



February 24, 2014

SUMMARY OF ORIGINAL BILL: Updates and revises provisions of the Tennessee Tobacco Manufacturers' Escrow Fund Act (the Act), including but not limited to:

- 1) Redefines "units sold" to mean the number of individual cigarettes sold to a consumer in Tennessee by the applicable tobacco product manufacturer, regardless of whether the state excise tax was due or collected, and exempts from the definition cigarettes sold on federal military installations or that are otherwise exempt from state excise tax pursuant to federal law;
- 2) Requires the escrow fund deposits by non-participating manufacturers to be made in quarterly installments and based upon units sold in that quarter together with an estimated inflation adjustment provided by the Attorney General; establishes applicable due dates for such deposits, and requires an annual reconciliation deposit to be made by April 15 of the year following the year in which the cigarettes were sold to account for the actual annual inflation adjustment; requires a statement of the reconciliation deposit and the final reconciled deposit figures to be included with the annual certification, due by April 30 of the year following the year in which the cigarettes were sold; requires certifications of compliance with escrow fund deposit requirements to be made quarterly and annually, instead of just annually, to the Attorney General;
- 3) Authorizes the Commissioner of the Department of Revenue, in specific circumstances, to disclose information relevant to the enforcement of the Act that may otherwise be confidential; requires any tobacco sales data provided by another state, a tobacco product manufacturer, or other person or entity to a data clearinghouse pursuant to the Non-Participating Manufacturer Adjustment Settlement Agreement to be treated as confidential tax information;
- 4) Establishes that, except for sales to licensed wholesale dealers and jobbers, it is unlawful for any person to cause cigarettes either ordered or purchased by or through the mail, a delivery service, the Internet, telephone, or some other electronic method to be shipped or transported to any person in this state without such products having the appropriate Tennessee tax paid by a licensed wholesale dealer and jobber; it is further unlawful for a wholesale dealer and jobber or a distributor to sell cigarettes directly to a consumer located within Tennessee; authorizes licensed wholesale dealers and jobbers to sell cigarettes to retail dealers after applying the appropriate tax stamp to all packs of cigarettes sold, and after paying the appropriate tobacco tax on roll-your-own tobacco products; authorizes retail dealers to receive and sell directly to state consumers cigarettes, provided that a wholesale dealer and jobber has paid the Tennessee tobacco tax on the products; authorizes the Attorney General to bring an action in court to prevent or restrain violations of this part, and to seek other remedies, including license revocation and imposition of civil penalties;

5) Establishes that the bond that a non-participating manufacturer must pay to be included in the directory of approved tobacco product manufacturers shall be the greater of \$100,000 or the greatest required escrow amount due from such manufacturer or its predecessor for any of the 12 preceding calendar quarters; authorizes the state to execute upon the bond in the amount equal to any remaining escrow amount due, if the non-participating manufacturer has failed to make escrow deposits equal to the full amount owed for a quarter within 15 days following the due date; further authorizes the state, if a judgment is obtained against such manufacturer, to execute on the bond to recover the amount of civil penalties and attorneys' fees obtained in that judgment;

6) Authorizes the Department to conduct inspections, audits, and investigations of non-participating manufacturers and their importers, licensed agents, tobacco distributors, wholesale dealers and jobbers, retail dealers, persons and entities engaged in delivery sales, and cigarette rolling machine operators; authorizes the Commissioner and the Attorney General to administer all necessary oaths, issue subpoenas, compel the attendance of witnesses, take depositions, and compel the production of pertinent books, payrolls, accounts, papers, records, documents, and testimony relevant to such investigation; subjects all non-participating manufacturers to inspections, as deemed necessary by the Commissioner, and creates a Class A misdemeanor for any interference with the examination; authorizes any duly authorized representative, agent or employee of the Department who has been designated by the Commissioner to enforce the tobacco settlement funds provisions to execute search warrants and do all acts incident to the search warrant, in the same manner as search warrants may be levied by sheriffs and other peace officers; establishes that inspectors, agents, representatives or officers appointed by the Commissioner shall have the duty, power and authority as police officers to enforce this part; authorizes the highway patrol to assist in the enforcement of this part; authorizes any duly authorized representative or employee of the Department, who has been specifically designated by the Commissioner to enforce this part, to go armed or carry a pistol while on active duty engaged in enforcing this part.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (012643): Requires the Department of Revenue to promulgate rules, in accordance with the Uniform Administrative Procedures Act, as necessary to ascertain the number of units sold by a tobacco product manufacturer for each year. Specifies that the Department's authorization to conduct inspections, audits, and investigations of non-participating manufacturers and their importers, licensed agents, tobacco distributors, wholesale dealers and jobbers, retail dealers, persons and entities engaged in delivery sales, and cigarette rolling machine operators is for the purpose of determining compliance with the requirements of tobacco product manufacturers codified under Tenn. Code Ann. § 47-31-103, and the provisions under the Tobacco Settlement Fund part. Removes the authorization for any duly authorized representative, agent or employee of the Department who has been designated by the Commissioner to enforce the tobacco settlement funds provisions to execute search warrants and

do all acts incident to the search warrant, in the same manner as search warrants may be levied by sheriffs and other peace officers. Requires that the bond a non-participating manufacturer must pay to be included in the directory of approved tobacco product manufacturers must be posted at least ten days in advance of each calendar year. Declares the provisions of this legislation are severable and makes several typographical errors without making any substantial revisions.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- According to the Department of Revenue, this bill ensures, among other things, that it is entirely clear that the Department has authority to audit for escrow compliance and will ensure that audit activities may continue without the risk of challenges that could undermine compliance with the Act. Any fiscal impact to the Department is estimated to be not significant.
- According to the Attorney General, this bill will enhance escrow statute enforcement and protect the state against any future reductions in its average annual payment. The projected payment for April 2014 is approximately \$136,000,000. Any fiscal impact to the Attorney General is estimated to be not significant.
- Any increase in revenue from the civil penalties authorized by this bill as amended is estimated to be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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