

HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 641 by Representative Thompson

SALES/TOBACCO DEALERS: Provides relative to tobacco enforcement

Synopsis of Senate Amendments

1. Generally makes technical corrections, clarifies the sale of cigarettes by various entities, and clarifies reporting requirements for various entities.
2. Adds to the definition of "Sales Entity Affiliate" to require documentation received directly from the manufacturer or importer to the satisfaction of the attorney general.
3. Adds requirement for every tobacco product manufacturer to provide supporting documentation in its annual report to the satisfaction of the attorney general.
4. Prohibits the sale, offer or possession of cigarettes for sale in this state that are imported or stamped after the date of de-listing from the state directory and removes the 60-day sale limitation.
5. Adds requirement that each manufacturer who sells cigarettes in the state and each importer who imports cigarettes into the state submit its federal tax returns to the attorney general by 60 days after the close of the quarter in which the returns were filed.
6. Adds a provision to the definition of "place of business" to provide for tobacco articles sold by retail dealer.
7. Clarifies which violations may cause a stamping agent to loose his designation or be subject to civil penalties.
8. Adds an exception in the case of a first violation to allow the stamping agent to cure the failure if the violation was not knowing or unintentional.
9. Adds requirement that all dealers immediately, upon receipt of unstamped cigarettes and prior to selling the cigarettes in or into the state, affix a tax stamp on the product.
10. Adds authorization for stamping agents to sell cigarettes in or into the state, purchase cigarettes for resale in or into the state, and affix tax stamps only if the stamping agent purchased the cigarettes directly from a manufacturer or importer of the cigarettes who holds a valid permit or from a sales entity affiliate whose name and address has been provided to the attorney general pursuant to law.
11. Removes authorization for a sales entity affiliate to possess, transport, or cause to be transported cigarettes in or into the state in certain circumstances.
12. Adds authorization for a manufacturer or importer to sell unstamped cigarettes 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 law and prior to the sales entity affiliate selling any cigarettes in or into the state under specific enumerated circumstances.
13. Specifically authorizes certain governmental agencies to share tobacco enforcement information.

Digest of Bill as Finally Passed by Senate

TITLE 13 PROVISIONS

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

Proposed law provides for the following substantive changes:

- (1) Provides for the expansion of requirements for Nonparticipating Manufacturers ("NPMs") which will now include: proof that the NPM holds a valid permit under 26 USC 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.
- (2) Provides for an enumerated list of reasons which prohibits a tobacco manufacturer from being included on the attorney general state directory: any violation of R.S. 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 R.S. 13:5075).
- (3) Provides relative to manufacturers and its brand families to be removed from the state directory in certain circumstances and further provides for reinstatement eligibility requirements.
- (4) Provides relative to the reporting requirements pursuant to Titles 13, 26, and 47 by stamping agents.
- (5) Provides relative to the unlawful selling, offering, or possessing for sale or import for personal consumption in Louisiana for cigarettes not included in the directory and cigarettes that are subject to a de-listing notice.
- (6) Provides for the provisions of present law regarding agent for service of process to be applicable to importers with regard to the appointment and continuous retention of an agent of process and related notice requirements and obligations.
- (7) Provides relative to reporting requirements for manufacturers and importers that sell into the state to submit monthly reports of total quantity of cigarettes and roll-your-own cigarettes sold into the state, including manufacturer and brand names. This section also includes reciprocity provisions allowing the attorney general to request copies of reports from manufacturers or importers that they have filed in other states which include sales information (quantity, manufacturer, and brand). Requires each such manufacturer and importer to submit its federal tax returns to the attorney general by 60 days after the close of the quarter in which the returns were filed. This language is entirely new as present law does not encompass manufacturer and importers in the reporting requirements.
- (8) Provides relative to the general authority of the attorney general to receive copies of any reports received by the commissioner and the sharing of information with the attorney general, the commissioner, and other federal, state, or local taxing agencies or law enforcement authorities for purposes of enforcement without violating any taxpayer confidentiality laws (pursuant to R.S. 47:1508).
- (9) Provides relative to escrow installments and reporting of information which mandates

escrow payments on a quarterly basis no later than 45 days after the end of each calendar quarter in which the sales are made and further provides that failure to make a full quarterly installment deposit will constitute a separate violation of the state's escrow laws. Further requires the attorney general to compare reports received from NPMs against the escrow deposits received and provide notice to each nonparticipating manufacturer when it concludes additional escrow is owed.

- (10) Provides relative to requirements for importers of any brand families of nonparticipating manufactures to 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 consent to personal jurisdiction in Louisiana for purposes of claims by the state for payment of the obligations.
- (11) 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 attorney 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.
- (12) Provides relative to the requirement that NPM 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 10 days prior to each calendar quarter as a condition to the NPM and its brand families' inclusion on the state directory. Further provides for the bond amounts.

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 the office of alcohol and tobacco control.

Proposed law provides for the following substantive changes:

- (1) Provides for the addition of 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.
- (2) 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 law and proposed law, paying all state taxes, complying generally with Title 47, consenting to the jurisdiction of the state to enforce proposed law, and waiver of sovereign immunity and confidentiality laws, allowing this state to share obtained information with other states.
- (3) Requires stamping agents located outside of the state to appoint an agent for service of process and codifies current practices and details the steps for the removal of a stamping agent; and lists the enumerated reasons a stamping agent's designation to be subject to termination. Further provides for reciprocity for a stamping agent's conduct in another state.
- (4) Provides for certain publication requirements by the commissioner and notice requirements for the attorney general.

- (5) Provides relative to current practices not previously detailed and states the enumerated time line for eligibility of stamping agent status for any stamping agent whose designation has been terminated, including a reinstatement time line of no less than 90 days and no more than three years following the termination date.
- (6) Provides relative to civil penalties for certain violations.

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 provides for the following substantive changes:

- (1) Requires 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.
- (2) Provides relative to the affixing of tax stamps, stating that no person other than a dealer holding a valid stamping agent license under R.S. 26:902 may affix a tax stamp and further requires that all dealers shall immediately, upon receipt of unstamped cigarettes and prior to selling the cigarettes in or into the state, affix a tax stamp on the product.
- (3) Provides relative to requirements for stamping agents to affix tax stamps and the time delay to affix the tax stamp.
- (4) Authorizes stamping agents to sell cigarettes in or into the state, purchase cigarettes for resale in or into the state, and affix tax stamps only if the stamping agent purchased the cigarettes directly from a manufacturer or importer of the cigarettes who holds a valid permit or from a sales entity affiliate whose name and address has been provided to the attorney general pursuant to law.
- (5) Authorizes a manufacturer, importer, or sales entity affiliate to, in accordance with R.S. 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 submitting a report.
- (6) Authorizes a manufacturer or importer to sell unstamped cigarettes 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 law and prior to the sales entity affiliate selling any cigarettes in or into the state. If such manufacturer or importer does so, it may sell or otherwise transfer the unstamped cigarettes to its sales entity affiliate in connection with the sale; 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 if it were making the sale directly; and in the case of sales permitted by this Act, the stamping agent will be deemed to have purchased the cigarettes directly from the manufacturer or importer.
- (7) 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. Further prohibits a dealer to 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.

- (8) Provides for the addition of 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.
- (9) Provides relative to certification by dealers, stamping agents, and importers that certain reports are complete and accurate and provide for certain identifying information as required by the commissioner or attorney general. Further requires certain persons to submit monthly reports to the secretary who is authorized to share reports with certain agencies of this state and other states.
- (10) Authorizes 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 pursuant to law.
- (11) Provides relative to the seizure and use of cigarettes by law enforcement and the destruction of the seized cigarettes.
- (12) Requires any person placing a purchase order (the consumer) to remit to the secretary all applicable taxes imposed by the state on such sale and to pay interest, costs, and attorney fees incurred in obtaining payment of the taxes imposed by this state as well as any penalties assessed.
- (13) Provides relative to penalties for violations of delivery sales of cigarettes and further authorizes the commissioner or his designee to bring an action for any violation regarding delivery sales.
- (14) Expands disclosure of tax records 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.
- (15) Provides that the secretary, commissioner, and attorney general 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)(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; R.S. 47:842(11), 843(A)(2), (C)(3) and (4), and (D), 847, 849, 851(B), 857, 862, 865(C)(3)(b), intro. para. of (c) and (c)(i), 871, 872, 876-878, and 1508(B)(11); Adds 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)-(27), 902(5), 904(D), 906(H), (I), and (J), 908(D), 916(I)-(N), and 918(C) and (D), R.S. 47:842(16)-(22), 843(A)(3), and 851(E) and (F), and 1520(A)(1)(g); Repeals R.S. 47:873-875)