

{As Amended by House Committee of the Whole}

Session of 2021

HOUSE BILL No. 2340

By Committee on Federal and State Affairs

2-10

1 AN ACT concerning cigarettes and tobacco products; increasing the
2 minimum age to purchase or possess such products; amending K.S.A.
3 72-6285, 79-3301, 79-3302, 79-3303, 79-3304, 79-3309, 79-3321, 79-
4 3322, 79-3323, 79-3326, 79-3334, 79-3335, 79-3388, 79-3391, 79-
5 3394, 79-3396 and 79-3399 and K.S.A.-~~2020~~ {2021} Supp. 21-6109,
6 21-6110 and 50-6a14 and repealing the existing sections.
7

8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A.-~~2020~~ {2021} Supp. 21-6109 is hereby amended to
10 read as follows: 21-6109. As used in K.S.A.-~~2020~~ {2021} Supp. 21-6109
11 through 21-6116, and amendments thereto:

12 (a) "Access point" means the area within a ten foot radius outside of
13 any doorway, open window or air intake leading into a building or facility
14 that is not exempted pursuant to K.S.A.-~~2020~~ {2021} Supp. 21-6110(d),
15 and amendments thereto.

16 (b) "Bar" means any indoor area that is operated and licensed for the
17 sale and service of alcoholic beverages, including alcoholic liquor as
18 defined in K.S.A. 41-102, and amendments thereto, or cereal malt
19 beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-
20 premises consumption.

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

23 (d) "Employee" means any person who is employed by an employer
24 in consideration for direct or indirect monetary wages or profit and any
25 person who volunteers their services for a nonprofit entity.

26 ~~(d)~~(e) "Employer" means any person, partnership, corporation,
27 association or organization, including municipal or nonprofit entities, that
28 employs one or more individual persons.

29 ~~(e)~~(f) "Enclosed area" means all space between a floor and ceiling
30 that is enclosed on all sides by solid walls, windows or doorways that
31 extend from the floor to the ceiling, including all space therein screened by
32 partitions that do not extend to the ceiling or are not solid or similar
33 structures. For purposes of this section, the following shall not be
34 considered an "enclosed area":

35 (1) Rooms or areas, enclosed by walls, windows or doorways, having
36 neither a ceiling nor a roof and that are completely open to the elements

1 and weather at all times; and

2 (2) rooms or areas, enclosed by walls, fences, windows or doorways
3 and a roof or ceiling, having openings that are permanently open to the
4 elements and weather and that comprise an area that is at least 30% of the
5 total perimeter wall area of such room or area.

6 ~~(f)~~(g) "Food service establishment" means any place in which food is
7 served or is prepared for sale or service on the premises. Such term shall
8 include, but not be limited to, fixed or mobile restaurants, coffee shops,
9 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich
10 shops, soda fountains, taverns, private clubs, roadside kitchens,
11 commissaries and any other private, public or nonprofit organization or
12 institution routinely serving food and any other eating or drinking
13 establishment or operation where food is served or provided for the public
14 with or without charge.

15 ~~(g)~~(h) "Gaming floor" means the area of a lottery gaming facility or
16 racetrack gaming facility, as those terms are defined in K.S.A. 74-8702,
17 and amendments thereto, where patrons engage in Class III gaming. The
18 gaming floor shall not include any areas used for accounting, maintenance,
19 surveillance, security, administrative offices, storage, cash or cash
20 counting, records, food service, lodging or entertainment, except that the
21 gaming floor may include a bar where alcoholic beverages are served so
22 long as the bar is located entirely within the area where Class III gaming is
23 conducted.

24 ~~(h)~~(i) "Medical care facility" means a physician's office, general
25 hospital, special hospital, ambulatory surgery center or recuperation center,
26 as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric
27 hospital licensed under K.S.A. ~~2020~~ {2021} Supp. 39-2001 et seq., and
28 amendments thereto.

29 ~~(i)~~(j) "Outdoor recreational facility" means a hunting, fishing,
30 shooting or golf club, business or enterprise operated primarily for the
31 benefit of its owners, members and their guests and not normally open to
32 the general public.

33 ~~(j)~~(k) "Place of employment" means any enclosed area under the
34 control of a public or private employer, including, but not limited to, work
35 areas, auditoriums, elevators, private offices, employee lounges and
36 restrooms, conference and meeting rooms, classrooms, employee
37 cafeterias, stairwells and hallways, that is used by employees during the
38 course of employment. For purposes of this section, a private residence
39 shall not be considered a "place of employment" unless such residence is
40 used as a day care home, as defined in K.S.A. 65-530, and amendments
41 thereto.

42 ~~(k)~~(l) "Private club" means an outdoor recreational facility operated
43 primarily for the use of its owners, members and their guests that in its

1 ordinary course of business is not open to the general public for which use
2 of its facilities has substantial dues or membership fee requirements for its
3 members.

4 ~~(m)~~(m) "Public building" means any building owned or operated by:

5 (1) The state, including any branch, department, agency, bureau,
6 commission, authority or other instrumentality thereof;

7 (2) any county, city, township, other political subdivision, including
8 any commission, authority, agency or instrumentality thereof; or

9 (3) any other separate corporate instrumentality or unit of the state or
10 any municipality.

11 ~~(n)~~(n) "Public meeting" means any meeting open to the public
12 pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other
13 law of this state.

14 ~~(o)~~(o) "Public place" means any enclosed areas open to the public or
15 used by the general public including, but not limited to: Banks, bars, food
16 service establishments, retail service establishments, retail stores, public
17 means of mass transportation, passenger elevators, health care institutions
18 or any other place where health care services are provided to the public,
19 medical care facilities, educational facilities, libraries, courtrooms, public
20 buildings, restrooms, grocery stores, school buses, museums, theaters,
21 auditoriums, arenas and recreational facilities. For purposes of this section,
22 a private residence shall not be considered a "public place" unless such
23 residence is used as a day care home, as defined in K.S.A. 65-530, and
24 amendments thereto.

25 ~~(p)~~(p) "*Smoke*" or "smoking" means possession of a lighted cigarette,
26 cigar, pipe or burning tobacco in any other form or device designed for the
27 use of tobacco, *or use of an electronic cigarette*.

28 ~~(q)~~(q) "Tobacco shop" means any indoor area operated primarily for
29 the retail sale of tobacco, tobacco products~~or~~, smoking devices, *electronic*
30 *cigarettes* or accessories, and that derives not less than 65% of its gross
31 receipts from~~the sale~~ *any combination of sales* of tobacco, *tobacco*
32 *products, smoking devices or electronic cigarettes*.

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

38 Sec. 2. K.S.A. ~~2020~~ {2021} Supp. 21-6110 is hereby amended to read
39 as follows: 21-6110. (a) It shall be unlawful, with no requirement of a
40 culpable mental state, to smoke in an enclosed area or at a public meeting
41 including, but not limited to:

42 (1) Public places;

43 (2) taxicabs and limousines;

1 (3) restrooms, lobbies, hallways and other common areas in public
2 and private buildings, condominiums and other multiple-residential
3 facilities;

4 (4) restrooms, lobbies and other common areas in hotels and motels
5 and in at least 80% of the sleeping quarters within a hotel or motel that
6 may be rented to guests;

7 (5) access points of all buildings and facilities not exempted pursuant
8 to subsection (d); and

9 (6) any place of employment.

10 (b) Each employer having a place of employment that is an enclosed
11 area shall provide a smoke-free workplace for all employees. Such
12 employer shall also adopt and maintain a written smoking policy ~~which~~
13 ~~shall prohibit~~ *that prohibits* smoking without exception in all areas of the
14 place of employment. Such policy shall be communicated to all current
15 employees within one week of its adoption and shall be communicated to
16 all new employees upon hiring. Each employer shall provide a written
17 copy of the smoking policy upon request to any current or prospective
18 employee.

19 (c) Notwithstanding any other provision of this section, K.S.A. ~~2020~~
20 **{2021}** Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor
21 or other person in charge of an adult care home, as defined in K.S.A. 39-
22 923, and amendments thereto, or a medical care facility, may designate a
23 portion of such adult care home, or the licensed long-term care unit of
24 such medical care facility, as a smoking area, and smoking may be
25 permitted within such designated smoking area.

26 (d) The provisions of this section shall not apply to:

27 (1) The outdoor areas of any building or facility beyond the access
28 points of such building or facility;

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

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

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

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

42 (6) that portion of a licensed long-term care unit of a medical care
43 facility that is expressly designated as a smoking area by the proprietor or

1 other person in charge of such medical care facility pursuant to subsection
2 (c) and that is fully enclosed and ventilated and to which access is
3 restricted to the residents and their guests;

4 (7) tobacco shops;

5 (8) a class A or class B club defined in K.S.A. 41-2601, and
6 amendments thereto, ~~which that~~:

7 (A) Held a license pursuant to K.S.A. 41-2606 et seq., and
8 amendments thereto, as of January 1, 2009; and

9 (B) notifies the secretary of health and environment in writing, not
10 later than 90 days after the effective date of this act, that it wishes to
11 continue to allow smoking on its premises;

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

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

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

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

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

24 (11) that portion of a medical or clinical research facility constituting
25 a separately ventilated, secure smoking room dedicated and used solely
26 and exclusively for clinical research activities conducted in accordance
27 with regulatory authority of the United States or the state of Kansas, as
28 determined by the director of alcoholic beverage control of the department
29 of revenue.

30 Sec. 3. K.S.A. ~~2020~~ {2021} Supp. 50-6a14 is hereby amended to read
31 as follows: 50-6a14. (a) In addition to, or in lieu of, any other civil or
32 criminal remedy provided by law, the director or the director's designee,
33 upon a finding that a stamping agent has violated ~~subsection (a) of~~ K.S.A.
34 50-6a04(a), and amendments thereto, or any rules or regulations adopted
35 pursuant to this act, may revoke or suspend the license of any licensee in
36 the manner provided by K.S.A. 79-3309, and amendments thereto. Each
37 package of cigarettes to which tax indicia is affixed, is caused to be affixed
38 or tax is paid thereupon, and each sale or offer to sell cigarettes in
39 violation of ~~subsection (a) of~~ K.S.A. 50-6a04(a), and amendments thereto,
40 shall constitute a separate violation. The director may also impose a civil
41 penalty in an amount not to exceed the greater of 500% of the retail value
42 of the cigarettes involved or \$5,000 upon a finding of violation of
43 ~~subsection (a) of~~ K.S.A. 50-6a04(a), and amendments thereto, or a

1 violation of any rules or regulations adopted pursuant to this act. Such fine
2 shall be imposed in the manner provided by K.S.A. 79-3391, and
3 amendments thereto. Any fine collected pursuant to this subsection shall
4 be remitted to the state treasurer in accordance with the provisions of
5 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
6 remittance, the state treasurer shall deposit the entire amount in the state
7 treasury to the credit of the cigarette and tobacco products regulation fund
8 created pursuant to ~~subsection (e) of~~ K.S.A. 79-3391, and amendments
9 thereto. The moneys credited to this fund shall be used for the purposes of
10 enforcement of this act, or K.S.A. 79-3301 et seq., and amendments
11 thereto.

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

16 Sec. 4. K.S.A. 72-6285 is hereby amended to read as follows: 72-
17 6285. (a) The use of *cigarettes, electronic cigarettes, consumable material*
18 *and* tobacco products in any school building is hereby prohibited. No
19 board of education of any school district shall allow any person to use
20 *cigarettes, electronic cigarettes, consumable material or* tobacco products
21 in any school building.

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

23 (1) "*Cigarette, "electronic cigarette, "consumable material" and*
24 "*tobacco product*" mean the same as such terms are defined in K.S.A. 79-
25 3301, and amendments thereto; and

26 (2) "school building" means any enclosed building used for ~~pupil-~~
27 *student* attendance purposes by the board of education of a unified school
28 district. The term school building does not include a building, or part
29 thereof, used for residential purposes or leased from the school district for
30 nonschool sponsored activities.

31 Sec. 5. K.S.A. 79-3301 is hereby amended to read as follows: 79-
32 3301. As used in K.S.A. 79-3301 et seq., and amendments thereto:

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

34 (b) "Carrier" means one who transports cigarettes from a
35 manufacturer to a wholesale dealer or from one wholesale dealer to
36 another.

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

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

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

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

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

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

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

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

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

20 ~~(k)~~(l) "Distributor" means:

21 (1) Any person engaged in the business of selling tobacco products in
22 this state who brings, or causes to be brought, into this state from outside
23 the state any tobacco products for sale;

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

26 (3) any person engaged in the business of selling tobacco products
27 outside this state who ships or transports tobacco products to any person in
28 the business of selling tobacco products in this state.

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

30 ~~(m)~~(n) "Electronic cigarette" means a battery-powered device,
31 whether or not such device is shaped like a cigarette, that can provide
32 inhaled doses of nicotine by delivering a vaporized solution by means of
33 cartridges or other chemical delivery systems.

34 ~~(n)~~(o) "Importer" means the same as provided in 26 U.S.C. § 5702(k).

35 ~~(o)~~(p) "License" means the privilege of a licensee to sell ~~cigarettes or~~
36 ~~tobacco~~ *regulated products* in the state of Kansas, and the written evidence
37 of such authority or privilege as issued by the director.

38 ~~(p)~~(q) "Licensee" means any person holding a current license issued
39 pursuant to this act.

40 ~~(q)~~(r) "Manufacturer" means the same as provided in 26 U.S.C. §
41 5702(d).

42 ~~(r)~~(s) "Manufacturer's salesperson" means a person employed by a
43 cigarette manufacturer who sells cigarettes, manufactured by such

1 employer and procured from wholesale dealers.

2 ~~(s)~~(t) (1) "Package" means a container in which no more than 25
3 individual cigarettes are wrapped and sealed by the manufacturer of
4 cigarettes prior to shipment to a wholesale dealer; *or*

5 (2) for the purposes of K.S.A. 79-3321~~(v)~~ and ~~(w)~~(r) and (s), and
6 amendments thereto, "package" means the same as provided in 15 U.S.C.
7 § 1332(4).

8 ~~(t)~~(u) "Person" means any individual, partnership, society,
9 association, joint-stock company, corporation, estate, receiver, trustee,
10 assignee, referee or any other person acting in a fiduciary or representative
11 capacity whether appointed by a court or otherwise and any combination
12 of individuals.

13 ~~(u)~~(v) "Received" means the coming to rest of cigarettes for sale by
14 any dealer in the state of Kansas.

15 (w) "*Regulated products*" means cigarettes, electronic cigarettes,
16 consumable material and tobacco products.

17 ~~(v)~~(x) "Retail dealer" or "retailers" means a person, ~~other than a~~
18 ~~vending machine operator,~~ in possession of ~~cigarettes or electronic~~
19 ~~cigarettes regulated products~~ for the purpose of sale to a consumer.

20 ~~(w)~~(y) "Sale" means any transfer of title or possession or both,
21 exchange, barter, distribution or gift of ~~cigarettes, tobacco products or~~
22 ~~electronic cigarettes regulated products,~~ with or without consideration.

23 ~~(x)~~(z) "Sample" means ~~cigarettes or tobacco~~ regulated products
24 distributed to members of the general public at no cost for purposes of
25 promoting the product.

26 ~~(y)~~(aa) "Self-service display" means a display that contains ~~cigarettes~~
27 ~~or tobacco~~ regulated products and is located in an area openly accessible
28 to a retail dealer's consumers, and from which such consumers can readily
29 access ~~cigarettes or tobacco~~ regulated products without the assistance of a
30 salesperson, and ~~which~~ that is knowingly utilized by the retail dealer to
31 market and sell ~~cigarettes and tobacco~~ regulated products to consumers. A
32 display case that holds ~~cigarettes or tobacco~~ regulated products behind
33 locked doors does not constitute a self-service display.

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

36 ~~(aa)~~(cc) "Tax indicia" means visible evidence of tax payment in the
37 form of stamps.

38 ~~(bb)~~(dd) "Tobacco products" means cigars, cheroots, stogies,
39 periques; granulated, plug cut, crimp cut, ready rubbed and other smoking
40 tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and
41 other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and
42 sweepings of tobacco, and other kinds and forms of tobacco, prepared in
43 such manner as to be suitable for chewing or smoking in a pipe or

1 otherwise, or both for chewing and smoking. Tobacco products do not
2 include cigarettes.

3 (ee)(ee) "Tobacco specialty store" means a dealer establishment that
4 derives at least 65% of such dealer establishment's revenue from cigarettes
5 or tobacco products.

6 (dd)(ff) "Vending machine" means any coin operated machine,
7 contrivance or device, by means of which merchandise may be sold.

8 (ee)(gg) "Vending machine distributor" means any person who sells
9 cigarette vending machines to a vending machine operator operating
10 vending machines in the state of Kansas.

11 (ff)(hh) "Vending machine operator" means any person who places a
12 vending machine, owned, leased or operated by such person, at locations
13 where cigarettes are sold from such vending machine. The owner or lessee
14 of the premises upon which a vending machine is placed shall not be
15 considered the operator of the machine, nor shall the owner or lessee, or
16 any employee or agent of the owner or lessee be considered an authorized
17 agent of the vending machine operator, if the owner or lessee does not own
18 or lease the machine and the owner's or lessee's sole remuneration from the
19 machine is a flat rental fee or commission based upon the number or value
20 of cigarettes sold from the machine, or a combination of both.

21 (gg)(ii) "Wholesale dealer" means any person who sells cigarettes to
22 other wholesale dealers, retail dealers, vending machine operators and
23 manufacturer's salespersons for the purpose of resale in the state of
24 Kansas.

25 (hh)(jj) "Wholesale sales price" means the original net invoice price
26 for which a manufacturer sells a tobacco product to a distributor, as shown
27 by the manufacturer's original invoice.

28 Sec. 6. K.S.A. 79-3302 is hereby amended to read as follows: 79-
29 3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309, 79-3310,
30 79-3311, 79-3311a, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-
31 3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3333, 79-3335,
32 79-3336, 79-3371, 79-3373, 79-3374, 79-3375, 79-3377, 79-3378, 79-
33 3379, 79-3387, 79-3388, 79-3391, 79-3392, 79-3393, 79-3394 and K.S.A.
34 79-3311a, ~~79-3336~~, 79-3395 through 79-3399; and 79-33,100, and
35 amendments thereto, shall be known and may be cited as the Kansas
36 cigarette and tobacco products act.

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

40 Sec. 7. K.S.A. 79-3303 is hereby amended to read as follows: 79-
41 3303. (a) Each person engaged in the business of selling ~~cigarettes or~~
42 ~~electronic cigarettes~~ *regulated products* in the state of Kansas and each
43 vending machine distributor shall obtain a license as provided by this act.

1 A separate application, license and fee is required for each dealer
2 establishment owned or operated by a dealer. A vending machine operator
3 is required to obtain a vending machine operator's master license and, in
4 addition, a separate permit for each vending machine operated by the
5 operator. A vending machine operator may submit one application for the
6 vending machine operator's master license and all permits for vending
7 machines operated by the operator. The license shall be displayed in the
8 dealer establishment and the vending machine permit shall remain securely
9 and visibly attached to the vending machine and contain such information
10 as the director may require. Any vending machine found without such
11 permit attached to the machine shall be sealed by an agent of the director
12 and such seal shall be removed only by an agent of the director after
13 payment of the permit fee and the penalties provided by this act.

14 (b) The application for a vending machine operator's master license
15 and vending machine permits shall list the brand name and serial number
16 of each machine and such other information as required by the director.
17 Except in accordance with proper judicial order or as otherwise provided
18 by law, it shall be unlawful for any officer or employee of the division to
19 divulge or make known in any way the location of any vending machine to
20 any person not an officer or employee of the division or contracting entity
21 of the division, where the division has determined disclosure of such
22 information is essential for completion of the contract and has taken
23 appropriate steps to preserve confidentiality, except that such information
24 may be divulged to any law enforcement officer for use in the officer's
25 official duties. Any officer, employee or contracting entity revealing any
26 such location in violation of this provision, in addition to the penalties
27 otherwise provided in this act, shall be dismissed from office.

28 (c) A vending machine operator, in the course of business as a
29 vending machine operator, may dispose of or sell vending machines
30 without securing a license to sell vending machines. The vending machine
31 operator may move vending machines from one location to another and, if
32 a vending machine becomes inoperative or is disposed of, the permit for
33 such machine may be transferred to another machine. A vending machine
34 operator, within 10 days, shall notify the director of the brand name and
35 serial number of vending machines that become inoperative or that the
36 operator disposes of, sells, acquires or brings into service in this state as
37 additional machines.

38 (d) The key to the lower or storage compartment of a vending
39 machine shall remain only in the possession of the vending machine
40 operator or the operator's authorized agent. All services connected with the
41 operation of a vending machine shall be performed by the vending
42 machine operator or the operator's authorized agent. All vending machines
43 shall be subject to inspection by the director or the director's authorized

1 agents. No permit shall be issued for a vending machine unless it is
2 constructed so that at least one package of each vertical column of
3 cigarettes located therein is visible showing tax indicia.

4 (e) All vending machines operated on military installations shall have
5 a permit affixed to the machines and the cigarettes shall show tax indicia
6 of the Kansas tax.

7 (f) On or before the 10th day of each month, each vending machine
8 distributor shall report to the director, on forms provided by the director,
9 all sales of cigarette vending machines by the distributor to persons in the
10 state of Kansas during the preceding month; the name and address of the
11 purchaser; and the brand name, serial number and sale price of the
12 machines.

13 (g) Concurrently with a change in ownership of a dealer
14 establishment the license applicable to the establishment is void and shall
15 be surrendered to the director and shall not be transferred. On removal of a
16 dealer establishment from one location to another, the owner of the
17 establishment shall notify the director and surrender the owner's license.
18 The director shall issue a new license for the unexpired term of the
19 surrendered license on payment of a fee of \$2. If a dealer's license is lost,
20 stolen or destroyed, the director may issue a new license on proof of loss,
21 theft or destruction, at a cost of \$2. The director shall remit all moneys
22 received under this subsection to the state treasurer in accordance with the
23 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
24 each such remittance, the state treasurer shall deposit the entire amount in
25 the state treasury to the credit of the state general fund.

26 Sec. 8. K.S.A. 79-3304 is hereby amended to read as follows: 79-
27 3304. (a) The license fee for each biennium or portion thereof shall be as
28 follows:

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

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

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

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

36 (5) For wholesale dealer's license, \$50 for each dealer establishment.
37 No wholesale dealer's license shall be issued until the person applying
38 therefor has filed with the director a bond payable to the state of Kansas in
39 such an amount as shall be fixed by the director, but in no event less than
40 \$1,000, with a corporate surety authorized to do business in the state of
41 Kansas, and approved by the director. If a wholesale dealer is unable to
42 secure a corporate surety bond, the director may issue a license to such
43 wholesale dealer, upon the wholesale dealer furnishing a personal bond

1 meeting the approval of the director. Such bond shall be conditioned on the
2 wholesale dealer's compliance with all the provisions of this act during the
3 license period.

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

5 (7) For manufacturer's salesperson license, \$20 for each salesperson.
6 The manufacturer's salesperson shall, with respect to each sale made to a
7 retail dealer, make and deliver to the retail dealer a true invoice wherein
8 such salesperson shall insert the name of the wholesale dealer from whom
9 such salesperson secured such cigarettes, together with such salesperson's
10 own name and the name of the retail dealer purchasing the cigarettes.

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

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

13 ~~(b) An application for any license required under the provisions of~~
14 ~~this act may be refused to: (1) A person who is not of good character and~~
15 ~~reputation in the community in which such person resides; or (2) a person~~
16 ~~who has been convicted of a felony or of any crime involving moral~~
17 ~~turpitude or of the violation of any law of any state or the United States~~
18 ~~pertaining to cigarettes or tobacco products and who has not completed the~~
19 ~~sentence, parole, probation or assignment to a community correctional~~
20 ~~services program imposed for any such conviction within two years~~
21 ~~immediately preceding the date of making application for any of such~~
22 ~~licenses.~~

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

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

27 (2) *has been convicted of a felony or of any crime involving moral*
28 *turpitude or of the violation of any law of any state or the United States*
29 *pertaining to regulated products and who has not completed the sentence,*
30 *parole, probation or assignment to a community correctional services*
31 *program imposed for any such conviction within two years immediately*
32 *preceding the date of making application for any of such licenses;*

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

35 ~~(2)~~(4) *is not current in the payment of any tax or fine under this act;*

36 ~~(3)~~(5) *has had a cigarette license revoked in this state or any other*
37 *state;*

38 ~~(4)~~(6) *is not at least 21 years of age;*

39 ~~(5)~~(7) *intends to carry on the business as an agent of another;*

40 ~~(6)~~(8) *at the time of application for renewal of any license issued*
41 *under this act, would not be eligible for the license upon first application;*

42 ~~(7)~~(9) *does not own the premises for which a license is sought, or*
43 *does not, at the time of the application, have a written lease;*

1 ~~(8)~~(10) has been convicted of a crime involving any tax under this
2 act;

3 ~~(9)~~(11) is a corporation in which any officer, manager or director
4 thereof, or any stockholder owning in the aggregate more than 5% of the
5 common or preferred stock of such corporation, has been an officer,
6 manager or director or stockholder owning in the aggregate more than 5%
7 of the common or preferred stock, of a corporation that:

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

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

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

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

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

17 Sec. 9. K.S.A. 79-3309 is hereby amended to read as follows: 79-
18 3309. (a) Whenever the director has reason to believe that any person
19 licensed under this act has violated any of the provisions of this act; in any
20 of the following ways, the director shall notify the person by certified mail
21 of the director's intention to suspend or revoke the person's license or
22 licenses, if the person:

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

25 (2) *has been convicted of a felony or of any crime involving moral*
26 *turpitude or of the violation of any law of any state or the United States*
27 *pertaining to regulated products and who has not completed the sentence,*
28 *parole, probation or assignment to a community correctional services*
29 *program imposed for any such conviction within two years immediately*
30 *preceding the date of making application for any of such licenses;*

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

33 ~~(2)~~(4) is not current in the payment of any tax or fine under this act;

34 ~~(3)~~(5) has had a cigarette license revoked in this state or any other
35 state;

36 ~~(4)~~(6) is not at least ~~18~~ 21 years of age;

37 ~~(5)~~(7) intends to carry on the business as an agent of another;

38 ~~(6)~~(8) at the time of application for renewal of any license issued
39 under this act, would not be eligible for the license upon first application;

40 ~~(7)~~(9) does not own the premises for which a license is sought, or
41 does not, at the time of the application, have a written lease;

42 ~~(8)~~(10) has been convicted of a crime involving any tax under this
43 act;

1 ~~(9)~~(11) in the case of a corporation, any officer, manager or director
2 thereof, or any stockholder owning in the aggregate more than 5% of the
3 common or preferred stock of such corporation, has been an officer,
4 manager or director or stockholder owning in the aggregate more than 5%
5 of the common or preferred stock, of a corporation that:

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

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

8 ~~(10)~~(12) in the case of a limited liability company, any officer,
9 manager or director thereof, or any member owning in the aggregate more
10 than 5% of the limited liability company, has been an officer, manager or
11 director or stockholder owning in the aggregate more than 5% of the
12 common or preferred stock, of a corporation that:

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

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

15 (b) Within 30 days after the mailing of the notice, the person may
16 request a hearing in writing before the director. The hearing shall be
17 conducted in accordance with the provisions of the Kansas administrative
18 procedure act. If, after such hearing, it appears to the satisfaction of the
19 director that the person has violated any of the provisions of this act, the
20 director is hereby authorized and empowered to suspend or revoke the
21 person's license or licenses and may in addition deny the application of the
22 person for a license or licenses for a portion of the succeeding calendar
23 year for such period as the director determines is necessary, but in no case
24 for a period ending more than one year following the date upon which the
25 license or licenses were suspended or revoked. The suspension or
26 revocation of a vending machine operator's master license shall suspend or
27 revoke all vending machine permits issued to the vending machine
28 operator for the term of the license suspension or revocation.

29 (c) If a person continues to engage in activities requiring a license
30 under this act after having notice or knowledge of the suspension or
31 revocation of the person's license or licenses or after becoming more than
32 10 days delinquent in filing a bond payable to the state of Kansas as
33 required by the director, payment of any fine, tax, penalty or interest
34 imposed pursuant to this act, the state shall be entitled, in any proceedings
35 brought for such purposes, to have an order and judgment restraining and
36 enjoining such unlawful sale and no bond shall be required for the
37 issuance of any such restraining order or injunction.

38 Sec. 10. K.S.A. 79-3321 is hereby amended to read as follows: 79-
39 3321. It shall be unlawful for any person:

40 (a) Except as otherwise specifically provided by this act, to possess,
41 sell, transport, import, distribute, wholesale or manufacture more than
42 1,000 cigarettes without the required tax indicia being affixed as herein
43 provided.

1 (b) To mutilate or attach to any individual package of cigarettes any
2 stamp that has in any manner been mutilated or that has been heretofore
3 attached to a different individual package of cigarettes or to have in
4 possession any stamps so mutilated.

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

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

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

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

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

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

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

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

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

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

33 (k) To vend small cigars, or any products so wrapped as to be
34 confused with cigarettes, from a machine vending cigarettes, nor shall a
35 vending machine be so built to vend cigars or products that may be
36 confused with cigarettes, be attached to a cigarette vending machine.

37 (l) To sell, furnish or distribute ~~cigarettes, electronic cigarettes or~~
38 ~~tobacco~~ *any regulated* products to any person under ~~18~~ *21* years of age, *or*
39 *to buy any regulated products for any person under 21 years of age.*

40 (m) Who is under ~~18~~ *21* years of age to purchase or attempt to
41 purchase cigarettes, electronic cigarettes or tobacco products.

42 (n) Who is under ~~18~~ *21* years of age to possess or attempt to possess
43 cigarettes, electronic cigarettes or tobacco products.

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

3 (p) To sell ~~cigarettes~~ *regulated products* without having a license for
4 such sale as provided herein.

5 (q) To sell a vending machine without having a vending machine
6 distributor's license.

7 (r) Who is a retail dealer to fail to post and maintain in a conspicuous
8 place in the dealer's establishment the following notice: "By law,
9 cigarettes, electronic cigarettes, *consumable material* and tobacco products
10 may be sold only to persons ~~18~~ 21 years of age and older." *All notices*
11 *shall be posted in a manner conspicuous to both employees and*
12 *consumers, unobstructed from view in their entirety, and within six feet of*
13 *each register where regulated products are available for purchase. The*
14 *notice shall be at least 8½" by 11" and the words on the notice shall be*
15 *legibly printed.*

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

19 (1) In an area to which persons under ~~18~~ 21 years of age are denied
20 access;

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

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

25 (t) To sell ~~cigarettes, electronic cigarettes or tobacco~~ *regulated*
26 *products* by means of a vending machine, including vending machines that
27 sell packaged, single cigarettes, in any establishment, or portion of an
28 establishment, which is open to ~~minors~~ *persons under 21 years of age*,
29 except that this subsection shall not apply to:

30 (1) The installation and use by the proprietor of the establishment, or
31 by the proprietor's agents or employees, of vending machines behind a
32 counter, or in some place in such establishment, or portion thereof, to
33 which ~~minors~~ *persons under 21 years of age* are prohibited by law from
34 having access; or

35 (2) the installation and use of a vending machine in a commercial
36 building or industrial plant, or portions thereof, where the public is not
37 customarily admitted and where machines are intended for the sole use of
38 adult employees employed in the building or plant.

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

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

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

1 or

2 (3) a self-service display located in a facility where the retailer
3 ensures that no person younger than—~~18~~ 21 years of age is present or
4 permitted to enter at any time.

5 (v) To sell or distribute in this state; to acquire, hold, own, possess or
6 transport for sale or distribution in this state; or to import or cause to be
7 imported, into this state for sale or distribution in this state:

8 (1) Any cigarettes the package of which:

9 (A) Bears any statement, label, stamp, sticker or notice indicating that
10 the manufacturer did not intend the cigarettes to be sold, distributed or
11 used in the United States, including but not limited to, labels stating "For
12 Export Only," "U.S. Tax-Exempt," "For Use Outside U.S." or similar
13 wording; or

14 (B) does not comply with:

15 (i) All requirements imposed by or pursuant to federal law regarding
16 warnings and other information on packages of cigarettes manufactured,
17 packaged or imported for sale, distribution or use in the United States,
18 including but not limited to the precise warning labels specified in the
19 federal cigarette labeling and advertising act, 15 U.S.C. § 1333; and

20 (ii) all federal trademark and copyright laws;

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

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

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

32 (w) To alter the package of any—~~cigarettes~~ *regulated products*, prior to
33 sale or distribution to the ultimate consumer, so as to remove, conceal or
34 obscure:

35 (1) Any statement, label, stamp, sticker or notice described in
36 subsection (v); or

37 (2) any health warning that is not specified in, or does not conform
38 with, the requirements of, the federal cigarette labeling and advertising act,
39 15 U.S.C. § 1333.

40 (x) To affix any stamp required pursuant to K.S.A. 79-3311, and
41 amendments thereto, to the package of any cigarettes described in
42 subsection (v) or altered in violation of subsection (w).

43 (y) To possess, sell, transport, import, distribute, wholesale or

1 manufacture cigarettes, smokeless tobacco or roll-your-own tobacco in
2 violation of K.S.A. 50-6a01 et seq., and amendments thereto.

3 (z) To sell cigarettes, smokeless tobacco or roll-your-own tobacco in
4 any manner that is not a direct, face-to-face exchange between the retailer
5 and the consumer, except:

6 (1) Mail-order sales, which shall not include mail-order redemption
7 coupons and distribution of free samples through the mail;

8 (2) vending machines as provided in subsection (t); and

9 (3) self-service displays as provided in subsection (u).

10 Sec. 11. K.S.A. 79-3322 is hereby amended to read as follows: 79-
11 3322. (a) (1) Except as otherwise provided in this act, a violation of K.S.A.
12 79-3321(a), (c), (d), (f), (h), (i), (j), (v), (w), (x) or (y), and amendments
13 thereto, is a:

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

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

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

22 (2) It shall be a defense to prosecution under K.S.A. 79-3321(a), and
23 amendments thereto, that a licensee has:

24 (A) Segregated the cigarettes from public view;

25 (B) marked the cigarettes as not for retail sale to consumers; and

26 (C) within 72 hours of receipt, notified the licensee's wholesale
27 dealer, in writing, that the cigarettes do not bear indicia of Kansas tax and
28 that the wholesale dealer shall remove the cigarettes from the licensee's
29 premises.

30 (b) Except as provided in subsections (a), (c) or (d), a violation of
31 K.S.A. 79-3321, and amendments thereto, is a class B misdemeanor and
32 upon conviction, an offender shall be fined not less than \$500 nor more
33 than \$1,000 or imprisoned for not more than one year, or both for each
34 separate violation. In addition thereto any person found liable for any
35 license fee or tax imposed under the provisions of this act shall be
36 personally liable for such license fee or tax plus a penalty in an amount
37 equal to 100% thereof.

38 (c) (1) It is a class B person misdemeanor punishable by a minimum
39 fine of \$200 for any person to:

40 (A) Sell, give or furnish any cigarettes or tobacco products to any
41 person under ~~18~~ {21} years of age; or

42 (B) buy any cigarettes or tobacco products for any person under ~~18~~
43 21 years of age.

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

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

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

8 (C) to purchase or receive the ~~cigarettes or tobacco~~ *regulated*
9 products, the person under ~~18~~ 21 years of age exhibited to the defendant a
10 driver's license, Kansas nondriver's identification card or other official or
11 apparently official document containing a photograph of the person and
12 purporting to establish that the person was of legal age to purchase or
13 receive ~~cigarettes or tobacco~~ *regulated* products.

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

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

17 (B) the defendant sold, furnished or distributed the ~~cigarettes or~~
18 ~~tobacco~~ *regulated* products to the person by mail only after the person had
19 provided to the defendant an unsworn declaration, conforming to K.S.A.
20 53-601, and amendments thereto, that the person was ~~18~~ 21 or more years
21 of age.

22 (4) For purposes of this subsection the person who violates this
23 subsection shall be the individual directly selling, furnishing or
24 distributing the ~~cigarettes or tobacco~~ *regulated* products to any person
25 under ~~18~~ 21 years of age, *the person buying regulated products for any*
26 *person under 21 years of age* or the retail dealer who has actual knowledge
27 of such *buying*, selling, furnishing or distributing by such individual or
28 both.

29 (d) Violation of K.S.A. 79-3321(m) or (n), and amendments thereto,
30 is a cigarette or tobacco infraction for which the fine is \$25. In addition,
31 the judge may require ~~the~~ a juvenile to appear in court with a parent or
32 legal guardian.

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

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

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

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

19 Sec. 12. K.S.A. 79-3323 is hereby amended to read as follows: 79-
20 3323. (a) *(1)* Except as provided in subsection (c), the following are
21 declared to be common nuisances and contraband:

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

25 ~~(2)~~(B) all packages of cigarettes, in quantities of 20 packages or
26 more, not bearing indicia of tax payment as required by any compact
27 between:

28 ~~(A)~~(i) The governor and the Prairie Band Potawatomi Nation and
29 approved by the legislature;

30 ~~(B)~~(ii) the governor and the Iowa Tribe of Kansas and Nebraska and
31 approved by the legislature;

32 ~~(C)~~(iii) the governor and the Kickapoo Tribe in Kansas and approved
33 by the legislature; or

34 ~~(D)~~(iv) the governor and the Sac and Fox Nation of Missouri in
35 Kansas and Nebraska and approved by the legislature;

36 ~~(3)~~(C) all ~~cigarettes or tobacco~~ regulated products in the possession
37 of a ~~minor~~ person under 21 years of age;

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

40 ~~(5)~~(E) all property, including vehicles, used in the sale, transportation,
41 distribution, importation, wholesale or manufacture of unstamped
42 packages of cigarettes; *and*

43 *(F) all consumable material on which tax has not been paid.*

1 (2) Cigarettes in vending machines and exposed to view not showing
2 indicia of tax payment required by this act to be visible from the outside of
3 the vending machine shall be presumed to be unstamped.

4 (b) Any ~~cigarettes~~ *regulated products* or property constituting a
5 common nuisance and contraband as provided by this section may be
6 seized by the director or the director's authorized agent or any duly
7 constituted peace officer with or without process or warrant and shall be
8 subject to forfeiture as provided in this act. The party making the seizure
9 shall deliver to the owner of the property and to the person or persons
10 found in possession of the property a receipt stating from whom the
11 property was seized, the place of seizure and a description and the brand of
12 the property seized. A duplicate of the receipt shall be filed in the office of
13 the director and shall be open for public inspection.

14 (c) Cigarettes in quantities of 1,000 or less in the possession of a
15 licensee are not declared a common nuisance and contraband if the
16 licensee has:

17 (1) Segregated the cigarettes from public view;

18 (2) marked the cigarettes as not for retail sale to consumers; and

19 (3) within 72 hours of receipt, notified the licensee's wholesale dealer,
20 in writing, that the cigarettes do not bear indicia of Kansas tax and that the
21 wholesale dealer shall remove the cigarettes from the licensee's premises.

22 Sec. 13. K.S.A. 79-3326 is hereby amended to read as follows: 79-
23 3326. The director of taxation shall administer and enforce the provisions
24 of this act, and to require such reports, make such investigations and take
25 such other action as the director deems necessary or suitable to that end.
26 For the purpose of ascertaining the correctness of any return or making an
27 estimate of the tax due for any taxpayer or person, the director or the
28 director's designee has the power to examine any books, papers, records or
29 memoranda bearing upon the matters required to be included in the return
30 or report. The secretary of revenue shall adopt rules and regulations for the
31 administration of this act. For the purpose of enforcing this act the director
32 may call to the director's aid any law enforcement officer of this state to
33 prosecute all violators of any of the provisions of this act. The police of
34 any city shall have the right to inspect all premises, records and invoices
35 pertaining to the wholesale distribution, retail sale or sampling of
36 ~~cigarettes or tobacco~~ *regulated products* within the city at all reasonable
37 times. All agents and representatives designated by the director are hereby
38 invested with all the powers of peace and police officers within the state of
39 Kansas in the enforcement of the provisions of this act throughout the
40 state.

41 Sec. 14. K.S.A. 79-3334 is hereby amended to read as follows: 79-
42 3334. (a) The Kansas department of revenue shall publish a list of active
43 ~~cigarette and tobacco~~ licensees and shall update such list monthly.

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

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

6 Sec. 15. K.S.A. 79-3335 is hereby amended to read as follows: 79-
7 3335. (a) Counterfeit ~~cigarettes~~ *regulated products* shall be seized by the
8 director. For purposes of this section, counterfeit ~~cigarettes~~ *includes*
9 ~~cigarettes~~ *regulated products include regulated products* manufactured,
10 sold, transported, imported, distributed or possessed in this state with
11 intent to deceive consumers and to avoid the provisions of this act, and
12 also ~~includes~~ *cigarettes include regulated products* that have false
13 manufacturing labels or packages of cigarettes bearing counterfeit tax
14 stamps. It shall be unlawful for any person to sell, transport, import,
15 distribute, possess, wholesale or manufacture counterfeit ~~cigarettes~~
16 *regulated products*.

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

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

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

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

27 (c) The secretary of revenue, or the secretary's authorized agent, may
28 refer such evidence as may be available concerning violations of this act or
29 any rules and regulations or order hereunder to the attorney general or the
30 proper county or district attorney, who may in the prosecutor's discretion,
31 with or without such a reference, institute the appropriate criminal
32 proceedings under this act. Upon receipt of such reference, the attorney
33 general or the county attorney or district attorney may request that a duly
34 employed attorney of the department of revenue prosecute or assist in the
35 prosecution of such violation or violations on behalf of the state. Upon
36 approval of the secretary or the secretary's authorized agent, such
37 employee shall be appointed as a special prosecutor for the attorney
38 general or the county attorney or district attorney to serve without
39 compensation from the attorney general or the county attorney or district
40 attorney. Such special prosecutor shall have all the powers and duties
41 prescribed by law for assistant attorneys general or assistant county or
42 district attorneys and such other powers and duties as are lawfully
43 delegated to such special prosecutor by the attorney general or the county

1 attorney or district attorney. If an attorney employed by the secretary or
2 secretary's authorized agent acts as a special prosecutor, the secretary may
3 pay extradition and witness expenses associated with the case.

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

6 Sec. 16. K.S.A. 79-3388 is hereby amended to read as follows: 79-
7 3388. The imposition of the tax as provided in this act shall not render
8 ~~tobacco~~ *regulated* products exempt from the retailers' sales tax act under
9 the provisions of K.S.A. 79-3606-~~(a)~~, *and amendments thereto*.

10 Sec. 17. K.S.A. 79-3391 is hereby amended to read as follows: 79-
11 3391. (a) In addition to or in lieu of any other civil or criminal penalty
12 provided by law, the secretary of revenue or the secretary's designee, upon
13 a finding that a person under this act has violated any provision of this act
14 or any provision of any rule and regulation of the secretary of revenue
15 adopted pursuant to this act shall impose on such person a civil fine not
16 exceeding \$1,000 for each violation.

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

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

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

22 (c) In determining the fine to be imposed under this subsection by a
23 licensed retail dealer whose employee sold, furnished or distributed the
24 ~~cigarettes or tobacco~~ *regulated* products, the secretary of revenue, or the
25 secretary's designee, shall consider it to be a mitigating circumstance if the
26 employee had completed a training program, approved by the secretary of
27 ~~revenue health and human services~~, or the secretary's designee, in
28 avoiding sale, furnishing or distributing of ~~cigarettes and tobacco~~
29 *regulated* products to persons under ~~18~~ 21 years of age.

30 ~~(e)~~(d) No fine shall be imposed pursuant to this section except upon
31 the written order of the secretary of revenue, or the secretary's designee, to
32 the licensee who committed the violation. Such order shall state the
33 violation, the fine to be imposed and the right of the licensee to appeal the
34 order. Such order shall be subject to appeal and review in the manner
35 provided by the Kansas administrative procedure act.

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

41 ~~(e)~~(f) There is hereby created, in the state treasury, the cigarette and
42 tobacco products regulation fund. Moneys in the fund shall be expended
43 only for the enforcement of this act and rules and regulations adopted

1 pursuant to this act. Such expenditures shall be made in accordance with
2 appropriation acts upon warrants of the director of accounts and reports
3 issued pursuant to vouchers approved by the secretary of revenue or a
4 person designated by the secretary.

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

9 (2) *For purposes of determining the number of violations of*
10 *subsection (b), each violation of subsection (b) or violation of an*
11 *ordinance of any city, or a resolution of any county, that prohibits the acts*
12 *prohibited by subsection (b) shall be considered a separate violation of*
13 *subsection (b).*

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

18 Sec. 18. K.S.A. 79-3394 is hereby amended to read as follows: 79-
19 3394. (a) *The director, or any person specified in subsection (b), when*
20 *conducting compliance checks shall engage persons under 21 years of age*
21 *to perform controlled buys at a retail dealer's licensed establishment.*
22 *Retail dealers shall be subject to not less than two unannounced*
23 *controlled buys each year. A subsequent unannounced controlled buy shall*
24 *be conducted within 90 days following any instance in which a retail*
25 *dealer is determined to be noncompliant during a controlled buy.*

26 (b) No person shall engage or direct a ~~minor~~ person under 18 years
27 of age to violate any provision of this act for purposes of determining
28 compliance with provisions of this act or the Kansas consumer protection
29 act unless such person has procured the written consent of a parent or
30 guardian of the ~~minor~~ person under 18 years of age to so engage or direct
31 the ~~minor~~ person under 18 years of age and such person is:

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

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

36 ~~(c)~~(3) an authorized representative of a business acting pursuant to a
37 self-compliance program designed to increase compliance with the
38 provisions of this act.

39 Sec. 19. K.S.A. 79-3396 is hereby amended to read as follows: 79-
40 3396. (a) In addition to or in lieu of any other civil or criminal penalty
41 provided by law, the director, upon a finding that a licensee has violated
42 the provisions of ~~subsection (u), (v) or (w)~~ of K.S.A. 79-3321(s), (t) or (u),
43 and amendments thereto, or has failed to comply with the provisions of

1 K.S.A. 79-3395, and amendments thereto, or any rule and regulation
2 adopted pursuant thereto, may revoke or suspend the license of any
3 licensee in the manner provided by K.S.A. 79-3309, and amendments
4 thereto; the director also may impose a civil fine in an amount not to
5 exceed the greater of 500% of the retail value of the cigarettes involved or
6 \$5,000. Such fine shall be imposed in the manner provided by K.S.A. 79-
7 3391, and amendments thereto.

8 (b) Any ~~cigarettes~~ *regulated products* that are acquired, held, owned,
9 possessed, transported, imported, sold or distributed in this state in
10 violation of ~~subsection (u), (v) or (w)~~ of K.S.A. 79-3321(*s*), (*t*) or (*u*), and
11 amendments thereto, or has failed to comply with the provisions of K.S.A.
12 79-3395, and amendments thereto, shall be deemed contraband under
13 K.S.A. 79-3323, and amendments thereto, and shall be subject to seizure
14 and forfeiture as provided therein and in K.S.A. 79-3324a, and
15 amendments thereto. All such ~~cigarettes~~ *regulated products* seized and
16 forfeited shall be destroyed. Such ~~cigarettes~~ *regulated products* shall be
17 deemed contraband whether the violation of this act is knowing or
18 otherwise.

19 Sec. 20. K.S.A. 79-3399 is hereby amended to read as follows: 79-
20 3399. (a) ~~On and after July 1, 2017,~~ A tax is hereby imposed upon the
21 privilege of selling or dealing in electronic cigarettes in this state by any
22 person engaged in business as a distributor thereof, at the rate of \$.05 per
23 milliliter of consumable material for electronic cigarettes and a
24 proportionate tax at the like rate on all fractional parts thereof. For
25 electronic cigarettes in the possession of retail dealers for which tax has
26 not been paid, tax shall be imposed under this subsection at the earliest
27 time the retail dealer:

28 (1) Brings or causes to be brought into this state from without the
29 state electronic cigarettes for sale;

30 (2) makes, manufactures or fabricates electronic cigarettes in this
31 state for sale in this state; or

32 (3) sells electronic cigarettes to consumers within this state.

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

35 (c) The secretary of revenue shall adopt rules and regulations to
36 implement the provisions of this section.

37 Sec. 21. K.S.A. 72-6285, 79-3301, 79-3302, 79-3303, 79-3304, 79-
38 3309, 79-3321, 79-3322, 79-3323, 79-3326, 79-3334, 79-3335, 79-3388,
39 79-3391, 79-3394, 79-3396 and 79-3399 and K.S.A. ~~2020~~ {2021} Supp.
40 21-6109, 21-6110 and 50-6a14 are hereby repealed.

41 Sec. 22. This act shall take effect and be in force from and after its
42 publication in the statute book.