

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: H3/18/21

# A Bill

HOUSE BILL 1683

5 By: Representative L. Johnson  
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## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS CODE REGARDING  
9 PROCEDURAL ENHANCEMENTS TO ENFORCEMENT MECHANISMS OF  
10 THE MASTER SETTLEMENT AGREEMENT CONCERNING THE  
11 ARKANSAS TOBACCO PRODUCTS TAX ACT OF 1977; AND FOR  
12 OTHER PURPOSES.  
13  
14

### Subtitle

15 TO AMEND THE ARKANSAS CODE REGARDING  
16 PROCEDURAL ENHANCEMENTS TO ENFORCEMENT  
17 MECHANISMS OF THE MASTER SETTLEMENT  
18 AGREEMENT CONCERNING THE ARKANSAS TOBACCO  
19 PRODUCTS TAX ACT OF 1977.  
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22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 26-57-1303(a)(5), concerning the additional  
26 certification to the Attorney General required of nonparticipating tobacco  
27 product manufacturers, is amended to add an additional subdivision to read as  
28 follows:

29 (J) That the nonparticipating manufacturer has posted the  
30 bond required by § 26-57-1308 and provided proof to the Attorney General of  
31 the posting of the bond required by § 26-57-1308.  
32

33 SECTION 2. Arkansas Code § 26-57-1303(a)(10), concerning the directory  
34 prepared by the Attorney General of participating and nonparticipating  
35 tobacco product manufacturers, is amended to read as follows:

36 (10) A tobacco product manufacturer shall certify that it is in



1 compliance with all applicable requirements imposed under federal law and  
2 federal regulations related to the manufacturer and distribution of  
3 cigarettes.

4 (11)(A) It is unlawful for a person to submit a certification  
5 required by this section that asserts the truth of any material matter that  
6 the person knows to be false or inaccurate.

7 (B) In addition to any other provision of law, the  
8 Attorney General may seek a civil penalty in an amount not to exceed ten  
9 thousand dollars (\$10,000) against a person that violates this subsection.

10 (C) A civil penalty collected under this section is  
11 general revenue of the state.

12  
13 SECTION 3. Arkansas Code § 26-57-1303(b)(3)(C), concerning the  
14 directory of cigarettes approved for stamping and sale, is amended to read as  
15 follows:

16 (C) The total nationwide reported sales of cigarettes on  
17 which federal excise tax is paid exceeds the sum of its nationwide reports  
18 under 15 U.S.C. § 376, as it existed on January 1, 2011, and any interstate  
19 reports by more than five percent (5%) of its total sales ~~or one million~~  
20 ~~(1,000,000) cigarettes, whichever is less,~~ unless the nonparticipating  
21 manufacturer cures or satisfactorily explains the discrepancy within thirty  
22 (30) days after receiving notice of the discrepancy.

23  
24 SECTION 4. Arkansas Code § 26-57-1303(b)(4)(C), concerning tobacco  
25 product manufacturers not included in the directory maintained by the  
26 Attorney General, is amended to read as follows:

27 (C)(i) The tobacco product manufacturer ~~and or~~ or the tobacco  
28 product manufacturer's brand families, whether or not listed by the  
29 nonparticipating manufacturer, have been removed, excluded, or is otherwise  
30 ineligible for listing from the directory of another state based on acts or  
31 omissions that would, if done in this state, serve as a basis for removal  
32 from the directory maintained by the Attorney General under this section,  
33 unless the tobacco product manufacturer demonstrates that ~~its~~ the removal  
34 from the other state's directory was effected without due process.

35 (ii) A tobacco product manufacturer that is removed  
36 or excluded from the state directory, or is otherwise ineligible for listing

1 in the state directory under this subsection ~~shall~~ may be eligible for  
2 relisting in the directory described in this subsection ~~on the earlier of the~~  
3 ~~date on which the tobacco product manufacturer cures~~ upon the curing of the  
4 ~~violation or the date on which the tobacco product manufacturer is reinstated~~  
5 ~~to the directory in the other state.~~

6  
7 SECTION 5. Arkansas Code § 26-57-1304(c)(1), concerning the  
8 requirement that a nonparticipating manufacturer have an agent for service of  
9 process, is amended to read as follows:

10 (c)(1) Any nonparticipating manufacturer whose cigarettes are sold in  
11 this state or has funds deposited under §§ 26-57-260 and 26-57-261, and who  
12 has not appointed and engaged an agent as required by this subchapter shall  
13 be deemed to have appointed the Secretary of State as the agent and may be  
14 proceeded against in courts of this state by service of process upon the  
15 Secretary of State.

16  
17 SECTION 6. Arkansas Code § 26-57-1305(e)(1)(B), concerning quarterly  
18 escrow installments for tobacco products manufacturers, is amended to read as  
19 follows:

20 (B) Quarterly installments of escrow deposits required  
21 under subdivision (e)(1)(A) of this section shall be deposited into a  
22 qualified escrow account established to receive escrow deposits required by  
23 §§ 26-57-260 and 26-57-261 not later than ~~twenty (20)~~ thirty (30) calendar  
24 days after the end of the quarter in which the sales were made.

25  
26 SECTION 7. Arkansas Code § 26-57-1306(f), concerning penalties and  
27 other remedies against a tobacco product manufacturer, is amended to read as  
28 follows:

29 (f)(1) In addition to any other provision of law, the Attorney General  
30 may seek a civil penalty in an amount not to exceed five hundred dollars  
31 (\$500) per day for:

32 (A) The knowing failure of a wholesaler to ~~timely or~~  
33 accurately comply with § 26-57-1305(a); or

34 (B) The failure of a wholesaler to timely comply with §  
35 26-57-1305(a).

36 (2) A civil penalty collected under this section is general

1 revenue of the state.

2

3 SECTION 8. Arkansas Code § 26-57-1308 is amended to read as follows:

4 26-57-1308. Bond.

5 ~~(a) If a newly qualified nonparticipating manufacturer is to be listed~~  
6 ~~in the directory maintained by the Attorney General under § 26-57-1303 or if~~  
7 ~~the Attorney General determines that a nonparticipating manufacturer who has~~  
8 ~~filed a certification under § 26-57-1303 poses an elevated risk for~~  
9 ~~noncompliance with either § 26-57-1305 or §§ 26-57-260 and 26-57-261, the~~  
10 ~~nonparticipating manufacturer and the nonparticipating manufacturer's brand~~  
11 ~~families shall not be included in the directory unless the nonparticipating~~  
12 ~~manufacturer or its United States importer that undertakes joint and several~~  
13 ~~liability for the nonparticipating manufacturer's performance under § 26-57-~~  
14 ~~1307 has posted a bond in accordance with this section.~~

15 ~~(b)(1) The bond required under subsection (a) of this section shall be~~  
16 ~~posted by corporate surety located within the United States in an amount~~  
17 ~~equal to the greater of fifty thousand dollars (\$50,000) or the amount of~~  
18 ~~escrow the manufacturer in either its current form or predecessor form was~~  
19 ~~required to deposit as a result of its previous two (2) calendar quarters~~  
20 ~~sales in the state.~~

21 ~~(2) The bond required under subsection (a) of this section shall~~  
22 ~~be written in favor of the state and shall be conditioned on the performance~~  
23 ~~by the nonparticipating manufacturer or its United States importer that~~  
24 ~~undertakes joint and several liability for the manufacturer's performance~~  
25 ~~under § 26-57-1307 of all of the nonparticipating manufacturer's duties and~~  
26 ~~obligations under § 26-57-1305 or §§ 26-57-260 and 26-57-261.~~

27 ~~(c) A nonparticipating manufacturer may be deemed to pose an elevated~~  
28 ~~risk for noncompliance with this section if:~~

29 ~~(1) The nonparticipating manufacturer or any affiliate thereof~~  
30 ~~has underpaid an escrow obligation with respect to any state during the~~  
31 ~~calendar year or within the past three (3) calendar years unless:~~

32 ~~(A) The manufacturer did not knowingly or recklessly make~~  
33 ~~an underpayment, and the manufacturer promptly cured the underpayment within~~  
34 ~~one hundred eighty (180) days of receiving the notice of the underpayment; or~~

35 ~~(B) The underpayment or lack of payment is the subject of~~  
36 ~~a good faith dispute as documented to the satisfaction of the Attorney~~

1 General, and the underpayment is cured within one hundred eighty (180) days  
2 of entry of a final order establishing the amount of the required escrow  
3 payment;

4 ~~(2) A state has removed the manufacturer, the manufacturer's~~  
5 ~~brands or brand families, an affiliate of the manufacturer, or any of the~~  
6 ~~affiliate's brands or brand families from the state's tobacco directory for~~  
7 ~~noncompliance with the state's law during the calendar year or within the~~  
8 ~~past three (3) calendar years; or~~

9 ~~(3) A state has litigation pending against, or an unsatisfied~~  
10 ~~judgment against, the manufacturer or any affiliate of the manufacturer for~~  
11 ~~escrow, penalties, costs, or attorney's fees related to noncompliance with~~  
12 ~~state escrow laws.~~

13 ~~(d) A newly qualified nonparticipating manufacturer may be required to~~  
14 ~~post a bond under this section for the first three (3) years of the newly~~  
15 ~~qualified nonparticipating manufacturer's listing or longer if the newly~~  
16 ~~qualified nonparticipating manufacturer has been deemed to pose an elevated~~  
17 ~~risk for noncompliance.~~

18 (a)(1) A nonparticipating manufacturer shall post a bond with the  
19 Attorney General as a condition of the inclusion of its brand families in the  
20 state directory.

21 (2) Proof that the bond has been posted shall be submitted as  
22 part of the annual and quarterly certifications required by this subchapter.

23 (b) The bond shall be in effect at least ten (10) days in advance of  
24 each calendar quarter.

25 (c) The amount of the bond shall be the greater of:

26 (1) The highest required escrow amount due from the  
27 nonparticipating manufacturer or its predecessor for any one (1) of the  
28 twelve (12) previous calendar quarters; or

29 (2) Fifty thousand dollars (\$50,000).

30 (d) The bond shall be written in favor of the State of Arkansas and  
31 shall be conditioned on the performance by the nonparticipating manufacturer  
32 of all obligations imposed under §§ 26-57-260 and 26-57-261, including any  
33 fees, penalties, or related financial obligations.

34 (e)(1) If a nonparticipating manufacturer that posted a bond has  
35 failed to make or have made on its behalf deposits equal to the full amount  
36 owed for a quarter within fifteen (15) days following the due date of the

1 quarter, the state may execute on the bond in the amount equal to any amount  
2 of the escrow due.

3 (2) Amounts that the state collects on a bond shall be general  
4 revenue of the state and shall reduce the amount of escrow due from that  
5 nonparticipating manufacturer in the dollar amount collected.

6 (3) Escrow obligations above the amount collected on the bond  
7 remain due from that nonparticipating manufacturer and from the importers  
8 that sold its cigarettes during that calendar quarter.

9 (f)(1) The state may also execute on the bond after having obtained a  
10 judgment against a nonparticipating manufacturer.

11 (2) Any financial obligations, including fees and penalties,  
12 recoverable under §§ 26-57-260 and 26-57-261 shall be covered by the bond.

13 (3) Any amounts collected on the bond shall first be allocated  
14 to reduce any escrow obligation by payment into the State Treasury.

15 (g) The Attorney General may adopt rules necessary to implement this  
16 section.

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18 SECTION 9. Arkansas Code Title 26, Chapter 57, Subchapter 13, is  
19 amended to add an additional section to read as follows:

20 26-57-1309. Assignment of funds placed into escrow.

21 (a)(1) Notwithstanding § 26-57-261, a tobacco product manufacturer  
22 that elects to place funds into escrow may make an irrevocable assignment of  
23 its interest in the funds to the benefit of the state.

24 (2) The assignment shall be permanent and shall apply to all  
25 funds in the subject escrow account at the time of assignment or that may  
26 subsequently come into such account, including those deposited into the  
27 escrow account prior to the assignment being executed, those deposited into  
28 the escrow account after the assignment is executed, and interest or other  
29 appreciation on such funds.

30 (3) Any interest or other appreciation withdrawn from the  
31 subject escrow account before the time of assignment shall not be a part of  
32 the assignment.

33 (4) The tobacco product manufacturer, the Attorney General, and  
34 the financial institution where the escrow account is maintained shall make  
35 such amendments to the qualified escrow account agreement, title to the  
36 account, and the account itself as may be necessary to effectuate an

1 irrevocable assignment of rights executed under this section or a withdrawal  
2 or payment of funds from the escrow account under § 26-57-261.

3 (5) An assignment of rights executed under this section shall be  
4 in writing, signed by a duly authorized representative of the tobacco product  
5 manufacturer making the assignment, and shall become effective upon delivery  
6 of the assignment to the Attorney General and the financial institution where  
7 the escrow account is maintained.

8 (b)(1) Any escrow funds assigned to the state under this section shall  
9 be available to be withdrawn by the state upon approval of the Attorney  
10 General.

11 (2) Any funds withdrawn under subdivision (b)(1) of this section  
12 shall be deposited into the Tobacco Settlement Cash Holding Fund under § 19-  
13 12-104 and shall be calculated on a dollar-for-dollar basis as a credit  
14 against any judgment or settlement in favor of the state as part of the  
15 Master Settlement Agreement under § 26-57-261 against the tobacco product  
16 manufacturer that has assigned the funds in the subject escrow account.

17 (c) This section does not relieve a tobacco product manufacturer from  
18 any past, current, or future obligations that the tobacco product  
19 manufacturer may have under this subchapter.

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21 */s/L. Johnson*  
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