

[Second Reprint]

ASSEMBLY, No. 2929

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED MARCH 4, 1999

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District 39 (Bergen)

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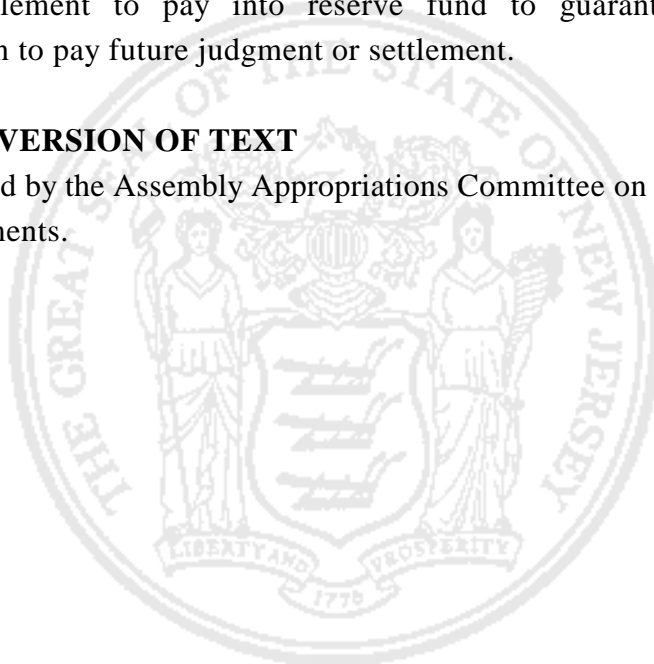
Senator Sinagra

SYNOPSIS

Requires tobacco product manufacturers who did not participate in national tobacco settlement to pay into reserve fund to guarantee source of compensation to pay future judgment or settlement.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on May 17, 1999, with amendments.



(Sponsorship Updated As Of: 6/25/1999)

1 AN ACT concerning certain tobacco product manufacturers and
2 supplementing Title 52 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. Cigarette smoking presents serious public health concerns to
8 the State and to the citizens of the State. The Surgeon General has
9 determined that smoking causes lung cancer, heart disease and other
10 serious diseases, and that there are hundreds of thousands of tobacco-
11 related deaths in the United States each year. These diseases most
12 often do not appear until many years after the person in question
13 begins smoking.

14 b. Cigarette smoking also presents serious financial concerns for
15 the State. Under certain health care programs, the State may have a
16 legal obligation to provide medical assistance to eligible persons for
17 health conditions associated with cigarette smoking, and those persons
18 may have a legal entitlement to receive such medical assistance.

19 c. Under these programs, the State pays millions of dollars each
20 year to provide medical assistance for these persons for health
21 conditions associated with cigarette smoking.

22 d. It is the policy of the State that financial burdens imposed on the
23 State by cigarette smoking be borne by tobacco product manufacturers
24 rather than by the State to the extent that such manufacturers either
25 determine to enter into a settlement with the State or are found
26 culpable by the courts.

27 e. On November 23, 1998, leading United States tobacco product
28 manufacturers entered into a settlement agreement, entitled the
29 "Master Settlement Agreement," with the State. The Master
30 Settlement Agreement obligates these manufacturers, in return for a
31 release of past, present and certain future claims against them as
32 described therein, to: pay substantial sums to the State, tied in part to
33 their volume of sales; fund a national foundation devoted to the
34 interests of public health; and make substantial changes in their
35 advertising and marketing practices and corporate culture, with the
36 intention of reducing underage smoking.

37 f. It would be contrary to the policy of the State if tobacco product
38 manufacturers who determine not to enter into such a settlement could
39 use a resulting cost advantage to derive large, short-term profits in the
40 years before liability may arise without ensuring that the State will
41 have an eventual source of recovery from them if they are proven to

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHL committee amendments adopted March 4, 1999.

² Assembly AAP committee amendments adopted May 17, 1999.

1 have acted culpably. It is thus in the interest of the State to require
2 that such manufacturers establish a reserve fund to guarantee a source
3 of compensation and to prevent such manufacturers from deriving
4 large, short-term profits and then becoming judgment-proof before
5 liability may arise.

6
7 2. As used in this act:

8 "Adjusted for inflation" means increased in accordance with the
9 formula for inflation adjustment set forth in Exhibit C to the Master
10 Settlement Agreement.

11 "Affiliate" means a person who directly or indirectly owns or
12 controls, is owned or controlled by, or is under common ownership
13 or control with^{1, 1} another person. Solely for purposes of this
14 definition, the term "owns," "is owned" and "ownership" mean
15 ownership of an equity interest, or the equivalent thereof, of 10% or
16 more, and the term "person" means an individual, partnership,
17 committee, association, corporation or any other organization or
18 group of persons.

19 "Allocable share" means allocable share as that term is defined in
20 the Master Settlement Agreement.

21 "Cigarette" means any product that contains nicotine, is intended to
22 be burned or heated under ordinary conditions of use, and consists of
23 or contains:

24 (1) any roll of tobacco wrapped in paper or in any substance not
25 containing tobacco; or

26 (2) tobacco, in any form, that is functional in the product, which,
27 because of its appearance, the type of tobacco used in the filler, or its
28 packaging and labeling, is likely to be offered to, or purchased by,
29 consumers as a cigarette; or

30 (3) any roll of tobacco wrapped in any substance containing
31 tobacco which, because of its appearance, the type of tobacco used in
32 the filler, or its packaging and labeling, is likely to be offered to, or
33 purchased by, consumers as a cigarette described in paragraph (1) of
34 this definition.

35 The term "cigarette" includes "roll-your-own," which means any
36 tobacco that, because of its appearance, type, packaging, or labeling
37 is suitable for use and likely to be offered to, or purchased by,
38 consumers as tobacco for making cigarettes. For purposes of this
39 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall
40 constitute one individual "cigarette."

41 "Master Settlement Agreement" means the settlement agreement^{1, 1}
42 and related documents^{1, 1} entered into on November 23, 1998 by the
43 State and leading United States tobacco product manufacturers.

44 "Qualified escrow fund" means an escrow arrangement with a
45 federally or State chartered financial institution having no affiliation
46 with any tobacco product manufacturer and having assets of at least

1 \$1,000,000,000 where such arrangement requires that ¹~~the~~ such¹
2 financial institution hold the escrowed funds' principal for the benefit
3 of releasing parties and prohibits the tobacco product manufacturer
4 placing the funds into escrow from using, accessing or directing the
5 use of the funds' principal except as consistent with paragraph (2) of
6 subsection b. of section 3 of this act.

7 "Released claims" means released claims as that term is defined in
8 the Master Settlement Agreement.

9 "Releasing parties" means releasing parties as that term is defined
10 in the Master Settlement Agreement.

11 "Tobacco Product Manufacturer" means an entity that after the date
12 of enactment of this ¹~~act~~¹ directly, and not exclusively through any
13 affiliate:

14 (1) manufactures ²~~anywhere~~² cigarettes ²~~anywhere~~² that ¹~~the~~
15 ²~~such~~¹ ~~the~~² manufacturer intends to be sold in the United States,
16 including cigarettes intended to be sold in the United States through
17 an importer ²~~], except where~~¹ ~~the~~ such¹; ~~provided, however, that~~
18 ~~an entity that manufactures cigarettes that it intends to be sold in the~~
19 ~~United States shall not be considered to be a tobacco product~~
20 ~~manufacturer under this paragraph (1) if (a) such cigarettes are sold in~~
21 ~~the United States exclusively through an~~² importer ² ~~that~~² is an
22 original participating manufacturer¹,¹ as that term is defined in the
23 Master Settlement Agreement, that will be responsible for the
24 payments under the Master Settlement Agreement with respect to such
25 cigarettes as a result of the provisions of ²~~subsections~~² subsection²
26 II(mm) of the Master Settlement Agreement and that pays the taxes
27 specified in subsection II(z) of the Master Settlement Agreement, and
28 ²~~provided that~~² ~~(b)~~² the manufacturer of ¹~~these~~ such¹ cigarettes
29 does not market or advertise such cigarettes in the United States;

30 (2) is the first purchaser anywhere for resale in the United States
31 of cigarettes manufactured anywhere that the manufacturer does not
32 intend to be sold in the United States; or

33 (3) becomes a successor of an entity described in paragraph (1) or
34 (2) of this definition.

35 The term "tobacco product manufacturer" shall not include an
36 affiliate of a tobacco product manufacturer unless ¹~~the~~ such¹
37 affiliate itself falls within any of paragraphs (1) through (3) of this
38 definition.

39 "Units sold" means the number of individual cigarettes sold in the
40 State by the applicable tobacco product manufacturer, whether directly
41 or through a distributor, retailer or similar intermediary ¹~~or~~
42 intermediaries¹, during the year in question, as measured by excise
43 taxes collected by the State ¹~~on~~² containers of "roll-your-own"
44 tobacco, and on² packs²; ~~or "roll-your-own" tobacco containers,]~~
45 cigarettes² bearing the excise tax stamp of the State¹. The State
46 Treasurer shall promulgate such regulations as are necessary to

1 ascertain the amount of State excise tax paid on the cigarettes of
2 ¹**the** such¹ tobacco product manufacturer for each year.

3
4 3. ¹**A** Any¹ tobacco product manufacturer selling cigarettes to
5 consumers within the State, whether directly or through a distributor,
6 retailer or similar intermediary ¹or intermediaries¹, after the date of
7 enactment of this act shall do one of the following:

8 a. become a participating manufacturer ²as² as that term is defined
9 in section II(jj) of the Master Settlement Agreement²² and generally
10 perform its financial obligations under the Master Settlement
11 Agreement; or

12 b. (1) place into a qualified escrow fund by April 15 of the year
13 following the year in question the following amounts, as such amounts
14 are adjusted for inflation:

15 (a) ¹**for**¹ 1999, \$.0094241 per unit sold after the date of
16 enactment of this act;

17 (b) ¹**for**¹ 2000, \$.0104712 per unit sold;

18 (c) for each of 2001 and 2002, \$.0136125 per unit sold;

19 (d) for each of 2003 through 2006, \$.0167539 per unit sold; and

20 (e) for ²each of² 2007 and each year thereafter, \$.0188482 per unit
21 sold.

22 (2) A tobacco product manufacturer that places funds into escrow
23 pursuant to paragraph (1) of this subsection shall receive the interest
24 or other appreciation on ¹**those** such¹ funds as earned. **The**
25 Such¹ funds themselves shall be released from escrow only under the
26 following circumstances:

27 (a) to pay a judgment or settlement on any released claim brought
28 against ¹**the** such¹ tobacco product manufacturer by the State or any
29 releasing party located or residing in the State. Funds shall be released
30 from escrow under this subparagraph: (i) ¹**on** in¹ the order in which
31 they were placed into escrow; and (ii) only to the extent and at the
32 time necessary to make payments required under ¹**the** such¹
33 judgment or settlement;

34 (b) to the extent that ²**a** the² tobacco product manufacturer
35 establishes that the amount ²that² it was required to place into escrow
36 in a particular year was greater than the State's allocable share of the
37 total payments that ¹**the** such¹ manufacturer would have been
38 required to make in that year under the Master Settlement Agreement
39 ²had it been a participating manufacturer², as ²such payments are²
40 determined pursuant to section IX (i)(2) of the Master Settlement
41 Agreement, and before any of the adjustments or offsets described in
42 section IX(i)(3) of that agreement other than the inflation adjustment
43 ²**[, had it been a participating manufacturer]**², the excess shall be
44 released from escrow and revert back to the tobacco product
45 manufacturer; or

1 (c) to the extent not released from escrow under subparagraphs (a)
2 or (b) of this paragraph, funds shall be released from escrow and
3 revert back to the tobacco product manufacturer 25 years after the
4 date on which they were placed into escrow.

5 (3) Each tobacco product manufacturer that elects to place funds
6 into escrow pursuant to this subsection shall annually certify to the
7 Attorney General that it is in compliance with this subsection. The
8 Attorney General may bring a civil action on behalf of the State
9 against ¹~~any~~ tobacco product manufacturer that fails to place into
10 escrow the funds required under this section. ¹~~A~~ Any tobacco
11 product manufacturer that fails in any year to place into escrow the
12 funds required under this section shall:

13 (a) be required within 15 days to place such funds into escrow as
14 shall bring it into compliance with this section. The court, upon a
15 finding of a violation of this subsection, may impose a civil penalty, to
16 be paid into the General Fund, in an amount not to exceed 5% of the
17 amount improperly withheld from escrow ¹~~for each~~ per day of the
18 violation and in ¹~~a~~ total amount not to exceed 100% of the original
19 amount improperly withheld from escrow;

20 (b) in the case of a knowing violation, be required within 15 days
21 to place such funds into escrow as shall bring it into compliance with
22 this section. The court, upon a finding of a knowing violation of this
23 subsection, may impose a civil penalty, to be paid into the General
24 Fund, in an amount not to exceed 15% of the amount improperly
25 withheld from escrow ¹~~for each~~ per day of the violation and in a
26 total amount not to exceed 300% of the original amount improperly
27 withheld from escrow; and

28 (c) in the case of a second knowing violation, be prohibited from
29 selling cigarettes to consumers within the State, whether directly or
30 through a distributor, retailer or similar intermediary ¹~~or~~
31 intermediaries, for a period not to exceed two years.

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

36
37 4. This act shall take effect immediately.