

FIRST REGULAR SESSION

SENATE BILL NO. 490

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS WILSON AND NODLER.

Read 1st time February 25, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2087S.011

AN ACT

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

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 196.1020, 196.1023, 196.1026, 196.1029, 196.1032, and 196.1035, to read as follows:

196.1020. As used in sections 196.1020 to 196.1035, 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 "100s", 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) "Master settlement agreement", the same meaning as such term is defined in section 196.1000;

(5) "Nonparticipating manufacturer", any tobacco product manufacturer that is not a participating manufacturer;

(6) "Participating manufacturer", the same meaning as such term

20 is defined in section II(jj) of the master settlement agreement and all
21 amendments thereto;

22 (7) "Qualified escrow fund", the same meaning as such term is
23 defined in section 196.1000;

24 (8) "Stamping agent", a person who is authorized to affix tax
25 stamps to packages or other containers or cigarettes under chapter 149,
26 RSMo, or any person who is required to pay the tax imposed under
27 section 149.160, RSMo, on other tobacco products;

28 (9) "Tobacco product manufacturer", the same meaning as such
29 term is defined in section 196.1000;

30 (10) "Units sold", the same meaning as such term is defined in
31 section 196.1000.

196.1023. 1. Every tobacco product manufacturer whose
2 cigarettes are sold in this state, whether directly or through a
3 distributor, retailer, or similar intermediary or intermediaries, shall
4 execute and deliver on a form prescribed by the director a certification
5 to the director no later than the thirtieth day of April each year
6 certifying under penalty of perjury that as of the date of such
7 certification such tobacco product manufacturer is a participating
8 manufacturer or is in full compliance with section 196.1003.

9 (1) A participating manufacturer shall include in its certification
10 a list of its brand families. The participating manufacturer shall
11 update such list thirty calendar days prior to any addition to or
12 modification of its brand families by executing and delivering a
13 supplemental certification to the director.

14 (2) A nonparticipating manufacturer shall include in its
15 certification:

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

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

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

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

26 The nonparticipating manufacturer shall update such list thirty
27 calendar days prior to any addition to or modification of its brand
28 families by executing and delivering a supplemental certification to the
29 director.

30 (3) For a nonparticipating manufacturer, such certification shall
31 further certify:

32 (a) That such nonparticipating manufacturer is registered to do
33 business in the state or has appointed a resident agent for service of
34 process and provided notice thereof as required in subsection 1 of
35 section 196.1023;

36 (b) That such nonparticipating manufacturer has established and
37 continues to maintain a qualified escrow fund and has executed a
38 qualified escrow agreement that has been reviewed and approved by
39 the director and that governs the qualified escrow fund;

40 (c) That such nonparticipating manufacturer is in full
41 compliance with section 196.1003 and sections 196.1020 to 196.1035 and
42 any rules promulgated thereunder;

43 (d) a. The name, address, and telephone number of the financial
44 institution where the nonparticipating manufacturer has established
45 such qualified escrow fund required under section 196.1003 and all
46 rules promulgated thereunder;

47 b. The account number of such qualified escrow fund and any
48 subaccount number for the state;

49 c. The amount such nonparticipating manufacturer placed in
50 such fund for cigarettes sold in the state during the preceding calendar
51 year, the date and amount of each such deposit, and such evidence or
52 verification as may be deemed necessary by the director to confirm the
53 foregoing; and

54 d. The amount and date of any withdrawal or transfer of funds
55 the nonparticipating manufacturer made at any time from such fund or
56 from any other qualified escrow fund into which it ever made escrow
57 payments under section 196.1003 and all rules promulgated thereunder.

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

60 (a) In the case of a participating manufacturer, such
61 participating manufacturer affirms that the brand family is deemed to
62 be its cigarettes for purposes of calculating its payments under the

63 master settlement agreement for the relevant year, in the volume and
64 shares determined under the master settlement agreement; and

65 (b) In the case of a nonparticipating manufacturer, such
66 nonparticipating manufacturer affirms that the brand family is deemed
67 to be its cigarettes for purposes of section 196.1003.

68 Nothing in this section shall be construed as limiting or otherwise
69 affecting the state's right to maintain that a brand family constitutes
70 cigarettes of a different tobacco product manufacturer for purposes of
71 calculating payments under the master settlement agreement or for
72 purposes of section 196.1003.

73 (5) Tobacco product manufacturers shall maintain all invoices
74 and documentation of sales and other such information relied upon for
75 such certification for a period of five years, unless otherwise required
76 by law to maintain them for a greater period of time.

77 2. By July 1, 2009, the director shall develop and make available
78 for public inspection or publish on its website a directory listing of all
79 tobacco product manufacturers that have provided current and
80 accurate certifications conforming to the requirements of subsection 1
81 of this section and all brand families that are listed in such
82 certifications, except:

83 (1) The director shall not include or retain in such directory the
84 name or brand families of any nonparticipating manufacturer that fails
85 to provide the required certification or whose certification the director
86 determines is not in compliance with subdivisions (2) and (3) of
87 subsection 1 of this section, unless the director has determined that
88 such violation has been cured to the satisfaction of the director;

89 (2) Neither a tobacco product manufacturer nor brand family
90 shall be included or retained in the directory if the director concludes
91 in the case of a nonparticipating manufacturer that:

92 (a) Any escrow payment required under section 196.1003 for any
93 period for any brand family whether or not listed by such
94 nonparticipating manufacturer has not been fully paid into a qualified
95 escrow fund governed by a qualified escrow agreement that has been
96 approved by the director; or

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

100 **(3) Every stamping agent shall provide and update as necessary**
101 **an electronic mail address to the director for the purpose of receiving**
102 **any notifications that may be required by sections 196.1020 to 196.1035.**

103 **3. It shall be unlawful for any person to:**

104 **(1) Affix a stamp to a package or other container of cigarettes**
105 **of a tobacco product manufacturer or brand family not included in the**
106 **directory; or**

107 **(2) Sell, offer, or possess for sale in this state, or import for**
108 **personal consumption in this state, cigarettes of a tobacco product**
109 **manufacturer or brand family not included in the directory.**

196.1026. 1. Any nonresident or foreign nonparticipating
2 **manufacturer that has not registered to do business in this state as a**
3 **foreign corporation or business entity shall as a condition precedent to**
4 **having its brand families listed or retained in the directory appoint and**
5 **continually engage without interruption the services of an agent in this**
6 **state to act as agent for the service of process on whom all process, and**
7 **any action or proceeding against it concerning or arising out of the**
8 **enforcement of sections 196.1003 and 196.1020 to 196.1035 may be**
9 **served in any manner authorized by law. Such service shall constitute**
10 **legal and valid service of process on the nonparticipating**
11 **manufacturer. The nonparticipating manufacturer shall provide the**
12 **name, address, phone number, and proof of the appointment and**
13 **availability of such agent to the satisfaction of the director.**

14 **2. The nonparticipating manufacturer shall provide notice to the**
15 **director thirty calendar days prior to termination of the authority of**
16 **an agent and shall further provide proof to the satisfaction of the**
17 **director of the appointment of a new agent no less than five calendar**
18 **days prior to the termination of an existing agent appointment. In the**
19 **event an agent terminates an agency appointment, the nonparticipating**
20 **manufacturer shall notify the director of the termination within five**
21 **calendar days and shall include proof to the satisfaction of the director**
22 **of the appointment of a new agent.**

23 **3. Any nonparticipating manufacturer whose cigarettes are sold**
24 **in this state and who has not appointed and engaged an agent as herein**
25 **required shall be deemed to have appointed the secretary of state as**
26 **such agent and may be proceeded against in courts of this state by**
27 **service of process upon the secretary of state. However, the**

28 appointment of the secretary of state as such agent shall not satisfy the
29 condition precedent for having the brand families of the
30 nonparticipating manufacturer included or retained in the directory.

196.1029. 1. Not later than twenty days after the end of each
2 calendar quarter and more frequently if so directed by the director,
3 each stamping agent shall submit such information as the director
4 requires to facilitate compliance with sections 196.1020 to 196.1035,
5 including but not limited to a list by brand family of the total number
6 of cigarettes or, in the case of roll your own, the equivalent stick count
7 for which the stamping agent affixed stamps during the previous
8 calendar quarter or otherwise paid the tax due for such cigarettes. The
9 stamping agent shall maintain and make available to the director all
10 invoices and documentation of sales of all nonparticipating
11 manufacturer cigarettes and any other information relied upon in
12 reporting to the director for a period of five years.

13 2. The director is authorized to disclose to the attorney general
14 any information received under sections 196.1020 to 196.1035 and
15 requested by the attorney general for purposes of determining
16 compliance with and enforcing the provisions of sections 196.1020 to
17 196.1035. The director and attorney general shall share with each other
18 the information received under section 196.1003, sections 196.1020 to
19 196.1035, or corresponding laws of other states.

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

27 4. In addition to any other information required to be submitted
28 under sections 196.1020 to 196.1035, the director may require a
29 stamping agent or tobacco product manufacturer to submit any
30 additional information, including but not limited to samples of the
31 packaging or labeling of each brand family, as is necessary to enable
32 the director to determine whether a tobacco product manufacturer is
33 in compliance with sections 196.1020 to 196.1035.

196.1032. 1. In addition to or in lieu of any other civil or

2 criminal remedy provided by law, upon a determination that a
3 stamping agent or any person has violated subsection 3 of section
4 196.1023 or any regulation adopted under sections 196.1020 to 196.1035,
5 the director may revoke or suspend the license of any stamping agent
6 in the manner provided in subsection 3 of section 149.035, RSMo. Each
7 stamp affixed and each sale or offer to sell cigarettes in violation of
8 subsection 3 of section 196.1023 shall constitute a separate
9 violation. For each such violation, the director may also impose a civil
10 penalty in an amount not to exceed the greater of five hundred percent
11 of the retail value of the cigarettes or five thousand dollars upon a
12 determination of a violation of subsection 3 of section 196.1023 or any
13 regulations adopted thereunder.

14 2. Any cigarettes that have been sold, offered for sale, or
15 possessed for sale in this state in violation of subsection 3 of section
16 196.1023 shall be deemed contraband and such cigarettes shall be
17 subject to seizure and forfeiture as provided in chapter 149, RSMo, and
18 all such cigarettes so seized and forfeited shall be destroyed and not
19 resold.

20 3. The attorney general on behalf of the director may seek an
21 injunction to restrain a threatened or actual violation of subsection 3
22 of section 196.1023, or subsection 1 or 4 of section 196.1029 by a
23 stamping agent and to compel the stamping agent to comply with such
24 provisions. In any action brought under this section, the state shall be
25 entitled to recover the costs of investigation, costs of the action, and
26 reasonable attorney fees.

27 4. It shall be unlawful for a person to sell or distribute
28 cigarettes, or acquire, hold, own, possess, transport, import, or cause
29 to be imported cigarettes that the person knows or should know are
30 intended for distribution or sale in the state in violation of subsection
31 3 of section 196.1023. A violation of this section is a class A
32 misdemeanor.

33 5. A person who violates subsection 3 of section 196.1023 engages
34 in an unfair practice in violation of section 407.020, RSMo.

196.1035. 1. A determination of the director not to list or to
2 remove from the directory a brand family or tobacco product
3 manufacturer shall be subject to review under chapter 621, RSMo.

4 2. No person shall be issued a license or granted a renewal of a

5 license under chapter 149, RSMo, unless such person has certified in
6 writing under the penalty of perjury that such person will comply fully
7 with sections 196.1020 to 196.1035.

8 3. For the calendar year 2009, if the effective date of sections
9 196.1020 to 196.1035 is later than March 16, 2009:

10 (1) The first report of stamping agents required in subsection 1
11 of section 196.1029 shall be due thirty calendar days after such effective
12 date;

13 (2) The certification by a tobacco product manufacturer
14 described in subsection 1 of section 196.1023 shall be due forty-five
15 calendar days after such effective date; and

16 (3) The directory described in subsection 2 of section 196.1023
17 shall be published or made available within one hundred thirty-five
18 calendar days after such effective date.

19 4. The director may promulgate rules necessary to effect the
20 purpose of sections 196.1020 to 196.1035.

21 5. In any action brought by the state to enforce sections 196.1020
22 to 196.1035, the state shall be entitled to recover the costs of
23 investigation, expert witness fees, costs of the action and reasonable
24 attorney fees.

25 6. If a court of competent jurisdiction determines that a person
26 has violated sections 196.1020 to 196.1035, the court shall order any
27 profits, gains, gross receipts, or other benefits from the violation to be
28 disgorged and paid to the state treasurer for deposit in the "Tobacco
29 Control Special Fund", which is hereby created. Unless otherwise
30 expressly provided, the remedies or penalties provided by sections
31 196.1020 to 196.1035 are cumulative to each other and to the remedies
32 or penalties available under all other laws of this state.

33 7. If a court of competent jurisdiction finds that the provisions
34 of section 196.1003 and sections 196.1020 to 196.1035 conflict and cannot
35 be harmonized, the provisions of section 196.1003 shall control. If any
36 section or portion of a section in sections 196.1020 to 196.1035 causes
37 section 196.1003 to no longer constitute a qualifying or model statute,
38 as those terms are defined in the master settlement agreement, that
39 portion of sections 196.1020 to 196.1035 shall be invalid. If any section
40 or portion of a section in sections 196.1020 to 196.1035 is for any reason
41 held to be invalid, unlawful, or unconstitutional, such decision shall not

42 **affect the validity of the remaining portions of sections 196.1020 to**
43 **196.1035.**

Section B. Because immediate action is necessary to protect the economic
2 welfare of the citizens of this state, section A of this act is deemed necessary for
3 the immediate preservation of the public health, welfare, peace, and safety, and
4 is hereby declared to be an emergency act within the meaning of the constitution,
5 and section A of this act shall be in full force and effect upon its passage and
6 approval.

Unofficial ✓

Bill

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