

## HOUSE BILL No. 2451

By Committee on Taxation

3-24

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1 AN ACT concerning tobacco products; relating to the sale thereof;  
2 remitting certain payments from tobacco product manufacturers to the  
3 credit of the Kansas endowment for youth fund rather than deposit into  
4 escrow upon certification by the attorney general; amending K.S.A. 50-  
5 6a01 and 50-6a03 and K.S.A. 2020 Supp. 50-6a04 and 50-6a09 and  
6 repealing the existing sections.  
7

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

9 Section 1. K.S.A. 50-6a01 is hereby amended to read as follows: 50-  
10 6a01. (a) Cigarette smoking presents serious public health concerns to the  
11 state and to the citizens of the state. The surgeon general has determined  
12 that smoking causes lung cancer, heart disease and other serious diseases,  
13 and that there are hundreds of thousands of tobacco-related deaths in the  
14 United States each year. These diseases most often do not appear until  
15 many years after the person in question begins smoking.

16 (b) Cigarette smoking also presents serious financial concerns for the  
17 state. Under certain health-care programs, the state may have a legal  
18 obligation to provide medical assistance to eligible persons for health  
19 conditions associated with cigarette smoking, and those persons may have  
20 a legal entitlement to receive such medical assistance.

21 (c) Under these programs, the state pays millions of dollars each year  
22 to provide medical assistance for these persons for health conditions  
23 associated with cigarette smoking.

24 (d) It is the policy of the state that financial burdens imposed on the  
25 state by cigarette smoking be borne by tobacco product manufacturers  
26 rather than by the state to the extent that such manufacturers either  
27 determine to enter into a settlement with the state or are found culpable by  
28 the courts.

29 (e) On November 23, 1998, leading United States tobacco product  
30 manufacturers entered into a settlement agreement, entitled the "master  
31 settlement agreement," with the state. The master settlement agreement  
32 obligates these manufacturers, in return for a release of past, present and  
33 certain future claims against them as described therein, to pay substantial  
34 sums to the state-~~(, tied in part to their volume of sales)~~, to fund a national  
35 foundation devoted to the interests of public health; and to make  
36 substantial changes in their advertising and marketing practices and

1 corporate culture, with the intention of reducing underage smoking.

2 (f) It would be contrary to the policy of the state if tobacco product  
3 manufacturers who determine not to enter into such a settlement could use  
4 a resulting cost advantage to derive large, short-term profits in the years  
5 before liability may arise without ensuring that the state will have an  
6 eventual source of recovery from them if they are proven to have acted  
7 culpably. It is thus in the interest of the state to require that such  
8 manufacturers establish a reserve fund to guarantee a source of  
9 compensation and to prevent such manufacturers from deriving large,  
10 short-term profits and then becoming judgment-proof before liability may  
11 arise.

12 (g) *It is also consistent with the policy of the state to require tobacco*  
13 *product manufacturers that have not entered into such a settlement to pay*  
14 *directly to the state an amount that: (1) Prevents such manufacturers from*  
15 *deriving large, short-term profits and then becoming judgment-proof; (2)*  
16 *requires such manufacturers to internalize the healthcare costs imposed on*  
17 *the state by cigarette smoking; (3) increases the price of such*  
18 *manufacturers' cigarettes, thereby reducing smoking rates, particularly*  
19 *among youth, consistent with the state's policy of discouraging underage*  
20 *smoking; and (4) serves as partial compensation for the financial burdens*  
21 *imposed on the state by cigarette smoking.*

22 Sec. 2. K.S.A. 50-6a03 is hereby amended to read as follows: 50-  
23 6a03. Any tobacco product manufacturer selling cigarettes to consumers  
24 within the state—(, whether directly or through a distributor, retailer or  
25 similar intermediary or intermediaries), after ~~the effective date of this act~~  
26 *May 20, 1999*, shall do one of the following:

27 (a) Become a participating manufacturer—(, as that term is defined in  
28 section II(jj) of the master settlement agreement), and generally perform  
29 its financial obligations under the master settlement agreement; or

30 (b) (1) ~~place into a qualified escrow fund~~ by April 15 of the year  
31 following the year in question, *pay* the following amounts—(, as such  
32 amounts are adjusted for inflation):

33 (A) *For the following years, place into a qualified escrow fund:*

34 (i) 1999: \$.0094241 per unit sold ~~after the effective date of this act;~~

35 ~~(B) (ii) 2000: \$.0104712 per unit sold;~~

36 ~~(C) (iii) for each of 2001 and 2002: \$.0136125 per unit sold;~~

37 ~~(D) (iv) for each of 2003 through 2006: \$.0167539 per unit sold;~~

38 ~~(E) (v) for each of 2007 and each year thereafter through 2021:~~  
39 \$.0188482 per unit sold; *and*

40 (B) *for 2022 and each year thereafter; remit to the director \$.0188482*  
41 *per unit sold. The department of revenue and the attorney general shall*  
42 *promulgate rules and regulations as necessary to implement this*  
43 *subsection. The director shall remit all such amounts to the state treasurer*

1 *in accordance with the provisions of K.S.A. 75-4215, and amendments*  
 2 *thereto. Upon receipt of each such remittance, and upon certification by*  
 3 *the attorney general that the tobacco product manufacturer subject to the*  
 4 *provisions of this subsection (b)(1)(B) did not seek a credit or refund*  
 5 *within one year of the date of remittance to the director, the state treasurer*  
 6 *shall deposit the entire amount in the state treasury to the credit of the*  
 7 *Kansas endowment for youth fund.*

8 (2) (A) A tobacco product manufacturer that places funds into escrow  
 9 pursuant to ~~paragraph (1) of~~ subsection (b)(1)(A) shall receive the interest  
 10 or other appreciation on such funds as earned. Such funds themselves shall  
 11 be released from escrow only under the following circumstances:

12 ~~(A)~~ (i) To pay a judgment or settlement on any released claim brought  
 13 against such tobacco product manufacturer by the state or any releasing  
 14 party located or residing in the state. Funds shall be released from escrow  
 15 under this ~~subparagraph (i)~~ subsection: (a) In the order in which they were  
 16 placed into escrow; and ~~(ii)~~ (b) only to the extent and at the time necessary  
 17 to make payments required under such judgment or settlement;

18 ~~(B)~~ (ii) to the extent that a tobacco product manufacturer establishes  
 19 that the amount it was required to place into escrow, based on units sold in  
 20 the state of Kansas in a particular year, was greater than the master  
 21 settlement agreement payments, as determined pursuant to section IX(i) of  
 22 that agreement including; after final determination of all adjustments, that  
 23 such manufacturer would have been required to make based on such units  
 24 sold had it been a participating manufacturer, the excess shall be released  
 25 from escrow and revert back to such tobacco product manufacturer; or

26 ~~(C)~~ (iii) to the extent not released from escrow under ~~subparagraphs~~  
 27 ~~(A) or (B) of paragraph (2) of~~ subsection (b)(2)(A)(i) or (ii), funds shall be  
 28 released from escrow and revert back to such tobacco product  
 29 manufacturer 25 years after the date on which they were placed into  
 30 escrow.

31 (B) *Each tobacco product manufacturer that remits funds pursuant to*  
 32 *subsection (b)(1)(B), within one year after the date of remittance, may*  
 33 *contest the amount of such remittance. With respect to any timely-*  
 34 *contested remittance, the tobacco product manufacturer may seek a credit*  
 35 *or refund to the extent that such tobacco product manufacturer establishes*  
 36 *that the amount such manufacturer was required to remit, based on units*  
 37 *sold in the state of Kansas in a particular year; was greater than the*  
 38 *master settlement agreement payments, as determined pursuant to section*  
 39 *IX(i) of that agreement, including after final determination of all*  
 40 *adjustments, that such tobacco product manufacturer would have been*  
 41 *required to make based on such units sold had such tobacco product*  
 42 *manufacturer been a participating manufacturer. The tobacco product*  
 43 *manufacturer may elect to receive the excess amount as a refund or a*

1 *credit against future remittances due under this section.*

2 (3) Each tobacco product manufacturer that elects to place funds into  
3 escrow pursuant to ~~this subsection (b)(1)(A) or remit funds pursuant to~~  
4 *subsection (b)(1)(B)* shall annually certify to the attorney general that it is  
5 in compliance with ~~this subsection~~ *such subsections*. The attorney general  
6 may bring a civil action on behalf of the state against any tobacco product  
7 manufacturer that fails to place into escrow *or remit* the funds required  
8 under this section. Any tobacco product manufacturer that fails in any year  
9 to place into escrow *or remit* the funds required under this section shall:

10 (A) Be required within 15 days to ~~place such funds into escrow as~~  
11 ~~shall bring it~~ *such tobacco product manufacturer* into compliance with this  
12 section. The court, upon a finding of a violation of ~~this either~~ subsection  
13 *(b)(1)(A) or (b)(1)(B)*, may impose a civil penalty to be credited to the state  
14 general fund in an amount not to exceed 5% of the amount improperly  
15 withheld ~~from escrow~~ per day of the violation and in a total amount not to  
16 exceed 100% of the original amount improperly withheld ~~from escrow~~;

17 (B) in the case of a knowing violation, be required within 15 days to  
18 ~~place such funds into escrow as shall bring it~~ *such tobacco product*  
19 *manufacturer* into compliance with this section. The court, upon a finding  
20 of a knowing violation of ~~this either~~ subsection *(b)(1)(A) or (b)(1)(B)*, may  
21 impose a civil penalty to be paid to the state general fund in an amount not  
22 to exceed 15% of the amount improperly withheld ~~from escrow~~ per day of  
23 the violation and in a total amount not to exceed 300% of the original  
24 amount improperly withheld ~~from escrow~~; and

25 (C) in the case of a second knowing violation, be prohibited from  
26 selling cigarettes to consumers within the state ~~(, whether directly or~~  
27 ~~through a distributor, retailer or similar intermediary)~~, for a period not to  
28 exceed two years.

29 Each failure to make an annual deposit *or remittance* required under  
30 this section shall constitute a separate violation. A tobacco product  
31 manufacturer who is found in violation of this section shall pay, in addition  
32 to other amounts assessed under this section and pursuant to law, the costs  
33 and attorney's fees incurred by the state during a successful presentation  
34 under ~~this paragraph~~ *subsection (b)(3)*.

35 Sec. 3. K.S.A. 2020 Supp. 50-6a04 is hereby amended to read as  
36 follows: 50-6a04. (a) No person may:

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

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

42 (b) (1) Not later than July 1, 2009, the attorney general shall develop  
43 a directory, to be posted on the attorney general's website. Except as

1 otherwise provided, the directory shall list all tobacco product  
2 manufacturers and brand families of such tobacco product manufacturers  
3 that have provided current and accurate certifications conforming to the  
4 requirements of subsection (c).

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

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

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

19 (B) *that a remittance required pursuant to K.S.A. 50-6a03(b), and*  
20 *amendments thereto, for any period for any brand family, whether or not*  
21 *listed by such non-participating manufacturer, has not been fully paid to*  
22 *the director as required;*

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

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

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

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

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

1 cigarettes of the tobacco product manufacturer in the possession of the  
2 stamping agent on the effective date of removal from the directory of that  
3 tobacco product manufacturer or brand family.

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

12 (8) The attorney general may remove from the state directory a  
13 tobacco product manufacturer or brand family if the attorney general  
14 concludes that:

15 (A) (i) The tobacco product manufacturer or any of the tobacco  
16 product manufacturer's affiliates, sales entity affiliates, officers or directors  
17 had pleaded guilty or nolo contendere to or been found guilty of a felony  
18 crime relating to the sale or taxation of cigarettes or tobacco products; or

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

25 (B) (i) A tobacco product manufacturer that is removed from the state  
26 directory under this subsection ~~(b)~~ shall be eligible for relisting in the  
27 directory described in this subsection ~~(b)~~ on the earlier of the date on  
28 which the tobacco product manufacturer cures the violation or the date on  
29 which the tobacco product manufacturer is reinstated to the directory in the  
30 other state; or

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

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

42 (A) A participating manufacturer; or

43 (B) in full compliance with K.S.A. 50-6a03, and amendments thereto,

1 including payment of all quarterly installment payments as may be  
2 required by subsection (d).

3 (2) A participating manufacturer shall include in its certification a list  
4 of its brand families. The participating manufacturer shall update such list  
5 30 calendar days prior to any addition to, or modification of its brand  
6 families by executing and delivering a supplemental certification to the  
7 attorney general.

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

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

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

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

18 (D) a declaration that such non-participating manufacturer is  
19 registered to do business in the state, or has appointed a resident agent for  
20 service of process, and provided notice thereof as required by K.S.A. 2020  
21 Supp. 50-6a08, and amendments thereto;

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

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

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

28 (iii) *has not made any cigarette sales in Kansas requiring escrow*  
29 *deposits under K.S.A. 50-6a03(b), and amendments thereto;*

30 (F) a declaration that such non-participating manufacturer consents to  
31 the jurisdiction of the district court of the third judicial district, Shawnee  
32 county, Kansas, for purposes of enforcing this act, or rules or regulations  
33 promulgated pursuant thereto, as required by K.S.A. 2020 Supp. 50-  
34 6a08(c), and amendments thereto;

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

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

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

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

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

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

16 (i) All escrow deposits *and remittances* due under K.S.A. 50-6a03(b),  
17 and amendments thereto;

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

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

22 Such declarations by importers of a non-participating manufacturer  
23 shall appoint for the declarant a resident agent for service of process in  
24 Kansas in accordance with K.S.A. 2020 Supp. 50-6a08, and amendments  
25 thereto, and consent to jurisdiction in accordance with K.S.A. 2020 Supp.  
26 50-6a08, and amendments thereto;

27 (J) the identity of all stamping agents, wholesalers and distributors,  
28 by name and address, to whom the non-participating manufacturer or its  
29 importer sold cigarettes to or that the manufacturer or importer believes or  
30 has reason to believe purchased or received any of the manufacturer's  
31 cigarettes from another source during the preceding calendar year, and  
32 those for which the manufacturer or its importer plan to sell to or believe  
33 or has reason to believe will purchase or receive any of the manufacturer's  
34 cigarettes from another source during the certifying calendar year; and

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

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

42 (A) In the case of a participating manufacturer, ~~said~~ *such* participating  
43 manufacturer affirms that the brand family shall be deemed to be its



1 cigarettes for purposes of calculating its payments under the master  
2 settlement agreement for the relevant year in the volume and shares  
3 determined pursuant to the master settlement agreement; or

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

8 Nothing in this paragraph shall be construed as limiting or otherwise  
9 affecting the state's right to maintain that a brand family constitutes  
10 cigarettes of a different tobacco product manufacturer for purposes of  
11 calculating payments under the master settlement agreement or K.S.A. 50-  
12 6a03(b), and amendments thereto.

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

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

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

21 (B) certify annually that it is in compliance with all reporting and  
22 registration requirements of 15 U.S.C. § 375 et seq. and provide monthly  
23 to the director and the attorney general, regardless of sales or shipments, a  
24 copy of all reports required pursuant to 15 U.S.C. §§ 376 and 376a, to be  
25 filed electronically in a manner prescribed by the director and attorney  
26 general; and

27 (C) pay annually a \$500 directory fee to the attorney general which  
28 shall be deposited in the tobacco master settlement agreement compliance  
29 fund.

30 (d) The attorney general may require a tobacco product manufacturer  
31 subject to the requirements of subsection (c) to make the escrow deposits  
32 *or remittances* required by K.S.A. 50-6a03(b), and amendments thereto, in  
33 quarterly installments during the calendar year in which the sales covered  
34 by such deposits *or remittances* are made. The attorney general may  
35 require production of information sufficient to enable the attorney general  
36 to determine the adequacy of the amount of the installment deposit *or*  
37 *remittance*.

38 Sec. 4. K.S.A. 2020 Supp. 50-6a09 is hereby amended to read as  
39 follows: 50-6a09. (a) Notwithstanding any other provision of law, if a  
40 newly qualified non-participating manufacturer is to be listed in the  
41 directory, or if the attorney general reasonably determines that any non-  
42 participating manufacturer who has filed a certification pursuant to  
43 ~~subsection (e) of~~ K.S.A. 50-6a04(c), and amendments thereto, poses an

1 elevated risk for noncompliance with this act neither such non-  
2 participating manufacturer nor any of its brand families shall be included  
3 or retained in the directory unless and until such non-participating  
4 manufacturer, or its United States importer that undertakes joint and  
5 several liability for the manufacturer's performance in accordance with  
6 ~~subsection (c)(3)(I) of K.S.A. 50-6a04(c)(3)(I)~~, and amendments thereto,  
7 has posted a bond in accordance with this section.

8 (b) The bond required by this section shall be posted by corporate  
9 surety located within the United States in an amount equal to the greater of  
10 \$50,000 or the amount of escrow *or remittance* the non-participating  
11 manufacturer in either its current or predecessor form was required to  
12 deposit *or remit* for sales of cigarettes in this state during the previous  
13 calendar year. The bond shall be written in favor of the state of Kansas and  
14 shall be conditioned on the performance by the non-participating  
15 manufacturer, or its United States importer that undertakes joint and  
16 several liability for the manufacturer's performance in accordance with  
17 ~~subsection (c)(3)(I) of K.S.A. 50-6a04(c)(3)(I)~~, and amendments thereto,  
18 of all of its duties and obligations under this act during the year in which  
19 the certification is filed and the next succeeding calendar year.

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

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

27 (A) The non-participating manufacturer did not make the  
28 underpayment knowingly or recklessly and the non-participating  
29 manufacturer promptly cured the underpayment within 180 calendar days  
30 of notice of the underpayment; or

31 (B) the underpayment or lack of payment is the subject of a good  
32 faith dispute as documented to the satisfaction of the attorney general and  
33 the underpayment is cured within 90 calendar days of entry of a final order  
34 establishing the amount of the required escrow *or remittance* payment;

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

42 (3) any state or jurisdiction that is party to the master settlement  
43 agreement has pending litigation, or an unsatisfied judgment against the

1 non-participating manufacturer, or any affiliate thereof, for unpaid escrow  
2 obligations, *remittances* or associated penalties, costs or attorney fees.

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

9 New Sec. 5. (a) Cigarette smoking presents serious public health  
10 concerns to the state and to the citizens of the state. The surgeon general  
11 has determined that smoking causes lung cancer, heart disease and other  
12 serious diseases and that there are hundreds of thousands of tobacco-  
13 related deaths in the United States each year. These diseases most often do  
14 not appear until many years after the person in question begins smoking.

15 (b) Cigarette smoking also presents serious financial concerns for the  
16 state. Under certain healthcare programs, the state may have a legal  
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19 a legal entitlement to receive such medical assistance.

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24 state by cigarette smoking be borne by tobacco product manufacturers  
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26 determine to enter into a settlement with the state or are found culpable by  
27 the courts.

28 (e) On November 23, 1998, leading United States tobacco product  
29 manufacturers entered into a settlement agreement, entitled the "master  
30 settlement agreement," with the state. The master settlement agreement  
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32 certain future claims against them as described therein: To pay substantial  
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38 manufacturers who determine not to enter into such a settlement could use  
39 a resulting cost advantage to derive large, short-term profits in the years  
40 before liability may arise without ensuring that the state will have an  
41 eventual source of recovery from them if they are proven to have acted  
42 culpably. It is thus in the interest of the state to require that such  
43 manufacturers establish a reserve fund to guarantee a source of

1 compensation and to prevent such manufacturers from deriving large,  
2 short-term profits and then becoming judgment-proof before liability may  
3 arise.

4 (g) The provisions of this section shall take effect January 1, 2022,  
5 and upon the date of publication in the Kansas register of the notice  
6 prescribed in section 9, and amendments thereto.

7 New Sec. 6. Any tobacco product manufacturer selling cigarettes to  
8 consumers within the state, whether directly or through a distributor,  
9 retailer or similar intermediary or intermediaries, after the effective date of  
10 this act shall do one of the following:

11 (a) Become a participating manufacturer, as that term is defined in  
12 section II(jj) of the master settlement agreement, and generally perform its  
13 financial obligations under the master settlement agreement; or

14 (b) (1) place into a qualified escrow fund by April 15 of the year  
15 following the year in question the following amounts, as such amounts are  
16 adjusted for inflation:

17 (A) 1999: \$.0094241 per unit sold after the effective date of this act;

18 (B) 2000: \$.0104712 per unit sold;

19 (C) for each of 2001 and 2002: \$.0136125 per unit sold;

20 (D) for each of 2003 through 2006: \$.0167539 per unit sold;

21 (E) for each of 2007 and each year thereafter: \$.0188482 per unit  
22 sold.

23 (2) A tobacco product manufacturer that places funds into escrow  
24 pursuant to subsection (b)(1) shall receive the interest or other appreciation  
25 on such funds as earned. Such funds themselves shall be released from  
26 escrow only under the following circumstances:

27 (A) To pay a judgment or settlement on any released claim brought  
28 against such tobacco product manufacturer by the state or any releasing  
29 party located or residing in the state. Funds shall be released from escrow  
30 under this subparagraph: (i) In the order in which they were placed into  
31 escrow; and (ii) only to the extent and at the time necessary to make  
32 payments required under such judgment or settlement;

33 (B) to the extent that a tobacco product manufacturer establishes that  
34 the amount it was required to place into escrow, based on units sold in the  
35 state of Kansas in a particular year, was greater than the master settlement  
36 agreement payments, as determined pursuant to section IX(i) of that  
37 agreement including, after final determination of all adjustments, that such  
38 manufacturer would have been required to make based on such units sold  
39 had it been a participating manufacturer, the excess shall be released from  
40 escrow and revert back to such tobacco product manufacturer; or

41 (C) to the extent not released from escrow under subsection (b)(2)(A)  
42 or (b)(2)(B), funds shall be released from escrow and revert back to such  
43 tobacco product manufacturer 25 years after the date on which they were

1 placed into escrow.

2 (3) Each tobacco product manufacturer that elects to place funds into  
3 escrow pursuant to this subsection shall annually certify to the attorney  
4 general that it is in compliance with this subsection. The attorney general  
5 may bring a civil action on behalf of the state against any tobacco product  
6 manufacturer that fails to place into escrow the funds required under this  
7 section. Any tobacco product manufacturer that fails in any year to place  
8 into escrow the funds required under this section shall:

9 (A) Be required within 15 days to place such funds into escrow as  
10 shall bring it into compliance with this section. The court, upon a finding  
11 of a violation of this subsection, may impose a civil penalty to be credited  
12 to the state general fund in an amount not to exceed 5% of the amount  
13 improperly withheld from escrow per day of the violation and in a total  
14 amount not to exceed 100% of the original amount improperly withheld  
15 from escrow;

16 (B) in the case of a knowing violation, be required within 15 days to  
17 place such funds into escrow as shall bring it into compliance with this  
18 section. The court, upon a finding of a knowing violation of this  
19 subsection, may impose a civil penalty to be paid to the state general fund  
20 in an amount not to exceed 15% of the amount improperly withheld from  
21 escrow per day of the violation and in a total amount not to exceed 300%  
22 of the original amount improperly withheld from escrow; and

23 (C) in the case of a second knowing violation, be prohibited from  
24 selling cigarettes to consumers within the state, whether directly or  
25 through a distributor, retailer or similar intermediary, for a period not to  
26 exceed two years.

27 Each failure to make an annual deposit required under this section shall  
28 constitute a separate violation. A tobacco product manufacturer who is  
29 found in violation of this section shall pay, in addition to other amounts  
30 assessed under this section and pursuant to law, the costs and attorney fees  
31 incurred by the state during a successful presentation under this paragraph  
32 (3).

33 (c) The provisions of this section shall take effect January 1, 2022,  
34 and upon the date of publication in the Kansas register of the notice  
35 prescribed in section 9, and amendments thereto.

36 New Sec. 7. (a) No person may:

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

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

42 (b) (1) Not later than July 1, 2009, the attorney general shall develop  
43 a directory, to be posted on the attorney general's website. Except as

1 otherwise provided, the directory shall list all tobacco product  
2 manufacturers and brand families of such tobacco product manufacturers  
3 that have provided current and accurate certifications conforming to the  
4 requirements of subsection (c).

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

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

14 (A) That an escrow payment required pursuant to section 6, and  
15 amendments thereto, for any period for any brand family, whether or not  
16 listed by such non-participating manufacturer, has not been fully paid into  
17 a qualified escrow fund governed by an escrow agreement that has been  
18 approved by the attorney general;

19 (B) that an outstanding final judgment, including interest thereon, for  
20 a violation of section 6, and amendments thereto, has not been fully  
21 satisfied for such tobacco product manufacturer; or

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

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

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

35 (6) Unless otherwise provided by agreement between a stamping  
36 agent and a tobacco product manufacturer, the stamping agent shall be  
37 entitled to a refund from a tobacco product manufacturer for any money  
38 paid by the stamping agent to the tobacco product manufacturer for any  
39 cigarettes of the tobacco product manufacturer in the possession of the  
40 stamping agent on the effective date of removal from the directory of that  
41 tobacco product manufacturer or brand family.

42 (7) Unless otherwise provided by agreement between a retail dealer  
43 or a vending machine operator and a tobacco product manufacturer, a retail

1 dealer or a vending machine operator shall be entitled to a refund from a  
2 tobacco product manufacturer for any money paid by the retail dealer or  
3 vending machine operator to a stamping agent for any cigarettes of the  
4 tobacco product manufacturer still in the possession of the retail dealer or  
5 vending machine operator on the effective date of removal from the  
6 directory of that tobacco product manufacturer or brand family.

7 (8) The attorney general may remove from the state directory a  
8 tobacco product manufacturer or brand family if the attorney general  
9 concludes that:

10 (A) (i) The tobacco product manufacturer or any of the tobacco  
11 product manufacturer's affiliates, sales entity affiliates, officers or directors  
12 had pleaded guilty or nolo contendere to or been found guilty of a felony  
13 crime relating to the sale or taxation of cigarettes or tobacco products; or

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

20 (B) (i) A tobacco product manufacturer that is removed from the state  
21 directory under this subsection shall be eligible for relisting in the  
22 directory described in this subsection on the earlier of the date on which  
23 the tobacco product manufacturer cures the violation or the date on which  
24 the tobacco product manufacturer is reinstated to the directory in the other  
25 state; or

26 (ii) in the case of a non-participating manufacturer deemed an  
27 elevated risk pursuant to section 8, and amendments thereto, the attorney  
28 general may require such non-participating manufacturer to post a bond in  
29 accordance with that section.

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

37 (A) A participating manufacturer; or

38 (B) in full compliance with section 6, and amendments thereto,  
39 including payment of all quarterly installment payments as may be  
40 required by subsection (d).

41 (2) A participating manufacturer shall include in its certification a list  
42 of its brand families. The participating manufacturer shall update such list  
43 30 calendar days prior to any addition to, or modification of its brand

1 families by executing and delivering a supplemental certification to the  
2 attorney general.

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

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

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

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

13 (D) a declaration that such non-participating manufacturer is  
14 registered to do business in the state, or has appointed a resident agent for  
15 service of process, and provided notice thereof as required by K.S.A. 2020  
16 Supp. 50-6a08, and amendments thereto;

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

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

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

23 (F) a declaration that such non-participating manufacturer consents to  
24 the jurisdiction of the district court of the third judicial district, Shawnee  
25 county, Kansas, for purposes of enforcing this act, or rules or regulations  
26 promulgated pursuant thereto, as required by K.S.A. 2020 Supp. 50-  
27 6a08(c), and amendments thereto;

28 (G) a declaration that such non-participating manufacturer is in full  
29 compliance with section 6(b), and amendments thereto, and any rules or  
30 regulations promulgated pursuant to this act;

31 (H) (i) the name, address and telephone number of the financial  
32 institution where the non-participating manufacturer has established such  
33 qualified escrow fund required pursuant to section 6(b), and amendments  
34 thereto;

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

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

42 (iv) the amount and date of any withdrawal or transfer of funds the  
43 non-participating manufacturer made at any time from such qualified



1 escrow fund or from any other qualified escrow fund into which it ever  
2 made escrow payments pursuant to section 6(b), and amendments thereto;

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

8 (i) All escrow deposits due under section 6(b), and amendments  
9 thereto;

10 (ii) all penalties assessed under section 6(b), and amendments thereto;  
11 and

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

14 Such declarations by importers of a non-participating manufacturer  
15 shall appoint for the declarant a resident agent for service of process in  
16 Kansas in accordance with K.S.A. 2020 Supp. 50-6a08, and amendments  
17 thereto, and consent to jurisdiction in accordance with K.S.A. 2020 Supp.  
18 50-6a08, and amendments thereto;

19 (J) the identity of all stamping agents, wholesalers and distributors,  
20 by name and address, to whom the non-participating manufacturer or its  
21 importer sold cigarettes to or that the manufacturer or importer believes or  
22 has reason to believe purchased or received any of the manufacturer's  
23 cigarettes from another source during the preceding calendar year, and  
24 those for which the manufacturer or its importer plan to sell to or believe  
25 or has reason to believe will purchase or receive any of the manufacturer's  
26 cigarettes from another source during the certifying calendar year; and

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

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

34 (A) In the case of a participating manufacturer, such participating  
35 manufacturer affirms that the brand family shall be deemed to be its  
36 cigarettes for purposes of calculating its payments under the master  
37 settlement agreement for the relevant year in the volume and shares  
38 determined pursuant to the master settlement agreement; or

39 (B) in the case of a non-participating manufacturer, such non-  
40 participating manufacturer affirms that the brand family shall be deemed to  
41 be its cigarettes for purposes of section 6(b), and amendments thereto.

42 Nothing in this paragraph shall be construed as limiting or otherwise  
43 affecting the state's right to maintain that a brand family constitutes

1 cigarettes of a different tobacco product manufacturer for purposes of  
2 calculating payments under the master settlement agreement or section  
3 6(b), and amendments thereto.

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

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

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

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

18 (C) pay annually a \$500 directory fee to the attorney general which  
19 shall be deposited in the tobacco master settlement agreement compliance  
20 fund.

21 (d) The attorney general may require a tobacco product manufacturer  
22 subject to the requirements of subsection (c) to make the escrow deposits  
23 required by section 6(b), and amendments thereto, in quarterly installments  
24 during the calendar year in which the sales covered by such deposits are  
25 made. The attorney general may require production of information  
26 sufficient to enable the attorney general to determine the adequacy of the  
27 amount of the installment deposit.

28 (e) The provisions of this section shall take effect January 1, 2022,  
29 and upon the date of publication in the Kansas register of the notice  
30 prescribed in section 9, and amendments thereto.

31 New Sec. 8. (a) Notwithstanding any other provision of law, if a  
32 newly qualified non-participating manufacturer is to be listed in the  
33 directory, or if the attorney general reasonably determines that any non-  
34 participating manufacturer who has filed a certification pursuant to section  
35 7(c), and amendments thereto, poses an elevated risk for noncompliance  
36 with this act neither such non-participating manufacturer nor any of its  
37 brand families shall be included or retained in the directory unless and  
38 until such non-participating manufacturer, or its United States importer  
39 that undertakes joint and several liability for the manufacturer's  
40 performance in accordance with section 7(c)(3)(I), and amendments  
41 thereto, has posted a bond in accordance with this section.

42 (b) The bond required by this section shall be posted by corporate  
43 surety located within the United States in an amount equal to the greater of

1 \$50,000 or the amount of escrow the non-participating manufacturer in  
2 either its current or predecessor form was required to deposit for sales of  
3 cigarettes in this state during the previous calendar year. The bond shall be  
4 written in favor of the state of Kansas and shall be conditioned on the  
5 performance by the non-participating manufacturer, or its United States  
6 importer that undertakes joint and several liability for the manufacturer's  
7 performance in accordance with section 7(c)(3)(I), and amendments  
8 thereto, of all of its duties and obligations under this act during the year in  
9 which the certification is filed and the next succeeding calendar year.

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

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

17 (A) The non-participating manufacturer did not make the  
18 underpayment knowingly or recklessly and the non-participating  
19 manufacturer promptly cured the underpayment within 180 calendar days  
20 of notice of the underpayment; or

21 (B) the underpayment or lack of payment is the subject of a good  
22 faith dispute as documented to the satisfaction of the attorney general and  
23 the underpayment is cured within 90 calendar days of entry of a final order  
24 establishing the amount of the required escrow payment;

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

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

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

42 (e) The provisions of this section shall take effect January 1, 2022,  
43 and upon the date of publication in the Kansas register of the notice

1 prescribed in section 9, and amendments thereto.

2 New Sec. 9. In the event that all or any portion of the amendments to  
3 K.S.A. 50-6a03 made by this act are adjudged by any court of competent  
4 jurisdiction to be unconstitutional or invalid, the attorney general shall  
5 certify to the secretary of state that such adjudication has occurred. Upon  
6 receipt of such certification, the secretary of state shall cause a notice of  
7 such certification to be published in the Kansas register. On January 1,  
8 2022, and the date of publication in the Kansas register of such notice, the  
9 amendments to K.S.A. 50-6a01 and 50-6a03, as amended by this act, shall  
10 be deemed to be repealed, and sections 5 through 8 of this act shall take  
11 effect and be in force. Neither any holding of unconstitutionality nor the  
12 repeal of K.S.A. 50-6a01 and 50-6a03, as amended by this act, shall affect,  
13 impair or invalidate any other portions of sections 5 through 8 of this act  
14 or the application of such sections to any other person or circumstance,  
15 and the provisions of sections 5 through 8 of this act shall at all times  
16 continue in full force and effect.

17 Sec. 10. K.S.A. 50-6a01 and 50-6a03 and K.S.A. 2020 Supp. 50-6a04  
18 and 50-6a09 are hereby repealed.

19 Sec. 11. On January 1, 2022, and the date of publication in the Kansas  
20 register of the notice prescribed in section 9, K.S.A. 50-6a01, as amended  
21 by section 1 of this act, and 50-6a03, as amended by section 2 of this act,  
22 and K.S.A. 2020 Supp. 50-6a04, as amended by section 3 of this act, and  
23 50-6a09, as amended by section 4 of this act, are hereby repealed.

24 Sec. 12. This act shall take effect and be in force from and after its  
25 publication in the statute book.