

HOUSE Substitute for SENATE BILL No. 342

By Committee on Federal and State Affairs

3-22

9 AN ACT concerning crimes and punishments; relating to smoking and
10 cigarette sales; amending K.S.A. 2009 Supp. 79-3301 and 79-3321 and
11 repealing the existing sections; reviving and amending K.S.A. 21-3105,
12 21-4009, 21-4010, 21-4011, 21-4012 and 65-530 and repealing the re-
13 vived sections; also repealing K.S.A. 21-3105, as amended by section
14 1 of 2010 House Bill No. 2221, 21-4009, as amended by section 2 of
15 2010 House Bill No. 2221, 21-4010, as amended by section 3 of 2010
16 House Bill No. 2221, 21-4011, as amended by section 4 of 2010 House
17 Bill No. 2221, 21-4012, as amended by section 5 of 2010 House Bill
18 No. 2221, 65-530, as amended by section 7 of 2010 House Bill No.
19 2221, and section 8 of 2010 House Bill No. 2221.

20
21 *Be it enacted by the Legislature of the State of Kansas:*

22 Section 1. K.S.A. 21-3105 is hereby revived to read as follows: 21-
23 3105. A crime is an act or omission defined by law and for which, upon
24 conviction, a sentence of death, imprisonment or fine, or both impris-
25 onment and fine, is authorized or, in the case of a traffic infraction or a
26 cigarette or tobacco infraction, a fine is authorized. Crimes are classified
27 as felonies, misdemeanors, traffic infractions and cigarette or tobacco
28 infractions.

29 (1) A felony is a crime punishable by death or by imprisonment in
30 any state correctional institution or a crime which is defined as a felony
31 by law.

32 (2) A traffic infraction is a violation of any of the statutory provisions
33 listed in subsection (c) of K.S.A. 8-2118 and amendments thereto.

34 (3) A cigarette or tobacco infraction is a violation of subsection (m)
35 or (n) of K.S.A. 79-3321 and amendments thereto.

36 (4) All other crimes are misdemeanors.

37 Sec. 2. K.S.A. 21-4009 is hereby revived to read as follows: 21-4009.
38 As used in this act: (a) "Public place" means enclosed indoor areas open
39 to the public or used by the general public including but not limited to:
40 Restaurants, retail stores, public means of mass transportation, passenger
41 elevators, health care institutions or any other place where health care
42 services are provided to the public, educational facilities, libraries, court-
43 rooms, state, county or municipal buildings, restrooms, grocery stores,

1 school buses, museums, theaters, auditoriums, arenas and recreational
2 facilities.

3 (b) "Public meeting" includes all meetings open to the public.

4 (c) "Smoking" means possession of a lighted cigarette, cigar, pipe or
5 any other lighted smoking equipment.

6 Sec. 3. K.S.A. 21-4010 is hereby revived to read as follows: 21-4010.

7 (a) No person shall smoke in a public place or at a public meeting except
8 in designated smoking areas.

9 (b) Smoking areas may be designated by proprietors or other persons
10 in charge of public places, except in passenger elevators, school buses,
11 public means of mass transportation and any other place in which smoking
12 is prohibited by the fire marshal or by other law, ordinance or regulation.

13 (c) Where smoking areas are designated, existing physical barriers
14 and ventilation systems shall be used to minimize the toxic effect of smoke
15 in adjacent nonsmoking areas.

16 Sec. 4. K.S.A. 21-4011 is hereby revived to read as follows: 21-4011.

17 The proprietor or other person in charge of the premises of a public place
18 shall post or cause to be posted in a conspicuous place signs clearly stating
19 that smoking is prohibited by state law. The person in charge of the
20 premises shall also post or cause to be posted in any designated smoking
21 area, signs stating that smoking is permitted in such room or area. The
22 proprietor or person in charge of the public place shall have the authority
23 to establish the percentage of area in the public place which shall be
24 posted and designated as a smoking area.

25 Sec. 5. K.S.A. 21-4012 is hereby revived to read as follows: 21-4012.

26 Any person found guilty of smoking in violation of this act is guilty of a
27 misdemeanor punishable by a fine of not more than \$20 for each violation.

28 Any person found guilty of failing to post signs as required by this act, is
29 guilty of a misdemeanor punishable by a fine of not more than \$50. In
30 addition, the department of health and environment, or local department
31 of health, may institute an action in any court of competent jurisdiction
32 to enjoin repeated violations of this act.

33 Sec. 6. K.S.A. 65-530 is hereby revived to read as follows: 65-530.

34 (a) As used in this section:

35 (1) "Day care home" means a day care home as defined under Kansas
36 administrative regulation 28-4-113, a group day care home as defined
37 under Kansas administrative regulation 28-4-113 and a family day care
38 home as defined under K.S.A. 65-517 and amendments thereto.

39 (2) "Smoking" means possession of a lighted cigarette, cigar, pipe or
40 burning tobacco in any other form or device designed for the use of
41 tobacco.

42 (b) Smoking within any room, enclosed area or other enclosed space
43 of a facility or facilities of a day care home during a time when children

1 who are not related by blood, marriage or legal adoption to the person
2 who maintains the home are being cared for, as part of the operation of
3 the day care home, within the facility or facilities is hereby prohibited.
4 Nothing in this subsection shall be construed to prohibit smoking on the
5 premises of the day care home outside the facility or facilities of a day
6 care home, including but not limited to porches, yards or garages.

7 (c) Each day care home registration certificate or license shall contain
8 a statement in bold print that smoking is prohibited within a room, en-
9 closed area or other enclosed space of the facility or facilities of the day
10 care home under the conditions specified in subsection (b). The state-
11 ment shall be phrased in substantially the same language as subsection
12 (b). The registration certificate or license shall be posted in a conspicuous
13 place in the facility or facilities.

14 (d) The secretary of health and environment may levy a civil fine
15 under K.S.A. 65-526 and amendments thereto against any day care home
16 for a first or second violation of this section. A third or subsequent vi-
17 olation shall be subject to the provisions of K.S.A. 65-523 and amendments
18 thereto.

19 Sec. 7. On and after January 2, 2011, K.S.A. 21-3105, as revived by
20 section 1, is hereby amended to read as follows: 21-3105. A crime is an
21 act or omission defined by law and for which, upon conviction, a sentence
22 of death, imprisonment or fine, or both imprisonment and fine, is au-
23 thorized or, in the case of a traffic infraction or a cigarette or tobacco
24 infraction, a fine is authorized. Crimes are classified as felonies, misde-
25 meanors, traffic infractions and cigarette or tobacco infractions.

26 (1) A felony is a crime punishable by death or by imprisonment in
27 any state correctional institution or a crime which is defined as a felony
28 by law.

29 (2) A traffic infraction is a violation of any of the statutory provisions
30 listed in subsection (c) of K.S.A. 8-2118, and amendments thereto.

31 (3) A cigarette or tobacco infraction is a violation of *K.S.A. 21-4009*
32 *through 21-4014 and* subsection (m) or (n) of K.S.A. 79-3321, and amend-
33 ments thereto.

34 (4) All other crimes are misdemeanors.

35 Sec. 8. On and after January 2, 2011, K.S.A. 21-4009, as revived by
36 section 2, is hereby amended to read as follows: 21-4009. As used in ~~this~~
37 ~~act~~ *K.S.A. 21-4009 through 21-4014, and amendments thereto:*

38 (a) *“Access point” means the area within a ten foot radius outside of*
39 *any doorway, open window or air intake leading into a building or facility*
40 *that is not exempted pursuant to subsection (d) of K.S.A. 21-4010, and*
41 *amendments thereto, except that for any bar as defined in subsection (b)*
42 *and for any class A or class B club as defined in K.S.A. 41-2601, and*
43 *amendments thereto, the radius shall be three feet.*

- 1 ~~(a)~~ (b) “Bar” means any indoor area that is operated and licensed for
2 the sale and service of alcoholic beverages, including alcoholic liquor as
3 defined in K.S.A. 41-102, and amendments thereto, or cereal malt bev-
4 erages as defined in K.S.A. 41-2701, and amendments thereto, for on-
5 premises consumption and which bar is authorized to sell lottery tickets
6 under the Kansas lottery act, and amendments thereto, and which bar
7 receives less than 30% of its gross receipts from the sale of food.
- 8 (c) “Employee” means any person who is employed by an employer
9 in consideration for direct or indirect monetary wages or profit, and any
10 person who volunteers their services for a nonprofit entity.
- 11 (d) “Employer” means any person, partnership, corporation, associ-
12 ation or organization, including municipal or nonprofit entities, which
13 employs one or more individual persons.
- 14 (e) “Enclosed area” means all space between a floor and ceiling which
15 is enclosed on all sides by solid walls, windows or doorways which extend
16 from the floor to the ceiling, including all space therein screened by par-
17 titions which do not extend to the ceiling or are not solid or similar struc-
18 tures. For purposes of this section, the following shall not be considered
19 an “enclosed area”: (1) Rooms or areas, enclosed by walls, windows or
20 doorways, having neither a ceiling nor a roof and which are completely
21 open to the elements and weather at all times; and (2) rooms or areas,
22 enclosed by walls, fences, windows or doorways and a roof or ceiling,
23 having openings that are permanently open to the elements and weather
24 and which comprise an area that is at least 30% of the total perimeter
25 wall area of such room or area.
- 26 (f) “Food service establishment” means any place in which food is
27 served or is prepared for sale or service on the premises. Such term shall
28 include, but not be limited to, fixed or mobile restaurants, coffee shops,
29 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich
30 shops, soda fountains, taverns, private clubs, roadside kitchens, commis-
31 saries and any other private, public or nonprofit organization or institu-
32 tion routinely serving food and any other eating or drinking establishment
33 or operation where food is served or provided for the public with or
34 without charge.
- 35 (g) “Gaming floor” means the area of a lottery gaming facility or
36 racetrack gaming facility, as those terms are defined in K.S.A. 74-8702,
37 and amendments thereto, where patrons engage in Class III gaming. The
38 gaming floor shall not include any areas used for accounting, mainte-
39 nance, surveillance, security, administrative offices, storage, cash or cash
40 counting, records, food service, lodging or entertainment, except that the
41 gaming floor may include a bar where alcoholic beverages are served so
42 long as the bar is located entirely within the area where Class III gaming
43 is conducted.

- 1 (h) “Medical care facility” means a physician’s office, general hospi-
2 tal, special hospital, ambulatory surgery center or recuperation center, as
3 defined by K.S.A. 65-425, and amendments thereto, and any psychiatric
4 hospital licensed under K.S.A. 75-3307b, and amendments thereto.
- 5 (i) “Outdoor recreational facility” means a hunting, fishing, shooting
6 or golf club, business or enterprise operated primarily for the benefit of
7 its owners, members and their guests and not normally open to the general
8 public.
- 9 (j) “Place of employment” means any enclosed area under the control
10 of a public or private employer, including, but not limited to, work areas,
11 auditoriums, elevators, private offices, employee lounges and restrooms,
12 conference and meeting rooms, classrooms, employee cafeterias, stairwells
13 and hallways, that is used by employees during the course of employment.
14 For purposes of this section, a private residence shall not be considered
15 a “place of employment” unless such residence is used as a day care home,
16 as defined in K.S.A. 65-530, and amendments thereto.
- 17 (k) “Private club” means an outdoor recreational facility operated pri-
18 marily for the use of its owners, members and their guests that in its
19 ordinary course of business is not open to the general public for which
20 use of its facilities has substantial dues or membership fee requirements
21 for its members.
- 22 (l) “Public building” means any building owned or operated by: (1)
23 The state, including any branch, department, agency, bureau, commis-
24 sion, authority or other instrumentality thereof; (2) any county, city,
25 township, other political subdivision, including any commission, author-
26 ity, agency or instrumentality thereof; or (3) any other separate corporate
27 instrumentality or unit of the state or any municipality.
- 28 (m) “Public meeting” means any meeting open to the public pursuant
29 to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of
30 this state.
- 31 (n) “Public place” means any enclosed ~~indoor~~ areas open to the pub-
32 lic or used by the general public including, but not limited to: ~~Restaurants~~
33 ~~Banks, bars, food service establishments, retail service establishments, re-~~
34 ~~tail stores, public means of mass transportation, passenger elevators,~~
35 ~~health care institutions or any other place where health care services are~~
36 ~~provided to the public, medical care facilities, educational facilities, li-~~
37 ~~braries, courtrooms, state, county or municipal public buildings, rest-~~
38 ~~rooms, grocery stores, school buses, museums, theaters, auditoriums, are-~~
39 ~~nas and recreational facilities. For purposes of this section, a private~~
40 ~~residence shall not be considered a “public place” unless such residence~~
41 ~~is used as a day care home, as defined in K.S.A. 65-530, and amendments~~
42 ~~thereto.~~
- 43 ~~(b) “Public meeting” includes all meetings open to the public.~~

- 1 ~~(e)~~ (o) “Smoking” means possession of a lighted cigarette, cigar, pipe
2 or ~~any other lighted smoking equipment burning tobacco in any other~~
3 ~~form or device designed for the use of tobacco.~~
- 4 (p) “Tobacco shop” means any indoor area operated primarily for the
5 retail sale of tobacco, tobacco products or smoking devices or accessories,
6 and which derives not less than 65% of its gross receipts from the sale of
7 tobacco.
- 8 (q) “Substantial dues or membership fee requirements” means initi-
9 ation costs, dues or fees proportional to the cost of membership in simi-
10 larly-situated outdoor recreational facilities that are not considered nom-
11 inal and implemented to otherwise avoid or evade restrictions of a
12 statewide ban on smoking.
- 13 Sec. 9. On and after January 2, 2011, K.S.A. 21-4010, as revived by
14 section 3, is hereby amended to read as follows: 21-4010. (a) No person
15 shall smoke in ~~a public place~~ *an enclosed area* or at a public meeting
16 ~~except in designated smoking areas, including, but not limited to:~~
- 17 (1) *Public places;*
 - 18 (2) *taxicabs and limousines;*
 - 19 (3) *restrooms, lobbies, hallways and other common areas in public*
20 *and private buildings, condominiums and other multiple-residential*
21 *facilities;*
 - 22 (4) *restrooms, lobbies and other common areas in hotels and motels*
23 *and in at least 80% of the sleeping quarters within a hotel or motel that*
24 *may be rented to guests;*
 - 25 (5) *access points of all buildings and facilities not exempted pursuant*
26 *to subsection (d); and*
 - 27 (6) *any place of employment.*
- 28 ~~(b) Smoking areas may be designated by proprietors or other persons~~
29 ~~in charge of public places, except in passenger elevators, school buses,~~
30 ~~public means of mass transportation and any other place in which smoking~~
31 ~~is prohibited by the fire marshal or by other law, ordinance or regulation.~~
- 32 ~~(c) Where smoking areas are designated, existing physical barriers~~
33 ~~and ventilation systems shall be used to minimize the toxic effect of smoke~~
34 ~~in adjacent nonsmoking areas.~~
- 35 (b) *Each employer having a place of employment that is an enclosed*
36 *area shall provide a smoke-free workplace for all employees. Such em-*
37 *ployer shall also adopt and maintain a written smoking policy which shall*
38 *prohibit smoking without exception in all areas of the place of employ-*
39 *ment. Such policy shall be communicated to all current employees within*
40 *one week of its adoption and shall be communicated to all new employees*
41 *upon hiring. Each employer shall provide a written copy of the smoking*
42 *policy upon request to any current or prospective employee.*
- 43 (c) *Notwithstanding any other provision of this section, K.S.A. 21-*

1 4011 or 21-4012, and amendments thereto, the proprietor or other person
2 in charge of an adult care home, as defined in K.S.A. 39-923, and amend-
3 ments thereto, or a medical care facility, may designate a portion of such
4 adult care home, or the licensed long-term care unit of such medical care
5 facility, as a smoking area, and smoking may be permitted within such
6 designated smoking area.

7 (d) The provisions of this section shall not apply to:

8 (1) The outdoor areas of any building or facility beyond the access
9 points of such building or facility;

10 (2) private homes or residences, except when such home or residence
11 is used as a day care home, as defined in K.S.A. 65-530, and amendments
12 thereto;

13 (3) a hotel or motel room rented to one or more guests if the total
14 percentage of such hotel or motel rooms in such hotel or motel does not
15 exceed 20%;

16 (4) the gaming floor of a lottery gaming facility or racetrack gaming
17 facility, as those terms are defined in K.S.A. 74-8702, and amendments
18 thereto;

19 (5) that portion of an adult care home, as defined in K.S.A. 39-923,
20 and amendments thereto, that is expressly designated as a smoking area
21 by the proprietor or other person in charge of such adult care home
22 pursuant to subsection (c) and that is fully enclosed and ventilated;

23 (6) that portion of a licensed long-term care unit of a medical care
24 facility that is expressly designated as a smoking area by the proprietor
25 or other person in charge of such medical care facility pursuant to sub-
26 section (c) and that is fully enclosed and ventilated and to which access
27 is restricted to the residents and their guests;

28 (7) tobacco shops;

29 (8) bars;

30 (9) a class A or class B club defined in K.S.A. 41-2601, and amend-
31 ments thereto, which (A) has a license pursuant to K.S.A. 41-2606 et seq.,
32 and amendments thereto; and (B) notifies the secretary of health and
33 environment in writing that it wishes to continue to allow smoking on its
34 premises;

35 (10) a private club in designated areas where minors are prohibited;
36 and

37 (11) any benefit cigar dinner or other smoking event conducted spe-
38 cifically and exclusively for charitable purposes by an organization which
39 is organized not for profit and which qualifies under section 501(c)(3) of
40 the federal internal revenue code of 1986.

41 Sec. 10. On and after January 2, 2011, K.S.A. 21-4011, as revived by
42 section 4, is hereby amended to read as follows: 21-4011. The proprietor
43 or other person in charge of the premises of a public place, or other area

1 *where smoking is prohibited*, shall post or cause to be posted in a con-
2 spicuous place signs *displaying the international no smoking symbol and*
3 clearly stating that smoking is prohibited by state law. ~~The person in~~
4 ~~charge of the premises shall also post or cause to be posted in any des-~~
5 ~~ignated smoking area, signs stating that smoking is permitted in such room~~
6 ~~or area. The proprietor or person in charge of the public place shall have~~
7 ~~the authority to establish the percentage of area in the public place which~~
8 ~~shall be posted and designated as a smoking area.~~

9 Sec. 11. On and after January 2, 2011, K.S.A. 21-4012, as revived by
10 section 5, is hereby amended to read as follows: 21-4012. ~~Any person~~
11 ~~found guilty of smoking in violation of this act is guilty of a misdemeanor~~
12 ~~punishable by a fine of not more than \$20 for each violation. Any person~~
13 ~~found guilty of failing to post signs as required by this act, is guilty of a~~
14 ~~misdemeanor punishable by a fine of not more than \$50. In addition, the~~
15 ~~department of health and environment, or local department of health,~~
16 ~~may institute an action in any court of competent jurisdiction to enjoin~~
17 ~~repeated violations of this act. (a) It shall be unlawful for any person who~~
18 ~~owns, manages, operates or otherwise controls the use of any public place,~~
19 ~~or other area where smoking is prohibited, to fail to comply with all or~~
20 ~~any of the provisions of K.S.A. 21-4009 through 21-4014, and amend-~~
21 ~~ments thereto.~~

22 (b) *It shall be unlawful for any person who owns, manages, operates*
23 *or otherwise controls the use of any public place, or other area where*
24 *smoking is prohibited, to allow smoking to occur where prohibited by law.*
25 *Any such person shall be deemed to allow smoking to occur under this*
26 *subsection if such person: (1) Has knowledge that smoking is occurring;*
27 *and (2) acquiesces to the smoking under the totality of the circumstances.*

28 (c) *It shall be unlawful for any person to smoke in any area where*
29 *smoking is prohibited by the provisions of K.S.A. 21-4010, and amend-*
30 *ments thereto.*

31 (d) *Any person who violates any provision of K.S.A. 21-4009 through*
32 *21-4014, and amendments thereto, shall be guilty of a cigarette or tobacco*
33 *infraction punishable by a fine:*

34 (1) *Not exceeding \$100 for the first violation;*

35 (2) *not exceeding \$200 for a second violation; or*

36 (3) *not exceeding \$500 for a third or subsequent violation.*

37 *For purposes of this subsection, the number of violations within a year*
38 *shall be measured by the date the smoking violations occur.*

39 (e) *Each individual allowed to smoke by a person who owns, manages,*
40 *operates or otherwise controls the use of any public place, or other area*
41 *where smoking is prohibited, in violation of subsection (b) shall be con-*
42 *sidered a separate violation for purposes of determining the number of*
43 *violations under subsection (d).*

1 (f) *No employer shall discharge, refuse to hire or in any manner re-*
2 *taliate against an employee, applicant for employment or customer be-*
3 *cause that employee, applicant or customer reports or attempts to pros-*
4 *ecute a violation of any of the provisions of K.S.A. 21-4009 through*
5 *21-4014, and amendments thereto.*

6 Sec. 12. On and after January 2, 2011, K.S.A. 65-530, as revived by
7 section 6, is hereby amended to read as follows: 65-530. (a) As used in
8 this section:

9 (1) “Day care home” means a day care home as defined under Kansas
10 administrative regulation 28-4-113, a group day care home as defined
11 under Kansas administrative regulation 28-4-113 and a family day care
12 home as defined under K.S.A. 65-517 and amendments thereto.

13 (2) “Smoking” means possession of a lighted cigarette, cigar, pipe or
14 burning tobacco in any other form or device designed for the use of
15 tobacco.

16 (b) Smoking within any room, enclosed area or other enclosed space
17 of a facility or facilities of a day care home during a time when children
18 who are not related by blood, marriage or legal adoption to the person
19 who maintains the home are being cared for, as part of the operation of
20 the day care home, within the facility or facilities is hereby prohibited.
21 Nothing in this subsection shall be construed to prohibit smoking on the
22 premises of the day care home outside the facility or facilities of a day
23 care home, including but not limited to porches, yards or garages.

24 (c) Each day care home registration certificate or license shall contain
25 a statement in bold print that smoking is prohibited within a room, en-
26 closed area or other enclosed space of the facility or facilities of the day
27 care home under the conditions specified in subsection (b). The state-
28 ment shall be phrased in substantially the same language as subsection
29 (b). The registration certificate or license shall be posted in a conspicuous
30 place in the facility or facilities.

31 (d) The secretary of health and environment may levy a civil fine
32 under K.S.A. 65-526 and amendments thereto against any day care home
33 for a first or second violation of this section. A third or subsequent vi-
34 olation shall be subject to the provisions of K.S.A. 65-523 and amendments
35 thereto.

36 (e) *In addition to any civil fine which may be levied pursuant to*
37 *subsection (d), any day care home that violates any provision of this sec-*
38 *tion may also be subject to criminal punishment pursuant to K.S.A. 21-*
39 *4012, and amendments thereto.*

40 New Sec. 13. On and after January 2, 2011, the amendments made
41 to K.S.A. 21-4009 through 21-4012, and amendments thereto, and K.S.A.
42 21-4013 and 21-4014, and amendments thereto, shall constitute the Kan-
43 sas indoor clean air act.

- 1 Sec. 14. K.S.A. 2009 Supp. 79-3301 is hereby amended to read as
2 follows: 79-3301. As used in ~~this act~~ K.S.A. 79-3301 *et seq.*, and amend-
3 *ments thereto*:
- 4 (a) “Carrier” means one who transports cigarettes from a manufac-
5 turer to a wholesale dealer or from one wholesale dealer to another.
- 6 (b) “Carton” means the container used by the manufacturer of cig-
7 arettes in which no more than 10 packages of cigarettes are placed prior
8 to shipment from such manufacturer.
- 9 (c) “Cigarette” means any roll for smoking, made wholly or in part
10 of tobacco, irrespective of size or shape, and irrespective of tobacco being
11 flavored, adulterated or mixed with any other ingredient if the wrapper
12 is in greater part made of any material except tobacco.
- 13 (d) “Consumer” means the person purchasing or receiving cigarettes
14 or tobacco products for final use.
- 15 (e) “Dealer” means any person who engages in the sale or manufac-
16 ture of cigarettes in the state of Kansas, and who is required to be licensed
17 under the provisions of this act.
- 18 (f) “Dealer establishment” means any location or premises, other
19 than vending machine locations, at or from which cigarettes are sold, and
20 where records are kept.
- 21 (g) “Director” means the director of taxation.
- 22 (h) “Distributor” means: (1) Any person engaged in the business of
23 selling tobacco products in this state who brings, or causes to be brought,
24 into this state from ~~without~~ *outside* the state any tobacco products for
25 sale;
- 26 (2) any person who makes, manufactures, fabricates or stores tobacco
27 products in this state for sale in this state; or
- 28 (3) any person engaged in the business of selling tobacco products
29 ~~without~~ *outside* this state who ships or transports tobacco products to any
30 person in the business of selling tobacco products in this state.
- 31 (i) “Division” means the division of taxation.
- 32 (j) “License” means, ~~in addition to~~ the privilege of a licensee to sell
33 cigarettes or tobacco products in the state of Kansas, *and* the written
34 evidence of such authority or privilege ~~to so operate as evidenced by any~~
35 ~~license~~ *as issued by the director of taxation*.
- 36 (k) “Licensee” means any person holding a current license issued
37 pursuant to this act.
- 38 (l) “Manufacturer’s salesperson” means a person employed by a cig-
39 arette manufacturer who sells cigarettes, manufactured by such employer
40 and procured from wholesale dealers.
- 41 (m) “Meter imprints” means tax indicia applied by means of ink print-
42 ing machines.
- 43 (n) (1) “Package” means a container in which no more than 25 in-

- 1 individual cigarettes are wrapped and sealed by the manufacturer of ciga-
2 rattes prior to shipment to a wholesale dealer;
- 3 (2) for the purposes of subsections (u), (v) and (w) of K.S.A. 79-3321,
4 and amendments thereto, “package” ~~shall have the meaning ascribed~~
5 ~~thereto~~ *means the same as provided* in 15 U.S.C. §1332(4).
- 6 (o) “Person” means any individual, partnership, society, association,
7 joint-stock company, corporation, estate, receiver, trustee, assignee, ref-
8 eree or any other person acting in a fiduciary or representative capacity
9 whether appointed by a court or otherwise and any combination of
10 individuals.
- 11 (p) “Received” means the coming to rest of cigarettes for sale by any
12 dealer in the state of Kansas.
- 13 (q) “Retail dealer” means a person, other than a vending machine
14 operator, in possession of cigarettes for the purpose of sale to a consumer.
- 15 (r) “Sale” means any transfer of title or possession or both, exchange,
16 barter, distribution or gift of cigarettes or tobacco products, with or with-
17 out consideration.
- 18 (s) “Sample” means cigarettes or tobacco products distributed to
19 members of the general public at no cost for purposes of promoting the
20 product.
- 21 (t) “Stamps” means tax indicia applied either by means of water ap-
22 plied gummed paper or heat process.
- 23 (u) “Tax indicia” means visible evidence of tax payment in the form
24 of stamps or meter imprints.
- 25 (v) “Tobacco products” means cigars, cheroots, stogies, periques;
26 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;
27 snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other
28 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings
29 of tobacco, and other kinds and forms of tobacco, prepared in such man-
30 ner as to be suitable for chewing or smoking in a pipe or otherwise, or
31 both for chewing and smoking. Tobacco products ~~does~~ *do* not include
32 cigarettes.
- 33 (w) *“Tobacco speciality store” means a dealer establishment that de-*
34 *rides at least 75% of such dealer establishment’s revenue from cigarettes*
35 *or tobacco products.*
- 36 ~~(w)~~ (x) “Vending machine” means any coin operated machine, con-
37 trivance or device, by means of which merchandise may be sold.
- 38 ~~(x)~~ (y) “Vending machine distributor” means any person who sells
39 cigarette vending machines to a vending machine operator operating
40 vending machines in the state of Kansas.
- 41 ~~(y)~~ (z) “Vending machine operator” means any person who places a
42 vending machine, owned, leased or operated by such person, at locations
43 where cigarettes are sold from ~~the~~ *such vending* machine. The owner or

1 lessee of the premises upon which a vending machine is placed shall not
2 be considered the operator of the machine, nor shall the owner or lessee,
3 or any employee or agent of the owner or lessee be considered an au-
4 thorized agent of the vending machine operator, if the owner or lessee
5 does not own or lease the machine and the owner's or lessee's sole re-
6 munerations from the machine is a flat rental fee or commission based
7 upon the number or value of cigarettes sold from the machine, or a com-
8 bination of both.

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

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

16 ~~(bb)~~ (cc) "Importer" ~~shall have the same meaning ascribed thereto~~
17 ~~means the same as provided in 26 U.S.C. §5702(l).~~

18 ~~(cc)~~ (dd) "Manufacturer" ~~shall have the same meaning ascribed~~
19 ~~thereto means the same as provided in 26 U.S.C. §5702(d).~~

20 Sec. 15. K.S.A. 2009 Supp. 79-3321 is hereby amended to read as
21 follows: 79-3321. It shall be unlawful for any person:

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

25 (b) To mutilate or attach to any individual package of cigarettes any
26 stamp that has in any manner been mutilated or that has been heretofore
27 attached to a different individual package of cigarettes or to have in pos-
28 session any stamps so mutilated.

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

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

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

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

42 (g) Who is a dealer to fail or refuse to keep and preserve for the time
43 and in the manner required ~~herein~~ *by this act* all the records required by

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

1 to minors, except that this subsection shall not apply to:

- 2 (1) The installation and use by the proprietor of the establishment,
3 or by the proprietor's agents or employees, of vending machines behind
4 a counter, or in some place in such establishment, or portion thereof, to
5 which minors are prohibited by law from having access;
- 6 (2) the installation and use of a vending machine in a commercial
7 building or industrial plant, or portions thereof, where the public is not
8 customarily admitted and where machines are intended for the sole use
9 of adult employees employed in the building or plant; or
- 10 (3) a vending machine which has a lock-out device which is inoper-
11 able in the continuous standby mode and which requires manual activa-
12 tion by the person supervising the operation of the machine each time
13 cigarettes or tobacco products are purchased from the machine.
- 14 (u) To sell or distribute in this state; to acquire, hold, own, possess
15 or transport for sale or distribution in this state; or to import or cause to
16 be imported, into this state for sale or distribution in this state:
- 17 (1) Any cigarettes the package of which (A) bears any statement, la-
18 bel, stamp, sticker or notice indicating that the manufacturer did not
19 intend the cigarettes to be sold, distributed or used in the United States,
20 including but not limited to, labels stating "For Export Only", "U.S. Tax-
21 Exempt", "For Use Outside U.S." or similar wording; or (B) does not
22 comply with (i) all requirements imposed by or pursuant to federal law
23 regarding warnings and other information on packages of cigarettes man-
24 ufactured, packaged or imported for sale, distribution or use in the United
25 States, including but not limited to the precise warning labels specified
26 in the federal cigarette labeling and advertising act, 15 U.S.C. 1333; and
27 (ii) all federal trademark and copyright laws;
- 28 (2) any cigarettes imported into the United States in violation of 26
29 U.S.C. 5754 or any other federal law, or federal regulations implementing
30 such laws;
- 31 (3) any cigarettes that such person otherwise knows or has reason to
32 know the manufacturer did not intend to be sold, distributed or used in
33 the United States; or
- 34 (4) any cigarettes for which there has not been submitted to the sec-
35 retary of the U.S. department of health and human services the list or
36 lists of the ingredients added to tobacco in the manufacture of such cig-
37 arettes required by the federal cigarette labeling and advertising act, 15
38 U.S.C. 1335a.
- 39 (v) To alter the package of any cigarettes, prior to sale or distribution
40 to the ultimate consumer, so as to remove, conceal or obscure:
- 41 (1) Any statement, label, stamp, sticker or notice described in sub-
42 section (u) of K.S.A. 79-3321, and amendments thereto; or
- 43 (2) any health warning that is not specified in, or does not conform

1 with, the requirements of, the federal cigarette labeling and advertising
2 act, 15 U.S.C. 1333.

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

6 Sec. 16. K.S.A. 21-3105, as amended by section 1 of 2010 House Bill
7 No. 2221, 21-4009, as amended by section 2 of 2010 House Bill No. 2221,
8 21-4010, as amended by section 3 of 2010 House Bill No. 2221, 21-4011,
9 as amended by section 4 of 2010 House Bill No. 2221, 21-4012, as
10 amended by section 5 of 2010 House Bill No. 2221, 65-530, as amended
11 by section 7 of 2010 House Bill No. 2221, and section 8 of 2010 House
12 Bill No. 2221, and K.S.A. 2009 Supp. 79-3301 and 79-3321 are hereby
13 repealed.

14 Sec. 17. On January 2, 2011, K.S.A. 21-3105, as revived by section
15 1, 21-4009, as revived by section 2, 21-4010, as revived by section 3, 21-
16 4011, as revived by section 4, 21-4012, as revived by section 5, and 65-
17 530, as revived by section 6, are hereby repealed.

18 Sec. 18. This act shall take effect and be in force from and after its
19 publication in the statute book.

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