Be it enacted by the people of the state of Missouri:

Sections 196.1000, 196.1003, 196.1020, 196.1023, 196.1026, 196.1029, 196.1032, and 196.1035, RSMo, are repealed and one new section enacted in lieu thereof to be known as section 149.018, to read as follows:

149.018. On and after January 1, 2015, an additional tax on the sale of cigarettes and roll-your-own tobacco, in an amount equal to one and one-half cents ($0.015) per cigarette, and ten and twenty-five hundredths percent of the manufacturer's invoice price before discounts and deals on roll-your-own tobacco, shall be levied and imposed upon the sale of cigarettes and roll-your-own tobacco in this state. The taxes imposed by this section shall be in addition to other taxes imposed by law on the sale of cigarettes and roll-your-own tobacco and shall be collected in the same manner and at the same time as the taxes imposed by law upon the sale of cigarettes and roll-your-own tobacco under this chapter.

[196.1000. (a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.
(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.
(c) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.
(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) 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 (3) 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 clause (1) of this definition. 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," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."
(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.
(f) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section 2(b)(2) of this Act.
(g) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.
(h) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.
(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):
(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);
(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or
(3) becomes a successor of an entity described in paragraph (1) or (2).

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1)-(3) above.
(j) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the State. The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.]

[196.1003. Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:
(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or
(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)
1999: $.0094241 per unit sold
after the date of enactment of this Act;
2000: $.0104712 per unit sold;
for each of 2001 and 2002: $.0136125 per unit sold;
for each of 2003 through 2006: $.0167539 per unit sold;
for each of 2007 and each year
thereafter: $.0188482 per unit sold.
(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances
(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;
(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or
(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.
(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall
(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the State's general revenue fund in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;
(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the State's general revenue fund in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.
Each failure to make an annual deposit required under this section shall constitute a separate violation. Any tobacco product manufacturer that violates the provisions of this section shall pay the State's cost and attorney's fees incurred during a successful prosecution under this section.]

[196.1020. As used in sections 196.1020 to 196.1035, the following terms mean:
(1) "Brand family", all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to "menthol", "lights", "kings", and "100s", 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) "Cigarette", the same meaning as such term is defined in section 196.1000;
(3) "Director", the director of the Missouri department of revenue;
(4) "Master settlement agreement", the same meaning as such term is defined in section 196.1000;
(5) "Nonparticipating manufacturer", any tobacco product manufacturer that is not a participating manufacturer;
(6) "Participating manufacturer", the same meaning as such term is defined in section II(jj) of the master settlement agreement and all amendments thereto;
(7) "Qualified escrow fund", the same meaning as such term is defined in section 196.1000;
(8) "Stamping agent", a person who is authorized to affix tax stamps to packages or other containers or cigarettes under chapter 149 or any person who is required to pay the tax imposed under section 149.160 on other tobacco products;
(9) "Tobacco product manufacturer", the same meaning as such term is defined in section 196.1000;
(10) "Units sold", the same meaning as such term is defined in section 196.1000.]

[196.1023.1. Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the director a certification to the director no later than the thirtieth day of April each year certifying, under penalty of perjury, that as of the date of such certification such tobacco product manufacturer is a participating manufacturer or is in full compliance with section 196.1003.
(1) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the director.
(2) A nonparticipating manufacturer shall include in its certification:
(a) A list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year;
(b) A list of all of its brand families that have been sold in the state at any time during the current calendar year, which shall indicate, by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and
(c) The name and address of any other manufacturer of such brand families in the preceding or current calendar year.
The nonparticipating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the director.
(3) For a nonparticipating manufacturer, such certification shall further certify:
(a) That such nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required in this subsection;
(b) That such nonparticipating manufacturer has established, and continues to maintain, a qualified escrow fund and has executed a qualified escrow agreement, governing the qualified escrow fund, which has been reviewed and approved by the director;
(c) That such nonparticipating manufacturer is in full compliance with sections 196.1003 and 196.1020 to 196.1035 and any rules promulgated thereunder;

(d) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required under section 196.1003 and all rules promulgated thereunder;
(e) The account number of such qualified escrow fund and any subaccount number for the state;
(f) The amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year;
(g) The date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the director to confirm the foregoing; and
(h) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made, at any time, from such fund or from any other qualified escrow fund into which it ever made escrow payments under section 196.1003 and all rules promulgated thereunder.
(4) A tobacco product manufacturer shall not include a brand family in its certification unless:
(a) In the case of a participating manufacturer, such participating manufacturer affirms that the brand family is deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined under the master settlement agreement; and
(b) In the case of a nonparticipating manufacturer, such nonparticipating manufacturer affirms that the brand family is deemed to be its cigarettes for purposes of section 196.1003.
Nothing in this section shall be construed as limiting, or otherwise affecting, the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of section 196.1003.
(5) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.
2. On or after January 1, 2011, the director shall issue, maintain, update when necessary but only on the first calendar day of each month, make available for public inspection and publish on its website a directory listing of all tobacco product manufacturers that have provided current and accurate certifications in compliance with the requirements of subsection 1 of this section and all brand families listed in such certifications, except:
(1) The director shall not include, or retain, in such directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification, or whose certification the director determines is not in compliance with subdivisions (2) and (3) of subsection 1 of this section, unless the director has determined that such violation has been cured to the satisfaction of the director;
(2) Neither a tobacco product manufacturer nor brand family shall be included, or retained, in the directory if the director concludes, in the case of a nonparticipating manufacturer that:
(a) Any escrow payment required under section 196.1003 for any period, for any brand family, whether or not listed by such nonparticipating manufacturer has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement approved by the director; or
(b) Any outstanding final judgment, including interest thereon, for violations of section 196.1003 has not been fully satisfied for such brand family and such manufacturer;
(3) Every stamping agent shall provide, and update as necessary, an electronic mail address to the director for the purpose of receiving any notifications that may be required by sections 196.1020 to 196.1035.
3. (1) The directory issued and updated in subsection 2 of this section shall become effective immediately but only as it applies to tobacco product manufacturers, and it shall be unlawful for any tobacco wholesaler or retailer to purchase from any tobacco product manufacturer any cigarette or brand family not listed in the directory.
(2) The directory issued in subsection 2 of this section shall become effective on the first day of the month following the month in which said directory is published or updated as it applies to tobacco wholesalers, and on the fifteenth day of the month following the month in which said directory is published or updated as it applies to tobacco retailers in order to allow wholesalers and retailers sufficient time to sell their inventory.
(3) Unless otherwise permitted herein, it shall be unlawful for any person to:
(a) 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
(b) Sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.]

[196.1026. 1. Any nonresident or foreign nonparticipating manufacturer not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint, and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process shall be served, and any action or proceeding against it concerning, or arising out of, the enforcement of sections 196.1003 and 196.1020 to 196.1035 may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of such agent to the satisfaction of the director.
2. The nonparticipating manufacturer shall provide notice to the director thirty calendar days prior to termination of the authority of an agent and shall further provide proof, to the satisfaction of the director, of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the director of the termination within five calendar days and shall include proof, to the satisfaction of the director, of the appointment of a new agent.
3. Any nonparticipating manufacturer whose cigarettes are sold in this state and who has not appointed and engaged an agent as herein required shall be deemed to have appointed the secretary of state as such agent and may be proceeded against in courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as such agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included, or retained, in the directory.]

[196.1029. 1. Not later than twenty days after the end of each calendar quarter and more frequently if so directed by the director, each stamping agent shall submit such information as the director requires to facilitate compliance with sections 196.1020 to 196.1035 including but not limited to:
(1) A list by brand family of the total number of cigarettes; or
(2) In the case of roll-your-own, the equivalent stick count for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes.
The stamping agent shall maintain and make available to the director all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the director for a period of five years.
2. The director shall disclose to the attorney general any information received under sections 196.1020 to 196.1035 which is requested by the attorney general for purposes of determining compliance with and enforcing the provisions of sections 196.1020 to 196.1035. The director and attorney general shall share with each other information received under sections 196.1003 and 196.1020 to 196.1035, or corresponding laws of other states.
3. The director may, at any time, require from the nonparticipating manufacturer proof from the financial institution, in which such manufacturer has established a qualified escrow fund for the purpose of compliance with section 196.1003, of the amount of money in such fund exclusive of interest, and the amount and date of each deposit to such fund, and the amount and date of each withdrawal from such fund.
4. In addition to any other information required to be submitted under sections 196.1020 to 196.1035, the director may require a stamping agent or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, as is necessary to enable the director to determine whether a tobacco product manufacturer is in compliance with sections 196.1020 to 196.1035.]

[196.1032. 1. In addition to, or in lieu of, any other civil or criminal remedy provided by law, upon a determination that a stamping agent or any person has violated subsection 3 of section 196.1023 or any regulation adopted under subsection 3 of section 196.1023, the director may revoke or suspend the license of any stamping agent in the manner provided in subsection 3 of section 149.035. Each stamp affixed and each sale, or offer to sell, cigarettes in violation of subsection 3 of section 196.1023 shall constitute a separate violation. Upon a determination of a violation of subsection 3 of section 196.1023 or any regulations adopted thereunder, the director may impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars for each such violation.
2. Any cigarettes deemed by a court of competent jurisdiction to have been sold, offered for sale, or possessed for sale in this state in violation of subsection 3 of section 196.1023 shall be

contraband and such cigarettes shall be subject to seizure and forfeiture as provided in chapter 149 and all such cigarettes so seized and forfeited shall be destroyed and not resold.
3. The attorney general, on behalf of the director, may seek an injunction to restrain a threatened or actual violation of subsection 3 of section 196.1023, or subsection 1 or 4 of section 196.1029 by a stamping agent and to compel a stamping agent to comply with such provisions. In any successful action brought under this section, the state may be entitled to recover the costs of investigation and action including reasonable attorney fees.
4. It shall be unlawful for a person to sell or distribute cigarettes, or acquire, hold, own, possess, transport, import, or cause to be imported, cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of subsection 3 of section 196.1023. A violation of this subsection shall be a class A misdemeanor.
5. A person who violates subsection 3 of section 196.1023 shall be deemed to have engaged in an unfair practice in violation of section 407.020.]

[196.1035. 1. A determination of the director not to list, or to remove from the directory, a brand family or tobacco product manufacturer shall be subject to review by a court of competent jurisdiction.
2. No person shall be issued, or granted a renewal of, a license under chapter 149 unless such person has certified, in writing and under the penalty of perjury, that such person will comply fully with sections 196.1020 to 196.1035.
3. For the calendar year 2010, if the effective date of sections 196.1020 to 196.1035 is later than March 16, 2010:
(1) The first report of stamping agents required in subsection 1 of section 196.1029 shall be due thirty calendar days after July 7, 2010;
(2) The certification by a tobacco product manufacturer described in subsection 1 of section 196.1023 shall be due forty-five calendar days after July 7, 2010; and
(3) The directory described in subsection 2 of section 196.1023 shall be published, or made available, within one hundred thirty-five calendar days after July 7, 2010.
4. The director may promulgate rules necessary to effect the purpose of sections 196.1020 to 196.1035. Any rule or portion of a rule, as that term is defined in section 536.010 that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2010, shall be invalid and void.
5. There is hereby created in the state treasury the "Tobacco Control Special Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and may approve disbursements from the fund in accordance with sections 30.170 and 30.180. Upon appropriation, money in the fund shall be used solely for the administration of this section. Any moneys remaining in the fund at the end of the biennium shall revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.
6. If a court of competent jurisdiction determines that a person has violated sections 196.1020 to 196.1035, such court shall order any profits, gains, gross receipts, or other benefits from such violation be disgorged and paid to the state treasurer for deposit in the "Tobacco Control Special Fund". Unless otherwise expressly provided, the remedies or penalties provided by sections 196.1020 to 196.1035 are cumulative to each other and to the remedies or penalties available under all other laws of this state.
7. If a court of competent jurisdiction finds that the provisions of sections 196.1003 and 196.1020 to 196.1035 conflict and cannot be harmonized, the provisions of section 196.1003 shall control. If any section or portion of a section in sections 196.1020 to 196.1035 causes section 196.1003 to no longer constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, that portion of sections 196.1020 to 196.1035 shall be invalid.]