

SECOND REGULAR SESSION

HOUSE BILL NO. 1267

92ND GENERAL ASSEMBLY

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

Read 1st time January 26, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4038L.011

AN ACT

To amend chapter 196, RSMo, by adding thereto six new sections relating to tobacco product manufacturers, with penalty provisions.

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 known as sections 196.1010, 196.1013, 196.1016, 196.1019, 196.1022, and 196.1025, to read as follows:

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

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

(2) "Cigarette", the same meaning as such term is defined in section 196.1000;

(3) "Director", the director of the Missouri department of revenue;

(4) "Escrow-electing manufacturer", any tobacco product manufacturer that is not a participating manufacturer;

(5) "Participating manufacturer", the same meaning as such term is given in section II(jj) of the master settlement agreement, as defined in section 196.1000, and all amendments thereto;

(6) "Qualified escrow fund", the same meaning as such term is defined in section 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 under section 149.160, RSMo, on other tobacco products;

20 (8) "Tobacco product manufacturer", means an entity that after the date of
21 enactment of this section directly and not exclusively through any affiliate:

22 (a) Manufactures cigarettes anywhere that such manufacturer intends to be sold
23 in the United States including cigarettes intended to be sold in the United States through
24 an importer, except where the importer is an original participating manufacturer as that
25 term is defined in section II(hh) of the master settlement agreement that will be responsible
26 for the payments under the master settlement agreement with respect to the cigarettes as
27 a result of the provisions of section II(mm) of the master settlement agreement and that
28 pays the taxes specified in section II(z) of the master settlement agreement, and provided
29 that the manufacturer of such cigarettes does not market or advertise such cigarettes in the
30 United States;

31 (b) Is the first purchaser anywhere for resale in the United States of cigarettes
32 manufactured anywhere that the manufacturer does not intend to be sold in the United
33 States; or

34 (c) Becomes a successor of an entity described in subdivision (1) or (2) of this
35 section.

36 (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 this
2 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 with
7 sections 196.1000 and 196.1003, including all installment payments required by section
8 196.1019.

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) An escrow-electing manufacturer shall include in its certification:

14 (a) A list of all of its brand families and the number of units sold for each brand
15 family that were sold in the state during the preceding calendar year;

16 (b) A list of all of its brand families that have been sold in the state at any time
17 during the current calendar year;

18 (c) Indicating by an asterisk, any brand family sold in the state during the
19 preceding calendar year that is no longer being sold in the state as of the date of such
20 certification; and

21 (d) Identifying by name and address any other manufacturer of such brand
22 families in the preceding or current calendar year.

23 The escrow-electing manufacturer shall update such list thirty days prior to any addition
24 to or modification of its brand families by executing and delivering a supplemental
25 certification to the attorney general.

26 (3) In the case of an escrow-electing manufacturer, such certification shall further
27 certify:

28 (a) That the escrow-electing manufacturer is registered to do business in the state
29 or has appointed an agent for service of process and provided notice of the appointment
30 as required in section 196.1016;

31 (b) That the escrow-electing manufacturer has established and continues to
32 maintain a qualified escrow fund, as defined in section 196.1000, and executed a qualified
33 escrow agreement that has been reviewed and approved by the attorney general and that
34 governs the qualified escrow fund;

35 (c) That such escrow-electing manufacturer is in full compliance with this section
36 and section 196.1003, and any regulations promulgated under either section;

37 (d) a. The name, address, and telephone number of the financial institution where
38 the escrow-electing manufacturer has established such qualified escrow fund required by
39 section 196.1003 and all regulations promulgated under that section; and

40 b. The account number of the qualified escrow fund and any subaccount number
41 for the state; and

42 c. The amount the escrow-electing manufacturer placed in the fund for cigarettes
43 sold in the state during the preceding calendar year, the date, and amount of each such
44 deposit, and such evidence or verification as may be deemed necessary by the attorney
45 general to confirm compliance with the requirements of this subparagraph; and

46 d. The amount and date of any withdrawal or transfer of funds the escrow-electing
47 manufacturer made at any time from the fund or from any other qualified escrow fund
48 into which it ever made escrow payments under section 196.1003 and all regulations
49 promulgated thereto.

50 (4) A tobacco product manufacturer may not include a brand family in its
51 certification unless:

52 **(a) In the case of a participating manufacturer, the manufacturer affirms that the**
53 **brand family is to be deemed to be its cigarettes for purposes of calculating its payments**
54 **under the master settlement agreement, as defined in section 196.1000, for the relevant**
55 **year, in the volume and shares determined pursuant to the master settlement agreement;**
56 **and**

57 **(b) In the case of an escrow-electing manufacturer, the escrow-electing**
58 **manufacturer affirms that the brand family is to be deemed to be its cigarettes for**
59 **purposes of section 196.1003. Nothing in this section shall be construed as limiting or**
60 **otherwise affecting the state's right to maintain that a brand family constitutes cigarettes**
61 **of a different tobacco product manufacturer for purposes of calculating payments under**
62 **the master settlement agreement or for purposes of section 196.1003.**

63 **(5) The tobacco product manufacturer shall maintain all invoices and**
64 **documentation of sales and other such information relied upon for such certification for**
65 **a period of five years, unless otherwise required by law to maintain them for a greater**
66 **period of time.**

67 **2. By January 1, 2005, the attorney general shall develop and make available for**
68 **public inspection or publish on its web site a directory listing of all tobacco product**
69 **manufacturers that have provided current and accurate certifications conforming to the**
70 **requirements of subsection 1 of this section and all brand families that are listed in such**
71 **certifications, except:**

72 **(1) The attorney general shall not include or retain in such directory the name or**
73 **brand families of any escrow-electing manufacturer that fails to provide the required**
74 **certification or whose certification the attorney general determines is not in compliance**
75 **with subdivisions (2) and (3) of subsection 1 of this section, unless the attorney general has**
76 **determined that such violation has been cured to the satisfaction of the attorney general;**

77 **(2) Neither a tobacco product manufacturer nor brand family shall be included or**
78 **retained in the directory if the attorney general concludes in the case of an escrow-electing**
79 **manufacturer that:**

80 **(a) Any escrow payment required under section 196.1003 for any period for any**
81 **brand family whether or not listed by such escrow-electing manufacturer has not been**
82 **fully paid into a qualified escrow fund governed by a qualified escrow agreement that has**
83 **been approved by the attorney general; or**

84 **(b) Any outstanding final judgment including interest thereon for violations of**
85 **section 196.1003 has not been fully satisfied for such brand family and such manufacturer;**

86 **(3) The attorney general shall update the directory as necessary in order to correct**
87 **mistakes and to add or remove a tobacco product manufacturer or brand family to keep**

88 the directory in conformity with the requirements of sections 196.1010 to 196.1025. The
89 attorney general shall, by e-mail or other practical means to each stamping agent and to
90 each retailer who supplies an e-mail address for that purpose, transmit notice of any
91 addition to or removal from the directory of any tobacco product manufacturer or brand
92 family. Unless otherwise provided by agreement between a stamping agent and a tobacco
93 product manufacturer, the stamping agent shall be entitled to a refund from a tobacco
94 product manufacturer for any money paid by the stamping agent to the tobacco product
95 manufacturer for any cigarettes of the tobacco product manufacturer in the possession of
96 the stamping agent on the date of notice by the attorney general of the removal from the
97 directory of that tobacco product manufacturer or the brand family of the cigarettes.
98 Unless otherwise provided by agreement between a retail dealer and a stamping agent or
99 a tobacco product manufacturer, a retail dealer shall be entitled to a refund from a
100 stamping agent or a tobacco product manufacturer for any money paid by the retail dealer
101 to such stamping agent or tobacco product manufacturer for any cigarettes of the tobacco
102 product manufacturer still in the possession of the retail dealer on the effective date of
103 removal from the directory of that tobacco product manufacturer or brand family of
104 cigarettes. The attorney general shall not restore to the directory the tobacco product
105 manufacturer or the brand family until the tobacco product manufacturer has paid each
106 stamping agent or retail dealer any refund due;

107 (4) Every stamping agent shall provide and update as necessary an electronic mail
108 address to the attorney general for the purpose of receiving any notifications that may be
109 required by sections 196.1010 to 196.1025;

110 (5) The attorney general shall electronically transmit to each stamping agent notice
111 of any addition to or removal from the directory of any tobacco product manufacturer or
112 brand family.

113 3. It shall be unlawful for any person to affix a stamp to a package or other
114 container of cigarettes of a tobacco product manufacturer or brand family not included
115 in the directory, or to sell, offer or possess for sale in this state cigarettes of a tobacco
116 product manufacturer or brand family not included in the directory.

196.1016. 1. Any nonresident or foreign escrow-electing manufacturer that has not
2 registered to do business in this state as a foreign corporation or business entity shall as a
3 condition precedent to having its brand families listed or retained in the directory appoint
4 and continually engage without interruption the services of an agent in this state to act as
5 agent for the service of process on whom all process, and any action or proceeding against
6 it concerning or arising out of the enforcement of sections 196.1003 and 196.1010 to
7 196.1025 may be served in any manner authorized by law. Such service shall constitute

8 legal and valid service of process on the escrow-electing manufacturer. The
9 escrow-electing manufacturer shall provide the name, address, phone number, and proof
10 of the appointment and availability of such agent to the satisfaction of the attorney general.

11 2. The escrow-electing manufacturer shall provide notice to the attorney general
12 thirty calendar days prior to termination of the authority of an agent and shall further
13 provide proof to the satisfaction of the attorney general of the appointment of a new agent
14 no less than five calendar days prior to the termination of an existing agent appointment.
15 In the event an agent terminates an agency appointment, the escrow-electing manufacturer
16 shall notify the attorney general of the termination within five calendar days and shall
17 include proof to the satisfaction of the attorney general of the appointment of a new agent.

196.1019. 1. Not later than twenty days after the end of each calendar quarter and
2 more frequently if so directed by the attorney general each stamping agent shall submit
3 such information as the attorney general requires to facilitate compliance with this section,
4 including but not limited to a list by brand family of the total number of cigarettes or in
5 the case of roll your own the equivalent stick count for which the stamping agent affixed
6 stamps during the previous calendar quarter or otherwise paid the tax due for such
7 cigarettes. The stamping agent shall maintain and make available to the attorney general
8 all invoices and documentation of sales of all escrow- electing manufacturer cigarettes and
9 any other information relied upon in reporting to the attorney general for a period of five
10 years.

11 2. The director of the department of revenue is authorized to disclose to the
12 attorney general any information received under sections 196.1010 to 196.1025 and
13 requested by the attorney general for purposes of determining compliance with and
14 enforcing the provisions of sections 196.1010 to 196.1025. The director and attorney
15 general shall share with each other the information received under sections 196.1010 to
16 196.1025, and may share such information with other federal, state or local agencies only
17 for purposes of enforcement of sections 196.1010 to 196.1025, or corresponding laws of
18 other states.

19 3. The attorney general may require at any time from the escrow-electing
20 manufacturer proof from the financial institution in which such manufacturer has
21 established a qualified escrow fund for the purpose of compliance with section 196.1003
22 of the amount of money in such fund exclusive of interest, and the amount and date of each
23 deposit to such fund, and the amount and date of each withdrawal from such fund.

24 4. In addition to any other information required to be submitted by law, the
25 attorney general may require a stamping agent or tobacco product manufacturer to
26 submit any additional information including but not limited to samples of the packaging

27 or labeling of each brand family, as is necessary to enable the attorney general to determine
28 whether a tobacco product manufacturer is in compliance with sections 196.1010 to
29 196.1025.

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 which shall be 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. The attorney general may require installment payments where the attorney**
37 **general reasonably concludes that an escrow-electing manufacturer may not fully and**
38 **timely comply with section 196.1000 and where an escrow-electing manufacturer has not**
39 **made an escrow deposit under section 196.1000 during the preceding calendar year.**

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 or five thousand dollars upon a determination of a violation**
9 **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 restrain**
15 **a threatened or actual violation of subsection 3 of section 196.1013, or subsection 1 or 4 of**
16 **section 196.1019 by a stamping agent and to compel the stamping agent to comply with**
17 **such provisions. In any action brought under this section, the state shall be entitled to**
18 **recover the costs of investigation, costs of the action, and reasonable attorney fees.**

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

23 **5. A person who violates subsection 3 of section 196.1013 engages in an unfair**
24 **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 **under chapter 621, RSMo.**

4 **2. The first report of stamping agents required by subsection 1 of section 196.1019**
5 **shall be due thirty days after the effective date of sections 196.1010 to 196.1025; the**
6 **certifications by the tobacco product manufacturer described in subsection 1 of section**
7 **196.1013 shall be due forty-five days after such effective date; and the directory described**
8 **in subsection 2 of section 196.1013 shall be published or made available within ninety days**
9 **after such effective date.**

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

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

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