

By: Representative Watson

To: Ways and Means

## HOUSE BILL NO. 1390

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 AMEND  
12 SECTION 27-69-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;  
13 AND FOR RELATED PURPOSES.

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

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

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

19 (b) To prevent nonsettling manufacturers from  
20 undermining the state's policy of reducing underage smoking by  
21 offering their cigarettes for sale substantially below the price  
22 of cigarettes of other manufacturers;

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

29 (d) To fund enforcement and administration of  
30 nonsettling-manufacturer legislation, and the fee imposed by this  
31 act, including reasonable administrative costs incurred by

wholesalers in complying with any additional reporting requirements necessitated by this act; and

(e) To fund such other purposes as the Legislature shall determine.

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

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

(b) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

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

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

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

(f) "Nonsettling-manufacturer cigarettes" mean cigarettes of a nonsettling manufacturer.

**SECTION 3.** There is hereby imposed, levied and assessed a fee for the sale, use, consumption, handling or distribution, in the State of Mississippi, of nonsettling-manufacturer cigarettes to which a stamp is required to be affixed by law. The rate of the fee shall be Two and One-half Cents (2-1/2¢) on each cigarette, to be adjusted upward annually each January 1 by the greater of three percent (3%) or the Consumer Price Index applied

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

**SECTION 4.** A nonsettling manufacturer whose cigarettes are being offered for sale in this state on the effective date of this act shall provide to the commissioner the information described in Sections 6 and 7 of this act, and pay the fee imposed by Section 3 of this act within thirty (30) days after the effective date of this act. If cigarettes of a nonsettling manufacturer are not being offered for sale in this state on the effective date of this act, then the nonsettling manufacturer, before its cigarettes may begin to be offered for sale in this state, shall prepay the fee imposed by Section 3 of this act for the number of cigarettes of the nonsettling manufacturer that the commissioner reasonably projects will be sold in the first calendar month in which cigarettes of the nonsettling manufacturer are sold in this state. The prepayment amount shall be determined by multiplying Two and One-half Cents (2-1/2¢) times the number of cigarettes that the commissioner reasonably projects that the nonsettling manufacturer will sell in this state in that first calendar month, or Fifty Thousand Dollars (\$50,000.00), whichever is more. The commissioner may require a nonsettling manufacturer to provide any information reasonably necessary to determine the fee payment amount and, in the case of prepayment, shall establish regulations providing for reimbursement to nonsettling manufacturers if actual sales are less than sales as projected by the commissioner and for

98 additional payment by nonsettling manufacturers if actual sales  
99 are greater than sales as projected by the commissioner.

100       **SECTION 5.** Any manufacturer, distributor, or wholesaler of  
101 cigarettes required by Section 27-69-35 to file a monthly report  
102 shall state, in addition to the information required to be  
103 reported under Section 27-69-35, the number and denominations of  
104 stamps affixed to individual packages of nonsettling-manufacturer  
105 cigarettes, by manufacturer and brand family, sold for each place  
106 of business in the month preceding the month in which the report  
107 is made, as well as any other information determined by the  
108 commissioner to be necessary or appropriate for determining the  
109 fee due under Section 3 of this act, or for enforcing any of the  
110 provisions of this act. This reporting requirement shall be  
111 enforced in the same manner as the monthly reporting requirement  
112 imposed by Section 27-69-35.

113       **SECTION 6.** Before its cigarettes may begin to be offered for  
114 sale in this state, or, if its cigarettes are being offered for  
115 sale in this state on the effective date of this act, within  
116 thirty (30) days of the effective date of this act, a nonsettling  
117 manufacturer shall provide to the Attorney General, on a form  
118 prescribed by the Attorney General, the following information:

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

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

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

127               (d) A statement of the nonsettling manufacturer's  
128 intention to comply with the obligations imposed by this section;  
129 and

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

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

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

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

**SECTION 9.** (a) A person may not transport or cause to be transported from this state cigarettes for sale in another state without first affixing to the cigarettes the stamp required by the state in which the cigarettes are to be sold or paying any other

163 excise tax on the cigarettes imposed by the state in which the  
164 cigarettes are to be sold.

165 (b) A person may not affix to cigarettes the stamp  
166 required by another state or pay any other excise tax on the  
167 cigarettes imposed by another state if the other state prohibits  
168 stamps from being affixed to the cigarettes, prohibits the payment  
169 of any other excise tax on the cigarettes, or prohibits the sale  
170 of the cigarettes.

171 (c) On or before the fifteenth day of each month, a  
172 person who transports or causes to be transported from this state  
173 cigarettes for sale in another state shall submit to the  
174 commissioner, on forms prescribed by the commissioner, a report  
175 identifying the quantity and brand family of each brand of the  
176 cigarettes transported or caused to be transported in the  
177 preceding calendar month, and the correct name and address of each  
178 recipient of the cigarettes.

179 (d) For purposes of this section, "person" means an  
180 individual, partnership, committee, association, corporation or  
181 any other organization or group of persons. Person does not  
182 include any common or contract carrier, or public warehouse that  
183 is not owned, in whole or in part, directly or indirectly by such  
184 person.

185 **SECTION 10.** Section 27-69-19, Mississippi Code of 1972, is  
186 amended as follows:

187 27-69-19. The provisions of this chapter shall not apply to  
188 dealers in tobacco made the subject of interstate sales, except as  
189 provided in House Bill No. \_\_\_\_, 2006 Regular Session.

190 **SECTION 11.** This act shall take effect and be in force from  
191 and after July 1, 2006.