

1 Section 1. R.S.13:5072, 5073(A)(3)(a)(v), (B)(2)(a), (3), and (4), and (C), 5075,
2 5076(A) and (B), and 5077 are hereby amended and reenacted and R.S.
3 13:5073(A)(3)(a)(vi), (4)(e) and (f), (B)(5) and (6), 5074(D), and 5078 are hereby enacted
4 to read as follows:

5 §5072. Definitions

6 As used in this Part, the following words and phrases shall have the following
7 meanings ascribed to them:

8 (1) "Brand family" means all styles of cigarettes sold under the same trade
9 mark and differentiated from one another by means of additional modifiers or
10 descriptors, including but not limited to "menthol", "lights", "kings", and "100s", and
11 includes any brand name (alone or in conjunction with any other word), trademark,
12 logo, symbol, motto, selling message, recognizable pattern of colors, or any other
13 indicia of product identification identical or similar to, or identifiable with, a
14 previously known brand of cigarettes.

15 (2) "Cigarette" has the same meaning as defined in R.S. 13:5062(4) and R.S.
16 47:842(2).

17 (3) "Commissioner" means the commissioner of alcohol and tobacco control.

18 (4) "Days" means calendar days unless otherwise specified.

19 ~~(3)~~ (5) "Dealer" has the same meaning as defined in R.S. 47:842(4).

20 ~~(4) "Department" means the Department of Revenue for the state of~~
21 ~~Louisiana.~~

22 (6) "Importer" means any person in the United States to whom non-tax-paid
23 cigarettes manufactured in a foreign country are shipped or consigned; any person
24 who removes cigarettes for sale or consumption in the United States from a customs
25 bonded manufacturing warehouse and any person who smuggles or otherwise
26 unlawfully brings cigarettes into the United States.

27 (7) "Manufacturer" has the same meaning as provided in R.S. 47:842.

28 ~~(5)~~ (8) "Master Settlement Agreement" has the same meaning as defined
29 provided in R.S. 13:5062(5).

1 ~~(6)~~ (9) "Nonparticipating manufacturer" means any tobacco product
2 manufacturer that is not a participating manufacturer.

3 (10) "Package" means any pack or other container on which a stamp could
4 be applied consistent with and as required by R.S. 47:841 et seq., that contains one
5 or more individual cigarettes for sale. Nothing in this Chapter shall alter any other
6 applicable requirement with respect to the minimum number of cigarettes that may
7 be contained in a pack or other container of cigarettes. References to "package" shall
8 not include a container of multiple packages.

9 ~~(7)~~ (11) "Participating manufacturer" has the meaning given that term in
10 section II (ii) of the Master Settlement Agreement and all amendments thereto.

11 (12) "Person" means any natural person, trustee, company, partnership,
12 corporation, or other legal entity.

13 (13) "Purchase" means acquisition in any manner, for any consideration.
14 The term shall include transporting or receiving product in connection with a
15 purchase.

16 ~~(8)~~ (14) "Qualified escrow fund" has the same meaning as defined in R.S.
17 13:5062(6).

18 (15) "Retailer" means "retail dealer" as defined in R.S. 26:901 and R.S.
19 47:842.

20 (16) "Sale" or "sell" means any transfer, exchange, or barter in any manner
21 or by any means for any consideration. The term shall include distributing or
22 shipping product in connection with a sale. References to a sale "in" or "into" a state
23 refer to the state of the destination point of the product in the sale, without regard to
24 where title was transferred. References to sale "from" a state refer to the sale of
25 cigarettes that are located in that state to the destination in question without regard
26 to where title was transferred.

27 (17) "Sales Entity Affiliate" means an entity that sells cigarettes that it
28 acquires directly from a manufacturer or importer and is affiliated with that
29 manufacturer or importer. Entities are affiliated with each other if one, directly or

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

3 ~~(9)~~ (18) "Secretary" means the head of the Department of Revenue, which
4 is the agency responsible for collection of the excise tax on cigarettes.

5 ~~(10)~~ (19) "Stamping agent" means a dealer that is authorized to affix tax
6 stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any
7 dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S.
8 47:841 et seq. on cigarettes.

9 (20) "State directory" or "directory" means the directory compiled by the
10 attorney general under R.S. 13:5073, or, in the case of reference to another state's
11 directory, the directory compiled under the similar law in that other state.

12 ~~(11)~~ (21) "Tobacco product manufacturer" has the same meaning as defined
13 in R.S. 13:5062(9).

14 ~~(12)~~ (22) "Units sold" has the same meaning as defined in R.S. 13:5062(10)
15 and shall include (a) cigarettes that are required to be sold in a package bearing a
16 stamp as well as (b) roll-your-own tobacco.

17 §5073. Certifications; directory; tax stamps

18 A.

19 * * *

20 (3)(a) A nonparticipating manufacturer shall include in its certification:

21 * * *

22 (v) Any other information required under ~~R.S. 13:5075(D)~~ R.S. 13:5075(F).

23 (vi) As a condition precedent to being listed and having its brand families
24 listed on the state directory, a manufacturer must certify annually that it holds a valid
25 permit under 26 USC 5713 and provide a copy of such permit to the attorney general.

26 * * *

27 (4) In the case of a nonparticipating manufacturer, such certification shall
28 further certify:

29 * * *

1 (2) Neither a tobacco product manufacturer nor brand family shall be
2 included or retained in the directory if the attorney general concludes, in the case of
3 a nonparticipating manufacturer, that:

4 (a) Any escrow payment required pursuant to R.S. 13:5061 et seq., ~~for any~~
5 ~~period~~ by the date due for any quarter for any brand family, whether or not listed by
6 such nonparticipating manufacturer, has not been fully paid into a qualified escrow
7 fund governed by a qualified escrow agreement that has been approved by the
8 attorney general; or

9 (b) Any outstanding final judgment, including interest thereon, for a
10 violation of R.S. 13:5061 et seq. has not been fully satisfied for such brand family
11 or such manufacturer.

12 (3) A manufacturer and its brand families may be removed from the state
13 directory if it is removed from the directory of another state based on acts or
14 omissions that if, they had occurred in this state, would be grounds for removal from
15 the state directory under this Section, unless the manufacturer demonstrates that its
16 removal from the other state's directory was effected without due process. Procedure
17 for removal from the state directory shall be governed by the procedure set forth in
18 R.S. 13:5077(A). A manufacturer that is removed from the state directory under this
19 Subsection shall be eligible for reinstatement upon the earlier of the date on which
20 it cures the violation or is reinstated to the directory in the other state.

21 (4) Failure to submit complete and accurate reports as required pursuant to
22 R.S. 13:5075 shall result in the manufacturer and its brand families being removed
23 from the state directory under the procedure set forth in R.S. 13:5077(A).

24 ~~(3)~~ (5) The attorney general shall update the directory as necessary in order
25 to correct mistakes and to list or de-list a tobacco product manufacturer or brand
26 family to keep the directory in conformity with the requirements of this Part. Fifteen
27 days prior to the listing or de-listing of a tobacco product manufacturer or brand
28 family, the attorney general shall transmit a notification to every stamping agent.

1 equivalent stick count, ~~that they~~ purchased from tobacco product manufacturers
2 during the previous calendar month or otherwise paid the tax due for such cigarettes.

3 The stamping agent shall maintain and make available to the secretary and the
4 attorney general all invoices and documentation of purchases and sales of all tobacco
5 product manufacturer cigarettes and any other information relied upon in reporting
6 to the secretary and the attorney general for a period of three years.

7 B. The requirements of Subsection A of this Section shall be satisfied if the
8 stamping agent timely submits to the secretary and attorney general reports required
9 generally under R.S. 47:841 et seq. and this Chapter and certifies that the reports are
10 complete and accurate.

11 C. Each manufacturer and importer that sells any cigarettes in or into the
12 state shall, within twenty days following the end of the month, file a report on a form
13 to be prescribed by the attorney general and certify that the report is complete and
14 accurate. The report shall contain the following information: (1) The total number
15 of cigarettes sold by that manufacturer or importer in or into the state during that
16 month, and identifying by name and number of cigarettes. (2) The manufacturers of
17 those cigarettes. (3) The brand families of those cigarettes. (4) The purchasers of
18 those cigarettes. A manufacturer's or importer's report shall include cigarettes sold
19 in or into the state through its sales entity affiliate.

20 D. The requirements of Subsection C of this Section shall be satisfied and
21 no further report shall be required under this Section with respect to cigarettes if the
22 manufacturer or importer timely submits to the attorney general and secretary the
23 report or reports required to be submitted by it with respect to those cigarettes under
24 15 USC 376 to the attorney general and certifies that the reports are complete and
25 accurate.

26 E. Upon request by the attorney general, a manufacturer or importer shall
27 provide copies of reports filed in other states containing information similar to those
28 provided by Subsections A and C of this Section.

1 F. Any reports submitted to the secretary or commissioner under R.S. 47:841
2 et seq. or R.S. 26:901 et seq. shall also be submitted contemporaneously to the
3 attorney general.

4 G. The secretary is authorized to disclose to the attorney general any
5 information received under this Part and requested by the attorney general for
6 purposes of determining compliance with and enforcing the provisions of this Part.
7 The secretary, ~~and attorney general, and commissioner~~ shall share with each other
8 the information received under this Part and may share such information with other
9 federal, state, or local ~~agencies~~ taxing agencies or law enforcement authorities only
10 for purposes of enforcement of this Part, R.S. 13:5061 et seq., or corresponding laws
11 of other states. Additionally, the sharing of information by the secretary under this
12 ~~Part~~ Chapter shall not constitute a violation of R.S. 47:1508.

13 ~~E.~~ H. The attorney general may require at any time from the nonparticipating
14 manufacturer, proof from the financial institution in which such manufacturer has
15 established a qualified escrow fund for the purpose of compliance with R.S. 13:5061
16 et seq., of the amount of money in such fund, exclusive of interest, the amount and
17 date of each deposit to such fund, and the amount and date of each withdrawal from
18 such fund.

19 ~~D.~~ I. In addition to the information required to be submitted pursuant to this
20 Part and R.S. 13:5061 et seq. or R.S. 47:843 et seq., the secretary and the attorney
21 general may require a stamping agent or tobacco product manufacturer to submit any
22 additional information including but not limited to samples of the packaging or
23 labeling of each brand family, as is necessary to enable the attorney general to
24 determine whether a tobacco product manufacturer is in compliance with this Part.

25 ~~E.~~ J. ~~To promote compliance with this Part, the attorney general may require~~
26 ~~a tobacco product manufacturer subject to the requirements of R.S. 13:5073(A)(2)~~
27 ~~to make the escrow deposits required in annual, quarterly, or monthly installments~~
28 ~~during the year in which the sales covered by such deposits are made. All escrow~~
29 ~~deposits under R.S. 13:5061 et seq. shall be made on a quarterly basis, no later than~~

1 forty-five days after the end of each calendar quarter in which the sales are made.
2 Each failure to make a full quarterly installment deposit shall constitute a separate
3 violation of the state's escrow laws. The secretary and the attorney general may
4 require production of information sufficient to enable the attorney general to
5 determine the adequacy of the amount of the installment deposit. The attorney
6 general shall promptly review the amount deposited by each nonparticipating
7 manufacturer for each calendar quarter against the reports received and other
8 information, and shall provide notice to each nonparticipating manufacturer for
9 which it concludes that an additional deposit was owed.

10 K. Importers of any brand families of a nonparticipating manufacturer in or
11 into the state shall be jointly and severally liable with the nonparticipating
12 manufacturer for all obligations to place funds into a qualified escrow fund for
13 payment of all civil penalties and for payment of all reasonable costs and expenses
14 of investigation and prosecution, including attorney fees, and shall consent to
15 personal jurisdiction in Louisiana for the purposes of claims by the state for payment
16 of such obligations.

17 §5076. Penalties; other remedies

18 A. In addition to or in lieu of any other civil or criminal remedy provided by
19 law, upon a determination that a stamping agent has violated R.S. 13:5073(C) or any
20 regulation adopted pursuant to this Part, the secretary may revoke or suspend the
21 license of the dealer in the manner provided by R.S. 47:844 and R.S. 26:916. Each
22 stamp affixed and each sale, offer to purchase, or offer to sell cigarettes in violation
23 of R.S. 13:5073(C) shall constitute a separate violation. For each violation hereof,
24 the secretary may also impose a civil penalty in an amount not to exceed the greater
25 of five hundred percent of the retail value of the cigarettes or five thousand dollars
26 upon a determination of violation of R.S. 13:5073(C) or any regulations adopted
27 pursuant thereto. Such penalty shall be imposed in the manner provided by R.S.
28 47:843 et seq. and R.S. 26:901 et seq.

1 ~~B: C.~~ No person shall be issued a license or granted a renewal of a license
2 to act as a stamping agent unless such person has certified in writing, under penalty
3 of perjury, that such person will comply fully with this Section.

4 ~~C: D.~~ For the year 2004, because the effective date of this Part is later than
5 April 15, 2004, the first report of stamping agents required by R.S. 13:5075(A) shall
6 be due thirty calendar days after June 25, 2004; the certifications by a tobacco
7 product manufacturer described in R.S. 13:5073(A) shall be due forty-five calendar
8 days after June 25, 2004; and the directory described in R.S. 13:5073(B) shall be
9 published or made available within ninety calendar days after June 25, 2004.

10 E. The secretary, commissioner, and attorney general shall each designate
11 employees who shall oversee the administration and enforcement of the laws and
12 regulations regarding the tobacco Master Settlement Agreement for its office and
13 who shall confer monthly to establish and monitor practices to promote ongoing
14 compliance under the Master Settlement Agreement. A tri-agency summit shall be
15 held on an annual basis for agency representatives and staff.

16 ~~D: F.~~ F. The secretary or the commissioner in conjunction with the attorney
17 general may promulgate regulations necessary to effect the purpose of this Part.

18 ~~E: G.~~ G. In any action brought by the state to enforce this Part, the attorney
19 general, the commissioner, and secretary shall be entitled to recover the costs of the
20 investigation, expert witness fees, the action, and reasonable attorney fees.

21 ~~F: H.~~ H. If a court determines that a person has violated this Part, the court shall
22 order any profits, gains, gross receipts, or other benefits from the violation to be
23 disgorged and paid to the state treasurer for deposit in the tobacco control special
24 fund, which is hereby created. The tobacco control special fund shall be used by the
25 attorney general for tobacco enforcement and control matters. Unless otherwise
26 expressly provided, the remedies or penalties provided by this Part are cumulative
27 to each other and to the remedies or penalties available under all other laws of this
28 state.

1 ~~G. I.~~ If a court of competent jurisdiction finds that the provisions of this Part
2 and of R.S. 13:5061 et seq. conflict and cannot be harmonized, then the provisions
3 in R.S. 13:5061 et seq. shall control. If any Section, Subsection, Paragraph,
4 Subparagraph, Item, sentence, clause, phrase, or word of this Part causes R.S.
5 13:5061 et seq. to no longer constitute a qualifying or model statute, as those terms
6 are defined in the Master Settlement Agreement, then that portion of this Part shall
7 not be valid. If any Section, Subsection, Paragraph, Subparagraph, Item, sentence,
8 clause, phrase, or word of this Part is for any reason held to be invalid, unlawful, or
9 unconstitutional, such decision shall not affect the validity of the remaining portions
10 of this Part.

11 §5078. Bond

12 A. All nonparticipating manufacturers shall post a bond or its cash
13 equivalent for the benefit of the state which is subject to execution under Subsection
14 C of this Section. The bond shall be posted by corporate surety located within the
15 United States or the cash equivalent of the bond shall be posted by the
16 nonparticipating manufacturer in an account approved by the state. The bond or its
17 cash equivalent shall be posted and evidence of such posting shall be provided to the
18 attorney general at least ten days in advance of each calendar quarter as a condition
19 to the nonparticipating manufacturer and its brand families being included in the
20 directory for that quarter.

21 B. The amount of the bond shall be determined as follows:

22 (1) Unless Paragraph (3) of this Subsection is applicable, for a
23 nonparticipating manufacturer which has been listed on Louisiana's state directory
24 for at least three years, the amount of the bond required shall be fifty thousand
25 dollars or the highest amount owed for any quarter over the past three years,
26 whichever is greater;

27 (2) Unless Paragraph (3) of this Subsection is applicable, for a
28 nonparticipating manufacturer which has not been listed on Louisiana's state
29 directory for at least three years, the amount of the bond required shall be determined

1 by the attorney general based on any prior history in any state, as well any other
2 considerations the attorney general deems relevant, but shall not be less than one
3 hundred thousand dollars in any event; and

4 (3) For a nonparticipating manufacturer which has failed, in the past three
5 years, to make a full and timely escrow deposit due under R.S. 13:5063, unless the
6 failure was not knowing or intentional and was promptly cured upon notice, or for
7 any nonparticipating manufacturer which was involuntarily removed from any state's
8 directory, unless the removal was determined to have been erroneous, the amount of
9 the bond required shall be the greater of one hundred thousand dollars or the greatest
10 amount of escrow owed by the nonparticipating manufacturer or its predecessor in
11 any calendar year in any state within the preceding five calendar years.

12 C. If a nonparticipating manufacturer that posted a bond has failed to make,
13 or have made on its behalf by an entity with joint and several liability, escrow
14 deposits equal to the full amount owed for a quarter within fifteen days following the
15 due date for the quarter under R.S. 13:5063, the state may execute upon the bond,
16 first to recover delinquent escrow, which amount shall be deposited into a qualified
17 escrow account under R.S. 13:5063, and then to recover civil penalties and costs
18 authorized under such section. Escrow obligations above the amount collected on
19 the bond remain due from that nonparticipating manufacturer and from the importers
20 that sold its cigarettes during that calender quarter.

21 * * *

22 Section 2. R.S. 26:904(A), 916(H), 918(B), and 921 are hereby amended and
23 reenacted and R.S. 26:901(19) through (26), 902(5), 904(D), 906(H), (I), and (J), 908(D),
24 916(I) through (N), and 918(C) and (D) are hereby enacted to read as follows:

25 §901. Definitions

26 * * *

27 (19) "Brand family" has the meaning as set forth in R.S. 13:5072(1).

28 (20) "Exporter license" means the stamping agent designation as set forth in
29 R.S. 26:902(5)(b).

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (21) A "knowing violation or failure" is where the person knowingly or
2 intentionally engaged in conduct without a good faith belief that the conduct was
3 consistent with the provisions of this Chapter.

4 (22) "Person" means any natural person, trustee, company, partnership,
5 corporation, or other legal entity.

6 (23) "Purchase" means acquisition in any manner, for any consideration.
7 The term shall include transporting or receiving product in connection with a
8 purchase.

9 (24) "Sale" or "sell" means any transfer, exchange, or barter in any manner
10 or by any means for any consideration. The term shall include distributing or
11 shipping product in connection with a sale. References to a sale "in" or "into" a state
12 refer to the state of the destination point of the product in the sale, without regard to
13 where title was transferred. References to sale "from" a state refer to the sale of
14 cigarettes that are located in that state to the destination in question without regard
15 to where title was transferred.

16 (25) "Sales entity affiliate" means an entity that (i) sells cigarettes that it
17 acquires directly from a manufacturer or importer and (ii) is affiliated with that
18 manufacturer or importer. Entities are affiliated with each other if one, directly or
19 indirectly through one or more intermediaries, controls or is controlled by or is under
20 common control with the other.

21 (26) "Stamping agent" means a dealer that is authorized to affix tax stamps
22 to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer
23 that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841
24 et seq. on cigarettes.

25 (27) "State directory" or "directory" means the directory compiled by the
26 attorney general under R.S. 13:5073, or, in the case of reference to another state's
27 directory, the directory compiled under the similar law in that other state.

1 §902. Permits

2 The commissioner shall issue as authorized by this Section the following
3 types of permits and shall adopt rules and regulations that specify the identifying
4 information that is required to appear on the face of each type of permit:

5 * * *

6 (5)(a) Stamping Agent Designation: A stamping agent designation shall be
7 issued to a dealer that engages in the business of purchasing unstamped or non-tax
8 paid cigarettes that meets all requirements of a wholesale dealer as defined by this
9 Chapter, the provision of R.S. 26:906(H), and any rules or regulations issued in
10 connection therewith.

11 (b) The holder of a valid stamping agent designation that engages in
12 interstate business or affixes tax stamps of another state shall first apply for an
13 exporter license allowing it to purchase or possess unstamped or non-tax paid
14 cigarettes.

15 * * *

16 §904. Permit terms

17 A. Except as otherwise provided in Subsection B of this Section, each permit
18 shall be valid for the designated time period unless suspended or revoked. The
19 commissioner may issue permits which are valid for two years to applicants in good
20 standing with the office of alcohol and tobacco control.

21 * * *

22 D. An exporter license issued pursuant to R.S. 26:902(5)(b) shall remain in
23 effect for a period of one year.

24 * * *

25 §906. General requirements

26 * * *

27 H. Applicants for a stamping agent designation shall certify on a form
28 provided by the commissioner that they will do the following:

29 (1) Affix stamps as set forth in R.S. 47:843(D).

1 §908. Issuance of permit

2 * * *

3 D. No exporter license may be issued to a person that violated a certification
4 it previously made under R.S. 26:906(J)(2).

5 * * *

6 §916. Suspensions or revocations

7 * * *

8 H. The designation of a stamping agent shall be subject to termination if a
9 permittee does any of the following:

10 (1) Fails to provide a report or certification as required by this Chapter, R.S.
11 13:5061 et seq., or R.S. 47:841 et seq.

12 (2) Knowingly files an incomplete or inaccurate report or certification.

13 (3) Fails to pay taxes as provided in R.S. 47:841 et seq.

14 (4) Fails to sell cigarettes in or into the state pursuant to R.S. 47:843 or sells
15 unstamped cigarettes of a manufacturer or brand family that is not at the time listed
16 on the state directory, or possesses such cigarettes more than sixty days after
17 receiving notice that the manufacturer or brand family is not on the state directory,
18 except as expressly permitted in R.S. 47:841 et seq.

19 (5) Purchases or sells cigarettes in violation of the provisions of this Chapter
20 or R.S. 47:841 et seq.

21 I. In the case of a first failure under R.S. 26:916(H)(4) and (5), the stamping
22 agent may be entitled to cure the failure within thirty days of being notified of the
23 violation. The designation of a stamping agent that fully cures the failure during the
24 prescribed period shall not be terminated on account of that failure.

25 J. The license of a stamping agent may be subject to termination if its similar
26 license is terminated in any other state based on acts or omissions that would be
27 grounds for license termination under this Section, unless the stamping agent
28 demonstrates that its license termination in the other state was terminated without
29 due process. A stamping agent whose license is terminated under this Subsection

1 §918. Civil penalties

2 * * *

3 B. In the case of a second violation pursuant to R.S. 26:916(H)(4) or (5) or
4 of a first violation of R.S. 26:916(H)(1) through (3) or (6), the stamping agent shall
5 be subject to a civil penalty of up to one thousand dollars.

6 C. In the case of a third or subsequent violation under R.S. 26:916(H)(4) or
7 (5) or of a second or subsequent violation of R.S. 26:916(H)(1) through (3) or (6),
8 the stamping agent shall be subject to a civil penalty of up to five thousand dollars
9 per violation. In the case of R.S. 26:916(H)(4) through (6), each sale shall constitute
10 a separate offense.

11 D. Any fine imposed upon any permittee or the revocation or suspension of
12 a permit is in addition to and is not in lieu of or a limitation upon any other penalty
13 imposed by law and not contained in this Chapter.

14 * * *

15 §921. Public records

16 A. The commissioner shall maintain a list of all wholesale and retail dealers
17 who hold a permit in this state. Nothing contained in this Chapter shall be construed
18 to prevent the commissioner from disclosing to any person upon request the name
19 and address of any dealer who holds a permit, but the commissioner shall not
20 disclose any tax information the disclosure of which is otherwise prohibited by law.

21 B. The commissioner shall provide on its website the list of all persons
22 licensed as stamping agents pursuant to R.S. 26:902(5)(a).

23 C. The commissioner shall provide on its website the list of all persons
24 holding an exporter license pursuant to R.S. 26:902(5)(b).

25 * * *

26 Section 3. R.S. 47:843(A)(2), (C)(3) and (4), and (D), 847(A) and (B), 849, 851(B),
27 857, 862, 865(C)(3)(b) and (c)(introductory paragraph), 871, 872, 876 through 878, and
28 1508(B)(11) are hereby amended and reenacted and R.S. 47:842(16) through (22),
29 843(A)(3), 847(C), 851(E) and (F), and 1520(A)(1)(g) are hereby enacted to read as follows:

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §842. Definitions

2 As used in this Chapter, the following terms have the meaning ascribed to
3 them in this Section, unless the context clearly indicates otherwise:

4 * * *

5 (16) "Brand family" has the meaning as set for in R.S. 13:5072(1).

6 (17) "Person" means any natural person, trustee, company, partnership,
7 corporation or other legal entity.

8 (18) "Purchase" means acquisition in any manner, for any consideration.
9 The term includes transporting or receiving product in connection with a purchase.

10 (19) "Sales" or "sell" means any transfer, exchange, or barter in any manner
11 or by any means for any consideration. The term includes distributing or shipping
12 product in connection with a sale. References to a sale "in" or "into" a state refer to
13 the state of the destination point of the product in the sale, without regard to where
14 title was transferred. References to sale "from" a state refer to the sale of cigarettes
15 that are located in that state to the destination in question without regard to where
16 title was transferred.

17 (20) "Sales entity affiliate" means an entity that sells cigarettes that it
18 acquires directly from a manufacturer or importer and is affiliated with that
19 manufacturer or importer. Entities are affiliated with each other if one, directly or
20 indirectly through one or more intermediaries, controls or is controlled by or is under
21 common control with the other.

22 (21) "Stamping agent" means a dealer that is authorized to affix tax stamps
23 to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer
24 that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841
25 et seq. on cigarettes.

26 (22) "State directory" or "directory" means the directory compiled by the
27 attorney general under R.S. 13:5073, or, in the case of reference to another state's
28 directory, the directory compiled under the similar law in that other state.

29 * * *

1 §843. Use of stamps or meter impression required and limitations

2 A. Cigarette tax stamps.

3 * * *

4 (2) No individual package of cigarettes shall be sold or distributed in, into,
5 or from the state in individual packages containing fewer than twenty cigarettes. No
6 smoking tobacco intended for use as roll-your-own smoking tobacco for cigarettes
7 shall be sold or distributed in individual packages containing less than six-tenths of
8 one ounce of smoking tobacco.

9 (3) Except as otherwise provided in this Chapter, all packages of cigarettes
10 sold in or into the state shall bear a stamp as required by this Chapter and no person
11 may sell, transport, or cause to be transported unstamped cigarettes in, into, or from,
12 or possess unstamped cigarettes in the state.

13 * * *

14 C. Purchase of stamps.

15 * * *

16 (3) Cigarette tax stamps shall be sold by the secretary of the Department of
17 Revenue to bonded registered Louisiana tobacco dealers in the state of Louisiana
18 who hold a valid stamping agent license in accordance with R.S. 26:902(5)(a) and
19 who have a direct purchasing contract with a manufacturer at a discount of six
20 percent from the face value, when purchased in quantities of not less than one
21 hundred dollars face value, and the same provisions and discount shall apply where
22 the metered stamping machine or device is used.

23 (4) Except as otherwise provided in this Section, the stamps shall be sold by
24 the secretary of the Department of Revenue in less quantity at face value to any and
25 all persons, firms, partnerships, corporations, and associations of person who hold
26 a valid stamping agent license in accordance with R.S. 26:902(5)(a) and are qualified
27 to purchase stamps hereunder.

28 * * *

1 D. Affixing Stamps. (1) No person other than a dealer holding a valid
2 stamping agent license under R.S. 26:902(5) may affix a stamp to any package of
3 cigarettes. Stamps shall be affixed by the dealer, on the smallest container or
4 package of cigarettes that is subject to the tax, to permit the secretary to readily
5 ascertain by an inspection of any dealer's stock on hand, whether or not the tax has
6 been paid. The dealer shall cause to be affixed on every package of cigarettes on
7 which a tax is due, stamps of an amount equaling the tax due thereon, before any
8 person, firm, partnership, corporation, or association of persons sells, offers for sale,
9 handles, removes, or otherwise disturbs or distributes the same. The stamps shall be
10 affixed in such a manner that their removal will require continued application of
11 steam or water and shall be canceled by placing thereon the license number of the
12 dealer.

* * *

14 §847. Dealers required to affix stamps

15 A. General requirement. Every registered tobacco dealer holding a valid
16 stamping agent license pursuant to R.S. 26:902(5)(a) shall immediately after receipt
17 of any unstamped cigarettes unless sooner offered for sale, cause the same to have
18 the requisite denominations and amount of stamp or stamps to represent the tax
19 affixed as stated herein. The stamping of the unstamped cigarettes shall actually
20 begin as soon as practicable after receipt of the cigarettes in the premises of the
21 tobacco dealer and shall be continued with reasonable diligence by the dealer until
22 all of the unstamped cigarettes have been stamped as provided by law.

23 B. Stamping agents may sell cigarettes in or into the state, may purchase
24 cigarettes for resale in or into the state and may affix a stamp required by this
25 Chapter only if the manufacturer and brand family of the cigarettes are listed on the
26 state directory at the time of stamping.

27 C. Unstamped cigarettes. If and whenever any of the cigarettes taxed in this
28 Chapter are found in the place of business of any tobacco dealer or any other person,
29 except bonded interstate tobacco dealers, without the stamps affixed as herein

1 provided, the prima facie presumption shall arise that such cigarettes are kept therein
2 in violation of the provisions of this Chapter.

3 (1) A manufacturer, importer, or sales entity affiliate may, in accordance
4 with R.S. 47:862, possess, transport, or cause to be transported unstamped cigarettes
5 in or into the state to a stamping agent under any of the following circumstances:

6 (a) The manufacturer and brand family of the cigarettes are at the time of
7 sale listed on the state directory.

8 (b) The manufacturer and brand family of cigarettes are not at the time of
9 sales listed on the state directory, but any of following conditions apply:

10 (i) The stamping agent is authorized to affix the stamp or, where permitted
11 by Paragraph (2) of this Subsection, pays the taxes imposed by another state on
12 whose directory the manufacturer and brand family of the cigarettes are listed at the
13 time of the sales.

14 (ii) The stamping agent would be permitted to resell the cigarettes from this
15 state into that other state as provided in R.S. 47:849.

16 (iii) The stamping agent receiving the cigarettes holds an exporter license
17 pursuant to R.S. 26:902(5)(b) and submits a report pursuant to R.S. 47:851(E).

18 * * *

19 §849. Interstate business of tobacco dealers

20 A. A registered tobacco dealer holding a valid stamping agent license as
21 provided in R.S. 26:902(5)(a) may sell its cigarettes from this state into another state
22 only if it first affixes the stamp required by the other state to the package containing
23 the cigarettes. If the law of the other state permits the sale of the cigarettes to
24 consumers in a package not bearing a stamp, the dealer may sell cigarettes into the
25 other state without a stamp only if it first pays an excise, use, or similar tax imposed
26 on the cigarettes by the other state.

27 B. A dealer may not purchase or possess unstamped cigarettes in this state
28 for sale into another state where the manufacturer and brand family of the cigarettes

1 month. The report shall certify that the report is complete and accurate and shall
2 contain, in addition to any further information that the secretary or the attorney
3 general may reasonably require, the following:

4 (a) The total number of cigarettes acquired by the stamping agent during that
5 month for sale into the state or for sale from this state into another state, sold in or
6 into the state by the stamping agent during that month, and held in inventory in the
7 state or for the sale into the state by the stamping agent pursuant to this Chapter and
8 R.S. 13:5075.

9 (b) The total number of stamps it affixed during that month, and identifying
10 (i) how many of each type of stamp it affixed by number and dollar amount of tax
11 paid; (ii) the total number of cigarettes contained in the packages to which it affixed
12 each respective type of tax stamp; and (iii) by name and number of cigarettes, the
13 manufacturers and brand families of the packages to which it affixed each respective
14 type of tax stamp.

15 (c) In the case of a stamping agent that is an importer, reports under
16 Subparagraph (a) of this Paragraph shall not include cigarettes it sold to a stamping
17 agent as permitted under R.S. 26:902(5)(a) and that it separately reports pursuant to
18 R.S. 13:5075.

19 (2) Any person that during a month acquired, purchased, sold, possessed,
20 transferred, transported, or caused to be transported in or into the state cigarettes of
21 a manufacturer or brand family that were not on the state directory at the time shall
22 file, not later than the twentieth day of the month following the end of the previous
23 calendar month, a report on a form provided by the secretary and certify that the
24 report is complete and accurate. The report shall contain, in addition to any further
25 information that the secretary or the attorney general may reasonably require, the
26 following information:

27 (a) The total number of those cigarettes, in each case identifying by name
28 and number of cigarettes (i) the manufacturer of those cigarettes, (ii) the brand
29 families of those cigarettes, (iii) in the case of a sale or transfer, the state in which

1 the recipient of those cigarettes is located, and (iv) in the case of an acquisition or
2 purchase, the state of the seller or sender of those cigarettes.

3 (b) The following shall be provided to the attorney general or secretary upon
4 request: in the case of acquisition, purchase, or possession, the detail of the person's
5 subsequent sale or transfer of those cigarettes, identifying by name and number of
6 cigarettes (i) the brand families of those cigarettes, (ii) the date of the sale or transfer,
7 (iii) the name and address of the recipient, (iv) the number of stamps of each other
8 state that the person affixed to the packages containing those cigarettes during that
9 month, (v) the total number of cigarettes contained in the packages to which it
10 affixed respective other state's stamp, (vi) by name and number of cigarettes that
11 manufacturers and brand families of the packages to which it affixed each respective
12 other state's stamp and (vii) a certification that it reported each sale or transfer to the
13 taxing authority of the other state not later than the twentieth day of the month
14 following the end of the previous calendar month.

15 (3) The secretary may share the information reported under this Section with
16 any federal, state, or local taxing agency or law enforcement authorities of this state
17 or other states.

18 ~~(2)~~(4)(a) Every registered tobacco dealer receiving and handling cigars and
19 smoking tobaccos in Louisiana upon which the tax has not been previously paid
20 shall, within twenty days after the expiration of each calendar month, file with the
21 secretary a report, under oath, of the total amount of such cigars and smoking
22 tobaccos received and handled during the preceding month, and shall pay the taxes
23 due thereon, and all out of state Louisiana registered tobacco dealers shall file a
24 report, under oath, disclosing all sales of cigars and smoking tobaccos in Louisiana
25 during the preceding calendar month, and shall pay the taxes due thereon. This
26 report shall be made on forms prescribed and furnished by the secretary and shall
27 show such other information as the secretary may require so that the taxes levied in
28 R.S. 47:841 can be reported and computed.

1 (b) A six percent discount is allowable for timely and accurately filing such
 2 report only on those purchases made by registered tobacco dealers in Louisiana who
 3 have a direct purchasing contract with a manufacturer. The secretary shall allow
 4 wholesale tobacco dealers of other states serving a trade area of retail dealers in this
 5 state who have a direct purchasing contract with a manufacturer to sell in this state
 6 with the benefit of the discount provided, however, in no instance shall the discount
 7 be greater than that which is received by such wholesale tobacco dealers in their state
 8 of domicile and further provided that regardless of the discount extended by other
 9 states, such discount shall not exceed six percent, provided said dealers meet the
 10 requirements of a wholesale dealer as set forth in R.S. 47:842(5). The transfer or
 11 disposal by a qualified dealer of any benefit herein conferred is prohibited except in
 12 the case of the original recipient.

13 ~~(3)~~(5) Failure to file the monthly report on or before the ~~20th~~ twentieth day
 14 of the following month will subject the dealer to forfeiture of the discounts as
 15 authorized in R.S. 47:843, R.S. 47:851 and all other penalties as provided in the
 16 administrative provisions in Chapter 18, Title 47, however, the collector can upon
 17 timely application extend this date in his discretion upon cause shown.

18 * * *

19 E. Out of state sales reports. Any person that sells cigarettes from this state
 20 into another state shall, by the twentieth day of the month following the month in
 21 which the sales were made, file a report on a form to be prescribed by the secretary
 22 and shall provide a duplicate report to the attorney general and certify that the report
 23 is complete and accurate.

24 (1) The report shall contain the following information:

25 (a) The total number of cigarettes sold from this state into another state by
 26 the dealer during that month, identifying by name and number of cigarettes (i) the
 27 manufacturer of those cigarettes, (ii) the brand families of those cigarettes, and (iii)
 28 the name and address of each recipient of those cigarettes;

1 §862. Importation of unstamped articles, except by common carrier, without permit
2 prohibited

3 A.(1) It is unlawful for any person to ship or transport or cause to be shipped
4 or transported into this state by any automobile, truck, boat, conveyance, vehicle, or
5 any means of transportation other than a common carrier of any article or articles on
6 which the tax is levied by this Chapter upon which article or articles the tax as levied
7 by this Chapter has not been paid, without first obtaining a permit from the collector,
8 authorizing the transportation, carriage or movement in this state of the article or
9 articles taxed under this Chapter.

10 (2) A common carrier may possess and transport unstamped cigarettes in
11 connection with a sale or other transfer permitted under this Chapter if the common
12 carrier has in its possession documents establishing that title to the unstamped
13 cigarettes remains with the manufacturer, importer, or stamping agent or bills of
14 lading or other shipping documents establishing that it is delivering the cigarettes on
15 behalf of a person authorized by this Chapter to sell or transfer the unstamped
16 cigarettes and, in each case, such documents list the name and address of the person
17 to whom the cigarettes are being delivered.

18 B.(1) The person or dealer who desires to import tobacco into this state, upon
19 which a tax has not been paid, by vehicles other than a common carrier, must apply
20 to the collector for a permit, stating the name of the driver, the make and number of
21 the vehicle, the date, name, and address of the consignee, and any other information
22 the collector may deem necessary; provided that, failure to obtain a permit as
23 provided in this Section shall render the automobile, truck, boat, conveyance,
24 vehicle, or other means of transportation so transporting any said article or articles
25 subject to seizure and forfeiture and sale in the manner hereinafter provided.

26 (2) Any person or dealer transporting tobacco pursuant to this Subsection
27 shall report the quantity and brand of the cigarettes to the collector and to the

1 (3) "Delivery sale" means any sale of cigarettes to a consumer in this state
2 where either (a) the purchaser submits the order for such sale by means of a
3 telephonic or other method of voice transmission, the mails or any other delivery
4 service, or the Internet or other online service, or (b) the cigarettes are delivered by
5 use of the mails or of a delivery service. A sale of cigarettes shall be a delivery sale
6 regardless of whether the seller is located within or without this state. A sale of
7 cigarettes not for personal consumption to a person who is a cigarette wholesale
8 dealer or a cigarette retail dealer shall not be a delivery sale.

9 (4) "Delivery service" means any person who is engaged in the commercial
10 delivery of letters, packages, or other containers.

11 ~~(5) "Secretary" means the secretary of the Department of Revenue for the~~
12 ~~state of Louisiana or his duly authorized representatives.~~

13 ~~(6) "Legal minimum purchase age" is the minimum age at which an~~
14 ~~individual may legally purchase cigarettes in this state as provided in R.S.~~
15 ~~26:911(A)(1).~~

16 ~~(7)~~ (5) "Mails" or "mailing" means the shipment of cigarettes through the
17 United States Postal Office.

18 ~~(8)~~ (6) "Person" means ~~the same as that term is defined in R.S. 1:10, except~~
19 ~~that a delivery service that is a motor carrier of property registered with the U.S.~~
20 ~~Department of Transportation and/or an air carrier certified by the U.S. Department~~
21 ~~of Transportation to provide all-cargo air transportation, when engaged in the~~
22 ~~business of the commercial delivery of letters, packages, or other containers, is not~~
23 ~~a person for purposes of this Chapter.~~ any natural person, trustee, company,
24 partnership, corporation, or other legal entity.

25 ~~(9) "Shipping container" means a container in which cigarettes are shipped~~
26 ~~in connection with a delivery sale.~~

27 ~~(10) "Shipping documents" means bills of lading, airbills, or any other~~
28 ~~documents used to evidence the undertaking by a delivery service to deliver letters,~~
29 ~~packages, or other containers.~~

1 B. In addition to the obligations to pay any taxes above, the person placing
2 a purchase order for delivery sale shall also be obligated to pay any interest, costs,
3 and attorney fees incurred in obtaining payment of the taxes imposed by this state
4 as well as any penalties assessed under this Chapter.

5 § 877. Penalties

6 A. Except as otherwise provided in this Section, a first violation of any
7 provision of ~~this Chapter~~ R.S. 47:872 shall be punishable by a fine of one thousand
8 dollars or five times the retail value of the cigarettes involved, whichever is greater.
9 A second or subsequent violation of ~~this Chapter~~ R.S. 47:872 shall be punishable by
10 a fine of five thousand dollars or five times the retail value of the cigarettes involved,
11 whichever is greater.

12 B. Any person who knowingly violates any provision of ~~this Chapter~~ R.S.
13 47:872, shall for each such offense be fined ten thousand dollars or five times the
14 retail value of the cigarettes involved, whichever is greater, or imprisoned not more
15 than five years, or both.

16 ~~C. Any person failing to collect or remit to the secretary any tax required in~~
17 ~~connection with a delivery sale shall be assessed, in addition to any other penalty, a~~
18 ~~penalty of five times the retail value of the cigarettes involved.~~

19 ~~D.C.~~ Forfeiture

20 (1) Any cigarettes sold or attempted to be sold in a delivery sale ~~that do not~~
21 ~~meet requirements of this Chapter~~ shall be forfeited to the state and destroyed.

22 (2) ~~All fixtures, equipment, and all other materials and personal property on~~
23 ~~the premises of any person who, with the intent to defraud the state, violates any of~~
24 ~~the requirements of this Chapter, shall be forfeited to the state.~~

25 §878. Enforcement

26 The attorney general of the Louisiana Office of Alcohol and Tobacco
27 Control, or ~~his~~ either agency's designee, or any person who holds a valid permit
28 under 26 USC 5712, may bring an action in the appropriate court in this state to

1 prevent or restrain violations of this Chapter by any person or any person controlling
2 such person.

3 * * *

4 §1508. Confidential character of tax records

5 * * *

6 B. Nothing herein contained shall be construed to prevent:

7 * * *

8 (11) The secretary from disclosing to any person upon request the name and
9 address of any registered wholesale tobacco dealer who holds a license or permit to
10 operate within this state, but the secretary shall not disclose any tax data whatsoever
11 with respect to the wholesaler, except for information provided to the tobacco
12 settlement enforcement unit of the Louisiana Department of Justice for the
13 enforcement of ~~Part~~ Parts XIII and XIII-A of Chapter 32 and Title 13 of the
14 Louisiana Revised Statutes of 1950 or to the Louisiana Office Alcohol and Tobacco
15 Control for the enforcement of Chapter 7 of Title 26 of the Louisiana Revised
16 Statutes of 1950. Such disclosure shall include any and all data with respect to
17 dealers, including but not limited to any wholesaler or retailer, as well as
18 manufacturer, sales entity affiliate, or importer. Neither the Louisiana Department
19 of Justice nor the Louisiana Office Alcohol and Tobacco Control shall disclose or
20 be required to disclose any information obtained under this Paragraph unless the
21 disclosure is ordered by a court of competent jurisdiction or agreed upon in writing
22 by the registered wholesale or retail tobacco dealer, sales entity affiliate, importer,
23 or manufacturer. The secretary, attorney general, and commissioner shall share with
24 each other the information received under the provisions of R.S. 13:5061 et seq.,
25 13:5071 et seq., 26:901 et seq., and R.S. 47:841 et seq. and may share such
26 information with other federal, state, or local taxing agencies or law enforcement
27 authorities only for purposes of enforcement of those Sections and the corresponding
28 laws of other states.

29 * * *

1 §1520. Electronically filed returns; signatures

2 A.(1) The secretary may require electronic filing of tax returns or reports
3 under any of the following circumstances:

4 * * *

5 (g) Persons required to file a report pursuant to R.S. 47:843 et seq.

6 * * *

7 Section 4. R.S. 47:873 through 875 are hereby repealed in their entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Thompson

HB No. 641

Abstract: Relative to tobacco enforcement, includes restrictions on transactions of unstamped cigarettes, adds requirements for manufacturers not participating in the tobacco Master Settlement Agreement, and provides for the duties of the attorney general, secretary of the Dept. of Revenue, and the commissioner of the office of alcohol and tobacco control.

TITLE 13 PROVISIONS

Present law (R.S. 13:5071 et seq.) establishes procedural enhancements to prevent violations and to aid in the enforcement of the Master Settlement Agreement between the state and leading United States tobacco product manufacturers.

Proposed law provides for the following substantive changes:

- (1) Provides for the expansion of requirements for Nonparticipating Manufacturers ("NPMs") which will now include: proof that the NPM holds a valid permit under 26 USC 5713; sufficient information that it has posted an appropriate bond; and, a declaration from importers – wherein the NPM is a foreign company, consenting to the personal jurisdiction of Louisiana, accepting joint and several liability with the NPM, and appointing a registered agent for service of process within the state of Louisiana.
- (2) Provides for an enumerated list of reasons which prohibits a tobacco manufacturer from being included on the attorney general state directory: any violation of 13:5061 et seq. (which are now included as only quarterly whereas present law allowed it as annual, monthly, or quarterly); and, reciprocity to other states' laws allowing La. to remove a manufacturer should its conduct in another state be cause for removal in this state; failure to submit (new) reports to the attorney general (monthly reports of the manufacturer's sales under 13:5075).
- (3) Provides relative to manufacturers and its brand families to be removed from the state directory in certain circumstances and further provides for reinstatement eligibility requirements.

- (4) Provides relative to the reporting requirements pursuant to Titles 13, 26, and 47 by stamping agents.
- (5) Provides relative to the unlawful selling, offering, or possessing for sale or import for personal consumption in Louisiana for cigarettes not included in the directory and cigarettes that are subject to a de-listing notice.
- (6) Provides for the provisions of present law regarding agent for service of process to be applicable to importers with regard to the appointment and continuous retention of an agent of process and related notice requirements and obligations.
- (7) Provides relative to reporting requirements for manufacturers and importers that sell into the state to submit monthly reports of total quantity of cigarettes and roll-your-own cigarettes sold into the state, including manufacturer and brand names. This section also includes reciprocity provisions allowing the attorney general to request copies of reports from manufacturers or importers that they have filed in other states which include sales information (quantity, manufacturer, and brand). This language is entirely new as present law does not encompass manufacturer and importers in the reporting requirements.
- (8) Provides relative to the general authority of the attorney general to receive copies of any reports received by the commissioner and the sharing of information with the attorney general, the commissioner, and other federal, state, or local taxing agencies or law enforcement authorities for purposes of enforcement without violating any taxpayer confidentiality laws (pursuant to 47:1508).
- (9) Provides relative to escrow installments and reporting of information which mandates escrow payments on a quarterly basis no later than 45 days after the end of each calendar quarterly in which the sales are made and further provides that failure to make a full quarterly installment deposit will constitute a separate violation of the state's escrow laws. Further requires the attorney general to compare reports received from NPMs against the escrow deposits received and provide notice to each nonparticipating manufacturer when it concludes additional escrow is owed.
- (10) Provides relative to requirements for importers of any brand families of nonparticipating manufactures to be jointly and severally liable with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund for payment of all civil penalties and for payment of all reasonable costs and expenses of investigation and prosecution, including attorney fees and consent to personal jurisdiction in Louisiana for purposes of claims by the state for payment of the obligations.
- (11) Specifies the procedures for notifying a manufacturer prior to the manufacturer's removal from the state directory by requiring a 30-day notice letter from the attorney general to the manufacturer; a manufacturer can attempt to fully cure such violation or refute the removal and detailed reasons for such removal during the 30-day notice period; allows the attorney general to recuperate reasonable costs and attorney fees for an unsuccessful challenge of a decision to not include or remove from the directory of a brand family or manufacturer; and, each person may provide a specific name/address for such notices to be sent.
- (12) Provides relative to the requirement that NPM post a bond or cash equivalent for the benefit of the state; evidence of such bond shall be provided to the attorney general at least 10 days prior to each calendar quarter as a condition to the NPM and its brand families' inclusion on the state directory. Further provides for the bond amounts.

TITLE 26 PROVISIONS

Present law (R.S. 26:901 et seq.) provides for the regulation of tobacco products and the issuance of permits by the commissioner of the office of alcohol and tobacco control.

Proposed law provides for the following substantive changes:

- (1) Provides for the addition of a new permit designation, a stamping agent designation (as a particular permit other than a general wholesale dealer) to dealers that engage in the business of purchasing unstamped or non-tax paid cigarettes (or roll-your-own). In addition, a second new designation is created and classified as an exporter permit for any person/dealer that intends to carry and possess tobacco products not listed as approved on the attorney general directory.
- (2) Codifies current practices and expands detailing what stamping agents shall certify and submit to the commissioner; such certification shall include an enumerated list of obligations including providing accurate reports under present law and proposed law, paying all state taxes, complying generally with Title 47, consenting to the jurisdiction of the state to enforce proposed law, and waiver of sovereign immunity and confidentiality laws, allowing this state to share obtained information with other states.
- (3) Requires stamping agents located outside of the state to appoint an agent for service of process and codifies current practices and details the steps for the removal of a stamping agent; and lists the enumerated reasons a stamping agent's license to be subject to termination. Further provides for reciprocity for a stamping agent's conduct in another state.
- (4) Provides for certain publication requirements by the commissioner and notice requirements for the attorney general.
- (5) Provides relative to current practices not previously detailed and states the enumerated time line for eligibility of stamping agent status for any stamping agent whose license has been terminated, including a reinstatement time line of no less than 90 days and no more than three years following the termination date.
- (6) Provides relative to civil penalties for certain violations.

TITLE 47 PROVISIONS

Present law (R.S. 47:841 et seq.) provides for levy of tobacco taxes. R.S. 47:871 et seq. provides for the delivery sales of cigarettes.

Proposed law provides for the following substantive changes:

- (1) Requires that all packages of cigarettes sold in or into the state shall bear a tax stamp as required under Title 47 and that transporting or possession of unstamped cigarettes in the state is prohibited unless otherwise provided in law.
- (2) Provides relative to the affixing of tax stamps, stating that no person other than a dealer holding a valid stamping agent license under R.S. 26:902 may affix a tax stamp and further requires that all dealers shall immediately, upon receipt of unstamped cigarettes, affix a tax stamp on the product.
- (3) Provides relative to requirements for stamping agents to affix tax stamps and the time delay to affix the tax stamp.

- (4) Authorizes a manufacturer, importer, or sales entity affiliate to, in accordance with R.S. 47:862, possess, transport, or cause to be transported unstamped cigarettes if the product is on the attorney general directory or if not listed on the attorney general directory, under specific enumerated circumstances, including but not limited to submitting a report.
- (5) Requires that only dealers holding an exporter permit under Title 26 be allowed to sell cigarettes from this state into another state, if it first affixes a tax stamp required by the other state or if the law of the other state does not require tax stamps, to first pay the excise tax of the other state. Further prohibits a dealer to purchase or possess unstamped cigarettes in this state for sale into another state if the brand and manufacturer are not at the time listed on the other state's directory, and that a person may not sell cigarettes into another state if such a sale would violate the laws of the other state.
- (6) Provides for the addition of stamping agents to the designation of registered tobacco dealers, including the requirement to file monthly reports with the Department of Revenue of monthly purchases, receipt and sale of unstamped taxable cigarettes, and the purchase and use of cigarette tax stamps.
- (7) Provides relative to certification by dealers, stamping agents, and importers that certain reports are complete and accurate and provide for certain identifying information as required by the commissioner or attorney general. Further requires certain persons to submit monthly reports to the secretary who is authorized to share reports with certain agencies of this state and other states.
- (8) Authorizes a common carrier to possess and transport unstamped cigarettes if the common carrier has in its possession documents establishing the title of the unstamped product remains with the manufacturer, importer, or stamping agent or bills of lading or other shipping documents establishing it is delivering the cigarettes pursuant to law.
- (9) Provides relative to the seizure and use of cigarettes by law enforcement and the destruction of the seized cigarettes.
- (10) Requires any person placing a purchase order (the consumer) to remit to the secretary all applicable taxes imposed by the state on such sale and to pay interest, costs, and attorney fees incurred in obtaining payment of the taxes imposed by this state as well as any penalties assessed.
- (11) Provides relative to penalties for violations of delivery sales of cigarettes and further authorizes the commissioner or his designee to bring an action for any violation regarding delivery sales.
- (12) Expands disclosure of tax records to the attorney general to encompass but not be limited to any and all data with respect to any dealer, wholesaler, retailers, manufacturer, sales entity affiliate, or importer. Further permits disclosure to the commissioner.
- (13) Provides that the secretary, commissioner, and attorney general shall share with each other information received under each respective title and may share such information with other federal, state, or local agencies for enforcement purposes.

(Amends R.S. 13:5072, 5073(A)(3)(a)(v), (B)(2)(a), (3), and (4), and (C), 5075, 5076(A) and (B), and 5077; R.S. 26:904(A), 916(H), 918(B), and 921; R.S. 47:843(A)(2), (C)(3) and (4), and (D), 847(A) and (B), 849, 851(B), 857, 862, 865(C)(3)(b) and (c)(intro. para.) and (i), 871, 872, 876-878, and 1508(B)(11); Adds R.S. 13:5073(A)(3)(a)(vi), (4)(e) and (f), (B)(5) and (6), 5074(D), and 5078, R.S. 26:901(19)-(26) 902(5), 904(D), 906(H), (I), and (J), 908(D), 916(I)-(N), and 918(C) and (D), R.S. 47:842(16)-(22), 843(A)(3), 847(C), and 851(E) and (F) and 1520(A)(1)(g); Repeals R.S. 47:873-875)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Judiciary to the original bill.

1. Retained current law which allows for the importation for personal consumption in this state.
2. Increased the time frame for possession of de-listed products from 15 days to 60 days.
3. Clarified the term "local agencies" to mean local taxing agencies or law enforcement agencies relative to the sharing of information.
4. Changed the requirement from the attorney general invoicing each nonparticipating manufacturer for additional deposit owed to requiring the attorney general to provide notice to the nonparticipating manufacturer for additional deposit owed.
5. Added the definition for the term "knowing violation or failure" to mean that the person knowingly or intentionally engaged in conduct without good faith belief that the conduct was consistent with the law.
6. Added the requirement for the holder of a valid stamping agent designation that affixes tax stamps of another state to apply for an exporter license to purchase or possess unstamped or non-tax paid cigarettes.
7. Added that the designation of a stamping agent shall be subject to termination if a permittee "knowingly" files an incomplete or inaccurate report or certification.
8. Removed the penalty for the designation of a stamping agent to be terminated for failure to deposit escrow.
9. Removed the changes regarding the appropriation for the Tobacco Settlement Enforcement Fund.
10. Removed the requirement for every registered tobacco dealer holding a valid stamping license, prior to selling any unstamped cigarettes in or into the state, to have the requisite denominations and amount of stamp or stamps to represent the tax affixed.
11. Removed the requirement for the stamping agent to purchase the cigarettes directly from the manufacturer or importer of the cigarettes.
12. Added authority for a sales entity affiliate to possess, transport, or cause to be transported unstamped cigarettes in or into the state in certain circumstances.
13. Changed the requirement for a stamping agent to give five days notice to the attorney general for transfer of in state to out of state cigarettes to submitting an out of state report in accordance with the requirements of proposed law.

14. Changed certain provisions relative to the information required by the attorney general in the report and further required certain information to be provided to the attorney general or secretary upon request.
15. Added authorization for the collector (Dept. of Revenue) to refund the dealer for the cost of stamps affixed to goods that were listed in the directory but subsequently removed upon proof that the product was destroyed.
16. Removed provisions that prohibited a person from being penalized for possession of up to 600 cigarettes bearing the stamp of another state for consumption by that person or person's family if the cigarettes are physically brought into the state by the person or family.
17. Provided for the definition of "cigarettes" and removed the definition of "tobacco products".
18. Changed all references from "tobacco products" to "cigarettes" relative to the prohibition against delivery sales and collection of taxes.
19. Changed authority to bring actions in the appropriate court for certain violations from the attorney general to the commissioner of the office of alcohol and tobacco control.
20. Removed and clarified certain provisions relative to wholesaler reporting.
21. Added a provision that authorizes the Department of Revenue to require electronic filing of tax returns or reports for persons required to file a report relative to cigarette tax stamps.