

# SENATE BILL 12

P5  
SB 942/08 – JPR

(PRE-FILED)

9lr0534

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By: **Senator Forehand**

Requested: August 25, 2008

Introduced and read first time: January 14, 2009

Assigned to: Judicial Proceedings

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Committee Report: Favorable

Senate action: Adopted

Read second time: February 6, 2009

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## CHAPTER \_\_\_\_\_

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

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2004 Replacement Volume and 2008 Supplement)

2 BY adding to

3 Article – Business Regulation

4 Section 16–401 through 16–403 to be under the new subtitle “Subtitle 4.

5 Tobacco Product Manufacturers Escrow Act”

6 Annotated Code of Maryland

7 (2004 Replacement Volume and 2008 Supplement)

8 BY repealing and reenacting, with amendments,

9 Chapter 455 of the Acts of the General Assembly of 2003

10 Section 2

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 15 of the General Assembly of 2006 be repealed.

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

18 **Article – Business Regulation**

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

20 [16–401.] **16–3B–01.**

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

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

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

26 **16–401.**

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

1           **(B) CIGARETTE SMOKING ALSO PRESENTS SERIOUS FINANCIAL**  
2 **CONCERNS FOR THE STATE. UNDER CERTAIN HEALTH CARE PROGRAMS, THE**  
3 **STATE MAY HAVE A LEGAL OBLIGATION TO PROVIDE MEDICAL ASSISTANCE TO**  
4 **ELIGIBLE PERSONS FOR HEALTH CONDITIONS ASSOCIATED WITH CIGARETTE**  
5 **SMOKING, AND THOSE PERSONS MAY HAVE A LEGAL ENTITLEMENT TO RECEIVE**  
6 **THE MEDICAL ASSISTANCE.**

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

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

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

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

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

1           (A)    **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
2 **INDICATED.**

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

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

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

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

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

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

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

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

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

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

32                   (2)    **“CIGARETTE” INCLUDES “ROLL-YOUR-OWN” TOBACCO (I.E.,**  
33 **ANY TOBACCO WHICH, BECAUSE OF ITS APPEARANCE, TYPE, PACKAGING, OR**

1 LABELING IS SUITABLE FOR USE AND LIKELY TO BE OFFERED TO OR  
2 PURCHASED BY CONSUMERS AS TOBACCO FOR MAKING CIGARETTES). FOR  
3 PURPOSES OF THIS DEFINITION OF "CIGARETTE", 0.09 OUNCES OF  
4 "ROLL-YOUR-OWN" TOBACCO SHALL CONSTITUTE ONE INDIVIDUAL  
5 "CIGARETTE".

6 (F) "MASTER SETTLEMENT AGREEMENT" MEANS THE SETTLEMENT  
7 AGREEMENT AND RELATED DOCUMENTS ENTERED INTO ON NOVEMBER 23,  
8 1998, BY THE STATE AND LEADING UNITED STATES TOBACCO PRODUCT  
9 MANUFACTURERS.

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

19 (H) "RELEASED CLAIMS" MEANS RELEASED CLAIMS AS THAT TERM IS  
20 DEFINED IN THE MASTER SETTLEMENT AGREEMENT.

21 (I) "RELEASING PARTIES" MEANS RELEASING PARTIES AS THAT TERM  
22 IS DEFINED IN THE MASTER SETTLEMENT AGREEMENT.

23 (J) (1) "TOBACCO PRODUCT MANUFACTURER" MEANS AN ENTITY  
24 THAT, AFTER JUNE 1, 1999, DIRECTLY (AND NOT EXCLUSIVELY THROUGH ANY  
25 AFFILIATE):

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

1                   (II) IS THE FIRST PURCHASER ANYWHERE FOR RESALE IN  
2 THE UNITED STATES OF CIGARETTES MANUFACTURED ANYWHERE THAT THE  
3 MANUFACTURER DOES NOT INTEND TO BE SOLD IN THE UNITED STATES; OR

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

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

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

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

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

24 **16-403.**

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

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

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

1 (I) FOR 1999, \$.0094241 PER UNIT SOLD AFTER JUNE 1,  
2 1999;

3 (II) FOR 2000, \$.0104712 PER UNIT SOLD;

4 (III) FOR EACH OF 2001 AND 2002, \$.0136125 PER UNIT  
5 SOLD;

6 (IV) FOR EACH OF 2003, 2004, 2005, AND 2006, \$.0167539  
7 PER UNIT SOLD; AND

8 (V) FOR 2007 AND EACH YEAR THEREAFTER, \$.0188482  
9 PER UNIT SOLD.

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

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

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

21 1. IN THE ORDER IN WHICH THEY WERE PLACED  
22 INTO ESCROW; AND

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

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

1 SHALL BE RELEASED FROM ESCROW AND REVERT BACK TO SUCH TOBACCO  
2 MANUFACTURER; OR

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

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

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

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

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

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

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

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

33 (II) UPON A FINDING OF A KNOWING VIOLATION OF  
34 SUBSECTION (A)(2) OR (B) OF THIS SECTION, THE COURT MAY IMPOSE A CIVIL  
35 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.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.