

SENATE BILL 12

P5
SB 942/08 – JPR

(PRE-FILED)

9lr0534

By: **Senator Forehand**

Requested: August 25, 2008

Introduced and read first time: January 14, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco Product Manufacturers – Settlement of State Claims –**
3 **Nonparticipating Manufacturers – Deposit of Funds in Escrow – Codification**
4 **of Model Statute**

5 FOR the purpose of codifying the provisions of the Model Statute enacted by Chapter
6 169 of the Acts of the General Assembly of 1999 as amended; providing for the
7 termination of certain provisions of this Act under certain circumstances;
8 providing for the construction of this Act; making certain technical, stylistic,
9 and conforming changes; and generally relating to the codification of a certain
10 prior enactment of the General Assembly relating to tobacco product
11 manufacturers and certain required deposits of funds into escrow accounts.

12 BY repealing

13 Chapter 169 of the Acts of the General Assembly of 1999, as amended by
14 Chapter 141 of the Acts of the General Assembly of 2001, Chapter 348 of
15 the Acts of the General Assembly of 2004, and Chapter 538 of the Acts of
16 the General Assembly of 2006

17 Section 1

18 BY repealing and reenacting, with amendments,

19 Article – Business Regulation

20 Section 16–401 to be under the amended subtitle “Subtitle 3B. Miscellaneous
21 Prohibited Act; Penalty”; and 16–501(c), (e), (g), (j), (k), and (l),
22 16–503(d)(2), and 16–504(b)(2)

23 Annotated Code of Maryland

24 (2004 Replacement Volume and 2008 Supplement)

25 BY adding to

26 Article – Business Regulation

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 16–401 through 16–403 to be under the new subtitle “Subtitle 4.
2 Tobacco Product Manufacturers Escrow Act”
3 Annotated Code of Maryland
4 (2004 Replacement Volume and 2008 Supplement)

5 BY repealing and reenacting, with amendments,
6 Chapter 455 of the Acts of the General Assembly of 2003
7 Section 2

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
9 MARYLAND, That Section(s) 1 of Chapter(s) 169 of the Acts of the General Assembly
10 of 1999, as amended by Chapter 141 of the Acts of the General Assembly of 2001,
11 Chapter 348 of the Acts of the General Assembly of 2004, and Chapter 538 of the Acts
12 of the General Assembly of 2006 be repealed.

13 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
14 read as follows:

15 **Article – Business Regulation**

16 Subtitle [4.] **3B.** Miscellaneous Prohibited Act; Penalty.

17 [16–401.] **16–3B–01.**

18 (a) A person may not violate a regulation adopted by the Comptroller that
19 applies to a person who sells cigarettes at retail.

20 (b) A person who violates this section is guilty of a misdemeanor and, on
21 conviction, is subject to a fine of \$100.

22 **SUBTITLE 4. TOBACCO PRODUCT MANUFACTURERS ESCROW ACT.**

23 **16–401.**

24 (A) **CIGARETTE SMOKING PRESENTS SERIOUS PUBLIC HEALTH**
25 **CONCERNS TO THE STATE AND TO THE CITIZENS OF THE STATE. THE UNITED**
26 **STATES SURGEON GENERAL HAS DETERMINED THAT SMOKING CAUSES LUNG**
27 **CANCER, HEART DISEASE, AND OTHER SERIOUS DISEASES, AND THAT THERE**
28 **ARE HUNDREDS OF THOUSANDS OF TOBACCO–RELATED DEATHS IN THE UNITED**
29 **STATES EACH YEAR. THESE DISEASES MOST OFTEN DO NOT APPEAR UNTIL**
30 **MANY YEARS AFTER THE PERSON IN QUESTION BEGINS SMOKING.**

31 (B) **CIGARETTE SMOKING ALSO PRESENTS SERIOUS FINANCIAL**
32 **CONCERNS FOR THE STATE. UNDER CERTAIN HEALTH CARE PROGRAMS, THE**
33 **STATE MAY HAVE A LEGAL OBLIGATION TO PROVIDE MEDICAL ASSISTANCE TO**
34 **ELIGIBLE PERSONS FOR HEALTH CONDITIONS ASSOCIATED WITH CIGARETTE**

1 SMOKING, AND THOSE PERSONS MAY HAVE A LEGAL ENTITLEMENT TO RECEIVE
2 THE MEDICAL ASSISTANCE.

3 (C) UNDER THESE PROGRAMS, THE STATE PAYS MILLIONS OF DOLLARS
4 EACH YEAR TO PROVIDE MEDICAL ASSISTANCE FOR THESE PERSONS FOR
5 HEALTH CONDITIONS ASSOCIATED WITH CIGARETTE SMOKING.

6 (D) IT IS THE POLICY OF THE STATE THAT FINANCIAL BURDENS
7 IMPOSED ON THE STATE BY CIGARETTE SMOKING BE BORNE BY TOBACCO
8 PRODUCT MANUFACTURERS RATHER THAN BY THE STATE TO THE EXTENT THAT
9 SUCH MANUFACTURERS EITHER DETERMINE TO ENTER INTO A SETTLEMENT
10 WITH THE STATE OR ARE FOUND CULPABLE BY THE COURTS.

11 (E) ON NOVEMBER 23, 1998, LEADING UNITED STATES TOBACCO
12 PRODUCT MANUFACTURERS ENTERED INTO A SETTLEMENT AGREEMENT,
13 ENTITLED THE "MASTER SETTLEMENT AGREEMENT", WITH THE STATE. THE
14 MASTER SETTLEMENT AGREEMENT OBLIGATES THESE MANUFACTURERS, IN
15 RETURN FOR A RELEASE OF PAST, PRESENT, AND CERTAIN FUTURE CLAIMS
16 AGAINST THEM AS DESCRIBED IN THE AGREEMENT, TO PAY SUBSTANTIAL SUMS
17 TO THE STATE (TIED IN PART TO THEIR VOLUME OF SALES); TO FUND A
18 NATIONAL FOUNDATION DEVOTED TO THE INTERESTS OF PUBLIC HEALTH; AND
19 TO MAKE SUBSTANTIAL CHANGES IN THEIR ADVERTISING AND MARKETING
20 PRACTICES AND CORPORATE CULTURE, WITH THE INTENTION OF REDUCING
21 UNDERAGE SMOKING.

22 (F) (1) IT WOULD BE CONTRARY TO THE POLICY OF THE STATE IF
23 TOBACCO PRODUCT MANUFACTURERS WHO DETERMINE NOT TO ENTER INTO
24 SUCH A SETTLEMENT COULD USE A RESULTING COST ADVANTAGE TO DERIVE
25 LARGE, SHORT-TERM PROFITS IN THE YEARS BEFORE LIABILITY MAY ARISE
26 WITHOUT ENSURING THAT THE STATE WILL HAVE AN EVENTUAL SOURCE OF
27 RECOVERY FROM THEM IF THEY ARE PROVEN TO HAVE ACTED CULPABLY.

28 (2) IT IS THUS IN THE INTEREST OF THE STATE TO REQUIRE SUCH
29 TOBACCO PRODUCT MANUFACTURERS TO ESTABLISH A RESERVE FUND TO
30 GUARANTEE A SOURCE OF COMPENSATION IN ORDER TO PREVENT THEM FROM
31 DERIVING LARGE, SHORT-TERM PROFITS AND THEN BECOMING
32 JUDGMENT-PROOF BEFORE LIABILITY MAY ARISE.

33 16-402.

34 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
35 INDICATED.

1 **(B) “ADJUSTED FOR INFLATION” MEANS INCREASED IN ACCORDANCE**
2 **WITH THE FORMULA FOR INFLATION ADJUSTMENT SET FORTH IN EXHIBIT C TO**
3 **THE MASTER SETTLEMENT AGREEMENT.**

4 **(C) (1) “AFFILIATE” MEANS A PERSON WHO DIRECTLY OR**
5 **INDIRECTLY OWNS OR CONTROLS, IS OWNED OR CONTROLLED BY, OR IS UNDER**
6 **COMMON OWNERSHIP OR CONTROL WITH, ANOTHER PERSON.**

7 **(2) FOR THE PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION:**

8 **(I) “OWNS”, “IS OWNED”, AND “OWNERSHIP” MEAN**
9 **OWNERSHIP OF AN EQUITY INTEREST, OR THE EQUIVALENT THEREOF, OF 10**
10 **PERCENT OR MORE; AND**

11 **(II) “PERSON” MEANS AN INDIVIDUAL, PARTNERSHIP,**
12 **COMMITTEE, ASSOCIATION, CORPORATION, OR ANY OTHER ORGANIZATION OR**
13 **GROUP OF PERSONS.**

14 **(D) “ALLOCABLE SHARE” HAS THE MEANING THAT IS STATED IN THE**
15 **MASTER SETTLEMENT AGREEMENT.**

16 **(E) (1) “CIGARETTE” MEANS ANY PRODUCT THAT CONTAINS**
17 **NICOTINE, IS INTENDED TO BE BURNED OR HEATED UNDER ORDINARY**
18 **CONDITIONS OF USE, AND CONSISTS OF OR CONTAINS:**

19 **(I) ANY ROLL OF TOBACCO WRAPPED IN PAPER OR IN ANY**
20 **SUBSTANCE NOT CONTAINING TOBACCO;**

21 **(II) TOBACCO, IN ANY FORM, THAT IS FUNCTIONAL IN THE**
22 **PRODUCT, WHICH, BECAUSE OF ITS APPEARANCE, THE TYPE OF TOBACCO USED**
23 **IN THE FILLER, OR ITS PACKAGING AND LABELING, IS LIKELY TO BE OFFERED**
24 **TO, OR PURCHASED BY, CONSUMERS AS A CIGARETTE; OR**

25 **(III) ANY ROLL OF TOBACCO WRAPPED IN ANY SUBSTANCE**
26 **CONTAINING TOBACCO WHICH, BECAUSE OF ITS APPEARANCE, THE TYPE OF**
27 **TOBACCO USED IN THE FILLER, OR ITS PACKAGING AND LABELING, IS LIKELY TO**
28 **BE OFFERED TO, OR PURCHASED BY, CONSUMERS AS A CIGARETTE DESCRIBED**
29 **IN ITEM (I) OF THIS PARAGRAPH.**

30 **(2) “CIGARETTE” INCLUDES “ROLL-YOUR-OWN” TOBACCO (I.E.,**
31 **ANY TOBACCO WHICH, BECAUSE OF ITS APPEARANCE, TYPE, PACKAGING, OR**
32 **LABELING IS SUITABLE FOR USE AND LIKELY TO BE OFFERED TO OR**
33 **PURCHASED BY CONSUMERS AS TOBACCO FOR MAKING CIGARETTES). FOR**
34 **PURPOSES OF THIS DEFINITION OF “CIGARETTE”, 0.09 OUNCES OF**

1 **“ROLL-YOUR-OWN” TOBACCO SHALL CONSTITUTE ONE INDIVIDUAL**
2 **“CIGARETTE”.**

3 (F) **“MASTER SETTLEMENT AGREEMENT” MEANS THE SETTLEMENT**
4 **AGREEMENT AND RELATED DOCUMENTS ENTERED INTO ON NOVEMBER 23,**
5 **1998, BY THE STATE AND LEADING UNITED STATES TOBACCO PRODUCT**
6 **MANUFACTURERS.**

7 (G) **“QUALIFIED ESCROW FUND” MEANS AN ESCROW ARRANGEMENT**
8 **WITH A FEDERALLY OR STATE CHARTERED FINANCIAL INSTITUTION HAVING NO**
9 **AFFILIATION WITH ANY TOBACCO PRODUCT MANUFACTURER AND HAVING**
10 **ASSETS OF AT LEAST \$1,000,000,000 WHERE SUCH ARRANGEMENT REQUIRES**
11 **THAT SUCH FINANCIAL INSTITUTION HOLD THE PRINCIPAL OF THE ESCROWED**
12 **FUNDS FOR THE BENEFIT OF RELEASING PARTIES AND PROHIBITS THE**
13 **TOBACCO PRODUCT MANUFACTURER THAT PLACES THE FUNDS INTO ESCROW**
14 **FROM USING, ACCESSING, OR DIRECTING THE USE OF THE PRINCIPAL OF THE**
15 **FUNDS EXCEPT AS CONSISTENT WITH § 16-403(B) OF THIS SUBTITLE.**

16 (H) **“RELEASED CLAIMS” MEANS RELEASED CLAIMS AS THAT TERM IS**
17 **DEFINED IN THE MASTER SETTLEMENT AGREEMENT.**

18 (I) **“RELEASING PARTIES” MEANS RELEASING PARTIES AS THAT TERM**
19 **IS DEFINED IN THE MASTER SETTLEMENT AGREEMENT.**

20 (J) (1) **“TOBACCO PRODUCT MANUFACTURER” MEANS AN ENTITY**
21 **THAT, AFTER JUNE 1, 1999, DIRECTLY (AND NOT EXCLUSIVELY THROUGH ANY**
22 **AFFILIATE):**

23 (I) **MANUFACTURES CIGARETTES ANYWHERE THAT SUCH**
24 **MANUFACTURER INTENDS THEM TO BE SOLD IN THE UNITED STATES,**
25 **INCLUDING CIGARETTES INTENDED TO BE SOLD IN THE UNITED STATES**
26 **THROUGH AN IMPORTER (EXCEPT WHERE SUCH IMPORTER IS AN ORIGINAL**
27 **PARTICIPATING MANUFACTURER (AS THAT TERM IS DEFINED IN THE MASTER**
28 **SETTLEMENT AGREEMENT) THAT WILL BE RESPONSIBLE FOR THE PAYMENTS**
29 **UNDER THE MASTER SETTLEMENT AGREEMENT WITH RESPECT TO SUCH**
30 **CIGARETTES AS A RESULT OF THE PROVISIONS OF SUBSECTION II(MM) OF THE**
31 **MASTER SETTLEMENT AGREEMENT AND THAT PAYS THE TAXES SPECIFIED IN**
32 **SUBSECTION II(Z) OF THE MASTER SETTLEMENT AGREEMENT, AND PROVIDED**
33 **THAT THE MANUFACTURER OF SUCH CIGARETTES DOES NOT MARKET OR**
34 **ADVERTISE THE CIGARETTES IN THE UNITED STATES);**

35 (II) **IS THE FIRST PURCHASER ANYWHERE FOR RESALE IN**
36 **THE UNITED STATES OF CIGARETTES MANUFACTURED ANYWHERE THAT THE**
37 **MANUFACTURER DOES NOT INTEND TO BE SOLD IN THE UNITED STATES; OR**

1 (III) BECOMES A SUCCESSOR OF AN ENTITY DESCRIBED IN
2 SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH OR PARAGRAPH (2) OF THIS
3 SUBSECTION.

4 (2) THE TERM "TOBACCO PRODUCT MANUFACTURER" SHALL NOT
5 INCLUDE AN AFFILIATE OF A TOBACCO PRODUCT MANUFACTURER UNLESS
6 SUCH AFFILIATE ITSELF FALLS WITHIN ANY PROVISIONS OF PARAGRAPH (1)(I),
7 (II), OR (III) OF THIS SUBSECTION.

8 (K) "UNITS SOLD" MEANS THE NUMBER OF INDIVIDUAL CIGARETTES:

9 (1) SOLD IN THE STATE BY THE APPLICABLE TOBACCO PRODUCT
10 MANUFACTURER, WHETHER DIRECTLY OR THROUGH A DISTRIBUTOR,
11 RETAILER, OR SIMILAR INTERMEDIARY OR INTERMEDIARIES, DURING THE YEAR
12 IN QUESTION; AND

13 (2) AS MEASURED BY EXCISE TAXES COLLECTED BY THE STATE
14 ON PACKS (OR "ROLL-YOUR-OWN" TOBACCO CONTAINERS) BEARING THE
15 EXCISE TAX STAMP OF THE STATE OR ON UNSTAMPED "ROLL-YOUR-OWN"
16 TOBACCO CONTAINERS, WITH EACH 0.09 OUNCES OF "ROLL-YOUR-OWN"
17 TOBACCO EQUALING ONE (1) UNIT SOLD. THE STATE COMPTROLLER SHALL
18 PROMULGATE REGULATIONS NECESSARY TO ASCERTAIN THE AMOUNT OF
19 STATE EXCISE TAX PAID ON THE CIGARETTES OF SUCH TOBACCO PRODUCT
20 MANUFACTURER FOR EACH YEAR.

21 **16-403.**

22 (A) ANY TOBACCO PRODUCT MANUFACTURER THAT SELLS CIGARETTES
23 TO CONSUMERS WITHIN THE STATE, WHETHER DIRECTLY OR THROUGH A
24 DISTRIBUTOR, RETAILER, OR SIMILAR INTERMEDIARY OR INTERMEDIARIES,
25 AFTER JUNE 1, 1999, SHALL EITHER:

26 (1) BECOME A PARTICIPATING MANUFACTURER, AS THAT TERM IS
27 DEFINED IN SECTION II(JJ) OF THE MASTER SETTLEMENT AGREEMENT, AND
28 GENERALLY PERFORM ITS FINANCIAL OBLIGATIONS UNDER THE MASTER
29 SETTLEMENT AGREEMENT; OR

30 (2) PLACE INTO A QUALIFIED ESCROW FUND BY APRIL 15 OF THE
31 YEAR FOLLOWING THE YEAR IN QUESTION THE FOLLOWING AMOUNTS, AS SUCH
32 AMOUNTS ARE ADJUSTED FOR INFLATION:

33 (I) FOR 1999, \$.0094241 PER UNIT SOLD AFTER JUNE 1,
34 1999;

- 1 (II) FOR 2000, \$.0104712 PER UNIT SOLD;
- 2 (III) FOR EACH OF 2001 AND 2002, \$.0136125 PER UNIT
3 SOLD;
- 4 (IV) FOR EACH OF 2003, 2004, 2005, AND 2006, \$.0167539
5 PER UNIT SOLD; AND
- 6 (V) FOR 2007 AND EACH YEAR THEREAFTER, \$.0188482
7 PER UNIT SOLD.

8 (B) (1) A TOBACCO PRODUCT MANUFACTURER THAT PLACES FUNDS
9 INTO ESCROW IN ACCORDANCE WITH SUBSECTION (A)(2) OF THIS SECTION
10 SHALL RECEIVE THE INTEREST OR OTHER APPRECIATION ON THE FUNDS AS
11 EARNED.

12 (2) THE FUNDS THEMSELVES SHALL BE RELEASED FROM ESCROW
13 ONLY UNDER THE FOLLOWING CIRCUMSTANCES:

14 (I) TO PAY A JUDGMENT OR SETTLEMENT ON ANY
15 RELEASED CLAIM BROUGHT AGAINST SUCH TOBACCO PRODUCT
16 MANUFACTURER BY THE STATE OR ANY RELEASING PARTY LOCATED OR
17 RESIDING IN THE STATE. FUNDS SHALL BE RELEASED FROM ESCROW UNDER
18 THIS SUBPARAGRAPH:

19 1. IN THE ORDER IN WHICH THEY WERE PLACED
20 INTO ESCROW; AND

21 2. ONLY TO THE EXTENT AND AT THE TIME
22 NECESSARY TO MAKE PAYMENTS REQUIRED UNDER SUCH JUDGMENT OR
23 SETTLEMENT; OR

24 (II) TO THE EXTENT THAT A TOBACCO PRODUCT
25 MANUFACTURER ESTABLISHES THAT THE AMOUNT IT WAS REQUIRED TO PLACE
26 INTO ESCROW ON ACCOUNT OF UNITS SOLD IN THE STATE IN A PARTICULAR
27 YEAR WAS GREATER THAN THE MASTER SETTLEMENT AGREEMENT PAYMENTS,
28 AS DETERMINED PURSUANT TO SECTION IX(I) OF THAT AGREEMENT,
29 INCLUDING AFTER FINAL DETERMINATION OF ALL ADJUSTMENTS, THAT SUCH
30 MANUFACTURER WOULD HAVE BEEN REQUIRED TO MAKE ON ACCOUNT OF SUCH
31 UNITS SOLD HAD IT BEEN A PARTICIPATING MANUFACTURER, THE EXCESS
32 SHALL BE RELEASED FROM ESCROW AND REVERT BACK TO SUCH TOBACCO
33 MANUFACTURER; OR

1 (III) TO THE EXTENT FUNDS ARE NOT RELEASED FROM
2 ESCROW UNDER SUBPARAGRAPH (I) OR (II) OF PARAGRAPH (2) OF THIS
3 SUBSECTION, FUNDS SHALL BE RELEASED FROM ESCROW AND REVERT TO SUCH
4 TOBACCO PRODUCT MANUFACTURER 25 YEARS AFTER THE DATE ON WHICH
5 THEY WERE PLACED INTO ESCROW.

6 (C) (1) EACH TOBACCO PRODUCT MANUFACTURER THAT ELECTS TO
7 PLACE FUNDS INTO ESCROW PURSUANT TO SUBSECTION (A)(2) OF THIS
8 SECTION SHALL ANNUALLY CERTIFY TO THE ATTORNEY GENERAL THAT IT IS IN
9 COMPLIANCE WITH SUBSECTIONS (A)(2) AND (B) OF THIS SECTION.

10 (2) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION ON
11 BEHALF OF THE STATE AGAINST ANY TOBACCO PRODUCT MANUFACTURER
12 THAT FAILS TO PLACE INTO ESCROW THE FUNDS REQUIRED UNDER THIS
13 SECTION.

14 (3) (I) ANY TOBACCO PRODUCT MANUFACTURER THAT FAILS
15 IN ANY YEAR TO PLACE INTO ESCROW THE FUNDS REQUIRED UNDER THIS
16 SECTION SHALL BE REQUIRED WITHIN 15 DAYS TO PLACE SUCH FUNDS INTO
17 ESCROW AS WILL BRING THE MANUFACTURER INTO COMPLIANCE WITH THIS
18 SECTION.

19 (II) THE COURT, UPON A FINDING OF A VIOLATION OF
20 SUBSECTION (A)(2) OR (B) OF THIS SECTION, MAY IMPOSE A CIVIL PENALTY, TO
21 BE PAID TO THE GENERAL FUND OF THE STATE:

22 1. IN AN AMOUNT NOT TO EXCEED 5 PERCENT OF
23 THE AMOUNT IMPROPERLY WITHHELD FROM ESCROW PER DAY OF THE
24 VIOLATION; AND

25 2. IN A TOTAL AMOUNT NOT TO EXCEED 100
26 PERCENT OF THE ORIGINAL AMOUNT IMPROPERLY WITHHELD FROM ESCROW.

27 (4) (I) IF A TOBACCO PRODUCT MANUFACTURER HAS
28 KNOWINGLY VIOLATED SUBSECTION (A)(2) OR (B) OF THIS SECTION, THE
29 MANUFACTURER SHALL BE REQUIRED WITHIN 15 DAYS TO PLACE SUCH FUNDS
30 INTO ESCROW AS WILL BRING IT INTO COMPLIANCE WITH THIS SECTION.

31 (II) UPON A FINDING OF A KNOWING VIOLATION OF
32 SUBSECTION (A)(2) OR (B) OF THIS SECTION, THE COURT MAY IMPOSE A CIVIL
33 PENALTY, TO BE PAID TO THE GENERAL FUND OF THE STATE:

1 1. IN AN AMOUNT NOT TO EXCEED 15 PERCENT OF
2 THE AMOUNT IMPROPERLY WITHHELD FROM ESCROW PER DAY OF THE
3 VIOLATION; AND

4 2. IN A TOTAL AMOUNT NOT TO EXCEED 300
5 PERCENT OF THE ORIGINAL AMOUNT IMPROPERLY WITHHELD FROM ESCROW.

6 (5) IN THE CASE OF A SECOND KNOWING VIOLATION OF
7 SUBSECTION (A)(2) OR (B) OF THIS SECTION, THE TOBACCO PRODUCT
8 MANUFACTURER SHALL BE PROHIBITED FROM SELLING CIGARETTES TO
9 CONSUMERS WITHIN THE STATE, WHETHER DIRECTLY OR THROUGH A
10 DISTRIBUTOR, RETAILER, OR SIMILAR INTERMEDIARY OR INTERMEDIARIES,
11 FOR A PERIOD NOT TO EXCEED 2 YEARS.

12 (6) EACH FAILURE TO MAKE THE ANNUAL DEPOSIT REQUIRED
13 UNDER THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION.

14 16-501.

15 (c) “Cigarette” has the meaning stated in [subsection 2(e) of the Escrow Act]
16 § **16-402(E) OF THIS TITLE (THE ESCROW ACT)**.

17 (e) “Escrow Act” means [Chapter 169 of the Acts of the General Assembly of
18 1999 as amended by Chapter 141 of the Acts of the General Assembly of 2001]
19 **SUBTITLE 4 OF THIS TITLE**.

20 (g) “Master Settlement Agreement” has the meaning stated in [subsection
21 2(f) of the Escrow Act] § **16-402(F) OF THIS TITLE (THE ESCROW ACT)**.

22 (j) “Qualified escrow fund” has the meaning stated in [subsection 2(g) of the
23 Escrow Act] § **16-402(G) OF THIS TITLE (THE ESCROW ACT)**.

24 (k) “Tobacco product manufacturer” has the meaning stated in [subsection
25 2(j) of the Escrow Act] § **16-402(J) OF THIS TITLE (THE ESCROW ACT)**.

26 (l) “Units sold” has the meaning stated in [subsection 2(k) of the Escrow
27 Act] § **16-402(K) OF THIS TITLE (THE ESCROW ACT)**.

28 16-503.

29 (d) (2) The certification shall include:

30 (i) the name, address and telephone number of the financial
31 institution in which the nonparticipating manufacturer has established a qualified

1 escrow fund required under [subsection 3(a)(2) of the Escrow Act] § **16-403(A)(2) OF**
2 **THIS TITLE (THE ESCROW ACT)** and all regulations adopted under it;

3 (ii) the account number of the qualified escrow fund and
4 subaccount number for the State of Maryland;

5 (iii) the amount the nonparticipating manufacturer placed in the
6 fund for cigarettes sold in the State during the preceding calendar year, the date and
7 amount of each deposit, and any additional information the Attorney General
8 considers necessary to confirm the information required by this subparagraph; and

9 (iv) the amount of and date of any withdrawal or transfer of
10 funds the nonparticipating manufacturer made at any time from the fund or from any
11 other qualified escrow fund into which the nonparticipating manufacturer made
12 escrow payments under [subsection 3(a)(2) of the Escrow Act] § **16-403(A)(2) OF**
13 **THIS TITLE (THE ESCROW ACT)** and all regulations adopted under that section.

14 16-504.

15 (b) (2) Neither a tobacco product manufacturer nor a brand family may be
16 included or retained in the directory if the Attorney General concludes, in the case of a
17 nonparticipating manufacturer, that:

18 (i) any escrow payment required under [subsection 3(a)(2) of
19 the Escrow Act] § **16-403(A)(2) OF THIS TITLE (THE ESCROW ACT)** for any period
20 for any brand family, whether or not listed by such nonparticipating manufacturer,
21 has not been fully paid into a qualified escrow fund governed by a qualified escrow
22 agreement that has been approved by the Attorney General; or

23 (ii) any outstanding final judgment, including interest on the
24 judgment, for a violation of the Escrow Act has not been fully satisfied for the brand
25 family or the manufacturer.

26 Chapter 455 of the Acts of 2003

27 SECTION 2. AND BE IT FURTHER ENACTED, That if a court of competent
28 jurisdiction finds that the provisions of this Act and of [Chapter 169 of the Acts of the
29 General Assembly of 1999, as amended by Chapter 141 of the Acts of the General
30 Assembly of 2001,] **TITLE 16, SUBTITLE 4 OF THE BUSINESS REGULATION**
31 **ARTICLE** conflict and cannot be harmonized, then the provisions of [Chapter 169 of
32 the Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of
33 the General Assembly of 2001,] **TITLE 16, SUBTITLE 4 OF THE BUSINESS**
34 **REGULATION ARTICLE** shall control. If any section, subsection, subdivision,
35 paragraph, sentence, clause or phrase of this Act causes [Chapter 169 of the Acts of
36 the General Assembly of 1999, as amended by Chapter 141 of the Acts of the General
37 Assembly of 2001,] **TITLE 16, SUBTITLE 4 OF THE BUSINESS REGULATION**

1 **ARTICLE** to no longer constitute a Qualifying or Model Statute, as those terms are
2 defined in the Master Settlement Agreement, then that portion of this Act shall not be
3 valid. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of
4 this Act is for any reason held by a court of competent jurisdiction to be invalid,
5 unlawful, or unconstitutional, the decision of the court does not affect the validity of
6 the remaining portions of this Act or any part of this Act.

7 SECTION 3. AND BE IT FURTHER ENACTED, That if Chapter 348 of the
8 Acts of the General Assembly of 2004, or any portion of the amendment to §
9 16-403(b)(2)(ii) of the Business Regulation Article made by Chapter 348 of the Acts of
10 the General Assembly of 2004, is held by a court of competent jurisdiction to be
11 unconstitutional, then § 16-403(b)(2)(ii) of the Business Regulation Article shall be
12 deemed to be repealed in its entirety. If § 16-403(b)(2)(ii) of the Business Regulation
13 Article shall thereafter be held by a court of competent jurisdiction to be
14 unconstitutional, then Chapter 348 of the Acts of the General Assembly of 2004 shall
15 be deemed repealed, and § 16-403(b)(2)(ii) of the Business Regulation Article be
16 restored as if no such amendments had been made. Neither any holding of
17 unconstitutionality nor the repeal of § 16-403(b)(2)(ii) of the Business Regulation
18 Article shall affect, impair, or invalidate any other portion of Title 16, Subtitle 4 of the
19 Business Regulation Article or the application of Title 16, Subtitle 4 of the Business
20 Regulation Article to any other person or circumstance, and such remaining portions
21 of Title 16, Subtitle 4 of the Business Regulation Article shall at all times continue in
22 full force and effect.

23 SECTION 4. AND BE IT FURTHER ENACTED, That it is the intention of the
24 General Assembly that, except as expressly provided in this Act, this Act shall be
25 construed as a nonsubstantive codification of Chapter 169 of the Acts of the General
26 Assembly of 1999, as amended by Chapter 141 of the Acts of the General Assembly of
27 2001, Chapter 348 of the Acts of the General Assembly of 2004, and Chapter 538 of the
28 Acts of the General Assembly of 2006, and may not otherwise be construed to render
29 any substantive change in the law of the State.

30 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2009.