

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2124** submits the following report:

The Senate recedes from all of its amendments to the bill, and your committee on conference further agrees to amend the bill, as introduced, as follows:

On page 1, by striking all in lines 6 through 19 and inserting:

"Section 1. K.S.A. 2014 Supp. 21-6110 is hereby amended to read as follows: 21-6110.

(a) It shall be unlawful, with no requirement of a culpable mental state, to smoke in an enclosed area or at a public meeting including, but not limited to:

- (1) Public places;
 - (2) taxicabs and limousines;
 - (3) restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
 - (4) restrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;
 - (5) access points of all buildings and facilities not exempted pursuant to subsection (d);
- and
- (6) any place of employment.

(b) Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one week of

its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.

(c) Notwithstanding any other provision of this section, K.S.A. 2014 Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.

(d) The provisions of this section shall not apply to:

(1) The outdoor areas of any building or facility beyond the access points of such building or facility;

(2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;

(3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;

(4) the gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;

(5) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;

(6) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such

medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;

(7) tobacco shops;

(8) a class A or class B club defined in K.S.A. 41-2601, and amendments thereto, which: (A) Held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises;

(9) a private club in designated areas where minors are prohibited;~~and~~

(10) any benefit cigar dinner or other cigar dinner of a substantially similar nature that:

(A) Is conducted specifically and exclusively for charitable purposes by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(B) is conducted no more than once per calendar year by such organization; and

(C) has been held during each of the previous three years prior to January 1, 2011; and

(11) that portion of a medical or clinical research facility constituting a separately ventilated, secure smoking room dedicated and used solely and exclusively for clinical research activities conducted in accordance with regulatory authority of the United States or the state of Kansas, as determined by the director of alcoholic beverage control of the department of revenue.

Sec. 2. K.S.A. 50-6a02 is hereby amended to read as follows: 50-6a02. As used in this act:

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit C to the master settlement agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means allocable share as that term is defined in the master settlement agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists of or contains: (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; ~~or~~ (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in ~~clause (1) of this subsection~~ (1). The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(e) "Master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with ~~subsection (b)(2) of~~ K.S.A. 50-6a03**(b)(2)**, and amendments thereto.

(g) "Released claims" means released claims as that term is defined in the master settlement agreement.

(h) "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.

(i) "Tobacco product manufacturer" means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate):

(1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of

the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in paragraph (1) or (2). The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of ~~parts (1)-(3)~~ of subsection (i)(1) through (3) above.

(j) "Units sold" means, with respect to a particular tobacco product manufacturer for a particular year, the number of individual cigarettes sold in the state, including, without limitation, any cigarettes sold on any qualified tribal land within the state, by the applicable tobacco product manufacturer ~~(, whether directly or through a distributor, retailer or similar intermediary or intermediaries)~~, during the year in question, ~~as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state for which the state has the authority under federal law to impose excise or a similar tax or to collect escrow deposits, regardless of whether such taxes were imposed or collected by the state.~~ The department of revenue and the attorney general shall promulgate such rules and regulations as are necessary to ascertain the ~~amount~~ number of state excise tax paid on the cigarettes units sold of such tobacco product manufacturer for each year.

Sec. 3. K.S.A. 2014 Supp. 50-6a04 is hereby amended to read as follows: 50-6a04. (a)

No person may:

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

the directory; or

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

(b) (1) Not later than July 1, 2009, the attorney general shall develop a directory, to be posted on the attorney general's website. Except as otherwise provided, the directory shall list all tobacco product manufacturers and brand families of such tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (c).

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

(3) In the case of a non-participating manufacturer, neither the tobacco product manufacturer nor a brand family shall be included or retained in the directory if the attorney general concludes:

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

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

manufacturer; or

(C) that, within three calendar years prior to the date of submission or approval of the most recent certification, such tobacco product manufacturer has defaulted on escrow payments in any other state or jurisdiction that is a party to the master settlement agreement and the default has not been cured within 90 calendar days of such default.

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

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

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

(7) Unless otherwise provided by agreement between a retail dealer or a vending machine operator and a tobacco product manufacturer, a retail dealer or a vending machine operator shall be entitled to a refund from a tobacco product manufacturer for any money paid by the retail dealer or vending machine operator to a stamping agent for any cigarettes of the tobacco product manufacturer still in the possession of the retail dealer or vending machine

operator on the effective date of removal from the directory of that tobacco product manufacturer or brand family.

(8) The attorney general may remove from the state directory a tobacco product manufacturer or brand family if the attorney general concludes that:

(A) (i) The tobacco product manufacturer or any of the tobacco product manufacturer's affiliates, sales entity affiliates, officers or directors had pleaded guilty or nolo contendere to or been found guilty of a felony crime relating to the sale or taxation of cigarettes or tobacco products; or

(ii) the tobacco product manufacturer and the tobacco product manufacturer's brand families have been removed from the directory of another state based on acts or omissions that would, if done in this state, serve as a basis for removal from the directory maintained by the attorney general under this section, unless the manufacturer demonstrates that its removal from the other state's directory was effected without due process.

(B) (i) A tobacco product manufacturer that is removed from the state directory under this subsection (b) shall be eligible for relisting in the directory described in this subsection (b) on the earlier of the date on which the tobacco product manufacturer cures the violation or the date on which the tobacco product manufacturer is reinstated to the directory in the other state; or

(ii) in the case of a non-participating manufacturer deemed an elevated risk pursuant to K.S.A. 50-6a09, and amendments thereto, the attorney general may require such non-participating manufacturer to post a bond in accordance with that section.

(c) (1) On or before April 30 of each year, every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a stamping agent or similar

intermediary or intermediaries, shall execute and deliver in the manner prescribed by the attorney general a certification to the attorney general certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is:

(A) A participating manufacturer; or

(B) in full compliance with K.S.A. 50-6a03, and amendments thereto, including payment of all quarterly installment payments as may be required by subsection (d).

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

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

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

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

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

(D) a declaration that such non-participating manufacturer is registered to do business in the state, or has appointed a resident agent for service of process, and provided notice thereof as required by K.S.A. 2014 Supp. 50-6a08, and amendments thereto;

(E) a declaration that such non-participating manufacturer:

(i) Has established and continues to maintain a qualified escrow fund; and

(ii) has executed an escrow agreement that governs the qualified escrow fund and that such escrow agreement has been reviewed and approved by the attorney general;

(F) a declaration that such non-participating manufacturer consents to the jurisdiction of the district court of the third judicial district, Shawnee county, Kansas, for purposes of enforcing this act, or rules or regulations promulgated pursuant thereto, as required by ~~subsection (e) of~~ K.S.A. 2014 Supp. 50-6a08(c), and amendments thereto;

(G) a declaration that such non-participating manufacturer is in full compliance with ~~subsection (b) of~~ K.S.A. 50-6a03(b), and amendments thereto, and any rules or regulations promulgated pursuant to this act;

(H) (i) the name, address and telephone number of the financial institution where the non-participating manufacturer has established such qualified escrow fund required pursuant to ~~subsection (b) of~~ K.S.A. 50-6a03(b), and amendments thereto;

(ii) the account number of such qualified escrow fund and any sub-account number for the state of Kansas;

(iii) the amount such non-participating manufacturer placed in such qualified escrow fund for cigarettes sold in this state during the preceding calendar year, the date and amount of each such deposit and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and

(iv) the amount and date of any withdrawal or transfer of funds the non-participating manufacturer made at any time from such qualified escrow fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to ~~subsection (b) of~~ K.S.A. 50-

6a03(b), and amendments thereto; ~~and~~

(I) in the case of a non-participating manufacturer located outside of the United States, a declaration from each of its importers to the United States of any of its brand families to be sold in Kansas that such importer accepts joint and several liability with the non-participating manufacturer for:

(i) All escrow deposits due under ~~subsection (b) of~~ K.S.A. 50-6a03(b), and amendments thereto;

(ii) all penalties assessed under ~~subsection (b) of~~ K.S.A. 50-6a03(b), and amendments thereto; and

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

Such declarations by importers of a non-participating manufacturer shall appoint for the declarant a resident agent for service of process in Kansas in accordance with K.S.A. 2014 Supp. 50-6a08, and amendments thereto, and consent to jurisdiction in accordance with K.S.A. 2014 Supp. 50-6a08, and amendments thereto;

(J) the identity of all stamping agents, wholesalers and distributors, by name and address, to whom the non-participating manufacturer or its importer sold cigarettes to or that the manufacturer or importer believes or has reason to believe purchased or received any of the manufacturer's cigarettes from another source during the preceding calendar year, and those for which the manufacturer or its importer plan to sell to or believe or has reason to believe will purchase or receive any of the manufacturer's cigarettes from another source during the certifying calendar year; and

(K) a declaration that all sales or shipments made by the non-participating manufacturer or its affiliates, including, but not limited to, its importers and stamping agents provided for certification under this section, within or into this state are made to a stamping agent, wholesaler, distributor or retailer that is licensed in this state.

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

(A) In the case of a participating manufacturer, said participating manufacturer affirms that the brand family shall be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year in the volume and shares determined pursuant to the master settlement agreement; or

(B) in the case of a non-participating manufacturer, said non-participating manufacturer affirms that the brand family shall be deemed to be its cigarettes for purposes of ~~subsection (b)~~ of K.S.A. 50-6a03**(b)**, and amendments thereto.

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

(5) Invoices and documentation of sales and other such information relied upon for such certification shall be maintained by tobacco product manufacturers for a period of at least five years.

(6) As a condition to being listed and having its brand families listed in the directory, a tobacco product manufacturer shall also:

(A) Certify annually that such manufacturer or its importer holds a valid permit under 26 U.S.C. § 5713 and provide a copy of such permit to the attorney general;

(B) certify annually that it is in compliance with all reporting and registration requirements of 15 U.S.C. § 375 et seq. and provide monthly to the director and the attorney general, regardless of sales or shipments, a copy of all reports required pursuant to 15 U.S.C. §§ 376 and 376a, to be filed electronically in a manner prescribed by the director and attorney general; and

(C) pay annually a \$500 directory fee to the attorney general which shall be deposited in the tobacco master settlement agreement compliance fund.

(d) The attorney general may require a tobacco product manufacturer subject to the requirements of subsection (c) to make the escrow deposits required by ~~subsection (b) of~~ K.S.A. 50-6a03**(b)**, and amendments thereto, in quarterly installments during the calendar year in which the sales covered by such deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

Sec. 4. K.S.A. 2014 Supp. 50-6a07 is hereby amended to read as follows: 50-6a07. As used in this act:

(a) "Act" means the provisions of K.S.A. 50-6a01 through 50-6a06, and amendments thereto, and the provisions of K.S.A. 2014 Supp. 50-6a07 through 50-6a21, and amendments thereto.

(b) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but

not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors or any other indicia of product identification identical, similar to or identifiable with a previously known brand of cigarettes.

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

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

(e) "Indian tribe" means any Indian tribe, band, nation or other organized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians under the laws of the United States.

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

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

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

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

~~(i)-(j)~~ "Resident agent" means a domestic corporation, a domestic limited partnership, a domestic limited liability company or a domestic business trust or a foreign corporation, a foreign limited partnership, a foreign limited liability company or a foreign business trust authorized to transact business in this state, and which is generally open during regular business

hours to accept service of process on behalf of a non-participating manufacturer.

~~(j)~~(k) "Retail dealer" has the same meaning given that term in ~~subsection (q)~~ of K.S.A. 79-3301(q), and amendments thereto.

~~(k)~~(l) "Stamping agent" means a person who is authorized to affix tax indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and amendments thereto, or any person who is required to pay the tax on the privilege of selling or dealing in roll-your-own tobacco products pursuant to K.S.A. 79-3371, and amendments thereto.

~~(l)~~(m) "Tax indicia" has the same meaning given that term in ~~subsection (u)~~ of K.S.A. 79-3301(u), and amendments thereto.

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

(o) "Qualified tribal land" means:

(1) All land within the borders of this state that is within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, including rights-of-way running through the reservation;

(2) all dependent Indian communities within the borders of this state;

(3) all Indian allotments within the borders of this state, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments; and

(4) any lands within the borders of this state, the title to which is either held in trust by the United States for the benefit of any Indian tribe or individual, or held by any Indian tribe or individual subject to restriction by the United States against alienation, and over which an Indian tribe exercises governmental power.

~~(n)~~(p) "Units sold" has the same meaning given that term in ~~subsection (j) of~~ K.S.A. 50-6a02(j), and amendments thereto.

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

Sec. 5. K.S.A. 2014 Supp. 50-6a10 is hereby amended to read as follows: 50-6a10. (a)
(1) No later than 10 calendar days after the end of each calendar month, and more frequently if so directed by the attorney general or director, each stamping agent authorized to affix tax indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and amendments thereto, shall submit such information as the attorney general or director requires. No later than 20 calendar days after the end of each calendar month, and more frequently if so directed by the attorney general or director, each stamping agent who is required to pay the tax on the privilege of selling or dealing in roll-your-own tobacco products pursuant to K.S.A. 79-3371, and amendments thereto, shall submit such information as the attorney general or director requires.

(2) Invoices and documentation of sales of all non-participating manufacturer cigarettes, and any other information relied upon in reporting to the director shall, upon request, be made available to the director or the attorney general. Such invoices and documents shall be maintained for a period of at least three years.

(b) At any time, the attorney general may request from the non-participating manufacturer or the financial institution at which such manufacturer has established a qualified escrow fund for the purpose of compliance with ~~subsection (b) of~~ K.S.A. 50-6a03(b), and amendments thereto, proof of the amount of money in such fund, exclusive of interest, the amount and date of each deposit to such fund and the amount and date of each withdrawal from

such fund.

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

(d) A stamping agent or non-participating manufacturer receiving a request pursuant to ~~subsection (e) of~~ this section shall provide the requested information within 30 calendar days from receipt of the request.

Sec. 6. K.S.A. 2014 Supp. 50-6a11 is hereby amended to read as follows: 50-6a11. (a) The director is authorized to disclose to the attorney general any information received under this act, as requested by the attorney general for purposes of determining compliance with or enforcing the provisions of this act. The director and attorney general shall share with each other information received under this act and the director and the attorney general may share such information with federal agencies, attorneys general of other states or directors of taxation or their equivalents of other states, for purposes of enforcement of this act, the corresponding federal laws or the corresponding laws of other states. The director and attorney general may share the information specified under this subsection with any of the following:

(1) Federal, state or local agencies for the purposes of enforcement of corresponding laws of other states.

(2) A court, arbitrator, data clearinghouse or similar entity for the purpose of assessing

compliance with or making calculations required by the master settlement agreement or agreements regarding disputes under the master settlement agreement, and with counsel for the parties or expert witnesses in any such proceeding, if the information otherwise remains confidential.

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

(c) On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, the attorney general or the director may provide the name of any stamping agent who reports selling the tobacco product manufacturer's products.

(d) On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, a stamping agent shall provide to the requesting tobacco product manufacturer the total number of cigarettes, by brand family, which the stamping agent reported to the attorney general or director pursuant to K.S.A. 2014 Supp. 50-6a10, and amendments thereto, provided that such information provided by the stamping agent to a tobacco product manufacturer shall be limited to the brand families of that manufacturer as listed in the directory established in ~~subsection (b) of~~ K.S.A. 50-6a04(b), and amendments thereto.

(e) Unless disclosure is authorized under this section, all information obtained by the director and disclosed to the attorney general or shared with federal agencies, attorneys general of other states or directors of taxation or their equivalents of other states for purposes of enforcement of this act, the corresponding federal laws or the corresponding laws of other states,

shall be confidential. The penalties provided under K.S.A. 75-5133, and amendments thereto, shall not apply when information is lawfully disclosed pursuant to this section.

(f) Any tobacco sales data provided to the director, attorney general or data clearinghouse for the purpose of assessing compliance with or making calculations required by the master settlement agreement or related agreements, shall be confidential. The provisions of this subsection shall expire on July 1, 2020, unless the legislature reviews this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2020.

Sec. 7. K.S.A. 2014 Supp. 50-6a16 is hereby amended to read as follows: 50-6a16. (a) It shall be unlawful for a person to sell or distribute cigarettes, or acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in this state in violation of ~~subsection (a) of~~ K.S.A. 50-6a04(a), ~~and amendments thereto. A violation of this subsection shall be a class B misdemeanor or~~ 50-6a13(a), and amendments thereto.

(1) Upon a first conviction for a violation of subsection (a), a person shall be guilty of a class A nonperson misdemeanor and sentenced to no more than one year in confinement and fined not less than \$1,000, nor more than \$2,500.

(2) On a second conviction for a violation of subsection (a), a person shall be guilty of a severity level 9 nonperson felony and fined a sum of not less than \$10,000, nor more than \$100,000, and sentenced according to the provisions of K.S.A. 2014 Supp. 21-6804, and amendments thereto.

(3) On a third or subsequent conviction for a violation of subsection (a), a person shall be guilty of a severity level 9 nonperson felony and fined a sum of no less than \$50,000, nor

more than \$100,000, and sentenced according to the provisions of K.S.A. 2014 Supp. 21-6804, and amendments thereto.

(4) The penalties provided hereunder are cumulative to the remedies or penalties, including all civil penalties, under all other laws of this state.

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

- (1) Any information about a brand family listed on the directory;
- (2) that it is a participating manufacturer;
- (3) that it has made all required escrow payments; or
- (4) that it has satisfied any other requirements imposed pursuant to this act.

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

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

Sec. 8. K.S.A. 2014 Supp. 75-5133 is hereby amended to read as follows: 75-5133. (a) Except as otherwise more specifically provided by law, all information received by the secretary of revenue, the director of taxation or the director of alcoholic beverage control from returns, reports, license applications or registration documents made or filed under the provisions of any law imposing any sales, use or other excise tax administered by the secretary of revenue, the director of taxation, or the director of alcoholic beverage control, or from any investigation conducted under such provisions, shall be confidential, and it shall be unlawful for any officer or employee of the department of revenue to divulge any such information except in accordance with other provisions of law respecting the enforcement and collection of such tax, in accordance

with proper judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

(b) The secretary of revenue or the secretary's designee may:

(1) Publish statistics, so classified as to prevent identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or the attorney general's designee;

(3) provide the post auditor access to all such excise tax reports or returns in accordance with and subject to the provisions of ~~subsection (g) of~~ K.S.A. 46-1106(g), and amendments thereto;

(4) disclose taxpayer information from excise tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) provide information from returns and reports filed under article 42 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, to county appraisers as is necessary to insure proper valuations of property. Information from such returns and reports may also be exchanged with any other state agency administering and collecting conservation or other taxes and fees imposed on or measured by mineral production;

(6) provide, upon request by a city or county clerk or treasurer or finance officer of any city or county receiving distributions from a local excise tax, monthly reports identifying each retailer doing business in such city or county or making taxable sales sourced to such city or county, setting forth the tax liability and the amount of such tax remitted by each retailer during

the preceding month, and identifying each business location maintained by the retailer and such retailer's sales or use tax registration or account number;

(7) provide information from returns and applications for registration filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-3601, and amendments thereto, to a city or county treasurer or clerk or finance officer to explain the basis of statistics contained in reports provided by subsection (b)(6);

(8) disclose the following oil and gas production statistics received by the department of revenue in accordance with K.S.A. 79-4216 et seq., and amendments thereto: Volumes of production by well name, well number, operator's name and identification number assigned by the state corporation commission, lease name, leasehold property description, county of production or zone of production, name of purchaser and purchaser's tax identification number assigned by the department of revenue, name of transporter, field code number or lease code, tax period, exempt production volumes by well name or lease, or any combination of this information;

(9) release or publish liquor brand registration information provided by suppliers, farm wineries, microdistilleries and microbreweries in accordance with the liquor control act. The information to be released is limited to: Item number, universal numeric code, type status, product description, alcohol percentage, selling units, unit size, unit of measurement, supplier number, supplier name, distributor number and distributor name;

(10) release or publish liquor license information provided by liquor licensees, distributors, suppliers, farm wineries, microdistilleries and microbreweries in accordance with the liquor control act. The information to be released is limited to: County name, owner, business

name, address, license type, license number, license expiration date and the process agent contact information;

(11) release or publish cigarette and tobacco license information obtained from cigarette and tobacco licensees in accordance with the Kansas cigarette and tobacco products act. The information to be released is limited to: County name, owner, business name, address, license type and license number;

(12) provide environmental surcharge or solvent fee, or both, information from returns and applications for registration filed pursuant to K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary of health and environment or the secretary's designee for the sole purpose of ensuring that retailers collect the environmental surcharge tax or solvent fee, or both;

(13) provide water protection fee information from returns and applications for registration filed pursuant to K.S.A. 82a-954, and amendments thereto, to the secretary of the state board of agriculture or the secretary's designee and the secretary of the Kansas water office or the secretary's designee for the sole purpose of verifying revenues deposited to the state water plan fund;

(14) provide to the secretary of commerce copies of applications for project exemption certificates sought by any taxpayer under the enterprise zone sales tax exemption pursuant to ~~subsection (ee) of~~ K.S.A. 79-3606(cc), and amendments thereto;

(15) disclose information received pursuant to the Kansas cigarette and tobacco act and subject to the confidentiality provisions of this act to any criminal justice agency, as defined in ~~subsection (e) of~~ K.S.A. 22-4701(c), and amendments thereto, or to any law enforcement officer,

as defined in K.S.A. 2014 Supp. 21-5111, and amendments thereto, on behalf of a criminal justice agency, when requested in writing in conjunction with a pending investigation;

(16) provide to retailers tax exemption information for the sole purpose of verifying the authenticity of tax exemption numbers issued by the department;

(17) provide information concerning remittance by sellers, as defined in K.S.A. 2014 Supp. 12-5363, and amendments thereto, of prepaid wireless 911 fees from returns to the local collection point administrator, as defined in K.S.A. 2014 Supp. 12-5363, and amendments thereto, for purposes of verifying seller compliance with collection and remittance of such fees; **and**

(18) release or publish charitable gaming information obtained in bingo licensee and registration applications and renewals in accordance with the bingo act, K.S.A. 79-4701 et seq., and amendments thereto. The information to be released is limited to: The name, address, phone number, license registration number and email address of the organization, distributor or of premises; and

(19) provide to the attorney general confidential information for purposes of determining compliance with or enforcing K.S.A. 50-6a01 et seq., and amendments thereto, the master settlement agreement referred to therein and all agreements regarding disputes under the master settlement agreement. The secretary and the attorney general may share the information specified under this subsection with any of the following:

(A) Federal, state or local agencies for the purposes of enforcement of corresponding laws of other states; and

(B) a court, arbitrator, data clearinghouse or similar entity for the purpose of assessing

compliance with or making calculations required by the master settlement agreement or agreements regarding disputes under the master settlement agreement, and with counsel for the parties or expert witnesses in any such proceeding, if the information otherwise remains confidential.

(c) Any person receiving any information under the provisions of subsection (b) shall be subject to the confidentiality provisions of subsection (a) and to the penalty provisions of subsection (d).

(d) Any violation of this section shall be a class A, nonperson misdemeanor, and if the offender is an officer or employee of this state, such officer or employee shall be dismissed from office. Reports of violations of this paragraph shall be investigated by the attorney general. The district attorney or county attorney and the attorney general shall have authority to prosecute any violation of this section if the offender is a city or county clerk or treasurer or finance officer of a city or county.

Sec. 9. K.S.A. 50-6a02 and K.S.A. 2014 Supp. 21-6110, 50-6a04, 50-6a07, 50-6a10, 50-6a11, 50-6a16 and 75-5133 are hereby repealed.";

Also on page 1, in line 21, by striking "statute book" and inserting "Kansas register";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after "concerning"; by striking all in line 2; in line 3, by striking all before the period and inserting "cigarettes and tobacco products; relating to smoking; the directory and certification of tobacco product manufacturers; disclosure of information and criminal penalties; amending K.S.A. 50-6a02 and K.S.A. 2014 Supp. 21-6110, 50-6a04, 50-6a07, 50-6a10, 50-6a11, 50-6a16 and 75-5133 and repealing the existing sections";

And your committee on conference recommends the adoption of this report.

Conferees on part of Senate

Conferees on part of House