



HOUSE OF REPRESENTATIVES  
FOURTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE  
FIRST REGULAR SESSION, 2004

PUBLIC LAW NO. 14-10  
H. B. NO. 14-3

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AN ACT

To complement enforcement of Public Law 13-15 (Tobacco Master Settlement Model Escrow Statute), and for other purposes.

BE IT ENACTED BY THE FOURTEENTH NORTHERN MARIANAS COMMONWEALTH  
LEGISLATURE:

**Section 1. Findings.** The Legislature finds that violations of Public Law 13-15, the Model Escrow Statute, threaten the integrity of the Tobacco Master Settlement Agreement, the fiscal soundness of the Commonwealth, and the public health. The Legislature finds that enacting procedural enhancements is necessary to aid the enforcement of the Model Escrow Statute and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the Commonwealth, and the public health.

**Section 2. Definitions.** As used in this Act, unless the context clearly requires otherwise:

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

(b) "Cigarette" has the same meaning as in Section 2(D) of Public Law 13-15.

(c) “Director” means the duly appointed head of the Division of Revenue and Taxation, Department of Finance.

(d) “Distributor” means a person, wherever resident or located, who purchases non-tax-paid Cigarettes and stores, sells, or otherwise disposes of the Cigarettes in the Commonwealth.

(e) “Master Settlement Agreement” has the same meaning as in Section 2(E) of the Model Escrow Statute.

(f) “Non-participating Manufacturer” means any Tobacco Product Manufacturer that is not a Participating Manufacturer.

(g) “Participating Manufacturer” has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto.

(h) “Qualified Escrow Fund” has the same meaning as that term is defined in Section 2F of the Model Escrow Statute.

(i) “Tobacco Product Manufacturer” has the same meaning as that term is defined in Section 2(I) of the Model Escrow Statute.

(j) “Units Sold” has the same meaning as that term is defined in Section 2J of the Model Escrow Statute.

(k) “Wholesale Agent” means any person that is required to pay the excise tax on tobacco imposed pursuant to 4 CMC § 1402(a)(16) and 4 CMC § 402(a)(17), as amended. This includes any business in possession of a Class 1 Wholesale Agent’s License from the Department of Commerce.

**Section 3. Certifications; Directory; Tax Stamps**

(a) *Certification.* Every Tobacco Product Manufacturer whose Cigarettes are sold in this Commonwealth, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Attorney General a certification to the Director and Attorney General no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such Tobacco Product Manufacturer either: is a

Participating Manufacturer; or is in full compliance with the Model Escrow Statute (Public Law 13-15).

(1) A Participating Manufacturer shall include in its certification a list of its Brand Families. The Participating Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Attorney General and Director.

(2) A Non-Participating Manufacturer shall include in its certification, (i) a list of all of its Brand Families and the number of Units Sold for each Brand Family that were sold in the Commonwealth during the preceding calendar year, (ii) a list of all of its Brand Families that have been sold in the Commonwealth at any time during the current calendar year, (iii) indicating, by an asterisk, any Brand Family sold in the Commonwealth during the preceding calendar year that is no longer being sold in the Commonwealth as of the date of such certification, and (iv) identifying by name and address any other manufacturer of such Brand Families in the preceding or current calendar year. The Non-Participating Manufacturer shall update such list thirty (30) days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Attorney General and Director.

(3) In the case of a Non-Participating Manufacturer, such certification shall further certify:

(A) That such Non-Participating Manufacturer has obtained a business license to conduct business in the Commonwealth pursuant 4 CMC § 5611(a), or has appointed an agent for service of process and provided notice thereof as required by Section 4 of this Act.

(B) That such Non-Participating Manufacturer (i) has established and continues to maintain a Qualified Escrow Fund, and (ii) has executed a qualified escrow agreement that has been reviewed

and approved by the Attorney General and that governs the Qualified Escrow Fund.

(C) That such Non-Participating Manufacturer is in full compliance with the Model Statute and this Act, and any regulations promulgated pursuant thereto.

(D) (i) the name, address and telephone number of the financial institution where the Non-Participating Manufacturer has established such Qualified Escrow Fund required pursuant to Public Law 13-15 and all regulations promulgated thereto; (ii) the account number of such Qualified Escrow Fund and any sub-account number for the Commonwealth of the Northern Mariana Islands; (iii) the amount such Non-Participating Manufacturer placed in such fund for Cigarettes sold in the Commonwealth during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General or Director to confirm the foregoing; and (iv) the amount and date of any withdrawal or transfer of funds the Non-Participating Manufacturer made at any time from such fund or from any other Qualified Escrow Fund into which it ever made escrow payments pursuant to Public Law 13-15 and all regulations promulgated thereto.

(4) A Tobacco Product Manufacturer may not include a Brand Family in its certification unless (i) in the case of a Participating Manufacturer, said Participating Manufacturer affirms that the Brand Family is to be deemed to be its Cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and (ii) in the case of a Non-Participating Manufacturer, said Non-Participating Manufacturer affirms that the Brand Family is to be deemed to be its cigarettes for purposes of Public Law 13-15. Nothing in this section shall be construed as limiting or otherwise affecting the Commonwealth's

right to maintain that a Brand Family constitutes cigarettes of a different Tobacco Product Manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of Public Law 13-15.

(5) Tobacco Product Manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(b) *Directory of cigarettes approved for sale.* Not later than the first day of June, the Director and the Attorney General shall develop and make available for public inspection a directory listing all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of Subsection 3(a) of this Act and all Brand Families that are listed in such certifications (the "Directory"), except as noted below.

(1) The Director and the Attorney General shall not include or retain in such Directory the name or Brand Families of any Non-Participating Manufacturer that has failed to provide the required certification or whose certification the Director or Attorney General determine is not in compliance with Paragraphs 3(a)(2) and 3(a)(3) of this Act, unless the Director and Attorney General, have determined that such violation has been cured to the satisfaction of the Director and Attorney General.

(2) Neither a Tobacco Product Manufacturer nor Brand Family shall be included or retained in the Directory if the Attorney General or Director concludes, in the case of a Non-Participating Manufacturer, that (i) any escrow payment required pursuant to Public Law 13-15 for any period for any Brand Family, whether or not listed by such Non-Participating Manufacturer, has not been fully paid into a Qualified Escrow Fund governed by a qualified escrow agreement that has been approved by the Attorney General, or (ii) any outstanding final judgment, including interest thereon, for

a violation of Public Law 13-15 has not been fully satisfied for such Brand Family or such manufacturer.

(3) The Director and Attorney General shall update the Directory as necessary in order to correct mistakes and to add or remove a Tobacco Product Manufacturer or Brand Family to keep the Directory in conformity with the requirements of this Act.

(4) Every Wholesale Agent shall provide and update as necessary an electronic mail address to the Director and Attorney General for the purpose of receiving any notifications as may be required by this Act.

(c) *Prohibition against sale or import of cigarettes not in the directory.* It shall be unlawful for any person to sell, offer, or possess for sale, in the Commonwealth, or import for commercial or personal consumption in the Commonwealth, Cigarettes of a Tobacco Product Manufacturer or Brand Family not included in the Directory.

**Section 4. Agent for Service of Process.**

(a) *Requirement for agent for service of process.* Any non-resident or foreign Non-Participating Manufacturer that has not registered to do business in the Commonwealth as a foreign corporation or business entity shall, as a condition precedent to having its Brand Families included or retained in the Directory, appoint and continually engage without interruption the services of an agent in this Commonwealth, pursuant to 4 CMC § 4331, to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this Act and Public Law 13-15, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the Non-Participating Manufacturer. The Non-Participating Manufacturer shall provide the name, address, phone number and proof of the appointment and availability of such agent to the Director and Attorney General and to the satisfaction of the Attorney General.

(b) The Non-Participating Manufacturer shall provide notice to the Director and Attorney General thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the Non-Participating Manufacturer shall notify the Attorney General of said termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(c) Any Non-Participating Manufacturer whose Cigarettes are sold in this Commonwealth, who has not appointed and engaged an agent as herein required, shall be deemed to have appointed the Registrar of Corporations as such agent and may be proceeded against in courts of this Commonwealth by service of process upon the Registrar of Corporations; provided, however, that the appointment of the Registrar of Corporations as such agent shall not satisfy the condition precedent for having the Brand Families of the Non-Participating Manufacturer included or retained in the Directory.

**Section 5. Reporting of Information; Escrow Installments.**

(a) *Reporting by wholesale agents.* Not later than 30 calendar days after the end of each month, and more frequently if so directed by the Attorney General or Director, each Wholesale Agent shall submit such information as the Director and Attorney General requires to facilitate compliance with this Act, including, but not limited to, a list by Brand Family of the total number of Cigarettes, or, in the case of roll your own, the equivalent stick count, for which the Wholesale Agent paid the tax due on for such Cigarettes during the previous calendar month. The Wholesale Agent shall maintain, and make available to the Director and Attorney General, all invoices and documentation of sales of all Non-Participating Manufacturer Cigarettes and any other information relied upon in reporting to the Director and Attorney General for a period of four years. Compliance with Department of Finance, Revenue and Taxation Regulations, Part XIX, Section 2700 *et seq.* Commonwealth Register, Volume 25,

Number 10, Page 21455 through 21459, November 17, 2003, and any modifications or amendments thereto, shall be deemed to be compliance with this Section.

(b) *Disclosure of information.* The Director is authorized to disclose to the Attorney General any information received under this Act and requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this Act. The Director and Attorney General shall share with each other the information received under this Act, and may share such information with other federal, Commonwealth or local agencies only for purposes of enforcement of this Act, the Model Escrow Statute or corresponding laws of other states.

(c) *Verification of qualified escrow fund.* The Attorney General may require at any time from the Non-Participating Manufacturer proof, from the financial institution in which such Manufacturer has established a Qualified Escrow Fund for the purpose of compliance with the Model Escrow Statute, of the amount of money in such fund, exclusive of interest, the amount and date of each deposit to such fund, and the amount and date of each withdrawal from such fund.

(d) *Requests for additional information.* In addition to the information required to be submitted herein, the Director or Attorney General may require a Wholesale Agent or Tobacco Product Manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each Brand Family, as is necessary to enable the Director and Attorney General to determine whether a Tobacco Product Manufacturer is in compliance with this Act.

(e) *Quarterly escrow installments.* To promote compliance with this Act, the Department of Finance or Attorney General may promulgate regulations requiring a Tobacco Product Manufacturer subject to the requirements of Paragraph 3(a)(2) of this Act to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The Department of Finance or Attorney General may require production of information sufficient to enable the Director or Attorney General to determine the adequacy of the amount of the installment deposit.

**Section 6. Penalties and Other Remedies.**

(a) *License revocation and civil penalty.* In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that any person has violated Section 3(c) herein, or any regulation adopted pursuant to this Act, or the Model Escrow Statute, the Director of the Alcohol Beverage and Tobacco Control Division, Department of Commerce, may revoke or suspend the license of a person, business, or organization to sell tobacco products in the Commonwealth, pursuant to Section 3(b) of Public Law 11-75. The Wholesale Agent, or other licensee, shall be entitled, upon request, to an administrative hearing pursuant to the procedures established under the Administrative Procedures Act, 1 CMC §§ 9108-9115. Each sale or offer to sell Cigarettes in violation of Section 3(c) of this Act shall constitute a separate violation. For each violation hereof, the Director of Alcoholic Beverage Control Division, Department of Commerce, may also impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the Cigarettes or \$5,000 upon a determination of violation of Subsection 3(c) of this Act or any regulations adopted pursuant thereto. Such penalty shall be imposed in the manner provided pursuant to the procedures established under the Administrative Procedures Act, 1 CMC §§ 9108-9115.

(b) *Contraband and seizure.* Any cigarettes that have been sold, offered for sale, or possessed for sale, in this Commonwealth, or imported for commercial or personal consumption in this Commonwealth, in violation of Subsection 3(c) of this Act shall be deemed contraband under 6 CMC § 2301 and such Cigarettes shall be subject to seizure and forfeiture as provided in 6 CMC § 2150, and all such Cigarettes so seized and forfeited shall be destroyed and not resold.

(c) *Injunction.* The Attorney General, on behalf of the Secretary of Finance, may seek an injunction to restrain a threatened or actual violation of Section 3(c), 5(a) or 5(d) by a Wholesale Agent and to compel the Wholesale Agent to comply with such Sections. In any action brought pursuant to this section, the

Commonwealth shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees.

(d) *Unlawful sale and distribution.* It shall be unlawful for a person to: (i) sell or distribute cigarettes, or (ii) acquire, hold, own, possess, transport, import, or cause to be imported Cigarettes, that the person knows or should know are intended for distribution or sale in the Commonwealth in violation of Subsection 3(c) of this Act. A violation of this section shall be a misdemeanor and upon conviction, a person shall be punished by a fine of not more than \$1,000 and/or up to one year in jail, or shall be required to perform no more than 250 hours of community service.

(e) *Unfair and deceptive trade practice.* A person who violates Subsection 3(c) of this Act engages in an unfair and deceptive trade practice in violation of 4 CMC § 5105(m).

**Section 7. Miscellaneous Provisions.**

(a) *Notice and review of determination.* A determination of the Director or Attorney General to not include or to remove from the Directory a Brand Family or Tobacco Product Manufacturer shall be subject to review in the manner prescribed by the Administrative Procedures Act, 1 CMC §§ 9108-9115.

(b) *Applicants for licenses.* No person shall be issued a license or granted a renewal of a license to act as a Wholesale Agent unless such person has certified in writing, under penalty of perjury, that such person will comply fully with this section, and any regulations promulgated pursuant to the Model Escrow Statute.

(c) *Dates.* The certifications by a Tobacco Product Manufacturer described in Section 3(a) shall be due 45 calendar days after such effective date; and the Directory described in subsection 3(b) shall be published or made available within 90 calendar days after such effective date.

(d) *Promulgation of regulations.* The Department of Finance and Attorney General may promulgate regulations necessary to effect the purposes of this Act.

(e) *Recovery of costs and fees by Attorney General.* In any action brought by the Commonwealth to enforce this Act, the Commonwealth shall be entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees.

(f) *Disgorgement of profits for violations of Act.* If a court determines that a person has violated this Act, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the Commonwealth Treasurer for deposit in the Tobacco Control Fund established pursuant to Public Law 13-38. Unless otherwise expressly provided the remedies or penalties provided by this Act are cumulative to each other and to the remedies or penalties available under all other laws of this Commonwealth.

(g) *Construction and Severability.* If a court of competent jurisdiction finds that the provisions of this Act and of the Model Escrow Statute conflict and cannot be harmonized, then such provisions of the Model Escrow Statute shall control. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Act causes the Model Escrow Statute to no longer constitute a Qualifying or Model Statute, as those terms are defined in the Master Settlement Agreement, then that portion of this Act shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Act is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Act or any part thereof. Nothing in this Act shall be construed as affecting the validity of Department of Finance, Revenue and Taxation Regulations, Part XIX, Section 2700 *et seq.* Commonwealth Register, Volume 25, Number 10, Page 21455 through 21459, November 17, 2003, as adopted, with any modifications or amendments thereto. If this Act, or any portion of the amendments to Public Law 13-15 made by this Act, is held to be invalid, unlawful or

unconstitutional, then such portion contained in this Act shall be repealed, and the original language from Public Law 13-15 shall be restored as if no such amendment(s) had been made.

**Section 8. Amendment.** The words “bearing the excise stamp of the Government of The CNMI” are hereby repealed from Subdivision (J) of Section 2 of the Model Escrow Statute (Public Law 13-15). The remainder of the text in that Section shall remain unchanged.

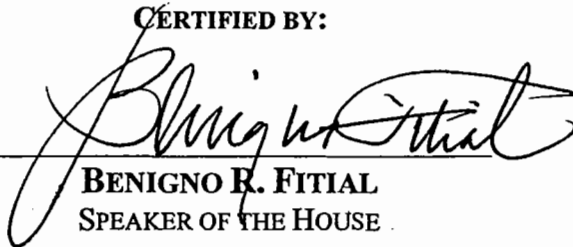
**Section 9. Amendment.** Subparagraph (b) of paragraph (2) of subdivision (B) of Section 3 of the Model Escrow Statute (Public Law 13-15) is hereby repealed and reenacted as follows:

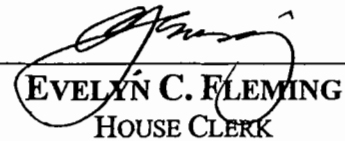
“(b) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the Commonwealth in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a Participating Manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer provided, however, that for escrow release purposes only, the total number of individual cigarettes sold in the CNMI shall count towards, and be included in, that tobacco product manufacturer’s “market share” as defined in Section II(z) of the Master Settlement Agreement as if such cigarettes were sold in one of the 50 states of the United States, Washington D.C. or Puerto Rico; or”

**Section 10. Effective Date.** This Act shall take effect upon its approval by the Governor or becoming law without such approval.

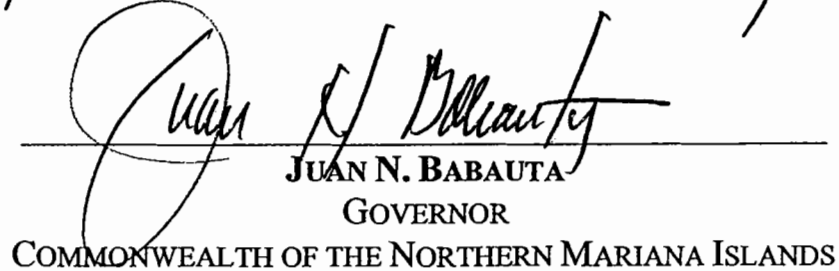
**CERTIFIED BY:**

**ATTESTED TO BY:**

  
BENIGNO R. FITIAL  
SPEAKER OF THE HOUSE

  
EVELYN C. FLEMING  
HOUSE CLERK

Approved on this 28<sup>th</sup> day of May, 2004

  
JUAN N. BABAUTA  
GOVERNOR  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS