

**SENATE BILL No. 455**

By Committee on Judiciary

2-11

1 AN ACT concerning the Kansas cigarette and tobacco products act;  
2 relating to definitions, licenses and permits, suspension or revocation of  
3 a license, stamps, records required of dealer, unlawful acts, infractions,  
4 penalties, contraband goods, sale of cigarettes, counterfeit cigarettes,  
5 disposition of revenues, administrative fines, application of certain laws  
6 to taxes under act; amending K.S.A. 79-3304, 79-3309, 79-3323, 79-  
7 3324a and 79-3378 and K.S.A. 2015 Supp. 50-6a07, 79-3301, 79-3302,  
8 79-3303, 79-3311, 79-3312, 79-3316, 79-3321, 79-3322, 79-3333, 79-  
9 3335, 79-3387, 79-3391, 79-3392 and 79-3393 and repealing the  
10 existing sections.  
11

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

13 New Section 1. Notwithstanding any other provision in this act, any  
14 person who purchases, possesses, uses or consumes more than 400  
15 cigarettes in this state without the required tax indicia being affixed as  
16 herein provided shall be liable for the tax imposed by this act.

17 New Sec. 2. For the purpose of determining whether a conviction is a  
18 first, second, third or subsequent conviction in sentencing under this act:

19 (a) "Conviction" includes being convicted of a violation of this act or  
20 entering into a diversion or deferred judgment agreement in lieu of further  
21 criminal proceedings on a complaint alleging a violation of this act;

22 (b) "conviction" includes being convicted of a violation of a law of  
23 another state or the United States, which prohibits the acts that this act  
24 prohibits or entering into a diversion or deferred judgment agreement in  
25 lieu of further criminal proceedings in a case alleging a violation of such  
26 law;

27 (c) only convictions occurring in the immediately preceding five  
28 years beginning on July 1, 2016, shall be taken into account, but the court  
29 may consider other prior convictions in determining the sentence to be  
30 imposed within the limits provided for a first, second, third or subsequent  
31 offense, whichever is applicable; and

32 (d) it is irrelevant whether an offense occurred before or after  
33 conviction for a previous offense.

34 Sec. 3. K.S.A. 2015 Supp. 79-3301 is hereby amended to read as  
35 follows: 79-3301. As used in K.S.A. 79-3301 et seq., and amendments  
36 thereto:

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

2 (b) *"Carrier" means one who transports cigarettes from a*  
3 *manufacturer to a wholesale dealer or from one wholesale dealer to*  
4 *another.*

5 ~~(b)~~(c) *"Carton" means the container used by the manufacturer of*  
6 *cigarettes in which no more than 10 packages of cigarettes are placed prior*  
7 *to shipment from such manufacturer.*

8 ~~(c)~~(d) *"Cigarette" means any roll for smoking, made wholly or in part*  
9 *of tobacco, irrespective of size or shape, and irrespective of tobacco being*  
10 *flavored, adulterated or mixed with any other ingredient if the wrapper is*  
11 *in greater part made of any material except tobacco.*

12 ~~(d)~~(e) *"Conspicuous location or place" means a location or place*  
13 *available to the general public.*

14 (f) *"Consumer" means the person purchasing or receiving cigarettes*  
15 *or tobacco products for final use.*

16 ~~(e)~~(g) *"Contracting entity" means any public or private person, firm*  
17 *or entity that has entered into a contract with the secretary of revenue to*  
18 *provide services.*

19 (h) *"Dealer" means any person who engages in the sale or*  
20 *manufacture of cigarettes, tobacco products or electronic cigarettes in the*  
21 *state of Kansas, and who is required to be licensed under the provisions of*  
22 *this act.*

23 ~~(h)~~(i) *"Dealer establishment" means any location or premises, other*  
24 *than vending machine locations, at or from which cigarettes, tobacco*  
25 *products or electronic cigarettes are sold, and where records are kept.*

26 ~~(g)~~(j) *"Director" means the director of taxation.*

27 ~~(h)~~(k) *"Distributor" means: (1) Any person engaged in the business of*  
28 *selling tobacco products in this state who brings, or causes to be brought,*  
29 *into this state from outside the state any tobacco products for sale;*

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

32 *(3) any person engaged in the business of selling tobacco products*  
33 *outside this state who ships or transports tobacco products to any person in*  
34 *the business of selling tobacco products in this state.*

35 ~~(i)~~(l) *"Division" means the division of taxation.*

36 ~~(j)~~(m) *"Electronic cigarette" means a battery-powered device,*  
37 *whether or not such device is shaped like a cigarette, that can provide*  
38 *inhaled doses of nicotine by delivering a vaporized solution by means of*  
39 *cartridges or other chemical delivery systems.*

40 (n) *"Importer" means the same as provided in 26 U.S.C. § 5702(l).*

41 (o) *"License" means the privilege of a licensee to sell cigarettes or*  
42 *tobacco products in the state of Kansas, and the written evidence of such*  
43 *authority or privilege as issued by the director.*

1       ~~(k)~~(p) "Licensee" means any person holding a current license issued  
2 pursuant to this act.

3       ~~(h)~~(q) "*Manufacturer*" means the same as provided in 26 U.S.C. §  
4 5702(d).

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

8       ~~(m)~~ "Meter imprints" means tax indicia applied by means of ink-  
9 printing machines.

10       ~~(n)~~(s) (1) "Package" means a container in which no more than 25  
11 individual cigarettes are wrapped and sealed by the manufacturer of  
12 cigarettes prior to shipment to a wholesale dealer;

13       (2) for the purposes of ~~subsections (u), (v) and (w)~~ of K.S.A. 79-  
14 3321(u), (v) and (w), and amendments thereto, "package" means the same  
15 as provided in 15 U.S.C. § 1332(4).

16       ~~(o)~~(t) "Person" means any individual, partnership, society,  
17 association, joint-stock company, corporation, estate, receiver, trustee,  
18 assignee, referee or any other person acting in a fiduciary or representative  
19 capacity whether appointed by a court or otherwise and any combination  
20 of individuals.

21       ~~(p)~~(u) "Received" means the coming to rest of cigarettes for sale by  
22 any dealer in the state of Kansas.

23       ~~(q)~~(v) "Retail dealer" or "*retailers*" means a person, other than a  
24 vending machine operator, in possession of cigarettes ~~or~~ tobacco products  
25 or electronic cigarettes for the purpose of sale to a consumer.

26       ~~(r)~~(w) "Sale" means any transfer of title or possession or both,  
27 exchange, barter, distribution or gift of cigarettes or tobacco products, with  
28 or without consideration.

29       ~~(s)~~(x) "Sample" means cigarettes or tobacco products distributed to  
30 members of the general public at no cost for purposes of promoting the  
31 product.

32       ~~(t)~~(y) "Self-service display" means a display that contains cigarettes  
33 or tobacco products and is located in an area openly accessible to a retail  
34 dealer's consumers, and from which such consumers can readily access  
35 cigarettes or tobacco products without the assistance of a salesperson. A  
36 display case that holds cigarettes or tobacco products behind locked doors  
37 does not constitute a self-service display.

38       ~~(u)~~(z) "Stamps" means tax indicia applied ~~either~~ by means of ~~water~~  
39 ~~applied gummed paper~~ or heat process, *pressure or any other process*  
40 *approved by the director*.

41       ~~(v)~~(aa) "Tax indicia" means visible evidence of tax payment in the  
42 form of stamps ~~or meter imprints~~.

43       ~~(w)~~(bb) "Tobacco products" means cigars, cheroots, stogies, periques;

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

7 ~~(x)~~(cc) "Tobacco—~~speciality~~ *specialty* store" means a dealer  
 8 establishment that derives at least ~~75~~ 65% of such dealer establishment's  
 9 revenue from cigarettes or tobacco products.

10 ~~(y)~~(dd) "Vending machine" means any coin operated machine,  
 11 contrivance or device, by means of which merchandise may be sold.

12 ~~(z)~~(ee) "Vending machine distributor" means any person who sells  
 13 cigarette vending machines to a vending machine operator operating  
 14 vending machines in the state of Kansas.

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

25 ~~(bb)~~(gg) "Wholesale dealer" means any person who sells cigarettes to  
 26 other wholesale dealers, retail dealers, vending machine operators and  
 27 manufacturer's salespersons for the purpose of resale in the state of  
 28 Kansas.

29 ~~(ee)~~(hh) "Wholesale sales price" means the original net invoice price  
 30 for which a manufacturer sells a tobacco product to a distributor, as shown  
 31 by the manufacturer's original invoice.

32 ~~(dd)~~ "Importer" means the same as provided in 26 U.S.C. § 5702(i).

33 ~~(ee)~~ "Manufacturer" means the same as provided in 26 U.S.C. §  
 34 5702(d).

35 ~~(ff)~~ "Electronic cigarette" means a battery-powered device, whether  
 36 or not such device is shaped like a cigarette, that can provide inhaled doses  
 37 of nicotine by delivering a vaporized solution by means of cartridges or  
 38 other chemical delivery systems.

39 Sec. 4. K.S.A. 2015 Supp. 79-3302 is hereby amended to read as  
 40 follows: 79-3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309,  
 41 79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-  
 42 3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3371, 79-3373,  
 43 79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-3388, 79-

1 3391, 79-3392, 79-3393, 79-3394 and K.S.A. 2015 Supp. 79-3395 through  
2 79-3398, *section 1 and section 2*, and amendments thereto, shall be known  
3 and may be cited as the Kansas cigarette and tobacco products act.

4 (b) It is the purpose and intent of this act to regulate the sale of  
5 cigarettes and tobacco products in this state and to impose a tax thereon.

6 Sec. 5. K.S.A. 2015 Supp. 79-3303 is hereby amended to read as  
7 follows: 79-3303. (a) Each person engaged in the business of selling  
8 cigarettes or electronic cigarettes in the state of Kansas and each vending  
9 machine distributor shall obtain a license as provided by this act. A  
10 separate application, license and fee is required for each dealer  
11 establishment owned or operated by a dealer. A vending machine operator  
12 is required to obtain a vending machine operator's master license and, in  
13 addition, a separate permit for each vending machine operated by the  
14 operator. A vending machine operator may submit one application for the  
15 vending machine operator's master license and all permits for vending  
16 machines operated by the operator. The license shall be displayed in the  
17 dealer establishment and the vending machine permit shall remain securely  
18 and visibly attached to the vending machine and contain such information  
19 as the director may require. Any vending machine found without such  
20 permit attached to the machine shall be sealed by an agent of the director  
21 and such seal shall be removed only by an agent of the director after  
22 payment of the permit fee and the penalties provided by this act.

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

37 (c) A vending machine operator, in the course of business as a  
38 vending machine operator, may dispose of or sell vending machines  
39 without securing a license to sell vending machines. The vending machine  
40 operator may move vending machines from one location to another and, if  
41 a vending machine becomes inoperative or is disposed of, the permit for  
42 such machine may be transferred to another machine. A vending machine  
43 operator, within 10 days, shall notify the director of the brand name and

1 serial number of vending machines that become inoperative or that the  
2 operator disposes of, sells, acquires or brings into service in this state as  
3 additional machines.

4 (d) The key to the lower or storage compartment of a vending  
5 machine shall remain only in the possession of the vending machine  
6 operator or the operator's authorized agent. All services connected with the  
7 operation of a vending machine shall be performed by the vending  
8 machine operator or the operator's authorized agent. All vending machines  
9 shall be subject to inspection by the director or the director's authorized  
10 agents. No permit shall be issued for a vending machine unless it is  
11 constructed so that at least one package of each vertical column of  
12 cigarettes located therein is visible showing tax indicia.

13 (e) All vending machines operated on military installations shall have  
14 a permit affixed to the machines and the cigarettes shall show tax indicia  
15 of the Kansas tax.

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

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

35 Sec. 6. K.S.A. 79-3304 is hereby amended to read as follows: 79-  
36 3304. (a) The license fee for each biennium or portion thereof shall be as  
37 follows:

- 38 (1) For retail dealer's license, \$25 for each dealer establishment.
- 39 (2) For retailer's license on railroad or sleeping cars, \$50. Only one  
40 retail license need be obtained by each railroad or sleeping car company to  
41 permit the sale of cigarettes on any or all of its cars within the state.
- 42 (3) For show, carnival or catering license, \$50 for each concession.
- 43 (4) For resident retail dealer's temporary license for a place of

1 business of a temporary nature, \$2 for each seven days or portion thereof.

2 (5) For wholesale dealer's license, \$50 for each dealer establishment.  
3 No wholesale dealer's license shall be issued until the person applying  
4 therefor has filed with the director a bond payable to the state of Kansas in  
5 such an amount as shall be fixed by the director, but in no event less than  
6 \$1,000, with a corporate surety authorized to do business in the state of  
7 Kansas, and approved by the director. If a wholesale dealer is unable to  
8 secure a corporate surety bond, the director may issue a license to such  
9 wholesale dealer, upon the wholesale dealer furnishing a personal bond  
10 meeting the approval of the director. Such bond shall be conditioned on the  
11 wholesale dealer's compliance with all the provisions of this act during the  
12 license period.

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

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

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

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

22 ~~(b) An application for any license required under the provisions of~~  
23 ~~this act may be refused to: (1) A person who is not of good character and~~  
24 ~~reputation in the community in which such person resides; or (2) a person~~  
25 ~~who 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 products and who has not completed the~~  
28 ~~sentence, parole, probation or assignment to a community correctional~~  
29 ~~services program imposed for any such conviction within two years~~  
30 ~~immediately preceding the date of making application for any of such~~  
31 ~~licenses. The director shall not issue or renew a license to any person~~  
32 ~~who:~~

33 (1) *Has been convicted of a felony under the laws of this state or any*  
34 *other state or the United States;*

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

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

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

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

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

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

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

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

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

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

9       (C) *would not qualify as a person under this act; or*

10      (10) *is a limited liability company in which any officer, manager or*  
 11 *director thereof, or any member owning in the aggregate more than 5% of*  
 12 *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 which:*

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

16      (B) *has been convicted of a tax crime under this act; or*

17      (C) *would not qualify as a person under this act.*

18      Sec. 7. K.S.A. 79-3309 is hereby amended to read as follows: 79-  
 19 3309. ~~(a) Whenever the director has reason to believe that any person~~  
 20 ~~licensed under this act has violated any of the provisions of this act, The~~  
 21 ~~director shall notify the person, by certified mail of, the director's intention~~  
 22 ~~to suspend or revoke the person's license or licenses of any person~~  
 23 ~~licensed under this act whenever the director has reason to believe such~~  
 24 ~~person has violated any provision of this act in any of the following ways:~~

25      (1) *Has been convicted of a felony under the laws of this state or any*  
 26 *other state or the United States;*

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

28      (3) *has had a cigarette or tobacco license revoked in this state or any*  
 29 *other state;*

30      (4) *is not at least 18 years of age;*

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

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

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

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

37      (9) *in the case of a corporation, any officer, manager or director*  
 38 *thereof, or any stockholder owning in the aggregate more than 5% of the*  
 39 *common or preferred stock of such corporation, has been an officer,*  
 40 *manager or director or stockholder owning in the aggregate more than*  
 41 *5% of the common or preferred stock, of a corporation which:*

42      (A) *Has had a license revoked under this act;*

43      (B) *has been convicted of a tax crime under this act; or*



1 (C) would not qualify as a person under this act; or

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

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

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

9 (C) would not qualify as a person under this act.

10 (b) Within 10 days after the mailing of the notice, the person may  
11 request a hearing in writing before the director. The hearing shall be  
12 conducted in accordance with the provisions of the Kansas administrative  
13 procedure act. If, after such hearing, it appears to the satisfaction of the  
14 director that the person has violated any of the provisions of this act, the  
15 director is hereby authorized and empowered to suspend or revoke the  
16 person's license or licenses and may in addition deny the application of the  
17 person for a license or licenses for a portion of the succeeding calendar  
18 year for such period as the director determines is necessary, but in no case  
19 for a period ending more than one year following the date upon which the  
20 license or licenses were suspended or revoked. The suspension or  
21 revocation of a vending machine operator's master license shall suspend or  
22 revoke all vending machine permits issued to the vending machine  
23 operator for the term of the license suspension or revocation.

24 (b)(c) If a person continues to engage in activities requiring a license  
25 under this act after having notice or knowledge of the suspension or  
26 revocation of the person's license or licenses or after becoming more than  
27 10 days delinquent in *filing a bond payable to the state of Kansas as*  
28 *required by the director*, payment of any *fine*, tax, penalty or interest  
29 imposed pursuant to this act, the state shall be entitled, in any proceedings  
30 brought for such purposes, to have an order and judgment restraining and  
31 enjoining such unlawful sale and no bond shall be required for the  
32 issuance of any such restraining order or injunction.

33 Sec. 8. K.S.A. 2015 Supp. 79-3311 is hereby amended to read as  
34 follows: 79-3311. The director shall design and designate indicia of tax  
35 payment to be affixed to each package of cigarettes as provided by this act.  
36 ~~The director shall sell water applied stamps only to licensed wholesale~~  
37 ~~dealers in the amounts of 1,000 or multiples thereof. Stamps applied by the~~  
38 ~~heat process shall be sold only in amounts of 30,000 or multiples thereof,~~  
39 ~~except that such stamps which are suitable for packages containing 25~~  
40 ~~cigarettes each shall be sold in amounts prescribed by the director. Meter~~  
41 ~~imprints shall be sold only in amounts of 10,000 or multiples thereof.~~  
42 ~~Water applied stamps in amounts of 10,000 or multiples thereof and~~  
43 ~~Stamps applied by the heat process and meter imprints shall be supplied to~~

1 wholesale dealers *in good standing with the director at the time of*  
2 *purchase* at a discount of 0.55% on and after July 1, 2015, and thereafter,  
3 from the face value thereof, and shall be deducted at the time of purchase  
4 or from the remittance therefor as hereinafter provided. Any wholesale  
5 cigarette dealer who shall file with the director a bond, of acceptable form,  
6 payable to the state of Kansas with a corporate surety authorized to do  
7 business in Kansas, shall be permitted to purchase stamps, and remit  
8 therefor to the director within 30 days after each such purchase, up to a  
9 maximum outstanding at any one time of 85% of the amount of the bond.  
10 Failure on the part of any wholesale dealer to remit as herein specified  
11 shall be cause for forfeiture of such dealer's bond. All revenue received  
12 from the sale of such stamps ~~or meter imprints~~ shall be remitted to the  
13 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
14 amendments thereto. Upon receipt of each such remittance, the state  
15 treasurer shall deposit the entire amount in the state treasury. The state  
16 treasurer shall first credit such amount as the director shall order to the  
17 cigarette tax refund fund and shall credit the remaining balance to the state  
18 general fund. A refund fund designated the cigarette tax refund fund not to  
19 exceed \$10,000 at any time shall be set apart and maintained by the  
20 director from taxes collected under this act and held by the state treasurer  
21 for prompt payment of all refunds authorized by this act. Such cigarette tax  
22 refund fund shall be in such amount as the director shall determine is  
23 necessary to meet current refunding requirements under this act.

24 The wholesale cigarette dealer shall affix to each package of cigarettes  
25 stamps ~~or tax meter imprints~~ required by this act prior to the sale of  
26 cigarettes to any person, by such dealer or such dealer's agent or agents,  
27 within the state of Kansas. The director is empowered to authorize  
28 wholesale dealers to affix revenue tax ~~meter imprints~~ stamps upon original  
29 packages of cigarettes and is charged with the duty of regulating the use of  
30 tax ~~meters~~ stamps to secure payment of the proper taxes. No wholesale  
31 dealer shall affix revenue tax ~~meter imprints~~ stamps to original packages  
32 of cigarettes without first having obtained permission from the director to  
33 employ this method of affixation. If the director approves the wholesale  
34 dealer's application for permission to affix revenue tax ~~meter imprints~~  
35 stamps to original packages of cigarettes, the director shall require such  
36 dealer to file a suitable bond payable to the state of Kansas executed by a  
37 corporate surety authorized to do business in Kansas. The director may, to  
38 assure the proper collection of taxes imposed by the act, revoke or suspend  
39 the privilege of ~~imprinting tax meter imprints~~ affixing tax stamps upon  
40 original packages of cigarettes. ~~All meters shall be under the direct control~~  
41 ~~of the director, and all transfer assignments or anything pertaining thereto~~  
42 ~~must first be authorized by the director. All inks used in the stamping of~~  
43 ~~cigarettes must be of a special type devised for use in connection with the~~

1 ~~machine employed and approved by the director. All repairs to the meter~~  
2 ~~are strictly prohibited except by a duly authorized representative of the~~  
3 ~~director. Requests for service shall be directed to the director. Meter~~  
4 ~~machine ink imprints on all packages shall be clear and legible. If a~~  
5 ~~wholesale dealer continuously issues illegible cigarette tax meter imprints,~~  
6 ~~it shall be considered sufficient cause for revocation of such dealer's~~  
7 ~~permit to use a cigarette tax meter.~~

8 A licensed wholesale dealer may, for the purpose of sale in another  
9 state, transport cigarettes not bearing Kansas indicia of tax payment  
10 through the state of Kansas provided such cigarettes are contained in  
11 sealed and original cartons.

12 Sec. 9. K.S.A. 2015 Supp. 79-3312 is hereby amended to read as  
13 follows: 79-3312. The director shall redeem any unused stamps ~~or meter~~  
14 ~~imprints~~ that any wholesale dealer presents for redemption within six  
15 months after the purchase thereof, at the face value less 0.55% thereof if  
16 such stamps ~~or meter imprints~~ have been purchased from the director *and*  
17 *are whole, complete stamps*. The director shall prepare a voucher showing  
18 the net amount of such refund due, and the director of accounts and reports  
19 shall draw a warrant on the state treasurer for the same. Wholesale dealers  
20 shall be entitled to a refund of the tax paid on cigarettes which have  
21 become unfit for sale upon proof thereof less 0.55% of such tax.

22 Sec. 10. K.S.A. 2015 Supp. 79-3316 is hereby amended to read as  
23 follows: 79-3316. (a) All purchases of cigarettes by any dealer shall be  
24 evidenced by an invoice, a duplicate of which shall be furnished the party  
25 receiving the cigarettes from any dealer.

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

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

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

1 business in the state, at a central location of the dealer.

2 (e) Every wholesale dealer shall report to the director on or before the  
3 10<sup>th</sup> day of each month, stating the amount of cigarettes sold during the  
4 preceding month and the amount of all cigarettes returned to the  
5 manufacturer. Any wholesale dealer who refuses any shipment or part of a  
6 shipment of unstamped cigarettes or has a shortage in the shipment of  
7 cigarettes consigned to such dealer shall in the monthly report next  
8 following the refusal or shortage report to the director the number of  
9 packages or cartons of cigarettes refused or short and the name of the  
10 carrier from whom the cigarettes were refused or shortage occurred. Such  
11 report shall be ~~made on forms provided~~ *filed electronically in the manner*  
12 *prescribed* by the director ~~and shall contain such other information as the~~  
13 ~~director may require.~~

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

17 Sec. 11. K.S.A. 2015 Supp. 79-3321 is hereby amended to read as  
18 follows: 79-3321. It shall be unlawful for any person:

19 (a) ~~To possess,~~ Except as otherwise specifically provided by this act,  
20 *to possess, sell, transport, import, distribute, wholesale or manufacture*  
21 *more than 200 1,000* cigarettes without the required tax indicia being  
22 affixed as herein provided.

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

27 (c) To prevent the director or any officer or agent authorized by law,  
28 to make a full inspection for the purpose of this act, of any place of  
29 business and all premises connected thereto where cigarettes are or may be  
30 manufactured, sold, distributed, or given away.

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

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

37 (f) Knowingly to make, use, or present to the director or agent thereof  
38 any falsified invoice or falsely state the nature or quantity of the goods  
39 invoiced.

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

43 (h) To wholesale cigarettes to any person, other than a manufacturer's

1 salesperson, retail dealer or wholesaler who is:

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

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

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

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

12 (k) To vend small cigars, or any products so wrapped as to be  
13 confused with cigarettes, from a machine vending cigarettes, nor shall a  
14 vending machine be so built to vend cigars or products that may be  
15 confused with cigarettes, be attached to a cigarette vending machine.

16 (l) To sell, furnish or distribute cigarettes, electronic cigarettes or  
17 tobacco products to any person under 18 years of age.

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

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

22 (o) To sell cigarettes to a retailer or at retail, *or to transport or allow*  
23 *cigarettes to be transported into this state* that do not bear Kansas tax  
24 indicia or upon which the Kansas cigarette tax has not been paid.

25 (p) To sell cigarettes without having a license for such sale as  
26 provided herein.

27 (q) To sell a vending machine without having a vending machine  
28 distributor's license.

29 (r) Who is a retail dealer to fail to post and maintain in a conspicuous  
30 place in the dealer's establishment the following notice: "By law,  
31 cigarettes, electronic cigarettes and tobacco products may be sold only to  
32 persons 18 years of age and older."

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

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

38 (2) in or at a retail location where cigarettes and tobacco products are  
39 the primary commodity offered for sale at retail; or

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

42 (t) To sell cigarettes, electronic cigarettes or tobacco products by  
43 means of a vending machine, *including vending machines that sell*

1 *packaged, single cigarettes*, in any establishment, or portion of an  
 2 establishment, which is open to minors, except that this subsection shall  
 3 not apply to:

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

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

12 ~~(3) a vending machine which has a lock-out device which is~~  
 13 ~~inoperable in the continuous standby mode and which requires manual~~  
 14 ~~activation by the person supervising the operation of the machine each~~  
 15 ~~time cigarettes or tobacco products are purchased from the machine.~~

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

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

20 (2) a self-service display that is located in a tobacco specialty store;  
 21 *or*

22 (3) *a self-service display located in a facility where the retailer*  
 23 *ensures that no person younger than 18 years of age is present or*  
 24 *permitted to enter at any time.*

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

28 (1) Any cigarettes the package of which: (A) Bears any statement,  
 29 label, stamp, sticker or notice indicating that the manufacturer did not  
 30 intend the cigarettes to be sold, distributed or used in the United States,  
 31 including but not limited to, labels stating "For Export Only," "U.S. Tax-  
 32 Exempt," "For Use Outside U.S." or similar wording; or (B) does not  
 33 comply with: (i) All requirements imposed by or pursuant to federal law  
 34 regarding warnings and other information on packages of cigarettes  
 35 manufactured, packaged or imported for sale, distribution or use in the  
 36 United States, including but not limited to the precise warning labels  
 37 specified in the federal cigarette labeling and advertising act, 15 U.S.C. §  
 38 1333; and (ii) all federal trademark and copyright laws;

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

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

1 United States; or

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

7 (w) To alter the package of any cigarettes, prior to sale or distribution  
8 to the ultimate consumer, so as to remove, conceal or obscure:

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

11 (2) any health warning that is not specified in, or does not conform  
12 with, the requirements of, the federal cigarette labeling and advertising act,  
13 15 U.S.C. § 1333.

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

17 (y) *To possess, sell, transport, import, distribute, wholesale or*  
18 *manufacture cigarettes or tobacco products in violation of K.S.A. 50-6a01*  
19 *et seq., and amendments thereto.*

20 (z) *To sell cigarettes or tobacco products in any manner that is not a*  
21 *direct, face-to-face exchange between the retailer and the consumer,*  
22 *except: (1) Mail-order sales, which shall not include mail-order*  
23 *redemption coupons and distribution of free samples through the mail; (2)*  
24 *vending machines as provided in subsection (t); and (3) self-service*  
25 *displays as provided in subsection (u).*

26 Sec. 12. K.S.A. 2015 Supp. 79-3322 is hereby amended to read as  
27 follows: 79-3322. ~~(a) Any person who violates any of the provisions of the~~  
28 ~~Kansas cigarette and tobacco products act, Except as otherwise provided in~~  
29 ~~this act, shall be guilty of a violation of K.S.A. 79-3321 (a), (c), (d), (f),~~  
30 ~~(h), (i), (j), (v), (w), (x) or (y), and amendments thereto, is a:~~

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

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

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

40 (b) *Except as provided in subsections (a), (c), or (d), a violation of*  
41 *K.S.A. 79-3321, and amendments thereto, is a class B misdemeanor and*  
42 *upon conviction, an offender shall be punished by a fine of* ~~not less~~  
43 ~~than \$500 nor more than \$1,000 or imprisonment~~ *imprisoned for not more*

1 than one year, or ~~by~~ both *for each separate violation*. In addition thereto  
2 any person found liable for any license fee or tax imposed under the  
3 provisions of this act shall be personally liable for such license fee or tax  
4 plus a penalty in an amount equal to 100% thereof.

5 ~~(b)~~(c) (1) It is a class B person misdemeanor punishable by a  
6 minimum fine of \$200 for any person to: (A) Sell, give or furnish any  
7 cigarettes or tobacco products to any person under 18 years of age; or (B)  
8 buy any cigarettes or tobacco products for any person under 18 years of  
9 age.

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

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

29 (4) For purposes of this subsection the person who violates this  
30 subsection shall be the individual directly selling, furnishing or  
31 distributing the cigarettes or tobacco products to any person under 18 years  
32 of age or the retail dealer who has actual knowledge of such selling,  
33 furnishing or distributing by such individual or both.

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

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

43 (f) *The secretary of revenue or the secretary's authorized agent, may*



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

20 Sec. 13. K.S.A. 79-3323 is hereby amended to read as follows: 79-  
 21 3323. (a) The following are declared to be common nuisances and  
 22 contraband:

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

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

29 (A) *the governor and the Prairie Band Potawatomi Nation and*  
 30 *approved by the legislature; or (B) the governor and the Iowa Tribe of*  
 31 *Kansas and Nebraska and approved by the legislature;*

32 ~~(4)(3)~~ all cigarettes or tobacco products in the possession of a minor;  
 33 ~~and~~

34 (4) *cigarettes or tobacco products in violation of K.S.A. 50-6a01 et*  
 35 *seq., and amendments thereto; and*

36 ~~(3)(5)~~ all property, ~~other than~~ *including* vehicles, used in the ~~retail~~  
 37 *sale, transportation, distribution, importation, wholesaling or manufacture*  
 38 *of unstamped packages of cigarettes.*

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

42 (b) Any cigarettes or property constituting a common nuisance and  
 43 contraband as provided by this section may be seized by the director or the

1 director's authorized agent or any duly constituted peace officer with or  
2 without process or warrant and shall be subject to forfeiture as provided in  
3 this act. The party making the seizure shall deliver to the owner of the  
4 property and to the person or persons found in possession of the property a  
5 receipt stating from whom the property was seized, the place of seizure  
6 and a description and the brand of the property seized. A duplicate of the  
7 receipt shall be filed in the office of the director and shall be open for  
8 public inspection.

9 Sec. 14. K.S.A. 79-3324a is hereby amended to read as follows: 79-  
10 3324a. (a) *All of the cigarettes and property seized by the director or the*  
11 *director's authorized agent shall first be listed and appraised by the*  
12 *person making the seizure, and turned over to the director and a receipt*  
13 *taken. The person making the seizure shall immediately make and file a*  
14 *written report showing the name of the person making the seizure, the*  
15 *place where, and the person from whom the property was seized, and*  
16 *inventory and appraisal thereof, at the usual and ordinary wholesale price*  
17 *of the articles received by the director of taxation. The director shall*  
18 *institute forfeiture proceedings within the department of revenue in the*  
19 *name of the state of Kansas, as plaintiff, and in the name of the owner or*  
20 *person in possession, as defendant, if known, and if unknown, in the name*  
21 *of the property seized. The director shall issue notice to the owner or*  
22 *person in whose possession such property was found, directing such*  
23 *person to answer within 10 days. The forfeiture hearing under this*  
24 *subsection shall be conducted in accordance with the provisions of the*  
25 *Kansas administrative procedure act. If the property is declared forfeited*  
26 *and ordered sold, notice of the sale shall be posted in the official*  
27 *newspaper of Shawnee county, Kansas, not less than 10 days before the*  
28 *date of the sale, except that cigarettes shall be withheld from public sale*  
29 *and shall be sold by the director of taxation to the manufacturer of such*  
30 *cigarettes or to a licensed distributor and the purchase price shall be paid*  
31 *to the director of taxation and treated as cigarette tax collected. After*  
32 *deducting all costs incurred in the seizure, forfeiture and sale of all*  
33 *contraband, including cigarettes and property seized by the director or by*  
34 *the director's authorized agent, pursuant to this subsection, all such*  
35 *proceeds shall be remitted to the state treasurer in accordance with the*  
36 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*  
37 *each such remittance, the state treasurer shall deposit the entire amount in*  
38 *the state treasury to the credit of the cigarette and tobacco products*  
39 *regulation fund created by K.S.A. 79-3391, and amendments thereto, and*  
40 *such proceeds shall be used exclusively for cigarette and tobacco products*  
41 *regulation and enforcement, and not for any other purpose.*

42 (b) *All of the cigarettes and property seized by officers of the state of*  
43 *Kansas, other than the director or the director's authorized agent, shall*

1 first be listed and appraised by the officer making the seizure, and turned  
2 over to the county sheriff of the county in which the seizure is made and a  
3 receipt ~~therefor~~ taken. The person making the seizure shall immediately  
4 make and file a written report ~~thereof~~ showing the name of the person  
5 making the seizure, the place where, and the person from whom the  
6 property was seized, and inventory and ~~appraisement~~ *appraisal* thereof, at  
7 the usual and ordinary wholesale price of the articles received to the  
8 director of taxation. The county or district attorney of the county in which  
9 the seizures are made may, at the request of the director, file in the district  
10 court forfeiture proceedings in the name of the state of Kansas, as plaintiff,  
11 and in the name of the owner or person in possession, as defendant, if  
12 known, and if unknown in the name of the property seized. The clerk of  
13 the court shall issue summons to the owner or person in whose possession  
14 such property was found, directing ~~him or her~~ *such person* to answer  
15 within ~~ten (10)~~ days. If the property is declared forfeited and ordered sold,  
16 notice of the sale shall be posted in five (5) public places in the county not  
17 less than ~~ten (10)~~ days before the date of the sale, except that cigarettes  
18 shall be withheld from public sale and shall be sold by the director of  
19 taxation to the manufacturer of such cigarettes or to a licensed distributor  
20 and the purchase price shall be paid to the director of taxation and treated  
21 as cigarette tax collected. The proceeds of any public sale shall be  
22 deposited with the clerk of the court, who shall, after deducting costs,  
23 including the costs of the sale, pay the balance to the treasurer of the  
24 county wherein ~~said~~ *the* sale is constructed. ~~Said~~ *The* treasurer shall credit  
25 the entire amount ~~thereof~~ to the county general fund.

26 (b)(c) The seizure and sale of the cigarettes shall not relieve the  
27 person from whom the cigarettes were seized from any prosecution on the  
28 payment of any penalties provided for under the provisions of K.S.A. 79-  
29 3301 et seq., and amendments thereto; nor shall it relieve the purchaser  
30 ~~thereof~~ from any payment of the regular cigarette tax and the placing of  
31 proper stamps thereon before making any sale of the cigarettes or the  
32 personal consumption of the same.

33 (e)(d) The forfeiture provisions of this act shall only apply to persons  
34 having possession of or transporting cigarettes with intent to barter, sell or  
35 give away the same. The possession of cigarettes in any quantity of more  
36 than ~~two (2) five~~ cartons, ~~twenty (20) 50~~ packages or ~~four hundred (400)~~  
37 *1,000* cigarettes, not bearing indicia of tax payment as required by the  
38 provisions of K.S.A. 79-3301 et seq., and amendments thereto, shall be  
39 prima facie evidence of intent to barter, sell or give away the cigarettes in  
40 violation of the provisions of K.S.A. 79-3301 et seq., and amendments  
41 thereto.

42 Sec. 15. K.S.A. 2015 Supp. 79-3333 is hereby amended to read as  
43 follows: 79-3333. (a) Each person engaged in the business of selling

1 cigarettes *or tobacco products* to persons who reside in Kansas shall  
2 obtain a license as provided by the Kansas cigarette and tobacco products  
3 act.

4 (b) All cigarettes sold to persons who reside in Kansas shall have a  
5 valid Kansas cigarette tax stamp affixed to each package.

6 (c) All retail cigarette *or tobacco product* dealers, whether located in  
7 or outside the state of Kansas, shall have a registration certificate as  
8 provided in K.S.A. 79-3608, and amendments thereto, and be subject to  
9 the provisions of the Kansas retailers' sales tax act. Each ~~licensed retail~~  
10 ~~cigarette dealer licensee~~ *licensee or other person* selling cigarettes *or tobacco*  
11 *products* over the internet, telephone or other mail order transaction shall  
12 file all sales tax returns and remit taxes owed pursuant to K.S.A. 79-3607,  
13 and amendments thereto.

14 (d) All sales transactions over the internet, telephone or other mail  
15 order transaction shall not be completed, unless, before each delivery of  
16 cigarettes *or tobacco products* is made, whether through the mail, through  
17 a transportation company or any other delivery system, the seller has  
18 obtained from the purchaser a certification that includes a reliable  
19 confirmation that the purchaser is at least the legal minimum age to  
20 purchase *cigarettes or tobacco products*; that the cigarettes *or tobacco*  
21 *products* purchased are not intended for consumption by an individual who  
22 is younger than the legal minimum age to purchase cigarettes *or tobacco*  
23 *products*; and a written statement signed by the purchaser that certifies the  
24 purchaser's address and that the purchaser is at least the minimum legal  
25 age to purchase cigarettes *or tobacco products*. Such statement shall also  
26 confirm: (1) That the purchaser understands that signing another person's  
27 name to such certification is illegal; (2) that the sale of cigarettes *or*  
28 *tobacco products* to individuals under the legal minimum purchase age is  
29 illegal; and (3) that the purchase of cigarettes *or tobacco products* by  
30 individuals under the legal minimum purchase age is illegal under the laws  
31 of Kansas.

32 (e) The retail cigarette *or tobacco products* dealer shall verify the  
33 information contained in the certification provided by the purchaser  
34 against a commercially available database of governmental records, or  
35 obtain a photocopy or other image of the valid, government-issued  
36 identification stating the date of birth or age of the purchaser.

37 (f) All invoices, bills of lading, sales receipts and any other document  
38 related to the sale of cigarettes *or tobacco products* through the internet or  
39 other mail order transaction shall contain the current, valid retailer Kansas  
40 cigarette *or tobacco products* dealer license number, Kansas sales tax  
41 registration number, business name and address of the seller.

42 (g) All packages of cigarettes shipped from a cigarette dealer to  
43 purchasers who reside in Kansas shall clearly print the package with the

1 word "CIGARETTES" on all sides of the package. In addition, such  
 2 package shall contain an externally visible and easily legible notice located  
 3 on the same side of the package as the address to which the package is  
 4 delivered as follows:

5 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM  
 6 A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU  
 7 RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL  
 8 LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX  
 9 COLLECTION AGENCY, INCLUDING YOUR NAME AND  
 10 ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL  
 11 APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."

12 ~~(h) The provisions of this section shall not apply to tobacco products,~~  
 13 ~~as defined in K.S.A. 79-3301, and amendments thereto. Except as~~  
 14 ~~otherwise provided by this act, a violation of subsection (a), (d) or (e) is a:~~

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

18 (2) *level 6, nonperson felony for a second violation, and the offender*  
 19 *shall be fined not less than \$50,000 nor more than \$100,000 upon a*  
 20 *second conviction; and*

21 (3) *level 6, nonperson felony for a third and all subsequent*  
 22 *violations, and the offender shall be fined \$100,000 upon a third and all*  
 23 *subsequent convictions.*

24 ~~(i) Violation of the provisions of subsection (a), (d) or (e) is a severity~~  
 25 ~~level 8, nonperson felony. Each separate violation of any provision of this~~  
 26 ~~section, other than the provisions of subsection (a), (d) or (e) is shall be a~~  
 27 ~~class B misdemeanor, and upon conviction shall be punishable by a fine of~~  
 28 ~~not the offender shall be fined not less than \$500 nor more than \$1,000 or~~  
 29 ~~imprisonment for not more than one year, or both.~~

30 (j) *The secretary of revenue or the secretary's authorized agent, may*  
 31 *refer such evidence as may be available concerning violations of this act*  
 32 *or any rules and regulations or order hereunder to the attorney general or*  
 33 *the proper county or district attorney, who may in the prosecutor's*  
 34 *discretion, with or without such a reference, institute the appropriate*  
 35 *criminal proceedings under this act. Upon receipt of such reference, the*  
 36 *attorney general or the county attorney or district attorney may request*  
 37 *that a duly employed attorney of the department of revenue prosecute or*  
 38 *assist in the prosecution of such violation or violations on behalf of the*  
 39 *state. Upon approval of the secretary or the secretary's authorized agent,*  
 40 *such employee shall be appointed a special prosecutor for the attorney*  
 41 *general or the county attorney or district attorney to serve without*  
 42 *compensation from the attorney general or the county attorney or district*  
 43 *attorney. Such special prosecutor shall have all the powers and duties*

1 *prescribed by law for assistant attorneys general or assistant county or*  
2 *district attorneys and such other powers and duties as are lawfully*  
3 *delegated to such special prosecutor by the attorney general or the county*  
4 *attorney or district attorney. If an attorney employed by the secretary or*  
5 *secretary's authorized agent acts as a special prosecutor, the secretary*  
6 *may pay extradition and witness expenses associated with the case.*

7 ~~(j)~~(k) *The provisions of this section shall be part of and supplemental*  
8 *to the Kansas cigarette and tobacco products act.*

9 Sec. 16. K.S.A. 2015 Supp. 79-3335 is hereby amended to read as  
10 follows: 79-3335. (a) Counterfeit cigarettes shall be seized by the director.  
11 For purposes of this section, counterfeit cigarettes includes cigarettes  
12 *manufactured, sold, transported, imported, distributed or possessed in this*  
13 *state with intent to deceive consumers and to avoid the provisions of this*  
14 *act, and also includes cigarettes that have false manufacturing labels or*  
15 *packages of cigarettes bearing counterfeit tax stamps. It shall be unlawful*  
16 *for any person to sell, transport, import, distribute, wholesale or*  
17 *manufacture counterfeit cigarettes.*

18 (b) *Except as otherwise provided by this act, a violation of the*  
19 *provisions of this subsection shall be a:*

20 (1) *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*  
22 *conviction;*

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

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

29 (c) *The secretary of revenue, or the secretary's authorized agent, may*  
30 *refer such evidence as may be available concerning violations of this act*  
31 *or any rules and regulations or order hereunder to the attorney general or*  
32 *the proper county or district attorney, who may in the prosecutor's*  
33 *discretion, with or without such a reference, institute the appropriate*  
34 *criminal proceedings under this act. Upon receipt of such reference, the*  
35 *attorney general or the county attorney or district attorney may request*  
36 *that a duly employed attorney of the department of revenue prosecute or*  
37 *assist in the prosecution of such violation or violations on behalf of the*  
38 *state. Upon approval of the secretary or the secretary's authorized agent,*  
39 *such employee shall be appointed a special prosecutor for the attorney*  
40 *general or the county attorney or district attorney to serve without*  
41 *compensation from the attorney general or the county attorney or district*  
42 *attorney. Such special prosecutor shall have all the powers and duties*  
43 *prescribed by law for assistant attorneys general or assistant county or*

1 *district attorneys and such other powers and duties as are lawfully*  
 2 *delegated to such special prosecutor by the attorney general or the county*  
 3 *attorney or district attorney. If an attorney employed by the secretary or*  
 4 *secretary's authorized agent acts as a special prosecutor, the secretary*  
 5 *may pay extradition and witness expenses associated with the case.*

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

8 Sec. 17. K.S.A. 79-3378 is hereby amended to read as follows: 79-  
 9 3378. (a) On or before the ~~twentieth~~ 20<sup>th</sup> day of each calendar month  
 10 every distributor with a place of business in this state shall file a return  
 11 with the director showing the quantity and wholesale sales price of each  
 12 tobacco product: (1) Brought, or caused to be brought, into this state for  
 13 sale; and (2) made, manufactured, or fabricated in this state for sale in this  
 14 state during the preceding calendar month. Every licensed distributor  
 15 outside this state shall in like manner file a return showing the quantity and  
 16 wholesale sales price of each tobacco product shipped or transported to  
 17 retailers in this state to be sold by those retailers, during the preceding  
 18 calendar month. Returns shall be made ~~upon forms furnished and~~  
 19 *electronically in the manner* prescribed by the director. Each return shall  
 20 be accompanied by a remittance for the full tax liability shown therein,  
 21 ~~less four percent (4%)~~ of such liability as compensation to reimburse the  
 22 distributor for ~~his or her~~ *such distributor's* expenses incurred in the  
 23 administration of this act.

24 (b) As soon as practicable after any return is filed, the director shall  
 25 examine the return. If the director finds that, in ~~his or her~~ *the director's*  
 26 judgment, the return is incorrect and any amount of tax is due from the  
 27 distributor and unpaid, ~~he or she~~ *the director* shall notify the distributor of  
 28 the deficiency. If a deficiency disclosed by the director's examination  
 29 cannot be allocated by ~~him~~ *the director* to a particular month or months, ~~he~~  
 30 ~~or she~~ *the director* may nevertheless notify the distributor that a deficiency  
 31 exists and state the amount of tax due. Such notice shall be given to the  
 32 distributor by registered or certified mail.

33 Sec. 18. K.S.A. 2015 Supp. 79-3387 is hereby amended to read as  
 34 follows: 79-3387. (a) All revenue collected or received by the director  
 35 from taxes imposed by this act shall be remitted to the state treasurer in  
 36 accordance with the provisions of K.S.A. 75-4215, and amendments  
 37 thereto. Upon receipt of each such remittance, the state treasurer shall  
 38 deposit the entire amount in the state treasury to the credit of the state  
 39 general fund.

40 (b) All moneys received from license fees, *forfeiture proceeds under*  
 41 *K.S.A. 79-3324a, and amendments thereto, and fines* imposed by this act  
 42 shall be collected by the director and shall be remitted to the state treasurer  
 43 in accordance with the provisions of K.S.A. 75-4215, and amendments

1 thereto. Upon receipt of each such remittance, the state treasurer shall  
2 deposit the entire amount in the state treasury to the credit of the cigarette  
3 and tobacco products regulation fund created by K.S.A. 79-3391, and  
4 amendments thereto, *and such proceeds shall be used exclusively for*  
5 *cigarette and tobacco products regulation and enforcement, and not for*  
6 *any other purpose.*

7 Sec. 19. K.S.A. 2015 Supp. 79-3391 is hereby amended to read as  
8 follows: 79-3391. (a) In addition to or in lieu of any other civil or criminal  
9 penalty provided by law, the secretary of revenue or the secretary's  
10 designee, upon a finding that a ~~licensee~~ *person* under this act has violated  
11 any provision of this act or any provision of any rule and regulation of the  
12 secretary of revenue adopted pursuant to this act shall impose on such  
13 ~~licensee~~ *person* a civil fine not exceeding ~~-\$1,000~~ \$2,500 for each  
14 violation.

15 (b) It shall be unlawful for any person, directly or indirectly, to: (1)  
16 Sell, give or furnish any cigarettes or tobacco products to any person under  
17 18 years of age; or (2) buy any cigarettes or tobacco products for any  
18 person under 18 years of age. In determining the fine to be imposed under  
19 this subsection by a licensed retail dealer whose employee sold, furnished  
20 or distributed the cigarettes or tobacco products, the secretary of revenue  
21 or the secretary's designee shall consider it to be a mitigating circumstance  
22 if the employee had completed a training program, approved by the  
23 secretary of revenue or the secretary's designee, in avoiding sale,  
24 furnishing or distributing of cigarettes and tobacco products to persons  
25 under 18 years of age.

26 (c) No fine shall be imposed pursuant to this section except upon the  
27 written order of the secretary of revenue or the secretary's designee to the  
28 licensee who committed the violation. Such order shall state the violation,  
29 the fine to be imposed and the right of the licensee to appeal the order.  
30 Such order shall be subject to appeal and review in the manner provided  
31 by the Kansas administrative procedure act.

32 (d) Any fine collected pursuant to this section shall be remitted to the  
33 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
34 amendments thereto. Upon receipt of each such remittance, the state  
35 treasurer shall deposit the entire amount in the state treasury to the credit  
36 of the cigarette and tobacco products regulation fund.

37 (e) There is hereby created, in the state treasury, the cigarette and  
38 tobacco products regulation fund. Moneys in the fund shall be expended  
39 only for the enforcement of this act and rules and regulations adopted  
40 pursuant to this act. Such expenditures shall be made in accordance with  
41 appropriation acts upon warrants of the director of accounts and reports  
42 issued pursuant to vouchers approved by the secretary of revenue or a  
43 person designated by the secretary.



1 (f) If a person violates subsection (b) for a second or subsequent  
2 occurrence within a three-year period, the secretary may impose a  
3 graduated fine upon such person for the second or subsequent occurrence.  
4 For the purposes of imposing a fine under this section, if three or more  
5 years have elapsed since a person has been found to have violated the  
6 provisions of subsection (b), such person shall be treated as never having  
7 violated subsection (b).

8 Sec. 20. K.S.A. 2015 Supp. 79-3392 is hereby amended to read as  
9 follows: 79-3392. The provisions of K.S.A. 75-5133, 79-3610, 79-3611,  
10 79-3612, 79-3613, 79-3615 and 79-3617, and amendments thereto,  
11 relating to the assessment, collection, appeal and administration of the  
12 retailers' sales tax, insofar as practical, shall have full force and effect with  
13 respect to taxes, *penalties and fines* imposed by this act.

14 Sec. 21. K.S.A. 2015 Supp. 79-3393 is hereby amended to read as  
15 follows: 79-3393. (a) When a person is stopped by a law enforcement  
16 officer for a cigarette or tobacco infraction, the law enforcement officer  
17 shall prepare and deliver to the person a written cigarette or tobacco  
18 citation on a form approved by the secretary of revenue or the secretary's  
19 designee. The citation shall contain a notice to appear in court, the name  
20 and address of the person, the offense or offenses charged, the time and  
21 place when and where the person shall appear in court, the signature of the  
22 law enforcement officer and any other pertinent information. The time  
23 specified in the notice to appear shall be at least five days after the alleged  
24 infraction unless the person charged with the infraction demands an earlier  
25 hearing. The place specified in the notice to appear shall be before a judge  
26 of the district court within the county where the infraction is alleged to  
27 have been committed or before a judge of the municipal court where the  
28 infraction is alleged to have been committed in a city which has adopted  
29 an ordinance which prohibits the same acts.

30 (b) The notice to appear may provide that the person charged with the  
31 infraction shall appear in court with a parent or legal guardian and shall  
32 provide that the person charged has a right to trial.

33 (c) Acts classified as cigarette or tobacco infractions by ~~subsection (e)~~  
34 ~~of~~ K.S.A. 79-3322(d), and amendments thereto, shall be classified as  
35 ordinance cigarette or tobacco infractions by those cities adopting  
36 ordinances prohibiting the same acts. The fine for an ordinance cigarette or  
37 tobacco infraction shall be \$25.

38 Sec. 22. K.S.A. 2015 Supp. 50-6a07 is hereby amended to read as  
39 follows: 50-6a07. As used in this act:

40 (a) "Act" means the provisions of K.S.A. 50-6a01 through 50-6a06,  
41 and amendments thereto, and the provisions of K.S.A. 2015 Supp. 50-6a07  
42 through 50-6a21, and amendments thereto.

43 (b) "Brand family" means all styles of cigarettes sold under the same

1 trademark and differentiated from one another by means of additional  
2 modifiers or descriptors, including, but not limited to, "menthol," "lights,"  
3 "kings," and "100s," and includes any brand name (alone or in conjunction  
4 with any other word), trademark, logo, symbol, motto, selling message,  
5 recognizable pattern of colors or any other indicia of product identification  
6 identical, similar to or identifiable with a previously known brand of  
7 cigarettes.

8 (c) "Cigarette" has the same meaning given that term in K.S.A. 50-  
9 6a02(d), and amendments thereto.

10 (d) "Director" means the director of taxation.

11 (e) "Indian tribe" means any Indian tribe, band, nation or other  
12 organized group or community that is recognized as eligible for the special  
13 programs and services provided by the United States to Indians because of  
14 their status as Indians under the laws of the United States.

15 (f) "Master settlement agreement" has the same meaning given that  
16 term in K.S.A. 50-6a02(e), and amendments thereto.

17 (g) "Non-participating manufacturer" means any tobacco product  
18 manufacturer that is not a participating manufacturer.

19 (h) "Participating manufacturer" has the meaning given that term in  
20 K.S.A. 50-6a02(i)(1), and amendments thereto.

21 (i) "Qualified escrow fund" has the same meaning given that term in  
22 K.S.A. 50-6a02(f), and amendments thereto.

23 (j) "Resident agent" means a domestic corporation, a domestic limited  
24 partnership, a domestic limited liability company or a domestic business  
25 trust or a foreign corporation, a foreign limited partnership, a foreign  
26 limited liability company or a foreign business trust authorized to transact  
27 business in this state, and which is generally open during regular business  
28 hours to accept service of process on behalf of a non-participating  
29 manufacturer.

30 (k) "Retail dealer" has the same meaning given that term in K.S.A.  
31 79-3301~~(e)~~, and amendments thereto.

32 (l) "Stamping agent" means a person who is authorized to affix tax  
33 indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and  
34 amendments thereto, or any person who is required to pay the tax on the  
35 privilege of selling or dealing in roll-your-own tobacco products pursuant  
36 to K.S.A. 79-3371, and amendments thereto.

37 (m) "Tax indicia" has the same meaning given that term in K.S.A. 79-  
38 3301~~(t)~~, and amendments thereto.

39 (n) "Tobacco product manufacturer" has the same meaning given that  
40 term in K.S.A. 50-6a02(i), and amendments thereto.

41 (o) "Qualified tribal land" means:

42 (1) All land within the borders of this state that is within the limits of  
43 any Indian reservation under the jurisdiction of the United States,

1 notwithstanding the issuance of any patent, including rights-of-way  
2 running through the reservation;

3 (2) all dependent Indian communities within the borders of this state;

4 (3) all Indian allotments within the borders of this state, the Indian  
5 titles to which have not been extinguished, including rights-of-way  
6 running through such allotments; and

7 (4) any lands within the borders of this state, the title to which is  
8 either held in trust by the United States for the benefit of any Indian tribe  
9 or individual, or held by any Indian tribe or individual subject to restriction  
10 by the United States against alienation, and over which an Indian tribe  
11 exercises governmental power.

12 (p) "Units sold" has the same meaning given that term in K.S.A. 50-  
13 6a02(j), and amendments thereto.

14 (q) "Vending machine operator" has the same meaning given that  
15 term in K.S.A. 79-3301~~(y)~~, and amendments thereto.

16 Sec. 23. K.S.A. 79-3304, 79-3309, 79-3323, 79-3324a and 79-3378  
17 and K.S.A. 2015 Supp. 50-6a07, 79-3301, 79-3302, 79-3303, 79-3311, 79-  
18 3312, 79-3316, 79-3321, 79-3322, 79-3333, 79-3335, 79-3387, 79-3391,  
19 79-3392 and 79-3393 are hereby repealed.

20 Sec. 24. This act shall take effect and be in force from and after its  
21 publication in the statute book.