

SENATE BILL No. 216

By Committee on Judiciary

2-5

9 AN ACT concerning the Kansas cigarette and tobacco products act; sale
10 of cigarettes and tobacco products in violation of act; amending K.S.A.
11 50-6,104, 79-3304, 79-3309, 79-3312a, 79-3323, 79-3324a, 79-3326,
12 79-3329, 79-3371, 79-3374, 79-3377 and 79-3379 and K.S.A. 2008
13 Supp. 79-3301, 79-3302, 79-3303, 79-3310, 79-3311, 79-3312, 79-
14 3313, 79-3316, 79-3321, 79-3322, 79-3333, 79-3334, 79-3335, 79-3391,
15 79-3393, 79-3395, 79-3396, 79-3397 and 79-3398 and repealing the
16 existing sections; also repealing K.S.A. 79-3306, 79-3373, 79-3375 and
17 79-3378 and K.S.A. 2008 Supp. 79-3310c.

18
19 *Be it enacted by the Legislature of the State of Kansas:*

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

23 (a) “Act” means the provisions of K.S.A. 79-3301 *et seq.*, and amend-
24 *ments thereto.*

25 (b) “Carrier” means one who transports cigarettes *or roll-your-own*
26 *tobacco* from a manufacturer to a wholesale dealer or from one wholesale
27 dealer to another.

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

31 ~~(c)~~ (d) “Cigarette” means ~~any roll for smoking, made wholly or in part~~
32 ~~of tobacco, irrespective of size or shape, and irrespective of tobacco being~~
33 ~~flavored, adulterated or mixed with any other ingredient if the wrapper~~
34 ~~is in greater part made of any material except tobacco~~ *any product that*
35 *contains nicotine, is intended to be burned or heated under ordinary con-*
36 *ditions of use, and consists of or contains:*

37 (1) *Any roll of tobacco wrapped in paper or in any substance not*
38 *containing tobacco;*

39 (2) *tobacco, in any form, that is functional in the product, which*
40 *because of its appearance, the type of tobacco used in the filler, or its*
41 *packaging and labeling, is likely to be offered to, or purchased by, con-*
42 *sumers as a cigarette; or*

43 (3) *any roll of tobacco wrapped in any substance containing tobacco*

- 1 *which, because of its appearance, the type of tobacco used in the filler, or*
 2 *its packaging or labeling, is likely to be offered to, or purchased by, con-*
 3 *sumers as a cigarette described in subsection (d)(1).*
- 4 ~~(d)~~ (e) “Consumer” means the person purchasing or receiving ciga-
 5 rettes, *roll-your-own tobacco* or tobacco products for final use.
- 6 ~~(e)~~ (f) “Dealer” means any person who engages in the sale or man-
 7 ufacture of cigarettes, *roll-your-own tobacco or tobacco products* in the
 8 state of Kansas, and who is required to be licensed under the provisions
 9 of this act.
- 10 ~~(f)~~ (g) “Dealer establishment” means any location or premises, other
 11 than vending machine locations, at or from which cigarettes, *roll-your-*
 12 *own tobacco or tobacco products* are sold, and where records are kept.
- 13 ~~(g)~~ (h) “Director” means the director of taxation.
- 14 ~~(h)~~ (i) “Distributor” means: (1) Any person engaged in the business
 15 of selling tobacco products in this state who brings, or causes to be
 16 brought, into this state from ~~without~~ *outside* the state any tobacco prod-
 17 ucts for sale;
- 18 (2) any person who makes, manufactures, fabricates or stores tobacco
 19 products in this state for sale in this state; or
- 20 (3) any person engaged in the business of selling tobacco products
 21 ~~without~~ *outside* this state who ships or transports tobacco products to any
 22 person in the business of selling tobacco products in this state.
- 23 ~~(i)~~ (j) “Division” means the division of taxation.
- 24 ~~(j)~~ (k) “Importer” means the same as provided in 26 U.S.C. §5702(k).
- 25 (l) “License” means, ~~in addition to~~ the privilege of a licensee to sell
 26 cigarettes, *roll-your-own tobacco* or tobacco products in the state of Kan-
 27 sas, *and* the written evidence of such authority or privilege ~~to so operate~~
 28 ~~as evidenced by any license~~ *as issued by the director of taxation.*
- 29 ~~(k)~~ (m) “Licensee” means any person holding a current license issued
 30 pursuant to this act, *or any person whose license expired and who sub-*
 31 *mitted a renewal application which was received by the director prior to*
 32 *expiration of the previous licensing period.*
- 33 ~~(l)~~ (n) “Little cigar” means any roll of tobacco wrapped in leaf tobacco
 34 or any substance containing tobacco, other than any roll of tobacco which
 35 is a cigarette within the meaning of subsection (d)(1), and as to which
 36 1,000 units weigh not more than three pounds.
- 37 (o) “Manufacture” means the same as provided in 26 U.S.C. §5702(d).
- 38 (p) “Manufacturer’s salesperson” means a person employed by a cig-
 39 arette or *roll-your-own tobacco* manufacturer who sells cigarettes or *roll-*
 40 *your-own tobacco*, manufactured by such employer and procured from
 41 wholesale dealers.
- 42 ~~(m)~~ “Meter imprints” means tax indicia applied by means of ink print-
 43 ing machines.

1 ~~(n)~~ (1) (q) “Package” means a ~~container in which no more than 25~~
 2 ~~individual cigarettes are wrapped and sealed by the manufacturer of cig-~~
 3 ~~arettes prior to shipment to a wholesale dealer. pack, box or container of~~
 4 ~~any kind in which cigarettes, roll-your-own tobacco or tobacco products~~
 5 ~~are offered for sale, sold or otherwise distributed to customers.~~
 6 (1) A package shall contain not more than 25 individual cigarettes,
 7 wrapped and sealed by the manufacturer of cigarettes prior to the ship-
 8 ment to a wholesale dealer.
 9 (2) A package shall contain not more than 16 ounces of roll-your-own
 10 tobacco sealed by the manufacturer of roll-your-own tobacco prior to
 11 shipment to a wholesale dealer.
 12 ~~(2)~~ (3) For the purposes of subsections ~~(u), (v) and (w)~~ (x), (y) and
 13 (z) of K.S.A. 79-3321, and amendments thereto, “package” ~~shall have the~~
 14 ~~meaning ascribed thereto~~ means the same as provided in 15 U.S.C.
 15 §1332(4).
 16 ~~(o)~~ (r) “Person” means any ~~individual, partnership, society, associa-~~
 17 ~~tion, joint stock company, corporation, estate, receiver, trustee, assignee,~~
 18 ~~referee assignee, association, corporation, estate, governmental entity, in-~~
 19 ~~dividual, joint-stock company, partnership, receiver, referee, society, trus-~~
 20 ~~tee or any other person acting in a fiduciary or representative capacity~~
 21 ~~whether appointed by a court or otherwise and any combination of~~
 22 ~~individuals.~~
 23 ~~(p)~~ “Received” means the coming to rest of cigarettes for sale by any
 24 ~~dealer in the state of Kansas.~~
 25 ~~(q)~~ (s) “Retail dealer” means a person, other than a vending machine
 26 operator, in possession of cigarettes, *roll-your-own tobacco or tobacco*
 27 *products* for the purpose of sale to a consumer.
 28 (t) “Roll-your-own tobacco” means any tobacco which, because of its
 29 appearance, type, packaging or labeling is suitable for use and likely to
 30 be offered to, or purchased by, consumers as tobacco for making ciga-
 31 rettes.
 32 ~~(r)~~ (u) “Sale” means any ~~transfer of title or possession or both,~~
 33 ~~exchange, barter, distribution or gift barter, distribution, exchange, gift,~~
 34 ~~transfer of possession or transfer of title of cigarettes, roll-your-own to-~~
 35 ~~bacco or tobacco products, with or without consideration.~~
 36 ~~(s)~~ (v) “Sample” means cigarettes, *roll-your-own tobacco* or tobacco
 37 products distributed to members of the general public at no cost for
 38 purposes of promoting the product.
 39 (t) “Stamps” means ~~tax indicia applied either by means of water ap-~~
 40 ~~plied gummed paper or heat process.~~
 41 ~~(t)~~ (w) “Tax indicia” means visible evidence of tax payment in the
 42 form of stamps ~~or meter imprints~~ *applied either by means of heat process*
 43 *or pressure.*

- 1 ~~(v)~~ (x) “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, cavendish; cheroots,~~
6 ~~cigars, little cigars, periques, stogies; crimp cut, granulated, plug cut,~~
7 ~~ready rubbed and other smoking tobacco; fine cut and other chewing~~
8 ~~tobaccos; plug and twist tobacco; refuse clippings, cuttings, scraps and~~
9 ~~sweepings of tobacco; shorts; snuff, snuff flour, snus and other kinds and~~
10 ~~forms of tobacco prepared in such manner as to be suitable for chewing~~
11 ~~or smoking in a pipe or otherwise, or both for chewing and smoking.~~
12 Tobacco products ~~does~~ do not include cigarettes ~~or roll-your-own~~
13 ~~tobacco.~~
- 14 ~~(w)~~ (y) “Vending machine” means any ~~coin-operated~~ machine, con-
15 trivance or device, by means of which ~~merchandise~~ cigarettes may be sold.
- 16 ~~(x)~~ (z) “Vending machine distributor” means any person who sells
17 cigarette vending machines to a vending machine operator ~~operating~~
18 ~~vending machines~~ in the state of Kansas.
- 19 ~~(y)~~ (aa) “Vending machine operator” means any person who places a
20 vending machine ~~or vending machines~~, owned, leased or operated by such
21 person, at locations where cigarettes are sold from ~~the such~~ vending ma-
22 chine ~~or vending machines~~. The owner or lessee of the premises upon
23 which a vending machine is placed shall not be considered the operator
24 of the *vending* machine, nor shall the owner or lessee, or any employee
25 or agent of the owner or lessee be considered an authorized agent of the
26 vending machine operator, if the owner or lessee does not own or lease
27 the *vending* machine and the owner’s or lessee’s sole remuneration from
28 the *vending* machine is a flat rental fee or commission based upon the
29 number or value of cigarettes sold from the *vending* machine, or a com-
30 bination of both.
- 31 ~~(z)~~ (bb) “Wholesale dealer” means any person who sells cigarettes ~~to~~
32 ~~other wholesale dealers, retail dealers, vending machine operators and~~
33 ~~manufacturer’s salespersons~~ ~~or roll-your-own tobacco to manufacturer’s~~
34 ~~salespersons, retail dealers or other wholesale dealers~~ for the purpose of
35 resale in the state of Kansas, ~~or sells cigarettes to vending machine op-~~
36 ~~erators for the purpose of resale in the state of Kansas.~~
- 37 ~~(aa)~~ (cc) “Wholesale sales price” means the original net invoice price
38 for which a manufacturer sells a tobacco product to a distributor, as shown
39 by the manufacturer’s original invoice.
- 40 ~~(bb)~~ “Importer” shall have the same meaning ascribed thereto in 26
41 U.S.C. §5702(l).
- 42 ~~(cc)~~ “Manufacturer” shall have the same meaning ascribed thereto in
43 26 U.S.C. §5702(d).

1 Sec. 2. K.S.A. 2008 Supp. 79-3302 is hereby amended to read as
2 follows: 79-3302. (a) K.S.A. 79-3301 through 79-3304, ~~79-3306~~, 79-3309,
3 79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-
4 3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, ~~79-3333~~, ~~79-3334~~,
5 ~~79-3335~~, ~~79-3371~~, ~~79-3373~~, 79-3374, ~~79-3375~~, 79-3377, ~~79-3378~~, 79-
6 3379, 79-3387, 79-3388, 79-3391, 79-3392, 79-3393, 79-3394 and K.S.A.
7 2008 Supp. 79-3395 through 79-3398, and amendments thereto, shall be
8 known and may be cited as the Kansas cigarette and tobacco products
9 act.

10 (b) It is the purpose and intent of this act to regulate the sale of
11 cigarettes, *roll-your-own tobacco* and tobacco products in this state and
12 to impose a tax thereon.

13 Sec. 3. K.S.A. 2008 Supp. 79-3303 is hereby amended to read as
14 follows: 79-3303. ~~(a) Each person engaged in the business of selling cig-~~
15 ~~arettes in the state of Kansas and each vending machine distributor shall~~
16 ~~obtain a license as provided by this act. A separate application, license~~
17 ~~and fee is required for each dealer establishment owned or operated by~~
18 ~~a dealer. A vending machine operator is required to obtain a vending~~
19 ~~machine operator's master license and, in addition, a separate permit for~~
20 ~~each vending machine operated by the operator. A vending machine op-~~
21 ~~erator may submit one application for the vending machine operator's~~
22 ~~master license and all permits for vending machines operated by the op-~~
23 ~~erator. The license shall be displayed in the dealer establishment and the~~
24 ~~vending machine permit shall remain securely and visibly attached to the~~
25 ~~vending machine and contain such information as the director may re-~~
26 ~~quire. Any vending machine found without such permit attached to the~~
27 ~~machine shall be sealed by an agent of the director and such seal shall be~~
28 ~~removed only by an agent of the director after payment of the permit fee~~
29 ~~and the penalties provided by this act.~~

30 ~~(b) The application for a vending machine operator's master license~~
31 ~~and vending machine permits shall list the brand name and serial number~~
32 ~~of each machine and such other information as required by the director.~~
33 ~~Except in accordance with proper judicial order or as otherwise provided~~
34 ~~by law, it shall be unlawful for any officer or employee of the division to~~
35 ~~divulge or make known in any way the location of any vending machine~~
36 ~~to any person not an officer or employee of the division, except that such~~
37 ~~information may be divulged to any law enforcement officer for use in~~
38 ~~the officer's official duties. Any officer or employee revealing any such~~
39 ~~location in violation of this provision, in addition to the penalties otherwise~~
40 ~~provided in this act, shall be dismissed from office.~~

41 ~~(c) A vending machine operator, in the course of business as a vend-~~
42 ~~ing machine operator, may dispose of or sell vending machines without~~
43 ~~securing a license to sell vending machines. The vending machine oper-~~

1 ~~ator may move vending machines from one location to another and, if a~~
2 ~~vending machine becomes inoperative or is disposed of, the permit for~~
3 ~~such machine may be transferred to another machine. A vending machine~~
4 ~~operator, within 10 days, shall notify the director of the brand name and~~
5 ~~serial number of vending machines that become inoperative or that the~~
6 ~~operator disposes of, sells, acquires or brings into service in this state as~~
7 ~~additional machines.~~

8 ~~—(d) The key to the lower or storage compartment of a vending ma-~~
9 ~~chine shall remain only in the possession of the vending machine operator~~
10 ~~or the operator's authorized agent. All services connected with the op-~~
11 ~~eration of a vending machine shall be performed by the vending machine~~
12 ~~operator or the operator's authorized agent. All vending machines shall~~
13 ~~be subject to inspection by the director or the director's authorized~~
14 ~~agents. No permit shall be issued for a vending machine unless it is con-~~
15 ~~structed so that at least one package of each vertical column of cigarettes~~
16 ~~located therein is visible showing tax indicia.~~

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

20 ~~—(f) On or before the 10th day of each month, each vending machine~~
21 ~~distributor shall report to the director, on forms provided by the director,~~
22 ~~all sales of cigarette vending machines by the distributor to persons in~~
23 ~~the state of Kansas during the preceding month; the name and address~~
24 ~~of the purchaser; and the brand name, serial number and sale price of~~
25 ~~the machines.~~

26 ~~—(g) Concurrently with a change in ownership of a dealer establish-~~
27 ~~ment the license applicable to the establishment is void and shall be sur-~~
28 ~~rendered to the director and shall not be transferred. On removal of a~~
29 ~~dealer establishment from one location to another, the owner of the es-~~
30 ~~tablishment shall notify the director and surrender the owner's license.~~
31 ~~The director shall issue a new license for the unexpired term of the sur-~~
32 ~~rendered license on payment of a fee of \$2. If a dealer's license is lost,~~
33 ~~stolen or destroyed, the director may issue a new license on proof of loss,~~
34 ~~theft or destruction, at a cost of \$2. The director shall remit all moneys~~
35 ~~received under this subsection to the state treasurer in accordance with~~
36 ~~the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt~~
37 ~~of each such remittance, the state treasurer shall deposit the entire~~
38 ~~amount in the state treasury to the credit of the state general fund. (a)~~
39 ~~*Each vending machine distributor shall obtain a vending machine dis-*~~
40 ~~*tributor's license as provided by the provisions of K.S.A. 79-3301 et seq.,*~~
41 ~~*and amendments thereto. Each vending machine operator shall obtain a*~~
42 ~~*vending machine operator's license and, in addition, a separate permit for*~~
43 ~~*each vending machine operated by the operator. A vending machine op-*~~

1 erator may submit one application for the vending machine operator's
2 license and all permits for vending machines operated by the operator.
3 The application for a vending machine operator's license and vending
4 machine permits shall list the brand name and serial number of each
5 vending machine and such other information as required by the director.

6 (b) No permit shall be issued for a vending machine unless the vend-
7 ing machine is constructed so that at least one package of each column of
8 cigarettes located therein is visible so as to display tax indicia affixed
9 thereto.

10 (c) The license shall be displayed in the dealer establishment and the
11 vending machine permit shall remain securely and visibly attached to the
12 vending machine and contain such information as the director may re-
13 quire. Any vending machine found without such permit attached to the
14 vending machine shall be sealed by an agent of the director and such seal
15 shall be removed only by an agent of the director after payment of the
16 permit fee and the penalties provided by this act. For purposes of this
17 section, "visibly attached" means on the face of the vending machine so
18 that it can be seen without moving the vending machine.

19 (d) Except in accordance with proper judicial order or as otherwise
20 provided by law, it shall be unlawful for any officer or employee of the
21 division to divulge or make known in any way the location of any vending
22 machine to any person not an officer or employee of the division, except
23 that such information may be divulged to any law enforcement officer for
24 use in the officer's official duties.

25 (e) On or before the 10th day of each month, each vending machine
26 distributor shall report to the director, on forms and in the manner pro-
27 vided by the director, all sales of cigarette vending machines by the vend-
28 ing machine distributor to persons in the state of Kansas during the pre-
29 ceding month including the name and address of each purchaser; the
30 brand name, serial number and sale price of each vending machine, and
31 any such other information as required by the director.

32 (f) A vending machine operator, within 10 days, shall notify the di-
33 rector of any vending machine that the operator acquires or brings into
34 service in this state as additional vending machines. Vending machine
35 operators shall report, on forms and in the manner provided by the di-
36 rector, the name and address of each seller; the brand name, serial num-
37 ber, and sale price of each vending machine that the operator acquires or
38 brings into service, and any such other information as required by the
39 director.

40 (g) A vending machine operator, within 10 days, shall notify the di-
41 rector of any vending machine that the operator moves to a new location.
42 Vending machine operators shall report, on forms and in the manner
43 provided by the director, the address of the new location; the brand name

1 *and serial number of each machine; the permit number of each machine*
2 *and any such other information as required by the director. A vending*
3 *machine operator may move a vending machine from one location to*
4 *another and, if a vending machine becomes inoperative or is disposed of,*
5 *the permit for such vending machine may be transferred to another vend-*
6 *ing machine.*

7 (h) *A vending machine operator, in the course of business as a vend-*
8 *ing machine operator, may dispose of or sell vending machines without*
9 *obtaining a vending machine distributor's license.*

10 (1) *A vending machine operator, within 10 days, shall notify the di-*
11 *rector of the brand name and serial number of each vending machine that*
12 *the operator disposes of or which becomes inoperative.*

13 (2) *A vending machine operator, within 10 days, shall notify the di-*
14 *rector of any vending machine that the operator sells. Vending machine*
15 *operators shall report, on forms and in the manner provided by the di-*
16 *rector, the name and address of the purchaser; the brand name, serial*
17 *number, and sale price of each vending machine that the operator sells,*
18 *and any such other information as required by the director.*

19 (i) *Concurrently with a change in ownership of a dealer establishment*
20 *the license applicable to the establishment is void and shall be surrendered*
21 *to the director and shall not be transferred. On removal of a dealer es-*
22 *tablishment from one location to another, the owner of the establishment*
23 *shall, within 10 days, notify the director and surrender the owner's li-*
24 *cence. The director shall issue a new license for the unexpired term of the*
25 *surrendered license on payment of a fee of \$10. If a dealer's license is lost,*
26 *stolen or destroyed, the director may issue a new license on proof of loss,*
27 *theft, or destruction, at a cost of \$10. The director shall remit all moneys*
28 *received under this subsection to the state treasurer in accordance with*
29 *the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt*
30 *of each such remittance, the state treasurer shall deposit the entire amount*
31 *in the state treasury to the credit of the state general fund.*

32 (j) *The key to the lower or storage compartment of a vending machine*
33 *shall remain only in the possession of the vending machine operator or*
34 *the operator's authorized agent. All services connected with the operation*
35 *of a vending machine shall be performed by the vending machine operator*
36 *or the operator's authorized agent. All vending machines shall be subject*
37 *to inspection by the director or the director's authorized agents.*

38 Sec. 4. K.S.A. 79-3304 is hereby amended to read as follows: 79-
39 3304. (a) *Each person engaged in the business of selling cigarettes or roll-*
40 *your-own tobacco in the state of Kansas shall obtain a license as provided*
41 *by this act.*

42 (b) *A separate application, license and fee is required for each dealer*
43 *establishment owned or operated by a dealer.*

- 1 (1) *Each application shall state the name and address of the applicant;*
2 *if the applicant is a firm, partnership or association, the name and address*
3 *of each of its members; if the applicant is a corporation, the name and*
4 *address of each of its officers; the address of its principal place of business;*
5 *the place where the business to be licensed is to be conducted; and such*
6 *other information as the director may require for the purpose of the ad-*
7 *ministration of this act.*
- 8 (2) *All questions on the application shall be answered completely. An-*
9 *swers shall be printed legibly or typed. The application shall be signed*
10 *and acknowledged by the applicant or an officer of the applicant.*
- 11 (3) *Applications for such licenses shall be made on forms and in the*
12 *manner provided by the director, containing such information as the di-*
13 *rector may require.*
- 14 (4) *A person outside this state who ships or transports cigarettes or*
15 *roll-your-own tobacco to dealers in this state, to be sold by those dealers,*
16 *may make application for license as a dealer, be granted such a license*
17 *by the director, and thereafter be subject to all the provisions of this act*
18 *and entitled to act as a licensed dealer if the person files with the appli-*
19 *cation proof that the person has appointed the secretary of state as the*
20 *person's agent for service of process relating to any matter or issue arising*
21 *under this act.*
- 22 (c) *Licenses issued pursuant to this section shall be valid for a period*
23 *of one calendar year. Such calendar year shall run from January 1 to*
24 *December 31. Each license shall expire on December 31 following its date*
25 *of issue unless sooner revoked by the director, or unless the business for*
26 *which the license was issued is transferred. Fees for this section shall be*
27 *required in full and may not be apportioned. License renewal applications*
28 *shall be received by the director on or before December 31 of the current*
29 *licensing period.*
- 30 (d) *Each license shall be granted with the understanding that the*
31 *license is a grant from the state to one particular individual, partnership,*
32 *or corporation and is not transferable from one owner to another. If any*
33 *member of a partnership dies, sells, or transfers the member's interest in*
34 *the partnership, the license shall become null and void.*
- 35 (e) *The license fee for each biennium or portion thereof licensing*
36 *period shall be as follows:*
- 37 (1) *For retail dealer's license, \$25 for each dealer establishment.*
- 38 (2) ~~*For retailer's license on railroad or sleeping cars, \$50. Only one*~~
39 ~~*retail license need be obtained by each railroad or sleeping car company*~~
40 ~~*to permit the sale of cigarettes on any or all of its cars within the state.*~~
- 41 ~~(3)~~ *For show, carnival or catering license, \$50 for each concession.*
- 42 ~~(4)~~ (3) *For resident retail dealer's temporary license for a place of*
43 *business of a temporary nature, \$2 \$10 for each seven days or portion*

1 thereof.

2 ~~(5)~~ (4) For wholesale dealer's license, \$50 for each dealer establish-
3 ment. ~~No wholesale dealer's license shall be issued until the person ap-~~
4 ~~plying therefor has filed with the director a bond payable to the state of~~
5 ~~Kansas in such an amount as shall be fixed by the director, but in no event~~
6 ~~less than \$1,000, with a corporate surety authorized to do business in the~~
7 ~~state of Kansas, and approved by the director. If a wholesale dealer is~~
8 ~~unable to secure a corporate surety bond, the director may issue a license~~
9 ~~to such wholesale dealer, upon the wholesale dealer furnishing a personal~~
10 ~~bond meeting the approval of the director. Such bond shall be condi-~~
11 ~~tioned on the wholesale dealer's compliance with all the provisions of this~~
12 ~~act during the license period.~~

13 ~~(6)~~ (5) For vending machine distributor's license, \$50.

14 ~~(7)~~ (6) For manufacturer's salesperson license, \$20 for each sales-
15 person. The manufacturer's salesperson shall, with respect to each sale
16 made to a retail dealer, make and deliver to the retail dealer a true invoice
17 wherein such salesperson shall insert the name of the wholesale dealer
18 from whom such salesperson secured ~~such~~ cigarettes *or roll-your-own*
19 *tobacco*, together with such salesperson's own name and the name, *ad-*
20 *dress and license number* of the retail dealer purchasing the cigarettes *or*
21 *roll-your-own tobacco*.

22 ~~(8)~~ (7) For vending machine operator's license, no fee.

23 ~~(9)~~ (8) For vending machine permit, \$25 for each permit.

24 (f) *No wholesale dealer's license shall be issued until the person ap-*
25 *plying therefor has filed with the director a bond listing each place of*
26 *business at which the wholesale dealer proposes to engage in business.*
27 *Such bond shall be made payable to the state of Kansas in such an amount*
28 *as shall be fixed by the director, but in no event less than \$2,500 for each*
29 *place of business, and secured with a corporate surety authorized to do*
30 *business in the state of Kansas, and approved by the director. If a whole-*
31 *sale dealer is unable to secure a corporate surety bond, the director may*
32 *issue a license to such wholesale dealer, upon the wholesale dealer fur-*
33 *nishing a personal bond meeting the approval of the director. Such bond*
34 *shall be conditioned on the wholesale dealer's compliance with all the*
35 *provisions of this act, including the payment of all taxes, penalties, and*
36 *accrued interest due the state of Kansas during the license period. The*
37 *bond shall be kept in effect during the entire period of the license. When-*
38 *ever it is the opinion of the director that the bond is inadequate in amount*
39 *to fully protect the state, an additional bond shall be required by the*
40 *director in an amount that the director deems sufficient.*

41 (g) (1) *The surety on a bond furnished by a wholesale dealer as re-*
42 *quired by this act shall be released and discharged from any liability to*
43 *the state accruing on that bond after the expiration of 60 days from the*

1 *date upon which the surety has submitted to the director a written request*
 2 *to be released and discharged, but this requirement shall not operate to*
 3 *relieve, release or discharge the surety from any liability that has already*
 4 *accrued or that will accrue before the expiration of the 60-day period.*

5 (2) *The wholesale dealer who furnished the bond shall be promptly*
 6 *notified by the director upon receipt of the request. If the wholesale dealer,*
 7 *on or before the expiration of the 60-day period, fails to file with the*
 8 *director a new bond fully complying with the provisions of this act, the*
 9 *license or licenses of the wholesale dealer shall be revoked and canceled*
 10 *by the director.*

11 (h) *Upon receipt of an application in proper form and payment of the*
 12 *license fee required hereunder, the director shall, unless otherwise pro-*
 13 *vided by this act, issue to applicant a license, which shall permit the*
 14 *applicant to whom it is issued to engage in business as a dealer at the*
 15 *place of business shown on the license for the licensing period. Each li-*
 16 *cence shall be prominently displayed on the premises covered by the li-*
 17 *cence.*

18 ~~(b)~~ (i) *An application for any license required under the provisions*
 19 *of this act may be refused to: (1) A person who is not of good character*
 20 *and reputation in the community in which such person resides, or (2) a*
 21 *person who has been convicted of a felony or of any crime involving moral*
 22 *turpitude or of the violation of any law of any state or the United States*
 23 *pertaining to cigarettes or tobacco products any regulated substance and*
 24 *who has not completed the sentence, parole, probation or assignment to*
 25 *a community correctional services program imposed for any such convic-*
 26 *tion within two years immediately preceding the date of making appli-*
 27 *cation for any of such licenses.*

28 Sec. 5. K.S.A. 79-3309 is hereby amended to read as follows: 79-
 29 3309. (a) ~~Whenever the director has reason to believe that any person~~
 30 ~~licensed under this act has violated any of the provisions of this act, the~~
 31 ~~director shall notify the person by certified mail of the director's intention~~
 32 ~~to suspend or revoke the person's license or licenses. Within 10 days after~~
 33 ~~the mailing of the notice, the person may request a hearing in writing~~
 34 ~~before the director. The hearing shall be conducted in accordance with~~
 35 ~~the provisions of the Kansas administrative procedure act. If, after such~~
 36 ~~hearing, it appears to the satisfaction of the director that the person has~~
 37 ~~violated any of the provisions of this act, the director is hereby authorized~~
 38 ~~and empowered to suspend or revoke the person's license or licenses and~~
 39 ~~may in addition deny the application of the person for a license or licenses~~
 40 ~~for a portion of the succeeding calendar year for such period as the di-~~
 41 ~~rector determines is necessary but in no case for a period ending more~~
 42 ~~than one year following the date upon which the license or licenses were~~
 43 ~~suspended or revoked. The suspension or revocation of a vending ma-~~

1 ~~chine operator's master license shall suspend or revoke all vending ma-~~
2 ~~chine permits issued to the vending machine operator for the term of the~~
3 ~~license suspension or revocation. Whenever the director has reason to~~
4 ~~believe that any person licensed under this act has violated any provision~~
5 ~~of this act, the director shall notify the person by certified mail of the~~
6 ~~director's intention to suspend or revoke the person's license or licenses.~~

7 (b) A licensee in receipt of such notice may request an administrative
8 hearing. Such request must be made in writing and postmarked within
9 10 days after receipt of the notice. The hearing shall be conducted in
10 accordance with the provisions of the Kansas administrative procedure
11 act.

12 (1) If a licensee fails to make a timely request for an administrative
13 hearing, the license or licenses shall be suspended or revoked.

14 (2) Upon receipt of a timely request for a hearing, the division shall
15 forthwith set the matter for hearing before the director. The license or
16 licenses shall remain in effect until the conclusion of the administrative
17 hearing.

18 (c) If, after such hearing, it appears to the satisfaction of the director
19 that the person has violated any of the provisions of this act, the director
20 is hereby authorized and empowered to suspend or revoke the person's
21 license or licenses.

22 (1) In addition, the director may deny the application of the person
23 for a license or licenses for a portion of the succeeding calendar year for
24 such period as the director determines is necessary.

25 (2) The director may not deny an application for a period ending
26 more than one year following the date upon which the license or licenses
27 were suspended or revoked.

28 (d) The suspension or revocation of a vending machine operator's
29 license shall suspend or revoke all vending machine permits issued to the
30 vending machine operator for the term of the license suspension or rev-
31 ocation.

32 ~~(b)~~ (e) If a person continues to engage in activities requiring a license
33 under this act after having notice or knowledge of the suspension or
34 revocation of the person's license or licenses or after becoming more than
35 10 days delinquent in the payment of any tax, penalty or interest imposed
36 pursuant to this act, the state shall be entitled, in any proceedings brought
37 for such purposes, to have an order and judgment restraining and enjoin-
38 ing such unlawful sale and no bond shall be required for the issuance of
39 any such restraining order or injunction.

40 Sec. 6. K.S.A. 2008 Supp. 79-3310 is hereby amended to read as
41 follows: 79-3310. (a) There is imposed a tax upon all cigarettes *and roll-*
42 *your-own tobacco* sold, distributed or given away within the state of Kan-
43 sas. ~~On and after July 1, 2002, and before January 1, 2003, the rate of~~

1 ~~such tax shall be \$.70 on each 20 cigarettes or fractional part thereof or~~
2 ~~\$.975 on each 25 cigarettes, as the case requires. On and after January 1,~~
3 ~~2009,~~

4 (1) The rate of such tax shall be \$.79 on each 20 cigarettes or frac-
5 tional part thereof or \$.99 on each 25 cigarettes, as the case requires.

6 (2) *The rate of such tax shall be \$.0395 for each .09 ounces of roll-*
7 *your-own tobacco.*

8 (b) Such tax shall be collected and paid to the director as provided
9 in this act. Such tax shall be paid only once and shall be paid by the
10 wholesale dealer ~~first receiving the:~~

11 (1) *Affixing tax indicia to cigarettes as herein provided: in this section;*
12 *or*

13 (2) *affixing tax indicia, where practicable, to roll-your-own tobacco,*
14 *and where impracticable, upon the first sale of such roll-your-own tobacco*
15 *to a retail dealer or second successive wholesale dealer.*

16 (c) The taxes imposed by this act are hereby levied upon all sales of
17 cigarettes *or roll-your-own tobacco* made to any department, institution
18 or agency of the state of Kansas, and to the political subdivisions thereof
19 and ~~their~~ departments, institutions and agencies *of such political*
20 *subdivisions.*

21 New Sec. 7. (a) Any distributor licensed as such before July 1, 2009,
22 may sell such distributor's existing inventory of roll-your-own tobacco on
23 or after July 1, 2009, if the distributor can establish:

24 (1) That the inventory of roll-your-own tobacco was purchased prior
25 to July 1, 2009; and

26 (2) that the taxes on the roll-your-own tobacco were paid prior to July
27 1, 2009.

28 (b) On or before July 31, 2009, each distributor shall report to the
29 director, in such form as the director may prescribe, the quantity of roll-
30 your-own tobacco on hand at 12:01 a.m. on July 1, 2009.

31 (c) On or before January 31, 2010, each distributor shall report to the
32 director, in such form as the director may prescribe, the quantity of roll-
33 your-own tobacco on hand at 12:01 a.m. on January 1, 2010.

34 (d) In no event may a distributor sell or offer for sale roll-your-own
35 tobacco in this state that does not comply with this act after January 1,
36 2010.

37 Sec. 8. K.S.A. 2008 Supp. 79-3311 is hereby amended to read as
38 follows: 79-3311. (a) The director shall design and designate *tax indicia*
39 ~~of tax payment~~ to be affixed to each package of cigarettes as provided by
40 this act. *The director shall also designate and design tax indicia to be*
41 *affixed, where practicable, to packages of roll-your-own tobacco.*

42 (b) The director shall sell ~~water applied stamps only to licensed~~
43 ~~wholesale dealers in the amounts of 1,000 or multiples thereof. Stamps~~

1 ~~applied by the heat process shall be sold only~~ *heat-applied tax indicia* in
2 amounts of 30,000 or multiples thereof, except that such ~~stamps~~ *tax in-*
3 *dicia* which ~~are~~ *is* suitable for packages containing 25 cigarettes each shall
4 be sold in amounts prescribed by the director. ~~Meter imprints shall be~~
5 ~~sold only in amounts of 10,000 or multiples thereof. Water applied stamps~~
6 ~~in amounts of 10,000 or multiples thereof and stamps applied by the heat~~
7 ~~process and meter imprints~~ *The director shall sell pressure-sensitive tax*
8 *indicia to licensed wholesale dealers in amounts of 1,000 or multiples*
9 *thereof. Heat-applied tax indicia* shall be supplied to wholesale dealers at
10 a discount of ~~.90% on and after July 1, 2002, and before January 1, 2003,~~
11 ~~and .80% thereafter~~ from the face value thereof, and shall be deducted
12 at the time of purchase or from the remittance therefor as ~~hereinafter~~
13 *provided in this section.*

14 (c) Any wholesale ~~cigarette~~ dealer who shall file with the director a
15 bond, of acceptable form, payable to the state of Kansas with a corporate
16 surety authorized to do business in Kansas, shall be permitted to purchase
17 ~~stamps tax indicia~~, and remit ~~therefor such payment~~ to the director within
18 30 days after each such purchase, up to a maximum outstanding at any
19 one time of 85% of the amount of the bond. *On and after January 1,*
20 *2010, payment for such tax indicia shall be made by means of electronic*
21 *funds transfer.* Failure on the part of any wholesale dealer to remit as
22 ~~herein in this section~~ specified shall be cause for forfeiture of such dealer's
23 bond.

24 (d) All revenue received from the sale of such ~~stamps or meter im-~~
25 ~~prints tax indicia~~ shall be remitted to the state treasurer in accordance
26 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
27 receipt of each such remittance, the state treasurer shall deposit the entire
28 amount in the state treasury. The state treasurer shall first credit such
29 amount as the director shall order to the cigarette tax refund fund and
30 shall credit the remaining balance to the state general fund.

31 (e) A refund fund designated the cigarette tax refund fund not to
32 exceed \$10,000 at any time shall be set apart and maintained by the
33 director from taxes collected under this act and held by the state treasurer
34 for prompt payment of all refunds authorized by this act. Such cigarette
35 tax refund fund shall be in such amount as the director shall determine
36 is necessary to meet current refunding requirements under this act.

37 (f) (1) The wholesale ~~cigarette~~ dealer shall affix *tax indicia, as re-*
38 *quired by this act,* to each package of cigarettes ~~stamps or tax meter~~
39 ~~imprints required by this act~~ prior to the sale of ~~cigarettes to any person,~~
40 ~~by such dealer or such dealer's agent or agents,~~ *such items to any retail*
41 *dealer, vending machine operator or wholesale dealer* within the state of
42 Kansas.

43 (2) *Where practicable, the director may also require that tax indicia*

1 *be affixed to packages of roll-your-own tobacco prior to the first sale of*
 2 *any roll-your-own tobacco to a retailer dealer or wholesale dealer within*
 3 *the state of Kansas. In the event that it is impracticable to affix tax indicia*
 4 *to a package of roll-your-own tobacco and where the first-receiving whole-*
 5 *sale dealer sells roll-your-own tobacco to another wholesale dealer, the*
 6 *first-receiving wholesale dealer shall provide documentation that the tax*
 7 *has been paid thereupon. Such documentation shall accompany the roll-*
 8 *your-own tobacco sold to the purchasing wholesale dealer.*

9 (g) The director is empowered to authorize wholesale dealers to affix
 10 ~~revenue tax meter imprints~~ *tax indicia* upon original packages of ciga-
 11 ~~rettes and, where practicable, roll-your-own tobacco~~ and is charged with
 12 the duty of regulating the use of ~~tax meters~~ *such tax indicia* to secure
 13 payment of the proper taxes.

14 (h) No wholesale dealer shall affix ~~revenue tax meter imprints~~ *tax*
 15 *indicia* to original packages of cigarettes *or, where practicable, roll-your-*
 16 *own tobacco* without first having obtained permission from the director
 17 to employ ~~this~~ *a* method of affixation. If the director approves the whole-
 18 sale dealer's application for permission to affix ~~revenue tax meter imprints~~
 19 *tax indicia* to original packages of cigarettes *or, where practicable, roll-*
 20 *your-own tobacco*, the director shall require such dealer to file a suitable
 21 bond payable to the state of Kansas executed by a corporate surety au-
 22 thorized to do business in Kansas.

23 (i) The director may, to assure the proper collection of taxes imposed
 24 by the act, revoke or suspend the privilege of ~~imprinting tax meter im-~~
 25 ~~prints~~ *affixing tax indicia* upon original packages of cigarettes *or, where*
 26 *practicable, roll-your-own tobacco*. All ~~meters~~ *tax indicia* shall be under
 27 the direct control of the director, ~~and all transfer assignments or anything~~
 28 ~~pertaining thereto must first be authorized by the director.~~ All inks used
 29 ~~in the stamping of cigarettes must be of a special type devised for use in~~
 30 ~~connection with the machine employed and approved by the director.~~ All
 31 ~~repairs to the meter are strictly prohibited except by a duly authorized~~
 32 ~~representative of the director.~~ Requests for service shall be directed to
 33 the director. Meter machine ink imprints on all packages shall be clear
 34 and legible. If a wholesale dealer continuously issues illegible cigarette
 35 tax meter imprints, it shall be considered sufficient cause for revocation
 36 of such dealer's permit to use a cigarette tax meter.

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

41 (j) *Tax indicia upon cigarettes or, where practicable, roll-your-own*
 42 *tobacco shall be securely affixed in such a manner that preserves the*
 43 *legibility of the serial numbers and other identifying characteristics of the*

1 *tax indicia. If a wholesale dealer knowingly and continuously issues cig-*
 2 *arettes or, where practicable, roll-your-own tobacco with illegible tax in-*
 3 *dicia, it shall be considered sufficient cause for an administrative fine,*
 4 *suspension or revocation or any combination thereof.*

5 Sec. 9. K.S.A. 2008 Supp. 79-3312 is hereby amended to read as
 6 follows: 79-3312. The director shall redeem any unused ~~stamps or meter~~
 7 ~~imprints~~ *tax indicia* that any wholesale dealer presents for redemption
 8 within six months after the purchase thereof, at the face value less ~~.90%~~
 9 ~~on and after July 1, 2002, and before January 1, 2003, and .80% thereafter~~
 10 ~~thereof if such stamps or meter imprints have been purchased from the~~
 11 ~~director of such tax.~~ The director shall prepare a voucher showing the
 12 net amount of such refund due, and the director of accounts and reports
 13 shall draw a warrant on the state treasurer for the same. Wholesale dealers
 14 shall be entitled to a refund of the tax paid on cigarettes *and roll-your-*
 15 *own tobacco* which have become unfit for sale upon proof thereof less
 16 ~~.90% on and after July 1, 2002, and before January 1, 2003, and .80%~~
 17 ~~thereafter~~ of such tax.

18 Sec. 10. K.S.A. 79-3312a is hereby amended to read as follows: 79-
 19 3312a. Carriers are hereby required to report to the director the amount
 20 of cigarettes *or roll-your-own tobacco* refused by any consignee and all
 21 such cigarettes *or roll-your-own tobacco* returned to the manufacturer
 22 on forms and in the manner and time provided by the director. Failure
 23 of carriers to file such reports shall make the carrier liable for unpaid tax
 24 on such cigarettes *or roll-your-own tobacco*. ~~Carriers may sell cigarettes~~
 25 ~~damaged in transit when refused by the consignee if the carrier first~~
 26 ~~obtains written authority of the director for such sale and pays the tax~~
 27 ~~due thereon.~~ Cigarettes *or roll-your-own tobacco* damaged in transit, re-
 28 fused by the consignee and not returned to the manufacturer or sold as
 29 herein provided shall be destroyed in the presence of an agent of the
 30 director and in such case the tax shall be waived. Any consignee signing
 31 receipt of delivery and then discovering shortage in transit shall be re-
 32 sponsible for the tax on the amount of cigarettes *or roll-your-own tobacco*
 33 shown in ~~the said~~ *such* receipt of delivery. In all other cases of shortage
 34 in shipment of cigarettes *or roll-your-own tobacco* as evidenced by ~~waybill~~
 35 *a bill of lading* or invoice the carrier shall be liable for the tax due on the
 36 missing cigarettes *or roll-your-own tobacco* unless ~~the said~~ *such* carrier
 37 shall furnish to the director on forms and in the manner and time pro-
 38 vided by the director proof satisfactory to the director that such shortage
 39 was occasioned by the theft of ~~said~~ *such* cigarettes *or roll-your-own to-*
 40 *bacco* by a person or persons outside of the employment of ~~said~~ *such*
 41 carrier. In the event that ~~said~~ *such* proof is satisfactory to the director,
 42 the tax on ~~said~~ *such* missing cigarettes *or roll-your-own tobacco* shall be
 43 waived.

1 Sec. 11. K.S.A. 2008 Supp. 79-3313 is hereby amended to read as
2 follows: 79-3313. (a) All cigarettes sold in this state shall be in packages,
3 and each of the packages shall bear evidence of payment of the tax
4 thereon ~~except that any railroad or sleeping car company licensed as a~~
5 ~~retailer is hereby authorized to sell cigarettes upon its cars without affixing~~
6 ~~stamps to the packages of cigarettes provided that monthly reports and~~
7 ~~payment of the tax due is made directly to the director in the manner~~
8 ~~and under the terms provided for by the director. In addition, All roll-~~
9 ~~your-own tobacco sold in this state shall be in packages, and each of the~~
10 ~~packages, where practicable, shall bear evidence of payment of tax~~
11 ~~thereon.~~

12 (b) (1) Manufacturers are hereby authorized to distribute in the
13 state, through their authorized representatives or wholesale dealers, free
14 sample packages of cigarettes ~~containing less than 20 cigarettes or roll-~~
15 ~~your-own tobacco without affixing stamps tax indicia to the packages pro-~~
16 ~~vided that monthly reports and payment of a tax at the rates prescribed~~
17 ~~by law are made directly to the director. No wholesale dealer or manu-~~
18 ~~facturers' authorized representatives shall sell or distribute cigarettes, ex-~~
19 ~~cept free sample packages, to any person in the state of Kansas not holding~~
20 ~~a dealer's license as provided in this act. Such packages of sample ciga-~~
21 ~~rettes or roll-your-own tobacco shall bear the word "sample" or "not for~~
22 ~~sale" and "state tax paid" in letters easily read.~~

23 ~~Whenever the director shall have reason to believe that any manufac-~~
24 ~~turer has violated the provisions of this section or the conditions provided~~
25 ~~by the director, the director shall conduct a hearing thereon in accordance~~
26 ~~with the provisions of the Kansas administrative procedure act. If upon~~
27 ~~the basis of such hearing it appears to the satisfaction of the director that~~
28 ~~such manufacturer has violated any of the provisions of this section or~~
29 ~~the conditions provided by the director, the director is hereby authorized~~
30 ~~to suspend or revoke the authorization to the manufacturer for such pe-~~
31 ~~riod as the director determines is necessary but in no case for more than~~
32 ~~one year.~~

33 (2) *Free sample packages of cigarettes shall contain not more than 20*
34 *cigarettes.*

35 (3) *Free sample packages of roll-your-own tobacco shall contain not*
36 *more than two ounces of roll-your-own tobacco.*

37 (c) *Manufacturers are hereby authorized to distribute in the state,*
38 *through their authorized representatives or distributors, free sample*
39 *packages of tobacco products provided that monthly reports and payment*
40 *of a tax at the rates prescribed by law are made directly to the director.*
41 *Such packages of sample tobacco products shall bear the word "sample"*
42 *or "not for sale" and "state tax paid" in letters easily read.*

43 Sec. 12. K.S.A. 2008 Supp. 79-3316 is hereby amended to read as

1 follows: 79-3316. (a) All purchases of cigarettes *or roll-your-own tobacco*
2 by any *wholesale dealer or retail dealer* shall be evidenced by an invoice;
3 ~~a duplicate of which shall be furnished the party receiving the cigarettes~~
4 ~~from any dealer.~~ A *duplicate of such invoice shall be provided to the*
5 *wholesale dealer or retail dealer by the seller. Such invoice shall show the*
6 *seller's name and address, purchaser's name and address, date of sale, all*
7 *prices and discounts, quantity, brand family and brand style of cigarettes*
8 *or roll-your-own tobacco purchased.*

9 (b) Purchases of cigarettes *or roll-your-own tobacco* by wholesale
10 dealers shall be made from the manufacturers of cigarettes *or roll-your-*
11 *own tobacco* or from other Kansas licensed wholesale dealers. Purchases
12 of cigarettes *or roll-your-own tobacco* by retail dealers ~~or vending ma-~~
13 ~~chine operators~~ shall be from wholesale dealers. *Purchases of cigarettes*
14 *by vending machine operators shall be from wholesale dealers.*

15 (c) All invoices issued by wholesale dealers shall be in duplicate and
16 a copy must accompany the consigned cigarettes *or roll-your-own to-*
17 *bacco.* Cigarettes *or roll-your-own tobacco* sold by a wholesale dealer to
18 any other dealer shall be evidenced by invoices bearing the vendee's name
19 and license number. A wholesale dealer selling cigarettes *or roll-your-*
20 *own tobacco* to a manufacturer's salesperson shall at the time of delivery
21 of ~~same~~ *such cigarettes or roll-your-own tobacco* make a true duplicate
22 invoice inserting therein the name of the ~~salesman~~ *salesperson* together
23 with the name of such salesperson's employer. *Such invoices shall show*
24 *the seller's name and address, purchaser's name and address, date of sale,*
25 *all prices and discounts, quantity, brand name and brand style of ciga-*
26 *rettes or roll-your-own tobacco purchased.*

27 (d) (1) All records, *including invoices*, pertaining to sales of cigarettes
28 *or roll-your-own tobacco* by *wholesale dealers or retail dealers* in the state
29 of Kansas shall be preserved ~~for a period of three years~~ and shall be
30 available for inspection by the director or the director's designee at the
31 *wholesale dealer's or retail dealer's* place of business or, if the *wholesale*
32 *dealer or retail dealer* has more than one place of business in the state,
33 at a central location of the *wholesale dealer or retail dealer.*

34 (2) (A) *On or after January 1, 2010, such records shall be preserved*
35 *for a period of three years.*

36 (B) *On or after January 1, 2011, such records shall be preserved for*
37 *a period of four years.*

38 (C) *On or after January 1, 2012, such records shall be preserved for*
39 *a period of five years.*

40 (3) *Such records shall be kept for the prescribed period after the date*
41 *of the documents, or the date of the entries thereof appearing in the re-*
42 *records, unless the director, in writing, authorizes destruction or disposal*
43 *of such records at an earlier date.*

1 (e) Every wholesale dealer shall report to the director on or before
2 the 10th day of each month, stating the amount of cigarettes *or roll-your-*
3 *own tobacco* sold during the preceding month and the amount, *brand*
4 *family and brand style* of all cigarettes *or roll-your-own tobacco* returned
5 to the manufacturer. Any wholesale dealer who refuses any shipment or
6 part of a shipment of ~~unstamped~~ cigarettes *or roll-your-own tobacco with-*
7 *out tax indicia affixed* or has a shortage in the shipment of cigarettes *or*
8 *roll-your-own tobacco* consigned to such dealer shall in the monthly re-
9 port next following the refusal or shortage report to the director the ~~num-~~
10 ~~ber of amount, brand family and brand style of cigarettes or roll-your-~~
11 ~~own tobacco~~ packages ~~or cartons of cigarettes~~ refused or short and the
12 name of the carrier from whom the cigarettes *and roll-your-own tobacco*
13 were refused or shortage occurred. Such report shall be made on forms
14 *and in the manner* provided by the director and shall contain such other
15 information as the director may require, *including, but not limited to,*
16 *address, business name, electronic mail address, license number, name*
17 *and title of authorized business representative and telephone number.*
18 *Each return shall be accompanied by a remittance for any tax liability*
19 *shown therein.*

20 (f) Exemption from payment of ~~cigarette~~ *any tax required by this act*
21 *on the sale of cigarettes or roll-your-own tobacco* made outside the state
22 by any wholesale dealer shall be filed on forms *and in the manner* pro-
23 vided by the director.

24 (g) *As soon as practicable after any return is filed, the director shall*
25 *examine the return. If the director finds that the return is incorrect and*
26 *any amount of tax is due from the wholesale dealer and is unpaid, the*
27 *director shall notify the wholesale dealer of the deficiency. If a deficiency*
28 *disclosed by the director's examination cannot be allocated to a particular*
29 *month or months, the director may nevertheless notify the wholesale*
30 *dealer that a deficiency exists and state the amount of tax due. Such notice*
31 *shall be given to the wholesale dealer by registered agent or certified mail.*

32 Sec. 13. K.S.A. 2008 Supp. 79-3321 is hereby amended to read as
33 follows: 79-3321. It shall be unlawful for any person:

34 (a) To possess, except as otherwise specifically provided by this act,
35 more than ~~200~~ 400 cigarettes without the required tax indicia being af-
36 fixed as ~~herein~~ provided in this section.

37 (b) *To possess, except as otherwise specifically provided by this act,*
38 *more than 32 ounces of roll-your-own tobacco without the required tax*
39 *paid as provided in this section and without the required tax indicia af-*
40 *fixed, as practicable.*

41 (c) To mutilate or attach to any individual package of cigarettes *or*
42 *roll-your-own tobacco* any ~~stamp~~ tax indicia that has in any manner been
43 mutilated or that has been heretofore attached to a different individual

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

- 1 or tobacco products to any person under 18 years of age.
- 2 (o) *To buy any cigarettes, roll-your-own tobacco or tobacco products*
- 3 *for any person under 18 years of age.*
- 4 ~~(m)~~ (p) Who is under 18 years of age to purchase or attempt to purchase cigarettes, *roll-your-own tobacco* or tobacco products.
- 5
- 6 ~~(n)~~ (q) Who is under 18 years of age to possess or attempt to possess cigarettes, *roll-your-own tobacco* or tobacco products.
- 7
- 8 ~~(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.*
- 9
- 10 (r) *To sell cigarettes to a retail dealer or at retail that do not bear Kansas tax indicia, or to sell cigarettes or roll-your-own tobacco to a retail dealer or at retail upon which the Kansas cigarette or roll-your-own tobacco tax has not been paid.*
- 11
- 12
- 13
- 14 ~~(p)~~ (s) To sell cigarettes or *roll-your-own tobacco* without having a license for such sale as provided ~~herein~~ *in this section.*
- 15
- 16 ~~(q)~~ (t) *Except as otherwise provided in this section, to sell a vending machine without having a vending machine distributor's license.*
- 17
- 18 ~~(r)~~ (u) 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 and tobacco products may be sold only to persons 18 years of age and older." *For the purposes of this subsection only, the notice required by this subsection shall be deemed sufficient to include roll-your-own tobacco.*
- 19
- 20
- 21
- 22
- 23
- 24 ~~(s)~~ (v) To distribute *cigarette, roll-your-own tobacco and tobacco product* 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:
- 25
- 26
- 27 (1) In an area to which persons under 18 years of age are denied access;
- 28
- 29 (2) in or at a retail location where cigarettes ~~and~~, *roll-your-own tobacco* or tobacco products are the primary commodity offered for sale at retail; or
- 30
- 31
- 32 (3) at or adjacent to an outdoor production, repair or construction site or facility.
- 33
- 34 ~~(t)~~ (w) To sell cigarettes or ~~tobacco products~~ by means of a vending machine in any establishment, or portion of an establishment, which is open to minors, except that this subsection shall not apply to:
- 35
- 36 (1) The installation and use by the proprietor of the establishment, or by the proprietor's agents or employees, of a vending ~~machines~~ *machine* behind a counter, or in some place in such establishment, or portion thereof, to which minors are prohibited by law from having access;
- 37
- 38 (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~~ *such vending machine is*
- 39
- 40
- 41
- 42
- 43

1 intended for the sole use of adult employees employed in the building or
2 plant; or

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

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

11 (1) Any cigarettes the package of which:

12 (A) Bears any statement, label, stamp, sticker or notice indicating that
13 the manufacturer did not intend the cigarettes to be sold, distributed or
14 used in the United States, including but not limited to, labels stating “For
15 Export Only”, “U.S. Tax-Exempt”, “For Use Outside U.S.” or similar
16 wording; or

17 (B) does not comply with:

18 (i) All requirements imposed by or pursuant to federal law regarding
19 warnings and other information on packages of cigarettes manufactured,
20 packaged or imported for sale, distribution or use in the United States,
21 including but not limited to the precise warning labels specified in the
22 federal cigarette labeling and advertising act, 15 U.S.C. 1333; and

23 (ii) all federal trademark and copyright laws;

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

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

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

35 ~~(v)~~ (y) To alter the package of any cigarettes, prior to sale or distri-
36 bution to the ultimate consumer, so as to remove, conceal or obscure:

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

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

42 ~~(w)~~ (z) To affix any ~~stamp~~ *tax indicia* required pursuant to K.S.A. 79-
43 3311, and amendments thereto, to the package of any cigarettes described

1 in subsection ~~(x)~~ (x) or altered in violation of subsection ~~(y)~~ (y).

2 New Sec. 14. The attorney general shall have concurrent power with
3 the county and district attorneys of the state to enforce violations of this
4 act.

5 Sec. 15. K.S.A. 2008 Supp. 79-3322 is hereby amended to read as
6 follows: 79-3322. (a) Any person who violates any of the provisions of the
7 Kansas cigarette and tobacco products act, except as otherwise provided
8 in this act, shall be guilty of a misdemeanor and upon conviction shall be
9 punished by a fine of not more than \$1,000 or imprisonment for not more
10 than one year, or by both. In addition thereto any person found liable for
11 any license fee or tax imposed under the provisions of this act shall be
12 personally liable for such license fee or tax plus a penalty in an amount
13 equal to 100% thereof.

14 (b) (1) It is a class B person misdemeanor punishable by a minimum
15 fine of \$200 for any person to:

16 (A) Sell, give or furnish any cigarettes, *roll-your-own tobacco* or to-
17 bacco products to any person under 18 years of age; or

18 (B) buy any cigarettes, *roll-your-own tobacco* or tobacco products for
19 any person under 18 years of age.

20 (2) It shall be a defense to a prosecution under this subsection if:

21 (A) The defendant is a licensed retail dealer, or employee thereof, or
22 a person authorized by law to distribute samples;

23 (B) the defendant sold, furnished or distributed the cigarettes, *roll-*
24 *your-own tobacco* or tobacco products to the person under 18 years of
25 age with reasonable cause to believe the person was of legal age to pur-
26 chase or receive cigarettes, *roll-your-own tobacco* or tobacco products;
27 and

28 (C) to purchase or receive the cigarettes, *roll-your-own tobacco* or
29 tobacco products, the person under 18 years of age exhibited to the de-
30 fendant a driver's license, ~~Kansas~~ nondriver's identification card or other
31 official or apparently official document containing a photograph of the
32 person and purporting to establish that the person was of legal age to
33 purchase or receive cigarettes, *roll-your-own tobacco* or tobacco
34 products.

35 (3) It shall be a defense to a prosecution under this subsection if:

36 (A) The defendant engages in the lawful sale, furnishing or distri-
37 bution of cigarettes, *roll-your-own tobacco* or tobacco products by mail;
38 and

39 (B) the defendant sold, furnished or distributed the cigarettes, *roll-*
40 *your-own tobacco* or tobacco products to the person by mail only after
41 ~~the person had provided to the defendant an unsworn declaration, con-~~
42 ~~forming to K.S.A. 53-601, and amendments thereto, that the person was~~
43 ~~18 or more years of age~~ *such defendant had verified the identify and age*

1 *provided by the purchaser against a commercially available database of*
 2 *governmental records or obtained a photocopy or other image of a valid*
 3 *driver's license, nondriver's identification card or other official or appar-*
 4 *ently official document containing a photograph of the person and pur-*
 5 *porting to establish that the person was of legal age to purchase or receive*
 6 *cigarettes, roll-your-own tobacco or tobacco products.*

7 (4) For purposes of this subsection the person who violates this sub-
 8 section shall be the individual directly selling, furnishing or distributing
 9 the cigarettes, *roll-your-own tobacco* or tobacco products to any person
 10 under 18 years of age or the retail dealer who has actual knowledge of
 11 such selling, furnishing or distributing by such individual or both.

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

16 (d) Any agent, employees or others who aid, abet or otherwise par-
 17 ticipate in any way in the violation of the Kansas cigarette and tobacco
 18 products act or in any of the offenses hereunder punishable shall be guilty
 19 and punished as principals to the same extent as any person violating this
 20 act.

21 Sec. 16. K.S.A. 79-3323 is hereby amended to read as follows: 79-
 22 3323. (a) The following are declared to be common nuisances and
 23 contraband:

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

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

29 ~~—(3)— all property, other than vehicles, used in the retail sale of unstam-~~
 30 ~~ped packages of cigarettes.~~

31 (1) *All cigarettes in any quantity of more than two cartons, 20 pack-*
 32 *ages or 400 cigarettes without the required tax indicia being affixed as*
 33 *herein provided in this act;*

34 (2) *all roll-your-own tobacco in any quantity of more than 32 ounces,*
 35 *or two 16-ounce packages, without the required tax paid as herein pro-*
 36 *vided, and the required tax indicia affixed, as practicable;*

37 (3) *all vending machines in which packages of cigarettes without af-*
 38 *fixed Kansas tax indicia are found;*

39 (4) *all cigarettes, roll-your-own tobacco or tobacco products in the*
 40 *possession of a minor;*

41 (5) *all property, other than vehicles, used in the retail sale of packages*
 42 *of cigarettes, roll-your-own tobacco or tobacco products without affixed*
 43 *tax indicia or on which the tax is unpaid;*

1 (6) *all tax indicia which has not been affixed to packages of cigarettes*
 2 *or roll-your-own tobacco and which is found in the possession of a person*
 3 *other than the person to whom the tax indicia is registered;*

4 (7) *any cigarettes or roll-your-own tobacco that are affixed with tax*
 5 *indicia or on which the tax is paid as provided in this act in violation of*
 6 *K.S.A. 50-6a01 et seq., and amendments thereto;*

7 (8) *tobacco products on which the required tax has not been paid by*
 8 *a licensed distributor; and*

9 (9) *packages of cigarettes, roll-your-own tobacco or tobacco products*
 10 *possessed by an unlicensed dealer with the intent to barter, sell or give*
 11 *away.*

12 (b) Cigarettes in vending machines and exposed to view not showing
 13 ~~indicia of tax payment~~ *tax indicia as required by this act to be visible from*
 14 *the outside of the vending machine shall be presumed to be unstamped*
 15 *without affixed tax indicia.*

16 ~~(b)~~ (c) Any cigarettes, roll-your-own tobacco, tobacco products or
 17 property constituting a common nuisance and contraband as provided by
 18 this section may be seized by the director or the director's authorized
 19 agent or any duly constituted peace officer with or without process or
 20 warrant and shall be subject to forfeiture as provided in this act. The party
 21 making the seizure shall deliver to the owner of the property and to the
 22 person or persons found in possession of the property a receipt stating
 23 from whom the property was seized, the place of seizure and a description
 24 ~~and the brand~~ of the property seized, *including all brand families and*
 25 *brand styles.* A duplicate of the receipt shall be filed in the office of the
 26 director and shall be open for public inspection.

27 Sec. 17. K.S.A. 79-3324a is hereby amended to read as follows: 79-
 28 3324a. (a) ~~All of the cigarettes and property seized shall first be listed and~~
 29 ~~appraised by the officer making the seizure, and turned over to the county~~
 30 ~~sheriff of the county in which the seizure is made and a receipt therefor~~
 31 ~~taken. The person making the seizure~~ *Any officer seizing cigarettes, roll-*
 32 *your-own tobacco, tobacco products or property as provided in this sec-*
 33 *tion shall immediately make and file a written report thereof showing the*
 34 *name of the person officer making the seizure, the place where, and the*
 35 *person from whom the property was seized, and inventory and appraise-*
 36 *ment thereof, at the usual and ordinary wholesale price of the articles*
 37 *received to with the director of taxation.*

38 (b) The county or district attorney of the county in which the seizures
 39 are made may, at the request of the director, file in the district court
 40 forfeiture proceedings in the name of the state of Kansas, as plaintiff, and
 41 in the name of the owner or person in possession, as defendant, if known,
 42 and if unknown in the name of the property seized. The clerk of the court
 43 shall issue summons to the owner or person in whose possession such

1 property was found, directing ~~him or her~~ *such owner or person* to answer
2 within ~~ten (10)~~ 10 days.

3 (c) If the property is declared forfeited and ordered sold, notice of
4 the sale shall be ~~posted in five (5) public places in the county not less~~
5 ~~than ten (10) days before the date of the sale, except that printed in a~~
6 ~~newspaper published in the county where the property is located and~~
7 ~~which newspaper is authorized by law to publish legal notices. If there is~~
8 ~~no newspaper published in the county, the notice may be published in a~~
9 ~~newspaper having general circulation in the county. Such notice shall be~~
10 ~~printed not less than 10 days before the date of sale.~~ Cigarettes, *roll-your-*
11 *own tobacco and tobacco products* shall be withheld from public sale and
12 shall be sold by the director of taxation to the manufacturer of such cig-
13 arettes, *roll-your-own tobacco and tobacco products* or to a licensed ~~dis-~~
14 ~~tributor~~ *dealer* and the purchase price shall be paid to the director of
15 taxation and treated as cigarette tax collected. The proceeds of any public
16 sale shall be deposited with the clerk of the court, who shall after de-
17 ducting costs, including the costs of the sale, pay the balance to the trea-
18 surer of the county ~~wherein said~~ *in which the sale is constructed. Said*
19 *The* treasurer shall credit the entire amount ~~thereof~~ *of such payment* to
20 the county general fund.

21 ~~(b)~~ (d) The seizure and sale of the cigarettes, *roll-your-own tobacco*
22 *or tobacco products* shall not relieve the person from whom the cigarettes,
23 *roll-your-own tobacco or tobacco products* were seized from any prose-
24 cution on the payment of any penalties provided for under the provisions
25 of K.S.A. 79-3301 et seq., and amendments thereto; nor shall it relieve
26 the purchaser ~~thereof of such cigarettes, roll-your-own tobacco or tobacco~~
27 ~~products~~ from any payment of the regular cigarette tax and the placing
28 of proper ~~stamps thereon~~ *tax indicia on such cigarettes, roll-your-own*
29 *tobacco or tobacco products* before making any sale of the cigarettes, *roll-*
30 *your-own tobacco or tobacco products* or the personal consumption of
31 the same.

32 ~~(c)~~ (e) The forfeiture provisions of this act shall only apply to persons
33 ~~having possession of~~ *possessing or transporting* cigarettes, *roll-your-own*
34 *tobacco or tobacco products* with intent to barter, sell or give away ~~the~~
35 ~~same~~ *such cigarettes, roll-your-own tobacco or tobacco products*. The
36 possession of cigarettes in any quantity of more than two ~~(2)~~ cartons,
37 ~~twenty (20)~~ 20 packages or ~~four hundred (400)~~ 400 cigarettes, not bearing
38 ~~tax indicia of tax payment~~ as required by the provisions of K.S.A. 79-3301
39 et seq., and amendments thereto, shall be prima facie evidence of intent
40 to barter, sell or give away the cigarettes in violation of the provisions of
41 K.S.A. 79-3301 et seq., and amendments thereto. *The possession of roll-*
42 *your-own tobacco in any quantity of more than 32 ounces or two 16-*
43 *ounce packages, not bearing tax indicia as required by the provisions of*

1 K.S.A. 79-3301 *et seq.*, and amendments thereto, shall be *prima facie*
 2 evidence of intent to barter, sell or give away the roll-your-own tobacco
 3 in violation of the provisions of K.S.A. 79-3301 *et seq.*, and amendments
 4 thereto.

5 Sec. 18. K.S.A. 79-3326 is hereby amended to read as follows: 79-
 6 3326. (a) The director ~~of taxation~~ shall administer and enforce the pro-
 7 visions of this act. The secretary of revenue shall adopt rules and regu-
 8 lations for the administration of this act. For ~~the purpose~~ *purposes* of
 9 enforcing this act the director may call to the director's aid any law en-
 10 forcement officer of this state to prosecute ~~all~~ violators of any of the
 11 provisions of this act. The ~~police~~ *law enforcement agency* of any city shall
 12 have the right to inspect all premises, records and invoices pertaining to
 13 the wholesale distribution, retail sale or sampling of cigarettes, *roll-your-*
 14 *own tobacco* or tobacco products within the city at all reasonable times.
 15 All agents and representatives designated by the director are hereby in-
 16 vested with all the powers of ~~peace and police~~ *law enforcement* officers
 17 within the state of Kansas in the enforcement of the provisions of this act
 18 throughout the state.

19 (b) *The director may call to the director's aid the attorney general or*
 20 *the attorney general's duly authorized designee to assist the director in a*
 21 *hearing to suspend or revoke a dealer's license for a violation of this act.*

22 Sec. 19. K.S.A. 79-3329 is hereby amended to read as follows: 79-
 23 3329. If any ~~part or parts of this act are held to be unconstitutional the~~
 24 ~~remaining part thereof shall be unaffected thereby~~ *section, subsection,*
 25 *paragraph, sentence, clause or phrase of this act is for any reason held to*
 26 *be invalid, unlawful or unconstitutional, such decision shall not affect the*
 27 *validity of the remaining portions of this act or any part thereof. If a court*
 28 *of competent jurisdiction finds that the provisions of this act and of K.S.A.*
 29 *50-6a01 et seq., and amendments thereto, conflict and cannot be har-*
 30 *monized, then such provisions of K.S.A. 50-6a01 et seq., and amendments*
 31 *thereto, shall control.*

32 Sec. 20. K.S.A. 2008 Supp. 79-3333 is hereby amended to read as
 33 follows: 79-3333. (a) Each person engaged in the business of selling cig-
 34 arettes or *roll-your-own tobacco* to ~~persons~~ *consumers* who reside in Kan-
 35 sas shall obtain a license as provided by the Kansas cigarette and tobacco
 36 products act.

37 (b) All cigarettes sold to ~~persons~~ *consumers* who reside in Kansas shall
 38 have a valid Kansas ~~cigarette tax stamp~~ *indicia* affixed to each package.

39 (c) *All roll-your-own tobacco sold to consumers who reside in Kansas,*
 40 *shall have, where practicable, valid Kansas tax indicia affixed to each*
 41 *package.*

42 (d) All retail ~~cigarette~~ dealers, whether located in or outside the state
 43 of Kansas, shall have a registration certificate as provided in K.S.A. 79-

1 3608, and amendments thereto, and be subject to the provisions of the
 2 Kansas retailers' sales tax act. Each licensed retail ~~cigarette~~ dealer selling
 3 cigarettes *or roll-your-own tobacco* over the internet, telephone or other
 4 mail order transaction shall file all sales tax returns and remit taxes owed
 5 pursuant to K.S.A. 79-3607, and amendments thereto.

6 ~~(d)~~ (e) All sales transactions over the internet, telephone or other mail
 7 order transaction shall not be completed, unless, before each delivery of
 8 cigarettes *or roll-your-own tobacco* is made, whether through the mail,
 9 through a transportation company or any other delivery system, the seller
 10 has obtained from the purchaser a certification that includes a reliable
 11 confirmation that:

12 (1) The purchaser is at least the legal minimum age to purchase cig-
 13 arettes *or roll-your-own tobacco*;

14 (2) ~~that~~ the cigarettes *or roll-your-own tobacco* purchased are not
 15 intended for consumption by an individual who is younger than the legal
 16 minimum age to purchase cigarettes *or roll-your-own tobacco*; and

17 (3) a written statement signed by the purchaser that certifies the pur-
 18 chaser's address and that the purchaser is at least the minimum legal age
 19 to purchase cigarettes *or roll-your-own tobacco*. Such statement shall also
 20 confirm *that*:

21 (1) ~~That~~ The purchaser understands that signing another person's
 22 name to such certification is illegal;

23 (2) that the sale of cigarettes *or roll-your-own tobacco* to individuals
 24 under the legal minimum purchase age is illegal; and

25 (3) that the purchase of cigarettes *or roll-your-own tobacco* by indi-
 26 viduals under the legal minimum purchase age is illegal under the laws
 27 of Kansas.

28 ~~(e)~~ (f) The retail ~~cigarette~~ dealer shall verify the information con-
 29 tained in the certification provided by the purchaser against a commer-
 30 cially available database of governmental records, or obtain a photocopy
 31 or other image of the valid, government-issued identification stating the
 32 date of birth or age of the purchaser.

33 ~~(f)~~ (g) All invoices, bills of lading, sales receipts and any other docu-
 34 ment related to the sale of cigarettes *or roll-your-own tobacco* through
 35 the internet or other mail order transaction shall contain the current; *and*
 36 valid ~~retailer~~ Kansas ~~cigarette~~ *retail* dealer license number, Kansas sales
 37 tax registration number, business name and address of the seller.

38 ~~(g)~~ (h) All packages of cigarettes *or roll-your-own tobacco* shipped
 39 from a ~~cigarette~~ *retail* dealer to purchasers who reside in Kansas shall
 40 clearly print the package with the word "CIGARETTES" on all sides of
 41 the package. In addition, such package shall contain an externally visible
 42 and easily legible notice located on the same side of the package as the
 43 address to which the package is delivered as follows:

1 “IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU
 2 FROM A SELLER LOCATED OUTSIDE OF THE STATE IN
 3 WHICH YOU RESIDE, THE SELLER HAS REPORTED PURSU-
 4 ANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO
 5 YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR
 6 NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR
 7 ALL APPLICABLE UNPAID STATE TAXES ON THESE
 8 CIGARETTES.”

9 *For purposes of this subsection only, the term “cigarettes” shall be*
 10 *deemed sufficient to include roll-your-own tobacco.*

11 ~~(h)~~ (i) The provisions of this section shall not apply to tobacco prod-
 12 ucts, as defined in K.S.A. 79-3301, and amendments thereto.

13 ~~(i)~~ (j) (1) Violation of the provisions of subsection (a), ~~(d)~~ or (e) or
 14 (f) is a severity level 8, nonperson felony.

15 (2) Violation of any provision of this section other than the provisions
 16 of subsection (a), ~~(d)~~ or (e) or (f) is a misdemeanor and upon conviction
 17 shall be punishable by a fine of not more than \$1,000 or imprisonment
 18 for not more than one year, or both.

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

21 Sec. 21. K.S.A. 2008 Supp. 79-3334 is hereby amended to read as
 22 follows: 79-3334. (a) The Kansas department of revenue shall publish a
 23 list of active ~~cigarette and tobacco~~ licensees and shall update such list
 24 monthly.

25 (b) The list of active ~~cigarette and tobacco~~ licensees published as
 26 provided in subsection (a) shall contain the following information: ~~County~~
 27 ~~name, owner, business name, address, license type and license number~~
 28 *Address, business name, county name, date license first issued, date of*
 29 *most recent renewal, date of current license expiration, license number,*
 30 *license type and name of authorized representative.*

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

33 Sec. 22. K.S.A. 2008 Supp. 79-3335 is hereby amended to read as
 34 follows: 79-3335. ~~(a)~~ Counterfeit cigarettes, *roll-your-own tobacco or to-*
 35 *bacco products* shall be seized by the director. For purposes of this sec-
 36 tion, counterfeit cigarettes includes cigarettes, *roll-your-own tobacco or*
 37 *tobacco products* that have false manufacturing labels or packages of cig-
 38 arettes or *roll-your-own tobacco* bearing counterfeit tax ~~stamps~~ *indicia*.

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

41 Sec. 23. K.S.A. 79-3371 is hereby amended to read as follows: 79-
 42 3371. A tax is hereby imposed upon the privilege of selling or dealing in
 43 tobacco products in this state by any person engaged in business as a

1 distributor thereof, at the rate of ~~ten percent (10%)~~ 10% of the wholesale
2 sales price of such tobacco products. Such tax shall be imposed at the
3 time the distributor:

4 (a) Brings or causes to be brought into this state from ~~without~~ outside
5 the state tobacco products for sale;

6 (b) makes, manufactures; or fabricates tobacco products in this state
7 for sale in this state; or

8 (c) ships or transports tobacco products to ~~retailers~~ retail dealers in
9 this state to be sold by those ~~retailers~~ retail dealers.

10 Sec. 24. K.S.A. 79-3374 is hereby amended to read as follows: 79-
11 3374. ~~Each application for a distributor's license shall be accompanied by~~
12 ~~a fee of twenty five dollars (\$25). The application shall also be accom-~~
13 ~~panied by a corporate surety bond issued by a surety company authorized~~
14 ~~to do business in this state, conditioned for the payment when due of all~~
15 ~~taxes, penalties and accrued interest which may be due the state. The~~
16 ~~bond shall be in an amount to be determined by the director and in a~~
17 ~~form prescribed by the director. Whenever it is the opinion of the director~~
18 ~~that the bond given by a licensee is inadequate in amount to fully protect~~
19 ~~the state, he or she shall require an additional bond in such amount as~~
20 ~~he or she deems sufficient. A separate application for a license shall be~~
21 ~~made for each place of business at which a distributor proposes to engage~~
22 ~~in business as such under this act, but an applicant may provide one bond~~
23 ~~in an amount determined by the director for all applications made by him~~
24 ~~or her. A distributor applying for a license between June thirtieth and~~
25 ~~December thirty first of any year shall be required to pay only one half~~
26 ~~of the license fee provided for herein.~~

27 (a) *Each person engaged in the business of selling tobacco products in*
28 *the state of Kansas shall obtain a license as provided by this act.*

29 (b) *A separate application, license and fee is required for each dealer*
30 *establishment owned or operated by a dealer.*

31 (1) *Each application shall state the name and address of the applicant;*
32 *if the applicant is a firm, partnership or association, the name and address*
33 *of each of its members; if the applicant is a corporation, the name and*
34 *address of each of its officers; the address of its principal place of business;*
35 *the place where the business to be licensed is to be conducted; and such*
36 *other information as the director may require for the purpose of the ad-*
37 *ministration of this act.*

38 (2) *All questions on the application shall be answered completely. An-*
39 *swers shall be printed legibly or typed. The application shall be signed*
40 *and acknowledged by the applicant or an officer of the applicant.*

41 (3) *Applications for such licenses shall be made on forms and in the*
42 *manner prescribed by the director, containing such information as the*
43 *director may require.*

- 1 (4) A person outside this state who ships or transports tobacco prod-
2 ucts to dealers in this state, to be sold by those dealers, may make appli-
3 cation for license as a dealer, be granted such a license by the director,
4 and thereafter be subject to all the provisions of this act and entitled to
5 act as a licensed dealer if the person files with the application proof that
6 the person has appointed the secretary of state as the person's agent for
7 service of process relating to any matter or issue arising under this act.
- 8 (c) Licenses issued pursuant to this section shall be valid for a period
9 of one calendar year. Such calendar year shall run from January 1 to
10 December 31. Each license shall expire on December 31 following its date
11 of issue unless sooner revoked by the director, or unless the business for
12 which the license was issued is transferred. Fees for this section shall be
13 required in full and may not be apportioned. License renewal applications
14 shall be received by the director on or before December 31 of the current
15 licensing period.
- 16 (d) Each license shall be granted with the understanding that the
17 license is a grant from the state to one particular individual, partnership
18 or corporation and is not transferable from one owner to another. If any
19 member of a partnership dies, sells or transfers the member's interest in
20 the partnership, the license shall become null and void.
- 21 (e) For a distributor's license, the fee shall be \$50 for each dealer
22 establishment.
- 23 (f) No distributor's license shall be issued until the person applying
24 therefor has filed with the director a bond listing each place of business
25 at which the distributor proposes to engage in business. Such bond shall
26 be made payable to the state of Kansas in such an amount as shall be fixed
27 by the director, but in no event less than \$2,500 for each place of business,
28 and secured with a corporate surety authorized to do business in the state
29 of Kansas, and approved by the director. If a distributor is unable to
30 secure a corporate surety bond, the director may issue a license to such
31 distributor, upon the distributor furnishing a personal bond meeting the
32 approval of the director. Such bond shall be conditioned on the distrib-
33 utor's compliance with all the provisions of this act, including the payment
34 of all taxes, penalties and accrued interest due the state of Kansas during
35 the license period. The bond shall be kept in effect during the entire period
36 of the license. Whenever it is the opinion of the director that the bond is
37 inadequate in amount to fully protect the state, an additional bond shall
38 be required by the director in an amount that the director deems
39 sufficient.
- 40 (g) (1) The surety on a bond furnished by a distributor as required
41 by this act shall be released and discharged from any liability to the state
42 accruing on that bond after the expiration of 60 days from the date upon
43 which the surety has submitted to the director a written request to be

1 released and discharged, but this requirement shall not operate to relieve,
2 release or discharge the surety from any liability that has already accrued
3 or that will accrue before the expiration of the 60-day period.

4 (2) The distributor who furnished the bond shall be promptly notified
5 by the director upon receipt of the request. If the distributor, on or before
6 the expiration of the 60-day period, fails to file with the director a new
7 bond fully complying with the provisions of this act, the license or licenses
8 of the distributor shall be revoked and canceled by the director.

9 (h) Upon receipt of an application in proper form and payment of the
10 license fee required hereunder, the director shall, unless otherwise pro-
11 vided by this act, issue to the applicant a license hereunder, which shall
12 permit the applicant to whom it is issued to engage in business as a dealer
13 at the place of business shown on the license for the licensing period. Each
14 license shall be prominently displayed on the premises covered by the
15 license.

16 (i) An application for any license required under the provisions of
17 this act may be refused to a person who has been convicted of a felony or
18 of any crime involving moral turpitude or of the violation of any law of
19 any state or the United States pertaining to any regulated substance and
20 who has not completed the sentence, parole, probation or assignment to
21 a community correctional services program imposed for any such convic-
22 tion within two years immediately preceding the date of making appli-
23 cation for any of such licenses.

24 Sec. 25. K.S.A. 79-3377 is hereby amended to read as follows: 79-
25 3377. ~~(a) Each distributor shall keep in each licensed place of business~~
26 ~~complete and accurate records for that place of business, including item-~~
27 ~~ized invoices of: (1) Tobacco products held, purchased, manufactured,~~
28 ~~brought in or caused to be brought in from outside the state or shipped~~
29 ~~or transported to retailers in this state; and (2) all sales of tobacco products~~
30 ~~made, except sales to an ultimate consumer. Such records shall show the~~
31 ~~names and addresses of purchasers and other pertinent papers and docu-~~
32 ~~ments relating to the purchase, sale or disposition of tobacco products.~~
33 ~~When a licensed distributor sells tobacco products exclusively to ultimate~~
34 ~~consumers at the addresses given in the license, no invoice of those sales~~
35 ~~shall be required, but itemized invoices shall be made of all tobacco prod-~~
36 ~~ucts transferred to other retail outlets owned or controlled by that li-~~
37 ~~icensed distributor. All books, records and other papers and documents~~
38 ~~required by this subsection to be kept shall be preserved for a period of~~
39 ~~at least three years after the date of the documents or the date of the~~
40 ~~entries thereof appearing in the records, unless the director, in writing,~~
41 ~~authorizes their destruction or disposal at an earlier date.~~

42 ~~—(b) At any time during usual business hours duly authorized agents~~
43 ~~or employees of the director may enter any place of business of a distrib-~~

1 utor and inspect the premises, the records required to be kept under this
2 act and the tobacco products contained therein, to determine whether or
3 not all the provisions of this act are being fully complied with. Refusal to
4 permit such inspection by a duly authorized agent or employee of the
5 director shall be grounds for revocation of the license.

6 ~~(c) Each person who sells tobacco products to persons other than an~~
7 ~~ultimate consumer shall render with each sale itemized invoices showing~~
8 ~~the seller's name and address, the purchaser's name and address, the date~~
9 ~~of sale and all prices and discounts. Such person shall preserve legible~~
10 ~~copies of all such invoices for three years after the date of sale.~~

11 ~~(d) Each distributor shall procure itemized invoices of all tobacco~~
12 ~~products purchased. The invoices shall show the name and address of the~~
13 ~~seller and the date of purchase. The distributor shall preserve a legible~~
14 ~~copy of each such invoice for three years after the date of purchase.~~
15 ~~Invoices shall be available for inspection by authorized agents or employ-~~
16 ~~ees of the director at the distributor's place of business.~~

17 *(a) Each distributor shall keep complete and accurate records, includ-*
18 *ing itemized invoices, of tobacco products brought in, caused to be*
19 *brought in, held, manufactured or purchased. Such invoices shall show*
20 *the name and address of the seller, the date of purchase, the quantity*
21 *purchased and the wholesale sales price.*

22 *(b) Each distributor shall keep complete and accurate records, in-*
23 *cluding itemized invoices, of tobacco products shipped, transported or*
24 *sold to retail dealers in this state. Such invoices shall show seller's name*
25 *and address, the purchaser's name, address and Kansas license number,*
26 *the date of sale and wholesale sales price. Distributors need not keep*
27 *copies of invoices for the sale of tobacco products sold exclusively to ul-*
28 *timate consumers. All invoices issued pursuant to this subsection shall be*
29 *in duplicate and a copy must accompany the shipped, transported or sold*
30 *tobacco products.*

31 *(c) Each distributor shall keep complete and accurate records, in-*
32 *cluding itemized invoices, of all tobacco products transferred to other*
33 *retail dealer outlets owned or controlled by that licensed distributor.*

34 *(d) (1) All records, including invoices, pertaining to the sale or pur-*
35 *chase of tobacco products by Kansas distributors as required by this act,*
36 *shall be preserved for the prescribed period after the date of the docu-*
37 *ments or the date of the entries thereof appearing in the records, unless*
38 *the director, in writing, authorizes their destruction or disposal at an*
39 *earlier date.*

40 *(2) (A) On or after January 1, 2010, such records shall be preserved*
41 *for a period of three years.*

42 *(B) On or after January 1, 2011, such records shall be preserved for*
43 *a period of four years.*

- 1 (C) *On or after January 1, 2012, such records shall be preserved for*
2 *a period of five years.*
- 3 (3) *Such records shall be available for inspection by the director or*
4 *the director's designee at the distributors place of business or, if the dealer*
5 *has more than one place of business in the state, at a central location of*
6 *the distributor. At any time during usual business hours, duly authorized*
7 *agents or employees of the director may enter any place of business of a*
8 *distributor and inspect the premises, the records required to be kept under*
9 *this act and the tobacco products contained therein, to determine whether*
10 *or not distributors are fully complying with all the provisions of this act.*
11 *Refusal to permit such inspection by a duly authorized agent or employee*
12 *of the director shall be grounds for revocation of the license.*
- 13 (e) (1) *On or before the 10th day of each month:*
- 14 (A) *Each licensed in-state distributor shall report to the director the*
15 *quantity and wholesale sales price of each tobacco product brought, or*
16 *caused to be brought into this state for sale and each tobacco product*
17 *made, manufactured or fabricated in this state for sale in this state during*
18 *the preceding calendar month; and*
- 19 (B) *each licensed distributor outside this state shall report to the di-*
20 *rector the quantity and wholesale sales price of each tobacco product*
21 *shipped or transported to retail dealers in this state to be sold by those*
22 *retail dealers during the preceding calendar month.*
- 23 (2) *Such reports shall be made on forms and in the manner prescribed*
24 *by the director and contain such other information as the director may*
25 *require, including, but not limited to, address, business name, electronic*
26 *mail address, license number, name and title of authorized business rep-*
27 *resentative and telephone number.*
- 28 (3) *Each return shall be accompanied by a remittance for the full tax*
29 *liability shown therein.*
- 30 (f) *As soon as practicable after any return is filed, the director shall*
31 *examine the return. If the director finds that the return is incorrect and*
32 *any amount of tax is due from the distributor and unpaid, the director*
33 *shall notify the distributor of the deficiency. If a deficiency disclosed by*
34 *the director's examination cannot be allocated to a particular month or*
35 *months, the director may nevertheless notify the distributor that a defi-*
36 *ciency exists and state the amount of tax due. Such notice shall be given*
37 *to the distributor by registered or certified mail.*
- 38 Sec. 26. K.S.A. 79-3379 is hereby amended to read as follows: 79-
39 3379. (a) Where tobacco products, on which the tax imposed by this act
40 has been reported and paid, or which have been reported for the purpose
41 of determining and imposing the tax for the privilege of doing business
42 under the provisions of this act and on which the tax has been paid, are
43 sold, shipped or transported by the distributor to ~~retailers~~ retail dealers,

1 distributors or ultimate consumers ~~without~~ *outside* the state, or are re-
2 turned to the manufacturer by the distributor, or destroyed by the dis-
3 tributor, a refund or credit of such tax shall be made to the distributor.

4 (b) For the purpose of making such credit or refund, or any combi-
5 nation thereof, the director may issue a tax credit memoranda or may
6 prepare a voucher showing the net amount of such refund due and the
7 director of accounts and reports shall draw a warrant upon the state trea-
8 surer for the amount of any such refund certified by the director.

9 Sec. 27. K.S.A. 2008 Supp. 79-3391 is hereby amended to read as
10 follows: 79-3391. (a) In addition to or in lieu of any other civil or criminal
11 penalty provided by law, the ~~secretary of revenue or the secretary's des-~~
12 ~~ignee~~ *director or the director's designee*, upon a finding that a licensee
13 under this act has violated any provision of this act or any provision of
14 any rule and regulation of the secretary of revenue adopted pursuant to
15 this act shall impose on such licensee a civil fine not exceeding \$1,000 for
16 each violation.

17 (b) (1) ~~It shall be unlawful for any person, directly or indirectly, to:~~
18 ~~(1) Sell, give or furnish any cigarettes or tobacco products to any person~~
19 ~~under 18 years of age, or (2) buy any cigarettes or tobacco products for~~
20 ~~any person under 18 years of age.~~ In determining the fine to be imposed
21 ~~under this subsection by~~ *against* a licensed retail dealer whose employee
22 sold, furnished or distributed the cigarettes, *roll-your-own tobacco* or
23 tobacco products, the ~~secretary of revenue or the secretary's director or~~
24 ~~the director's~~ *designee shall may* consider it to be a mitigating circum-
25 stance if the employee had completed a training program, approved by
26 the ~~secretary of revenue or the secretary's designee~~ *director or the direc-*
27 *tor's designee*, in avoiding ~~the~~ sale, furnishing or distributing of cigarettes
28 ~~and~~ *roll-your-own tobacco* or tobacco products to persons under 18 years
29 of age.

30 (2) *If a person violates subsection (n) of K.S.A. 79-3321, and amend-*
31 *ments thereto, for a second or subsequent occurrence within a three-year*
32 *period, the director may impose a graduated fine upon such person for*
33 *the second or subsequent occurrence. For the purposes of imposing a fine*
34 *under this section, if three or more years have elapsed since a person has*
35 *been found to have violated the provisions of this subsection, such person*
36 *shall be treated as never having violated this subsection.*

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

1 (d) Any *fee or fine* collected pursuant to this ~~section~~ *act* shall be re-
 2 mitted to the state treasurer in accordance with the provisions of K.S.A.
 3 75-4215, and amendments thereto. Upon receipt of each such remittance,
 4 the state treasurer shall deposit the entire amount in the state treasury
 5 to the credit of the cigarette and tobacco products regulation fund.

6 (e) There is hereby created, in the state treasury, the cigarette and
 7 tobacco products regulation fund. Moneys in the fund shall be expended
 8 only for the *administration and* enforcement of this act and rules and
 9 regulations adopted pursuant to this act *or the enforcement of K.S.A. 50-*
 10 *6a01 et seq., and amendments thereto.* Such expenditures shall be made
 11 in accordance with appropriation acts upon warrants of the director of
 12 accounts and reports issued pursuant to vouchers approved by the ~~see-~~
 13 ~~retary of revenue~~ *director* or a person designated by the ~~secretary~~
 14 *director.*

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

22 Sec. 28. K.S.A. 2008 Supp. 79-3393 is hereby amended to read as
 23 follows: 79-3393. (a) When a person is stopped by a law enforcement
 24 officer for a cigarette or tobacco infraction, the law enforcement officer
 25 shall prepare and deliver to the person a written cigarette or tobacco
 26 citation on a form approved by the ~~secretary of revenue or the secretary's~~
 27 *director or the director's* designee. The citation shall contain a notice to
 28 appear in court, the name and address of the person, the offense or of-
 29 fenses charged, the time and place when and where the person shall
 30 appear in court, the signature of the law enforcement officer and any
 31 other pertinent information. The time specified in the notice to appear
 32 shall be at least five days after the alleged infraction unless the person
 33 charged with the infraction demands an earlier hearing. The place spec-
 34 ified in the notice to appear shall be before a judge of the district court
 35 within the county where the infraction is alleged to have been committed
 36 or before a judge of the municipal court where the infraction is alleged
 37 to have been committed in a city which has adopted an ordinance which
 38 prohibits the same acts.

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

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

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

4 (d) For purposes of this act, “cigarette or tobacco infraction” and
5 “cigarette or tobacco citation” shall be deemed to include roll-your-own
6 tobacco violations and citations.

7 Sec. 29. K.S.A. 2008 Supp. 79-3395 is hereby amended to read as
8 follows: 79-3395. On the first business day of each month, each person
9 licensed to affix the state tax stamp indicia to cigarettes shall file with the
10 director, for all cigarettes imported into the United States to which such
11 person has affixed the tax stamp indicia in the preceding month:

12 (a) A copy of:

13 (1) The permit issued pursuant to the internal revenue code, section
14 26 U.S.C. 5713, to the person importing such cigarettes into the United
15 States allowing such person to import such cigarettes; and

16 (2) the customs form containing, with respect to such cigarettes, the
17 internal revenue tax information required by the U.S. bureau of alcohol,
18 tobacco and firearms;

19 (b) a statement, signed by such person under penalty of perjury,
20 which shall be treated as confidential by the commissioner and exempt
21 from disclosure under the open records act, K.S.A. 45-215 through 45-
22 223, and amendments thereto, identifying the brand family and brand
23 styles of all such cigarettes, the quantity of each brand style of such cig-
24 arettes, the supplier of such cigarettes, and the person or persons, if any,
25 to whom such cigarettes have been conveyed for resale; and

26 (c) a statement, signed by an officer of the manufacturer or importer
27 under penalty of perjury, certifying that the manufacturer or importer
28 has complied with:

29 (1) The package health warning and ingredient reporting require-
30 ments of the federal cigarette labeling and advertising act, section 15
31 U.S.C. 1333 and 1335a, with respect to such cigarettes; and

32 (2) the provisions of K.S.A. 50-6a01 et seq., and amendments thereto,
33 including a statement indicating whether the manufacturer is, or is not,
34 a participating tobacco product manufacturer within the meaning of
35 K.S.A. 50-6a01 et seq., and amendments thereto.

36 Sec. 30. K.S.A. 2008 Supp. 79-3396 is hereby amended to read as
37 follows: 79-3396. (a) In addition to or in lieu of any other civil or criminal
38 penalty provided by law, the director, upon a finding that a licensee has
39 violated the provisions of subsection ~~(u), (v) or (w)~~ (x), (y) or (z) of K.S.A.
40 79-3321, and amendments thereto, or has failed to comply with the pro-
41 visions of K.S.A. 2008 Supp. 79-3395, and amendments thereto, or any
42 rule and regulation adopted pursuant thereto, may revoke or suspend the
43 license of any licensee in the manner provided by K.S.A. 79-3309, and

1 amendments thereto; the director also may impose a civil fine in an
 2 amount not to exceed the greater of 500% of the retail value of the cig-
 3 arettes involved or \$5,000. Such fine shall be imposed in the manner
 4 provided by K.S.A. 79-3391, and amendments thereto.

5 (b) Any cigarettes that are acquired, ~~held, owned, possessed, trans-~~
 6 ~~ported, imported, sold or~~ distributed, *held, imported, owned, possessed,*
 7 *sold or transported* in this state in violation of subsection ~~(u), (v) or (w)~~
 8 *(x), (y) or (z)* of K.S.A. 79-3321, and amendments thereto, or has failed
 9 to comply with the provisions of K.S.A. 2008 Supp. 79-3395, and amend-
 10 ments thereto, shall be deemed contraband under K.S.A. 79-3323, and
 11 amendments thereto, and shall be subject to seizure and forfeiture as
 12 provided therein and in K.S.A. 79-3324a, and amendments thereto. All
 13 such cigarettes seized and forfeited shall be destroyed. Such cigarettes
 14 shall be deemed contraband whether the violation of this act is knowing
 15 or otherwise.

16 Sec. 31. K.S.A. 2008 Supp. 79-3397 is hereby amended to read as
 17 follows: 79-3397. (a) The provisions of subsection ~~(u), (v) or (w)~~ *(x), (y)*
 18 *or (z)* of K.S.A. 79-3321 and K.S.A. 2008 Supp. 79-3395, and amendments
 19 thereto, shall be enforced by the director. At the request of the director
 20 or the director's duly authorized agent, the Kansas bureau of investigation
 21 and all local law enforcement agencies shall enforce such provisions. The
 22 attorney general shall have concurrent power with the district and county
 23 attorneys of the state to enforce such provisions.

24 (b) For the purpose of enforcing the provisions of subsection ~~(u), (v)~~
 25 ~~or (w)~~ *(x), (y) or (z)* of K.S.A. 79-3321 and K.S.A. 2008 Supp. 79-3395,
 26 and amendments thereto, the director and any agency to which the di-
 27 rector shall have delegated enforcement responsibility pursuant to sub-
 28 section (a) may request information from any state or local agency, and
 29 may share information with, and request information from, any federal
 30 agency and any agency of any other state or any local agency thereof.

31 (c) Any person who may be damaged or injured by a violation of the
 32 provisions of subsection ~~(u), (v) or (w)~~ *(x), (y) or (z)* of K.S.A. 79-3321 or
 33 K.S.A. 2008 Supp. 79-3395, and amendments thereto, shall have a cause
 34 of action against any person causing such damage or injury. Such action
 35 may be brought by any person who is injured in such person's business
 36 or property by reason of any violation of such provisions, regardless of
 37 whether such injured person dealt directly or indirectly with the defend-
 38 ant. The plaintiff in any action commenced hereunder in the district court
 39 of the county wherein such plaintiff resides, or the district court of the
 40 county of the defendant's principal place of business, may sue for and
 41 recover treble the damages sustained. In addition, any person who is
 42 threatened with injury or additional injury by reason of any person's vi-
 43 olation may commence an action in such district court to enjoin any such

1 violation, and any damages suffered may be sued for and recovered in
2 the same action in addition to injunctive relief. In any action commenced
3 under this act, the plaintiff may be allowed reasonable attorney fees and
4 costs. The remedies provided herein shall be alternative and in addition
5 to any other remedies provided by law.

6 Sec. 32. K.S.A. 2008 Supp. 79-3398 is hereby amended to read as
7 follows: 79-3398. The provisions of subsection ~~(u), (v) or (w)~~ (x), (y) or
8 (z) of K.S.A. 79-3321 and K.S.A. 2008 Supp. 79-3395, and amendments
9 thereto, shall not apply to:

10 (a) Cigarettes allowed to be imported or brought into the United
11 States for personal use; and

12 (b) cigarettes sold or intended to be sold as duty-free merchandise
13 by a duty-free sales enterprise in accordance with the provisions of *section*
14 19 U.S.C. 1555(b) and any implementing regulations, except that this act
15 shall apply to any such cigarettes that are brought back into the customs
16 territory for resale within the customs territory.

17 New Sec. 33. (a) On or after January 1, 2010, the director may re-
18 quire a licensed wholesale dealer or distributor, as defined in K.S.A. 79-
19 3301, and amendments thereto, that purchases in any combination
20 thereof more than 1,500 cigarettes or 135 ounces of roll-your-own tobacco
21 or other tobacco products in a calendar month to file by electronic media,
22 in a standard format, such information as specified by the director. A
23 licensed wholesale dealer or distributor, that can show just cause, may
24 request a waiver from these requirements.

25 (b) Payment of funds as required by subsection (a) must be made by
26 means of electronic funds transfer.

27 (c) The director shall grant the attorney general and appointed des-
28 ignees access to and provide the attorney general and appointed designees
29 with all relevant information filed under this act that is necessary for the
30 enforcement of the requirements for sale of cigarettes, under the provi-
31 sions of K.S.A. 50-60a01 et seq., and amendments thereto.

32 (d) The director shall work with the attorney general in developing
33 and implementing a system for electronic filing of information required
34 under this act and K.S.A. 50-60a1 et. seq., and amendments thereto.

35 (e) The secretary of revenue may adopt rules and regulations estab-
36 lishing the criteria and procedures to effectuate the administration of this
37 electronic filing.

38 Sec. 34. K.S.A. 50-6,104 is hereby amended to read as follows: 50-
39 6,104. A violation of subsection (c), (j), (r), (s), (t), (u), (v) or (w) of K.S.A.
40 79-3321 or K.S.A. ~~2005~~ 2008 Supp. 79-3395, and amendments thereto,
41 shall constitute ~~an unlawful trade~~ a *deceptive act and practice* as provided
42 in K.S.A. 50-626, and amendments thereto. In addition to any remedies
43 or penalties set forth in the Kansas cigarette and tobacco products act,

1 any remedy or penalty available for a violation of K.S.A. 50-626, and
2 amendments thereto, also may be imposed for such violation.

3 Sec. 35. K.S.A. 50-6,104, 79-3304, 79-3306, 79-3309, 79-3312a, 79-
4 3323, 79-3324a, 79-3326, 79-3329, 79-3371, 79-3373, 79-3374, 79-3375,
5 79-3377, 79-3378 and 79-3379 and K.S.A. 2008 Supp. 79-3301, 79-3302,
6 79-3303, 79-3310, 79-3310c, 79-3311, 79-3312, 79-3313, 79-3316, 79-
7 3321, 79-3322, 79-3333, 79-3334, 79-3335, 79-3391, 79-3393, 79-3395,
8 79-3396, 79-3397 and 79-3398 are hereby repealed.

9 Sec. 36. This act shall take effect and be in force from and after its
10 publication in the statute book.