

SENATE BILL No. 455

By Committee on Judiciary

2-11

Proposed Amendment for SB 455
For Committee on Judiciary
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Office of Revisor of Statutes
February 18, 2016



1 AN ACT concerning the Kansas cigarette and tobacco products act;
2 relating to definitions, licenses and permits, suspension or revocation of
3 a license, stamps, records required of dealer, unlawful acts, infractions,
4 penalties, contraband goods, sale of cigarettes, counterfeit cigarettes,
5 disposition of revenues, administrative fines, application of certain laws
6 to taxes under act; amending K.S.A. 79-3304, 79-3309, 79-3323, 79-
7 3324a and 79-3378 and K.S.A. 2015 Supp. 50-6a07, 79-3301, 79-3302,
8 79-3303, 79-3311, 79-3312, 79-3316, 79-3321, 79-3322, 79-3333, 79-
9 3335, 79-3387, 79-3391, 79-3392 and 79-3393 and repealing the
10 existing sections.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. Notwithstanding any other provision in this act, any
14 person who purchases, possesses, uses or consumes more than 400
15 cigarettes in this state without the required tax indicia being affixed as
16 herein provided shall be liable for the tax imposed by this act.

17 New Sec. 2. For the purpose of determining whether a conviction is a
18 first, second, third or subsequent conviction in sentencing under this act:

19 (a) "Conviction" includes being convicted of a violation of this act or
20 entering into a diversion or deferred judgment agreement in lieu of further
21 criminal proceedings on a complaint alleging a violation of this act;

22 (b) "conviction" includes being convicted of a violation of a law of
23 another state or the United States, which prohibits the acts that this act
24 prohibits or entering into a diversion or deferred judgment agreement in
25 lieu of further criminal proceedings in a case alleging a violation of such
26 law;

27 (c) only convictions occurring in the immediately preceding five
28 years beginning on July 1, 2016, shall be taken into account, but the court
29 may consider other prior convictions in determining the sentence to be
30 imposed within the limits provided for a first, second, third or subsequent
31 offense, whichever is applicable; and

32 (d) it is irrelevant whether an offense occurred before or after
33 conviction for a previous offense.

34 Sec. 3. K.S.A. 2015 Supp. 79-3301 is hereby amended to read as
35 follows: 79-3301. As used in K.S.A. 79-3301 et seq., and amendments
36 thereto:

1 serial number of vending machines that become inoperative or that the
2 operator disposes of, sells, acquires or brings into service in this state as
3 additional machines.

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

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

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

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

35 Sec. 6. K.S.A. 79-3304 is hereby amended to read as follows: 79-
36 3304. (a) The license fee for each biennium or portion thereof shall be as
37 follows:

38 (1) For retail dealer's license, \$25 for each dealer establishment.

39 (2) For retailer's license on railroad or sleeping cars, \$50. Only one
40 retail license need be obtained by each railroad or sleeping car company to
41 permit the sale of cigarettes on any or all of its cars within the state.

42 (3) For show, carnival or catering license, \$50 for each concession.

43 (4) For resident retail dealer's temporary license for a place of

1 business of a temporary nature, \$2 for each seven days or portion thereof.

2 (5) For wholesale dealer's license, \$50 for each dealer establishment.
3 No wholesale dealer's license shall be issued until the person applying
4 therefor has filed with the director a bond payable to the state of Kansas in
5 such an amount as shall be fixed by the director, but in no event less than
6 \$1,000, with a corporate surety authorized to do business in the state of
7 Kansas, and approved by the director. If a wholesale dealer is unable to
8 secure a corporate surety bond, the director may issue a license to such
9 wholesale dealer, upon the wholesale dealer furnishing a personal bond
10 meeting the approval of the director. Such bond shall be conditioned on the
11 wholesale dealer's compliance with all the provisions of this act during the
12 license period.

13 (6) For vending machine distributor's license, \$50.

14 (7) For manufacturer's salesperson license, \$20 for each salesperson.
15 The manufacturer's salesperson shall, with respect to each sale made to a
16 retail dealer, make and deliver to the retail dealer a true invoice wherein
17 such salesperson shall insert the name of the wholesale dealer from whom
18 such salesperson secured such cigarettes, together with such salesperson's
19 own name and the name of the retail dealer purchasing the cigarettes.

20 (8) For vending machine operator's license, no fee.

21 (9) For vending machine permit, \$25 for each permit.

22 ~~(b) An application for any license required under the provisions of~~
23 ~~this act may be refused to: (1) A person who is not of good character and~~
24 ~~reputation in the community in which such person resides; or (2) a person~~
25 ~~who has been convicted of a felony or of any crime involving moral~~
26 ~~turpitude or of the violation of any law of any state or the United States~~
27 ~~pertaining to cigarettes or tobacco products and who has not completed the~~
28 ~~sentence, parole, probation or assignment to a community correctional~~
29 ~~services program imposed for any such conviction within two years~~
30 ~~immediately preceding the date of making application for any of such~~
31 ~~licenses. The director shall not issue or renew a license to any person~~
32 ~~who:~~

may refuse to

on or after January 1, 2013,

33 (1) *Has been convicted of a felony under the laws of this state or any*
34 *other state or the United States;*

35 (2) *is not current in the payment of any tax or fine under this act;*

36 (3) *has had a cigarette or tobacco license revoked in this state or any*
37 *other state;*

38 (4) *is not at least 18 years of age;*

39 (5) *intends to carry on the business as an agent of another;*

40 (6) *at the time of application for renewal of any license issued under*
41 *this act, would not be eligible for the license upon first application;*

42 (7) *does not own the premises for which a license is sought, or does*
43 *not, at the time of the application, have a written lease;*

1 (8) *has been convicted of a crime involving any tax under this act;*

2 (9) *is a corporation in which any officer, manager or director thereof,*
3 *or any stockholder owning in the aggregate more than 5% of the common*
4 *or preferred stock of such corporation, has been an officer, manager or*
5 *director or stockholder owning in the aggregate more than 5% of the*
6 *common or preferred stock, of a corporation which:*

7 (A) *Has had a license revoked under this act;*

8 (B) *has been convicted of a tax crime under this act; or*

9 (C) *would not qualify as a person under this act; or*

10 (10) *is a limited liability company in which any officer, manager or*
11 *director thereof, or any member owning in the aggregate more than 5% of*
12 *the limited liability company, has been an officer, manager or director or*
13 *stockholder owning in the aggregate more than 5% of the common or*
14 *preferred stock, of a corporation which:*

15 (A) *Has had a license revoked under this act;*

16 (B) *has been convicted of a tax crime under this act; or*

17 (C) *would not qualify as a person under this act.*

18 Sec. 7. K.S.A. 79-3309 is hereby amended to read as follows: 79-
19 3309. (a) ~~Whenever the director has reason to believe that any person~~
20 ~~licensed under this act has violated any of the provisions of this act, The~~
21 ~~director shall notify the person, by certified mail of, the director's intention~~
22 ~~to suspend or revoke the person's license or licenses of any person~~
23 ~~licensed under this act whenever the director has reason to believe such~~
24 ~~person has violated any provision of this act in any of the following ways:~~

25 (1) *Has been convicted of a felony under the laws of this state or any*
26 *other state or the United States;*

27 (2) *is not current in the payment of any tax or fine under this act;*

28 (3) *has had a cigarette or tobacco license revoked in this state or any*
29 *other state;*

30 (4) *is not at least 18 years of age;*

31 (5) *intends to carry on the business as an agent of another;*

32 (6) *at the time of application for renewal of any license issued under*
33 *this act, would not be eligible for the license upon first application;*

34 (7) *does not own the premises for which a license is sought, or does*
35 *not, at the time of the application, have a written lease;*

36 (8) *has been convicted of a crime involving any tax under this act;*

37 (9) *in the case of a corporation, any officer, manager or director*
38 *thereof, or any stockholder owning in the aggregate more than 5% of the*
39 *common or preferred stock of such corporation, has been an officer,*
40 *manager or director or stockholder owning in the aggregate more than*
41 *5% of the common or preferred stock, of a corporation which:*

42 (A) *Has had a license revoked under this act;*

43 (B) *has been convicted of a tax crime under this act; or*

on or after January 1, 2013,

(C) would not qualify as a person under this act; or

(10) in the case of a limited liability company, any officer, manager or director thereof, or any member owning in the aggregate more than 5% of the limited liability company, has been an officer, manager or director or stockholder owning in the aggregate more than 5% of the common or preferred stock, of a corporation which:

(A) Has had a license revoked under this act;

(B) has been convicted of a tax crime under this act; or

(C) would not qualify as a person under this act.

(b) Within 10 days after the mailing of the notice, the person may request a hearing in writing before the director. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If, after such hearing, it appears to the satisfaction of the director that the person has violated any of the provisions of this act, the director is hereby authorized and empowered to suspend or revoke the person's license or licenses and may in addition deny the application of the person for a license or licenses for a portion of the succeeding calendar year for such period as the director determines is necessary, but in no case for a period ending more than one year following the date upon which the license or licenses were suspended or revoked. The suspension or revocation of a vending machine operator's master license shall suspend or revoke all vending machine permits issued to the vending machine operator for the term of the license suspension or revocation.

(b)(c) If a person continues to engage in activities requiring a license under this act after having notice or knowledge of the suspension or revocation of the person's license or licenses or after becoming more than 10 days delinquent in filing a bond payable to the state of Kansas as required by the director, payment of any fine, tax, penalty or interest imposed pursuant to this act, the state shall be entitled, in any proceedings brought for such purposes, to have an order and judgment restraining and enjoining such unlawful sale and no bond shall be required for the issuance of any such restraining order or injunction.

Sec. 8. K.S.A. 2015 Supp. 79-3311 is hereby amended to read as follows: 79-3311. The director shall design and designate indicia of tax payment to be affixed to each package of cigarettes as provided by this act. ~~The director shall sell water applied stamps only to licensed wholesale dealers in the amounts of 1,000 or multiples thereof. Stamps applied by the heat process shall be sold only in amounts of 30,000 or multiples thereof, except that such stamps which are suitable for packages containing 25 cigarettes each shall be sold in amounts prescribed by the director. Meter imprints shall be sold only in amounts of 10,000 or multiples thereof. Water applied stamps in amounts of 10,000 or multiples thereof and~~ Stamps applied by the heat process and meter imprints shall be supplied to

1 business in the state, at a central location of the dealer.

2 (e) Every wholesale dealer shall report to the director on or before the
3 10th day of each month, stating the amount of cigarettes sold during the
4 preceding month and the amount of all cigarettes returned to the
5 manufacturer. Any wholesale dealer who refuses any shipment or part of a
6 shipment of unstamped cigarettes or has a shortage in the shipment of
7 cigarettes consigned to such dealer shall in the monthly report next
8 following the refusal or shortage report to the director the number of
9 packages or cartons of cigarettes refused or short and the name of the
10 carrier from whom the cigarettes were refused or shortage occurred. Such
11 report shall be ~~made on forms provided~~ *filed electronically in the manner*
12 *prescribed by the director and shall contain such other information as the*
13 *director may require.*

commencing on or after July 1, 2016,

14 (f) Exemption from payment of cigarette tax on sale of cigarettes
15 made outside the state by any wholesale dealer shall be filed on forms
16 provided by the director.

17 Sec. 11. K.S.A. 2015 Supp. 79-3321 is hereby amended to read as
18 follows: 79-3321. It shall be unlawful for any person:

19 (a) ~~To possess.~~ Except as otherwise specifically provided by this act,
20 *to possess, sell, transport, import, distribute, wholesale or manufacture*
21 *more than 200 1,000* cigarettes without the required tax indicia being
22 affixed as herein provided.

23 (b) To mutilate or attach to any individual package of cigarettes any
24 stamp that has in any manner been mutilated or that has been heretofore
25 attached to a different individual package of cigarettes or to have in
26 possession any stamps so mutilated.

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

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

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

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

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

43 (h) To wholesale cigarettes to any person, other than a manufacturer's

1 United States; or

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

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

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

11 (2) any health warning that is not specified in, or does not conform
12 with, the requirements of, the federal cigarette labeling and advertising act,
13 15 U.S.C. § 1333.

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

17 (y) *To possess, sell, transport, import, distribute, wholesale or*
18 *manufacture cigarettes or tobacco products in violation of K.S.A. 50-6a01*
19 *et seq., and amendments thereto.*

20 (z) *To sell cigarettes or tobacco products in any manner that is not a*
21 *direct, face-to-face exchange between the retailer and the consumer,*
22 *except: (1) Mail-order sales, which shall not include mail-order*
23 *redemption coupons and distribution of free samples through the mail; (2)*
24 *vending machines as provided in subsection (t); and (3) self-service*
25 *displays as provided in subsection (u).*

26 Sec. 12. K.S.A. 2015 Supp. 79-3322 is hereby amended to read as
27 follows: 79-3322. (a) ~~Any person who violates any of the provisions of the~~
28 ~~Kansas cigarette and tobacco products act, Except as otherwise provided in~~
29 ~~this act, shall be guilty of a violation of K.S.A. 79-3321 (a), (c), (d), (f),~~
30 ~~(h), (i), (j), (v), (w), (x) or (y), and amendments thereto, is a:~~

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

34 ~~(2) level 6, nonperson felony for a second violation, and the offender~~
35 ~~shall be fined not less than \$50,000 nor more than \$100,000 upon a~~
36 ~~second conviction; and~~

37 ~~(3) level 6, nonperson felony for a third and all subsequent~~
38 ~~violations, and the offender shall be fined \$100,000 upon a third and all~~
39 ~~subsequent convictions.~~

40 (b) *Except as provided in subsections (a), (c), or (d), a violation of*
41 *K.S.A. 79-3321, and amendments thereto, is a class B misdemeanor and*
42 *upon conviction, an offender shall be punished by a fine of not less*
43 *than \$500 nor more than \$1,000 or imprisonment imprisoned for not more*

(1)

(A)

(B)

(C)

(2) It shall be a defense to prosecution under K.S.A. 79-3321(a), and amendments thereto, that a licensee has: (A) Segregated the cigarettes from public view; (B) marked the cigarettes as not for retail sale to consumers; and (C) notified the licensee's wholesale dealer, in writing, that the cigarettes do not bear indicia of Kansas tax and that the wholesale dealer shall remove the cigarettes from the licensee's premises within 72 hours after notification.

1 than one year, ~~or by~~ both *for each separate violation*. In addition thereto
2 any person found liable for any license fee or tax imposed under the
3 provisions of this act shall be personally liable for such license fee or tax
4 plus a penalty in an amount equal to 100% thereof.

5 ~~(b)~~(c) (1) It is a class B person misdemeanor punishable by a
6 minimum fine of \$200 for any person to: (A) Sell, give or furnish any
7 cigarettes or tobacco products to any person under 18 years of age; or (B)
8 buy any cigarettes or tobacco products for any person under 18 years of
9 age.

10 (2) It shall be a defense to a prosecution under this subsection if: (A)
11 The defendant is a licensed retail dealer, or employee thereof, or a person
12 authorized by law to distribute samples; (B) the defendant sold, furnished
13 or distributed the cigarettes or tobacco products to the person under 18
14 years of age with reasonable cause to believe the person was of legal age
15 to purchase or receive cigarettes or tobacco products; and (C) to purchase
16 or receive the cigarettes or tobacco products, the person under 18 years of
17 age exhibited to the defendant a driver's license, Kansas nondriver's
18 identification card or other official or apparently official document
19 containing a photograph of the person and purporting to establish that the
20 person was of legal age to purchase or receive cigarettes or tobacco
21 products.

22 (3) It shall be a defense to a prosecution under this subsection if: (A)
23 The defendant engages in the lawful sale, furnishing or distribution of
24 cigarettes or tobacco products by mail; and (B) the defendant sold,
25 furnished or distributed the cigarettes or tobacco products to the person by
26 mail only after the person had provided to the defendant an unsworn
27 declaration, conforming to K.S.A. 53-601, and amendments thereto, that
28 the person was 18 or more years of age.

29 (4) For purposes of this subsection the person who violates this
30 subsection shall be the individual directly selling, furnishing or
31 distributing the cigarettes or tobacco products to any person under 18 years
32 of age or the retail dealer who has actual knowledge of such selling,
33 furnishing or distributing by such individual or both.

34 ~~(e)~~(d) Violation of ~~subsection (m) or (n)~~ of K.S.A. 79-3321(m) or (n),
35 and amendments thereto, is a cigarette or tobacco infraction for which the
36 fine is \$25. In addition, the judge may require the juvenile to appear in
37 court with a parent or legal guardian.

38 ~~(d)~~(e) Any agent, employees or others who aid, abet or otherwise
39 participate in any way in the violation of the Kansas cigarette and tobacco
40 products act or in any of the offenses hereunder punishable shall be guilty
41 and punished as principals to the same extent as any person violating this
42 act.

43 (f) *The secretary of revenue or the secretary's authorized agent, may*

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

20 Sec. 13. K.S.A. 79-3323 is hereby amended to read as follows: 79-
 21 3323. (a) The following are declared to be common nuisances and
 22 contraband:

Except as provided in subsection (c),

23 (1) All packages of cigarettes, in quantities of 20 packages or more,
 24 not bearing indicia of tax payment as required in this act and all devices
 25 for vending cigarettes in which unstamped packages are found;

26 (2) *All packages of cigarettes, in quantities of 20 packages or more,*
 27 *not bearing indicia of tax payment and sold as required by any compact*
 28 *between:*

29 *(A) the governor and the Prairie Band Potawatomi Nation and*
 30 *approved by the legislature; or (B) the governor and the Iowa Tribe of*
 31 *Kansas and Nebraska and approved by the legislature;*

32 ~~(4)(3)~~ all cigarettes or tobacco products in the possession of a minor;
 33 ~~and~~

34 (4) *cigarettes or tobacco products in violation of K.S.A. 50-6a01 et*
 35 *seq., and amendments thereto; and*

36 ~~(3)(5)~~ all property, ~~other than~~ including vehicles, used in the ~~retail~~
 37 ~~sale, transportation, distribution, importation, wholesaling or manufacture~~
 38 ~~of unstamped packages of cigarettes.~~

39 Cigarettes in vending machines and exposed to view not showing
 40 indicia of tax payment required by this act to be visible from the outside of
 41 the vending machine shall be presumed to be unstamped.

42 (b) Any cigarettes or property constituting a common nuisance and
 43 contraband as provided by this section may be seized by the director or the

1 director's authorized agent or any duly constituted peace officer with or
2 without process or warrant and shall be subject to forfeiture as provided in
3 this act. The party making the seizure shall deliver to the owner of the
4 property and to the person or persons found in possession of the property a
5 receipt stating from whom the property was seized, the place of seizure
6 and a description and the brand of the property seized. A duplicate of the
7 receipt shall be filed in the office of the director and shall be open for
8 public inspection.

9 Sec. 14. K.S.A. 79-3324a is hereby amended to read as follows: 79-
10 3324a. (a) *All of the cigarettes and property seized by the director or the*
11 *director's authorized agent shall first be listed and appraised by the*
12 *person making the seizure, and turned over to the director and a receipt*
13 *taken. The person making the seizure shall immediately make and file a*
14 *written report showing the name of the person making the seizure, the*
15 *place where, and the person from whom the property was seized, and*
16 *inventory and appraisal thereof, at the usual and ordinary wholesale price*
17 *of the articles received by the director of taxation. The director shall*
18 *institute forfeiture proceedings within the department of revenue in the*
19 *name of the state of Kansas, as plaintiff, and in the name of the owner or*
20 *person in possession, as defendant, if known, and if unknown, in the name*
21 *of the property seized. The director shall issue notice to the owner or*
22 *person in whose possession such property was found, directing such*
23 *person to answer within 10 days. The forfeiture hearing under this*
24 *subsection shall be conducted in accordance with the provisions of the*
25 *Kansas administrative procedure act. If the property is declared forfeited*
26 *and ordered sold, notice of the sale shall be posted in the official*
27 *newspaper of Shawnee county, Kansas, not less than 10 days before the*
28 *date of the sale, except that cigarettes shall be withheld from public sale*
29 *and shall be sold by the director of taxation to the manufacturer of such*
30 *cigarettes or to a licensed distributor and the purchase price shall be paid*
31 *to the director of taxation and treated as cigarette tax collected. After*
32 *deducting all costs incurred in the seizure, forfeiture and sale of all*
33 *contraband, including cigarettes and property seized by the director or by*
34 *the director's authorized agent, pursuant to this subsection, all such*
35 *proceeds shall be remitted to the state treasurer in accordance with the*
36 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*
37 *each such remittance, the state treasurer shall deposit the entire amount in*
38 *the state treasury to the credit of the cigarette and tobacco products*
39 *regulation fund created by K.S.A. 79-3391, and amendments thereto, and*
40 *such proceeds shall be used exclusively for cigarette and tobacco products*
41 *regulation and enforcement, and not for any other purpose.*

42 (b) *All of the cigarettes and property seized by officers of the state of*
43 *Kansas, other than the director or the director's authorized agent, shall*

(c) Cigarettes in quantities of 1,000 or less in the possession of a licensee are not declared a common nuisance and contraband if the licensee has: (1) Segregated the cigarettes from public view; (2) marked the cigarettes as not for retail sale to consumers; and (3) notified the licensee's wholesale dealer, in writing, that the cigarettes do not bear indicia of Kansas tax and that the wholesale dealer shall remove the cigarettes from the licensee's premises within 72 hours after notification.

1 first be listed and appraised by the officer making the seizure, and turned
2 over to the county sheriff of the county in which the seizure is made and a
3 receipt ~~therefor~~ taken. The person making the seizure shall immediately
4 make and file a written report ~~thereof~~ showing the name of the person
5 making the seizure, the place where, and the person from whom the
6 property was seized, and inventory and ~~appraisement~~ *appraisal* thereof, at
7 the usual and ordinary wholesale price of the articles received to the
8 director of taxation. The county or district attorney of the county in which
9 the seizures are made may, at the request of the director, file in the district
10 court forfeiture proceedings in the name of the state of Kansas, as plaintiff,
11 and in the name of the owner or person in possession, as defendant, if
12 known, and if unknown in the name of the property seized. The clerk of
13 the court shall issue summons to the owner or person in whose possession
14 such property was found, directing ~~him or her~~ *such person* to answer
15 within ~~ten~~ (10) days. If the property is declared forfeited and ordered sold,
16 notice of the sale shall be posted in five (5) public places in the county not
17 less than ~~ten~~ (10) days before the date of the sale, except that cigarettes
18 shall be withheld from public sale and shall be sold by the director of
19 taxation to the manufacturer of such cigarettes or to a licensed distributor
20 and the purchase price shall be paid to the director of taxation and treated
21 as cigarette tax collected. The proceeds of any public sale shall be
22 deposited with the clerk of the court, who shall, after deducting costs,
23 including the costs of the sale, pay the balance to the treasurer of the
24 county wherein ~~said~~ *the* sale is constructed. ~~Said~~ *The* treasurer shall credit
25 the entire amount ~~thereof~~ to the county general fund.

26 ~~(b)~~(c) The seizure and sale of the cigarettes shall not relieve the
27 person from whom the cigarettes were seized from any prosecution on the
28 payment of any penalties provided for under the provisions of K.S.A. 79-
29 3301 et seq., and amendments thereto; nor shall it relieve the purchaser
30 ~~thereof~~ from any payment of the regular cigarette tax and the placing of
31 proper stamps thereon before making any sale of the cigarettes or the
32 personal consumption of the same.

33 ~~(e)~~(d) The forfeiture provisions of this act shall only apply to persons
34 having possession of or transporting cigarettes with intent to barter, sell or
35 give away the same. The possession of cigarettes in any quantity of more
36 than ~~two~~ (2) *five* cartons, ~~twenty~~ (20) *50* packages or ~~four hundred~~ (400)
37 *1,000* cigarettes, not bearing indicia of tax payment as required by the
38 provisions of K.S.A. 79-3301 et seq., and amendments thereto, shall be
39 prima facie evidence of intent to barter, sell or give away the cigarettes in
40 violation of the provisions of K.S.A. 79-3301 et seq., and amendments
41 thereto.

42 Sec. 15. K.S.A. 2015 Supp. 79-3333 is hereby amended to read as
43 follows: 79-3333. (a) Each person engaged in the business of selling

1 cigarettes ~~or tobacco products~~ to persons who reside in Kansas shall
 2 obtain a license as provided by the Kansas cigarette and tobacco products
 3 act.

, smokeless tobacco or roll-your-own tobacco

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

, smokeless tobacco or roll-your-own tobacco

6 (c) All retail cigarette ~~or tobacco product~~ dealers, whether located in
 7 or outside the state of Kansas, shall have a registration certificate as
 8 provided in K.S.A. 79-3608, and amendments thereto, and be subject to
 9 the provisions of the Kansas retailers' sales tax act. Each ~~licensed retail~~
 10 ~~cigarette dealer licensee or other person~~ selling cigarettes ~~or tobacco~~
 11 ~~products~~ over the internet, telephone or other mail order transaction shall
 12 file all sales tax returns and remit taxes owed pursuant to K.S.A. 79-3607,
 13 and amendments thereto.

, smokeless tobacco or roll-your-own

14 (d) All sales transactions over the internet, telephone or other mail
 15 order transaction shall not be completed, unless, before each delivery of
 16 cigarettes ~~or tobacco products~~ is made, whether through the mail, through
 17 a transportation company or any other delivery system, the seller has
 18 obtained from the purchaser a certification that includes a reliable
 19 confirmation that the purchaser is at least the legal minimum age to
 20 purchase cigarettes ~~or tobacco products~~; that the cigarettes ~~or tobacco~~
 21 ~~products~~ purchased are not intended for consumption by an individual who
 22 is younger than the legal minimum age to purchase cigarettes ~~or tobacco~~
 23 ~~products~~; and a written statement signed by the purchaser that certifies the
 24 purchaser's address and that the purchaser is at least the minimum legal
 25 age to purchase cigarettes ~~or tobacco products~~. Such statement shall also
 26 confirm: (1) That the purchaser understands that signing another person's
 27 name to such certification is illegal; (2) that the sale of cigarettes ~~or~~
 28 ~~tobacco products~~ to individuals under the legal minimum purchase age is
 29 illegal; and (3) that the purchase of cigarettes ~~or tobacco products~~ by
 30 individuals under the legal minimum purchase age is illegal under the laws
 31 of Kansas.

, smokeless tobacco or roll-your-own tobacco

, smokeless tobacco or roll-your-own tobacco

, smokeless tobacco or roll-your-own

, smokeless tobacco or roll-your-own

, smokeless tobacco or roll-your-own tobacco

, smokeless tobacco or roll-your-own tobacco

, smokeless tobacco or roll-your-own tobacco

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

, smokeless tobacco or roll-your-own tobacco

37 (f) All invoices, bills of lading, sales receipts and any other document
 38 related to the sale of cigarettes ~~or tobacco products~~ through the internet or
 39 other mail order transaction shall contain the current, valid retailer Kansas
 40 cigarette ~~or tobacco products~~ dealer license number, Kansas sales tax
 41 registration number, business name and address of the seller.

, smokeless tobacco or roll-your-own tobacco

, smokeless tobacco or roll-your-own tobacco

42 (g) All packages of cigarettes shipped from a cigarette dealer to
 43 purchasers who reside in Kansas shall clearly print the package with the

Proposed Amendment for SB 455
 For Committee on Judiciary
 Prepared by: Jenna Seematter
 Office of Revisor of Statutes
 February 16, 2016

word "CIGARETTES" on all sides of the package. In addition, such package shall contain an externally visible and easily legible notice located on the same side of the package as the address to which the package is delivered as follows:

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

~~(h) The provisions of this section shall not apply to tobacco products, as defined in K.S.A. 79-3301, and amendments thereto. Except as~~
otherwise provided by this act, a violation of subsection (a), (d) or (e) is a:

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

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

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

~~(i) Violation of the provisions of subsection (a), (d) or (e) is a severity level 8, nonperson felony. Each separate violation of any provision of this section, other than the provisions of subsection (a), (d) or (e) is shall be a class B misdemeanor, and upon conviction shall be punishable by a fine of not the offender shall be fined not less than \$500 nor more than \$1,000 or imprisonment for not more than one year, or both.~~

(j) The secretary of revenue or the secretary's authorized agent, may refer such evidence as may be available concerning violations of this act or any rules and regulations or order hereunder to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the department of revenue prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the secretary or the secretary's authorized agent, such employee shall be appointed a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties

1 *district attorneys and such other powers and duties as are lawfully*
 2 *delegated to such special prosecutor by the attorney general or the county*
 3 *attorney or district attorney. If an attorney employed by the secretary or*
 4 *secretary's authorized agent acts as a special prosecutor, the secretary*
 5 *may pay extradition and witness expenses associated with the case.*

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

8 Sec. 17. K.S.A. 79-3378 is hereby amended to read as follows: 79-

9 3378. (a) On or before the ~~twentieth~~ 20th day of each calendar month
 10 every distributor with a place of business in this state shall file a return
 11 with the director showing the quantity and wholesale sales price of each
 12 tobacco product: (1) Brought, or caused to be brought, into this state for
 13 sale; and (2) made, manufactured, or fabricated in this state for sale in this
 14 state during the preceding calendar month. Every licensed distributor
 15 outside this state shall in like manner file a return showing the quantity and
 16 wholesale sales price of each tobacco product shipped or transported to
 17 retailers in this state to be sold by those retailers, during the preceding
 18 calendar month. Returns shall be made ~~upon forms furnished and~~
 19 ~~electronically~~ *in the manner* prescribed by the director. Each return shall
 20 be accompanied by a remittance for the full tax liability shown therein,
 21 less ~~four percent (4%)~~ of such liability as compensation to reimburse the
 22 distributor for ~~his or her~~ *such distributor's* expenses incurred in the
 23 administration of this act.

commencing on and after July 1, 2016,

24 (b) As soon as practicable after any return is filed, the director shall
 25 examine the return. If the director finds that, in ~~his or her~~ *the director's*
 26 judgment, the return is incorrect and any amount of tax is due from the
 27 distributor and unpaid, ~~he or she~~ *the director* shall notify the distributor of
 28 the deficiency. If a deficiency disclosed by the director's examination
 29 cannot be allocated by ~~him~~ *the director* to a particular month or months, ~~he~~
 30 ~~or she~~ *the director* may nevertheless notify the distributor that a deficiency
 31 exists and state the amount of tax due. Such notice shall be given to the
 32 distributor by registered or certified mail.

33 Sec. 18. K.S.A. 2015 Supp. 79-3387 is hereby amended to read as
 34 follows: 79-3387. (a) All revenue collected or received by the director
 35 from taxes imposed by this act shall be remitted to the state treasurer in
 36 accordance with the provisions of K.S.A. 75-4215, and amendments
 37 thereto. Upon receipt of each such remittance, the state treasurer shall
 38 deposit the entire amount in the state treasury to the credit of the state
 39 general fund.

40 (b) All moneys received from license fees, *forfeiture proceeds under*
 41 *K.S.A. 79-3324a, and amendments thereto, and fines* imposed by this act
 42 shall be collected by the director and shall be remitted to the state treasurer
 43 in accordance with the provisions of K.S.A. 75-4215, and amendments

1 thereto. Upon receipt of each such remittance, the state treasurer shall
2 deposit the entire amount in the state treasury to the credit of the cigarette
3 and tobacco products regulation fund created by K.S.A. 79-3391, and
4 amendments thereto, *and such proceeds shall be used exclusively for*
5 *cigarette and tobacco products regulation and enforcement, and not for*
6 *any other purpose.*

7 Sec. 19. K.S.A. 2015 Supp. 79-3391 is hereby amended to read as
8 follows: 79-3391. (a) In addition to or in lieu of any other civil or criminal
9 penalty provided by law, the secretary of revenue or the secretary's
10 designee, upon a finding that a ~~licensee~~ *person* under this act has violated
11 any provision of this act or any provision of any rule and regulation of the
12 secretary of revenue adopted pursuant to this act shall impose on such
13 ~~licensee~~ *person* a civil fine not exceeding ~~\$1,000~~ *\$2,500* for each
14 violation.

15 (b) It shall be unlawful for any person, directly or indirectly, to: (1)
16 Sell, give or furnish any cigarettes or tobacco products to any person under
17 18 years of age; or (2) buy any cigarettes or tobacco products for any
18 person under 18 years of age. In determining the fine to be imposed under
19 this subsection by a licensed retail dealer whose employee sold, furnished
20 or distributed the cigarettes or tobacco products, the secretary of revenue
21 or the secretary's designee shall consider it to be a mitigating circumstance
22 if the employee had completed a training program, approved by the
23 secretary of revenue or the secretary's designee, in avoiding sale,
24 furnishing or distributing of cigarettes and tobacco products to persons
25 under 18 years of age.

26 (c) No fine shall be imposed pursuant to this section except upon the
27 written order of the secretary of revenue or the secretary's designee to the
28 licensee who committed the violation. Such order shall state the violation,
29 the fine to be imposed and the right of the licensee to appeal the order.
30 Such order shall be subject to appeal and review in the manner provided
31 by the Kansas administrative procedure act.

32 (d) Any fine collected pursuant to this section shall be remitted to the
33 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
34 amendments thereto. Upon receipt of each such remittance, the state
35 treasurer shall deposit the entire amount in the state treasury to the credit
36 of the cigarette and tobacco products regulation fund.

37 (e) There is hereby created, in the state treasury, the cigarette and
38 tobacco products regulation fund. Moneys in the fund shall be expended
39 only for the enforcement of this act and rules and regulations adopted
40 pursuant to this act. Such expenditures shall be made in accordance with
41 appropriation acts upon warrants of the director of accounts and reports
42 issued pursuant to vouchers approved by the secretary of revenue or a
43 person designated by the secretary.

Notwithstanding the provisions of subsection (a), the
fine under this subsection shall not exceed \$1,000.