

1 AN ACT relating to the dissemination of cigarettes, tobacco products, alternative
2 nicotine products, and vapor products, and making an appropriation therefor.

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

4 ➔Section 1. KRS 438.310 is amended to read as follows:

5 (1) No person shall sell or cause to be sold any tobacco product, alternative nicotine
6 product, or vapor product at retail to any person under the age of twenty-one (21),
7 or solicit any person under the age of twenty-one (21) to purchase any tobacco
8 product, alternative nicotine product, or vapor product at retail.

9 (2) Any person who sells tobacco products, alternative nicotine products, or vapor
10 products at retail shall cause to be posted in a conspicuous place in his or her
11 establishment a notice stating that it is illegal to sell tobacco products, alternative
12 nicotine products, or vapor products to persons under age twenty-one (21).

13 (3) Any person selling tobacco products, alternative nicotine products, or vapor
14 products shall require proof of age from a prospective buyer or recipient if the
15 person has reason to believe that the prospective buyer or recipient is under the age
16 of twenty-one (21).

17 (4) **A person who violates subsection (1) of this section shall be subject to a fine of**
18 **not less than one thousand five hundred dollars (\$1,500) nor more than two**
19 **thousand dollars (\$2,000) for a first violation and a fine of not less than two**
20 **thousand five hundred dollars (\$2,500) nor more than three thousand dollars**
21 **(\$3,000) for any subsequent violation. The fine shall be administered by the**
22 **Department of Alcoholic Beverage Control using a civil enforcement procedure.**

23 **(5)** A person who violates subsection~~[(1) or]~~ (2) of this section shall be subject to a
24 fine of not less than one hundred dollars (\$100) nor more than five hundred dollars
25 (\$500) for a first violation and a fine of not less than five hundred dollars (\$500)
26 nor more than one thousand dollars (\$1,000) for any subsequent violation. The fine
27 shall be administered by the Department of Alcoholic Beverage Control using a

1 civil enforcement procedure.

2 **(6) All peace officers with general law enforcement authority and employees of the**
3 **Department of Alcoholic Beverage Control may issue a uniform citation, but may**
4 **not make an arrest, or take a child into custody, for a violation of this section.**

5 ➔Section 2. KRS 438.313 is amended to read as follows:

6 (1) No wholesaler, retailer, or manufacturer of cigarettes, tobacco products, alternative
7 nicotine products, or vapor products may distribute cigarettes, tobacco products,
8 alternative nicotine products, or vapor products, including samples thereof, free of
9 charge or otherwise, to any person under the age of twenty-one (21).

10 (2) Any person who distributes cigarettes, tobacco products, alternative nicotine
11 products, or vapor products, including samples thereof, free of charge or otherwise
12 shall require proof of age from a prospective buyer or recipient if the person has
13 reason to believe that the prospective purchaser or recipient is under the age of
14 twenty-one (21).

15 (3) Any person who violates the provisions of this section shall be fined not less than
16 **one thousand five hundred dollars (\$1,500)**~~one thousand dollars (\$1,000)~~ nor
17 more than **two thousand dollars (\$2,000)**~~two thousand five hundred dollars~~
18 ~~(\$2,500)~~ for **a first**~~each~~ offense, **not less than two thousand five hundred dollars**
19 **(\$2,500) nor more than three thousand dollars (\$3,000) for a second or any**
20 **subsequent offense, and shall have any license issued pursuant to KRS 138.195**
21 **revoked for a third offense.** The fine shall be administered by the Department of
22 Alcoholic Beverage Control using a civil enforcement procedure for persons
23 eighteen (18) years of age or older.

24 (4) All peace officers with general law enforcement authority and employees of the
25 Department of Alcoholic Beverage Control may issue a uniform citation, but may
26 not make an arrest, or take a child into custody, for a violation of this section.

27 ➔Section 3. KRS 138.195 is amended to read as follows:

- 1 (1) (a) No person other than a manufacturer shall acquire cigarettes in this state on
2 which the Kentucky cigarette tax has not been paid, nor act as a resident
3 wholesaler, nonresident wholesaler, vending machine operator, sub-jobber,
4 transporter or unclassified acquirer of such cigarettes without first obtaining a
5 license from the department as set out in this section.
- 6 (b) No person shall act as a distributor of tobacco products or vapor products
7 without first obtaining a license from the department as set out in this section.
- 8 (c) For licenses effective for periods beginning on or after July 1, 2015, no
9 individual, entity, or any other group or combination acting as a unit may be
10 eligible to obtain a license under this section if the individual, or any partner,
11 director, principal officer, or manager of the entity or any other group or
12 combination acting as a unit has been convicted of or entered a plea of guilty
13 or nolo contendere to:
- 14 1. A crime relating to the reporting, distribution, sale, or taxation of
15 cigarettes, tobacco products, or vapor products; or
- 16 2. A crime involving fraud, falsification of records, improper business
17 transactions or reporting;
- 18 for ten (10) years from the expiration of probation or final discharge from
19 parole or maximum expiration of sentence.
- 20 (2) (a) Each resident wholesaler shall secure a separate license for each place of
21 business at which cigarette tax evidence is affixed or at which cigarettes on
22 which the Kentucky cigarette tax has not been paid are received.
- 23 (b) Each nonresident wholesaler shall secure a separate license for each place of
24 business at which evidence of Kentucky cigarette tax is affixed or from where
25 Kentucky cigarette tax is reported and paid.
- 26 (c) Each license shall be secured on or before July 1 of each year.
- 27 (d) Each licensee shall pay the sum of five hundred dollars (\$500) for each year,

1 or portion thereof, for which each license is secured.

2 (3) (a) Each sub-jobber shall secure a separate license for each place of business
3 from which cigarettes, upon which the cigarette tax has been paid, are made
4 available to retailers, whether the place of business is located within or
5 without this state.

6 (b) Each license shall be secured on or before July 1 of each year.

7 (c) Each licensee shall pay the sum of five hundred dollars (\$500) for each year,
8 or portion thereof, for which each license is secured.

9 (4) (a) Each vending machine operator shall secure a license for the privilege of
10 dispensing cigarettes, on which the cigarette tax has been paid, by vending
11 machines.

12 (b) Each license shall be secured on or before July 1 of each year.

13 (c) Each licensee shall pay the sum of twenty-five dollars (\$25) for each year, or
14 portion thereof, for which each license is secured.

15 (d) No vending machine shall be operated within this Commonwealth without
16 having prominently affixed thereto the name of its operator and the license
17 number assigned to that operator by the department.

18 (e) The department shall prescribe by administrative regulation the manner in
19 which the information shall be affixed to the vending machine.

20 (5) (a) Each transporter shall secure a license for the privilege of transporting
21 cigarettes within this state.

22 (b) Each license shall be secured on or before July 1 of each year.

23 (c) Each licensee shall pay the sum of fifty dollars (\$50) for each year, or portion
24 thereof, for which each license is secured.

25 (d) No transporter shall transport any cigarettes without having in actual
26 possession an invoice or bill of lading therefor, showing:

27 1. The name and address of the consignor and consignee;

- 1 2. The date acquired by the transporter;
 - 2 3. The name and address of the transporter;
 - 3 4. The quantity of cigarettes being transported; and
 - 4 5. The license number assigned to the transporter by the department.
- 5 (6) Each unclassified acquirer shall secure a license for the privilege of acquiring
6 cigarettes on which the cigarette tax has not been paid. The license shall be secured
7 on or before July 1 of each year. Each licensee shall pay the sum of fifty dollars
8 (\$50) for each year, or portion thereof, for which the license is secured.
- 9 (7) (a) 1. Each distributor shall secure a license for the privilege of selling tobacco
10 products or vapor products in this state. Each license shall be secured on
11 or before July 1 of each year, and each licensee shall pay the sum of five
12 hundred dollars (\$500) for each year, or portion thereof, for which the
13 license is secured.
- 14 2. a. A resident wholesaler, nonresident wholesaler, or subjobber
15 licensed under this section may also obtain and maintain a
16 distributor's license at each place of business at no additional cost
17 each year.
- 18 b. An unclassified acquirer licensed under this section may also
19 obtain and maintain a distributor's license for the privilege of
20 selling tobacco products or vapor products in this state. The
21 license shall be secured on or before July 1 of each year, and each
22 licensee shall pay the sum of four hundred fifty dollars (\$450) for
23 each year, or portion thereof, for which the license is secured.
- 24 3. The department may, upon application, grant a distributor's license to a
25 person other than a retailer and who is not otherwise required to hold a
26 distributor's license under this paragraph. If the department grants the
27 license, the licensee shall pay the sum of five hundred dollars (\$500) for

1 each year, or portion thereof, for which the license is secured, and the
2 licensee shall be subject to the excise tax in the same manner and
3 subject to the same requirements as a distributor required to be licensed
4 under this paragraph.

5 (b) The department may, upon application, grant a retail distributor's license to a
6 retailer for the privilege of purchasing tobacco products or vapor products
7 from a distributor not licensed by the department. If the department grants the
8 license, the licensee shall pay the sum of one hundred dollars (\$100) for each
9 year, or portion thereof, for which the license is secured.

10 (8) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department
11 from requiring a person to purchase more than one (1) license if the nature of that
12 person's business is so diversified as to justify the requirement.

13 (9) (a) The department may by administrative regulation require any person
14 requesting a license or holding a license under this section to supply such
15 information concerning his or her business, sales or any privilege exercised,
16 as is deemed reasonably necessary for the regulation of the licensees, and to
17 protect the revenues of the state.

18 (b) Failure on the part of the applicant or licensee to:

19 1. Comply with KRS 131.600 to 131.630, 138.130 to 138.205, 248.752,~~f~~
20 ~~or~~ 248.754, or Section 2 of this Act, or any administrative regulations
21 promulgated thereunder; or

22 2. Permit an inspection of premises, machines, or vehicles by an authorized
23 agent of the department at any reasonable time;

24 shall be grounds for the denial or revocation of any license issued by the
25 department, after due notice and a hearing by the department.

26 (c) The commissioner may assign a time and place for the hearing and may
27 appoint a conferee who shall conduct a hearing, receive evidence, and hear

1 arguments.

2 (d) The conferee shall thereupon file a report with the commissioner together
3 with a recommendation as to the denial or revocation of the license.

4 (e) From any denial or revocation made by the commissioner on the report, the
5 licensee may prosecute an appeal to the Board of Tax Appeals pursuant to
6 KRS 49.220.

7 (f) Any person whose license has been revoked for the willful violation of any
8 provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752,~~[-or]~~
9 248.754, or Section 2 of this Act, or any administrative regulations
10 promulgated thereunder shall not be entitled to any license provided for in this
11 section, or have any interest in any license, either disclosed or undisclosed,
12 either as an individual, partnership, corporation or otherwise, for a period of
13 two (2) years after the revocation.

14 (10) No license issued pursuant to this section shall be transferable or negotiable, except
15 that a license may be transferred between an individual and a corporation if that
16 individual is the exclusive owner of that corporation, or between a subsidiary
17 corporation and its parent corporation.

18 (11) Every manufacturer located or doing business in this state and the first person to
19 import cigarettes into this state shall keep written records of all shipments of
20 cigarettes to persons within this state, and shall submit to the department monthly
21 reports of such shipments. All books, records, invoices, and documents required by
22 this section shall be preserved in a form prescribed by the department for not less
23 than four (4) years from the making of the records unless the department authorizes,
24 in writing, the destruction of the records.

25 (12) No person licensed under this section except nonresident wholesalers shall either
26 sell to or purchase from any other such licensee untax-paid cigarettes.

27 (13) (a) Licensed distributors of tobacco products or vapor products shall pay and

1 report the tobacco products tax or vapor products tax on or before the
2 twentieth day of the calendar month following the month in which the
3 possession or title of the tobacco products or vapor products are transferred
4 from the licensed distributor to retailers or consumers in this state, as the case
5 may be.

6 (b) Retailers who have applied for and been granted a retail distributor's license
7 for the privilege of purchasing tobacco products or vapor products from a
8 person who is not a distributor licensed under KRS 138.195(7)(a) shall report
9 and pay the tobacco products tax or vapor products tax on or before the
10 twentieth day of the calendar month following the month in which the
11 products are acquired by the licensed retail distributors.

12 (c) If the distributor or retail distributor timely reports and pays the tax due, the
13 distributor or retail distributor may deduct an amount equal to one percent
14 (1%) of the tax due.

15 (d) The department shall promulgate administrative regulations setting forth the
16 details of the reporting requirements.

17 (14) A tax return shall be filed for each reporting period whether or not tax is due.

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

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

23 1. The applicant has made any material false statement on the application
24 for the license; or

25 2. The applicant has violated any provision of KRS 131.600 to 131.630,
26 138.130 to 138.205, 248.754, ~~or~~ 248.756, or Section 2 of this Act, or
27 any administrative regulations promulgated thereunder.

1 (b) If the department denies the applicant a license under this section, the
2 department shall notify the applicant of the grounds for the denial, and the
3 applicant may request a hearing and appeal the denial as provided in
4 subsection (9) of this section.