

SENATE BILL No. 255

By Committee on Federal and State Affairs

2-19

1 AN ACT concerning sales of cigarettes and tobacco products; relating to
2 **{smoking;}** the directory and certification of tobacco product
3 manufacturers; relating to disclosure of information and criminal
4 penalties therefor; amending K.S.A. 50-6a02 and K.S.A. 2014 Supp.
5 **{21-6110,}** 50-6a04, 50-6a07, 50-6a10, 50-6a11, 50-6a16 and 75-5133
6 and repealing the existing sections.
7

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

9 ***{Section 1. K.S.A. 2014 Supp. 21-6110 is hereby amended to read as***
10 ***follows: 21-6110. (a) It shall be unlawful, with no requirement of a***
11 ***culpable mental state, to smoke in an enclosed area or at a public***
12 ***meeting including, but not limited to:***

13 ***(1) Public places;***

14 ***(2) taxicabs and limousines;***

15 ***(3) restrooms, lobbies, hallways and other common areas in public***
16 ***and private buildings, condominiums and other multiple-residential***
17 ***facilities;***

18 ***(4) restrooms, lobbies and other common areas in hotels and motels***
19 ***and in at least 80% of the sleeping quarters within a hotel or motel that***
20 ***may be rented to guests;***

21 ***(5) access points of all buildings and facilities not exempted***
22 ***pursuant to subsection (d); and***

23 ***(6) any place of employment.***

24 ***(b) Each employer having a place of employment that is an***
25 ***enclosed area shall provide a smoke-free workplace for all employees.***
26 ***Such employer shall also adopt and maintain a written smoking policy***
27 ***which shall prohibit smoking without exception in all areas of the place***
28 ***of employment. Such policy shall be communicated to all current***
29 ***employees within one week of its adoption and shall be communicated to***
30 ***all new employees upon hiring. Each employer shall provide a written***
31 ***copy of the smoking policy upon request to any current or prospective***
32 ***employee.***

33 ***(c) Notwithstanding any other provision of this section, K.S.A. 2014***
34 ***Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or***
35 ***other person in charge of an adult care home, as defined in K.S.A. 39-***
36 ***923, and amendments thereto, or a medical care facility, may designate a***

1 *portion of such adult care home, or the licensed long-term care unit of*
2 *such medical care facility, as a smoking area, and smoking may be*
3 *permitted within such designated smoking area.*

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

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

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

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

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

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

20 *(6) that portion of a licensed long-term care unit of a medical care*
21 *facility that is expressly designated as a smoking area by the proprietor*
22 *or other person in charge of such medical care facility pursuant to*
23 *subsection (c) and that is fully enclosed and ventilated and to which*
24 *access is restricted to the residents and their guests;*

25 *(7) tobacco shops;*

26 *(8) a class A or class B club defined in K.S.A. 41-2601, and*
27 *amendments thereto, which (A) held a license pursuant to K.S.A. 41-*
28 *2606 et seq., and amendments thereto, as of January 1, 2009; and (B)*
29 *notifies the secretary of health and environment in writing, not later*
30 *than 90 days after the effective date of this act, that it wishes to continue*
31 *to allow smoking on its premises;*

32 *(9) a private club in designated areas where minors are prohibited;*
33 *and*

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

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

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

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

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

7 ~~Section 1.~~{**Sec. 2.**} K.S.A. 50-6a02 is hereby amended to read as
8 follows: 50-6a02. As used in this act:

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

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

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

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

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

40 (f) "Qualified escrow fund" means an escrow arrangement with a
41 federally or state chartered financial institution having no affiliation with
42 any tobacco product manufacturer and having assets of at least
43 \$1,000,000,000 where such arrangement requires that such financial

1 institution hold the escrowed funds' principal for the benefit of releasing
2 parties and prohibits the tobacco product manufacturer placing the funds
3 into escrow from using, accessing or directing the use of the funds'
4 principal except as consistent with ~~subsection (b)(2) of K.S.A. 50-6a03(b)~~
5 *(2), and amendments thereto.*

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

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

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

12 (1) Manufactures cigarettes anywhere that such manufacturer intends
13 to be sold in the United States, including cigarettes intended to be sold in
14 the United States through an importer (except where such importer is an
15 original participating manufacturer, as that term is defined in the master
16 settlement agreement, that will be responsible for the payments under the
17 master settlement agreement with respect to such cigarettes as a result of
18 the provisions of subsections II(mm) of the master settlement agreement
19 and that pays the taxes specified in subsection II(z) of the master
20 settlement agreement, and provided that the manufacturer of such
21 cigarettes does not market or advertise such cigarettes in the United
22 States);

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

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

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

1 Sec. ~~2-73.~~ K.S.A. 2014 Supp. 50-6a04 is hereby amended to read as
2 follows: 50-6a04. (a) No person may:

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

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

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

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

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

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

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

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

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

41 (5) The attorney general shall promptly post in the directory and
42 transmit by electronic mail to each stamping agent that has provided an
43 electronic mail address, notice of removal from the directory of a tobacco

1 product manufacturer or brand family.

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

9 (7) Unless otherwise provided by agreement between a retail dealer
10 or a vending machine operator and a tobacco product manufacturer, a retail
11 dealer or a vending machine operator shall be entitled to a refund from a
12 tobacco product manufacturer for any money paid by the retail dealer or
13 vending machine operator to a stamping agent for any cigarettes of the
14 tobacco product manufacturer still in the possession of the retail dealer or
15 vending machine operator on the effective date of removal from the
16 directory of that tobacco product manufacturer or brand family.

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

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

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

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

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

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

1 execute and deliver in the manner prescribed by the attorney general a
2 certification to the attorney general certifying under penalty of perjury
3 that, as of the date of such certification, such tobacco product
4 manufacturer either is:

5 (A) A participating manufacturer; or

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

9 (2) A participating manufacturer shall include in its certification a list
10 of its brand families. The participating manufacturer shall update such list
11 30 calendar days prior to any addition to, or modification of its brand
12 families by executing and delivering a supplemental certification to the
13 attorney general.

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

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

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

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

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

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

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

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

34 (F) a declaration that such non-participating manufacturer consents to
35 the jurisdiction of the district court of the third judicial district, Shawnee
36 county, Kansas, for purposes of enforcing this act, or rules or regulations
37 promulgated pursuant thereto, as required by ~~subsection (e) of~~ K.S.A.
38 2014 Supp. 50-6a08(c), and amendments thereto;

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

42 (H) (i) the name, address and telephone number of the financial
43 institution where the non-participating manufacturer has established such

1 qualified escrow fund required pursuant to ~~subsection (b) of K.S.A. 50-~~
2 ~~6a03(b)~~, and amendments thereto;

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

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

10 (iv) the amount and date of any withdrawal or transfer of funds the
11 non-participating manufacturer made at any time from such qualified
12 escrow fund or from any other qualified escrow fund into which it ever
13 made escrow payments pursuant to ~~subsection (b) of K.S.A. 50-6a03(b)~~,
14 and amendments thereto; ~~and~~

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

20 (i) All escrow deposits due under ~~subsection (b) of K.S.A. 50-~~
21 ~~6a03(b)~~, and amendments thereto;

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

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

26 Such declarations by importers of a non-participating manufacturer
27 shall appoint for the declarant a resident agent for service of process in
28 Kansas in accordance with K.S.A. 2014 Supp. 50-6a08, and amendments
29 thereto, and consent to jurisdiction in accordance with K.S.A. 2014 Supp.
30 50-6a08, and amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

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

41 ~~Sec. 3-14.~~ K.S.A. 2014 Supp. 50-6a07 is hereby amended to read as
42 follows: 50-6a07. As used in this act:

43 (a) "Act" means the provisions of K.S.A. 50-6a01 through 50-6a06,

1 and amendments thereto, and the provisions of K.S.A. 2014 Supp. 50-6a07
2 through 50-6a21, and amendments thereto.

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

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

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

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

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

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

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

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

26 ~~(i)~~ (j) "Resident agent" means a domestic corporation, a domestic
27 limited partnership, a domestic limited liability company or a domestic
28 business trust or a foreign corporation, a foreign limited partnership, a
29 foreign limited liability company or a foreign business trust authorized to
30 transact business in this state, and which is generally open during regular
31 business hours to accept service of process on behalf of a non-participating
32 manufacturer.

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

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

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

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

1 (o) "**Qualified** tribal land" means:

2 (1) All land ~~in~~ **{within the borders of}** this state **{that is}** within the
3 limits of any Indian reservation under the jurisdiction of the United States,
4 notwithstanding the issuance of any patent, including rights-of-way
5 running through the reservation;

6 (2) all dependent Indian communities within the borders of this state;
7 ~~and~~

8 (3) all Indian allotments ~~in~~ **{within the borders of}** this state, the
9 Indian titles to which have not been extinguished, including rights-of-way
10 running through such allotments; **and**

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

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

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

20 Sec. ~~4-15.~~ K.S.A. 2014 Supp. 50-6a10 is hereby amended to read as
21 follows: 50-6a10. (a) (1) No later than 10 calendar days after the end of
22 each calendar month, and more frequently if so directed by the attorney
23 general or director, each stamping agent authorized to affix tax indicia to
24 packages of cigarettes pursuant to K.S.A. 79-3311, and amendments
25 thereto, shall submit such information as the attorney general or director
26 requires. No later than 20 calendar days after the end of each calendar
27 month, and more frequently if so directed by the attorney general or
28 director, each stamping agent who is required to pay the tax on the
29 privilege of selling or dealing in roll-your-own tobacco products pursuant
30 to K.S.A. 79-3371, and amendments thereto, shall submit such information
31 as the attorney general or director requires.

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

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

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

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

12 ~~Sec. 5-16,}~~ K.S.A. 2014 Supp. 50-6a11 is hereby amended to read as
13 follows: 50-6a11. (a) The director is authorized to disclose to the attorney
14 general any information received under this act, as requested by the
15 attorney general for purposes of determining compliance with or enforcing
16 the provisions of this act. The director and attorney general shall share
17 with each other information received under this act and the director and
18 the attorney general may share such information with federal agencies,
19 attorneys general of other states or directors of taxation or their equivalents
20 of other states, for purposes of enforcement of this act, the corresponding
21 federal laws or the corresponding laws of other states. *The director and*
22 *attorney general may share the information specified under this subsection*
23 *with any of the following:*

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

26 (2) *A court, arbitrator, data clearinghouse or similar entity for the*
27 *purpose of assessing compliance with or making calculations required by*
28 *the master settlement agreement or agreements regarding disputes under*
29 *the master settlement agreement, and with counsel for the parties or*
30 *expert witnesses in any such proceeding, if the information otherwise*
31 *remains confidential.*

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

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

41 (d) On a quarterly basis, and upon request made in writing by a
42 tobacco product manufacturer, a stamping agent shall provide to the
43 requesting tobacco product manufacturer the total number of cigarettes, by

1 brand family, which the stamping agent reported to the attorney general or
2 director pursuant to K.S.A. 2014 Supp. 50-6a10, and amendments thereto,
3 provided that such information provided by the stamping agent to a
4 tobacco product manufacturer shall be limited to the brand families of that
5 manufacturer as listed in the directory established in ~~subsection (b) of~~
6 K.S.A. 50-6a04(b), and amendments thereto.

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

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

21 Sec. ~~6-7.~~ K.S.A. 2014 Supp. 50-6a16 is hereby amended to read as
22 follows: 50-6a16. (a) It shall be unlawful for a person to sell or distribute
23 cigarettes, or acquire, hold, own, possess, transport, import or cause to be
24 imported cigarettes that the person knows or should know are intended for
25 distribution or sale in this state in violation of ~~subsection (a) of~~ K.S.A. 50-
26 6a04(a), and amendments thereto. ~~A violation of this subsection shall be a~~
27 ~~class B misdemeanor, and K.S.A. 50-6a13(a), and amendments thereto.~~

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

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

36 (3) *On a third or subsequent conviction for a violation of subsection*
37 *(a), a person shall be guilty of a severity level 9 nonperson felony and*
38 *fined a sum of no less than \$50,000, nor more than \$100,000, and*
39 *sentenced according to the provisions of K.S.A. 2014 Supp. 21-6804, and*
40 *amendments thereto.*

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

43 (b) It shall be unlawful for a non-participating manufacturer, directly

1 or indirectly, to falsely represent to any person in Kansas:

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

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

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

10 Sec. ~~7-18,~~ K.S.A. 2014 Supp. 75-5133 is hereby amended to read as
11 follows: 75-5133. (a) Except as otherwise more specifically provided by
12 law, all information received by the secretary of revenue, the director of
13 taxation or the director of alcoholic beverage control from returns, reports,
14 license applications or registration documents made or filed under the
15 provisions of any law imposing any sales, use or other excise tax
16 administered by the secretary of revenue, the director of taxation, or the
17 director of alcoholic beverage control, or from any investigation conducted
18 under such provisions, shall be confidential, and it shall be unlawful for
19 any officer or employee of the department of revenue to divulge any such
20 information except in accordance with other provisions of law respecting
21 the enforcement and collection of such tax, in accordance with proper
22 judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

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

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

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

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

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

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

41 (6) provide, upon request by a city or county clerk or treasurer or
42 finance officer of any city or county receiving distributions from a local
43 excise tax, monthly reports identifying each retailer doing business in such

1 city or county or making taxable sales sourced to such city or county,
2 setting forth the tax liability and the amount of such tax remitted by each
3 retailer during the preceding month, and identifying each business location
4 maintained by the retailer and such retailer's sales or use tax registration or
5 account number;

6 (7) provide information from returns and applications for registration
7 filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-
8 3601, and amendments thereto, to a city or county treasurer or clerk or
9 finance officer to explain the basis of statistics contained in reports
10 provided by subsection (b)(6);

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

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

28 (10) release or publish liquor license information provided by liquor
29 licensees, distributors, suppliers, farm wineries, microdistilleries and
30 microbreweries in accordance with the liquor control act. The information
31 to be released is limited to: County name, owner, business name, address,
32 license type, license number, license expiration date and the process agent
33 contact information;

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

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

1 fee, or both;

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

8 (14) provide to the secretary of commerce copies of applications for
9 project exemption certificates sought by any taxpayer under the enterprise
10 zone sales tax exemption pursuant to ~~subsection (ee) of~~ K.S.A. 79-
11 3606(cc), and amendments thereto;

12 (15) disclose information received pursuant to the Kansas cigarette
13 and tobacco act and subject to the confidentiality provisions of this act to
14 any criminal justice agency, as defined in ~~subsection (e) of~~ K.S.A. 22-
15 4701(c), and amendments thereto, or to any law enforcement officer, as
16 defined in K.S.A. 2014 Supp. 21-5111, and amendments thereto, on behalf
17 of a criminal justice agency, when requested in writing in conjunction with
18 a pending investigation;

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

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

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

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

40 (A) *Federal, state or local agencies for the purposes of enforcement*
41 *of corresponding laws of other states.*

42 (B) *A court, arbitrator, data clearinghouse or similar entity for the*
43 *purpose of assessing compliance with or making calculations required by*

1 *the master settlement agreement or agreements regarding disputes under*
2 *the master settlement agreement, and with counsel for the parties or*
3 *expert witnesses in any such proceeding, if the information otherwise*
4 *remains confidential.*

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

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

15 Sec. ~~8-9.~~ K.S.A. 50-6a02 and K.S.A. 2014 Supp. ~~{21-6110,}~~ 50-
16 6a04, 50-6a07, 50-6a10, 50-6a11, 50-6a16 and 75-5133 are hereby
17 repealed.

18 Sec. ~~9-10.~~ This act shall take effect and be in force from and after its
19 publication in the Kansas register.