

## CHAPTER 96

AN ACT concerning tobacco manufacturer payments under the tobacco Master Settlement Agreement, amending and supplementing P.L.1999, c.148.

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

1. Section 3 of P.L.1999, c.148 (C.52:4D-3) is amended to read as follows:

C.52:4D-3 Responsibilities of tobacco product manufacturer.

3. 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:

- (a) 1999, \$.0094241 per unit sold after the date of enactment of this act;
- (b) 2000, \$.0104712 per unit sold;
- (c) for each of 2001 and 2002, \$.0136125 per unit sold;
- (d) for each of 2003 through 2006, \$.0167539 per unit sold; and
- (e) 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) of this subsection 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 the tobacco product manufacturer establishes that the amount that it was required to place into escrow on account of units sold in the State in a particular year was greater than the 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 the tobacco product manufacturer; or

(c) to the extent not released from escrow under subparagraph (a) or (b) of this paragraph, funds shall be released from escrow and revert back to the tobacco product manufacturer 25 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 into the General Fund, in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% 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 into the General Fund, in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% 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 or intermediaries, for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. A person who violates this section shall pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3).

C.52:4D-3.1 Effect of holding of unconstitutionality, repeal.

2. If this act, or any portion of the amendment made in section 1 of this act amending subparagraph (b) of paragraph (2) of subsection b. of section 3 of P.L.1999, c.148 (C.52:4D-3), 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 subsection b. of section 3 of P.L.1999, c.148 (C.52:4D-3) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this act shall be deemed repealed, and subparagraph (b) of paragraph (2) of subsection b. of section 3 of P.L.1999, c.148 (C.52:4D-3) restored as if no such amendment had been made. Neither any holding of unconstitutionality nor the repeal of subparagraph (b) of paragraph (2) of subsection b. of section 3 of P.L.1999, c.148 (C.52:4D-3), shall affect, impair or invalidate any other portion of section 3 of P.L.1999, c.148 (C.52:4D-3), or the application of such section to any other person or circumstance, and such remaining portions of section 3 of P.L.1999, c.148 (C.52:4D-3) shall at all times continue in full force and effect.

C.52:4D-3.2 Annual report to Joint Budget Oversight Committee.

3. The State Treasurer shall submit an annual report to the Joint Budget Oversight Committee on or before December 31 of each year setting forth a list of the amount of payments by and refunds to Participating Manufacturers and Non-Participating Manufacturers for the previous fiscal year and a list of any payments of penalties required under section 3 of P.L.1999, c.148 (C.52:4D-3) for the previous fiscal year.

4. This act shall take effect immediately.

Approved June 28, 2007.