

SECOND REGULAR SESSION

HOUSE BILL NO. 1343

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GOODMAN.

Read 1st time January 29, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4324L.011

AN ACT

To repeal section 196.1003, RSMo, and to enact in lieu thereof two new sections relating to the tobacco master settlement agreement.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 196.1003, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 196.1003 and 196.1006, to read as follows:

196.1003. Requirements.

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

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)--

1999: \$.0094241 per unit sold after the date of enactment of this Act;

2000: \$.0104712 per unit sold;

for each of 2001 and 2002: \$.0136125 per unit sold;

for each of 2003 through 2006: \$.0167539 per unit sold;

for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

17 themselves shall be released from escrow only under the following circumstances--

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

23 (B) to the extent that a tobacco product manufacturer establishes that the amount it was
24 required to place into escrow **on account of units sold in the State** in a particular year was
25 greater than the [State's allocable share of the total payments that such manufacturer would have
26 been required to make in that year under the Master Settlement Agreement (as determined
27 pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the
28 adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation
29 Adjustment)] **Master Settlement Agreement payments, as determined pursuant to section**
30 **IX(i) of that Agreement including after final determination of all adjustments, that such**
31 **manufacturer would have been required to make on account of such units sold** had it been
32 a Participating Manufacturer, the excess shall be released from escrow and revert back to such
33 tobacco product manufacturer; or

34 (C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall
35 be released from escrow and revert back to such tobacco product manufacturer twenty-five years
36 after the date on which they were placed into escrow.

37 (3) Each tobacco product manufacturer that elects to place funds into escrow pursuant
38 to this subsection shall annually certify to the Attorney General that it is in compliance with this
39 subsection. The Attorney General may bring a civil action on behalf of the State against any
40 tobacco product manufacturer that fails to place into escrow the funds required under this
41 section. Any tobacco product manufacturer that fails in any year to place into escrow the funds
42 required under this section shall--

43 (A) be required within 15 days to place such funds into escrow as shall bring it into
44 compliance with this section. The court, upon a finding of a violation of this subsection, may
45 impose a civil penalty to be paid to the State's general revenue fund in an amount not to exceed
46 5 percent of the amount improperly withheld from escrow per day of the violation and in a total
47 amount not to exceed 100 percent of the original amount improperly withheld from escrow;

48 (B) in the case of a knowing violation, be required within 15 days to place such funds
49 into escrow as shall bring it into compliance with this section. The court, upon a finding of a
50 knowing violation of this subsection, may impose a civil penalty to be paid to the State's general
51 revenue fund in an amount not to exceed 15 percent of the amount improperly withheld from
52 escrow per day of the violation and in a total amount not to exceed 300 percent of the original

53 amount improperly withheld from escrow; and

54 (C) in the case of a second knowing violation, be prohibited from selling cigarettes to
55 consumers within the State (whether directly or through a distributor, retailer or similar
56 intermediary) for a period not to exceed 2 years.

57 Each failure to make an annual deposit required under this section shall constitute a
58 separate violation. Any tobacco product manufacturer that violates the provisions of this section
59 shall pay the State's cost and attorney's fees incurred during a successful prosecution under this
60 section.

196.1006. Severability Clause.

2 **If section 196.1003, or any portion of the amendment to subparagraph (B) of**
3 **paragraph (2) of subdivision (b) of section 196.1003 amended by this act, is held by a court**
4 **of competent jurisdiction to be unconstitutional, then such subparagraph (B) shall be**
5 **deemed to be repealed in its entirety. If paragraph (2) of subdivision (b) of section**
6 **196.1003 shall thereafter be held by a court of competent jurisdiction to be**
7 **unconstitutional, then sections 196.1003 and 196.1006 amended by this act shall be deemed**
8 **repealed, and subparagraph (B) of paragraph (2) of subdivision (b) of section 196.1003**
9 **shall be restored as if no such amendments had been made. Neither any holding of**
10 **unconstitutionality nor the repeal of subparagraph (B) of paragraph (2) of subdivision (b)**
11 **of section 196.1003 shall affect, impair, or invalidate any other portion of section 196.1003,**
12 **or the application of such section to any other person or circumstance, and such remaining**
13 **portions of section 196.1003 shall at all times continue in full force and effect.**