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# COMMERCE AND TRADE Enforcement of Master Settlement Agreement: Require Certifications by Certain Tobacco Manufacturers; Provide for a Directory Database of Certified Tobacco Manufacturers; Establish a Prohibition Against Sales by Tobacco Manufacturers Not in the Directory Database

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## COMMERCE AND TRADE

### ***Enforcement of Master Settlement Agreement: Require Certifications by Certain Tobacco Manufacturers; Provide for a Directory Database of Certified Tobacco Manufacturers; Establish a Prohibition Against Sales by Tobacco Manufacturers Not in the Directory Database***

CODE SECTIONS: O.C.G.A. §§ 10-13A-1 to -9 (new), 48-11-8, -9, -23.1 (amended)

BILL NUMBER: HB 893

ACT NUMBER: 367

GEORGIA LAWS: 2003 Ga. Laws 829

SUMMARY: The Act amends certain Code sections to require that tobacco manufacturers who (a) plan to sell cigarettes in Georgia and (b) did not sign the 1998 Master Settlement Agreement must certify with the state that they have paid into an escrow fund an amount proportional to their market share in order to offset the anticipated costs and penalties of future litigation.

EFFECTIVE DATE: July 1, 2003

#### *History*

The National Association of Attorneys General promoted this legislation.<sup>1</sup> Similar bills are pending or have already passed in 39 other states.<sup>2</sup> These bills complement the national Master Settlement Agreement (“MSA”), a compromise between four major cigarette

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1. See Interview with Rep. Bob Lane, House District No. 101 (Apr. 24, 2003) [hereinafter Lane Interview].

2. See *id.*; see also Jim Wallace, *Bill May Protect Settlement Funds, Measures Target Small Tobacco Companies*, CHARLESTON DAILY MAIL, Mar. 5, 2003, at P3C (noting West Virginia Senate Finance Committee approval of a similar bill in the West Virginia state legislature).

manufacturers and 46 states.<sup>3</sup> These four manufacturers agreed to pay more than \$200 billion over 25 years in exchange for those states' agreeing not to file lawsuits during that time period.<sup>4</sup> The MSA also includes provisions for state-established escrow funds into which non-participating tobacco companies must pay in order to satisfy pending and future lawsuits.<sup>5</sup> In 1999, the Georgia General Assembly codified this requirement in Code section 10-13-3.<sup>6</sup> Certain foreign and domestic cigarette manufacturers and distributors did not, however, fit into the definitions set forth in that Code section.<sup>7</sup> As a result, these companies were able to sell their products at lower prices and cut into the market share of the larger companies that had voluntarily either signed the MSA or contributed to the escrow funds.<sup>8</sup> For this reason, MSA participants like Philip Morris supported certification procedures that impose on manufacturers, distributors, and retailers a duty to ensure that all parties comply with either the MSA or state statutes enforcing it, such as Code section 10-13-3.<sup>9</sup> Opponents argued that forcing companies to pay into the escrow fund created a larger financial burden than that of potential litigation, but any money in escrow in excess of the amount required to satisfy tobacco-related claims will be returned with interest to the contributors in 25 years.<sup>10</sup>

### HB 893

Representative Bob Lane of the 101st district sponsored HB 893.<sup>11</sup> Representative Lane introduced HB 893 on March 27, 2003, and the

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3. See George Whitehurst, *Philip Morris Makes Payment*, DANVILLE REG. & BEE, Apr. 16, 2003, at 1; see also Lane Interview, *supra* note 1 (noting that the funding to fight tobacco-related illnesses primarily came from Medicaid dollars, which the states sought to recover from manufacturers).

4. See Whitehurst, *supra* note 3.

5. *Tribal Tobacco Company Can't Sue Other State Attorneys General*, 18 TOBACCO IND. LIT. REP. 6 (2003); see also Lane Interview, *supra* note 1 (stating that Georgia uses funds paid into the MSA for anti-smoking campaigns, cancer research, and revitalizing local economies formerly dependent on the tobacco industry).

6. See O.C.G.A. § 10-13-3 (2000).

7. See Lane Interview, *supra* note 1.

8. *Id.*; see Telephone Interview with Jamie Drogin, Philip Morris USA (June 6, 2003) [hereinafter Drogin Interview].

9. See Drogin Interview, *supra* note 8; see also Wallace, *supra* note 2.

10. See Drogin Interview, *supra* note 8; see also Wallace, *supra* note 2.

11. See HB 893, as introduced, 2003 Ga. Gen. Assem.

House ordered it engrossed on March 28, 2003.<sup>12</sup> The Speaker later assigned HB 893 to the House Regulated Industries Committee, which favorably reported the bill on April 7, 2003.<sup>13</sup> The House passed the bill by a vote of 159 to 7 on April 8, 2003.<sup>14</sup>

That same day, HB 893 was assigned to the Senate Regulated Industries Committee, which favorably reported the bill without change on April 11, 2003.<sup>15</sup> The Senate adopted and unanimously passed the bill without change on April 17, 2003.<sup>16</sup> Governor Sonny Perdue signed the bill into law on June 4, 2003.<sup>17</sup>

### *The Act*

HB 893 amends Title 10 of the Code, by adding a new Chapter 13A.<sup>18</sup> Code section 10-13A-1 describes the motivation behind the Act, stating that “violations of Chapter 13 of this [T]itle threaten the integrity of the tobacco [MSA], the fiscal soundness of the state, and the public health.”<sup>19</sup> Code section 10-13A-2 expands the definitions applicable to Chapter 13A to include companies that are not signatories to the MSA.<sup>20</sup> Code section 10-13A-3 requires every tobacco manufacturer whose cigarettes enter the Georgia market to certify that the company either is a manufacturer participating in the MSA or has fully complied with the existing Chapter 13, including making annual deposits into the state-established escrow account.<sup>21</sup> Code section 10-13A-4 directs the Attorney General to establish an online directory, which “shall not include [the name of any] nonparticipating manufacturer that has failed to provide the required certification” under Code section 10-13A-3.<sup>22</sup> If a manufacturer is not participating in the MSA or fully complying with Chapter 13, and as

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12. See State of Georgia Final Composite Status Sheet, HB 893, Apr. 25, 2003; Georgia House of Representatives Voting Record, HB 893 (Mar. 28, 2003).

13. See State of Georgia Final Composite Status Sheet, HB 893, Apr. 25, 2003.

14. See Georgia House of Representatives Voting Record, HB 893 (Apr. 8, 2003).

15. See State of Georgia Final Composite Status Sheet, HB 893, Apr. 25, 2003.

16. See Georgia Senate Voting Record, HB 893 (Apr. 17, 2003).

17. See 2003 Ga. Laws 829, § 5, at 838.

18. See O.C.G.A. §§ 10-13A-1 to -9 (Supp. 2003).

19. See O.C.G.A. § 10-13A-1 (Supp. 2003).

20. See O.C.G.A. § 10-13A-2 (Supp. 2003); see also Audio Recording of Senate Proceedings, Apr. 17, 2003 (remarks by Sen. Bill Hamrick), at <http://www.state.ga.us/services/leg/audio/2002archive.html>.

21. See O.C.G.A. § 10-13A-3 (Supp. 2003).

22. See O.C.G.A. § 10-13A-4 (Supp. 2003).

a result is not listed in the directory Code section 10-13A-4 establishes, Code section 10-13A-5 makes it illegal to affix a tax stamp to that manufacturer's cigarette packages or containers.<sup>23</sup> Code section 10-13A-6 requires any nonresident or foreign nonparticipating manufacturer not registered to do business in Georgia to appoint an agent within the state for purposes of service of process.<sup>24</sup> Code section 10-13A-7 requires each distributor in the state to submit quarterly to the Attorney General a list of the total number of cigarettes the distributor affixed tax stamps to during that quarter.<sup>25</sup> Code section 10-13A-8 provides the State Revenue Commissioner discretion to revoke or suspend tobacco licenses and imposes civil and criminal penalties for distributor violations of Code section 10-13A-5.<sup>26</sup> Code section 10-13A-9 subjects to review, pursuant to the Georgia Administrative Procedure Act, an Attorney General's decision to remove a brand family or manufacturer from the directory.<sup>27</sup> This section also prohibits entities not in compliance with this Chapter from receiving a license to distribute cigarettes.<sup>28</sup>

The Act amends Code section 48-11-8, by replacing subsection (b) with similar gender-neutral language.<sup>29</sup> The Act also adds paragraph (a)(3), which explicitly references new Chapter 13A of Title 10.<sup>30</sup>

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23. See O.C.G.A. § 10-13A-5 (Supp. 2003).

24. See O.C.G.A. § 10-13A-6 (Supp. 2003).

25. See O.C.G.A. § 10-13A-7 (Supp. 2003).

26. See O.C.G.A. § 10-13A-8 (Supp. 2003).

27. See O.C.G.A. § 10-13A-9 (Supp. 2003); O.C.G.A. § 50-13-1 (2002).

28. See O.C.G.A. § 10-13A-9 (Supp. 2003).

29. Compare 1955 Ga. Laws 268, § 9, at 277 (formerly found at O.C.G.A. § 48-11-8 (2000)), with O.C.G.A. § 48-11-8 (Supp. 2003).

30. Compare 1955 Ga. Laws 268, § 9, at 277 (formerly found at O.C.G.A. § 48-11-8 (2000)), with O.C.G.A. § 48-11-8 (Supp. 2003).

The Act amends Code section 48-11-9, which defines contraband material, by striking paragraph (a)(1) and replacing it with text that explicitly refers to new Chapter 13A of Title 10.<sup>31</sup> Finally, the Act amends Code subsection 48-11-23.1(b), by explicitly adding the packages covered by new Chapter 13A of Title 10 to the list of packages and containers to which no individual may affix a tax stamp.<sup>32</sup>

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31. *Compare* 1955 Ga. Laws 268, § 10, at 278 (formerly found at O.C.G.A. § 48-11-9 (2000)), with O.C.G.A. § 48-11-9 (Supp. 2003).

32. *Compare* 1999 Ga. Laws 309, § 2, at 157 (formerly found at O.C.G.A. § 48-11-23.1 (2000)), with O.C.G.A. § 48-11-23.1 (Supp. 2003).