

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 (e) 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 (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)(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 ~~(p)(m) 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)(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.~~

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:~~

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~~

, except the provisions of this subsection shall not apply to the sale of such products to any person who:

(1) Is at least 18 years of age; and

(2) presents at the time of purchase a valid military identification card issued by any branch of the armed forces of the United States military or the Kansas national guard

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

, unless such person is at least 18 years of age and presents a valid military identification card issued by any branch of the armed forces of the United States military or the Kansas national guard

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*

, or that such person was at least 18 years of age and possessed
a valid military identification card issued by any branch of the
armed forces of the United States military or the Kansas
national guard

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

, except when in the possession of a person who is at least 18 years of age and possesses a valid military identification card issued by any branch of the armed forces of the United States military or the Kansas national guard

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

The provisions of this subsection shall not apply to the sale of such products to any person who: (1) Is at least 18 years of age; and (2) presents at the time of purchase a valid military identification card issued by any branch of the armed forces of the United States military or the Kansas national guard.