

# HOUSE BILL No. 5222

November 4, 2003, Introduced by Reps. O'Neil, Farrah, Minore, Zelenko, Nofs and Meyer and referred to the Committee on Tax Policy.

A bill to amend 1999 PA 244, entitled

"An act to require tobacco product manufacturers to place funds in escrow for medical expenses incurred by the state due to tobacco related illnesses; to establish a formula for determining the amount of the escrow; to establish the conditions for release of funds from escrow; to prescribe powers and duties of the attorney general; and to provide for civil penalties for violation of this act,"

by amending section 2 (MCL 445.2052).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 2. (1) Any tobacco product manufacturer selling  
2 cigarettes to consumers within the state (whether directly or  
3 through a distributor, retailer, or similar intermediary or  
4 intermediaries) after the date of enactment of this act shall do  
5 1 of the following:

6           (a) Become a participating manufacturer and generally perform  
7 its financial obligations under the master settlement agreement.

8           (b) Place into a qualified escrow fund by April 15 of the

1 year following the year in question the following amounts (as  
2 such amounts are adjusted for inflation):

3 (i) 1999: \$.0094241 per unit sold after the date of  
4 enactment of this act.

5 (ii) 2000: \$.0104712 per unit sold.

6 (iii) For each of 2001 and 2002: \$.0136125 per unit sold.

7 (iv) For each of 2003 through 2006: \$.0167539 per unit  
8 sold.

9 (v) For each of 2007 and each year thereafter: \$.0188482 per  
10 unit sold.

11 (2) A tobacco product manufacturer that places funds into  
12 escrow pursuant to subsection (1)(b) shall receive the interest  
13 or other appreciation on the funds as earned. The funds  
14 themselves shall be released from escrow only under 1 or more of  
15 the following circumstances:

16 (a) To pay a judgment or settlement on any released claim  
17 brought against the tobacco product manufacturer by the state or  
18 any releasing party located or residing in the state. Funds  
19 shall be released from escrow under this subdivision in the order  
20 in which they were placed into escrow and only to the extent and  
21 at the time necessary to make payments required under such  
22 judgment or settlement.

23 (b) To the extent that a tobacco product manufacturer  
24 establishes that the amount it was required to place into escrow  
25 **on account of units sold in the state** in a particular year was  
26 greater than the ~~state's allocable share of the total payments~~  
27 ~~that such manufacturer would have been required to make in that~~

1 ~~year under the master settlement agreement (as determined~~  
2 ~~pursuant to section IX(i)(2) of the master settlement agreement,~~  
3 ~~and before any of the adjustments or offsets described in section~~  
4 ~~IX(i)(3) of the master settlement agreement other than the~~  
5 ~~inflation adjustment)~~ **master settlement agreement payments, as**  
6 **determined pursuant to section IX(i) of that agreement including**  
7 **after final determination of all adjustments, that such**  
8 **manufacturer would have been required to make on account of such**  
9 **units sold** had it been a participating manufacturer, the excess  
10 shall be released from escrow and revert back to such tobacco  
11 product manufacturer.

12 (c) To the extent not released from escrow under subdivision  
13 (a) or (b), funds shall be released from escrow and revert back  
14 to such tobacco product manufacturer 25 years after the date on  
15 which they were placed into escrow.

16 (d) **If a court of competent jurisdiction determines that**  
17 **subdivision (b) as amended by the amendatory act that added this**  
18 **subdivision is unconstitutional, subdivision (b) does not apply.**

19 (3) Each tobacco product manufacturer that elects to place  
20 funds into escrow pursuant to subsection (1)(b) shall annually  
21 certify to the department of treasury that it is in compliance  
22 with this section. The attorney general may bring a civil action  
23 on behalf of the state against any tobacco product manufacturer  
24 that fails to place into escrow the funds required under this  
25 section. Any tobacco product manufacturer that fails in any year  
26 to place into escrow the funds required under this section shall  
27 be subject to all of the following that are applicable:

1 (a) Shall be required within 15 days to place sufficient  
2 funds into escrow to bring it into compliance with this section.  
3 The court, upon a finding of a violation of this subsection, may  
4 impose a civil penalty to be paid to the general fund of the  
5 state in an amount not to exceed 5% of the amount improperly  
6 withheld from escrow per day of the violation and in a total  
7 amount not to exceed 100% of the original amount improperly  
8 withheld from escrow.

9 (b) In the case of a knowing violation, shall be required  
10 within 15 days to place sufficient funds into escrow to bring it  
11 into compliance with this section. The court, upon a finding of  
12 a knowing violation of this subsection, may impose a civil  
13 penalty to be paid to the general fund of this state in an amount  
14 not to exceed 15% of the amount improperly withheld from escrow  
15 per day of the violation and in a total amount not to exceed 300%  
16 of the original amount improperly withheld from escrow.

17 (c) In the case of a second knowing violation, shall be  
18 prohibited from selling cigarettes to consumers within the state  
19 (whether directly or through a distributor, retailer, or similar  
20 intermediary) for a period not to exceed 2 years.

21 (4) For purposes of subsection (3), each failure to make an  
22 annual deposit required under subsection (1)(b) shall constitute  
23 a separate violation.

24 (5) **If, following a court determination described in**  
25 **subsection(2)(d), a court of competent jurisdiction determines**  
26 **that subsection (2) without subsection (2)(b) is**  
27 **unconstitutional, then this subsection applies. A tobacco**

1 product manufacturer that places funds into escrow pursuant to  
2 subsection (1)(b) shall receive the interest or other  
3 appreciation on the funds as earned. The funds themselves shall  
4 be released from escrow only under 1 or more of the following  
5 circumstances:

6 (a) To pay a judgment or settlement on any released claim  
7 brought against the tobacco product manufacturer by the state or  
8 any releasing party located or residing in the state. Funds  
9 shall be released from escrow under this subdivision in the order  
10 in which they were placed into escrow and only to the extent and  
11 at the time necessary to make payments required under such  
12 judgment or settlement.

13 (b) To the extent that a tobacco product manufacturer  
14 establishes that the amount it was required to place into escrow  
15 in a particular year was greater than the state's allocable share  
16 of the total payments that such manufacturer would have been  
17 required to make in that year under the master settlement  
18 agreement (as determined pursuant to section IX(i)(2) of the  
19 master settlement agreement, and before any of the adjustments or  
20 offsets described in section IX(i)(3) of the master settlement  
21 agreement other than the inflation adjustment) had it been a  
22 participating manufacturer, the excess shall be released from  
23 escrow and revert back to such tobacco product manufacturer.

24 (c) To the extent not released from escrow under subdivision  
25 (a) or (b), funds shall be released from escrow and revert back  
26 to such tobacco product manufacturer 25 years after the date on  
27 which they were placed into escrow.

1           (6) If this act or any portion of the amendatory act that  
2 added this subsection is held by a court of competent  
3 jurisdiction to be unconstitutional, the remaining portions of  
4 this act shall continue in full force and effect.