

SENATE BILL 240

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2004 Regular Session  
4r1448  
CF 4r1411

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By: **Senators Green, Forehand, Frosh, Garagiola, Giannetti, Haines,  
Hughes, and Jimeno**

Introduced and read first time: January 29, 2004

Assigned to: Judicial Proceedings

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A BILL ENTITLED

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:

19 **Chapter 169 of the Acts of 1999, as amended by Chapter 141 of the Acts of**  
20 **2001**

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

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

25 (i) manufactures cigarettes anywhere that the manufacturer  
26 intends them to be sold in the United States, including cigarettes intended to be sold  
27 in the United States through an importer (except where such importer is an original

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

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

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

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

16 **Chapter 169 of the Acts of 1999**

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

19 3. (b) (1) A tobacco product manufacturer that places funds into escrow in  
 20 accordance with subsection (a)(2) of this section shall receive the interest or other  
 21 appreciation on the funds as earned.

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

24 (i) to pay a judgment or settlement on any released claim brought  
 25 against such tobacco product manufacturer by the State or any releasing party  
 26 located or residing in the State. Funds shall be released from escrow under this  
 27 subparagraph:

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

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

31 (ii) to the extent that a tobacco product manufacturer establishes  
 32 that the amount it was required to place into escrow ON ACCOUNT OF UNITS SOLD IN  
 33 THE STATE in a particular year was greater than [the State's allocable share of the  
 34 total payments that such manufacturer would have been required to make in that  
 35 year under the Master Settlement Agreement (as determined pursuant to section  
 36 IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or  
 37 offsets described in section IX(i)(3) of that Agreement other than the inflation  
 38 adjustment)] THE MASTER SETTLEMENT AGREEMENT PAYMENTS, AS DETERMINED  
 39 PURSUANT TO SECTION IX(I) OF THAT AGREEMENT, INCLUDING AFTER FINAL

1 DETERMINATION OF ALL ADJUSTMENTS, THAT SUCH MANUFACTURER WOULD HAVE  
2 BEEN REQUIRED TO MAKE ON ACCOUNT OF SUCH UNITS SOLD had it been a  
3 participating manufacturer, the excess shall be released from escrow and revert back  
4 to such tobacco manufacturer; or

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

9 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this  
10 Act or the application thereof to any person or circumstance is held invalid for any  
11 reason in a court of competent jurisdiction, the invalidity does not affect other  
12 provisions or any other application of this Act which can be given effect without the  
13 invalid provision or application, and for this purpose the provisions of this Act are  
14 declared severable. Furthermore, if any provision of this Act or the application thereof  
15 to any person or circumstance places the State out of compliance with the Master  
16 Settlement Agreement or adversely impacts the State's payments under the Master  
17 Settlement Agreement, this Act shall be abrogated and of no further force and effect.

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