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MEMORANDUM

To: Chairman Barker
Members of the House Committee on Federal and State Affairs

From: The Office of Revisor of Statutes

Date: February 13, 2020

Subject: HB 2563 – Regulation of sales and use of cigarettes and electronic cigarettes

House Bill No. 2563 (HB 2563) amends various statutes regarding the sale and use of cigarettes and electronic cigarettes (also known as vaping devices). Each proposed policy in HB 2563 requires multiple amendments to various statutes. Instead of describing each section of the bill, this memorandum will focus on the substantive policies proposed by HB 2563 and will note the various amendments necessary to effectuate such policy.

First, HB 2563 would add the use of electronic cigarettes to the Kansas Clean Indoor Air Act. By including the "use of an electronic cigarette" in the definition of "smoking" under the act, every instance in the act where smoking is prohibited the same prohibition would apply to vaping. The relevant amendments appear in Section 2 of HB 2563.

Second, HB 2563 adds the terms "electronic cigarette" and "consumable material" throughout the Cigarette and Tobacco Products Act (Act). These amendments place electronic cigarettes and consumable materials under the same regulations in terms of sales and possession as cigarettes and other tobacco products. Under HB 2563 the Act would regulate the following four products:

- Cigarettes, which are what is commonly known as cigarettes.
- Electronic cigarettes, which are commonly known as vaping devices.
- Consumable material, which is the liquid nicotine solution used in an electronic cigarette.
- Tobacco products, which are all other types of tobacco that can be consumed, such as cigars, plug tobacco, and snuff.

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Section 12 of the bill also adds the new unlawful practice of selling flavored consumable materials. No person may sell any electronic cigarette or any other container of consumable material that is flavored, except menthol-flavored consumable material will still be permitted.

HB 2563 also amends the education statute K.S.A. 72-6285, which currently prohibits the use of tobacco products in school buildings. The statute is amended to specify all four types of products regulated under the Act, so that each is specifically prohibited in public school buildings.

Third, HB 2563 raises the minimum age to purchase or possess any type of tobacco from 18 to 21. This mirrors the recent federal legislation raising imposing the same age restriction. There are various amendments throughout the Act to change "18" to "21," and to change references to "minors" to persons under age 21.

In Section 12, on page 17 of the bill there are new requirements for the signage all retail dealers are required to post. The new requirements specify where in the licensed premises the sign must be posted and the size of the sign.

Section 13 of HB 2563 imposes a new schedule of fines for sales to persons under 21. Currently, the offense is a class B misdemeanor with a minimum fine of \$200. HB 2563 raises the minimum fine to \$500 for a first offense, \$750 for a second offense, and \$1000 for a third or subsequent offense. The bill also adds a new provision under Section 19 that requires municipal ordinance violations to be counted in determining the number of violations committed.

HB 2563 also removes the crime of purchase or possession by a minor. Currently, it is a cigarette and tobacco infraction for a minor to purchase or possess cigarettes, electronic cigarettes, or tobacco products. Under the bill, while it would be unlawful to sell or distribute such products to persons under 21, it would not be crime for the person under 21 to purchase or possess.

Section 20 amends K.S.A. 79-3394, which is the controlled buy statute. The amendment allows the use of persons under 21 to conduct controlled buys to ensure compliance with the Act. The bill also requires two unannounced controlled buys at each retail dealer each year. If there is a compliance failure, then a subsequent controlled buy must be conducted within 90 days.

Fourth, HB 2563 would prohibit the sale of any cigarettes or any tobacco products via a vending machine or self-service display. As a result, the bill strikes provisions in various statutes providing for licensure and regulation of vending machines and self-service displays. Section 12, however, retains an exception to the general prohibition on self-service displays. Self-service could be provided by a retail dealer in an indoor enclosed area where the dealer ensures that no

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person under 21 can enter. This would most likely apply to indoor humidors located in retail tobacco shops.

Fifth, HB 2563 makes amendments with respect to retail dealer licenses. The first amendment is to raise the license fee from \$25 to \$100. This fee is paid each biennium. All other license fees remain the same.

Next, HB 2563 cleans up licensure applications provisions in Section 9. Currently, a license application may be refused if the applicant is not of good moral character or has been convicted of a felony involving moral turpitude or cigarettes or tobacco products. Such restrictions, however, are not included in the director's authority to refuse to issue or renew a license. HB 2563 would allow the director to deny an initial license or renewal license on these grounds. The bill also adds these restrictions to the statute that provides the grounds for suspension or revocation of a license.

If enacted, HB 2563 would become effective on July 1, 2020.

