

# 52:4D-13

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2003           **CHAPTER:** 195  
**NJSA:** 52:4D-13      (Establishes \$50 maximum total appeal bond)  
**BILL NO:** S2738 (Substituted for A3717)  
**SPONSOR:** Kavanaugh and others  
**DATE INTRODUCED:** June 30, 2003  
**COMMITTEE:**       **ASSEMBLY:** ---  
                              **SENATE:** Budget and Appropriations  
**AMENDED DURING PASSAGE:** Yes  
**DATE OF PASSAGE:**       **ASSEMBLY:** June 30, 2003  
                                  **SENATE:** June 30, 2003  
**DATE OF APPROVAL:** November 21, 2003

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)  
(Amendments during passage denoted by superscript numbers)

#### S2738

**[SPONSORS STATEMENT:](#)** (Begins on page 3 of original bill)        [Yes](#)  
**COMMITTEE STATEMENT:**                           **ASSEMBLY:** No  
   **SENATE:**       [Yes](#)  
**FLOOR AMENDMENT STATEMENT:**                                    No  
**LEGISLATIVE FISCAL ESTIMATE:**                                    No

#### A3717

**[SPONSORS STATEMENT:](#)** (Begins on page 3 of original bill)        [Yes](#)  
  Bill and Sponsors Statement identical to S2738  
**COMMITTEE STATEMENT:**                                   **ASSEMBLY:**        [Yes](#)  
  **SENATE:**        No  
**FLOOR AMENDMENT STATEMENT:**                                    No  
**LEGISLATIVE FISCAL ESTIMATE:**                                    No  
**VETO MESSAGE:**    No  
**GOVERNOR'S PRESS RELEASE ON SIGNING:**                        No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 2003, CHAPTER 195, *approved November 21, 2003*

Senate, No. 2738 (*First Reprint*)

1 **AN ACT** concerning tobacco product manufacturer signatories to a  
2 master settlement agreement and supplementing Title 52 of the  
3 Revised Statutes.

4

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

7

8 1. a. The Legislature finds and declares that:

9 (1) New Jersey receives hundreds of millions of dollars annually as  
10 a result of the Master Settlement Agreement. These funds have been  
11 used to provide important services for the citizens of the State,  
12 including tobacco-use prevention, elder care, pharmaceutical  
13 assistance, health insurance for the working poor, cancer research, and  
14 school renovation and construction. If this reliable revenue stream  
15 were jeopardized, the State might be forced to cut many vital services  
16 and programs.

17 (2) Recent jury verdicts in private litigation against tobacco  
18 manufacturers who were signatories to the Master Settlement  
19 Agreement have resulted in a \$145 billion class action judgment, which  
20 is on appeal, and other large judgments. A plaintiff can typically  
21 collect such judgments while an appeal is proceeding, meaning that a  
22 defendant's assets can be taken even while it appeals.

23 (3) A defendant can prevent a plaintiff from taking its assets while  
24 it appeals in two ways, by posting a bond under State law or by  
25 declaring bankruptcy. If a tobacco company faced with a large  
26 judgment could not afford to post a bond under State law it might be  
27 forced to declare bankruptcy, and this could interrupt the flow of  
28 payments to the State under the Master Settlement Agreement. This  
29 would hurt the residents of New Jersey.

30 (4) New Jersey law requires a defendant to post a bond at least  
31 equal to the full amount of the judgment. This may not be possible for  
32 the signatories to the Master Settlement Agreement in light of the size  
33 of the judgments they are facing. The Legislature finds that it is  
34 strongly in the public interest to ensure that a Master Settlement  
35 Agreement signatory has access to a full appeal of an adverse  
36 judgment before its financial soundness, and its payments to the State,  
37 are threatened by the judgment, and thus to ensure that a Master  
38 Settlement Agreement signatory is not forced into bankruptcy due to  
39 its inability to post a bond pending appeal of an adverse judgment. In

**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:**

<sup>1</sup> Senate SBA committee amendments adopted June 30, 2003.

1 furtherance of this compelling public interest the Legislature finds that  
2 a maximum appeal bond should be established for cases involving  
3 Master Settlement Agreement signatories, successors and affiliates.

4 (5) The Legislature declares that nothing in this act, P.L. , c.  
5 (C. ) (now before the Legislature as this bill), is intended to affect the  
6 liability of a tobacco manufacturer in any litigation. This act merely  
7 ensures that a Master Settlement Agreement signatory, a successor of  
8 a signatory, or any affiliate of a signatory, can fully appeal an adverse  
9 judgment, thereby avoiding the necessity of seeking a stay in the  
10 bankruptcy court. This, in turn, will protect not only New Jersey but  
11 all states participating in the Master Settlement Agreement by  
12 preserving the uninterrupted flow of tobacco settlement revenues.

13 b. In order to secure and protect the monies to be received as a  
14 result of the Master Settlement Agreement, as defined in section 2 of  
15 P.L.1999, c.148 (C.52:4D-2), in civil litigation under any legal theory  
16 involving a signatory, a successor of a signatory, or any affiliate of a  
17 signatory to the Master Settlement Agreement, the appeal bond to be  
18 furnished during the pendency of all appeals or discretionary reviews  
19 by any appellate courts in order to stay the execution of any judgment  
20 granting legal, equitable or other relief during the entire course of  
21 appellate review shall be set in accordance with applicable laws or  
22 court rules, except that the total appeal bond that is required of all  
23 appellants collectively shall not exceed <sup>1</sup>[\$25,000,000] \$50,000,000<sup>1</sup>,  
24 regardless of the value of the judgment.

25 c. Notwithstanding subsection b. of this section, if an appellee  
26 proves by a preponderance of the evidence that an appellant is  
27 dissipating assets outside the ordinary course of business to avoid  
28 payment of a judgment, a court may enter orders that:

- 29 (1) are necessary to protect the appellee; and  
30 (2) require the appellant to post a bond in an amount up to the  
31 total amount of the judgment.

32

33 2. This act shall take effect immediately and shall apply to all cases  
34 pending or filed on or after its effective date.

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39 Establishes \$50 million maximum total appeal bond to stay execution  
40 of judgments related to tobacco Master Settlement Agreement.

**SENATE, No. 2738**

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**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

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INTRODUCED JUNE 30, 2003

**Sponsored by:**

**Senator WALTER J. KAVANAUGH**

**District 16 (Morris and Somerset)**

**SYNOPSIS**

Establishes \$25 million maximum total appeal bond to stay execution of judgments related to tobacco Master Settlement Agreement.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning tobacco product manufacturer signatories to a  
2 master settlement agreement and supplementing Title 52 of the  
3 Revised Statutes.

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

7  
8 1. a. The Legislature finds and declares that:

9 (1) New Jersey receives hundreds of millions of dollars annually as  
10 a result of the Master Settlement Agreement. These funds have been  
11 used to provide important services for the citizens of the State,  
12 including tobacco-use prevention, elder care, pharmaceutical  
13 assistance, health insurance for the working poor, cancer research, and  
14 school renovation and construction. If this reliable revenue stream  
15 were jeopardized, the State might be forced to cut many vital services  
16 and programs.

17 (2) Recent jury verdicts in private litigation against tobacco  
18 manufacturers who were signatories to the Master Settlement  
19 Agreement have resulted in a \$145 billion class action judgment, which  
20 is on appeal, and other large judgments. A plaintiff can typically  
21 collect such judgments while an appeal is proceeding, meaning that a  
22 defendant's assets can be taken even while it appeals.

23 (3) A defendant can prevent a plaintiff from taking its assets while  
24 it appeals in two ways, by posting a bond under State law or by  
25 declaring bankruptcy. If a tobacco company faced with a large  
26 judgment could not afford to post a bond under State law it might be  
27 forced to declare bankruptcy, and this could interrupt the flow of  
28 payments to the State under the Master Settlement Agreement. This  
29 would hurt the residents of New Jersey.

30 (4) New Jersey law requires a defendant to post a bond at least  
31 equal to the full amount of the judgment. This may not be possible for  
32 the signatories to the Master Settlement Agreement in light of the size  
33 of the judgments they are facing. The Legislature finds that it is  
34 strongly in the public interest to ensure that a Master Settlement  
35 Agreement signatory has access to a full appeal of an adverse  
36 judgment before its financial soundness, and its payments to the State,  
37 are threatened by the judgement, and thus to ensure that a Master  
38 Settlement Agreement signatory is not forced into bankruptcy due to  
39 its inability to post a bond pending appeal of an adverse judgement.  
40 In furtherance of this compelling public interest the Legislature finds  
41 that a maximum appeal bond should be established for cases involving  
42 Master Settlement Agreement signatories, successors and affiliates.

43 (5) The Legislature declares that nothing in this act, P.L. , c.  
44 (C. ) (now before the Legislature as this bill), is intended to affect  
45 the liability of a tobacco manufacture in any litigation. This act merely  
46 ensures that a Master Settlement Agreement signatory, a successor of

1 a signatory, or any affiliate of a signatory, can fully appeal an adverse  
2 judgement, thereby avoiding the necessity of seeking a stay in the  
3 bankruptcy court. This, in turn, will protect not only New Jersey but  
4 all states participating in the Master Settlement Agreement by  
5 preserving the uninterrupted flow of tobacco settlement revenues.

6 b. In order to secure and protect the monies to be received as a  
7 result of the Master Settlement Agreement, as defined in section 2 of  
8 P.L.1999, c.148 (C.52:4D-2), in civil litigation under any legal theory  
9 involving a signatory, a successor of a signatory, or any affiliate of a  
10 signatory to the Master Settlement Agreement, the appeal bond to be  
11 furnished during the pendency of all appeals or discretionary reviews  
12 by any appellate courts in order to stay the execution of any judgment  
13 granting legal, equitable or other relief during the entire course of  
14 appellate review shall be set in accordance with applicable laws or  
15 court rules, except that the total appeal bond that is required of all  
16 appellants collectively shall not exceed \$25,000,000, regardless of the  
17 value of the judgment.

18 c. Notwithstanding subsection b. of this section, if an appellee  
19 proves by a preponderance of the evidence that an appellant is  
20 dissipating assets outside the ordinary course of business to avoid  
21 payment of a judgment, a court may enter orders that:

- 22 (1) are necessary to protect the appellee; and  
23 (2) require the appellant to post a bond in an amount up to the total  
24 amount of the judgment.

25  
26 2. This act shall take effect immediately and shall apply to all cases  
27 pending or filed on or after its effective date.

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29

30 STATEMENT

31

32 This bill establishes a maximum bond required to stay an execution  
33 of a judgment in any civil action under any legal theory involving a  
34 signatory, a successor of a signatory or any affiliate of a signatory to  
35 the Master Settlement Agreement, defined in N.J.S.A.52:4D-2, during  
36 the course of all appeals in the amount of \$25 million.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 2738**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 30, 2003

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2738.

This bill establishes a maximum bond required to stay an execution of a judgment in any civil action under any legal theory involving a signatory, a successor of a signatory or any affiliate of a signatory to the Master Settlement Agreement, defined in N.J.S.A.52:4D-2, during the course of all appeals in the amount of \$50 million.

#### COMMITTEE AMENDMENTS

Committee amendments to this bill increase the ceiling on the bond requirement to \$50 million from \$25 million.

#### FISCAL IMPACT

This bill has not been certified as having a fiscal impact.



# ASSEMBLY, No. 3717

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 30, 2003

**Sponsored by:**

**Assemblyman ALBIO SIRES**

**District 33 (Hudson)**

**Assemblyman JOSEPH J. ROBERTS, JR.**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Establishes \$25 million maximum total appeal bond to stay execution of judgments related to tobacco Master Settlement Agreement.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning tobacco product manufacturer signatories to a  
2 master settlement agreement and supplementing Title 52 of the  
3 Revised Statutes.

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

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8 1. a. The Legislature finds and declares that:

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14 school renovation and construction. If this reliable revenue stream  
15 were jeopardized, the State might be forced to cut many vital services  
16 and programs.

17 (2) Recent jury verdicts in private litigation against tobacco  
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19 Agreement have resulted in a \$145 billion class action judgment, which  
20 is on appeal, and other large judgments. A plaintiff can typically  
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35 Agreement signatory has access to a full appeal of an adverse  
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37 are threatened by the judgement, and thus to ensure that a Master  
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23 (2) require the appellant to post a bond in an amount up to the  
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26 2. This act shall take effect immediately and shall apply to all cases  
27 pending or filed on or after its effective date.

28  
29  
30 STATEMENT

31  
32 This bill establishes a maximum bond required to stay an execution  
33 of a judgment in any civil action under any legal theory involving a  
34 signatory, a successor of a signatory or any affiliate of a signatory to  
35 the Master Settlement Agreement, defined in N.J.S.A. 52:4D-2, during  
36 the course of all appeals in the amount of \$25 million.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3717**

with Assembly committee amendments

# **STATE OF NEW JERSEY**

DATED: JULY 1, 2003

The Assembly Budget Committee reports favorably Assembly Bill No. 3717, with committee amendments.

Assembly Bill No. 3717, as amended, establishes a maximum bond required to stay an execution of a judgement in any civil action under any legal theory involving a signatory, a successor of a signatory or any affiliate of a signatory to the Master Settlement Agreement, defined in N.J.S.A. 52:4D-2, during the course of all appeals in the amount of \$50 million.

#### FISCAL IMPACT:

This bill has no determinable fiscal impact. The bill establishes a maximum bond amount of \$50 million to protect the continuing economic viability of a signatory, a successor of a signatory or any affiliate of a signatory to the Master Settlement Agreement. Protecting the economic viability of the tobacco companies protects the flow of funds from the companies to the States, including New Jersey.

#### COMMITTEE AMENDMENTS:

The amendments increase the maximum bond amount from \$25 million to \$50 million.