

Regular Session, 2013

HOUSE BILL NO. 641

BY REPRESENTATIVE THOMPSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SALES/TOBACCO DEALERS: Provides relative to tobacco enforcement

1 AN ACT  
2 To amend and reenact R.S.13:5072, 5073(A)(3)(a)(v), (B)(2)(a), (3), and (4), and (C), 5075,  
3 5076(A) and (B), and 5077, R.S. 26:904(A), 916(H), 918(B), and 921 and R.S.  
4 47:843(A)(2), (C)(3) and (4), and (D), 847(A) and (B), 849, 851(B), 857, 862,  
5 865(C)(3)(b) and (c) and (i), 871, 872, 876 through 878, and 1508(B)(11), to enact  
6 R.S. 13:5073(A)(3)(a)(vi), (4)(e) and (f), (B)(5) and (6), 5074(D), and 5078, R.S.  
7 26:901(19) through (27), 902(5), 904(D), 906(H), (I), and (J), 908(D), 916(I) through  
8 (N), and 918(C) and (D), R.S. 47:842(16) through (22), 843(A)(3), 847(C), and  
9 851(E) and (F), and 1520(A)(1)(g), and to repeal  
10 R.S. 47: 873 through 875, relative to tobacco enforcement; to provide restrictions on  
11 transactions in unstamped cigarettes; to provide for definitions; to provide  
12 requirements for stamping agent licenses; to provide escrow requirements for  
13 nonparticipating manufacturers; to require stamping agent reporting; to require  
14 manufacturer and importer reporting; to require reports on out-of-state cigarette  
15 sales; to provide for the disclosure of information; to prohibit delivery sales; to  
16 provide for violations and penalties; to require that nonparticipating manufacturers  
17 post bond; to provide for a directory of stamping agents and exporter licensees; to  
18 authorize the promulgation of rules; to provide for disclosure of information between  
19 agencies relative to tobacco enforcement; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S.13:5072, 5073(A)(3)(a)(v), (B)(2)(a), (3), and (4), and (C), 5075,  
3 5076(A) and (B), and 5077 are hereby amended and reenacted and R.S.  
4 13:5073(A)(3)(a)(vi), (4)(e) and (f), (B)(5) and (6), 5074(D), and 5078 are hereby enacted  
5 to read as follows:

6 §5072. Definitions

7 As used in this Part, the following words and phrases shall have the following  
8 meanings ascribed to them:

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

16 (2) "Cigarette" has the same meaning as ~~defined~~ provided in R.S. 13:5062(4)  
17 and R.S. 47:842(2).

18 (3) "Commissioner" means the commissioner of alcohol and tobacco control.

19 (4) "Days" means calendar days unless otherwise specified.

20 ~~(3)~~(5) "Dealer" has the same meaning as ~~defined~~ provided in R.S. 47:842(4).

21 ~~(4)~~ "~~Department~~" means the ~~Department of Revenue for the state of~~  
22 ~~Louisiana~~:

23 (6) "Importer" means any person in the United States to whom non-tax-paid  
24 cigarettes manufactured in a foreign country are shipped or consigned, any person  
25 who removes cigarettes for sale or consumption in the United States from a customs  
26 bonded manufacturing warehouse, and any person who smuggles or otherwise  
27 unlawfully brings cigarettes into the United States.

28 (7) "Manufacturer" has the same meaning as provided in R.S. 47:842.

1           ~~(5)~~(8) "Master Settlement Agreement" has the same meaning as ~~defined~~  
2           provided in R.S. 13:5062(5).

3           ~~(6)~~(9) "Nonparticipating manufacturer" means any tobacco product  
4           manufacturer that is not a participating manufacturer.

5           (10) "Package" means any pack or other container on which a stamp could  
6           be applied consistent with and as required by R.S. 47:841 et seq., that contains one  
7           or more individual cigarettes for sale. Nothing in this Chapter shall alter any other  
8           applicable requirement with respect to the minimum number of cigarettes that may  
9           be contained in a pack or other container of cigarettes. References to "package" shall  
10          not include a container of multiple packages.

11          ~~(7)~~(11) "Participating manufacturer" has the meaning given that term in  
12          section II ~~(ii)~~ (jj) of the Master Settlement Agreement and all amendments thereto.

13          (12) "Person" means any natural person, trustee, company, partnership,  
14          corporation, or other legal entity.

15          (13) "Purchase" means acquisition in any manner, for any consideration.  
16          The term shall include transporting or receiving product in connection with a  
17          purchase.

18          ~~(8)~~ (14) "Qualified escrow fund" has the same meaning as ~~defined~~ provided  
19          in R.S. 13:5062(6).

20          (15) "Retailer" means "retail dealer" as provided in R.S. 26:901 and R.S.  
21          47:842.

22          (16) "Sale" or "sell" means any transfer, exchange, or barter in any manner  
23          or by any means for any consideration. The term shall include distributing or  
24          shipping product in connection with a sale. References to a sale "in" or "into" a state  
25          refer to the state of the destination point of the product in the sale, without regard to  
26          where title was transferred. References to sale "from" a state refer to the sale of  
27          cigarettes that are located in that state to the destination in question without regard  
28          to where title was transferred.



1 (4) In the case of a nonparticipating manufacturer, such certification shall  
2 further certify:

3 \* \* \*

4 (e) Sufficient information to establish that such nonparticipating  
5 manufacturer has posted the appropriate bond or cash equivalent pursuant to R.S.  
6 13:5078.

7 (f) In the case of a nonparticipating manufacturer located outside of the  
8 United States, the nonparticipating manufacturer shall provide a declaration from  
9 each of its importers into the United States of any of its brand families to be sold in  
10 this state. The declaration shall be on a form prescribed by the attorney general and  
11 shall state the following:

12 (i) The importer accepts joint and several liability with the nonparticipating  
13 manufacturer for all obligations to place funds into a qualified escrow fund for  
14 payment of all civil penalties and for payment of all reasonable costs and expenses  
15 of investigation and prosecution, including attorney fees.

16 (ii) The importer consents to personal jurisdiction in Louisiana for the  
17 purposes of claims by the state for any obligation to place funds into a qualified  
18 escrow fund for payment of any civil penalties and for payment of any reasonable  
19 costs and expenses of investigation or prosecution, including attorney fees.

20 (iii) The importer has appointed a registered agent for service of process in  
21 Louisiana according to the same requirements as established in this Part for any  
22 nonresident or foreign nonparticipating manufacturer that has not yet registered to  
23 do business in this state as a foreign corporation or business entity.

24 \* \* \*

25 B. Not later than ninety days after June 25, 2004, the attorney general shall  
26 develop and make available for public inspection or publish on its website a  
27 directory listing all tobacco product manufacturers that have provided current and  
28 accurate certifications conforming to the requirements of Subsection A and all brand

1 families, including country of origin, that are listed in such certifications (the  
2 directory), except as noted below.

3 \* \* \*

4 (2) Neither a tobacco product manufacturer nor brand family shall be  
5 included or retained in the directory if the attorney general concludes, in the case of  
6 a nonparticipating manufacturer, that:

7 (a) Any escrow payment required pursuant to R.S. 13:5061 et seq., ~~for any~~  
8 ~~period by the date due for any quarter~~ for any brand family, whether or not listed by  
9 such nonparticipating manufacturer, has not been fully paid into a qualified escrow  
10 fund governed by a qualified escrow agreement that has been approved by the  
11 attorney general; or

12 (b) Any outstanding final judgment, including interest thereon, for a  
13 violation of R.S. 13:5061 et seq. has not been fully satisfied for such brand family  
14 or such manufacturer.

15 (3) A manufacturer and its brand families may be removed from the state  
16 directory if they are removed from the directory of another state based on acts or  
17 omissions that, if they had occurred in this state, would be grounds for removal from  
18 the state directory under this Section, unless the manufacturer demonstrates that its  
19 removal from the other state's directory was effected without due process. Procedure  
20 for removal from the state directory shall be governed by the procedure set forth in  
21 R.S. 13:5077(A). A manufacturer that is removed from the state directory under this  
22 Subsection shall be eligible for reinstatement upon the earlier of the date on which  
23 it cures the violation or is reinstated to the directory in the other state.

24 (4) Failure to submit complete and accurate reports as required pursuant to  
25 R.S. 13:5075 shall result in the manufacturer and its brand families being removed  
26 from the state directory under the procedure set forth in R.S. 13:5077(A).

27 ~~(3)~~(5) The attorney general shall update the directory as necessary in order  
28 to correct mistakes and to list or de-list a tobacco product manufacturer or brand  
29 family to keep the directory in conformity with the requirements of this Part. Fifteen

1 days prior to the listing or de-listing of a tobacco product manufacturer or brand  
2 family, the attorney general shall transmit a notification to every stamping agent.

3 ~~(4)~~(6) Every stamping agent shall provide and update as necessary an  
4 electronic mail address or facsimile telephone number to the secretary and the  
5 attorney general for the purpose of receiving any notifications as may be required by  
6 this Part.

7 C. It shall be unlawful for any person:

8 (1) To affix a Louisiana tax stamp to a package or other container of  
9 cigarettes of a tobacco product manufacturer or brand family not included in the  
10 directory.

11 (2) To sell, offer, or possess for sale, in this state, or import for personal  
12 consumption in this state, cigarettes of a tobacco product manufacturer or brand  
13 family not included in the state directory; or, in the event of cigarettes subject to a  
14 de-listing notice described in this Section, sell, offer, or possess ~~for sale, in this state,~~  
15 or import for personal consumption in this state, cigarettes received; or imported, or  
16 ~~stamped~~ whether stamped or unstamped, for sale in this state more than sixty days  
17 after the date of de-listing from the state directory.

18 (3) To order, purchase, or offer to purchase cigarettes of a tobacco product  
19 manufacturer or brand family identified by the attorney general to be de-listed from  
20 the directory, after receipt of the notice described in this Section.

21 §5074. Agent for service of process

22 \* \* \*

23 D. This Section shall be applicable to importers, as defined in this Part, with  
24 regard to the appointment and continuous retention of an agent for service of process  
25 as well as related notice requirements and obligations detailed in this Section.

26 §5075. Reporting of information; escrow installments

27 A. Not later than twenty calendar days after the end of each calendar month,  
28 and more frequently if so directed by the secretary or the attorney general, each  
29 stamping agent shall submit such information as the secretary and attorney general

1 require to facilitate compliance with this Part, including but not limited to a list by  
2 brand family of the total number of cigarettes, or, in the case of roll your own, the  
3 equivalent stick count, ~~that they~~ purchased from tobacco product manufacturers  
4 during the previous calendar month or otherwise paid the tax due for such cigarettes.

5 The stamping agent shall maintain and make available to the secretary and the  
6 attorney general all invoices and documentation of purchases and sales of all tobacco  
7 product manufacturer cigarettes and any other information relied upon in reporting  
8 to the secretary and the attorney general for a period of three years.

9 B. The requirements of Subsection A of this Section shall be satisfied if the  
10 stamping agent timely submits to the secretary and attorney general reports required  
11 generally under R.S. 47:841 et seq. and this Chapter and certifies that the reports are  
12 complete and accurate.

13 C. Each manufacturer and importer that sells any cigarettes in or into the  
14 state shall, within twenty days following the end of the month, file a report on a form  
15 to be prescribed by the attorney general and certify that the report is complete and  
16 accurate. The report shall contain the following information: (1) The total number  
17 of cigarettes sold by that manufacturer or importer in or into the state during that  
18 month, identified by name and number of cigarettes. (2) The manufacturers of those  
19 cigarettes. (3) The brand families of those cigarettes. (4) The purchasers of those  
20 cigarettes. A manufacturer's or importer's report shall include cigarettes sold in or  
21 into the state through its sales entity affiliate.

22 D. The requirements of Subsection C of this Section shall be satisfied and  
23 no further report shall be required under this Section with respect to cigarettes if the  
24 manufacturer or importer timely submits to the attorney general and secretary the  
25 report or reports required to be submitted by it with respect to those cigarettes under  
26 15 USC 376 to the attorney general and certifies that the reports are complete and  
27 accurate.



1           E. Upon request by the attorney general, a manufacturer or importer shall  
2           provide copies of reports filed in other states containing information similar to those  
3           provided by Subsections A and C of this Section.

4           F. Any reports submitted to the secretary or commissioner under R.S. 47:841  
5           et seq. or R.S. 26:901 et seq. shall also be submitted contemporaneously to the  
6           attorney general.

7           G. The secretary is authorized to disclose to the attorney general any  
8 information received under this Part and requested by the attorney general for  
9 purposes of determining compliance with and enforcing the provisions of this Part.  
10 The secretary, ~~and attorney general, and commissioner~~ shall share with each other  
11 the information received under this Part and may share such information with other  
12 federal, state, or local ~~agencies~~ taxing agencies or law enforcement authorities only  
13 for purposes of enforcement of this Part, R.S. 13:5061 et seq., or corresponding laws  
14 of other states. Additionally, the sharing of information by the secretary under this  
15 ~~Part Chapter~~ shall not constitute a violation of R.S. 47:1508.

16           ~~E.H.~~ H. The attorney general may require at any time from the nonparticipating  
17 manufacturer, proof from the financial institution in which such manufacturer has  
18 established a qualified escrow fund for the purpose of compliance with R.S. 13:5061  
19 et seq., of the amount of money in such fund, exclusive of interest, the amount and  
20 date of each deposit to such fund, and the amount and date of each withdrawal from  
21 such fund.

22           ~~D.I.~~ I. In addition to the information required to be submitted pursuant to this  
23 Part and R.S. 13:5061 et seq. or R.S. 47:843 et seq., the secretary and the attorney  
24 general may require a stamping agent or tobacco product manufacturer to submit any  
25 additional information including but not limited to samples of the packaging or  
26 labeling of each brand family, as is necessary to enable the attorney general to  
27 determine whether a tobacco product manufacturer is in compliance with this Part.

28           ~~E.J. To promote compliance with this Part, the attorney general may require~~  
29 ~~a tobacco product manufacturer subject to the requirements of R.S. 13:5073(A)(2)~~

1 to make the escrow deposits required in annual, quarterly, or monthly installments  
2 during the year in which the sales covered by such deposits are made. All escrow  
3 deposits under R.S. 13:5061 et seq. shall be made on a quarterly basis, no later than  
4 forty-five days after the end of each calendar quarter in which the sales are made.  
5 Each failure to make a full quarterly installment deposit shall constitute a separate  
6 violation of the state's escrow laws. The secretary and the attorney general may  
7 require production of information sufficient to enable the attorney general to  
8 determine the adequacy of the amount of the installment deposit. The attorney  
9 general shall promptly review the amount deposited by each nonparticipating  
10 manufacturer for each calendar quarter against the reports received and other  
11 information and shall provide notice to each nonparticipating manufacturer for which  
12 it concludes that an additional deposit was owed.

13 K. Importers of any brand families of a nonparticipating manufacturer in or  
14 into the state shall be jointly and severally liable with the nonparticipating  
15 manufacturer for all obligations to place funds into a qualified escrow fund for  
16 payment of all civil penalties and for payment of all reasonable costs and expenses  
17 of investigation and prosecution, including attorney fees, and shall consent to  
18 personal jurisdiction in Louisiana for the purposes of claims by the state for payment  
19 of such obligations.

20 §5076. Penalties; other remedies

21 A. In addition to or in lieu of any other civil or criminal remedy provided by  
22 law, upon a determination that a stamping agent has violated R.S. 13:5073(C) or any  
23 regulation adopted pursuant to this Part, the secretary may revoke or suspend the  
24 license of the dealer in the manner provided by R.S. ~~47:844~~ 47:846 and R.S. 26:916.  
25 Each stamp affixed and each sale, offer to purchase, or offer to sell cigarettes in  
26 violation of R.S. 13:5073(C) shall constitute a separate violation. For each violation  
27 hereof, the secretary may also impose a civil penalty in an amount not to exceed the  
28 greater of five hundred percent of the retail value of the cigarettes or five thousand  
29 dollars upon a determination of violation of R.S. 13:5073(C) or any regulations

1 adopted pursuant thereto. Such penalty shall be imposed in the manner provided by  
2 R.S. 47:843 et seq. and R.S. 26:901 et seq.

3 B. Any cigarettes that have been sold, offered for sale, or possessed for sale,  
4 in this state, or imported for personal consumption in this state, in violation of R.S.  
5 13:5073(C) shall be deemed contraband under R.S. 47:865 and R.S. 13:5061 et seq.,  
6 and such cigarettes shall be subject to seizure and forfeiture as provided in ~~such~~  
7 ~~section~~ those provisions, and all such cigarettes so seized and forfeited shall be  
8 destroyed and not resold.

9 \* \* \*

10 §5077. Miscellaneous provisions

11 A. The attorney general shall provide a notice of removal to any  
12 manufacturer that it determines should be removed or have any of its brand families  
13 removed from the state directory. The notice shall state the grounds for the removal  
14 and inform the manufacturer that it or its brand families will be removed from the  
15 state directory thirty days following the date of the notice. During the thirty days  
16 following the date of the notice, the manufacturer may (1) fully cure the failure or  
17 violation or (2) submit documentation to the attorney general demonstrating that its  
18 determination described in the notice was incorrect. Unless the attorney general  
19 determines that the manufacturer has satisfied either (1) or (2), it or its brand families  
20 will be removed from the state directory thirty days following the date of the notice.

21 A determination of the attorney general to not include or to remove from the  
22 directory a brand family or tobacco product manufacturer shall be subject to review  
23 in the manner prescribed by the Administrative Procedure Act. A manufacturer that  
24 unsuccessfully challenges a decision not to include or to remove from the directory  
25 a brand family or manufacturer shall pay the state's reasonable costs and attorney  
26 fees incurred in contesting the challenge.

27 B. Each person may provide a name and address to which notices under this  
28 Section are to be sent. Notice periods under this Section run from the date of notice

1 sent to such name and address or, in the case of a person that does not provide a  
2 name and address, the last known company address.

3 ~~B.C.~~ No person shall be issued a license or granted a renewal of a license to  
4 act as a stamping agent unless such person has certified in writing, under penalty of  
5 perjury, that such person will comply fully with this Section.

6 ~~C.D.~~ For the year 2004, because the effective date of this Part is later than  
7 April 15, 2004, the first report of stamping agents required by R.S. 13:5075(A) shall  
8 be due thirty calendar days after June 25, 2004; the certifications by a tobacco  
9 product manufacturer described in R.S. 13:5073(A) shall be due forty-five calendar  
10 days after June 25, 2004; and the directory described in R.S. 13:5073(B) shall be  
11 published or made available within ninety calendar days after June 25, 2004.

12 E. The secretary, commissioner, and attorney general shall each designate  
13 employees who shall oversee the administration and enforcement of the laws and  
14 regulations regarding the tobacco Master Settlement Agreement for its office and  
15 who shall confer monthly to establish and monitor practices to promote ongoing  
16 compliance under the Master Settlement Agreement. A tri-agency summit shall be  
17 held on an annual basis for agency representatives and staff.

18 ~~D.F.~~ The secretary or the commissioner in conjunction with the attorney  
19 general may promulgate regulations necessary to effect the purpose of this Part.

20 ~~E.G.~~ In any action brought by the state to enforce this Part, the attorney  
21 general, the commissioner, and secretary shall be entitled to recover the costs of the  
22 investigation, expert witness fees, the action, and reasonable attorney fees.

23 ~~F.H.~~ If a court determines that a person has violated this Part, the court shall  
24 order any profits, gains, gross receipts, or other benefits from the violation to be  
25 disgorged and paid to the state treasurer for deposit in the tobacco control special  
26 fund, which is hereby created. The tobacco control special fund shall be used by the  
27 attorney general for tobacco enforcement and control matters. Unless otherwise  
28 expressly provided, the remedies or penalties provided by this Part are cumulative

1 to each other and to the remedies or penalties available under all other laws of this  
2 state.

3 ~~G.I.~~ If a court of competent jurisdiction finds that the provisions of this Part  
4 and of R.S. 13:5061 et seq. conflict and cannot be harmonized, then the provisions  
5 in R.S. 13:5061 et seq. shall control. If any Section, Subsection, Paragraph,  
6 Subparagraph, Item, sentence, clause, phrase, or word of this Part causes R.S.  
7 13:5061 et seq. to no longer constitute a qualifying or model statute, as those terms  
8 are defined in the Master Settlement Agreement, then that portion of this Part shall  
9 not be valid. If any Section, Subsection, Paragraph, Subparagraph, Item, sentence,  
10 clause, phrase, or word of this Part is for any reason held to be invalid, unlawful, or  
11 unconstitutional, such decision shall not affect the validity of the remaining portions  
12 of this Part.

13 §5078. Bond

14 A. All nonparticipating manufacturers shall post a bond or its cash  
15 equivalent for the benefit of the state that is subject to execution under Subsection  
16 C of this Section. The bond shall be posted by corporate surety located within the  
17 United States or the cash equivalent of the bond shall be posted by the  
18 nonparticipating manufacturer in an account approved by the state. The bond or its  
19 cash equivalent shall be posted and evidence of such posting shall be provided to the  
20 attorney general at least ten days in advance of each calendar quarter as a condition  
21 to the nonparticipating manufacturer and its brand families being included in the  
22 directory for that quarter.

23 B. The amount of the bond shall be determined as follows:

24 (1) Unless Paragraph (3) of this Subsection is applicable, for a  
25 nonparticipating manufacturer that has been listed on Louisiana's state directory for  
26 at least three years, the amount of the bond required shall be fifty thousand dollars  
27 or the highest amount owed for any quarter over the past three years, whichever is  
28 greater;

1           (2) Unless Paragraph (3) of this Subsection is applicable, for a  
 2           nonparticipating manufacturer that has not been listed on Louisiana's state directory  
 3           for at least three years, the amount of the bond required shall be determined by the  
 4           attorney general based on any prior history in any state, as well any other  
 5           considerations the attorney general deems relevant, but shall not be less than one  
 6           hundred thousand dollars in any event; and

7           (3) For a nonparticipating manufacturer that has failed, in the past three  
 8           years, to make a full and timely escrow deposit due under R.S. 13:5063, unless the  
 9           failure was not knowing or intentional and was promptly cured upon notice, or for  
 10          any nonparticipating manufacturer that was involuntarily removed from any state's  
 11          directory, unless the removal was determined to have been erroneous, the amount of  
 12          the bond required shall be the greater of one hundred thousand dollars or the greatest  
 13          amount of escrow owed by the nonparticipating manufacturer or its predecessor in  
 14          any calendar year in any state within the preceding five calendar years.

15           C. If a nonparticipating manufacturer that posted a bond has failed to make,  
 16           or have made on its behalf by an entity with joint and several liability, escrow  
 17           deposits equal to the full amount owed for a quarter within fifteen days following the  
 18           due date for the quarter under R.S. 13:5063, the state may execute upon the bond,  
 19           first to recover delinquent escrow, which amount shall be deposited into a qualified  
 20           escrow account under R.S. 13:5063, and then to recover civil penalties and costs  
 21           authorized under such Section. Escrow obligations above the amount collected on  
 22           the bond remain due from that nonparticipating manufacturer and from the importers  
 23           that sold its cigarettes during that calender quarter.

\* \* \*

25           Section 2. R.S. 26:904(A), 916(H), 918(B), and 921 are hereby amended and  
 26           reenacted and R.S. 26:901(19) through (27), 902(5), 904(D), 906(H), (I), and (J), 908(D),  
 27           916(I) through (N), and 918(C) and (D) are hereby enacted to read as follows:

28           §901. Definitions

29           \* \* \*

1           (19) "Brand family" has the meaning as set forth in R.S. 13:5072(1).

2           (20) "Exporter license" means the stamping agent designation as set forth in  
3           R.S. 26:902(5)(b).

4           (21) A "knowing violation or failure" is where the person knowingly or  
5           intentionally engaged in conduct without a good faith belief that the conduct was  
6           consistent with the provisions of this Chapter.

7           (22) "Person" means any natural person, trustee, company, partnership,  
8           corporation, or other legal entity.

9           (23) "Purchase" means acquisition in any manner, for any consideration.  
10          The term shall include transporting or receiving product in connection with a  
11          purchase.

12          (24) "Sale" or "sell" means any transfer, exchange, or barter in any manner  
13          or by any means for any consideration. The term shall include distributing or  
14          shipping product in connection with a sale. References to a sale "in" or "into" a state  
15          refer to the state of the destination point of the product in the sale, without regard to  
16          where title was transferred. References to sale "from" a state refer to the sale of  
17          cigarettes that are located in that state to the destination in question without regard  
18          to where title was transferred.

19          (25) "Sales entity affiliate" means an entity that (1) sells cigarettes that it  
20          acquires directly from a manufacturer or importer and (2) is affiliated with that  
21          manufacturer or importer. Entities are affiliated with each other if one, directly or  
22          indirectly through one or more intermediaries, controls or is controlled by or is under  
23          common control with the other.

24          (26) "Stamping agent" means a dealer that is authorized to affix tax stamps  
25          to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer  
26          that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841  
27          et seq. on cigarettes.

1           (27) "State directory" or "directory" means the directory compiled by the  
2           attorney general under R.S. 13:5073, or, in the case of reference to another state's  
3           directory, the directory compiled under the similar law in that other state.

4           §902. Permits

5           The commissioner shall issue as authorized by this Section the following  
6           types of permits and shall adopt rules and regulations that specify the identifying  
7           information that is required to appear on the face of each type of permit:

8   \*       \*       \*

9           (5)(a) Stamping Agent Designation: A stamping agent designation shall be  
10          issued to a dealer that engages in the business of purchasing unstamped or non-tax  
11          paid cigarettes that meets all requirements of a wholesale dealer as defined by this  
12          Chapter, the provision of R.S. 26:906(H), and any rules or regulations issued in  
13          connection therewith.

14          (b) The holder of a valid stamping agent designation that engages in  
15          interstate business or affixes tax stamps of another state shall first apply for an  
16          exporter license allowing it to purchase or possess unstamped or non-tax paid  
17          cigarettes.

18   \*       \*       \*

19          §904. Permit terms

20          A. Except as otherwise provided in Subsection B of this Section, each permit  
21          shall be valid for the designated time period unless suspended or revoked. The  
22          commissioner may issue permits which are valid for two years to applicants in good  
23          standing with the office of alcohol and tobacco control.

24   \*       \*       \*

25          D. An exporter license issued pursuant to R.S. 26:902(5)(b) shall remain in  
26          effect for a period of one year.

27   \*       \*       \*

28          §906. General requirements

29   \*       \*       \*



1           H. Applicants for a stamping agent designation shall certify on a form  
2           provided by the commissioner that they will do the following:

3                   (1) Affix stamps as set forth in R.S. 47:843(D).

4                   (2) Pay to the state all taxes applicable under R.S. 47:841 et seq. on  
5                   cigarettes it sells or present documentation demonstrating that such taxes were paid  
6                   prior to the sale.

7                   (3) Provide complete and accurate reports as required by this Chapter, R.S.  
8                   13:5071 et seq., or R.S. 47:841 et seq. and certify monthly that it has complied with  
9                   all requirements therein.

10                  (4) Comply generally with all other provisions set forth in R.S. 47:841 et  
11                  seq.

12                  (5) Consent to the jurisdiction of the state to enforce the requirements of this  
13                  Chapter and waive any claim of sovereign immunity to the contrary.

14                  (6) Waive all confidentiality laws as necessary to permit the commissioner  
15                  to create and make available the list described in R.S. 26:921(B) and to share  
16                  information reported under this Chapter with the taxing or law enforcement  
17                  authorities of other states.

18           I. Applicants for a stamping agent designation located outside of the state  
19           shall appoint an agent in the state for service of process in connection with  
20           enforcement of the provisions of this Chapter and the provisions of R.S. 13:5061 et  
21           seq., and R.S. 47:841 et seq.

22           J. An exporter license shall be issued upon the applicant's meeting the  
23           following requirements:

24                   (1) Demonstrates that it holds a valid stamping agent designation.

25                   (2) Certifies on a form provided by the commissioner that any cigarettes of  
26                   a manufacturer or brand family not listed on the state directory will be purchased or  
27                   possessed solely for sale or transfer into another state as permitted by R.S. 47:849.

28                   (3) Maintains such cigarette inventory pursuant to Paragraph (2) of this  
29                   Subsection, in a separate and distinct area within its warehouse.

1                   (4) Waives any confidentiality laws as necessary to permit the commissioner  
2                   to create and make available a list as provided in R.S. 26:921(C).

3   \*           \*           \*

4                   §908. Issuance of permit

5   \*           \*           \*

6                   D. No exporter license may be issued to a person that violated a certification  
7                   it previously made under R.S. 26:906(J)(2).

8   \*           \*           \*

9                   §916. Suspensions or revocations

10    \*           \*           \*

11                   H. The designation of a stamping agent shall be subject to termination if a  
12                   permittee does any of the following:

13                                   (1) Fails to provide a report or certification as required by this Chapter, R.S.  
14                                   13:5061 et seq., or R.S. 47:841 et seq.

15                                   (2) Knowingly files an incomplete or inaccurate report or certification.

16                                   (3) Fails to pay taxes as provided in R.S. 47:841 et seq.

17                                   (4) Fails to sell cigarettes in or into the state pursuant to R.S. 47:843 or sells  
18                   unstamped cigarettes of a manufacturer or brand family that is not at the time listed  
19                   on the state directory, or possesses such cigarettes more than sixty days after  
20                   receiving notice that the manufacturer or brand family is not on the state directory,  
21                   except as expressly permitted in R.S. 47:841 et seq.

22                                   (5) Purchases or sells cigarettes in violation of the provisions of this Chapter  
23                   or R.S. 47:841 et seq.

24                   I. In the case of a first failure under Paragraphs (H)(3) and (4) of this  
25                   Section, the stamping agent may be entitled to cure the failure within thirty days of  
26                   being notified of the violation. The designation of a stamping agent that fully cures  
27                   the failure during the prescribed period shall not be terminated on account of that  
28                   failure.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1           J. The designation of a stamping agent may be subject to termination if its  
2           similar designation is terminated in any other state based on acts or omissions that  
3           would be grounds for designation termination under this Section, unless the stamping  
4           agent demonstrates that its designation termination in the other state was terminated  
5           without due process. A stamping agent whose designation is terminated under this  
6           Subsection shall be eligible for reinstatement upon the earlier date specified by  
7           Subsection M of this Section for the omission in question or reinstatement of its  
8           license by the other state.

9           K. The commissioner shall promptly remove any stamping agent whose  
10          designation is terminated from the list required by R.S. 26:921(B) and shall publish  
11          a notice of the termination on its website and send notice of the termination to all  
12          wholesale dealers, the attorney general, and the secretary. The attorney general shall  
13          send notice of the termination to all persons listed on the state directory.

14           (1) Beginning five days following the publication and sending of such  
15          notice, no person may sell cigarettes nor purchase cigarettes from the stamping agent  
16          whose designation has been terminated.

17           (2) A stamping agent whose designation has been terminated may, within  
18          thirty days from the date of the publication, return any unaffixed stamps to the  
19          secretary for a refund equal to the current value of each stamp returned. No refunds  
20          shall be issued after thirty days from the date of the publication of the termination.

21           L.(1) A stamping agent whose designation is terminated shall be removed  
22          from the list required by R.S. 26:921(B). (2) Any person that sells cigarettes to or  
23          purchases cigarettes from a terminated stamping agent after the stamping agent has  
24          been removed from the directory by R.S. 26:921(B), shall be jointly and severally  
25          liable for any taxes applicable to such cigarettes under R.S. 47:841 and for any  
26          escrow due on such cigarettes under R.S. 13:5063 during the period of the  
27          termination.

1           M. A stamping agent whose designation is terminated shall be eligible for  
 2           reinstatement no less than ninety days and no more than three years following date  
 3           of termination.

4           N. In addition to any other causes enumerated in this Chapter, the  
 5           commissioner shall suspend or revoke any permit of any dealer that fails to pay taxes  
 6           due to the state.

7                                   \*       \*       \*

8           §918. Civil penalties

9                                   \*       \*       \*

10           B. In the case of a second violation pursuant to R.S. 26:916(H)(4) or (5) or  
 11           of a first violation of R.S. 26:916(H)(1) through (3) or (6), the stamping agent shall  
 12           be subject to a civil penalty of up to one thousand dollars.

13           C. In the case of a third or subsequent violation under R.S. 26:916(H)(4) or  
 14           (5) or of a second or subsequent violation of R.S. 26:916(H)(1) through (3) or (6),  
 15           the stamping agent shall be subject to a civil penalty of up to five thousand dollars  
 16           per violation. In the case of R.S. 26:916(H)(4) through (6), each sale shall constitute  
 17           a separate offense.

18           D. Any fine imposed upon any permittee or the revocation or suspension of  
 19           a permit is in addition to and is not in lieu of or a limitation upon any other penalty  
 20           imposed by law and not contained in this Chapter.

21                                   \*       \*       \*

22           §921. Public records

23           A. The commissioner shall maintain a list of all wholesale and retail dealers  
 24           who hold a permit in this state. Nothing contained in this Chapter shall be construed  
 25           to prevent the commissioner from disclosing to any person upon request the name  
 26           and address of any dealer who holds a permit, but the commissioner shall not  
 27           disclose any tax information the disclosure of which is otherwise prohibited by law.

28           B. The commissioner shall provide on its website the list of all persons  
 29           licensed as stamping agents pursuant to R.S. 26:902(5)(a).

1           C. The commissioner shall provide on its website the list of all persons  
2           holding an exporter license pursuant to R.S. 26:902(5)(b).

3   \*       \*       \*

4           Section 3. R.S. 47:843(A)(2), (C)(3) and (4), and (D), 847(A) and (B), 849, 851(B),  
5           857, 862, 865(C)(3)(b) and (c) and (i), 871, 872, 876 through 878, and 1508(B)(11) are  
6           hereby amended and reenacted and R.S. 47:842(16) through (22), 843(A)(3), 847(C), 851(E)  
7           and (F), and 1520(A)(1)(g) are hereby enacted to read as follows:

8           §842. Definitions

9                           As used in this Chapter, the following terms have the meaning ascribed to  
10           them in this Section, unless the context clearly indicates otherwise:

11   \*       \*       \*

12                           (16) "Brand family" has the meaning as set forth in R.S. 13:5072(1).

13                           (17) "Person" means any natural person, trustee, company, partnership,  
14           corporation or other legal entity.

15                           (18) "Purchase" means acquisition in any manner, for any consideration.  
16           The term includes transporting or receiving product in connection with a purchase.

17                           (19) "Sales" or "sell" means any transfer, exchange, or barter in any manner  
18           or by any means for any consideration. The term includes distributing or shipping  
19           product in connection with a sale. References to a sale "in" or "into" a state refer to  
20           the state of the destination point of the product in the sale, without regard to where  
21           title was transferred. References to sale "from" a state refer to the sale of cigarettes  
22           that are located in that state to the destination in question without regard to where  
23           title was transferred.

24                           (20) "Sales entity affiliate" means an entity that sells cigarettes that it  
25           acquires directly from a manufacturer or importer and is affiliated with that  
26           manufacturer or importer. Entities are affiliated with each other if one, directly or  
27           indirectly through one or more intermediaries, controls or is controlled by or is under  
28           common control with the other.



1 hundred dollars face value, and the same provisions and discount shall apply where  
2 the metered stamping machine or device is used.

3 (4) Except as otherwise provided in this Section, the stamps shall be sold by  
4 the secretary of the Department of Revenue in less quantity at face value to any and  
5 all persons, firms, partnerships, corporations, and associations of person who hold  
6 a valid stamping agent designation in accordance with R.S. 26:902(5)(a) and are  
7 qualified to purchase stamps hereunder.

8 \* \* \*

9 D. Affixing Stamps. (1) No person other than a dealer holding a valid  
10 stamping agent designation under R.S. 26:902(5) may affix a stamp to any package  
11 of cigarettes. Stamps shall be affixed by the dealer, on the smallest container or  
12 package of cigarettes that is subject to the tax, to permit the secretary to readily  
13 ascertain by an inspection of any dealer's stock on hand, whether or not the tax has  
14 been paid. The dealer shall cause to be affixed on every package of cigarettes on  
15 which a tax is due, stamps of an amount equaling the tax due thereon, before any  
16 person, firm, partnership, corporation, or association of persons sells, offers for sale,  
17 handles, removes, or otherwise disturbs or distributes the same. The stamps shall be  
18 affixed in such a manner that their removal will require continued application of  
19 steam or water and shall be canceled by placing thereon the license number of the  
20 dealer.

21 \* \* \*

22 §847. Dealers required to affix stamps

23 A. General requirement. Every registered tobacco dealer holding a valid  
24 stamping agent designation pursuant to R.S. 26:902(5)(a) shall immediately after  
25 receipt of any unstamped cigarettes unless sooner offered for sale, cause the same  
26 to have the requisite denominations and amount of stamp or stamps to represent the  
27 tax affixed as stated herein. The stamping of the unstamped cigarettes shall actually  
28 begin as soon as practicable after receipt of the cigarettes in the premises of the

1 tobacco dealer and shall be continued with reasonable diligence by the dealer until  
2 all of the unstamped cigarettes have been stamped as provided by law.

3 B. Stamping agents may sell cigarettes in or into the state, may purchase  
4 cigarettes for resale in or into the state and may affix a stamp required by this  
5 Chapter only if the manufacturer and brand family of the cigarettes are listed on the  
6 state directory at the time of stamping.

7 C.(1) Unstamped cigarettes. If and whenever any of the cigarettes taxed in  
8 this Chapter are found in the place of business of any tobacco dealer or any other  
9 person, except bonded interstate tobacco dealers, without the stamps affixed as  
10 herein provided, the prima facie presumption shall arise that such cigarettes are kept  
11 therein in violation of the provisions of this Chapter.

12 (2) A manufacturer, importer, or sales entity affiliate may, in accordance  
13 with R.S. 47:862, possess, transport, or cause to be transported unstamped cigarettes  
14 in or into the state to a stamping agent under any of the following circumstances:

15 (a) The manufacturer and brand family of the cigarettes are at the time of  
16 sale listed on the state directory.

17 (b) The manufacturer and brand family of cigarettes are not at the time of  
18 sales listed on the state directory, but any of following conditions apply:

19 (i) The stamping agent is authorized to affix the stamp or, when permitted  
20 by Item (ii) of this Subparagraph, pays the taxes imposed by another state on whose  
21 directory the manufacturer and brand family of the cigarettes are listed at the time  
22 of the sales.

23 (ii) The stamping agent would be permitted to resell the cigarettes from this  
24 state into that other state as provided in R.S. 47:849.

25 (iii) The stamping agent receiving the cigarettes holds an exporter license  
26 pursuant to R.S. 26:902(5)(b) and submits a report pursuant to R.S. 47:851(E).

27 \* \* \*



1 §849. Interstate business of tobacco dealers

2 A. A registered tobacco dealer holding a valid stamping agent designation  
3 as provided in R.S. 26:902(5)(a) may sell its cigarettes from this state into another  
4 state only if it first affixes the stamp required by the other state to the package  
5 containing the cigarettes. If the law of the other state permits the sale of the  
6 cigarettes to consumers in a package not bearing a stamp, the dealer may sell  
7 cigarettes into the other state without a stamp only if it first pays an excise, use, or  
8 similar tax imposed on the cigarettes by the other state.

9 B. A dealer may not purchase or possess unstamped cigarettes in this state  
10 for sale into another state where the manufacturer and brand family of the cigarettes  
11 are not at the time of sale listed on this state's directory unless it holds an exporter  
12 license pursuant to R.S. 26:902(5)(b).

13 C. Any registered tobacco dealer desiring to engage in interstate business  
14 shall furnish a bond for that purpose. This bond shall be in addition to the bond  
15 provided for in R.S. 47:848, in an amount and of tenor and solvency satisfactory to  
16 the collector. He shall then be permitted to set aside such part of his stock as may  
17 be absolutely necessary for the conduct of such interstate business, without affixing  
18 the stamps required by this Chapter. Such interstate stock shall be kept in an entirely  
19 separate part of the building, separate and apart from stamped stock, and the  
20 interstate business shall be conducted by the dealer in accordance with rules and  
21 regulations to be promulgated by the collector.

22 D. Notwithstanding Subsections A, B, or C of this Section, a person may not  
23 sell cigarettes from this state into another state if the sale would violate the law of  
24 the other state, or affix the stamp required by the other state or pay the excise, use,  
25 or similar tax imposed by the other state if doing so would violate the law of the  
26 other state.

27 \* \* \*

1 §851. Dealers receiving unstamped and/or nontax paid cigarettes, cigars, and  
2 smoking tobaccos required to file monthly reports and maintain records;  
3 vending machine restrictions

4 \* \* \*

5 B. Registered tobacco dealers and stamping agents.

6 (1) Each and every ~~registered tobacco dealer~~ designated stamping agent in  
7 accordance with R.S. 26:902(5)(a) receiving unstamped cigarettes shall file a report  
8 with the secretary of the Department of Revenue on forms prescribed and furnished  
9 by the secretary showing the purchase, receipt and sale of unstamped taxable  
10 cigarettes, and the purchase and use of cigarette tax stamps. The report shall be  
11 submitted to cover the calendar month and shall be filed with the secretary not later  
12 than the ~~20th~~ twentieth day of the month following the end of the previous calendar  
13 month. The report shall certify that the report is complete and accurate and shall  
14 contain, in addition to any further information that the secretary or the attorney  
15 general may reasonably require, the following:

16 (a) The total number of cigarettes acquired by the stamping agent during that  
17 month for sale into the state or for sale from this state into another state, sold in or  
18 into the state by the stamping agent during that month, and held in inventory in the  
19 state or for the sale into the state by the stamping agent pursuant to this Chapter and  
20 R.S. 13:5075.

21 (b) The total number of stamps it affixed during that month, and identifying  
22 (i) how many of each type of stamp it affixed by number and dollar amount of tax  
23 paid; (ii) the total number of cigarettes contained in the packages to which it affixed  
24 each respective type of tax stamp; and (iii) by name and number of cigarettes, the  
25 manufacturers and brand families of the packages to which it affixed each respective  
26 type of tax stamp.

27 (c) In the case of a stamping agent that is an importer, reports under  
28 Subparagraph (a) of this Paragraph shall not include cigarettes it sold to a stamping

1 agent as permitted under R.S. 26:902(5)(a) and that it separately reports pursuant to  
2 R.S. 13:5075.

3 (2) Any person that during a month acquired, purchased, sold, possessed,  
4 transferred, transported, or caused to be transported in or into the state cigarettes of  
5 a manufacturer or brand family that were not on the state directory at the time shall  
6 file, not later than the twentieth day of the month following the end of the previous  
7 calendar month, a report on a form provided by the secretary and certify that the  
8 report is complete and accurate. The report shall contain, in addition to any further  
9 information that the secretary or the attorney general may reasonably require, the  
10 following information:

11 (a) The total number of those cigarettes, in each case identifying by name  
12 and number of cigarettes (i) the manufacturer of those cigarettes, (ii) the brand  
13 families of those cigarettes, (iii) in the case of a sale or transfer, the state in which  
14 the recipient of those cigarettes is located, and (iv) in the case of an acquisition or  
15 purchase, the state of the seller or sender of those cigarettes.

16 (b) The following shall be provided to the attorney general or secretary upon  
17 request: in the case of acquisition, purchase, or possession, the detail of the person's  
18 subsequent sale or transfer of those cigarettes, identifying by name and number of  
19 cigarettes (i) the brand families of those cigarettes, (ii) the date of the sale or transfer,  
20 (iii) the name and address of the recipient, (iv) the number of stamps of each other  
21 state that the person affixed to the packages containing those cigarettes during that  
22 month, (v) the total number of cigarettes contained in the packages to which it  
23 affixed respective other state's stamp, (vi) by name and number of cigarettes that  
24 manufacturers and brand families of the packages to which it affixed each respective  
25 other state's stamp and (vii) a certification that it reported each sale or transfer to the  
26 taxing authority of the other state not later than the twentieth day of the month  
27 following the end of the previous calendar month.

1           (3) The secretary may share the information reported under this Section with  
2           any federal, state, or local taxing agency or law enforcement authorities of this state  
3           or other states.

4           ~~(2)~~(4)(a) Every registered tobacco dealer receiving and handling cigars and  
5           smoking tobaccos in Louisiana upon which the tax has not been previously paid  
6           shall, within twenty days after the expiration of each calendar month, file with the  
7           secretary a report, under oath, of the total amount of such cigars and smoking  
8           tobaccos received and handled during the preceding month, and shall pay the taxes  
9           due thereon, and all out of state Louisiana registered tobacco dealers shall file a  
10          report, under oath, disclosing all sales of cigars and smoking tobaccos in Louisiana  
11          during the preceding calendar month, and shall pay the taxes due thereon. This  
12          report shall be made on forms prescribed and furnished by the secretary and shall  
13          show such other information as the secretary may require so that the taxes levied in  
14          R.S. 47:841 can be reported and computed.

15          (b) A six percent discount is allowable for timely and accurately filing such  
16          report only on those purchases made by registered tobacco dealers in Louisiana who  
17          have a direct purchasing contract with a manufacturer. The secretary shall allow  
18          wholesale tobacco dealers of other states serving a trade area of retail dealers in this  
19          state who have a direct purchasing contract with a manufacturer to sell in this state  
20          with the benefit of the discount provided, however, in no instance shall the discount  
21          be greater than that which is received by such wholesale tobacco dealers in their state  
22          of domicile and further provided that regardless of the discount extended by other  
23          states, such discount shall not exceed six percent, provided said dealers meet the  
24          requirements of a wholesale dealer as set forth in R.S. 47:842(5). The transfer or  
25          disposal by a qualified dealer of any benefit herein conferred is prohibited except in  
26          the case of the original recipient.

27          ~~(3)~~(5) Failure to file the monthly report on or before the ~~20<sup>th</sup>~~ twentieth day  
28          of the following month will subject the dealer to forfeiture of the discounts as  
29          authorized in R.S. 47:843, R.S. 47:851 and all other penalties as provided in the

1 administrative provisions in Chapter 18, Title 47, however, the collector can upon  
2 timely application extend this date in his discretion upon cause shown.

3 \* \* \*

4 E. Out of state sales reports. Any person that sells cigarettes from this state  
5 into another state shall, by the twentieth day of the month following the month in  
6 which the sales were made, file a report on a form to be prescribed by the secretary  
7 and shall provide a duplicate report to the attorney general and certify that the report  
8 is complete and accurate.

9 (1) The report shall contain the following information:

10 (a) The total number of cigarettes sold from this state into another state by  
11 the dealer during that month, identifying by name and number of cigarettes (i) the  
12 manufacturer of those cigarettes, (ii) the brand families of those cigarettes, and (iii)  
13 the name and address of each recipient of those cigarettes.

14 (b) The number of stamps of each other state the dealer affixed to the  
15 packages containing those cigarettes during that month, the total number of  
16 cigarettes contained in packages to which it affixed each respective other state's  
17 stamp and, by name and number of cigarettes, the manufacturers and brand families  
18 of the packages to which it affixed each respective other state's stamp.

19 (c) If the dealer sold cigarettes during that month from this state into another  
20 state in packages not bearing a stamp of the other state, (i) the total number of  
21 cigarettes contained in such packages, identifying by names and number of  
22 cigarettes, the manufacturers of those cigarettes, the brand families of those  
23 cigarettes and the name and address of each recipient of those cigarettes; (ii) the  
24 dealer's basis for belief that such state permits the sale of the cigarettes to consumers  
25 in a package not bearing a stamp; (iii) and the amount of excise, use or similar tax  
26 imposed on the cigarettes and paid by the dealer to such state.

1           F. The secretary may share the information provided in Subsection E of this  
 2           Section, upon request, with any federal, state, or local taxing agency or law  
 3           enforcement authorities of this state or other states.

4                                   \*       \*       \*

5           §857. Refunds

6           A. The collector may promulgate rules and regulations providing for the  
 7           refund to dealer for the cost of stamps affixed to goods which by reason of damage  
 8           become unfit for sale and are destroyed by dealer or returned to manufacturer or  
 9           jobber.

10           B. The collector may refund a dealer for the cost of stamps affixed to goods,  
 11           that were listed on the state directory at the time the stamps were affixed but have  
 12           been subsequently removed from the state directory, upon proof that the goods have  
 13           been destroyed, the date and location of the destruction, and a verification must be  
 14           signed by the individuals who witnessed the destruction. The collector may  
 15           promulgate rules and regulations related to the destruction of the goods and the  
 16           procedures for refund.

17                                   \*       \*       \*

18           §862. Importation of unstamped articles, except by common carrier, without permit  
19           prohibited

20           A.(1) It is unlawful for any person to ship or transport or cause to be shipped  
 21           or transported into this state by any automobile, truck, boat, conveyance, vehicle, or  
 22           any means of transportation other than a common carrier of any article or articles on  
 23           which the tax is levied by this Chapter upon which article or articles the tax as levied  
 24           by this Chapter has not been paid, without first obtaining a permit from the collector,  
 25           authorizing the transportation, carriage or movement in this state of the article or  
 26           articles taxed under this Chapter.

27           (2) A common carrier may possess and transport unstamped cigarettes in  
 28           connection with a sale or other transfer permitted under this Chapter if the common  
 29           carrier has in its possession documents establishing that title to the unstamped

1 cigarettes remains with the manufacturer, importer, or stamping agent or bills of  
2 lading or other shipping documents establishing that it is delivering the cigarettes on  
3 behalf of a person authorized by this Chapter to sell or transfer the unstamped  
4 cigarettes and, in each case, such documents shall list the name and address of the  
5 person to whom the cigarettes are being delivered.

6 B.(1) The person or dealer who desires to import tobacco into this state, upon  
7 which a tax has not been paid, by vehicles other than a common carrier, must apply  
8 to the collector for a permit, stating the name of the driver, the make and number of  
9 the vehicle, the date, name, and address of the consignee, and any other information  
10 the collector may deem necessary; provided that, failure to obtain a permit as  
11 provided in this Section shall render the automobile, truck, boat, conveyance,  
12 vehicle, or other means of transportation so transporting any said article or articles  
13 subject to seizure and forfeiture and sale in the manner hereinafter provided.

14 (2) Any person or dealer transporting tobacco pursuant to this Subsection  
15 shall report the quantity and brand of the cigarettes to the collector and to the  
16 attorney general and the taxing authority of the other state by the twentieth day of the  
17 month following the month in which the transfer was made.

18 \* \* \*

19 §865. Seizure and forfeiture of unstamped taxable articles

20 \* \* \*

21 C.

22 \* \* \*

23 (3)

24 \* \* \*

25 (b) If cigarettes are seized and such cigarettes are in packages described in  
26 R.S. 47:843(D)(2) or are stamped in violation of R.S. 47:843(D)(2), the secretary  
27 may not sell the cigarettes, but shall destroy such cigarettes or dedicate them to be  
28 used for law enforcement purposes and then destroyed.

1 (c) ~~Cigarettes~~ Any cigarettes that are acquired, held, owned, possessed,  
2 transported in, imported into, or sold or distributed in this state in violation of  
3 ~~R.S.47:843(D)(4)~~ this Chapter or R.S. 13:5061 et seq. shall be deemed contraband  
4 and are subject to seizure and forfeiture as provided in this Chapter.

5 (i) Any cigarettes so seized and forfeited shall be destroyed or used by law  
6 enforcement and then destroyed. Such cigarettes shall be deemed contraband  
7 whether the violations of ~~R.S. 47:843(D)(4)~~ is this Chapter or R.S. 13:5061 et seq.  
8 are knowing or otherwise.

9 \* \* \*

10 §871. Definitions

11 For purposes of this Chapter:

12 (1) ~~"Adult" means a person who is at least the legal minimum purchase age.~~

13 (1) "Cigarettes" shall have the meaning as set forth in R.S. 13:5062(4)(a)  
14 through (d).

15 (2) "Consumer" means an individual who is not licensed as a cigarette  
16 wholesale dealer or cigarette retail dealer as defined in R.S. 47:842.

17 (3) "Delivery sale" means any sale of cigarettes to a consumer in this state  
18 where either (a) the purchaser submits the order for such sale by means of a  
19 telephonic or other method of voice transmission, the mails or any other delivery  
20 service, or the Internet or other online service, or (b) the cigarettes are delivered by  
21 use of the mails or of a delivery service. A sale of cigarettes shall be a delivery sale  
22 regardless of whether the seller is located within or without this state. A sale of  
23 cigarettes not for personal consumption to a person who is a cigarette wholesale  
24 dealer or a cigarette retail dealer shall not be a delivery sale.

25 (4) "Delivery service" means any person who is engaged in the commercial  
26 delivery of letters, packages, or other containers.

27 (5) ~~"Secretary" means the secretary of the Department of Revenue for the~~  
28 ~~state of Louisiana or his duly authorized representatives.~~



1           ~~(6) "Legal minimum purchase age" is the minimum age at which an~~  
2           ~~individual may legally purchase cigarettes in this state as provided in R.S.~~  
3           ~~26:911(A)(1).~~

4           ~~(7)(5) "Mails" or "mailing" means the shipment of cigarettes through the~~  
5           ~~United States Postal Office.~~

6           ~~(8)(6) "Person" means the same as that term is defined in R.S. 1:10, except~~  
7           ~~that a delivery service that is a motor carrier of property registered with the U.S.~~  
8           ~~Department of Transportation and/or an air carrier certified by the U.S. Department~~  
9           ~~of Transportation to provide all-cargo air transportation, when engaged in the~~  
10          ~~business of the commercial delivery of letters, packages, or other containers, is not~~  
11          ~~a person for purposes of this Chapter. any natural person, trustee, company,~~  
12          ~~partnership, corporation, or other legal entity.~~

13          ~~(9) "Shipping container" means a container in which cigarettes are shipped~~  
14          ~~in connection with a delivery sale.~~

15          ~~(10) "Shipping documents" means bills of lading, airbills, or any other~~  
16          ~~documents used to evidence the undertaking by a delivery service to deliver letters,~~  
17          ~~packages, or other containers.~~

18          ~~(5)(7) "Secretary" means the secretary of the Department of Revenue for the~~  
19          ~~state of Louisiana or his duly authorized representatives.~~

20          ~~§872. Requirements for delivery sales Prohibition against delivery sales~~

21           ~~A. No person shall make a delivery sale of cigarettes to any individual who~~  
22           ~~is under the legal minimum purchase age in this state.~~

23           ~~B. Each person accepting a purchase order for a delivery sale shall comply~~  
24           ~~with:~~

25           ~~(1) The age verification requirements set forth in R.S. 47:873.~~

26           ~~(2) The disclosure requirements set forth in R.S. 47:874.~~

27           ~~(3) The shipping requirements set forth in R.S. 47:874.~~

28           ~~(4) The registration and reporting requirements set forth in R.S. 47:875.~~

29           ~~(5) The tax collection requirements set forth in R.S. 47:876.~~

1           ~~(6) All other laws of this state generally applicable to sales of cigarettes that~~  
 2           ~~occur entirely within this state, including but not limited to those laws imposing: (a)~~  
 3           ~~excise taxes, (b) sales taxes, (c) permit and revenue-stamping requirement, and (d)~~  
 4           ~~escrow payment obligations as set forth in R.S. 13:5063.~~

5           No person who is engaged in the business of selling or distributing cigarettes  
 6           may ship or transport, or cause to be shipped or transported, cigarettes to any  
 7           consumer in the state. The provisions of this Section shall apply regardless of  
 8           whether the person engaged in the business of selling or distributing cigarettes is  
 9           located within or without the state.

10   \*           \*           \*

11           §876. Collection of Taxes

12           A. Each person accepting placing a purchase order for a delivery sale shall  
 13           ~~collect and~~ remit to the secretary all ~~cigarette~~ taxes imposed by this state with respect  
 14           to such delivery sale, except that such collection and remission shall not be required  
 15           to the extent such person has obtained proof, in the form of the presence of  
 16           applicable tax stamps or otherwise, that such taxes already have been paid to the  
 17           state.

18           B. In addition to the obligations to pay any taxes, as provided in Subsection  
 19           A of this Section, the person placing a purchase order for delivery sale shall also be  
 20           obligated to pay any interest, costs, and attorney fees incurred in obtaining payment  
 21           of the taxes imposed by this state as well as any penalties assessed under this  
 22           Chapter.

23           §877. Penalties

24           A. Except as otherwise provided in this Section, a first violation of any  
 25           provision of ~~this Chapter~~ R.S. 47:872 shall be punishable by a fine of one thousand  
 26           dollars or five times the retail value of the cigarettes involved, whichever is greater.  
 27           A second or subsequent violation of ~~this Chapter~~ R.S. 47:872 shall be punishable by  
 28           a fine of five thousand dollars or five times the retail value of the cigarettes involved,  
 29           whichever is greater.

1           B. Any person who knowingly violates any provision of ~~this Chapter~~ R.S.  
2           47:872, shall for each such offense be fined ten thousand dollars or five times the  
3           retail value of the cigarettes involved, whichever is greater, or imprisoned not more  
4           than five years, or both.

5           ~~C. Any person failing to collect or remit to the secretary any tax required in~~  
6           ~~connection with a delivery sale shall be assessed, in addition to any other penalty, a~~  
7           ~~penalty of five times the retail value of the cigarettes involved.~~

8           ~~D.C.~~ Forfeiture

9           (1) Any cigarettes sold or attempted to be sold in a delivery sale ~~that do not~~  
10           ~~meet requirements of this Chapter~~ shall be forfeited to the state and destroyed.

11           ~~(2) All fixtures, equipment, and all other materials and personal property on~~  
12           ~~the premises of any person who, with the intent to defraud the state, violates any of~~  
13           ~~the requirements of this Chapter, shall be forfeited to the state.~~

14           §878. Enforcement

15           The attorney general or the commissioner of the Louisiana Office of Alcohol  
16           and Tobacco Control, or ~~his~~ either agency's designee, or any person who holds a  
17           valid permit under 26 USC 5712, may bring an action in the appropriate court in this  
18           state to prevent or restrain violations of this Chapter by any person or any person  
19           controlling such person.

20   \*       \*       \*

21           §1508. Confidential character of tax records

22   \*       \*       \*

23           B. Nothing herein contained shall be construed to prevent:

24   \*       \*       \*

25           (11) The secretary from disclosing to any person upon request the name and  
26           address of any registered wholesale tobacco dealer who holds a license or permit to  
27           operate within this state, but the secretary shall not disclose any tax data whatsoever  
28           with respect to the wholesaler, except for information provided to the tobacco  
29           settlement enforcement unit of the Louisiana Department of Justice for the

1 enforcement of ~~Part~~ Parts XIII and XIII-A of Chapter 32 ~~and of~~ Title 13 of the  
 2 Louisiana Revised Statutes of 1950 or to the Louisiana Office Alcohol and Tobacco  
 3 Control for the enforcement of Chapter 7 of Title 26 of the Louisiana Revised  
 4 Statutes of 1950. Such disclosure shall include any and all data with respect to  
 5 dealers, including but not limited to any wholesaler or retailer, as well as  
 6 manufacturer, sales entity affiliate, or importer. Neither the Louisiana Department  
 7 of Justice nor the Louisiana Office Alcohol and Tobacco Control shall disclose or  
 8 be required to disclose any information obtained under this Paragraph unless the  
 9 disclosure is ordered by a court of competent jurisdiction or agreed upon in writing  
 10 by the registered wholesale or retail tobacco dealer, sales entity affiliate, importer,  
 11 or manufacturer. The secretary, attorney general, and commissioner shall share with  
 12 each other the information received under the provisions of R.S. 13:5061 et seq.,  
 13 13:5071 et seq., 26:901 et seq., and R.S. 47:841 et seq. and may share such  
 14 information with other federal, state, or local taxing agencies or law enforcement  
 15 authorities only for purposes of enforcement of those Sections and the corresponding  
 16 laws of other states.

\* \* \*

§1520. Electronically filed returns; signatures

A.(1) The secretary may require electronic filing of tax returns or reports under any of the following circumstances:

\* \* \*

(g) Persons required to file a report pursuant to R.S. 47:843 et seq.

\* \* \*

Section 4. R.S. 47:873 through 875 are hereby repealed in their entirety.

---

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

---

Thompson

HB No. 641

**Abstract:** Relative to tobacco enforcement, includes restrictions on transactions of unstamped cigarettes, adds requirements for manufacturers not participating in the tobacco Master Settlement Agreement, and provides for the duties of the attorney general, secretary of the Dept. of Revenue, and the commissioner of the office of alcohol and tobacco control.

TITLE 13 PROVISIONS

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

Proposed law provides for the following substantive changes:

- (1) Provides for the expansion of requirements for Nonparticipating Manufacturers ("NPMs") which will now include: proof that the NPM holds a valid permit under 26 USC 5713; sufficient information that it has posted an appropriate bond; and, a declaration from importers – wherein the NPM is a foreign company, consenting to the personal jurisdiction of Louisiana, accepting joint and several liability with the NPM, and appointing a registered agent for service of process within the state of Louisiana.
- (2) Provides for an enumerated list of reasons which prohibits a tobacco manufacturer from being included on the attorney general state directory: any violation of R.S. 13:5061 et seq. (which are now included as only quarterly whereas present law allowed it as annual, monthly, or quarterly); and, reciprocity to other states' laws allowing La. to remove a manufacturer should its conduct in another state be cause for removal in this state; failure to submit (new) reports to the attorney general (monthly reports of the manufacturer's sales under R.S. 13:5075).
- (3) Provides relative to manufacturers and its brand families to be removed from the state directory in certain circumstances and further provides for reinstatement eligibility requirements.
- (4) Provides relative to the reporting requirements pursuant to Titles 13, 26, and 47 by stamping agents.
- (5) Provides relative to the unlawful selling, offering, or possessing for sale or import for personal consumption in Louisiana for cigarettes not included in the directory and cigarettes that are subject to a de-listing notice.
- (6) Provides for the provisions of present law regarding agent for service of process to be applicable to importers with regard to the appointment and continuous retention of an agent of process and related notice requirements and obligations.
- (7) Provides relative to reporting requirements for manufacturers and importers that sell into the state to submit monthly reports of total quantity of cigarettes and roll-your-own cigarettes sold into the state, including manufacturer and brand names. This section also includes reciprocity provisions allowing the attorney general to request

- copies of reports from manufacturers or importers that they have filed in other states which include sales information (quantity, manufacturer, and brand). This language is entirely new as present law does not encompass manufacturer and importers in the reporting requirements.
- (8) Provides relative to the general authority of the attorney general to receive copies of any reports received by the commissioner and the sharing of information with the attorney general, the commissioner, and other federal, state, or local taxing agencies or law enforcement authorities for purposes of enforcement without violating any taxpayer confidentiality laws (pursuant to R.S. 47:1508).
  - (9) Provides relative to escrow installments and reporting of information which mandates escrow payments on a quarterly basis no later than 45 days after the end of each calendar quarter in which the sales are made and further provides that failure to make a full quarterly installment deposit will constitute a separate violation of the state's escrow laws. Further requires the attorney general to compare reports received from NPMs against the escrow deposits received and provide notice to each nonparticipating manufacturer when it concludes additional escrow is owed.
  - (10) Provides relative to requirements for importers of any brand families of nonparticipating manufactures to be jointly and severally liable with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund for payment of all civil penalties and for payment of all reasonable costs and expenses of investigation and prosecution, including attorney fees and consent to personal jurisdiction in Louisiana for purposes of claims by the state for payment of the obligations.
  - (11) Specifies the procedures for notifying a manufacturer prior to the manufacturer's removal from the state directory by requiring a 30-day notice letter from the attorney general to the manufacturer; a manufacturer can attempt to fully cure such violation or refute the removal and detailed reasons for such removal during the 30-day notice period; allows the attorney general to recuperate reasonable costs and attorney fees for an unsuccessful challenge of a decision to not include or remove from the directory of a brand family or manufacturer; and, each person may provide a specific name/address for such notices to be sent.
  - (12) Provides relative to the requirement that NPM post a bond or cash equivalent for the benefit of the state; evidence of such bond shall be provided to the attorney general at least 10 days prior to each calendar quarter as a condition to the NPM and its brand families' inclusion on the state directory. Further provides for the bond amounts.

#### TITLE 26 PROVISIONS

Present law (R.S. 26:901 et seq.) provides for the regulation of tobacco products and the issuance of permits by the commissioner of the office of alcohol and tobacco control.

Proposed law provides for the following substantive changes:

- (1) Provides for the addition of a new permit designation, a stamping agent designation (as a particular permit other than a general wholesale dealer) to dealers that engage in the business of purchasing unstamped or non-tax paid cigarettes (or roll-your-own). In addition, a second new designation is created and classified as an exporter permit for any person/dealer that intends to carry and possess tobacco products not listed as approved on the attorney general directory.
- (2) Codifies current practices and expands detailing what stamping agents shall certify and submit to the commissioner; such certification shall include an enumerated list

- of obligations including providing accurate reports under present law and proposed law, paying all state taxes, complying generally with Title 47, consenting to the jurisdiction of the state to enforce proposed law, and waiver of sovereign immunity and confidentiality laws, allowing this state to share obtained information with other states.
- (3) Requires stamping agents located outside of the state to appoint an agent for service of process and codifies current practices and details the steps for the removal of a stamping agent; and lists the enumerated reasons a stamping agent's designation to be subject to termination. Further provides for reciprocity for a stamping agent's conduct in another state.
  - (4) Provides for certain publication requirements by the commissioner and notice requirements for the attorney general.
  - (5) Provides relative to current practices not previously detailed and states the enumerated time line for eligibility of stamping agent status for any stamping agent whose designation has been terminated, including a reinstatement time line of no less than 90 days and no more than three years following the termination date.
  - (6) Provides relative to civil penalties for certain violations.

#### TITLE 47 PROVISIONS

Present law (R.S. 47:841 et seq.) provides for levy of tobacco taxes. R.S. 47:871 et seq. provides for the delivery sales of cigarettes.

Proposed law provides for the following substantive changes:

- (1) Requires that all packages of cigarettes sold in or into the state shall bear a tax stamp as required under Title 47 and that transporting or possession of unstamped cigarettes in the state is prohibited unless otherwise provided in law.
- (2) Provides relative to the affixing of tax stamps, stating that no person other than a dealer holding a valid stamping agent license under R.S. 26:902 may affix a tax stamp and further requires that all dealers shall immediately, upon receipt of unstamped cigarettes, affix a tax stamp on the product.
- (3) Provides relative to requirements for stamping agents to affix tax stamps and the time delay to affix the tax stamp.
- (4) Authorizes a manufacturer, importer, or sales entity affiliate to, in accordance with R.S. 47:862, possess, transport, or cause to be transported unstamped cigarettes if the product is on the attorney general directory or if not listed on the attorney general directory, under specific enumerated circumstances, including but not limited to submitting a report.
- (5) Requires that only dealers holding an exporter permit under Title 26 be allowed to sell cigarettes from this state into another state, if it first affixes a tax stamp required by the other state or if the law of the other state does not require tax stamps, to first pay the excise tax of the other state. Further prohibits a dealer to purchase or possess unstamped cigarettes in this state for sale into another state if the brand and manufacturer are not at the time listed on the other state's directory, and that a person may not sell cigarettes into another state if such a sale would violate the laws of the other state.
- (6) Provides for the addition of stamping agents to the designation of registered tobacco dealers, including the requirement to file monthly reports with the Department of

Revenue of monthly purchases, receipt and sale of unstamped taxable cigarettes, and the purchase and use of cigarette tax stamps.

- (7) Provides relative to certification by dealers, stamping agents, and importers that certain reports are complete and accurate and provide for certain identifying information as required by the commissioner or attorney general. Further requires certain persons to submit monthly reports to the secretary who is authorized to share reports with certain agencies of this state and other states.
- (8) Authorizes a common carrier to possess and transport unstamped cigarettes if the common carrier has in its possession documents establishing the title of the unstamped product remains with the manufacturer, importer, or stamping agent or bills of lading or other shipping documents establishing it is delivering the cigarettes pursuant to law.
- (9) Provides relative to the seizure and use of cigarettes by law enforcement and the destruction of the seized cigarettes.
- (10) Requires any person placing a purchase order (the consumer) to remit to the secretary all applicable taxes imposed by the state on such sale and to pay interest, costs, and attorney fees incurred in obtaining payment of the taxes imposed by this state as well as any penalties assessed.
- (11) Provides relative to penalties for violations of delivery sales of cigarettes and further authorizes the commissioner or his designee to bring an action for any violation regarding delivery sales.
- (12) Expands disclosure of tax records to the attorney general to encompass but not be limited to any and all data with respect to any dealer, wholesaler, retailers, manufacturer, sales entity affiliate, or importer. Further permits disclosure to the commissioner.
- (13) Provides that the secretary, commissioner, and attorney general shall share with each other information received under each respective title and may share such information with other federal, state, or local agencies for enforcement purposes.

(Amends R.S. 13:5072, 5073(A)(3)(a)(v), (B)(2)(a), (3), and (4), and (C), 5075, 5076(A) and (B), and 5077; R.S. 26:904(A), 916(H), 918(B), and 921; R.S. 47:843(A)(2), (C)(3) and (4), and (D), 847(A) and (B), 849, 851(B), 857, 862, 865(C)(3)(b) and (c) and (i), 871, 872, 876-878, and 1508(B)(11); Adds R.S. 13:5073(A)(3)(a)(vi), (4)(e) and (f), (B)(5) and (6), 5074(D), and 5078, R.S. 26:901(19)-(27), 902(5), 904(D), 906(H), (I), and (J), 908(D), 916(I)-(N), and 918(C) and (D), R.S. 47:842(16)-(22), 843(A)(3), 847(C), and 851(E) and (F) and 1520(A)(1)(g); Repeals R.S. 47:873-875)

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Judiciary to the original bill.

1. Retained current law which allows for the importation for personal consumption in this state.
2. Increased the time frame for possession of de-listed products from 15 days to 60 days.
3. Clarified the term "local agencies" to mean local taxing agencies or law enforcement agencies relative to the sharing of information.



4. Changed the requirement from the attorney general invoicing each nonparticipating manufacturer for additional deposit owed to requiring the attorney general to provide notice to the nonparticipating manufacturer for additional deposit owed.
5. Added the definition for the term "knowing violation or failure" to mean that the person knowingly or intentionally engaged in conduct without good faith belief that the conduct was consistent with the law.
6. Added the requirement for the holder of a valid stamping agent designation that affixes tax stamps of another state to apply for an exporter license to purchase or possess unstamped or non-tax paid cigarettes.
7. Added that the designation of a stamping agent shall be subject to termination if a permittee "knowingly" files an incomplete or inaccurate report or certification.
8. Removed the penalty for the designation of a stamping agent to be terminated for failure to deposit escrow.
9. Removed the changes regarding the appropriation for the Tobacco Settlement Enforcement Fund.
10. Removed the requirement for every registered tobacco dealer holding a valid stamping license, prior to selling any unstamped cigarettes in or into the state, to have the requisite denominations and amount of stamp or stamps to represent the tax affixed.
11. Removed the requirement for the stamping agent to purchase the cigarettes directly from the manufacturer or importer of the cigarettes.
12. Added authority for a sales entity affiliate to possess, transport, or cause to be transported unstamped cigarettes in or into the state in certain circumstances.
13. Changed the requirement for a stamping agent to give five days notice to the attorney general for transfer of in state to out of state cigarettes to submitting an out of state report in accordance with the requirements of proposed law.
14. Changed certain provisions relative to the information required by the attorney general in the report and further required certain information to be provided to the attorney general or secretary upon request.
15. Added authorization for the collector (Dept. of Revenue) to refund the dealer for the cost of stamps affixed to goods that were listed in the directory but subsequently removed upon proof that the product was destroyed.
16. Removed provisions that prohibited a person from being penalized for possession of up to 600 cigarettes bearing the stamp of another state for consumption by that person or person's family if the cigarettes are physically brought into the state by the person or family.
17. Provided for the definition of "cigarettes" and removed the definition of "tobacco products".
18. Changed all references from "tobacco products" to "cigarettes" relative to the prohibition against delivery sales and collection of taxes.

19. Changed authority to bring actions in the appropriate court for certain violations from the attorney general to the commissioner of the office of alcohol and tobacco control.
20. Removed and clarified certain provisions relative to wholesaler reporting.
21. Added a provision that authorizes the Department of Revenue to require electronic filing of tax returns or reports for persons required to file a report relative to cigarette tax stamps.

House Floor Amendments to the engrossed bill.

1. Changed all references from a stamping agent license to a stamping agent designation.
2. Clarified that the commissioner of the office of alcohol and tobacco control or the attorney general may bring an action in the appropriate court for certain violations.