

By: Representatives Watson, Brown,
Whittington

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1070

1 AN ACT TO IMPOSE A FEE ON NONSETTLING-MANUFACTURER
2 CIGARETTES; TO PROVIDE DEFINITIONS; TO REQUIRE MONTHLY REPORTING
3 OF THE NUMBER AND DENOMINATION OF STAMPS AFFIXED TO PACKAGES OF
4 NONSETTLING-MANUFACTURER CIGARETTES; TO REQUIRE REGISTRATION OF
5 NONSETTLING MANUFACTURERS WITH THE ATTORNEY GENERAL; TO REQUIRE
6 DEVELOPMENT, MAINTENANCE, AND PUBLICATION BY THE ATTORNEY GENERAL
7 OF A LIST OF NONSETTLING MANUFACTURERS THAT HAVE CERTIFIED THEIR
8 COMPLIANCE WITH THIS ACT; TO PROVIDE FOR ENFORCEMENT OF THE
9 REQUIREMENTS IMPOSED BY THIS ACT; TO PROHIBIT THE TRANSPORT OF
10 UNSTAMPED CIGARETTES ACROSS STATE LINES; TO PROVIDE FOR REPORTS ON
11 THE TRANSPORT OF STAMPED CIGARETTES ACROSS STATE LINES; TO PROVIDE
12 THAT THE REVENUE DERIVED FROM THE FEE IMPOSED UNDER THIS ACT SHALL
13 BE DEPOSITED INTO SPECIAL FUNDS IN THE STATE TREASURY TO THE
14 CREDIT OF THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER AND THE
15 STATE VETERANS AFFAIRS BOARD; TO SPECIFY THE PURPOSES FOR WHICH
16 THE MONIES IN SUCH SPECIAL FUNDS MAY BE USED; TO AMEND SECTION
17 27-69-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR
18 RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 **SECTION 1.** The Legislature declares that the following are
21 the purposes of this act:

22 (a) To recover health care costs to the state imposed
23 by nonsettling manufacturers;

24 (b) To prevent nonsettling manufacturers from
25 undermining the state's policy of reducing underage smoking by
26 offering their cigarettes for sale substantially below the price
27 of cigarettes of other manufacturers;

28 (c) To protect funding, which is reduced as a result of
29 the growth of nonsettling-manufacturer cigarette sales, for
30 programs funded in whole or in part by payments to the state under
31 the tobacco settlements referred to in Section 2(e) of this act,
32 and to recoup settlement-payment revenue lost to the state as a
33 result of nonsettling-manufacturer cigarettes sales; and

34 (d) To fund such other purposes as the Legislature
35 shall determine.

36 **SECTION 2.** As used in this act, the following terms shall
37 have the meaning ascribed to them herein:

38 (a) "Commissioner" means the Chairman of the State Tax
39 Commission of the State of Mississippi, and his authorized agents
40 and employees.

41 (b) "Consumer Price Index" means the Consumer Price
42 Index for All Urban Consumers as published by the Bureau of Labor
43 Statistics of the United States Department of Labor.

44 (c) "Manufacturer" includes, but is not limited to, an
45 entity that is the first importer into the United States of
46 cigarettes manufactured abroad.

47 (d) "Master Settlement Agreement" means the settlement
48 agreement entered into on November 23, 1998, by various states and
49 leading cigarette manufacturers.

50 (e) "Nonsettling manufacturer" means any tobacco
51 product manufacturer that has not entered into the settlement
52 agreements, as amended, in the case of Mike Moore, Attorney
53 General ex rel. State of Mississippi v. The American Tobacco
54 Company et al. (Chancery Court of Jackson County, Mississippi,
55 Cause No. 94-1429).

56 (f) "Nonsettling-manufacturer cigarettes" means
57 cigarettes of a nonsettling manufacturer.

58 **SECTION 3.** (1) There is hereby imposed, levied and assessed
59 a fee for the sale, use, consumption, handling or distribution, in
60 the State of Mississippi, of nonsettling-manufacturer cigarettes
61 to which a stamp is required to be affixed by law. The rate of
62 the fee shall be Two and Three-twentieths Cents (2-3/20¢) on each
63 cigarette, to be adjusted upward annually each January 1 by the
64 greater of three percent (3%) or the Consumer Price Index applied
65 each year on the previous year, beginning with the year of
66 enactment of this act. The fee is in addition to all other
67 privileges, licenses, fees, or taxes now imposed by law in this
68 state. The commissioner shall collect the fee each month directly

69 from each nonsettling manufacturer based on information received
70 under Section 5 of this act or other information available to the
71 commissioner. Except as otherwise provided in this act, the fee
72 shall be imposed, collected, paid, administered, and enforced in
73 the same manner as the tax on cigarettes assessed by Section
74 27-69-13.

75 (2) The revenue derived from the fee imposed under this
76 section shall be deposited into the State Treasury, as follows:

77 (a) Seventy-one and one-half percent (71.5%) of the
78 revenue collected, not to exceed Ten Million Dollars
79 (\$10,000,000.00) of the revenue collected during any fiscal year,
80 shall be deposited into the special fund to the credit of the
81 University of Mississippi Medical Center that is created by
82 Section 10(1) of this act.

83 (b) Twenty-one and one-half percent (21.5%) of the
84 revenue collected, not to exceed Three Million Dollars
85 (\$3,000,000.00) of the revenue collected during any fiscal year,
86 shall be deposited into the special fund to the credit of the
87 State Veterans Affairs Board that is created by Section 10(2) of
88 this act.

89 (c) The remainder of the revenue collected shall be
90 deposited into the special fund to the credit of the University of
91 Mississippi Medical Center that is created by Section 10(3) of
92 this act.

93 **SECTION 4.** A nonsettling manufacturer whose cigarettes are
94 being offered for sale in this state on the effective date of this
95 act shall provide to the commissioner the information described in
96 Sections 6 and 7 of this act, and pay the fee imposed by Section 3
97 of this act within thirty (30) days after the effective date of
98 this act. If cigarettes of a nonsettling manufacturer are not
99 being offered for sale in this state on the effective date of this
100 act, then the nonsettling manufacturer, before its cigarettes may
101 begin to be offered for sale in this state, shall prepay the fee

102 imposed by Section 3 of this act for the number of cigarettes of
103 the nonsettling manufacturer that the commissioner reasonably
104 projects will be sold in the first calendar month in which
105 cigarettes of the nonsettling manufacturer are sold in this state.
106 The prepayment amount shall be determined by multiplying Two and
107 One-half Cents (2-1/2¢) times the number of cigarettes that the
108 commissioner reasonably projects that the nonsettling manufacturer
109 will sell in this state in that first calendar month, or Fifty
110 Thousand Dollars (\$50,000.00), whichever is more. The
111 commissioner may require a nonsettling manufacturer to provide any
112 information reasonably necessary to determine the fee payment
113 amount and, in the case of prepayment, shall establish regulations
114 providing for reimbursement to nonsettling manufacturers if actual
115 sales are less than sales as projected by the commissioner and for
116 additional payment by nonsettling manufacturers if actual sales
117 are greater than sales as projected by the commissioner.

118 **SECTION 5.** Any manufacturer, distributor, or wholesaler of
119 cigarettes required by Section 27-69-35 to file a monthly report
120 shall state, in addition to the information required to be
121 reported under Section 27-69-35, the number and denominations of
122 stamps affixed to individual packages of nonsettling-manufacturer
123 cigarettes, by manufacturer and brand family, sold for each place
124 of business in the month preceding the month in which the report
125 is made, as well as any other information determined by the
126 commissioner to be necessary or appropriate for determining the
127 fee due under Section 3 of this act, or for enforcing any of the
128 provisions of this act. This reporting requirement shall be
129 enforced in the same manner as the monthly reporting requirement
130 imposed by Section 27-69-35.

131 **SECTION 6.** Before its cigarettes may begin to be offered for
132 sale in this state, or, if its cigarettes are being offered for
133 sale in this state on the effective date of this act, within
134 thirty (30) days of the effective date of this act, a nonsettling

135 manufacturer shall provide to the Attorney General, on a form
136 prescribed by the Attorney General, the following information:

137 (a) The complete name, address and telephone number of
138 the nonsettling manufacturer;

139 (b) The date that cigarettes of the nonsettling
140 manufacturer began or will begin to be offered for sale in this
141 state;

142 (c) The names of the brand families of cigarettes of
143 the nonsettling manufacturer that are being or will be offered for
144 sale in this state;

145 (d) A statement of the nonsettling manufacturer's
146 intention to comply with the obligations imposed by this section;
147 and

148 (e) The name, address, telephone number and signature
149 of an officer of the nonsettling manufacturer attesting to all of
150 the information described in this section.

151 The Attorney General shall make information provided pursuant
152 to this section available to the commissioner.

153 **SECTION 7.** Each nonsettling manufacturer subject to the fee
154 imposed by Section 3 of this act shall certify to the Attorney
155 General on the first day of each month that it is in compliance
156 with this act and that it has paid in full the fee imposed by
157 Section 3 of this act. The Attorney General shall develop,
158 maintain, and publish on its Internet web site a directory listing
159 all nonsettling manufacturers that have provided current, accurate
160 and complete certifications. The Attorney General shall provide a
161 copy of the list to a person upon request.

162 **SECTION 8.** Cigarettes of a nonsettling manufacturer that has
163 not complied with this act, including payment in full of the fee
164 imposed by Section 3 of this act, shall be treated as cigarettes
165 for which the tax assessed by Section 27-69-13 has not been paid,
166 and a nonsettling manufacturer that has not complied with this act
167 shall be subject to any and all of the penalties imposed for

168 violations of Chapter 69, Title 27, Mississippi Code of 1972. A
169 person shall not affix to any package of nonsettling-manufacturer
170 cigarettes the stamp required under Sections 27-69-13 and 27-69-27
171 after receiving notice from the commissioner, which the
172 commissioner shall provide, that the nonsettling manufacturer of
173 those cigarettes has not paid in full the fee imposed by Section 3
174 of this act or if the nonsettling manufacturer does not appear on
175 the Attorney General's directory described in Section 7 of this
176 act.

177 **SECTION 9.** (a) A person may not transport or cause to be
178 transported from this state cigarettes for sale in another state
179 without first affixing to the cigarettes the stamp required by the
180 state in which the cigarettes are to be sold or paying any other
181 excise tax on the cigarettes imposed by the state in which the
182 cigarettes are to be sold.

183 (b) A person may not affix to cigarettes the stamp
184 required by another state or pay any other excise tax on the
185 cigarettes imposed by another state if the other state prohibits
186 stamps from being affixed to the cigarettes, prohibits the payment
187 of any other excise tax on the cigarettes, or prohibits the sale
188 of the cigarettes.

189 (c) On or before the fifteenth day of each month, a
190 person who transports or causes to be transported from this state
191 cigarettes for sale in another state shall submit to the
192 commissioner, on forms prescribed by the commissioner, a report
193 identifying the quantity and brand family of each brand of the
194 cigarettes transported or caused to be transported in the
195 preceding calendar month, and the correct name and address of each
196 recipient of the cigarettes.

197 (d) For purposes of this section, "person" means an
198 individual, partnership, committee, association, corporation or
199 any other organization or group of persons. Person does not
200 include any common or contract carrier, or public warehouse that

201 is not owned, in whole or in part, directly or indirectly by such
202 person.

203 SECTION 10. (1) (a) There is created in the State Treasury
204 a special fund to the credit of the University of Mississippi
205 Medical Center, which shall be comprised of the monies required to
206 be deposited into the fund under Section 3(2)(a) of this act, and
207 any other funds that may be made available for the fund by the
208 Legislature.

209 (b) Monies in the fund shall be expended by the
210 University of Mississippi Medical Center, upon appropriation by
211 the Legislature, to aid in the construction, furnishing, equipping
212 and operating of the University of Mississippi Medical Center
213 Cancer Institute.

214 (c) Unexpended amounts remaining in the special fund at
215 the end of a fiscal year shall not lapse into the State General
216 Fund, and any interest earned or investment earnings on amounts in
217 the special fund shall be deposited to the credit of the special
218 fund.

219 (2) (a) There is created in the State Treasury a special
220 fund to the credit of the State Veterans Affairs Board, which
221 shall be comprised of the monies required to be deposited into the
222 fund under Section 3(2)(b) of this act, and any other funds that
223 may be made available for the fund by the Legislature.

224 (b) Monies in the fund shall be expended by the State
225 Veterans Affairs Board, upon appropriation by the Legislature, for
226 operating and maintaining the state veterans homes.

227 (c) Unexpended amounts remaining in the special fund at
228 the end of a fiscal year shall not lapse into the State General
229 Fund, and any interest earned or investment earnings on amounts in
230 the special fund shall be deposited to the credit of the special
231 fund.

232 (3) (a) There is created in the State Treasury a special
233 fund to the credit of the University of Mississippi Medical

234 Center, which shall be comprised of the monies required to be
235 deposited into the fund under Section 3(2)(c) of this act, and any
236 other funds that may be made available for the fund by the
237 Legislature.

238 (b) Monies in the fund shall be expended by the
239 University of Mississippi Medical Center, upon appropriation by
240 the Legislature, to pay the costs of medical services provided by
241 the center for which it does not receive compensation or
242 reimbursement from any other source.

243 (c) Unexpended amounts remaining in the special fund at
244 the end of a fiscal year shall not lapse into the State General
245 Fund, and any interest earned or investment earnings on amounts in
246 the special fund shall be deposited to the credit of the special
247 fund.

248 **SECTION 11.** Section 27-69-19, Mississippi Code of 1972, is
249 amended as follows:

250 27-69-19. The provisions of this chapter shall not apply to
251 dealers in tobacco made the subject of interstate sales, except as
252 provided in House Bill No. 1070, 2006 Regular Session.

253 **SECTION 12.** This act shall take effect and be in force from
254 and after July 1, 2006.