

3852--B

Cal. No. 665

2013-2014 Regular Sessions

I N S E N A T E

February 22, 2013

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 a participating or non-participating manufacturer under the master settlement agreement

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

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 5519-a to read as follows:
3 S 5519-A. STAY OF ENFORCEMENT FOR MASTER SETTLEMENT AGREEMENT PARTIC-
4 IPATING AND NON-PARTICIPATING MANUFACTURERS OR THEIR SUCCESSORS. (A) IN
5 CIVIL LITIGATION CONCERNING A THEORY OF LIABILITY RELATING TO THE HEALTH
6 EFFECTS, DESIGN, OR MARKETING OF, OR REPRESENTATIONS CONCERNING, TOBACCO
7 PRODUCTS AS DEFINED BY THE MASTER SETTLEMENT AGREEMENT, AND THAT
8 INVOLVES A PARTICIPATING OR NON-PARTICIPATING MANUFACTURER, AS THOSE
9 TERMS ARE DEFINED IN THE MASTER SETTLEMENT AGREEMENT, OR ANY OF THEIR
10 SUCCESSORS, OR PARENT ENTITIES FOUND TO BE LIABLE BY VIRTUE OF THEIR
11 STATUS AS PARENT TO HAVE CONTROLLED THE CONDUCT OF SUCH MANUFACTURERS OR
12 THEIR SUCCESSORS, THE UNDERTAKING REQUIRED DURING THE PENDENCY OF ALL
13 APPEALS OR DISCRETIONARY REVIEWS BY ANY APPELLATE COURTS IN ORDER TO
14 STAY THE EXECUTION OF ANY JUDGMENT OR ORDER GRANTING LEGAL, EQUITABLE OR
15 OTHER RELIEF DURING THE ENTIRE COURSE OF APPELLATE REVIEW, INCLUDING
16 REVIEW BY THE UNITED STATES SUPREME COURT, SHALL BE SET PURSUANT TO THE

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

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1 APPLICABLE PROVISIONS OF LAW; PROVIDED, HOWEVER, THAT THE COURT OF
2 ORIGINAL INSTANCE SHALL SET THE TOTAL UNDERTAKING REQUIRED IN AN AMOUNT
3 NOT TO EXCEED TWO HUNDRED FIFTY MILLION DOLLARS, REGARDLESS OF THE VALUE
4 OF THE JUDGMENT APPEALED. NOTHING HEREIN SHALL AFFECT THE DISCRETION OF
5 AN APPELLATE COURT PURSUANT TO SUBDIVISION (C) OF SECTION FIFTY-FIVE
6 HUNDRED NINETEEN OF THIS ARTICLE. WHERE THE COURT SETS THE UNDERTAKING
7 IN AN AMOUNT LESS THAN THE JUDGMENT, THE APPEAL SHALL BE DILIGENTLY
8 PROSECUTED IN GOOD FAITH.

9 (B) AS USED IN THIS SECTION, "MASTER SETTLEMENT AGREEMENT" SHALL HAVE
10 THE SAME MEANING AS SET FORTH IN SUBDIVISION FIVE OF SECTION THIRTEEN
11 HUNDRED NINETY-NINE-00 OF THE PUBLIC HEALTH LAW.

12 (C) NOTHING CONTAINED IN THIS SECTION SHALL BE READ TO ALLOW: (I)
13 SUCH PARTICIPATING MANUFACTURER TO CURTAIL ITS FINANCIAL OBLIGATION
14 UNDER THE MASTER SETTLEMENT AGREEMENT; OR (II) SUCH NON-PARTICIPATING
15 MANUFACTURER TO CURTAIL ITS OBLIGATION TO PLACE THE AMOUNTS SPECIFIED IN
16 SUBDIVISION TWO OF SECTION THIRTEEN HUNDRED NINETY-NINE-PP OF THE PUBLIC
17 HEALTH LAW INTO A QUALIFIED ESCROW FUND AS DEFINED IN SUBDIVISION SIX OF
18 SECTION THIRTEEN HUNDRED NINETY-NINE-00 OF THE PUBLIC HEALTH LAW.

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