AN ACT TO ENACT THE "CIGARETTE ANTI-CONDUIT ACT" TO MAKE IT
UNLAWFUL TO SHIP TO ANY PERSON IN THIS STATE OR ANOTHER STATE
CIGARETTES BELONGING TO A BRAND FAMILY OF A MANUFACTURER WHO IS
NOT PARTICIPATING IN THE MASTER SETTLEMENT AGREEMENT BETWEEN
CERTAIN STATE AND TOBACCO PRODUCT MANUFACTURERS OR WHO IS NOT
MAKING ESCROW PAYMENTS AS REQUIRED UNDER THE MASTER SETTLEMENT
AGREEMENT; TO REQUIRE THE CHAIRMAN OF THE STATE TAX COMMISSION TO
ANNUALLY COMPILE A LIST OF ALL BRAND FAMILIES OF CIGARETTE
MANUFACTURERS WHO ARE PARTICIPATING IN THE MASTER SETTLEMENT
AGREEMENT OR WHO ARE MAKING ESCROW PAYMENTS UNDER THE MASTER
SETTLEMENT AGREEMENT; TO REQUIRE CERTAIN REPORTS BY PARTICIPATING
MANUFACTURERS; TO PROVIDE CERTAIN PENALTIES AND INJUNCTIVE RELIEF
FOR VIOLATIONS OF THIS ACT; TO GIVE THE CHAIRMAN OF THE STATE TAX
COMMISSION AND THE ATTORNEY GENERAL CERTAIN ADDITIONAL AUTHORITY
IN RELATION TO THIS ACT; TO AUTHORIZE THE CHAIRMAN OF THE STATE
TAX COMMISSION TO ESTABLISH FEES TO BE PAID BY MANUFACTURERS
SEEKING INCLUSION OF THEIR BRAND FAMILIES IN THE LIST REQUIRED BY
THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This chapter may be cited as the "Cigarette
Anti-Conduit Act."

SECTION 2. (1) It is the policy of the state to reduce
cigarette smoking by minors and adults who are residents of this
state.

(2) According to public health authorities, higher cigarette
prices help reduce cigarette consumption.

(3) In 1997 and 1998 leading United States cigarette
manufacturers entered into a settlement agreement with this state,
and into settlement agreements with other states, resolving
various lawsuits brought by those states against those
manufacturers.

(4) Pursuant to the settlement agreement with leading United
States cigarette manufacturers known as the Master Settlement
Agreement, or MSA, entered into on November 23, 1998, forty-six
states and six (6) territories have enacted statutes, known
as the MSA Statute, requiring tobacco product manufacturers either
(a) to sign the MSA, and thereby become participating
manufacturers responsible for making settlement payments to those
states and territories as specified in the MSA, or (b) to remain
nonparticipating manufacturers, and thereby become responsible for
making specified payments into escrow accounts for sales of their
cigarettes to consumers within those states, in order to provide a
source of recovery in the event that the states and territories
assert claims against them in the future, and prevent such
manufacturers from deriving large, short-term profits and then
becoming judgment-proof before liability may arise.

(5) The MSA and the MSA Statutes enacted by the MSA States
directly benefit the people of this state by requiring each
tobacco product manufacturer that is a participating manufacturer
or a nonparticipating manufacturer under the MSA to make
settlement payments or escrow payments, as the case may be, that
are reflected in higher prices for the cigarettes of such
manufacturer in this state, which public health authorities
believe help reduce cigarette consumption.

(6) Some nonparticipating manufacturers, however, either are
circumventing or may attempt to circumvent the escrow payment
requirements of the MSA Statute enacted by MSA States by using
this state as a conduit, selling their cigarettes to distributors
in this state for transshipment to states and territories covered
by the MSA, and then claiming that the MSA Statute does not
require them to make escrow payments for sales of the transshipped
cigarettes in those states and territories.

(7) As a result of such circumvention of the escrow payment
requirements of the MSA Statute, the prices of cigarettes of such
nonparticipating manufacturers in this state do not reflect the
escrow payments required by the MSA Statutes enacted by the MSA
States, undermining the policy of this state to reduce smoking by
the residents of this state by enabling such nonparticipating
manufacturers to offer significantly lower prices than the tobacco
product manufacturers that must make annual settlement payments
under the MSA and the nonparticipating manufacturers that make
such escrow payments.

(8) This use of the state as a conduit to circumvent the
laws of other states and territories not only undermines the
policy of this state to reduce smoking by residents of this state
but also is generally contrary to the public policy of this state.

(9) Prohibiting the shipment or sale of cigarettes of a
nonparticipating manufacturer that has not made all escrow
payments required by the MSA Statutes enacted by the MSA States
will help ensure that the nonparticipating manufacturer will make
such payments, thereby serving the state’s policy of reducing
smoking by its residents and avoiding its use as a conduit to
circumvent the laws of other states.

SECTION 3. As used in this chapter:

(a) "Brand family" means all styles of cigarettes sold
under the same trade mark and differentiated from one another by
means of additional modifiers including, but not limited to,
"menthol," "lights," "kings" and "100s."

(b) "Cigarette" means any product that contains
nicotine, is intended to be burned or heated under ordinary
conditions of use, and consists of or contains (i) any roll of
tobacco wrapped in paper or in any substance not containing
tobacco; or (ii) 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 (iii)
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 (i) of this
definition. The term "cigarette" includes "roll-your-own,"

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meaning 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 (1) individual "cigarette."

c) "Commissioner" means the Chairman of the State Tax Commission of the State of Mississippi, and his authorized agents and employees.

d) "Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by the MSA States and certain tobacco product manufacturers, and subsequently entered into by certain other tobacco product manufacturers.

e) "MSA State" means a Settling State as defined in Section II(qq) of the Master Settlement Agreement.

f) "MSA Statute" means the statute enacted by an MSA State to implement the Exhibit T to the Master Settlement Agreement.

g) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer, as defined in paragraph (h).

h) "Participating manufacturer" means a participating manufacturer as that term is defined in Section II(jj) of the Master Settlement Agreement and any amendments thereto.

i) "Permit holder" means a person who (i) holds a permit under Chapter 69 of Title 27 to operate as a wholesaler or operator of a terminal or warehouse; or (ii) has received permission to operate as an interstate dealer under Section 27-69-33.

j) "State" means any state or territory of the United States.
(k) "Tobacco product manufacturer" means a tobacco product manufacturer as that term is defined in Section II(uu) of the Master Settlement Agreement.

SECTION 4. It shall be unlawful for a permit holder (a) to
ship to any person in this state or another state cigarettes
belonging to a brand family not included on the list provided by
the commissioner to the permit holder under Section 27-70-5, or
(b) to sell or possess for sale, to any person in this state or
another state, for resale to a consumer in this state or another
state, such cigarettes.

SECTION 5. The commissioner shall annually prepare, and not
later than July 15 of each year shall transmit to all permit
holders and post on the website of the commissioner, a list of all
brand families manufactured for sale to consumers within the
United States by (a) each tobacco product manufacturer that by May
1 of such year has provided the commissioner the certification and
information specified in Section 6(1) of this act, and (b) each
tobacco product manufacturer as to which the commissioner has made
the determination described in Section 7(2) of this act.

SECTION 6. (1) The commissioner shall include on the list
described in Section 5 of this act all brand families manufactured
for sale to consumers within the United States by each tobacco
product manufacturer that has provided the commissioner, not later
than May 1 of the year in question or previously, (a) a
certification, under penalty of perjury, that it is a
participating manufacturer, and (b) the names of all such brand
families. Such a tobacco product manufacturer shall be deemed to
be the manufacturer of all those cigarettes, but only those
cigarettes, that are counted as its cigarettes for purposes of
calculating its payments under the Master Settlement Agreement for
the year in question.

(2) The commissioner shall include on the list described in
Section 5 of this act all brand families manufactured for sale to
consumers within the United States by each nonparticipating manufacturer that has provided the commissioner, not later than May 1 of the year in question, (a) the certification described in Section 7 of this act, but only if the commissioner has determined that such certification is true and correct; and (b) the names of all such brand families. A nonparticipating manufacturer shall be deemed to be the manufacturer of all cigarettes as to which it is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer of such cigarettes did not intend to be sold in the United States.

**SECTION 7.** (1) For the brand families of a nonparticipating manufacturer that sells (whether directly or through a distributor or similar intermediary or intermediaries) cigarettes to any permit holder to be eligible for inclusion in the list described in Section 5 of this act, such manufacturer, not later than May 1 of the year in question, under penalty of perjury, must provide the commissioner:

(a) A certification that such manufacturer:

(i) Will make all escrow payments required by the MSA Statute of each MSA State for all cigarettes of such nonparticipating manufacturer that shall be sold to consumers within each such MSA State through April 30 of the year following the year in which such certification is provided; and

(ii) Has made all escrow payments required by the MSA Statute of each MSA State for cigarettes of such nonparticipating manufacturer that were sold to consumers within each such MSA State during the preceding calendar year; and

(b) Such information as the commissioner shall require to determine whether such certification is true and correct.

(2) A nonparticipating manufacturer shall be determined to have made a true and correct certification under subsection (1) of this section if the commissioner determines that the total amount of the escrow payments made by the nonparticipating manufacturer
in all MSA States for cigarettes of the nonparticipating
manufacturer that were sold to consumers within all such states
during the preceding year is equal to the product of (a) the
applicable per-unit amount specified in the MSA Statutes of such
states, including all adjustments for inflation, and (b) the
number of units of cigarettes manufactured by the nonparticipating
manufacturer that were sold to consumers within all MSA States
during the preceding year.

(3) The commissioner shall promptly notify the
nonparticipating manufacturer and the Attorney General of any
determination made under this section.

(4) For purposes of this section, references to cigarettes
"sold to consumers within" a state shall include any cigarettes
sold to consumers within the state, whether sold by the
manufacturer directly or by a distributor, retailer or similar
intermediary or intermediaries.

SECTION 8. Not later than thirty (30) days after the end of
each quarter, and more frequently if so directed by the
commissioner, each permit holder shall report to the commissioner
all shipments of cigarettes to persons in this state and other
states during the preceding calendar quarter. The report shall
state, by nonparticipating manufacturer and brand family, the
quantity of cigarettes shipped to persons in each such state.

SECTION 9. (1) Upon a finding of a violation of Section 4
of this act by a permit holder, the commissioner may impose upon
the permit holder a civil penalty in an amount not to exceed the
greater of five hundred percent (500%) of the retail value of the
cigarettes shipped in violation of Section 4 of this act or Five
Thousand Dollars ($5,000.00). Upon a finding of a violation of
Section 8 of this act by a permit holder, the commissioner may
impose upon the permit holder a civil penalty in an amount not to
exceed Five Thousand Dollars ($5,000.00). Upon a finding of a
second or subsequent violation by a permit holder of Sections 4 or
8 of this act, the commissioner may revoke the license of the permit holder, in accordance with the procedures in Section 27-69-9.

(2) The Attorney General, on behalf of the commissioner, shall seek an injunction to restrain a permit holder from shipping cigarettes in violation of Section 4 of this act or to compel a permit holder to submit the information required by Section 8 of this act.

(3) Based on credible information provided by authorities in an MSA State or other credible information, the Attorney General shall bring an action in the circuit court of Hinds County, Mississippi, against a nonparticipating manufacturer for filing a false certification in violation of Section 7 of this act. Upon a finding that the nonparticipating manufacturer has filed a false certification under Section 7(1)(a)(ii) of this act or has fraudulently or intentionally filed a false certification under Section 7(1)(a)(i), the court shall issue a permanent injunction prohibiting any nonparticipating manufacturer from selling cigarettes (directly or through a distributor or other intermediary or intermediaries) to permit holders and consumers within the state for a period not to exceed two (2) years.

SECTION 10. If the commissioner determines to exclude or remove from the list described in Section 5 of this act the brand families of a nonparticipating manufacturer that timely submitted to the commissioner the certification and information described in Section 7(1)(b) of this act, such nonparticipating manufacturer may challenge such determination as erroneous and seek relief from such determination by bringing an action in the Circuit Court of Hinds County, Mississippi, to challenge the commissioner’s determination. Upon the filing of such an action, the commissioner’s determination shall be stayed for twenty (20) days. The Circuit Court of Hinds County, Mississippi, may extend the stay upon a showing by the nonparticipating manufacturer, after
notice to the commissioner, that it has a substantial probability
of success in the action and would suffer irreparable injury in
the absence of a stay.

SECTION 11. (1) The commissioner shall update monthly the
list described in Section 5 of this act in order to correct
mistakes and to remove or add brand families, including brand
families of nonparticipating manufacturers that have failed to
make escrow payments required by the MSA Statute of an MSA State,
or that have corrected such failures, and new brand families of
participating manufacturers.

(2) The commissioner and Attorney General may share with
each other, with other authorities within the state, and with
authorities in other states the information they receive under
this chapter, including audits under subsection (3) of this act,
and may combine such information with information received from
authorities in other states for purposes of analysis and
enforcement.

(3) The Attorney General and the commissioner may audit, or
engage others to audit, information supplied by nonparticipating
manufacturers under Section 7(1), and the commissioner may audit
the information supplied by permit holders under Section 8.

(4) The commissioner shall establish a fee, to be paid by
nonparticipating manufacturers seeking inclusion of their brand
families in the list described in Section 5 of this act,
sufficient to cover the costs incurred by the commissioner in
carrying out the functions of the commissioner described in
Section 7 of this act.

SECTION 12. No person shall be issued a permit to act as a
permit holder unless such person has certified, under penalty of
perjury, that such person will comply fully with this act.

SECTION 13. For calendar year 2002, the reports of permit
holders required by Section 8 of this act shall be due thirty (30)
days after such effective date; the submissions of participating
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manufacturers and the certifications of nonparticipating manufacturers described in Section 6(1) and Section 7(1), respectively, shall be due forty-five (45) days after such effective date; and the transmission by the commissioner to permit holders and the website posting under Section 5 of this act shall be due ninety (90) days after such effective date.

SECTION 14. This act shall take effect and be in force from and after its passage.