ENROLLED

Regular Session, 2013

ACT No. 221

HOUSE BILL NO. 641

BY REPRESENTATIVE THOMPSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AN ACT

To amend and reenact R.S.13:5072, 5073(A)(1) and (3)(a)(v), (B)(2)(a), (3), and (4), and (C), 5075, 5076(A), (B), and (C), and 5077, R.S. 26:901(7), 904(A), 916(H), 918(B), and 921 and R.S. 47:842(11), 843(A)(2), (C)(3) and (4), and (D), 847, 849, 851(B), 857, 862, 865(C)(3)(b), (c)(introductory paragraph) and (i), 871, 872, 876 through 878, and 1508(B)(11), to enact R.S. 13:5073(A)(3)(a)(vi), (4)(e) and (f), and (7), and (B)(5) and (6), 5074(D), and 5078, R.S. 26:901(19) through (27), 902(5), 904(D), 906(H), (I), and (J), 908(D), 916(I) through (N), and 918(C) and (D), R.S. 47:842(16) through (22), 843(A)(3), and 851(E) and (F), and 1520(A)(1)(g), and to repeal R.S. 47:873 through 875, relative to tobacco enforcement; to provide restrictions on transactions in unstamped cigarettes; to provide for definitions; to provide requirements for stamping agent licenses; to provide escrow requirements for nonparticipating manufacturers; to require stamping agent reporting; to require manufacturer and importer reporting; to require reports on out-of-state cigarette sales; to provide for the disclosure of information; to prohibit delivery sales; to provide for violations and penalties; to require that nonparticipating manufacturers post bond; to provide for a directory of stamping agents and exporter licensees; to authorize the promulgation of rules; to provide for disclosure of information between agencies relative to tobacco enforcement; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S.13:5072, 5073(A)(1) and (3)(a)(v), (B)(2)(a), (3), and (4), and (C), 5075, 5076(A), (B), and (C), and 5077 are hereby amended and reenacted and R.S. 13:5073(A)(3)(a)(vi), (4)(e) and (f), and (7), and (B)(5) and (6), 5074(D), and 5078 are hereby enacted to read as follows:

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§5072. Definitions

As used in this Part, the following words and phrases shall have the following meanings ascribed to them:

(1) "Brand family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to "menthol", "lights", "kings", and "100s", and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Cigarette" has the same meaning as ~~defined~~ provided in R.S. 13:5062(4) and R.S. 47:842(2).

(3) "Commissioner" means the commissioner of alcohol and tobacco control.

(4) "Days" means calendar days unless otherwise specified.

~~(3)~~(5) "Dealer" has the same meaning as ~~defined~~ provided in R.S. 47:842(4).

~~(4) "Department" means the Department of Revenue for the state of Louisiana.~~

(6) "Importer" means any person in the United States to whom non-tax-paid cigarettes manufactured in a foreign country are shipped or consigned, any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, and any person who smuggles or otherwise unlawfully brings cigarettes into the United States.

(7) "Manufacturer" has the same meaning as provided in R.S. 47:842.

~~(5)~~(8) "Master Settlement Agreement" has the same meaning as ~~defined~~ provided in R.S. 13:5062(5).

~~(6)~~(9) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(10) "Package" means any pack or other container on which a stamp could be applied consistent with and as required by R.S. 47:841 et seq., that contains one or more individual cigarettes for sale. Nothing in this Chapter shall alter any other

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applicable requirement with respect to the minimum number of cigarettes that may be contained in a pack or other container of cigarettes. References to "package" shall not include a container of multiple packages.

~~(7)~~(11) "Participating manufacturer" has the meaning given that term in section II ~~(ii)~~ (jj) of the Master Settlement Agreement and all amendments thereto.

(12) "Person" means any natural person, trustee, company, partnership, corporation, or other legal entity.

(13) "Purchase" means acquisition in any manner, for any consideration. The term shall include transporting or receiving product in connection with a purchase.

~~(8)~~(14) "Qualified escrow fund" has the same meaning as ~~defined~~ provided in R.S. 13:5062(6).

(15) "Retailer" means "retail dealer" as provided in R.S. 26:901 and R.S. 47:842.

(16) "Sale" or "sell" means any transfer, exchange, or barter in any manner or by any means for any consideration. The term shall include distributing or shipping product in connection with a sale. References to a sale "in" or "into" a state refer to the state of the destination point of the product in the sale, without regard to where title was transferred. References to sale "from" a state refer to the sale of cigarettes that are located in that state to the destination in question without regard to where title was transferred.

(17) "Sales Entity Affiliate" means an entity that sells cigarettes that it acquires directly from a manufacturer or importer and is affiliated with that manufacturer or importer as established by documentation received directly from that manufacturer or importer to the satisfaction of the attorney general. Entities are affiliated with each other if one, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other.

~~(9)~~(18) "Secretary" means the head of the Department of Revenue, which is the agency responsible for collection of the excise tax on cigarettes.

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~~(10)~~(19) "Stamping agent" means a dealer that is authorized to affix tax stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841 et seq. on cigarettes.

(20) "State directory" or "directory" means the directory compiled by the attorney general under R.S. 13:5073, or, in the case of reference to another state's directory, the directory compiled under the similar law in that other state.

~~(11)~~(21) "Tobacco product manufacturer" has the same meaning as ~~defined~~ provided in R.S. 13:5062(9).

~~(12)~~(22) "Units sold" has the same meaning as defined in R.S. 13:5062(10) and shall include (a) cigarettes that are required to be sold in a package bearing a stamp as well as (b) roll-your-own tobacco.

§5073. Certifications; directory; tax stamps

A.(1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the attorney general a certification to the secretary and attorney general, no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either: is a participating manufacturer; or is in full compliance with R.S. 13:5061 et seq., including all installment payments required by R.S. 13:5075~~(E)~~(J). For the initial certification submitted no later than the thirtieth of April each year, a manufacturer shall pay to the attorney general a fee of five hundred dollars. The fees generated pursuant to this Section shall be deposited in the Tobacco Settlement Enforcement Fund and used solely and exclusively for purposes of enforcement of the Master Settlement Agreement, pursuant to R.S. 39:98.7.

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(3)(a) A nonparticipating manufacturer shall include in its certification:

* * *

(v) Any other information required under ~~R.S. 13:5075(D)~~ R.S. 13:5075(I).

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(vi) As a condition precedent to being listed and having its brand families listed on the state directory, a manufacturer must certify annually that it holds a valid permit under 26 USC 5713 and provide a copy of such permit to the attorney general.

* * *

(4) In the case of a nonparticipating manufacturer, such certification shall further certify:

* * *

(e) Sufficient information to establish that such nonparticipating manufacturer has posted the appropriate bond or cash equivalent pursuant to R.S. 13:5078.

(f) In the case of a nonparticipating manufacturer located outside of the United States, the nonparticipating manufacturer shall provide a declaration from each of its importers into the United States of any of its brand families to be sold in this state. The declaration shall be on a form prescribed by the attorney general and shall state the following:

(i) The importer accepts joint and several liability with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund for payment of all civil penalties and for payment of all reasonable costs and expenses of investigation and prosecution, including attorney fees.

(ii) The importer consents to personal jurisdiction in Louisiana for the purposes of claims by the state for any obligation to place funds into a qualified escrow fund for payment of any civil penalties and for payment of any reasonable costs and expenses of investigation or prosecution, including attorney fees.

(iii) The importer has appointed a registered agent for service of process in Louisiana according to the same requirements as established in this Part for any nonresident or foreign nonparticipating manufacturer that has not yet registered to do business in this state as a foreign corporation or business entity.

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(7) Every tobacco product manufacturer shall include in its annual certification a list of the names and addresses of all sales entity affiliates that may

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transact business in the state on its behalf and shall provide supporting documentation to establish to the satisfaction of the attorney general its status as a sales entity affiliate pursuant to R.S. 13:5072(17).

B. Not later than ninety days after June 25, 2004, the attorney general shall develop and make available for public inspection or publish on its website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Subsection A and all brand families, including country of origin, that are listed in such certifications (the directory), except as noted below.

* * *

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that:

(a) Any escrow payment required pursuant to R.S. 13:5061 et seq., ~~for any period~~ by the date due for any quarter for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

* * *

(3) A manufacturer and its brand families may be removed from the state directory if they are removed from the directory of another state based on acts or omissions that, if they had occurred in this state, would be grounds for removal from the state directory under this Section, unless the manufacturer demonstrates that its removal from the other state's directory was effected without due process. Procedure for removal from the state directory shall be governed by the procedure set forth in R.S. 13:5077(A). A manufacturer that is removed from the state directory under this Subsection shall be eligible for reinstatement upon the earlier of the date on which it cures the violation or is reinstated to the directory in the other state.

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(4) Failure to submit complete and accurate reports as required pursuant to R.S. 13:5075 shall result in the manufacturer and its brand families being removed from the state directory under the procedure set forth in R.S. 13:5077(A).

~~(3)~~(5) The attorney general shall update the directory as necessary in order to correct mistakes and to list or de-list a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this Part. Fifteen days prior to the listing or de-listing of a tobacco product manufacturer or brand family, the attorney general shall transmit a notification to every stamping agent.

~~(4)~~(6) Every stamping agent shall provide and update as necessary an electronic mail address or facsimile telephone number to the secretary and the attorney general for the purpose of receiving any notifications as may be required by this Part.

C. It shall be unlawful for any person:

(1) To affix a Louisiana tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(2) To sell, offer, or possess for sale, in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the state directory; or, in the event of cigarettes subject to a de-listing notice described in this Section, sell, offer, or possess for sale, in this state, or import for personal consumption in this state, cigarettes received, imported, or stamped after the date of de-listing from the state directory.

(3) To order, purchase, or offer to purchase cigarettes of a tobacco product manufacturer or brand family identified by the attorney general to be de-listed from the directory, after receipt of the notice described in this Section.

§5074. Agent for service of process

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D. This Section shall be applicable to importers, as defined in this Part, with regard to the appointment and continuous retention of an agent for service of process as well as related notice requirements and obligations detailed in this Section.

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§5075. Reporting of information; escrow installments

A. Not later than twenty calendar days after the end of each calendar month, and more frequently if so directed by the secretary or the attorney general, each stamping agent shall submit such information as the secretary and attorney general require to facilitate compliance with this Part, including but not limited to a list by brand family of the total number of cigarettes, or, in the case of roll your own, the equivalent stick count, ~~that they~~ purchased from tobacco product manufacturers during the previous calendar month or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain and make available to the secretary and the attorney general all invoices and documentation of purchases and sales of all tobacco product manufacturer cigarettes and any other information relied upon in reporting to the secretary and the attorney general for a period of three years.

B. The requirements of Subsection A of this Section shall be satisfied if the stamping agent timely submits to the secretary and attorney general reports required generally under R.S. 47:841 et seq. and this Chapter and certifies that the reports are complete and accurate.

C. Each manufacturer and importer that sells any cigarettes in or into the state shall, within twenty days following the end of the month, file a report on a form to be prescribed by the attorney general and certify that the report is complete and accurate. The report shall contain the following information: (1) The total number of cigarettes sold by that manufacturer or importer in or into the state during that month, identified by name and number of cigarettes. (2) The manufacturers of those cigarettes. (3) The brand families of those cigarettes. (4) The purchasers of those cigarettes. A manufacturer's or importer's report shall include cigarettes sold in or into the state through its sales entity affiliate.

D. The requirements of Subsection C of this Section shall be satisfied and no further report shall be required under this Section with respect to cigarettes if the manufacturer or importer timely submits to the attorney general and secretary the report or reports required to be submitted by it with respect to those cigarettes under

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15 USC 376 to the attorney general and certifies that the reports are complete and accurate.

E. Upon request by the attorney general, a manufacturer or importer shall provide copies of reports filed in other states containing information similar to those provided by Subsections A and C of this Section.

F. Any reports submitted to the secretary or commissioner under R.S. 47:841 et seq. or R.S. 26:901 et seq. shall also be submitted contemporaneously to the attorney general.

G. The secretary is authorized to disclose to the attorney general any information received under this Part and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this Part. The secretary, ~~and~~ attorney general, and commissioner shall share with each other the information received under this Part and may share such information with other federal, state, or local ~~agencies~~ taxing agencies or law enforcement authorities only for purposes of enforcement of this Part, R.S. 13:5061 et seq., or corresponding laws of other states. Additionally, the sharing of information by the secretary under this ~~Part~~ Chapter shall not constitute a violation of R.S. 47:1508.

~~C.~~H. The attorney general may require at any time from the nonparticipating manufacturer, proof from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with R.S. 13:5061 et seq., of the amount of money in such fund, exclusive of interest, the amount and date of each deposit to such fund, and the amount and date of each withdrawal from such fund.

~~D.~~I. In addition to the information required to be submitted pursuant to this Part and R.S. 13:5061 et seq. or R.S. 47:843 et seq., the secretary and the attorney general may require a stamping agent or tobacco product manufacturer to submit any additional information including but not limited to samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this Part.

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~~E.~~J. ~~To promote compliance with this Part, the attorney general may require a tobacco product manufacturer subject to the requirements of R.S. 13:5073(A)(2) to make the escrow deposits required in annual, quarterly, or monthly installments during the year in which the sales covered by such deposits are made.~~ All escrow deposits under R.S. 13:5061 et seq. shall be made on a quarterly basis, no later than forty-five days after the end of each calendar quarter in which the sales are made. Each failure to make a full quarterly installment deposit shall constitute a separate violation of the state's escrow laws. The secretary and the attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit. The attorney general shall promptly review the amount deposited by each nonparticipating manufacturer for each calendar quarter against the reports received and other information and shall provide notice to each nonparticipating manufacturer for which it concludes that an additional deposit was owed.

K. Importers of any brand families of a nonparticipating manufacturer in or into the state shall be jointly and severally liable with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund for payment of all civil penalties and for payment of all reasonable costs and expenses of investigation and prosecution, including attorney fees, and shall consent to personal jurisdiction in Louisiana for the purposes of claims by the state for payment of such obligations.

L.(1) Each manufacturer that sells cigarettes in the state and each importer that imports cigarettes into the state shall do either of the following:

(a) Submit its federal returns to the attorney general by sixty days after the close of the quarter in which the returns were filed.

(b) Submit to the United States Treasury a request or consent under Internal Revenue Code Section 6103(c) authorizing the Alcohol and Tobacco Tax and Trade Bureau and, in the case of a foreign manufacturer or importer, the U.S. Customs Service to disclose the manufacturer's or importer's federal returns to the attorney general as of sixty days after the close of the quarter in which the returns were filed.

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(2) For purposes of this Subsection, "federal returns" mean all federal excise tax returns and all monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau Form 5210.5, and all adjustments, changes, and amendments to the foregoing.

§5076. Penalties; other remedies

A. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated R.S. 13:5073(C) or any regulation adopted pursuant to this Part, the secretary may revoke or suspend the license of the dealer in the manner provided by R.S. ~~47:844~~ 47:846 and R.S. 26:916. Each stamp affixed and each sale, offer to purchase, or offer to sell cigarettes in violation of R.S. 13:5073(C) shall constitute a separate violation. For each violation hereof, the secretary may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of R.S. 13:5073(C) or any regulations adopted pursuant thereto. Such penalty shall be imposed in the manner provided by R.S. 47:843 et seq. and R.S. 26:901 et seq.

B. Any cigarettes that have been sold, offered for sale, or possessed for sale, in this state, or imported for personal consumption in this state, in violation of R.S. 13:5073(C) shall be deemed contraband under R.S. 47:865 and R.S. 13:5061 et seq., and such cigarettes shall be subject to seizure and forfeiture as provided in ~~such section~~ those provisions, and all such cigarettes so seized and forfeited shall be destroyed and not resold.

C. The attorney general, on behalf of the secretary, may seek an injunction to restrain a threatened or actual violation of R.S. 13:5073(C) or 5075(A) or ~~(D)~~ (I) by a stamping agent and to compel the stamping agent to comply with such provisions. In any action brought pursuant to this Section, the state shall be entitled to recover the costs of the investigation, action, and reasonable attorney fees.

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§5077. Miscellaneous provisions

A. The attorney general shall provide a notice of removal to any manufacturer that it determines should be removed or have any of its brand families removed from the state directory. The notice shall state the grounds for the removal and inform the manufacturer that it or its brand families will be removed from the state directory thirty days following the date of the notice. During the thirty days following the date of the notice, the manufacturer may (1) fully cure the failure or violation or (2) submit documentation to the attorney general demonstrating that its determination described in the notice was incorrect. Unless the attorney general determines that the manufacturer has satisfied either (1) or (2), it or its brand families will be removed from the state directory thirty days following the date of the notice. A determination of the attorney general to not include or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by the Administrative Procedure Act. A manufacturer that unsuccessfully challenges a decision not to include or to remove from the directory a brand family or manufacturer shall pay the state's reasonable costs and attorney fees incurred in contesting the challenge.

B. Each person may provide a name and address to which notices issued pursuant to this Section are to be sent. Notice periods under this Section run from the date of notice sent to such name and address or, in the case of a person that does not provide a name and address, the last known company address.

~~B.~~C. No person shall be issued a license or granted a renewal of a license to act as a stamping agent unless such person has certified in writing, under penalty of perjury, that such person will comply fully with this Section.

~~C.~~D. For the year 2004, because the effective date of this Part is later than April 15, 2004, the first report of stamping agents required by R.S. 13:5075(A) shall be due thirty calendar days after June 25, 2004; the certifications by a tobacco product manufacturer described in R.S. 13:5073(A) shall be due forty-five calendar days after June 25, 2004; and the directory described in R.S. 13:5073(B) shall be published or made available within ninety calendar days after June 25, 2004.

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E. The secretary, commissioner, and attorney general shall each designate employees who shall oversee the administration and enforcement of the laws and regulations regarding the tobacco Master Settlement Agreement for its office and who shall confer monthly to establish and monitor practices to promote ongoing compliance under the Master Settlement Agreement. A tri-agency summit shall be held on an annual basis for agency representatives and staff.

~~D.~~F. The secretary or the commissioner in conjunction with the attorney general may promulgate regulations necessary to effect the purpose of this Part.

~~E.~~G. In any action brought by the state to enforce this Part, the attorney general, the commissioner, and secretary shall be entitled to recover the costs of the investigation, expert witness fees, the action, and reasonable attorney fees.

~~F.~~H. If a court determines that a person has violated this Part, the court shall order any profits, gains, gross receipts, or other benefits from the violation to be disgorged and paid to the state treasurer for deposit in the tobacco control special fund, which is hereby created. The tobacco control special fund shall be used by the attorney general for tobacco enforcement and control matters. Unless otherwise expressly provided, the remedies or penalties provided by this Part are cumulative to each other and to the remedies or penalties available under all other laws of this state.

~~G.~~I. If a court of competent jurisdiction finds that the provisions of this Part and of R.S. 13:5061 et seq. conflict and cannot be harmonized, then the provisions in R.S. 13:5061 et seq. shall control. If any Section, Subsection, Paragraph, Subparagraph, Item, sentence, clause, phrase, or word of this Part causes R.S. 13:5061 et seq. to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this Part shall not be valid. If any Section, Subsection, Paragraph, Subparagraph, Item, sentence, clause, phrase, or word of this Part is for any reason held to be invalid, unlawful, or unconstitutional, such decision shall not affect the validity of the remaining portions of this Part.

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§5078. Bond

A. All nonparticipating manufacturers shall post a bond or its cash equivalent for the benefit of the state that is subject to execution under Subsection C of this Section. The bond shall be posted by corporate surety located within the United States or the cash equivalent of the bond shall be posted by the nonparticipating manufacturer in an account approved by the state. The bond or its cash equivalent shall be posted and evidence of such posting shall be provided to the attorney general at least ten days in advance of each calendar quarter as a condition to the nonparticipating manufacturer and its brand families being included in the directory for that quarter.

B. The amount of the bond shall be determined as follows:

(1) Unless Paragraph (3) of this Subsection is applicable, for a nonparticipating manufacturer that has been listed on Louisiana's state directory for at least three years, the amount of the bond required shall be fifty thousand dollars or the highest amount owed for any quarter over the past three years, whichever is greater;

(2) Unless Paragraph (3) of this Subsection is applicable, for a nonparticipating manufacturer that has not been listed on Louisiana's state directory for at least three years, the amount of the bond required shall be determined by the attorney general based on any prior history in any state, as well as any other considerations the attorney general deems relevant, but shall not be less than one hundred thousand dollars in any event; and

(3) For a nonparticipating manufacturer that has failed, in the past three years, to make a full and timely escrow deposit due under R.S. 13:5063, unless the failure was not knowing or intentional and was promptly cured upon notice, or for any nonparticipating manufacturer that was involuntarily removed from any state's directory, unless the removal was determined to have been erroneous, the amount of the bond required shall be the greater of one hundred thousand dollars or the greatest amount of escrow owed by the nonparticipating manufacturer or its predecessor in any calendar year in any state within the preceding five calendar years.

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C. If a nonparticipating manufacturer that posted a bond has failed to make, or have made on its behalf by an entity with joint and several liability, escrow deposits equal to the full amount owed for a quarter within fifteen days following the due date for the quarter under R.S. 13:5063, the state may execute upon the bond, first to recover delinquent escrow, which amount shall be deposited into a qualified escrow account under R.S. 13:5063, and then to recover civil penalties and costs authorized under such Section. Escrow obligations above the amount collected on the bond remain due from that nonparticipating manufacturer and from the importers that sold its cigarettes during that calender quarter.

* * *

Section 2. R.S. 26:901(7), 904(A), 916(H), 918(B), and 921 are hereby amended and reenacted and R.S. 26:901(19) through (27), 902(5), 904(D), 906(H), (I), and (J), 908(D), 916(I) through (N), and 918(C) and (D) are hereby enacted to read as follows:

§901. Definitions

* * *

(7) "Place of business" means the place where the tobacco orders are received, or where the taxable tobacco articles are sold, or if sold by a retail dealer upon a railroad train or on or from any other vehicle, the vehicle on which or from which the taxable articles are sold by the retail dealer. It also includes the establishment where vending machines are located.

* * *

(19) "Brand family" has the meaning as set forth in R.S. 13:5072(1).

(20) "Exporter license" means the stamping agent designation as set forth in R.S. 26:902(5)(b).

(21) A "knowing violation or failure" is a knowing or intentional engaging in conduct without a good faith belief that the conduct was consistent with the provisions of this Chapter.

(22) "Person" means any natural person, trustee, company, partnership, corporation, or other legal entity.

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(23) "Purchase" means acquisition in any manner, for any consideration. The term shall include transporting or receiving product in connection with a purchase.

(24) "Sale" or "sell" means any transfer, exchange, or barter in any manner or by any means for any consideration. The term shall include distributing or shipping product in connection with a sale. References to a sale "in" or "into" a state refer to the state of the destination point of the product in the sale, without regard to where title was transferred. References to sale "from" a state refer to the sale of cigarettes that are located in that state to the destination in question without regard to where title was transferred.

(25) "Sales entity affiliate" means an entity that (1) sells cigarettes that it acquires directly from a manufacturer or importer and (2) is affiliated with that manufacturer or importer as established by documentation received directly from that manufacturer or importer to the satisfaction of the attorney general. Entities are affiliated with each other if one, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other.

(26) "Stamping agent" means a dealer that is authorized to affix tax stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841 et seq. on cigarettes.

(27) "State directory" or "directory" means the directory compiled by the attorney general under R.S. 13:5073, or, in the case of reference to another state's directory, the directory compiled under the similar law in that other state.

§902. Permits

The commissioner shall issue as authorized by this Section the following types of permits and shall adopt rules and regulations that specify the identifying information that is required to appear on the face of each type of permit:

* * *

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(5)(a) Stamping Agent Designation: A stamping agent designation shall be issued to a dealer that engages in the business of purchasing unstamped or non-tax paid cigarettes that meets all requirements of a wholesale dealer as defined by this Chapter, the provision of R.S. 26:906(H), and any rules or regulations issued in connection therewith.

(b) The holder of a valid stamping agent designation that engages in interstate business or affixes tax stamps of another state shall first apply for an exporter license allowing it to purchase or possess unstamped or non-tax paid cigarettes.

* * *

§904. Permit terms

A. Except as otherwise provided in ~~Subsection B of~~ this Section, each permit shall be valid for the designated time period unless suspended or revoked. The commissioner may issue permits which are valid for two years to applicants in good standing with the office of alcohol and tobacco control.

* * *

D. An exporter license issued pursuant to R.S. 26:902(5)(b) shall remain in effect for a period of one year.

* * *

§906. General requirements

* * *

H. Applicants for a stamping agent designation shall certify on a form provided by the commissioner that they will do the following:

(1) Affix stamps as set forth in R.S. 47:843(D).

(2) Pay to the state all taxes applicable under R.S. 47:841 et seq. on cigarettes it sells or present documentation demonstrating that such taxes were paid prior to the sale.

(3) Provide complete and accurate reports as required by this Chapter, R.S. 13:5071 et seq., or R.S. 47:841 et seq. and certify monthly that it has complied with all requirements therein.

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(4) Comply generally with all other provisions set forth in R.S. 47:841 et seq.

(5) Consent to the jurisdiction of the state to enforce the requirements of this Chapter and waive any claim of sovereign immunity to the contrary.

(6) Waive all confidentiality laws as necessary to permit the commissioner to create and make available the list described in R.S. 26:921(B) and to share information reported under this Chapter with the taxing or law enforcement authorities of other states.

I. Applicants for a stamping agent designation located outside of the state shall appoint an agent in the state for service of process in connection with enforcement of the provisions of this Chapter and the provisions of R.S. 13:5061 et seq., and R.S. 47:841 et seq.

J. An exporter license shall be issued upon the applicant's meeting the following requirements:

(1) Demonstrates that it holds a valid stamping agent designation.

(2) Certifies on a form provided by the commissioner that any cigarettes of a manufacturer or brand family not listed on the state directory will be purchased or possessed solely for sale or transfer into another state as permitted by R.S. 47:849.

(3) Maintains such cigarette inventory pursuant to Paragraph (2) of this Subsection, in a separate and distinct area within its warehouse.

(4) Waives any confidentiality laws as necessary to permit the commissioner to create and make available a list as provided in R.S. 26:921(C).

* * *

§908. Issuance of permit

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D. No exporter license may be issued to a person that violated a certification it previously made under R.S. 26:906(J)(2).

* * *

§916. Suspensions or revocations

* * *

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H. The designation of a stamping agent shall be subject to termination if a permittee does any of the following:

(1) Fails to provide a report or certification as required by this Chapter, R.S. 13:5061 et seq., or R.S. 47:841 et seq.

(2) Knowingly files an incomplete or inaccurate report or certification.

(3) Fails to pay taxes as provided in R.S. 47:841 et seq.

(4) Fails to sell cigarettes in or into the state pursuant to R.S. 47:843 or sells unstamped cigarettes of a manufacturer or brand family that is not at the time listed on the state directory, or sells, offers or possesses for sale in this state, or imports for personal consumption in this state, cigarettes received, imported, or stamped after receiving notice that the manufacturer or brand family is not on the state directory, except as expressly permitted in R.S. 47:841 et seq.

(5) Purchases or sells cigarettes in violation of the provisions of this Chapter or R.S. 47:841 et seq.

I. In the case of a first violation under Paragraphs (1) or (3) of Subsection H of this Section that was not knowing or intentional, the stamping agent may be entitled to cure the failure within thirty days of being notified of the violation. The designation of a stamping agent that fully cures the failure during the prescribed period shall not be terminated on account of that failure.

J. The designation of a stamping agent may be subject to termination if its similar designation is terminated in any other state based on acts or omissions that would be grounds for designation termination under this Section, unless the stamping agent demonstrates that its designation termination in the other state was terminated without due process. A stamping agent whose designation is terminated under this Subsection shall be eligible for reinstatement upon the earlier date specified by Subsection M of this Section for the omission in question or reinstatement of its license by the other state.

K. The commissioner shall promptly remove any stamping agent whose designation is terminated from the list required by R.S. 26:921(B) and shall publish a notice of the termination on its website and send notice of the termination to all

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wholesale dealers, the attorney general, and the secretary. The attorney general shall send notice of the termination to all persons listed on the state directory.

(1) Beginning five days following the publication and sending of such notice, no person may sell cigarettes nor purchase cigarettes from the stamping agent whose designation has been terminated.

(2) A stamping agent whose designation has been terminated may, within thirty days from the date of the publication, return any unaffixed stamps to the secretary for a refund equal to the current value of each stamp returned. No refunds shall be issued after thirty days from the date of the publication of the termination.

L.(1) A stamping agent whose designation is terminated shall be removed from the list required by R.S. 26:921(B). (2) Any person that sells cigarettes to or purchases cigarettes from a terminated stamping agent after the stamping agent has been removed from the directory by R.S. 26:921(B), shall be jointly and severally liable for any taxes applicable to such cigarettes under R.S. 47:841 and for any escrow due on such cigarettes under R.S. 13:5063 during the period of the termination.

M. A stamping agent whose designation is terminated shall be eligible for reinstatement no less than ninety days and no more than three years following date of termination.

N. In addition to any other causes enumerated in this Chapter, the commissioner shall suspend or revoke any permit of any dealer that fails to pay taxes due to the state.

* * *

§918. Civil penalties

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B. In the case of a knowing or intentional first violation of R.S. 26:916(H)(1) through (5), the stamping agent shall be subject to a civil penalty of up to one thousand dollars.

C. In the case of a second or subsequent violation of R.S. 26:916(H)(1) through (5), the stamping agent shall be subject to a civil penalty of up to five

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thousand dollars per violation. In the case of a violation of R.S. 26:916(H)(4) or (5), each sale shall constitute a separate offense.

D. Any fine imposed upon any permittee or the revocation or suspension of a permit is in addition to and is not in lieu of or a limitation upon any other penalty imposed by law and not contained in this Chapter.

* * *

§921. Public records

A. The commissioner shall maintain a list of all wholesale and retail dealers who hold a permit in this state. Nothing contained in this Chapter shall be construed to prevent the commissioner from disclosing to any person upon request the name and address of any dealer who holds a permit, but the commissioner shall not disclose any tax information the disclosure of which is otherwise prohibited by law.

B. The commissioner shall provide on its website the list of all persons licensed as stamping agents pursuant to R.S. 26:902(5)(a).

C. The commissioner shall provide on its website the list of all persons holding an exporter license pursuant to R.S. 26:902(5)(b).

* * *

Section 3. R.S. 47:842(11), 843(A)(2), (C)(3) and (4), and (D), 847, 849, 851(B), 857, 862, 865(C)(3)(b), (c)(introductory paragraph) and (i), 871, 872, 876 through 878, and 1508(B)(11) are hereby amended and reenacted and R.S. 47:842(16) through (22), 843(A)(3), 851(E) and (F), and 1520(A)(1)(g) are hereby enacted to read as follows:

§842. Definitions

As used in this Chapter, the following terms have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

* * *

(11) "Place of business" as used in this Chapter means the place where the orders are received, or where the taxable articles are sold, or if sold upon a railroad train or on or from any other vehicle, the vehicle on which or from which the taxable

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articles are sold by the retail dealer. It also includes the establishment where vending machines are located.

* * *

(16) "Brand family" has the meaning as set forth in R.S. 13:5072(1).

(17) "Person" means any natural person, trustee, company, partnership, corporation or other legal entity.

(18) "Purchase" means acquisition in any manner, for any consideration. The term includes transporting or receiving product in connection with a purchase.

(19) "Sales" or "sell" means any transfer, exchange, or barter in any manner or by any means for any consideration. The term includes distributing or shipping product in connection with a sale. References to a sale "in" or "into" a state refer to the state of the destination point of the product in the sale, without regard to where title was transferred. References to sale "from" a state refer to the sale of cigarettes that are located in that state to the destination in question without regard to where title was transferred.

(20) "Sales entity affiliate" means an entity that sells cigarettes that it acquires directly from a manufacturer or importer and is affiliated with that manufacturer or importer as established by documentation received directly from that manufacturer or importer to the satisfaction of the attorney general. Entities are affiliated with each other if one, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other.

(21) "Stamping agent" means a dealer that is authorized to affix tax stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841 et seq. on cigarettes.

(22) "State directory" or "directory" means the directory compiled by the attorney general under R.S. 13:5073, or, in the case of reference to another state's directory, the directory compiled under the similar law in that other state.

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§843. Use of stamps or meter impression required and limitations

A. Cigarette tax stamps.

* * *

(2) No individual package of cigarettes shall be sold or distributed in, into, or from the state in individual packages containing fewer than twenty cigarettes. No smoking tobacco intended for use as roll-your-own smoking tobacco for cigarettes shall be sold or distributed in individual packages containing less than six-tenths of one ounce of smoking tobacco.

(3) Except as otherwise provided in this Chapter, all packages of cigarettes sold in or into the state shall bear a stamp as required by this Chapter and no person may sell, transport, or cause to be transported unstamped cigarettes in, into, or from, or possess unstamped cigarettes in the state.

* * *

C. Purchase of stamps.

* * *

(3) Cigarette tax stamps shall be sold by the secretary of the Department of Revenue to bonded registered Louisiana tobacco dealers in the state of Louisiana who hold a valid stamping agent designation in accordance with R.S. 26:902(5)(a) and who have a direct purchasing contract with a manufacturer at a discount of six percent from the face value, when purchased in quantities of not less than one hundred dollars face value, and the same provisions and discount shall apply where the metered stamping machine or device is used.

(4) Except as otherwise provided in this Section, the stamps shall be sold by the secretary of the Department of Revenue in less quantity at face value to any and all persons, firms, partnerships, corporations, and associations of person who hold a valid stamping agent designation in accordance with R.S. 26:902(5)(a) and are qualified to purchase stamps hereunder.

* * *

D. Affixing Stamps. (1) No person other than a dealer holding a valid stamping agent designation under R.S. 26:902(5) may affix a stamp to any package

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of cigarettes. Stamps shall be affixed by the dealer, on the smallest container or package of cigarettes that is subject to the tax, to permit the secretary to readily ascertain by an inspection of any dealer's stock on hand, whether or not the tax has been paid. The dealer shall cause to be affixed on every package of cigarettes on which a tax is due, stamps of an amount equaling the tax due thereon, before any person, firm, partnership, corporation, or association of persons sells, offers for sale, handles, removes, or otherwise disturbs or distributes the same. The stamps shall be affixed in such a manner that their removal will require continued application of steam or water and shall be canceled by placing thereon the license number of the dealer.

* * *

§847. Dealers required to affix stamps

A. General requirement. Every registered tobacco dealer holding a valid stamping agent designation pursuant to R.S. 26:902(5)(a) shall immediately after receipt of any unstamped cigarettes unless sooner offered for sale and prior to selling the cigarettes in or into the state, cause the same to have the requisite denominations and amount of stamp or stamps to represent the tax affixed as stated herein. The stamping of the unstamped cigarettes shall actually begin as soon as practicable after receipt of the cigarettes in the premises of the tobacco dealer and shall be continued with reasonable diligence by the dealer until all of the unstamped cigarettes have been stamped as provided by law.

B. Stamping agents may sell cigarettes in or into the state, may purchase cigarettes for resale in or into the state and may affix a stamp required by this Chapter only if the manufacturer and brand family of the cigarettes are listed on the state directory at the time of stamping.

C. Notwithstanding the provisions of Subsection A of this Section, unless prior written approval is obtained from the attorney general in accordance with regulations promulgated by the secretary pursuant to the Administrative Procedure Act, stamping agents may sell cigarettes in or into the state, may purchase cigarettes for resale in or into the state, and may affix a stamp required by this Chapter only if

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the stamping agent purchased the cigarettes directly from the manufacturer or importer of the cigarettes, who holds a valid permit issued pursuant to 26 USC 5713, or from a sales entity affiliate whose name and address has been provided to the attorney general pursuant to R.S. 13:5073(A)(7).

D.(1) Unstamped cigarettes. If and whenever any of the cigarettes taxed in this Chapter are found in the place of business of any tobacco dealer or any other person, except bonded interstate tobacco dealers, without the stamps affixed as herein provided, the prima facie presumption shall arise that such cigarettes are kept therein in violation of the provisions of this Chapter.

(2) A manufacturer or importer may, in accordance with R.S. 47:862, possess, transport, or cause to be transported unstamped cigarettes in or into the state to a stamping agent under either of the following circumstances:

(a) The manufacturer and brand family of the cigarettes are at the time of sale listed on the state directory.

(b) The manufacturer and brand family of cigarettes are not at the time of sales listed on the state directory, but all of following conditions apply:

(i) The stamping agent is authorized to affix the stamp or, when permitted by R.S. 47:849, pays the taxes imposed by another state on whose directory the manufacturer and brand family of the cigarettes are listed at the time of the sales.

(ii) The stamping agent would be permitted to resell the cigarettes from this state into that other state as provided in R.S. 47:849.

(iii) The stamping agent receiving the cigarettes holds an exporter license pursuant to R.S. 26:902(5)(b) and submits a report pursuant to R.S. 47:851(E).

(3) A manufacturer or importer may sell unstamped cigarettes as permitted under Paragraph (2) of this Subsection through its sales entity affiliate whose status as a sales entity affiliate has been provided by the manufacturer or importer to the satisfaction of the attorney general in accordance with R.S. 13:5073(A)(7) and prior to the sales entity affiliate selling any cigarettes in or into the state. If the manufacturer or importer does so:

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(a) It may sell or otherwise transfer the unstamped cigarettes to its sales entity affiliate in connection with the sale.

(b) The sales entity affiliate may possess, transport, or cause to be transported the unstamped cigarettes in connection with the sale to the same extent the manufacturer or importer could under this Section if it were making the sale directly.

(c) In the case of sales permitted under Paragraph (2) of this Subsection, the stamping agent will be deemed to have purchased the cigarettes directly from the manufacturer or importer.

* * *

§849. Interstate business of tobacco dealers

A. A registered tobacco dealer holding a valid stamping agent designation as provided in R.S. 26:902(5)(a) may sell its cigarettes from this state into another state only if it first affixes the stamp required by the other state to the package containing the cigarettes. If the law of the other state permits the sale of the cigarettes to consumers in a package not bearing a stamp, the dealer may sell cigarettes into the other state without a stamp only if it first pays an excise, use, or similar tax imposed on the cigarettes by the other state.

B. A dealer may not purchase or possess unstamped cigarettes in this state for sale into another state where the manufacturer and brand family of the cigarettes are not at the time of sale listed on this state's directory unless it holds an exporter license pursuant to R.S. 26:902(5)(b).

C. Any registered tobacco dealer desiring to engage in interstate business shall furnish a bond for that purpose. This bond shall be in addition to the bond provided for in R.S. 47:848, in an amount and of tenor and solvency satisfactory to the collector. He shall then be permitted to set aside such part of his stock as may be absolutely necessary for the conduct of such interstate business, without affixing the stamps required by this Chapter. Such interstate stock shall be kept in an entirely separate part of the building, separate and apart from stamped stock, and the

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interstate business shall be conducted by the dealer in accordance with rules and regulations to be promulgated by the collector.

D. Notwithstanding Subsections A, B, or C of this Section, a person may not sell cigarettes from this state into another state if the sale would violate the law of the other state, or affix the stamp required by the other state or pay the excise, use, or similar tax imposed by the other state if doing so would violate the law of the other state.

* * *

§851. Dealers receiving unstamped and/or nontax paid cigarettes, cigars, and smoking tobaccos required to file monthly reports and maintain records; vending machine restrictions

* * *

B. Registered tobacco dealers and stamping agents.

(1) Each and every ~~registered tobacco dealer~~ designated stamping agent in accordance with R.S. 26:902(5)(a) receiving unstamped cigarettes shall file a report with the secretary of the Department of Revenue on forms prescribed and furnished by the secretary showing the purchase, receipt and sale of unstamped taxable cigarettes, and the purchase and use of cigarette tax stamps. The report shall be submitted to cover the calendar month and shall be filed with the secretary not later than the ~~20th~~ twentieth day of the month following the end of the previous calendar month. The report shall certify that the report is complete and accurate and shall contain, in addition to any further information that the secretary or the attorney general may reasonably require, the following:

(a) The total number of cigarettes acquired by the stamping agent during that month for sale into the state or for sale from this state into another state, sold in or into the state by the stamping agent during that month, and held in inventory in the state or for the sale into the state by the stamping agent pursuant to this Chapter and R.S. 13:5075, in each case identifying by name and number of cigarettes the manufacturer and brand families of those cigarettes.

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(b) The total number of stamps it affixed during that month, and identifying (i) how many of each type of stamp it affixed by number and dollar amount of tax paid; (ii) the total number of cigarettes contained in the packages to which it affixed each respective type of tax stamp; and (iii) by name and number of cigarettes, the manufacturers and brand families of the packages to which it affixed each respective type of tax stamp.

(c) In the case of a stamping agent that is an importer, reports under Subparagraph (a) of this Paragraph shall not include cigarettes it sold to a stamping agent as permitted under R.S. 26:902(5)(a) and that it separately reports pursuant to R.S. 13:5075.

(2) Any person that during a month acquired, purchased, sold, possessed, transferred, transported, or caused to be transported in or into the state cigarettes of a manufacturer or brand family that were not on the state directory at the time shall file, not later than the twentieth day of the month following the end of the previous calendar month, a report on a form provided by the secretary and certify that the report is complete and accurate. The report shall contain, in addition to any further information that the secretary or the attorney general may reasonably require, the following information:

(a) The total number of those cigarettes, in each case identifying by name and number of cigarettes (i) the manufacturer of those cigarettes, (ii) the brand families of those cigarettes, (iii) in the case of a sale or transfer, the state in which the recipient of those cigarettes is located, and (iv) in the case of an acquisition or purchase, the state of the seller or sender of those cigarettes.

(b) The following shall be provided to the attorney general or secretary upon request: in the case of acquisition, purchase, or possession, the detail of the person's subsequent sale or transfer of those cigarettes, identifying by name and number of cigarettes (i) the brand families of those cigarettes, (ii) the date of the sale or transfer, (iii) the name and address of the recipient, (iv) the number of stamps of each other state that the person affixed to the packages containing those cigarettes during that month, (v) the total number of cigarettes contained in the packages to which it

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affixed respective other state's stamp, (vi) by name and number of cigarettes that manufacturers and brand families of the packages to which it affixed each respective other state's stamp and (vii) a certification that it reported each sale or transfer to the taxing authority of the other state not later than the twentieth day of the month following the end of the previous calendar month.

(3) The secretary may share the information reported under this Section with any federal, state, or local taxing agency or law enforcement authorities of this state or other states.

~~(2)~~(4)(a) Every registered tobacco dealer receiving and handling cigars and smoking tobaccos in Louisiana upon which the tax has not been previously paid shall, within twenty days after the expiration of each calendar month, file with the secretary a report, under oath, of the total amount of such cigars and smoking tobaccos received and handled during the preceding month, and shall pay the taxes due thereon, and all ~~out of state~~ out-of-state Louisiana registered tobacco dealers shall file a report, under oath, disclosing all sales of cigars and smoking tobaccos in Louisiana during the preceding calendar month, and shall pay the taxes due thereon. This report shall be made on forms prescribed and furnished by the secretary and shall show such other information as the secretary may require so that the taxes levied in R.S. 47:841 can be reported and computed.

(b) A six percent discount is allowable for timely and accurately filing such report only on those purchases made by registered tobacco dealers in Louisiana who have a direct purchasing contract with a manufacturer. The secretary shall allow wholesale tobacco dealers of other states serving a trade area of retail dealers in this state who have a direct purchasing contract with a manufacturer to sell in this state with the benefit of the discount provided, however, in no instance shall the discount be greater than that which is received by such wholesale tobacco dealers in their state of domicile and further provided that regardless of the discount extended by other states, such discount shall not exceed six percent, provided said dealers meet the requirements of a wholesale dealer as set forth in R.S. 47:842(5). The transfer or

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disposal by a qualified dealer of any benefit herein conferred is prohibited except in the case of the original recipient.

~~(3)~~(5) Failure to file the monthly report on or before the ~~20th~~ twentieth day of the following month will subject the dealer to forfeiture of the discounts as authorized in R.S. 47:843~~, R.S. 47:851~~ and 851 and all other penalties as provided in the administrative provisions in Chapter 18, Title 47, however, the collector can upon timely application extend this date in his discretion upon cause shown.

* * *

E. Out-of-state sales reports. Any person that sells cigarettes from this state into another state shall, by the twentieth day of the month following the month in which the sales were made, file a report on a form to be prescribed by the secretary and shall provide a duplicate report to the attorney general and certify that the report is complete and accurate.

(1) The report shall contain the following information:

(a) The total number of cigarettes sold from this state into another state by the dealer during that month, identifying by name and number of cigarettes; (i) the manufacturer of those cigarettes; (ii) the brand families of those cigarettes; and, (iii) the name and address of each recipient of those cigarettes.

(b) The number of stamps of each other state the dealer affixed to the packages containing those cigarettes during that month, the total number of cigarettes contained in packages to which it affixed each respective other state's stamp and, by name and number of cigarettes, the manufacturers and brand families of the packages to which it affixed each respective other state's stamp.

(c) If the dealer sold cigarettes during that month from this state into another state in packages not bearing a stamp of the other state, (i) the total number of cigarettes contained in such packages, identifying by names and number of cigarettes, the manufacturers of those cigarettes, the brand families of those cigarettes, and the name and address of each recipient of those cigarettes; (ii) the dealer's basis for belief that such state permits the sale of the cigarettes to consumers

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in a package not bearing a stamp; and, (iii) the amount of excise, use or similar tax imposed on the cigarettes and paid by the dealer to such state.

F. The secretary may share the information provided in Subsection E of this Section, upon request, with any federal, state, or local taxing agency or law enforcement authorities of this state or other states.

* * *

§857. Refunds

A. The collector may promulgate rules and regulations providing for the refund to dealer for the cost of stamps affixed to goods which by reason of damage become unfit for sale and are destroyed by dealer or returned to manufacturer or jobber.

B. The collector may refund a dealer for the cost of stamps affixed to goods, that were listed on the state directory at the time the stamps were affixed but have been subsequently removed from the state directory, upon proof that the goods have been destroyed, the date and location of the destruction, and a verification must be signed by the individuals who witnessed the destruction. The collector may promulgate rules and regulations related to the destruction of the goods and the procedures for refund.

* * *

§862. Importation of unstamped articles, except by common carrier, without permit prohibited

A.(1) It is unlawful for any person to ship or transport or cause to be shipped or transported into this state by any automobile, truck, boat, conveyance, vehicle, or any means of transportation other than a common carrier of any article or articles on which the tax is levied by this Chapter upon which article or articles the tax as levied by this Chapter has not been paid, without first obtaining a permit from the collector, authorizing the transportation, carriage or movement in this state of the article or articles taxed under this Chapter.

(2) A common carrier may possess and transport unstamped cigarettes in connection with a sale or other transfer permitted under this Chapter if the common

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carrier has in its possession documents establishing that title to the unstamped cigarettes remains with the manufacturer, importer, or stamping agent or bills of lading or other shipping documents establishing that it is delivering the cigarettes on behalf of a person authorized by this Chapter to sell or transfer the unstamped cigarettes and, in each case, such documents shall list the name and address of the person to whom the cigarettes are being delivered.

B.(1) The person or dealer who desires to import tobacco into this state, upon which a tax has not been paid, by vehicles other than a common carrier, must apply to the collector for a permit, stating the name of the driver, the make and number of the vehicle, the date, name, and address of the consignee, and any other information the collector may deem necessary; provided that, failure to obtain a permit as provided in this Section shall render the automobile, truck, boat, conveyance, vehicle, or other means of transportation so transporting any said article or articles subject to seizure and forfeiture and sale in the manner hereinafter provided.

(2) Any person or dealer transporting tobacco pursuant to this Subsection shall report the quantity and brand of the cigarettes to the collector and to the attorney general and the taxing authority of the other state by the twentieth day of the month following the month in which the transfer was made.

* * *

§865. Seizure and forfeiture of unstamped taxable articles

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C.

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(b) If cigarettes are seized and such cigarettes are in packages described in R.S. 47:843(D)(2) or are stamped in violation of R.S. 47:843(D)(2), the secretary may not sell the cigarettes, but shall destroy such cigarettes or dedicate them to be used for law enforcement purposes and then destroyed.

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(c) ~~Cigarettes~~ Any cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of ~~R.S.47:843(D)(4)~~ this Chapter or R.S. 13:5061 et seq. shall be deemed contraband and are subject to seizure and forfeiture as provided in this Chapter.

(i) Any cigarettes so seized and forfeited shall be destroyed or used by law enforcement and then destroyed. Such cigarettes shall be deemed contraband whether the violations of ~~R.S. 47:843(D)(4) is~~ this Chapter or R.S. 13:5061 et seq. are knowing or otherwise.

* * *

§871. Definitions

For purposes of this Chapter:

~~(1) "Adult" means a person who is at least the legal minimum purchase age.~~

(1) "Cigarettes" shall have the meaning as set forth in R.S. 13:5062(4)(a) through (d).

(2) "Consumer" means an individual who is not licensed as a cigarette wholesale dealer or cigarette retail dealer as defined in R.S. 47:842.

(3) "Delivery sale" means any sale of cigarettes to a consumer in this state where either (a) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service, or (b) the cigarettes are delivered by use of the mails or of a delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes not for personal consumption to a person who is a cigarette wholesale dealer or a cigarette retail dealer shall not be a delivery sale.

(4) "Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

~~(5) "Secretary" means the secretary of the Department of Revenue for the state of Louisiana or his duly authorized representatives.~~

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~~(6) "Legal minimum purchase age" is the minimum age at which an individual may legally purchase cigarettes in this state as provided in R.S. 26:911(A)(1).~~

~~(7)~~(5) "Mails" or "mailing" means the shipment of cigarettes through the United States Postal Office.

~~(8)~~(6) "Person" means ~~the same as that term is defined in R.S. 1:10, except that a delivery service that is a motor carrier of property registered with the U.S. Department of Transportation and/or an air carrier certified by the U.S. Department of Transportation to provide all-cargo air transportation, when engaged in the business of the commercial delivery of letters, packages, or other containers, is not a person for purposes of this Chapter.~~ any natural person, trustee, company, partnership, corporation, or other legal entity.

~~(9) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.~~

~~(10) "Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.~~

~~(5)~~(7) "Secretary" means the secretary of the Department of Revenue for the state of Louisiana or his duly authorized representatives.

§872. ~~Requirements for delivery sales~~ Prohibition against delivery sales

~~A. No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in this state.~~

~~B. Each person accepting a purchase order for a delivery sale shall comply with:~~

~~(1) The age verification requirements set forth in R.S. 47:873.~~

~~(2) The disclosure requirements set forth in R.S. 47:874.~~

~~(3) The shipping requirements set forth in R.S. 47:874.~~

~~(4) The registration and reporting requirements set forth in R.S. 47:875.~~

~~(5) The tax collection requirements set forth in R.S. 47:876.~~

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~~(6) All other laws of this state generally applicable to sales of cigarettes that occur entirely within this state, including but not limited to those laws imposing: (a) excise taxes, (b) sales taxes, (c) permit and revenue-stamping requirement, and (d) escrow payment obligations as set forth in R.S. 13:5063.~~

No person who is engaged in the business of selling or distributing cigarettes may ship or transport, or cause to be shipped or transported, cigarettes to any consumer in the state. The provisions of this Section shall apply regardless of whether the person engaged in the business of selling or distributing cigarettes is located within or without the state.

* * *

§876. Collection of Taxes

A. Each person ~~accepting~~ placing a purchase order for a delivery sale shall ~~collect and~~ remit to the secretary all ~~cigarette~~ taxes imposed by this state with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that such taxes already have been paid to the state.

B. In addition to the obligations to pay any taxes, as provided in Subsection A of this Section, the person placing a purchase order for delivery sale shall also be obligated to pay any interest, costs, and attorney fees incurred in obtaining payment of the taxes imposed by this state as well as any penalties assessed under this Chapter.

§877. Penalties

A. Except as otherwise provided in this Section, a first violation of any provision of ~~this Chapter~~ R.S. 47:872 shall be punishable by a fine of one thousand dollars or five times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation of ~~this Chapter~~ R.S. 47:872 shall be punishable by a fine of five thousand dollars or five times the retail value of the cigarettes involved, whichever is greater.

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B. Any person who knowingly violates any provision of ~~this Chapter~~ R.S. 47:872, shall for each such offense be fined ten thousand dollars or five times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than five years, or both.

~~C. Any person failing to collect or remit to the secretary any tax required in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five times the retail value of the cigarettes involved.~~

~~D.~~C. Forfeiture

(1) Any cigarettes sold or attempted to be sold in a delivery sale ~~that do not meet requirements of this Chapter~~ shall be forfeited to the state and destroyed.

~~(2) All fixtures, equipment, and all other materials and personal property on the premises of any person who, with the intent to defraud the state, violates any of the requirements of this Chapter, shall be forfeited to the state.~~

§878. Enforcement

The attorney general or the commissioner of the Louisiana Office of Alcohol and Tobacco Control, or ~~his~~ either agency's designee, or any person who holds a valid permit under 26 USC 5712, may bring an action in the appropriate court in this state to prevent or restrain violations of this Chapter by any person or any person controlling such person.

* * *

§1508. Confidential character of tax records

* * *

B. Nothing herein contained shall be construed to prevent:

* * *

(11) The secretary from disclosing to any person upon request the name and address of any registered wholesale tobacco dealer who holds a license or permit to operate within this state, but the secretary shall not disclose any tax data whatsoever with respect to the wholesaler, except for information provided to the tobacco settlement enforcement unit of the Louisiana Department of Justice for the enforcement of ~~Part~~ Parts XIII and XIII-A of Chapter 32 ~~and~~ of Title 13 of the

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Louisiana Revised Statutes of 1950 or to the Louisiana Office Alcohol and Tobacco Control for the enforcement of Chapter 7 of Title 26 of the Louisiana Revised Statutes of 1950. Such disclosure shall include any and all data with respect to dealers, including but not limited to any wholesaler or retailer, as well as manufacturer, sales entity affiliate, or importer. ~~the Louisiana Department of Justice shall disclose or be required to disclose any information obtained under this Paragraph unless the disclosure is ordered by a court of competent jurisdiction or agreed upon in writing by the registered wholesale or tobacco dealer~~ The secretary, attorney general, and commissioner shall share with each other the information received under the provisions of R.S. 13:5061 et seq., 13:5071 et seq., 26:901 et seq., and R.S. 47:841 et seq. and may share such information with other federal, state, or local taxing agencies or law enforcement authorities only for purposes of enforcement of those Sections and the corresponding laws of other states. The attorney general, commissioner, or secretary may also disclose any information obtained under this Paragraph pursuant to an order by a court of competent jurisdiction or if agreed upon in writing by the registered wholesale or retail tobacco dealer, sales entity affiliate, importer, or manufacturer.

* * *

§1520. Electronically filed returns; signatures

A.(1) The secretary may require electronic filing of tax returns or reports under any of the following circumstances:

* * *

(g) Persons required to file a report pursuant to R.S. 47:843 et seq.

* * *

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Section 4. R.S. 47:873 through 875 are hereby repealed in their entirety.

_____
SPEAKER OF THE HOUSE OF REPRESENTATIVES

_____
PRESIDENT OF THE SENATE

_____
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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