

FIRST REGULAR SESSION

# HOUSE BILL NO. 263

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES COOPER (120), DEMPSEY AND PRATT (Co-sponsors).

Read 1<sup>st</sup> time January 23, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0909L.011

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### AN ACT

To amend chapter 196, RSMo, by adding thereto six new sections relating to the tobacco settlement agreement, with penalty provisions and an emergency clause.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 196, RSMo, is amended by adding thereto six new sections, to be  
2 known as sections 196.1010, 196.1013, 196.1016, 196.1019, 196.1022 and 196.1025, to read as  
3 follows:

**196.1010. As used in sections 196.1010 to 196.1025, the following terms shall mean:**

- 2 (1) "Brand Family", all styles of Cigarettes sold under same trade mark and  
3 differentiated from one another by means of additional modifiers or descriptors, including  
4 but not limited to, "menthol", "lights", "kings", and "100s", and includes any brand name  
5 (alone or in conjunction with any other word) trademark, logo, symbol, motto, selling  
6 message, recognizable pattern of colors, or any other indicia of product identification  
7 identical or similar to, or identifiable with, a previously known brand of Cigarettes;
- 8 (2) "Cigarette", the same meaning as such term is defined in section 196.1000;
- 9 (3) "Director", the director of the Missouri department of revenue;
- 10 (4) "Nonparticipating Manufacturer", any Tobacco Product Manufacturer that  
11 is not a Participating Manufacturer;
- 12 (5) "Participating Manufacturer", the same meaning as such term is given in  
13 Section II(jj) of the Master Settlement Agreement, as defined in section 196.1000, and all  
14 amendments thereto;
- 15 (6) "Qualified Escrow Fund", the same meaning as such term is defined in section  
16 196.1000;
- 17 (7) "Stamping Agent", a person that is authorized to affix tax stamps to packages

18 or other containers or Cigarettes under chapter 149, RSMo, or any person that is required  
19 to pay the tax imposed pursuant to chapter 149, RSMo, on Cigarettes;

20 (8) "Tobacco Product Manufacturer", the same meaning as such term is defined  
21 in section 196.1000;

22 (9) "Units Sold", the same meaning as such term is defined in section 196.1000.

196.1013. 1. Every Tobacco Product Manufacturer whose Cigarettes are sold in  
2 this state, whether directly or through a distributor, retailer or similar intermediary or  
3 intermediaries, shall execute and deliver on a form or in the manner prescribed by the  
4 attorney general a certification to the director and the attorney general no later than the  
5 thirtieth day of April each year, certifying that, as of the date of such certification, such  
6 Tobacco Product Manufacturer is a Participating Manufacturer or is in full compliance  
7 with sections 196.1000 and 196.1003, including all quarterly installment payments required  
8 by section 196.1019.

9 (1) A Participating Manufacturer shall include in its certification a list of its Brand  
10 Families. The Participating Manufacturer shall update such list thirty days prior to any  
11 addition to or modification of its Brand Families by executing and delivering a  
12 supplemental certification to the attorney general.

13 (2) A Nonparticipating Manufacturer shall include in its certification (i) a list of all  
14 of its Brand Families and the number of Units Sold for each Brand Family that were sold  
15 in the State during the preceding calendar year, (ii) a list of all of its Brand Families that  
16 have been sold in the State at any time during the current calendar year, (iii) indicating by  
17 an asterisk, any Brand Family sold in the State during the preceding calendar year that is  
18 no longer being sold in the State as of the date of such certification, and (iv) identifying by  
19 name and address any other manufacturer of such Brand Families in the preceding or  
20 current calendar year. The Nonparticipating Manufacturer shall update such list thirty  
21 days prior to any addition to or modification of its Brand Families by executing and  
22 delivering a supplemental certification to the attorney general.

23 (3) In the case of a Nonparticipating Manufacturer, such certification shall further  
24 certify:

25 (a) That such Nonparticipating Manufacturer is registered to do business in the  
26 state or has appointed an agent for service of process and provided notice thereof as  
27 required in section 196.1016;

28 (b) That such Nonparticipating Manufacturer has (i) established and continues to  
29 maintain a Qualified Escrow Fund, as defined in section 196.1000, and (ii) executed a  
30 qualified escrow agreement that has been reviewed and approved by the attorney general  
31 and that governs the Qualified Escrow Fund;

32           (c) That such Nonparticipating Manufacturer is in full compliance with this section  
33 and section 196.1003, and any regulations promulgated pursuant thereto;

34           (d) (i) the name, address and telephone number of the financial institution where  
35 the Nonparticipating Manufacturer has established such Qualified Escrow Fund required  
36 by section 196.1003 and all regulations promulgated thereto, and (ii) the account number  
37 of such Qualified Escrow Fund and any subaccount number for the state of Missouri, and  
38 (iii) the amount such Nonparticipating Manufacturer placed in such fund for Cigarettes  
39 sold in the State during the preceding calendar year, the date, and amount of each such  
40 deposit, and such evidence or verification as may be deemed necessary by the attorney  
41 general to confirm the foregoing, and (iv) the amount and date of any withdrawal or  
42 transfer of funds the Nonparticipating Manufacturer made at any time from such fund or  
43 from any other Qualified Escrow Fund into which it ever made escrow payments pursuant  
44 to section 196.1003 and all regulations promulgated thereto.

45           (4) A Tobacco Product Manufacturer may not include a Brand Family in its  
46 certification unless (i) in the case of a Participating Manufacturer, said Participating  
47 Manufacturer affirms that the Brand Family is to be deemed to be its cigarettes for  
48 purposes of calculating its payments under the Master Settlement Agreement, as defined  
49 in section 196.1000, for the relevant year, in the volume and shares determined pursuant  
50 to the Master Settlement Agreement, and (ii) in the case of a Nonparticipating  
51 Manufacturer, said Nonparticipating Manufacturer affirms that the Brand Family is to  
52 be deemed to be its cigarettes for purposes of section 196.1003. Nothing in this section shall  
53 be construed as limiting or otherwise affecting the State's right to maintain that a Brand  
54 Family constitutes cigarettes of a different Tobacco Product Manufacturer for purposes  
55 of calculating payments under the Master Settlement Agreement or for purposes of section  
56 196.1003.

57           (5) The Tobacco Product Manufacturer shall maintain all invoices and  
58 documentation of sales and other such information relied upon for such certification for  
59 a period of five years, unless otherwise required by law to maintain them for a greater  
60 period of time.

61           2. Not later than January 1, 2004, the attorney general shall develop and make  
62 available for public inspection or publish on its website a directory listing of all Tobacco  
63 Product Manufacturers that have provided current and accurate certifications conforming  
64 to the requirements subsection 1 of this section and all Brand Families that are listed in  
65 such certifications, except as noted below.

66           (1) The attorney general shall not include or retain in such Directory the name or  
67 Brand Families of any Nonparticipating Manufacturer that fails to provide the required

68 certification or whose certification the attorney general determines is not in compliance  
69 with subdivisions (2) and (3) of subsection 1 of this section, unless the attorney general has  
70 determined that such violation has been cured to the satisfaction of the attorney general.

71 (2) Neither a Tobacco Product Manufacturer nor Brand Family shall be included  
72 or retained in the Directory if the attorney general concludes in the case of a  
73 Nonparticipating Manufacturer that (i) any escrow payment required pursuant to section  
74 196.1003 for any period for any Brand Family, whether or not listed by such  
75 Nonparticipating Manufacturer, have not been fully paid into a Qualified Escrow Fund  
76 governed by a qualified escrow agreement that has been approved by the attorney general,  
77 or (ii) any outstanding final judgment, including interest thereon, for violations of section  
78 196.1003 have not been fully satisfied for such Brand Family and such manufacturer.

79 (3) The attorney general shall update the Directory as necessary in order to correct  
80 mistakes and to add or remove a Tobacco Product Manufacturer or Brand Family to keep  
81 the Directory in conformity with the requirements of sections 196.1010 to 196.1025.

82 (4) Every Stamping Agent shall provide and update as necessary an electronic mail  
83 address to the attorney general for the purpose of receiving any notifications as may be  
84 required by sections 196.1010 to 196.1025.

85 (5) The attorney general shall electronically transmit to each stamping agent notice  
86 of any addition to or removal from the Directory of any Tobacco Product Manufacturer  
87 or Brand Family.

88 3. It shall be unlawful for any person to affix a stamp to a package or other  
89 container of Cigarettes of a Tobacco Product Manufacturer or Brand Family not included  
90 in the Directory, or to sell, offer or possess for sale in this State Cigarettes of a Tobacco  
91 Product Manufacturer or Brand Family not included in the Directory.

196.1016. 1. Any nonresident or foreign Nonparticipating Manufacturer that has  
2 not registered to do business in this State as a foreign corporation or business entity shall,  
3 as a condition precedent to having its Brand Families listed or retained in the Directory,  
4 appoint and continually engage without interruption the services of an agent in this State  
5 to act as agent for the service of process on whom all process, and any action or proceeding  
6 against it concerning or arising out of the enforcement of sections 196.1003 and 196.1010  
7 to 196.1025, may be served in any manner authorized by law. Such service shall constitute  
8 legal and valid service of process on the Nonparticipating Manufacturer. The  
9 Nonparticipating Manufacturer shall provide the name, address, phone number and proof  
10 of the appointment and availability of such agent to and to the satisfaction of the attorney  
11 general.

12 2. The Nonparticipating Manufacturer shall provide notice to the attorney general

13 **thirty calendar days prior to termination of the authority of an agent and shall further**  
14 **provide proof to the satisfaction of the attorney general of the appointment of a new agent**  
15 **no less than five calendar days prior to the termination of an existing agent appointment.**  
16 **In the event an agent terminates an agency appointment, the Nonparticipating**  
17 **Manufacturer shall notify the attorney general of said termination within five calendar**  
18 **days and shall include proof to the satisfaction of the attorney general of the appointment**  
19 **of a new agent.**

20 **196.1019. 1. Not later than twenty days after the end of each calendar quarter, and**  
21 **more frequently if so directed by the attorney general, each stamping agent shall submit**  
22 **such information as the attorney general requires to facilitate compliance with this section,**  
23 **including but not limited to a list by Brand Family of the total number of Cigarettes or in**  
24 **the case of roll your own, the equivalent stick count for which the stamping agent affixed**  
25 **stamps during the previous calendar quarter or otherwise paid the tax due for such**  
26 **Cigarettes. The stamping agent shall maintain, and make available to the attorney general**  
27 **all invoices and documentation of sales of all Nonparticipating Manufacturer Cigarettes**  
28 **and any other information relied upon in reporting to the attorney general for a period of**  
29 **five years.**

30 **2. The director of the department of revenue is authorized to disclose to the**  
31 **attorney general any information received under sections 196.1010 to 196.1025 and**  
32 **requested by the attorney general for purposes of determining compliance with and**  
33 **enforcing the provisions of sections 196.1010 to 196.1025. The director and attorney**  
34 **general shall share with each other the information received under sections 196.1010 to**  
35 **196.1025, and may share such information with other federal, state or local agencies only**  
36 **for purposes of enforcement of sections 196.1010 to 196.1025, or corresponding laws of**  
37 **other states.**

38 **3. The attorney general may require at any time from the Nonparticipating**  
39 **Manufacturer proof from the financial institution in which such Manufacturer has**  
40 **established a Qualified Escrow Fund for the purpose of compliance with section 196.1003**  
41 **of the amount of money in such fund, exclusive of interest, and the amount and date of**  
42 **each deposit to such fund, and the amount and date of each withdrawal from such fund.**

43 **4. In addition to any other information required to be submitted by law, the**  
44 **attorney general may require a stamping agent or Tobacco Product Manufacturer to**  
45 **submit any additional information, including but not limited to samples of the packaging**  
46 **or labeling of each Brand Family, as is necessary to enable the attorney general to**  
47 **determine whether a Tobacco Product Manufacturer is in compliance with sections**  
48 **196.1010 to 196.1025.**

30           **5. To promote compliance with the provisions of sections 196.1010 to 196.1025, the**  
31 **attorney general may promulgate rules requiring a Tobacco Product Manufacturer subject**  
32 **to the requirements of subdivision (2) of subsection 1 of section 196.1013 to make escrow**  
33 **deposits required in installments during the year in which the sales covered by such**  
34 **deposits are made. The attorney general may require production of information sufficient**  
35 **to enable the attorney general to determine the adequacy of the amount of the installment**  
36 **deposit.**

**196.1022. 1. In addition to or in lieu of any other civil or criminal remedy provided**  
2 **by law, upon a determination that a stamping agent or any person has violated subsection**  
3 **3 of section 196.1013 or any regulation adopted pursuant thereto, the director may revoke**  
4 **or suspend the license of any stamping agent in the manner provided in chapter 149,**  
5 **RSMo. Each stamp affixed and each sale or offer to sell Cigarettes in violation of**  
6 **subsection 3 of section 196.1013 shall constitute a separate violation. The director may also**  
7 **impose a civil penalty in an amount not to exceed the greater of five hundred percent of the**  
8 **retail value of the Cigarettes sold or five thousand dollars upon a determination of a**  
9 **violation of subsection 3 of section 196.1013 or any regulations adopted pursuant thereto.**

10           **2. Any Cigarettes that have been sold, offered for sale or possessed for sale in this**  
11 **State in violation of subsection 3 of section 196.1013 shall be deemed contraband and such**  
12 **Cigarettes shall be subject to seizure and forfeiture as provided by law, and all such**  
13 **Cigarettes so seized and forfeited shall be destroyed and not resold.**

14           **3. The attorney general, on behalf of the director, may seek an injunction to**  
15 **restrain a threatened or actual violation of subsection 3 of section 196.1013, or subsection**  
16 **1 or 5 of section 196.1019 by a stamping agent and to compel the stamping agent to comply**  
17 **with such provisions. In any action brought pursuant to this section, the State shall be**  
18 **entitled to recover the costs of investigation, costs of the action and reasonable attorney**  
19 **fees.**

20           **4. It shall be unlawful for a person to sell or distribute Cigarettes, or acquire, hold,**  
21 **own, possess, transport, import, or cause to be imported Cigarettes that the person knows**  
22 **or should know are intended for distribution or sale in the State in violation of subsection**  
23 **3 of section 196.1013. A violation of this section is a class A misdemeanor.**

24           **5. A person who violates subsection 3 of section 196.1013 engages in an unfair**  
25 **practice in violation of section 407.020, RSMo.**

**196.1025. 1. A determination of the attorney general not to list or to remove from**  
2 **the Directory a Brand Family or Tobacco Product Manufacturer shall be subject to review**  
3 **pursuant to chapter 621, RSMo.**

4           **2. For the year 2003, if the effective date of sections 196.1010 to 196.1025 is later**

5 **than March 16, 2003, the first report of stamping agents required by subsection 1 of section**  
6 **196.1019 shall be due thirty days after the effective date of sections 196.1010 to 196.1025;**  
7 **the certifications by the Tobacco Product Manufacturer described in subsection 1 of**  
8 **section 196.1013 shall be due forty-five days after such effective date; and the Directory**  
9 **described in subsection 2 of section 196.1013 shall be published or made available within**  
10 **ninety days after such effective date.**

11 **3. The attorney general may promulgate rules necessary to effect the purpose of**  
12 **sections 196.1010 to 196.1025.**

13 **4. In any action brought by the State to enforce sections 196.1010 to 196.1025, the**  
14 **State shall be entitled to recover the costs of investigation, expert witness fees, costs of the**  
15 **action and reasonable attorney fees.**

16 **5. If a court of competent jurisdiction determines that a person has violated sections**  
17 **196.1010 to 196.1025, the court shall order any profits, gains, gross receipts or other benefit**  
18 **from the violation to be disgorged and paid to the state treasurer for deposit in the**  
19 **"Tobacco Control Special Fund", which is hereby created. Unless otherwise expressly**  
20 **provided the remedies or penalties provided by sections 196.1010 to 196.1025 are**  
21 **cumulative to each other and to the remedies or penalties available under all other laws of**  
22 **this state.**

Section B. Because immediate action is necessary to ensure complete compliance with  
2 the tobacco settlement agreement section A of this act is deemed necessary for the immediate  
3 preservation of the public health, welfare, peace, and safety, and is hereby declared to be an  
4 emergency act within the meaning of the constitution, and section A of this act shall be in full  
5 force and effect upon its passage and approval.