

SENATE BILL No. 355

By Committee on Federal and State Affairs

1-21

1 AN ACT concerning cigarettes, electronic cigarettes and tobacco products;
2 regulating the manufacture, wholesale and distribution of electronic
3 cigarettes; requiring all wholesales of cigarettes, electronic cigarettes,
4 smokeless tobacco and roll-your-own tobacco to be transacted between
5 licensees under the Kansas cigarette and tobacco product act; requiring
6 the licensure of electronic cigarette manufacturers; amending K.S.A.
7 79-3301, 79-3302, 79-3333, 79-3334 and 79-3373 and repealing the
8 existing sections.
9

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

11 New Section 1. (a) Every electronic cigarette manufacturer that
12 engages in the sale of electronic cigarettes in this state either directly or
13 through a distributor, retailer or a similar intermediary shall obtain an
14 electronic cigarette manufacturer license from the director. Every
15 application for such license shall be made on a form prescribed by the
16 director and shall state:

- 17 (1) The name and address of the applicant;
18 (2) if the applicant is a firm, partnership or association, the name and
19 address of each member thereof;
20 (3) if the applicant is a corporation, the name and address of each
21 corporate officer;
22 (4) the address of the applicant's principal place of business;
23 (5) the place where the business to be licensed is to be conducted; and
24 (6) such other information as the director may require for the purpose
25 of the administration of this act.

26 (b) A person outside this state who ships or transports electronic
27 cigarettes to distributors or retailers in this state, to be sold by such
28 distributors or retailers, may make application for license as an electronic
29 cigarette manufacturer, be granted such a license by the director and
30 thereafter be subject to all the provisions of this act and entitled to act as a
31 licensed electronic cigarette manufacturer if the person files with the
32 application proof that the person has appointed the secretary of state as the
33 person's agent for service of process relating to any matter or issue arising
34 under this act.

35 (c) Each application for an electronic cigarette manufacturer's license
36 shall be accompanied by a fee of \$500. The application shall also be

1 accompanied by a corporate surety bond issued by a surety company
2 authorized to do business in this state, conditioned for the payment when
3 due of all taxes, penalties and accrued interest that may be due the state.
4 The bond shall be in an amount to be determined by the director and in a
5 form prescribed by the director. Whenever it is the opinion of the director
6 that the bond given by a licensee is inadequate in amount to fully protect
7 the state, the director shall require an additional bond in such amount as
8 the director deems sufficient. A separate application for a license shall be
9 made for each place of business at which an electronic cigarette
10 manufacturer proposes to engage in business under this act, but an
11 applicant may provide one bond in an amount determined by the director
12 for all applications made by such applicant. A person applying for a license
13 between June 30 and December 31 of any year shall be required to pay
14 only $\frac{1}{2}$ of the license fee.

15 (d) Upon receipt of an application in proper form and payment of the
16 required license fee, the director shall, unless otherwise provided by this
17 act, issue a license to the applicant, which shall permit the applicant to
18 engage in business as an electronic cigarette manufacturer at the place of
19 business shown on the license. Each license shall expire on December 31
20 following the date such license is issued unless such license is revoked by
21 the director or the business is transferred. In either case, the holder of the
22 license shall immediately surrender such license to the director. Each
23 license shall be prominently displayed on the premises named on the
24 license. No license shall be transferable to any other person.

25 (e) This section shall be a part of and supplemental to the Kansas
26 cigarette and tobacco products act.

27 Sec. 2. K.S.A. 79-3301 is hereby amended to read as follows: 79-
28 3301. As used in K.S.A. 79-3301 et seq., and amendments thereto:

29 (a) "Act" means the Kansas cigarette and tobacco products act.

30 (b) "Carrier" means one who transports cigarettes from a
31 manufacturer to a wholesale dealer or from one wholesale dealer to
32 another.

33 (c) "Carton" means the container used by the manufacturer of
34 cigarettes in which no more than 10 packages of cigarettes are placed prior
35 to shipment from such manufacturer.

36 (d) "Cigarette" means any roll for smoking, made wholly or in part of
37 tobacco, irrespective of size or shape, and irrespective of tobacco being
38 flavored, adulterated or mixed with any other ingredient if the wrapper is
39 in greater part made of any material except tobacco.

40 (e) "Conspicuous location or place" means a location or place
41 available to the general public.

42 (f) "Consumer" means the person purchasing or receiving cigarettes
43 or tobacco products for final use.

1 (g) "Contracting entity" means any public or private person, firm or
2 entity that has entered into a contract with the secretary of revenue to
3 provide services.

4 (h) "Dealer" means any person who engages in the sale or
5 manufacture of cigarettes, tobacco products or electronic cigarettes in the
6 state of Kansas, and who is required to be licensed under the provisions of
7 this act.

8 (i) "Dealer establishment" means any location or premises, other than
9 vending machine locations, at or from which cigarettes, tobacco products
10 or electronic cigarettes are sold, and where records are kept.

11 (j) "Director" means the director of taxation.

12 (k) "Distributor" means:

13 (1) Any person engaged in the business of selling tobacco products
14 *or electronic cigarettes* in this state who brings, or causes to be brought,
15 into this state from outside the state any tobacco products *or electronic*
16 *cigarettes* for sale;

17 (2) any person who makes, manufactures, fabricates or stores tobacco
18 products *or electronic cigarettes* in this state for sale in this state; or

19 (3) any person engaged in the business of selling tobacco products *or*
20 *electronic cigarettes* outside this state who ships or transports tobacco
21 products *or electronic cigarettes* to any person in the business of selling
22 tobacco products *or electronic cigarettes* in this state.

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

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

28 (n) *"Electronic cigarette manufacturer" means any person engaged in*
29 *the business of manufacturing, fabricating, assembling, processing or*
30 *labeling electronic cigarettes for sale in this state.*

31 (o) "Importer" means the same as provided in 26 U.S.C. § 5702(k).

32 ~~(p)~~(p) "License" means the privilege of a licensee to sell cigarettes or
33 tobacco products in the state of Kansas, and the written evidence of such
34 authority or privilege as issued by the director.

35 ~~(q)~~(q) "Licensee" means any person holding a current license issued
36 pursuant to this act.

37 ~~(r)~~(r) "Manufacturer" means the same as provided in 26 U.S.C. §
38 5702(d).

39 ~~(s)~~(s) "Manufacturer's salesperson" means a person employed by a
40 cigarette manufacturer who sells cigarettes, manufactured by such
41 employer and procured from wholesale dealers.

42 ~~(t)~~(t) (1) "Package" means a container in which no more than 25
43 individual cigarettes are wrapped and sealed by the manufacturer of

1 cigarettes prior to shipment to a wholesale dealer; *and*

2 (2) for the purposes of K.S.A. 79-3321(v) and (w), and amendments
3 thereto, "package" means the same as provided in 15 U.S.C. § 1332(4).

4 ~~(t)~~(u) "Person" means any individual, partnership, society,
5 association, joint-stock company, corporation, estate, receiver, trustee,
6 assignee, referee or any other person acting in a fiduciary or representative
7 capacity whether appointed by a court or otherwise and any combination
8 of individuals.

9 ~~(u)~~(v) "Received" means the coming to rest of cigarettes for sale by
10 any dealer in the state of Kansas.

11 ~~(v)~~(w) "Retail dealer" or "retailers" means a person, other than a
12 vending machine operator, in possession of cigarettes or electronic
13 cigarettes for the purpose of sale to a consumer.

14 ~~(w)~~(x) "Sale" means any transfer of title or possession or both,
15 exchange, barter, distribution or gift of cigarettes, tobacco products or
16 electronic cigarettes, with or without consideration.

17 ~~(x)~~(y) "Sample" means cigarettes or tobacco products distributed to
18 members of the general public at no cost for purposes of promoting the
19 product.

20 ~~(y)~~(z) "Self-service display" means a display that contains cigarettes
21 or tobacco products and is located in an area openly accessible to a retail
22 dealer's consumers, and from which such consumers can readily access
23 cigarettes or tobacco products without the assistance of a salesperson, and
24 which is knowingly utilized by the retail dealer to market and sell
25 cigarettes and tobacco products to consumers. A display case that holds
26 cigarettes or tobacco products behind locked doors does not constitute a
27 self-service display.

28 ~~(z)~~(aa) "Stamps" means tax indicia applied by means of heat process,
29 pressure or any other process approved by the director.

30 ~~(aa)~~(bb) "Tax indicia" means visible evidence of tax payment in the
31 form of stamps.

32 ~~(bb)~~(cc) "Tobacco products" means cigars, cheroots, stogies,
33 periques; granulated, plug cut, crimp cut, ready rubbed and other smoking
34 tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and
35 other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and
36 sweepings of tobacco, and other kinds and forms of tobacco, prepared in
37 such manner as to be suitable for chewing or smoking in a pipe or
38 otherwise, or both for chewing and smoking. Tobacco products do not
39 include cigarettes.

40 ~~(ee)~~(dd) "Tobacco specialty store" means a dealer establishment that
41 derives at least 65% of such dealer establishment's revenue from cigarettes
42 or tobacco products.

43 ~~(dd)~~(ee) "Vending machine" means any coin operated machine,

1 contrivance or device, by means of which merchandise may be sold.

2 ~~(ee)~~(ff) "Vending machine distributor" means any person who sells
3 cigarette vending machines to a vending machine operator operating
4 vending machines in the state of Kansas.

5 ~~(ff)~~(gg) "Vending machine operator" means any person who places a
6 vending machine, owned, leased or operated by such person, at locations
7 where cigarettes are sold from such vending machine. The owner or lessee
8 of the premises upon which a vending machine is placed shall not be
9 considered the operator of the machine, nor shall the owner or lessee, or
10 any employee or agent of the owner or lessee be considered an authorized
11 agent of the vending machine operator, if the owner or lessee does not own
12 or lease the machine and the owner's or lessee's sole remuneration from the
13 machine is a flat rental fee or commission based upon the number or value
14 of cigarettes sold from the machine, or a combination of both.

15 ~~(gg)~~(hh) "Wholesale dealer" means any person who sells cigarettes to
16 other wholesale dealers, retail dealers, vending machine operators and
17 manufacturer's salespersons for the purpose of resale in the state of
18 Kansas.

19 ~~(hh)~~(ii) "Wholesale sales price" means the original net invoice price
20 for which a manufacturer sells a tobacco product to a distributor, as shown
21 by the manufacturer's original invoice.

22 Sec. 3. K.S.A. 79-3302 is hereby amended to read as follows: 79-
23 3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309, 79-3310,
24 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-3322, 79-
25 3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3333, 79-3335, 79-3371,
26 79-3373, 79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-
27 3388, 79-3391, 79-3392, 79-3393, 79-3394 and K.S.A. 79-3311a, 79-
28 3336, 79-3395 through 79-3399, and 79-33,100, and amendments thereto,
29 *and section 1, and amendments thereto*, shall be known and may be cited
30 as the Kansas cigarette and tobacco products act.

31 (b) It is the purpose and intent of this act to regulate the sale of
32 cigarettes and tobacco products in this state and to impose a tax thereon.

33 Sec. 4. K.S.A. 79-3333 is hereby amended to read as follows: 79-
34 3333. (a) Each person engaged in the business of selling cigarettes,
35 *electronic cigarettes*, smokeless tobacco or roll-your-own tobacco to
36 persons who reside in Kansas shall obtain a license as provided by the
37 Kansas cigarette and tobacco products act.

38 (b) All cigarettes sold to persons who reside in Kansas shall have a
39 valid Kansas cigarette tax stamp affixed to each package.

40 (c) All retail dealers, whether located in or outside the state of
41 Kansas, shall have a registration certificate as provided in K.S.A. 79-3608,
42 and amendments thereto, and be subject to the provisions of the Kansas
43 retailers' sales tax act. Each licensee or other person selling cigarettes,

1 *electronic cigarettes*, smokeless tobacco or roll-your-own tobacco over the
2 internet, telephone or other mail order transaction shall file all sales tax
3 returns and remit taxes owed pursuant to K.S.A. 79-3607, and
4 amendments thereto.

5 (d) All sales transactions over the internet, telephone or other mail
6 order transaction shall not be completed, unless, before each delivery of
7 cigarettes, *electronic cigarettes*, smokeless tobacco or roll-your-own
8 tobacco is made, whether through the mail, through a transportation
9 company or any other delivery system, the seller has obtained from the
10 purchaser a certification that includes:

11 (1) A reliable confirmation that the purchaser is at least the legal
12 minimum age to purchase cigarettes, *electronic cigarettes*, smokeless
13 tobacco or roll-your-own tobacco; and

14 (2) a written statement signed by the purchaser that includes the
15 following:

16 (A) The cigarettes, *electronic cigarettes* or tobacco products
17 purchased are not intended for consumption by an individual who is
18 younger than the legal minimum age to purchase cigarettes, *electronic*
19 *cigarettes*, smokeless tobacco or roll-your-own tobacco; ~~and a written~~
20 ~~statement signed by the purchaser that certifies~~

21 (B) ~~the address provided is the purchaser's address and that;~~

22 (C) the purchaser is at least the minimum legal age to purchase
23 cigarettes, *electronic cigarettes*, smokeless tobacco or roll-your-own
24 tobacco. ~~Such statement shall also confirm: (1) That;~~

25 (D) the purchaser understands that signing another person's name to
26 such certification is illegal; ~~(2) that~~

27 (E) the sale of cigarettes, *electronic cigarettes*, smokeless tobacco or
28 roll-your-own tobacco to individuals under the legal minimum purchase
29 age is illegal; and ~~(3) that~~

30 (F) the purchase of cigarettes, *electronic cigarettes*, smokeless
31 tobacco or roll-your-own tobacco by individuals under the legal minimum
32 purchase age is illegal under the laws of Kansas.

33 (e) The retail cigarette dealer shall verify the information contained in
34 the certification provided by the purchaser against a commercially
35 available database of governmental records, or obtain a photocopy or other
36 image of the valid, government-issued identification stating the date of
37 birth or age of the purchaser.

38 (f) All invoices, bills of lading, sales receipts and any other document
39 related to the sale of cigarettes, *electronic cigarettes*, smokeless tobacco or
40 roll-your-own tobacco through the internet or other mail order transaction
41 shall contain the current, valid retailer Kansas cigarette, *electronic*
42 *cigarette*, smokeless tobacco or roll-your-own tobacco dealer license
43 number, Kansas sales tax registration number, business name and address

1 of the seller.

2 (g) All packages of cigarettes shipped from a cigarette dealer to
3 purchasers who reside in Kansas shall clearly print the package with the
4 word "CIGARETTES" on all sides of the package. In addition, such
5 package shall contain an externally visible and easily legible notice located
6 on the same side of the package as the address to which the package is
7 delivered as follows:

8 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM
9 A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU
10 RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL
11 LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX
12 COLLECTION AGENCY, INCLUDING YOUR NAME AND
13 ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL
14 APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."

15 (h) (1) Each retail dealer that sells cigarettes to Kansas consumers
16 without indicia of Kansas tax shall file an annual statement for each
17 consumer to the department of revenue on such forms as are provided or
18 approved by the department to the director for all Kansas consumers by
19 March 1 of each year showing such information as the Kansas department
20 of revenue shall require by rules and regulations, including the:

21 (A) Name and address of such Kansas consumer;

22 (B) the date of purchase; and

23 (C) the total number of packs of cigarettes purchased by such Kansas
24 consumer made from the retail dealer in the previous calendar year.

25 (2) The director may require any retail dealer that sells cigarettes to
26 Kansas consumers without indicia of Kansas tax of more than \$100,000 in
27 a calendar year to file the annual statement described in paragraph (1) by
28 electronic format, including magnetic media or another machine-readable
29 form for that year.

30 (3) Failure to file the annual statement required in paragraph (1) shall
31 subject the retailer dealer to a penalty of \$10 for each consumer that
32 should have been included in such annual statement, unless the retailer
33 shows reasonable cause for such failure.

34 (i) Except as otherwise provided by this act, a violation of subsection
35 (a), (d), (e) ~~or~~, (h) *or* (l) is a:

36 (1) Class A misdemeanor for a first violation, and the offender shall
37 be fined not less than \$1,000 nor more than \$2,500 upon a first conviction;

38 (2) severity level 6, nonperson felony for a second violation, and the
39 offender shall be fined not less than \$50,000 nor more than \$100,000 upon
40 a second conviction; and

41 (3) severity level 6, nonperson felony for a third and all subsequent
42 violations, and the offender shall be fined \$100,000 upon a third and all
43 subsequent convictions.

1 (j) Each separate violation of any provision of this section, other than
2 the provisions of subsection (a), (d), (e)-~~or~~, (h) *or* (l) shall be a class B
3 misdemeanor, and the offender shall be fined not less than \$500 nor more
4 than \$1,000.

5 (k) The secretary of revenue or the secretary's authorized agent may
6 refer such evidence as may be available concerning violations of this act or
7 any rules and regulations or order hereunder to the attorney general or the
8 proper county or district attorney, who may, in the prosecutor's discretion,
9 with or without such a reference, institute the appropriate criminal
10 proceedings under this act. Upon receipt of such reference, the attorney
11 general or the county attorney or district attorney may request that a duly
12 employed attorney of the department of revenue prosecute or assist in the
13 prosecution of such violation or violations on behalf of the state. Upon
14 approval of the secretary or the secretary's authorized agent, such
15 employee shall be appointed as a special prosecutor for the attorney
16 general or the county attorney or district attorney to serve without
17 compensation from the attorney general or the county attorney or district
18 attorney. Such special prosecutor shall have all the powers and duties
19 prescribed by law for assistant attorneys general or assistant county or
20 district attorneys and such other powers and duties as are lawfully
21 delegated to such special prosecutor by the attorney general or the county
22 attorney or district attorney. If an attorney employed by the secretary or
23 secretary's authorized agent acts as a special prosecutor, the secretary may
24 pay extradition and witness expenses associated with the case.

25 (l) *(1) All wholesale dealers, distributors and retailers shall only*
26 *purchase cigarettes, electronic cigarettes, smokeless tobacco and roll-*
27 *your-own tobacco from a manufacturer, electronic cigarette manufacturer,*
28 *wholesale dealer or distributor that holds a valid license issued pursuant*
29 *to this act and shall verify that the seller holds such valid license prior to*
30 *completing the transaction.*

31 *(2) All manufacturers, electronic cigarette manufacturers, wholesale*
32 *dealers and distributors shall only sell cigarettes, electronic cigarettes,*
33 *smokeless tobacco and roll-your-own tobacco to a wholesale dealer,*
34 *distributor or retailer that holds a valid license issued pursuant to this act*
35 *and shall verify that the purchaser holds such valid license prior to*
36 *completing the transaction.*

37 (m) The provisions of this section shall be a part of and supplemental
38 to the Kansas cigarette and tobacco products act.

39 Sec. 5. K.S.A. 79-3334 is hereby amended to read as follows: 79-
40 3334. (a) ~~The Kansas department of revenue shall publish a list of active~~
41 ~~cigarette and tobacco licensees~~ *persons that hold an active license issued*
42 *pursuant to this act and shall update such list monthly.*

43 (b) ~~The list of active cigarette and tobacco licensees published as~~

1 ~~provided in~~ under subsection (a) shall contain the following information:

2 (1) ~~The name of the county name;~~ where such licensee is located;

3 (2) ~~the name of the owner;~~ of such licensee;

4 (3) ~~the name and address of the licensee business name, address;~~

5 (4) the license type; and

6 (5) the license number.

7 (c) *The department of revenue shall publish a list of those persons*
8 *holding a license issued pursuant to this act but whose license is*
9 *suspended or revoked. Such list shall include the date such suspension or*
10 *revocation commenced and the date of anticipated reinstatement, if any.*

11 (d) The provisions of this section shall be a part of and supplemental
12 to the Kansas cigarette and tobacco products act.

13 Sec. 6. K.S.A. 79-3373 is hereby amended to read as follows: 79-
14 3373. (a) No person shall engage in the business of selling or dealing in
15 tobacco products *or electronic cigarettes* as a distributor in this state
16 without first having received a license from the director. Every application
17 for such license shall be made on a form prescribed by the director and
18 shall state:

19 (1) The name and address of the applicant;

20 (2) if the applicant is a firm, partnership or association, the name and
21 address of each of ~~its members~~ *member thereof*;

22 (3) if the applicant is a corporation, the name and address of each of
23 ~~its officers~~ *corporate officer*;

24 (4) the address of ~~its~~ *the applicant's* principal place of business;

25 (5) the place where the business to be licensed is to be conducted; and

26 (6) such other information as the director may require for the purpose
27 of the administration of this act.

28 (b) A person outside this state who ships or transports tobacco
29 products *or electronic cigarettes* to retailers in this state, to be sold by
30 those retailers, may make application for license as a distributor, be
31 granted such a license by the director and thereafter be subject to all the
32 provisions of this act and entitled to act as a licensed distributor if the
33 person files with the application proof that the person has appointed the
34 secretary of state as the person's agent for service of process relating to any
35 matter or issue arising under this act.

36 Sec. 7. K.S.A. 79-3301, 79-3302, 79-3333, 79-3334 and 79-3373 are
37 hereby repealed.

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