

February 22, 2021

CORRECTED

The Honorable John Barker, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 285A-N
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Corrected Fiscal Note for HB 2061 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following corrected fiscal note concerning HB 2061 is respectfully submitted to your committee.

HB 2061 would increase the minimum age to purchase or possess cigarettes, electronic cigarettes, consumable materials, alternative nicotine products, and tobacco products from 18 years of age to 21 years of age. The bill would not allow vending machines or self-service displays to sell cigarettes beginning on July 1, 2022. The bill would add electronic cigarettes to the requirements of the current Clean Indoor Air Act. The bill clarifies that this prohibition also includes cigarettes, e-cigarettes, and consumable material. The bill would allow electronic cigarette and consumable material to be regulated under the Cigarette and Tobacco Products Act and definitions in this Act would be updated to include electronic cigarettes and consumable material. The bill would prohibit any person from selling electronic cigarettes with flavored consumable material other than menthol flavored.

The bill would increase the retail dealer's license fee from \$25 to \$100 and would increase the minimum age to obtain this license from 18 years of age to 21 years of age. The bill would allow the Department of Revenue to refuse to renew or issue a retail dealer's license to any person who is not of good character or has been convicted of a felony or other certain crimes. The bill would eliminate the specific license for retailer's license on railroad or sleeping cars; the show, carnival, or catering license; the resident retail dealer's temporary license; vending machine distributor license; and vending machine operator's license. The bill would also eliminate the vending machine permit.

Under current law, it is a class B person misdemeanor to sell or furnish cigarettes or tobacco products to persons under the age of 18 years of age or allow persons under the age of 18 years of

age to purchase these products that is punishable with a fine of \$200. The bill would add electronic cigarettes and consumable materials to this misdemeanor; increase the age to 21 years of age; and increase the fine to a minimum of \$500 for the first violation, a minimum fine of \$750 for a second violation within a three-year period, and a minimum fine of \$1,000 for a third or subsequent violation within a three-year period. The bill would require the Department of Health and Human Services to create or approve training materials for those caught selling tobacco products to people under the age of 21. The bill would also update the “controlled buys” procedures that allow the Department of Revenue to perform compliance checks to make sure retailers comply the age requirements for the sale of cigarettes, electronic cigarettes, and tobacco products. All provisions of the bill would become effective on July 1, 2022.

The Department of Revenue estimates that HB 2061 would decrease state revenues by \$7,205,000 in FY 2023. Of that total, the State General Fund is estimated to decrease by \$7,140,000, the State Highway Fund is estimated to decrease by \$260,000 in FY 2023, and the Cigarette and Tobacco Enforcement Fund is estimated to increase by \$195,000 in FY 2023. This bill also is estimated to decrease local sales tax revenues from lower cigarette sales; however, the specific estimate of lower local sales tax revenues was not calculated by the Department of Revenue.

The bill would also increase the biennial retail dealer’s license fee from \$25 to \$100. With that change, the Department would see an increase every other year of \$195,000 to the Cigarette and Tobacco Enforcement Fund. The Department indicates that 2,600 dealers would see a fee increase of \$75 every other year. This bill would also increase the fees for violations of the Cigarette and Tobacco Products Act; however, it is unknown what the effect on revenue collected from these increased fines would be.

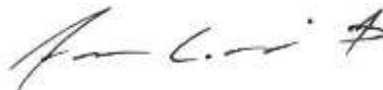
While some cities and counties in Kansas have already increased the age to purchase cigarettes, electronic cigarettes, and tobacco products from 18 to 21 years of age, the effect is unknown to the Department. To formulate these estimates, the Department of Revenue reviewed data from the Centers for Disease Control and Prevention that show an estimated 17,219 smokers aged 18-20 in Kansas (14.1 percent of that particular population are smokers), which represents approximately 4.52 percent of all adult smokers in Kansas. The Department reported annual cigarette stamp revenue of \$116.5 million in 2020 and reducing consumption by 4.52 percent would result in a reduction of approximately \$5.3 million in cigarette stamp revenue that goes to the State General Fund. The Department estimates that the \$5.3 million cigarette stamp revenue represents approximately 4.2 million packs of cigarettes no longer being sold in Kansas. The bill is also estimated to reduce tobacco products tax collections by \$400,000 and electronic cigarettes tax collections by \$100,000. There would also be a loss of an additional \$1.6 million in sales tax revenue (\$1,340,000 to the State General Fund and \$260,000 to the State Highway Fund). In the original fiscal note issued, the revenue reductions attributed to the tobacco products tax and electronic cigarettes tax were not included.

This bill would also increase the fees for violations of the Cigarette and Tobacco Products Act; however, it is unknown what the effect on revenue collected from these increased fines would be. The Department indicates that the bill would require \$7,243 from the State General Fund in FY 2023 to update forms and publications.

The bill would require the Department of Health and Human Services to create or approve training materials for those caught selling tobacco products to people under the age of 21. The Kansas Department of Health and Environment (KDHE) fiscal note assumes that this is a drafting error and KDHE would have this responsibility. KDHE indicates that if the bill requires it to create or approve training materials for those caught selling tobacco products to people under the age of 21, then it would require \$26,155 from the State General Fund in FY 2023 to contract with a part-time inspector to conduct training sessions. KDHE indicates that the Department of Revenue is currently performing these duties. KDHE indicates that there were 188 compliance violations in 2019 and assumes that the number of compliance violations would not vary substantially as a result of this bill.

The bill has the potential for increasing litigation in the courts because of the increased fine structure for violations of the Cigarette and Tobacco Products Act created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to estimate the number of additional court cases that would arise or how complex and time-consuming the cases would be. The fiscal effect would most likely be negligible and could be accommodated within the existing budget resources. The Attorney General's Office indicates that the bill would have no fiscal effect on its operations; however, they indicate that there might be additional law enforcement actions on the local level to investigate and prosecute additional violations. The Office also indicates that the bill would likely reduce sales of cigarettes in the state, which has the potential to decrease payments to Kansas under the Master Settlement Agreement. The Kansas Sentencing Commission indicates that the bill would not have an effect on prison admissions and beds. Any fiscal effect associated with HB 2061 is not reflected in *The FY 2022 Governor's Budget Report*.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Lynn Robinson, Department of Revenue
Dan Thimmesch, Health & Environment
Debbie Thomas, Judiciary
Willie Prescott, Office of the Attorney General
Scott Schultz, Sentencing Commission