

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 348
Senate Finance Committee Substitute Adopted 8/27/02
Senate Finance Committee Substitute #2 Adopted 10/1/02

Short Title: Tobacco Escrow Compliance.

(Public)

Sponsors:

Referred to:

March 1, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE COMPLIANCE WITH THE TOBACCO ESCROW
3 STATUTE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The heading to Article 37 of Chapter 66 of the General
6 Statutes reads as rewritten:

7 "Tobacco Reserve ~~Fund~~ Fund and Escrow Compliance."

8 **SECTION 2.** G.S. 66-290 and G.S. 66-291 of Article 37 of Chapter 66 of
9 the General Statutes are designated as Part 1 with the heading "Tobacco Reserve Fund".

10 **SECTION 3.** Article 37 of Chapter 66 of the General Statutes is amended by
11 adding a new Part to read:

12 "Part 2. Tobacco Escrow Compliance.

13 **"§ 66-292. Definitions.**

14 The following definitions apply in this Part:

- 15 (1) Brand family. – All styles of cigarettes sold under the same trademark
16 and differentiated from one another by means of additional modifiers
17 including, but not limited to, 'menthol', 'lights', 'kings', and '100s'.
18 (2) Escrow agreement. – An agreement by which a qualified escrow fund
19 is created and maintained.
20 (3) Nonparticipating manufacturer. – A tobacco product manufacturer that
21 is not a participating manufacturer.
22 (4) Participating manufacturer. – Defined in subsection II(jj) of the Master
23 Settlement Agreement.

24 **"§ 66-293. Sale of certain cigarettes prohibited.**

25 (a) Civil Penalty. – It is unlawful for a person required to pay taxes pursuant to
26 Part 2 or 3 of Article 2A of Chapter 105 of the General Statutes to sell or deliver
27 cigarettes belonging to a brand family of a nonparticipating manufacturer if the sale of
28 the cigarettes is subject to such taxes unless the cigarettes are included on the compliant

1 nonparticipating manufacturer's list prepared and made public by the Office of the
2 Attorney General under G.S. 66-295 as of the date the person sells or delivers the
3 cigarettes. It is not a violation of this subsection if the brand family was on the
4 compliant nonparticipating manufacturer's list when the person purchased the cigarettes
5 and the person sold or delivered the cigarettes within 60 days of the purchase. The
6 Attorney General may impose a civil penalty on a person that it finds violates this
7 subsection. The amount of the penalty may not exceed the greater of five hundred
8 percent (500%) of the retail value of the cigarettes sold or five thousand dollars
9 (\$5,000).

10 (b) **Contraband.** – Cigarettes described in subsection (a) of this section are
11 contraband and may be seized by a law enforcement officer. The procedure for seizure
12 and disposition of this contraband is the same as the procedure under G.S. 105-113.31
13 and G.S. 105-113.32 for non-tax-paid cigarettes.

14 **"§ 66-294. Duties of manufacturers.**

15 (a) **Participating Manufacturers.** – Unless the Office of the Attorney General
16 provides a waiver, a participating manufacturer must submit to the Office of the
17 Attorney General a list of all of the manufacturer's brand families by April 30th of each
18 year. The participating manufacturer must notify the Office of the Attorney General of
19 any changes to the list of brand families it offers for sale 30 days prior to the change.

20 (b) **Nonparticipating Manufacturers.** – A nonparticipating manufacturer must:

21 (1) **Appoint and continuously maintain a process service agent within the**
22 State of North Carolina to accept service of any notification or
23 enforcement of an action under this Article. The manufacturer shall
24 file a certified copy of each instrument appointing a process service
25 agent with the Secretary of State and the Office of the Attorney
26 General.

27 (2) **Submit an annual application to the Office of the Attorney General for**
28 inclusion of the nonparticipating manufacturer's products on the
29 compliant nonparticipating manufacturer's list, in accordance with
30 subsection (c) of this section.

31 (3) **Notify the Office of the Attorney General of any changes to the list of**
32 brand families it offers for sale 30 days prior to the change.

33 (4) **Have made the escrow payments required under G.S. 66-291(a)(2) for**
34 all cigarettes belonging to the brand families included in the list
35 submitted in the application for inclusion and any brand families added
36 to the list since it was submitted to the Office of the Attorney General.

37 (5) **Submit an escrow agreement to the Office of the Attorney General.**

38 (6) **Not deliver cigarettes unless the cigarettes are included on the**
39 compliant nonparticipating manufacturer's list in effect on the date of
40 delivery.

41 (c) **Nonparticipating Manufacturer's Application.** – A nonparticipating
42 manufacturer must submit an application to the Office of the Attorney General by April
43 30th of each year for inclusion on the compliant nonparticipating manufacturers' list. The
44 Attorney General may provide a waiver of the deadline for good cause. The application

1 must include a certification that the nonparticipating manufacturer has fulfilled the
2 duties listed in subsection (b) of this section and a list of the brand families of the
3 manufacturer offered for sale in the State during either the current calendar year or the
4 previous calendar year. The certification must be in the form required by the Office of
5 the Attorney General.

6 **"§ 66-295. Duties of Attorney General.**

7 (a) Annual Lists. – The Office of the Attorney General shall prepare the
8 following lists annually and shall make those lists available for public inspection:

9 (1) Participating manufacturers. – A list of the participating manufacturers
10 and all brand families of each participating manufacturer that the
11 manufacturer has identified to the Attorney General, in accordance
12 with G.S. 66-294.

13 (2) Compliant nonparticipating manufacturers. – A list of the
14 nonparticipating manufacturers whose applications for inclusion have
15 been found to be complete and accurate and whose escrow agreements
16 have been approved by the Office of the Attorney General. The list
17 must include those brand families that the manufacturer has identified
18 to the Attorney General, in accordance with G.S. 66-294.

19 (b) Supplemental Lists. – The Office of the Attorney General must supplement
20 the annual lists as necessary to reflect additions to or deletions of manufacturers and
21 brand families. The Attorney General shall delete a nonparticipating manufacturer and
22 its brand families from the list if it determines that the manufacturer fails to comply
23 with the duties listed in G.S. 66-294. The Attorney General must add a nonparticipating
24 manufacturer and its brand families to the list if it determines all of the following:

25 (1) The nonparticipating manufacturer has submitted an application under
26 G.S. 66-294, and it is found to be complete and accurate.

27 (2) The Office of the Attorney General has approved the manufacturer's
28 escrow agreement.

29 (3) The manufacturer has made any past due payments owed to its escrow
30 account for any of its listed brand families.

31 (4) The manufacturer has resolved any outstanding penalty demands or
32 adjudicated penalties for its listed brand families."

33 **SECTION 4.** G.S. 14-401.18 reads as rewritten:

34 **"§ 14-401.18. Sale of certain packages of cigarettes prohibited.**

35 (a) Definitions. – The following definitions apply in this section:

36 (1) Cigarette. – Defined in G.S. 105-113.4.

37 (2) Package. – Defined in G.S. 105-113.4.

38 (b) Offenses. – A person who sells or holds for sale (other than for export to a
39 foreign country) a package of cigarettes that meets one or more of the following
40 descriptions commits a Class A1 misdemeanor and engages in an unfair trade practice
41 prohibited by G.S. 75-1.1:

42 (1) The package differs in any respect with the requirements of the Federal
43 Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, for the

1 placement of labels, warnings, or any other information upon a
2 package of cigarettes that is to be sold within the United States.

3 (2) The package is labeled "For Export Only," "U.S. Tax Exempt," "For
4 Use Outside U.S.," or has similar wording indicating that the
5 manufacturer did not intend that the product be sold in the United
6 States.

7 (3) The package was altered by adding or deleting the wording, labels, or
8 warnings described in subdivision (1) or (2) of this subsection.

9 (4) The package was imported into the United States after January 1,
10 2000, in violation of 26 U.S.C. § 5754.

11 (5) The package violates federal trademark or copyright ~~laws~~ laws,
12 federal laws governing the submission of ingredient information to
13 federal authorities pursuant to 15 U.S.C. § 1335a, federal laws
14 governing the import of certain cigarettes pursuant to 19 U.S.C. § 1681
15 and 19 U.S.C. § 1681b, or any other provision of federal law or
16 regulation.

17 (c) Contraband. – A package of cigarettes described in subsection (b) of this
18 section is contraband and may be seized by a law enforcement officer. The procedure
19 for seizure and disposition of this contraband is the same as the procedure under G.S.
20 105-113.31 and G.S. 105-113.32 for non-tax-paid cigarettes."

21 **SECTION 5.** Notwithstanding G.S. 66-294, as enacted by this act, the initial
22 lists required to be submitted to the Office of the Attorney General must be submitted
23 by November 1, 2002.

24 **SECTION 6.** G.S. 66-293, as enacted in Section 3 of this act, and Section 4
25 become effective January 1, 2003. The remainder of this act is effective when it
26 becomes law.