

Bill as
Introduced

HB 488-FN - AS INTRODUCED

2013 SESSION

13-0577
09/10

HOUSE BILL

488-FN

AN ACT

changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.

SPONSORS:

Rep. Almy, Graf 13

COMMITTEE:

Ways and Means

ANALYSIS

This bill changes the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Tobacco Tax; Definition of Cigarette. RSA 78:1, XVII is repealed and reenacted to read as
2 follows:

3 XVII.(a) "Cigarette" means any product that contains nicotine, is intended to be burned or
4 heated under ordinary conditions of use, and consists of or contains:

5 (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
6 or

7 (2) Tobacco, in any form, that is functional in the product, which, because of its
8 appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered
9 to, or purchased by, consumers as a cigarette; or

10 (3) Any roll of tobacco wrapped in any substance containing tobacco which, because
11 of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be
12 offered to, or purchased by, consumers as a cigarette described in subparagraph (a)(1).

13 (b) The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its
14 appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased
15 by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09
16 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

17 2 Contingency. Section 1 of this act shall take effect on the effective date of the repeal of
18 RSA 541-C and RSA 541-D relative to the state's participation in the Master Settlement Agreement.

19 3 Effective Date.

20 I. Section 1 of this act shall take effect as provided in section 2 of this act.

21 II. The remainder of this act shall take effect upon its passage.

LBAO
13-0577
01/17/13

HB 488-FN - FISCAL NOTE

AN ACT changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, as introduced, at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON WAYS AND MEANS

PUBLIC HEARING ON HB 488-FN

BILL TITLE: changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.

DATE: February 5, 2013

LOB ROOM: Rm. 202 **Time Public Hearing Called to Order:** 10:52 AM

Time Adjourned: 11:09 AM

(please circle if present)

Committee Members: Reps. (Almy) Lovejoy, (Cooney) Davis, (Butynski) J. Kelley, Shattuck, (Young) Ames, (Karrick) (Schamberg) (Major) (R. Ober) (Ulery) (Sanborn) Hess, (Abram) (Griffin), Azarian and (Sapareto)

Bill Sponsors: Rep. Almy, Graf 13

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Susan Almy, Prime Sponsor** – Supports the bill ...; See Handout, "Title V, Taxation, Chapter 78, Tobacco Tax" ... Submitted this rather strange bill, but not sure that it works ... prefer to go to Master Settlement Agreement language.

David Rienzo, NH Department of Justice, and Mindy Cyr and Carol Guyer, DRA – could simply cite the Master Settlement Agreement language. You will get a Fiscal Note when it is published ... best to amend RSA to include definitions of cigarettes within the Master Settlement Agreement ... roll your own tobacco definition is important and must be accounted for by the state ... failure to pass this bill could endanger Master Settlement Agreement funds received by NH ... will e-mail appropriate language to the Chairwoman.

Respectfully submitted,



Rep. William Butynski, Clerk

HOUSE COMMITTEE ON WAYS AND MEANS

PUBLIC HEARING ON HB 488-FN

BILL TITLE: changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.

DATE: 2/5/13

LOB ROOM: Rm. 202 Time Public Hearing Called to Order: 10:52 AM

Time Adjourned: 11:09 AM

(please circle if present)

Committee Members: Reps. Almy, Lovejoy, Cooney, Davis, Butynski, J. Kelley, Shattuck, Young, Ames, Karrick, Schamberg, Major, R. Ober, Ulery, Sanborn, Hess, Abram, Griffin, Azarian and Sapareto.

Bill Sponsors: Rep. Almy, Graf 13

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

* Rep. Almy, Prime Sponsor - Support the bill...; See Amendment, "Title V, Taxation, Chapter 48, Tobacco Tax"... Submitted this rather strange bill, but not sure that it makes... bill has language prepared to go to Master Settlement Agreement language. Daniel Riengo, NH Dept of Justice, and Mandy Cyr and Carol Guyer, DRA. - could simply cite the Master Settlement Agreement language, you will get a Fiscal Note when it is published... sent to amend RSA to include definitions of cigarettes within the Master Settlement Agreement... will have one... respectfully submitted... important and must be accounted for by the state... failure to... Agreement funds received by NH... with email appropriate language to the Chair...

Rep. William Butynski, Clerk

Sub-Committee Actions

HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE WORK SESSION ON HB 488-FN

BILL TITLE: changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.

DATE: February 19, 2013

Subcommittee Members: Reps. Schamber, Ulrey, Ames, Cooney, Shattuck, Almy, Kerrick, and Major

Comments and Recommendations: Please see attached.

Amendments:

Sponsor: Rep. Almy OLS Document #: 2013 0339h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Schamberg

Seconded by Rep. Major

Vote: 7-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Schamberg
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON WAYS AND MEANS

SUB COMMITTEE WORK SESSION ON HB 488-FN

BILL TITLE: changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.

DATE: February 19, 2013 - 3:00 pm

Subcommittee Members: Reps. Ulrey, Ames, Cooney, Shattuck, Schamberg, Almy, KARRICK, MAJOR

Comments and Recommendations:

Amendments: 339-H

1st Sponsor: Rep. Schamberg OLS Document #:

2nd Sponsor: Rep. Major OLS Document #:

Sponsor: Rep. OLS Document #:

vote 7-0 to adopt Amend.

Motions: OTPA Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. ~~Schamberg~~ Schamberg to Pass HB 488-FN as amended -- 339H

Seconded by Rep. Major

Vote: 7-0

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Subcommittee Chairman/Clerk

Schamberg

Sub committee

Feb. 19-2013

488-FN -

~~Amendment~~ Amendment to 488-FN

Almy: RSA 78:1 XVII to be repealed
& reenacted as set forth in Amendment
339h.

Bring in conformity with def of
"Cig" - in RSA 541-C:2, IV - to insure diligent
enforcement of M.S.A under RSA 541-C and
RSA 541-D. - brings in \$42 million a year.

Rep
Ulrey - worry about this being a new tax on
cigarettes. ~~He~~ ^{Doesn't} want challenge
on floor - Looking for good justification to prevent
floor light.

DRA - NO new tax -

Switching how it taxes other Tobacco Products

Rep
Ames: Does Amend change any tax law?

Rep Almy - felt that there was a worry of a future
~~legislator~~ legislators not knowing that ~~present~~
definition was tied to Master Settlement Agreement.

DRA - ~~AG~~ AG feels Amendment more ^{closer} closely
~~related~~ to conformity with MSA.

Amendment to HB 488-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Tobacco Tax; Definition of Cigarette. RSA 78:1, XVII is repealed and reenacted to read as
4 follows:

5 XVII.(a) In conformity with RSA 451-C:2, IV, "cigarette" means any product that contains
6 nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or
7 contains:

8 (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
9 or

10 (2) Tobacco, in any form, that is functional in the product, which, because of its
11 appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered
12 to, or purchased by, consumers as a cigarette; or

13 (3) Any roll of tobacco wrapped in any substance containing tobacco which, because
14 of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be
15 offered to, or purchased by, consumers as a cigarette described in subparagraph (a)(1).

16 (b) The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its
17 appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased
18 by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09
19 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

20 2 Effective Date. This act shall take effect upon its passage.

Testimony

HB488

**TITLE V
TAXATION
CHAPTER 78
TOBACCO TAX**

Section 78:1

78:1 Definitions. – Whenever used in this chapter the following words shall have the meanings set opposite them below:

- I. "Commissioner", the commissioner of revenue administration.
- II. "Person," any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed.
- III. "Manufacturer" means any person engaged in the business of importing, exporting, producing, or manufacturing tobacco products who sells his product only to licensed wholesalers.
- III-a. "Wholesale sales price" means the established price for which a manufacturer sells tobacco products other than cigarettes to a wholesaler, exclusive of any discount or other reduction.
- IV. "Licensed manufacturer," a manufacturer licensed hereunder.
- V. "Wholesaler" means any person doing business in this state who shall purchase all of his unstamped tobacco products directly from a licensed manufacturer, and who shall sell all of his products to licensed wholesalers, sub-jobbers, vending machine operators, retailers, and those persons exempted from the tobacco tax under RSA 78:7-b.
- VI. "Licensed wholesaler," a wholesaler licensed hereunder.
- VII. "Sub-jobber" means any person doing business in this state who buys stamped tobacco products from a licensed wholesaler and who sells all of his tobacco products to other licensed sub-jobbers, vending machine operators, and retailers.
- VIII. "Licensed sub-jobber," a sub-jobber licensed hereunder.
- IX. "Vending machine operator" means any person operating one or more tobacco product vending machines on property or premises other than his own.
- X. "Licensed vending machine operator," a vending machine operator licensed hereunder.
- XI. "Retailer" means any person who sells tobacco products to consumers, and any vending machine in which tobacco products are sold.
- XII. "Licensed retailer," a retailer licensed hereunder.
- XIII. "Sale" or "sell," any transfer, whether by bargain, gift, exchange, barter or otherwise.
- XIV. "Tobacco products" means cigarettes, loose tobacco, smokeless tobacco, snuff, and cigars, but shall not include premium cigars.
- XIV-a. [Repealed.]
- XV. [Repealed.]
- XVI. [Repealed.]
- XVII. "Cigarette" means:
 - (a) Any roll for smoking containing tobacco wrapped in any substance not containing tobacco; and
 - (b) Any roll for smoking containing tobacco wrapped in any substance containing tobacco, however labeled or named, if such roll of tobacco weighs not more than 3 pounds per thousand.
- XVIII. "Licensee" means the person in whose name the license is issued.
- XIX. "Sampler" means any person who distributes free tobacco products to consumers for promotional purposes.
- XX. "Vending machine" means any self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses tobacco, cigarettes, or any other tobacco product.

XXI. "Premium cigars" means cigars which are made entirely by hand of all natural tobacco leaf, hand constructed and hand wrapped, wholesaling for \$2 or more, and weighing more than 3 pounds per 1000 cigars. These cigars shall be kept in a humidor at the proper humidity.

Source. 1939, 167:1; 180:1. RL 79:1. 1947, 133:1; 238:1. 1949, 187:1, 2. RSA 78:1. 1970, 5:12. 1973, 544:11, XII. 1975, 466:2, 6. 1977, 200:1. 1981, 210:1-6, 24. 1991, 292:1, 2. 1997, 338:1. 2003, 152:5, 8. 2005, 177:140. 2008, 236:1. 2009, 144:177, 178, eff. July 1, 2009.

TITLE LV

PROCEEDINGS IN SPECIAL CASES

CHAPTER 541-C

TOBACCO MANUFACTURERS NOT ENTERING MASTER SETTLEMENT AGREEMENT

Section 541-C:1

541-C:1 Findings and Purpose. –

I. Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

II. Cigarette smoking also presents serious financial concerns for the state. Under certain health-care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

III. Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

IV. It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

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

VI. It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Source. 1999, 222:1, eff. July 1, 1999.

Section 541-C:2

541-C:2 Definitions. – In this chapter:

I. "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

II. "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by,

or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

III. "Allocable share" means allocable share as that term is defined in the Master Settlement Agreement.

IV. (a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
- (2) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or
- (3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (a)(1).

(b) The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

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

VI. "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with RSA 541-C:3, II.

VII. "Released claims" means released claims as that term is defined in the Master Settlement Agreement.

VIII. "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement.

IX. (a) "Tobacco product manufacturer" means an entity that after the effective date of this chapter 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 subsection 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 subparagraph (a)(1) or (2).

(b) The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of subparagraphs (a)(1), (2), or (3).

X. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state. The commissioner of the department of revenue administration shall adopt such rules, pursuant to RSA 541-A, as are

necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Source. 1999, 222:1, eff. July 1, 1999.

Section 541-C:3

541-C:3 Requirements. –

I. Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the effective date of this chapter shall do one of the following:

(a) Become a participating manufacturer (as that term is defined in subsection II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(1) 1999: \$.0094241 per unit sold after the effective date of this chapter.

(2) 2000: \$.0104712 per unit sold.

(3) For each of 2001 and 2002: \$.0136125 per unit sold.

(4) For each of 2003 through 2006: \$.0167539 per unit sold.

(5) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

I-a. The payments required by subparagraph I(b) shall be made in quarterly installments during the year in which the sales covered by such deposits are made.

II. A tobacco product manufacturer that places funds into escrow pursuant to subparagraph I(b) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph:

(1) In the order in which they were placed into escrow; and

(2) Only to the extent and at the time necessary to make payments required under such judgment or settlement;

[Current version. See also Paragraph II(b) and 2004 contingency note set out below.]

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

[Contingent version. See also Paragraph II(b) set out above and 2004 contingency note set out below.]

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before

any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the inflation adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(c) To the extent not released from escrow under subparagraphs (a) or (b), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

III. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the attorney general that it is in compliance with paragraph I(b) of this section. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(a) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of paragraph I(b) or III of this section, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(b) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of paragraph I(b) or III of this section, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(c) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed 2 years.

IV. Each failure to make an annual deposit required under this section shall constitute a separate violation.

V. The state shall be entitled to its costs and reasonable attorneys' fees incurred during any action for violation of this section pursuant to paragraph III of this section.

Source. 1999, 222:1. 2004, 226:6, 9, eff. Aug. 10, 2004; 226:7, contingently eff., see note set out below.

TITLE LV

PROCEEDINGS IN SPECIAL CASES

CHAPTER 541-D

TOBACCO PRODUCT MANUFACTURERS' FAILURE TO COMPLY

Section 541-D:1

541-D:1 Findings and Purpose. – The legislature finds that violations of RSA 541-C threaten the integrity of the tobacco Master Settlement Agreement. The legislature finds that enacting procedural enhancements will safeguard the Master Settlement Agreement. The provisions of this act are not intended to and shall not be interpreted to amend RSA 541-C.

Source. 2003, 152:1, eff. Jan. 1, 2004.

Section 541-D:2

541-D:2 Definitions. – In this chapter:

I. "Brand family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s" and includes any use of a brand name (alone or in conjunction with any other word) trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

II. "Cigarette" has the same meaning as in RSA 541-C:2, IV.

III. "Commissioner" means the commissioner of revenue administration.

IV. "Non-participating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

V. "Participating manufacturer" has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto.

VI. "Qualified escrow fund" has the same meaning as that term is defined in RSA 541-C:2, VI.

VII. "Stamping agent" means a person that is authorized to affix tax stamps to packages or other containers or cigarettes under RSA 78 or any person that is required to pay the tobacco tax imposed pursuant to RSA 78 on cigarettes.

VIII. "Tobacco product manufacturer" has the same meaning as that term is defined in RSA 541-C:2, IX.

IX. "Units sold" has the same meaning as that term is defined in RSA 541-C:2, X.

Source. 2003, 152:1, eff. Jan. 1, 2004.

Section 541-D:3

541-D:3 Certifications; Directory; Tax Stamps. –

I. Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a distributor, retailer or similar intermediary or intermediaries shall execute and deliver on a form prescribed by the attorney general a certification to the attorney general no later than the thirtieth

day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is a participating manufacturer, or is in full compliance with RSA 541-C.

(a) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(b)(1) A non-participating manufacturer shall include in its certification, a complete list of all of its brand families:

(A) Separately listing brand families of cigarettes and the number of units sold for each brand family that were sold in the state during the preceding calendar year;

(B) All of its brand families that have been sold in the state at any time during the current calendar year;

(C) Indicating by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and

(D) Identifying by name and address any other manufacturer of such brand families in the preceding calendar year.

(2) The non-participating manufacturer shall update such list 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(c) In the case of a non-participating manufacturer, such certification shall further certify:

(1) That such non-participating manufacturer is registered to do business in the state or has appointed an agent for service of process and provided notice thereof as required by subparagraph (d).

(2) That such non-participating manufacturer has:

(A) Established and continues to maintain a qualified escrow fund as that term is defined in RSA 541-C:2, VI; and

(B) Executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund.

(3) That such non-participating manufacturer is in full compliance with RSA 541-C and this section, and any rules adopted pursuant thereto;

(4) The name, address and telephone number of the financial institution where the non-participating manufacturer has established such qualified escrow fund, required pursuant to RSA 541-C:2, VI and all rules adopted thereunder; the account number of such qualified escrow fund and sub-account number for the state of New Hampshire; the amount such non-participating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and the amounts of and dates of any withdrawal or transfer of funds the non-participating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to RSA 541-C and all rules adopted thereunder.

(d) A tobacco product manufacturer may not include a brand family in its certification unless:

(1) In the case of a participating manufacturer, said participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and

(2) In the case of a non-participating manufacturer, said non-participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of RSA 541-C.

(e) Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of RSA 541-C.

(f) The tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of 5 years; unless otherwise

required by law to maintain them for a greater period of time.

II. Not later than January 1, 2004 the attorney general shall develop and publish on the state website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of paragraph I and all brand families that are listed in such certifications ("the directory"), except as otherwise provided in this paragraph.

(a) The attorney general shall not include or retain in such directory the name or brand families of any non-participating manufacturer that fails to provide the required certification or whose certification the attorney general determines is not in compliance with subparagraphs I(b) and (c), unless the attorney general has determined that such violation has been cured to the satisfaction of the attorney general.

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the attorney general concludes that:

(1) In the case of a non-participating manufacturer all escrow payments required pursuant to RSA 541-C:3 for any period for any brand family, whether or not listed by such non-participating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(2) All outstanding final judgments, including interest thereon, for violations of RSA 541-C have not been fully satisfied for such brand family and such manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of this chapter.

(d) Every stamping agent shall provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by this chapter.

III. Prohibition against stamping or sale or import of cigarettes not in the directory. It shall be unlawful for any person:

(a) To affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; and

(b) To sell, offer, or possess for sale in this state, or import for personal consumption in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory.

Source. 2003, 152:1, eff. Jan. 1, 2004.

Section 541-D:4

541-D:4 Agent for Service of Process. –

I. Any non-resident or foreign non-participating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of the Master Settlement Agreement and RSA 541-C, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the non-participating manufacturer. The non-participating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of such agent to and to the satisfaction of the attorney general.

II. The non-participating manufacturer shall provide notice to the attorney general 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than 5 calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the non-participating manufacturer shall notify the attorney general of said termination within 5 calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

III. Any non-participating manufacturer whose products are sold in this state, without appointing or designating an agent as herein required shall be deemed to have appointed the secretary of state as such

agent and may be proceeded against in courts of this state by service of process upon the secretary of state; however, the appointment of the secretary of state as such agent shall not satisfy the condition precedent to having its brand families listed or retained in the directory.

Source. 2003, 152:1, eff. Jan. 1, 2004.

Section 541-D:5

541-D:5 Reporting of Information; Escrow Installments. –

I. Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the attorney general, each stamping agent shall submit such information as the attorney general requires to facilitate compliance with this section, including, but not limited to, a list by brand family of the total number of cigarettes or in the case of roll your own, the equivalent stick count for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain, and make available to the attorney general, all invoices and documentation of sales of all non-participating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of 5 years.

II. As provided under RSA 21-J:14, XII, the commissioner is authorized to disclose to the attorney general or designee any information received under this chapter and requested by the attorney general or designee for purposes of determining compliance with and enforcing the provisions of this chapter. The commissioner and attorney general shall share with each other the information received under this chapter, and may share such information with other federal, state or local agencies only for purposes of enforcement of this chapter, the Master Settlement Agreement, RSA 541-C, or corresponding laws of other states.

III. The attorney general may require at any time from the non-participating manufacturer, proof from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with RSA 541-C of the amount of money in such fund being held on behalf of the state and the dates of deposits, and listing the amounts of all withdrawals from such fund and the dates thereof.

IV. In addition to the information required to be submitted pursuant to this section, the attorney general may require a stamping agent, distributor or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this chapter.

V. To promote compliance with the provisions of this chapter, the attorney general may adopt rules requiring a tobacco product manufacturer subject to the requirements of RSA 541-C:3, I(b) to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

Source. 2003, 152:1, eff. Jan. 1, 2004.

Section 541-D:6

541-D:6 Penalties and Other Remedies. –

I. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that any person has violated RSA 541-D:3, III or any rule adopted pursuant thereto, the commissioner may revoke or suspend the license of any stamping agent in the manner provided by RSA 78:6. Each stamp affixed and each offer to sell cigarettes in violation of RSA 541-D:3, III shall constitute a separate violation. For each violation hereof, the commissioner may also impose a civil penalty in an amount not

to exceed the greater of 500 percent of the retail value of the cigarettes sold or \$5,000 upon a determination of violation of RSA 541-D:3, III or any rules adopted pursuant thereto. Such penalty shall be imposed in the manner provided by RSA 78 or RSA 21-J.

II. Any cigarettes that have been sold, offered for sale, or possessed for sale in this state, in violation of RSA 541-D:3, III shall be deemed contraband under RSA 78:16 and such cigarettes shall be subject to seizure and forfeiture as provided in such section, and all such cigarettes so seized and forfeited shall be destroyed and not resold.

III. The attorney general, on behalf of the commissioner, may seek an injunction to restrain a threatened or actual violation of RSA 541-D:3, III, 541-D:5, I, or 541-D:5, IV, by a stamping agent and to compel the stamping agent to comply with such provisions. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.

Source. 2003, 152:1, eff. Jan. 1, 2004.

Section 541-D:7

541-D:7 Notice and Review of Determination. – A determination of the attorney general to not list or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by RSA 541.

Source. 2003, 152:1, eff. Jan. 1, 2004.

Section 541-D:8

541-D:8 Recovery of Costs and Fees by Attorney General. – In any action brought by the state to enforce this chapter, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

Source. 2003, 152:1, eff. Jan. 1, 2004.

Section 541-D:9

541-D:9 Rulemaking. – The attorney general shall adopt rules, pursuant to RSA 541-A, necessary to effect the purposes of this chapter.

Source. 2003, 152:1, eff. Jan. 1, 2004.

Voting Sheets

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on HB 488-FN

BILL TITLE: changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.

DATE: February 19, 2013

LOB ROOM: Room 202, LOB

Amendments:

Sponsor: Rep. Almy OLS Document #: 2013 0339h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) on Amendment #2013-0339h

Moved by Rep. Schamberg

Seconded by Rep. Major

Vote: 18-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Schamberg

Seconded by Rep. Major

Vote: 18-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 18-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,



Rep. William Butynski, Clerk

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on HB 488-FN

BILL TITLE: changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.

DATE: 2/19/13

LOB ROOM: Room 202, LOB

Amendments:

Sponsor: Rep. *Almy*

OLS Document #: 2013-0339 *h*

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions:

one Amendment to 2013-0339 h
 OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Schamberg*

Seconded by Rep. *Majors*

Vote: *18 to 0* (Please attach record of roll call vote.)

Motions:

OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Schamberg*

Seconded by Rep. *Majors*

Vote: *18 to 0* (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: {Type VOTE} *18 to 0*

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. William Butynski, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2013 11:00:11 AM
Roll Call Committee Registers
Report

2013 SESSION

WAYS AND MEANS

Bill #: HB 488-FM Title: Settlement Agreement
changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master

PH Date: 2/5/13 Exec Session Date: 2/19/13

Motion: OT Roll Call moved by Schamberg + Major Amendment #: 2013-0339h

MEMBER

YEAS

NAYS

MEMBER	YEAS	NAYS
Almy, Susan W, Chairman	✓	
Lovejoy, Patricia T, V Chairman	✓	
Butynski, William, Clerk	✓	
Davis, Frank W	✓	
Shattuck, Gilman C	✓	
Kelley, John D	✓	
Cooney, Mary R	✓	
Ames, Richard	✓	
Karrick, David B	✓	
Schamberg, Thomas C	✓	
Young, Harry L	✓	
Major, Norman L,	✓	
Griffin, Mary E	✓	
Hess, David W	✓	
Sapareto, Frank V	✓	
Ulery, Jordan G	✓	
Ober, Russell T,		
Abrami, Patrick F	✓	
Azarian, Gary S		
Sanborn, Laurie J	✓	
TOTAL VOTE:	18	0



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2013 11:00:11 AM
Roll Call Committee Registers
Report

2013 SESSION

WAYS AND MEANS

Bill #: HB 488

Title: Changing the definition ...

PH Date: 1 / 1

Exec Session Date: 2 / 19 / 13

Motion: OTPA by Schamberg and Major

Amendment #: _____

MEMBER	YEAS	NAYS
Almy, Susan W, Chairman	✓	
Lovejoy, Patricia T, V Chairman	✓	
Butynski, William , Clerk	✓	
Davis, Frank W	✓	
Shattuck, Gilman C	✓	
Kelley, John D	✓	
Cooney, Mary R	✓	
Ames, Richard	✓	
Karrick, David B	✓	
Schamberg, Thomas C	✓	
Young, Harry L	✓	
Major, Norman L,	✓	
Griffin, Mary E	✓	
Hess, David W	✓	
Sapareto, Frank V	✓	
Ulery, Jordan G	✓	
Ober, Russell T, <i>Absent</i>		
Abrami, Patrick F	✓	
Azarian, Gary S <i>Absent</i>		
Sanborn, Laurie J	✓	
TOTAL VOTE:	<u>18</u>	<u>0</u>

Committee Report

CONSENT CALENDAR

February 20, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on WAYS AND MEANS to which was referred HB488-FN,

AN ACT changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Thomas C Schamberg

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	WAYS AND MEANS
Bill Number:	HB488-FN
Title:	changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement.
Date:	February 20, 2013
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

HB 488-FN 18-0 CONSENT OTPW/A 2013-0339h

This brings the definition of "cigarette" in conformity with RSA 541-C:2, IV, to ensure diligent enforcement of the Master Settlement Agreement RSA 541-C and RSA 541-D and that we will continue to bring in \$42M a year under the MSA. The Assistant Attorney General stated failure to pass this bill will put annual payments in jeopardy, and agreed to the amendment.

Vote 18-0.

Rep. Thomas C Schamberg
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

WAYS AND MEANS

HB488-FN, changing the definition of "cigarette" under the tobacco tax to match the definition of "cigarette" under the Master Settlement Agreement. **OUGHT TO PASS WITH AMENDMENT.**
Rep. Thomas C Schamberg for WAYS AND MEANS. HB 488-FN 18-0 CONSENT
OTPW/A 2013-0339h

This brings the definition of "cigarette" in conformity with RSA 541-C:2, IV, to ensure diligent enforcement of the Master Settlement Agreement RSA 541-C and RSA 541-D and that we will continue to bring in \$42M a year under the MSA. The Assistant Attorney General stated failure to pass this bill will put annual payments in jeopardy, and agreed to the amendment.

Vote 18-0.

COMMITTEE REPORT

COMMITTEE: House WAYS + MEANS

BILL NUMBER: 488 - FN

TITLE: changing the definition of "cigarette" under tobacco tax to match definition of "cigarette" under Master Settlement Agreement

DATE: 2-19-13 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
339h

STATEMENT OF INTENT:

~~Amendment to Repeal RSA 78:1, xvii and Re enact~~
~~as set forth in Amendment # 339h.~~ This brings the
definition of "cigarette" in conformity with RSA 541-C:2, IV,
to ensure diligent enforcement of ^{the} Master Settlement Agreement
RSA 541-C and RSA 541-D ^{and we continue to} and will bring in ^{Ass't to the} 42 million
a year under the MSA. The Attorney General ^{has stated} ~~has~~
~~Amendment is closer to conforming with the MSA.~~
~~The Amendment is conforming~~
failure to pass this bill will put annual payments in
jeopardy, and agreed to the Amendment.

COMMITTEE VOTE: 18 - 0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Tom Schamber
For the Committee JWA

MAJORITY REPORT

HB 488-FN

18-0 CONSENT

OTPW/A 2013-0339h

This brings the definition of "cigarette" in conformity with RSA 541-C:2, IV, to ensure diligent enforcement of the Master Settlement Agreement RSA 541-C and RSA 541-D and that we will continue to bring in \$42M a year under the MSA. The Assistant Attorney General stated failure to pass this bill will put annual payments in jeopardy, and agreed to the amendment.

Respectfully submitted,

Rep. Thomas Schamberg

