

# 2004 SESSION

INTRODUCED

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## HOUSE BILL NO. 345

Offered January 14, 2004

Prefiled January 12, 2004

*A BILL to amend and reenact § 3.1-336.2 of the Code of Virginia, relating to the Master Settlement Agreement; escrow funds.*

Patron—Kilgore

Referred to Committee for Courts of Justice

### **Be it enacted by the General Assembly of Virginia:**

#### **1. That § 3.1-336.2 of the Code of Virginia is amended and reenacted as follows:**

§ 3.1-336.2. Requirements on tobacco product manufacturers; escrow of funds; civil penalties for violations.

A. Any tobacco product manufacturer selling cigarettes to consumers within the Commonwealth, whether directly or through a distributor, retailer or similar intermediary or intermediaries, after 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):

Year	Amount per unit sold in such year (except for 1999, the amount per unit sold after July 1, 1999)
1999	\$.0094241
2000	\$.0104712
each of 2001 and 2002	\$.0136125
each of 2003 through 2006	\$.0167539
each of 2007 and each year thereafter	\$.0188482

B. A tobacco product manufacturer that places funds into escrow pursuant to subdivision A 2 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 Commonwealth or any releasing party located or residing in the Commonwealth. Funds shall be released from escrow under this subdivision (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;

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 Commonwealth* in a particular year was greater than the Commonwealth'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 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 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; or

INTRODUCED

HB345

57 3. To the extent not released from escrow under subdivisions 1 or 2, funds shall be released from  
58 escrow and revert back to such tobacco product manufacturer ~~twenty-five~~25 years after the date on  
59 which they were placed into escrow.

60 C. Each tobacco product manufacturer that elects to place funds into escrow pursuant to subdivision  
61 A 2 shall annually certify to the Attorney General that it is in compliance with that subdivision. The  
62 Attorney General may bring a civil action on behalf of the Commonwealth against any tobacco product  
63 manufacturer that fails to place into escrow the funds required under this section. Any tobacco product  
64 manufacturer that fails in any year to place into escrow the funds required under this section shall:

65 1. Be required within ~~fifteen~~15 days to place such funds into escrow as shall bring it into compliance  
66 with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty,  
67 to be paid to the general fund of the Commonwealth, in an amount not to exceed five percent of the  
68 amount improperly withheld from escrow per day of the violation and in a total amount not to exceed  
69 100 percent of the original amount improperly withheld from escrow;

70 2. In the case of a knowing violation, be required within ~~fifteen~~15 days to place such funds into  
71 escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing  
72 violation of this subsection, may impose a civil penalty, to be paid to the general fund of the  
73 Commonwealth, in an amount not to exceed ~~fifteen~~15 percent of the amount improperly withheld from  
74 escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount  
75 improperly withheld from escrow; and

76 3. In the case of a second knowing violation, be prohibited from selling cigarettes to consumers  
77 within the Commonwealth (whether directly or through a distributor, retailer or similar intermediary) for  
78 a period not to exceed two years.

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

81 **2. That, if any portion of the amendments to subdivision B 2 of § 3.1-336.2 pursuant to this act,**  
82 **are held by a court of last resort to be unconstitutional, then such amendments to subdivision B 2**  
83 **shall be deemed repealed in their entirety, and subdivision B 2 of § 3.1-336.2 shall be in effect as**  
84 **such subdivision existed on January 1, 2004. Neither any holding of unconstitutionality nor any**  
85 **repeal of subdivision B 2 of § 3.1-336.2 pursuant to this enactment clause shall affect, impair, or**  
86 **invalidate any other portion of § 3.1-336.2, or the application of such section to any other person**  
87 **or circumstance, and such remaining portions of § 3.1-336.2 shall at all times continue in full force**  
88 **and effect.**

89 **3. That an emergency exists and this act is in force from its passage.**