ENROLLED

House Bill No. 3045

(By Mr. Speaker, Mr. Kiss)

Passed March 7, 2003

In Effect Ninety Days from Passage
AN ACT to amend and reenact section three, article nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four, all relating generally to implementation of master tobacco settlement agreement; providing allocable share cap on payments by non-participating manufacturers and as to such providing special severability rule and date for implementation.

Be it enacted by the Legislature of West Virginia:

That section three, article nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to further amend said article by adding thereto a new section, designated section four, all to read as follows:

ARTICLE 9B. IMPLEMENTING TOBACCO MASTER SETTLEMENT AGREEMENT.

§16-9B-3. Requirements.
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 article 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 the fifteenth day of April of the year following the year in question the following amounts, adjusted for inflation:

   (A) For the year one thousand nine hundred ninety-nine: $.0094241 per unit sold after the date of enactment of this article;

   (B) For the year two thousand: $.0104712 per unit sold;

   (C) For each of the years two thousand one and two thousand two: $.0136125 per unit sold;

   (D) For each of the years two thousand three through two thousand six: $.0167539 per unit sold; and

   (E) For the year two thousand seven or each year thereafter: $.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to 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 paragraph: (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 a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the master tobacco 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 on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) To the extent not released from escrow under paragraph (A) or (B) of this subdivision, funds shall be released from escrow and revert back to the tobacco product manufacturer twenty-five 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 fifteen 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 to the general fund of the state, in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;
(B) In the case of a knowing violation, be required within fifteen 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 to the general fund of the state, in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent 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) for a period not to exceed two years.

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

§16-9B-4. Special severability rule; implementation date.

(a) Section three severability rule. --

(1) If the act amending section three of this article in the year two thousand three, or any portion of the amendment to paragraph (B), subdivision (2), subsection (b), section three of this article, made by that act, is held by a court of competent jurisdiction to be unconstitutional, then such paragraph (B) shall be deemed to be repealed in its entirety.

(2) If after application of subsection (a) of this section, a court of competent jurisdiction thereafter holds subdivision (2), subsection (b) of said section three to be unconstitutional, then section three as amended in the year two thousand three shall be deleted in its entirety and section three as enacted in the year one thousand nine hundred ninety-nine, shall be restored as if no amendments had been made to section three in the year two thousand three. Neither any holding of unconstitutionality nor the repeal of paragraph (B), subdivision (2), subsection (b), section three of this article shall affect, impair or invalidate any other portion of section three, or the application of section three
to any other person or circumstance, and such remaining
portions of section three shall at all times continue in full force
and effect.

(b) Implementation date. – The amendments to section
three of this article in the year two thousand three shall not take
effect until thirty days after the earlier of:

(1) All states that share a common border with this state
enacting similar amendments to their laws implementing the
master tobacco settlement agreement, or

(2) Thirty three states, including this state, enacting similar
amendments to their laws implementing the master tobacco
settlement agreement.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 20th day of March, 2003.

Governor