

# AN ACT

To amend section 5703.21 and to enact sections 1346.01, 1346.02, and 1346.03 of the Revised Code to require a tobacco product manufacturer who sells cigarettes in this state but is not part of a settlement agreement with the Attorney General to place specified amounts of money into a qualified escrow fund each year to be used to pay any future judgment or settlement on a claim brought against the manufacturer regarding tobacco products, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 5703.21 be amended and sections 1346.01, 1346.02, and 1346.03 of the Revised Code be enacted to read as follows:

Sec. 1346.01. (A) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit C to the Master Settlement Agreement.

(B) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten per cent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(C) "Allocable share" means allocable share as that term is defined in the Master Settlement Agreement.

(D)(1) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

(a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(b) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its

packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(c) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in division (D)(1)(a) of this section.

(2) The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(E) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers.

(F) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section 1346.02 of the Revised Code.

(G) "Released claims" means released claims as that term is defined in the Master Settlement Agreement.

(H) "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement.

(I)(1) "Tobacco product manufacturer" means an entity that after the effective date of this section directly (and not exclusively through any affiliate):

(a) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) Becomes a successor of an entity described in division (I)(1)(a) or (b) of this section.

(2) The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of division (I)(1)(a), (b), or (c) of this section.

(J) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state. The department of taxation shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Sec. 1346.02. 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 section 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):

1999: \$.0094241 per unit sold after the effective date of this section;

2000: \$.0104712 per unit sold;

For each of 2001 and 2002: \$.0136125 per unit sold;

For each of 2003 through 2006: \$.0167539 per unit sold;

For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to division (B)(1) 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:

(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 division (B)(2)(a) of this section:

(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 in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the inflation adjustment) 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 division (B)(2)(a) or (b) of this section, 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.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to division (B) of this section shall annually certify to the attorney general that it is in compliance with division (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 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 division (B) of this section, may impose a civil penalty to be paid to the general revenue fund of the state in an amount not to exceed five per cent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred per cent 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 division (B) of this section, may impose a civil penalty to be paid to the general revenue fund of the state in an amount not to exceed fifteen per cent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred per cent 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.

Sec. 1346.03. Any information provided to the attorney general by the department of taxation in accordance with division (G) of section 5703.21 of the Revised Code shall not be disclosed publicly by the attorney general except when it is necessary to facilitate compliance with and enforcement of section 1346.01 or 1346.02 of the Revised Code.

Sec. 5703.21. (A) Except as provided in divisions (B), (C), (D), (E), ~~and (F), and (G)~~ of this section, no agent of the department of taxation, except in the agent's report to the department or when called on to testify in any court or proceeding, shall divulge any information acquired by the agent as to the transactions, property, or business of any person while acting or claiming to act under orders of the department. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the department.

(B)(1) For purposes of an audit pursuant to section 117.15 of the Revised Code, or an audit of the department pursuant to Chapter 117. of the Revised Code, or an audit, pursuant to such chapter, the objective of which is to express an opinion on a financial report or statement prepared or issued pursuant to division (G) or (I) of section 126.21 of the Revised Code, the officers and employees of the auditor of state charged with conducting the audit shall have access to and the right to examine any state tax returns and state tax return information in the possession of the department to the extent that such access and examination are necessary for purposes of the audit. Any information acquired as the result of such access and examination shall not be divulged for any purpose other than as required for such audit or unless the officers and employees are required to testify in a court or proceeding under compulsion of legal process. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the auditor of state.

(2) As provided by section 6103(d)(2) of the Internal Revenue Code, any federal tax returns or federal tax information ~~which~~ that the department has acquired from the internal revenue service, through federal and state statutory authority, may be disclosed to the auditor of state solely for purposes of an audit of the department.

(C) Division (A) of this section does not prohibit divulging information contained in applications, complaints, and related documents filed with the

department under section 5715.27 of the Revised Code, or in applications filed with the department under section 5715.39 of the Revised Code.

(D) Division (A) of this section does not prohibit the department of taxation providing information to the division of child support within the department of human services, or a child support enforcement agency, pursuant to division (G)(2) of section 5101.31 of the Revised Code.

(E) Division (A) of this section does not prohibit the disclosure to the board of motor vehicle collision repair registration of any information in the possession of the department that is necessary for the board to verify the existence of an applicant's valid vendor's license and current state tax identification number under section 4775.07 of the Revised Code.

(F) Division (A) of this section does not prohibit the department from providing information to the administrator of workers' compensation pursuant to section 4123.591 of the Revised Code.

(G) Division (A) of this section does not prohibit the DEPARTMENT of taxation from providing to the attorney general information the department obtains under division (J) of section 1346.01 of the Revised Code.

SECTION 2. That existing section 5703.21 of the Revised Code is hereby repealed.

SECTION 3. Section 5703.21 of the Revised Code is amended by this act and also by Sub. H.B. 180 of the 123rd General Assembly (effective August 6, 1999). The amendments of Sub. H.B. 180 are included in this act in lower case to confirm the intention to retain them, but are not intended to be effective until August 6, 1999.

SECTION 4. Section 1 of this act enacts the Model Statute described in Exhibit T to the Master Settlement Agreement entered into between leading tobacco manufacturers and state attorney generals on November 23, 1998.

SECTION 5. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to ensure that the state's financial and public health benefits under the Master Tobacco Settlement Agreement of 1998 are not subject to reduction. Therefore, this act shall go into immediate effect.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_