

1 HB449  
2 158719-3  
3 By Representative Clouse  
4 RFD: Ways and Means General Fund  
5 First Read: 11-FEB-14

1 ENGROSSED

2  
3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

8 To amend Sections 6-12-2, 6-12-3, 6-12A-2, 6-12A-3,  
9 and 6-12A-5 of the Code of Alabama 1975, to define an importer  
10 of tobacco products, to further define "units sold" to include  
11 cigarettes sold to certain consumers without payment of the  
12 cigarette excise tax and exclusion of certain cigarettes made  
13 in certain tax-exempt transactions, to make the importer  
14 jointly and severally liable with the tobacco products  
15 manufacturer of cigarettes for escrow deposit obligations, to  
16 provide for seizure and forfeiture of cigarettes for failure  
17 to deposit funds into escrow, to require both the  
18 non-participating manufacturer and importer or importers of  
19 cigarettes to appoint agents for service of process, to  
20 require the non-participating manufacturer to hold a valid  
21 permit under 26 U.S.C. Section 5713, to provide for  
22 non-participating manufacturer bond requirements, and to  
23 further provide for disclosure of information.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 6-12-2, 6-12-3, 6-12A-2,  
26 6-12A-3, and 6-12A-5, Code of Alabama 1975 are hereby amended  
27 as follows:

1 §6-12-2

2 Definitions.

3 As used in this chapter, the following terms shall  
4 have the following meanings:

5 (1) ADJUSTED FOR INFLATION. Increased in accordance  
6 with the formula for inflation adjustment set forth in Exhibit  
7 C to the Master Settlement Agreement.

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

17 (3) ALLOCABLE SHARE. Allocable share as that term is  
18 defined in the Master Settlement Agreement.

19 (4) CIGARETTE. Any product that contains nicotine,  
20 is intended to be burned or heated under ordinary conditions  
21 of use, and consists of or contains (i) any roll of tobacco  
22 wrapped in paper or in any substance not containing tobacco;  
23 or (ii) tobacco, in any form, that is functional in the  
24 product, which, because of its appearance, the type of tobacco  
25 used in the filler, or its packaging and labeling, is likely  
26 to be offered to, or purchased by, consumers as a cigarette;  
27 or (iii) any roll of tobacco wrapped in any substance

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

11 (5) IMPORTER. Any person in the United States to  
12 whom non-tax paid tobacco products or cigarette papers or  
13 tubes, or any processed tobacco, manufactured in a foreign  
14 country, Puerto Rico, the Virgin Islands, or a possession of  
15 the United States are shipped or consigned; any person who  
16 removes cigars or cigarettes for sale or consumption in the  
17 United States from a customs bonded manufacturing warehouse;  
18 and any person who smuggles or otherwise unlawfully brings  
19 tobacco products or cigarette papers or tubes, or any  
20 processed tobacco, into the United States. Federal judicial  
21 and administrative determinations and precedents of 26 U.S.C.  
22 § 5702(k), as it exists from time to time, may be considered  
23 in interpreting this term.

24 (5)(6) MASTER SETTLEMENT AGREEMENT. The settlement  
25 agreement, and related documents, entered into on November 23,  
26 1998, by the state and leading United States tobacco product  
27 manufacturers.

1           ~~(6)~~(7) QUALIFIED ESCROW FUND. An escrow arrangement  
2 with a federally or state chartered financial institution  
3 having no affiliation with any tobacco product manufacturer  
4 and having assets of at least one billion dollars  
5 (\$1,000,000,000), where such arrangement requires that such  
6 financial institution hold the escrowed funds' principal for  
7 the benefit of releasing parties and prohibits the tobacco  
8 product manufacturer placing the funds into escrow from using,  
9 accessing, or directing the use of the funds' principal except  
10 as consistent with subdivision (2) of Section 6-12-3.

11           ~~(7)~~(8) RELEASED CLAIMS. Released claims as that term  
12 is defined in the Master Settlement Agreement.

13           ~~(8)~~(9) RELEASING PARTIES. Releasing parties as that  
14 term is defined in the Master Settlement Agreement.

15           ~~(9)~~(10) TOBACCO PRODUCT MANUFACTURER. An entity  
16 that, after June 9, 1999, directly, and not exclusively  
17 through any affiliate:

18           a. Manufactures cigarettes anywhere that such  
19 manufacturer intends to be sold in the United States,  
20 including cigarettes intended to be sold in the United States  
21 through an importer (except where such importer is an original  
22 participating manufacturer, as that term is defined in the  
23 Master Settlement Agreement, that will be responsible for the  
24 payments under the Master Settlement Agreement with respect to  
25 such cigarettes as a result of the provisions of subsections  
26 II(mm) of the Master Settlement Agreement and that pays the  
27 taxes specified in subsection II(z) of the Master Settlement

1 Agreement, and provided that the manufacturer of such  
2 cigarettes does not market or advertise such cigarettes in the  
3 United States);

4 b. Is the first purchaser anywhere for resale in the  
5 United States of cigarettes manufactured anywhere that the  
6 manufacturer does not intend to be sold in the United States;  
7 or

8 c. Becomes a successor of an entity described in  
9 paragraph a. or b.

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

13 ~~(10)~~ (11) UNITS SOLD. The number of individual  
14 cigarettes sold in the state by the applicable tobacco product  
15 manufacturer, whether directly or through a distributor,  
16 retailer, or similar intermediary or intermediaries, during  
17 the year in question, as measured by excise taxes collected by  
18 the state on packs, or roll-your-own tobacco containers,  
19 bearing the excise tax stamp of the state. In addition to and  
20 without limiting the foregoing, the term "units sold" shall  
21 also include the number of individual cigarettes sold in the  
22 state by the tobacco product manufacturer, whether directly or  
23 through a distributor, retailer, or similar intermediary or  
24 intermediaries, during the year in question, as to which the  
25 state had power to under federal law, but did not, impose  
26 and/or collect excise tax. Without limiting the foregoing,  
27 this term specifically includes the following cigarettes,

1 provided such cigarettes were not sold in a transaction that  
2 is exempted from Alabama taxation by federal statute or  
3 constitution: (i) cigarettes sold to a consumer without  
4 payment of the cigarette excise tax on the reservation lands  
5 of a federally-recognized Native American tribe, (ii)  
6 cigarettes sold for retail sale in Alabama which were exempted  
7 from taxation pursuant to Chapter 9, Article 1 of Title 40  
8 and/or any rule or regulation promulgated pursuant thereto,  
9 and (iii) cigarettes sold by a seller located outside of  
10 Alabama directly to a consumer in this state, without payment  
11 of the cigarette excise tax, via mail order, telephone,  
12 internet, or other remote means. The Department of Revenue  
13 shall promulgate such regulations as are necessary to  
14 ascertain the amount of state excise tax paid on the  
15 cigarettes of such tobacco product manufacturer for each year.

16 §6-12-3

17 Election between settlement and escrow fund.

18 (a) Any tobacco product manufacturer selling  
19 cigarettes to consumers within the state, whether directly or  
20 through a distributor, retailer, or similar intermediary or  
21 intermediaries, after June 9, 1999, shall do one of the  
22 following:

23 (1) Become a participating manufacturer, as that  
24 term is defined in Section II(jj) of the Master Settlement  
25 Agreement, and generally perform its financial obligations  
26 under the Master Settlement Agreement; or

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

4           1999: \$.0094241 per unit sold after June 9, 1999;

5           2000: \$.0104712 per unit sold;

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

7           For each of 2003 through 2006: \$.0167539 per unit  
8 sold;

9           For each of 2007 and each year thereafter: \$.0188482  
10 per unit sold.

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

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

23           2. To the extent that a tobacco product manufacturer  
24 establishes that the amount it was required to place into  
25 escrow on account of units sold in the state in a particular  
26 year was greater than the Master Settlement Agreement  
27 payments, as determined pursuant to Section IX(i) of that



1 agreement, including, after final determination of all  
2 adjustments, that such manufacturer would have been required  
3 to make on account of such units sold had it been a  
4 participating manufacturer, the excess shall be released from  
5 escrow and revert back to such tobacco product manufacturer;  
6 or

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

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

20 1. Be required within 15 days to place such funds  
21 into escrow as shall bring it into compliance with this  
22 section. The court, upon a finding of a violation of this  
23 section, may impose a civil penalty to be paid to the General  
24 Fund of the state in an amount not to exceed 5 percent of the  
25 amount improperly withheld from escrow per day of the  
26 violation and in a total amount not to exceed 100 percent of  
27 the original amount improperly withheld from escrow;

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

10           3. In the case of a second knowing violation, be  
11 prohibited from selling cigarettes to consumers within the  
12 state, whether directly or through a distributor, retailer, or  
13 similar intermediary, for a period not to exceed 2 years.

14           Each failure to make an annual deposit required  
15 under this section shall constitute a separate violation.

16           (b) In the case of units sold which are cigarettes  
17 manufactured outside the United States and imported into the  
18 United States by an importer:

19           (1) Importers of the cigarettes shall be jointly and  
20 severally liable with the tobacco product manufacturer of the  
21 cigarettes for the escrow deposits required under subsection  
22 (a) (2) of this section;

23           (2) Importers of the cigarettes may be sued under  
24 subsection (a) (2)c. of this section to the same extent as the  
25 tobacco product manufacturer, and shall be subject to all of  
26 the same civil penalties, remedies, or other relief that may

1 be awarded against the tobacco product manufacturer of the  
2 cigarettes as provided in that subsection; and

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

12 §6-12A-2

13 Definitions.

14 For the purposes of this chapter, unless otherwise  
15 indicated, the following terms shall have the meanings  
16 respectively ascribed to them by this section:

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

26 (2) CIGARETTE. As defined under subdivision (4) of  
27 Section 6-12-2.

1 (3) COMMISSIONER. The Commissioner for the  
2 Department of Revenue for the State of Alabama.

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

6 (5) IMPORTER. As defined under subdivision (5) of  
7 Section 6-12-2.

8 ~~(5)~~(6) MASTER SETTLEMENT AGREEMENT. The tobacco  
9 Master Settlement Agreement as defined under subdivision (5)  
10 of Section 6-12-2.

11 ~~(6)~~(7) NON-PARTICIPATING MANUFACTURER. Any tobacco  
12 product manufacturer that is not a participating manufacturer.

13 ~~(7)~~(8) PARTICIPATING MANUFACTURER. As defined in  
14 Section II(jj) of the Master Settlement Agreement, and all  
15 amendments thereto.

16 ~~(8)~~(9) QUALIFIED ESCROW FUND. As defined in  
17 subdivision (6) of Section 6-12-2.

18 ~~(9)~~(10) TOBACCO PRODUCT MANUFACTURER. As defined in  
19 subdivision (9) of Section 6-12-2.

20 ~~(10)~~(11) UNITS SOLD. As defined in subdivision (10)  
21 of Section 6-12-2.

22 ~~(11)~~(12) WHOLESALER. A person, firm, corporation,  
23 club, or association that is authorized to affix tax stamps to  
24 packages or other containers of cigarettes under Chapter 25 of  
25 Title 40.

26 §6-12A-3

1 Tobacco product manufacturer certification;  
2 directory; stamping, sale, or import of cigarettes not in  
3 directory.

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

26 b. That it has:

1           1. Established and continues to maintain a qualified  
2 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 6-12-3  
7 and this chapter, and any regulations promulgated pursuant  
8 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 transfer  
21 of funds the non-participating manufacturer made at any time  
22 from the qualified escrow fund or from any other qualified  
23 escrow fund into which escrow payments were ever made pursuant  
24 to Section 6-12-3 and all regulations promulgated thereto.

25           5. That it and, if applicable, the importer of the  
26 cigarettes, holds a current and valid permit under 26 U.S.C. §  
27 5713.

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

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

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

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

22           (b) Directory of cigarettes approved for stamping  
23 and sale. Not later than 90 days after August 1, 2003, the  
24 commissioner shall compile and make available for public  
25 inspection a directory listing all tobacco product  
26 manufacturers that have provided current and accurate  
27 certifications conforming to the requirements of subsection



1 (a), and all brand families that are listed in the  
2 certifications, except as noted below.

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

10 (2) Neither a tobacco product manufacturer nor a  
11 brand family shall be included or retained in the directory if  
12 the commissioner concludes either of the following:

13 a. Any escrow payment required pursuant to Section  
14 6-12-3, for any period for any brand family, whether or not  
15 listed by the non-participating manufacturer, has not been  
16 fully paid into a qualified escrow fund governed by a  
17 qualified escrow agreement that has been approved by the  
18 commissioner.

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

22 c. That the non-participating manufacturer has not  
23 provided a bond in strict compliance with subsection (f) of  
24 Section 6-12A-5 and the regulations relating thereto.

25 d. That the non-participating manufacturer has  
26 failed or refused to provide the documents or information

1 requested by the commissioner in order to promote compliance  
2 with the requirements of this chapter.

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

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

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

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

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

5           §6-12A-5

6           Reporting to commissioner; disclosure; escrow fund.

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

22           (b) Disclosure of information. Notwithstanding any  
23 other law or regulation including Section 10 of Chapter 2A,  
24 Title 40, the commissioner is hereby authorized to disclose,  
25 in the commissioner's discretion, any information received  
26 under this chapter, Chapter 12 of this Title, or Chapter 25 of  
27 Title 40, for purposes of the proper administration of any

1 matter administered by the Department of Revenue, including  
2 but not limited to determining compliance with and enforcing  
3 this chapter, Chapter 12 of this Title and Chapter 25 of Title  
4 40, and in determining the proper amount of any payment,  
5 offset, adjustment, or refund pursuant to the Master  
6 Settlement Agreement or any agreement related thereto. ~~The~~  
7 ~~commissioner is authorized to disclose any information~~  
8 ~~received under this chapter for purposes of determining~~  
9 ~~compliance with and enforcing this chapter. The commissioner~~  
10 ~~may share the information received under this chapter with~~  
11 ~~other federal, state, or local agencies only for purposes of~~  
12 ~~enforcement of this chapter, Chapter 12, or corresponding laws~~  
13 ~~of other states.~~

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

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

1 determine whether a tobacco product manufacturer is in  
2 compliance with this chapter.

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

12 (f) (1) A non-participating manufacturer shall post a  
13 bond for the benefit of the commissioner, in accordance with  
14 the provisions of this section, which is conditioned that the  
15 non-participating manufacturer shall fully comply with the  
16 escrow obligations of this chapter.

17 (2) The bond shall be posted at least 10 days in  
18 advance of each calendar quarter as a condition to the  
19 non-participating manufacturer and its brand families being  
20 included in the state directory for that quarter. The amount  
21 of the bond shall be the greater of (i) the greatest required  
22 escrow amount due from the non-participating manufacturer or  
23 its predecessor for any of the 12 preceding calendar quarters  
24 or (ii) \$25,000.

25 (3) If a non-participating manufacturer that posted  
26 a bond has failed to make or have made on its behalf deposits  
27 equal to the full amount owed for a quarter within 15 days

1 following the due date for the quarter under subsection (e) of  
2 Section 6-12A-5, the commissioner may execute upon the bond in  
3 the amount equal to any remaining amount of the escrow due  
4 including any applicable penalties or other charges allowable  
5 by law. Amounts the commissioner or the State collects on a  
6 bond shall be deposited into the general fund for the benefit  
7 of the State and shall reduce the amount of escrow due from  
8 that non-participating manufacturer in the dollar amount  
9 collected. Escrow obligations above the amount collected on  
10 the bond remain due from that non-participating manufacturer  
11 and any importer liable as provided in subsection (b) of  
12 Section 6-12-3.

13 (4) The bond required under this subsection must be  
14 a good and sufficient bond executed by a surety company  
15 licensed and authorized to do business in Alabama and shall be  
16 conditioned to pay the escrow requirements as well as any  
17 penalties or other charges under this chapter.

18 (5) The commissioner may promulgate rules and  
19 regulations necessary to implement this subsection including  
20 acceptable forms and types of bonds.

21 Section 2. The provisions of this act are severable.  
22 If any part of this act is declared invalid or  
23 unconstitutional, such declaration shall not affect the part  
24 which remains.

25 Section 3. All laws or parts of laws which conflict  
26 with this act are hereby repealed.

1                   Section 4. This act shall become effective  
2 immediately upon its passage and approval by the Governor, or  
3 upon its otherwise becoming law. However, provisions relating  
4 to the bond requirement of section 6-12-5(f) will not be  
5 effective until 10 days before the beginning of the first  
6 quarter of 2015.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
  
16  
17  
18  
19

House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Ways and Means  
General Fund..... . . . . 11-FEB-14

Read for the second time and placed  
on the calendar with 1 substitute  
and..... . . . . 20-FEB-14

Read for the third time and passed  
as amended..... . . . . 26-FEB-14

Yeas 96, Nays 0, Abstains 0

Jeff Woodard  
Clerk