

As Amended by House Committee

Session of 2020

HOUSE BILL No. 2563

By Committee on Federal and State Affairs

2-4

1 AN ACT concerning cigarettes and tobacco products; increasing the
2 minimum age to purchase or possess such products; prohibiting
3 cigarette vending machines and self-service displays; amending K.S.A.
4 72-6285, 79-3301, 79-3302, 79-3303, 79-3304, 79-3309, 79-3316, 79-
5 3321, 79-3322, 79-3323, 79-3326, 79-3334, 79-3335, 79-3388, 79-
6 3391, 79-3394, 79-3396 and 79-3399 and K.S.A. 2019 Supp. 21-5102,
7 21-6109, 21-6110 and 50-6a14 and repealing the existing sections; also
8 repealing K.S.A. 79-3310c.
9

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

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

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

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

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

26 (d) All other crimes are misdemeanors.

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

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

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

1 beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-
2 premises consumption.

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

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

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

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

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

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

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

1 ~~(h)~~(i) "Medical care facility" means a physician's office, general
2 hospital, special hospital, ambulatory surgery center or recuperation center,
3 as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric
4 hospital licensed under K.S.A. 2019 Supp. 39-2001 et seq., and
5 amendments thereto.

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

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

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

24 ~~(l)~~(m) "Public building" means any building owned or operated by:
25 (1) The state, including any branch, department, agency, bureau,
26 commission, authority or other instrumentality thereof; (2) any county,
27 city, township, other political subdivision, including any commission,
28 authority, agency or instrumentality thereof; or (3) any other separate
29 corporate instrumentality or unit of the state or any municipality.

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

33 ~~(n)~~(o) "Public place" means any enclosed areas open to the public or
34 used by the general public including, but not limited to: Banks, bars, food
35 service establishments, retail service establishments, retail stores, public
36 means of mass transportation, passenger elevators, health care institutions
37 or any other place where health care services are provided to the public,
38 medical care facilities, educational facilities, libraries, courtrooms, public
39 buildings, restrooms, grocery stores, school buses, museums, theaters,
40 auditoriums, arenas and recreational facilities. For purposes of this section,
41 a private residence shall not be considered a "public place" unless such
42 residence is used as a day care home, as defined in K.S.A. 65-530, and
43 amendments thereto.

1 (⊕)(p) "Smoking" means possession of a lighted cigarette, cigar, pipe
2 or burning tobacco in any other form or device designed for the use of
3 tobacco, *or use of an electronic cigarette*.

4 (⊕)(q) "Tobacco shop" means any indoor area operated primarily for
5 the retail sale of tobacco, tobacco products ~~or~~, smoking devices, **electronic**
6 **cigarettes, e-liquids** or accessories, and that derives not less than 65% of
7 its gross receipts from ~~the sale~~ **any combination of sales** of tobacco,
8 **tobacco products, smoking devices, electronic cigarettes or e-liquids**.

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

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

18 (1) Public places;

19 (2) taxicabs and limousines;

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

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

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

28 (6) any place of employment.

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

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

1 designated smoking area.

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

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

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

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

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

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

18 ~~(6)~~**(5)** that portion of a licensed long-term care unit of a medical care
19 facility that is expressly designated as a smoking area by the proprietor or
20 other person in charge of such medical care facility pursuant to subsection
21 (c) and that is fully enclosed and ventilated and to which access is
22 restricted to the residents and their guests;

23 ~~(7)~~**(6)** tobacco shops;

24 ~~(8)~~**(7)** a class A or class B club, *as* defined in K.S.A. 41-2601, and
25 amendments thereto, ~~which that:~~ (A) Held a license pursuant to K.S.A. 41-
26 2606 et seq., and amendments thereto, as of January 1, 2009; and (B)
27 notifies the secretary of health and environment in writing, not later than
28 90 days after the effective date of this act, that it wishes to continue to
29 allow smoking on its premises;

30 ~~(9)~~**(8)** a private club in designated areas where ~~minors~~ *persons under*
31 *the age of 21* are prohibited;

32 ~~(10)~~**(9)** any benefit cigar dinner or other cigar dinner of a
33 substantially similar nature that:

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

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

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

42 ~~(11)~~**(10)** that portion of a medical or clinical research facility
43 constituting a separately ventilated, secure smoking room dedicated and

1 used solely and exclusively for clinical research activities conducted in
2 accordance with regulatory authority of the United States or the state of
3 Kansas, as determined by the director of alcoholic beverage control of the
4 department of revenue.

5 Sec. 4. K.S.A. 2019 Supp. 50-6a14 is hereby amended to read as
6 follows: 50-6a14. (a) In addition to, or in lieu of, any other civil or
7 criminal remedy provided by law, the director or the director's designee,
8 upon a finding that a stamping agent has violated ~~subsection (a)~~ of K.S.A.
9 50-6a04(a), and amendments thereto, or any rules or regulations adopted
10 pursuant to this act, may revoke or suspend the license of any licensee in
11 the manner provided by K.S.A. 79-3309, and amendments thereto. Each
12 package of cigarettes to which tax indicia is affixed, is caused to be affixed
13 or tax is paid thereupon, and each sale or offer to sell cigarettes in
14 violation of ~~subsection (a)~~ of K.S.A. 50-6a04(a), and amendments thereto,
15 shall constitute a separate violation. The director may also impose a civil
16 penalty in an amount not to exceed the greater of 500% of the retail value
17 of the cigarettes involved or \$5,000 upon a finding of violation of
18 ~~subsection (a)~~ of K.S.A. 50-6a04(a), and amendments thereto, or a
19 violation of any rules or regulations adopted pursuant to this act. Such fine
20 shall be imposed in the manner provided by K.S.A. 79-3391, and
21 amendments thereto. Any fine collected pursuant to this subsection shall
22 be remitted to the state treasurer in accordance with the provisions of
23 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
24 remittance, the state treasurer shall deposit the entire amount in the state
25 treasury to the credit of the cigarette and tobacco products regulation fund
26 created pursuant to ~~subsection (e)~~ of K.S.A. 79-3391, and amendments
27 thereto. The moneys credited to this fund shall be used for the purposes of
28 enforcement of this act, or K.S.A. 79-3301 et seq., and amendments
29 thereto.

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

34 Sec. 5. K.S.A. 72-6285 is hereby amended to read as follows: 72-
35 6285. (a) The use of *cigarettes, electronic cigarettes, consumable material,*
36 **alternative nicotine product** and tobacco products in any school building
37 is hereby prohibited. No board of education of any school district shall
38 allow any person to use *cigarettes, electronic cigarettes, consumable*
39 *material, alternative nicotine product* or tobacco products in any school
40 building.

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

42 (1) "*Cigarette,*" "*electronic cigarette,*" "*consumable material,*"
43 "**alternative nicotine product**" and "*tobacco product*" mean the same as

1 *such terms are defined in K.S.A. 79-3301, and amendments thereto; and*

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

7 Sec. 6. K.S.A. 79-3301 is hereby amended to read as follows: 79-
8 3301. As used in K.S.A. 79-3301 et seq., and amendments thereto:

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

10 (b) **"Alternative nicotine product" means any noncombustible**
11 **product containing nicotine without the presence of tobacco leaf that**
12 **is intended to be placed in the oral or nasal cavity, whether chewed,**
13 **absorbed, dissolved or ingested by any other means. The term**
14 **"alternative nicotine product" does not include cigarettes, electronic**
15 **cigarettes, consumable material, tobacco products or any product**
16 **regulated as a drug or device by the United States food and drug**
17 **administration under chapter V of the federal food, drug and cosmetic**
18 **act.**

19 (c) "Carrier" means one who transports cigarettes from a
20 manufacturer to a wholesale dealer or from one wholesale dealer to
21 another.

22 ~~(e)~~(d) "Carton" means the container used by the manufacturer of
23 cigarettes in which no more than 10 packages of cigarettes are placed prior
24 to shipment from such manufacturer.

25 ~~(d)~~(e) "Cigarette" means any roll for smoking, made wholly or in part
26 of tobacco, irrespective of size or shape, and irrespective of tobacco being
27 flavored, adulterated or mixed with any other ingredient if the wrapper is
28 in greater part made of any material except tobacco.

29 ~~(e)~~(f) "Conspicuous location or place" means a location or place
30 available to the general public.

31 ~~(f)~~(g) "*Consumable material*" means any liquid solution or other
32 material that is depleted as it is consumed through the use of an electronic
33 cigarette.

34 ~~(f)~~~~(g)~~(h) "Consumer" means the person purchasing or receiving
35 cigarettes, ~~electronic cigarettes, consumable material or tobacco~~
36 **regulated** products for final use.

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

40 ~~(h)~~~~(i)~~(j) "Dealer" means any person who engages in the sale or
41 manufacture of ~~cigarettes, tobacco products or electronic cigarettes,~~
42 ~~consumable material or tobacco~~ **regulated products** in the state of Kansas,
43 and who is required to be licensed under the provisions of this act.

1 ~~(j)(k)~~(k) "Dealer establishment" means any location or premises, ~~other~~
 2 ~~than vending machine locations~~; at or from which ~~cigarettes, tobacco~~
 3 ~~products or electronic cigarettes, consumable material or tobacco~~
 4 **regulated products** are sold; and where records are kept.

5 ~~(j)(l)~~(l) "Director" means the director of taxation.

6 ~~(k)(m)~~(m) "Distributor" means:

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

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

12 (3) any person engaged in the business of selling tobacco products
 13 outside this state who ships or transports tobacco products to any person in
 14 the business of selling tobacco products in this state.

15 ~~(l)(n)~~(n) "Division" means the division of taxation.

16 ~~(m)(o)~~(o) "Electronic cigarette" means a battery-powered device,
 17 whether or not such device is shaped like a cigarette, that can provide
 18 inhaled doses of nicotine by delivering a vaporized solution by means of
 19 cartridges or other chemical delivery systems.

20 ~~(n)(p)~~(p) "Importer" means the same as provided in 26 U.S.C. §
 21 5702(k).

22 ~~(o)(q)~~(q) "License" means the privilege of a licensee to sell
 23 ~~cigarettes, electronic cigarettes, consumable material or tobacco~~
 24 **regulated products** in the state of Kansas; and the written evidence of such
 25 authority or privilege as issued by the director.

26 ~~(p)(r)~~(r) "Licensee" means any person holding a current license
 27 issued pursuant to this act.

28 ~~(q)(s)~~(s) "Manufacturer" means the same as provided in 26 U.S.C. §
 29 5702(d).

30 ~~(r)(t)~~(t) "Manufacturer's salesperson" means a person employed by a
 31 cigarette manufacturer who sells cigarettes, manufactured by such
 32 employer and procured from wholesale dealers.

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

36 (2) for the purposes of K.S.A. 79-3321~~(v)~~ and ~~(w)~~ (r) and (s), and
 37 amendments thereto, "package" means the same as provided in 15 U.S.C.
 38 § 1332(4).

39 ~~(t)(v)~~(v) "Person" means any individual, partnership, society,
 40 association, joint-stock company, corporation, estate, receiver, trustee,
 41 assignee, referee or any other person acting in a fiduciary or representative
 42 capacity whether appointed by a court or otherwise and any combination
 43 of individuals.

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

3 ~~(v)(w)~~(x) "**Regulated products**" means **cigarettes, electronic**
4 **cigarettes, consumable materials, alternative nicotine products and**
5 **tobacco products.**

6 (y) "Retail dealer" or "retailers" means a person, ~~other than a vending~~
7 ~~machine operator,~~ in possession of ~~cigarettes or, electronic cigarettes,~~
8 ~~consumable material or tobacco~~ **regulated products** for the purpose of
9 sale to a consumer.

10 ~~(w)(x)~~(z) "Sale" means any transfer of title or possession or both,
11 exchange, barter, distribution or gift of ~~cigarettes, tobacco products or~~
12 ~~electronic cigarettes, consumable material or tobacco~~ **regulated products,**
13 with or without consideration.

14 ~~(x)(y)~~(aa) "Sample" means ~~cigarettes, electronic cigarettes,~~
15 ~~consumable material or tobacco~~ **regulated products** distributed to
16 members of the general public at no cost for purposes of promoting the
17 product.

18 (y)(z)(bb) "Self-service display" means a display that contains
19 ~~cigarettes, electronic cigarettes, consumable material or tobacco~~
20 **regulated products** and is located in an area openly accessible to a retail
21 dealer's consumers, and from which such consumers can readily access
22 ~~cigarettes, electronic cigarettes, consumable material or tobacco~~
23 **regulated products** without the assistance of a salesperson, and ~~which that~~
24 is knowingly utilized by the retail dealer to market and sell ~~cigarettes,~~
25 ~~electronic cigarettes, consumable material and tobacco~~ **regulated products**
26 to consumers. A display case that holds ~~cigarettes, electronic cigarettes,~~
27 ~~consumable material or tobacco~~ **regulated products** behind locked doors
28 does not constitute a self-service display.

29 ~~(z)(aa)~~(cc) "Stamps" means tax indicia applied by means of heat
30 process, pressure or any other process approved by the director.

31 ~~(aa)(bb)~~(dd) "Tax indicia" means visible evidence of tax payment in
32 the form of stamps.

33 ~~(bb)(cc)~~(ee)(ff) "Tobacco products" means cigars, cheroots, stogies,
34 periques; granulated, plug cut, crimp cut, ready rubbed and other smoking
35 tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and
36 other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and
37 sweepings of tobacco, and other kinds and forms of tobacco, prepared in
38 such manner as to be suitable for chewing or smoking in a pipe or
39 otherwise, or both for chewing and smoking. "Tobacco products" do not
40 include cigarettes.

41 ~~(cc)(dd)~~(ff) "Tobacco specialty store" means a dealer establishment
42 that derives at least 65% of such dealer establishment's revenue from
43 cigarettes or tobacco products.

1 ~~(dd)(ee)~~**(gg)** "Vending machine" means any coin operated machine,
2 contrivance or device, by means of which merchandise may be sold.

3 ~~(ee)~~ "Vending machine distributor" means any person who sells
4 cigarette vending machines to a vending machine operator operating
5 vending machines in the state of Kansas.

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

16 ~~(gg)(ff)~~**(hh)** "Wholesale dealer" means any person who sells
17 cigarettes to other wholesale dealers, retail dealers, ~~vending machine~~
18 ~~operators~~ and manufacturer's salespersons for the purpose of resale in the
19 state of Kansas.

20 ~~(hh)(gg)~~**(ii)** "Wholesale sales price" means the original net invoice
21 price for which a manufacturer sells a tobacco product to a distributor, as
22 shown by the manufacturer's original invoice.

23 Sec. 7. K.S.A. 79-3302 is hereby amended to read as follows: 79-
24 3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309, 79-3310,
25 79-3311, ~~79-3311a~~, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-
26 3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3333, 79-3335,
27 79-3336, 79-3371, 79-3373, 79-3374, 79-3375, 79-3377, 79-3378, 79-
28 3379, 79-3387, 79-3388, 79-3391, 79-3392, 79-3393, 79-3394 ~~and K.S.A.~~
29 ~~79-3311a~~, ~~79-3336~~, 79-3395 through 79-3399, and 79-33,100, and
30 amendments thereto, shall be known and may be cited as the Kansas
31 cigarette and tobacco products act.

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

36 Sec. 8. K.S.A. 79-3303 is hereby amended to read as follows: 79-
37 3303. (a) Each person engaged in the business of selling ~~cigarettes or~~
38 ~~electronic cigarettes~~, ~~consumable material or tobacco~~ **regulated products**
39 in the state of Kansas ~~and each vending machine distributor~~ shall obtain a
40 license as provided by this act. A separate application, license and fee is
41 required for each dealer establishment owned or operated by a dealer. ~~A~~
42 ~~vending machine operator is required to obtain a vending machine~~
43 ~~operator's master license and, in addition, a separate permit for each~~

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

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

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

35 (d) The key to the lower or storage compartment of a vending
36 machine shall remain only in the possession of the vending machine
37 operator or the operator's authorized agent. All services connected with the
38 operation of a vending machine shall be performed by the vending
39 machine operator or the operator's authorized agent. All vending machines
40 shall be subject to inspection by the director or the director's authorized
41 agents. No permit shall be issued for a vending machine unless it is
42 constructed so that at least one package of each vertical column of
43 cigarettes located therein is visible showing tax indicia.

1 (e) ~~All vending machines operated on military installations shall have~~
2 ~~a permit affixed to the machines and the cigarettes shall show tax indicia~~
3 ~~of the Kansas tax.~~

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

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

23 Sec. 9. K.S.A. 79-3304 is hereby amended to read as follows: 79-
24 3304. (a) The license fee for each biennium, or portion thereof, shall be as
25 follows:

26 (1) For retail dealer's license, ~~\$25~~ ~~\$100~~ **\$25** for each dealer
27 establishment.

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

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

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

34 (5) For wholesale dealer's license, \$50 for each dealer establishment.

35 No wholesale dealer's license shall be issued until the person applying
36 therefor has filed with the director a bond payable to the state of Kansas in
37 such an amount as shall be fixed by the director, but in no event less than
38 \$1,000, with a corporate surety authorized to do business in the state of
39 Kansas, and approved by the director. If a wholesale dealer is unable to
40 secure a corporate surety bond, the director may issue a license to such
41 wholesale dealer, upon the wholesale dealer furnishing a personal bond
42 meeting the approval of the director. Such bond shall be conditioned on the
43 wholesale dealer's compliance with all the provisions of this act during the

1 license period.

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

3 ~~(7)~~(3) For manufacturer's salesperson license, \$20 for each
4 salesperson. The manufacturer's salesperson shall, with respect to each sale
5 made to a retail dealer, make and deliver to the retail dealer a true invoice
6 wherein such salesperson shall insert the name of the wholesale dealer
7 from whom such salesperson secured such cigarettes, together with such
8 salesperson's own name and the name of the retail dealer purchasing the
9 cigarettes.

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

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

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

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

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

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

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

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

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

38 ~~(4)~~(6) *is not at least ~~18~~ 21 years of age;*

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

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

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

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

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

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

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

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

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

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

17 Sec. 10. K.S.A. 79-3309 is hereby amended to read as follows: 79-
18 3309. (a) Whenever the director has reason to believe that any person
19 licensed under this act has violated any of the provisions of this act; in any
20 of the following ways, the director shall notify the person by certified mail
21 of the director's intention to suspend or revoke the person's license or
22 licenses, if the person:

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

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

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

34 ~~(2)~~(4) is not current in the payment of any tax or fine under this act;

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

37 ~~(4)~~(6) is not at least ~~18~~ 21 years of age;

38 ~~(5)~~(7) intends to carry on the business as an agent of another;

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

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

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

1 act;

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

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

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

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

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

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

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

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

39 Sec. 11. K.S.A. 79-3316 is hereby amended to read as follows: 79-
40 3316. (a) All purchases of cigarettes by any dealer shall be evidenced by
41 an invoice, a duplicate of which shall be furnished to the party receiving
42 the cigarettes from any dealer.

43 (b) Purchases of cigarettes by wholesale dealers shall be made from

1 the manufacturers of cigarettes or from other Kansas licensed wholesale
2 dealers. Purchases of cigarettes by retail dealers ~~or vending machine~~
3 ~~operators~~ shall be from wholesale dealers.

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

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

19 (e) Every wholesale dealer shall report to the director on or before the
20 10th day of each month, stating the amount of cigarettes sold during the
21 preceding month and the amount of all cigarettes returned to the
22 manufacturer. Any wholesale dealer who refuses any shipment or part of a
23 shipment of unstamped cigarettes or has a shortage in the shipment of
24 cigarettes consigned to such dealer shall in the monthly report next
25 following the refusal or shortage report to the director the number of
26 packages or cartons of cigarettes refused or short and the name of the
27 carrier from whom the cigarettes were refused or shortage occurred. Such
28 report shall be filed electronically in the manner prescribed by the director.

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

32 Sec. 12. K.S.A. 79-3321 is hereby amended to read as follows: 79-
33 3321. It shall be unlawful for any person:

34 (a) Except as otherwise specifically provided by this act, to possess,
35 sell, transport, import, distribute, wholesale or manufacture more than
36 1,000 cigarettes without the required tax indicia being affixed as herein
37 provided.

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

42 (c) To prevent the director or any officer or agent authorized by law,
43 ~~to make from making~~ a full inspection for the ~~purpose~~ purposes of this act;

1 of any place of business and all premises connected thereto where
2 cigarettes are or may be manufactured, sold, distributed; or given away.

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

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

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

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

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

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

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

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

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

27 ~~(k) To vend small cigars, or any products so wrapped as to be~~
28 ~~confused with cigarettes, from a machine vending cigarettes, nor shall a~~
29 ~~vending machine be so built to vend cigars or products that may be~~
30 ~~confused with cigarettes, be attached to a cigarette vending machine.~~

31 ~~(l) To sell, furnish or distribute cigarettes, electronic cigarettes,~~
32 ~~consumable material or tobacco any regulated products to any person~~
33 ~~under 18 21 years of age, or to buy cigarettes, electronic cigarettes,~~
34 ~~consumable material or tobacco any regulated products for any person~~
35 ~~under 21 years of age.~~

36 ~~(m) Who is under 18 years of age to purchase or attempt to purchase~~
37 ~~cigarettes, electronic cigarettes or tobacco products.~~

38 ~~(n) Who is under 18 years of age to possess or attempt to possess~~
39 ~~cigarettes, electronic cigarettes or tobacco products.~~

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

42 ~~(p)(m)~~ To sell ~~cigarettes, electronic cigarettes, consumable material~~
43 ~~or tobacco~~ **regulated products** without having a license for such sale as

1 provided herein.

2 ~~(q) To sell a vending machine without having a vending machine-~~
3 ~~distributor's license.~~

4 ~~(r)(n)~~ Who is a retail dealer to fail to post and maintain in a
5 conspicuous place in the dealer's establishment the following notice: "By
6 law, cigarettes, electronic cigarettes, *consumable material*, **alternative**
7 **nicotine products** and tobacco products may be sold only to persons ~~18~~
8 *21* years of age and older." *All notices shall be posted in a manner*
9 *conspicuous to both employees and consumers, unobstructed from view in*
10 *their entirety, and within six feet of each register where ~~cigarettes,~~*
11 *electronic cigarettes, consumable material or tobacco **regulated** products*
12 *are available for purchase. The notice shall be at least 8 1/2" by 11" and the*
13 *words on the notice shall be legibly printed.*

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

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

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

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

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

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

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

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

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

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

43 or

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

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

9 (1) Any cigarettes the package of which: (A) Bears any statement,
 10 label, stamp, sticker or notice indicating that the manufacturer did not
 11 intend the cigarettes to be sold, distributed or used in the United States,
 12 including but not limited to, labels stating "For Export Only," "U.S. Tax-
 13 Exempt," "For Use Outside U.S." or similar wording; or (B) does not
 14 comply with: (i) All requirements imposed by or pursuant to federal law
 15 regarding warnings and other information on packages of cigarettes
 16 manufactured, packaged or imported for sale, distribution or use in the
 17 United States, including but not limited to the precise warning labels
 18 specified in the federal cigarette labeling and advertising act, 15 U.S.C. §
 19 1333; and (ii) all federal trademark and copyright laws;

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

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

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

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

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

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

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

42 ~~(y)(u)~~ To possess, sell, transport, import, distribute, wholesale or
 43 manufacture cigarettes, smokeless tobacco or roll-your-own tobacco in

1 violation of K.S.A. 50-6a01 et seq., and amendments thereto.

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

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

16 Sec. 13. K.S.A. 79-3322 is hereby amended to read as follows: 79-
17 3322. (a) (1) Except as otherwise provided in this act, a violation of K.S.A.
18 79-3321(a), (c), (d), (f), (h), (i), (j), ~~(v), (w), (x) or (y)~~ (r), (s), (t), (u) or
19 (w), and amendments thereto, is a:

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

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

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

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

35 (b) Except as provided in ~~subsections~~ subsection (a); or (c) ~~or (d)~~, a
36 violation of K.S.A. 79-3321, and amendments thereto, is a class B
37 misdemeanor and upon conviction, an offender shall be fined not less than
38 \$500 nor more than \$1,000 or imprisoned for not more than one year, or
39 both for each separate violation. In addition thereto, any person found
40 liable for any license fee or tax imposed under the provisions of this act
41 shall be personally liable for such license fee or tax plus a penalty in an
42 amount equal to 100% thereof.

43 (c) (1) ~~It~~ A violation of K.S.A. 79-3321(k), and amendments thereto, is

1 a class B person misdemeanor punishable by a minimum fine of \$200 for
2 any person to: (A) Sell, give or furnish any cigarettes or tobacco products
3 to any person under 18 years of age; or (B) buy any cigarettes or tobacco
4 products for any person under 18 years of age:

5 (A) For a first violation, a minimum fine of \$500;

6 (B) for a second violation within a three-year period, a minimum fine
7 of \$750;

8 (C) for a third or subsequent violation within a three-year period, a
9 minimum fine of \$1,000.

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

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

13 (B) the defendant sold, furnished or distributed the ~~cigarettes,~~
14 ~~electronic cigarettes, consumable material or tobacco~~ **regulated** products
15 to the person under ~~18~~ 21 years of age with reasonable cause to believe the
16 person was of legal age to purchase or receive ~~cigarettes, electronic~~
17 ~~cigarettes, consumable material or tobacco~~ **regulated** products; and

18 (C) to purchase or receive the ~~cigarettes, electronic cigarettes,~~
19 ~~consumable material or tobacco~~ **regulated** products, the person under ~~18~~
20 21 years of age exhibited to the defendant a driver's license, Kansas
21 nondriver's identification card or other official or apparently official
22 document containing a photograph of the person and purporting to
23 establish that the person was of legal age to purchase or receive ~~cigarettes,~~
24 ~~electronic cigarettes, consumable material or tobacco~~ **regulated** products.

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

26 (A) The defendant engages in the lawful sale, furnishing or
27 distribution of ~~cigarettes, electronic cigarettes, consumable material or~~
28 ~~tobacco~~ **regulated** products by mail; and

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

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

42 (d) ~~Violation of K.S.A. 79-3321(m) or (n), and amendments thereto,~~
43 ~~is a cigarette or tobacco infraction for which the fine is \$25. In addition,~~

1 the judge may require the juvenile to appear in court with a parent or legal
2 guardian.

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

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

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

33 Sec. 14. K.S.A. 79-3323 is hereby amended to read as follows: 79-
34 3323. (a) Except as provided in subsection (c), the following are declared
35 to be common nuisances and contraband:

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

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

41 (A) The governor and the Prairie Band Potawatomi Nation and
42 approved by the legislature; (B) the governor and the Iowa Tribe of Kansas
43 and Nebraska and approved by the legislature; (C) the governor and the

1 Kickapoo Tribe in Kansas and approved by the legislature; or (D) the
2 governor and the Sac and Fox Nation of Missouri in Kansas and Nebraska
3 and approved by the legislature;

4 (3) ~~all cigarettes, electronic cigarettes, consumable material, or~~
5 ~~tobacco~~ **regulated** products in the possession of a ~~minor person under the~~
6 ~~age of 21~~;

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

9 (5) all property, including vehicles, used in the sale, transportation,
10 distribution, importation, wholesale or manufacture of unstamped
11 packages of cigarettes; ~~and~~

12 (6) *all consumable material on which tax has not been paid.*

13 ~~Cigarettes in vending machines and exposed to view not showing~~
14 ~~indicia of tax payment required by this act to be visible from the outside of~~
15 ~~the vending machine shall be presumed to be unstamped.~~

16 (b) ~~Any cigarettes, electronic cigarettes, consumable material,~~
17 ~~tobacco~~ **regulated** products or property constituting a common nuisance
18 and contraband as provided by this section may be seized by the director
19 or the director's authorized agent or any duly constituted peace officer with
20 or without process or warrant and shall be subject to forfeiture as provided
21 in this act. The party making the seizure shall deliver to the owner of the
22 property and to the person or persons found in possession of the property a
23 receipt stating from whom the property was seized, the place of seizure
24 and a description and the brand of the property seized. A duplicate of the
25 receipt shall be filed in the office of the director and shall be open for
26 public inspection.

27 (c) Cigarettes in quantities of 1,000 or less in the possession of a
28 licensee are not declared a common nuisance and contraband if the
29 licensee has: (1) Segregated the cigarettes from public view; (2) marked
30 the cigarettes as not for retail sale to consumers; and (3) within 72 hours of
31 receipt, notified the licensee's wholesale dealer, in writing, that the
32 cigarettes do not bear indicia of Kansas tax and that the wholesale dealer
33 shall remove the cigarettes from the licensee's premises.

34 Sec. 15. K.S.A. 79-3326 is hereby amended to read as follows: 79-
35 3326. The director of taxation shall administer and enforce the provisions
36 of this act, and to require such reports, make such investigations and take
37 such other action as the director deems necessary or suitable to that end.
38 For the purpose of ascertaining the correctness of any return or making an
39 estimate of the tax due for any taxpayer or person, the director or the
40 director's designee has the power to examine any books, papers, records or
41 memoranda bearing upon the matters required to be included in the return
42 or report. The secretary of revenue shall adopt rules and regulations for the
43 administration of this act. For the purpose of enforcing this act the director

1 may call to the director's aid any law enforcement officer of this state to
2 prosecute all violators of any of the provisions of this act. The police of
3 any city shall have the right to inspect all premises, records and invoices
4 pertaining to the wholesale distribution, retail sale or sampling of
5 ~~cigarettes, electronic cigarettes, consumable material or tobacco~~
6 **regulated** products within the city at all reasonable times. All agents and
7 representatives designated by the director are hereby invested with all the
8 powers of peace and police officers within the state of Kansas in the
9 enforcement of the provisions of this act throughout the state.

10 Sec. 16. K.S.A. 79-3334 is hereby amended to read as follows: 79-
11 3334. (a) The Kansas department of revenue shall publish a list of active
12 ~~cigarette and tobacco~~ licensees and shall update such list monthly.

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

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

18 Sec. 17. K.S.A. 79-3335 is hereby amended to read as follows: 79-
19 3335. (a) Counterfeit ~~cigarettes, electronic cigarettes, consumable~~
20 ~~material and tobacco~~ **regulated** products shall be seized by the director.

21 For purposes of this section, counterfeit ~~cigarettes includes, electronic~~
22 ~~cigarettes, consumable material and tobacco~~ **regulated** products include
23 ~~cigarettes, electronic cigarettes, consumable material and tobacco~~
24 **regulated** products manufactured, sold, transported, imported, distributed
25 or possessed in this state with intent to deceive consumers and to avoid the
26 provisions of this act, and also ~~includes include~~ ~~cigarettes, electronic~~
27 ~~cigarettes, consumable material and tobacco~~ **regulated** products that have
28 false manufacturing labels or packages of cigarettes bearing counterfeit tax
29 stamps. It shall be unlawful for any person to sell, transport, import,
30 distribute, possess, wholesale or manufacture counterfeit ~~cigarettes,~~
31 ~~electronic cigarettes, consumable material or tobacco~~ **regulated** products.

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

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

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

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

42 (c) The secretary of revenue, or the secretary's authorized agent, may
43 refer such evidence as may be available concerning violations of this act or

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

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

21 Sec. 18. K.S.A. 79-3388 is hereby amended to read as follows: 79-
22 3388. The imposition of the tax as provided in this act shall not render
23 ~~cigarettes, electronic cigarettes, consumable material or tobacco~~
24 **regulated** products exempt from the retailers' sales tax act under the
25 provisions of K.S.A. 79-3606~~(a)~~, and amendments thereto.

26 Sec. 19. K.S.A. 79-3391 is hereby amended to read as follows: 79-
27 3391. (a) In addition to or in lieu of any other civil or criminal penalty
28 provided by law, the secretary of revenue or the secretary's designee, upon
29 a finding that a person under this act has violated any provision of this act
30 or any provision of any rule and regulation of the secretary of revenue
31 adopted pursuant to this act shall impose on such person a civil fine not
32 exceeding \$1,000 for each violation.

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

38 (c) In determining the fine to be imposed under this subsection by a
39 licensed retail dealer whose employee sold, furnished or distributed the
40 ~~cigarettes, electronic cigarettes, consumable material or tobacco~~
41 **regulated** products, the secretary of revenue, or the secretary's designee,
42 shall consider it to be a mitigating circumstance if the employee had
43 completed a training program, approved by the secretary of ~~revenue~~ *the*

1 *department of health and environment, or the secretary's designee, in*
2 *avoiding sale, furnishing or distributing of*~~cigarettes, electronic cigarettes,~~
3 ~~consumable material and tobacco~~ **regulated** *products to persons under 18*
4 *21 years of age.*

5 ~~(e)~~(d) No fine shall be imposed pursuant to this section except upon
6 the written order of the secretary of revenue, or the secretary's designee, to
7 the licensee who committed the violation. Such order shall state the
8 violation, the fine to be imposed and the right of the licensee to appeal the
9 order. Such order shall be subject to appeal and review in the manner
10 provided by the Kansas administrative procedure act.

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

16 ~~(e)~~(f) There is hereby created, in the state treasury, the cigarette and
17 tobacco products regulation fund. Moneys in the fund shall be expended
18 only for the enforcement of this act and rules and regulations adopted
19 pursuant to this act. Such expenditures shall be made in accordance with
20 appropriation acts upon warrants of the director of accounts and reports
21 issued pursuant to vouchers approved by the secretary of revenue or a
22 person designated by the secretary.

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

27 (2) *For purposes of determining the number of violations of*
28 *subsection (b), a violation of subsection (b) or a violation of an ordinance*
29 *of any city, or a resolution of any county, that prohibits the acts prohibited*
30 *by subsection (b) shall be considered a violation of subsection (b).*

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

35 Sec. 20. K.S.A. 79-3394 is hereby amended to read as follows: 79-
36 3394. (a) *The director, or any person specified in subsection (b), when*
37 *conducting compliance checks shall engage persons under the age of 21 to*
38 *perform controlled buys at a retail dealer's licensed establishment. Retail*
39 *dealers shall be subject to not less than two unannounced controlled buys*
40 *each year. A subsequent unannounced controlled buy shall be conducted*
41 *within 90 days following any instance in which a retail dealer is*
42 *determined to be noncompliant during a controlled buy.*

43 (b) No person shall engage or direct a ~~minor~~ *person under the age of*

1 18 to violate any provision of this act for purposes of determining
2 compliance with provisions of this act or the Kansas consumer protection
3 act, unless such person has procured the written consent of a parent or
4 guardian of the ~~minor person under the age of 18~~ to so engage or direct the
5 ~~minor person under the age of 18~~, and such person is:

6 (a)(1) An officer having authority to enforce the provisions of this
7 act;

8 (b)(2) an authorized representative of the attorney general, a county
9 attorney or a district attorney; or

10 (c)(3) an authorized representative of a business acting pursuant to a
11 self-compliance program designed to increase compliance with the
12 provisions of this act.

13 Sec. 21. K.S.A. 79-3396 is hereby amended to read as follows: 79-
14 3396. (a) In addition to, or in lieu of, any other civil or criminal penalty
15 provided by law, the director, upon a finding that a licensee has violated
16 the provisions of ~~subsection (u), (v) or (w) of K.S.A. 79-3321(q), (r) or (s)~~,
17 and amendments thereto, or has failed to comply with the provisions of
18 K.S.A. 79-3395, and amendments thereto, or any rule and regulation
19 adopted pursuant thereto, may revoke or suspend the license of any
20 licensee in the manner provided by K.S.A. 79-3309, and amendments
21 thereto; the director also may impose a civil fine in an amount not to
22 exceed the greater of 500% of the retail value of the cigarettes involved or
23 \$5,000. Such fine shall be imposed in the manner provided by K.S.A. 79-
24 3391, and amendments thereto.

25 (b) Any ~~cigarettes, electronic cigarettes, consumable material or~~
26 ~~tobacco regulated products~~ that are acquired, held, owned, possessed,
27 transported, imported, sold or distributed in this state in violation of
28 ~~subsection (u), (v) or (w) of K.S.A. 79-3321(q), (r) or (s)~~, and
29 amendments thereto, or has failed to comply with the provisions of K.S.A.
30 79-3395, and amendments thereto, shall be deemed contraband under
31 K.S.A. 79-3323, and amendments thereto, and shall be subject to seizure
32 and forfeiture as provided therein and in K.S.A. 79-3324a, and
33 amendments thereto. All such cigarettes seized and forfeited shall be
34 destroyed. Such ~~cigarettes, electronic cigarettes, consumable material or~~
35 ~~tobacco regulated products~~ shall be deemed contraband whether the
36 violation of this act is knowing or otherwise.

37 Sec. 22. K.S.A. 79-3399 is hereby amended to read as follows: 79-
38 3399. (a) ~~On and after July 1, 2017,~~ A tax is hereby imposed upon the
39 privilege of selling or dealing in electronic cigarettes in this state by any
40 person engaged in business as a distributor thereof, at the rate of \$.05 per
41 milliliter of consumable material for electronic cigarettes and a
42 proportionate tax at the like rate on all fractional parts thereof. For
43 electronic cigarettes in the possession of retail dealers for which tax has

1 not been paid, tax shall be imposed under this subsection at the earliest
2 time the retail dealer: (1) Brings or causes to be brought into this state
3 from without the state electronic cigarettes for sale; (2) makes,
4 manufactures or fabricates electronic cigarettes in this state for sale in this
5 state; or (3) sells electronic cigarettes to consumers within this state.

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

8 ~~(e)~~—The secretary of revenue shall adopt rules and regulations to
9 implement the provisions of this section.

10 Sec. 23. K.S.A. 72-6285, 79-3301, 79-3302, 79-3303, 79-3304, 79-
11 3309, 79-3310c, 79-3316, 79-3321, 79-3322, 79-3323, 79-3326, 79-3334,
12 79-3335, 79-3388, 79-3391, 79-3394, 79-3396 and 79-3399 and K.S.A.
13 2019 Supp. 21-5102, 21-6109, 21-6110 and 50-6a14 are hereby repealed.

14 Sec. 24. This act shall take effect and be in force from and after **July**
15 **1, 2021, and** its publication in the statute book.