



Senate

General Assembly

File No. 640

February Session, 2014

Substitute Senate Bill No. 390

Senate, April 21, 2014

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CHANGES TO CIGARETTE REGULATION TO IMPLEMENT THE NONPARTICIPATING MANUFACTURER ADJUSTMENT SETTLEMENT AGREEMENT.

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

1 Section 1. Section 4-28h of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2015*):

3 As used in sections 4-28h to 4-28j, inclusive, as amended by this act:

4 (1) "Adjusted for inflation" means increased in accordance with the
5 formula for inflation adjustment set forth in Exhibit C to the Master
6 Settlement Agreement;

7 (2) "Affiliate" means a person who directly or indirectly owns or
8 controls, is owned or controlled by, or is under common ownership or
9 control with, another person. The terms "owns", "is owned" and
10 "ownership" mean ownership of an equity interest, or the equivalent
11 thereof, of ten per cent or more. The term "person" means an

12 individual, partnership, committee, association, corporation or any
13 other organization or group of persons;

14 (3) "Allocable share" means allocable share as that term is defined in
15 the Master Settlement Agreement;

16 (4) "Cigarette" means any product that contains nicotine, is intended
17 to be burned or heated under ordinary conditions of use, and consists
18 of or contains (A) any roll of tobacco wrapped in paper or in any
19 substance not containing tobacco; or (B) tobacco, in any form, that is
20 functional in the product, which, because of its appearance, the type of
21 tobacco used in the filler, or its packaging and labeling, is likely to be
22 offered to, or purchased by, consumers as a cigarette; and (C) any roll
23 of tobacco wrapped in any substance containing tobacco which,
24 because of its appearance, the type of tobacco used in the filler, or its
25 packaging and labeling, is likely to be offered to, or purchased by,
26 consumers as a cigarette described in subparagraph (A) of this
27 subdivision. The term "cigarette" includes roll-your-own tobacco,
28 meaning any tobacco which, because of its appearance, type,
29 packaging or labeling is suitable for use and likely to be offered to, or
30 purchased by, consumers as tobacco for making cigarettes. For
31 purposes of this definition of "cigarette", 0.09 ounces of roll-your-own
32 tobacco shall constitute one individual "cigarette";

33 (5) "Importer" means any person in the United States to whom
34 cigarettes manufactured in a foreign country are shipped or consigned,
35 any person who removes cigarettes for sale or consumption in the
36 United States from a customs bonded manufacturing warehouse, or
37 any person who unlawfully brings cigarettes into the United States;

38 [(5)] (6) "Master Settlement Agreement" means the settlement
39 agreement executed November 23, 1998, by the state of Connecticut
40 and leading tobacco product manufacturers, entitled "State of
41 Connecticut v. Philip Morris, et al.";

42 (7) "Nonparticipating Manufacturer Adjustment Settlement
43 Agreement" means the settlement agreement between the state of

44 Connecticut and the participating manufacturers, as preliminarily set
45 forth in the term sheet executed by the state of Connecticut and the
46 participating manufacturers on May 24, 2013;

47 [(6)] (8) "Qualified escrow fund" means an escrow arrangement with
48 a federally or state-chartered financial institution having no affiliation
49 with any tobacco product manufacturer and having assets of at least
50 one billion dollars where such arrangement requires that such financial
51 institution hold the escrowed funds' principal for the benefit of
52 releasing parties and prohibits the tobacco product manufacturer
53 placing the funds into escrow from using, accessing or directing the
54 use of the funds' principal except as consistent with the provisions of
55 subsection (b) of section 4-28i;

56 [(7)] (9) "Released claims" means released claims as that term is
57 defined in the Master Settlement Agreement;

58 [(8)] (10) "Releasing parties" means releasing parties as that term is
59 defined in the Master Settlement Agreement;

60 [(9)] (11) "Tobacco product manufacturer" means an entity, or its
61 successor, that, after July 1, 2000, directly and not exclusively through
62 an affiliate (A) manufactures cigarettes anywhere which the
63 manufacturer intends to be sold in the United States, including
64 cigarettes intended to be sold in the United States through an importer,
65 provided that an entity that manufactures cigarettes that it intends to
66 be sold in the United States shall not be considered to be a tobacco
67 product manufacturer under this subparagraph (A) if (i) such
68 cigarettes are sold in the United States exclusively through an importer
69 that is an original participating manufacturer, as that term is defined in
70 the Master Settlement Agreement, that will be responsible for
71 payments under the Master Settlement Agreement with respect to such
72 cigarettes as a result of the provisions of subsection II(mm) of the
73 Master Settlement Agreement and that pays the taxes specified in
74 subsection II(z) of the Master Settlement Agreement, and (ii) the
75 manufacturer of such cigarettes does not market or advertise such
76 cigarettes in the United States; or (B) is the first purchaser anywhere

77 for resale in the United States of cigarettes manufactured anywhere
78 that the manufacturer does not intend to be sold in the United States.
79 A tobacco product manufacturer shall not include an affiliate of a
80 tobacco product manufacturer unless such affiliate itself meets the
81 criteria specified in subparagraph (A) or (B) of this subdivision;

82 [(10)] (12) "Units sold" means the number of individual cigarettes
83 sold in this state by the applicable tobacco product manufacturer,
84 whether directly or through a distributor, dealer or similar
85 intermediary or intermediaries during the year in question, [as
86 measured by excise taxes collected by this state on packs, or on "roll-
87 your-own" tobacco containers, bearing the excise tax stamp of the
88 state] in packs required to bear a stamp pursuant to chapter 214 or, in
89 the case of roll-your-own tobacco, on which a tax is due pursuant to
90 chapter 214a. "Units sold" shall not include cigarettes sold on federal
91 military installations, sold by a Native American tribe to a member of
92 such tribe on such tribe's land, or that are otherwise exempt from state
93 excise tax pursuant to federal law. The Department of Revenue
94 Services shall adopt such regulations, in accordance with the
95 provisions of chapter 54, as are necessary to ascertain the amount of
96 state excise tax paid or required to be paid on the cigarettes of such
97 tobacco product manufacturer for each year.

98 Sec. 2. Subsection (a) of section 4-28i of the general statutes is
99 repealed and the following is substituted in lieu thereof (*Effective*
100 *January 1, 2015*):

101 (a) (1) Any tobacco product manufacturer selling cigarettes to
102 consumers within this state, whether directly or through a distributor,
103 dealer or similar intermediary or intermediaries, after July 1, 2000,
104 shall [(1)] (A) become a participating manufacturer, as the term is
105 defined in section II(jj) of the Master Settlement Agreement, and
106 generally perform its financial obligations under the Master Settlement
107 Agreement; or [(2)] (B) place into a qualified escrow fund not later than
108 April fifteenth of the year following the year in question the following
109 amounts, as adjusted for inflation: For calendar year 2000, \$.0104712

110 per unit sold after July 1, 2000; for each of calendar years 2001 and
111 2002, \$.0136125 per unit sold; for each of calendar years 2003 through
112 2006, \$.0167539 per unit sold; for calendar year 2007 and for each
113 calendar year thereafter, \$.0188482 per unit sold.

114 (2) For calendar years ending on or before December 31, 2014, a
115 tobacco product manufacturer electing to place funds into escrow shall
116 place the amount required pursuant to subparagraph (B) of
117 subdivision (1) of this subsection into a qualified escrow fund on an
118 annual basis not later than April fifteenth of the year following the
119 year in which the sales covered by such deposit are made.

120 (3) For calendar years commencing on and after January 1, 2015, a
121 tobacco product manufacturer electing to place funds into escrow shall
122 place an amount equal to \$.0188482 per unit sold, as adjusted for
123 inflation, into a qualified escrow fund on a quarterly basis not later
124 than thirty days after the end of the quarter in which the sales covered
125 by such deposit are made.

126 Sec. 3. Section 4-28j of the general statutes is repealed and the
127 following is substituted in lieu thereof (*Effective January 1, 2015*):

128 (a) Each tobacco product manufacturer that elects to place funds
129 into escrow pursuant to section 4-28i, as amended by this act, shall
130 [annually] certify to the Attorney General that it is in compliance with
131 said section 4-28i. Such certification shall be made annually for
132 calendar years prior to calendar year 2014, and quarterly for calendar
133 years commencing on and after January 1, 2015.

134 (b) The Attorney General may bring a civil action on behalf of the
135 state against any tobacco product manufacturer that fails to place into
136 escrow the funds required under section 4-28i, as amended by this act.
137 Any tobacco product manufacturer that fails [in any year] to place into
138 escrow the funds required under section 4-28i, as amended by this act,
139 shall (1) be required within fifteen days to place such funds into
140 escrow as shall bring it into compliance with section 4-28i, as amended
141 by this act. The court, upon a finding of a violation of this subsection,

142 may impose a civil penalty in an amount not to exceed five per cent of
143 the amount improperly withheld from escrow per day of the violation
144 and in a total amount not to exceed one hundred per cent of the
145 original amount improperly withheld from escrow; (2) in the case of a
146 knowing violation, be required within fifteen days to place such funds
147 into escrow as shall bring it into compliance with section 4-28i, as
148 amended by this act. The court, upon a finding of a knowing violation
149 of this subsection, may impose a civil penalty in an amount not to
150 exceed fifteen per cent of the amount improperly withheld from
151 escrow per day of the violation and in a total amount not to exceed
152 three hundred per cent of the original amount improperly withheld
153 from escrow; and (3) in the case of a second knowing violation, be
154 prohibited from selling cigarettes to consumers within the state,
155 whether directly or through a distributor, dealer or similar
156 intermediary, for a period not to exceed two years. All costs, fees and
157 expenses in connection with such action shall be assessed as damages
158 against the tobacco product manufacturer together with reasonable
159 attorney's fees.

160 (c) Each failure to make [an annual] a deposit required under
161 section 4-28i, as amended by this act, shall constitute a separate
162 violation.

163 (d) For any tobacco product manufacturer that elects to place funds
164 into escrow pursuant to section 4-28i, as amended by this act, and that
165 is located outside the United States, each importer of such
166 nonparticipating manufacturer's cigarettes shall have joint and several
167 liability with such manufacturer for the deposit of all escrow amounts
168 due under section 4-28i, as amended by this act, and the payment of all
169 penalties imposed under subsection (b) of this section for the units sold
170 in this state.

171 Sec. 4. Section 4-28k of the general statutes is repealed and the
172 following is substituted in lieu thereof (*Effective January 1, 2015*):

173 As used in sections 4-28k to 4-28r, inclusive:

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

182 (2) "Cigarette" has the same meaning as provided in section 4-28h,
183 as amended by this act;

184 (3) "Commissioner" means the Commissioner of Revenue Services;

185 (4) "Importer" has the same meaning as provided in section 4-28h, as
186 amended by this act;

187 (5) "Master Settlement Agreement" has the same meaning as
188 provided in section 4-28h, as amended by this act;

189 [(4)] (6) "Nonparticipating manufacturer" means any tobacco
190 product manufacturer that is not a participating manufacturer;

191 (7) "Nonparticipating Manufacturer Adjustment Settlement
192 Agreement" has the same meaning as provided in section 4-28h, as
193 amended by this act;

194 [(5)] (8) "Participating manufacturer" has the meaning as provided
195 in section II(jj) of the Master Settlement Agreement [, as defined in
196 section 4-28h,] and all amendments thereto;

197 [(6)] (9) "Qualified escrow fund" has the same meaning as provided
198 in section 4-28h, as amended by this act;

199 [(7)] (10) "Stamper" means, in the case of cigarettes other than roll-
200 your-own tobacco, a person that under chapter 214 may lawfully
201 purchase unstamped packages of cigarettes and affix Connecticut
202 cigarette tax stamps to such packages, and, in the case of roll-your-own

203 tobacco, a person licensed as a distributor under chapter 214a and
204 required to pay the tax due on such tobacco under said chapter 214a;

205 [(8)] (11) "Tobacco product manufacturer" has the same meaning as
206 provided in section 4-28h, as amended by this act; and

207 [(9)] (12) "Units sold" has the same meaning as provided in section
208 4-28h, as amended by this act.

209 Sec. 5. Section 4-28l of the general statutes is repealed and the
210 following is substituted in lieu thereof (*Effective January 1, 2015*):

211 (a) Any tobacco product manufacturer whose cigarettes are sold in
212 this state, whether directly or through a distributor, retailer or similar
213 intermediary or intermediaries, shall execute a certification annually
214 on a form prescribed by the commissioner, certifying under penalty of
215 law for false statement that, as of the date of such certification, such
216 tobacco product manufacturer is either a participating manufacturer in
217 full compliance with subdivision (1) of subsection (a) of section 4-28i,
218 as amended by this act, or is a nonparticipating manufacturer in full
219 compliance with the provisions of sections 4-28h to 4-28j, inclusive, as
220 amended by this act. Such tobacco product manufacturer shall deliver
221 such certificate to the commissioner and Attorney General no later
222 than April thirtieth of each year. Each tobacco product manufacturer
223 shall maintain all invoices and documentation of sales and other such
224 information relied upon for such certification for a period of five years
225 unless otherwise required by law to maintain them for a longer period
226 of time.

227 (b) If a tobacco product manufacturer is a participating
228 manufacturer, such manufacturer shall include in its certification a list
229 of its brand families. The participating manufacturer shall update such
230 list thirty days prior to any addition to, or modification of, its brand
231 families by executing and delivering a supplemental certification to the
232 Attorney General and the commissioner.

233 (c) If the tobacco product manufacturer is a nonparticipating

234 manufacturer, such manufacturer shall include in its certification: (1) A
235 list of all of its brand families and the number of units of each brand
236 family that were sold in the state during the preceding calendar year;
237 (2) a list of all of its brand families that have been sold in the state at
238 any time during the current calendar year; (3) an indication, by an
239 asterisk, of any brand family sold in the state during the preceding
240 calendar year that is no longer being sold in the state as of the date of
241 such certification; and (4) the name and address of any other
242 manufacturer of such brand families in the preceding or current
243 calendar year. Each nonparticipating manufacturer shall update such
244 list thirty days prior to any addition to, or modification of, its brand
245 families by executing and delivering a supplemental certification to the
246 Attorney General and the commissioner.

247 (d) If the tobacco product manufacturer is a nonparticipating
248 manufacturer, such manufacturer shall further (1) certify that such
249 nonparticipating manufacturer is registered to do business in this state
250 pursuant to title 33 or 34 as a foreign corporation or business entity or
251 has appointed an agent for service of process and provided notice
252 thereof as required by section 4-28n, as amended by this act, (2) certify
253 that such nonparticipating manufacturer has established and continues
254 to maintain a qualified escrow fund and has executed a qualified
255 escrow agreement that governs the qualified escrow fund, (3) certify
256 that such nonparticipating manufacturer is in full compliance with the
257 provisions of sections 4-28h to 4-28r, inclusive, as amended by this act,
258 and any regulations adopted under sections 4-28h to 4-28r, inclusive,
259 as amended by this act, [and] (4) provide (A) the name, address and
260 telephone number of the financial institution where the
261 nonparticipating manufacturer has established such qualified escrow
262 fund required pursuant to the provisions of sections 4-28h to 4-28j,
263 inclusive, as amended by this act, and all regulations adopted under
264 sections 4-28h to 4-28j, inclusive, as amended by this act; (B) the
265 account number of such qualified escrow fund and subaccount
266 number for the state of Connecticut; (C) the amount that such
267 nonparticipating manufacturer placed in such fund for cigarettes sold
268 in the state during the preceding calendar year, the date and amount of

269 each such deposit, and such evidence or verification as may be deemed
270 necessary by the commissioner or the Attorney General, to confirm the
271 foregoing; and (D) the amounts of and dates of any withdrawal or
272 transfer of funds the nonparticipating manufacturer made at any time
273 from such fund or from any other qualified escrow fund into which it
274 ever made escrow payments pursuant to the provisions of sections 4-
275 28h to 4-28j, inclusive, as amended by this act, and all regulations
276 adopted under sections 4-28h to 4-28j, inclusive, as amended by this
277 act, and (5) provide proof that such nonparticipating manufacturer has
278 posted the bond required under subsection (e) of section 4-28n, as
279 amended by this act.

280 (e) A tobacco product manufacturer may not include in its
281 certification a brand family unless (1) in the case of a participating
282 manufacturer, the participating manufacturer affirms that the brand
283 family is to be deemed to be its cigarettes for purposes of calculating
284 its payments under the Master Settlement Agreement for the relevant
285 year, in the volume and shares determined pursuant to the Master
286 Settlement Agreement; and (2) in the case of a nonparticipating
287 manufacturer, such nonparticipating manufacturer affirms that the
288 brand family is to be deemed to be its cigarettes for purposes of
289 sections 4-28h to 4-28j, inclusive, as amended by this act. Nothing in
290 this section shall be construed as limiting or otherwise affecting the
291 state's right to maintain that a brand family constitutes cigarettes of a
292 different tobacco product manufacturer for purposes of calculating
293 payments under the Master Settlement Agreement or for purposes of
294 sections 4-28h to 4-28j, inclusive, as amended by this act.

295 (f) A tobacco product manufacturer shall also (1) certify annually
296 that such manufacturer or its importer holds a valid permit under 26
297 USC 5713, as from time to time amended, and provide a copy of such
298 permit to the commissioner, and (2) certify that it is in compliance with
299 all reporting and registration requirements of 15 USC 375 et seq., as
300 from time to time amended.

301 (g) No tobacco product manufacturer shall submit a certification

302 required by this section that contains any material representation that
303 the manufacturer knows to be false or inaccurate.

304 Sec. 6. Subdivision (3) of subsection (a) of section 4-28m of the
305 general statutes is repealed and the following is substituted in lieu
306 thereof (*Effective January 1, 2015*):

307 (3) The commissioner shall not include or retain in the directory any
308 brand family of a nonparticipating manufacturer if the commissioner
309 concludes: (A) All escrow payments required pursuant to the
310 provisions of sections 4-28h to 4-28j, inclusive, as amended by this act,
311 for any period for any brand family, whether or not listed by such
312 nonparticipating manufacturer, have not been fully paid into a
313 qualified escrow fund governed by a qualified escrow agreement that
314 has been approved by the Attorney General; [or] (B) any outstanding
315 final judgment, including interest thereon, for a violation of sections 4-
316 28h to 4-28j, inclusive, as amended by this act, has not been fully
317 satisfied for such brand family and such manufacturer; or (C) a
318 nonparticipating manufacturer's total nation-wide reported sales of
319 cigarettes on which federal excise tax is paid exceeds the sum of (i) its
320 nation-wide reports under 15 USC 375 et seq., as from time to time
321 amended, or those made by its importer, and (ii) any intrastate sales
322 reports under 15 USC 375 et seq., as from time to time amended, by
323 more than five per cent of its total nation-wide sales or one million
324 cigarettes, whichever is less, during any calendar year, unless the
325 nonparticipating manufacturer cures or satisfactorily explains the
326 discrepancy not later than ten days after receiving notice of the
327 discrepancy.

328 Sec. 7. Section 4-28n of the general statutes is repealed and the
329 following is substituted in lieu thereof (*Effective January 1, 2015*):

330 (a) Any nonparticipating manufacturer that has not registered to do
331 business in this state, pursuant to title 33 or 34, as a foreign corporation
332 or business entity shall, as a condition precedent to having its brand
333 families listed or retained in the directory maintained pursuant to
334 section 4-28m, as amended by this act, appoint and continually engage

335 without interruption the services of an agent in this state to act as
336 agent for the service of process on whom all process and any action or
337 proceeding against it concerning or arising out of the enforcement of
338 the provisions of sections 4-28h to 4-28r, inclusive, as amended by this
339 act, may be served in any manner authorized by law. Such service
340 shall constitute legal and valid service of process on the
341 nonparticipating manufacturer. The nonparticipating manufacturer
342 shall provide the name, address, telephone number and proof of the
343 appointment and availability of such agent to, and to the satisfaction
344 of, the commissioner and the Attorney General.

345 (b) A nonparticipating manufacturer shall provide notice to the
346 commissioner and the Attorney General at least thirty calendar days
347 prior to termination of the authority of an agent and shall further
348 provide proof, to the satisfaction of the commissioner and the Attorney
349 General, of the appointment of a new agent no less than five calendar
350 days prior to the termination of an existing agent appointment. In the
351 event an agent terminates an agency, the nonparticipating
352 manufacturer shall notify the commissioner and the Attorney General
353 of such termination not later than five calendar days after such
354 termination and shall include proof, to the satisfaction of the
355 commissioner and the Attorney General, of the appointment of a new
356 agent.

357 (c) Any nonparticipating manufacturer whose products are sold in
358 this state without appointing or designating an agent as required in
359 this section shall be deemed to have appointed the Secretary of the
360 State as such agent and may be proceeded against in courts of this state
361 by service of process upon the Secretary of the State, except that the
362 appointment of the Secretary of the State as such agent shall not satisfy
363 the condition precedent to having the brand families of the
364 nonparticipating manufacturer listed or retained in the directory.

365 (d) A nonparticipating manufacturer located outside of the United
366 States shall cause each of its importers into the United States of each of
367 its brand families to be sold in the state to appoint and maintain the

368 services of an agent in the state, and shall provide notification to the
369 commissioner and the Attorney General regarding the agents of its
370 importers in the manner prescribed in subsections (a) and (b) of this
371 section. Each importer of a nonparticipating manufacturer's cigarettes
372 that are sold in the state who does not appoint or designate an agent as
373 required in this section shall be deemed to have appointed the
374 Secretary of the State as such agent and may be proceeded against in
375 courts of this state by service of process upon the Secretary of the State,
376 except that the appointment of the Secretary of the State as such agent
377 shall not satisfy the condition precedent to having the brand families of
378 the nonparticipating manufacturer listed or retained in the directory.

379 (e) (1) At least ten days prior to the first day of each calendar
380 quarter, as a condition precedent to having its brand families listed or
381 retained in the directory, each nonparticipating manufacturer shall file
382 with the commissioner a surety bond, the form of which shall be
383 approved by the Attorney General, that is issued by a bonding
384 company or insurance company authorized to do business in this state.
385 The bond shall be in favor of the commissioner and be in the principal
386 sum of the greater of (A) twenty-five thousand dollars, or (B) the
387 greatest amount of the total escrow payments owed in any of the five
388 calendar years preceding the filing of such bond.

389 (2) If the nonparticipating manufacturer that posted a bond has
390 failed to make, or have made on its behalf, escrow deposits equal to
391 the full amount owed for a quarter not later than fifteen days following
392 the due date for the quarter under section 4-28i, as amended by this
393 act, the commissioner may execute on the bond, to (A) recover the
394 delinquent escrow, which amount shall be deposited into a qualified
395 escrow account as defined in section 4-28h, as amended by this act, or
396 a reasonable alternative account as determined by the commissioner,
397 and (B) recover civil penalties and costs authorized under section 4-28j,
398 as amended by this act. Escrow amounts above the amount collected
399 on the bond shall remain due from the nonparticipating manufacturer
400 and, as provided in subsection (d) of section 4-28j, as amended by this
401 act, from the importers that sold such nonparticipating manufacturer's

402 cigarettes in this state during such calendar quarter.

403 Sec. 8. Section 4-28o of the general statutes is repealed and the
404 following is substituted in lieu thereof (*Effective January 1, 2015*):

405 (a) Not later than twenty-five days after the end of each month, and
406 more frequently if so directed by the commissioner, each stamper shall
407 submit such information as the commissioner requires to facilitate
408 compliance with sections 4-28k to 4-28r, inclusive, as amended by this
409 act, including, but not limited to, a list by brand family of the total
410 number of cigarettes, or in the case of roll-your-own tobacco, the
411 equivalent stick count, for which the stamper affixed stamps during
412 the previous month. The stamper shall maintain, and make available to
413 the commissioner for a period of five years, all invoices and
414 documentation of purchases and sales of all nonparticipating
415 manufacturer cigarettes and any other information relied upon in
416 reporting to the commissioner. Each stamper shall provide and update
417 as necessary an electronic mail address to the commissioner.

418 (b) (1) The commissioner may disclose to the Attorney General any
419 information received under sections 4-28k to 4-28r, inclusive, as
420 amended by this act, and requested by the Attorney General for
421 purposes of determining compliance with and enforcing the provisions
422 of sections 4-28k to 4-28r, inclusive, as amended by this act. The
423 commissioner and the Attorney General shall share with each other the
424 information received under sections 4-28k to 4-28r, inclusive, as
425 amended by this act, and may share such information with other
426 federal, state or local agencies [only] for purposes of law enforcement,
427 [of the provisions of sections 4-28h to 4-28r, inclusive, or
428 corresponding laws of other states.]

429 (2) Notwithstanding the provisions of section 12-15, the
430 commissioner may disclose to the Attorney General any returns or
431 return information, as defined in section 12-15, received pursuant to
432 this chapter or chapter 214 or 214a, when such returns or return
433 information is relevant to any arbitration or other dispute resolution
434 proceeding to which the state is a party, created or authorized under

435 the terms of the Master Settlement Agreement, as defined in section 4-
436 28h, as amended by this act, or any amendments to said agreement.
437 The Attorney General may further disclose such returns or return
438 information in such arbitration or other dispute resolution proceeding.

439 (3) Notwithstanding the provisions of section 12-15, the
440 commissioner may disclose to the Attorney General any returns or
441 return information, as defined in section 12-15, received pursuant to
442 this chapter or chapter 214 or 214a, when such returns or return
443 information is directly related to the state's implementation of the
444 Master Settlement Agreement or the Nonparticipating Manufacturer
445 Adjustment Settlement Agreement. The Attorney General may further
446 disclose (A) such returns or return information pursuant to an
447 agreement with an entity designated to serve as a data clearinghouse
448 in accordance with the terms of the Nonparticipating Manufacturer
449 Adjustment Settlement Agreement, or (B) returns or return
450 information of a distributor licensed under the provisions of chapter
451 214 or chapter 214a, to a nonparticipating manufacturer subject to the
452 provisions of subsection (a) of section 4-28i, as amended by this act,
453 provided the information disclosed is limited to information relating to
454 such manufacturer's sales to consumers within this state, whether
455 directly or through a distributor, dealer or similar intermediary or
456 intermediaries, of cigarettes, as defined in section 4-28h, as amended
457 by this act.

458 (c) The Attorney General may require at any time from a
459 nonparticipating manufacturer proof of the amount of money in the
460 qualified escrow fund maintained by such manufacturer for the
461 purpose of compliance with provisions of sections 4-28h to 4-28j,
462 inclusive, as amended by this act. Such proof shall be provided to such
463 manufacturer by the financial institution in which such manufacturer
464 has established such fund. Such proof shall include the amount of
465 money in such fund, exclusive of interest, the amount and date of each
466 deposit to such fund and the amount and date of each withdrawal
467 from such fund.

468 (d) In addition to the information requested to be submitted
469 pursuant to subsection (a) of this section and section 4-28l, as amended
470 by this act, the commissioner may require a stamper or tobacco
471 product manufacturer to submit any additional information including,
472 but not limited to, samples of the packaging or labeling of each brand
473 family, as is necessary to enable the Attorney General to determine
474 whether a tobacco product manufacturer is in compliance with the
475 provisions of sections 4-28k to 4-28r, inclusive, as amended by this act.

476 (e) [To promote compliance with the provisions of sections 4-28k to
477 4-28r, inclusive, the commissioner may adopt regulations, in
478 accordance with the provisions of chapter 54, requiring a tobacco
479 product manufacturer subject to the requirements of subsection (c) of
480 section 4-28l to make the escrow deposits required in quarterly
481 installments during the year in which the sales covered by such
482 deposits are made.] The commissioner may require production of
483 information from a nonparticipating manufacturer, importer or
484 stamper sufficient to enable the [commissioner] Attorney General to
485 determine the adequacy of the amount of [the installment deposit] a
486 quarterly escrow deposit under subsection (a) of section 4-28i, as
487 amended by this act.

488 (f) (1) Each tobacco product manufacturer and importer that sells
489 cigarettes in or into the state shall, not later than fifteen days after the
490 end of the month, file a report on a form and in the manner prescribed
491 by the commissioner and certify that the report is complete and
492 accurate.

493 (2) The report shall contain the following information: The total
494 number of cigarettes sold by such manufacturer or importer in or into
495 the state during that month and identifying by name and number of
496 cigarettes, (A) the manufacturers of such cigarettes, (B) the brand
497 families of such cigarettes, and (C) the purchasers of such cigarettes. A
498 manufacturer's or importer's report shall include cigarettes sold in or
499 into the state through an affiliate.

500 (3) The requirements of subdivisions (1) and (2) of this subsection

501 shall be satisfied and no further report shall be required under
 502 subdivisions (1) and (2) of this subsection with respect to cigarettes if
 503 the manufacturer or importer timely submits to the commissioner the
 504 report or reports required to be submitted by it with respect to
 505 cigarettes under 15 USC 375 et seq., as from time to time amended, and
 506 certifies that the reports are complete and accurate.

507 (4) Upon request by the commissioner or Attorney General, a
 508 manufacturer or importer shall provide copies of all sales reports
 509 required to be submitted under 15 USC 375 et seq., as from time to
 510 time amended, that such manufacturer or importer filed in other states.

511 (5) Each manufacturer or importer that sells cigarettes in or into the
 512 state shall either (A) submit its federal excise tax returns and all
 513 monthly operational reports on Alcohol and Tobacco Tax and Trade
 514 Bureau Form 5210.5 or any subsequent corresponding form, and all
 515 adjustments, changes and amendments to such reports to the
 516 commissioner not later than thirty days after the returns are filed, or
 517 (B) submit to the United States Treasury a valid request or consent
 518 under Section 6103(c) of the Internal Revenue Code of 1986, or any
 519 subsequent corresponding internal revenue code of the United States,
 520 as from time to time amended, authorizing the federal Alcohol and
 521 Tobacco Tax and Trade Bureau and, in the case of a foreign
 522 manufacturer or importer, the United States Customs and Border
 523 Protection, to disclose the manufacturer's or importer's federal excise
 524 tax returns to the commissioner.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2015	4-28h
Sec. 2	January 1, 2015	4-28i(a)
Sec. 3	January 1, 2015	4-28j
Sec. 4	January 1, 2015	4-28k
Sec. 5	January 1, 2015	4-28l
Sec. 6	January 1, 2015	4-28m(a)(3)
Sec. 7	January 1, 2015	4-28n
Sec. 8	January 1, 2015	4-28o

Statement of Legislative Commissioners:

In Sec. 3(d), "nonparticipating manufacturer" was changed to "manufacturer that elects to place funds into escrow" for conformity with Subsec. (a) of the section; in Sec. 7(d), the reference to Subsecs. "(a) to (c)" was changed to "(a) and (b)" for accuracy; in Sec. 8(f)(1), "tobacco product" was added in front of "manufacturer" for accuracy, and "fifteen days following" was changed to "fifteen days after" for clarity; and in Sec. 8(f)(5), "United States Customs Service" was changed to "United States Customs and Border Protection" for accuracy.

FIN *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Revenue Serv., Dept.; Attorney General	GF - Precludes Revenue Loss	Potential	Potential

Municipal Impact: None

Explanation

The bill makes conforming changes to statutory sections affecting the Office of the Attorney General (OAG) and Department of Revenue Services (DRS) related to recent federal cigarette Master Settlement Agreement (MSA) arbitration. This precludes a potential future revenue loss by ensuring the enforcement of MSA provisions relating to certain cigarette manufacturers which are required in order to continue receiving full MSA funding.

The 2014-2015 biennial budget allocates \$13 million of the \$63 million in proceeds from the MSA arbitration to enforcement by the OAG and DRS.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 390*****AN ACT CONCERNING CHANGES TO CIGARETTE REGULATION TO IMPLEMENT THE NONPARTICIPATING MANUFACTURER ADJUSTMENT SETTLEMENT AGREEMENT.*****SUMMARY:**

The law requires tobacco product manufacturers that sell cigarettes in Connecticut to 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 “participating manufacturers” and those that choose the latter are “nonparticipating manufacturers” (NPMs).

This bill makes numerous changes in the state’s tobacco settlement law to implement the NPM Adjustment Settlement Agreement (i.e., the May 24, 2013 settlement between the state and participating manufacturers). The agreement modified the tobacco master settlement agreement and, among other things, broadened the state’s enforcement responsibilities regarding illegal contraband cigarette sales.

Specifically, the bill:

1. beginning January 1, 2015, increases the frequency with which NPMs must make escrow fund payments and changes the basis for calculating the payments;
2. makes any importer for a NPM located outside the United States jointly and severally liable with the manufacturer for escrow fund deposits and any penalties imposed for violating the

escrow requirements;

3. requires NPMs to file a surety bond with the Department of Revenue Services (DRS) as a condition of having their brand families listed in the DRS directory;
4. requires NPMs located outside of the United States to require each of their brand family importers to appoint and maintain a Connecticut agent for service of process;
5. imposes additional reporting requirements on participating and nonparticipating manufacturers; and
6. allows the (a) DRS commissioner to disclose certain tax information to the attorney general if it is relevant to the state's implementation of the master or adjustment settlement agreements and (b) attorney general to disclose the information under specific circumstances.

EFFECTIVE DATE: January 1, 2015

§§ 1-3 — ESCROW CONTRIBUTION

Basis and Frequency

The bill bases the escrow payment NPMs must make on the number of cigarettes sold in Connecticut that are subject to the cigarette tax or, in the case of roll-your-own tobacco, tobacco products tax, rather than basing it on actual excise taxes collected. It excludes cigarettes (1) sold on federal military installations, (2) sold by a Native American tribe to a tribe member on the tribe's land, and (3) otherwise exempt from state excise tax under federal law. As under current law, the payment applies to each cigarette sold in Connecticut by a covered manufacturer during the year in question, including both direct sales and sales through distributors, dealers, or similar intermediaries.

The bill requires DRS to adopt regulations needed to determine the amount of excise tax required to be paid, not just the actual tax paid, by each tobacco product manufacturer.

Under current law, NPMs annually pay into their escrow accounts a specified amount for each cigarette they sold in the prior year. For sales in 2013, the escrow payment was \$.0299790 per cigarette (based on the 2007 amount of \$.0188482, as adjusted for inflation).

Beginning January 1, 2015, the bill (1) requires NPMs to make quarterly, rather than annual, escrow fund payments and (2) decreases the payment to \$.0188482 per cigarette, adjusted for inflation. It also requires them to certify to the attorney general that they comply with the escrow fund payments quarterly, rather than annually.

Penalties for Noncompliance

The bill makes any “importer” for a NPM located outside the United States jointly and severally liable with the manufacturer for escrow fund deposits and any penalties imposed for violating the escrow requirements. Under the bill, an “importer” is any person (1) in the United States to whom cigarettes manufactured in another country are shipped or consigned, (2) who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, or (3) who unlawfully brings cigarettes into the United States.

By law, the attorney general may sue nonparticipating manufacturers that violate the escrow requirements and, if the court finds a violation, impose civil penalties of up to 5% of the improperly withheld amount for each day of violation, up to 100% of that amount. For a knowing violating, the penalty may be up to 15% of the improperly withheld amount per day up to 300% of that amount. For a second knowing violation, a violator is barred from selling cigarettes in the state, either directly or indirectly, for up to two years. Each failure to make the required deposit is a separate violation.

§§ 4-5 — CERTIFICATION REQUIREMENTS

The law requires all manufacturers (participating and nonparticipating) whose cigarettes are directly or indirectly sold in Connecticut to annually certify, by April 30 and under penalty of false

statement, to the DRS commissioner and attorney general that, as of the certification date, they are either participating in the master settlement agreement or complying with escrow requirements for nonparticipating manufacturers. The bill requires participating manufacturers to also certify that they are complying with the master settlement agreement's financial obligations.

The bill also requires each manufacturer to annually (1) certify that it or its importer holds a valid federal permit for engaging in such business (26 USC 5713), (2) provide a copy of the permit to the DRS commissioner, and (3) certify that it complies with federal tobacco manufacturer reporting and registration requirements (15 USC 375 et seq.). It bars manufacturers from including in their certifications any material representation that they know is false or inaccurate.

§ 6 — DRS DIRECTORY

By law, the DRS commissioner must make available to the public a directory of (1) manufacturers that have provided current and accurate certifications and (2) all brand families listed in those certifications. A brand family is a style of cigarette, such as menthol or lights, sold under the same trademark.

The bill generally prohibits the commissioner from listing brand families for any NPM with discrepancies in certain sales reports. The prohibition applies during any calendar year for which the NPM reports total nationwide federally taxable cigarette sales that exceed the sum of its sales on federally required monthly sales reports, by more than 5% of its total sales, or one million cigarettes, whichever is less. The sales reports are the (a) nationwide sales reports it or its importer submitted to DRS and (b) any intrastate sales reports (15 USC 376 (a)). Under the bill, if a NPM fixes or satisfactorily explains the discrepancy between the reports within 10 days after receiving notice of the discrepancy from DRS, the commissioner may include or retain its brand families in the directory.

§ 7 — AGENT FOR SERVICE OF PROCESS REQUIREMENTS

Under the bill, NPMs located outside of the United States must (1) require each of their brand family importers to appoint and maintain a Connecticut agent for service of process and (2) notify the DRS commissioner and attorney general of the agent in the same manner in which the NPMs notify them of their agent for service of process. The bill makes the secretary of state the agent for any importer who has not appointed an agent. Proceedings against such an importer may be brought by serving process on the secretary, but the secretary's appointment does not satisfy the agent appointment requirements for having the manufacturer's brand families listed in the DRS directory.

§§ 5-7 — SURETY BOND

As a condition of having its brand families listed in the DRS directory, the bill requires NPMs to file a surety bond with the DRS commissioner for the greater of (1) \$25,000 or (2) the greatest amount of total escrow payments owed in any of the five calendar years before the bond's filing. The bond must be (1) in a form the attorney general approves and (2) issued by a bonding or insurance company authorized to do business in Connecticut. The bill also requires NPMs to include proof that they have posted the bond in their annual certification to the DRS commissioner and attorney general.

The bill allows the commissioner to execute on the bond if the NPM fails to make, or have made on its behalf, its required quarterly escrow deposits within 15 days following their due date. He may do so to recover (1) the delinquent escrow and (2) civil penalties and costs. The commissioner must deposit any delinquent escrow funds he recovers into a qualified escrow fund or a reasonable alternative account he determines. Any escrow amounts above the amount recovered on the bond remain due from the NPM and its importers.

§ 8 — INFORMATION SHARING

The bill allows the commissioner to disclose tax returns or return information (see BACKGROUND) to the attorney general if it is relevant to the state's implementation of the Master Settlement Agreement or the NPM Adjustment Settlement Agreement. It allows

the attorney general to disclose the information under an agreement with an entity designated to serve as a data clearinghouse under the NPM Adjustment Settlement Agreement. He may also disclose a licensed cigarette or tobacco products distributor's tax information to a NPM that makes escrow fund contributions, as long as the disclosure is limited to information relating to the NPM's Connecticut sales.

§ 8 — REPORTING REQUIREMENTS

Monthly Sales Reports

The bill requires each manufacturer and importer to file a monthly report with the DRS commissioner and certify that the report is complete and accurate. The report, which manufacturers and importers must file within 15 days following the end of the month, must include the (1) total number of cigarettes they sold in the state that month, identified by name and number, including those sold through an affiliate; (2) cigarette manufacturer and brand family; and (3) cigarette purchasers. Manufacturers and importers satisfy this monthly reporting requirement by submitting federally required monthly sales reports to the commissioner and certifying that they are complete and accurate.

Federal Excise Tax Returns

The bill requires each manufacturer and importer to submit to the (1) commissioner its federal excise tax returns and monthly operational reports within 30 days after the returns are filed or (2) Treasury a valid request or consent authorizing the federal Alcohol Tobacco Tax and Trade Bureau and, in the case of a foreign manufacturer or importer, United States Customs and Border Protection, to disclose the manufacturer's or importer's federal excise tax returns to the commissioner.

Additional Reporting Requirements

The bill requires manufacturers and importers to disclose to the commissioner or attorney general, upon request, copies of all federally required sales reports they filed in other states.

It also allows the attorney general to require NPMs, importers, and stampers to produce information to allow him to determine whether a quarterly escrow deposit is adequate.

BACKGROUND

Tax Returns and Return Information

By law, a “return” is any of the following filed with the DRS commissioner by, on behalf of, or with respect to, anyone: (1) a tax or information return; (2) an estimated tax declaration; (3) a refund claim; or (4) any license, permit, registration, or other application. The term also covers amendments or supplements, including supporting schedules, attachments, or lists that supplement or are part of a filed return.

“Return information” includes:

1. a taxpayer's identity;
2. the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, tax under- or over-reportings, or tax payments; and
3. any other data received, recorded, prepared, or collected by or furnished to the DRS commissioner regarding a return or regarding any determination of liability for a tax, penalty, interest, fine, forfeiture, or other imposition or offense (CGS § 12-15 (h)(1) & (2)).

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 50 Nay 0 (04/01/2014)