

SENATE BILL No. 180

By Committee on Public Health and Welfare

2-3

9 AN ACT concerning the Kansas cigarette and tobacco products act; re-
10 lating to certain unlawful acts; self-service displays; amending K.S.A.
11 2008 Supp. 79-3301 and 79-3321 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2008 Supp. 79-3301 is hereby amended to read as
15 follows: 79-3301. As used in ~~this act~~ K.S.A. 79-3301 *et seq.*, and *amend-*
16 *ments thereto:*

17 (a) "Carrier" means one who transports cigarettes from a manufac-
18 turer to a wholesale dealer or from one wholesale dealer to another.

19 (b) "Carton" means the container used by the manufacturer of cig-
20 arettes in which no more than 10 packages of cigarettes are placed prior
21 to shipment from such manufacturer.

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

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

28 (e) "Dealer" means any person who engages in the sale or manufac-
29 ture of cigarettes in the state of Kansas, and who is required to be licensed
30 under the provisions of this act.

31 (f) "Dealer establishment" means any location or premises, other
32 than vending machine locations, at or from which cigarettes are sold, and
33 where records are kept.

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

35 (h) "Distributor" means: (1) Any person engaged in the business of
36 selling tobacco products in this state who brings, or causes to be brought,
37 into this state from ~~without~~ *outside* the state any tobacco products for
38 sale;

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

41 (3) any person engaged in the business of selling tobacco products
42 ~~without~~ *outside* this state who ships or transports tobacco products to any
43 person in the business of selling tobacco products in this state.

- 1 (i) "Division" means the division of taxation.
- 2 (j) "License" means, ~~in addition to~~ the privilege of a licensee to sell
3 cigarettes or tobacco products in the state of Kansas, *and* the written
4 evidence of such authority or privilege ~~to so operate as evidenced by any~~
5 ~~license as issued by the director of taxation.~~
- 6 (k) "Licensee" means any person holding a current license issued
7 pursuant to this act.
- 8 (l) "Manufacturer's salesperson" means a person employed by a cig-
9 arette manufacturer who sells cigarettes, manufactured by such employer
10 and procured from wholesale dealers.
- 11 (m) "Meter imprints" means tax indicia applied by means of ink print-
12 ing machines.
- 13 (n) (1) "Package" means a container in which no more than 25 in-
14 dividual cigarettes are wrapped and sealed by the manufacturer of ciga-
15 rettes prior to shipment to a wholesale dealer;
- 16 (2) for the purposes of subsections (u), (v) and (w) of K.S.A. 79-3321,
17 and amendments thereto, "package" ~~shall have the meaning ascribed~~
18 ~~thereto~~ *means the same as provided* in 15 U.S.C. §1332(4).
- 19 (o) "Person" means any individual, partnership, society, association,
20 joint-stock company, corporation, estate, receiver, trustee, assignee, ref-
21 erree or any other person acting in a fiduciary or representative capacity
22 whether appointed by a court or otherwise and any combination of
23 individuals.
- 24 (p) "Received" means the coming to rest of cigarettes for sale by any
25 dealer in the state of Kansas.
- 26 (q) "Retail dealer" means a person, other than a vending machine
27 operator, in possession of cigarettes for the purpose of sale to a consumer.
- 28 (r) "Sale" means any transfer of title or possession or both, exchange,
29 barter, distribution or gift of cigarettes or tobacco products, with or with-
30 out consideration.
- 31 (s) "Sample" means cigarettes or tobacco products distributed to
32 members of the general public at no cost for purposes of promoting the
33 product.
- 34 (t) *"Self-service display" means a display that contains cigarettes or*
35 *tobacco products and is located in an area openly accessible to a retail*
36 *dealer's consumers, and from which such consumers can readily access*
37 *cigarettes or tobacco products without the assistance of a salesperson. A*
38 *display case that holds cigarettes or tobacco products behind locked doors*
39 *does not constitute a self-service display.*
- 40 (u) "Stamps" means tax indicia applied either by means of water ap-
41 plied gummed paper or heat process.
- 42 ~~(v)~~ (v) "Tax indicia" means visible evidence of tax payment in the
43 form of stamps or meter imprints.

- 1 ~~(v)~~ (w) “Tobacco products” means cigars, cheroots, stogies, periques;
2 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;
3 snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other
4 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings
5 of tobacco, and other kinds and forms of tobacco, prepared in such man-
6 ner as to be suitable for chewing or smoking in a pipe or otherwise, or
7 both for chewing and smoking. Tobacco products ~~does~~ do not include
8 cigarettes.
- 9 (x) “Tobacco speciality store” means a dealer establishment that de-
10 rives at least 75% of such dealer establishment’s revenue from cigarettes
11 or tobacco products.
- 12 ~~(w)~~ (y) “Vending machine” means any coin operated machine, con-
13 trivance or device, by means of which merchandise may be sold.
- 14 ~~(x)~~ (z) “Vending machine distributor” means any person who sells
15 cigarette vending machines to a vending machine operator operating
16 vending machines in the state of Kansas.
- 17 ~~(y)~~ (aa) “Vending machine operator” means any person who places a
18 vending machine, owned, leased or operated by such person, at locations
19 where cigarettes are sold from ~~the~~ such vending machine. The owner or
20 lessee of the premises upon which a vending machine is placed shall not
21 be considered the operator of the machine, nor shall the owner or lessee,
22 or any employee or agent of the owner or lessee be considered an au-
23 thorized agent of the vending machine operator, if the owner or lessee
24 does not own or lease the machine and the owner’s or lessee’s sole re-
25 munerations from the machine is a flat rental fee or commission based
26 upon the number or value of cigarettes sold from the machine, or a com-
27 bination of both.
- 28 ~~(z)~~ (bb) “Wholesale dealer” means any person who sells cigarettes to
29 other wholesale dealers, retail dealers, vending machine operators and
30 manufacturer’s salespersons for the purpose of resale in the state of
31 Kansas.
- 32 ~~(aa)~~ (cc) “Wholesale sales price” means the original net invoice price
33 for which a manufacturer sells a tobacco product to a distributor, as shown
34 by the manufacturer’s original invoice.
- 35 ~~(bb)~~ (dd) “Importer” ~~shall have the same meaning ascribed thereto~~
36 ~~means the same as provided in 26 U.S.C. §5702(l).~~
- 37 ~~(cc)~~ (ee) “Manufacturer” ~~shall have the same meaning ascribed~~
38 ~~thereto means the same as provided in 26 U.S.C. §5702(d).~~
- 39 Sec. 2. K.S.A. 2008 Supp. 79-3321 is hereby amended to read as
40 follows: 79-3321. It shall be unlawful for any person:
41 (a) To possess, except as otherwise specifically provided by this act,
42 more than 200 cigarettes without the required tax indicia being affixed as
43 herein provided.

- 1 (b) To mutilate or attach to any individual package of cigarettes any
2 stamp that has in any manner been mutilated or that has been heretofore
3 attached to a different individual package of cigarettes or to have in pos-
4 session any stamps so mutilated.
- 5 (c) To prevent the director or any officer or agent authorized by law,
6 to make a full inspection for the purpose of this act, of any place of
7 business and all premises connected thereto where cigarettes are or may
8 be manufactured, sold, distributed, or given away.
- 9 (d) To use any artful device or deceptive practice to conceal any vi-
10 olation of this act or to mislead the director or officer or agent authorized
11 by law in the enforcement of this act.
- 12 (e) Who is a dealer to fail to produce on demand of the director or
13 any officer or agent authorized by law any records or invoices required
14 to be kept by such person.
- 15 (f) Knowingly to make, use, or present to the director or agent thereof
16 any falsified invoice or falsely state the nature or quantity of the goods
17 ~~therein~~ invoiced.
- 18 (g) Who is a dealer to fail or refuse to keep and preserve for the time
19 and in the manner required ~~herein~~ *by this act* all the records required by
20 this act to be kept and preserved.
- 21 (h) To wholesale cigarettes to any person, other than a manufacturer's
22 salesperson, retail dealer or wholesaler who is:
- 23 (1) Duly licensed by the state where such manufacturer's salesperson,
24 retail dealer or wholesaler is located; or
- 25 (2) exempt from state licensing under applicable state or federal laws
26 or court decisions including any such person operating as a retail dealer
27 upon land allotted to or held in trust for an Indian tribe recognized by
28 the United States bureau of Indian affairs.
- 29 (i) To have in possession any evidence of tax indicia provided for
30 herein not purchased from the director.
- 31 (j) To fail or refuse to permit the director or any officer or agent
32 authorized by law to inspect a carrier transporting cigarettes.
- 33 (k) To vend small cigars, or any products so wrapped as to be con-
34 fused with cigarettes, from a machine vending cigarettes, nor shall a vend-
35 ing machine be so built to vend cigars or products that may be confused
36 with cigarettes, be attached to a cigarette vending machine.
- 37 (l) To sell, furnish or distribute cigarettes or tobacco products to any
38 person under 18 years of age.
- 39 (m) Who is under 18 years of age to purchase or attempt to purchase
40 cigarettes or tobacco products.
- 41 (n) Who is under 18 years of age to possess or attempt to possess
42 cigarettes or tobacco products.
- 43 (o) To sell cigarettes to a retailer or at retail that do not bear Kansas

- 1 tax indicia or upon which the Kansas cigarette tax has not been paid.
- 2 (p) To sell cigarettes without having a license for such sale as provided
3 herein.
- 4 (q) To sell a vending machine without having a vending machine dis-
5 tributor's license.
- 6 (r) Who is a retail dealer to fail to post and maintain in a conspicuous
7 place in the dealer's establishment the following notice: "By law, ciga-
8 rettes and tobacco products may be sold only to persons 18 years of age
9 and older."
- 10 (s) To distribute samples within 500 feet of any school when such
11 facility is being used primarily by persons under 18 years of age unless
12 the sampling is: (1) In an area to which persons under 18 years of age are
13 denied access;
- 14 (2) in or at a retail location where cigarettes and tobacco products
15 are the primary commodity offered for sale at retail; or
- 16 (3) at or adjacent to an outdoor production, repair or construction
17 site or facility.
- 18 (t) To sell cigarettes or tobacco products by means of a vending ma-
19 chine in any establishment, or portion of an establishment, which is open
20 to minors, except that this subsection shall not apply to:
- 21 (1) The installation and use by the proprietor of the establishment,
22 or by the proprietor's agents or employees, of vending machines behind
23 a counter, or in some place in such establishment, or portion thereof, to
24 which minors are prohibited by law from having access;
- 25 (2) the installation and use of a vending machine in a commercial
26 building or industrial plant, or portions thereof, where the public is not
27 customarily admitted and where machines are intended for the sole use
28 of adult employees employed in the building or plant; or
- 29 (3) a vending machine which has a lock-out device which is inoper-
30 able in the continuous standby mode and which requires manual activa-
31 tion by the person supervising the operation of the machine each time
32 cigarettes or tobacco products are purchased from the machine.
- 33 (u) *To sell cigarettes or tobacco products by means of a self-service*
34 *display in any establishment, except that the provisions of this subsection*
35 *shall not apply to:*
- 36 (1) *A vending machine that is permitted under subsection (t); or*
37 (2) *a self-service display that is located in a tobacco specialty store.*
- 38 (v) To sell or distribute in this state; to acquire, hold, own, possess
39 or transport for sale or distribution in this state; or to import or cause to
40 be imported, into this state for sale or distribution in this state:
- 41 (1) Any cigarettes the package of which (A) bears any statement, la-
42 bel, stamp, sticker or notice indicating that the manufacturer did not
43 intend the cigarettes to be sold, distributed or used in the United States,

1 including but not limited to, labels stating “For Export Only”, “U.S. Tax-
2 Exempt”, “For Use Outside U.S.” or similar wording; or (B) does not
3 comply with (i) all requirements imposed by or pursuant to federal law
4 regarding warnings and other information on packages of cigarettes man-
5 ufactured, packaged or imported for sale, distribution or use in the United
6 States, including but not limited to the precise warning labels specified
7 in the federal cigarette labeling and advertising act, 15 U.S.C. 1333; and
8 (ii) all federal trademark and copyright laws;

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

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

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

20 ~~(w)~~ (w) To alter the package of any cigarettes, prior to sale or distri-
21 bution to the ultimate consumer, so as to remove, conceal or obscure:

22 (1) Any statement, label, stamp, sticker or notice described in sub-
23 section ~~(u)~~ of K.S.A. 79-3321, and amendments thereto (v); or

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

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

30 Sec. 3. K.S.A. 2008 Supp. 79-3301 and 79-3321 are hereby repealed.
31 Sec. 4. This act shall take effect and be in force from and after its
32 publication in the statute book.