

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1149 Session of  
2004

INTRODUCED BY RAFFERTY, BRIGHTBILL, PIPPY, TARTAGLIONE, LEMMOND,  
COSTA, BOSCOLA, ERICKSON, PILEGGI, SCHWARTZ, TOMLINSON,  
THOMPSON, MOWERY, O'PAKE, CORMAN AND PICCOLA, JUNE 9, 2004

REFERRED TO FINANCE, JUNE 9, 2004

AN ACT

1 Amending the act of June 22, 2000 (P.L.394, No.54), entitled "An  
2 act requiring certain tobacco product manufacturers to place  
3 certain moneys into an escrow fund; conferring powers and  
4 duties upon the Attorney General and the Department of  
5 Revenue; and imposing penalties," further providing for  
6 requirements.

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

9 Section 1. Section 4(b) of the act of June 22, 2000  
10 (P.L.394, No.54), known as the Tobacco Settlement Agreement Act,  
11 is amended to read:

12 Section 4. Requirements.

13 \* \* \*

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

19 (1) To pay a judgment or settlement on any released

1 claim brought against such tobacco product manufacturer by  
2 the Commonwealth or any releasing party located or residing  
3 in this Commonwealth. Funds shall be released from escrow  
4 under this paragraph in the order in which they were placed  
5 into escrow and only to the extent and at the time necessary  
6 to make payments required under such judgment or settlement.

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

20 (2.1) To the extent that a tobacco product manufacturer  
21 establishes that the amount it was required to place into  
22 escrow on account of units sold in this Commonwealth in a  
23 particular year was greater than the Master Settlement  
24 Agreement payments, as determined pursuant to section IX(i)  
25 of that agreement including after final determination of all  
26 adjustments, that such manufacturer would have been required  
27 to make on account of such units sold had it been a  
28 participating manufacturer, the excess shall be released from  
29 escrow and shall revert back to such tobacco product  
30 manufacturer. The provisions of this paragraph are

1     nonseverable. If any provision of this paragraph or its  
2     application to any person or circumstance is held invalid,  
3     the remaining provisions or applications of this paragraph  
4     are void.

5           (2.2) To the extent that a tobacco product manufacturer  
6     establishes that the amount it was required to place into  
7     escrow in a particular year was greater than the  
8     Commonwealth's allocable share of the total payments that the  
9     manufacturer would have been required to make in that year  
10    under the Master Settlement Agreement had it been a  
11    participating manufacturer, as such payments are determined  
12    pursuant to section IX(i)(2) of the Master Settlement  
13    Agreement and before any of the adjustments or offsets  
14    described in section IX(i)(3) of the Master Settlement  
15    Agreement other than the inflation adjustment, the excess  
16    shall be released from escrow and revert back to such tobacco  
17    product manufacturer.

18           (3) To the extent not released from escrow under  
19    [paragraph (1) or (2)] this subsection, funds shall be  
20    released from escrow and revert back to the tobacco product  
21    manufacturer 25 years after the date on which they were  
22    placed into escrow.

23    \* \* \*

24    Section 2. If section 4(b)(2.1) of the act or its  
25    application to any person or circumstance is held invalid by a  
26    court of competent jurisdiction and if the decision has become  
27    final either because of expiration of a period for appellate  
28    review or because of a decision of a court of last resort, the  
29    Attorney General shall transmit to the Legislative Reference  
30    Bureau notice of the holding and its finality for publication in

1 the Pennsylvania Bulletin.

2 Section 3. This act shall take effect as follows:

3 (1) The addition of section 4(b)(2.2) of the act shall  
4 take effect upon publication of the notice under section 2 of  
5 this act.

6 (2) The remainder of this act shall take effect  
7 immediately.