

ACT No. 544

Regular Session, 2004

HOUSE BILL NO. 1112

BY REPRESENTATIVE PINAC

1 AN ACT

2 To enact Part XIII-A of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, to
3 be comprised of R.S. 13:5071 through 5077, relative to the Master Settlement
4 Agreement; to provide for complementary procedures; to provide for definitions; to
5 require certification; to provide for a directory of tobacco product manufacturers; to
6 provide for an agent for service of process; to require reporting; to provide for the
7 disclosure of information; to provide for escrow funds; to provide for penalties; to
8 authorize the promulgation of rules; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part XIII-A of Chapter 32 of Title 13 of the Louisiana Revised Statutes
11 of 1950, comprised of R.S. 13:5071 through 5077, is hereby enacted to read as follows:

12 PART XIII-A. MASTER SETTLEMENT AGREEMENT –

13 COMPLEMENTARY PROCEDURES

14 §5071. Findings and purpose

15 The Legislature of Louisiana finds that violations of R.S. 13:5061 et seq.,
16 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal
17 soundness of the state, and the public health. The legislature finds that enacting
18 procedural enhancements will help prevent violations and aid the enforcement of
19 R.S. 13:5061 et seq., and thereby safeguard the Master Settlement Agreement, the
20 fiscal soundness of the state, and the public health.

21 §5072. Definitions

22 As used in this Part, the following words and phrases shall have the following
23 meanings ascribed to them:

1 (1) "Brand family" means all styles of cigarettes sold under the same trade
2 mark and differentiated from one another by means of additional modifiers or
3 descriptors, including but not limited to "menthol", "lights", "kings", and "100s", and
4 includes any brand name (alone or in conjunction with any other word), trademark,
5 logo, symbol, motto, selling message, recognizable pattern of colors, or any other
6 indicia of product identification identical or similar to, or identifiable with, a
7 previously known brand of cigarettes.

8 (2) "Cigarette" has the same meaning as defined in R.S. 13:5062(4) and
9 R.S. 47:842(2).

10 (3) "Secretary" means the head of the Department of Revenue, which is the
11 agency responsible for collection of the excise tax on cigarettes.

12 (4) "Dealer" has the same meaning as defined in R.S. 47:842(4).

13 (5) "Department" means the Department of Revenue for the state of
14 Louisiana.

15 (6) "Master Settlement Agreement" has the same meaning as defined in R.S.
16 13:5062(5).

17 (7) "Nonparticipating manufacturer" means any tobacco product
18 manufacturer that is not a participating manufacturer.

19 (8) "Participating manufacturer" has the meaning given that term in section
20 II(jj) of the Master Settlement Agreement and all amendments thereto.

21 (9) "Qualified escrow fund" has the same meaning as defined in R.S.
22 13:5062(6).

23 (10) "Stamping agent" means a dealer that is authorized to affix tax stamps
24 to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer
25 that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841
26 et seq. on cigarettes.

27 (11) "Tobacco product manufacturer" has the same meaning as defined in
28 R.S. 13:5062(9).

29 (12) "Units sold" has the same meaning as defined in R.S. 13:5062(10).

1 §5073. Certifications; directory; tax stamps

2 A. Every tobacco product manufacturer whose cigarettes are sold in this
3 state, whether directly or through a distributor, retailer, or similar intermediary or
4 intermediaries, shall execute and deliver on a form prescribed by the attorney general
5 a certification to the secretary and attorney general, no later than the thirtieth day of
6 April each year, certifying under penalty of perjury that, as of the date of such
7 certification, such tobacco product manufacturer either: is a participating
8 manufacturer; or is in full compliance with R.S. 13:5061 et seq., including all
9 installment payments required by R.S. 13:5075(E).

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

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

15 (i) A list of all of its current and past brand families and the number of units
16 sold for each brand family that were sold in the state during the preceding calendar
17 year.

18 (ii) A list of all of its current and past brand families that have been sold in
19 the state at any time during the current calendar year.

20 (iii) Indicating, by an asterisk, any brand family sold in the state during the
21 preceding calendar year that is no longer being sold in the state as of the date of such
22 certification.

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

25 (v) Any other information required under R.S. 13:5075(D).

26 (b) The nonparticipating manufacturer shall update such list thirty calendar
27 days prior to any addition to or modification of its brand families by executing and
28 delivering a supplemental certification to the attorney general and the secretary.

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

3 (a) That such nonparticipating manufacturer is registered to do business in
4 the state or has appointed a resident agent for service of process and provided notice
5 thereof as required by R.S. 13:5074.

6 (b) That such nonparticipating manufacturer:

7 (i) Has established and continues to maintain a qualified escrow fund.

8 (ii) Has executed a qualified escrow agreement that has been reviewed and
9 approved by the attorney general and that governs the qualified escrow fund.

10 (c) That such nonparticipating manufacturer is in full compliance with R.S.
11 13:5061 et seq., and this Part and any regulations promulgated pursuant thereto.

12 (d)(i) The name, address, and telephone number of the financial institution
13 where the nonparticipating manufacturer has established such qualified escrow fund
14 required pursuant to R.S. 13:5061 et seq., and all regulations promulgated thereto.

15 (ii) The account number of such qualified escrow fund and any subaccount
16 number for Louisiana.

17 (iii) The amount such nonparticipating manufacturer placed in such fund for
18 cigarettes sold in the state during the preceding calendar year, the date and amount
19 of each such deposit, and such evidence or verification as may be deemed necessary
20 by the attorney general to confirm the foregoing.

21 (iv) The amount and date of any withdrawal or transfer of funds the
22 nonparticipating manufacturer made at any time from such fund or from any other
23 qualified escrow fund into which it ever made escrow payments pursuant to R.S.
24 13:5061 et seq., and all regulations promulgated thereto.

25 (4) A tobacco product manufacturer may not include a brand family in its
26 certification unless:

27 (a) In the case of a participating manufacturer, said participating
28 manufacturer affirms that the brand family is to be deemed to be its cigarettes for

1 purposes of calculating its payments under the Master Settlement Agreement for the
2 relevant year, in the volume and shares determined pursuant to the Master Settlement
3 Agreement.

4 (b) In the case of a nonparticipating manufacturer, said nonparticipating
5 manufacturer affirms that the brand family is to be deemed to be its cigarettes for
6 purposes of R.S. 13:5061 et seq. Nothing in this Section shall be construed as
7 limiting or otherwise affecting the right of the state to maintain that a brand family
8 constitutes cigarettes of a different tobacco product manufacturer for purposes of
9 calculating payments under the Master Settlement Agreement or for purposes of R.S.
10 13:5061 et seq.

11 (5) Tobacco product manufacturers shall maintain all invoices and
12 documentation of sales and other such information relied upon for such certification
13 for a period of five years, unless otherwise required by law to maintain them for a
14 greater period of time.

15 B. Not later than ninety days after the effective date of this Part, the attorney
16 general shall develop and make available for public inspection or publish on its
17 website a directory listing all tobacco product manufacturers that have provided
18 current and accurate certifications conforming to the requirements of Subsection A
19 and all brand families, including country of origin, that are listed in such
20 certifications (the directory), except as noted below.

21 (1) The attorney general shall not include or retain in such directory the name
22 or brand families of any nonparticipating manufacturer that has failed to provide the
23 required certification or whose certification the secretary or attorney general
24 determines is not in compliance with Paragraphs (2) and (3) of Subsection A, unless
25 the attorney general has determined that such violation has been cured to the
26 satisfaction of the attorney general and the secretary.

27 (2) Neither a tobacco product manufacturer nor brand family shall be
28 included or retained in the directory if the attorney general concludes, in the case of
29 a nonparticipating manufacturer, that:

1 (a) Any escrow payment required pursuant to R.S. 13:5061 et seq., for any
2 period for any brand family, whether or not listed by such nonparticipating
3 manufacturer, has not been fully paid into a qualified escrow fund governed by a
4 qualified escrow agreement that has been approved by the attorney general; or

5 (b) Any outstanding final judgment, including interest thereon, for a violation
6 of R.S. 13:5061 et seq. has not been fully satisfied for such brand family or such
7 manufacturer.

8 (3) The attorney general shall update the directory as necessary in order to
9 correct mistakes and to list or de-list a tobacco product manufacturer or brand family
10 to keep the directory in conformity with the requirements of this Part. Fifteen days
11 prior to the listing or de-listing of a tobacco product manufacturer or brand family,
12 the attorney general shall transmit a notification to every stamping agent.

13 (4) Every stamping agent shall provide and update as necessary an electronic
14 mail address or facsimile telephone number to the secretary and the attorney general
15 for the purpose of receiving any notifications as may be required by this Part.

16 C. It shall be unlawful for any person:

17 (1) To affix a stamp to a package or other container of cigarettes of a tobacco
18 product manufacturer or brand family not included in the directory.

19 (2) To sell, offer, or possess for sale, in this state, or import for personal
20 consumption in this state, cigarettes of a tobacco product manufacturer or brand
21 family not included in the directory; or, in the event of cigarettes subject to a de-
22 listing notice described in this Section, sell, offer, or possess for sale, in this state, or
23 import for personal consumption in this state, cigarettes received, imported, or
24 stamped after the date of de-listing.

25 (3) To order, purchase, or offer to purchase cigarettes of a tobacco product
26 manufacturer or brand family identified by the attorney general to be de-listed from
27 the directory, after receipt of the notice described in this Section.

1 §5074. Agent for service of process

2 A. Any nonresident or foreign nonparticipating manufacturer that has not
3 registered to do business in the state as a foreign corporation or business entity shall,
4 as a condition precedent to having its brand families included or retained in the
5 directory, appoint and continually engage without interruption the services of an
6 agent in this state to act as agent for the service of process on whom all process, and
7 any action or proceeding against it concerning or arising out of the enforcement of
8 this Part and R.S. 13:5061 et seq., may be served in any manner authorized by law.
9 Such service shall constitute legal and valid service of process on the
10 nonparticipating manufacturer. The nonparticipating manufacturer shall provide the
11 name, address, phone number, and proof of the appointment and availability of such
12 agent to the satisfaction of the secretary and attorney general.

13 B. The nonparticipating manufacturer shall provide notice to the secretary
14 and attorney general thirty calendar days prior to termination of the authority of an
15 agent and shall further provide proof to the satisfaction of the attorney general of the
16 appointment of a new agent not less than five calendar days prior to the termination
17 of an existing agent appointment. In the event an agent terminates an agency
18 appointment, the nonparticipating manufacturer shall notify the secretary and the
19 attorney general of said termination within five calendar days and shall include proof
20 to the satisfaction of the attorney general of the appointment of a new agent.

21 C. Any nonparticipating manufacturer whose cigarettes are sold in this state,
22 who has not appointed and engaged an agent as herein required, shall be deemed to
23 have appointed the secretary of state as such agent, and may be proceeded against in
24 the courts of this state by service of process upon the secretary of state. Such service
25 shall be considered valid service on said nonparticipating manufacturer; however, the
26 appointment of the secretary of state as such agent shall not satisfy the condition
27 precedent for having the brand families of the nonparticipating manufacturer
28 included or retained in the directory.

1 §5075. Reporting of information; escrow installments

2 A. Not later than twenty calendar days after the end of each calendar month,
3 and more frequently if so directed by the secretary or the attorney general, each
4 stamping agent shall submit such information as the secretary and attorney general
5 require to facilitate compliance with this Part, including but not limited to a list by
6 brand family of the total number of cigarettes, or, in the case of roll your own, the
7 equivalent stick count, that they purchased from tobacco product manufacturers
8 during the previous calendar month or otherwise paid the tax due for such cigarettes.
9 The stamping agent shall maintain and make available to the secretary and the
10 attorney general all invoices and documentation of purchases and sales of all tobacco
11 product manufacturer cigarettes and any other information relied upon in reporting
12 to the secretary and the attorney general for a period of three years.

13 B. The secretary is authorized to disclose to the attorney general any
14 information received under this Part and requested by the attorney general for
15 purposes of determining compliance with and enforcing the provisions of this Part.
16 The secretary and attorney general shall share with each other the information
17 received under this Part and may share such information with other federal, state, or
18 local agencies only for purposes of enforcement of this Part, R.S. 13:5061 et seq., or
19 corresponding laws of other states. Additionally, the sharing of information by the
20 secretary under this Part shall not constitute a violation of R.S. 47:1508.

21 C. The attorney general may require at any time from the nonparticipating
22 manufacturer, proof from the financial institution in which such manufacturer has
23 established a qualified escrow fund for the purpose of compliance with R.S. 13:5061
24 et seq., of the amount of money in such fund, exclusive of interest, the amount and
25 date of each deposit to such fund, and the amount and date of each withdrawal from
26 such fund.

27 D. In addition to the information required to be submitted pursuant to this
28 Part and R.S. 13:5061 et seq. or R.S. 47:843 et seq., the secretary and the attorney

1 general may require a stamping agent or tobacco product manufacturer to submit any
2 additional information including but not limited to samples of the packaging or
3 labeling of each brand family, as is necessary to enable the attorney general to
4 determine whether a tobacco product manufacturer is in compliance with this Part.

5 E. To promote compliance with this Part, the attorney general may require
6 a tobacco product manufacturer subject to the requirements of R.S. 13:5073(A)(2)
7 to make the escrow deposits required in annual, quarterly, or monthly installments
8 during the year in which the sales covered by such deposits are made. The secretary
9 and the attorney general may require production of information sufficient to enable
10 the attorney general to determine the adequacy of the amount of the installment
11 deposit.

12 §5076. Penalties; other remedies

13 A. In addition to or in lieu of any other civil or criminal remedy provided by
14 law, upon a determination that a stamping agent has violated R.S. 13:5073(C) or any
15 regulation adopted pursuant to this Part, the secretary may revoke or suspend the
16 license of the dealer in the manner provided by R.S. 47:844. Each stamp affixed and
17 each sale, offer to purchase, or offer to sell cigarettes in violation of R.S. 13:5073(C)
18 shall constitute a separate violation. For each violation hereof, the secretary may also
19 impose a civil penalty in an amount not to exceed the greater of five hundred percent
20 of the retail value of the cigarettes or five thousand dollars upon a determination of
21 violation of R.S. 13:5073(C) or any regulations adopted pursuant thereto. Such
22 penalty shall be imposed in the manner provided by R.S. 47:843 et seq.

23 B. Any cigarettes that have been sold, offered for sale, or possessed for sale,
24 in this state, or imported for personal consumption in this state, in violation of R.S.
25 13:5073(C) shall be deemed contraband under R.S. 47:865 and R.S. 13:5061 et seq.,
26 and such cigarettes shall be subject to seizure and forfeiture as provided in such
27 section, and all such cigarettes so seized and forfeited shall be destroyed and not
28 resold.

1 C. The attorney general, on behalf of the secretary, may seek an injunction
2 to restrain a threatened or actual violation of R.S. 13:5073(C) or 5075(A) or (D) by
3 a stamping agent and to compel the stamping agent to comply with such provisions.
4 In any action brought pursuant to this Section, the state shall be entitled to recover
5 the costs of the investigation, action, and reasonable attorney fees.

6 D. It shall be unlawful for a person to:

7 (1) Sell or distribute cigarettes; or

8 (2) Acquire, hold, own, possess, transport, import, or cause to be imported
9 cigarettes that the person knows or should know are intended for distribution or sale
10 in the state in violation of R.S. 13:5073(C). A violation of this Section shall be
11 punishable as a misdemeanor in accordance with R.S. 47:859.

12 E. A person who violates R.S. 13:5073(C) engages in an unfair and deceptive
13 trade practice in violation of R.S. 51:1401 et seq.

14 F. Failure to make annual, quarterly, or monthly payments, when required by
15 the attorney general in accordance with R.S. 13:5075, shall subject the tobacco
16 product manufacturer to the penalties for failure to place funds in escrow contained
17 in R.S. 13:5063(C)(3).

18 §5077. Miscellaneous provisions

19 A. A determination of the attorney general to not include or to remove from
20 the directory a brand family or tobacco product manufacturer shall be subject to
21 review in the manner prescribed by the Administrative Procedure Act.

22 B. No person shall be issued a license or granted a renewal of a license to act
23 as a stamping agent unless such person has certified in writing, under penalty of
24 perjury, that such person will comply fully with this Section.

25 C. For the year 2004, because the effective date of this Part is later than April
26 15, 2004, the first report of stamping agents required by R.S. 13:5075(A) shall be due
27 thirty calendar days after the effective date of this Part; the certifications by a tobacco

1 product manufacturer described in R.S. 13:5073(A) shall be due forty-five calendar
2 days after the effective date of this Part; and the directory described in R.S.
3 13:5073(B) shall be published or made available within ninety calendar days after the
4 effective date of this Part.

5 D. The secretary in conjunction with the attorney general may promulgate
6 regulations necessary to effect the purpose of this Part.

7 E. In any action brought by the state to enforce this Part, the attorney general
8 and secretary shall be entitled to recover the costs of the investigation, expert witness
9 fees, the action, and reasonable attorney fees.

10 F. If a court determines that a person has violated this Part, the court shall
11 order any profits, gains, gross receipts, or other benefits from the violation to be
12 disgorged and paid to the state treasurer for deposit in the tobacco control special
13 fund, which is hereby created. The tobacco control special fund shall be used by the
14 attorney general for tobacco enforcement and control matters. Unless otherwise
15 expressly provided, the remedies or penalties provided by this Part are cumulative to
16 each other and to the remedies or penalties available under all other laws of this state.

17 G. If a court of competent jurisdiction finds that the provisions of this Part
18 and of R.S. 13:5061 et seq. conflict and cannot be harmonized, then the provisions
19 in R.S. 13:5061 et seq. shall control. If any Section, Subsection, Paragraph,
20 Subparagraph, Item, sentence, clause, phrase, or word of this Part causes R.S.
21 13:5061 et seq. to no longer constitute a qualifying or model statute, as those terms
22 are defined in the Master Settlement Agreement, then that portion of this Part shall
23 not be valid. If any Section, Subsection, Paragraph, Subparagraph, Item, sentence,
24 clause, phrase, or word of this Part is for any reason held to be invalid, unlawful, or
25 unconstitutional, such decision shall not affect the validity of the remaining portions
26 of this Part.

27 Section 2. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____