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Committee Report: Favorable with amendments
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CHAPTER _____

1 AN ACT concerning

2 **Tobacco Product Manufacturers - Master Settlement Agreement - Escrow**
3 **Requirements**

4 FOR the purpose of specifying that the amounts tobacco product manufacturers are
5 required to place into escrow accounts are based on a certain factor; altering the
6 circumstances under which the funds in escrow accounts may be released;
7 making the provisions of this Act severable; providing for the termination of this
8 Act under certain circumstances; and generally relating to tobacco product
9 manufacturers and certain escrow accounts.

10 BY repealing and reenacting, without amendments,
11 Chapter 169 of the Acts of the General Assembly of 1999, as amended by
12 Chapter 141 of the Acts of the General Assembly of 2001
13 Section 1 2(j)

14 BY repealing and reenacting, with amendments,
15 Chapter 169 of the Acts of the General Assembly of 1999
16 Section 1 3(b)

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

1 **Chapter 169 of the Acts of 1999, as amended by Chapter 141 of the Acts of**
2 **2001**

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

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

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

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

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

22 (2) The term "tobacco product manufacturer" shall not include an
23 affiliate of a tobacco product manufacturer unless such affiliate itself falls within any
24 provisions of subparagraph (i), (ii), or (iii) of paragraph (1) of this subsection.

25 **Chapter 169 of the Acts of 1999**

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

28 3. (b) (1) A tobacco product manufacturer that places funds into escrow in
29 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. Funds shall be released from escrow under this
36 subparagraph:

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

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

3 (ii) to the extent that a tobacco product manufacturer establishes
4 that the amount it was required to place into escrow ON ACCOUNT OF UNITS SOLD IN
5 THE STATE in a particular year was greater than [the State's allocable share of the
6 total payments that such manufacturer would have been required to make in that
7 year under the Master Settlement Agreement (as determined pursuant to section
8 IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or
9 offsets described in section IX(i)(3) of that Agreement other than the inflation
10 adjustment)] THE MASTER SETTLEMENT AGREEMENT PAYMENTS, AS DETERMINED
11 PURSUANT TO SECTION IX(I) OF THAT AGREEMENT, INCLUDING AFTER FINAL
12 DETERMINATION OF ALL ADJUSTMENTS, THAT SUCH MANUFACTURER WOULD HAVE
13 BEEN REQUIRED TO MAKE ON ACCOUNT OF SUCH UNITS SOLD had it been a
14 participating manufacturer, the excess shall be released from escrow and revert back
15 to such tobacco manufacturer; or

16 (iii) to the extent funds are not released from escrow under
17 subparagraph (i) or (ii) of paragraph (2) of this subsection, funds shall be released
18 from escrow and revert to such tobacco product manufacturer 25 years after the date
19 on which they were placed into escrow.

20 ~~SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this~~
21 ~~Act or the application thereof to any person or circumstance is held invalid for any~~
22 ~~reason in a court of competent jurisdiction, the invalidity does not affect other~~
23 ~~provisions or any other application of this Act which can be given effect without the~~
24 ~~invalid provision or application, and for this purpose the provisions of this Act are~~
25 ~~declared severable. Furthermore, if any provision of this Act or the application thereof~~
26 ~~to any person or circumstance places the State out of compliance with the Master~~
27 ~~Settlement Agreement or adversely impacts the State's payments under the Master~~
28 ~~Settlement Agreement, this Act shall be abrogated and of no further force and effect.~~

29 SECTION 2. AND BE IT FURTHER ENACTED, That if this Act, or any portion
30 of the amendment to 3(b)(2)(ii) of Section 1 of Chapter 169 of the Acts of the General
31 Assembly of 1999, as amended by Chapter 141 of the Acts of the General Assembly of
32 2001, made by this Act, is held by a court of competent jurisdiction to be
33 unconstitutional, then such 3(b)(2)(ii) of Section 1 shall be deemed to be repealed in
34 its entirety. If 3(b)(2) of Section 1 of Chapter 169 of the Acts of the General Assembly
35 of 1999, as amended by Chapter 141 of the Acts of the General Assembly of 2001, shall
36 hereafter be held by a court of competent jurisdiction to be unconstitutional, then
37 this Act shall be deemed repealed, and 3(b)(2)(ii) of Section 1 of Chapter 169 of the
38 Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of the
39 General Assembly of 2001, be restored as if no such amendments had been made.
40 Neither any holding of unconstitutionality nor the repeal of 3(b)(2)(ii) of Section 1 of
41 Chapter 169 of the Acts of the General Assembly of 1999, as amended by Chapter 141
42 of the Acts of the General Assembly of 2001, shall affect, impair, or invalidate any
43 other portion of Chapter 169 of the Acts of the General Assembly of 1999, as amended
44 by Chapter 141 of the Acts of the General Assembly of 2001, or the application of such
45 Act to any other person or circumstance, and such remaining portions of Chapter 169

1 of the Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of
2 the General Assembly of 2001, shall at all times continue in full force and effect.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
4 effect June 1, 2004.