

**TWELFTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE**

*Public Law 12-45*

**SECOND REGULAR SESSION, 2000**

**H. B. NO. 12-260, CD1**

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**AN ACT**

Requiring any tobacco manufacturer selling cigarettes to consumers within the Commonwealth of the Northern Mariana Islands to become a participating manufacturer in the tobacco master settlement agreement or to place specific amounts into a qualified escrow fund; and for other purposes.

**BE IT ENACTED BY THE TWELFTH NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:**

**Section 1. Findings and Purposes.**

(A) Cigarette smoking presents serious public health concerns to the CNMI and its citizens. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(B) Cigarette smoking also presents serious financial concerns for The CNMI. Under certain health-care programs, the Government of The CNMI may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(C) Under these programs, the Government of The CNMI pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking. Diseases partially attributed to cigarette smoking or tobacco use include, but are not limited to, coronary heart disease, heart attacks, chronic obstructive lung disease, emphysema, stroke, and a variety of cancers including lung cancer. Lung cancer rates per capita of Chamorro males have already exceeded the rates of lung cancer mortality among males in the mainland U.S. The CNMI

Department of Public Health estimates that 18% of the total cost of hospital days in 1994 for Chamorro and Carolinian patients can be attributed to smoking.

(D) It is the policy of the Government of The CNMI that financial burdens imposed on the Government of The CMMI by cigarette smoking be borne by tobacco product manufacturers rather than by the Government of The CNMI to the extent that such manufacturers either determine to enter into a settlement with the Government of The CNMI or are found culpable by the courts.

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

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

**Section 2. Definitions.** As used in this chapter, unless the context clearly requires otherwise:

(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 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 Attorney General of The CNMI and leading United States tobacco product manufacturers.

(F) “Qualified escrow fund” means an escrow arrangement with a federally or Commonwealth chartered financial institution having no affiliation with any tobacco product manufacturer 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 3(B)(2)(b)-(c) 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 though any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, or has a reasonable expectation thereof, 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), or a subsequent participating manufacturer (a manufacturer which has become a participant in the Master Settlement Agreement after the original participating manufacturer), that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II (mm) of the Master Settlement Agreement and that pays the taxes specified in subsection 11 (z) of the Master Settlement Agreement, and

provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in paragraph (1) or (2).

The term Tobacco Product Manufacturer” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of the (1) - (3) above.

(J) “United States” means the United States of America, including The CNMI.

(K) “Units sold” means the number of individual cigarettes sold in The CNMI by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by taxes collected by the Government of The CNMI. The Department of Revenue and Taxation shall promulgate such regulations as are necessary to ascertain the amount of taxes paid on the cigarettes of such tobacco product manufacturer for each year.

**Section 3. Requirements.** Any tobacco product manufacturer selling cigarettes to consumers within The CNMI (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of the Act shall do one of the following:

(A) become a participating manufacturer (as that term is defined in section IIjj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(B)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) —

- (a) 2000: \$.01047 per unit sold after the date of enactment of the Act;
- (b) for each of 2001 and 2002: \$.0136 per unit sold after the date of enactment of this Act;
- (c) for each of 2003 through 2006: \$.01675 per unit sold after the date of enactment of this Act;
- (d) for each of 2007 and each year thereafter: \$.01885 per unit sold after the date of enactment of the Act.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances -

(a) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the Government of The CNMI or any releasing party located or residing in The CNMI. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (II) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(b) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than The CNMI's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer, or

(c) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General of The CNMI that it is in compliance with this subsection. The Attorney General of The CNMI may bring a civil action on behalf of the Government of The CNMI against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall

(a) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court upon a finding of a violation of this subsection, may impose a civil penalty (to be paid into the general fund of the CMMI government) in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(b) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty [to be paid to the general fund of the Government of The CMMI] in an amount not to exceed 25 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(c) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within The CNMI (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

(d) a court shall award attorneys' fees and costs in any proceeding successfully brought by the attorney general under this section.

**Section 4. Severability.** If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

**Section 5. Savings Clause.** This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repeaters contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this Act becomes effective.

**Section 6. Effective Date.** This Act shall take effect upon its approval by the Governor or its becoming law without such approval.

**CERTIFIED BY:**

**ATTESTED TO BY:**

/s/ \_\_\_\_\_  
**ALEJO M. MENDIOLA, JR.**  
ACTING SPEAKER

/s/ \_\_\_\_\_  
**EVELYN C. FLEMING**  
HOUSE CLERK

Approved this 20<sup>th</sup> day of April, 2001

/s/ \_\_\_\_\_  
**PEDRO P. TENORIO**  
**GOVERNOR**  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS