

1 SB334  
2 157965-1  
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

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8 SYNOPSIS: Under current law, tobacco manufacturers  
9 which are not signatory to the tobacco master  
10 settlement agreement are required to deposit funds  
11 into escrow to secure payment of potential  
12 liability for tobacco related illnesses.

13 This bill would amend Sections 6-12-2,  
14 6-12-3, 6-12A-2, 6-12A-3, and 6-12A-5, Code of  
15 Alabama 1975, relating to the tobacco escrow fund  
16 provisions and tobacco master settlement  
17 complementary legislation, so as to define an  
18 importer of tobacco products, to further define  
19 "units sold" to include cigarettes sold to certain  
20 consumers without payment of the cigarette excise  
21 tax and exclusion of certain cigarettes made in  
22 certain tax exempt transactions, to make the  
23 importer jointly and severally liable with the  
24 tobacco products manufacturer of cigarettes for  
25 escrow deposit obligations, to provide for seizure  
26 and forfeiture of cigarettes for failure to deposit  
27 funds into escrow, to require both the

1 nonparticipating manufacturer and importer or  
2 importers of cigarettes to appoint agents for  
3 service of process, to require the nonparticipating  
4 manufacturer to hold a valid permit under 26 U.S.C.  
5 § 5713, to provide for nonparticipating  
6 manufacturer bond requirements, and to further  
7 provide for disclosure of information.

8  
9 A BILL

10 TO BE ENTITLED

11 AN ACT

12  
13 To amend Sections 6-12-2, 6-12-3, 6-12A-2, 6-12A-3,  
14 and 6-12A-5, Code of Alabama 1975, relating to the Tobacco  
15 Master Settlement and Tobacco Escrow Fund; to define an  
16 importer of tobacco products, to further define "unit sold" to  
17 include cigarettes sold to certain consumers without payment  
18 of the cigarette excise tax and exclusion of certain  
19 cigarettes made in certain tax exempt transactions, to make  
20 the importer jointly and severally liable with the tobacco  
21 products manufacturer of cigarettes for escrow deposit  
22 obligation; to provide for seizure and forfeiture of  
23 cigarettes for failure to deposit funds into escrow; to  
24 require both the nonparticipating manufacturer and importer or  
25 importers of cigarettes to appoint agents for service of  
26 process; to require the nonparticipating manufacturer to hold  
27 a valid permit under 26 U.S.C. § 5713; to provide for

1 nonparticipating manufacturer bond requirements; and to  
2 further provide for disclosure of information.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§6-12-2.

8 "As used in this chapter, the following terms shall  
9 have the following meanings:

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

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

22 "(3) ALLOCABLE SHARE. Allocable share as that term  
23 is defined in the Master Settlement Agreement.

24 "(4) CIGARETTE. Any product that contains nicotine,  
25 is intended to be burned or heated under ordinary conditions  
26 of use, and consists of or contains (i) any roll of tobacco  
27 wrapped in paper or in any substance not containing tobacco;

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

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

1 § 5702(k), as it exists from time to time, may be considered  
2 in interpreting this term.

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

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

17 "~~(7)~~(8) RELEASED CLAIMS. Released claims as that  
18 term is defined in the Master Settlement Agreement.

19 "~~(8)~~(9) RELEASING PARTIES. Releasing parties as that  
20 term is defined in the Master Settlement Agreement.

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

24 "a. Manufactures cigarettes anywhere that such  
25 manufacturer intends to be sold in the United States,  
26 including cigarettes intended to be sold in the United States  
27 through an importer (except where such importer is an original

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

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

14 "c. Becomes a successor of an entity described in  
15 paragraph a. or b.

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

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

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

21 "§6-12-3.

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:  
14 \$.0188482 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  
2 manufacturer establishes that the amount it was required to  
3 place into escrow on account of units sold in the state in a  
4 particular year was greater than the Master Settlement  
5 Agreement payments, as determined pursuant to Section IX(i) of  
6 that 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  
25 and severally liable with the tobacco product manufacturer of  
26 the cigarettes for the escrow deposits required under  
27 subsection (a) (2).

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

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

16           "§6-12A-2.

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

20           "(1) BRAND FAMILY. All styles of cigarettes sold  
21 under the same trade mark and differentiated from one another  
22 by means of additional modifiers or descriptors, including,  
23 but not limited to, menthol, lights, kings, and 100s and  
24 includes any brand name (alone or in conjunction with any  
25 other word) trademark, logo, symbol, motto, selling message,  
26 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 in 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 "(a) Certification. Every tobacco product  
5 manufacturer whose cigarettes are sold in this state whether  
6 directly or through a distributor, retailer, or similar  
7 intermediary or intermediaries shall execute and deliver on a  
8 form prescribed by the commissioner, a certification to the  
9 commissioner no later than the thirtieth day of April each  
10 year, certifying that, as of the date of the certification,  
11 the tobacco product manufacturer either: Is a participating  
12 manufacturer or is in full compliance with Section 6-12-3,  
13 including all quarterly installment payments required by  
14 subsection (e) of Section 6-12A-5.

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

21 "(2) Each non-participating manufacturer shall  
22 include in its certification:

23 "a. A complete list of all of its brand families.

24 "b. A separate listing containing the names of the  
25 brand families of cigarettes and the number of units sold for  
26 each brand family in the state during the preceding calendar  
27 year.

1 "c. A separate listing containing the names of its  
2 brand families that have been sold in the state at any time  
3 during the current calendar year.

4 "d. An indication by an asterisk of the names of any  
5 brand family sold in the state during the preceding calendar  
6 year that are no longer being sold in the state as of the date  
7 of the certification.

8 "e. An identification by name and address of any  
9 other manufacturer of any of the listed brand families in the  
10 preceding or current calendar year.

11 "f. In the case of cigarettes, brands, or brand  
12 families imported into the United States by one or more  
13 importers, an identification by name and address of any and  
14 all importers of the cigarettes.

15 "Each non-participating manufacturer shall update  
16 its list at least 30 days prior to any addition or  
17 modification to its list of brand families by executing and  
18 delivering a supplemental certification to the commissioner.

19 "(3) Additionally, each non-participating  
20 manufacturer shall further certify in its certification:

21 "a. That ~~it is~~ both the nonparticipating  
22 manufacturer, and, if applicable, the importer of the  
23 cigarettes, are registered to do business in the state or has  
24 appointed an agent for service of process and provided notice  
25 thereof as required by Section 6-12A-4.

26 "b. That it has:

1           "1. Established and continues to maintain a  
2 qualified escrow fund.

3           "2. Executed a qualified escrow agreement that has  
4 been reviewed and approved by the commissioner and that  
5 governs the qualified escrow fund.

6           "c. That it is in full compliance with Section  
7 6-12-3 and this chapter, and any regulations promulgated  
8 pursuant thereto.

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

13           "2. The account number of the qualified escrow fund  
14 and any sub-account number for the State of Alabama.

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

20           "4. The amount and date of any withdrawal or  
21 transfer of funds the non-participating manufacturer made at  
22 any time from the qualified escrow fund or from any other  
23 qualified escrow fund into which escrow payments were ever  
24 made pursuant to Section 6-12-3 and all regulations  
25 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  
11 include a brand family in its certification unless it affirms  
12 that the brand family is to be deemed to be its cigarettes for  
13 purposes 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  
21 maintain 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 tobacco product manufacturer is  
26 required under subsection (f) of Section 6-12A-5 to provide a  
27 bond and has not done so.

1           "d. That the tobacco product manufacturer has failed  
2           or refused to provide the documents or information requested  
3           by the commissioner in order to promote compliance with the  
4           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  
24          of cigarettes not in the directory. It shall be unlawful for  
25          any person to do either of the following:

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

24           "(b) Disclosure of information. ~~The commissioner is~~  
25 ~~authorized to disclose any information received under this~~  
26 ~~chapter for purposes of determining compliance with and~~  
27 ~~enforcing this chapter. The commissioner may share the~~

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

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

23           "(d) Requests for additional information. In  
24 addition to the information required to be submitted herein,  
25 the commissioner may require a wholesaler or distributor or  
26 tobacco product manufacturer to submit any additional  
27 information including, but not limited to, samples of the

1 packaging or labeling of each brand family, as is necessary to  
2 determine whether a tobacco product manufacturer is in  
3 compliance with this chapter.

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

13 "(f) (1) A nonparticipating manufacturer shall post a  
14 bond for the benefit of the state if: a. its cigarettes were  
15 not sold in the state during any one of the four preceding  
16 calendar quarters; b. it or any person affiliated with it  
17 failed to make a full and timely escrow deposit due under  
18 Section 6-12-3 or subsection (e) of Section 6-12A-5 during any  
19 of the five preceding calendar years, unless the failure was  
20 not knowing or reckless and was promptly cured upon notice; or  
21 c. it or any person affiliated with it, or any of its brands  
22 or brands of a person affiliated with it, were removed from  
23 the state directory of any state during any of the five  
24 preceding calendar years, unless the removal was judicially  
25 determined to have been erroneous or illegal. Entities are  
26 affiliated with each other if one directly, or indirectly

1 through one or more intermediaries, controls or is controlled  
2 by or is under common control with the other.

3 "(2) The bond shall be posted at least 10 days in  
4 advance of each calendar quarter as a condition to the  
5 nonparticipating manufacturer and its brand families being  
6 included in the state directory for that quarter. The amount  
7 of the bond shall be the greater of: a. the greatest required  
8 escrow amount due from the nonparticipating manufacturer or  
9 its predecessor for any of the 12 preceding calendar quarters;  
10 or b. twenty-five thousand dollars (\$25,000).

11 "(3) If a nonparticipating manufacturer that posted  
12 a bond has failed to make or have made on its behalf deposits  
13 equal to the full amount owed for a quarter within 15 days  
14 following the due date for the quarter under subsection (e) of  
15 Section 6-12A-5, the state may execute upon the bond in the  
16 amount equal to any remaining amount of the escrow due.  
17 Amounts the state collects on a bond shall be deposited into  
18 the State General Fund and shall reduce the amount of escrow  
19 due from that nonparticipating manufacturer in the dollar  
20 amount collected. Escrow obligations above the amount  
21 collected on the bond remain due from the nonparticipating  
22 manufacturer and any importer liable as provided in Section  
23 6-12-3(b).

24 "(4) The bond required under this subsection must be  
25 a good and sufficient bond executed by a surety company  
26 licensed and authorized to do business in Alabama and shall be

1 conditioned to pay the escrow requirements as well as any  
2 penalties or other charges under this chapter.

3 "(5) The commissioner may promulgate rules and  
4 regulations necessary to implement this subsection including  
5 acceptable forms and types of bonds."

6 Section 2. The provisions of this act are severable.  
7 If any part of this act is declared invalid or  
8 unconstitutional, that declaration shall not affect the part  
9 which remains.

10 Section 3. All laws or parts of laws which conflict  
11 with this act are repealed.

12 Section 4. This act shall become effective  
13 immediately following its passage and approval by the  
14 Governor, or its otherwise becoming law.