

Regular Session, 1999

HOUSE BILL NO. 1007

BY REPRESENTATIVES COPELIN, LEBLANC, MURRAY, HUNTER, DOWNER, ALARIO, BARTON, BRUCE, CARTER, CLARKSON, CURTIS, DAMICO, DANIEL, DEWITT, DIEZ, DOERGE, DUPRE, DURAND, FARVE, FAUCHEUX, FRITH, FRUGE, GAUTREAU, GLOVER, GUILLORY, HEATON, ILES, KENNEY, LANDRIEU, MCCAIN, MCMAINS, MICHOT, MITCHELL, MONTGOMERY, PIERRE, PINAC, POWELL, PRATT, QUEZAIRE, ROMERO, SALTER, SCHWEGMANN, THOMPSON, THORNHILL, TRAVIS, WADDELL, WALSWORTH, WARNER, WELCH, WIGGINS, WILKERSON, WILLARD, AND WOOTON

COMMERCE: Provides requirements for tobacco product manufacturers who do not participate in the Master Settlement Agreement

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AN ACT

To enact Part XIII of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 13:5061 through 5063, relative to requirements for certain tobacco product manufacturers; to require those tobacco product manufacturers who did not participate in the Master Settlement Agreement signed on November 23, 1998, and who sell tobacco products in Louisiana, to place certain funds in escrow; to provide for the distribution of those funds; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part XIII of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, comprised of R.S. 13:5061 through 5063, is hereby enacted to read as follows:

1 PART XIII. MASTER SETTLEMENT
2 AGREEMENT - REQUIREMENTS FOR
3 TOBACCO PRODUCT MANUFACTURERS

4 §5061. Findings and purpose

5 The Legislature of Louisiana hereby finds and declares that:

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

13 (2) Cigarette smoking also presents serious financial concerns
14 for the state. Under certain health-care programs, the state may have
15 a legal obligation to provide medical assistance to eligible persons for
16 health conditions associated with cigarette smoking, and those persons
17 may have a legal entitlement to receive such medical assistance.

18 (3) Under these programs, the state pays millions of dollars
19 each year to provide medical assistance for those persons for health
20 conditions associated with cigarette smoking.

21 (4) It is the policy of this state that financial burdens imposed
22 on the state by cigarette smoking be borne by tobacco product
23 manufacturers rather than by the state to the extent that such
24 manufacturers either determine to enter into a settlement with the state
25 or are found culpable by the courts.

1 (5) On November 23, 1998, leading United States tobacco
2 product manufacturers entered into a settlement agreement, entitled the
3 "Master Settlement Agreement", with the state. The Master Settlement
4 Agreement obligates these manufacturers, in return for a release of past,
5 present, and certain future claims against them as described therein, to
6 pay substantial sums to the state (tied in part to their volume of sales);
7 to fund a national foundation devoted to the interests of public health;
8 and to make substantial changes in their advertising and marketing
9 practices and corporate culture, with the intention of reducing underage
10 smoking.

11 (6) It would be contrary to the policy of this state if tobacco
12 product manufacturers who determine not to enter into such a
13 settlement could use a resulting cost advantage to derive large, short-
14 term profits in the years before liability may arise without ensuring that
15 the state will have an eventual source of recovery from them if they are
16 proven to have acted culpably. It is thus in the interest of the state to
17 require that such manufacturers establish a reserve fund to guarantee a
18 source of compensation and to prevent such manufacturers from
19 deriving large, short-term profits and then becoming judgment-proof
20 before liability may arise.

21 §5062. Definitions

22 As used in this Part, the following words and phrases shall have
23 the following meanings ascribed to them:

24 (1) "Adjusted for inflation" means increased in accordance with
25 the formula for inflation adjustment set forth in Exhibit C to the Master
26 Settlement Agreement.

1 (2) "Affiliate" means a person who directly or indirectly owns
2 or controls, is owned or controlled by, or is under common ownership
3 or control with, another person. Solely for purposes of this definition,
4 the terms "owns", "is owned", and "ownership" mean ownership of an
5 equity interest, or the equivalent thereof, of ten percent or more, and
6 the term "person" means an individual, partnership, committee,
7 association, corporation, or any other organization or group of persons.

8 (3) "Allocable share" means allocable share as that term is
9 defined in the Master Settlement Agreement.

10 (4) "Cigarette" means any product that contains nicotine, is
11 intended to be burned or heated under ordinary conditions of use, and
12 consists of or contains (a) any roll of tobacco wrapped in paper or in
13 any substance not containing tobacco, or (b) tobacco, in any form, that
14 is functional in the product, which, because of its appearance, the type
15 of tobacco used in the filler, or its packaging and labeling, is likely to
16 be offered to, or purchased by, consumers as a cigarette, or (c) any roll
17 of tobacco wrapped in any substance containing tobacco which,
18 because of its appearance, the type of tobacco used in the filler, or its
19 packaging and labeling, is likely to be offered to, or purchased by,
20 consumers as a cigarette described in Subparagraph (a) of this
21 definition. (d) The term "cigarette" includes "roll-your-own" (i.e., any
22 tobacco which, because of its appearance, type, packaging, or labeling,
23 is suitable for use and likely to be offered to, or purchased by,
24 consumers as tobacco for making cigarettes). For purposes of this
25 definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall
26 constitute one individual "cigarette".

1 (5) "Master Settlement Agreement" means the settlement
2 agreement (and related documents) entered into on November 23, 1998,
3 by the state and leading United States tobacco product manufacturers.

4 (6) "Qualified escrow fund" means an escrow arrangement with
5 a federally or state-chartered financial institution having no affiliation
6 with any tobacco product manufacturer and having assets of at least one
7 billion dollars where such arrangement requires that such financial
8 institution hold the escrowed funds' principal for the benefit of
9 releasing parties and prohibits the tobacco product manufacturer
10 placing the funds into escrow from using, accessing, or directing the
11 use of the funds' principal except as consistent with R.S.
12 13:5063(C)(2).

13 (7) "Released claims" means released claims as that term is
14 defined in the Master Settlement Agreement.

15 (8) "Releasing parties" means releasing parties as that term is
16 defined in the Master Settlement Agreement.

17 (9) "Tobacco product manufacturer" means an entity that after
18 the effective date of this Part directly (and not exclusively through any
19 affiliate):

20 (a) Manufactures cigarettes anywhere that such manufacturer
21 intends to be sold in the United States, including cigarettes intended to
22 be sold in the United States through an importer (except where such
23 importer is an original participating manufacturer, as that term is
24 defined in the Master Settlement Agreement, that will be responsible
25 for the payments under the Master Settlement Agreement with respect
26 to such cigarettes as a result of the provisions of subsections II(mm) of

1 the Master Settlement Agreement and that pays the taxes specified in
2 subsection II(z) of the Master Settlement Agreement, and provided that
3 the manufacturer of such cigarettes does not market or advertise such
4 cigarettes in the United States).

5 (b) Is the first purchaser anywhere for resale in the United
6 States of cigarettes manufactured anywhere that the manufacturer does
7 not intend to be sold in the United States.

8 (c) Becomes a successor of an entity described in Subparagraph
9 (a) or (b) of this Paragraph.

10 (d) The term "tobacco product manufacturer" shall not include
11 an affiliate of a tobacco product manufacturer unless such affiliate itself
12 falls within any of Subparagraphs (a) through (c) of this Paragraph.

13 (10) "Units sold" means the number of individual cigarettes sold
14 in the state by the applicable tobacco product manufacturer (whether
15 directly or through a distributor, retailer, or similar intermediary or
16 intermediaries) during the year in question, as measured by excise taxes
17 collected by the state on packs (or "roll-your-own" tobacco containers)
18 bearing the excise tax stamp of the state. The Department of Revenue
19 shall adopt such rules as are necessary to ascertain the amount of state
20 excise tax paid on the cigarettes of such tobacco product manufacturer
21 for each year.

22 §5063. Requirements

23 A. Any tobacco product manufacturer selling cigarettes to
24 consumers within the state (whether directly or through a distributor,
25 retailer, or similar intermediary or intermediaries) after the effective

1 date of this Part shall comply with either Subsection B or C of this
2 Section.

3 B. The tobacco product manufacturer may become a
4 participating manufacturer (as that term is defined in section II(jj) of
5 the Master Settlement Agreement) and meet its financial obligations
6 under the Master Settlement Agreement.

7 C.(1) The tobacco product manufacturer may place into a
8 qualified escrow fund by April fifteenth of the year following the year
9 in question the following amounts (as such amounts are adjusted for
10 inflation):

11 (a) 1999: \$.0094241 per unit sold after the effective date of this
12 Part.

13 (b) 2000: \$.0104712 per unit sold after the effective date of this
14 Part.

15 (c) For each of 2001 and 2002: \$.0136125 per unit sold after
16 the effective date of this Part.

17 (d) For each of 2003 through 2006: \$.0167539 per unit sold
18 after the effective date of this Part.

19 (e) For each of 2007 and each year thereafter: \$.0188482 per
20 unit sold after the effective date of this Part.

21 (2) A tobacco product manufacturer that places funds into
22 escrow pursuant to this Subsection shall receive the interest or other
23 appreciation on such funds as earned. Such funds themselves shall be
24 released from escrow only under the following circumstances:

25 (a) To pay a judgment or settlement on any released claim
26 brought against such tobacco product manufacturer by the state or any

1 releasing party located or residing in the state. Funds shall be released
2 from escrow under this Paragraph in the order in which they were
3 placed into escrow and only to the extent and at the time necessary to
4 make payments required under such judgment or settlement.

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

15 (c) To the extent not released from escrow under Subparagraphs
16 (a) and (b) of this Paragraph, funds shall be released from escrow and
17 revert back to such tobacco product manufacturer twenty-five years
18 after the date on which they were placed into escrow.

19 (3) Each tobacco product manufacturer that elects to place
20 funds into escrow pursuant to this Subsection shall annually certify to
21 the attorney general that it is in compliance with this Subsection. The
22 attorney general may bring a civil action on behalf of the state against
23 any tobacco product manufacturer that fails to place into escrow the
24 funds required under this Subsection. Any tobacco product
25 manufacturer that fails in any year to place into escrow the funds
26 required under this Subsection shall:

1 (a) Be required within fifteen days to place such funds into
2 escrow as shall bring it into compliance with this Subsection. The
3 court, upon a finding of a violation of this Subsection, may impose a
4 civil penalty in an amount not to exceed five percent of the amount
5 improperly withheld from escrow per day of the violation and in a total
6 amount not to exceed one hundred percent of the original amount
7 improperly withheld from escrow.

8 (b) In the case of a knowing violation, be required within fifteen
9 days to place such funds into escrow as shall bring it into compliance
10 with this Subsection. The court, upon a finding of a knowing violation
11 of this Subsection, may impose a civil penalty in an amount not to
12 exceed fifteen percent of the amount improperly withheld from escrow
13 per day of the violation and in a total amount not to exceed three
14 hundred percent of the original amount improperly withheld from
15 escrow.

16 (c) In the case of a second knowing violation, be prohibited
17 from selling cigarettes to consumers within the state (whether directly
18 or through a distributor, retailer, or similar intermediary) for a period
19 not to exceed two years.

20 (4) Each failure to make an annual deposit required under this
21 Subsection shall constitute a separate violation.

22 Section 2. This Act shall become effective upon signature by the
23 governor or, if not signed by the governor, upon expiration of the time for bills
24 to become law without signature by the governor, as provided in Article III,
25 Section 18 of the Constitution of Louisiana. If vetoed by the governor and

1 subsequently approved by the legislature, this Act shall become effective on
2 the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Copelin, et al.

HB No. 1007

Proposed law enacts requirements for tobacco product manufacturers who did not participate in the Master Settlement Agreement and who sell tobacco products in Louisiana.

Proposed law makes the following findings:

- (1) On November 23, 1998, several states and several tobacco product manufacturers entered into a compromise settlement of a number of lawsuits which those states had filed against those tobacco product manufacturers. That agreement requires those tobacco product manufacturers to pay substantial amounts of money, some to the states directly, some for a national public health foundation, and some for certain programs aimed at reducing smoking among underage people.
- (2) A number of tobacco product manufacturers did not enter into the Master Settlement Agreement and thus would not be bound to contribute to these expenditures.

Proposed law requires those tobacco product manufacturers who sell cigarettes in Louisiana to place in escrow certain sums of money. The amount of money is based on sales of cigarettes in Louisiana.

The stated purposes of proposed law include preventing the deriving of large, short-term profits by nonparticipating tobacco product manufacturers while at the same time ensuring that Louisiana will have a source from which to recover any damages which might be awarded if Louisiana eventually obtains a judgment against those manufacturers.

Proposed law requires nonparticipating tobacco product manufacturers to place the following amounts in escrow:

1999	\$.0094241	per unit
2000	\$.0104712	per unit
2001 - 2002	\$.0136125	per unit
2003 - 2006	\$.0167539	per unit
2007 and thereafter	\$.0188482	per unit

Proposed law provides that a "unit" is one cigarette, or the equivalent amount of tobacco for tobacco sold in "roll-your-own" form and that the amounts

above will be adjusted for inflation. Provides that the interest on the escrow funds shall be paid to the tobacco product manufacturer.

Proposed law provides that the escrow fund shall be released only under the following circumstances:

- (1) To pay a judgment or settled claim against the tobacco product manufacturer.
- (2) The tobacco product manufacturer proves that the amount placed in escrow for any one year exceeds the amount that the manufacturer would have had to pay for that year under the Master Settlement Agreement.
- (3) The funds have been in escrow for 25 years.

Proposed law authorizes the attorney general to file suit against tobacco product manufacturers which do not place in escrow the amounts required by proposed law. Provides that manufacturers which are found to be in violation of proposed law shall be required to place in escrow sufficient funds to be in compliance and authorizes a penalty of 5% per day of the amount improperly withheld, up to 100% of the amount improperly withheld. If the violation is a first offense knowing violation, the deposit of the improperly withheld funds must be made within 15 days and the penalty is increased to 15% per day up to 300% of the total amount improperly withheld. The penalty for a second offense knowing violation is a prohibition against selling cigarettes in Louisiana for two years. Each failure to make an annual deposit is a separate offense.

Proposed law provides that a nonparticipating tobacco product manufacturer may avoid proposed law by becoming a participating manufacturer and performing its financial obligations under the Master Settlement Agreement.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 13:5061-5063)