

# Journal of the House

## EIGHTY-FOURTH DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Tuesday, June 6, 2017, 2:00 p.m.

The House met pursuant to adjournment with Speaker Ryckman in the chair.

The roll was called with 119 members present.

Reps. Aurand, Barker, Jacobs, Kessinger, Mason and Thimesch were excused on excused absence by the Speaker.

Excused later: Rep. Ralph.

Present later: Reps. Aurand, Kessinger and Ralph.

Prayer by Chaplain Brubaker:

God of comfort,  
strength and refuge,  
I call upon You today to come along side our leaders  
and give them strength and encourage their hearts.  
King Solomon, in his psalm to You reminds us that:  
“Unless the Lord builds the house,  
its builders labor in vain.  
Unless the Lord watches over the city,  
the watchmen stand guard in vain.  
In vain you rise early and stay up late,  
toiling for food to eat—  
for He grants sleep to those He Loves.”  
Isaiah also give us encouraging words when he said:  
“The Lord is the everlasting God  
the Creator of the ends of the earth,  
He will not grow tired or weary,  
and his understanding no one can fathom.  
He gives strength to the weary  
and increases the power of the weak.  
May these promises be fulfilled in our leaders today.  
I pray this in Christ’s Name, Amen.  
(Psalm 127:1-4; Isaiah 40:28-29)

The Pledge of Allegiance was led by Rep. Williams.

### MESSAGES FROM THE SENATE

The Senate adopts the Conference Committee report on **SB 19**.

Also, the Senate adopts the Conference Committee report on **SB 30**.

**INTRODUCTION OF ORIGINAL MOTIONS**

On motion of Rep. Hineman, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **S Sub for HB 2002**.

**MOTIONS TO CONCUR AND NONCONCUR**

On motion of Rep. Waymaster, the House nonconcurred in Senate amendments to **S Sub for HB 2002** and asked for a conference.

Speaker Ryckman thereupon appointed Reps. Waymaster, Davis and Wolfe Moore as conferees on the part of the House.

On motion of Rep. Hineman, the House recessed until 5:00 p.m.

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**LATE AFTERNOON SESSION**

The House met pursuant to recess with Speaker pro tem Schwab in the chair.

**MESSAGES FROM THE SENATE**

The Senate announced the appointment of Senator Hilderbrand to replace to Senator Olson as a conferee on **HB 2409**

The Senate accedes to the request of the House for a conference on **S Sub for HB 2002** and has appointed Senators McGinn, Billinger and Kelly as conferees on the part of the Senate.

Announcing passage of **Sub SB 198**.

The Senate adopts the Conference Committee report on **Sub for HB 2230**.

The Senate adopts the Conference Committee report on **HB 2313**.

**INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS**

The following Senate bill was thereupon introduced and read by title:

**SB 198**

**CONFERENCE COMMITTEE REPORT**

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2230** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments, as follows: On page 1, by striking all in lines 10 through 34;

By striking all on pages 2 through 5;

On page 6, by striking line 1; following line 1, by inserting:

"New Section 1. (a) Notwithstanding any other provision in this act, any person who purchases, possesses, uses or consumes more than 400 cigarettes in this state without the required tax indicia being affixed as herein provided shall be liable for the

tax imposed by this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(h)~~(k) "Distributor" means: (1) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from

outside the state any tobacco products for sale;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(t)~~(y) "Self-service display" means a display that contains cigarettes or tobacco products and is located in an area openly accessible to a retail dealer's consumers, and from which such consumers can readily access cigarettes or tobacco products without the assistance of a salesperson, and which is knowingly utilized by the retail dealer to market and sell cigarettes and tobacco products to consumers. A display case that holds

cigarettes or tobacco products behind locked doors does not constitute a self-service display.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4. K.S.A. 2016 Supp. 79-3302 is hereby amended to read as follows: 79-3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309, 79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, ~~79-3333, 79-3335,~~ 79-3371, 79-3373, 79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-3388, 79-3391, 79-3392, 79-3393, 79-3394 and K.S.A. 2016

Supp. 79-3395 through ~~79-3398~~ 79-3399, section 1, section 2 and section 24, and amendments thereto, shall be known and may be cited as the Kansas cigarette and tobacco products act.

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

Sec. 5. K.S.A. 2016 Supp. 79-3303 is hereby amended to read as follows: 79-3303.

(a) Each person engaged in the business of selling cigarettes or electronic cigarettes in the state of Kansas and each vending machine distributor shall obtain a license as provided by this act. A separate application, license and fee is required for each dealer establishment owned or operated by a dealer. A vending machine operator is required to obtain a vending machine operator's master license and, in addition, a separate permit for each vending machine operated by the operator. A vending machine operator may submit one application for the vending machine operator's master license and all permits for vending machines operated by the operator. The license shall be displayed in the dealer establishment and the vending machine permit shall remain securely and visibly attached to the vending machine and contain such information as the director may require. Any vending machine found without such permit attached to the machine shall be sealed by an agent of the director and such seal shall be removed only by an agent of the director after payment of the permit fee and the penalties provided by this act.

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

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

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

therein is visible showing tax indicia.

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

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

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

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

- (1) For retail dealer's license, \$25 for each dealer establishment.
  - (2) For retailer's license on railroad or sleeping cars, \$50. Only one retail license need be obtained by each railroad or sleeping car company to permit the sale of cigarettes on any or all of its cars within the state.
  - (3) For show, carnival or catering license, \$50 for each concession.
  - (4) For resident retail dealer's temporary license for a place of business of a temporary nature, \$2 for each seven days or portion thereof.
  - (5) For wholesale dealer's license, \$50 for each dealer establishment. No wholesale dealer's license shall be issued until the person applying therefor has filed with the director a bond payable to the state of Kansas in such an amount as shall be fixed by the director, but in no event less than \$1,000, with a corporate surety authorized to do business in the state of Kansas, and approved by the director. If a wholesale dealer is unable to secure a corporate surety bond, the director may issue a license to such wholesale dealer, upon the wholesale dealer furnishing a personal bond meeting the approval of the director. Such bond shall be conditioned on the wholesale dealer's compliance with all the provisions of this act during the license period.
  - (6) For vending machine distributor's license, \$50.
  - (7) For manufacturer's salesperson license, \$20 for each salesperson. The manufacturer's salesperson shall, with respect to each sale made to a retail dealer, make and deliver to the retail dealer a true invoice wherein such salesperson shall insert the name of the wholesale dealer from whom such salesperson secured such cigarettes, together with such salesperson's own name and the name of the retail dealer purchasing the cigarettes.
  - (8) For vending machine operator's license, no fee.
  - (9) For vending machine permit, \$25 for each permit.
- (b) An application for any license required under the provisions of this act may be

refused to: (1) A person who is not of good character and reputation in the community in which such person resides; or (2) a person who has been convicted of a felony or of any crime involving moral turpitude or of the violation of any law of any state or the United States pertaining to cigarettes or tobacco products and who has not completed the sentence, parole, probation or assignment to a community correctional services program imposed for any such conviction within two years immediately preceding the date of making application for any of such licenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(b) Within ~~10~~ 30 days after the mailing of the notice, the person may request a hearing in writing before the director. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If, after such hearing, it appears to the satisfaction of the director that the person has violated any of the provisions of this act, the director is hereby authorized and empowered to suspend or revoke the person's license or licenses and may in addition deny the application of the person for a license or licenses for a portion of the succeeding calendar year for such period as the director determines is necessary, but in no case for a period ending more than one year following the date upon which the license or licenses were suspended or revoked. The suspension or revocation of a vending machine operator's master license shall suspend or revoke all vending machine permits issued to the vending machine operator for the term of the license suspension or revocation.

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

Sec. 8. K.S.A. 2016 Supp. 79-3311 is hereby amended to read as follows: 79-3311. The director shall design and designate indicia of tax payment to be affixed to each package of cigarettes as provided by this act. ~~The director shall sell water applied stamps only to licensed wholesale dealers in the amounts of 1,000 or multiples thereof. Stamps applied by the heat process shall be sold only in amounts of 30,000 or multiples thereof, except that such stamps which are suitable for packages containing 25 cigarettes each shall be sold in amounts prescribed by the director. Meter imprints shall be sold only in amounts of 10,000 or multiples thereof. Water applied stamps in amounts of 10,000 or multiples thereof and Stamps applied by the heat process and meter imprints shall be supplied to wholesale dealers in good standing with the director at the time of purchase~~ at a discount of 0.55% on and after July 1, 2015, and thereafter, from the face value thereof, and shall be deducted at the time of purchase or from the remittance therefor as hereinafter provided. Any wholesale cigarette dealer who shall file with the director a bond, of acceptable form, payable to the state of Kansas with a corporate surety authorized to do business in Kansas, shall be permitted to purchase

stamps, and remit therefor to the director within 30 days after each such purchase, up to a maximum outstanding at any one time of 85% of the amount of the bond. Failure on the part of any wholesale dealer to remit as herein specified shall be cause for forfeiture of such dealer's bond. All revenue received from the sale of such stamps ~~or meter imprints~~ shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. The state treasurer shall first credit such amount as the director shall order to the cigarette tax refund fund and shall credit the remaining balance to the state general fund. A refund fund designated the cigarette tax refund fund not to exceed \$10,000 at any time shall be set apart and maintained by the director from taxes collected under this act and held by the state treasurer for prompt payment of all refunds authorized by this act. Such cigarette tax refund fund shall be in such amount as the director shall determine is necessary to meet current refunding requirements under this act.

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

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

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

refund of the tax paid on cigarettes which have become unfit for sale upon proof thereof less 0.55% of such tax.

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

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

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

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

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

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

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

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

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

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

(d) To use any artful device or deceptive practice to conceal any violation of this

act or to mislead the director or officer or agent authorized by law in the enforcement of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) It shall be a defense to a prosecution under this subsection if: (A) The defendant

engages in the lawful sale, furnishing or distribution of cigarettes or tobacco products by mail; and (B) the defendant sold, furnished or distributed the cigarettes or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601, and amendments thereto, that the person was 18 or more years of age.

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

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

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

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

Sec. 13. K.S.A. 79-3323 is hereby amended to read as follows: 79-3323. (a) Except as provided in subsection (c), the following are declared to be common nuisances and contraband:

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

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

(A) The governor and the Prairie Band Potawatomi Nation and approved by the legislature; (B) the governor and the Iowa Tribe of Kansas and Nebraska and approved by the legislature; (C) the governor and the Kickapoo Tribe in Kansas and approved by the legislature; or (D) the governor and the Sac and Fox Nation of Missouri in Kansas and Nebraska and approved by the legislature;

~~(4)~~(3) all cigarettes or tobacco products in the possession of a minor; ~~and~~  
 (4) cigarettes, smokeless tobacco or roll-your-own tobacco in violation of K.S.A. 50-6a01 et seq., and amendments thereto; and

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

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

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

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

Sec. 14. K.S.A. 79-3324a is hereby amended to read as follows: 79-3324a. (a) All of the cigarettes and property seized by the director or the director's authorized agent shall first be listed and appraised by the person making the seizure, and turned over to the director and a receipt taken. The person making the seizure shall immediately make and file a written report showing the name of the person making the seizure, the place where, and the person from whom the property was seized, and inventory and appraisal thereof, at the usual and ordinary wholesale price of the articles received by the director of taxation. The director shall institute forfeiture proceedings within the department of revenue in the name of the state of Kansas, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown, in the name of the property seized. The director shall issue notice to the owner or person in whose possession such property was found, directing such person to answer within 10 days. The forfeiture hearing under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in the official newspaper of Shawnee county, Kansas, not less than 10 days before the date of the sale, except that cigarettes shall be withheld from public sale and shall be sold by the director of taxation to the manufacturer of such cigarettes or to a licensed distributor and the purchase price shall be paid to the director of taxation and treated as cigarette tax collected. After deducting all costs incurred in the seizure, forfeiture and sale of all contraband, including cigarettes and property seized by the director or by the director's authorized agent, pursuant to this subsection, all such proceeds shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire



amount in the state treasury to the credit of the cigarette and tobacco products regulation fund created by K.S.A. 79-3391, and amendments thereto, and such proceeds shall be used exclusively for cigarette and tobacco products regulation and enforcement, and not for any other purpose.

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

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

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

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

secretary of revenue shall adopt rules and regulations for the administration of this act. For the purpose of enforcing this act the director may call to the director's aid any law enforcement officer of this state to prosecute all violators of any of the provisions of this act. The police of any city shall have the right to inspect all premises, records and invoices pertaining to the wholesale distribution, retail sale or sampling of cigarettes or tobacco products within the city at all reasonable times. All agents and representatives designated by the director are hereby invested with all the powers of peace and police officers within the state of Kansas in the enforcement of the provisions of this act throughout the state.

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

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

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

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

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

(f) All invoices, bills of lading, sales receipts and any other document related to the sale of cigarettes, smokeless tobacco or roll-your-own tobacco through the internet or other mail order transaction shall contain the current, valid retailer Kansas cigarette, smokeless tobacco or roll-your-own tobacco dealer license number, Kansas sales tax

registration number, business name and address of the seller.

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

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

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

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

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

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

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

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

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

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

(k) The secretary of revenue or the secretary's authorized agent may refer such evidence as may be available concerning violations of this act or any rules and regulations or order hereunder to the attorney general or the proper county or district attorney, who may, in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request

that a duly employed attorney of the department of revenue prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the secretary or the secretary's authorized agent, such employee shall be appointed as a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the attorney general or the county attorney or district attorney. If an attorney employed by the secretary or secretary's authorized agent acts as a special prosecutor, the secretary may pay extradition and witness expenses associated with the case.

(f)(1) The provisions of this section shall be part of and supplemental to the Kansas cigarette and tobacco products act.

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

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

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

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

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

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

(d) The provisions of this section shall be part of and supplemental to the Kansas

cigarette and tobacco products act.

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

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

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

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

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

(b) It shall be unlawful for any person, directly or indirectly, to: (1) Sell, give or furnish any cigarettes or tobacco products to any person under 18 years of age; or (2) buy any cigarettes or tobacco products for any person under 18 years of age. In determining the fine to be imposed under this subsection by a licensed retail dealer whose employee sold, furnished or distributed the cigarettes or tobacco products, the

secretary of revenue or the secretary's designee shall consider it to be a mitigating circumstance if the employee had completed a training program, approved by the secretary of revenue or the secretary's designee, in avoiding sale, furnishing or distributing of cigarettes and tobacco products to persons under 18 years of age.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) "Qualified tribal land" means:

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

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

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

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

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

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

New Sec. 24. (a) No provisions of this act shall: (1) Be deemed to amend or modify any compact described in K.S.A. 79-3323(a), and amendments thereto; or (2) be enforced in a manner which would cause the state to breach the terms of any compact described in K.S.A. 79-3323(a), and amendments thereto.

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

Sec. 25. K.S.A. 2016 Supp. 79-3399 is hereby amended to read as follows: 79-3399. (a) On and after ~~January~~ July 1, 2017, a tax is hereby imposed upon the privilege of selling or dealing in electronic cigarettes in this state by any person engaged in business as a distributor thereof, at the rate of ~~\$.20~~ \$.05 per milliliter of consumable material for electronic cigarettes and a proportionate tax at the like rate on all fractional parts thereof. For electronic cigarettes in the possession of retail dealers for which tax has not been paid, tax shall be imposed under this subsection at the earliest time the retail dealer: (1) Brings or causes to be brought into this state from without the state electronic cigarettes for sale; (2) makes, manufactures or fabricates electronic cigarettes in this state for sale in this state; or (3) sells electronic cigarettes to consumers within this state.

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

(c) The secretary of revenue shall adopt rules and regulations to implement the provisions of this section.

Sec. 26. K.S.A. 79-3304, 79-3309, 79-3323, 79-3324a, 79-3326 and 79-3378 and K.S.A. 2016 Supp. 50-6a07, 79-3301, 79-3302, 79-3303, 79-3311, 79-3312, 79-3316, 79-3321, 79-3322, 79-3333, 79-3335, 79-3387, 79-3391, 79-3392, 79-3393 and 79-3399 are hereby repealed.;

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after "concerning"; by striking lines 2 through 6; in line 7, by striking all before the period and inserting "the Kansas cigarettes and tobacco products act; relating to definitions, licenses and permits, suspension or revocation of licenses, stamps, records required of dealers, unlawful acts, penalties, sale of cigarettes, application of certain laws to taxes, remittance of taxes, escrow deposits,



taxation of electronic cigarettes; amending K.S.A. 79-3304, 79-3309, 79-3323, 79-3324a, 79-3326 and 79-3378 and K.S.A. 2016 Supp. 50-6a07, 79-3301, 79-3302, 79-3303, 79-3311, 79-3312, 79-3316, 79-3321, 79-3322, 79-3333, 79-3335, 79-3387, 79-3391, 79-3392, 79-3393 and 79-3399 and repealing the existing sections";

And your committee on conference recommends the adoption of this report.

CARYN TYSON

DAN KERSCHEN

TOM HOLLAND

*Conferees on part of Senate*

STEVEN C. JOHNSON

TOM PHILLIPS

TOM SAWYER

*Conferees on part of House*

On motion of Rep. Phillips, the conference committee report on **Sub HB 2230** was adopted.

On roll call, the vote was: Yeas 116; Nays 0; Present but not voting: 0; Absent or not voting: 9.

Yeas: Alcalá, Alford, Arnberger, Awerkamp, Baker, Ballard, Becker, Bishop, Blex, Brim, Burris, Burroughs, Campbell, Carlin, Carmichael, B. Carpenter, Claeys, Clark, Clayton, Concannon, Corbet, Cox, Crum, S., Curtis, E. Davis, Deere, Delperdang, Dierks, Dietrich, Dove, Elliott, Ellis, Eplee, Esau, Finch, Finney, Francis, Frownfelter, Gallagher, Gartner, Good, Hawkins, Helgerson, Henderson, Hibbard, Highberger, Highland, Hineman, Hodge, Hoffman, Holscher, Houser, Huebert, Humphries, Jennings, Johnson, K. Jones, Judd-Jenkins, Karleskint, Kelly, Koesten, Kuether, Lakin, Landwehr, Lewis, Lusk, Lusker, Markley, Mastroni, Miller, Murnan, Neighbor, Ohaebosim, Orr, Osterman, Ousley, Parker, F. Patton, Phelps, Phillips, Pittman, R. Powell, Proehl, Rafie, Rahjes, Resman, Rooker, Ruiz, Ryckman, Sawyer, Schreiber, Schroeder, Schwab, Seiwert, Sloan, Smith, A., Smith, E., Stogsdill, Sutton, S. Swanson, Tarwater, Terrell, Thompson, Trimmer, Vickrey, Victors, Ward, Waymaster, Weber, C., Weigel, Wheeler, Whipple, Whitmer, K. Williams, Winn, Wolfe Moore.

Nays: None.

Present but not voting: None.

Absent or not voting: Aurand, Barker, Garber, Jacobs, Kessinger, Mason, Ralph, Thimesch, Wilson.

## CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2313** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee amendments, as follows:

On page 2, following line 21, by inserting:

"(h) (1) "Instant bingo vending machine" means a machine or electronic device owned or leased by the Kansas lottery in fulfillment of the Kansas lottery's obligations under an agreement between the Kansas lottery and a licensee entered into pursuant to

section 8, and amendments thereto, the sole purpose of which is to:

(A) Dispense a printed physical instant bingo ticket after a purchaser inserts cash or other form of consideration into the machine; and

(B) allow purchasers to manually check the winning status of the instant bingo ticket.

(2) "Instant bingo vending machine" shall not:

(A) Provide a visual or audio representation of a bingo card or an electronic gaming machine;

(B) visually or functionally have the same characteristics of an electronic instant bingo game or an electronic gaming machine;

(C) automatically determine or display the winning status of any dispensed instant bingo ticket;

(D) extend or arrange credit for the purchase of an instant bingo ticket;

(E) dispense any winnings;

(F) dispense any prize;

(G) dispense any evidence of a prize other than an instant bingo ticket;

(H) provide free instant bingo tickets or any other item that can be redeemed for cash; or

(I) dispense any other form of a prize to a purchaser.";

On page 3, in line 39, by striking "or"; in line 40, after "machine" by inserting "; or

(G) any instant bingo vending machine";

On page 4, following line 28, by inserting:

"No more than two lottery ticket vending machines may be located at each Kansas lottery retailer selling location.";

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly;

On page 9, in line 5, by striking all after "(k)"; by striking all in line 6; in line 7, by striking all before the period and inserting "'Facility owner licensee" shall have the same meaning as the term is defined in K.S.A. 74-8802, and amendments thereto.

(l) "Racetrack gaming facility manager" shall have the same meaning as that term is defined in K.S.A. 74-8702, and amendments thereto.

(m) "Lottery gaming facility manager" shall have the same meaning as that term is defined in K.S.A. 74-8702, and amendments thereto.

(n) "Prize" shall have the same meaning as that term is defined in K.S.A. 74-8702, and amendments thereto, and any winnings from parimutuel wagering as provided by the Kansas parimutuel racing act, K.S.A. 74-8801 et seq., and amendments thereto";

Also on page 9, by striking all in lines 8 through 35; in line 40, by striking all after "director"; in line 41, by striking all before "may";

On page 10, in line 1, by striking all after "or"; in line 2, by striking "vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 10, by striking all after "a"; in line 11, by striking "vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 14, by striking all before "with" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 16, by striking "third party vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 18, after "debts" by inserting "by a lottery gaming facility manager, racetrack gaming facility manager or

facility owner licensee"; in line 29, by striking "third party vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 31, by striking "third party vendor, as agent of the state," and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 35, by striking "third party"; in line 36, by striking "vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 38, by striking "third party vendor is acting strictly as agent for the state and" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 41, by striking "third party vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee"; in line 42, by striking "third party vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee";

On page 11, in line 3, by striking "third party vendor" and inserting "lottery gaming facility manager, racetrack gaming facility manager or facility owner licensee";

On page 12, in line 6, after "(5)" by inserting "transfers to the community crisis stabilization centers fund and clubhouse model program fund of the Kansas department for aging and disability services pursuant to subsection (e);

(6)";

Also on page 12, in line 7, after the stricken material by inserting "and"; in line 8, by striking the semicolon; by striking all in lines 9 through 11; in line 12, by striking all before the period; in line 20, by striking "(c)(4)" and inserting "(c)(5)"; in line 27, by striking all after "(2)"; by striking all in lines 28 through 43;

On page 13, in line 1, by striking all before the period and inserting "during fiscal year 2018 through fiscal year 2022, on or before the 10<sup>th</sup> day of each month, the director of the lottery shall certify to the director of accounts and reports all net profits from the sale of lottery tickets and shares via lottery ticket vending machines. Of such certified amount, the director of accounts and reports shall transfer 75% from the lottery operating fund to the community crisis stabilization centers fund of the Kansas department for aging and disability services and 25% from the lottery operating fund to the clubhouse model program fund of the Kansas department for aging and disability services";

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly;

Also on page 13, following line 27, by inserting:

"New Sec. 8. (a) The executive director of the Kansas lottery is authorized to enter into agreements with any nonprofit organization licensed under K.S.A. 2016 Supp. 75-5171 et seq., and amendments thereto, for the operation of instant bingo vending machines, as defined in K.S.A. 74-8702, and amendments thereto, to be located on the premises of such nonprofit organization, provided, that not more than two instant bingo vending machines may be located on the premises of such nonprofit organization. Such agreements shall provide for the remittance of the gross receipts from the sale of instant bingo tickets via any instant bingo vending machine to the nonprofit organization.

(b) All sales of instant bingo tickets via an instant bingo vending machine operated pursuant to an agreement shall be considered sales by the nonprofit organization, and all proceeds from such sales shall be remitted to the nonprofit organization.

Sec. 9. K.S.A. 2016 Supp. 74-8723 is hereby amended to read as follows: 74-8723.

(a) The Kansas lottery and the office of executive director of the Kansas lottery,

established by K.S.A. 74-8703, and amendments thereto, and the Kansas lottery commission, created by K.S.A. 74-8709, and amendments thereto, shall be and hereby are abolished on July 1, ~~2022~~ 2037.

(b) This section shall be part of and supplemental to the Kansas lottery act.

Sec. 10. K.S.A. 2016 Supp. 75-5173 is hereby amended to read as follows: 75-5173. As used in this act:

(a) "Act" means the Kansas charitable gaming act.

(b) "Administrator" means the administrator of charitable gaming designated by the secretary pursuant to K.S.A. 2016 Supp. 75-5186, and amendments thereto.

(c) "Bingo" or "games of bingo" means the games of call bingo and instant bingo.

(d) "Bingo face" or "face" means a piece of paper which is marked off into 25 squares arranged in five horizontal rows of five squares each and five vertical rows of five squares each, with each square being designated by a number, letter or combination of numbers and letters. Only the center square shall be designated with the word "free." No two bingo faces in the same game shall be identical. Faces shall be disposable and shall not be reused after the game in which a player has used such face.

(e) "Call bingo" means a game in which: (1) Each player pays a charge; (2) a prize or prizes are awarded to the winner or winners; (3) each player receives one or more cards or faces; and (4) each player covers the squares on each card or face as the operator of such game announces a number, letter or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically from a receptacle in which have been placed objects bearing numbers, letters or combinations of numbers and letters corresponding to the system used for designating the squares. The winner of each game is the player or players first covering properly a predetermined and announced pattern of squares upon the card or face being used by such player or players.

"Call bingo" shall include any regular, special, mini and progressive game of bingo.

(f) "Charitable gaming" means bingo, including call bingo, and instant bingo and charitable raffles.

(g) "Charitable raffle" means a raffle conducted by a nonprofit religious, charitable, fraternal, educational or veterans' organization.

(h) "Department" means the department of revenue.

(i) "Director" means the director of taxation.

(j) "Distributor" means any person or entity that sells or distributes instant bingo tickets, bingo cards or bingo faces.

(k) "Electronic gaming device" means a device that, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value.

(l) "Instant bingo" means a game: (1) In which each player pays a charge; (2) in which a prize or prizes are awarded to the winner or winners; (3) in which each player receives one or more disposable pull-tab or break-open tickets which accord a player an opportunity to win something of value by opening or detaching the paper covering from the back of the ticket to reveal a set of numbers, letters, symbols or configurations, or any combination thereof; (4) ~~which that~~ is conducted by a licensee under this act; (5) ~~the conduct of which must be in the presence of the players that may be dispensed by an instant bingo vending machine;~~ and (6) ~~which that~~ does not utilize any dice, normal

playing cards, instant ticket with a removable latex covering or slot machines.

Winners of instant bingo shall be determined either: (1) By a combination of letters, numbers or symbols determined and posted prior to the sale of instant bingo tickets; (2) by matching a letter, number or symbol under a tab of an instant bingo ticket with the winning letter, number or symbol in a designated call game of bingo during the same session; or (3) by matching a letter, number or symbol under a tab of an instant bingo ticket with one or more letters, numbers or symbols announced in, or as a continuation of, a designated call game of bingo during the same session.

~~"Instant bingo" shall not include any game utilizing electronically generated or computer-generated tickets.~~

(m) "Instant bingo vending machine" means the same as that term is defined in K.S.A. 74-8702, and amendments thereto.

~~(n)~~(n) "Lessor" means the owner, co-owner, lessor or sublessor of premises upon which a licensee is permitted to manage, operate or conduct games of bingo.

~~(o)~~(o) "Licensee" means any nonprofit organization holding a license to manage, operate or conduct games of bingo or charitable raffles pursuant to K.S.A. 2016 Supp. 75-5171 through 75-5188, and amendments thereto. A license shall be required for each affiliated organization of any state or national nonprofit religious, charitable, fraternal, educational or veteran's organization.

~~(p)~~(p) "Mini bingo" means a game of call bingo in which the prizes awarded are not less than 50% of the gross receipts derived from the sale of cards or faces for participation in the game.

~~(q)~~(q) "Net proceeds" means the gross receipts received by the licensee from charges imposed on players for participation in games of bingo or raffles and any admission fees or charges less amounts actually paid as prizes in games of bingo or raffles and any tax payable by the licensee.

~~(r)~~(r) "Nonprofit religious organization" means any organization, church, body of communicants, or group, gathered in common membership for mutual support and edification in piety, worship, and religious observances, or a society of individuals united for religious purposes at a definite place and of which no part of the net earnings inures to the benefit of any private shareholder or individual member of such organization, and which religious organization maintains an established place of worship within this state and has a regular schedule of services or meetings at least on a weekly basis and has been determined by the administrator to be organized and created as a bona fide religious organization and which has been exempted from the payment of federal income taxes as provided by section 501(c)(3) or section 501(d) of the federal internal revenue code of 1986, as amended, or determined to be organized and operated as a bona fide nonprofit religious organization by the administrator.

~~(s)~~(s) "Nonprofit charitable organization" means any organization which is organized and operated for:

(1) The relief of poverty, distress, or other condition of public concern within this state;

(2) financially supporting the activities of a charitable organization as defined in paragraph (1); or

(3) conferring direct benefits on the community at large; and of which no part of the net earnings inures to the benefit of any private shareholder or individual member of such organization and has been determined by the administrator to be organized and

operated as a bona fide charitable organization and which has been exempted from the payment of federal income taxes as provided by sections 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6) and 501(c)(7) of the federal internal revenue code of 1986, as amended, or determined to be organized and operated as a bona fide nonprofit charitable organization by the administrator.

~~(s)~~(t) "Nonprofit fraternal organization" means any organization within this state which exists for the common benefit, brotherhood, or other interests of its members and is authorized by its written constitution, charter, articles of incorporation or bylaws to engage in a fraternal, civic or service purpose within this state and has been determined by the administrator to be organized and operated as a bona fide fraternal organization and which has been exempted from the payment of federal income taxes as provided by section 501(c)(8) or section 501(c)(10) of the federal internal revenue code of 1986, as amended, or determined to be organized and operated as a bona fide nonprofit fraternal organization by the administrator.

~~(t)~~(u) "Nonprofit educational organization" means any public or private elementary or secondary school or institution of higher education which has been determined by the administrator to be organized and operated as a bona fide educational organization and which has been exempted from the payment of federal income taxes as provided by section 501(c)(3) of the federal internal revenue code of 1986, as amended, or determined to be organized and operated as a bona fide nonprofit educational organization by the administrator.

~~(u)~~(v) "Nonprofit veterans' organization" means any organization within this state or any branch, lodge or chapter of a national or state organization within this state, the membership of which consists exclusively of individuals who qualify for membership because they were or are members of the armed services or forces of the United States, or an auxiliary unit or society of such a nonprofit veterans' organization, the membership of which consists exclusively of individuals who were or are members of the armed services or forces of the United States, or are cadets, or are spouses, widows or widowers of individuals who were or are members of the armed services or forces of the United States, and of which no part of the net earnings inures to the benefit of any private shareholder or individual member of such organization, and has been determined by the administrator to be organized and operated as a bona fide veterans' organization and which has been exempted from the payment of federal income taxes as provided by section 501(c)(4) or 501(c)(19) of the federal internal revenue code of 1986, as amended, or determined to be organized and operated as a bona fide nonprofit veterans' organization by the administrator.

~~(v)~~(w) "Person" means any natural person, corporation, partnership, trust or association.

~~(w)~~(x) "Premises" means any room, hall, building, enclosure or outdoor area used for the management, operation or conduct of a game of bingo by a licensee.

~~(x)~~(y) "Progressive bingo" means a game of call bingo in which either the established prize amount or number of bingo balls or objects called, or both, may be increased from one session to the next scheduled session if no player completes the required pattern within the specified number of bingo balls or objects drawn. The player's opportunity to win shall increase as the prize amount increases.

~~(y)~~(z) "Raffle" means a game of chance in which each participant buys a ticket or tickets from a nonprofit organization with each ticket providing an equal chance to win

a prize and the winner being determined by a random drawing.

~~(z)~~(aa) "Reusable bingo card" means a reusable card which is marked off into 25 squares arranged in five horizontal rows of five squares each and five vertical rows of five squares each, with each square being designated by a number, letter or combination of numbers and letters. Only the center square shall be designated with the word "free." No two cards in the same game shall be identical.

~~(aa)~~(bb) "Secretary" means the secretary of revenue or the secretary's designee.

~~(bb)~~(cc) "Session" means a day on which a licensee conducts games of bingo.";

Also on page 13, in line 28, by striking "and 75-6203"; in line 29, after "74-8723" by inserting "75-5173,";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking "the Kansas lottery" and inserting "gaming"; in line 2, by striking all after the semicolon; in line 3, by striking "sunset;" and inserting "dealing with instant bingo vending machines; concerning certain"; also in line 3, by striking "with third party vendors"; in line 4, by striking "and 75-6203"; also in line 4, following the comma, by inserting "74-8723, 75-5173,"; in line 6, by striking "; also repealing "K.S. A. 2016 Supp. 74-8723"

And your committee on conference recommends the adoption of this report.

BUD ESTES

ROB OLSON

OLETHA FAUST-GOUDEAU

*Conferees on part of Senate*

RONALD L. HIGHLAND

KRISTEY WILLIAMS

LOUIS E. RUIZ

*Conferees on part of House*

On motion of Rep. Highland, the conference committee report on **HB 2313** was adopted.

On roll call, the vote was: Yeas 98; Nays 19; Present but not voting: 0; Absent or not voting: 8.

Yeas: Alcalá, Alford, Amberger, Baker, Ballard, Becker, Bishop, Brim, Burroughs, Campbell, Carlin, Claeys, Clark, Clayton, Concannon, Corbet, Cox, Crum, S., Curtis, E. Davis, Deere, Delperdang, Dierks, Dietrich, Dove, Elliott, Eplee, Finch, Finney, Francis, Frownfelter, Gallagher, Garber, Gartner, Good, Hawkins, Henderson, Hibbard, Hightberger, Highland, Hineman, Hodge, Holscher, Humphries, Jennings, Johnson, Judd-Jenkins, Karleskint, Kelly, Koesten, Kuether, Landwehr, Lewis, Lusk, Lusker, Markley, Mastroni, Miller, Murnan, Neighbor, Ohaebosim, Orr, Osterman, Parker, F. Patton, Phelps, Phillips, Pittman, Proehl, Rafie, Rahjes, Resman, Rooker, Ruiz, Ryckman, Sawyer, Schreiber, Schwab, Seiwert, Sloan, Smith, A., Smith, E., Stogsdill, Sutton, S. Swanson, Tarwater, Terrell, Thompson, Trimmer, Victors, Waymaster, Weber, C., Weigel, Wheeler, Whipple, K. Williams, Winn, Wolfe Moore.

Nays: Awerkamp, Blex, Burris, Carmichael, B. Carpenter, Ellis, Esau, Helgerson, Hoffman, Houser, Huebert, K. Jones, Lakin, Ousley, R. Powell, Schroeder, Vickrey, Ward, Whitmer.

Present but not voting: None.

Absent or not voting: Aurand, Barker, Jacobs, Kessinger, Mason, Ralph, Thimesch, Wilson.

On motion of Rep. Hineman, the House recessed until 7:30 p.m.

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#### EVENING SESSION

The House met pursuant to recess with Speaker pro tem Schwab in the chair.

#### MESSAGES FROM THE SENATE

Announcing the Senate herewith transmits the veto message from the Governor, together with the enrolled copy of **SB 30**, AN ACT concerning taxation; relating to sales and compensating use tax, collection and distribution thereof, STAR bonds; income taxation, determination of Kansas adjusted gross income, modifications, rates, itemized deductions and credits; amending K.S.A. 2016 Supp. 12-17,165, 12-17,179, 79-32,110, 79-32,117, 79-32,120 and 79-32,138 and repealing the existing sections; also repealing K.S.A. 2016 Supp. 79-32,269, which was received and read on June 6, 2017.

#### Message from the Governor

I appreciate the efforts of members during this intense lawmaking process. We have worked hard in Kansas to move our tax policy toward a pro-growth orientation. Unfortunately, Senate Bill 30 takes us backward in that effort. We can and we must balance our budget without negatively harming Kansas families.

Accordingly, pursuant to Article 2, Section 14 (a) of the Constitution of the State of Kansas, I hereby veto Senate Bill 30.

Dated: June 6, 2017

Signed, Sam Brownback, Governor of Kansas

A motion was made that **SB 30** be passed notwithstanding the Governor's veto. By vote of 27 Yeas and 13 Nays, the motion having received the required two-thirds constitutional majority of the members elected or appointed to the Senate, voting in the affirmative, the bill passed.

#### CONSIDERATION OF VETO

On motion of Rep. Rep. Johnson, the House proceeded to reconsider **SB 30**, AN ACT concerning taxation; relating to sales and compensating use tax, collection and distribution thereof, STAR bonds; income taxation, determination of Kansas adjusted gross income, modifications, rates, itemized deductions and credits; amending K.S.A. 2016 Supp. 12-17,165, 12-17,179, 79-32,110, 79-32,117, 79-32,120 and 79-32,138 and repealing the existing sections; also repealing K.S.A. 2016 Supp. 79-32,269.

The Governor's objection to **SB 30** having been read, the question being shall the bill be passed not withstanding the Governor's veto?

On roll call, the vote was: Yeas 88; Nays 31; Present but not voting: 1; Absent or not voting: 5.

Yeas: Alcalá, Alford, Aurand, Baker, Ballard, Becker, Bishop, Brim, Burroughs, Campbell, Carlin, Carmichael, Clark, Clayton, Concannon, Cox, Crum, S., Curtis, E.



Davis, Deere, Dierks, Dietrich, Elliott, Eplee, Finch, Finney, Frownfelter, Gallagher, Gartner, Good, Hawkins, Helgerson, Hibbard, Highberger, Hineman, Hodge, Holscher, Jennings, Johnson, Judd-Jenkins, Karleskint, Kelly, Kessinger, Koesten, Kuether, Lakin, Lewis, Lusk, Lusker, Markley, Mastroni, Miller, Murnan, Neighbor, Ohaebosim, Orr, Ousley, Parker, F. Patton, Phelps, Phillips, Pittman, Proehl, Raffie, Ralph, Rooker, Ruiz, Ryckman, Sawyer, Schreiber, Schroeder, Sloan, Smith, A., Stogsdill, S. Swanson, Tarwater, Terrell, Thompson, Trimmer, Victors, Ward, Waymaster, Weigel, Wheeler, Whipple, Wilson, Winn, Wolfe Moore.

Nays: Arnberger, Awerkamp, Blex, Burris, B. Carpenter, Claeys, Corbet, Delperdang, Dove, Ellis, Esau, Garber, Henderson, Highland, Hoffman, Houser, Huebert, Humphries, K. Jones, Landwehr, Osterman, R. Powell, Rahjes, Resman, Schwab, Smith, E., Sutton, Vickrey, Weber, C., Whitmer, K. Williams.

Present but not voting: Seiwert.

Absent or not voting: Barker, Francis, Jacobs, Mason, Thimesch.

A two-thirds majority of the members elected to the House having voted in favor of the bill over the Governor's veto, the motion did prevail, the bill did pass.

#### EXPLANATIONS OF VOTE

MR. SPEAKER: I am voting yes to override the Governor's veto on **SB 30**. I vote to override with reluctance. This is the first time in my life that I've watched negotiations go upward. Usually, you negotiate down. That said, it would have been much easier for me to vote for **SB 30** had it contained a full-fledged repeal of the Governor's tax cuts.

However, the Governor has done my community no favors. With the reality being what it is, I choose to do what will most benefit Kansans – and that is to support this override. – STAN FROWN FELTER

MR. SPEAKER: I voted present on **SB 30** because I support funding government – and jobs for my district including Wichita and rural Kansas. However, they were not a part of this bill, therefore I could neither support it or vote against it, or the largest tax increase in states' history. – JOE SEIWERT

MR. SPEAKER: I vote yes to override the veto on **SB 30**. 109 days ago we came together to formulate a plan that would get our state back on solid financial footing. We all came with different goals: some with reversing the Governor's plan altogether, putting businesses back on tax rolls or shielding all Kansans from tax hikes. We've worked in good faith to find the middle ground. However, it became clear that finding middle ground on a plan the governor would sign was out of reach. This isn't the plan I supported, but it's the plan that the majority of this House supported. It's time to provide certainty for Kansas. --RON RYCKMAN

On motion of Rep. Hineman, the House adjourned until 4:00 p.m., Wednesday, June 7, 2017.

BECKIE HENDRICKS, JENNY HAUGH, JULIA WERNER, *Journal Clerks*.

SUSAN W. KANNARR, *Chief Clerk*.

