

SENATE BILL No. 96

By Committee on Assessment and Taxation

1-26

1 AN ACT concerning cigarettes and tobacco products; relating to the
2 cigarette and tobacco products act; definitions, licenses and permits,
3 suspension or revocation licenses, stamps, records required of dealers,
4 unlawful acts, penalties, sale of cigarettes, application of certain laws to
5 taxes, remittance of taxes and escrow deposits; amending K.S.A. 79-
6 3304, 79-3309, 79-3323, 79-3324a, 79-3326 and 79-3378 and K.S.A.
7 2016 Supp. 50-6a07, 79-3301, 79-3302, 79-3303, 79-3311, 79-3312,
8 79-3316, 79-3321, 79-3322, 79-3333, 79-3335, k79-3387, 79-3391, 79-
9 3392 and 79-3393 and repealing the existing sections.

10

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

12

13 New Section 1. (a) Notwithstanding any other provision in this act,
14 any 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.

16

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

18

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

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

24

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

29

30 (c) only convictions occurring in the immediately preceding five
31 years beginning on July 1, 2017, shall be taken into account, but the court
32 may consider other prior convictions in determining the sentence to be
33 imposed within the limits provided for a first, second, third or subsequent
34 offense, whichever is applicable; and

34

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

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36 (e) The provisions of this section shall be part of and supplemental to

1 the Kansas cigarette and tobacco products act.

2 Sec. 3. K.S.A. 2016 Supp. 79-3301 is hereby amended to read as
3 follows: 79-3301. As used in K.S.A. 79-3301 et seq., and amendments
4 thereto:

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

6 (b) *"Carrier" means one who transports cigarettes from a
7 manufacturer to a wholesale dealer or from one wholesale dealer to
8 another.*

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

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

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

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

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

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

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

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

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

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

36 *(3) any person engaged in the business of selling tobacco products
37 outside this state who ships or transports tobacco products to any person in
38 the business of selling tobacco products in this state.*

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

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

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

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

5 ~~(p)~~ (p) "Licensee" means any person holding a current license issued
6 pursuant to this act.

7 ~~(q)~~ (q) "Manufacturer" means the same as provided in 26 U.S.C. §
8 5702(d).

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

12 ~~(m) "Meter imprints" means tax indicia applied by means of ink
13 printing machines.~~

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

17 (2) for the purposes of ~~subsections (u), (v) and (w)~~ of K.S.A. 79-
18 3321(u), (v) and (w), and amendments thereto, "package" means the same
19 as provided in 15 U.S.C. § 1332(4).

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

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

27 ~~(v)~~ (v) "Retail dealer" or "retailers" means a person, other than a
28 vending machine operator, in possession of cigarettes or electronic
29 cigarettes for the purpose of sale to a consumer.

30 ~~(w)~~ (w) "Sale" means any transfer of title or possession or both,
31 exchange, barter, distribution or gift of cigarettes or ~~tobacco products~~
32 *electronic cigarettes*, with or without consideration.

33 ~~(x)~~ (x) "Sample" means cigarettes or tobacco products distributed to
34 members of the general public at no cost for purposes of promoting the
35 product.

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

42 ~~(z)~~ (z) "Stamps" means tax indicia applied ~~either by means of water
43 applied gummed paper or heat process, pressure or any other process~~

1 *approved by the director.*

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

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

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

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

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

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

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

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

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

37 ~~(ee)~~ "Manufacturer" means the same as provided in 26 U.S.C. §
38 5702(d).

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

43 Sec. 4. K.S.A. 2016 Supp. 79-3302 is hereby amended to read as

1 follows: 79-3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309,
2 79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-
3 3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3333, 79-3335,
4 79-3371, 79-3373, 79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-
5 3387, 79-3388, 79-3391, 79-3392, 79-3393, 79-3394 and K.S.A. 2016
6 Supp. 79-3395 through 79-3398, *section 1 and section 2*, and amendments
7 thereto, shall be known and may be cited as the Kansas cigarette and
8 tobacco products act.

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

11 Sec. 5. K.S.A. 2016 Supp. 79-3303 is hereby amended to read as
12 follows: 79-3303. (a) Each person engaged in the business of selling
13 cigarettes or electronic cigarettes in the state of Kansas and each vending
14 machine distributor shall obtain a license as provided by this act. A
15 separate application, license and fee is required for each dealer
16 establishment owned or operated by a dealer. A vending machine operator
17 is required to obtain a vending machine operator's master license and, in
18 addition, a separate permit for each vending machine operated by the
19 operator. A vending machine operator may submit one application for the
20 vending machine operator's master license and all permits for vending
21 machines operated by the operator. The license shall be displayed in the
22 dealer establishment and the vending machine permit shall remain securely
23 and visibly attached to the vending machine and contain such information
24 as the director may require. Any vending machine found without such
25 permit attached to the machine shall be sealed by an agent of the director
26 and such seal shall be removed only by an agent of the director after
27 payment of the permit fee and the penalties provided by this act.

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

42 (c) A vending machine operator, in the course of business as a
43 vending machine operator, may dispose of or sell vending machines

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

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

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

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

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

40 Sec. 6. K.S.A. 79-3304 is hereby amended to read as follows: 79-
41 3304. (a) The license fee for each biennium or portion thereof shall be as
42 follows:

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

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

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

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

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

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

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

19 (7) For manufacturer's salesperson license, \$20 for each salesperson.

20 The manufacturer's salesperson shall, with respect to each sale made to a
21 retail dealer, make and deliver to the retail dealer a true invoice wherein
22 such salesperson shall insert the name of the wholesale dealer from whom
23 such salesperson secured such cigarettes, together with such salesperson's
24 own name and the name of the retail dealer purchasing the cigarettes.

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

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

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

37 (c) *The director may refuse to issue or renew a license to any person*
38 *who:*

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

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

42 (3) *has had a cigarette license revoked in this state or any other*
43 *state;*

- 1 (4) *is not at least 18 years of age;*
- 2 (5) *intends to carry on the business as an agent of another;*
- 3 (6) *at the time of application for renewal of any license issued under*
4 *this act, would not be eligible for the license upon first application;*
- 5 (7) *does not own the premises for which a license is sought, or does*
6 *not, at the time of the application, have a written lease;*
- 7 (8) *has been convicted of a crime involving any tax under this act;*
- 8 (9) *is a corporation in which any officer, manager or director thereof,*
9 *or any stockholder owning in the aggregate more than 5% of the common*
10 *or preferred stock of such corporation, has been an officer, manager or*
11 *director or stockholder owning in the aggregate more than 5% of the*
12 *common or preferred stock, of a corporation that:*
 - 13 (A) *Has had a license revoked under this act;*
 - 14 (B) *has been convicted of a crime involving any tax under this act; or*
 - 15 (C) *would not qualify as a person under this act; or*
 - 16 (10) *is a limited liability company in which any officer, manager or*
17 *director thereof, or any member owning in the aggregate more than 5% of*
18 *the limited liability company, has been an officer, manager or director or*
19 *stockholder owning in the aggregate more than 5% of the common or*
20 *preferred stock, of a corporation that:*
 - 21 (A) *Has had a license revoked under this act;*
 - 22 (B) *has been convicted of a crime involving any tax under this act; or*
 - 23 (C) *would not qualify as a person under this act.*
- 24 Sec. 7. K.S.A. 79-3309 is hereby amended to read as follows: 79-
25 3309. (a) Whenever the director has reason to believe that any person
26 licensed under this act has violated any of the provisions of this act, The
27 director shall notify ~~the person,~~ by certified mail ~~of,~~ the director's intention
28 to suspend or revoke ~~the person's~~ license or licenses *of any person*
29 *licensed under this act whenever the director has reason to believe such*
30 *person has violated any provision of this act in any of the following ways:*
 - 31 (1) *Has been convicted on or after January 1, 2013, of a felony under*
32 *the laws of this state or any other state or the United States;*
 - 33 (2) *is not current in the payment of any tax or fine under this act;*
 - 34 (3) *has had a cigarette license revoked in this state or any other*
35 *state;*
 - 36 (4) *is not at least 18 years of age;*
 - 37 (5) *intends to carry on the business as an agent of another;*
 - 38 (6) *at the time of application for renewal of any license issued under*
39 *this act, would not be eligible for the license upon first application;*
 - 40 (7) *does not own the premises for which a license is sought, or does*
41 *not, at the time of the application, have a written lease;*
 - 42 (8) *has been convicted of a crime involving any tax under this act;*
 - 43 (9) *in the case of a corporation, any officer, manager or director*

1 *thereof, or any stockholder owning in the aggregate more than 5% of the*
 2 *common or preferred stock of such corporation, has been an officer,*
 3 *manager or director or stockholder owning in the aggregate more than*
 4 *5% of the common or preferred stock, of a corporation that:*

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

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

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

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

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

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

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

16 (b) ~~Within 30~~ 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 ~~(b)(c)~~ (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. 8. K.S.A. 2016 Supp. 79-3311 is hereby amended to read as
 40 follows: 79-3311. The director shall design and designate indicia of tax
 41 payment to be affixed to each package of cigarettes as provided by this act.
 42 ~~The director shall sell water applied stamps only to licensed wholesale~~
 43 ~~dealers in the amounts of 1,000 or multiples thereof. Stamps applied by the~~

1 heat process shall be sold only in amounts of 30,000 or multiples thereof,
2 except that such stamps which are suitable for packages containing 25
3 cigarettes each shall be sold in amounts prescribed by the director. ~~Meter~~
4 ~~imprints shall be sold only in amounts of 10,000 or multiples thereof.~~
5 ~~Water applied stamps in amounts of 10,000 or multiples thereof and~~
6 Stamps applied by the heat process ~~and meter imprints~~ shall be supplied to
7 wholesale dealers *in good standing with the director at the time of*
8 *purchase* at a discount of 0.55% on and after July 1, 2015, and thereafter,
9 from the face value thereof, and shall be deducted at the time of purchase
10 or from the remittance therefor as hereinafter provided. Any wholesale
11 cigarette dealer who shall file with the director a bond, of acceptable form,
12 payable to the state of Kansas with a corporate surety authorized to do
13 business in Kansas, shall be permitted to purchase stamps, and remit
14 therefor to the director within 30 days after each such purchase, up to a
15 maximum outstanding at any one time of 85% of the amount of the bond.
16 Failure on the part of any wholesale dealer to remit as herein specified
17 shall be cause for forfeiture of such dealer's bond. All revenue received
18 from the sale of such stamps ~~or meter imprints~~ shall be remitted to the
19 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
20 amendments thereto. Upon receipt of each such remittance, the state
21 treasurer shall deposit the entire amount in the state treasury. The state
22 treasurer shall first credit such amount as the director shall order to the
23 cigarette tax refund fund and shall credit the remaining balance to the state
24 general fund. A refund fund designated the cigarette tax refund fund not to
25 exceed \$10,000 at any time shall be set apart and maintained by the
26 director from taxes collected under this act and held by the state treasurer
27 for prompt payment of all refunds authorized by this act. Such cigarette tax
28 refund fund shall be in such amount as the director shall determine is
29 necessary to meet current refunding requirements under this act.

30 The wholesale cigarette dealer shall affix to each package of cigarettes
31 stamps ~~or tax meter imprints~~ required by this act prior to the sale of
32 cigarettes to any person, by such dealer or such dealer's agent or agents,
33 within the state of Kansas. The director is empowered to authorize
34 wholesale dealers to affix revenue tax ~~meter imprints~~ *stamps* upon original
35 packages of cigarettes and is charged with the duty of regulating the use of
36 tax ~~meters~~ *stamps* to secure payment of the proper taxes. No wholesale
37 dealer shall affix revenue tax ~~meter imprints~~ *stamps* to original packages
38 of cigarettes without first having obtained permission from the director to
39 employ this method of affixation. If the director approves the wholesale
40 dealer's application for permission to affix revenue tax ~~meter imprints~~
41 *stamps* to original packages of cigarettes, the director shall require such
42 dealer to file a suitable bond payable to the state of Kansas executed by a
43 corporate surety authorized to do business in Kansas. The director may, to

1 assure the proper collection of taxes imposed by the act, revoke or suspend
2 the privilege of ~~imprinting tax meter imprints~~ *affixing tax stamps* upon
3 original packages of cigarettes. ~~All meters shall be under the direct control~~
4 ~~of the director, and all transfer assignments or anything pertaining thereto~~
5 ~~must first be authorized by the director. All inks used in the stamping of~~
6 ~~cigarettes must be of a special type devised for use in connection with the~~
7 ~~machine employed and approved by the director. All repairs to the meter~~
8 ~~are strictly prohibited except by a duly authorized representative of the~~
9 ~~director. Requests for service shall be directed to the director. Meter-~~
10 ~~machine ink imprints on all packages shall be clear and legible. If a~~
11 ~~wholesale dealer continuously issues illegible cigarette tax meter imprints,~~
12 ~~it shall be considered sufficient cause for revocation of such dealer's~~
13 ~~permit to use a cigarette tax meter.~~

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

18 Sec. 9. K.S.A. 2016 Supp. 79-3312 is hereby amended to read as
19 follows: 79-3312. The director shall redeem any unused stamps ~~or meter~~
20 ~~imprints~~ that any wholesale dealer presents for redemption within six
21 months after the purchase thereof, at the face value less 0.55% thereof if
22 such stamps ~~or meter imprints~~ have been purchased from the director *and*
23 *are whole, complete stamps*. The director shall prepare a voucher showing
24 the net amount of such refund due, and the director of accounts and reports
25 shall draw a warrant on the state treasurer for the same. Wholesale dealers
26 shall be entitled to a refund of the tax paid on cigarettes which have
27 become unfit for sale upon proof thereof less 0.55% of such tax.

28 Sec. 10. K.S.A. 2016 Supp. 79-3316 is hereby amended to read as
29 follows: 79-3316. (a) All purchases of cigarettes by any dealer shall be
30 evidenced by an invoice, a duplicate of which shall be furnished *to* the
31 party receiving the cigarettes from any dealer.

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

36 (c) All invoices issued by wholesale dealers shall be in duplicate and
37 a copy must accompany the consigned cigarettes. Cigarettes sold by a
38 wholesale dealer to any other dealer shall be evidenced by invoices
39 bearing the vendee's name and license number. A wholesale dealer selling
40 cigarettes to a manufacturer's salesperson shall at the time of delivery of
41 same make a true duplicate invoice, inserting therein the name of the
42 salesman together with the name of such salesperson's employer, *except*
43 *that for an outlet, or fuel outlet or fuel center owned by the same entity,*

1 *separate invoices are not required if cigarettes are sold from the fuel outlet*
2 *owned by the same entity.*

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

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

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

23 Sec. 11. K.S.A. 2016 Supp. 79-3321 is hereby amended to read as
24 follows: 79-3321. It shall be unlawful for any person:

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

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

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

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

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

43 (f) Knowingly to make, use, or present to the director or agent thereof

1 any falsified invoice or falsely state the nature or quantity of the goods
2 invoiced.

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

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

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

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

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

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

18 (k) To vend small cigars, or any products so wrapped as to be
19 confused with cigarettes, from a machine vending cigarettes, nor shall a
20 vending machine be so built to vend cigars or products that may be
21 confused with cigarettes, be attached to a cigarette vending machine.

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

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

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

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

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

33 (q) To sell a vending machine without having a vending machine
34 distributor's license.

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

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

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

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

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

5 (t) To sell cigarettes, electronic cigarettes or tobacco products by
6 means of a vending machine, *including vending machines that sell*
7 *packaged, single cigarettes*, in any establishment, or portion of an
8 establishment, which is open to minors, except that this subsection shall
9 not apply to:

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

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

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

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

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

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

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

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

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

1 1333; and (ii) all federal trademark and copyright laws;

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

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

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

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

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

17 (2) any health warning that is not specified in, or does not conform
18 with, the requirements of, the federal cigarette labeling and advertising act,
19 15 U.S.C. § 1333.

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

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

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

32 Sec. 12. K.S.A. 2016 Supp. 79-3322 is hereby amended to read as
33 follows: 79-3322. (a) ~~Any person who violates any of the provisions of the~~
34 ~~Kansas cigarette and tobacco products act, (1) Except as otherwise~~
35 ~~provided in this act, shall be guilty of a violation of K.S.A. 79-3321(a),~~
36 ~~(c), (d), (f), (h), (i), (j), (v), (w), (x) or (y), and amendments thereto, is a:~~

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

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

43 (C) *severity level 6, nonperson felony for a third and all subsequent*

1 violations, and the offender shall be fined \$100,000 upon a third and all
2 subsequent convictions.

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

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

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

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

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

42 (4) For purposes of this subsection the person who violates this
43 subsection shall be the individual directly selling, furnishing or

1 distributing the cigarettes or tobacco products to any person under 18 years
 2 of age or the retail dealer who has actual knowledge of such selling,
 3 furnishing or distributing by such individual or both.

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

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

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

33 Sec. 13. 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 and sold as required by any compact*
 41 *between:*

42 (A) *The governor and the Prairie Band Potawatomi Nation and*
 43 *approved by the legislature; or (B) the governor and the Iowa Tribe of*

1 *Kansas and Nebraska and approved by the legislature;*

2 ~~(4)(3)~~ all cigarettes or tobacco products in the possession of a minor;
3 ~~and~~

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

6 ~~(3)(5)~~ all property, ~~other than~~ including vehicles, used in the ~~retail~~
7 ~~sale, transportation, distribution, importation, wholesale or manufacture~~
8 ~~of unstamped packages of cigarettes.~~

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

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

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

29 Sec. 14. K.S.A. 79-3324a is hereby amended to read as follows: 79-
30 3324a. (a) *All of the cigarettes and property seized by the director or the*
31 *director's authorized agent shall first be listed and appraised by the*
32 *person making the seizure, and turned over to the director and a receipt*
33 *taken. The person making the seizure shall immediately make and file a*
34 *written report showing the name of the person making the seizure, the*
35 *place where, and the person from whom the property was seized, and*
36 *inventory and appraisal thereof, at the usual and ordinary wholesale price*
37 *of the articles received by the director of taxation. The director shall*
38 *institute forfeiture proceedings within the department of revenue in the*
39 *name of the state of Kansas, as plaintiff, and in the name of the owner or*
40 *person in possession, as defendant, if known, and if unknown, in the name*
41 *of the property seized. The director shall issue notice to the owner or*
42 *person in whose possession such property was found, directing such*
43 *person to answer within 10 days. The forfeiture hearing under this*

1 subsection shall be conducted in accordance with the provisions of the
2 Kansas administrative procedure act. If the property is declared forfeited
3 and ordered sold, notice of the sale shall be posted in the official
4 newspaper of Shawnee county, Kansas, not less than 10 days before the
5 date of the sale, except that cigarettes shall be withheld from public sale
6 and shall be sold by the director of taxation to the manufacturer of such
7 cigarettes or to a licensed distributor and the purchase price shall be paid
8 to the director of taxation and treated as cigarette tax collected. After
9 deducting all costs incurred in the seizure, forfeiture and sale of all
10 contraband, including cigarettes and property seized by the director or by
11 the director's authorized agent, pursuant to this subsection, all such
12 proceeds shall be remitted to the state treasurer in accordance with the
13 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
14 each such remittance, the state treasurer shall deposit the entire amount in
15 the state treasury to the credit of the cigarette and tobacco products
16 regulation fund created by K.S.A. 79-3391, and amendments thereto, and
17 such proceeds shall be used exclusively for cigarette and tobacco products
18 regulation and enforcement, and not for any other purpose.

19 (b) All of the cigarettes and property seized by officers of the state of
20 Kansas, other than the director or the director's authorized agent, shall
21 first be listed and appraised by the officer making the seizure, and turned
22 over to the county sheriff of the county in which the seizure is made and a
23 receipt ~~therefor~~ taken. The person making the seizure shall immediately
24 make and file a written report ~~thereof~~ showing the name of the person
25 making the seizure, the place where, and the person from whom the
26 property was seized, and inventory and ~~appraisement~~ appraisal thereof, at
27 the usual and ordinary wholesale price of the articles received to the
28 director of taxation. The county or district attorney of the county in which
29 the seizures are made may, at the request of the director, file in the district
30 court forfeiture proceedings in the name of the state of Kansas, as plaintiff,
31 and in the name of the owner or person in possession, as defendant, if
32 known, and if unknown in the name of the property seized. The clerk of
33 the court shall issue summons to the owner or person in whose possession
34 such property was found, directing ~~him or her~~ such person to answer
35 within ~~ten~~(10) days. If the property is declared forfeited and ordered sold,
36 notice of the sale shall be posted in five (5) public places in the county not
37 less than ~~ten~~(10) days before the date of the sale, except that cigarettes
38 shall be withheld from public sale and shall be sold by the director of
39 taxation to the manufacturer of such cigarettes or to a licensed distributor
40 and the purchase price shall be paid to the director of taxation and treated
41 as cigarette tax collected. The proceeds of any public sale shall be
42 deposited with the clerk of the court, who shall, after deducting costs,
43 including the costs of the sale, pay the balance to the treasurer of the

1 county wherein ~~said~~ the sale is constructed. ~~Said~~ The treasurer shall credit
2 the entire amount ~~thereof~~ to the county general fund.

3 ~~(b)~~(c) The seizure and sale of the cigarettes shall not relieve the
4 person from whom the cigarettes were seized from any prosecution on the
5 payment of any penalties provided for under the provisions of K.S.A. 79-
6 3301 et seq., and amendments thereto; nor shall it relieve the purchaser
7 ~~thereof~~ from any payment of the regular cigarette tax and the placing of
8 proper stamps thereon before making any sale of the cigarettes or the
9 personal consumption of the same.

10 ~~(e)~~(d) The forfeiture provisions of this act shall only apply to persons
11 having possession of or transporting cigarettes with intent to barter, sell or
12 give away the same. The possession of cigarettes in any quantity of more
13 than ~~two (2) five~~ cartons, ~~twenty (20) 50~~ packages or ~~four hundred (400)~~
14 *1,000* cigarettes, not bearing indicia of tax payment as required by the
15 provisions of K.S.A. 79-3301 et seq., and amendments thereto, shall be
16 prima facie evidence of intent to barter, sell or give away the cigarettes in
17 violation of the provisions of K.S.A. 79-3301 et seq., and amendments
18 thereto.

19 Sec. 15. K.S.A. 79-3326 is hereby amended to read as follows: 79-
20 3326. The director of taxation shall administer and enforce the provisions
21 of this act, *and to require such reports, make such investigations and take*
22 *such other action as the director deems necessary or suitable to that end.*
23 *For the purpose of ascertaining the correctness of any return or making*
24 *an estimate of the tax due for any taxpayer or person, the director or the*
25 *director's designee has the power to examine any books, papers, records*
26 *or memoranda bearing upon the matters required to be included in the*
27 *return or report.* The secretary of revenue shall adopt rules and regulations
28 for the administration of this act. For the purpose of enforcing this act the
29 director may call to the director's aid any law enforcement officer of this
30 state to prosecute all violators of any of the provisions of this act. The
31 police of any city shall have the right to inspect all premises, records and
32 invoices pertaining to the wholesale distribution, retail sale or sampling of
33 cigarettes or tobacco products within the city at all reasonable times. All
34 agents and representatives designated by the director are hereby invested
35 with all the powers of peace and police officers within the state of Kansas
36 in the enforcement of the provisions of this act throughout the state.

37 Sec. 16. K.S.A. 2016 Supp. 79-3333 is hereby amended to read as
38 follows: 79-3333. (a) Each person engaged in the business of selling
39 cigarettes, *smokeless tobacco or roll-your-own tobacco* to persons who
40 reside in Kansas shall obtain a license as provided by the Kansas cigarette
41 and tobacco products act.

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

1 (c) All ~~retail-cigarette~~ dealers, whether located in or outside the state
2 of Kansas, shall have a registration certificate as provided in K.S.A. 79-
3 3608, and amendments thereto, and be subject to the provisions of the
4 Kansas retailers' sales tax act. Each ~~licensed-retail-cigarette-dealer~~ *licensee*
5 *or other person* selling cigarettes, *smokeless tobacco or roll-your-own*
6 *tobacco* over the internet, telephone or other mail order transaction shall
7 file all sales tax returns and remit taxes owed pursuant to K.S.A. 79-3607,
8 and amendments thereto.

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

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

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

40 (g) All packages of cigarettes shipped from a cigarette dealer to
41 purchasers who reside in Kansas shall clearly print the package with the
42 word "CIGARETTES" on all sides of the package. In addition, such
43 package shall contain an externally visible and easily legible notice located

1 on the same side of the package as the address to which the package is
2 delivered as follows:

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

10 (h) ~~The provisions of this section shall not apply to tobacco products,~~
11 ~~as defined in K.S.A. 79-3301, and amendments thereto.~~ (1) *Each retail*
12 *dealer that sells cigarettes to Kansas consumers without indicia of Kansas*
13 *tax shall file an annual statement for each consumer to the department of*
14 *revenue on such forms as are provided or approved by the department to*
15 *the director for all Kansas consumers by March 1 of each year showing*
16 *such information as the Kansas department of revenue shall require by*
17 *rules and regulations, including the: (A) Name and address of such*
18 *Kansas consumer; (B) the date of purchase; and (C) the total number of*
19 *packs of cigarettes purchased by such Kansas consumer made from the*
20 *retail dealer in the previous calendar year.*

21 (2) *The director may require any retail dealer that sells cigarettes to*
22 *Kansas consumers without indicia of Kansas tax of more than \$100,000 in*
23 *a calendar year to file the annual statement described in paragraph (1) by*
24 *electronic format, including magnetic media or another machine-readable*
25 *form for that year.*

26 (3) *Failure to file the annual statement required in paragraph (1)*
27 *shall subject the retailer dealer to a penalty of \$10 for each consumer that*
28 *should have been included in such annual statement, unless the retailer*
29 *shows reasonable cause for such failure.*

30 (i) *Except as otherwise provided by this act, a violation of subsection*
31 *(a), (d), (e) or (h) is a:*

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

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

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

41 (j) ~~Violation of the provisions of subsection (a), (d) or (e) is a severity~~
42 ~~level 8, nonperson felony.~~ *Each separate violation of any provision of this*
43 *section, other than the provisions of subsection (a), (d)–(e), (e)–(h)*

1 *shall be a class B misdemeanor, and upon conviction shall be punishable*
2 *by a fine of not the offender shall be fined not less than \$500 nor more*
3 *than \$1,000 or imprisonment for not more than one year, or both.*

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

24 *†(l) The provisions of this section shall be part of and supplemental*
25 *to the Kansas cigarette and tobacco products act.*

26 *Sec. 17. K.S.A. 2016 Supp. 79-3335 is hereby amended to read as*
27 *follows: 79-3335. (a) Counterfeit cigarettes shall be seized by the director.*
28 *For purposes of this section, counterfeit cigarettes includes cigarettes*
29 *manufactured, sold, transported, imported, distributed or possessed in this*
30 *state with intent to deceive consumers and to avoid the provisions of this*
31 *act, and also includes cigarettes that have false manufacturing labels or*
32 *packages of cigarettes bearing counterfeit tax stamps. It shall be unlawful*
33 *for any person to sell, transport, import, distribute, possess, wholesale or*
34 *manufacture counterfeit cigarettes.*

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

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

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

43 *(3) severity level 6, nonperson felony for a third and all subsequent*

1 violations, and the offender shall be fined \$100,000 upon a third and all
2 subsequent convictions.

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

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

25 Sec. 18. K.S.A. 79-3378 is hereby amended to read as follows: 79-
26 3378. (a) On or before the ~~twentieth~~ 20th day of each calendar month every
27 distributor with a place of business in this state shall file a return with the
28 director showing the quantity and wholesale sales price of each tobacco
29 product: (1) Brought, or caused to be brought, into this state for sale; and
30 (2) made, manufactured, or fabricated in this state for sale in this state
31 during the preceding calendar month. Every licensed distributor outside
32 this state shall in like manner file a return showing the quantity and
33 wholesale sales price of each tobacco product shipped or transported to
34 retailers in this state to be sold by those retailers, during the preceding
35 calendar month. Returns shall be made ~~upon forms furnished and~~
36 *electronically in the manner* prescribed by the director. Each return shall
37 be accompanied by a remittance for the full tax liability shown therein,
38 less ~~four percent (4%)~~ of such liability as compensation to reimburse the
39 distributor for ~~his or her~~ *such distributor's* expenses incurred in the
40 administration of this act.

41 (b) As soon as practicable after any return is filed, the director shall
42 examine the return. If the director finds that, in ~~his or her~~ *the director's*
43 judgment, the return is incorrect and any amount of tax is due from the

1 distributor and unpaid, ~~he or she~~ *the director* shall notify the distributor of
2 the deficiency. If a deficiency disclosed by the director's examination
3 cannot be allocated by ~~him~~ *the director* to a particular month or months, ~~he~~
4 ~~or she~~ *the director* may nevertheless notify the distributor that a deficiency
5 exists and state the amount of tax due. Such notice shall be given to the
6 distributor by registered or certified mail.

7 Sec. 19. K.S.A. 2016 Supp. 79-3387 is hereby amended to read as
8 follows: 79-3387. (a) All revenue collected or received by the director
9 from taxes imposed by this act shall be remitted to the state treasurer in
10 accordance with the provisions of K.S.A. 75-4215, and amendments
11 thereto. Upon receipt of each such remittance, the state treasurer shall
12 deposit the entire amount in the state treasury to the credit of the state
13 general fund.

14 (b) All moneys received from license fees, *forfeiture proceeds under*
15 *K.S.A. 79-3324a, and amendments thereto, and fines* imposed by this act
16 shall be collected by the director and shall be remitted to the state treasurer
17 in accordance with the provisions of K.S.A. 75-4215, and amendments
18 thereto. Upon receipt of each such remittance, the state treasurer shall
19 deposit the entire amount in the state treasury to the credit of the cigarette
20 and tobacco products regulation fund created by K.S.A. 79-3391, and
21 amendments thereto, *and such proceeds shall be used exclusively for*
22 *cigarette and tobacco products regulation and enforcement, and not for*
23 *any other purpose.*

24 Sec. 20. K.S.A. 2016 Supp. 79-3391 is hereby amended to read as
25 follows: 79-3391. (a) In addition to or in lieu of any other civil or criminal
26 penalty provided by law, the secretary of revenue or the secretary's
27 designee, upon a finding that a ~~licensee~~ *person* under this act has violated
28 any provision of this act or any provision of any rule and regulation of the
29 secretary of revenue adopted pursuant to this act shall impose on such
30 ~~licensee~~ *person* a civil fine not exceeding \$1,000 for each violation.

31 (b) It shall be unlawful for any person, directly or indirectly, to: (1)
32 Sell, give or furnish any cigarettes or tobacco products to any person under
33 18 years of age; or (2) buy any cigarettes or tobacco products for any
34 person under 18 years of age. In determining the fine to be imposed under
35 this subsection by a licensed retail dealer whose employee sold, furnished
36 or distributed the cigarettes or tobacco products, the secretary of revenue
37 or the secretary's designee shall consider it to be a mitigating circumstance
38 if the employee had completed a training program, approved by the
39 secretary of revenue or the secretary's designee, in avoiding sale,
40 furnishing or distributing of cigarettes and tobacco products to persons
41 under 18 years of age.

42 (c) No fine shall be imposed pursuant to this section except upon the
43 written order of the secretary of revenue or the secretary's designee to the

1 licensee who committed the violation. Such order shall state the violation,
2 the fine to be imposed and the right of the licensee to appeal the order.
3 Such order shall be subject to appeal and review in the manner provided
4 by the Kansas administrative procedure act.

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

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

17 (f) If a person violates subsection (b) for a second or subsequent
18 occurrence within a three-year period, the secretary may impose a
19 graduated fine upon such person for the second or subsequent occurrence.
20 For the purposes of imposing a fine under this section, if three or more
21 years have elapsed since a person has been found to have violated the
22 provisions of subsection (b), such person shall be treated as never having
23 violated subsection (b).

24 Sec. 21. K.S.A. 2016 Supp. 79-3392 is hereby amended to read as
25 follows: 79-3392. The provisions of K.S.A. 75-5133, 79-3610, 79-3611,
26 79-3612, 79-3613, 79-3615 and 79-3617, and amendments thereto,
27 relating to the assessment, collection, appeal and administration of the
28 retailers' sales tax, insofar as practical, shall have full force and effect with
29 respect to taxes, *penalties and fines* imposed by this act.

30 Sec. 22. K.S.A. 2016 Supp. 79-3393 is hereby amended to read as
31 follows: 79-3393. (a) When a person is stopped by a law enforcement
32 officer for a cigarette or tobacco infraction, the law enforcement officer
33 shall prepare and deliver to the person a written cigarette or tobacco
34 citation on a form approved by the secretary of revenue or the secretary's
35 designee. The citation shall contain a notice to appear in court, the name
36 and address of the person, the offense or offenses charged, the time and
37 place when and where the person shall appear in court, the signature of the
38 law enforcement officer and any other pertinent information. The time
39 specified in the notice to appear shall be at least five days after the alleged
40 infraction unless the person charged with the infraction demands an earlier
41 hearing. The place specified in the notice to appear shall be before a judge
42 of the district court within the county where the infraction is alleged to
43 have been committed or before a judge of the municipal court where the

1 infraction is alleged to have been committed in a city which has adopted
2 an ordinance which prohibits the same acts.

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

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

11 Sec. 23. K.S.A. 2016 Supp. 50-6a07 is hereby amended to read as
12 follows: 50-6a07. As used in this act:

13 (a) "Act" means the provisions of K.S.A. 50-6a01 through 50-6a06,
14 and amendments thereto, and the provisions of K.S.A. 2016 Supp. 50-6a07
15 through 50-6a21, and amendments thereto.

16 (b) "Brand family" means all styles of cigarettes sold under the same
17 trademark and differentiated from one another by means of additional
18 modifiers or descriptors, including, but not limited to, "menthol," "lights,"
19 "kings," and "100s," and includes any brand name (alone or in conjunction
20 with any other word), trademark, logo, symbol, motto, selling message,
21 recognizable pattern of colors or any other indicia of product identification
22 identical, similar to or identifiable with a previously known brand of
23 cigarettes.

24 (c) "Cigarette" has the same meaning given that term in K.S.A. 50-
25 6a02(d), and amendments thereto.

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

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

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

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

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

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

39 (j) "Resident agent" means a domestic corporation, a domestic limited
40 partnership, a domestic limited liability company or a domestic business
41 trust or a foreign corporation, a foreign limited partnership, a foreign
42 limited liability company or a foreign business trust authorized to transact
43 business in this state, and which is generally open during regular business

1 hours to accept service of process on behalf of a non-participating
2 manufacturer.

3 (k) "Retail dealer" has the same meaning given that term in K.S.A.
4 79-3301(~~q~~), and amendments thereto.

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

10 (m) "Tax indicia" has the same meaning given that term in K.S.A. 79-
11 3301(~~r~~), and amendments thereto.

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

14 (o) "Qualified tribal land" means:

15 (1) All land within the borders of this state that is within the limits of
16 any Indian reservation under the jurisdiction of the United States,
17 notwithstanding the issuance of any patent, including rights-of-way
18 running through the reservation;

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

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

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

28 (p) "Units sold" has the same meaning given that term in K.S.A. 50-
29 6a02(j), and amendments thereto.

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

32 Sec. 24. K.S.A. 79-3304, 79-3309, 79-3323, 79-3324a, 79-3326 and
33 79-3378 and K.S.A. 2016 Supp. 50-6a07, 79-3301, 79-3302, 79-3303, 79-
34 3311, 79-3312, 79-3316, 79-3321, 79-3322, 79-3333, 79-3335, 79-3387,
35 79-3391, 79-3392 and 79-3393 are hereby repealed.

36 Sec. 25. This act shall take effect and be in force from and after its
37 publication in the statute book.