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3 **SENATE BILL No. 412**

4
5 By Committee on Federal and State Affairs

6
7 1-21

8
9 AN ACT concerning taxation upon certain tobacco products; relating to
10 little cigars; amending K.S.A. 79-3371 and K.S.A. 2009 Supp. 79-3301
11 and repealing the existing sections.

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

14 Section 1. K.S.A. 2009 Supp. 79-3301 is hereby amended to read as
15 follows: 79-3301. As used in this act:

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

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

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

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

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

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

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

34 (h) "Distributor" means: (1) Any person engaged in the business of
35 selling tobacco products in this state who brings, or causes to be brought,
36 into this state from without the state any tobacco products for sale; (2)
37 any person who makes, manufactures, fabricates or stores tobacco prod-
38 ucts in this state for sale in this state; or (3) any person engaged in the
39 business of selling tobacco products without this state who ships or trans-
40 ports tobacco products to any person in the business of selling tobacco
41 products in this state.

42 (i) "Division" means the division of taxation.

43 (j) "License" means, in addition to the privilege of a licensee to sell

1 cigarettes or tobacco products in the state of Kansas, the written evidence
2 of such authority or privilege to so operate as evidenced by any license
3 issued by the director of taxation.

4 (k) "Licensee" means any person holding a current license issued
5 pursuant to this act.

6 (l) *"Little cigars" means any roll for smoking made wholly or in part*
7 *of tobacco, if such product is wrapped in any substance containing to-*
8 *bacco, other than natural leaf tobacco, and as to which 1,000 units weigh*
9 *not more than four pounds. If such product also meets the definition of*
10 *"cigarette" as provided in subsection (c), such product shall be treated as*
11 *a cigarette and not as a little cigar for purposes of this act.*

12 (m) "Manufacturer's salesperson" means a person employed by a cig-
13 arette manufacturer who sells cigarettes, manufactured by such employer
14 and procured from wholesale dealers.

15 ~~(n)~~ (n) "Meter imprints" means tax indicia applied by means of ink
16 printing machines.

17 ~~(o)~~ (o) (1) "Package" means a container in which no more than 25
18 individual cigarettes are wrapped and sealed by the manufacturer of cig-
19 arettes prior to shipment to a wholesale dealer.

20 (2) For the purposes of subsections (u), (v) and (w) of K.S.A. 79-
21 3321, and amendments thereto, "package" ~~shall have the meaning as-~~
22 ~~cribed thereto~~ *means the same as provided in 15 U.S.C. §1332(4).*

23 ~~(p)~~ (p) "Person" means any individual, partnership, society, associa-
24 tion, joint-stock company, corporation, estate, receiver, trustee, assignee,
25 referee or any other person acting in a fiduciary or representative capacity
26 whether appointed by a court or otherwise and any combination of
27 individuals.

28 ~~(q)~~ (q) "Received" means the coming to rest of cigarettes for sale by
29 any dealer in the state of Kansas.

30 ~~(r)~~ (r) "Retail dealer" means a person, other than a vending machine
31 operator, in possession of cigarettes for the purpose of sale to a consumer.

32 ~~(s)~~ (s) "Sale" means any transfer of title or possession or both,
33 exchange, barter, distribution or gift of cigarettes or tobacco products,
34 with or without consideration.

35 ~~(t)~~ (t) "Sample" means cigarettes or tobacco products distributed to
36 members of the general public at no cost for purposes of promoting the
37 product.

38 ~~(u)~~ (u) "Stamps" means tax indicia applied either by means of water
39 applied gummed paper or heat process.

40 ~~(v)~~ (v) "Tax indicia" means visible evidence of tax payment in the
41 form of stamps or meter imprints.

42 ~~(w)~~ (w) "Tobacco products" means cigars, *including little cigars*, che-
43 roots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed

1 and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist
 2 tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clip-
 3 pings, cuttings and sweepings of tobacco, and other kinds and forms of
 4 tobacco, prepared in such manner as to be suitable for chewing or smok-
 5 ing in a pipe or otherwise, or both for chewing and smoking. Tobacco
 6 products does not include cigarettes.

7 ~~(w)~~ (x) “Vending machine” means any coin operated machine, con-
 8 trivance or device, by means of which merchandise may be sold.

9 ~~(x)~~ (y) “Vending machine distributor” means any person who sells
 10 cigarette vending machines to a vending machine operator operating
 11 vending machines in the state of Kansas.

12 ~~(y)~~ (z) “Vending machine operator” means any person who places a
 13 vending machine, owned, leased or operated by such person, at locations
 14 where cigarettes are sold from the machine. The owner or lessee of the
 15 premises upon which a vending machine is placed shall not be considered
 16 the operator of the machine, nor shall the owner or lessee, or any em-
 17 ployee or agent of the owner or lessee be considered an authorized agent
 18 of the vending machine operator, if the owner or lessee does not own or
 19 lease the machine and the owner’s or lessee’s sole remuneration from the
 20 machine is a flat rental fee or commission based upon the number or
 21 value of cigarettes sold from the machine, or a combination of both.

22 ~~(z)~~ (aa) “Wholesale dealer” means any person who sells cigarettes to
 23 other wholesale dealers, retail dealers, vending machine operators and
 24 manufacturer’s salespersons for the purpose of resale in the state of
 25 Kansas.

26 ~~(aa)~~ (bb) “Wholesale sales price” means the original net invoice price
 27 for which a manufacturer sells a tobacco product to a distributor, as shown
 28 by the manufacturer’s original invoice.

29 ~~(bb)~~ (cc) “Importer” ~~shall have the same meaning ascribed thereto~~
 30 ~~means the same as provided in 26 U.S.C. §5702(l).~~

31 ~~(cc)~~ (dd) “Manufacturer” ~~shall have the same meaning ascribed~~
 32 ~~thereto means the same as provided in 26 U.S.C. §5702(d).~~

33 Sec. 2. K.S.A. 79-3371 is hereby amended to read as follows: 79-
 34 3371. A tax is hereby imposed upon the privilege of selling or dealing in
 35 tobacco products *other than little cigars* in this state by any person en-
 36 gaged in business as a distributor thereof. ~~The tax on tobacco products~~
 37 ~~other than little cigars shall be~~ at the rate of ~~ten percent (10%)~~ 10% of
 38 the wholesale sales price of such tobacco products. ~~Such tax~~ A tax is
 39 hereby imposed upon the privilege of selling or dealing in little cigars in
 40 this state by any person engaged in business as a distributor thereof. The
 41 tax on little cigars shall be at the same rate as is imposed on cigarettes
 42 under the provisions of K.S.A. 79-3310, and amendments thereto. Taxes
 43 imposed under this section shall be imposed at the time the distributor:

1 (a) Brings or causes to be brought into this state from without the state
2 tobacco products for sale; (b) makes, manufactures, or fabricates tobacco
3 products in this state for sale in this state; or (c) ships or transports tobacco
4 products to retailers in this state to be sold by those retailers.

5 Sec. 3. K.S.A. 79-3371 and K.S.A. 2009 Supp. 79-3301 are hereby
6 repealed.

7 Sec. 4. This act shall take effect and be in force from and after its
8 publication in the statute book.

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