

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 348
Senate Finance Committee Substitute Adopted 8/27/02

Short Title: Tobacco Escrow Compliance.

(Public)

Sponsors:

Referred to:

March 1, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE COMPLIANCE WITH THE TOBACCO ESCROW
3 STATUTE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 66-290 is amended by adding the following new
6 subdivisions to read:

7 **"§ 66-290. Definitions.**

8 As used in this Article:

9 ...

10 (3a) 'Brand family' means all styles of cigarettes sold under the same
11 trademark and differentiated from one another by means of additional
12 modifiers including, but not limited to, "menthol", "lights", "kings",
13 and "100s".

14 ...

15 (4a) 'Distributor' has the same meaning as defined in G.S. 105-113.4.

16 ...

17 (5a) 'Nonparticipating manufacturer' means a tobacco product manufacturer
18 that is not a participating manufacturer.

19 (5b) 'Participating manufacturer' has the same meaning as defined in
20 section II(jj) of the Master Settlement Agreement.

21"

22 SECTION 2. G.S. 66-291(a)(1) reads as rewritten:

23 "(1) Become a participating manufacturer (~~as that term is defined in section~~
24 ~~II(jj) of the Master Settlement Agreement~~) and generally perform its
25 financial obligations under the Master Settlement Agreement; or".

26 SECTION 3. Article 37 of Chapter 66 of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 66-292. Compliance certification.**

1 (a) It shall be unlawful for any person, including any distributor, to pay the tax
2 levied under Part 2 of Article 2A of Chapter 105 of the General Statutes for cigarettes
3 belonging to a brand family of a nonparticipating manufacturer if the brand family is not
4 included on the nonparticipating manufacturers' list issued pursuant to subsection (b) of
5 this section. Cigarettes otherwise subject to the levy of the tax but made ineligible for
6 the levy under this section are non-tax-paid cigarettes.

7 (b) As a supplement to the list prepared pursuant to G.S. 105-113.4C, the Office
8 of the Attorney General shall prepare the following separate lists and shall make those
9 lists available for public inspection. The Office of the Attorney General shall update the
10 supplemental lists as necessary to reflect additions to or deletions of manufacturers and
11 brand families.

12 (1) A list of the participating manufacturers and all brand families of each
13 participating manufacturer that the participating manufacturer has
14 identified to the Attorney General.

15 (2) A list of the nonparticipating manufacturers who are in full compliance
16 with G.S. 66-291(a)(2). The list shall include all brand families of
17 those manufacturers that the manufacturers have identified to the
18 Attorney General.

19 (c) A person shall not be liable for a violation of subsection (a) of this section if
20 the brand family and the manufacturer of the brand family were included on the
21 supplemental list of nonparticipating manufacturers at the time the tax was paid
22 regardless of whether the manufacturer or the brand family is included on a subsequent
23 edition of the supplemental list.

24 (d) Unless the Office of the Attorney General provides a waiver, a
25 nonparticipating manufacturer shall submit to the Office of the Attorney General on or
26 before April 30th of each year all of the following:

27 (1) A list of all brand families of the manufacturer sold for consumption in
28 the State during the current and previous calendar year.

29 (2) A copy of the instrument appointing a process service agent, as
30 required under this section.

31 (3) A statement certifying all of the following:

32 a. The manufacturer is in full compliance with G.S. 66-291(a)(2).

33 b. All escrow payments required under G.S. 66-291(a)(2) have
34 been made for all cigarettes belonging to the brand families
35 included in the list submitted pursuant to subdivision (1) of this
36 subsection.

37 c. The manufacturer will not deliver any brand family to a
38 distributor before the manufacturer has updated the list of brand
39 families submitted pursuant to subdivision (1) of this subsection
40 to include the brand family.

41 d. The instrument required under subdivision (2) of this subsection
42 is currently in effect.

43 (e) A nonparticipating tobacco product manufacturer not previously subject to
44 this section and the brand families of that manufacturer will be included in the next

1 updated supplemental list only after the submissions required by subsection (d) of this
2 section have been approved by the Office of the Attorney General and the Office of the
3 Attorney General has approved the manufacturer's escrow agreement. A
4 nonparticipating tobacco product manufacturer previously subject to this section and its
5 brand families will be included in the next updated supplemental list only after the
6 submissions required by subsection (d) of this section have been approved by the Office
7 of the Attorney General and the manufacturer has obtained the approval of the Office of
8 the Attorney General for its escrow agreement, made payment into the approved escrow
9 account of all past due payments, and resolved all outstanding penalty demands or
10 adjudicated penalties.

11 (f) Each nonparticipating tobacco product manufacturer shall appoint and
12 continuously maintain a process service agent within the State of North Carolina to
13 accept service of any notification or enforcement action pursuant to this Article. The
14 manufacturer shall file with the Secretary of State and the Office of the Attorney
15 General a certified copy of each instrument appointing a process service agent."

16 **SECTION 4.** G.S. 14-401.18(b) reads as rewritten:

17 "(b) Offenses. – A person who sells or holds for sale (other than for export to a
18 foreign country) a package of cigarettes that meets one or more of the following
19 descriptions commits a Class A1 misdemeanor and engages in an unfair trade practice
20 prohibited by G.S. 75-1.1:

- 21 (1) The package differs in any respect with the requirements of the Federal
22 Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, for the
23 placement of labels, warnings, or any other information upon a
24 package of cigarettes that is to be sold within the United States.
- 25 (2) The package is labeled "For Export Only," "U.S. Tax Exempt," "For
26 Use Outside U.S.," or has similar wording indicating that the
27 manufacturer did not intend that the product be sold in the United
28 States.
- 29 (3) The package was altered by adding or deleting the wording, labels, or
30 warnings described in subdivision (1) or (2) of this subsection.
- 31 (4) The package was imported into the United States after January 1,
32 2000, in violation of 26 U.S.C. § 5754.
- 33 (5) The package violates federal trademark or copyright ~~laws.~~ laws,
34 federal laws governing the submission of ingredient information to
35 federal authorities pursuant to 15 U.S.C. § 1335a, federal laws
36 governing the import of certain cigarettes pursuant to 19 U.S.C. § 1681
37 and 19 U.S.C. § 1691b, or any other provision of federal law or
38 regulation.
- 39 (6) The package contains cigarettes, as defined in G.S. 66-290(4), that are
40 non-tax-paid cigarettes under G.S. 66-292."

41 **SECTION 5.** G.S. 105-113.4C(1) reads as rewritten:

- 42 "(1) The Office of the Attorney General must give to the Secretary of
43 Revenue a list of the nonparticipating manufacturers under the Master
44 Settlement Agreement and the brand names of the products of the

1 nonparticipating manufacturers. The Office of the Attorney General
2 must also give to the Secretary of Revenue the supplemental list
3 prepared under G.S. 66-292 that shows which nonparticipating
4 manufacturers are in full compliance with G.S. 66-291(a)(2)."

5 **SECTION 6.** G.S. 105-133.5 reads as rewritten:

6 **"§ 105-113.5. Tax on cigarettes.**

7 (a) Tax. – A tax is levied on the sale or possession for sale in this State, by a
8 distributor, of all cigarettes at the rate of two and one-half mills per individual cigarette.

9 This tax does not apply to any of the following:

10 (1) Sample cigarettes distributed without charge in packages containing
11 five or fewer cigarettes.

12 (2) Cigarettes in a package of cigarettes given without charge by the
13 manufacturer of the cigarettes to an employee of the manufacturer who
14 works in a factory where cigarettes are made, if the cigarettes are not
15 taxed by the federal government.

16 (b) Tobacco Escrow Compliance. – Notwithstanding subsection (a) of this
17 section, a tax may not be levied on the sale or possession for sale of a cigarette
18 belonging to a brand family of a nonparticipating manufacturer if the brand family is not
19 included on the nonparticipating manufacturers' list issued under G.S. 66-292.
20 Cigarettes that are not subject to tax under this subsection are non-tax-paid cigarettes."

21 **SECTION 7.** This act becomes effective October 1, 2002.