

## 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Section A. Section 196.1003, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 196.1003 and 196.1006, to read as follows: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 themselves shall be released from escrow only under the following circumstances--

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

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than the [State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section

IX(i)(3) of that Agreement other than the Inflation Adjustment)]  
Master Settlement Agreement payments, as determined pursuant to  
section IX(i) of that Agreement including after final  
determination of all adjustments, that such manufacturer would  
have been required to make on account of such units sold had it  
been a Participating Manufacturer, the excess shall be released  
from escrow and revert back to such tobacco product manufacturer;  
or

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

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

(A) be required within 15 days to place such funds into  
escrow as shall bring it into compliance with this section. The  
court, upon a finding of a violation of this subsection, may  
impose a civil penalty to be paid to the State's general revenue

fund in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

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

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

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

196.1006. Severability Clause.

If section 196.1003, or any portion of the amendment to subparagraph (B) of paragraph (2) of subdivision (b) of section

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