WEST VIRGINIA CODE: §16-9D-4A

§16-9D-4a. Listing of nonparticipating manufacturers in the West Virginia Tobacco Directory; bonding requirement for nonparticipating manufacturers newly qualified or posing an elevated risk for noncompliance.

(a) Notwithstanding any other provision of law to the contrary, if a newly qualified nonparticipating manufacturer is to be listed in the directory described in subsection (b), section three of this article, or if the Attorney General reasonably determines that a nonparticipating manufacturer who has filed a certification pursuant to section three of this article poses an elevated risk for noncompliance with its obligations under this article or article nine-b of this chapter, neither the nonparticipating manufacturer nor any of its brand families may be included in the directory unless and until the nonparticipating manufacturer has posted a bond in accordance with this section.

(b) The bond shall be posted by corporate surety located within the United States in an amount equal to the greater of $25,000 or the amount of escrow the manufacturer, in either its current or predecessor form, was required to deposit as a result of its sales in the previous calendar year in West Virginia. The bond shall be written in favor of the State of West Virginia and shall be conditioned on the performance by the nonparticipating manufacturer of all of its duties and obligations under this article and article nine-b of this chapter during the year in which the certification is filed and the next succeeding calendar year. Duplicate originals of the bond shall be provided to the State Tax Division and the Attorney General.

(c) A nonparticipating manufacturer may be considered to pose an elevated risk for noncompliance with this section if:

(1) The nonparticipating manufacturer or any affiliate thereof has underpaid an escrow obligation with respect to any state that is a signatory to the Master Settlement Agreement at any time during the calendar year or within the three preceding calendar years unless:

(A) The manufacturer did not make underpayment knowingly or recklessly and the manufacturer promptly cured the underpayment within one hundred eighty days' notice of it; or

(B) The underpayment or lack of payment is the subject of a good-faith dispute as documented to the satisfaction of the Attorney General and the underpayment is cured within one hundred eighty days of entry of a final order establishing the amount of the required escrow payment;

(2) Any state that is a signatory to the Master Settlement Agreement has removed the manufacturer or its brands or brand families or an affiliate or any of the affiliate's brands or brand families from the directory for noncompliance with the state law at any time during

WV Legislature

the calendar year or within the three preceding calendar years; or

(3) Any state that is a signatory to the Master Settlement Agreement has litigation pending against, or an unsatisfied judgment against, the manufacturer or any affiliate thereof for escrow or for penalties, costs, or attorney fees related to noncompliance with state escrow laws.

(d) As used in this section, "newly qualified nonparticipating manufacturer" means a nonparticipating manufacturer that has not previously been listed in the directory in the three preceding calendar years. The manufacturer may be required to post a bond in accordance with this section for the first three years of their listing, or for such longer time as the Attorney General may require, if the manufacturer has been determined to pose an elevated risk for noncompliance. Any other nonparticipating manufacturer that has been determined to pose an elevated risk for noncompliance shall be required to post a bond in accordance with this section for three years, and shall be required to post a bond for such further period of time as the Attorney General may require, in accordance with this section, if the nonparticipating manufacturer still poses an elevated risk at the end of the three-year period.

(e) The posted bond shall be forfeited to the West Virginia General Revenue Fund in the event that the manufacturer fails to comply with its with its obligations under this article or article nine-b of this chapter. The amount of the forfeiture shall be equal to the delinquent escrow payments due at the time of forfeiture plus any penalties assessed against the manufacturer based on its failure to fulfill its responsibilities under this article and article nine-b of this chapter.

WV Legislature