



Senate

General Assembly

File No. 728

January Session, 2003

Substitute Senate Bill No. 1134

Senate, May 19, 2003

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CERTAIN TOBACCO MANUFACTURERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2003*) As used in sections 1 to 7,
2 inclusive, of this act:

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

11 (2) "Cigarette" has the same meaning as provided in section 4-28h of
12 the general statutes;

- 13 (3) "Commissioner" means the Commissioner of Revenue Services;
- 14 (4) "Nonparticipating manufacturer" means any tobacco product
15 manufacturer that is not a participating manufacturer;
- 16 (5) "Participating manufacturer" has the meaning as provided in
17 section II(jj) of the Master Settlement Agreement, as defined in section
18 4-28h of the general statutes, and all amendments thereto;
- 19 (6) "Qualified escrow fund" has the same meaning as provided in
20 section 4-28h of the general statutes;
- 21 (7) "Stamper" means a person that may lawfully purchase
22 unstamped packages of cigarettes and affix Connecticut cigarette tax
23 stamps to such packages before selling them;
- 24 (8) "Tobacco product manufacturer" has the same meaning as
25 provided in section 4-28h of the general statutes; and
- 26 (9) "Units sold" has the same meaning as provided in section 4-28h
27 of the general statutes.

28 Sec. 2. (NEW) (*Effective October 1, 2003*) (a) Any tobacco product
29 manufacturer whose cigarettes are sold in this state, whether directly
30 or through a distributor, retailer or similar intermediary or
31 intermediaries, shall execute a certification annually on a form
32 prescribed by the commissioner, certifying under penalty of law for
33 false statement that, as of the date of such certification, such tobacco
34 product manufacturer is either a participating manufacturer or is in
35 full compliance with the provisions of sections 4-28h to 4-28j, inclusive,
36 of the general statutes. Such tobacco product manufacturer shall
37 deliver such certificate to the commissioner and Attorney General no
38 later than April thirtieth of each year. Each tobacco product
39 manufacturer shall maintain all invoices and documentation of sales
40 and other such information relied upon for such certification for a
41 period of five years unless otherwise required by law to maintain them
42 for a longer period of time.

43 (b) If a tobacco product manufacturer is a participating
44 manufacturer, such manufacturer shall include in its certification a list
45 of its brand families. The participating manufacturer shall update such
46 list thirty days prior to any addition to, or modification of, its brand
47 families by executing and delivering a supplemental certification to the
48 Attorney General and the commissioner.

49 (c) If the tobacco product manufacturer is a nonparticipating
50 manufacturer, such manufacturer shall include in its certification: (1) A
51 list of all of its brand families and the number of units of each brand
52 family that were sold in the state during the preceding calendar year;
53 (2) a list of all of its brand families that have been sold in the state at
54 any time during the current calendar year; (3) an indication, by an
55 asterisk, of any brand family sold in the state during the preceding
56 calendar year that is no longer being sold in the state as of the date of
57 such certification; and (4) the name and address of any other
58 manufacturer of such brand families in the preceding or current
59 calendar year. Each nonparticipating manufacturer shall update such
60 list thirty days prior to any addition to, or modification of, its brand
61 families by executing and delivering a supplemental certification to the
62 Attorney General and the commissioner.

63 (d) If the tobacco product manufacturer is a nonparticipating
64 manufacturer, such manufacturer shall further (1) certify that such
65 nonparticipating manufacturer is registered to do business in this state
66 pursuant to title 33 or 34 of the general statutes as a foreign
67 corporation or business entity or has appointed an agent for service of
68 process and provided notice thereof as required by section 4 of this act,
69 (2) certify that such nonparticipating manufacturer has established and
70 continues to maintain a qualified escrow fund and has executed a
71 qualified escrow agreement that governs the qualified escrow fund, (3)
72 certify that such nonparticipating manufacturer is in full compliance
73 with the provisions of sections 4-28h to 4-28j, inclusive, of the general
74 statutes and sections 1 to 7, inclusive, of this act, and any regulations
75 adopted under sections 4-28h to 4-28j, inclusive, of the general statutes
76 and sections 1 to 7, inclusive, of this act, and (4) provide (A) the name,

77 address and telephone number of the financial institution where the
78 nonparticipating manufacturer has established such qualified escrow
79 fund required pursuant to the provisions of sections 4-28h to 4-28j,
80 inclusive, of the general statutes and all regulations adopted under
81 sections 4-28h to 4-28j, inclusive, of the general statutes; (B) the account
82 number of such qualified escrow fund and subaccount number for the
83 state of Connecticut; (C) the amount that such nonparticipating
84 manufacturer placed in such fund for cigarettes sold in the state during
85 the preceding calendar year, the date and amount of each such deposit,
86 and such evidence or verification as may be deemed necessary by the
87 commissioner or the Attorney General, to confirm the foregoing; and
88 (D) the amounts of and dates of any withdrawal or transfer of funds
89 the nonparticipating manufacturer made at any time from such fund
90 or from any other qualified escrow fund into which it ever made
91 escrow payments pursuant to the provisions of sections 4-28h to 4-28j,
92 inclusive, of the general statutes and all regulations adopted under
93 sections 4-28h to 4-28j, inclusive, of the general statutes.

94 (e) A tobacco product manufacturer may not include in its
95 certification a brand family unless (1) in the case of a participating
96 manufacturer, the participating manufacturer affirms that the brand
97 family is to be deemed to be its cigarettes for purposes of calculating
98 its payments under the Master Settlement Agreement for the relevant
99 year, in the volume and shares determined pursuant to the Master
100 Settlement Agreement; and (2) in the case of a nonparticipating
101 manufacturer, such nonparticipating manufacturer affirms that the
102 brand family is to be deemed to be its cigarettes for purposes of
103 sections 4-28h to 4-28j, inclusive, of the general statutes. Nothing in
104 this section shall be construed as limiting or otherwise affecting the
105 state's right to maintain that a brand family constitutes cigarettes of a
106 different tobacco product manufacturer for purposes of calculating
107 payments under the Master Settlement Agreement or for purposes of
108 sections 4-28h to 4-28j, inclusive, of the general statutes.

109 Sec. 3. (NEW) (*Effective October 1, 2003*) (a) (1) Not later than January
110 1, 2004, the commissioner shall develop and make available for public

111 inspection, on the Department of Revenue Services' website and in
112 such other forms as the commissioner deems appropriate, a directory
113 listing of all tobacco product manufacturers that have provided
114 current and accurate certifications conforming to the requirements of
115 section 2 of this act and all brand families that are listed in such
116 certifications. The commissioner shall update the directory as
117 necessary in order to correct mistakes and to add or remove a tobacco
118 product manufacturer or brand family to keep the directory current
119 and in conformity with the requirements of sections 1 to 7, inclusive, of
120 this act.

121 (2) The commissioner shall not include or retain in such directory
122 the name or brand families of any manufacturer that has failed to
123 provide the required certification or whose certification the
124 commissioner determines is not in compliance with the provisions of
125 section 2 of this act, unless such violation has been remedied to the
126 satisfaction of the commissioner.

127 (3) The commissioner shall not include or retain in the directory
128 any brand family of a nonparticipating manufacturer if the
129 commissioner concludes: (A) All escrow payments required pursuant
130 to the provisions of sections 4-28h to 4-28j, inclusive, of the general
131 statutes for any period for any brand family, whether or not listed by
132 such nonparticipating manufacturer, have not been fully paid into a
133 qualified escrow fund governed by a qualified escrow agreement that
134 has been approved by the Attorney General, or (B) any outstanding
135 final judgment, including interest thereon, for a violation of sections 4-
136 28h to 4-28j, inclusive, of the general statutes has not been fully
137 satisfied for such brand family and such manufacturer.

138 (b) It shall be unlawful for any person:

139 (1) To affix a tax stamp to a package or other container of cigarettes
140 of a tobacco product manufacturer or brand family not included in the
141 directory; and

142 (2) To sell, offer, possess for sale or distribute in this state, cigarettes

143 of a tobacco product manufacturer or brand family not included in the
144 directory.

145 (c) A violation of subsection (b) of this section shall be a class A
146 misdemeanor.

147 (d) Any person who violates subsection (b) of this section engages in
148 an unfair and deceptive trade practice in violation of section 42-110b of
149 the general statutes.

150 (e) A determination by the commissioner not to include a brand
151 family or tobacco product manufacturer in the directory maintained
152 pursuant to this section or to remove such brand family or
153 manufacturer from the directory shall be subject to review in the
154 manner prescribed by section 12-311 of the general statutes.

155 Sec. 4. (NEW) (*Effective October 1, 2003*) (a) Any nonparticipating
156 manufacturer that has not registered to do business in the state,
157 pursuant to title 33 or 34 of the general statutes, as a foreign
158 corporation or business entity shall, as a condition precedent to having
159 its brand families listed or retained in the directory maintained
160 pursuant to section 3 of this act, appoint and continually engage
161 without interruption the services of an agent in this state to act as
162 agent for the service of process on whom all process and any action or
163 proceeding against it concerning or arising out of the enforcement of
164 the provisions of sections 1 to 7, inclusive, of this act and the
165 provisions of sections 4-28h to 4-28j, inclusive, of the general statutes
166 may be served in any manner authorized by law. Such service shall
167 constitute legal and valid service of process on the nonparticipating
168 manufacturer. The nonparticipating manufacturer shall provide the
169 name, address, telephone number and proof of the appointment and
170 availability of such agent to, and to the satisfaction of, the
171 commissioner and the Attorney General.

172 (b) A nonparticipating manufacturer shall provide notice to the
173 commissioner and Attorney General at least thirty calendar days prior
174 to termination of the authority of an agent and shall further provide

175 proof, to the satisfaction of the commissioner and the Attorney
176 General, of the appointment of a new agent no less than five calendar
177 days prior to the termination of an existing agent appointment. In the
178 event an agent terminates an agency, the nonparticipating
179 manufacturer shall notify the commissioner and Attorney General of
180 such termination not later than five calendar days after such
181 termination and shall include proof, to the satisfaction of the
182 commissioner and the Attorney General, of the appointment of a new
183 agent.

184 (c) Any nonparticipating manufacturer whose products are sold in
185 this state without appointing or designating an agent as required in
186 this section shall be deemed to have appointed the Secretary of the
187 State as such agent and may be proceeded against in courts of this state
188 by service of process upon the Secretary of the State, except that the
189 appointment of the Secretary of the State as such agent shall not satisfy
190 the condition precedent to having the brand families of the
191 nonparticipating manufacturer listed or retained in the directory.

192 Sec. 5. (NEW) (*Effective October 1, 2003*) (a) Not later than twenty-
193 five days after the end of each month, and more frequently if so
194 directed by the commissioner, each stamper shall submit such
195 information as the commissioner requires to facilitate compliance with
196 sections 1 to 7, inclusive, of this act, including, but not limited to, a list
197 by brand family of the total number of cigarettes, or in the case of roll-
198 your-own tobacco, the equivalent stick count, for which the stamper
199 affixed stamps during the previous month. The stamper shall
200 maintain, and make available to the commissioner for a period of five
201 years, all invoices and documentation of purchases and sales of all
202 nonparticipating manufacturer cigarettes and any other information
203 relied upon in reporting to the commissioner. Each stamper shall
204 provide and update as necessary an electronic mail address to the
205 commissioner.

206 (b) The commissioner may disclose to the Attorney General any
207 information received under sections 1 to 7, inclusive, of this act and

208 requested by the Attorney General for purposes of determining
209 compliance with and enforcing the provisions of sections 1 to 7,
210 inclusive, of this act. The commissioner and Attorney General shall
211 share with each other the information received under sections 1 to 7,
212 inclusive, of this act, and may share such information with other
213 federal, state or local agencies only for purposes of enforcement of
214 sections 1 to 7, inclusive, of this act, the provisions of sections 4-28h to
215 4-28j, inclusive, of the general statutes or corresponding laws of other
216 states.

217 (c) The Attorney General may require at any time from a
218 nonparticipating manufacturer proof of the amount of money in the
219 qualified escrow fund maintained by such manufacturer for the
220 purpose of compliance with provisions of sections 4-28h to 4-28j,
221 inclusive, of the general statutes. Such proof shall be provided to such
222 manufacturer by the financial institution in which such manufacturer
223 has established such fund. Such proof shall include the amount of
224 money in such fund, exclusive of interest, the amount and date of each
225 deposit to such fund and the amount and date of each withdrawal
226 from such fund.

227 (d) In addition to the information requested to be submitted
228 pursuant to subsection (a) of this section and section 2 of this act, the
229 commissioner may require a stamper or tobacco product manufacturer
230 to submit any additional information including, but not limited to,
231 samples of the packaging or labeling of each brand family, as is
232 necessary to enable the Attorney General to determine whether a
233 tobacco product manufacturer is in compliance with the provisions of
234 sections 1 to 7, inclusive, of this act.

235 (e) To promote compliance with the provisions of sections 1 to 7,
236 inclusive, of this act, the commissioner may adopt regulations, in
237 accordance with the provisions of chapter 54 of the general statutes,
238 requiring a tobacco product manufacturer subject to the requirements
239 of subsection (c) of section 2 of this act to make the escrow deposits
240 required in quarterly installments during the year in which the sales

241 covered by such deposits are made. The commissioner may require
242 production of information sufficient to enable the commissioner to
243 determine the adequacy of the amount of the installment deposit.

244 Sec. 6. (NEW) (*Effective October 1, 2003*) (a) In addition to any other
245 civil or criminal remedy provided by law, upon a determination that a
246 stamper has violated subsection (b) of section 3 of this act or any
247 regulation adopted under sections 1 to 7, inclusive, of this act, the
248 commissioner, after a hearing, may revoke or suspend the license of
249 such stamper in the manner provided by section 12-295 of the general
250 statutes. Each stamp affixed and each offer to sell cigarettes in
251 violation of subsection (b) of section 3 of this act shall constitute a
252 separate violation. The commissioner may also assess such stamper a
253 civil penalty in an amount not to exceed the greater of five hundred
254 per cent of the retail value of the cigarettes, or five thousand dollars,
255 upon a determination of violation of subsection (b) of section 3 of this
256 act.

257 (b) Any cigarettes that have been sold, offered for sale or possessed
258 for sale in this state, in violation of subsection (b) of section 3 of this act
259 shall be deemed contraband under section 12-305 of the general
260 statutes and such cigarettes shall be subject to seizure and forfeiture as
261 provided in section 12-305 of the general statutes. All such cigarettes so
262 seized and forfeited shall be destroyed and not resold.

263 (c) The Attorney General, on behalf of the commissioner, may seek
264 an injunction to restrain a threatened or actual violation of subsection
265 (b) of section 3 of this act and subsections (a) and (d) of section 5 of this
266 act by a stamper and to compel the stamper to comply with said
267 subsections. The commissioner may adopt regulations, in accordance
268 with the provisions of chapter 54 of the general statutes, to effect the
269 purposes of this section.

270 Sec. 7. (NEW) (*Effective October 1, 2003*) (a) In any action brought by
271 the state to enforce the provisions of sections 1 to 6, inclusive, of this
272 act, the state shall be entitled to recover, when it is the prevailing
273 party, the costs of investigation, expert witness fees, costs of the action

274 and reasonable attorneys' fees.

275 (b) If a court determines that a person has violated the provisions of
276 sections 1 to 6, inclusive, of this act, the court shall order any profits,
277 gains, gross receipts or other benefits from the violation to be paid to
278 the state. Unless otherwise expressly provided, the remedies or
279 penalties provided by sections 1 to 6, inclusive, of this act are
280 cumulative to each other and to the remedies or penalties available
281 under all other laws of this state.

282 Sec. 8. (NEW) (*Effective October 1, 2003*) If a court of competent
283 jurisdiction finds that the provisions of sections 1 to 7, inclusive, of this
284 act and sections 4-28h to 4-28j, inclusive, of the general statutes conflict
285 and cannot be reconciled, then sections 4-28h to 4-28j, inclusive, of the
286 general statutes shall supersede the provisions of said sections 1 to 7,
287 inclusive, of this act. If any section, subsection, subdivision,
288 subparagraph, sentence, clause or phrase of said sections 1 to 7,
289 inclusive, of this act causes sections 4-28h to 4-28j, inclusive, of the
290 general statutes to no longer constitute a qualifying or model statute,
291 as those terms are defined in the Master Settlement Agreement, then
292 that portion of said sections 1 to 7, inclusive, of this act shall not be
293 valid. If any section, subsection, subdivision, subparagraph, sentence,
294 clause or phrase of sections 1 to 7, inclusive, of this act is for any reason
295 held to be invalid, unlawful or unconstitutional, such decision shall
296 not affect the validity of the remaining portions of said sections 1 to 7,
297 inclusive, of this act or any part thereof.

298 Sec. 9. Section 4-28e of the general statutes is amended by adding
299 subsection (f) as follows (*Effective July 1, 2003*):

300 (NEW) (f) For the fiscal year ending June 30, 2004, and each fiscal
301 year thereafter, the sum of one hundred thousand dollars is
302 appropriated to the Department of Revenue Services and the sum of
303 twenty-five thousand dollars is appropriated to the office of the
304 Attorney General for the enforcement of the provisions of sections 1 to
305 7, inclusive, of this act and sections 4-28h to 4-28j, inclusive, of the
306 general statutes.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>
Sec. 9	<i>July 1, 2003</i>

FIN *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Revenue Serv., Dept.	GF - Precludes a Revenue Loss	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

To the extent that the bill strengthens our current laws regarding cigarette manufacturers who are not parties to the Master Settlement Agreement (MSA), it will help ensure that manufacturers participating in the agreement will not withhold future tobacco settlement payments to Connecticut.

The MSA signed between the participating states and cigarette manufacturers contain assessments against a state’s tobacco settlement payments if a state does not enact and enforce legislation concerning cigarette manufacturers who are not parties to the MSA.

OLR Bill Analysis

sSB 1134

AN ACT CONCERNING CERTAIN TOBACCO MANUFACTURERS**SUMMARY:**

This bill requires tobacco product manufacturers that sell cigarettes in Connecticut and anyone allowed to put Connecticut tax stamps on cigarettes ("stampers") to file periodic certifications and reports with the Department of Revenue Services (DRS) and the attorney general. It requires DRS to compile, publish, and keep updated a directory of (1) manufacturers that comply with the tobacco settlement law and agreement and (2) their cigarette brand families whose sales in this state are used to compute the payments to the state or the escrow fund payments required by the tobacco settlement agreement.

The bill makes it illegal to distribute, sell, or offer or possess for sale in the state any cigarettes whose manufacturer or brand family is not included in the directory and imposes criminal and civil penalties on violators. It allows the attorney general to enforce its provisions in court through lawsuits and injunctions.

As a condition for inclusion in the DRS listing, the bill also requires certain tobacco product manufacturers that are not registered to do business in Connecticut, to appoint an agent for service of process in the state.

Starting with FY 2003-04, the bill appropriates \$100,000 annually to DRS and \$25,000 annually to the attorney general's office from the Tobacco Settlement Fund. The funds must be used to enforce the bill and the state tobacco settlement law.

EFFECTIVE DATE: October 1, 2003, except for the appropriation, which is effective July 1, 2003.

ANNUAL CERTIFICATION***All Tobacco Product Manufacturers***

By law, tobacco product manufacturers that sell cigarettes in Connecticut must either (1) enter into, and perform financial obligations under, the master settlement agreement between Connecticut and four leading tobacco companies or (2) pay into a qualified escrow account a specified amount for each cigarette they sell in the state. Tobacco companies that choose the former option are considered to be “participating manufacturers” and those that choose the latter are “nonparticipating manufacturers.”

The bill requires manufacturers whose cigarettes are directly or indirectly sold in Connecticut to certify, under penalty of false statement, to the DRS commissioner and the attorney general by April 30 every year that, as of the certification date, they are either participating in the master settlement agreement or complying with escrow requirements for nonparticipating manufacturers. (Making a false statement on a document other than a certified prevailing wage law payroll is a class A misdemeanor punishable by a fine of up to \$2,000, up to one year in jail, or both.)

Each manufacturer must include with its certification a list of its brand families. Under the bill, a “brand family” is all styles of cigarettes (such as menthol, lights, kings, or 100s) sold under the same trademark. A brand family includes cigarettes identified with a previously known brand through such things as the same or similar brand names, trademarks, logos, symbols, mottos, selling messages, or recognizable color patterns.

A manufacturer can only include a brand family in its certification if its cigarettes were used to calculate either its master settlement agreement payment for the relevant year or payments to its escrow fund. Under the bill, the state retains the right to maintain that a particular brand family belongs to another manufacturer for purposes of calculating master settlement or escrow fund payments.

Thirty days before adding to or modifying its brand families, a manufacturer must update its list by executing and delivering a supplemental certification to the commissioner and the attorney general.

Nonparticipating Manufacturers

A nonparticipating manufacturer’s certification must also include:

1. a list of its brand families and the number of units of each sold in Connecticut in the preceding calendar year, with an asterisk marking any no longer being sold here;
2. a list of its brand families sold in the state during the current year;
3. the name and address of any other company manufacturing the brand families in the preceding or current year;
4. the name, address, and telephone number of the financial institution where it has established the qualified escrow fund;
5. the account numbers for the fund and for the Connecticut subaccount;
6. the amount placed in the fund for cigarettes sold in Connecticut during the preceding calendar year, with the date and amount of each deposit and whatever confirming evidence or verification the commissioner or attorney general considers necessary; and
7. the amounts and dates of any withdrawals or transfers it made from the escrow fund or from any other qualified escrow fund that it ever paid into under the state's tobacco settlement law and regulations.

The bill also requires each nonparticipating manufacturer to certify annually that it:

1. is either registered to do business in Connecticut or has appointed an agent for service of process here and notified the commissioner and the attorney general of the agent's name, telephone number, and address;
2. has established and maintains a qualified escrow fund and executed a qualified escrow agreement governing the fund; and
3. complies with the state's tobacco settlement law, the bill, and their regulations.

Manufacturers must keep all records and other information they relied on for their certifications for five years, unless the law requires them to keep records longer.

DRS DIRECTORY

The bill requires the DRS commissioner, by January 1, 2004, to develop and make available to the public on the DRS website and in other appropriate forms, a directory of (1) manufacturers that have provided current and accurate certifications and (2) all brand families listed in those certifications. The commissioner cannot list the name and brand families of any manufacturer that has not:

1. filed the required certification or whose certification the commissioner determines does not meet the bill's requirements;
2. made all required escrow payments to qualified funds governed by approved escrow agreements for any period or brand family, whether or not the manufacturer listed the brand family on its certification;
3. fully satisfied any outstanding final judgment, including interest, for violating the tobacco settlement law.

The commissioner's determination not to include a brand family or manufacturer in, or to remove either from, her directory is subject to the same appeal hearings available to those aggrieved by any of the commissioner's other actions relating to cigarette taxes and licensing. The commissioner must update the directory as needed.

PROHIBITIONS AND PENALTIES

The bill makes it illegal for anyone to:

1. put Connecticut tax stamps on cigarettes whose manufacturer or brand family is not listed in the DRS directory or
2. sell, offer to sell, distribute, or possess for sale unlisted cigarettes in Connecticut.

Under the bill, it is a class A misdemeanor and an unfair and deceptive trade practice to violate these prohibitions. A class A misdemeanor is punishable by a fine of up to \$2,000, up to one year in jail, or both.

The bill allows the DRS commissioner, in addition to other criminal or civil penalties, after a hearing and using the regular procedure for revoking or suspending a cigarette distributor's or dealer's license, to revoke or suspend the license of a tax stamper who violates these prohibitions and any regulations adopted under the bill. Each stamp affixed to, and each offer to sell, cigarettes from an unlisted brand family or manufacturer is a separate violation. The bill also allows the commissioner to levy a maximum civil penalty of 500% of the retail value of the cigarettes or \$5,000, whichever is greater.

It makes cigarettes sold or offered for sale in violation of its provisions contraband and applies existing confiscation, search, and forfeiture procedures to such cigarettes. It requires cigarettes seized and forfeited as contraband to be destroyed.

The bill allows the attorney general, on the DRS commissioner's behalf, to ask for an injunction (1) against actual or threatened violations of the sale prohibitions or the stamper reporting and record keeping requirements and (2) to compel stampers to comply with these provisions.

When it prevails in any action to enforce the bill, the state is entitled to its costs for investigation, for bringing the action, and for expert witness and reasonable attorneys' fees. If a court decides anyone has violated the bill, it must order the violator to pay to the state any profits, gains, gross receipts, or other benefits it received from the violation. Unless expressly provided, the bill's remedies and penalties are cumulative both with each other and with those available under other state laws.

TAX STAMPER REPORTS

The bill requires stampers to give the DRS commissioner, within 25 days after the end of every month and more often if the commissioner directs, information she requires. The information must include a list, by brand family, of the total number of cigarettes, or an equivalent count for roll-your-own tobacco (under the tobacco settlement law, each 0.09 ounces of such tobacco equals one cigarette), on which the

stamper put tax stamps. The bill requires stampers to maintain, and make available to the commissioner, sales documentation and other information they rely on for the report for five years.

The bill requires each stamper to give the commissioner an e-mail address and to update it as needed.

ADDITIONAL INFORMATION AND REPORTING

The bill allows the attorney general to require any nonparticipating manufacturer, at any time, to provide proof of how much money is in its qualified escrow fund, including the amount excluding interest and the amount and date of each deposit and withdrawal. It requires the financial institution where the fund is established to provide the proof to the manufacturer.

In addition to the specified information, the bill allows the DRS commissioner to require a stamper or manufacturer covered by the state tobacco settlement law to submit other information, including samples of each brand family's packaging or labels, needed to allow the attorney general to determine a manufacturer's compliance with the bill.

DISCLOSURE AND INFORMATION SHARING

The bill allows the commissioner to disclose to the attorney general any information she receives under the bill that he requests to determine compliance and to enforce its provisions. It requires the commissioner and the attorney general to share information they receive with each other and allows them to share it with other state, federal, and local agencies, but only to enforce the bill or Connecticut's or other states' tobacco settlement laws.

REGULATIONS ON QUARTERLY ESCROW PAYMENTS

The bill allows the DRS commissioner to adopt regulations requiring nonparticipating manufacturers to make escrow deposits quarterly in the same year that the sales covered by the payment occur. It allows the commissioner to require information to determine whether the quarterly payments are adequate.

AGENT FOR SERVICE OF PROCESS REQUIREMENTS

As a condition of having its brand families listed in the DRS directory, the bill requires nonparticipating manufacturers not registered to do business here to appoint and maintain a Connecticut agent for receiving notice of any process, action, or proceeding against it under the bill or under the state tobacco settlement law or its regulations. Any process served on the agent constitutes legal and valid service on the nonparticipating manufacturer. The manufacturer must give the attorney general and the DRS commissioner the agent's name, address, and telephone number, along with satisfactory proof of his appointment and availability.

A nonparticipating manufacturer must give the commissioner and the attorney general 30 calendar days notice before terminating its agent's authority and proof that it appointed a new agent at least five days before ending its existing agent's appointment. If its agent resigns, the manufacturer must notify the officials and provide proof of a new appointment no more than five days later.

The bill requires the secretary of the state to be the agent for service of process for any nonparticipating manufacturer whose products are sold in Connecticut but who has not appointed an agent. Proceedings against such a manufacturer may be brought by serving process on the secretary but the secretary's appointment does not satisfy the agent appointment condition for having the manufacturer's brand families listed in the DRS directory.

SEVERABILITY AND RELATIONSHIP TO TOBACCO SETTLEMENT LAW

If a court finds that any of the bill's provisions conflict with those of the state tobacco settlement law, the tobacco settlement law prevails. The bill also invalidates any of its parts that cause the state tobacco settlement law to lose its status as a qualifying or model statute under the tobacco master settlement agreement and specifies that any invalidated parts do not affect the validity of the remainder of the bill.

BACKGROUND

Cigarette Licensees

Anyone wishing to sell cigarettes in the state must have a license from DRS. There are two kinds of licenses. Cigarette manufacturers, wholesalers, and large-scale cigarette retailers (those who operate five

or more retail outlets or 25 or more cigarette vending machines) are licensed as “distributors.” All other sellers are considered “dealers.”

Model Statute

The state tobacco settlement law is the “model statute” required under the tobacco master settlement agreement. States without model statutes have their allotments from the settlement reduced by up to 65%.

Unfair and Deceptive Trade Practice

The Connecticut Unfair Trade Practices Act (CUTPA) prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the Department of Consumer Protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violating a restraining order.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 44 Nay 0