

SENATE BILL 240

Unofficial Copy  
P5

2004 Regular Session  
4r1448  
CF 4r1411

---

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

Introduced and read first time: January 29, 2004  
Assigned to: Judicial Proceedings

---

Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: February 24, 2004

---

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:

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:

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

3 (i) 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 where such importer is an original  
6 participating manufacturer (as that term is defined in the Master Settlement  
7 Agreement) that will be responsible for the payments under the Master Settlement  
8 Agreement with respect to such cigarettes as a result of the provisions of subsection  
9 II(mm) of the Master Settlement Agreement and that pays the taxes specified in  
10 subsection II(z) of the Master Settlement Agreement, and provided that the  
11 manufacturer of the cigarettes does not market or advertise the cigarettes in the  
12 United States);

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

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

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

21

### Chapter 169 of the Acts of 1999

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

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

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

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

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

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

36 (ii) to the extent that a tobacco product manufacturer establishes  
37 that the amount it was required to place into escrow ON ACCOUNT OF UNITS SOLD IN  
38 THE STATE in a particular year was greater than [the State's allocable share of the

1 total payments that such manufacturer would have been required to make in that  
2 year under the Master Settlement Agreement (as determined pursuant to section  
3 IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or  
4 offsets described in section IX(i)(3) of that Agreement other than the inflation  
5 adjustment)] THE MASTER SETTLEMENT AGREEMENT PAYMENTS, AS DETERMINED  
6 PURSUANT TO SECTION IX(I) OF THAT AGREEMENT, INCLUDING AFTER FINAL  
7 DETERMINATION OF ALL ADJUSTMENTS, THAT SUCH MANUFACTURER WOULD HAVE  
8 BEEN REQUIRED TO MAKE ON ACCOUNT OF SUCH UNITS SOLD had it been a  
9 participating manufacturer, the excess shall be released from escrow and revert back  
10 to such tobacco manufacturer; or

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

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That if this Act, or any portion  
25 of the amendment to 3(b)(2)(ii) of Section 1 of Chapter 169 of the Acts of the General  
26 Assembly of 1999, as amended by Chapter 141 of the Acts of the General Assembly of  
27 2001, made by this Act, is held by a court of competent jurisdiction to be  
28 unconstitutional, then such 3(b)(2)(ii) of Section 1 shall be deemed to be repealed in  
29 its entirety. If 3(b)(2) of Section 1 of Chapter 169 of the Acts of the General Assembly  
30 of 1999, as amended by Chapter 141 of the Acts of the General Assembly of 2001, shall  
31 hereafter be held by a court of competent jurisdiction to be unconstitutional, then  
32 this Act shall be deemed repealed, and 3(b)(2)(ii) of Section 1 of Chapter 169 of the  
33 Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of the  
34 General Assembly of 2001, be restored as if no such amendments had been made.  
35 Neither any holding of unconstitutionality nor the repeal of 3(b)(2)(ii) of Section 1 of  
36 Chapter 169 of the Acts of the General Assembly of 1999, as amended by Chapter 141  
37 of the Acts of the General Assembly of 2001, shall affect, impair, or invalidate any  
38 other portion of Chapter 169 of the Acts of the General Assembly of 1999, as amended  
39 by Chapter 141 of the Acts of the General Assembly of 2001, or the application of such  
40 Act to any other person or circumstance, and such remaining portions of Chapter 169  
41 of the Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of  
42 the General Assembly of 2001, shall at all times continue in full force and effect.

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

