

Spring 2000

1999 Survey of Rhode Island Law: Legislation: Public Health Law: An Act Relating to Health and Safety - Tobacco Product Manufacturers Escrow Fund

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Recommended Citation

Blasbalg, Gregory B. (2000) "1999 Survey of Rhode Island Law: Legislation: Public Health Law: An Act Relating to Health and Safety - Tobacco Product Manufacturers Escrow Fund," *Roger Williams University Law Review*: Vol. 5: Iss. 2, Article 34.

Available at: http://docs.rwu.edu/rwu_LR/vol5/iss2/34

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Public Health Law. *An Act Relating to Health and Safety—Tobacco Product Manufacturers Escrow Fund.* This legislation (the Act) applies to tobacco manufacturers that have not agreed to the Master Settlement Agreement between the State of Rhode Island and leading United States tobacco product manufacturers. The Act requires that manufacturers not participating in the settlement pay money, based upon unit sales, into a qualified escrow fund. These funds are to be used to pay any judgment or settlement on a claim brought against the manufacturer by the State of Rhode Island or any party located or residing in the state. Effective, June 29, 1999. 1999 R.I. Pub. Laws ch. 178.

Section 23-71-1 of the Rhode Island General Laws states that the legislature has determined that "cigarette smoking presents serious public health concerns to the state and to the citizens of the state."¹ It also places a major financial burden upon the state due to the millions of dollars the state spends each year by providing medical assistance used to treat smoking related health conditions.² It is the policy of the state to require that these smoking related financial burdens be borne by the manufacturers of tobacco products and not the state.³ The state will hold tobacco purchasers responsible for these expenses to the extent that the manufacturers settle with the state or are held responsible by the courts.⁴

Accordingly, the State of Rhode Island entered into a "Master Settlement Agreement" (tobacco settlement) with the major manufacturers of tobacco products.⁵ This settlement, in return for a release of claims against them, requires that the manufacturers change their advertising and marketing techniques and to pay into a fund designed to protect the interests of public health.⁶ The Act was designed to prevent those manufacturers who did not agree to the tobacco settlement from using the resulting cost advantage to earn "large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably."⁷

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1. R.I. Gen. Laws § 23-71-1(a) (1956) (1994 Reenactment & Supp. 1999).
 2. *See id.* § 23-71-1(b).
 3. *See id.* § 23-71-1(d).
 4. *See id.*
 5. *See id.* § 23-71-1(e).
 6. *See id.*
 7. *Id.* § 23-71-1(f).

The Act requires those tobacco product manufacturers selling cigarettes to consumers in Rhode Island either directly or indirectly to either agree to the tobacco settlement or place funds into a qualified escrow fund.⁸ The amount to be paid is to be based upon the unit sales of the manufacturer.⁹ The manufacturer receives the interest on these funds but is allowed to withdraw the principal funds only in three circumstances.¹⁰ The manufacturer may withdraw funds to pay a judgment or settlement to the state or a person located in or residing in Rhode Island.¹¹ The funds can also be withdrawn to the extent that a manufacturer can show that the amount it paid into the escrow fund exceeded the amount it would have been required to pay if it were a party to the tobacco settlement.¹² Finally, any unused funds shall revert back to the manufacturer twenty-five years after they are placed into the escrow fund.¹³

Any manufacturer that fails to comply with the provisions of the Act can be liable for a civil penalty of five percent of the amount improperly withheld per day of the violation, with the total amount not exceeding 100% of the amount improperly withheld.¹⁴ A knowing violation can be punishable by a civil penalty of fifteen percent of the amount per day, with the total fine not to exceed 300% of the amount improperly withheld.¹⁵ A manufacturer who commits a second knowing violation can be prohibited from selling cigarettes in the state for up to two years¹⁶ and be ordered to pay the costs and attorney's fees of the state.¹⁷

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8. *See id.* § 23-71-3(a)-(b).

9. *See id.* The amounts the manufacturers must put into escrow increase periodically over time: in 1999, \$.0094241 per unit sold; in 2000, \$.0104712 per unit sold; in 2001-2002, \$.0136125 per unit sold; in 2003-2006, \$.0167539 per unit sold; in 2007 and afterwards, \$.0188482 per unit sold. *See id.* § 23-71-3(b)(1).

10. *See id.* § 23-71-3(b)(2).

11. *See id.* § 23-71-3(b)(2)(A).

12. *See id.* § 23-71-3(b)(2)(B).

13. *See id.* § 23-71-3(b)(2)(C).

14. *See id.* § 23-71-3(b)(3)(A).

15. *See id.* § 23-71-3(b)(3)(B).

16. *See id.* § 23-71-3(b)(3)(C).

17. *See id.* § 23-71-3(b)(3)(D).