

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 884

95TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 1, 2010, with recommendation that the Senate Committee Substitute do pass.

4831S.04C

TERRY L. SPIELER, Secretary.

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 enacted in lieu thereof, 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;

19 (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 or any person who is required to pay the tax imposed under section
27 149.160 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, which shall
21 indicate, by an asterisk, any brand family sold in the state during the
22 preceding calendar year that is no longer being sold in the state as of
23 the date of such certification; and

24 (c) The name and address of any other manufacturer of such

25 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 this subsection;

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

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

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

46 (e) The account number of such qualified escrow fund and any
47 subaccount number for the state;

48 (f) The amount such nonparticipating manufacturer placed in
49 such fund for cigarettes sold in the state during the preceding calendar
50 year;

51 (g) The date and amount of each such deposit, and such evidence
52 or verification as may be deemed necessary by the director to confirm
53 the foregoing; and

54 (h) The amount and date of any withdrawal or transfer of funds
55 the nonparticipating manufacturer made, at any time, from such fund
56 or 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 shall 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. On or after January 1, 2011, the director shall issue, maintain,
78 update when necessary but only on the first calendar day of each
79 month, make available for public inspection and publish on its website
80 a directory listing of all tobacco product manufacturers that have
81 provided current and accurate certifications in compliance with the
82 requirements of subsection 1 of this section and all brand families
83 listed in such certifications, except:

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

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

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

98 (b) Any outstanding final judgment, including interest thereon,

99 for violations of section 196.1003 has not been fully satisfied for such
100 brand family and such manufacturer;

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

104 3. (1) The directory issued and updated in subsection 2 of this
105 section shall become effective immediately but only as it applies to
106 tobacco product manufacturers, and it shall be unlawful for any
107 tobacco wholesaler or retailer to purchase from any tobacco product
108 manufacturer, any cigarette, or brand family not listed in the directory.

109 (2) The directory issued in subsection 2 of this section shall
110 become effective on February 1, 2011, as it applies to tobacco
111 wholesalers and on February 15, 2011, as it applies to tobacco retailers
112 in order to allow wholesalers and retailers sufficient time to sell their
113 inventory.

114 (3) Unless otherwise permitted herein, it shall be unlawful for
115 any person to:

116 (a) Affix a stamp to a package or other container of cigarettes of
117 a tobacco product manufacturer or brand family not included in the
118 directory; or

119 (b) Sell, offer, or possess for sale in this state, or import for
120 personal consumption in this state, cigarettes of a tobacco product
121 manufacturer or brand family not included in the directory.

196.1026. 1. Any nonresident or foreign nonparticipating
2 manufacturer not registered to do business in this state as a foreign
3 corporation or business entity shall, as a condition precedent to having
4 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
7 shall be served, and any action or proceeding against it concerning, or
8 arising out of, the enforcement of sections 196.1003 and 196.1020 to
9 196.1035 may be served in any manner authorized by law. Such service
10 shall constitute legal and valid service of process on the
11 nonparticipating manufacturer. The nonparticipating manufacturer
12 shall provide the name, address, phone number, and proof of the
13 appointment and availability of such agent to the satisfaction of the
14 director.

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

24 3. Any nonparticipating manufacturer whose cigarettes are sold
25 in this state and who has not appointed and engaged an agent as herein
26 required shall be deemed to have appointed the secretary of state as
27 such agent and may be proceeded against in courts of this state by
28 service of process upon the secretary of state. However, the
29 appointment of the secretary of state as such agent shall not satisfy the
30 condition precedent for having the brand families of the
31 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:

6 (1) A list by brand family of the total number of cigarettes; or

7 (2) In the case of roll your own, the equivalent stick count for
8 which the stamping agent affixed stamps during the previous calendar
9 quarter or otherwise paid the tax due for such cigarettes.

10 The stamping agent shall maintain and make available to the director
11 all invoices and documentation of sales of all nonparticipating
12 manufacturer cigarettes and any other information relied upon in
13 reporting to the director for a period of five years.

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

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

28 4. In addition to any other information required to be submitted
29 under sections 196.1020 to 196.1035, the director may require a
30 stamping agent or tobacco product manufacturer to submit any
31 additional information, including but not limited to samples of the
32 packaging or labeling of each brand family, as is necessary to enable
33 the director to determine whether a tobacco product manufacturer is
34 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 subsection 3 of section
5 196.1023, the director may revoke or suspend the license of any
6 stamping agent in the manner provided in subsection 3 of section
7 149.035. Each stamp affixed and each sale, or offer to sell, cigarettes in
8 violation of subsection 3 of section 196.1023 shall constitute a separate
9 violation. Upon a determination of a violation of subsection 3 of
10 section 196.1023 or any regulations adopted thereunder, the director
11 may impose a civil penalty in an amount not to exceed the greater of
12 five hundred percent of the retail value of the cigarettes or five
13 thousand dollars for each such violation.

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 and all
18 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 a 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 and action including
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 subsection shall be a class A
32 misdemeanor.

33 5. A person who violates subsection 3 of section 196.1023 shall be
34 deemed to have engaged in an unfair practice in violation of section
35 407.020.

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.

4 2. No person shall be issued, or granted a renewal of, a license
5 under chapter 149 unless such person has certified, in writing and
6 under the penalty of perjury, that such person will comply fully with
7 sections 196.1020 to 196.1035.

8 3. For the calendar year 2010, if the effective date of sections
9 196.1020 to 196.1035 is later than March 16, 2010:

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. Any rule or portion of a rule,
21 as that term is defined in section 536.010 that is created under the
22 authority delegated in this section shall become effective only if it
23 complies with and is subject to all of the provisions of chapter 536, and,
24 if applicable, section 536.028. This section and chapter 536 are
25 nonseverable and if any of the powers vested with the general assembly

26 pursuant to chapter 536, to review, to delay the effective date, or to
27 disapprove and annul a rule are subsequently held unconstitutional,
28 then the grant of rulemaking authority and any rule proposed or
29 adopted after August 28, 2010, shall be invalid and void.

30 5. There is hereby created in the state treasury the "Tobacco
31 Control Special Fund", which shall consist of money collected under
32 this section. The state treasurer shall be custodian of the fund and may
33 approve disbursements from the fund in accordance with sections
34 30.170 and 30.180. Upon appropriation, money in the fund shall be used
35 solely for the administration of this section. Any moneys remaining in
36 the fund at the end of the biennium shall revert to the credit of the
37 general revenue fund. The state treasurer shall invest moneys in the
38 fund in the same manner as other funds are invested. Any interest and
39 moneys earned on such investments shall be credited to the fund.

40 6. If a court of competent jurisdiction determines that a person
41 has violated sections 196.1020 to 196.1035, such court shall order any
42 profits, gains, gross receipts, or other benefits from such violation be
43 disgorged and paid to the state treasurer for deposit in the "Tobacco
44 Control Special Fund". Unless otherwise expressly provided, the
45 remedies or penalties provided by sections 196.1020 to 196.1035 are
46 cumulative to each other and to the remedies or penalties available
47 under all other laws of this state.

48 7. If a court of competent jurisdiction finds that the provisions
49 of sections 196.1003 and 196.1020 to 196.1035 conflict and cannot be
50 harmonized, the provisions of section 196.1003 shall control. If any
51 section or portion of a section in sections 196.1020 to 196.1035 causes
52 section 196.1003 to no longer constitute a qualifying or model statute,
53 as those terms are defined in the master settlement agreement, that
54 portion of sections 196.1020 to 196.1035 shall be invalid.

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

Copy