LEGISLATIVE BILL 944

Approved by the Governor April 9, 2004

Introduced by Jensen, 20

AN ACT relating to tobacco; to amend section 69-2703, Reissue Revised Statutes of Nebraska; to change provisions relating to the Master Settlement Agreement and requirements of tobacco product manufacturers; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 69-2703, Reissue Revised Statutes of Nebraska, is amended to read:

69-2703. Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after April 29, 1999, 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)(a) 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:

(i) 1999: $.0094241 per unit sold after April 29, 1999;

(ii) 2000: $.0104712 per unit sold;

(iii) For each of the years 2001 and 2002: $.0136125 per unit sold;

(iv) For each of the years 2003, 2004, 2005, and 2006: $.0167539 per unit sold; and

(v) For the year 2007 and each year thereafter: $.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (2)(a) of this section shall receive the interest or other appreciation on such funds as earned. Such funds shall be released from escrow only under the following circumstances:

(i) 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 subdivision (2)(b)(i) in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) 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 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)~~ 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; or

(iii) To the extent not released from escrow under ~~subdivisions~~ subdivision (2)(b)(i) or (2)(b)(ii) 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.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subdivision (2) of this section shall annually certify to the Attorney General that it is in compliance with subdivision (2) 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:

(i) Be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a violation of subdivision (2) of this section, may impose a civil penalty 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;

(ii) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a knowing violation of subdivision (2) of this section, may impose a civil penalty 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. Such civil penalty shall be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska; and

(iii) 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 constitutes a separate violation.

Sec. 2. If the amendments to subdivision (2)(b)(ii) of section 69-2703 made by this legislative bill are held by a court of competent jurisdiction to be unconstitutional, then the changes made by this legislative bill shall be deemed repealed and subdivision (2)(b)(ii) of section 69-2703 shall be deemed to be in the form as it existed prior to such amendments. Neither a holding of unconstitutionality nor an implied repeal of the amendment shall affect, impair, or invalidate any other portion of section 69-2703 or the application of such section to any other person or circumstance and those remaining portions of section 69-2703 shall at all times continue in full force and effect.

Sec. 3. Original section 69-2703, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 4. Since an emergency exists, this act takes effect when passed and approved according to law.