

Senate File 482

Bill Text

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1 1 SENATE FILE 482
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1 3 AN ACT
1 4 RELATING TO TOBACCO PRODUCT MANUFACTURERS, PROVIDING PENALTIES,
1 5 AND PROVIDING AN EFFECTIVE DATE.
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1 7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 8
1 9 Section 1. NEW SECTION. 453C.1 DEFINITIONS.
1 10 1. "Adjusted for inflation" means increased in accordance
1 11 with the formula for inflation adjustment set forth in exhibit
1 12 "C" to the master settlement agreement.
1 13 2. "Affiliate" means a person who directly or indirectly
1 14 owns or controls, is owned or controlled by, or is under
1 15 common ownership or control with, another person. Solely for
1 16 purposes of this definition, the terms "owns", "is owned", and
1 17 "ownership" mean ownership of an equity interest, or the
1 18 equivalent thereof, of ten percent or more, and the term
1 19 "person" means an individual, partnership, committee,
1 20 association, corporation, or any other organization or group
1 21 of persons.
1 22 3. "Allocable share" means allocable share as defined in
1 23 the master settlement agreement.
1 24 4. "Cigarette" means any product that contains nicotine,
1 25 is intended to be burned or heated under ordinary conditions
1 26 of use, and consists of or contains any of the following:
1 27 a. Any roll of tobacco wrapped in paper or in any
1 28 substance not containing tobacco.
1 29 b. Tobacco, in any form, that is functional in the
1 30 product, which, because of its appearance, the type of tobacco
1 31 used in the filler, or its packaging and labeling, is likely
1 32 to be offered to, or purchased by, consumers as a cigarette.
1 33 c. Any roll of tobacco wrapped in any substance containing
1 34 tobacco which, because of its appearance, the type of tobacco
1 35 used in the filler, or its packaging and labeling, is likely
2 1 to be offered to, or purchased by, consumers as a cigarette
2 2 described in paragraph "a" of this definition.
2 3 The term "cigarette" includes "roll-your-own" tobacco
2 4 which, because of its appearance, type, packaging, or
2 5 labeling, is suitable for use and likely to be offered to, or
2 6 purchased by, consumers as tobacco for making cigarettes. For
2 7 purposes of this definition of "cigarette", 0.09 ounces of
2 8 "roll-your-own" tobacco shall constitute one individual
2 9 "cigarette".
2 10 5. "Master settlement agreement" means the settlement
2 11 agreement and related documents entered into on November 23,
2 12 1998, by the state and leading United States tobacco product
2 13 manufacturers.
2 14 6. "Qualified escrow fund" means an escrow arrangement
2 15 with a federally or state-chartered financial institution
2 16 having no affiliation with any tobacco product manufacturer
2 17 and having assets of at least one billion dollars where such
2 18 arrangement requires that such financial institution hold the
2 19 escrowed funds' principal for the benefit of releasing parties
2 20 and prohibits the tobacco product manufacturer placing the
2 21 funds into escrow from using, accessing, or directing the use

2 22 of the funds' principal except as consistent with section
2 23 453C.2, subsection 2, paragraph "b".

2 24 7. "Released claims" means released claims as that term is
2 25 defined in the master settlement agreement.

2 26 8. "Releasing parties" means releasing parties as that
2 27 term is defined in the master settlement agreement.

2 28 9. "Tobacco product manufacturer" means an entity that on
2 29 or after the effective date of this Act directly and not
2 30 exclusively through any affiliate does any of the following:

2 31 a. Manufactures cigarettes anywhere that such manufacturer
2 32 intends to be sold in the United States, including cigarettes
2 33 intended to be sold in the United States through an importer,
2 34 except where such importer is an original participating
2 35 manufacturer, as that term is defined in the master settlement
3 1 agreement, that will be responsible for the payments under the
3 2 master settlement agreement with respect to such cigarettes as
3 3 a result of the provisions of the subsection II(mm) of the
3 4 master settlement agreement and that pays the taxes specified
3 5 in subsection II(z) of the master settlement agreements and
3 6 provided that the manufacturer of such cigarettes does not
3 7 market or advertise such cigarettes in the United States.

3 8 b. Is the first purchaser anywhere for resale in the
3 9 United States of cigarettes manufactured anywhere that the
3 10 manufacturer does not intend to be sold in the United States.

3 11 c. Becomes a successor of an entity described in paragraph
3 12 "a" or "b".

3 13 The term "tobacco product manufacturer" shall not include
3 14 an affiliate of a tobacco product manufacturer unless such
3 15 affiliate itself falls within any of paragraphs "a" through
3 16 "c".

3 17 10. "Units sold" means the number of individual cigarettes
3 18 sold in the state by the applicable tobacco product
3 19 manufacturer, whether directly or through a distributor,
3 20 retailer, or similar intermediary or intermediaries, during
3 21 the year in question, as measured by excise taxes collected by
3 22 the state on packs or roll-your-own tobacco containers bearing
3 23 the excise tax stamp of the state. The department of revenue
3 24 and finance shall adopt rules as are necessary to ascertain
3 25 the amount of state excise tax paid on the cigarettes of such
3 26 tobacco product manufacturer for each year.

3 27 Sec. 2. NEW SECTION. 453C.2 REQUIREMENTS.

3 28 Any tobacco product manufacturer selling cigarettes to
3 29 consumers within the state, whether directly or through a
3 30 distributor, retailer, or similar intermediary or
3 31 intermediaries, on or after the effective date of this Act
3 32 shall do one of the following:

3 33 1. Become a participating manufacturer as that term is
3 34 defined in section II(jj) of the master settlement agreement
3 35 and generally perform its financial obligations under the
4 1 master settlement agreement.

4 2 2. a. Place into a qualified escrow fund by April 15 of
4 3 the year following the year in question, the following
4 4 amounts, as such amounts are adjusted for inflation:

4 5 (1) For 1999: \$.0094241 per unit sold on or after the
4 6 effective date of this Act.

4 7 (2) For 2000: \$.0104712 per unit sold.

4 8 (3) For each of 2001 and 2002: \$.0136125 per unit sold.

4 9 (4) For each of 2003 through 2006: \$.0167539 per unit
4 10 sold.

4 11 (5) For 2007 and each year thereafter: \$.0188482 per unit
4 12 sold.

4 13 b. A tobacco product manufacturer that places funds into
4 14 escrow pursuant to paragraph "a" shall receive the interest or
4 15 other appreciation on such funds as earned. Such funds
4 16 themselves shall be released from escrow only under any of the
4 17 following circumstances:

4 18 (1) To pay a judgment or settlement on any released claim

4 19 brought against such tobacco product manufacturer by the state
4 20 or any releasing party located or residing in the state.
4 21 Funds shall be released from escrow under this subparagraph
4 22 (1) in the order in which they were placed into escrow and
4 23 only to the extent and at the time necessary to make payments
4 24 required under such judgment or settlement.

4 25 (2) To the extent that a tobacco product manufacturer
4 26 establishes that the amount the manufacturer was required to
4 27 place into escrow in a particular year was greater than the
4 28 state's allocable share of the total payments that such
4 29 manufacturer would have been required to make in that year
4 30 under the master settlement agreement had such manufacturer
4 31 been a participating manufacturer, as such payments are
4 32 determined pursuant to section IX(i)(2) of the master
4 33 settlement agreement and before any of the adjustments or
4 34 offsets described in section IX(i)(3) of that agreement other
4 35 than the inflation adjustment, the excess shall be released
5 1 from escrow and revert back to such tobacco product
5 2 manufacturer.

5 3 (3) To the extent not released from escrow under
5 4 subparagraph (1) or (2), funds shall be released from escrow
5 5 and revert back to such tobacco product manufacturer twenty-
5 6 five years after the date on which they were placed into
5 7 escrow.

5 8 c. Each tobacco product manufacturer that elects to place
5 9 funds into escrow pursuant to this subsection shall annually
5 10 certify to the attorney general that the manufacturer is in
5 11 compliance with this subsection. The attorney general may
5 12 bring a civil action on behalf of the state against any
5 13 tobacco product manufacturer that is not a participating
5 14 manufacturer under the master settlement agreement and fails
5 15 to place into escrow the funds required under this section.
5 16 Any tobacco product manufacturer that fails in any year to
5 17 place into escrow the funds required under this subsection
5 18 shall be subject to all of the following:

5 19 (1) Be required within fifteen days to place such funds
5 20 into escrow as shall bring the manufacturer into compliance
5 21 with this subsection. The court, upon a finding of a
5 22 violation of this subsection, may impose a civil penalty, to
5 23 be paid to the general fund of the state, in an amount not to
5 24 exceed five percent of the amount improperly withheld from
5 25 escrow per day of the violation and in a total amount not to
5 26 exceed one hundred percent of the original amount improperly
5 27 withheld from escrow.

5 28 (2) In the case of a knowing violation, be required within
5 29 fifteen days to place such funds into escrow as shall bring
5 30 the manufacturer into compliance with this subsection. The
5 31 court, upon a finding of a knowing violation of this
5 32 subsection, may impose a civil penalty, to be paid to the
5 33 general fund of the state, in an amount not to exceed fifteen
5 34 percent of the amount improperly withheld from escrow per day
5 35 of the violation and in a total amount not to exceed three
6 1 hundred percent of the original amount improperly withheld
6 2 from escrow.

6 3 (3) In the case of a second knowing violation, be
6 4 prohibited from selling cigarettes to consumers within the
6 5 state, whether directly or through a distributor, retailer, or
6 6 similar intermediary, for a period not to exceed two years.

6 7 d. Each failure to make an annual deposit required under
6 8 this subsection shall constitute a separate violation.

6 9 Sec. 3. EFFECTIVE DATE. This Act, being deemed of
6 10 immediate importance, takes effect upon enactment.

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MARY E. KRAMER
President of the Senate

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BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 482, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 1999

THOMAS J. VILSACK
Governor