

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2269

As Recommended by House Committee on
Federal and State Affairs

Brief*

HB 2269 would amend the Kansas Cigarette and Tobacco Products Act (Act) to raise the minimum age to 21 to sell, purchase, and possess cigarettes, electronic cigarettes, and tobacco products.

Licensing

The bill would amend a statute concerning licensing to raise the minimum age to receive such a license governed by the Act to age 21.

The bill would amend a related statute to require the Kansas Department of Revenue Director of Taxation (Director) to notify licensees who are not age 21 of the Director's intention to suspend or revoke such person's license due to them being under 21 years of age.

Unlawful Acts and Related Penalties

The bill would amend the Act's unlawful act provisions concerning cigarettes, electronic cigarettes, or tobacco products. Specifically, the bill would amend references to the minimum age in statutes concerning the following:

- Sale, furnishing, or distribution of cigarettes, electronic cigarettes, or tobacco products;

*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>

- Possession or attempt to possess such products;
- The age listed on required notice of the minimum age to be sold such products;
- Distribution of samples within 500 feet of a school when the facility is primarily used by persons under the minimum age;
 - Distribution of such samples in an area to which persons under the minimum age are allowed access; and
- Use of a self-service display in a facility where the retailer allows persons younger than the minimum age to be present or permitted to enter at any time.

Criminal Penalty

The bill would amend current law provisions setting out criminal penalties for the unlawful acts of selling, giving, furnishing, or buying such cigarettes or tobacco products by raising the minimum age from 18 to 21. The bill would also make related amendments to provisions concerning defenses to such offenses.

Civil Penalty

The bill would also amend current law provisions setting out civil penalties for unlawful acts related to selling, giving, furnishing, or buying cigarette or tobacco products for persons under the minimum age by raising the minimum age from 18 to 21. The bill would make a related amendment to a provision specifying certain sale-avoidance training would be a mitigating circumstance in determination of a fine by the Director.

Background

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

[*Note:* 2021 HB 2340, which also would have raised the minimum tobacco product age was passed by the House of Representatives on March 23, 2022.]

House Committee on Federal and State Affairs

In the House Committee hearing on February 9, 2023, **proponent** testimony was provided by Representative Eplee and representatives of the Kansas Department of Revenue (KDOR) and the Kansas Department for Aging and Disability Services (KDADS). The proponents discussed the health care costs and issues associated with tobacco use and noted the bill would conform Kansas law to federal law, which could risk the loss of federal funding if Kansas law is not in conformity with federal law. [*Note:* The federal Synar program set a deadline of December 31, 2022, for state conformity.]

Written-only proponent testimony was provided by representatives of the DCCCA, FuelTrue Independent Energy and Convenience, the Greater Kansas City Chamber of Commerce, the Kansas Chapter of the American Academy of Pediatrics, the Kansas Hospital Association, the Kansas National Education Association, and the University of Kansas Cancer Center.

Neutral testimony was provided by representatives of the American Heart Association and the Tobacco Free Kansas Coalition, who stated their concern with penalties for youth who may be penalized under the bill for purchase or possession, and their concern that synthetic nicotine and puff bars may not be covered under the bill.

Fiscal Information

According to the fiscal note prepared by the Division of Budget on the bill, KDOR states that increasing the minimum age from 18 to 21 would bring Kansas into compliance with federal law, and in conformity with 80.0 percent of all other states, which have moved their statutes to 21. Additionally, increasing the age would allow the agency to maintain its contract with the federal government to carry out enforcement of the cigarette and tobacco laws. Without this change, the federal government could withhold funding of \$1.2 million for state enforcement, and the enforcement of the cigarette and tobacco laws under this program would cease.

KDOR estimates enactment of the bill would decrease state revenues by \$7.6 million in FY 2024. Of that total, the State General Fund (SGF) revenue is estimated to decrease by \$7,323,519 in FY 2024, while the State Highway Fund revenue is estimated to decrease by \$276,481 in FY 2024. The fiscal effect to state revenues during subsequent years would be a decrease of \$7.5 million in FY 2025 and \$7.3 million in FY 2026. The bill is also estimated to decrease local sales tax revenues beginning in FY 2024; however, a specific estimate was not calculated by KDOR.

To formulate these estimates, KDOR reviewed data from the federal Centers for Disease Control and Prevention that show an estimated 17,142 smokers aged 18-20 in Kansas, which represents approximately 4.74 percent of all adult smokers in Kansas. KDOR reported annual cigarette stamp revenue of \$113.5 million in 2021, and reducing consumption by 4.74 percent would result in a reduction of approximately \$6.0 million in cigarette stamp revenue that goes to the SGF, and an additional loss of \$1.6 million in sales tax revenue, of which \$1,323,519 is deposited into the SGF and \$276,481 is deposited into the State Highway Fund (SHF). KDOR estimates that approximately 4.0 million fewer packs of cigarettes would be sold in Kansas as a result of the bill. The bill is also estimated to reduce tobacco products tax collections by \$400,000 and electronic cigarettes tax

collections by \$100,000. KDOR indicates that the bill would require \$3,322 from the SGF in FY 2024 to update forms and publications.

The Kansas Department of Transportation (KDOT) indicates the bill would reduce state revenues to the SHF as noted above. KDOT indicates that when the state receives lower SHF dollars, it may be required to make corresponding reductions to planned expenditures for projects funded under the comprehensive transportation plan.

The Kansas Association of Counties and the League of Kansas Municipalities indicate that the bill would provide a net reduction to local sales tax collections that are used in part to finance local governments. The bill also has the potential to reduce revenues that are pledged to repay STAR bond projects; however, it is unknown what impact this bill would have on the viability of those projects.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Kansas Cigarette and Tobacco Products Act; electronic cigarette, minimum age; criminal penalty; civil penalty