

## **Smoking Ban—Clinical Research Exemption; Tobacco Master Settlement Agreement; Senate Sub. for HB 2124**

**Senate Sub. for HB 2124** amends 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 amends 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 detailed below.

The bill amends the definition of “units sold” and adds definitions for “Indian tribe” and “qualified tribal land.”

The bill expands 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 is allowed to remove a manufacturer or brand family from the directory if the Attorney 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 will be eligible for relisting upon curing the violation or being reinstated to the other state’s directory. A nonparticipating manufacturer deemed an elevated risk may be required to post a bond for reinstatement.

The annual certification nonparticipating manufacturers are required to provide is 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 adds 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.

An existing provision requiring that invoices and documentation of sales of all nonparticipating manufacturer cigarettes be made available to the Director of Taxation upon request is amended to allow the Attorney General also to request this information. The Attorney General also is added to the Department of Revenue as an entity authorized to promulgate rules and regulations regarding units sold.

The bill amends 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 requires the information remain confidential. A specific confidentiality provision regarding tobacco sales data is added and will 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 are 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 are cumulative to remedies or penalties, including civil penalties, provided under other Kansas laws.

Finally, a statute in the chapter governing the Department of Revenue is 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, are also be added here.