

CHAPTER 12

(Senate Bill 12)

AN ACT concerning

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

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

BY repealing

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

Section 1

BY repealing and reenacting, with amendments,

Article – Business Regulation

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

Annotated Code of Maryland

(2004 Replacement Volume and 2008 Supplement)

BY adding to

Article – Business Regulation

Section 16–401 through 16–403 to be under the new subtitle “Subtitle 4. Tobacco Product Manufacturers Escrow Act”

Annotated Code of Maryland

(2004 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,

Chapter 455 of the Acts of the General Assembly of 2003

Section 2

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Chapter 348 of the Acts of the General Assembly of 2004, and Chapter 538 of the Acts of the General Assembly of 2006 be repealed.

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

Article – Business Regulation

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

[16–401.] **16–3B–01.**

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

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

SUBTITLE 4. TOBACCO PRODUCT MANUFACTURERS ESCROW ACT.

16–401.

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

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

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

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

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

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

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

16-402.

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

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

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

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

(I) "OWNS", "IS OWNED", AND "OWNERSHIP" MEAN OWNERSHIP OF AN EQUITY INTEREST, OR THE EQUIVALENT THEREOF, OF 10 PERCENT OR MORE; AND

(II) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, COMMITTEE, ASSOCIATION, CORPORATION, OR ANY OTHER ORGANIZATION OR GROUP OF PERSONS.

(D) "ALLOCABLE SHARE" HAS THE MEANING THAT IS STATED IN THE MASTER SETTLEMENT AGREEMENT.

(E) (1) "CIGARETTE" MEANS ANY PRODUCT THAT CONTAINS NICOTINE, IS INTENDED TO BE BURNED OR HEATED UNDER ORDINARY CONDITIONS OF USE, AND CONSISTS OF OR CONTAINS:

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

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

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

(2) "CIGARETTE" INCLUDES "ROLL-YOUR-OWN" TOBACCO (I.E., ANY TOBACCO WHICH, BECAUSE OF ITS APPEARANCE, TYPE, PACKAGING, OR LABELING IS SUITABLE FOR USE AND LIKELY TO BE OFFERED TO OR PURCHASED BY CONSUMERS AS TOBACCO FOR MAKING CIGARETTES). FOR PURPOSES OF THIS DEFINITION OF "CIGARETTE", 0.09 OUNCES OF "ROLL-YOUR-OWN" TOBACCO SHALL CONSTITUTE ONE INDIVIDUAL "CIGARETTE".

(F) "MASTER SETTLEMENT AGREEMENT" MEANS THE SETTLEMENT AGREEMENT AND RELATED DOCUMENTS ENTERED INTO ON NOVEMBER 23,

1998, BY THE STATE AND LEADING UNITED STATES TOBACCO PRODUCT MANUFACTURERS.

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

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

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

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

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

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

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

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

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

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

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

16-403.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16-501.

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

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

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

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

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

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

16-503.

(d) (2) The certification shall include:

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

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

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

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

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

16-504.

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

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

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

Chapter 455 of the Acts of 2003

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

Assembly of 2001,] **TITLE 16, SUBTITLE 4 OF THE BUSINESS REGULATION ARTICLE** to no longer constitute a Qualifying or Model Statute, as those terms are defined in the Master Settlement Agreement, then that portion of this Act shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Act is for any reason held by a court of competent jurisdiction to be invalid, unlawful, or unconstitutional, the decision of the court does not affect the validity of the remaining portions of this Act or any part of this Act.

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

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

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

Approved by the Governor, April 14, 2009.