

LEGISLATIVE HISTORY CHECKLIST

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LAWS of 1999

CHAPTER: 148

NJSA:52:4D-1 to 52:4D-3

(Tobacco companies - reserve fund)

BILL NO:A2929 (Substituted for S1713)

SPONSOR(S):Vandervalk and Russo

DATE INTRODUCED: March 4, 1999

COMMITTEE:

ASSEMBLY: Appropriations; Health

SENATE:-----

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE:

ASSEMBLY: June 14, 1999

SENATE: June 24, 1999

DATE OF APPROVAL: June 28, 1999

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: *Yes*^{2nd} Reprint

(Amendments during passage denoted by superscript numbers)

A2929

SPONSORS STATEMENT: *Yes* (Begins on page 6 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: Yes

March 4, 1999 (Health)

May 17, 1999 (Appropriations)

SENATE: No

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *Yes*

S1713

SPONSORS STATEMENT: *Yes*(Begins on page 6 of original bill)

Bill and Sponsor's Statement identical to A2929

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *Yes*

Identical to Assembly Statement of 3-4-99 for A2929

FLOOR AMENDMENT STATEMENTS: *Yes*

LEGISLATIVE FISCAL ESTIMATE: *Yes*

Identical to Fiscal Estimate for A2929

GOVERNOR'S ACTIONS

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

P.L. 1999, CHAPTER 148, *approved June 28, 1999*
Assembly, No. 2929 (*Second Reprint*)

1 AN ACT concerning certain tobacco product manufacturers and
2 supplementing Title 52 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. Cigarette smoking presents serious public health concerns to
8 the State and to the citizens of the State. The Surgeon General has
9 determined that smoking causes lung cancer, heart disease and other
10 serious diseases, and that there are hundreds of thousands of tobacco-
11 related deaths in the United States each year. These diseases most
12 often do not appear until many years after the person in question
13 begins smoking.

14 b. Cigarette smoking also presents serious financial concerns for
15 the State. Under certain health care programs, the State may have a
16 legal obligation to provide medical assistance to eligible persons for
17 health conditions associated with cigarette smoking, and those persons
18 may have a legal entitlement to receive such medical assistance.

19 c. Under these programs, the State pays millions of dollars each
20 year to provide medical assistance for these persons for health
21 conditions associated with cigarette smoking.

22 d. It is the policy of the State that financial burdens imposed on the
23 State by cigarette smoking be borne by tobacco product manufacturers
24 rather than by the State to the extent that such manufacturers either
25 determine to enter into a settlement with the State or are found
26 culpable by the courts.

27 e. On November 23, 1998, leading United States tobacco product
28 manufacturers entered into a settlement agreement, entitled the
29 "Master Settlement Agreement," with the State. The Master
30 Settlement Agreement obligates these manufacturers, in return for a
31 release of past, present and certain future claims against them as
32 described therein, to: pay substantial sums to the State, tied in part to
33 their volume of sales; fund a national foundation devoted to the
34 interests of public health; and make substantial changes in their

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHL committee amendments adopted March 4, 1999.

² Assembly AAP committee amendments adopted May 17, 1999.

1 advertising and marketing practices and corporate culture, with the
2 intention of reducing underage smoking.

3 f. It would be contrary to the policy of the State if tobacco product
4 manufacturers who determine not to enter into such a settlement could
5 use a resulting cost advantage to derive large, short-term profits in the
6 years before liability may arise without ensuring that the State will
7 have an eventual source of recovery from them if they are proven to
8 have acted culpably. It is thus in the interest of the State to require
9 that such manufacturers establish a reserve fund to guarantee a source
10 of compensation and to prevent such manufacturers from deriving
11 large, short-term profits and then becoming judgment-proof before
12 liability may arise.

13

14 2. As used in this act:

15 "Adjusted for inflation" means increased in accordance with the
16 formula for inflation adjustment set forth in Exhibit C to the Master
17 Settlement Agreement.

18 "Affiliate" means a person who directly or indirectly owns or
19 controls, is owned or controlled by, or is under common ownership
20 or control with^{1,1} another person. Solely for purposes of this
21 definition, the term "owns," "is owned" and "ownership" mean
22 ownership of an equity interest, or the equivalent thereof, of 10% or
23 more, and the term "person" means an individual, partnership,
24 committee, association, corporation or any other organization or
25 group of persons.

26 "Allocable share" means allocable share as that term is defined in
27 the Master Settlement Agreement.

28 "Cigarette" means any product that contains nicotine, is intended to
29 be burned or heated under ordinary conditions of use, and consists of
30 or contains:

31 (1) any roll of tobacco wrapped in paper or in any substance not
32 containing tobacco; or

33 (2) tobacco, in any form, that is functional in the product, which,
34 because of its appearance, the type of tobacco used in the filler, or its
35 packaging and labeling, is likely to be offered to, or purchased by,
36 consumers as a cigarette; or

37 (3) any roll of tobacco wrapped in any substance containing
38 tobacco which, because of its appearance, the type of tobacco used in
39 the filler, or its packaging and labeling, is likely to be offered to, or
40 purchased by, consumers as a cigarette described in paragraph (1) of
41 this definition.

42 The term "cigarette" includes "roll-your-own," which means any
43 tobacco that, because of its appearance, type, packaging, or labeling
44 is suitable for use and likely to be offered to, or purchased by,
45 consumers as tobacco for making cigarettes. For purposes of this
46 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall

1 constitute one individual "cigarette."

2 "Master Settlement Agreement" means the settlement agreement^{1, 1}
3 and related documents^{1, 1} entered into on November 23, 1998 by the
4 State and leading United States tobacco product manufacturers.

5 "Qualified escrow fund" means an escrow arrangement with a
6 federally or State chartered financial institution having no affiliation
7 with any tobacco product manufacturer and having assets of at least
8 \$1,000,000,000 where such arrangement requires that ¹[the] such¹
9 financial institution hold the escrowed funds' principal for the benefit
10 of releasing parties and prohibits the tobacco product manufacturer
11 placing the funds into escrow from using, accessing or directing the
12 use of the funds' principal except as consistent with paragraph (2) of
13 subsection b. of section 3 of this act.

14 "Released claims" means released claims as that term is defined in
15 the Master Settlement Agreement.

16 "Releasing parties" means releasing parties as that term is defined
17 in the Master Settlement Agreement.

18 "Tobacco Product Manufacturer" means an entity that after the date
19 of enactment of this ¹act¹ directly, and not exclusively through any
20 affiliate:

21 (1) manufactures ²anywhere ²cigarettes ²[anywhere]² that ¹[the]
22 ²[such¹] the ² manufacturer intends to be sold in the United States,
23 including cigarettes intended to be sold in the United States through
24 an importer ²[, except where ¹[the] such¹]; provided, however, that an
25 entity that manufactures cigarettes that it intends to be sold in the
26 United States shall not be considered to be a tobacco product
27 manufacturer under this paragraph (1) if (a) such cigarettes are sold in
28 the United States exclusively through an² importer ²that² is an original
29 participating manufacturer^{1, 1} as that term is defined in the Master
30 Settlement Agreement, that will be responsible for the payments under
31 the Master Settlement Agreement with respect to such cigarettes as a
32 result of the provisions of ²[subsections] subsection² II(mm) of the
33 Master Settlement Agreement and that pays the taxes specified in
34 subsection II(z) of the Master Settlement Agreement, and ²[provided
35 that](b)² the manufacturer of ¹[these] such¹ cigarettes does not
36 market or advertise such cigarettes in the United States;

37 (2) is the first purchaser anywhere for resale in the United States
38 of cigarettes manufactured anywhere that the manufacturer does not
39 intend to be sold in the United States; or

40 (3) becomes a successor of an entity described in paragraph (1) or
41 (2) of this definition.

42 The term "tobacco product manufacturer" shall not include an
43 affiliate of a tobacco product manufacturer unless ¹[the] such¹ affiliate
44 itself falls within any of paragraphs (1) through (3) of this definition.

45 "Units sold" means the number of individual cigarettes sold in the
46 State by the applicable tobacco product manufacturer, whether directly

1 or through a distributor, retailer or similar intermediary ¹or
2 intermediaries¹, during the year in question, as measured by excise
3 taxes collected by the State ¹on ²containers of "roll-your-own"
4 tobacco, and on² packs ²[, or "roll-your-own" tobacco containers,]of
5 cigarettes² bearing the excise tax stamp of the State¹. The State
6 Treasurer shall promulgate such regulations as are necessary to
7 ascertain the amount of State excise tax paid on the cigarettes of
8 ¹[the] such¹ tobacco product manufacturer for each year.

9
10 3. ¹[A] Any¹ tobacco product manufacturer selling cigarettes to
11 consumers within the State, whether directly or through a distributor,
12 retailer or similar intermediary ¹or intermediaries¹, after the date of
13 enactment of this act shall do one of the following:

14 a. become a participating manufacturer ^{2,2} as that term is defined
15 in section II(jj) of the Master Settlement Agreement^{2,2} and generally
16 perform its financial obligations under the Master Settlement
17 Agreement; or

18 b. (1) place into a qualified escrow fund by April 15 of the year
19 following the year in question the following amounts, as such amounts
20 are adjusted for inflation:

21 (a) ¹[for]¹ 1999, \$.0094241 per unit sold after the date of
22 enactment of this act;

23 (b) ¹[for]¹ 2000, \$.0104712 per unit sold;

24 (c) for each of 2001 and 2002, \$.0136125 per unit sold;

25 (d) for each of 2003 through 2006, \$.0167539 per unit sold; and

26 (e) for ²each of² 2007 and each year thereafter, \$.0188482 per unit
27 sold.

28 (2) A tobacco product manufacturer that places funds into escrow
29 pursuant to paragraph (1) of this subsection shall receive the interest
30 or other appreciation on ¹[those] such¹ funds as earned. ¹[The] Such¹
31 funds themselves shall be released from escrow only under the
32 following circumstances:

33 (a) to pay a judgment or settlement on any released claim brought
34 against ¹[the] such¹ tobacco product manufacturer by the State or any
35 releasing party located or residing in the State. Funds shall be released
36 from escrow under this subparagraph: (i) ¹[on] in¹ the order in which
37 they were placed into escrow; and (ii) only to the extent and at the
38 time necessary to make payments required under ¹[the] such¹ judgment
39 or settlement;

40 (b) to the extent that ²[a] the² tobacco product manufacturer
41 establishes that the amount ²that² it was required to place into escrow
42 in a particular year was greater than the State's allocable share of the
43 total payments that ¹[the] such¹ manufacturer would have been
44 required to make in that year under the Master Settlement Agreement
45 ²had it been a participating manufacturer², as ²such payments are²
46 determined pursuant to section IX (i)(2) of the Master Settlement

1 Agreement, and before any of the adjustments or offsets described in
2 section IX(i)(3) of that agreement other than the inflation adjustment
3 ²[, had it been a participating manufacturer]², the excess shall be
4 released from escrow and revert back to the tobacco product
5 manufacturer; or

6 (c) to the extent not released from escrow under subparagraphs (a)
7 or (b) of this paragraph, funds shall be released from escrow and
8 revert back to the tobacco product manufacturer 25 years after the
9 date on which they were placed into escrow.

10 (3) Each tobacco product manufacturer that elects to place funds
11 into escrow pursuant to this subsection shall annually certify to the
12 Attorney General that it is in compliance with this subsection. The
13 Attorney General may bring a civil action on behalf of the State
14 against ¹[a] any¹ tobacco product manufacturer that fails to place into
15 escrow the funds required under this section. ¹[A] Any¹ tobacco
16 product manufacturer that fails in any year to place into escrow the
17 funds required under this section shall:

18 (a) be required within 15 days to place such funds into escrow as
19 shall bring it into compliance with this section. The court, upon a
20 finding of a violation of this subsection, may impose a civil penalty, to
21 be paid into the General Fund, in an amount not to exceed 5% of the
22 amount improperly withheld from escrow ¹[for each] per¹ day of the
23 violation and in ¹a¹ total amount not to exceed 100% of the original
24 amount improperly withheld from escrow;

25 (b) in the case of a knowing violation, be required within 15 days
26 to place such funds into escrow as shall bring it into compliance with
27 this section. The court, upon a finding of a knowing violation of this
28 subsection, may impose a civil penalty, to be paid into the General
29 Fund, in an amount not to exceed 15% of the amount improperly
30 withheld from escrow ¹[for each] per¹ day of the violation and in a
31 total amount not to exceed 300% of the original amount improperly
32 withheld from escrow; and

33 (c) in the case of a second knowing violation, be prohibited from
34 selling cigarettes to consumers within the State, whether directly or
35 through a distributor, retailer or similar intermediary ¹or
36 intermediaries¹, for a period not to exceed two years.

37 Each failure to make an annual deposit required under this section
38 shall constitute a separate violation. A person who violates this section
39 shall pay the State's costs and attorney's fees incurred during a
40 successful prosecution under this paragraph (3).

41
42 4. This act shall take effect immediately.

1

2

3 Requires tobacco product manufacturers who did not participate in

4 national tobacco settlement to pay into reserve fund to guarantee

5 source of compensation to pay future judgment or settlement.

ASSEMBLY, No. 2929

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED MARCH 4, 1999

Sponsored by:

Assemblywoman CHARLOTTE VANDERVALK

District 39 (Bergen)

Assemblyman DAVID C. RUSSO

District 40 (Bergen and Passaic)

SYNOPSIS

Requires tobacco product manufacturers who did not participate in national tobacco settlement to pay into reserve fund to guarantee source of compensation to pay future judgment or settlement.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain tobacco product manufacturers and
2 supplementing Title 52 of the Revised Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
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9 determined that smoking causes lung cancer, heart disease and other
10 serious diseases, and that there are hundreds of thousands of tobacco-
11 related deaths in the United States each year. These diseases most
12 often do not appear until many years after the person in question
13 begins smoking.

14 b. Cigarette smoking also presents serious financial concerns for
15 the State. Under certain health care programs, the State may have a
16 legal obligation to provide medical assistance to eligible persons for
17 health conditions associated with cigarette smoking, and those persons
18 may have a legal entitlement to receive such medical assistance.

19 c. Under these programs, the State pays millions of dollars each
20 year to provide medical assistance for these persons for health
21 conditions associated with cigarette smoking.

22 d. It is the policy of the State that financial burdens imposed on the
23 State by cigarette smoking be borne by tobacco product manufacturers
24 rather than by the State to the extent that such manufacturers either
25 determine to enter into a settlement with the State or are found
26 culpable by the courts.

27 e. On November 23, 1998, leading United States tobacco product
28 manufacturers entered into a settlement agreement, entitled the
29 "Master Settlement Agreement," with the State. The Master
30 Settlement Agreement obligates these manufacturers, in return for a
31 release of past, present and certain future claims against them as
32 described therein, to: pay substantial sums to the State, tied in part to
33 their volume of sales; fund a national foundation devoted to the
34 interests of public health; and make substantial changes in their
35 advertising and marketing practices and corporate culture, with the
36 intention of reducing underage smoking.

37 f. It would be contrary to the policy of the State if tobacco product
38 manufacturers who determine not to enter into such a settlement could
39 use a resulting cost advantage to derive large, short-term profits in the
40 years before liability may arise without ensuring that the State will
41 have an eventual source of recovery from them if they are proven to
42 have acted culpably. It is thus in the interest of the State to require
43 that such manufacturers establish a reserve fund to guarantee a source
44 of compensation and to prevent such manufacturers from deriving
45 large, short-term profits and then becoming judgment-proof before
46 liability may arise.

1 2. As used in this act:

2 "Adjusted for inflation" means increased in accordance with the
3 formula for inflation adjustment set forth in Exhibit C to the Master
4 Settlement Agreement.

5 "Affiliate" means a person who directly or indirectly owns or
6 controls, is owned or controlled by, or is under common ownership
7 or control with another person. Solely for purposes of this definition,
8 the term "owns," "is owned" and "ownership" mean ownership of an
9 equity interest, or the equivalent thereof, of 10% or more, and the
10 term "person" means an individual, partnership, committee,
11 association, corporation or any other organization or group of
12 persons.

13 "Allocable share" means allocable share as that term is defined in
14 the Master Settlement Agreement.

15 "Cigarette" means any product that contains nicotine, is intended to
16 be burned or heated under ordinary conditions of use, and consists of
17 or contains:

18 (1) any roll of tobacco wrapped in paper or in any substance not
19 containing tobacco; or

20 (2) tobacco, in any form, that is functional in the product, which,
21 because of its appearance, the type of tobacco used in the filler, or its
22 packaging and labeling, is likely to be offered to, or purchased by,
23 consumers as a cigarette; or

24 (3) any roll of tobacco wrapped in any substance containing
25 tobacco which, because of its appearance, the type of tobacco used in
26 the filler, or its packaging and labeling, is likely to be offered to, or
27 purchased by, consumers as a cigarette described in paragraph (1) of
28 this definition.

29 The term "cigarette" includes "roll-your-own," which means any
30 tobacco that, because of its appearance, type, packaging, or labeling
31 is suitable for use and likely to be offered to, or purchased by,
32 consumers as tobacco for making cigarettes. For purposes of this
33 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall
34 constitute one individual "cigarette."

35 "Master Settlement Agreement" means the settlement agreement
36 and related documents entered into on November 23, 1998 by the
37 State and leading United States tobacco product manufacturers.

38 "Qualified escrow fund" means an escrow arrangement with a
39 federally or State chartered financial institution having no affiliation
40 with any tobacco product manufacturer and having assets of at least
41 \$1,000,000,000 where such arrangement requires that the financial
42 institution hold the escrowed funds' principal for the benefit of
43 releasing parties and prohibits the tobacco product manufacturer
44 placing the funds into escrow from using, accessing or directing the
45 use of the funds' principal except as consistent with paragraph (2) of
46 subsection b. of section 3 of this act.

1 "Released claims" means released claims as that term is defined in
2 the Master Settlement Agreement.

3 "Releasing parties" means releasing parties as that term is defined
4 in the Master Settlement Agreement.

5 "Tobacco Product Manufacturer" means an entity that after the date
6 of enactment of this directly, and not exclusively through any affiliate:

7 (1) manufactures cigarettes anywhere that the manufacturer intends
8 to be sold in the United States, including cigarettes intended to be sold
9 in the United States through an importer, except where the importer
10 is an original participating manufacturer as that term is defined in the
11 Master Settlement Agreement, that will be responsible for the
12 payments under the Master Settlement Agreement with respect to such
13 cigarettes as a result of the provisions of subsections II(mm) of the
14 Master Settlement Agreement and that pays the taxes specified in
15 subsection II(z) of the Master Settlement Agreement, and provided
16 that the manufacturer of these cigarettes does not market or advertise
17 such cigarettes in the United States;

18 (2) is the first purchaser anywhere for resale in the United States
19 of cigarettes manufactured anywhere that the manufacturer does not
20 intend to be sold in the United States; or

21 (3) becomes a successor of an entity described in paragraph (1) or
22 (2) of this definition.

23 The term "tobacco product manufacturer" shall not include an
24 affiliate of a tobacco product manufacturer unless the affiliate itself
25 falls within any of paragraphs (1) through (3) of this definition.

26 "Units sold" means the number of individual cigarettes sold in the
27 State by the applicable tobacco product manufacturer, whether directly
28 or through a distributor, retailer or similar intermediary, during the
29 year in question, as measured by excise taxes collected by the State.
30 The State Treasurer shall promulgate such regulations as are necessary
31 to ascertain the amount of State excise tax paid on the cigarettes of
32 the tobacco product manufacturer for each year.

33

34 3. A tobacco product manufacturer selling cigarettes to consumers
35 within the State, whether directly or through a distributor, retailer or
36 similar intermediary, after the date of enactment of this act shall do
37 one of the following:

38 a. become a participating manufacturer as that term is defined in
39 section II(jj) of the Master Settlement Agreement and generally
40 perform its financial obligations under the Master Settlement
41 Agreement; or

42 b. (1) place into a qualified escrow fund by April 15 of the year
43 following the year in question the following amounts, as such amounts
44 are adjusted for inflation:

45 (a) for 1999, \$.0094241 per unit sold after the date of enactment of
46 this act;

- 1 (b) for 2000, \$.0104712 per unit sold;
2 (c) for each of 2001 and 2002, \$.0136125 per unit sold;
3 (d) for each of 2003 through 2006, \$.0167539 per unit sold; and
4 (e) for 2007 and each year thereafter, \$.0188482 per unit sold.
- 5 (2) A tobacco product manufacturer that places funds into escrow
6 pursuant to paragraph (1) of this subsection shall receive the interest
7 or other appreciation on those funds as earned. The funds themselves
8 shall be released from escrow only under the following circumstances:
9 (a) to pay a judgment or settlement on any released claim brought
10 against the tobacco product manufacturer by the State or any releasing
11 party located or residing in the State. Funds shall be released from
12 escrow under this subparagraph: (i) on the order in which they were
13 placed into escrow; and (ii) only to the extent and at the time
14 necessary to make payments required under the judgment or
15 settlement;
- 16 (b) to the extent that a tobacco product manufacturer establishes
17 that the amount it was required to place into escrow in a particular
18 year was greater than the State's allocable share of the total payments
19 that the manufacturer would have been required to make in that year
20 under the Master Settlement Agreement, as determined pursuant to
21 section IX (i)(2) of the Master Settlement Agreement, and before any
22 of the adjustments or offsets described in section IX(i)(3) of that
23 agreement other than the inflation adjustment, had it been a
24 participating manufacturer, the excess shall be released from escrow
25 and revert back to the tobacco product manufacturer; or
- 26 (c) to the extent not released from escrow under subparagraphs (a)
27 or (b) of this paragraph, funds shall be released from escrow and
28 revert back to the tobacco product manufacturer 25 years after the
29 date on which they were placed into escrow.
- 30 (3) Each tobacco product manufacturer that elects to place funds
31 into escrow pursuant to this subsection shall annually certify to the
32 Attorney General that it is in compliance with this subsection. The
33 Attorney General may bring a civil action on behalf of the State
34 against a tobacco product manufacturer that fails to place into escrow
35 the funds required under this section. A tobacco product manufacturer
36 that fails in any year to place into escrow the funds required under this
37 section shall:
- 38 (a) be required within 15 days to place such funds into escrow as
39 shall bring it into compliance with this section. The court, upon a
40 finding of a violation of this subsection, may impose a civil penalty, to
41 be paid into the General Fund, in an amount not to exceed 5% of the
42 amount improperly withheld from escrow for each day of the violation
43 and in total amount not to exceed 100% of the original amount
44 improperly withheld from escrow;
- 45 (b) in the case of a knowing violation, be required within 15 days
46 to place such funds into escrow as shall bring it into compliance with

1 this section. The court, upon a finding of a knowing violation of this
2 subsection, may impose a civil penalty, to be paid into the General
3 Fund, in an amount not to exceed 15% of the amount improperly
4 withheld from escrow for each day of the violation and in a total
5 amount not to exceed 300% of the original amount improperly
6 withheld from escrow; and

7 (c) in the case of a second knowing violation, be prohibited from
8 selling cigarettes to consumers within the State, whether directly or
9 through a distributor, retailer or similar intermediary, for a period not
10 to exceed two years.

11 Each failure to make an annual deposit required under this section
12 shall constitute a separate violation. A person who violates this section
13 shall pay the State's costs and attorney's fees incurred during a
14 successful prosecution under this paragraph (3).

15

16 4. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill requires tobacco product manufacturers who did not
22 participate in the national tobacco settlement reached on
23 November 23, 1998, which was entered into by the State in the Master
24 Settlement Agreement in State of New Jersey v. R.J. Reynolds
25 Tobacco Company, et al., Superior Court, Chancery Division,
26 Middlesex County, No. C-254-96, to pay into a reserve fund in order
27 to guarantee a source of compensation for them to pay any future
28 judgment or settlement. Under the terms of the Master Settlement
29 Agreement, enactment of this bill in its exact form is a condition of
30 New Jersey's receipt of the full amount of funds to which it is
31 otherwise entitled under that agreement.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2929

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 4, 1999

The Assembly Health Committee reports favorably and with committee amendments Assembly Bill No. 2929.

As amended by the committee, this bill requires tobacco product manufacturers who did not participate in the national tobacco settlement reached on November 23, 1998, which was entered into by the State in the Master Settlement Agreement in State of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior Court, Chancery Division, Middlesex County, No. C-254-96, to pay into a reserve fund in order to guarantee a source of compensation for them to pay any future judgment or settlement. Under the terms of the Master Settlement Agreement, enactment of this bill in its exact form is a condition of New Jersey's receipt of the full amount of funds to which it is otherwise entitled under that agreement.

The committee adopted technical amendments at the request of the Department of Law and Public Safety to more precisely reflect the exact language in the model statute included in the Master Settlement Agreement which this bill seeks to enact.

As reported by the committee, this bill is similar to Senate Bill No. 1713 (Sinagra), which is currently pending in the Senate Health Committee.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2929

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 17, 1999

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2929 (1R) with committee amendments.

Assembly Bill No. 2929 (1R), as amended, requires a tobacco product manufacturer that did not participate in the "Master Settlement Agreement," the national tobacco settlement reached on November 23, 1998 between the states' attorneys general and the largest tobacco manufacturers, to either become a participant in the settlement or make payments, based on the number of cigarettes the manufacturer sells in New Jersey, into an escrow arrangement.

Under the terms of the Master Settlement Agreement, each recipient state must achieve "state-specific finality" through its court's approval of the agreement, begun by New Jersey through entry of a consent decree in State of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior Court, Chancery Division, Middlesex County, No. C-254-96, approved December 4, 1998. There will be an annual analysis of the market share of the tobacco manufacturers participating in the agreement. If in any year that market share decreases by more than 2 percent and the decrease is found to be a result of the agreement, payments to states may be reduced on the basis of that loss. However, this reduction will not be imposed for a state that has enacted the "Model Statute" contained in the agreement without substantive modification or addition and not in conjunction with any other legislative or regulatory proposal.

The Model Statute requires a tobacco manufacturer that did not enter into the agreement to make payments into an escrow arrangement. Those contributions are designed to prevent the non-participating manufacturer from gaining a pricing advantage over the manufacturers that entered the agreement, and the payments guarantee a source of compensation for future judgements or settlements. The bill would enact the Model Statute for New Jersey.

FISCAL IMPACT:

The settlement moneys are payable in perpetuity; New Jersey expects to receive a nominal \$7.58 billion through calendar year 2025. The actual amount will be adjusted (probably upwards) for inflation and (probably downwards) for changes in tobacco manufacturers' volume of cigarette sales in the United States. Other factors, such as the bankruptcy of participating tobacco manufacturers, may also affect final payments.

While the amount of moneys the State will actually receive through the agreement cannot be determined at this time, by enacting the Model Statute the bill would protect the State from losing principal payment amounts through market share decrease adjustments.

COMMITTEE AMENDMENTS:

The amendments are technical corrections to legal references made with the assistance of the parties to the agreement to assure that the bill is the Model Statute.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2929

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: MAY 25, 1999

Assembly Bill No. 2929 (1R) of 1999 implements a provision of the November 1998 Master Settlement Agreement between the major tobacco product manufacturers and the attorneys general of 46 states, including New Jersey. In that settlement, the tobacco manufacturers agreed, among other things, to pay the signatory states and territories \$206 billion over the next 25 years and to halt many kinds of cigarette advertising. New Jersey is scheduled to receive approximately \$7.6 billion through the year 2025.

One of the provisions of the settlement was that each participating state enact a virtually identical "model statute," the purpose of which is to require tobacco manufacturers who were not part of the national settlement to make contributions to a qualified escrow fund maintained by a federally or state-chartered financial institution. These payments are designed to prevent such manufacturers (mainly smaller companies) from gaining a potential pricing advantage over the settling manufacturers and to guarantee a source of compensation for any future judgment or settlement involving one or more nonparticipating manufacturers.

A2929 (1R) is New Jersey's version of the "model statute" called for in the national Master Settlement Agreement. It requires tobacco product manufacturers who were not parties to the national settlement to deposit amounts ranging from \$.0094241 per unit (e.g., per cigarette) sold in 1999 to \$.0188482 per unit sold in the year 2007 and each year thereafter. Funds on deposit, if not paid in judgment or settlement, are returned to the companies with interest 25 years after being placed in escrow.

OFFICE OF LEGISLATIVE SERVICES COMMENTS

While the national tobacco settlement does not require that states enact the model statute as a condition of receiving settlement payments, there is a strong financial inducement to do so. Enactment of A2929 (1R) or similar legislation is a condition for New Jersey to

receive its full funding under the Master Settlement Agreement negotiated between the tobacco industry and the attorneys general. The statute must remain in full force and effect to ensure against future payment reductions, for instance if non-participating manufacturers increase their market share at the expense of companies that did sign the national agreement. The escrow payments by non-participating manufacturers will also ensure that funds are available to meet future contingent liabilities of those companies if they are sued by the state.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 1713

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED FEBRUARY 25, 1999

Sponsored by:
Senator JACK SINAGRA
District 18 (Middlesex)

SYNOPSIS

Requires tobacco product manufacturers who did not participate in national tobacco settlement to pay into reserve fund to guarantee source of compensation to pay future judgment or settlement.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain tobacco product manufacturers and
2 supplementing Title 52 of the Revised Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. a. Cigarette smoking presents serious public health concerns to
8 the State and to the citizens of the State. The Surgeon General has
9 determined that smoking causes lung cancer, heart disease and other
10 serious diseases, and that there are hundreds of thousands of tobacco-
11 related deaths in the United States each year. These diseases most
12 often do not appear until many years after the person in question
13 begins smoking.

14 b. Cigarette smoking also presents serious financial concerns for
15 the State. Under certain health care programs, the State may have a
16 legal obligation to provide medical assistance to eligible persons for
17 health conditions associated with cigarette smoking, and those persons
18 may have a legal entitlement to receive such medical assistance.

19 c. Under these programs, the State pays millions of dollars each
20 year to provide medical assistance for these persons for health
21 conditions associated with cigarette smoking.

22 d. It is the policy of the State that financial burdens imposed on the
23 State by cigarette smoking be borne by tobacco product manufacturers
24 rather than by the State to the extent that such manufacturers either
25 determine to enter into a settlement with the State or are found
26 culpable by the courts.

27 e. On November 23, 1998, leading United States tobacco product
28 manufacturers entered into a settlement agreement, entitled the
29 "Master Settlement Agreement," with the State. The Master
30 Settlement Agreement obligates these manufacturers, in return for a
31 release of past, present and certain future claims against them as
32 described therein, to: pay substantial sums to the State, tied in part to
33 their volume of sales; fund a national foundation devoted to the
34 interests of public health; and make substantial changes in their
35 advertising and marketing practices and corporate culture, with the
36 intention of reducing underage smoking.

37 f. It would be contrary to the policy of the State if tobacco product
38 manufacturers who determine not to enter into such a settlement could
39 use a resulting cost advantage to derive large, short-term profits in the
40 years before liability may arise without ensuring that the State will
41 have an eventual source of recovery from them if they are proven to
42 have acted culpably. It is thus in the interest of the State to require
43 that such manufacturers establish a reserve fund to guarantee a source
44 of compensation and to prevent such manufacturers from deriving
45 large, short-term profits and then becoming judgment-proof before
46 liability may arise.

1 2. As used in this act:

2 "Adjusted for inflation" means increased in accordance with the
3 formula for inflation adjustment set forth in Exhibit C to the Master
4 Settlement Agreement.

5 "Affiliate" means a person who directly or indirectly owns or
6 controls, is owned or controlled by, or is under common ownership
7 or control with another person. Solely for purposes of this definition,
8 the term "owns," "is owned" and "ownership" mean ownership of an
9 equity interest, or the equivalent thereof, of 10% or more, and the
10 term "person" means an individual, partnership, committee,
11 association, corporation or any other organization or group of
12 persons.

13 "Allocable share" means allocable share as that term is defined in
14 the Master Settlement Agreement.

15 "Cigarette" means any product that contains nicotine, is intended to
16 be burned or heated under ordinary conditions of use, and consists of
17 or contains:

18 (1) any roll of tobacco wrapped in paper or in any substance not
19 containing tobacco; or

20 (2) tobacco, in any form, that is functional in the product, which,
21 because of its appearance, the type of tobacco used in the filler, or its
22 packaging and labeling, is likely to be offered to, or purchased by,
23 consumers as a cigarette; or

24 (3) any roll of tobacco wrapped in any substance containing
25 tobacco which, because of its appearance, the type of tobacco used in
26 the filler, or its packaging and labeling, is likely to be offered to, or
27 purchased by, consumers as a cigarette described in paragraph (1) of
28 this definition.

29 The term "cigarette" includes "roll-your-own," which means any
30 tobacco that, because of its appearance, type, packaging, or labeling
31 is suitable for use and likely to be offered to, or purchased by,
32 consumers as tobacco for making cigarettes. For purposes of this
33 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall
34 constitute one individual "cigarette."

35 "Master Settlement Agreement" means the settlement agreement
36 and related documents entered into on November 23, 1998 by the
37 State and leading United States tobacco product manufacturers.

38 "Qualified escrow fund" means an escrow arrangement with a
39 federally or State chartered financial institution having no affiliation
40 with any tobacco product manufacturer and having assets of at least
41 \$1,000,000,000 where such arrangement requires that the financial
42 institution hold the escrowed funds' principal for the benefit of
43 releasing parties and prohibits the tobacco product manufacturer
44 placing the funds into escrow from using, accessing or directing the
45 use of the funds' principal except as consistent with paragraph (2) of
46 subsection b. of section 3 of this act.

1 "Released claims" means released claims as that term is defined in
2 the Master Settlement Agreement.

3 "Releasing parties" means releasing parties as that term is defined
4 in the Master Settlement Agreement.

5 "Tobacco Product Manufacturer" means an entity that after the date
6 of enactment of this directly, and not exclusively through any affiliate:

7 (1) manufactures cigarettes anywhere that the manufacturer intends
8 to be sold in the United States, including cigarettes intended to be sold
9 in the United States through an importer, except where the importer
10 is an original participating manufacturer as that term is defined in the
11 Master Settlement Agreement, that will be responsible for the
12 payments under the Master Settlement Agreement with respect to such
13 cigarettes as a result of the provisions of subsections II(mm) of the
14 Master Settlement Agreement and that pays the taxes specified in
15 subsection II(z) of the Master Settlement Agreement, and provided
16 that the manufacturer of these cigarettes does not market or advertise
17 such cigarettes in the United States;

18 (2) is the first purchaser anywhere for resale in the United States
19 of cigarettes manufactured anywhere that the manufacturer does not
20 intend to be sold in the United States; or

21 (3) becomes a successor of an entity described in paragraph (1) or
22 (2) of this definition.

23 The term "tobacco product manufacturer" shall not include an
24 affiliate of a tobacco product manufacturer unless the affiliate itself
25 falls within any of paragraphs (1) through (3) of this definition.

26 "Units sold" means the number of individual cigarettes sold in the
27 State by the applicable tobacco product manufacturer, whether directly
28 or through a distributor, retailer or similar intermediary, during the
29 year in question, as measured by excise taxes collected by the State.
30 The State Treasurer shall promulgate such regulations as are necessary
31 to ascertain the amount of State excise tax paid on the cigarettes of
32 the tobacco product manufacturer for each year.

33

34 3. A tobacco product manufacturer selling cigarettes to consumers
35 within the State, whether directly or through a distributor, retailer or
36 similar intermediary, after the date of enactment of this act shall do
37 one of the following:

38 a. become a participating manufacturer as that term is defined in
39 section II(jj) of the Master Settlement Agreement and generally
40 perform its financial obligations under the Master Settlement
41 Agreement; or

42 b. (1) place into a qualified escrow fund by April 15 of the year
43 following the year in question the following amounts, as such amounts
44 are adjusted for inflation:

45 (a) for 1999, \$.0094241 per unit sold after the date of enactment of
46 this act;

S1713 SINAGRA

- 1 (b) for 2000, \$.0104712 per unit sold;
2 (c) for each of 2001 and 2002, \$.0136125 per unit sold;
3 (d) for each of 2003 through 2006, \$.0167539 per unit sold; and
4 (e) for 2007 and each year thereafter, \$.0188482 per unit sold.
- 5 (2) A tobacco product manufacturer that places funds into escrow
6 pursuant to paragraph (1) of this subsection shall receive the interest
7 or other appreciation on those funds as earned. The funds themselves
8 shall be released from escrow only under the following circumstances:
9 (a) to pay a judgment or settlement on any released claim brought
10 against the tobacco product manufacturer by the State or any releasing
11 party located or residing in the State. Funds shall be released from
12 escrow under this subparagraph: (i) on the order in which they were
13 placed into escrow; and (ii) only to the extent and at the time
14 necessary to make payments required under the judgment or
15 settlement;
- 16 (b) to the extent that a tobacco product manufacturer establishes
17 that the amount it was required to place into escrow in a particular
18 year was greater than the State's allocable share of the total payments
19 that the manufacturer would have been required to make in that year
20 under the Master Settlement Agreement, as determined pursuant to
21 section IX (i)(2) of the Master Settlement Agreement, and before any
22 of the adjustments or offsets described in section IX(i)(3) of that
23 agreement other than the inflation adjustment, had it been a
24 participating manufacturer, the excess shall be released from escrow
25 and revert back to the tobacco product manufacturer; or
- 26 (c) to the extent not released from escrow under subparagraphs (a)
27 or (b) of this paragraph, funds shall be released from escrow and
28 revert back to the tobacco product manufacturer 25 years after the
29 date on which they were placed into escrow.
- 30 (3) Each tobacco product manufacturer that elects to place funds
31 into escrow pursuant to this subsection shall annually certify to the
32 Attorney General that it is in compliance with this subsection. The
33 Attorney General may bring a civil action on behalf of the State
34 against a tobacco product manufacturer that fails to place into escrow
35 the funds required under this section. A tobacco product manufacturer
36 that fails in any year to place into escrow the funds required under this
37 section shall:
- 38 (a) be required within 15 days to place such funds into escrow as
39 shall bring it into compliance with this section. The court, upon a
40 finding of a violation of this subsection, may impose a civil penalty, to
41 be paid into the General Fund, in an amount not to exceed 5% of the
42 amount improperly withheld from escrow for each day of the violation
43 and in total amount not to exceed 100% of the original amount
44 improperly withheld from escrow;
- 45 (b) in the case of a knowing violation, be required within 15 days
46 to place such funds into escrow as shall bring it into compliance with

1 this section. The court, upon a finding of a knowing violation of this
2 subsection, may impose a civil penalty, to be paid into the General
3 Fund, in an amount not to exceed 15% of the amount improperly
4 withheld from escrow for each day of the violation and in a total
5 amount not to exceed 300% of the original amount improperly
6 withheld from escrow; and

7 (c) in the case of a second knowing violation, be prohibited from
8 selling cigarettes to consumers within the State, whether directly or
9 through a distributor, retailer or similar intermediary, for a period not
10 to exceed two years.

11 Each failure to make an annual deposit required under this section
12 shall constitute a separate violation. A person who violates this section
13 shall pay the State's costs and attorney's fees incurred during a
14 successful prosecution under this paragraph (3).

15

16 4. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill requires tobacco product manufacturers who did not
22 participate in the national tobacco settlement reached on
23 November 23, 1998, which was entered into by the State in the Master
24 Settlement Agreement in State of New Jersey v. R.J. Reynolds
25 Tobacco Company, et al., Superior Court, Chancery Division,
26 Middlesex County, No. C-254-96, to pay into a reserve fund in order
27 to guarantee a source of compensation for them to pay any future
28 judgment or settlement. Under the terms of the Master Settlement
29 Agreement, enactment of this bill in its exact form is a condition of
30 New Jersey's receipt of the full amount of funds to which it is
31 otherwise entitled under that agreement.

SENATE HEALTH COMMITTEE

STATEMENT TO

SENATE, No. 1713

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 15, 1999

The Senate Health Committee reports favorably and with committee amendments Senate Bill No. 1713.

As amended by the committee, this bill requires tobacco product manufacturers who did not participate in the national tobacco settlement reached on November 23, 1998, which was entered into by the State in the Master Settlement Agreement in State of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior Court, Chancery Division, Middlesex County, No. C-254-96, to pay into a reserve fund in order to guarantee a source of compensation for them to pay any future judgment or settlement. Under the terms of the Master Settlement Agreement, enactment of this bill in its exact form is a condition of New Jersey's receipt of the full amount of funds to which it is otherwise entitled under that agreement.

The committee adopted technical amendments at the request of the Department of Law and Public Safety to more precisely reflect the exact language in the model statute included in the Master Settlement Agreement which this bill seeks to enact.

As reported by the committee, this bill is identical to Assembly Bill No. 2929(1R) (Vandervalk/Russo), which is currently pending before the General Assembly.

STATEMENT TO
[First Reprint]
SENATE, No. 1713

with Senate Floor Amendments
(Proposed By Senator SINAGRA)

ADOPTED: JUNE 21, 1999

These amendments, which are technical in nature and are being proposed at the request of the Department of Law and Public Safety, are intended to more precisely reflect the exact language in the model statute included in the Master Settlement Agreement in State of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior Court, Chancery Division, Middlesex County, No. C-254-96 (the national tobacco settlement reached on November 23, 1998), which this bill seeks to enact.

This bill requires tobacco product manufacturers who did not participate in the national tobacco settlement to enter into this settlement or to pay into a reserve fund in order to guarantee a source of compensation for them to pay any future judgment or settlement. Under the terms of the Master Settlement Agreement, enactment of this bill in its exact form is a condition of New Jersey's receipt of the full amount of funds to which it is otherwise entitled under that agreement.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1713

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: MAY 21, 1999

Senate Bill No. 1713 (1R) of 1999 implements a provision of the November 1998 Master Settlement Agreement between the major tobacco product manufacturers and the attorneys general of 46 states, including New Jersey. In that settlement, the tobacco manufacturers agreed, among other things, to pay the signatory states and territories \$206 billion over the next 25 years and to halt many kinds of cigarette advertising. New Jersey is scheduled to receive approximately \$7.6 billion through the year 2025.

One of the provisions of the settlement was that each participating state enact a virtually identical "model statute," the purpose of which is to require tobacco manufacturers who were not part of the national settlement to make contributions to a qualified escrow fund maintained by a federally or state-chartered financial institution. These payments are designed to prevent such manufacturers (mainly smaller companies) from gaining a potential pricing advantage over the settling manufacturers and to guarantee a source of compensation for any future judgment or settlement involving one or more nonparticipating manufacturers.

S1713 (1R) is New Jersey's version of the "model statute" called for in the national Master Settlement Agreement. It requires tobacco product manufacturers who were not parties to the national settlement to deposit amounts ranging from \$.0094241 per unit (e.g., per cigarette) sold in 1999 to \$.0188482 per unit sold in the year 2007 and each year thereafter. Funds on deposit, if not paid in judgment or settlement, are returned to the companies with interest 25 years after being placed in escrow.

OFFICE OF LEGISLATIVE SERVICES COMMENTS

While the national tobacco settlement does not require that states enact the model statute as a condition of receiving settlement payments, there is a strong financial inducement to do so. Enactment of S1713 (1R) or similar legislation is a condition for New Jersey to

receive its full funding under the Master Settlement Agreement negotiated between the tobacco industry and the attorneys general. The statute must remain in full force and effect to ensure against future payment reductions, for instance if non-participating manufacturers increase their market share at the expense of companies that did sign the national agreement. The escrow payments by non-participating manufacturers will also ensure that funds are available to meet future contingent liabilities of those companies if they are sued by the state.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Gene Herman
609-777-2600

RELEASE: June 28, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

S-1976, sponsored by Senator Robert E. Littell (R-Sussex/Hunterdon/Morris) and Assembly Members Joseph R. Malone, 3d (R-Burlington/Monmouth/Ocean) and Gerald J. Luongo (R-Camden/Gloucester), permits an expedited procedure for the adoption of regulations by the Commissioner of Education in regard to the Abbott districts. The bill permits the commissioner to adopt, immediately upon filing with the Office of Administrative Law, interim regulations to implement the order of the New Jersey Supreme Court in *Abbott v. Burke*. In view of the limited time available, it would not be practicable for the commissioner to adopt regulations for the 1999-2000 school year pursuant to the provisions of the Administrative Procedures Act. The bill, therefore provides an expedited procedure for the commissioner to adopt regulations to implement the Supreme Court's order in *Abbott* for this limited time period.

A-2929, sponsored by Assembly Members Charlotte Vandervalk (R-Bergen) and David C. Russo (R-Bergen/Passaic) and Senator Jack Sinagra (R-Middlesex), requires tobacco product manufacturers who did not participate in the national tobacco settlement to pay into a reserve fund to guarantee a source of compensation to pay any future judgment or settlement. The purpose of the model statute is to prevent non-participating manufacturers from obtaining a significant market advantage since they are not subject to the business expense of the Master Settlement Agreement (MSA). The MSA was reached on November 23 and entered into by New Jersey in *State of New Jersey v. R. J. Reynolds Tobacco Company, et al.*, Superior Court, Chancery Division, Middlesex County.