

Stricken language would be deleted from and underlined language would be added to present law.
Act 929 of the Regular Session

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H3/18/21

A Bill

HOUSE BILL 1683

By: Representative L. Johnson

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS CODE REGARDING
PROCEDURAL ENHANCEMENTS TO ENFORCEMENT MECHANISMS OF
THE MASTER SETTLEMENT AGREEMENT CONCERNING THE
ARKANSAS TOBACCO PRODUCTS TAX ACT OF 1977; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS CODE REGARDING
PROCEDURAL ENHANCEMENTS TO ENFORCEMENT
MECHANISMS OF THE MASTER SETTLEMENT
AGREEMENT CONCERNING THE ARKANSAS TOBACCO
PRODUCTS TAX ACT OF 1977.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 26-57-1303(a)(5), concerning the additional certification to the Attorney General required of nonparticipating tobacco product manufacturers, is amended to add an additional subdivision to read as follows:

(J) That the nonparticipating manufacturer has posted the bond required by § 26-57-1308 and provided proof to the Attorney General of the posting of the bond required by § 26-57-1308.

SECTION 2. Arkansas Code § 26-57-1303(a)(10), concerning the directory prepared by the Attorney General of participating and nonparticipating tobacco product manufacturers, is amended to read as follows:

(10) A tobacco product manufacturer shall certify that it is in



compliance with all applicable requirements imposed under federal law and federal regulations related to the manufacturer and distribution of cigarettes.

(11)(A) It is unlawful for a person to submit a certification required by this section that asserts the truth of any material matter that the person knows to be false or inaccurate.

(B) In addition to any other provision of law, the Attorney General may seek a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) against a person that violates this subsection.

(C) A civil penalty collected under this section is general revenue of the state.

SECTION 3. Arkansas Code § 26-57-1303(b)(3)(C), concerning the directory of cigarettes approved for stamping and sale, is amended to read as follows:

(C) The total nationwide reported sales of cigarettes on which federal excise tax is paid exceeds the sum of its nationwide reports under 15 U.S.C. § 376, as it existed on January 1, 2011, and any interstate reports by more than five percent (5%) of its total sales ~~or one million (1,000,000) cigarettes, whichever is less,~~ unless the nonparticipating manufacturer cures or satisfactorily explains the discrepancy within thirty (30) days after receiving notice of the discrepancy.

SECTION 4. Arkansas Code § 26-57-1303(b)(4)(C), concerning tobacco product manufacturers not included in the directory maintained by the Attorney General, is amended to read as follows:

(C)(i) The tobacco product manufacturer ~~and~~ or the tobacco product manufacturer's brand families, whether or not listed by the nonparticipating manufacturer, have been removed, excluded, or is otherwise ineligible for listing from the directory of another state based on acts or omissions that would, if done in this state, serve as a basis for removal from the directory maintained by the Attorney General under this section, unless the tobacco product manufacturer demonstrates that ~~its~~ the removal from the other state's directory was effected without due process.

(ii) A tobacco product manufacturer that is removed or excluded from the state directory, or is otherwise ineligible for listing

in the state directory under this subsection ~~shall~~ may be eligible for relisting in the directory described in this subsection ~~on the earlier of the date on which the tobacco product manufacturer cures~~ upon the curing of the violation ~~or the date on which the tobacco product manufacturer is reinstated to the directory in the other state.~~

SECTION 5. Arkansas Code § 26-57-1304(c)(1), concerning the requirement that a nonparticipating manufacturer have an agent for service of process, is amended to read as follows:

(c)(1) Any nonparticipating manufacturer whose cigarettes are sold in this state or has funds deposited under §§ 26-57-260 and 26-57-261, and who has not appointed and engaged an agent as required by this subchapter shall be deemed to have appointed the Secretary of State as the agent and may be proceeded against in courts of this state by service of process upon the Secretary of State.

SECTION 6. Arkansas Code § 26-57-1305(e)(1)(B), concerning quarterly escrow installments for tobacco products manufacturers, is amended to read as follows:

(B) Quarterly installments of escrow deposits required under subdivision (e)(1)(A) of this section shall be deposited into a qualified escrow account established to receive escrow deposits required by §§ 26-57-260 and 26-57-261 not later than ~~twenty (20)~~ thirty (30) calendar days after the end of the quarter in which the sales were made.

SECTION 7. Arkansas Code § 26-57-1306(f), concerning penalties and other remedies against a tobacco product manufacturer, is amended to read as follows:

(f)(1) In addition to any other provision of law, the Attorney General may seek a civil penalty in an amount not to exceed five hundred dollars (\$500) per day for:

(A) The knowing failure of a wholesaler to timely or accurately comply with § 26-57-1305(a); or

(B) The failure of a wholesaler to timely comply with § 26-57-1305(a).

(2) A civil penalty collected under this section is general

revenue of the state.

SECTION 8. Arkansas Code § 26-57-1308 is amended to read as follows:
26-57-1308. Bond.

~~(a) If a newly qualified nonparticipating manufacturer is to be listed in the directory maintained by the Attorney General under § 26-57-1303 or if the Attorney General determines that a nonparticipating manufacturer who has filed a certification under § 26-57-1303 poses an elevated risk for noncompliance with either § 26-57-1305 or §§ 26-57-260 and 26-57-261, the nonparticipating manufacturer and the nonparticipating manufacturer's brand families shall not be included in the directory unless the nonparticipating manufacturer or its United States importer that undertakes joint and several liability for the nonparticipating manufacturer's performance under § 26-57-1307 has posted a bond in accordance with this section.~~

~~(b)(1) The bond required under subsection (a) of this section shall be posted by corporate surety located within the United States in an amount equal to the greater of fifty thousand dollars (\$50,000) or the amount of escrow the manufacturer in either its current form or predecessor form was required to deposit as a result of its previous two (2) calendar quarters sales in the state.~~

~~(2) The bond required under subsection (a) of this section shall be written in favor of the state and shall be conditioned on the performance by the nonparticipating manufacturer or its United States importer that undertakes joint and several liability for the manufacturer's performance under § 26-57-1307 of all of the nonparticipating manufacturer's duties and obligations under § 26-57-1305 or §§ 26-57-260 and 26-57-261.~~

~~(c) A nonparticipating manufacturer may be deemed to pose an elevated risk for noncompliance with this section if:~~

~~(1) The nonparticipating manufacturer or any affiliate thereof has underpaid an escrow obligation with respect to any state during the calendar year or within the past three (3) calendar years unless:~~

~~(A) The manufacturer did not knowingly or recklessly make an underpayment, and the manufacturer promptly cured the underpayment within one hundred eighty (180) days of receiving the notice of the underpayment; or~~

~~(B) The underpayment or lack of payment is the subject of a good faith dispute as documented to the satisfaction of the Attorney~~

~~General, and the underpayment is cured within one hundred eighty (180) days of entry of a final order establishing the amount of the required escrow payment;~~

~~(2) A state has removed the manufacturer, the manufacturer's brands or brand families, an affiliate of the manufacturer, or any of the affiliate's brands or brand families from the state's tobacco directory for noncompliance with the state's law during the calendar year or within the past three (3) calendar years; or~~

~~(3) A state has litigation pending against, or an unsatisfied judgment against, the manufacturer or any affiliate of the manufacturer for escrow, penalties, costs, or attorney's fees related to noncompliance with state escrow laws.~~

~~(d) A newly qualified nonparticipating manufacturer may be required to post a bond under this section for the first three (3) years of the newly qualified nonparticipating manufacturer's listing or longer if the newly qualified nonparticipating manufacturer has been deemed to pose an elevated risk for noncompliance.~~

(a)(1) A nonparticipating manufacturer shall post a bond with the Attorney General as a condition of the inclusion of its brand families in the state directory.

(2) Proof that the bond has been posted shall be submitted as part of the annual and quarterly certifications required by this subchapter.

(b) The bond shall be in effect at least ten (10) days in advance of each calendar quarter.

(c) The amount of the bond shall be the greater of:

(1) The highest required escrow amount due from the nonparticipating manufacturer or its predecessor for any one (1) of the twelve (12) previous calendar quarters; or

(2) Fifty thousand dollars (\$50,000).

(d) The bond shall be written in favor of the State of Arkansas and shall be conditioned on the performance by the nonparticipating manufacturer of all obligations imposed under §§ 26-57-260 and 26-57-261, including any fees, penalties, or related financial obligations.

(e)(1) If a nonparticipating manufacturer that posted a bond has failed to make or have made on its behalf deposits equal to the full amount owed for a quarter within fifteen (15) days following the due date of the

quarter, the state may execute on the bond in the amount equal to any amount of the escrow due.

(2) Amounts that the state collects on a bond shall be general revenue of the state and shall reduce the amount of escrow due from that nonparticipating manufacturer in the dollar amount collected.

(3) Escrow obligations above the amount collected on the bond remain due from that nonparticipating manufacturer and from the importers that sold its cigarettes during that calendar quarter.

(f)(1) The state may also execute on the bond after having obtained a judgment against a nonparticipating manufacturer.

(2) Any financial obligations, including fees and penalties, recoverable under §§ 26-57-260 and 26-57-261 shall be covered by the bond.

(3) Any amounts collected on the bond shall first be allocated to reduce any escrow obligation by payment into the State Treasury.

(g) The Attorney General may adopt rules necessary to implement this section.

SECTION 9. Arkansas Code Title 26, Chapter 57, Subchapter 13, is amended to add an additional section to read as follows:

26-57-1309. Assignment of funds placed into escrow.

(a)(1) Notwithstanding § 26-57-261, a tobacco product manufacturer that elects to place funds into escrow may make an irrevocable assignment of its interest in the funds to the benefit of the state.

(2) The assignment shall be permanent and shall apply to all funds in the subject escrow account at the time of assignment or that may subsequently come into such account, including those deposited into the escrow account prior to the assignment being executed, those deposited into the escrow account after the assignment is executed, and interest or other appreciation on such funds.

(3) Any interest or other appreciation withdrawn from the subject escrow account before the time of assignment shall not be a part of the assignment.

(4) The tobacco product manufacturer, the Attorney General, and the financial institution where the escrow account is maintained shall make such amendments to the qualified escrow account agreement, title to the account, and the account itself as may be necessary to effectuate an

irrevocable assignment of rights executed under this section or a withdrawal or payment of funds from the escrow account under § 26-57-261.

(5) An assignment of rights executed under this section shall be in writing, signed by a duly authorized representative of the tobacco product manufacturer making the assignment, and shall become effective upon delivery of the assignment to the Attorney General and the financial institution where the escrow account is maintained.

(b)(1) Any escrow funds assigned to the state under this section shall be available to be withdrawn by the state upon approval of the Attorney General.

(2) Any funds withdrawn under subdivision (b)(1) of this section shall be deposited into the Tobacco Settlement Cash Holding Fund under § 19-12-104 and shall be calculated on a dollar-for-dollar basis as a credit against any judgment or settlement in favor of the state as part of the Master Settlement Agreement under § 26-57-261 against the tobacco product manufacturer that has assigned the funds in the subject escrow account.

(c) This section does not relieve a tobacco product manufacturer from any past, current, or future obligations that the tobacco product manufacturer may have under this subchapter.

/s/L. Johnson

APPROVED: 4/26/21