

HOUSE BILL No. 2094

By Committee on Federal and State Affairs

Requested by Kevin Barone on behalf of The Capitol Lobby Group

1-27

1 AN ACT concerning tobacco products; authorizing the sale of electronic
2 cigarettes in cigarette vending machines; amending K.S.A. 79-3301,
3 79-3303 and 79-3399 and K.S.A. 2024 Supp. 79-3321 and repealing
4 the existing sections.
5

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

7 Section 1. K.S.A. 79-3301 is hereby amended to read as follows: 79-
8 3301. As used in K.S.A. 79-3301 et seq., and amendments thereto:

- 9 (a) "Act" means the Kansas cigarette and tobacco products act.
10 (b) "Carrier" means one who transports cigarettes from a
11 manufacturer to a wholesale dealer or from one wholesale dealer to
12 another.
13 (c) "Carton" means the container used by the manufacturer of
14 cigarettes in which no more than 10 packages of cigarettes are placed prior
15 to shipment from such manufacturer.
16 (d) "Cigarette" means any roll for smoking, made wholly or in part of
17 tobacco, irrespective of size or shape, and irrespective of tobacco being
18 flavored, adulterated or mixed with any other ingredient if the wrapper is
19 in greater part made of any material except tobacco.
20 (e) "Conspicuous location or place" means a location or place
21 available to the general public.
22 (f) "Consumer" means the person purchasing or receiving cigarettes
23 or tobacco products for final use.
24 (g) "Contracting entity" means any public or private person, firm or
25 entity that has entered into a contract with the secretary of revenue to
26 provide services.
27 (h) "Dealer" means any person who engages in the sale or
28 manufacture of cigarettes, tobacco products or electronic cigarettes in the
29 state of Kansas, and who is required to be licensed under the provisions of
30 this act.
31 (i) "Dealer establishment" means any location or premises, other than
32 vending machine locations, at or from which cigarettes, tobacco products
33 or electronic cigarettes are sold, and where records are kept.
34 (j) "Director" means the director of taxation.
35 (k) "Distributor" means:

1 (1) Any person engaged in the business of selling tobacco products in
2 this state who brings, or causes to be brought, into this state from outside
3 the state any tobacco products for sale;

4 (2) any person who makes, manufactures, fabricates or stores tobacco
5 products in this state for sale in this state; or

6 (3) any person engaged in the business of selling tobacco products
7 outside this state who ships or transports tobacco products to any person in
8 the business of selling tobacco products in this state.

9 (l) "Division" means the division of taxation.

10 (m) "Electronic cigarette" means a battery-powered device, whether
11 or not such device is shaped like a cigarette, that can provide inhaled doses
12 of nicotine by delivering a vaporized solution by means of cartridges or
13 other chemical delivery systems.

14 (n) "Importer" means the same as ~~provided~~ *defined* in 26 U.S.C. §
15 5702(k).

16 (o) "License" means the privilege of a licensee to sell cigarettes or
17 tobacco products in the state of Kansas, and the written evidence of such
18 authority or privilege as issued by the director.

19 (p) "Licensee" means any person holding a current license issued
20 pursuant to this act.

21 (q) "Manufacturer" means the same as ~~provided~~ *defined* in 26 U.S.C.
22 § 5702(d).

23 (r) "Manufacturer's salesperson" means a person employed by a
24 cigarette manufacturer who sells cigarettes, manufactured by such
25 employer and procured from wholesale dealers.

26 (s) (1) "Package" means a container in which no more than 25
27 individual cigarettes are wrapped and sealed by the manufacturer of
28 cigarettes prior to shipment to a wholesale dealer;

29 (2) For the purposes of K.S.A. 79-3321(v) and (w), and amendments
30 thereto, "package" means the same as ~~provided~~ *defined* in 15 U.S.C. §
31 1332(4).

32 (t) "Person" means any individual, partnership, society, association,
33 joint-stock company, corporation, estate, receiver, trustee, assignee, referee
34 or any other person acting in a fiduciary or representative capacity whether
35 appointed by a court or otherwise and any combination of individuals.

36 (u) "Received" means the coming to rest of cigarettes for sale by any
37 dealer in the state of Kansas.

38 (v) "Retail dealer" or "retailers" means a person, other than a vending
39 machine operator, in possession of cigarettes or electronic cigarettes for
40 the purpose of sale to a consumer.

41 (w) "Sale" means any transfer of title or possession or both,
42 exchange, barter, distribution or gift of cigarettes, tobacco products or
43 electronic cigarettes, with or without consideration.

1 (x) "Sample" means cigarettes or tobacco products distributed to
2 members of the general public at no cost for purposes of promoting the
3 product.

4 (y) "Self-service display" means a display that contains cigarettes or
5 tobacco products and is located in an area openly accessible to a retail
6 dealer's consumers, and from which such consumers can readily access
7 cigarettes or tobacco products without the assistance of a salesperson, and
8 which is knowingly utilized by the retail dealer to market and sell
9 cigarettes and tobacco products to consumers. A display case that holds
10 cigarettes or tobacco products behind locked doors does not constitute a
11 self-service display.

12 (z) "Stamps" means tax indicia applied by means of heat process,
13 pressure or any other process approved by the director.

14 (aa) "Tax indicia" means visible evidence of tax payment in the form
15 of stamps.

16 (bb) "Tobacco products" means cigars, cheroots, stogies, periques;
17 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;
18 snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other
19 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings
20 of tobacco, and other kinds and forms of tobacco, prepared in such manner
21 as to be suitable for chewing or smoking in a pipe or otherwise, or both for
22 chewing and smoking. Tobacco products do not include cigarettes.

23 (cc) "Tobacco specialty store" means a dealer establishment that
24 derives at least 65% of such dealer establishment's revenue from cigarettes
25 or tobacco products.

26 (dd) "Vending machine" means any coin operated machine,
27 contrivance or device, by means of which merchandise may be sold.

28 (ee) "Vending machine distributor" means any person who sells
29 cigarette *or electronic cigarette* vending machines to a vending machine
30 operator operating vending machines in the state of Kansas.

31 (ff) (1) "Vending machine operator" means any person who places a
32 vending machine, owned, leased or operated by such person, at locations
33 where cigarettes *or electronic cigarettes* are sold from such vending
34 machine.

35 (2) The owner or lessee of the premises upon which a vending
36 machine is placed shall not be considered the operator of the machine, nor
37 shall the owner or lessee, or any employee or agent of the owner or lessee
38 be considered an authorized agent of the vending machine operator, if the
39 owner or lessee does not own or lease the machine and the owner's or
40 lessee's sole remuneration from the machine is a flat rental fee or
41 commission based upon the number or value of cigarettes *or electronic*
42 *cigarettes* sold from the machine, or a combination of both.

43 (gg) "Wholesale dealer" means any person who sells cigarettes *or*

1 *electronic cigarettes* to other wholesale dealers, retail dealers, vending
2 machine operators and manufacturer's salespersons for the purpose of
3 resale in the state of Kansas.

4 (hh) "Wholesale sales price" means the original net invoice price for
5 which a manufacturer sells a tobacco product to a distributor, as shown by
6 the manufacturer's original invoice.

7 Sec. 2. K.S.A. 79-3303 is hereby amended to read as follows: 79-
8 3303. (a) Each person engaged in the business of selling cigarettes or
9 electronic cigarettes in the state of Kansas and each vending machine
10 distributor shall obtain a license as provided by this act. A separate
11 application, license and fee is required for each dealer establishment
12 owned or operated by a dealer. A vending machine operator is required to
13 obtain a vending machine operator's master license and, in addition, a
14 separate permit for each vending machine operated by the operator. A
15 vending machine operator may submit one application for the vending
16 machine operator's master license and all permits for vending machines
17 operated by the operator. The license shall be displayed in the dealer
18 establishment and the vending machine permit shall remain securely and
19 visibly attached to the vending machine and contain such information as
20 the director may require. Any vending machine found without such permit
21 attached to the machine shall be sealed by an agent of the director and
22 such seal shall be removed only by an agent of the director after payment
23 of the permit fee and the penalties provided by this act.

24 (b) The application for a vending machine operator's master license
25 and vending machine permits shall list the brand name and serial number
26 of each machine and such other information as required by the director.
27 Except in accordance with proper judicial order or as otherwise provided
28 by law, it shall be unlawful for any officer or employee of the division to
29 divulge or make known in any way the location of any vending machine to
30 any person not an officer or employee of the division or contracting entity
31 of the division, where the division has determined disclosure of such
32 information is essential for completion of the contract and has taken
33 appropriate steps to preserve confidentiality, except that such information
34 may be divulged to any law enforcement officer for use in the officer's
35 official duties. Any officer, employee or contracting entity revealing any
36 such location in violation of this provision, in addition to the penalties
37 otherwise provided in this act, shall be dismissed from office.

38 (c) A vending machine operator, in the course of business as a
39 vending machine operator, may dispose of or sell vending machines
40 without securing a license to sell vending machines. The vending machine
41 operator may move vending machines from one location to another and, if
42 a vending machine becomes inoperative or is disposed of, the permit for
43 such machine may be transferred to another machine. A vending machine

1 operator, within 10 days, shall notify the director of the brand name and
2 serial number of vending machines that become inoperative or that the
3 operator disposes of, sells, acquires or brings into service in this state as
4 additional machines.

5 (d) The key to the lower or storage compartment of a vending
6 machine shall remain only in the possession of the vending machine
7 operator or the operator's authorized agent. All services connected with the
8 operation of a vending machine shall be performed by the vending
9 machine operator or the operator's authorized agent. All vending machines
10 shall be subject to inspection by the director or the director's authorized
11 agents. No permit shall be issued for a *cigarette* vending machine unless it
12 is constructed so that at least one package of each vertical column of
13 cigarettes located therein is visible showing tax indicia.

14 (e) All vending machines operated on military installations shall have
15 a permit affixed to the machines and the cigarettes shall show tax indicia
16 of the Kansas tax.

17 (f) On or before the 10th day of each month, each vending machine
18 distributor shall report to the director, on forms provided by the director,
19 all sales of *cigarette and electronic cigarette* vending machines by the
20 distributor to persons in the state of Kansas during the preceding month;
21 the name and address of the purchaser; and the brand name, serial number
22 and sale price of the machines.

23 (g) Concurrently with a change in ownership of a dealer
24 establishment the license applicable to the establishment is void and shall
25 be surrendered to the director and shall not be transferred. On removal of a
26 dealer establishment from one location to another, the owner of the
27 establishment shall notify the director and surrender the owner's license.
28 The director shall issue a new license for the unexpired term of the
29 surrendered license on payment of a fee of \$2. If a dealer's license is lost,
30 stolen or destroyed, the director may issue a new license on proof of loss,
31 theft or destruction, at a cost of \$2. The director shall remit all moneys
32 received under this subsection to the state treasurer in accordance with the
33 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
34 each such remittance, the state treasurer shall deposit the entire amount in
35 the state treasury to the credit of the state general fund.

36 (h) *Any vending machine that sells electronic cigarettes shall be*
37 *permitted to sell any of the following:*

38 (1) *Devices used to vaporize a liquid solution for the purpose of*
39 *consuming nicotine through the use of an electronic cigarette;*

40 (2) *cartridges, pods or any other containers used in any device*
41 *described in paragraph (1) to store such liquid solution; and*

42 (3) *batteries used in electronic cigarettes and the appropriate*
43 *charging devices for such batteries, if applicable.*

1 Sec. 3. K.S.A. 2024 Supp. 79-3321 is hereby amended to read as
2 follows: 79-3321. It shall be unlawful for any person:

3 (a) Except as otherwise specifically provided by this act, to possess,
4 sell, transport, import, distribute, wholesale or manufacture more than
5 1,000 cigarettes without the required tax indicia being affixed as ~~herein~~
6 ~~provided~~ *required by this act*.

7 (b) To mutilate or attach to any individual package of cigarettes any
8 stamp that has in any manner been mutilated or that has been heretofore
9 attached to a different individual package of cigarettes or to have in
10 possession any stamps so mutilated.

11 (c) To prevent the director or any officer or agent authorized by law,
12 to make a full inspection for the purpose of this act, of any place of
13 business and all premises connected thereto where cigarettes are or may be
14 manufactured, sold, distributed, or given away.

15 (d) To use any artful device or deceptive practice to conceal any
16 violation of this act or to mislead the director or officer or agent authorized
17 by law in the enforcement of this act.

18 (e) Who is a dealer to fail to produce on demand of the director or
19 any officer or agent authorized by law any records or invoices required to
20 be kept by such person.

21 (f) Knowingly to make, use, or present to the director or agent thereof
22 any falsified invoice or falsely state the nature or quantity of the goods
23 invoiced.

24 (g) Who is a dealer to fail or refuse to keep and preserve for the time
25 and in the manner required by this act all the records required by this act to
26 be kept and preserved.

27 (h) To wholesale cigarettes to any person, other than a manufacturer's
28 salesperson, retail dealer or wholesaler who is:

29 (1) Duly licensed by the state where such manufacturer's salesperson,
30 retail dealer or wholesaler is located; or

31 (2) exempt from state licensing under applicable state or federal laws
32 or court decisions including any such person operating as a retail dealer
33 upon land allotted to or held in trust for an Indian tribe recognized by the
34 United States bureau of Indian affairs.

35 (i) To have in possession any evidence of tax indicia ~~provided for~~
36 ~~herein~~ *required by this act* and not purchased from the director.

37 (j) To fail or refuse to permit the director or any officer or agent
38 authorized by law to inspect a carrier transporting cigarettes.

39 (k) To vend small cigars, or any products so wrapped as to be
40 confused with cigarettes, from a machine vending cigarettes, nor shall a
41 vending machine be so built to vend cigars or products that may be
42 confused with cigarettes, be attached to a cigarette vending machine. *This*
43 *subsection shall not apply to the sale of electronic cigarettes from a*

1 *vending machine.*

2 (l) To sell, furnish or distribute cigarettes, electronic cigarettes or
3 tobacco products to any person under 21 years of age.

4 (m) Who is under 21 years of age to purchase or attempt to purchase
5 cigarettes, electronic cigarettes or tobacco products.

6 (n) Who is under 21 years of age to possess or attempt to possess
7 cigarettes, electronic cigarettes or tobacco products.

8 (o) To sell cigarettes to a retailer or at retail that do not bear Kansas
9 tax indicia or upon which the Kansas cigarette tax has not been paid.

10 (p) To sell cigarettes without having a license for such sale as
11 ~~provided herein~~ *required by this act.*

12 (q) To sell a vending machine without having a vending machine
13 distributor's license.

14 (r) Who is a retail dealer to fail to post and maintain in a conspicuous
15 place in the dealer's establishment the following notice: "By law,
16 cigarettes, electronic cigarettes and tobacco products may be sold only to
17 persons 21 years of age and older."

18 (s) To distribute samples within 500 feet of any school when such
19 facility is being used primarily by persons under 21 years of age unless the
20 sampling is:

21 (1) In an area to which persons under 21 years of age are denied
22 access;

23 (2) in or at a retail location where cigarettes and tobacco products are
24 the primary commodity offered for sale at retail; or

25 (3) at or adjacent to an outdoor production, repair or construction site
26 or facility.

27 (t) To sell cigarettes, electronic cigarettes or tobacco products by
28 means of a vending machine, including vending machines that sell
29 packaged, single cigarettes, in any establishment, or portion of an
30 establishment, which is open to minors, except that this subsection shall
31 not apply to:

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

36 (2) the installation and use of a vending machine in a commercial
37 building or industrial plant, or portions thereof, where the public is not
38 customarily admitted and where machines are intended for the sole use of
39 adult employees employed in the building or plant.

40 (u) To sell cigarettes, electronic cigarettes or tobacco products by
41 means of a self-service display in any establishment, except that the
42 provisions of this subsection shall not apply to:

43 (1) A vending machine that is permitted under subsection (t);

1 (2) a self-service display that is located in a tobacco specialty store;
2 or

3 (3) a self-service display located in a facility where the retailer
4 ensures that no person younger than 21 years of age is present or permitted
5 to enter at any time.

6 (v) To sell or distribute in this state; to acquire, hold, own, possess or
7 transport for sale or distribution in this state; or to import or cause to be
8 imported, into this state for sale or distribution in this state:

9 (1) Any cigarettes the package of which:

10 (A) Bears any statement, label, stamp, sticker or notice indicating that
11 the manufacturer did not intend the cigarettes to be sold, distributed or
12 used in the United States, including, but not limited to, labels stating "For
13 Export Only," "U.S. Tax-Exempt," "For Use Outside U.S." or similar
14 wording; or

15 (B) does not comply with:

16 (i) All requirements imposed by or pursuant to federal law regarding
17 warnings and other information on packages of cigarettes manufactured,
18 packaged or imported for sale, distribution or use in the United States,
19 including but not limited to the precise warning labels specified in the
20 federal cigarette labeling and advertising act, 15 U.S.C. § 1333; and

21 (ii) all federal trademark and copyright laws;

22 (2) any cigarettes imported into the United States in violation of 26
23 U.S.C. § 5754 or any other federal law, or federal regulations
24 implementing such laws;

25 (3) any cigarettes that such person otherwise knows or has reason to
26 know the manufacturer did not intend to be sold, distributed or used in the
27 United States; or

28 (4) any cigarettes for which there has not been submitted to the
29 secretary of the U.S. department of health and human services the list or
30 lists of the ingredients added to tobacco in the manufacture of such
31 cigarettes required by the federal cigarette labeling and advertising act, 15
32 U.S.C. § 1335a.

33 (w) To alter the package of any cigarettes, prior to sale or distribution
34 to the ultimate consumer, so as to remove, conceal or obscure:

35 (1) Any statement, label, stamp, sticker or notice described in
36 subsection (v); or

37 (2) any health warning that is not specified in, or does not conform
38 with, the requirements of, the federal cigarette labeling and advertising act,
39 15 U.S.C. § 1333.

40 (x) To affix any stamp required pursuant to K.S.A. 79-3311, and
41 amendments thereto, to the package of any cigarettes described in
42 subsection (v) or altered in violation of subsection (w).

43 (y) To possess, sell, transport, import, distribute, wholesale or

1 manufacture cigarettes, smokeless tobacco or roll-your-own tobacco in
2 violation of K.S.A. 50-6a01 et seq., and amendments thereto.

3 (z) To sell cigarettes, smokeless tobacco or roll-your-own tobacco in
4 any manner that is not a direct, face-to-face exchange between the retailer
5 and the consumer, except:

6 (1) Mail-order sales, which shall not include mail-order redemption
7 coupons and distribution of free samples through the mail;

8 (2) vending machines as provided in subsection (t); and

9 (3) self-service displays as provided in subsection (u).

10 Sec. 4. K.S.A. 79-3399 is hereby amended to read as follows: 79-
11 3399. (a) ~~On and after July 1, 2017,~~ A tax is hereby imposed upon the
12 privilege of selling or dealing in electronic cigarettes in this state by any
13 person engaged in business as a distributor thereof, at the rate of \$.05 per
14 milliliter of consumable material for electronic cigarettes and a
15 proportionate tax at the like rate on all fractional parts thereof. For
16 electronic cigarettes in the possession of retail dealers *or vending machine*
17 *operators* for which tax has not been paid, tax shall be imposed under this
18 subsection at the earliest time the retail dealer *or vending machine*
19 *operator*:

20 (1) Brings or causes to be brought into this state from without the
21 state electronic cigarettes for sale;

22 (2) makes, manufactures or fabricates electronic cigarettes in this
23 state for sale in this state; or

24 (3) sells electronic cigarettes to consumers within this state.

25 (b) *As used in this section*, "consumable material" means any liquid
26 solution or other material that is depleted as an electronic cigarette is used.

27 (c) The secretary of revenue shall adopt rules and regulations to
28 implement the provisions of this section.

29 Sec. 5. K.S.A. 79-3301, 79-3303 and 79-3399 and K.S.A. 2024 Supp.
30 79-3321 are hereby repealed.

31 Sec. 6. This act shall take effect and be in force from and after its
32 publication in the statute book.