

1 SB334  
2 158828-3  
3 By Senators Figures, Orr, Singleton, Coleman, Dunn, Ross,  
4 Waggoner, Marsh, Reed, Blackwell, Holley, Scofield, Williams,  
5 Dial, Taylor, Allen, Brewbaker, Beasley, Smitherman, Irons,  
6 Whatley, Holtzclaw, and Keahey  
7 RFD: Finance and Taxation General Fund  
8 First Read: 11-FEB-14

2  
3  
4 ENGROSSED

5  
6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Sections 6-12-2, 6-12-3, 6-12A-2, 6-12A-3,  
12 and 6-12A-5 of the Code of Alabama 1975, to define an importer  
13 of tobacco products, to further define "units sold" to include  
14 cigarettes sold to certain consumers without payment of the  
15 cigarette excise tax and exclusion of certain cigarettes made  
16 in certain tax-exempt transactions, to make the importer  
17 jointly and severally liable with the tobacco products  
18 manufacturer of cigarettes for escrow deposit obligations, to  
19 provide for seizure and forfeiture of cigarettes for failure  
20 to deposit funds into escrow, to require both the  
21 non-participating manufacturer and importer or importers of  
22 cigarettes to appoint agents for service of process, to  
23 require the non-participating manufacturer to hold a valid  
24 permit under 26 U.S.C. Section 5713, to provide for  
25 non-participating manufacturer bond requirements, and to  
26 further provide for disclosure of information.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1                   Section 1. Sections 6-12-2, 6-12-3, 6-12A-2,  
2                   6-12A-3, and 6-12A-5, Code of Alabama 1975 are hereby amended  
3                   as follows:

4                   §6-12-2  
5                   Definitions.

6                   As used in this chapter, the following terms shall  
7                   have the following meanings:

8                   (1) ADJUSTED FOR INFLATION. Increased in accordance  
9                   with the formula for inflation adjustment set forth in Exhibit  
10                  C to the Master Settlement Agreement.

11                  (2) AFFILIATE. A person who directly or indirectly  
12                  owns or controls, is owned or controlled by, or is under  
13                  common ownership or control with, another person. Solely for  
14                  purposes of this definition, the terms "owns," "is owned" and  
15                  "ownership" mean ownership of an equity interest, or the  
16                  equivalent thereof, of ten percent or more, and the term  
17                  "person" means an individual, partnership, committee,  
18                  association, corporation, or any other organization or group  
19                  of persons.

20                  (3) ALLOCABLE SHARE. Allocable share as that term is  
21                  defined in the Master Settlement Agreement.

22                  (4) CIGARETTE. Any product that contains nicotine,  
23                  is intended to be burned or heated under ordinary conditions  
24                  of use, and consists of or contains (i) any roll of tobacco  
25                  wrapped in paper or in any substance not containing tobacco;  
26                  or (ii) tobacco, in any form, that is functional in the  
27                  product, which, because of its appearance, the type of tobacco

1 used in the filler, or its packaging and labeling, is likely  
2 to be offered to, or purchased by, consumers as a cigarette;  
3 or (iii) any roll of tobacco wrapped in any substance  
4 containing tobacco which, because of its appearance, the type  
5 of tobacco used in the filler, or its packaging and labeling,  
6 is likely to be offered to, or purchased by, consumers as a  
7 cigarette described in item (i). The term "cigarette" includes  
8 "roll-your-own", i.e. any tobacco which, because of its  
9 appearance, type, packaging, or labeling is suitable for use  
10 and likely to be offered to, or purchased by, consumers as  
11 tobacco for making cigarettes. For purposes of this definition  
12 of cigarette, 0.09 ounces of roll-your-own tobacco shall  
13 constitute one individual cigarette.

14 (5) IMPORTER. Any person in the United States to  
15 whom non-tax paid tobacco products or cigarette papers or  
16 tubes, or any processed tobacco, manufactured in a foreign  
17 country, Puerto Rico, the Virgin Islands, or a possession of  
18 the United States are shipped or consigned; any person who  
19 removes cigars or cigarettes for sale or consumption in the  
20 United States from a customs bonded manufacturing warehouse;  
21 and any person who smuggles or otherwise unlawfully brings  
22 tobacco products or cigarette papers or tubes, or any  
23 processed tobacco, into the United States. Federal judicial  
24 and administrative determinations and precedents of 26 U.S.C.  
25 § 5702(k), as it exists from time to time, may be considered  
26 in interpreting this term.

1           ~~(5)~~(6) MASTER SETTLEMENT AGREEMENT. The settlement  
2 agreement, and related documents, entered into on November 23,  
3 1998, by the state and leading United States tobacco product  
4 manufacturers.

5           ~~(6)~~(7) QUALIFIED ESCROW FUND. An escrow arrangement  
6 with a federally or state chartered financial institution  
7 having no affiliation with any tobacco product manufacturer  
8 and having assets of at least one billion dollars  
9 (\$1,000,000,000), where such arrangement requires that such  
10 financial institution hold the escrowed funds' principal for  
11 the benefit of releasing parties and prohibits the tobacco  
12 product manufacturer placing the funds into escrow from using,  
13 accessing, or directing the use of the funds' principal except  
14 as consistent with subdivision (2) of Section 6-12-3.

15           ~~(7)~~(8) RELEASED CLAIMS. Released claims as that term  
16 is defined in the Master Settlement Agreement.

17           ~~(8)~~(9) RELEASING PARTIES. Releasing parties as that  
18 term is defined in the Master Settlement Agreement.

19           ~~(9)~~(10) TOBACCO PRODUCT MANUFACTURER. An entity  
20 that, after June 9, 1999, directly, and not exclusively  
21 through any affiliate:

22           a. Manufactures cigarettes anywhere that such  
23 manufacturer intends to be sold in the United States,  
24 including cigarettes intended to be sold in the United States  
25 through an importer (except where such importer is an original  
26 participating manufacturer, as that term is defined in the  
27 Master Settlement Agreement, that will be responsible for the

1 payments under the Master Settlement Agreement with respect to  
2 such cigarettes as a result of the provisions of subsections  
3 II(mm) of the Master Settlement Agreement and that pays the  
4 taxes specified in subsection II(z) of the Master Settlement  
5 Agreement, and provided that the manufacturer of such  
6 cigarettes does not market or advertise such cigarettes in the  
7 United States);

8 b. Is the first purchaser anywhere for resale in the  
9 United States of cigarettes manufactured anywhere that the  
10 manufacturer does not intend to be sold in the United States;  
11 or

12 c. Becomes a successor of an entity described in  
13 paragraph a. or b.

14 The term "Tobacco Product Manufacturer" shall not  
15 include an affiliate of a tobacco product manufacturer unless  
16 such affiliate itself falls within any of a., b., or c. above.

17 ~~(10)~~ (11) UNITS SOLD. The number of individual  
18 cigarettes sold in the state by the applicable tobacco product  
19 manufacturer, whether directly or through a distributor,  
20 retailer, or similar intermediary or intermediaries, during  
21 the year in question, as measured by excise taxes collected by  
22 the state on packs, or roll-your-own tobacco containers,  
23 bearing the excise tax stamp of the state. In addition to and  
24 without limiting the foregoing, the term "units sold" shall  
25 also include the number of individual cigarettes sold in the  
26 state by the tobacco product manufacturer, whether directly or  
27 through a distributor, retailer, or similar intermediary or

1 intermediaries, during the year in question, as to which the  
2 state had power to under federal law, but did not, impose  
3 and/or collect excise tax. Without limiting the foregoing,  
4 this term specifically includes the following cigarettes,  
5 provided such cigarettes were not sold in a transaction that  
6 is exempted from Alabama taxation by federal statute or  
7 constitution: (i) cigarettes sold to a consumer without  
8 payment of the cigarette excise tax on the reservation lands  
9 of a federally-recognized Native American tribe, (ii)  
10 cigarettes sold for retail sale in Alabama which were exempted  
11 from taxation pursuant to Chapter 9, Article 1 of Title 40  
12 and/or any rule or regulation promulgated pursuant thereto,  
13 and (iii) cigarettes sold by a seller located outside of  
14 Alabama directly to a consumer in this state, without payment  
15 of the cigarette excise tax, via mail order, telephone,  
16 internet, or other remote means. The Department of Revenue  
17 shall promulgate such regulations as are necessary to  
18 ascertain the amount of state excise tax paid on the  
19 cigarettes of such tobacco product manufacturer for each year.

20 §6-12-3

21 Election between settlement and escrow fund.

22 (a) Any tobacco product manufacturer selling  
23 cigarettes to consumers within the state, whether directly or  
24 through a distributor, retailer, or similar intermediary or  
25 intermediaries, after June 9, 1999, shall do one of the  
26 following:

1                   (1) Become a participating manufacturer, as that  
2 term is defined in Section II(jj) of the Master Settlement  
3 Agreement, and generally perform its financial obligations  
4 under the Master Settlement Agreement; or

5                   (2) a. Place into a qualified escrow fund, by April  
6 15 of the year following the year in question, the following  
7 amounts, as such amounts are adjusted for inflation:

8                   1999: \$.0094241 per unit sold after June 9, 1999;

9                   2000: \$.0104712 per unit sold;

10                  For each of 2001 and 2002: \$.0136125 per unit sold;

11                  For each of 2003 through 2006: \$.0167539 per unit  
12 sold;

13                  For each of 2007 and each year thereafter: \$.0188482  
14 per unit sold.

15                  b. A tobacco product manufacturer that places funds  
16 into escrow pursuant to paragraph a. shall receive the  
17 interest or other appreciation on such funds as earned. Such  
18 funds themselves shall be released from escrow only under one  
19 of the following circumstances:

20                  1. To pay a judgment or settlement on any released  
21 claim brought against such tobacco product manufacturer by the  
22 state or any releasing party located or residing in the state.

23 Funds shall be released from escrow under this subparagraph

24 (i) in the order in which they were placed into escrow and

25 (ii) only to the extent and at the time necessary to make

26 payments required under such judgment or settlement;



1           2. To the extent that a tobacco product manufacturer  
2 establishes that the amount it was required to place into  
3 escrow on account of units sold in the state in a particular  
4 year was greater than the Master Settlement Agreement  
5 payments, as determined pursuant to Section IX(i) of that  
6 agreement, including, after final determination of all  
7 adjustments, that such manufacturer would have been required  
8 to make on account of such units sold had it been a  
9 participating manufacturer, the excess shall be released from  
10 escrow and revert back to such tobacco product manufacturer;  
11 or

12           3. To the extent not released from escrow under  
13 subparagraphs 1. or 2., funds shall be released from escrow  
14 and revert back to such tobacco product manufacturer 25 years  
15 after the date on which they were placed into escrow.

16           c. Each tobacco product manufacturer that elects to  
17 place funds into escrow pursuant to this section shall  
18 annually certify to the Commissioner of the Department of  
19 Revenue that it is in compliance with this section. The  
20 Attorney General may bring a civil action on behalf of the  
21 state against any tobacco product manufacturer that fails to  
22 place into escrow the funds required under this section. Any  
23 tobacco product manufacturer that fails in any year to place  
24 into escrow the funds required under this section shall:

25           1. Be required within 15 days to place such funds  
26 into escrow as shall bring it into compliance with this  
27 section. The court, upon a finding of a violation of this

1 section, may impose a civil penalty to be paid to the General  
2 Fund of the state in an amount not to exceed 5 percent of the  
3 amount improperly withheld from escrow per day of the  
4 violation and in a total amount not to exceed 100 percent of  
5 the original amount improperly withheld from escrow;

6 2. In the case of a knowing violation, be required  
7 within 15 days to place such funds into escrow as shall bring  
8 it into compliance with this section. The court, upon a  
9 finding of a knowing violation of this section, may impose a  
10 civil penalty to be paid to the General Fund of the state in  
11 an amount not to exceed 15 percent of the amount improperly  
12 withheld from escrow per day of the violation and in a total  
13 amount not to exceed 300 percent of the original amount  
14 improperly withheld from escrow; and

15 3. In the case of a second knowing violation, be  
16 prohibited from selling cigarettes to consumers within the  
17 state, whether directly or through a distributor, retailer, or  
18 similar intermediary, for a period not to exceed 2 years.

19 Each failure to make an annual deposit required  
20 under this section shall constitute a separate violation.

21 (b) In the case of units sold which are cigarettes  
22 manufactured outside the United States and imported into the  
23 United States by an importer:

24 (1) Importers of the cigarettes shall be jointly and  
25 severally liable with the tobacco product manufacturer of the  
26 cigarettes for the escrow deposits required under subsection  
27 (a) (2) of this section;

1           (2) Importers of the cigarettes may be sued under  
2           subsection (a)(2)c. of this section to the same extent as the  
3           tobacco product manufacturer, and shall be subject to all of  
4           the same civil penalties, remedies, or other relief that may  
5           be awarded against the tobacco product manufacturer of the  
6           cigarettes as provided in that subsection; and

7           (3) If the importer of the cigarettes fails or  
8           refuses within 15 days of the Alabama Revenue Commissioner's  
9           or the Attorney General's written demand to deposit the funds  
10           into escrow for which it is jointly and severally liable under  
11           subsection (b)(1) of this section, all cigarettes imported  
12           into the United States by the importer shall constitute  
13           contraband in the State of Alabama as provided in Section 6(b)  
14           of Chapter 12A, Title 6, and shall be subject to seizure and  
15           forfeiture as provided under that Section.

16           §6-12A-2

17           Definitions.

18           For the purposes of this chapter, unless otherwise  
19           indicated, the following terms shall have the meanings  
20           respectively ascribed to them by this section:

21           (1) BRAND FAMILY. All styles of cigarettes sold  
22           under the same trade mark and differentiated from one another  
23           by means of additional modifiers or descriptors, including,  
24           but not limited to, menthol, lights, kings, and 100s and  
25           includes any brand name (alone or in conjunction with any  
26           other word) trademark, logo, symbol, motto, selling message,  
27           recognizable pattern of colors, or any other indicia of

1 product identification identical or similar to, or  
2 identifiable with, a previously known brand of cigarettes.

3 (2) CIGARETTE. As defined under subdivision (4) of  
4 Section 6-12-2.

5 (3) COMMISSIONER. The Commissioner for the  
6 Department of Revenue for the State of Alabama.

7 (4) DISTRIBUTOR. A person, wherever resident or  
8 located, who purchases non-tax-paid cigarettes and stores,  
9 sells, or otherwise disposes of the cigarettes.

10 (5) IMPORTER. As defined under subdivision (5) of  
11 Section 6-12-2.

12 ~~(5)~~(6) MASTER SETTLEMENT AGREEMENT. The tobacco  
13 Master Settlement Agreement as defined under subdivision (5)  
14 of Section 6-12-2.

15 ~~(6)~~(7) NON-PARTICIPATING MANUFACTURER. Any tobacco  
16 product manufacturer that is not a participating manufacturer.

17 ~~(7)~~(8) PARTICIPATING MANUFACTURER. As defined in  
18 Section II(jj) of the Master Settlement Agreement, and all  
19 amendments thereto.

20 ~~(8)~~(9) QUALIFIED ESCROW FUND. As defined in  
21 subdivision (6) of Section 6-12-2.

22 ~~(9)~~(10) TOBACCO PRODUCT MANUFACTURER. As defined in  
23 subdivision (9) of Section 6-12-2.

24 ~~(10)~~(11) UNITS SOLD. As defined in subdivision (10)  
25 of Section 6-12-2.

26 ~~(11)~~(12) WHOLESALER. A person, firm, corporation,  
27 club, or association that is authorized to affix tax stamps to

1 packages or other containers of cigarettes under Chapter 25 of  
2 Title 40.

3 §6-12A-3

4 Tobacco product manufacturer certification;  
5 directory; stamping, sale, or import of cigarettes not in  
6 directory.

7 (a) Certification. Every tobacco product  
8 manufacturer whose cigarettes are sold in this state whether  
9 directly or through a distributor, retailer, or similar  
10 intermediary or intermediaries shall execute and deliver on a  
11 form prescribed by the commissioner, a certification to the  
12 commissioner no later than the thirtieth day of April each  
13 year, certifying that, as of the date of the certification,  
14 the tobacco product manufacturer either: Is a participating  
15 manufacturer or is in full compliance with Section 6-12-3,  
16 including all quarterly installment payments required by  
17 subsection (e) of Section 6-12A-5.

18 (1) Each participating manufacturer shall include in  
19 its certification a list of its brand families. The  
20 participating manufacturer shall update its list 30 days prior  
21 to any addition or modification to its brand families by  
22 executing and delivering a supplemental certification to the  
23 commissioner.

24 (2) Each non-participating manufacturer shall  
25 include in its certification:

26 a. A complete list of all of its brand families.

1           b. A separate listing containing the names of the  
2 brand families of cigarettes and the number of units sold for  
3 each brand family in the state during the preceding calendar  
4 year.

5           c. A separate listing containing the names of its  
6 brand families that have been sold in the state at any time  
7 during the current calendar year.

8           d. An indication by an asterisk of the names of any  
9 brand family sold in the state during the preceding calendar  
10 year that are no longer being sold in the state as of the date  
11 of the certification.

12           e. An identification by name and address of any  
13 other manufacturer of any of the listed brand families in the  
14 preceding or current calendar year.

15           f. In the case of cigarettes, brands, or brand  
16 families imported into the United States by one or more  
17 importers, an identification by name and address of any and  
18 all importers of the cigarettes.

19           Each non-participating manufacturer shall update  
20 its list at least 30 days prior to any addition or  
21 modification to its list of brand families by executing and  
22 delivering a supplemental certification to the commissioner.

23           (3) Additionally, each non-participating  
24 manufacturer shall further certify in its certification:

25           a. That both the non-participating manufacturer,  
26 and, if applicable, the importer of the cigarettes, are it is  
27 registered to do business in the state or has appointed an

1 agent for service of process and provided notice thereof as  
2 required by Section 6-12A-4.

3 b. That it has:

4 1. Established and continues to maintain a qualified  
5 escrow fund.

6 2. Executed a qualified escrow agreement that has  
7 been reviewed and approved by the commissioner and that  
8 governs the qualified escrow fund.

9 c. That it is in full compliance with Section 6-12-3  
10 and this chapter, and any regulations promulgated pursuant  
11 thereto.

12 d.1. The name, address, and telephone number of the  
13 financial institution where it has established the qualified  
14 escrow fund required pursuant to Section 6-12-3 and all  
15 regulations promulgated thereto.

16 2. The account number of the qualified escrow fund  
17 and any sub-account number for the State of Alabama.

18 3. The amount the non-participating manufacturer  
19 placed in the qualified escrow fund for cigarettes sold in the  
20 state during the preceding calendar year, the date and amount  
21 of each deposit, and any evidence or verification as may be  
22 deemed necessary by the commissioner to confirm the foregoing.

23 4. The amount and date of any withdrawal or transfer  
24 of funds the non-participating manufacturer made at any time  
25 from the qualified escrow fund or from any other qualified  
26 escrow fund into which escrow payments were ever made pursuant  
27 to Section 6-12-3 and all regulations promulgated thereto.

1           5. That it and, if applicable, the importer of the  
2           cigarettes, holds a current and valid permit under 26 U.S.C. §  
3           5713.

4           (4) A participating manufacturer may not include a  
5           brand family in its certification unless it affirms that the  
6           brand family is to be deemed to be its cigarettes for purposes  
7           of calculating its payments under the Master Settlement  
8           Agreement for the relevant year, in the volume and shares  
9           determined pursuant to the Master Settlement Agreement.

10          (5) A non-participating manufacturer may not include  
11          a brand family in its certification unless it affirms that the  
12          brand family is to be deemed to be its cigarettes for purposes  
13          of Section 6-12-3.

14          (6) Nothing in this section shall be construed as  
15          limiting or otherwise affecting the state's right to maintain  
16          that a brand family constitutes cigarettes of a different  
17          tobacco product manufacturer for purposes of calculating  
18          payments under the Master Settlement Agreement or for purposes  
19          of Section 6-12-3.

20          (7) The tobacco product manufacturers shall maintain  
21          all invoices and documentation of sales and any other  
22          information relied upon for certification for a period of five  
23          years, unless otherwise required by law to maintain them for a  
24          greater period of time.

25          (b) Directory of cigarettes approved for stamping  
26          and sale. Not later than 90 days after August 1, 2003, the  
27          commissioner shall compile and make available for public



1 inspection a directory listing all tobacco product  
2 manufacturers that have provided current and accurate  
3 certifications conforming to the requirements of subsection  
4 (a), and all brand families that are listed in the  
5 certifications, except as noted below.

6 (1) The commissioner shall not include or retain in  
7 the directory the name or brand families of any  
8 non-participating manufacturer that fails or has failed to  
9 provide the required certification or whose certification the  
10 commissioner determines is not in compliance with subdivisions  
11 (2) and (3) of subsection (a), unless the commissioner has  
12 determined that each violation has been cured.

13 (2) Neither a tobacco product manufacturer nor a  
14 brand family shall be included or retained in the directory if  
15 the commissioner concludes either of the following:

16 a. Any escrow payment required pursuant to Section  
17 6-12-3, for any period for any brand family, whether or not  
18 listed by the non-participating manufacturer, has not been  
19 fully paid into a qualified escrow fund governed by a  
20 qualified escrow agreement that has been approved by the  
21 commissioner.

22 b. Any outstanding final judgment, including  
23 interest thereon, for a violation of Section 6-12-3, has not  
24 been fully satisfied for the brand family or the manufacturer.

25 c. That the non-participating manufacturer has not  
26 provided a bond in strict compliance with subsection (f) of  
27 Section 6-12A-5 and the regulations relating thereto.

1           d. That the non-participating manufacturer has  
2 failed or refused to provide the documents or information  
3 requested by the commissioner in order to promote compliance  
4 with the requirements of this chapter.

5           (3) The commissioner shall update the directory as  
6 necessary in order to correct mistakes and to add or remove a  
7 tobacco product manufacturer or brand family to keep the  
8 directory in conformity with the requirements of this chapter.  
9 The commissioner, in addition to any notice requirements in  
10 Section 40-2A-8, shall transmit by electronic mail or other  
11 practicable means to each wholesaler, stamping agent, or  
12 distributor notice of any addition to or removal from the  
13 directory of any tobacco product manufacturer or brand family.  
14 The wholesaler, stamping agent, or distributor shall have 30  
15 days from receipt of notice from the department regarding the  
16 change in the directory to sell the brand family that is  
17 delisted. No delisted brand family may be sold after the 30  
18 day period.

19           (4) Every wholesaler and distributor shall provide  
20 and update as necessary an electronic mail address to the  
21 commissioner for the purpose of receiving any notifications as  
22 may be required by this chapter.

23           (c) Prohibition against stamping, sale, or import of  
24 cigarettes not in the directory. It shall be unlawful for any  
25 person to do either of the following:

1 (1) Affix a stamp to a package or other container of  
2 cigarettes of a tobacco product manufacturer or brand family  
3 not included in the directory.

4 (2) Sell, offer, or possess for sale in this state,  
5 or import for personal consumption in this state, cigarettes  
6 of a tobacco product manufacturer or brand family not included  
7 in the directory.

8 §6-12A-5

9 Reporting to commissioner; disclosure; escrow fund.

10 (a) Reporting by wholesalers and distributors. Not  
11 later than 20 days after the end of each month, and more  
12 frequently if so directed by the commissioner, each wholesaler  
13 and distributor shall submit all the information the  
14 commissioner requires to facilitate compliance with this  
15 chapter, including, but not limited to, a list by brand family  
16 of the total number of cigarettes or in the case of roll your  
17 own, the equivalent stick count for which the wholesalers and  
18 distributors affixed stamps during the previous month or  
19 otherwise paid the tax due for any cigarettes. The wholesaler  
20 or distributor shall maintain, and make available to the  
21 commissioner, all invoices and documentation of sales of all  
22 non-participating manufacturer cigarettes and any other  
23 information relied upon in reporting to the commissioner for a  
24 period of five years.

25 (b) Disclosure of information. Notwithstanding any  
26 other law or regulation including Section 10 of Chapter 2A,  
27 Title 40, the commissioner is hereby authorized to disclose,

1 in the commissioner's discretion, any information received  
2 under this chapter, Chapter 12 of this Title, or Chapter 25 of  
3 Title 40, for purposes of the proper administration of any  
4 matter administered by the Department of Revenue, including  
5 but not limited to determining compliance with and enforcing  
6 this chapter, Chapter 12 of this Title and Chapter 25 of Title  
7 40, and in determining the proper amount of any payment,  
8 offset, adjustment, or refund pursuant to the Master  
9 Settlement Agreement or any agreement related thereto. ~~The~~  
10 ~~commissioner is authorized to disclose any information~~  
11 ~~received under this chapter for purposes of determining~~  
12 ~~compliance with and enforcing this chapter. The commissioner~~  
13 ~~may share the information received under this chapter with~~  
14 ~~other federal, state, or local agencies only for purposes of~~  
15 ~~enforcement of this chapter, Chapter 12, or corresponding laws~~  
16 ~~of other states.~~

17 (c) Verification of qualified escrow fund. The  
18 commissioner may require at any time from the  
19 non-participating manufacturer proof, from the financial  
20 institution in which the manufacturer has established a  
21 qualified escrow fund for the purpose of compliance with  
22 Section 6-12-3, of the amount of money in the fund, exclusive  
23 of interest, the amount and date of each deposit, and the  
24 amount and date of each withdrawal from the fund.

25 (d) Requests for additional information. In addition  
26 to the information required to be submitted herein, the  
27 commissioner may require a wholesaler or distributor or

1 tobacco product manufacturer to submit any additional  
2 information including, but not limited to, samples of the  
3 packaging or labeling of each brand family, as is necessary to  
4 determine whether a tobacco product manufacturer is in  
5 compliance with this chapter.

6 (e) Quarterly escrow installments. To promote  
7 compliance with this chapter, the commissioner may promulgate  
8 regulations requiring a tobacco product manufacturer subject  
9 to the requirements of subdivision (2) of subsection (a) of  
10 Section 6-12A-3, to make the escrow deposits required in  
11 quarterly installments during the year in which the sales  
12 covered by the deposits are made. The commissioner may require  
13 production of information sufficient to determine the adequacy  
14 of the amount of the installment deposit.

15 (f) (1) A non-participating manufacturer shall post a  
16 bond for the benefit of the commissioner, in accordance with  
17 the provisions of this section, which is conditioned that the  
18 non-participating manufacturer shall fully comply with the  
19 escrow obligations of this chapter.

20 (2) The bond shall be posted at least 10 days in  
21 advance of each calendar quarter as a condition to the  
22 non-participating manufacturer and its brand families being  
23 included in the state directory for that quarter. The amount  
24 of the bond shall be the greater of (i) the greatest required  
25 escrow amount due from the non-participating manufacturer or  
26 its predecessor for any of the 12 preceding calendar quarters  
27 or (ii) \$25,000.

1           (3) If a non-participating manufacturer that posted  
2 a bond has failed to make or have made on its behalf deposits  
3 equal to the full amount owed for a quarter within 15 days  
4 following the due date for the quarter under subsection (e) of  
5 Section 6-12A-5, the commissioner may execute upon the bond in  
6 the amount equal to any remaining amount of the escrow due  
7 including any applicable penalties or other charges allowable  
8 by law. Amounts the commissioner or the State collects on a  
9 bond shall be deposited into the general fund for the benefit  
10 of the State and shall reduce the amount of escrow due from  
11 that non-participating manufacturer in the dollar amount  
12 collected. Escrow obligations above the amount collected on  
13 the bond remain due from that non-participating manufacturer  
14 and any importer liable as provided in subsection (b) of  
15 Section 6-12-3.

16           (4) The bond required under this subsection must be  
17 a good and sufficient bond executed by a surety company  
18 licensed and authorized to do business in Alabama and shall be  
19 conditioned to pay the escrow requirements as well as any  
20 penalties or other charges under this chapter.

21           (5) The commissioner may promulgate rules and  
22 regulations necessary to implement this subsection including  
23 acceptable forms and types of bonds.

24           Section 2. The provisions of this act are severable.  
25 If any part of this act is declared invalid or  
26 unconstitutional, such declaration shall not affect the part  
27 which remains.

1                   Section 3. All laws or parts of laws which conflict  
2 with this act are hereby repealed.

3                   Section 4. This act shall become effective  
4 immediately upon its passage and approval by the Governor, or  
5 upon its otherwise becoming law. However, provisions relating  
6 to the bond requirement of section 6-12-5(f) will not be  
7 effective until 10 days before the beginning of the first  
8 quarter of 2015.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
  
11  
12  
13  
14  
15  
16  
17  
18

Senate

Read for the first time and referred to the Senate  
committee on Finance and Taxation General Fund ... 11-FEB-14

Read for the second time and placed on the calen-  
dar with 1 substitute and..... 20-FEB-14

Read for the third time and passed as amended .... 05-MAR-14

Yeas 23  
Nays 1  
Abstaining 1

Patrick Harris  
Secretary