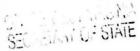
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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2013

ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 3003

(By Delegate White)

Passed April 10, 2013

In effect ninety days from passage.

2013 APR 23 AM 9: 05

SECTEMENT OF SIM

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 3003

(BY DELEGATE WHITE)

[Passed April 10, 2013; in effect ninety days from passage.]

AN ACT 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 TO-BACCO 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 article or article nine-b of this chapter, neither the nonparticipating manufacturer nor any of its brand families may be included 10 in the directory unless and until the nonparticipating manufacturer has posted a bond in accordance with this section.
- 12 (b) The bond shall be posted by corporate surety located within the United States in an amount equal to the greater of 13 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 its sales in the previous calendar year in West Virginia. The 16 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

- state that is a signatory to the Master Settlement Agreement at any time during the calendar year or within the three preceding 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

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- with this section for three years, and shall be required to post a bond for such further period of time as the Attorney General may require, in accordance with this section, if the nonparticipating manufacturer still poses an elevated risk at the end of the threeyear 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 any penalties assessed against the manufacturer based on its 70 71 failure to fulfill its responsibilities under this article and article 72 nine-b of this chapter.

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That Joint Committee on Enrolled Bills hereby certifies that the

foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee	
Originating in the House.	201
In effect ninety days from passage.	SE SE
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