LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS
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FISCAL IMPACT STATEMENT

LS 8090 — **DATE PREPARED:** Mar 31, 1999
BILL NUMBER: HB 1870 — **BILL AMENDED:** Mar 30, 1999

SUBJECT: Escrow fund for tobacco company payments.

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FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill requires a cigarette manufacturer that is not a participant in the master settlement agreement among cigarette manufacturers and various states (including Indiana) to make payments into an escrow account.

Effective Date: July 1, 1999.

Explanation of State Expenditures: This bill requires cigarette manufacturers who are not part of the master settlement agreement to establish a reserve fund to guarantee a source of compensation and to prevent them from receiving large, short-term profits and then becoming judgment proof before liability may arise.

Payments will be based on the number of individual cigarettes sold in Indiana by the manufacturer as measured by excise taxes collected by the state on packs of cigarettes. The bill requires the Department of Revenue to determine the amount of state excise tax paid on the cigarettes of a manufacturer for each year.

Each manufacturer must deposit the following amounts in an escrow account by April 15 of each year:

- For 1999, $0.0094241 per unit sold after June 30, 1999.
- For 2000, $0.0104712 per unit sold
- For each of 2001 and 2002, $0.0136125 per unit sold
- For each of 2003 through 2006, $0.0167539 per unit sold
- For each of 2007 and every year thereafter, $0.0188482 per unit sold.

A manufacturer that places funds in escrow will receive any interest earned on the funds. The funds themselves will be taken out of escrow only to pay a judgement or settlement on a claim brought against the manufacturer by a party in Indiana, or to refund the manufacturer if it can establish that the amount deposited in a particular year was greater than Indiana’s allocable share of the payments the manufacturer would have been required to make had it been a participating manufacturer in the Master Settlement Agreement.

If any funds remain, they will be released from escrow and will revert to the manufacturer twenty-five years after the date the funds were placed in escrow.

Each manufacturer that places funds in escrow must annually certify to the Attorney General that it is in compliance with the provisions of this bill.

Explanation of State Revenues: Any manufacturer that does not place funds in escrow as required by this bill can be sanctioned by the court. Possible sanctions include the imposition of a civil penalty to be paid to the State General Fund in an amount up to 5% of the amount improperly withheld from escrow per day. The amount of the total penalty assessed cannot exceed 100% of the amount improperly withheld. If a manufacturer knowingly violates the provisions of the bill, the court can impose a penalty in an amount up to 15% of the amount improperly withheld from escrow per day. The amount of the total penalty assessed for a knowing violation cannot exceed 300% of the amount improperly withheld. If the manufacturer commits a second knowing violation, it will be prohibited from selling cigarettes within Indiana for a period of up to two years.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of Revenue; Office of the Attorney General.

Local Agencies Affected: Trial courts; clerks

Information Sources: