



2020 South Dakota Legislature

Senate Bill 25

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 **An Act to establish certain requirements to maintain state compliance with the**
 2 **Master Settlement Agreement.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1.** That a NEW SECTION be added:

5 **10-50B-18. Cigarette importers--Tobacco product manufacturer--Joint and**
 6 **several liability--Escrow Fund.**

7 Any person that imports cigarettes into the United States shall be jointly and
 8 severally liable with any tobacco product manufacturer required to place a deposit into a
 9 qualified escrow fund pursuant to subdivision 10-50B-7(2) for the obligation to make the
 10 deposit into the qualified escrow fund.

11 **Section 2.** That a NEW SECTION be added:

12 **10-50B-19. State directory--Manufacturers--Surety bond--Amount.**

13 Before being listed in the state directory of manufacturers and brands permitted to
 14 be sold, any tobacco product manufacturer required to place a deposit into a qualified
 15 escrow fund pursuant to subdivision 10-50B-7(2) shall provide a surety bond to the
 16 attorney general at least ten days before the beginning of each calendar quarter. The
 17 amount of the bond shall be the greater of:

18 (1) The largest required deposit into a qualified escrow fund by the tobacco product
 19 manufacturer or the tobacco product manufacturer's predecessor for any of the
 20 twelve preceding calendar quarters; or

21 (2) Twenty-five thousand dollars.

22 **Section 3.** That a NEW SECTION be added:

1 **10-50B-20. Disclosure of information--Purposes.**

2 Notwithstanding any other law, the secretary of revenue or the attorney general
3 may disclose, at the discretion of the secretary or the attorney general, any information
4 received pursuant to title 10 for purposes of the proper administration, determination of
5 compliance, or enforcement of chapters 10-50 and 10-50B, to:

6 (1) Participating manufacturers;

7 (2) Signatory states that are signatories to the NPM Adjustment Settlement
8 Agreement; or

9 (3) The Data Clearinghouse;

10 as those terms are defined in the Master Settlement Agreement or the NPM Adjustment
11 Settlement Agreement.

12 **Section 4.** That § 10-50B-3 be AMENDED:

13 **10-50B-3. Definitions.**

14 Terms used in §§ 10-50B-1 to 10-50B-10, inclusive, mean:

15 (1) "Adjusted for inflation," increased in accordance with the formula for inflation
16 adjustment set forth in the Master Settlement Agreement;

17 (2) "Affiliate," a person who directly or indirectly owns or controls, is owned or
18 controlled by, or is under common ownership or control with, another person. Solely
19 for purposes of this definition, the terms, owns, is owned, and ownership, mean
20 ownership of an equity interest, or the equivalent thereof, of ten percent or more,
21 and the term, person, means an individual, partnership, committee, association,
22 corporation, or any other organization or group of persons;

23 (3) "Allocable share," allocable share as that term is defined in the Master Settlement
24 Agreement;

25 (4) "Master Settlement Agreement," the settlement agreement, and related
26 documents, entered into on November 23, 1998, by the State of South Dakota and
27 major United States tobacco product manufacturers which is filed as part of the
28 court record in *State of South Dakota, et al. v. Philip Morris, Inc., et al.*, Civ. No.
29 98-65, Sixth Judicial Circuit, Hughes County;

30 (5) "Qualified escrow fund," an escrow arrangement with a federally or state-chartered
31 financial institution having no affiliation with any tobacco product manufacturer and
32 having assets of at least one billion dollars where such arrangement requires that
33 the financial institution hold the escrowed funds' principal for the benefit of releasing
34 parties and prohibits the tobacco product manufacturer placing the funds into

- 1 escrow from using, accessing, or directing the use of the funds' principal except as
2 consistent with § 10-50B-8;
- 3 (6) "Released claims," released claims as that term is defined in the Master Settlement
4 Agreement;
- 5 (7) "Releasing parties," releasing parties as that term is defined in the Master
6 Settlement Agreement;
- 7 (8) "NPM Adjustment Settlement Agreement," the settlement agreement, and related
8 documents, entered into on March 9, 2018, by the State of South Dakota and major
9 United States tobacco product manufacturers which is filed as part of the court
10 record in *State of South Dakota, et al. v. Philip Morris, Inc., et al.*, Civ. No. 98-65,
11 Sixth Judicial Circuit, Hughes County.