

**DISTRICT OF COLUMBIA**  
**OFFICIAL CODE**

**TITLE 7.**  
**HUMAN HEALTH CARE AND SAFETY.**

**CHAPTER 18.**  
**TOBACCO MASTER SETTLEMENT AGREEMENT.**

**2001 Edition**

**DISTRICT OF COLUMBIA OFFICIAL CODE**  
**CHAPTER 18. TOBACCO MASTER SETTLEMENT**  
**AGREEMENT.**

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# **CHAPTER 18. TOBACCO MASTER SETTLEMENT AGREEMENT.**

## **SUBCHAPTER I. ESTABLISHMENT OF RESERVE FUND BY TOBACCO PRODUCT MANUFACTURERS NOT PARTICIPATING IN THE MASTER SETTLEMENT AGREEMENT.**

### **PART A. DEFINITIONS AND REQUIREMENTS.**

#### **§ 7-1801.01. DEFINITIONS.**

For the purpose of this subchapter, the term:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the District of Columbia and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally, District of Columbia or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with § 7-1801.02(2)(B).

(7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9)(A) "Tobacco Product Manufacturer" means an entity that after June 30, 1999 directly (and not

exclusively through any affiliate):

(i) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where the importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of section ll(mm) of the Master Settlement Agreement and that pays the taxes specified in section ll(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(ii) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) Becomes a successor of an entity described in sub-subparagraphs (i) or (ii) of the subparagraph.

(B) The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of subparagraph (A)(i)-(iii) of this paragraph.

(10) "Units sold" means the number of individual cigarettes sold in the District of Columbia by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the District of Columbia on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the District of Columbia. The Mayor shall promulgate such regulations as are necessary to ascertain the amount of District of Columbia excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

(July 18, 2000, D.C. Law 13-139, § 2, 47 DCR 3426.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Emergency Act Amendments*

For temporary (90-day) addition of section, see § 2 of the Tobacco Settlement Model Congressional Review Emergency Act of 2000 (D.C. Act 13-341, May 9, 2000, 47 DCR 4661).

##### *Legislative History of Laws*

Law 13-139, the "Tobacco Settlement Model Act of 2000," was introduced in Council and assigned Bill No. 13-332, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 7, 2000, and April 4, 2000, respectively. Signed by the Mayor on April 20, 2000, it was assigned Act No. 13-321 and transmitted to both Houses of Congress for its review. D.C. Law 13-139 became effective on July 18, 2000.

## **§ 7-1801.02. REQUIREMENTS.**

Any tobacco product manufacturer selling cigarettes to consumers within the District of Columbia (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after June 30, 1999 shall do one of the following:

(1) Become a participating manufacturer (as that term is defined in section ll(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(A) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(i) 1999: \$.0094241 per unit sold after June 30, 1999;

(ii) 2000: \$.0104712 per unit sold;

(iii) For each of 2001 and 2002: \$.0136125 per unit sold;

(iv) For each 2003 through 2006: \$.0167539 per unit sold; and

(v) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to subparagraph (A) of this paragraph shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the District of Columbia or any releasing party located or residing in the District of Columbia. Funds shall be released from escrow under this subparagraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the District of Columbia in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of the Master Settlement Agreement, including after final determination of all adjustments that the manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to the tobacco product manufacturer; or

(iii) To the extent not released from escrow under sub-subparagraphs (i) or (ii) of this subparagraph, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(C)(i) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this paragraph shall annually certify to the Chief Financial Officer of the District of Columbia that it is in compliance with this paragraph. The Corporation Counsel may bring a civil action on behalf of the District of Columbia against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(I) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this paragraph, may impose a civil penalty in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow;

(II) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this paragraph, may impose a civil penalty in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow; and

(III) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the District of Columbia (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed 2 years.

(ii) Each failure to make an annual deposit required under this section shall constitute a separate violation.

(D) If the District of Columbia prevails in a civil suit brought under subparagraph (C) of this paragraph, it shall also be entitled to attorneys' fees, plus the costs of the action.

(July 18, 2000, D.C. Law 13-139, § 3, 47 DCR 3426; Oct. 18, 2005, D.C. Law 16-30, § 2, 52 DCR 8105.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 16-30 rewrote par. (2)(B)(ii) which had read as follows:

"(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the District of Columbia's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or".

##### *Emergency Act Amendments*

For temporary (90-day) addition of section, see § 3 of the Tobacco Settlement Model Congressional Review Emergency Act of 2000 (D.C. Act 13-341, May 9, 2000, 47 DCR 4661).

##### *Legislative History of Laws*

For Law 13-139, see notes following § 7-1801.01.

Law 16-30, the "Tobacco Settlement Model Amendment Act of 2005", was introduced in Council and assigned Bill No. 16-289 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 2005, and July 6, 2005, respectively. Signed by the Mayor on July 14, 2005, it was assigned Act No. 16-139 and transmitted to both Houses of Congress for its review. D.C. Law 16-30 became effective on October 18, 2005.

##### *Miscellaneous Notes*

Section 3 of D.C. Law 16-30 provides: "If this act, or any portion of the amendment to section 3(2)(B)(ii) made by this act, is held by a court of competent jurisdiction to be unconstitutional, then such section 3(2)(B)(ii) shall

be deemed to be repealed in its entirety. If section 3(2)(B) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this act shall be deemed repealed, and section 3(2)(B)(ii) be restored as if no such amendment had been made. Neither any holding of unconstitutionality nor the repeal of section 3(2)(B)(ii) shall affect, impair, or invalidate any other portion of the Tobacco Settlement Model Act of 2000, or the application of the Act to any other person or circumstance, and such remaining portions of the Act shall at all times continue in full force and effect."

## **PART B. TOBACCO PRODUCT MANUFACTURER'S RESERVE FUNDS PROCEDURE.**

### **§ 7-1803.01. FINDINGS AND PURPOSE.**

The Council finds that violations of part A of this subchapter threaten the integrity of the tobacco Master Settlement Agreement, as defined in § 7- 1801.01, the fiscal soundness of the District, and the public health and that enacting the procedural enhancements set forth in this part will aid in the enforcement of part A of this subchapter and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the District, and the public health.

(Apr. 22, 2004, D.C. Law 15-150, § 2, 51 DCR 2809.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

Law 15-150, the "Tobacco Product Manufacturer Reserve Fund Complementary Procedures Act of 2004", was introduced in Council and assigned Bill No. 15- 406, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on January 6, 2004, and February 3, 2004, respectively. Signed by the Mayor on February 27, 2004, it was assigned Act No. 15-384 and transmitted to both Houses of Congress for its review. D.C. Law 15-150 became effective on April 22, 2004.

### **§ 7-1803.02. DEFINITIONS.**

For the purposes of this part, the term:

- (1) "Brand Family" means all styles of cigarettes sold under the same trademark and differentiated from one another by additional modifiers or descriptors, including "menthol," "lights," "kings," and "100s," and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.
- (2) "Cigarette" has the same meaning as in § 7-1801.01(4).
- (3) "Master Settlement Agreement" has the same meaning as in § 7-1801.01(5).
- (4) "Non-participating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer.
- (5) "Participating Manufacturer" has the meaning given that term in Section II(j) of the Master Settlement Agreement and all amendments to it.
- (6) "Qualified Escrow Fund" has the same meaning as that term is defined in § 7-1801.01(6).
- (7) "Tobacco Product Manufacturer" has the same meaning as that term is defined in § 7-1801.01(9).
- (8) "Units Sold" has the same meaning as that term is defined in § 7- 1801.01(10).
- (9) "Wholesaler" means a wholesaler licensed under § 47-2404(b)(1).

(Apr. 22, 2004, D.C. Law 15-150, § 3, 51 DCR 2809.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 15-150, see notes following § 7-1803.01.

### **§ 7-1803.03. CERTIFICATIONS; DIRECTORY; TAX STAMPS.**

(a) Every Tobacco Product Manufacturer whose cigarettes are sold in the District whether directly or through a wholesaler, retailer, or similar intermediary shall execute and deliver on a form prescribed by the Mayor, a certification to the Mayor, no later than the April 13th of each year, certifying under penalty of perjury that, as of the date of such certification, the Tobacco Product Manufacturer is a Participating

Manufacturer or is in full compliance with § 7-1801.02(2), including all quarterly installment payments required by regulations promulgated pursuant to § 7-1803.05(e); and:

(1) A Participating Manufacturer shall include in its certification a list of its Brand Families, which shall be updated 30 days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Mayor.

(2)(A) A Non-Participating Manufacturer shall include in its certification the following information:

(i) A list of all of its Brand Families and the number of Units Sold for each Brand Family that were sold in the District during the preceding calendar year;

(ii) A list of all of its Brand Families that have been sold in the District at any time during the current calendar year;

(iii) Indicating, by an asterisk, any Brand Family sold in the District of Columbia during the preceding calendar year that is no longer being sold in the District of Columbia as of the date of such certification;

(iv) Identifying by name and address, any other manufacturer of such Brand Families in the preceding or current calendar year;

(v) That it is registered to do business in the District or has appointed a resident agent for service of process and provided notice thereof as required by § 7-1803.04;

(vi) That it has established and continues to maintain a Qualified Escrow Fund, and that it has executed a qualified escrow agreement, which shall govern the Qualified Escrow Fund, that has been reviewed and approved by the Mayor;

(vii) That it is in full compliance with § 7-1801.02(2), this part, and any regulations promulgated pursuant to part A of this subchapter and this part;

(viii) The name, address, and telephone number of the financial institution where the Non-Participating Manufacturer has established such Qualified Escrow Fund required pursuant to § 7-1801.02(2) and all regulations promulgated pursuant to part A of this subchapter;

(ix) The account number of the Qualified Escrow Fund and any sub-account number for the District;

(x) The amount the Non-Participating Manufacturer has placed in the fund for cigarettes sold in the District during the preceding calendar year, including the date and amount of each deposit, and such evidence or verification as may be deemed necessary by the Mayor to confirm this information; and

(xi) The amount and date of any withdrawal or transfer of funds the Non-Participating Manufacturer has made at any time from the fund or from any other Qualified Escrow Fund into which it ever made escrow payments pursuant to § 7-1801.02(2) and all regulations promulgated pursuant to part A of this subchapter.

(B) The Non-Participating Manufacturer shall update the lists required by this paragraph 30 calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Mayor.

(3)(A) A Tobacco Product Manufacturer may not include a Brand Family in its certification unless:

(i) In the case of a Participating Manufacturer, the Participating Manufacturer affirms that the Brand Family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and

(ii) In the case of a Non-Participating Manufacturer, the Non-Participating Manufacturer affirms that the Brand Family is to be deemed to be its cigarettes for purposes of part A of this subchapter.

(B) Nothing in this section shall be construed as limiting or otherwise affecting the District of Columbia's right to maintain that a Brand Family constitutes cigarettes of a different Tobacco Product Manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of § 7-1801.02(2).

(4) Tobacco Product Manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for the required certification for a period of 5 years, unless required by law to maintain them for a greater period of time.

(b) Not later than 150 days after April 22, 2004, the Mayor shall develop and make available for public inspection a directory ("Directory") listing all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (a) of this section and of all Brand Families that are listed in the certifications; provided, that:

(1) The Mayor shall not include or retain in the Directory the name or Brand Families of any Non-

Participating Manufacturer that has failed to provide the required certification or whose certification the Mayor determines is not in compliance with subsection (a)(2) of this section, unless the Mayor has determined that the violation has been cured to the satisfaction of the Mayor.

(2) Neither a Tobacco Product Manufacturer nor Brand Family shall be included or retained in the Directory if the Mayor concludes, in the case of a Non-Participating Manufacturer, that:

(A) Any escrow payment required pursuant to § 7-1801.02(2) for any period for any Brand Family, whether or not listed by such Non-Participating Manufacturer, has not been fully paid into a Qualified Escrow Fund governed by a qualified escrow agreement that has been approved by the Mayor; or

(B) Any outstanding final judgment, including interest, for a violation of § 7-1801.02(2) has not been fully satisfied for the Brand Family or the manufacturer.

(3)(A) The Mayor shall update the Directory as necessary in order to correct mistakes and to add or remove a Tobacco Product Manufacturer or Brand Family to keep the Directory in conformity with the requirements of this part and shall post in the Directory notice of any removal from the Directory of a Tobacco Product Manufacturer or Brand Family at least 30 days prior to removal from the Directory of the Tobacco Product Manufacturer or Brand Family; and unless otherwise provided by agreement between:

(i) A Wholesaler and a Tobacco Product Manufacturer, the Wholesaler shall be entitled to a refund from a Tobacco Product Manufacturer for any money paid by the Wholesaler to the Tobacco Product Manufacturer for any cigarettes of the Tobacco Product Manufacturer in the possession of the Wholesaler on the effective date of removal from the Directory, or as subsequently received from a retail dealer as provided herein, of that Tobacco Product Manufacturer or Brand Family of cigarettes.

(ii) A retail dealer and a Wholesaler, a retail dealer shall be entitled to a refund from a Wholesaler or a Tobacco Product Manufacturer for any money paid by the retail dealer to such Wholesaler or Tobacco Product Manufacturer for any cigarettes of the Tobacco Product Manufacturer still in the possession of the retail dealer on the effective date of removal from the Directory of that Tobacco Product Manufacturer or Brand Family of cigarettes.

(B) The Mayor shall not restore to the Directory the Tobacco Product Manufacturer or the Brand Family until the Tobacco Product Manufacturer has paid the Wholesaler or retail dealer any refund due.

(4) Every Wholesaler shall provide and update as necessary an electronic mail address to the Mayor for the purpose of receiving any notifications as may be required by this part.

(c) It shall be unlawful for any person to:

(1) Affix a stamp to a package or other container of cigarettes of a Tobacco Product Manufacturer or Brand Family not included in the Directory, or

(2) Sell, offer, or possess for sale, in the District, or import for personal consumption in the District, cigarettes of a Tobacco Product Manufacturer or Brand Family not included in the Directory.

(Apr. 22, 2004, D.C. Law 15-150, § 4, 51 DCR 2809.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 15-150, see notes following § 7-1803.01.

### **§ 7-1803.04. AGENT FOR SERVICE OF PROCESS.**

(a)(1) Any non-resident or foreign Non-Participating Manufacturer that has not registered to do business in the District as a foreign corporation or business entity shall, prior to having its Brand Families included or retained in the Directory, appoint and continually engage without interruption the services of an agent in the District to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this part or part A of this subchapter, may be served in any manner authorized by law and which shall constitute legal and valid service of process on the Non-Participating Manufacturer.

(2) The Non-Participating Manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to, and to the satisfaction of, the Mayor.

(b)(1) The Non-Participating Manufacturer shall provide notice to the Mayor 30 calendar days prior to termination of the authority of an agent and shall further provide proof, to the satisfaction of the Mayor, of the appointment of a new agent no less than 5 calendar days prior to the termination of an existing agent appointment.



(2) If an agent terminates an agency appointment, the Non-Participating Manufacturer shall notify the Mayor of the termination within 5 calendar days and shall include proof, to the satisfaction of the Mayor, of the appointment of a new agent.

(Apr. 22, 2004, D.C. Law 15-150, § 5, 51 DCR 2809.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 15-150, see notes following § 7-1803.01.

### **§ 7-1803.05. REPORTING OF INFORMATION; ESCROW INSTALLMENTS.**

(a) Not later than 20 calendar days after the end of each calendar quarter, and more frequently if so directed by the Mayor, each Wholesaler shall submit such information as the Mayor requires to facilitate compliance with this part, including a list, by Brand Family, of the total number of cigarettes, or, in the case of roll your own, the equivalent stick count, for which the Wholesaler affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The Wholesaler shall maintain, and make available to the Mayor, all invoices and documentation of sales of all Non-Participating Manufacturer cigarettes and any other information relied upon in reporting to the Mayor for a period of 5 years.

(b) The Corporation Counsel is authorized to disclose any information to the Mayor received under this part and requested by the Mayor for purposes of determining compliance with and enforcing the provisions of this part. The Corporation Counsel and the Mayor shall share with each other the information received under this part, and may share such information with other federal, state, District, or local agencies only for purposes of enforcement of this part, part A of this subchapter, or corresponding laws of other jurisdictions.

(c) The Mayor may require, at any time, from the Non-Participating Manufacturer, proof from the financial institution in which the Manufacturer has established a Qualified Escrow Fund, for the purpose of compliance with § 7-1801.02(2), of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(d) In addition to the information required to be submitted pursuant to this part, the Mayor may require a Wholesaler or Tobacco Product Manufacturer to submit any additional information, including samples of the packaging or labeling of each Brand Family, as is necessary to enable the Mayor to determine whether a Tobacco Product Manufacturer is in compliance with this part.

(e) To promote compliance with this part, the Mayor may promulgate regulations requiring a Tobacco Product Manufacturer, subject to the requirements of § 7-1803.03(a)(2), to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The Mayor may require production of information sufficient to enable the Mayor to determine the adequacy of the amount of the installment deposit.

(Apr. 22, 2004, D.C. Law 15-150, § 6, 51 DCR 2809.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 15-150, see notes following § 7-1803.01.

### **§ 7-1803.06. PENALTIES AND OTHER REMEDIES.**

(a)(1) In addition to, or in lieu of, any other civil or criminal remedy provided by law, upon a determination that any person has violated § 7-1803.03(c) or any regulation adopted pursuant to this part, the Mayor may revoke or suspend the license of the Wholesaler in the manner provided by § 47-2404(f).

(2) Each stamp affixed and each sale or offer to sell cigarettes in violation of § 7-1803.03(c) shall constitute a separate violation. Pursuant to Chapter 18 of Title 2, the Mayor may also impose a civil fine in an amount not to exceed the greater of 500% of the retail value of the cigarettes or \$5,000 for any violation of § 7-1803.03(c) or any regulations adopted pursuant to this part.

(b) Any cigarettes that have been sold, offered for sale, or possessed for sale, in the District, or imported for personal consumption in the District, in violation of § 7-1803.03(c) shall be deemed contraband under § 47-2405(b) and the cigarettes shall be subject to seizure and forfeiture as provided in § 47-2409; provided, that all such cigarettes so seized and forfeited shall be destroyed and not resold.

(c) The Corporation Counsel, on behalf of the District, may seek an injunction to restrain a threatened or actual violation of § 7-1803.03(c), § 7-1803.05(a), or § 7-1803.05(d) by a Wholesaler and compel the Wholesaler to comply with the subsections.

(d)(1) It shall be unlawful for a person to:

(A) Sell or distribute cigarettes, or

(B) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the District in violation of § 7-1803.03(c).

(2) A violation of this subsection shall, upon conviction, be punishable by a fine of not more than \$5,000 or imprisonment of not more than 1 year, or both. Prosecutions for violations of this subsection shall be brought in Superior Court of the District of Columbia in the name of the District by the Corporation Counsel.

(Apr. 22, 2004, D.C. Law 15-150, § 7, 51 DCR 2809.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 15-150, see notes following § 7-1803.01.

**§ 7-1803.07. MISCELLANEOUS PROVISIONS.**

(a) A determination of the Mayor to not include or to remove from the Directory a Brand Family or Tobacco Product Manufacturer shall be subject to review in the manner prescribed by subchapter I of Chapter 5 of Title 2.

(b) No person shall be issued a license or granted a renewal of a license to act as a Wholesaler unless that person has certified in writing, under penalty of perjury, that he or she will comply fully with this part.

(c) The first report of Wholesalers required by § 7-1803.05(a) shall be due 45 calendar days after April 22, 2004; the certifications by a Tobacco Product Manufacturer described in § 7-1803.03(a) shall be due 45 calendar days after April 22, 2004; and the Directory described in § 7-1803.03(b) shall be published or made available within 150 calendar days after April 22, 2004.

(d) The Mayor may promulgate regulations necessary to effect the purposes of this part.

(e) In any action brought by the District to enforce this part, the District shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(f) If a court determines that a person has violated this part, the court shall order any profits, gain, gross receipts, or other benefit derived from the violation to be disgorged and paid to the District. Unless otherwise expressly provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the District.

(g)(1) If a court of competent jurisdiction finds that the provisions of this part and of part A of this subchapter conflict and cannot be harmonized, then the provisions of part A of this subchapter shall control.

(2)(A) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this part causes part A of this subchapter to no longer constitute a Qualifying or Model Statute, as those terms are defined in the Master Settlement Agreement, then that portion of this part shall not be valid.

(B) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this part is for any reason held to be invalid, unlawful, or unconstitutional, that holding shall not affect the validity of the remaining portions of this part or any part of this part.

(Apr. 22, 2004, D.C. Law 15-150, § 8, 51 DCR 2809; Apr. 13, 2005, D.C. Law 15-354, § 16, 52 DCR 2638.)

*HISTORICAL AND STATUTORY NOTES*

*Effect of Amendments*

D.C. Law 15-534, in subsec. (g)(2)(A), validated a previously made technical correction.

*Legislative History of Laws*

For Law 15-150, see notes following § 7-1803.01.

Law 15-354, the "Technical Amendments Act of 2004", was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

**SUBCHAPTER II. TOBACCO SETTLEMENT TRUST  
FUND.**

## **§ 7-1811.01. ESTABLISHMENT OF TOBACCO SETTLEMENT TRUST FUND.**

(a)(1) There is established a trust fund designated as the Tobacco Settlement Trust Fund ("Fund"), to which shall be credited, without regard to fiscal year limitation:

(A) All revenue owed and accruing to the District from the payments under the tobacco litigation settlement agreement entered into on November 23, 1998 by the District of Columbia and leading United States tobacco product manufacturers ("Settlement Agreement"), except:

(i) The first \$16.05 million recognized as general fund revenue and already included in the base budget in Fiscal Year 2000;

(ii) All payments under the Settlement Agreement sold to the District of Columbia Tobacco Settlement Financing Corporation under § 7-1831.02; and

(iii) All payments under the Residual Bond sold to the District of Columbia Tobacco Settlement Financing Corporation under § 7-1831.02;

(B) If the Residual Bond has not been sold by the Fund, all payments received with respect to the Residual Interest, as the term is defined in § 7- 1831.01(7);

(B-i) If the Residual Bond has been sold by the Fund, all payments received under the Remainder Certificate, if any; and

(C) All other funds which are directed to be deposited into the Fund by law, which shall include funds to be deposited into a Reservation 13 Benefit Area ("R13BA") Health Care account ("R13BA fund") pursuant to Chapter 15 of Title 10.

(2) The Fund shall be continuing. Revenues deposited into the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available, subject to authorization by Congress in an appropriations act.

(b) The Fund shall be managed by the Board of Trustees of the Tobacco Settlement Trust Fund established under § 7-1811.02.

(c) The Fund shall have the power to indemnify or insure members of the board and officers of the Fund as it determines appropriate.

(Oct. 20, 1999, D.C. Law 13-38, § 2302, 46 DCR 6373; Oct. 19, 2000, D.C. Law 13-172, § 3721(a), 47 DCR 6308; Apr. 11, 2003, D.C. Law 14-300, § 7(b)(1), 50 DCR 406; Feb. 6, 2004, D.C. Law 15-69, § 3(a), 50 DCR 9824; Apr. 13, 2005, D.C. Law 15-354, § 89(b), 52 DCR 2638; July 25, 2006, D.C. Law 16-142, § 2(a), 53 DCR 4412; Mar. 25, 2009, D.C. Law 17-353, § 119, 56 DCR 1117.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Effect of Amendments*

D.C. Law 13-172 rewrote this section, which previously read:

"Establishment of Tobacco Settlement Trust Fund.

" (a) There is established within the General Fund of the District of Columbia, a trust fund designated as the Tobacco Settlement Trust Fund ('Fund'), to which shall be credited, without regard to fiscal year limitation, all revenue owed and accruing to the District from the proceeds of the tobacco litigation settlement, except for the first \$16.05 million recognized as general fund revenue and already included in the base budget in FY 2000, and except for the second \$16.05 million which is allocated first to the reserve to replace funds allocated from the reserve to the fund pursuant to title XX of this act. The Fund shall be continuing. Revenues deposited into the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available, subject to authorization by Congress in an appropriations act.

"(b) Tobacco settlement monies received, or deposited into the Fund shall be used for the purposes set forth in legislation adopted by the Council."

D.C. Law 14-300, in subsec. (a)(1)(C), substituted "by law, which shall include funds to be deposited into a Reservation 13 Benefit Area ('R13BA') Hospital account or R13BA Health Care account (collectively, 'R13BA funds') pursuant to Chapter 15 of Title 10" for "by law."

D.C. Law 15-69, in subpar. (1)(C) of subsec. (a), substituted "Health Care account ('R13BA fund)" for "Hospital account or R13BA Health Care account (collectively, 'R13BA funds')", and made a technical correction that required no change in the text.

D.C. Law 15-354, in subsec. (a)(1)(C), validated a previously made technical correction.

D.C. Law 16-142, in subpar. (a)(1)(A)(i), substituted a semicolon for "; and"; in subpar. (a)(1)(A)(ii), substituted "§ 7-1831.02; and" for "§ 7- 1831.02;"; added subpars. (a)(1)(A)(iii) and (a)(1)(B-i); added subsec. (c); and rewrote subpar. (a)(1)(B), which had read as follows:

(B)" All payments received with respect to the Residual Interest, as the term is defined in § 7-1831.01(7); and"

D.C. Law 17-353 validated a previously made technical correction in subsec. (a)(1)(B).

*Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 2(d)(1) of Draft Master Plan for Public Reservation 13 Temporary Amendment Act of 2003 (D.C. Law 15-3, May 3, 2003, law notification 50 DCR 3783).

*Emergency Act Amendments*

For temporary (90-day) addition of section, see § 2302 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90-day) amendment of section, see § 3721(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) authorization for use of fund for certain bonus payments, see § 2 of the Funding for Compensation Units 1 and 2 Bonus Payment Authorization Emergency Act of 1999 (D.C. Act 13-211, December 14, 1999, 46 DCR 10476).

For temporary (90 day) amendment of section, see § 3721(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13- 438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 2(d)(1) of Draft Master Plan for Public Reservation 13 Emergency Amendment Act of 2003 (D.C. Act 15-13, January 27, 2003, 50 DCR 1488).

For temporary (90 day) amendment of section, see § 3(a) of Draft Master Plan for Public Reservation 13 Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-273, December 18, 2003, 51 DCR 40).

*Legislative History of Laws*

Law 13-38, the "Service Improvement and Fiscal Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Law 14-300, the "Draft Master Plan for Public Reservation 13 Approval Act of 2002", was introduced in Council and assigned Bill No. 14-648, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 7, 2002, and December 3, 2002, respectively. Signed by the Mayor on January 7, 2003, it was assigned Act No. 14-576 and transmitted to both Houses of Congress for its review. D.C. Law 14-300 became effective on April 11, 2003.

Law 15-69, the "Draft Master Plan For Public Reservation 13 Amendment Act of 2003", was introduced in Council and assigned Bill No. 15-24, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on July 8, 2003, and October 7, 2003, respectively. Signed by the Mayor on October 24, 2003, it was assigned Act No. 15-198 and transmitted to both Houses of Congress for its review. D.C. Law 15-69 became effective on February 6, 2004.

For Law 15-354, see notes following § 7-1803.07.

Law 16-142, the "Tobacco Settlement Trust Fund and Tobacco Settlement Financing Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-605 which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on April 4, 2006, and May 2, 2006, respectively. Signed by the Mayor on May 19, 2006, it was assigned Act No. 16-383 and transmitted to both Houses of Congress for its review. D.C. Law 16-142 became effective on July 25, 2006.

For Law 17-353, see notes following § 7-161.

*Miscellaneous Notes*

Section 2301 of D.C. Law 13-38 provides:

"This title may be cited as the 'Tobacco Settlement Trust Fund Establishment Act of 1999'."

**§ 7-1811.02. BOARD OF TRUSTEES OF THE TOBACCO SETTLEMENT TRUST FUND.**

(a) The Board of Trustees of the Tobacco Settlement Trust Fund ("Board") is established as an independent agency of the District government. The Board shall consist of 3 members. One member shall be appointed by the Council. The other 2 members shall be nominated by the Mayor and approved by the

Council and one of those 2 members shall be nominated by the Mayor as chairperson. Within 90 calendar days after October 19, 2000, or 180 days after the date of a vacancy, the Mayor shall transmit to the Council, for a 90-day period of review, excluding days of Council recess, the nominations to the Board. If the Council does not approve a nomination by resolution within the 90-day period, the nomination shall be deemed disapproved.

(b)(1) Except as provided in paragraph (2) of this subsection, the members of the Board shall each serve a term of 4 years, except that a member selected to fill a vacancy occurring before the end of the term for which his predecessor was selected shall only serve until the end of the term. A member may serve after the expiration of his term until his successor has taken office.

(2) The member of the Board first selected by the Council shall serve for a term of 2 years. As determined by the Mayor in his initial nominations, of the members of the Board who are first selected from his nominees, one shall serve for a term of 3 years and one shall serve for a term of 4 years.

(3) An individual shall not serve more than 2 terms as a member of the Board, except that an individual serving less than 2 years of a term to which some other individual was originally selected shall be eligible for an additional 2 full terms as a member of the Board and an individual serving 2 years or more of a term to which some other individual was originally selected shall be eligible for only one additional full term as a member of the Board.

(4) A member of the Board shall not have any personal interest, direct or indirect, in a transaction involving assets of the Fund.

(c) Subject to the availability of appropriations for that purpose, each member of the Board shall be entitled to receive the hourly equivalent of the annual rate of compensation effect for the highest step of grade DS-15 under Chapter 6 of Title 1, for each hour that the member is engaged in the actual performance of duties vested in the Board, except that a member of the Board who is a full-time officer or employee of the District of Columbia or the United States shall not be entitled to receive compensation under this subsection for performance of duties vested in the Board during the employee's regularly scheduled working hours, and the total amount to which a member may be entitled under this subsection during a fiscal year may not exceed \$5,000.

(d) Once funds are deposited into the Fund, the Board shall meet at least once each calendar year at a regular and specified time. It shall meet at such other times as the Chairperson may prescribe. Actions of the Board shall be determined by a majority vote of the members.

(e)(1) All administrative expenses incurred by the Board in administering the Fund, including compensation for the members of the Board, shall be paid out of funds appropriated for such purpose.

(2) The budget prepared and submitted by the Mayor under § 47-301.01 shall include recommended expenditures at a reasonable level for the forthcoming fiscal year for the administrative expenses of the Board, except that the recommended expenditures for the administrative expenses for Fiscal Year 2004 shall not exceed \$10,000.00.

(f)(1) Subject to appropriations, the Board may engage the services of investment counsel, who shall be either: (A) registered under title 11 of An Act to provide for the registration and regulation of investment companies and investment advisers (54 Stat. 847; 15 U.S.C. § 80b-1 et seq.) ("Investment Advisers Act of 1940"); (B) a bank, as defined in the Investment Advisers Act of 1940; or (C) an insurance company qualified to perform investment advisory services under the laws of more than one state. The investment counsel shall be a fiduciary with respect to services rendered to the Board. The fiduciary relationship shall be specified in a written agreement.

(2) Subject to appropriations, the Board may appoint staff it considers necessary or convenient to carry out its functions. Staff appointed by the Board shall be subject to Chapter 6 of Title 1.

(g)(1) The Board shall have the authority to enter into contracts with the governments of the District of Columbia and the United States and other public and private entities to the extent necessary to carry out its responsibilities.

(2) The Board shall issue proposed rules governing the procurement of goods and services under the authority granted in paragraph (1) of this subsection. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(3) The Board may adopt, amend, repeal, and enforce bylaws or other operating procedures as appropriate in accordance with District laws.

(h)(1) In addition to an investment otherwise authorized by law, and without restriction to investments a fiduciary may make, the Board, subject to any specific limitations set forth in this section or applicable law other than law relating to investments a fiduciary may make, may invest and reinvest the funds of the Fund in any real or personal property deemed advisable by the Board, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or

instrumentality thereof.

(2) The Board shall submit reports of the investment performance of and financial transactions related to the Fund to the Council within 90 days after the end of the fiscal year, including a listing of the assets of the Fund, the earnings of each asset of the Fund, the value of each asset of the Fund at the beginning and end of the fiscal year, and the investment strategy of the Fund, including any proposed changes.

(Oct. 20, 1999, D.C. Law 13-38, § 2302a, as added Oct. 19, 2000, D.C. Law 13-172, § 3721(b), 47 DCR 6308; June 5, 2003, D.C. Law 14-307, § 402(a), 49 DCR 11664; Nov. 13, 2003, D.C. Law 15-39, § 1504(a), 50 DCR 5668; Oct. 20, 2005, D.C. Law 16-33, § 1036, 52 DCR 7503; July 25, 2006, D.C. Law 16-142, § 2(b), 53 DCR 4412.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 15-39, in subsec. (e)(2), substituted "Fiscal Year 2004 shall not exceed \$10,000." for "fiscal year 2003 shall not exceed \$1,000."

D.C. Law 14-307 rewrote subsec. (e)(2); in subsec. (g), added par. (3); and rewrote subsec. (h)(2). Prior to amendment, subsecs. (e)(2) and (h)(2) had read as follows:

"(2) The budget prepared and submitted by the Mayor under § 1-204.42 of the District of Columbia Official Code shall include recommended expenditures at a reasonable level for the forthcoming fiscal year for the administrative expenses of the Board."

"(2) The Board shall submit a report of the investment performance of the Fund to the Council within 90 days after the end of the fiscal year, including a listing of the assets of the Fund, the earnings of each asset of the Fund, the value of each asset of the Fund at the beginning and end of the fiscal year, and the investment strategy of the Fund, including any proposed changes."

D.C. Law 16-33, in subsec. (d), substituted "Once funds are deposited into the Fund, the Board shall meet" for "The Board shall meet".

D.C. Law 16-142, in subsec. (d), substituted "year" for "quarter".

##### *Emergency Act Amendments*

For temporary (90-day) addition of section, see § 3721(b) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 3721(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 402(a) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 402(a) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 402(a) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 1504(a) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1504(a) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 1036 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

##### *Legislative History of Laws*

For Law 13-38, see notes following § 7-1811.01.

For Law 13-172, see notes following § 7-1811.01.

For Law 14-307, see notes following § 7-225.

For Law 15-39, see notes following § 7-732.

For Law 16-33, see notes following § 7-733.01.

For Law 16-142, see notes following § 7-1811.01.

##### *Miscellaneous Notes*

Section 1505 of D.C. Law 15-39 provides:

"Sec. 1505. Applicability.

"Section 1504(a) shall apply as of October 1, 2003."

Short title of subtitle H of title I of Law 16-33: Section 1035 of D.C. Law 16-33 provided that subtitle H of title I of the act may be cited as the Tobacco Settlement Trust Fund Board of Trustees Meetings Amendment Act of 2005.

### **§ 7-1811.03. ALLOCATION OF FUNDS.**

(a)(1) Beginning in Fiscal Year 2001, the funds which shall be appropriated and deposited in the Fund shall be allocated and used as provided in subsection (b) of this section.

(2) Within 15 business days of the sale of the District's right in and to the Master Settlement Agreement to the District of Columbia Tobacco Financing Settlement Corporation under § 7-1831.02, the Chief Financial Officer shall certify, for each year, the debt service savings that the District will achieve as a result of the sale.

(3) Beginning in Fiscal Year 2002, the Chief Financial Officer shall certify to the Council that the Mayor has included in the budget and financial plan the transfer to the Fund in the amount of the savings for that year.

(4) The amount of the savings which are appropriated for deposit into the Fund shall be deposited into the Fund in equal quarterly installments which shall be paid at the end of each quarter of the fiscal year.

(b) The funds of the Fund shall be used as follows:

(1) Fifty percent of the sum of the residual interest plus the annual savings from debt defeasance or prepayment shall be spent for purposes specified in local law;

(2) Fifty percent of the sum of the residual interest plus the annual savings from debt defeasance or prepayment shall be invested by the Board in accordance with the standards of § 7-1811.02(h)(1);

(3) All of the investment earnings of the Fund shall be reinvested by the Board in accordance with the standards of § 7-1811.02(h)(1);

(4) Any funds not spent in accordance with paragraph (1) of this subsection shall be invested in accordance with paragraph (2) of this subsection;

(5)(A) All residual funds accumulated from fiscal years 2001 and 2002 shall be allocated to the General Fund during Fiscal Year 2003. Beginning October 1, 2002 through September 30, 2004, 100% of the residual shall be spent for purposes specified in local law. For Fiscal Year 2003, 100% of the residual shall be transferred to the General Fund, and 100% of the annual savings from debt defeasance and prepayment, after being reduced by \$1 million to be allocated to the General Fund, shall be allocated to the Medicaid and Special Education Reform Fund ("Reform Fund") established by § 4-204.53. For Fiscal Year 2004, 100% of the residual shall be transferred to the General Fund, and 100% of the annual savings from debt defeasance and prepayment shall be allocated to the Reform Fund. Funds deposited in the Reform Fund shall be disbursed to the Department of Human Services, the Child and Family Services Agency, the Department of Mental Health, the Department of Health, and the District of Columbia Public Schools only for spending pressures associated with the Medicaid, Medicare, Foster Care and Adoption Assistance, and Special Education programs and in accordance with § 4-204.55. For fiscal year 2005, 100% of the residual and 100% of the annual savings from debt defeasance and prepayment shall be transferred to the General Fund. Commencing in fiscal year 2006, 100% of the residual (unless the Residual Bond has been sold) and 100% of the annual savings from debt defeasance and prepayment shall be transferred to the General Fund. Unless the Residual Bond has been sold by the Fund, the Council may direct all or a portion of the residual to be transferred to the Fund.

(B) For the purposes of this paragraph, the term:

(i) "Foster Care and Adoption Assistance" means the programs authorized by Part E of Title IV of the Social Security Act, approved June 17, 1980 (94 Stat. 501; 42 U.S.C. § 670 *et seq.*).

(ii) "Medicaid" means the medical assistance programs authorized by Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 *et seq.*), or by § 1-307.02, and administered by the Department of Health.

(iii) "Medicare" means the health insurance programs authorized by Title XVIII of the Social Security Act, approved July 30, 1965 (79 Stat. 290; 42 U.S.C. § 1395 *et seq.*).

(iv) "Special Education" means services provided under § 38-2501 to students who are classified as having a disability, as defined in section 101(a)(1) of the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1401(a)(1)), or in section 7(8) of the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 359; 29 U.S.C. § 706(8)).

(6) Beginning October 1, 2002, \$16,627,000 of programming funds shall be reinvested by the Board.

(7) If the Residual Bond has been sold by the Fund, 100% of the residual shall be payable to the Corporation for so long as the Bonds issued to purchase the Residual Bond are Outstanding.

(c) The R13BA fund, including all accrued interest, shall be used as follows:

- (1) To fund infrastructure improvements related to a proposed development within the R13BA;
- (2) To provide health care to the uninsured residents of the District; and
- (3) For administrative support in the provision of health care to the uninsured.

(d) For the purpose of financing the costs of the National Capital Medical Center, healthcare related issues, or other capital projects, and repayment of outstanding indebtedness issued for certain capital projects and other undertakings of the District, the Fund may sell to the Corporation all of the Fund's right, title, and interest in and to the Residual Bond, including all the moneys, and any interest thereon, payable to or received by the Fund, in exchange for:

- (1) A cash payment in the amount of the net sales proceeds of the Bonds (other than the Residual Bond); and
- (2) The Remainder Certificate, if any.

(e) Subject to the authorization and restrictions of this subchapter, the terms and conditions of the Residual Bond Purchase Agreement shall be determined by the Mayor, which determination shall be conclusively evidenced by his execution of the Residual Bond Purchase Agreement. The Mayor may execute and deliver any administrative or other documents or agreements that are necessary or desirable relating to the sale of the Fund's right, title, and interest in and to the Residual Bond or in connection with the issuance of the Bonds. Proceeds from the sale of the Bonds and other moneys received by the Corporation pursuant to the Residual Bond Purchase Agreement shall be used to repay certain outstanding indebtedness of the District, to finance or refinance the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District, to pay costs of issuance of the Bonds, to establish and fund reserve funds, and to pay other expenses and fees related to the issuance of the Bonds.

(Oct. 20, 1999, D.C. Law 13-38, § 2303b, as added Oct. 19, 2000, D.C. Law 13-172, § 3721(c), 47 DCR 6308; Oct. 1, 2002, D.C. Law 14-190, § 702, 49 DCR 6968; Apr. 11, 2003, D.C. Law 14-300, § 7(b)(2), 50 DCR 406; June 5, 2003, D.C. Law 14-307, § 402(b), 49 DCR 11664; June 12, 2003, D.C. Law 14-310, § 5, 50 DCR 1092; Nov. 13, 2003, D.C. Law 15-39, § 1504(b), 50 DCR 5668; Feb. 6, 2004, D.C. Law 15-69, § 3(b), 50 DCR 9824; Mar. 13, 2004, D.C. Law 15-105, § 46, 51 DCR 881; Dec. 7, 2004, D.C. Law 15-205, § 5102, 51 DCR 8441; July 25, 2006, D.C. Law 16-142, § 2(c), 53 DCR 4412.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 14-190, in subsec. (b), made nonsubstantive changes to pars. (3) and (4), and added pars. (5) and (6).

D.C. Law 14-300 added subsec. (c).

D.C. Law 14-307, in subsec. (b), rewrote the introductory language of subpar. (5)(A), and rewrote sub-subpars. (5)(A)(i) and (5)(A)(ii) which had read as follows:

"(5)(A) Beginning October 1, 2002 through September 30, 2004, 100% of the residual shall be spent for purposes specified in local law and 100% of the annual savings from debt defeasance or prepayment shall be allocated to the Department of Human Services, the Child and Family Services Agency, and the District of Columbia Public Schools, for spending pressures generated by the Medicaid and Special Education programs providing the following:

"(i) No such funds shall be made available for expenditure to the Department of Human Services or the Child and Family Services Agency unless by no later than December 31, 2002, the Director of the Office of Medicaid Public Provider Operations Reform submits to the Mayor a savings plan certified by the Chief Financial Officer. The plan shall commence no later than October 1, 2003, and generate savings comparable to the funds allocated to the Medicaid program from the annual savings in Fiscal Year 2003.

"(ii) No such funds shall be made available for expenditure to the District of Columbia Public Schools unless, by no later than December 31, 2002, the District of Columbia Public Schools submits to the Special Education Task Force a savings plan certified by the Chief Financial Officer. The Special Education Task Force shall include the Mayor, the Chair of the Committee on Education, Libraries and Recreation for the Council of the District of Columbia, the Chair of the Committee on Finance and Revenue for the Council of the District of Columbia, the Chief Financial Officer, the President of the District of Columbia Board of Education, the Superintendent of the District of Columbia Public Schools, the State Education Officer of the District of Columbia, the Deputy Mayor for Children, Youth, Families and Elders, the Chief Financial Officer for the District of Columbia Public Schools, and others to be determined by Mayor's Order. Members of the Council's Committee on Education, Libraries, and Recreation shall serve *ex officio* (non-voting) on the Special Education Task Force. The plan shall commence no later than October 1, 2003, and generate savings



comparable to the funds allocated to special education programs from the annual savings in Fiscal Year 2003."

D.C. Law 14-310 made a technical correction which did not change the text.

D.C. Law 15-39 rewrote subsec. (b)(5) which had read as follows:

"(5)(A) All residual funds accumulated from fiscal years 2001 and 2002 shall be allocated to the General Fund during fiscal year 2003. In addition, beginning October 1, 2002 through September 30, 2004, 100% of the residual shall be spent for purposes specified in local law, and 100% of the annual savings from debt defeasance or prepayment, after being reduced by \$1,000,000 to be allocated to the General Fund, shall be allocated to the Department of Human Services, the Child and Family Services Agency, Department of Mental Health, Department of Health, and the District of Columbia Public Schools, for spending pressures associated with the Medicaid, Medicare, Title IV, Part E of the Social Security Act (42 U.S.C. § 674(a)) and Special Education programs, provided the following:

"(i) No such funds from annual savings described above shall be made available for expenditure to the Department of Human Services or the Child and Family Services Agency unless by no later than December 31, 2002, the Director of the Office of Medicaid Public Provider Operations Reform submits to the Mayor a savings plan certified by the Chief Financial Officer. The plan shall commence no later than October 1, 2003, and generate savings comparable to the funds allocated to the Medicaid program from the annual savings in Fiscal Year 2003.

"(ii) No such funds from annual savings described above shall be made available for expenditure to the District of Columbia Public Schools unless, by no later than December 31, 2002, the District of Columbia Public Schools submits to the Special Education Task Force a savings plan certified by the Chief Financial Officer. The Special Education Task Force shall include the Mayor, the Chair of the Committee on Education, Libraries and Recreation for the Council of the District of Columbia, the Chair of the Committee on Finance and Revenue for the Council of the District of Columbia, the Chief Financial Officer, the President of the District of Columbia Board of Education, the Superintendent of the District of Columbia Public Schools, the State Education Officer of the District of Columbia, the Deputy Mayor for Children, Youth, Families and Elders, the Chief Financial Officer for the District of Columbia Public Schools, and others to be determined by Mayor's Order. Members of the Council's Committee on Education, Libraries, and Recreation shall serve ex officio (non-voting) on the Special Education Task Force. The plan shall commence no later than October 1, 2003, and generate savings comparable to the funds allocated to special education programs from the annual savings in Fiscal Year 2003.

"(ii) No such funds from annual savings described above shall be made available for expenditure to the District of Columbia Public Schools unless, by no later than December 31, 2002, the District of Columbia Public Schools submits to the Special Education Task Force a savings plan certified by the Chief Financial Officer. The Special Education Task Force shall include the Mayor, the Chair of the Committee on Education, Libraries and Recreation for the Council of the District of Columbia, the Chair of the Committee on Finance and Revenue for the Council of the District of Columbia, the Chief Financial Officer, the President of the District of Columbia Board of Education, the Superintendent of the District of Columbia Public Schools, the State Education Officer of the District of Columbia, the Deputy Mayor for Children, Youth, Families and Elders, the Chief Financial Officer for the District of Columbia Public Schools, and others to be determined by Mayor's Order. Members of the Council's Committee on Education, Libraries, and Recreation shall serve ex officio (non-voting) on the Special Education Task Force. The plan shall commence no later than October 1, 2003, and generate savings comparable to the funds allocated to special education programs from the annual savings in Fiscal Year 2003.

"(B) Beginning 3 months following the commencement of the plan or no later than January 2, 2004, the Mayor and the Special Education Task Force shall provide the Council with quarterly reports on the progress made by the Department of Human Services, the Child and Family Services Agency, and the District of Columbia Public Schools, in reducing costs associated with the Medicaid and special education programs; and"

D.C. Law 15-69 rewrote subsec. (c) which had read as follows:

"(c) The R13BA funds, including all accrued interest, shall be used as follows:

"(1) To construct and maintain a public full-service hospital within the R13BA;

"(2) To provide health care to the uninsured residents of the District;

"(3) For administrative support in the provision of health care to the uninsured; and

"(4) For costs relating to an annual audit of expenditures."

D.C. Law 15-105, in subsec. (b)(4), validated a previously made technical correction.

D.C. Law 15-205, in subpar. (A) of par. (5) of subsec. (b), added at the end "For fiscal years 2005 through 2008, 100% of the residual and 100% of the annual savings from debt defeasance and prepayment shall be transferred to the General Fund."

D.C. Law 16-142, in subpar. (b)(5)(A), substituted "For fiscal year 2005," for "For fiscal years 2005 through 2008," and added "Commencing in fiscal year 2006, 100% of the residual (unless the Residual Bond has been sold) and 100% of the annual savings from debt defeasance and prepayment shall be transferred to the

General Fund. Unless the Residual Bond has been sold by the Fund, the Council may direct all or a portion of the residual to be transferred to the Fund." to the end; and added par. (b)(7) and subsecs. (d) and (e).

*Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 2(d)(2) of Draft Master Plan for Public Reservation 13 Temporary Amendment Act of 2003 (D.C. Law 15-3, May 3, 2003, law notification 50 DCR 3783).

*Emergency Act Amendments*

For temporary (90-day) addition of section, see § 3721(c) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 3721(c) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13- 438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 702 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 402(b) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 2(d)(2) of Draft Master Plan for Public Reservation 13 Emergency Amendment Act of 2003 (D.C. Act 15-13, January 27, 2003, 50 DCR 1488).

For temporary (90 day) amendment of section, see § 402(b) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 402(b) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 1504(b) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1504(b) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 3(b) of Draft Master Plan for Public Reservation 13 Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-273, December 18, 2003, 51 DCR 40).

For temporary (90 day) amendment of section, see § 5102 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 5102 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

*Legislative History of Laws*

For Law 13-172, see notes following § 7-1811.01.

Law 14-190, the "Fiscal Year 2003 Budget Support Act of 2002", was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

For Law 14-300, see notes following § 7-1811.01.

For Law 14-307, see notes following § 7-225.

Law 14-310, the "Criminal Code and Miscellaneous Technical Amendments Act of 2002", was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

For Law 15-39, see notes following § 7-732.

For Law 15-69, see notes following § 7-1811.01.

For Law 15-105, see notes following § 7-136.

For Law 15-205, see notes following § 7-503.03.

For Law 16-142, see notes following § 7-1811.01.

*Miscellaneous Notes*

Short title of title VII of Law 14-190: Section 701 of D.C. Law 14-190 provided that title VII of the act may be cited as the Tobacco Settlement Savings Fund Amendment Act of 2002.

## **SUBCHAPTER III. TOBACCO SETTLEMENT FINANCING.**

### **§ 7-1831.01. DEFINITIONS.**

For the purposes of this subchapter, the term:

- (1) "Bonds" means the taxable or tax-exempt revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), which may be issued on a senior or subordinate basis and would include any instrument evidencing the Corporation's obligations relating to the Residual Interest, authorized to be issued by the Corporation pursuant to this subchapter.
- (2) "Corporation" means the District of Columbia Tobacco Settlement Financing Corporation established by § 7-1831.03.
- (3) "District" means the District of Columbia.
- (4) "Master Settlement Agreement" means the settlement agreement (and related documents), as may be amended from time to time, entered into on November 23, 1998 by the District and leading United States tobacco product manufacturers.
- (5) "Purchase Agreement" means a contract, as authorized under § 7-1831.03, between the Corporation and the District, under which the District sells to the Corporation all of the District's right, title, and interest in and to the Master Settlement Agreement, including all the moneys, and any interest thereon, payable to or received by the District thereunder (except for the first payment of \$16.05 million which has already been received by the District), in exchange for a cash payment from the net proceeds of the sale of the Bonds (other than the Residual Bond), the Residual Bond, and the agreement of the Corporation to repay certain indebtedness of the District.
- (5A) "Remainder Certificate" means a certificate evidencing an interest in the payments to be made under the Residual Bond after payment in full of all outstanding Bonds secured thereby.
- (6) "Residual Bond" means a Bond evidencing the Residual Interest.
- (6A) "Residual Bond Purchase Agreement" means a contract, as authorized under § 7-1831.03, between the Corporation and the Fund, under which the Fund sells to the Corporation all or a portion of the Fund's right, title, and interest in and to the Residual Bond, including all the moneys, and any interest thereon, payable to or received by the Fund thereunder, in exchange for a cash payment from the net proceeds of the sale of the Bonds (other than the Residual Bond) and the Remainder Certificate, if any.
- (7) "Residual Interest" means that portion of any payments received by the Corporation under the Master Settlement Agreement which is not annually required to:
  - (A) Defease certain indebtedness of the District pursuant to the provisions of the Purchase Agreement;
  - (B) Repay the holders of the Bonds (other than the Residual Bond);
  - (C) Establish, maintain, or replenish any reserve funds created in connection with the issuance of the Bonds (other than the Residual Bond);
  - (D) Pay any other obligations of the Corporation (other than the Residual Bond) incurred in connection with the issuance of the Bonds; or
  - (E) Pay the actual, reasonable, and necessary expenses of the Corporation.

(Oct. 19, 2000, D.C. Law 13-172, § 3702, 47 DCR 6308; July 25, 2006, D.C. Law 16-142, § 3(a), 53 DCR 4412.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 16-142, in par. (1), substituted "obligations), which may be issued on a senior or subordinate basis and would include" for "obligations), which would include"; and added pars. (5A) and (6A).

##### *Emergency Act Amendments*

For temporary (90-day) addition of §§ 7-1831.01 to 7-1831.06, see §§ 3702 to 3707 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13- 376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 3702 to 3707 of the Fiscal Year 2001 Budget Support

Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

*Legislative History of Laws*

For Law 13-172, see notes following § 7-1811.01.

For Law 16-142, see notes following § 7-1811.01.

**§ 7-1831.02. SALE OF RIGHTS UNDER MASTER SETTLEMENT AGREEMENT.**

(a) For the purpose of financing the costs of the National Capital Medical Center, healthcare related issues, or other capital projects, and the repayment of outstanding indebtedness issued for certain capital projects and other undertakings of the District, the District may sell to the Corporation all of the District's right, title, and interest in and to the Master Settlement Agreement, including all the moneys, and any interest thereon, payable to or received by the District thereunder (except for the first payment of \$16.05 million which has already been received by the District), in exchange for: (1) a cash payment in the amount of the net sales proceeds of the Bonds (other than the Residual Bond); (2) the Residual Bond; and (3) the agreement of the Corporation to repay certain indebtedness of the District.

(b) Subject to the authorization and restrictions of this subchapter, the terms and conditions of the Purchase Agreement or the Residual Bond Purchase Agreement shall be determined by the Mayor, which determination shall be conclusively evidenced by his execution of the Purchase Agreement or the Residual Bond Purchase Agreement. The Mayor may execute and deliver any administrative or other documents or agreements which are necessary or desirable relating to the sale of the District's right, title, and interest in and to the Master Settlement Agreement or in connection with the issuance of the Bonds. Proceeds from the sale of the Bonds and other moneys received by the Corporation pursuant to the Purchase Agreement or the Residual Bond Purchase Agreement will be used to repay certain outstanding indebtedness of the District, to finance or refinance the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District, as well as to pay costs of issuance of the Bonds, to establish and fund reserve funds, and to pay other expenses and fees related to the issuance of the Bonds.

(c) For the purpose of financing the costs of the National Capital Medical Center, healthcare related issues, or other capital projects, and repayment of outstanding indebtedness issued for certain capital projects and other undertakings of the District, the Fund may sell to the Corporation all of the Fund's right, title, and interest in and to the Residual Bond, including all the moneys, and any interest thereon, payable to or received by the Fund thereunder, in exchange for:

- (1) A cash payment in the amount of the net sales proceeds of Bonds secured by the Residual Bond; and
- (2) The Remainder Certificate, if any.

(Oct. 19, 2000, D.C. Law 13-172, § 3703, 47 DCR 6308; July 25, 2006, D.C. Law 16-142, § 3(b), 53 DCR 4412; Mar. 25, 2009, D.C. Law 17-353, § 120, 56 DCR 1117.)

*HISTORICAL AND STATUTORY NOTES*

*Effect of Amendments*

D.C. Law 16-142, in subsec. (a), substituted "For the purpose of financing the costs of the National Capital Medical Center, healthcare related issues, or other capital projects, and the repayment" for "For the purpose of the repayment"; in subsec. (b), substituted "Purchase Agreement or the Residual Bond Purchase Agreement" for "Purchase Agreement" and substituted "indebtedness of the District, to finance or refinance the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District," for "indebtedness of the District"; and added subsec. (b-1).

D.C. Law 17-353 redesignated subsec. (b-1) as subsec. (c).

*Emergency Act Amendments*

For temporary (90-day) addition of section, see notes following § 7-1831.01.

For temporary (90 day) amendment of section, see §§ 3702 to 3707 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

*Legislative History of Laws*

For Law 13-172, see notes following § 7-1811.01.

For Law 16-142, see notes following § 7-1811.01.

For Law 17-353, see notes following § 7-161.

## **§ 7-1831.03. ESTABLISHMENT OF THE DISTRICT OF COLUMBIA TOBACCO SETTLEMENT FINANCING CORPORATION; POWERS AND AUTHORITY.**

(a) The District of Columbia Tobacco Settlement Financing Corporation is established as a special purpose, independent instrumentality of the District government. The Corporation shall be a corporate body, intended, created, and empowered to effectuate the purposes stated in this subchapter, and shall have a legal existence separate from the District government.

(b) The purpose of the Corporation is to purchase all of the District's right, title, and interest in the Master Settlement Agreement, including all the moneys, and any interest thereon, payable to or received by the District thereunder (except for the first payment of \$16.05 million which has already been received by the District) and the Residual Bond, issuing Bonds to pay the purchase price therefor, and to repay certain of the outstanding indebtedness of the District issued for capital projects and other undertakings. The Corporation may enter into the Purchase Agreement or the Residual Bond Purchase Agreement and may perform any acts necessary or convenient to effectuate its purposes, including financing the costs of the National Capital Medical Center indebtedness of the District, to finance or refinance the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District, or other capital projects, repayment, refinancing, or defeasance of certain indebtedness issued for capital projects and other undertakings.

(c)(1) Pursuant to § 1-204.90, subject to the restrictions of this subchapter, the Council delegates to the Corporation the power to issue revenue bonds, notes, and other obligations, including refunding revenue bonds at or before maturity, to finance or refinance, or assist in the financing or refinancing of the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District, which obligations shall be payable solely from, and secured by, the payments under the Master Settlement Agreement sold under § 7-1831.02, including the power to provide for the authorization, securing, sale, and issuance of the Bonds consistent with this subchapter. This delegation is not exclusive and does not restrict, impair, or supersede the authority otherwise vested by law in any District instrumentality.

(2)(A) The Corporation, by resolution of its board, may authorize the issuance of the Bonds. The resolution may stipulate the terms of the Bonds, including the following:

- (i) The date a Bond bears;
- (ii) The date a Bond matures and, if different, such other date on which a Bond may be paid;
- (iii) Whether Bonds are issued as serial bonds, term bonds, or as a combination of the two;
- (iv) The denominations;
- (v) The interest rate or rates, or variable rate or rates changing from time to time, as provided in, or determined pursuant to, authorization under the resolution;
- (vi) The method and terms of sale;
- (vii) The method for payment;
- (viii) Security for the Bonds;
- (ix) The terms of redemption;
- (x) The establishment of reserves and debt service funds and the use of proceeds of the Bonds for costs of issuance and otherwise in accordance with this subchapter; and
- (xi) Any other terms which, in the opinion of the board or its advisors, may be necessary or desirable for the sale of the Bonds.

(B) The resolution authorizing the issuance of the Bonds shall include a statement as to:

- (i) Whether the Bonds are intended to be sold by competitive bid or by negotiated sale and, if the Bonds are intended to be sold by negotiated sale, a statement of the reasons that sale by competitive bid is not feasible or is not in the best interests of the Corporation;
- (ii) Whether the Bonds are intended to be issued on a tax-exempt or taxable basis; and
- (iii) Whether the Bonds are intended to be issued on a senior or subordinate basis.

(C) The Corporation shall send a copy of the resolution authorizing the issuance of the Bonds to the Council within 3 days of its adoption.

(3) The board may delegate to the Chief Financial Officer as a member of the board the authority to prescribe the terms and conditions of the Bonds, including those referred to in § 7-1831.03(c)(2), except that the terms and conditions of the Residual Bond shall be consistent with the provisions of the Purchase Agreement and shall provide that the Residual Interest shall be paid to the Tobacco Settlement Trust Fund established by subchapter II of this chapter, and the terms and conditions of the Remainder Certificate, if any, shall be consistent with the provisions of the Residual Bond Purchase Agreement and shall provide that the payments under the Master Settlement Agreement after payment in full of all Bonds outstanding shall be paid to the Tobacco Settlement Trust Fund established by subchapter II of this chapter.

(4) A pledge by the Corporation of contract rights, general intangibles, or revenues collected by or on behalf of the Corporation as security for the Bonds shall be valid and binding from the time the pledge is made. The contract rights, general intangibles, or revenues pledged shall immediately be subject to the lien of the pledge without physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having a claim of any kind in tort, contract, or otherwise against the Corporation or the District government irrespective of whether the person has notice. Notwithstanding any law, the filing or recording of a resolution, trust, agreement, financing statement, continuation statement, or other instrument adopted or entered into by the Corporation in any public record is not required to perfect the lien against third parties.

(5) The Bonds shall be legal instruments in which public officers and public bodies of the District, insurance companies, insurance company associations, and other persons carrying on an insurance business, banks, bankers, banking institutions including savings and loan associations, building and loan associations, trust companies, savings banks, savings associations, investment companies, and other persons carrying on a banking business, administrators, guardians, executors, trustees, and other fiduciaries, and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The Bonds are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(6) The Bonds shall not constitute an indebtedness of the District. The Bonds are not general obligations of the District and are not secured by a pledge of the full faith and credit of the District and the holders of the Bonds may not require the levy or imposition of taxes. The Bonds issued to purchase the District's right, title, and interest in the Master Settlement Agreement are special obligations of the Corporation payable solely from, and secured by, the payments received under the Master Settlement Agreement. The Bonds issued to purchase the Fund's right, title, and interest in the Residual Bond are obligations of the Corporation payable solely from, and secured by, the payments received under the Residual Bond. The Corporation has no taxing power. The Bonds shall contain on their face a statement containing all of the above. Nothing contained in the Bonds, or in the related financing or closing documents, shall create an obligation on the part of the Corporation or the District to make payments with respect to the Bonds from sources other than the payments received by the Corporation under the Master Settlement Agreement or under the Fund under the Residual Bond.

(7) Regardless of their form or character, the Bonds are negotiable instruments for all purposes of Title 28, subject only to the provisions of the bonds and notes for registration.

(8) No official, employee, or agent of the Corporation or the District shall be held personally liable solely because the Bonds are issued.

(9) The District pledges, which pledge the Corporation may include in any agreement with the holders of the Bonds, to the Corporation that the District will:

(i) Continue to diligently enforce the Model Statute against all tobacco product manufacturers selling tobacco products in the District that are not signatories to the Master Settlement Agreement;

(ii) Enforce the District's rights to receive the payments to be made to the District pursuant to the Master Settlement Agreement to the full extent permitted by the terms of the Master Settlement Agreement;

(iii) Not amend the Master Settlement Agreement in any way that would materially impair the rights of the holders of Bonds;

(iv) Not limit or alter rights vested in the Corporation to fulfill agreements made with holders of the Bonds; or

(v) Not in any way impair the rights and remedies of the holders of the Bonds until the Bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the Bonds are fully met and discharged.

(10) The signature of an officer of the Corporation that appears on the Bonds, including Bonds not yet issued or delivered, shall remain valid notwithstanding that the person has ceased to hold that office.

(11) The Bonds, and the interest thereon, shall be exempt from District taxation, except estate, inheritance, and gift taxes.

(12) During a control period (as defined in § 47-392.09), a resolution of the board of directors of Corporation authorizing the issuance of the Bonds shall be submitted to the District of Columbia Financial Responsibility and Management Assistance Authority ("Authority") for certification in accordance with § 47-392.04. A certification issued by the Authority during a control period shall be effective for purposes of this subsection for Bonds issued pursuant to the resolution of the board of directors of the Corporation whether the Bonds are issued during or after the control period.

(d) In addition to any other powers or authority conferred by this section or subchapter, the Corporation shall have all the powers of a corporate body under the laws of the District to the extent not inconsistent with or restricted by the provisions of this section or subchapter, including the power to:

- (1) Adopt, amend, repeal, and enforce bylaws, rules, regulations, and procedures as it determines appropriate to the governance of its affairs and the conduct of its business and which are not inconsistent with this section;
- (2) Sue and be sued, and to complain and defend, in its own name;
- (3) Adopt, alter, and use a corporate seal, which shall be judicially noticed; provided, that the absence of the seal on a contract or other document shall not affect its validity;
- (4) Acquire, purchase, hold, lease, sell, assign, pledge, or convey real and personal property, contract rights, general intangibles, revenues, moneys, and accounts as may be proper or expedient to carry out the purposes of the Corporation and this subchapter, and to assign, convey, sell, transfer, lease, or otherwise dispose of such property;
- (5) Elect, appoint, and employ such officers, agents, and employees as the Corporation deems advisable to operate and manage the affairs of the Corporation, and to define their duties and fix, adjust, and define their compensation as it determines to be appropriate;
- (6) Make, execute, or perform contracts, commitments, agreements, trust indentures, and other instruments and agreements, including, as approved by its board of directors, investment contracts, swap agreements and other hedging transactions, liquidity facilities, insurance agreements, or reinsurance agreements, necessary, or convenient to accomplish the purposes of the Corporation and this subchapter;
- (7) Select, retain, and employ professionals, contractors, or agents which are necessary, or convenient to enable or assist the Corporation in carrying out the purposes of the Corporation;
- (8) Indemnify or insure members of the board and officers of the Corporation as it determines appropriate;
- (9) Purchase insurance or self-insure against loss in connection with its property and other assets or other risks, in such amounts and from such insurers as it determines appropriate; and
- (10) Perform any act not inconsistent with federal or District law necessary or convenient to carry out the purposes of the Corporation.

(e)(1) The Corporation shall be governed by a board of directors consisting of 5 members. One member shall be the Chief Financial Officer (or, if the office is vacated, and until a successor is appointed, the acting Chief Financial Officer), one member shall be the Mayor or his designee (or, if the office is vacated, and until a successor is appointed, the acting Mayor or his designee), one member shall be the Chairman of the Council of the District or his designee (or, if the position is vacated, and until a successor is appointed, the acting Chairman), and 2 members shall be private citizens ("independent members"). Actions of the board shall be determined by a majority vote of the members unless a unanimous vote of all of the members will be required by the by-laws of the Corporation for certain purposes; provided, that the affirmative vote of the independent members shall be required for the issuance of the Bonds.

(2) One of the independent members of the board of directors shall be appointed by the Mayor and one shall be appointed by the Council within 30 calendar days after October 19, 2000, or 180 days after the date of a vacancy. Each of the independent members of the board shall serve a term of 4 years, except that an independent member selected to fill a vacancy occurring before the end of the term for which his predecessor was selected shall only serve until the end of the term. A member may serve after the expiration of his term until his successor has taken office.

(3) The members shall serve without compensation for their membership, but may receive, or be reimbursed for, the actual, reasonable, and necessary expenses incurred in the performance of their official duties.

(f) All operating and administrative expenses of the Corporation and costs of issuance of the Bonds shall be paid by the Corporation out of payments received by the Corporation under the Master Settlement Agreement and from the proceeds of the Bonds.

(g) Upon the request of the Corporation, the Mayor and the governing officer or body of each instrumentality of the District, by delegation, contract, or agreement, may direct that personnel or other resources of a District department, office, agency, establishment, or instrumentality be made available to the Corporation on a full cost reimbursable basis to carry out the Corporation's duties. Personnel detailed to the Corporation under this subsection shall not be considered employees of the Corporation, but shall remain employees of the department, agency, establishment, or instrumentality from which the employees were detailed. With the consent of an executive agency, department, or independent agency of the federal government or the District government, the Corporation may use the information, services, staff, and facilities of the department or agency on a full cost reimbursable basis.

(h)(1) The existence of the Corporation shall be perpetual; provided, that the board of directors, by majority vote (including both of the independent members), may dissolve the Corporation when the Bonds and all

other obligations of the Corporation incurred with respect to the issuance of the Bonds have been repaid, or their repayment has been provided for fully, and the existence of the Corporation shall terminate when adequate provision has been made for all other debts and obligations, and the winding up of the affairs, of the Corporation. No assets or earnings of the Corporation shall inure to a private person or entity.

(2) As long as the Bonds are outstanding:

(A) The Corporation shall not dissolve or file a voluntary petition under any bankruptcy legislation in effect from time to time or sell all, or substantially all, of its assets;

(B) No public officer, organization, entity, or other person may authorize the Corporation to be or become a debtor under any bankruptcy legislation in effect from time to time; and

(C) The Corporation shall not take any action that materially and adversely affects the rights of the holders of the Bonds or other obligations issued by it.

(i) All assets and income of the Corporation shall be exempt from District taxation.

(j) The Corporation shall have the same fiscal year as the District.

(k) An independent accountant, appointed by the board of directors of the Corporation, shall conduct an annual audit of the accounts and records of the Corporation.

(l) No District laws, rules, or orders governing procurement or administrative procedures or personnel shall apply to the Corporation, its activities, board members, officers, or employees, except as otherwise provided for in this subchapter.

(m)(1) Notwithstanding any other provisions of this section, the Corporation shall select the underwriter or placement agent for the Bonds (not including the Residual Bond) and legal counsel, including bond counsel, by competitive sealed bidding. The contracts shall be awarded on the basis of lowest evaluated bid price (as the term is defined in § 2-351.04(31)). In evaluating the bids, the following factors shall be considered:

(A) The type of business or organization and its history;

(B) The resumes and professional qualifications of the business or organization's staff, including relevant professional licenses, affiliations, and specialties;

(C) Information attesting to financial capability, including financial statements;

(D) A summary of similar contracts awarded to the bidder, and the bidder's performance of those contracts;

(E) A statement attesting to compliance with wage, hour, workplace safety, and other standards of labor law;

(F) A statement attesting to compliance with federal and District equal employment opportunity law; and

(G) Information about pending lawsuits or investigations, and judgments, indictments, or convictions against the bidder or its proprietors, partners, directors, officers, or managers.

(2) The invitation for bids shall state that the selection shall be made on the basis of the lowest evaluated bid price. The Corporation shall provide public notice of the invitation for bids of not less than 10 working days. Public notice of an invitation for bids shall include publication in a newspaper of general circulation, and in trade publications considered to be appropriate by the Corporation to give adequate public notice.

(3) Bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, with the name of the bidder, shall be recorded and be open to public inspection. The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid will be most advantageous to the Corporation, considering price and other factors as set forth in paragraph (1) of this subsection.

(Oct. 19, 2000, D.C. Law 13-172, § 3704, 47 DCR 6308; Oct. 21, 2000, D.C. Law 13-176, § 8(d)(3), 47 DCR 6835; July 25, 2006, D.C. Law 16-142, § 3(c), 53 DCR 4412; Mar. 14, 2007, D.C. Law 16-294, § 10, 54 DCR 1086; Sept. 26, 2012, D.C. Law 19-171, § 211, 59 DCR 6190.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Effect of Amendments*

D.C. Law 13-176, in par. (m)(2), substituted "10 working days" for "30 days".

Section 9 of D.C. Law 13-176 provides:

"Rule of construction.

"To the extent that provisions of this act conflict with any order of the Financial Responsibility and Management Assistance Authority ('Financial Authority'), issued pursuant to section 207(d) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 the provisions of the Financial



Authority Order shall govern."

D.C. Law 16-142, in subsec. (b), substituted "by the District and the Residual Bond, issuing" for "by the District), issuing", substituted "Purchase Agreement or the Residual Bond Purchase Agreement and" for "Purchase Agreement and", and substituted "including financing the costs of the National Capital Medical Center indebtedness of the District, to finance or refinance the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District, or other capital projects, repayment, refinancing," for "including repayment, refinancing,;" in par. (c)(1), substituted "to finance or refinance" for "to refinance", substituted "the financing or refinancing of the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings" for "the refinancing of, capital projects and other undertakings" and deleted the last sentence which had read: "The refinancing of capital projects and other undertakings of the District shall include the refinancing, repayment, or defeasance of general obligation debt of the District incurred for capital projects and other undertakings.;" in subpar. (c)(2)(B)(i), substituted "Corporation;" for "Corporation; and"; in subpar. (c)(2)(B)(ii), substituted "taxable basis; and" for "taxable basis.;" added subpar. (c)(2)(B)(iii); in par. (c)(3), substituted "subchapter II of this chapter, and the terms and conditions of the Remainder Certificate, if any, shall be consistent with the provisions of the Residual Bond Purchase Agreement and shall provide that the payments under the Master Settlement Agreement after payment in full of all Bonds outstanding shall be paid to the Tobacco Settlement Trust Fund established by subchapter II of this chapter." for "subchapter II of this chapter.;" in par. (c)(6), substituted "The Bonds issued to purchase the District's right, title, and interest in the Master Settlement Agreement are special obligations of the Corporation payable solely from, and secured by, the payments received under the Master Settlement Agreement. The Bonds issued to purchase the Fund's right, title, and interest in the Residual Bond are obligations of the Corporation payable solely from, and secured by, the payments received under the Residual Bond." for "The Bonds are special obligations of the Corporation payable solely from, and secured by, the payments received under the Master Settlement Agreement.", and substituted "Settlement Agreement or under the Fund under the Residual Bond." for "Settlement Agreement." in the last sentence; and rewrote par. (c)(9), which had read as follows:

"(9) The District pledges to the Corporation and the holders of the Bonds that the District will not limit or alter rights vested in the Corporation to fulfill agreements made with holders of the Bonds, or in any way impair the rights and remedies of the holders of the Bonds until the Bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the Bonds are fully met and discharged. The Corporation may include this pledge of the District in any agreement with the holders of the Bonds."

D.C. Law 16-294, in subsec. (b), substituted "District) and the Residual Bond" for "District and the Residual Bond)".

D.C. Law 19-171, in subsec. (m)(1), substituted "§ 2-351.04(31)" for "§ 2- 301.07(25)".

#### *Temporary Amendments of Section*

For temporary (225 day) amendment of the Fiscal Year 2001 Budget Support Temporary Amendment Act of 2000, see §§ 2(d), 3(d) of (D.C. Law 13-197, October 21, 2000, law notification 47 DCR 8987).

#### *Emergency Act Amendments*

For temporary (90-day) addition of section, see notes following § 7-1831.01.

For temporary (90-day) amendment of section, see §§ 2(c) and 3(c) of the Fiscal Year 2001 Budget Support Emergency Amendment Act of 2000 (D.C. Act 13-381, July 24, 2000, 47 DCR 6695).

For temporary (90 day) additions, see §§ 3702 to 3707 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

#### *Legislative History of Laws*

For Law 13-172, see notes following § 7-1811.01.

Law 13-176, the "State Education Office Establishment Act of 2000," was introduced in Council and assigned Bill No. 13-416, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 6, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 26, 2000, it was assigned Act No. 13-187 and transmitted to both Houses of Congress for its review. D.C. Law 13-176 became effective on October 21, 2000.

For Law 16-142, see notes following § 7-1811.01.

Law 16-294, the "Second Technical Amendments Act of 2006", was introduced in Council and assigned Bill No. 16-996, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-653 and transmitted to both Houses of Congress for its review. D.C. Law 16-294 became effective on March 14, 2007.

For history of Law 19-171, see notes under § 7-242.

## **§ 7-1831.04. TRUE SALE.**

(a) The transfer of the District's right, title, and interest in and to the Master Settlement Agreement to the Corporation or any assignee which the parties have in the governing documentation expressly stated to be a sale or other absolute transfer shall be treated as an absolute transfer of all of the District's right, title, and interest, as in a true sale, and not as a pledge or other financing, of the District's right, title, and interest in and to the Master Settlement Agreement, including the moneys payable or received thereunder and any interest thereon (except for the first payment of \$16.05 million which has already been received by the District). The grant to the holders of the Bonds of a security interest in, and a lien on, all of the Corporation's right, title, and interest in and to the Master Settlement Agreement, including the moneys payable or received thereunder and any interest thereon (except for the first payment of \$16.05 million which has already been received by the District), the provision by the District of any credit enhancement with respect to the Bonds, or the characterization of the transaction for accounting purposes or securities regulation shall not impair or negate the characterization of any transfer as a true sale. The transfer of the District's right, title, and interest in and to the Master Settlement Agreement to the Corporation or any assignee shall be deemed perfected as against third persons having claims in tort, contract, or otherwise, including any judicial lien creditors, when a sale or transfer of the right, title, and interest in and to the Master Settlement Agreement in writing has been executed and delivered by the District to the Corporation or any assignee.

(b) The transfer of the Fund's right, title, and interest in and to the Residual Bond to the Corporation or any assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer shall be treated as an absolute transfer of all of the Fund's right, title, and interest, as in a true sale, and not as a pledge or other financing, of the Fund's right, title, and interest in and to the Residual Bond, including the moneys payable or received thereunder and any interest thereon. The grant to the holders of the Bonds of a security interest in, and a lien on, all of the Fund's right, title, and interest in and to the Residual Bond, including the moneys payable or received thereunder and any interest thereon, the provision by the Fund or the District of any credit enhancement with respect to the Bonds (other than the Residual Bond), or the characterization of the transaction for accounting purposes or securities regulation shall not impair or negate the characterization of any transfer as a true sale. The transfer of the Fund's right, title, and interest in and to the Residual Bond to the Corporation or any assignee shall be deemed perfected as against third persons having claims in tort, contract, or otherwise, including any judicial lien creditors, when a sale or transfer of the right, title, and interest in and to the Residual Bond in writing has been executed and delivered by the Fund to the Corporation or any assignee.

(Oct. 19, 2000, D.C. Law 13-172, § 3705, 47 DCR 6308; July 25, 2006, D.C. Law 16-142, § 3(d), 53 DCR 4412.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Effect of Amendments*

D.C. Law 16-142, designated the existing text of section as subsec. (a); and added subsec. (b).

#### *Emergency Act Amendments*

For temporary (90-day) addition of section, see notes following § 7-1831.01.

For temporary (90 day) amendment of section, see §§ 3702 to 3707 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

#### *Legislative History of Laws*

For Law 13-172, see notes following § 7-1811.01.

For Law 16-142, see notes following § 7-1811.01.

## **§ 7-1831.05. SEVERABILITY.**

If a provision of this subchapter or its application to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provisions or application.

(Oct. 19, 2000, D.C. Law 13-172, § 3706, 47 DCR 6308.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Emergency Act Amendments*

For temporary (90-day) addition of section, see notes following § 7-1831.01.

For temporary (90 day) amendment of section, see §§ 3702 to 3707 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

#### *Legislative History of Laws*

For Law 13-172, see notes following § 7-1811.01.

### **§ 7-1831.06. TERMINATION.**

This subchapter shall expire on September 30, 2001, if the Bonds (other than the Residual Bond) are not sold and issued. In the event of such expiration, all the assets of the Corporation shall vest in the District.

(Oct. 19, 2000, D.C. Law 13-172, § 3707, 47 DCR 6308.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Emergency Act Amendments*

For temporary (90-day) addition of section, see notes following § 7-1831.01.

For temporary (90 day) amendment of section, see §§ 3702 to 3707 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

##### *Legislative History of Laws*

For Law 13-172, see notes following § 7-1811.01.