

CHAPTER 150**(HB 279)**

AN ACT relating to cigarettes.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 10 and 11 of this Act:

- (1) *"Cabinet" means the Revenue Cabinet;*
- (2) *"Cigarettes" means cigarettes as defined in KRS 138.130;*
- (3) *"Importer" means an importer as defined in 26 U.S.C. sec. 5702(l);*
- (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) *"Package" means package as is defined in 15 U.S.C. sec. 1333(4); and*
- (7) *"Person" means person as defined in KRS 446.010.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

No person shall:

- (1) *Sell or distribute, in this Commonwealth; acquire, hold, own, possess, or transport in this Commonwealth; for sale or distribution in this Commonwealth; or import or cause to be imported into this Commonwealth for sale or distribution in this Commonwealth:*
 - (a) *Any cigarettes the package of which:*
 1. *Bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States including, but not limited to, a label stating "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording; or*
 2. *Does not comply with:*
 - a. *All requirements imposed by or in accordance with federal law regarding warnings, and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States including, but not limited to, the precise warning label specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. sec. 1333; and*
 - b. *All federal trademark and copyright laws;*
 - (b) *Any cigarettes in violation of federal law or federal regulations, including but not limited to cigarettes imported into the United States in violation of 26 U.S.C. sec. 5754, 26 U.S.C. sec. 5704, 19 U.S.C. secs. 1681-1681b, U.S. Customs Law including*

Title VII of the Tariff Act of 1930 or Public Law 106-476, the Imported Cigarette Compliance Act of 2000; or

- (c) *Any cigarettes for which there has not been submitted to the Secretary of the United States Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of the cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. sec. 1335a;*
- (2) *Alter the package of any cigarettes, prior to the sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:*
 - (a) *Any statement, label, stamp, sticker, or notice described in subsection (1)(a)2.a. of this section; or*
 - (b) *Any health warning that is not specified in or does not conform with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. sec. 1333; or*
- (3) *Affix any stamp required by KRS 138.146 or make other evidence of tax payment as provided in KRS 138.155 to the package of any cigarettes described in subsection (1) of this section or altered in violation of subsection (2) of this section.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

On or before the fifteenth business day of each month, each 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 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 customs certificates required by 19 U.S.C. 1681a(c) for the entry of cigarettes into the United States.

SECTION 4. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet may revoke or suspend the license issued in accordance with KRS 138.195 of any licensee and impose a civil penalty 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 the provisions of Section 2 or 3 of this Act.*
- (2) *Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this Commonwealth in violation of the provisions of Section 2 or 3 of this Act 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 the provisions of Section 2 or 3 of this Act is knowing or otherwise.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

For the purposes of Sections 1 to 10 and 11 of this Act, cigarettes imported or reimported into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as or is confusingly similar to any trade name, trade dress, or trademark used for

cigarettes manufactured in the United States for sale or distribution in the United States shall be presumed to have been purchased outside of the ordinary business channels of trade.

SECTION 6. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *A violation of the provisions of Section 2 or 3 of this Act shall constitute an unlawful trade practice as provided in KRS 365.260 to 365.380 and, in addition to any remedies or penalties set forth in Sections 4, 7, and 9 of this Act, shall be subject to any remedies or penalties available for a violation of the provisions of KRS 365.260 to 365.380.*
- (2) *Any person who sells, distributes, or manufactures cigarettes shall be bound by Kentucky law on unfair trade practices, KRS 365.020 to 365.050.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

Any person that commits any of the acts prohibited by Section 2 of this Act, either knowing or having reason to know he or she is doing so, or that fails to comply with any of the requirements in Section 3 of this Act is guilty of a Class D felony and, in addition, may be subject to a fine of not more than five thousand dollars (\$5,000) and costs of prosecution.

SECTION 8. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of Sections 2 and 3 of this Act shall be enforced by the Attorney General, but at the request of the Attorney General or the Attorney General's duly authorized agent, the State Police and all local police authorities shall enforce the provisions of Sections 2 and 3 of this Act. The Attorney General has concurrent powers with prosecuting attorneys of the Commonwealth to enforce the provisions of Section 3 or 4 of this Act.*
- (2) *For the purpose of enforcing the provisions of Sections 3 and 4 of this Act, the Attorney General and any agency that the Attorney General shall have delegated enforcement responsibility under subsection (1) of this section may request information from any state or local agency and may share information with and request information from any federal agency and any agency of any other state or any local agency of that state.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

Any person who sells, distributes, or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of Section 2 or 3 of this Act may bring an action in good faith for appropriate injunctive relief.

SECTION 10. A NEW SECTION OF KRS CHAPTER 248 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of Sections 2 and 3 of this Act shall not apply to:*
 - (a) *Cigarettes allowed to be imported or brought into the United States for personal use; and*
 - (b) *Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. sec. 1555(b) and any implementing regulations, but the provisions of Sections 3 and 4 of this Act shall*

apply to any cigarettes that are brought back into the customs territory for resale within the customs territory.

- (2) *The penalties provided in Sections 4, 6, and 7 of this Act are in addition to any other penalties imposed under other law.*

Section 11. KRS 138.146 is amended to read as follows:

- (1) The cigarette tax imposed by KRS 138.130 to 138.205 shall be due when any licensed wholesaler or unclassified acquirer takes possession within this state of untax-paid cigarettes.
- (2) The tax shall be paid by the purchase of stamps by a resident wholesaler within forty-eight (48) hours after the cigarettes are received by him. A stamp shall be affixed to each package of an aggregate denomination not less than the amount of the tax upon the contents thereof. The stamp, so affixed, shall be prima-facie evidence of payment of tax. Unless such stamps have been previously affixed, they shall be so affixed by each resident wholesaler prior to the delivery of any cigarettes to a retail location or any person in this state. The evidence of tax payment shall be affixed to each individual package of cigarettes by a nonresident wholesaler prior to the introduction or importation of the cigarettes into the territorial limits of this state. The evidence of tax payment shall be affixed by an unclassified acquirer within twenty-four (24) hours after the cigarettes are received by him.
- (3) The cabinet shall by regulation prescribe the form of cigarette tax evidence, the method and manner of the sale and distribution of such cigarette tax evidence, and the method and manner that such evidence shall be affixed to the cigarettes. *All cigarette tax evidence prescribed by the cabinet shall be designed and furnished in a fashion to permit identification of the person that affixed the cigarette tax evidence to the particular package of cigarettes, by means of numerical rolls or other mark on the cigarette tax evidence. The cabinet shall maintain for at least three (3) years, information identifying the person that affixed the cigarette tax evidence to each package of cigarettes. This information shall not be kept confidential or exempt from disclosure to the public through open records.*
- (4) Units of cigarette tax evidence shall be sold at their face value, but the cabinet shall allow as compensation to any licensed wholesaler an amount of tax evidence equal to thirty cents (\$0.30) face value for each three dollars (\$3) of tax evidence purchased at face value. The cabinet shall have the power to withhold compensation from any licensed wholesaler for failure to abide by any provisions of KRS 138.130 to 138.205 or any regulations promulgated thereunder. Any refund or credit for unused cigarette tax evidence shall be reduced by the amount allowed as compensation at the time of purchase.
- (5) No tax evidence may be affixed, or used in any way, by any person other than the person purchasing such evidence from the cabinet. Such tax evidence may not be transferred or negotiated, and may not, by any scheme or device, be given, bartered, sold, traded, or loaned to any other person. Unaffixed tax evidence may be returned to the cabinet for credit or refund for any reason satisfactory to the cabinet.
- (6) In the event any retailer shall receive into his possession cigarettes to which evidence of Kentucky tax payment is not properly affixed, he shall within twenty-four (24) hours notify the cabinet of such fact. Such notice shall be in writing, and shall give the name of the person from whom such cigarettes were received, and the quantity of such cigarettes, and such written notice may be given to any field agent of the cabinet. The written notice may

also be directed to the secretary of revenue, Frankfort, Kentucky. If such notice is given by means of the United States mail, it shall be sent by certified mail. Any such cigarettes shall be retained by such retailer, and not sold, for a period of fifteen (15) days after giving the notice provided in this subsection. The retailer may, at his option, pay the tax due on any such cigarettes according to rules and regulations to be prescribed by the cabinet, and proceed to sell the same after such payment.

- (7) Cigarettes stamped with the cigarette tax evidence of another state shall at no time be commingled with cigarettes on which the Kentucky cigarette tax evidence has been affixed, but any licensed wholesaler, licensed sub-jobber or licensed vending machine operator may hold cigarettes stamped with the tax evidence of another state for any period of time, subsection (2) of this section notwithstanding.

Section 12. This Act takes effect January 1, 2002.

Approved March 20, 2001