



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

JACK CONWAY
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KY 40601
(502) 696-5300
FAX: (502) 564-2894

**Notice of Amendments
to the Kentucky Tobacco Directory Statutes**

To: Non-Participating Manufacturers

From: Kentucky Office of the Attorney General
Michael Plumley, Assistant Attorney General
700 Capital Avenue, Suite 118
Frankfort, KY 40601
Telephone: (502) 696-5613
Facsimile: (502) 564-9380

Date: May 22, 2015

Re: HB 512 of 2015(eff. 7/1/15)

Please be advised that HB 512 of 2015 was signed by Governor Steve Beshear on March 23, 2015 and includes numerous changes to the Kentucky Escrow and Directory statutes governing the certification of Non-Participating Manufacturers on the Kentucky tobacco directory of approved brands. This notice is intended to describe these changes and NPMs will need to comply with the new requirements to remain on the directory going forward.

Major changes for 2015:

- 1) NPMs must post a financial instrument with the Office of Attorney General beginning with the third quarter, 2015 to remain on the directory.*

HB 512 requires that all NPMs wishing to remain on the tobacco directory post a financial instrument such as a corporate surety bond with the Office of Attorney General in an amount of \$50,000 or the highest amount of escrow deposited in any of the last twelve quarters by the NPM. The purpose of this requirement is to secure compliance with the escrow requirement. "Financial

instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.

If escrow is not deposited in the proper amount each quarter, the Office of the Attorney General may: (1) delist the NPM; (2) initiate a civil action against the NPM; and/or (3) execute on the financial instrument from the NPM to satisfy the default. If you have questions about the amount of the financial instrument, please contact our office. The first bond must be filed with our office by June 22, 2015.

2) NPMs whose products are imported into the United States must have their importers certify that they are in compliance with applicable law and they agree to joint and several liability with the manufacturer for any default in escrow.

Each NPM which has brands imported shall provide a listing of and a declaration from each of its importers of any of its brand families. The declaration shall state the following:

- The importer accepts joint and several liability with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund, for payment of all civil penalties, and for payment of all reasonable costs and expenses of investigation and prosecution, including attorneys' fees;
- The importer consents to personal jurisdiction in this state for the purpose of claims by the state for any obligation to place funds into a qualified escrow fund, for payment of all civil penalties, and for payment of any reasonable costs and expenses of investigation or prosecution, including attorneys' fees;
- The importer has appointed a registered agent for service of process in this state according to the same requirements established for the nonparticipating manufacturer as provided in Section 6 of this Act;
- The importer holds a valid permit under 26 U.S.C. sec. 5713;

- The importer is in compliance with the federal Jenkins Act, 15 U.S.C. secs. 375 et seq., as amended by the Prevent All Cigarette Trafficking (Pact) Act, Pub. L. No. 111-154, 124 Stat. 108; and
- The importer has complied with KRS 138.130 to 138.205, 248.752, and 248.754, and any administrative regulations promulgated thereunder.

These requirements must be met by the beginning of the third quarter (July 1, 2015).

3) NPM products which are delisted from the directory after the 30-day notice may not be stamped or sold after the removal date.

Major Changes for 2016 annual certification:

1) NPMs must certify no criminal convictions in the prior ten years involving cigarette sales.

NPMs will be required to certify that they or their officers or managers have not, for ten (10) years from the expiration of probation or final discharge from parole or maximum expiration of sentence, been convicted of or plead guilty to:

- A crime relating to the reporting, distribution, sale, or taxation of cigarettes or tobacco products; or
- A crime involving fraud, falsification of records, improper business transactions, or reporting.

2) NPMs must give a full disclosure of any removals or notices of removal from other state directories, which may be used as a basis to deny certification.

New certification forms will be available for 2016.

AN ACT relating to the Tobacco Master Settlement Agreement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 131.600 is amended to read as follows:

As used in **KRS 131.600 to 131.630**~~[this section and KRS 131.602]:~~

- (1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement;~~[-]~~
- (2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons;~~[-]~~
- (3) "Allocable share" means allocable share as that term is defined in the master settlement agreement;~~[-]~~
- (4) **"Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to menthol, kings, and 100's, and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes;**
- (5) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:
 - (a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
 - (b) Tobacco, in any form, that is functional in the product, which, because of its

appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette;
or

- (c) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subsection.

The term "cigarette" includes "roll-your-own", i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," nine-hundredths (0.09) ounces of "roll-your-own" tobacco shall constitute one (1) individual "cigarette";~~[-]~~

~~(6)~~~~(5)~~ **"Commissioner" means the commissioner of the department;**

(7) "Department" means the Department of Revenue;

(8) "Directory" means the directory as provided in Section 4 of this Act;

(9) "Distributor" means a person, wherever residing or located, who purchases nontax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes. This includes resident wholesalers, nonresident wholesalers, and unclassified acquirers as defined in KRS 138.130;

(10) "Financial instrument" has the same meaning as in KRS 138.210;

(11) "Importer" has the same meaning as in Section 13 of this Act;

(12) "Master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998, by Kentucky and leading United States tobacco product manufacturers;~~[-]~~

(13) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer;

(14) "Participating manufacturer" has the meaning given the term in Section II(jj) of

the master settlement agreement and all amendments thereto:

(15)~~(6)~~ "Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with KRS 131.602**(3)**~~(2)~~.

(16)~~(7)~~ "Released claims" means released claims as that term is defined in the master settlement agreement~~;~~.

(17)~~(8)~~ "Releasing parties" means releasing parties as that term is defined in the master settlement agreement~~;~~.

(18) "Stamping agent" means a person, including a distributor, that is authorized to affix tax stamps to packages or other containers of cigarettes pursuant to KRS 138.146 or any person that is required to pay the excise tax imposed pursuant to KRS 138.155;

(19)~~(9)~~ "Tobacco product manufacturer" means an entity that after June 30, 2000, directly and not exclusively through any affiliate:

- (a) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer, except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in

the United States;

- (b) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or
- (c) Becomes a successor of an entity described in paragraph (a) or (b) of this subsection.

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of the definitions described in paragraph (a), (b), or (c) of this subsection; ~~and~~[-]

~~(20)~~[(10)] "Units sold" means the number of individual cigarettes sold in Kentucky by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by Kentucky on packs or "roll-your-own" tobacco. The department~~[of Revenue]~~ shall promulgate administrative~~[such]~~ regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of ~~the~~~~[such]~~ tobacco product manufacturer for each year.

➔Section 2. KRS 131.602 is amended to read as follows:

- (1) Any tobacco product manufacturer selling cigarettes to consumers within this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after June 30, 2000, shall do one (1) 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) 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.~~[1.]~~For 2000: \$0.0104712 per unit sold after June 30, 2000;

b.~~[2.]~~ For each of 2001 and 2002: \$0.0136125 per unit sold;

c.~~[3.]~~ For each of 2003 through 2006: \$0.0167539 per unit sold; and

d.~~[4.]~~ For 2007 and each year thereafter: \$0.0188482 per unit sold; and

2. *Post a financial instrument with the Attorney General as provided in subsection (10) of this section.*

(2) *The nonparticipating manufacturer shall place the amount required under this section into the qualified escrow fund on a quarterly basis.*

(3) A *nonparticipating*~~[tobacco product]~~ manufacturer that places funds into escrow pursuant to~~[subsection (1)(b) of]~~ this section 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 *the nonparticipating*~~[such tobacco product]~~ manufacturer by Kentucky or any releasing party located or residing in Kentucky. Funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under *the*~~[such]~~ judgment or settlement;
- (b) To the extent that a *nonparticipating*~~[tobacco product]~~ manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state 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 *the nonparticipating*~~[such]~~ manufacturer would have been required to make on account of *the*~~[such]~~ units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to *the nonparticipating*~~[such tobacco product]~~ manufacturer; or
- (c) To the extent not released from escrow under paragraph (a) or (b) of this

subsection, funds shall be released from escrow and revert back to the nonparticipating~~[such tobacco product]~~ manufacturer twenty-five (25) years after the date on which they were placed into escrow.

~~(4)~~~~(3)~~ Each nonparticipating~~[tobacco product]~~ manufacturer~~[that elects to place funds into escrow pursuant to subsection (1)(b) of this section]~~ shall annually certify to the Attorney General that it is in compliance with *KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, and 248.754, and any administrative regulations promulgated thereunder*~~[subsections (1)(b) and (2) of this section]~~.

(5) In addition to subsection (10)(g) of this section, the Attorney General may bring a civil action on behalf of Kentucky against any nonparticipating~~[tobacco product]~~ manufacturer that fails in any quarter to place into escrow the funds required under this section. Any nonparticipating~~[tobacco product]~~ manufacturer that fails in any quarter~~[year]~~ to place into escrow the funds required under this section shall:

- (a) Be required within fifteen (15) days to place sufficient~~[such]~~ funds into escrow to~~[as shall]~~ bring it into compliance with this section. The court, upon a finding of a violation of~~[subsection (1)(b) or (2) of]~~ this section, may impose a civil penalty, to be paid to the general fund of Kentucky, in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;
- (b) In the case of a knowing violation, be required within fifteen (15) days to place sufficient~~[such]~~ funds into escrow to~~[as shall]~~ bring it into compliance with this section. The court, upon a finding of a knowing violation of~~[subsection (1)(b) or (2) of]~~ this section, may impose a civil penalty, to be paid to the general fund of Kentucky, in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the

violation and in a total amount not to exceed three hundred percent (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 Kentucky, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two (2) years, or, if later, until fully compliant with KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, 248.754, and any administrative regulations promulgated thereunder.

Each failure to place sufficient funds into escrow as~~make an annual deposit~~ required under this section on a quarterly basis as required by subsection (2) of this section shall constitute a separate violation.

- ~~(6)~~~~(4)~~ Notwithstanding the provisions of subsection (2) of this section, a nonparticipating~~tobacco product~~ manufacturer that elects to place funds into escrow pursuant to ~~subsection (1)(b) of~~ this section may make an irrevocable assignment of its interest in the funds to the benefit of the Commonwealth of Kentucky. Such assignment shall be permanent and apply to all funds in the subject qualified escrow fund~~account~~ or that may subsequently come into the fund~~such account~~, including those deposited into the qualified escrow fund~~account~~ prior to the assignment being executed, those deposited into the qualified escrow fund~~account~~ after the assignment is executed, and interest or other appreciation on the~~such~~ funds. The nonparticipating~~tobacco product~~ manufacturer, the Attorney General, and the financial institution where the qualified escrow fund~~account~~ is maintained may make~~such~~ amendments to the qualified escrow fund~~account~~ agreement as may be necessary to effectuate an assignment of rights executed pursuant to this subsection or a withdrawal of funds from the qualified escrow fund~~account~~ pursuant to subsection ~~(7)~~~~(5)~~ of this section. An assignment of rights executed pursuant to this subsection shall be in writing, signed by a duly

authorized representative of the nonparticipating~~[tobacco product]~~ manufacturer making the assignment, and shall become effective upon delivery of the assignment to the Attorney General and the financial institution where the qualified escrow fund~~[account]~~ is maintained.

~~(7)~~~~(5)~~ Notwithstanding the provisions of subsection ~~(3)~~~~(2)~~ of this section, any escrow funds assigned to the Commonwealth pursuant to subsection ~~(6)~~~~(4)~~ of this section shall be withdrawn by the Commonwealth upon request by the Treasurer of the Commonwealth and approval of the Attorney General. Any funds withdrawn pursuant to this subsection shall be deposited in the general fund and shall be calculated on a dollar-for-dollar basis as a credit against any judgment or settlement described in subsection ~~(3)~~~~(2)~~(a) of this section which may be obtained against the nonparticipating~~[tobacco product]~~ manufacturer who has assigned the funds in the subject qualified escrow fund~~[account]~~. Nothing in this subsection or in subsection ~~(6)~~~~(4)~~ of this section shall be construed to relieve a nonparticipating~~[tobacco product]~~ manufacturer from any past, current, or future obligations the manufacturer may have pursuant to this chapter.

~~(8)~~~~(6)~~ Notwithstanding subsections ~~(6)~~~~(4)~~ and ~~(7)~~~~(5)~~ of this section, no assignment of escrows created pursuant to ~~subsection (1)(b) of~~ this section shall be made by a nonparticipating~~[tobacco product]~~ manufacturer, or shall be accepted by the Treasurer of the Commonwealth, unless and until the Attorney General has provided an opinion to the Treasurer, with a copy of the opinion provided to the Governor and the Legislative Research Commission, that amendments to KRS 131.600 and subsections ~~(6)~~~~(4)~~ and ~~(7)~~~~(5)~~ of this section shall~~[will]~~ not substantially jeopardize the Commonwealth's payments under the master settlement agreement~~[in the form of a nonparticipating manufacturer adjustment]~~.

(9) For any nonparticipating manufacturer that is located outside the United States, each importer of the nonparticipating manufacturer's cigarettes shall be jointly

and severally liable with the nonparticipating manufacturer for the deposit of all escrow amounts due under subsection (1) of this section, and the payment of all civil penalties imposed under subsection (5) of this section for the units sold in this state.

- (10) (a) A nonparticipating manufacturer shall post a financial instrument with the Attorney General as a condition of the nonparticipating manufacturer and its brand families being included in the state directory for that quarter.
- (b) The amount of the financial instrument shall be the greater of fifty thousand dollars (\$50,000) or the greatest required escrow amount due from the nonparticipating manufacturer or its predecessor for the immediately preceding twelve (12) calendar quarters.
- (c) The financial instrument shall be posted at least ten (10) days in advance of each calendar quarter.
- (d) The nonparticipating manufacturer shall be the obligor.
- (e) The State Treasurer shall be the obligee.
- (f) The financial instrument shall be conditioned on the performance by the nonparticipating manufacturer of all of its escrow deposit and other financial obligations under Kentucky law.
- (g) In addition to subsection (5) of this section, if:
1. The nonparticipating manufacturer fails to make its escrow deposits equal to the full amount owed for the quarter within thirty (30) days following the end of the quarter, the Attorney General may execute the financial instrument in the amount equal to any remaining amount of escrow due. The amount collected shall be deposited in the general fund and shall reduce the amount of escrow due from the nonparticipating manufacturer by the dollar amount collected. Escrow obligations that remain after the collection on the financial

instrument shall remain due from the nonparticipating manufacturer and each of its importers; and

2. If the Attorney General obtains a judgment against the nonparticipating manufacturer for its failure to make the required escrow deposit, the Attorney General may also execute on the financial instrument to recover the amount of the costs of investigation, expert witness fees, costs of action, civil penalties, and attorneys' fees obtained in that judgment. Funds collected from the financial instrument shall be counted first toward the amount of escrow due but not deposited into escrow by the nonparticipating manufacturer.

➔Section 3. KRS 131.608 is amended to read as follows:

- (1) Prior to selling cigarettes in Kentucky, directly or through a distributor, retailer, or similar intermediary or intermediaries, every tobacco product manufacturer shall certify as true under penalty of perjury that, as of the date of certification, the tobacco product manufacturer is a:
- (a) Participating manufacturer; or
- (b) Nonparticipating manufacturer;
- in full compliance with the provisions of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, 248.754, and any administrative regulations promulgated thereunder~~[131.602 and 131.620]~~. The participating~~[tobacco product]~~ manufacturer and the nonparticipating manufacturer shall execute and deliver an annual~~[the]~~ certification to the Attorney General on a form prescribed by the Attorney General no later than April 30 of each year. The nonparticipating manufacturer shall also submit a quarterly certification at the time and on a form prescribed by the Attorney General.
- (2) A participating manufacturer shall include in its certification a list of its brand

families. The participating manufacturer shall update the list thirty (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 nonparticipating manufacturer shall include in its certification:

(a) A complete list of ~~all of~~ its brand families; ~~and provide the following:~~

(b)~~(a)~~ A separate list of its brand families ~~of cigarettes~~ and the number of units sold ***in Kentucky*** for each brand family ~~that were sold in Kentucky~~ during the preceding calendar year;

(c)~~(b)~~ A separate list of all of its brand families that have been sold in Kentucky at any time during the current calendar year including:

1. Indicating by an asterisk any brand family sold in Kentucky during the preceding calendar year that is no longer being sold in Kentucky as of the date of the certification; and
2. Identifying by name and address any other manufacturer of such brand families in the preceding or current calendar year; ~~and~~

(d) A full disclosure of any removals or notices of removal from other state directories, which may be used as a basis to deny certification;

(e) A listing of and a declaration from each of its importers of any of its brand families. The declaration shall state the following:

1. The importer accepts joint and several liability with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund, for payment of all civil penalties, and for payment of all reasonable costs and expenses of investigation and prosecution, including attorneys' fees, as provided in Section 2 of this Act;
2. The importer consents to personal jurisdiction in this state for the purpose of claims by the state for any obligation to place funds into a

qualified escrow fund, for payment of all civil penalties, and for payment of any reasonable costs and expenses of investigation or prosecution, including attorneys' fees, as provided in Section 2 of this Act;

3. The importer has appointed a registered agent for service of process in this state according to the same requirements established for the nonparticipating manufacturer as provided in Section 6 of this Act;
4. The importer holds a valid permit under 26 U.S.C. sec. 5713;
5. The importer is in compliance with the federal Jenkins Act, 15 U.S.C. secs. 375 et seq., as amended by the Prevent All Cigarette Trafficking (Pact) Act, Pub. L. No. 111-154, 124 Stat. 108; and
6. The importer has complied with KRS 138.130 to 138.205, 248.752, and 248.754, and any administrative regulations promulgated thereunder; and

~~(f)(e)~~ Verification that the nonparticipating manufacturer has provided the following:

1. The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established a qualified escrow fund required under KRS 131.602 and all administrative regulations promulgated thereunder;[-]
2. The account number of the qualified escrow fund and any subaccount number for the state of Kentucky;[-]
3. The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in Kentucky during the preceding calendar year, the date and amount of each deposit and evidence or verification, as may be deemed necessary, by the Attorney General to confirm the foregoing;[-]
4. The amount and date of any withdrawal or transfer of funds the

nonparticipating manufacturer made at any time from the fund, or from any other qualified escrow fund into which it ever made escrow payments pursuant to KRS 131.602 and all administrative regulations promulgated thereunder~~[thereto]~~.

(4) ~~[In the case of]~~A nonparticipating manufacturer~~[, the]~~ requesting certification shall further certify that it:

(a) ~~[That the nonparticipating manufacturer]~~Is registered to do business in Kentucky or has appointed a resident agent for service of process and provided notice as required by Section 6 of this Act~~;~~~~[KRS 131.614]~~.

(b) Holds a valid permit under 26 U.S.C. sec. 5713;

(c)~~(b)~~ ~~[That the nonparticipating manufacturer]~~Has established and continues to maintain a qualified escrow fund pursuant to KRS 131.602 and has executed a qualified escrow agreement that governs the qualified escrow fund and that has been reviewed and approved by the Attorney General~~;~~~~[]~~

(d)~~(c)~~ ~~[That the nonparticipating manufacturer]~~Is in full compliance with KRS 131.600~~[131.602, 131.604]~~ to 131.630, 138.130 to 138.205, and any administrative regulations promulgated thereunder~~;~~~~[pursuant thereto]~~

(e) Is in compliance with the federal Jenkins Act, 15 U.S.C. secs. 375 et seq., as amended by the Prevent All Cigarette Trafficking (Pact) Act, Pub. L. No. 111-154, 124 Stat. 108; and

(f) Whether acting as an individual, entity, or any other group or combination acting as a unit, or any partner, director, principal officer, or manager of the entity or any other group or combination acting as a unit, has not been convicted of, or entered a plea of guilty or nolo contendere to:

1. A crime relating to the reporting, distribution, sale, or taxation of cigarettes or tobacco products; or

2. A crime involving fraud, falsification of records, improper business

transactions, or reporting;

for ten (10) years from the expiration of probation or final discharge from parole or maximum expiration of sentence.

- (5) A tobacco product manufacturer may not include a brand family in its certification unless:
- (a) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to 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; ~~and~~
 - (b) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes pursuant to KRS 131.602.
- (6) The nonparticipating manufacturer shall update all lists thirty (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.
- (7) Nothing in this section 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 for purposes of KRS 131.602.
- (8) The tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for a certification for a period of five (5) years.

➔Section 4. KRS 131.610 is amended to read as follows:

- (1) The Attorney General shall develop and make available to the department for public inspection, to include publishing on the department's Web site, a listing of all tobacco product manufacturers that have provided current and accurate

certifications pursuant to KRS 131.608 and all brand families that are listed in the certifications. The listing shall be referred to as the "directory" and completed no later than July 1 of each certification year.

- (2) The department shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the Attorney General determines is not in compliance with KRS 131.608, unless the Attorney General has determined that such violation has been satisfactorily cured.
- (3) Neither a **nonparticipating** ~~[tobacco product]~~ manufacturer nor a brand family shall be included or retained in the directory if the Attorney General determines ~~[, in the case of a nonparticipating manufacturer,]~~ that:
 - (a) Any escrow payment required pursuant to KRS 131.602 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; ~~[or]~~
 - (b) Any outstanding final judgment, including interest thereon, for a violation of KRS 131.602 has not been fully satisfied for the brand family or the manufacturer;
 - (c) **The requirements for certification under Section 3 of this Act have not been met; or**
 - (d) **The financial instrument required by subsection (10) of Section 2 of this Act has not been posted.**
- (4) Upon receipt of information from the Attorney General, the department shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this section and KRS 131.608 and 131.620.
- (5) (a) The department shall transmit, by electronic mail or other practicable means,

notice to each stamping agent and distributor of any addition to or removal from the directory of any tobacco product manufacturer or brand family.

(b) Within seven (7) days of receiving a removal notice from the department, each stamping agent or distributor shall forward:

1. A copy of the removal notice to each of the stamping agent's or distributor's retail customers; and
2. To the department, a list of the ~~retail~~~~retailer~~ customers **and any other person** to whom the removal notices were sent.

(c) ~~[1. The retailer shall have sixty (60) days from the effective date of the removal notice to sell the affected cigarettes before the cigarettes are deemed contraband and become subject to seizure and destruction under KRS 131.622.~~

~~2. On and after the sixty first day from the effective date of the removal notice,~~ The retailer shall not sell any cigarettes of a tobacco product manufacturer or brand family that ~~have~~~~has~~ been removed from the directory.

(d) The department shall work cooperatively with the stamping agents and distributors to develop an electronic system which will be used to notify, as soon as possible, all retail customers and any other person to whom the nonparticipating manufacturer's products were sold that:

- 1. A notice of intent to remove the nonparticipating manufacturer from the directory has been issued by the Attorney General; and**
- 2. A subsequent change in that status has occurred as a result of the nonparticipating manufacturer coming into compliance prior to being removed from the directory.**

(6) Every stamping agent and distributor shall provide and update as necessary an electronic mail address to the department for the purpose of receiving any

notifications that may be required by this section and KRS 131.608, 131.616, 131.620, and 131.624.

- (7) Notwithstanding the provisions of subsections (2) and (3) of this section, in the case of any nonparticipating manufacturer who has established a qualified escrow ~~fund~~~~account~~ pursuant to KRS 131.602 that has been approved by the Attorney General, the Attorney General may not remove the **nonparticipating** manufacturer or its brand families from the directory unless the **nonparticipating** manufacturer has been given at least thirty (30) days' notice of the intended action. For the purposes of this section, notice shall be deemed sufficient if it is sent either electronically to an electronic-mail address or by first class to a postal mailing address provided by the **nonparticipating** manufacturer in its most recent certification filed pursuant to KRS 131.608. The notified nonparticipating manufacturer shall have thirty (30) days from receipt of the notice to comply. At the time that the Attorney General sends notice of his or her intent to remove the **nonparticipating** manufacturer from the directory, the Attorney General shall post the notice in the directory.
- (8) Beginning on the day after the Attorney General posts a notice in the directory of the Attorney General's intent to remove the nonparticipating manufacturer from the directory as provided in subsection (7) of this section, a stamping agent or distributor shall not purchase cigarettes from the nonparticipating manufacturer **or any of its importers** unless and until the Attorney General determines that the nonparticipating manufacturer is in compliance with **Section 3 of this Act**~~KRS 131.608~~ and posts the notification of compliance in the directory.

➔Section 5. KRS 131.612 is amended to read as follows:

It shall be unlawful for:

- (1) Any stamping agent~~, or~~ distributor, **or any other person** to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand

family not included in the directory; or

- (2) Any retailer **or any other person** to sell cigarettes from a tobacco product manufacturer or brand family ~~[sixty one (61) days or more]~~ after the effective date of the removal of the tobacco product manufacturer or brand family from the directory.

➔Section 6. KRS 131.614 is amended to read as follows:

- (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory:~~[;]~~

(a) Appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of KRS **131.600**~~[131.602 and 131.604]~~ to 131.630, may be served in any manner authorized by law. The service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the Attorney General; **and**

(b) **Cause each of its importers of each of its brand families to be sold in the state to appoint and continually engage without interruption the services of an agent in this state for the purposes outlined in paragraph (a) of this subsection.**

- (2) The nonparticipating manufacturer **and each of its importers** shall provide notice to the Attorney General thirty (30) calendar days prior to termination of the authority of an agent and shall further provide proof of the appointment of a new agent no less than five (5) calendar days prior to the termination of an existing agent

appointment. If an agent terminates an agency appointment, the nonparticipating manufacturer **and each of its importers** shall notify the **Secretary of State**~~[secretary]~~ and the Attorney General of the termination within five (5) calendar days and shall include proof of the appointment of a new agent.

- (3) **If a**~~[Any]~~ nonparticipating manufacturer **or any of its importers do not appoint or designate**~~[whose products are sold in this state without appointing or designating]~~ an agent as required by this section,~~[shall be deemed to have appointed]~~ the Secretary of State **shall serve** as its agent and **the nonparticipating manufacturer or its importers, as the case may be,** may be proceeded against in courts of this state by service of process upon the Secretary of State. The appointment of the Secretary of State as its agent shall not satisfy the condition precedent to having **the nonparticipating manufacturer's**~~[its]~~ brand families listed or retained in the directory.

- (4) The Attorney General may by administrative regulation establish criteria for validating the appointment of an agent for the purposes of this section.

➔Section 7. KRS 131.618 is amended to read as follows:

- (1) Notwithstanding KRS 131.190, the commissioner is authorized to disclose to the Attorney General the name and address of a stamping agent or distributor and the number of sticks by brand name that have been purchased from a nonparticipating manufacturer and have been stamped with Kentucky stamps by that agent or distributor. The Attorney General may share this information with~~[other]~~ federal, **other** state, or local agencies only for the purposes of enforcement of KRS **131.600**~~[131.602 and 131.604]~~ to 131.630 or corresponding laws of other states. The Attorney General is further authorized to disclose to a nonparticipating~~[tobacco product]~~ manufacturer **or its importers** this information that has been provided by a stamping agent regarding the purchases from that **nonparticipating manufacturer or its importers.** This information provided by a stamping agent may

be used in any enforcement action against the nonparticipating manufacturer or its importers by the Attorney General.

- (2) In addition to the information required to be submitted pursuant to KRS 131.608, 131.614, and 131.620, the Attorney General or the commissioner may require a stamping agent, distributor, participating manufacturer, nonparticipating ~~or~~
~~tobacco product~~ manufacturer, or a nonparticipating manufacturer's importers to submit any additional information including but not limited to samples of the packaging or labeling of each brand family as is necessary to enable the Attorney General to determine whether the participating~~a tobacco product~~ manufacturer or the nonparticipating manufacturer and its importers are~~is~~ in compliance with KRS 131.600~~131.604~~ to 131.630.

➔Section 8. KRS 131.622 is amended to read as follows:

- (1) (a) The following shall be contraband and subject to seizure and destruction:
1. Any cigarettes that have been affixed with a stamp in this state in violation of KRS 131.612; or
 2. Any cigarettes in the possession of a retailer ~~after the sixty (60) day grace period as provided in KRS 131.610(5)(e)~~ from a tobacco product manufacturer or brand family that have~~has~~ been removed from the directory.
- (b) Whenever any peace officer of this state, or any representative of the department, finds any contraband cigarettes, the cigarettes shall be immediately seized and stored in a depository to be selected by the officer or representative.
- (c) The seized cigarettes shall be held for a period of twenty (20) days to allow the owner or any person having an interest in the cigarettes to protest the seizure.
- (d) At the time of seizure, the officer or representative shall:

1. Notify the department of the nature and quantity of the cigarettes seized;
and
 2. Deliver to the person in whose custody the cigarettes are found a receipt for the cigarettes. The receipt shall state on its face the date of seizure, and a notice that the cigarettes shall be destroyed if the seizure is not protested in writing to the Department of Revenue, Frankfort, Kentucky, within twenty (20) days from the seizure.
- (e) The owner or any person having an interest in the seized cigarettes may appeal to the Kentucky Board of Tax Appeals a final determination made by the department pursuant to KRS 131.340.
- (f) If the owner or any person having an interest in the seized cigarettes fails to protest the seizure before the end of the twenty (20) day holding period, the department shall destroy the seized cigarettes.
- (2) The Attorney General may seek an injunction to restrain a violation of KRS 131.612 or 131.616 by a distributor or stamping agent and to compel the distributor or stamping agent to comply with KRS 131.612 and 131.616. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and attorneys' ~~reasonable attorney~~ fees from any distributor or stamping agent found to be in violation of KRS 131.612 or 131.616.
- (3) No stamping agent, ~~or~~ distributor, retailer, or any other person shall sell or distribute cigarettes, or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the stamping agent, distributor, retailer, or person knows are intended for distribution or sale in the state in violation of KRS 131.612. A violation of this section is a Class A misdemeanor.
- (4) Nothing in this section shall prohibit a stamping agent or distributor from possessing unstamped containers of cigarettes held in inventory for delivery to, or for sale in, another state if in possession of proof that the cigarettes are intended

for sale in another state.

- (5) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent or distributor has violated KRS 131.612 or any administrative regulation promulgated~~adopted~~ pursuant to KRS 131.600~~131.604~~ to 131.630, the commissioner may suspend the sale of cigarette stamps to the stamping agent or distributor for failure to comply with the provisions of KRS 131.600~~131.604~~ to 131.630.

➔Section 9. KRS 131.624 is amended to read as follows:

- (1) Any person aggrieved by a determination of the Attorney General to not include or to remove from the directory created in KRS 131.610 a brand family or tobacco product manufacturer may appeal the determination to the Franklin Circuit Court, or to the Circuit Court of the county in which the aggrieved party resides or conducts his place of business. For the purposes of a temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the directory may be deemed to constitute irreparable harm.
- (2) No person shall be issued a license or granted a renewal of a license to act as a distributor or stamping agent unless the person is in compliance with the provisions of KRS 131.600~~131.604~~ to 131.630.
- (3) The Attorney General or the department may promulgate administrative regulations necessary to effect the purposes of KRS 131.600~~131.604~~ to 131.630.

➔Section 10. KRS 131.626 is amended to read as follows:

- (1) In any action brought by the state to enforce KRS 131.600~~131.604~~ to 131.630, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and attorneys'~~reasonable attorney~~ fees from any entity or person found to be in violation of KRS 131.600~~131.604~~ to 131.630.
- (2) If a court determines that a person has violated KRS 131.600~~131.604~~ to 131.630, the court shall order any profits, gain, gross receipts, or other benefit from the

violation to be relinquished and paid to the State Treasurer for deposit in the tobacco control special fund, which is hereby created. Moneys in the fund shall be used for the sole purpose of enforcement of KRS 131.600~~[131.604]~~ to 131.630.

(3) Unless otherwise expressly provided, the remedies or penalties provided by KRS 131.600~~[131.604]~~ to 131.630 are cumulative to each other and to the remedies or penalties available under all other laws of this state.

➔Section 11. KRS 131.628 is amended to read as follows:

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of KRS 131.600~~[, 131.602, or 131.604]~~ to 131.630 causes KRS 131.600 and 131.602 to no longer constitute a model statute, as it is set out in Exhibit T to the master settlement agreement, then that portion of KRS 131.600~~[, 131.602, or 131.604]~~ to 131.630 shall not be valid.

➔Section 12. KRS 131.630 is amended to read as follows:

(1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent or distributor has violated any provision of KRS 131.600~~[131.604]~~ to 131.630 or any administrative regulations~~[regulation]~~ promulgated thereunder, the commissioner may revoke or suspend the license of any stamping agent or distributor pursuant to KRS 138.195 and 138.205.

(2) Each stamp affixed in violation of KRS 131.612 shall constitute a separate violation.

(3) The commissioner may impose a civil penalty of twenty-five dollars (\$25) per violation~~[in an amount]~~ not to exceed~~[the greater of five hundred percent (500%) of the retail value of the cigarettes sold or]~~ five thousand dollars (\$5,000) upon a determination of a violation of KRS 131.612 or any administrative regulations promulgated thereunder. The penalty shall be imposed in the manner provided by KRS 138.195 and 138.205.

➔Section 13. KRS 248.750 is amended to read as follows:

As used in KRS~~[138.146 and]~~ 248.750 to 248.769:

- (1) "Department" means the Department of Revenue;
- (2) "Cigarettes" ***has the same meaning***~~[means cigarettes]~~ as~~[defined]~~ in KRS 138.130;
- (3) "Importer" ***has the same meaning***~~[means an importer]~~ as~~[defined]~~ in 26 U.S.C. sec. 5702~~(k)~~~~(1)~~;
- (4) "Manufacturer" means any person who manufactures or produces cigarettes within or without the Commonwealth;
- (5) "Master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by Kentucky and leading United States tobacco product manufacturers;
- (6) ***"Nonparticipating manufacturer" has the same meaning as in Section 1 of this Act;***
- (7) "Package" ***has the same meaning***~~[means package]~~ as~~[is defined]~~ in 15 U.S.C. sec. 1332(4); and
- (8)~~(7)~~ "Person" ***has the same meaning***~~[means person]~~ as~~[defined]~~ in KRS 446.010.

➔Section 14. KRS 248.754 is amended to read as follows:

On or before the fifteenth business day of each month, each:

- (1) Person licensed to affix the stamp required by KRS 138.146 or make other evidence of tax payment as provided in KRS 138.155 shall file with the ***department***~~[cabinet]~~, for all cigarettes imported into the United States to which the person has affixed the stamp required by KRS 138.146 or made other evidence of tax payment as provided in KRS 138.155 in the preceding month, a copy of the ***current*** customs certificates required by 19 U.S.C. sec. 1681a(c) for the entry of cigarettes into the United States; ***and***
- (2) ***A nonparticipating manufacturer and each of its importers shall file with the Attorney General for all cigarettes imported into the United States, a copy of the current customs certificates required by 19 U.S.C. sec. 1681a(c) for the entry of cigarettes into the United States.***

➔Section 15. KRS 248.756 is amended to read as follows:

- (1) The department~~[cabinet]~~ may revoke~~[or suspend]~~ the license issued in accordance with KRS 138.195 of any licensee and impose a civil penalty ***of twenty-five dollars (\$25) per violation***~~[in an amount]~~ not to exceed~~[the greater of five hundred percent (500%) of the retail value of the cigarettes involved or]~~ five thousand dollars (\$5,000) upon finding a violation by the licensee of KRS 248.752 or 248.754, ***as applicable***.
- (2) Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this Commonwealth in violation of KRS 248.752 or 248.754 shall be treated as contraband under KRS 138.165 and be subject to seizure and forfeiture. Notwithstanding the provisions of KRS 138.165, all cigarettes seized and forfeited shall be destroyed. Cigarettes shall be treated as contraband whether the violation of KRS 248.752 or 248.754 is knowing or otherwise.

➔Section 16. KRS 138.195 is amended to read as follows:

- (1) (a) No person other than a manufacturer shall acquire cigarettes in this state on which the Kentucky cigarette tax has not been paid, nor act as a resident wholesaler, nonresident wholesaler, vending machine operator, sub-jobber, transporter or unclassified acquirer of such cigarettes without first obtaining a license from the department as set out in this section.
- (b) No person shall act as a distributor of tobacco products without first obtaining a license from the department as set out in this section.
- (c) ***For licenses effective for periods beginning on or after July 1, 2015, no individual, entity, or any other group or combination acting as a unit may be eligible to obtain a license under this section if the individual, or any partner, director, principal officer, or manager of the entity or any other group or combination acting as a unit has been convicted of, or entered a plea of guilty or nolo contendere to:***

1. A crime relating to the reporting, distribution, sale, or taxation of cigarettes or tobacco products; or
2. A crime involving fraud, falsification of records, improper business transactions or reporting;

for ten (10) years from the expiration of probation or final discharge from parole or maximum expiration of sentence.
- (2) Each resident wholesaler shall secure a separate license for each place of business at which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky cigarette tax has not been paid are received. Each nonresident wholesaler shall secure a separate license for each place of business at which evidence of Kentucky cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid. Such a license or licenses shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each such year or portion thereof for which such license is secured.
- (3) Each sub-jobber shall secure a separate license for each place of business from which Kentucky tax-paid cigarettes are made available to retailers, whether such place of business is located within or without this state. Such license or licenses shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each such year or portion thereof for which such license is secured.
- (4) Each vending machine operator shall secure a license for the privilege of dispensing Kentucky tax-paid cigarettes by vending machines. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of twenty-five dollars (\$25) for each year or portion thereof for which such license is secured. No vending machine shall be operated within this Commonwealth without having prominently affixed thereto the name of its operator, together with the license number assigned to such operator by the department. The department shall prescribe

by administrative regulation the manner in which the information shall be affixed to the vending machine.

- (5) Each transporter shall secure a license for the privilege of transporting cigarettes within this state. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion thereof for which such license is secured. No transporter shall transport any cigarettes without having in actual possession an invoice or bill of lading therefor, showing the name and address of the consignor and consignee, the date acquired by the transporter, the name and address of the transporter, the quantity of cigarettes being transported, together with the license number assigned to such transporter by the department.
- (6) Each unclassified acquirer shall secure a license for the privilege of acquiring cigarettes on which the Kentucky cigarette tax has not been paid. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion thereof for which such license is secured.
- (7)
 - (a)
 1. Each distributor shall secure a license for the privilege of selling tobacco products in this state. Each license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each year or portion thereof for which the license is secured.
 2.
 - a. A resident wholesaler, nonresident wholesaler, or subjobber licensed under this section may also obtain and maintain a distributor's license at each place of business at no additional cost each year.
 - b. An unclassified acquirer licensed under this section may also obtain and maintain a distributor's license for the privilege of selling tobacco products in this state. The license shall be secured

on or before July 1 of each year, and each licensee shall pay the sum of four hundred fifty dollars (\$450) for each year or portion thereof for which the license is secured.

3. The department may, upon application, grant a distributor's license to a person other than a retailer and who is not otherwise required to hold a distributor's license under this paragraph. If the department grants the license, the licensee shall pay the sum of five hundred dollars (\$500) for each year or portion thereof for which the license is secured, and the licensee shall be subject to the excise tax in the same manner and subject to the same requirements as a distributor required to be licensed under this paragraph.
- (b) The department may, upon application, grant a retail distributor's license to a retailer for the privilege of purchasing tobacco products from a distributor not licensed by the department. If the department grants the license, the licensee shall pay the sum of one hundred dollars (\$100) for each year or portion thereof for which the license is secured.
- (8) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department from requiring a person to purchase more than one (1) license if the nature of such person's business is so diversified as to justify such requirement.
- (9) (a) The department may by administrative regulation require any person requesting a license or holding a license~~licensed~~ under~~the provisions of~~ this section to supply such information concerning his business, sales or any privilege exercised, as is deemed reasonably necessary for the regulation of such licensees, and to protect the revenues of the state.
- (b) Failure on the part of the applicant or~~such~~ licensee to comply with~~the provisions of~~ KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, 248.754, or any administrative regulations promulgated thereunder, or to

- permit an inspection of premises, machines, or vehicles by an authorized agent of the department at any reasonable time shall be grounds for the **denial or** revocation of any license issued by the department, after due notice and a hearing by the department.
- (c) The commissioner~~[of the department]~~ may assign a time and place for **the**~~[such]~~ hearing and may appoint a conferee who shall conduct a hearing, receive evidence, and hear arguments.
- (d) The conferee shall thereupon file a report with the commissioner together with a recommendation as to the **denial or** revocation of **the**~~[such]~~ license.
- (e) From any **denial or** revocation made by the commissioner~~[of the department]~~ on **the**~~[such]~~ report, the licensee may prosecute an appeal to the Kentucky Board of Tax Appeals as provided by law.
- (f) Any person whose license has been revoked for the willful violation of any provision of KRS **131.600 to 131.630**, 138.130 to 138.205, **248.752, 248.754**, **or any administrative regulations promulgated thereunder** shall not be entitled to any license provided for in this section, or have any interest in any~~[such]~~ license, either disclosed or undisclosed, either as an individual, partnership, corporation or otherwise, for a period of **two (2) years**~~[one (1) year]~~ after **the**~~[such]~~ revocation.
- (10) No license issued pursuant to~~[the provisions of]~~ this section shall be transferable or negotiable except that a license may be transferred between an individual and a corporation, if that individual is the exclusive owner of that corporation, or between a subsidiary corporation and its parent corporation.
- (11) Every manufacturer located or doing business in this state and the first person to import cigarettes **into this state**~~[from a foreign manufacturer]~~ shall keep written records of all shipments of cigarettes to persons within this state, and shall submit to the department monthly reports of such shipments. All books, records, invoices, and

documents required by this section shall be preserved in a form prescribed by the department for not less than four (4) years from the making of the records unless the department authorizes, in writing, the destruction of the records.

- (12) No person licensed under this section except nonresident wholesalers shall either sell to or purchase from any other such licensee untax-paid cigarettes.
- (13) (a) Licensed distributors of tobacco products shall pay and report the tax levied by KRS 138.140(4)(a) on or before the twentieth day of the calendar month following the month in which the possession or title of the tobacco products are transferred from the licensed distributor to retailers or consumers in this state, as the case may be.
- (b) Retailers who have applied for and been granted a retail distributor's license for the privilege of purchasing tobacco products from a person who is not a distributor licensed under KRS 138.195(7)(a) shall report and pay the tax levied by KRS 138.140(4)(c)2. on or before the twentieth day of the calendar month following the month in which the products are acquired by the licensed retail distributors.
- (c) If the distributor or retail distributor timely reports and pays the tax due, the distributor or retail distributor may deduct an amount equal to one percent (1%) of the tax due.
- (d) The department shall promulgate administrative regulations setting forth the details of the reporting requirements.
- (14) A tax return shall be filed for each reporting period whether or not tax is due.

(15) Any license issued by the department under this section shall not be construed to waive or condone any violation that occurred or may have occurred prior to the issuance of the license and shall not prevent subsequent proceedings against the licensee.

(16) (a) The department may deny the issuance of a license under this section if:

1. The applicant has made any material false statement on the application for the license; or
 2. The applicant has violated any provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.754, 248.756 or any administrative regulations promulgated thereunder.
- (b) If the department denies the applicant a license under this section, the department shall notify the applicant of the grounds for the denial, and the applicant may request a hearing and appeal the denial as provided in subsection (9) of this section.

➔Section 17. KRS 227.774 is amended to read as follows:

- (1) Each manufacturer shall submit to the state fire marshal a written certification attesting that:
 - (a) Each cigarette listed in the certification has been tested in accordance with KRS 227.772; and
 - (b) Each cigarette listed in the certification meets the performance standard set forth under KRS 227.772(1)(d).
- (2) Each cigarette listed in the certification shall be described with the following information:
 - (a) Brand or trade name on the package;
 - (b) Style, such as light or ultra light;
 - (c) Length in millimeters;
 - (d) Circumference in millimeters;
 - (e) Flavor, such as menthol or chocolate, if applicable;
 - (f) Filter or nonfilter;
 - (g) Package description, such as soft pack or box;
 - (h) Marking approved in accordance with KRS 227.776;
 - (i) The name, address, and telephone number of the laboratory, if different than

the manufacturer that conducted the test; and

- (j) The date that the testing occurred.
- (3) The certifications shall be made available to the Attorney General for purposes consistent with KRS 227.770 to 227.784 and the Department of Revenue for the purposes of ensuring compliance with this section.
- (4) Each cigarette certified under this section shall be recertified every three (3) years.
- (5) For cigarettes certified in compliance with this section, a manufacturer shall pay to the state fire marshal a fee of one thousand dollars (\$1,000) per brand family. "Brand family" shall have the same meaning as in Section 1 of this Act~~[KRS 131.604]~~.
- (6) The Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund is established in the Finance and Administration Cabinet for use by the state fire marshal solely for processing, testing, enforcement, and oversight activities set out in KRS 227.770 to 227.784. The fund shall consist of certification fees required under subsection (5) of this section, and any other moneys made available for such purpose from any source. Moneys credited to the fund may be invested until needed. All interest earned in the fund shall be retained in the fund. Notwithstanding KRS 45.229, moneys in the fund shall not lapse but shall carry forward at the end of the fiscal year.
- (7) If a manufacturer has certified a cigarette pursuant to this section, and afterward makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by KRS 227.770 to 227.784, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in KRS 227.772(1)(b) and maintains records of that retesting as required by KRS 227.772. Any altered cigarette which does not meet the performance standard set forth in KRS 227.772(1)(d) shall not be sold in this state.

➔Section 18. The following KRS section is repealed:

131.604 Definitions for KRS 131.604 to 131.630.

➔Section 19. This Act takes effect July 1, 2015.