

SENATE BILL 305

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1999 Regular Session
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By: **Senator Green**

Introduced and read first time: February 5, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco Product Manufacturers - Settlement of State Claims -**
3 **Nonparticipating Manufacturers - Deposits of Funds in Escrow - Model**
4 **Statute**

5 FOR the purpose of enacting the model statute provided by the Master Settlement
6 Agreement between the State of Maryland and certain tobacco product
7 manufacturers in the United States to create a reserve fund for a certain
8 purpose for those manufacturers who do not enter into the settlement; requiring
9 tobacco product manufacturers that sell cigarettes to consumers in the State to
10 either become a participant in the settlement agreement or to deposit certain
11 amounts of funds, calculated on the basis of certain formulas, into escrow
12 accounts in certain financial institutions for certain years; providing for the
13 circumstances under which the funds in the escrow accounts may be released;
14 requiring tobacco product manufacturers who place funds in escrow accounts to
15 make a certain annual certification to the Attorney General; providing for
16 certain penalties for those manufacturers who fail to comply with the
17 certification requirement; providing that the penalties shall be paid over to the
18 General Fund of the State; and relating generally to tobacco product
19 manufacturers and certain required deposits of funds into escrow accounts.

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 1. Findings and Purpose.

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

29 (b) Cigarette smoking also presents serious financial concerns for the State.
30 Under certain health care programs, the State may have a legal obligation to provide
31 medical assistance to eligible persons for health conditions associated with cigarette

1 smoking, and those persons may have a legal entitlement to receive the medical
2 assistance.

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

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

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

19 (f) (1) It would be contrary to the policy of the State if tobacco product
20 manufacturers who determine not to enter into such a settlement could use a
21 resulting cost advantage to derive large, short-term profits in the years before
22 liability may arise without ensuring that the State will have an eventual source of
23 recovery from them if they are proven to have acted culpably.

24 (2) It is thus in the interest of the State to require that tobacco product
25 manufacturers establish a reserve fund to guarantee a source of compensation in
26 order to prevent them from deriving large, short-term profits and then becoming
27 judgment-proof before liability may arise.

28 2. Definitions.

29 (a) As used in this Act, the following words have the meanings indicated.

30 (b) "Adjusted for inflation" means increased in accordance with the formula
31 for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

32 (c) (1) "Affiliate" means a person who directly or indirectly owns or controls,
33 is owned or controlled by, or is under common ownership or control with, another
34 person.

35 (2) For the purposes of paragraph (1) of this subsection:

36 (i) "owns", "is owned", and "ownership" mean ownership of an
37 equity interest, or the equivalent of an equity ownership, of 10 percent or more; and

1 (ii) "person" means an individual, partnership, committee,
2 association, corporation, or any other organization or group.

3 (d) "Allocable share" has the meaning that is stated in the Master Settlement
4 Agreement.

5 (e) (1) "Cigarette" means any product that contains nicotine, is intended to
6 be burned or heated under ordinary conditions of use, and consists of or contains:

7 (i) any roll of tobacco wrapped in paper or in any substance not
8 containing tobacco;

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

12 (iii) any roll of tobacco wrapped in any substance containing tobacco
13 which, because of its appearance, the type of tobacco used in the filler, or its
14 packaging and labeling, is likely to be offered to, or purchased by, consumers as a
15 cigarette described in item (i) of this paragraph.

16 (2) (i) "Cigarette" includes tobacco commonly known as a
17 "roll-your-own", 0.09 ounces of which constitute one individual cigarette.

18 (ii) "Roll-your-own" means any tobacco which, because of its
19 appearance, type, packaging, or labeling, is suitable for use and likely to be offered to,
20 or purchased by, consumers as tobacco for making cigarettes.

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

24 (g) "Qualified escrow fund" means an escrow arrangement with a federally or
25 State chartered financial institution that:

26 (1) has no affiliation with any tobacco product manufacturer and has
27 assets of at least \$1,000,000,000; and

28 (2) (i) requires the financial institution to hold the principal of the
29 escrowed funds for the benefit of releasing parties; and

30 (ii) prohibits the tobacco product manufacturer that places the
31 funds into escrow from using, accessing, or directing the use of the principal of the
32 funds except as otherwise provided by this Act.

33 (h) "Released claims" has the meaning stated in the Master Settlement
34 Agreement.

35 (i) "Releasing parties" has the meaning stated in the Master Settlement
36 Agreement.

1 (j) (1) "Tobacco product manufacturer" means an entity that, after the date
2 of enactment of this Act, directly and not exclusively through any affiliate:

3 (i) 1. manufactures cigarettes anywhere that the manufacturer
4 intends them to be sold in the United States, including cigarettes intended to be sold
5 in the United States through an importer, except if the importer is an original
6 participating manufacturer as that term is defined in the Master Settlement
7 Agreement;

8 2. will be responsible for the payments under the Master
9 Settlement Agreement with respect to the cigarettes as a result of the provisions of
10 section II(mm) of the Master Settlement Agreement; and

11 3. pays the taxes specified in section II(z) of the Master
12 Settlement Agreement, and provided that the manufacturer of the cigarettes does not
13 market or advertise the cigarettes in the United States;

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

17 (iii) becomes a successor of an entity described in this paragraph or
18 paragraph (2) of this subsection.

19 (2) The term "tobacco product manufacturer" does not include an
20 affiliate of a tobacco product manufacturer unless the affiliate itself falls within any
21 provisions of subparagraph (i), (ii), or (iii) of paragraph (1) of this subsection.

22 (k) "Unit sold" means the number of individual cigarettes:

23 (1) sold in the State by the applicable tobacco product manufacturer,
24 whether directly or through a distributor, retailer, or similar intermediary, during a
25 year listed in § 3(a)(2) of this Act; and

26 (2) as measured by excise taxes collected by the State on packs or
27 "roll-your-own" tobacco containers bearing the excise tax stamp of the State. The
28 State Comptroller shall promulgate regulations necessary to ascertain the amount of
29 State excise tax paid on the cigarettes of the tobacco product manufacturer for each
30 year.

31 3. Requirements.

32 (a) As of the effective date of this Act, a tobacco product manufacturer that
33 sells cigarettes to consumers within the State, whether directly or through a
34 distributor, retailer, or similar intermediary, shall:

35 (1) become a participating manufacturer, as that term is defined in
36 section II(jj) of the Master Settlement Agreement, and perform the financial
37 obligations for participating manufacturers under the Master Settlement Agreement;
38 or

1 (2) deposit into a qualified escrow fund by April 15 of the year after the
2 year specified in each of items (i) through (v) of this paragraph the following amounts,
3 as adjusted for inflation:

4 (i) for 1999, \$.0094241 per unit sold after the effective date of this
5 Act;

6 (ii) for 2000, \$.0104712 per unit sold after the effective date of this
7 Act;

8 (iii) for 2001 and 2002, \$.0136125 per unit sold after the effective
9 date of this Act;

10 (iv) for 2003, 2004, 2005, and 2006, \$.0167539 per unit sold after
11 the effective date of this Act; and

12 (v) for 2007 and each year thereafter, \$.0188482 per unit sold after
13 the effective date this Act.

14 (b) (1) A tobacco product manufacturer that deposits funds into escrow in
15 accordance with subsection (a)(2) of this section shall receive the interest or other
16 appreciation on the funds as earned.

17 (2) The funds shall be released from escrow only under the following
18 circumstances:

19 (i) to pay a judgment or settlement on any released claim brought
20 against such tobacco product manufacturer by the State or any releasing party
21 located or residing in the State, provided that funds shall be released from escrow
22 under this subparagraph:

23 1. in the order in which they were placed into escrow; and

24 2. only to the extent and at the time necessary to make
25 payments required under the judgment or settlement; or

26 (ii) to allow the reversion of excess funds to the tobacco product
27 manufacturer to the extent that the manufacturer establishes that the amount it was
28 required to deposit into escrow in a particular year, had the manufacturer been a
29 participating manufacturer, was greater than the State's allocable share of the total
30 payments that the manufacturer would have been required to make in that year
31 under the Master Settlement Agreement, as determined in accordance with section
32 IX(i)(2) of the Master Settlement Agreement and before any of the adjustments or
33 offsets described in section IX(i)(3) of that Agreement other than the inflation
34 adjustment.

35 (3) To the extent funds are not released from escrow under
36 subparagraph (i) or (ii) of paragraph (2) of this subsection, funds shall be released
37 from escrow and revert to the tobacco product manufacturer 25 years after the date
38 on which they were placed into escrow.

1 (c) (1) A tobacco product manufacturer that elects to place funds into escrow
2 under subsection (a)(2) of this section shall annually certify to the Attorney General
3 that it is in compliance with this section.

4 (2) The Attorney General may bring a civil action on behalf of the State
5 against any tobacco product manufacturer that fails to place into escrow the funds
6 required under this section.

7 (3) (i) Any tobacco product manufacturer that fails in any year to
8 place into escrow the funds required under this section shall be required within 15
9 days to place the funds into escrow to bring the manufacturer into compliance with
10 this section.

11 (ii) The court, upon a finding of a violation of this section, may
12 impose a civil penalty:

13 1. in an amount not to exceed 5 percent of the amount
14 improperly withheld from escrow per day of the violation; and

15 2. in a total amount not to exceed 100 percent of the original
16 amount improperly withheld from escrow.

17 (4) (i) If a tobacco manufacturer has knowingly violated this section,
18 the manufacturer shall be required within 15 days to place the funds into escrow to
19 bring it into compliance with this section.

20 (ii) Upon a finding of a knowing violation of this section, the court
21 may impose a civil penalty:

22 1. in an amount not to exceed 15 percent of the amount
23 improperly withheld from escrow per day of the violation; and

24 2. in a total amount not to exceed 300 percent of the original
25 amount improperly withheld from escrow.

26 (5) In the case of a second knowing violation of this section, the tobacco
27 product manufacturer shall be prohibited from selling cigarettes to consumers within
28 the State, whether directly or through a distributor, retailer, or similar intermediary,
29 for a period not to exceed 2 years.

30 (6) Each failure to make the annual deposit required under this section
31 shall constitute a separate violation.

32 (7) Any penalty imposed and collected under this subsection shall be
33 deposited to the credit of the State and paid over to the General Fund of the State.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
35 effect June 1, 1999.