

SENATE BILL No. 255

By Committee on Federal and State Affairs

2-19

1 AN ACT concerning sales of cigarettes and tobacco products; relating to
2 the directory and certification of tobacco product manufacturers;
3 relating to disclosure of information and criminal penalties therefor;
4 amending K.S.A. 50-6a02 and K.S.A. 2014 Supp. 50-6a04, 50-6a07,
5 50-6a10, 50-6a11, 50-6a16 and 75-5133 and repealing the existing
6 sections.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 50-6a02 is hereby amended to read as follows: 50-
10 6a02. As used in this act:

11 (a) "Adjusted for inflation" means increased in accordance with the
12 formula for inflation adjustment set forth in exhibit C to the master
13 settlement agreement.

14 (b) "Affiliate" means a person who directly or indirectly owns or
15 controls, is owned or controlled by, or is under common ownership or
16 control with, another person. Solely for purposes of this definition, the
17 terms "owns," "is owned" and "ownership" mean ownership of an equity
18 interest, or the equivalent thereof, of 10% or more, and the term "person"
19 means an individual, partnership, committee, association, corporation or
20 any other organization or group of persons.

21 (c) "Allocable share" means allocable share as that term is defined in
22 the master settlement agreement.

23 (d) "Cigarette" means any product that contains nicotine, is intended
24 to be burned or heated under ordinary conditions of use and consists of or
25 contains: (1) Any roll of tobacco wrapped in paper or in any substance not
26 containing tobacco; ~~or~~ (2) tobacco, in any form, that is functional in the
27 product, which, because of its appearance, the type of tobacco used in the
28 filler, or its packaging and labeling, is likely to be offered to, or purchased
29 by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any
30 substance containing tobacco which, because of its appearance, the type of
31 tobacco used in the filler, or its packaging and labeling, is likely to be
32 offered to, or purchased by, consumers as a cigarette described in ~~clause~~
33 ~~(1) of this subsection (d)(1)~~. The term "cigarette" includes "roll-your-own"
34 (i.e., any tobacco which, because of its appearance, type, packaging or
35 labeling is suitable for use and likely to be offered to, or purchased by,
36 consumers as tobacco for making cigarettes). For purposes of this

1 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall
2 constitute one individual "cigarette."

3 (e) "Master settlement agreement" means the settlement agreement
4 (and related documents) entered into on November 23, 1998, by the state
5 and leading United States tobacco product manufacturers.

6 (f) "Qualified escrow fund" means an escrow arrangement with a
7 federally or state chartered financial institution having no affiliation with
8 any tobacco product manufacturer and having assets of at least
9 \$1,000,000,000 where such arrangement requires that such financial
10 institution hold the escrowed funds' principal for the benefit of releasing
11 parties and prohibits the tobacco product manufacturer placing the funds'
12 into escrow from using, accessing or directing the use of the funds'
13 principal except as consistent with ~~subsection (b)(2) of K.S.A. 50-6a03(b)~~
14 *(2), and amendments thereto.*

15 (g) "Released claims" means released claims as that term is defined in
16 the master settlement agreement.

17 (h) "Releasing parties" means releasing parties as that term is defined
18 in the master settlement agreement.

19 (i) "Tobacco product manufacturer" means an entity that after the date
20 of enactment of this act directly (and not exclusively through any affiliate):

21 (1) Manufactures cigarettes anywhere that such manufacturer intends
22 to be sold in the United States, including cigarettes intended to be sold in
23 the United States through an importer (except where such importer is an
24 original participating manufacturer, as that term is defined in the master
25 settlement agreement, that will be responsible for the payments under the
26 master settlement agreement with respect to such cigarettes as a result of
27 the provisions of subsections II(mm) of the master settlement agreement
28 and that pays the taxes specified in subsection II(z) of the master
29 settlement agreement, and provided that the manufacturer of such
30 cigarettes does not market or advertise such cigarettes in the United
31 States);

32 (2) is the first purchaser anywhere for resale in the United States of
33 cigarettes manufactured anywhere that the manufacturer does not intend to
34 be sold in the United States; or

35 (3) becomes a successor of an entity described in paragraph (1) or (2).
36 The term "tobacco product manufacturer" shall not include an affiliate of a
37 tobacco product manufacturer unless such affiliate itself falls within any of
38 ~~parts (1)-(3) of subsection (i)(1) through (3) above.~~

39 (j) "Units sold" means, *with respect to a particular tobacco product*
40 *manufacturer for a particular year*, the number of individual cigarettes
41 sold in the state, *including, without limitation, any cigarettes sold on any*
42 *qualified tribal land within the state*, by the applicable tobacco product
43 manufacturer ~~(, whether directly or through a distributor, retailer or similar~~

1 intermediary or intermediaries), during the year in question, ~~as measured~~
2 ~~by excise taxes collected by the state on packs (or "roll-your-own" tobacco~~
3 ~~containers) bearing the excise tax stamp of the state for which the state has~~
4 ~~the authority under federal law to impose excise or a similar tax or to~~
5 ~~collect escrow deposits, regardless of whether such taxes were imposed or~~
6 ~~collected by the state.~~ The department of revenue and the attorney general
7 shall promulgate such rules and regulations as are necessary to ascertain
8 the ~~amount~~ number of state excise tax paid on the cigarettes units sold of
9 such tobacco product manufacturer for each year.

10 Sec. 2. K.S.A. 2014 Supp. 50-6a04 is hereby amended to read as
11 follows: 50-6a04. (a) No person may:

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

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

18 (b) (1) Not later than July 1, 2009, the attorney general shall develop
19 a directory, to be posted on the attorney general's website. Except as
20 otherwise provided, the directory shall list all tobacco product
21 manufacturers and brand families of such tobacco product manufacturers
22 that have provided current and accurate certifications conforming to the
23 requirements of subsection (c).

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

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

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

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

41 (C) that, within three calendar years prior to the date of submission or
42 approval of the most recent certification, such tobacco product
43 manufacturer has defaulted on escrow payments in any other state or

1 jurisdiction that is a party to the master settlement agreement and the
2 default has not been cured within 90 calendar days of such default.

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

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

11 (6) Unless otherwise provided by agreement between a stamping
12 agent and a tobacco product manufacturer, the stamping agent shall be
13 entitled to a refund from a tobacco product manufacturer for any money
14 paid by the stamping agent to the tobacco product manufacturer for any
15 cigarettes of the tobacco product manufacturer in the possession of the
16 stamping agent on the effective date of removal from the directory of that
17 tobacco product manufacturer or brand family.

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

26 (8) *The attorney general may remove from the state directory a*
27 *tobacco product manufacturer or brand family if the attorney general*
28 *concludes that:*

29 (A) (i) *The tobacco product manufacturer or any of the tobacco*
30 *product manufacturer's affiliates, sales entity affiliates, officers or*
31 *directors had pleaded guilty or nolo contendere to or been found guilty of*
32 *a felony crime relating to the sale or taxation of cigarettes or tobacco*
33 *products; or*

34 (ii) *the tobacco product manufacturer and the tobacco product*
35 *manufacturer's brand families have been removed from the directory of*
36 *another state based on acts or omissions that would, if done in this state,*
37 *serve as a basis for removal from the directory maintained by the attorney*
38 *general under this section, unless the manufacturer demonstrates that its*
39 *removal from the other state's directory was effected without due process.*

40 (B) (i) *A tobacco product manufacturer that is removed from the state*
41 *directory under this subsection (b) shall be eligible for relisting in the*
42 *directory described in this subsection (b) on the earlier of the date on*
43 *which the tobacco product manufacturer cures the violation or the date on*

1 *which the tobacco product manufacturer is reinstated to the directory in*
2 *the other state; or*

3 *(ii) in the case of a non-participating manufacturer deemed an*
4 *elevated risk pursuant to K.S.A. 50-6a09, and amendments thereto, the*
5 *attorney general may require such non-participating manufacturer to post*
6 *a bond in accordance with that section.*

7 (c) (1) On or before April 30 of each year, every tobacco product
8 manufacturer whose cigarettes are sold in this state, whether directly or
9 through a stamping agent or similar intermediary or intermediaries, shall
10 execute and deliver in the manner prescribed by the attorney general a
11 certification to the attorney general certifying under penalty of perjury
12 that, as of the date of such certification, such tobacco product
13 manufacturer either is:

14 (A) A participating manufacturer; or

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

18 (2) A participating manufacturer shall include in its certification a list
19 of its brand families. The participating manufacturer shall update such list
20 30 calendar days prior to any addition to, or modification of its brand
21 families by executing and delivering a supplemental certification to the
22 attorney general.

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

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

26 (B) a list of all of its brand families sold in the state at any time
27 during the current calendar year, including any brand family sold in the
28 state during the preceding calendar year that is no longer being sold in the
29 state as of the date of such certification;

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

33 (D) a declaration that such non-participating manufacturer is
34 registered to do business in the state, or has appointed a resident agent for
35 service of process, and provided notice thereof as required by K.S.A. 2014
36 Supp. 50-6a08, and amendments thereto;

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

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

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

43 (F) a declaration that such non-participating manufacturer consents to

1 the jurisdiction of the district court of the third judicial district, Shawnee
2 county, Kansas, for purposes of enforcing this act, or rules or regulations
3 promulgated pursuant thereto, as required by ~~subsection (e) of K.S.A.~~
4 2014 Supp. 50-6a08(c), and amendments thereto;

5 (G) a declaration that such non-participating manufacturer is in full
6 compliance with ~~subsection (b) of K.S.A. 50-6a03(b)~~, and amendments
7 thereto, and any rules or regulations promulgated pursuant to this act;

8 (H) (i) the name, address and telephone number of the financial
9 institution where the non-participating manufacturer has established such
10 qualified escrow fund required pursuant to ~~subsection (b) of K.S.A. 50-~~
11 6a03(b), and amendments thereto;

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

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

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

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

29 (i) All escrow deposits due under ~~subsection (b) of K.S.A. 50-~~
30 6a03(b), and amendments thereto;

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

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

35 Such declarations by importers of a non-participating manufacturer
36 shall appoint for the declarant a resident agent for service of process in
37 Kansas in accordance with K.S.A. 2014 Supp. 50-6a08, and amendments
38 thereto, and consent to jurisdiction in accordance with K.S.A. 2014 Supp.
39 50-6a08, and amendments thereto;

40 (J) *the identity of all stamping agents, wholesalers and distributors,*
41 *by name and address, to whom the non-participating manufacturer or its*
42 *importer sold cigarettes to or that the manufacturer or importer believes*
43 *or has reason to believe purchased or received any of the manufacturer's*

1 *cigarettes from another source during the preceding calendar year; and*
2 *those for which the manufacturer or its importer plan to sell to or believe*
3 *or has reason to believe will purchase or receive any of the manufacturer's*
4 *cigarettes from another source during the certifying calendar year; and*

5 *(K) a declaration that all sales or shipments made by the non-*
6 *participating manufacturer or its affiliates, including, but not limited to,*
7 *its importers and stamping agents provided for certification under this*
8 *section, within or into this state are made to a stamping agent, wholesaler,*
9 *distributor or retailer that is licensed in this state.*

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

12 (A) In the case of a participating manufacturer, said participating
13 manufacturer affirms that the brand family shall be deemed to be its
14 cigarettes for purposes of calculating its payments under the master
15 settlement agreement for the relevant year in the volume and shares
16 determined pursuant to the master settlement agreement; or

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

21 Nothing in this paragraph shall be construed as limiting or otherwise
22 affecting the state's right to maintain that a brand family constitutes
23 cigarettes of a different tobacco product manufacturer for purposes of
24 calculating payments under the master settlement agreement or ~~subsection~~
25 ~~(b) of~~ K.S.A. 50-6a03(b), and amendments thereto.

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

29 (6) *As a condition to being listed and having its brand families listed*
30 *in the directory, a tobacco product manufacturer shall also:*

31 (A) *Certify annually that such manufacturer or its importer holds a*
32 *valid permit under 26 U.S.C. § 5713 and provide a copy of such permit to*
33 *the attorney general;*

34 (B) *certify annually that it is in compliance with all reporting and*
35 *registration requirements of 15 U.S.C. § 375 et seq. and provide monthly*
36 *to the director and the attorney general, regardless of sales or shipments,*
37 *a copy of all reports required pursuant to 15 U.S.C. §§ 376 and 376a, to*
38 *be filed electronically in a manner prescribed by the director and attorney*
39 *general; and*

40 (C) *pay annually a \$500 directory fee to the attorney general which*
41 *shall be deposited in the tobacco master settlement agreement compliance*
42 *fund.*

43 (d) The attorney general may require a tobacco product manufacturer

1 subject to the requirements of subsection (c) to make the escrow deposits
 2 required by ~~subsection (b) of~~ K.S.A. 50-6a03(b), and amendments thereto,
 3 in quarterly installments during the calendar year in which the sales
 4 covered by such deposits are made. The attorney general may require
 5 production of information sufficient to enable the attorney general to
 6 determine the adequacy of the amount of the installment deposit.

7 Sec. 3. K.S.A. 2014 Supp. 50-6a07 is hereby amended to read as
 8 follows: 50-6a07. As used in this act:

9 (a) "Act" means the provisions of K.S.A. 50-6a01 through 50-6a06,
 10 and amendments thereto, and the provisions of K.S.A. 2014 Supp. 50-6a07
 11 through 50-6a21, and amendments thereto.

12 (b) "Brand family" means all styles of cigarettes sold under the same
 13 trademark and differentiated from one another by means of additional
 14 modifiers or descriptors, including, but not limited to, "menthol," "lights,"
 15 "kings," and "100s," and includes any brand name (alone or in conjunction
 16 with any other word), trademark, logo, symbol, motto, selling message,
 17 recognizable pattern of colors or any other indicia of product identification
 18 identical, similar to or identifiable with a previously known brand of
 19 cigarettes.

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

22 (d) "Director" means the director of taxation.

23 (e) *"Indian tribe" means any Indian tribe, band, nation or other*
 24 *organized group or community that is recognized as eligible for the*
 25 *special programs and services provided by the United States to Indians*
 26 *because of their status as Indians under the laws of the United States.*

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

29 ~~(f) (g)~~ "Non-participating manufacturer" means any tobacco product
 30 manufacturer that is not a participating manufacturer.

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

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

35 ~~(i) (j)~~ "Resident agent" means a domestic corporation, a domestic
 36 limited partnership, a domestic limited liability company or a domestic
 37 business trust or a foreign corporation, a foreign limited partnership, a
 38 foreign limited liability company or a foreign business trust authorized to
 39 transact business in this state, and which is generally open during regular
 40 business hours to accept service of process on behalf of a non-participating
 41 manufacturer.

42 ~~(j) (k)~~ "Retail dealer" has the same meaning given that term in
 43 ~~subsection (q) of~~ K.S.A. 79-3301(q), and amendments thereto.

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

6 ~~(j)~~ (m) "Tax indicia" has the same meaning given that term in
 7 subsection ~~(u)~~ of K.S.A. 79-3301(u), and amendments thereto.

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

10 (o) "Tribal land" means:

11 (1) *All land in this state within the limits of any Indian reservation*
 12 *under the jurisdiction of the United States, notwithstanding the issuance of*
 13 *any patent, including rights-of-way running through the reservation;*

14 (2) *all dependent Indian communities within the borders of this state;*
 15 *and*

16 (3) *all Indian allotments in this state, the Indian titles to which have*
 17 *not been extinguished, including rights-of-way running through such*
 18 *allotments.*

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

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

23 Sec. 4. K.S.A. 2014 Supp. 50-6a10 is hereby amended to read as
 24 follows: 50-6a10. (a) (1) No later than 10 calendar days after the end of
 25 each calendar month, and more frequently if so directed by the attorney
 26 general or director, each stamping agent authorized to affix tax indicia to
 27 packages of cigarettes pursuant to K.S.A. 79-3311, and amendments
 28 thereto, shall submit such information as the attorney general or director
 29 requires. No later than 20 calendar days after the end of each calendar
 30 month, and more frequently if so directed by the attorney general or
 31 director, each stamping agent who is required to pay the tax on the
 32 privilege of selling or dealing in roll-your-own tobacco products pursuant
 33 to K.S.A. 79-3371, and amendments thereto, shall submit such information
 34 as the attorney general or director requires.

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

40 (b) At any time, the attorney general may request from the non-
 41 participating manufacturer or the financial institution at which such
 42 manufacturer has established a qualified escrow fund for the purpose of
 43 compliance with subsection ~~(b)~~ of K.S.A. 50-6a03(b), and amendments

1 thereto, proof of the amount of money in such fund, exclusive of interest,
2 the amount and date of each deposit to such fund and the amount and date
3 of each withdrawal from such fund.

4 (c) In addition to the information required to be submitted pursuant to
5 subsections (a) and (b) and ~~subsection (c) of K.S.A. 50-6a04(c)~~, and
6 amendments thereto, the attorney general or the director may require a
7 stamping agent or tobacco product manufacturer to submit any additional
8 information including, but not limited to, samples of the packaging or
9 labeling of each brand family as is necessary to enable the attorney general
10 to determine whether a tobacco product manufacturer is in compliance
11 with this act.

12 (d) A stamping agent or non-participating manufacturer receiving a
13 request pursuant to ~~subsection (e) this section~~ shall provide the requested
14 information within 30 calendar days from receipt of the request.

15 Sec. 5. K.S.A. 2014 Supp. 50-6a11 is hereby amended to read as
16 follows: 50-6a11. (a) The director is authorized to disclose to the attorney
17 general any information received under this act, as requested by the
18 attorney general for purposes of determining compliance with or enforcing
19 the provisions of this act. The director and attorney general shall share
20 with each other information received under this act and the director and
21 the attorney general may share such information with federal agencies,
22 attorneys general of other states or directors of taxation or their equivalents
23 of other states, for purposes of enforcement of this act, the corresponding
24 federal laws or the corresponding laws of other states. *The director and*
25 *attorney general may share the information specified under this subsection*
26 *with any of the following:*

27 (1) *Federal, state or local agencies for the purposes of enforcement*
28 *of corresponding laws of other states.*

29 (2) *A court, arbitrator, data clearinghouse or similar entity for the*
30 *purpose of assessing compliance with or making calculations required by*
31 *the master settlement agreement or agreements regarding disputes under*
32 *the master settlement agreement, and with counsel for the parties or*
33 *expert witnesses in any such proceeding, if the information otherwise*
34 *remains confidential.*

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

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

1 (d) On a quarterly basis, and upon request made in writing by a
2 tobacco product manufacturer, a stamping agent shall provide to the
3 requesting tobacco product manufacturer the total number of cigarettes, by
4 brand family, which the stamping agent reported to the attorney general or
5 director pursuant to K.S.A. 2014 Supp. 50-6a10, and amendments thereto,
6 provided that such information provided by the stamping agent to a
7 tobacco product manufacturer shall be limited to the brand families of that
8 manufacturer as listed in the directory established in ~~subsection (b) of~~
9 K.S.A. 50-6a04(b), and amendments thereto.

10 (e) Unless disclosure is authorized under this section, all information
11 obtained by the director and disclosed to the attorney general or shared
12 with federal agencies, attorneys general of other states or directors of
13 taxation or their equivalents of other states for purposes of enforcement of
14 this act, the corresponding federal laws or the corresponding laws of other
15 states, shall be confidential. The penalties provided under K.S.A. 75-5133,
16 and amendments thereto, shall not apply when information is lawfully
17 disclosed pursuant to this section.

18 (f) *Any tobacco sales data provided to the director, attorney general*
19 *or data clearinghouse for the purpose of assessing compliance with or*
20 *making calculations required by the master settlement agreement or*
21 *related agreements, shall be confidential. The provisions of this subsection*
22 *shall expire on July 1, 2020, unless the legislature reviews this provision*
23 *pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2020.*

24 Sec. 6. K.S.A. 2014 Supp. 50-6a16 is hereby amended to read as
25 follows: 50-6a16. (a) It shall be unlawful for a person to sell or distribute
26 cigarettes, or acquire, hold, own, possess, transport, import or cause to be
27 imported cigarettes that the person knows or should know are intended for
28 distribution or sale in this state in violation of ~~subsection (a) of~~ K.S.A. 50-
29 6a04(a), and amendments thereto. ~~A violation of this subsection shall be a~~
30 ~~class B misdemeanor, and K.S.A. 50-6a13(a), and amendments thereto.~~

31 (1) *Upon a first conviction for a violation of subsection (a), a person*
32 *shall be guilty of a class A nonperson misdemeanor and sentenced to no*
33 *more than one year in confinement and fined not less than \$1,000, nor*
34 *more than \$2,500.*

35 (2) *On a second conviction for a violation of subsection (a), a person*
36 *shall be guilty of a severity level 9 nonperson felony and fined a sum of*
37 *not less than \$10,000, nor more than \$100,000, and sentenced according*
38 *to the provisions of K.S.A. 2014 Supp. 21-6804, and amendments thereto.*

39 (3) *On a third or subsequent conviction for a violation of subsection*
40 *(a), a person shall be guilty of a severity level 9 nonperson felony and*
41 *fined a sum of no less than \$50,000, nor more than \$100,000, and*
42 *sentenced according to the provisions of K.S.A. 2014 Supp. 21-6804, and*
43 *amendments thereto.*

1 (4) *The penalties provided hereunder are cumulative to the remedies*
2 *or penalties, including all civil penalties, under all other laws of this state.*

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

5 (1) Any information about a brand family listed on the directory;

6 (2) that it is a participating manufacturer;

7 (3) that it has made all required escrow payments; or

8 (4) that it has satisfied any other requirements imposed pursuant to
9 this act.

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

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

13 Sec. 7. K.S.A. 2014 Supp. 75-5133 is hereby amended to read as
14 follows: 75-5133. (a) Except as otherwise more specifically provided by
15 law, all information received by the secretary of revenue, the director of
16 taxation or the director of alcoholic beverage control from returns, reports,
17 license applications or registration documents made or filed under the
18 provisions of any law imposing any sales, use or other excise tax
19 administered by the secretary of revenue, the director of taxation, or the
20 director of alcoholic beverage control, or from any investigation conducted
21 under such provisions, shall be confidential, and it shall be unlawful for
22 any officer or employee of the department of revenue to divulge any such
23 information except in accordance with other provisions of law respecting
24 the enforcement and collection of such tax, in accordance with proper
25 judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

26 (b) The secretary of revenue or the secretary's designee may:

27 (1) Publish statistics, so classified as to prevent identification of
28 particular reports or returns and the items thereof;

29 (2) allow the inspection of returns by the attorney general or the
30 attorney general's designee;

31 (3) provide the post auditor access to all such excise tax reports or
32 returns in accordance with and subject to the provisions of ~~subsection (g)~~
33 ~~of~~ K.S.A. 46-1106(g), and amendments thereto;

34 (4) disclose taxpayer information from excise tax returns to persons
35 or entities contracting with the secretary of revenue where the secretary
36 has determined disclosure of such information is essential for completion
37 of the contract and has taken appropriate steps to preserve confidentiality;

38 (5) provide information from returns and reports filed under article 42
39 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto,
40 to county appraisers as is necessary to insure proper valuations of property.
41 Information from such returns and reports may also be exchanged with any
42 other state agency administering and collecting conservation or other taxes
43 and fees imposed on or measured by mineral production;

1 (6) provide, upon request by a city or county clerk or treasurer or
2 finance officer of any city or county receiving distributions from a local
3 excise tax, monthly reports identifying each retailer doing business in such
4 city or county or making taxable sales sourced to such city or county,
5 setting forth the tax liability and the amount of such tax remitted by each
6 retailer during the preceding month, and identifying each business location
7 maintained by the retailer and such retailer's sales or use tax registration or
8 account number;

9 (7) provide information from returns and applications for registration
10 filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-
11 3601, and amendments thereto, to a city or county treasurer or clerk or
12 finance officer to explain the basis of statistics contained in reports
13 provided by subsection (b)(6);

14 (8) disclose the following oil and gas production statistics received by
15 the department of revenue in accordance with K.S.A. 79-4216 et seq., and
16 amendments thereto: Volumes of production by well name, well number,
17 operator's name and identification number assigned by the state
18 corporation commission, lease name, leasehold property description,
19 county of production or zone of production, name of purchaser and
20 purchaser's tax identification number assigned by the department of
21 revenue, name of transporter, field code number or lease code, tax period,
22 exempt production volumes by well name or lease, or any combination of
23 this information;

24 (9) release or publish liquor brand registration information provided
25 by suppliers, farm wineries, microdistilleries and microbreweries in
26 accordance with the liquor control act. The information to be released is
27 limited to: Item number, universal numeric code, type status, product
28 description, alcohol percentage, selling units, unit size, unit of
29 measurement, supplier number, supplier name, distributor number and
30 distributor name;

31 (10) release or publish liquor license information provided by liquor
32 licensees, distributors, suppliers, farm wineries, microdistilleries and
33 microbreweries in accordance with the liquor control act. The information
34 to be released is limited to: County name, owner, business name, address,
35 license type, license number, license expiration date and the process agent
36 contact information;

37 (11) release or publish cigarette and tobacco license information
38 obtained from cigarette and tobacco licensees in accordance with the
39 Kansas cigarette and tobacco products act. The information to be released
40 is limited to: County name, owner, business name, address, license type
41 and license number;

42 (12) provide environmental surcharge or solvent fee, or both,
43 information from returns and applications for registration filed pursuant to

1 K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary
2 of health and environment or the secretary's designee for the sole purpose
3 of ensuring that retailers collect the environmental surcharge tax or solvent
4 fee, or both;

5 (13) provide water protection fee information from returns and
6 applications for registration filed pursuant to K.S.A. 82a-954, and
7 amendments thereto, to the secretary of the state board of agriculture or the
8 secretary's designee and the secretary of the Kansas water office or the
9 secretary's designee for the sole purpose of verifying revenues deposited to
10 the state water plan fund;

11 (14) provide to the secretary of commerce copies of applications for
12 project exemption certificates sought by any taxpayer under the enterprise
13 zone sales tax exemption pursuant to ~~subsection (ee) of~~ K.S.A. 79-
14 3606(cc), and amendments thereto;

15 (15) disclose information received pursuant to the Kansas cigarette
16 and tobacco act and subject to the confidentiality provisions of this act to
17 any criminal justice agency, as defined in ~~subsection (c) of~~ K.S.A. 22-
18 4701(c), and amendments thereto, or to any law enforcement officer, as
19 defined in K.S.A. 2014 Supp. 21-5111, and amendments thereto, on behalf
20 of a criminal justice agency, when requested in writing in conjunction with
21 a pending investigation;

22 (16) provide to retailers tax exemption information for the sole
23 purpose of verifying the authenticity of tax exemption numbers issued by
24 the department;

25 (17) provide information concerning remittance by sellers, as defined
26 in K.S.A. 2014 Supp. 12-5363, and amendments thereto, of prepaid
27 wireless 911 fees from returns to the local collection point administrator,
28 as defined in K.S.A. 2014 Supp. 12-5363, and amendments thereto, for
29 purposes of verifying seller compliance with collection and remittance of
30 such fees; ~~and~~

31 (18) release or publish charitable gaming information obtained in
32 bingo licensee and registration applications and renewals in accordance
33 with the bingo act, K.S.A. 79-4701 et seq., and amendments thereto. The
34 information to be released is limited to: The name, address, phone number,
35 license registration number and email address of the organization,
36 distributor or of premises; *and*

37 (19) *provide to the attorney general confidential information for*
38 *purposes of determining compliance with or enforcing K.S.A. 50-6a01 et*
39 *seq., and amendments thereto, the master settlement agreement referred to*
40 *therein and all agreements regarding disputes under the master settlement*
41 *agreement. The secretary and the attorney general may share the*
42 *information specified under this subsection with any of the following:*

43 (A) *Federal, state or local agencies for the purposes of enforcement*

1 *of corresponding laws of other states.*

2 *(B) A court, arbitrator, data clearinghouse or similar entity for the*
3 *purpose of assessing compliance with or making calculations required by*
4 *the master settlement agreement or agreements regarding disputes under*
5 *the master settlement agreement, and with counsel for the parties or*
6 *expert witnesses in any such proceeding, if the information otherwise*
7 *remains confidential.*

8 (c) Any person receiving any information under the provisions of
9 subsection (b) shall be subject to the confidentiality provisions of
10 subsection (a) and to the penalty provisions of subsection (d).

11 (d) Any violation of this section shall be a class A, nonperson
12 misdemeanor, and if the offender is an officer or employee of this state,
13 such officer or employee shall be dismissed from office. Reports of
14 violations of this paragraph shall be investigated by the attorney general.
15 The district attorney or county attorney and the attorney general shall have
16 authority to prosecute any violation of this section if the offender is a city
17 or county clerk or treasurer or finance officer of a city or county.

18 Sec. 8. K.S.A. 50-6a02 and K.S.A. 2014 Supp. 50-6a04, 50-6a07, 50-
19 6a10, 50-6a11, 50-6a16 and 75-5133 are hereby repealed.

20 Sec. 9. This act shall take effect and be in force from and after its
21 publication in the Kansas register.