



1                    **risk for noncompliance.**

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

12            (b) The bond shall be posted by corporate surety located  
13 within the United States in an amount equal to the greater of  
14 \$25,000 or the amount of escrow the manufacturer, in either its  
15 current or predecessor form, was required to deposit as a result of  
16 its sales in the previous calendar year in West Virginia. The bond  
17 shall be written in favor of the State of West Virginia and shall  
18 be conditioned on the performance by the nonparticipating  
19 manufacturer of all of its duties and obligations under this  
20 article and article nine-d of this chapter during the year in which  
21 the certification is filed and the next succeeding calendar year.  
22 Duplicate originals of the bond shall be provided to the State Tax  
23 Division and the Attorney General.

24            (c) A nonparticipating manufacturer may be considered to pose

1 an elevated risk for noncompliance with this section if:

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

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

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

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

21 (3) Any state that is a signatory to the Master Settlement  
22 Agreement has litigation pending against, or an unsatisfied  
23 judgment against, the manufacturer or any affiliate thereof for  
24 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 a longer time the Attorney General may require, if  
8 the manufacturer has been determined to pose an elevated risk for  
9 noncompliance. Any other nonparticipating manufacturer that has  
10 been determined to pose an elevated risk for noncompliance shall be  
11 required to post a bond in accordance with this section for three  
12 years, and shall be required to post a bond for a further period of  
13 time the Attorney General may require, in accordance with this  
14 section, if the nonparticipating manufacturer still poses an  
15 elevated risk at the end of the three-year period.

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

NOTE: The purpose of this bill is to facilitate compliance with the Tobacco Master Settlement Agreement by requiring nonparticipating tobacco product manufacturers that are new or that have an elevated risk of noncompliance with said statute to post a bond conditioned on their compliance.

§16-9D-4a is new, therefore it has been completely underscored.