

otherwise part of the State. By entering into this Compact, the Parties acknowledge and agree that, except as expressly provided herein, the State does not concede that its interests, jurisdiction or sovereignty, as authorized, permitted or recognized by federal law, is diminished, limited or preempted in any manner.

Section 8.04. Most-Favored Nation. The State agrees that Nation may propose an amendment to this Compact by written notice to the State based upon any provision of a compact permitted by Section 8.01 which Nation desires to include as a provision in this Compact. If the State Legislature does not approved such proposed amendment at the legislative session next following the Nation's request for such amendment, Nation may terminate this Compact at any time thereafter by providing thirty days' written notice to State.

Section 8.05. Construction.

- a. Each Party has received independent legal advice from its attorney(s) of choice and neither Party shall be deemed the author or drafter of this Compact. Therefore, any rule or canon of construction (whether pertaining to contracts, statutes, treaties or otherwise) that, in the case of an ambiguity, such ambiguity is construed against the author or drafter is not applicable. The language of all parts of this Compact shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. It is the intent of the Parties that this Compact shall be construed to reflect that the Parties are of equal stature and dignity and have dealt with each other at arm's-length. Accordingly, any statutory or judicial rules or canon concerning the construction of vague or ambiguous terms (whether pertaining to contracts, statutes, treaties or otherwise) that might otherwise be used in the interpretation or enforcement of this Compact, including construction of ambiguities either in favor of or against a state or Indian Tribe, is not applicable to this Compact and shall not obtain to the benefit or detriment of any Party, nor shall the terms and conditions of this Compact be extended by implication to the benefit or detriment of any Party, it being the intent of the Parties that the construction of this Compact shall be controlled by its express terms and not by implication.
- b. The Article, Section and other headings contained in this Compact are for reference purposes only and shall not affect the meaning or interpretation of this Compact.

Section 8.06. Notice. Except as otherwise expressly provided in Section 6.07(c), any notices or communications required or permitted to be given hereunder shall be in writing and shall be sent by manual delivery, overnight courier or United States certified mail (postage prepaid and return receipt requested) addressed to the respective Party at the address specified below, or at such other address as such Party shall have specified to the other Parties hereto in writing.

If to the Nation:

Chairperson and Tribal Council
Prairie Band Potawatomi Nation
16281 Q Road, Mayetta, KS 66509

with a copy to:

Russell A. Brien
Brien Law, LLC
15026 114th St.
Oskaloosa, KS 66066

If to the State:

Office of the Governor
300 SW 10th Ave., Ste. 2415
Topeka, KS 66612-1590

with copies to:

Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612-1597

and

Secretary of Revenue
915 SW Harrison Street, Second Floor
Topeka, KS. 66612-1588

All periods of notice shall be measured from, and such notices or com-

munications shall be deemed to have been given and received on, the date of delivery as evidenced by the signed receipt of such notice or communication by the addressee or its authorized representative.

Section 8.07. Limited Purpose. Nothing in this Compact shall be deemed to authorize the State to regulate or tax the Nation, its members, or any Nation Affiliate or to interfere with the Nation's government or internal affairs. This Compact shall not alter, limit, diminish or preempt Nation, federal or State sovereignty, authority, civil adjudicatory jurisdiction or criminal jurisdiction, except as expressly provided herein. Subject to Section 2.03 and the provisions of this Compact regarding Approved Manufacturers, nothing in this Compact shall require that the Nation, any Nation Affiliate, or any Licensed Retailer or Licensed Distributor obtain or maintain any license from, or otherwise submit to the jurisdiction of, the State. Nothing in this Compact shall constitute a stipulation by any party as to the actual boundaries of Nation's federally-established reservation.

Section 8.08. Entire Agreement; Amendments. This Compact constitutes the entire understanding between the Parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between or among the Parties, with respect to the subject matter hereof. Subject to Section 8.04, this Compact can only be amended or modified with the same formality required to make the original Compact valid and enforceable.

Section 8.09. No Assignment; Beneficiaries. This Compact is personal in nature, and no Party may directly or indirectly assign or transfer it by operation of law or otherwise. Nothing in this Compact, express or implied, is intended to or shall confer upon any individual or entity, other than the Parties hereto, any right, benefit or remedy of any nature whatsoever under or by reason of this Compact; *provided, however*, that subject to the terms and provisions of Article VII, each Nation Claim Party (other than the Nation) is an express third-party beneficiary of this Compact.

Section 8.10. Survival. Upon the termination or cancellation of this Compact, the obligations of the parties hereunder shall terminate, except that the provisions of Sections 7.01, 7.02, 7.03, 7.04, and 8.02 shall survive such termination or cancellation and the State's payment obligations pursuant to Section 4.02(a) shall survive such termination or cancellation only until satisfaction of such obligations.

Section 8.11. Severability. The terms, provisions, agreements, covenants and restrictions of this Compact are non-severable and, unless otherwise agreed to by the Parties, this Compact shall terminate if any term, provision, agreement, covenant or restriction in this Compact is held by a court of competent jurisdiction or other authority to be invalid, void, or otherwise unenforceable. In the event either Party has actual knowledge that the validity or enforceability of this Compact or any of its terms, provisions, agreements, covenants or restrictions are being challenged in a court of competent jurisdiction or other authority, such Party shall transmit written notice thereof to the other Party within three Business Days of acquiring such actual knowledge. The Parties agree to reasonably cooperate with each other and oppose any such challenge.

IN WITNESS WHEREOF, the Parties hereto have executed this Compact as of the respective dates indicated below.

Prairie Band Potawatomi Nation

By: Liana Onnen, Chairperson

Dated: February 17, 2016

State of Kansas

By: Sam Brownback, Governor

Dated: February 17, 2016

(Published in the Kansas Register April 21, 2016.)

SENATE BILL No. 485

AN ACT concerning tribal-state compacts; approving a compact between the Iowa Tribe of Kansas and Nebraska and the state of Kansas; relating to cigarette and tobacco sales and taxation.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) The compact relating to cigarette and tobacco sales and taxation between the Iowa Tribe of Kansas and Nebraska and the state of Kansas submitted by the governor to the senate and the house of representatives of the state of Kansas and received and printed in the

journal of the senate and the journal of the house of representatives on March 2, 2016, is hereby approved and adopted by reference as the law of this state.

(b) The secretary of the senate is directed to send a copy of such compact to the secretary of state. The secretary of state shall cause such compact to be published in the Kansas register.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

COMPACT RELATING TO CIGARETTE AND TOBACCO SALES AND TAXATION

ARTICLE I PURPOSE AND INTENT

WHEREAS, it is in the best interests of the State of Kansas (hereinafter, Kansas) to continue to reduce the financial burdens imposed on Kansas by cigarette smoking and that said costs continue to be borne by tobacco product manufacturers rather than by Kansas to the extent that such manufacturers either determine to enter into a settlement with Kansas or are found culpable by the courts; and,

WHEREAS, On November 23, 1998, leading United States tobacco product manufacturers (hereinafter, PMs) entered into a settlement agreement, entitled the "master settlement agreement," (hereinafter, MSA) with Kansas. The MSA obligates these PMs, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to Kansas (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking; and,

WHEREAS, it would be contrary to the policy of Kansas if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that Kansas will have an eventual source of recovery from them if they are proven to have acted culpably; and,

WHEREAS, Kansas entered into a settlement agreement with certain PMs settling Kansas' obligations under the MSA and the 2003 NPM adjustment settlement agreement, including the 2012 term sheet agreement; and,

WHEREAS, as part of said settlement, Kansas has agreed to undertake certain diligent enforcement efforts of its cigarette and tobacco laws and more specifically, its MSA laws on qualified tribal land in Kansas ("*Qualified tribal land*" means: (1) *All land within the borders of this state that is within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, including rights-of-way running through the reservation;* (2) *all dependent Indian communities within the borders of this state; and* (3) *all Indian allotments in within the borders of this state, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments; and* (4) *any lands within the borders of this state, the title to which is either held in trust by the United States for the benefit of any Indian tribe or individual, or held by any Indian tribe or individual subject to restriction by the United States against alienation, and over which an Indian tribe exercises governmental power*); and,

WHEREAS, Kansas recognizes the importance to Kansas of forming an alliance with the Iowa Tribe of Kansas and Nebraska (hereinafter, Tribe) to assist Kansas in its diligent enforcement efforts; and,

WHEREAS, Kansas further recognizes that the Tribe will incur certain economic costs in assisting Kansas in its diligent enforcement efforts for which the Tribe should not be required to endure; and,

WHEREAS, it is altogether just and proper that Kansas compensate the Tribe for its assistance to Kansas in Kansas' diligent enforcement obligation under the MSA and the 2003 NPM adjustment settlement agreement, including the 2012 term sheet agreement; and,

WHEREAS, the Tribe is a federally recognized Indian Tribe with its reservation located within the geographical boundaries of the State of Kansas, possessing inherent powers of self-government, exercising sovereign powers over its members and their property within the boundaries of the Tribe's reservation, as defined and recognized by treaty and

federal laws and federal court decisions, and recognized by state laws and state court decisions, and that it has responsibilities and needs similar to those of state governments; and,

WHEREAS, the State of Kansas is an independent sovereign state within the United States of America possessed of full powers of state government, possessing inherent powers of self-government, exercising sovereign powers over its citizens and their property within the boundaries of the state, as defined and recognized by federal laws and federal court decisions, and recognized by state laws and state court decisions, and that it has responsibilities and needs similar to those of the national government; and,

WHEREAS, Kansas and the Tribe respect the sovereignty of the other, and recognize and support each other's governmental responsibilities to provide for and govern its citizens, members and territory; Kansas recognizes the Tribe's inherent sovereign right to existence, self-government and self-determination; the Tribe recognizes the Kansas's inherent sovereign right to existence, self-government and self-determination; and,

WHEREAS, federal and state law recognizes Kansas' authority to collect state taxes on cigarettes and tobacco products sold to non-tribal members on the Tribe's reservation, whether sold by the Tribe, or businesses owned or controlled by the Tribe, or not; and,

WHEREAS, federal law recognizes the Tribe's authority to sell cigarettes and tobacco products to its tribal members on the Tribe's reservation free from Kansas taxation.

ARTICLE II TERMS AND CONDITIONS

NOW, THEREFORE, the Tribe, by and through its duly elected Executive Committee and Kansas, by and through its duly elected Governor and Legislature do hereby enter into this Compact, the terms of such Compact to commence upon approval by the Executive Committee of the Iowa Tribe of Kansas and Nebraska (the "Executive Committee"), and enactment by the Kansas Legislature and publication in the Kansas Register, to-wit:

1. Kansas and the Tribe agree that as used herein the Tribe's reservation shall mean only the land that comprises that portion of the Tribe's reservation as established by the treaty between the United States and the Tribe dated the seventeenth day of May, 1854, that: (a) is within the boundaries of the State of Kansas; and, (b) is unaffected by the treaty between the United States and the Sauk and Foxes dated the sixth day of March, 1861, to the extent such treaty reduced the land set aside for the Tribe pursuant to the prior treaty dated the seventeenth day of May, 1854, and specifically excludes any portion of the Tribe's reservation that is not within the boundaries of the State of Kansas. For the purposes of this Compact, the Tribe's reservation shall also not include any lands that are inside the boundaries of the State of Kansas, but are outside the boundaries of the Tribe's reservation established by the 1854 Treaty that have been, or may at any time be taken into trust by the United States.
2. Unless otherwise expressly stated, Kansas and the Tribe agree that K.S.A. 2015 Supp. §50-6a01, and amendments thereto, and K.S.A. 2015 Supp. §79-3301, and amendments thereto apply to the provisions of this Compact. For the purposes of this Compact, only, and for no other purpose whatsoever, Kansas and the Tribe agree that the Tribe's Treaties with the United States do not exempt, exclude or reserve the Tribe's land from the boundaries of Kansas. For the purposes of this Compact, only, and for no other purpose whatsoever, the Tribe's Reservation is within the State of Kansas.
3. Tribe agrees to not purchase any cigarettes or tobacco products from any distributor, manufacturer, importer or wholesale dealer not licensed by Kansas for sale by the Tribe in Kansas, nor offer for sale in Kansas, possess for sale or import into Kansas for sale, cigarettes of a cigarette product manufacturer brand family not included in the directory maintained by the Kansas Attorney General. The Kansas Attorney General shall give the Tribe written notice to discontinue sale of any cigarettes or tobacco products being sold by the Tribe that are not included in the directory. The Tribe shall have ninety (90) days from and after receipt of the written notice within which to sell or otherwise dispose of the Tribe's existing inventory of the product(s) subject of such notice. The Tribe

(continued)

shall not order new or replacement inventory of the product(s) subject of the notice within such ninety (90) day period.

Nothing in this section shall prohibit the Tribe from licensing and regulating any distributor, manufacturer, importer or wholesale dealer doing business with the Tribe on its reservation, but the Tribe recognizes that its exercise of regulatory authority over a distributor, manufacturer, importer or wholesale dealer does not preempt Kansas from also exercising its regulatory authority over the same distributor, manufacturer, importer or wholesale dealer, including, where applicable, the power to tax.

Except for "Sacred Tobacco," which shall not be subject to the terms of this Compact, Tribe agrees that if it manufactures, or authorizes the manufacture of cigarettes or tobacco products on its reservation for sale in Kansas such products shall be subject to the terms of this Compact. For purposes of this Compact, Sacred Tobacco shall mean *nicotiana quadrivalois* and *nicotiana rustica* neither of which is a controlled substance or otherwise regulated by Kansas or Federal Law.

4. Tribe will be responsible for regulating and enforcing Compact with respect to sales at retail of cigarettes and tobacco products in Tribe's retail outlets on the Tribe's reservation.
5. Tribe will require all sales of cigarettes and tobacco products on Tribe's reservation to be conducted pursuant to a valid retail license issued by the Tribe.
6. Tribe agrees to require all cigarettes and tobacco products provided for sale on the Tribe's reservation will only be acquired from manufacturers compliant with Kansas statute and on the Attorney General's approved list.
7. Kansas and the Tribe agree that each pack of cigarettes the Tribe sells in Kansas shall bear a joint Kansas-Tribal tax stamp that will be designed jointly by the Tribe and Kansas.
 - a. Said stamp shall bear the name "Iowa Tribe" and "Kansas" and a logo in a form and color mutually agreeable to both the Tribe and Kansas;
 - b. Kansas shall cause said stamps to be produced at its sole expense;
 - c. Kansas and the Tribe shall select a mutually agreeable in-state third party distributor, and the Tribe shall cause all cigarettes it purchases for sale in Kansas to be shipped to said third party distributor at its sole expense;
 - d. Kansas shall provide said joint Kansas-Tribal stamps to said third party distributor who shall be responsible for affixing said Kansas-Tribal stamps on all cigarettes to be sold by the Tribe in Kansas;
 - e. Said third party distributor shall ship all cigarettes bearing joint Kansas-Tribal stamps to the Tribe at the Tribe's sole expense; and,
 - f. The costs incurred by the Tribe associated with this paragraph shall be added to the economic costs of the Tribe in Paragraph Fifteen (15) below that Kansas agrees is part of the diligent enforcement expenses for which it must reimburse the Tribe.
8. Tribe agrees to collect and timely share with Kansas, subject to third party audit, data regarding retail sales by Tribe on Tribe's reservation. Data shall be collected and provided to the Kansas Department of Revenue, at the Tribe's sole expense, on a monthly basis in a manner that conforms to data provided to Kansas by all other entities that currently collect and file data with Kansas, and shall be filed electronically in a format as required by Kansas of all other reporting entities.
9. Tribe and Kansas shall select a third party auditor for purposes of verifying compliance with this Compact. For purposes of verifying compliance with this Compact, the parties agree to jointly retain said Auditor and shall each bear fifty percent (50%) of the costs of the auditing services. The Auditor must possess a valid Kansas Permit to Practice issued by the Kansas Board of Accountancy. The Tribe and State shall be entitled to freely communicate with the Auditor. The Auditor will review records on an annual calendar year basis and issue an annual report and certification as provided herein.
 - a. Audit Protocol. To verify compliance with this Compact, the Auditor must adhere to the following protocol:
 - b. Period Under Review. The Auditor must review records for the calendar year under audit and may review records for earlier years that are after the Effective Date but only as necessary for an internal reconciliation of the relevant books. Subject to the foregoing, records relating to any period before the Effective Date are not open to review. In situations where the Auditor is responsible for verifying records on less than an annual basis, the period under review shall not include years previously reviewed by the Auditor, except when a violation is alleged to have occurred during the period previously reviewed.
 - c. Records to be Examined. The Auditor must review records and invoices of stamp purchases, records and invoice of sales of stamped cigarettes, stamp inventory, the stamping process, products sold, product inventory records, and such additional records as are necessary to verify (1) the Units Sold (2) the retail selling price, including application of Tribal sales and excise taxes, and (3) procedures demonstrating the Tribe's compliance with this Compact, all with respect to sales of Cigarettes by the Tribe. In all situations, the Auditor is not responsible for examining, and shall not examine, records that do not relate to the stamping, selling, or taxing activities of the Tribe.
 - d. Audit Report and Certification. After each annual audit, the Auditor shall issue an audit report and a certification, as further described below, with respect to compliance with this Compact. The annual audit report shall set forth the total Units Sold attributable to each manufacturer by the Tribe during the relevant period. The annual audit report shall also include a certified statement of the Auditor to the Kansas Attorney General that the Auditor finds the Tribe to be in compliance with this Compact or else that the Tribe is in compliance except for specifically listed items that are explained in the annual report.
 - e. Audit Schedule. Audit reviews shall take place following each calendar year (or portion thereof) during the term of this Compact, with an audit report submitted no later than April 1 following such calendar year.
 - f. Joint Audit Implementation and Review. The Tribe and the State shall meet jointly with the Auditor prior to the beginning of each annual audit. The purpose of such meeting will be to discuss the objectives of the upcoming audit, the expectations of the Tribe and of the State, the standards to be used in such audit, and any issues regarding conduct of the audit, records pertinent to the audit or the contents of the Auditor's report. The Tribe and State agree that the report will audit the processes, controls and the supporting documentation of the Tribe's purchases and sales of cigarettes and tobacco products using both Generally Accepted Auditing Standards and Generally Accepted Accounting Principles. Subsequent meetings before and during the audit may be held as required. As soon as practicable after the issuance of the Auditor's report and certification, the Tribe and the State may meet jointly with the Auditor as often as required to review the audit report and discuss any issue of concern. In the event that either the Tribe or the State disagrees with the Auditor's report or certification, or any audit finding contained therein, either Party may notify the other of the disagreement and follow the procedures for resolution of the disagreement in Article III, Paragraph 1 of this Compact.
 - g. Tribe agrees that Kansas is allowed to enter its retail outlets and inspect its cigarette stock, invoice and inventory of tax indicia on hand to insure that the cigarettes offered by Tribe for sale in Kansas are solely brands that are on the Attorney General's approved list and bear Kansas tax indicia. Any cigarettes found for sale at Tribe's retail outlets that are not on the Attorney General's approved list or bearing Kansas tax indicia shall be jointly removed by the Tribe and Kansas and destroyed.
10. Tribe shall enjoy exclusive cigarette and tobacco excise tax on all cigarette and tobacco sales by Tribe on Tribe's reservation. As part of the consideration for this Compact, Kansas agrees that cigarette and tobacco sales on the Tribe's Reservation shall not be subject to the Kansas cigarette and tobacco excise tax.

11. The Tribe has the right to impose its tribal tax on its members on its reservation and the Kansas cigarette and tobacco tax does not apply on said sales. Kansas has the right to impose its cigarette and tobacco taxes on the wholesale dealer of first receipt, and the Tribe's tax does not preempt or otherwise impede or interfere with Kansas' tax.
12. Kansas and the Tribe jointly agree to waive their respective rights to taxation identified in paragraph 11 above, and instead, agree to apply paragraphs 11 and 13 herein.
13. Tribe's cigarette tax shall be no lower than 17 cents per individual pack of cigarettes, or \$1.70 per carton of ten (10) packs of cigarettes for the term of this Compact.
14. Kansas agrees to reimburse the Tribe for the economic cost incurred by the Tribe in assisting the Kansas in its ongoing diligent enforcement efforts under the MSA and 2012 Term Sheet Settlement. Reimbursement shall be as follows:
 - a. \$30,000.00 to be received by the Tribe on or before the end of each calendar quarter (March 31, June 30, September 30 and December 31) during the initial five (5) year term of this Compact.
 - b. In the event this Compact continues for additional five (5) year terms, the quarterly payment amount shall be increased fifteen percent (15%) over the quarterly payment amount payable during the immediately prior five (5) year period.
15. As additional consideration to reimburse the Tribe for the economic cost incurred by the Tribe in assisting the State in its ongoing diligent enforcement efforts under the MSA and the 2003 NPM adjustment settlement agreement, including the 2012 term sheet agreement, the following shall be exempt from tax imposed by the Kansas Retailers' Sales Tax Act, K.S.A. 79-3601 *et seq.* and amendments thereto: all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the Iowa Tribe of Kansas and Nebraska, a federally recognized Indian Tribe, and used exclusively for Tribal purposes.

ARTICLE III GENERAL PROVISIONS

1. Dispute Resolution
 - a. General. Each party warrants that it will use its best efforts to negotiate an amicable resolution of any dispute between the Tribe and Kansas arising from this Compact whether as to the construction or operation thereof or the respective rights and liabilities of the Tribe and Kansas thereunder. If a party perceives itself to be aggrieved under this Compact, said party shall provide written notice of such perceived violation to the other party within thirty (30) days of the perceived violation or violations. The notice shall identify the specific Compact provision or provisions allegedly violated, or in dispute, the date or dates of violation, and shall specify in sufficient detail the asserting party's contention and all factual basis for each claim. The parties agree to cooperatively and promptly investigate and cure any such violations, to the extent possible, prior to providing a notice of breach of this Compact.
 - b. Negotiation. Upon written notice by either party of being unable to cure an issue under Article III 1. A. above, the Governor and Tribe's Chairperson, or their respective designees, shall commence good faith negotiations to resolve the dispute within thirty (30) days or such longer period as mutually agreed in writing by both parties. If the Tribe and Kansas are unable to negotiate an amicable resolution of a dispute under this paragraph, then the aggrieved party shall issue a final written notice of intent to refer the matter to arbitration under this section.
 - c. Arbitration. Arbitration may be initiated by any signatory to this Compact by serving written notice to the other signatories at the addresses noted herein. Within seven (7) days thereafter, each party shall notify the other party of its nominee for an arbitrator. If Tribe and Kansas can agree upon the nomination of a single arbitrator for the dispute, such person shall serve as sole arbitrator of the dispute. If the Tribe and Kansas do not agree upon the nomination of a single arbitrator, each party's nominee shall serve as arbitrator upon a panel of three, and those two arbitrators shall nominate the third to serve with them. In the event the two arbitrators fail for any reason to name the third arbitrator within two weeks after the nomination of the last nominated one of them, either nominee shall be entitled to ask the American Arbitration Society to name the third arbitrator. The arbitrators shall commence proceedings within thirty (30) days after their appointment, and hold proceedings providing each party a fair opportunity to present its side of the dispute, together with any documents or other evidence relevant to resolution of the dispute. The arbitration decision shall be signed by the arbitrators and shall be made within thirty (30) days after all evidence relevant to resolution of the dispute has been received by the arbitrators, but no later than forty-five (45) days after proceedings are commenced. The arbitration decision shall be final and binding upon the Tribe and Kansas unless, during or following completion of the arbitration proceedings, the Tribe and Kansas have met and arrived at a different settlement of the dispute.
 - d. Enforcement. If enforcement of a settlement or arbitration decision becomes necessary by reason of failure of one or both parties to implement its terms voluntarily, or if one of the parties refuses to participate in arbitration as provided in this Section and the other party seeks enforcement of any provision of this Compact, the Tribe and Kansas agree that the matter may be resolved by judicial resolution and enforcement and that venue for judicial resolution and enforcement shall be in the United States District Court for Kansas pursuant to the specific provisions of this Section.
 - e. Expenses of Dispute Resolution or Judicial Enforcement Between the Tribe and Kansas. Each party shall be responsible for their own expenses of dispute resolution by arbitration or judicial enforcement, unless the parties agree otherwise.
2. Waiver of Sovereign Immunity by the Tribe and Rights to Tribal Remedies. The Tribe hereby waives its sovereign immunity, its right to require exhaustion of tribal remedies, and its right to seek tribal remedies with respect to any dispute over this Compact, subject to the following specific limitations:
 - a. Limitation of Claims. The waiver granted herein shall encompass only claims for remedies, dispute resolution by arbitration or judicial enforcement provided in this Compact, and may not encompass claims which seek monetary relief, including but not limited to damages, penalties or attorney's fees.
 - b. Time Period. The waiver granted herein shall commence upon publication of this Compact in the Kansas Register and shall continue until the date of its termination pursuant to the terms of this Compact or cancellation, except that the waivers shall remain effective for any proceedings then pending and all appeals therefrom.
 - c. Recipient of Waiver. The waiver of sovereign immunity is limited to the State of Kansas.
 - d. Enforcement. Tribe agrees to waive its sovereign immunity from a judgment or order which is final because either the time for appeal thereof has expired or the judgment or order issued by a court having final appellate jurisdiction over the matter. Tribe agrees to accept and be bound by any order or judgment of the United States District Court for Kansas or any other court having appellate jurisdiction over such Court. Further, Tribe waives its sovereign immunity as to enforcement in any federal court of any such final judgment against Tribe.
 - e. Service of Process. In any such suit, Tribe agrees that service on Tribe shall be effective if made by certified mail, return receipt requested at the addresses set forth herein.
 - f. Guarantee of Tribe Not to Revoke Waiver of Sovereign Immunity. Tribe agrees not to revoke its waiver of sovereign immunity contained in this Compact. In the event of any such revocation, Kansas may, at its option, declare this Compact terminated for breach by Tribe.
3. Waiver of Sovereign Immunity by Kansas. Kansas hereby waives its sovereign immunity.

(continued)

- a. Limitation of Claims. The waiver granted herein shall encompass only claims for remedies, dispute resolution by arbitration or judicial enforcement provided in this Compact, and may not encompass claims which seek monetary relief, including but not limited to damages, penalties or attorney's fees.
 - b. Time Period. The waiver granted herein shall commence upon publication of this Compact in the Kansas Register and shall continue until the date of its termination pursuant to the terms of this Compact or cancellation, except that the waivers shall remain effective for any proceedings then pending and all appeals therefrom.
 - c. Recipient of Waiver. The waiver of sovereign immunity is limited to the Tribe.
 - d. Enforcement. Kansas agrees to waive its sovereign immunity from a judgment or order which is final because either the time for appeal thereof has expired or the judgment or order issued by a court having final appellate jurisdiction over the matter. Kansas agrees to accept and be bound by any order or judgment of the United States District Court for Kansas or any other court having appellate jurisdiction over such Court. Further, Kansas waives its sovereign immunity as to enforcement in any federal court of any such final judgment against Tribe.
 - e. Service of Process. In any such suit, Kansas agrees that service on the Governor, Secretary of Revenue and Attorney General shall be effective if made by certified mail, return receipt requested at the addresses set forth herein.
 - f. Guarantee of Kansas Not to Revoke Waiver of Sovereign Immunity. Kansas agrees not to revoke its waiver of sovereign immunity contained in this Section. In the event of any such revocation, the Tribe may, at its option, declare this Compact terminated for breach by Kansas.
4. Attached hereto as Exhibit A and incorporated into this Compact is a copy of the Resolution of the Executive Committee of the Tribe approving this Compact including the limited waiver of sovereign immunity provisions and authorizing the Tribal Chairman to execute this Compact on behalf of the Tribe.
 5. Kansas agrees to not enter into a cigarette and tobacco compact with any Indian tribe that does not have a reservation established by treaty with the United States of America within the State of Kansas as of the date of publication of this Compact in the Kansas Register.
 6. Kansas agrees that it will fully enforce its cigarette and tobacco laws under Chapter 79 of the Kansas Statutes Annotated, and amendments thereto, including the administrative regulations pertaining thereto, and its MSA laws under Chapter 50 of the Kansas Statutes Annotated, and amendments thereto, including the administrative regulations pertaining thereto, against any retailer, distributor, wholesale dealer or manufacturer selling, importing, or delivering cigarettes or tobacco products in violation of Kansas law, including, but not limited to, not being on the Attorney General's approved list. This will include enforcement against other Indian tribes, including tribes in Kansas, unless the resident Kansas tribe has entered into a Compact with Kansas.
During the term of this compact, Kansas may enter into and be party to one or more compacts or other agreements regarding possession, transport, distribution, or sale of cigarettes or other tobacco products, including but not limited to taxation and escrow collection, with the Kickapoo Tribe in Kansas, the Prairie Band Potawatomi Nation, or the Sac and Fox Nation of Missouri in Kansas and Nebraska. Kansas shall not enter into or be party to any such compact or agreement with any Indian Tribe during the term of this Compact, except as otherwise provided above.
 7. This Compact shall expire on the last day of the month five (5) years after the Effective Date and shall be automatically renewed for consecutive five (5) year terms thereafter unless either party gives written notice to the other not less than sixty (60) days prior to the end of the then current term that it elects to terminate this Compact.
 8. In the event that Kansas elects to withdraw from the MSA and the 2003 NPM adjustment settlement agreement, including the 2012 term sheet agreement, then the Tribe shall be free to withdraw from the terms of this Compact without penalty.
 9. Kansas agrees that Tribe may propose an amendment to this Compact by written notice to the Governor, State of Kansas and Attorney General based upon any provision of a compact Kansas entered into with another tribe which the Tribe desires to include as a provision in this Compact. If the Kansas Legislature does not approve the proposed amendment at the Legislative Session next following the Tribe's request for the amendment, Tribe may terminate this Compact at any time thereafter by written notice to the Governor, Secretary of Revenue and Attorney General.
 10. The language of all parts of this Compact shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. It is the intent of the parties that this Compact shall be construed to reflect that the parties are of equal stature and dignity and have dealt with each other at arm's-length. Accordingly, any statutory or judicial rules concerning the construction of vague or ambiguous terms that might otherwise be used in the interpretation or enforcement of this Compact, including judicial decisions generally holding that agreements involving Indians or Indian tribes are to be construed in a manner in favor of Indians and Indian tribes, shall not obtain to the benefit or detriment of either party, nor shall the terms and conditions of this Agreement be extended by implication to the benefit or detriment of either party, it being the intent of the parties that the construction of this Compact shall be controlled by its express terms and not by implication.
 11. Unless otherwise specifically noted herein, the definitions, words and terms used in this Compact shall have the same meaning as the definitions, words and terms used in Chapters 50 and 79 of the Kansas Statutes Annotated, and amendments thereto, including the administrative regulations pertaining thereto. If the definitions, words and terms used in this Compact are not found in Chapters 50 or 79 of the Kansas Statutes Annotated, and amendments thereto, including the administrative regulations pertaining thereto, then those definitions, words and terms are to be given their plain and ordinary meaning.
 12. The paragraph headings contained in this Compact are for reference purposes only and shall not affect the meaning or interpretation of this Compact. If any provision of this Compact is declared or determined by any court to be illegal or invalid, that part shall be excluded from the Compact, but the validity of the remaining parts, terms, or provisions shall not be affected.
 13. This Compact constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and Compacts, whether oral or written, between the parties, with respect to the subject matter hereof. This Compact can only be modified with the same formality as the original Compact.
 14. Any failure by either party to enforce the other party's strict performance of any provision of this Compact will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Compact.
 15. This Compact is personal in nature, and no party may directly or indirectly assign or transfer it by operation of law or otherwise. All obligations contained in this Compact shall extend to and be binding upon the parties to this Compact and their respective successors, assigns and designees.
 16. Notices. All notices under this Compact shall be in writing and sent by way of certified U.S. mail to the following officials or their successors in office:
To the Tribe:
Chairperson and Executive Committee
Iowa Tribe of Kansas and Nebraska
3345 B Thrasher Road,
White Cloud, KS 66094
To the Governor:
Office of the Governor
300 SW 10th Ave., Ste. 2415
Topeka, KS 66612-1590

To the Attorney General:

Office of the Kansas Attorney
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612-1597

To the Kansas Department of Revenue:

Secretary of Revenue
915 SW Harrison Street, Second Floor
Topeka, KS. 66612-1588

17. Confidentiality. All information provided hereunder to Kansas is confidential, except as Kansas is permitted under K.S.A. 2015 Supp. § 50-6a11(a) and K.S.A. 2015 Supp. § 75-5133(b)(19) to provide information for MSA and 2003 NPM adjustment settlement agreement, including the 2012 term sheet agreement purposes. All information will be provided to the Kansas Department of Revenue in the manner provided hereunder and shall be treated as confidential under K.S.A. 2015 Supp. § 75-5133.

IN WITNESS WHEREOF, the parties hereto have executed this Compact as of the date first above written.

Iowa Tribe of Kansas and Nebraska
By: Timothy N. Rhodd
Chairman

State of Kansas
By: Sam Brownback
Governor

State of Kansas
Office of the Governor
Message from the Governor
Regarding Compacts with Tribal Nations

In consultation with the Attorney General and the Department of Revenue, and pursuant to my authority under Article 1, Section 3 of the Constitution of the State of Kansas, I have entered into the following Compacts:

- Compact Relating to Cigarette and Tobacco Sales, Taxation and Escrow Collection with the Prairie Band Potawatomi Nation as of February 17, 2016; and
- Compact Relating to Cigarette and Tobacco Sales and Taxation with the Iowa Tribe of Kansas and Nebraska as of February 22, 2016.

I hereby give notice of these executive actions and transmit the Compacts to the Legislature for the required approvals pursuant to applicable law.

Dated February 22, 2016

Sam Brownback
Governor

State of Kansas
Board of Healing Arts
Permanent Administrative Regulations

Article 28a.—PHYSICIAN ASSISTANTS

100-28a-1a. Definitions. As used in this article, each of the following terms shall have the meaning specified in this regulation:

(a) "Active practice request form" means the board-provided form that each physician assistant is required

to submit to the board pursuant to K.S.A. 65-28a03, and amendments thereto, as a condition of engaging in active practice and that is signed by the physician assistant, supervising physician, and each substitute supervising physician. Each active practice request form contains a section called the written agreement.

(b) "Different practice location" means a practice location at which a supervising physician is physically present less than 20 percent of the time that the practice location provides medical services to patients. This term shall not include a medical care facility, as defined in K.S.A. 65-425 and amendments thereto.

(c) "Direct supervision" means a type of supervision in which the supervising physician or substitute supervising physician is physically present at the site of patient care and capable of immediately providing direction or taking over care of the patient.

(d) "Emergency medical condition" means the sudden and, at the time, unexpected onset of a person's health condition that requires immediate medical attention, for which the failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part or would place the person's health in serious jeopardy.

(e) "Indirect supervision" means a type of supervision in which the supervising physician or substitute supervising physician can be physically present at the site of patient care within 15 minutes to provide direct supervision.

(f) "Off-site supervision" means a type of supervision in which the supervising physician or substitute supervising physician is not physically present at the site of patient care but is immediately available by means of telephonic or electronic communication.

(g) "Practice location" means any location at which a physician assistant is authorized to practice, including a medical care facility as defined in K.S.A. 65-425 and amendments thereto.

(h) "Substitute supervising physician" means each physician designated by prior arrangement pursuant to K.S.A. 65-28a09, and amendments thereto, to provide supervision to the physician assistant if the supervising physician is temporarily unavailable.

(i) "Supervision" means oversight by a supervising physician or a substitute supervising physician of delegated medical services that may be performed by a physician assistant. The types of supervision shall include direct supervision, indirect supervision, and off-site supervision.

(j) "Written agreement" means the section of the active practice request form that specifies the agreed scope of authorized medical services and procedures and prescription-only drug authority for each physician assistant. (Authorized by K.S.A. 2015 Supp. 65-28a02 and 65-28a08; implementing K.S.A. 2015 Supp. 65-28a03, 65-28a08, and 65-28a09; effective, T-100-12-10-15, Jan. 11, 2016; effective May 6, 2016)

100-28a-6. Scope of practice. Any physician assistant may perform acts that constitute the practice of medicine and surgery as follows:

(a) When directly ordered, authorized, and coordinated by the supervising physician or substitute supervising physician through that individual's physical presence;

(continued)