

AN ACT

RELATING TO TOBACCO; CLARIFYING THE STATUTORY RELEASE FOR
NONPARTICIPATING MANUFACTURERS; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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Section 1. Section 6-4-13 NMSA 1978 (being Laws 1999, Chapter 208,
Section 2) is amended to read:

"6-4-13. 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 date of enactment of this act 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 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.

B. A tobacco product manufacturer that places funds into escrow pursuant to Paragraph (2) of Subsection A of this section 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:

(1) 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:

(a) in the order in which they were placed into escrow; and

(b) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(2) 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 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 an 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

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(3) to the extent not released from escrow under Paragraphs (1) or (2) of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

C. Each tobacco product manufacturer that elects to place funds into escrow pursuant to Paragraph (2) of Subsection A of this section shall annually certify to the attorney general that it is in compliance with Paragraph (2) of Subsection A of this section and Subsection B of this section. 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 Paragraph (2) of Subsection A of this section and Subsection B of this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under Paragraph (2) of Subsection A of this section and Subsection B of this section shall:

(1) be required within fifteen days to place such funds into escrow as shall bring it into compliance with Paragraph (2) of Subsection A of this section and Subsection B of this section. The court, upon a finding of a violation of Paragraph (2) of Subsection A of this section or Subsection B of this section, may impose a civil penalty to be paid to the state general fund 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;

(2) 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

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Paragraph (2) of Subsection A of this section and Subsection B of this section. The court, upon a finding of a knowing violation of Paragraph (2) of Subsection A of this section or Subsection B of this section, may impose a civil penalty to be paid to the state general fund 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

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(3) 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 Paragraph (2) of Subsection A of this section shall constitute a separate violation."

Section 2. A new Section 6-4-13.1 NMSA 1978 is enacted to read:

"6-4-13.1. SEVERABILITY.--If the 2004 amendment to Paragraph (2) of Subsection B of Section 6-4-13 NMSA 1978 is held by a court of competent jurisdiction to be unconstitutional, then Paragraph (2) of Subsection B of Section 6-4-13 NMSA 1978 shall be deemed to be repealed in its entirety. If Subsection B of Section 6-4-13 NMSA 1978 is thereafter held by a court of competent jurisdiction to be unconstitutional, then the 2004 amendment shall be deemed repealed and Paragraph (2) of Subsection B of Section 6-4-13 NMSA 1978 shall be restored as if no such amendment had been made. Neither a holding of unconstitutionality nor the repeal of Paragraph (2) of Subsection B of Section 6-4-13 NMSA 1978 shall affect, impair or invalidate any other portion of Sections 6-4-12 and 6-4-13 NMSA 1978, or the application of such sections to any other person or circumstance, and

such remaining portions of Sections 6-4-12 and 6-4-13 NMSA 1978 shall at all times
continue in full force and effect."

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