

**\*\*\* Pending \*\*\***

**COMMITTEE AMENDMENT NO 1 PROPOSED TO**

**House Bill No. 1070**

**BY: Committee**

**Amend by striking all after the enacting clause and inserting  
in lieu thereof the following:**

18        **SECTION 1.** The purpose of this act is to:

19               (a) Prevent nonsettling manufacturers from undermining  
20 this state's policy of discouraging underage smoking by offering  
21 cigarettes and cigarette tobacco products at prices that are  
22 substantially below the prices of cigarettes and cigarette tobacco  
23 products of other manufacturers;

24               (b) Protect the tobacco settlement agreement, and  
25 funding, which has been reduced because of the growth of sales of  
26 nonsettling-manufacturer cigarettes and cigarette tobacco  
27 products, for programs that are funded wholly or partly by  
28 payments to this state under the tobacco settlement agreement and  
29 recoup for this state settlement payment revenue lost because of  
30 sales of nonsettling-manufacturer cigarettes and cigarette tobacco  
31 products;

32               (c) Provide funding to enforce and administer this act  
33 and any legislation relating to nonsettling manufacturers; and

34               (d) Provide funding for any other purpose the  
35 Legislature determines.

36        **SECTION 2.** As used in this act:

37           (a) "Brand family" means each style of cigarettes or  
38 cigarette tobacco products sold under the same trademark and  
39 differentiated from one another by means of additional modifiers,  
40 including "menthol," "lights," "kings," and "100s." The term  
41 includes any style of cigarettes or cigarette tobacco products  
42 that have a brand name, trademark, logo, symbol, motto, selling  
43 message, recognizable pattern of colors, or other indication of  
44 product identification that is identical to, similar to, or  
45 identifiable with a previously known brand of cigarettes or  
46 cigarette tobacco products.

47           (b) "Cigarette" means any product that contains  
48 nicotine and is intended to be burned or heated under ordinary  
49 conditions of use. The term includes:

50                 (i) A roll of tobacco wrapped in paper or another  
51 substance that does not contain tobacco;

52                 (ii) Tobacco, in any form, that is functional in a  
53 product that, because of the product's appearance, the type of  
54 tobacco used in the filler, or the product's packaging and  
55 labeling, is likely to be offered to or purchased by a consumer as  
56 a cigarette; or

57                 (iii) A roll of tobacco wrapped in any substance  
58 containing tobacco that, because of the product's appearance, the  
59 type of tobacco used in the filler, or the product's packaging and  
60 labeling, is likely to be offered to or purchased by a consumer as  
61 a cigarette.

62           (c) "Cigarette tobacco product" means roll-your-own  
63 tobacco or tobacco that, because of the tobacco's appearance,  
64 type, packaging, or labeling, is suitable for use in making  
65 cigarettes and is likely to be offered to or purchased by a  
66 consumer for that purpose.

67           (d) "Commissioner" means the Chairman of the State Tax  
68 Commission and his authorized agents and employees.

69           (e) "Manufacturer" means a person that manufactures,  
70 fabricates or assembles cigarettes for sale or distribution. For  
71 purposes of this act, the term includes a person that is the first  
72 importer into the United States of cigarettes and cigarette  
73 tobacco products manufactured outside the United States.

74           (f) "Master settlement agreement" means the settlement  
75 agreement and related documents entered into in 1998 by forty-six  
76 (46) states and leading United States tobacco manufacturers.

77           (g) "Nonsettling manufacturer" means a manufacturer of  
78 cigarettes that did not sign the tobacco settlement agreement.

79           (h) "Nonsettling-manufacturer cigarettes" means cigarettes  
80 manufactured, fabricated, assembled or imported by a nonsettling  
81 manufacturer.

82           (i) "Nonsettling manufacturer cigarette tobacco  
83 products" means cigarette tobacco products manufactured,  
84 fabricated assembled or imported by a nonsettling manufacturer.

85           (j) "Tobacco settlement agreement" means the  
86 Comprehensive Settlement Agreement and Release filed December 29,  
87 1997, in the Chancery Court of Jackson County, State of  
88 Mississippi, in the case styled In Re Mike Moore, Attorney  
89 General, ex rel. State of Mississippi Tobacco Litigation, Cause  
90 No. 94-1429, and all subsequent amendments thereto.

91           (k) "Distributor" shall have the same meaning ascribed  
92 to that term in Section 27-69-3.

93           **SECTION 3.** (1) A fee is imposed on the sale, use,  
94 consumption or distribution in this state of:

95           (a) Nonsettling-manufacturer cigarettes if a stamp is  
96 required to be affixed to a package of those cigarettes under the  
97 Tobacco Tax Law;

98           (b) Nonsettling-manufacturer cigarettes that are sold,  
99 purchased or distributed in this state but that are not required

100 to have a stamp affixed to a package of those cigarettes under the  
101 Tobacco Tax Law; and

102 (c) Nonsettling manufacturer cigarette tobacco products  
103 that are subject to the tax imposed by Section 27-69-13.

104 (2) The fee imposed by this act does not apply to cigarettes  
105 or cigarette tobacco products that are included in computing  
106 payments due to be made by a settling manufacturer under the  
107 tobacco settlement agreement.

108 (3) The fee imposed by this act is in addition to any other  
109 privilege, license, fee or tax required or imposed by state law.

110 (4) Except as otherwise provided by this act, the fee  
111 imposed by this act is imposed, collected, paid, administered, and  
112 enforced in the same manner, taking into account that the fee is  
113 imposed on nonsettling manufacturers, as the taxes imposed by the  
114 Tobacco Tax Law, as appropriate.

115 **SECTION 4.** (1) Except as provided by subsection (2) of this  
116 section, the fee is imposed at the rate of Two and  
117 Three-twentieths Cents (2-3/20¢) for:

118 (a) Each nonsettling-manufacturer cigarette; and

119 (b) Each nine one-hundredths (0.09) ounce of  
120 nonsettling-manufacturer cigarette tobacco product.

121 (2) On January 1 of each year, the fee prescribed by  
122 subsection (1) of this section shall increase by the greater of:

123 (a) Three percent (3%); or

124 (b) The percentage increase in the most recent annual  
125 revised Consumer Price Index for all Urban Consumers, as published  
126 by the Federal Bureau of Labor Statistics of the United States  
127 Department of Labor.

128 (3) The revenue collected from the fee imposed by this  
129 section shall be deposited into the State General Fund.

130 **SECTION 5.** (1) A distributor required to file a monthly  
131 report under Section 27-69-35, shall, in addition to the

132 information required by that section, include in the report the  
133 following information:

134 (a) The number and denominations of stamps affixed to  
135 individual packages of nonsettling manufacturer cigarettes during  
136 the preceding month;

137 (b) The number of individual packages of nonsettling  
138 manufacturer cigarettes sold or purchased in this state or  
139 otherwise distributed in this state for sale in the United States;  
140 and

141 (c) Any other information the commissioner considers  
142 necessary or appropriate to determine the amount of the fee  
143 imposed by this act or to enforce this act.

144 (2) The information required by subsection (1)(a) and (b)  
145 must be itemized for each place of business and by manufacturer  
146 and brand family.

147 (3) The requirement to report information under this section  
148 shall be enforced in the same manner as the requirement to deliver  
149 to or file with the comptroller a report required under the  
150 Tobacco Tax Law.

151 **SECTION 6.** (1) Each month, not later than the 10th day  
152 after the date the commissioner receives the information required  
153 by Section 5 of this act, the commissioner shall:

154 (a) Compute the amount of the fee imposed by this act  
155 that each nonsettling manufacturer owes for that reporting period  
156 based on that information and any other information available to  
157 the commissioner; and

158 (b) Mail to each nonsettling manufacturer a notice of  
159 the amount of fee the manufacturer owes.

160 (2) Not later than the 15th day of the month after the month  
161 in which the commissioner mails a nonsettling manufacturer a  
162 notice under subsection (1) of this section, the nonsettling

163 manufacturer shall send to the commissioner the amount of the fee  
164 due according to the notice.

165 **SECTION 7.** (1) Not later than the first day of each month,  
166 a nonsettling manufacturer who is required to pay the fee imposed  
167 by this act shall certify to the Attorney General that the  
168 manufacturer is in compliance with this act and has paid in full  
169 the fee imposed by this act.

170 (2) The Attorney General shall develop, maintain and publish  
171 on the Attorney General's Internet Web site a directory listing of  
172 all nonsettling manufacturers that have been provided current,  
173 accurate and complete certifications. The listing shall also  
174 include all manufacturers of cigarettes that signed the tobacco  
175 settlement agreement.

176 (3) The Attorney General shall provide the list described by  
177 subsection (2) of this section to any person on request.

178 **SECTION 8.** (1) If cigarettes or cigarette tobacco products  
179 of a nonsettling manufacturer are not offered for sale or  
180 distribution in this state on September 1, 2005, the nonsettling  
181 manufacturer may not offer those cigarettes or cigarette tobacco  
182 products for sale or distribution in this state after that date  
183 unless the manufacturer first prepays the fee imposed by this act  
184 for sales of cigarettes and cigarette tobacco products that will  
185 occur in the first calendar month in which they are sold or  
186 distributed in this state.

187 (2) The amount a nonsettling manufacturer is required to  
188 prepay under this section is equal to the greater of:

189 (a) The rate prescribed by Section 4 of this act in  
190 effect on that date multiplied by:

191 (i) The number of cigarettes the commissioner  
192 reasonably projects that the nonsettling manufacturer will sell or  
193 distribute in this state during that calendar month; and

194                   (ii) Each nine one-hundredths (0.09) ounce of  
195 nonsettling manufacturer cigarette tobacco products the  
196 commissioner reasonably projects that the nonsettling manufacturer  
197 will sell or distribute in this state during that calendar month;  
198 or

199                   (b) Fifty Thousand Dollars (\$50,000.00).

200           (3) The fee imposed by this section does not apply to  
201 cigarettes or cigarette tobacco products that are included in  
202 computing payments due to be made by a settling manufacturer under  
203 the tobacco settlement agreement.

204           (4) The commissioner may require a nonsettling manufacturer  
205 to provide any information reasonably necessary to determine the  
206 prepayment amount.

207           (5) The commissioner shall establish procedures to:

208                   (a) Reimburse a nonsettling manufacturer if the actual  
209 sales or distributions in the first calendar month are less than  
210 the projected sales or distributions; and

211                   (b) Require additional payments if the actual sales or  
212 distributions in the first calendar month are greater than the  
213 projected sales or distributions.

214           (6) A nonsettling manufacturer shall pay the fee imposed by  
215 this act in the manner provided by Section 27-69-91, beginning in  
216 the second calendar month in which the manufacturer offers the  
217 cigarettes or cigarette tobacco products for sale or distribution  
218 in this state.

219           **SECTION 9.** (1) In addition to prepaying the fee required by  
220 Section 8 of this act, a nonsettling manufacturer described by  
221 Section 8(1) of this act shall, before the date the cigarettes or  
222 cigarette tobacco products are offered for sale or distribution in  
223 this state, provide to the Attorney General on a form prescribed  
224 by the Attorney General:

225 (a) The nonsettling manufacturer's complete name,  
226 address and telephone number;

227 (b) The date that the nonsettling manufacturer will  
228 begin offering cigarettes or cigarette tobacco products for sale  
229 or distribution in this state;

230 (c) The names of the brand families of the cigarettes  
231 or cigarette tobacco products that the nonsettling manufacturer  
232 will offer for sale or distribution in this state;

233 (d) A statement that the nonsettling manufacturer  
234 intends to comply with this act; and

235 (e) The name, address, telephone number and signature  
236 of an officer of the nonsettling manufacturer attesting to all of  
237 the included information.

238 (2) The Attorney General shall make the information provided  
239 under this section available to the commissioner.

240 **SECTION 10.** (1) Cigarettes and cigarette tobacco products  
241 of a nonsettling manufacturer that has not complied with this act,  
242 including full payment of the fee imposed by this act, shall be  
243 treated as tobacco for which the tax assessed by the Tobacco Tax  
244 Law, has not been paid, and the manufacturer is subject to all  
245 penalties imposed by that act for violations of that act.

246 (2) The commissioner shall provide to a nonsettling  
247 manufacturer and each distributor authorized to affix tax stamps  
248 pursuant to the Tobacco Tax Act, a notice of noncompliance with  
249 this act if the manufacturer:

250 (a) Does not pay in full the fee imposed by this act;  
251 or

252 (b) Is not included on the list described by Section  
253 7(2) of this act.

254 (3) If a nonsettling manufacturer does not appear in the  
255 Attorney General's directory required by Section 7(2) of this act,  
256 or upon receipt of the notice of noncompliance described in



257 subsection (2) of this section with respect to a nonsettling  
258 manufacturer, no distributor may, with respect to cigarettes  
259 manufactured by such nonsettling manufacturer:

260 (a) Pay the tax imposed by the Tobacco Tax Law;

261 (b) Affix to a package of cigarettes the stamp required  
262 by Section 27-69-15; or

263 (c) Otherwise purchase, sell or distribute cigarettes  
264 manufactured by such nonsettling manufacturer in this state.

265 **SECTION 11.** Any nonsettling manufacturer that complies with  
266 the provisions of this act shall be granted the same civil  
267 immunity granted to settling manufacturers in the tobacco  
268 settlement agreement; provided, however, that such nonsettling  
269 manufacturer shall be subject, when applicable, to the same  
270 mandates and restrictions imposed in the settlement agreement on  
271 the settling manufacturers.

272 **SECTION 12.** This act applies without regard to Section  
273 27-69-19, or any other law that might be read to create an  
274 exemption for interstate sales.

275 **SECTION 13.** (1) Not later than September 30, 2006, a  
276 nonsettling manufacturer that is offering cigarettes or cigarette  
277 tobacco products for sale or distribution in this state on  
278 September 1, 2006, shall provide to the Attorney General on a form  
279 prescribed by the Attorney General:

280 (a) The nonsettling manufacturer's complete name,  
281 address, and telephone number;

282 (b) The date that the nonsettling manufacturer began  
283 offering cigarettes or cigarette tobacco products for sale or  
284 distribution in this state;

285 (c) The names of the brand families of the cigarettes  
286 or cigarette tobacco products that the nonsettling manufacturer  
287 offers for sale or distribution in this state;

288 (d) A statement that the nonsettling manufacturer  
289 intends to comply with this act; and

290 (e) The name, address, telephone number and signature  
291 of an officer of the nonsettling manufacturer attesting to all of  
292 the included information.

293 (2) The Attorney General shall make the information provided  
294 under subsection (1) of this section available to the  
295 commissioner.

296 **SECTION 14.** This act shall take effect and be in force from  
297 and after September 1, 2006.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

1 AN ACT TO IMPOSE A FEE ON NONSETTLING-MANUFACTURER  
2 CIGARETTES; TO REQUIRE MONTHLY REPORTING OF THE NUMBER AND  
3 DENOMINATION OF STAMPS AFFIXED TO PACKAGES OF  
4 NONSETTLING-MANUFACTURER CIGARETTES, THE NUMBER OF INDIVIDUAL  
5 PACKAGES OF NONSETTLING-MANUFACTURER CIGARETTES SOLD OR PURCHASED  
6 IN THIS STATE OR OTHERWISE DISTRIBUTED IN THIS STATE FOR SALE IN  
7 THE UNITED STATES AND ANY OTHER INFORMATION THE STATE TAX  
8 COMMISSION CONSIDERS NECESSARY OR APPROPRIATE TO DETERMINE THE  
9 AMOUNT OF THE FEE IMPOSED BY THIS ACT OR TO ENFORCE THIS ACT; TO  
10 REQUIRE REGISTRATION OF NONSETTLING MANUFACTURERS WITH THE  
11 ATTORNEY GENERAL; TO REQUIRE DEVELOPMENT, MAINTENANCE AND  
12 PUBLICATION BY THE ATTORNEY GENERAL OF A LIST OF NONSETTLING  
13 MANUFACTURERS THAT HAVE CERTIFIED THEIR COMPLIANCE WITH THIS ACT;  
14 TO PROVIDE FOR ENFORCEMENT OF THE REQUIREMENTS IMPOSED BY THIS  
15 ACT; TO GRANT CIVIL IMMUNITY TO NONSETTLING MANUFACTURERS THAT  
16 COMPLY WITH THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.