

**Representative Patrice M. Arent** proposes to substitute the following bill:

1                   **TOBACCO MANUFACTURERS RESPONSIBILITY ACT**

2                                   1999 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Sponsor: Patrice M. Arent**

5   Greg J. Curtis

6   AN ACT RELATING TO HEALTH; ENACTING THE MODEL TOBACCO SETTLEMENT  
7   STATUTE; AND PROVIDING AN EFFECTIVE DATE.

8   This act affects sections of Utah Code Annotated 1953 as follows:

9   ENACTS:

10           **26-44-101**, Utah Code Annotated 1953

11           **26-44-201**, Utah Code Annotated 1953

12           **26-44-202**, Utah Code Annotated 1953

13           **26-44-203**, Utah Code Annotated 1953

14   *Be it enacted by the Legislature of the state of Utah:*

15           Section 1. Section **26-44-101** is enacted to read:

16                   **CHAPTER 44. TOBACCO MANUFACTURERS RESPONSIBILITY ACT**

17                           **Part 1. Tobacco Manufacturers Responsibility Act**

18                   **26-44-101. Title.**

19                   The chapter is known as the "Tobacco Manufacturers Responsibility Act."

20           Section 2. Section **26-44-201** is enacted to read:

21                           **Part 2. Model Tobacco Settlement Statute**

22                   **26-44-201. Findings and purpose.**

23                   (1) Cigarette smoking presents serious public health concerns to the State and to the  
24 citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart  
25 disease and other serious diseases, and that there are hundreds of thousands of tobacco-related

26 deaths in the United States each year. These diseases most often do not appear until many years  
27 after the person in question begins smoking.

28 (2) Cigarette smoking also presents serious financial concerns for the State. Under certain  
29 health-care programs, the State may have a legal obligation to provide medical assistance to  
30 eligible persons for health conditions associated with cigarette smoking, and those persons may  
31 have a legal entitlement to receive such medical assistance.

32 (3) Under these programs, the State pays millions of dollars each year to provide medical  
33 assistance for these persons for health conditions associated with cigarette smoking.

34 (4) It is the policy of the State that financial burdens imposed on the State by cigarette  
35 smoking be borne by tobacco product manufacturers rather than by the State to the extent that such  
36 manufacturers either determine to enter into a settlement with the State or are found culpable by  
37 the courts.

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

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

52 Section 3. Section **26-44-202** is enacted to read:

53 **26-44-202. Definitions.**

54 As used in this part:

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

57 (2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or  
58 controlled by, or is under common ownership or control with, another person. Solely for purposes  
59 of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity  
60 interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual,  
61 partnership, committee, association, corporation or any other organization or group of persons.

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

64 (4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated  
65 under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in  
66 paper or in any substance not containing tobacco; or (b) tobacco, in any form, that is functional in  
67 the product, which, because of its appearance, the type of tobacco used in the filler, or its  
68 packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c)  
69 any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance,  
70 the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or  
71 purchased by, consumers as a cigarette described in clause (a) of this definition. The term  
72 "cigarette" includes "roll-your-own," (i.e., any tobacco which, because of its appearance, type,  
73 packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers  
74 as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of  
75 "roll-your-own" tobacco shall constitute one individual "cigarette."

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

79 (6) "Qualified escrow fund" means an escrow arrangement with a federally or State  
80 chartered financial institution having no affiliation with any tobacco product manufacturer and  
81 having assets of at least \$1,000,000,000 where such arrangement requires that such financial  
82 institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the  
83 tobacco product manufacturer placing the funds into escrow from using, accessing, or directing  
84 the use of the funds' principal except as consistent with Subsection 26-44-203(2).

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

87 (8) "Releasing parties" means Releasing Parties as that term is defined in the Master

88 Settlement Agreement.

89 (9) (a) "Tobacco product manufacturer" means an entity that after the date of enactment  
90 of this Act directly (and not exclusively through any affiliate):

91 (i) manufactures cigarettes anywhere that such manufacturer intends to be sold in the  
92 United States, including cigarettes intended to be sold in the United States through an importer  
93 (except where such importer is an original participating manufacturer (as that term is defined in  
94 the Master Settlement Agreement) that will be responsible for the payments under the Master  
95 Settlement Agreement with respect to such cigarettes as a result of the provisions of Subsection  
96 II(mm) of the Master Settlement Agreement and that pays the taxes specified in Subsection II(z)  
97 of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does  
98 not market or advertise such cigarettes in the United States);

99 (ii) is the first purchaser anywhere for resale in the United States of cigarettes  
100 manufactured anywhere that the manufacturer does not intend to be sold in the United States; or  
101 (iii) becomes a successor of an entity described in Subsection (9)(a)(i) or (ii).

102 (b) "Tobacco product manufacturer" shall not include an affiliate of a tobacco product  
103 manufacturer unless such affiliate itself falls within any Subsection (9)(a)(i) through (iii).

104 (10) "Units sold" means the number of individual cigarettes sold in the State by the  
105 applicable tobacco product manufacturer (whether directly or through a distributor, retailer or  
106 similar intermediary or intermediaries) during the year in question, as measured by excise taxes  
107 collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax  
108 stamp of the State. The State Tax Commission shall promulgate such regulations as are necessary  
109 to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product  
110 manufacturer for each year.

111 Section 4. Section **26-44-203** is enacted to read:

112 **26-44-203. Requirements.**

113 (1) Any tobacco product manufacturer selling cigarettes to consumers within the State  
114 (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after  
115 the date of enactment of this Act shall do one of the following:

116 (a) become a participating manufacturer (as that term is defined in Section II(jj) of the  
117 Master Settlement Agreement) and generally perform its financial obligations under the Master  
118 Settlement Agreement; or

119 (b) place into a qualified escrow fund by April 15 of the year following the year in  
120 question the following amounts (as such amounts are adjusted for inflation):

121 (i) 1999: \$.0094241 per unit sold after the date of enactment of this Act;

122 (ii) 2000: \$.0104712 per unit sold;

123 (iii) for each of 2001 and 2002: \$.0136125 per unit sold;

124 (iv) for each of 2003 through 2006: \$.0167539 per unit sold; and

125 (v) for each of 2007 and each year thereafter: \$.0188482 per unit sold.

126 (2) A tobacco product manufacturer that places funds into escrow pursuant to Subsection

127 (1)(b) shall receive the interest or other appreciation on such funds as earned. Such funds  
128 themselves shall be released from escrow only under the following circumstances:

129 (a) to pay a judgment or settlement on any released claim brought against such tobacco  
130 product manufacturer by the State or any releasing party located or residing in the State. Funds  
131 shall be released from escrow under this Subsection (2)(a):

132 (i) in the order in which they were placed into escrow; and

133 (ii) only to the extent and at the time necessary to make payments required under such  
134 judgment or settlement;

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

142 (c) to the extent not released from escrow under Subsection (2)(a) or (b), funds shall be  
143 released from escrow and revert back to such tobacco product manufacturer 25 years after the date  
144 on which they were placed into escrow.

145 (3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to  
146 Subsection (1)(b) shall annually certify to the executive director that it is in compliance with  
147 Subsection (1)(b) and Subsection (2). The executive director may bring a civil action on behalf  
148 of the State against any tobacco product manufacturer that fails to place into escrow the funds  
149 required under Subsection (1)(b) and Subsection (2). Any tobacco product manufacturer that fails

150 in any year to place into escrow the funds required under this Subsection (1)(b) and Subsection (2)  
151 shall:

152 (a) be required within 15 days to place such funds into escrow as shall bring it into  
153 compliance with Subsection (1)(b) and Subsection (2). The court, upon a finding of a violation  
154 of Subsection (1)(b) or Subsection (2), may impose a civil penalty to be paid to the General Fund  
155 in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the  
156 violation and in a total amount not to exceed 100% of the original amount improperly withheld  
157 from escrow;

158 (b) in the case of a knowing violation, be required within 15 days to place such funds into  
159 escrow as shall bring it into compliance with Subsection (1)(b) and Subsection (2). The court,  
160 upon a finding of a knowing violation of Subsection (1)(b) or Subsection (2), may impose a civil  
161 penalty to be paid to the General Fund of the State in an amount not to exceed 15% of the amount  
162 improperly withheld from escrow per day of the violation and in a total amount not to exceed  
163 300% of the original amount improperly withheld from escrow; and

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

167 (4) Each failure to make an annual deposit required under Subsection (1)(b) shall  
168 constitute a separate violation.

169 (5) A court shall award the State its costs and attorneys fees incurred in bringing any action  
170 in which the State establishes that a tobacco product manufacturer has violated this section.

171 **Section 5. Effective date.**

172 This act takes effect on July 1, 1999.