

No. 2004-114

## AN ACT

SB 1149

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

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

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

Section 4. Requirements.

\* \* \*

(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(i)(2) of the Master Settlement Agreement and before any of the adjustments or offsets described in section IX(i)(3) of the Master Settlement Agreement other than the inflation adjustment, the excess shall be released from escrow and revert back to such tobacco product manufacturer.]**

*(2.1) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in this Commonwealth in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and shall revert back to such*

*tobacco product manufacturer. The provisions of this paragraph are nonseverable. If any provision of this paragraph or its application to any person or circumstance is held invalid, the remaining provisions or applications of this paragraph are void.*

*(2.2) 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(i)(2) of the Master Settlement Agreement and before any of the adjustments or offsets described in section IX(i)(3) of the Master Settlement Agreement other than the inflation adjustment, 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)] *this subsection*, 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.

\* \* \*

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

Section 3. This act shall take effect as follows:

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

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

APPROVED—The 19th day of November, A.D. 2004.

EDWARD G. RENDELL