

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 384 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

As Engrossed: S1/31/05

A Bill

SENATE BILL 118

4
5 By: Senator B. Johnson
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8 **For An Act To Be Entitled**

9 AN ACT TO AMEND ARKANSAS CODE § 26-57-261
10 PERTAINING TO REFUNDS OF INTEREST FROM DEPOSITS
11 BY TOBACCO PRODUCT MANUFACTURERS UNDER THE MASTER
12 SETTLEMENT AGREEMENT; AND FOR OTHER PURPOSES.
13

14 **Subtitle**

15 AN ACT TO AMEND ARKANSAS CODE § 26-57-
16 261.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 26-57-261(2)(B)(ii) is amended to read as
22 follows:

23 (ii) To the extent that a tobacco product
24 manufacturer establishes that the amount it was required to place into escrow
25 on account of units sold in the state in a particular year was greater than
26 ~~the state's allocable share of the total payments that such manufacturer~~
27 ~~would have been required to make in that year under the Master Settlement~~
28 ~~Agreement, as determined pursuant to section IX(i)(2) of the Master~~
29 ~~Settlement Agreement and before any of the adjustments or offsets described~~
30 ~~in section IX(i)(3) of that agreement other than the inflation adjustment,~~
31 the Master Settlement Agreement payments, as determined under section IX(i)
32 of the Master Settlement Agreement including after final determination of all
33 adjustments, that the manufacturer would have been required to make on
34 account of the units sold had it been a participating manufacturer, the
35 excess shall be released from escrow and revert back to such tobacco product



1 manufacturer; or

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3 SECTION 2. Arkansas Code § 26-57-1303(c), concerning the prohibition
4 against stamping, sale, or import of cigarettes not in the directory, is
5 amended to read as follows:

6 (c) Prohibition Against Stamping, Sale, or Import of Cigarettes Not in
7 Directory.

8 (1) It is unlawful for any person or entity to:

9 (A) Affix a tax stamp to a package or other container of
10 cigarettes of a tobacco product manufacturer or brand family that the person
11 or entity knows is not included in the directory maintained by the Attorney
12 General pursuant to subsection (b) of this section; or

13 (B) Sell, offer, or possess for sale in this state, or
14 import for personal consumption in this state, cigarettes of a tobacco
15 product manufacturer or brand family that the person or entity knows is not
16 included in the directory maintained by the Attorney General pursuant to
17 subsection (b) of this section.

18 (2) Persons and entities are deemed to have received notice that
19 cigarettes of a tobacco product manufacturer or a brand family are not
20 included in the directory maintained by the Attorney General pursuant to
21 subsection (b) of this section at the time the Attorney General's website
22 fails to list any such cigarettes in the directory or at the time the
23 Attorney General removes the cigarettes from the directory.

24 (3) A person or entity purchasing cigarettes for resale shall
25 not be in violation of this subchapter if:

26 (A) At the time of purchase the manufacturer and brand
27 families of the cigarettes are included in the directory maintained by the
28 Attorney General pursuant to subsection (b) of this section and the
29 cigarettes are lawfully stamped and sold within ~~fourteen (14)~~twenty-one (21)
30 days of the date the manufacturer and brand families were removed from the
31 directory; or

32 (B) In the case of a retailer, the cigarettes are sold or
33 delivered to retail customers within ~~fourteen (14)~~twenty-one (21) days after
34 receipt of delivery of such cigarettes from a wholesaler so long as the
35 cigarettes in question were lawfully purchased from the same wholesaler.

36 (4) No brand families may be purchased by or delivered to a

1 wholesaler once the manufacturer and brand families are removed from the
2 directory.

3 ~~(4)~~(5) Any manufacturer, wholesaler, or retailer selling
4 cigarettes for resale of a manufacturer or brand family that has been removed
5 from the directory maintained by the Attorney General pursuant to subsection
6 (b) of this section shall notify the purchaser of such cigarettes of that
7 fact at the time of delivery of the cigarettes.

8 ~~(5)~~(6)(A) Unless otherwise provided by contract or purchase
9 agreement, a purchaser shall be entitled to a refund of the purchase price
10 from the manufacturer, wholesaler, or retailer from whom the cigarettes were
11 purchased of any cigarettes that are the product of a manufacturer or a brand
12 family that has been removed from the directory maintained by the Attorney
13 General pursuant to subsection (b) of this section.

14 (B) The Department of Finance and Administration may by
15 regulation provide for a refund of the price of tax stamps that have been
16 lawfully affixed to cigarettes that may not be sold under this subsection.
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18 SECTION 3. Severability.

19 (a) If this act or any portion of the amendment to Arkansas Code § 26-
20 57-261(2)(B)(ii) made by this act is held by a court of competent
21 jurisdiction to be unconstitutional, then Arkansas Code § 26-57-
22 261(2)(B)(ii) shall be deemed to be repealed in its entirety.

23 (b) If Arkansas Code § 26-57-261(2)(B) shall thereafter be held by a
24 court of competent jurisdiction to be unconstitutional, then this act shall
25 be deemed repealed and Arkansas Code § 26-57-261(2)(B)(ii) be restored as if
26 the amendment made by this act had not been made.

27 (c) Neither any holding of unconstitutionality nor the repeal of
28 Arkansas Code § 26-57-261(2)(B)(ii) shall affect, impair, or invalidate any
29 other portion of Arkansas Code § 26-57-261 or the application of Arkansas
30 Code § 26-57-261 to any other person or circumstance, and the remaining
31 portions of Arkansas Code § 26-57-261 shall continue in full force and
32 effect.

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34 SECTION 4. EFFECTIVE DATE. Section 1 shall apply to all funds placed
35 into, due to be placed into, or being held in a qualified escrow account
36 pursuant to Arkansas Code § 26-57-261 on or after March 31, 2005.

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SECTION 5. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that smoking poses a serious health risk to Arkansans; that the Master Settlement Agreement is a critical component in reducing the rate of smoking in Arkansas; and that the provisions of this act are immediately necessary for the continued effective administration and enforcement of provisions of the Master Settlement Agreement in Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/ B. Johnson

APPROVED: 2/24/2005

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