

SESSION OF 2017

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2230**

As Agreed to June 1, 2017

Brief*

HB 2230 would make a number of amendments to the Cigarette and Tobacco Products Act relating to definitions, licenses and permits, bonds, suspension or revocation of licenses, tax stamps, redemption of stamps, records required of dealers, penalties, license fees, and administrative fines designed to keep Kansas in compliance with the Master Settlement Agreement (MSA).

Additional provisions of the bill would decelerate the effective date and reduce the rate of the tax on electronic cigarettes.

MSA Provisions

The bill would make individuals who purchase, possess, use, or consume more than 400 cigarettes liable for the tax imposed if the cigarettes do not have the required tax stamp.

The bill would clarify what would be considered a first, second, third, or subsequent conviction for the purposes of sentencing. The fine for a first conviction of trafficking in counterfeit or illegal cigarettes and tobacco products would be at least \$1,000, but no more than \$2,500. Subsequent convictions could result in fines of up to \$100,000 and possible jail time after the third conviction.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/klrd>

The bill would define when certain cigarettes and tobacco products would be considered contraband.

Counterfeit or illegal cigarettes and tobacco products and property used in the trafficking would be subject to seizure and sale. The bill would outline the procedure and process the Kansas Department of Revenue (KDOR) would be required to follow to effectuate the sale and disbursement of any funds.

Any packages of cigarettes bearing *indicia* of tax payment pursuant to compacts signed between the Governor and the Prairie Band Potawatomi Nation and the Governor and the Iowa Tribe of Kansas and Nebraska and approved by the Legislature would not be deemed contraband.

The bill would make it unlawful to possess, transport, import, distribute, wholesale, or manufacture more than 1,000 cigarettes, cigarettes without Kansas stamps being affixed, or cigarettes or tobacco products otherwise in violation of the MSA. Transportation of cigarettes not bearing tax stamps to a retailer would also be made unlawful.

The bill would require tobacco distributors to file their reports electronically on forms and in a manner prescribed by KDOR.

The bill would require all moneys received from license fees, fines, and forfeiture proceedings be used exclusively for assisting in funding diligent enforcement as required by the MSA.

An additional provision would require wholesale dealers to be in good standing with the Director of Taxation (at KDOR) in order to receive a discount on stamps purchased. KDOR would be authorized to suspend, deny, or non-renew license applications under certain circumstances.

The bill would clarify its provisions would apply to the sale of tobacco products over the Internet and telephone and

through mail order transactions. The bill would revise outdated language related to vending machines and allow KDOR to divulge information related to vending machines to contracting entities.

The bill would require any retailer selling cigarettes to Kansas consumers without a tax stamp to file an annual statement for each consumer with KDOR. The statement would include the name and address of the consumer, the date of the purchase, and the total number of packs of cigarettes purchased by the consumer.

Electronic Cigarette Provisions

The bill would delay the effective date and reduce the rate of the tax on electronic cigarettes. Under current law, a tax at the rate of \$0.20 per milliliter of consumable material in electronic cigarettes was imposed as of January 1, 2017. The bill would delay the effective date of the tax to July 1, 2017, and would reduce the rate to \$0.05 per milliliter.

The bill would define “consumable material” to mean any liquid solution or other material that is depleted as an electronic cigarette is used.

Conference Committee Action

On May 15, the Conference Committee agreed to adopt the House-approved version of SB 96, which includes SB 130 relating to electronic cigarettes, with additional clarifying amendments suggested by the revisor. On June 1, the Conference Committee agreed to another technical amendment to clarify the above provisions. The language was then added to HB 2230, and the former contents of that bill were deleted.

Background

The original contents of HB 2230 dealt with property tax law, specifically, property tax exemptions for property located on former federal enclaves. At the House Committee on Taxation hearing on the bill a representative from the Great Plains Development Finance Authority and Representative Proehl appeared as proponents.

SB 96

SB 96, which dealt with the MSA provisions, was requested for introduction and supported at the Senate Committee on Assessment and Taxation hearing by KDOR, whose representative said the bill's provisions were necessary to ensure Kansas could demonstrate "diligent enforcement" and continue receiving money from the MSA. A representative of the Office of the Attorney General also appeared as a proponent. The Petroleum Marketers and Convenience Store Association of Kansas provided testimony in opposition to the bill.

The Senate Committee subsequently adopted amendments provided by KDOR to address several concerns raised by the opponents.

A fiscal note prepared by the Division of the Budget on the SB 96, as introduced, notes that approximately \$50 million in annual MSA payments to Kansas could be imperiled if the bill is not enacted.

The House Committee on Taxation amended the bill to incorporate the provisions of SB 130, as amended by the Senate Committee, relating to electronic cigarettes, and to clarify certain MSA language at the suggestion of the revisor.

The latest fiscal information from KDOR indicates the changes in the electronic cigarette tax would be expected to reduce receipts in FY 2017 by \$0.9 million, in FY 2018 by \$1.6 million, and in FY 2019 by \$1.5 million.

taxation; cigarettes; master settlement agreement; electronic cigarettes

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