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HOUSE BILL NO. 980

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 3.1-336.2 of the Code of Virginia, relating to escrow fund payments by nonparticipating tobacco product manufacturers.

Patron—Hogan

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 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 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 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 15 days to place such funds into escrow as

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58 shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this
59 subsection, may impose a civil penalty in an amount not to exceed 15 percent of the amount improperly
60 withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the
61 original amount improperly withheld from escrow; and

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

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

67 *D. 1. In order to facilitate full and accurate payments by tobacco product manufacturers pursuant to*
68 *subdivision A 2, the Attorney General shall provide each such manufacturer with data received pursuant*
69 *to § 3.1-336.8 regarding the sales of its cigarettes in the Commonwealth for each calendar year. Such*
70 *data shall be provided annually as soon after December 31 as possible, but no later than February 1.*
71 *The Attorney General shall work with each such manufacturer to correct any errors or omissions in*
72 *order to determine the correct count for purposes of the escrow payments. A good faith dispute over the*
73 *number of cigarettes sold shall not constitute grounds for removal of a tobacco product manufacturer*
74 *from the list of approved tobacco product manufacturers pursuant to § 3.1-336.5.*

75 2. The Attorney General shall require quarterly escrow payments by tobacco product manufacturers
76 not participating in the Master Settlement Agreement that (i) are new market entrants; (ii) default on
77 any governing provision of the Master Settlement Agreement, including, but not limited to, the making of
78 escrow payments; or (iii) as determined by the Attorney General, pose a risk of not paying escrow in
79 the future, taking into account any factors the Attorney General deems relevant, including the price
80 charged for the tobacco products expected to be insufficient to cover all federal and state obligations,
81 manufacturing costs, and a profit.