

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

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ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

§6-12-2

Definitions.

1           As used in this chapter, the following terms shall  
2 have the following meanings:

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

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

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

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

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

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

24 (5)(6) MASTER SETTLEMENT AGREEMENT. The settlement  
25 agreement, and related documents, entered into on November 23,

1 1998, by the state and leading United States tobacco product  
2 manufacturers.

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

13 ~~(7)~~(8) RELEASED CLAIMS. Released claims as that term  
14 is defined in the Master Settlement Agreement.

15 ~~(8)~~(9) RELEASING PARTIES. Releasing parties as that  
16 term is defined in the Master Settlement Agreement.

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

20 a. Manufactures cigarettes anywhere that such  
21 manufacturer intends to be sold in the United States,  
22 including cigarettes intended to be sold in the United States  
23 through an importer (except where such importer is an original  
24 participating manufacturer, as that term is defined in the  
25 Master Settlement Agreement, that will be responsible for the

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

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

12 c. Becomes a successor of an entity described in  
13 paragraph a. or b.

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

17 ~~(10)~~ (11) UNITS SOLD. The number of individual  
18 cigarettes sold in the state by the applicable tobacco product  
19 manufacturer, whether directly or through a distributor,  
20 retailer, or similar intermediary or intermediaries, during  
21 the year in question, as measured by excise taxes collected by  
22 the state on packs, or roll-your-own tobacco containers,  
23 bearing the excise tax stamp of the state. In addition to and  
24 without limiting the foregoing, the term "units sold" shall  
25 also include the number of individual cigarettes sold in the

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

22 §6-12-3

23 Election between settlement and escrow fund.

24 (a) Any tobacco product manufacturer selling  
25 cigarettes to consumers within the state, whether directly or

1 through a distributor, retailer, or similar intermediary or  
2 intermediaries, after June 9, 1999, shall do one of the  
3 following:

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

8 (2) a. Place into a qualified escrow fund, by April  
9 15 of the year following the year in question, the following  
10 amounts, as such amounts are adjusted for inflation:

11 1999: \$.0094241 per unit sold after June 9, 1999;

12 2000: \$.0104712 per unit sold;

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

14 For each of 2003 through 2006: \$.0167539 per unit  
15 sold;

16 For each of 2007 and each year thereafter: \$.0188482  
17 per unit sold.

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

23 1. To pay a judgment or settlement on any released  
24 claim brought against such tobacco product manufacturer by the  
25 state or any releasing party located or residing in the state.



1 Funds shall be released from escrow under this subparagraph  
2 (i) in the order in which they were placed into escrow and  
3 (ii) only to the extent and at the time necessary to make  
4 payments required under such judgment or settlement;

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

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

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

1 place into escrow the funds required under this section. Any  
2 tobacco product manufacturer that fails in any year to place  
3 into escrow the funds required under this section shall:

4 1. Be required within 15 days to place such funds  
5 into escrow as shall bring it into compliance with this  
6 section. The court, upon a finding of a violation of this  
7 section, may impose a civil penalty to be paid to the General  
8 Fund of the state in an amount not to exceed 5 percent of the  
9 amount improperly withheld from escrow per day of the  
10 violation and in a total amount not to exceed 100 percent of  
11 the original amount improperly withheld from escrow;

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

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

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

3           (b) In the case of units sold which are cigarettes  
4 manufactured outside the United States and imported into the  
5 United States by an importer:

6           (1) Importers of the cigarettes shall be jointly and  
7 severally liable with the tobacco product manufacturer of the  
8 cigarettes for the escrow deposits required under subsection  
9 (a) (2) of this section;

10           (2) Importers of the cigarettes may be sued under  
11 subsection (a) (2)c. of this section to the same extent as the  
12 tobacco product manufacturer, and shall be subject to all of  
13 the same civil penalties, remedies, or other relief that may  
14 be awarded against the tobacco product manufacturer of the  
15 cigarettes as provided in that subsection; and

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

25           §6-12A-2

1 Definitions.

2 For the purposes of this chapter, unless otherwise  
 3 indicated, the following terms shall have the meanings  
 4 respectively ascribed to them by this section:

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

14 (2) CIGARETTE. As defined under subdivision (4) of  
 15 Section 6-12-2.

16 (3) COMMISSIONER. The Commissioner for the  
 17 Department of Revenue for the State of Alabama.

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

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

23 ~~(5)~~(6) MASTER SETTLEMENT AGREEMENT. The tobacco  
 24 Master Settlement Agreement as defined under subdivision (5)  
 25 of Section 6-12-2.

1           ~~(6)~~(7) NON-PARTICIPATING MANUFACTURER. Any tobacco  
2 product manufacturer that is not a participating manufacturer.

3           ~~(7)~~(8) PARTICIPATING MANUFACTURER. As defined in  
4 Section II(jj) of the Master Settlement Agreement, and all  
5 amendments thereto.

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

8           ~~(9)~~(10) TOBACCO PRODUCT MANUFACTURER. As defined in  
9 subdivision (9) of Section 6-12-2.

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

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

16           §6-12A-3

17           Tobacco product manufacturer certification;  
18 directory; stamping, sale, or import of cigarettes not in  
19 directory.

20           (a) Certification. Every tobacco product  
21 manufacturer whose cigarettes are sold in this state whether  
22 directly or through a distributor, retailer, or similar  
23 intermediary or intermediaries shall execute and deliver on a  
24 form prescribed by the commissioner, a certification to the  
25 commissioner no later than the thirtieth day of April each

1 year, certifying that, as of the date of the certification,  
2 the tobacco product manufacturer either: Is a participating  
3 manufacturer or is in full compliance with Section 6-12-3,  
4 including all quarterly installment payments required by  
5 subsection (e) of Section 6-12A-5.

6 (1) Each participating manufacturer shall include in  
7 its certification a list of its brand families. The  
8 participating manufacturer shall update its list 30 days prior  
9 to any addition or modification to its brand families by  
10 executing and delivering a supplemental certification to the  
11 commissioner.

12 (2) Each non-participating manufacturer shall  
13 include in its certification:

14 a. A complete list of all of its brand families.

15 b. A separate listing containing the names of the  
16 brand families of cigarettes and the number of units sold for  
17 each brand family in the state during the preceding calendar  
18 year.

19 c. A separate listing containing the names of its  
20 brand families that have been sold in the state at any time  
21 during the current calendar year.

22 d. An indication by an asterisk of the names of any  
23 brand family sold in the state during the preceding calendar  
24 year that are no longer being sold in the state as of the date  
25 of the certification.

1 e. An identification by name and address of any  
2 other manufacturer of any of the listed brand families in the  
3 preceding or current calendar year.

4 f. In the case of cigarettes, brands, or brand  
5 families imported into the United States by one or more  
6 importers, an identification by name and address of any and  
7 all importers of the cigarettes.

8 Each non-participating manufacturer shall update  
9 its list at least 30 days prior to any addition or  
10 modification to its list of brand families by executing and  
11 delivering a supplemental certification to the commissioner.

12 (3) Additionally, each non-participating  
13 manufacturer shall further certify in its certification:

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

19 b. That it has:

20 1. Established and continues to maintain a qualified  
21 escrow fund.

22 2. Executed a qualified escrow agreement that has  
23 been reviewed and approved by the commissioner and that  
24 governs the qualified escrow fund.

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

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

8           2. The account number of the qualified escrow fund  
 9 and any sub-account number for the State of Alabama.

10           3. The amount the non-participating manufacturer  
 11 placed in the qualified escrow fund for cigarettes sold in the  
 12 state during the preceding calendar year, the date and amount  
 13 of each deposit, and any evidence or verification as may be  
 14 deemed necessary by the commissioner to confirm the foregoing.

15           4. The amount and date of any withdrawal or transfer  
 16 of funds the non-participating manufacturer made at any time  
 17 from the qualified escrow fund or from any other qualified  
 18 escrow fund into which escrow payments were ever made pursuant  
 19 to Section 6-12-3 and all regulations promulgated thereto.

20           5. That it and, if applicable, the importer of the  
 21 cigarettes, holds a current and valid permit under 26 U.S.C. §  
 22 5713.

23           (4) A participating manufacturer may not include a  
 24 brand family in its certification unless it affirms that the  
 25 brand family is to be deemed to be its cigarettes for purposes



1 of calculating its payments under the Master Settlement  
2 Agreement for the relevant year, in the volume and shares  
3 determined pursuant to the Master Settlement Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8           §6-12A-5

9           Reporting to commissioner; disclosure; escrow fund.

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

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

20           (c) Verification of qualified escrow fund. The  
21 commissioner may require at any time from the  
22 non-participating manufacturer proof, from the financial  
23 institution in which the manufacturer has established a  
24 qualified escrow fund for the purpose of compliance with  
25 Section 6-12-3, of the amount of money in the fund, exclusive

1 of interest, the amount and date of each deposit, and the  
2 amount and date of each withdrawal from the fund.

3 (d) Requests for additional information. In addition  
4 to the information required to be submitted herein, the  
5 commissioner may require a wholesaler or distributor or  
6 tobacco product manufacturer to submit any additional  
7 information including, but not limited to, samples of the  
8 packaging or labeling of each brand family, as is necessary to  
9 determine whether a tobacco product manufacturer is in  
10 compliance with this chapter.

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

20 (f) (1) A non-participating manufacturer shall post a  
21 bond for the benefit of the commissioner, in accordance with  
22 the provisions of this section, which is conditioned that the  
23 non-participating manufacturer shall fully comply with the  
24 escrow obligations of this chapter.

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

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

24           (4) The bond required under this subsection must be  
25 a good and sufficient bond executed by a surety company

1 licensed and authorized to do business in Alabama and shall be  
2 conditioned to pay the escrow requirements as well as any  
3 penalties or other charges under this chapter.

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

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

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

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



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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 26-FEB-14, as amended.

Jeff Woodard  
Clerk

Senate

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01-APR-14

Passed