

HOUSE BILL No. 2269

By Committee on Federal and State Affairs

2-2

1 AN ACT regarding cigarettes, electronic cigarettes and tobacco products;
2 raising the minimum age for the sale, purchase or possession of such
3 products to 21 years of age; amending K.S.A. 79-3304, 79-3309, 79-
4 3321, 79-3322 and 79-3391 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 79-3304 is hereby amended to read as follows: 79-
8 3304. (a) The license fee for each biennium or portion thereof shall be as
9 follows:

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

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

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

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

17 (5) For wholesale dealer's license, \$50 for each dealer establishment.
18 No wholesale dealer's license shall be issued until the person applying
19 therefor has filed with the director a bond payable to the state of Kansas in
20 such an amount as shall be fixed by the director, but in no event less than
21 \$1,000, with a corporate surety authorized to do business in the state of
22 Kansas, and approved by the director. If a wholesale dealer is unable to
23 secure a corporate surety bond, the director may issue a license to such
24 wholesale dealer, upon the wholesale dealer furnishing a personal bond
25 meeting the approval of the director. Such bond shall be conditioned on the
26 wholesale dealer's compliance with all the provisions of this act during the
27 license period.

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

29 (7) For manufacturer's salesperson license, \$20 for each salesperson.
30 The manufacturer's salesperson shall, with respect to each sale made to a
31 retail dealer, make and deliver to the retail dealer a true invoice wherein
32 such salesperson shall insert the name of the wholesale dealer from whom
33 such salesperson secured such cigarettes, together with such salesperson's
34 own name and the name of the retail dealer purchasing the cigarettes.

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

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

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

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

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

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

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

17 (4) is not at least ~~18~~ 21 years of age;

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

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

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

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

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

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

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

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

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

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

38 Sec. 2. K.S.A. 79-3309 is hereby amended to read as follows: 79-
39 3309. (a) Whenever the director has reason to believe that any person
40 licensed under this act has violated any of the provisions of this act, in any
41 of the following ways, the director shall notify the person by certified mail
42 of the director's intention to suspend or revoke the person's license or
43 licenses, if the person:

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

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

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

5 (4) is not at least ~~18~~ 21 years of age;

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

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

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

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

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

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

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

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

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

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

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

40 (c) If a person continues to engage in activities requiring a license
41 under this act after having notice or knowledge of the suspension or
42 revocation of the person's license or licenses or after becoming more than
43 10 days delinquent in filing a bond payable to the state of Kansas as

1 required by the director, payment of any fine, tax, penalty or interest
2 imposed pursuant to this act, the state shall be entitled, in any proceedings
3 brought for such purposes, to have an order and judgment restraining and
4 enjoining such unlawful sale and no bond shall be required for the
5 issuance of any such restraining order or injunction.

6 Sec. 3. K.S.A. 79-3321 is hereby amended to read as follows: 79-
7 3321. It shall be unlawful for any person:

8 (a) Except as otherwise specifically provided by this act, to possess,
9 sell, transport, import, distribute, wholesale or manufacture more than
10 1,000 cigarettes without the required tax indicia being affixed as herein
11 provided.

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

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

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

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

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

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

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

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

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

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

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

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

5 (l) To sell, furnish or distribute cigarettes, electronic cigarettes or
6 tobacco products to any person under ~~18~~ 21 years of age.

7 (m) Who is under ~~18~~ 21 years of age to purchase or attempt to
8 purchase cigarettes, electronic cigarettes or tobacco products.

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

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

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

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

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

21 (s) To distribute samples within 500 feet of any school when such
22 facility is being used primarily by persons under ~~18~~ 21 years of age unless
23 the sampling is:

24 (1) In an area to which persons under ~~18~~ 21 years of age are denied
25 access;

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

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

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

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

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

43 (u) To sell cigarettes, electronic cigarettes or tobacco products by

1 means of a self-service display in any establishment, except that the
2 provisions of this subsection shall not apply to:

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

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

6 (3) a self-service display located in a facility where the retailer
7 ensures that no person younger than ~~18~~ 21 years of age is present or
8 permitted to enter at any time.

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

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

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

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

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

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

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

38 (2) any health warning that is not specified in, or does not conform
39 with, the requirements of, the federal cigarette labeling and advertising act,
40 15 U.S.C. § 1333.

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

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

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

10 Sec. 4. K.S.A. 79-3322 is hereby amended to read as follows: 79-
11 3322. (a) (1) Except as otherwise provided in this act, a violation of K.S.A.
12 79-3321(a), (c), (d), (f), (h), (i), (j), (v), (w), (x) or (y), and amendments
13 thereto, is a:

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

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

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

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

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

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

41 (2) It shall be a defense to a prosecution under this subsection if: (A)
42 The defendant is a licensed retail dealer, or employee thereof, or a person
43 authorized by law to distribute samples; (B) the defendant sold, furnished

1 or distributed the cigarettes or tobacco products to the person under ~~18~~ 21
2 years of age with reasonable cause to believe the person was of legal age
3 to purchase or receive cigarettes or tobacco products; and (C) to purchase
4 or receive the cigarettes or tobacco products, the person under ~~18~~ 21 years
5 of age exhibited to the defendant a driver's license, Kansas nondriver's
6 identification card or other official or apparently official document
7 containing a photograph of the person and purporting to establish that the
8 person was of legal age to purchase or receive cigarettes or tobacco
9 products.

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

17 (4) For purposes of this subsection the person who violates this
18 subsection shall be the individual directly selling, furnishing or
19 distributing the cigarettes or tobacco products to any person under ~~18~~ 21
20 years of age or the retail dealer who has actual knowledge of such selling,
21 furnishing or distributing by such individual or both.

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

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

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

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

8 Sec. 5. K.S.A. 79-3391 is hereby amended to read as follows: 79-
9 3391. (a) In addition to or in lieu of any other civil or criminal penalty
10 provided by law, the secretary of revenue or the secretary's designee, upon
11 a finding that a person under this act has violated any provision of this act
12 or any provision of any rule and regulation of the secretary of revenue
13 adopted pursuant to this act shall impose on such person a civil fine not
14 exceeding \$1,000 for each violation.

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

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

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

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

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

8 Sec. 6. K.S.A. 79-3304, 79-3309, 79-3321, 79-3322 and 79-3391 are
9 hereby repealed.

10 Sec. 7. This act shall take effect and be in force from and after its
11 publication in the statute book.