

## HOUSE BILL No. 2021

By Special Committee on Federal and State Affairs

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AN ACT concerning certain vending machines; requiring permits therefor; restricting the location thereof.

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

Section 1. As used in this act:

(a) "Director" means the director of taxation.

(b) "Division" means the division of taxation.

(c) "Vending machine" means any machine, contrivance or device from which may be purchased a product, merchandise or service upon the insertion of money into such machine, contrivance or device and evidence of such purchase may be redeemed for a monetary prize at the premises upon which the vending machine is placed.

(d) "Vending machine operator" means any person who places a vending machine, owned, leased or operated by such person, at locations where products, merchandise or services are sold from such machine. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of such machine, nor shall the owner or lessee, or any employee or agent of the owner or lessee be considered an authorized agent of the vending machine operator, if the owner or lessee does not own or lease the vending machine and the owner's or lessee's sole remuneration from the vending machine is a flat rental fee or commission based upon the number or value of the products, merchandise or services sold from such machine, or a combination thereof.

Sec. 2. (a) A vending machine operator shall obtain a vending machine permit for each vending machine operated by the operator. A vending machine operator may submit one application for all permits for vending machines operated by the operator. The vending machine permit shall be securely and visibly attached to the vending machine and shall contain such information as the director may require.

(b) The application for a vending machine permit shall list the brand name and serial number of each machine and such other information as required by the director. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the division to divulge or make known in any way the location

1 of any vending machine to any person not an officer or employee of the  
2 division, except that such information may be divulged to any law en-  
3 forcement officer for use in the officer's official duties. Any officer or  
4 employee revealing any such location in violation of this provision, in  
5 addition to the penalties otherwise provided, shall be dismissed from  
6 office.

7 (c) The vending machine operator may move vending machines from  
8 one location to another and, if a vending machine becomes inoperative  
9 or is disposed of, the permit for such machine may be transferred to  
10 another machine. A vending machine operator, within 10 days, shall notify  
11 the director of the brand name and serial number of any vending machine  
12 that becomes inoperative or that the operator disposes of, sells, acquires  
13 or brings into service in this state as additional machines.

14 (d) A vending machine permit shall be issued by the director for a  
15 biennium, or portion thereof. Application for such permit shall be made  
16 on a form prescribed by rules and regulations of the secretary of revenue  
17 and shall be accompanied by a permit fee of \$25 for each vending  
18 machine.

19 Sec. 3. (a) Whenever the director has reason to believe that any per-  
20 son required to obtain a permit under this act has violated any of the  
21 provisions of this act, the director shall notify the person by certified mail  
22 of the director's intention to suspend or revoke the person's permit or  
23 permits. Within 10 days after the mailing of the notice, the person may  
24 request a hearing in writing before the director. The hearing shall be  
25 conducted in accordance with the provisions of the Kansas administrative  
26 procedure act. If, after such hearing, it appears to the satisfaction of the  
27 director that the person has violated any of the provisions of this act, the  
28 director may suspend or revoke the person's permit or permits. In addi-  
29 tion, the director may deny the application of the person for a permit or  
30 permits for a portion of the succeeding calendar year for such period as  
31 the director determines is necessary but in no case for a period ending  
32 more than one year following the date upon which the permit or permits  
33 were suspended or revoked.

34 (b) If a person continues to engage in activities requiring a permit  
35 under this act after having notice or knowledge of the suspension or  
36 revocation of the person's permit or permits or after becoming more than  
37 10 days delinquent in the payment of any penalty imposed pursuant to  
38 this act, the state shall be entitled, in any proceedings brought for such  
39 purposes, to have an order and judgment restraining and enjoining such  
40 unlawful activity and no bond shall be required for the issuance of any  
41 such restraining order or injunction.

42 Sec. 4. (a) Any vending machine to which is not attached a permit  
43 as required by this act and any product, merchandise or other property

1 in such vending machine are declared to be common nuisances and  
2 contraband.

3 (b) Any vending machine, product, merchandise or other property  
4 constituting a common nuisance and contraband as provided by this sec-  
5 tion may be seized by the director or the director's authorized agent or  
6 any duly constituted peace officer with or without process or warrant and  
7 shall be subject to forfeiture as provided in this act. The party making the  
8 seizure shall deliver to the owner of the property and to the person or  
9 persons found in possession of the property a receipt stating from whom  
10 the property was seized, the place of seizure and a description of the  
11 property seized. A duplicate of the receipt shall be filed in the office of  
12 the director and shall be open for public inspection.

13 (c) Any vending machine, product, merchandise or other property  
14 seized shall be listed and appraised by the officer making the seizure, and  
15 turned over to the county sheriff of the county in which the seizure is  
16 made and a receipt therefor taken. The person making the seizure im-  
17 mediately shall make and file a written report thereof showing the name  
18 of the person making the seizure, the place where, and the person from  
19 whom the property was seized, and inventory and appraisal thereof,  
20 at the usual and ordinary wholesale price of the articles received to the  
21 director of taxation. The county or district attorney of the county in which  
22 the seizures are made, at the request of the director, may file in the  
23 district court forfeiture proceedings in the name of the state of Kansas,  
24 as plaintiff, and in the name of the owner or person in possession, as  
25 defendant, if known, and if unknown in the name of the property seized.  
26 The clerk of the court shall issue summons to the owner or person in  
27 whose possession such property was found, directing such person to an-  
28 swer within 10 days. If the property is declared forfeited and ordered  
29 sold, notice of the sale shall be posted in five public places in the county  
30 not less than 10 days before the date of the sale. The proceeds of any  
31 public sale shall be deposited with the clerk of the court, who after de-  
32 ducting costs, including the costs of the sale, shall pay the balance to the  
33 treasurer of the county in which the sale was conducted. The county  
34 treasurer shall credit the entire amount thereof to the county general  
35 fund.

36 Sec. 5. The director of taxation shall administer and enforce the pro-  
37 visions of this act. The secretary of revenue shall adopt rules and regu-  
38 lations for the administration of this act. For the purpose of enforcing  
39 this act the director may call to the director's aid any law enforcement  
40 officer of this state to prosecute all violators of any of the provisions of  
41 this act. The police of any city shall have the right to inspect all premises,  
42 records and invoices pertaining to sales from vending machines within  
43 the city at all reasonable times.

1 Sec. 6. (a) Except as provided by subsection (b), it shall be unlawful  
2 for any person to sell any product, merchandise or service from a vending  
3 machine in any establishment, or portion of an establishment, which is  
4 open to minors.

5 (b) The provisions of subsection (a) shall not apply to:

6 (1) The installation and use by the proprietor of the establishment,  
7 or by the proprietor's agents or employees, of vending machines behind  
8 a counter, or in some place in such establishment, or portion thereof, to  
9 which minors are prohibited by law from having access;

10 (2) the installation and use of a vending machine in a commercial  
11 building or industrial plant, or portions thereof, where the public is not  
12 customarily admitted and where machines are intended for the sole use  
13 of adult employees employed in the building or plant; or

14 (3) a vending machine which has a lock-out device which is inoper-  
15 able in the continuous standby mode and which requires manual activa-  
16 tion by the person supervising the operation of the machine each time  
17 any product, merchandise or service is purchased from the machine.

18 Sec. 7. Any person who violates any of the provisions of this act,  
19 except as otherwise provided in this act, shall be guilty of a misdemeanor  
20 and upon conviction shall be punished by a fine of not more than \$1,000  
21 or imprisonment for not more than one year, or by both.

22 Sec. 8. This act shall take effect and be in force from and after its  
23 publication in the statute book.

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