

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2340

As Recommended by House Committee on
Federal and State Affairs

Brief*

HB 2340 would amend the Kansas Cigarette and Tobacco Products Act; the Kansas Indoor Clean Air Act; law concerning student health; and criminal statutes related to the use and possession of cigarettes, electronic cigarettes, consumable material, and tobacco products by persons under the age of 21.

The bill would change references to the legal age to use or possess such products throughout the above Acts from 18 years of age (or a minor) to 21 years of age. The bill would also define the term “regulated products” to mean cigarettes, electronic cigarettes, consumable material, and tobacco products, and would replace references to either “cigarettes”, “electronic cigarettes”, or “cigarette and tobacco products” with “regulated products” throughout the bill.

Kansas Cigarette and Tobacco Products Act

Purpose

The bill would amend the statement of purpose for the Kansas Cigarette and Tobacco Products Act (Act) to include the regulation and taxation of the sale of electronic cigarettes and consumable material in addition to cigarettes and tobacco products; and it would also state the intent to impose a tax where applicable.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would add the following to the list of reasons the Director of Taxation (Director) would be able to refuse to renew or issue a license or suspend or revoke licenses for the sale of regulated products:

- Any person who is not of good character and reputation in the community in which such person resides;
- Any person who has been convicted of a felony or of any crime involving moral turpitude or the violation of any laws of any state or federal laws pertaining to regulated products and has not completed the sentence, parole, probation, or assignment to a community correctional services program imposed for such conviction within two years immediately preceding the date of applying for a license; or
- Any person who is not 21 years of age.

Change in Age to Purchase or Possess Tobacco Products

The bill would specify it is illegal to:

- Sell, furnish, or distribute any regulated products to any person under 21 years of age;
- Buy any cigarettes or tobacco products for any person under 21 years of age;
- To sell regulated products without having a license;
- Distribute samples within 500 feet of a school when the facility is primarily used by persons under 21 years of age, unless the sampling is in an area that restricts access to persons under age 21, and is in or at a retail location where regulated products are the primary commodity sold;

- Sell regulated products through a vending machine in an establishment open to persons under age 21, with the exception of establishments open to persons under age 21 if such vending machines are behind a counter or in a place in an establishment not open to persons under age 21;
- Sell regulated products through any self-service display in any establishment, except in a facility where the retailer ensures that no person under 21 years of age is present or permitted to enter at any time; and
- To alter the package of any regulated products prior to sale or distribution to the ultimate customer.

Posted Notice

The bill would require retail dealers to post and maintain notice that cigarettes, electronic cigarettes, consumable material, and tobacco products could be sold only to persons over 21 years of age in a conspicuous place. The bill would specify such notices must be:

- Posted in a manner conspicuous to both employees and consumers;
- Unobstructed from view in their entirety;
- Within six feet of where such products are available for purchase;
- At least 8.5 inches by 11 inches in size; and
- Legibly printed.

Penalties, Defenses

The bill would specify it would not be a violation of the Act to permit an individual under 21 years of age to possess

regulated products if such possession is solely in the course of such person's employment by a retailer.

The bill would clarify that, among other persons, the person buying regulated products for any person under 21 years of age would be the person in violation of the Act.

The bill would specify a violation of the Act, or a violation of a city or county ordinance that prohibits the acts made illegal under the Act, would be considered a violation of the Act.

Nuisances and Contraband

The bill would amend provisions in current law concerning nuisances and contraband to include all regulated products in the possession of a person under 21 years of age, as well as consumable material on which tax has not been paid. Under continuing law, nuisances and contraband may be seized by the Director, an authorized agent, or a duly constituted peace officer without process or warrant.

Training Program

The bill would amend law related to civil penalties that may be imposed by the Secretary of Revenue (Secretary) to specify that the Secretary may consider it a mitigating circumstance in determining a civil penalty for a violation of the Act if an employee of the licensee who violated the Act has completed a training program in avoidance of underage sales approved by the United States Secretary of Health and Human Services. Current law specifies such program must be approved by the Secretary.

Compliance Checks

The bill would require the Director, or an authorized person, to perform compliance checks to engage persons under 21 years of age to perform not less than two controlled

buys at each licensed retail dealer establishment each year. The bill would also require a subsequent unannounced controlled buy within 90 days of any non-compliant controlled buy.

The bill would specify compliance checks may be conducted by persons under 18 years of age without the consent of a parent or guardian.

Other Defined Terms:

The bill would create or amend the following definitions:

- “Consumable material,” to mean any liquid solution or other material that is depleted as it is consumed through the use of an electronic cigarette;
- “Electronic cigarette” to mean a battery-powered device, whether or not such device is shaped like a cigarette, that can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems as defined in 79-3301, and amendments thereto;
- “Smoke” or “Smoking” to mean possession of a lighted cigarette, cigar, pipe, or burning tobacco in any other form or device designed for the use of tobacco, or the use of an electronic cigarette;
- “Tobacco shop” to mean any indoor area operated primarily for the retail sale of tobacco, tobacco products, smoking devices, electronic cigarettes, or accessories, and that derives not less than 65 percent of its gross receipt from any combination of sales of tobacco, tobacco products, smoking devices or electronic cigarettes.

Schools

The bill would amend the prohibition on the use of tobacco products in school buildings to specify the use of cigarettes, electronic cigarettes, consumable material, and tobacco products are prohibited in school buildings.

Technical Amendments

The bill would make technical amendments to ensure consistency in statutory phrasing, and conforming amendments to carry out the provisions of the bill.

Background

The bill was introduced by the House Committee on Federal and State Affairs at the request of Representative Eplee.

House Committee on Federal and State Affairs

In the House Committee hearing on February 22, 2021, Representative Eplee, and representatives of the American Academy of Pediatrics, Fuel True, Kansas Association of School Boards, and United School Administrators of Kansas testified as **proponents** of the bill, stating that passing the bill would codify the federal minimum legal age for tobacco use, reduce tobacco use among adolescents, and help strengthen enforcement of the law.

Written-only **proponent** testimony was submitted by representatives of Kansas Academy of Family Physicians; Kansas National Education Association; Olathe Public Schools; Oral Health Kansas; Reynolds American; Unified School District 229, Blue Valley; and a private citizen. Representatives of the Kansas Department of Health & Environment, and Tobacco Free Kansas Coalition submitted neutral testimony. No other testimony was submitted.

Fiscal Information

According to the fiscal note prepared by the Division of Budget on the bill, the The Department of Revenue estimates enactment of the bill would decrease state revenues by \$7.4 million in FY 2022. Of that total, the State General Fund (SGF) is estimated to decrease by \$7,140,000 in FY 2022, while the State Highway Fund is estimated to decrease by \$260,000 in FY 2022. The bill is also 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 (Department).

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 17,219 smokers aged 18-20 in Kansas (14.1 percent of that particular population are smokers), which represents approximately 4.52 percent of all adult smokers in Kansas. The Department reported annual cigarette stamp revenue of \$116.5 million in 2020 and reducing consumption by 4.52 percent would result in a reduction of approximately \$5.3 million in cigarette stamp revenue that goes to the SGF. The Department estimates that the \$5.3 million cigarette stamp revenue represents approximately 4.2 million packs of cigarettes no longer being sold in Kansas. The bill is also estimated to reduce tobacco products tax collections by \$400,000 and electronic cigarettes tax collections by \$100,000. There would also be a loss of an additional \$1.6 million in sales tax revenue (\$1,340,000 to the SGF and \$260,000 to the State Highway Fund). The Department indicates that the bill would require \$7,243 from the SGF in FY 2022 to update forms and publications.

The bill would require the Department of Health and Human Services to create or approve training materials for

those caught selling tobacco products to people under the age of 21. The Kansas Department of Health and Environment (KDHE) fiscal note assumes that this is a drafting error and KDHE would have this responsibility. KDHE indicates that if the bill requires it to create or approve training materials for those caught selling tobacco products to people under the age of 21, then it would require \$26,155 from the SGF in FY 2022 to contract with a part-time inspector to conduct training sessions. KDHE indicates that the Department is currently performing these duties. 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 (Office) indicates that the bill would have no fiscal effect on its operations; however, the Office indicates that there might be additional law enforcement actions on the local level to investigate and prosecute additional violations. The Office also indicates that the bill would likely reduce sales of cigarettes in the State, which has the potential to decrease payments to Kansas under the Master Settlement Agreement.

The Kansas Sentencing Commission indicates that the bill would not have an effect on prison admissions and beds. Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Cigarette and tobacco products; Cigarette and Tobacco Products Act; minimum purchase age