

**CHAPTER 85**  
**(CORRECTED COPY)**

**AN ACT** concerning tobacco sales, amending P.L.1999, c.148 and amending and supplementing P.L.2003, c.25.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1999, c.148 (C.52:4D-2) is amended to read as follows:

C.52:4D-2 Definitions relative to tobacco product manufacturers.

2. As used in this act:

"Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

"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 term "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

"Allocable share" means allocable share as that term is defined in the Master Settlement Agreement.

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
- (2) 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
- (3) 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 paragraph (1) of this definition.

The term "cigarette" includes "roll-your-own," which means any tobacco that, 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."

"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.

"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 \$1,000,000,000 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 paragraph (2) of subsection b. of section 3 of this act.

"Released claims" means released claims as that term is defined in the Master Settlement Agreement.

"Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement.

"Tobacco Product Manufacturer" means an entity that after the date of enactment of this act directly, and not exclusively through any affiliate:

(1) manufactures anywhere cigarettes that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer; provided, however, that an entity that manufactures cigarettes that it intends to be sold in the United States shall not be considered to be a tobacco product manufacturer under this paragraph (1) if (a) such cigarettes are sold in the United States exclusively through an importer that 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 (b) the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(2) 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

(3) becomes a successor of an entity described in paragraph (1) or (2) of this definition.

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs (1) through (3) of this definition.

"Units sold" means the number of individual cigarettes on which the State has the authority under federal law to impose excise or similar taxes, regardless of whether such taxes were imposed or collected by the State, that were 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. The State Treasurer shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of, and number of units sold by, such tobacco product manufacturer for each year.

2. Section 6 of P.L.2003, c.25 (C.52:4D-9) is amended to read as follows:

C.52:4D-9 Registered agent necessary for listing of non-resident, non-participating manufacturer; responsibility for escrow deposit.

6. a. Any non-resident or foreign non-participating 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 listed or retained in the directory established pursuant to section 4 of this act, appoint and continually engage without interruption the services of an agent in New Jersey 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 the act and P.L.1999, c.148 (C.52:4D-1 et seq.), 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, telephone number and proof of the appointment and availability of such agent to the Attorney General.

b. A non-participating manufacturer shall provide notice to the director and Attorney General not later than 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. If an agent terminates an agency appointment, the non-participating manufacturer shall notify the director and Attorney General of that termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

c. A non-participating manufacturer whose products are sold in this State, without appointing or designating an agent as herein required shall be deemed to have appointed the Secretary of State as that agent and may be proceeded against in the courts of this State by service of process upon the Secretary of State; provided however, that the appointment of the Secretary of State as that agent shall not satisfy the condition precedent to having its brand families listed or retained in the directory established pursuant to section 4 of P.L.2003, c.25 (C.52:4D-4 et seq.).

d. Any person who imports cigarettes of a foreign non-participating manufacturer for sale in this State, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall be jointly and severally responsible for any escrow deposit required by section 3 of P.L.1999, c.148 (C.52:4D-3), to the extent that the non-participating manufacturer failed to deposit the required escrow amount. Such person shall also be subject to the provisions of subsections a. and c. of section 8 of P.L.2003, c.25 (C.52:4D-11).

3. Section 7 of P.L.2003, c.25 (C.52:4D-10) is amended to read as follows:

C.52:4D-10 Submission of information.

7. a. Within 20 days after the end of each calendar quarter, and more frequently if so directed by the director, each licensed distributor and each holder of a certificate of authority pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6) shall submit such information as the director requires to facilitate compliance with this section, 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 licensed distributor affixed stamps or impressed or attached metered impressions or for which the holder of the certificate of authority otherwise paid the tax due for such cigarettes during the previous calendar quarter. Each licensed distributor and holder of a certificate of authority shall, for a period of five years, maintain, and make available to the director and the Attorney General, all invoices and documentation of sales of all cigarettes sold by the licensed distributor or holder of a certificate of authority that were manufactured by a non-participating manufacturer and any other information relied upon in reporting to the director.

b. The director is authorized to disclose to the Attorney General any information received under P.L.2003, c.25 (C.52:4D-4 et seq.) or requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of P.L.2003, c.25 (C.52:4D-4 et seq.). The director and Attorney General shall share with each other the information received under P.L.2003, c.25 (C.52:4D-4 et seq.), and may share such information with other federal, State or local agencies only for purposes of enforcement of P.L.2003, c.25 (C.52:4D-4 et seq.), P.L.1999, c.148 (C.52:4D-1 et seq.), or the corresponding laws of other states, and with the data clearinghouse or similar entity established pursuant to the settlement with respect to the non-participating manufacturer adjustment, as such adjustment is described in the provisions of section IX(d) of the Master Settlement Agreement.

c. The Attorney General may require at any time that a non-participating manufacturer provide from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with P.L.1999, c.148 (C.52:4D-1 et seq.), proof of the amount of money in the fund being held on behalf of the State and the dates of deposits, and listing the amounts of all withdrawals from the fund and the dates thereof.

d. In addition to the information required to be submitted pursuant to this section, the director or Attorney General may require a stamping agent, licensed distributor, holder of a certificate of authority pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6), 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 act.

e. To promote compliance with the provisions of P.L.2003, c.25 (C.52:4D-6), the Attorney General may promulgate regulations requiring a tobacco product manufacturer subject to the requirements of paragraph (2) of subsection a. of section 3 of P.L.2003, c.25 (C.52:4D-4 et seq.) to make the escrow deposits required in more frequent installments during the year in which the sales covered by the 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.

4. Section 8 of P.L.2003, c.25 (C.52:4D-11) is amended to read as follows:

C.52:4D-11 Additional penalties.

8. a. 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 5 of P.L.2014, c.85 (C.52:4D-7.1) or section 5 of P.L.2003, c.25 (C.52:4D-8) or subsection d. of section 6 of P.L.2003, c.25 (C.52:4D-9) or any regulation adopted pursuant thereto, the director may revoke or suspend the license of any person pursuant to section 203 of P.L.1948, c.65 (C.54:40A-5) or revoke or suspend the holder's certificate of authority pursuant to procedures applicable to the suspension of a license set forth in section 203 of P.L.1948, c.65 (C.54:40A-5). Each stamp or metered impression affixed and each offer to sell cigarettes in violation of section 5 of P.L.2003, c.25 (C.52:4D-8) shall constitute a separate violation. For each violation hereof, the director may also impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes sold or \$5,000 upon a determination of violation of section 5 of P.L.2003, c.25 (C.52:4D-8) or any regulations adopted pursuant thereto.

b. Any cigarettes that have been sold, offered for sale or possessed for sale in this State in violation of section 5 of P.L.2003, c.25 (C.52:4D-8) shall be deemed contraband, without regard to whether the violation was knowing under section 607 of P.L.1948, c. 65 (C.54:40A-30), and those cigarettes shall be subject to seizure and forfeiture as provided in section 607, and all cigarettes so seized and forfeited shall be destroyed and not resold.

c. The Attorney General, on behalf of the director, may seek an injunction to restrain a threatened or actual violation of: section 5 of P.L.2014, c.85 (C.52:4D-7.1); section 5 of P.L.2003, c.25 (C.52:4D-8); or subsection d. of section 6 of P.L.2003, c.25 (C.52:4D-9); or subsection a. or subsection b. of section 7 of P.L.2003, c.25 (C.52:4D-10) by a licensed distributor or a holder of a certificate of authority pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6) and to compel the licensed distributor or holder of a certificate of authority to comply with the requirements provided therein. In any action brought pursuant to this

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 any person to sell or distribute cigarettes or 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 State in violation of section 5 of P.L.2003, c.25 (C.52:4D-8). A violation of this subsection shall be a crime of the third degree.

C.52:4D-7.1 Requirements for listing in directory of manufacturers.

5. A non-participating manufacturer shall not be listed in the directory of manufacturers established pursuant to section 4 of P.L.2003, c.25 (C.52:4D-7) unless and until it posts a bond for the benefit of the State in the manner described herein:

a. The bond shall be posted by corporate surety located within the United States in an amount equaling the greatest required escrow due from the non-participating manufacturer or its predecessor for any of the four preceding calendar years or \$25,000, whichever amount is higher;

b. The bond shall be conditioned on the performance by the non-participating manufacturer of all its duties and obligations imposed by section 3 of P.L.1999, c.148 (C.52:4D-3), section 3 of P.L.2003, c.25 (C.52:4D-6), section 5 of P.L.2003, c.25 (C.52:4D-8) and section 6 of P.L.2003, c.25 (C.52:4D-9);

c. If a non-participating manufacturer that posted a bond has failed to make or have made on its behalf deposits equal to the full amount of escrow owed for a given year, within fifteen days following the due date for the deposit the State may execute upon the bond to recover any amount the non-participating manufacturer failed to deposit into escrow, as well as civil penalties, the costs of investigation, costs of the action and reasonable attorneys' fees pursuant to subsections a. and c. of section 8 of P.L.2003, c.25 (C.52:4D-11); and

d. Beginning on April 30, 2015, the bond shall be posted or updated by the end of each quarter of each calendar year as a condition to the inclusion of a non-participating manufacturer and its brand families in the directory of manufacturers, and proof of the sufficiency of such bond shall be submitted quarterly.

6. This act shall take effect on January 1, 2015.

Approved December 26, 2014.