

CHAPTER 195

AN ACT concerning tobacco product manufacturer signatories to a master settlement agreement and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.52:4D-13 Findings, declarations relative to tobacco Master Settlement Agreement; maximum total appeal bond.

1. a. The Legislature finds and declares that:

(1) New Jersey receives hundreds of millions of dollars annually as a result of the Master Settlement Agreement. These funds have been used to provide important services for the citizens of the State, including tobacco-use prevention, elder care, pharmaceutical assistance, health insurance for the working poor, cancer research, and school renovation and construction. If this reliable revenue stream were jeopardized, the State might be forced to cut many vital services and programs.

(2) Recent jury verdicts in private litigation against tobacco manufacturers who were signatories to the Master Settlement Agreement have resulted in a \$145 billion class action judgment, which is on appeal, and other large judgments. A plaintiff can typically collect such judgments while an appeal is proceeding, meaning that a defendant's assets can be taken even while it appeals.

(3) A defendant can prevent a plaintiff from taking its assets while it appeals in two ways, by posting a bond under State law or by declaring bankruptcy. If a tobacco company faced with a large judgment could not afford to post a bond under State law it might be forced to declare bankruptcy, and this could interrupt the flow of payments to the State under the Master Settlement Agreement. This would hurt the residents of New Jersey.

(4) New Jersey law requires a defendant to post a bond at least equal to the full amount of the judgment. This may not be possible for the signatories to the Master Settlement Agreement in light of the size of the judgments they are facing. The Legislature finds that it is strongly in the public interest to ensure that a Master Settlement Agreement signatory has access to a full appeal of an adverse judgment before its financial soundness, and its payments to the State, are threatened by the judgment, and thus to ensure that a Master Settlement Agreement signatory is not forced into bankruptcy due to its inability to post a bond pending appeal of an adverse judgment. In furtherance of this compelling public interest the Legislature finds that a maximum appeal bond should be established for cases involving Master Settlement Agreement signatories, successors and affiliates.

(5) The Legislature declares that nothing in this act, P.L.2003, c.195 (C.52:4D-13), is intended to affect the liability of a tobacco manufacturer in any litigation. This act merely ensures that a Master Settlement Agreement signatory, a successor of a signatory, or any affiliate of a signatory, can fully appeal an adverse judgment, thereby avoiding the necessity of seeking a stay in the bankruptcy court. This, in turn, will protect not only New Jersey but all states participating in the Master Settlement Agreement by preserving the uninterrupted flow of tobacco settlement revenues.

b. In order to secure and protect the monies to be received as a result of the Master Settlement Agreement, as defined in section 2 of P.L.1999, c.148 (C.52:4D-2), in civil litigation under any legal theory involving a signatory, a successor of a signatory, or any affiliate of a signatory to the Master Settlement Agreement, the appeal bond to be furnished during the pendency of all appeals or discretionary reviews by any appellate courts in order to stay the execution of any judgment granting legal, equitable or other relief during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total appeal bond that is required of all appellants collectively shall not exceed \$50,000,000 regardless of the value of the judgment.

c. Notwithstanding subsection b. of this section, if an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may enter orders that:

- (1) are necessary to protect the appellee; and
- (2) require the appellant to post a bond in an amount up to the total amount of the judgment.

2. This act shall take effect immediately and shall apply to all cases pending or filed on or

after its effective date.

Approved November 21, 2003.