

**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

Strike all in lines 11 through 26

And by renumbering sections accordingly

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.

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

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

23 (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 (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 (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 (k) "Director" means the director of taxation.

35 (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.

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       ~~(s)~~(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

(t) and (u)

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.

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.

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.~~

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~~

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;*

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;*
- 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 10<sup>th</sup> 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 ~~(l)~~ 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.

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

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

17 ~~(o)~~ 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 ~~(p)~~ To sell cigarettes, electronic cigarettes, consumable material  
20 or tobacco products without having a license for such sale as provided  
21 herein.

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

24 ~~(r)~~ 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.

33 ~~(s)~~ 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:

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)~~ To sell cigarettes, electronic cigarettes, consumable material or

Who is under 21 years of age to purchase or attempt to purchase  
cigarettes, electronic cigarettes, consumable material or tobacco  
products.  
(m) Who is under 21 years of age to possess or attempt to possess  
cigarettes, electronic cigarettes, consumable material or tobacco  
products.

And by relettering the remaining subsections accordingly

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.~~

13 ~~(t)(g)~~ 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:

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

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)~~ ~~(#)~~ or altered in violation of subsection ~~(w)~~ ~~(s)~~, (t)

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. (u)

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).

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.

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)~~ ~~(#)~~, ~~(s)~~, ~~(t)~~, ~~(u)~~ or  
33 ~~(w)~~, and amendments thereto, is a: (t), (u), (v), (w) or (y)

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

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.

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

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

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.

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.

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*

Violation of K.S.A. 79-3321(l) or (m), and amendments thereto, is a cigarette or tobacco infraction for which the fine is \$25. In addition, the judge may require the person to appear in court, and if such person is a juvenile, may require the parent or legal guardian of such person to appear in court along with the juvenile defendant.  
(e)

And by relettering the remaining subsections accordingly

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.*

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*;

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.

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.

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*

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.*

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.

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.

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.

(t) or (u)

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

(t) or (u)

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.

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.