

05/20/2014 02:52:58 PM

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2363

By: Cox of the House and Treat of the Senate

Title: Cigarette tax; modifying bonding and reporting requirements under the Master Settlement Agreement Complementary Act; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

HB2363 CCR (A)
HOUSE CONFEREES

Biggs, Scott R.		Echols, Jon	<hr/>
Grau, Randy		Inman, Scott	<hr/>
Johnson, Dennis	<hr/>	Jordan, Fred	
Martin, Steve		McCall, Charles A.	<hr/>
McCullough, Mark		Morrisette, Richard	<hr/>
Newell, Tom		O'Donnell, Terry	
Russ, Todd		Sherrer, Ben	<hr/>
Stiles, Aaron		Virgin, Emily	<hr/>
Williams, Cory T.	<hr/>		

SENATE CONFEREES

Bass *RJ Bass*
 Branan _____
 Brinkley *Le Brinkley*
 Coates _____
 Crain _____
 David *Randall*
 Ellis *Ellis*
 Fields *Ernie Fields*
 Ford *John Ford*
 Griffin _____
 Halligan *Don Valley*
 Holt _____
 Ivester _____
 C. Johnson _____
 R. Johnson _____
 Jolley _____
 Justice *Justice*
 Marlatt *Marlatt*
 Mazzei *Mazzei*
 Newberry *Newberry*
 Paddack _____
 Standridge _____
 Stanislawski *Stanislawski*
 Sykes _____

Treat *Treat*
 Wyrick *Wyrick*

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 2363

By: Cox of the House

and

Treat of the Senate

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10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to cigarette tax; amending 68 O.S.
12 2011, Section 360.9, which relates to the listing of
13 nonparticipating manufacturers in the Oklahoma
14 Tobacco Directory; deleting certain listing
15 requirements; requiring certain nonparticipating
16 manufacturer to post certain bond; listing conditions
17 which if met require the filing of a bond; listing
18 conditions for determining noncompliance; deleting
19 certain bonding requirements; deleting criteria for
20 determining noncompliance with certain laws; deleting
21 certain definition; deleting bonding requirement for
22 certain manufacturer; defining an affiliate; listing
23 conditions a nonparticipating manufacturer shall meet
24 to be included in the Oklahoma Tobacco Directory;
establishing criteria and amount of bonds required of
certain manufacturers; providing time period for
posting a bond by certain manufacturers; authorizing
execution of the bond for a certain amount upon the
failure of a manufacturer to make a certain deposit;
stating use of escrow amounts collected; authorizing
the Attorney General to exclude a manufacturer from
inclusion in the Directory under certain
circumstances; authorizing the Attorney General to
collect certain information and material from
nonparticipating manufacturers; allowing the Attorney
General when necessary to require certain wholesalers
or distributors to file monthly reports; specifying

1 reporting date; listing information required to be
2 included in the report; requiring electronic filing
3 of the report; authorizing the Attorney General to
4 use report information to investigate and enforce
5 certain laws and demonstrate certain compliance;
6 granting to the Attorney General the right to inspect
7 certain records and premises; providing for limited
8 release of reports; making the filing of certain
9 report to be considered as meeting certain
10 requirements; providing for codification; and
11 providing an effective date.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2011, Section 360.9, is
amended to read as follows:

Section 360.9 A. Notwithstanding any other provision of law,
~~if a newly qualified nonparticipating manufacturer is to be listed
in the Oklahoma Tobacco Directory (the Directory), or if the
Attorney General reasonably determines that any nonparticipating
manufacturer who has filed a certification pursuant to Section 360.4
of Title 68 of the Oklahoma Statutes poses an elevated risk for
noncompliance with the Master Settlement Agreement or with the
Prevention of Youth Access to Tobacco Act, neither such
nonparticipating manufacturer nor any of its brand families shall be
included in the Directory unless and until such nonparticipating
manufacturer, or its United States importer that undertakes joint
and several liability for the performance of the manufacturer in
accordance with Section 13 of this act, has posted a bond in~~

1 ~~accordance with this section~~ any nonparticipating manufacturer shall
2 post a bond for the exclusive benefit of this state if:

3 1. It was not listed in the Oklahoma Tobacco Directory,
4 hereinafter referred to as the Directory, during the four (4)
5 consecutive calendar quarters preceding its application to be on the
6 Directory;

7 2. It had been previously listed in the Directory, but was
8 involuntarily removed or denied recertification for noncompliance
9 with the Master Settlement Agreement Complementary Act or the
10 Prevention of Youth Access to Tobacco Act, unless the removal was
11 determined to have been erroneous or illegal; or

12 3. The Attorney General reasonably determines that the
13 nonparticipating manufacturer who has filed a certification pursuant
14 to Section 360.4 of this title poses an elevated risk for
15 noncompliance with the Master Settlement Agreement Complementary Act
16 or with the Prevention of Youth Access to Tobacco Act. A reasonable
17 risk of noncompliance with this section or the Prevention of Youth
18 Access to Tobacco Act includes, but is not limited to, the following
19 circumstances and a nonparticipating manufacturer shall be deemed to
20 pose an elevated risk for noncompliance if:

21 a. any state has removed the manufacturer or its brand or
22 brand families or an affiliate or any of the
23 affiliate's brands or brand families from the tobacco
24 directory of the state or placed the manufacturer or

1 its brand or brand families or an affiliate or any of
2 the affiliate's brands on a list of noncompliant
3 companies, brands or brand families for noncompliance
4 with the state law at any time during the calendar
5 year or within the past five (5) consecutive calendar
6 years, unless it submits proof that its brands, or the
7 brands of an affiliate were erroneously or illegally
8 removed from a tobacco directory of a state,

9 b. any state, or the federal government, has filed
10 litigation against or has an unsatisfied judgment
11 against the manufacturer or any affiliate thereof for
12 escrow or for penalties, costs, or attorney fees
13 related to noncompliance with state escrow laws or
14 complementary legislation, or

15 c. the nonparticipating manufacturer or any affiliate has
16 been charged, entered a plea or has been convicted of
17 violating the Contraband Cigarette Trafficking Act,
18 the Jenkins Act or the PACT Act.

19 ~~B. The bond shall be posted by corporate surety located within~~
20 ~~the United States in an amount equal to the greater of Fifty~~
21 ~~Thousand Dollars (\$50,000.00) or the amount of escrow the~~
22 ~~manufacturer in either its current or predecessor form was required~~
23 ~~to deposit as a result of its sales in the previous calendar year in~~
24 ~~Oklahoma. The bond shall be written in favor of the State of~~

1 ~~Oklahoma and shall be conditioned on the performance by the~~
2 ~~nonparticipating manufacturer, or its United States importer that~~
3 ~~undertakes joint and several liability for the performance of the~~
4 ~~manufacturer in accordance with Section 13 of this act, of all of~~
5 ~~its duties and obligations under the Prevention of Youth Access to~~
6 ~~Tobacco Act and the Master Settlement Agreement Complementary Act~~
7 ~~during the year in which the certification is filed and the next~~
8 ~~succeeding calendar year.~~

9 ~~C. A nonparticipating manufacturer may be deemed to pose an~~
10 ~~elevated risk for noncompliance with this section or the Prevention~~
11 ~~of Youth Access to Tobacco Act if:~~

12 ~~1. The nonparticipating manufacturer or any affiliate thereof~~
13 ~~has underpaid an escrow obligation with respect to any state at any~~
14 ~~time during the calendar year or within the past three (3) calendar~~
15 ~~years unless:~~

16 ~~a. the manufacturer did not make underpayment knowingly~~
17 ~~or recklessly and the manufacturer promptly cured the~~
18 ~~underpayment within one hundred eighty (180) days'~~
19 ~~notice of it, or~~

20 ~~b. the underpayment or lack of payment is the subject of~~
21 ~~a good faith dispute as documented to the satisfaction~~
22 ~~of the Attorney General and the underpayment is cured~~
23 ~~within one hundred eighty (180) days of entry of a~~

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1 ~~final order establishing the amount of the required~~
2 ~~escrow payment;~~

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

8 ~~3. Any state has litigation pending against, or an unsatisfied~~
9 ~~judgment against, the manufacturer or any affiliate thereof for~~
10 ~~escrow or for penalties, costs, or attorney fees related to~~
11 ~~noncompliance with state escrow laws.~~

12 ~~D. As used in this section, "newly qualified nonparticipating~~
13 ~~manufacturer" means a nonparticipating manufacturer that has not~~
14 ~~previously been listed in the Oklahoma Tobacco Directory. Such~~
15 ~~manufacturer may be required to post a bond in accordance with this~~
16 ~~section for the first three (3) years of their listing, or longer if~~
17 ~~they have been determined to pose an elevated risk for~~
18 ~~noncompliance. Any other nonparticipating manufacturer that has~~
19 ~~been determined to pose an elevated risk for noncompliance shall be~~
20 ~~required to post a bond in accordance with this section for three~~
21 ~~(3) years or longer if such nonparticipating manufacturer still~~
22 ~~poses an elevated risk at the end of such three-year period.~~

23 ~~For purposes of this section an affiliate is an entity or~~
24 ~~individual that either controls or is controlled by the~~

1 nonparticipating manufacturer, regardless of whether the control
2 being exercised is direct or indirect.

3 C. Neither a nonparticipating manufacturer nor any of its brand
4 families shall be included in the Directory unless and until the
5 nonparticipating manufacturer:

6 1. Undertakes joint and several liability with its importer for
7 the performance of the manufacturer in accordance with Section
8 360.5-1 of this title and, if required, has posted a joint bond in
9 accordance with this section;

10 2. The manufacturer and importer, if any, have:

11 a. registered to do business within the state with the
12 Oklahoma Secretary of State,

13 b. maintained a registered service agent within the State
14 of Oklahoma, and

15 c. agreed that the Oklahoma Secretary of State will act
16 as service agent if the registered service agent dies,
17 resigns or otherwise is unavailable to accept service
18 on behalf of the nonparticipating manufacturer or
19 importer; and

20 3. The manufacturer and importer, if any, consent to be sued in
21 the district courts of the State of Oklahoma for purposes of the
22 state enforcing any provision of the Prevention of Youth Access to
23 Tobacco Act, the Master Settlement Agreement Complementary Act and
24 Oklahoma cigarette excise tax statutes.

1 D. The bond shall be posted by corporate surety located within
2 the United States in an amount equal to the greater of Fifty
3 Thousand Dollars (\$50,000.00) or fifty percent (50%) of the required
4 escrow that the manufacturer in either its current or predecessor
5 form was required to deposit as a result of its sales in Oklahoma
6 during the last full calendar year it was listed in the Directory.
7 The bond shall be written in favor of the State of Oklahoma and
8 shall be conditioned on the performance by the nonparticipating
9 manufacturer, or its United States importer that undertakes joint
10 and several liability for the performance of the manufacturer in
11 accordance with Section 360.5-1 of this title, of all of its duties
12 and obligations under the Prevention of Youth Access to Tobacco Act
13 and the Master Settlement Agreement Complementary Act during the
14 year in which the certification is filed and the next succeeding
15 calendar year.

16 E. Any manufacturer or importer required to post a bond in
17 accordance with this section shall do so for three (3) consecutive
18 years, or longer if the Attorney General determines the manufacturer
19 or importer poses an elevated risk at the end of the three-year
20 period.

21 F. If a nonparticipating manufacturer fails to make or have
22 made in its behalf deposits equal to the full amount owed for a
23 quarter within fifteen (15) days of the due date of the quarter, the
24 State of Oklahoma may execute on the bond in the amount of the

1 remaining escrow deposit due. Escrow amounts collected from the
2 bond shall be used to reduce the amount of escrow due from and
3 penalties assessed against that nonparticipating manufacturer and
4 unpaid escrow that exceeds the amount covered by the bond remains
5 due from the nonparticipating manufacturer and any importer that is
6 jointly and severally liable for its cigarette sales into the state.

7 G. In addition to the grounds contained in paragraph 3 of
8 subsection B of Section 360.4 of this title the Attorney General has
9 the authority to not retain or not to include in the Directory any
10 nonparticipating manufacturer, its brands and brand families if the
11 manufacturer:

12 1. Does not certify it is subject to, without any immunity, the
13 Master Settlement Agreement Complementary Act and the Prevention of
14 Youth Access to Tobacco Act;

15 2. Fails to disclose that a state or the federal government has
16 brought an action in compliance with any state or federal law,
17 regulating the sale and or distribution of tobacco products,
18 including the escrow statute of another state; or

19 3. Fails to sell only through an Oklahoma-licensed wholesaler
20 any tobacco product sold into the state or fails to provide monthly
21 PACT Act reports to the Oklahoma Tax Commission and the Oklahoma
22 Attorney General for sales into the state.

23 H. The Attorney General shall have the authority to require a
24 nonparticipating manufacturer to submit all information and

1 materials the Attorney General deems appropriate to determine
2 compliance of the nonparticipating manufacturer with this section
3 and other related laws including the grounds for retaining or not
4 including a manufacturer or its brands and brand families in the
5 Directory.

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 360.10 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The Attorney General may, when considered necessary for the
10 enforcement of any provision of the Prevention of Youth Access to
11 Tobacco Act or the Master Settlement Agreement Complementary Act,
12 require each wholesaler or distributor of cigarettes and roll-your-
13 own tobacco products intended for sale in this state to file with
14 the Attorney General a report each month of its sales, by brand, to
15 retailers and wholesalers located in this state.

16 B. The wholesaler or distributor shall file a report on or
17 before the twentieth day of each month containing the following
18 information for the sales during the preceding calendar month of
19 cigarettes and roll-your-own tobacco that are subject to this
20 section to each retailer and wholesaler:

21 1. The name and address of the outlet location of each retailer
22 and wholesaler to which the wholesaler or distributor delivered
23 cigarettes, including the city and zip code;

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1 2. The monthly sales, including the number of individual
2 cigarettes, by brand name, made to other wholesalers and retailers
3 in packages bearing the excise tax stamp of the State of Oklahoma;

4 3. The monthly sales, including the number of individual
5 cigarettes, by brand name, made to tribal retailers of compacting
6 Tribes, in packages bearing the joint "unity rate" tax stamp
7 purchased from the Oklahoma Tax Commission;

8 4. The monthly sales, including the number of individual
9 cigarettes, by brand name, made to wholesalers, retailers or
10 consumers located outside the State of Oklahoma in packages not
11 bearing the excise tax stamp of the State of Oklahoma;

12 5. The monthly sales, including the number of individual
13 cigarettes, by brand name, made to noncompacting Tribes located in
14 the State of Oklahoma that bear the black tax-free stamp for sales
15 to tribal members of a noncompacting Tribe;

16 6. The monthly sales of individual containers of roll-your-own
17 tobacco products, by brand name and by weight, upon which the state
18 excise or "unity" tax has been paid, the monthly sales of individual
19 containers of roll-your-own tobacco products, by brand name and by
20 weight, made to wholesalers, retailers or consumers located outside
21 the State of Oklahoma on which the state excise tax has not been
22 paid and the monthly sales of individual containers of roll-your-own
23 tobacco products, by brand name and by weight, made to noncompacting
24 Tribes located within the State of Oklahoma; and

1 7. All monthly net sales reports shall include the invoice
2 number and invoice date of cigarettes sold, distributed or shipped
3 into Oklahoma. The reports shall also include the beginning and
4 ending inventory for each type of stamp held during the reporting
5 period.

6 C. Except as provided by this subsection, the wholesaler or
7 distributor shall file the report required by this section with the
8 Attorney General and the Oklahoma Tax Commission electronically.

9 D. Notwithstanding any other provision of law the Attorney
10 General, in the sole discretion of the Attorney General, may use the
11 information contained in the reports received under this section and
12 reports received from the Oklahoma Tax Commission to investigate and
13 enforce the provisions of the Prevention of Youth Access to Tobacco
14 Act and the Master Settlement Agreement Complementary Act and to
15 demonstrate compliance of the state with the terms of the Master
16 Settlement Agreement and a subsequent settlement agreement entered
17 into with the participating manufacturers to the Master Settlement
18 Agreement in April 2013 and to provide information to any data
19 clearinghouse or similar entity established as required by the terms
20 of the Master Settlement Agreement and any subsequent settlement
21 agreement. The Attorney General may use the information to enforce
22 statutes related to contraband tobacco sales, including the seizure
23 of contraband products. For the purpose of enabling the Attorney
24 General to determine compliance with the provisions of this act and

1 statutes related to contraband tobacco sales, the Attorney General
2 shall have the right to inspect all premises and records related to
3 the manufacture, production, storage, transportation, sale or
4 exchange of cigarettes and tobacco products located in the State of
5 Oklahoma, located out of state and licensed by the Oklahoma Tax
6 Commission or which are on the Attorney General's Directory of
7 Tobacco Product Manufacturers. The Attorney General may condition
8 the release of the reports received by the Attorney General to only
9 those third parties who have signed and pledged to abide by the
10 terms of any confidentiality agreement that the Attorney General
11 deems necessary to preserve the confidentiality of the records.

12 E. The report required by this section, if timely filed, shall
13 be considered as meeting the reporting requirements of Section 360.6
14 of Title 68 of the Oklahoma Statutes.

15 SECTION 3. This act shall become effective November 1, 2014.

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