
DIGEST

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Thompson

HB No. 641

Abstract: Relative to tobacco enforcement, includes restrictions on transactions of unstamped cigarettes, adds requirements for manufacturers not participating in the tobacco Master Settlement Agreement, and increases the dedication into the Tobacco Settlement Enforcement.

TITLE 13 PROVISIONS

Present law (R.S. 13:5071, et. seq.) establishes procedural enhancements to prevent violations and aid in the enforcement of the Master Settlement Agreement between the state and leading United States tobacco product manufacturers.

Proposed law adds the following new definitions: commissioner, importer, package, person, sales, retailer, sale in or into, and sales entity affiliate. Removes “Department” as a definition for Revenue. Retains “secretary” as the sole definition under Title 13 which parallels reference to the agency in Titles 26 and 47.

Proposed law expands the requirements for Nonparticipating Manufacturers (“NPMs”) which will now include: proof that the NPM holds a valid permit under 26 U.S.C. 5713; sufficient information that it has posted an appropriate bond; and, a declaration from importers – wherein the NPM is a foreign company, consenting to the personal jurisdiction of Louisiana, accepting joint and several liability with the NPM, and appointing a registered agent for service of process within the State of Louisiana.

Under proposed law, the enumerated list of reasons a tobacco product manufacturer shall not be included on the Attorney General state directory shall now include: any violation of 13:5061 et seq. (which are now included as only quarterly whereas present law allowed it as annual, monthly, or quarterly); and, reciprocity to other states’ laws allowing LA to remove a manufacturer should its conduct in another state be cause for removal in this state; failure to submit (new) reports to the attorney general (monthly reports of the manufacturer’s sales under 13:5075).

Proposed law requires that all reports due under Titles 13, 26, and 47 by stamping agents be submitted to the secretary, commissioner, and attorney general and shall be complete and accurate stamping agent to be considered in full compliance.

Proposed law mandates that both manufacturers and importers that sell into the state submit

monthly reports of total quantity of cigarettes and roll-your-own sold into the state, including manufacturer and brand names. Also, manufacturers and importers shall be required to submit timely reports and certify that the reports are complete and accurate. This section also includes reciprocity – the attorney general may request copies of reports from manufacturers or importers that they have filed in other states which include sales information (quantity, manufacturer, and brand). This language is entirely new as present law does not encompass manufacturer and importers in the reporting requirements.

Proposed law gives general authority for the attorney general to receive copies of any reports received by the commissioner. Present law does not include that general authority to receive all duplicate copies of reports submitted to the commissioner.

Present law allows for the secretary to share information received with the attorney general, without violating any taxpayer confidentiality laws (pursuant to 47:1508).

Proposed law now adds the commissioner of alcohol and tobacco control.

Present law authorizes the attorney general under to allow for annual, quarterly, or monthly escrow installments.

Proposed law mandates escrow payments on a quarterly basis.

Proposed law requires the attorney general to compare reports received from NPMs against the escrow deposits received and invoice the companies when it concludes additional escrow is owed.

Proposed law mandates that any person that sells cigarettes (including roll-your-own) from this state into another state shall file a report to the secretary and attorney general.

Proposed law specifies the procedures for notifying a manufacturer prior to the manufacturer's removal from the state directory by requiring a 30 day notice letter from the attorney general to the manufacturer; a manufacturer can attempt to fully cure such violation or refute the removal and detailed reasons for such removal during the 30 day notice period; allows the attorney general to recuperate reasonable costs and attorneys' fees for an unsuccessful challenge of a decision to not include or remove from the directory of a brand family or manufacturer; and, each person may provide a specific name/address for such notices to be sent.

Proposed law mandates that NonParticipating Manufacturers (NPMs) post a bond or cash equivalent for the benefit of the state; evidence of such bond shall be provided to the attorney general at least ten days prior to each calendar quarter as a condition to the NPM and its brand families' inclusion on the state directory.

Proposed law includes bond amounts as follows: NPMs or its affiliated which have been listed on Louisiana's directory for at least three years, it shall be \$50,000; for NPMs which have been listed on Louisiana's directory less than three years, it shall be \$100,000; and, for NPMs which

have failed, in the past 3 years, to make its full escrow deposits, the bond shall be no less than \$100,000.

Proposed law allows the state to execute upon the bond, after the NPM fails to deposit escrow and the appropriate due date for escrow due that quarter has passed; the state shall execute the bond first, to receive delinquent escrow and then second, to receive civil penalties and costs. Any escrow obligations above that collected amount shall be due from the NPMs and its importers that sold cigarettes (or roll-your-own) that quarter.

TITLE 26 PROVISIONS

Present law (R.S. 26:901 et seq) provides for the regulation of tobacco products and the issuance of permits by the commissioner of alcohol and tobacco control.

Proposed law adds the following new definitions: brand family, person, purchase, sale or sell, sale in or into, sales entity affiliate, stamping agent, and state directory.

Proposed law adds a new permit designation, a stamping agent designation (as a particular permit other than a general wholesale dealer) to dealers that engage in the business of purchasing unstamped or non-tax paid cigarettes (or roll-your-own). In addition, a second new designation is created and classified as an exporter permit for any person/dealer that intends to carry and possess tobacco products not listed as approved on the attorney general directory.

Proposed law codifies current practices and expands detailing what stamping agents shall certify and submit to the commissioner; such certification shall include an enumerated list of obligations including providing accurate reports under present and proposed law, paying all state taxes, complying generally with Title 47, consenting to the jurisdiction of the state to enforce this Act, and waiver of sovereign immunity and confidentiality laws, allowing this state to share obtained information with other states.

Proposed law requires stamping agents located outside of the state to appoint an agent for service of process.

Proposed law codifies current practices and details the steps for the removal of a stamping agent; lists the enumerated reasons a stamping agent's license to be subject to termination.

Proposed law encompasses reciprocity of a stamping agent's conduct in another state, so that any Louisiana licensed stamping agent's license could be subject to termination if its actions in another state, if done in this state, would be subject termination of its stamping agent designation under proposed law.

Proposed law states that the commissioner shall publish on its website a notice of the removal of any stamping agent, after prompt removal; in addition, it requires that the attorney general send notice of such removal to all manufacturers on the state directory.

Proposed law codifies current practices not previously detailed and states the enumerated timeline for eligibility of stamping agent status for any stamping agent whose license has been terminated under this section, including reinstatement timeline of no less than 90 days and no more than three years following the termination date.

Proposed law establishes new civil penalties of up to \$1,000 for a first violation and \$5,000 for a third or subsequent violation for a second violation under 26:916(H)(4)-(5) or 26:916(H)(1)-(3) or (6).

TITLE 39 PROVISIONS

Present law (R.S. 39:98.7) establishes the Tobacco Settlement Enforcement Fund (the fund). Provides that the state treasurer shall transfer \$400,000 out of the state general fund into the fund to be used by the Dept. of Justice for enforcement of the Master Settlement Agreement.

Proposed law increases the amount deposited into the fund each year out of the state general fund from \$400,000 to \$1,485,000.

TITLE 47 PROVISIONS

Present law (R.S. 47:841 et seq.) provides for levy of tobacco taxes R.S. 47:871 et seq provides for the delivery sales of cigarettes.

Proposed law adds the following new definitions: brand family, person, purchase, sale or sell, sale in or into, sales entity affiliate, stamping agent, and state directory.

Present law states that individual packages of cigarettes shall not be sold or distributed in individual packages; proposed law retains that and add that such individual packages shall not be sold or distributed in, into, or from the state – regardless of destination (interstate, etc.), - thus possession of such individual packages would be prohibited.

Proposed law presumes that all packages of cigarettes sold in or into the State shall bear a tax stamp as required under Title 47 and that transporting or possession of unstamped cigarettes in the state is prohibited unless otherwise provided in law. Proposed law does not prohibit the possession of unstamped product unless it is encompassed by specific exemptions or provisions of (proposed) law.

Proposed law amends the language relating to the affixing of tax stamps, stating that a no person other than a dealer holding a valid stamping agent license under 26:902 may affix a tax stamp. Present law requires that only dealers affix a tax stamp on cigarettes; proposed law has added the stamping agent designation as a subset of wholesale dealer (which subsequently also requires a permit designation under Title 26), specifically for those wholesale dealers that may affix tax stamp on cigarettes.

Present law requires that all dealers shall immediately, upon receipt of unstamped cigarettes, affix a tax stamp on such product.

Proposed law specifies that only stamping agents shall be required to affix tax stamps, rather than all wholesale dealers. In addition proposed law clarifies that the affixing of tax stamps shall occur prior to the selling of cigarettes in or into the state.

Proposed law states that stamping agents may sell cigarettes in or into the state and subsequently affix a tax stamp if the manufacturers and brand family of the cigarettes are listed on the attorney general directory and the stamping agent purchased the cigarettes directly from the importer of cigarettes.

Proposed law allows manufacturer or importers to, in accordance with 47:862, possess, transport, or cause to be transported unstamped cigarettes if the product is on the attorney general directory or if not listed on the attorney general directory, under specific, enumerated circumstances, including but not limited to giving notice to the commissioner and attorney general 5 days prior to the cigarettes being transferred.

Proposed law requires that only dealers holding an exporter permit under Title 26 be allowed to sell cigarettes from this state into another state, if it first affixes a tax stamp required by the other state or if the law of the other state does not require tax stamps, to first pay the excise tax of the other state. In addition proposed law specifies that a dealer may not purchase or possess unstamped cigarettes in this state for sale into another state if the brand and manufacturer are not at the time listed on the other state's directory, and that a person may not sell cigarettes into another state if such a sale would violate the laws of the other state.

Proposed law adds stamping agents to the designation of registered tobacco dealers, including the requirement to file monthly reports with the Department of Revenue of monthly purchases, receipt and sale of unstamped taxable cigarettes and the purchase and use of cigarette tax stamps.

Proposed law requires that dealers and stamping agents to certify to the state that such reports are complete and accurate; proposed law codifies present practice whereby dealers certify on their monthly reports that such report are accurate.

Proposed law enumerates what the commissioner or attorney general may reasonably require dealers or stamping agents provide on such monthly reports, including the total number of stamps affixed that month and identifying the manufacturers/brands of cigarettes.

Proposed law adds importers to the requirement of submitting monthly reports of sales and purchases.

Proposed law requires any person that acquires, purchases, sold, possessed, transferred, transported, or caused to be transported in any month to submit monthly reports to the secretary.

Proposed law allows the secretary to share information reported under present and proposed law with taxing and law enforcement of this state or other states.

Proposed law requires that any person that sells cigarettes from this state into another state shall file a monthly report, by the 20th of the month following the month in which sales were made, and shall provide duplicate copies of such reports to the attorney general. Proposed law requires the following on the monthly report: number of stamps of each other state the dealer affixed to the packages, including the other state, and breakdown of brands/manufacturers; and, if such sales into another state are unstamped, then the total number of cigarettes contained in such packages by name/brands, the dealer's basis for belief that such state permits the sale of such cigarettes and the amount of excise or similar tax imposed.

Proposed law allows a common carrier to possess and transport unstamped cigarettes if the common carrier has in its possession documents establishing the title of the unstamped product remains with the manufacturer, importer, or stamping agent or bills of lading or other shipping documents establishing it is delivering the cigarettes on behalf of authorized on under this chapter to sell or transfer unstamped product.

Proposed law requires any person or dealer transporting tobacco under this paragraph to report the brand and quantity of cigarette to the secretary monthly.

Proposed law exempts the possession of up to 600 cigarettes bearing the stamp of another state for consumption by that person or that person's family if the cigarettes are physically brought into the state.

Present law provides for the seizure of cigarettes and their destruction..

Proposed law adds that seized product may also be dedicate to be used for law enforcement purposes and then destroyed.

Proposed law expands the definition of contraband to any cigarettes in violation of Titles 47 or 13.

Present law details that delivery sales shall be allowed if the person accepting such product is of legal age and such person must comply with a list of requirements.

Proposed law deletes present law.

Present law requires that any person placing a purchase order (the consumer) shall remit to the secretary all applicable taxes imposed by the state on such sale. In addition, there is the proposed obligation on the consumer to pay interest, costs, and attorneys' fees incurred in obtaining payment of the taxes imposed by this state as well as any penalties assessed.

Proposed law bans delivery sales, however, it continues to require that the applicable taxes be paid, in addition to such penalties and costs should a delivery sale occur.

Present law relative to penalties for violations of delivery sales, references cigarettes. Proposed law replaces cigarettes with tobacco products.

Proposed law requires the commissioner or his designee to bring an action for any violation of present law regarding delivery sales.

Present law does not permit the secretary to disclose any tax data of any tobacco dealer who holds a license or permit to operate in this state, except for information provided to the tobacco settlement unit of the attorney general's office (Department of Justice).

Proposed law expands disclosure to the attorney general to encompass but not be limited to any and all data with respect to any dealer, wholesaler, retailers, manufacturer, sales entity affiliate, or importer. Further permits disclosure to the commissioner.

Proposed law states that the secretary, commissioner, and attorney shall share with each other information received under each respective title and may share such information with other federal, state, or local agencies for enforcement purposes.

(Amends R.S. 13:5072, 5073(A)(3)(a)(v), (B)(2) through (4), 5075, 5076(A) and (B), and 5077; R.S. 26:904(A), 916(H), 918(B), and 921; R.S. 39:98.7(B); and R.S. 47:843(A)(2), (C)(3) and (4) and (D), 847(A) and (B), 849, 851(B), 862, 865(C)(3)(b) and (c), 871, 872, 876 through 878, and 1508(B)(11); adds R.S. 13:5073(A)(3)(a)(vi), (4)(e) and (f), (B)(5) and (6), 5074(D), and 5078; R.S. 26:901(19) - (26), 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)-(22), 843(A)(3), 847(C), and 851(E) and (F); and to repeal R.S. 47: 873 through 875)