

February 19, 2024

The Honorable Will Carpenter, Chairperson
House Committee on Federal and State Affairs
300 SW 10th Avenue, Room 346-S
Topeka, Kansas 66612

Dear Representative Carpenter:

SUBJECT: Fiscal Note for HB 2801 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2801 is respectfully submitted to your committee.

HB 2801 specifies that from and after October 1, 2024, and each year after that, every manufacturer of consumable materials and electronic cigarettes that are sold in Kansas whether directly or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries, would be required to file an annual certification with the Department of Revenue under penalty of perjury. The certification form must include a copy of the marketing authorization or similar order that complies with federal law or a copy of the form that shows the application was accepted for filing and remains under review by the federal U.S. Food and Drug Administration, or a final decision on the application has not yet taken effect.

The Director of Alcoholic Beverage Control of the Department of Revenue would provide a manufacturer notice and opportunity to cure deficiencies before removing the manufacturer from the directory. Both the Director and manufacturer must comply with specific notice requirements as outlined in the bill. From and after January 1, 2025, or on the date the Director first makes the directory available for public inspection on the Department's website, a person may not sell or offer for sale in Kansas consumable materials or electronic cigarettes that are not included in the directory.

An importer, distributor, or wholesaler that offers or supplies a Kansas retailer with consumable materials or electronic cigarettes that are not included in the directory would be subject to a civil penalty of \$250 per day for each product supplied or offered. The fine would occur from the date the seller is notified of the violation and would continue until the product is removed from

the market or listed in the directory. A retailer, or any other person, who sells or offers for sale a consumable material or electronic cigarette that is not included in the directory would be subject to the following penalties:

1. A first violation would result in a written notice from the Director;
2. A second violation within a 12-month period would result in a civil penalty of \$100 per day, starting from the date of notification of a violation for each product offered for sale in violation until the product is removed from the market or properly listed in the directory;
3. A third violation within a 12-month period would result in a civil penalty of \$250, and the retailer would be prohibited from selling consumable materials or electronic cigarettes for 14 days;
4. A fourth violation within a 12-month period would result in a civil penalty of \$500, and the retailer would be prohibited from selling consumable materials or electronic cigarettes for 60 days; and
5. A fifth or subsequent violation within a 12-month period would result in a civil penalty of \$750, and the retailer would be prohibited from selling consumable materials or electronic cigarettes for at least one year.

Retailers would be exempt from the above penalties if they acquired a consumable material or an electronic cigarette from a supplier that is licensed, even if the supplier is not listed in the directory. Manufacturers whose products are not listed in the directory, but are sold directly or indirectly through a distributor, wholesaler, retailer, or similar intermediary would be subject to a civil penalty of \$250 per day for each product offered or sold in violation until the product is removed from the market or properly listed in the directory. A manufacturer who falsely represents any of the information required to be provided in the annual certification would be guilty of a class C nonperson misdemeanor for each false representation and the crime would be considered a deceptive practice under the Kansas Consumer Protection Act. All fees and penalties collected would be used for the administration and enforcement of the bill's provisions.

To enforce the provisions of the bill, the Director may examine the books, papers, invoices, and other records of any individual who controls the premises where consumable materials or electronic cigarettes are placed, stored, sold, or offered for sale. Each retailer and wholesaler could be subject to unannounced compliance checks annually. The bill specifies that at least 15.0 percent of retailers and wholesalers would be subject to compliance checks each year. If a retailer or wholesaler is found to be noncompliant, a follow-up compliance check must be conducted within 30 days after any violation. The Director would be required to publish results of all compliance checks at least annually and would make those results available upon public request.

Nonresident manufacturers of consumable materials or electronic cigarettes would have to be registered to do business in Kansas as a foreign corporation or business entity and have a registered agent that could receive service of process. A determination by the Director to not include or remove a manufacturer, consumable material, or electronic cigarette from the directory would be subject to review by the filing of a civil action for the prospective declaratory or

injunctive relief. The Director would provide a report to the Legislature annually regarding the status of the directory, manufacturers, and products included in the directory, and revenue and expenditures related to administration and enforcement activities beginning on July 1, 2025.

Estimated State Fiscal Effect			
	FY 2024	FY 2025	FY 2026
Expenditures			
State General Fund	--	\$598,210	\$598,210
Fee Fund(s)	--	--	--
Federal Fund	--	--	--
Total Expenditures	--	\$598,210	\$598,210
Revenues			
State General Fund	--	--	--
Fee Fund(s)	--	\$5,750	\$2,300
Federal Fund	--	--	--
Total Revenues	--	--	--
FTE Positions	--	8.00	8.00

The Department of Revenue states the bill would require each manufacturer to pay \$250 per product and \$100.00 annually thereafter. According to the Department, there are only three manufacturers that have brands approved by U.S. Food and Drug Administration for a total of 23 brands to be sold. The Department estimates revenues of \$5,750 for the first year and \$2,300 for each year thereafter. The Department states the estimated revenues would not cover the cost of extra employees and enforcement efforts taking into consideration the number of probable manufacturers who would be unable to get their products approved. Also, the Department states the bill would provide fees and penalties for administration and enforcement; however, the Department indicates it cannot estimate an amount that would be collected.

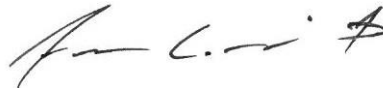
The Department estimates additional expenditures of \$598,210 from the State General Fund in FY 2025, along with an additional 8.00 FTE positions to implement the bill’s provisions and to modify its systems, if enacted. Of that amount, \$558,210 would be for the additional FTE positions and \$40,000 would be for other operating expenditures. The required programming for this bill by itself would be performed by existing staff of the Department. In addition, if the combined effect of implementing this bill and other enacted legislation exceeds the Department’s programming resources, or if the time for implementing the changes is too short, additional expenditures for outside contract programmer services beyond the Department’s current budget may be required.

The Office of Judicial Administration states enactment of HB 2801 could increase the number of cases filed in district court because it would create a new crime and would allow for a civil action to be filed, which could result in more time spent by court employees and judges

processing and deciding these cases. Since this crime carries a misdemeanor penalty, there could be additional supervision of offenders required to be performed by court service officers. According to the Office, a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions. The Office states enactment of the bill could result in the collection of docket fees, fines, civil penalties, and supervision fees in those cases filed under the bill's provisions, which would be credited to the State General Fund and other state funds.

The Office of the Attorney General indicates the bill's enactment would have a fiscal effect on agency operations if the Department of Revenue refers cases to the Office for prosecution, especially if such cases involve deceptive trade practices; however, the Office is unable to estimate a precise fiscal effect. Any fiscal effect associated with HB 2801 is not reflected in *The FY 2025 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam C. Proffitt", with a stylized flourish at the end.

Adam C. Proffitt
Director of the Budget

cc: Trisha Morrow, Judiciary
Lynn Robinson, Department of Revenue
William Hendrix, Office of the Attorney General