

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 4

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

[H 2629]

Approved February 23, 2005

**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

3. To the extent not released from escrow under subdivisions 1 or 2, 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. Each tobacco product manufacturer that elects to place funds into escrow pursuant to subdivision A 2 shall annually certify to the Attorney General that it is in compliance with that subdivision. The Attorney General may bring a civil action on behalf of the Commonwealth 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 this subsection, may impose a civil penalty in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent 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 this subsection, may impose a civil penalty in an amount not to exceed ~~fifteen~~ 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent 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 Commonwealth (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.

**2. That, if any portion of the amendments to subdivision B 2 of § 3.1-336.2 pursuant to this act are held by a court of competent jurisdiction to be unconstitutional or in violation of federal law, then such amendments to subdivision B 2 shall be deemed repealed in their entirety, and subdivision B 2 of § 3.1-336.2 shall be in effect as such subdivision existed on January 1, 2005. Neither any holding of unconstitutionality nor any repeal of subdivision B 2 of § 3.1-336.2 pursuant to this enactment clause shall affect, impair, or invalidate any other portion of § 3.1-336.2, or the application of such section to any other person or circumstance, and such remaining portions of § 3.1-336.2 shall at all times continue in full force and effect.**

**3. That for all units, as that term is defined in § 3.1-336.1 of the Code of Virginia, sold prior to the effective date of this act and for which funds are placed into escrow on or before April 15, 2006, the manufacturer placing such funds into escrow may receive a release of that portion of the funds as would be available pursuant to the provisions of Articles 5 (§ 3.1-336.1 et seq.) and 6 (§ 3.1-336.3 et seq.) of Chapter 18 of Title 3.1 as those provisions of the Code of Virginia existed on January 1, 2005.**