

The Senate Committee on Finance offered the following substitute to HB 899:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapters 13 and 13A of Title 10 of the Official Code of Georgia Annotated,
2 relating to tobacco product manufacturers and master settlement agreement enhancements,
3 respectively, so as to revise and add certain definitions; to provide for procedures, conditions,
4 and limitations; to provide for responsibilities of cigarette importers and stamping agents; to
5 provide for duties of the Attorney General and the revenue commissioner; to amend Chapter
6 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on tobacco
7 products, so as to clarify applicability in conjunction with other provisions of law; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

10 Chapter 13 of Title 10 of the Official Code of Georgia Annotated, relating to tobacco product
11 manufacturers, is amended by revising Code Section 10-13-2, relating to definitions
12 regarding tobacco product manufacturers, as follows:
13

14 "10-13-2.

15 As used in this chapter, the term:

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

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

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

26 (4) 'Cigarette' means any product that contains nicotine, is intended to be burned or
27 heated under ordinary conditions of use, and consists of or contains (A) any roll of

28 tobacco wrapped in paper or in any substance not containing tobacco; or (B) tobacco, in
 29 any form, that is functional in the product, which, because of its appearance, the type of
 30 tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or
 31 purchased by, consumers as a cigarette; or (C) any roll of tobacco wrapped in any
 32 substance containing tobacco which, because of its appearance, the type of tobacco used
 33 in the filler, or its packaging and labeling, is likely to be offered to, or purchased by,
 34 consumers as a cigarette described in clause (A) of this definition. The term 'cigarette'
 35 includes 'roll-your-own' (i.e., any tobacco which, because of its appearance, type,
 36 packaging, or labeling is suitable for use and likely to be offered to, or purchased by,
 37 consumers as tobacco for making cigarettes). For purposes of this definition of 'cigarette,'
 38 0.09 ounces of 'roll-your-own' tobacco shall constitute one individual 'cigarette.'

39 (5) 'Importer' means any person in the United States to whom nonfederal excise tax-paid
 40 cigarettes manufactured in a foreign country are shipped or consigned, any person who
 41 removes cigarettes for sale or consumption in the United States from a customs bonded
 42 manufacturing warehouse, or any person who smuggles or otherwise unlawfully brings
 43 cigarettes into the United States.

44 (6) 'Master Settlement Agreement' means the settlement agreement (and related
 45 documents) entered into on November 23, 1998, by the state and leading United States
 46 tobacco product manufacturers.

47 ~~(6)~~(7) 'Qualified escrow fund' means an escrow arrangement with a federally or state
 48 chartered financial institution having no affiliation with any tobacco product
 49 manufacturer and having assets of at least \$1 billion where such arrangement requires
 50 that such financial institution hold the escrowed funds' principal for the benefit of
 51 releasing parties and prohibits the tobacco product manufacturer placing the funds into
 52 escrow from using, accessing, or directing the use of the funds' principal except as
 53 consistent with subparagraph (B) of paragraph (2) of Code Section 10-13-3. The
 54 principal balance in the qualified escrow fund must always be maintained so that both the
 55 face value and the cost basis of the account are each equal to or greater than the
 56 accumulated principal deposits.

57 ~~(7)~~(8) 'Released claims' means Released Claims as that term is defined in the Master
 58 Settlement Agreement.

59 ~~(8)~~(9) 'Releasing parties' means Releasing Parties as that term is defined in the Master
 60 Settlement Agreement.

61 ~~(9)~~(10) 'Tobacco product manufacturer' means an entity that after the date of enactment
 62 of this chapter directly (and not exclusively through any affiliate):

63 (A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the
 64 United States, including cigarettes intended to be sold in the United States through an

65 importer (except where such importer is an original participating manufacturer (as that
 66 term is defined in the Master Settlement Agreement) that will be responsible for the
 67 payments under the Master Settlement Agreement with respect to such cigarettes as a
 68 result of the provisions of ~~subsections~~ subsection II(mm) of the Master Settlement
 69 Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement
 70 Agreement, and provided that the manufacturer of such cigarettes does not market or
 71 advertise such cigarettes in the United States);

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

75 (C) Becomes a successor of an entity described in subparagraph (A) or (B) of this
 76 paragraph.

77 The term 'tobacco product manufacturer' shall not include an affiliate of a tobacco product
 78 manufacturer unless such affiliate itself falls within subparagraphs (A) through (C) of this
 79 paragraph.

80 ~~(10)~~(11) 'Units sold' means the number of individual cigarettes sold in the state by the
 81 applicable tobacco product manufacturer (whether directly or through a distributor,
 82 retailer, or similar intermediary or intermediaries) during the year in question, ~~as~~
 83 ~~measured by excise taxes collected by the state on packs (or 'roll-your-own' tobacco~~
 84 ~~containers) bearing the excise tax stamp of the state~~ on packs required to bear a tax stamp
 85 pursuant to Code Section 48-11-3 and on 'roll-your-own' tobacco on which excise tax is
 86 due either by tax stamp or pursuant to an alternate method of taxation. 'Units sold' does
 87 not include cigarettes the purchase or use of which the state is prohibited from taxing
 88 under the Constitution or statutes of the United States. The state revenue commissioner
 89 ~~shall~~ and the Attorney General may promulgate such regulations as are necessary to
 90 ascertain the amount of state excise tax paid on the cigarettes of such tobacco product
 91 manufacturer for each year."

92 SECTION 2.

93 Said chapter is further amended by revising Code Section 10-13-3, relating to deposits into
 94 escrow accounts, as follows:

95 "10-13-3.

96 Any tobacco product manufacturer selling cigarettes to consumers within the state (whether
 97 directly or through a distributor, retailer, or similar intermediary or intermediaries) after the
 98 date of enactment of this chapter shall do one of the following:

- 99 (1) Become a participating manufacturer (as that term is defined in section II(jj) of the
 100 Master Settlement Agreement) and generally perform its financial obligations under the
 101 Master Settlement Agreement; or
- 102 (2)(A) Place into a qualified escrow fund ~~by April 15 of the year following the year in~~
 103 ~~question~~ on a quarterly basis, no later than 30 days after the end of each calendar
 104 quarter in which sales are made, the following amounts (as such amounts are adjusted
 105 for inflation):
- 106 (i) 1999: \$0.0094241 per unit sold after the date of enactment of this chapter;
 - 107 (ii) 2000: \$0.0104712 per unit sold;
 - 108 (iii) For each of 2001 and 2002: \$0.0136125 per unit sold;
 - 109 (iv) For each of 2003 through 2006: \$0.0167539 per unit sold; and
 - 110 (v) For each of 2007 and each year thereafter: \$0.0188482 per unit sold.
- 111 (B) A tobacco product manufacturer that places funds into escrow pursuant to
 112 subparagraph (A) of this paragraph shall receive the interest or other appreciation on
 113 such funds as earned. Such funds themselves shall be released from escrow only under
 114 the following circumstances:
- 115 (i) To pay a judgment or settlement on any released claim brought against such
 116 tobacco product manufacturer by the state or any releasing party located or residing
 117 in the state. Funds shall be released from escrow under this division: (I) in the order
 118 in which they were placed into escrow; and (II) only to the extent and at the time
 119 necessary to make payments required under such judgment or settlement;
 - 120 (ii) To the extent that a tobacco product manufacturer establishes that the amount it
 121 was required to place into escrow on account of units sold in the state in a particular
 122 year was greater than the Master Settlement Agreement payments, as determined
 123 pursuant to section IX(i) of that Agreement including, after final determination of all
 124 adjustments, that such manufacturer would have been required to make on account
 125 of such units sold had it been a participating manufacturer, the excess shall be
 126 released from escrow and revert back to such tobacco product manufacturer; or
 - 127 (iii) To the extent not released from escrow under division (i) or (ii) of this
 128 subparagraph, funds shall be released from escrow and revert back to such tobacco
 129 product manufacturer 25 years after the date on which they were placed into escrow.
- 130 (C) Each tobacco product manufacturer that elects to place funds into escrow pursuant
 131 to this paragraph shall ~~annually~~ quarterly and annually certify to the Attorney General
 132 that it is in compliance with this paragraph. The Attorney General may bring a civil
 133 action on behalf of the state against any tobacco product manufacturer that fails to place
 134 into escrow the funds required under this paragraph. Any tobacco product

135 manufacturer that fails in any calendar quarter or year to place into escrow the funds
 136 required under this paragraph shall:

137 (i) Be required within 15 days to place such funds into escrow as shall bring it into
 138 compliance with this paragraph. The court, upon a finding of a violation of this
 139 paragraph, may impose a civil penalty (to be paid to the general fund of the state) in
 140 an amount not to exceed 5 percent of the amount improperly withheld from escrow
 141 per day of the violation and in a total amount not to exceed 100 percent of the original
 142 amount improperly withheld from escrow;

143 (ii) In the case of a knowing violation, be required within 15 days to place such funds
 144 into escrow as shall bring it into compliance with this Code section. The court, upon
 145 a finding of a knowing violation of this paragraph, may impose a civil penalty (to be
 146 paid to the general fund of the state) in an amount not to exceed 15 percent of the
 147 amount improperly withheld from escrow per day of the violation and in a total
 148 amount not to exceed 300 percent of the original amount improperly withheld from
 149 escrow; and

150 (iii) In the case of a second knowing violation, be prohibited from selling cigarettes
 151 to consumers within the state (whether directly or through a distributor, retailer, or
 152 similar intermediary) for a period not to exceed two years.

153 (D) An importer shall be jointly and severally liable for escrow deposits due from a
 154 nonparticipating manufacturer with respect to any nonparticipating manufacturer
 155 cigarettes that it imported and which were then sold in this state.

156 Each failure to make ~~an~~ a quarterly or annual deposit required under this Code section shall
 157 constitute a separate violation."

158 **SECTION 3.**

159 Chapter 13A of Title 10 of the Official Code of Georgia Annotated, relating to master
 160 settlement agreement enhancements, is repealed and reenacted to read as follows:

161 "CHAPTER 13A

162 10-13A-1.

163 The General Assembly finds that violations of Chapter 13 of this title threaten the integrity
 164 of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the
 165 public health. The General Assembly finds that enacting procedural enhancements will aid
 166 the enforcement of such chapter and thereby safeguard the Master Settlement Agreement,
 167 the fiscal soundness of the state, and the public health.

168 10-13A-2.

169 As used in this chapter, the term:

170 (1) 'Brand family' means all styles of cigarettes sold under the same trademark and
 171 differentiated from one another by means of additional modifiers or descriptors,
 172 including, but not limited to, 'menthol,' 'lights,' 'kings,' and '100s,' and includes any brand
 173 name, alone or in conjunction with any other word, trademark, logo, symbol, motto,
 174 selling message, recognizable pattern of colors, or any other indicia of product
 175 identification identical or similar to or identifiable with a previously known brand of
 176 cigarettes.

177 (2) 'Cigarette' means any product that contains nicotine, is intended to be burned or
 178 heated under ordinary conditions of use, and consists of or contains (A) any roll of
 179 tobacco wrapped in paper or in any substance not containing tobacco; or (B) tobacco, in
 180 any form, that is functional in the product, which, because of its appearance, the type of
 181 tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or
 182 purchased by, consumers as a cigarette; or (C) any roll of tobacco wrapped in any
 183 substance containing tobacco which, because of its appearance, the type of tobacco used
 184 in the filler, or its packaging and labeling, is likely to be offered to, or purchased by,
 185 consumers as a cigarette described in clause (A) of this definition. The term 'cigarette'
 186 includes 'roll-your-own' (i.e., any tobacco which, because of its appearance, type,
 187 packaging, or labeling is suitable for use and likely to be offered to, or purchased by,
 188 consumers as tobacco for making cigarettes). For purposes of this definition of 'cigarette,'
 189 0.09 ounces of 'roll-your-own' tobacco shall constitute one individual 'cigarette.'

190 (3) 'Commissioner' means the state revenue commissioner.

191 (4) 'Dealer' means cigarette and loose and smokeless dealers as defined in paragraphs (7)
 192 and (17) of Code Section 48-11-1.

193 (5) 'Directory' means the directory listing all tobacco product manufacturers that have
 194 provided current and accurate certifications conforming to the requirements of Code
 195 Section 10-13A-3 and all brand families that are listed in such certifications developed
 196 by the Attorney General pursuant to Code Section 10-13A-4, or in the case of reference
 197 to another state's directory, the directory compiled under the similar law of the other state.

198 ~~(5)~~(6) 'Distributor' means any person who:

199 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 200 contact and call on dealers; and

201 (B) Is engaged in the business of:

202 (i) Manufacturing ~~cigars~~ or cigarettes in this state, importing ~~cigars~~ or cigarettes into
 203 this state, or purchasing ~~cigars~~ or cigarettes from other manufacturers or distributors;
 204 and

205 (ii) Selling the ~~cigars or~~ cigarettes to dealers in this state for resale but is not in the
 206 business of selling the ~~cigars or~~ cigarettes directly to the ultimate consumer of the
 207 ~~cigars or~~ cigarettes.

208 (7) 'Importer' means any person in the United States to whom nonfederal excise tax-paid
 209 cigarettes manufactured in a foreign country are shipped or consigned, any person who
 210 removes cigarettes for sale or consumption in the United States from a customs bonded
 211 manufacturing warehouse, or any person who smuggles or otherwise unlawfully brings
 212 cigarettes into the United States.

213 ~~(6)~~(8) 'Master Settlement Agreement' means the settlement agreement (and related
 214 documents) entered into on November 23, 1998, by the state and leading United States
 215 tobacco product manufacturers.

216 ~~(7)~~(9) 'Nonparticipating manufacturer' means any tobacco product manufacturer that is
 217 not a participating manufacturer.

218 (10) 'Package' means any pack or other container on which a state stamp could be
 219 applied consistent with and as required by Code Section 48-11-3 that contains one or
 220 more individual cigarettes for sale. Nothing in this paragraph shall alter any other
 221 applicable requirements with respect to the minimum number of cigarettes that may be
 222 contained in a pack or other container of cigarettes. References to package do not include
 223 a container of multiple packages.

224 ~~(8)~~(11) 'Participating manufacturer' has the meaning given that term in subsection II(jj)
 225 of the Master Settlement Agreement and all amendments thereto.

226 (12) 'Person' means any natural person, trustee, company, partnership, corporation, or
 227 other legal entity.

228 (13) 'Purchase' means any acquisition in any manner or by any means for any
 229 consideration. The term includes transporting or receiving product in connection with
 230 a purchase.

231 (14) 'Qualified escrow fund' means an escrow arrangement with a federally or state
 232 chartered financial institution having no affiliation with any tobacco product
 233 manufacturer and having assets of at least \$1 billion where such arrangement requires
 234 that such financial institution hold the escrowed funds' principal for the benefit of
 235 releasing parties and prohibits the tobacco product manufacturer placing the funds into
 236 escrow from using, accessing, or directing the use of the funds' principal except as
 237 consistent with subparagraph (B) of paragraph (2) of Code Section 10-13-3. The
 238 principal balance in the qualified escrow fund must always be maintained so that both the
 239 face value and the cost basis of the account are each equal to or greater than the
 240 accumulated principal deposits.

241 (15) 'Sale or sell' means any transfer, exchange, or barter in any manner or by any means
 242 for any consideration. Sale or sell includes distributing or shipping product in connection
 243 with a sale. References to sale 'in' or 'into' a state refers to the state of the destination
 244 point of the product in the sale, without regard to where title was transferred. References
 245 to sale 'from' the state refers to the sale of cigarettes that are located in the state to the
 246 destination in question without regard to where title was transferred.

247 (16) 'Stamping agent' means any person that is authorized to affix stamps to packages or
 248 other containers of cigarettes under Code Section 48-11-3 or any person that is required
 249 to pay the excise tax under the alternate method of taxation, if so prescribed pursuant to
 250 Code Section 48-11-3 on 'roll-your-own' tobacco.

251 ~~(9) 'Qualified escrow fund' means an escrow arrangement with a federally or state~~
 252 ~~chartered financial institution having no affiliation with any tobacco product~~
 253 ~~manufacturer and having assets of at least \$1 billion where such arrangement requires~~
 254 ~~that such financial institution hold the escrowed funds' principal for the benefit of~~
 255 ~~releasing parties and prohibits the tobacco product manufacturer placing the funds into~~
 256 ~~escrow from using, accessing, or directing the use of the funds' principal except as~~
 257 ~~consistent with subparagraph (B) of paragraph (2) of Code Section 10-13-3.~~

258 ~~(10)~~(17) 'Tobacco product manufacturer' means an entity that after April 28, 1999:

259 (A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the
 260 United States, including cigarettes intended to be sold in the United States through an
 261 importer (except where such importer is an original participating manufacturer (as that
 262 term is defined in the Master Settlement Agreement) that will be responsible for the
 263 payments under the Master Settlement Agreement with respect to such cigarettes as a
 264 result of the provisions of subsection II(mm) of the Master Settlement Agreement and
 265 that pays the taxes specified in subsection II(z) of the Master Settlement Agreement,
 266 and provided that the manufacturer of such cigarettes does not market or advertise such
 267 cigarettes in the United States);

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

271 (C) Becomes a successor of an entity described in subparagraph (A) or (B) of this
 272 paragraph.

273 The term tobacco product manufacturer shall not include an affiliate of a tobacco product
 274 manufacturer unless such affiliate itself falls within subparagraphs (A) through (C) of this
 275 paragraph.

276 ~~(11)~~(18) 'Units sold' means the number of individual cigarettes sold in the state by the
 277 applicable tobacco product manufacturer (whether directly or through a distributor,

278 retailer, or similar intermediary or intermediaries) during the year in question, ~~as~~
 279 ~~measured by excise taxes collected by the state on packs (or 'roll-your-own' tobacco~~
 280 ~~containers) bearing the excise tax stamp of the state. on cigarette packs required to bear~~
 281 ~~a tax stamp pursuant to Code Section 48-11-3 and on 'roll-your-own' tobacco on which~~
 282 ~~excise tax is due either by tax stamp or pursuant to an alternate method of taxation. 'Units~~
 283 ~~sold' does not include cigarettes the purchase or use of which the state is prohibited from~~
 284 ~~taxing under the Constitution or statutes of the United States. The state revenue~~
 285 ~~commissioner ~~shall~~ and the Attorney General may promulgate such regulations as are~~
 286 necessary to ascertain the amount of state excise tax paid on cigarettes of such tobacco
 287 product manufacturer for each year.

288 10-13A-3.

289 (a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether
 290 directly or through a distributor, retailer, or similar intermediary or intermediaries, shall
 291 execute and deliver in the manner prescribed by the Attorney General a certification to the
 292 commissioner and Attorney General, no later than the thirtieth day of April each year,
 293 certifying that, as of the date of such certification, such tobacco product manufacturer
 294 either is a participating manufacturer or is in full compliance with Chapter 13 of this title,
 295 including all annual deposits required by paragraph (2) of Code Section 10-13-3.

296 (b) Every tobacco product manufacturer shall also certify that:

297 (1) Such manufacturer or its importer holds a valid permit under 26 U.S.C. Section 5713;
 298 and

299 (2) Such manufacturer is in compliance with all reporting and registration requirements
 300 of 15 U.S.C. Sections 376 and 376a.

301 (c) ~~A~~ In addition, participating manufacturer shall include in its certification a list of its
 302 brand families. A participating manufacturer shall update such list 30 calendar days prior
 303 to any addition to or modification of its brand families by executing and delivering a
 304 supplemental certification to the Attorney General and commissioner. A participating
 305 manufacturer may not include a brand family in its certification unless the participating
 306 manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes
 307 of calculating its payments under the Master Settlement Agreement for the relevant year,
 308 in the volume and shares determined pursuant to the Master Settlement Agreement.

309 ~~(c)~~(d) A nonparticipating manufacturer shall include in its certification a list of all of its
 310 brand families and the number of units sold for each brand family that were sold in this
 311 state during the preceding calendar year and a list of all of its brand families that have been
 312 sold in this state at any time during the current calendar year. Such lists must indicate ~~by~~
 313 ~~an asterisk~~ any brand family sold in this state during the preceding calendar year that is no

314 longer being sold in this state as of the date of such certification, and identification by name
 315 and address of any other manufacturer of such brand families in the preceding or current
 316 calendar year. The nonparticipating manufacturer shall update such list 30 calendar days
 317 prior to any addition to or modification of its brand families by executing and delivering
 318 a supplemental certification to the Attorney General and commissioner. A nonparticipating
 319 manufacturer may not include a brand family in its certification unless such
 320 nonparticipating manufacturer affirms that the brand family is to be deemed to be its
 321 cigarettes for purposes of Chapter 13 of this title. Such certification must also certify:

322 (1) That such nonparticipating manufacturer is registered to do business in this state and
 323 has appointed a resident agent for service of process and provided notice thereof as
 324 required by Code Section 10-13A-6;

325 (2) That such nonparticipating manufacturer has established and continues to maintain
 326 a qualified escrow fund as required by Code Section 10-13-3 and has executed a qualified
 327 escrow agreement that has been reviewed and approved by the Attorney General and that
 328 governs the qualified escrow fund;

329 (3) That such nonparticipating manufacturer is in full compliance with Chapter 13 of this
 330 title, ~~and with this chapter, Chapter 11 of Title 48,~~ and any regulations promulgated
 331 pursuant to ~~either chapter such chapters;~~ and

332 (4) The name, address, and telephone number of the financial institution where the
 333 nonparticipating manufacturer has established such qualified escrow fund required
 334 pursuant to Chapter 13 of this title and all regulations promulgated pursuant to such
 335 chapter; the account number of such qualified escrow fund and any subaccount number
 336 for this state; the amount such nonparticipating manufacturer placed in such fund for
 337 cigarettes sold in this state during the preceding calendar year, the date and amount of
 338 each such deposit, and such evidence or verification as may be deemed necessary by the
 339 Attorney General to confirm the foregoing; and the amount and date of any withdrawal
 340 or transfer of funds the nonparticipating manufacturer made at any time from such fund
 341 or from any other qualified escrow fund into which it ever made escrow payments
 342 pursuant to Chapter 13 of this title and all regulations promulgated pursuant to such
 343 chapter.;

344 (5) That such nonparticipating manufacturer consents to be sued in the courts of the State
 345 of Georgia for purposes of the state:

346 (A) Enforcing this chapter, Chapter 13 of this title, Title 48, and any regulations
 347 promulgated pursuant to these provisions; or

348 (B) Bringing a released claim as defined in paragraph (8) of Code Section 10-13-2;

349 (6) That such nonparticipating manufacturer has posted the appropriate bond required
 350 under Code Section 10-13A-7 and the information needed to establish the existence of
 351 such bond; and

352 (7) In the case of a nonparticipating manufacturer located outside of the United States,
 353 the nonparticipating manufacturer shall provide a declaration from each of its importers
 354 into the United States of any of its brand families to be sold in this state. The declaration
 355 shall be on a form prescribed by the Attorney General and shall state the following:

356 (A) The importer accepts joint and several liability with the nonparticipating
 357 manufacturer for all obligations to place funds into a qualified escrow fund and for
 358 payment of all civil penalties and all reasonable costs and expenses of investigation and
 359 prosecution, including attorney's fees;

360 (B) The importer consents to personal jurisdiction in Georgia for the purposes of
 361 claims by the state for any obligation to place funds into a qualified escrow fund and
 362 for payment of all civil penalties and all reasonable costs and expenses of investigation
 363 and prosecution, including attorney's fees; and

364 (C) The importer has appointed a registered agent for service of process in Georgia
 365 according to the same requirements as established in Code Section 10-13A-6 for any
 366 nonresident or foreign nonparticipating manufacturer.

367 Certification in accordance with this subsection shall be deemed to be in compliance with
 368 subparagraph (C) of paragraph (2) of Code Section 10-13-3.

369 ~~(d)~~(e) Nothing in this Code section shall be construed as limiting or otherwise affecting
 370 the state's right to maintain that a brand family constitutes cigarettes of a different tobacco
 371 product manufacturer for purposes of calculating payments under the Master Settlement
 372 Agreement or for purposes of Chapter 13 of this title.

373 ~~(e)~~(f) Tobacco product manufacturers shall maintain all invoices and documentation of
 374 sales and other such information relied upon for such certification for a period of five
 375 years, unless otherwise required by law to maintain them for a greater period of time.

376 10-13A-4.

377 (a) ~~Not later than August 1, 2004, the~~ The Attorney General shall develop and make
 378 available for public inspection on its website a directory, as defined in paragraph ~~(4)~~ (5) of
 379 Code Section 10-13A-2.

380 (b) The Attorney General shall not include or retain in such directory the name or brand
 381 families of any nonparticipating manufacturer that has failed to provide the required
 382 certification or whose certification the Attorney General determines is not in compliance
 383 with ~~subsection (c)~~ of Code Section 10-13A-3, unless the Attorney General has determined
 384 that such violation has been cured to the satisfaction of the Attorney General.

385 (c) Neither a tobacco product manufacturer nor brand family shall be included or retained
 386 in the directory if the Attorney General concludes, in the case of a nonparticipating
 387 manufacturer, that:

388 (1) Any escrow payment required pursuant to Chapter 13 of this title for any period for
 389 any brand family, whether or not listed by such nonparticipating manufacturer, has not
 390 been fully paid into a qualified escrow fund governed by a qualified escrow agreement
 391 that has been approved by the Attorney General; or

392 (2) Any outstanding final judgment, including interest thereon, for a violation of Chapter
 393 13 of this title has not been fully satisfied for such brand family or such manufacturer.

394 (d) The Attorney General shall update the directory as necessary in order to correct
 395 mistakes and to add or remove tobacco product manufacturers or brand families to keep the
 396 directory in conformity with the requirements of this chapter.

397 (e) Every distributor shall provide and update as necessary an e-mail address to the
 398 Attorney General for the purpose of receiving any notifications as may be required by this
 399 chapter.

400 10-13A-5.

401 It shall be unlawful for any person to affix a tax stamp to a package or other container of
 402 cigarettes of a tobacco product manufacturer or brand family not included in the directory
 403 or to sell, offer for sale, or possess with intent to sell, or import for personal use, in this
 404 state, cigarettes of a tobacco product manufacturer or brand family not included in the
 405 directory.

406 10-13A-6.

407 (a) Any nonresident or foreign nonparticipating manufacturer or importer that has not
 408 registered to do business in this state as a foreign corporation or business entity shall, as
 409 a condition precedent to having its brand families included or retained in the directory,
 410 appoint and continually engage without interruption the services of an agent in this state
 411 as required by Code Section 48-11-5 to act as agent for the service of process on whom all
 412 process and any action or proceeding against it concerning or arising out of the
 413 enforcement of Chapter 13 of this title or this chapter may be served in any manner
 414 authorized by law. Such service shall constitute legal and valid service of process on the
 415 nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name,
 416 address, phone number, and proof of the appointment and availability of such agent to the
 417 satisfaction of the commissioner and Attorney General.

418 (b) The nonparticipating manufacturer or importer shall provide notice to the
 419 commissioner and Attorney General 30 calendar days prior to termination of the authority

420 of an agent and shall further provide proof to the satisfaction of the Attorney General of the
421 appointment of a new agent no less than five calendar days prior to the termination of an
422 existing agent appointment. In the event an agent terminates an agency appointment, the
423 agent and the nonparticipating manufacturer or importer shall notify the commissioner and
424 Attorney General of said termination within five calendar days and shall include proof to
425 the satisfaction of the Attorney General of the appointment of a new agent.

426 (c) Any nonparticipating manufacturer or importer whose cigarettes are sold in this state
427 who has not appointed and engaged an agent as required in this Code section shall be
428 deemed to have appointed the Secretary of State as such agent and may be proceeded
429 against in courts of this state by service of process upon the Secretary of State; provided,
430 however, that the appointment of the Secretary of State as such agent shall not satisfy the
431 condition precedent for having the brand families of the nonparticipating manufacturer or
432 importer included or retained in the directory.

433 (d) The Attorney General shall update the directory as necessary in order to correct
434 mistakes and to add or remove a tobacco product manufacturer or brand family to keep the
435 directory in conformity with the requirements of this chapter. The Attorney General shall
436 post in the directory and transmit by e-mail or other practicable means to each notice of any
437 removal from the directory of a tobacco product manufacturer or brand family at least 30
438 days prior to removal from the directory of such tobacco product manufacturer or brand
439 family. Unless otherwise provided by agreement between the wholesaler and a tobacco
440 product manufacturer, the wholesaler shall be entitled to a refund from a tobacco product
441 manufacturer for any money paid by the wholesaler to the tobacco product manufacturer
442 for any cigarettes of the tobacco product manufacturer in the possession of the wholesaler
443 on the effective date of removal from the directory, or as subsequently received from a
444 retail dealer as provided in this chapter, of products of that tobacco product manufacturer
445 or brand family of cigarettes. Unless otherwise provided by agreement between a retail
446 dealer and the wholesaler or a tobacco product manufacturer, a retail dealer shall be entitled
447 to a refund from the wholesaler or a tobacco product manufacturer for any money paid by
448 the retail dealer to the wholesaler or such tobacco product manufacturer for any cigarettes
449 of the tobacco product manufacturer still in the possession of the retail dealer on the
450 effective date of removal from the directory of that tobacco product manufacturer or brand
451 family.

452 10-13A-7.

453 (a) All nonparticipating manufacturers shall post a bond for the benefit of the state which
454 is subject to execution under subsection (c) of this Code section. The bond shall be posted
455 by a corporate surety located within the United States. The bond shall be posted and

456 evidence of such posting shall be provided to the Attorney General with the
 457 nonparticipating manufacturer's quarterly and annual certifications as a condition of the
 458 nonparticipating manufacturer and its brand families being included or remaining in the
 459 directory for the following quarter or year.

460 (b) The amount of the bond shall be the greater of:

461 (1) Fifty thousand dollars; or

462 (2) The highest amount of escrow owed in Georgia by the nonparticipating manufacturer
 463 or its predecessor in the last 12 quarters.

464 (c) If a nonparticipating manufacturer that posted a bond has failed to make, or have made
 465 on its behalf by an entity with joint and several liability, escrow deposits equal to the full
 466 amount owed for a quarter within 15 days following the due date for the quarter under
 467 Code Section 10-13-3, the state may execute upon the bond, first to recover delinquent
 468 escrow, which amount shall be deposited into a qualified escrow account under Code
 469 Section 10-13-3, and then to recover civil penalties and costs authorized under such Code
 470 section. Escrow obligations above the amount collected on the bond remain due from that
 471 nonparticipating manufacturer and from the importers that sold its cigarettes during that
 472 calendar quarter and at any time prior to the removal of the nonparticipating manufacturer
 473 and brand from the directory.

474 ~~10-13A-7.~~ 10-13A-8.

475 (a) Not later than ~~20~~ 10 calendar days after the end of each calendar ~~quarter~~ month, and
 476 more frequently if so directed by the Attorney General, each distributor shall submit such
 477 information as the Attorney General requires to facilitate compliance with this chapter,
 478 including, but not limited to, a list by brand family of the total number of cigarettes, or, in
 479 the case of 'roll-your-own,' the equivalent count, for which the distributor affixed tax
 480 stamps during the previous calendar ~~quarter~~ month or otherwise paid the tax due for such
 481 cigarettes. The distributor shall also certify that the information provided to the Attorney
 482 General is complete and accurate. The distributor shall maintain and make available to the
 483 Attorney General all invoices and documentation of sales of all nonparticipating
 484 manufacturer cigarettes and any other information relied upon in reporting to the Attorney
 485 General for a period of five years.

486 ~~(b) The commissioner is authorized to disclose to the Attorney General any information~~
 487 ~~received under this chapter and requested by the Attorney General for purposes of~~
 488 ~~determining compliance with and enforcing the provisions of this chapter. The~~
 489 ~~commissioner and Attorney General shall share with each other the information received~~
 490 ~~under this chapter and may share such information with other federal, state, or local~~
 491 ~~agencies only for purposes of enforcement of this chapter or the corresponding laws of~~

492 ~~other states. Notwithstanding any law to the contrary, the commissioner and the Attorney~~
 493 ~~General are authorized to disclose to each other any information received under this~~
 494 ~~chapter, Chapter 13 of this title, and Title 48 for the purposes of determining compliance~~
 495 ~~with and enforcing the provisions of this chapter, Chapter 13 of this title, and Title 48. The~~
 496 ~~commissioner and Attorney General may also share such information with other federal,~~
 497 ~~state, or local courts or agencies for purposes of enforcing the provisions of this chapter,~~
 498 ~~Chapter 13 of this title, or the corresponding laws of other states. The commissioner and~~
 499 ~~Attorney General may also disclose information provided under this Code section, Chapter~~
 500 ~~13 of this title, and Title 48 that may otherwise be confidential:~~

501 ~~(1) In discharge of the duty to enforce or defend the provisions of this part or Chapter 13~~
 502 ~~of this title;~~

503 ~~(2) In the course of any litigation, arbitration, or proceeding related to this part, Chapter~~
 504 ~~13 of this title, the Master Settlement Agreement, or the NPM Adjustment Settlement~~
 505 ~~Agreement; or~~

506 ~~(3) In complying with provisions in the NPM Adjustment Settlement Agreement.~~

507 ~~Despite this disclosure, the information shall maintain its confidential status.~~

508 ~~(c) Any tobacco sales data provided by another state, a tobacco product manufacturer, or~~
 509 ~~other person or entity to a data clearing-house pursuant to the NPM Adjustment Settlement~~
 510 ~~Agreement that is also provided to the Attorney General or commissioner pursuant to that~~
 511 ~~agreement shall be treated as confidential tax information as defined in Title 48. This~~
 512 ~~subsection only applies to information received by the Attorney General or commissioner~~
 513 ~~solely as a result of the NPM Adjustment Settlement Agreement.~~

514 ~~(e)(d)~~ The Attorney General may require at any time from the nonparticipating
 515 manufacturer proof from the financial institution in which such manufacturer has
 516 established a qualified escrow fund for the purpose of compliance with Chapter 13 of this
 517 title of the amount of money in such fund, exclusive of interest, the amount and date of
 518 each deposit to such fund, and the amount and date of each withdrawal from such fund.

519 ~~(d)(e)~~ In addition to the information required to be submitted pursuant to this chapter, the
 520 Attorney General may require a distributor, stamping agent, or tobacco product
 521 manufacturer to submit any additional information or documentation, including, but not
 522 limited to, samples of the packaging or labeling of each brand family, as is necessary to
 523 enable the Attorney General to determine whether a tobacco product manufacturer is in
 524 compliance with this chapter.

525 ~~(e)(f)~~ To promote compliance with this chapter, the Attorney General may promulgate
 526 regulations ~~requiring a tobacco product manufacturer subject to the requirements of~~
 527 ~~subsection (c) of Code Section 10-13A-3 to make the annual escrow deposits required~~
 528 ~~during the year in which the sales covered by such deposits are made. The Attorney~~

529 General may also require production of information sufficient to enable the Attorney
 530 General to determine the adequacy of the amount of the installment quarterly or annual
 531 escrow deposit.

532 ~~10-13A-8.~~ 10-13A-9.

533 (a) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a
 534 determination that a distributor stamping agent has violated Code Section 10-13A-5 or any
 535 regulation adopted pursuant to this chapter, the commissioner may revoke or suspend the
 536 dealer or distributor's license of the distributor stamping agent in the manner provided by
 537 Code Section 48-11-6. Each tax stamp affixed and each sale or offer to sell cigarettes in
 538 violation of Code Section 10-13A-5 or the rules and regulations adopted pursuant to this
 539 chapter shall constitute a separate violation. For each violation, the commissioner may also
 540 impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail
 541 value of the cigarettes or \$5,000.00 upon a determination of a violation of Code Section
 542 10-13A-5 or any regulations adopted pursuant thereto. Such penalty shall be imposed in
 543 the manner provided in subsection (c) of Code Section 48-11-24.

544 (b) A license may also be subject to termination, suspension, or other available remedy
 545 found in Code Section 48-11-14, if:

546 (1) A distributor fails to provide a report required under Code Section 10-13A-8; or

547 (2) A distributor files an incomplete or inaccurate report required under Code Section
 548 10-13A-8.

549 (c) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state
 550 in violation of Code Section 10-13A-5 or other provisions of this chapter or Chapter 13 of
 551 this title shall be deemed contraband under Code Section 48-11-9 and such cigarettes shall
 552 be subject to seizure and forfeiture as provided in such Code section.

553 (e)(d) The Attorney General, on behalf of the commissioner, may seek an injunction to
 554 restrain a threatened or actual violation of Code Section 10-13A-5 or of subsection (a)
 555 or (d) (e) of Code Section ~~10-13A-7~~ 10-13A-8 by a distributor or stamping agent and to
 556 compel the distributor to comply with said Code section or either such subsection. In any
 557 action brought pursuant to this Code section, the state shall be entitled to recover the costs
 558 of investigation, costs of the action, and reasonable attorney fees.

559 (d)(e) It shall be unlawful for a person to sell or distribute cigarettes or to acquire, hold,
 560 own, possess, transport, import, or cause to be imported cigarettes that the person knows
 561 or should know are intended for distribution or sale in this state in violation of Code
 562 Section 10-13A-5. Any person who violates this subsection shall be guilty of a
 563 misdemeanor.

564 ~~(e)~~(f) A violation of Code Section 10-13A-5 shall constitute an unfair and deceptive act
 565 or practice under Part 2 of Article 15 of Chapter 1 of this title, the 'Fair Business Practices
 566 Act of 1975.'

567 (g) It is unlawful for any person to knowingly submit any false information required
 568 pursuant to Chapter 13 of this title or this chapter. A violation of this subsection is a
 569 felony. Knowing submission of false information shall also be grounds for removal of a
 570 tobacco product manufacturer or brand from the directory.

571 ~~10-13A-9.~~ 10-13A-10.

572 (a) A determination of the Attorney General to not include or to remove from the directory
 573 a brand family or tobacco product manufacturer shall be subject to review in the manner
 574 prescribed by Article 1 of Chapter 13 of Title 50, known as the 'Georgia Administrative
 575 Procedure Act.'

576 (b) No person shall be issued a license or granted a renewal of a license under Chapter 11
 577 of Title 48 to act as a distributor unless such person has certified in writing that such person
 578 will comply fully with this chapter.

579 ~~(c) The first report of distributors required by subsection (a) of Code Section 10-13A-7~~
 580 ~~shall be due 30 calendar days after July 1, 2003, the certifications by a tobacco product~~
 581 ~~manufacturer described in subsection (a) of Code Section 10-13A-3 shall be due 45~~
 582 ~~calendar days after such date, and the directory described in Code Section 10-13A-4 shall~~
 583 ~~be published or made available within 90 calendar days after such date.~~

584 ~~(d)~~(c) The Attorney General may promulgate rules and regulations necessary to effect the
 585 purposes of this chapter.

586 ~~(e)~~(d) In any action brought by the state to enforce this chapter, the state shall be entitled
 587 to recover the costs of investigation, expert witness fees, costs of the action, and reasonable
 588 attorney fees.

589 ~~(f)~~(e) If a court of competent jurisdiction finds that the provisions of this chapter and of
 590 Chapter 13 of this title conflict and cannot be harmonized, then such provisions of Chapter
 591 13 of this title shall control. If any section, subsection, subdivision, paragraph, sentence,
 592 clause, or phrase of this chapter causes Chapter 13 of this title to no longer constitute a
 593 qualifying or model statute, as those terms are defined in the Master Settlement Agreement,
 594 then that portion of this chapter shall not be valid. If any section, subsection, subdivision,
 595 paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid,
 596 unlawful, or unconstitutional, such decision shall not affect the validity of the remaining
 597 portions of this chapter or any part thereof."

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SECTION 4.

599

Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on tobacco products, is amended by revising paragraph (4) of subsection (c) of Code Section 48-11-4, relating to licensing and registration of persons engaged in the tobacco business and annual fees, as follows:

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"(4) Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to suspension or revocation for violation of any of the provisions of this chapter or of the rules and regulations made pursuant to this chapter or Chapters 13 and 13A of Title 10 or of the rules and regulations made pursuant to those chapters. A separate license shall be required for each place of business. No person shall hold a distributor's license and a dealer's license at the same time."

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SECTION 5.

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Said chapter is further amended by revising Code Section 48-11-6, relating to suspension and revocation of licenses, as follows:

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"48-11-6.

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The commissioner may suspend or refuse to renew a license issued to any person under this chapter for violation of any provision of this chapter ~~or of any rule or regulation of the commissioner made pursuant to this chapter~~ or Chapters 13 and 13A of Title 10 or of the rules and regulations made pursuant to those chapters. After notice and opportunity for hearing, the commissioner may revoke a license issued to any person under this chapter for violation of any provision of this chapter or of any rule or regulation of the commissioner made pursuant to this chapter ~~or Chapters 13 and 13A of Title 10 or of the rules and regulations made pursuant to those chapters~~. Any person aggrieved by the suspension of or refusal to renew his or her license may apply to the commissioner for a hearing as provided in subsection (a) of Code Section 48-11-18; and any person aggrieved by the action of the commissioner in revoking or refusing to renew his or her license after hearing may further appeal to the courts as provided in subsection (b) of Code Section 48-11-18. No legal proceedings or other action by the commissioner shall be barred or abated by the suspension, revocation, or expiration of any license issued under this chapter."

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SECTION 6.

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Said chapter is further amended by revising paragraph (1) of subsection (a) of Code Section 48-11-9, relating to seizure of unstamped tobacco products as contraband, as follows:

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"(a)(1) Any cigars, cigarettes, or loose or smokeless tobacco found at any place in this state without stamps affixed to them as required by this chapter and any cigarettes ~~seized pursuant to~~ in violation of subsection ~~(b)~~ (c) of Code Section ~~10-13A-8~~ 10-13A-9 are

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633 declared to be contraband articles and may be seized by the commissioner, the
634 commissioner's agents or employees, or any peace officer of this state when directed by
635 the commissioner to do so."

636 **SECTION 7.**
637 All laws and parts of laws in conflict with this Act are repealed.