

# SENATE, No. 1713

## STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED FEBRUARY 25, 1999

**Sponsored by:**

**Senator JACK SINAGRA**

**District 18 (Middlesex)**

### **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 introduced.



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

1       2. As used in this act:

2       "Adjusted for inflation" means increased in accordance with the  
3 formula for inflation adjustment set forth in Exhibit C to the Master  
4 Settlement Agreement.

5       "Affiliate" means a person who directly or indirectly owns or  
6 controls, is owned or controlled by, or is under common ownership  
7 or control with another person. Solely for purposes of this definition,  
8 the term "owns," "is owned" and "ownership" mean ownership of an  
9 equity interest, or the equivalent thereof, of 10% or more, and the  
10 term "person" means an individual, partnership, committee,  
11 association, corporation or any other organization or group of  
12 persons.

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

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

18       (1) any roll of tobacco wrapped in paper or in any substance not  
19 containing tobacco; or

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

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

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

35       "Master Settlement Agreement" means the settlement agreement  
36 and related documents entered into on November 23, 1998 by the  
37 State and leading United States tobacco product manufacturers.

38       "Qualified escrow fund" means an escrow arrangement with a  
39 federally or State chartered financial institution having no affiliation  
40 with any tobacco product manufacturer and having assets of at least  
41 \$1,000,000,000 where such arrangement requires that the financial  
42 institution hold the escrowed funds' principal for the benefit of  
43 releasing parties and prohibits the tobacco product manufacturer  
44 placing the funds into escrow from using, accessing or directing the  
45 use of the funds' principal except as consistent with paragraph (2) of  
46 subsection b. of section 3 of this act.

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

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

5 "Tobacco Product Manufacturer" means an entity that after the date  
6 of enactment of this directly, and not exclusively through any affiliate:

7 (1) manufactures cigarettes anywhere that the manufacturer intends  
8 to be sold in the United States, including cigarettes intended to be sold  
9 in the United States through an importer, except where the importer  
10 is an original participating manufacturer as that term is defined in the  
11 Master Settlement Agreement, that will be responsible for the  
12 payments under the Master Settlement Agreement with respect to such  
13 cigarettes as a result of the provisions of subsections II(mm) of the  
14 Master Settlement Agreement and that pays the taxes specified in  
15 subsection II(z) of the Master Settlement Agreement, and provided  
16 that the manufacturer of these cigarettes does not market or advertise  
17 such cigarettes in the United States;

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

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

23 The term "tobacco product manufacturer" shall not include an  
24 affiliate of a tobacco product manufacturer unless the affiliate itself  
25 falls within any of paragraphs (1) through (3) of this definition.

26 "Units sold" means the number of individual cigarettes sold in the  
27 State by the applicable tobacco product manufacturer, whether directly  
28 or through a distributor, retailer or similar intermediary, during the  
29 year in question, as measured by excise taxes collected by the State.  
30 The State Treasurer shall promulgate such regulations as are necessary  
31 to ascertain the amount of State excise tax paid on the cigarettes of  
32 the tobacco product manufacturer for each year.

33  
34 3. A tobacco product manufacturer selling cigarettes to consumers  
35 within the State, whether directly or through a distributor, retailer or  
36 similar intermediary, after the date of enactment of this act shall do  
37 one of the following:

38 a. become a participating manufacturer as that term is defined in  
39 section II(jj) of the Master Settlement Agreement and generally  
40 perform its financial obligations under the Master Settlement  
41 Agreement; or

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

45 (a) for 1999, \$.0094241 per unit sold after the date of enactment of  
46 this act;

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

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

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

4 (e) for 2007 and each year thereafter, \$.0188482 per unit sold.

5 (2) A tobacco product manufacturer that places funds into escrow  
6 pursuant to paragraph (1) of this subsection shall receive the interest  
7 or other appreciation on those funds as earned. The funds themselves  
8 shall be released from escrow only under the following circumstances:

9 (a) to pay a judgment or settlement on any released claim brought  
10 against the tobacco product manufacturer by the State or any releasing  
11 party located or residing in the State. Funds shall be released from  
12 escrow under this subparagraph: (i) on the order in which they were  
13 placed into escrow; and (ii) only to the extent and at the time  
14 necessary to make payments required under the judgment or  
15 settlement;

16 (b) to the extent that a tobacco product manufacturer establishes  
17 that the amount it was required to place into escrow in a particular  
18 year was greater than the State's allocable share of the total payments  
19 that the manufacturer would have been required to make in that year  
20 under the Master Settlement Agreement, as determined pursuant to  
21 section IX (i)(2) of the Master Settlement Agreement, and before any  
22 of the adjustments or offsets described in section IX(i)(3) of that  
23 agreement other than the inflation adjustment, had it been a  
24 participating manufacturer, the excess shall be released from escrow  
25 and revert back to the tobacco product manufacturer; or

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

30 (3) Each tobacco product manufacturer that elects to place funds  
31 into escrow pursuant to this subsection shall annually certify to the  
32 Attorney General that it is in compliance with this subsection. The  
33 Attorney General may bring a civil action on behalf of the State  
34 against a tobacco product manufacturer that fails to place into escrow  
35 the funds required under this section. A tobacco product manufacturer  
36 that fails in any year to place into escrow the funds required under this  
37 section shall:

38 (a) be required within 15 days to place such funds into escrow as  
39 shall bring it into compliance with this section. The court, upon a  
40 finding of a violation of this subsection, may impose a civil penalty, to  
41 be paid into the General Fund, in an amount not to exceed 5% of the  
42 amount improperly withheld from escrow for each day of the violation  
43 and in total amount not to exceed 100% of the original amount  
44 improperly withheld from escrow;

45 (b) in the case of a knowing violation, be required within 15 days  
46 to place such funds into escrow as shall bring it into compliance with

1 this section. The court, upon a finding of a knowing violation of this  
2 subsection, may impose a civil penalty, to be paid into the General  
3 Fund, in an amount not to exceed 15% of the amount improperly  
4 withheld from escrow for each day of the violation and in a total  
5 amount not to exceed 300% of the original amount improperly  
6 withheld from escrow; and

7 (c) in the case of a second knowing violation, be prohibited from  
8 selling cigarettes to consumers within the State, whether directly or  
9 through a distributor, retailer or similar intermediary, for a period not  
10 to exceed two years.

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

15  
16 4. This act shall take effect immediately.

17  
18  
19 STATEMENT

20  
21 This bill requires tobacco product manufacturers who did not  
22 participate in the national tobacco settlement reached on  
23 November 23, 1998, which was entered into by the State in the Master  
24 Settlement Agreement in State of New Jersey v. R.J. Reynolds  
25 Tobacco Company, et al., Superior Court, Chancery Division,  
26 Middlesex County, No. C-254-96, to pay into a reserve fund in order  
27 to guarantee a source of compensation for them to pay any future  
28 judgment or settlement. Under the terms of the Master Settlement  
29 Agreement, enactment of this bill in its exact form is a condition of  
30 New Jersey's receipt of the full amount of funds to which it is  
31 otherwise entitled under that agreement.