

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

2ND CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1359

By: Vaughn of the House

and

Robinson of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to tobacco; amending 37 O.S. 2001, Section 600.23, which relates to tobacco product manufacturers; updating references; modifying escrow requirements for certain tobacco product manufacturers; providing procedure upon certain court holding; making certain provision severable; providing procedure for determining the effective date of act; and providing for noncodification.

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, the excess shall be released from escrow and revert back to such tobacco product manufacturer, unless otherwise provided for by subsection C or D of this section; 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 paragraph 2 of subsection B of this section shall have no force and effect.

D. If in accordance with the provisions of subsection C of this section, paragraph 2 of subsection B of this section shall have no force and effect because a court of competent jurisdiction found such provisions unconstitutional, and if, thereafter, a court of competent jurisdiction finds that subsection B of this section without the provisions of paragraph 2 of subsection B of this section is unconstitutional, then paragraph 2 of subsection B of

this section shall be replaced by the provisions of paragraph 1 of this subsection.

1. To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow 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) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

2. Neither any holding of unconstitutionality nor the rendering of paragraph 2 of subsection B of this section to have no force and effect 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. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The amendments to Section 600.23 of Title 37 of the Oklahoma Statutes made by Enrolled House Bill No. 1359 of the 1st Regular Session of the 49th Oklahoma Legislature shall become effective on January 1 of the year after:

1. Twenty-five (25) states have enacted similar amendments to their laws on early release of funds from escrow accounts established in compliance with the statutes of other states that are similar to the escrow requirements of Sections 600.21 through 600.23 of Title 37 of the Oklahoma Statutes; and

2. The Attorney General certifies such fact to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Secretary of State.

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