

CHAPTER 267

TAXATION

HOUSE BILL 03-1330

BY REPRESENTATIVE(S) Stengel, Coleman, Larson, Miller, and Vigil;
also SENATOR(S) Dyer, and Groff.

AN ACT

CONCERNING MEASURES TO ENSURE COMPLIANCE WITH EXISTING STATUTORY PROVISIONS THAT GOVERN TOBACCO ESCROW FUNDS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 28 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 3
ADDITIONAL REQUIREMENTS FOR TOBACCO PRODUCT
MANUFACTURERS AND STAMPING AGENTS

39-28-301. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) VIOLATIONS OF THE TOBACCO ESCROW FUNDS ACT THREATEN THE INTEGRITY OF THE MASTER SETTLEMENT AGREEMENT, THE FISCAL SOUNDNESS OF THE STATE, AND THE PUBLIC HEALTH.

(b) ENACTING PROCEDURAL ENHANCEMENTS WILL AID THE ENFORCEMENT OF THE TOBACCO ESCROW FUNDS ACT AND THEREBY SAFEGUARD THE MASTER SETTLEMENT AGREEMENT, THE FISCAL SOUNDNESS OF THE STATE, AND THE PUBLIC HEALTH.

(c) THE PROVISIONS OF THIS PART 3 ARE NOT INTENDED TO AND SHALL NOT BE INTERPRETED TO AMEND THE TOBACCO ESCROW FUNDS ACT.

39-28-302. Definitions. AS USED IN THIS PART 3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(1) "BRAND FAMILY" MEANS ALL STYLES OF CIGARETTES SOLD UNDER THE SAME TRADE MARK 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" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-28-202 (4).

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(4) "MASTER SETTLEMENT AGREEMENT" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-28-202 (5).

(5) "NONPARTICIPATING MANUFACTURER" MEANS ANY TOBACCO PRODUCT MANUFACTURER THAT IS NOT A PARTICIPATING MANUFACTURER.

(6) "PARTICIPATING MANUFACTURER" HAS THE SAME MEANING AS SET FORTH IN SECTION II (jj) OF THE MASTER SETTLEMENT AGREEMENT AND ALL AMENDMENTS THERETO.

(7) "QUALIFIED ESCROW FUND" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-28-202 (6).

(8) "STAMPING AGENT" MEANS A PERSON THAT IS AUTHORIZED TO AFFIX TAX STAMPS TO PACKAGES OR OTHER CONTAINERS OF CIGARETTES OR TOBACCO PRODUCTS UNDER SECTION 39-28-104 OR A PERSON THAT IS REQUIRED TO PAY THE TOBACCO PRODUCTS TAX IMPOSED PURSUANT TO SECTION 39-28.5-102 ON ROLL-YOUR-OWN TOBACCO FOR CIGARETTES.

(9) "TOBACCO CONTROL SPECIAL FUND" MEANS A SEPARATE FUND CREATED BY THIS PART 3, THE REVENUES OF WHICH DO NOT PASS THROUGH THE GENERAL FUND, AND THAT WILL BY USED BY THE DEPARTMENT FOR THE ENFORCEMENT OF THIS PART 3 AND THE TOBACCO ESCROW FUNDS ACT.

(10) "TOBACCO ESCROW FUNDS ACT" OR "ACT" MEANS THOSE PROVISIONS THAT ARE REFERRED TO AS THE MODEL ACT IN THE MASTER SETTLEMENT AGREEMENT AND THAT ARE CODIFIED AS PART 2 OF THIS ARTICLE.

(11) "TOBACCO PRODUCT MANUFACTURER" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-28-202 (9).

(12) "UNITS SOLD" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-28-202 (10).

39-28-303. Certifications - directory - tax stamps. (1) Certification.
(a) EXCEPT AS OTHERWISE PROVIDED IN SECTION 39-28-307 (3), 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 DEPARTMENT A CERTIFICATION TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT NO LATER THAN THE THIRTIETH DAY OF APRIL EACH YEAR CERTIFYING UNDER PENALTY OF PERJURY THAT, AS OF THE DATE OF SUCH CERTIFICATION, THE TOBACCO PRODUCT MANUFACTURER EITHER IS A PARTICIPATING MANUFACTURER OR IS IN FULL COMPLIANCE WITH THE TOBACCO ESCROW FUNDS ACT AND ALL IMPLEMENTING REGULATIONS.

(b) A PARTICIPATING MANUFACTURER SHALL INCLUDE IN ITS CERTIFICATION A LIST OF ITS BRAND FAMILIES. THE PARTICIPATING MANUFACTURER SHALL UPDATE THE LIST THIRTY DAYS PRIOR TO ANY ADDITION TO OR MODIFICATION OF ITS BRAND FAMILIES BY EXECUTING AND DELIVERING A SUPPLEMENTAL CERTIFICATION TO THE DEPARTMENT.

(c) A NONPARTICIPATING MANUFACTURER SHALL INCLUDE IN ITS CERTIFICATION A COMPLETE LIST OF ALL OF ITS BRAND FAMILIES, AND THE LIST SHALL:

(I) SEPARATELY LIST:

(A) BRAND FAMILIES OF CIGARETTES AND THE NUMBER OF UNITS SOLD FOR EACH BRAND FAMILY THAT WERE SOLD IN THE STATE DURING THE PRECEDING CALENDAR YEAR; AND

(B) ALL OF THE NONPARTICIPATING MANUFACTURER'S BRAND FAMILIES THAT HAVE BEEN SOLD IN THE STATE AT ANY TIME DURING THE CURRENT CALENDAR YEAR;

(II) INDICATE BY AN ASTERISK, ANY BRAND FAMILY SOLD IN THE STATE DURING THE PRECEDING CALENDAR YEAR THAT IS NO LONGER BEING SOLD IN THE STATE AS OF THE DATE OF SUCH CERTIFICATION; AND

(III) IDENTIFY BY NAME AND ADDRESS ANY OTHER MANUFACTURER OF SUCH BRAND FAMILIES IN THE PRECEDING CALENDAR YEAR.

(d) A NONPARTICIPATING MANUFACTURER SHALL UPDATE A CERTIFICATION THIRTY DAYS PRIOR TO ANY ADDITION TO OR MODIFICATION OF ITS BRAND FAMILIES BY EXECUTING AND DELIVERING A SUPPLEMENTAL CERTIFICATION TO THE DEPARTMENT.

(e) A CERTIFICATION OF A NONPARTICIPATING MANUFACTURER SHALL FURTHER CERTIFY:

(I) THAT THE NONPARTICIPATING MANUFACTURER IS REGISTERED TO DO BUSINESS IN THE STATE OR HAS APPOINTED A RESIDENT AGENT FOR SERVICE OF PROCESS AND PROVIDED NOTICE THEREOF AS REQUIRED BY SECTION 39-28-304;

(II) THAT THE NONPARTICIPATING MANUFACTURER HAS:

(A) ESTABLISHED AND CONTINUES TO MAINTAIN A QUALIFIED ESCROW FUND, AS DEFINED IN SECTION 39-28-202 (6); AND

(B) EXECUTED A QUALIFIED ESCROW AGREEMENT THAT HAS BEEN REVIEWED AND APPROVED BY THE ATTORNEY GENERAL AND THAT GOVERNS THE QUALIFIED ESCROW

FUND;

(III) THAT THE NONPARTICIPATING MANUFACTURER IS IN FULL COMPLIANCE WITH THE TOBACCO ESCROW FUNDS ACT, THIS PART 3, AND ANY RULES PROMULGATED PURSUANT TO THE TOBACCO ESCROW FUNDS ACT OR THIS PART 3; AND

(IV) THAT INFORMATION PERTAINING TO THE QUALIFIED ESCROW FUND, INCLUDING:

(A) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE FINANCIAL INSTITUTION WHERE THE NONPARTICIPATING MANUFACTURER HAS ESTABLISHED THE QUALIFIED ESCROW FUND REQUIRED BY SECTION 39-28-203 AND ALL RULES PROMULGATED THERETO;

(B) THE ACCOUNT NUMBER OF THE QUALIFIED ESCROW FUND AND SUB-ACCOUNT NUMBER FOR THE STATE OF COLORADO;

(C) THE AMOUNT THE NONPARTICIPATING MANUFACTURER PLACED IN THE FUND FOR CIGARETTES SOLD IN THE STATE DURING THE PRECEDING CALENDAR YEAR, THE DATE AND AMOUNT OF EACH DEPOSIT, AND SUCH EVIDENCE OR VERIFICATION AS MAY BE DEEMED NECESSARY BY THE DEPARTMENT TO CONFIRM THE FOREGOING; AND

(D) THE AMOUNTS OF AND DATES OF ANY WITHDRAWAL OR TRANSFER OF FUNDS THE NONPARTICIPATING MANUFACTURER MADE AT ANY TIME FROM THE FUND OR FROM ANY OTHER QUALIFIED ESCROW FUND INTO WHICH IT EVER MADE ESCROW PAYMENTS PURSUANT TO THE TOBACCO ESCROW FUNDS ACT AND ALL RULES PROMULGATED THERETO.

(f) (I) A TOBACCO PRODUCT MANUFACTURER MAY NOT INCLUDE A BRAND FAMILY IN ITS CERTIFICATION UNLESS:

(A) IN THE CASE OF A PARTICIPATING MANUFACTURER, 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; AND

(B) IN THE CASE OF A NONPARTICIPATING MANUFACTURER, THE NONPARTICIPATING MANUFACTURER AFFIRMS THAT THE BRAND FAMILY IS TO BE DEEMED TO BE ITS CIGARETTES FOR PURPOSES OF THE TOBACCO ESCROW FUNDS ACT.

(II) NOTHING IN THIS PARAGRAPH (f) 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 PART 2 OF THIS ARTICLE.

(g) 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.

(2) Directory of cigarettes approved for stamping and sale. (a) EXCEPT AS OTHERWISE PROVIDED IN SECTION 39-28-307 (3), NOT LATER THAN JUNE 1, 2003, THE DEPARTMENT SHALL DEVELOP AND PUBLISH ON ITS WEBSITE A DIRECTORY LISTING ALL TOBACCO PRODUCT MANUFACTURERS THAT HAVE PROVIDED CURRENT AND ACCURATE CERTIFICATIONS CONFORMING TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION AND ALL BRAND FAMILIES THAT ARE LISTED IN SUCH CERTIFICATIONS; EXCEPT THAT:

(I) THE DEPARTMENT SHALL NOT INCLUDE OR RETAIN IN THE DIRECTORY THE NAME OR BRAND FAMILIES OF ANY NONPARTICIPATING MANUFACTURER THAT HAS FAILED TO PROVIDE THE REQUIRED CERTIFICATION OR WHOSE CERTIFICATION THE DEPARTMENT DETERMINES IS NOT IN COMPLIANCE WITH PARAGRAPHS (c) AND (d) OF SUBSECTION (1) OF THIS SECTION, UNLESS THE DEPARTMENT HAS DETERMINED THAT THE VIOLATION HAS BEEN CURED TO THE SATISFACTION OF THE DEPARTMENT.

(II) NEITHER A TOBACCO PRODUCT MANUFACTURER NOR BRAND FAMILY SHALL BE INCLUDED OR RETAINED IN THE DIRECTORY IF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT CONCLUDES THAT:

(A) IN THE CASE OF A NONPARTICIPATING MANUFACTURER, ANY ESCROW PAYMENT REQUIRED PURSUANT TO THE TOBACCO ESCROW FUNDS ACT FOR ANY PERIOD FOR ANY BRAND FAMILY, WHETHER OR NOT LISTED BY THE 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

(B) ANY OUTSTANDING FINAL JUDGMENT, INCLUDING INTEREST THEREON, FOR VIOLATIONS OF THE TOBACCO ESCROW FUNDS ACT HAS NOT BEEN FULLY SATISFIED FOR THE BRAND FAMILY AND THE MANUFACTURER.

(b) THE DEPARTMENT 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 PART 3.

(c) THE DEPARTMENT SHALL TRANSMIT BY ELECTRONIC MAIL OR OTHER PRACTICABLE MEANS TO EACH STAMPING AGENT NOTICE OF ANY ADDITION TO OR REMOVAL FROM THE DIRECTORY OF A TOBACCO PRODUCT BRAND MANUFACTURER OR BRAND FAMILY. IN ADDITION, THE DEPARTMENT SHALL TRANSMIT BY ELECTRONIC MAIL OR OTHER PRACTICAL MEANS TO EACH STAMPING AGENT NOTICE OF THE POTENTIAL REMOVAL FROM THE DIRECTORY OF A TOBACCO PRODUCT BRAND MANUFACTURER OR BRAND FAMILY THREE CALENDAR DAYS BEFORE THE TOBACCO PRODUCT BRAND MANUFACTURER OR BRAND FAMILY IS ACTUALLY REMOVED FROM THE DIRECTORY. UNLESS OTHERWISE PROVIDED BY AGREEMENT BETWEEN A STAMPING AGENT AND A TOBACCO PRODUCT MANUFACTURER, A STAMPING AGENT SHALL BE ENTITLED TO A REFUND FROM A TOBACCO PRODUCT MANUFACTURER OF ANY MONEY PAID BY THE STAMPING AGENT TO THE TOBACCO PRODUCT MANUFACTURER FOR ANY CIGARETTES OF THE TOBACCO PRODUCT MANUFACTURER STILL HELD BY THE STAMPING AGENT ON THE DATE OF NOTICE BY THE DEPARTMENT OF THE REMOVAL FROM THE DIRECTORY OF THE TOBACCO PRODUCT MANUFACTURER OR THE BRAND FAMILY OF THE CIGARETTES. THE DEPARTMENT SHALL NOT RESTORE TO THE

DIRECTORY A TOBACCO PRODUCT MANUFACTURER OR A BRAND FAMILY UNTIL THE TOBACCO PRODUCT MANUFACTURER HAS PAID THE STAMPING AGENT ANY REFUND DUE.

(d) EVERY STAMPING AGENT SHALL PROVIDE AND UPDATE AS NECESSARY AN ELECTRONIC MAIL ADDRESS TO THE DEPARTMENT FOR THE PURPOSE OF RECEIVING ANY NOTIFICATIONS THAT MAY BE REQUIRED BY THIS PART 3.

(3) Prohibition against stamping or sale of cigarettes not in the directory. IT SHALL BE UNLAWFUL FOR ANY PERSON TO:

(a) AFFIX A STAMP TO A PACKAGE OR OTHER CONTAINER OF CIGARETTES OF A TOBACCO PRODUCT MANUFACTURER OR BRAND FAMILY NOT INCLUDED IN THE DIRECTORY; OR

(b) SELL, OFFER, OR POSSESS FOR SALE IN THIS STATE CIGARETTES OF A TOBACCO PRODUCT MANUFACTURER OR BRAND FAMILY NOT INCLUDED IN THE DIRECTORY.

39-28-304. Agent for service of process. (1) A NONRESIDENT OR FOREIGN NONPARTICIPATING MANUFACTURER THAT HAS NOT REGISTERED TO DO BUSINESS IN THE STATE AS A FOREIGN CORPORATION OR BUSINESS ENTITY SHALL, AS A CONDITION PRECEDENT TO HAVING ITS BRAND FAMILIES LISTED OR RETAINED IN THE DIRECTORY, APPOINT AND CONTINUALLY ENGAGE WITHOUT INTERRUPTION THE SERVICES OF AN AGENT IN THE STATE TO ACT AS AN AGENT FOR THE SERVICE OF PROCESS ON WHOM ALL PROCESS, AND ANY ACTION OR PROCEEDING AGAINST THE NONPARTICIPATING MANUFACTURER CONCERNING OR ARISING OUT OF THE ENFORCEMENT OF THIS PART 3 AND THE TOBACCO ESCROW FUNDS ACT, 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 THE AGENT TO AND TO THE SATISFACTION OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT AND THE ATTORNEY GENERAL.

(2) A NONPARTICIPATING MANUFACTURER SHALL PROVIDE NOTICE TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT AND THE ATTORNEY GENERAL AT LEAST 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 AT LEAST 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 EXECUTIVE DIRECTOR AND THE ATTORNEY GENERAL OF THE TERMINATION WITHIN FIVE CALENDAR DAYS AND SHALL INCLUDE PROOF TO THE SATISFACTION OF THE ATTORNEY GENERAL OF THE APPOINTMENT OF A NEW AGENT.

(3) A NONPARTICIPATING 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 THE AGENT AND MAY BE PROCEEDED AGAINST IN THE COURTS OF THIS STATE BY SERVICE OF PROCESS UPON THE SECRETARY OF STATE. HOWEVER, THE APPOINTMENT OF THE SECRETARY OF STATE AS THE AGENT SHALL NOT SATISFY THE CONDITION PRECEDENT TO HAVING THE

NONPARTICIPATING MANUFACTURER'S BRAND FAMILIES LISTED OR RETAINED IN THE DIRECTORY.

39-28-305. Reporting of information - escrow installments. (1) Reporting by stamping agents. NOT LATER THAN TWENTY DAYS AFTER THE END OF EACH MONTH, EACH STAMPING AGENT SHALL SUBMIT TO THE DEPARTMENT SUCH INFORMATION AS THE DEPARTMENT REQUIRES TO FACILITATE COMPLIANCE WITH THIS PART 3, 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 STAMPING AGENT AFFIXED STAMPS DURING THE PREVIOUS CALENDAR MONTH OR OTHERWISE PAID THE TAX DUE FOR SUCH CIGARETTES. THE STAMPING AGENT SHALL MAINTAIN AND MAKE AVAILABLE TO THE DEPARTMENT ALL INVOICES AND DOCUMENTATION OF SALES OF ALL NONPARTICIPATING MANUFACTURER CIGARETTES AND ANY OTHER INFORMATION RELIED UPON IN REPORTING TO THE DEPARTMENT FOR A PERIOD OF FIVE YEARS.

(2) Disclosure of information. THE DEPARTMENT IS AUTHORIZED TO DISCLOSE TO THE ATTORNEY GENERAL ANY INFORMATION RECEIVED UNDER THIS PART 3 AND REQUESTED BY THE ATTORNEY GENERAL FOR PURPOSES OF DETERMINING COMPLIANCE WITH AND ENFORCING THE PROVISIONS OF THIS PART 3. THE DEPARTMENT AND THE ATTORNEY GENERAL SHALL SHARE WITH EACH OTHER THE INFORMATION RECEIVED UNDER THIS PART 3 AND MAY SHARE THE INFORMATION WITH OTHER FEDERAL, STATE, OR LOCAL AGENCIES ONLY FOR PURPOSES OF ENFORCEMENT OF THIS PART 3, THE TOBACCO ESCROW FUNDS ACT, OR CORRESPONDING LAWS OF OTHER STATES.

(3) Verification of qualified escrow fund. THE ATTORNEY GENERAL MAY REQUIRE AT ANY TIME FROM A NONPARTICIPATING MANUFACTURER, PROOF FROM THE FINANCIAL INSTITUTION IN WHICH THE MANUFACTURER HAS ESTABLISHED A QUALIFIED ESCROW FUND FOR THE PURPOSE OF COMPLIANCE WITH THE TOBACCO ESCROW FUNDS ACT OF THE AMOUNT OF MONEY IN THE FUND, EXCLUSIVE OF INTEREST, BEING HELD ON BEHALF OF THE STATE, THE DATES OF DEPOSITS, AND THE DATES AND AMOUNTS OF ALL WITHDRAWALS FROM SUCH FUND.

(4) Requests for additional information. IN ADDITION TO THE INFORMATION REQUIRED TO BE SUBMITTED PURSUANT TO REGULATION NUMBER 39-28-202 (3) AND (4) OR ANY SUCCESSOR RULE OF THE DEPARTMENT (1 CCR 201-7), THE DEPARTMENT OR THE ATTORNEY GENERAL MAY REQUIRE A STAMPING AGENT, 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 DEPARTMENT OR THE ATTORNEY GENERAL TO DETERMINE WHETHER A TOBACCO PRODUCT MANUFACTURER IS IN COMPLIANCE WITH THIS PART 3.

(5) Quarterly escrow installments. TO PROMOTE COMPLIANCE WITH THE PROVISIONS OF THIS PART 3, THE DEPARTMENT MAY PROMULGATE RULES REQUIRING A TOBACCO PRODUCT MANUFACTURER SUBJECT TO THE REQUIREMENTS OF SECTION 39-28-303 (1) (c) TO MAKE THE ESCROW DEPOSITS REQUIRED IN QUARTERLY INSTALLMENTS DURING THE YEAR IN WHICH THE SALES COVERED BY SUCH DEPOSITS ARE MADE. THE DEPARTMENT MAY REQUIRE PRODUCTION OF INFORMATION SUFFICIENT TO ENABLE THE DEPARTMENT TO DETERMINE THE ADEQUACY OF THE

AMOUNT OF THE INSTALLMENT DEPOSIT.

39-28-306. Penalties and other remedies. (1) 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 A STAMPING AGENT HAS VIOLATED SECTION 39-28-303 (3) OR ANY RULE ADOPTED PURSUANT THERETO, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY REVOKE OR SUSPEND THE LICENSE OF ANY STAMPING AGENT IN THE MANNER PROVIDED BY SECTIONS 39-28-102 (1) AND 39-28.5-104. EACH STAMP AFFIXED AND EACH OFFER TO SELL CIGARETTES IN VIOLATION OF SECTION 39-28-303 (3) SHALL CONSTITUTE A SEPARATE VIOLATION. FOR EACH VIOLATION, THE EXECUTIVE DIRECTOR MAY ALSO IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED THE GREATER OF FIVE HUNDRED PERCENT OF THE RETAIL VALUE OF THE CIGARETTES SOLD OR FIVE THOUSAND DOLLARS UPON A DETERMINATION OF A VIOLATION OF SECTION 39-28-303 (3) OR ANY RULES ADOPTED PURSUANT THERETO.

(2) Contraband and seizure. ANY CIGARETTES THAT HAVE BEEN SOLD, OFFERED FOR SALE, OR POSSESSED FOR SALE IN THIS STATE IN VIOLATION OF SECTION 39-28-303 (3) SHALL BE DEEMED A CONTRABAND ARTICLE AS DEFINED BY SECTION 16-13-502 (1), C.R.S. THE CIGARETTES SHALL BE SUBJECT TO SEIZURE AND FORFEITURE AS PROVIDED IN THE "COLORADO CONTRABAND FORFEITURE ACT", PART 5 OF ARTICLE 13 OF TITLE 16, C.R.S., AND ANY CIGARETTES SO SEIZED AND FORFEITED SHALL BE DESTROYED AND NOT RESOLD.

(3) Injunction. THE ATTORNEY GENERAL, ON BEHALF OF THE DEPARTMENT, MAY SEEK AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF SECTION 39-28-303 (3) OR 39-28-305 (1) OR (4) BY A STAMPING AGENT AND TO COMPEL THE STAMPING AGENT TO COMPLY WITH THOSE STATUTORY PROVISIONS.

(4) Unlawful sale and distribution. IT IS UNLAWFUL FOR A PERSON TO SELL, DISTRIBUTE, 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 39-28-303 (3). A VIOLATION OF THIS SECTION IS A CLASS 2 MISDEMEANOR.

(5) Colorado consumer protection act. A PERSON WHO VIOLATES SECTION 39-28-303 (3) ENGAGES IN AN UNFAIR AND DECEPTIVE TRADE PRACTICE IN VIOLATION OF SECTION 6-1-105, C.R.S.

(6) Disgorgement of profits for violations of this part 3. IF A COURT DETERMINES THAT A PERSON HAS VIOLATED THIS PART 3, THE COURT SHALL ORDER ANY PROFITS, GAIN, GROSS RECEIPTS, OR OTHER BENEFIT FROM THE VIOLATION TO BE DISGORGED AND PAID TO THE STATE TREASURER FOR DEPOSIT INTO THE TOBACCO CONTROL SPECIAL FUND, WHICH IS HEREBY CREATED. UNLESS OTHERWISE EXPRESSLY PROVIDED, THE REMEDIES OR PENALTIES PROVIDED BY THIS PART 3 ARE CUMULATIVE TO EACH OTHER AND TO THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS OF THIS STATE.

39-28-307. Miscellaneous provisions. (1) Notice and review of determination. A DETERMINATION OF THE DEPARTMENT TO NOT LIST OR TO REMOVE FROM THE DIRECTORY A BRAND FAMILY OR TOBACCO PRODUCT MANUFACTURER

SHALL BE SUBJECT TO REVIEW IN THE MANNER PRESCRIBED BY THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S.

(2) **Applicants for licenses.** NO STAMPING AGENT FOR A LICENSE SHALL BE ISSUED A LICENSE OR GRANTED A RENEWAL OF A LICENSE UNLESS THE STAMPING AGENT HAS CERTIFIED IN WRITING, UNDER PENALTY OF PERJURY, THAT THE STAMPING AGENT HAS IN THE PAST AND WILL CONTINUE TO COMPLY FULLY WITH THIS PART 3. NO APPLICANT FOR A LICENSE SHALL BE ISSUED A LICENSE UNLESS THE APPLICANT HAS CERTIFIED IN WRITING, UNDER PENALTY OF PERJURY, THAT THE STAMPING AGENT WILL FULLY COMPLY WITH THIS SECTION.

(3) **Dates.** FOR THE YEAR 2003, IF THE EFFECTIVE DATE OF THIS PART 3 IS LATER THAN MARCH 16, 2003, THE FIRST REPORT OF STAMPING AGENTS REQUIRED BY SECTION 39-28-305 (1) SHALL BE DUE THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS PART 3, THE CERTIFICATIONS BY A TOBACCO PRODUCT MANUFACTURER DESCRIBED IN SECTION 39-28-303 (1) SHALL BE DUE FORTY-FIVE DAYS AFTER THE EFFECTIVE DATE OF THIS PART 3, AND THE DIRECTORY DESCRIBED IN SECTION 39-28-303 (2) SHALL BE PUBLISHED OR MADE AVAILABLE WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS PART 3.

(4) **Promulgation of rules.** THE DEPARTMENT MAY PROMULGATE RULES NECESSARY TO EFFECT THE PURPOSES OF THIS STATUTE. THE DEPARTMENT SHALL PROMULGATE SUCH RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(5) **Recovery of costs and fees by attorney general.** IN ANY ACTION BROUGHT BY THE STATE TO ENFORCE THIS PART 3, THE STATE SHALL BE ENTITLED TO RECOVER THE COSTS OF INVESTIGATION, EXPERT WITNESS FEES, COSTS OF THE ACTION, AND REASONABLE ATTORNEY FEES.

(6) **Construction and severability.** IF A COURT OF COMPETENT JURISDICTION FINDS THAT THE PROVISIONS OF THIS PART 3 AND OF THE TOBACCO ESCROW FUNDS ACT CONFLICT AND CANNOT BE HARMONIZED, THEN THE PROVISIONS OF THE TOBACCO ESCROW FUNDS ACT SHALL CONTROL. IF ANY PROVISION OF THIS PART 3 CAUSES THE TOBACCO ESCROW FUNDS ACT TO NO LONGER CONSTITUTE A QUALIFYING OR MODEL STATUTE, AS THOSE TERMS ARE DEFINED IN THE MASTER SETTLEMENT AGREEMENT, THEN THAT PORTION OF THIS PART 3 SHALL NOT BE VALID. IF ANY PROVISION OF THIS PART 3 IS FOR ANY REASON HELD TO BE INVALID, UNLAWFUL, OR UNCONSTITUTIONAL, THE DECISION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THIS PART 3 OR ANY PART THEREOF.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 14, 2003