

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, FARGO AND HABAY, FEBRUARY 9, 1999

SENATOR MOWERY, PUBLIC HEALTH AND WELFARE, IN SENATE, AS
AMENDED, MAY 16, 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.~~

1 REQUIRING CERTAIN TOBACCO PRODUCT MANUFACTURERS TO PLACE CERTAIN <—
2 MONEYS INTO AN ESCROW FUND; CONFERRING POWERS AND DUTIES UPON
3 THE ATTORNEY GENERAL AND THE DEPARTMENT OF REVENUE; AND
4 IMPOSING PENALTIES.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 ~~Section 1. Short title.~~ <—

8 ~~This act shall be known and may be cited as the Tobacco~~
9 ~~Settlement Agreement Act.~~

10 ~~Section 2. Declaration of policy.~~

11 ~~The General Assembly finds and declares as follows:~~

12 ~~(1) Cigarette smoking presents serious public health~~
13 ~~concerns to the Commonwealth and to the citizens of this~~

1 ~~Commonwealth. The Surgeon General has determined that smoking~~
2 ~~causes lung cancer, heart disease and other serious diseases~~
3 ~~and that there are hundreds of thousands of tobacco related~~
4 ~~deaths in the United States each year. These diseases most~~
5 ~~often do not appear until many years after the person begins~~
6 ~~smoking.~~

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

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

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

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

~~(i) To pay substantial sums to the Commonwealth,
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, partnership, committee, association, corporation or any other organization or group of persons.~~

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

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

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

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

~~(3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette described in paragraph (1). The term "cigarette" includes "roll your own," such as any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll your own" tobacco shall constitute one individual "cigarette."~~

~~"Council." The Tobacco Settlement Policy Council established in section 7.~~

~~"Fund." The Tobacco Settlement Fund established in section 6.~~

~~"Implementing legislation." Legislation enacted in accordance with the provisions of the Constitution of Pennsylvania authorizing the creation of programs and the authorization of expenditures from the Tobacco Settlement Fund. This term shall not include spending authorizations included in an appropriations act.~~

~~"Master Settlement Agreement." The settlement agreement and related documents entered into on November 23, 1998, by the Commonwealth and leading United States tobacco product manufacturers and approved by the court in Commonwealth v. Philip Morris, April Term 1997, No.2443 (C.P. Philadelphia County), on January 13, 1999.~~

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

~~"Released claims." Includes claims:~~

~~(1) for past conduct, acts or omissions, including any damages incurred in the future arising from such past conduct, acts or omissions, those claims directly or indirectly based on, arising out of or in any way related, in whole or in part, to the use, sale, distribution, manufacture, development, advertising, marketing or health~~

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

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

25 ~~"Releasing parties." Each settling state and any of its~~
26 ~~past, present and future agents, officials acting in their~~
27 ~~official capacities, legal representatives, agencies,~~
28 ~~departments, commissions and divisions. The term also means, to~~
29 ~~the full extent of the power of the signatories hereto to~~
30 ~~release past, present and future claims, the follow:~~

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

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

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

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

20 ~~"Tobacco product manufacturer."~~

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

23 ~~(i) manufactures cigarettes anywhere that such~~
24 ~~manufacturer intends to be sold in the United States,~~
25 ~~including cigarettes intended to be sold in the United~~
26 ~~States through an importer (except where such importer is~~
27 ~~an original participating manufacturer, as that term is~~
28 ~~defined in the Master Settlement Agreement, that will be~~
29 ~~responsible for the payments under the Master Settlement~~
30 ~~Agreement with respect to such cigarettes as a result of~~

~~the provisions of section II(mm) of the Master Settlement Agreement and that pays the taxes specified in section II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);~~

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

~~(iii) becomes a successor of an entity described in subparagraph (i) or (ii).~~

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

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

~~Section 4. Requirements.~~

~~(a) General rule. Any tobacco product manufacturer selling cigarettes to consumers within this Commonwealth whether directly or through a distributor, retailer or similar intermediary or intermediaries after the date of enactment of this act shall do one of the following:~~

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

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

~~(i) 1999 — \$.0094241 per unit sold after the date of enactment of this act.~~

~~(ii) 2000 — \$.0104712 per unit sold after the date of enactment of this act.~~

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

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

~~(v) For each of 2007 and each year thereafter — \$.0188482 per unit sold after the date of enactment of this act.~~

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

~~(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the Commonwealth or any releasing party located or residing in this Commonwealth. Funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under the judgment or settlement.~~

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

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

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

~~(1) Be required within 15 days after notice by the Attorney General to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the General Fund of the Commonwealth in~~

~~an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow.~~

~~(2) In the case of a knowing violation, be required within 15 days after notice by the Attorney General to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the General Fund of the Commonwealth in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow.~~

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

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

~~Section 5. Public inspection.~~

~~The Attorney General will deposit the Master Settlement Agreement for public inspection under 1 Pa. Code § 3.13(b) (relating to contents of bulletin) and the Department of Health shall post the Master Settlement Agreement for public inspection on the department's World Wide Web site.~~

~~Section 6. Establishment of Tobacco Settlement Fund.~~

~~The Tobacco Settlement Fund is hereby established in the~~

1 ~~State Treasury. All moneys made available to the Commonwealth~~
2 ~~after January 1, 1999, from the tobacco settlement agreement~~
3 ~~shall be credited to this fund and shall be subject to the~~
4 ~~provisions of the act of June 29, 1976 (P.L.469, No.117),~~
5 ~~entitled "An act relating to the fiscal affairs of the~~
6 ~~Commonwealth concerning duties of the Governor, the Secretary of~~
7 ~~Revenue and the Budget Secretary, with respect to the submission~~
8 ~~of and signing the budget for any fiscal year; and, after a~~
9 ~~budget is enacted, regulating the issuance of warrants by the~~
10 ~~State Treasurer for certain requisitioned funds and imposing~~
11 ~~duties on persons authorized by law to issue requisitions for~~
12 ~~the payment of moneys from the State Treasury; and prescribing~~
13 ~~that Federal funds received by the Commonwealth shall be~~
14 ~~deposited in the General Fund account with certain exceptions."~~
15 ~~Interest earned by investment of moneys in this fund by the~~
16 ~~Treasury Department shall also be credited by the Treasury~~
17 ~~Department to this fund. No funds may be expended from this fund~~
18 ~~except by annual appropriation by the General Assembly.~~

19 ~~Section 7. Tobacco Settlement Policy Council.~~

20 ~~(a) Establishment. A Tobacco Settlement Policy Council is~~
21 ~~hereby established and shall advise the Governor and the General~~
22 ~~Assembly on matters of policy related to the development and~~
23 ~~implementation of programs for the expenditure of moneys in the~~
24 ~~Tobacco Settlement Fund.~~

25 ~~(b) Membership. The council shall consist of the following~~
26 ~~members:~~

27 ~~(1) The Secretary of Health.~~

28 ~~(2) The Physician General.~~

29 ~~(3) One member of the Senate appointed by the Majority~~
30 ~~Leader of the Senate.~~

~~(4) One member of the Senate appointed by the Minority Leader of the Senate.~~

~~(5) One member of the House of Representatives appointed by the Majority Leader of the House of Representatives.~~

~~(6) One member of the House of Representatives appointed by the Minority Leader of the House of Representatives.~~

~~(7) Three public members appointed by the Governor.~~

~~(8) One representative of hospitals and health systems appointed by the Minority Leader of the House of Representatives.~~

~~(9) One representative of the medical community appointed by the Minority Leader of the Senate.~~

~~(10) One representative of the medical research community appointed by the Majority Leader of the House of Representatives.~~

~~(11) One representative of private charitable foundations appointed by the Majority Leader of the Senate.~~

~~(c) Development of Statewide plan. Within six months of the effective date of this act, the council shall develop a detailed plan for the expenditure of the moneys in the fund. The council shall make recommendations on legislation and appropriation authorizations to the Governor and the General Assembly. Annually, the council shall review expenditures from the fund and make appropriate recommendations to the Governor and the General Assembly.~~

~~(d) Annual report to General Assembly. The council shall submit an annual report to the General Assembly on or before September 30 of each year summarizing and evaluating the expenditure of funds under this section during the previous State fiscal year.~~

~~(c) Inclusion in Governor's budget request. The Governor shall include the recommendations of the council in his annual budget request to the General Assembly.~~

~~Section 8. Bar on appropriation.~~

~~No funds may be dispersed from this fund except upon appropriations made in accordance with law.~~

~~Section 9. Effective date.~~

~~This act shall take effect in 60 days.~~

SECTION 1. SHORT TITLE.

THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE TOBACCO SETTLEMENT AGREEMENT ACT.

SECTION 2. DECLARATION OF POLICY.

THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS:

(1) CIGARETTE SMOKING PRESENTS SERIOUS PUBLIC HEALTH CONCERNS TO THE COMMONWEALTH AND TO THE CITIZENS OF THIS COMMONWEALTH. THE SURGEON GENERAL HAS DETERMINED THAT SMOKING CAUSES LUNG CANCER, HEART DISEASE AND OTHER SERIOUS DISEASES, AND THAT THERE ARE HUNDREDS OF THOUSANDS OF TOBACCO-RELATED DEATHS IN THE UNITED STATES EACH YEAR. THESE DISEASES MOST OFTEN DO NOT APPEAR UNTIL MANY YEARS AFTER THE PERSON IN QUESTION BEGINS SMOKING.

(2) CIGARETTE SMOKING ALSO PRESENTS SERIOUS FINANCIAL CONCERNS FOR THE COMMONWEALTH. UNDER CERTAIN HEALTH CARE PROGRAMS, THE COMMONWEALTH MAY PROVIDE MEDICAL ASSISTANCE TO ELIGIBLE PERSONS FOR HEALTH CONDITIONS ASSOCIATED WITH CIGARETTE SMOKING, AND THOSE PERSONS MAY BE ELIGIBLE TO RECEIVE SUCH MEDICAL ASSISTANCE.

(3) UNDER THE HEALTH CARE PROGRAMS DESCRIBED IN PARAGRAPH (2), THE COMMONWEALTH PAYS MILLIONS OF DOLLARS EACH YEAR TO PROVIDE MEDICAL ASSISTANCE FOR THESE PERSONS FOR

1 HEALTH CONDITIONS ASSOCIATED WITH CIGARETTE SMOKING.

2 (4) FINANCIAL BURDENS IMPOSED ON THE COMMONWEALTH BY
3 CIGARETTE SMOKING SHOULD BE BORNE BY TOBACCO PRODUCT
4 MANUFACTURERS RATHER THAN BY THE COMMONWEALTH TO THE EXTENT
5 THAT SUCH MANUFACTURERS EITHER DETERMINE TO ENTER INTO A
6 SETTLEMENT WITH THE COMMONWEALTH OR ARE FOUND CULPABLE BY THE
7 COURTS.

8 (5) ON NOVEMBER 23, 1998, LEADING UNITED STATES TOBACCO
9 PRODUCT MANUFACTURERS ENTERED INTO A SETTLEMENT AGREEMENT,
10 ENTITLED THE "MASTER SETTLEMENT AGREEMENT," WITH THE
11 COMMONWEALTH. THE MASTER SETTLEMENT AGREEMENT OBLIGATES THESE
12 MANUFACTURERS, IN RETURN FOR A RELEASE OF PAST, PRESENT AND
13 CERTAIN FUTURE CLAIMS AGAINST THOSE MANUFACTURERS AS
14 DESCRIBED THEREIN, TO:

15 (I) PAY SUBSTANTIAL SUMS TO THE COMMONWEALTH, TIED
16 IN PART TO THOSE MANUFACTURERS' VOLUME OF SALES.

17 (II) FUND A NATIONAL FOUNDATION DEVOTED TO THE
18 INTERESTS OF PUBLIC HEALTH.

19 (III) MAKE SUBSTANTIAL CHANGES IN THE MANUFACTURERS'
20 ADVERTISING AND MARKETING PRACTICES AND CORPORATE
21 CULTURE, WITH THE INTENTION OF REDUCING UNDERAGE SMOKING.

22 (6) IT WOULD BE CONTRARY TO THE POLICY OF THE
23 COMMONWEALTH IF TOBACCO PRODUCT MANUFACTURERS WHO DECIDE NOT
24 TO ENTER INTO THE MASTER SETTLEMENT AGREEMENT OR SIMILAR
25 SETTLEMENT WERE ABLE TO USE A RESULTING COST ADVANTAGE TO
26 DERIVE LARGE, SHORT-TERM PROFITS IN THE YEARS BEFORE
27 LIABILITY MAY ARISE WITHOUT ENSURING THAT THE COMMONWEALTH
28 WILL HAVE A SOURCE OF RECOVERY FROM THESE MANUFACTURERS IF
29 THEY ARE FOUND TO HAVE ACTED CULPABLY. IT IS THUS IN THE
30 INTEREST OF THE COMMONWEALTH TO REQUIRE THAT THESE

1 MANUFACTURERS ESTABLISH A RESERVE FUND TO GUARANTEE A SOURCE
2 OF COMPENSATION AND TO PREVENT THESE MANUFACTURERS FROM
3 DERIVING LARGE, SHORT-TERM PROFITS AND THEN BECOMING JUDGMENT
4 PROOF BEFORE LIABILITY MAY ARISE.

5 SECTION 3. DEFINITIONS.

6 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
7 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION:

8 "ADJUSTED FOR INFLATION." INCREASED IN ACCORDANCE WITH THE
9 FORMULA FOR INFLATION ADJUSTMENT SET FORTH IN EXHIBIT C TO THE
10 MASTER SETTLEMENT AGREEMENT.

11 "AFFILIATE." A PERSON WHO, DIRECTLY OR INDIRECTLY, OWNS OR
12 CONTROLS, IS OWNED OR CONTROLLED BY, OR IS UNDER COMMON
13 OWNERSHIP OR CONTROL WITH, ANOTHER PERSON. FOR PURPOSES OF THIS
14 DEFINITION, THE TERMS "OWNS," "IS OWNED" AND "OWNERSHIP" MEAN
15 OWNERSHIP OF AN EQUITY INTEREST, OR THE EQUIVALENT THEREOF, OF
16 10% OR MORE.

17 "ALLOCABLE SHARE." AS THAT TERM IS DEFINED IN THE MASTER
18 SETTLEMENT AGREEMENT.

19 "CIGARETTE." ANY PRODUCT THAT CONTAINS NICOTINE, IS INTENDED
20 TO BE BURNED OR HEATED UNDER ORDINARY CONDITIONS OF USE, AND
21 CONSISTS OF OR CONTAINS ANY OF THE FOLLOWING:

22 (1) ANY ROLL OF TOBACCO WRAPPED IN PAPER OR IN ANY
23 SUBSTANCE NOT CONTAINING TOBACCO.

24 (2) TOBACCO, IN ANY FORM, THAT IS FUNCTIONAL IN THE
25 PRODUCT, WHICH, BECAUSE OF ITS APPEARANCE, THE TYPE OF
26 TOBACCO USED IN THE FILLER, OR ITS PACKAGING AND LABELING, IS
27 LIKELY TO BE OFFERED TO, OR PURCHASED BY, CONSUMERS AS A
28 CIGARETTE.

29 (3) ANY ROLL OF TOBACCO WRAPPED IN ANY SUBSTANCE
30 CONTAINING TOBACCO WHICH, BECAUSE OF ITS APPEARANCE, THE TYPE

1 OF TOBACCO USED IN THE FILLER, OR ITS PACKAGING AND LABELING,
2 IS LIKELY TO BE OFFERED TO, OR PURCHASED BY, CONSUMERS AS A
3 CIGARETTE DESCRIBED IN CLAUSE (1).

4 (4) ANY "ROLL-YOUR-OWN," WHICH MEANS ANY TOBACCO WHICH,
5 BECAUSE OF ITS APPEARANCE, TYPE, PACKAGING OR LABELING IS
6 SUITABLE FOR USE AND LIKELY TO BE OFFERED TO, OR PURCHASED
7 BY, CONSUMERS AS TOBACCO FOR MAKING CIGARETTES. FOR PURPOSES
8 OF THIS DEFINITION OF "CIGARETTE," 0.09 OUNCES OF "ROLL-YOUR-
9 OWN" TOBACCO SHALL CONSTITUTE ONE INDIVIDUAL "CIGARETTE."

10 "MASTER SETTLEMENT AGREEMENT." THE SETTLEMENT AGREEMENT AND
11 RELATED DOCUMENTS ENTERED INTO ON NOVEMBER 23, 1998, BY THE
12 COMMONWEALTH AND LEADING UNITED STATES TOBACCO PRODUCT
13 MANUFACTURERS IN THE ACTION ENTITLED COMMONWEALTH V. PHILIP
14 MORRIS, ET AL, PHILADELPHIA COUNTY, APRIL TERM, 1997, NO.2443,
15 JANUARY 13, 1999.

16 "PERSON." ANY INDIVIDUAL, UNINCORPORATED ASSOCIATION,
17 COMPANY, CORPORATION, LIMITED LIABILITY CORPORATION, JOINT STOCK
18 COMPANY, GROUP, COMMITTEE, AGENCY, SYNDICATE, TRUST OR TRUSTEE,
19 RECEIVER, FIDUCIARY, PARTNERSHIP OR CONSERVATOR. WHENEVER USED
20 IN ANY SECTION OF THIS ACT TO ESTABLISH OR IMPOSE PENALTIES, THE
21 WORD "PERSON" WHEN APPLIED TO A PARTNERSHIP, UNINCORPORATED
22 ASSOCIATION OR OTHER JOINT VENTURE, MEANS THE PARTNERS OR
23 MEMBERS THEREOF, AND WHEN APPLIED TO A CORPORATION, MEANS ALL
24 OFFICERS AND DIRECTORS THEREOF.

25 "QUALIFIED ESCROW FUND." AN ESCROW ARRANGEMENT WITH A
26 FEDERALLY CHARTERED OR STATE-CHARTERED FINANCIAL INSTITUTION
27 THAT HAS NO AFFILIATION WITH ANY TOBACCO PRODUCT MANUFACTURER
28 AND HAS ASSETS OF AT LEAST \$1,000,000,000 IN WHICH THE ESCROW
29 ARRANGEMENT:

30 (1) REQUIRES THAT THE FINANCIAL INSTITUTION HOLD THE

1 PRINCIPAL OF THE ESCROWED FUNDS FOR THE BENEFIT OF RELEASING
2 PARTIES; AND

3 (2) PROHIBITS THE TOBACCO PRODUCT MANUFACTURER PLACING
4 THE FUNDS INTO ESCROW FROM USING, ACCESSING OR DIRECTING THE
5 USE OF THE PRINCIPAL OF THE FUNDS EXCEPT AS CONSISTENT WITH
6 SECTION 4.

7 "RELEASED CLAIMS." AS THAT TERM IS DEFINED IN THE MASTER
8 SETTLEMENT AGREEMENT.

9 "RELEASING PARTIES." AS THAT TERM IS DEFINED IN THE MASTER
10 SETTLEMENT AGREEMENT.

11 "SELL" OR "SOLD." THE TERM INCLUDES SALES MADE DIRECTLY OR
12 THROUGH A DISTRIBUTOR, RETAILER OR SIMILAR INTERMEDIARY.

13 "TOBACCO PRODUCT MANUFACTURER."

14 (1) A PERSON THAT AFTER THE DATE OF ENACTMENT OF THIS
15 ACT DIRECTLY AND NOT EXCLUSIVELY THROUGH ANY AFFILIATE:

16 (I) MANUFACTURES CIGARETTES ANYWHERE THAT SUCH
17 MANUFACTURER INTENDS TO BE SOLD IN THE UNITED STATES,
18 INCLUDING CIGARETTES INTENDED TO BE SOLD IN THE UNITED
19 STATES THROUGH AN IMPORTER (EXCEPT WHERE THE IMPORTER IS
20 AN ORIGINAL PARTICIPATING MANUFACTURER, AS THAT TERM IS
21 DEFINED IN THE MASTER SETTLEMENT AGREEMENT, THAT WILL BE
22 RESPONSIBLE FOR THE PAYMENTS UNDER THE MASTER SETTLEMENT
23 AGREEMENT WITH RESPECT TO THE CIGARETTES AS A RESULT OF
24 THE PROVISIONS OF SUBSECTION II(MM) OF THE MASTER
25 SETTLEMENT AGREEMENT AND THAT PAYS THE TAXES SPECIFIED IN
26 SUBSECTION II(Z) OF THE MASTER SETTLEMENT AGREEMENT, AND
27 PROVIDED THAT THE MANUFACTURER OF THE CIGARETTES DOES NOT
28 MARKET OR ADVERTISE THE CIGARETTES IN THE UNITED STATES);

29 (II) IS THE FIRST PURCHASER ANYWHERE FOR RESALE IN
30 THE UNITED STATES OF CIGARETTES MANUFACTURED ANYWHERE

1 THAT THE MANUFACTURER DOES NOT INTEND TO BE SOLD IN THE
2 UNITED STATES; OR

3 (III) BECOMES A SUCCESSOR OF A PERSON DESCRIBED IN
4 CLAUSE (I) OR (II).

5 (2) THE TERM SHALL NOT INCLUDE AN AFFILIATE OF A TOBACCO
6 PRODUCT MANUFACTURER UNLESS THE AFFILIATE ITSELF FALLS UNDER
7 PARAGRAPH (1)(I), (II) OR (III).

8 "UNITS SOLD." THE NUMBER OF INDIVIDUAL CIGARETTES SOLD IN
9 THIS COMMONWEALTH BY THE APPLICABLE TOBACCO PRODUCT MANUFACTURER
10 DURING THE YEAR IN QUESTION, AS MEASURED BY TAXES COLLECTED BY
11 THE COMMONWEALTH ON PACKS, OR "ROLL-YOUR-OWN" TOBACCO
12 CONTAINERS, BEARING THE TAX STAMP OF THE COMMONWEALTH REQUIRED
13 UNDER SECTION 1215 OF THE ACT OF MARCH 4, 1971 (P.L.6, NO.2),
14 KNOWN AS THE TAX REFORM CODE OF 1971. THE DEPARTMENT OF REVENUE
15 SHALL PROMULGATE SUCH REGULATIONS AS ARE NECESSARY TO ASCERTAIN
16 THE AMOUNT OF STATE TAX PAID ON THE CIGARETTES OF SUCH TOBACCO
17 PRODUCT MANUFACTURER FOR EACH YEAR.

18 SECTION 4. REQUIREMENTS.

19 (A) GENERAL RULE.--ANY TOBACCO PRODUCT MANUFACTURER THAT
20 SELLS CIGARETTES TO CONSUMERS WITHIN THIS COMMONWEALTH AFTER THE
21 EFFECTIVE DATE OF THIS ACT SHALL DO ONE OF THE FOLLOWING:

22 (1) BECOME A PARTICIPATING MANUFACTURER AS DEFINED IN
23 THE MASTER SETTLEMENT AGREEMENT AND GENERALLY PERFORM ITS
24 FINANCIAL OBLIGATIONS UNDER THE MASTER SETTLEMENT AGREEMENT.

25 (2) PLACE INTO A QUALIFIED ESCROW FUND BY APRIL 15 OF
26 THE YEAR FOLLOWING THE YEAR IN QUESTION THE FOLLOWING
27 AMOUNTS, AS SUCH AMOUNTS ARE ADJUSTED FOR INFLATION:

28 (I) 2000 - \$.0104712 PER UNIT SOLD AFTER THE
29 EFFECTIVE DATE OF THIS ACT.

30 (II) FOR EACH OF 2001 AND 2002 - \$.0136125 PER UNIT

1 SOLD.

2 (III) FOR EACH OF 2003 THROUGH 2006 - \$.0167539 PER
3 UNIT SOLD.

4 (IV) FOR EACH OF 2007 AND EACH YEAR THEREAFTER -
5 \$.0188482 PER UNIT SOLD.

6 (B) FUNDS IN ESCROW.--A TOBACCO PRODUCT MANUFACTURER THAT
7 PLACES FUNDS INTO ESCROW UNDER SUBSECTION (A)(2) SHALL RECEIVE
8 THE INTEREST OR OTHER APPRECIATION ON SUCH FUNDS AS EARNED. THE
9 FUNDS THEMSELVES SHALL BE RELEASED FROM ESCROW ONLY UNDER THE
10 FOLLOWING CIRCUMSTANCES:

11 (1) TO PAY A JUDGMENT OR SETTLEMENT ON ANY RELEASED
12 CLAIM BROUGHT AGAINST SUCH TOBACCO PRODUCT MANUFACTURER BY
13 THE COMMONWEALTH OR ANY RELEASING PARTY LOCATED OR RESIDING
14 IN THIS COMMONWEALTH. FUNDS SHALL BE RELEASED FROM ESCROW
15 UNDER THIS PARAGRAPH IN THE ORDER IN WHICH THEY WERE PLACED
16 INTO ESCROW AND ONLY TO THE EXTENT AND AT THE TIME NECESSARY
17 TO MAKE PAYMENTS REQUIRED UNDER SUCH JUDGMENT OR SETTLEMENT.

18 (2) TO THE EXTENT THAT A TOBACCO PRODUCT MANUFACTURER
19 ESTABLISHES THAT THE AMOUNT IT WAS REQUIRED TO PLACE INTO
20 ESCROW IN A PARTICULAR YEAR WAS GREATER THAN THE
21 COMMONWEALTH'S ALLOCABLE SHARE OF THE TOTAL PAYMENTS THAT THE
22 MANUFACTURER WOULD HAVE BEEN REQUIRED TO MAKE IN THAT YEAR
23 UNDER THE MASTER SETTLEMENT AGREEMENT HAD IT BEEN A
24 PARTICIPATING MANUFACTURER, AS SUCH PAYMENTS ARE DETERMINED
25 PURSUANT TO SECTION IX(1)(2) OF THE MASTER SETTLEMENT
26 AGREEMENT AND BEFORE ANY OF THE ADJUSTMENTS OR OFFSETS
27 DESCRIBED IN SECTION IX(1)(3) OF THE MASTER SETTLEMENT
28 AGREEMENT OTHER THAN THE INFLATION ADJUSTMENT, THE EXCESS
29 SHALL BE RELEASED FROM ESCROW AND REVERT BACK TO SUCH TOBACCO
30 PRODUCT MANUFACTURER.

(3) TO THE EXTENT NOT RELEASED FROM ESCROW UNDER PARAGRAPHS (1) OR (2), FUNDS SHALL BE RELEASED FROM ESCROW AND REVERT BACK TO THE TOBACCO PRODUCT MANUFACTURER 25 YEARS AFTER THE DATE ON WHICH THEY WERE PLACED INTO ESCROW.

(C) CERTIFICATION.--EACH TOBACCO PRODUCT MANUFACTURER THAT DECIDES TO PLACE FUNDS INTO ESCROW UNDER SUBSECTION (A)(2) SHALL ANNUALLY CERTIFY TO THE ATTORNEY GENERAL THAT IT IS IN COMPLIANCE WITH SUBSECTION (A). THE COMMONWEALTH MAY BRING A CIVIL ACTION AGAINST ANY TOBACCO PRODUCT MANUFACTURER THAT FAILS TO PLACE INTO ESCROW THE FUNDS REQUIRED UNDER THIS SECTION. ANY TOBACCO PRODUCT MANUFACTURER THAT FAILS IN ANY YEAR TO PLACE INTO ESCROW THE FUNDS REQUIRED UNDER THIS SECTION SHALL:

(1) BE REQUIRED WITHIN 15 DAYS AFTER A FINDING OF A VIOLATION BY THE COURT TO PLACE SUCH FUNDS INTO ESCROW AS SHALL BRING IT INTO COMPLIANCE WITH THIS SECTION. THE COURT, UPON A FINDING OF A VIOLATION OF SUBSECTION (A)(2), (B) OR (C), MAY IMPOSE A CIVIL PENALTY TO BE PAID TO THE GENERAL FUND OF THE COMMONWEALTH IN AN AMOUNT NOT TO EXCEED 5% OF THE AMOUNT IMPROPERLY WITHHELD FROM ESCROW PER DAY OF THE VIOLATION, NOT TO EXCEED 100% OF THE ORIGINAL AMOUNT IMPROPERLY WITHHELD FROM ESCROW FOR THAT YEAR.

(2) IN THE CASE OF A KNOWING VIOLATION, BE REQUIRED TO PLACE THE FUNDS INTO ESCROW WITHIN 15 DAYS AFTER A FINDING OF A VIOLATION BY THE COURT TO BRING THE TOBACCO PRODUCT MANUFACTURER INTO COMPLIANCE WITH SUBSECTIONS (A)(2), (B) AND (C). THE COURT, UPON A FINDING OF A KNOWING VIOLATION OF SUBSECTION (A)(2), (B) OR (C), MAY IMPOSE A CIVIL PENALTY TO BE PAID TO THE GENERAL FUND OF THE COMMONWEALTH NOT TO EXCEED 15% OF THE AMOUNT IMPROPERLY WITHHELD FROM ESCROW PER DAY OF THE VIOLATION. THE TOTAL AMOUNT OF A CIVIL PENALTY UNDER THIS

1 PARAGRAPH SHALL NOT EXCEED 300% OF THE ORIGINAL AMOUNT
2 IMPROPERLY WITHHELD FROM ESCROW FOR THAT YEAR.

3 (3) IN THE CASE OF A SECOND KNOWING VIOLATION OF
4 SUBSECTION (A)(2), (B) OR (C), BE PROHIBITED FROM SELLING
5 CIGARETTES TO CONSUMERS WITHIN THIS COMMONWEALTH FOR A PERIOD
6 NOT TO EXCEED TWO YEARS. FOR PURPOSES OF THIS SECTION, EACH
7 YEAR THAT THE TOBACCO PRODUCT MANUFACTURER FAILS TO PLACE
8 FUNDS IN ESCROW AS REQUIRED BY SUBSECTIONS (A) AND (B) SHALL
9 CONSTITUTE A SEPARATE OFFENSE.

10 (D) FEES AND COSTS.--THE COMMONWEALTH SHALL RECEIVE
11 REIMBURSEMENT FROM THE TOBACCO PRODUCT MANUFACTURER FOR FEES AND
12 COSTS, INCLUDING ATTORNEY FEES, INCURRED IN THE ENFORCEMENT OF
13 THIS SECTION.

14 SECTION 5. PUBLIC INSPECTION.

15 THE ATTORNEY GENERAL WILL MAKE THE MASTER SETTLEMENT
16 AGREEMENT AVAILABLE FOR PUBLIC INSPECTION UNDER 1 PA. CODE §
17 3.13(B) (RELATING TO CONTENTS OF BULLETIN).

18 SECTION 6. EFFECTIVE DATE.

19 THIS ACT SHALL TAKE EFFECT IMMEDIATELY.