

February 13, 2020

The Honorable John Barker, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 285-N
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2563 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2563 is respectfully submitted to your committee.

HB 2563 would increase the minimum age to purchase or possess cigarettes, electronic cigarettes, and tobacco products from 18 years of age to 21 years of age. The bill would not allow vending machines or self-service displays to sell cigarettes beginning on July 1, 2020. The bill would add electronic cigarettes to the requirements of the current Clean Indoor Air Act. Under current law, the use of tobacco products is prohibited in school buildings. The bill clarifies that this prohibition also includes cigarettes, e-cigarettes, and consumable material. The bill would allow electronic cigarettes and consumable material to be regulated under the Cigarette and Tobacco Products Act and definitions in this Act would be updated to include electronic cigarettes and consumable material. The bill would prohibit any person from selling electronic cigarettes with flavored consumable material other than menthol flavored.

The bill would increase the retail dealer's license fee from \$25 to \$100, and would increase the minimum age to obtain this license from 18 years of age to 21 years of age. The bill would eliminate the specific license for retailer's license on railroad or sleeping cars; the show, carnival, or catering license; the resident retail dealer's temporary license; vending machine distributor license; and vending machine operator's license. The bill would also eliminate the vending machine permit.

Under current law, it is a class B person misdemeanor to sell or furnish cigarettes or tobacco products to persons under the age of 18 years of age, or allow persons under the age of 18 years of age to purchase these products that is punishable with a fine of \$200. The bill would add electronic cigarettes and consumable materials to this misdemeanor; increase the age to 21 years of age; and

increase the fine to a minimum of \$500 for the first violation, a minimum fine of \$750 for a second violation within a three-year period, and a minimum fine of \$1,000 for a third or subsequent violation within a three-year period. The bill requires the Kansas Department of Health and Environment (KDHE) to create or approve training materials for those caught selling tobacco products to people under the age of 21. The bill also updates the “controlled buys” procedures that allows the Department of Revenue to perform compliance checks to make sure retailers comply the age requirements for the sale of cigarettes, electronic cigarettes, and tobacco products.

The Department of Revenue estimates that HB 2563 would decrease state revenues by \$6,870,337 in FY 2021. Of that total, the State General Fund is estimated to decrease by \$6.8 million FY 2021, the State Highway Fund is estimated to decrease by \$265,337 in FY 2021, and the Cigarette and Tobacco Enforcement Fund is estimated to increase by \$195,000 in FY 2021. This bill also is estimated to decrease local sales tax revenues from lower cigarette sales; however, the specific estimate of lower local sales tax revenues was not calculated by the Department of Revenue.

While some cities and counties in Kansas have already increased the age to purchase cigarettes, electronic cigarettes, and tobacco products from 18 to 21 years of age, the effect is unknown to the Department. To formulate these estimates, the Department of Revenue reviewed data from the Centers for Disease Control and Prevention that show an estimated 17,662 smokers aged 18-20 in Kansas (14.1 percent of that particular population are smokers), which represents approximately 4.66 percent of all adult smokers in Kansas. The Department reported annual cigarette stamp revenue of \$116.7 million in 2019 and reducing consumption by 4.66 percent would result in a reduction of approximately \$5.4 million in cigarette stamp revenue that goes to the State General Fund. There would also be a loss of an additional \$1.6 million in sales tax revenue (\$1.4 million to the State General Fund and \$265,337 to the State Highway Fund). The Department estimates that the \$5.4 million cigarette stamp revenue represents approximately 4.2 million packs of cigarettes no longer being sold in Kansas.

The bill would also increase the biennial retail dealer’s license fee from \$25 to \$100. With that change, the Department would see an increase every other year of \$195,000 to the Cigarette and Tobacco Enforcement Fund. The Department indicates that 2,600 dealers would see a fee increase of \$75 every other year. This bill would also increase the fees for violations of the Cigarette and Tobacco Products Act; however, it is unknown what the effect on revenue collected from these increased fines.

The Department indicates that the bill would require \$92,482 from the State General Fund in FY 2021 to update forms and publications. The bill would require the Department to hire 1.00 new FTE position to perform the additional inspection requirements.

KDHE indicates that the bill requires it to create or approve training materials for those caught selling tobacco products to people under the age of 21. KDHE indicates that the Department of Revenue is currently performing these duties and requiring KDHE to perform these duties instead would require \$26,155 from the State General Fund to contract with a part-time inspector to conduct training sessions. KDHE indicates that there were 188 compliance violations

in 2019 and assumes that the number of compliance violations would not vary substantially as a result of this bill.

The bill has the potential for increasing litigation in the courts because of the increased fine structure for violations of the Cigarette and Tobacco Products Act created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to estimate the number of additional court cases that would arise or how complex and time-consuming the cases would be. The fiscal effect would most likely be negligible and could be accommodated within the existing budget resources. The Attorney General's Office indicates that the bill would have no fiscal effect on its operations; however, they indicate that there might be additional law enforcement actions on the local level to investigate and prosecute additional violations. The Kansas Sentencing Commission indicates that the bill would not have an effect on prison admissions and beds. Any fiscal effect associated with HB 2563 is not reflected in *The FY 2021 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink that reads "L. L. Campbell". The signature is fluid and cursive, with the first and last names being clearly legible.

Larry L. Campbell
Division of the Budget

cc: Dan Thimmesh, Health & Environment
Lynn Robinson, Department of Revenue
Scott Schultz, Sentencing Commission
Willie Prescott, Office of the Attorney General
Mary Rinehart, Judiciary