

These two chapters of the Official Code of Georgia set forth the details for annual certifications and escrow payments required of tobacco product manufacturers. Many other provisions of the Code affect tobacco manufacturers and distributors, especially in the areas of tax and licensure, but they are not listed here.

CHAPTER 13
TOBACCO PRODUCT MANUFACTURERS

Effective date. - This chapter became effective April 28, 1999.

10-13-1. Legislative findings; Master Settlement Agreement.

(a) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The Surgeon General has determined that smoking causes lung cancer, heart disease, and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the state. Under certain health-care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the state. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them as described therein, to pay substantial sums to the state (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

(Code 1981, § 10-13-1, enacted by Ga. L. 1999, p. 725, § 1.)

10-13-2. Definitions.

As used in this chapter, the term:

- (1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.
- (2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof of 10 percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.
- (3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.
- (4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (B) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (C) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (A) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."
- (5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.
- (6) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subparagraph (B) of paragraph (2) of Code Section 10-13-3.
- (7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.
- (8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.
- (9) "Tobacco product manufacturer" means an entity that after the date of enactment of this chapter directly (and not exclusively through any affiliate):
 - (A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections

II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) Becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph. The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within subparagraphs (A) through (C) of this paragraph.

(10) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state. The state revenue commissioner shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

(Code 1981, § 10-13-2, enacted by Ga. L. 1999, p. 725, § 1.)

10-13-3. Deposits into escrow accounts; violations.

Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the date of enactment of this chapter shall do one of the following:

(1) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2) (A) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(i) 1999: \$.0094241 per unit sold after the date of enactment of this chapter;

(ii) 2000: \$.0104712 per unit sold;

(iii) For each of 2001 and 2002: \$.0136125 per unit sold;

(iv) For each of 2003 through 2006: \$.0167539 per unit sold; and

(v) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to subparagraph (A) of this paragraph shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this division: (I) in the order in which they were placed into escrow; and (II) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the

Master Settlement Agreement (as determined pursuant to section IX(i) (2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i) (3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) To the extent not released from escrow under division (i) or (ii) of this subparagraph, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(C) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this paragraph shall annually certify to the Attorney General that it is in compliance with this paragraph. The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this paragraph. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this paragraph shall:

(i) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this paragraph. The court, upon a finding of a violation of this paragraph, may impose a civil penalty (to be paid to the general fund of the state) in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(ii) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this Code section. The court, upon a finding of a knowing violation of this paragraph, may impose a civil penalty (to be paid to the general fund of the state) in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under this Code section shall constitute a separate violation.

(Code 1981, § 10-13-3, enacted by Ga. L. 1999, p. 725, § 1; Ga. L. 2000, p. 136, § 10.)

The 2000 amendment, effective March 16, 2000, part of an Act to revise, modernize, and correct the Code, deleted "after the date of enactment of this chapter" at the end of divisions (2)(A)(ii), (2)(A)(iii), (2)(A)(iv), and (2)(A)(v); deleted "(2)" following "paragraph" in subparagraphs (2)(B) and (2)(C); substituted "division" for "paragraph" in division (2)(B)(i); deleted "(B)" following "subparagraph" in division (2)(B)(iii); and substituted "paragraph" for "Code section" throughout subparagraph (2)(C).

10-13-4. Copies of Master Settlement Agreement available to the public.

The "Master Settlement Agreement" referred to in subsection (e) of Code Section 10-13-1 and other provisions of this chapter has been transmitted by the Attorney General to the Secretary of State and shall be maintained as a permanent record in the office of the Secretary of State, together with the enrolled Act by which this chapter is enacted. The Master Settlement

Agreement shall not be published with the Act, but the Secretary of State shall, upon request and payment of copying costs, make a copy or certified copy of such document available to any member of the public.

(Code 1981, § 10-13-4, enacted by Ga. L. 1999, p. 725, § 1.)

CHAPTER 13A

10-13A-1.

The General Assembly finds that violations of Chapter 13 of this title threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health. The General Assembly finds that enacting procedural enhancements will aid the enforcement of such chapter and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health.

10-13A-2.

As used in this chapter, the term:

(1) '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.

(2) 'Cigarette' means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (B) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (C) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (A) of this definition. The term 'cigarette' includes 'roll-your-own' (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of 'cigarette,' 0.09 ounces of 'roll-your-own' tobacco shall constitute one individual 'cigarette.'

(3) 'Commissioner' means the state revenue commissioner.

(4) 'Directory' means the directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Code Section 10-13A-3 and all brand families that are listed in such certifications developed by the Attorney General pursuant to Code Section 10-13A-4.

(5) 'Distributor' means any person who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on dealers; and

(B) Is engaged in the business of:

(i) Manufacturing cigars or cigarettes in this state, importing cigars or cigarettes into this state, or purchasing cigars or cigarettes from other manufacturers or distributors; and

(ii) Selling the cigars or cigarettes to dealers in this state for resale but is not in the business of selling the cigars or cigarettes directly to the ultimate consumer of the cigars or cigarettes.

(6) 'Master Settlement Agreement' means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(7) 'Nonparticipating manufacturer' means any tobacco product manufacturer that is not a participating manufacturer.

(8) 'Participating manufacturer' has the meaning given that term in subsection II(jj) of the Master Settlement Agreement and all amendments thereto.

(9) 'Qualified escrow fund' means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subparagraph (B) of paragraph (2) of Code Section 10-13-3.

(10) 'Tobacco product manufacturer' means an entity that after April 28, 1999:

(A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) Becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph. The term tobacco product manufacturer shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within subparagraphs (A) through (C) of this paragraph.

(11) 'Units sold' means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or 'roll-your-own' tobacco containers) bearing the excise tax stamp of the state. The state revenue commissioner shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

10-13A-3.

(a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the Attorney General a certification to the commissioner and Attorney General, no later than the thirtieth day of April each year, certifying that, as of the date

of such certification, such tobacco product manufacturer either is a participating manufacturer or is in full compliance with Chapter 13 of this title including all annual deposits required by paragraph (2) of Code Section 10-13-3.

(b) A participating manufacturer shall include in its certification a list of its brand families. A participating manufacturer shall update such list 30 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 commissioner. A participating manufacturer may not include a brand family in its certification unless the 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.

(c) A nonparticipating manufacturer shall include in its certification a list of all of its brand families and the number of units sold for each brand family that were sold in this state during the preceding calendar year and a list of all of its brand families that have been sold in this state at any time during the current calendar year. Such lists must indicate by an asterisk any brand family sold in this state during the preceding calendar year that is no longer being sold in this state as of the date of such certification, and identification by name and address of any other manufacturer of such brand families in the preceding or current calendar year. The nonparticipating manufacturer shall update such list 30 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 commissioner. A nonparticipating manufacturer may not include a brand family in its certification unless such nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of Chapter 13 of this title. Such certification must also certify:

(1) That such nonparticipating manufacturer is registered to do business in this state and has appointed a resident agent for service of process and provided notice thereof as required by Code Section 10-13A-6;

(2) That such nonparticipating manufacturer has established and continues to maintain a qualified escrow fund as required by Code Section 10-13-3 and has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund;

(3) That such nonparticipating manufacturer is in full compliance with Chapter 13 of this title and with this chapter and any regulations promulgated pursuant to either such chapter; and

(4) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to Chapter 13 of this title and all regulations promulgated pursuant to such chapter; the account number of such qualified escrow fund and any subaccount number for this state; the amount such nonparticipating manufacturer placed in such fund for cigarettes sold in this state 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 to confirm the foregoing; and the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to Chapter 13 of this title and all regulations promulgated pursuant to such chapter.

Certification in accordance with this subsection shall be deemed to be in compliance with subparagraph (C) of paragraph (2) of Code Section 10-13-3.

(d) Nothing in this Code section shall be construed as limiting or otherwise affecting the state'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 Chapter 13 of this title.

(e) 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.

10-13A-4.

(a) Not later than August 1, 2004, the Attorney General shall develop and make available for public inspection on its website a directory, as defined in paragraph (4) of Code Section 10-13A-2.

(b) The Attorney General shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the Attorney General determines is not in compliance with subsection (c) of Code Section 10-13A-3, unless the Attorney General has determined that such violation has been cured to the satisfaction of the Attorney General.

(c) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General concludes, in the case of a nonparticipating manufacturer, that:

(1) Any escrow payment required pursuant to Chapter 13 of this title for any period for any brand family, whether or not listed by such nonparticipating 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

(2) Any outstanding final judgment, including interest thereon, for a violation of Chapter 13 of this title has not been fully satisfied for such brand family or such manufacturer.

(d) The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove tobacco product manufacturers or brand families to keep the directory in conformity with the requirements of this chapter.

(e) Every distributor shall provide and update as necessary an e-mail address to the Attorney General for the purpose of receiving any notifications as may be required by this chapter.

10-13A-5.

It shall be unlawful for any person to affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or to sell, offer for sale, or possess with intent to sell, in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

10-13A-6.

(a) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state 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 state as required by Code Section 48-11-5 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 chapter may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name,

address, phone number, and proof of the appointment and availability of such agent to the satisfaction of the commissioner and Attorney General.

(b) The nonparticipating manufacturer shall provide notice to the commissioner and Attorney General 30 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 nonparticipating manufacturer shall notify the commissioner and 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 nonparticipating manufacturer whose cigarettes are sold in this state who has not appointed and engaged an agent as required in this Code section shall be deemed to have appointed the Secretary of State as such agent and may be proceeded against in courts of this state by service of process upon the Secretary of State; provided, however, that the appointment of the Secretary of State as such agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory.

(d) The 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 chapter. The Attorney General shall post in the directory and transmit by e-mail or other practicable means to each notice of any removal from the directory of a tobacco product manufacturer or brand family at least 30 days prior to removal from the directory of such tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the wholesaler and a tobacco product manufacturer, the wholesaler shall be entitled to a refund from a tobacco product manufacturer for any money paid by the wholesaler to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer in the possession of the wholesaler on the effective date of removal from the directory, or as subsequently received from a retail dealer as provided in this chapter, of products of that tobacco product manufacturer or brand family of cigarettes. Unless otherwise provided by agreement between a retail dealer and the wholesaler or a tobacco product manufacturer, a retail dealer shall be entitled to a refund from the wholesaler or a tobacco product manufacturer for any money paid by the retail dealer to the wholesaler or such tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still in the possession of the retail dealer on the effective date of removal from the directory of that tobacco product manufacturer or brand family.

10-13A-7.

(a) Not later than 20 calendar days after the end of each calendar quarter, and more frequently if so directed by the Attorney General, each distributor shall submit such information as the Attorney General requires to facilitate compliance with this chapter, 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 count, for which the distributor affixed tax stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The distributor shall maintain and make available to the Attorney General all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Attorney General for a period of five years.

(b) The commissioner is authorized to disclose to the Attorney General any information received under this chapter and requested by the Attorney General for purposes of determining

compliance with and enforcing the provisions of this chapter. The commissioner and Attorney General shall share with each other the information received under this chapter and may share such information with other federal, state, or local agencies only for purposes of enforcement of this chapter or the corresponding laws of other states.

(c) The Attorney General may require at any time from the nonparticipating manufacturer proof from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with Chapter 13 of this title 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) In addition to the information required to be submitted pursuant to this chapter, the Attorney General may require a distributor 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 Attorney General to determine whether a tobacco product manufacturer is in compliance with this chapter.

(e) To promote compliance with this chapter, the Attorney General may promulgate regulations requiring a tobacco product manufacturer subject to the requirements of subsection (c) of Code Section 10-13A-3 to make the annual escrow deposits required during the year in which the sales covered by such deposits are made. The Attorney General may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

10-13A-8.

(a) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a distributor has violated Code Section 10-13A-5 or any regulation adopted pursuant to this chapter, the commissioner may revoke or suspend the license of the distributor in the manner provided by Code Section 48-11-6. Each tax stamp affixed and each sale or offer to sell cigarettes in violation of Code Section 10-13A-5 shall constitute a separate violation. For each violation, the commissioner may also impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes or \$5,000.00 upon a determination of a violation of Code Section 10-13A-5 or any regulations adopted pursuant thereto. Such penalty shall be imposed in the manner provided in subsection (c) of Code Section 48-11-24.

(b) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of Code Section 10-13A-5 shall be deemed contraband under Code Section 48-11-9 and such cigarettes shall be subject to seizure and forfeiture as provided in such Code section.

(c) The Attorney General, on behalf of the commissioner, may seek an injunction to restrain a threatened or actual violation of Code Section 10-13A-5 or of subsection (a) or (d) of Code Section 10-13A-7 by a distributor and to compel the distributor to comply with said Code section or either such subsection. In any action brought pursuant to this Code section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees.

(d) It shall be unlawful for a person to sell or distribute cigarettes or to 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 this state in violation of Code Section 10-13A-5. Any person who violates this subsection shall be guilty of a misdemeanor.

(e) A violation of Code Section 10-13A-5 shall constitute an unfair and deceptive act or practice under Part 2 of Article 15 of Chapter 1 of this title, the 'Fair Business Practices Act of 1975.'

10-13A-9.

(a) A determination of the 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 Article 1 of Chapter 13 of Title 50, known as the 'Georgia Administrative Procedure Act.'

(b) No person shall be issued a license or granted a renewal of a license under Chapter 11 of Title 48 to act as a distributor unless such person has certified in writing that such person will comply fully with this chapter.

(c) The first report of distributors required by subsection (a) of Code Section 10-13A-7 shall be due 30 calendar days after July 1, 2003, the certifications by a tobacco product manufacturer described in subsection (a) of Code Section 10-13A-3 shall be due 45 calendar days after such date, and the directory described in Code Section 10-13A-4 shall be published or made available within 90 calendar days after such date.

(d) The Attorney General may promulgate rules and regulations necessary to effect the purposes of this chapter.

(e) In any action brought by the state to enforce this chapter, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(f) If a court of competent jurisdiction finds that the provisions of this chapter and of Chapter 13 of this title conflict and cannot be harmonized, then such provisions of Chapter 13 of this title shall control. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter causes Chapter 13 of this title to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this chapter shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof.

(Code 1981, § 10-13A-1 *et seq.*, enacted by Ga. L. 2003, p. 829)