Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

State of Arkansas
82nd General Assembly
Regular Session, 1999

As Engrossed: S3/25/99

A Bill

Act 1165 of 1999

SENATE BILL 867

By: Senators Bradford, *Bearden, Bisbee, Hoofman, Ross, Scott, B. Walker, Wilson*
By: Representative B. Johnson

For An Act To Be Entitled

"AN ACT CONCERNING NON-SETTLING TOBACCO PRODUCT MANUFACTURERS; AND FOR OTHER PURPOSES."

Subtitle

"AN ACT CONCERNING NON-SETTLING TOBACCO PRODUCT MANUFACTURERS."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Definitions.

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

(b) "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. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) 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 (3) 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 offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

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

(f) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section 2(b)(2) of this Act.

(g) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections ll(mm) of the

1 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 (2) 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; or
8 (3) becomes a successor of an entity described in paragraph (1)
9 or (2).
10 The term "Tobacco Product Manufacturer" shall not include an
11 affiliate of a tobacco product manufacturer unless such affiliate itself falls
12 within any of (1) - (3) above.
13 (j) "Units sold" means the number of individual cigarettes sold in the
14 State by the applicable tobacco product manufacturer (whether directly or
15 through a distributor, retailer or similar intermediary or intermediaries)
16 during the year in question, as measured by excise taxes collected by the
17 State on packs (or "roll-your-own" tobacco containers) bearing the excise tax
18 stamp of the State. The Arkansas Department of Finance and Administration
19 shall promulgate such regulations as are necessary to ascertain the amount of
20 State excise tax paid on the cigarettes of such tobacco product manufacturer
21 for each year.
22
23 SECTION 2. Requirements.
24 Any tobacco product manufacturer selling cigarettes to consumers within
25 the State (whether directly or through a distributor, retailer or similar
26 intermediary or intermediaries) after the date of enactment of this Act shall
27 do one of the following:
28 (a) become a participating manufacturer (as that term is defined in
29 section II(jj) of the Master Settlement Agreement) and generally perform its
30 financial obligations under the Master Settlement Agreement; or
31 (b) (1) place into a qualified escrow fund by April 15 of the year
32 following the year in question the following amounts (as such amounts are
33 adjusted for inflation) --
34 1999: $.0094241 per unit sold after the date of enactment of this Act;
35 2000: $.0104712 per unit sold;
36 for each of 2001 and 2002: $.0136125 per unit sold;

1 for each of 2003 through 2006: $.0167539 per unit sold;
2 for each of 2007 and each year thereafter: $.0188482 per unit sold.
3 (2) A tobacco product manufacturer that places funds into escrow
4 pursuant to paragraph (1) shall receive the interest or other appreciation on
5 such funds as earned. Such funds themselves shall be released from escrow only
6 under the following circumstances --
7 (A) to pay a judgment or settlement on any released claim
8 brought against such tobacco product manufacturer by the State or any
9 releasing party located or residing in the State. Funds shall be released
10 from escrow under this subparagraph (i) in the order in which they were placed
11 into escrow and (ii) only to the extent and at the time necessary to make
12 payments required under such judgment or settlement;
13 (B) to the extent that a tobacco product manufacturer
14 establishes that the amount it was required to place into escrow in a
15 particular year was greater than the State's allocable share of the total
16 payments that such manufacturer would have been required to make in that year
17 under the Master Settlement Agreement (as determined pursuant to section
18 IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments
19 or offsets described in section IX(i)(3) of that Agreement other than the
20 Inflation Adjustment) had it been a participating manufacturer, the excess
21 shall be released from escrow and revert back to such tobacco product
22 manufacturer; or
23 (C) to the extent not released from escrow under
24 subparagraphs (A) or (B), funds shall be released from escrow and revert back
25 to such tobacco product manufacturer twenty-five years after the date on which
26 they were placed into escrow.
27 (3) Each tobacco product manufacturer that elects to place funds
28 into escrow pursuant to this subsection shall annually certify to the Attorney
29 General that it is in compliance with this subsection. The Attorney General
30 may bring a civil action on behalf of the State against any tobacco product
31 manufacturer that fails to place into escrow the funds required under this
32 section. Any tobacco product manufacturer that fails in any year to place
33 into escrow the funds required under this section shall --
34 (A) be required within 15 days to place such funds into
35 escrow as shall bring it into compliance with this section. The court, upon a
36 finding of a violation of this subsection, may impose a civil penalty, to be

1 paid to the general fund of the State, in an amount not to exceed 5 percent of
2 the amount improperly withheld from escrow per day of the violation and in a
3 total amount not to exceed 100 percent of the original amount improperly
4 withheld from escrow;
5 (B) in the case of a knowing violation, be required within
6 15 days to place such funds into escrow as shall bring it into compliance with
7 this section. The court, upon a finding of a knowing violation of this
8 subsection, may impose a civil penalty, to be paid to the general fund of the
9 State, in an amount not to exceed 15 percent of the amount improperly withheld
10 from escrow per day of the violation and in a total amount not to exceed 300
11 percent of the original amount improperly withheld from escrow; and
12 (C) in the case of a second knowing violation, be
13 prohibited from selling cigarettes to consumers within the State (whether
14 directly or through a distributor, retailer or similar intermediary) for a
15 period not to exceed 2 years.
16 Each failure to make an annual deposit required under this
17 section shall constitute a separate violation.
18
19 SECTION 3. All provisions of this Act are of a general and permanent
20 nature and are amendatory to the Arkansas Code of 1987 Annotated and the
21 Arkansas Code Revision Commission shall incorporate the same in the Code.
22 */s/* ***Bradfor*** ***APPROVED: 4/6/1999d***