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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2689 Session of  
2022

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INTRODUCED BY TWARDZIK, JUNE 20, 2022

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REFERRED TO COMMITTEE ON APPROPRIATIONS, JUNE 20, 2022

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AN ACT

1 Amending the act of December 30, 2003 (P.L.441, No.64), entitled  
2 "An act requiring certifications by tobacco product  
3 manufacturers; providing for a directory of cigarettes  
4 approved for stamping and sale; conferring powers and  
5 imposing duties on the Attorney General and the Department of  
6 Revenue; and imposing penalties," in preliminary provisions,  
7 further providing for definitions; in tobacco product  
8 manufacturers directory, further providing for directory, for  
9 certification, for required information, for agent for  
10 service of process and for records and reporting and  
11 providing for nonparticipating manufacturer and importer  
12 joint and several liability and for surety bond requirements;  
13 and imposing duties on the Office of Attorney General.

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. The definition of "units sold" in section 102 of  
17 the act of December 30, 2003 (P.L.441, No.64), known as the  
18 Tobacco Product Manufacturer Directory Act, is amended and the  
19 section is amended by adding definitions to read:

20 Section 102. Definitions.

21 The following words and phrases when used in this act shall  
22 have the meanings given to them in this section unless the  
23 context clearly indicates otherwise:

24 \* \* \*

1 "Importer." A person in any state or territory of the United  
2 States to whom cigarettes that are manufactured outside the  
3 United States are shipped, delivered or consigned for resale.

4 \* \* \*

5 "Nonparticipating Manufacturer Adjustment Settlement  
6 Agreement." The settlement agreement and related documents  
7 entered into on June 20, 2018, by the Commonwealth and the  
8 participating manufacturers settling certain disputes regarding  
9 application of adjustments to payments made pursuant to the  
10 Master Settlement Agreement.

11 \* \* \*

12 "Units sold." The number of individual cigarettes sold in  
13 this Commonwealth by the applicable tobacco product manufacturer  
14 during the year in question[, as measured by taxes collected by  
15 the Commonwealth on packs bearing the tax stamp of the  
16 Commonwealth required under section 1215 of the act of March 4,  
17 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971; by  
18 taxes collected by the Commonwealth on "roll-your-own" tobacco  
19 containers which are not required to have a tax stamp under  
20 section 1215 of the Tax Reform Code of 1971; and by taxes  
21 collected by the Commonwealth on cigarettes sold without a tax  
22 stamp, when authorized by the Department of Revenue, under  
23 section 1215(h) of the Tax Reform Code of 1971.] on which the  
24 Commonwealth has authority under Federal and State law to  
25 collect State excise tax under sections 1206 and 1202-A of the  
26 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
27 of 1971, notwithstanding whether the State excise taxes were  
28 imposed or collected by the Commonwealth. Cigarettes that are  
29 exempt from State excise taxes under Federal law are  
30 specifically excluded from this definition.

1 Section 2. Section 301(1)(ii) and (iv) of the act are  
2 amended and the paragraph is amended by adding a subparagraph to  
3 read:

4 Section 301. Directory.

5 The Attorney General shall develop and publish a directory of  
6 all tobacco product manufacturers and their brand families that  
7 have provided current and accurate certification under section  
8 303. The directory shall be available on the Office of Attorney  
9 General's World Wide Web site. The following shall apply:

10 (1) In the case of a nonparticipating manufacturer,  
11 neither the manufacturer nor its brand family shall be  
12 included or retained in the directory if the Attorney General  
13 determines that any of the following apply:

14 \* \* \*

15 (ii) The manufacturer has failed to make any payment  
16 required under the Tobacco Settlement Agreement Act,  
17 including applicable penalties, for any period for any  
18 brand family, whether or not listed by the tobacco  
19 product manufacturer, including all payments or penalties  
20 required from prior manufacturers of those brands, into a  
21 qualified escrow fund approved by the Attorney General.  
22 For purposes of retention on the directory, the  
23 Commonwealth's recovery of any amount from execution of a  
24 bond under section 313 shall not excuse a manufacturer's  
25 failure to timely deposit escrow as required by the  
26 Tobacco Settlement Agreement Act, notwithstanding if the  
27 bond fully covers the escrow owed and any other costs,  
28 fees or penalties that may be applicable.

29 \* \* \*

30 (iv) The requirements of [section] sections 303(a),

1           304(b), 312 or 313 have not been satisfied.

2           (v) The Commonwealth has executed upon a bond under  
3           section 313 due to the manufacturer's failure to timely  
4           deposit escrow as required. This ground for exclusion or  
5           removal from the directory shall remain notwithstanding  
6           whether the manufacturer's escrow obligations and other  
7           costs were fully covered by the amount recovered by the  
8           Commonwealth under the bond.

9           \* \* \*

10          Section 3. Section 303(a) of the act is amended by adding a  
11 paragraph to read:

12          Section 303. Certification.

13          (a) Required information.--A tobacco product manufacturer  
14 whose cigarettes are sold in this Commonwealth, whether directly  
15 or through a distributor, retailer or similar intermediary or  
16 intermediaries, shall execute and deliver to the Attorney  
17 General a certification under penalty of perjury that, as of the  
18 date of the certification, the tobacco product manufacturer is  
19 either a participating manufacturer or is in full compliance  
20 with this act and the Tobacco Settlement Agreement Act. In the  
21 case of a nonparticipating manufacturer, the certification shall  
22 include a statement that:

23          \* \* \*

24          (3) The nonparticipating manufacturer has posted the  
25          bond required under section 313.

26          \* \* \*

27          Section 4. Section 304(b) of the act is amended to read:

28          Section 304. Required information.

29          \* \* \*

30          (b) Nonparticipating manufacturers.--A nonparticipating

1 manufacturer shall include in its certification the following:

2 (1) A list of all of its brand families that were sold  
3 in this Commonwealth during the preceding calendar year,  
4 including the number of units sold for each brand family.

5 (2) A list of all of its brand families that have been  
6 sold in this Commonwealth during the current calendar year.

7 (3) The following:

8 (i) The name, address and telephone number of the  
9 financial institution where the nonparticipating  
10 manufacturer [has] and its importers have established  
11 [its] a qualified escrow fund.

12 (ii) The account number of [the] each qualified  
13 escrow fund and [any] each subaccount number for the  
14 escrow account established for the benefit of the  
15 Commonwealth.

16 (iii) The amount the nonparticipating manufacturer  
17 and its importers placed in [the fund] qualified escrow  
18 funds for cigarettes sold in this Commonwealth during the  
19 preceding calendar year, the date and amount of each  
20 deposit and any other evidence of the deposit required by  
21 the Attorney General.

22 (iv) The amount and date of any withdrawal or  
23 transfer of funds the nonparticipating manufacturer or  
24 its importers made from [the] qualified escrow [fund]  
25 funds at any time or from any other qualified escrow fund  
26 into which the nonparticipating manufacturer or its  
27 importers made escrow payments under the Tobacco  
28 Settlement Agreement Act.

29 (v) The name and address of any other manufacturer  
30 of its brand families in the current or preceding

1 calendar year. A supplemental certification shall be  
2 filed if brand families change during the course of the  
3 year.

4 (4) If the nonparticipating manufacturer's cigarettes  
5 are manufactured outside of the United States, a complete  
6 list of its importers into the United States who sell  
7 cigarettes into this Commonwealth and the brand families sold  
8 by the importers, including the importer's name, address,  
9 contact name, phone number and email address at which the  
10 importer can be reached, and a declaration signed by each  
11 importer on a form prescribed by the Attorney General. The  
12 declaration shall state the following:

13 (i) The importer accepts joint and several liability  
14 with the nonparticipating manufacturer for each  
15 obligation to place money into a qualified escrow fund  
16 and for payment of civil penalties, costs, expenses and  
17 attorney's fees related to the nonparticipating  
18 manufacturer's failure to deposit escrow as required.

19 (ii) The importer consents to personal jurisdiction  
20 in this Commonwealth for the purposes of claims by the  
21 Commonwealth for any obligations to place money into a  
22 qualified escrow fund and for payment of civil penalties,  
23 costs, expenses and attorney's fees related to the escrow  
24 obligations.

25 (iii) The importer has appointed a registered agent  
26 for service of process in this Commonwealth according to  
27 the same requirements under section 305.

28 (iv) The importer holds a valid permit under 26  
29 U.S.C. § 5713 (relating to permit).

30 (v) The importer agrees to provide any information

1           required under this act.

2           \* \* \*

3           Section 5. Section 305 of the act is amended by adding a  
4 subsection to read:

5 Section 305. Agent for service of process.

6           \* \* \*

7           (d) Importers.--Each importer of cigarettes into the United  
8 States of any nonparticipating manufacturer's brand families  
9 that are sold in this Commonwealth shall appoint a registered  
10 agent for service of process located in this Commonwealth  
11 pursuant to the same requirements provided by this section. The  
12 importers shall be subject to personal jurisdiction within this  
13 Commonwealth. The nonparticipating manufacturer shall bear  
14 responsibility for ensuring its importers' compliance with this  
15 act. Failure to ensure compliance shall constitute grounds for  
16 removal of the nonparticipating manufacturer's brand families  
17 from the directory.

18           Section 6. Section 306(c) of the act is amended to read:

19 Section 306. Records and reporting.

20           \* \* \*

21           (c) Disclosure.--The department may disclose to the Attorney  
22 General any information received under this section. The  
23 department and the Attorney General shall share information  
24 received under this [section with other Federal, State and local  
25 agencies as necessary to enforce this act or related laws of  
26 other states.] chapter, the act of April 9, 1929 (P.L.343,  
27 No.176), known as The Fiscal Code, or the act of March 4, 1971  
28 (P.L.6, No.2), known as the Tax Reform Code of 1971, with:

29           (1) other Federal, State and local agencies as necessary  
30 to determine compliance with and enforce this act or related

1 laws of other states; or

2 (2) the data clearinghouse and the participating  
3 manufacturer's counsel as provided by the nonparticipating  
4 manufacturer adjustment settlement agreement to determine the  
5 proper amount of any payment, offset, adjustment or refund  
6 pursuant to the master settlement agreement or the  
7 nonparticipating manufacturer adjustment settlement  
8 agreement.

9 \* \* \*

10 Section 7. The act is amended by adding sections to read:

11 Section 312. Nonparticipating manufacturer and importer joint  
12 and several liability.

13 In the case of nonparticipating manufacturers located outside  
14 of the United States, each importer into the United States of  
15 any nonparticipating manufacturer's brand families that are sold  
16 in this Commonwealth shall bear joint and several liability with  
17 the nonparticipating manufacturer for deposit of all escrow due  
18 under section 4(a) of the Tobacco Settlement Agreement Act and  
19 payment of all civil penalties, fees, costs and attorney fees  
20 due under section 4(c) and (d) of the Tobacco Settlement  
21 Agreement Act.

22 Section 313. Surety bond requirements.

23 (a) Requirements.--All nonparticipating manufacturers shall  
24 post a bond for the benefit of the Commonwealth, which shall be:

25 (1) Subject to execution under subsection (c).

26 (2) Conditioned on the nonparticipating manufacturer's  
27 compliance with the requirements of this act and the Tobacco  
28 Settlement Agreement Act.

29 (3) Posted by a surety bond company located within this  
30 Commonwealth.



1       (4) Posted or adjusted at least 21 days prior to every  
2 calendar quarter.

3       (5) Provided to the Attorney General at least 21 days in  
4 advance of each calendar quarter as a precondition for the  
5 nonparticipating manufacturer and its brand families being  
6 included on the directory for that quarter. If the amount  
7 required to be posted under subsection (b) is equal to or  
8 lower than the amount already posted, the nonparticipating  
9 manufacturer shall not be required to post a new bond and may  
10 comply with this section by providing evidence that the bond  
11 already posted will remain in effect for the next calendar  
12 year or quarter, whichever is applicable.

13       (b) Amount.--The amount of the bond required by subsection  
14 (a) shall be the greater of:

15           (1) \$25,000;

16           (2) for a nonparticipating manufacturer that deposits  
17 escrow annually, the highest collective amount of escrow owed  
18 in this Commonwealth by the nonparticipating manufacturer or  
19 its predecessor for any four consecutive calendar quarters  
20 out of the past 12 calendar quarters;

21           (3) for a nonparticipating manufacturer that deposits  
22 escrow quarterly, the highest amount of escrow owed in this  
23 Commonwealth by the nonparticipating manufacturer or its  
24 predecessor for any of the past 12 calendar quarters; or

25           (4) for a nonparticipating manufacturer that, at the  
26 time of its application, is not included on the directory and  
27 is applying for initial inclusion or reinclusion on the  
28 directory, an amount determined by the Attorney General to  
29 adequately protect the Commonwealth's interest in enforcing  
30 the Tobacco Settlement Agreement Act and this act,

1 considering:

2 (i) the nonparticipating manufacturer's prior sales  
3 history selling within this Commonwealth or in other  
4 states, territories or countries;

5 (ii) the nonparticipating manufacturer's history of  
6 compliance with Federal or State tobacco regulations;

7 (iii) the financial state of the nonparticipating  
8 manufacturer; and

9 (iv) any other factors that the Attorney General  
10 deems pertinent to the determination.

11 (c) Execution upon bond.--If a nonparticipating manufacturer  
12 that posted a bond has failed to make, or have made on its  
13 behalf by its importer with joint and several liability, escrow  
14 deposits equal to the full amount due for the certification  
15 within 15 days following the due date for the certification  
16 under section 4 of the Tobacco Settlement Agreement Act, the  
17 Attorney General may execute upon the bond, first to recover  
18 delinquent escrow, then to recover civil penalties and costs  
19 authorized by section 4 of the Tobacco Settlement Agreement Act,  
20 all of which, including escrow, shall be deposited into the  
21 General Fund. Escrow obligations, civil penalties, costs, fees  
22 and disgorgement of profits determined to be due under this act  
23 or the Tobacco Settlement Agreement Act that are above the  
24 amount collected on the bond shall remain due from the  
25 nonparticipating manufacturer and from any importer that sold  
26 its cigarettes during the period of default. Any delinquent  
27 escrow recovered under this subsection shall reduce the amount  
28 of escrow due from the nonparticipating manufacturer by the  
29 dollar amount collected.

30 Section 8. The following shall apply:

1           (1) The Office of Attorney General shall attempt to  
2 obtain the consent of the participating manufacturers under  
3 the Master Settlement Agreement to the amendment or addition  
4 of the definition of "importer," "Nonparticipating  
5 Manufacturer Adjustment Settlement Agreement" and "units  
6 sold" in section 102 and sections 301(1)(ii), (iv) and (v),  
7 303(a)(3), 304(b), 305(d), 306(c), 312 and 313 of the act.

8           (2) If consent is obtained under paragraph (1), the  
9 Office of Attorney General shall:

10           (i) provide notice to the Secretary of Revenue; and

11           (ii) transmit notice of the consent to the  
12 Legislative Reference Bureau for publication in the  
13 Pennsylvania Bulletin.

14           (3) If consent is not obtained under paragraph (1), the  
15 Office of Attorney General shall:

16           (i) notify the Secretary of Revenue; and

17           (ii) transmit notice of the refusal to the  
18 Legislative Reference Bureau for publication in the  
19 Pennsylvania Bulletin.

20 Section 9. This act shall take effect as follows:

21           (1) The amendment or addition of the definition of  
22 "importer," "Nonparticipating Manufacturer Adjustment  
23 Settlement Agreement" and "units sold" in section 102 and  
24 sections 301(1)(ii), (iv) and (v), 303(a)(3), 304(b), 305(d),  
25 306(c), 312 and 313 of the act shall take effect 60 days  
26 after publication of the notice of consent under section 8(2)  
27 (ii) of this act.

28           (2) The remainder of this act shall take effect  
29 immediately.