

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1267
92ND GENERAL ASSEMBLY

Reported from the Committee on Tax Policy, April 13, 2004, with recommendation that the House Committee Substitute for House Bill No. 1267 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

4038L.04C

AN ACT

To amend chapter 196, RSMo, by adding thereto seven new sections relating to certification of tobacco products, 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 seven new sections, to be known as sections 196.1010, 196.1013, 196.1016, 196.1019, 196.1022, 196.1025, and 196.1028, 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) "Qualified escrow fund", the same meaning as such term is defined in section 196.1000;**
- (5) "Stamping agent", a person that is authorized to affix tax stamps to packages or other containers or cigarettes under chapter 149, RSMo, or any person that is required to pay the tax imposed under section 149.160, RSMo, on other tobacco products;**
- (6) "Tobacco product manufacturer", means an entity that after the date of enactment of this section directly and not exclusively through any affiliate:**

17 **(a) Manufactures cigarettes anywhere that such manufacturer intends to be sold**
18 **in the United States including cigarettes intended to be sold in the United States through**
19 **an importer;**

20 **(b) Is the first purchaser anywhere for resale in the United States of cigarettes**
21 **manufactured anywhere that the manufacturer does not intend to be sold in the United**
22 **States; or**

23 **(c) Becomes a successor of an entity described in subdivision (1) or (2) of this**
24 **section.**

25 **(7) "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 **director a certification to the director and the director no later than the thirtieth day of**
5 **April each year certifying that as of the date of such certification such tobacco product**
6 **manufacturer is in full compliance with sections 196.1000 and 196.1003, including all**
7 **installment payments required by section 196.1019.**

8 **(1) A tobacco product manufacturer shall include in its certification:**

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

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

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

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

18

19 **The tobacco product manufacturer shall update such list thirty days prior to any addition**
20 **to or modification of its brand families by executing and delivering a supplemental**
21 **certification to the director.**

22 **(e) That the tobacco product manufacturer is registered to do business in the state**
23 **or has appointed an agent for service of process and provided notice of the appointment**
24 **as required in section 196.1016;**

25 **(f) That the tobacco product manufacturer, if required by section 196.1003, has**
26 **established and continues to maintain a qualified escrow fund, as defined in section**
27 **196.1000, and executed a qualified escrow agreement that has been reviewed and approved**

28 by the director and that governs the qualified escrow fund;

29 (g) That such tobacco product manufacturer is in full compliance with this section
30 and section 196.1003, and any regulations promulgated under either section;

31 (h) a. The name, address, and telephone number of the financial institution where
32 the tobacco product manufacturer has established such qualified escrow fund required by
33 section 196.1003 and all regulations promulgated under that section; and

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

36 c. The amount the tobacco product manufacturer placed in the fund for cigarettes
37 sold in the state during the preceding calendar year, the date, and amount of each such
38 deposit, and such evidence or verification as may be deemed necessary by the director to
39 confirm compliance with the requirements of this subparagraph; and

40 d. The amount and date of any withdrawal or transfer of funds the tobacco product
41 manufacturer made at any time from the fund or from any other qualified escrow fund
42 into which it ever made escrow payments under section 196.1003 and all regulations
43 promulgated thereto;

44 (2) A tobacco product manufacturer may not include a brand family in its
45 certification unless:

46 (a) The tobacco product manufacturer affirms that the brand family is to be
47 deemed to be its cigarettes for purposes of calculating its payments under the master
48 settlement agreement, as defined in section 196.1000, for the relevant year, in the volume
49 and shares determined pursuant to the master settlement agreement; and

50 (b) The tobacco product manufacturer affirms that the brand family is to be
51 deemed to be its cigarettes for purposes of section 196.1003. Nothing in this section shall
52 be construed as limiting or otherwise affecting the state's right to maintain that a brand
53 family constitutes cigarettes of a different tobacco product manufacturer for purposes of
54 calculating payments under the master settlement agreement or for purposes of section
55 196.1003;

56 (3) The tobacco product manufacturer shall maintain all invoices and
57 documentation of sales and other such information relied upon for such certification for
58 a period of five years, unless otherwise required by law to maintain them for a greater
59 period of time.

60 2. By January 1, 2005, the director shall develop and make available for public
61 inspection or publish on its web site a directory listing of all tobacco product
62 manufacturers that have provided current and accurate certifications conforming to the
63 requirements of subsection 1 of this section and all brand families that are listed in such

64 **certifications, except:**

65 **(1) The director shall not include or retain in such directory the name or brand**
66 **families of any tobacco product manufacturer that fails to provide the required**
67 **certification or whose certification the director determines is not in compliance with**
68 **subdivisions (2) and (3) of subsection 1 of this section, unless the director has determined**
69 **that such violation has been cured to the satisfaction of the director;**

70 **(2) Neither a tobacco product manufacturer nor brand family shall be included or**
71 **retained in the directory if the director concludes in the case of a tobacco product**
72 **manufacturer that:**

73 **(a) Any escrow payment required under section 196.1003 for any period for any**
74 **brand family whether or not listed by such tobacco product manufacturer has not been**
75 **fully paid into a qualified escrow fund governed by a qualified escrow agreement that has**
76 **been approved by the director; or**

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

79 **(3) The director shall update the directory as necessary in order to correct mistakes**
80 **and to add or remove a tobacco product manufacturer or brand family to keep the**
81 **directory in conformity with the requirements of sections 196.1010 to 196.1025. The**
82 **director shall, by e-mail or other practical means to each stamping agent and to each**
83 **retailer who supplies an e-mail address for that purpose, transmit notice of any addition**
84 **to or removal from the directory of any tobacco product manufacturer or brand family.**
85 **Unless otherwise provided by agreement between a stamping agent and a tobacco product**
86 **manufacturer, the stamping agent shall be entitled to a refund from a tobacco product**
87 **manufacturer for any money paid by the stamping agent to the tobacco product**
88 **manufacturer for any cigarettes of the tobacco product manufacturer in the possession of**
89 **the stamping agent on the date of notice by the director of the removal from the directory**
90 **of that tobacco product manufacturer or the brand family of the cigarettes. Unless**
91 **otherwise provided by agreement between a retail dealer and a stamping agent or a**
92 **tobacco product manufacturer, a retail dealer shall be entitled to a refund from a stamping**
93 **agent or a tobacco product manufacturer for any money paid by the retail dealer to such**
94 **stamping agent or tobacco product manufacturer for any cigarettes of the tobacco product**
95 **manufacturer still in the possession of the retail dealer on the effective date of removal**
96 **from the directory of that tobacco product manufacturer or brand family of cigarettes.**
97 **The director shall not restore to the directory the tobacco product manufacturer or the**
98 **brand family until the tobacco product manufacturer has paid each stamping agent or**
99 **retail dealer any refund due;**

100 (4) Every stamping agent shall provide and update as necessary an electronic mail
101 address to the director for the purpose of receiving any notifications that may be required
102 by sections 196.1010 to 196.1025;

103 (5) The director shall electronically transit to each stamping agent notice of any
104 addition to or removal from the directory of any tobacco product manufacturer or brand
105 family;

106 (6) Not less than fifteen business days prior to the removal from the directory of a
107 tobacco product manufacturer or brand family, the director shall provide written notice
108 to the manufacturer, at the address provided in the certification filed, or any update
109 thereto under section 196.1013, of the director's proposed determination and the basis for
110 the determination. A tobacco product manufacturer or brand family may cure any
111 deficiency contained in the notice under the provisions of this section within the fifteen-day
112 period, or challenge such notice and impending removal by seeking an injunction in a court
113 of competent jurisdiction of this state, or other means of relief as such court may
114 determine.

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

119 4. Notwithstanding subsection 3 of this section, for twenty-one days following the
120 date on which the director has provided notice to a stamping agent of the removal of a
121 brand family or manufacturer, the stamping agent may continue to stamp and sell
122 cigarettes affected by the notice that the stamping agent had purchased before the director
123 provided notice of removal, and such cigarettes shall not be subject to subsection 2 of
124 section 196.1022.

125 5. A retailer may purchase cigarettes from a stamping agent and sell such cigarettes
126 at retail for thirty days following the date on which the director has provided notice to a
127 stamping agent of the removal of a brand family or manufacturer and such cigarettes shall
128 not be subject to subsection 2 of section 196.1022.

196.1016. 1. Any nonresident or foreign tobacco product 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 tobacco product manufacturer. The tobacco
9 product manufacturer shall provide the name, address, phone number, and proof of the
10 appointment and availability of such agent to the satisfaction of the director.

11 2. The tobacco product manufacturer shall provide notice to the director thirty
12 calendar days prior to termination of the authority of an agent and shall further provide
13 proof to the satisfaction of the director of the appointment of a new agent no less than five
14 calendar days prior to the termination of an existing agent appointment. In the event an
15 agent terminates an agency appointment, the tobacco product manufacturer shall notify
16 the director of the termination within five calendar days and shall include proof to the
17 satisfaction of the director 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 director each stamping agent shall submit such
3 information as the director requires to facilitate compliance with this section, including but
4 not limited to a list by brand family of the total number of cigarettes or in the case of roll
5 your own the equivalent stick count for which the stamping agent affixed stamps during
6 the previous calendar quarter or otherwise paid the tax due for such cigarettes. The
7 stamping agent shall maintain and make available to the director all invoices and
8 documentation of sales of all tobacco product manufacturer cigarettes and any other
9 information relied upon in reporting to the director for a period of five years.

10 2. The director may share information with other federal, state or local agencies
11 only for purposes of enforcement of sections 196.1010 to 196.1025, or corresponding laws
12 of other states.

13 3. The director may require at any time from the tobacco product manufacturer
14 proof from the financial institution in which such manufacturer has established a qualified
15 escrow fund for the purpose of compliance with section 196.1003 of the amount of money
16 in such fund exclusive of interest, and the amount and date of each deposit to such fund,
17 and the amount and date of each withdrawal from such fund.

18 4. In addition to any other information required to be submitted by law, the
19 director may require a stamping agent or tobacco product manufacturer to submit any
20 additional information including but not limited to samples of the packaging or labeling
21 of each brand family, as is necessary to enable the director to determine whether a tobacco
22 product manufacturer is in compliance with sections 196.1010 to 196.1025.

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 director may seek an injunction to restrain a threatened or actual violation
15 of subsection 3 of section 196.1013, or subsection 1 or 4 of section 196.1019 by a stamping
16 agent and to compel the stamping agent to comply with such provisions. In any action
17 brought under this section, the state shall be entitled to recover the costs of investigation,
18 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 director not to list or to remove from the
2 directory a brand family or tobacco product manufacturer shall be subject to review under
3 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 director may promulgate rules necessary to effect the purpose of sections
11 196.1010 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.

196.1028. 1. Any tobacco product manufacturer required to make payments under
2 the provisions of section 196.1003, who has not made shipments of tobacco products into
3 this state prior to the effective date of this act may be required to file an instrument which
4 may be a cash or surety bond, letter of credit, or other instrument approved by the director
5 which shall be in the amount of the average escrow payment made by all escrow-paying
6 entities pursuant to section 196.1003, over the immediate past twelve months but shall not
7 exceed fifty thousand dollars. The director shall, after a two-year period, release such
8 manufacturer from the bonding requirement.

9 2. In the event the bond filed with the director is cash, the director shall deposit
10 such bond in the state general revenue fund and such bond shall be released to the
11 manufacturer pursuant to subsection 1 of this section from funds appropriated by the
12 general assembly for such purpose. If appropriated funds are available, the commissioner
13 of administration and the state treasurer shall cause such refunds to be paid within thirty
14 days of the receipt of a warrant request from the director.