

Act No. 286
Public Acts of 2003
Approved by the Governor
January 8, 2004
Filed with the Secretary of State
January 8, 2004
EFFECTIVE DATE: January 8, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003**

Introduced by Senators Thomas and Cassis

ENROLLED SENATE BILL No. 781

AN ACT to amend 1999 PA 244, entitled "An act to require tobacco product manufacturers to place funds in escrow for medical expenses incurred by the state due to tobacco related illnesses; to establish a formula for determining the amount of the escrow; to establish the conditions for release of funds from escrow; to prescribe powers and duties of the attorney general; and to provide for civil penalties for violation of this act," by amending section 2 (MCL 445.2052).

The People of the State of Michigan enact:

Sec. 2. (1) 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 date of enactment of this act shall do 1 of the following:

(a) Become a participating manufacturer and generally perform its financial obligations under the master settlement agreement.

(b) 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) 1999: \$.0094241 per unit sold after the date of enactment of this act.

(ii) 2000: \$.0104712 per unit sold.

(iii) For each of 2001 and 2002: \$.0136125 per unit sold.

(iv) For each of 2003 through 2006: \$.0167539 per unit sold.

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

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

(a) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision in the order in which they were placed into escrow and 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 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 product manufacturer.

(c) To the extent not released from escrow under subdivision (a) or (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.

(d) If a court of competent jurisdiction determines that subdivision (b) as amended by the amendatory act that added this subdivision is unconstitutional, subdivision (b) does not apply.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subsection (1)(b) shall annually certify to the department of treasury that it is in compliance with 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 be subject to all of the following that are applicable:

(a) Shall be required within 15 days to place sufficient funds into escrow to 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 paid to the general fund of the state 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, shall be required within 15 days to place sufficient funds into escrow to 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 general fund of this state 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.

(c) In the case of a second knowing violation, shall 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 2 years.

(4) For purposes of subsection (3), each failure to make an annual deposit required under subsection (1)(b) shall constitute a separate violation.

(5) If, following a court determination described in subsection (2)(d), a court of competent jurisdiction determines that subsection (2) without subsection (2)(b) is unconstitutional, then this subsection applies. A tobacco product manufacturer that places funds into escrow pursuant to subsection (1)(b) shall receive the interest or other appreciation on the funds as earned. The funds themselves shall be released from escrow only under 1 or more of the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision in the order in which they were placed into escrow and 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 in a particular year was greater than the state's allocable 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 the master settlement 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.

(c) To the extent not released from escrow under subdivision (a) or (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.

(6) If this act or any portion of the amendatory act that added this subsection is held by a court of competent jurisdiction to be unconstitutional, the remaining portions of this act shall continue in full force and effect.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved _____

Governor