

SENATE BILL No. 518

By Committee on Ways and Means

4-29

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 (a) *"Act" means the Kansas cigarette and tobacco products act.*
- 2 (b) *"Carrier" means one who transports cigarettes from a*
3 *manufacturer to a wholesale dealer or from one wholesale dealer to*
4 *another.*
- 5 ~~(b)~~ (c) *"Carton" means the container used by the manufacturer of*
6 *cigarettes in which no more than 10 packages of cigarettes are placed prior*
7 *to shipment from such manufacturer.*
- 8 ~~(c)~~ (d) *"Cigarette" means any roll for smoking, made wholly or in*
9 *part of tobacco, irrespective of size or shape, and irrespective of tobacco*
10 *being flavored, adulterated or mixed with any other ingredient if the*
11 *wrapper is in greater part made of any material except tobacco.*
- 12 ~~(d)~~ (e) *"Conspicuous location or place" means a location or place*
13 *available to the general public.*
- 14 (f) *"Consumer" means the person purchasing or receiving cigarettes*
15 *or tobacco products for final use.*
- 16 ~~(e)~~ (g) *"Contracting entity" means any public or private person, firm*
17 *or entity that has entered into a contract with the secretary of revenue to*
18 *provide services.*
- 19 (h) *"Dealer" means any person who engages in the sale or*
20 *manufacture of cigarettes, tobacco products or electronic cigarettes in the*
21 *state of Kansas, and who is required to be licensed under the provisions of*
22 *this act.*
- 23 ~~(h)~~ (i) *"Dealer establishment" means any location or premises, other*
24 *than vending machine locations, at or from which cigarettes, tobacco*
25 *products or electronic cigarettes are sold, and where records are kept.*
- 26 ~~(g)~~ (j) *"Director" means the director of taxation.*
- 27 ~~(i)~~ (k) *"Distributor" means: (1) Any person engaged in the business*
28 *of selling tobacco products in this state who brings, or causes to be*
29 *brought, into this state from outside the state any tobacco products for sale;*
30 *(2) any person who makes, manufactures, fabricates or stores tobacco*
31 *products in this state for sale in this state; or*
32 *(3) any person engaged in the business of selling tobacco products*
33 *outside this state who ships or transports tobacco products to any person in*
34 *the business of selling tobacco products in this state.*
- 35 ~~(j)~~ (l) *"Division" means the division of taxation.*
- 36 ~~(k)~~ (m) *"Electronic cigarette" means a battery-powered device,*
37 *whether or not such device is shaped like a cigarette, that can provide*
38 *inhaled doses of nicotine by delivering a vaporized solution by means of*
39 *cartridges or other chemical delivery systems.*
- 40 (n) *"Importer" means the same as provided in 26 U.S.C. § 5702(l).*
- 41 (o) *"License" means the privilege of a licensee to sell cigarettes or*
42 *tobacco products in the state of Kansas, and the written evidence of such*
43 *authority or privilege as issued by the director.*

- 1 ~~(k)~~ (p) "Licensee" means any person holding a current license issued
2 pursuant to this act.
- 3 ~~(h)~~ (q) "*Manufacturer*" means the same as provided in 26 U.S.C. §
4 5702(d).
- 5 (r) "Manufacturer's salesperson" means a person employed by a
6 cigarette manufacturer who sells cigarettes, manufactured by such
7 employer and procured from wholesale dealers.
- 8 ~~(m)~~ "~~Meter imprints~~" means ~~tax indicia applied by means of ink-~~
9 ~~printing machines.~~
- 10 ~~(n)~~ (s) (1) "Package" means a container in which no more than 25
11 individual cigarettes are wrapped and sealed by the manufacturer of
12 cigarettes prior to shipment to a wholesale dealer;
- 13 (2) for the purposes of ~~subsections (u), (v) and (w)~~ of K.S.A. 79-
14 3321(u), (v) and (w), and amendments thereto, "package" means the same
15 as provided in 15 U.S.C. § 1332(4).
- 16 ~~(o)~~ (t) "Person" means any individual, partnership, society,
17 association, joint-stock company, corporation, estate, receiver, trustee,
18 assignee, referee or any other person acting in a fiduciary or representative
19 capacity whether appointed by a court or otherwise and any combination
20 of individuals.
- 21 ~~(p)~~ (u) "Received" means the coming to rest of cigarettes for sale by
22 any dealer in the state of Kansas.
- 23 ~~(q)~~ (v) "*Retail dealer*" or "*retailer*" means a person, other than a
24 vending machine operator, in possession of cigarettes ~~or tobacco products~~
25 or electronic cigarettes for the purpose of sale to a consumer.
- 26 ~~(r)~~ (w) "Sale" means any transfer of title or possession or both,
27 exchange, barter, distribution or gift of cigarettes or tobacco products, with
28 or without consideration.
- 29 ~~(s)~~ (x) "Sample" means cigarettes or tobacco products distributed to
30 members of the general public at no cost for purposes of promoting the
31 product.
- 32 ~~(t)~~ (y) "Self-service display" means a display that contains cigarettes
33 or tobacco products and is located in an area openly accessible to a retail
34 dealer's consumers, and from which such consumers can readily access
35 cigarettes or tobacco products without the assistance of a salesperson. A
36 display case that holds cigarettes or tobacco products behind locked doors
37 does not constitute a self-service display.
- 38 ~~(u)~~ (z) "Stamps" means tax indicia applied ~~either by means of water~~
39 ~~applied gummed paper or heat process, pressure or any other process~~
40 ~~approved by the director.~~
- 41 ~~(v)~~ (aa) "Tax indicia" means visible evidence of tax payment in the
42 form of stamps ~~or meter imprints.~~
- 43 ~~(w)~~ (bb) "Tobacco products" means cigars, cheroots, stogies,

1 periques; granulated, plug cut, crimp cut, ready rubbed and other smoking
 2 tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and
 3 other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and
 4 sweepings of tobacco, and other kinds and forms of tobacco, prepared in
 5 such manner as to be suitable for chewing or smoking in a pipe or
 6 otherwise, or both for chewing and smoking. Tobacco products do not
 7 include cigarettes.

8 ~~(x)~~ (cc) "Tobacco—~~speciality~~ *specialty* store" means a dealer
 9 establishment that derives at least ~~75~~ 65% of such dealer establishment's
 10 revenue from cigarettes or tobacco products.

11 ~~(y)~~ (dd) "Vending machine" means any coin operated machine,
 12 contrivance or device, by means of which merchandise may be sold.

13 ~~(z)~~ (ee) "Vending machine distributor" means any person who sells
 14 cigarette vending machines to a vending machine operator operating
 15 vending machines in the state of Kansas.

16 ~~(aa)~~ (ff) "Vending machine operator" means any person who places a
 17 vending machine, owned, leased or operated by such person, at locations
 18 where cigarettes are sold from such vending machine. The owner or lessee
 19 of the premises upon which a vending machine is placed shall not be
 20 considered the operator of the machine, nor shall the owner or lessee, or
 21 any employee or agent of the owner or lessee be considered an authorized
 22 agent of the vending machine operator, if the owner or lessee does not own
 23 or lease the machine and the owner's or lessee's sole remuneration from the
 24 machine is a flat rental fee or commission based upon the number or value
 25 of cigarettes sold from the machine, or a combination of both.

26 ~~(bb)~~ (gg) "Wholesale dealer" means any person who sells cigarettes
 27 to other wholesale dealers, retail dealers, vending machine operators and
 28 manufacturer's salespersons for the purpose of resale in the state of
 29 Kansas.

30 ~~(ee)~~ (hh) "Wholesale sales price" means the original net invoice price
 31 for which a manufacturer sells a tobacco product to a distributor, as shown
 32 by the manufacturer's original invoice.

33 ~~(dd)~~ "Importer" means the same as provided in 26 U.S.C. § 5702(i).

34 ~~(ee)~~ "Manufacturer" means the same as provided in 26 U.S.C. §
 35 5702(d).

36 ~~(ff)~~ "Electronic cigarette" means a battery-powered device, whether
 37 or not such device is shaped like a cigarette, that can provide inhaled doses
 38 of nicotine by delivering a vaporized solution by means of cartridges or
 39 other chemical delivery systems.

40 Sec. 4. K.S.A. 2015 Supp. 79-3302 is hereby amended to read as
 41 follows: 79-3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309,
 42 79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-
 43 3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3371, 79-3373,

1 79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-3388, 79-
2 3391, 79-3392, 79-3393, 79-3394 and K.S.A. 2015 Supp. 79-3395 through
3 79-3398, *section 1 and section 2*, and amendments thereto, shall be known
4 and may be cited as the Kansas cigarette and tobacco products act.

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

7 Sec. 5. K.S.A. 2015 Supp. 79-3303 is hereby amended to read as
8 follows: 79-3303. (a) Each person engaged in the business of selling
9 cigarettes or electronic cigarettes in the state of Kansas and each vending
10 machine distributor shall obtain a license as provided by this act. A
11 separate application, license and fee is required for each dealer
12 establishment owned or operated by a dealer. A vending machine operator
13 is required to obtain a vending machine operator's master license and, in
14 addition, a separate permit for each vending machine operated by the
15 operator. A vending machine operator may submit one application for the
16 vending machine operator's master license and all permits for vending
17 machines operated by the operator. The license shall be displayed in the
18 dealer establishment and the vending machine permit shall remain securely
19 and visibly attached to the vending machine and contain such information
20 as the director may require. Any vending machine found without such
21 permit attached to the machine shall be sealed by an agent of the director
22 and such seal shall be removed only by an agent of the director after
23 payment 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-~~or~~, employee *or contracting entity* revealing
36 any 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 vending machine unless it is
12 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 vending machines by the distributor to persons in the
20 state of Kansas during the preceding month; the name and address of the
21 purchaser; and the brand name, serial number and sale price of the
22 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 Sec. 6. K.S.A. 79-3304 is hereby amended to read as follows: 79-
37 3304. (a) The license fee for each biennium or portion thereof shall be as
38 follows:

- 39 (1) For retail dealer's license, \$25 for each dealer establishment.
- 40 (2) For retailer's license on railroad or sleeping cars, \$50. Only one
41 retail license need be obtained by each railroad or sleeping car company to
42 permit the sale of cigarettes on any or all of its cars within the state.
- 43 (3) For show, carnival or catering license, \$50 for each concession.

1 (4) For resident retail dealer's temporary license for a place of
2 business of a temporary nature, \$2 for each seven days or portion thereof.

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

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

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

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

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

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

34 (1) *Has been convicted on or after January 1, 2013, of a felony under*
35 *the laws of this state or any other state or the United States;*

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

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

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

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

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

43 (7) *does not own the premises for which a license is sought, or does*

- 1 *not, at the time of the application, have a written lease;*
2 (8) *has been convicted of a crime involving any tax under this act;*
3 (9) *is a corporation in which any officer, manager or director thereof,*
4 *or any stockholder owning in the aggregate more than 5% of the common*
5 *or preferred stock of such corporation, has been an officer, manager or*
6 *director or stockholder owning in the aggregate more than 5% of the*
7 *common or preferred stock, of a corporation which:*
8 (A) *Has had a license revoked under this act;*
9 (B) *has been convicted of a tax crime under this act; or*
10 (C) *would not qualify as a person under this act; or*
11 (10) *is a limited liability company in which any officer, manager or*
12 *director thereof, or any member owning in the aggregate more than 5% of*
13 *the limited liability company, has been an officer, manager or director or*
14 *stockholder owning in the aggregate more than 5% of the common or*
15 *preferred stock, of a corporation which:*
16 (A) *Has had a license revoked under this act;*
17 (B) *has been convicted of a tax crime under this act; or*
18 (C) *would not qualify as a person under this act.*
19 Sec. 7. K.S.A. 79-3309 is hereby amended to read as follows: 79-
20 3309. (a) Whenever the director has reason to believe that any person
21 licensed under this act has violated any of the provisions of this act, the
22 director shall notify ~~the person~~, by certified mail ~~of~~, the director's intention
23 to suspend or revoke the ~~person's~~ license or licenses of any person
24 licensed under this act whenever the director has reason to believe such
25 person has violated any provision of this act in any of the following ways:
26 (1) *Has been convicted on or after January 1, 2013, of a felony under*
27 *the laws of this state or any other state or the United States;*
28 (2) *is not current in the payment of any tax or fine under this act;*
29 (3) *has had a cigarette or tobacco license revoked in this state or any*
30 *other state;*
31 (4) *is not at least 18 years of age;*
32 (5) *intends to carry on the business as an agent of another;*
33 (6) *at the time of application for renewal of any license issued under*
34 *this act, would not be eligible for the license upon first application;*
35 (7) *does not own the premises for which a license is sought, or does*
36 *not, at the time of the application, have a written lease;*
37 (8) *has been convicted of a crime involving any tax under this act;*
38 (9) *in the case of a corporation, any officer, manager or director*
39 *thereof, or any stockholder owning in the aggregate more than 5% of the*
40 *common or preferred stock of such corporation, has been an officer,*
41 *manager or director or stockholder owning in the aggregate more than*
42 *5% of the common or preferred stock, of a corporation which:*
43 (A) *Has had a license revoked under this act;*

1 (B) *has been convicted of a tax crime under this act; or*
2 (C) *would not qualify as a person under this act; or*
3 (10) *in the case of a limited liability company, any officer, manager*
4 *or director thereof, or any member owning in the aggregate more than 5%*
5 *of the limited liability company, has been an officer, manager or director*
6 *or stockholder owning in the aggregate more than 5% of the common or*
7 *preferred stock, of a corporation which:*

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

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

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

11 (b) ~~Within 10~~ 30 days after the mailing of the notice, the person may
12 request a hearing in writing before the director. The hearing shall be
13 conducted in accordance with the provisions of the Kansas administrative
14 procedure act. If, after such hearing, it appears to the satisfaction of the
15 director that the person has violated any of the provisions of this act, the
16 director is hereby authorized and empowered to suspend or revoke the
17 person's license or licenses and may in addition deny the application of the
18 person for a license or licenses for a portion of the succeeding calendar
19 year for such period as the director determines is necessary, but in no case
20 for a period ending more than one year following the date upon which the
21 license or licenses were suspended or revoked. The suspension or
22 revocation of a vending machine operator's master license shall suspend or
23 revoke all vending machine permits issued to the vending machine
24 operator for the term of the license suspension or revocation.

25 **(b)(c)** If a person continues to engage in activities requiring a license
26 under this act after having notice or knowledge of the suspension or
27 revocation of the person's license or licenses or after becoming more than
28 10 days delinquent in *filing a bond payable to the state of Kansas as*
29 *required by the director*, payment of any *fine*, tax, penalty or interest
30 imposed pursuant to this act, the state shall be entitled, in any proceedings
31 brought for such purposes, to have an order and judgment restraining and
32 enjoining such unlawful sale and no bond shall be required for the
33 issuance of any such restraining order or injunction.

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

1 Stamps applied by the heat process ~~and meter imprints~~ shall be supplied to
2 wholesale dealers *in good standing with the director at the time of*
3 *purchase* at a discount of 0.55% on and after July 1, 2015, and thereafter,
4 from the face value thereof, and shall be deducted at the time of purchase
5 or from the remittance therefor as hereinafter provided. Any wholesale
6 cigarette dealer who shall file with the director a bond, of acceptable form,
7 payable to the state of Kansas with a corporate surety authorized to do
8 business in Kansas, shall be permitted to purchase stamps, and remit
9 therefor to the director within 30 days after each such purchase, up to a
10 maximum outstanding at any one time of 85% of the amount of the bond.
11 Failure on the part of any wholesale dealer to remit as herein specified
12 shall be cause for forfeiture of such dealer's bond. All revenue received
13 from the sale of such stamps ~~or meter imprints~~ shall be remitted to the
14 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
15 amendments thereto. Upon receipt of each such remittance, the state
16 treasurer shall deposit the entire amount in the state treasury. The state
17 treasurer shall first credit such amount as the director shall order to the
18 cigarette tax refund fund and shall credit the remaining balance to the state
19 general fund. A refund fund designated the cigarette tax refund fund not to
20 exceed \$10,000 at any time shall be set apart and maintained by the
21 director from taxes collected under this act and held by the state treasurer
22 for prompt payment of all refunds authorized by this act. Such cigarette tax
23 refund fund shall be in such amount as the director shall determine is
24 necessary to meet current refunding requirements under this act.

25 The wholesale cigarette dealer shall affix to each package of cigarettes
26 stamps ~~or tax meter imprints~~ required by this act prior to the sale of
27 cigarettes to any person, by such dealer or such dealer's agent or agents,
28 within the state of Kansas. The director is empowered to authorize
29 wholesale dealers to affix revenue tax ~~meter imprints~~ stamps upon original
30 packages of cigarettes and is charged with the duty of regulating the use of
31 tax ~~meters~~ stamps to secure payment of the proper taxes. No wholesale
32 dealer shall affix revenue tax ~~meter imprints~~ stamps to original packages
33 of cigarettes without first having obtained permission from the director to
34 employ this method of affixation. If the director approves the wholesale
35 dealer's application for permission to affix revenue tax ~~meter imprints~~
36 stamps to original packages of cigarettes, the director shall require such
37 dealer to file a suitable bond payable to the state of Kansas executed by a
38 corporate surety authorized to do business in Kansas. The director may, to
39 assure the proper collection of taxes imposed by the act, revoke or suspend
40 the privilege of ~~imprinting tax meter imprints~~ affixing tax stamps upon
41 original packages of cigarettes. ~~All meters shall be under the direct control~~
42 ~~of the director, and all transfer assignments or anything pertaining thereto~~
43 ~~must first be authorized by the director. All inks used in the stamping of~~

1 cigarettes must be of a special type devised for use in connection with the
2 machine employed and approved by the director. All repairs to the meter
3 are strictly prohibited except by a duly authorized representative of the
4 director. Requests for service shall be directed to the director. Meter
5 machine ink imprints on all packages shall be clear and legible. If a
6 wholesale dealer continuously issues illegible cigarette tax meter imprints,
7 it shall be considered sufficient cause for revocation of such dealer's
8 permit to use a cigarette tax meter.

9 A licensed wholesale dealer may, for the purpose of sale in another
10 state, transport cigarettes not bearing Kansas indicia of tax payment
11 through the state of Kansas provided such cigarettes are contained in
12 sealed and original cartons.

13 Sec. 9. K.S.A. 2015 Supp. 79-3312 is hereby amended to read as
14 follows: 79-3312. The director shall redeem any unused stamps ~~or meter~~
15 ~~imprints~~ that any wholesale dealer presents for redemption within six
16 months after the purchase thereof, at the face value less 0.55% thereof if
17 such stamps ~~or meter imprints~~ have been purchased from the director *and*
18 *are whole, complete stamps*. The director shall prepare a voucher showing
19 the net amount of such refund due, and the director of accounts and reports
20 shall draw a warrant on the state treasurer for the same. Wholesale dealers
21 shall be entitled to a refund of the tax paid on cigarettes which have
22 become unfit for sale upon proof thereof less 0.55% of such tax.

23 Sec. 10. K.S.A. 2015 Supp. 79-3316 is hereby amended to read as
24 follows: 79-3316. (a) All purchases of cigarettes by any dealer shall be
25 evidenced by an invoice, a duplicate of which shall be furnished the party
26 receiving the cigarettes from any dealer.

27 (b) Purchases of cigarettes by wholesale dealers shall be made from
28 the manufacturers of cigarettes or from other Kansas licensed wholesale
29 dealers. Purchases of cigarettes by retail dealers or vending machine
30 operators shall be from wholesale dealers.

31 (c) All invoices issued by wholesale dealers shall be in duplicate and
32 a copy must accompany the consigned cigarettes. Cigarettes sold by a
33 wholesale dealer to any other dealer shall be evidenced by invoices
34 bearing the vendee's name and license number. A wholesale dealer selling
35 cigarettes to a manufacturer's salesperson shall at the time of delivery of
36 same make a true duplicate invoice inserting therein the name of the
37 salesman together with the name of such salesperson's employer, *except*
38 *that an outlet, or fuel outlet or fuel center, owned by the same entity where*
39 *separate invoices are not required if cigarettes are sold from a fuel outlet*
40 *by the same entity*.

41 (d) All records pertaining to sales of cigarettes by dealers in the state
42 of Kansas shall be preserved for a period of three years and shall be
43 available for inspection by the director or the director's designee at the

1 dealer's place of business or, if the dealer has more than one place of
2 business in the state, at a central location of the dealer.

3 (e) Every wholesale dealer shall report to the director on or before the
4 10th day of each month, stating the amount of cigarettes sold during the
5 preceding month and the amount of all cigarettes returned to the
6 manufacturer. Any wholesale dealer who refuses any shipment or part of a
7 shipment of unstamped cigarettes or has a shortage in the shipment of
8 cigarettes consigned to such dealer shall in the monthly report next
9 following the refusal or shortage report to the director the number of
10 packages or cartons of cigarettes refused or short and the name of the
11 carrier from whom the cigarettes were refused or shortage occurred. Such
12 report shall be ~~made on forms provided~~ *filed electronically commencing*
13 *on and after January 1, 2017, in the manner prescribed* by the director ~~and~~
14 ~~shall contain such other information as the director may require.~~

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

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

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

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

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

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

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

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

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

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

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

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

9 (i) To have in possession any evidence of tax indicia provided for
10 herein not purchased from the director.

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

13 (k) To vend small cigars, or any products so wrapped as to be
14 confused with cigarettes, from a machine vending cigarettes, nor shall a
15 vending machine be so built to vend cigars or products that may be
16 confused with cigarettes, be attached to a cigarette vending machine.

17 (l) To sell, furnish or distribute cigarettes, electronic cigarettes or
18 tobacco products to any person under 18 years of age.

19 (m) Who is under 18 years of age to purchase or attempt to purchase
20 cigarettes, electronic cigarettes or tobacco products.

21 (n) Who is under 18 years of age to possess or attempt to possess
22 cigarettes, electronic cigarettes or tobacco products.

23 (o) To sell cigarettes to a retailer or at retail, *or to transport or allow*
24 *cigarettes to be transported into this state* that do not bear Kansas tax
25 indicia or upon which the Kansas cigarette tax has not been paid.

26 (p) To sell cigarettes without having a license for such sale as
27 provided herein.

28 (q) To sell a vending machine without having a vending machine
29 distributor's license.

30 (r) Who is a retail dealer to fail to post and maintain in a conspicuous
31 place in the dealer's establishment the following notice: "By law,
32 cigarettes, electronic cigarettes and tobacco products may be sold only to
33 persons 18 years of age and older."

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

37 (1) In an area to which persons under 18 years of age are denied
38 access;

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

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

43 (t) To sell cigarettes, electronic cigarettes or tobacco products by

1 means of a vending machine, *including vending machines that sell*
 2 *packaged, single cigarettes*, in any establishment, or portion of an
 3 establishment, which is open to minors, except that this subsection shall
 4 not apply to:

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

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

13 ~~(3) a vending machine which has a lock-out device which is~~
 14 ~~inoperable in the continuous standby mode and which requires manual~~
 15 ~~activation by the person supervising the operation of the machine each~~
 16 ~~time cigarettes or tobacco products are purchased from the machine.~~

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

20 (1) A vending machine that is permitted under subsection (t); ~~or~~

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

23 *(3) a self-service display located in a facility where the retailer*
 24 *ensures that no person younger than 18 years of age is present or*
 25 *permitted to enter at any time.*

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

29 (1) Any cigarettes the package of which: (A) Bears any statement,
 30 label, stamp, sticker or notice indicating that the manufacturer did not
 31 intend the cigarettes to be sold, distributed or used in the United States,
 32 including but not limited to, labels stating "For Export Only," "U.S. Tax-
 33 Exempt," "For Use Outside U.S." or similar wording; or (B) does not
 34 comply with: (i) All requirements imposed by or pursuant to federal law
 35 regarding warnings and other information on packages of cigarettes
 36 manufactured, packaged or imported for sale, distribution or use in the
 37 United States, including but not limited to the precise warning labels
 38 specified in the federal cigarette labeling and advertising act, 15 U.S.C. §
 39 1333; and (ii) all federal trademark and copyright laws;

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

43 (3) any cigarettes that such person otherwise knows or has reason to

1 know the manufacturer did not intend to be sold, distributed or used in the
2 United States; or

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

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

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

12 (2) any health warning that is not specified in, or does not conform
13 with, the requirements of, the federal cigarette labeling and advertising act,
14 15 U.S.C. § 1333.

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

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

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

27 Sec. 12. K.S.A. 2015 Supp. 79-3322 is hereby amended to read as
28 follows: 79-3322. (a) ~~(1) Any person who violates any of the provisions of~~
29 ~~the Kansas cigarette and tobacco products act, Except as otherwise~~
30 ~~provided in this act, shall be guilty of a violation of K.S.A. 79-3321 (a),~~
31 ~~(c), (d), (f), (h), (i), (j), (v), (w), (x) or (y), and amendments thereto, is a:~~

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

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

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

41 (2) *It shall be a defense to prosecution under K.S.A. 79-3321(a), and*
42 *amendments thereto, that a licensee has: (A) Segregated the cigarettes*
43 *from public view; (B) marked the cigarettes as not for retail sale to*

1 consumers; and (C) notified the licensee's wholesale dealer, in writing,
 2 that the cigarettes do not bear indicia of Kansas tax and that the
 3 wholesale dealer shall remove the cigarettes from the licensee's premises
 4 within 72 hours after notification.

5 (b) Except as provided in (a), (c) or (d), a violation of K.S.A. 79-
 6 3321, and amendments thereto, is a class B misdemeanor and upon
 7 conviction, an offender shall be ~~punished by a fine of~~ fined not less than
 8 \$500 nor more than \$1,000 or ~~imprisonment~~ imprisoned for not more than
 9 one year, or ~~by~~ both for each separate violation. In addition thereto any
 10 person found liable for any license fee or tax imposed under the provisions
 11 of this act shall be personally liable for such license fee or tax plus a
 12 penalty in an amount equal to 100% thereof.

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

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

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

37 (4) For purposes of this subsection the person who violates this
 38 subsection shall be the individual directly selling, furnishing or
 39 distributing the cigarettes or tobacco products to any person under 18 years
 40 of age or the retail dealer who has actual knowledge of such selling,
 41 furnishing or distributing by such individual or both.

42 ~~(e)~~(d) Violation of ~~subsection (m) or (n)~~ of K.S.A. 79-3321(m) or (n),
 43 and amendments thereto, is a cigarette or tobacco infraction for which the

1 fine is \$25. In addition, the judge may require the juvenile to appear in
2 court with a parent or legal guardian.

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

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

28 Sec. 13. K.S.A. 79-3323 is hereby amended to read as follows: 79-
29 3323. (a) The following are declared to be common nuisances and
30 contraband:

31 (1) *Except at provided in subsection (c), all packages of cigarettes, in*
32 *quantities of 20 packages or more, not bearing indicia of tax payment as*
33 *required in this act and all devices for vending cigarettes in which*
34 *unstamped packages are found;*

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

38 (A) *The governor and the Prairie Band Potawatomi Nation and*
39 *approved by the legislature; or (B) the governor and the Iowa Tribe of*
40 *Kansas and Nebraska and approved by the legislature;*

41 (3) *all cigarettes or tobacco products in the possession of a minor; and*

42 (4) *cigarettes, smokeless tobacco or roll-your-own tobacco in*
43 *violation of K.S.A. 50-6a01 et seq., and amendments thereto; and*

1 (3)(5) all property, ~~other than~~ including vehicles, used in the ~~retail~~
2 sale, *transportation, distribution, importation, wholesaling or manufacture*
3 of unstamped packages of cigarettes.

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

7 (b) Any cigarettes or property constituting a common nuisance and
8 contraband as provided by this section may be seized by the director or the
9 director's authorized agent or any duly constituted peace officer with or
10 without process or warrant and shall be subject to forfeiture as provided in
11 this act. The party making the seizure shall deliver to the owner of the
12 property and to the person or persons found in possession of the property a
13 receipt stating from whom the property was seized, the place of seizure
14 and a description and the brand of the property seized. A duplicate of the
15 receipt shall be filed in the office of the director and shall be open for
16 public inspection.

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

24 Sec. 14. K.S.A. 79-3324a is hereby amended to read as follows: 79-
25 3324a. (a) *All of the cigarettes and property seized by the director or the*
26 *director's authorized agent shall first be listed and appraised by the*
27 *person making the seizure, and turned over to the director and a receipt*
28 *taken. The person making the seizure shall immediately make and file a*
29 *written report showing the name of the person making the seizure, the*
30 *place where, and the person from whom the property was seized, and*
31 *inventory and appraisal thereof, at the usual and ordinary wholesale price*
32 *of the articles received by the director of taxation. The director shall*
33 *institute forfeiture proceedings within the department of revenue in the*
34 *name of the state of Kansas, as plaintiff, and in the name of the owner or*
35 *person in possession, as defendant, if known, and if unknown, in the name*
36 *of the property seized. The director shall issue notice to the owner or*
37 *person in whose possession such property was found, directing such*
38 *person to answer within 10 days. The forfeiture hearing under this*
39 *subsection shall be conducted in accordance with the provisions of the*
40 *Kansas administrative procedure act. If the property is declared forfeited*
41 *and ordered sold, notice of the sale shall be posted in the official*
42 *newspaper of Shawnee county, Kansas, not less than 10 days before the*
43 *date of the sale, except that cigarettes shall be withheld from public sale*

1 *and shall be sold by the director of taxation to the manufacturer of such*
2 *cigarettes or to a licensed distributor and the purchase price shall be paid*
3 *to the director of taxation and treated as cigarette tax collected. After*
4 *deducting all costs incurred in the seizure, forfeiture and sale of all*
5 *contraband, including cigarettes and property seized by the director or by*
6 *the director's authorized agent, pursuant to this subsection, all such*
7 *proceeds shall be remitted to the state treasurer in accordance with the*
8 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*
9 *each such remittance, the state treasurer shall deposit the entire amount in*
10 *the state treasury to the credit of the cigarette and tobacco products*
11 *regulation fund created by K.S.A. 79-3391, and amendments thereto, and*
12 *such proceeds shall be used exclusively for cigarette and tobacco products*
13 *regulation and enforcement, and not for any other purpose.*

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

41 (b)(c) The seizure and sale of the cigarettes shall not relieve the
42 person from whom the cigarettes were seized from any prosecution on the
43 payment of any penalties provided for under the provisions of K.S.A. 79-

1 3301 et seq., and amendments thereto; nor shall it relieve the purchaser
2 thereof from any payment of the regular cigarette tax and the placing of
3 proper stamps thereon before making any sale of the cigarettes or the
4 personal consumption of the same.

5 ~~(e)~~(d) The forfeiture provisions of this act shall only apply to persons
6 having possession of or transporting cigarettes with intent to barter, sell or
7 give away the same. The possession of cigarettes in any quantity of more
8 than ~~two (2) five~~ cartons, ~~twenty (20) 50~~ packages or ~~four hundred (400)~~
9 ~~1,000~~ cigarettes, not bearing indicia of tax payment as required by the
10 provisions of K.S.A. 79-3301 et seq., and amendments thereto, shall be
11 prima facie evidence of intent to barter, sell or give away the cigarettes in
12 violation of the provisions of K.S.A. 79-3301 et seq., and amendments
13 thereto.

14 Sec. 15. K.S.A. 2015 Supp. 79-3333 is hereby amended to read as
15 follows: 79-3333. (a) Each person engaged in the business of selling
16 cigarettes, *smokeless tobacco or roll-your-own tobacco* to persons who
17 reside in Kansas shall obtain a license as provided by the Kansas cigarette
18 and tobacco products act.

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

21 (c) All retail ~~cigarette~~ dealers, whether located in or outside the state
22 of Kansas, shall have a registration certificate as provided in K.S.A. 79-
23 3608, and amendments thereto, and be subject to the provisions of the
24 Kansas retailers' sales tax act. Each ~~licensed retail cigarette dealer~~
25 ~~licensee or other person~~ selling cigarettes, *smokeless tobacco or roll-your-*
26 *own tobacco* over the internet, telephone or other mail order transaction
27 shall file all sales tax returns and remit taxes owed pursuant to K.S.A. 79-
28 3607, and amendments thereto.

29 (d) All sales transactions over the internet, telephone or other mail
30 order transaction shall not be completed, unless, before each delivery of
31 cigarettes, *smokeless tobacco or roll-your-own tobacco* is made, whether
32 through the mail, through a transportation company or any other delivery
33 system, the seller has obtained from the purchaser a certification that
34 includes a reliable confirmation that the purchaser is at least the legal
35 minimum age to purchase *cigarettes, smokeless tobacco or roll-your-own*
36 *tobacco*; that the cigarettes, *smokeless tobacco or roll-your-own tobacco*
37 purchased are not intended for consumption by an individual who is
38 younger than the legal minimum age to purchase cigarettes, *smokeless*
39 *tobacco or roll-your-own tobacco*; and a written statement signed by the
40 purchaser that certifies the purchaser's address and that the purchaser is at
41 least the minimum legal age to purchase cigarettes, *smokeless tobacco or*
42 *roll-your-own tobacco*. Such statement shall also confirm: (1) That the
43 purchaser understands that signing another person's name to such

1 certification is illegal; (2) that the sale of cigarettes, *smokeless tobacco or*
 2 *roll-your-own tobacco* to individuals under the legal minimum purchase
 3 age is illegal; and (3) that the purchase of cigarettes, *smokeless tobacco or*
 4 *roll-your-own tobacco* by individuals under the legal minimum purchase
 5 age is illegal under the laws of Kansas.

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

11 (f) All invoices, bills of lading, sales receipts and any other document
 12 related to the sale of cigarettes, *smokeless tobacco or roll-your-own*
 13 *tobacco* through the internet or other mail order transaction shall contain
 14 the current, valid retailer Kansas cigarette *or tobacco* dealer license
 15 number, Kansas sales tax registration number, business name and address
 16 of the seller.

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

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

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

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

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

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

42 (i) ~~Violation of the provisions of subsection (a), (d) or (e) is a severity~~
 43 ~~level 8, nonperson felony. Each separate violation of any provision of this~~

1 section, other than the provisions of subsection (a), (d) or (e) ~~is shall be a~~
 2 ~~class B misdemeanor, and upon conviction shall be punishable by a fine of~~
 3 ~~not the offender shall be fined not less than \$500 nor more than \$1,000 or~~
 4 ~~imprisonment for not more than one year, or both.~~

5 (j) *The secretary of revenue, or the secretary's authorized agent, may*
 6 *refer such evidence as may be available concerning violations of this act*
 7 *or any rules and regulations or order hereunder to the attorney general or*
 8 *the proper county or district attorney, who may in the prosecutor's*
 9 *discretion, with or without such a reference, institute the appropriate*
 10 *criminal proceedings under this act. Upon receipt of such reference, the*
 11 *attorney general or the county attorney or district attorney may request*
 12 *that a duly employed attorney of the department of revenue prosecute or*
 13 *assist in the prosecution of such violation or violations on behalf of the*
 14 *state. Upon approval of the secretary or the secretary's authorized agent,*
 15 *such employee shall be appointed 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*
 24 *may pay extradition and witness expenses associated with the case.*

25 ~~(j)~~(k) *The provisions of this section shall be part of and supplemental*
 26 *to the Kansas cigarette and tobacco products act.*

27 Sec. 16. K.S.A. 2015 Supp. 79-3335 is hereby amended to read as
 28 follows: 79-3335. (a) *Counterfeit cigarettes shall be seized by the director.*
 29 *For purposes of this section, counterfeit cigarettes includes cigarettes*
 30 *manufactured, sold, transported, imported, distributed or possessed in this*
 31 *state with intent to deceive consumers and to avoid the provisions of this*
 32 *act, and also includes cigarettes that have false manufacturing labels or*
 33 *packages of cigarettes bearing counterfeit tax stamps. It shall be unlawful*
 34 *for any person to sell, transport, import, distribute, wholesale or*
 35 *manufacture counterfeit cigarettes.*

36 (b) *Except as otherwise provided by this act, a violation of the*
 37 *provisions of this subsection shall be a:*

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

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

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

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

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

26 Sec. 17. K.S.A. 79-3378 is hereby amended to read as follows: 79-
27 3378. (a) On or before the ~~twentieth~~ 20th day of each calendar month
28 every distributor with a place of business in this state shall file a return
29 with the director showing the quantity and wholesale sales price of each
30 tobacco product: (1) Brought, or caused to be brought, into this state for
31 sale; and (2) made, manufactured, or fabricated in this state for sale in this
32 state during the preceding calendar month. Every licensed distributor
33 outside this state shall in like manner file a return showing the quantity and
34 wholesale sales price of each tobacco product shipped or transported to
35 retailers in this state to be sold by those retailers, during the preceding
36 calendar month. Returns shall be made ~~upon forms furnished and~~
37 *electronically commencing on and after January 1, 2017, in the manner*
38 prescribed by the director. Each return shall be accompanied by a
39 remittance for the full tax liability shown therein, less ~~four percent (4%)~~ of
40 such liability as compensation to reimburse the distributor for ~~his or her~~
41 *such distributor's* expenses incurred in the administration of this act.

42 (b) As soon as practicable after any return is filed, the director shall
43 examine the return. If the director finds that, in ~~his or her~~ *the director's*

1 judgment, the return is incorrect and any amount of tax is due from the
2 distributor and unpaid, ~~he or she~~ *the director* shall notify the distributor of
3 the deficiency. If a deficiency disclosed by the director's examination
4 cannot be allocated by ~~him~~ *the director* to a particular month or months, ~~he~~
5 ~~or she~~ *the director* may nevertheless notify the distributor that a deficiency
6 exists and state the amount of tax due. Such notice shall be given to the
7 distributor by registered or certified mail.

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

15 (b) All moneys received from license fees, *forfeiture proceeds under*
16 *K.S.A. 79-3324a, and amendments thereto, and fines* imposed by this act
17 shall be collected by the director and shall be remitted to the state treasurer
18 in accordance with the provisions of K.S.A. 75-4215, and amendments
19 thereto. Upon receipt of each such remittance, the state treasurer shall
20 deposit the entire amount in the state treasury to the credit of the cigarette
21 and tobacco products regulation fund created by K.S.A. 79-3391, and
22 amendments thereto, *and such proceeds shall be used exclusively for*
23 *cigarette and tobacco products regulation and enforcement, and not for*
24 *any other purpose.*

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

32 (b) It shall be unlawful for any person, directly or indirectly, to: (1)
33 Sell, give or furnish any cigarettes or tobacco products to any person under
34 18 years of age; or (2) buy any cigarettes or tobacco products for any
35 person under 18 years of age. In determining the fine to be imposed under
36 this subsection by a licensed retail dealer whose employee sold, furnished
37 or distributed the cigarettes or tobacco products, the secretary of revenue
38 or the secretary's designee shall consider it to be a mitigating circumstance
39 if the employee had completed a training program, approved by the
40 secretary of revenue or the secretary's designee, in avoiding sale,
41 furnishing or distributing of cigarettes and tobacco products to persons
42 under 18 years of age.

43 (c) No fine shall be imposed pursuant to this section except upon the

1 written order of the secretary of revenue or the secretary's designee to the
2 licensee who committed the violation. Such order shall state the violation,
3 the fine to be imposed and the right of the licensee to appeal the order.
4 Such order shall be subject to appeal and review in the manner provided
5 by the Kansas administrative procedure act.

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

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

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

25 Sec. 20. K.S.A. 2015 Supp. 79-3392 is hereby amended to read as
26 follows: 79-3392. The provisions of K.S.A. 75-5133, 79-3610, 79-3611,
27 79-3612, 79-3613, 79-3615 and 79-3617, and amendments thereto,
28 relating to the assessment, collection, appeal and administration of the
29 retailers' sales tax, insofar as practical, shall have full force and effect with
30 respect to taxes, *penalties and fines* imposed by this act.

31 Sec. 21. K.S.A. 2015 Supp. 79-3393 is hereby amended to read as
32 follows: 79-3393. (a) When a person is stopped by a law enforcement
33 officer for a cigarette or tobacco infraction, the law enforcement officer
34 shall prepare and deliver to the person a written cigarette or tobacco
35 citation on a form approved by the secretary of revenue or the secretary's
36 designee. The citation shall contain a notice to appear in court, the name
37 and address of the person, the offense or offenses charged, the time and
38 place when and where the person shall appear in court, the signature of the
39 law enforcement officer and any other pertinent information. The time
40 specified in the notice to appear shall be at least five days after the alleged
41 infraction unless the person charged with the infraction demands an earlier
42 hearing. The place specified in the notice to appear shall be before a judge
43 of the district court within the county where the infraction is alleged to

1 have been committed or before a judge of the municipal court where the
2 infraction is alleged to have been committed in a city which has adopted
3 an ordinance which prohibits the same acts.

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

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

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

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

17 (b) "Brand family" means all styles of cigarettes sold under the same
18 trademark and differentiated from one another by means of additional
19 modifiers or descriptors, including, but not limited to, "menthol," "lights,"
20 "kings," and "100s," and includes any brand name (alone or in conjunction
21 with any other word), trademark, logo, symbol, motto, selling message,
22 recognizable pattern of colors or any other indicia of product identification
23 identical, similar to or identifiable with a previously known brand of
24 cigarettes.

25 (c) "Cigarette" has the same meaning given that term in K.S.A. 50-
26 6a02(d), and amendments thereto.

27 (d) "Director" means the director of taxation.

28 (e) "Indian tribe" means any Indian tribe, band, nation or other
29 organized group or community that is recognized as eligible for the special
30 programs and services provided by the United States to Indians because of
31 their status as Indians under the laws of the United States.

32 (f) "Master settlement agreement" has the same meaning given that
33 term in K.S.A. 50-6a02(e), and amendments thereto.

34 (g) "Non-participating manufacturer" means any tobacco product
35 manufacturer that is not a participating manufacturer.

36 (h) "Participating manufacturer" has the meaning given that term in
37 K.S.A. 50-6a02(i)(1), and amendments thereto.

38 (i) "Qualified escrow fund" has the same meaning given that term in
39 K.S.A. 50-6a02(f), and amendments thereto.

40 (j) "Resident agent" means a domestic corporation, a domestic limited
41 partnership, a domestic limited liability company or a domestic business
42 trust or a foreign corporation, a foreign limited partnership, a foreign
43 limited liability company or a foreign business trust authorized to transact

1 business in this state, and which is generally open during regular business
2 hours to accept service of process on behalf of a non-participating
3 manufacturer.

4 (k) "Retail dealer" has the same meaning given that term in K.S.A.
5 79-3301(~~q~~), and amendments thereto.

6 (l) "Stamping agent" means a person who is authorized to affix tax
7 indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and
8 amendments thereto, or any person who is required to pay the tax on the
9 privilege of selling or dealing in roll-your-own tobacco products pursuant
10 to K.S.A. 79-3371, and amendments thereto.

11 (m) "Tax indicia" has the same meaning given that term in K.S.A. 79-
12 3301(~~u~~), and amendments thereto.

13 (n) "Tobacco product manufacturer" has the same meaning given that
14 term in K.S.A. 50-6a02(i), and amendments thereto.

15 (o) "Qualified tribal land" means:

16 (1) All land within the borders of this state that is within the limits of
17 any Indian reservation under the jurisdiction of the United States,
18 notwithstanding the issuance of any patent, including rights-of-way
19 running through the reservation;

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

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

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

29 (p) "Units sold" has the same meaning given that term in K.S.A. 50-
30 6a02(j), and amendments thereto.

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

33 Sec. 23. K.S.A. 79-3304, 79-3309, 79-3323, 79-3324a and 79-3378
34 and K.S.A. 2015 Supp. 50-6a07, 79-3301, 79-3302, 79-3303, 79-3311, 79-
35 3312, 79-3316, 79-3321, 79-3322, 79-3333, 79-3335, 79-3387, 79-3391,
36 79-3392 and 79-3393 are hereby repealed.

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