

PROPOSED INITIATIVE PETITIONS

Official Ballot Title
Proposition A

[Proposed by Initiative Petition]

Official Ballot Title:

Shall Missouri law be amended to:

- allow any city not within a county (the City of St. Louis) the option of transferring certain obligations and control of the city's police force from the board of police commissioners currently appointed by the governor to the city and establishing a municipal police force;
- establish certain procedures and requirements for governing such a municipal police force including residency, rank, salary, benefits, insurance, and pension; and
- prohibit retaliation against any employee of such municipal police force who reports conduct believed to be illegal to a superior, government agency, or the press?

State governmental entities estimated savings will eventually be up to \$500,000 annually. Local governmental entities estimated annual potential savings of \$3.5 million; however, consolidation decisions with an unknown outcome may result in the savings being more or less than estimated.

Fair Ballot Language:

A **“yes”** vote will amend Missouri law to allow any city not within a county (the City of St. Louis) the option of establishing a municipal police force by transferring certain obligations and control of the city's police force from the board of police commissioners currently appointed by the governor to the city. This amendment also establishes certain procedures and requirements for governing such a municipal police force including residency, rank, salary, benefits, insurance, and pension. The amendment further prohibits retaliation against any employee of such municipal police force who reports conduct believed to be illegal to a superior, government agency, or the press.

A **“no”** vote will not change the current Missouri law regarding St. Louis City's police force.

If passed, this measure will have no impact on taxes.

PROPOSITION A**Statutory Amendment to RSMo Chapters 83, 84, 86 and 105,
Relating to Municipal Police Force, Version 7
2012-88**

Be it enacted by the people of the State of Missouri as follows:

Sections 84.010 and 84.220 are repealed, Sections 86.200, 86.213, and 105.726 are amended, and seven new sections are enacted, to be known as Sections 84.341, 84.342, 84.343, 84.344, 84.345, 84.346, and 84.347, to read as follows:

84.341. No elected or appointed official of the state or any political subdivision thereof shall act or refrain from acting in any manner to impede, obstruct, hinder, or otherwise interfere with any member of a municipal police force established under sections 84.343 to 84.346 in the performance of his or her job duties, or with any aspect of any investigation arising from the performance of such job duties. This section shall not be construed to prevent such officials from acting within the normal course and scope of their employment or from acting to implement sections 84.343 to 84.346. Any person who violates this section shall be liable for a penalty of two thousand five hundred dollars for each offense and shall forever be disqualified from holding any office or employment whatsoever with the governmental entity the person served at the time of the violation. The penalty shall not be paid by the funds of any committee as the term "committee" is defined in section 130.011. This section shall not be construed to interfere with the punishment, under any laws of this state, of a criminal offense committed by such officials, nor shall this section apply to duly appointed members of the municipal police force, or their appointing authorities, whose conduct is otherwise provided for by law.

84.342. 1. It shall be an unlawful employment practice for an official, employee, or agent of a municipal police force established under sections 84.343 to 84.346 to discharge, demote, reduce the pay of, or otherwise retaliate against an employee of the municipal police force for reporting to any superior, government agency, or the press the conduct of another employee that the reporting employee believes, in good faith, is illegal.

2. Any employee of the municipal police force may bring a cause of action for general or special damages based on a violation of this section.

84.343. 1. Subject to the provisions of sections 84.344 to 84.346, any city not within a county may establish a municipal police force for the purposes of:

- (1) Preserving the public peace, welfare, and order;
- (2) Preventing crime and arresting suspected offenders;
- (3) Enforcing the laws of the state and ordinances of the city;
- (4) Exercising all powers available to a police force under generally applicable state law;

and

(5) Regulating and licensing all private watchmen, private detectives, and private policemen serving or acting as such in said city.

2. Any person who acts as a private watchman, private detective, or private policeman in said cities without having obtained a written license from said cities is guilty of a class A misdemeanor.

84.344. 1. Notwithstanding any provisions of this chapter to the contrary, any city not within a county may establish a municipal police force on or after July 1, 2013, according to the procedures and requirements of this section. The purpose of these procedures and requirements is to provide for an orderly and appropriate transition in the governance of the police force and provide for an equitable employment transition for commissioned and civilian personnel.

2. Upon the establishment of a municipal police force by a city under sections 84.343 to 84.346, the board of police commissioners shall convey, assign, and otherwise transfer to the city title and ownership of all indebtedness and assets, including, but not limited to, all funds and real and personal property held in the name of or controlled by the board of police commissioners created under sections 84.010 to 84.340. The board of police commissioners shall execute all documents reasonably required to accomplish such transfer of ownership and obligations.

3. If the city establishes a municipal police force and completes the transfer described in subsection 2 of this section, the city shall provide the necessary funds for the maintenance of the municipal police force.

4. Before a city not within a county may establish a municipal police force under this section, the city shall adopt an ordinance accepting responsibility, ownership, and liability as successor-in-interest for contractual obligations, indebtedness, and other lawful obligations of the board of police commissioners subject to the provisions of subsection 2 of section 84.345.

5. A city not within a county that establishes a municipal police force shall initially employ, without a reduction in rank, salary, or benefits, all commissioned and civilian personnel of the board of police commissioners created under sections 84.010 to 84.340 that were employed by the board immediately prior to the date the municipal police force was established. Such commissioned personnel who previously were employed by the board may only be involuntarily terminated by the city not within a county for cause. The city shall also recognize all accrued years of service that such commissioned and civilian personnel had with the board of police commissioners. Such personnel shall be entitled to the same holidays, vacation, and sick leave they were entitled to as employees of the board of police commissioners.

6. Commissioned and civilian personnel who were previously employed by the board shall continue to be subject, throughout their employment for the city not within a county, to a residency rule no more restrictive than a requirement of retaining a primary residence in a city not within a county for a total of seven years and of then allowing them to maintain a primary residence outside the city not within a county so long as the residence is located within a one-hour response time.

7. The commissioned and civilian personnel who retire from service with the board of police commissioners before the establishment of a municipal police force under subsection 1 of this section shall continue to be entitled to the same pension benefits provided under chapter 86 and the same benefits set forth in subsection 5 of this section.

8. If the city not within a county elects to establish a municipal police force under this section, the city shall establish a separate division for the operation of its municipal police force. The civil service commission of the city may adopt rules and regulations appropriate for the unique operation of a police department. Such rules and regulations shall reserve exclusive authority over the disciplinary process and procedures affecting commissioned officers to the civil service commission; however, until such time as the city adopts such rules and regulations, the commissioned personnel shall continue to be governed by the board of police commissioner's rules and regulations in effect immediately prior to the establishment of the municipal police force, with the police chief acting in place of the board of police commissioners for purposes of applying the rules and regulations. Unless otherwise provided for, existing civil service commission rules and regulations governing the appeal of disciplinary decisions to the civil service commission shall apply to all commissioned and

civilian personnel. The civil service commission's rules and regulations shall provide that records prepared for disciplinary purposes shall be confidential, closed records available solely to the civil service commission and those who possess authority to conduct investigations regarding disciplinary matters pursuant to the civil service commission's rules and regulations. A hearing officer shall be appointed by the civil service commission to hear any such appeals that involve discipline resulting in a suspension of greater than fifteen days, demotion, or termination, but the civil service commission shall make the final findings of fact, conclusions of law, and decision which shall be subject to any right of appeal under chapter 536.

9. A city not within a county that establishes and maintains a municipal police force under this section:

(1) Shall provide or contract for life insurance coverage and for insurance benefits providing health, medical, and disability coverage for commissioned and civilian personnel of the municipal police force to the same extent as was provided by the board of police commissioners under section 84.160;

(2) Shall provide or contract for medical and life insurance coverage for any commissioned or civilian personnel who retired from service with the board of police commissioners or who were employed by the board of police commissioners and retire from the municipal police force of a city not within a county to the same extent such medical and life insurance coverage was provided by the board of police commissioners under section 84.160;

(3) Shall make available medical and life insurance coverage for purchase to the spouses or dependents of commissioned and civilian personnel who retire from service with the board of police commissioners or the municipal police force and deceased commissioned and civilian personnel who receive pension benefits under sections 86.200 to 86.366 at the rate that such dependent's or spouse's coverage would cost under the appropriate plan if the deceased were living; and

(4) May pay an additional shift differential compensation to commissioned and civilian personnel for evening and night tours of duty in an amount not to exceed ten percent of the officer's base hourly rate.

10. A city not within a county that establishes a municipal police force under sections 84.343 to 84.346 shall establish a transition committee of five members for the purpose of: coordinating and implementing the transition of authority, operations, assets, and obligations from the board of police commissioners to the city; winding down the affairs of the board; making nonbinding recommendations for the transition of the police force from the board to the city; and other related duties, if any, established by executive order of the city's mayor. Once the ordinance referenced in section 84.344 is enacted, the city shall provide written notice to the board of police commissioners and the governor of the State of Missouri. Within thirty days of such notice, the mayor shall appoint three members to the committee, two of whom shall be members of a statewide law enforcement association that represents at least five thousand law enforcement officers. The remaining members of the committee shall include the police chief of the municipal police force and a person who currently or previously served as a commissioner on the board of police commissioners, who shall be appointed to the committee by the mayor of such city.

84.345. 1. Except as required for the board of police commissioners to conclude its affairs and pursue legal claims and defenses, upon the establishment of a municipal police force, the terms of office of the commissioners of the board of police created under sections 84.020 and 84.030 shall expire, and the provisions of sections 84.010 to 84.340 shall not apply to any city not within a county or its municipal police force as of such date. The board shall continue to operate, if necessary, to wind down the board's affairs until the transfer of ownership and obligations under subsection 2 of section 84.344 has been completed. During such time, the board of police commissioners shall designate and authorize its secretary to act

on behalf of the board for purposes of performing the board's duties and any other actions incident to the transfer and winding down of the board's affairs.

2. For any claim, lawsuit, or other action arising out of actions occurring before the date of completion of the transfer provided under subsection 2 of section 84.344, the state shall continue to provide legal representation as set forth in section 105.726, and the state legal expense fund shall continue to provide reimbursement for such claims under section 105.726. This subsection applies to all claims, lawsuits, and other actions brought against any commissioner, police officer, employee, agent, representative, or any individual or entity acting or purporting to act on its or their behalf.

3. Notwithstanding any other provision of law, rule, or regulation to the contrary, any city not within a county that establishes a municipal police force under sections 84.343 to 84.346 shall not be restricted or limited in any way in the selection of a police chief or chief of the division created under subsection 8 of section 84.344.

4. It shall be the duty of the sheriff for any city not within a county, whenever called upon by the police chief of the municipal police force, to act under the police chief's control for the preservation of the public peace and quiet; and, whenever the exigency or circumstances may, in the police chief's judgment, warrant it, said police chief shall have the power to assume the control and command of all local and municipal conservators of the peace of the city, whether sheriff, constable, policemen or others, and they shall act under the orders of the said police chief and not otherwise.

84.346. Any police pension system created under chapter 86 for the benefit of a police force established under sections 84.010 to 84.340 shall continue to be governed by chapter 86, and shall apply to any police force established under section 84.343 to 84.346. Other than any provision that makes chapter 86 applicable to a municipal police force established under section 84.343 to 84.346, nothing in sections 84.343 to 84.346 shall be construed as limiting or changing the rights or benefits provided under chapter 86.

84.347. Notwithstanding the provisions of section 1.140 to the contrary, the provisions of sections 84.343 to 84.346 shall be non-severable. If any provision of sections 84.343 to 84.346 is for any reason held to be invalid, such decision shall invalidate all of the remaining provisions of this act.

86.200. The following words and phrases as used in sections 86.200 to 86.366, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Accumulated contributions", the sum of all mandatory contributions deducted from the compensation of a member and credited to the member's individual account, together with members' interest thereon;

(2) "Actuarial equivalent", a benefit of equal value when computed upon the basis of mortality tables and interest assumptions adopted by the board of trustees;

(3) "Average final compensation":

(a) With respect to a member who earns no creditable service on or after October 1, 2001, the average earnable compensation of the member during the member's last three years of creditable service as a police officer, or if the member has had less than three years of creditable service, the average earnable compensation of the member's entire period of creditable service;

(b) With respect to a member who is not participating in the DROP pursuant to section 86.251 on October 1, 2001, who did not participate in the DROP at any time before such date, and who earns any creditable service on or after October 1, 2001, the average earnable compensation of the member during the member's last two years of creditable service as a policeman, or if the member has had less than two years of creditable service, then the average earnable compensation of the member's entire period of creditable service;

(c) With respect to a member who is participating in the DROP pursuant to section 86.251 on October 1, 2001, or whose participation in DROP ended before such date, who returns to active participation in the system pursuant to section 86.251, and who terminates employment as a police officer for reasons other than death or disability before earning at least two years of creditable service after such return, the portion of the member's benefit attributable to creditable service earned before DROP entry shall be determined using average final compensation as defined in paragraph (a) of this subdivision; and the portion of the member's benefit attributable to creditable service earned after return to active participation in the system shall be determined using average final compensation as defined in paragraph (b) of this subdivision;

(d) With respect to a member who is participating in the DROP pursuant to section 86.251 on October 1, 2001, or whose participation in the DROP ended before such date, who returns to active participation in the system pursuant to section 86.251, and who terminates employment as a police officer after earning at least two years of creditable service after such return, the member's benefit attributable to all of such member's creditable service shall be determined using the member's average final compensation as defined in paragraph (b) of this subdivision;

(e) With respect to a member who is participating in the DROP pursuant to section 86.251 on October 1, 2001, or whose participation in DROP ended before such date, who returns to active participation in the system pursuant to section 86.251, and whose employment as a police officer terminates due to death or disability after such return, the member's benefit attributable to all of such member's creditable service shall be determined using the member's average final compensation as defined in paragraph (b) of this subdivision; and

(f) With respect to the surviving spouse or surviving dependent child of a member who earns any creditable service on or after October 1, 2001, the average earnable compensation of the member during the member's last two years of creditable service as a police officer or, if the member has had less than two years of creditable service, the average earnable compensation of the member's entire period of creditable service;

(4) "Beneficiary", any person in receipt of a retirement allowance or other benefit;

(5) "Board of police commissioners", any board of police commissioners, police commissioners and any other officials or boards now or hereafter authorized by law to employ and manage a permanent police force in such cities;

(6) "Board of trustees", the board provided in sections 86.200 to 86.366 to administer the retirement system;

(7) "Creditable service", prior service plus membership service as provided in sections 86.200 to 86.366;

(8) "DROP", the deferred retirement option plan provided for in section 86.251;

(9) "Earnable compensation", the annual salary which a member would earn during one year on the basis of the member's rank or position as specified in the applicable salary matrix [in section 84.160,] plus any additional compensation for academic work [as provided in subsection 7 of section 84.160, plus] and shift differential [as provided in subdivision (4) of subsection 8 of section 84.160] that may be provided by any official or board now or hereafter authorized by law to employ and manage a permanent police force in such cities. Such amount shall include the member's deferrals to a deferred compensation plan pursuant to Section 457 of the Internal Revenue Code or to a cafeteria plan pursuant to Section 125 of the Internal Revenue Code or, effective October 1, 2001, to a transportation fringe benefit program pursuant to Section 132(f)(4) of the Internal Revenue Code. Earnable compensation shall not include a member's additional compensation for overtime, standby time, court time, nonuniform time or unused vacation time. Notwithstanding the foregoing, the earnable compensation taken into account under the plan established pursuant to sections 86.200 to 86.366 with respect to a member who is a noneligible participant, as defined in this subdivision, for any plan year beginning on or after October 1, 1996, shall not exceed the

amount of compensation that may be taken into account under Section 401(a)(17) of the Internal Revenue Code, as adjusted for increases in the cost of living, for such plan year. For purposes of this subdivision, a "noneligible participant" is an individual who first becomes a member on or after the first day of the first plan year beginning after the earlier of:

- (a) The last day of the plan year that includes August 28, 1995; or
- (b) December 31, 1995;
- (10) "Internal Revenue Code", the federal Internal Revenue Code of 1986, as amended;
- (11) "Mandatory contributions", the contributions required to be deducted from the salary of each member who is not participating in DROP in accordance with section 86.320;
- (12) "Member", a member of the retirement system as defined by sections 86.200 to 86.366;
- (13) "Members' interest", interest on accumulated contributions at such rate as may be set from time to time by the board of trustees;
- (14) "Membership service", service as a policeman rendered since last becoming a member, except in the case of a member who has served in the armed forces of the United States and has subsequently been reinstated as a policeman, in which case "membership service" means service as a policeman rendered since last becoming a member prior to entering such armed service;
- (15) "Plan year" or "limitation year", the twelve consecutive-month period beginning each October first and ending each September thirtieth;
- (16) "Policeman" or "police officer", any member of the police force of such cities who holds a rank in such police force [for which the annual salary is listed in section 84.160];
- (17) "Prior service", all service as a policeman rendered prior to the date the system becomes operative or prior to membership service which is creditable in accordance with the provisions of sections 86.200 to 86.366;
- (18) "Reserve officer", any member of the police reserve force of such cities, armed or unarmed, who works less than full time, without compensation, and who, by his or her assigned function or as implied by his or her uniform, performs duties associated with those of a police officer and who currently receives a service retirement as provided by sections 86.200 to 86.366;
- (19) "Retirement allowance", annual payments for life as provided by sections 86.200 to 86.366 which shall be payable in equal monthly installments or any benefits in lieu thereof granted to a member upon termination of employment as a police officer and actual retirement;
- (20) "Retirement system", the police retirement system of the cities as defined in sections 86.200 to 86.366;
- (21) "Surviving spouse", the surviving spouse of a member who was the member's spouse at the time of the member's death.

86.213. 1. The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of sections 86.200 to 86.366 are hereby vested in a board of trustees of [ten] nine persons. The board shall be constituted as follows:

- (1) [The president of the board of police commissioners of the city, ex officio. If the president is absent from any meeting of the board of trustees for any cause whatsoever, the president may be represented by any member of the board of police commissioners who in such case shall have full power to act as a member of the board of trustees;
- (2)] The comptroller of the city, ex officio. If the comptroller is absent from any meeting of the board of trustees for any cause whatsoever, the comptroller may be represented by either the deputy comptroller or the first assistant comptroller who in such case shall have full power to act as a member of the said board of trustees;

~~[(3) Three]~~ (2) Two members to be appointed by the mayor of the city to serve for a term of two years, except the mayor shall not appoint the police chief of the municipal police force, the city's director of public safety, or the president of the board of police commissioners of the city;

~~[(4)]~~ (3) Three members to be elected by the members of the retirement system of the city for a term of three years; provided, however, that the term of office of the first three members so elected shall begin immediately upon their election and one such member's term shall expire one year from the date the retirement system becomes operative, another such member's term shall expire two years from the date the retirement system becomes operative and the other such member's term shall expire three years from the date the retirement system becomes operative; provided, further, that such members shall be members of the system and hold office only while members of the system;

~~[(5) Two]~~ (4) Three members who shall be retired members of the retirement system to be elected by the retired members of the retirement system for a term of three years; except that, the term of office of the first two members so elected shall begin immediately upon their election and one such member's term shall expire two years from the date of election and the other such member's term shall expire three years from the date of election.

2. Any member elected chairman of the board of trustees may serve without term limitations.

3. Each commissioned elected trustee shall be granted travel time by the St. Louis metropolitan police department to attend any and all functions that have been authorized by the board of trustees of the police retirement system of St. Louis. Travel time, with compensation, for a trustee shall not exceed thirty days in any board fiscal year.

105.726. 1. Nothing in sections 105.711 to 105.726 shall be construed to broaden the liability of the state of Missouri beyond the provisions of sections 537.600 to 537.610, nor to abolish or waive any defense at law which might otherwise be available to any agency, officer, or employee of the state of Missouri. Sections 105.711 to 105.726 do not waive the sovereign immunity of the state of Missouri.

2. The creation of the state legal expense fund and the payment therefrom of such amounts as may be necessary for the benefit of any person covered thereby are deemed necessary and proper public purposes for which funds of this state may be expended.

3. Moneys in the state legal expense fund shall not be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against a board of police commissioners established under chapter 84, including the commissioners, any police officer, notwithstanding sections 84.330 and 84.710, or other provisions of law, other employees, agents, representative, or any other individual or entity acting or purporting to act on its or their behalf. Such was the intent of the general assembly in the original enactment of sections 105.711 to 105.726, and it is made express by this section in light of the decision in *Wayman Smith, III, et al. v. State of Missouri*, 152 S.W.3d 275. Except that the commissioner of administration shall reimburse from the legal expense fund [any] the board of police commissioners established under [chapter 84] section 84.350, and any successor-in-interest established pursuant to section 84.344, for liability claims otherwise eligible for payment under section 105.711 paid by such [boards on an equal share basis per claim] board up to a maximum of one million dollars per fiscal year.

4. Subject to the provisions of subsection 2 of section 84.345, if [If] the representation of the attorney general is requested by a board of police commissioners or its successor-in-interest established pursuant to section 84.344, the attorney general shall represent, investigate, defend, negotiate, or compromise all claims under sections 105.711 to 105.726 for the board of police commissioners, its successor-in-interest pursuant to section 84.344, any police officer, other employees, agents, representatives, or any other individual or entity acting or purporting to act on their behalf. The attorney general may establish procedures by rules

promulgated under chapter 536 under which claims must be referred for the attorney general's representation. The attorney general and the officials of the city which the police board represents or represented shall meet and negotiate reasonable expenses or charges that will fairly compensate the attorney general and the office of administration for the cost of the representation of the claims under this section.

5. Claims tendered to the attorney general promptly after the claim was asserted as required by section 105.716 and prior to August 28, 2005, may be investigated, defended, negotiated, or compromised by the attorney general and full payments may be made from the state legal expense fund on behalf of the entities and individuals described in this section as a result of the holding in *Wayman Smith, III, et al. v. State of Missouri*, 152 S.W.3d 275.

[84.010. In all cities of this state that now have, or may hereafter attain, a population of seven hundred thousand inhabitants or over, the common council or municipal assembly, as the case may be, of such cities may pass ordinances for preserving order, securing property and persons from violence, danger or destruction, protecting public and private property, and for promoting the interests and insuring the good government of the cities; but no ordinances heretofore passed, or that may hereafter be passed, by the common council or municipal assembly of the cities, shall, in any manner, conflict or interfere with the powers or the exercise of the powers of the boards of police commissioners of the cities as created by section 84.020, nor shall the cities or any officer or agent of the corporation of the cities, or the mayor thereof, in any manner impede, obstruct, hinder or interfere with the boards of police or any officer, or agent or servant thereof or thereunder, except that in any case of emergency imminently imperiling the lives, health or safety of the inhabitants of the city, the mayor may call upon and direct the chief of police of the city to provide such number of officers and patrolmen to meet the emergency as the mayor determines to be necessary and the chief of police shall continue to act under the direction of the mayor until the emergency has ceased, or until the board of police commissioners takes charge of such matter.]

[84.220. Any officer or servant of the mayor or common council or municipal assembly of the said cities, or other persons whatsoever, who shall forcibly resist or obstruct the execution or enforcement of any of the provisions of sections 84.010 to 84.340 or relating to the same, or who shall disburse any money in violation thereof, or who shall hinder or obstruct the organization or maintenance of said board of police, or the police force therein provided to be organized and maintained, or who shall maintain or control any police force other than the one therein provided for, or who shall delay or hinder the due enforcement of sections 84.010 to 84.340 by failing or neglecting to perform the duties by said sections imposed upon him, shall be liable to a penalty of one thousand dollars for each and every offense, recoverable by the boards by action at law in the name of the state, and shall forever thereafter be disqualified from holding or exercising any office or employment whatsoever under the mayor or common council or municipal assembly of said cities, or under sections 84.010 to 84.340; provided, however, that nothing in this section shall be construed to interfere with the punishment, under any existing or any future laws of this state, of any criminal offense which shall be committed by the said parties in or about the resistance, obstruction, hindrance, conspiracy, combination or disbursement aforesaid.]

Official Ballot Title
Proposition B

[Proposed by Initiative Petition]

Official Ballot Title:

Shall Missouri law be amended to:

- create the Health and Education Trust Fund with proceeds of a tax of \$0.0365 per cigarette and 25% of the manufacturer's invoice price for roll-your-own tobacco and 15% for other tobacco products;
- use Fund proceeds to reduce and prevent tobacco use and for elementary, secondary, college, and university public school funding; and
- increase the amount that certain tobacco product manufacturers must maintain in their escrow accounts, to pay judgments or settlements, before any funds in escrow can be refunded to the tobacco product manufacturer and create bonding requirements for these manufacturers?

Estimated additional revenue to state government is \$283 million to \$423 million annually with limited estimated implementation costs or savings. The revenue will fund only programs and services allowed by the proposal. The fiscal impact to local governmental entities is unknown. Escrow fund changes may result in an unknown increase in future state revenue.

Fair Ballot Language:

A **“yes”** vote will amend Missouri law to create the Health and Education Trust Fund with proceeds from a tax on cigarettes and other tobacco products. The amount of the tax is \$0.0365 per cigarette and 25% of the manufacturer's invoice price for roll-your-own tobacco and 15% for other tobacco products. The Fund proceeds will be used to reduce and prevent tobacco use and for elementary, secondary, college, and university public school funding. This amendment also increases the amount that certain tobacco product manufacturers must maintain in their escrow accounts, to pay judgments or settlements, before any funds in escrow can be refunded to the tobacco product manufacturer and creates bonding requirements for these manufacturers.

A **“no”** vote will not change the current Missouri law regarding taxes on cigarettes and other tobacco products or the escrow account and bonding requirements for certain tobacco product manufacturers.

If passed, this measure will increase taxes on cigarettes and other tobacco products.

PROPOSITION B**Statutory Amendment to RSMo Chapters 149 and 196,
Relating to Cigarette and Other Tobacco Product Taxation, version G
2012-134**

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

Section A. Sections 149.011, 149.021, 196.1003, 196.1023, and 196.1029 are amended and two new sections, to be known as sections 149.018 and 149.204, are enacted, to read as follows:

149.011. As used in this chapter, unless the context requires otherwise, the following terms mean:

(1) "Cigar", any roll for smoking, except cigarettes, made chiefly of tobacco or any substitute therefor;

(2) "Cigarette", [an item manufactured] any roll of tobacco [or any substitute therefor], however wrapped [in paper or any substitute therefor], weighing not to exceed [three] four pounds per one thousand cigarettes [and which is commonly classified, labeled or advertised as a cigarette];

(3) "Common carrier", any person, association, company, or corporation engaged in the business of operating, for public use, an agency for the transportation of persons or property within the state;

(4) "Director", the director of Missouri department of revenue;

(5) "First sale within the state", the first sale of a tobacco product by a manufacturer, wholesaler or other person to a person who intends to sell such tobacco products at retail or to a person at retail within the state of Missouri;

(6) "Manufacturer", any person engaged in the manufacture or production of cigarettes;

(7) "Manufacturer's invoice price", the original net invoice price for which a manufacturer sells a tobacco product to a distributor, wholesaler or first seller in the state as shown by the manufacturer's original invoice;

(8) "Meter machine", a type of device manufactured for the use of printing or imprinting an inked impression indicating that the cigarette tax has been paid on an individual package of cigarettes;

(9) "Package of cigarettes", a container of any type composition in which is normally contained twenty individual cigarettes, except as in special instances when the number may be more or less than twenty;

(10) "Person", any individual, corporation, firm, partnership, incorporated or unincorporated association, or any other legal or commercial entity;

(11) "Retailer", any person who sells to a consumer or to any person for any purpose other than resale;

(12) "Roll-your-own tobacco," any loose tobacco sold for roll-your-own cigarettes or cigars or otherwise intended or expected to be smoked;

(13) "Sale" in this instance is defined to be and declared to include sales, barter, exchanges and every other manner, method and form of transferring the ownership of personal property from one person to another. "Sale" also means the possession of cigarettes or tobacco products by any person other than a manufacturer, wholesaler or retailer and shall be prima facie evidence of possession for consumption;

(14) [(13)] "Smokeless tobacco", chewing tobacco, including, but not limited to, twist, moist plug, loose leaf and firm plug, [and] all types of snuff, including, but not limited to, moist and dry, and any other product containing tobacco intended or expected to be consumed without being combusted;

(15) [(14)] "Stamped cigarettes", an individual package, containing twenty individual cigarettes, more or less, on which appears or is affixed or imprinted thereon a Missouri state cigarette tax stamp or Missouri state meter machine impression;

(16) [(15)] "Tax stamp", an item manufactured of a paper product or substitute thereof on which is printed, imprinted, or engraved lettering, numerals or symbols indicating that the cigarette tax has been paid on each individual package of cigarettes;

(17) [(16)] "Tobacco product", cigarettes, cigarette papers, clove cigarettes, cigars, smokeless tobacco, smoking tobacco, or other form of tobacco products or products made with tobacco substitute containing nicotine;

(18) [(17)] "Unstamped cigarettes", an individual package containing cigarettes on which does not appear a Missouri state cigarette tax stamp or Missouri state meter machine impression;

(19) [(18)] "Wholesaler", any person, firm or corporation organized and existing, or doing business, primarily to sell cigarettes or tobacco products to, and render service to, retailers in the territory the person, firm or corporation chooses to serve; that purchases cigarettes or tobacco products directly from the manufacturer; that carries at all times at his or its principal place of business a representative stock of cigarettes or tobacco products for sale; and that comes into the possession of cigarettes or tobacco products for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail the cigarettes or tobacco products to consumers. This shall include any manufacturer, jobber, broker, agent or other person, whether or not enumerated in this chapter, who so sells or so distributes cigarettes or tobacco products.

149.018. For the purpose of reducing public health care expenses and deaths from tobacco-related diseases, as well as providing additional moneys to be expended and used for tobacco use prevention and quit assistance; for elementary and secondary public school funding (with an emphasis on direct classroom expenditures); and for public college and university funding (with an emphasis on training for future medical caregivers including physicians, dentists, optometrists, pharmacists, nurses, elder and hospice caregivers, and other health care providers); additional taxes are hereby imposed on the sale of cigarettes, roll-your-own tobacco, and tobacco products other than cigarettes and roll-your-own tobacco. On and after January 1, 2013, taxes equal to three and sixty-five hundredth cents (\$0.0365) per cigarette, twenty-five percent of the manufacturer's invoice price before discounts and deals on roll-your-own tobacco, and fifteen percent of the manufacturer's invoice price before discounts and deals on all tobacco products other than cigarettes and roll-your own tobacco shall be levied and imposed upon the sale of cigarettes, roll-your-own tobacco, and tobacco products other than cigarettes and roll-your-own tobacco. The taxes imposed by this section shall be in addition to other taxes imposed by law on the sale of cigarettes and tobacco products other than cigarettes 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 tobacco products other than cigarettes.

2. The Health and Education Trust Fund is hereby created within the state treasury. The following accounts are hereby created within the Health and Education Trust Fund:

(1) Tobacco Use Prevention and Quit Assistance Account;

(2) Public Education Account;

(3) Public Higher Education Account.

3. Beginning January 1, 2013, all moneys collected as a result of the taxes imposed by this section shall be credited to and placed in the Health and Education Trust Fund as said

moneys are received. All of the moneys from the taxes imposed by this section shall be kept separate from the general revenue fund as well as any other funds or accounts in the state treasury and shall be credited to and placed only in the Health and Education Trust Fund and the accounts created within the Health and Education Trust Fund. Any moneys credited to and placed in the Health and Education Trust Fund and any account created by this section shall be appropriated and used only for purposes which are authorized by this section and shall not be subject to the provisions of section 33.080, RSMo. The unexpended balances of such moneys shall remain in the Health and Education Trust Fund and in the particular account in which the moneys are placed, and such balances shall not revert to the general revenue fund. All interest which accrues upon the moneys in any account within the Health and Education Trust Fund shall be added to such account and shall not be credited to the general revenue fund.

4. (1) The additional actual costs incurred by the state in collecting and enforcing the taxes imposed by this section may be paid from moneys appropriated from the Health and Education Trust Fund for that purpose, not to exceed one and one half of one percent (1.5%) of the total moneys collected in that fiscal year. Collection and enforcement activities and initiatives that are paid for with moneys from the Health and Education Trust Fund shall be conducted in a fiscally responsible manner in order to maximize the amounts of net proceeds available for distribution pursuant to subsection 5. Moneys appropriated from the Health and Education Trust Fund pursuant to this subdivision 4(1) shall not be used to pay costs that are not additional actual costs incurred by the state in collecting and enforcing the taxes imposed by this section;

(2) The department of revenue shall refund moneys overpaid or erroneously paid pursuant to this section;

(3) On an annual basis, the director of the department of revenue shall determine whether the taxes imposed by this section have resulted in a decrease in consumption of tobacco products and thereby directly caused a reduction in the amount of moneys collected and deposited into the fair share fund, the health initiatives fund, or the state school moneys fund pursuant to chapter 149, RSMo. If a reduction in the amount of moneys collected and deposited into any of those funds pursuant to chapter 149, RSMo, has been directly caused by the taxes imposed by this section, an amount equal to the amount of moneys that were not collected and deposited into that fund or funds because of the taxes imposed by this section shall be transferred from the Health and Education Trust Fund to the appropriate fund or funds. The aggregate amount transferred to the fair share fund, the health initiatives fund, and the state school moneys fund from the Health and Education Trust Fund for any year shall not exceed three percent of the total moneys collected pursuant to this section during that same year.

5. The net proceeds of the taxes imposed by this section shall be monthly apportioned, distributed, and deposited in the manner described below. "Net proceeds" means the total moneys collected and deposited in the Health and Education Trust Fund pursuant to the taxes imposed by this section minus the amounts transferred from or paid out of the Health and Education Trust Fund pursuant to subsection 4 of this section.

(1) Twenty percent of the net proceeds shall be credited to and placed in the Tobacco Use Prevention and Quit Assistance Account;

(2) Fifty percent of the net proceeds shall be credited to and placed in the Public Education Account;

(3) Thirty percent of the net proceeds shall be credited to and placed in the Public Higher Education Account.

6. Except for such amounts as may be appropriated by the general assembly for the purposes described in subdivision 6(4), all moneys deposited in the Tobacco Use Prevention and Quit Assistance Account shall be appropriated to and used solely by the Missouri Healthy Families Commission for the purpose of establishing, maintaining, and enhancing activities,

programs, and initiatives to promote tobacco use quit assistance and prevention, including a comprehensive statewide tobacco control program, and public health for tobacco-related diseases. The comprehensive statewide tobacco control program shall be consistent with the United States Centers for Disease Control and Prevention's, or its successor agency's, best practices and guidelines for tobacco control programs, if any, and shall be designed to be effective to prevent and reduce tobacco use, reduce the public's exposure to secondhand smoke, and identify and eliminate disparities related to tobacco use and its effects among different population groups. The components of the comprehensive statewide tobacco control program shall include, but not be limited to: state and community based interventions, health communication interventions, cessation interventions, surveillance and evaluation, and administration and management. No more than fifteen percent of the moneys in the Tobacco Use Prevention and Quit Assistance Account may be expended by the Missouri Healthy Families Commission for activities, programs, and initiatives that promote public health for tobacco-related diseases, such as programs to provide student loan forgiveness or scholarships for medical professionals who work in underserved areas of the state, but that are not part of the comprehensive statewide tobacco control program. Moneys expended by the Missouri Healthy Families Commission for the purpose of promoting public health for tobacco-related diseases shall be used solely for that purpose and shall not be used directly or indirectly for research activities.

(1) The Missouri Healthy Families Commission is hereby created and shall be responsible for conducting, coordinating, and overseeing the tobacco use quit assistance and prevention activities, programs, and initiatives funded through the Tobacco Use Prevention and Quit Assistance Account. The Missouri Healthy Families Commission is hereby authorized to expend and use funds appropriated to it for the purposes described in this subsection 6. The Missouri Healthy Families Commission shall be governed by a board of directors, who may employ such staff and may enter agreements with, provide funding to, and otherwise cooperate with other public and private entities and agencies to further the purposes described in this subsection 6. The Missouri Healthy Families Commission may promulgate reasonable rules to implement this subsection 6. The Missouri Healthy Families Commission shall be assigned to the department of health and senior services with supervision by the department of health and senior services only for budgeting and reporting as provided by subdivisions (4) and (5) of subsection 6 of section 1 of the Reorganization Act of 1974. Supervision by the department of health and senior services shall not extend to matters relating to policies, regulative functions, or appeals from decisions of the Missouri Healthy Families Commission, and the director of the department of health and senior services, any employee of the department of health and senior services, or the governor, either directly or indirectly, shall not participate or interfere with the activities of the Missouri Healthy Families Commission in any manner not specifically provided by law and shall not in any manner interfere with the budget request of or withhold any moneys appropriated to the Missouri Healthy Families Commission by the general assembly.

(2) The board of directors shall consist of nine (9) members appointed by the governor with the advice and consent of the senate. Members of the board of directors may be removed by the governor for misconduct, incompetency, or neglect of duty. The initial appointed members of the board of directors shall serve staggered terms of office, with two members serving initial terms of one year, one member serving an initial term of two years, one member serving an initial term of three years, one member serving an initial term of four years, two members serving initial terms of five years, one member serving an initial term of six years, and one member serving an initial term of seven years. In making initial appointments to the board of directors, the governor shall specify the initial term which each such member shall serve. Thereafter, the appointed members of the board of directors shall serve seven year terms of office. Not more than three appointees shall be appointed from any single congressional district. Not more than five appointees shall be members of the same political

party. An appointee shall have been a member of the political party, if any, to which the appointee belongs for at least one year prior to the date of appointment. In addition to the requirements described above, members of the board of directors shall be selected to represent the following areas of expertise: at least three members shall be persons with experience and expertise regarding tobacco control policies and programs or the oversight and evaluation of such programs; at least one member shall be a person with experience and expertise regarding public health; at least one member shall be a physician or surgeon with expertise regarding tobacco-related illnesses or tobacco-related addiction; at least one member shall be a school nurse or school-based health educator; at least one member shall be a physician, surgeon, or nurse with experience and expertise with tobacco cessation programs; at least one member shall be a representative of a local public health entity; and at least one member shall be a representative of the general public. No member of the board of directors shall receive or have received any salary, grants, or other payments or support from, or have any other financial interest in, any business that manufactures, distributes, markets, or sells tobacco products, or serve or have served as a director, employee, or consultant of any organization that receives donations from any such business or that provides legal, lobbying, public relations, marketing, or advertising services to any such business. Each member of the board of directors shall also agree not to enter into any such financial or business relationships with the tobacco industry for a period of five years after that member's tenure on the board ends. No member of the board of directors shall receive personal payments from the Missouri Healthy Families Commission or the Tobacco Use Prevention and Quit Assistance Account other than reimbursements for necessary expenses in connection with their official responsibilities as board members and a per diem amount of one hundred dollars per day for attending board meetings. Board members may be employed by, contract with, receive payments from, or serve as directors, officers, or other representatives of organizations that receive funding directly or indirectly from the Missouri Healthy Families Commission or the Tobacco Use Prevention and Quit Assistance Account; provided that all board members shall annually disclose to the board any and all personal and financial interests related to the statewide comprehensive tobacco control program and other activities, programs, and initiatives administered by the Missouri Healthy Families Commission. The board of directors shall develop a form to be used by board members to disclose potential conflicts of interest and shall adopt a conflict of interest policy by rule, which shall require board members to recuse themselves from participating in deliberations or voting on proposed actions when a material conflict of interest exists and shall further specify personal, financial, and other relationships that shall be considered to be a material conflict of interest. Board members shall supplement their annual disclosure during the year if the information provided on the disclosure changes or is subsequently determined to be incomplete. Annual disclosures shall be made available to the public upon request. The department of health and senior services, department of social services, department of public safety, department of elementary and secondary education, and department of mental health shall each be entitled to designate a non-voting, ex officio representative to the board of directors.

(3) The board of directors shall meet at least one time each calendar quarter. Meetings, records, and votes of the board of directors shall be open to the public unless closed pursuant to an exception provided by chapter 610, RSMo, or other applicable law.

The Missouri Healthy Families Commission shall conduct its procurement and grantmaking activities pursuant to generally accepted standards for similar programs, and is authorized to elect by rule, but shall not be required, to follow state procurement and purchasing procedures provided by law for other state agencies.

The Missouri Healthy Families Commission shall annually provide a publicly available report on tobacco use and its related harms and costs in the state, the allocation of the Tobacco Use Prevention and Quit Assistance Account moneys, and related surveillance and evaluation findings to the general assembly and the governor.

(4) The general assembly may appropriate up to a total of one fifth of one percent of the moneys deposited in the Tobacco Use Prevention and Quit Assistance Account in a state fiscal year to the attorney general and other state agencies for the purpose of enforcing and administering the Master Settlement Agreement and the provisions of sections 196.1000 to 196.1035, RSMo, as amended.

7. Moneys deposited in the Public Education Account shall be appropriated to and used solely by the department of elementary and secondary education for distribution to school districts in this state for purposes which include, but are not limited to, teacher recruitment, retention, salaries, or professional development; school construction, renovation, or leasing; technology enhancements, textbooks, or instructional materials; school safety; or supplying additional funding for required state and federal programs. Funds distributed pursuant to this subsection shall be in addition to funds distributed pursuant to the school funding formula pursuant to chapter 163, RSMo. The department of elementary and secondary education shall distribute the funds to school districts in this state on an average daily attendance basis, as such term is defined in section 163.011(2), RSMo, during any fiscal year in which the total formula appropriation under subsections 1 and 2 of section 163.031, RSMo, is insufficient to fund the entire entitlement calculation determined by subsections 1 and 2 of section 163.031, RSMo, for the same fiscal year. The department of elementary and secondary education shall distribute the funds to school districts in this state on a resident pupil basis, as such term is defined in section 163.011(2), RSMo, during any fiscal year in which the total formula appropriation under subsections 1 and 2 of section 163.031, RSMo, is sufficient to fund the entire entitlement calculation determined by subsections 1 and 2 of section 163.031, RSMo, for the same fiscal year. At least twenty-five percent of the moneys distributed to each school district pursuant to this subsection shall be used in direct classroom expenditures. During any time when a school district is not qualified to receive state aid pursuant to section 163.021, RSMo, the school district shall not be entitled to receive distributions pursuant to this subsection.

8. Moneys deposited in the Public Higher Education Account shall be appropriated to and used solely by the department of higher education for distribution to public colleges and universities in proportion to their base operating appropriations for the preceding fiscal year as provided in subdivision (1) of this subsection solely for the purposes of education, training, and development of future caregivers, faculty recruitment, retention, salaries, or professional development; facility construction, renovation, or leasing, and construction materials; classroom instructional technology and classroom instructional materials; and campus safety. The department of higher education shall ensure that at least twenty-five percent of the moneys distributed from the Public Higher Education Account are used for programs and initiatives related to the education, training, and development of future caregivers including physicians, dentists, optometrists, pharmacists, nurses, and other health care providers. All of the moneys deposited in the Public Higher Education Account are intended to be expended on activities that directly relate to the education of students and shall be used solely for the purposes identified above, and shall not be used directly or indirectly for research activities.

(1) The moneys deposited in the Public Higher Education Account during a fiscal year shall be distributed by the department of higher education to the public colleges and universities in proportion to their respective shares of the total base operating appropriations for all public colleges and universities for the preceding fiscal year. The base operating appropriation amounts for public colleges and universities shall be determined from the bill that appropriates amounts for higher education base operations as approved by the governor for the preceding fiscal year. If no such bill exists or if base operating appropriations are provided in more than one bill, the department of higher education shall determine base operating appropriation amounts using a reasonable accounting method.

(2) Each public college or university shall deposit the amounts that it receives from the Public Higher Education Account into a new or existing restricted fund. Each public college

or university shall maintain the amounts received and income generated from those amounts for the purposes described in this section.

9. The state auditor shall perform an annual audit of the fund and accounts established pursuant to subsection 2 of this section, which shall include an evaluation of whether appropriations for tobacco-related programs and elementary, secondary, and higher education have increased. Such audit shall be performed on a fiscal year basis. The state auditor shall make copies of each audit available to the public and to the general assembly.

10. Except as otherwise provided in this section, the effective date of this section shall be January 1, 2013. The taxes imposed by this section on cigarettes, roll-your-own tobacco, and tobacco products other than cigarettes and roll-your-own tobacco shall be imposed on all cigarettes, roll-your-own tobacco, and tobacco products other than cigarettes and roll-your-own tobacco in the possession or under the control of any person licensed under chapter 149, RSMo on and after 12:01 a.m. on January 1, 2013. The activities, initiatives, and programs described in subsection 6 shall be implemented as soon as reasonably practicable, but at least by January 1, 2014.

11. The net proceeds from the taxes imposed by this section shall constitute new and additional funding for the activities, initiatives, and programs described in this section and shall not be used to replace existing funding as of July 1, 2012, for the same or similar activities, initiatives, and programs.

12. None of the funds collected, distributed, or allocated pursuant to this section shall be expended, paid or granted to or on behalf of existing or proposed activities, programs, or initiatives that involve abortion services, including performing, inducing, or assisting with abortions, as defined in section 188.015, RSMo, or encouraging patients to have abortions, referring patients for abortions not necessary to save the life of the mother, or development of drugs, chemicals, or devices intended to be used to induce an abortion.

13. None of the funds collected, distributed or allocated pursuant to this section shall be expended, paid or granted to or on behalf of existing or proposed activities, programs, or initiatives that involve human cloning or research prohibited by law.

149.021. 1. For the purpose of allowing compensation for the costs necessarily incurred in affixing the proper tax stamps to each package of cigarettes before making a sale of the cigarettes, each wholesaler purchasing stamps from the director as required by law may purchase the stamps from the director at a reduction of [three percent of the face value of each lot of stamps] one-half of one cent (\$0.005) per stamp so purchased, provided that all required reports have been made. The discount provided in this section shall be the only discount allowed to purchasers from the director. If a purchaser refuses to comply with the laws of the state of Missouri, the director shall require the full face value for stamps purchased until such time as the person has complied with the provisions of the law.

2. The director may permit the use of meter machines in lieu of stamps, for the impress of the tax stamp, and where used a one-half of one cent (\$0.005) [three percent] reduction [on the total tax] per stamp due shall be allowed. The director shall prescribe all rules and regulations governing the use of meter machines and may require a bond in a suitable amount to guarantee payment of the tax.

149.204. Notwithstanding any other provision of law, any person that, for commercial purposes, operates or maintains a machine that enables any person to process a substance that is made or derived from tobacco into a roll or tube shall be deemed to be a manufacturer of cigarettes (and the resulting product shall be deemed to be a cigarette) for purposes of this chapter and chapter 196, RSMo.

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, adjusted for inflation as provided in section 196.1000(a), RSMo [(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 on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined under Section IX(i) of that Agreement including after final determination of all adjustments, [State's allocable share of the total payments] that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, [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] make timely and complete deposits into escrow [the funds] as 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.

(4) All escrow deposits shall be made on a quarterly basis, no less than thirty (30) days after the end of each calendar quarter in which the sales were made.

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[.]; and

(i) That the nonparticipating manufacturer is in compliance with section 149.200, RSMo.

(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.

4. (1) A non-participating manufacturer shall post a bond in favor of the state of Missouri if its cigarettes were not sold in the state during any one of the four preceding calendar quarters; it or any person affiliated with it failed to make a full and timely escrow deposit due under section 196.1003, RSMo, unless the failure was not knowing or reckless and was promptly cured on notice; or, it or any person affiliated with it was removed from the state directory of any state during any of the five preceding calendar years, unless the removal was determined to have been erroneous or illegal. Entities are affiliated with each other if one directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other.

(2) The bond required by this subsection shall be posted at least ten days in advance of each calendar quarter as a condition to the non-participating manufacturer and its brand families being included in the state directory for that quarter. The amount of the bond shall be the greater of (i) the greatest required escrow amount due from the non-participating manufacturer or its predecessor for any of the twelve preceding calendar quarters or (ii) \$25,000. The bond shall be written in favor of the state of Missouri and shall be conditioned on the performance by the non-participating manufacturer of all of its duties and obligations under this chapter. The bond shall remain in effect for twenty-four (24) months from the date posted.

(3) If the non-participating manufacturer fails to perform the duties and obligations on which the bond is conditioned, the state shall be authorized to execute on the bond, first to recover any amounts the non-participating manufacturer failed to place into escrow as required by this chapter, then to recover penalties and attorneys' fees under this chapter.

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.

5. The director shall, on a quarterly basis, make available to the public information relating to the number of units sold by brand family of each tobacco product manufacturer.

Section B. All of the provisions of this act are severable. If any provision of this act is found by a court of competent jurisdiction to be unconstitutional or unconstitutionally enacted, the remaining provisions of this act shall be and remain valid and in full force and effect.
