

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

# A Bill

HOUSE BILL 1683

5 By: Representative L. Johnson  
6

## 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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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code § 26-57-1303(a)(2), concerning the  
26 certification to the Attorney General by participating tobacco product  
27 manufacturers, is amended to read as follows:

28 (2)(A) A participating manufacturer shall include in its  
29 certification a list of its brand families.

30 (B) The participating manufacturer shall update the list  
31 required under subdivision (a)(2)(A) of this section thirty (30) calendar  
32 days before an addition to or modification of the participating  
33 manufacturer's brand families by executing and delivering a supplemental  
34 certification to the Attorney General.

35 (C) Supplemental certifications shall be submitted to the  
36 Attorney General on or before January 31 of the next following calendar year.



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2 SECTION 2. Arkansas Code § 26-57-1303(a)(4), concerning the  
3 certification to the Attorney General by participating tobacco product  
4 manufacturers, is amended to read as follows:

5 (4)(A) The nonparticipating manufacturer shall update the list  
6 required under subdivision (a)(3) of this section thirty (30) calendar days  
7 before an addition to or modification of the nonparticipating manufacturer's  
8 brand families by executing and delivering a supplemental certification to  
9 the Attorney General.

10 (B) Supplemental certifications shall be submitted to the  
11 Attorney General on or before January 31 of the next following calendar year.  
12

13 SECTION 3. Arkansas Code § 26-57-1303(a)(5), concerning the additional  
14 certification to the Attorney General required of nonparticipating tobacco  
15 product manufacturers, is amended to add an additional subdivision to read as  
16 follows:

17 (J) That the nonparticipating manufacturer has posted the  
18 bond required by § 26-57-1308 and provided proof to the Attorney General of  
19 the posting of the bond required by § 26-57-1308.  
20

21 SECTION 4. Arkansas Code § 26-57-1303(a)(10), concerning the directory  
22 prepared by the Attorney General of participating and nonparticipating  
23 tobacco product manufacturers, is amended to read as follows:

24 (10) A tobacco product manufacturer shall certify that it is in  
25 compliance with all applicable requirements imposed under federal law and  
26 federal regulations related to the manufacturer and distribution of  
27 cigarettes.

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

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

34 (C) A civil penalty collected under this section is  
35 general revenue of the state.  
36

1 SECTION 5. Arkansas Code § 26-57-1303(b)(3)(C), concerning the  
2 directory of cigarettes approved for stamping and sale, is amended to read as  
3 follows:

4 (C) The total nationwide reported sales of cigarettes on  
5 which federal excise tax is paid exceeds the sum of its nationwide reports  
6 under 15 U.S.C. § 376, as it existed on January 1, 2011, and any interstate  
7 reports by more than five percent (5%) of its total sales ~~or one million~~  
8 ~~(1,000,000) cigarettes, whichever is less,~~ unless the nonparticipating  
9 manufacturer cures or satisfactorily explains the discrepancy within thirty  
10 (30) days after receiving notice of the discrepancy.

11  
12 SECTION 6. Arkansas Code § 26-57-1303(b)(4)(C), concerning tobacco  
13 product manufacturers not included in the directory maintained by the  
14 Attorney General, is amended to read as follows:

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

23 (ii) A tobacco product manufacturer that is removed  
24 or excluded from the state directory, or is otherwise ineligible for listing  
25 in the state directory under this subsection ~~shall~~ may be eligible for  
26 relisting in the directory described in this subsection ~~on the earlier of the~~  
27 ~~date on which the tobacco product manufacturer cures~~ upon the curing of the  
28 ~~violation or the date on which the tobacco product manufacturer is reinstated~~  
29 ~~to the directory in the other state.~~

30  
31 SECTION 7. Arkansas Code § 26-57-1304(c)(1), concerning the  
32 requirement that a nonparticipating manufacturer have an agent for service of  
33 process, is amended to read as follows:

34 (c)(1) Any nonparticipating manufacturer whose cigarettes are sold in  
35 this state or has funds deposited under §§ 26-57-260 and 26-57-261, and who  
36 has not appointed and engaged an agent as required by this subchapter shall

1 be deemed to have appointed the Secretary of State as the agent and may be  
 2 proceeded against in courts of this state by service of process upon the  
 3 Secretary of State.

4  
 5 SECTION 8. Arkansas Code § 26-57-1305(e)(1)(B), concerning quarterly  
 6 escrow installments for tobacco products manufacturers, is amended to read as  
 7 follows:

8 (B) Quarterly installments of escrow deposits required  
 9 under subdivision (e)(1)(A) of this section shall be deposited into a  
 10 qualified escrow account established to receive escrow deposits required by  
 11 §§ 26-57-260 and 26-57-261 not later than ~~twenty (20)~~ thirty (30) calendar  
 12 days after the end of the quarter in which the sales were made.

13  
 14 SECTION 9. Arkansas Code § 26-57-1306(f), concerning penalties and  
 15 other remedies against a tobacco product manufacturer, is amended to read as  
 16 follows:

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

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

22 (B) The failure of a wholesaler to timely comply with §  
 23 26-57-1305(a).

24 (2) A civil penalty collected under this section is general  
 25 revenue of the state.

26  
 27 SECTION 10. Arkansas Code § 26-57-1308 is amended to read as follows:  
 28 26-57-1308. Bond.

29 ~~(a) If a newly qualified nonparticipating manufacturer is to be listed~~  
 30 ~~in the directory maintained by the Attorney General under § 26-57-1303 or if~~  
 31 ~~the Attorney General determines that a nonparticipating manufacturer who has~~  
 32 ~~filed a certification under § 26-57-1303 poses an elevated risk for~~  
 33 ~~noncompliance with either § 26-57-1305 or §§ 26-57-260 and 26-57-261, the~~  
 34 ~~nonparticipating manufacturer and the nonparticipating manufacturer's brand~~  
 35 ~~families shall not be included in the directory unless the nonparticipating~~  
 36 ~~manufacturer or its United States importer that undertakes joint and several~~

1 ~~liability for the nonparticipating manufacturer's performance under § 26-57-~~  
2 ~~1307 has posted a bond in accordance with this section.~~

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

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

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

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

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

23 ~~(B) The underpayment or lack of payment is the subject of~~  
24 ~~a good faith dispute as documented to the satisfaction of the Attorney~~  
25 ~~General, and the underpayment is cured within one hundred eighty (180) days~~  
26 ~~of entry of a final order establishing the amount of the required escrow~~  
27 ~~payment;~~

28 ~~(2) A state has removed the manufacturer, the manufacturer's~~  
29 ~~brands or brand families, an affiliate of the manufacturer, or any of the~~  
30 ~~affiliate's brands or brand families from the state's tobacco directory for~~  
31 ~~noncompliance with the state's law during the calendar year or within the~~  
32 ~~past three (3) calendar years; or~~

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

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

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

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

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

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

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

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

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

22       (e)(1) If a nonparticipating manufacturer that posted a bond has  
23 failed to make or have made on its behalf deposits equal to the full amount  
24 owed for a quarter within fifteen (15) days following the due date of the  
25 quarter, the state may execute on the bond in the amount equal to any amount  
26 of the escrow due.

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

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

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

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

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

3           (g) The Attorney General may adopt rules necessary to implement this  
4 section.

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6           SECTION 11. Arkansas Code Title 26, Chapter 57, Subchapter 13, is  
7 amended to add an additional section to read as follows:

8           26-57-1309. Assignment of funds placed into escrow.

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

12           (2) The assignment shall be permanent and shall apply to all  
13 funds in the subject escrow account at the time of assignment or that may  
14 subsequently come into such account, including those deposited into the  
15 escrow account prior to the assignment being executed, those deposited into  
16 the escrow account after the assignment is executed, and interest or other  
17 appreciation on such funds.

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

21           (4) The tobacco product manufacturer, the Attorney General, and  
22 the financial institution where the escrow account is maintained shall make  
23 such amendments to the qualified escrow account agreement, title to the  
24 account, and the account itself as may be necessary to effectuate an  
25 irrevocable assignment of rights executed under this section or a withdrawal  
26 or payment of funds from the escrow account under § 26-57-261.

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

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

35           (2) Any funds withdrawn under subdivision (b)(1) of this section  
36 shall be deposited into the Tobacco Settlement Cash Holding Fund under § 19-

1 12-104 and shall be calculated on a dollar-for-dollar basis as a credit  
2 against any judgment or settlement in favor of the state as part of the  
3 Master Settlement Agreement under § 26-57-261 against the tobacco product  
4 manufacturer that has assigned the funds in the subject escrow account.

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

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