

**CHAPTER 84****(SB 48)**

AN ACT relating to cigarettes.

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

➔Section 1. KRS 131.604 is amended to read as follows:

As used in KRS 131.604 to 131.630:

- (1) "Brand family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to menthol, lights, 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.
- (2) "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.
- (3) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.
- (4) "Participating manufacturer" has the meaning given the term in Section II(jj) of the master settlement agreement and all amendments thereto.
- (5) "Stamping agent" means a person, including a distributor, that is authorized to affix tax stamps to packages or other containers or cigarettes pursuant to KRS 138.146 or any person that is required to pay the excise tax imposed pursuant to KRS 138. 155.
- (6) "Master settlement agreement" has the same meaning as in KRS 131.600.
- (7) "Cigarette" has the same meaning as in KRS 131.600.
- (8) "Commissioner" means the commissioner of the Department of Revenue.
- (9) "Department" means the Department of Revenue.
- (10) "Tobacco product manufacturer" has the same meaning as in KRS 131.600.
- (11) "Units sold" has the same meaning as in KRS 131.600.
- (12) "Qualified escrow fund" has the same meaning as in KRS 131.600.
- (13) ***"Directory" means the directory as provided in Section 2 of this Act.***

➔Section 2. 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 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.
- (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 retailer customers 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 Section 4 of this Act.***
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 has been removed from the directory.***
- ~~(6)(5)~~ 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)(6)~~ Notwithstanding the provisions of subsections (2) and (3) of this section, in the case of any nonparticipating manufacturer who has established a qualified escrow account pursuant to KRS 131.602 that has been approved by the Attorney General, the Attorney General may not remove the manufacturer or its brand families from the directory unless the 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 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 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 unless and until the Attorney General determines that the nonparticipating manufacturer is in compliance with KRS 131.608 and posts the notification of compliance in the directory.***

➔Section 3. KRS 131.612 is amended to read as follows:

It shall be unlawful for:

- (1) Any stamping agent or distributor 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 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 4. 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 subsection (5)(c) of Section 2 of this Act from a tobacco product manufacturer or brand family that has been removed from the directory* ~~shall be deemed contraband and subject to seizure and forfeiture pursuant to KRS 138.165. Cigarettes seized in accordance with this section shall be destroyed and not resold.~~
- (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 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 shall sell or distribute cigarettes, or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the stamping agent 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.
- (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 regulation adopted pursuant to KRS 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 131.604 to 131.630.

➔Section 5. (1) The staff of the Legislative Research Commission shall conduct a study to review the initial certification process and subsequent recertification process and escrow requirements of the Tobacco Master Settlement Agreement and the related impacts on participating manufacturers, nonmanufacturers, stamping agents or distributors, and retailers.

(2) Staff shall transmit the results of the study to the Legislative Research Commission, for distribution to the Interim Joint Committee on Appropriations and Revenue, by November 1, 2010.

(3) Provisions of subsections (1) and (2) of this section to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee, thereof, and to designate a study completion date.

➔Section 6. This Act takes effect July 1, 2009.

**Signed by the Governor March 24, 2009.**