



1 appreciation on such funds as earned. Such funds themselves shall be released from  
2 escrow only under the following circumstances:

- 3 (1) To pay a judgment or settlement on any released claim brought against  
4 such tobacco product manufacturer by the State or any releasing party  
5 located or residing in the State. Funds shall be released from escrow  
6 under this subdivision (i) in the order in which they were placed into  
7 escrow and (ii) only to the extent and at the time necessary to make  
8 payments required under such judgment or settlement;
- 9 (2) To the extent that a tobacco product manufacturer establishes that the  
10 amount it was required to place into escrow on account of units sold in  
11 the State in a particular year was greater than the Master Settlement  
12 Agreement payments, as determined pursuant to Section IX(i) of that  
13 agreement, including after final determination of all adjustments, that  
14 the manufacturer would have been required to make on account of the  
15 units sold had it been a participating manufacturer, the excess shall be  
16 released from escrow and revert back to such tobacco product  
17 manufacturer; or
- 18 (3) To the extent not released from escrow under subdivisions (1) or (2) of  
19 this subsection, funds shall be released from escrow and revert back to  
20 such tobacco product manufacturer 25 years after the date on which  
21 they were placed into escrow.

22 (c) Each tobacco product manufacturer that elects to place funds into escrow  
23 pursuant to this section shall ~~annually~~ certify to the Attorney General that it is in  
24 compliance with this section. The Attorney General may bring a civil action on behalf  
25 of the State against any tobacco product manufacturer that fails to place into escrow the  
26 funds required under this section. Any tobacco product manufacturer that fails ~~in any~~  
27 ~~year~~ to place into escrow the funds required under this section shall:

- 28 (1) Be required within 15 days in the case of a manufacturer who places  
29 funds into escrow on an annual basis or 10 days in the case of a  
30 manufacturer who places funds into escrow on a quarterly basis to  
31 place such funds into escrow as shall bring it into compliance with this  
32 section. The court, upon a finding of a violation either of subdivision  
33 (2) or (3) of subsection (a) of this section, of subsection (b) of this  
34 section, or of this section, may impose a civil penalty (the clear  
35 proceeds of which shall be paid to the Civil Penalty and Forfeiture  
36 Fund in accordance with G.S. 115C-457.2) in an amount not to exceed  
37 five percent (5%) of the amount improperly withheld from escrow per  
38 day of the violation and in a total amount not to exceed one hundred  
39 percent (100%) of the original amount improperly withheld from  
40 escrow;
- 41 (2) In the case of a knowing violation, be required within 15 days in the  
42 case of a manufacturer who places funds into escrow on an annual  
43 basis or 10 days in the case of a manufacturer who places funds into  
44 escrow on a quarterly basis to place such funds into escrow as shall

1 bring it into compliance with this section. The court, upon a finding of  
2 a knowing violation either of subdivision (2) or (3) of subsection (a) of  
3 this section, of subsection (b) of this section, or of this section, may  
4 impose a civil penalty (the clear proceeds of which shall be paid to the  
5 Civil Penalty and Forfeiture Fund in accordance with  
6 G.S. 115C-457.2) in an amount not to exceed fifteen percent (15%) of  
7 the amount improperly withheld from escrow per day of the violation  
8 and in a total amount not to exceed three hundred percent (300%) of  
9 the original amount improperly withheld from escrow; and

- 10 (3) In the case of a second knowing violation, be prohibited from selling  
11 cigarettes to consumers within the State (whether directly or through a  
12 distributor, retailer, or similar intermediary) for a period not to exceed  
13 two years.

14 Each failure to make ~~an annual~~ a deposit required under this section shall constitute  
15 a separate violation.

16 (d) The Attorney General may require a manufacturer who satisfies either of the  
17 conditions of this subsection to place money into escrow on a quarterly basis under  
18 subdivision (3) of subsection (a) of this section. The Attorney General must notify any  
19 manufacturer required to make quarterly deposits under this section of its duty to do so  
20 by first-class mail sent to its last known address.

- 21 (1) The manufacturer has not previously established and funded a  
22 qualified escrow fund in this State.  
23 (2) The manufacturer has not made a deposit in a qualified escrow fund in  
24 this State for more than one year."

25 **SECTION 2.** This act becomes effective July 1, 2007.