

Lamberti, Ziemann, Bolkcom

SSB 3184
Appropriations

SENATE FILE _____

BY (PROPOSED COMMITTEE ON
APPROPRIATIONS BILL BY
CHAIRPERSON LAMBERTI)

Succeeded By
(SF) HF 2317

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the tobacco master settlement agreement,
2 including tobacco product manufacturer compliance, making an
3 appropriation, and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 453A.22, subsection 1, Code 2001, is
2 amended to read as follows:

3 1. If a person holding a permit issued by the department
4 under this division, including a retailer permit for railway
5 car, has willfully violated section 453A.2 or 453A.58, the
6 department shall revoke the permit upon notice and hearing.
7 If the person violates any other provision of this division,
8 or a rule adopted under this division, or is substantially
9 delinquent in the payment of a tax administered by the
10 department or the interest or penalty on the tax, or if the
11 person is a corporation and if any officer having a
12 substantial legal or equitable interest in the ownership of
13 the corporation owes any delinquent tax of the permit-holding
14 corporation, or interest or penalty on the tax, administered
15 by the department, the department may revoke the permit issued
16 to the person, after giving the permit holder an opportunity
17 to be heard upon ten days' written notice stating the reason
18 for the contemplated revocation and the time and place at
19 which the person may appear and be heard. The hearing before
20 the department may be held at a site in the state as the
21 department may direct. The notice shall be given by mailing a
22 copy to the permit holder's place of business as it appears on
23 the application for a permit. If, upon hearing, the
24 department finds that the violation has occurred, the
25 department may revoke the permit.

26 Sec. 2. Section 453A.44, subsection 10, Code 2001, is
27 amended to read as follows:

28 10. The director may revoke, cancel, or suspend the
29 license or licenses of any distributor or subjobber for
30 violation of any of the provisions of this division, for
31 violation of section 453A.58, or for violation of any other
32 act applicable to the sale of tobacco products, or any rule or
33 regulations promulgated by the director in furtherance of this
34 division. No license shall be revoked, canceled, or suspended
35 except after notice and a hearing by the director as provided

1 in section 453A.48.

2 DIVISION IV

3 MANUFACTURERS' COMPLIANCE

4 Sec. 3. NEW SECTION. 453A.57 DEFINITIONS.

5 For the purposes of this division, unless the context
6 otherwise requires:

7 1. "Cigarette" means the same as defined in section
8 453C.1.

9 2. "Distributor" means the same as defined in sections
10 453A.1 and 453A.42.

11 3. "Tobacco product manufacturer" means the same as
12 defined in section 453C.1.

13 Sec. 4. NEW SECTION. 453A.58 DISTRIBUTORS --

14 DETERMINATION OF TOBACCO PRODUCT MANUFACTURER COMPLIANCE.

15 1. A distributor shall not affix stamps or cause stamps to
16 be affixed to individual packages of any brand of cigarettes
17 sold or distributed by the distributor in this state and shall
18 not act as a distributor for any roll-your-own-tobacco unless
19 either of the following conditions applies:

20 a. The tobacco product manufacturer of the brand, or any
21 predecessor tobacco product manufacturer of the brand, is a
22 participating manufacturer in compliance with section 453C.2,
23 subsection 1.

24 b. The tobacco product manufacturer of the brand, or any
25 predecessor tobacco product manufacturer of the brand, has
26 provided the distributor with a current certification that
27 such tobacco product manufacturer and all predecessor tobacco
28 product manufacturers of the brand are in full compliance with
29 section 453C.2, subsection 2.

30 2. A distributor shall not affix stamps or cause stamps to
31 be affixed to individual packages of any brand of cigarettes,
32 subsequent to notice to the distributor by the tobacco product
33 manufacturer or a predecessor tobacco product manufacturer
34 that the tobacco product manufacturer is in violation of
35 chapter 453C with reference to that brand.

1 Sec. 5. NEW SECTION. 453A.59 TOBACCO PRODUCT

2 MANUFACTURER CERTIFICATION.

3 1. A tobacco product manufacturer whose cigarettes are
4 sold for consumption in this state shall quarterly certify,
5 under penalty of perjury, that as of the date of
6 certification, the tobacco product manufacturer and any
7 predecessor of the tobacco product manufacturer are either of
8 the following:

9 a. A participating manufacturer pursuant to section
10 453C.2, subsection 1.

11 b. In full compliance with section 453C.2, subsection 2.

12 2. A certification under subsection 1 shall also state,
13 under penalty of perjury, that the tobacco product
14 manufacturer is in compliance with section 453A.62, and shall
15 be accompanied by a list of cigarette brands sold by the
16 tobacco product manufacturer in this state.

17 3. If certification is made pursuant to subsection 1,
18 paragraph "b", the certification shall also state, under
19 penalty of perjury, that the per unit price to the distributor
20 includes an amount equal to the amount required to be placed
21 into escrow under section 453C.2, subsection 2.

22 4. A copy of the certification shall be delivered to the
23 director, the attorney general, and any distributor of the
24 tobacco product manufacturer. A distributor shall retain a
25 copy of the certificate for five years from the date of
26 receipt.

27 5. The director shall prescribe the form of the
28 certificate required and the specific dates on which the
29 certificate must be filed.

30 Sec. 6. NEW SECTION. 453A.60 PERMIT REVOCATION.

31 A distributor that violates this division is subject to
32 revocation of the distributor's permit pursuant to section
33 453A.22 or 453A.44, as applicable.

34 Sec. 7. NEW SECTION. 453A.61 INFORMATION EXCHANGE.

35 For the purposes of enforcement of chapter 453C and this

1 division, the department and the attorney general may share
2 all information collected under chapter 453C and this division
3 with each other, with the national association of attorneys
4 general, and with agencies of other states responsible for
5 enforcement of cigarette and tobacco laws.

6 Sec. 8. NEW SECTION. 453A.62 REGISTERED AGENT.

7 1. A tobacco product manufacturer whose cigarettes are
8 sold for consumption in this state shall, prior to any such
9 sale, maintain in this state both a registered office and a
10 registered agent that meet the criteria prescribed in section
11 490.501.

12 2. A registered agent is the tobacco product
13 manufacturer's agent for service of process, notice, or demand
14 required or permitted by law to be served on the tobacco
15 product manufacturer.

16 3. If a tobacco product manufacturer does not have a
17 registered agent, or the agent cannot be served with
18 reasonable diligence, the tobacco product manufacturer may be
19 served by any means provided in section 490.504.

20 4. Registration and changes of a registered office or
21 registered agent or resignation of a registered agent shall be
22 filed with the department in accordance with rules adopted by
23 the department.

24 Sec. 9. TOBACCO SETTLEMENT FUND -- APPROPRIATION --
25 LITIGATION COSTS. There is appropriated from the tax-exempt
26 bond proceeds restricted capital funds account of the tobacco
27 settlement trust fund established in section 12E.12, to the
28 treasurer of state for the fiscal year beginning July 1, 2001,
29 and ending June 30, 2002, the following amount, or so much
30 thereof as is necessary, to supplement the appropriation made
31 in 2001 Iowa Acts, chapter 176, section 25, to be used for the
32 purpose designated:

33 For payment of litigation fees incurred pursuant to the
34 tobacco master settlement agreement:
35 \$ 944,880

1 certification, the tobacco product manufacturer and any
 2 predecessor of the tobacco product manufacturer are either a
 3 participating manufacturer under the master settlement
 4 agreement or in full compliance with the escrow requirements
 5 under the master settlement agreement. The certification is
 6 to state, under penalty of perjury, that the tobacco product
 7 manufacturer is in compliance with requirements relating to
 8 maintaining a registered office and registered agent in the
 9 state. If certification is made on the basis that the tobacco
 10 product manufacturer is in full compliance with the escrow
 11 requirements under the master settlement agreement, the
 12 certification must also state, under penalty of perjury, that
 13 the per unit price to the distributor includes an amount equal
 14 to the amount required to be placed into escrow under Code
 15 section 453C.2. Each certificate must be accompanied by a
 16 list of cigarette brands sold by the tobacco product
 17 manufacturer in the state.

18 The bill requires that a copy of the certification be
 19 delivered to the director of revenue and finance, the attorney
 20 general, and any distributor of the tobacco product
 21 manufacturer. The bill requires distributors to retain a copy
 22 of the certificate for five years from the date of receipt.

23 The bill directs the director of revenue and finance to
 24 prescribe the form of the certificate required and the
 25 specific dates on which the certificate must be filed.

26 Under the bill, a distributor that violates the provisions
 27 of the bill is subject to revocation of the distributor's
 28 permit or license.

29 The bill authorizes that, for the purposes of enforcement
 30 of Code chapter 453C (tobacco product manufacturers --
 31 financial obligations) and the new provisions of the bill, the
 32 department of revenue and finance and the attorney general may
 33 share all information collected under Code chapter 453C and
 34 the provisions of the bill with each other, with the national
 35 association of attorneys general, and with agencies of other

1 states responsible for enforcement of cigarette and tobacco
2 laws.

3 The bill requires tobacco product manufacturers whose
4 cigarettes are sold for consumption in the state, prior to any
5 such sale, to maintain both a registered office and a
6 registered agent in the state.

7 The bill also makes an appropriation for the fiscal year
8 beginning July 1, 2001, and ending June 30, 2002, from the
9 tax-exempt bond proceeds restricted capital funds account of
10 the tobacco settlement trust fund, to the treasurer of state,
11 to supplement the appropriation made pursuant to 2001 Iowa
12 Acts, chapter 176, section 25, for payment of litigation fees
13 incurred pursuant to the tobacco master settlement agreement.
14 This section of the bill takes effect upon enactment.

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REPRINTED

FILED MAR 20 2002

SENATE FILE 2317
BY COMMITTEE ON APPROPRIATIONS

(SUCCESSOR TO SSB 3184)

Passed Senate, ^(p. 946) Date 4/3/02 Passed House, ^(p. 1298) Date 4-10-02
 Vote: Ayes 48 Nays 0 Vote: Ayes 97 Nays 0
 Approved Jeff Lambert 5/10/02

A BILL FOR

1 An Act relating to the tobacco master settlement agreement,
 2 including tobacco product manufacturer compliance, making an
 3 appropriation, and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SE 2317

SENATE FILE 2317

S-5373

1 Amend Senate File 2317 as follows:
 2 1. Page 3, line 26, by striking the word "five"
 3 and inserting the following: "two".
 4 2. Page 3, by striking lines 31 through 34 and
 5 inserting the following:
 6 "Sec. ____ . NEW SECTION. 453A.60 CIVIL PENALTIES.
 7 A distributor that violates this division is
 8 subject to the civil penalties specified in section
 9 453A.31, subsection 2."
 10 3. By renumbering as necessary.

By JEFF LAMBERTI

S-5373 FILED APRIL 3, 2002

ADOPTED ^(p. 945)

1 in section 453A.48.

2 DIVISION IV
3 MANUFACTURERS' COMPLIANCE

4 Sec. 3. NEW SECTION. 453A.57 DEFINITIONS.

5 For the purposes of this division, unless the context
6 otherwise requires:

7 1. "Cigarette" means the same as defined in section
8 453C.1.

9 2. "Distributor" means the same as defined in sections
10 453A.1 and 453A.42.

11 2A. "Master settlement agreement" means the same as
12 defined in section 453C.1.

13 3. "Tobacco product manufacturer" means the same as
14 defined in section 453C.1.

15 Sec. 4. NEW SECTION. 453A.58 DISTRIBUTORS --

16 DETERMINATION OF TOBACCO PRODUCT MANUFACTURER COMPLIANCE.

17 1. A distributor shall not affix stamps or cause stamps to
18 be affixed to individual packages of any brand of cigarettes
19 sold or distributed by the distributor in this state and shall
20 not act as a distributor for any roll-your-own-tobacco unless
21 either of the following conditions applies:

22 a. The tobacco product manufacturer of the brand, or any
23 predecessor tobacco product manufacturer of the brand, is a
24 participating manufacturer in compliance with section 453C.2,
25 subsection 1.

26 b. The tobacco product manufacturer of the brand, or any
27 predecessor tobacco product manufacturer of the brand, has
28 provided the distributor with a current certification that
29 such tobacco product manufacturer and all predecessor tobacco
30 product manufacturers of the brand are in full compliance with
31 section 453C.2, subsection 2.

32 2. A distributor shall not affix stamps or cause stamps to
33 be affixed to individual packages of any brand of cigarettes,
34 subsequent to notice to the distributor by the department of
35 revenue and finance that the tobacco product manufacturer is

1 For the purposes of enforcement of chapter 453C and this
2 division, the department and the attorney general may share
3 all information collected under chapter 453C and this division
4 with each other, with the national association of attorneys
5 general, and with agencies of other states responsible for
6 enforcement of cigarette and tobacco laws.

7 Sec. 8. NEW SECTION. 453A.62 REGISTERED AGENT.

8 1. A tobacco product manufacturer whose cigarettes are
9 sold for consumption in this state shall, prior to any such
10 sale, maintain in this state both a registered office and a
11 registered agent that meet the criteria prescribed in section
12 490.501.

13 2. A registered agent is the tobacco product
14 manufacturer's agent for service of process, notice, or demand
15 required or permitted by law to be served on the tobacco
16 product manufacturer.

17 3. If a tobacco product manufacturer does not have a
18 registered agent, or the agent cannot be served with
19 reasonable diligence, the tobacco product manufacturer may be
20 served by any means provided in section 490.504.

21 4. Registration and changes of a registered office or
22 registered agent or resignation of a registered agent shall be
23 filed with the department in accordance with rules adopted by
24 the department.

25 Sec. 9. TOBACCO SETTLEMENT FUND -- APPROPRIATION --
26 LITIGATION COSTS. There is appropriated from the tax-exempt
27 bond proceeds restricted capital funds account of the tobacco
28 settlement trust fund established in section 12E.12, to the
29 treasurer of state for the fiscal year beginning July 1, 2001,
30 and ending June 30, 2002, the following amount, or so much
31 thereof as is necessary, to supplement the appropriation made
32 in 2001 Iowa Acts, chapter 176, section 25, to be used for the
33 purpose designated:

34 For payment of litigation fees incurred pursuant to the
35 tobacco master settlement agreement:

1 certification, the tobacco product manufacturer and any
2 predecessor of the tobacco product manufacturer are either a
3 participating manufacturer under the master settlement
4 agreement or in full compliance with the escrow requirements
5 under the master settlement agreement. The certification is
6 to state, under penalty of perjury, that the tobacco product
7 manufacturer is in compliance with requirements relating to
8 maintaining a registered office and registered agent in the
9 state. If certification is made on the basis that the tobacco
10 product manufacturer is in full compliance with the escrow
11 requirements under the master settlement agreement, the
12 certification must also state, under penalty of perjury, that
13 the per unit price to the distributor includes an amount equal
14 to the amount required to be placed into escrow under Code
15 section 453C.2. Each certificate must be accompanied by a
16 list of cigarette brands sold by the tobacco product
17 manufacturer in the state.

18 The bill requires that a copy of the certification be
19 delivered to the director of revenue and finance, the attorney
20 general, and any distributor of the tobacco product
21 manufacturer. The bill requires distributors to retain a copy
22 of the certificate for five years from the date of receipt.

23 The bill directs the director of revenue and finance to
24 prescribe the form of the certificate required and the
25 specific dates on which the certificate must be filed.

26 Under the bill, a distributor that violates the provisions
27 of the bill is subject to revocation of the distributor's
28 permit or license.

29 The bill authorizes that, for the purposes of enforcement
30 of Code chapter 453C (tobacco product manufacturers --
31 financial obligations) and the new provisions of the bill, the
32 department of revenue and finance and the attorney general may
33 share all information collected under Code chapter 453C and
34 the provisions of the bill with each other, with the national
35 association of attorneys general, and with agencies of other

1 in section 453A.48.

2

DIVISION IV

3

MANUFACTURERS' COMPLIANCE

4

Sec. 3. NEW SECTION. 453A.57 DEFINITIONS.

5

For the purposes of this division, unless the context

6

otherwise requires:

7

1. "Cigarette" means the same as defined in section

8

453C.1.

9

2. "Distributor" means the same as defined in sections

10

453A.1 and 453A.42.

11

2A. "Master settlement agreement" means the same as

12

defined in section 453C.1.

13

3. "Tobacco product manufacturer" means the same as

14

defined in section 453C.1.

15

Sec. 4. NEW SECTION. 453A.58 DISTRIBUTORS --

16

DETERMINATION OF TOBACCO PRODUCT MANUFACTURER COMPLIANCE.

17

1. A distributor shall not affix stamps or cause stamps to

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be affixed to individual packages of any brand of cigarettes

19

sold or distributed by the distributor in this state and shall

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not act as a distributor for any roll-your-own-tobacco unless

21

either of the following conditions applies:

22

a. The tobacco product manufacturer of the brand, or any

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predecessor tobacco product manufacturer of the brand, is a

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participating manufacturer in compliance with section 453C.2,

25

subsection 1.

26

b. The tobacco product manufacturer of the brand, or any

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predecessor tobacco product manufacturer of the brand, has

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provided the distributor with a current certification that

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such tobacco product manufacturer and all predecessor tobacco

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product manufacturers of the brand are in full compliance with

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section 453C.2, subsection 2.

32

2. A distributor shall not affix stamps or cause stamps to

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be affixed to individual packages of any brand of cigarettes,

34

subsequent to notice to the distributor by the department of

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revenue and finance that the tobacco product manufacturer is

1 division, the department and the attorney general may share
2 all information collected under chapter 453C and this division
3 with each other, with the national association of attorneys
4 general, and with agencies of other states responsible for
5 enforcement of cigarette and tobacco laws.

6 Sec. 8. NEW SECTION. 453A.62 REGISTERED AGENT.

7 1. A tobacco product manufacturer whose cigarettes are
8 sold for consumption in this state shall, prior to any such
9 sale, maintain in this state both a registered office and a
10 registered agent that meet the criteria prescribed in section
11 490.501.

12 2. A registered agent is the tobacco product
13 manufacturer's agent for service of process, notice, or demand
14 required or permitted by law to be served on the tobacco
15 product manufacturer.

16 3. If a tobacco product manufacturer does not have a
17 registered agent, or the agent cannot be served with
18 reasonable diligence, the tobacco product manufacturer may be
19 served by any means provided in section 490.504.

20 4. Registration and changes of a registered office or
21 registered agent or resignation of a registered agent shall be
22 filed with the department in accordance with rules adopted by
23 the department.

24 Sec. 9. TOBACCO SETTLEMENT FUND -- APPROPRIATION --
25 LITIGATION COSTS. There is appropriated from the tax-exempt
26 bond proceeds restricted capital funds account of the tobacco
27 settlement trust fund established in section 12E.12, to the
28 treasurer of state for the fiscal year beginning July 1, 2001,
29 and ending June 30, 2002, the following amount, or so much
30 thereof as is necessary, to supplement the appropriation made
31 in 2001 Iowa Acts, chapter 176, section 25, to be used for the
32 purpose designated:

33 For payment of litigation fees incurred pursuant to the
34 tobacco master settlement agreement:
35 \$ 944,880



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

May 10, 2002

RECEIVED
MAY 14 2002

The Honorable Chester Culver
Secretary of State
State Capitol
LOCAL

Dear Secretary Culver:

I hereby transmit Senate File 2317, an act relating to the tobacco master settlement agreement, including tobacco product manufacturer compliance, making an appropriation, and providing penalties. This legislation provides additional remedies to aid in the enforcement of the Model Statute, Code 453C which was required to be approved and enforced by the State in the Master Settlement Agreement with the Tobacco Manufacturers.

Sections 1-8 of this bill would require compliance with chapter 453C before a distributor could affix stamps to the product. Additionally, a registered agent would be required for service of process of those out of state manufacturers selling in this state. Iowa is required to "diligently enforce" Chapter 453C and penalties for failure to are monetary and substantial. The possibility exists that the entire amount owed to Iowa for any particular year could be eliminated if the statute is not diligently enforced.

Section 9 is the balance owed the private counsel retained to represent Iowa in its litigation against the Tobacco manufacturers. The original appropriation contained in House File 755, section 25, of last year's appropriation was \$944, 877.60 short of the obligation owed to the attorneys by contract. The shortage was created when estimates paid by Tobacco manufacturers over the last three years did not meet actual obligation. When the contractual obligation to the attorneys is concluded, the balance of the payments will be assigned to the State.

In its present form there is some question as to whether Sections 1-8 would jeopardize Iowa having a qualified model statute within the meaning of the Master Settlement Agreement. That in itself would result in substantial monetary penalties for the State.



Item Veto

SENATE FILE 2317

AN ACT
RELATING TO THE TOBACCO MASTER SETTLEMENT AGREEMENT, INCLUDING
TOBACCO PRODUCT MANUFACTURER COMPLIANCE, MAKING AN
APPROPRIATION, AND PROVIDING PENALTIES.

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

Section 1. Section 453A.22, subsection 1, Code 2001, is amended to read as follows:

1. If a person holding a permit issued by the department under this division, including a retailer permit for railway car, has willfully violated section 453A.2 or 453A.58, the department shall revoke the permit upon notice and hearing. If the person violates any other provision of this division, or a rule adopted under this division, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing before the department may be held at a site in the state as the department may direct. The notice shall be given by mailing a copy to the permit holder's place of business as it appears on the application for a permit. If, upon hearing, the department finds that the violation has occurred, the department may revoke the permit.

Sec. 2. Section 453A.44, subsection 10, Code 2001, is amended to read as follows:

10. The director may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of any of the provisions of this division, for violation of section 453A.58, or for violation of any other act applicable to the sale of tobacco products, or any rule or regulations promulgated by the director in furtherance of this division. No license shall be revoked, canceled, or suspended except after notice and a hearing by the director as provided in section 453A.48.

DIVISION IV
MANUFACTURERS' COMPLIANCE

Sec. 3. NEW SECTION. 453A.57 DEFINITIONS.

For the purposes of this division, unless the context otherwise requires:

- 1. "Cigarette" means the same as defined in section 453C.1.
- 2. "Distributor" means the same as defined in sections 453A.1 and 453A.42.
- 2A. "Master settlement agreement" means the same as defined in section 453C.1.
- 3. "Tobacco product manufacturer" means the same as defined in section 453C.1.

Sec. 4. NEW SECTION. 453A.58 DISTRIBUTORS --
DETERMINATION OF TOBACCO PRODUCT MANUFACTURER COMPLIANCE.

1. A distributor shall not affix stamps or cause stamps to be affixed to individual packages of any brand of cigarettes sold or distributed by the distributor in this state and shall not act as a distributor for any roll-your-own-tobacco unless either of the following conditions applies:

- a. The tobacco product manufacturer of the brand, or any predecessor tobacco product manufacturer of the brand, is a participating manufacturer in compliance with section 453C.2, subsection 1.
- b. The tobacco product manufacturer of the brand, or any predecessor tobacco product manufacturer of the brand, has provided the distributor with a current certification that such tobacco product manufacturer and all predecessor tobacco

Veto

Veto

For payment of litigation fees incurred pursuant to the tobacco master settlement agreement:

..... \$ 944,880

Sec. 10. EFFECTIVE DATE. Section 9 of this Act relating to an appropriation from the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund for payment of litigation fees, being deemed of immediate importance, takes effect upon enactment.

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2317, Seventy-ninth General Assembly.

Item Veto
5/10/02
Approved _____, 2002

MICHAEL E. MARSHALL
Secretary of the Senate

THOMAS J. VILSACK
Governor