

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1359

By: Vaughn of the House

and

Robinson of the Senate

(tobacco - notice - Master Settlement Agreement -

codification -

effective date)

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

"[tobacco - financial obligations of tobacco product

manufacturers - specifying provisions -

emergency]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 37 O.S. 2001, Section 600.23, is
amended to read as follows:

Section 600.23 A. 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~~ July 1, 1999,
shall do one of the following:

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:

- a. 1999: ninety-four thousand two hundred forty-one one-hundred-thousandths of one cent (\$.0094241) per unit sold after ~~the effective date of this act~~ July 1, 1999,
- b. 2000: one hundred four thousand seven hundred twelve one-hundred-thousandths of one cent (\$.0104712) per unit sold,
- c. for each of 2001 and 2002: one hundred thirty-six thousand one hundred twenty-five one-hundred-thousandths of one cent (\$.0136125) per unit sold,
- d. for each of 2003 through 2006: one hundred sixty-seven thousand five hundred thirty-nine one-hundred-thousandths of one cent (\$.0167539) per unit sold, and
- e. for each of 2007 and each year thereafter: one hundred eighty-eight thousand four hundred eighty-two one-hundred-thousandths of one cent (\$.0188482) per unit sold.

B. A tobacco product manufacturer that places funds into escrow pursuant to paragraph 2 of subsection A of this section 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:

1. 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 paragraph:

- a. in the order in which they were placed into escrow, and
- b. only to the extent and at the time necessary to make payments required under such judgment or settlement;

2. 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 this state in a particular year was greater

~~than the allocable share for the state 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) 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~~
Participating Manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

3. To the extent not released from escrow under paragraph 1 or 2 of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

C. If this act, or any portion of the amendment to paragraph 2 of subsection B of this section made by this act, is held by a court of competent jurisdiction to be unconstitutional, then the provisions of paragraph 2 of subsection B of this section shall be deemed to be repealed in their entirety.

D. If in accordance with the provisions of subsection C of this section, the provisions of paragraph 2 of subsection B of this section are repealed in their entirety because a court of competent jurisdiction found such provisions unconstitutional, and if, thereafter, a court of competent jurisdiction finds that this section without the provisions of paragraph 2 of subsection B of this section is unconstitutional, then the provisions of paragraph 2 of subsection B of this section shall be restored as if the amendments to paragraph 2 of subsection B of this section made by this act had never been made. Neither any holding of unconstitutionality nor the repeal of the provisions of paragraph 2

of subsection B of this section shall affect, impair or invalidate any other provision of this section, or the application of this section to any other person or circumstance, and the remaining portions of this section shall at all times continue in full force and effect.

E. Each tobacco product manufacturer that elects to place funds into escrow pursuant to paragraph 2 of subsection A of this section shall annually certify to the Attorney General that it is in compliance with paragraph 2 of subsection A of this section. 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:

1. Be required within fifteen (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 paragraph 2 of subsection A or this subsection of this section, may impose a civil penalty to be paid to the General Fund of the state in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

2. In the case of a knowing violation, be required within fifteen (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 paragraph 2 of subsection A or this subsection of this section, may impose a civil penalty to be paid to the General Fund of the state in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

3. 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 (2) years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the Senate the 14th day of April, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2003.

Presiding Officer of the House
of Representatives