

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH80303-LY-173 (3/13)

Short Title: Quarterly Escrow Deposits. (Public)

Sponsors: Representative Cole.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ATTORNEY GENERAL TO REQUIRE CERTAIN
CIGARETTE MANUFACTURERS TO MAKE QUARTERLY ESCROW
DEPOSITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-291 reads as rewritten:

"§ 66-291. Requirements.

(a) 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 effective date of this Article shall do one of the following:

- (1) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or
- (2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):
 - a. 1999: \$.0094241 per unit sold after the effective date of this Article.
 - 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.
 - e. For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(3) As required by subsection (d) of this section, place into a qualified escrow fund by 30 days following the end of the fiscal quarter \$.0188482 per unit sold during that quarter.

1 (b) A tobacco product manufacturer that places funds into escrow pursuant to
2 subdivision (2) or (3) of subsection (a) of this section shall receive the interest or other
3 appreciation on such funds as earned. Such funds themselves shall be released from
4 escrow only under the following circumstances:

- 5 (1) To pay a judgment or settlement on any released claim brought against
6 such tobacco product manufacturer by the State or any releasing party
7 located or residing in the State. Funds shall be released from escrow
8 under this subdivision (i) in the order in which they were placed into
9 escrow and (ii) only to the extent and at the time necessary to make
10 payments required under such judgment or settlement;
- 11 (2) To the extent that a tobacco product manufacturer establishes that the
12 amount it was required to place into escrow on account of units sold in
13 the State in a particular year was greater than the Master Settlement
14 Agreement payments, as determined pursuant to Section IX(i) of that
15 agreement, including after final determination of all adjustments, that
16 the manufacturer would have been required to make on account of the
17 units sold had it been a participating manufacturer, the excess shall be
18 released from escrow and revert back to such tobacco product
19 manufacturer; or
- 20 (3) To the extent not released from escrow under subdivisions (1) or (2) of
21 this subsection, funds shall be released from escrow and revert back to
22 such tobacco product manufacturer 25 years after the date on which
23 they were placed into escrow.

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

- 30 (1) Be required within 15 days in the case of a manufacturer who places
31 funds into escrow on an annual basis or 10 days in the case of a
32 manufacturer who places funds into escrow on a quarterly basis to
33 place such funds into escrow as shall bring it into compliance with this
34 section. The court, upon a finding of a violation either of subdivision
35 (2) or (3) of subsection (a) of this section, of subsection (b) of this
36 section, or of this section, may impose a civil penalty (the clear
37 proceeds of which shall be paid to the Civil Penalty and Forfeiture
38 Fund in accordance with G.S. 115C-457.2) in an amount not to exceed
39 five percent (5%) of the amount improperly withheld from escrow per
40 day of the violation and in a total amount not to exceed one hundred
41 percent (100%) of the original amount improperly withheld from
42 escrow;
- 43 (2) In the case of a knowing violation, be required within 15 days in the
44 case of a manufacturer who places funds into escrow on an annual

1 basis or 10 days in the case of a manufacturer who places funds into
2 escrow on a quarterly basis to place such funds into escrow as shall
3 bring it into compliance with this section. The court, upon a finding of
4 a knowing violation either of subdivision (2) or (3) of subsection (a) of
5 this section, of subsection (b) of this section, or of this section, may
6 impose a civil penalty (the clear proceeds of which shall be paid to the
7 Civil Penalty and Forfeiture Fund in accordance with
8 G.S. 115C-457.2) in an amount not to exceed fifteen percent (15%) of
9 the amount improperly withheld from escrow per day of the violation
10 and in a total amount not to exceed three hundred percent (300%) of
11 the original amount improperly withheld from escrow; and

- 12 (3) In the case of a second knowing violation, be prohibited from selling
13 cigarettes to consumers within the State (whether directly or through a
14 distributor, retailer, or similar intermediary) for a period not to exceed
15 two years.

16 Each failure to make ~~an annual~~ a deposit required under this section shall constitute
17 a separate violation.

18 (d) The Attorney General may require a manufacturer who satisfies either of the
19 conditions of this subsection to place money into escrow on a quarterly basis under
20 subdivision (3) of subsection (a) of this section. The Attorney General must notify any
21 manufacturer required to make quarterly deposits under this section of its duty to do so
22 by first-class mail sent to its last known address.

- 23 (1) The manufacturer has not previously established and funded a
24 qualified escrow fund in this State.

- 25 (2) The manufacturer has not made a deposit in a qualified escrow fund in
26 this State for more than one year."

27 **SECTION 2.** This act becomes effective July 1, 2007.