

**HOUSE BILL No. 2061**

By Committee on Federal and State Affairs

1-13

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. 2020 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. 2020 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. 2020  
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. 2020 Supp. 21-6109 is hereby amended to read as  
28 follows: 21-6109. As used in K.S.A. 2020 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. 2020 Supp. 21-6110(d), and  
33 amendments thereto.

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

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

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

5 (d) "Employee" means any person who is employed by an employer  
6 in consideration for direct or indirect monetary wages or profit and any  
7 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. 2020 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) "*Smoke*" or "*smoking*" means possession of a lighted cigarette,  
42 cigar, pipe or burning tobacco in any other form or device designed for the  
43 use of 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, *electronic*  
 3 *cigarettes* or accessories, and that derives not less than 65% of its gross  
 4 receipts from ~~the sale~~ *any combination of sales* of tobacco, *tobacco*  
 5 *products, smoking devices or electronic cigarettes*.

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

11       Sec. 3. K.S.A. 2020 Supp. 21-6110 is hereby amended to read as  
 12 follows: 21-6110. (a) It shall be unlawful, with no requirement of a  
 13 culpable mental state, to smoke in an enclosed area or at a public meeting  
 14 including, but not limited to:

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

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

35       (c) Notwithstanding any other provision of this section, K.S.A. 2020  
 36 Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or other  
 37 person in charge of an adult care home, as defined in K.S.A. 39-923, and  
 38 amendments thereto, or a medical care facility, may designate a portion of  
 39 such adult care home, or the licensed long-term care unit of such medical  
 40 care facility, as a smoking area, and smoking may be permitted within such  
 41 designated smoking area.

42       (d) The provisions of this section shall not apply to:  
 43       (1) The outdoor areas of any building or facility beyond the access

1 points of such building or facility;

2 (2) private homes or residences, except when such home or residence  
3 is used as a day care home, as defined in K.S.A. 65-530, and amendments  
4 thereto;

5 (3) a hotel or motel room rented to one or more guests if the total  
6 percentage of such hotel or motel rooms in such hotel or motel does not  
7 exceed 20%;

8 (4) the gaming floor of a lottery gaming facility or racetrack gaming  
9 facility, as those terms are defined in K.S.A. 74-8702, and amendments  
10 thereto;

11 (5) that portion of an adult care home, as defined in K.S.A. 39-923,  
12 and amendments thereto, that is expressly designated as a smoking area by  
13 the proprietor or other person in charge of such adult care home pursuant  
14 to subsection (c) and that is fully enclosed and ventilated;

15 (6) that portion of a licensed long-term care unit of a medical care  
16 facility that is expressly designated as a smoking area by the proprietor or  
17 other person in charge of such medical care facility pursuant to subsection  
18 (c) and that is fully enclosed and ventilated and to which access is  
19 restricted to the residents and their guests;

20 (7) tobacco shops;

21 (8) a class A or class B club defined in K.S.A. 41-2601, and  
22 amendments thereto, ~~which that~~: (A) Held a license pursuant to K.S.A. 41-  
23 2606 et seq., and amendments thereto, as of January 1, 2009; and (B)  
24 notifies the secretary of health and environment in writing, not later than  
25 90 days after the effective date of this act, that it wishes to continue to  
26 allow smoking on its premises;

27 (9) a private club in designated areas where ~~minors~~ *persons under 21*  
28 *years of age* are prohibited;

29 (10) any benefit cigar dinner or other cigar dinner of a substantially  
30 similar nature that:

31 (A) Is conducted specifically and exclusively for charitable purposes  
32 by a nonprofit organization ~~which that~~ is exempt from federal income  
33 taxation pursuant to section 501(c)(3) of the federal internal revenue code  
34 of 1986;

35 (B) is conducted no more than once per calendar year by such  
36 organization; and

37 (C) has been held during each of the previous three years prior to  
38 January 1, 2011; and

39 (11) that portion of a medical or clinical research facility constituting  
40 a separately ventilated, secure smoking room dedicated and used solely  
41 and exclusively for clinical research activities conducted in accordance  
42 with regulatory authority of the United States or the state of Kansas, as  
43 determined by the director of alcoholic beverage control of the department

1 of revenue.

2 Sec. 4. K.S.A. 2020 Supp. 50-6a14 is hereby amended to read as  
3 follows: 50-6a14. (a) In addition to or in lieu of any other civil or criminal  
4 remedy provided by law, the director or the director's designee, upon a  
5 finding that a stamping agent has violated ~~subsection (a)~~ of K.S.A. 50-  
6 6a04(a), and amendments thereto, or any rules or regulations adopted  
7 pursuant to this act, may revoke or suspend the license of any licensee in  
8 the manner provided by K.S.A. 79-3309, and amendments thereto. Each  
9 package of cigarettes to which tax indicia is affixed, is caused to be affixed  
10 or tax is paid thereupon, and each sale or offer to sell cigarettes in  
11 violation of ~~subsection (a)~~ of K.S.A. 50-6a04(a), and amendments thereto,  
12 shall constitute a separate violation. The director may also impose a civil  
13 penalty in an amount not to exceed the greater of 500% of the retail value  
14 of the cigarettes involved or \$5,000 upon a finding of violation of  
15 ~~subsection (a)~~ of K.S.A. 50-6a04(a), and amendments thereto, or a  
16 violation of any rules or regulations adopted pursuant to this act. Such fine  
17 shall be imposed in the manner provided by K.S.A. 79-3391, and  
18 amendments thereto. Any fine collected pursuant to this subsection shall  
19 be remitted to the state treasurer in accordance with the provisions of  
20 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
21 remittance, the state treasurer shall deposit the entire amount in the state  
22 treasury to the credit of the cigarette and tobacco products regulation fund  
23 created pursuant to ~~subsection (e)~~ of K.S.A. 79-3391, and amendments  
24 thereto. The moneys credited to this fund shall be used for the purposes of  
25 enforcement of this act, or K.S.A. 79-3301 et seq., and amendments  
26 thereto.

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

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

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

38 (1) "*Cigarette,*" "*electronic cigarette,*" "*consumable material*" and  
39 "*tobacco product*" mean the same as such terms are defined in K.S.A. 79-  
40 3301, and amendments thereto; and

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

1 thereof, used for residential purposes or leased from the school district for  
 2 nonschool sponsored activities.

3 Sec. 6. K.S.A. 79-3301 is hereby amended to read as follows: 79-  
 4 3301. As used in K.S.A. 79-3301 et seq., and amendments thereto:

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

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

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

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

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

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

21 (g) "Consumer" means the person purchasing or receiving ~~cigarettes~~  
 22 ~~or tobacco~~ regulated products for final use.

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

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

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

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

35 ~~(k)~~(l) "Distributor" means: (1) Any person engaged in the business of  
 36 selling tobacco products in this state who brings, or causes to be brought,  
 37 into this state from outside the state any tobacco products for sale;

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

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

43 ~~(l)~~(m) "Division" means the division of taxation.

- 1       ~~(m)~~(n) "Electronic cigarette" means a battery-powered device,
- 2 whether or not such device is shaped like a cigarette, that can provide
- 3 inhaled doses of nicotine by delivering a vaporized solution by means of
- 4 cartridges or other chemical delivery systems.
- 5       ~~(n)~~(o) "Importer" means the same as provided in 26 U.S.C. § 5702(k).
- 6       ~~(o)~~(p) "License" means the privilege of a licensee to sell ~~cigarettes or~~
- 7 ~~tobacco~~ *regulated* products in the state of Kansas, and the written evidence
- 8 of such authority or privilege as issued by the director.
- 9       ~~(p)~~(q) "Licensee" means any person holding a current license issued
- 10 pursuant to this act.
- 11       ~~(q)~~(r) "Manufacturer" means the same as provided in 26 U.S.C. §
- 12 5702(d).
- 13       ~~(r)~~(s) "Manufacturer's salesperson" means a person employed by a
- 14 cigarette manufacturer who sells cigarettes, manufactured by such
- 15 employer and procured from wholesale dealers.
- 16       ~~(s)~~(t) (1) "Package" means a container in which no more than 25
- 17 individual cigarettes are wrapped and sealed by the manufacturer of
- 18 cigarettes prior to shipment to a wholesale dealer; *or*
- 19 (2) for the purposes of K.S.A. 79-3321~~(v)~~ ~~and~~ ~~(w)~~ (r) and (s), and
- 20 amendments thereto, "package" means the same as provided in 15 U.S.C.
- 21 § 1332(4).
- 22       ~~(t)~~(u) "Person" means any individual, partnership, society,
- 23 association, joint-stock company, corporation, estate, receiver, trustee,
- 24 assignee, referee or any other person acting in a fiduciary or representative
- 25 capacity whether appointed by a court or otherwise and any combination
- 26 of individuals.
- 27       ~~(u)~~(v) "Received" means the coming to rest of cigarettes for sale by
- 28 any dealer in the state of Kansas.
- 29       (w) "*Regulated products*" means *cigarettes, electronic cigarettes,*
- 30 *consumable materials and tobacco products.*
- 31       ~~(v)~~(x) "Retail dealer" or "retailers" means a person, ~~other than a~~
- 32 ~~vending machine operator,~~ in possession of ~~cigarettes or electronic~~
- 33 ~~cigarettes~~ *regulated products* for the purpose of sale to a consumer.
- 34       ~~(w)~~(y) "Sale" means any transfer of title or possession or both,
- 35 exchange, barter, distribution or gift of ~~cigarettes, tobacco products or~~
- 36 ~~electronic cigarettes~~ *regulated products*, with or without consideration.
- 37       ~~(x)~~(z) "Sample" means ~~cigarettes or tobacco~~ *regulated* products
- 38 distributed to members of the general public at no cost for purposes of
- 39 promoting the product.
- 40       ~~(y)~~(aa) "Self-service display" means a display that contains ~~cigarettes~~
- 41 ~~or tobacco~~ *regulated* products and is located in an area openly accessible
- 42 to a retail dealer's consumers, and from which such consumers can readily
- 43 access ~~cigarettes or tobacco~~ *regulated* products without the assistance of a



1 salesperson, and ~~which~~ *that* is knowingly utilized by the retail dealer to  
 2 market and sell ~~cigarettes and tobacco~~ *regulated* products to consumers. A  
 3 display case that holds ~~cigarettes or tobacco~~ *regulated* products behind  
 4 locked doors does not constitute a self-service display.

5 ~~(z)~~*(bb)* "Stamps" means tax indicia applied by means of heat process,  
 6 pressure or any other process approved by the director.

7 ~~(aa)~~*(cc)* "Tax indicia" means visible evidence of tax payment in the  
 8 form of stamps.

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

17 ~~(ee)~~*(ee)* "Tobacco specialty store" means a dealer establishment that  
 18 derives at least 65% of such dealer establishment's revenue from cigarettes  
 19 or tobacco products.

20 ~~(dd)~~*(ff)* "Vending machine" means any coin operated machine,  
 21 contrivance or device, by means of which merchandise may be sold.

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

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

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

39 ~~(hh)~~ "Wholesale sales price" means the original net invoice price for  
 40 which a manufacturer sells a tobacco product to a distributor, as shown by  
 41 the manufacturer's original invoice.

42 Sec. 7. K.S.A. 79-3302 is hereby amended to read as follows: 79-  
 43 3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309, 79-3310,

1 79-3311, ~~79-3311a~~, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-  
2 3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3333, 79-3335,  
3 79-3336, 79-3371, 79-3373, 79-3374, 79-3375, 79-3377, 79-3378, 79-  
4 3379, 79-3387, 79-3388, 79-3391, 79-3392, 79-3393, 79-3394 and K.S.A.  
5 ~~79-3311a, 79-3336~~, 79-3395 through 79-3399; and 79-33,100, and  
6 amendments thereto, shall be known and may be cited as the Kansas  
7 cigarette and tobacco products act.

8 (b) It is the purpose and intent of this act to regulate the sale of  
9 cigarettes, *electronic cigarettes*, *consumable material* and tobacco  
10 products in this state and, *where applicable*, to impose a tax thereon.

11 Sec. 8. K.S.A. 79-3303 is hereby amended to read as follows: 79-  
12 3303. (a) Each person engaged in the business of selling ~~cigarettes or~~  
13 ~~electronic cigarettes~~ *regulated products* in the state of Kansas and each  
14 ~~vending machine distributor~~ shall obtain a license as provided by this act.  
15 A separate application, license and fee is required for each dealer  
16 establishment owned or operated by a dealer. ~~A vending machine operator~~  
17 ~~is required to obtain a vending machine operator's master license and, in~~  
18 ~~addition, a separate permit for each vending machine operated by the~~  
19 ~~operator. A vending machine operator may submit one application for the~~  
20 ~~vending machine operator's master license and all permits for vending~~  
21 ~~machines operated by the operator. The license shall be displayed in the~~  
22 ~~dealer establishment and the vending machine permit shall remain securely~~  
23 ~~and visibly attached to the vending machine and contain such information~~  
24 ~~as the director may require. Any vending machine found without such~~  
25 ~~permit attached to the machine shall be sealed by an agent of the director~~  
26 ~~and such seal shall be removed only by an agent of the director after~~  
27 ~~payment of the permit fee and the penalties provided by this act.~~

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

42 (c) ~~A vending machine operator, in the course of business as a~~  
43 ~~vending machine operator, may dispose of or sell vending machines~~

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

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

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

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

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

40 Sec. 9. K.S.A. 79-3304 is hereby amended to read as follows: 79-  
41 3304. (a) The license fee for each biennium or portion thereof shall be as  
42 follows:

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

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

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

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

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

8       No wholesale dealer's license shall be issued until the person applying  
9 therefor has filed with the director a bond payable to the state of Kansas in  
10 such an amount as shall be fixed by the director, but in no event less than  
11 \$1,000, with a corporate surety authorized to do business in the state of  
12 Kansas, and approved by the director. If a wholesale dealer is unable to  
13 secure a corporate surety bond, the director may issue a license to such  
14 wholesale dealer, upon the wholesale dealer furnishing a personal bond  
15 meeting the approval of the director. Such bond shall be conditioned on the  
16 wholesale dealer's compliance with all the provisions of this act during the  
17 license period.

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

19       ~~(7)~~(3) For manufacturer's salesperson license, \$20 for each  
20 salesperson. The manufacturer's salesperson shall, with respect to each sale  
21 made to a retail dealer, make and deliver to the retail dealer a true invoice  
22 wherein such salesperson shall insert the name of the wholesale dealer  
23 from whom such salesperson secured such cigarettes, together with such  
24 salesperson's own name and the name of the retail dealer purchasing the  
25 cigarettes.

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

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

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

38       ~~(e) The director may refuse to issue or renew a license to any person~~  
39 ~~who:~~

40       ~~(1) Is not of good character and reputation in the community in~~  
41 ~~which such person resides;~~

42       ~~(2) has been convicted of a felony or of any crime involving moral~~  
43 ~~turpitude or of the violation of any law of any state or the United States~~

1 *pertaining to regulated products and who has not completed the sentence,*  
 2 *parole, probation or assignment to a community correctional services*  
 3 *program imposed for any such conviction within two years immediately*  
 4 *preceding the date of making application for any of such licenses;*

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

7 ~~(2)~~(4) is not current in the payment of any tax or fine under this act;

8 ~~(3)~~(5) has had a cigarette license revoked in this state or any other  
 9 state;

10 ~~(4)~~(6) is not at least ~~18~~ 21 years of age;

11 ~~(5)~~(7) intends to carry on the business as an agent of another;

12 ~~(6)~~(8) at the time of application for renewal of any license issued  
 13 under this act, would not be eligible for the license upon first application;

14 ~~(7)~~(9) does not own the premises for which a license is sought, or  
 15 does not, at the time of the application, have a written lease;

16 ~~(8)~~(10) has been convicted of a crime involving any tax under this  
 17 act;

18 ~~(9)~~(11) is a corporation in which any officer, manager or director  
 19 thereof, or any stockholder owning in the aggregate more than 5% of the  
 20 common or preferred stock of such corporation, has been an officer,  
 21 manager or director or stockholder owning in the aggregate more than 5%  
 22 of the common or preferred stock, of a corporation that:

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

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

25 ~~(10)~~(12) is a limited liability company in which any officer, manager  
 26 or director thereof, or any member owning in the aggregate more than 5%  
 27 of the limited liability company, has been an officer, manager or director or  
 28 stockholder owning in the aggregate more than 5% of the common or  
 29 preferred stock, of a corporation that:

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

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

32 Sec. 10. K.S.A. 79-3309 is hereby amended to read as follows: 79-  
 33 3309. (a) Whenever the director has reason to believe that any person  
 34 licensed under this act has violated any of the provisions of this act; in any  
 35 of the following ways, the director shall notify the person by certified mail  
 36 of the director's intention to suspend or revoke the person's license or  
 37 licenses, if the person:

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

40 (2) *has been convicted of a felony or of any crime involving moral*  
 41 *turpitude or of the violation of any law of any state or the United States*  
 42 *pertaining to regulated products and who has not completed the sentence,*  
 43 *parole, probation or assignment to a community correctional services*

1 *program imposed for any such conviction within two years immediately*  
 2 *preceding the date of making application for any of such licenses;*

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

5 ~~(2)~~(4) is not current in the payment of any tax or fine under this act;

6 ~~(3)~~(5) has had a cigarette license revoked in this state or any other  
 7 state;

8 ~~(4)~~(6) is not at least ~~18~~ 21 years of age;

9 ~~(5)~~(7) intends to carry on the business as an agent of another;

10 ~~(6)~~(8) at the time of application for renewal of any license issued  
 11 under this act, would not be eligible for the license upon first application;

12 ~~(7)~~(9) does not own the premises for which a license is sought, or  
 13 does not, at the time of the application, have a written lease;

14 ~~(8)~~(10) has been convicted of a crime involving any tax under this  
 15 act;

16 ~~(9)~~(11) in the case of a corporation, any officer, manager or director  
 17 thereof, or any stockholder owning in the aggregate more than 5% of the  
 18 common or preferred stock of such corporation, has been an officer,  
 19 manager or director or stockholder owning in the aggregate more than 5%  
 20 of the common or preferred stock, of a corporation that:

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

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

23 ~~(10)~~(12) in the case of a limited liability company, any officer,  
 24 manager or director thereof, or any member owning in the aggregate more  
 25 than 5% of the limited liability company, has been an officer, manager or  
 26 director or stockholder owning in the aggregate more than 5% of the  
 27 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.

30 (b) Within 30 days after the mailing of the notice, the person may  
 31 request a hearing in writing before the director. The hearing shall be  
 32 conducted in accordance with the provisions of the Kansas administrative  
 33 procedure act. If, after such hearing, it appears to the satisfaction of the  
 34 director that the person has violated any of the provisions of this act, the  
 35 director is hereby authorized and empowered to suspend or revoke the  
 36 person's license or licenses and may in addition deny the application of the  
 37 person for a license or licenses for a portion of the succeeding calendar  
 38 year for such period as the director determines is necessary, but in no case  
 39 for a period ending more than one year following the date upon which the  
 40 license or licenses were suspended or revoked. ~~The suspension or~~  
 41 ~~revocation of a vending machine operator's master license shall suspend or~~  
 42 ~~revoke all vending machine permits issued to the vending machine~~  
 43 ~~operator for the term of the license suspension or revocation.~~

1 (c) If a person continues to engage in activities requiring a license  
2 under this act after having notice or knowledge of the suspension or  
3 revocation of the person's license or licenses or after becoming more than  
4 10 days delinquent in filing a bond payable to the state of Kansas as  
5 required by the director, payment of any fine, tax, penalty or interest  
6 imposed pursuant to this act, the state shall be entitled, in any proceedings  
7 brought for such purposes, to have an order and judgment restraining and  
8 enjoining such unlawful sale and no bond shall be required for the  
9 issuance of any such restraining order or injunction.

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

14 (b) Purchases of cigarettes by wholesale dealers shall be made from  
15 the manufacturers of cigarettes or from other Kansas licensed wholesale  
16 dealers. Purchases of cigarettes by retail dealers ~~or vending machine~~  
17 ~~operators~~ shall be from wholesale dealers.

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

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

33 (e) Every wholesale dealer shall report to the director on or before the  
34 10<sup>th</sup> day of each month, stating the amount of cigarettes sold during the  
35 preceding month and the amount of all cigarettes returned to the  
36 manufacturer. Any wholesale dealer who refuses any shipment or part of a  
37 shipment of unstamped cigarettes or has a shortage in the shipment of  
38 cigarettes consigned to such dealer shall in the monthly report next  
39 following the refusal or shortage report to the director the number of  
40 packages or cartons of cigarettes refused or short and the name of the  
41 carrier from whom the cigarettes were refused or shortage occurred. Such  
42 report shall be filed electronically in the manner prescribed by the director.

43 (f) Exemption from payment of cigarette tax on sale of cigarettes

1 made outside the state by any wholesale dealer shall be filed on forms  
2 provided by the director.

3 Sec. 12. K.S.A. 79-3321 is hereby amended to read as follows: 79-  
4 3321. It shall be unlawful for any person:

5 (a) Except as otherwise specifically provided by this act, to possess,  
6 sell, transport, import, distribute, wholesale or manufacture more than  
7 1,000 cigarettes without the required tax indicia being affixed as herein  
8 provided.

9 (b) To mutilate or attach to any individual package of cigarettes any  
10 stamp that has in any manner been mutilated or that has been heretofore  
11 attached to a different individual package of cigarettes or to have in  
12 possession any stamps so mutilated.

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

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

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

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

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

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

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

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

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

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

41 ~~To vend small cigars, or any products so wrapped as to be~~  
42 ~~confused with cigarettes, from a machine vending cigarettes, nor shall a~~  
43 ~~vending machine be so built to vend cigars or products that may be~~



1 ~~confused with cigarettes, be attached to a cigarette vending machine.~~

2 ~~(h) To sell, furnish or distribute cigarettes, electronic cigarettes or~~  
 3 ~~tobacco any regulated products to any person under 18 21 years of age, or~~  
 4 ~~to buy any regulated products for any person under 21 years of age.~~

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

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

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

11 ~~(p)(m) To sell cigarettes regulated products without having a license~~  
 12 ~~for such sale as provided herein.~~

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

15 ~~(r)(n) Who is a retail dealer to fail to post and maintain in a~~  
 16 ~~conspicuous place in the dealer's establishment the following notice: "By~~  
 17 ~~law, cigarettes, electronic cigarettes, consumable material and tobacco~~  
 18 ~~products may be sold only to persons 18 21 years of age and older." All~~  
 19 ~~notices shall be posted in a manner conspicuous to both employees and~~  
 20 ~~consumers, unobstructed from view in their entirety, and within six feet of~~  
 21 ~~each register where regulated products are available for purchase. The~~  
 22 ~~notice shall be at least 8 1/2" by 11" and the words on the notice shall be~~  
 23 ~~legibly printed.~~

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

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

29 (2) in or at a retail location where ~~cigarettes and tobacco regulated~~  
 30 ~~products are the primary commodity offered for sale at retail; or~~

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

33 ~~(t)(p) To sell cigarettes, electronic cigarettes or tobacco regulated~~  
 34 ~~products by means of a vending machine, including vending machines that~~  
 35 ~~sell packaged, single cigarettes, in any establishment, or portion of an~~  
 36 ~~establishment, which is open to minors, except that this subsection shall~~  
 37 ~~not apply to:~~

38 ~~(1) The installation and use by the proprietor of the establishment, or~~  
 39 ~~by the proprietor's agents or employees, of vending machines behind a~~  
 40 ~~counter, or in some place in such establishment, or portion thereof, to~~  
 41 ~~which minors are prohibited by law from having access; or~~

42 ~~(2) the installation and use of a vending machine in a commercial~~  
 43 ~~building or industrial plant, or portions thereof, where the public is not~~

1 customarily admitted and where machines are intended for the sole use of  
 2 adult employees employed in the building or plant.

3 ~~(u)(q)~~ To sell ~~cigarettes, electronic cigarettes or tobacco~~ *regulated*  
 4 products by means of a self-service display in any establishment, except  
 5 that the provisions of this subsection shall not apply to:

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

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

8 ~~or~~

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

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

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

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

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

34 (4) any cigarettes for which there has not been submitted to the  
 35 secretary of the ~~U.S.~~ *United States* department of health and human  
 36 services the list or lists of the ingredients added to tobacco in the  
 37 manufacture of such cigarettes required by the federal cigarette labeling  
 38 and advertising act, 15 U.S.C. § 1335a.

39 ~~(w)(s)~~ To alter the package of any ~~cigarettes~~ *regulated products*, prior  
 40 to sale or distribution to the ultimate consumer, so as to remove, conceal or  
 41 obscure:

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

1 (2) any health warning that is not specified in, or does not conform  
 2 with, the requirements of, the federal cigarette labeling and advertising act,  
 3 15 U.S.C. § 1333.

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

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

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

16 (w) *To sell: (1) Any electronic cigarette that contains flavored*  
 17 *consumable material, except tobacco-flavored or menthol-flavored*  
 18 *consumable material; or (2) any flavored consumable material, except*  
 19 *tobacco-flavored or menthol-flavored consumable material.*

20 Sec. 13. K.S.A. 79-3322 is hereby amended to read as follows: 79-  
 21 3322. (a) (1) Except as otherwise provided in this act, a violation of K.S.A.  
 22 79-3321(a), (c), (d), (f), (h), (i), (j), ~~(v)~~, ~~(w)~~, ~~(x)~~ or ~~(y)~~ (r), (s), (t), (u) or  
 23 (w), and amendments thereto, is a:

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

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

29 (C) severity level 6, nonperson felony for a third and all subsequent  
 30 violations, and the offender shall be fined \$100,000 upon a third and all  
 31 subsequent convictions.

32 (2) It shall be a defense to prosecution under K.S.A. 79-3321(a), and  
 33 amendments thereto, that a licensee has: (A) Segregated the cigarettes  
 34 from public view; (B) marked the cigarettes as not for retail sale to  
 35 consumers; and (C) within 72 hours of receipt, notified the licensee's  
 36 wholesale dealer, in writing, that the cigarettes do not bear indicia of  
 37 Kansas tax and that the wholesale dealer shall remove the cigarettes from  
 38 the licensee's premises.

39 (b) Except as provided in ~~subsections~~ subsection (a), or (c) or ~~(d)~~, a  
 40 violation of K.S.A. 79-3321, and amendments thereto, is a class B  
 41 misdemeanor and upon conviction, an offender shall be fined not less than  
 42 \$500 nor more than \$1,000 or imprisoned for not more than one year, or  
 43 both for each separate violation. In addition thereto any person found

1 liable for any license fee or tax imposed under the provisions of this act  
2 shall be personally liable for such license fee or tax plus a penalty in an  
3 amount equal to 100% thereof.

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

10 *(A) For a first violation, a minimum fine of \$500;*

11 *(B) for a second violation within a three-year period, a minimum fine*  
12 *of \$750; and*

13 *(C) for a third or subsequent violation within a three-year period, a*  
14 *minimum fine of \$1,000.*

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

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

18 (B) the defendant sold, furnished or distributed the ~~cigarettes or~~  
19 ~~tobacco regulated~~ products to the person under ~~18~~ 21 years of age with  
20 reasonable cause to believe the person was of legal age to purchase or  
21 receive ~~cigarettes or tobacco regulated~~ products; and

22 (C) to purchase or receive the ~~cigarettes or tobacco regulated~~  
23 products, the person under ~~18~~ 21 years of age exhibited to the defendant a  
24 driver's license, Kansas nondriver's identification card or other official or  
25 apparently official document containing a photograph of the person and  
26 purporting to establish that the person was of legal age to purchase or  
27 receive ~~cigarettes or tobacco regulated~~ products.

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

29 (A) The defendant engages in the lawful sale, furnishing or  
30 distribution of ~~cigarettes or tobacco regulated~~ products by mail; and

31 (B) the defendant sold, furnished or distributed the ~~cigarettes or~~  
32 ~~tobacco regulated~~ products to the person by mail only after the person had  
33 provided to the defendant an unsworn declaration, conforming to K.S.A.  
34 53-601, and amendments thereto, that the person was ~~18~~ 21 or more years  
35 of age.

36 (4) For purposes of this subsection the person who violates this  
37 subsection shall be the individual directly selling, furnishing or  
38 distributing the ~~cigarettes or tobacco regulated~~ products to any person  
39 under ~~18~~ 21 years of age, *the person buying regulated products for any*  
40 *person under 21 years of age* or the retail dealer who has actual knowledge  
41 of such *buying*, selling, furnishing or distributing by such individual or  
42 both.

43 ~~(d) Violation of K.S.A. 79-3321(m) or (n), and amendments thereto,~~

1 is a cigarette or tobacco infraction for which the fine is \$25. In addition,  
2 the judge may require the juvenile to appear in court with a parent or legal  
3 guardian.

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

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

29 (f) *It shall not be a violation of K.S.A. 79-3321, and amendments*  
30 *thereto, to permit any person under 21 years of age to possess regulated*  
31 *products if such possession is solely in the course of such person's*  
32 *employment by a retailer.*

33 Sec. 14. K.S.A. 79-3323 is hereby amended to read as follows: 79-  
34 3323. (a) Except as provided in subsection (c), the following are declared  
35 to be common nuisances and contraband:

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

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

41 (A) The governor and the Prairie Band Potawatomi Nation and  
42 approved by the legislature; (B) the governor and the Iowa Tribe of Kansas  
43 and Nebraska and approved by the legislature; (C) the governor and the

1 Kickapoo Tribe in Kansas and approved by the legislature; or (D) the  
2 governor and the Sac and Fox Nation of Missouri in Kansas and Nebraska  
3 and approved by the legislature;

4 (3) ~~all cigarettes or tobacco~~ *regulated* products in the possession of a  
5 ~~minor person under 21 years of age~~;

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

8 (5) all property, including vehicles, used in the sale, transportation,  
9 distribution, importation, wholesale or manufacture of unstamped  
10 packages of cigarettes;

11 ~~Cigarettes in vending machines and exposed to view not showing~~  
12 ~~indicia of tax payment required by this act to be visible from the outside of~~  
13 ~~the vending machine shall be presumed to be unstamped; and~~

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

15 (b) ~~Any cigarettes regulated products~~ or property constituting a  
16 common nuisance and contraband as provided by this section may be  
17 seized by the director or the director's authorized agent or any duly  
18 constituted peace officer with or without process or warrant and shall be  
19 subject to forfeiture as provided in this act. The party making the seizure  
20 shall deliver to the owner of the property and to the person or persons  
21 found in possession of the property a receipt stating from whom the  
22 property was seized, the place of seizure and a description and the brand of  
23 the property seized. A duplicate of the receipt shall be filed in the office of  
24 the director and shall be open for public inspection.

25 (c) Cigarettes in quantities of 1,000 or less in the possession of a  
26 licensee are not declared a common nuisance and contraband if the  
27 licensee has: (1) Segregated the cigarettes from public view; (2) marked  
28 the cigarettes as not for retail sale to consumers; and (3) within 72 hours of  
29 receipt, notified the licensee's wholesale dealer, in writing, that the  
30 cigarettes do not bear indicia of Kansas tax and that the wholesale dealer  
31 shall remove the cigarettes from the licensee's premises.

32 Sec. 15. K.S.A. 79-3326 is hereby amended to read as follows: 79-  
33 3326. The director of taxation shall administer and enforce the provisions  
34 of this act, and to require such reports, make such investigations and take  
35 such other action as the director deems necessary or suitable to that end.  
36 For the purpose of ascertaining the correctness of any return or making an  
37 estimate of the tax due for any taxpayer or person, the director or the  
38 director's designee has the power to examine any books, papers, records or  
39 memoranda bearing upon the matters required to be included in the return  
40 or report. The secretary of revenue shall adopt rules and regulations for the  
41 administration of this act. For the purpose of enforcing this act the director  
42 may call to the director's aid any law enforcement officer of this state to  
43 prosecute all violators of any of the provisions of this act. The police of

1 any city shall have the right to inspect all premises, records and invoices  
2 pertaining to the wholesale distribution, retail sale or sampling of  
3 ~~cigarettes or tobacco~~ *regulated* products within the city at all reasonable  
4 times. All agents and representatives designated by the director are hereby  
5 invested with all the powers of peace and police officers within the state of  
6 Kansas in the enforcement of the provisions of this act throughout the  
7 state.

8 Sec. 16. K.S.A. 79-3334 is hereby amended to read as follows: 79-  
9 3334. (a) The Kansas department of revenue shall publish a list of active  
10 ~~cigarette and tobacco~~ licensees and shall update such list monthly.

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

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

16 Sec. 17. K.S.A. 79-3335 is hereby amended to read as follows: 79-  
17 3335. (a) Counterfeit ~~cigarettes~~ *regulated products* shall be seized by the  
18 director. For purposes of this section, counterfeit ~~cigarettes~~ *includes*  
19 ~~cigarettes~~ *regulated products include regulated products* manufactured,  
20 sold, transported, imported, distributed or possessed in this state with  
21 intent to deceive consumers and to avoid the provisions of this act, and  
22 also ~~includes~~ *cigarettes include regulated products* that have false  
23 manufacturing labels or packages of cigarettes bearing counterfeit tax  
24 stamps. It shall be unlawful for any person to sell, transport, import,  
25 distribute, possess, wholesale or manufacture counterfeit ~~cigarettes~~  
26 *regulated products*.

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

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

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

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

37 (c) The secretary of revenue, or the secretary's authorized agent, may  
38 refer such evidence as may be available concerning violations of this act or  
39 any rules and regulations or order hereunder to the attorney general or the  
40 proper county or district attorney, who may in the prosecutor's discretion,  
41 with or without such a reference, institute the appropriate criminal  
42 proceedings under this act. Upon receipt of such reference, the attorney  
43 general or the county attorney or district attorney may request that a duly

1 employed attorney of the department of revenue prosecute or assist in the  
2 prosecution of such violation or violations on behalf of the state. Upon  
3 approval of the secretary or the secretary's authorized agent, such  
4 employee shall be appointed as a special prosecutor for the attorney  
5 general or the county attorney or district attorney to serve without  
6 compensation from the attorney general or the county attorney or district  
7 attorney. Such special prosecutor shall have all the powers and duties  
8 prescribed by law for assistant attorneys general or assistant county or  
9 district attorneys and such other powers and duties as are lawfully  
10 delegated to such special prosecutor by the attorney general or the county  
11 attorney or district attorney. If an attorney employed by the secretary or  
12 secretary's authorized agent acts as a special prosecutor, the secretary may  
13 pay extradition and witness expenses associated with the case.

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

16 Sec. 18. K.S.A. 79-3388 is hereby amended to read as follows: 79-  
17 3388. The imposition of the tax as provided in this act shall not render  
18 ~~tobacco~~ regulated products exempt from the retailers' sales tax act under  
19 the provisions of K.S.A. 79-3606-~~(a)~~, and amendments thereto.

20 Sec. 19. K.S.A. 79-3391 is hereby amended to read as follows: 79-  
21 3391. (a) In addition to or in lieu of any other civil or criminal penalty  
22 provided by law, the secretary of revenue or the secretary's designee, upon  
23 a finding that a person under this act has violated any provision of this act  
24 or any provision of any rule and regulation of the secretary of revenue  
25 adopted pursuant to this act shall impose on such person a civil fine not  
26 exceeding \$1,000 for each violation.

27 (b) It shall be unlawful for any person, directly or indirectly, to:

28 (1) Sell, give or furnish any ~~cigarettes or tobacco~~ regulated products  
29 to any person under ~~18~~ 21 years of age; or

30 (2) buy any ~~cigarettes or tobacco~~ regulated products for any person  
31 under ~~18~~ 21 years of age.

32 (c) In determining the fine to be imposed under this subsection by a  
33 licensed retail dealer whose employee sold, furnished or distributed the  
34 ~~cigarettes or tobacco~~ regulated products, the secretary of revenue, or the  
35 secretary's designee, shall consider it to be a mitigating circumstance if the  
36 employee had completed a training program, approved by the secretary of  
37 ~~revenue~~ the department of health and human services, or the secretary's  
38 designee, in avoiding sale, furnishing or distributing of ~~cigarettes and~~  
39 ~~tobacco~~ regulated products to persons under ~~18~~ 21 years of age.

40 ~~(e)~~(d) No fine shall be imposed pursuant to this section except upon  
41 the written order of the secretary of revenue, or the secretary's designee, to  
42 the licensee who committed the violation. Such order shall state the  
43 violation, the fine to be imposed and the right of the licensee to appeal the



1 order. Such order shall be subject to appeal and review in the manner  
2 provided by the Kansas administrative procedure act.

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

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

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

19 (2) *For purposes of determining the number of violations of*  
20 *subsection (b), each violation of subsection (b) or violation of an*  
21 *ordinance of any city, or a resolution of any county, that prohibits the acts*  
22 *prohibited by subsection (b) shall be considered a separate violation of*  
23 *subsection (b).*

24 (3) For the purposes of imposing a fine under this section, if three or  
25 more years have elapsed since a person has been found to have violated  
26 the provisions of subsection (b), such person shall be treated as never  
27 having violated subsection (b).

28 Sec. 20. K.S.A. 79-3394 is hereby amended to read as follows: 79-  
29 3394. (a) *The director, or any person specified in subsection (b), when*  
30 *conducting compliance checks shall engage persons under 21 years of age*  
31 *to perform controlled buys at a retail dealer's licensed establishment.*  
32 *Retail dealers shall be subject to not less than two unannounced*  
33 *controlled buys each year. A subsequent unannounced controlled buy shall*  
34 *be conducted within 90 days following any instance in which a retail*  
35 *dealer is determined to be noncompliant during a controlled buy.*

36 (b) No person shall engage or direct a ~~minor~~ person under 18 years  
37 of age to violate any provision of this act for purposes of determining  
38 compliance with provisions of this act or the Kansas consumer protection  
39 act unless such person has procured the written consent of a parent or  
40 guardian of the ~~minor~~ person under 18 years of age to so engage or direct  
41 the ~~minor~~ person under 18 years of age and such person is:

42 ~~(a)~~(1) An officer having authority to enforce the provisions of this  
43 act;

1        ~~(b)~~(2) an authorized representative of the attorney general, a county  
2 attorney or a district attorney; or

3        ~~(e)~~(3) an authorized representative of a business acting pursuant to a  
4 self-compliance program designed to increase compliance with the  
5 provisions of this act.

6        Sec. 21. K.S.A. 79-3396 is hereby amended to read as follows: 79-  
7 3396. (a) In addition to or in lieu of any other civil or criminal penalty  
8 provided by law, the director, upon a finding that a licensee has violated  
9 the provisions of ~~subsection (u), (v) or (w) of K.S.A. 79-3321(q), (r) or (s),~~  
10 and amendments thereto, or has failed to comply with the provisions of  
11 K.S.A. 79-3395, and amendments thereto, or any rule and regulation  
12 adopted pursuant thereto, may revoke or suspend the license of any  
13 licensee in the manner provided by K.S.A. 79-3309, and amendments  
14 thereto; the director also may impose a civil fine in an amount not to  
15 exceed the greater of 500% of the retail value of the cigarettes involved or  
16 \$5,000. Such fine shall be imposed in the manner provided by K.S.A. 79-  
17 3391, and amendments thereto.

18        (b) ~~Any cigarettes regulated products~~ that are acquired, held, owned,  
19 possessed, transported, imported, sold or distributed in this state in  
20 violation of ~~subsection (u), (v) or (w) of K.S.A. 79-3321(q), (r) or (s),~~ and  
21 amendments thereto, or has failed to comply with the provisions of K.S.A.  
22 79-3395, and amendments thereto, shall be deemed contraband under  
23 K.S.A. 79-3323, and amendments thereto, and shall be subject to seizure  
24 and forfeiture as provided therein and in K.S.A. 79-3324a, and  
25 amendments thereto. All such ~~cigarettes regulated products~~ seized and  
26 forfeited shall be destroyed. Such ~~cigarettes regulated products~~ shall be  
27 deemed contraband whether the violation of this act is knowing or  
28 otherwise.

29        Sec. 22. K.S.A. 79-3399 is hereby amended to read as follows: 79-  
30 3399. (a) ~~On and after July 1, 2017,~~ A tax is hereby imposed upon the  
31 privilege of selling or dealing in electronic cigarettes in this state by any  
32 person engaged in business as a distributor thereof, at the rate of \$.05 per  
33 milliliter of consumable material for electronic cigarettes and a  
34 proportionate tax at the like rate on all fractional parts thereof. For  
35 electronic cigarettes in the possession of retail dealers for which tax has  
36 not been paid, tax shall be imposed under this subsection at the earliest  
37 time the retail dealer: (1) Brings or causes to be brought into this state  
38 from without the state electronic cigarettes for sale; (2) makes,  
39 manufactures or fabricates electronic cigarettes in this state for sale in this  
40 state; or (3) sells electronic cigarettes to consumers within this state.

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

43        (e) ~~The secretary of revenue shall adopt rules and regulations to~~

1 implement the provisions of this section.

2 Sec. 23. K.S.A. 72-6285, 79-3301, 79-3302, 79-3303, 79-3304, 79-  
3 3309, 79-3310c, 79-3316, 79-3321, 79-3322, 79-3323, 79-3326, 79-3334,  
4 79-3335, 79-3388, 79-3391, 79-3394, 79-3396 and 79-3399 and K.S.A.  
5 2020 Supp. 21-5102, 21-6109, 21-6110 and 50-6a14 are hereby repealed.

6 Sec. 24. This act shall take effect and be in force from and after July  
7 1, 2022, and its publication in the statute book.