
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1209 Session of
2023

INTRODUCED BY TWARDZIK AND ZIMMERMAN, MAY 19, 2023

REFERRED TO COMMITTEE ON HEALTH, MAY 19, 2023

AN ACT

1 Amending the act of December 30, 2003 (P.L.441, No.64), entitled
2 "An act requiring certifications by tobacco product
3 manufacturers; providing for a directory of cigarettes
4 approved for stamping and sale; conferring powers and
5 imposing duties on the Attorney General and the Department of
6 Revenue; and imposing penalties," in preliminary provisions,
7 further providing for definitions; in tobacco product
8 manufacturers directory, further providing for directory, for
9 certification, for required information, for agent for
10 service of process and for records and reporting and
11 providing for nonparticipating manufacturer and importer
12 joint and several liability and for surety bond requirements;
13 and imposing duties on the Office of Attorney General.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The definition of "units sold" in section 102 of
17 the act of December 30, 2003 (P.L.441, No.64), known as the
18 Tobacco Product Manufacturer Directory Act, is amended and the
19 section is amended by adding definitions to read:

20 Section 102. Definitions.

21 The following words and phrases when used in this act shall
22 have the meanings given to them in this section unless the
23 context clearly indicates otherwise:

24 * * *

1 "Importer." A person in any state or territory of the United
2 States to whom cigarettes that are manufactured outside the
3 United States are shipped, delivered or consigned for resale.

4 * * *

5 "Nonparticipating Manufacturer Adjustment Settlement
6 Agreement." The settlement agreement and related documents
7 entered into on June 20, 2018, by the Commonwealth and the
8 participating manufacturers settling certain disputes regarding
9 application of adjustments to payments made pursuant to the
10 Master Settlement Agreement.

11 * * *

12 "Units sold." The number of individual cigarettes sold in
13 this Commonwealth by the applicable tobacco product manufacturer
14 during the year in question[, as measured by taxes collected by
15 the Commonwealth on packs bearing the tax stamp of the
16 Commonwealth required under section 1215 of the act of March 4,
17 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971; by
18 taxes collected by the Commonwealth on "roll-your-own" tobacco
19 containers which are not required to have a tax stamp under
20 section 1215 of the Tax Reform Code of 1971; and by taxes
21 collected by the Commonwealth on cigarettes sold without a tax
22 stamp, when authorized by the Department of Revenue, under
23 section 1215(h) of the Tax Reform Code of 1971.] on which the
24 Commonwealth has authority under Federal law to collect State
25 excise tax, notwithstanding whether the State excise taxes were
26 imposed or collected by the Commonwealth. Cigarettes that are
27 exempt from State excise taxes under Federal law are
28 specifically excluded from this definition.

29 Section 2. Section 301 introductory paragraph, (1)(ii) and
30 (iv) of the act are amended and the paragraph is amended by

1 adding a subparagraph to read:

2 Section 301. Directory.

3 The Attorney General shall develop and publish a directory of
4 all tobacco product manufacturers and their brand families that
5 have provided current and accurate certification under section
6 303. The directory shall be available on the Office of Attorney
7 General's [World Wide Web site] publicly accessible Internet
8 website. The following shall apply:

9 (1) In the case of a nonparticipating manufacturer,
10 neither the manufacturer nor its brand family shall be
11 included or retained in the directory if the Attorney General
12 determines that any of the following apply:

13 * * *

14 (ii) The manufacturer has failed to make any payment
15 required under the Tobacco Settlement Agreement Act,
16 including applicable penalties, for any period for any
17 brand family, whether or not listed by the tobacco
18 product manufacturer, including all payments or penalties
19 required from prior manufacturers of those brands, into a
20 qualified escrow fund approved by the Attorney General.
21 For purposes of retention on the directory, the
22 Commonwealth's recovery of any amount from execution of a
23 bond under section 313 shall not excuse a manufacturer's
24 failure to timely deposit escrow as required by the
25 Tobacco Settlement Agreement Act, notwithstanding if the
26 bond fully covers the escrow owed and any other costs,
27 fees or penalties that may be applicable.

28 * * *

29 (iv) The requirements of section 303(a), 304(b), 312
30 or 313 have not been satisfied.

1 (v) The Commonwealth has executed upon a bond under
2 section 313 due to the manufacturer's failure to timely
3 deposit escrow as required. This ground for exclusion or
4 removal from the directory shall remain notwithstanding
5 whether the manufacturer's escrow obligations and other
6 costs were fully covered by the amount recovered by the
7 Commonwealth under the bond.

8 * * *

9 Section 3. Section 303(a) of the act is amended by adding a
10 paragraph to read:

11 Section 303. Certification.

12 (a) Required information.--A tobacco product manufacturer
13 whose cigarettes are sold in this Commonwealth, whether directly
14 or through a distributor, retailer or similar intermediary or
15 intermediaries, shall execute and deliver to the Attorney
16 General a certification under penalty of perjury that, as of the
17 date of the certification, the tobacco product manufacturer is
18 either a participating manufacturer or is in full compliance
19 with this act and the Tobacco Settlement Agreement Act. In the
20 case of a nonparticipating manufacturer, the certification shall
21 include a statement that:

22 * * *

23 (3) The nonparticipating manufacturer has posted the
24 bond required under section 313.

25 * * *

26 Section 4. Section 304(b) of the act is amended to read:

27 Section 304. Required information.

28 * * *

29 (b) Nonparticipating manufacturers.--A nonparticipating
30 manufacturer shall include in its certification the following:

1 (1) A list of all of its brand families that were sold
2 in this Commonwealth during the preceding calendar year,
3 including the number of units sold for each brand family.

4 (2) A list of all of its brand families that have been
5 sold in this Commonwealth during the current calendar year.

6 (3) The following:

7 (i) The name, address and telephone number of the
8 financial institution where the nonparticipating
9 manufacturer [has] and its importers have established
10 [its] a qualified escrow fund.

11 (ii) The account number of [the] each qualified
12 escrow fund and [any] each subaccount number for the
13 escrow account established for the benefit of the
14 Commonwealth.

15 (iii) The amount the nonparticipating manufacturer
16 and its importers placed in [the fund] qualified escrow
17 funds for cigarettes sold in this Commonwealth during the
18 preceding calendar year, the date and amount of each
19 deposit and any other evidence of the deposit required by
20 the Attorney General.

21 (iv) The amount and date of any withdrawal or
22 transfer of funds the nonparticipating manufacturer or
23 its importers made from [the] qualified escrow [fund]
24 funds at any time or from any other qualified escrow fund
25 into which the nonparticipating manufacturer or its
26 importers made escrow payments under the Tobacco
27 Settlement Agreement Act.

28 (v) The name and address of any other manufacturer
29 of its brand families in the current or preceding
30 calendar year. A supplemental certification shall be

1 filed if brand families change during the course of the
2 year.

3 (4) If the nonparticipating manufacturer's cigarettes
4 are manufactured outside of the United States, a complete
5 list of its importers into the United States who sell
6 cigarettes into this Commonwealth and the brand families sold
7 by the importers, including the importer's name, address,
8 contact name, phone number and email address at which the
9 importer can be reached, and a declaration signed by each
10 importer on a form prescribed by the Attorney General. The
11 declaration shall state the following:

12 (i) The importer accepts joint and several liability
13 with the nonparticipating manufacturer for each
14 obligation to place money into a qualified escrow fund
15 and for payment of civil penalties, costs, expenses and
16 attorney's fees related to the nonparticipating
17 manufacturer's failure to deposit escrow as required.

18 (ii) The importer consents to personal jurisdiction
19 in this Commonwealth for the purposes of claims by the
20 Commonwealth for any obligations to place money into a
21 qualified escrow fund and for payment of civil penalties,
22 costs, expenses and attorney's fees related to the escrow
23 obligations.

24 (iii) The importer has appointed an agent for
25 service of process in this Commonwealth according to the
26 same requirements under section 305.

27 (iv) The importer holds a valid permit under 26
28 U.S.C. § 5713 (relating to permit).

29 (v) The importer agrees to provide any information
30 required under this act.

1 * * *

2 Section 5. Section 305 of the act is amended by adding a
3 subsection to read:

4 Section 305. Agent for service of process.

5 * * *

6 (d) Importers.--Each importer of cigarettes into the United
7 States of any nonparticipating manufacturer's brand families
8 that are sold in this Commonwealth shall appoint an agent for
9 service of process located in this Commonwealth pursuant to the
10 same requirements provided by this section. The importers shall
11 be subject to personal jurisdiction within this Commonwealth.
12 The nonparticipating manufacturer shall bear responsibility for
13 ensuring its importers' compliance with this act. Failure to
14 ensure compliance shall constitute grounds for removal of the
15 nonparticipating manufacturer's brand families from the
16 directory.

17 Section 6. Section 306(c) of the act is amended to read:
18 Section 306. Records and reporting.

19 * * *

20 (c) Disclosure.--The department may disclose to the Attorney
21 General any information received under this section. The
22 department and the Attorney General shall share information
23 received under this [section with other Federal, State and local
24 agencies as necessary to enforce this act or related laws of
25 other states.] chapter, the act of April 9, 1929 (P.L.343,
26 No.176), known as The Fiscal Code, or the act of March 4, 1971
27 (P.L.6, No.2), known as the Tax Reform Code of 1971, with:

28 (1) other Federal, State and local agencies as necessary
29 to determine compliance with and enforcement of this act or
30 related laws of other states; or

1 (2) the data clearinghouse and the participating
2 manufacturer's counsel as provided by the Nonparticipating
3 Manufacturer Adjustment Settlement Agreement to determine the
4 proper amount of any payment, offset, adjustment or refund
5 pursuant to the Master Settlement Agreement or the
6 Nonparticipating Manufacturer Adjustment Settlement
7 Agreement.

8 * * *

9 Section 7. The act is amended by adding sections to read:

10 Section 312. Nonparticipating manufacturer and importer joint
11 and several liability.

12 In the case of nonparticipating manufacturers located outside
13 of the United States, each importer into the United States of
14 any nonparticipating manufacturer's brand families that are sold
15 in this Commonwealth shall bear joint and several liability with
16 the nonparticipating manufacturer for deposit of all escrow due
17 under section 4(a) of the Tobacco Settlement Agreement Act and
18 payment of all civil penalties, fees, costs and attorney fees
19 due under section 4(c) and (d) of the Tobacco Settlement
20 Agreement Act.

21 Section 313. Surety bond requirements.

22 (a) Requirements.--All nonparticipating manufacturers shall
23 post a bond for the benefit of the Commonwealth, which shall be:

24 (1) Subject to execution under subsection (c).

25 (2) Conditioned on the nonparticipating manufacturer's
26 compliance with the requirements of this act and the Tobacco
27 Settlement Agreement Act.

28 (3) Posted by a surety bond company located within this
29 Commonwealth.

30 (4) Posted or adjusted at least 21 days prior to every

1 calendar quarter.

2 (5) Provided to the Attorney General at least 21 days in
3 advance of each calendar quarter as a precondition for the
4 nonparticipating manufacturer and its brand families being
5 included on the directory for that quarter. If the amount
6 required to be posted under subsection (b) is equal to or
7 lower than the amount already posted, the nonparticipating
8 manufacturer shall not be required to post a new bond and may
9 comply with this section by providing evidence that the bond
10 already posted will remain in effect for the next calendar
11 year or quarter, whichever is applicable.

12 (b) Amount.--The amount of the bond required by subsection
13 (a) shall be the greater of:

14 (1) \$25,000;

15 (2) for a nonparticipating manufacturer that deposits
16 escrow annually, the highest collective amount of escrow owed
17 in this Commonwealth by the nonparticipating manufacturer or
18 its predecessor for any four consecutive calendar quarters
19 out of the past 12 calendar quarters;

20 (3) for a nonparticipating manufacturer that deposits
21 escrow quarterly, the highest amount of escrow owed in this
22 Commonwealth by the nonparticipating manufacturer or its
23 predecessor for any of the past 12 calendar quarters; or

24 (4) for a nonparticipating manufacturer that, at the
25 time of its application, is not included on the directory and
26 is applying for initial inclusion or reinclusion on the
27 directory, an amount determined by the Attorney General to
28 adequately protect the Commonwealth's interest in enforcing
29 the Tobacco Settlement Agreement Act and this act,
30 considering:

1 (i) the nonparticipating manufacturer's prior sales
2 history selling within this Commonwealth or in other
3 states, territories or countries;

4 (ii) the nonparticipating manufacturer's history of
5 compliance with Federal or State tobacco regulations;

6 (iii) the financial state of the nonparticipating
7 manufacturer; and

8 (iv) any other factors that the Attorney General
9 deems pertinent to the determination.

10 (c) Execution upon bond.--If a nonparticipating manufacturer
11 that posted a bond has failed to make, or have made on its
12 behalf by its importer with joint and several liability, escrow
13 deposits equal to the full amount due for the certification
14 within 15 days following the due date for the certification
15 under section 4 of the Tobacco Settlement Agreement Act, the
16 Attorney General may execute upon the bond, first to recover
17 delinquent escrow, then to recover civil penalties and costs
18 authorized by section 4 of the Tobacco Settlement Agreement Act,
19 all of which, including escrow, shall be deposited into the
20 General Fund. Escrow obligations, civil penalties, costs, fees
21 and disgorgement of profits determined to be due under this act
22 or the Tobacco Settlement Agreement Act that are above the
23 amount collected on the bond shall remain due from the
24 nonparticipating manufacturer and from any importer that sold
25 cigarettes during the period of default. Any delinquent escrow
26 recovered under this subsection shall reduce the amount of
27 escrow due from the nonparticipating manufacturer by the dollar
28 amount collected.

29 Section 8. The following shall apply:

30 (1) The Office of Attorney General shall attempt to

1 obtain the consent of the participating manufacturers under
2 the Master Settlement Agreement, as defined in section 102 of
3 the act, to the amendment or addition of the following
4 provisions of the act:

5 (i) The definitions of "importer," "Nonparticipating
6 Manufacturer Adjustment Settlement Agreement" and "units
7 sold" in section 102.

8 (ii) Section 301(1)(ii), (iv) and (v).

9 (iii) Section 303(a)(3).

10 (iv) Section 304(b).

11 (v) Section 305(d).

12 (vi) Section 306(c).

13 (vii) Section 312.

14 (viii) Section 313.

15 (2) If consent is obtained under paragraph (1), the
16 Office of Attorney General shall:

17 (i) provide notice to the Secretary of Revenue; and

18 (ii) transmit notice of the consent to the
19 Legislative Reference Bureau for publication in the next
20 available issue of the Pennsylvania Bulletin.

21 (3) If consent is not obtained under paragraph (1), the
22 Office of Attorney General shall:

23 (i) notify the Secretary of Revenue; and

24 (ii) transmit notice of the refusal to the
25 Legislative Reference Bureau for publication in the next
26 available issue of the Pennsylvania Bulletin.

27 Section 9. This act shall take effect as follows:

28 (1) This section and section 8 of this act shall take
29 effect immediately.

30 (2) The remainder of this act shall take effect 60 days

1 after publication of the notice of consent under section 8(2)
2 (ii) of this act.