

FIRST REGULAR SESSION

# SENATE BILL NO. 375

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PARSON.

Read 1st time February 28, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1700S.011

## 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.

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Section A. Section 196.1003, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 196.1003, to read as follows: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

(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

20 the following circumstances--

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

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

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

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

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

56 100 percent of the original amount improperly withheld from escrow;

57 (B) in the case of a knowing violation, be required within 15 days to place  
58 such funds into escrow as shall bring it into compliance with this section. The  
59 court, upon a finding of a knowing violation of this subsection, may impose a civil  
60 penalty to be paid to the State's general revenue fund in an amount not to exceed  
61 15 percent of the amount improperly withheld from escrow per day of the  
62 violation and in a total amount not to exceed 300 percent of the original amount  
63 improperly withheld from escrow; and

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

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

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

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