

TITLE 3: HUMAN RESOURCES
DIVISION 2: HEALTH

§ 2172. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the CNMI (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of the 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) for each of 2001 and 2002: \$.0136125 per unit sold after the date of enactment of this Act;

(b) for each of 2003 through 2006: \$.0167539 per unit sold.

(c) 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) 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 Government of the CNMI or any releasing party located or residing in the CNMI. 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 a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the Commonwealth in a particular year was greater than the 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 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 provided, however, that for escrow release purposes only, the total number of individual cigarettes sold in the CNMI shall count towards, and be included in, that tobacco product manufacturer's "market share" as defined in Section II(z) of the Master Settlement Agreement as if such cigarettes were sold in one of the 50 states of the United States, Washington D.C. or Puerto Rico; or

(c) to the extent not released from escrow under subparagraphs (a) or (b), funds shall be released from escrow and revert back to such tobacco

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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 of the CNMI that it is in compliance with this subsection. The Attorney General of the CNMI may bring a civil action on behalf of the Government of the CNMI 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 of the CNMI government) in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent 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 to the general fund of the Government of the CNMI) in an amount not to exceed 25 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 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 CNMI (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. A court shall award attorneys' fees and costs in any proceeding successfully brought by the Attorney General under this section.

Source: PL 12-45, § 3, modified; amended by PL 13-15, § 1(3), modified; (B)(2)(b) repealed and reenacted by PL 14-10, § 9; (B)(2)(b) repealed and reenacted by PL 14-10, § 9.

Commission Comment: PL 14-10, which took effect on May 28, 2004, established additional licensing requirements to sell tobacco (see 4 CMC §§ 50161-50166) and included the following findings:

Section 1. Findings. The Legislature finds that violations of Public Law 13-15, the Model Escrow Statute, threaten the integrity of the Tobacco Master Settlement Agreement, the fiscal soundness of the Commonwealth, and the public health. The Legislature finds that enacting

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procedural enhancements is necessary to aid the enforcement of the Model Escrow Statute and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the Commonwealth, and the public health.