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2003 MAR 20 P 5: 24

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

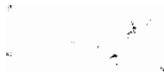
FIRST REGULAR SESSION, 2003



# ENROLLED

## House Bill No. 3045

(By Mr. Speaker, Mr. Kiss)



Passed March 7, 2003

In Effect Ninety Days from Passage

FILED

2003 MAR 20 P 5: 25

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**E N R O L L E D**

**H. B. 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.**

1 Any tobacco product manufacturer selling cigarettes to  
2 consumers within the state (whether directly or through a  
3 distributor, retailer or similar intermediary or intermediaries)  
4 after the date of enactment of this article shall do one of the  
5 following:

6 (a) Become a participating manufacturer (as that term is  
7 defined in section II(jj) of the master settlement agreement) and  
8 generally perform its financial obligations under the master  
9 settlement agreement; or

10 (b) (1) Place into a qualified escrow fund by the fifteenth  
11 day of April of the year following the year in question the  
12 following amounts, adjusted for inflation:

13 (A) For the year one thousand nine hundred ninety-nine:  
14 \$.0094241 per unit sold after the date of enactment of this  
15 article;

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

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

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

21 (E) For the year two thousand seven or each year thereafter:  
22 \$.0188482 per unit sold.

23 (2) A tobacco product manufacturer that places funds into  
24 escrow pursuant to this subsection shall receive the interest or  
25 other appreciation on such funds as earned. Such funds them-  
26 selves shall be released from escrow only under the following  
27 circumstances:

28 (A) To pay a judgment or settlement on any released claim  
29 brought against such tobacco product manufacturer by the state  
30 or any releasing party located or residing in the state. Funds  
31 shall be released from escrow under this paragraph: (i) In the

32 order in which they were placed into escrow; and (ii) only to the  
33 extent and at the time necessary to make payments required  
34 under such judgment or settlement;

35 (B) To the extent that a tobacco product manufacturer  
36 establishes that the amount it was required to place into escrow  
37 on account of units sold in the state in a particular year was  
38 greater than the master tobacco settlement agreement payments,  
39 as determined pursuant to section IX(i) of that agreement,  
40 including after final determination of all adjustments, that such  
41 manufacturer would have been required to make on account of  
42 such units sold had it been a participating manufacturer, the  
43 excess shall be released from escrow and revert back to such  
44 tobacco product manufacturer; or

45 (C) To the extent not released from escrow under paragraph  
46 (A) or (B) of this subdivision, funds shall be released from  
47 escrow and revert back to the tobacco product manufacturer  
48 twenty-five years after the date on which they were placed into  
49 escrow.

50 (3) Each tobacco product manufacturer that elects to place  
51 funds into escrow pursuant to this subsection shall annually  
52 certify to the attorney general that it is in compliance with this  
53 subsection. The attorney general may bring a civil action on  
54 behalf of the state against any tobacco product manufacturer  
55 that fails to place into escrow the funds required under this  
56 section. Any tobacco product manufacturer that fails in any year  
57 to place into escrow the funds required under this section shall:

58 (A) Be required within fifteen days to place such funds into  
59 escrow as shall bring it into compliance with this section. The  
60 court, upon a finding of a violation of this subsection, may  
61 impose a civil penalty, to be paid to the general fund of the  
62 state, in an amount not to exceed five percent of the amount  
63 improperly withheld from escrow per day of the violation and  
64 in a total amount not to exceed one hundred percent of the  
65 original amount improperly withheld from escrow;

66 (B) In the case of a knowing violation, be required within  
67 fifteen days to place such funds into escrow as shall bring it into  
68 compliance with this section. The court, upon a finding of a  
69 knowing violation of this subsection, may impose a civil  
70 penalty, to be paid to the general fund of the state, in an amount  
71 not to exceed fifteen percent of the amount improperly withheld  
72 from escrow per day of the violation and in a total amount not  
73 to exceed three hundred percent of the original amount improper-  
74 ly withheld from escrow; and

75 (C) In the case of a second knowing violation, be prohibited  
76 from selling cigarettes to consumers within the state (whether  
77 directly or through a distributor, retailer or similar intermedi-  
78 ary) for a period not to exceed two years.

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

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

1 (a) *Section three severability rule.* --

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

8 (2) If after application of subsection (a) of this section, a  
9 court of competent jurisdiction thereafter holds subdivision (2),  
10 subsection (b) of said section three to be unconstitutional, then  
11 section three as amended in the year two thousand three shall be  
12 deleted in its entirety and section three as enacted in the year  
13 one thousand nine hundred ninety-nine, shall be restored as if  
14 no amendments had been made to section three in the year two  
15 thousand three. Neither any holding of unconstitutionality nor  
16 the repeal of paragraph (B), subdivision (2), subsection (b),  
17 section three of this article shall affect, impair or invalidate any  
18 other portion of section three, or the application of section three

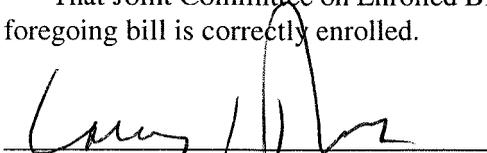
19 to any other person or circumstance, and such remaining  
20 portions of section three shall at all times continue in full force  
21 and effect.

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

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

28 (2) Thirty three states, including this state, enacting similar  
29 amendments to their laws implementing the master tobacco  
30 settlement agreement.

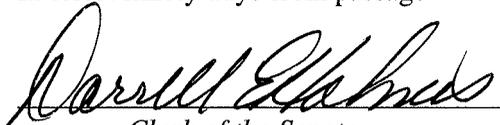
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

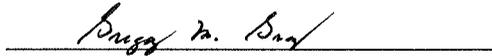
  
Chairman Senate Committee

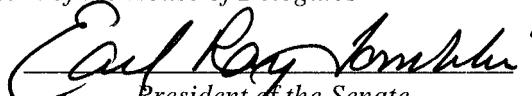
  
Chairman House Committee

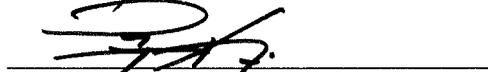
Originating in the House.

In effect ninety days from passage

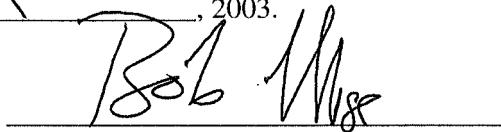
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 20<sup>th</sup>  
day of March, 2003.

  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/14/03

Time 9:40am