

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB608
Page 31 Section 10-13 Lines 2 1/2
Of the printed Bill
Of the Engrossed Bill

By inserting new sections 10 through 13 as attached; and
by renumbering subsequent sections.

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Mike Jackson

Adopted: _____

Reading Clerk

1 "SECTION 10. AMENDATORY Section 4, Chapter 266, O.S.L.
2 2004 (68 O.S. Supp. 2008, Section 360.4), is amended to read as
3 follows:

4 Section 360.4 A. 1. Every tobacco product manufacturer whose
5 cigarettes are sold in this state, whether directly or through a
6 distributor, retailer or similar intermediary or intermediaries,
7 shall execute and deliver on a form or in the manner prescribed by
8 the Attorney General, requesting such information as the Attorney
9 General deems reasonably necessary, a certification to the Oklahoma
10 Tax Commission and Attorney General, no later than April 30 of each
11 year, certifying under penalty of perjury that, as of the date of
12 certification, the tobacco product manufacturer either:

13 a. is a participating manufacturer and has made all
14 payments calculated by the independent auditor to be
15 due from it under the Master Settlement Agreement
16 Complementary Act except to the extent it is disputing
17 any of such payments, or

18 b. is in full compliance with the provisions of Sections
19 600.21 through 600.23 of Title 37 of the Oklahoma
20 Statutes.

21 2. A participating manufacturer shall include in its
22 certification a list of its brand families. The participating
23 manufacturer shall update the list thirty (30) calendar days prior
24 to any addition to or modification of its brand families by

1 executing and delivering a supplemental certification to the
2 Attorney General and the Oklahoma Tax Commission.

3 3. A nonparticipating manufacturer shall include in its
4 certification:

5 a. a list of all of its brand families and the number of
6 units sold for each brand family that were sold in the
7 state during the preceding calendar year, and

8 b. a list of all of its brand families that have been
9 sold in the state at any time during the current
10 calendar year:

11 (1) indicating, by an asterisk, any brand family sold
12 in the state during the preceding calendar year
13 that is no longer being sold in the state as of
14 the date of the certification, and

15 (2) identifying by name and address any other
16 manufacturer of the brand families in the
17 preceding or current calendar year.

18 The nonparticipating manufacturer shall update the list thirty (30)
19 calendar days prior to any corrected final addition to or
20 modification of its brand families by executing and delivering a
21 supplemental certification to the Attorney General and the Oklahoma
22 Tax Commission.

1 4. In the case of a nonparticipating manufacturer, the
2 certification shall further certify that the nonparticipating
3 manufacturer:

- 4 a. is registered to do business in the state or has
5 appointed a resident agent for service of process and
6 provided notice thereof as required by Section 5 360.5
7 of this ~~act~~ title,
8 b. has established and continues to maintain a qualified
9 escrow fund, and
10 c. has executed a qualified escrow agreement that has
11 been reviewed and approved by the Attorney General and
12 that governs the qualified escrow fund as defined in
13 Section 600.22 of Title 37 of the Oklahoma Statutes
14 that the nonparticipating manufacturer is in full
15 compliance with the provisions of Sections 600.21
16 through 600.23 of Title 37 of the Oklahoma Statutes
17 and the Master Settlement Agreement Complementary Act
18 and any rules promulgated pursuant to the Master
19 Settlement Agreement Complementary Act.

20 5. The nonparticipating manufacturer shall include with
21 certification:

- 22 a. the name, address, and telephone number of the
23 financial institution with which the nonparticipating
24

1 manufacturer has established its qualified escrow
2 fund,

3 b. the account number of its qualified escrow fund and
4 any subaccount number for the State of Oklahoma,

5 c. the amount the nonparticipating manufacturer placed in
6 the qualified escrow fund for cigarettes sold in
7 Oklahoma during the preceding calendar year, the date
8 and amount of each deposit to the fund, and any
9 evidence or verification as may be deemed necessary by
10 the Attorney General to confirm the information
11 required by this paragraph, and

12 d. the amount and date of any withdrawal or transfer of
13 funds the nonparticipating manufacturer made at any
14 time from the qualified escrow fund or from any other
15 qualified escrow fund into which the nonparticipating
16 manufacturer made escrow payments pursuant to Section
17 600.23 of Title 37 of the Oklahoma Statutes rules
18 promulgated thereto.

19 6. In the case of a nonparticipating manufacturer located
20 outside of the United States, the certification shall further
21 certify that the nonparticipating manufacturer has provided a
22 declaration from each of its importers into the United States of any
23 of its brand families to be sold in Oklahoma. The declaration shall
24 be on a form prescribed by the Attorney General and shall state that

1 such importer accepts joint and several liability with the
2 nonparticipating manufacturer for all escrow deposits due, for all
3 penalties assessed and for payment of all costs and attorney fees
4 imposed in accordance with Sections 600.21 through 600.23 of Title
5 37 of the Oklahoma Statutes. Such declaration shall appoint for the
6 declaration a resident agent for service of process in Oklahoma in
7 accordance with Section 360.5 of this title.

8 7. A tobacco product manufacturer may not include a brand
9 family in its certification unless:

10 a. in the case of a participating manufacturer, the
11 participating manufacturer affirms that the brand
12 family is to be deemed to be its cigarettes for
13 purposes of calculating its payments under the Master
14 Settlement Agreement for the relevant year, in the
15 volume and shares determined pursuant to the Master
16 Settlement Agreement, or

17 b. in the case of a nonparticipating manufacturer, the
18 nonparticipating manufacturer affirms that the brand
19 family is to be deemed to be its cigarettes for
20 purposes of the provisions of Sections 600.21 through
21 600.23 of Title 37 of the Oklahoma Statutes.

22 ~~7.~~ 8. Nothing in this section shall be construed as limiting or
23 otherwise affecting the right of this state to maintain that a brand
24 family constitutes cigarettes of a different tobacco product

1 manufacturer for purposes of calculating payments under the Master
2 Settlement Agreement or for purposes of Sections 600.21 through
3 600.23 of Title 37 of the Oklahoma Statutes.

4 ~~8.~~ 9. Tobacco product manufacturers shall maintain all invoices
5 and documentation of sales and other information relied upon for the
6 certification for a period of five (5) years, unless otherwise
7 required by law to maintain them for a greater period of time.

8 B. 1. Not later than ninety (90) calendar days after this act
9 takes effect, the Attorney General shall develop and publish on its
10 website a directory listing all tobacco product manufacturers that
11 have provided current and accurate certifications conforming to the
12 requirements of subparagraph a of paragraph 4 of subsection A of
13 this section and all brand families that are listed in the
14 certifications, except as otherwise provided in this section.

15 2. The Attorney General shall not include or retain in the
16 directory the name or brand families of any:

17 a. participating manufacturer that fails to provide the
18 required certification or to make a payment calculated
19 by the independent auditor to be due from it under the
20 Master Settlement Agreement except to the extent that
21 it is disputing such payment, or

22 b. nonparticipating manufacturer that has failed to
23 provide the required certification or whose
24 certification the Attorney General determines is not

1 in compliance with paragraphs 3, 4, and 5 of
2 subsection A of this section, unless the Attorney
3 General has determined that a violation has been cured
4 to the satisfaction of the Attorney General.

5 3. Neither a tobacco product manufacturer nor brand family
6 shall be included or retained in the directory if the Attorney
7 General concludes, in the case of a nonparticipating manufacturer,
8 that:

9 a. any escrow payment required pursuant to Section 600.23
10 of Title 37 of the Oklahoma Statutes for any period
11 for any brand family, whether or not listed by the
12 nonparticipating manufacturer, has not been fully paid
13 into a qualified escrow fund governed by a qualified
14 escrow agreement that has been approved by the
15 Attorney General, ~~or~~

16 b. any outstanding final judgment, including interest
17 thereon, for a violation of the provisions of Sections
18 600.21 through 600.23 of Title 37 of the Oklahoma
19 Statutes has not been fully satisfied for the brand
20 family or manufacturer, or

21 c. in the case of a nonparticipating manufacturer or a
22 tobacco product manufacturer that became a
23 participating manufacturer after the Master Settlement
24 Agreement execution date, as defined by Section II

(aa) of the Master Settlement Agreement, by reason of
the business plan, business history, trade
connections, or compliance and payment history under
the Master Settlement Agreement or in Oklahoma or any
other state of any of the principals thereof, the
nonparticipating manufacturer or such tobacco product
manufacturer fails to provide reasonable assurance
that it will comply with the requirements of this
section or Sections 600.21 through 600.23 of Title 37
of the Oklahoma Statutes, or the manufacturer has
knowingly failed to disclose any material information
required or knowingly made any material false
statement in the certification of any supporting
information or documentation provided. As used in
this subparagraph, reasonable assurances may include
information and documentation establishing to the
satisfaction of the Attorney General that a failure to
pay in Oklahoma or elsewhere was the result of a good-
faith dispute over the payment obligation.

4. The Attorney General shall update the directory as necessary
in order to correct mistakes and to add or remove a tobacco product
manufacturer or brand family to keep the directory in conformity
with the requirements of the Master Settlement Agreement
Complementary Act.

1 5. Every stamping agent shall provide and update, as necessary,
2 an electronic mail address to the Oklahoma Tax Commission and the
3 Attorney General for the purpose of receiving any notifications as
4 may be required by the Master Settlement Agreement Complementary
5 Act.

6 6. Any nonparticipating manufacturer may request, by facsimile
7 transmission or other means to the Attorney General's Tobacco
8 Enforcement Unit, information regarding its current compliance
9 status pursuant to this act and to Sections 600.21 through 600.23 of
10 Title 37 of the Oklahoma Statutes. Upon receipt of such request,
11 the Attorney General shall inform the requesting nonparticipating
12 manufacturer of its current compliance status before close of
13 business within three (3) business days.

14 C. It shall be unlawful for any person to:

15 1. Affix a stamp to a package or other container of cigarettes
16 of a tobacco product manufacturer or brand family not included in
17 the directory; and

18 2. Sell, offer, or possess for sale, in this state, or import
19 for personal consumption in this state, cigarettes of a tobacco
20 product manufacturer or brand family not included in the directory.

21 SECTION 11. AMENDATORY Section 5, Chapter 266, O.S.L.
22 2004 (68 O.S. Supp. 2008, Section 360.5), is amended to read as
23 follows:
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1 Section 360.5 A. Any nonresident or foreign nonparticipating
2 manufacturer that has not registered to do business in this state as
3 a foreign corporation or business entity shall appoint and
4 continually engage without interruption, as a condition precedent to
5 having its brand families included or retained in the directory, the
6 services of an agent in this state to act as agent for the service
7 of process on whom all process, and any action or proceeding against
8 it concerning or arising out of the enforcement of the Master
9 Settlement Agreement Complementary Act and Sections 600.21 through
10 600.23 of Title 37 of the Oklahoma Statutes, may be served in any
11 manner authorized by law. The service shall constitute legal and
12 valid service of process on the nonparticipating manufacturer. The
13 nonparticipating manufacturer shall provide the name, address, phone
14 number, and proof of the appointment and availability of the agent
15 to perform the duties of an agent pursuant to the Master Settlement
16 Agreement Complementary Act and to the satisfaction of the Oklahoma
17 Tax Commission and the Attorney General. Any nonparticipating
18 manufacturer located outside of the United States shall, as an
19 additional condition precedent to having its brand families listed
20 or retained in the Directory, cause each of its importers into the
21 United States of any of its brand families to be sold in Oklahoma to
22 appoint and continuously engage without interruption the services of
23 an agent in the State of Oklahoma in accordance with the provisions
24 of this section. All obligations of a nonparticipating manufacturer

1 imposed by this section with respect to appointment of its agent
2 shall likewise apply to such importers with respect to appointment
3 of their agents.

4 B. The nonparticipating manufacturer shall provide notice to
5 the Oklahoma Tax Commission and Attorney General thirty (30)
6 calendar days prior to termination of the authority of an agent and
7 shall further provide proof to the satisfaction of the Attorney
8 General of the appointment of a new agent no less than five (5)
9 calendar days prior to the termination of an existing agent
10 appointment. If an agent terminates an agency appointment, the
11 nonparticipating manufacturer shall notify the Oklahoma Tax
12 Commission and Attorney General of the termination within five (5)
13 calendar days and shall include proof to the satisfaction of the
14 Attorney General of the appointment of a new agent.

15 C. Any nonparticipating manufacturer whose cigarettes are sold
16 in this state, who has not appointed and engaged an agent as
17 required by this section, shall be deemed to have appointed the
18 Secretary of State as its agent and may be proceeded against in
19 courts of this state by service of process upon the Secretary of
20 State. However, the appointment of the Secretary of State as the
21 agent shall not satisfy the condition precedent for having the brand
22 families of the nonparticipating manufacturer included or retained
23 in the directory.

1 SECTION 12. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 360.5-1 of Title 68, unless
3 there is created a duplication in numbering, reads as follows:

4 For each nonparticipating manufacturer located outside the
5 United States, each importer into the United States of any such
6 nonparticipating manufacturer's brand families that are sold in
7 Oklahoma shall bear joint and severable liability with such
8 nonparticipating manufacturer for deposit of all escrow due, payment
9 of all penalties imposed and payment of all costs and attorney fees
10 imposed under Sections 600.21 through 600.23 of Title 37 of the
11 Oklahoma Statutes and the Master Settlement Agreement Complementary
12 Act.

13 SECTION 13. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 360.9 of Title 68, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Notwithstanding any other provision of law, if a newly
17 qualified nonparticipating manufacturer is to be listed in the
18 Oklahoma Tobacco Directory (the Directory), or if the Attorney
19 General reasonably determines that any nonparticipating manufacturer
20 who has filed a certification pursuant to Section 360.4 of Title 68
21 of the Oklahoma Statutes poses an elevated risk for noncompliance
22 with Sections 360.1 through 360.9 of Title 68 of the Oklahoma
23 Statutes or with Sections 600.1 through 600.23 of Title 37 of the
24 Oklahoma Statutes, neither such nonparticipating manufacturer nor

1 any of its brand families shall be included in the Directory unless
2 and until such nonparticipating manufacturer, or its United States
3 importer that undertakes joint and severable liability for the
4 performance of the manufacturer in accordance with Section 3 of this
5 act, has posted a bond in accordance with this section.

6 B. The bond shall be posted by corporate surety located within
7 the United States in an amount equal to the greater of Fifty
8 Thousand Dollars (\$50,000.00) or the amount of escrow the
9 manufacturer in either its current or predecessor form was required
10 to deposit as a result of its sales in the previous calendar year in
11 Oklahoma. The bond shall be written in favor of the State of
12 Oklahoma and shall be conditioned on the performance by the
13 nonparticipating manufacturer, or its United States importer that
14 undertakes joint and severable liability for the performance of the
15 manufacturer in accordance with Section 3 of this act, of all of its
16 duties and obligations under Sections 600.1 through 600.23 of Title
17 37 of the Oklahoma Statutes and Sections 360.1 through 360.9 of
18 Title 68 of the Oklahoma Statutes during the year in which the
19 certification is filed and the next succeeding calendar year.

20 C. A nonparticipating manufacturer may be deemed to pose an
21 elevated risk for noncompliance with this section or Sections 600.1
22 through 600.23 of Title 37 of the Oklahoma Statutes if:

23 1. The nonparticipating manufacturer or any affiliate thereof
24 has underpaid an escrow obligation with respect to any state at any

1 time during the calendar year or within the past three (3) calendar
2 years unless:

3 a. the manufacturer did not make underpayment knowingly
4 or recklessly and the manufacturer promptly cured the
5 underpayment within one hundred eighty (180) days'
6 notice of it, or

7 b. the underpayment or lack of payment is the subject of
8 a good-faith dispute as documented to the satisfaction
9 of the Attorney General and the underpayment is cured
10 within one hundred eighty (180) days of entry of a
11 final order establishing the amount of the required
12 escrow payment;

13 2. Any state has removed the manufacturer or its brands or
14 brand families or an affiliate or any of the affiliate's brands or
15 brand families from the state's tobacco directory for noncompliance
16 with the state law at any time during the calendar year or within
17 the past three (3) calendar years; or

18 3. Any state has litigation pending against, or an unsatisfied
19 judgment against, the manufacturer or any affiliate thereof for
20 escrow or for penalties, costs, or attorney fees related to
21 noncompliance with state escrow laws.

22 D. As used in this section, "newly qualified nonparticipating
23 manufacturer" means a nonparticipating manufacturer that has not
24 previously been listed in the Oklahoma Tobacco Directory. Such

1 manufacturer may be required to post a bond in accordance with this
2 section for the first three (3) years of their listing, or longer if
3 they have been determined to pose an elevated risk for
4 noncompliance."

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