

By: Representatives Watson, Brown,
Whittington

To: Ways and Means

HOUSE BILL NO. 1070
(As Passed the House)

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 (g) "Subsequent participating manufacturer" means a
59 manufacturer of cigarettes that is a subsequent participating
60 manufacturer as defined in the Master Settlement Agreement.

61 **SECTION 3.** (1) Except as otherwise provided in this
62 section, there is hereby imposed, levied and assessed a fee for
63 the sale, use, consumption, handling or distribution, in the State
64 of Mississippi, of nonsettling-manufacturer cigarettes to which a
65 stamp is required to be affixed by law. The rate of the fee shall
66 be Two and Three-twentieths Cents (2-3/20¢) on each cigarette, to
67 be adjusted upward annually each January 1 by the greater of three
68 percent (3%) or the Consumer Price Index applied each year on the

69 previous year, beginning with the year of enactment of this act.
70 The fee is in addition to all other privileges, licenses, fees, or
71 taxes now imposed by law in this state. The commissioner shall
72 collect the fee each month directly from each nonsettling
73 manufacturer based on information received under Section 5 of this
74 act or other information available to the commissioner. Except as
75 otherwise provided in this act, the fee shall be imposed,
76 collected, paid, administered, and enforced in the same manner as
77 the tax on cigarettes assessed by Section 27-69-13.

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

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

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

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

96 (3) (a) The fee imposed under this section shall not apply
97 to a subsequent participating manufacturer until both of the
98 following have occurred: (i) a final and binding agreement
99 between that subsequent participating manufacturer and the
100 settling states to the Master Settlement Agreement providing such
101 subsequent participating manufacturer with a credit to its Master

102 Settlement Agreement payments for payments made to Mississippi
103 under this section has become effective and (ii) the Mississippi
104 Attorney General has received notice from the subsequent
105 participating manufacturer and the National Association of
106 Attorneys General, as representative of the settling states, that
107 an agreement acceptable to both sides has been reached. This
108 subsection (3) shall not apply to any subsequent participating
109 manufacturer that as of the effective date of this act already has
110 an agreement with the settling states (as defined in the Master
111 Settlement Agreement) with respect to a credit.

112 (b) This subsection (3) shall stand repealed from and
113 after July 1, 2007.

114 **SECTION 4.** A nonsettling manufacturer whose cigarettes are
115 being offered for sale in this state on the effective date of this
116 act shall provide to the commissioner the information described in
117 Sections 6 and 7 of this act, and pay the fee imposed by Section 3
118 of this act within thirty (30) days after the effective date of
119 this act. If cigarettes of a nonsettling manufacturer are not
120 being offered for sale in this state on the effective date of this
121 act, then the nonsettling manufacturer, before its cigarettes may
122 begin to be offered for sale in this state, shall prepay the fee
123 imposed by Section 3 of this act for the number of cigarettes of
124 the nonsettling manufacturer that the commissioner reasonably
125 projects will be sold in the first calendar month in which
126 cigarettes of the nonsettling manufacturer are sold in this state.
127 The prepayment amount shall be determined by multiplying Two and
128 One-half Cents (2-1/2¢) times the number of cigarettes that the
129 commissioner reasonably projects that the nonsettling manufacturer
130 will sell in this state in that first calendar month, or Fifty
131 Thousand Dollars (\$50,000.00), whichever is more. The
132 commissioner may require a nonsettling manufacturer to provide any
133 information reasonably necessary to determine the fee payment
134 amount and, in the case of prepayment, shall establish regulations

135 providing for reimbursement to nonsettling manufacturers if actual
136 sales are less than sales as projected by the commissioner and for
137 additional payment by nonsettling manufacturers if actual sales
138 are greater than sales as projected by the commissioner.

139 **SECTION 5.** Any manufacturer, distributor, or wholesaler of
140 cigarettes required by Section 27-69-35 to file a monthly report
141 shall state, in addition to the information required to be
142 reported under Section 27-69-35, the number and denominations of
143 stamps affixed to individual packages of nonsettling-manufacturer
144 cigarettes, by manufacturer and brand family, sold for each place
145 of business in the month preceding the month in which the report
146 is made, as well as any other information determined by the
147 commissioner to be necessary or appropriate for determining the
148 fee due under Section 3 of this act, or for enforcing any of the
149 provisions of this act. This reporting requirement shall be
150 enforced in the same manner as the monthly reporting requirement
151 imposed by Section 27-69-35.

152 **SECTION 6.** Before its cigarettes may begin to be offered for
153 sale in this state, or, if its cigarettes are being offered for
154 sale in this state on the effective date of this act, within
155 thirty (30) days of the effective date of this act, a nonsettling
156 manufacturer shall provide to the Attorney General, on a form
157 prescribed by the Attorney General, the following information:

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

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

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

166 (d) A statement of the nonsettling manufacturer's
167 intention to comply with the obligations imposed by this section;
168 and

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

172 The Attorney General shall make information provided pursuant
173 to this section available to the commissioner.

174 SECTION 7. Each nonsettling manufacturer subject to the fee
175 imposed by Section 3 of this act shall certify to the Attorney
176 General on the first day of each month that it is in compliance
177 with this act and that it has paid in full the fee imposed by
178 Section 3 of this act. The Attorney General shall develop,
179 maintain, and publish on its Internet web site a directory listing
180 all nonsettling manufacturers that have provided current, accurate
181 and complete certifications. The Attorney General shall provide a
182 copy of the list to a person upon request.

183 SECTION 8. Cigarettes of a nonsettling manufacturer that has
184 not complied with this act, including payment in full of the fee
185 imposed by Section 3 of this act, shall be treated as cigarettes
186 for which the tax assessed by Section 27-69-13 has not been paid,
187 and a nonsettling manufacturer that has not complied with this act
188 shall be subject to any and all of the penalties imposed for
189 violations of Chapter 69, Title 27, Mississippi Code of 1972. A
190 person shall not affix to any package of nonsettling-manufacturer
191 cigarettes the stamp required under Sections 27-69-13 and 27-69-27
192 after receiving notice from the commissioner, which the
193 commissioner shall provide, that the nonsettling manufacturer of
194 those cigarettes has not paid in full the fee imposed by Section 3
195 of this act or if the nonsettling manufacturer does not appear on
196 the Attorney General's directory described in Section 7 of this
197 act.

198 **SECTION 9.** (a) A person may not transport or cause to be
199 transported from this state cigarettes for sale in another state
200 without first affixing to the cigarettes the stamp required by the
201 state in which the cigarettes are to be sold or paying any other
202 excise tax on the cigarettes imposed by the state in which the
203 cigarettes are to be sold.

204 (b) A person may not affix to cigarettes the stamp
205 required by another state or pay any other excise tax on the
206 cigarettes imposed by another state if the other state prohibits
207 stamps from being affixed to the cigarettes, prohibits the payment
208 of any other excise tax on the cigarettes, or prohibits the sale
209 of the cigarettes.

210 (c) On or before the fifteenth day of each month, a
211 person who transports or causes to be transported from this state
212 cigarettes for sale in another state shall submit to the
213 commissioner, on forms prescribed by the commissioner, a report
214 identifying the quantity and brand family of each brand of the
215 cigarettes transported or caused to be transported in the
216 preceding calendar month, and the correct name and address of each
217 recipient of the cigarettes.

218 (d) For purposes of this section, "person" means an
219 individual, partnership, committee, association, corporation or
220 any other organization or group of persons. Person does not
221 include any common or contract carrier, or public warehouse that
222 is not owned, in whole or in part, directly or indirectly by such
223 person.

224 **SECTION 10.** (1) (a) There is created in the State Treasury
225 a special fund to the credit of the University of Mississippi
226 Medical Center, which shall be comprised of the monies required to
227 be deposited into the fund under Section 3(2)(a) of this act, and
228 any other funds that may be made available for the fund by the
229 Legislature.

230 (b) Monies in the fund shall be expended by the
231 University of Mississippi Medical Center, upon appropriation by
232 the Legislature, to aid in the construction, furnishing, equipping
233 and operating of the University of Mississippi Medical Center
234 Cancer Institute.

235 (c) Unexpended amounts remaining in the special fund at
236 the end of a fiscal year shall not lapse into the State General
237 Fund, and any interest earned or investment earnings on amounts in
238 the special fund shall be deposited to the credit of the special
239 fund.

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

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

248 (c) Unexpended amounts remaining in the special fund at
249 the end of a fiscal year shall not lapse into the State General
250 Fund, and any interest earned or investment earnings on amounts in
251 the special fund shall be deposited to the credit of the special
252 fund.

253 (3) (a) There is created in the State Treasury a special
254 fund to the credit of the University of Mississippi Medical
255 Center, which shall be comprised of the monies required to be
256 deposited into the fund under Section 3(2)(c) of this act, and any
257 other funds that may be made available for the fund by the
258 Legislature.

259 (b) Monies in the fund shall be expended by the
260 University of Mississippi Medical Center, upon appropriation by
261 the Legislature, to pay the costs of medical services provided by

262 the center for which it does not receive compensation or
263 reimbursement from any other source.

264 (c) Unexpended amounts remaining in the special fund at
265 the end of a fiscal year shall not lapse into the State General
266 Fund, and any interest earned or investment earnings on amounts in
267 the special fund shall be deposited to the credit of the special
268 fund.

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

271 27-69-19. The provisions of this chapter shall not apply to
272 dealers in tobacco made the subject of interstate sales, except as
273 provided in House Bill No. 1070, 2006 Regular Session.

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