

SENATE BILL 305

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1999 Regular Session  
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By: ~~Senator Green~~ **Senators Green and Forehand**

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Committee Report: Favorable with amendments

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CHAPTER \_\_\_\_\_

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.

1 These diseases most often do not appear until many years after the person in  
2 question begins smoking.

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

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

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

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

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

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

### 33 2. Definitions.

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

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

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

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

2 (i) "owns", "is owned", and "ownership" mean ownership of an  
3 equity interest, or the equivalent of an equity ownership thereof, of 10 percent or  
4 more; and

5 (ii) "person" means an individual, partnership, committee,  
6 association, corporation, or any other organization or group of persons.

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

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

11 (i) any roll of tobacco wrapped in paper or in any substance not  
12 containing tobacco;

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

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

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

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

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

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

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

35 ~~(1) has having no affiliation with any tobacco product manufacturer and  
36 has having assets of at least \$1,000,000,000; and~~

1           (2)    (+)    where such arrangement requires ~~the~~ that such financial  
2 institution ~~to~~ hold the principal of the escrowed funds for the benefit of releasing  
3 parties; and

4           (ii)    prohibits the tobacco product manufacturer that places the  
5 funds into escrow from using, accessing, or directing the use of the principal of the  
6 funds except as ~~otherwise provided by this Act~~ consistent with § 3(b) of this Act.

7    (h)    "Released claims" ~~has the meaning stated~~ means released claims as that  
8 term is defined in the Master Settlement Agreement.

9    (i)    "Releasing parties" ~~has the meaning stated~~ means releasing parties as  
10 that term is defined in the Master Settlement Agreement.

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

13           (i)    ~~1-~~ manufactures cigarettes anywhere that the manufacturer  
14 intends them to be sold in the United States, including cigarettes intended to be sold  
15 in the United States through an importer, ~~except if the~~ (except where such importer is  
16 an original participating manufacturer as that term is defined in the Master  
17 Settlement ~~Agreement;~~ Agreement)

18           ~~2-~~    that will be responsible for the payments under the  
19 Master Settlement Agreement with respect to ~~the~~ such cigarettes as a result of the  
20 provisions of ~~section subsection II(mm) of the Master Settlement Agreement;~~ and and  
21 that

22           ~~3-~~    pays the taxes specified in ~~section subsection II(z) of the~~  
23 Master Settlement Agreement, and provided that the manufacturer of the cigarettes  
24 does not market or advertise the cigarettes in the United States;

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

28           (iii)   becomes a successor of an entity described in subparagraph (i)  
29 or (ii) of this paragraph or paragraph (2) of this subsection.

30           (2)    The term "tobacco product manufacturer" ~~does shall~~ not include an  
31 affiliate of a tobacco product manufacturer unless ~~the~~ such affiliate itself falls within  
32 any provisions of subparagraph (i), (ii), or (iii) of paragraph (1) of this subsection.

33   (k)    "~~Unit~~ Units sold" means the number of individual cigarettes:

34           (1)    sold in the State by the applicable tobacco product manufacturer,  
35 whether directly or through a distributor, retailer, or similar intermediary or  
36 intermediaries, during ~~a year listed in § 3(a)(2) of this Act~~ the year in question; and

1 (2) as measured by excise taxes collected by the State on packs or  
 2 "roll-your-own" tobacco containers bearing the excise tax stamp of the State. The  
 3 State Comptroller shall promulgate regulations necessary to ascertain the amount of  
 4 State excise tax paid on the cigarettes of ~~the~~ such tobacco product manufacturer for  
 5 each year.

6 3. Requirements.

7 (a) ~~As of the effective date of this Act, a~~ Any tobacco product manufacturer  
 8 that sells cigarettes to consumers within the State, whether directly or through a  
 9 distributor, retailer, or similar intermediary, ~~shall or intermediaries, after the~~  
 10 effective date of this Act, shall either:

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

15 (2) deposit place into a qualified escrow fund by April 15 of the year ~~after~~  
 16 ~~the year specified in each of items (i) through (v) of this paragraph~~ following the year  
 17 in question the following amounts, as such amounts are adjusted for inflation:

18 (i) for 1999, \$.0094241 per unit sold after the ~~effective date~~ date of  
 19 enactment of this Act;

20 (ii) for 2000, \$.0104712 per unit sold after the ~~effective date~~ date of  
 21 enactment of this Act;

22 (iii) for each of 2001 and 2002, \$.0136125 per unit sold after the  
 23 ~~effective date~~ date of enactment of this Act;

24 (iv) for each of 2003, 2004, 2005, and 2006, \$.0167539 per unit sold  
 25 after the ~~effective date~~ date of enactment of this Act; and

26 (v) for 2007 and each year thereafter, \$.0188482 per unit sold after  
 27 the ~~effective date~~ date of enactment of this Act.

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

31 (2) The funds themselves shall be released from escrow only under the  
 32 following circumstances:

33 (i) to pay a judgment or settlement on any released claim brought  
 34 against such tobacco product manufacturer by the State or any releasing party  
 35 located or residing in the State, ~~provided that funds.~~ Funds shall be released from  
 36 escrow under this subparagraph:

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



1 (4) (i) If a tobacco product manufacturer has knowingly violated ~~this~~  
2 ~~section § 3(a)(2) or (b)~~, the manufacturer shall be required within 15 days to place ~~the~~  
3 such funds into escrow ~~to~~ as will bring it into compliance with this section.

4 (ii) Upon a finding of a knowing violation of ~~this section § 3(a)(2) or~~  
5 (b), the court may impose a civil penalty, to be paid to the General Fund of the State:

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

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

10 (5) In the case of a second knowing violation of ~~this section § 3(a)(2) or~~  
11 (b), the tobacco product manufacturer shall be prohibited from selling cigarettes to  
12 consumers within the State, whether directly or through a distributor, retailer, or  
13 similar intermediary or intermediaries, for a period not to exceed 2 years.

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

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

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