

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

455J0383

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1054** - 01/16/2004

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney  
General

1 FOR AN ACT ENTITLED, An Act to revise the allowable share provision of the escrow fund  
2 for tobacco litigation.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-50B-8 be amended to read as follows:

5 10-50B-8. A tobacco product manufacturer that places funds into escrow pursuant to  
6 subdivision 10-50B-7(2) shall receive the interest or other appreciation on such funds as earned.

7 Such funds themselves shall be released from escrow only under the following circumstances:

8 (1) To pay a judgment or settlement on any released claim brought against such tobacco  
9 product manufacturer by the state or any releasing party located or residing in the  
10 state. Funds shall be released from escrow under this subdivision in the order in  
11 which they were placed into escrow and only to the extent and at the time necessary  
12 to make payments required under such judgment or settlement;

13 (2) To the extent that a tobacco product manufacturer establishes that the amount it was  
14 required to place into escrow on account of units sold in the state in a particular year  
15 was greater than ~~the state's allocable share of the total payments that such~~



1 ~~manufacturer would have been required to make in that year under the Master~~  
2 ~~Settlement Agreement payments, as determined pursuant to section IX (i) of that~~  
3 ~~agreement including after final determination of all adjustments, that such~~  
4 ~~manufacturer would have been required to make on account of such units sold had~~  
5 ~~it been a participating manufacturer, as such payments are determined pursuant to~~  
6 ~~section IX(i)(2) of the Master Settlement Agreement and before any of the~~  
7 ~~adjustments or offsets described in section IX(i)(3) of the Master Settlement~~  
8 ~~Agreement other than the inflation adjustment; the excess shall be released from~~  
9 ~~escrow and revert back to such tobacco product manufacturer; or~~

- 10 (3) To the extent not released from escrow under subdivision (1) or (2) of this section,  
11 funds shall be released from escrow and revert back to such tobacco product  
12 manufacturer twenty-five years after the date on which they were placed into escrow.

13 Section 2. That chapter 10-50B be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 If any portion of the amendment to subdivision 10-50B-8(2) made by this Act is held by a  
16 court of competent jurisdiction to be unconstitutional, then subdivision 10-50B-8(2) shall be  
17 deemed to be repealed in its entirety. If that repeal of subdivision 10-50B-8(2) is thereafter held  
18 by a court of competent jurisdiction to render § 10-50B-8 unconstitutional, then this Act shall  
19 be deemed repealed, and subdivision 10-50B-8(2) restored as if no such amendment had been  
20 made. Neither any holding of unconstitutionality nor the repeal of subdivision 10-50B-8(2)  
21 affects, impairs, or invalidates any other portion of § 10-50B-8, or the application of such  
22 section to any other person or circumstance, and such remaining portions of § 10-50B-8 shall  
23 at all times continue in full force and effect.