



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

MAY 16 2001

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

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u> <i>JS</i> </u>
Time	<u> 10:16 am. </u>
Date	<u> 05/17/01 </u>

Dear Legislative Secretary Brown:

Enclosed please find Bill No. 071 (COR) entitled: "AN ACT TO REPEAL AND REENACT SECTIONS 221201, 221202 AND 221203 OF ARTICLE 12 OF CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADOPTING A MODEL STATUTE UNDER THE MASTER SETTLEMENT AGREEMENT" which I have signed into law as Public Law No. 26-07.

This legislation makes technical amendments to Public Law No. 26-03, signed into law on March 14, 2001, relative to Guam adopting the Model Statute under the Master Settlement Agreement for receipt of tobacco funds. Most of the technical amendments concern removal of italics, insertion of parentheses, and other stylistic amendments to conform the Guam statute with the Model Statute. Three sections previously amended in Public Law No. 26-03 were repealed and reenacted in this legislation, to include the required modifications.

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

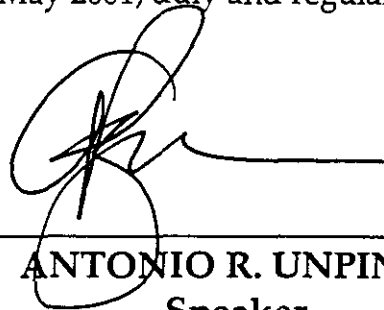
cc: The Honorable Antonio R. Unpingco
Speaker

DIS4

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

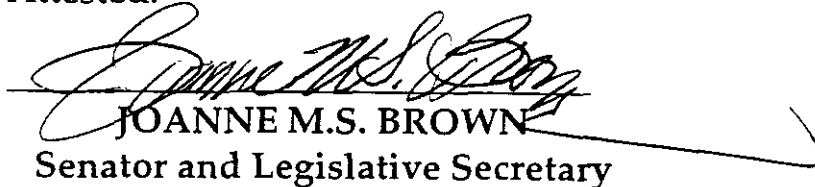
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 071 (COR) "AN ACT TO REPEAL AND REENACT SECTIONS 221201, 221202 AND 221203 OF ARTICLE 12 OF CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ADOPTING A MODEL STATUTE UNDER THE MASTER SETTLEMENT AGREEMENT," was on the 7th day of May 2001, duly and regularly passed.



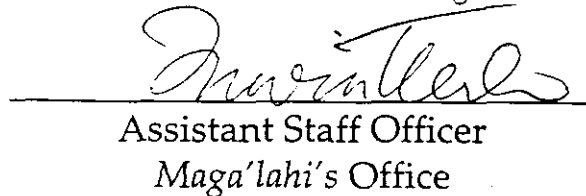
ANTONIO R. UNPINGCO
Speaker

Attested:



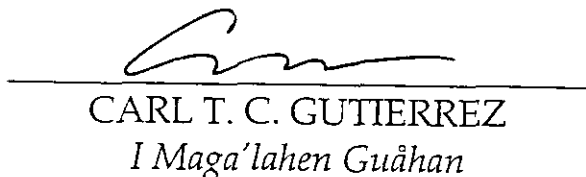
JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by I Maga'lahaen Guåhan this 14th day of May, 2001,
at 3:40 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guåhan

Date: 5-16-01

Public Law No. 26-07

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

Bill No. 71 (COR)

As amended on the Floor.

Introduced by:

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

**AN ACT TO REPEAL AND REENACT SECTIONS
221201, 221202 AND 221203 OF ARTICLE 12 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:**

2 **Section 1.** Section 221201 of Article 12 of Chapter 22, Division 2 of Title
3 5 of the Guam Code Annotated is hereby *repealed and reenacted* to read as
4 follows:

1 “§221201. Findings and Purpose. (a) Cigarette smoking
2 presents serious public health concerns to the State and to the
3 citizens of the State. The Surgeon General has determined that
4 smoking causes lung cancer, heart disease and other serious
5 diseases, and that there are hundreds of thousands of tobacco-
6 related deaths in the United States each year. These diseases most
7 often do not appear until many years after the person in question
8 begins smoking.

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

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

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

23 (e) On November 23, 1998, leading United States tobacco
24 product manufacturers entered into a settlement agreement,
25 entitled the “Master Settlement Agreement,” with the State. The
26 Master Settlement Agreement obligates these manufacturers, in

1 return for a release of past, present and certain future claims
2 against them as described therein, to pay substantial sums to the
3 State (tied in part to their volume of sales); to fund a national
4 foundation devoted to the interests of public health; and to make
5 substantial changes in their advertising and marketing practices
6 and corporate culture, with the intention of reducing underage
7 smoking.

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

19 **Section 2.** Section 221202 of Article 12 of Chapter 22, Division 2 of Title
20 5 of the Guam Code Annotated is hereby *repealed and reenacted* to read as
21 follows:

22 "§221202. **Definitions.** (a) "Adjusted for inflation" means
23 increased in accordance with the formula for inflation adjustment
24 set forth in Exhibit C to the Master Settlement Agreement.

25 (b) "Affiliate" means a person who directly or indirectly
26 owns or controls, is owned or controlled by, or is under common

1 ownership or control with, another person. Solely for purposes of
2 this definition, the terms "owns," "is owned" and "ownership"
3 mean ownership of an equity interest, or the equivalent thereof, of
4 ten percent (10%) or more, and the term "person" means an
5 individual, partnership, committee, association, corporation or
6 any other organization or group of persons.

7 (c) "Allocable share" means Allocable Share as that term
8 is defined in the Master Settlement Agreement.

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

1 (e) "Master Settlement Agreement" means the settlement
2 agreement (and related documents) entered into on November 23,
3 1998 by the State and leading United States tobacco product
4 manufacturers.

5 (f) "Qualified escrow fund" means an escrow
6 arrangement with a federally or State chartered financial
7 institution having no affiliation with any tobacco product
8 manufacturer and having assets of at least \$1,000,000,000 where
9 such arrangement requires that such financial institution hold the
10 escrowed funds' principal for the benefit of releasing parties and
11 prohibits the tobacco product manufacturer placing the funds into
12 escrow from using, accessing or directing the use of the funds'
13 principal except as consistent with section 221203(b).

14 (g) "Released claims" means Released Claims as that term
15 is defined in the Master Settlement Agreement.

16 (h) "Releasing parties" means Releasing Parties as that
17 term is defined in the Master Settlement Agreement.

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

21 (1) manufactures cigarettes anywhere that such
22 manufacturer intends to be sold in the United States,
23 including cigarettes intended to be sold in the United States
24 through an importer (except where such importer is an
25 original participating manufacturer (as that term is defined
26 in the Master Settlement Agreement) that will be responsible

1 for the payments under the Master Settlement Agreement
2 with respect to such cigarettes as a result of the provisions of
3 subsection II (mm) of the Master Settlement Agreement and
4 that pays the taxes specified in subsection II (z) of the Master
5 Settlement Agreement, and provided that the manufacturer
6 of such cigarettes does not market or advertise such
7 cigarettes in the United States);

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

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

14 The term "Tobacco Product Manufacturer" shall not include
15 an affiliate of a tobacco product manufacturer unless such affiliate
16 itself falls within any of Paragraph (1) through (3) above.

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

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

3 Section 3. Section 221203 of Article 12 of Chapter 22, Division 2 of Title
4 5 of the Guam Code Annotated is hereby *repealed and reenacted* to read as
5 follows:

6 "§221203. Requirements. Any tobacco product manufacturer
7 selling cigarettes to consumers within the State (whether directly or
8 through a distributor, retailer or similar intermediary or intermediaries)
9 after the date of enactment of this article shall do one of the following:

10 (a) become a participating manufacturer (as that term is defined
11 in section II (jj) of the Master Settlement Agreement) and generally
12 perform its financial obligations under the Master Settlement
13 Agreement; or

14 (b) (1) place into a qualified escrow fund by April 15 of the
15 year following the year in question the following amounts (as
16 such amounts are adjusted for inflation) --

17 2000: \$.0104712 per unit sold after the date of
18 enactment of this article;

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

20 For each of 2003 through 2006: \$.0167539 per unit
21 sold;

22 For each of 2007 and each year thereafter: \$.0188482
23 per unit sold.

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

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

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

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

23 (C) to the extent not released from escrow under
24 Subparagraphs (A) or (B), funds shall be released from
25 escrow and revert back to such tobacco product

1 manufacturer twenty-five (25) years after the date on which
2 they were placed into escrow.

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

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

20 (B) in the case of a knowing violation, be required
21 within fifteen (15) days to place such funds into escrow as
22 shall bring it into compliance with this section. The court,
23 upon a finding of a knowing violation of this subsection,
24 may impose a civil penalty to be paid to the General Fund in
25 an amount not to exceed fifteen percent (15%) of the amount
26 improperly withheld from escrow per day of the violation

1 and in a total amount not to exceed three hundred percent
2 (300%) of the original amount improperly withheld from
3 escrow; and

4 (C) in the case of a second knowing violation, be
5 prohibited from selling cigarettes to consumers within the
6 State (whether directly or through a distributor, retailer or
7 similar intermediary) for a period not to exceed two (2)
8 years; and

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

12 (4) Each failure to make an annual deposit required under
13 this section shall constitute a separate violation."



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 health and welfare of the people and therefore waive the statutory requirements for a public hearing on Bill Number 71 (COR); "AN ACT TO REPEAL AND REENACT SECTIONS 221201, 221202 AND 221203 OF ARTICLE 12 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 April 27, 2001, and therefore waive the statutory requirements for a public hearing on Bill Number 71 (COR).


Dated: May 7, 2001

ANTONIO R. UNPINGCO
Speaker

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

Bill No. 71 (COR)

Introduced by:

v. c. pangelinan 

AN ACT TO REPEAL AND REENACT SECTIONS
221201, 221202 AND 221203 OF ARTICLE 12 OF
CHAPTER 22, DIVISION 2 OF TITLE 5, GUAM
CODE ANNOTATED, RELATIVE TO ADOPTING
A MODEL STATUTE UNDER THE MASTER
SETTLEMENT AGREEMENT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1.** Section 221201 of Article 12 of Chapter 22, Division 2 of Title
2 5 of the Guam Code Annotated is hereby *repealed and reenacted* to read as
3 follows:
4

5 “§221201. **Findings and Purpose.**(a) Cigarette smoking
6 presents serious public health concerns to the State and to the citizens of
7 the State. The Surgeon General has determined that smoking causes
8 lung cancer, heart disease and other serious diseases, and that there are
9 hundreds of thousands of tobacco-related deaths in the United States
10 each 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 concerns
13 for the State. Under certain health-care programs, the State may have a
14 legal obligation to provide medical assistance to eligible persons for

1 health conditions associated with cigarette smoking, and those persons
2 may have a legal entitlement to receive such medical assistance.

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

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

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

21 (f) It would be contrary to the policy of the State if tobacco
22 product manufacturers who determine not to enter into such a
23 settlement could use a resulting cost advantage to derive large, short-
24 term profits in the years before liability may arise without ensuring that
25 the State will have an eventual source of recovery from them if they are
26 proven to have acted culpably. It is thus in the interest of the State to

1 require that such manufacturers establish a reserve fund to guarantee a
2 source of compensation and to prevent such manufacturers from
3 deriving large, short-term profits and then becoming judgment-proof
4 before liability may arise.”

5 **Section 2.** Section 221202 of Article 12 of Chapter 22, Division 2 of Title
6 5 of the Guam Code Annotated is hereby *repealed and reenacted* to read as
7 follows:

8 “§221202. **Definitions.** (a) “Adjusted for inflation” means
9 increased in accordance with the formula for inflation adjustment set
10 forth in Exhibit C to the Master Settlement Agreement.

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

18 (c) “Allocable share” means Allocable Share as that term is
19 defined in the Master Settlement Agreement.

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

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

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

13 (f) "Qualified escrow fund" means an escrow arrangement
14 with a federally or State chartered financial institution having no
15 affiliation with any tobacco product manufacturer and having assets of
16 at least \$1,000,000,000 where such arrangement requires that such
17 financial institution hold the escrowed funds' principal for the benefit of
18 releasing parties and prohibits the tobacco product manufacturer
19 placing the funds into escrow from using, accessing or directing the use
20 of the funds' principal except as consistent with section 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 is
24 defined in the Master Settlement Agreement.

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

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

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

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

21 The term "Tobacco Product Manufacturer" shall not include an
22 affiliate of a tobacco product manufacturer unless such affiliate itself
23 falls within any of Paragraph (1) through (3) above.

24 (j) "Units sold" means the number of individual cigarettes sold
25 in the State by the applicable tobacco product manufacturer (whether
26 directly or through a distributor, retailer or similar intermediary or

1 intermediaries) during the year in question, as measured by excise taxes
2 collected by the State on packs (or "roll-your-own" tobacco containers)
3 bearing the excise tax stamp of the State. The Department of Revenue
4 and Taxation shall promulgate such regulations as are necessary to
5 ascertain the amount of State excise tax paid on the cigarettes of such
6 tobacco product manufacturer for each year.

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

9 **Section 3.** Section 221203 of Article 12 of Chapter 22, Division 2 of Title
10 5 of the Guam Code Annotated is hereby *repealed and reenacted* to read as
11 follows:

12 **"§221203. Requirements.** Any tobacco product manufacturer
13 selling cigarettes to consumers within the State (whether directly or
14 through a distributor, retailer or similar intermediary or intermediaries)
15 after the date of enactment of this article shall do one of the following:

16 (a) become a participating manufacturer (as that term is defined
17 in section II (jj) of the Master Settlement Agreement) and generally
18 perform its financial obligations under the Master Settlement
19 Agreement; or

20 (b) (1) place into a qualified escrow fund by April 15 of the
21 year following the year in question the following amounts (as
22 such amounts are adjusted for inflation) --

23 2000: \$.0104712 per unit sold after the date of
24 enactment of this article;

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

1 For each of 2003 through 2006: \$.0167539 per unit
2 sold;

3 For each of 2007 and each year thereafter: \$.0188482
4 per unit sold.

5 (2) A tobacco product manufacturer that places funds into
6 escrow pursuant to Paragraph (1) shall receive the interest or
7 other appreciation on such funds as earned. Such funds
8 themselves shall be released from escrow only under the
9 following circumstances:

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

18 (B) to the extent that a tobacco product
19 manufacturer establishes that the amount it was required to
20 place into escrow in a particular year was greater than the
21 State's allocable share of the total payments that such
22 manufacturer would have been required to make in that
23 year under the Master Settlement Agreement (as determined
24 pursuant to section IX (i)(2) of the Master Settlement
25 Agreement, and before any of the adjustments or offsets
26 described in section IX (i)(3) of that Agreement other than

1 the Inflation Adjustment) had it been a participating
2 manufacturer, the excess shall be released from escrow and
3 revert back to such tobacco product manufacturer; or

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

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

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



Governor
Carl 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

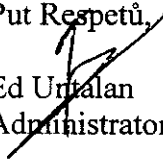
Hafa Adai, Mr. Speaker:

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 Urtilan
Administrator

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u> E </u>
Time	<u> 2:48 pm </u>
Date	<u> 04/20/01 </u>

0526/01-098
Office of the Speaker
ANTONIO R. UNPINGCO
Date: 4-20-01
Time: 11:35
Rec'd by: [Signature]
Print Name: Laurie

0153

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004-2401 TEL 202.692.6000 FAX 202.692.6281 WWW.COV.COM	WASHINGTON, DC NEW YORK LONDON BRUSSELS SAN FRANCISCO
---	---

DAVID H. REMES
TEL 202.692.6212
FAX 202.778.8212
DREMES@COV.COM

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(m-m) 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).

6

I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2001 (FIRST) Regular Session

Date: 5/7/01

VOTING SHEET

Bill No. 71

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 14 0 0 0 1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence