

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3003**

4 (By Delegate White)

5 (Originating in the Committee on Finance)

6 [March 25, 2013]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §16-9D-4a, relating  
12 generally to facilitating and enforcing compliance with  
13 escrow, certification and other requirements imposed on  
14 certain tobacco manufacturers that did not participate in the  
15 tobacco product manufacturers' Master Settlement Agreement;  
16 imposing bonding requirements on certain nonparticipating  
17 tobacco product manufacturers; and providing for forfeiture of  
18 bond for noncompliance.

19 *Be it enacted by the Legislature of West Virginia:*

20 That the Code of West Virginia, 1931, as amended, be amended  
21 by adding thereto a new section, designated §16-9D-4a, to read as  
22 follows:

23 **ARTICLE 9D. ENFORCEMENT OF STATUTES IMPLEMENTING TOBACCO MASTER**  
24 **SETTLEMENT AGREEMENT.**

25 **§16-9D-4a. Listing of nonparticipating manufacturers in the West**

1 Virginia Tobacco Directory; bonding requirement for  
2 nonparticipating manufacturers newly qualified or  
3 posing an elevated risk for noncompliance.

4 (a) Notwithstanding any other provision of law to the  
5 contrary, if a newly qualified nonparticipating manufacturer is to  
6 be listed in the directory described in subsection (b), section  
7 three of this article, or if the Attorney General reasonably  
8 determines that a nonparticipating manufacturer who has filed a  
9 certification pursuant to section three of this article poses an  
10 elevated risk for noncompliance with its obligations under this  
11 article or article nine-b of this chapter, neither the  
12 nonparticipating manufacturer nor any of its brand families may be  
13 included in the directory unless and until the nonparticipating  
14 manufacturer has posted a bond in accordance with this section.

15 (b) The bond shall be posted by corporate surety located  
16 within the United States in an amount equal to the greater of  
17 \$25,000 or the amount of escrow the manufacturer, in either its  
18 current or predecessor form, was required to deposit as a result of  
19 its sales in the previous calendar year in West Virginia. The bond  
20 shall be written in favor of the State of West Virginia and shall  
21 be conditioned on the performance by the nonparticipating  
22 manufacturer of all of its duties and obligations under this  
23 article and article nine-b of this chapter during the year in which  
24 the certification is filed and the next succeeding calendar year.  
25 Duplicate originals of the bond shall be provided to the State Tax

1 Division and the Attorney General.

2 (c) A nonparticipating manufacturer may be considered to pose  
3 an elevated risk for noncompliance with this section if:

4 (1) The nonparticipating manufacturer or any affiliate thereof  
5 has underpaid an escrow obligation with respect to any state that  
6 is a signatory to the Master Settlement Agreement at any time  
7 during the calendar year or within the three preceding calendar  
8 years unless:

9 (A) The manufacturer did not make underpayment knowingly or  
10 recklessly and the manufacturer promptly cured the underpayment  
11 within one hundred eighty days' notice of it; or

12 (B) The underpayment or lack of payment is the subject of a  
13 good-faith dispute as documented to the satisfaction of the  
14 Attorney General and the underpayment is cured within one hundred  
15 eighty days of entry of a final order establishing the amount of  
16 the required escrow payment;

17 (2) Any state that is a signatory to the Master Settlement  
18 Agreement has removed the manufacturer or its brands or brand  
19 families or an affiliate or any of the affiliate's brands or brand  
20 families from the directory for noncompliance with the state law at  
21 any time during the calendar year or within the three preceding  
22 calendar years; or

23 (3) Any state that is a signatory to the Master Settlement  
24 Agreement has litigation pending against, or an unsatisfied  
25 judgment against, the manufacturer or any affiliate thereof for  
26 escrow or for penalties, costs, or attorney fees related to

1 noncompliance with state escrow laws.

2       (d) As used in this section, "newly qualified nonparticipating  
3 manufacturer" means a nonparticipating manufacturer that has not  
4 previously been listed in the directory in the three preceding  
5 calendar years. The manufacturer may be required to post a bond in  
6 accordance with this section for the first three years of their  
7 listing, or for such longer time as the Attorney General may  
8 require, if the manufacturer has been determined to pose an  
9 elevated risk for noncompliance. Any other nonparticipating  
10 manufacturer that has been determined to pose an elevated risk for  
11 noncompliance shall be required to post a bond in accordance with  
12 this section for three years, and shall be required to post a bond  
13 for such further period of time as the Attorney General may  
14 require, in accordance with this section, if the nonparticipating  
15 manufacturer still poses an elevated risk at the end of the three-  
16 year period.

17       (e) The posted bond shall be forfeited to the West Virginia  
18 General Revenue Fund in the event that the manufacturer fails to  
19 comply with its with its obligations under this article or article  
20 nine-b of this chapter. The amount of the forfeiture shall be  
21 equal to the delinquent escrow payments due at the time of  
22 forfeiture plus any penalties assessed against the manufacturer  
23 based on its failure to fulfill its responsibilities under this  
24 article and article nine-b of this chapter.