

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 5088

(As passed the House, November 9, 1999)

A bill 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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Adjusted for inflation" means increased in accordance
3 with the formula for inflation adjustment set forth in Exhibit C
4 to the master settlement agreement.

5 (b) "Affiliate" means a person who directly or indirectly
6 owns or controls, is owned or controlled by, or is under common
7 ownership or control with, another person. Solely for purposes

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1 of this definition, the terms "owns", "is owned", and "ownership"
2 mean ownership of an equity interest, or the equivalent thereof,
3 of 10% or more, and the term "person" means an individual, part-
4 nership, committee, association, corporation, or any other organ-
5 ization or group of persons.

6 (c) "Allocable share" means that term as defined in the
7 master settlement agreement.

8 (d) "Cigarette" means any product that contains nicotine, is
9 intended to be burned or heated under ordinary conditions of use,
10 and consists of or contains (i) any roll of tobacco wrapped in
11 paper or in any substance not containing tobacco; or (ii) tobac-
12 co, in any form, that is functional in the product, which,
13 because of its appearance, the type of tobacco used in the
14 filler, or its packaging and labeling, is likely to be offered
15 to, or purchased by, consumers as a cigarette; or (iii) any roll
16 of tobacco wrapped in any substance containing tobacco which,
17 because of its appearance, the type of tobacco used in the
18 filler, or its packaging and labeling, is likely to be offered
19 to, or purchased by, consumers as a cigarette described in clause
20 (i) of this definition. The term "cigarette" includes
21 "roll-your-own" (i.e., any tobacco which, because of its appear-
22 ance, type, packaging, or labeling is suitable for use and likely
23 to be offered to, or purchased by, consumers as tobacco for
24 making cigarettes). For purposes of this definition of
25 "cigarette", 0.09 ounces of "roll-your-own" tobacco shall consti-
26 tute 1 individual "cigarette".

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1 (e) "Inflation adjustment" means that term as defined in the
2 master settlement agreement.

3 (f) "Master settlement agreement" means the settlement
4 agreement (and related documents) entered into on November 23,
5 1998, and incorporated into a consent decree and final judgment
6 entered into on December 7, 1998, in Kelley Ex Rel. Michigan v
7 Philip Morris Incorporated, et al., Ingham county circuit court,
8 docket no. 96-84281CZ.

9 (g) "Original participating manufacturer" means that term as
10 defined in the master settlement agreement.

11 (h) "Participating manufacturer" means that term as defined
12 in the master settlement agreement.

13 (i) "Qualified escrow fund" means an escrow arrangement with
14 a federally or state chartered financial institution having no
15 affiliation with any tobacco product manufacturer and having
16 assets of at least \$1,000,000,000.00 where such arrangement
17 requires that such financial institution hold the escrowed funds'
18 principal for the benefit of releasing parties and prohibits the
19 tobacco product manufacturer placing the funds into escrow from
20 using, accessing, or directing the use of the funds' principal
21 except as consistent with section 2(2) of this act.

22 (j) "Released claims" means that term as defined in the
23 master settlement agreement.

24 (k) "Releasing parties" means that term as defined in the
25 master settlement agreement.

26 (l) "Tobacco product manufacturer" means an entity that
27 after the date of enactment of this act directly (and not

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1 exclusively through any affiliate) meets 1 or more of the
2 following:

3 (i) Manufactures cigarettes anywhere that such manufacturer
4 intends to be sold in the United States, including cigarettes
5 intended to be sold in the United States through an importer
6 (except where such importer is an original participating manufac-
7 turer that will be responsible for the payments under the master
8 settlement agreement with respect to such cigarettes as a result
9 of the provisions of subsection II(mm) of the master settlement
10 agreement and that pays the taxes specified in subsection II(z)
11 of the master settlement agreement, and provided that the manu-
12 facturer of such cigarettes does not market or advertise such
13 cigarettes in the United States).

14 (ii) Is the first purchaser anywhere for resale in the
15 United States of cigarettes manufactured anywhere that the manu-
16 facturer does not intend to be sold in the United States.

17 (iii) Becomes a successor of an entity described in subpara-
18 graph (i) or (ii).

19 (m) The term "tobacco product manufacturer" as defined in
20 subdivision (l) does not include an affiliate of a tobacco pro-
21 duct manufacturer unless the affiliate itself falls within 1 or
22 more of subdivision (l)(i) to (iii).

23 (n) "Units sold" means the number of individual cigarettes
24 sold in the state by the applicable tobacco product manufacturer
25 (whether directly or through a distributor, retailer, or similar
26 intermediary or intermediaries) during the year in question, as
27 measured by excise taxes collected by the state on packs (or

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1 "roll-your-own" tobacco containers) bearing the excise tax stamp
2 of the state. The department of treasury shall promulgate such
3 regulations as are necessary to ascertain the amount of state
4 excise tax paid on the cigarettes of such tobacco product manu-
5 facturer for each year.

6 Sec. 2. (1) Any tobacco product manufacturer selling ciga-
7 rettes to consumers within the state (whether directly or through
8 a distributor, retailer, or similar intermediary or
9 intermediaries) after the date of enactment of this act shall do
10 1 of the following:

11 (a) Become a participating manufacturer and generally per-
12 form its financial obligations under the master settlement
13 agreement.

14 (b) Place into a qualified escrow fund by April 15 of the
15 year following the year in question the following amounts (as
16 such amounts are adjusted for inflation):

17 (i) 1999: \$.0094241 per unit sold after the date of enact-
18 ment of this act.

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

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

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

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

25 (2) A tobacco product manufacturer that places funds into
26 escrow pursuant to subsection (1)(b) shall receive the interest
27 or other appreciation on the funds as earned. The funds

1 themselves shall be released from escrow only under 1 or more of
2 the following circumstances:

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

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

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

25 (3) Each tobacco product manufacturer that elects to place
26 funds into escrow pursuant to subsection (1)(b) shall annually
27 certify to the department of treasury that it is in compliance with

1 this section. The attorney general may bring a civil action on
2 behalf of the state against any tobacco product manufacturer that
3 fails to place into escrow the funds required under this
4 section. Any tobacco product manufacturer that fails in any year
5 to place into escrow the funds required under this section shall
6 be subject to all of the following that are applicable:

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

15 (b) In the case of a knowing violation, shall be required
16 within 15 days to place sufficient funds into escrow to bring it
17 into compliance with this section. The court, upon a finding of
18 a knowing violation of this subsection, may impose a civil pen-
19 alty to be paid to the general fund of this state in an amount
20 not to exceed 15% of the amount improperly withheld from escrow
21 per day of the violation and in a total amount not to exceed 300%
22 of the original amount improperly withheld from escrow.

23 (c) In the case of a second knowing violation, shall be pro-
24 hibited from selling cigarettes to consumers within the state
25 (whether directly or through a distributor, retailer, or similar
26 intermediary) for a period not to exceed 2 years.

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