

## HOUSE BILL NO. HB0225

Regulation of tobacco products.

Sponsored by: Representative(s) Parady and Osborn and  
Senator(s) Coe

A BILL

for

1 AN ACT relating to the sale of tobacco products; providing  
2 for the regulation of licensed tobacco wholesalers as  
3 specified; specifying duties of the department of revenue  
4 and the attorney general; establishing licensing and  
5 certification requirements and a directory; authorizing  
6 seizure and destruction of tobacco products; authorizing  
7 attorney fees and costs; providing penalties; providing  
8 definitions; granting rulemaking authority; and providing  
9 for an effective date.

10

11 *Be It Enacted by the Legislature of the State of Wyoming:*

12

13 **Section 1.** W.S. 9-4-1205 through 9-4-1210 are created  
14 to read:

15

16 **9-4-1205. Certifications; directory; tax stamps.**

1

2 (a) Every tobacco product manufacturer whose  
3 cigarettes are sold in this state, whether directly or  
4 through a distributor, retailer or similar intermediary,  
5 shall annually execute and deliver on a form prescribed by  
6 the attorney general a certification to the department and  
7 the attorney general no later than April 30 of each year,  
8 certifying under penalty of false swearing that, as of the  
9 date of the certification, the tobacco manufacturer either  
10 is a participating manufacturer or is otherwise in full  
11 compliance with this act.

12

13 (b) A participating manufacturer shall include a  
14 complete list of its brand family in its certification  
15 under this section. The participating manufacturer shall  
16 update its list thirty (30) days prior to any addition to,  
17 or modification of, its brand family by executing and  
18 delivering a supplemental certification to the department  
19 and the attorney general.

20

21 (c) In the case of a nonparticipating manufacturer:

22

23 (i) The certification shall include a complete  
24 list of its brand family:

1

2 (A) Separately listing its brand family of  
3 cigarettes and the number of units sold for each brand  
4 family that were sold in the state during the preceding  
5 calendar year;

6

7 (B) That have been sold in the state at any  
8 time during the current calendar year;

9

10 (C) Indicating by an asterisk, any brand  
11 family sold in the state during the preceding calendar year  
12 that is no longer being sold in the state as of the date of  
13 the certification; and

14

15 (D) Identifying by name and address any  
16 other manufacturer of the brand family in the preceding  
17 calendar year.

18

19 (ii) The certification shall further certify:

20

21 (A) That the nonparticipating manufacturer  
22 is registered to do business in the state or has appointed  
23 a resident agent in the state for service of process and

1 has provided notice with respect to the appointment of an  
2 agent as required by W.S. 9-4-1206(b);

3

4 (B) That the nonparticipating manufacturer  
5 has established and continues to maintain a qualified  
6 escrow fund and has executed a qualified escrow agreement  
7 that has been reviewed and approved by the attorney general  
8 and that governs the qualified escrow account;

9

10 (C) That the nonparticipating manufacturer  
11 is in full compliance with this act and any regulations  
12 promulgated thereto;

13

14 (D) The name, address and telephone number  
15 of the financial institution where the nonparticipating  
16 manufacturer has established the qualified escrow fund  
17 required under W.S. 9-4-1202(a)(ii), the account number of  
18 the qualified escrow fund and subaccount number for the  
19 state, the amount the nonparticipating manufacturer placed  
20 in the fund for cigarettes sold in the state during the  
21 preceding calendar year, the date and amount of each  
22 deposit and evidence or verification as may be deemed  
23 necessary by the attorney general to confirm the deposit  
24 and the amount and date of any withdrawal or transfer of

1 funds the nonparticipating manufacturer made at any time  
2 from the fund or from any other qualified escrow fund into  
3 which it ever made escrow payments pursuant to W.S.  
4 9-4-1202(b).

5

6 (d) A tobacco product manufacturer shall not include  
7 a brand family in its certification unless:

8

9 (i) In the case of a participating manufacturer,  
10 the participating manufacturer affirms that the brand  
11 family is to be deemed to be its cigarettes for the purpose  
12 of calculating payments under the master settlement  
13 agreement for the relevant year, in the volume and shares  
14 determined pursuant to the master settlement agreement; or

15

16 (ii) In the case of a nonparticipating  
17 manufacturer, the nonparticipating manufacturer affirms  
18 that the brand family is to be deemed to be its cigarettes  
19 for purposes of this act.

20

21 (e) Nothing in this section shall be construed as  
22 limiting or otherwise affecting the state's right to  
23 maintain that a brand family constitutes cigarettes of a  
24 different tobacco product manufacturer for purposes of

1 calculating payments under the master settlement agreement  
2 or for purposes of this act.

3

4 (f) The tobacco product manufacturer shall maintain  
5 all invoices and documentation of sales and other  
6 information relied upon for the certifications required  
7 under this section for a period of five (5) years, unless  
8 otherwise required by law to maintain the information for a  
9 longer period of time.

10

11 (g) The attorney general shall develop and make  
12 available for public inspection a directory listing all  
13 tobacco product manufacturers that have provided current  
14 and accurate certifications conforming to the requirements  
15 of this section and all brand families that are listed in  
16 the certifications, except as follows:

17

18 (i) The attorney general shall not include or  
19 retain in the directory the name of the brand family of any  
20 nonparticipating manufacturer who fails to provide the  
21 required certification or whose certification the attorney  
22 general determines is not in compliance with subsection (c)  
23 of this section and W.S. 9-4-1206, unless the attorney

1 general has determined that the violation has been cured to  
2 his satisfaction;

3

4 (ii) Neither a tobacco product manufacturer nor  
5 a brand family shall be included or retained in the  
6 directory if the attorney general concludes that:

7

8 (A) In the case of a nonparticipating  
9 manufacturer, all escrow payments required pursuant to W.S.  
10 9-4-1202 for any period for any brand family, whether or  
11 not listed by the nonparticipating manufacturer, have been  
12 fully paid into a qualified escrow fund governed by a  
13 qualified escrow agreement that has been approved by the  
14 attorney general; or

15

16 (B) All outstanding final judgments,  
17 including interest thereon, for violations of this act have  
18 not been fully satisfied for the brand family and the  
19 manufacturer.

20

21 (h) The attorney general shall update the directory  
22 required under subsection (g) of this section as necessary  
23 to correct mistakes and to add or remove a tobacco product  
24 manufacturer or brand family to keep the directory in

1 conformity with the requirements of this act. A  
2 determination by the attorney general to remove from the  
3 directory, or not to list on the directory, a tobacco  
4 product manufacturer or brand family shall be subject to  
5 review as provided by the Wyoming Administrative Procedure  
6 Act.

7

8 (j) Every licensed wholesaler shall provide and  
9 update as necessary a current address to the attorney  
10 general for the purpose of receiving any notifications that  
11 may be required under this act.

12

13 (k) No person shall affix a stamp to a package or  
14 other container of cigarettes of a tobacco product  
15 manufacturer or brand family not included in the directory  
16 required under subsection (g) of this section, or sell,  
17 offer for sale or possess for sale in this state,  
18 cigarettes of a tobacco product manufacturer or brand  
19 family not included in the directory.

20

21 **9-4-1206. Agent for service of process.**

22

23 (a) Any nonresident or foreign nonparticipating  
24 manufacturer who has not registered to do business in the



1 state as a foreign corporation or business entity shall, as  
2 a condition precedent to having its brand family listed or  
3 retained in the directory required under W.S. 9-4-1205(g),  
4 appoint and continually engage without interruption the  
5 services of an agent in this state to act as agent for  
6 service of process on whom all process, and any action or  
7 proceeding against it concerning or arising out of the  
8 enforcement of this act, may be served in any manner  
9 authorized by law. The service shall constitute legal and  
10 valid service of process on the nonparticipating  
11 manufacturer. The nonparticipating manufacturer shall  
12 provide the name, address, phone number and proof of  
13 appointment and availability of the agent to the  
14 satisfaction of the attorney general.

15

16 (b) The nonparticipating manufacturer shall provide  
17 notice to the attorney general thirty (30) calendar days  
18 prior to the termination of the authority of an agent  
19 appointed under this section and shall further provide  
20 proof to the satisfaction of the attorney general of the  
21 appointment of a new agent no less than five (5) calendar  
22 days prior to the termination of an existing agent  
23 appointment. In the event an agent terminates an agency  
24 appointment, the nonparticipating manufacturer shall notify

1 the attorney general of the termination within five (5)  
2 calendar days and shall include proof to the satisfaction  
3 of the attorney general of the appointment of a new agent.

4

5 **9-4-1207. Reporting of information; escrow**  
6 **installments.**

7

8 (a) No later than twenty (20) days after the end of a  
9 calendar quarter, and more frequently if directed by the  
10 attorney general, each licensed wholesaler shall submit  
11 information the attorney general requires to facilitate  
12 compliance with this section, including, but not limited  
13 to, a list by brand family of the total number of  
14 cigarettes or in the case of roll your own cigarettes, the  
15 equivalent stick count for which the licensed wholesaler  
16 affixed stamps during the previous calendar quarter or  
17 otherwise paid the tax due for the cigarettes. The  
18 licensed wholesaler shall maintain and make available to  
19 the attorney general all invoices and documentation of  
20 sales of all nonparticipating manufacturer cigarettes and  
21 any other information relied upon in reporting to the  
22 attorney general for a period of five (5) years.

23

1           (b) The department is authorized to disclose to the  
2 attorney general any information received under this act  
3 and requested by the attorney general for purposes of  
4 determining compliance with and enforcing the provisions of  
5 this act. The director of the department and the attorney  
6 general shall share the information received under this act  
7 and may share the information with other federal, state or  
8 local agencies only for the purposes of enforcement of this  
9 act or corresponding laws of other states.

10  
11           (c) The attorney general may require at any time from  
12 the nonparticipating manufacturer, proof from the financial  
13 institution in which the manufacturer has established a  
14 qualified escrow fund for the purpose of compliance with  
15 this act of the amount of money in the fund being held on  
16 behalf of the state, the dates of deposits and listing the  
17 amounts of all withdrawals from the account and the dates  
18 of the withdrawals.

19  
20           (d) In addition to the information required to be  
21 submitted pursuant to subsection (a) of this section, the  
22 attorney general may require a licensed wholesaler or  
23 tobacco product manufacturer to submit any additional  
24 information including, but not limited to, samples of the

1 packaging or labeling of each family brand as is necessary  
2 to enable the attorney general to determine whether a  
3 tobacco product manufacturer is in compliance with this  
4 act.

5  
6 (e) To promote compliance with this act, the attorney  
7 general may promulgate rules and regulations requiring a  
8 tobacco product manufacturer subject to the requirements of  
9 W.S. 9-4-1205(c) to make the escrow deposits required in  
10 installments during the year in which the sales covered by  
11 the deposits are made. The attorney general may require  
12 production of information sufficient to enable the attorney  
13 general to determine the adequacy of the amount of the  
14 installment deposit.

15

16 **9-4-1208. Penalties and other remedies.**

17

18 (a) In addition to, or in lieu of, any other civil or  
19 criminal remedy provided by law, upon a determination that  
20 any person has violated subsection W.S. 9-4-1205(k), the  
21 department may revoke or suspend the license of any  
22 licensed wholesaler in the manner provided by W.S.  
23 39-18-108(c)(v). Each stamp affixed and each offer to sell  
24 cigarettes in violation of W.S. 9-4-1205(k) shall

1 constitute a separate violation. For each violation under  
2 W.S. 9-4-1205(k), the department may also impose a civil  
3 penalty in an amount not to exceed the greater of five  
4 hundred percent (500%) of the retail value of the  
5 cigarettes sold, or five thousand dollars (\$5,000.00) upon  
6 a determination of a violation of W.S. 9-4-1205(k).

7

8 (b) Any cigarettes that have been sold, offered for  
9 sale or possessed for sale in this state, or imported for  
10 personal consumption in this state in violation of W.S.  
11 9-4-1205(k) shall be:

12

13 (i) Deemed contraband under W.S.  
14 39-18-108(c)(i);

15

16 (ii) Subject to seizure and forfeiture as  
17 provided in W.S. 39-18-108(c)(i); and

18

19 (iii) Destroyed.

20

21 (c) The attorney general may seek an injunction to  
22 restrain a threatened or actual violation of W.S.  
23 9-4-1205(k) or 9-4-1207(a) or (d) by a licensed wholesaler

1 and to compel the licensed wholesaler to comply with those  
2 provisions.

3

4 (d) No person shall sell or distribute cigarettes or  
5 acquire, hold, own, possess, transport, import or cause to  
6 be imported cigarettes that the person knows or should know  
7 are intended for distribution or sale in this state in  
8 violation of W.S. 9-4-1205(k). Any person who violates  
9 this section is guilty of a misdemeanor punishable by a  
10 fine of not more than one hundred dollars (\$100.00),  
11 imprisonment for not more than six (6) months, or both.

12

13 (e) Any person who violates W.S. 9-4-1205(k) engages  
14 in an unfair and deceptive trade practice in violation of  
15 W.S. 40-12-105(a)(i).

16

17 (f) In any action brought by the state to enforce  
18 this act, the state may recover the costs of investigation,  
19 expert witness fees, costs of the action and reasonable  
20 attorney fees.

21

22 (g) If a court determines that a person has violated  
23 any provision of this act, the court shall order any  
24 profits, gain, gross receipts or other benefit from the

1 violation to be surrendered and paid to the Wyoming tobacco  
2 settlement trust fund established by W.S. 9-4-1203. Unless  
3 otherwise expressly provided, the remedies or penalties  
4 provided by this act are cumulative to each other and to  
5 the remedies or penalties available under all other laws of  
6 this state.

7

8 **9-4-1209. Rules and regulations.**

9

10 The department and the attorney general may promulgate  
11 rules and regulations necessary to effect the purposes of  
12 this act.

13

14 **9-4-1210. Definitions.**

15

16 (a) As used in this act:

17

18 (i) "Brand family" means all styles of  
19 cigarettes sold under the same trademark and differentiated  
20 by means of additional modifiers or descriptors, including,  
21 but not limited to, "menthol," "lights," "kings" and "100s"  
22 and includes any brand name, alone or in conjunction with  
23 any other word, trademark, logo, symbol, motto, selling  
24 message, recognizable pattern of colors or any other

1 indicia of product identification identical, similar to or  
2 identifiable with a previously known brand of cigarettes;

3

4 (ii) "Cigarette" means any product that contains  
5 nicotine, is intended to be burned or heated under ordinary  
6 conditions of use, and consists of or contains:

7

8 (A) Any roll of tobacco wrapped in paper or  
9 in any substance not containing tobacco;

10

11 (B) Tobacco, in any form, that is  
12 functional in the product, which, because of its  
13 appearance, the type of tobacco used in the filler, or its  
14 packaging and labeling, is likely to be offered to, or  
15 purchased by, consumers as a cigarette; or

16

17 (C) Any roll of tobacco wrapped in any  
18 substance containing tobacco which, because of its  
19 appearance, the type of tobacco used in the filler, or its  
20 packaging and labeling, is likely to be offered to, or  
21 purchased by, consumers as a cigarette described in  
22 subparagraph (A) of this paragraph. The term "cigarette"  
23 includes "roll-your-own" meaning any tobacco which, because  
24 of its appearance, type, packaging, or labeling is suitable



1 for use and likely to be offered to, or purchased by,  
2 consumers as tobacco for making cigarettes. For purposes of  
3 "roll your own" cigarettes, nine one-hundredths (.09)  
4 ounces of "roll-your-own" tobacco shall constitute one (1)  
5 individual cigarette.

6

7 (iii) "Department" means the Wyoming department  
8 of revenue;

9

10 (iv) "Licensed wholesaler" means a person  
11 authorized to affix tax stamps to packages or other  
12 containers or cigarettes under W.S. 39-18-102(a) or any  
13 person who is required to pay the cigarette tax imposed  
14 under W.S. 39-18-103;

15

16 (v) "Master settlement agreement" means the  
17 settlement agreement, and related documents, entered into  
18 on November 23, 1998 by the state and leading United States  
19 tobacco product manufacturers;

20

21 (vi) "Nonparticipating manufacturer" means any  
22 tobacco product manufacturer who is not a participating  
23 manufacturer;

24

1           (vii) "Participating manufacturer" means as  
2 defined in section II(jj) of the master settlement  
3 agreement;

4  
5           (viii) "Qualified escrow fund" means an escrow  
6 arrangement with a federally or state chartered financial  
7 institution having no affiliation with any tobacco product  
8 manufacturer and having assets of at least one billion  
9 dollars (\$1,000,000,000.00) where the arrangement requires  
10 that the financial institution hold the escrowed funds'  
11 principal for the benefit of releasing parties and  
12 prohibits the tobacco product manufacturer placing the  
13 funds into escrow from using, accessing or directing the  
14 use of the funds' principal except as consistent with W.S.  
15 9-4-1202(b);

16  
17           (ix) "Tobacco product manufacturer" means, but  
18 shall not include an affiliate of a tobacco product  
19 manufacturer unless the affiliate itself falls within any  
20 of subparagraphs (A) through (C) of this paragraph, an  
21 entity that after the date of enactment of this act  
22 directly and not exclusively through any affiliate:

23

1                   (A) Manufactures cigarettes anywhere that  
2 the manufacturer intends to be sold in the United States,  
3 including cigarettes intended to be sold in the United  
4 States through an importer, (except where the importer is  
5 an original participating manufacturer, as that term is  
6 defined in the master settlement agreement, who will be  
7 responsible for the payments under the master settlement  
8 agreement with respect to the cigarettes as a result of the  
9 provisions of subsection II(mm) of the master settlement  
10 agreement and who pays the taxes specified in subsection  
11 II(z) of the master settlement agreement, and provided that  
12 the manufacturer of the cigarettes does not market or  
13 advertise the cigarettes in the United States);

14

15                   (B) Is the first purchaser anywhere for  
16 resale in the United States of cigarettes manufactured  
17 anywhere that the manufacturer does not intend to be sold  
18 in the United States; or

19

20                   (C) Becomes a successor of an entity  
21 described in subparagraph (A) or (B) of this paragraph.

22

23                   (x) "Units sold" means the number of individual  
24 cigarettes sold in the state by the applicable tobacco

1 product manufacturer, whether directly or through a  
2 distributor, retailer or similar intermediary or  
3 intermediaries, during the year in question, as measured by  
4 excise taxes collected by the state on packs, or "roll-  
5 your-own" tobacco containers, bearing the excise tax stamp  
6 of the state. The department of revenue shall promulgate  
7 regulations as are necessary to ascertain the amount of  
8 state excise tax paid on the cigarettes of such tobacco  
9 product manufacturer for each year;

10

11 (xi) "This act" means W.S. 9-4-1205 through  
12 9-4-1210.

13

14 **Section 2.** W.S. 39-18-106(a) is amended to read:

15

16 **39-18-106. Licensing; permits.**

17

18 (a) Every wholesaler who sells or offers to sell  
19 cigarettes, cigars, snuff or other tobacco products in this  
20 state must have a license to do so issued by the  
21 department. No license or renewal of a license shall be  
22 granted under this section unless the wholesaler states in  
23 writing, under penalty for false swearing, that he shall  
24 comply fully with W.S. 9-4-1201 through 9-4-1209. The

1 license fee is ten dollars (\$10.00) per year or fraction  
2 thereof and is valid through June 30 in each year. The  
3 license will be granted only to wholesalers who own or  
4 operate the place from which sales are made and additional  
5 licenses must be obtained for each separate location. The  
6 licenses are transferable pursuant to rules and regulations  
7 promulgated by the department.

8

9

**Section 3.**

10

11 (a) For the calendar year 2003:

12

13 (i) The first report of a licensed wholesaler  
14 required by W.S. 9-4-1207(a), as created in section 1 of  
15 this act, shall be due no later than thirty (30) days after  
16 the effective date of this act;

17

18 (ii) The certifications by tobacco product  
19 manufacturers required by W.S. 9-4-1205(a), as created in  
20 section 1 of this act, shall be due no later than forty-  
21 five (45) days after the effective date of this act; and

22

23 (iii) The directory required under W.S.  
24 9-4-1205(g), as created in section 1 of this act, shall be

1 made available no later than ninety (90) days after the  
2 effective date of this act.

3

4       **Section 4.** To the extent the provisions of W.S.  
5 9-4-1205 through 9-4-1209, as created by section 1 of this  
6 act, and the provisions of W.S. 9-4-1201 through 9-4-1204  
7 conflict, the provisions of W.S. 9-4-1201 through 9-4-1204  
8 shall control. If any provision created by section 1 of  
9 this act causes W.S. 9-4-1201 through 9-4-1204 to fail as a  
10 qualifying or model statute, as those terms are defined in  
11 the master settlement agreement entered into on November  
12 23, 1998, by the state and leading United States tobacco  
13 product manufacturers, then that portion of this act shall  
14 not be valid.

15

16       **Section 5.** This act is effective immediately upon  
17 completion of all acts necessary for a bill to become law  
18 as provided by Article 4, Section 8 of the Wyoming  
19 Constitution.

20

21

(END)