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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH 4/30/08

P.L. 2007, CHAPTER 96, *approved June 28, 2007*
Assembly Committee Substitute for
Assembly, No. 3058

1 AN ACT concerning tobacco manufacturer payments under the
2 tobacco Master Settlement Agreement, amending and
3 supplementing P.L.1999, c.148.

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

7
8 1. Section 3 of P.L.1999, c.148 (C.52:4D-3) is amended to read
9 as follows:

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

14 a. become a participating manufacturer, as that term is defined
15 in section II(jj) of the Master Settlement Agreement, 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
20 amounts are adjusted for inflation:

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

23 (b) 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 each of 2007 and each year thereafter, \$.0188482 per
27 unit sold.

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

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

40 (b) to the extent that the tobacco product manufacturer
41 establishes that the amount that it was required to place into escrow

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

Matter underlined thus is new matter.

1 on account of units sold in the State in a particular year was greater
2 than the **【State's allocable share of the total payments】** Master
3 Settlement Agreement payments, as determined pursuant to section
4 IX(i) of that Agreement including after final determination of all
5 adjustments, that such manufacturer would have been required to
6 make **【in that year under the Master Settlement Agreement】** on
7 account of such units sold had it been a participating manufacturer,
8 **【as such payments are determined pursuant to section IX (i)(2) of**
9 **the Master Settlement Agreement, and before any of the**
10 **adjustments or offsets described in section IX(i)(3) of that**
11 **agreement other than the inflation adjustment,】** the excess shall be
12 released from escrow and revert back to the tobacco product
13 manufacturer; or

14 (c) to the extent not released from escrow under subparagraph
15 (a) or (b) of this paragraph, funds shall be released from escrow and
16 revert back to the tobacco product manufacturer 25 years after the
17 date on which they were placed into escrow.

18 (3) Each tobacco product manufacturer that elects to place funds
19 into escrow pursuant to this subsection shall annually certify to the
20 Attorney General that it is in compliance with this subsection. The
21 Attorney General may bring a civil action on behalf of the State
22 against any tobacco product manufacturer that fails to place into
23 escrow the funds required under this section. Any tobacco product
24 manufacturer that fails in any year to place into escrow the funds
25 required under this section shall:

26 (a) be required within 15 days to place such funds into escrow
27 as shall bring it into compliance with this section. The court, upon a
28 finding of a violation of this subsection, may impose a civil penalty,
29 to be paid into the General Fund, in an amount not to exceed 5% of
30 the amount improperly withheld from escrow per day of the
31 violation and in a total amount not to exceed 100% of the original
32 amount improperly withheld from escrow;

33 (b) in the case of a knowing violation, be required within 15
34 days to place such funds into escrow as shall bring it into
35 compliance with this section. The court, upon a finding of a
36 knowing violation of this subsection, may impose a civil penalty, to
37 be paid into the General Fund, in an amount not to exceed 15% of
38 the amount improperly withheld from escrow per day of the
39 violation and in a total amount not to exceed 300% of the original
40 amount improperly withheld from escrow; and

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

45 Each failure to make an annual deposit required under this
46 section shall constitute a separate violation. A person who violates

1 this section shall pay the State's costs and attorney's fees incurred
2 during a successful prosecution under this paragraph (3).
3 (cf: P.L.1999, c.148, s.3)

4
5 2. (New section) If this act, or any portion of the amendment
6 made in section 1 of this act amending subparagraph (b) of
7 paragraph (2) of subsection b. of section 3 of P.L.1999, c.148
8 (C.52:4D-3), is held by a court of competent jurisdiction to be
9 unconstitutional, then such subparagraph (b) shall be deemed to be
10 repealed in its entirety. If paragraph (2) of subsection b. of section
11 3 of P.L.1999, c.148 (C.52:4D-3) shall thereafter be held by a court
12 of competent jurisdiction to be unconstitutional, then this act shall
13 be deemed repealed, and subparagraph (b) of paragraph (2) of
14 subsection b. of section 3 of P.L.1999, c.148 (C.52:4D-3) restored
15 as if no such amendment had been made. Neither any holding of
16 unconstitutionality nor the repeal of subparagraph (b) of paragraph
17 (2) of subsection b. of section 3 of P.L.1999, c.148 (C.52:4D-3),
18 shall affect, impair or invalidate any other portion of section 3 of
19 P.L.1999, c.148 (C.52:4D-3), or the application of such section to
20 any other person or circumstance, and such remaining portions of
21 section 3 of P.L.1999, c.148 (C.52:4D-3) shall at all times continue
22 in full force and effect.

23
24 3. (New section) The State Treasurer shall submit an annual
25 report to the Joint Budget Oversight Committee on or before
26 December 31 of each year setting forth a list of the amount of
27 payments by and refunds to Participating Manufacturers and Non-
28 Participating Manufacturers for the previous fiscal year and a list of
29 any payments of penalties required under section 3 of P.L.1999,
30 c.148 (C.52:4D-3) for the previous fiscal year.

31
32 4. This act shall take effect immediately.

33
34

35
36

37 _____
38 Concerns tobacco manufacturer payments under the tobacco
Master Settlement Agreement.

ASSEMBLY, No. 3058

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 15, 2006

Sponsored by:

Assemblyman JOSEPH CRYAN

District 20 (Union)

SYNOPSIS

Implements amendments to the Tobacco Master Settlement Agreement.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT implementing amendments to the tobacco master
2 settlement agreement and amending P.L.1999, c.148.

3

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

6

7 1. Section 3 of P.L.1999, c.148 (C.52:4D-3) is amended to read
8 as follows:

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

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

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

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

22 (b) 2000, \$.0104712 per unit sold;

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

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

25 (e) for each of 2007 and each year thereafter, \$.0188482 per unit
26 sold.

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

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

39 (b) to the extent that the tobacco product manufacturer
40 establishes that the amount that it was required to place into escrow
41 on account of units sold in the State in a particular year was greater
42 than the **【State's allocable share of the total payments】** Master
43 Settlement Agreement payments, as determined pursuant to section
44 IX(i) of that Agreement including after final determination of all
45 adjustments, that such manufacturer would have been required to

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 make [in that year under the Master Settlement Agreement] on
2 account of such units sold had it been a participating manufacturer,
3 [as such payments are determined pursuant to section IX (i)(2) of
4 the Master Settlement Agreement, and before any of the
5 adjustments or offsets described in section IX(i)(3) of that
6 agreement other than the inflation adjustment,] the excess shall be
7 released from escrow and revert back to the tobacco product
8 manufacturer; or

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

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

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

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

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

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

44 (cf: P.L.1999, c.148, s.3)

45

46 2. (New section) If P.L.1999, c.148, or any portion of the
47 amendment made in section 1 of P.L. , c. (pending before the
48 Legislature as this bill) amending subparagraph (b) of paragraph (2)

1 of subsection b. of section 3 of P.L.1999, c.148 (C.52:4D-3), is held
2 by a court of competent jurisdiction to be unconstitutional, then
3 such subparagraph (b) shall be deemed to be repealed in its entirety.
4 If paragraph (2) of subsection b. of section 3 of P.L.1999, c.148
5 (C.52:4D-3) shall thereafter be held by a court of competent
6 jurisdiction to be unconstitutional, then section 1 of P.L. ,
7 c. (pending before the Legislature as this bill) shall be deemed
8 repealed, and subparagraph (b) of paragraph (2) of subsection b. of
9 section 3 of P.L.1999, c.148 (C.52:4D-3) restored as if no such
10 amendment had been made. Neither any holding of
11 unconstitutionality nor the repeal of subparagraph (b) of paragraph
12 (2) of subsection b. of section 3 of P.L.1999, c.148 (C.52:4D-3),
13 shall affect, impair or invalidate any other portion of section 3 of
14 P.L.1999, c.148 (C.52:4D-3), or the application of such section to
15 any other person or circumstance, and such remaining portions of
16 section 3 of P.L.1999, c.148 (C.52:4D-3) shall at all times continue
17 in full force and effect.

18

19 3. This act shall take effect immediately

20

21

22

23 STATEMENT

24

25 This bill amends the Tobacco Master Settlement Agreement
26 model implementing statute to change the formula for early release
27 of escrow funds to a Non-Participating Manufacturer. The early
28 release formula is altered so that the amount remaining in escrow is
29 not less than the amount the manufacturer would have been required
30 to pay if it had signed the Tobacco Master Settlement Agreement.

31 The Tobacco Master Settlement Agreement is an agreement
32 between two groups known as the "Settling States" and the
33 "Participating Manufacturers." The Settling States consist of 46
34 states, the District of Columbia, and six territories. New Jersey is
35 one of the settling states. The Participating Manufacturers include
36 the major tobacco companies and several smaller manufacturers.
37 The tobacco manufacturers that did not sign the agreement are
38 known as Non-Participating Manufacturers.

39 Under the agreement, Participating Manufacturers make
40 specified payments to the states and agree to abide by extensive
41 public health restrictions on the advertising, promotion and
42 marketing of cigarettes. In exchange, the states agreed to release the
43 Participating Manufacturers from claims by the states. Non-
44 Participating Manufacturers were not released from potential state
45 claims and did not undertake any of the payment obligations or
46 agree to abide by the public health restrictions. The agreement
47 included a proposed escrow statute (Model Statute) for states to
48 adopt. The Model Statute requires Non-Participating Manufacturers
to make annual payments into an escrow fund based on the number

1 of cigarettes sold in the state. The Model Statute is intended to
2 prevent Non-Participating Manufacturers from taking advantage of
3 the fact that they need not make settlement payments or observe the
4 public health, advertising and other restrictions under the settlement
5 agreement. It is also intended to provide a fund from which a state
6 that successfully sues a Non-Participating Manufacturer in the
7 future can recover any judgment or settlement moneys. This
8 Qualified Escrow Account established under the Model Statute thus
9 provides for a reserve fund to guarantee a source of compensation
10 and to prevent manufacturers who decided not to enter into the
11 Master Settlement Agreement from deriving large, short-term
12 profits and then becoming judgment-proof before their liability to a
13 state may arise. All Settling States enacted a Model Statute.

14 Money deposited in an escrow account is released to the Non-
15 Participating Manufacturer after 25 years if not used before then to
16 pay a judgment. The Model Statute permits a Non-Participating
17 Manufacturer to obtain an earlier release of money from escrow to
18 the extent that its escrow payments are greater than the state's
19 allocable share of the total payments that manufacturer would have
20 paid if the manufacturer had signed the settlement agreement. It
21 appears that if a Non-Participating Manufacturer concentrates its
22 sales in a single state or a few states, the early release formula in
23 the Model Statute could result in refunds of the vast majority of the
24 manufacturer's escrow deposits. A Non-Participating Manufacturer
25 who is able to obtain these refunds could lower the price of its
26 cigarettes in comparison to manufacturers who are making full
27 payments under the settlement agreement, thereby obtaining a
28 competitive advantage. Moreover, the reduced escrow funds might
29 not be sufficient for a state to recover judgment or settlement
30 moneys against a Non-Participating Manufacturer. This depletion
31 of escrow funds by certain Non-Participating Manufacturers was
32 not contemplated when the Model Statute was enacted. Changing
33 the escrow funds release amount to the amount of units sold in New
34 Jersey provides a means of ensuring that the Non-Participating
35 Manufacturers pay their share into the escrow account, and that
36 those payments are secured for the benefit of the State.

37 Under the provisions of this bill, if a court finds this amendment
38 of the escrow funds release provisions unconstitutional, the early
39 release provisions shall be deemed eliminated in their entirety. If a
40 court finds that elimination of the early escrow release provisions is
41 also unconstitutional, the early escrow release provisions shall be
42 deemed restored as if no amendment had been made.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3058

STATE OF NEW JERSEY

DATED: JUNE 18, 2007

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3058.

This substitute amends the Tobacco Master Settlement Agreement model implementing statute to change the formula for early release of escrow funds to a Non-Participating Manufacturer. The substitute alters the early release formula so that the amount remaining in escrow is not less than the amount the manufacturer would have been required to pay if it had signed the Tobacco Master Settlement Agreement.

The Tobacco Master Settlement Agreement is an agreement between two groups known as the "Settling States" and the "Participating Manufacturers." The Settling States consist of 46 states, the District of Columbia, and six territories. New Jersey is one of the settling states. The Participating Manufacturers include the major tobacco companies and several smaller manufacturers. The tobacco manufacturers that did not sign the agreement are known as Non-Participating Manufacturers.

Under the agreement, Participating Manufacturers make specified payments to the states and agree to abide by extensive public health restrictions on the advertising, promotion and marketing of cigarettes. In exchange, the states agreed to release the Participating Manufacturers from claims by the states. Non-Participating Manufacturers were not released from potential state claims and did not undertake any of the payment obligations or agree to abide by the public health restrictions. The agreement included a proposed escrow statute (Model Statute) for states to adopt. The Model Statute requires Non-Participating Manufacturers to make annual payments into an escrow fund based on the number of cigarettes sold in the state. The Model Statute is intended to prevent Non-Participating Manufacturers from taking advantage of the fact that they need not make settlement payments or observe the public health, advertising and other restrictions under the settlement agreement. It is also intended to provide a fund from which a state that successfully sues a Non-Participating Manufacturer in the future can recover any judgment or settlement moneys. This Qualified Escrow Account established under the Model Statute thus provides for a reserve fund to guarantee a

source of compensation and to prevent manufacturers who decided not to enter into the Master Settlement Agreement from deriving large, short-term profits and then becoming judgment-proof before their liability to a state may arise. All Settling States enacted a Model Statute.

Money deposited in an escrow account is released to the Non-Participating Manufacturer after 25 years if not used before then to pay a judgment. The Model Statute permits a Non-Participating Manufacturer to obtain an earlier release of money from escrow to the extent that its escrow payments are greater than the state's allocable share of the total payments that manufacturer would have paid if the manufacturer had signed the settlement agreement. It appears that if a Non-Participating Manufacturer concentrates its sales in a single state or a few states, the early release formula in the Model Statute could result in refunds of the vast majority of the manufacturer's escrow deposits. A Non-Participating Manufacturer who is able to obtain these refunds could lower the price of its cigarettes in comparison to manufacturers who are making full payments under the settlement agreement, thereby obtaining a competitive advantage. Moreover, the reduced escrow funds might not be sufficient for a state to recover judgment or settlement moneys against a Non-Participating Manufacturer. This depletion of escrow funds by certain Non-Participating Manufacturers was not contemplated when the Model Statue was enacted. Changing the escrow funds release amount to the amount of units sold in New Jersey provides a means of ensuring that the Non-Participating Manufacturers pay their share into the escrow account, and that those payments are secured for the benefit of the State.

Under the provisions of this substitute, if a court finds this amendment of the escrow funds release provisions unconstitutional, the early release provisions shall be deemed eliminated in their entirety. If a court finds that elimination of the early escrow release provisions is also unconstitutional, the early escrow release provisions shall be deemed restored as if no amendment had been made.

Finally, the substitute requires the State Treasurer to submit an annual report to the Joint Budget Oversight Committee on or before December 31 of each year setting forth a list of the amount of payments by and refunds to Participating Manufacturers and Non-Participating Manufacturers for the previous fiscal year and a list of any payments of penalties required under the act for the previous fiscal year. The goal of this requirement is allow the Joint Budget Oversight Committee to monitor enforcement of payments.

As substituted and reported by the committee, this substitute is identical to Senate Bill No. 2783.

FISCAL IMPACT:

This substitute has not been certified as requiring a fiscal note.

SENATE, No. 2783

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED JUNE 7, 2007

Sponsored by:

Senator WALTER J. KAVANAUGH

District 16 (Morris and Somerset)

SYNOPSIS

Concerns tobacco manufacturer payments under the tobacco Master Settlement Agreement.

CURRENT VERSION OF TEXT

As introduced.



S2783 KAVANAUGH

2

1 AN ACT concerning tobacco manufacturer payments under the
2 tobacco Master Settlement Agreement, amending and
3 supplementing P.L.1999, c.148.

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

7
8 1. Section 3 of P.L.1999, c.148 (C.52:4D-3) is amended to read
9 as follows:

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

14 a. become a participating manufacturer, as that term is defined
15 in section II(jj) of the Master Settlement Agreement, 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
20 amounts are adjusted for inflation:

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

23 (b) 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 each of 2007 and each year thereafter, \$.0188482 per unit
27 sold.

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

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

40 (b) to the extent that the tobacco product manufacturer
41 establishes that the amount that it was required to place into escrow
42 on account of units sold in the State in a particular year was greater
43 than the **【State's allocable share of the total payments】** Master
44 Settlement Agreement payments, as determined pursuant to section
45 IX(i) of that Agreement including after final determination of all

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 adjustments, that such manufacturer would have been required to
2 make [in that year under the Master Settlement Agreement] on
3 account of such units sold had it been a participating manufacturer,
4 [as such payments are determined pursuant to section IX (i)(2) of
5 the Master Settlement Agreement, and before any of the
6 adjustments or offsets described in section IX(i)(3) of that
7 agreement other than the inflation adjustment,] the excess shall be
8 released from escrow and revert back to the tobacco product
9 manufacturer; or

10 (c) to the extent not released from escrow under subparagraph
11 (a) or (b) of this paragraph, funds shall be released from escrow and
12 revert back to the tobacco product manufacturer 25 years after the
13 date on which they were placed into escrow.

14 (3) Each tobacco product manufacturer that elects to place funds
15 into escrow pursuant to this subsection shall annually certify to the
16 Attorney General that it is in compliance with this subsection. The
17 Attorney General may bring a civil action on behalf of the State
18 against any tobacco product manufacturer that fails to place into
19 escrow the funds required under this section. Any tobacco product
20 manufacturer that fails in any year to place into escrow the funds
21 required under this section shall:

22 (a) be required within 15 days to place such funds into escrow as
23 shall bring it into compliance with this section. The court, upon a
24 finding of a violation of this subsection, may impose a civil penalty,
25 to be paid into the General Fund, in an amount not to exceed 5% of
26 the amount improperly withheld from escrow per day of the
27 violation and in a total amount not to exceed 100% of the original
28 amount improperly withheld from escrow;

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

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

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

45 (cf: P.L.1999, c.148, s.3)

46

47 2. (New section) If this act, or any portion of the amendment
48 made in section 1 of this act amending subparagraph (b) of

1 paragraph (2) of subsection b. of section 3 of P.L.1999, c.148
2 (C.52:4D-3), is held by a court of competent jurisdiction to be
3 unconstitutional, then such subparagraph (b) shall be deemed to be
4 repealed in its entirety. If paragraph (2) of subsection b. of section
5 3 of P.L.1999, c.148 (C.52:4D-3) shall thereafter be held by a court
6 of competent jurisdiction to be unconstitutional, then this act shall
7 be deemed repealed, and subparagraph (b) of paragraph (2) of
8 subsection b. of section 3 of P.L.1999, c.148 (C.52:4D-3) restored
9 as if no such amendment had been made. Neither any holding of
10 unconstitutionality nor the repeal of subparagraph (b) of paragraph
11 (2) of subsection b. of section 3 of P.L.1999, c.148 (C.52:4D-3),
12 shall affect, impair or invalidate any other portion of section 3 of
13 P.L.1999, c.148 (C.52:4D-3), or the application of such section to
14 any other person or circumstance, and such remaining portions of
15 section 3 of P.L.1999, c.148 (C.52:4D-3) shall at all times continue
16 in full force and effect.

17

18 3. (New section) The State Treasurer shall submit an annual
19 report to the Joint Budget Oversight Committee on or before
20 December 31 of each year setting forth a list of the amount of
21 payments by and refunds to Participating Manufacturers and Non-
22 Participating Manufacturers for the previous fiscal year and a list of
23 any payments of penalties required under section 3 of P.L.1999,
24 c.148 (C.52:4D-3) for the previous fiscal year.

25

26 4. This act shall take effect immediately.

27

28

29

STATEMENT

30

31 This bill amends the Tobacco Master Settlement Agreement
32 model implementing statute to change the formula for early release
33 of escrow funds to a Non-Participating Manufacturer. The early
34 release formula is altered so that the amount remaining in escrow is
35 not less than the amount the manufacturer would have been required
36 to pay if it had signed the Tobacco Master Settlement Agreement.

37 The Tobacco Master Settlement Agreement is an agreement
38 between two groups known as the "Settling States" and the
39 "Participating Manufacturers." The Settling States consist of 46
40 states, the District of Columbia, and six territories. New Jersey is
41 one of the settling states. The Participating Manufacturers include
42 the major tobacco companies and several smaller manufacturers.
43 The tobacco manufacturers that did not sign the agreement are
44 known as Non-Participating Manufacturers.

45 Under the agreement, Participating Manufacturers make
46 specified payments to the states and agree to abide by extensive
47 public health restrictions on the advertising, promotion and
48 marketing of cigarettes. In exchange, the states agreed to release the

1 Participating Manufacturers from claims by the states. Non-
2 Participating Manufacturers were not released from potential state
3 claims and did not undertake any of the payment obligations or
4 agree to abide by the public health restrictions. The agreement
5 included a proposed escrow statute (Model Statute) for states to
6 adopt. The Model Statute requires Non-Participating Manufacturers
7 to make annual payments into an escrow fund based on the number
8 of cigarettes sold in the state. The Model Statute is intended to
9 prevent Non-Participating Manufacturers from taking advantage of
10 the fact that they need not make settlement payments or observe the
11 public health, advertising and other restrictions under the settlement
12 agreement. It is also intended to provide a fund from which a state
13 that successfully sues a Non-Participating Manufacturer in the
14 future can recover any judgment or settlement moneys. This
15 Qualified Escrow Account established under the Model Statute thus
16 provides for a reserve fund to guarantee a source of compensation
17 and to prevent manufacturers who decided not to enter into the
18 Master Settlement Agreement from deriving large, short-term
19 profits and then becoming judgment-proof before their liability to a
20 state may arise. All Settling States enacted a Model Statute.

21 Money deposited in an escrow account is released to the Non-
22 Participating Manufacturer after 25 years if not used before then to
23 pay a judgment. The Model Statute permits a Non-Participating
24 Manufacturer to obtain an earlier release of money from escrow to
25 the extent that its escrow payments are greater than the state's
26 allocable share of the total payments that manufacturer would have
27 paid if the manufacturer had signed the settlement agreement. It
28 appears that if a Non-Participating Manufacturer concentrates its
29 sales in a single state or a few states, the early release formula in
30 the Model Statute could result in refunds of the vast majority of the
31 manufacturer's escrow deposits. A Non-Participating Manufacturer
32 who is able to obtain these refunds could lower the price of its
33 cigarettes in comparison to manufacturers who are making full
34 payments under the settlement agreement, thereby obtaining a
35 competitive advantage. Moreover, the reduced escrow funds might
36 not be sufficient for a state to recover judgment or settlement
37 moneys against a Non-Participating Manufacturer. This depletion
38 of escrow funds by certain Non-Participating Manufacturers was
39 not contemplated when the Model Statute was enacted. Changing
40 the escrow funds release amount to the amount of units sold in New
41 Jersey provides a means of ensuring that the Non-Participating
42 Manufacturers pay their share into the escrow account, and that
43 those payments are secured for the benefit of the State.

44 Under the provisions of this bill, if a court finds this amendment
45 of the escrow funds release provisions unconstitutional, the early
46 release provisions shall be deemed eliminated in their entirety. If a
47 court finds that elimination of the early escrow release provisions is

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1 also unconstitutional, the early escrow release provisions shall be
2 deemed restored as if no amendment had been made.

3 Finally, the bill requires the State Treasurer to submit an annual
4 report to the Joint Budget Oversight Committee on or before
5 December 31 of each year setting forth a list of the amount of
6 payments by and refunds to Participating Manufacturers and Non-
7 Participating Manufacturers for the previous fiscal year and a list of
8 any payments of penalties required under the act for the previous
9 fiscal year. The goal of this requirement is allow the Joint Budget
10 Oversight Committee to monitor enforcement of payments.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2783

STATE OF NEW JERSEY

DATED: JUNE 14, 2007

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2783.

Senate Bill No. 2783 amends the Tobacco Master Settlement Agreement model implementing statute to change the formula for early release of escrow funds to a Non-Participating Manufacturer. The early release formula is altered so that the amount remaining in escrow is not less than the amount the manufacturer would have been required to pay if it had signed the Tobacco Master Settlement Agreement.

The Tobacco Master Settlement Agreement is an agreement between two groups known as the "Settling States" and the "Participating Manufacturers." The Settling States consist of 46 states, the District of Columbia, and six territories. New Jersey is one of the settling states. The Participating Manufacturers include the major tobacco companies and several smaller manufacturers. The tobacco manufacturers that did not sign the agreement are known as Non-Participating Manufacturers.

Under the agreement, Participating Manufacturers make specified payments to the states and agree to abide by extensive public health restrictions on the advertising, promotion and marketing of cigarettes. In exchange, the states agreed to release the Participating Manufacturers from claims by the states. Non-Participating Manufacturers were not released from potential state claims and did not undertake any of the payment obligations or agree to abide by the public health restrictions. The agreement included a proposed escrow statute (Model Statute) for states to adopt. The Model Statute requires Non-Participating Manufacturers to make annual payments into an escrow fund based on the number of cigarettes sold in the state. The Model Statute is intended to prevent Non-Participating Manufacturers from taking advantage of the fact that they need not make settlement payments or observe the public health, advertising and other restrictions under the settlement agreement. It is also intended to provide a fund from which a state that successfully sues a Non-Participating Manufacturer in the future can recover any judgment or settlement moneys. This Qualified Escrow Account established under the Model Statute thus provides for a reserve fund to guarantee a source of compensation and to prevent manufacturers who decided not

to enter into the Master Settlement Agreement from deriving large, short-term profits and then becoming judgment-proof before their liability to a state may arise. All Settling States enacted a Model Statute.

Money deposited in an escrow account is released to the Non-Participating Manufacturer after 25 years if not used before then to pay a judgment. The Model Statute permits a Non-Participating Manufacturer to obtain an earlier release of money from escrow to the extent that its escrow payments are greater than the state's allocable share of the total payments that manufacturer would have paid if the manufacturer had signed the settlement agreement. It appears that if a Non-Participating Manufacturer concentrates its sales in a single state or a few states, the early release formula in the Model Statute could result in refunds of the vast majority of the manufacturer's escrow deposits. A Non-Participating Manufacturer who is able to obtain these refunds could lower the price of its cigarettes in comparison to manufacturers who are making full payments under the settlement agreement, thereby obtaining a competitive advantage. Moreover, the reduced escrow funds might not be sufficient for a state to recover judgment or settlement moneys against a Non-Participating Manufacturer. This depletion of escrow funds by certain Non-Participating Manufacturers was not contemplated when the Model Statute was enacted. Changing the escrow funds release amount to the amount of units sold in New Jersey provides a means of ensuring that the Non-Participating Manufacturers pay their share into the escrow account, and that those payments are secured for the benefit of the State.

Under the provisions of this bill, if a court finds this amendment of the escrow funds release provisions unconstitutional, the early release provisions shall be deemed eliminated in their entirety. If a court finds that elimination of the early escrow release provisions is also unconstitutional, the early escrow release provisions shall be deemed restored as if no amendment had been made.

Finally, the bill requires the State Treasurer to submit an annual report to the Joint Budget Oversight Committee on or before December 31 of each year setting forth a list of the amount of payments by and refunds to Participating Manufacturers and Non-Participating Manufacturers for the previous fiscal year and a list of any payments of penalties required under the act for the previous fiscal year. The goal of this requirement is allow the Joint Budget Oversight Committee to monitor enforcement of payments.

FISCAL IMPACT:

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