

Approved: 3-21-94
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on March 16, 1994 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division
Bryan Beaver, Convenience Store Association of Kansas
Rebecca Rice, Legislative Counsel, Kansas Retail Liquor Dealers Association
Don Bird, Kansans For Life At Its Best

The Chairperson opened the hearing on SB 631 concerning alcoholic beverages relating to certain offenses involving minors.

Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division, testified in support of SB 631, stating this measure is intended to reduce underage access to alcoholic beverages. Section 1 accomplishes this by providing increased minimum penalties when a minor is apprehended in possession of an alcoholic beverage and in Section 2 there is an incentive for licensees to check identification. There is a growing problem with the use of false identification by minors and the opportunity for a defense actually provides increased incentive for all licensees to make a thorough ID check when there is any question of the purchaser's age. SB 631 provides a licensee or licensee's employee a defense to criminal prosecution and specifically allows for the same defense to be raised in administrative hearings before the ABC director. (See Attachment #1)

R. E. "Tuck" Duncan provided written testimony supporting SB 631 stating the defense provided in this bill is consistent with one already in law and applicable to licensed retail liquor dealers. (See Attachment #2)

Representative Plummer moved and Representative Benlon seconded to move SB 631 out favorably.

Representative Sebelius moved and Representative Kline seconded to amend SB 631 on page 2, lines 32 and 33 and strike "if evidence is presented which indicates". The motion carried.

Representative Plummer moved and Representative Benlon seconded to move SB 631 out as amended. The motion carried.

Don Bird, Kansans For Life At Its Best, had testimony distributed that opposed SB 631 which states their opposition was specifically in the striking of the words "knowingly" or unknowingly" in Section 2. (See Attachment #3)

The Chairperson opened the hearing on SB 468 concerning alcoholic beverages, relating to certain sales on credit cards.

Bryan Beaver, Kansas Oil Marketers, Convenience Store Association of Kansas, testified in support of SB 468, stating credit cards are the payment method of choice by the American consumer; 30 - 50% of business today is made up of credit card sales. It is difficult for convenience store clerks to separate the cash and charge product transactions. (See Attachment #4)

Rebecca Rice, Legislative Counsel for Kansas Retail Liquor Dealers Association, testified in support of SB 468, stating the use of credit cards to purchase alcoholic beverages is the preferred form of payment for many, if not most, consumers. It is believed that society is continuing to move towards a "cashless" society. The on-premise licensees can sell unlimited quantities of alcohol on credit to patrons, but prohibits package sales by credit card to the same consumers and this is unfair. (See Attachment #5)

R. E. "Tuck" Duncan had testimony distributed that supported SB 468. (See Attachment #2)

Don Bird, Kansans For Life At Its Best, opposed SB 468 stating the initial version was first promoted as a needed tool for sales to tourists at Kansas microbreweries and winery outlets. It is believed that the current policy set forth in K.S.A. 41-717 and 41-2706 as it pertains to the use of credit cards for the purchase of alcoholic beverages should be continued and question whether the adoption of SB 468 is actually in the best interest of the people. (See Attachment #6)

Staff clarified that only lender credit cards could be used for purchase of alcoholic beverages.

Representative Benlon offered an amendment that would allow for alcohol sales on Sunday. (See Attachment #7)

Representative Benlon moved and Representative Watson seconded to amend SB 468 on page 1, after line 15, to allow Sunday sales of alcoholic beverage. The motion carried.

There was discussion and a division was called for. There were 12 yeas and 10 nos.

Representative Benlon offered a second amendment that would allow retail sales of alcohol on Memorial Day, Independence Day, and Labor Day and delete "On Sunday". (See Attachment # 8)

After discussion Representative Benlon moved and Representative Kline to accept Representative Benlon's amendment. The motion carried. There was a call for division and there were 12 yeas and 10 nos.

Representative Benlon moved and Representative Ruff seconded to pass SB 468 out as amended. The motion carried. There was a call for division and there were 11 yeas and 11 nos. The Chair voted yes. The motion carried.

Representative Robinette moved and Representative Benlon seconded to remove HB 3048 from the table. The motion carried.

Representative Robinette moved and Representative Sebelius seconded to adopt amendment which would allow limited vending machine sales. (See Attachment #9)

Representative Kline moved and Representative Standifer seconded a substitute motion that would strike Section 15 which allows for pre-emption. The motion failed.

The Chairperson stated we are now back on Robinette's amendment.

Representative Krehbiel moved to offer a substitute motion and Representative Smith seconded to offer a substitute motion to report ~~HB 3048~~ out of committee adversely. The motion carried.

The meeting adjourned at 3:00PM. The next meeting will be March 17, 1994.

Date: 3/16/94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
God Schnellbacher	AARP	5945 SW 24 th Terr Topeka
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Pat Wadman	Sr. Citizen	O.P. KS.
Carl Wells	Johnson County AAA	9537 W-116 Terr Overland Park, KS
Jane Thies	Johnson County AAA	9537 W. 116 th Terr. Overland Park, KS 66210
Sandy Barnett	KS. Coal. Against Sex & Dr. V.	P.O. Box 1526, Manhattan.
Kindra Brobst	Crisis Center, Inc.	P.O. Box 1626 Manhattan, KS
C. Craig Rutheford		1207 SW 31 st Terr Topeka
Arthur L. Clack	Kansan	1917 P. R. Ry Blvd MANHATTAN
Craig Korth	self → gun owner	3969 Deep Creek Rd Manhattan, KS 66502
Dan Finch	Topeka	KWIC
Flaine Mann	League of Women State Voters of Kansas	O.P., KS.
wp ucc 1-207 Amy Scott	FULLY INFORMED JURY ASSC.	2320 LORI LN. WICHITA, KS. 67207

Date: 3/16

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
<i>Julia Merzardi</i>	<i>Observer</i>	<i>Topeka</i>
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Kirk Peters	intern	Lawrence
Kathy Peterson	Distilled spirits	Topeka
JOHN C. BOTTENBERG	P.M. USA	Topeka.
Bill Smeed	STC	Topeka
Donna Harling	KRLDA	Topeka
Danielle Noe	STC	Topeka
Frances Kastner	Ks Food Dealers Assn	Topeka
Tom Bruno	Allen & Assoc.	Topeka
Julie Hein	Hein, Ebert & Wair	Topeka
Meal Whitaker	KBWA	Topeka
Doug Smith	KAMA	Topeka
Raymond Romy	chevener	Topeka.
Stylin English	intern	Lawrence

Date: 3/16

FEDERAL and STATE AFFAIRS COMMITTEE

[illegible]

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Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: The Honorable Clyde Graeber, Chairman
House Committee on Federal & State Affairs

FROM: Jim Conant, Chief Administrative Officer
Alcoholic Beverage Control Division

DATE: March 16, 1994

SUBJECT: Senate Bill 631

Thank you for the opportunity to appear before the committee today regarding Senate Bill 631. The ABC Division is generally supportive of any measure intended to reduce underage access to alcoholic beverages. Senate Bill 631 accomplishes this by providing increased minimum penalties when a minor is apprehended in possession of an alcoholic beverage (Section 1) and an incentive to licensees to check identification (Section 2). It should be noted that this committee has previously discussed these issues in hearings on House Bills 2847 and 2876. Senate Bill 631 embodies essentially the same language as that contained in House Bill 2847, regarding the proposed defense, and also addresses the penalties imposed on underage violators, although not to the extent proposed under House Bill 2876.

The inclusion of a defense to prosecution under K.S.A. 41-2615 recognizes the growing problem with use of false identification by minors. The opportunity for a defense actually provides increased incentive for all licensees to make a thorough ID check when there is any question of the purchaser's age. Senate Bill 631 provides a licensee or licensee's employee a defense to criminal prosecution and specifically allows for the same defense to be raised in administrative hearings before the ABC director.

Thank you for your consideration of these issues. I would be happy to answer any questions the committee may have.

FvSA
3-16-94
Atch #1

K • A • N • S • A • S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

To: House Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan,

March 16, 1994

Kansas Wine & Spirits Wholesalers Association

To conserve paper our testimony on two bills scheduled for hearing Wednesday, March 16, 1994, is set forth below. Due to a last minute schedule conflict, I am submitting this testimony for your consideration, but regret that I am unable to appear personally. Thank you for your attention to and consideration of these matters.

Senate Bill 631

SB 631, is for all practical purposes the Senate version of House Bill 2876, on which in the House Federal & State Affairs committee has previously conducted hearings. Both bills provide an affirmative defense, judicially and administratively, for clubs and drinking establishments for the sale to a minor if a fake I.D. is used. The bill will encourage these establishments to actively check identification and is a positive measure to assist in reducing underage purchases of beer, wine or spirits. The defense provided in this bill is consistent with one already in law and applicable to licensed retail liquor dealers.

K.W.S.W.A. supports SB631 and encourages your favorable action.

The K.W.S.W.A. has been actively engaged in an industry program encouraging checking I.D.s. No I.D., No Sale. No Way.

**I'd card my
own mother.**
NO I.D., NO SALE. NO WAY.

Senate Bill 468

SB468 which allows retailers, farm wineries, and micro-breweries to accept credit cards, eliminates the inconsistencies in the method of payment of alcoholic beverages in drinking establishments versus package stores. It further prevents the loss of sales to Kansas retailers when customers cross state lines to make purchases in surrounding states that allow the use of credit cards. Colorado, Missouri, Nebraska and Oklahoma all permit their use (according to A.B.C.). As one Senator stated during debate: "We are moving in the direction of plastic as a way of life." Many business customers would use these cards for record keeping purposes.

K.W.S.W.A. believes SB468 will: Keep Kansas customers in Kansas; Increase revenue to the state through greater enforcement tax collections due to tourist purchases now being lost at farm wineries; Provide consistency for the sale of alcoholic beverages in on-premise and off-premise locations; and Greatly reduce the number of bad checks and the expense of collection for the small businesses involved.

K.W.S.W.A. supports SB468 and asks for the committee's favorable action.

Tuck Duncan

FSA
3-16-94
Atch #2

TO: The Honorable Clyde Graeber, Chairperson
House Committee on Federal and State Affairs

FROM: Don Bird
Kansans For Life At Its Best

DATE: March 16, 1994

RE: Senate Bill No. 631

We previously appeared as opponents to SB 631 not in regards to its intent but its form. Our opposition was specifically in the striking of the words "knowingly or unknowingly" in Section 2, line 8.

As the committee made this change in the bill's reading, we have no further objections.

In Section 1, however, we do encourage your consideration of providing more serious penalties for repeated violations by under-age purchasers.

FSA
3-16-94
Atch #3



KANSAS OIL MARKETERS ASSOCIATION

Convenience Store Association of Kansas

Testimony on Senate Bill 468
Submitted by the Kansas Oil Marketers Association/
Convenience Store Association of Kansas
To the House Federal & State Affairs Committee

March 16, 1994

Honorable Chair, Clyde Graber and members of the House Federal and State Affairs Committee.

Thank you for the opportunity to appear before you today. My name is Bryan Beaver. I reside at 14042 Grandview, Overland Park, Kansas. I am the legislative chairperson for the Convenience Store Association of Kansas. Our company, Carter Oil, owns and operates four convenience stores in Kansas.

I am here today in strong support of SB468.

Please consider the following facts as they relate to this issue:

Credit cards are the payment method of choice by the American consumer. Our business today is made up of 30 to 50% in credit card sales (this varies by location).

I would also ask you to recognize the large number of entry level clerks we employ in our fine state and the expense we incur in training. The challenge here is the difficulty in training these entry level people to stop in the middle of a multi-item transaction and separate the cereal malt beverage purchases from all other items, allow the consumer to pay with a credit card on most items and request the consumer pay cash for their beer. With the diverse product mix we carry to meet the needs of the consumer, this type transaction causes the typical "convenience store" to become "inconvenient."

Private clubs and restaurants, who retail alcoholic beverages, currently accept credit cards as a form of payment for these purchases. It would be equally as cumbersome for their cashiers to separate alcoholic beverages from all other purchases and require cash.

Again, thank you.

F & S A
3-16-94
Atch #4

TESTIMONY PRESENTED TO THE
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
re: SB 468

March 16, 1994

by: Rebecca Rice
Legislative Counsel for Kansas Retail Liquor Dealers Association

Thank you Chairman Graeber and members of the committee. My name is Rebecca Rice and I appear before you today on behalf of the Kansas Retail Liquor Dealers Association. Thank you for allowing me to appear as a supporter of Senate Bill 468.

The positive effects of this legislation are requested by the retail liquor dealers and cereal malt beverage licensees, as well.

As most of you are aware, the industry over the last 10-15 years has attempted to deal with the problem of the term "credit" as used in K.S.A. 41-717. Various participants in the industry disagree with attorney general opinions which have held "credit" as used in this section includes the acceptance of credit cards.

Former Attorney General Frizzell ruled that credit cards are prohibited under this statutory language. His opinion has since been relied upon. I, for one, continue to disagree with this interpretation and believe the legislature intended to prohibit the extension of store credit by the retailer. Unfortunately, due to the passage of time, the courts may view this legislature as having adopted this position.

The conditions under which credit cards are used today have changed dramatically since the time former AG Frizzell issued his opinion. We now use credit cards as the accepted form for paying for any consumer good, obtaining cash advances, and, perhaps, for the payment of income taxes and insurance premiums. As these changes evolve, the interpretation of this statute and the accompanying rationale become more difficult for liquor retailers to understand and accept.

Therefore, we request an amendment which would allow all alcoholic beverage retailers, including cereal malt beverage licensees, to accept credit cards as a form of legal payment. We request this amendment for the following reasons:

- 1) We believe credit cards are the preferred form of payment for many, if not most, consumers. We also believe that our society is continuing to move towards a "cashless" society.
- 2) Despite numerous attorney general opinions to the contrary, we do not believe the original intent of the legislature was to prohibit purchases of packaged liquor by credit card, but instead was intended to prohibit the extension of credit by a retail liquor dealer.
- 3) We believe the present interpretation of the law, which allows on-premise licensees to sell unlimited quantities of alcohol on credit to patrons, but prohibits package sales by credit card to the same consumers, is not only unfair, but is unconstitutional under the equal protection clause of the Constitution.

F+SA
3-16-94
Atch #5

It has only been in the last few years that most liquor retailers have come to the realization that, despite the percentage taken by the issuing financial institution which we estimate will be between 2.5% and 3%, the certainty of payment makes up for the percentage loss. Retail liquor dealers are no different from the numerous other merchandisers who contact you regarding the problem of worthless checks. Regardless of the actions taken to guard against the problem of bad checks, the losses to retailers continue to increase.

The result is the retailers end up **giving away** far more of their product than they believe is acceptable. By limiting retail liquor dealers to accepting two forms of legal tender, cash or personal checks, the Kansas legislature has inadvertently created a situation where liquor retailers are hindered in their efforts to limit the number of worthless checks they receive.

The argument for allowing an individual to purchase alcohol on credit from on-premise licensees appears, in part, to be falsely based upon an idea of protecting an alcoholic from himself. Although used as an argument by our attorney general and by some senators, our society has moved beyond the stereotype of an alcoholic being someone who consumes huge quantities of alcohol from a paper sack. In addition, the argument that the total dollar amount charged by any one consumer will be less when purchased from an on-premise licensee is only inaccurate. In fact, encouraging consumption at home may actually lessen the credit liability: it is similar to the cost of eating out versus eating at home.

In any event, there appears to be no reason to encourage on-premise consumption by restricting credit card usage to such establishments. Although one senator was vehement in his opposition to the extension of credit for off-premise licensees, he did not ever address the inconsistency in the law nor why on-premise consumption is preferred.

I appreciate this opportunity to present our support of SB 468.

Thank you, Mr. Chairman.

TO: The Honorable Clyde Graeber, Chairperson
House Committee on Federal and State Affairs

FROM: Don Bird
Kansans For Life At Its Best

DATE: March 16, 1994

RE: Senate Bill No. 468

Senate Bill No. 468 in its initial version was first promoted as a needed tool for sales to tourists at Kansas microbreweries and winery outlets. At the bill's hearing before the Senate Committee on Federal and State Affairs, I testified that the bill would set a dangerous precedent for the use of credit cards on all alcoholic carry-out purchases because retail competitors would not likely sit idly by without wanting equal treatment. As you can see, the amended version of the bill now before the committee includes the sale of all alcoholic beverages.

We believe that the current policy set forth in K.S.A. 41-717 and 41-2706 as it pertains to the use of credit cards for the purchase of alcoholic beverages should be continued and question whether the adoption of Senate Bill No. 468 is actually in the best interest of the citizens of Kansas.

You may recall the recent report, "Substance Abuse: The Nation's Number One Health Problem, Key Indicators for Policy," to which I have previously referred. Conducted by the Institute for Health Policy of Brandeis University for The Robert Wood Johnson Foundation, this study documents the substantial impact of alcohol abuse on this country: its contribution to premature death, its strain on the health care system, its effect on families, and its relationship to crime. (See especially pages 34, 38, 40, and 42.)

The results further reveal the enormous economic burden that substance abuse saddles on American society. Alcohol-related problems alone, due to expenses of treatment and health care, "productivity losses caused by premature death and inability to perform usual activities, and costs related to crime, destruction of property and other losses," tabulate an estimated \$99 billion (p. 20). Local sources say that the state of Kansas shoulders over \$1 billion of that total.

FISA
3-16-94
Atch #6

Though not the primary issue before the committee today, please consider for a moment the alarming increase in incidents of credit card fraud in recent years. According to Business Week (01/17/94 issue) and ABA Banking Journal (09/01/93 issue), experts say that credit card fraud in America has now topped the billion dollar mark and is still rising.

In light of the growing problem of card fraud and the statistical evidence of the difficulties associated with the use of alcohol, we question the wisdom of allowing the use of credit cards for the purchase of this highly addictive substance.

Furthermore, the Johnson study emphasizes the importance of public perception as to the substantial risks and potential harm of substance abuse. Not allowing the use of credit cards for the purpose of purchasing closed-container alcoholic beverages is one simple way to communicate to Kansans that its purchase is more than merely buying a loaf of bread and that, as the evidence indicates, it is a substance to be handled altogether differently.

In the best interest of Kansans and out of compassion for the persons victimized, we believe it necessary to curtail rather than increase accessability of carry-out alcoholic beverages. We call for a vote to the negative on Senate Bill 468.

Becker
1

Proposed Amendment to S.B. 468
(As Further Amended by Senate Committee)

On page 1, after line 15, by inserting:

"Section 1. K.S.A. 41-712 is hereby amended to read as follows: 41-712. (a) No person shall sell at retail any alcoholic liquor:

(1) ~~On--the--day--of--any--national--state--county-or-city election--including-primary-elections--during-the-hours-the-polls are-open--within-the-political-area-in--which--such--election--is being--held--(2)--on--the-first-day-of-the-week--commonly-called Sunday--(3)--on--Decoration-or~~ On Memorial Day, Independence Day, Labor Day, Thanksgiving Day and or Christmas Day; and ~~(4)--before nine--(9)--o'clock-a.m.-or-after-eleven--(11)~~

(2) before 1 p.m. or after 11 p.m. on Sunday; or

(3) before 9 a.m. or after 11 p.m. on any other day when the sale-is-permitted--Provided--that.

(b) The governing body of any city by ordinance may require closing retailers to close prior to ~~eleven--(11)--o'clock-p.m.-by ordinance~~ 11 p.m., but such ordinance shall not require closing prior to ~~eight--(8)--o'clock~~ 8 p.m.";

Also on page 1, in line 16, by striking "Section 1" and inserting "Sec. 2"; after line 34, by inserting:

"Sec. 3. K.S.A. 41-2704 is hereby amended to read as follows: 41-2704. (a) In addition to and consistent with the

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requirements of this act, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

(b) Except as provided by subsection (g), no cereal malt beverages may be sold:

(1) Between the hours of 12 midnight and 1 p.m. on Sunday;
or

(2) between the hours of 12 midnight and 6 a.m.
~~(2)--on--Sunday,--except--in--a--place--of--business--which--is--~~
~~licensed--to--sell--cereal--malt--beverage--for--consumption--on--the~~
~~premises,--which--derives--not--less--than--30%--of--its--gross--receipts~~
~~from--the--sale--of--food--for--consumption--on--the--licensed--premises~~
~~and--which--is--located--in--a--county--where--such--sales--on--Sunday--have~~
~~been--authorized--by--resolution--of--the--board--of--county~~
~~commissioners--of--the--county--or--in--a--city--where--such--sales--on~~
~~Sunday--have--been--authorized--by--ordinance--of--the--governing--body--of~~
~~the--city,--or~~

~~(3)--on--the--day--of--any--national,--state,--county--or--city~~
~~election,--including--primary--elections,--during--the--hours--the--polls~~
~~are--open,--within--the--political--area--in--which--such--election--is~~
~~being--held~~ on any other day.

(c) No private rooms or closed booths shall be operated in a place of business, but this provision shall not apply if the

licensed premises are also currently licensed as a club pursuant to the club and drinking establishment act.

(d) Each place of business shall be open to the public and to law enforcement officers at all times during business hours, except that a premises licensed as a club pursuant to the club and drinking establishment act shall be open to law enforcement officers and not to the public.

(e) No licensee shall permit a person under the legal age for consumption of cereal malt beverage to consume or purchase any cereal malt beverage in or about a place of business, and no licensee shall permit a person under the legal age for consumption of cereal malt beverage to possess cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage, if:

(1) The licensee's place of business is licensed only to sell cereal malt beverage at retail in original and unopened containers and not for consumption on the premises; or

(2) the licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.

(f) No person shall have any alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking

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establishment pursuant to the club and drinking establishment act.

(g) Cereal malt beverages may be sold on premises which are licensed pursuant to both the acts contained in article 27 of chapter 41 of the Kansas Statutes Annotated and the club and drinking establishment act at any time when alcoholic liquor is allowed by law to be served on the premises.";

By renumbering sections 2 through 4 as sections 4 through 6;

On page 2, in line 4, by striking "41-717" and inserting "41-712, 41-717, 41-2704";

In the title, in line 12, by striking "; amending K.S.A. 41-717" and inserting "and days of sale; amending K.S.A. 41-712, 41-717, 41-2704"

Becker
Proposed Amendment to S.B. 468
(As Further Amended by Senate Committee)

On page 1, after line 15, by inserting:

"Section 1. K.S.A. 41-712 is hereby amended to read as follows: 41-712. No person shall sell at retail any alcoholic liquor: (1) ~~On the day of any national, state, county or city election, including primary elections, during the hours the polls are open, within the political area in which such election is being held,~~ (2) ~~on the first day of the week, commonly called Sunday,~~ ^{" delete "} (3) On Sunday; (2) on Memorial Day, Independence Day, Labor Day, Thanksgiving Day and or Christmas Day; and (4) ~~before nine (9) o'clock a.m. or after eleven (11) or~~ (3) before 9 a.m. or after 11 p.m. on any day when the sale is permitted; ~~Provided, except~~ except that the governing body of any city by ordinance may require closing prior to ~~eleven (11) o'clock p.m. by ordinance 11 p.m.,~~ but such ordinance shall not require closing prior to ~~eight (8) o'clock 8 p.m.~~ 8 p.m.";

Also on page 1, in line 16, by striking "Section 1" and inserting "Sec. 2";

By renumbering sections 2 through 4 as sections 3 through 5;

On page 2, in line 4, after "K.S.A.", by inserting "41-712,";

In the title, in line 12, by striking "; amending K.S.A." and inserting "and days of sale; amending K.S.A. 41-712,"

FISA
3-16-94
Atch #8

HOUSE BILL No. 3048

By Committee on Federal and State Affairs

2-16

8 AN ACT concerning cigarettes and tobacco products; relating to
9 regulation and taxation thereof; prohibiting certain acts and pro-
10 viding penalties for violations; amending K.S.A. 79-3301, 79-3302,
11 79-3303, 79-3304, 79-3309, 79-3316, 79-3321, 79-3322, 79-3323,
12 79-3326, 79-3373, 79-3377 and 79-3387 and repealing the existing
13 sections; also repealing K.S.A. 79-3305, 79-3310b, 79-3318, 79-
14 3370, 79-3372, 79-3376, 79-3380 through 79-3386 and 79-3390.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 79-3301 is hereby amended to read as follows:
18 79-3301. ~~The following words, terms and phrases As used in this~~
19 ~~act, are hereby defined as follows:~~

20 (a) *"Carrier" means one who transports cigarettes from a man-*
21 *ufacturer to a wholesale dealer or from one wholesale dealer to*
22 *another.*

23 (b) *"Carton" means the container used by the manufacturer of*
24 *cigarettes in which no more than 10 packages of cigarettes are placed*
25 *prior to shipment from such manufacturer.*

26 (a) (c) *"Cigarettes," "Cigarette" means any roll for smoking,*
27 *made wholly or in part of tobacco, irrespective of size or shape, and*
28 *irrespective of tobacco being flavored, adulterated or mixed with any*
29 *other ingredient if the wrapper is in greater part made of any material*
30 *except tobacco.*

31 (b) *"Person" means any individual, partnership, society, as-*
32 *sociation, joint stock company, corporation, estate, receiver,*
33 *trustee, assignee, referee or any other person acting in a fi-*
34 *ducuary or representative capacity whether appointed by a court*
35 *or otherwise and any combination of individuals;*

36 (c) (d) *"Consumer" means that the person purchasing or re-*
37 *ceiving cigarettes or tobacco products for final use.*

38 (d) (e) *"Dealer" means every person, firm, corporation, or*
39 *association of persons who shall sell any person who engages in*
40 *the sale or manufacture of cigarettes in the state of Kansas, and who*
41 *is required to be licensed under the provisions of this act.*

42 (e) *"Wholesale dealer" means those persons who sell cig-*
43 *arettes to other wholesale dealers, retail dealers, vending ma-*

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Atek #9

ehine operators and manufacturers' salesmen for the purpose of resale in the state of Kansas;

(f) "Retail dealer" means a person other than a vending machine operator in possession of cigarettes for the purpose of sale to a consumer;

(g) "Sale" means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes, with or without consideration;

(h) (f) "Dealer establishment" means any location or premise, other than vending machine locations, premises at or from which cigarettes are sold, and where records are kept;

(i) "Tax indicia" means visible evidence of tax payment in the form of stamps or meter imprints;

(j) "Stamps" means tax indicia applied either by means of water applied gummed paper or heat process;

(k) "Meter imprints" means tax indicia applied by means of ink printing machines;

(l) (g) "Director" means the director of taxation;

(h) "Distributor" means any and each of the following: (1) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale; (2) any person who makes, manufactures, fabricates or stores tobacco products in this state for sale in this state; (3) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to any person in the business of selling tobacco products in this state.

(m) (i) "Division" means the division of taxation;

(n) "Manufacturer's salesman" means a person employed by a cigarette manufacturer who sells cigarettes, manufactured by such employer and procured from wholesale dealers;

(o) "Carton" means the container used by the manufacturer of cigarettes in which no more than 10 packages of cigarettes are placed prior to shipment from such manufacturer;

(p) "Package" means a container in which no more than 25 individual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer;

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

(r) "Vending machine" means any coin operated machine, contrivance or device, by means of which cigarettes are sold in their original package;

(s) "Vending machine operator" means any person who

1 places a vending machine, owned, leased or operated by such
2 person, at locations where cigarettes are sold therefrom; and
3 the owner or lessee of the premises upon which a vending
4 machine is placed, shall not be considered the operator of the
5 machine, if such person does not own or lease the machine
6 and if such person's sole remuneration therefrom is a flat rental
7 fee or a commission, based upon the number or value of cig-
8 arettes sold from the machine, or a combination of both nor
9 may such owner or lessee or such owner or lessee's agents or
10 employees be an authorized agent of a vending machine op-
11 erator;

12 (t) (j) "License" means, in addition to the privilege of a licensee
13 to sell cigarettes or tobacco products in the state of Kansas, the
14 written evidence of such authority or privilege to so operate as
15 evidenced by any license or permit issued by the director of tax-
16 ation.

17 (u) (k) "Licensee" means any person holding a current license
18 or permit issued under the provisions of the cigarette tax laws
19 of the state of Kansas; issued pursuant to this act.

20 (v) "Distributor or dealer of cigarette vending machines"
21 means any person who sells cigarette vending machines to a
22 vending machine operator, operating vending machines in the
23 state of Kansas;

24 (w) "Carrier" means one who transports cigarettes from a
25 manufacturer to a wholesale dealer or from one wholesale
26 dealer to another.

27 (l) "Manufacturer's salesperson" means a person employed by a
28 cigarette manufacturer who sells cigarettes, manufactured by such
29 employer and procured from wholesale dealers.

30 (m) "Meter imprints" means tax indicia applied by means of ink
31 printing machines.

32 (n) "Package" means a container in which no more than 25 in-
33 dividual cigarettes are wrapped and sealed by the manufacturer of
34 cigarettes prior to shipment to a wholesale dealer.

35 (o) "Person" means any individual, partnership, society, associ-
36 ation, joint-stock company, corporation, estate, receiver, trustee,
37 assignee, referee or any other person acting in a fiduciary or rep-
38 resentative capacity whether appointed by a court or otherwise and
39 any combination of individuals.

40 (p) "Received" means the coming to rest of cigarettes for sale by
41 any dealer in the state of Kansas.

42 (q) "Retail dealer" means a person in possession of cigarettes for
43 the purpose of sale to a consumer.

9.3
other than a vending machine operator,

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

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

(t) "Stamps" means tax indicia applied either by means of water applied gummed paper or heat process.

(u) "Tax indicia" means visible evidence of tax payment in the form of stamps or meter imprints.

(v) "Tobacco products" has the meaning provided by K.S.A. 79-3370 and amendments thereto.

(w) "Vending machine" means any coin operated machine, contrivance or device, by means of which merchandise may be sold.

(z) ~~(x)~~ "Wholesale dealer" means ~~those persons who sell cigarettes to other wholesale dealers, retail dealers and manufacturer's salespersons for the purpose of resale in the state of Kansas.~~

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

Sec. 2. K.S.A. 79-3302 is hereby amended to read as follows: 79-3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309, 79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3371, 79-3373, 79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-3388 and sections 14 through 16, and amendments thereto, shall be known and may be cited as the Kansas cigarette and tobacco products act.

(b) It is the purpose and intent of this act to levy a tax on cigarettes sold, distributed, conveyed or given away in this state, and to collect such tax from the wholesale or retail cigarette dealer, who first sells, distributes or conveys the cigarettes in the state of Kansas. It is further the intent and purpose of this act that where a wholesale dealer or manufacturer's authorized representative gives away cigarettes for advertising or for any other purpose whatever, the cigarettes shall be taxed in the same manner as if they were sold in this state, and that such tax shall be paid in the manner prescribed by rules and regulations of the secretary of revenue regulate the sale of cigarettes and tobacco products in this state and to impose a tax thereon.

Sec. 3. K.S.A. 79-3303 is hereby amended to read as follows: 79-3303. Each person engaged in the business of selling cigarettes in the state of Kansas shall ~~secure~~ obtain a license as ~~hereinafter~~

(x) "Vending machine distributor" means any person who sells cigarette vending machines to a vending machine operator operating vending machines in the state of Kansas.

(y) "Vending machine operator" means any person who places a vending machine, owned, leased or operated by such person, at locations where cigarettes are sold therefrom. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of the machine, nor shall the owner or lessee, or any employee or agent thereof be considered an authorized agent of the vending machine operator, if the owner or lessee does not own or lease the machine and the owner's or lessee's sole remuneration therefrom is a flat rental fee or commission, based upon the number or value of cigarettes sold from the machine, or a combination of both.

means any person who sells

vending machine operators

and 15

1 set out provided by this act. A separate application, license, and
2 fee is required for each dealer establishment owned or operated by
3 said a dealer: *Provided*, That a vending machine operator may
4 submit one application for a vending machine operator's master
5 license and for permits for all vending machines operated by
6 him or her. The license shall be displayed in the dealer establish-
7 ment and the vending machine permit shall remain securely
8 and visibly attached to the vending machine and contain such
9 information as the director may require. Any vending machine
10 found without such permit attached thereto shall be sealed by
11 an agent of the director and said seal shall be removed only
12 by an agent of the director after payment of the permit fee and
13 penalties hereinafter provided. The application for a vending
14 machine operator's master license and vending machine per-
15 mits shall list the brand name and serial number of each ma-
16 chine, and such other information as required by the director.
17 Except in accordance with proper judicial order or as otherwise
18 provided by law it shall be unlawful for any officer or employee
19 of the department of taxation to divulge or make known in any
20 way, the location of any cigarette machine to any person not
21 an officer or employee of such division: *Provided*, That such
22 information may be divulged to any law enforcement officer
23 for use by such officer in his or her official duties and in such
24 capacity. Any officer or employee revealing any such location
25 in violation of this provision, shall in addition to the penalties
26 otherwise provided in this act be dismissed from office.

27 A vending machine operator, in the course of his business
28 as a vending machine operator, may dispose of or sell vending
29 machines without securing a license to sell vending machines.
30 The vending machine operator may move vending machines
31 from one location to another and should a vending machine
32 become inoperative or be disposed of, the permit pertaining
33 thereto may be transferred to another machine. A vending ma-
34 chine operator shall within ten (10) days notify the director of
35 the brand name, and serial number of vending machines that
36 become inoperative, that are disposed of by him or her, sold
37 by him or her, acquired by him or her or brought into service
38 in this state as additional machines. The key to the lower or
39 storage compartment of a vending machine shall remain only
40 in the possession of the vending machine operator or his or
41 her authorized agent. All services connected with the operation
42 of a vending machine shall be performed by the vending ma-
43 chine operator thereof or his or her authorized agent. All vend-

— Reinsert language regarding vending machines

ing machines shall be subject to inspection by the director or his or her authorized agents. No vending machine shall be licensed unless it is so constructed that at least one package of each vertical column of cigarettes located therein is visible showing tax indicia.

All vending machines operated on military installations shall have a permit affixed thereto and the cigarettes shall show tax indicia of the Kansas tax.

Concurrently with a change in ownership of a dealer establishment the license applicable thereto is void and shall be surrendered to the director and shall not be transferred. On removal of a dealer establishment from one location to another, the owner thereof shall notify the director and surrender his or her license. The director shall issue a new license for the unexpired term of the surrendered license on payment of a fee of two dollars (\$2) \$2 to be deposited in the general revenue state treasury and credited to the state general fund. Should a dealer's license become lost, stolen, or destroyed, the director may issue a new license on proof of loss, theft, or destruction, at a cost of two dollars (\$2) \$2, to be deposited in the general revenue state treasury and credited to the state general fund.

Sec. 4. K.S.A. 79-3304 is hereby amended to read as follows: 79-3304. (a) Commencing with the biennium beginning January 1, 1986, the license or permit fee for each biennium or portion thereof shall be as follows: (a) *Retail dealer's license.*

(1) For retail dealer's license, \$12 for each dealer establishment.

(b) *Retail dealer on railroad.* (2) For retailer's license on railroad or sleeping cars, \$50. Only one retail license need be obtained by each railroad or sleeping car company to permit it to sell the sale of cigarettes on any or all of its cars within the state.

(c) *Show, carnival and catering license.* (3) For show, carnival or catering license, \$50 for each concession.

(d) *Temporary retail license.* (4) Resident retail dealer's temporary license for a place of business of a temporary nature, \$2 for each seven days or portion thereof.

(e) *Wholesale dealer's license.* (5) For wholesale dealer's license, \$50, for each dealer establishment. No wholesale dealer's license shall be issued until the person applying therefor has filed with the director a bond payable to the state of Kansas in such an amount as shall be fixed by the director, but in no event less than \$1,000, with a corporate surety authorized to do business in the state of Kansas, and approved by the director. Should a wholesale dealer be unable to secure a corporate surety bond, the director

1 may issue a license to such wholesale dealer, upon the wholesale
2 dealer furnishing a personal bond meeting the approval of the di-
3 rector. Such bond shall be conditioned that the wholesale dealer
4 therein named will faithfully comply with all the provisions of this
5 act during the license period. Wholesale dealers shall submit to
6 the director upon request such records of sale or distribution
7 of cigarettes made in the state of Kansas, as may be required
8 by the director. All records pertaining to sale of cigarettes in
9 the state of Kansas shall be preserved for a period of two years.
10 Failure to furnish the director with such information as may
11 be required shall be cause for suspension or revocation of any
12 license issued hereunder.

13 A wholesale dealer selling cigarettes to a manufacturer's
14 salesman shall at the time of delivery of same make a true
15 duplicate invoice inserting therein the name of the salesman
16 together with the name of such salesman's employer.

17 (f) *Distributor or dealer of vending machines license.* A
18 distributor or dealer who sells cigarette vending machines into
19 the state of Kansas must secure a license at a fee of \$50, and
20 report on or before the tenth day of each month all such sales
21 made during the preceding month in Kansas to the director on
22 forms furnished by the director, showing the name and address
23 of the purchaser; brand name of the machine; serial number
24 of the machine and the sale price.

25 (g) *Manufacturer's salesman license.* (6) Manufacturer's
26 salesman salesperson licenses, \$20 for each salesman salesperson.
27 The manufacturer's salesman salesperson shall, with respect to each
28 sale made to a retail dealer, make and deliver to the retail dealer
29 a true invoice wherein such salesman salesperson shall insert the
30 name of the wholesale dealer from whom such salesman salesperson
31 secured such cigarettes, together with such salesman's salesperson's
32 own name and the name of the retail dealer purchasing the cigarettes.

33 (h) *Vending machine operator's master license.* No vending
34 machine operator shall place any vending machine owned,
35 leased or operated by such operator at any location for the
36 purpose of selling cigarettes therefrom without first having
37 made application to and having received from the director, a
38 vending machine operator's master license. No fee shall be
charged for such license.

(i) *Vending machine permit.* In addition to the vending ma-
chine operator's master license, the operator of each cigarette
vending machine shall obtain a permit for each vending ma-
chine operated by such operator for a fee of \$12 for each permit.

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— Reinsert language regarding vending machines

— Reinsert language regarding vending machines

(b) An application for a ~~retail dealer's, wholesale dealer's or vending machine operator's master~~ any license required under the provisions of this act may be refused to: ~~(a)~~ (1) A person who is not of good character and reputation in the community in which such person resides; ~~(b)~~ or (2) a person who has been convicted of a felony or of any crime involving moral turpitude or of the violation of any law of any state or the United States pertaining to cigarettes or tobacco products and who has not completed the sentence, parole, probation or assignment to a community correctional services program imposed for any such conviction within two years immediately preceding the date of making application for any of such licenses.

Sec. 5. K.S.A. 79-3309 is hereby amended to read as follows: 79-3309. (a) Whenever the director ~~shall have~~ has reason to believe that any dealer in cigarettes ~~person licensed under this act~~ has violated any of the provisions of the cigarette tax law ~~this act~~, the director shall notify ~~such dealer by registered or the person by~~ certified mail of the director's intention to suspend or revoke the ~~person's license or licenses of such dealer. Within 10 days after mailing such notice, such dealer within 10 days after the mailing of the notice, the person~~ may request a hearing in writing before the director. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If, after such hearing, it appears to the satisfaction of the director that ~~such dealer the person~~ has violated any of the provisions of the cigarette tax law ~~this act~~, the director is hereby authorized and empowered to suspend or revoke the ~~person's license or licenses of any such dealer and may in addition deny the application of any such dealer the person~~ for a license or licenses for a portion of the succeeding calendar year for such period as the director determines is necessary but in no case for a period ending more than one year following the date upon which ~~such the~~ license or licenses were suspended or revoked. The suspension or revocation of the vending machine operator's master license shall suspend or revoke all vending machine permits issued to such vending machine operator for the term of such suspension or revocation of such license.

Reinsert language regarding vending machines

(b) If any dealer shall continue to sell cigarettes at any dealer establishment or from a vending machine, a person continues to engage in activities requiring a license under this act after having notice or knowledge of the suspension or revocation of a license or permit issued to such dealer for such establishment or vending machine, or shall continue for the person's license or licenses or after becoming more than 10 days after becoming de-

permit,

linquent in the payment of any tax, penalty or interest; ~~to sell~~
cigarettes imposed pursuant to this act, the state shall be entitled,
in any proceedings brought for such purposes, to have an order and
judgment restraining and enjoining such unlawful sale and no bond
shall be required for the issuance of any such restraining order or
injunction.

Sec. 6. K.S.A. 79-3316 is hereby amended to read as follows:

79-3316. (a) All purchases of cigarettes by any dealer shall be evidenced by an invoice, a duplicate of which shall be furnished the party receiving said the cigarettes from any dealer and shall be preserved for a period of two (2) years which duplicates shall be retained at the place of sale.

(b) Purchases of cigarettes by wholesale cigarette dealers shall be made from the manufacturers of cigarettes or from other Kansas licensed wholesale dealers. Purchases of cigarettes by retail dealers shall be from wholesale dealers.

(c) All invoices issued by wholesale dealers shall be in duplicate and a copy must accompany the consigned cigarettes. Cigarettes sold by a wholesale dealer to any other dealer shall be evidenced by invoices bearing the vendee's name and license number. A wholesale dealer selling cigarettes to a manufacturer's salesperson shall at the time of delivery of same make a true duplicate invoice inserting therein the name of the salesman together with the name of such salesperson's employer.

(d) All records pertaining to sales of cigarettes by dealers in the state of Kansas shall be preserved for a period of three years and shall be available for inspection by the director or the director's designee at the dealer's place of business.

(e) Every wholesale dealer shall report to the director on or before the tenth 10th day of each month, stating the amount of cigarettes sold during the preceding month, and shall further report and the amount of all cigarettes returned to the manufacturer. Any wholesale dealer who refuses any shipment or part of a shipment of unstamped cigarettes or has a shortage in the shipment of cigarettes consigned to him or her such dealer shall in the monthly report next following the refusal or shortage report to the director the number of packages or cartons of cigarettes refused or short and the name of the carrier from whom the cigarettes were refused or shortage occurred. Such report shall be made on forms provided by the director and shall contain such other information as the director may require.

(f) Exemption from payment of cigarette tax on sale of cigarettes made outside the state by any wholesale dealer shall be filed on

forms provided by the director. ~~Purchase of cigarettes by retail dealers or vending machine operators shall be from wholesale dealers.~~

Sec. 7. K.S.A. 79-3321 is hereby amended to read as follows: 79-3321. It shall be unlawful for any person:

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

(b) To mutilate or attach to any individual package of cigarettes any stamp that has in any manner been mutilated or that has been heretofore attached to a different individual package of cigarettes or to have in possession any stamps so mutilated.

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

(d) To use any artful device or deceptive practice to conceal any violation of this act or to mislead the director or officer or agent authorized by law in the enforcement of this act.

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

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

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

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

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

(2) exempt from state licensing under applicable state or federal laws or court decisions including any such person operating as a retail dealer upon land allotted to or held in trust for an Indian tribe recognized by the United States bureau of Indian affairs.

(i) To have in possession any evidence of tax indicia provided for herein not purchased from the director.

(j) To fail or refuse to permit the director or any officer or agent authorized by law to inspect a carrier transporting cigarettes.

(k) To vend small cigars, or any products so wrapped as to be confused with cigarettes, from a machine vending cigarettes, nor shall a vending machine be so built to vend cigars or products that

may be confused with cigarettes, be attached to a cigarette vending machine.

(l) To sell, furnish or distribute cigarettes or tobacco products to any person under 18 years of age.

(m) ~~For any person~~ Who is under 18 years of age to purchase or possess, or attempt to purchase or possess, cigarettes or tobacco products.

(n) 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.

(o) To sell cigarettes without having a license for such sale as provided herein.

(p) To sell ~~cigarette vending machines without having a license as provided herein for sale of vending machines cigarettes or tobacco products from a vending machine.~~

without having a vending machine distributor's license

(q) 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."

(r) To distribute 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: (1) In an area to which persons under 18 years of age are denied access; (2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or (3) at or adjacent to an outdoor production, repair or construction site or facility.

(s) To sell cigarettes or tobacco products from a vending machine, or to allow a vending machine to be placed on premises owned or operated by such person, unless purchases from such machine require intervention of an employee or agent of the owner or lessor of the premises.

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

(b) Any person who violates this act by selling, furnishing or distributing ~~sample cigarettes or sample smokeless tobacco cigarettes or tobacco products~~ to any person under 18 years of age shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$500 nor more than \$2,500 or imprisonment for not more than one year, or by both.

It shall be a defense to a prosecution under this subsection if: (1) The defendant is a licensed retail dealer or a person authorized by

law to distribute samples; (2) the defendant sold, furnished or distributed the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; and (3) to purchase or receive the cigarettes or tobacco products, the person under 18 years of age exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes or tobacco products.

(c) Any agent, employees or others who aid, abet or otherwise participate in any way in the violation of this act or in any of the offenses hereunder punishable shall be guilty and punished as principals to the same extent as any person violating ~~the~~ this act.

Sec. 9. K.S.A. 79-3323 is hereby amended to read as follows: 79-3323. (a) The following are declared to be common nuisances and contraband:

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

(2) all property and paraphernalia, ~~other than vehicles,~~ used in the retail sale of such unstamped packages, ~~other than vehicles,~~ are hereby declared to be common nuisances and contraband unstamped packages of cigarettes; and

(3) all vending machines used to dispense cigarettes or tobacco products.

Cigarettes in vending machines and exposed to view not showing indicia of tax payment required by this act to be visible from the outside of the vending machine shall be presumed to be unstamped.

(b) Any cigarettes or property constituting a common nuisance and contraband as ~~herein~~ provided by this section may be seized by the director or ~~his or her~~ the director's authorized agent or any duly constituted peace officer with or without process or warrant and shall be subject to forfeiture as provided in this act. The party making the seizure shall deliver to the vending machine operator owner of the property and to the person or persons found in possession of the ~~same property~~ a receipt stating from whom the property was seized, the place of seizure, and a description and ~~the~~ brand of the goods ~~or the~~ property seized. A duplicate of ~~said the~~ receipt shall be filed in the office of the director and shall be open for public inspection.

It shall be a defense to a prosecution under this subsection if: (1) The defendant is not a retail dealer or a person authorized by law to distribute samples; and (2) the defendant furnished the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to receive cigarettes or tobacco products.

— Reinsert

— Reinsert

1 Sec. 10. K.S.A. 79-3326 is hereby amended to read as follows:
2 79-3326. The director of taxation shall administer and enforce the
3 provisions of this act. The secretary of revenue shall adopt rules and
4 regulations for the administration of this act. For the purpose of
5 enforcing this act the director may call to ~~his or her~~ *the director's*
6 aid any law enforcement officer of this state to prosecute all violators
7 of any of the provisions ~~hereof and of this act~~. The police of ~~all~~
8 ~~cities any city~~ shall have the right to inspect all *premises*, records
9 and invoices pertaining to the ~~purchase and sale of cigarettes of~~
10 ~~such dealers in their respective cities wholesale distribution, re-~~
11 ~~tail sale or sampling of cigarettes or tobacco products within the~~
12 ~~city~~ at all reasonable times. All agents and representatives ~~of des-~~
13 ~~ignated by~~ the director are hereby invested with all the powers of
14 peace and police officers within the state of Kansas in the enforce-
15 ment of the ~~cigarette tax law provisions of this act~~ throughout the
16 state.

17 Sec. 11. K.S.A. 79-3373 is hereby amended to read as follows:
18 79-3373. ~~From and after 12:01 o'clock a.m. on July 1, 1972, No~~
19 person shall engage in the business of selling or dealing in tobacco
20 products as a distributor ~~in any place of business~~ in this state
21 without first having received a license from the director ~~to engage~~
22 ~~in such business at that place of business~~. Every application for
23 such license shall be made on a form prescribed by the director and
24 shall state the name and address of the applicant; if the applicant
25 is a firm, partnership or association, the name and address of each
26 of its members; if the applicant is a corporation, the name and
27 address of each of its officers; the address of its principal place of
28 business; the place where the business to be licensed is to be con-
29 ducted; and such other information as the director may require for
30 the purpose of the administration of this act. A person ~~without~~
31 ~~outside~~ this state who ships or transports tobacco products to retailers
32 in this state, to be sold by those retailers, may make application for
33 license as a distributor, be granted such a license by the director,
34 and thereafter be subject to all the provisions of this act and entitled
35 to act as a licensed distributor: ~~Provided, That he or she file proof~~
36 ~~with his or her application that he or she if the person files with~~
37 ~~the application proof that the person~~ has appointed the secretary of
38 state as ~~his or her~~ *the person's* agent for service of process relating
to any matter or issue arising under this act.

41 Sec. 12. K.S.A. 79-3377 is hereby amended to read as follows:
42 79-3377. ~~Every~~ (a) *Each* distributor shall keep in each licensed place
43 of business complete and accurate records for that place of business,
including itemized invoices of: (1) Tobacco products held, purchased,

manufactured, brought in or caused to be brought in from ~~without~~
outside the state, or shipped or transported to retailers in this state,
and of; and (2) all sales of tobacco products made, except sales to
an ultimate consumer. Such records shall show the names and ad-
dresses of purchasers, and other pertinent papers and documents
relating to the purchase, sale, or disposition of tobacco products.
When a licensed distributor sells tobacco products exclusively to
ultimate consumers at the addresses given in the license, no invoice
of those sales shall be required, but itemized invoices shall be made
of all tobacco products transferred to other retail outlets owned or
controlled by that licensed distributor. All books, records, and other
papers and documents required by this ~~section~~ subsection to be
kept shall be preserved for a period of at least ~~two~~ (2) ~~three~~ years
after the date of the documents, ~~as aforesaid~~, or the date of the
entries thereof appearing in the records, unless the director, in
writing, authorizes their destruction or disposal at an earlier date.

(b) At any time during usual business hours duly authorized
agents or employees of the director may enter any place of business
of a distributor and inspect the premises, the records required to
be kept under this act, and the tobacco products contained therein,
to determine whether or not all the provisions of this act are being
fully complied with. Refusal to permit such inspection by a duly
authorized agent or employee of the director shall be grounds for
revocation of the license. ~~Every~~

(c) Each person who sells tobacco products to persons other than
an ultimate consumer shall render with each sale itemized invoices
showing the seller's name and address, the purchaser's name and
address, the date of sale, and all prices and discounts. ~~He or she~~
Such person shall preserve legible copies of all such invoices for ~~two~~
(2) ~~years from three years after~~ the date of sale. ~~Every retailer~~

(d) Each distributor shall procure itemized invoices of all tobacco
products purchased. The invoices shall show the name and address
of the seller and the date of purchase. The ~~retailer distributor~~ shall
preserve a legible copy of each such invoice for ~~two~~ (2) ~~years from~~
~~three years after~~ the date of purchase. Invoices shall be available
for inspection by authorized agents or employees of the director at
the ~~retailer's distributor's~~ place of business.

Sec. 13. K.S.A. 79-3387 is hereby amended to read as follows:
79-3387. (a) All revenue collected or received by the director from
the licenses and taxes imposed by this act shall be deposited
monthly with the state treasurer and by him or her credited
remitted daily to the state treasurer, who shall deposit the entire
amount in the state treasury and credit it to the state general fund.

(b) All moneys received from license fees imposed by this act shall be collected by the director and shall be remitted daily to the state treasurer who shall deposit the entire amount in the state treasury and credit it to the cigarette and tobacco products regulation fund created by section 14.

New Sec. 14. (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the secretary of revenue or the secretary's designee, upon a finding that a licensee under this act has violated any provision of this act or any provision of any rule and regulation of the secretary of revenue adopted pursuant to this act shall impose on such licensee a civil fine not exceeding \$1,000 for each violation.

(b) No fine shall be imposed pursuant to this section except upon the written order of the secretary of revenue or the secretary's designee to the licensee who committed the violation. Such order shall state the violation, the fine to be imposed and the right of the licensee to appeal the order. Such order shall be subject to appeal and review in the manner provided by the Kansas administrative procedure act.

(c) Any fine collected pursuant to this section shall be paid to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the cigarette and tobacco products regulation fund.

(d) There is hereby created, in the state treasury, the cigarette and tobacco products regulation fund. Moneys in the fund shall be expended only for the enforcement of this act and rules and regulations adopted pursuant to this act. Such expenditures shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of revenue or a person designated by the secretary.

~~New Sec. 15. This act expressly preempts the regulation of the sale, marketing, licensing, distribution, advertising, sampling, promotion or display of cigarettes and tobacco products, or any limitation of competition of tobacco products by any restriction of the use of coupons, discounts, promotional allowances or premiums by any city, county or other political subdivision of this state and expressly supersedes any ordinance or resolution by any city, county or other political subdivision of this state that pertains to these matters which is adopted before, on or after the effective date of this act. A city, county or other political subdivision of this state may adopt an ordinance or resolution under the provisions of this act, but the conduct prohibited or restricted by such ordinance or resolution shall be identical to the conduct prohibited or restricted under this act and~~

(strike)

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~~under no circumstances shall the provisions of any such ordinance
or resolution be more stringent than the provisions of this act.~~

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New Sec. 16. The provisions of K.S.A. 79-3610, 79-3611, 79-
3612, 79-3613, 79-3614, 79-3615 and 79-3617, and amendments
thereto, relating to the assessment, collection, appeal and admin-
istration of the retailers' sales tax, insofar as practical, shall have full
force and effect with respect to taxes imposed by this act.

Sec. 17. K.S.A. 79-3301, 79-3302, 79-3303, 79-3304, 79-3305, 79-
3309, 79-3310b, 79-3316, 79-3318, 79-3321, 79-3322, 79-3323, 79-
3326, 79-3370, 79-3372, 79-3373, 79-3376, 79-3377, 79-3380 through
79-3387 and 79-3390 are hereby repealed.

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