

CHAPTER 110
SENATE BILL No. 154

AN ACT concerning tobacco; relating to the enforcement of the laws regarding the sale of cigarettes; amending K.S.A. 50-6a04 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in this act:

(a) “Act” means the provisions of K.S.A. 50-6a01 through 50-6a06, and amendments thereto, and the provisions of sections 1 through 15, and amendments thereto.

(b) “Brand family” means all styles of cigarettes sold under the same trademark 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, similar to or identifiable with a previously known brand of cigarettes.

(c) “Cigarette” has the same meaning given that term in subsection (d) of K.S.A. 50-6a02, and amendments thereto.

(d) “Director” means the director of taxation.

(e) “Master settlement agreement” has the same meaning given that term in subsection (e) of K.S.A. 50-6a02, and amendments thereto.

(f) “Non-participating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.

(g) “Participating manufacturer” has the meaning given that term in subsection (i)(1) of K.S.A. 50-6a02, and amendments thereto.

(h) “Qualified escrow fund” has the same meaning given that term in subsection (f) of K.S.A. 50-6a02, and amendments thereto.

(i) “Resident agent” means a domestic corporation, a domestic limited partnership, a domestic limited liability company or a domestic business trust or a foreign corporation, a foreign limited partnership, a foreign limited liability company or a foreign business trust authorized to transact business in this state, and which is generally open during regular business hours to accept service of process on behalf of a non-participating manufacturer.

(j) “Retail dealer” has the same meaning given that term in subsection (q) of K.S.A. 79-3301, and amendments thereto.

(k) “Stamping agent” means a person who is authorized to affix tax indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and amendments thereto, or any person who is required to pay the tax on the privilege of selling or dealing in roll-your-own tobacco products pursuant to K.S.A. 79-3371, and amendments thereto.

(l) “Tax indicia” has the same meaning given that term in subsection (u) of K.S.A. 79-3301, and amendments thereto.

(m) “Tobacco product manufacturer” has the same meaning given that term in subsection (i) of K.S.A. 50-6a02, and amendments thereto.

(n) “Units sold” has the same meaning given that term in subsection (j) of K.S.A. 50-6a02, and amendments thereto.

(o) “Vending machine operator” has the same meaning given that term in subsection (y) of K.S.A. 79-3301, and amendments thereto.

New Sec. 2. (a) Any non-participating manufacturer that has not registered with the secretary of state to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this act may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the non-participating manufacturer. The non-participating manufacturer shall provide to the attorney general the name, address, phone number, proof of the appointment and availability of such resident agent, and such information shall be provided to the satisfaction of the attorney general.

(b) (1) A non-participating manufacturer may substitute its resident agent for another by notifying, in writing sent via certified or registered mail, the attorney general of such termination of the authority of the

current agent and providing proof to the satisfaction of the attorney general of the appointment of a new agent. Such substitution shall not become effective until 30 days after receipt of such notification by the attorney general.

(2) A resident agent of a non-participating manufacturer that wishes to resign shall notify the attorney general, in writing via certified or registered mail, and provide to the attorney general the name and address of the successor agent. There shall be attached to the notification a statement of each affected non-participating manufacturer ratifying such change of resident agent. Upon receipt of such notification by the attorney general, the successor resident agent shall become the resident agent of such non-participating manufacturers that have ratified and approved the substitution.

(3) (A) A resident agent of a non-participating manufacturer may resign without appointing a successor by notifying, in writing sent via certified or registered mail, the attorney general. Such resignation shall not become effective until 60 days after receipt of such notification by the attorney general. There shall be attached to the notification an affidavit by the resident agent, if an individual, or by the authorized officer, if a corporation or other business entity, attesting that at least 30 days prior to the expiration of the 60 day period, notice was sent via certified or registered mail to the designated contact of the non-participating manufacturer for which such resident agent was acting that such agent was resigning its position.

(B) After receipt of the notice of resignation of its resident agent, the non-participating manufacturer for which such resident agent was acting shall obtain and designate a new resident agent to take the place of the resigning resident agent. If such non-participating manufacturer fails to obtain and designate a new resident agent and provide notice thereof, in writing via certified or registered mail, to the attorney general prior to the expiration of the 60-day period provided in subparagraph (A), such non-participating manufacturer shall be removed from the directory.

(4) If a resident agent of a non-participating manufacturer dies, the non-participating manufacturer shall have 30 days after the death of such resident agent to appoint and notify, in writing via certified or registered mail, the attorney general of the non-participating manufacturer's new resident agent. Service upon the non-participating manufacturer after the death of such agent but prior to the appointment of a new agent shall be had upon the secretary of state. Failure by the non-participating manufacturer to appoint a new resident agent, and provide proof of such appointment to the satisfaction of the attorney general prior to the expiration of the 30-day period shall result in removal from the directory.

(5) After the resignation of the resident agent becomes effective as provided in subparagraph (3)(A), or after the death of such resident agent as provided in paragraph (4), and if no new resident agent is obtained and notification is provided in the time and manner required in this section, then service of process against the non-participating manufacturer for which the previous resident agent had been acting shall thereafter be made upon the secretary of state in the manner prescribed by K.S.A. 60-304, and amendments thereto.

(c) A non-participating manufacturer shall provide irrevocable written consent that actions brought under this act may be commenced against it in the district court of the third judicial district, Shawnee county, Kansas, by service of process on the appointed service of process agent designated pursuant to this section.

(d) A resident agent may change the resident agent's address when appointed to accept service of process on behalf of a non-participating manufacturer for which such agent is a resident agent, to another address in this state by mailing a letter, via certified or registered mail, to the attorney general. The letter shall be on company letterhead and executed by the resident agent. The letter shall contain the following:

(1) The names of all non-participating manufacturers represented by the resident agent;

(2) the address at which the resident agent has maintained the resident agent's office for each manufacturer;

(3) a certification of the new address to which the resident agent's address will be changed to on a given day; and

(4) a certification at which the resident agent will thereafter maintain the resident agent's address for each of the non-participating manufac-

turers recited in the letter.

Upon the filing of the letter with the attorney general and thereafter, or until further change of address, as authorized by law, the office address of the resident agent recited in the letter shall be located at the new address of the resident agent as provided in the letter.

New Sec. 3. (a) (1) No later than 10 calendar days after the end of each calendar month, and more frequently if so directed by the attorney general or director, each stamping agent authorized to affix tax indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and amendments thereto, shall submit such information as the attorney general or director requires. No later than 20 calendar days after the end of each calendar month, and more frequently if so directed by the attorney general or director, each stamping agent who is required to pay the tax on the privilege of selling or dealing in roll-your-own tobacco products pursuant to K.S.A. 79-3371, and amendments thereto, shall submit such information as the attorney general or director requires.

(2) Invoices and documentation of sales of all non-participating manufacturer cigarettes, and any other information relied upon in reporting to the director shall, upon request, be made available to the director. Such invoices and documents shall be maintained for a period of at least three years.

(b) At any time, the attorney general may request from the non-participating manufacturer or the financial institution at which such manufacturer has established a qualified escrow fund for the purpose of compliance with subsection (b) of K.S.A. 50-6a03, and amendments thereto, proof of the amount of money in such fund, exclusive of interest, the amount and date of each deposit to such fund and the amount and date of each withdrawal from such fund.

(c) In addition to the information required to be submitted pursuant to subsections (a) and (b) and subsection (c) of K.S.A. 50-6a04, and amendments thereto, the attorney general or the director may require a stamping agent 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 attorney general to determine whether a tobacco product manufacturer is in compliance with this act.

(d) A stamping agent or non-participating manufacturer receiving a request pursuant to subsection (c) shall provide the requested information within 30 calendar days from receipt of the request.

New Sec. 4. (a) The director is authorized to disclose to the attorney general any information received under this act, as requested by the attorney general for purposes of determining compliance with or enforcing the provisions of this act. The director and attorney general shall share with each other information received under this act and the director and the attorney general may share such information with federal agencies, attorneys general of other states or directors of taxation or their equivalents of other states, for purposes of enforcement of this act, the corresponding federal laws or the corresponding laws of other states.

(b) Except as otherwise provided, any information provided to the attorney general or director for purposes of enforcement of this act may be shared between the attorney general and the director and shall not be disclosed publicly by the attorney general or the director except when necessary to facilitate compliance with and enforcement of this act.

(c) On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, the attorney general or the director may provide the name of any stamping agent who reports selling the tobacco product manufacturer's products.

(d) On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, a stamping agent shall provide to the requesting tobacco product manufacturer the total number of cigarettes, by brand family, which the stamping agent reported to the attorney general or director pursuant to section 3, and amendments thereto, provided that such information provided by the stamping agent to a tobacco product manufacturer shall be limited to the brand families of that manufacturer as listed in the directory established in subsection (b) of K.S.A. 50-6a04, and amendments thereto.

(e) Unless disclosure is authorized under this section, all information obtained by the director and disclosed to the attorney general or shared with federal agencies, attorneys general of other states or directors of

taxation or their equivalents of other states for purposes of enforcement of this act, the corresponding federal laws or the corresponding laws of other states, shall be confidential. The penalties provided under K.S.A. 75-5133, and amendments thereto, shall not apply when information is lawfully disclosed pursuant to this section.

New Sec. 5. (a) Notwithstanding any other provision of law, if a newly qualified non-participating manufacturer is to be listed in the directory, or if the attorney general reasonably determines that any non-participating manufacturer who has filed a certification pursuant to subsection (c) of K.S.A. 50-6a04, and amendments thereto, poses an elevated risk for noncompliance with this act neither such non-participating manufacturer nor any of its brand families shall be included or retained in the directory unless and until such non-participating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with subsection (c)(3)(I) of K.S.A. 50-6a04, and amendments thereto, has posted a bond in accordance with this section.

(b) The bond required by this section shall be posted by corporate surety located within the United States in an amount equal to the greater of \$50,000 or the amount of escrow the non-participating manufacturer in either its current or predecessor form was required to deposit for sales of cigarettes in this state during the previous calendar year. The bond shall be written in favor of the state of Kansas and shall be conditioned on the performance by the non-participating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with subsection (c)(3)(I) of K.S.A. 50-6a04, and amendments thereto, of all of its duties and obligations under this act during the year in which the certification is filed and the next succeeding calendar year.

(c) A non-participating manufacturer may be deemed to pose an elevated risk for noncompliance with this act if:

(1) The non-participating manufacturer, or any affiliate thereof, has underpaid an escrow obligation with respect to any other state or jurisdiction that is a party to the master settlement agreement at any time within the three calendar years prior to the date of submission or approval of the most recent certification, unless:

(A) The non-participating manufacturer did not make the underpayment knowingly or recklessly and the non-participating manufacturer promptly cured the underpayment within 180 calendar days of notice of the underpayment; 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 90 calendar days of entry of a final order establishing the amount of the required escrow payment;

(2) any state or jurisdiction that is party to the master settlement agreement has removed the non-participating manufacturer, or its brands or brand families, or an affiliate, or such affiliate's brands or brand families, from the state's directory for noncompliance with the corresponding laws of such other state or jurisdiction at any time within three calendar years prior to the date of submission or approval of the most recent certification; or

(3) any state or jurisdiction that is party to the master settlement agreement has pending litigation, or an unsatisfied judgment against the non-participating manufacturer, or any affiliate thereof, for unpaid escrow obligations, or associated penalties, costs or attorney fees.

(d) As used in this section, "newly qualified non-participating manufacturer" means a non-participating manufacturer that has not previously been listed in the directory. Such non-participating manufacturer may be required to post a bond in accordance with this section for the first five years of its listing, or longer, if they have been deemed to pose an elevated risk for noncompliance.

New Sec. 6. No wholesale dealer, as defined in K.S.A. 79-3301, and amendments thereto, or distributor, as defined in K.S.A. 79-3301, and amendments thereto, of cigarettes shall be issued a license or granted a renewal of a license by the Kansas department of revenue unless such wholesale dealer or distributor has provided to the director reasonable assurances, in writing and under penalty of perjury, that such person will comply fully with the stamping agent requirements in this act.

New Sec. 7. (a) In addition to or in lieu of any other civil or criminal

remedy provided by law, the director or the director's designee, upon a finding that a stamping agent has violated subsection (a) of K.S.A. 50-6a04, and amendments thereto, or any rules or regulations adopted pursuant to this act, may revoke or suspend the license of any licensee in the manner provided by K.S.A.79-3309, and amendments thereto. Each package of cigarettes to which tax indicia is affixed, is caused to be affixed or tax is paid thereupon, and each sale or offer to sell cigarettes in violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto, shall constitute a separate violation. The director may also impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000 upon a finding of violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto, or a violation of any rules or regulations adopted pursuant to this act. Such fine shall be imposed in the manner provided by K.S.A. 79-3391, and amendments thereto. Any fine collected pursuant to this subsection shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the cigarette and tobacco products regulation fund created pursuant to subsection (e) of K.S.A. 79-3391, and amendments thereto. The moneys credited to this fund shall be used for the purposes of enforcement of this act, or K.S.A. 79-3301 et seq., and amendments thereto.

(b) The attorney general or the attorney general's duly authorized designee shall, when requested by the director, assist the director in a hearing to suspend or revoke a stamping agent's license for a violation of this act.

New Sec. 8. (a) The following shall be deemed contraband under K.S.A. 79-3323, and amendments thereto:

(1) Any cigarettes that have been sold, offered for sale or possessed for sale in this state in violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto; and

(2) any cigarettes to which tax indicia has been affixed, was caused to be affixed or the tax paid thereupon as required by K.S.A. 79-3311 or 79-3371, and amendments thereto, in violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto.

(b) Any cigarettes constituting contraband may be seized by the attorney general or attorney general's authorized agent, the director or director's authorized agent or any law enforcement officer. All such cigarettes shall be subject to seizure, with or without process or warrant, and forfeiture, as provided herein and in K.S.A. 79-3324a, and amendments thereto, and shall be destroyed and not resold. Such cigarettes shall be deemed contraband whether the violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto, is knowing or otherwise.

(c) (1) Any stamping agent that distributes cigarettes in a state other than Kansas may store in its Kansas warehouse cigarettes made contraband pursuant to this section if such stamping agent has affixed the tax indicia of such other state to each package of cigarettes or can provide evidence that it has paid the required tax thereupon.

(2) Cigarettes made contraband pursuant to this section, without being subject to seizure or forfeiture, may be transported in, into or through the state either:

(A) On a commercial carrier with a proper bill of lading with an out-of-state destination;

(B) when the tax indicia of another state is affixed to each package of cigarettes; or

(C) on a commercial carrier with a proper bill of lading to a licensed Kansas stamping agent who affixes tax indicia to cigarettes for sale in a state other than Kansas if the packing slip accompanying the shipment indicates the shipment is for sale in a state other than Kansas and identifies the state in which the shipment is to be sold. The time of delivery of the shipments shall be indicated on the bill of lading of the common carrier when delivery is completed. The receiving Kansas stamping agent must, within 24 hours of receiving the delivery, affix or caused to be affixed to each package of cigarettes the stamp of the state in which they are to be sold.

New Sec. 9. The attorney general, on behalf of the director, may seek an injunction to restrain a threatened or actual violation of this act by a stamping agent and to compel the stamping agent to comply with this act.

New Sec. 10. (a) It shall be unlawful for a person to sell or distribute

cigarettes, or 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 this state in violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto. A violation of this subsection shall be a class B misdemeanor.

(b) It shall be unlawful for a non-participating manufacturer, directly or indirectly, to falsely represent to any person in Kansas:

- (1) Any information about a brand family listed on the directory;
- (2) that it is a participating manufacturer;
- (3) that it has made all required escrow payments; or
- (4) that it has satisfied any other requirements imposed pursuant to this act.

A violation of this subsection is a class A nonperson misdemeanor.

(c) The attorney general shall have concurrent authority with any county or district attorney to prosecute any violation of this section.

New Sec. 11. (a) Any violation of this act involving the sale or attempted sale of cigarettes by a stamping agent to a retail dealer, vending machine operator or consumer, or by a retail dealer or vending machine operator to a consumer, shall constitute an unlawful and deceptive trade practice as provided in K.S.A. 50-626, and amendments thereto, and shall be subject to the penalties provided for in K.S.A. 50-623 et seq., and amendments thereto, in lieu of or in addition to any penalties provided in this act.

(b) For purposes of this section, a stamping agent shall be deemed a "supplier" for purposes of a consumer transaction, as defined in subsection (c) of K.S.A. 50-624, and amendments thereto, regardless of whether the stamping agent sells to a retail dealer or consumer.

(c) If a court determines that a person has violated this act, the court shall order any profits, gains, gross receipts or other benefit from the violation be surrendered. Any profits, gains, gross receipts or other benefit surrendered from the violation shall be collected pursuant to this subsection and shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the cigarette and tobacco products regulation fund created pursuant to subsection (e) of K.S.A. 79-3391, and amendments thereto.

(d) Unless otherwise expressly provided, the remedies or penalties provided by this act are cumulative to each other and to the remedies or penalties under all other laws of this state.

New Sec. 12. In any action brought by the state to enforce the provisions of this act the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees. Recovery of such costs and fees shall be remitted to the state agency or agencies who initiated and brought such action.

New Sec. 13. In any action under K.S.A. 50-6a03, and amendments thereto, reports of the numbers of non-participating manufacturers' cigarettes submitted to the attorney general or director pursuant to subsection (a) of section 3, and amendments thereto, shall be admissible in evidence. These reports shall be presumed to accurately account for the number of cigarettes on which state taxes were paid during the time period by the stamping agent that submitted the report absent a contrary showing by the non-participating manufacturer or importer. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that such reports are incorrect or do not accurately reflect a non-participating manufacturer's sales in the state during the time period in question, and the presumption shall not apply in the event the state does so maintain.

New Sec. 14. Notwithstanding subsection (j) of K.S.A. 50-6a02, and amendments thereto, the attorney general may promulgate rules and regulations necessary to effect the purposes of this act for the regulation of tobacco product manufacturers. The director may promulgate rules and regulations necessary to effect the purposes of this act for the regulation of stamping agents, retail dealers and vending machine operators.

New Sec. 15. If a court of competent jurisdiction finds that the provisions of K.S.A. 50-6a01 through 50-6a03, and amendments thereto, conflict with and cannot be reconciled with any other provisions of this act, then such provisions of K.S.A. 50-6a01 thru 50-6a03, and amendments

thereto, shall control. If any provision of this act causes K.S.A. 50-6a01 through 50-6a03, and amendments thereto, to no longer constitute a qualifying or model statute as those terms are defined in the master settlement agreement, then that portion of this act shall not be valid. If any provision of this act is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this act or any part thereof.

Sec. 16. K.S.A. 50-6a04 is hereby amended to read as follows: 50-6a04. (a) ~~No person may affix, or cause to be affixed, tax stamps or meter impressions to individual packages of cigarettes or pay the required tax on roll-your-own tobacco in accordance with K.S.A. 79-3371, and amendments thereto, unless the tobacco product manufacturer that makes or sells such cigarettes or roll-your-own tobacco has:~~

- ~~— (1) Become a participating manufacturer; or~~
- ~~— (2) made all required escrow payments.~~

No person may:

(1) *Affix, or cause to be affixed, tax indicia to a package of cigarettes, or otherwise pay the tax due upon such cigarettes, of a tobacco product manufacturer brand family not included in the directory; or*

(2) *sell, offer, possess for sale or import for personal consumption in this state, cigarettes of a tobacco product manufacturer brand family not included in the directory.*

(b) (1) *Not later than July 1, ~~2002~~ 2009, the attorney general shall develop a list directory, to be posted on the attorney general's website, of all tobacco product manufacturers that have become participating manufacturers or made all required escrow payments. This list shall include the brand families identified by each such tobacco product manufacturer under subsection (c). The list shall be updated as necessary. A person may rely upon the attorney general's list in affixing or causing to be affixed stamps or meter impressions to individual packages of cigarettes or paying the tax on roll-your-own tobacco as required by K.S.A. 79-3371, and amendments thereto, of any brand family included on the list. Except as otherwise provided, the directory shall list all tobacco product manufacturers and brand families of such tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (c).*

(2) *The attorney general shall not include or retain in the directory any non-participating manufacturer, or non-participating manufacturer's brand family, that has failed to provide the required certification, or whose certification the attorney general determines is not in compliance with subsection (c), unless such failure or noncompliance has been cured to the satisfaction of the attorney general.*

(3) *In the case of a non-participating manufacturer, neither the tobacco product manufacturer nor a brand family shall be included or retained in the directory if the attorney general concludes:*

(A) *That an escrow payment required pursuant to K.S.A. 50-6a03, and amendments thereto, for any period for any brand family, whether or not listed by such non-participating manufacturer, has not been fully paid into a qualified escrow fund governed by an escrow agreement that has been approved by the attorney general;*

(B) *that an outstanding final judgment, including interest thereon, for a violation of K.S.A. 50-6a03, and amendments thereto, has not been fully satisfied for such tobacco product manufacturer; or*

(C) *that, within three calendar years prior to the date of submission or approval of the most recent certification, such tobacco product manufacturer has defaulted on escrow payments in any other state or jurisdiction that is a party to the master settlement agreement and the default has not been cured within 90 calendar days of such default.*

(4) *The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family so as to keep the directory in conformity with the requirements of this act.*

(5) *The attorney general shall promptly post in the directory and transmit by electronic mail to each stamping agent that has provided an electronic mail address, notice of removal from the directory of a tobacco product manufacturer or brand family.*

(6) *Unless otherwise provided by agreement between a stamping agent and a tobacco product manufacturer, the stamping agent shall be entitled to a refund from a tobacco product manufacturer for any money*

paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer in the possession of the stamping agent on the effective date of removal from the directory of that tobacco product manufacturer or brand family.

(7) Unless otherwise provided by agreement between a retail dealer or a vending machine operator and a tobacco product manufacturer, a retail dealer or a vending machine operator shall be entitled to a refund from a tobacco product manufacturer for any money paid by the retail dealer or vending machine operator to a stamping agent for any cigarettes of the tobacco product manufacturer still in the possession of the retail dealer or vending machine operator on the effective date of removal from the directory of that tobacco product manufacturer or brand family.

(c) In order to be included on the list developed by the attorney general under subsection (b), a tobacco product manufacturer shall (1) submit to the attorney general a list of brand families whose cigarettes are to be counted in calculating the participating manufacturer's annual payments under the master settlement agreement or required escrow payments whichever is applicable, (2) appoint a registered agent for service of process in the state and identify such registered agent to the attorney general, and (3) certify, under penalty of perjury, that all escrow payments have been made by all other tobacco product manufacturers that previously made or sold brand families identified under this subsection or brand style included within such brand families, except that, if the brand family or brand style was made or sold by the manufacturer before the effective date of this act, such manufacturer shall be required only to identify such predecessor manufacturer or manufacturers. A tobacco product manufacturer may update the list to reflect changes. (1) On or before April 30 of each year, every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a stamping agent or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the attorney general a certification to the attorney general certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is:

(A) A participating manufacturer; or

(B) in full compliance with K.S.A. 50-6a03, and amendments thereto, including payment of all quarterly installment payments as may be required by subsection (d).

(2) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list 30 calendar days prior to any addition to, or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(3) A non-participating manufacturer shall include in its certification:

(A) The number of units sold for each brand family sold in the state during the preceding calendar year;

(B) a list of all of its brand families sold in the state at any time during the current calendar year, including 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;

(C) the identity, by name and address, of any other tobacco product manufacturer who manufactured such brand families in the preceding or current calendar year;

(D) a declaration that such non-participating 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 2, and amendments thereto;

(E) a declaration that such non-participating manufacturer:

(i) Has established and continues to maintain a qualified escrow fund; and

(ii) has executed an escrow agreement that governs the qualified escrow fund and that such escrow agreement has been reviewed and approved by the attorney general;

(F) a declaration that such non-participating manufacturer consents to the jurisdiction of the district court of the third judicial district, Shawnee county, Kansas, for purposes of enforcing this act, or rules or regulations promulgated pursuant thereto, as required by subsection (c) of section 2, and amendments thereto;

(G) a declaration that such non-participating manufacturer is in full compliance with subsection (b) of K.S.A. 50-6a03, and amendments

thereto, and any rules or regulations promulgated pursuant to this act;

(H) (i) the name, address and telephone number of the financial institution where the non-participating manufacturer has established such qualified escrow fund required pursuant to subsection (b) of K.S.A. 50-6a03, and amendments thereto;

(ii) the account number of such qualified escrow fund and any sub-account number for the state of Kansas;

(iii) the amount such non-participating manufacturer placed in such qualified escrow fund for cigarettes sold in this state during the preceding calendar year, the date and amount of each such deposit and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and

(iv) the amount and date of any withdrawal or transfer of funds the non-participating manufacturer made at any time from such qualified escrow fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to subsection (b) of K.S.A. 50-6a03, and amendments thereto; and

(I) in the case of a non-participating manufacturer located outside of the United States, a declaration from each of its importers to the United States of any of its brand families to be sold in Kansas that such importer accepts joint and several liability with the non-participating manufacturer for:

(i) All escrow deposits due under subsection (b) of K.S.A. 50-6a03, and amendments thereto;

(ii) all penalties assessed under subsection (b) of K.S.A. 50-6a03, and amendments thereto; and

(iii) payment of all costs and attorney fees pursuant to any successful action under this act against said manufacturer.

Such declarations by importers of a non-participating manufacturer shall appoint for the declarant a resident agent for service of process in Kansas in accordance with section 2, and amendments thereto, and consent to jurisdiction in accordance with section 2, and amendments thereto.

(4) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, said participating manufacturer affirms that the brand family shall 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; or

(B) in the case of a non-participating manufacturer, said non-participating manufacturer affirms that the brand family shall be deemed to be its cigarettes for purposes of subsection (b) of K.S.A. 50-6a03, and amendments thereto.

Nothing in this paragraph 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 subsection (b) of K.S.A. 50-6a03, and amendments thereto.

(5) Invoices and documentation of sales and other such information relied upon for such certification shall be maintained by tobacco product manufacturers for a period of at least five years.

(d) ~~In addition to or in lieu of any other civil or criminal penalty provided by law, upon a finding that a licensee has violated subsection (a) or any rules and regulations adopted pursuant thereto, the director may revoke or suspend the license of any licensee in the manner provided by K.S.A. 79-3309, and amendments thereto. The director may also impose a civil fine in an amount not to exceed the greater of 500% of the retail value of the cigarettes or roll-your-own tobacco involved or \$5,000 upon a finding of a violation of subsection (a) or any rules and regulations adopted pursuant thereto. Such fine shall be imposed in the manner provided by K.S.A. 79-3301, and amendments thereto. The attorney general may require a tobacco product manufacturer subject to the requirements of subsection (c) to make the escrow deposits required by subsection (b) of K.S.A. 50-6a03, and amendments thereto, in quarterly installments during the calendar year in which the sales covered by such deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.~~

~~(c) Any cigarettes or roll-your-own tobacco that are stamped, to~~

which a meter impression is affixed or for which tax is paid as required by K.S.A. 79-3371, and amendments thereto, in violation of subsection (a) shall be deemed contraband under K.S.A. 79-3323, and amendments thereto, and shall be subject to seizure and forfeiture as provided therein and in K.S.A. 79-3324a, and amendments thereto. All such cigarettes and roll-your-own tobacco seized and forfeited shall be destroyed. Such cigarettes and roll-your-own tobacco shall be deemed contraband whether the violation of subsection (a) is knowing or otherwise.

~~— (f) (1) The director may require wholesale dealers and distributors to submit such information as is necessary to enable the attorney general to determine whether a nonparticipating manufacturer has made the required escrow payments.~~

~~— (2) The attorney general may require nonparticipating manufacturers to submit such information as the attorney general may determine is necessary to enable the attorney general to determine whether a nonparticipating manufacturer has made the required escrow payments.~~

~~— (g) The attorney general may require a nonparticipating manufacturer to make the required escrow payments in quarterly installments during the year in which the sales covered by such payments are made in order to be placed on the list developed by the attorney general under subsection (b).~~

~~— (h) (1) It shall be unlawful for a nonparticipating manufacturer, directly or indirectly, to falsely represent to any person in Kansas:~~

~~— (A) Any information about a brand family pursuant to the list submitted pursuant to subsection (b);~~

~~— (B) that it is a participating manufacturer;~~

~~— (C) that it has made all required escrow payments; or~~

~~— (D) that it has satisfied any other requirements imposed pursuant to this statute.~~

~~— (2) Violation of this section is a class A, nonperson misdemeanor.~~

~~— (i) The director and the attorney general may enter into a written agreement authorizing the exchange of information reasonably necessary to the enforcement and administration of this section.~~

~~— (j) As used in this section:~~

~~— (1) “Participating manufacturer” has the meaning ascribed thereto in subsection (a) of K.S.A. 50-6a03, and amendments thereto.~~

~~— (2) “Required escrow payments” means the amounts described in subsection (b)(1) of K.S.A. 50-6a03, and amendments thereto.~~

~~— (3) “Director” means the director of taxation.~~

Sec. 17. K.S.A. 50-6a04 is hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 20, 2009.
