

CHAPTER 178  
SENATE BILL No. 151

AN ACT amending the tobacco master settlement agreement; release of escrow funds; amending K.S.A. 2004 Supp. 50-6a03 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2004 Supp. 50-6a03 is hereby amended to read as follows: 50-6a03. Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the effective date of this act shall do one of the following:

(a) 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

(b) (1) 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):

(A) 1999: \$.0094241 per unit sold after the effective date of this act;

(B) 2000: \$.0104712 per unit sold;

(C) for each of 2001 and 2002: \$.0136125 per unit sold;

(D) for each of 2003 through 2006: \$.0167539 per unit sold;

(E) for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) of subsection (b) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) 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 (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow, *based on units sold in the state of Kansas* in a particular year, was greater than the ~~state's allowable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment)~~ *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 based on such units sold* had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B) of paragraph (2) of subsection (b), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the attorney general that it is in compliance with this subsection. 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. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(A) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be credited to the state general fund in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow;

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

section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the state general fund in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow; and

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

Each failure to make an annual deposit required under this section shall constitute a separate violation. A tobacco product manufacturer who is found in violation of this section shall pay, in addition to other amounts assessed under this section and pursuant to law, the costs and attorney's fees incurred by the state during a successful presentation under this paragraph (3).

New Sec. 2. If any portion of the amendment to subsection (b)(2)(B) of K.S.A. 50-6a03 made by this act, is adjudged by any court of competent jurisdiction to be unconstitutional or invalid, then such subsection (b)(2)(B) of K.S.A. 50-6a03 shall be deemed to be repealed in its entirety. If subsection (b)(2) of K.S.A. 50-6a03 is adjudged by any court of competent jurisdiction to be unconstitutional or invalid, then this act shall be deemed repealed, and subsection (b)(2)(B) of K.S.A. 50-6a03 shall be restored as if no such amendment had been made. Neither any holding of unconstitutionality nor the repeal of subsection (b)(2)(B) of K.S.A. 50-6a03 shall affect, impair or invalidate the remainder thereof, or the application thereof to any other person or circumstance, and such remaining portions of K.S.A. 50-6a03 shall continue in full force and effect.

Sec. 3. K.S.A. 2004 Supp. 50-6a03 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 9, 2005.

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