

1 AMENDMENT TO HOUSE BILL 3518

2 AMENDMENT NO. _____. Amend House Bill 3518 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Tobacco Product Manufacturers' Escrow
5 Act is amended by changing Section 15 and by adding Section
6 20 as follows:

7 (30 ILCS 168/15)

8 Sec. 15. Requirements.

9 (a) Any tobacco product manufacturer selling cigarettes
10 to consumers within the State of Illinois (whether directly
11 or through a distributor, retailer, or similar intermediary
12 or intermediaries) after the effective date of this Act shall
13 do one of the following:

14 (1) become a participating manufacturer (as that
15 term is defined in Section II(jj) of the Master
16 Settlement Agreement) and generally perform its
17 financial obligations under the Master Settlement
18 Agreement; or

19 (2) (A) place into a qualified escrow fund by April
20 15 of the year following the year in question the
21 following amounts (as such amounts are adjusted for
22 inflation):

1 (i) For 1999: \$0.0094241 per unit sold
2 after the effective date of this Act;

3 (ii) For 2000: \$0.0104712 per unit sold;

4 (iii) For each of 2001 and 2002:
5 \$0.0136125 per unit sold;

6 (iv) For each of 2003 through 2006:
7 \$0.0167539 per unit sold;

8 (v) For each of 2007 and each year
9 thereafter: \$0.0188482 per unit sold.

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

16 (i) to pay a judgment or settlement on
17 any released claim brought against the tobacco
18 product manufacturer by the State or any
19 releasing party located or residing in the
20 State. Funds shall be released from escrow
21 under this subdivision (a)(2)(B)(i): (I) in
22 the order in which they were placed into
23 escrow; and (II) only to the extent and at the
24 time necessary to make payments required under
25 such judgment or settlement;

26 (ii) to the extent that a tobacco product
27 manufacturer establishes that the amount it was
28 required to place into escrow on account of
29 units sold in the State in a particular year
30 was greater than the Master Settlement
31 Agreement payments, as determined pursuant to
32 Section IX(i) of that Agreement, including
33 after final determination of all adjustments,
34 that such manufacturer would have been required

1 to make on account of such units sold the
2 State's--allocable--share--of--the--total--payments
3 that--such--manufacturer--would--have--been--required
4 to--make--in--that--year---under---the---Master
5 Settlement--Agreement--(as--determined--pursuant--to
6 Section---IX(i)(2)--of--the--Master--Settlement
7 Agreement,--and--before--any--of--the--adjustments--or
8 offsets--described--in--Section--IX(i)(3)--of--that
9 Agreement--other--than--the--Inflation--Adjustment)
10 had it been a Participating Manufacturer, the
11 excess shall be released from escrow and revert
12 back to such tobacco product manufacturer; or

13 (iii) to the extent not released from
14 escrow under subdivisions (a)(2)(B)(i) or
15 (a)(2)(B)(ii), funds shall be released from
16 escrow and revert back to such tobacco product
17 manufacturer 25 years after the date on which
18 they were placed into escrow.

19 (C) Each tobacco product manufacturer that
20 elects to place funds into escrow pursuant to this
21 subdivision (a)(2) shall annually certify to the
22 Attorney General that it is in compliance with this
23 subdivision (a)(2). The Attorney General may bring
24 a civil action on behalf of the State of Illinois
25 against any tobacco product manufacturer that fails
26 to place into escrow the funds required under this
27 subdivision (a)(2). Any tobacco product
28 manufacturer that fails in any year to place into
29 escrow the funds required under this subdivision
30 (a)(2) shall:

31 (i) be required within 15 days to place
32 such funds into escrow as shall bring it into
33 compliance with this Section. The court, upon
34 a finding of a violation of this subdivision

1 (a)(2), may impose a civil penalty to be paid
 2 into the General Revenue Fund in an amount not
 3 to exceed 5% of the amount improperly withheld
 4 from escrow per day of the violation and in a
 5 total amount not to exceed 100% of the original
 6 amount improperly withheld from escrow;

7 (ii) in the case of a knowing violation,
 8 be required within 15 days to place such funds
 9 into escrow as shall bring it into compliance
 10 with this Section. The court, upon a finding
 11 of a knowing violation of this subdivision
 12 (a)(2), may impose a civil penalty to be paid
 13 into the General Revenue Fund in an amount not
 14 to exceed 15% of the amount improperly withheld
 15 from escrow per day of the violation and in a
 16 total amount not to exceed 300% of the original
 17 amount improperly withheld from escrow; and

18 (iii) in the case of a second knowing
 19 violation, be prohibited from selling
 20 cigarettes to consumers within the State of
 21 Illinois (whether directly or through a
 22 distributor, retailer, or similar intermediary)
 23 for a period not to exceed 2 years.

24 (b) Each failure to make an annual deposit required
 25 under this Section shall constitute a separate violation. If
 26 a tobacco product manufacturer is successfully prosecuted by
 27 the Attorney General for a violation of subdivision (a)(2),
 28 the tobacco product manufacturer must pay, in addition to any
 29 fine imposed by a court, the State's costs and attorney's
 30 fees incurred in the prosecution.

31 (Source: P.A. 91-41, eff. 6-30-99.)

32 (30 ILCS 168/20 new)

33 Sec. 20. If this amendatory Act of the 93rd General

1 Assembly or any portion of the amendment to subdivision
2 (2)(B)(ii) of subsection (a) of Section 15 made by this
3 amendatory Act of the 93rd General Assembly is held by a
4 court of competent jurisdiction to be unconstitutional, then
5 such subdivision (2)(B)(ii) of subsection (a) of Section 15
6 shall be deemed to be repealed in its entirety. If
7 subdivision (2)(B)(ii) of subsection (a) of Section 15 shall
8 thereafter be held by a court of competent jurisdiction to be
9 unconstitutional, then this amendatory Act of the 93rd
10 General Assembly shall be deemed repealed and subdivision
11 (2)(B)(ii) of subsection (a) of Section 15 shall be restored
12 as if no such amendments had been made. Neither any holding
13 of unconstitutionality nor the repeal of subdivision
14 (2)(B)(ii) of subsection (a) of Section 15 shall affect,
15 impair, or invalidate any other portion of Section 15 or the
16 application of such Section to any other person or
17 circumstance, and such remaining portions of Section 15 shall
18 at all times continue in full force and effect."