

SENATE BILL No. 455

By Committee on Judiciary

2-11

Proposed Amendments to SB 455 - KVA

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Office of Revisor of Statutes

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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

and 79-3399

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 3391, 79-3392, 79-3393, 79-3394 and K.S.A. 2015 Supp. 79-3395 through
2 ~~79-3398~~ section 1 and section 2, and amendments thereto, shall be known
3 and may be cited as the Kansas cigarette and tobacco products act.

79-3399

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

6 Sec. 5. K.S.A. 2015 Supp. 79-3303 is hereby amended to read as
7 follows: 79-3303. (a) Each person engaged in the business of selling
8 cigarettes or electronic cigarettes in the state of Kansas and each vending
9 machine distributor shall obtain a license as provided by this act. A
10 separate application, license and fee is required for each dealer
11 establishment owned or operated by a dealer. A vending machine operator
12 is required to obtain a vending machine operator's master license and, in
13 addition, a separate permit for each vending machine operated by the
14 operator. A vending machine operator may submit one application for the
15 vending machine operator's master license and all permits for vending
16 machines operated by the operator. The license shall be displayed in the
17 dealer establishment and the vending machine permit shall remain securely
18 and visibly attached to the vending machine and contain such information
19 as the director may require. Any vending machine found without such
20 permit attached to the machine shall be sealed by an agent of the director
21 and such seal shall be removed only by an agent of the director after
22 payment of the permit fee and the penalties provided by this act.

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

37 (c) A vending machine operator, in the course of business as a
38 vending machine operator, may dispose of or sell vending machines
39 without securing a license to sell vending machines. The vending machine
40 operator may move vending machines from one location to another and, if
41 a vending machine becomes inoperative or is disposed of, the permit for
42 such machine may be transferred to another machine. A vending machine
43 operator, within 10 days, shall notify the director of the brand name and

(f) If a person violates subsection (b) for a second or subsequent occurrence within a three-year period, the secretary may impose a graduated fine upon such person for the second or subsequent occurrence. For the purposes of imposing a fine under this section, if three or more years have elapsed since a person has been found to have violated the provisions of subsection (b), such person shall be treated as never having violated subsection (b).

Sec. 20. K.S.A. 2015 Supp. 79-3392 is hereby amended to read as follows: 79-3392. The provisions of K.S.A. 75-5133, 79-3610, 79-3611, 79-3612, 79-3613, 79-3615 and 79-3617, and amendments thereto, relating to the assessment, collection, appeal and administration of the retailers' sales tax, insofar as practical, shall have full force and effect with respect to taxes, *penalties and fines* imposed by this act.

Sec. 21. K.S.A. 2015 Supp. 79-3393 is hereby amended to read as follows: 79-3393. (a) When a person is stopped by a law enforcement officer for a cigarette or tobacco infraction, the law enforcement officer shall prepare and deliver to the person a written cigarette or tobacco citation on a form approved by the secretary of revenue or the secretary's designee. The citation shall contain a notice to appear in court, the name and address of the person, the offense or offenses charged, the time and place when and where the person shall appear in court, the signature of the law enforcement officer and any other pertinent information. The time specified in the notice to appear shall be at least five days after the alleged infraction unless the person charged with the infraction demands an earlier hearing. The place specified in the notice to appear shall be before a judge of the district court within the county where the infraction is alleged to have been committed or before a judge of the municipal court where the infraction is alleged to have been committed in a city which has adopted an ordinance which prohibits the same acts.

(b) The notice to appear may provide that the person charged with the infraction shall appear in court with a parent or legal guardian and shall provide that the person charged has a right to trial.

(c) Acts classified as cigarette or tobacco infractions by ~~subsection (c) of K.S.A. 79-3322(d)~~, and amendments thereto, shall be classified as ordinance cigarette or tobacco infractions by those cities adopting ordinances prohibiting the same acts. The fine for an ordinance cigarette or tobacco infraction shall be \$25.

Sec. 22. K.S.A. 2015 Supp. 50-6a07 is hereby amended to read as follows: 50-6a07. As used in this act:

(a) "Act" means the provisions of K.S.A. 50-6a01 through 50-6a06, and amendments thereto, and the provisions of K.S.A. 2015 Supp. 50-6a07 through 50-6a21, and amendments thereto.

(b) "Brand family" means all styles of cigarettes sold under the same

Sec. 22. K.S.A. 2015 Supp. 79-3399 is hereby amended to read as follows: 79-3399. (a) On and after July 1, ~~2016~~ 2017, a tax is hereby imposed upon the privilege of selling or dealing in electronic cigarettes in this state by any person engaged in business as a distributor thereof, at the rate of \$.20 per milliliter of consumable material for electronic cigarettes and a proportionate tax at the like rate on all fractional parts thereof. For electronic cigarettes in the possession of retail dealers for which tax has not been paid, tax shall be imposed under this subsection at the earliest time the retail dealer: (1) Brings or causes to be brought into this state from without the state electronic cigarettes for sale; (2) makes, manufactures or fabricates electronic cigarettes in this state for sale in this state; or (3) sells electronic cigarettes to consumers within this state.

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

Renumber sections accordingly

1 notwithstanding the issuance of any patent, including rights-of-way
2 running through the reservation;

3 (2) all dependent Indian communities within the borders of this state;

4 (3) all Indian allotments within the borders of this state, the Indian
5 titles to which have not been extinguished, including rights-of-way
6 running through such allotments; and

7 (4) any lands within the borders of this state, the title to which is
8 either held in trust by the United States for the benefit of any Indian tribe
9 or individual, or held by any Indian tribe or individual subject to restriction
10 by the United States against alienation, and over which an Indian tribe
11 exercises governmental power.

12 (p) "Units sold" has the same meaning given that term in K.S.A. 50-
13 6a02(j), and amendments thereto.

14 (q) "Vending machine operator" has the same meaning given that
15 term in K.S.A. 79-3301(y), and amendments thereto.

16 Sec. 23. K.S.A. 79-3304, 79-3309, 79-3323, 79-3324a and 79-3378
17 and K.S.A. 2015 Supp. 50-6a07, 79-3301, 79-3302, 79-3303, 79-3311, 79-
18 3312, 79-3316, 79-3321, 79-3322, 79-3333, 79-3335, 79-3387, 79-3391,
19 79-3392 and 79-3393 are hereby repealed.

20 Sec. 24. This act shall take effect and be in force from and after its
21 publication in the statute book.

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and 79-3399