

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2124**

As Agreed to May 12, 2015

**Brief\***

Senate Sub. for HB 2124 would amend the statute prohibiting smoking in an enclosed area or at a public meeting to add an exemption for a separately-ventilated portion of a medical or clinical research facility used exclusively for clinical research activities conducted in accordance with U.S. or Kansas regulations.

The bill also would amend various statutes in the chapter governing requirements for sale of cigarettes related to the Master Settlement Agreement (MSA) and escrow funds for nonparticipating tobacco product manufacturers, as follows.

The bill would amend the definition of “units sold” and add definitions for “Indian tribe” and “qualified tribal land.”

The bill would expand a provision prohibiting persons from selling, offering, possessing for sale, or importing cigarettes of a tobacco product manufacturer (manufacturer) brand family not included in the directory of manufacturers and brand families required by the chapter, by eliminating a requirement that such cigarettes be for personal consumption in the state.

The Attorney General would be allowed to remove a manufacturer or brand family from the directory if the Attorney

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General concludes the manufacturer or certain affiliates, officers, or directors have pleaded guilty or *nolo contendere* to, or have been found guilty of, a felony related to the sale or taxation of cigarettes or tobacco products, or if the manufacturer and its brand families have been removed from the directory of another state for acts or omissions that would be the basis for removal in Kansas, unless the removal in another state was without due process. A manufacturer removed from the directory would be eligible for relisting upon curing the violation or being reinstated to the other state's directory. A nonparticipating manufacturer deemed an elevated risk could be required to post a bond for reinstatement.

The annual certification nonparticipating manufacturers are required to provide would be amended to include information regarding certain stamping agents, wholesalers, and distributors involved in the sale or purchase or who receive the manufacturer's cigarettes and a declaration that all sales or shipments made by the manufacturer and affiliates are made to a stamping agent, wholesaler, distributor, or retailer that is licensed in Kansas.

The bill would add a requirement that, to be listed and have brand families listed in the directory, a manufacturer must certify annually that it has a federal manufacturer permit and is in compliance with federal reporting and registration requirements and must pay an annual \$500 directory fee to the Attorney General, to be deposited in the Tobacco Master Settlement Agreement Compliance Fund.

A requirement that invoices and documentation of sales of all nonparticipating manufacturer cigarettes be made available to the Director of Taxation (Director) upon request would be amended to also allow the Attorney General to request this information.

The bill would amend the statute governing disclosure of information to allow the Director and the Attorney General to share specified information with federal, state, or local

agencies for the purpose of enforcement of other states' laws or with a court, arbitrator, data clearinghouse, or similar entity to assess compliance with or make calculations under the MSA, or with counsel for the parties or expert witnesses in a related proceeding. The bill would require the information remain confidential. A specific confidentiality provision regarding tobacco sales data would be added and would expire on July 1, 2020, unless reviewed by the Legislature prior to that date.

Criminal penalties for selling, distributing, acquiring, holding, owning, possessing, transporting, or importing cigarettes in violation of the chapter would be increased from a class B misdemeanor, as follows:

- Upon a first conviction, a class A misdemeanor with a sentence of up to one year in confinement and a fine of \$1,000 to \$2,500;
- Upon a second conviction, a severity level 9 nonperson felony and a fine of \$10,000 to \$100,000; and
- Upon a third or subsequent conviction, a severity level 9 nonperson felony and a fine of \$50,000 to \$100,000.

Such penalties would be cumulative to remedies or penalties, including civil penalties, provided under other Kansas laws.

Finally, a statute in the chapter governing the Department of Revenue would be amended to allow the Secretary of Revenue or designee to share confidential information with the Attorney General for the purposes of determining compliance with or enforcing the MSA statutes, the MSA, and all related agreements. Similar confidentiality provisions to those added to the MSA statutes, as described above, would also be added here.

The bill would be in effect upon publication in the *Kansas Register*.

### **Conference Committee Action**

The Conference Committee agreed to remove the contents of the bill as it entered conference and insert the contents of SB 255, as it passed the Senate, regarding a smoking prohibition exemption and the MSA.

### **Background**

As it entered conference, Senate Sub. for HB 2124 would have amended provisions of the Uniform Commercial Code (UCC) concerning remittance transfers as defined in the federal Electronic Fund Transfer Act (EFTA). It also would have made technical amendments to the UCC.

The Conference Committee removed the UCC provisions and inserted the contents of SB 255, as it passed the Senate.

### ***Background of SB 255***

SB 255 was introduced by the Senate Committee on Federal and State Affairs at the request of the Attorney General. As introduced, the bill contained the provisions related to the MSA.

In the Senate Committee on Judiciary, a representative of the Attorney General testified in support of the bill, stating the amendments are intended to satisfy Kansas' "diligent enforcement" obligations under the MSA and avoid a loss of payments under the MSA. The Secretary of Revenue submitted written testimony supporting the bill. There was no neutral or opponent testimony.

The Senate Committee of the Whole adopted amendments adjusting the definition of “qualified tribal land” and adding the exemption for clinical research to the statute prohibiting smoking in enclosed areas.

According to the fiscal note prepared by the Division of the Budget on SB 255, as introduced, the Office of the Attorney General indicates failure to pass the bill could jeopardize Kansas’ annual share of the MSA. The bill would increase revenue to the Tobacco Settlement Agreement Compliance Fund by \$16,000. The Department of Revenue indicates expenditures of \$6,600 would be required to update computer systems to provide reports required in the bill.

The Office of Judicial Administration indicates SB 255 could result in more cases filed for cigarette and tobacco sale or distribution crimes, but it is not possible to predict a precise fiscal effect. The Kansas Sentencing Commission indicates the bill could affect prison admissions, bed space, and agency workload, but there is no data to provide an estimate of the fiscal effect. Any fiscal effect is not reflected in *The FY 2016 Governor’s Budget Report*.

smoking prohibition; exemption for research; tobacco Master Settlement Agreement; Indian tribes; Attorney General; directory of manufacturers and brand families; annual certification; information sharing; Director of Taxation; Secretary of Revenue; criminal penalties

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