S T A T E O F N E W Y O R K

5108--A

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to the undertaking required during the pendency of a stay of enforcement of a judgment against tobacco product master settlement agreement signatories or their successors or affiliates

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The civil practice law and rules is amended by adding a new section 5519-a to read as follows:

S 5519-A. STAY OF ENFORCEMENT FOR TOBACCO PRODUCT MASTER SETTLEMENT AGREEMENT PARTICIPATING OR NON-PARTICIPATING MANUFACTURERS OR THEIR SUCCESSORS OR AFFILIATES. (A) IN CIVIL LITIGATION UNDER ANY LEGAL THEORY INVOLVING A PARTICIPATING MANUFACTURER OR A NON-PARTICIPATING MANUFACTURER, AS THOSE TERMS ARE DEFINED IN THE MASTER SETTLEMENT AGREEMENT, OR ANY OF THEIR SUCCESSORS OR AFFILIATES, THE UNDERTAKING REQUIRED DURING THE PENDENCY OF ALL APPEALS OR DISCRETIONARY REVIEWS BY ANY APPELLATE COURTS IN ORDER TO STAY THE EXECUTION OF ANY JUDGMENT OR ORDER GRANTING LEGAL, EQUITABLE OR OTHER RELIEF DURING THE ENTIRE COURSE OF APPELLATE REVIEW, INCLUDING REVIEW BY THE UNITED STATES SUPREME COURT, SHALL BE SET PURSUANT TO THE APPLICABLE PROVISIONS OF LAW OR COURT RULES; PROVIDED, HOWEVER THAT THE TOTAL UNDERTAKING REQUIRED OF ALL APPELLANTS COLLECTIVELY SHALL NOT EXCEED ONE HUNDRED MILLION DOLLARS, REGARDLESS OF THE VALUE OF THE JUDGMENT APPEALED.

(B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION, UPON PROOF BY A PREPONDERANCE OF THE EVIDENCE, BY AN APPELLEE, THAT AN APPELLANT IS DISSIPATING ASSETS OUTSIDE THE COURSE OF ORDINARY BUSINESS TO AVOID PAYMENT OF A JUDGMENT, A COURT MAY REQUIRE THE APPELLANT TO POST A BOND IN AN AMOUNT UP TO THE TOTAL AMOUNT OF THE JUDGMENT.

S 2. This act shall take effect on the thirtieth day after it shall have become a law, and shall apply to any cause of action pending on or filed on or after such effective date.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD11326-03-1