

1 HB449
2 157965-1
3 By Representative Clouse
4 RFD: Ways and Means General Fund
5 First Read: 11-FEB-14

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8 SYNOPSIS: Under current law, tobacco manufacturers
9 which are not signatory to the tobacco master
10 settlement agreement are required to deposit funds
11 into escrow to secure payment of potential
12 liability for tobacco related illnesses.

13 This bill would amend Sections 6-12-2,
14 6-12-3, 6-12A-2, 6-12A-3, and 6-12A-5, Code of
15 Alabama 1975, relating to the tobacco escrow fund
16 provisions and tobacco master settlement
17 complementary legislation, so as to define an
18 importer of tobacco products, to further define
19 "units sold" to include cigarettes sold to certain
20 consumers without payment of the cigarette excise
21 tax and exclusion of certain cigarettes made in
22 certain tax exempt transactions, to make the
23 importer jointly and severally liable with the
24 tobacco products manufacturer of cigarettes for
25 escrow deposit obligations, to provide for seizure
26 and forfeiture of cigarettes for failure to deposit
27 funds into escrow, to require both the

1 nonparticipating manufacturer and importer or
2 importers of cigarettes to appoint agents for
3 service of process, to require the nonparticipating
4 manufacturer to hold a valid permit under 26 U.S.C.
5 § 5713, to provide for nonparticipating
6 manufacturer bond requirements, and to further
7 provide for disclosure of information.

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9 A BILL
10 TO BE ENTITLED
11 AN ACT

12
13 To amend Sections 6-12-2, 6-12-3, 6-12A-2, 6-12A-3,
14 and 6-12A-5, Code of Alabama 1975, relating to the Tobacco
15 Master Settlement and Tobacco Escrow Fund; to define an
16 importer of tobacco products, to further define "unit sold" to
17 include cigarettes sold to certain consumers without payment
18 of the cigarette excise tax and exclusion of certain
19 cigarettes made in certain tax exempt transactions, to make
20 the importer jointly and severally liable with the tobacco
21 products manufacturer of cigarettes for escrow deposit
22 obligation; to provide for seizure and forfeiture of
23 cigarettes for failure to deposit funds into escrow; to
24 require both the nonparticipating manufacturer and importer or
25 importers of cigarettes to appoint agents for service of
26 process; to require the nonparticipating manufacturer to hold
27 a valid permit under 26 U.S.C. § 5713; to provide for

1 nonparticipating manufacturer bond requirements; and to
2 further provide for disclosure of information.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 6-12-2, 6-12-3, 6-12A-2,
5 6-12A-3, and 6-12A-5, Code of Alabama 1975, are amended to
6 read as follows:

7 "§6-12-2.

8 "As used in this chapter, the following terms shall
9 have the following meanings:

10 "(1) ADJUSTED FOR INFLATION. Increased in accordance
11 with the formula for inflation adjustment set forth in Exhibit
12 C to the Master Settlement Agreement.

13 "(2) AFFILIATE. A person who directly or indirectly
14 owns or controls, is owned or controlled by, or is under
15 common ownership or control with, another person. Solely for
16 purposes of this definition, the terms "owns," "is owned" and
17 "ownership" mean ownership of an equity interest, or the
18 equivalent thereof, of ten percent or more, and the term
19 "person" means an individual, partnership, committee,
20 association, corporation, or any other organization or group
21 of persons.

22 "(3) ALLOCABLE SHARE. Allocable share as that term
23 is defined in the Master Settlement Agreement.

24 "(4) CIGARETTE. Any product that contains nicotine,
25 is intended to be burned or heated under ordinary conditions
26 of use, and consists of or contains (i) any roll of tobacco
27 wrapped in paper or in any substance not containing tobacco;

1 or (ii) tobacco, in any form, that is functional in the
2 product, which, because of its appearance, the type of tobacco
3 used in the filler, or its packaging and labeling, is likely
4 to be offered to, or purchased by, consumers as a cigarette;
5 or (iii) any roll of tobacco wrapped in any substance
6 containing tobacco which, because of its appearance, the type
7 of tobacco used in the filler, or its packaging and labeling,
8 is likely to be offered to, or purchased by, consumers as a
9 cigarette described in item (i). The term "cigarette" includes
10 "roll-your-own", i.e. any tobacco which, because of its
11 appearance, type, packaging, or labeling is suitable for use
12 and likely to be offered to, or purchased by, consumers as
13 tobacco for making cigarettes. For purposes of this definition
14 of cigarette, 0.09 ounces of roll-your-own tobacco shall
15 constitute one individual cigarette.

16 "(5) IMPORTER. Any person in the United States to
17 whom non-tax paid tobacco products or cigarette papers or
18 tubes, or any processed tobacco, manufactured in a foreign
19 country, Puerto Rico, the Virgin Islands, or a possession of
20 the United States are shipped or consigned; any person who
21 removes cigars or cigarettes for sale or consumption in the
22 United States from a customs bonded manufacturing warehouse;
23 and any person who smuggles or otherwise unlawfully brings
24 tobacco products or cigarette papers or tubes, or any
25 processed tobacco, into the United States. Federal judicial
26 and administrative determinations and precedents of 26 U.S.C.

1 § 5702(k), as it exists from time to time, may be considered
2 in interpreting this term.

3 "~~(5)~~(6) MASTER SETTLEMENT AGREEMENT. The settlement
4 agreement, and related documents, entered into on November 23,
5 1998, by the state and leading United States tobacco product
6 manufacturers.

7 "~~(6)~~(7) QUALIFIED ESCROW FUND. An escrow arrangement
8 with a federally or state chartered financial institution
9 having no affiliation with any tobacco product manufacturer
10 and having assets of at least one billion dollars
11 (\$1,000,000,000), where such arrangement requires that such
12 financial institution hold the escrowed funds' principal for
13 the benefit of releasing parties and prohibits the tobacco
14 product manufacturer placing the funds into escrow from using,
15 accessing, or directing the use of the funds' principal except
16 as consistent with subdivision (2) of Section 6-12-3.

17 "~~(7)~~(8) RELEASED CLAIMS. Released claims as that
18 term is defined in the Master Settlement Agreement.

19 "~~(8)~~(9) RELEASING PARTIES. Releasing parties as that
20 term is defined in the Master Settlement Agreement.

21 "~~(9)~~(10) TOBACCO PRODUCT MANUFACTURER. An entity
22 that, after June 9, 1999, directly, and not exclusively
23 through any affiliate:

24 "a. Manufactures cigarettes anywhere that such
25 manufacturer intends to be sold in the United States,
26 including cigarettes intended to be sold in the United States
27 through an importer (except where such importer is an original

1 participating manufacturer, as that term is defined in the
2 Master Settlement Agreement, that will be responsible for the
3 payments under the Master Settlement Agreement with respect to
4 such cigarettes as a result of the provisions of subsections
5 II(mm) of the Master Settlement Agreement and that pays the
6 taxes specified in subsection II(z) of the Master Settlement
7 Agreement, and provided that the manufacturer of such
8 cigarettes does not market or advertise such cigarettes in the
9 United States);

10 "b. Is the first purchaser anywhere for resale in
11 the United States of cigarettes manufactured anywhere that the
12 manufacturer does not intend to be sold in the United States;
13 or

14 "c. Becomes a successor of an entity described in
15 paragraph a. or b.

16 "The term "Tobacco Product Manufacturer" shall not
17 include an affiliate of a tobacco product manufacturer unless
18 such affiliate itself falls within any of a., b., or c. above.

19 "~~(10)~~(11) UNITS SOLD. The number of individual
20 cigarettes sold in the state by the applicable tobacco product
21 manufacturer, whether directly or through a distributor,
22 retailer, or similar intermediary or intermediaries, during
23 the year in question, as measured by excise taxes collected by
24 the state on packs, or roll-your-own tobacco containers,
25 bearing the excise tax stamp of the state. In addition to, and
26 without limiting the foregoing, the term "units sold" shall
27 also include the number of individual cigarettes sold in the

1 state by the tobacco product manufacturer, whether directly or
2 through a distributor, retailer, or similar intermediary or
3 intermediaries, during the year in question, as to which the
4 state had power to, but did not, impose and/or collect excise
5 tax. This term specifically includes cigarettes which were not
6 sold in a transaction that is exempted from Alabama taxation
7 by federal statute or constitution but which are: a.
8 cigarettes sold to a consumer without payment of the cigarette
9 excise tax on the reservation lands of a federally recognized
10 Native American tribe; b. cigarettes sold for retail sale in
11 Alabama which were exempted from taxation pursuant to Chapter
12 9, Article 1 of Title 40 and/or any rule or regulation
13 promulgated pursuant thereto; and c. cigarettes sold by a
14 seller located outside of Alabama directly to a consumer in
15 this state, without payment of the cigarette excise tax, via
16 mail order, telephone, Internet, or other remote means. The
17 Department of Revenue ~~shall~~ may promulgate such regulations as
18 are necessary to ascertain the amount of state excise tax paid
19 on the cigarettes of such tobacco product manufacturer for
20 each year.

21 "§6-12-3.

22 "(a) Any tobacco product manufacturer selling
23 cigarettes to consumers within the state, whether directly or
24 through a distributor, retailer, or similar intermediary or
25 intermediaries, after June 9, 1999, shall do one of the
26 following:

1 "(1) Become a participating manufacturer, as that
2 term is defined in Section II(jj) of the Master Settlement
3 Agreement, and generally perform its financial obligations
4 under the Master Settlement Agreement; or

5 "(2) a. Place into a qualified escrow fund, by April
6 15 of the year following the year in question, the following
7 amounts, as such amounts are adjusted for inflation:

8 "1999: \$.0094241 per unit sold after June 9, 1999;

9 "2000: \$.0104712 per unit sold;

10 "For each of 2001 and 2002: \$.0136125 per unit sold;

11 "For each of 2003 through 2006: \$.0167539 per unit
12 sold;

13 "For each of 2007 and each year thereafter:
14 \$.0188482 per unit sold.

15 "b. A tobacco product manufacturer that places funds
16 into escrow pursuant to paragraph a. shall receive the
17 interest or other appreciation on such funds as earned. Such
18 funds themselves shall be released from escrow only under one
19 of the following circumstances:

20 "1. To pay a judgment or settlement on any released
21 claim brought against such tobacco product manufacturer by the
22 state or any releasing party located or residing in the state.
23 Funds shall be released from escrow under this subparagraph
24 (i) in the order in which they were placed into escrow and
25 (ii) only to the extent and at the time necessary to make
26 payments required under such judgment or settlement;

1 "2. To the extent that a tobacco product
2 manufacturer establishes that the amount it was required to
3 place into escrow on account of units sold in the state in a
4 particular year was greater than the Master Settlement
5 Agreement payments, as determined pursuant to Section IX(i) of
6 that agreement, including, after final determination of all
7 adjustments, that such manufacturer would have been required
8 to make on account of such units sold had it been a
9 participating manufacturer, the excess shall be released from
10 escrow and revert back to such tobacco product manufacturer;
11 or

12 "3. To the extent not released from escrow under
13 subparagraphs 1. or 2., funds shall be released from escrow
14 and revert back to such tobacco product manufacturer 25 years
15 after the date on which they were placed into escrow.

16 "c. Each tobacco product manufacturer that elects to
17 place funds into escrow pursuant to this section shall
18 annually certify to the Commissioner of the Department of
19 Revenue that it is in compliance with this section. The
20 Attorney General may bring a civil action on behalf of the
21 state against any tobacco product manufacturer that fails to
22 place into escrow the funds required under this section. Any
23 tobacco product manufacturer that fails in any year to place
24 into escrow the funds required under this section shall:

25 "1. Be required within 15 days to place such funds
26 into escrow as shall bring it into compliance with this
27 section. The court, upon a finding of a violation of this

1 section, may impose a civil penalty to be paid to the General
2 Fund of the state in an amount not to exceed 5 percent of the
3 amount improperly withheld from escrow per day of the
4 violation and in a total amount not to exceed 100 percent of
5 the original amount improperly withheld from escrow;

6 "2. In the case of a knowing violation, be required
7 within 15 days to place such funds into escrow as shall bring
8 it into compliance with this section. The court, upon a
9 finding of a knowing violation of this section, may impose a
10 civil penalty to be paid to the General Fund of the state in
11 an amount not to exceed 15 percent of the amount improperly
12 withheld from escrow per day of the violation and in a total
13 amount not to exceed 300 percent of the original amount
14 improperly withheld from escrow; and

15 "3. In the case of a second knowing violation, be
16 prohibited from selling cigarettes to consumers within the
17 state, whether directly or through a distributor, retailer, or
18 similar intermediary, for a period not to exceed 2 years.

19 "Each failure to make an annual deposit required
20 under this section shall constitute a separate violation.

21 "(b) In the case of units sold which are cigarettes
22 manufactured outside the United States and imported into the
23 United States by an importer:

24 "(1) Importers of the cigarettes shall be jointly
25 and severally liable with the tobacco product manufacturer of
26 the cigarettes for the escrow deposits required under
27 subsection (a) (2).

1 "(2) Importers of the cigarettes may be sued under
2 subsection (a)(2)c. to the same extent as the tobacco product
3 manufacturer, and shall be subject to all of the same civil
4 penalties, remedies, or other relief that may be awarded
5 against the tobacco product manufacturer of the cigarettes as
6 provided in that subsection.

7 "(3) If the importer of the cigarettes fails or
8 refuses within 15 days of the Revenue Commissioner's or the
9 Attorney General's written demand to deposit the funds into
10 escrow for which it is jointly and severally liable under
11 subsection (b)(1), all cigarettes imported into the United
12 States by the importer shall constitute contraband in the
13 State of Alabama as provided in Section 6-12A-6(b) and shall
14 be subject to seizure and forfeiture as provided under that
15 section.

16 "§6-12A-2.

17 "For the purposes of this chapter, unless otherwise
18 indicated, the following terms shall have the meanings
19 respectively ascribed to them by this section:

20 "(1) BRAND FAMILY. All styles of cigarettes sold
21 under the same trade mark and differentiated from one another
22 by means of additional modifiers or descriptors, including,
23 but not limited to, menthol, lights, kings, and 100s and
24 includes any brand name (alone or in conjunction with any
25 other word) trademark, logo, symbol, motto, selling message,
26 recognizable pattern of colors, or any other indicia of

1 product identification identical or similar to, or
2 identifiable with, a previously known brand of cigarettes.

3 "(2) CIGARETTE. As defined under subdivision (4) of
4 Section 6-12-2.

5 "(3) COMMISSIONER. The Commissioner for the
6 Department of Revenue for the State of Alabama.

7 "(4) DISTRIBUTOR. A person, wherever resident or
8 located, who purchases non-tax-paid cigarettes and stores,
9 sells, or otherwise disposes of the cigarettes.

10 "(5) IMPORTER. As defined in subdivision (5) of
11 Section 6-12-2.

12 "~~(5)~~ (6) MASTER SETTLEMENT AGREEMENT. The tobacco
13 Master Settlement Agreement as defined under subdivision (5)
14 of Section 6-12-2.

15 "~~(6)~~ (7) NON-PARTICIPATING MANUFACTURER. Any tobacco
16 product manufacturer that is not a participating manufacturer.

17 "~~(7)~~ (8) PARTICIPATING MANUFACTURER. As defined in
18 Section II(jj) of the Master Settlement Agreement, and all
19 amendments thereto.

20 "~~(8)~~ (9) QUALIFIED ESCROW FUND. As defined in
21 subdivision (6) of Section 6-12-2.

22 "~~(9)~~ (10) TOBACCO PRODUCT MANUFACTURER. As defined in
23 subdivision (9) of Section 6-12-2.

24 "~~(10)~~ (11) UNITS SOLD. As defined in subdivision (10)
25 of Section 6-12-2.

26 "~~(11)~~ (12) WHOLESALER. A person, firm, corporation,
27 club, or association that is authorized to affix tax stamps to

1 packages or other containers of cigarettes under Chapter 25 of
2 Title 40.

3 "§6-12A-3.

4 "(a) Certification. Every tobacco product
5 manufacturer whose cigarettes are sold in this state whether
6 directly or through a distributor, retailer, or similar
7 intermediary or intermediaries shall execute and deliver on a
8 form prescribed by the commissioner, a certification to the
9 commissioner no later than the thirtieth day of April each
10 year, certifying that, as of the date of the certification,
11 the tobacco product manufacturer either: Is a participating
12 manufacturer or is in full compliance with Section 6-12-3,
13 including all quarterly installment payments required by
14 subsection (e) of Section 6-12A-5.

15 "(1) Each participating manufacturer shall include
16 in its certification a list of its brand families. The
17 participating manufacturer shall update its list 30 days prior
18 to any addition or modification to its brand families by
19 executing and delivering a supplemental certification to the
20 commissioner.

21 "(2) Each non-participating manufacturer shall
22 include in its certification:

23 "a. A complete list of all of its brand families.

24 "b. A separate listing containing the names of the
25 brand families of cigarettes and the number of units sold for
26 each brand family in the state during the preceding calendar
27 year.

1 "c. A separate listing containing the names of its
2 brand families that have been sold in the state at any time
3 during the current calendar year.

4 "d. An indication by an asterisk of the names of any
5 brand family sold in the state during the preceding calendar
6 year that are no longer being sold in the state as of the date
7 of the certification.

8 "e. An identification by name and address of any
9 other manufacturer of any of the listed brand families in the
10 preceding or current calendar year.

11 "f. In the case of cigarettes, brands, or brand
12 families imported into the United States by one or more
13 importers, an identification by name and address of any and
14 all importers of the cigarettes.

15 "Each non-participating manufacturer shall update
16 its list at least 30 days prior to any addition or
17 modification to its list of brand families by executing and
18 delivering a supplemental certification to the commissioner.

19 "(3) Additionally, each non-participating
20 manufacturer shall further certify in its certification:

21 "a. That ~~it is~~ both the nonparticipating
22 manufacturer, and, if applicable, the importer of the
23 cigarettes, are registered to do business in the state or has
24 appointed an agent for service of process and provided notice
25 thereof as required by Section 6-12A-4.

26 "b. That it has:

1 "1. Established and continues to maintain a
2 qualified escrow fund.

3 "2. Executed a qualified escrow agreement that has
4 been reviewed and approved by the commissioner and that
5 governs the qualified escrow fund.

6 "c. That it is in full compliance with Section
7 6-12-3 and this chapter, and any regulations promulgated
8 pursuant thereto.

9 "d.1. The name, address, and telephone number of the
10 financial institution where it has established the qualified
11 escrow fund required pursuant to Section 6-12-3 and all
12 regulations promulgated thereto.

13 "2. The account number of the qualified escrow fund
14 and any sub-account number for the State of Alabama.

15 "3. The amount the non-participating manufacturer
16 placed in the qualified escrow fund for cigarettes sold in the
17 state during the preceding calendar year, the date and amount
18 of each deposit, and any evidence or verification as may be
19 deemed necessary by the commissioner to confirm the foregoing.

20 "4. The amount and date of any withdrawal or
21 transfer of funds the non-participating manufacturer made at
22 any time from the qualified escrow fund or from any other
23 qualified escrow fund into which escrow payments were ever
24 made pursuant to Section 6-12-3 and all regulations
25 promulgated thereto.

1 "5. That it, and if applicable, the importer of the
2 cigarettes, holds a current and valid permit under 26 U.S.C. §
3 5713.

4 "(4) A participating manufacturer may not include a
5 brand family in its certification unless it affirms that the
6 brand family is to be deemed to be its cigarettes for purposes
7 of calculating its payments under the Master Settlement
8 Agreement for the relevant year, in the volume and shares
9 determined pursuant to the Master Settlement Agreement.

10 "(5) A non-participating manufacturer may not
11 include a brand family in its certification unless it affirms
12 that the brand family is to be deemed to be its cigarettes for
13 purposes of Section 6-12-3.

14 "(6) Nothing in this section shall be construed as
15 limiting or otherwise affecting the state's right to maintain
16 that a brand family constitutes cigarettes of a different
17 tobacco product manufacturer for purposes of calculating
18 payments under the Master Settlement Agreement or for purposes
19 of Section 6-12-3.

20 "(7) The tobacco product manufacturers shall
21 maintain all invoices and documentation of sales and any other
22 information relied upon for certification for a period of five
23 years, unless otherwise required by law to maintain them for a
24 greater period of time.

25 "(b) Directory of cigarettes approved for stamping
26 and sale. Not later than 90 days after August 1, 2003, the
27 commissioner shall compile and make available for public

1 inspection a directory listing all tobacco product
2 manufacturers that have provided current and accurate
3 certifications conforming to the requirements of subsection
4 (a), and all brand families that are listed in the
5 certifications, except as noted below.

6 "(1) The commissioner shall not include or retain in
7 the directory the name or brand families of any
8 non-participating manufacturer that fails or has failed to
9 provide the required certification or whose certification the
10 commissioner determines is not in compliance with subdivisions
11 (2) and (3) of subsection (a), unless the commissioner has
12 determined that each violation has been cured.

13 "(2) Neither a tobacco product manufacturer nor a
14 brand family shall be included or retained in the directory if
15 the commissioner concludes either of the following:

16 "a. Any escrow payment required pursuant to Section
17 6-12-3, for any period for any brand family, whether or not
18 listed by the non-participating manufacturer, has not been
19 fully paid into a qualified escrow fund governed by a
20 qualified escrow agreement that has been approved by the
21 commissioner.

22 "b. Any outstanding final judgment, including
23 interest thereon, for a violation of Section 6-12-3, has not
24 been fully satisfied for the brand family or the manufacturer.

25 "c. That the tobacco product manufacturer is
26 required under subsection (f) of Section 6-12A-5 to provide a
27 bond and has not done so.

1 "d. That the tobacco product manufacturer has failed
2 or refused to provide the documents or information requested
3 by the commissioner in order to promote compliance with the
4 requirements of this chapter.

5 "(3) The commissioner shall update the directory as
6 necessary in order to correct mistakes and to add or remove a
7 tobacco product manufacturer or brand family to keep the
8 directory in conformity with the requirements of this chapter.
9 The commissioner, in addition to any notice requirements in
10 Section 40-2A-8, shall transmit by electronic mail or other
11 practicable means to each wholesaler, stamping agent, or
12 distributor notice of any addition to or removal from the
13 directory of any tobacco product manufacturer or brand family.
14 The wholesaler, stamping agent, or distributor shall have 30
15 days from receipt of notice from the department regarding the
16 change in the directory to sell the brand family that is
17 delisted. No delisted brand family may be sold after the 30
18 day period.

19 "(4) Every wholesaler and distributor shall provide
20 and update as necessary an electronic mail address to the
21 commissioner for the purpose of receiving any notifications as
22 may be required by this chapter.

23 "(c) Prohibition against stamping, sale, or import
24 of cigarettes not in the directory. It shall be unlawful for
25 any person to do either of the following:

1 "(1) Affix a stamp to a package or other container
2 of cigarettes of a tobacco product manufacturer or brand
3 family not included in the directory.

4 "(2) Sell, offer, or possess for sale in this state,
5 or import for personal consumption in this state, cigarettes
6 of a tobacco product manufacturer or brand family not included
7 in the directory.

8 "§6-12A-5.

9 "(a) Reporting by wholesalers and distributors. Not
10 later than 20 days after the end of each month, and more
11 frequently if so directed by the commissioner, each wholesaler
12 and distributor shall submit all the information the
13 commissioner requires to facilitate compliance with this
14 chapter, including, but not limited to, a list by brand family
15 of the total number of cigarettes or in the case of roll your
16 own, the equivalent stick count for which the wholesalers and
17 distributors affixed stamps during the previous month or
18 otherwise paid the tax due for any cigarettes. The wholesaler
19 or distributor shall maintain, and make available to the
20 commissioner, all invoices and documentation of sales of all
21 non-participating manufacturer cigarettes and any other
22 information relied upon in reporting to the commissioner for a
23 period of five years.

24 "(b) Disclosure of information. ~~The commissioner is~~
25 ~~authorized to disclose any information received under this~~
26 ~~chapter for purposes of determining compliance with and~~
27 ~~enforcing this chapter. The commissioner may share the~~

1 ~~information received under this chapter with other federal,~~
2 ~~state, or local agencies only for purposes of enforcement of~~
3 ~~this chapter, Chapter 12, or corresponding laws of other~~
4 ~~states.~~ Notwithstanding any other law or regulation including
5 Section 40-2A-10, the commissioner is hereby authorized to
6 disclose, in the commissioner's discretion, any information
7 received under this chapter, Chapter 12 of this title, or
8 Chapter 25 of Title 40, for purposes of the proper
9 administration of any matter administered by the Department of
10 Revenue, including, but not limited to, determining compliance
11 with and enforcing this chapter, Chapter 12 of this title, and
12 Chapter 25 of Title 40, and in determining the proper amount
13 of any payment, offset, adjustment, or refund pursuant to the
14 master settlement agreement or any agreement related thereto.

15 "(c) Verification of qualified escrow fund. The
16 commissioner may require at any time from the
17 non-participating manufacturer proof, from the financial
18 institution in which the manufacturer has established a
19 qualified escrow fund for the purpose of compliance with
20 Section 6-12-3, of the amount of money in the fund, exclusive
21 of interest, the amount and date of each deposit, and the
22 amount and date of each withdrawal from the fund.

23 "(d) Requests for additional information. In
24 addition to the information required to be submitted herein,
25 the commissioner may require a wholesaler or distributor or
26 tobacco product manufacturer to submit any additional
27 information including, but not limited to, samples of the

1 packaging or labeling of each brand family, as is necessary to
2 determine whether a tobacco product manufacturer is in
3 compliance with this chapter.

4 "(e) Quarterly escrow installments. To promote
5 compliance with this chapter, the commissioner may promulgate
6 regulations requiring a tobacco product manufacturer subject
7 to the requirements of subdivision (2) of subsection (a) of
8 Section 6-12A-3, to make the escrow deposits required in
9 quarterly installments during the year in which the sales
10 covered by the deposits are made. The commissioner may require
11 production of information sufficient to determine the adequacy
12 of the amount of the installment deposit.

13 "(f) (1) A nonparticipating manufacturer shall post a
14 bond for the benefit of the state if: a. its cigarettes were
15 not sold in the state during any one of the four preceding
16 calendar quarters; b. it or any person affiliated with it
17 failed to make a full and timely escrow deposit due under
18 Section 6-12-3 or subsection (e) of Section 6-12A-5 during any
19 of the five preceding calendar years, unless the failure was
20 not knowing or reckless and was promptly cured upon notice; or
21 c. it or any person affiliated with it, or any of its brands
22 or brands of a person affiliated with it, were removed from
23 the state directory of any state during any of the five
24 preceding calendar years, unless the removal was judicially
25 determined to have been erroneous or illegal. Entities are
26 affiliated with each other if one directly, or indirectly

1 through one or more intermediaries, controls or is controlled
2 by or is under common control with the other.

3 "(2) The bond shall be posted at least 10 days in
4 advance of each calendar quarter as a condition to the
5 nonparticipating manufacturer and its brand families being
6 included in the state directory for that quarter. The amount
7 of the bond shall be the greater of: a. the greatest required
8 escrow amount due from the nonparticipating manufacturer or
9 its predecessor for any of the 12 preceding calendar quarters;
10 or b. twenty-five thousand dollars (\$25,000).

11 "(3) If a nonparticipating manufacturer that posted
12 a bond has failed to make or have made on its behalf deposits
13 equal to the full amount owed for a quarter within 15 days
14 following the due date for the quarter under subsection (e) of
15 Section 6-12A-5, the state may execute upon the bond in the
16 amount equal to any remaining amount of the escrow due.
17 Amounts the state collects on a bond shall be deposited into
18 the State General Fund and shall reduce the amount of escrow
19 due from that nonparticipating manufacturer in the dollar
20 amount collected. Escrow obligations above the amount
21 collected on the bond remain due from the nonparticipating
22 manufacturer and any importer liable as provided in Section
23 6-12-3(b).

24 "(4) The bond required under this subsection must be
25 a good and sufficient bond executed by a surety company
26 licensed and authorized to do business in Alabama and shall be

1 conditioned to pay the escrow requirements as well as any
2 penalties or other charges under this chapter.

3 "(5) The commissioner may promulgate rules and
4 regulations necessary to implement this subsection including
5 acceptable forms and types of bonds."

6 Section 2. The provisions of this act are severable.
7 If any part of this act is declared invalid or
8 unconstitutional, that declaration shall not affect the part
9 which remains.

10 Section 3. All laws or parts of laws which conflict
11 with this act are repealed.

12 Section 4. This act shall become effective
13 immediately following its passage and approval by the
14 Governor, or its otherwise becoming law.