

FIRST REGULAR SESSION

# SENATE BILL NO. 362

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATORS STEELMAN AND GROSS.

Read 1st time January 27, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1232S.02I

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## AN ACT

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

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*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 196.1010, 196.1013, 196.1016, 196.1019, 196.1022, and 196.1025, to read as follows:

**196.1010. As used in sections 196.1010 to 196.1025, the following terms shall mean:**

(1) "Brand family", all styles of cigarettes sold under same trade mark 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) "Nonparticipating manufacturer", any tobacco product manufacturer that is not a participating manufacturer;

(5) "Participating manufacturer", the same meaning as such term is given in Section II(jj) of the Master Settlement Agreement, as defined in section 196.1000, and all amendments thereto;

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

(7) "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 pursuant to chapter 149, RSMo, on cigarettes;

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

(9) "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 state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall execute and deliver on a form or in the manner prescribed by the attorney general a certification to the director and the attorney general no later than the thirtieth day of April each year, certifying that, as of the date of such certification, such tobacco product manufacturer is a participating manufacturer or is in full compliance with sections 196.1000 and 196.1003, including all quarterly installment payments required by section 196.1019.

(1) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

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

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

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

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

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

The nonparticipating manufacturer shall update such list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(3) In the case of a nonparticipating manufacturer, such certification shall further certify:

(a) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process and provided notice thereof as

required in section 196.1016;

(b) That such nonparticipating manufacturer has (i) established and continues to maintain a qualified escrow fund, as defined in section 196.1000, and (ii) executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(c) That such nonparticipating manufacturer is in full compliance with this section and section 196.1003, and any regulations promulgated pursuant thereto;

(d) (i) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required by section 196.1003 and all regulations promulgated thereto, and (ii) the account number of such qualified escrow fund and any subaccount number for the state of Missouri, and (iii) the amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the date, and amount of each such deposit, and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing, and (iv) the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to section 196.1003 and all regulations promulgated thereto.

(4) A tobacco product manufacturer may not include a brand family in its certification unless (i) in the case of a participating manufacturer, said participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement, as defined in section 196.1000, for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement, and (ii) in the case of a nonparticipating manufacturer, said nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of section 196.1003. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of section 196.1003.

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

2. Not later than January 1, 2004, the attorney general shall develop and make available for public inspection or publish on its website a directory listing of all

tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection 1 of this section and all brand families that are listed in such certifications, except as noted below.

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

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the attorney general concludes in the case of a nonparticipating manufacturer that (i) any escrow payment required pursuant to section 196.1003 for any period for any brand family, whether or not listed by such nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general, or (ii) any outstanding final judgment, including interest thereon, for violations of section 196.1003 have not been fully satisfied for such brand family and such manufacturer.

(3) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of sections 196.1010 to 196.1025.

(4) Every stamping agent shall provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by sections 196.1010 to 196.1025.

(5) The attorney general shall electronically transmit to each stamping agent notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family.

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

196.1016. 1. Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process,

and any action or proceeding against it concerning or arising out of the enforcement of sections 196.1003 and 196.1010 to 196.1025, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of such agent to and to the satisfaction of the attorney general.

2. The nonparticipating manufacturer shall provide notice to the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of said termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

196.1019. 1. Not later than twenty days after the end of each calendar quarter, and more frequently if so directed by the attorney general, each stamping agent shall submit such information as the attorney general requires to facilitate compliance with this section, including but not limited to a list by brand family of the total number of cigarettes or in the case of roll your own, the equivalent stick count for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain, and make available to the attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of five years.

2. The director of the department of revenue is authorized to disclose to the attorney general any information received under sections 196.1010 to 196.1025 and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of sections 196.1010 to 196.1025. The director and attorney general shall share with each other the information received under sections 196.1010 to 196.1025, and may share such information with other federal, state, or local agencies only for purposes of enforcement of sections 196.1010 to 196.1025, or corresponding laws of other states.

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

from such fund.

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

5. To promote compliance with the provisions of sections 196.1010 to 196.1025, the attorney general may promulgate rules requiring a tobacco product manufacturer subject to the requirements of subdivision (2) of subsection 1 of section 196.1013 to make escrow deposits required in installments during the year in which the sales covered by such deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

196.1022. 1. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent or any person has violated subsection 3 of section 196.1013 or any regulation adopted pursuant thereto, the director may revoke or suspend the license of any stamping agent in the manner provided in chapter 149, RSMo. Each stamp affixed and each sale or offer to sell cigarettes in violation of subsection 3 of section 196.1013 shall constitute a separate violation. The director may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes sold or five thousand dollars upon a determination of a violation of subsection 3 of section 196.1013 or any regulations adopted pursuant thereto.

2. Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of subsection 3 of section 196.1013 shall be deemed contraband and such cigarettes shall be subject to seizure and forfeiture as provided by law, and all such cigarettes so seized and forfeited shall be destroyed and not resold.

3. The attorney general, on behalf of the director, may seek an injunction to restrain a threatened or actual violation of subsection 3 of section 196.1013, or subsection 1 or 5 of section 196.1019, by a stamping agent and to compel the stamping agent to comply with such provisions. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees.

4. It shall be unlawful for a person to sell or distribute cigarettes, or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in

violation of subsection 3 of section 196.1013. A violation of this section is a class A misdemeanor.

5. A person who violates subsection 3 of section 196.1013 engages in an unfair practice in violation of section 407.020, RSMo.

196.1025. 1. A determination of the attorney general not to list or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review pursuant to chapter 621, RSMo.

2. For the year 2003, if the effective date of sections 196.1010 to 196.1025 is later than March 16, 2003, the first report of stamping agents required by subsection 1 of section 196.1019 shall be due thirty days after the effective date of sections 196.1010 to 196.1025; the certifications by the tobacco product manufacturer described in subsection 1 of section 196.1013 shall be due forty-five days after such effective date; and the directory described in subsection 2 of section 196.1013 shall be published or made available within ninety days after such effective date.

3. The attorney general may promulgate rules necessary to effect the purpose of sections 196.1010 to 196.1025.

4. In any action brought by the state to enforce sections 196.1010 to 196.1025, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

5. If a court of competent jurisdiction determines that a person has violated sections 196.1010 to 196.1025, the court shall order any profits, gains, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the "Tobacco Control Special Fund", which is hereby created. Unless otherwise expressly provided the remedies or penalties provided by sections 196.1010 to 196.1025 are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Section B. Because immediate action is necessary to ensure complete compliance with the tobacco settlement agreement section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.