

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and
when printed to be committed to the Committee on Judiciary

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 ASSEM-
BLY, 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
17 APPLICABLE PROVISIONS OF LAW; PROVIDED, HOWEVER, THAT THE COURT OF
18 ORIGINAL INSTANCE SHALL SET THE TOTAL UNDERTAKING REQUIRED IN AN AMOUNT
19 NOT TO EXCEED TWO HUNDRED FIFTY MILLION DOLLARS, REGARDLESS OF THE VALUE
20 OF THE JUDGMENT APPEALED. NOTHING HEREIN SHALL AFFECT THE DISCRETION OF
21 AN APPELLATE COURT PURSUANT TO SUBDIVISION (C) OF SECTION FIFTY-FIVE
22 HUNDRED NINETEEN OF THIS ARTICLE. WHERE THE COURT SETS THE UNDERTAKING

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

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1 IN AN AMOUNT LESS THAN THE JUDGMENT, THE APPEAL SHALL BE DILIGENTLY
2 PROSECUTED IN GOOD FAITH.

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

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

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