

SENATE BILL No. 203

By Committee on Federal and State Affairs

2-11

1 AN ACT concerning the sale of cigarettes and tobacco products; relating
2 to regulations, licensure and taxation; dealing with crimes, penalties
3 and fines; amending K.S.A. 79-3304, 79-3309, 79-3323, 79-3324a, 79-
4 3374 and 79-3378 and K.S.A. 2014 Supp. 79-3301, 79-3302, 79-3303,
5 79-3311, 79-3312, 79-3316, 79-3321, 79-3322, 79-3333, 79-3335, 79-
6 3387, 79-3391, 79-3392 and 79-3393 and repealing the existing
7 sections.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. K.S.A. 2014 Supp. 79-3301 is hereby amended to read as
11 follows: 79-3301. As used in K.S.A. 79-3301 et seq., and amendments
12 thereto:

13 (a) "Carrier" means one who transports cigarettes from a
14 manufacturer to a wholesale dealer or from one wholesale dealer to
15 another.

16 (b) "Carton" means the container used by the manufacturer of
17 cigarettes in which no more than 10 packages of cigarettes are placed prior
18 to shipment from such manufacturer.

19 (c) "Cigarette" means: (1) Any roll for smoking, made wholly or in
20 part of tobacco, irrespective of size or shape, and irrespective of tobacco
21 being flavored, adulterated or mixed with any other ingredient if ~~the~~
22 ~~wrapper is in greater part made of any material except tobacco wrapped in~~
23 *paper or in any other substance not containing tobacco; or (2) any roll of*
24 *tobacco wrapped in any substance containing tobacco that, because of its*
25 *appearance, the type of tobacco used in the filler, or its packaging and*
26 *labeling, is likely to be offered to, or purchased by, consumers as a*
27 *cigarette described in paragraph (1).*

28 (d) "Consumer" means the person purchasing or receiving cigarettes
29 or tobacco products for final use.

30 (e) "Dealer" means any person who engages in the sale or
31 manufacture of cigarettes, *tobacco products or electronic cigarettes* in the
32 state of Kansas, and who is required to be licensed under the provisions of
33 this act.

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

1 (g) "Director" means the director of taxation.

2 (h) "Distributor" means: (1) Any person engaged in the business of
3 selling tobacco products in this state who brings, or causes to be brought,
4 into this state from outside the state any tobacco products for sale;

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

7 (3) any person engaged in the business of selling tobacco products
8 outside this state who ships or transports tobacco products to any person in
9 the business of selling tobacco products in this state.

10 (i) "Division" means the division of taxation.

11 (j) "License" means the privilege of a licensee to sell cigarettes or
12 tobacco products in the state of Kansas, and the written evidence of such
13 authority or privilege as issued by the director.

14 (k) "Licensee" means any person holding a current license issued
15 pursuant to this act.

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

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

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

24 (2) for the purposes of ~~subsections (u), (v) and (w) of K.S.A. 79-~~
25 ~~3321(u), (v) and (w), and amendments thereto, "package" means the same~~
26 ~~as provided in 15 U.S.C. § 1332(4).~~

27 ~~(o)~~ (n) "Person" means any individual, partnership, society,
28 association, joint-stock company, corporation, estate, receiver, trustee,
29 assignee, referee or any other person acting in a fiduciary or representative
30 capacity whether appointed by a court or otherwise and any combination
31 of individuals.

32 ~~(p)~~ (o) "Received" means the coming to rest of cigarettes for sale by
33 any dealer in the state of Kansas.

34 ~~(q)~~ (p) "Retail dealer" or "retailers" means a person, other than a
35 vending machine operator, in possession of cigarettes ~~or~~, electronic
36 cigarettes or tobacco products for the purpose of sale to a consumer.

37 ~~(r)~~ (q) "Sale" means any transfer of title or possession or both,
38 exchange, barter, distribution or gift of cigarettes or tobacco products, with
39 or without consideration.

40 ~~(s)~~ (r) "Sample" means cigarettes or tobacco products distributed to
41 members of the general public at no cost for purposes of promoting the
42 product.

43 ~~(t)~~ (s) "Self-service display" means a display that contains cigarettes

1 or tobacco products and is located in an area openly accessible to a retail
2 dealer's consumers, and from which such consumers can readily access
3 cigarettes or tobacco products without the assistance of a salesperson. A
4 display case that holds cigarettes or tobacco products behind locked doors
5 does not constitute a self-service display.

6 ~~(t)~~ (t) "Stamps" means tax indicia applied either by means of water
7 applied gummed paper or heat process, *pressure or any other process*
8 *approved by the director.*

9 ~~(u)~~ (u) "Tax indicia" means visible evidence of tax payment in the
10 form of stamps or meter imprints.

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

18 ~~(w)~~ (w) "Tobacco speciality store" means a dealer establishment that
19 derives at least 75% of such dealer establishment's revenue from cigarettes
20 or tobacco products. *Except as otherwise provided under this section, a*
21 *retailer may sell cigarettes and smokeless tobacco only in a direct, face-to-*
22 *face exchange between the retailer and the consumer. Examples of*
23 *methods of sale that are not permitted include vending machines and self-*
24 *service displays. The following methods of sale, however, are permitted:*

25 (1) *Mail-order sales, excluding mail-order redemption of coupons*
26 *and distribution of free samples through the mail; and*

27 (2) *vending machines, including vending machines that sell*
28 *packaged, single cigarettes, and self-service displays that are located in*
29 *facilities where the retailer ensures that no person younger than 18 years*
30 *of age is present, or permitted to enter, at any time.*

31 ~~(x)~~ (x) "Vending machine" means any coin operated machine,
32 contrivance or device, by means of which merchandise may be sold.

33 ~~(y)~~ (y) "Vending machine distributor" means any person who sells
34 cigarette vending machines to a vending machine operator operating
35 vending machines in the state of Kansas.

36 ~~(z)~~ (z) "Vending machine operator" means any person who places a
37 vending machine, owned, leased or operated by such person, at locations
38 where cigarettes are sold from such vending machine. The owner or lessee
39 of the premises upon which a vending machine is placed shall not be
40 considered the operator of the machine, nor shall the owner or lessee, or
41 any employee or agent of the owner or lessee be considered an authorized
42 agent of the vending machine operator, if the owner or lessee does not own
43 or lease the machine and the owner's or lessee's sole remuneration from the

1 machine is a flat rental fee or commission based upon the number or value
2 of cigarettes sold from the machine, or a combination of both.

3 ~~(bb)~~ (aa) "Wholesale dealer" means any person who sells cigarettes
4 to other wholesale dealers, retail dealers, vending machine operators and
5 manufacturer's salespersons for the purpose of resale in the state of
6 Kansas.

7 ~~(ee)~~ (bb) "Wholesale sales price" means the original net invoice price
8 for which a manufacturer sells a tobacco product to a distributor, as shown
9 by the manufacturer's original invoice.

10 ~~(dd)~~ (cc) "Importer" means the same as provided in 26 U.S.C. §
11 5702(l).

12 ~~(ee)~~ (dd) "Manufacturer" means the same as provided in 26 U.S.C. §
13 5702(d).

14 ~~(ff)~~ (ee) "Electronic cigarette" means a battery-powered device,
15 whether or not such device is shaped like a cigarette, that can provide
16 inhaled doses of nicotine by delivering a vaporized solution by means of
17 cartridges or other chemical delivery systems, *and includes the*
18 *components and cartridges for electronic cigarettes.*

19 (ff) "*Conspicuous location or place*" means a location or place
20 available to the general public.

21 Sec. 2. K.S.A. 2014 Supp. 79-3302 is hereby amended to read as
22 follows: 79-3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309,
23 79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-
24 3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3371, 79-3373,
25 79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-3388, 79-
26 3391, 79-3392, 79-3393, 79-3394 and K.S.A. 2014 Supp. 79-3395 through
27 79-3398, *section 6 and section 22* and amendments thereto, shall be known
28 and may be cited as the Kansas cigarette and tobacco products act.

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

31 Sec. 3. K.S.A. 2014 Supp. 79-3303 is hereby amended to read as
32 follows: 79-3303. (a) Each person engaged in the business of selling
33 cigarettes or electronic cigarettes in the state of Kansas and each vending
34 machine distributor shall obtain a license as provided by this act. A
35 separate application, license and fee is required for each dealer
36 establishment owned or operated by a dealer. A vending machine operator
37 is required to obtain a vending machine operator's master license and, in
38 addition, a separate permit for each vending machine operated by the
39 operator. A vending machine operator may submit one application for the
40 vending machine operator's master license and all permits for vending
41 machines operated by the operator. The license shall be displayed in the
42 dealer establishment and the vending machine permit shall remain securely
43 and visibly attached to the vending machine and contain such information

1 as the director may require. Any vending machine found without such
2 permit attached to the machine shall be sealed by an agent of the director
3 and such seal shall be removed only by an agent of the director after
4 payment of the permit fee and the penalties provided by this act.

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

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

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

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

41 (f) On or before the 10th day of each month, each vending machine
42 distributor shall report to the director, on forms provided by the director,
43 all sales of cigarette vending machines by the distributor to persons in the

1 state of Kansas during the preceding month; the name and address of the
2 purchaser; and the brand name, serial number and sale price of the
3 machines.

4 (g) Concurrently with a change in ownership of a dealer
5 establishment the license applicable to the establishment is void and shall
6 be surrendered to the director and shall not be transferred. On removal of a
7 dealer establishment from one location to another, the owner of the
8 establishment shall notify the director and surrender the owner's license.
9 The director shall issue a new license for the unexpired term of the
10 surrendered license on payment of a fee of ~~\$2~~ \$25. If a dealer's license is
11 lost, stolen or destroyed, the director may issue a new license on proof of
12 loss, theft or destruction, at a cost of ~~\$2~~ \$25. The director shall remit all
13 moneys received under this subsection to the state treasurer in accordance
14 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
15 receipt of each such remittance, the state treasurer shall deposit the entire
16 amount in the state treasury to the credit of the state general fund.

17 Sec. 4. K.S.A. 79-3304 is hereby amended to read as follows: 79-
18 3304. (a) The license fee for each biennium or portion thereof shall be as
19 follows:

20 (1) For retail dealer's license, ~~\$25~~ \$200 for each dealer establishment.

21 (2) For retailer's license on railroad or sleeping cars, ~~\$50~~ \$200. Only
22 one retail license need be obtained by each railroad or sleeping car
23 company to permit the sale of cigarettes on any or all of its cars within the
24 state.

25 (3) For show, carnival or catering license, ~~\$50~~ \$200 for each
26 concession.

27 (4) For resident retail dealer's temporary license for a place of
28 business of a temporary nature, ~~\$2~~ \$20 for each seven days or portion
29 thereof.

30 (5) For wholesale dealer's license, ~~\$50~~ \$500 for each dealer
31 establishment. No wholesale dealer's license shall be issued until the
32 person applying therefor has filed with the director a bond payable to the
33 state of Kansas in such an amount as shall be fixed by the director, but in
34 no event less than ~~\$1,000~~ \$10,000, with a corporate surety authorized to do
35 business in the state of Kansas, and approved by the director. If a
36 wholesale dealer is unable to secure a corporate surety bond, the director
37 may issue a license to such wholesale dealer, upon the wholesale dealer
38 furnishing a personal bond meeting the approval of the director. Such bond
39 shall be conditioned on the wholesale dealer's compliance with all the
40 provisions of this act during the license period.

41 (6) For vending machine distributor's license, ~~\$50~~ \$500.

42 (7) For manufacturer's salesperson license, ~~\$20~~ \$50 for each
43 salesperson. The manufacturer's salesperson shall, with respect to each sale

1 made to a retail dealer, make and deliver to the retail dealer a true invoice
2 wherein such salesperson shall insert the name of the wholesale dealer
3 from whom such salesperson secured such cigarettes, together with such
4 salesperson's own name and the name of the retail dealer purchasing the
5 cigarettes.

6 (8) For vending machine operator's license, ~~no fee~~ \$200.

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

8 (b) ~~An application for any license required under the provisions of~~
9 ~~this act may be refused to: (1) A person who is not of good character and~~
10 ~~reputation in the community in which such person resides; or (2) a person~~
11 ~~who has been convicted of a felony or of any crime involving moral~~
12 ~~turpitude or of the violation of any law of any state or the United States~~
13 ~~pertaining to cigarettes or tobacco products and who has not completed the~~
14 ~~sentence, parole, probation or assignment to a community correctional~~
15 ~~services program imposed for any such conviction within two years~~
16 ~~immediately preceding the date of making application for any of such~~
17 ~~licenses~~ *No license will be issued or renewed by the director to any person*
18 *who:*

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

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

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

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

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

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

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

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

31 (9) *is a corporation if any officer, manager or director thereof, or any*
32 *stockholder owning in the aggregate more than 5% of the common or*
33 *preferred stock of such corporation, has been an officer, manager or*
34 *director or stockholder owning in the aggregate more than 5% of the*
35 *common or preferred stock, of a corporation which:*

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

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

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

39 (10) *is a limited liability company if any officer, manager, director or*
40 *organizer thereof, or any member owning in the aggregate more than 5%*
41 *of the limited liability company, has been an officer, manager or director*
42 *or stockholder owning in the aggregate more than 5% of the common or*
43 *preferred stock, of a corporation which:*

- 1 (A) *Has had a license revoked under this act;*
- 2 (B) *has been convicted of a tax crime under this act; or*
- 3 (C) *would not qualify as a person under this act.*

4 Sec. 5. K.S.A. 79-3309 is hereby amended to read as follows: 79-
5 3309. (a) Whenever the director has reason to believe that any person
6 licensed under this act has violated any of the provisions of this act, the
7 director shall notify the person by certified mail of the director's intention
8 to suspend or revoke the person's license or licenses. *Such reasons shall*
9 *include a belief that any person licensed under this act:*

- 10 (1) *Has been convicted of a felony under the laws of this state or any*
11 *other state or the United States;*
- 12 (2) *is not current in the payment of any tax under this act;*
- 13 (3) *has had a cigarette or tobacco license revoked in this or any other*
14 *state;*
- 15 (4) *is not at least 18 years of age;*
- 16 (5) *intends to carry on the business as an agent of another;*
- 17 (6) *at the time of application for renewal of any license issued under*
18 *this act would not be eligible for the license upon first application;*
- 19 (7) *does not own the premises for which a license is sought, or does*
20 *not, at the time of the application, have a written lease;*
- 21 (8) *has been convicted of a crime involving any tax under this act;*
- 22 (9) *in the case of a corporation, if any officer, manager or director*
23 *thereof, or any stockholder owning in the aggregate more than 5% of the*
24 *common or preferred stock of such corporation, has been an officer,*
25 *manager or director or stockholder owning in the aggregate more than*
26 *5% of the common or preferred stock, of a corporation which:*
 - 27 (A) *Has had a license revoked under this act;*
 - 28 (B) *has been convicted of a tax crime under this act; or*
 - 29 (C) *would not qualify as a person under this act;*
- 30 (10) *in the case of a limited liability company, if any officer, manager,*
31 *director or organizer thereof, or any member owning in the aggregate*
32 *more than 5% of the limited liability company, has been an officer,*
33 *manager or director or stockholder owning in the aggregate more than*
34 *5% of the common or preferred stock, of a corporation which:*
 - 35 (A) *Has had a license revoked under this act;*
 - 36 (B) *has been convicted of a tax crime under this act; or*
 - 37 (C) *would not qualify as a person under this act.*

38 (b) Within 10 days after the mailing of the notice, the person may
39 request a hearing in writing before the director. The hearing shall be
40 conducted in accordance with the provisions of the Kansas administrative
41 procedure act. If, after such hearing, it appears to the satisfaction of the
42 director that the person has violated any of the provisions of this act, the
43 director is hereby authorized and empowered to suspend or revoke the

1 person's license or licenses and may in addition deny the application of the
2 person for a license or licenses for a portion of the succeeding calendar
3 year for such period as the director determines is necessary but in no case
4 for a period ending more than one year following the date upon which the
5 license or licenses were suspended or revoked. The suspension or
6 revocation of a vending machine operator's master license shall suspend or
7 revoke all vending machine permits issued to the vending machine
8 operator for the term of the license suspension or revocation.

9 (b) (c) If a person continues to engage in activities requiring a license
10 under this act after having notice or knowledge of the suspension or
11 revocation of the person's license or licenses or after becoming more than
12 10 days delinquent in *filing a bond payable to the state of Kansas as*
13 *required by the director*, in the payment of any *fine*, tax, penalty or interest
14 imposed pursuant to this act, the state shall be entitled, in any proceedings
15 brought for such purposes, to have an order and judgment restraining and
16 enjoining such unlawful sale and no bond shall be required for the
17 issuance of any such restraining order or injunction.

18 New Sec. 6. Notwithstanding any other provision in this act, any
19 person who purchases, possesses, uses or consumes more than 400
20 cigarettes in this state without the required tax indicia being affixed as
21 herein provided shall be liable for the tax imposed by this act.

22 Sec. 7. K.S.A. 2014 Supp. 79-3311 is hereby amended to read as
23 follows: 79-3311. The director shall design and designate indicia of tax
24 payment to be affixed to each package of cigarettes as provided by this act.
25 ~~The director shall sell water applied stamps only to licensed wholesale~~
26 ~~dealers in the amounts of 1,000 or multiples thereof. Stamps applied by the~~
27 ~~heat process shall be sold only in amounts of 30,000 or multiples thereof,~~
28 ~~except that such stamps which are suitable for packages containing 25~~
29 ~~cigarettes each shall be sold in amounts prescribed by the director. Meter~~
30 ~~imprints shall be sold only in amounts of 10,000 or multiples thereof.~~
31 ~~Water applied stamps in amounts of 10,000 or multiples thereof and~~
32 ~~Stamps applied by the heat process and meter imprints shall be supplied to~~
33 ~~wholesale dealers in good standing with the director at the time of~~
34 ~~purchase at a discount of .90% on and after July 1, 2002, and before~~
35 ~~January 1, 2003, and .80% thereafter from the face value thereof, and shall~~
36 ~~be deducted at the time of purchase or from the remittance therefor as~~
37 ~~hereinafter provided. Any wholesale cigarette dealer who shall file with~~
38 ~~the director a bond, of acceptable form, payable to the state of Kansas with~~
39 ~~a corporate surety authorized to do business in Kansas, shall be permitted~~
40 ~~to purchase stamps, and remit therefor to the director within 30 days after~~
41 ~~each such purchase, up to a maximum outstanding at any one time of 85%~~
42 ~~of the amount of the bond. Failure on the part of any wholesale dealer to~~
43 ~~remit as herein specified shall be cause for forfeiture of such dealer's bond.~~

1 All revenue received from the sale of such stamps ~~or meter imprints~~ shall
2 be remitted to the state treasurer in accordance with the provisions of
3 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
4 remittance, the state treasurer shall deposit the entire amount in the state
5 treasury. The state treasurer shall first credit such amount as the director
6 shall order to the cigarette tax refund fund and shall credit the remaining
7 balance to the state general fund. A refund fund designated the cigarette
8 tax refund fund not to exceed \$10,000 at any time shall be set apart and
9 maintained by the director from taxes collected under this act and held by
10 the state treasurer for prompt payment of all refunds authorized by this act.
11 Such cigarette tax refund fund shall be in such amount as the director shall
12 determine is necessary to meet current refunding requirements under this
13 act.

14 The wholesale cigarette dealer shall affix to each package of cigarettes
15 stamps ~~or tax meter imprints~~ required by this act prior to the sale of
16 cigarettes to any person, by such dealer or such dealer's agent or agents,
17 within the state of Kansas. The director is empowered to authorize
18 wholesale dealers to affix revenue tax meter imprints upon original
19 packages of cigarettes and is charged with the duty of regulating the use of
20 tax meters to secure payment of the proper taxes. No wholesale dealer
21 shall affix revenue tax meter imprints to original packages of cigarettes
22 without first having obtained permission from the director to employ this
23 method of affixation. If the director approves the wholesale dealer's
24 application for permission to affix revenue tax ~~meter imprints~~ *stamps* to
25 original packages of cigarettes, the director shall require such dealer to file
26 a suitable bond payable to the state of Kansas executed by a corporate
27 surety authorized to do business in Kansas. The director may, to assure the
28 proper collection of taxes imposed by the act, revoke or suspend the
29 privilege of ~~imprinting tax meter imprints~~ *affixing tax stamps* upon
30 original packages of cigarettes. ~~All meters shall be under the direct control~~
31 ~~of the director, and all transfer assignments or anything pertaining thereto~~
32 ~~must first be authorized by the director. All inks used in the stamping of~~
33 ~~cigarettes must be of a special type devised for use in connection with the~~
34 ~~machine employed and approved by the director. All repairs to the meter~~
35 ~~are strictly prohibited except by a duly authorized representative of the~~
36 ~~director. Requests for service shall be directed to the director. Meter~~
37 ~~machine ink imprints on all packages shall be clear and legible. If a~~
38 ~~wholesale dealer continuously issues illegible cigarette tax meter imprints,~~
39 ~~it shall be considered sufficient cause for revocation of such dealer's~~
40 ~~permit to use a cigarette tax meter.~~

41 A licensed wholesale dealer may, for the purpose of sale in another
42 state, transport cigarettes not bearing Kansas indicia of tax payment
43 through the state of Kansas provided such cigarettes are contained in

1 sealed and original cartons.

2 Sec. 8. K.S.A. 2014 Supp. 79-3312 is hereby amended to read as
3 follows: 79-3312. The director shall redeem any unused stamps ~~or meter~~
4 ~~imprints~~ that any wholesale dealer presents for redemption within six
5 months after the purchase thereof, at the face value less ~~.90% on and after~~
6 ~~July 1, 2002, and before January 1, 2003, and .80% thereafter~~ thereof if
7 such stamps ~~or meter imprints~~ have been purchased from the director. The
8 director shall prepare a voucher showing the net amount of such refund
9 due, and the director of accounts and reports shall draw a warrant on the
10 state treasurer for the same. Wholesale dealers shall be entitled to a refund
11 of the tax paid on cigarettes which have become unfit for sale upon proof
12 thereof less ~~.90% on and after July 1, 2002, and before January 1, 2003,~~
13 ~~and .80% thereafter~~ of such tax.

14 Sec. 9. K.S.A. 2014 Supp. 79-3316 is hereby amended to read as
15 follows: 79-3316. (a) All purchases of cigarettes by any dealer shall be
16 evidenced by an invoice, a duplicate of which shall be furnished the party
17 receiving the cigarettes from any dealer.

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

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

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

37 (e) Every wholesale dealer shall report to the director on or before the
38 10th day of each month, stating the amount of cigarettes sold during the
39 preceding month and the amount of all cigarettes returned to the
40 manufacturer. Any wholesale dealer who refuses any shipment or part of a
41 shipment of unstamped cigarettes or has a shortage in the shipment of
42 cigarettes consigned to such dealer shall in the monthly report next
43 following the refusal or shortage report to the director the number of

1 packages or cartons of cigarettes refused or short and the name of the
2 carrier from whom the cigarettes were refused or shortage occurred. Such
3 report shall be ~~made on forms provided~~ *filed electronically in the manner*
4 *prescribed* by the director ~~and shall contain such other information as the~~
5 ~~director may require.~~

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

9 Sec. 10. K.S.A. 2014 Supp. 79-3321 is hereby amended to read as
10 follows: 79-3321. It shall be unlawful for any person:

11 (a) To possess, except as otherwise specifically provided by this act,
12 *sell, transport, import, distribute, wholesale or manufacture* more than ~~200~~
13 *1,000* cigarettes without the required tax indicia being affixed as herein
14 provided.

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

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

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

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

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

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

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

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

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

43 (i) To have in possession any evidence of tax indicia provided for

1 herein not purchased from the director.

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

4 (k) To vend small cigars, or any products so wrapped as to be
5 confused with cigarettes, from a machine vending cigarettes, nor shall a
6 vending machine be so built to vend cigars or products that may be
7 confused with cigarettes, be attached to a cigarette vending machine.

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

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

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

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

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

19 (q) To sell a vending machine without having a vending machine
20 distributor's license.

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

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

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

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

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

34 (t) To sell cigarettes, electronic cigarettes or tobacco products by
35 means of a vending machine in any establishment, or portion of an
36 establishment, which is open to minors, except that this subsection shall
37 not apply to:

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

42 (2) the installation and use of a vending machine in a commercial
43 building or industrial plant, or portions thereof, where the public is not

1 customarily admitted and where machines are intended for the sole use of
2 adult employees employed in the building or plant; or

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

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

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

11 (2) a self-service display that is located in a tobacco specialty store.

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

15 (1) Any cigarettes the package of which: (A) Bears any statement,
16 label, stamp, sticker or notice indicating that the manufacturer did not
17 intend the cigarettes to be sold, distributed or used in the United States,
18 including, but not limited to, labels stating "For Export Only," "U.S. Tax-
19 Exempt," "For Use Outside U.S." or similar wording; or (B) does not
20 comply with: (i) All requirements imposed by or pursuant to federal law
21 regarding warnings and other information on packages of cigarettes
22 manufactured, packaged or imported for sale, distribution or use in the
23 United States, including, but not limited to, the precise warning labels
24 specified in the federal cigarette labeling and advertising act, 15 U.S.C. §
25 1333; and (ii) all federal trademark and copyright laws;

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

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

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

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

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

41 (2) any health warning that is not specified in, or does not conform
42 with, the requirements of, the federal cigarette labeling and advertising act,
43 15 U.S.C. § 1333.

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

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

7 Sec. 11. K.S.A. 2014 Supp. 79-3322 is hereby amended to read as
 8 follows: 79-3322. (a) ~~Any person who violates any of the provisions of the~~
 9 ~~Kansas cigarette and tobacco products act, except as otherwise provided in~~
 10 ~~this act, shall be guilty of a misdemeanor and upon conviction shall be~~
 11 ~~punished by a fine of not more than \$1,000 or imprisonment for not more~~
 12 ~~than one year, or by both~~ *Except as otherwise provided by this act, a first*
 13 *violation of K.S.A. 79-3321(a), (c), (d), (f), (h), (i), (j), (v), (w), (x) or (y)*
 14 *shall be a class A misdemeanor, and upon a first conviction of a violation*
 15 *of K.S.A. 79-3321(a), (c), (d), (f), (h), (i), (j), (v), (w), (x) or (y) a person*
 16 *shall be fined a sum of not less than \$1,000, nor more than \$2,500.*

17 (b) *A second violation of K.S.A. 79-3321(a), (c), (d), (f), (h), (i), (j),*
 18 *(v), (w), (x) or (y) shall be a level 6, nonperson felony, and upon*
 19 *conviction of a second violation of K.S.A. 79-3321(a), (c), (d), (f), (h), (i),*
 20 *(j), (v), (w), (x) or (y) a person shall be fined a sum of not less than*
 21 *\$50,000, nor more than \$100,000.*

22 (c) *A third violation of K.S.A. 79-3321(a), (c), (d), (f), (h), (i), (j), (v),*
 23 *(w), (x) or (y) shall be a level 6, nonperson felony, and upon conviction of*
 24 *a third violation of K.S.A. 79-3321(a), (c), (d), (f), (h), (i), (j), (v), (w), (x)*
 25 *or (y) a person shall be fined a sum of \$100,000 and imprisonment*
 26 *pursuant to the provisions of K.S.A. 21-6804, and amendments thereto.*

27 (d) *A fourth and all subsequent violations of K.S.A. 79-3321(a), (c),*
 28 *(d), (f), (h), (i), (j), (v), (w), (x) or (y) shall be a level 6, nonperson felony,*
 29 *and upon conviction of a fourth and all subsequent violations of K.S.A. 79-*
 30 *3321(a), (c), (d), (f), (h), (i), (j), (v), (w), (x) or (y) a person shall be fined*
 31 *a sum of \$100,000 and imprisonment pursuant to the provisions of K.S.A.*
 32 *21-6804, and amendments thereto.*

33 (e) *Any person who violates any provision of K.S.A. 79-3321, other*
 34 *than the provisions of K.S.A. 79-3321(a), (c), (d), (f), (h), (i), (j), (v), (w),*
 35 *(x) or (y), shall be guilty of a class B misdemeanor and upon conviction*
 36 *shall be punished by a fine of not less than \$500 nor more than \$1,000 or*
 37 *imprisonment for not more than one year, or by both for each separate*
 38 *violation.*

39 In addition thereto any person found liable for any license fee or tax
 40 imposed under the provisions of this act shall be personally liable for such
 41 license fee or tax plus a penalty in an amount equal to 100% thereof.

42 ~~(b)~~ (f) (1) It is a class B person misdemeanor punishable by a
 43 minimum fine of \$200 for any person to: (A) Sell, give or furnish any

1 cigarettes or tobacco products to any person under 18 years of age; or (B)
2 buy any cigarettes or tobacco products for any person under 18 years of
3 age.

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

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

23 (4) For purposes of this subsection the person who violates this
24 subsection shall be the individual directly selling, furnishing or
25 distributing the cigarettes or tobacco products to any person under 18 years
26 of age or the retail dealer who has actual knowledge of such selling,
27 furnishing or distributing by such individual or both.

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

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

37 Sec. 12. K.S.A. 79-3323 is hereby amended to read as follows: 79-
38 3323. (a) The following are declared to be common nuisances and
39 contraband:

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

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

1 (3) *cigarettes or tobacco products sold in violation of K.S.A. 50-6a01*
2 *et seq., and amendments thereto; and*

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

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

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

19 Sec. 13. K.S.A. 79-3324a is hereby amended to read as follows: 79-
20 3324a. (a) *All of the cigarettes and property seized by the director's*
21 *authorized agent shall first be listed and appraised by the director's*
22 *authorized agent making the seizure, and turned over to the director and a*
23 *receipt given. The person making the seizure shall immediately make and*
24 *file a written report to the director of taxation, showing the name of the*
25 *person making the seizure, the place where, and the person from whom the*
26 *property was seized, and inventory and appraisal thereof, at the usual*
27 *and ordinary wholesale price of the articles received. The director shall*
28 *institute forfeiture proceedings within the department of revenue in the*
29 *name of the state of Kansas, as plaintiff, and in the name of the owner or*
30 *person in possession, as defendant, if known, and if unknown in the name*
31 *of the property seized. The director shall issue notice to the owner or*
32 *person in whose possession such property was found, directing such*
33 *person to answer within 10 days. The forfeiture hearing under this*
34 *subsection shall be conducted in accordance with the provisions of the*
35 *Kansas administrative procedure act. If the property is declared forfeited*
36 *and ordered sold, notice of the sale shall be posted in the official paper of*
37 *Shawnee county, Kansas, not less than 10 days before the date of the sale,*
38 *except that cigarettes shall be withheld from public sale and shall be sold*
39 *by the director of taxation to the manufacturer of such cigarettes or to a*
40 *licensed distributor and the purchase price shall be paid to the director of*
41 *taxation and treated as cigarette tax collected. After deducting all costs*
42 *incurred in the seizure, forfeiture and sale of all contraband, including*
43 *cigarettes and property seized by the director or by the director's*

1 *authorized agent, pursuant to this subsection, shall be remitted to the state*
2 *treasurer in accordance with the provisions of K.S.A. 75-4215, and*
3 *amendments thereto. Upon receipt of each such remittance, the state*
4 *treasurer shall deposit the entire amount in the state treasury to the credit*
5 *of the cigarette and tobacco products regulation fund created by K.S.A.*
6 *79-3391, and amendments thereto, and the proceeds shall be used*
7 *exclusively for cigarette and tobacco products regulation and enforcement,*
8 *and not for any other purpose.*

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

36 (b) (c) The seizure and sale of the cigarettes shall not relieve the
37 person from whom the cigarettes were seized from any prosecution on the
38 payment of any penalties provided for under the provisions of K.S.A. 79-
39 3301 et seq., and amendments thereto; nor shall it relieve the purchaser
40 thereof from any payment of the regular cigarette tax and the placing of
41 proper stamps thereon before making any sale of the cigarettes or the
42 personal consumption of the same.

43 (e) (d) The forfeiture provisions of this act shall only apply to persons

1 having possession of or transporting cigarettes with intent to barter, sell or
2 give away the same. The possession of cigarettes in any quantity of more
3 than ~~two (2) cartons, twenty (20) packages or four hundred (400) five~~
4 *cartons, 50 packs or 1,000* cigarettes, not bearing indicia of tax payment as
5 required by the provisions of K.S.A. 79-3301 et seq., and amendments
6 thereto, shall be prima facie evidence of intent to barter, sell or give away
7 the cigarettes in violation of the provisions of K.S.A. 79-3301 et seq., and
8 amendments thereto.

9 Sec. 14. K.S.A. 2014 Supp. 79-3333 is hereby amended to read as
10 follows: 79-3333. (a) Each person engaged in the business of selling
11 cigarettes *and tobacco products* to persons who reside in Kansas shall
12 obtain a license as provided by the Kansas cigarette and tobacco products
13 act.

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

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

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

42 (e) The retail cigarette *or tobacco products* dealer shall verify the
43 information contained in the certification provided by the purchaser

1 against a commercially available database of governmental records, or
2 obtain a photocopy or other image of the valid, government-issued
3 identification stating the date of birth or age of the purchaser.

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

9 (g) All packages of cigarettes shipped from a cigarette dealer to
10 purchasers who reside in Kansas shall clearly print the package with the
11 word "CIGARETTES" on all sides of the package. In addition, such
12 package shall contain an externally visible and easily legible notice located
13 on the same side of the package as the address to which the package is
14 delivered as follows:

15 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM
16 A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU
17 RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL
18 LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX
19 COLLECTION AGENCY, INCLUDING YOUR NAME AND
20 ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL
21 APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."

22 (h) ~~The provisions of this section shall not apply to tobacco products,~~
23 ~~as defined in K.S.A. 79-3301, and amendments thereto.~~

24 ~~(i) Violation of the provisions of subsection (a), (d) or (e) is a severity~~
25 ~~level 8, nonperson felony. Violation of any provision of this section other~~
26 ~~than the provisions of subsection (a), (d) or (e) is a misdemeanor and upon~~
27 ~~conviction shall be punishable by a fine of not more than \$1,000 or~~
28 ~~imprisonment for not more than one year, or both Except as otherwise~~
29 ~~provided by this act:~~

30 (1) *A first violation of the provisions of K.S.A. 79-3333(a), (d) or (e),*
31 *and amendments thereto, shall be a class A misdemeanor, and upon a first*
32 *conviction of a violation of the provisions of K.S.A. 79-3333(a), (d) or (e),*
33 *and amendments thereto, a person shall be fined a sum of not less than*
34 *\$1,000, nor more than \$2,500.*

35 (2) *A second violation of the provisions of K.S.A. 79-3333(a), (d) or*
36 *(e), and amendments thereto, shall be a level 6, nonperson felony, and*
37 *upon conviction of a second violation of the provisions of K.S.A. 79-*
38 *3333(a), (d) or (e), and amendments thereto, a person shall be fined a sum*
39 *of not less than \$50,000, nor more than \$100,000.*

40 (3) *A third violation of the provisions of K.S.A. 79-3333(a), (d) or (e),*
41 *and amendments thereto, shall be a level 6, nonperson felony, and upon*
42 *conviction of a third violation of the provisions of K.S.A. 79-3333(a), (d)*
43 *or (e), and amendments thereto, a person shall be fined a sum of \$100,000*

1 *and imprisonment pursuant to the provisions of K.S.A. 2014 Supp. 21-*
2 *6804, and amendments thereto.*

3 *(4) A fourth and all subsequent violations of the provisions of K.S.A.*
4 *79-3333(a), (d) or (e), and amendments thereto, shall be a level 6,*
5 *nonperson felony, and upon conviction of a fourth and all subsequent*
6 *violations of the provisions of K.S.A. 79-3333(a), (d) or (e), and*
7 *amendments thereto, a person shall be fined a sum of \$100,000 and*
8 *imprisonment pursuant to the provisions of K.S.A. 2014 Supp. 21-6804,*
9 *and amendments thereto. Each separate violation of any provision of this*
10 *section other than the provisions of K.S.A. 79-3333(a), (d) or (e), and*
11 *amendments thereto, shall be a class B misdemeanor, and upon conviction*
12 *a person shall be fined a sum of not less than \$500, nor more than \$1,000.*

13 *(+) (i) The provisions of this section shall be part of and supplemental*
14 *to the Kansas cigarette and tobacco products act.*

15 *Sec. 15. K.S.A. 2014 Supp. 79-3335 is hereby amended to read as*
16 *follows: 79-3335. (a) Counterfeit cigarettes shall be seized by the director.*
17 *For purposes of this section, counterfeit cigarettes includes cigarettes*
18 *manufactured, sold, transported, imported, distributed or possessed in this*
19 *state with the intent to deceive consumers and to avoid the provisions of*
20 *this act and also includes cigarettes that have false manufacturing labels or*
21 *packages of cigarettes bearing counterfeit tax stamps. It shall be unlawful*
22 *for any person to sell, transport, import, distribute, wholesale or*
23 *manufacture counterfeit cigarettes.*

24 *(b) Except as otherwise provided by this act, a first violation of the*
25 *provisions of this section shall be a class A misdemeanor, and upon a first*
26 *conviction of a violation of the provisions of this section a person shall be*
27 *fined a sum of not less than \$1,000, nor more than \$2,500.*

28 *(c) A second violation of the provisions of this section shall be a level*
29 *6, non-person felony, and upon conviction of a second violation of the*
30 *provisions of this section a person shall be fined a sum of not less than*
31 *\$50,000, nor more than \$100,000.*

32 *(d) A third violation of the provisions of this section shall be a level 6,*
33 *non-person felony, and upon conviction of a third violation of the*
34 *provisions of this section a person shall be fined a sum of \$100,000 and*
35 *imprisonment pursuant to the provisions of K.S.A. 2014 Supp. 21-6804,*
36 *and amendments thereto.*

37 *(e) A fourth and all subsequent violations of the provisions of this*
38 *section shall be a level 6, non-person felony, and upon conviction of a*
39 *fourth and all subsequent violations of the provisions of this section, a*
40 *person shall be fined a sum of \$100,000 and imprisonment pursuant to the*
41 *provisions of K.S.A. 2014 Supp. 21-6804, and amendments thereto.*

42 *(f) The provisions of this section shall be part of and supplemental to*
43 *the Kansas cigarette and tobacco products act.*

1 Sec. 16. K.S.A. 79-3374 is hereby amended to read as follows: 79-
2 3374. Each application for a distributor's license shall be accompanied by
3 a fee of ~~twenty-five dollars (\$25)~~ \$200. The application shall also be
4 accompanied by a corporate surety bond issued by a surety company
5 authorized to do business in this state, conditioned for the payment when
6 due of all taxes, penalties and accrued interest which may be due the state.
7 The bond shall be in an amount to be determined by the director and in a
8 form prescribed by the director. Whenever it is the opinion of the director
9 that the bond given by a licensee is inadequate in amount to fully protect
10 the state, ~~he or she~~ *the director* shall require an additional bond in such
11 amount as ~~he or she~~ *the director* deems sufficient. A separate application
12 for a license shall be made for each place of business at which a distributor
13 proposes to engage in business as such under this act, but an applicant may
14 provide one bond in an amount determined by the director for all
15 applications made by ~~him or her~~ *such distributor*. ~~A distributor applying~~
16 ~~for a license between June thirtieth and December thirty-first of any year~~
17 ~~shall be required to pay only one-half of the license fee provided for~~
18 ~~herein.~~

19 Sec. 17. K.S.A. 79-3378 is hereby amended to read as follows: 79-
20 3378. On or before the ~~twentieth~~ 20th day of each calendar month every
21 distributor with a place of business in this state shall file a return with the
22 director showing the quantity and wholesale sales price of each tobacco
23 product ~~(1):~~ (a) Brought, or caused to be brought, into this state for sale;
24 and ~~(2)~~ (b) made, manufactured, or fabricated in this state for sale in this
25 state during the preceding calendar month. Every licensed distributor
26 outside this state shall in like manner file a return showing the quantity and
27 wholesale sales price of each tobacco product shipped or transported to
28 retailers in this state to be sold by those retailers, during the preceding
29 calendar month. Returns shall be made ~~upon forms furnished and~~
30 ~~electronically in the manner~~ prescribed by the director. Each return shall
31 be accompanied by a remittance for the full tax liability shown therein,
32 less ~~four percent (4%)~~ 4% of such liability as compensation to reimburse
33 the distributor for ~~his or her~~ *such distributor* expenses incurred in the
34 administration of this act. As soon as practicable after any return is filed,
35 the director shall examine the return. If the director finds that, in ~~his or her~~
36 ~~the director's~~ judgment, the return is incorrect and any amount of tax is
37 due from the distributor and unpaid, ~~he or she~~ *the director* shall notify the
38 distributor of the deficiency. If a deficiency disclosed by the director's
39 examination cannot be allocated by ~~him~~ *the director* to a particular month
40 or months, ~~he or she~~ *the director* may nevertheless notify the distributor
41 that a deficiency exists and state the amount of tax due. Such notice shall
42 be given to the distributor by registered or certified mail.

43 Sec. 18. K.S.A. 2014 Supp. 79-3387 is hereby amended to read as

1 follows: 79-3387. (a) All revenue collected or received by the director
2 from taxes imposed by this act shall be remitted to the state treasurer in
3 accordance with the provisions of K.S.A. 75-4215, and amendments
4 thereto. Upon receipt of each such remittance, the state treasurer shall
5 deposit the entire amount in the state treasury to the credit of the state
6 general fund.

7 (b) All moneys received from license fees, *forfeiture proceeds under*
8 *K.S.A. 79-3324a, and amendments thereto, and fines* imposed by this act
9 shall be collected by the director and shall be remitted to the state treasurer
10 in 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 cigarette
13 and tobacco products regulation fund created by K.S.A. 79-3391, and
14 amendments thereto, *and the proceeds shall be used exclusively for*
15 *cigarette and tobacco products regulation.*

16 Sec. 19. K.S.A. 2014 Supp. 79-3391 is hereby amended to read as
17 follows: 79-3391. (a) In addition to or in lieu of any other civil or criminal
18 penalty provided by law, the secretary of revenue or the secretary's
19 designee, upon a finding that a ~~licensee~~ *person* under this act has violated
20 any provision of this act or any provision of any rule and regulation of the
21 secretary of revenue adopted pursuant to this act shall impose on such
22 ~~licensee~~ *person* a civil fine not exceeding ~~\$1,000~~ *\$2,500* for each
23 violation.

24 (b) It shall be unlawful for any person, directly or indirectly, to: (1)
25 Sell, give or furnish any cigarettes or tobacco products to any person under
26 18 years of age; or (2) buy any cigarettes or tobacco products for any
27 person under 18 years of age. In determining the fine to be imposed under
28 this subsection by a licensed retail dealer whose employee sold, furnished
29 or distributed the cigarettes or tobacco products, the secretary of revenue
30 or the secretary's designee shall consider it to be a mitigating circumstance
31 if the employee had completed a training program, approved by the
32 secretary of revenue or the secretary's designee, in avoiding sale,
33 furnishing or distributing of cigarettes and tobacco products to persons
34 under 18 years of age.

35 (c) No fine shall be imposed pursuant to this section except upon the
36 written order of the secretary of revenue or the secretary's designee to the
37 licensee who committed the violation. Such order shall state the violation,
38 the fine to be imposed and the right of the licensee to appeal the order.
39 Such order shall be subject to appeal and review in the manner provided
40 by the Kansas administrative procedure act.

41 (d) Any fine collected pursuant to this section shall be remitted to the
42 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
43 amendments thereto. Upon receipt of each such remittance, the state

1 treasurer shall deposit the entire amount in the state treasury to the credit
2 of the cigarette and tobacco products regulation fund.

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

10 (f) If a person violates subsection (b) for a second or subsequent
11 occurrence within a three-year period, the secretary may impose a
12 graduated fine upon such person for the second or subsequent occurrence.
13 For the purposes of imposing a fine under this section, if three or more
14 years have elapsed since a person has been found to have violated the
15 provisions of subsection (b), such person shall be treated as never having
16 violated subsection (b).

17 Sec. 20. K.S.A. 2014 Supp. 79-3392 is hereby amended to read as
18 follows: 79-3392. The provisions of K.S.A. 75-5133, 79-3610, 79-3611,
19 79-3612, 79-3613, 79-3615 and 79-3617, and amendments thereto,
20 relating to the assessment, collection, appeal and administration of the
21 retailers' sales tax, insofar as practical, shall have full force and effect with
22 respect to taxes, *penalties and fines* imposed by this act.

23 Sec. 21. K.S.A. 2014 Supp. 79-3393 is hereby amended to read as
24 follows: 79-3393. (a) When a person is stopped by a law enforcement
25 officer for a cigarette or tobacco infraction, the law enforcement officer
26 shall prepare and deliver to the person a written cigarette or tobacco
27 citation on a form approved by the secretary of revenue or the secretary's
28 designee. The citation shall contain a notice to appear in court, the name
29 and address of the person, the offense or offenses charged, the time and
30 place when and where the person shall appear in court, the signature of the
31 law enforcement officer and any other pertinent information. The time
32 specified in the notice to appear shall be at least five days after the alleged
33 infraction unless the person charged with the infraction demands an earlier
34 hearing. The place specified in the notice to appear shall be before a judge
35 of the district court within the county where the infraction is alleged to
36 have been committed or before a judge of the municipal court where the
37 infraction is alleged to have been committed in a city which has adopted
38 an ordinance which prohibits the same acts.

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

42 (c) Acts classified as cigarette or tobacco infractions by ~~subsection (e)~~
43 ~~of~~ K.S.A. 79-3322(g), and amendments thereto, shall be classified as

1 ordinance cigarette or tobacco infractions by those cities adopting
2 ordinances prohibiting the same acts. The fine for an ordinance cigarette
3 or tobacco infraction shall be \$25.

4 New Sec. 22. (a) The governor is authorized, subject to ratification by
5 the Kansas legislature pursuant to K.S.A. 46-2301 et seq., and
6 amendments thereto, to negotiate and execute an agreement with the
7 governing body of any federally recognized Indian tribe within the state of
8 Kansas concerning the collection and dissemination of any cigarette tax or
9 other tobacco product tax under K.S.A. 79-3301 et seq., and amendments
10 thereto, and escrow collected pursuant to K.S.A. 50-6a01 et seq., and
11 amendments thereto, on sales of cigarettes, cigars, roll-your-own or
12 smokeless tobacco made or sold on that tribe's federally recognized
13 reservation.

14 The agreement shall specify:

- 15 (1) Its duration;
- 16 (2) its purpose;
- 17 (3) its limitation to the geographic boundaries of that tribe's
18 reservation boundaries;
- 19 (4) provisions for administering, collecting and enforcing the
20 agreement and for the mutual waiver of sovereign immunity objections
21 with respect to such provisions;
- 22 (5) remittance of state taxes and escrow collected;
- 23 (6) the method to be employed in accomplishing the partial or
24 complete termination of the agreement;
- 25 (7) adequate reporting and auditing provisions; and
- 26 (8) any other necessary and proper matters to implement the master
27 settlement agreement and the 2012 settlement in the best interests of the
28 state of Kansas.

29 (b) The agreement may provide for the sale of cigarettes not included
30 in the directory under K.S.A. 50-6a04, and amendments thereto, but only
31 if the agreement requires that such cigarettes bear both the Kansas state tax
32 stamp and tribal tax stamp, and only if the agreement includes provisions
33 to account for escrow deposits on such cigarettes in amounts equal to and
34 in a manner consistent with the deposits required of manufacturers under
35 K.S.A. 50-6a03, and amendments thereto, or otherwise requires payment
36 of escrow by the manufacturers pursuant to K.S.A. 50-6a01 et seq., and
37 amendments thereto.

38 Sec. 23. K.S.A. 79-3304, 79-3309, 79-3323, 79-3324a, 79-3374 and
39 79-3378 and K.S.A. 2014 Supp. 79-3301, 79-3302, 79-3303, 79-3311, 79-
40 3312, 79-3316, 79-3321, 79-3322, 79-3333, 79-3335, 79-3387, 79-3391,
41 79-3392 and 79-3393 are hereby repealed.

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