

HOUSE BILL No. 2552

By Representative Ward

12-16

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to cigarettes; amending K.S.A. 2005 Supp. 79-3321 and 79-3322
11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2005 Supp. 79-3321 is hereby amended to read as
15 follows: 79-3321. It shall be unlawful for any person:

16 (a) To possess, except as otherwise specifically provided by this act,
17 more than 200 cigarettes without the required tax indicia being affixed as
18 herein provided.

19 (b) To mutilate or attach to any individual package of cigarettes any
20 stamp that has in any manner been mutilated or that has been heretofore
21 attached to a different individual package of cigarettes or to have in pos-
22 session any stamps so mutilated.

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

27 (d) To use any artful device or deceptive practice to conceal any vi-
28 olation of this act or to mislead the director or officer or agent authorized
29 by law in the enforcement of this act.

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

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

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

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

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

43 (2) exempt from state licensing under applicable state or federal laws

- 1 or court decisions including any such person operating as a retail dealer
2 upon land allotted to or held in trust for an Indian tribe recognized by
3 the United States bureau of Indian affairs.
- 4 (i) To have in possession any evidence of tax indicia provided for
5 herein not purchased from the director.
- 6 (j) To fail or refuse to permit the director or any officer or agent
7 authorized by law to inspect a carrier transporting cigarettes.
- 8 (k) To vend small cigars, or any products so wrapped as to be con-
9 fused with cigarettes, from a machine vending cigarettes, nor shall a vend-
10 ing machine be so built to vend cigars or products that may be confused
11 with cigarettes, be attached to a cigarette vending machine.
- 12 (l) To sell, furnish or distribute cigarettes or tobacco products to any
13 person under 18 years of age.
- 14 (m) Who is under 18 years of age to purchase or attempt to purchase
15 cigarettes or tobacco products.
- 16 (n) Who is under 18 years of age to possess or attempt to possess
17 cigarettes or tobacco products.
- 18 (o) To sell cigarettes to a retailer or at retail that do not bear Kansas
19 tax indicia or upon which the Kansas cigarette tax has not been paid.
- 20 (p) To sell cigarettes without having a license for such sale as provided
21 herein.
- 22 (q) To sell a vending machine without having a vending machine dis-
23 tributor's license.
- 24 (r) Who is a retail dealer to fail to post and maintain in a conspicuous
25 place in the dealer's establishment the following notice: "By law, ciga-
26 rettes and tobacco products may be sold only to persons 18 years of age
27 and older."
- 28 (s) To distribute samples within 500 feet of any school when such
29 facility is being used primarily by persons under 18 years of age unless
30 the sampling is: (1) In an area to which persons under 18 years of age are
31 denied access; (2) in or at a retail location where cigarettes and tobacco
32 products are the primary commodity offered for sale at retail; or (3) at or
33 adjacent to an outdoor production, repair or construction site or facility.
- 34 (t) To sell cigarettes or tobacco products by means of a vending ma-
35 chine in any establishment, or portion of an establishment, which is open
36 to minors, except that this subsection shall not apply to:
- 37 (1) The installation and use by the proprietor of the establishment,
38 or by the proprietor's agents or employees, of vending machines behind
39 a counter, or in some place in such establishment, or portion thereof, to
40 which minors are prohibited by law from having access;
- 41 (2) the installation and use of a vending machine in a commercial
42 building or industrial plant, or portions thereof, where the public is not
43 customarily admitted and where machines are intended for the sole use

- 1 of adult employees employed in the building or plant; or
- 2 (3) a vending machine which has a lock-out device which is inoper-
3 able in the continuous standby mode and which requires manual activa-
4 tion by the person supervising the operation of the machine each time
5 cigarettes or tobacco products are purchased from the machine.
- 6 (u) To sell or distribute in this state; to acquire, hold, own, possess
7 or transport for sale or distribution in this state; or to import or cause to
8 be imported, into this state for sale or distribution in this state:
- 9 (1) Any cigarettes the package of which (A) bears any statement, la-
10 bel, stamp, sticker or notice indicating that the manufacturer did not
11 intend the cigarettes to be sold, distributed or used in the United States,
12 including but not limited to, labels stating "For Export Only", "U.S. Tax-
13 Exempt", "For Use Outside U.S." or similar wording; or (B) does not
14 comply with (i) all requirements imposed by or pursuant to federal law
15 regarding warnings and other information on packages of cigarettes man-
16 ufactured, packaged or imported for sale, distribution or use in the United
17 States, including but not limited to the precise warning labels specified
18 in the federal cigarette labeling and advertising act, 15 U.S.C. 1333; and
19 (ii) all federal trademark and copyright laws;
- 20 (2) any cigarettes imported into the United States in violation of 26
21 U.S.C. 5754 or any other federal law, or federal regulations implementing
22 such laws;
- 23 (3) any cigarettes that such person otherwise knows or has reason to
24 know the manufacturer did not intend to be sold, distributed or used in
25 the United States; or
- 26 (4) any cigarettes for which there has not been submitted to the sec-
27 retary of the U.S. department of health and human services the list or
28 lists of the ingredients added to tobacco in the manufacture of such cig-
29 arettes required by the federal cigarette labeling and advertising act, 15
30 U.S.C. 1335a.
- 31 (v) To alter the package of any cigarettes, prior to sale or distribution
32 to the ultimate consumer, so as to remove, conceal or obscure:
- 33 (1) Any statement, label, stamp, sticker or notice described in sub-
34 section (u) of K.S.A. 79-3321, and amendments thereto; or
- 35 (2) any health warning that is not specified in, or does not conform
36 with, the requirements of, the federal cigarette labeling and advertising
37 act, 15 U.S.C. 1333.
- 38 (w) To affix any stamp required pursuant to K.S.A. 79-3311, and
39 amendments thereto, to the package of any cigarettes described in sub-
40 section (u) or altered in violation of subsection (v).
- 41 (x) (1) *No person shall sell or offer for sale in this state any cigarette*
42 *or component part thereof, including, but not limited to the tobacco, pa-*
43 *per, roll or filter, which contains a natural or artificial constituent or*

1 *additive that causes such cigarette or its smoke to have a characterizing*
2 *flavor.*

3 (2) *For the purposes of this subsection, the phrase, “characterizing*
4 *flavor” shall include, but not be limited to, any fruit, chocolate, vanilla,*
5 *honey, candy, mint, cocoa, dessert, alcoholic beverage, herb or spice fla-*
6 *voring. The phrase shall not include tobacco or menthol.*

7 Sec. 2. K.S.A. 2005 Supp. 79-3322 is hereby amended to read as
8 follows: 79-3322. (a) Any person who violates any of the provisions of the
9 Kansas cigarette and tobacco products act, except as otherwise provided
10 in this act, shall be guilty of a misdemeanor and upon conviction shall be
11 punished by a fine of not more than \$1,000 or imprisonment for not more
12 than one year, or by both. In addition thereto any person found liable for
13 any license fee or tax imposed under the provisions of this act shall be
14 personally liable for such license fee or tax plus a penalty in an amount
15 equal to 100% thereof.

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

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

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

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

- 1 (c) Violation of subsection (m) or (n) of K.S.A. 79-3321, and amend-
2 ments thereto, is a cigarette or tobacco infraction for which the fine is
3 \$25. In addition, the judge may require the juvenile to appear in court
4 with a parent or legal guardian.
- 5 (d) *Any person who willfully violates subsection (x) of K.S.A. 79-3321,*
6 *and amendments thereto, shall be subject to a fine of not more than \$500*
7 *for each violation.*
- 8 ~~(d)~~ (e) Any agent, employees or others who aid, abet or otherwise
9 participate in any way in the violation of the Kansas cigarette and tobacco
10 products act or in any of the offenses hereunder punishable shall be guilty
11 and punished as principals to the same extent as any person violating this
12 act.
- 13 Sec. 3. K.S.A. 2005 Supp. 79-3321 and 79-3322 are hereby repealed.
- 14 Sec. 4. This act shall take effect and be in force from and after its
15 publication in the statute book.