HOUSE BILL No. 2563

By Committee on Federal and State Affairs


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

Sec. 1. K.S.A. 2019 Supp. 21-5102 is hereby amended to read as follows: 21-5102. A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions.

(a) A felony is a crime punishable by death or by imprisonment in any state correctional institution or a crime which is defined as a felony by law.

(b) A traffic infraction is a violation of any of the statutory provisions listed in subsection (c) of K.S.A. 8-2118(c), and amendments thereto.

(c) A cigarette or tobacco infraction is a violation of K.S.A. 2019 Supp. 21-6109 through 21-6114 and 21-6116 and K.S.A. 79-3321, and amendments thereto.

(d) All other crimes are misdemeanors.

Sec. 2. K.S.A. 2019 Supp. 21-6109 is hereby amended to read as follows: 21-6109. As used in K.S.A. 2019 Supp. 21-6109 through 21-6116, and amendments thereto:

(a) "Access point" means the area within a ten foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to K.S.A. 2019 Supp. 21-6110(d), and amendments thereto.

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

(c) "E-liquid" means a substance that may or may not contain nicotine and is intended to be aerosolized or vaporized and inhaled using an electronic cigarette.

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

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

(f) "Employer" means any person, partnership, corporation, association or organization, including municipal or nonprofit entities, that employs one or more individual persons.

(g) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls, windows or doorways that extend from the floor to the ceiling, including all space therein screened by partitions that do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an "enclosed area": (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and that are completely open to the elements and weather at all times; and (2) rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and that comprise an area that is at least 30% of the total perimeter wall area of such room or area.

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

(i) "Gaming floor" means the area of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, where patrons engage in Class III gaming. The gaming floor shall not include any areas used for accounting, maintenance, surveillance, security, administrative offices, storage, cash or cash counting, records, food service, lodging or entertainment, except that the gaming floor may include a bar where alcoholic beverages are served so long as the bar is located entirely within the area where Class III gaming is conducted.
"Medical care facility" means a physician's office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric hospital licensed under K.S.A. 2019 Supp. 39-2001 et seq., and amendments thereto.

"Outdoor recreational facility" means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.

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

"Private club" means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.

"Public building" means any building owned or operated by:

(1) The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof; (2) any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or (3) any other separate corporate instrumentality or unit of the state or any municipality.

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

"Public place" means any enclosed areas open to the public or used by the general public including, but not limited to: Banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a "public place" unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.
"Smoking" means possession of a lighted cigarette, cigar, pipe or burning tobacco in any other form or device designed for the use of tobacco, or use of an electronic cigarette.

"Tobacco shop" means any indoor area operated primarily for the retail sale of tobacco, tobacco products, smoking devices, electronic cigarettes, e-liquids or accessories, and that derives not less than 65% of its gross receipts from the sale any combination of sales of tobacco, tobacco products, smoking devices, electronic cigarettes or e-liquids.

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

Sec. 3. K.S.A. 2019 Supp. 21-6110 is hereby amended to read as follows: 21-6110. (a) It shall be unlawful, with no requirement of a culpable mental state, to smoke in an enclosed area or at a public meeting including, but not limited to:

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

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

(c) Notwithstanding any other provision of this section, K.S.A. 2019 Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such
designated smoking area.

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

(1) The outdoor areas of any building or facility beyond the access points of such building or facility;
(2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;
(3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;
(4) the gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;
(5) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;
(6) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;
(7) tobacco shops;
(8) a class A or class B club, as defined in K.S.A. 41-2601, and amendments thereto, which that: (A) Held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises;
(9) a private club in designated areas where minors persons under the age of 21 are prohibited;
(10) any benefit cigar dinner or other cigar dinner of a substantially similar nature that:
(A) Is conducted specifically and exclusively for charitable purposes by a nonprofit organization which that is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;
(B) is conducted no more than once per calendar year by such organization; and
(C) has been held during each of the previous three years prior to January 1, 2011; and
(11) that portion of a medical or clinical research facility constituting a separately ventilated, secure smoking room dedicated and
used solely and exclusively for clinical research activities conducted in accordance with regulatory authority of the United States or the state of Kansas, as determined by the director of alcoholic beverage control of the department of revenue.

Sec. 4. K.S.A. 2019 Supp. 50-6a14 is hereby amended to read as follows: 50-6a14. (a) In addition to, or in lieu of, any other civil or criminal remedy provided by law, the director or the director's designee, upon a finding that a stamping agent has violated subsection (a) of K.S.A. 50-6a04(a), and amendments thereto, or any rules or regulations adopted pursuant to this act, may revoke or suspend the license of any licensee in the manner provided by K.S.A. 79-3309, and amendments thereto. Each package of cigarettes to which tax indicia is affixed, is caused to be affixed or tax is paid thereupon, and each sale or offer to sell cigarettes in violation of subsection (a) of K.S.A. 50-6a04(a), and amendments thereto, shall constitute a separate violation. The director may also impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or $5,000 upon a finding of violation of subsection (a) of K.S.A. 50-6a04(a), and amendments thereto, or a violation of any rules or regulations adopted pursuant to this act. Such fine shall be imposed in the manner provided by K.S.A. 79-3391, and amendments thereto. Any fine collected pursuant to this subsection shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 79-3391, and amendments thereto. The moneys credited to this fund shall be used for the purposes of enforcement of this act, or K.S.A. 79-3301 et seq., and amendments thereto.

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

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

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

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

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

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

(a) "Act" means the Kansas cigarette and tobacco products act.
(b) "Alternative nicotine product" means any noncombustible product containing nicotine without the presence of tobacco leaf that is intended to be placed in the oral or nasal cavity, whether chewed, absorbed, dissolved or ingested by any other means. The term "alternative nicotine product" does not include cigarettes, electronic cigarettes, consumable material, tobacco products or any product regulated as a drug or device by the United States food and drug administration under chapter V of the federal food, drug and cosmetic act.
(c) "Carrier" means one who transports cigarettes from a manufacturer to a wholesale dealer or from one wholesale dealer to another.
(e) "Carton" means the container used by the manufacturer of cigarettes in which no more than 10 packages of cigarettes are placed prior to shipment from such manufacturer.
(d) "Cigarette" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.
(f) "Conspicuous location or place" means a location or place available to the general public.
(g) "Consumable material" means any liquid solution or other material that is depleted as it is consumed through the use of an electronic cigarette.
(h) "Consumer" means the person purchasing or receiving cigarettes, electronic cigarettes, consumable material or tobacco regulated products for final use.
(i) "Contracting entity" means any public or private person, firm or entity that has entered into a contract with the secretary of revenue to provide services.
(j) "Dealer" means any person who engages in the sale or manufacture of cigarettes, tobacco products or electronic cigarettes, consumable material or tobacco regulated products in the state of Kansas, and who is required to be licensed under the provisions of this act.
"Dealer establishment" means any location or premises, other than vending machine locations, at or from which cigarettes, tobacco products or electronic cigarettes, consumable material or tobacco regulated products are sold; and where records are kept.

"Director" means the director of taxation.

"Distributor" means:

1. Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale;
2. any person who makes, manufactures, fabricates or stores tobacco products in this state for sale in this state; or
3. any person engaged in the business of selling tobacco products outside this state who ships or transports tobacco products to any person in the business of selling tobacco products in this state.

"Division" means the division of taxation.

"Electronic cigarette" means 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.

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

"License" means the privilege of a licensee to sell cigarettes, electronic cigarettes, consumable material or tobacco regulated products in the state of Kansas; and the written evidence of such authority or privilege as issued by the director.

"Licensee" means any person holding a current license issued pursuant to this act.

"Manufacturer" means the same as provided in 26 U.S.C. § 5702(d).

"Manufacturer's salesperson" means a person employed by a cigarette manufacturer who sells cigarettes, manufactured by such employer and procured from wholesale dealers.

"Package" means a container in which no more than 25 individual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer; or

1. for the purposes of K.S.A. 79-3321(v) and (w) (r) and (s), and amendments thereto, "package" means the same as provided in 15 U.S.C. § 1332(4).
2. "Person" means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise and any combination of individuals.
"Received" means the coming to rest of cigarettes for sale by any dealer in the state of Kansas.

"Regulated products" means cigarettes, electronic cigarettes, consumable materials, alternative nicotine products and tobacco products.

"Retail dealer" or "retailers" means a person, other than a vending machine operator, in possession of cigarettes or electronic cigarettes, consumable material or tobacco regulated products for the purpose of sale to a consumer.

"Sale" means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes, tobacco products or electronic cigarettes, consumable material or tobacco regulated products, with or without consideration.

"Sample" means cigarettes, electronic cigarettes, consumable material or tobacco regulated products distributed to members of the general public at no cost for purposes of promoting the product.

"Self-service display" means a display that contains cigarettes, electronic cigarettes, consumable material or tobacco regulated products and is located in an area openly accessible to a retail dealer's consumers, and from which such consumers can readily access cigarettes, electronic cigarettes, consumable material or tobacco regulated products without the assistance of a salesperson, and which that is knowingly utilized by the retail dealer to market and sell cigarettes, electronic cigarettes, consumable material and tobacco regulated products to consumers. A display case that holds cigarettes, electronic cigarettes, consumable material or tobacco regulated products behind locked doors does not constitute a self-service display.

"Stamps" means tax indicia applied by means of heat process, pressure or any other process approved by the director.

"Tax indicia" means visible evidence of tax payment in the form of stamps.

"Tobacco products" means cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. "Tobacco products" do not include cigarettes.

"Tobacco specialty store" means a dealer establishment that derives at least 65% of such dealer establishment's revenue from cigarettes or tobacco products.
"Vending machine" means any coin operated machine, contrivance or device, by means of which merchandise may be sold.

"Vending machine distributor" means any person who sells cigarette vending machines to a vending machine operator operating vending machines in the state of Kansas.

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

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

"Wholesale sales price" means the original net invoice price for which a manufacturer sells a tobacco product to a distributor, as shown by the manufacturer's original invoice.


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

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

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

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

d) The key to the lower or storage compartment of a vending machine shall remain only in the possession of the vending machine operator or the operator's authorized agent. All services connected with the operation of a vending machine shall be performed by the vending machine operator or the operator's authorized agent. All vending machines shall be subject to inspection by the director or the director's authorized agents. No permit shall be issued for a vending machine unless it is constructed so that at least one package of each vertical column of cigarettes located therein is visible showing tax indicia.
(e) All vending machines operated on military installations shall have a permit affixed to the machines and the cigarettes shall show tax indicia of the Kansas tax.

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

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

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

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

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

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

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

(5) For wholesale dealer's license, $50 for each dealer establishment. No wholesale dealer's license shall be issued until the person applying therefor has filed with the director a bond payable to the state of Kansas in such an amount as shall be fixed by the director, but in no event less than $1,000, with a corporate surety authorized to do business in the state of Kansas, and approved by the director. If a wholesale dealer is unable to secure a corporate surety bond, the director may issue a license to such wholesale dealer, upon the wholesale dealer furnishing a personal bond meeting the approval of the director. Such bond shall be conditioned on the wholesale dealer's compliance with all the provisions of this act during the
license period.

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

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

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

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

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

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

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

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

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

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

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

(4)/(6) is not at least 21 years of age;

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

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

(7)/(9) does not own the premises for which a license is sought, or does not, at the time of the application, have a written lease;
(8)(10) has been convicted of a crime involving any tax under this act;
(9)(11) is a corporation in which any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation, has been an officer, manager or director or stockholder owning in the aggregate more than 5% of the common or preferred stock, of a corporation that:
(A) Has had a license revoked under this act; or
(B) has been convicted of a crime involving any tax under this act; or
(10)(12) is a limited liability company in which any officer, manager or director thereof, or any member owning in the aggregate more than 5% of the limited liability company, has been an officer, manager or director or stockholder owning in the aggregate more than 5% of the common or preferred stock, of a corporation that:
(A) Has had a license revoked under this act; or
(B) has been convicted of a crime involving any tax under this act.
Sec. 10. K.S.A. 79-3309 is hereby amended to read as follows: 79-3309.
a) Whenever the director has reason to believe that any person licensed under this act has violated any of the provisions of this act, in any of the following ways, the director shall notify the person by certified mail of the director's intention to suspend or revoke the person's license or licenses, if the person:
(1) Is not of good character and reputation in the community in which such person resides;
(2) has been convicted of a felony or of any crime involving moral turpitude or of the violation of any law of any state or the United States pertaining to cigarettes or tobacco regulated products and who has not completed the sentence, parole, probation or assignment to a community correctional services program imposed for any such conviction within two years immediately preceding the date of making application for any of such licenses;
(3) has been convicted on or after January 1, 2013, of a felony under the laws of this state or any other state or the United States;
(4)(4) is not current in the payment of any tax or fine under this act;
(5)(5) has had a cigarette license revoked in this state or any other state;
(6)(6) is not at least 21 years of age;
(7)(7) intends to carry on the business as an agent of another;
(8)(8) at the time of application for renewal of any license issued under this act, would not be eligible for the license upon first application;
(9)(9) does not own the premises for which a license is sought, or does not, at the time of the application, have a written lease;
(10)(10) has been convicted of a crime involving any tax under this act;
act;

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

(A) Has had a license revoked under this act; or
(B) has been convicted of a crime involving any tax under this act; or

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

(A) Has had a license revoked under this act; or
(B) has been convicted of a crime involving any tax under this act.

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

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

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

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

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

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

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

(f) Exemption from payment of cigarette tax on sale of cigarettes made outside the state by any wholesale dealer shall be filed on forms provided by the director.

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

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

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

(c) To prevent the director or any officer or agent authorized by law to make a full inspection for the purpose purposes of this act,
of any place of business and all premises connected thereto where
cigarettes are or may be manufactured, sold, distributed; or given away.
(d) To use any artful device or deceptive practice to conceal any
violation of this act or to mislead the director or officer or agent authorized
by law in the enforcement of this act.
(e) Who is a dealer to fail to produce on demand of the director or
any officer or agent authorized by law any records or invoices required to
be kept by such person.
(f) Knowingly to make, use, or present to the director or agent thereof
any falsified invoice or falsely state the nature or quantity of the goods
invoked.
(g) Who is a dealer to fail or refuse to keep and preserve for the time
and in the manner required by this act all the records required by this act to
be kept and preserved.
(h) To wholesale cigarettes to any person, other than a manufacturer's
salesperson, retail dealer or wholesaler who is:
(1) Duly licensed by the state where such manufacturer's salesperson,
retail dealer or wholesaler is located; or
(2) exempt from state licensing under applicable state or federal laws
or court decisions including any such person operating as a retail dealer
upon land allotted to or held in trust for an Indian tribe recognized by the
United States bureau of Indian affairs.
(i) To have in possession any evidence of tax indicia provided for
herein not purchased from the director.
(j) To fail or refuse to permit the director or any officer or agent
authorized by law to inspect a carrier transporting cigarettes.
(k) To vend small cigars, or any products so wrapped as to be
confused with cigarettes, from a machine vending cigarettes, nor shall a
vending machine be so built to vend cigars or products that may be
confused with cigarettes, be attached to a cigarette vending machine.
(l) To sell, furnish or distribute—cigarettes, electronic cigarettes,
consumable material or tobacco any regulated products to any person
under 18 21 years of age, or to buy—cigarettes, electronic cigarettes,
 consumable material or tobacco any regulated products for any person
under 21 years of age.
(m) Who is under 18 years of age to purchase or attempt to purchase
cigarettes, electronic cigarettes or tobacco products.
(n) Who is under 18 years of age to possess or attempt to possess
cigarettes, electronic cigarettes or tobacco products.
(o) To sell cigarettes to a retailer or at retail that do not bear Kansas
tax indicia or upon which the Kansas cigarette tax has not been paid.
(p) To sell—cigarettes, electronic cigarettes, consumable material
or tobacco regulated products without having a license for such sale as
(q) To sell a vending machine without having a vending machine
distributor's license.

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

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

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

(2) in or at a retail location where—cigarettes, electronic cigarettes,
consumable material and tobacco regulated products are the primary
commodity offered for sale at retail; or

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

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

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

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

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

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

(2) a self-service display that is located in a tobacco specialty store;
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(3) a self-service display located in a facility where the retailer ensures that no person younger than 18 years of age is present or permitted to enter at any time any indoor enclosed area where the retailer ensures that no person under 21 years of age is present or permitted to enter at any time.

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

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

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

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

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

(w) To alter the package of any cigarettes, electronic cigarettes or consumable material regulated products, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

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

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

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

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

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

(w) To sell: (1) Any electronic cigarette that has not obtained a tobacco product clearance order from the United States food and drug administration pursuant to 21 U.S.C. § 387j contains flavored consumable material, except tobacco- or menthol-flavored consumable material; or (2) any flavored consumable material that has not obtained a tobacco product clearance order from the United States food and drug administration pursuant to 21 U.S.C. § 387j, except tobacco- or menthol-flavored consumable material.

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

(A) Class A misdemeanor for a first violation, and the offender shall be fined not less than $1,000 nor more than $2,500 upon a first conviction;
(B) severity level 6, nonperson felony for a second violation, and the offender shall be fined not less than $50,000 nor more than $100,000 upon a second conviction; and
(C) severity level 6, nonperson felony for a third and all subsequent violations, and the offender shall be fined $100,000 upon a third and all subsequent convictions.

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

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

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

(A) For a first violation, a minimum fine of $500;
(B) for a second violation within a three-year period, a minimum fine of $750;
(C) for a third or subsequent violation within a three-year period, a minimum fine of $1,000.

(2) It shall be a defense to a prosecution under this subsection if:
(A) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
(B) the defendant sold, furnished or distributed the cigarettes, electronic cigarettes, consumable material or tobacco regulated products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes, consumable material or tobacco regulated products; and
(C) to purchase or receive the cigarettes, electronic cigarettes, consumable material or tobacco regulated products, the person under 18 years of age exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, consumable material or tobacco regulated products.

(3) It shall be a defense to a prosecution under this subsection if:
(A) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, electronic cigarettes, consumable material or tobacco regulated products by mail; and
(B) the defendant sold, furnished or distributed the cigarettes, electronic cigarettes, consumable material or tobacco regulated products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601, and amendments thereto, that the person was 18 or more years of age.

(4) For purposes of this subsection, the person who violates this subsection shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, consumable material or tobacco regulated products to any person under 18 years of age, the person buying cigarettes, electronic cigarettes, consumable material or tobacco regulated products for any person under 21 years of age or the retail dealer who has actual knowledge of such buying, selling, furnishing or distributing by such individual or both.

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

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

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

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

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

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

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

(A) The governor and the Prairie Band Potawatomi Nation and approved by the legislature; (B) the governor and the Iowa Tribe of Kansas and Nebraska and approved by the legislature; (C) the governor and the
Kickapoo Tribe in Kansas and approved by the legislature; or (D) the
governor and the Sac and Fox Nation of Missouri in Kansas and Nebraska
and approved by the legislature;
(3) all cigarettes, electronic cigarettes, consumable material or
tobacco regulated products in the possession of a minor person under the
age of 21;
(4) cigarettes, smokeless tobacco or roll-your-own tobacco in
violation of K.S.A. 50-6a01 et seq., and amendments thereto; and
(5) all property, including vehicles, used in the sale, transportation,
distribution, importation, wholesale or manufacture of unstamped
packages of cigarettes; and
(6) all consumable material on which tax has not been paid.
Cigarettes in vending machines and exposed to view not showing
indicia of tax payment required by this act to be visible from the outside of
the vending machine shall be presumed to be unstamped.
(b) Any—cigarettes, electronic cigarettes, consumable material,
tobacco regulated products or property constituting a common nuisance
and contraband as provided by this section may be seized by the director
or the director's authorized agent or any duly constituted peace officer with
or without process or warrant and shall be subject to forfeiture as provided
in this act. The party making the seizure shall deliver to the owner of the
property and to the person or persons found in possession of the property a
receipt stating from whom the property was seized, the place of seizure
and a description and the brand of the property seized. A duplicate of the
receipt shall be filed in the office of the director and shall be open for
public inspection.
(c) Cigarettes in quantities of 1,000 or less in the possession of a
licensee are not declared a common nuisance and contraband if the
licensee has: (1) Segregated the cigarettes from public view; (2) marked
the cigarettes as not for retail sale to consumers; and (3) within 72 hours of
receipt, notified the licensee's wholesale dealer, in writing, that the
cigarettes do not bear indicia of Kansas tax and that the wholesale dealer
shall remove the cigarettes from the licensee's premises.
Sec. 15. K.S.A. 79-3326 is hereby amended to read as follows: 79-
3326. The director of taxation shall administer and enforce the provisions
of this act, and to require such reports, make such investigations and take
such other action as the director deems necessary or suitable to that end.
For the purpose of ascertaining the correctness of any return or making an
estimate of the tax due for any taxpayer or person, the director or the
director's designee has the power to examine any books, papers, records or
memoranda bearing upon the matters required to be included in the return
or report. The secretary of revenue shall adopt rules and regulations for the
administration of this act. For the purpose of enforcing this act the director
may call to the director's aid any law enforcement officer of this state to
prosecute all violators of any of the provisions of this act. The police of
any city shall have the right to inspect all premises, records and invoices
pertaining to the wholesale distribution, retail sale or sampling of
cigarettes, electronic cigarettes, consumable material or tobacco-
regulated products within the city at all reasonable times. All agents and
representatives designated by the director are hereby invested with all the
powers of peace and police officers within the state of Kansas in the
enforcement of the provisions of this act throughout the state.

Sec. 16. K.S.A. 79-3334 is hereby amended to read as follows: 79-
3334. (a) The Kansas department of revenue shall publish a list of active
cigarette and tobacco licensees and shall update such list monthly.
(b) The list of active cigarette and tobacco licensees published as
provided in subsection (a) shall contain the following information: County
name, owner, business name, address, license type and license number.
(c) The provisions of this section shall be a part of and supplemental
to the Kansas cigarette and tobacco products act.

Sec. 17. K.S.A. 79-3335 is hereby amended to read as follows: 79-
3335. (a) Counterfeit cigarettes, electronic cigarettes, consumable-
material and tobacco regulated products shall be seized by the director.
For purposes of this section, counterfeit cigarettes includes, electronic-
cigarettes, consumable material and tobacco regulated products include
cigarettes, electronic cigarettes, consumable material and tobacco-
regulated products manufactured, sold, transported, imported, distributed
or possessed in this state with intent to deceive consumers and to avoid the
provisions of this act, and also includes include cigarettes, electronic-
cigarettes, consumable material and tobacco regulated products that have
false manufacturing labels or packages of cigarettes bearing counterfeit tax
stamps. It shall be unlawful for any person to sell, transport, import,
distribute, possess, wholesale or manufacture counterfeit cigarettes,
electronic cigarettes, consumable material or tobacco regulated products.
(b) Except as otherwise provided by this act, a violation of the
provisions of this section shall be a:
(1) Class A misdemeanor for a first violation, and the offender shall
be fined not less than $1,000 nor more than $2,500 upon a first conviction;
(2) severity level 6, nonperson felony for a second violation, and the
offender shall be fined not less than $50,000 nor more than $100,000 upon
a second conviction; and
(3) severity level 6, nonperson felony for a third and all subsequent
violations, and the offender shall be fined $100,000 upon a third and all
subsequent convictions.
(c) The secretary of revenue, or the secretary's authorized agent, may
refer such evidence as may be available concerning violations of this act or
any rules and regulations or order hereunder to the attorney general or the
proper county or district attorney, who may in the prosecutor's discretion,
with or without such a reference, institute the appropriate criminal
proceedings under this act. Upon receipt of such reference, the attorney
general or the county attorney or district attorney may request that a duly
employed attorney of the department of revenue prosecute or assist in the
prosecution of such violation or violations on behalf of the state. Upon
approval of the secretary or the secretary's authorized agent, such
employee shall be appointed as a special prosecutor for the attorney
general or the county attorney or district attorney to serve without
compensation from the attorney general or the county attorney or district
attorney. Such special prosecutor shall have all the powers and duties
prescribed by law for assistant attorneys general or assistant county or
district attorneys and such other powers and duties as are lawfully
delegated to such special prosecutor by the attorney general or the county
attorney or district attorney. If an attorney employed by the secretary or
secretary's authorized agent acts as a special prosecutor, the secretary may
pay extradition and witness expenses associated with the case.

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

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

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

(b) It shall be unlawful for any person, directly or indirectly, to: (1)
Sell, give or furnish any--cigarettes, electronic cigarettes, consumable-
material or tobacco regulated products to any person under 18 to 21 years of
age; or (2) buy any--cigarettes, electronic cigarettes, consumable material
or tobacco regulated products for any person under 18 to 21 years of age.

(c) In determining the fine to be imposed under this subsection by a
licensed retail dealer whose employee sold, furnished or distributed the
cigarettes, electronic cigarettes, consumable material or tobacco-
regulated products, the secretary of revenue, or the secretary's designee,
shall consider it to be a mitigating circumstance if the employee had
completed a training program, approved by the secretary of revenue the
department of health and environment, or the secretary's designee, in
avoiding sale, furnishing or distributing of cigarettes, electronic cigarettes,
consumable material and tobacco regulated products to persons under 18
21 years of age.
(e)(d) No fine shall be imposed pursuant to this section except upon
the written order of the secretary of revenue, or the secretary's designee, to
the licensee who committed the violation. Such order shall state the
violation, the fine to be imposed and the right of the licensee to appeal the
order. Such order shall be subject to appeal and review in the manner
provided by the Kansas administrative procedure act.
(e)(f) Any fine collected pursuant to this section shall be remitted to
the state treasurer in accordance with the provisions of K.S.A. 75-4215,
and amendments thereto. Upon receipt of each such remittance, the state
treasurer shall deposit the entire amount in the state treasury to the credit
of the cigarette and tobacco products regulation fund.
(e)(f) There is hereby created, in the state treasury, the cigarette and
tobacco products regulation fund. Moneys in the fund shall be expended
only for the enforcement of this act and rules and regulations adopted
pursuant to this act. Such expenditures shall be made in accordance with
appropriation acts upon warrants of the director of accounts and reports
issued pursuant to vouchers approved by the secretary of revenue or a
person designated by the secretary.
(g)(f) (1) If a person violates subsection (b) for a second or
subsequent occurrence within a three-year period, the secretary may
impose a graduated fine upon such person for the second or subsequent
occurrence.
(2) For purposes of determining the number of violations of
subsection (b), a violation of subsection (b) or a violation of an ordinance
of any city, or a resolution of any county, that prohibits the acts prohibited
by subsection (b) shall be considered a violation of subsection (b).
(3) For the purposes of imposing a fine under this section, if three or
more years have elapsed since a person has been found to have violated
the provisions of subsection (b), such person shall be treated as never
having violated subsection (b).
Sec. 20. K.S.A. 79-3394 is hereby amended to read as follows: 79-
3394. (a) The director, or any person specified in subsection (b), when
conducting compliance checks shall engage persons under the age of 21 to
perform controlled buys at a retail dealer's licensed establishment. Retail
dealers shall be subject to not less than two unannounced controlled buys
each year. A subsequent unannounced controlled buy shall be conducted
within 90 days following any instance in which a retail dealer is
determined to be noncompliant during a controlled buy.
(b) No person shall engage or direct a minor person under the age of
18 to violate any provision of this act for purposes of determining
compliance with provisions of this act or the Kansas consumer protection
act, unless such person has procured the written consent of a parent or
guardian of the minor person under the age of 18 to so engage or direct the
minor person under the age of 18, and such person is:
(a)(1) An officer having authority to enforce the provisions of this
act;
(b)(2) an authorized representative of the attorney general, a county
attorney or a district attorney; or
(c)(3) an authorized representative of a business acting pursuant to a
self-compliance program designed to increase compliance with the
provisions of this act.
Sec. 21. K.S.A. 79-3396 is hereby amended to read as follows: 79-
3396. (a) In addition to, or in lieu of, any other civil or criminal penalty
provided by law, the director, upon a finding that a licensee has violated
the provisions of subsection (u), (v) or (w) of K.S.A. 79-3321(q), (r) or (s),
and amendments thereto, or has failed to comply with the provisions of
K.S.A. 79-3395, and amendments thereto, or any rule and regulation
adopted pursuant thereto, may revoke or suspend the license of any
licensee in the manner provided by K.S.A. 79-3309, and amendments
thereto; the director also may impose a civil fine in an amount not to
exceed the greater of 500% of the retail value of the cigarettes involved or
$5,000. Such fine shall be imposed in the manner provided by K.S.A. 79-
3391, and amendments thereto.
(b) Any cigarettes, electronic cigarettes, consumable material or
tobacco regulated products that are acquired, held, owned, possessed,
transported, imported, sold or distributed in this state in violation of
subsection (u), (v) or (w) of K.S.A. 79-3321(q), (r) or (s), and
amendments thereto, or has failed to comply with the provisions of K.S.A.
79-3395, and amendments thereto, shall be deemed contraband under
K.S.A. 79-3323, and amendments thereto, and shall be subject to seizure
and forfeiture as provided therein and in K.S.A. 79-3324a, and
amendments thereto. All such cigarettes seized and forfeited shall be
destroyed. Such cigarettes, electronic cigarettes, consumable material or
tobacco regulated products shall be deemed contraband whether the
violation of this act is knowing or otherwise.
Sec. 22. K.S.A. 79-3399 is hereby amended to read as follows: 79-
3399. (a) On and after July 1, 2017, a tax is hereby imposed upon the
privilege of selling or dealing in electronic cigarettes in this state by any
person engaged in business as a distributor thereof, at the rate of $.05 per
milliliter of consumable material for electronic cigarettes and a
proportionate tax at the like rate on all fractional parts thereof. For
electronic cigarettes in the possession of retail dealers for which tax has
not been paid, tax shall be imposed under this subsection at the earliest

time the retail dealer: (1) Brings or causes to be brought into this state

from without the state electronic cigarettes for sale; (2) makes,

manufactures or fabricates electronic cigarettes in this state for sale in this

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

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

e)—The secretary of revenue shall adopt rules and regulations to

implement the provisions of this section.

Sec. 23. K.S.A. 72-6285, 79-3301, 79-3302, 79-3303, 79-3304, 79-

3309, 79-3310c, 79-3316, 79-3321, 79-3322, 79-3323, 79-3326, 79-3334,


2019 Supp. 21-5102, 21-6109, 21-6110 and 50-6a14 are hereby repealed.

Sec. 24. This act shall take effect and be in force from and after July

1, 2021, and its publication in the statute book.