# GENERAL ASSEMBLY
## COMMONWEALTH OF KENTUCKY

## 2015 REGULAR SESSION

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HOUSE BILL NO. 512

AS ENACTED

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WEDNESDAY, MARCH 11, 2015

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to the Tobacco Master Settlement Agreement.

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

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

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

5 (1) "Adjusted for inflation" means increased in accordance with the formula for
6 inflation adjustment set forth in Exhibit C to the master settlement agreement;[~~.~~]

7 (2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or
8 controlled by, or is under common ownership or control with, another person.
9 Solely for purposes of this definition, the terms "owns," "is owned," and
10 "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten
11 percent (10%) or more, and the term "person" means an individual, partnership,
12 committee, association, corporation, or any other organization or group of
13 persons;[~~.~~]

14 (3) "Allocable share" means allocable share as that term is defined in the master
15 settlement agreement;[~~.~~]

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

23 ***(5)*** "Cigarette" means any product that contains nicotine, is intended to be burned or
24 heated under ordinary conditions of use, and consists of or contains:

25 (a) Any roll of tobacco wrapped in paper or in any substance not containing
26 tobacco;

27 (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***

1 ***the master settlement agreement and all amendments thereto;***

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

9 ***(16)***[~~(7)~~] "Released claims" means released claims as that term is defined in the master
10 settlement agreement***;***[~~.~~]

11 ***(17)***[~~(8)~~] "Releasing parties" means releasing parties as that term is defined in the
12 master settlement agreement***;***[~~.~~]

13 ***(18) "Stamping agent" means a person, including a distributor, that is authorized to***
14 ***affix tax stamps to packages or other containers of cigarettes pursuant to KRS***
15 ***138.146 or any person that is required to pay the excise tax imposed pursuant to***
16 ***KRS 138.155;***

17 ***(19)***[~~(9)~~] "Tobacco product manufacturer" means an entity that after June 30, 2000,
18 directly and not exclusively through any affiliate:

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

1 the United States;
2 (b) Is the first purchaser anywhere for resale in the United States of cigarettes
3 manufactured anywhere that the manufacturer does not intend to be sold in the
4 United States; or
5 (c) Becomes a successor of an entity described in paragraph (a) or (b) of this
6 subsection.
7 The term "tobacco product manufacturer" shall not include an affiliate of a tobacco
8 product manufacturer unless such affiliate itself falls within any of the definitions
9 described in paragraph (a), (b), or (c) of this subsection***; and***[~~.~~]
10 ***(20)***[~~(10)~~] "Units sold" means the number of individual cigarettes sold in Kentucky by
11 the applicable tobacco product manufacturer, whether directly or through a
12 distributor, retailer, or similar intermediary or intermediaries, during the year in
13 question, as measured by excise taxes collected by Kentucky on packs or "roll-your-
14 own" tobacco. The department[~~ of Revenue~~] shall promulgate ***administrative***[~~ such~~]
15 regulations as are necessary to ascertain the amount of state excise tax paid on the
16 cigarettes of ***the***[~~such~~] tobacco product manufacturer for each year.
17 ➔Section 2. KRS 131.602 is amended to read as follows:
18 (1) Any tobacco product manufacturer selling cigarettes to consumers within this state,
19 whether directly or through a distributor, retailer, or similar intermediary or
20 intermediaries, after June 30, 2000, shall do one (1) of the following:
21 (a) Become a participating manufacturer, as that term is defined in section II(jj) of
22 the master settlement agreement, and generally perform its financial
23 obligations under the master settlement agreement; or
24 (b) Place into a qualified escrow fund[~~ by April 15 of the year following the year~~
25 ~~in question~~] the following amounts, as[~~ such amounts are~~] adjusted for
26 inflation:
27 ***a.***[~~1.~~]For 2000: $0.0104712 per unit sold after June 30, 2000;

1 ***b.***[~~2.~~]For each of 2001 and 2002: $0.0136125 per unit sold;
2 ***c.***[~~3.~~] For each of 2003 through 2006: $0.0167539 per unit sold; and
3 ***d.***[~~4.~~]For 2007 and each year thereafter: $0.0188482 per unit sold***; and***
4 ***2. Post a financial instrument with the Attorney General as provided in***
5 ***subsection (10) of this section***.
6 (2) ***The nonparticipating manufacturer shall place the amount required under this***
7 ***section into the qualified escrow fund on a quarterly basis.***
8 ***(3)*** A ***nonparticipating***[~~tobacco product~~] manufacturer that places funds into escrow
9 pursuant to[~~ subsection (1)(b) of~~] this section shall receive the interest or other
10 appreciation on such funds as earned. Such funds themselves shall be released from
11 escrow only under the following circumstances:
12 (a) To pay a judgment or settlement on any released claim brought against ***the***
13 ***nonparticipating***[~~such tobacco product~~] manufacturer by Kentucky or any
14 releasing party located or residing in Kentucky. Funds shall be released from
15 escrow under this paragraph in the order in which they were placed into
16 escrow and only to the extent and at the time necessary to make payments
17 required under ***the***[~~such~~] judgment or settlement;
18 (b) To the extent that a ***nonparticipating***[~~tobacco product~~] manufacturer
19 establishes that the amount it was required to place into escrow on account of
20 units sold in the state in a particular year was greater than the master
21 settlement agreement payments, as determined pursuant to section IX(i) of
22 that agreement, including after final determination of all adjustments, that ***the***
23 ***nonparticipating***[~~such~~] manufacturer would have been required to make on
24 account of ***the***[~~such~~] units sold had it been a participating manufacturer, the
25 excess shall be released from escrow and revert back to ***the***
26 ***nonparticipating***[~~such tobacco product~~] manufacturer; or
27 (c) To the extent not released from escrow under paragraph (a) or (b) of this

1 subsection, funds shall be released from escrow and revert back to ***the***
2 ***nonparticipating***[~~such tobacco product~~] manufacturer twenty-five (25) years
3 after the date on which they were placed into escrow.
4 ***(4)***[~~(3)~~] Each ***nonparticipating***[~~tobacco product~~] manufacturer[~~ that elects to place~~
5 ~~funds into escrow pursuant to subsection (1)(b) of this section~~] shall annually certify
6 to the Attorney General that it is in compliance with ***KRS 131.600 to 131.630,***
7 ***138.130 to 138.205, 248.752, and 248.754, and any administrative regulations***
8 ***promulgated thereunder***[~~subsections (1)(b) and (2) of this section~~].
9 ***(5) In addition to subsection (10)(g) of this section,*** the Attorney General may bring a
10 civil action on behalf of Kentucky against any ***nonparticipating***[~~tobacco product~~]
11 manufacturer that fails ***in any quarter*** to place into escrow the funds required under
12 this section. Any ***nonparticipating***[~~tobacco product~~] manufacturer that fails in any
13 ***quarter***[~~year~~] to place into escrow the funds required under this section shall:
14 (a) Be required within fifteen (15) days to place ***sufficient***[~~such~~] funds into
15 escrow ***to***[~~ as shall~~] bring it into compliance with this section. The court, upon
16 a finding of a violation of[~~ subsection (1)(b) or (2) of~~] this section, may
17 impose a civil penalty, to be paid to the general fund of Kentucky, in an
18 amount not to exceed five percent (5%) of the amount improperly withheld
19 from escrow per day of the violation and in a total amount not to exceed one
20 hundred percent (100%) of the original amount improperly withheld from
21 escrow;
22 (b) In the case of a knowing violation, be required within fifteen (15) days to
23 place ***sufficient***[~~such~~] funds into escrow ***to***[~~as shall~~] bring it into compliance
24 with this section. The court, upon a finding of a knowing violation of[
25 ~~subsection (1)(b) or (2) of~~] this section, may impose a civil penalty, to be paid
26 to the general fund of Kentucky, in an amount not to exceed fifteen percent
27 (15%) of the amount improperly withheld from escrow per day of the

1 violation and in a total amount not to exceed three hundred percent (300%) of
2 the original amount improperly withheld from escrow; and
3 (c) In the case of a second knowing violation, be prohibited from selling
4 cigarettes to consumers within Kentucky, whether directly or through a
5 distributor, retailer, or similar intermediary, for a period not to exceed two (2)
6 years***, or, if later, until fully compliant with KRS 131.600 to 131.630,***
7 ***138.130 to 138.205, 248.752, 248.754, and any administrative regulations***
8 ***promulgated thereunder***.
9 Each failure to ***place sufficient funds into escrow as***[~~make an annual deposit~~]
10 required under this section ***on a quarterly basis as required by subsection (2) of***
11 ***this section*** shall constitute a separate violation.
12 ***(6)***[~~(4)~~] Notwithstanding the provisions of subsection (2) of this section, a
13 ***nonparticipating***[~~tobacco product~~] manufacturer that elects to place funds into
14 escrow pursuant to[~~ subsection (1)(b) of~~] this section may make an irrevocable
15 assignment of its interest in the funds to the benefit of the Commonwealth of
16 Kentucky. Such assignment shall be permanent and apply to all funds in the subject
17 ***qualified*** escrow ***fund***[~~account~~] or that may subsequently come into ***the fund***[~~such~~
18 ~~account~~], including those deposited into the ***qualified*** escrow ***fund***[~~account~~] prior to
19 the assignment being executed, those deposited into the ***qualified*** escrow
20 ***fund***[~~account~~] after the assignment is executed, and interest or other appreciation on
21 ***the***[~~such~~] funds. The ***nonparticipating***[~~tobacco product~~] manufacturer, the Attorney
22 General, and the financial institution where the ***qualified*** escrow ***fund***[~~account~~] is
23 maintained may make[~~ such~~] amendments to the qualified escrow ***fund***[~~account~~]
24 agreement as may be necessary to effectuate an assignment of rights executed
25 pursuant to this subsection or a withdrawal of funds from the ***qualified*** escrow
26 ***fund***[~~account~~] pursuant to subsection ***(7)***[~~(5)~~] of this section. An assignment of
27 rights executed pursuant to this subsection shall be in writing, signed by a duly

1 authorized representative of the ***nonparticipating***[~~tobacco product~~] manufacturer
2 making the assignment, and shall become effective upon delivery of the assignment
3 to the Attorney General and the financial institution where the ***qualified*** escrow
4 ***fund***[~~account~~] is maintained.
5 ***(7)***[~~(5)~~] Notwithstanding the provisions of subsection ***(3)***[~~(2)~~] of this section, any
6 escrow funds assigned to the Commonwealth pursuant to subsection ***(6)***[~~(4)~~] of this
7 section shall be withdrawn by the Commonwealth upon request by the Treasurer of
8 the Commonwealth and approval of the Attorney General. Any funds withdrawn
9 pursuant to this subsection shall be deposited in the general fund and shall be
10 calculated on a dollar-for-dollar basis as a credit against any judgment or settlement
11 described in subsection ***(3)***[~~(2)~~](a) of this section which may be obtained against the
12 ***nonparticipating***[~~tobacco product~~] manufacturer who has assigned the funds in the
13 subject ***qualified*** escrow ***fund***[~~account~~]. Nothing in this subsection or in subsection
14 ***(6)***[~~(4)~~] of this section shall be construed to relieve a ***nonparticipating***[~~tobacco~~
15 ~~product~~] manufacturer from any past, current, or future obligations the manufacturer
16 may have pursuant to this chapter.
17 ***(8)***[~~(6)~~] Notwithstanding subsections ***(6)***[~~(4)~~] and ***(7)***[~~(5)~~] of this section, no
18 assignment of escrows created pursuant to[~~ subsection (1)(b) of~~] this section shall
19 be made by a ***nonparticipating***[~~tobacco product~~] manufacturer, or shall be accepted
20 by the Treasurer of the Commonwealth, unless and until the Attorney General has
21 provided an opinion to the Treasurer, with a copy of the opinion provided to the
22 Governor and the Legislative Research Commission, that amendments to KRS
23 131.600 and subsections ***(6)***[~~(4)~~] and ***(7)***[~~(5)~~] of this section ***shall***[~~will~~] not
24 ***substantially*** jeopardize the Commonwealth's payments under the master settlement
25 agreement[~~ in the form of a nonparticipating manufacturer adjustment~~].
26 ***(9) For any nonparticipating manufacturer that is located outside the United States,***
27 ***each importer of the nonparticipating manufacturer's cigarettes shall be jointly***

1 *and severally liable with the nonparticipating manufacturer for the deposit of all*
2 *escrow amounts due under subsection (1) of this section, and the payment of all*
3 *civil penalties imposed under subsection (5) of this section for the units sold in*
4 *this state.*
5 *(10) (a) A nonparticipating manufacturer shall post a financial instrument with the*
6 *Attorney General as a condition of the nonparticipating manufacturer and*
7 *its brand families being included in the state directory for that quarter.*
8 *(b) The amount of the financial instrument shall be the greater of fifty*
9 *thousand dollars ($50,000) or the greatest required escrow amount due*
10 *from the nonparticipating manufacturer or its predecessor for the*
11 *immediately preceding twelve (12) calendar quarters.*
12 *(c) The financial instrument shall be posted at least ten (10) days in advance of*
13 *each calendar quarter.*
14 *(d) The nonparticipating manufacturer shall be the obligor.*
15 *(e) The State Treasurer shall be the obligee.*
16 *(f) The financial instrument shall be conditioned on the performance by the*
17 *nonparticipating manufacturer of all of its escrow deposit and other*
18 *financial obligations under Kentucky law.*
19 *(g) In addition to subsection (5) of this section, if:*
20 *1. The nonparticipating manufacturer fails to make its escrow deposits*
21 *equal to the full amount owed for the quarter within thirty (30) days*
22 *following the end of the quarter, the Attorney General may execute the*
23 *financial instrument in the amount equal to any remaining amount of*
24 *escrow due. The amount collected shall be deposited in the general*
25 *fund and shall reduce the amount of escrow due from the*
26 *nonparticipating manufacturer by the dollar amount collected.*
27 *Escrow obligations that remain after the collection on the financial*

1 ***instrument shall remain due from the nonparticipating manufacturer***
2 ***and each of its importers; and***
3 ***2. If the Attorney General obtains a judgment against the***
4 ***nonparticipating manufacturer for its failure to make the required***
5 ***escrow deposit, the Attorney General may also execute on the***
6 ***financial instrument to recover the amount of the costs of***
7 ***investigation, expert witness fees, costs of action, civil penalties, and***
8 ***attorneys' fees obtained in that judgment. Funds collected from the***
9 ***financial instrument shall be counted first toward the amount of***
10 ***escrow due but not deposited into escrow by the nonparticipating***
11 ***manufacturer.***
12 ➔Section 3. KRS 131.608 is amended to read as follows:
13 (1) Prior to selling cigarettes in Kentucky, directly or through a distributor, retailer, or
14 similar intermediary or intermediaries, every tobacco product manufacturer shall
15 certify as true under penalty of perjury that, as of the date of certification, the
16 tobacco product manufacturer is a***:***
17 ***(a)*** Participating manufacturer***;*** or
18 ***(b)*** Nonparticipating manufacturer***;***
19 in full compliance with the provisions of KRS ***131.600 to 131.630, 138.130 to***
20 ***138.205, 248.752, 248.754, and any administrative regulations promulgated***
21 ***thereunder***[~~131.602 and 131.620~~]. The ***participating***[~~tobacco product~~]
22 manufacturer ***and the nonparticipating manufacturer*** shall execute and deliver ***an***
23 ***annual***[~~the~~] certification to the Attorney General on a form prescribed by the
24 Attorney General no later than April 30 of each year. ***The nonparticipating***
25 ***manufacturer shall also submit a quarterly certification at the time and on a***
26 ***form prescribed by the Attorney General.***
27 (2) A participating manufacturer shall include in its certification a list of its brand

1 families. The participating manufacturer shall update the list thirty (30) calendar
2 days prior to any addition to or modification of its brand families by executing and
3 delivering a supplemental certification to the Attorney General.
4 (3) A nonparticipating manufacturer shall include in its certification***:***
5 ***(a)*** A complete list of~~[ all of]~~ its brand families***;***~~[ and provide the following:]~~
6 ***(b)***~~[(a)]~~ A separate list of its brand families~~[ of cigarettes]~~ and the number of
7 units sold ***in Kentucky*** for each brand family~~[ that were sold in Kentucky]~~
8 during the preceding calendar year;
9 ***(c)***~~[(b)]~~ A separate list of all of its brand families that have been sold in
10 Kentucky at any time during the current calendar year including:
11 1. Indicating by an asterisk any brand family sold in Kentucky during the
12 preceding calendar year that is no longer being sold in Kentucky as of
13 the date of the certification; and
14 2. Identifying by name and address any other manufacturer of such brand
15 families in the preceding or current calendar year;~~[ and]~~
16 ***(d) A full disclosure of any removals or notices of removal from other state***
17 ***directories, which may be used as a basis to deny certification;***
18 ***(e) A listing of and a declaration from each of its importers of any of its brand***
19 ***families. The declaration shall state the following:***
20 ***1. The importer accepts joint and several liability with the***
21 ***nonparticipating manufacturer for all obligations to place funds into a***
22 ***qualified escrow fund, for payment of all civil penalties, and for***
23 ***payment of all reasonable costs and expenses of investigation and***
24 ***prosecution, including attorneys' fees, as provided in Section 2 of this***
25 ***Act;***
26 ***2. The importer consents to personal jurisdiction in this state for the***
27 ***purpose of claims by the state for any obligation to place funds into a***

1 ***qualified escrow fund, for payment of all civil penalties, and for***
2 ***payment of any reasonable costs and expenses of investigation or***
3 ***prosecution, including attorneys' fees, as provided in Section 2 of this***
4 ***Act;***
5 ***3. The importer has appointed a registered agent for service of process in***
6 ***this state according to the same requirements established for the***
7 ***nonparticipating manufacturer as provided in Section 6 of this Act;***
8 ***4. The importer holds a valid permit under 26 U.S.C. sec. 5713;***
9 ***5. The importer is in compliance with the federal Jenkins Act, 15 U.S.C.***
10 ***secs. 375 et seq., as amended by the Prevent All Cigarette Trafficking***
11 ***(Pact) Act, Pub. L. No. 111-154, 124 Stat. 108; and***
12 ***6. The importer has complied with KRS 138.130 to 138.205, 248.752, and***
13 ***248.754, and any administrative regulations promulgated thereunder;***
14 ***and***
15 ***(f)***[~~(e)~~] Verification that the nonparticipating manufacturer has provided the
16 following:
17 1. The name, address, and telephone number of the financial institution
18 where the nonparticipating manufacturer has established a qualified
19 escrow fund required under KRS 131.602 and all ***administrative***
20 regulations promulgated thereunder;[~~.~~]
21 2. The account number of the qualified escrow fund and any subaccount
22 number for the state of Kentucky;[~~.~~]
23 3. The amount the nonparticipating manufacturer placed in the fund for
24 cigarettes sold in Kentucky during the preceding calendar year, the date
25 and amount of each deposit and evidence or verification, as may be
26 deemed necessary, by the Attorney General to confirm the foregoing;[~~.~~]
27 4. The amount and date of any withdrawal or transfer of funds the

1 nonparticipating manufacturer made at any time from the fund, or from
2 any other qualified escrow fund into which it ever made escrow
3 payments pursuant to KRS 131.602 and all administrative regulations
4 promulgated ***thereunder***[~~thereto~~].
5 (4) [~~In the case of~~ ]A nonparticipating manufacturer[~~, the~~] ***requesting*** certification shall
6 further certify ***that it***:
7 (a) [~~That the nonparticipating manufacturer~~ ]Is registered to do business in
8 Kentucky or has appointed a resident agent for service of process and
9 provided notice as required by ***Section 6 of this Act;***[~~ KRS 131.614~~].
10 ***(b) Holds a valid permit under 26 U.S.C. sec. 5713;***
11 ***(c)***[~~(b)~~] [~~That the nonparticipating manufacturer~~ ]Has established and continues
12 to maintain a qualified escrow fund pursuant to KRS 131.602 and has
13 executed a qualified escrow agreement that governs the qualified escrow fund
14 and that has been reviewed and approved by the Attorney General***;***[~~.~~]
15 ***(d)***[~~(c)~~] [~~That the nonparticipating manufacturer~~ ]Is in full compliance with KRS
16 ***131.600***[~~131.602, 131.604~~] to 131.630, ***138.130 to 138.205,*** and any
17 administrative regulations promulgated ***thereunder;***[~~pursuant thereto.~~]
18 ***(e) Is in compliance with the federal Jenkins Act, 15 U.S.C. secs. 375 et seq., as***
19 ***amended by the Prevent All Cigarette Trafficking (Pact) Act, Pub. L. No.***
20 ***111-154, 124 Stat. 108; and***
21 ***(f) Whether acting as an individual, entity, or any other group or combination***
22 ***acting as a unit, or any partner, director, principal officer, or manager of***
23 ***the entity or any other group or combination acting as a unit, has not been***
24 ***convicted of, or entered a plea of guilty or nolo contendere to:***
25 ***1. A crime relating to the reporting, distribution, sale, or taxation of***
26 ***cigarettes or tobacco products; or***
27 ***2. A crime involving fraud, falsification of records, improper business***

1 ***transactions, or reporting;***
2 ***for ten (10) years from the expiration of probation or final discharge from***
3 ***parole or maximum expiration of sentence.***
4 (5) A tobacco product manufacturer may not include a brand family in its certification
5 unless:
6 (a) In the case of a participating manufacturer, the participating manufacturer
7 affirms that the brand family is to be deemed to be its cigarettes for purposes
8 of calculating its payments under the master settlement agreement for the
9 relevant year, in the volume and shares determined pursuant to the master
10 settlement agreement***; and***[~~.~~]
11 (b) In the case of a nonparticipating manufacturer, the nonparticipating
12 manufacturer affirms that the brand family is to be deemed to be its cigarettes
13 pursuant to KRS 131.602.
14 (6) The nonparticipating manufacturer shall update all lists thirty (30) calendar days
15 prior to any addition to or modification of its brand families by executing and
16 delivering a supplemental certification to the Attorney General.
17 (7) Nothing in this section shall be construed as limiting or otherwise affecting the
18 state's right to maintain that a brand family constitutes cigarettes of a different
19 tobacco product manufacturer for purposes of calculating payments under the
20 master settlement agreement or for purposes of KRS 131.602.
21 (8) The tobacco product manufacturers shall maintain all invoices and documentation
22 of sales and other information relied upon for a certification for a period of five (5)
23 years.
24 ➔Section 4. KRS 131.610 is amended to read as follows:
25 (1) The Attorney General shall develop and make available to the department for public
26 inspection, to include publishing on the department's Web site, a listing of all
27 tobacco product manufacturers that have provided current and accurate

1 certifications pursuant to KRS 131.608 and all brand families that are listed in the
2 certifications. The listing shall be referred to as the "directory" and completed no
3 later than July 1 of each certification year.
4 (2) The department shall not include or retain in the directory the name or brand
5 families of any nonparticipating manufacturer that has failed to provide the required
6 certification or whose certification the Attorney General determines is not in
7 compliance with KRS 131.608, unless the Attorney General has determined that
8 such violation has been satisfactorily cured.
9 (3) Neither a ***nonparticipating***[~~tobacco product~~] manufacturer nor a brand family shall
10 be included or retained in the directory if the Attorney General determines[~~, in the~~
11 ~~case of a nonparticipating manufacturer,~~] that:
12 (a) Any escrow payment required pursuant to KRS 131.602 for any period for any
13 brand family, whether or not listed by the nonparticipating manufacturer, has
14 not been fully paid into a qualified escrow fund governed by a qualified
15 escrow agreement that has been approved by the Attorney General;[~~ or~~]
16 (b) Any outstanding final judgment, including interest thereon, for a violation of
17 KRS 131.602 has not been fully satisfied for the brand family or the
18 manufacturer***;***
19 ***(c) The requirements for certification under Section 3 of this Act have not been***
20 ***met; or***
21 ***(d) The financial instrument required by subsection (10) of Section 2 of this Act***
22 ***has not been posted***.
23 (4) Upon receipt of information from the Attorney General, the department shall update
24 the directory as necessary in order to correct mistakes and to add or remove a
25 tobacco product manufacturer or brand family to keep the directory in conformity
26 with the requirements of this section and KRS 131.608 and 131.620.
27 (5) (a) The department shall transmit, by electronic mail or other practicable means,

1 notice to each stamping agent and distributor of any addition to or removal
2 from the directory of any tobacco product manufacturer or brand family.
3 (b) Within seven (7) days of receiving a removal notice from the department, each
4 stamping agent or distributor shall forward:
5 1. A copy of the removal notice to each of the stamping agent's or
6 distributor's retail customers; and
7 2. To the department, a list of the ***retail***[~~retailer~~] customers ***and any other***
8 ***person*** to whom the removal notices were sent.
9 (c) [~~1. The retailer shall have sixty (60) days from the effective date of the~~
10 ~~removal notice to sell the affected cigarettes before the cigarettes are~~
11 ~~deemed contraband and become subject to seizure and destruction under~~
12 ~~KRS 131.622.~~
13 ~~2. On and after the sixty-first day from the effective date of the removal~~
14 ~~notice,~~ ]The retailer shall not sell any cigarettes of a tobacco product
15 manufacturer or brand family that ***have***[~~has~~] been removed from the
16 directory.
17 ***(d) The department shall work cooperatively with the stamping agents and***
18 ***distributors to develop an electronic system which will be used to notify, as***
19 ***soon as possible, all retail customers and any other person to whom the***
20 ***nonparticipating manufacturer's products were sold that:***
21 ***1. A notice of intent to remove the nonparticipating manufacturer from***
22 ***the directory has been issued by the Attorney General; and***
23 ***2. A subsequent change in that status has occurred as a result of the***
24 ***nonparticipating manufacturer coming into compliance prior to being***
25 ***removed from the directory.***
26 (6) Every stamping agent and distributor shall provide and update as necessary an
27 electronic mail address to the department for the purpose of receiving any

1 notifications that may be required by this section and KRS 131.608, 131.616,
2 131.620, and 131.624.
3 (7) Notwithstanding the provisions of subsections (2) and (3) of this section, in the case
4 of any nonparticipating manufacturer who has established a qualified escrow
5 ***fund***[~~account~~] pursuant to KRS 131.602 that has been approved by the Attorney
6 General, the Attorney General may not remove the ***nonparticipating*** manufacturer
7 or its brand families from the directory unless the ***nonparticipating*** manufacturer
8 has been given at least thirty (30) days' notice of the intended action. For the
9 purposes of this section, notice shall be deemed sufficient if it is sent either
10 electronically to an electronic-mail address or by first class to a postal mailing
11 address provided by the ***nonparticipating*** manufacturer in its most recent
12 certification filed pursuant to KRS 131.608. The notified nonparticipating
13 manufacturer shall have thirty (30) days from receipt of the notice to comply. At the
14 time that the Attorney General sends notice of his or her intent to remove the
15 ***nonparticipating*** manufacturer from the directory, the Attorney General shall post
16 the notice in the directory.
17 (8) Beginning on the day after the Attorney General posts a notice in the directory of
18 the Attorney General's intent to remove the nonparticipating manufacturer from the
19 directory as provided in subsection (7) of this section, a stamping agent or
20 distributor shall not purchase cigarettes from the nonparticipating manufacturer ***or***
21 ***any of its importers*** unless and until the Attorney General determines that the
22 nonparticipating manufacturer is in compliance with ***Section 3 of this Act***[~~KRS~~
23 ~~131.608~~] and posts the notification of compliance in the directory.
24 ➔Section 5. KRS 131.612 is amended to read as follows:
25 It shall be unlawful for:
26 (1) Any stamping agent,[~~or~~] distributor***, or any other person*** to affix a stamp to a
27 package or other container of cigarettes of a tobacco product manufacturer or brand

1 family not included in the directory; or
2 (2) Any retailer ***or any other person*** to sell cigarettes from a tobacco product
3 manufacturer or brand family~~[ sixty-one (61) days or more]~~ after the effective date
4 of the removal of the tobacco product manufacturer or brand family from the
5 directory.
6 ➔Section 6. KRS 131.614 is amended to read as follows:
7 (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to
8 do business in the state as a foreign corporation or business entity shall, as a
9 condition precedent to having its brand families included or retained in the
10 directory***:***~~[,]~~
11 ***(a)*** Appoint and continually engage without interruption the services of an agent
12 in this state to act as agent for the service of process on whom all process, and
13 any action or proceeding against it concerning or arising out of the
14 enforcement of KRS ***131.600***~~[131.602 and 131.604]~~ to 131.630, may be
15 served in any manner authorized by law. The service shall constitute legal and
16 valid service of process on the nonparticipating manufacturer. The
17 nonparticipating manufacturer shall provide the name, address, phone number,
18 and proof of the appointment and availability of the agent to the Attorney
19 General***; and***
20 ***(b) Cause each of its importers of each of its brand families to be sold in the***
21 ***state to appoint and continually engage without interruption the services of***
22 ***an agent in this state for the purposes outlined in paragraph (a) of this***
23 ***subsection***.
24 (2) The nonparticipating manufacturer ***and each of its importers*** shall provide notice to
25 the Attorney General thirty (30) calendar days prior to termination of the authority
26 of an agent and shall further provide proof of the appointment of a new agent no
27 less than five (5) calendar days prior to the termination of an existing agent

1 appointment. If an agent terminates an agency appointment, the nonparticipating
2 manufacturer ***and each of its importers*** shall notify the ***Secretary of***
3 ***State***[~~secretary~~] and the Attorney General of the termination within five (5) calendar
4 days and shall include proof of the appointment of a new agent.
5 (3) ***If a***[~~Any~~] nonparticipating manufacturer ***or any of its importers do not appoint or***
6 ***designate***[~~whose products are sold in this state without appointing or designating~~]
7 an agent as required by this section,[~~ shall be deemed to have appointed~~] the
8 Secretary of State ***shall serve*** as its agent and ***the nonparticipating manufacturer***
9 ***or its importers, as the case may be,*** may be proceeded against in courts of this
10 state by service of process upon the Secretary of State. The appointment of the
11 Secretary of State as its agent shall not satisfy the condition precedent to having ***the***
12 ***nonparticipating manufacturer's***[~~its~~] brand families listed or retained in the
13 directory.
14 (4) The Attorney General may by administrative regulation establish criteria for
15 validating the appointment of an agent for the purposes of this section.
16 ➔Section 7. KRS 131.618 is amended to read as follows:
17 (1) Notwithstanding KRS 131.190, the commissioner is authorized to disclose to the
18 Attorney General the name and address of a stamping agent or distributor and the
19 number of sticks by brand name that have been purchased from a nonparticipating
20 manufacturer and have been stamped with Kentucky stamps by that agent or
21 distributor. The Attorney General may share this information with[~~ other~~] federal,
22 ***other*** state, or local agencies only for the purposes of enforcement of KRS
23 ***131.600***[~~131.602 and 131.604~~] to 131.630 or corresponding laws of other states.
24 The Attorney General is further authorized to disclose to a nonparticipating[
25 ~~tobacco product~~] manufacturer ***or its importers*** this information that has been
26 provided by a stamping agent regarding the purchases from that ***nonparticipating***
27 manufacturer ***or its importers***. This information provided by a stamping agent may

1 be used in any enforcement action against the nonparticipating manufacturer ***or its***
2 ***importers*** by the Attorney General.
3 (2) In addition to the information required to be submitted pursuant to KRS 131.608,
4 131.614, and 131.620, the Attorney General or the commissioner may require a
5 stamping agent, distributor, ***participating manufacturer, nonparticipating***[~~or~~
6 ~~tobacco product~~] manufacturer***, or a nonparticipating manufacturer's importers*** to
7 submit any additional information including but not limited to samples of the
8 packaging or labeling of each brand family as is necessary to enable the Attorney
9 General to determine whether ***the participating***[~~a tobacco product~~] manufacturer ***or***
10 ***the nonparticipating manufacturer and its importers are***[~~is~~] in compliance with
11 KRS ***131.600***[~~131.604~~] to 131.630.
12 ➔Section 8. KRS 131.622 is amended to read as follows:
13 (1) (a) The following shall be contraband and subject to seizure and destruction:
14 1. Any cigarettes that have been affixed with a stamp in this state in
15 violation of KRS 131.612; or
16 2. Any cigarettes in the possession of a retailer[~~ after the sixty (60) day~~
17 ~~grace period as provided in KRS 131.610(5)(c)~~] from a tobacco product
18 manufacturer or brand family that ***have***[~~has~~] been removed from the
19 directory.
20 (b) Whenever any peace officer of this state, or any representative of the
21 department, finds any contraband cigarettes, the cigarettes shall be
22 immediately seized and stored in a depository to be selected by the officer or
23 representative.
24 (c) The seized cigarettes shall be held for a period of twenty (20) days to allow
25 the owner or any person having an interest in the cigarettes to protest the
26 seizure.
27 (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***

1 ***for sale in another state***.

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

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

9 (1) Any person aggrieved by a determination of the Attorney General to not include or
10 to remove from the directory created in KRS 131.610 a brand family or tobacco
11 product manufacturer may appeal the determination to the Franklin Circuit Court, or
12 to the Circuit Court of the county in which the aggrieved party resides or conducts
13 his place of business. For the purposes of a temporary injunction sought pursuant to
14 this subsection, loss of the ability to sell tobacco products as a result of removal
15 from the directory may be deemed to constitute irreparable harm.

16 (2) No person shall be issued a license or granted a renewal of a license to act as a
17 distributor or stamping agent unless the person is in compliance with the provisions
18 of KRS ***131.600***[~~131.604~~] to 131.630.

19 (3) The Attorney General or the department may promulgate administrative regulations
20 necessary to effect the purposes of KRS ***131.600***[~~131.604~~] to 131.630.

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

22 (1) In any action brought by the state to enforce KRS ***131.600***[~~131.604~~] to 131.630, the
23 state shall be entitled to recover the costs of investigation, expert witness fees, costs
24 of the action, and ***attorneys'***[~~ reasonable attorney~~] fees from any entity or person
25 found to be in violation of KRS ***131.600***[~~131.604~~] to 131.630.

26 (2) If a court determines that a person has violated KRS ***131.600***[~~131.604~~] to 131.630,
27 the court shall order any profits, gain, gross receipts, or other benefit from the

1 violation to be relinquished and paid to the State Treasurer for deposit in the
2 tobacco control special fund, which is hereby created. Moneys in the fund shall be
3 used for the sole purpose of enforcement of KRS ***131.600***[~~131.604~~] to 131.630.
4 ***(3)*** Unless otherwise expressly provided, the remedies or penalties provided by KRS
5 ***131.600***[~~131.604~~] to 131.630 are cumulative to each other and to the remedies or
6 penalties available under all other laws of this state.
7 ➔Section 11. KRS 131.628 is amended to read as follows:
8 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of KRS
9 131.600[~~, 131.602, or 131.604~~] to 131.630 causes KRS 131.600 and 131.602 to no longer
10 constitute a model statute, as it is set out in Exhibit T to the master settlement agreement,
11 then that portion of KRS 131.600[~~, 131.602, or 131.604~~] to 131.630 shall not be valid.
12 ➔Section 12. KRS 131.630 is amended to read as follows:
13 (1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon
14 a determination that a stamping agent or distributor has violated any provision of
15 KRS ***131.600***[~~131.604~~] to 131.630 or any administrative ***regulations***[~~regulation~~]
16 promulgated thereunder, the commissioner may revoke or suspend the license of
17 any stamping agent or distributor pursuant to KRS 138.195 and 138.205.
18 (2) Each stamp affixed in violation of KRS 131.612 shall constitute a separate
19 violation.
20 ***(3)*** The commissioner may impose a civil penalty ***of twenty-five dollars ($25) per***
21 ***violation***[~~ in an amount~~] not to exceed[~~ the greater of five hundred percent (500%)~~
22 ~~of the retail value of the cigarettes sold or~~] five thousand dollars ($5,000) upon a
23 determination of a violation of KRS 131.612 or any administrative regulations
24 promulgated thereunder. The penalty shall be imposed in the manner provided by
25 KRS 138.195 and 138.205.
26 ➔Section 13. KRS 248.750 is amended to read as follows:
27 As used in KRS[~~ 138.146 and~~] 248.750 to 248.769:

1 (1) "Department" means the Department of Revenue;
2 (2) "Cigarettes" ***has the same meaning***~~[means cigarettes]~~ as~~[ defined]~~ in KRS 138.130;
3 (3) "Importer" ***has the same meaning***~~[ means an importer]~~ as~~[ defined]~~ in 26 U.S.C.
4 sec. 5702***(k)***~~[(l)]~~;
5 (4) "Manufacturer" means any person who manufactures or produces cigarettes within
6 or without the Commonwealth;
7 (5) "Master settlement agreement" means the settlement agreement (and related
8 documents) entered into on November 23, 1998, by Kentucky and leading United
9 States tobacco product manufacturers;
10 (6) ***"Nonparticipating manufacturer" has the same meaning as in Section 1 of this***
11 ***Act;***
12 ***(7)*** "Package" ***has the same meaning***~~[means package]~~ as~~[ is defined]~~ in 15 U.S.C. sec.
13 1332(4); and
14 ***(8)***~~[(7)]~~ "Person" ***has the same meaning***~~[means person]~~ as~~[ defined]~~ in KRS 446.010.
15 ➔Section 14. KRS 248.754 is amended to read as follows:
16 On or before the fifteenth business day of each month, each***:***
17 ***(1)*** Person licensed to affix the stamp required by KRS 138.146 or make other evidence
18 of tax payment as provided in KRS 138.155 shall file with the ***department***~~[cabinet]~~,
19 for all cigarettes imported into the United States to which the person has affixed the
20 stamp required by KRS 138.146 or made other evidence of tax payment as provided
21 in KRS 138.155 in the preceding month, a copy of the ***current*** customs certificates
22 required by 19 U.S.C. sec. 1681a(c) for the entry of cigarettes into the United
23 States***; and***
24 ***(2) A nonparticipating manufacturer and each of its importers shall file with the***
25 ***Attorney General for all cigarettes imported into the United States, a copy of the***
26 ***current customs certificates required by 19 U.S.C. sec. 1681a(c) for the entry of***
27 ***cigarettes into the United States***.

1 ➔Section 15. KRS 248.756 is amended to read as follows:
2 (1) The ***department***[~~cabinet~~] may revoke[~~ or suspend~~] the license issued in accordance
3 with KRS 138.195 of any licensee and impose a civil penalty ***of twenty-five dollars***
4 ***($25) per violation***[~~ in an amount~~] not to exceed[~~ the greater of five hundred~~
5 ~~percent (500%) of the retail value of the cigarettes involved or~~] five thousand
6 dollars ($5,000) upon finding a violation by the licensee of KRS 248.752 or
7 248.754***, as applicable***.
8 (2) Cigarettes that are acquired, held, owned, possessed, transported in, imported into,
9 or sold or distributed in this Commonwealth in violation of KRS 248.752 or
10 248.754 shall be treated as contraband under KRS 138.165 and be subject to seizure
11 and forfeiture. Notwithstanding the provisions of KRS 138.165, all cigarettes seized
12 and forfeited shall be destroyed. Cigarettes shall be treated as contraband whether
13 the violation of KRS 248.752 or 248.754 is knowing or otherwise.
14 ➔Section 16. KRS 138.195 is amended to read as follows:
15 (1) (a) No person other than a manufacturer shall acquire cigarettes in this state on
16 which the Kentucky cigarette tax has not been paid, nor act as a resident
17 wholesaler, nonresident wholesaler, vending machine operator, sub-jobber,
18 transporter or unclassified acquirer of such cigarettes without first obtaining a
19 license from the department as set out in this section.
20 (b) No person shall act as a distributor of tobacco products without first obtaining
21 a license from the department as set out in this section.
22 ***(c) For licenses effective for periods beginning on or after July 1, 2015, no***
23 ***individual, entity, or any other group or combination acting as a unit may***
24 ***be eligible to obtain a license under this section if the individual, or any***
25 ***partner, director, principal officer, or manager of the entity or any other***
26 ***group or combination acting as a unit has been convicted of, or entered a***
27 ***plea of guilty or nolo contendere to:***

1 ***1. A crime relating to the reporting, distribution, sale, or taxation of***
2 ***cigarettes or tobacco products; or***
3 ***2. A crime involving fraud, falsification of records, improper business***
4 ***transactions or reporting;***
5 ***for ten (10) years from the expiration of probation or final discharge from***
6 ***parole or maximum expiration of sentence.***
7 (2) Each resident wholesaler shall secure a separate license for each place of business at
8 which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky
9 cigarette tax has not been paid are received. Each nonresident wholesaler shall
10 secure a separate license for each place of business at which evidence of Kentucky
11 cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid.
12 Such a license or licenses shall be secured on or before July 1 of each year, and each
13 licensee shall pay the sum of five hundred dollars ($500) for each such year or
14 portion thereof for which such license is secured.
15 (3) Each sub-jobber shall secure a separate license for each place of business from
16 which Kentucky tax-paid cigarettes are made available to retailers, whether such
17 place of business is located within or without this state. Such license or licenses
18 shall be secured on or before July 1 of each year, and each licensee shall pay the
19 sum of five hundred dollars ($500) for each such year or portion thereof for which
20 such license is secured.
21 (4) Each vending machine operator shall secure a license for the privilege of dispensing
22 Kentucky tax-paid cigarettes by vending machines. Such license shall be secured on
23 or before July 1 of each year, and each licensee shall pay the sum of twenty-five
24 dollars ($25) for each year or portion thereof for which such license is secured. No
25 vending machine shall be operated within this Commonwealth without having
26 prominently affixed thereto the name of its operator, together with the license
27 number assigned to such operator by the department. The department shall prescribe

1 by ***administrative*** regulation the manner in which the information shall be affixed
2 to the vending machine.
3 (5) Each transporter shall secure a license for the privilege of transporting cigarettes
4 within this state. Such license shall be secured on or before July 1 of each year, and
5 each licensee shall pay the sum of fifty dollars ($50) for each such year or portion
6 thereof for which such license is secured. No transporter shall transport any
7 cigarettes without having in actual possession an invoice or bill of lading therefor,
8 showing the name and address of the consignor and consignee, the date acquired by
9 the transporter, the name and address of the transporter, the quantity of cigarettes
10 being transported, together with the license number assigned to such transporter by
11 the department.
12 (6) Each unclassified acquirer shall secure a license for the privilege of acquiring
13 cigarettes on which the Kentucky cigarette tax has not been paid. Such license shall
14 be secured on or before July 1 of each year, and each licensee shall pay the sum of
15 fifty dollars ($50) for each such year or portion thereof for which such license is
16 secured.
17 (7) (a) 1. Each distributor shall secure a license for the privilege of selling tobacco
18 products in this state. Each license shall be secured on or before July 1
19 of each year, and each licensee shall pay the sum of five hundred dollars
20 ($500) for each year or portion thereof for which the license is secured.
21 2. a. A resident wholesaler, nonresident wholesaler, or subjobber
22 licensed under this section may also obtain and maintain a
23 distributor's license at each place of business at no additional cost
24 each year.
25 b. An unclassified acquirer licensed under this section may also
26 obtain and maintain a distributor's license for the privilege of
27 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

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

1 documents required by this section shall be preserved in a form prescribed by the
2 department for not less than four (4) years from the making of the records unless the
3 department authorizes, in writing, the destruction of the records.
4 (12) No person licensed under this section except nonresident wholesalers shall either
5 sell to or purchase from any other such licensee untax-paid cigarettes.
6 (13) (a) Licensed distributors of tobacco products shall pay and report the tax levied
7 by KRS 138.140(4)(a) on or before the twentieth day of the calendar month
8 following the month in which the possession or title of the tobacco products
9 are transferred from the licensed distributor to retailers or consumers in this
10 state, as the case may be.
11 (b) Retailers who have applied for and been granted a retail distributor's license
12 for the privilege of purchasing tobacco products from a person who is not a
13 distributor licensed under KRS 138.195(7)(a) shall report and pay the tax
14 levied by KRS 138.140(4)(c)2. on or before the twentieth day of the calendar
15 month following the month in which the products are acquired by the licensed
16 retail distributors.
17 (c) If the distributor or retail distributor timely reports and pays the tax due, the
18 distributor or retail distributor may deduct an amount equal to one percent
19 (1%) of the tax due.
20 (d) The department shall promulgate administrative regulations setting forth the
21 details of the reporting requirements.
22 (14) A tax return shall be filed for each reporting period whether or not tax is due.
23 ***(15) Any license issued by the department under this section shall not be construed to***
24 ***waive or condone any violation that occurred or may have occurred prior to the***
25 ***issuance of the license and shall not prevent subsequent proceedings against the***
26 ***licensee.***
27 ***(16) (a) The department may deny the issuance of a license under this section if:***

1 ***1. The applicant has made any material false statement on the***
2 ***application for the license; or***
3 ***2. The applicant has violated any provision of KRS 131.600 to 131.630,***
4 ***138.130 to 138.205, 248.754, 248.756 or any administrative***
5 ***regulations promulgated thereunder.***
6 ***(b) If the department denies the applicant a license under this section, the***
7 ***department shall notify the applicant of the grounds for the denial, and the***
8 ***applicant may request a hearing and appeal the denial as provided in***
9 ***subsection (9) of this section.***
10 ➔Section 17. KRS 227.774 is amended to read as follows:
11 (1) Each manufacturer shall submit to the state fire marshal a written certification
12 attesting that:
13 (a) Each cigarette listed in the certification has been tested in accordance with
14 KRS 227.772; and
15 (b) Each cigarette listed in the certification meets the performance standard set
16 forth under KRS 227.772(1)(d).
17 (2) Each cigarette listed in the certification shall be described with the following
18 information:
19 (a) Brand or trade name on the package;
20 (b) Style, such as light or ultra light;
21 (c) Length in millimeters;
22 (d) Circumference in millimeters;
23 (e) Flavor, such as menthol or chocolate, if applicable;
24 (f) Filter or nonfilter;
25 (g) Package description, such as soft pack or box;
26 (h) Marking approved in accordance with KRS 227.776;
27 (i) The name, address, and telephone number of the laboratory, if different than

1 the manufacturer that conducted the test; and
2 (j) The date that the testing occurred.
3 (3) The certifications shall be made available to the Attorney General for purposes
4 consistent with KRS 227.770 to 227.784 and the Department of Revenue for the
5 purposes of ensuring compliance with this section.
6 (4) Each cigarette certified under this section shall be recertified every three (3) years.
7 (5) For cigarettes certified in compliance with this section, a manufacturer shall pay to
8 the state fire marshal a fee of one thousand dollars ($1,000) per brand family.
9 "Brand family" shall have the same meaning as in ***Section 1 of this Act***[~~KRS~~
10 ~~131.604~~].
11 (6) The Reduced Cigarette Ignition Propensity and Firefighter Protection Act
12 enforcement fund is established in the Finance and Administration Cabinet for use
13 by the state fire marshal solely for processing, testing, enforcement, and oversight
14 activities set out in KRS 227.770 to 227.784. The fund shall consist of certification
15 fees required under subsection (5) of this section, and any other moneys made
16 available for such purpose from any source. Moneys credited to the fund may be
17 invested until needed. All interest earned in the fund shall be retained in the fund.
18 Notwithstanding KRS 45.229, moneys in the fund shall not lapse but shall carry
19 forward at the end of the fiscal year.
20 (7) If a manufacturer has certified a cigarette pursuant to this section, and afterward
21 makes any change to the cigarette that is likely to alter its compliance with the
22 reduced cigarette ignition propensity standards required by KRS 227.770 to
23 227.784, that cigarette shall not be sold or offered for sale in this state until the
24 manufacturer retests the cigarette in accordance with the testing standards set forth
25 in KRS 227.772(1)(b) and maintains records of that retesting as required by KRS
26 227.772. Any altered cigarette which does not meet the performance standard set
27 forth in KRS 227.772(1)(d) shall not be sold in this state.

1 ➔Section 18. The following KRS section is repealed:

2 131.604 Definitions for KRS 131.604 to 131.630.

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

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 3/23/15