

HOUSE BILL No. 2563

By Committee on Federal and State Affairs

2-4

1 AN ACT concerning cigarettes and tobacco products; increasing the
2 minimum age to purchase or possess such products; prohibiting
3 cigarette vending machines and self-service displays; amending K.S.A.
4 72-6285, 79-3301, 79-3302, 79-3303, 79-3304, 79-3309, 79-3316, 79-
5 3321, 79-3322, 79-3323, 79-3326, 79-3334, 79-3335, 79-3388, 79-
6 3391, 79-3394, 79-3396 and 79-3399 and K.S.A. 2019 Supp. 21-5102,
7 21-6109, 21-6110 and 50-6a14 and repealing the existing sections; also
8 repealing K.S.A. 79-3310c.
9

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

11 Section 1. K.S.A. 2019 Supp. 21-5102 is hereby amended to read as
12 follows: 21-5102. A crime is an act or omission defined by law and for
13 which, upon conviction, a sentence of death, imprisonment or fine, or both
14 imprisonment and fine, is authorized or, in the case of a traffic infraction
15 or a cigarette or tobacco infraction, a fine is authorized. Crimes are
16 classified as felonies, misdemeanors, traffic infractions and cigarette or
17 tobacco infractions.

18 (a) A felony is a crime punishable by death or by imprisonment in
19 any state correctional institution or a crime which is defined as a felony by
20 law.

21 (b) A traffic infraction is a violation of any of the statutory provisions
22 listed in ~~subsection (c) of K.S.A. 8-2118(c)~~, and amendments thereto.

23 (c) A cigarette or tobacco infraction is a violation of K.S.A. 2019
24 Supp. 21-6109 through 21-6114 and 21-6116 ~~and subsection (m) or (n) of~~
25 ~~K.S.A. 79-3321~~, and amendments thereto.

26 (d) All other crimes are misdemeanors.

27 Sec. 2. K.S.A. 2019 Supp. 21-6109 is hereby amended to read as
28 follows: 21-6109. As used in K.S.A. 2019 Supp. 21-6109 through 21-6116,
29 and amendments thereto:

30 (a) "Access point" means the area within a ten foot radius outside of
31 any doorway, open window or air intake leading into a building or facility
32 that is not exempted pursuant to K.S.A. 2019 Supp. 21-6110(d), and
33 amendments thereto.

34 (b) "Bar" means any indoor area that is operated and licensed for the
35 sale and service of alcoholic beverages, including alcoholic liquor as
36 defined in K.S.A. 41-102, and amendments thereto, or cereal malt

1 beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-
2 premises consumption.

3 (c) *"Electronic cigarette" means the same as such term is defined in*
4 *K.S.A. 79-3301, and amendments thereto.*

5 ~~(e)~~(d) "Employee" means any person who is employed by an
6 employer in consideration for direct or indirect monetary wages or profit
7 and any person who volunteers their services for a nonprofit entity.

8 ~~(d)~~(e) "Employer" means any person, partnership, corporation,
9 association or organization, including municipal or nonprofit entities, that
10 employs one or more individual persons.

11 ~~(e)~~(f) "Enclosed area" means all space between a floor and ceiling
12 that is enclosed on all sides by solid walls, windows or doorways that
13 extend from the floor to the ceiling, including all space therein screened by
14 partitions that do not extend to the ceiling or are not solid or similar
15 structures. For purposes of this section, the following shall not be
16 considered an "enclosed area": (1) Rooms or areas, enclosed by walls,
17 windows or doorways, having neither a ceiling nor a roof and that are
18 completely open to the elements and weather at all times; and (2) rooms or
19 areas, enclosed by walls, fences, windows or doorways and a roof or
20 ceiling, having openings that are permanently open to the elements and
21 weather and that comprise an area that is at least 30% of the total
22 perimeter wall area of such room or area.

23 ~~(f)~~(g) "Food service establishment" means any place in which food is
24 served or is prepared for sale or service on the premises. Such term shall
25 include, but not be limited to, fixed or mobile restaurants, coffee shops,
26 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich
27 shops, soda fountains, taverns, private clubs, roadside kitchens,
28 commissaries and any other private, public or nonprofit organization or
29 institution routinely serving food and any other eating or drinking
30 establishment or operation where food is served or provided for the public
31 with or without charge.

32 ~~(g)~~(h) "Gaming floor" means the area of a lottery gaming facility or
33 racetrack gaming facility, as those terms are defined in K.S.A. 74-8702,
34 and amendments thereto, where patrons engage in Class III gaming. The
35 gaming floor shall not include any areas used for accounting, maintenance,
36 surveillance, security, administrative offices, storage, cash or cash
37 counting, records, food service, lodging or entertainment, except that the
38 gaming floor may include a bar where alcoholic beverages are served so
39 long as the bar is located entirely within the area where Class III gaming is
40 conducted.

41 ~~(h)~~(i) "Medical care facility" means a physician's office, general
42 hospital, special hospital, ambulatory surgery center or recuperation center,
43 as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric

1 hospital licensed under K.S.A. 2019 Supp. 39-2001 et seq., and
2 amendments thereto.

3 ~~(j)~~(j) "Outdoor recreational facility" means a hunting, fishing,
4 shooting or golf club, business or enterprise operated primarily for the
5 benefit of its owners, members and their guests and not normally open to
6 the general public.

7 ~~(k)~~(k) "Place of employment" means any enclosed area under the
8 control of a public or private employer, including, but not limited to, work
9 areas, auditoriums, elevators, private offices, employee lounges and
10 restrooms, conference and meeting rooms, classrooms, employee
11 cafeterias, stairwells and hallways, that is used by employees during the
12 course of employment. For purposes of this section, a private residence
13 shall not be considered a "place of employment" unless such residence is
14 used as a day care home, as defined in K.S.A. 65-530, and amendments
15 thereto.

16 ~~(l)~~(l) "Private club" means an outdoor recreational facility operated
17 primarily for the use of its owners, members and their guests that in its
18 ordinary course of business is not open to the general public for which use
19 of its facilities has substantial dues or membership fee requirements for its
20 members.

21 ~~(m)~~(m) "Public building" means any building owned or operated by:
22 (1) The state, including any branch, department, agency, bureau,
23 commission, authority or other instrumentality thereof; (2) any county,
24 city, township, other political subdivision, including any commission,
25 authority, agency or instrumentality thereof; or (3) any other separate
26 corporate instrumentality or unit of the state or any municipality.

27 ~~(n)~~(n) "Public meeting" means any meeting open to the public
28 pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other
29 law of this state.

30 ~~(o)~~(o) "Public place" means any enclosed areas open to the public or
31 used by the general public including, but not limited to: Banks, bars, food
32 service establishments, retail service establishments, retail stores, public
33 means of mass transportation, passenger elevators, health care institutions
34 or any other place where health care services are provided to the public,
35 medical care facilities, educational facilities, libraries, courtrooms, public
36 buildings, restrooms, grocery stores, school buses, museums, theaters,
37 auditoriums, arenas and recreational facilities. For purposes of this section,
38 a private residence shall not be considered a "public place" unless such
39 residence is used as a day care home, as defined in K.S.A. 65-530, and
40 amendments thereto.

41 ~~(p)~~(p) "Smoking" means possession of a lighted cigarette, cigar, pipe
42 or burning tobacco in any other form or device designed for the use of
43 tobacco, *or use of an electronic cigarette.*

1 ~~(p)~~(q) "Tobacco shop" means any indoor area operated primarily for
2 the retail sale of tobacco, tobacco products or smoking devices or
3 accessories, and that derives not less than 65% of its gross receipts from
4 the sale of tobacco.

5 ~~(q)~~(r) "Substantial dues or membership fee requirements" means
6 initiation costs, dues or fees proportional to the cost of membership in
7 similarly-situated outdoor recreational facilities that are not considered
8 nominal and implemented to otherwise avoid or evade restrictions of a
9 statewide ban on smoking.

10 Sec. 3. K.S.A. 2019 Supp. 21-6110 is hereby amended to read as
11 follows: 21-6110. (a) It shall be unlawful, with no requirement of a
12 culpable mental state, to smoke in an enclosed area or at a public meeting
13 including, but not limited to:

- 14 (1) Public places;
- 15 (2) taxicabs and limousines;
- 16 (3) restrooms, lobbies, hallways and other common areas in public
17 and private buildings, condominiums and other multiple-residential
18 facilities;
- 19 (4) restrooms, lobbies and other common areas in hotels and motels
20 and in at least 80% of the sleeping quarters within a hotel or motel that
21 may be rented to guests;
- 22 (5) access points of all buildings and facilities not exempted pursuant
23 to subsection (d); and
- 24 (6) any place of employment.

25 (b) Each employer having a place of employment that is an enclosed
26 area shall provide a smoke-free workplace for all employees. Such
27 employer shall also adopt and maintain a written smoking policy ~~which~~
28 ~~shall prohibit that prohibits~~ smoking without exception in all areas of the
29 place of employment. Such policy shall be communicated to all current
30 employees within one week of its adoption and shall be communicated to
31 all new employees upon hiring. Each employer shall provide a written
32 copy of the smoking policy upon request to any current or prospective
33 employee.

34 (c) Notwithstanding any other provision of this section, K.S.A. 2019
35 Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or other
36 person in charge of an adult care home, as defined in K.S.A. 39-923, and
37 amendments thereto, or a medical care facility, may designate a portion of
38 such adult care home, or the licensed long-term care unit of such medical
39 care facility, as a smoking area, and smoking may be permitted within such
40 designated smoking area.

41 (d) The provisions of this section shall not apply to:

- 42 (1) The outdoor areas of any building or facility beyond the access
43 points of such building or facility;

- 1 (2) private homes or residences, except when such home or residence
2 is used as a day care home, as defined in K.S.A. 65-530, and amendments
3 thereto;
- 4 (3) a hotel or motel room rented to one or more guests if the total
5 percentage of such hotel or motel rooms in such hotel or motel does not
6 exceed 20%;
- 7 (4) the gaming floor of a lottery gaming facility or racetrack gaming
8 facility, as those terms are defined in K.S.A. 74-8702, and amendments
9 thereto;
- 10 (5) that portion of an adult care home, as defined in K.S.A. 39-923,
11 and amendments thereto, that is expressly designated as a smoking area by
12 the proprietor or other person in charge of such adult care home pursuant
13 to subsection (c) and that is fully enclosed and ventilated;
- 14 (6) that portion of a licensed long-term care unit of a medical care
15 facility that is expressly designated as a smoking area by the proprietor or
16 other person in charge of such medical care facility pursuant to subsection
17 (c) and that is fully enclosed and ventilated and to which access is
18 restricted to the residents and their guests;
- 19 (7) tobacco shops;
- 20 (8) a class A or class B club, *as* defined in K.S.A. 41-2601, and
21 amendments thereto, ~~which~~ *that*: (A) Held a license pursuant to K.S.A. 41-
22 2606 et seq., and amendments thereto, as of January 1, 2009; and (B)
23 notifies the secretary of health and environment in writing, not later than
24 90 days after the effective date of this act, that it wishes to continue to
25 allow smoking on its premises;
- 26 (9) a private club in designated areas where ~~minors~~ *persons under the*
27 *age of 21* are prohibited;
- 28 (10) any benefit cigar dinner or other cigar dinner of a substantially
29 similar nature that:
- 30 (A) Is conducted specifically and exclusively for charitable purposes
31 by a nonprofit organization ~~which~~ *that* is exempt from federal income
32 taxation pursuant to section 501(c)(3) of the federal internal revenue code
33 of 1986;
- 34 (B) is conducted no more than once per calendar year by such
35 organization; and
- 36 (C) has been held during each of the previous three years prior to
37 January 1, 2011; and
- 38 (11) that portion of a medical or clinical research facility constituting
39 a separately ventilated, secure smoking room dedicated and used solely
40 and exclusively for clinical research activities conducted in accordance
41 with regulatory authority of the United States or the state of Kansas, as
42 determined by the director of alcoholic beverage control of the department
43 of revenue.

1 Sec. 4. K.S.A. 2019 Supp. 50-6a14 is hereby amended to read as
 2 follows: 50-6a14. (a) In addition to, or in lieu of, any other civil or
 3 criminal remedy provided by law, the director or the director's designee,
 4 upon a finding that a stamping agent has violated ~~subsection (a) of~~ K.S.A.
 5 50-6a04(a), and amendments thereto, or any rules or regulations adopted
 6 pursuant to this act, may revoke or suspend the license of any licensee in
 7 the manner provided by K.S.A. 79-3309, and amendments thereto. Each
 8 package of cigarettes to which tax indicia is affixed, is caused to be affixed
 9 or tax is paid thereupon, and each sale or offer to sell cigarettes in
 10 violation of ~~subsection (a) of~~ K.S.A. 50-6a04(a), and amendments thereto,
 11 shall constitute a separate violation. The director may also impose a civil
 12 penalty in an amount not to exceed the greater of 500% of the retail value
 13 of the cigarettes involved or \$5,000 upon a finding of violation of
 14 ~~subsection (a) of~~ K.S.A. 50-6a04(a), and amendments thereto, or a
 15 violation of any rules or regulations adopted pursuant to this act. Such fine
 16 shall be imposed in the manner provided by K.S.A. 79-3391, and
 17 amendments thereto. Any fine collected pursuant to this subsection shall
 18 be remitted to the state treasurer in accordance with the provisions of
 19 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
 20 remittance, the state treasurer shall deposit the entire amount in the state
 21 treasury to the credit of the cigarette and tobacco products regulation fund
 22 created pursuant to ~~subsection (e) of~~ K.S.A. 79-3391, and amendments
 23 thereto. The moneys credited to this fund shall be used for the purposes of
 24 enforcement of this act, or K.S.A. 79-3301 et seq., and amendments
 25 thereto.

26 (b) The attorney general or the attorney general's duly authorized
 27 designee shall, when requested by the director, assist the director in a
 28 hearing to suspend or revoke a stamping agent's license for a violation of
 29 this act.

30 Sec. 5. K.S.A. 72-6285 is hereby amended to read as follows: 72-
 31 6285. (a) The use of *cigarettes, electronic cigarettes, consumable material*
 32 *and* tobacco products in any school building is hereby prohibited. No
 33 board of education of any school district shall allow any person to use
 34 *cigarettes, electronic cigarettes, consumable material* *or* tobacco products
 35 in any school building.

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36 (b) As used in this section, ~~the term:~~

37 (1) "Cigarette," "electronic cigarette," "consumable material," *and*
 38 "tobacco product" mean the same as such terms are defined in K.S.A. 79-
 39 3301, and amendments thereto; and

"alternative nicotine product"

40 (2) "school building" means any enclosed building used for ~~pupil~~
 41 *student* attendance purposes by the board of education of a unified school
 42 district. The term "school building" does not include a building, or part
 43 thereof, used for residential purposes or leased from the school district for

1 nonschool sponsored activities.

2 Sec. 6. K.S.A. 79-3301 is hereby amended to read as follows: 79-
3 3301. As used in K.S.A. 79-3301 et seq., and amendments thereto:

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

5 (b) "Carrier" means one who transports cigarettes from a
6 manufacturer to a wholesale dealer or from one wholesale dealer to
7 another.

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

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

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

17 (f) *"Consumable material" means any liquid solution or other*
18 *material that is depleted as it is consumed through the use of an electronic*
19 *cigarette.*

20 ~~(g)~~(g) "Consumer" means the person purchasing or receiving
21 cigarettes, ~~electronic cigarettes, consumable material or tobacco~~ products
22 for final use.

23 ~~(g)~~(h) "Contracting entity" means any public or private person, firm
24 or entity that has entered into a contract with the secretary of revenue to
25 provide services.

26 ~~(h)~~(i) "Dealer" means any person who engages in the sale or
27 manufacture of cigarettes, ~~tobacco products or electronic cigarettes,~~
28 ~~consumable material or tobacco~~ products in the state of Kansas, and who
29 is required to be licensed under the provisions of this act.

30 ~~(i)~~(j) "Dealer establishment" means any location or premises, ~~other~~
31 ~~than vending machine locations,~~ at or from which cigarettes, ~~tobacco~~
32 ~~products or electronic cigarettes, consumable material or tobacco~~ products
33 are sold; and where records are kept.

34 ~~(j)~~(k) "Director" means the director of taxation.

35 ~~(k)~~(l) "Distributor" means:

36 (1) Any person engaged in the business of selling tobacco products in
37 this state who brings, or causes to be brought, into this state from outside
38 the state any tobacco products for sale;

39 (2) any person who makes, manufactures, fabricates or stores tobacco
40 products in this state for sale in this state; or

41 (3) any person engaged in the business of selling tobacco products
42 outside this state who ships or transports tobacco products to any person in
43 the business of selling tobacco products in this state.

"Alternative nicotine product" means any noncombustible product containing nicotine without the presence of tobacco leaf that is intended to be placed in the oral or nasal cavity, whether chewed, absorbed, dissolved or ingested by any other means. The term "alternative nicotine product" does not include cigarettes, electronic cigarettes, consumable material, tobacco products or any product regulated as a drug or device by the United States food and drug administration under chapter V of the federal food, drug and cosmetic act.
(c)

And by relettering remaining subsections

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1 ~~(h)~~(m) "Division" means the division of taxation.

2 ~~(m)~~(n) "Electronic cigarette" means a battery-powered device,

3 whether or not such device is shaped like a cigarette, that can provide

4 inhaled doses of nicotine by delivering a vaporized solution by means of

5 cartridges or other chemical delivery systems.

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

7 ~~(h)~~(p) "License" means the privilege of a licensee to sell ~~cigarettes,~~

8 ~~electronic cigarettes, consumable material or tobacco~~ products in the state

9 of Kansas; and the written evidence of such authority or privilege as issued

10 by the director.

11 ~~(h)~~(q) "Licensee" means any person holding a current license issued

12 pursuant to this act.

13 ~~(h)~~(r) "Manufacturer" means the same as provided in 26 U.S.C. §

14 5702(d).

15 ~~(h)~~(s) "Manufacturer's salesperson" means a person employed by a

16 cigarette manufacturer who sells cigarettes, manufactured by such

17 employer and procured from wholesale dealers.

18 ~~(h)~~(t) (1) "Package" means a container in which no more than 25

19 individual cigarettes are wrapped and sealed by the manufacturer of

20 cigarettes prior to shipment to a wholesale dealer;

21 (2) for the purposes of K.S.A. 79-3321~~(v)~~ and ~~(w)~~ (r) and (s), and

22 amendments thereto, "package" means the same as provided in 15 U.S.C.

23 § 1332(4).

24 ~~(h)~~(u) "Person" means any individual, partnership, society,

25 association, joint-stock company, corporation, estate, receiver, trustee,

26 assignee, referee or any other person acting in a fiduciary or representative

27 capacity whether appointed by a court or otherwise and any combination

28 of individuals.

29 ~~(h)~~(v) "Received" means the coming to rest of cigarettes for sale by

30 any dealer in the state of Kansas.

31 ~~(v)~~(w) "Retail dealer" or "retailers" means a person, ~~other than a~~

32 ~~vending machine operator,~~ in possession of ~~cigarettes or electronic~~

33 ~~cigarettes, consumable material or tobacco~~ products for the purpose of

34 sale to a consumer.

35 ~~(w)~~(x) "Sale" means any transfer of title or possession or both,

36 exchange, barter, distribution or gift of ~~cigarettes, tobacco products or~~

37 ~~electronic cigarettes, consumable material or tobacco~~ products, with or

38 without consideration.

39 ~~(x)~~(y) "Sample" means ~~cigarettes, electronic cigarettes, consumable~~

40 ~~material or tobacco~~ products distributed to members of the general public

41 at no cost for purposes of promoting the product.

42 ~~(y)~~(z) "Self-service display" means a display that contains ~~cigarettes,~~

43 ~~electronic cigarettes, consumable material or tobacco~~ products and is

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(x) "Regulated products" means cigarettes, electronic cigarettes, consumable materials, alternative nicotine products and tobacco products.

And by relettering remaining subsections

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1 located in an area openly accessible to a retail dealer's consumers, and
 2 from which such consumers can readily access ~~cigarettes, electronic~~
 3 ~~cigarettes, consumable material~~ or tobacco products without the assistance
 4 of a salesperson, and ~~which that~~ is knowingly utilized by the retail dealer
 5 to market and sell ~~cigarettes, electronic cigarettes, consumable material~~
 6 ~~and tobacco~~ products to consumers. A display case that holds ~~cigarettes,~~
 7 ~~electronic cigarettes, consumable material~~ or tobacco products behind
 8 locked doors does not constitute a self-service display.

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

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

13 ~~(bb)~~(cc) "Tobacco products" means cigars, cheroots, stogies,
 14 periques; granulated, plug cut, crimp cut, ready rubbed and other smoking
 15 tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and
 16 other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and
 17 sweepings of tobacco, and other kinds and forms of tobacco, prepared in
 18 such manner as to be suitable for chewing or smoking in a pipe or
 19 otherwise, or both for chewing and smoking. Tobacco products do not
 20 include cigarettes.

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

24 ~~(dd)~~(ee) "Vending machine" means any coin operated machine,
 25 contrivance or device, by means of which merchandise may be sold.

26 ~~(ee)~~ "Vending machine distributor" means any person who sells
 27 ~~cigarette vending machines to a vending machine operator operating~~
 28 ~~vending machines in the state of Kansas.~~

29 ~~(ff)~~ "Vending machine operator" means any person who places a
 30 ~~vending machine, owned, leased or operated by such person, at locations~~
 31 ~~where cigarettes are sold from such vending machine. The owner or lessee~~
 32 ~~of the premises upon which a vending machine is placed shall not be~~
 33 ~~considered the operator of the machine, nor shall the owner or lessee, or~~
 34 ~~any employee or agent of the owner or lessee be considered an authorized~~
 35 ~~agent of the vending machine operator, if the owner or lessee does not own~~
 36 ~~or lease the machine and the owner's or lessee's sole remuneration from the~~
 37 ~~machine is a flat rental fee or commission based upon the number or value~~
 38 ~~of cigarettes sold from the machine, or a combination of both.~~

39 ~~(gg)~~(ff) "Wholesale dealer" means any person who sells cigarettes to
 40 other wholesale dealers, retail dealers, ~~vending machine operators~~ and
 41 manufacturer's salespersons for the purpose of resale in the state of
 42 Kansas.

43 ~~(hh)~~(gg) "Wholesale sales price" means the original net invoice price

1 for which a manufacturer sells a tobacco product to a distributor, as shown
2 by the manufacturer's original invoice.

3 Sec. 7. K.S.A. 79-3302 is hereby amended to read as follows: 79-
4 3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309, 79-3310,
5 79-3311, ~~79-3311a~~, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-
6 3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3333, 79-3335,
7 79-3336, 79-3371, 79-3373, 79-3374, 79-3375, 79-3377, 79-3378, 79-
8 3379, 79-3387, 79-3388, 79-3391, 79-3392, 79-3393, 79-3394 and K.S.A.
9 ~~79-3311a, 79-3336~~, 79-3395 through 79-3399; and 79-33,100, and
10 amendments thereto, shall be known and may be cited as the Kansas
11 cigarette and tobacco products act.

12 (b) It is the purpose and intent of this act to regulate the sale of
13 cigarettes, *electronic cigarettes*, *consumable material* and tobacco
14 products in this state and to impose a tax thereon.

, alternative nicotine products

15 Sec. 8. K.S.A. 79-3303 is hereby amended to read as follows: 79-
16 3303. (a) Each person engaged in the business of selling ~~cigarettes or~~
17 ~~electronic cigarettes, consumable material or tobacco products~~ in the state
18 of Kansas and each vending machine distributor shall obtain a license as
19 provided by this act. A separate application, license and fee is required for
20 each dealer establishment owned or operated by a dealer. ~~A vending~~
21 ~~machine operator is required to obtain a vending machine operator's~~
22 ~~master license and, in addition, a separate permit for each vending~~
23 ~~machine operated by the operator. A vending machine operator may submit~~
24 ~~one application for the vending machine operator's master license and all~~
25 ~~permits for vending machines operated by the operator. The license shall~~
26 ~~be displayed in the dealer establishment and the vending machine permit~~
27 ~~shall remain securely and visibly attached to the vending machine and~~
28 ~~contain such information as the director may require. Any vending~~
29 ~~machine found without such permit attached to the machine shall be sealed~~
30 ~~by an agent of the director and such seal shall be removed only by an agent~~
31 ~~of the director after payment of the permit fee and the penalties provided~~
32 ~~by this act.~~

, where applicable,

33 (b) ~~The application for a vending machine operator's master license~~
34 ~~and vending machine permits shall list the brand name and serial number~~
35 ~~of each machine and such other information as required by the director.~~
36 ~~Except in accordance with proper judicial order or as otherwise provided~~
37 ~~by law, it shall be unlawful for any officer or employee of the division to~~
38 ~~divulge or make known in any way the location of any vending machine to~~
39 ~~any person not an officer or employee of the division or contracting entity~~
40 ~~of the division, where the division has determined disclosure of such~~
41 ~~information is essential for completion of the contract and has taken~~
42 ~~appropriate steps to preserve confidentiality, except that such information~~
43 ~~may be divulged to any law enforcement officer for use in the officer's~~

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1 official duties. Any officer, employee or contracting entity revealing any
2 such location in violation of this provision, in addition to the penalties
3 otherwise provided in this act, shall be dismissed from office.

4 ~~(c) A vending machine operator, in the course of business as a
5 vending machine operator, may dispose of or sell vending machines
6 without securing a license to sell vending machines. The vending machine
7 operator may move vending machines from one location to another and, if
8 a vending machine becomes inoperative or is disposed of, the permit for
9 such machine may be transferred to another machine. A vending machine
10 operator, within 10 days, shall notify the director of the brand name and
11 serial number of vending machines that become inoperative or that the
12 operator disposes of, sells, acquires or brings into service in this state as
13 additional machines.~~

14 ~~(d) The key to the lower or storage compartment of a vending
15 machine shall remain only in the possession of the vending machine
16 operator or the operator's authorized agent. All services connected with the
17 operation of a vending machine shall be performed by the vending
18 machine operator or the operator's authorized agent. All vending machines
19 shall be subject to inspection by the director or the director's authorized
20 agents. No permit shall be issued for a vending machine unless it is
21 constructed so that at least one package of each vertical column of
22 cigarettes located therein is visible showing tax indicia.~~

23 ~~(e) All vending machines operated on military installations shall have
24 a permit affixed to the machines and the cigarettes shall show tax indicia
25 of the Kansas tax.~~

26 ~~(f) On or before the 10th day of each month, each vending machine
27 distributor shall report to the director, on forms provided by the director,
28 all sales of cigarette vending machines by the distributor to persons in the
29 state of Kansas during the preceding month; the name and address of the
30 purchaser; and the brand name, serial number and sale price of the
31 machines.~~

32 ~~(g) Concurrently with a change in ownership of a dealer
33 establishment, the license applicable to the establishment is void and shall
34 be surrendered to the director and shall not be transferred. On removal of a
35 dealer establishment from one location to another, the owner of the
36 establishment shall notify the director and surrender the owner's license.
37 The director shall issue a new license for the unexpired term of the
38 surrendered license on payment of a fee of \$2. If a dealer's license is lost,
39 stolen or destroyed, the director may issue a new license on proof of loss,
40 theft or destruction, at a cost of \$2. The director shall remit all moneys
41 received under this subsection to the state treasurer in accordance with the
42 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
43 each such remittance, the state treasurer shall deposit the entire amount in~~

1 the state treasury to the credit of the state general fund.

2 Sec. 9. K.S.A. 79-3304 is hereby amended to read as follows: 79-
3 3304. (a) The license fee for each biennium, or portion thereof, shall be as
4 follows:

5 (1) For retail dealer's license, ~~\$25~~ \$100 for each dealer establishment.

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

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

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

12 (5) For wholesale dealer's license, \$50 for each dealer establishment.

13 No wholesale dealer's license shall be issued until the person applying
14 therefor has filed with the director a bond payable to the state of Kansas in
15 such an amount as shall be fixed by the director, but in no event less than
16 \$1,000, with a corporate surety authorized to do business in the state of
17 Kansas, and approved by the director. If a wholesale dealer is unable to
18 secure a corporate surety bond, the director may issue a license to such
19 wholesale dealer, upon the wholesale dealer furnishing a personal bond
20 meeting the approval of the director. Such bond shall be conditioned on the
21 wholesale dealer's compliance with all the provisions of this act during the
22 license period.

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

24 (7)(3) For manufacturer's salesperson license, \$20 for each
25 salesperson. The manufacturer's salesperson shall, with respect to each sale
26 made to a retail dealer, make and deliver to the retail dealer a true invoice
27 wherein such salesperson shall insert the name of the wholesale dealer
28 from whom such salesperson secured such cigarettes, together with such
29 salesperson's own name and the name of the retail dealer purchasing the
30 cigarettes.

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

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

33 (b) ~~An application for any license required under the provisions of~~
34 ~~this act may be refused to: (1) A person who is not of good character and~~
35 ~~reputation in the community in which such person resides; or (2) a person~~
36 ~~who has been convicted of a felony or of any crime involving moral~~
37 ~~turpitude or of the violation of any law of any state or the United States~~
38 ~~pertaining to cigarettes or tobacco products and who has not completed the~~
39 ~~sentence, parole, probation or assignment to a community correctional~~
40 ~~services program imposed for any such conviction within two years~~
41 ~~immediately preceding the date of making application for any of such~~
42 ~~licenses.~~

43 (e) The director may refuse to issue or renew a license to any person

1 who:

2 (1) *Is not of good character and reputation in the community in*
3 *which such person resides;*

4 (2) *has been convicted of a felony or of any crime involving moral*
5 *turpitude or of the violation of any law of any state or the United States*
6 *pertaining to ~~cigarettes or tobacco~~ products and who has not completed*
7 *the sentence, parole, probation or assignment to a community correctional*
8 *services program imposed for any such conviction within two years*
9 *immediately preceding the date of making application for any of such*
10 *licenses;*

regulated

11 (3) *has been convicted on or after January 1, 2013, of a felony under*
12 *the laws of this state or any other state or the United States;*

13 ~~(2)~~(4) *is not current in the payment of any tax or fine under this act;*

14 ~~(3)~~(5) *has had a cigarette license revoked in this state or any other*
15 *state;*

16 ~~(4)~~(6) *is not at least ~~18~~ 21 years of age;*

17 ~~(5)~~(7) *intends to carry on the business as an agent of another;*

18 ~~(6)~~(8) *at the time of application for renewal of any license issued*
19 *under this act, would not be eligible for the license upon first application;*

20 ~~(7)~~(9) *does not own the premises for which a license is sought, or*
21 *does not, at the time of the application, have a written lease;*

22 ~~(8)~~(10) *has been convicted of a crime involving any tax under this*
23 *act;*

24 ~~(9)~~(11) *is a corporation in which any officer, manager or director*
25 *thereof, or any stockholder owning in the aggregate more than 5% of the*
26 *common or preferred stock of such corporation, has been an officer,*
27 *manager or director or stockholder owning in the aggregate more than 5%*
28 *of the common or preferred stock, of a corporation that:*

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

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

31 ~~(10)~~(12) *is a limited liability company in which any officer, manager*
32 *or director thereof, or any member owning in the aggregate more than 5%*
33 *of the limited liability company, has been an officer, manager or director or*
34 *stockholder owning in the aggregate more than 5% of the common or*
35 *preferred stock, of a corporation that:*

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

37 (B) *has been convicted of a crime involving any tax under this act.*

38 Sec. 10. K.S.A. 79-3309 is hereby amended to read as follows: 79-
39 3309. (a) Whenever the director has reason to believe that any person
40 licensed under this act has violated any of the provisions of this act; in any
41 of the following ways, the director shall notify the person by certified mail
42 of the director's intention to suspend or revoke the person's license or
43 licenses, if the person:

1 (1) *Is not of good character and reputation in the community in*
2 *which such person resides;*

3 (2) *has been convicted of a felony or of any crime involving moral*
4 *turpitude or of the violation of any law of any state or the United States*
5 *pertaining to ~~cigarettes or tobacco~~ products and who has not completed*
6 *the sentence, parole, probation or assignment to a community correctional*
7 *services program imposed for any such conviction within two years*
8 *immediately preceding the date of making application for any of such*
9 *licenses;*

regulated

10 (3) *has been convicted on or after January 1, 2013, of a felony under*
11 *the laws of this state or any other state or the United States;*

12 ~~(2)~~(4) *is not current in the payment of any tax or fine under this act;*

13 ~~(3)~~(5) *has had a cigarette license revoked in this state or any other*
14 *state;*

15 ~~(4)~~(6) *is not at least ~~18~~ 21 years of age;*

16 ~~(5)~~(7) *intends to carry on the business as an agent of another;*

17 ~~(6)~~(8) *at the time of application for renewal of any license issued*
18 *under this act, would not be eligible for the license upon first application;*

19 ~~(7)~~(9) *does not own the premises for which a license is sought, or*
20 *does not, at the time of the application, have a written lease;*

21 ~~(8)~~(10) *has been convicted of a crime involving any tax under this*
22 *act;*

23 ~~(9)~~(11) *in the case of a corporation, any officer, manager or director*
24 *thereof, or any stockholder owning in the aggregate more than 5% of the*
25 *common or preferred stock of such corporation, has been an officer,*
26 *manager or director or stockholder owning in the aggregate more than 5%*
27 *of the common or preferred stock, of a corporation that:*

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

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

30 ~~(10)~~(12) *in the case of a limited liability company, any officer,*
31 *manager or director thereof, or any member owning in the aggregate more*
32 *than 5% of the limited liability company, has been an officer, manager or*
33 *director or stockholder owning in the aggregate more than 5% of the*
34 *common or preferred stock, of a corporation that:*

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

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

37 (b) *Within 30 days after the mailing of the notice, the person may*
38 *request a hearing in writing before the director. The hearing shall be*
39 *conducted in accordance with the provisions of the Kansas administrative*
40 *procedure act. If, after such hearing, it appears to the satisfaction of the*
41 *director that the person has violated any of the provisions of this act, the*
42 *director is hereby authorized and empowered to suspend or revoke the*
43 *person's license or licenses and may in addition deny the application of the*

1 person for a license or licenses for a portion of the succeeding calendar
2 year for such period as the director determines is necessary, but in no case
3 for a period ending more than one year following the date upon which the
4 license or licenses were suspended or revoked. ~~The suspension or~~
5 ~~revocation of a vending machine operator's master license shall suspend or~~
6 ~~revoke all vending machine permits issued to the vending machine~~
7 ~~operator for the term of the license suspension or revocation.~~

8 (c) If a person continues to engage in activities requiring a license
9 under this act after having notice or knowledge of the suspension or
10 revocation of the person's license or licenses or after becoming more than
11 10 days delinquent in filing a bond payable to the state of Kansas as
12 required by the director, payment of any fine, tax, penalty or interest
13 imposed pursuant to this act, the state shall be entitled, in any proceedings
14 brought for such purposes, to have an order and judgment restraining and
15 enjoining such unlawful sale and no bond shall be required for the
16 issuance of any such restraining order or injunction.

17 Sec. 11. K.S.A. 79-3316 is hereby amended to read as follows: 79-
18 3316. (a) All purchases of cigarettes by any dealer shall be evidenced by
19 an invoice, a duplicate of which shall be furnished to the party receiving
20 the cigarettes from any dealer.

21 (b) Purchases of cigarettes by wholesale dealers shall be made from
22 the manufacturers of cigarettes or from other Kansas licensed wholesale
23 dealers. Purchases of cigarettes by retail dealers ~~or vending machine~~
24 ~~operators~~ shall be from wholesale dealers.

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

35 (d) All records pertaining to sales of cigarettes by dealers in the state
36 of Kansas shall be preserved for a period of three years and shall be
37 available for inspection by the director or the director's designee at the
38 dealer's place of business or, if the dealer has more than one place of
39 business in the state, at a central location of the dealer.

40 (e) Every wholesale dealer shall report to the director on or before the
41 10th day of each month, stating the amount of cigarettes sold during the
42 preceding month and the amount of all cigarettes returned to the
43 manufacturer. Any wholesale dealer who refuses any shipment or part of a

1 shipment of unstamped cigarettes or has a shortage in the shipment of
2 cigarettes consigned to such dealer shall in the monthly report next
3 following the refusal or shortage report to the director the number of
4 packages or cartons of cigarettes refused or short and the name of the
5 carrier from whom the cigarettes were refused or shortage occurred. Such
6 report shall be filed electronically in the manner prescribed by the director.

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

10 Sec. 12. K.S.A. 79-3321 is hereby amended to read as follows: 79-
11 3321. It shall be unlawful for any person:

12 (a) Except as otherwise specifically provided by this act, to possess,
13 sell, transport, import, distribute, wholesale or manufacture more than
14 1,000 cigarettes without the required tax indicia being affixed as herein
15 provided.

16 (b) To mutilate or attach to any individual package of cigarettes any
17 stamp that has in any manner been mutilated or that has been heretofore
18 attached to a different individual package of cigarettes or to have in
19 possession any stamps so mutilated.

20 (c) To prevent the director or any officer or agent authorized by law;
21 ~~to make from making~~ a full inspection for the ~~purpose~~ *purposes* of this act;
22 of any place of business and all premises connected thereto where
23 cigarettes are or may be manufactured, sold, distributed; or given away.

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

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

30 (f) Knowingly to make, use; or present to the director or agent thereof
31 any falsified invoice or falsely state the nature or quantity of the goods
32 invoiced.

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

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

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

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

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

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

5 ~~(k) To vend small cigars, or any products so wrapped as to be
6 confused with cigarettes, from a machine vending cigarettes, nor shall a
7 vending machine be so built to vend cigars or products that may be
8 confused with cigarettes, be attached to a cigarette vending machine.~~

9 ~~(t) To sell, furnish or distribute cigarettes, electronic cigarettes,
10 consumable material or tobacco products to any person under 18 21 years
11 of age, or to buy cigarettes, electronic cigarettes, consumable material or
12 tobacco products for any person under 21 years of age.~~ any regulated

13 ~~(m) Who is under 18 years of age to purchase or attempt to purchase
14 cigarettes, electronic cigarettes or tobacco products.~~ any regulated

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

17 ~~(t)(l) To sell cigarettes to a retailer or at retail that do not bear Kansas
18 tax indicia or upon which the Kansas cigarette tax has not been paid.~~

19 ~~(t)(m) To sell cigarettes, electronic cigarettes, consumable material
20 or tobacco products without having a license for such sale as provided
21 herein.~~ regulated

22 ~~(q) To sell a vending machine without having a vending machine
23 distributor's license.~~

24 ~~(t)(n) Who is a retail dealer to fail to post and maintain in a
25 conspicuous place in the dealer's establishment the following notice: "By
26 law, cigarettes, electronic cigarettes, consumable material and tobacco
27 products may be sold only to persons 18 21 years of age and older." All
28 notices shall be posted in a manner conspicuous to both employees and
29 consumers, unobstructed from view in their entirety, and within six feet of
30 each register where cigarettes, electronic cigarettes, consumable material
31 or tobacco products are available for purchase. The notice shall be at
32 least 8 1/2" by 11" and the words on the notice shall be legibly printed.~~ , alternative nicotine products

33 ~~(s)(o) To distribute samples within 500 feet of any school when such
34 facility is being used primarily by persons under 18 21 years of age unless
35 the sampling is:~~ regulated

36 (1) In an area to which persons under 18 21 years of age are denied
37 access;

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

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

43 ~~(t)(p) To sell cigarettes, electronic cigarettes, consumable material or~~ Strike in line 43

regulated

1 ~~tobacco~~ products by means of a vending machine, including vending
2 machines that sell packaged, single cigarettes, in any establishment, or
3 portion of an establishment, ~~which is open to minors, except that this~~
4 ~~subsection shall 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.~~

regulated

13 ~~(u)(q) To sell cigarettes, electronic cigarettes, consumable material or~~
14 ~~tobacco~~ products by means of a self-service display in any establishment,
15 except that the provisions of this subsection shall not apply to:

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

17 ~~(2) a self-service display that is located in a tobacco specialty store;~~

18 ~~or~~

19 ~~(3) a self-service display located in a facility where the retailer~~
20 ~~ensures that no person younger than 18 years of age is present or permitted~~
21 ~~to enter at any time any indoor enclosed area where the retailer ensures~~
22 ~~that no person under 21 years of age is present or permitted to enter at~~
23 ~~any time.~~

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

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

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

41 (3) any cigarettes that such person otherwise knows or has reason to
42 know the manufacturer did not intend to be sold, distributed or used in the
43 United States; or

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

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

regulated products

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

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

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

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

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

has not obtained a tobacco product clearance order from the United States food and drug administration pursuant to 21 U.S.C. § 387j

26 (w) To sell: (1) Any electronic cigarette that contains flavored
27 consumable material, except menthol-flavored consumable material; or
28 (2) any flavored consumable material, except menthol-flavored
29 consumable material.

tobacco- or

has not obtained a tobacco product clearance order from the United States food and drug administration pursuant to 21 U.S.C. § 387j

30 Sec. 13. K.S.A. 79-3322 is hereby amended to read as follows: 79-
31 3322. (a) (1) Except as otherwise provided in this act, a violation of K.S.A.
32 79-3321(a), (c), (d), (f), (h), (i), (j), ~~(v)~~, ~~(w)~~, ~~(x)~~ or ~~(y)~~ (r), (s), (t), (u) or
33 (w), and amendments thereto, is a:

tobacco- or

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

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

39 (C) severity 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 (2) It shall be a defense to prosecution under K.S.A. 79-3321(a), and
43 amendments thereto, that a licensee has: (A) Segregated the cigarettes

1 from public view; (B) marked the cigarettes as not for retail sale to
2 consumers; and (C) within 72 hours of receipt, notified the licensee's
3 wholesale dealer, in writing, that the cigarettes do not bear indicia of
4 Kansas tax and that the wholesale dealer shall remove the cigarettes from
5 the licensee's premises.

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

14 (c) (1) ~~A violation of K.S.A. 79-3321(k), and amendments thereto, is~~
15 ~~a class B person misdemeanor punishable by a minimum fine of \$200 for~~
16 ~~any person to: (A) Sell, give or furnish any cigarettes or tobacco products~~
17 ~~to any person under 18 years of age; or (B) buy any cigarettes or tobacco~~
18 ~~products for any person under 18 years of age:~~

- 19 (A) For a first violation, a minimum fine of \$500;
- 20 (B) for a second violation within a three-year period, a minimum fine
- 21 of \$750;
- 22 (C) for a third or subsequent violation within a three-year period, a
- 23 minimum fine of \$1,000.

24 (2) It shall be a defense to a prosecution under this subsection if:

25 (A) The defendant is a licensed retail dealer, or employee thereof, or
26 a person authorized by law to distribute samples;

27 (B) the defendant sold, furnished or distributed ~~the cigarettes,~~
28 ~~electronic cigarettes, consumable material or tobacco~~ products to the
29 person under ~~18~~ 21 years of age with reasonable cause to believe the
30 person was of legal age to purchase or receive ~~cigarettes, electronic~~
31 ~~cigarettes, consumable material or tobacco~~ products; and

regulated

32 (C) to purchase or receive ~~the cigarettes, electronic cigarettes,~~
33 ~~consumable material or tobacco~~ products, the person under ~~18~~ 21 years of
34 age exhibited to the defendant a driver's license, Kansas nondriver's
35 identification card or other official or apparently official document
36 containing a photograph of the person and purporting to establish that the
37 person was of legal age to purchase or receive ~~cigarettes, electronic~~
38 ~~cigarettes, consumable material or tobacco~~ products.

regulated

regulated

regulated

39 (3) It shall be a defense to a prosecution under this subsection if:

40 (A) The defendant engages in the lawful sale, furnishing or
41 distribution of ~~cigarettes, electronic cigarettes, consumable material or~~
42 ~~tobacco~~ products by mail; and

regulated

43 (B) the defendant sold, furnished or distributed the cigarettes,

Strike in line 43

1 ~~electronic cigarettes, consumable material~~ or tobacco products to the
2 person by mail only after the person had provided to the defendant an
3 unsworn declaration, conforming to K.S.A. 53-601, and amendments
4 thereto, that the person was ~~18~~ 21 or more years of age.

regulated

5 (4) For purposes of this subsection, the person who violates this
6 subsection shall be the individual directly selling, furnishing or
7 distributing the ~~cigarettes, electronic cigarettes, consumable material or~~
8 ~~tobacco~~ products to any person under ~~18~~ 21 years of age, the person
9 buying ~~cigarettes, electronic cigarettes, consumable material or tobacco~~
10 products for any person under 21 years of age or the retail dealer who has
11 actual knowledge of such buying, selling, furnishing or distributing by
12 such individual or both.

regulated

regulated

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

17 (e) Any agent, employees or others who aid, abet or otherwise
18 participate in any way in the violation of the Kansas cigarette and tobacco
19 products act or in any of the offenses hereunder punishable shall be guilty
20 and punished as principals to the same extent as any person violating this
21 act.

22 (f)(e) The secretary of revenue, or the secretary's authorized agent,
23 may refer such evidence as may be available concerning violations of this
24 act or any rules and regulations or order hereunder to the attorney general
25 or the proper county or district attorney, who may in the prosecutor's
26 discretion, with or without such a reference, institute the appropriate
27 criminal proceedings under this act. Upon receipt of such reference, the
28 attorney general or the county attorney or district attorney may request that
29 a duly employed attorney of the department of revenue prosecute or assist
30 in the prosecution of such violation or violations on behalf of the state.
31 Upon approval of the secretary or the secretary's authorized agent, such
32 employee shall be appointed a special prosecutor for the attorney general
33 or the county attorney or district attorney to serve without compensation
34 from the attorney general or the county attorney or district attorney. Such
35 special prosecutor shall have all the powers and duties prescribed by law
36 for assistant attorneys general or assistant county or district attorneys and
37 such other powers and duties as are lawfully delegated to such special
38 prosecutor by the attorney general or the county attorney or district
39 attorney. If an attorney employed by the secretary or secretary's authorized
40 agent acts as a special prosecutor, the secretary may pay extradition and
41 witness expenses associated with the case.

42 (f) It shall not be a violation of K.S.A. 79-3321, and amendments
43 thereto, to permit any person under the age of 21 years to possess

1 ~~cigarettes, electronic cigarettes, consumable material or tobacco~~ products
2 if such possession is solely in the course of such person's employment by a
3 retailer.

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4 Sec. 14. K.S.A. 79-3323 is hereby amended to read as follows: 79-
5 3323. (a) Except as provided in subsection (c), the following are declared
6 to be common nuisances and contraband:

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

10 (2) all packages of cigarettes, in quantities of 20 packages or more,
11 not bearing indicia of tax payment as required by any compact between:

12 (A) The governor and the Prairie Band Potawatomi Nation and
13 approved by the legislature; (B) the governor and the Iowa Tribe of Kansas
14 and Nebraska and approved by the legislature; (C) the governor and the
15 Kickapoo Tribe in Kansas and approved by the legislature; or (D) the
16 governor and the Sac and Fox Nation of Missouri in Kansas and Nebraska
17 and approved by the legislature;

18 (3) ~~all cigarettes, electronic cigarettes, consumable material or~~
19 ~~tobacco~~ products in the possession of a ~~minor person under the age of 21;~~

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

22 (5) all property, including vehicles, used in the sale, transportation,
23 distribution, importation, wholesale or manufacture of unstamped
24 packages of cigarettes; ~~and~~

25 (6) all consumable material on which tax has not been paid.

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

29 (b) ~~Any cigarettes, electronic cigarettes, consumable material,~~
30 ~~tobacco~~ products or property constituting a common nuisance and
31 contraband as provided by this section may be seized by the director or the
32 director's authorized agent or any duly constituted peace officer with or
33 without process or warrant and shall be subject to forfeiture as provided in
34 this act. The party making the seizure shall deliver to the owner of the
35 property and to the person or persons found in possession of the property a
36 receipt stating from whom the property was seized, the place of seizure
37 and a description and the brand of the property seized. A duplicate of the
38 receipt shall be filed in the office of the director and shall be open for
39 public inspection.

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40 (c) Cigarettes in quantities of 1,000 or less in the possession of a
41 licensee are not declared a common nuisance and contraband if the
42 licensee has: (1) Segregated the cigarettes from public view; (2) marked
43 the cigarettes as not for retail sale to consumers; and (3) within 72 hours of

1 receipt, notified the licensee's wholesale dealer, in writing, that the
2 cigarettes do not bear indicia of Kansas tax and that the wholesale dealer
3 shall remove the cigarettes from the licensee's premises.

4 Sec. 15. K.S.A. 79-3326 is hereby amended to read as follows: 79-
5 3326. The director of taxation shall administer and enforce the provisions
6 of this act, and to require such reports, make such investigations and take
7 such other action as the director deems necessary or suitable to that end.
8 For the purpose of ascertaining the correctness of any return or making an
9 estimate of the tax due for any taxpayer or person, the director or the
10 director's designee has the power to examine any books, papers, records or
11 memoranda bearing upon the matters required to be included in the return
12 or report. The secretary of revenue shall adopt rules and regulations for the
13 administration of this act. For the purpose of enforcing this act the director
14 may call to the director's aid any law enforcement officer of this state to
15 prosecute all violators of any of the provisions of this act. The police of
16 any city shall have the right to inspect all premises, records and invoices
17 pertaining to the wholesale distribution, retail sale or sampling of
18 ~~cigarettes, electronic cigarettes, consumable material or tobacco~~ products
19 within the city at all reasonable times. All agents and representatives
20 designated by the director are hereby invested with all the powers of peace
21 and police officers within the state of Kansas in the enforcement of the
22 provisions of this act throughout the state.

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23 Sec. 16. K.S.A. 79-3334 is hereby amended to read as follows: 79-
24 3334. (a) The Kansas department of revenue shall publish a list of active
25 ~~cigarette and tobacco~~ licensees and shall update such list monthly.

26 (b) The list of active ~~cigarette and tobacco~~ licensees published as
27 provided in subsection (a) shall contain the following information: County
28 name, owner, business name, address, license type and license number.

29 (c) The provisions of this section shall be a part of and supplemental
30 to the Kansas cigarette and tobacco products act.

31 Sec. 17. K.S.A. 79-3335 is hereby amended to read as follows: 79-
32 3335. (a) Counterfeit ~~cigarettes, electronic cigarettes, consumable~~
33 ~~material and tobacco~~ products shall be seized by the director. For purposes
34 of this section, counterfeit ~~cigarettes includes, electronic cigarettes,~~
35 ~~consumable material and tobacco~~ products include ~~cigarettes, electronic~~
36 ~~cigarettes, consumable material and tobacco~~ products manufactured, sold,
37 transported, imported, distributed or possessed in this state with intent to
38 deceive consumers and to avoid the provisions of this act, and also
39 ~~includes include~~ ~~cigarettes, electronic cigarettes, consumable material and~~
40 ~~tobacco~~ products that have false manufacturing labels or packages of
41 cigarettes bearing counterfeit tax stamps. It shall be unlawful for any
42 person to sell, transport, import, distribute, possess, wholesale or
43 manufacture counterfeit ~~cigarettes, electronic cigarettes, consumable~~

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Strike in line 43

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1 ~~material or tobacco~~ products.

2 (b) Except as otherwise provided by this act, a violation of the
3 provisions of this section shall be a:

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

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

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

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

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

34 Sec. 18. K.S.A. 79-3388 is hereby amended to read as follows: 79-
35 3388. The imposition of the tax as provided in this act shall not render
36 ~~cigarettes, electronic cigarettes, consumable material or tobacco~~ products
37 exempt from the retailers' sales tax act under the provisions of K.S.A. 79-
38 3606 ~~(a)~~, and amendments thereto.

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39 Sec. 19. K.S.A. 79-3391 is hereby amended to read as follows: 79-
40 3391. (a) In addition to or in lieu of any other civil or criminal penalty
41 provided by law, the secretary of revenue or the secretary's designee, upon
42 a finding that a person under this act has violated any provision of this act
43 or any provision of any rule and regulation of the secretary of revenue

1 adopted pursuant to this act shall impose on such person a civil fine not
2 exceeding \$1,000 for each violation.

3 (b) It shall be unlawful for any person, directly or indirectly, to: (1)
4 Sell, give or furnish any ~~cigarettes, electronic cigarettes, consumable~~
5 ~~material or tobacco~~ products to any person under ~~18~~ 21 years of age; or (2)
6 buy any ~~cigarettes, electronic cigarettes, consumable material or tobacco~~
7 products for any person under ~~18~~ 21 years of age.

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8 (c) In determining the fine to be imposed under this subsection by a
9 licensed retail dealer whose employee sold, furnished or distributed the
10 ~~cigarettes, electronic cigarettes, consumable material or tobacco~~ products,
11 the secretary of revenue, or the secretary's designee, shall consider it to be
12 a mitigating circumstance if the employee had completed a training
13 program, approved by the secretary of ~~revenue~~ *the department of health*
14 *and environment*, or the secretary's designee, in avoiding sale, furnishing
15 or distributing of ~~cigarettes, electronic cigarettes, consumable material and~~
16 ~~tobacco~~ products to persons under ~~18~~ 21 years of age.

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17 ~~(e)~~(d) No fine shall be imposed pursuant to this section except upon
18 the written order of the secretary of revenue, or the secretary's designee, to
19 the licensee who committed the violation. Such order shall state the
20 violation, the fine to be imposed and the right of the licensee to appeal the
21 order. Such order shall be subject to appeal and review in the manner
22 provided by the Kansas administrative procedure act.

23 ~~(d)~~(e) Any fine collected pursuant to this section shall be remitted to
24 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
25 and amendments thereto. Upon receipt of each such remittance, the state
26 treasurer shall deposit the entire amount in the state treasury to the credit
27 of the cigarette and tobacco products regulation fund.

28 ~~(e)~~(f) There is hereby created, in the state treasury, the cigarette and
29 tobacco products regulation fund. Moneys in the fund shall be expended
30 only for the enforcement of this act and rules and regulations adopted
31 pursuant to this act. Such expenditures shall be made in accordance with
32 appropriation acts upon warrants of the director of accounts and reports
33 issued pursuant to vouchers approved by the secretary of revenue or a
34 person designated by the secretary.

35 ~~(f)~~(g) (1) If a person violates subsection (b) for a second or
36 subsequent occurrence within a three-year period, the secretary may
37 impose a graduated fine upon such person for the second or subsequent
38 occurrence.

39 (2) *For purposes of determining the number of violations of*
40 *subsection (b), a violation of subsection (b) or a violation of an ordinance*
41 *of any city, or a resolution of any county, that prohibits the acts prohibited*
42 *by subsection (b) shall be considered a violation of subsection (b).*

43 (3) For the purposes of imposing a fine under this section, if three or

1 more years have elapsed since a person has been found to have violated
 2 the provisions of subsection (b), such person shall be treated as never
 3 having violated subsection (b).

4 Sec. 20. K.S.A. 79-3394 is hereby amended to read as follows: 79-
 5 3394. (a) *The director, or any person specified in subsection (b), when*
 6 *conducting compliance checks shall engage persons under the age of 21 to*
 7 *perform controlled buys at a retail dealer's licensed establishment. Retail*
 8 *dealers shall be subject to not less than two unannounced controlled buys*
 9 *each year. A subsequent unannounced controlled buy shall be conducted*
 10 *within 90 days following any instance in which a retail dealer is*
 11 *determined to be noncompliant during a controlled buy.*

12 (b) No person shall engage or direct a ~~minor~~ person under the age of
 13 18 to violate any provision of this act for purposes of determining
 14 compliance with provisions of this act or the Kansas consumer protection
 15 act, unless such person has procured the written consent of a parent or
 16 guardian of the ~~minor~~ person under the age of 18 to so engage or direct the
 17 ~~minor~~ person under the age of 18, and such person is:

- 18 (a)(1) An officer having authority to enforce the provisions of this
 19 act;
- 20 (b)(2) an authorized representative of the attorney general, a county
 21 attorney or a district attorney; or
- 22 (e)(3) an authorized representative of a business acting pursuant to a
 23 self-compliance program designed to increase compliance with the
 24 provisions of this act.

25 Sec. 21. K.S.A. 79-3396 is hereby amended to read as follows: 79-
 26 3396. (a) In addition to, or in lieu of, any other civil or criminal penalty
 27 provided by law, the director, upon a finding that a licensee has violated
 28 the provisions of ~~subsection (u), (v) or (w) of~~ K.S.A. 79-3321(q), (r) or (s),
 29 and amendments thereto, or has failed to comply with the provisions of
 30 K.S.A. 79-3395, and amendments thereto, or any rule and regulation
 31 adopted pursuant thereto, may revoke or suspend the license of any
 32 licensee in the manner provided by K.S.A. 79-3309, and amendments
 33 thereto; the director also may impose a civil fine in an amount not to
 34 exceed the greater of 500% of the retail value of the cigarettes involved or
 35 \$5,000. Such fine shall be imposed in the manner provided by K.S.A. 79-
 36 3391, and amendments thereto.

37 (b) ~~Any cigarettes, electronic cigarettes, consumable material or~~
 38 ~~tobacco~~ products that are acquired, held, owned, possessed, transported,
 39 imported, sold or distributed in this state in violation of ~~subsection (u), (v)~~
 40 ~~or (w) of~~ K.S.A. 79-3321(q), (r) or (s), and amendments thereto, or has
 41 failed to comply with the provisions of K.S.A. 79-3395, and amendments
 42 thereto, shall be deemed contraband under K.S.A. 79-3323, and
 43 amendments thereto, and shall be subject to seizure and forfeiture as

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1 provided therein and in K.S.A. 79-3324a, and amendments thereto. All
 2 such cigarettes seized and forfeited shall be destroyed. Such ~~cigarettes,~~
 3 ~~electronic cigarettes, consumable material or tobacco~~ products shall be
 4 deemed contraband whether the violation of this act is knowing or
 5 otherwise.

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6 Sec. 22. K.S.A. 79-3399 is hereby amended to read as follows: 79-
 7 3399. (a) ~~On and after July 1, 2017,~~ A tax is hereby imposed upon the
 8 privilege of selling or dealing in electronic cigarettes in this state by any
 9 person engaged in business as a distributor thereof, at the rate of \$.05 per
 10 milliliter of consumable material for electronic cigarettes and a
 11 proportionate tax at the like rate on all fractional parts thereof. For
 12 electronic cigarettes in the possession of retail dealers for which tax has
 13 not been paid, tax shall be imposed under this subsection at the earliest
 14 time the retail dealer: (1) Brings or causes to be brought into this state
 15 from without the state electronic cigarettes for sale; (2) makes,
 16 manufactures or fabricates electronic cigarettes in this state for sale in this
 17 state; or (3) sells electronic cigarettes to consumers within this state.

18 (b) ~~"Consumable material" means any liquid solution or other~~
 19 ~~material that is depleted as an electronic cigarette is used.~~

20 (e) ~~The secretary of revenue shall adopt rules and regulations to~~
 21 ~~implement the provisions of this section.~~

22 Sec. 23. K.S.A. 72-6285, 79-3301, 79-3302, 79-3303, 79-3304, 79-
 23 3309, 79-3310c, 79-3316, 79-3321, 79-3322, 79-3323, 79-3326, 79-3334,
 24 79-3335, 79-3388, 79-3391, 79-3394, 79-3396 and 79-3399 and K.S.A.
 25 2019 Supp. 21-5102, 21-6109, 21-6110 and 50-6a14 are hereby repealed.

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