

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-145
HOUSE BILL 348**

AN ACT TO IMPROVE COMPLIANCE WITH THE TOBACCO ESCROW
STATUTE.

The General Assembly of North Carolina enacts:

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

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

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

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

"Part 2. Tobacco Escrow Compliance.

"§ 66-292. Definitions.

The following definitions apply in this Part:

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

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

(a) Civil Penalty. – It is unlawful for a person required to pay taxes pursuant to Part 2 or 3 of Article 2A of Chapter 105 of the General Statutes to sell or deliver cigarettes belonging to a brand family of a nonparticipating manufacturer if the sale of the cigarettes is subject to such taxes unless the cigarettes are included on the compliant nonparticipating manufacturer's list prepared and made public by the Office of the Attorney General under G.S. 66-295 as of the date the person sells or delivers the cigarettes. It is not a violation of this subsection if the brand family was on the compliant nonparticipating manufacturer's list when the person purchased the cigarettes and the person sold or delivered the cigarettes within 60 days of the purchase. The Attorney General may impose a civil penalty on a person that it finds violates this subsection. The amount of the penalty may not exceed the greater of five hundred percent (500%) of the retail value of the cigarettes sold or five thousand dollars (\$5,000).

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

"§ 66-294. Duties of manufacturers.

(a) Participating Manufacturers. – Unless the Office of the Attorney General provides a waiver, a participating manufacturer must submit to the Office of the Attorney General a list of all of the manufacturer's brand families by April 30th of each

year. The participating manufacturer must notify the Office of the Attorney General of any changes to the list of brand families it offers for sale 30 days prior to the change.

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

- (1) Appoint and continuously maintain a process service agent within the State of North Carolina to accept service of any notification or enforcement of an action under this Article. The manufacturer shall file a certified copy of each instrument appointing a process service agent with the Secretary of State and the Office of the Attorney General.
- (2) Submit an annual application to the Office of the Attorney General for inclusion of the nonparticipating manufacturer's products on the compliant nonparticipating manufacturer's list, in accordance with subsection (c) of this section.
- (3) Notify the Office of the Attorney General of any changes to the list of brand families it offers for sale 30 days prior to the change.
- (4) Have made the escrow payments required under G.S. 66-291(a)(2) for all cigarettes belonging to the brand families included in the list submitted in the application for inclusion and any brand families added to the list since it was submitted to the Office of the Attorney General.
- (5) Submit an escrow agreement to the Office of the Attorney General.
- (6) Not deliver cigarettes unless the cigarettes are included on the compliant nonparticipating manufacturer's list in effect on the date of delivery.

(c) Nonparticipating Manufacturer's Application. – A nonparticipating manufacturer must submit an application to the Office of the Attorney General by April 30th of each year for inclusion on the compliant nonparticipating manufacturers' list. The Attorney General may provide a waiver of the deadline for good cause. The application must include a certification that the nonparticipating manufacturer has fulfilled the duties listed in subsection (b) of this section and a list of the brand families of the manufacturer offered for sale in the State during either the current calendar year or the previous calendar year. The certification must be in the form required by the Office of the Attorney General.

"§ 66-295. Duties of Attorney General.

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

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

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

- (1) The nonparticipating manufacturer has submitted an application under G.S. 66-294, and it is found to be complete and accurate.
- (2) The Office of the Attorney General has approved the manufacturer's escrow agreement.

- (3) The manufacturer has made any past due payments owed to its escrow account for any of its listed brand families.
- (4) The manufacturer has resolved any outstanding penalty demands or adjudicated penalties for its listed brand families."

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

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

- (a) Definitions. – The following definitions apply in this section:
 - (1) Cigarette. – Defined in G.S. 105-113.4.
 - (2) Package. – Defined in G.S. 105-113.4.
- (b) Offenses. – A person who sells or holds for sale (other than for export to a foreign country) a package of cigarettes that meets one or more of the following descriptions commits a Class A1 misdemeanor and engages in an unfair trade practice prohibited by G.S. 75-1.1:
 - (1) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.
 - (2) The package is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or has similar wording indicating that the manufacturer did not intend that the product be sold in the United States.
 - (3) The package was altered by adding or deleting the wording, labels, or warnings described in subdivision (1) or (2) of this subsection.
 - (4) The package was imported into the United States after January 1, 2000, in violation of 26 U.S.C. § 5754.
 - (5) The package violates federal trademark or copyright laws, laws, federal laws governing the submission of ingredient information to federal authorities pursuant to 15 U.S.C. § 1335a, federal laws governing the import of certain cigarettes pursuant to 19 U.S.C. § 1681 and 19 U.S.C. § 1681b, or any other provision of federal law or regulation.
- (c) Contraband. – A package of cigarettes described in subsection (b) of this section is contraband and may be seized by a law enforcement officer. The procedure for seizure and disposition of this contraband is the same as the procedure under G.S. 105-113.31 and G.S. 105-113.32 for non-tax-paid cigarettes."

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

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

In the General Assembly read three times and ratified this the 2nd day of October, 2002.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:59 p.m. this 4th day of October, 2002