

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 TILGHMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, JUNE 12, 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 ~~ESTABLISHING A SPECIAL FUND AND ACCOUNT FOR MONEY RECEIVED BY~~ <—
6 ~~THE COMMONWEALTH FROM THE MASTER SETTLEMENT AGREEMENT WITH~~
7 ~~TOBACCO MANUFACTURERS; AND ESTABLISHING THE TOBACCO~~
8 ~~SETTLEMENT INVESTMENT BOARD.~~

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 ~~Section 1. Short title.~~ <—

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

14 ~~Section 2. Declaration of policy.~~

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

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

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

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

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

26 ~~(5) On January 13, 1999, leading United States tobacco~~
27 ~~product manufacturers entered into a settlement agreement,~~
28 ~~entitled the "Master Settlement Agreement," with the~~
29 ~~Commonwealth. The Master Settlement Agreement obligates these~~
30 ~~manufacturers, in return for a release of past, present and~~

1 ~~certain future claims against them as described therein, to~~
2 ~~do the following:~~

3 ~~(i) To pay substantial sums to the Commonwealth,~~
4 ~~tied in part to their volume of sales.~~

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

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

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

22 ~~Section 3. Definitions.~~

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

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

29 ~~"Affiliate." A person who directly or indirectly owns or~~
30 ~~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~~

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

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

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

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

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

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

~~"Tobacco product manufacturer."~~

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

~~(i) manufactures cigarettes anywhere that such
manufacturer intends to be sold in the United States,
including cigarettes intended to be sold in the United
States through an importer (except where such importer is
an original participating manufacturer, as that term is
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 ~~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~~

~~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~~

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~~

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.~~

~~(3) One member of the Senate appointed by the Majority 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~~

1 ~~PARAGRAPH (2), THE COMMONWEALTH PAYS MILLIONS OF DOLLARS EACH~~
2 ~~YEAR TO PROVIDE MEDICAL ASSISTANCE FOR THESE PERSONS FOR~~
3 ~~HEALTH CONDITIONS ASSOCIATED WITH CIGARETTE SMOKING.~~

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

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

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

19 ~~(II) FUND A NATIONAL FOUNDATION DEVOTED TO THE~~
20 ~~INTERESTS OF PUBLIC HEALTH.~~

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

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

1 ~~THEY ARE FOUND TO HAVE ACTED CULPABLY. IT IS THUS IN THE~~
2 ~~INTEREST OF THE COMMONWEALTH TO REQUIRE THAT THESE~~
3 ~~MANUFACTURERS ESTABLISH A RESERVE FUND TO GUARANTEE A SOURCE~~
4 ~~OF COMPENSATION AND TO PREVENT THESE MANUFACTURERS FROM~~
5 ~~DERIVING LARGE, SHORT TERM PROFITS AND THEN BECOMING JUDGMENT~~
6 ~~PROOF BEFORE LIABILITY MAY ARISE.~~

7 ~~SECTION 3. DEFINITIONS.~~

8 ~~THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL~~
9 ~~HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION:~~

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

13 ~~"AFFILIATE." A PERSON WHO, DIRECTLY OR INDIRECTLY, OWNS OR~~
14 ~~CONTROLS, IS OWNED OR CONTROLLED BY, OR IS UNDER COMMON~~
15 ~~OWNERSHIP OR CONTROL WITH, ANOTHER PERSON. FOR PURPOSES OF THIS~~
16 ~~DEFINITION, THE TERMS "OWNS," "IS OWNED" AND "OWNERSHIP" MEAN~~
17 ~~OWNERSHIP OF AN EQUITY INTEREST, OR THE EQUIVALENT THEREOF, OF~~
18 ~~10% OR MORE.~~

19 ~~"ALLOCABLE SHARE." AS THAT TERM IS DEFINED IN THE MASTER~~
20 ~~SETTLEMENT AGREEMENT.~~

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

24 ~~(1) ANY ROLL OF TOBACCO WRAPPED IN PAPER OR IN ANY~~
25 ~~SUBSTANCE NOT CONTAINING TOBACCO.~~

26 ~~(2) TOBACCO, IN ANY FORM, THAT IS FUNCTIONAL IN THE~~
27 ~~PRODUCT, WHICH, BECAUSE OF ITS APPEARANCE, THE TYPE OF~~
28 ~~TOBACCO USED IN THE FILLER, OR ITS PACKAGING AND LABELING, IS~~
29 ~~LIKELY TO BE OFFERED TO, OR PURCHASED BY, CONSUMERS AS A~~
30 ~~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 CLAUSE (1).~~

~~(4) ANY "ROLL YOUR OWN," WHICH MEANS 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."~~

~~"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 IN THE ACTION ENTITLED COMMONWEALTH V. PHILIP MORRIS, ET AL, PHILADELPHIA COUNTY, APRIL TERM, 1997, NO.2443, JANUARY 13, 1999.~~

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

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

1 ~~ARRANGEMENT:~~

2 ~~(1) REQUIRES THAT THE FINANCIAL INSTITUTION HOLD THE~~
3 ~~PRINCIPAL OF THE ESCROWED FUNDS FOR THE BENEFIT OF RELEASING~~
4 ~~PARTIES; AND~~

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

9 ~~"RELEASED CLAIMS." AS THAT TERM IS DEFINED IN THE MASTER~~
10 ~~SETTLEMENT AGREEMENT.~~

11 ~~"RELEASING PARTIES." AS THAT TERM IS DEFINED IN THE MASTER~~
12 ~~SETTLEMENT AGREEMENT.~~

13 ~~"SELL" OR "SOLD." THE TERM INCLUDES SALES MADE DIRECTLY OR~~
14 ~~THROUGH A DISTRIBUTOR, RETAILER OR SIMILAR INTERMEDIARY.~~

15 ~~"TOBACCO PRODUCT MANUFACTURER."~~

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

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

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

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

~~SECTION 4. REQUIREMENTS.~~

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

~~(1) BECOME A PARTICIPATING MANUFACTURER AS DEFINED IN
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, AS SUCH AMOUNTS ARE ADJUSTED FOR INFLATION:~~

~~(I) 2000 \$.0104712 PER UNIT SOLD AFTER THE~~

~~EFFECTIVE DATE OF THIS ACT.~~

~~(II) FOR EACH OF 2001 AND 2002 — \$.0136125 PER UNIT
SOLD.~~

~~(III) FOR EACH OF 2003 THROUGH 2006 — \$.0167539 PER
UNIT SOLD.~~

~~(IV) FOR EACH OF 2007 AND EACH YEAR THEREAFTER —
\$.0188482 PER UNIT SOLD.~~

~~(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 THEMSELVES 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 SUCH 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 HAD IT BEEN A
PARTICIPATING MANUFACTURER, AS SUCH PAYMENTS ARE DETERMINED
PURSUANT TO SECTION IX(1)(2) OF THE MASTER SETTLEMENT
AGREEMENT AND BEFORE ANY OF THE ADJUSTMENTS OR OFFSETS
DESCRIBED IN SECTION IX(1)(3) OF THE MASTER SETTLEMENT
AGREEMENT OTHER THAN THE INFLATION ADJUSTMENT, THE EXCESS~~

1 ~~SHALL BE RELEASED FROM ESCROW AND REVERT BACK TO SUCH TOBACCO~~
2 ~~PRODUCT MANUFACTURER.~~

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

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

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

24 ~~(2) IN THE CASE OF A KNOWING VIOLATION, BE REQUIRED TO~~
25 ~~PLACE THE FUNDS INTO ESCROW WITHIN 15 DAYS AFTER A FINDING OF~~
26 ~~A VIOLATION BY THE COURT TO BRING THE TOBACCO PRODUCT~~
27 ~~MANUFACTURER INTO COMPLIANCE WITH SUBSECTIONS (A)(2), (B) AND~~
28 ~~(C). THE COURT, UPON A FINDING OF A KNOWING VIOLATION OF~~
29 ~~SUBSECTION (A)(2), (B) OR (C), MAY IMPOSE A CIVIL PENALTY TO~~
30 ~~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 PARAGRAPH SHALL NOT EXCEED 300% OF THE ORIGINAL AMOUNT IMPROPERLY WITHHELD FROM ESCROW FOR THAT YEAR.~~

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

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

~~SECTION 5. PUBLIC INSPECTION.~~

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

~~SECTION 6. EFFECTIVE DATE.~~

~~THIS ACT SHALL TAKE EFFECT IMMEDIATELY.~~

SECTION 1. SHORT TITLE.

THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE PENNSYLVANIA HEALTH INVESTMENT ACT.

SECTION 2. 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:

"ACCOUNT." THE TOBACCO ENDOWMENT ACCOUNT ESTABLISHED IN SECTION 3(B).

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1 "BOARD." THE TOBACCO SETTLEMENT INVESTMENT BOARD ESTABLISHED
2 IN SECTION 4(A).

3 "FUND." THE TOBACCO SETTLEMENT FUND ESTABLISHED IN SECTION
4 3(A).

5 "JURISDICTIONAL PAYMENT." A PAYMENT RECEIVED BY THE
6 COMMONWEALTH RESULTING FROM A COURT RETAINING JURISDICTION OVER
7 THE ESCROW AGREEMENT PURSUANT TO SECTION IX(B) OF THE MASTER
8 SETTLEMENT AGREEMENT.

9 "MASTER SETTLEMENT AGREEMENT." THE SETTLEMENT AGREEMENT AND
10 RELATED DOCUMENTS ENTERED INTO ON NOVEMBER 23, 1998, BY THE
11 COMMONWEALTH AND LEADING UNITED STATES TOBACCO PRODUCT
12 MANUFACTURERS APPROVED BY THE COURT OF COMMON PLEAS,
13 PHILADELPHIA COUNTY, ON JANUARY 13, 1999.

14 "STRATEGIC CONTRIBUTION PAYMENT." A PAYMENT RECEIVED BY THE
15 COMMONWEALTH PURSUANT TO SECTION IX(C)(2) OF THE MASTER
16 SETTLEMENT AGREEMENT.

17 "TOBACCO ENDOWMENT ACCOUNT." THE TOBACCO ENDOWMENT ACCOUNT
18 ESTABLISHED IN SECTION 3(B).

19 "TOBACCO SETTLEMENT FUND." THE TOBACCO SETTLEMENT FUND
20 ESTABLISHED IN SECTION 3(A).

21 SECTION 3. ESTABLISHMENT OF SPECIAL FUND AND ACCOUNT.

22 (A) TOBACCO SETTLEMENT FUND.--THERE IS HEREBY ESTABLISHED A
23 SPECIAL FUND KNOWN AS THE TOBACCO SETTLEMENT FUND. EXCEPT AS
24 PROVIDED IN SUBSECTION (B), ALL PAYMENTS RECEIVED BY THE
25 COMMONWEALTH PURSUANT TO THE MASTER SETTLEMENT AGREEMENT SHALL
26 BE DEPOSITED BY THE TREASURY DEPARTMENT IN THE FUND. EARNINGS
27 DERIVED FROM INVESTMENT OF THE MONEY IN THE FUND SHALL BE
28 CREDITED BY THE TREASURY DEPARTMENT TO THE TOBACCO ENDOWMENT
29 ACCOUNT.

30 (B) TOBACCO ENDOWMENT ACCOUNT.--THERE IS HEREBY ESTABLISHED

1 WITHIN THE FUND THE TOBACCO ENDOWMENT ACCOUNT. THE FOLLOWING
2 AMOUNTS SHALL BE DEPOSITED BY THE TREASURY DEPARTMENT INTO THE
3 ACCOUNT:

4 (1) THE JURISDICTIONAL PAYMENT RECEIVED BY THE
5 COMMONWEALTH PURSUANT TO THE MASTER SETTLEMENT AGREEMENT.

6 (2) THE STRATEGIC CONTRIBUTION PAYMENTS RECEIVED BY THE
7 COMMONWEALTH PURSUANT TO THE MASTER SETTLEMENT AGREEMENT.

8 (3) TEN PERCENT OF ANY OTHER PAYMENT RECEIVED BY THE
9 COMMONWEALTH PURSUANT TO THE MASTER SETTLEMENT AGREEMENT.

10 (4) EARNINGS DERIVED FROM THE INVESTMENT OF THE MONEY IN
11 THE FUND.

12 (5) EARNINGS DERIVED FROM THE INVESTMENT OF THE MONEY IN
13 THE ACCOUNT.

14 (6) MONEY FROM AN APPROPRIATION PURSUANT TO SECTION 5
15 WHICH LAPSES.

16 (C) BORROWING.--THE GENERAL FUND MAY TEMPORARILY BORROW
17 MONEY FROM THE FUND IN ACCORDANCE WITH THE ACT OF AUGUST 22,
18 1961 (P.L.1049, NO.479), ENTITLED "AN ACT AUTHORIZING THE STATE
19 TREASURER UNDER CERTAIN CONDITIONS TO TRANSFER SUMS OF MONEY
20 BETWEEN THE GENERAL FUND AND CERTAIN FUNDS AND SUBSEQUENT
21 TRANSFERS OF EQUAL SUMS BETWEEN SUCH FUNDS, AND MAKING
22 APPROPRIATIONS NECESSARY TO EFFECT SUCH TRANSFERS."

23 SECTION 4. INVESTMENT OF FUND AND ACCOUNT.

24 (A) TOBACCO SETTLEMENT INVESTMENT BOARD.--THERE IS HEREBY
25 ESTABLISHED THE TOBACCO SETTLEMENT INVESTMENT BOARD, CONSISTING
26 OF 11 MEMBERS AS FOLLOWS: THE GOVERNOR OR A DESIGNEE; THE
27 SECRETARY OF THE BUDGET; THE STATE TREASURER OR A DESIGNEE; ONE
28 MEMBER APPOINTED BY THE PRESIDENT PRO TEMPORE OF THE SENATE AND
29 ONE MEMBER APPOINTED BY THE MINORITY LEADER OF THE SENATE; ONE
30 MEMBER APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

1 AND ONE MEMBER APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF
2 REPRESENTATIVES; THREE MEMBERS APPOINTED BY THE GOVERNOR; AND
3 ONE MEMBER APPOINTED BY THE STATE TREASURER. LEGISLATIVE
4 APPOINTMENTS SHALL SERVE AT THE PLEASURE OF THE APPOINTING
5 AUTHORITY. OTHER APPOINTED MEMBERS SHALL SERVE FOR A TERM OF
6 FOUR YEARS AND UNTIL A SUCCESSOR IS APPOINTED. MEMBERS OF THE
7 BOARD SHALL SERVE WITHOUT COMPENSATION, BUT SHALL BE REIMBURSED
8 FOR ACTUAL AND REASONABLE EXPENSES INCURRED IN THE PERFORMANCE
9 OF THEIR OFFICIAL DUTIES. THE GOVERNOR SHALL SELECT ONE MEMBER
10 AS CHAIRPERSON, AND THE MEMBERS OF THE BOARD SHALL SELECT ONE
11 MEMBER AS SECRETARY.

12 (B) CONTROL AND MANAGEMENT.--NOTWITHSTANDING ANY OTHER
13 PROVISION OF LAW, THE BOARD SHALL HAVE EXCLUSIVE CONTROL AND
14 AUTHORITY TO MANAGE AND INVEST MONEY IN THE FUND AND THE ACCOUNT
15 IN ACCORDANCE WITH THIS SECTION, SUBJECT, HOWEVER, TO THE
16 EXERCISE OF THAT DEGREE OF JUDGMENT, SKILL AND CARE UNDER THE
17 PREVAILING CIRCUMSTANCES THAT PERSONS OF PRUDENCE, DISCRETION
18 AND INTELLIGENCE, WHO ARE FAMILIAR WITH INVESTMENT MATTERS,
19 EXERCISE IN THE MANAGEMENT OF THEIR OWN AFFAIRS, CONSIDERING THE
20 PROBABLE INCOME TO BE DERIVED FROM THE INVESTMENTS AND THE
21 PROBABLE SAFETY OF THEIR CAPITAL. THE BOARD MAY HOLD, PURCHASE,
22 SELL, LEND, ASSIGN, TRANSFER OR DISPOSE OF INVESTMENTS IN WHICH
23 MONEY IN THE FUND OR THE ACCOUNT HAS BEEN INVESTED AND OF THE
24 PROCEEDS OF THE INVESTMENTS, INCLUDING ANY DIRECTED COMMISSIONS
25 THAT HAVE ACCRUED TO THE BENEFIT OF THE FUND OR THE ACCOUNT FROM
26 THE INVESTMENTS, AND OF MONEY BELONGING TO THE FUND OR THE
27 ACCOUNT SUBJECT TO THE STANDARD OF PRUDENCE IN THIS SECTION. THE
28 BOARD MAY EMPLOY INVESTMENT ADVISORS, FUND MANAGERS AND STAFF AS
29 IS NECESSARY.

30 (C) FIDUCIARY STATUS OF BOARD.--THE MEMBERS OF THE BOARD AND

1 THEIR EMPLOYEES AND AGENTS SHALL STAND IN A FIDUCIARY
2 RELATIONSHIP TO THE COMMONWEALTH AND ITS CITIZENS REGARDING THE
3 INVESTMENTS AND DISBURSEMENTS OF THE MONEY OF THE FUND AND THE
4 ACCOUNT AND SHALL NOT PROFIT, EITHER DIRECTLY OR INDIRECTLY,
5 WITH RESPECT THERETO.

6 (D) CUSTODIAN.--THE STATE TREASURER SHALL BE THE CUSTODIAN
7 OF THE FUND AND THE ACCOUNT. ALL INVESTMENT DRAWS FROM THE FUND
8 OR THE ACCOUNT SHALL BE MADE BY THE STATE TREASURER IN
9 ACCORDANCE WITH REQUISITIONS SIGNED BY THE SECRETARY OF THE
10 BOARD AND RATIFIED BY RESOLUTION OF THE BOARD.

11 (E) AUTHORIZED INVESTMENT VEHICLES.--THE BOARD MAY MAKE AN
12 INVESTMENT THAT MEETS THE STANDARD OF PRUDENCE SET FORTH IN
13 SUBSECTION (B) BY BECOMING A LIMITED PARTNER IN A PARTNERSHIP
14 THAT WILL HOLD THE INVESTMENT; OR BY ACQUIRING SHARES OR UNITS
15 OF PARTICIPATION OR OTHERWISE PARTICIPATING BENEFICIALLY IN A
16 BANK COLLECTIVE TRUST OR THE SEPARATE ACCOUNTS OF AN INSURANCE
17 COMPANY AUTHORIZED TO DO BUSINESS IN THIS COMMONWEALTH; OR BY
18 ACQUIRING STOCKS OR SHARES OR UNITS OF PARTICIPATION OR
19 OTHERWISE PARTICIPATING BENEFICIALLY IN A CORPORATE FUND OR
20 TRUST ORGANIZED OR CREATED AND EXISTING UNDER THE LAWS OF THE
21 UNITED STATES OR OF ANY STATE, DISTRICT OR TERRITORY THEREOF, IF
22 THAT CORPORATE FUND OR TRUST IS MAINTAINED FOR AND CONSISTS OF
23 ASSETS OF EMPLOYEES' BENEFIT TRUSTS, INCLUDING GOVERNMENTAL
24 PLANS AS DEFINED IN SECTION 414(D) OF THE INTERNAL REVENUE CODE
25 OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 414(D)), OR WHICH MEET
26 THE REQUIREMENTS FOR QUALIFICATION UNDER SECTION 401 OF THE
27 INTERNAL REVENUE CODE OF 1986 (26 U.S.C. § 401). THE LIABILITY
28 OF THE FUND OR THE ACCOUNT SHALL BE LIMITED TO THE AMOUNT OF AN
29 INVESTMENT UNDER THIS SUBSECTION.

30 (F) LEGISLATIVE DECLARATION.--THE GENERAL ASSEMBLY FINDS AND

1 DECLARES THAT AUTHORIZED INVESTMENTS OF THE FUND OR THE ACCOUNT
2 MADE UNDER THIS SECTION, WHEREBY THE BOARD BECOMES A JOINT
3 OWNER, LIMITED PARTNER OR STOCKHOLDER IN A COMPANY, CORPORATION,
4 LIMITED PARTNERSHIP OR ASSOCIATION, ARE OUTSIDE THE SCOPE OF THE
5 ORIGINAL INTENT OF, AND DO NOT VIOLATE, THE PROHIBITION SET
6 FORTH IN SECTION 8 OF ARTICLE VIII OF THE CONSTITUTION OF
7 PENNSYLVANIA.

8 SECTION 5. USE OF TOBACCO SETTLEMENT FUND.

9 THE GOVERNOR SHALL INCLUDE A SPENDING PLAN FOR THE FUND IN
10 THE ANNUAL BUDGET PROPOSAL. THE GENERAL ASSEMBLY SHALL
11 APPROPRIATE THE FUND FOR HEALTH-RELATED PURPOSES.

12 SECTION 6. USE OF TOBACCO ENDOWMENT ACCOUNT.

13 WHENEVER THE GOVERNOR DETERMINES THAT MONEY FROM THE TOBACCO
14 ENDOWMENT ACCOUNT IS NECESSARY TO MEET THE EXTRAORDINARY OR
15 EMERGENCY HEALTH CARE NEEDS OF THE CITIZENS OF THIS
16 COMMONWEALTH, THE GOVERNOR SHALL PRESENT A DETAILED SPENDING
17 PROPOSAL WITH A REQUEST FOR AN APPROPRIATION AND ANY NECESSARY
18 LEGISLATION TO THE CHAIRMAN OF THE APPROPRIATIONS COMMITTEE OF
19 THE SENATE AND THE CHAIRMAN OF THE APPROPRIATIONS COMMITTEE OF
20 THE HOUSE OF REPRESENTATIVES. THE GENERAL ASSEMBLY MAY, THROUGH
21 APPROVAL OF A SEPARATE APPROPRIATION BILL BY A VOTE OF TWO-
22 THIRDS OF THE MEMBERS ELECTED TO THE SENATE AND TO THE HOUSE OF
23 REPRESENTATIVES, APPROPRIATE MONEY FROM THE TOBACCO ENDOWMENT
24 ACCOUNT TO MEET THE NEEDS IDENTIFIED IN THE GOVERNOR'S REQUEST.
25 ANY MONEY APPROPRIATED UNDER THIS SECTION THAT LAPSES SHALL BE
26 RETURNED TO THE TOBACCO ENDOWMENT ACCOUNT.

27 SECTION 7. ANNUAL REPORT.

28 BY OCTOBER 1 OF EACH YEAR, THE BOARD SHALL SUBMIT A REPORT TO
29 THE GOVERNOR AND THE GENERAL ASSEMBLY. THE REPORT SHALL PROVIDE
30 AN ANALYSIS OF THE STATUS OF THE CURRENT INVESTMENTS AND

1 TRANSACTIONS MADE OVER THE LAST FISCAL YEAR FOR THE FUND AND THE
2 ACCOUNT AND SHALL INCLUDE, AT A MINIMUM:

3 (1) A LISTING OF INDIVIDUAL SECURITIES THAT EXCEED ONE-
4 YEAR DURATION EITHER PURCHASED OR SOLD DURING THE FISCAL
5 YEAR;

6 (2) A LISTING OF INDIVIDUAL SECURITIES HELD AT THE END
7 OF THE FISCAL YEAR; AND

8 (3) THE REALIZED AND UNREALIZED GAINS OR LOSSES
9 RESULTING FROM APPRECIATION OR DEPRECIATION OF SECURITIES
10 OWNED AT ANY TIME DURING THE FISCAL YEAR.

11 SECTION 8. EFFECTIVE DATE.

12 THIS ACT SHALL TAKE EFFECT IMMEDIATELY.