



State of Tennessee
PUBLIC CHAPTER NO. 669

HOUSE BILL NO. 3632

By Representative Sargent

Substituted for: Senate Bill No. 3578

By Senator McNally

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 26, relative to certain tobacco products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2602(a), is amended by adding the following language as a new subdivision and renumbering the subsequent subdivisions accordingly:

(4) In the case of a non-participating manufacturer located outside of the United States, the certification shall further certify that the non-participating manufacturer has provided 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 reporter and shall state the following:

(A) The importer accepts joint and several liability with the non-participating 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 attorneys' fees, authorized in accordance with the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999;

(B) The importer consents to personal jurisdiction in Tennessee for the purpose 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 attorneys' fees, authorized in accordance with the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999; and

(C) The importer has appointed a registered agent for service of process in this state according to the same requirements as established in this part for any non-resident or foreign non-participating manufacturer that has not registered to do business in this state as a foreign corporation or business entity.

SECTION 2. Tennessee Code Annotated, Section 67-4-2602(a)(3), is amended by adding the following language as a new subdivision:

(E) That the non-participating manufacturer has certified in writing on a form approved by the commissioner that it consents to be sued in the circuit or chancery courts in the State of Tennessee for purposes of enforcing this statute or for an action to enforce § 47-31-103.

SECTION 3. Tennessee Code Annotated, Section 67-4-2602(b)(2), is amended by adding the following language as a new subdivision:

(C) Such non-participating manufacturer has underpaid escrow obligations in this state or any state unless such underpayment is cured within sixty (60) days of entry of a final order establishing the required escrow payment amount; however, such cure shall have no such effect if such underpayment is the result of fraud or deceit.

HB 3632

SECTION 4. Tennessee Code Annotated, Section 67-4-2602(b), is amended by adding the following new subdivision and renumbering the subsequent subdivisions accordingly:

(3) A non-participating tobacco product manufacturer may be removed from the state's directory of approved tobacco product manufacturers, if the commissioner determines such action is in the best interest of the state of Tennessee and the operation of the directory, if the tobacco product manufacturer or any of its affiliates, officers, directors, or owners has:

(A) Been removed from any state's directory of approved tobacco product manufacturers based on any acts or omissions that would, if done in this state, be grounds for removal from the directory, except that if the basis for removal is a good faith dispute regarding the amount of escrow required for units sold in other states, the non-participating manufacturer shall have the opportunity to cure the underpayment of escrow within sixty (60) days of entry of a final order establishing the required escrow payment amount;

(B) Plead guilty or nolo contendere to or has been found guilty of a crime relating to the reporting, distribution, sale or taxation of cigarettes or tobacco products; or

(C) Failed to cooperate with any request for information from the commissioner made pursuant to § 67-4-2604(d) to the satisfaction of the commissioner.

SECTION 5. Tennessee Code Annotated, Section 67-4-2602, is amended by adding the following language as new subsections:

(e) For each non-participating manufacturer located outside of the United States, each importer into the United States of any such non-participating manufacturer's brand families that are sold in this state shall bear joint and several liability with such non-participating 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 attorneys' fees, authorized in accordance with the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999.

(f) Service of process on the importer's appointed registered agent for service of process may be served in any manner authorized by law and shall constitute legal and valid service of process on the importer. The importer is subject to the same requirements in this part as non-participating manufacturers regarding notice of termination of the agency appointment. Any importer that has not appointed and engaged an agent as required in this section shall be deemed to have appointed the secretary of state as such agent and may be proceeded against in courts of this state by service of process on the secretary of state.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL NO. 3632

PASSED: MARCH 22, 2012


BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 4th day of April 2012


BILL HASLAM, GOVERNOR