AN ACT concerning tobacco products; relating to the sale thereof; remitting certain payments from tobacco product manufacturers to the credit of the Kansas endowment for youth fund rather than deposit into escrow upon certification by the attorney general; amending K.S.A. 50-6a01 and 50-6a03 and K.S.A. 2020 Supp. 50-6a04 and 50-6a09 and repealing the existing sections.

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

Section 1. K.S.A. 50-6a01 is hereby amended to read as follows:

(a) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the state. Under certain health-care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "master settlement agreement," with the state. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the state, tied in part to their volume of sales, to fund a national foundation devoted to the interests of public health; and to make
substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

(g) It is also consistent with the policy of the state to require tobacco product manufacturers that have not entered into such a settlement to pay directly to the state an amount that: (1) Prevents such manufacturers from deriving large, short-term profits and then becoming judgment-proof; (2) requires such manufacturers to internalize the healthcare costs imposed on the state by cigarette smoking; (3) increases the price of such manufacturers' cigarettes, thereby reducing smoking rates, particularly among youth, consistent with the state's policy of discouraging underage smoking; and (4) serves as partial compensation for the financial burdens imposed on the state by cigarette smoking.

Sec. 2. K.S.A. 50-6a03 is hereby amended to read as follows: 50-6a03. Any tobacco product manufacturer selling cigarettes to consumers within the state—whether directly or through a distributor, retailer or similar intermediary or intermediaries—after the effective date of this act May 20, 1999, shall do one of the following:

(a) Become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement), and generally perform its financial obligations under the master settlement agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question, pay the following amounts (as such amounts are adjusted for inflation):

(A) For the following years, place into a qualified escrow fund:

(i) 1999: $.0094241 per unit sold after the effective date of this act;

(ii) 2000: $.0104712 per unit sold;

(iii) for each of 2001 and 2002: $.0136125 per unit sold;

(iv) for each of 2003 through 2006: $.0167539 per unit sold;

(v) for each of 2007 and each year thereafter through 2021: $.0188482 per unit sold; and

(B) for 2022 and each year thereafter, remit to the director $.0188482 per unit sold. The department of revenue and the attorney general shall promulgate rules and regulations as necessary to implement this
subsection. The director shall remit all such amounts to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, and upon certification by the attorney general that the tobacco product manufacturer subject to the provisions of this subsection (b)(1)(B) did not seek a credit or refund within one year of the date of remittance to the director, the state treasurer shall deposit the entire amount in the state treasury to the credit of the Kansas endowment for youth fund.

(2) (A) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) of subsection (b)(1)(A) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A)(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph (i) subsection: (a) In the order in which they were placed into escrow; and (ii) (b) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B)(ii) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow, based on units sold in the state of Kansas in a particular year, was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including, after final determination of all adjustments, that such manufacturer would have been required to make based on such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C)(iii) to the extent not released from escrow under subparagraphs (A) or (B) of paragraph (2) of subsection (b)(2)(A)(i) or (ii), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(B) Each tobacco product manufacturer that remits funds pursuant to subsection (b)(1)(B), within one year after the date of remittance, may contest the amount of such remittance. With respect to any timely-contested remittance, the tobacco product manufacturer may seek a credit or refund to the extent that such tobacco product manufacturer establishes that the amount such manufacturer was required to remit, based on units sold in the state of Kansas in a particular year, was greater than the master settlement agreement payments, as determined pursuant to section IX(ii) of that agreement, including after final determination of all adjustments, that such tobacco product manufacturer would have been required to make based on such units sold had such tobacco product manufacturer been a participating manufacturer. The tobacco product
manufacturer may elect to receive the excess amount as a refund or a credit against future remittances due under this section.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection (b)(1)(A) or remit funds pursuant to subsection (b)(1)(B) shall annually certify to the attorney general that it is in compliance with this subsection such subsections. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow or remit the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow or remit the funds required under this section shall:

(A) Be required within 15 days to place such funds into escrow as shall bring it such tobacco product manufacturer into compliance with this section. The court, upon a finding of a violation of this either subsection (b)(1)(A) or (b)(1)(B), may impose a civil penalty to be credited to the state general fund in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it such tobacco product manufacturer into compliance with this section. The court, upon a finding of a knowing violation of this either subsection (b)(1)(A) or (b)(1)(B), may impose a civil penalty to be paid to the state general fund in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state—(whether directly or through a distributor, retailer or similar intermediary), for a period not to exceed two years.

Each failure to make an annual deposit or remittance required under this section shall constitute a separate violation. A tobacco product manufacturer who is found in violation of this section shall pay, in addition to other amounts assessed under this section and pursuant to law, the costs and attorney's fees incurred by the state during a successful presentation under this paragraph subsection (b)(3).

Sec. 3. K.S.A. 2020 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 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(b), 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 a remittance required pursuant to K.S.A. 50-6a03(b), and amendments thereto, for any period for any brand family, whether or not listed by such non-participating manufacturer, has not been fully paid to the director as required;

(C) 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

(D) 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 or remittances 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. 2020 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; or
      (iii) has not made any cigarette sales in Kansas requiring escrow deposits under K.S.A. 50-6a03(b), and amendments thereto;
   (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 K.S.A. 2020 Supp. 50-6a08(c), and amendments thereto;
   (G) a declaration that such non-participating manufacturer is in full compliance with 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 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 or remitted to the director for cigarettes sold in this state during the preceding calendar year, the date and amount of each such deposit or remittance 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 K.S.A. 50-6a03(b), and amendments thereto;

(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 and remittances due under K.S.A. 50-6a03(b), and amendments thereto;

(ii) all penalties assessed under 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 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. 2020 Supp. 50-6a08, and amendments thereto, and consent to jurisdiction in accordance with K.S.A. 2020 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, such 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, such non-participating manufacturer affirms that the brand family shall be deemed to be its cigarettes for purposes 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 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 or remittances required by K.S.A. 50-6a03(b), and amendments thereto, in quarterly installments during the calendar year in which the sales covered by such deposits or remittances 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 or remittance.

Sec. 4. K.S.A. 2020 Supp. 50-6a09 is hereby amended to read as follows: 50-6a09. (a) Notwithstanding any other provision of law, if a newly qualified non-participating manufacturer is to be listed in the directory, or if the attorney general reasonably determines that any non-
participating manufacturer who has filed a certification pursuant to subsection (c) of K.S.A. 50-6a04(c), and amendments thereto, poses an elevated risk for noncompliance with this act neither such non-participating manufacturer nor any of its brand families shall be included or retained in the directory unless and until such non-participating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with subsection (c)(3)(I) of K.S.A. 50-6a04(c)(3)(I), and amendments thereto, has posted a bond in accordance with this section.

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

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

1. The non-participating manufacturer, or any affiliate thereof, has underpaid an escrow obligation or remittance with respect to any other state or jurisdiction that is a party to the master settlement agreement at any time within the three calendar years prior to the date of submission or approval of the most recent certification, unless:
   A. The non-participating manufacturer did not make the underpayment knowingly or recklessly and the non-participating manufacturer promptly cured the underpayment within 180 calendar days of notice of the underpayment; or
   B. The underpayment or lack of payment is the subject of a good faith dispute as documented to the satisfaction of the attorney general and the underpayment is cured within 90 calendar days of entry of a final order establishing the amount of the required escrow or remittance payment;

2. any state or jurisdiction that is party to the master settlement agreement has removed the non-participating manufacturer, or its brands or brand families, or an affiliate, or such affiliate's brands or brand families, from the state's directory for noncompliance with the corresponding laws of such other state or jurisdiction at any time within three calendar years prior to the date of submission or approval of the most recent certification; or
(3) any state or jurisdiction that is party to the master settlement agreement has pending litigation, or an unsatisfied judgment against the non-participating manufacturer, or any affiliate thereof, for unpaid escrow obligations, remittances or associated penalties, costs or attorney fees.

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

New Sec. 5. (a) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease and other serious diseases and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the state. Under certain healthcare programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "master settlement agreement," with the state. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein: To pay substantial sums to the state, tied in part to their volume of sales, to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted
culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

(g) The provisions of this section shall take effect January 1, 2022, and upon the date of publication in the Kansas register of the notice prescribed in section 9, and amendments thereto.

New Sec. 6. Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, after the effective date of this act shall do one of the following:

(a) Become a participating manufacturer, as that term is defined in section II(jj) of the master settlement agreement, and generally perform its financial obligations under the master settlement agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(A) 1999: $0.0094241 per unit sold after the effective date of this act;
(B) 2000: $0.0104712 per unit sold;
(C) for each of 2001 and 2002: $0.0136125 per unit sold;
(D) for each of 2003 through 2006: $0.0167539 per unit sold;
(E) for each of 2007 and each year thereafter: $0.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to subsection (b)(1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph: (i) In the order in which they were placed into escrow; and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow, based on units sold in the state of Kansas in a particular year, was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including, after final determination of all adjustments, that such manufacturer would have been required to make based on such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subsection (b)(2)(A)
or (b)(2)(B), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the attorney general that it is in compliance with this subsection. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(A) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be credited to the state general fund in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the state general fund in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer or similar intermediary, for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. A tobacco product manufacturer who is found in violation of this section shall pay, in addition to other amounts assessed under this section and pursuant to law, the costs and attorney fees incurred by the state during a successful presentation under this paragraph (3).

(c) The provisions of this section shall take effect January 1, 2022, and upon the date of publication in the Kansas register of the notice prescribed in section 9, and amendments thereto.

New Sec. 7. (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 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 section 6, 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 section 6, 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 shall be eligible for relisting in the directory described in this subsection 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 section 8, 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 section 6, 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. 2020
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 K.S.A. 2020 Supp. 50-
6a08(c), and amendments thereto;
(G) a declaration that such non-participating manufacturer is in full
compliance with section 6(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 section 6(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 section 6(b), and amendments thereto;

(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 section 6(b), and amendments thereto;

(ii) all penalties assessed under section 6(b), and amendments thereto;

and

(iii) payment of all costs and attorney fees pursuant to any successful action under this act against 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. 2020 Supp. 50-6a08, and amendments thereto, and consent to jurisdiction in accordance with K.S.A. 2020 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, such 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, such non-participating manufacturer affirms that the brand family shall be deemed to be its cigarettes for purposes of section 6(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 section 6(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 section 6(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.

(e) The provisions of this section shall take effect January 1, 2022, and upon the date of publication in the Kansas register of the notice prescribed in section 9, and amendments thereto.

New Sec. 8. (a) Notwithstanding any other provision of law, if a newly qualified non-participating manufacturer is to be listed in the directory, or if the attorney general reasonably determines that any non-participating manufacturer who has filed a certification pursuant to section 7(c), and amendments thereto, poses an elevated risk for noncompliance with this act neither such non-participating manufacturer nor any of its brand families shall be included or retained in the directory unless and until such non-participating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with section 7(c)(3)(I), and amendments thereto, has posted a bond in accordance with this section.
(b) The bond required by this section shall be posted by corporate surety located within the United States in an amount equal to the greater of $50,000 or the amount of escrow the non-participating manufacturer in either its current or predecessor form was required to deposit for sales of cigarettes in this state during the previous calendar year. The bond shall be written in favor of the state of Kansas and shall be conditioned on the performance by the non-participating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with section 7(c)(3)(I), and amendments thereto, of all of its duties and obligations under this act during the year in which the certification is filed and the next succeeding calendar year.

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

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

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

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

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

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

(d) As used in this section, "newly qualified non-participating manufacturer" means a non-participating manufacturer that has not previously been listed in the directory. Such non-participating manufacturer may be required to post a bond in accordance with this section for the first five years of its listing, or longer, if they have been deemed to pose an elevated risk for noncompliance.
(e) The provisions of this section shall take effect January 1, 2022, and upon the date of publication in the Kansas register of the notice prescribed in section 9, and amendments thereto.

New Sec. 9. In the event that all or any portion of the amendments to K.S.A. 50-6a03 made by this act are adjudged by any court of competent jurisdiction to be unconstitutional or invalid, the attorney general shall certify to the secretary of state that such adjudication has occurred. Upon receipt of such certification, the secretary of state shall cause a notice of such certification to be published in the Kansas register. On January 1, 2022, and the date of publication in the Kansas register of such notice, the amendments to K.S.A. 50-6a01 and 50-6a03, as amended by this act, shall be deemed to be repealed, and sections 5 through 8 of this act shall take effect and be in force. Neither any holding of unconstitutionality nor the repeal of K.S.A. 50-6a01 and 50-6a03, as amended by this act, shall affect, impair or invalidate any other portions of sections 5 through 8 of this act or the application of such sections to any other person or circumstance, and the provisions of sections 5 through 8 of this act shall at all times continue in full force and effect.

Sec. 10. K.S.A. 50-6a01 and 50-6a03 and K.S.A. 2020 Supp. 50-6a04 and 50-6a09 are hereby repealed.

Sec. 11. On January 1, 2022, and the date of publication in the Kansas register of the notice prescribed in section 9, K.S.A. 50-6a01, as amended by section 1 of this act, and 50-6a03, as amended by section 2 of this act, and K.S.A. 2020 Supp. 50-6a04, as amended by section 3 of this act, and 50-6a09, as amended by section 4 of this act, are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.