

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 ~~(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; OR

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

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.

"Tobacco products"

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

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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)~~ (r); or

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

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

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

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

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

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