

As Amended by House Committee

Session of 2009

SENATE BILL No. 159

By Committee on Judiciary

2-2

10 AN ACT concerning tobacco; relating to the enforcement of the laws
11 regarding the sale of cigarettes; amending K.S.A. 50-6a04 and repeal-
12 ing the existing section.
13

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

15 New Section 1. As used in this act:

16 (a) "Act" means the provisions of K.S.A. 50-6a01 through 50-6a06,
17 and amendments thereto, and the provisions of sections 1 through 15,
18 and amendments thereto.

19 (b) "Brand family" means all styles of cigarettes sold under the same
20 trademark and differentiated from one another by means of additional
21 modifiers or descriptors, including, but not limited to, "menthol,"
22 "lights," "kings," and "100s," and includes any brand name (alone or in
23 conjunction with any other word), trademark, logo, symbol, motto, selling
24 message, recognizable pattern of colors or any other indicia of product
25 identification identical, similar to or identifiable with a previously known
26 brand of cigarettes.

27 (c) "Cigarette" has the same meaning given that term in subsection
28 (d) of K.S.A. 50-6a02, and amendments thereto.

29 (d) "Director" means the director of taxation.

30 (e) "Master settlement agreement" has the same meaning given that
31 term in subsection (e) of K.S.A. 50-6a02, and amendments thereto.

32 (f) "Non-participating manufacturer" means any tobacco product
33 manufacturer that is not a participating manufacturer.

34 (g) "Participating manufacturer" has the meaning given that term in
35 subsection (i)(1) of K.S.A. 50-6a02, and amendments thereto.

36 (h) "Qualified escrow fund" has the same meaning given that term
37 in subsection (f) of K.S.A. 50-6a02, and amendments thereto.

38 (i) **"Resident agent" means a domestic corporation, a domestic**
39 **limited partnership, a domestic limited liability company or a do-**
40 **mestic business trust or a foreign corporation, a foreign limited**
41 **partnership, a foreign limited liability company or a foreign busi-**
42 **ness trust authorized to transact business in this state, and which**
43 **is generally open during regular business hours to accept service**

1 **of process on behalf of a non-participating manufacturer.**

2 (j) “Retail dealer” has the same meaning given that term in subsec-
3 tion (q) of K.S.A. 79-3301, and amendments thereto.

4 (k) “Stamping agent” means a person who is authorized to affix tax
5 indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and amend-
6 ments thereto, or any person who is required to pay the tax on the priv-
7 ilege of selling or dealing in roll-your-own tobacco products pursuant to
8 K.S.A. 79-3371, and amendments thereto.

9 (l) “Tax indicia” has the same meaning given that term in subsection
10 (u) of K.S.A. 79-3301, and amendments thereto.

11 (m) “Tobacco product manufacturer” has the same meaning given
12 that term in subsection (i) of K.S.A. 50-6a02, and amendments thereto.

13 (n) “Units sold” has the same meaning given that term in subsec-
14 tion (j) of K.S.A. 50-6a02, and amendments thereto.

15 (o) “Vending machine operator” has the same meaning given that
16 term in subsection (y) of K.S.A. 79-3301, and amendments thereto.

17 New Sec. 2. (a) Any non-participating manufacturer that has not reg-
18 istered with the secretary of state to do business in the state as a foreign
19 corporation or business entity shall, as a condition precedent to having
20 its brand families included or retained in the directory, appoint and con-
21 tinually engage without interruption the services of an agent in this state
22 to act as agent for the service of process on whom all process, and any
23 action or proceeding against it concerning or arising out of the enforce-
24 ment of this act may be served in any manner authorized by law. Such
25 service shall constitute legal and valid service of process on the non-
26 participating manufacturer. The non-participating manufacturer shall
27 provide to the attorney general the name, address, phone number, proof
28 of the appointment and availability of such resident agent, and such in-
29 formation shall be provided to the satisfaction of the attorney general.

30 (b) (1) A non-participating manufacturer may substitute its ~~regis-~~
31 ~~tered resident~~ agent for another by notifying, in writing sent via certified
32 or registered mail, the attorney general of such termination of the au-
33 thority of the current agent and providing proof to the satisfaction of the
34 attorney general of the appointment of a new agent. Such substitution
35 shall not become effective until 30 days after receipt of such notification
36 by the attorney general.

37 (2) A resident agent of a non-participating manufacturer that wishes
38 to resign shall notify the attorney general, in writing via certified or reg-
39 istered mail, and provide to the attorney general the name and address
40 of the successor agent. There shall be attached to the notification a state-
41 ment of each affected non-participating manufacturer ratifying such
42 change of resident agent. Upon receipt of such notification by the attor-
43 ney general, the successor resident agent shall become the resident agent

1 of such non-participating manufacturers that have ratified and approved
2 the substitution.

3 (3) (A) A resident agent of a non-participating manufacturer may re-
4 sign without appointing a successor by notifying, in writing sent via cer-
5 tified or registered mail, the attorney general. Such resignation shall not
6 become effective until 60 days after receipt of such notification by the
7 attorney general. There shall be attached to the notification an affidavit
8 by the resident agent, if an individual, or by the authorized officer, if a
9 corporation or other business entity, attesting that at least 30 days prior
10 to the expiration of the 60 day period, notice was sent via certified or
11 registered mail to the designated contact of the non-participating man-
12 ufacturer for which such resident agent was acting that such agent was
13 resigning its position.

14 (B) After receipt of the notice of resignation of its resident agent, the
15 non-participating manufacturer for which such resident agent was acting
16 shall obtain and designate a new resident agent to take the place of the
17 resigning resident agent. If such non-participating manufacturer fails to
18 obtain and designate a new resident agent and provide notice thereof, in
19 writing via certified or registered mail, to the attorney general prior to
20 the expiration of the 60-day period provided in subparagraph (A), such
21 non-participating manufacturer shall be removed from the directory.

22 (4) If a ~~registered~~ **resident** agent of a non-participating manufacturer
23 dies, the non-participating manufacturer shall have 30 days after the death
24 of such ~~registered~~ **resident** agent to appoint and notify, in writing via
25 certified or registered mail, the attorney general of the non-participating
26 manufacturer's new ~~registered~~ **resident** agent. Service upon the non-
27 participating manufacturer after the death of such agent but prior to the
28 appointment of a new agent shall be had upon the secretary of state.
29 Failure by the non-participating manufacturer to appoint a new resident
30 agent, and provide proof of such appointment to the satisfaction of the
31 attorney general prior to the expiration of the 30-day period shall result
32 in removal from the directory.

33 (5) After the resignation of the resident agent becomes effective as
34 provided in subparagraph (3)(A), or after the death of such resident agent
35 as provided in paragraph (4), and if no new resident agent is obtained
36 and notification is provided in the time and manner required in this sec-
37 tion, then service of process against the non-participating manufacturer
38 for which the previous resident agent had been acting shall thereafter be
39 made upon the secretary of state in the manner prescribed by K.S.A. 60-
40 304, and amendments thereto.

41 (c) A non-participating manufacturer shall provide irrevocable writ-
42 ten consent that actions brought under this act may be commenced
43 against it in the district court of the third judicial district, Shawnee county,

1 Kansas, by service of process on the appointed service of process agent
2 designated pursuant to this section.

3 **(d) A resident agent may change the resident agent's address**
4 **when appointed to accept service of process on behalf of a non-**
5 **participating manufacturer for which such agent is a resident**
6 **agent, to another address in this state by mailing a letter, via cer-**
7 **tified or registered mail, to the attorney general. The letter shall**
8 **be on company letterhead and executed by the resident agent. The**
9 **letter shall contain the following:**

10 **(1) The names of all non-participating manufacturers repre-**
11 **sented by the resident agent;**

12 **(2) the address at which the resident agent has maintained the**
13 **resident agent's office for each manufacturer;**

14 **(3) a certification of the new address to which the resident**
15 **agent's address will be changed to on a given day; and**

16 **(4) a certification at which the resident agent will thereafter**
17 **maintain the resident agent's address for each of the non-partici-**
18 **pating manufacturers recited in the letter.**

19 **Upon the filing of the letter with the attorney general and there-**
20 **after, or until further change of address, as authorized by law, the**
21 **office address of the resident agent recited in the letter shall be**
22 **located at the new address of the resident agent as provided in the**
23 **letter.**

24 ~~New Sec. 3. (a) (1) No later than 10 calendar days after the end of~~
25 ~~each calendar month, and more frequently if so directed by the attorney~~
26 ~~general or director, each stamping agent shall submit such information~~
27 ~~as the attorney general or the director requires to facilitate compliance~~
28 ~~with this act including, but not limited to, a list by brand family of the~~
29 ~~total number of cigarettes or the equivalent stick count to which the~~
30 ~~stamping agent affixed tax indicia, caused tax indicia to be affixed or oth-~~
31 ~~erwise paid the tax due for such cigarettes during the previous calendar~~
32 ~~month. No later than 10 calendar days after the end of each cal-~~
33 ~~endar month, and more frequently if so directed by the attorney~~
34 ~~general or director, each stamping agent authorized to affix tax~~
35 ~~indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and~~
36 ~~amendments thereto, shall submit such information as the attorney~~
37 ~~general or director requires. No later than 20 calendar days after~~
38 ~~the end of each calendar month, and more frequently if so directed~~
39 ~~by the attorney general or director, each stamping agent who is~~
40 ~~required to pay the tax on the privilege of selling or dealing in roll-~~
41 ~~your-own tobacco products pursuant to K.S.A. 79-3371, and~~
42 ~~amendments thereto, shall submit such information as the attorney~~
43 ~~general or director requires.~~

1 (2) Invoices and documentation of sales of all non-participating man-
2 ufacturer cigarettes, and any other information relied upon in reporting
3 to ~~the attorney general or~~ the director shall, upon request, be made avail-
4 able to ~~the attorney general or~~ the director. Such invoices and documents
5 shall be maintained:

6 ~~(A) On or after January 1, 2010, for a period of at least three years;~~

7 ~~(B) on or after January 1, 2011, for a period of at least four years; and~~

8 ~~(C) on or after January 1, 2012, for a period of at least five years; for~~

9 **a period of at least three years.**

10 (b) At any time, the attorney general may request from the non-par-
11 ticipating manufacturer or the financial institution at which such manu-
12 facturer has established a qualified escrow fund for the purpose of com-
13 pliance with subsection (b) of K.S.A. 50-6a03, and amendments thereto,
14 proof of the amount of money in such fund, exclusive of interest, the
15 amount and date of each deposit to such fund and the amount and date
16 of each withdrawal from such fund.

17 (c) In addition to the information required to be submitted pursuant
18 to subsections (a) and (b) and subsection (c) of K.S.A. 50-6a04, and
19 amendments thereto, the attorney general or the director may require a
20 stamping agent or tobacco product manufacturer to submit any additional
21 information including, but not limited to, samples of the packaging or
22 labeling of each brand family as is necessary to enable the attorney general
23 to determine whether a tobacco product manufacturer is in compliance
24 with this act.

25 (d) A stamping agent or non-participating manufacturer receiving a
26 request pursuant to subsection (c) shall provide the requested informa-
27 tion within 30 calendar days from receipt of the request.

28 New Sec. 4. (a) The director is authorized to disclose to the attorney
29 general any information received under this act, as requested by the at-
30 torney general for purposes of determining compliance with or enforcing
31 the provisions of this act. The director and attorney general shall share
32 with each other information received under this act and the director and
33 the attorney general may share such information with federal agencies,
34 attorneys general of other states or directors of taxation or their equiva-
35 lents of other states, for purposes of enforcement of this act, the corre-
36 sponding federal laws or the corresponding laws of other states.

37 (b) Except as otherwise provided, any information provided to the
38 attorney general or director for purposes of enforcement of this act may
39 be shared between the attorney general and the director and shall not be
40 disclosed publicly by the attorney general or the director except when
41 necessary to facilitate compliance with and enforcement of this act.

42 (c) On a quarterly basis, and upon request made in writing by a to-
43 bacco product manufacturer, the attorney general or the director may

1 provide the name of any stamping agent who reports selling the tobacco
2 product manufacturer's products.

3 (d) On a quarterly basis, and upon request made in writing by a to-
4 bacco product manufacturer, a stamping agent shall provide to the re-
5 questing tobacco product manufacturer the total number of cigarettes,
6 by brand family, which the stamping agent reported to the attorney gen-
7 eral **or director** pursuant to section 3, and amendments thereto, pro-
8 vided that such information provided by the stamping agent to a tobacco
9 **product** manufacturer shall be limited to the brand families of that man-
10 ufacturer as listed in the directory established in subsection (b) of K.S.A.
11 50-6a04, and amendments thereto.

12 (e) Unless disclosure is authorized under this section, all information
13 obtained by the director and disclosed to the attorney general or shared
14 with federal agencies, attorneys general of other states or directors of
15 taxation or their equivalents of other states for purposes of enforcement
16 of this act, the corresponding federal laws or the corresponding laws of
17 other states, shall be confidential. The penalties provided under K.S.A.
18 75-5133, and amendments thereto, shall not apply when information is
19 lawfully disclosed pursuant to this section.

20 New Sec. 5. (a) Notwithstanding any other provision of law, if a
21 newly qualified non-participating manufacturer is to be listed in the di-
22 rectory, or if the attorney general reasonably determines that any non-
23 participating manufacturer who has filed a certification pursuant to sub-
24 section (c) of K.S.A. 50-6a04, and amendments thereto, poses an elevated
25 risk for noncompliance with this act neither such non-participating man-
26 ufacturer nor any of its brand families shall be included or retained in the
27 directory unless and until such non-participating manufacturer, or its
28 United States importer that undertakes joint and several liability for the
29 manufacturer's performance in accordance with subsection (c)(3)(I) of
30 K.S.A. 50-6a04, and amendments thereto, has posted a bond in accord-
31 ance with this section.

32 (b) The bond required by this section shall be posted by corporate
33 surety located within the United States in an amount equal to the greater
34 of \$50,000 or the amount of escrow the non-participating manufacturer
35 in either its current or predecessor form was required to deposit for sales
36 of cigarettes in this state during the previous calendar year. The bond
37 shall be written in favor of the state of Kansas and shall be conditioned
38 on the performance by the non-participating manufacturer, or its United
39 States importer that undertakes joint and several liability for the manu-
40 facturer's performance in accordance with subsection (c)(3)(I) of K.S.A.
41 50-6a04, and amendments thereto, of all of its duties and obligations
42 under this act during the year in which the certification is filed and the
43 next succeeding calendar year.

1 (c) A non-participating manufacturer may be deemed to pose an el-
2 evated risk for noncompliance with this act if:

3 (1) The non-participating manufacturer, or any affiliate thereof, has
4 underpaid an escrow obligation with respect to any other state or juris-
5 diction that is a party to the master settlement agreement at any time
6 within the three calendar years prior to the date of submission or approval
7 of the most recent certification, unless:

8 (A) The non-participating manufacturer did not make the underpay-
9 ment knowingly or recklessly and the non-participating manufacturer
10 promptly cured the underpayment within 180 calendar days of notice of
11 the underpayment; or

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

16 (2) any state or jurisdiction that is party to the master settlement
17 agreement has removed the non-participating manufacturer, or its brands
18 or brand families, or an affiliate, or such affiliate's brands or brand fam-
19 ilies, from the state's directory for noncompliance with the corresponding
20 laws of such other state or jurisdiction at any time within three calendar
21 years prior to the date of submission or approval of the most recent cer-
22 tification; or

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

27 (d) As used in this section, "newly qualified non-participating man-
28 ufacturer" means a non-participating manufacturer that has not previ-
29 ously been listed in the directory. Such non-participating manufacturer
30 may be required to post a bond in accordance with this section for the
31 first five years of its listing, or longer, if they have been deemed to pose
32 an elevated risk for noncompliance.

33 New Sec. 6. No ~~person~~ **wholesale dealer, as defined in K.S.A.**
34 **79-3301, and amendments thereto, or distributor, as defined in**
35 **K.S.A. 79-3301, and amendments thereto, of cigarettes and roll-**
36 **your-own tobacco products** shall be issued a license or granted a re-
37 newal of a license by the Kansas department of revenue ~~as a stamping~~
38 ~~agent~~ unless such ~~person~~ **wholesale dealer or distributor** has provided
39 to the ~~attorney general~~ **director** reasonable assurances, in writing and
40 under penalty of perjury, that such person will comply fully with the
41 stamping agent requirements in this act.

42 New Sec. 7. (a) In addition to or in lieu of any other civil or criminal
43 remedy provided by law, the director or the director's designee, upon a

1 finding that a stamping agent has violated subsection (a) of K.S.A. 50-
2 6a04, and amendments thereto, or any rules or regulations adopted pur-
3 suant to this act, may revoke or suspend the license of any licensee in the
4 manner provided by K.S.A. 79-3309, and amendments thereto. Each
5 package of cigarettes to which tax indicia is affixed, is caused to be affixed
6 or tax is paid thereupon, and each sale or offer to sell cigarettes in violation
7 of subsection (a) of K.S.A. 50-6a04, and amendments thereto, shall con-
8 stitute a separate violation. The director may also impose a civil penalty
9 in an amount not to exceed the greater of 500% of the retail value of the
10 cigarettes involved or \$5,000 upon a finding of violation of subsection (a)
11 of K.S.A. 50-6a04, and amendments thereto, or a violation of any rules
12 or regulations adopted pursuant to this act. Such fine shall be imposed
13 in the manner provided by K.S.A. 79-3391, and amendments thereto. Any
14 fine collected pursuant to this subsection shall be remitted to the state
15 treasurer in accordance with the provisions of K.S.A. 75-4215, and
16 amendments thereto. Upon receipt of each such remittance, the state
17 treasurer shall deposit the entire amount in the state treasury to the credit
18 of the cigarette and tobacco products regulation fund created pursuant
19 to subsection (e) of K.S.A. 79-3391, and amendments thereto. The mon-
20 eys credited to this fund shall be used for the purposes of enforcement
21 of this act, or K.S.A. 79-3301 et seq., and amendments thereto.

22 (b) The attorney general or the attorney general's duly authorized
23 designee shall, when requested by the director, assist the director in a
24 hearing to suspend or revoke a stamping agent's license for a violation of
25 this act.

26 New Sec. 8. (a) The following shall be deemed contraband under
27 K.S.A. 79-3323, and amendments thereto:

28 (1) Any cigarettes that have been sold, offered for sale or possessed
29 for sale in this state in violation of subsection (a) of K.S.A. 50-6a04, and
30 amendments thereto; and

31 (2) any cigarettes to which tax indicia has been affixed, was caused to
32 be affixed or the tax paid thereupon as required by K.S.A. 79-3311 or 79-
33 3371, and amendments thereto, in violation of subsection (a) of K.S.A.
34 50-6a04, and amendments thereto.

35 (b) Any cigarettes constituting contraband may be seized by the at-
36 torney general or attorney general's authorized agent, the director or di-
37 rector's authorized agent or any law enforcement officer. All such ciga-
38 rettes shall be subject to seizure, with or without process or warrant, and
39 forfeiture, as provided herein and in K.S.A. 79-3324a, and amendments
40 thereto, and shall be destroyed and not resold. Such cigarettes shall be
41 deemed contraband whether the violation of subsection (a) of K.S.A. 50-
42 6a04, and amendments thereto, is knowing or otherwise.

43 (c) (1) Any stamping agent that distributes cigarettes in a state other

1 than Kansas may store in its Kansas warehouse cigarettes made contra-
2 band pursuant to this section if such stamping agent has affixed the tax
3 indicia of such other state to each package of cigarettes or can provide
4 evidence that it has paid the required tax thereupon.

5 (2) Cigarettes made contraband pursuant to this section, without be-
6 ing subject to seizure or forfeiture, may be transported in, into or through
7 the state either:

8 (A) On a commercial carrier with a proper bill of lading with an out-
9 of-state destination;

10 (B) when the tax indicia of another state is affixed to each package of
11 cigarettes; or

12 (C) on a commercial carrier with a proper bill of lading to a licensed
13 Kansas stamping agent who affixes tax indicia to cigarettes for sale in a
14 state other than Kansas if the packing slip accompanying the shipment
15 indicates the shipment is for sale in a state other than Kansas and iden-
16 tifies the state in which the shipment is to be sold. The time of delivery
17 of the shipments shall be indicated on the bill of lading of the common
18 carrier when delivery is completed. The receiving Kansas stamping agent
19 must, within 24 hours of receiving the delivery, affix or caused to be
20 affixed to each package of cigarettes the stamp of the state in which they
21 are to be sold.

22 New Sec. 9. The attorney general, on behalf of the director, may seek
23 an injunction to restrain a threatened or actual violation of this act by a
24 stamping agent and to compel the stamping agent to comply with this act.

25 New Sec. 10. (a) It shall be unlawful for a person to sell or distribute
26 cigarettes, or acquire, hold, own, possess, transport, import or cause to
27 be imported cigarettes that the person knows or should know are in-
28 tended for distribution or sale in this state in violation of subsection (a)
29 of K.S.A. 50-6a04, and amendments thereto. A violation of this subsection
30 shall be a class B misdemeanor.

31 (b) It shall be unlawful for a non-participating manufacturer, directly
32 or indirectly, to falsely represent to any person in Kansas:

33 (1) Any information about a brand family listed on the directory;

34 (2) that it is a participating manufacturer;

35 (3) that it has made all required escrow payments; or

36 (4) that it has satisfied any other requirements imposed pursuant to
37 this act.

38 A violation of this subsection is a class A nonperson misdemeanor.

39 (c) The attorney general shall have concurrent authority with any
40 county or district attorney to prosecute any violation of this section.

41 New Sec. 11. (a) Any violation of this act involving the sale or at-
42 tempted sale of cigarettes by a stamping agent to a retail dealer, **vending**
43 **machine operator** or consumer, or by a retail dealer **or vending ma-**

1 **chine operator** to a consumer, shall constitute an unlawful and deceptive
2 trade practice as provided in K.S.A. 50-626, and amendments thereto,
3 and shall be subject to the penalties provided for in K.S.A. 50-623 et seq.,
4 and amendments thereto, in lieu of or in addition to any penalties pro-
5 vided in this act.

6 (b) For purposes of this section, a stamping agent shall be deemed a
7 “supplier” for purposes of a consumer transaction, as defined in subsec-
8 tion (c) of K.S.A. 50-624, and amendments thereto, regardless of whether
9 the stamping agent sells to a retail dealer or consumer.

10 (c) **If a court determines that a person has violated this act, the**
11 **court shall order any profits, gains, gross receipts or other benefit**
12 **from the violation be surrendered. Any profits, gains, gross re-**
13 **ceipts or other benefit surrendered from the violation shall be col-**
14 **lected pursuant to this subsection and shall be remitted to the state**
15 **treasurer in accordance with the provisions of K.S.A. 75-4215, and**
16 **amendments thereto. Upon receipt of each such remittance, the**
17 **state treasurer shall deposit the entire amount in the state treasury**
18 **to the credit of the cigarette and tobacco products regulation fund**
19 **created pursuant to subsection (e) of K.S.A. 79-3391, and amend-**
20 **ments thereto.**

21 (d) **Unless otherwise expressly provided, the remedies or pen-**
22 **alties provided by this act are cumulative to each other and to the**
23 **remedies or penalties under all other laws of this state.**

24 New Sec. 12. In any action brought by the state to enforce the pro-
25 visions of this act the state shall be entitled to recover the costs of inves-
26 tigation, expert witness fees, costs of the action and reasonable attorney
27 fees. Recovery of such costs and fees shall be remitted to the state agency
28 or agencies who initiated and brought such action.

29 New Sec. 13. In any action under K.S.A. 50-6a03, and amendments
30 thereto, reports of the numbers of **non-participating manufacturers’**
31 cigarettes ~~stamped~~ submitted to the attorney general **or director** pur-
32 suant to subsection (a) of section 3, and amendments thereto, shall be
33 admissible in evidence ~~and~~. **These reports** shall be presumed to accu-
34 rately account for the number of cigarettes ~~stamped~~ **on which state taxes**
35 **were paid** during the time period by the stamping agent that submitted
36 the report absent a contrary showing by the non-participating manufac-
37 turer or importer. Nothing in this section shall be construed as limiting
38 or otherwise affecting the state’s right to maintain that such reports are
39 incorrect or do not accurately reflect a non-participating manufacturer’s
40 sales in the state during the time period in question, and the presumption
41 shall not apply in the event the state does so maintain.

42 New Sec. 14. Notwithstanding subsection (j) of K.S.A. 50-6a02, and
43 amendments thereto, the attorney general may promulgate rules and reg-

1 ulations necessary to effect the purposes of this act for the regulation of
 2 tobacco product manufacturers. The director may promulgate rules and
 3 regulations necessary to effect the purposes of this act for the regulation
 4 of stamping agents, retail dealers and vending machine operators.

5 New Sec. 15. If a court of competent jurisdiction finds that the pro-
 6 visions of K.S.A. 50-6a01 through 50-6a03, and amendments thereto, con-
 7 flict with and cannot be reconciled with any other provisions of this act,
 8 then such provisions of K.S.A. 50-6a01 thru 50-6a03, and amendments
 9 thereto, shall control. If any provision of this act causes K.S.A. 50-6a01
 10 through 50-6a03, and amendments thereto, to no longer constitute a qual-
 11 ifying or model statute as those terms are defined in the master settlement
 12 agreement, then that portion of this act shall not be valid. If any provision
 13 of this act is for any reason held to be invalid, unlawful or unconstitutional,
 14 such decision shall not affect the validity of the remaining portions of this
 15 act or any part thereof.

16 Sec. 16. K.S.A. 50-6a04 is hereby amended to read as follows: 50-
 17 6a04. (a) ~~No person may affix, or cause to be affixed, tax stamps or meter~~
 18 ~~impressions to individual packages of cigarettes or pay the required tax~~
 19 ~~on roll-your-own tobacco in accordance with K.S.A. 79-3371, and amend-~~
 20 ~~ments thereto, unless the tobacco product manufacturer that makes or~~
 21 ~~sells such cigarettes or roll-your-own tobacco has:~~

22 ~~—(1) Become a participating manufacturer; or~~

23 ~~—(2) made all required escrow payments.~~

24 No person may:

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

28 (2) *sell, offer, possess for sale or import for personal consumption in*
 29 *this state, cigarettes of a tobacco product manufacturer brand family not*
 30 *included in the directory.*

31 (b) (1) Not later than July 1, ~~2002~~ 2009, the attorney general shall
 32 develop a ~~list~~ *directory*, to be posted on the attorney general's website;
 33 ~~of all tobacco product manufacturers that have become participating man-~~
 34 ~~ufacturers or made all required escrow payments. This list shall include~~
 35 ~~the brand families identified by each such tobacco product manufacturer~~
 36 ~~under subsection (c). The list shall be updated as necessary. A person~~
 37 ~~may rely upon the attorney general's list in affixing or causing to be affixed~~
 38 ~~stamps or meter impressions to individual packages of cigarettes or paying~~
 39 ~~the tax on roll-your-own tobacco as required by K.S.A. 79-3371, and~~
 40 ~~amendments thereto, of any brand family included on the list. Except as~~
 41 ~~otherwise provided, the directory shall list all tobacco product manufac-~~
 42 ~~turers and brand families of such tobacco product manufacturers that~~
 43 ~~have provided current and accurate certifications conforming to the~~

1 requirements of subsection (c).

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

8 (3) In the case of a non-participating manufacturer, neither the to-
9 bacco product manufacturer nor a brand family shall be included or re-
10 tained in the directory if the attorney general concludes:

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

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

19 (C) that, within three calendar years prior to the date of submission
20 or approval of the most recent certification, such tobacco product man-
21 ufacturer has defaulted on escrow payments in any other state or juris-
22 diction that is a party to the master settlement agreement and the default
23 has not been cured within 90 calendar days of such default.

24 (4) The attorney general shall update the directory as necessary in
25 order to correct mistakes and to add or remove a tobacco product man-
26 ufacturer or brand family so as to keep the directory in conformity with
27 the requirements of this act.

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

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

39 (7) Unless otherwise provided by agreement between a retail dealer
40 or a vending machine operator and a tobacco product manufacturer, a
41 retail dealer or a vending machine operator shall be entitled to a refund
42 from a tobacco product manufacturer for any money paid by the retail
43 dealer or vending machine operator to a stamping agent for any cigarettes

1 *of the tobacco product manufacturer still in the possession of the retail*
2 *dealer or vending machine operator on the effective date of removal from*
3 *the directory of that tobacco product manufacturer or brand family.*

4 ~~(c) In order to be included on the list developed by the attorney~~
5 ~~general under subsection (b), a tobacco product manufacturer shall (1)~~
6 ~~submit to the attorney general a list of brand families whose cigarettes~~
7 ~~are to be counted in calculating the participating manufacturer's annual~~
8 ~~payments under the master settlement agreement or required escrow~~
9 ~~payments whichever is applicable, (2) appoint a registered agent for serv-~~
10 ~~ice of process in the state and identify such registered agent to the attor-~~
11 ~~ney general, and (3) certify, under penalty of perjury, that all escrow~~
12 ~~payments have been made by all other tobacco product manufacturers~~
13 ~~that previously made or sold brand families identified under this subsec-~~
14 ~~tion or brand style included within such brand families, except that, if the~~
15 ~~brand family or brand style was made or sold by the manufacturer before~~
16 ~~the effective date of this act, such manufacturer shall be required only to~~
17 ~~identify such predecessor manufacturer or manufacturers. A tobacco~~
18 ~~product manufacturer may update the list to reflect changes. (1) On or~~
19 ~~before April 30 of each year, every tobacco product manufacturer whose~~
20 ~~cigarettes are sold in this state, whether directly or through a stamping~~
21 ~~agent or similar intermediary or intermediaries, shall execute and deliver~~
22 ~~in the manner prescribed by the attorney general a certification to the~~
23 ~~attorney general certifying under penalty of perjury that, as of the date~~
24 ~~of such certification, such tobacco product manufacturer either is:~~

25 (A) *A participating manufacturer; or*
26 (B) *in full compliance with K.S.A. 50-6a03, and amendments thereto,*
27 *including payment of all quarterly installment payments as may be re-*
28 *quired by subsection (d).*

29 (2) *A participating manufacturer shall include in its certification a*
30 *list of its brand families. The participating manufacturer shall update such*
31 *list 30 calendar days prior to any addition to, or modification of its brand*
32 *families by executing and delivering a supplemental certification to the*
33 *attorney general.*

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

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

37 (B) *a list of all of its brand families sold in the state at any time during*
38 *the current calendar year, including any brand family sold in the state*
39 *during the preceding calendar year that is no longer being sold in the*
40 *state as of the date of such certification;*

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

- 1 (D) *a declaration that such non-participating manufacturer is regis-*
2 *tered to do business in the state, or has appointed a resident agent for*
3 *service of process, and provided notice thereof as required by section 2,*
4 *and amendments thereto;*
- 5 (E) *a declaration that such non-participating manufacturer:*
- 6 (i) *Has established and continues to maintain a qualified escrow fund;*
7 *and*
- 8 (ii) *has executed an escrow agreement that governs the qualified es-*
9 *crow fund and that such escrow agreement has been reviewed and ap-*
10 *proved by the attorney general;*
- 11 (F) *a declaration that such non-participating manufacturer consents*
12 *to the jurisdiction of the district court of the third judicial district, Shaw-*
13 *nee county, Kansas, for purposes of enforcing this act, or rules or regu-*
14 *lations promulgated pursuant thereto, as required by subsection (c) of*
15 *section 2, and amendments thereto;*
- 16 (G) *a declaration that such non-participating manufacturer is in full*
17 *compliance with subsection (b) of K.S.A. 50-6a03, and amendments*
18 *thereto, and any rules or regulations promulgated pursuant to this act;*
- 19 (H) (i) *the name, address and telephone number of the financial in-*
20 *stitution where the non-participating manufacturer has established such*
21 *qualified escrow fund required pursuant to subsection (b) of K.S.A. 50-*
22 *6a03, and amendments thereto;*
- 23 (ii) *the account number of such qualified escrow fund and any sub-*
24 *account number for the state of Kansas;*
- 25 (iii) *the amount such non-participating manufacturer placed in such*
26 *qualified escrow fund for cigarettes sold in this state during the preceding*
27 *calendar year, the date and amount of each such deposit and such evi-*
28 *dence or verification as may be deemed necessary by the attorney general*
29 *to confirm the foregoing; and*
- 30 (iv) *the amount and date of any withdrawal or transfer of funds the*
31 *non-participating manufacturer made at any time from such qualified*
32 *escrow fund or from any other qualified escrow fund into which it ever*
33 *made escrow payments pursuant to subsection (b) of K.S.A. 50-6a03, and*
34 *amendments thereto; and*
- 35 (I) *in the case of a non-participating manufacturer located outside of*
36 *the United States, a declaration from each of its importers to the United*
37 *States of any of its brand families to be sold in Kansas that such importer*
38 *accepts joint and several liability with the non-participating manufacturer*
39 *for:*
- 40 (i) *All escrow deposits due under subsection (b) of K.S.A. 50-6a03,*
41 *and amendments thereto;*
- 42 (ii) *all penalties assessed under subsection (b) of K.S.A. 50-6a03, and*
43 *amendments thereto; and*

1 (iii) payment of all costs and attorney fees pursuant to any successful
2 action under this act against said manufacturer.

3 Such declarations by importers of a non-participating manufacturer
4 shall appoint for the declarant a resident agent for service of process in
5 Kansas in accordance with section 2, and amendments thereto, and con-
6 sent to jurisdiction in accordance with section 2, and amendments thereto.

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

9 (A) In the case of a participating manufacturer, said participating
10 manufacturer affirms that the brand family shall be deemed to be its
11 cigarettes for purposes of calculating its payments under the master set-
12 tlement agreement for the relevant year in the volume and shares deter-
13 mined pursuant to the master settlement agreement; or

14 (B) in the case of a non-participating manufacturer, said non-partic-
15 ipating manufacturer affirms that the brand family shall be deemed to be
16 its cigarettes for purposes of subsection (b) of K.S.A. 50-6a03, and amend-
17 ments thereto.

18 Nothing in this paragraph shall be construed as limiting or otherwise
19 affecting the state's right to maintain that a brand family constitutes cig-
20 arettes of a different tobacco product manufacturer for purposes of cal-
21 culating payments under the master settlement agreement or subsection
22 (b) of K.S.A. 50-6a03, and amendments thereto.

23 (5) Invoices and documentation of sales and other such information
24 relied upon for such certification shall be maintained by tobacco product
25 manufacturers;

26 ~~(A) On or after January 1, 2010, for a period of at least three years;~~

27 ~~(B) on or after January 1, 2011, for a period of at least four years;~~

28 ~~and~~

29 ~~(C) on or after January 1, 2012, for a period of at least five years.~~

30 (d) ~~In addition to or in lieu of any other civil or criminal penalty~~
31 ~~provided by law, upon a finding that a licensee has violated subsection~~
32 ~~(a) or any rules and regulations adopted pursuant thereto, the director~~
33 ~~may revoke or suspend the license of any licensee in the manner provided~~
34 ~~by K.S.A. 79-3309, and amendments thereto. The director may also im-~~
35 ~~pose a civil fine in an amount not to exceed the greater of 500% of the~~
36 ~~retail value of the cigarettes or roll-your-own tobacco involved or \$5,000~~
37 ~~upon a finding of a violation of subsection (a) or any rules and regulations~~
38 ~~adopted pursuant thereto. Such fine shall be imposed in the manner~~
39 ~~provided by K.S.A. 79-3391, and amendments thereto. The attorney gen-~~
40 ~~eral may require a tobacco product manufacturer subject to the require-~~
41 ~~ments of subsection (c) to make the escrow deposits required by subsection~~
42 ~~(b) of K.S.A. 50-6a03, and amendments thereto, in quarterly installments~~
43 ~~during the calendar year in which the sales covered by such deposits are~~

- 1 *made. The attorney general may require production of information suf-*
2 *ficient to enable the attorney general to determine the adequacy of the*
3 *amount of the installment deposit.*
- 4 ~~(c) Any cigarettes or roll-your-own tobacco that are stamped, to~~
5 ~~which a meter impression is affixed or for which tax is paid as required~~
6 ~~by K.S.A. 79-3371, and amendments thereto, in violation of subsection~~
7 ~~(a) shall be deemed contraband under K.S.A. 79-3323, and amendments~~
8 ~~thereto, and shall be subject to seizure and forfeiture as provided therein~~
9 ~~and in K.S.A. 79-3324a, and amendments thereto. All such cigarettes and~~
10 ~~roll-your-own tobacco seized and forfeited shall be destroyed. Such cig-~~
11 ~~arettes and roll-your-own tobacco shall be deemed contraband whether~~
12 ~~the violation of subsection (a) is knowing or otherwise.~~
- 13 ~~—(f) (1) The director may require wholesale dealers and distributors~~
14 ~~to submit such information as is necessary to enable the attorney general~~
15 ~~to determine whether a nonparticipating manufacturer has made the re-~~
16 ~~quired escrow payments.~~
- 17 ~~—(2) The attorney general may require nonparticipating manufacturers~~
18 ~~to submit such information as the attorney general may determine is~~
19 ~~necessary to enable the attorney general to determine whether a non-~~
20 ~~participating manufacturer has made the required escrow payments.~~
- 21 ~~—(g) The attorney general may require a nonparticipating manufac-~~
22 ~~turer to make the required escrow payments in quarterly installments~~
23 ~~during the year in which the sales covered by such payments are made~~
24 ~~in order to be placed on the list developed by the attorney general under~~
25 ~~subsection (b).~~
- 26 ~~—(h) (1) It shall be unlawful for a nonparticipating manufacturer, di-~~
27 ~~rectly or indirectly, to falsely represent to any person in Kansas:~~
- 28 ~~—(A) Any information about a brand family pursuant to the list sub-~~
29 ~~mitted pursuant to subsection (b);~~
- 30 ~~—(B) that it is a participating manufacturer;~~
- 31 ~~—(C) that it has made all required escrow payments; or~~
- 32 ~~—(D) that it has satisfied any other requirements imposed pursuant to~~
33 ~~this statute.~~
- 34 ~~—(2) Violation of this section is a class A, nonperson misdemeanor.~~
- 35 ~~—(i) The director and the attorney general may enter into a written~~
36 ~~agreement authorizing the exchange of information reasonably necessary~~
37 ~~to the enforcement and administration of this section.~~
- 38 ~~—(j) As used in this section:~~
- 39 ~~—(1) “Participating manufacturer” has the meaning ascribed thereto in~~
40 ~~subsection (a) of K.S.A. 50-6a03, and amendments thereto.~~
- 41 ~~—(2) “Required escrow payments” means the amounts described in~~
42 ~~subsection (b)(1) of K.S.A. 50-6a03, and amendments thereto.~~
- 43 ~~—(3) “Director” means the director of taxation.~~

- 1 Sec. 17. K.S.A. 50-6a04 is hereby repealed.
- 2 Sec. 18. This act shall take effect and be in force from and after its
- 3 publication in the statute book.