



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

MAR 14 2001

The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Sais na Liheslaturan Guåhan
Twenty-Sixth Guam Legislature
Suite 200
130 Aspinal Street
Hagåtña, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT

Received By EC

Time 4:05 p.m.

Date 03/14/01

Dear Legislative Secretary Brown:

Enclosed please find Bill No. 033 (LS) entitled: "AN ACT TO REPEAL §14 OF P.L. NO. 25-150, TO AMEND §3 OF P.L. NO. 24-174; AND TO AMEND §§221201, 221202, 221203 AND 221108 OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO ADOPTING A MODEL STATUTE UNDER THE MASTER SETTLEMENT AGREEMENT" which I have signed into law as Public Law No. 26-03.

This legislation amends previous legislation in Public Law No. 25-150 which adopted the "model statute" creating a reserve fund for non-participating tobacco manufacturers in the settlement agreement between the United States government and certain tobacco companies.

This legislation makes the following changes to the legislation passed in Public Law No. 25-150:

1. The "legislative intent" section in Section 14 of Public Law No. 25-150 is repealed.
2. The citation of the tobacco settlement agreement dated December 8, 1998 is changed to the agreement dated November 23, 1998.
3. The financial institution eligible to set up a "qualified escrow fund" is a financial institution having assets of One Billion Dollars as compared to Five Hundred Million Dollars in previous law.
4. A reference to "§§3(b) through (c) of this Act" on page five line 20 is changed to "§221203(b)".
5. A deletion of a reference to the possibility of there being no excise tax on cigarettes and tobacco products is deleted.
6. A reference to escrow amounts for the year 1999 is deleted. Prior Law, Public Law No. 25-150, was not enacted until July, 2000.

0108

Speaker;B33;PL26-03
March, 2001

7. A repetitious reference to "after the date of enactment of this Act" after the amounts to be set aside in the qualified escrow fund is deleted for all years after this year 2000.
8. The placement of funds received from the State Attorneys General Tobacco Litigation Settlement are to be deposited into the Health and Human Service Fund, and reference to placing some amounts into another fund named a Reserve Fund for Non-Participating Tobacco Manufacturers is deleted. The Health and Human Service Fund is the designated fund.

Very truly yours,



Carl T. C. Gutierrez
I Maga'Lahen Guåhan
Governor of Guam


Attachment: copy attached for signed bill or overridden bill
original attached for vetoed bill

cc: The Honorable Antonio R. Unpingco
Speaker


MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 033 (LS) "AN ACT TO REPEAL §14 OF P.L. NO. 25-150, TO AMEND §3 OF P.L. NO. 24-174; AND TO AMEND §§221201, 221202, 221203 AND 221108 OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO ADOPTING A MODEL STATUTE UNDER THE MASTER SETTLEMENT AGREEMENT," was on the 1st day of March, 2001, duly and regularly passed.


ANTONIO R. UNPINGCO
Speaker

Attested:


JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 2nd day of March, 2001,
at 4:50 o'clock P.M.


Assistant Staff Officer
Maga'lahi's Office

APPROVED:


CARL T. C. GUTIERREZ
I Maga'lahaen Guåhan

Date: 3-14-01

Public Law No. 26-03

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

Bill No. 33 (LS)

As amended on the Floor.

Introduced by:

V. C. Pangelinan
L. F. Kasperbauer
J. M.S. Brown
F. B. Aguon, Jr.
J. F. Ada
T. C. Ada
E. B. Calvo
F. P. Camacho
M. C. Charfauros
Mark Forbes
L. A. Leon Guerrero
K. S. Moylan
A. L. G. Santos
A. R. Unpingco
J. T. Won Pat

**AN ACT TO REPEAL §14 OF P.L. NO. 25-150, TO
AMEND §3 OF P.L. NO. 24-174; AND TO AMEND
§§221201, 221202, 221203 AND 221108 OF TITLE 5 OF
THE GUAM CODE ANNOTATED, RELATIVE TO
ADOPTING A MODEL STATUTE UNDER THE
MASTER SETTLEMENT AGREEMENT.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** Section 14 of Public Law Number 25-150 is hereby *repealed*.

1 **Section 2.** Section 221201 of Article 12, Chapter 22, Division 2 of Title 5
2 of the Guam Code Annotated, as added by Public Law Number 25-150, is
3 hereby *amended* to read as follows:

4 **“Section 221201. Findings and Purpose.**

5 (a) Cigarette smoking presents serious public health
6 concerns to the State and to the citizens of the State. The Surgeon
7 General has determined that smoking causes lung cancer, heart
8 disease and other serious diseases, and that there are hundreds of
9 thousands of tobacco-related deaths in the United States each
10 year. These diseases most often do *not* appear until many years
11 after the person in question begins smoking.

12 (b) Cigarette smoking also presents serious financial
13 concerns for the State. Under certain health-care programs, the
14 State may have a legal obligation to provide medical assistance to
15 eligible persons for health conditions associated with cigarette
16 smoking, and those persons may have a legal entitlement to
17 receive such medical assistance.

18 (c) Under these programs, the State pays millions of
19 dollars each year to provide medical assistance for these persons
20 for health conditions associated with cigarette smoking.

21 (d) It is the policy of the State that financial burdens
22 imposed on the State by cigarette smoking be borne by tobacco
23 product manufacturers rather than by the State to the extent that
24 such manufacturers either determine to enter into a settlement
25 with the State, or are found culpable by the courts.

1 (e) On November 23, 1998, leading United States tobacco
2 product manufacturers entered into a settlement agreement,
3 entitled the '*Master Settlement Agreement*,' with the State. The
4 Master Settlement Agreement obligates these manufacturers, in
5 return for a release of past, present and certain future claims
6 against them, as described therein, to pay substantial sums to the
7 State, (tied in part to their volume of sales); to fund a national
8 foundation devoted to the interests of public health; and to make
9 substantial changes in their advertising and marketing practices
10 and corporate culture, with the intention of reducing underage
11 smoking.

12 (f) It would be contrary to the policy of the State if
13 tobacco product manufacturers who determine *not* to enter into
14 such a settlement could use a resulting cost advantage to derive
15 large, short-term profits in the years before liability may arise
16 without ensuring that the State will have an eventual source of
17 recovery from them *if* they are proven to have acted culpably. It is
18 thus in the interest of the State to require that such manufacturers
19 establish a reserve fund to guarantee a source of compensation,
20 and to prevent such manufacturers from deriving large, short-
21 term profits and then becoming judgment-proof before liability
22 may arise."

23 **Section 3.** Section 221202 of Article 12, Chapter 22, Division 2 of Title 5
24 of the Guam Code Annotated, as added by Public Law Number 25-150, is
25 hereby *amended* to read as follows:

1 **“Section 221202. Definitions.**

2 (a) ‘*Adjusted for inflation*’ means increased in accordance
3 with the formula for inflation adjustment set forth in ‘Exhibit C’ to
4 the Master Settlement Agreement.

5 (b) ‘*Affiliate*’ means a person who directly or indirectly
6 owns or controls, is owned or controlled by, or is under common
7 ownership or control with, another person. Solely for purposes of
8 this definition, the terms ‘*owns*,’ ‘*is owned*’ and ‘*ownership*’ mean
9 ownership of an equity interest, or the equivalent thereof, of ten
10 percent (10%) or more, and the term ‘*person*’ means an individual,
11 partnership, committee, association, corporation, or any other
12 organization or group of persons.

13 (c) ‘*Allocable share*’ means ‘allocable share’ as that term is
14 defined in the Master Settlement Agreement.

15 (d) ‘*Cigarette*’ means any product that contains nicotine, is
16 intended to be burned or heated under ordinary conditions of use,
17 and consists of or contains: (1) any roll of tobacco wrapped in
18 paper or in any substance not containing tobacco; (2) tobacco, in
19 any form, that is functional in the product, which, because of its
20 appearance, the type of tobacco used in the filler, or its packaging
21 and labeling, is likely to be offered to, or purchased by, consumers
22 as a cigarette; or (3) any roll of tobacco wrapped in any substance
23 containing tobacco which, because of its appearance, the type of
24 tobacco used in the filler, or its packaging and labeling, is likely to

1 be offered to, or purchased by, consumers as a cigarette described
2 in Clause (1) of this definition. The term '*cigarette*' includes '*roll-*
3 *your-own*' (i.e. any tobacco which, because of its appearance, type,
4 packaging, or labeling is suitable for use and likely to be offered
5 to, or purchased by, consumers as tobacco for making cigarettes).
6 For purposes of this definition of '*cigarette*,' 0.09 ounces of '*roll-*
7 *your-own*' tobacco shall constitute one (1) individual '*cigarette*.'

8 (e) '*Master Settlement Agreement*' means the settlement
9 agreement, and related documents, entered into on November 23,
10 1998 by the State and leading United States tobacco product
11 manufacturers.

12 (f) '*Qualified escrow fund*' means an escrow arrangement
13 with a Federally or State chartered financial institution having no
14 affiliation with any tobacco product manufacturer, and having
15 assets of *at least* One Billion Dollars (\$1,000,000,000), where such
16 arrangement requires that such financial institution hold the
17 escrowed funds' principal for the benefit of releasing parties, and
18 prohibits the tobacco product manufacturer placing the funds into
19 escrow from using, accessing or directing the use of the funds'
20 principal, *except* as consistent with §221203(b).

21 (g) '*Released claims*' means 'released claims' as that term is
22 defined in the Master Settlement Agreement.

23 (h) '*Releasing parties*' means 'releasing parties' as that term
24 is defined in the Master Settlement Agreement.

1 (i) 'Tobacco Product Manufacturer' means an entity that
2 after the date of enactment of this Article directly, (and *not*
3 exclusively through any affiliate):

4 (1) manufactures cigarettes anywhere that such
5 manufacturer intends to be sold in the United States,
6 including cigarettes intended to be sold in the United States
7 through an importer, *except* where such importer is an
8 original participating manufacturer, as that term is defined
9 in the Master Settlement Agreement, that will be responsible
10 for the payments under the Master Settlement Agreement
11 with respect to such cigarettes as a result of the provisions of
12 Subsections II(mm) of the Master Settlement Agreement,
13 and that pays the taxes specified in Subsection II(z) of the
14 Master Settlement Agreement, and provided that the
15 manufacturer of such cigarettes does *not* market or advertise
16 such cigarettes in the United States;

17 (2) is the first purchaser anywhere for resale in the
18 United States of cigarettes manufactured anywhere that the
19 manufacturer does *not* intend to be sold in the United States;

20 *or*

21 (3) becomes a successor of an entity described in
22 Paragraph (1) or (2).

1 The term '*Tobacco Product Manufacturer*' shall *not* include an
2 affiliate of a tobacco product manufacturer, *unless* such affiliate
3 itself falls within any of Paragraphs (1) through (3) above.

4 (j) 'Units sold' means the number of individual cigarettes
5 sold in the State by the applicable tobacco product manufacturer,
6 (whether directly or through a distributor, retailer or similar
7 intermediary or intermediaries) during the year in question, as
8 measured by excise taxes collected by the State on packs, or 'roll-
9 your-own' tobacco containers, bearing the excise tax stamp of the
10 State. The Department of Revenue and Taxation shall promulgate
11 such regulations as are necessary to ascertain the amount of State
12 excise tax paid on the cigarettes of such tobacco product
13 manufacturer for each year.

14 (k) 'State' means Guam, or the government of Guam, as
15 the case may be."

16 **Section 4.** Section 221203 of Article 12, Chapter 22, Division 2 of Title 5
17 of the Guam Code Annotated, as added by Public Law Number 25-150, is
18 hereby *amended* to read as follows:

19 **"Section 221203. Requirements.** Any tobacco product
20 manufacturer selling cigarettes to consumers within the State, whether
21 directly or through a distributor, retailer or similar intermediary or
22 intermediaries, after the date of enactment of this Article shall do one of
23 the following:

1 (a) become a participating manufacturer, as that term is
2 defined in §II(jj) of the Master Settlement Agreement, and
3 generally perform its financial obligations under the Master
4 Settlement Agreement; *or*

5 (b) (1) place into a qualified escrow fund by April 15 of
6 the year following the year in question the following
7 amounts, as such amounts are adjusted for inflation:

8 2000: \$.0104712 per unit sold
9 *after* the date
10 of enactment
11 of this Article;

12 For each of
13 2001 and 2002: \$.0136125 per unit sold;

14
15 For each of 2003
16 Through 2006: \$.0167539 per unit sold;

17
18 For each of
19 2007 and each
20 year thereafter: \$.0188482 per unit sold.

21
22 (2) A tobacco product manufacturer that places
23 funds into escrow pursuant to Paragraph (1) shall receive
24 the interest or other appreciation on such funds as earned.

1 Such funds themselves shall be released from escrow *only*
2 under the following circumstances:

3 (i) to pay a judgment or settlement on any
4 released claim brought against such tobacco product
5 manufacturer by the State or any releasing party
6 located or residing in the State. Funds shall be
7 released from escrow under this Subparagraph: (1) in
8 the order in which they were placed into escrow, *and*
9 (2) *only* to the extent and at the time necessary to make
10 payments required under such judgment or
11 settlement;

12 (ii) to the extent that a tobacco product
13 manufacturer establishes that the amount it was
14 required to place into escrow in a particular year was
15 greater than the State's allocable share of the total
16 payments that such manufacturer would have been
17 required to make in that year under the Master
18 Settlement Agreement, as determined pursuant to
19 §IX(i)(2) of the Master Settlement Agreement, and
20 before any of the adjustments or offsets described in
21 §IX(i)(3) of that Agreement other than the Inflation
22 Adjustment, had it been a participating manufacturer,
23 the excess shall be released from escrow and revert
24 back to such tobacco product manufacturer; *or*

1 (iii) to the extent *not* released from escrow
2 under Subparagraphs (i) or (ii), funds shall be released
3 from escrow and revert back to such tobacco product
4 manufacturer twenty-five (25) years after the date on
5 which they were placed into escrow.

6 (3) Each tobacco product manufacturer that elects to
7 place funds into escrow pursuant to this Subsection shall
8 annually certify to the Attorney General that it is in
9 compliance with this Subsection. The Attorney General may
10 bring a civil action on behalf of the State against any tobacco
11 product manufacturer that fails to place into escrow the
12 funds required under this Section. Any tobacco product
13 manufacturer that fails in any year to place into escrow the
14 funds required under this Section shall:

15 (i) be required within fifteen (15) days to
16 place such funds into escrow as shall bring it into
17 compliance with this Section. The Court, upon a
18 finding of a violation of this Subsection, may impose a
19 civil penalty to be paid to the General Fund in an
20 amount *not to exceed* five percent (5%) of the amount
21 improperly withheld from escrow per day of the
22 violation and in a total amount *not to exceed* one
23 hundred percent (100%) of the original amount
24 improperly withheld from escrow;

1 (ii) in the case of a knowing violation, be
2 required within fifteen (15) days to place such funds
3 into escrow as shall bring it into compliance with this
4 Section. The Court, upon a finding of a knowing
5 violation of this Subsection, may impose a civil penalty
6 to be paid to the General Fund in an amount *not to*
7 *exceed* fifteen percent (15%) of the amount improperly
8 withheld from escrow per day of the violation, and in
9 a total amount *not to exceed* three hundred percent
10 (300%) of the original amount improperly withheld
11 from escrow;

12 (iii) in the case of a second knowing violation,
13 be prohibited from selling cigarettes to consumers
14 within the State, whether directly or through a
15 distributor, retailer or similar intermediary, for a
16 period *not to exceed* two (2) years; *and*

17 (iv) be required to pay the State's costs and
18 attorney's fees incurred during a successful
19 prosecution of any action brought under this
20 Paragraph (3).

21 (4) Each failure to make an annual deposit required
22 under this Section shall constitute a separate violation."

23 **Section 5.** Section 3 of Public Law Number 24-174 is hereby *amended* to
24 read as follows:

1 **"Section 3. Tobacco Litigation Settlement.** Any and all funds
2 which Guam shall receive from the State Attorneys General Tobacco
3 Litigation Settlement shall be deposited into the Health and Human
4 Service Fund."

5 **Section 6.** Section 221108 of Article 11, Chapter 22, Division 2 of Title 5
6 of the Guam Code Annotated, as repealed and reenacted in Public Law
7 Number 25-150, is hereby *amended* to read as follows:

8 **"Section 221108. Deposit.** All proceeds entitled to Guam
9 from the tobacco litigation settlement shall be deposited into the HAHS
10 Fund established by this Act. All monies deposited into the HAHS
11 Fund shall be expended exclusively for the purposes enumerated in
12 §221003 and the general intent of this Act."



MINA' BENTE SAIS NA LIHESLATURAN GUÅHAN
TWENTY-SIXTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

2001 (FIRST) Regular Session

I, Antonio R. Unpingco, Speaker of *I Mina'Bente Sais Na Liheslaturan Guåhan*, hereby certify, in conformance with Title 2 Guam Code Annotated §2103, *Public Hearings Mandatory*, as amended, that an emergency condition exists involving danger to the public safety and welfare of the people and therefore waive the statutory requirements for a public hearing on Bill Number 33 (LS), "AN ACT TO REPEAL SECTION 14 OF PUBLIC LAW NUMBER 25-150, TO AMEND §§ 221201, 221202 AND 221203 OF ARTICLE 12 OF CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED, TO AMEND SECTION 3 OF PUBLIC LAW NUMBER 24-174, AND TO AMEND §221108 OF ARTICLE 11 OF CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADOPTING A MODEL STATUTE UNDER THE MASTER SETTLEMENT AGREEMENT," which was introduced on February 28, 2001, and therefore waive the statutory requirements for a public hearing on Bill Number 33 (LS).

Dated: March 1, 2001



ANTONIO R. UNPINGCO
Speaker

6

I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2001 (FIRST) Regular Session

Date: 3-1-01

VOTING SHEET

Bill No. 33

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.	✓				
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.	✓				
MOYLAN, Kaleo S.	✓				
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.	✓				

TOTAL

15 0 0 0 0

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



MINA' BENTE SAIS NA LIHESLATURAN GUÅHAN
TWENTY-SIXTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

2001 (FIRST) Regular Session

I, Antonio R. Unpingco, Speaker of *I Mina'Bente Sais Na Liheslaturan Guåhan*, hereby certify, in conformance with Title 2 Guam Code Annotated §2103, *Public Hearings Mandatory*, as amended, that an emergency condition exists involving danger to the public safety and welfare of the people and therefore waive the statutory requirements for a public hearing on Bill Number 33 (LS), "AN ACT TO REPEAL SECTION 14 OF PUBLIC LAW NUMBER 25-150, TO AMEND §§ 221201, 221202 AND 221203 OF ARTICLE 12 OF CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED, TO AMEND SECTION 3 OF PUBLIC LAW NUMBER 24-174, AND TO AMEND §221108 OF ARTICLE 11 OF CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADOPTING A MODEL STATUTE UNDER THE MASTER SETTLEMENT AGREEMENT," which was introduced on February 28, 2001, and therefore waive the statutory requirements for a public hearing on Bill Number 33 (LS).

Dated: March 1, 2001



ANTONIO R. UNPINGCO
Speaker

Office of



the People

M i n a ' B e n t e S a i s N a L i h e s l a t u r a n G u a ñ a n

Senator vicente (ben) c. pangelinan
Minority Leader (D)

February 28, 2001

Senator Antonio R. Unpingco
Speaker, I Mina'Bente Sais Na Liheslaturan Guåhan
155 Hesler St.
Hagåtña, GU 96932

Re: Bill No. 33.- Request for Emergency Declaration

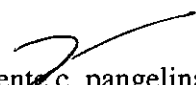
Dear Speaker Unpingco:

I hereby request that you, pursuant to the authority of the Speaker, certify as an emergency measure Bill No. 33, "An act to repeal Section 14 of Public Law Number 25-150, to amend §§ 221201, 221202 and 221203 of Article 12 of Chapter 22, Division 2 of Title 5, Guam Code Annotated, to amend Section 3 of Public Law Number 24-174, and to amend §221108 of Article 11 of Chapter 22, Division 2 of Title 5, Guam Code Annotated, relative to adopting a model statute under the Master Settlement Agreement," and immediately take action in the current session to address the matter presented.

I have attached a letter from the Administrator of Guam Economic Development Authority attesting to the emergency nature of this measure.

I thank you in advance for your favorable consideration of this matter.

Sincerely,


vicente c. pangelinan
Minority Leader

enclosures

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 02/28/2001
Time: 4:30
Rec'd by: [Signature]
Print Name: [Signature]



Governor
Carl T.C. Gutierrez

Lieutenant Governor
Madeleine Z. Bordallo

February 28, 2001

The Honorable Senator Vicente Pangelinan
MINA'BENTE SAIS NA LIHESLATURAN GUAHAN
215-A Chalan Santo Papa
Ada's Commercial & Professional Center
Suite 108 Bldg. F
Hagåtña, Guam 96910

Hafa Adaj Senator Pangelinan:

I am writing to you today in an effort to encourage the immediate attention to and ultimate passage by the Legislature of the Tobacco and Model Statute legislation necessary to allow the Guam Economic Development Authority (GEDA) to finalize the Tobacco securitization. As you are acutely aware of, Guam stands to receive approximately \$24,000,000.00 immediately upon execution of the Tobacco bond authorized under P.L. 25-187. These funds would provide desperately needed funding for the Guam Memorial Hospital, the University of Guam, the Guam Community College as well as for the Department of Public Health and Social Services.

The immediate need for passage of the Tobacco and Model Statute legislation stems from two major issues. First, a desire to maximize the potential bond proceeds as a direct result of current and very favorable interest rates. And second, to avoid a later issuance with competition from several California counties scheduled to go to market in April. These factors combined could adversely affect the overall revenues derived directly from the Tobacco Securitization. As such, if they can be avoided by prompt approval from the Legislature allowing for GEDA to go to market sooner rather than later, this would be the desired course of action.

It is with these factors in mind that I urge you and your fellow senators to take the necessary steps to entertain and ultimately approve of the Tobacco and Model Statute legislation as soon as possible. It would be most desirable if this matter is taken up and approved during the current session, if not, then at a Special Session.

I am available at your or the Speaker's request to assist in any manner required to realize the immediate passage of both the Tobacco and Model Statute legislation. Please call upon me at your convenience should any assistance from GEDA be required. Thank you.

Sincerely,


ED UNTALAN
Administrator

Guam USA ~ The Ultimate Destination

FEB 28, 2001

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

Bill No. 33(LS)
Introduced by:

v. c. pangelinan



AN ACT TO REPEAL SECTION 14 OF PUBLIC LAW NUMBER 25-150, TO AMEND §§ 221201, 221202 AND 221203 OF ARTICLE 12 OF CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED, TO AMEND SECTION 3 OF PUBLIC LAW NUMBER 24-174, AND TO AMEND §221108 OF ARTICLE 11 OF CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADOPTING A MODEL STATUTE UNDER THE MASTER SETTLEMENT AGREEMENT.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Section 14 of Public Law Number 25-150 is hereby *repealed*.

2 Section 2. §221201 of Article 12 of Chapter 22, Division 2 of Title 5,
3 Guam Code Annotated, is hereby *amended* to read as follows:

4 "§221201. Findings and Purpose.(a) Cigarette smoking
5 presents serious public health concerns to the State and to the citizens of
6 the State. The Surgeon General has determined that smoking causes
7 lung cancer, heart disease and other serious diseases, and that there are
8 hundreds of thousands of tobacco-related deaths in the United States
9 each year. These diseases most often do *not* appear until many years
10 after the person in question begins smoking.

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

6 (c) Under these programs, the State pays millions of dollars
7 each year to provide medical assistance for these persons for health
8 conditions associated with cigarette smoking.

9 (d) It is the policy of the State that financial burdens imposed on
10 the State by cigarette smoking be borne by tobacco product
11 manufacturers rather than by the State to the extent that such
12 manufacturers either determine to enter into a settlement with the State,
13 or are found culpable by the courts.

14 (e) On ~~December 8~~ November 23, 1998, leading United States
15 tobacco product manufacturers entered into a settlement agreement,
16 entitled the "Master Settlement Agreement," with the State. The Master
17 Settlement Agreement obligates these manufacturers, in return for a
18 release of past, present and certain future claims against them as
19 described therein, to pay substantial sums to the State, (tied in part to
20 their volume of sales); to fund a national foundation devoted to the
21 interests of public health; and to make substantial changes in their
22 advertising and marketing practices and corporate culture, with the
23 intention of reducing underage smoking.

1 (f) It would be contrary to the policy of the State if tobacco
2 product manufacturers who determine *not* to enter into such a
3 settlement could use a resulting cost advantage to derive large, short-
4 term profits in the years before liability may arise without ensuring that
5 the State will have an eventual source of recovery from them *if* they are
6 proven to have acted culpably. It is thus in the interest of the State to
7 require that such manufacturers establish a reserve fund to guarantee a
8 source of compensation and to prevent such manufacturers from
9 deriving large, short-term profits and then becoming judgment-proof
10 before liability may arise.”

11 **Section 3.** §221202 of Article 12 of Chapter 22, Division 2 of Title 5,
12 Guam Code Annotated, is hereby *amended* to read as follows:

13 “§221202. **Definitions.** (a) “*Adjusted for inflation*” means
14 increased in accordance with the formula for inflation adjustment set
15 forth in Exhibit C to the Master Settlement Agreement.

16 (b) “*Affiliate*” means a person who directly or indirectly owns or
17 controls, is owned or controlled by, or is under common ownership or
18 control with, another person. Solely for purposes of this definition, the
19 terms “*owns,*” “*is owned*” and “*ownership*” mean ownership of an equity
20 interest, or the equivalent thereof, of ten percent (10%) or more, and the
21 term “*person*” means an individual, partnership, committee, association,
22 corporation or any other organization or group of persons.

23 (c) “*Allocable share*” means ‘allocable share’ as that term is
24 defined in the Master Settlement Agreement.

1 (d) "Cigarette" means any product that contains nicotine, is
2 intended to be burned or heated under ordinary conditions of use, and
3 consists of or contains: (1) any roll of tobacco wrapped in paper or in
4 any substance not containing tobacco; or (2) tobacco, in any form, that is
5 functional in the product, which, because of its appearance, the type of
6 tobacco used in the filler, or its packaging and labeling, is likely to be
7 offered to, or purchased by, consumers as a cigarette; or (3) any roll of
8 tobacco wrapped in any substance containing tobacco which, because of
9 its appearance, the type of tobacco used in the filler, or its packaging
10 and labeling, is likely to be offered to, or purchased by, consumers as a
11 cigarette described in clause (1) of this definition. The term "cigarette"
12 includes "roll-your-own" (i.e. any tobacco which, because of its
13 appearance, type, packaging, or labeling is suitable for use and likely to
14 be offered to, or purchased by, consumers as tobacco for ~~marking~~
15 making cigarettes). For purposes of this definition of "cigarette," 0.09
16 ounces of "roll-your-own" tobacco shall constitute one (1) individual
17 "cigarette."

18 (e) "Master Settlement Agreement" means the settlement
19 agreement; ~~(and related documents,)~~ entered into on ~~December 8~~
20 November 23, 1998 by the State and leading United States tobacco
21 product manufacturers.

22 (f) "Qualified escrow fund" means an escrow arrangement with a
23 ~~Federally~~ federally or State chartered financial institution having no
24 affiliation with any tobacco product manufacturer and having assets of

1 ~~at least Five Hundred Million Dollars (\$500,000,000)~~ One Billion Dollars
2 ~~(\$1,000,000,000)~~; where such arrangement requires that such financial
3 institution hold the escrowed funds' principal for the benefit of
4 releasing parties and prohibits the tobacco product manufacturer
5 placing the funds into escrow from using, accessing or directing the use
6 of the funds' principal; ~~except as consistent with §§3(b) through (e) of~~
7 ~~this Act~~ §221203(b).

8 (g) "*Released claims*" means 'released claims' as that term is
9 defined in the Master Settlement Agreement.

10 (h) "*Releasing parties*" means 'releasing parties' as that term is
11 defined in the Master Settlement Agreement.

12 (i) "*Tobacco Product Manufacturer*" means an entity that after the
13 date of enactment of this ~~Act~~ Article directly; (and *not* exclusively
14 through any affiliate):

15 (1) manufactures cigarettes anywhere that such
16 manufacturer intends to be sold in the United States, including
17 cigarettes intended to be sold in the United States through an
18 importer; (*except* where such importer is an original participating
19 manufacturer; (as that term is defined in the Master Settlement
20 Agreement;)) that will be responsible for the payments under the
21 Master Settlement Agreement with respect to such cigarettes as a
22 result of the provisions of Subsections II (mm) of the Master
23 Settlement Agreement and that pays the taxes specified in
24 Subsection II (z) of the Master Settlement Agreement, and

1 provided that the manufacturer of such cigarettes ~~do~~ does not
2 market or advertise such cigarettes in the United States);

3 (2) is the first purchaser anywhere for resale in the United
4 States of cigarettes manufactured anywhere that the manufacturer
5 does *not* intend to be sold in the United States; or

6 (3) becomes a successor of an entity described in
7 Paragraph (1) or (2).

8 The term "*Tobacco Product Manufacturer*" shall *not* include an
9 affiliate of a tobacco product manufacturer, *unless* such affiliate itself
10 falls within any of Paragraph (1) through (3) above.

11 (j) "Units sold" means the number of individual cigarettes sold
12 in the State by the applicable tobacco product manufacturer, (whether
13 directly or through a distributor, retailer or similar intermediary or
14 intermediaries,) during the year in question, as measured by excise
15 taxes collected by the State on packs, (or "roll-your-own" tobacco
16 containers,) bearing the excise tax stamp of the State. The Department
17 of Revenue and Taxation shall ~~develop such procedures~~ promulgate
18 such regulations as are necessary to ascertain the amount of State excise
19 tax paid on the cigarettes of such tobacco product manufacturer for each
20 year.

21 (k) "State" means Guam or the government of Guam, as the
22 case may be."

23 **Section 4.** Section 221203 of Article 12 of Chapter 22, Division 2 of Title
24 5, Guam Code Annotated, is hereby *amended* to read as follows:

1 “§221203. Requirements. Any tobacco product manufacturer
2 selling cigarettes to consumers within the State, (whether directly or
3 through a distributor, retailer or similar intermediary or intermediaries,
4 after the date of enactment of this ~~Act~~ Article shall do one of the
5 following:

6 (a) become a participating manufacturer, (as that term is
7 defined in §II (jj) of the Master Settlement Agreement,) and generally
8 perform its financial obligations under the Master Settlement
9 Agreement; *or*

10 (b) (1) place into a qualified escrow fund by April 15 of the
11 year following the year in question the following amounts, (as
12 such amounts are adjusted for inflation:)--

13 ~~1999: \$.0094241 per unit sold after the date of enactment of~~
14 ~~this Act;~~

15 2000: \$.0104712 per unit sold *after* the date of enactment of
16 this ~~Act~~ Article;

17 For each of 2001 and 2002: \$.0136125 per unit sold ~~after the~~
18 ~~date of enactment of this Act;~~

19 For each of 2003 through 2006: \$.0167539 per unit sold ~~after~~
20 ~~the date of enactment of this Act;~~

21 For each of 2007 and each year thereafter: \$.0188482 per unit
22 sold ~~after the date of enactment of this Act.~~

23 (2) A tobacco product manufacturer that places funds into
24 escrow pursuant to Paragraph (1) shall receive the interest or

1 other appreciation on such funds as earned. Such funds
2 themselves shall be released from escrow only under the
3 following circumstances:

4 (A) to pay a judgment or settlement on any released
5 claim brought against such tobacco product manufacturer
6 by the State or any releasing party located or residing in the
7 State. Funds shall be released from escrow under this
8 Subparagraph (i) in the order in which they were placed into
9 escrow; *and* (ii) only to the extent and at the time necessary
10 to make payments required under such judgment or
11 settlement;

12 (B) to the extent that a tobacco product
13 manufacturer establishes that the amount it was required to
14 place into escrow in a particular year was *greater* than the
15 State's allocable share of the total payments that such
16 manufacturer would have been required to make in that
17 year under the Master Settlement Agreement; (as
18 determined pursuant to §IX (i)(2) of the Master Settlement
19 Agreement, and before any of the adjustments or offsets
20 described in §IX (i)(3) of that Agreement other than the
21 Inflation Adjustment;) had it been a participating
22 manufacturer, the excess shall be released from escrow and
23 revert back to such tobacco product manufacturer; *or*

1 (C) to the extent not released from escrow under
2 Subparagraphs (A) or (B), funds shall be released from
3 escrow and revert back to such tobacco product
4 manufacturer twenty-five (25) years after the date on which
5 they were placed into escrow.

6 (3) Each tobacco product manufacturer that elects to place
7 funds into escrow pursuant to this Subsection shall annually
8 certify to the Attorney General that it is in compliance with this
9 subsection. The Attorney General may bring a civil action on
10 behalf of the State against any tobacco product manufacturer that
11 fails to place into escrow the funds required under this Section.
12 Any tobacco product manufacturer that fails in any year to place
13 into escrow the funds required under this Section shall:

14 (A) be required within fifteen (15) days to place such
15 funds into escrow as shall bring it into compliance with this
16 Section. The Court, upon a finding of a violation of this
17 Subsection, may impose a civil penalty to be paid to the
18 General Fund in an amount *not to exceed* five percent (5%) of
19 the amount improperly withheld from escrow per day of the
20 violation and in a total amount *not to exceed* one hundred
21 percent (100%) of the original amount improperly withheld
22 from escrow;

23 (B) in the case of a knowing violation, be required
24 within fifteen (15) days to place such funds into escrow as

1 shall bring it into compliance with this Section. The Court,
2 upon a finding of a knowing violation of this Subsection,
3 may impose a civil penalty to be paid to the General Fund in
4 an amount *not to exceed* fifteen percent (15%) of the amount
5 improperly withheld from escrow per day of the violation,
6 and in a total amount *not to exceed* three hundred percent
7 (300%) of the original amount improperly withheld from
8 escrow; *and*

9 (C) in the case of a second knowing violation, be
10 prohibited from selling cigarettes to consumers within the
11 State, (whether directly or through a distributor, retailer or
12 similar intermediary,) for a period *not to exceed* two (2) years;

13 ~~Each failure to make an annual deposit required under~~
14 ~~this Section shall constitute a separate violation; and~~

15 (D) be required to pay the State's costs and
16 attorney's fees incurred during a successful prosecution of
17 any action brought under this Paragraph (3).

18 (4) Each failure to make an annual deposit required under
19 this Section shall constitute a separate violation."

20 **Section 5.** Section 3 of Public Law Number 24-174 is hereby *amended* to
21 read as follows:

22 **"Section 3. Tobacco Litigation Settlement.** Any and all funds
23 which Guam shall receive from the State Attorneys General Tobacco
24 Litigation Settlement shall be deposited into the Health and Human

1 Service Fund ~~except as may be required to be deposited into the Reserve~~
2 ~~Fund for Non-Participating Tobacco Manufacturers.~~"

3 Section 6. §221108 of Article 11, Chapter 22 of Division 2 of Title 5,
4 Guam Code Annotated, is hereby *amended* to read as follows:

5 "§221108. **Deposit.** All proceeds entitled to Guam from the
6 tobacco lawsuit litigation settlement shall be deposited into the HAHS
7 Fund established by this Act ~~except as may be required to be deposited~~
8 ~~into the Reserve Fund for Non-Participating Tobacco Manufacturers.~~
9 All monies deposited into the HAHS Fund shall be expended
10 exclusively for the purposes enumerated in §221003 and the general
11 intent of this Act."

Aturidad Inadilanton



Ikunumihan Guahan

Governor
Cari T.C. Gutierrez

Lieutenant Governor
Madeleine Z. Bordallo

**Refer to
Legislative Secretary**

April 19, 2001

The Honorable Antonio R Unpingco
Speaker 26th Guam Legislature
155 Hesler Street
Hagåtña, Guam 96910

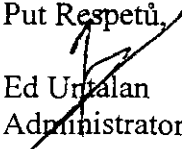
Hafa Adai, Mr. Speaker:

When Public Law No. 26-03 was enacted on March 14, 2001, there was a scrivener error in the transcription of the Model Statute when enacted into Guam Law. As a result, the Tobacco attorneys have rejected the Guam's Model Statute within the meaning of the Master Settlement Agreement.

Enclosed is a letter dated April 12, 2001 from Mr. David H. Remes (Tobacco attorney) to Ms. Jenna Magan (Bond counsel) concerning the amendment needed for the OPM's (other producing manufacturers) to accept Guam's Model Statute within the meaning of the Master Settlement Agreement (MSA). It was the exclusion of the parentheses that has caused a dispute of Guam's Model Statute within the meaning of the MSA.

Therefore, Mr. Speaker it is with great urgency that the amendments be implemented through legislation so as there would be no dispute with regards to Guam's Model Statute. It is most necessary that this be done to move forward with the Tobacco Securitization Bonds.

If you should have any questions, please call myself or Mr. Joseph Cepeda.

Put Respectu,

Ed Urzalan
Administrator

0526/01-098
Office of the Speaker
ANTONIO R. UNPINGCO
Date: 4-20-01
Time: 11:25
Rec'd by: [Signature]
Print Name: Laurie

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT
Received By [Signature]
Time 2:48 pm
Date 04/20/01

0153

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April 12, 2001

BY FACSIMILE

Jenna Magan, Esq.
Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall
Suite 3000
Sacramento, California 95814-4497

Dear Ms. Magan:

At your request, we have reviewed Bill No. 33, Public Law No. 26-03, enacted on March 14, 2001, amending the public law enacting Guam's Exhibit T legislation, which you were kind enough to fax to me on April 5 and April 11. Unfortunately, the amendment failed to make a change that we identified in the attachment to our letter of February 26, 2001, which required the insertion of open and close parentheses in the definition of "tobacco product manufacturer" (§ 221202(i)(1) (page 6)). A copy of the page, showing the omission of these parentheses, is attached. Therefore, I regret to say that the OPMs are not able at this time to agree not to dispute that Guam has in effect a Model Statute within the meaning of the Master Settlement Agreement.

Sincerely,

David H. Remes

David H. Remes

Attachment

cc: Jeffrey Wintner, Esq.
Mark Greenwold, Esq.

(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Article directly, (and not exclusively through any affiliate):

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

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States;

or

(3) becomes a successor of an entity described in Paragraph (1) or (2).

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MINA' BENTE SAIS NA LIHESLATURAN GUÅHAN
TWENTY-SIXTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

2001 (FIRST) Regular Session

I, Antonio R. Unpingco, Speaker of *I Mina'Bente Sais Na Liheslaturan Guåhan*, hereby certify, in conformance with Title 2 Guam Code Annotated §2103, *Public Hearings Mandatory*, as amended, that an emergency condition exists involving danger to the public safety and welfare of the people and therefore waive the statutory requirements for a public hearing on Bill Number 33 (LS), "AN ACT TO REPEAL SECTION 14 OF PUBLIC LAW NUMBER 25-150, TO AMEND §§ 221201, 221202 AND 221203 OF ARTICLE 12 OF CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED, TO AMEND SECTION 3 OF PUBLIC LAW NUMBER 24-174, AND TO AMEND §221108 OF ARTICLE 11 OF CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADOPTING A MODEL STATUTE UNDER THE MASTER SETTLEMENT AGREEMENT," which was introduced on February 28, 2001, and therefore waive the statutory requirements for a public hearing on Bill Number 33 (LS).

Dated: March 1, 2001



ANTONIO R. UNPINGCO
Speaker