

COMMITTEE SUBSTITUTE

FOR

H. B. 3003

(BY DELEGATE WHITE)

(Originating in the Committee on Finance)

[March 25, 2013]

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

Be it enacted by the Legislature of West Virginia:

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

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

§16-9D-4a. Listing of nonparticipating manufacturers in the West Virginia Tobacco Directory; bonding requirement for nonparticipating manufacturers newly qualified or posing an elevated risk for noncompliance.

1 (a) Notwithstanding any other provision of law to the
2 contrary, if a newly qualified nonparticipating manufacturer is
3 to be listed in the directory described in subsection (b), section
4 three of this article, or if the Attorney General reasonably
5 determines that a nonparticipating manufacturer who has filed a
6 certification pursuant to section three of this article poses an
7 elevated risk for noncompliance with its obligations under this
8 article or article nine-b of this chapter, neither the nonparticipat-
9 ing manufacturer nor any of its brand families may be included
10 in the directory unless and until the nonparticipating manufac-
11 turer 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
16 of its sales in the previous calendar year in West Virginia. The
17 bond shall be written in favor of the State of West Virginia and

18 shall be conditioned on the performance by the nonparticipating
19 manufacturer of all of its duties and obligations under this article
20 and article nine-b of this chapter during the year in which the
21 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
25 pose an elevated risk for noncompliance with this section if:

26 (1) The nonparticipating manufacturer or any affiliate
27 thereof has underpaid an escrow obligation with respect to any
28 state that is a signatory to the Master Settlement Agreement at
29 any time during the calendar year or within the three preceding
30 calendar years unless:

31 (A) The manufacturer did not make underpayment know-
32 ingly or recklessly and the manufacturer promptly cured the
33 underpayment within one hundred eighty days' notice of it; or

34 (B) The underpayment or lack of payment is the subject of
35 a good-faith dispute as documented to the satisfaction of the
36 Attorney General and the underpayment is cured within one
37 hundred eighty days of entry of a final order establishing the
38 amount of the required escrow payment;

39 (2) Any state that is a signatory to the Master Settlement
40 Agreement has removed the manufacturer or its brands or brand
41 families or an affiliate or any of the affiliate’s brands or brand
42 families from the directory for noncompliance with the state law
43 at any time during the calendar year or within the three preced-
44 ing calendar years; or

45 (3) Any state that is a signatory to the Master Settlement
46 Agreement has litigation pending against, or an unsatisfied
47 judgment against, the manufacturer or any affiliate thereof for
48 escrow or for penalties, costs, or attorney fees related to non-
49 compliance with state escrow laws.

50 (d) As used in this section, “newly qualified nonparticipating
51 manufacturer” means a nonparticipating manufacturer that has
52 not previously been listed in the directory in the three preceding
53 calendar years. The manufacturer may be required to post a bond
54 in accordance with this section for the first three years of their
55 listing, or for such longer time as the Attorney General may
56 require, if the manufacturer has been determined to pose an
57 elevated risk for noncompliance. Any other nonparticipating
58 manufacturer that has been determined to pose an elevated risk

59 for noncompliance shall be required to post a bond in accordance
60 with this section for three years, and shall be required to post a
61 bond for such further period of time as the Attorney General may
62 require, in accordance with this section, if the nonparticipating
63 manufacturer still poses an elevated risk at the end of the three-
64 year period.

65 (e) The posted bond shall be forfeited to the West Virginia
66 General Revenue Fund in the event that the manufacturer fails to
67 comply with its obligations under this article or article nine-b of
68 this chapter. The amount of the forfeiture shall be equal to the
69 delinquent escrow payments due at the time of forfeiture plus
70 any penalties assessed against the manufacturer based on its
71 failure to fulfill its responsibilities under this article and article
72 nine-b of this chapter.

