

By: Senator(s) Hyde-Smith

To: Finance

SENATE BILL NO. 2759

1 AN ACT TO REQUIRE ANY TOBACCO PRODUCT MANUFACTURER SELLING  
 2 CIGARETTES TO CONSUMERS WITHIN THIS STATE, WHETHER DIRECTLY OR  
 3 THROUGH A DISTRIBUTOR, RETAILER OR SIMILAR INTERMEDIARY, TO BECOME  
 4 A PARTICIPATING MANUFACTURER IN THE TOBACCO SETTLEMENT OR PLACE  
 5 CERTAIN AMOUNT INTO AN ESCROW ACCOUNT; TO PROVIDE THE  
 6 CIRCUMSTANCES UNDER WHICH THE FUNDS IN SUCH AN ESCROW ACCOUNT MAY  
 7 BE RELEASED; TO PROVIDE THAT FUNDS THAT ARE NOT RELEASED SHALL  
 8 REMAIN IN THE ESCROW ACCOUNT FOR 25 YEARS; TO PROVIDE THAT EACH  
 9 TOBACCO PRODUCT MANUFACTURER THAT ELECTS TO PLACE FUNDS INTO  
 10 ESCROW PURSUANT TO THIS SECTION SHALL ANNUALLY CERTIFY TO THE  
 11 ATTORNEY GENERAL THAT IT IS IN COMPLIANCE WITH THIS SECTION; TO  
 12 AUTHORIZE THE ATTORNEY GENERAL TO BRING A CIVIL ACTION ON BEHALF  
 13 OF THE STATE AGAINST ANY TOBACCO PRODUCT MANUFACTURER THAT FAILS  
 14 TO PLACE INTO ESCROW THE FUNDS REQUIRED UNDER THIS SECTION; TO  
 15 PROVIDE CERTAIN CIVIL PENALTIES FOR THE FAILURE TO DEPOSIT THE  
 16 CORRECT AMOUNTS INTO THE ESCROW ACCOUNT; AND FOR RELATED PURPOSES.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

18 **SECTION 1.** (1) Any tobacco product manufacturer selling  
 19 cigarettes to consumers within this state, whether directly or  
 20 through a distributor, retailer or similar intermediary or  
 21 intermediaries, after July 1, 2004, shall comply with either  
 22 subsection (1) or subsection (2) of this section.

23 (2) The tobacco product manufacturer shall become a  
 24 participating manufacturer in the tobacco settlement (as defined  
 25 in Section 43-13-405) and generally perform its financial  
 26 obligations under the tobacco settlement.

27 (3) The tobacco product manufacturer shall place into a  
 28 qualified escrow fund by April 15 of the year in question the  
 29 following amounts as such amounts are adjusted for inflation:

30 (a) For each calendar year through 2006, \$.0137539 per  
 31 unit sold;

32 (b) For calendar year 2007 and each calendar year  
 33 thereafter, \$.0188482 per unit sold.

34           (4) A tobacco product manufacturer that places funds into  
35 escrow pursuant to subsection (3) of this section shall receive  
36 the interest or other appreciation on such funds as earned, such  
37 funds themselves shall be released from escrow only under the  
38 following circumstances:

39           (a) To pay a judgment or settlement on any released  
40 claim brought against such tobacco product manufacturer by the  
41 state or any releasing party located or residing in the state.  
42 Funds shall be released from escrow under this paragraph in the  
43 order in which they were placed into escrow and only to the extent  
44 and at the time necessary to make payments required under such  
45 judgment or settlement.

46           (b) To the extent that a tobacco product manufacturer  
47 establishes that the amount it was required to place into escrow  
48 in a particular year was greater than the state's allocable share  
49 of the total payments that such manufacturer would have been  
50 required to make in that year under the tobacco settlement (before  
51 any of the adjustments or offsets described in that agreement  
52 other than the inflation adjustment) had it been a participating  
53 manufacturer, the excess shall be released from escrow and revert  
54 back to such tobacco product manufacturer.

55           (c) To the extent not released from escrow under  
56 paragraphs (a) and (b) of this subsection, funds shall be released  
57 from escrow and revert back to such tobacco product manufacturer  
58 twenty-five (25) years after the date on which they were placed  
59 into escrow.

60           (5) Each tobacco product manufacturer that elects to place  
61 funds into escrow pursuant to this section shall annually certify  
62 to the Attorney General that it is in compliance with this  
63 section. The Attorney General may bring a civil action on behalf  
64 of the state against any tobacco product manufacturer that fails  
65 to place into escrow the funds required under this section. Any

66 tobacco product manufacturer that fails in any year to place into  
67 escrow the funds required under this section shall:

68 (a) Be required within fifteen (15) days to place such  
69 funds into escrow as shall bring it into compliance with this  
70 section. The court, upon a finding of a violation of this  
71 section, may impose a civil penalty in an amount not to exceed  
72 five percent (5%) of the amount improperly withheld from escrow  
73 per day of the violation and in a total amount not to exceed one  
74 hundred percent (100%) of the original amount improperly withheld  
75 from escrow.

76 (b) In case of a knowing violation, be required within  
77 fifteen (15) days to place such funds into escrow as shall bring  
78 it into compliance with this section. The court, upon a finding  
79 of a violation of this section, may impose a civil penalty in an  
80 amount not to exceed fifteen percent (15%) of the amount  
81 improperly withheld from escrow per day of the violation and in a  
82 total amount not to exceed three hundred percent (300%) of the  
83 original amount improperly withheld from escrow.

84 (c) In the case of a second knowing violation, be  
85 prohibited from selling cigarettes to consumers within the state  
86 whether directly or through a distributor retailer or similar  
87 intermediary for a period not to exceed two (2) years.

88 (6) Each failure to make an annual deposit under this  
89 section shall constitute a separate violation.

90 **SECTION 2.** This act shall take effect and be in force from  
91 and after July 1, 2005.