



Rep. Angelo Saviano

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1 AMENDMENT TO HOUSE BILL 2926

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2926 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Nonparticipating Cigarette Manufacturer Assessment Act.

6 Section 5. Required information; assessment imposed; other  
7 provisions.

8 (a) Before commencing sales of cigarettes in this State, a  
9 nonparticipating manufacturer shall provide to the Department  
10 the information described in subsection (c) and shall pay the  
11 equity assessment as provided in subsections (d) and (e).

12 (b) A nonparticipating manufacturer selling cigarettes in  
13 this State on the effective date of this Act shall provide to  
14 the Department the information described in subsection (c) and  
15 pay the equity assessment as provided in subsections (d) and  
16 (e) within 30 days after the effective date of this Act. If a

1 nonparticipating manufacturer is not selling cigarettes in  
2 this State on the effective date of this Act, then, before  
3 selling cigarettes in this State, the nonparticipating  
4 manufacturer shall pay the equity assessment imposed under  
5 subsections (d) and (e) for all cigarettes that are anticipated  
6 to be sold in the current calendar year as described in  
7 subsection (e).

8 (c) A nonparticipating manufacturer shall provide to the  
9 Department on a form prescribed by the Department the following  
10 information:

11 (1) the complete name, address, and telephone number of  
12 the nonparticipating manufacturer;

13 (2) the date that the nonparticipating manufacturer  
14 intends to begin or began selling cigarettes in this State;

15 (3) the brand names of the cigarettes the  
16 nonparticipating manufacturer will sell or is selling in  
17 this State;

18 (4) a statement of the nonparticipating manufacturer's  
19 intention to comply with its escrow obligation under this  
20 Act, and the obligations in this Act;

21 (5) the name, address, and telephone number of the  
22 resident agent of the nonparticipating manufacturer; and

23 (6) the name, address, telephone number, and signature  
24 of an officer of the nonparticipating manufacturer  
25 attesting to all of the information described in this  
26 subsection.

1           (d) An equity assessment in the amount of 17.5 mills per  
2 cigarette is imposed upon all cigarettes sold by a  
3 nonparticipating manufacturer in this State. The purpose of the  
4 equity assessment is to fund enforcement and administration  
5 this Act. The equity assessment is in addition to all other  
6 fees, assessments, and taxes levied by law. The equity  
7 assessment shall be collected by the Department from each  
8 nonparticipating manufacturer selling cigarettes in this  
9 State. The equity assessment shall be collected and reconciled  
10 by April 15 of each year for cigarettes sold in the previous  
11 calendar year. The Department shall credit a nonparticipating  
12 manufacturer with any prepayment made by the nonparticipating  
13 manufacturer pursuant to subsection (e) for that calendar year.

14           (e) Except as provided in subsection (b), a  
15 nonparticipating manufacturer selling cigarettes in this State  
16 shall prepay the equity assessment imposed in subsection (d)  
17 not later than March 1 for all cigarettes that are anticipated  
18 to be sold in the current calendar year. The prepayment amount  
19 shall be determined by multiplying 17.5 mills times the number  
20 of cigarettes that the Department reasonably determines that  
21 the nonparticipating manufacturer will sell in this State in  
22 the current calendar year or \$10,000, whichever is more. The  
23 Department may require a nonparticipating manufacturer to  
24 provide any information reasonably necessary to determine the  
25 equity assessment prepayment amount. Not later than February 15  
26 of each year, the Department shall notify the nonparticipating

1 manufacturer of the amount of the prepayment due for the  
2 current year. The Department shall increase the equity  
3 assessment prepayment amount during the year if the increase is  
4 justified by the nonparticipating manufacturer's actual sales  
5 of cigarettes.

6 (f) A stamping agent shall not affix to any package of  
7 cigarettes or shipping container of roll-your-own tobacco of a  
8 nonparticipating manufacturer the stamp required under this  
9 Act unless the nonparticipating manufacturer is listed on the  
10 Department website as provided in subsection (i) or after  
11 receiving notice that the nonparticipating manufacturer has  
12 not prepaid or paid in full the equity assessment imposed under  
13 this Act. A stamping agent that violates this subsection is  
14 subject to the penalties described in subsection (e). If a  
15 stamping agent intentionally and knowingly violates this  
16 subsection, the Department may seize or confiscate any  
17 cigarettes in the stamping agent's possession that were stamped  
18 in violation of this subsection.

19 (g) A nonparticipating manufacturer that does not provide  
20 the information required under subsection (c) or pay the equity  
21 assessment required by this Act shall not make a sale of  
22 cigarettes in this State to any person for sale, distribution,  
23 or consumption in this State.

24 (h) A person shall not purchase, acquire, possess, or sell  
25 cigarettes acquired from or manufactured by a nonparticipating  
26 manufacturer that has not provided the information required

1 under subsection (c) or made the payment of the equity  
2 assessment required by this Act.

3 (i) The Department shall maintain and regularly update a  
4 list of nonparticipating manufacturers that have complied with  
5 the requirements of this Act. The Department shall publish the  
6 list on its website and provide a copy of the list to a person  
7 upon request.

8 (j) Ninety days after the Department posts on its website  
9 and provides wholesalers and unclassified acquirers notice  
10 that a nonparticipating manufacturer is in violation of  
11 subsection (a) or (b), the Department may seize or confiscate  
12 from any person any cigarettes in that person's possession that  
13 were acquired from or manufactured by that nonparticipating  
14 manufacturer.

15 (k) The Department may impose on any person a civil fine  
16 not to exceed \$1,000 for each violation of this Act. The civil  
17 fine is in addition to all other fines or penalties imposed by  
18 law.

19 (l) A nonparticipating manufacturer shall appoint and  
20 continually engage a resident agent for service of process.  
21 That service shall constitute legal and valid service of  
22 process on the nonparticipating manufacturer.

23 (m) For purposes of this Act, a nonparticipating  
24 manufacturer that intends to sell or is selling a brand of  
25 cigarettes in or into this State is presumed to be the same  
26 manufacturer that previously sold that same brand in or into

1 the State, unless the nonparticipating manufacturer can prove  
2 that the 2 manufacturers are not affiliated. A nonparticipating  
3 manufacturer shall not be authorized to sell in or into this  
4 State a cigarette brand that was previously sold in or into  
5 this State by another nonparticipating manufacturer if that  
6 other nonparticipating manufacturer did not escrow the entire  
7 amount due or pay the equity assessment due under this Act.

8 (n) The Department shall conduct an audit or review of  
9 nonparticipating manufacturers to ensure compliance with this  
10 Act.

11 (o) As used in this Act:

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

15 (1) any roll of tobacco wrapped in paper or any  
16 substance not containing tobacco;

17 (2) tobacco, in any form, that is functional in the  
18 product that, because of its appearance, the type of  
19 tobacco used in the filler, or its packaging and labeling,  
20 is likely to be offered to or purchased by consumers as a  
21 "cigarette"; or

22 (3) any roll or tobacco wrapped in any substance  
23 containing tobacco that, because of its appearance, the  
24 type of tobacco used in the filler, or its packaging and  
25 labeling, is likely to be offered to or purchased by  
26 consumers as a "cigarette".

1 The term "cigarette" also includes roll-your-own tobacco,  
2 which is any tobacco that, because of its appearance, the type  
3 of tobacco used in the filler, or its packaging and labeling,  
4 is likely to be offered to or purchased by consumers for making  
5 or rolling cigarettes, and 0.09 ounces of roll-your-own tobacco  
6 is equal to one cigarette.

7 "Department" means the Department of Revenue.

8 "Nonparticipating manufacturer" means a manufacturer of  
9 cigarettes that is not a participating manufacturer under the  
10 Tobacco Master Settlement Agreement. Nonparticipating  
11 manufacturer also includes the first purchaser of cigarettes  
12 manufactured outside the United States for resale in the United  
13 States.

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law.".