

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1511

H.P. 1104

House of Representatives, April 2, 2003

An Act To Make Technical Changes to the Laws Concerning Tobacco Manufacturers

Submitted by the Department of the Attorney General pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative NORBERT of Portland.
Cosponsored by Senator PENDLETON of Cumberland.

Be it enacted by the People of the State of Maine as follows:

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4 **Sec. 1. 22 MRSA §1580-H, sub-§10**, as enacted by PL 1999, c.
401, Pt. U, §1 and affected by §2, is amended to read:

6 10. "Units sold" means the number of individual cigarettes
8 sold in the State by the applicable tobacco product manufacturer
(whether directly or through a distributor, retailer or similar
10 intermediary ~~of~~ or intermediaries) during the year in question,
as measured by excise taxes collected by the State on packs
12 bearing the excise tax stamp of the State or "roll-your-own"
tobacco containers. ~~The Department--of--Administrative--and~~
~~Financial--Services--Bureau-of-Revenue--Services--shall promulgate~~
14 ~~such~~ the Attorney General may adopt rules as are necessary to obtain
information from any tobacco product retailer, distributor or
16 manufacturer, to ascertain the amount of state excise tax paid on
tobacco products of each tobacco product manufacturer for each
18 year. Rules established pursuant to this section are routine
technical rules, as provided in Title 5, ~~Chapter~~ chapter 375,
20 subchapter II-A ~~2-A~~. Notwithstanding any other provision of law,
the Bureau of Revenue Services may provide information ~~obtained~~
22 ~~pursuant to this section to the Attorney General~~ as is necessary
for a tobacco product manufacturer to compile its escrow payment
24 hereunder. In addition, ~~the Department-of-the~~ Attorney General
~~shall have the authority to~~ may subpoena the records of any
26 tobacco product retailer, distributor, or manufacturer, to
enforce this Act.

28 **Sec. 2. 22 MRSA §1580-I, sub-§2, ¶A**, as enacted by PL 1999, c.
30 401, Pt. U, §1 and affected by §2, is amended to read:

32 A. A tobacco product manufacturer that places funds into
escrow pursuant to this subsection shall receive the
34 interest or other appreciation on such funds as earned.
Such funds themselves shall must be released from escrow
36 only under the following circumstances --:

38 (1) to pay a judgment or settlement on any released
claim brought against such tobacco product manufacturer
40 by the State or any releasing party located or residing
in the State. Funds shall must be released from escrow
42 under this subparagraph;

44 (a) in the order in which they were placed into
escrow; and

46 (b) only to the extent and at the time necessary
48 to make payments required under such judgment or
settlement;

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2 (2) to the extent that a tobacco product manufacturer
establishes that the amount it was required to place
4 into escrow on account of units sold in the State in a
particular year was greater than ~~the State's allocable~~
6 ~~share of the total payments that such manufacturer~~
~~would have been required to make in that year under the~~
8 ~~Master Settlement Agreement (as determined pursuant to~~
~~section IX(i)(2) of the Master Settlement Agreement,~~
10 ~~and before any of the adjustments or offsets described~~
~~in section IX(i)(3) of that Agreement other than the~~
12 ~~Inflation Adjustment) the Master Settlement Agreement~~
14 ~~payments, as determined pursuant to section IX(i) of~~
~~that agreement including after final determination of~~
16 ~~all adjustments, that such manufacturer would have been~~
~~required to make an account of such units sold had it~~
18 ~~been a participating manufacturer, the excess shall~~
~~must be released from escrow and revert back to such~~
20 ~~tobacco product manufacturer. If a court of competent~~
~~jurisdiction holds that this subparagraph is~~
~~unconstitutional, then this subparagraph is deemed~~
22 ~~repealed; or~~

24 (2-A) to the extent that a tobacco product
26 manufacturer establishes that the amount it was
required to place into escrow in a particular year was
28 greater than the State's allocable share of the total
payments that such manufacturer would have been
30 required to make in that year under the Master
Settlement Agreement (as determined pursuant to section
32 IX(i)(2) of the Master Settlement Agreement, and before
any of the adjustments or offsets described in section
34 IX(i)(3) of that Agreement other than the Inflation
Adjustment) had it been a participating manufacturer,
36 the excess must be released from escrow and revert back
to such tobacco product manufacturer. This
38 subparagraph takes effect only if, following the repeal
of subparagraph (2), as described therein, a court of
40 competent jurisdiction holds that paragraph A is
unconstitutional; or

42 (3) to the extent not released from escrow under
44 subparagraph (1) or (2), funds shall must be released
46 from escrow and revert back to such tobacco product
manufacturer ~~twenty-five~~ 25 years after the date on
which they were placed into escrow.

SUMMARY

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This bill makes 3 technical changes in the Maine Revised Statutes, Title 22, chapter 263, subchapter 3, the tobacco manufacturers laws, which is the law the State adopted to ensure payments under the 1998 multistate legal settlement with tobacco companies. First, the bill delegates the rule-making authority under the law to the Attorney General. Second, it changes the way allocable share releases from escrow are calculated for tobacco manufacturers who do not participate in the master settlement agreement. Third, it provides that, in the event the new method is found unconstitutional by a court and the statute, without an allocable share provision is found to be unconstitutional, the statute reverts to the form it was in prior to the changes made by this bill.