52:4D-3.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 96

NJSA: 52:4D-3.1 (Concerns tobacco manufacturer payments under the tobacco Master Settlement Agreement)

BILL NO: A3058 (Substituted for S2783)

SPONSOR(S) Cryan and Others

DATE INTRODUCED: May 15, 2006

COMMITTEE: **ASSEMBLY:** Budget

SENATE:

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 21, 2007

SENATE: June 21, 2007

DATE OF APPROVAL: June 28, 2007

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Assembly Committee Substitute enacted)

A3058

SPONSOR'S STATEMENT: (Begins on page 4 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

S2783

SPONSOR'S STATEMENT: (Begins on page 4 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: Yes

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

RWH 4/30/08

§§2,3 -
C.52:4D-3.1 &
52:4D-3.2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) to the extent that the tobacco product manufacturer 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 <u>thus</u> is new matter.

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

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

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

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

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

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

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

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

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

3. (New section) The State Treasurer shall 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 section 3 of P.L.1999, c.148 (C.52:4D-3) for the previous fiscal year.

4. This act shall take effect immediately.

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) to the extent that the tobacco product manufacturer establishes that the amount that it was required to place into escrow <u>on account of units sold in the State</u> in a particular year was greater than the **[**State's allocable share of the total payments**]** <u>Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments,</u> that such manufacturer would have been required to

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Matter underlined <u>thus</u> is new matter.

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

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

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

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

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

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

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

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

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

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

3. This act shall take effect immediately

STATEMENT

This bill 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 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 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.

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.

<u>FISCAL IMPACT</u>:

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) to the extent that the tobacco product manufacturer establishes that the amount that it was required to place into escrow <u>on account of units sold in the State</u> in a particular year was greater than the **[**State's allocable share of the total payments**]** <u>Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all</u>

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Matter underlined <u>thus</u> is new matter.

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

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

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

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

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

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

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

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

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

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

3. (New section) The State Treasurer shall 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 section 3 of P.L.1999, c.148 (C.52:4D-3) for the previous fiscal year.

4. This act shall take effect immediately.

STATEMENT

This bill 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 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 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.

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.

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