

HOUSE BILL NO. 102

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/19/99

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act imposing certain requirements relating to cigarette sales in this state by
2 tobacco product manufacturers, including requirements for escrow, payment, and
3 reporting of money from cigarette sales in this state; providing penalties for
4 noncompliance with those requirements; and providing for an effective date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * **Section 1. FINDINGS AND PURPOSE.** (a) The legislature finds that

7 (1) cigarette smoking presents serious public health concerns to the state and
8 to the citizens of the state; the United States Surgeon General has determined that smoking
9 causes lung cancer, heart disease, and other serious diseases, and that there are hundreds of
10 thousands of tobacco-related deaths in the United States each year; these diseases most often
11 do not appear until many years after the person in question begins smoking;

12 (2) cigarette smoking also presents serious financial concerns for the state;
13 under certain health-care programs, the state may have a legal obligation to provide medical
14 assistance to eligible persons for health conditions associated with cigarette smoking, and

1 those persons may have a legal entitlement to receive such medical assistance;

2 (3) under the programs described in (2) of this subsection, the state pays
3 millions of dollars each year to provide medical assistance for the persons described in (2) of
4 this subsection for health conditions associated with cigarette smoking;

5 (4) it is the policy of the state that financial burdens imposed on the state by
6 cigarette smoking be borne by tobacco product manufacturers rather than by the state to the
7 extent that such manufacturers either determine to enter into a settlement with the state or are
8 found culpable by the courts;

9 (5) on November 23, 1998, leading United States tobacco product
10 manufacturers entered into a settlement agreement, entitled the "Master Settlement
11 Agreement," with the state; on February 9, 1999, the Alaska Superior Court accepted the
12 agreement dismissing claims in *The State of Alaska v. Philip Morris, Incorporated*. The
13 Master Settlement Agreement obligates these manufacturers, in return for a release of past,
14 present, and certain future claims against them as described in the agreement, to

15 (A) pay substantial sums to the state, tied in part to their volume of
16 sales;

17 (B) fund a national foundation devoted to the interests of public health;
18 and

19 (C) make substantial changes in their advertising and marketing
20 practices and corporate culture, with the intention of reducing underage smoking;

21 (6) it would be contrary to the policy of the state if tobacco product
22 manufacturers who determine not to enter into such a settlement could use a resulting cost
23 advantage to derive large, short-term profits in the years before liability may arise without
24 ensuring that the state will have an eventual source of recovery from them if they are proven
25 to have acted culpably; it is thus in the interests of the state to require that such manufacturers
26 establish an escrow fund to guarantee a source of compensation and to prevent such
27 manufacturers from deriving large, short-term profits and then becoming judgment-proof
28 before liability may arise.

29 (b) The purpose of this Act is to implement the findings set out in (a) of this section.

30 * **Sec. 2.** AS 45 is amended by adding a new chapter to read:

31 **Chapter 53. Cigarette Sales.**

Sec. 45.53.010. Tobacco product master settlement agreement recognized.

The master settlement agreement entered into by certain United States tobacco product manufacturers and the state, and related documents, for settlement of claims raised in *The State of Alaska v. Philip Morris, Incorporated*, and approved by the Alaska Superior Court on February 9, 1999, are recognized.

Sec. 45.53.020. Requirements. (a) Any tobacco product manufacturer selling cigarettes to consumers within the state - whether directly or through a distributor, retailer, or similar intermediary or intermediaries - after the effective date of this Act shall do one of the following:

(1) become a participating manufacturer, as that term is defined in sec. II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2) place into a qualified escrow fund by April 15 of the year following each listed calendar year the following amounts, as such amounts are adjusted for inflation:

(A) for 1999, \$.0094241 per unit sold on or after the effective date of this Act, but before January 1, 2000;

(B) for 2000, \$.0104712 per unit sold during that year;

(C) for each of 2001 and 2002, \$.0136125 per unit sold during the year in question;

(D) for each of 2003 through 2006, \$.0167539 per unit sold during the year in question;

(E) for each of 2007 and each year thereafter, \$.0188482 per unit sold during the year in question.

(b) A tobacco product manufacturer that places money into escrow under (a)(2) of this section is entitled to receive the interest or other appreciation on such money as earned. Such money itself shall be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on a released claim brought against such tobacco product manufacturer by this state or a releasing party located or residing in this state; the funds shall be released from escrow under this paragraph in the order

1 in which they were placed into escrow and only to the extent and at the time necessary
2 to make payments required under the judgment or settlement;

3 (2) to the extent that the tobacco product manufacturer establishes that
4 the amount that it was required to place into escrow in a particular year was greater
5 than the state's allocable share of the total payments that the manufacturer would have
6 been required to make in that year under the Master Settlement Agreement had it been
7 a participating manufacturer, as such payments are determined under sec. IX(i)(2) of
8 the Master Settlement Agreement and before any of the adjustments or offsets
9 described in sec. IX(i)(3) of that agreement other than the inflation adjustment, the
10 excess shall be released from escrow and revert back to that tobacco product
11 manufacturer; or

12 (3) to the extent not released from escrow under (1) or (2) of this
13 subsections, funds placed into escrow shall be released from escrow and revert back
14 to the tobacco product manufacturer 25 years after the date on which they were placed
15 into escrow.

16 (c) To be a qualified escrow fund under this section, the

17 (1) fund must be an escrow fund governed by an escrow arrangement
18 with a federally or state chartered financial institution having no affiliation with a
19 tobacco product manufacturer and having assets of at least \$1,000,000,000; and

20 (2) escrow arrangements described in (1) of this subsection must

21 (A) require that the financial institution hold the principal of the
22 escrow fund for the benefit of releasing parties; and

23 (B) prohibit the tobacco product manufacturer that places
24 money into the escrow fund from using, accessing, or directing the use of the
25 principal of the fund except as consistent with this section.

26 **Sec. 45.53.030. Regulations.** The commissioner of revenue shall adopt
27 regulations under AS 44.62 (Administrative Procedure Act) necessary to ascertain the
28 amount of excise tax paid on the cigarettes of a tobacco product manufacturer for each
29 year for which the manufacturer is required to place money into a qualified escrow
30 fund under AS 45.53.020.

31 **Sec. 45.53.040. Certification of compliance; civil actions.** (a) A tobacco

1 product manufacturer that elects to comply with AS 45.53.020 by placing money into
2 escrow under that section shall annually, at the time of compliance, certify to the
3 commissioner of revenue that it is in compliance with AS 45.53.020.

4 (b) If the commissioner of revenue does not timely receive a certification of
5 compliance from a tobacco product manufacturer as required by (a) of this section, the
6 commissioner shall notify the attorney general. The attorney general shall require that
7 manufacturer to, within 15 days, place into a qualified escrow fund the money
8 necessary to bring the manufacturer into compliance with AS 45.53.020. The attorney
9 general may bring a civil action on behalf of the state against a tobacco product
10 manufacturer that fails to place into a qualified escrow fund the money necessary to
11 bring the manufacturer into compliance with AS 45.53.020. The court, upon a finding
12 of a tobacco product manufacturer's

13 (1) violation of AS 45.53.020, shall require the manufacturer within 15
14 days to place into a qualified escrow fund the money necessary to bring the
15 manufacturer into compliance with AS 45.53.020 and may impose a civil penalty, in
16 an amount not to exceed five percent of the amount improperly withheld from escrow,
17 for each day of the violation; the total amount of the penalty under this paragraph may
18 not exceed 100 percent of the original amount improperly withheld from escrow;

19 (2) knowing violation of AS 45.53.020, shall require the manufacturer
20 within 15 days to place into a qualified escrow fund the money necessary to bring the
21 manufacturer into compliance with AS 45.53.020 and may impose a civil penalty, in
22 an amount not to exceed 15 percent of the amount improperly withheld from escrow,
23 for each day of the violation; the total amount of the penalty under this paragraph may
24 not exceed 300 percent of the original amount improperly withheld from escrow; and

25 (3) second knowing violation of AS 45.53.020, shall require the
26 manufacturer within 15 days to place into a qualified escrow fund the money necessary
27 to bring the manufacturer into compliance with AS 45.53.020, and may impose a
28 monetary penalty as described in (2) of this subsection, and shall prohibit the
29 manufacturer from selling cigarettes to consumers within the state, whether directly or
30 through a distributor, retailer, or similar intermediary, for a period not to exceed two
31 years.

(c) In addition to the civil penalties described in (b) of this section, the court may award the state full reasonable attorneys fees and costs if the state prevails in a civil action brought under (b) of this section.

(d) Each failure to make an annual placement of money into a qualified escrow fund as required by AS 45.53.020 is a separate violation for the purposes of this section.

Sec. 45.53.990. Definitions. In this chapter,

(1) "adjusted for inflation" means increased in accordance with the formula for inflation adjustment set out in Exhibit C to the Master Settlement Agreement;

(2) "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person; in this paragraph,

(A) "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more;

(B) "person" means an individual, a partnership, a committee, an association, a corporation, or any other organization or group of persons;

(3) "allocable share" means allocable share as that term is defined in the Master Settlement Agreement;

(4) "cigarette"

(A) means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains

(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to, or purchased by, consumers as a cigarette; or

(iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be

1 offered to, or purchased by, consumers as a cigarette described in (i) of
2 this subparagraph;

3 (B) includes "roll-your-own"; for purposes of this subparagraph,

4 (i) 0.09 ounces of "roll-your-own" tobacco constitutes
5 one individual "cigarette;"

6 (ii) "roll-your-own" includes any tobacco that, because
7 of its appearance, type, packaging, or labeling is suitable for use and
8 likely to be offered to, or purchased by, consumers as tobacco for
9 making cigarettes;

10 (5) "Master Settlement Agreement" means the settlement agreement and
11 related documents described in AS 45.53.010;

12 (6) "original participating manufacturer" means "original participating
13 manufacturer" as that term is defined in the Master Settlement Agreement;

14 (7) "qualified escrow fund" means a fund described in AS 45.53.020(c);

15 (8) "released claims" means "released claims" as that term is defined
16 in the Master Settlement Agreement;

17 (9) "releasing parties" means "releasing parties" as that term is defined
18 in the Master Settlement Agreement;

19 (10) "tobacco product manufacturer"

20 (A) means an entity that, on or after the effective date of this
21 Act, directly, and not exclusively through an affiliate,

22 (i) manufactures cigarettes anywhere that such
23 manufacturer intends to be sold in the United States, including
24 cigarettes intended to be sold in the United States through an importer;
25 provided, however, that an entity that manufactures cigarettes that it
26 intends to be sold in the United States shall not be considered to be a
27 tobacco product manufacturer under this clause (i) if, first, such
28 cigarettes are sold in the United States exclusively through an importer
29 that is an original participating manufacturer, as that term is defined in
30 the Master Settlement Agreement, that will be responsible for the
31 payments under the Master Settlement Agreement with respect to such

1 cigarettes as a result of the provisions of sec. II(mm) of the Master
2 Settlement Agreement and that pays the taxes specified in sec. II(z) of
3 the Master Settlement Agreement, and, second, the manufacturer of
4 such cigarettes does not market or advertise such cigarettes in the
5 United States;

6 (ii) is the first purchaser anywhere for resale in the
7 United States of cigarettes manufactured anywhere that the
8 manufacturer does not intend to be sold in the United States; or

9 (iii) becomes a successor of an entity described in (i) or
10 (ii) of this subparagraph;

11 (B) does not include an affiliate of an entity described in (A)
12 of this paragraph unless the affiliate itself meets the standards set out in any
13 of (A)(i) - (iii) of this paragraph;

14 (11) "units sold" means the number of individual cigarettes sold in the
15 state by the applicable tobacco product manufacturer, whether directly or through a
16 distributor, retailer, or similar intermediary or intermediaries, during the year in
17 question, as measured by excise taxes collected by the state on packs or "roll-your-
18 own" tobacco containers.

19 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).