

House Bill 1621

By: Representatives Powell of the 23<sup>rd</sup>, Hudson of the 156<sup>th</sup>, Murphy of the 18<sup>th</sup> and Skipper of the 137<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to cigar  
2 and cigarette taxes, so as to provide for additional requirements with respect to affixing tax  
3 stamps on cigarettes; to provide for procedures, conditions, and limitations; to provide for  
4 powers, duties, and authority of the Attorney General and the state revenue commissioner;  
5 to provide for civil and criminal penalties; to provide for related matters; to provide an  
6 effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to cigar and  
10 cigarette taxes, is amended by adding a new Code section immediately following Code  
11 Section 48-11-23.1, to be designated Code Section 48-11-23.2, to read as follows:

12 "48-11-23.2.

13 (a) No person may affix, or cause to be affixed, any tax stamp to a package of cigarettes  
14 unless the brand family of such cigarettes, and the tobacco manufacturer that makes or sells  
15 such cigarettes, are included on the list described in subsection (b) of this Code section.

16 (b)(1) Not later than May 15, 2002, the Attorney General shall develop a list, to be  
17 posted on the website of the Department of Law, which list shall include:

18 (A) All tobacco product manufacturers that are participating manufacturers as defined  
19 in paragraph (1) of Code Section 10-13-3;

20 (B) All tobacco product manufacturers that the Attorney General has determined have  
21 made all escrow payments required by subparagraph (A) of paragraph (2) of Code  
22 Section 10-13-3; and

23 (C) All brand families identified by such manufacturers under subsection (c) of this  
24 Code section.

25 (2) The Attorney General shall update the list as necessary.

1 (c) In order for a tobacco product manufacturer and its brand families to be included on  
2 the list described in subsection (b) of this Code section, the manufacturer must submit to  
3 the Attorney General a list of all brand families that are to be counted in calculating the  
4 manufacturer's annual payments under the Master Settlement Agreement or its escrow  
5 payments under subparagraph (A) of paragraph (2) of Code Section 10-13-3, whichever  
6 is applicable to the manufacturer. A participating manufacturer shall list its brand families  
7 in the unit volume and shares determined pursuant to sections II(z) and (mm) of Exhibit E  
8 of the Master Settlement Agreement. A tobacco product manufacturer may update the list  
9 to reflect changes.

10 (d) Before excluding or removing a tobacco product manufacturer and its brand families  
11 from the list described in subsection (b) of this Code section based on a determination that  
12 the manufacturer has not made all escrow payments required by subparagraph (A) of  
13 paragraph (2) of Code Section 10-13-3, the Attorney General shall notify the manufacturer  
14 of his or her determination. Upon receiving such notice from the Attorney General, the  
15 manufacturer may challenge the Attorney General's determination as erroneous, and seek  
16 relief from the determination, by bringing an action in the superior court of the county in  
17 which the Attorney General's office maintains its headquarters or where a party resides,  
18 or as otherwise provided by law to challenge the Attorney General's determination. The  
19 bringing of such an action shall operate to stay the Attorney General's determination if the  
20 manufacturer has paid into escrow, pending the resolution of the action, the full amount of  
21 any deficiency in the escrow payments that the Attorney General has determined the  
22 tobacco product manufacturer was required to have made under subparagraph (A) of  
23 paragraph (2) of Code Section 10-13-3.

24 (e) In addition to or in lieu of any other civil or criminal penalty provided by law, the  
25 commissioner, upon a finding that a distributor has violated subsection (a) of this Code  
26 section, may revoke or suspend the license or licenses of the distributor pursuant to the  
27 procedures set forth in Code Section 48-11-6 and impose on the distributor a civil penalty  
28 in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes  
29 involved or \$5,000.00.

30 (f) Any cigarettes that are stamped in violation of subsection (a) of this Code section shall  
31 be deemed contraband and are subject to seizure and forfeiture as provided in Code Section  
32 48-11-9, and all such cigarettes seized and forfeited shall be destroyed. Such cigarettes  
33 shall be deemed contraband whether the violation of subsection (a) of this Code section is  
34 knowing or otherwise.

35 (g)(1) The commissioner may require distributors to submit such information as is  
36 necessary to enable the Attorney General to determine whether a tobacco product

1 manufacturer has made the escrow payments required by subparagraph (A) of  
2 paragraph (2) of Code Section 10-13-3, if applicable to the manufacturer.

3 (2) The Attorney General may require tobacco product manufacturers to submit such  
4 information as the Attorney General may determine is necessary to enable the Attorney  
5 General to determine whether a manufacturer has made the escrow payments required by  
6 subparagraph (A) of paragraph (2) of Code Section 10-13-3, if applicable to the  
7 manufacturer.

8 (h) To promote compliance with subparagraph (A) of paragraph (2) of Code  
9 Section 10-13-3, the Attorney General shall require each tobacco product manufacturer  
10 subject to the requirements of such subparagraph:

11 (1) To make the escrow payments required by such subparagraph in quarterly  
12 installments during the year in which the sales covered by such payments are made;

13 (2) To appoint a registered agent for service of process in the state and identify such  
14 registered agent to the Attorney General; and

15 (3) To certify, under penalty of perjury, that all escrow payments required by such  
16 subparagraph have been made by all tobacco product manufacturers that previously  
17 owned or sold any brand families identified under subsection (c) of this Code section or  
18 brand styles included within such brand families.

19 (i) Any tobacco product manufacturer that falsely represents to any person:

20 (1) Any information specified in subsection (c) of this Code section;

21 (2) That it is a participating manufacturer as defined in paragraph (1) of Code  
22 Section 10-13-3;

23 (3) That it or any other person has made all escrow payments required by  
24 subparagraph (A) of paragraph (2) of Code Section 10-13-3, if applicable to the  
25 manufacturer; or

26 (4) That it has made any installment payments or appointed the registered agent required  
27 by subsection (h) of this Code section, if applicable to the manufacturer

28 shall be deemed guilty of a misdemeanor for each such false representation.

29 (j) The commissioner and the Attorney General may enter into a written agreement  
30 authorizing the exchange of information reasonably necessary to the enforcement and  
31 administration of this Code section."

## 32 SECTION 2.

33 This Act shall become effective upon its approval by the Governor or upon its becoming law  
34 without such approval.

1

**SECTION 3.**

2 All laws and parts of laws in conflict with this Act are repealed.