

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 445 Session of
1999

INTRODUCED BY ARMSTRONG, STETLER, DRUCE, DAILEY, MAJOR, CLYMER,
STAIRS, HARHART, BARD, MAHER, LEH, ROHRER, RUBLEY, FLICK,
BAKER, FORCIER, ORIE, ROSS, MARSICO, SEMMEL, WRIGHT, PIPPY,
ZIMMERMAN, McNAUGHTON, BENNINGHOFF, DALLY, HUTCHINSON,
BIRMELIN, HENNESSEY, SCHULER, LESCOVITZ, BUTKOVITZ, STEELMAN,
BATTISTO, HERSHEY, TRELLO AND FARGO, FEBRUARY 9, 1999

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MARCH 20, 2000

AN ACT

1 Providing for the Tobacco Settlement Agreement Act; conferring
2 powers and duties upon the Attorney General and the
3 Department of Revenue; ESTABLISHING THE TOBACCO SETTLEMENT
4 FUND FOR MONEYS RECEIVED BY THE COMMONWEALTH FROM RESOLUTION
5 OF CERTAIN MATTERS; ESTABLISHING THE TOBACCO SETTLEMENT
6 POLICY COUNCIL; and imposing penalties. <—

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Tobacco
11 Settlement Agreement Act.

12 Section 2. Declaration of policy.

13 The General Assembly finds and declares as follows:

14 (1) Cigarette smoking presents serious public health
15 concerns to the Commonwealth and to the citizens of this
16 Commonwealth. The Surgeon General has determined that smoking
17 causes lung cancer, heart disease and other serious diseases

1 and that there are hundreds of thousands of tobacco-related
2 deaths in the United States each year. These diseases most
3 often do not appear until many years after the person begins
4 smoking.

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

12 (3) Under these programs, the Commonwealth pays millions
13 of dollars each year to provide medical assistance for these
14 persons for health conditions associated with cigarette
15 smoking.

16 (4) It is the policy of the Commonwealth that financial
17 burdens imposed on the Commonwealth by cigarette smoking be
18 borne by tobacco product manufacturers rather than by the
19 Commonwealth to the extent that manufacturers either
20 determine to enter into a settlement with the Commonwealth or
21 are found culpable by the courts.

22 (5) On January 13, 1999, leading United States tobacco
23 product manufacturers entered into a settlement agreement,
24 entitled the "Master Settlement Agreement," with the
25 Commonwealth. The Master Settlement Agreement obligates these
26 manufacturers, in return for a release of past, present and
27 certain future claims against them as described therein, to
28 do the following:

29 (i) To pay substantial sums to the Commonwealth,
30 tied in part to their volume of sales.

(ii) To fund a national foundation devoted to the interests of public health.

(iii) To make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the Commonwealth if tobacco product manufacturers who determine not to enter into the settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the Commonwealth will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the Commonwealth to require that certain manufacturers establish a reserve fund to guarantee a source of compensation and to prevent certain manufacturers from deriving large, short-term profits and then becoming judgment proof before liability may arise.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adjusted for inflation." Increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

"Affiliate." A person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual,

1 partnership, committee, association, corporation or any other
2 organization or group of persons.

3 "Allocable share." The percentage for the Commonwealth is
4 5.7468588% as set forth in Exhibit A in the Master Settlement
5 Agreement.

6 "Cigarette." Any product that contains nicotine, is intended
7 to be burned or heated under ordinary conditions of use and
8 consists of or contains the following:

9 (1) Any roll of tobacco wrapped in paper or in any
10 substance not containing tobacco.

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

16 (3) Any roll of tobacco wrapped in any substance
17 containing tobacco which, because of its appearance, the type
18 of tobacco used in the filler or its packaging and labeling
19 is likely to be offered to or purchased by consumers as a
20 cigarette described in ~~elause~~ PARAGRAPH (1). The term <—
21 "cigarette" includes "roll-your-own," such as any tobacco
22 which, because of its appearance, type, packaging or labeling
23 is suitable for use and likely to be offered to or purchased
24 by consumers as tobacco for making cigarettes. For purposes
25 of this definition of "cigarette," 0.09 ounces of "roll-your-
26 own" tobacco shall constitute one individual "cigarette."

27 ~~"Master Settlement Agreement." The settlement agreement and <—~~
28 ~~related documents entered into on January 13, 1999, by the~~
29 ~~Commonwealth and leading United States tobacco product~~
30 ~~manufacturers.~~

1 "COUNCIL." THE TOBACCO SETTLEMENT POLICY COUNCIL ESTABLISHED <—
2 IN SECTION 7.

3 "FUND." THE TOBACCO SETTLEMENT FUND ESTABLISHED IN SECTION
4 6.

5 "IMPLEMENTING LEGISLATION." LEGISLATION ENACTED IN ACCORDANCE
6 WITH THE PROVISIONS OF THE CONSTITUTION OF PENNSYLVANIA
7 AUTHORIZING THE CREATION OF PROGRAMS AND THE AUTHORIZATION OF
8 EXPENDITURES FROM THE TOBACCO SETTLEMENT FUND. THIS TERM SHALL
9 NOT INCLUDE SPENDING AUTHORIZATIONS INCLUDED IN AN
10 APPROPRIATIONS ACT.

11 "MASTER SETTLEMENT AGREEMENT." THE SETTLEMENT AGREEMENT AND
12 RELATED DOCUMENTS ENTERED INTO ON NOVEMBER 23, 1998, BY THE
13 COMMONWEALTH AND LEADING UNITED STATES TOBACCO PRODUCT
14 MANUFACTURERS AND APPROVED BY THE COURT IN COMMONWEALTH V.
15 PHILIP MORRIS, APRIL TERM 1997, NO.2443 (C.P. PHILADELPHIA
16 COUNTY), ON JANUARY 13, 1999.

17 "Qualified escrow fund." An escrow arrangement with a
18 federally chartered or State-chartered financial institution
19 having no affiliation with any tobacco product manufacturer and
20 having assets of at least \$1,000,000,000 where the arrangement
21 requires that the financial institution hold the escrowed fund's
22 principal for the benefit of releasing parties and prohibits the
23 tobacco product manufacturer placing the funds into escrow from
24 using, accessing or directing the use of the fund's principal
25 except as consistent with section 4.

26 "Released claims." Includes claims:

27 (1) for past conduct, acts or omissions, including any
28 damages incurred in the future arising from such past
29 conduct, acts or omissions, those claims directly or
30 indirectly based on, arising out of or in any way related, in

1 whole or in part, to the use, sale, distribution,
2 manufacture, development, advertising, marketing or health
3 effects of, the exposure to or research, statements or
4 warnings regarding tobacco products (including, but not
5 limited to, the claims asserted in the actions identified in
6 Exhibit D to the Master Settlement Agreement, or any
7 comparable claims that were, could be or could have been
8 asserted now or in the future in those actions or in any
9 comparable action in Federal, State or local court brought by
10 a settling state or a releasing party, whether or not the
11 settling state or releasing party has brought the action),
12 except for claims not asserted in the actions identified in
13 Exhibit D for outstanding liability under existing licensing
14 or similar fee laws or existing tax laws but not excepting
15 claims for any tax liability of the tobacco-related
16 organizations or of any released party with respect to such
17 tobacco-related organizations, which claims are covered by
18 the release and covenants set forth in the Master Settlement
19 Agreement; and

20 (2) for future conduct, acts or omissions, only those
21 monetary claims directly or indirectly based on, arising out
22 of or in any way related to, in whole or in part, the use of
23 or exposure to tobacco products manufactured in the ordinary
24 course of business, including, without limitation, any future
25 claims for reimbursement of health care costs allegedly
26 associated with the use of or exposure to tobacco products.

27 "Releasing parties." Each settling state and any of its
28 past, present and future agents, officials acting in their
29 official capacities, legal representatives, agencies,
30 departments, commissions and divisions. The term also means, to

1 the full extent of the power of the signatories hereto to
2 release past, present and future claims, the follow:

3 (1) Any settling state's subdivisions (political or
4 otherwise, including, but not limited to, municipalities,
5 counties, parishes, villages, unincorporated districts and
6 hospital districts), public entities, public
7 instrumentalities and public educational institutions.

8 (2) Persons or entities acting in a parens patriae,
9 sovereign, quasi-sovereign, private attorney general, qui
10 tam, taxpayer, or any other capacity, whether or not any of
11 them participate in this settlement;

12 (i) to the extent that any person or entity is
13 seeking relief on behalf of or generally applicable to
14 the general public in such settling state or the people
15 of the state, as opposed solely to private or individual
16 relief for separate and distinct injuries; or

17 (ii) to the extent that any such entity as opposed
18 to an individual is seeking recovery of health care
19 expenses other than premium or capitation payments for
20 the benefit of present or retired State employees paid or
21 reimbursed, directly or indirectly, by a settling state.

22 "Tobacco product manufacturer."

23 (1) An entity that after the date of enactment of this
24 act directly and not exclusively through any affiliate:

25 (i) manufactures cigarettes anywhere that such
26 manufacturer intends to be sold in the United States,
27 including cigarettes intended to be sold in the United
28 States through an importer (except where such importer is
29 an original participating manufacturer, as that term is
30 defined in the Master Settlement Agreement, that will be

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

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

12 (iii) becomes a successor of an entity described in
13 ~~clause~~ SUBPARAGRAPH (i) or (ii). <—

14 (2) The term shall not include an affiliate of a tobacco
15 product manufacturer unless such affiliate itself falls
16 within paragraph (1).

17 "Units sold." The number of individual cigarettes sold in
18 this Commonwealth by the applicable tobacco product
19 manufacturer, whether directly or through a distributor,
20 retailer or similar intermediary or intermediaries, during the
21 year in question, as measured by excise taxes collected by the
22 Commonwealth on packs (or "roll-your-own" tobacco containers)
23 bearing the excise tax stamp of the Commonwealth. The Department
24 of Revenue shall promulgate such regulations as are necessary to
25 ascertain the amount of State excise tax paid on the cigarettes
26 of such tobacco product manufacturer for each year.

27 Section 4. Requirements.

28 (a) General rule.--Any tobacco product manufacturer selling
29 cigarettes to consumers within this Commonwealth whether
30 directly or through a distributor, retailer or similar

1 intermediary or intermediaries after the date of enactment of
2 this act shall do one of the following:

3 (1) Become a participating manufacturer as defined in
4 section II(jj) of the Master Settlement Agreement and
5 generally perform its financial obligations under the Master
6 Settlement Agreement.

7 (2) Place into a qualified escrow fund by April 15 of
8 the year following the year in question the following
9 amounts, that are adjusted for inflation:

10 (i) 1999 - \$.0094241 per unit sold after the date of
11 enactment of this act.

12 (ii) 2000 - \$.0104712 per unit sold after the date
13 of enactment of this act.

14 (iii) For each of 2001 and 2002 - \$.0136125 per unit
15 sold after the date of enactment of this act.

16 (iv) For each of 2003 through 2006 - \$.0167539 per
17 unit sold after the date of enactment of this act.

18 (v) For each of 2007 and each year thereafter -
19 \$.0188482 per unit sold after the date of enactment of
20 this act.

21 (b) Funds in escrow.--A tobacco product manufacturer that
22 places funds into escrow under subsection (a)(2) shall receive
23 the interest or other appreciation on such funds as earned. The
24 funds shall be released from escrow only under the following
25 circumstances:

26 (1) To pay a judgment or settlement on any released
27 claim brought against such tobacco product manufacturer by
28 the Commonwealth or any releasing party located or residing
29 in this Commonwealth. Funds shall be released from escrow
30 under this paragraph in the order in which they were placed

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

3 (2) To the extent that a tobacco product manufacturer
4 establishes that the amount it was required to place into
5 escrow in a particular year was greater than the
6 Commonwealth's allocable share of the total payments that the
7 manufacturer would have been required to make in that year
8 under the Master Settlement Agreement, as determined under
9 section IX(I)(2) of the Master Settlement Agreement and
10 before any of the adjustments or offsets described in section
11 IX(I)(3) of that agreement other than the inflation
12 adjustment, had it been a participating manufacturer, the
13 excess shall be released from escrow and revert back to such
14 tobacco product manufacturer.

15 (3) To the extent not released from escrow under
16 paragraph (1) or (2), funds shall be released from escrow and
17 revert back to the tobacco product manufacturer 25 years
18 after the date on which they were placed into escrow.

19 (c) Certification.--Each tobacco product manufacturer that
20 elects to place funds into escrow pursuant to this subsection
21 shall annually certify to the Attorney General that it is in
22 compliance with this subsection. The Attorney General may bring
23 a civil action on behalf of the Commonwealth against any tobacco
24 product manufacturer that fails to place into escrow the funds
25 required under this section. Any tobacco product manufacturer
26 that fails in any year to place into escrow the funds required
27 under this section shall do the following:

28 (1) Be required within 15 days AFTER NOTICE BY THE
29 ATTORNEY GENERAL to place the funds into escrow as shall
30 bring it into compliance with this section. The court, upon a

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1 finding of a violation of this subsection, may impose a civil
2 penalty to be paid to the General Fund of the Commonwealth in
3 an amount not to exceed 5% of the amount improperly withheld
4 from escrow per day of the violation and in a total amount
5 not to exceed 100% of the original amount improperly withheld
6 from escrow.

7 (2) In the case of a knowing violation, be required
8 within 15 days AFTER NOTICE BY THE ATTORNEY GENERAL to place <—
9 the funds into escrow as shall bring it into compliance with
10 this section. The court, upon a finding of a knowing
11 violation of this subsection, may impose a civil penalty to
12 be paid to the General Fund of the Commonwealth in an amount
13 not to exceed 15% of the amount improperly withheld from
14 escrow per day of the violation and in a total amount not to
15 exceed 300% of the original amount improperly withheld from
16 escrow.

17 (3) In the case of a second knowing violation, be
18 prohibited from selling cigarettes to consumers within this
19 Commonwealth, whether directly or through a distributor,
20 retailer or similar intermediary, for a period not to exceed
21 two years.

22 (d) Violation.--Each failure to make an annual deposit
23 required under this section shall constitute a separate
24 violation.

25 Section 5. Public inspection.

26 The Attorney General will deposit the Master Settlement
27 Agreement for public inspection under 1 Pa. Code § 3.13(b)
28 (relating to contents of bulletin) AND THE DEPARTMENT OF HEALTH <—
29 SHALL POST THE MASTER SETTLEMENT AGREEMENT FOR PUBLIC INSPECTION
30 ON THE DEPARTMENT'S WORLD WIDE WEB SITE.

1 SECTION 6. ESTABLISHMENT OF TOBACCO SETTLEMENT FUND.

2 THE TOBACCO SETTLEMENT FUND IS HEREBY ESTABLISHED IN THE
3 STATE TREASURY. ALL MONEYS MADE AVAILABLE TO THE COMMONWEALTH
4 AFTER JANUARY 1, 1999, FROM THE TOBACCO SETTLEMENT AGREEMENT
5 SHALL BE CREDITED TO THIS FUND AND SHALL BE SUBJECT TO THE
6 PROVISIONS OF THE ACT OF JUNE 29, 1976 (P.L.469, NO.117),
7 ENTITLED "AN ACT RELATING TO THE FISCAL AFFAIRS OF THE
8 COMMONWEALTH CONCERNING DUTIES OF THE GOVERNOR, THE SECRETARY OF
9 REVENUE AND THE BUDGET SECRETARY, WITH RESPECT TO THE SUBMISSION
10 OF AND SIGNING THE BUDGET FOR ANY FISCAL YEAR; AND, AFTER A
11 BUDGET IS ENACTED, REGULATING THE ISSUANCE OF WARRANTS BY THE
12 STATE TREASURER FOR CERTAIN REQUISITIONED FUNDS AND IMPOSING
13 DUTIES ON PERSONS AUTHORIZED BY LAW TO ISSUE REQUISITIONS FOR
14 THE PAYMENT OF MONEYS FROM THE STATE TREASURY; AND PRESCRIBING
15 THAT FEDERAL FUNDS RECEIVED BY THE COMMONWEALTH SHALL BE
16 DEPOSITED IN THE GENERAL FUND ACCOUNT WITH CERTAIN EXCEPTIONS."
17 INTEREST EARNED BY INVESTMENT OF MONEYS IN THIS FUND BY THE
18 TREASURY DEPARTMENT SHALL ALSO BE CREDITED BY THE TREASURY
19 DEPARTMENT TO THIS FUND. NO FUNDS MAY BE EXPENDED FROM THIS FUND
20 EXCEPT BY ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY.

21 SECTION 7. TOBACCO SETTLEMENT POLICY COUNCIL.

22 (A) ESTABLISHMENT.--A TOBACCO SETTLEMENT POLICY COUNCIL IS
23 HEREBY ESTABLISHED AND SHALL ADVISE THE GOVERNOR AND THE GENERAL
24 ASSEMBLY ON MATTERS OF POLICY RELATED TO THE DEVELOPMENT AND
25 IMPLEMENTATION OF PROGRAMS FOR THE EXPENDITURE OF MONEYS IN THE
26 TOBACCO SETTLEMENT FUND.

27 (B) MEMBERSHIP.--THE COUNCIL SHALL CONSIST OF THE FOLLOWING
28 MEMBERS:

29 (1) THE SECRETARY OF HEALTH.

30 (2) THE PHYSICIAN GENERAL.

1 (3) ONE MEMBER OF THE SENATE APPOINTED BY THE MAJORITY
2 LEADER OF THE SENATE.

3 (4) ONE MEMBER OF THE SENATE APPOINTED BY THE MINORITY
4 LEADER OF THE SENATE.

5 (5) ONE MEMBER OF THE HOUSE OF REPRESENTATIVES APPOINTED
6 BY THE MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

7 (6) ONE MEMBER OF THE HOUSE OF REPRESENTATIVES APPOINTED
8 BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

9 (7) THREE PUBLIC MEMBERS APPOINTED BY THE GOVERNOR.

10 (8) ONE REPRESENTATIVE OF HOSPITALS AND HEALTH SYSTEMS
11 APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF
12 REPRESENTATIVES.

13 (9) ONE REPRESENTATIVE OF THE MEDICAL COMMUNITY
14 APPOINTED BY THE MINORITY LEADER OF THE SENATE.

15 (10) ONE REPRESENTATIVE OF THE MEDICAL RESEARCH
16 COMMUNITY APPOINTED BY THE MAJORITY LEADER OF THE HOUSE OF
17 REPRESENTATIVES.

18 (11) ONE REPRESENTATIVE OF PRIVATE CHARITABLE
19 FOUNDATIONS APPOINTED BY THE MAJORITY LEADER OF THE SENATE.

20 (C) DEVELOPMENT OF STATEWIDE PLAN.--WITHIN SIX MONTHS OF THE
21 EFFECTIVE DATE OF THIS ACT, THE COUNCIL SHALL DEVELOP A DETAILED
22 PLAN FOR THE EXPENDITURE OF THE MONEYS IN THE FUND. THE COUNCIL
23 SHALL MAKE RECOMMENDATIONS ON LEGISLATION AND APPROPRIATION
24 AUTHORIZATIONS TO THE GOVERNOR AND THE GENERAL ASSEMBLY.
25 ANNUALLY, THE COUNCIL SHALL REVIEW EXPENDITURES FROM THE FUND
26 AND MAKE APPROPRIATE RECOMMENDATIONS TO THE GOVERNOR AND THE
27 GENERAL ASSEMBLY.

28 (D) ANNUAL REPORT TO GENERAL ASSEMBLY.--THE COUNCIL SHALL
29 SUBMIT AN ANNUAL REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE
30 SEPTEMBER 30 OF EACH YEAR SUMMARIZING AND EVALUATING THE

1 EXPENDITURE OF FUNDS UNDER THIS SECTION DURING THE PREVIOUS
2 STATE FISCAL YEAR.

3 (E) INCLUSION IN GOVERNOR'S BUDGET REQUEST.--THE GOVERNOR
4 SHALL INCLUDE THE RECOMMENDATIONS OF THE COUNCIL IN HIS ANNUAL
5 BUDGET REQUEST TO THE GENERAL ASSEMBLY.

6 SECTION 8. BAR ON APPROPRIATION.

7 NO FUNDS MAY BE DISPERSED FROM THIS FUND EXCEPT UPON
8 APPROPRIATIONS MADE IN ACCORDANCE WITH LAW.

9 Section 6 9. Effective date.

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10 This act shall take effect in 60 days.