



**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.*

**APP**      *Joint Favorable*