

SECOND REGULAR SESSION

# HOUSE BILL NO. 2795

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCGAUGH.

6862H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 196.1003, RSMo, and to enact in lieu thereof one new section relating to the tobacco master settlement agreement, with an emergency clause.

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

Section A. Section 196.1003, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 196.1003, to read as follows: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

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

17 (2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph  
18 (1) shall receive the interest or other appreciation on such funds as earned. Such funds  
19 themselves shall be released from escrow only under the following circumstances--

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

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

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

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

45 (A) be required within 15 days to place such funds into escrow as shall bring it into  
46 compliance with this section. The court, upon a finding of a violation of this subsection, may  
47 impose a civil penalty to be paid to the State's general revenue fund in an amount not to exceed  
48 5 percent of the amount improperly withheld from escrow per day of the violation and in a total  
49 amount not to exceed 100 percent of the original amount improperly withheld from escrow;

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

53 revenue fund in an amount not to exceed 15 percent of the amount improperly withheld from  
54 escrow per day of the violation and in a total amount not to exceed 300 percent of the original  
55 amount improperly withheld from escrow; and

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

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

Section B. Because immediate action is necessary to protect the economic welfare of the  
2 citizens of this state, section A of this act is deemed necessary for the immediate preservation  
3 of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act  
4 within the meaning of the constitution, and section A of this act shall be in full force and effect  
5 upon its passage and approval.

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