

**HOUSE . . . . . No. 4279**

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**The Commonwealth of Massachusetts**

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HOUSE OF REPRESENTATIVES, October 30, 2003.

The committee on Health Care, to whom was referred the petition (accompanied by bill, House, No. 4169) of Daniel E. Bosley and Richard T. Moore relative to the financial obligations of tobacco manufacturers selling cigarettes to consumers within the Commonwealth, reports recommending that the accompanying bill (House, No. 4279) ought to pass.

For the committee,

PETER J. KOUTOUJIAN.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

### AN ACT RELATIVE TO CERTAIN TOBACCO MANUFACTURERS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Subclause (ii) of clause (2) of subsection (b) of  
2 section 2 of chapter 94E, as appearing in the 2000 Official Edi-  
3 tion, is hereby amended by striking out the text in its entirety and  
4 inserting in place thereof the following:— “(ii) to the extent that a  
5 tobacco product manufacturer establishes that the amount it was  
6 required to place into escrow on account of units sold in the State  
7 in a particular year was greater than the Master Settlement Agree-  
8 ment payments, as determined pursuant to section IX(i) of that  
9 Agreement including after final determination of all adjustments,  
10 that such manufacturer would have been required to make on  
11 account of such units sold had it been a Participating Manufac-  
12 turer, the excess shall be released from escrow and revert back to  
13 such tobacco product manufacturer; or”.

1 SECTION 2. If Section 1 of this act, or any portion of the  
2 amendment to subclause (ii) of clause (2) of subsection (b) of  
3 section 2 of chapter 94E made by Section 1 of this act, is held by  
4 a court of competent jurisdiction to be unconstitutional, then such  
5 subclause (ii) shall be deemed to be repealed in its entirety. If  
6 clause (2) of subsection (b) of section 2 of chapter 94E shall  
7 thereafter be held by a court of competent jurisdiction to be  
8 unconstitutional, then Section 1 of this act shall be deemed  
9 repealed, and subclause (ii) of clause (2) of subsection (b) of  
10 section 2 of chapter 94E shall be restored as if no such amend-  
11 ments had been made. Neither any holding of unconstitutionality  
12 nor the repeal of subclause (ii) of clause (2) of subsection (b) of  
13 section 2 of chapter 94E shall affect, impair or invalidate any  
14 other portion of chapter 94E, or the application of such section to

15 any other person or circumstance, and such remaining portions of  
16 chapter 94E shall at all times continue in full force and effect.

1 SECTION 3. The definition of “Units sold” in section 1 of  
2 chapter 94E, as appearing in the 2000 Official Edition, is hereby  
3 amended by striking out the text in its entirety and inserting in  
4 place thereof the following:— “Units sold”, the number of indi-  
5 vidual cigarettes sold in the commonwealth by the applicable  
6 tobacco product manufacturer, whether directly or through a dis-  
7 tributor, retailer or similar intermediary or intermediaries, during  
8 the year in question, as measured by excise taxes collected by the  
9 commonwealth on packs bearing the excise tax stamp of the com-  
10 monwealth, or “roll-your own”, so-called, tobacco containers. The  
11 department of revenue shall promulgate such regulations as are  
12 necessary to ascertain the amount of state excise tax paid on the  
13 cigarettes of such tobacco product manufacturer for each year.

