

**KANSAS
CIGARETTE AND
TOBACCO
PRODUCTS LAWS
AND
REGULATIONS
ANNOTATED**



**Office of Kansas Attorney General Derek Schmidt
Tobacco Enforcement Unit**

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KANSAS CIGARETTE AND TOBACCO PRODUCTS ACT

K.S.A. Chapter 79, Article 33

79-3301. Definitions.

As used in this act:

- (a) “Carrier” means one who transports cigarettes from a manufacturer to a wholesale dealer or from one wholesale dealer to another.
- (b) “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.
- (c) “Cigarette” means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.
- (d) “Consumer” means the person purchasing or receiving cigarettes or tobacco products for final use.
- (e) “Dealer” means any person who engages in the sale or manufacture of cigarettes in the state of Kansas, and who is required to be licensed under the provisions of this act.
- (f) “Dealer establishment” means any location or premises, other than vending machine locations, at or from which cigarettes are sold, and where records are kept.
- (g) “Director” means the director of taxation.
- (h) “Distributor” means:
 - (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 outside 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; or

- (3) any person engaged in the business of selling tobacco products outside this state who ships or transports tobacco products to any person in the business of selling tobacco products in this state.
- (i) “Division” means the division of taxation.
- (j) “License” means, the privilege of a licensee to sell cigarettes or tobacco products in the state of Kansas, and the written evidence of such authority or privilege as issued by the director.
- (k) “Licensee” means any person holding a current license issued pursuant to this act.
- (l) “Manufacturer’s salesperson” means a person employed by a cigarette manufacturer who sells cigarettes, manufactured by such employer and procured from wholesale dealers.
- (m) “Meter imprints” means tax indicia applied by means of ink printing machines.
- (n) (1) “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.
- (2) For the purposes of subsections (u), (v) and (w) of K.S.A. 79-3321, and amendments thereto, “package” means the same as provided in 15 U.S.C. § 1332(4).
- (o) “Person” means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise and any combination of individuals.
- (p) “Received” means the coming to rest of cigarettes for sale by any dealer in the state of Kansas.
- (q) “Retail dealer” means a person, other than a vending machine operator, in possession of cigarettes for the purpose of sale to a consumer.
- (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) “Self-service display” means a display that contains cigarettes or tobacco products and is located in an area openly accessible to a retail dealer’s consumers, and from which consumers can readily access cigarettes or tobacco products without the assistance of a salesperson. A display case that holds cigarettes or tobacco products behind locked doors does not constitute a self-service display.
- (u) “Stamps” means tax indicia applied either by means of water applied gummed paper or heat process.
- (v) “Tax indicia” means visible evidence of tax payment in the form of stamps or meter imprints.
- (w) “Tobacco products” means cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Tobacco products do not include cigarettes.
- (x) “Tobacco specialty store” means a dealer establishment that derives at least 75% of such dealer establishment’s revenue from cigarettes or tobacco products.
- (y) “Vending machine” means any coin operated machine, contrivance or device, by means of which merchandise may be sold.
- (z) “Vending machine distributor” means any person who sells cigarette vending machines to a vending machine operator operating vending machines in the state of Kansas.
- (aa) “Vending machine operator” means any person who places a vending machine, owned, leased or operated by such person, at locations where cigarettes are sold such vending machine. 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 of the owner or lessee 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

from the machine is a flat rental fee or commission based upon the number or value of cigarettes sold from the machine, or a combination of both.

- (bb) “Wholesale dealer” means any person who sells cigarettes to other wholesale dealers, retail dealers, vending machine operators and manufacturer’s salespersons for the purpose of resale in the state of Kansas.
- (cc) “Wholesale sales price” means the original net invoice price for which [a] manufacturer sells a tobacco product to a distributor, as shown by the manufacturer’s original invoice.
- (dd) “Importer” means the same as provided in 26 U.S.C. § 5702(l).
- (ee) “Manufacturer” means the same as provided in 26 U.S.C. § 5702(d).

Annotations:

1. Action to determine validity of license suspension dismissed as question moot. *Epperson v. Department of Inspections & Registration*, 147 Kan. 762 (1938).
2. Whether plaintiff’s assertion state cigarette tax scheme was illegal is barred by tax injunction act examined. *Oyler v. Finney*, 870 F.Supp. 1018, 1021 (1994).

History: L. 1933, ch. 122, § 1 (Special Session); L. 1939, ch. 329, § 1; L. 1966, ch. 46, § 1 (Budget Session); L. 1967, ch. 498, § 1; L. 1969, ch. 456, § 1; L. 1984, ch. 357, § 1; L. 1996, ch. 214, § 1; L. 2000, ch. 92, § 1; July 1.

79-3302. Title and purpose of act.

- (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, 79-3391, 79-3392, 79-3393, 79-3394 and K.S.A. 2004 Supp. 79-3395 through 79-3398, 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 regulate the sale of cigarettes and tobacco products in this state and to impose a tax thereon.

Annotations:

1. Cited in case determining liability of wholesaler for tax increase under 79-3310. *Fleming Company v. McDonald*, 212 Kan. 11, 13 (1973).

Attorney General's Opinions:

1. Sales tax enforcement provisions on Indian reservations. 1989-115.

History: L. 1933, ch. 122, § 2 (Special Session); L. 1939, ch. 329, § 2; L. 1972, ch. 342, § 105; L. 1984, ch. 358, § 1; L. 1996, ch. 214, § 2; L. 2000, ch. 92, § 2; July 1.

79-3303. Licenses and permits; requirements relating to vending machines.

- (a) Each person engaged in the business of selling cigarettes in the state of Kansas and each vending machine distributor shall obtain a license as provided by this act. A separate application, license and fee is required for each dealer establishment owned or operated by a dealer. A vending machine operator is required to obtain a vending machine operator's master license and, in addition, a separate permit for each vending machine operated by the operator. A vending machine operator may submit one application for the vending machine operator's master license and all permits for vending machines operated by the operator. The license shall be displayed in the dealer establishment and the vending machine permit shall remain securely and visibly attached to the vending machine and contain such information as the director may require. Any vending machine found without such permit attached to the machine shall be sealed by an agent of the director and such seal shall be removed only by an agent of the director after payment of the permit fee and the penalties provided by this act.
- (b) The application for a vending machine operator's master license and vending machine permits shall list the brand name and serial number of each machine and such other information as required by the director. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the division to divulge or make known in any way the location of any vending machine to any person not an officer or employee of the division, except that such information may be divulged to any law enforcement officer for use in the officer's official duties. Any officer or employee revealing any such location in violation of this provision, in

addition to the penalties otherwise provided in this act, shall be dismissed from office.

- (c) A vending machine operator, in the course of business as a vending machine operator, may dispose of or sell vending machines without securing a license to sell vending machines. The vending machine operator may move vending machines from one location to another and, if a vending machine becomes inoperative or is disposed of, the permit for such machine may be transferred to another machine. A vending machine operator, within 10 days, shall notify the director of the brand name and serial number of vending machines that become inoperative or that the operator disposes of, sells, acquires or brings into service in this state as additional machines.
- (d) The key to the lower or storage compartment of a vending machine shall remain only in the possession of the vending machine operator or the operator's authorized agent. All services connected with the operation of a vending machine shall be performed by the vending machine operator or the operator's authorized agent. All vending machines shall be subject to inspection by the director or the director's authorized agents. No permit shall be issued for a vending machine unless it is constructed so that at least one package of each vertical column of cigarettes located therein is visible showing tax indicia.
- (e) All vending machines operated on military installations shall have a permit affixed to the machines and the cigarettes shall show tax indicia of the Kansas tax.
- (f) On or before the 10th day of each month, each vending machine distributor shall report to the director, on forms provided by the director, all sales of cigarette vending machines by the distributor to persons in the state of Kansas during the preceding month; the name and address of the purchaser; and the brand name, serial number and sale price of the machines.
- (g) Concurrently with a change in ownership of a dealer establishment the license applicable to the establishment 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 of the establishment shall notify the director and surrender the owner's license. The director shall issue a new license for the unexpired term of the surrendered license on payment of a fee of \$2. If a dealer's license is lost, stolen or destroyed, the director may issue a new license on proof of loss, theft or destruction, at a cost of \$2. The director shall remit all

moneys received under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Annotations:

1. Action to determine validity of license suspension dismissed as question moot. *Epperson v. Department of Inspections & Registration*, 147 Kan. 762, 767 (1938).

History: L. 1933, ch. 122, § 3 (Special Session); L. 1939, ch. 329, § 3; L. 1953, ch. 438, § 1; L. 1967, ch. 498, § 2; L. 1969, ch. 457, § 1; L. 1996, ch. 214, § 3; L. 2001, ch. 5, § 449; July 1.

79-3304. License and permit fees and bond; qualifications for license.

- (a) The license fee for each biennium or portion thereof shall be as follows:
 - (1) For retail dealer's license, \$25 for each dealer establishment.
 - (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 the sale of cigarettes on any or all of its cars within the state.
 - (3) For show, carnival or catering license, \$50 for each concession.
 - (4) For resident retail dealer's temporary license for a place of business of a temporary nature, \$2 for each seven days or portion thereof.
 - (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. If a wholesale dealer is unable to secure a corporate surety bond, the director may issue a license to such wholesale dealer, upon the wholesale dealer furnishing a personal bond meeting the approval of the director. Such bond shall be conditioned on the

wholesale dealer's compliance with all the provisions of this act during the license period.

- (6) For vending machine distributor's license, \$50.
 - (7) For manufacturer's salesperson license, \$20 for each salesperson. The manufacturer's salesperson shall, with respect to each sale made to a retail dealer, make and deliver to the retail dealer a true invoice wherein such salesperson shall insert the name of the wholesale dealer from whom such salesperson secured such cigarettes, together with such salesperson's own name and the name of the retail dealer purchasing the cigarettes.
 - (8) For vending machine operator's license, no fee.
 - (9) For vending machine permit, \$25 for each permit.
- (b) An application for any license required under the provisions of this act may be refused to:
- (1) A person who is not of good character and reputation in the community in which such person resides; 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.

History: L. 1933, ch. 122, § 4 (Special Session); L. 1939, ch. 329, § 4; L. 1949, ch. 482, § 1; L. 1959, ch. 394, § 1; L. 1966, ch. 46, § 2 (Budget Session); L. 1967, ch. 498, § 3; L. 1980, ch. 319, § 1; L. 1985, ch. 326, § 1; L. 1986, ch. 123, § 30; L. 1996, ch. 214, § 4; July 1.

79-3306. License; application forms; issuance.

Licenses shall be issued by the director for a biennium or portion thereof upon application for the license made on forms furnished by the director containing such information as the director may require subscribed to by the applicant or the applicant's authorized representative.

History: L. 1933, ch. 122, § 6 (Special Session); L. 1939, ch. 329, § 6; L. 1967, ch. 498, § 5; L. 1985, ch. 326, § 2; April 25.

79-3309. Suspension or revocation of license.

- (a) Whenever the director has reason to believe that any person licensed under this act has violated any of the provisions of this act, the director shall notify the person by certified mail of the director's intention to suspend or revoke the person's license or licenses[.] 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 the person has violated any of the provisions of this act, the director is hereby authorized and empowered to suspend or revoke the person's license or licenses and may in addition deny the application of 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 the license or licenses were suspended or revoked. The suspension or revocation of a vending machine operator's master license shall suspend or revoke all vending machine permits issued to the vending machine operator for the term of the license suspension or revocation.
- (b) If a person continues to engage in activities requiring a license under this act after having notice or knowledge of the suspension or revocation of the person's license or licenses or after becoming more than 10 days delinquent in the payment of any tax, penalty or interest 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.

History: L. 1933, ch. 122, § 9 (Special Session); L. 1935, ch. 309, § 1; L. 1939, ch. 329, § 8; L. 1943, ch. 290, § 4; L. 1949, ch. 483, § 1; L. 1957, ch. 429, § 19; L. 1966, ch. 46, § 3 (Budget Session); L. 1967, ch. 498, § 6; L. 1988, ch. 356, § 331; L. 1996, ch. 214, § 5; July 1.

79-3310. Tax on cigarettes imposed; rates.

There is imposed a tax upon all cigarettes sold, distributed or given away within the state of Kansas. On and after July 1, 2002, and before January 1, 2003, the rate of such tax shall be \$.70 on each 20 cigarettes or fractional part thereof or \$.875 on each 25 cigarettes, as the case requires. On and after January

1, 2003, the rate of such tax shall be \$.79 on each 20 cigarettes or fractional part thereof or \$.99 on each 25 cigarettes, as the case requires. Such tax shall be collected and paid to the director as provided in this act. Such tax shall be paid only once and shall be paid by the wholesale dealer first receiving the cigarettes as herein provided.

The taxes imposed by this act are hereby levied upon all sales of cigarettes made to any department, institution or agency of the state of Kansas, and to the political subdivisions thereof and their departments, institutions and agencies.

Annotations:

1. Tax increase became effective after payment by wholesaler but prior to distribution' wholesaler not liable for increase. *Fleming Company v. McDonald*, 212 Kan. 11, 12, 13, 15 (1973).

History: L. 1933, ch. 122, § 10 (Special Session); L. 1935, ch. 309, § 2; L. 1939, ch. 329, § 9; L. 1947, ch. 459, § 1; L. 1957, ch. 505, § 1; L. 1964, ch. 37, § 1 (Budget Session); L. 1965, ch. 529, § 1; L. 1967, ch. 498, § 7; L. 1970, ch. 396, § 1; L. 1983, ch. 329, § 1; L. 1984, ch. 357, § 2; L. 1985, ch. 327, § 1; L. 2002, ch. 185, § 1; July 1.

79-3310c. Inventory tax on cigarettes; procedures for payment.

- (1) On or before July 30, 2002, each wholesale dealer, retail dealer and vending machine operator shall file a report with the director in such form as the director may prescribe showing cigarettes, cigarette stamps and meter imprints on hand at 12:01 a.m. on July 1, 2002. A tax of \$.46 on each 20 cigarettes or fractional part thereof or \$.575 on each 25 cigarettes, as the case requires and \$.46 or \$.575, as the case requires upon all tax stamps and all meter imprints purchased from the director and not affixed to cigarettes prior to July 1, 2002, is hereby imposed and shall be due and payable in equal installments on or before July 30, 2002, on or before September 30, 2002, and on or before December 30, 2002. The tax imposed upon such cigarettes, tax stamps and meter imprints shall be imposed only once under this act. The director shall remit all moneys collected pursuant to this section to the state treasurer who shall credit the entire amount thereof to the state general fund.
- (2) On or before January 30, 2003, each wholesale dealer, retail dealer and vending machine operator shall file a report with the director in such form as the director may prescribe showing cigarettes, cigarette stamps and meter imprints on hand at 12:01 a.m. on January 1, 2003. A tax of \$.09 on each 20 cigarettes or fractional part thereof or \$.115 on each 25

cigarettes, as the case requires and \$.09 or \$.115, as the case requires upon all tax stamps and all meter imprints purchased from the director and not affixed to cigarettes prior to January 1, 2003, is hereby imposed and shall be due and payable in equal installments on or before January 30, 2003, on or before March 30, 2003, and on or before June 30, 2003. The tax imposed upon such cigarettes, tax stamps and meter imprints shall be imposed only once under this act. The director shall remit all moneys collected pursuant to this section to the state treasurer who shall credit the entire amount thereof to the state general fund.

History: L. 2002, ch. 185, § 2; June 6.

79-3311. Stamps and meter imprints; sale; discount; corporate surety bond; tax meter, use and bond; cigarette tax refund fund established; transportation for out-of-state sale.

The director shall design and designate indicia of tax payment to be affixed to each package of cigarettes as provided by this act. The director shall sell water applied stamps only to licensed wholesale dealers in the amounts of 1,000 or multiples thereof. Stamps applied by the heat process shall be sold only in amounts of 30,000 or multiples thereof, except that such stamps which are suitable for packages containing 25 cigarettes each shall be sold in amounts prescribed by the director. Meter imprints shall be sold only in amounts of 10,000 or multiples thereof. Water applied stamps in amounts of 10,000 or multiples thereof and stamps applied by the heat process and meter imprints shall be supplied to wholesale dealers at a discount of .90% on and after July 1, 2002, and before January 1, 2003, and .80% thereafter from the face value thereof, and shall be deducted at the time of purchase or from the remittance therefor as hereinafter provided. Any wholesale cigarette dealer who shall file with the director a bond, of acceptable form, payable to the state of Kansas with a corporate surety authorized to do business in Kansas, shall be permitted to purchase stamps, and remit therefor to the director within 30 days after each such purchase, up to a maximum outstanding at any one time of 85% of the amount of the bond. Failure on the part of any wholesale dealer to remit as herein specified shall be cause for forfeiture of such dealer's bond. All revenue received from the sale of such stamps or meter imprints shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. The state treasurer shall first credit such amount as the director shall order to the cigarette tax refund fund and shall credit the remaining balance to the state general fund. A refund fund designated the cigarette tax refund fund not to exceed \$10,000 at any time shall be set apart and maintained by the director from taxes collected under this act and held by the state treasurer for prompt payment of all refunds authorized by this act. Such cigarette

tax refund fund shall be in such amount as the director shall determine is necessary to meet current refunding requirements under this act.

The wholesale cigarette dealer shall affix to each package of cigarettes stamps or tax meter imprints required by this act prior to the sale of cigarettes to any person, by such dealer or such dealer's agent or agents, within the state of Kansas. The director is empowered to authorize wholesale dealers to affix revenue tax meter imprints upon original packages of cigarettes and is charged with the duty of regulating the use of tax meters to secure payment of the proper taxes. No wholesale dealer shall affix revenue tax meter imprints to original packages of cigarettes without first having obtained permission from the director to employ this method of affixation. If the director approves the wholesale dealer's application for permission to affix revenue tax meter imprints to original packages of cigarettes, the director shall require such dealer to file a suitable bond payable to the state of Kansas executed by a corporate surety authorized to do business in Kansas. The director may, to assure the proper collection of taxes imposed by the act, revoke or suspend the privilege of imprinting tax meter imprints upon original packages of cigarettes. All meters shall be under the direct control of the director, and all transfer assignments or anything pertaining thereto must first be authorized by the director. All inks used in the stamping of cigarettes must be of a special type devised for use in connection with the machine employed and approved by the director. All repairs to the meter are strictly prohibited except by a duly authorized representative of the director. Requests for service shall be directed to the director. Meter machine ink imprints on all packages shall be clear and legible. If a wholesale dealer continuously issues illegible cigarette tax meter imprints, it shall be considered sufficient cause for revocation of such dealer's permit to use a cigarette tax meter.

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

History: L. 1933, ch. 122, § 11 (Special Session); L. 1935, ch. 309, § 3; L. 1939, ch. 329, § 10; L. 1957, ch. 505, § 2; L. 1964, ch. 37, § 2 (Budget Session); L. 1965, ch. 529, § 2; L. 1967, ch. 498, § 8; L. 1970, ch. 396, § 2; L. 1971, ch. 315, § 1; L. 1983, ch. 329, § 4; L. 1985, ch. 327, § 2; L. 1986, ch. 381, § 1; L. 2001, ch. 5, § 450; L. 2002, ch. 185, § 3; July 1.

79-3312. Redemption of stamps and meter imprints.

The director shall redeem any unused stamps or meter imprints that any wholesale dealer presents for redemption within six months after the purchase thereof, at the face value less .90% on and after July 1, 2002, and before January 1, 2003, and .80% thereafter thereof if such stamps or meter imprints have been

purchased from the director. The director shall prepare a voucher showing the net amount of such refund due, and the director of accounts and reports shall draw a warrant on the state treasurer for the same. Wholesale dealers shall be entitled to a refund of the tax paid on cigarettes which have become unfit for sale upon proof thereof less .90% on and after July 1, 2002, and before January 1, 2003, and .80% thereafter of such tax.

Annotations:

1. Cited in case determining liability of wholesaler for tax increase under 79-3310. *Fleming Company v. McDonald*, 212 Kan. 11, 14 (1973).

History: L. 1935, ch. 309, § 4; L. 1939, ch. 329, § 11; L. 1957, ch. 505, § 3; L. 1964, ch. 37, § 3 (Budget Session); L. 1967, ch. 498, § 9; L. 1970, ch. 396, § 3; L. 1971, ch. 315, § 2; L. 1983, ch. 329, § 5; L. 1985, ch. 327, § 3; L. 2002, ch. 185, § 4; July 1.

79-3312a. Cigarettes refused by consignee; duty of carrier; liability for tax; damaged or missing cigarettes.

Carriers are hereby required to report to the director the amount of cigarettes refused by any consignee and all such cigarettes returned to the manufacturer on forms and in the manner and time provided by the director. Failure of carriers to file such reports shall make the carrier liable for unpaid tax on such cigarettes. Carriers may sell cigarettes damaged in transit when refused by the consignee if the carrier first obtains written authority of the director for such sale and pays the tax due thereon. Cigarettes damaged in transit, refused by the consignee and not returned to the manufacturer or sold as herein provided shall be destroyed in the presence of an agent of the director and in such case the tax shall be waived. Any consignee signing receipt of delivery and then discovering shortage in transit shall be responsible for the tax on the amount of cigarettes shown in the said receipt of delivery. In all other cases of shortage in shipment of cigarettes as evidenced by waybill or invoice the carrier shall be liable for the tax due on the missing cigarettes unless the said carrier shall furnish to the director on forms and in the manner and time provided by the director proof satisfactory to the director that such shortage was occasioned by the theft of said cigarettes by a person or persons outside of the employment of said carrier. In the event that said proof is satisfactory to the director, the tax on said missing cigarettes shall be waived.

History: L. 1967, ch. 498, § 10; L. 1969, ch. 458, § 1; July 1.

79-3313. Cigarettes required to be sold in packages; distribution of free sample packages; violations and sanctions; hearing.

All cigarettes sold in this state shall be in packages, and each of the packages shall bear evidence of payment of the tax thereon except that any railroad or sleeping car company licensed as a retailer is hereby authorized to sell cigarettes upon its cars without affixing stamps to the packages of cigarettes provided that monthly reports and payment of the tax due is made directly to the director in the manner and under the terms provided for by the director. In addition, manufacturers are hereby authorized to distribute in the state, through their authorized representatives or wholesale dealers, free sample packages of cigarettes containing less than 20 cigarettes without affixing stamps to the packages provided that monthly reports and payment of a tax at the rates prescribed by law are made directly to the director. No wholesale dealer or manufacturers' authorized representatives shall sell or distribute cigarettes, except free sample packages, to any person in the state of Kansas not holding a dealer's license as provided in this act. Such packages of sample cigarettes shall bear the word "sample" or "not for sale" and "state tax paid" in letters easily read.

Whenever the director shall have reason to believe that any manufacturer has violated the provisions of this section or the conditions provided by the director, the director shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act. If upon the basis of such hearing it appears to the satisfaction of the director that such manufacturer has violated any of the provisions of this section or the conditions provided by the director, the director is hereby authorized to suspend or revoke the authorization to the manufacturer for such period as the director determines is necessary but in no case for more than one year.

History: L. 1933, ch. 122, § 12 (Special Session); L. 1935, ch. 309, § 5; L. 1939, ch. 329, § 12; L. 1953, ch. 439, § 1; L. 1957, ch. 429, § 20; L. 1967, ch. 498, § 11; L. 1969, ch. 459, § 1; L. 1984, ch. 358, § 2; L. 1988, ch. 356, § 332; July 1, 1989.

79-3316. Certain records required of dealer; restrictions on purchase by dealer; tax exemption forms.

- (a) All purchases of cigarettes by any dealer shall be evidenced by an invoice, a duplicate of which shall be furnished the party receiving the cigarettes from any dealer.
- (b) Purchases of cigarettes by wholesale dealers shall be made from the manufacturers of cigarettes or from other Kansas licensed wholesale

dealers. Purchases of cigarettes by retail dealers or vending machine operators 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 or, if the dealer has more than one place of business in the state, at a central location of the dealer.
- (e) Every wholesale dealer shall report to the director on or before the 10th day of each month, stating the amount of cigarettes sold during the preceding month 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 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.

History: L. 1933, ch. 122, § 15 (Special Session); L. 1935, ch. 309, § 7; L. 1939, ch. 329, § 14; L. 1955, ch. 418, § 1; L. 1967, ch. 498, § 12; L. 1996, ch. 214, § 6; L. 1998, ch. 192, § 10; May 28.

79-3321. Unlawful acts.

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 invoiced.
- (g) Who is a dealer to fail or refuse to keep and preserve for the time and in the manner required by this act all the records required by this act to be kept and preserved.
- (h) To wholesale cigarettes to any person, other than a manufacturer's 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) Who is under 18 years of age to purchase or attempt to purchase cigarettes or tobacco products.
- (n) Who is under 18 years of age to possess or attempt to possess cigarettes or tobacco products.
- (o) To sell cigarettes to a retailer or at retail that do not bear Kansas tax indicia or upon which the Kansas cigarette tax has not been paid.
- (p) To sell cigarettes without having a license for such sale as provided herein.
- (q) To sell a vending machine without having a vending machine distributor's license.
- (r) 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."
- (s) 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.
- (t) To sell cigarettes or tobacco products by means of a vending machine in any establishment, or portion of an establishment, which is open to minors, except that this subsection shall not apply to:

- (1) The installation and use by the proprietor of the establishment, or by the proprietor's agents or employees, of vending machines behind a counter, or in some place in such establishment, or portion thereof, to which minors are prohibited by law from having access;
 - (2) the installation and use of a vending machine in a commercial building or industrial plant, or portions thereof, where the public is not customarily admitted and where machines are intended for the sole use of adult employees employed in the building or plant; or
 - (3) a vending machine which has a lock-out device which is inoperable in the continuous standby mode and which requires manual activation by the person supervising the operation of the machine each time cigarettes or tobacco products are purchased from the machine.
- (u) To sell cigarettes or tobacco products by means of a self-service display in any establishment, except that the provisions of this subsection shall not apply to:
- (1) A vending machine that is permitted under subsection (t); or
 - (2) a self-service display that is located in a tobacco specialty store.
- (v) To sell or distribute in this state; to acquire, hold, own, possess or transport for sale or distribution in this state; or to import or cause to be imported, into this state for sale or distribution in this state:
- (1) Any cigarettes the package of which
 - (A) bears any statement, label, stamp, sticker or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States, including but not limited to, labels stating "For Export Only", "U.S. Tax-Exempt", "For Use Outside U.S." or similar wording; or
 - (B) does not comply with
 - (i) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including but not limited to the precise warning labels specified in the fed-

eral cigarette labeling and advertising act, 15 U.S.C. 1333; and

- (ii) all federal trademark and copyright laws;
 - (2) any cigarettes imported into the United States in violation of 26 U.S.C. 5754 or any other federal law, or federal regulations implementing such laws;
 - (3) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or
 - (4) any cigarettes for which there has not been submitted to the secretary of the U.S. department of health and human services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal cigarette labeling and advertising act, 15 U.S.C. 1335a.
- (v) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:
- (1) Any statement, label, stamp, sticker or notice described in subsection (u) of K.S.A. 79-3321, and amendments thereto; or
 - (2) any health warning that is not specified in, or does not conform with, the requirements of, the federal cigarette labeling and advertising act, 15 U.S.C. 1333.
- [15 U.S.C. § 1333. See 79-3321(u)(1)(B) *supra*].
- (w) To affix any stamp required pursuant to K.S.A. 79-3311, and amendments thereto, to the package of any cigarettes described in subsection (u) or altered in violation of subsection (v).

Annotations:

1. Cited in case determining liability of wholesaler for tax increase under 79-3310. *Fleming Company v. McDonald*, 212 Kan. 11.
2. State has jurisdiction to seize and sell cigarettes not bearing Kansas tax stamps from Indian on reservation land. *State v. Oyler*, 15 Kan. App. 2d 84, 85 (1991).

3. State has criminal subject matter jurisdiction over Indian sale of cigarettes without state tax indicia. *Oyler v. Allenbrand*, 815 F.Supp. 1441, 1442 (1993).
4. Whether state attorney general is qualifiedly immune in civil rights actions regarding seizure of untaxed cigarettes examined. *Kaul v. Stephan*, 868 F.Supp. 1253, 1256 (1994).
5. Whether plaintiff's claims of constitutional violations by state and county officials were barred by statute of limitations. *Oyler v. Finney*, 870 F.Supp. 1018, 1020 (1994)
6. Department of revenue rule of not imposing tax on Indian retailer was void where rule not filed or published. *Kaul v. Stephan*, 83 F.3d 1208, 1212, 1214 (1996).

Attorney General's Opinions:

1. Sales tax enforcement provisions on Indian reservations. 1989-115.
2. Municipal courts: jurisdiction over juveniles charged with cigarette and tobacco infractions. 1996-83.
3. Municipal courts: disclosure of records of juvenile charged with tobacco ordinance infraction. 1998-36

History: L. 1933, ch. 122, § 18 (Special Session); L. 1939, ch. 329, § 18; L. 1967, ch. 498, § 14; L. 1969, ch. 460, § 1; L. 1988, ch. 384, § 1; L. 1996, ch. 214, § 7; L. 2000, ch. 92, § 3; July 1.

79-3322. Penalties.

(a) Any person who violates any of the provisions of the Kansas cigarette and tobacco products 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 fee or tax imposed under the provisions of this act shall be personally liable for such license fee or tax plus a penalty in an amount equal to 100% thereof.

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

- (A) Sell, give or furnish any cigarettes or tobacco products to any person under 18 years of age; or
 - (B) buy any cigarettes or tobacco products for any person under 18 years of age.
- (2) It shall be a defense to a prosecution under this subsection if:
- (A) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
 - (B) 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
 - (C) 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.
- (3) It shall be a defense to a prosecution under this subsection if:
- (A) The defendant engages in the lawful sale, furnishing or distribution of cigarettes or tobacco products by mail; and
 - (B) the defendant sold, furnished or distributed the cigarettes or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601, and amendments thereto, that the person was 18 or more years of age.
- (4) For purposes of this subsection the person who violates this subsection shall be the individual directly selling, furnishing or distributing the cigarettes or tobacco products to any person under 18 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.
- (c) Violation of subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, is a cigarette or tobacco infraction for which the fine is \$25. In

addition, the judge may require the juvenile to appear in court with a parent or legal guardian.

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

Annotations:

1. State has jurisdiction to impose cigarette and sales taxes on sales to nontribal members and non-Indians on reservation land. *State v. Oylar*, 15 Kan. App. 2d 78, 82 (1991).
2. State has criminal subject matter jurisdiction over Indian sale of cigarettes without state tax indicia. *Oylar v. Allenbrand*, 815 F.Supp. 1441, 1442 (1993).
3. Whether plaintiff's claims of constitutional violations by state and county officials were barred by statute of limitations. *Oylar v. Finney*, 870 F.Supp. 1018, 1020 (1994).

History: L. 1933, ch. 122, § 19 (Special Session); L. 1939, ch. 329, § 19; L. 1967, ch. 498, § 15; L. 1984, ch. 358, § 4; L. 1996, ch. 214, § 8; L. 1998, ch. 192, § 11; L. 2000, ch. 92, § 4; July 1.

79-3323. Contraband goods; seizure.

- (a) The following are declared to be common nuisances and contraband:
- (1) All packages of cigarettes, in quantities of 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;
 - (2) all cigarettes or tobacco products in the possession of a minor; and
 - (3) all property, other than vehicles, used in the retail sale of unstamped packages of cigarettes.

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 provided by this section may be seized by the director or 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 owner of the property and to the person or persons found in possession of the property a receipt stating from whom the property was seized, the place of seizure and a description and the brand of the property seized. A duplicate of the receipt shall be filed in the office of the director and shall be open for public inspection.

Annotations:

1. State has jurisdiction to seize and sell cigarettes not bearing Kansas tax stamps from Indian on reservation land. *State v. Oyler*, 15 Kan. App. 2d 84, 85 (1991).

History: L. 1933, ch. 122, § 20 (Special Session); L. 1939, ch. 329, § 20; L. 1953, ch. 440, § 1; L. 1967, ch. 498, § 16; L. 1980, ch. 319, § 2; L. 1996, ch. 214, § 10; July 1.

79-3324a. Contraband goods; seizure and sale; disposition of proceeds.

- (a) All of the cigarettes and property seized shall first be listed and appraised by the officer making the seizure, and turned over to the county sheriff of the county in which the seizure is made and a receipt therefore taken. The person making the seizure shall immediately make and file a written report thereof showing the name of the person making the seizure, the place where, and the person from whom the property was seized, and inventory and appraisal thereof, at the usual and ordinary wholesale price of the articles received to the director of taxation. The county or district attorney of the county in which the seizures are made may, at the request of the director, file in the district court forfeiture proceedings in the name of the state of Kansas, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found, directing him or her to answer within ten (10) days. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in five (5) public places in the county not less than ten (10) days before the date of the sale, except that cigarettes shall be withheld from public sale and shall be sold by the director of taxation to the manufacturer of such cigarettes or to a licensed distribu-

tor and the purchase price shall be paid to the director of taxation and treated as cigarette tax collected. The proceeds of any public sale shall be deposited with the clerk of the court, who shall after deducting costs, including the costs of the sale, pay the balance to the treasurer of the county wherein said sale is constructed. Said treasurer shall credit the entire amount thereof to the county general fund.

- (b) The seizure and sale of the cigarettes shall not relieve the person from whom the cigarettes were seized from any prosecution on the payment of any penalties provided for under the provisions of K.S.A. 79-3301 *et seq.*, and amendments thereto; nor shall it relieve the purchaser thereof from any payment of the regular cigarette tax and the placing of proper stamps thereon before making any sale of the cigarettes or the personal consumption of the same.
- (c) The forfeiture provisions of this act shall only apply to persons having possession of or transporting cigarettes with intent to barter, sell or give away the same. The possession of cigarettes in any quantity of more than two (2) cartons, twenty (20) packages or four hundred (400) cigarettes, not bearing indicia of tax payment as required by the provisions of K.S.A. 79-3301 *et seq.*, and amendments thereto, shall be prima facie evidence of intent to barter, sell or give away the cigarettes in violation of the provisions of K.S.A. 79-3301 *et seq.*, and amendments thereto.

History: L. 1980, ch. 319, § 3; July 1.

79-3326. Duties of director; enforcement of act.

The director of taxation shall administer and enforce the provisions of this act. The secretary of revenue shall adopt rules and regulations for the administration of this act. For the purpose of enforcing this act the director may call to the director's aid any law enforcement officer of this state to prosecute all violators of any of the provisions of this act. The police of any city shall have the right to inspect all premises, records and invoices pertaining to the wholesale distribution, retail sale or sampling of cigarettes or tobacco products within the city at all reasonable times. All agents and representatives designated by the director are hereby invested with all the powers of peace and police officers within the state of Kansas in the enforcement of the provisions of this act throughout the state.

History: L. 1933, ch. 122, § 23 (Special Session); L. 1935, ch. 309, § 10; L. 1939, ch. 329, § 22; L. 1967, ch. 498, § 18; L. 1972, ch. 342, § 106; L. 1996, ch. 214, § 11; July 1.

79-3328. Expenses of enforcement.

The director is hereby authorized and instructed to pay all proper expenses incurred in the enforcement of this act and for that purpose shall present the necessary vouchers approved by him or her to the director of accounts and reports, who shall issue his or her warrants upon the state treasurer for the amount due upon such vouchers and such warrants shall be paid by the state treasurer as by law provided.

History: L. 1933, ch. 122, § 25 (Special Session); Jan. 1, 1934.

79-3329. Unconstitutionality of part.

If any part or parts of this act are held to be unconstitutional the remaining part thereof shall be unaffected thereby.

History: L. 1933, ch. 122, § 26 (Special Session); Jan. 1, 1934.

79-3333. Sale of cigarettes; requirements; internet, telephone or mail order transactions, requirements; packages of cigarettes; penalties.

- (a) Each person engaged in the business of selling cigarettes to persons who reside in Kansas shall obtain a license as provided by the Kansas cigarette and tobacco products act.
- (b) All cigarettes sold to persons who reside in Kansas shall have a valid Kansas cigarette tax stamp affixed to each package.
- (c) All retail cigarette dealers, whether located in or outside the state of Kansas, shall have a registration certificate as provided in K.S.A. 79-3608, and amendments thereto, and be subject to the provisions of the Kansas retailers' sales tax act. Each licensed retail cigarette dealer selling cigarettes over the internet, telephone or other mail order transaction shall file all sales tax returns and remit taxes owed pursuant to K.S.A. 79-3607, and amendments thereto.
- (d) All sales transactions over the internet, telephone or other mail order transaction shall not be completed, unless, before each delivery of cigarettes is made, whether through the mail, through a transportation company or any other delivery system, the seller has obtained from the purchaser a certification that includes a reliable confirmation that the purchaser is at least the legal minimum age to purchase cigarettes; that the cigarettes purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase ciga-

rettes; and a written statement signed by the purchaser that certifies the purchaser's address and that the purchaser is at least the minimum legal age to purchase cigarettes. Such statement shall also confirm:

- (1) That the purchaser understands that signing another person's name to such certification is illegal;
 - (2) that the sale of cigarettes to individuals under the legal minimum purchase age is illegal; and
 - (3) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of Kansas.
- (e) The retail cigarette dealer shall verify the information contained in the certification provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the purchaser.
- (f) All invoices, bills of lading, sales receipts and any other document related to the sale of cigarettes through the internet or other mail order transaction shall contain the current, valid retailer Kansas cigarette dealer license number, Kansas sales tax registration number, business name and address of the seller.
- (g) All packages of cigarettes shipped from a cigarette dealer to purchasers who reside in Kansas shall clearly print the package with the word "CIGARETTES" on all sides of the package. In addition, such package shall contain an externally visible and easily legible notice located on the same side of the package as the address to which the package is delivered as follows:

"IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."

- (h) The provisions of this section shall not apply to tobacco products, as defined in K.S.A. 79-3301, and amendments thereto.

- (i) Violation of the provisions of subsection (a), (d) or (e) is a severity level 8, nonperson felony. Violation of any provision of this section other than the provisions of subsection (a), (d) or (e) is a misdemeanor and upon conviction shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.
- (j) The provisions of this section shall be part of and supplemental to the Kansas cigarette and tobacco products act.

History: L. 2004, ch. 140, § 1; July 1.

79-3334. Active cigarette and tobacco licensees, list.

- (a) The Kansas department of revenue shall publish a list of active cigarette and tobacco licensees and shall update such list monthly.
- (b) The list of active cigarette and tobacco licensees published as provided in subsection (a) shall contain the following information: County name, owner, business name, address, license type and license number.
- (c) The provisions of this section shall be part of and supplemental to the Kansas cigarette and tobacco products act.

History: L. 2004, ch. 140, § 2; July 1.

79-3335. Counterfeit cigarettes; seizure.

- (a) Counterfeit cigarettes shall be seized by the director. For purposes of this section, counterfeit cigarettes includes cigarettes that have false manufacturing labels or packages of cigarettes bearing counterfeit tax stamps.
- (b) The provisions of this section shall be part of and supplemental to the Kansas cigarette and tobacco products act.

History: L. 2004, ch. 140, § 3; July 1.

79-3371. Tax on privilege of selling tobacco products.

A tax is hereby imposed upon the privilege of selling or dealing in tobacco products in this state by any person engaged in business as a distributor thereof, at the rate of ten percent (10%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor

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

Annotations:

- 1. Applied; allegations of payment of tobacco products tax would be avoided not upheld. *Kansas Tobacco-Candy Distributors and Vendors, Inc. v. McDonald*, 214 Kan. 67, 72 (1974).
- 2. Various constitutional objections to act considered; constitutionally upheld. *Kansas Tobacco-Candy Distributors and Vendors, Inc. v. McDonald*, 214 Kan. 67, 68, 69 (1974).

History: L. 1972, ch. 375, § 2; July 1.

79-3373. Distributor's license.

No person shall engage in the business of selling or dealing in tobacco products as a distributor in this state without first having received a license from the director. Every application for such license shall be made on a form prescribed by the director and shall state the name and address of the applicant; if the applicant is a firm, partnership or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the director may require for the purpose of the administration of this act. A person outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, may make application for license as a distributor, be granted such a license by the director and thereafter be subject to all the provisions of this act and entitled to act as a licensed distributor if the person files with the application proof that the person has appointed the secretary of state as the person's agent for service of process relating to any matter or issue arising under this act.

History: L. 1972, ch. 375, § 4; L. 1996, ch. 214, § 12; July 1.

79-3374. License fees; surety bond; application for each place of business.

Each application for a distributor's license shall be accompanied by a fee of twenty-five dollars (\$25). The application shall also be accompanied by a corporate surety bond issued by a surety company authorized to do business in this state, conditioned for the payment when due of all taxes, penalties and accrued interest which may be due the state. The bond shall be in an amount to be determined by the director and in a form prescribed by the director. Whenever it is the opinion of the director that the bond given by a licensee is inadequate in amount to fully protect the state, he or she shall require an additional bond in such amount as he or she deems sufficient. A separate application for a license shall be made for each place of business at which a distributor proposes to engage in business as such under this act, but an applicant may provide one bond in an amount determined by the director for all applications made by him or her. A distributor applying for a license between June thirtieth and December thirty-first of any year shall be required to pay only one-half of the license fee provided for herein.

History: L. 1972, ch. 375, § 5; July 1.

79-3375. Issuance, expiration and display of licenses; license not transferable.

Upon receipt of an application in proper form and payment of the license fee required hereunder, the director shall, unless otherwise provided by this act, issue to applicant a license hereunder, which license shall permit the applicant to whom it is issued to engage in business as a distributor at the place of business shown on the license. Each license shall expire on December thirty-first following its date of issue unless sooner revoked by the director, or unless the business for which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the director. Each license shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person.

History: L. 1972, ch. 375, § 6; July 1.

79-3377. Certain records required of distributor; access to premises.

- (a) Each distributor shall keep in each licensed place 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 outside the state or shipped or transported to retailers in this state; and

- (2) all sales of tobacco products made, except sales to an ultimate consumer.

Such records shall show the names and addresses 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 subsection to be kept shall be preserved for a period of at least three years after the date of the documents 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.
- (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. Such person shall preserve legible copies of all such invoices for three years after the date of sale.
- (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 distributor shall preserve a legible copy of each such invoice for three years after the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the director at the distributor's place of business.

History: L. 1972, ch. 375, § 8; L. 1996, ch. 214, § 13; July 1.

79-3378. Monthly tax returns; remittance of tax; deficiencies.

On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing the quantity and wholesale sales price of each tobacco product

- (1) brought, or caused to be brought, into this state for sale; and
- (2) made, manufactured, or fabricated in this state for sale in this state during the preceding calendar month.

Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the director. Each return shall be accompanied by a remittance for the full tax liability shown therein, less four percent (4%) of such liability as compensation to reimburse the distributor for his or her expenses incurred in the administration of this act. As soon as practicable after any return is filed, the director shall examine the return. If the director finds that, in his or her judgment, the return is incorrect and any amount of tax is due from the distributor and unpaid, he or she shall notify the distributor of the deficiency. If a deficiency disclosed by the director's examination cannot be allocated by him to a particular month or months, he or she may nevertheless notify the distributor that a deficiency exists and state the amount of tax due. Such notice shall be given to the distributor by registered or certified mail.

Annotations:

1. Applied; allegations of payment of tobacco products tax would be avoided not upheld. *Kansas Tobacco-Candy Distributors and Vendors, Inc. v. McDonald*, 214 Kan. 67, 72 (1974).

History: L. 1972, ch. 375, § 9; July 1.

79-3379. Refunds and credits of tax.

Where tobacco products, on which the tax imposed by this act has been reported and paid, or which have been reported for the purpose of determining and imposing the tax for the privilege of doing business under the provisions of this act and on which the tax has been paid, are sold, shipped or transported by the distributor to retailers, distributors or ultimate consumers without the state, or are returned to the manufacturer by the distributor, or destroyed by the distributor, a refund or credit of such tax shall be made to the distributor. For the purpose of making such credit or refund, or any combination thereof, the director may issue a tax credit memoranda or may prepare a voucher showing the net amount of such refund due and the director of accounts and reports shall draw a warrant upon the state treasurer for the amount of any such refund certified by the director.

History: L. 1972, ch. 375, § 10; L. 1975, ch. 503, § 1; July 1.

79-3387. Disposition of revenues.

- (a) All revenue collected or received by the director from taxes imposed by this act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of 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 to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the cigarette and tobacco products regulation fund created by K.S.A. 79-3391, and amendments thereto.

History: L. 1972, ch. 375, § 18; L. 1996, ch. 214, § 14; L. 2001, ch. 5, § 451; July 1.

79-3388. Tobacco products not exempt from sales tax.

The imposition of the tax as provided in this act shall not render tobacco products exempt from the retailers' sales tax act under the provisions of K.S.A. 79-3606 (a).

History: L. 1972, ch. 375, § 19; July 1.

79-3391. Administrative fines; cigarette and tobacco products regulation fund created.

- (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) It shall be unlawful for any person, directly or indirectly, to:
 - (1) Sell, give or furnish any cigarettes or tobacco products to any person under 18 years of age; or

- (2) buy any cigarettes or tobacco products for any person under 18 years of age.

In determining the fine to be imposed under this subsection by a licensed retail dealer whose employee sold, furnished or distributed the cigarettes or tobacco products, the secretary of revenue or the secretary's designee shall consider it to be a mitigating circumstance if the employee had completed a training program, approved by the secretary of revenue or the secretary's designee, in avoiding sale, furnishing or distributing of cigarettes and tobacco products to persons under 18 years of age.

- (c) 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.
- (d) Any fine collected pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the cigarette and tobacco products regulation fund.
- (e) 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.
- (f) If a person violates subsection (b) for a second or subsequent occurrence within a three-year period, the secretary may impose a graduated fine upon such person for the second or subsequent occurrence. For the purposes of imposing a fine under this section, if three or more years have elapsed since a person has been found to have violated the provisions of subsection (b), such person shall be treated as never having violated subsection (b).

History: L. 1996, ch. 214, § 15; L. 1998, ch. 192, § 12; L. 2000, ch. 92, § 10; L. 2001, ch. 5, § 452; July 1.

79-3392. Application of certain laws to taxes under act.

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 administration of the retailers' sales tax, insofar as practical, shall have full force and effect with respect to taxes imposed by this act.

History: L. 1996, ch. 214, § 16; July 1.

79-3393. Cigarette or tobacco infraction; procedure.

- (a) When a person is stopped by a law enforcement officer for a cigarette or tobacco infraction, the law enforcement officer shall prepare and deliver to the person a written cigarette or tobacco citation on a form approved by the secretary of revenue or the secretary's designee. The citation shall contain a notice to appear in court, the name and address of the person, the offense or offenses charged, the time and place when and where the person shall appear in court, the signature of the law enforcement officer and any other pertinent information. The time specified in the notice to appear shall be at least five days after the alleged infraction unless the person charged with the infraction demands an earlier hearing. The place specified in the notice to appear shall be before a judge of the district court within the county where the infraction is alleged to have been committed or before a judge of the municipal court where the infraction is alleged to have been committed in a city which has adopted an ordinance which prohibits the same acts.
- (b) The notice to appear may provide that the person charged with the infraction shall appear in court with a parent or legal guardian and shall provide that the person charged has a right to trial.
- (c) Acts classified as cigarette or tobacco infractions by subsection (c) of K.S.A. 79-3322, and amendments thereto shall be classified as ordinance cigarette or tobacco infractions by those cities adopting ordinances prohibiting the same acts. The fine for an ordinance cigarette or tobacco infraction shall be \$25.

History: L. 1996, ch. 214, § 9; L. 1998, ch. 192, § 13; May 28.

79-3394. Use of minors to determine compliance, limitations.

No person shall engage or direct a minor to violate any provision of this act for purposes of determining compliance with provisions of this act or the Kansas consumer protection act unless such person has procured the written consent of a

parent or guardian of the minor to so engage or direct the minor and such person is:

- (a) An officer having authority to enforce the provisions of this act;
- (b) an authorized representative of the attorney general, a county attorney or a district attorney; or
- (c) an authorized representative of a business acting pursuant to a self-compliance program designed to increase compliance with the provisions of this act.

History: L. 1996, ch. 214, § 17; July 1.

79-3395. Cigarettes imported into the United States; certain information to be filed with the director.

On the first business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the director, for all cigarettes imported into the United States to which such person has affixed the tax stamp in the preceding month:

- (a) A copy of
 - (1) the permit issued pursuant to the internal revenue code, 26 U.S.C. 5713, to the person importing such cigarettes into the United States allowing such person to import such cigarettes; and
 - (2) the customs form containing, with respect to such cigarettes, the internal revenue tax information required by the U.S. bureau of alcohol, tobacco and firearms;
- (b) a statement, signed by such person under penalty of perjury, which shall be treated as confidential by the commissioner and exempt from disclosure under the open records act, K.S.A. 45-215 through 45-223, and amendments thereto, identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale; and
- (c) a statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with

- (1) the package health warning and ingredient reporting requirements of the federal cigarette labeling and advertising act, 15 U.S.C. 1333 and 1335a, with respect to such cigarettes; and
- (2) the provisions of K.S.A. 50-6a01 *et seq.*, and amendments thereto, including a statement indicating whether the manufacturer is, or is not, a participating tobacco product manufacturer within the meaning of K.S.A. 50-6a01 *et seq.*, and amendments thereto.

History: L. 2000, ch. 92, § 5; July 1.

79-3396. Failure to file; penalty.

- (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the director, upon a finding that a licensee has violated the provisions of subsection (u), (v) or (w) of K.S.A. 79-3321, and amendments thereto, or has failed to comply with the provisions of K.S.A. 2004 Supp. 79-3395, and amendments thereto, or any rule and regulation adopted pursuant thereto, may revoke or suspend the license of any licensee in the manner provided by K.S.A. 79-3309, and amendments thereto; the director also may impose a civil fine in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000. Such fine shall be imposed in the manner provided by K.S.A. 79-3391, and amendments thereto.
- (b) Any cigarettes that are acquired, held, owned, possessed, transported, imported, sold or distributed in this state in violation of subsection (u), (v) or (w) of K.S.A. 79-3321, and amendments thereto, or has failed to comply with the provisions of K.S.A. 2004 Supp. 79-3395, and amendments thereto, shall be deemed contraband under K.S.A. 79-3323, and amendments thereto, and shall be subject to seizure and forfeiture as provided therein and in K.S.A. 79-3324a, and amendments thereto. All such cigarettes seized and forfeited shall be destroyed. Such cigarettes shall be deemed contraband whether the violation of this act is knowing or otherwise.

History: L. 2000, ch. 92, § 6; July 1.

79-3397. Enforcement of act; civil liability for violation of act.

- (a) The provisions of subsection (u), (v) or (w) of K.S.A. 79-3321 and K.S.A. 2004 Supp. 79-3395, and amendments thereto, shall be enforced by the director. At the request of the director or the director's duly authorized agent, the Kansas bureau of investigation and all local

law enforcement agencies shall enforce such provisions. The attorney general shall have concurrent power with the district and county attorneys of the state to enforce such provisions.

- (b) For the purpose of enforcing the provisions of subsection (u), (v) or (w) of K.S.A. 79-3321 and K.S.A. 2004 Supp. 79-3395, and amendments thereto, the director and any agency to which the director shall have delegated enforcement responsibility pursuant to subsection (a) may request information from any state or local agency, and may share information with, and request information from, any federal agency and any agency of any other state or any local agency thereof.

- (c) Any person who may be damaged or injured by a violation of the provisions of subsection (u), (v) or (w) of K.S.A. 79-3321 or K.S.A. 2004 Supp. 79-3395, and amendments thereto, shall have a cause of action against any person causing such damage or injury. Such action may be brought by any person who is injured in such person's business or property by reason of any violation of such provisions, regardless of whether such injured person dealt directly or indirectly with the defendant. The plaintiff in any action commenced hereunder in the district court of the county wherein such plaintiff resides, or the district court of the county of the defendant's principal place of business, may sue for and recover treble the damages sustained. In addition, any person who is threatened with injury or additional injury by reason of any person's violation may commence an action in such district court to enjoin any such violation, and any damages suffered may be sued for and recovered in the same action in addition to injunctive relief. In any action commenced under this act, the plaintiff may be allowed reasonable attorney fees and costs. The remedies provided herein shall be alternative and in addition to any other remedies provided by law.

History: L. 2000, ch. 92, § 7; July 1.

79-3398. Exceptions to applicability of act.

The provisions of subsection (u), (v) or (w) of K.S.A. 79-3321 and K.S.A. 2004 Supp. 79-3395, and amendments thereto, shall not apply to:

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

- (b) cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations, except that this act shall

apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

History: L. 2000, ch. 92, § 8; July 1.

KANSAS CONSUMER PROTECTION ACT

K.S.A. Chapter 50, Article 6

50-625. Waiver; agreement to forego rights; settlement of claims.

- (a) Except as otherwise provided in this act, a consumer may not waive or agree to forego rights or benefits under this act.
- (b) A claim, whether or not disputed, by or against a consumer may be settled for less value than the amount claimed.
- (c) A settlement in which the consumer waives or agrees to forego rights or benefits under this act is invalid if the court finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer, and the value of the consideration are relevant to the issue of unconscionability.

History: L. 1973, ch. 217, § 3; Jan. 1, 197

50-626. Deceptive acts and practices.

- (a) No supplier shall engage in any deceptive act or practice in connection with a consumer transaction.
- (b) Deceptive acts and practices include, but are not limited to, the following, each of which is hereby declared to be a violation of this act, whether or not any consumer has in fact been misled:
 - (1) Representations made knowingly or with reason to know that:
 - (A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;
 - (B) the supplier has a sponsorship, approval, status, affiliation or connection that the supplier does not have;
 - (E) the consumer will receive a rebate, discount or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other

- consumer transactions, if receipt of benefit is contingent on an event occurring after the consumer enters into the transaction;
- (F) property or services has uses, benefits or characteristics unless the supplier relied upon and possesses a reasonable basis for making such representation; or
 - (G) use, benefit or characteristic of property or services has been proven or otherwise substantiated unless the supplier relied upon and possesses the type and amount of proof or substantiation represented to exist;
- (2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;
 - (3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact;
 - (4) disparaging the property, services or business of another by making, knowingly or with reason to know, false or misleading representations of material facts;
 - (5) offering property or services without intent to sell them;
 - (6) offering property or services without intent to supply reasonable, expectable public demand, unless the offer discloses the limitation;
 - (7) making false or misleading representations, knowingly or with reason to know, of fact concerning the reason for, existence of or amounts of price reductions, or the price in comparison to prices of competitors or one's own price at a past or future time;
 - (8) falsely stating, knowingly or with reason to know, that a consumer transaction involves consumer rights, remedies or obligations;
 - (9) falsely stating, knowingly or with reason to know, that services, replacements or repairs are needed;
 - (10) falsely stating, knowingly or with reason to know, the reasons for offering or supplying property or services at sale or discount prices;

- (11) sending or delivering a solicitation for goods or services which could reasonably be interpreted or construed as a bill, invoice or statement of account due, unless:
- (A) Such solicitation contains the following notice, on its face, in conspicuous and legible type in contrast by typography, layout or color with other printing on its face:
- "THIS IS A SOLICITATION FOR THE PURCHASE OF GOODS OR SERVICES AND NOT A BILL, INVOICE OR STATEMENT OF ACCOUNT DUE. YOU ARE UNDER NO OBLIGATION TO MAKE ANY PAYMENTS UNLESS YOU ACCEPT THIS OFFER"; and
- (B) such solicitation, if made by any classified telephone directory service not affiliated with a local telephone service in the area of service, contains the following notice, on its face, in a prominent and conspicuous manner:
- "_____ IS NOT
AFFILIATED WITH
(name of telephone directory service)
ANY LOCAL TELEPHONE COMPANY"; and
- (12) using, in any printed advertisement, an assumed or fictitious name for the conduct of such person's business that includes the name of any municipality, community or region or other description of the municipality, community or region in this state in such a manner as to suggest that such person's business is located in such municipality, community or region unless: (A) Such person's business is, in fact, located in such municipality, community or region; or (B) such person includes in any such printed advertisement the complete street and city address of the location from which such person's business is actually conducted. If located outside of Kansas, the state in which such person's business is located also shall be included. The provisions of this subsection shall not apply to the use of any trademark or service mark registered under the laws of this state or under federal law; any such name that, when applied to the goods or services of such person's business, is merely descriptive of them; or any such name that is merely a surname. Nothing in this subsection shall be construed to impose any liability on any publisher when such publisher had no knowledge the business was not, in fact, located in such municipality, community or region.]

50-627. Unconscionable Acts and Practices.

- (a) No supplier shall engage in any unconscionable act or practice in connection with a consumer transaction. An unconscionable act or practice violates this act whether it occurs before, during or after the transaction.

- (b) The unconscionability of an act or practice is a question for the court. In determining whether an act or practice is unconscionable, the court shall consider circumstances of which the supplier knew or had reason to know, such as, but not limited to the following that:
 - (1) The supplier took advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor;
 - (2) when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by similar consumers;
 - (3) the consumer was unable to receive a material benefit from the subject of the transaction;
 - (4) when the consumer transaction was entered into, there was no reasonable probability of payment of the obligation in full by the consumer;
 - (5) the transaction the supplier induced the consumer to enter into was excessively onesided in favor of the supplier;
 - (6) the supplier made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment; and
 - (7) except as provided by K.S.A. 50-639, and amendments thereto, the supplier excluded, modified or otherwise attempted to limit either the implied warranties of merchantability and fitness for a particular purpose or any remedy provided by law for a breach of those warranties.

History: L. 1973, ch. 217, § 5; L. 1976, ch. 236, § 4; L. 1983, ch. 180, § 1; L. 1991, ch. 159, § 3; L. 1998, ch. 99, § 1; Apr. 16.

50-6,104. Sale of cigarettes in violation of cigarette and tobacco products act.

- (a) A violation of subsection (u), (v) or (w) of K.S.A. 79-3321 or K.S.A. 2005 Supp. 79-3395, and amendments thereto, shall constitute an unlawful trade practice as provided in K.S.A. 50-626, and amendments thereto. In addition to any remedies or penalties set forth in the Kansas cigarette and tobacco products act, any remedy or penalty available for a violation of K.S.A. 50-626, and amendments thereto, also may be imposed for such violation.

History: L. 2000, ch. 92, § 9; July 1.

REQUIREMENTS FOR SALE OF CIGARETTES (MSA ESCROW STATUTE)

K.S.A. Chapter 50, Article 6a

50-6a01. Findings and purpose.

- (a) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.
- (b) Cigarette smoking also presents serious financial concerns for the state. Under certain health-care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.
- (c) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.
- (d) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.
- (e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "master settlement agreement," with the state. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the state (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.
- (f) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement

could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

History: L. 1999, ch. 136, § 1; May 20.

50-6a02. Definitions.

As used in this act:

- (a) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in exhibit C to the master settlement agreement.
- (b) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term “person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.
- (c) “Allocable share” means allocable share as that term is defined in the master settlement agreement.
- (d) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists of or contains
 - (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
 - (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or
 - (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the

filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this subsection (d).

The term “cigarette” includes “roll-your-own” (i.e., any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette.”

- (e) “Master settlement agreement” means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.
- (f) “Qualified escrow fund” means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with subsection (b)(2) of K.S.A. 50-6a03.
- (g) “Released claims” means released claims as that term is defined in the master settlement agreement.
- (h) “Releasing parties” means releasing parties as that term is defined in the master settlement agreement.
- (i) “Tobacco product manufacturer” means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate):
 - (1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of

the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

- (2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or
 - (3) becomes a successor of an entity described in paragraph (1) or (2). The term “tobacco product manufacturer” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of parts (1) – (3) of subsection (i) above.
- (j) “Units sold” means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or “roll-your-own” tobacco containers) bearing the excise tax stamp of the state. The department of revenue shall promulgate such rules and regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Annotations:

1. Kansas statutes requiring NPMs to make per-cigarette deposits into escrow fund to fund future liability for tobacco-related health care costs did not violate dormant Commerce Clause, despite NPM’s national market share, where NPM escrow obligation in Kansas was determined solely on basis of payment amount set forth in escrow statute, multiplied by number of cigarettes that NPM sold in Kansas. U.S.C.A. Const. Art. 1, § 1, cl. 3; *International Tobacco Partners, Ltd. v. Kline*, 475 F.Supp.2d 1078 (2007).
2. Sherman Act did not preempt Kansas statutes requiring NPMs to make per-cigarette deposits into escrow fund to fund future liability for tobacco-related health care costs, despite NPM’s connection that statutes put NPMs at competitive disadvantage, where statute was unilateral state action, and did not authorize or enforce price fixing. Sherman Act, § 1, 15 U.S.C.A. § 1; *International Tobacco Partners, Ltd. v. Kline*, 475 F.Supp.2d 1078 (2007).

History: L. 1999, ch. 136, § 2; L. 2001, ch. 20, § 1; March 22.

50-6a03. Requirements for sale of cigarettes; penalties.

Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the effective date of this act shall do one of the following:

- (a) Become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement) and generally perform its financial obligations under the master settlement agreement; or
- (b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):
 - (A) 1999: \$.0094241 per unit sold after the effective date of this act;
 - (B) 2000: \$.0104712 per unit sold;
 - (C) for each of 2001 and 2002: \$.0136125 per unit sold;
 - (D) for each of 2003 through 2006: \$.0167539 per unit sold;
 - (E) for each of 2007 and each year thereafter: \$.0188482 per unit sold.
- (2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) of subsection (b) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:
 - (A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph
 - (i) in the order in which they were placed into escrow and
 - (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

- (B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow, based on units sold in the state of Kansas in a particular year, was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including, after final determination of all adjustments, that such manufacturer would have been required to make based on such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or
 - (C) to the extent not released from escrow under subparagraphs (A) or (B) of paragraph (2) of subsection (b), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.
- (3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the attorney general that it is in compliance with this subsection. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:
- (A) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be credited to the state general fund in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow;
 - (B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the state general fund in an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow; and

- (C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. A tobacco product manufacturer who is found in violation of this section shall pay, in addition to other amounts assessed under this section and pursuant to law, the costs and attorney's fees incurred by the state during a successful presentation under this paragraph (3).

History: L. 1999, ch. 136, § 3; L. 2001, ch. 20, § 2; L. 2005, ch. 178, § 1; July 1.

50-6a04. Tobacco product manufacturers; list by attorney general; penalties; contraband.

- (a) No person may:
 - (1) Affix, or cause to be affixed, tax indicia to a package of cigarettes, or otherwise pay the tax due upon such cigarettes, of a tobacco product manufacturer brand family not included in the directory; or
 - (2) sell, offer, possess for sale or import for personal consumption in this state, cigarettes of a tobacco product manufacturer brand family not included in the directory.
- (b)
 - (1) Not later than July 1, 2009, the attorney general shall develop a list, to be posted on the attorney general's website. Except as otherwise provided, the directory shall list all tobacco product manufacturers and brand families of such tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (c).
 - (2) The attorney general shall not include or retain in the directory any non-participating manufacturer, or non-participating manufacturer's brand family, that has failed to provide the required certification, or whose certification the attorney general determines is not in compliance with subsection (c), unless such failure or noncompliance has been cured to the satisfaction of the attorney general.
 - (3) In the case of a non-participating manufacturer, neither the tobacco

product manufacturer nor a brand family shall be included or retained in the directory if the attorney general concludes:

- (A) That an escrow payment required pursuant to K.S.A. 50-6a03, and amendments thereto, for any period for any brand family, whether or not listed by such non-participating manufacturer, has not been fully paid into a qualified escrow fund governed by an escrow agreement that has been approved by the attorney general;
 - (B) that an outstanding final judgment, including interest thereon, for a violation of K.S.A. 50-6a03, and amendments thereto, has not been fully satisfied for such tobacco product manufacturer; or
 - (C) that, within three calendar years prior to the date of submission or approval of the most recent certification, such tobacco product manufacturer has defaulted on escrow payments in any other state or jurisdiction that is a party to the master settlement agreement and the default has not been cured within 90 calendar days of such default.
- (4) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family so as to keep the directory in conformity with the requirements of this act.
 - (5) The attorney general shall promptly post in the directory and transmit by electronic mail to each stamping agent that has provided an electronic mail address, notice of removal from the directory of a tobacco product manufacturer or brand family.
 - (6) Unless otherwise provided by agreement between a stamping agent and a tobacco product manufacturer, the stamping agent shall be entitled to a refund from a tobacco product manufacturer for any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer in the possession of the stamping agent on the effective date of removal from the directory of that tobacco product manufacturer or brand family.
 - (7) Unless otherwise provided by agreement between a retail dealer or a vending machine operator and a tobacco product manufacturer, a retail dealer or a vending machine operator shall be entitled to a re-

fund from a tobacco product manufacturer for any money paid by the retail dealer or vending machine operator to a stamping agent for any cigarettes of the tobacco product manufacturer still in the possession of the retail dealer or vending machine operator on the effective date of removal from the directory of that tobacco product manufacturer or brand family.

- (c) (1) On or before April 30 of each year, every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a stamping agent or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the attorney general a certification to the attorney general certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is:
- (A) A participating manufacturer; or
 - (B) in full compliance with K.S.A. 50-6a03, and amendments thereto, including payment of all quarterly installment payments as may be required by subsection (d).
- (2) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list 30 calendar days prior to any addition to, or modification of its brand families by executing and delivering a supplemental certification to the attorney general.
- (3) A non-participating manufacturer shall include in its certification:
- (A) The number of units sold for each brand family sold in the state during the preceding calendar year;
 - (B) a list of all of its brand families sold in the state at any time during the current calendar year, including any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification;
 - (C) the identity, by name and address, of any other tobacco product manufacturer who manufactured such brand families in the preceding or current calendar year;
 - (D) a declaration that such non-participating manufacturer is registered to do business in the state, or has appointed a resident

agent for service of process, and provided notice thereof as required by section 2, and amendments thereto;

- (E) a declaration that such non-participating manufacturer:
 - (i) Has established and continues to maintain a qualified escrow fund; and
 - (ii) has executed an escrow agreement that governs the qualified escrow fund and that such escrow agreement has been reviewed and approved by the attorney general;
- (F) a declaration that such non-participating manufacturer consents to the jurisdiction of the district court of the third judicial district, Shawnee county, Kansas, for purposes of enforcing this act, or rules or regulations promulgated pursuant thereto, as required by subsection (c) of section 2, and amendments thereto;
- (G) a declaration that such non-participating manufacturer is in full compliance with subsection (b) of K.S.A. 50-6a03, and amendments thereto, and any rules or regulations promulgated pursuant to this act;
- (H)
 - (i) the name, address and telephone number of the financial institution where the non-participating manufacturer has established such qualified escrow fund required pursuant to subsection (b) of K.S.A. 50-6a03, and amendments thereto;
 - (ii) the account number of such qualified escrow fund and any sub-account number for the state of Kansas;
 - (iii) the amount such non-participating manufacturer placed in such qualified escrow fund for cigarettes sold in this state during the preceding calendar year, the date and amount of each such deposit and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and
 - (iv) the amount and date of any withdrawal or transfer of funds the non-participating manufacturer made at any time from such qualified escrow fund or from any other qualified escrow fund into which it ever made escrow pay-

ments pursuant to subsection (b) of K.S.A. 50-6a03, and amendments thereto; and

- (I) in the case of a non-participating manufacturer located outside of the United States, a declaration from each of its importers to the United States of any of its brand families to be sold in Kansas that such importer accepts joint and several liability with the non- participating manufacturer for:
 - (i) All escrow deposits due under subsection (b) of K.S.A.50-6a03, and amendments thereto;
 - (ii) all penalties assessed under subsection (b) of K.S.A. 50-6a03, and amendments thereto; and
 - (iii) payment of all costs and attorney fees pursuant to any successful action under this act against said manufacturer. Such declarations by importers of a non-participating manufacturer shall appoint for the declarant a resident agent for service of process in Kansas in accordance with section 2, and amendments thereto, and consent to jurisdiction in accordance with section 2, and amendments thereto.
- (4) A tobacco product manufacturer may not include a brand family in its certification unless:
 - (A) In the case of a participating manufacturer, said participating manufacturer affirms that the brand family shall be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year in the volume and shares determined pursuant to the master settlement agreement; or
 - (B) in the case of a non-participating manufacturer, said non-participating manufacturer affirms that the brand family shall be deemed to be its cigarettes for purposes of subsection (b) of K.S.A. 50-6a03, and amendments thereto. Nothing in this paragraph shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or subsection (b) of K.S.A. 50-6a03, and

amendments thereto.

- (5) Invoices and documentation of sales and other such information relied upon for such certification shall be maintained by tobacco product manufacturers for a period of at least five years.
- (d) The attorney general may require a tobacco product manufacturer subject to the requirements of subsection (c) to make the escrow deposits required by subsection(b) of K.S.A. 50-6a03, and amendments thereto, in quarterly installments during the calendar year in which the sales covered by such deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

50-6a05. Appeal bond staying execution on judgment against signatory to master settlement agreement; order preventing dissipation of assets.

- (a) In civil litigation under any legal theory involving a signatory or a successor to a signatory of the master settlement agreement, as defined in K.S.A. 50-6a02, and amendments thereto, the maximum appeal bond that any appellant in the litigation may be required to post to stay execution on a judgment during an appeal or discretionary review shall be set in accordance with existing law and court rules, except that in no case shall an appeal bond for any individual appellant and its successors, individually or collectively, exceed \$25,000,000, regardless of the total value of the judgment.
- (b) If it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited pursuant to this section is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent the dissipation or diversion of assets.
- (c) The amendment to this section shall apply to all cases pending or filed on and after July 1, 2005.

History: L. 2003, ch. 110, § 1; L. 2005, ch. 79, § 1; July 1.

50-6a06. Invalidity of amendment to 50-6a03, effect.

If any portion of the amendment to subsection (b)(2)(B) of K.S.A. 50-6a03 made by this act, is adjudged by any court of competent jurisdiction to be unconstitutional or invalid, then such subsection (b)(2)(B) of K.S.A. 50-6a03

shall be deemed to be repealed in its entirety. If subsection (b)(2) of K.S.A. 50-6a03 is adjudged by any court of competent jurisdiction to be unconstitutional or invalid, then this act shall be deemed repealed, and subsection (b)(2)(B) of K.S.A. 50-6a03 shall be restored as if no such amendment had been made. Neither any holding of unconstitutionality nor the repeal of subsection (b)(2)(B) of K.S.A. 50-6a03 shall affect, impair or invalidate the remainder thereof, or the application thereof to any other person or circumstance, and such remaining portions of K.S.A. 50-6a03 shall continue in full force and effect.

History: L. 2005, ch. 178, § 2; July 1.

50-6a07. Additional Definitions

- (a) “Act” means the provisions of K.S.A. 50-6a01 through 50-6a06, and amendments thereto, and the provisions of sections 1 through 15, and amendments thereto.
- (b) “Brand family” means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, “menthol,” “lights,” “kings,” and “100s,” and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors or any other indicia of product identification identical, similar to or identifiable with a previously known brand of cigarettes.
- (c) “Cigarette” has the same meaning given that term in subsection (d) of K.S.A. 50-6a02, and amendments thereto.
- (d) “Director” means the director of taxation.
- (e) “Master settlement agreement” has the same meaning given that term in subsection (e) of K.S.A. 50-6a02, and amendments thereto.
- (f) “Non-participating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.
- (g) “Participating manufacturer” has the meaning given that term in subsection (i)(1) of K.S.A. 50-6a02, and amendments thereto.
- (h) “Qualified escrow fund” has the same meaning given that term in subsection (f) of K.S.A. 50-6a02, and amendments thereto.

- (i) “Resident agent” means a domestic corporation, a domestic limited partnership, a domestic limited liability company or a domestic business trust or a foreign corporation, a foreign limited partnership, a foreign limited liability company or a foreign business trust authorized to transact business in this state, and which is generally open during regular business hours to accept service of process on behalf of a non-participating manufacturer.
- (j) “Retail dealer” has the same meaning given that term in subsection (q) of K.S.A. 79-3301, and amendments thereto.
- (k) “Stamping agent” means a person who is authorized to affix tax indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and amendments thereto, or any person who is required to pay the tax on the privilege of selling or dealing in roll-your-own tobacco products pursuant to K.S.A. 79-3371, and amendments thereto.
- (l) “Tax indicia” has the same meaning given that term in subsection (u) of K.S.A. 79-3301, and amendments thereto.
- (m) “Tobacco product manufacturer” has the same meaning given that term in subsection (i) of K.S.A. 50-6a02, and amendments thereto.
- (n) “Units sold” has the same meaning given that term in subsection (j) of K.S.A. 50-6a02, and amendments thereto.
- (o) “Vending machine operator” has the same meaning given that term in subsection (y) of K.S.A. 79-3301, and amendments thereto.

History: L. 2009, ch. 110, §1; effective July 1, 2009.

50-6a08. Non-participating manufacturers; resident agent, appointment, substitution, resignation, death; consent to jurisdiction.

- (a) Any non-participating manufacturer that has not registered with the secretary of state to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this act may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the non-

participating manufacturer. The non-participating manufacturer shall provide to the attorney general the name, address, phone number, proof of the appointment and availability of such resident agent, and such information shall be provided to the satisfaction of the attorney general.

- (b) (1) A non-participating manufacturer may substitute its resident agent for another by notifying, in writing sent via certified or registered mail, the attorney general of such termination of the authority of the current agent and providing proof to the satisfaction of the attorney general of the appointment of a new agent. Such substitution shall not become effective until 30 days after receipt of such notification by the attorney general.
- (2) A resident agent of a non-participating manufacturer that wishes to resign shall notify the attorney general, in writing via certified or registered mail, and provide to the attorney general the name and address of the successor agent. There shall be attached to the notification a statement of each affected non-participating manufacturer ratifying such change of resident agent. Upon receipt of such notification by the attorney general, the successor resident agent shall become the resident agent of such non-participating manufacturers that have ratified and approved the substitution.
- (3) (A) A resident agent of a non-participating manufacturer may resign without appointing a successor by notifying, in writing sent via certified or registered mail, the attorney general. Such resignation shall not become effective until 60 days after receipt of such notification by the attorney general. There shall be attached to the notification an affidavit by the resident agent, if an individual, or by the authorized officer, if a corporation or other business entity, attesting that at least 30 days prior to the expiration of the 60 day period, notice was sent via certified or registered mail to the designated contact of the non-participating manufacturer for which such resident agent was acting that such agent was resigning its position.
- (B) After receipt of the notice of resignation of its resident agent, the non-participating manufacturer for which such resident agent was acting shall obtain and designate a new resident agent to take the place of the resigning resident agent. If such non-participating manufacturer fails to obtain and designate a new resident agent and provide notice thereof, in writing via certified or registered mail, to the attorney general prior to the expiration of the 60-day period provided in subparagraph

(A), such non-participating manufacturer shall be removed from the directory.

- (4) If a resident agent of a non-participating manufacturer dies, the non-participating manufacturer shall have 30 days after the death of such resident agent to appoint and notify, in writing via certified or registered mail, the attorney general of the non-participating manufacturer's new resident agent. Service upon the non-participating manufacturer after the death of such agent but prior to the appointment of a new agent shall be had upon the secretary of state. Failure by the non-participating manufacturer to appoint a new resident agent, and provide proof of such appointment to the satisfaction of the attorney general prior to the expiration of the 30-day period shall result in removal from the directory.
 - (5) After the resignation of the resident agent becomes effective as provided in subparagraph (3)(A), or after the death of such resident agent as provided in paragraph (4), and if no new resident agent is obtained and notification is provided in the time and manner required in this section, then service of process against the non-participating manufacturer for which the previous resident agent had been acting shall thereafter be made upon the secretary of state in the manner prescribed by K.S.A. 60-304, and amendments thereto.
- (c) A non-participating manufacturer shall provide irrevocable written consent that actions brought under this act may be commenced against it in the district court of the third judicial district, Shawnee county, Kansas, by service of process on the appointed service of process agent designated pursuant to this section.
- (d) A resident agent may change the resident agent's address when appointed to accept service of process on behalf of a non-participating manufacturer for which such agent is a resident agent, to another address in this state by mailing a letter, via certified or registered mail, to the attorney general. The letter shall be on company letterhead and executed by the resident agent. The letter shall contain the following:
- (1) The names of all non-participating manufacturers represented by the resident agent;
 - (2) the address at which the resident agent has maintained the resident agent's office for each manufacturer;

- (3) a certification of the new address to which the resident agent's address will be changed to on a given day; and
- (4) a certification at which the resident agent will thereafter maintain the resident agent's address for each of the non-participating manufacturers recited in the letter.

Upon the filing of the letter with the attorney general and thereafter, or until further change of address, as authorized by law, the office address of the resident agent recited in the letter shall be located at the new address of the resident agent as provided in the letter.

History: L. 2009, ch. 110, §2; effective July 1, 2009.

50-6a09. Non-participating manufacturers; required to post bond, conditions; amount; elevated risk, circumstances.

- (a) Notwithstanding any other provision of law, if a newly qualified non-participating manufacturer is to be listed in the directory, or if the attorney general reasonably determines that any non-participating manufacturer who has filed a certification pursuant to subsection (c) of K.S.A. 50-6a04, and amendments thereto, poses an elevated risk for noncompliance with this act neither such non-participating manufacturer nor any of its brand families shall be included or retained in the directory unless and until such non-participating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with subsection (c)(3)(I) of K.S.A. 50-6a04, and amendments thereto, has posted a bond in accordance with this section.
- (b) The bond required by this section shall be posted by corporate surety located within the United States in an amount equal to the greater of \$50,000 or the amount of escrow the non-participating manufacturer in either its current or predecessor form was required to deposit for sales of cigarettes in this state during the previous calendar year. The bond shall be written in favor of the state of Kansas and shall be conditioned on the performance by the non-participating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with subsection (c)(3)(I) of K.S.A. 50-6a04, and amendments thereto, of all of its duties and obligations under this act during the year in which the certification is filed and the next succeeding calendar year.
- (c) A non-participating manufacturer may be deemed to pose an elevated

risk for noncompliance with this act if:

- (1) The non-participating manufacturer, or any affiliate thereof, has underpaid an escrow obligation with respect to any other state or jurisdiction that is a party to the master settlement agreement at any time within the three calendar years prior to the date of submission or approval of the most recent certification, unless:
 - (A) The non-participating manufacturer did not make the underpayment knowingly or recklessly and the non-participating manufacturer promptly cured the underpayment within 180 calendar days of notice of the underpayment; or
 - (B) the underpayment or lack of payment is the subject of a good faith dispute as documented to the satisfaction of the attorney general and the underpayment is cured within 90 calendar days of entry of a final order establishing the amount of the required escrow payment;
 - (2) any state or jurisdiction that is party to the master settlement agreement has removed the non-participating manufacturer, or its brands or brand families, or an affiliate, or such affiliate's brands or brand families, from the state's directory for noncompliance with the corresponding laws of such other state or jurisdiction at any time within three calendar years prior to the date of submission or approval of the most recent certification; or
 - (3) any state or jurisdiction that is party to the master settlement agreement has pending litigation, or an unsatisfied judgment against the non-participating manufacturer, or any affiliate thereof, for unpaid escrow obligations, or associated penalties, costs or attorney fees.
- (d) As used in this section, "newly qualified non-participating manufacturer" means a non-participating manufacturer that has not previously been listed in the directory. Such non-participating manufacturer may be required to post a bond in accordance with this section for the first five years of its listing, or longer, if they have been deemed to pose an elevated risk for noncompliance.

History: L. 2009, ch. 110, §5; effective July 1, 2009.

50-6a10. Reports of stamping agents, contents; reports on qualified escrow funds, contents; providing packaging and labeling samples.

- (a) (1) No later than 10 calendar days after the end of each calendar month, and more frequently if so directed by the attorney general or director, each stamping agent authorized to affix tax indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and amendments thereto, shall submit such information as the attorney general or director requires. No later than 20 calendar days after the end of each calendar month, and more frequently if so directed by the attorney general or director, each stamping agent who is required to pay the tax on the privilege of selling or dealing in roll-your-own tobacco products pursuant to K.S.A. 79-3371, and amendments thereto, shall submit such information as the attorney general or director requires.
- (2) Invoices and documentation of sales of all non-participating manufacturer cigarettes, and any other information relied upon in reporting to the director shall, upon request, be made available to the director. Such invoices and documents shall be maintained for a period of at least three years.
- (b) At any time, the attorney general may request from the non-participating manufacturer or the financial institution at which such manufacturer has established a qualified escrow fund for the purpose of compliance with subsection (b) of K.S.A. 50-6a03, and amendments thereto, proof of the amount of money in such fund, exclusive of interest, the amount and date of each deposit to such fund and the amount and date of each withdrawal from such fund.
- (c) In addition to the information required to be submitted pursuant to subsections (a) and (b) and subsection (c) of K.S.A. 50-6a04, and amendments thereto, the attorney general or the director may require a stamping agent or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this act.
- (c) A stamping agent or non-participating manufacturer receiving a request pursuant to subsection (c) shall provide the requested information within 30 calendar days from receipt of the request.

History: L. 2009, ch. 110, §3; effective July 1, 2009.

50-6a11. Disclosure of information, between director, attorney general, tobacco product manufacturer and stamping agent, confidentiality.

- (a) The director is authorized to disclose to the attorney general any information received under this act, as requested by the attorney general for purposes of determining compliance with or enforcing the provisions of this act. The director and attorney general shall share with each other information received under this act and the director and the attorney general may share such information with federal agencies, attorneys general of other states or directors of taxation or their equivalents of other states, for purposes of enforcement of this act, the corresponding federal laws or the corresponding laws of other states.
- (b) Except as otherwise provided, any information provided to the attorney general or director for purposes of enforcement of this act may be shared between the attorney general and the director and shall not be disclosed publicly by the attorney general or the director except when necessary to facilitate compliance with and enforcement of this act.
- (c) On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, the attorney general or the director may provide the name of any stamping agent who reports selling the tobacco product manufacturer's products.
- (d) On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, a stamping agent shall provide to the requesting tobacco product manufacturer the total number of cigarettes, by brand family, which the stamping agent reported to the attorney general or director pursuant to section 3, and amendments thereto, provided that such information provided by the stamping agent to a tobacco product manufacturer shall be limited to the brand families of that manufacturer as listed in the directory established in subsection (b) of K.S.A. 50-6a04, and amendments thereto.
- (d) Unless disclosure is authorized under this section, all information obtained by the director and disclosed to the attorney general or shared with federal agencies, attorneys general of other states or directors of taxation or their equivalents of other states for purposes of enforcement of this act, the corresponding federal laws or the corresponding laws of other states, shall be confidential. The penalties provided under K.S.A. 75-5133, and amendments thereto, shall not apply when information is lawfully disclosed pursuant to this section.

History: L. 2009, ch. 110, §4; effective July 1, 2009.

50-6a12. Wholesale dealer and distributor licensure; compliance with stamping agent requirements of the act.

No wholesale dealer, as defined in K.S.A. 79-3301, and amendments thereto, or distributor, as defined in K.S.A. 79-3301, and amendments thereto, of cigarettes shall be issued a license or granted a renewal of a license by the Kansas department of revenue unless such wholesale dealer or distributor has provided to the director reasonable assurances, in writing and under penalty of perjury, that such person will comply fully with the stamping agent requirements in this act.

History: L. 2009, ch. 110, §6; effective July 1, 2009.

50-6a13. Contraband; seizure; storage and transportation.

- (a) The following shall be deemed contraband under K.S.A. 79-3323, and amendments thereto:
 - (1) Any cigarettes that have been sold, offered for sale or possessed for sale in this state in violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto; and
 - (2) any cigarettes to which tax indicia has been affixed, was caused to be affixed or the tax paid thereupon as required by K.S.A. 79-3311 or 79-3371, and amendments thereto, in violation of subsection (a) of K.S.A.50-6a04, and amendments thereto.
- (b) Any cigarettes constituting contraband may be seized by the attorney general or attorney general's authorized agent, the director or director's authorized agent or any law enforcement officer. All such cigarettes shall be subject to seizure, with or without process or warrant, and forfeiture, as provided herein and in K.S.A. 79-3324a, and amendments thereto, and shall be destroyed and not resold. Such cigarettes shall be deemed contraband whether the violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto, is knowing or otherwise.
- (c)
 - (1) Any stamping agent that distributes cigarettes in a state other than Kansas may store in its Kansas warehouse cigarettes made contraband pursuant to this section if such stamping agent has affixed the tax indicia of such other state to each package of cigarettes or can provide evidence that it has paid the required tax thereupon.
 - (2) Cigarettes made contraband pursuant to this section, without be-

ing subject to seizure or forfeiture, may be transported in, into or through the state either:

- (A) On a commercial carrier with a proper bill of lading with an out-of-state destination;
- (B) when the tax indicia of another state is affixed to each package of cigarettes; or
- (C) on a commercial carrier with a proper bill of lading to a licensed Kansas stamping agent who affixes tax indicia to cigarettes for sale in a state other than Kansas if the packing slip accompanying the shipment indicates the shipment is for sale in a state other than Kansas and identifies the state in which the shipment is to be sold. The time of delivery of the shipments shall be indicated on the bill of lading of the common carrier when delivery is completed. The receiving Kansas stamping agent must, within 24 hours of receiving the delivery, affix or caused to be affixed to each package of cigarettes the stamp of the state in which they are to be sold.

History: L. 2009, ch. 110, §8; effective July 1, 2009.

50-6a14. Violation of act; stamping agents; licensure, revocation, suspension; civil fines.

- (a) In addition to or in lieu of any other civil or criminal remedy provided by law, the director or the director's designee, upon a finding that a stamping agent has violated subsection (a) of K.S.A. 50-6a04, and amendments thereto, or any rules or regulations adopted pursuant to this act, may revoke or suspend the license of any licensee in the manner provided by K.S.A. 79-3309, and amendments thereto. Each package of cigarettes to which tax indicia is affixed, is caused to be affixed or tax is paid thereupon, and each sale or offer to sell cigarettes in violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto, shall constitute a separate violation. The director may also impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000 upon a finding of violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto, or a violation of any rules or regulations adopted pursuant to this act. Such fine shall be imposed in the manner provided by K.S.A. 79-3391, and amendments thereto. Any fine collected pursuant to this subsection shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such

remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the cigarette and tobacco products regulation fund created pursuant to subsection (e) of K.S.A. 79-3391, and amendments thereto. The moneys credited to this fund shall be used for the purposes of enforcement of this act, or K.S.A. 79-3301 et seq., and amendments thereto.

- (b) The attorney general or the attorney general's duly authorized designee shall, when requested by the director, assist the director in a hearing to suspend or revoke a stamping agent's license for a violation of this act.

History: L. 2009, ch. 110, §7; effective July 1, 2009.

50-6a15. Injunction; stamping agent.

The attorney general, on behalf of the director, may seek an injunction to restrain a threatened or actual violation of this act by a stamping agent and to compel the stamping agent to comply with this act.

History: L. 2009, ch. 110, §9; effective July 1, 2009.

50-6a16. Criminal Penalties.

- (a) It shall be unlawful for a person to sell or distribute cigarettes, or acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in this state in violation of subsection (a) of K.S.A. 50-6a04, and amendments thereto. A violation of this subsection shall be a class B misdemeanor.
- (b) It shall be unlawful for a non-participating manufacturer, directly or indirectly, to falsely represent to any person in Kansas:
 - (1) Any information about a brand family listed on the directory;
 - (2) that it is a participating manufacturer;
 - (3) that it has made all required escrow payments; or
 - (4) that it has satisfied any other requirements imposed pursuant to this act.

A violation of this subsection is a class A nonperson misdemeanor.

- (c) The attorney general shall have concurrent authority with any county or district attorney to prosecute any violation of this section.

History: L. 2009, ch. 110, §10; effective July 1, 2009.

50-6a17. Unlawful sales; deceptive trade practice; surrender of profits.

- (a) Any violation of this act involving the sale or attempted sale of cigarettes by a stamping agent to a retail dealer, vending machine operator or consumer, or by a retail dealer or vending machine operator to a consumer, shall constitute an unlawful and deceptive trade practice as provided in K.S.A. 50-626, and amendments thereto, and shall be subject to the penalties provided for in K.S.A. 50-623 et seq., and amendments thereto, in lieu of or in addition to any penalties provided in this act.
- (b) For purposes of this section, a stamping agent shall be deemed a “supplier” for purposes of a consumer transaction, as defined in subsection (c) of K.S.A. 50-624, and amendments thereto, regardless of whether the stamping agent sells to a retail dealer or consumer.
- (c) If a court determines that a person has violated this act, the court shall order any profits, gains, gross receipts or other benefit from the violation be surrendered. Any profits, gains, gross receipts or other benefit surrendered from the violation shall be collected pursuant to this subsection and shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the cigarette and tobacco products regulation fund created pursuant to subsection (e) of K.S.A. 79-3391, and amendments thereto.
- (d) Unless otherwise expressly provided, the remedies or penalties provided by this act are cumulative to each other and to the remedies or penalties under all other laws of this state.

History: L. 2009, ch. 110, §11; effective July 1, 2009.

50-6a18. Recovery of costs of enforcement action by state.

In any action brought by the state to enforce the provisions of this act the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees. Recovery of such costs and fees

shall be remitted to the state agency or agencies who initiated and brought such action.

History: L. 2009, ch. 110, §12; effective July 1, 2009.

50-6a19. Certain reports admissible as evidence; presumption of accuracy.

In any action under K.S.A. 50-6a03, and amendments thereto, reports of the numbers of non-participating manufacturers' cigarettes submitted to the attorney general or director pursuant to subsection (a) of section 3, and amendments thereto, shall be admissible in evidence. These reports shall be presumed to accurately account for the number of cigarettes on which state taxes were paid during the time period by the stamping agent that submitted the report absent a contrary showing by the non-participating manufacturer or importer. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that such reports are incorrect or do not accurately reflect a non-participating manufacturer's sales in the state during the time period in question, and the presumption shall not apply in the event the state does so maintain.

History: L. 2009, ch. 110, §13; effective July 1, 2009.

50-6a20. Rules and regulations.

Notwithstanding subsection (j) of K.S.A. 50-6a02, and amendments thereto, the attorney general may promulgate rules and regulations necessary to effect the purposes of this act for the regulation of tobacco product manufacturers. The director may promulgate rules and regulations necessary to effect the purposes of this act for the regulation of stamping agents, retail dealers and vending machine operators.

History: L. 2009, ch. 110, §14; effective July 1, 2009.

50-6a21. Controlling law; severability.

If a court of competent jurisdiction finds that the provisions of K.S.A. 50-6a01 through 50-6a03, and amendments thereto, conflict with and cannot be reconciled with any other provisions of this act, then such provisions of K.S.A. 50-6a01 thru 50-6a03, and amendments thereto, shall control. If any provision of this act causes K.S.A. 50-6a01 through 50-6a03, and amendments thereto, to no longer constitute a qualifying or model statute as those terms are defined in the master settlement agreement, then that portion of this act shall not be valid. If any provision of this act is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this act or any part thereof.

History: L. 2009, ch. 110, §15; effective July 1, 2009.

DISPOSITION OF TOBACCO LITIGATION SETTLEMENT PROCEEDS

K.S.A. Chapter 38, Article 21

38-2101. Kansas endowment for youth fund; tobacco litigation settlement agreement proceeds, disposition; investment, management and administration of fund.

- (a) There is hereby established in the state treasury the Kansas endowment for youth fund which shall constitute a trust fund and shall be invested, managed and administered in accordance with the provisions of this act by the board of trustees of the Kansas public employees retirement system established by K.S.A. 74-4905 ["KPERs"] and amendments thereto.
- (b) All of the moneys received by the state pursuant to the tobacco litigation settlement agreements entered into by the attorney general on behalf of the state of Kansas, or pursuant to any judgment rendered, regarding the litigation against tobacco industry companies and related entities, shall be deposited in the state treasury and credited to the Kansas endowment for youth fund. All such moneys shall constitute an endowment which shall remain credited to the Kansas endowment for youth fund except as provided in this section or in K.S.A. 38-2102 and amendments thereto for transfers to the children's initiatives fund. Expenditures may be made from the Kansas endowment for youth fund for the payment of the operating expenses of the Kansas children's cabinet and the board of trustees, including the expenses of investing and managing the moneys, which are attributable to the Kansas endowment for youth fund. All moneys credited to the Kansas endowment for youth fund shall be invested to provide an ongoing source of investment earnings available for periodic transfer to the children's initiatives fund in accordance with this act. All expenditures from the Kansas endowment for youth fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the board of trustees of the Kansas public employees retirement system or by the chairperson's designee.
- (c) On the effective date of this act, the director of accounts and reports shall transfer all moneys credited to the children's health care programs fund to the Kansas endowment for youth fund and the children's health care programs fund is hereby abolished. On and after Ju-

ly 1, 1999, whenever the children's health care programs fund, or words of like effect, is referred to or designated by statute, contract or other document, such reference or designation shall be deemed to apply to the Kansas endowment for youth fund.

History: L. 1999, ch. 172, § 1; July 1.

38-2102. Children's initiatives fund; purposes; requirements for funded programs; transfers from Kansas endowment for youth fund, adjustments for increased or reduced tobacco litigation settlement agreement proceeds.

- (a) There is hereby established in the state treasury the children's initiatives fund which shall be administered in accordance with this section and the provisions of appropriation acts.
- (b) All moneys credited to the children's initiatives fund shall be used for the purposes of providing additional funding for programs, projects, improvements, services and other purposes directly or indirectly beneficial to the physical and mental health, welfare, safety and overall well-being of children in Kansas as provided by appropriation or other acts of the legislature. In allocating or appropriating moneys in the children's initiatives fund, the legislature shall emphasize programs and services that are data-driven and outcomes-based and may emphasize programs and services that are generally directed toward improving the lives of children and youth by combating community-identified risk factors associated with children and youth becoming involved in tobacco, alcohol, drugs or juvenile delinquency. Programs funded must have a clearly articulated objective to be achieved with any funds received. As a condition precedent to funding, every program must demonstrate that the program's design is supported by credible research, that the program as implemented will constitute best practices in the field, that data is available to benchmark the program's desired outcomes and that an evaluation and assessment component is part of the program design and that such evaluation is capable of determining program performance, needed program modifications to enhance performance, ways in which the program could be modified for transfer to other venues, and when performance no longer justifies funding. Community-based programs must demonstrate the availability of sufficient community leadership and the capacity to appropriately implement and administer the program that is funded. Programs which require community mobilization to successfully achieve program objectives must demonstrate a specific strategy

to obtain the requisite levels of community mobilization. Moneys allocated or appropriated from the children's initiatives fund shall not be used to replace or substitute for moneys appropriated from the state general fund in the immediately preceding fiscal year.

- (c) All expenditures from the children's initiatives fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved in the manner prescribed by law.
- (d) (1) On July 1, 2000, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer, in the following order of priority,
 - (A) first, \$70,740,000 from the Kansas endowment for youth fund to the state general fund and
 - (B) second, \$30,000,000 from the Kansas endowment for youth fund to the children's initiatives fund.
- (2) On July 1, 2001, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$40,000,000 from the Kansas endowment for youth fund to the children's initiatives fund and shall transfer \$10,000,000 from the Kansas endowment for youth fund to the state general fund.
- (3) On July 1, 2002, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$45,000,000 from the Kansas endowment for youth fund to the children's initiatives fund.
- (4) On July 1 of each fiscal year thereafter, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer from the Kansas endowment for youth fund to the children's initiatives fund the amount equal to 102.5% of the amount transferred from the Kansas endowment for youth fund to the children's initiatives fund pursuant to this section during the immediately preceding fiscal year.
- (5) If the amounts to be received during any fiscal year under the tobacco litigation settlement agreements entered into by the attorney general on behalf of the state of Kansas, or pursuant to any judgment rendered, regarding the litigation against tobacco industry companies and related entities, are reduced or increased

from the amount that was anticipated to be received for such fiscal year, as of the time the settlement agreements were entered into, then the legislature may adjust the amount otherwise provided by this subsection to be transferred from the Kansas endowment for youth fund to the children's initiatives fund for such fiscal year by including provisions in appropriation acts for such fiscal year that proportionally reduce or increase, as appropriate, the amount otherwise provided by this subsection to be transferred from the Kansas endowment for youth fund to the children's initiatives fund for such fiscal year. In addition, for purposes of circumstances related to the investment of moneys in the Kansas endowment for youth fund or other circumstances or matters deemed sufficient by the legislature, the legislature may adjust the amount otherwise provided by this subsection to be transferred from the Kansas endowment for youth fund to the children's initiatives fund for any fiscal year by including provisions in appropriation acts for such fiscal year that proportionally reduce or increase, as appropriate, the amount otherwise provided by this subsection to be transferred from the Kansas endowment for youth fund to the children's initiatives fund for such fiscal year.

- (e) It is the intent of the legislature that, except as provided by this section, no amounts shall be transferred from the Kansas endowment for youth fund to the children's initiatives fund or to any other fund during any state fiscal year.
- (f) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the Kansas endowment for youth fund interest earnings based on
 - (1) the average daily balance of moneys in the children's initiatives fund for the preceding month and
 - (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

History: L. 1999, ch. 172, § 2; July 1.

38-2103. Kansas children's cabinet, duties concerning children's initiatives fund; reviews, assessments and evaluations of uses of moneys; audits; children's initiatives accountability fund, interest.

- (a) The Kansas children's cabinet established by K.S.A. 38-1901 and amendments thereto shall advise the governor and the legislature regarding the uses of the moneys credited to the children's initiatives fund.
- (b) The Kansas children's cabinet shall review, assess and evaluate all uses of the moneys in the children's initiatives fund. The Kansas children's cabinet shall study and shall initiate studies, assessments and evaluations, by contract or otherwise, through institutions of higher education and other appropriate research entities to identify best practices and to measure and otherwise determine the efficiency and efficacy of practices that are utilized in programs, projects, improvements, services and other purposes for which moneys are allocated or appropriated from the children's initiatives fund. The costs of such reviews, assessments and evaluations shall be paid from the children's initiatives accountability fund.
- (c) There shall be conducted performance audits and other audit work by the legislative post auditor upon request by the Kansas children's cabinet and as directed by the legislative post audit committee in accordance with the provisions of the legislative post audit act. The purpose of such performance audits and other audit work shall be to provide interested parties with the program evaluation and research needed to make informed decisions for the uses of moneys credited to the children's initiatives fund. The auditor to conduct such performance audit or other audit work shall be specified in accordance with K.S.A. 46-1122 and amendments thereto and if the legislative post audit committee specifies under such statute that a firm, as defined by K.S.A. 46-1112 and amendments thereto, is to perform all or part of the audit work of such audit, such firm shall be selected and shall perform such audit work as provided in K.S.A. 46-1123 and amendments thereto and K.S.A. 46-1125 through 46-1127 and amendments thereto. The audit work required pursuant to this subsection shall be conducted in accordance with generally accepted governmental auditing standards. The post auditor shall compute the reasonably anticipated cost of the audit work performed by a firm for such performance audit or other audit work pursuant to this subsection, subject to review and approval by the contract audit committee established by K.S.A. 46-1120 and amendments thereto, and the Kansas children's cabinet shall pay such cost from the children's initiatives ac-

countability fund. If all or part of the audit work for such performance audit or other audit work is performed by the division of post audit and the division of post audit incurs costs in addition to those attributable to the operations of the division of post audit in the performance of other duties and responsibilities, the post auditor shall charge the Kansas children's cabinet for such additional costs and the Kansas children's cabinet shall pay such charges from the children's initiatives accountability fund. The payment of any such costs and any such charges shall be a transaction between the division of post audit and the Kansas children's cabinet and such transaction shall be settled in accordance with the provisions of K.S.A. 75-5516 and amendments thereto. All moneys received by the division of post audit for such costs and charges shall be credited to the audit services fund.

- (d) There is hereby established in the state treasury the children's initiatives accountability fund which shall be administered in accordance with this section and the provisions of appropriation acts. The governor shall recommend and the legislature shall provide for moneys to be credited annually to the children's initiatives accountability fund by transfers or other provisions of appropriation acts.
- (e) All moneys credited to the children's initiatives accountability fund shall be used for the purposes of providing funding for assessment and evaluation of programs, projects, improvements, services and other purposes for which moneys are allocated or appropriated from the children's initiatives fund. All expenditures from the children's initiatives accountability fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved in the manner prescribed by law.
- (f) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the Kansas endowment for youth fund interest earnings based on
 - (1) the average daily balance of moneys in the children's initiatives accountability fund for the preceding month and
 - (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

History: L. 1999, ch. 172, § 3; July 1.

38-2104. Management and investment of Kansas endowment for youth fund and family and children endowment account of the family and children investment fund; investment standards and objectives; contracts with investment advisors and other consultants, requirements.

- (a) The board of trustees is responsible for the management and investment of the fund and shall discharge the board's duties with respect to the fund solely in the interests of the beneficiaries of the fund for the exclusive purpose of providing investment revenue for the purposes for which the moneys may be used and defraying reasonable expenses of administering the fund and shall invest and reinvest moneys in the fund and acquire, retain, manage, including the exercise of any voting rights and disposal of investments of the fund within the limitations and according to the powers, duties and purposes as prescribed by this section.
- (b) Moneys in the fund shall be invested and reinvested to achieve the investment objective which is preservation of the fund to provide benefits to the beneficiaries of the fund and accordingly providing that the moneys are as productive as possible, subject to the standards set forth in this act. No moneys in the fund shall be invested or reinvested if the sole or primary investment objective is for economic development or social purposes or objectives.
- (c) In investing and reinvesting moneys in the fund and in acquiring, retaining, managing and disposing of investments of the fund, the board of trustees shall exercise the judgment, care, skill, prudence and diligence under the circumstances then prevailing, which persons of prudence, discretion and intelligence acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and not in regard to speculation but in regard to the permanent disposition of similar funds, considering the probable income as well as the probable safety of their capital.
- (d) In the discharge of such management and investment responsibilities the board of trustees may contract for the services of one or more professional investment advisors or other consultants in the management and investment of moneys in the fund and otherwise in the performance of the duties of the board of trustees under this act.

- (e) The board of trustees shall require that each person contracted with under subsection (d) to provide services shall obtain commercial insurance which provides for errors and omissions coverage for such person in an amount to be specified by the board of trustees. The amount of such coverage specified by the board of trustees shall be at least the greater of \$500,000 or 1% of the funds entrusted to such person up to a maximum of \$10,000,000. The board of trustees shall require a person contracted with under subsection (d) to provide services give a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the board of trustees, with corporate surety authorized to do business in this state. Such persons contracted with the board of trustees pursuant to subsection (d) and any persons contracted with such persons to perform the functions specified in subsection (b) shall be deemed to be fiduciary agents of the board of trustees in the performance of contractual obligations.
- (f) (1) Subject to the objective set forth in subsection (b) and the standards set forth in subsection (c), the board of trustees shall formulate and adopt policies and objectives for the investment and reinvestment of moneys in the fund and the acquisition, retention, management and disposition of investments of the fund. Such policies and objectives shall be in writing and shall include:
- (A) Specific asset allocation standards and objectives;
 - (B) establishment of criteria for evaluating the risk versus the potential return on a particular investment; and
 - (C) a requirement that all investment advisors, and any managers or others with similar duties and responsibilities as investment advisors, shall immediately report all instances of default on investments to the board of trustees and provide such board of trustees with recommendations and options, including, but not limited to, curing the default or withdrawal from the investment.
- (2) The board of trustees shall review such policies and objectives, make changes considered necessary or desirable and readopt such policies and objectives on an annual basis.
- (g) (1) Except as provided in subsection (d) and this subsection, the custody of money and securities of the fund shall remain in the custody of the state treasurer, except that the board of trustees

may arrange for the custody of such money and securities as it considers advisable with one or more member banks or trust companies of the federal reserve system or with one or more banks in the state of Kansas, or both, to be held in safekeeping by the banks or trust companies for the collection of the principal and interest or other income or of the proceeds of sale.

- (2) The state treasurer and the board of trustees shall collect the principal and interest or other income of investments or the proceeds of sale of securities in the custody of the state treasurer and shall pay such moneys when so collected into the state treasury to the credit of the fund.
 - (3) The principal and interest or other income or the proceeds of sale of securities as provided in paragraph (1) of this subsection shall be reported to the state treasurer and the board of trustees and credited to the fund.
- (h) All interest or other income of the investments of the moneys in the fund, after payment of any management fees, shall be considered income of the fund and shall be deposited in the state treasury to the credit of the fund.
- (i) As used in this section:
- (1) “Board of trustees” means the board of trustees of the Kansas public employees retirement system established by K.S.A. 74-4905 and amendments thereto.
 - (2) “Fiduciary” means a person who, with respect to the fund, is a person who:
 - (A) Exercises any discretionary authority with respect to administration of the fund;
 - (B) exercises any authority to invest or manage assets of the fund or has any authority or responsibility to do so;
 - (C) provides investment advice for a fee or other direct or indirect compensation with respect to the assets of the fund or has any authority or responsibility to do so;
 - (D) provides actuarial, accounting, auditing, consulting, legal or other professional services for a fee or other direct or indi-

rect compensation with respect to the fund or has any authority or responsibility to do so; or

- (E) is a member of the board of trustees or of the staff of the board of trustees.
- (3) "Fund" means the Kansas endowment for youth fund and the family and the children endowment account of the family and children investment fund.
- (4) With respect to the investment of moneys in the Kansas endowment for youth fund, "purposes for which the moneys may be used" means the purposes for which the moneys in the children's initiatives fund may be used, as provided in K.S.A. 38-2102 and amendments thereto, and "beneficiaries of the fund" means the beneficiaries of the children's initiatives fund, as provided by K.S.A. 38-2102 and amendments thereto.
- (5) With respect to the investment of moneys in the family and children endowment account of the family and children investment fund, "purposes for which the moneys may be used" means the purposes for which the moneys in the family and children trust account of the family and children investment fund may be used, as provided in subsection (c) of K.S.A. 38-1808, and amendments thereto, and "beneficiaries of the fund" means the beneficiaries of the family and children trust account of the family and children investment fund may be used, as provided in subsection (c) of K.S.A. 38-1808, and amendments thereto.

History: L. 1999, ch. 172, § 4; July 1.

38-2105. Reports to governor and legislature, actual and estimated receipts and investment earnings to Kansas endowment for youth fund.

The board of trustees of the Kansas public employees retirement system shall report to the governor and to the legislature on the moneys credited to the Kansas endowment for youth fund and investment earnings thereon at least once each calendar quarter and on a monthly basis upon request of the governor, the president of the senate or the speaker of the house of representatives. In addition, the board of trustees shall submit a report on or before October 1 of each year to the director of the budget, the director of the legislative research department and the chairpersons of the senate committee on ways and means and the house of representatives committee on appropriations detailing the board's estimates as to the amounts of moneys that would be available for

transfer from the Kansas endowment for youth fund to the children's initiatives fund during the ensuing fiscal year. The director of the budget and the governor shall use the information in such report in the preparation of the governor's budget report under K.S.A. 75-3721 and amendments thereto.

History: L. 1999, ch. 172, § 5; July 1.

KANSAS FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT

K.S.A. Chapter 31, Article 6

31-601. Fire safety standard and firefighter protection act; citation; severability.

- (a) This act shall be known and may be cited as the fire safety standard and firefighter protection act.
- (b) If any provision of the fire safety standard and firefighter protection act is held to be unconstitutional, such holding shall not affect the validity of any remaining portion of the act.

31-602. Same; definitions.

As used in this act:

- (a) "Agent" means any person authorized by the director to purchase and affix stamps on packages of cigarettes.
- (b) "Cigarette" means any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and irrespective of tobacco or substance being flavored, adulterated or mixed with any other ingredient, if the wrapper is in greater part made of any material except tobacco.
- (c) "Director," "retail dealer," "vending machine operator," "sale" and "wholesale dealer" shall have the meanings ascribed thereto in K.S.A. 79- 3301, and amendments thereto.
- (d) "Manufacturer" means:
 - (1) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer;
 - (2) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States;
or

- (3) any entity that becomes a successor of an entity described in paragraph (1) or (2).
- (e) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and non-systematic methodological errors and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values required by K.S.A. 31-603, and amendments thereto, for all test trials used to certify cigarettes in accordance with this act.
- (f) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.
- (g) "Sell" means to sell, or to offer or agree to do the same.

31-603. Same; cigarette ignition strength; testing; performance standards; certification prior to sale; reports; duties of state fire marshal; exceptions.

- (a) Except as provided in subsection (h), no cigarettes may be sold or offered for sale in this state or offered for sale or sold to any person located in this state unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the state fire marshal in accordance with K.S.A. 31-604, and amendments thereto, and the cigarettes have been marked in accordance with K.S.A. 31-605, and amendments thereto.
- (b)
 - (1) Testing of cigarettes shall be conducted in accordance with the American society of testing and materials (ASTM) standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."
 - (2) Testing shall be conducted on 10 layers of filter paper.
 - (3) No more than 25% of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.
 - (4) The performance standard required by this section shall be applied only to a complete test trial.

- (5) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization (ISO) or other comparable accreditation standard required by the state fire marshal.
 - (6) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.
 - (7) This section does not require additional testing if cigarettes are tested in a manner which is consistent with this act for any other purpose.
 - (8) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.
- (c) Each cigarette listed in a certification submitted pursuant to K.S.A. 31-604, and amendments thereto, that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.
- (d) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in subsection (b) shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (b)(3) of this section, the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to K.S.A. 31-604, and amendments thereto. If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the

same as those contained in this act, and the state fire marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the state fire marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under this act. All other applicable requirements of this section shall apply to the manufacturer.

- (e) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request shall be subject to a civil penalty not to exceed \$10,000 for each day after the sixtieth day that the manufacturer does not make such copies available.
- (f) The state fire marshal may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM standard E2187-04 and the performance standard in subsection (b)(3) of this section.
- (g) The state fire marshal shall review the effectiveness of this section and report every three years to the legislature the state fire marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this act. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.
- (h) The requirements of subsection (a) shall not prohibit: (1) A wholesale dealer, retail dealer or vending machine operator from selling their existing inventory of cigarettes on or after July 1, 2009, if the wholesale dealer, retail dealer or vending machine operator can establish that state tax stamps were affixed to such cigarettes prior to July 1, 2009, and if the wholesale dealer, retail dealer or vending machine

operator can establish that the inventory was purchased prior to July 1, 2009, in comparable quantity to the inventory purchased during the same period of time in the prior year. In no event may a wholesale dealer, retail dealer or vending machine operator sell or offer for sale a cigarette in this state that does not comply with this act after July 1, 2010; or (2) the sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

- (i) The provisions of this section shall take effect and be in force from and after July 1, 2009.

31-604. Same; manufacturer's certification of compliance with performance standards; recertification; fee; fire safety standard and firefighter protection act enforcement fund; administration; directory of certified cigarettes; duties of attorney general.

Each manufacturer shall submit to the state fire marshal a written certification attesting that: (1) Each cigarette listed in the certification has been tested in accordance with K.S.A. 31-603, and amendments thereto; and (2) each cigarette listed in the certification meets the performance standard set forth in K.S.A. 31-603, and amendments thereto.

- (a) Each cigarette listed in the certification shall be described with the following information:
 - (1) Brand or trade name on the package;
 - (2) style, such as lights, ultra lights, or low tar;
 - (3) length in millimeters;
 - (4) circumference in millimeters;
 - (5) flavor, such as menthol, chocolate or other, if applicable;
 - (6) filter or non-filter;
 - (7) package description, such as soft pack, box or other;

- (8) the name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
 - (9) the date that the testing was conducted.
- (b) For the purpose of compliance with this section, the state fire marshal shall accept completed certifications and make the completed certifications available to the attorney general.
- (c) Each cigarette certified under this section shall be recertified every three years. Initial cigarette certifications may be made at any time. Subsequent certifications shall be made before July 31 of the subsequent certification year.
- (d) Every manufacturer shall certify cigarettes within the state before the manufacturer, retail dealer, wholesale dealer or vending machine operator legally may offer a manufacturer's cigarette for sale within the state. In order to obtain and maintain a listing on the directory created under subsection (i), a manufacturer shall consent to the jurisdiction of the Kansas courts for the purpose of enforcement of this act and shall appoint a registered agent for service of process in this state and shall identify the agent to the secretary of state.
- (e) For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a fee of \$250. The state fire marshal may adjust such fee annually, by rule and regulation, to ensure that such fee defrays the actual cost of processing, testing enforcement, administration and oversight activities required by law.
- (f) There is hereby established in the state treasury a separate, nonlapsing fund to be known as the fire safety standard and firefighter protection act enforcement fund which shall be administered by the state fire marshal.
- (g) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this act, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in K.S.A. 31-603, and amendments thereto, and maintains records of that retesting as required by K.S.A. 31-603, and amendments thereto. Any altered cigarette which does not meet the performance standard set forth in K.S.A. 31-603, and amendments thereto, may not be sold in this state.

- (h) Not later than July 31, 2009, the attorney general shall develop a directory of all certified cigarettes under this act. The directory shall be updated as necessary and shall be posted on the attorney general's website. Unless a wholesale dealer, retail dealer or vending machine operator has actual knowledge that cigarettes do not comply with this act, the wholesale dealer, retail dealer or vending machine operator shall consider any cigarette listed on the directory posted on the website to be lawful to sell in this state for the purpose of compliance with this act by such wholesale dealer, retail dealer or vending machine operator.
- (i) The provisions of this section shall take effect and be in force from and after July 1, 2009.

31-605. Same; cigarette markings.

- (a) Cigarettes that are certified by a manufacturer in accordance with K.S.A. 31-604, and amendments thereto, shall be marked with the letters "FSC", which signifies fire standards compliant, appearing in eight-point type or larger and permanently printed, stamped, engraved or embossed on the package at or near the UPC code. A manufacturer certifying cigarettes in accordance with K.S.A. 31-604, and amendments thereto, shall provide a copy of the certifications to any wholesale dealer and its agents to which the manufacturer sells cigarettes. Any wholesale dealer, agent, retail dealer or vending machine operator shall permit the state fire marshal, the director, the attorney general, and employees thereof, to inspect cigarette packaging marked in accordance with this section.
- (b) The provisions of this section shall take effect and be in force from and after July 1, 2009.

31-606. Same; sales in violation of act; fines, forfeiture, injunctive relief, costs.

- (a) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, that do not meet the performance standard of K.S.A. 31-603, and amendments thereto, are not listed on the directory as required by K.S.A. 31-604, and amendments thereto, or are not marked in accordance with K.S.A. 31-605, and amendments thereto, shall be subject to a civil penalty not to exceed \$500 for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty

against any such person or entity exceed \$100,000 during any thirty-day period.

- (b) A retail dealer or vending machine operator who knowingly sells or offers to sell cigarettes that are not listed on the directory as required by K.S.A. 31-604, and amendments thereto, or are not marked in accordance with K.S.A. 31-605, and amendments thereto, shall be subject to a civil penalty not to exceed \$500 for each pack of such cigarettes sold or offered for sale, provided that in no case shall the penalty against any retail dealer or vending machine operator exceed \$25,000 for sales or offers to sell during any thirty-day period.
- (c) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to K.S.A. 31-604, and amendments thereto, shall be subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.
- (d) Any person violating any other provision in this act shall be subject to a civil penalty for a first offense not to exceed \$1,000, and for a subsequent offense subject to a civil penalty not to exceed \$5,000 for each such violation.
- (e) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by K.S.A. 31-603, and amendments thereto, shall be considered contraband and subject to forfeiture. Cigarettes forfeited pursuant to this section shall be destroyed. Prior to the destruction of any cigarette forfeited pursuant to this subsection, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.
- (f) In addition to any other remedy provided by law, the state fire marshal or attorney general may file an action in the district court for a violation of this act, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this act, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this act or of rules or regulations adopted under this act constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief.
- (g) Whenever any law enforcement personnel or duly authorized representative of the state fire marshal, director, or attorney general shall

discover any cigarettes that have not been marked in the manner required by K.S.A. 31- 605, and amendments thereto, or for which a certification has not been filed as required by K.S.A. 31-604, and amendments thereto, such personnel are hereby authorized and empowered to seize and take possession of such cigarettes with or without process or warrant. Such cigarettes shall be turned over to the division of taxation, and shall be subject to forfeiture proceedings. Cigarettes seized pursuant to this section shall be destroyed. Prior to the destruction of any cigarette seized pursuant to this subsection, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

- (h) Any action taken pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.
- (i) The provisions of this section shall take effect and be in force from and after July 1, 2009.

31-607. Same; powers and duties of director of taxation.

- (a) The director, in the regular course of conducting inspections of wholesale dealers, agents, retail dealers or vending machine operators, as authorized under the Kansas cigarette and tobacco products act or other state statutes, rules, or regulations, may inspect such cigarettes to determine if the cigarettes are marked as required by K.S.A. 31-605, and amendments thereto. If the cigarettes are not marked as required, the director may seize such contraband with or without process or warrant and shall notify the state fire marshal.
- (b) The provisions of this section shall take effect and be in force from and after July 1, 2009.

31-608. Same; enforcement of act; examination of records.

- (a) To enforce the provisions of this act, the attorney general, the director and the state fire marshal, their duly authorized representatives and other law enforcement personnel are hereby authorized to examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are placed, stored or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control or occupancy of any premises where cigarettes are placed, stored or offered for sale, is hereby directed and required to give the attorney general, the director

and the state fire marshal, their duly authorized representatives and other law enforcement personnel the means, facilities and opportunity for the examinations authorized by this section.

- (b) The provisions of this section shall take effect and be in force from and after July 1, 2009.

31-609. Same; cigarette fire safety standard and fire fighter protection act fund; administration; use of moneys in fund.

- (a) There is hereby established in the state treasury a separate, nonlapsing fund to be known as the cigarette fire safety standard and fire-fighter protection act fund which shall be administered by the state fire marshal. The fund shall consist of all moneys recovered as penalties under K.S.A. 31-606, and amendments thereto. The moneys shall be deposited to the credit of the fund and in addition to any other money made available for such purpose, shall be made available to the state entity responsible for administering the provisions of this act to support fire safety and prevention programs.
- (b) The provisions of this section shall take effect and be in force from and after July 1, 2009.

31-610. Same; sales outside United States.

- (a) Nothing in this act shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of K.S.A. 31-603, and amendments thereto, if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state.
- (b) The provisions of this section shall take effect and be in force from and after July 1, 2009.

31-611. Same; rules and regulations.

Prior to July 1, 2009, the state fire marshal may promulgate rules and regulations necessary to effectuate the purposes of this act. Such rules and regulations shall not become effective until July 1, 2009. The state fire marshal, director and attorney general may take any other action deemed necessary to prepare for the implementation and enforcement of the fire safety standard and firefighter protection act.

31-612. Same; preemption of city and county authority.

Notwithstanding any other provision of law, a city or county shall not enact nor enforce any ordinance, resolution or other regulation conflicting with, or preempted by, any provision of this act or with any policy of this state expressed by this act, whether that policy be expressed by inclusion of a provision in this act or by exclusion of that subject from this act.

31-613. Same; federal preemption.

The provisions of the fire safety and firefighter protection act shall become null and void if a federal reduced cigarette ignition propensity standard that preempts such act is adopted and becomes effective.

History: L. 2008, ch. 135, § 13; July 1.

KANSAS CIGARETTE TAX REGULATIONS

K.A.R. Agency 92, Article 5

92-5-1. Distinguished; wholesaler-retailer licenses.

A wholesale cigarette dealer operating a licensed retail place of business or vending machine shall use a distinctive title for the retail or vending machine operation and shall keep all records of the retail business separate from the records of the wholesale cigarette business.

Authority: K.S.A. 1967 Supp. 79-3326; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968.

92-5-2. Vending machines; owner display; record.

- (a) All owners and operators of cigarette vending machines are hereby required to have the name and address of the owner displayed on each vending machine in operation within the state.
- (b) Each owner and operator of cigarette vending machines shall keep a record showing the business location of each vending machine being currently serviced, which shall be available to the director of revenue or his agents at any reasonable time.
- (c) The vending machine permit shall be securely and visibly attached to the vending machine. Visibly attached means on the face of the machine, and that it can be seen without moving the machine.

Authority: K.S.A. 1967 Supp. 79-3303, 79-3326; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968.

92-5-3. Manufacturer's salespersons.

Manufacturer's salespersons shall not have in their possession packages of cigarettes other than sample packages, without the required Kansas tax indicia applied thereto. The salesperson's license shall at all times be posted in the vehicle used by the salesperson in the conduct of the salesperson's business. Cigarettes sold by a manufacturer's salesperson to a retail dealer shall be evidenced by an invoice stating the retail dealer's name, address and retail license number.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3304, 79-3313; effec-

tive Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended May 1, 1985.

92-5-5. Interstate shipment, exemptions; transporting unstamped cigarettes.

- (a) (1) All claims for tax exemption on any shipment of unstamped, cartoned cigarettes consigned in interstate commerce for export from the state of Kansas shall be presented to the director of taxation on the wholesale cigarette dealer's monthly report. The report shall be on a form and in the manner prescribed by the director of taxation.
- (2) All invoices or delivery tickets supporting the claims shall be preserved by the wholesale cigarette dealer for three years. Each invoice or delivery ticket shall detail the following information:
 - (A) The name and address of the consignee;
 - (B) the date of sale;
 - (C) the quantity of cigarettes sold; and
 - (D) if the invoice or delivery ticket includes other merchandise, a separate list of the cigarettes sold by brand at the top or bottom of the invoice or delivery ticket. The invoices or delivery tickets filed for preservation shall be signed by the consignee to whom delivery was made or by the common carrier making the delivery.
- (b) If sealed cartons of cigarettes have not been stamped and are not detailed on invoices or delivery tickets showing them to be consigned to out-of-state dealers or authorized persons on a government military post, each wholesale cigarette dealer shall furnish the driver of the vehicle transporting these sealed cartons of cigarettes with a memorandum detailing the quantity of unstamped, cartoned, and not consigned cigarettes to be transported to the border of the state of Kansas or government military post.

The driver of the vehicle transporting the cartons of cigarettes that have not been stamped or consigned shall have in the driver's possession at all times the quantity of cigarettes outlined in the memorandum or receipted invoices or delivery tickets showing to whom the cigarettes were sold, delivered, or given away, so that the total number of cartons of cigarettes shown by the signed invoices

and delivery tickets and the number of cartons of cigarettes on hand balance with the memorandum described. All claims for the tax exemption on any sales or deliveries made in this manner shall be procured as outlined in subsection (a) of this regulation.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3311, as amended by L. 2001, Ch. 5, § 450 and K.S.A. 2000 Supp. 79-3316; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.

92-5-6. Wholesaler; receiving stamped cigarettes.

A wholesale cigarette dealer who receives cigarettes already stamped from another wholesale cigarette dealer shall be required to report to the director of taxation, each month, all of these receipts. All cigarettes sold or delivered by one wholesale cigarette dealer to another licensed wholesale cigarette dealer in the state of Kansas shall be stamped by the wholesale cigarette dealer making the sale or delivery.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3311, as amended by L. 2001, Ch. 5, § 450 and K.S.A. 2000 Supp. 79-3316; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.

92-5-7. Wholesaler; separate locations, bond.

Each wholesale cigarette dealer having more than one wholesale place of business in the state of Kansas shall be required to file an application and pay the required fee for each place of business owned or operated by that dealer. Each place of business licensed shall be covered by a surety bond furnished by the wholesale dealer as provided in K.S.A. 79-3304, and amendments thereto. If the wholesale cigarette dealer is unable to obtain a surety bond, a cash bond or escrow account agreement may be accepted by the director. A cash bond or escrow account agreement shall be submitted in writing with a copy of the surety bond rejection letter.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3304; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.

92-5-8. Wholesaler; trucker, salesperson.

- (a) Each licensed wholesale cigarette dealer who employs truckers or salespeople, either salaried or working on a commission, to both sell and

distribute cigarettes to licensed retail dealers shall obtain an identification card for each trucker and salesperson. Application forms for the identification cards shall be furnished upon request by the director of taxation.

- (b) All sales of cigarettes made by any trucker or salesperson shall be written up on sales books furnished by the wholesale cigarette dealer, detailing the name of the wholesale dealer. Copies of all sales tickets shall be kept for a period of three years in the files of the wholesale dealer.
- (c) The identification card furnished shall be kept posted at all times in the conveyance of each trucker or salesperson. The identification card shall be valid during the term of the wholesale cigarette dealer's license, or until the license is revoked, suspended or surrendered.
- (d) If a trucker or salesperson is no longer employed by the wholesale cigarette dealer, the wholesale cigarette dealer shall notify the director and return the identification card furnished to the trucker or salesperson.
- (e) Any individual who obtains cigarettes from a wholesale cigarette dealer for sale and distribution to retail cigarette dealers and who is not an employee of the wholesale cigarette dealer shall be required to be licensed as a wholesale cigarette dealer.

Authority: K.S.A. 79-3326; implementing K.S.A. 2000 Supp. 79-3316; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.

92-5-9. Redemption of unused stamps.

The cost of any unused cigarette stamps that any wholesale cigarette dealer presents for refund may be refunded by the director of taxation. The unused cigarette stamps shall be presented for refund within six months from the date of the purchase from the director of taxation. The stamps shall be returned to the director of taxation, and a refund may be issued for the face value less 2.65 percent.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3312; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended, E-71-21, July 1, 1971; amended Jan. 1, 1972; amended March 22, 2002.

92-5-10. Cigarettes unfit for sale.

If cigarettes on which the Kansas tax has been paid, as evidenced by cigarette tax stamps or tax indicia, have become unfit for use or consumption, unsalable, or damaged or destroyed by fire, flood, or similar causes, the value of the tax paid less 2.65 percent may be refunded by the director of taxation, upon receipt of satisfactory proof, to the wholesaler who has paid the tax. The director of taxation shall be notified before the destruction of damaged or partially damaged cigarettes, and the merchandise shall be kept available for inspection by a representative of the director of taxation's office.

Authority: Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3312; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended, E-71-21, July 1, 1971; amended Jan. 1, 1972; amended March 22, 2002.

92-5-12. Bond; cancellations.

The surety on a bond furnished by a wholesale cigarette dealer as required by the cigarette tax law shall be released and discharged from all liability to the state accruing on the bond after the expiration of 60 days from the date upon which the surety has submitted to the director of taxation a written request to be released and discharged. However, this provision shall not operate to relieve, release, or discharge the surety from any liability that has already accrued or that will accrue before the expiration of the 60-day period.

Prompt notification of the wholesale cigarette dealer who furnished the bond shall be made by the director of taxation upon receiving such a request. If the dealer fails to file with the director of taxation, on or before the expiration of the 60-day period, a new bond fully complying with the provisions of the cigarette tax law, the license or licenses of the dealer shall be revoked and canceled by the director of taxation in accordance with K.S.A. 79-3309, and amendments thereto. The dealer shall be notified by the director of taxation.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3304, 79-3309, 79-3311, as amended by L. 2001, Ch. 5, § 450; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.

92-5-13. Credits.

In order to purchase stamps on credit, the wholesale dealer shall forward to the division of taxation a completed stamp purchase order form for the number of stamps that the dealer wishes to purchase as a credit transaction. The purchase

order shall be charged to the wholesaler's account on the date the purchase order is approved.

Presentation of company or personal checks that have not been certified shall not be considered payment of credit purchases until the company or personal checks have been presented to and accepted by the bank for payment.

If a delinquency of payment for stamps occurs, the wholesaler's credit privileges shall be discontinued for a period of time prescribed by the director of taxation. Notice of the delinquency shall be forwarded to the surety.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3311, as amended by L. 2001, Ch. 5, § 450; effective Jan. 1, 1966; amended, E-67-11, July 1, 1967; amended Jan. 1, 1968; amended March 22, 2002.

92-5-14. Vending machines; cigarette sales only.

A cigarette vending machine may be used for cigarette sales only. No candy or any other items may be sold from a cigarette vending machine.

Authority: K.S.A. 79-3303, 79-3326; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979.

K.A.R. Agency 92, Article 12

92-12-65. Powers of the director of taxation.

The director or his or her delegate shall be permitted to examine any books, papers, records, or memoranda of a taxpayer for the purpose of determining the correctness of information contained in, or the existence of additional information that should be contained in, the taxpayer's returns. The director or his or her delegate may examine all the taxpayer's books, papers, records, or memoranda to determine which of these items are relevant to a determination of the taxpayer's tax liability. The determination of relevance shall not be made by the keeper of the books, papers, records, or memoranda. Books, papers, records, or memoranda which may be examined shall include, but not be limited to, the following: general ledgers and subordinate ledgers; general journals, and subordinate journals; computer printouts of any accounting or financial data; audit workpapers of company, internal auditor and independent auditor; annual reports with all supporting workpapers, schedules, and exhibits; SEC 10-K with all supporting workpapers, schedules, and exhibits; cancelled checks; sales invoices; vendors invoices; time cards; deposit slips; bank statements; cash register tapes; inventory sheets; board of directors minutes and reports; audit committee minutes and reports; executive committee minutes and reports; internal company financial reports, statements and memoranda, with schedules and attachments; trial balances; employee lists; list of accounts receivable; capital asset ledgers and subordinate ledgers; depreciation ledgers and schedules; route schedules; bills of lading; shipping and receiving reports; weight tickets; work orders; job tickets; production reports; rents paid schedules; procedure manuals, operations manuals, employee manuals; table of organization; appraisal reports; property tax reports and receipts; federal income tax returns, and all schedules and attachments (pro forma and consolidated); all state tax returns, and all schedules and attachments; federal and state revenue agent adjustments reports; sales tax returns and all supporting workpapers; ad valorem tax returns and all supporting workpapers; intangible tax returns and all supporting workpapers; local occupation licenses; corporate charter; permits to do business as a foreign corporation; motor vehicle license returns to all appropriate states; special fuel licenses; cigarette licenses; liquor licenses; franchise agreements with supporting details; stock certificates ledger; security agreements; insurance policies; blueprints of plant facilities; patent agreements; royalty agreements; aging of accounts receivable; payroll journals and ledgers, W-2 forms; unemployment compensation ledgers; sales journals and subordinate details; accounts receivable ledger; bad debts workpapers; accounts payable ledger; computer cards; computer program guides; all lease agreements; lease-purchase agreements; apportionment workpapers—property, payroll, and sales workpapers by state and total company; management and personnel directory; director, officer and employee directory; list of articles and publications concerning company, its predecessors and sub-

subsidiary and affiliated corporations, which describes their development, operations and activities; travel vouchers and authorization; and internal memorandums. The director shall have the authority to issue interrogatories, subpoenas, and requests for production relating to disclosure of any of the information or items listed here. This authority may be exercised any time before or after an assessment has been made.

Authority: K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-3233; effective Jan. 1, 1968; amended May 1, 1979; amended May 1, 1982.

K.A.R. Agency 92, Article 17

92-17-1. Terms; distributor, retailer.

- (a) (1) Each 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 shall be deemed a distributor unless that person is a retailer who has purchased tobacco products on a tax-paid basis from a licensed distributor.
- (2) Each person who has one or more retail outlets and who brings or causes to be brought into this state from without the state tobacco products for sale by one of the retail outlets shall be deemed a distributor; however, the retail outlet from which the tobacco products are sold to the ultimate consumer shall be a retailer.
- (b) Each person within the state, including a retailer, who purchases tobacco products upon which the tax has been unpaid from sources out of the state and brings those products into the state for resale shall be required to purchase a distributor's license and shall be responsible for the tax due on the products.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3373; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.

92-17-2. Imposition of tax.

- (a) The tax imposed by the cigarette and tobacco products law shall be paid by the distributor who first performs any of the following:
 - (1) Brings or causes to be brought into this state from outside the state tobacco products for sale;
 - (2) makes, manufactures, or fabricates tobacco products in this state for sale in this state; or
 - (3) ships or transports tobacco products to retailers in this state to be sold by those retailers.
- (b) Liability for the tax shall accrue at the time tobacco products are first brought into the state from outside the state for sale within the state. Each person causing tobacco products to be brought into this state upon which the tax has been unpaid shall be responsible for the payment of the tax on those products.

- (c) A transfer from one distributor to another shall not relieve the distributor who first brought or caused the tobacco products to be brought into this state from the tax liability. Therefore, a tax credit shall not be taken on tobacco tax returns for any transfers made within this state.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3371; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.

92-17-3. Applications; forms.

Each person required by the cigarette and tobacco products act to be licensed as a distributor shall make application for a license on a form furnished by the director.

All questions on the application shall be answered completely. Answers shall be printed legibly in ink or typed. The application shall be signed and acknowledged by the applicant or an officer of the applicant.

Each license shall be granted with the understanding that the license is a grant from the state to one particular individual, partnership, or corporation and is not transferable from one owner to another. If any member of a partnership dies, sells, or transfers the member's interest in the partnership, the license shall become null and void.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3373, 79-3375; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.

92-17-4. Distributor's bond.

Each application for a "tobacco products" distributor's license shall be accompanied by a corporate surety bond submitted on forms prescribed by the director and issued by a surety licensed to do business in the state of Kansas. The bond shall list each place of business at which the distributor proposes to engage in business under the cigarette and tobacco products act. The minimum amount of the required bond shall be \$1,000.00 for each place of business and shall be conditioned upon compliance with the provisions of K.S.A. 79-3301 *et seq.* and amendments thereto, and the payment of all taxes, penalties, and accrued interest due the state of Kansas. The bond shall be kept in effect during the entire period of the license. Whenever it is the opinion of the director that the bond is inadequate in amount to fully protect the state, an additional bond shall be required by the director in an amount that the director deems sufficient.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3374; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.

92-17-5. Bond; cancellations.

The surety on a bond furnished by a tobacco products distributor as required by the cigarette and tobacco products act shall be released and discharged from any liability to the state accruing on that bond after the expiration of 60 days from the date upon which the surety has submitted to the director a written request to be released and discharged, but this requirement shall not operate to relieve, release, or discharge the surety from any liability that has already accrued or that will accrue before the expiration of the 60-day period.

The tobacco products distributor who furnished the bond shall be promptly notified by the director upon receipt of the request. If the distributor, on or before the expiration of the 60-day period, fails to file with the director a new bond fully complying with the provisions of the tobacco products law, the license or licenses of the distributor shall be revoked and canceled by the director.

Authority: K.S.A. 79-3326; implementing K.S.A. 79-3374, 79-3375; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.

92-17-6. Refund or credit of tax-exempt tobacco products.

A Kansas tobacco products distributor may present a claim for refund or claim for credit for the tobacco products tax paid on tobacco products sold to the United States government or an instrumentality of it that is exempt from the Kansas tobacco products tax on a form approved by the director.

Each Kansas tobacco products distributor shall present evidence acceptable to the director certifying that the sale of tobacco products for which a claim for refund or claim for credit is filed was made by the Kansas distributor to the United States government or an instrumentality of it that is exempt from the Kansas tobacco products tax.

Each distributor selling tobacco products to the United States government or an instrumentality of it that is exempt from the Kansas tobacco products tax shall submit a report to the division of taxation for refund or credit of tobacco products sold in the preceding calendar month. The report shall provide the sales slips in serial number order signed by the receiving officer. The sales slips shall designate the club, armed forces exchange, or other instrumentality of the United States government buying exempt tobacco products.

Authority: Authorized by K.S.A. 79-3326; implementing K.S.A. 79-3379; effective, E-74-37, July 2, 1974; effective May 1, 1975; amended March 22, 2002.

JENKINS ACT
U.S.C.A. TITLE 15, CHAPTER 10A

§ 375. Definitions.

For the purposes of this chapter:

- (1) The term “person” includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.
- (2) The term “cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.
- (3) The term “distributor licensed by or located in such State” means:
 - (A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or
 - (B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.
- (4) The term “use”, in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes.
- (5) The term “tobacco tax administrator” means the State official duly authorized to administer the cigarette tax law of a State. The term “State” includes the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico.
- (6) The term “transfers for profit” means any transfer for profit or other disposition for profit, including any transfer or disposition by an agent to his principal in connection with which the agent receives anything of value.

CREDIT(S) (Oct. 19, 1949, c. 699, § 1, 63 Stat. 884; Aug. 9, 1955, c. 695, § 1, 69 Stat. 627.)

§ 376. Reports to State tobacco tax administrator.

(a) Contents

Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes, to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such a sale or transfer and shipment, shall:

- (1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and
- (2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence

The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a)(1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

CREDIT(S) (Oct. 19, 1949, c. 699, § 2, 63 Stat. 884; Aug. 15, 1953, c. 512, Title II, § 201(a), 67 Stat. 617; Aug. 9, 1955, c. 695, § 1, 69 Stat. 627.)

§ 377. Penalties

Whoever violates any provision of this chapter shall be guilty of a misdemeanor and shall be fined not more than \$1,000, or imprisoned not more than 6 months, or both.

CREDIT(S) (Oct. 19, 1949, c. 699, § 3, 63 Stat. 885; Aug. 9, 1955, c. 695, § 1, 69 Stat. 628.)

§ 378. Jurisdiction to prevent and restrain violations

The United States district courts shall have jurisdiction to prevent and restrain violations of this chapter.

CREDIT(S) (Oct. 19, 1949, c. 699, § 4, as added Aug. 9, 1955, c. 695, § 1, 69 Stat. 628.)

OTHER STATUTES REFERENCED

CIGARETTE LABELING AND ADVERTISING

15 U.S.C. § 1332. Definitions.

- (4) The term “package” means a pack, box, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed to consumers.

15 U.S.C. § 1333. Labeling; requirements; conspicuous statement.

- (a) Required warnings; packages; advertisements; billboards
- (1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

SURGEON GENERAL’S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.

SURGEON GENERAL’S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

SURGEON GENERAL’S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.

SURGEON GENERAL’S WARNING: Cigarette Smoke Contains Carbon Monoxide.

- (2) It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised (other than through the use of outdoor billboards) within the United States any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

SURGEON GENERAL’S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.

SURGEON GENERAL's WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

SURGEON GENERAL's WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.

SURGEON GENERAL's WARNING: Cigarette Smoke Contains Carbon Monoxide.

- (3) It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised within the United States through the use of outdoor billboards any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

SURGEON GENERAL's WARNING: Smoking Causes Lung Cancer, Heart Disease, And Emphysema.

SURGEON GENERAL's WARNING: Quitting Smoking Now Greatly Reduces Serious Health Risks.

SURGEON GENERAL's WARNING: Pregnant Women Who Smoke Risk Fetal Injury And Premature Birth.

SURGEON GENERAL's WARNING: Cigarette Smoke Contains Carbon Monoxide.

- (b) Conspicuous statement; label statement format; outdoor billboard statement format
- (1) Each label statement required by paragraph (1) of subsection (a) of this section shall be located in the place label statements were placed on cigarette packages as of October 12, 1984. The phrase "Surgeon General's Warning" shall appear in capital letters and the size of all other letters in the label shall be the same as the size of such letters as of October 12, 1984. All the letters in the label shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the package.
- (2) The format of each label statement required by paragraph (2) of subsection (a) of this section shall be the format required for label statements in cigarette advertising as of October 12, 1984, except that the phrase "Surgeon General's Warning" shall appear in capital letters, the area of the rectangle enclosing the label shall be 50 per centum

larger in size with a corresponding increase in the size of the type in the label, the width of the rule forming the border around the label shall be twice that in effect on October 12, 1984, and the label may be placed at a distance from the outer edge of the advertisement which is one-half the distance permitted on October 12, 1984. Each label statement shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material in the advertisement.

- (3) The format and type style of each label statement required by paragraph (3) of subsection (a) of this section shall be the format and type style required in outdoor billboard advertising as of October 12, 1984. Each such label statement shall be printed in capital letters of the height of the tallest letter in a label statement on outdoor advertising of the same dimension on October 12, 1984. Each such label statement shall be enclosed by a black border which is located within the perimeter of the format required in outdoor billboard advertising of the same dimension on October 12, 1984, and the width of which is twice the width of the vertical element of any letter in the label statement within the border.

(c) Rotation of label statement; plan; submission to Federal Trade Commission.

- (1) Except as provided in paragraph (2), the label statements specified in paragraphs (1), (2), and (3) of subsection (a) of this section shall be rotated by each manufacturer or importer of cigarettes quarterly in alternating sequence on packages of each brand of cigarettes manufactured by the manufacturer or importer and in the advertisements for each such brand of cigarettes in accordance with a plan submitted by the manufacturer or importer and approved by the Federal Trade Commission. The Federal Trade Commission shall approve a plan submitted by a manufacturer or importer of cigarettes which will provide the rotation required by this subsection and which assures that all of the labels required by paragraphs (1), (2), and (3) will be displayed by the manufacturer or importer at the same time.
- (2) (A) A manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation described in subparagraph (C) apply with respect to a brand style of cigarettes manufactured or imported by such manufacturer or importer if—
 - (i) the number of cigarettes of such brand style sold in the fiscal year of the manufacturer or importer preceding the

submission of the application is less than one-fourth of 1 percent of all the cigarettes sold in the United States in such year, and

- (ii) more than one-half of the cigarettes manufactured or imported by such manufacturer or importer for sale in the United States are packaged into brand styles which meet the requirements of clause (i).

If an application is approved by the Commission, the label rotation described in subparagraph (C) shall apply with respect to the applicant during the one- year period beginning on the date of the application approval.

- (B) An applicant under subparagraph (A) shall include in its application a plan under which the label statements specified in paragraph (1) of subsection (a) of this section will be rotated by the applicant manufacturer or importer in accordance with the label rotation described in subparagraph (C).
 - (C) Under the label rotation which a manufacturer or importer with an approved application may put into effect each of the labels specified in paragraph (1) of subsection (a) of this section shall appear on the packages of each brand style of cigarettes with respect to which the application was approved an equal number of times within the twelve-month period beginning on the date of the approval by the Commission of the application.
- (d) Application; distributors; retailers Subsection (a) of this section does not apply to a distributor or a retailer of cigarettes who does not manufacture, package, or import cigarettes for sale or distribution within the United States.

Annotations (15 U.S.C.A. § 1333):

1. Labeling requirement in Federal Cigarette Labeling and Advertising Act of 1965 does not apply to loose tobacco products. *Wilson v. Brown & Williamson Tobacco Corp.*, 968 F.Supp. 296 (1997).

15 U.S.C. § 1335a. List of cigarette ingredients; annual submission to Secretary; transmittal to Congress; confidentiality.

- (a) Each person who manufactures, packages, or imports cigarettes shall annually provide the Secretary with a list of the ingredients added to tobacco

in the manufacture of cigarettes which does not identify the company which uses the ingredients or the brand of cigarettes which contain the ingredients. A person or group of persons required to provide a list by this subsection may designate an individual or entity to provide the list required by this subsection.

- (b) (1) At such times as the Secretary considers appropriate, the Secretary shall transmit to the Congress a report, based on the information provided under subsection (a) of this section, respecting—
- (A) a summary of research activities and proposed research activities on the health effects of ingredients added to tobacco in the manufacture of cigarettes and the findings of such research;
 - (B) information pertaining to any such ingredient which in the judgment [*sic*] of the Secretary poses a health risk to cigarette smokers; and
 - (C) any other information which the Secretary determines to be in the public interest.
- (2) (A) Any information provided to the Secretary under subsection (a) of this section shall be treated as trade secret or confidential information subject to section 552(b)(4) of Title 5 and section 1905 of Title 18 and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.
- (B) Subparagraph (A) does not authorize the withholding of a list provided under subsection (a) of this section from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such a list, the Secretary shall make the list available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the list of such request.
 - (C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a) of this section. Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

- (i) shall take physical possession of the information and, when not in use by a person authorized to have access to such information, shall store it in a locked cabinet or file, and
- (ii) shall maintain a complete record of any person who inspects or uses the information.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.

Annotations (15 U.S.C.A. § 1335a):

- 1. Federal statutes regulating tobacco did not preempt Iowa statute requiring cigarette manufacturers that did not participate in master settlement agreement reached in multistate tobacco litigation to either participate in the agreement or make annual escrow payments based on tobacco product sales to Iowa consumers, as it applied to tobacco manufacturer owned by Indian tribe. *Omaha Tribe of Nebraska v. Miller*, 311 F.Supp.2d 816 (2004).]

19 U.S.C. § 1555. Bonded warehouses.

(b) Duty-free sales enterprises.

- (1) Duty-free sales enterprises may sell and deliver for export from the customs territory duty-free merchandise in accordance with this subsection and such regulations as the Secretary may prescribe to carry out this subsection.
- (2) A duty-free sales enterprise may be located anywhere within—
 - (A) the same port of entry, as established under section 1 of the Act of August 24, 1912 (37 Stat. 434), from which a purchaser of duty-free merchandise departs the customs territory; or
 - (B) 25 statute miles from the exit point through which the purchaser of duty-free merchandise will depart the customs territory; or
 - (C) a port of entry, as established under section 1 of the Act of August 24, 1912 (37 Stat. 434), or within 25 statute miles of a staffed port of entry if reasonable assurance can be provided

that duty-free merchandise sold by the enterprise will be exported by individuals departing from the customs territory through an international airport located within the customs territory.

- (3) Each duty-free sales enterprise—
- (A) shall establish procedures to provide reasonable assurance that duty-free merchandise sold by the enterprise will be exported from the customs territory;
 - (B) if the duty-free sales enterprise is an airport store, shall establish and enforce, in accordance with such regulations as the Secretary may prescribe, restrictions on the sale of duty-free merchandise to any one individual to personal use quantities;
 - (C) shall display in prominent places within its place of business notices which state clearly that any duty-free merchandise purchased from the enterprise—
 - (i) has not been subject to any Federal duty or tax,
 - (ii) if brought back into the customs territory, must be declared and is subject to Federal duty and tax, and
 - (iii) is subject to the customs laws and regulation of any foreign country to which it is taken;
 - (D) shall not be required to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate that the items were sold by a duty-free sales enterprise, unless the Secretary finds a pattern in which such items are being brought back into the customs territory without declaration;
 - (E) may unpack merchandise into saleable units after it has been entered for warehouse and placed in a duty-free sales enterprise, without requirement of further permits; and
 - (F) shall deliver duty-free merchandise—
 - (i) in the case of a duty-free sales enterprise that is an airport store—

- (I) to the purchaser (or a family member or companion traveling with the purchaser) in an area that is within the airport and to which access to passengers is restricted to those departing from the customs territory;
- (II) to the purchaser (or a family member or companion traveling with the purchaser) at the exit point of a specific departing flight;
- (III) by placing the merchandise within the aircraft on which the purchaser will depart for carriage as passenger baggage; or
- (IV) if the duty-free sales enterprise has made a good faith effort to effect delivery for exportation through one of the methods described in subclause (I), (II), or (III) but is unable to do so, by any other reasonable method to effect delivery; or
- (ii) in the case of a duty-free sales enterprise that is a border store—
 - (I) at a merchandise storage location at or beyond the exit point; or
 - (II) at any location approved by the Secretary before the date of enactment of the Omnibus Trade Act of 1987.
- (4) If a State or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to or through such facility unless the operator of the duty-free sales enterprise demonstrates to the Secretary that the concession or approval required for the enterprise has been obtained.
- (4) This subsection does not prohibit a duty-free sales enterprise from offering for sale and delivering to, or on behalf of, individuals departing from the customs territory merchandise other than duty-

free merchandise, except that such other merchandise may not be stored in a bonded warehouse facility other than a bonded facility used for retail sales.

- (6) (A) Except as provided in subparagraph (B), merchandise that is purchased in a duty-free sales enterprise is not eligible for exemption from duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States if such merchandise is brought back to the customs territory.
- (B) Except in the case of travel involving transit to, from, or through an insular possession of the United States, merchandise described in subparagraph (A) that is purchased by a United States resident shall be eligible for exemption from duty under subheadings 9804.00.65, 9804.00.70, and 9804.00.72 of the Harmonized Tariff Schedule of the United States upon the United States resident's return to the customs territory of the United States, if the resident meets the eligibility requirements for the exemption claimed. Notwithstanding any other provision of law, such merchandise shall be considered to be an article acquired abroad as an incident of the journey from which the resident is returning, for purposes of determining eligibility for any such exemption.
- (7) The Secretary shall by regulation establish a separate class of bonded warehouses for duty-free sales enterprises. Regulations issued to carry out this paragraph shall take into account the unique characteristics of the different types of duty-free sales enterprises.
- (8) For purposes of this subsection—
 - (A) The term “airport store” means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory from an international airport located within the customs territory.
 - (B) The term “border store” means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory through a land or water border by a means of conveyance other than an aircraft.
 - (C) The term “customs territory” means the customs territory of the United States and foreign trade zones.

- (D) The term “duty-free sales enterprise” means a person that sells, for use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory.
 - (E) The term “duty-free merchandise” means merchandise sold by a duty-free sales enterprise on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory.
 - (F) The term “exit point” means the area in close proximity to an actual exit for departing from the customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that duty-free merchandise delivered in the gate holding area will be exported from the customs territory.
 - (G) The term “personal use quantities” means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others.
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INTERNAL REVENUE CODE- EXCISE TAXES

26 U.S.C. § 5702 –Internal Revenue Code: Alcohol, Tobacco, and Certain Other Excise Taxes. Definitions.; Rate and Payment of tax; Exemption from Tax; and Refund and Drawback of Tax

- (d) “Manufacturer of tobacco products” means any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco or roll-your-own tobacco, except that such term shall not include—
 - (1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person’s own personal consumption or use, and
 - (2) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.
- (k) “Importer” means any person in the United States to whom nontaxpaid tobacco products or cigarette papers or tubes manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars or ciga-

rettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes into the United States.

26 U.S.C. § 5713. Permit.

- (a) Issuance—A person shall not engage in business as a manufacturer or importer of tobacco products or as an export warehouse proprietor without a permit to engage in such business. Such permit, conditioned upon compliance with this chapter and regulations issued thereunder, shall be issued in such form and in such manner as the Secretary shall by regulation prescribe, to every person properly qualified under sections 5711 and 5712. A new permit may be required at such other time as the Secretary shall by regulation prescribe.

- (b) Revocation—If the Secretary has reason to believe that any person holding a permit has not in good faith complied with this chapter, or with any other provision of this title involving intent to defraud, or has violated the conditions of such permit, or has failed to disclose any material information required or made any material false statement in the application for such permit, or has failed to maintain his premises in such manner as to protect the revenue, the Secretary shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. If, after hearing, the Secretary finds that such person has not in good faith complied with this chapter or with any other provision of this title involving intent to defraud, has violated the conditions of such permit, has failed to disclose any material information required or made any material false statement in the application therefor, or has failed to maintain his premises in such manner as to protect the revenue, such permit shall be suspended for such period as the Secretary deems proper or shall be revoked.

26 U.S.C. § 5754. Restriction on importation of previously exported tobacco products.

- (a) Export-labeled tobacco products—
 - (1) In general—Tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation under this chapter—

- (A) may be transferred to or removed from the premises of a manufacturer or an export warehouse proprietor only if such articles are being transferred or removed without tax in accordance with section 5704;
 - (B) may be imported or brought into the United States, after their exportation, only if such articles either are eligible to be released from customs custody with the partial duty exemption provided in section 5704(d) or are returned to the original manufacturer of such article as provided in section 5704(c); and
 - (C) may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label.
- (2) Alterations by persons other than original manufacturer—This section shall apply to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by the placement of a sticker over) any export label.
- (3) Exports include shipments to Puerto Rico—For purposes of this section, section 5704(d), section 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.
- (b) Export label—For purposes of this section, an article is labeled for export or contains an export label if it bears the mark, label, or notice required under section 5704(b).
- (c) Cross references—
- (1) For exception to this section for personal use, see section 5761(d).
 - (2) For civil penalties related to violations of this section, see section 5761(c).
 - (3) For a criminal penalty applicable to any violation of this section, see section 5762(b).

- (4) For forfeiture provisions related to violations of this section, see section 5761(c).]
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NOTARIES AND PUBLIC COMMISSIONERS

53-601. Unsworn declarations; written declaration sufficient, form; exceptions; relationship to notarial acts.

- (a) Except as provided by subsection (b), whenever a law of this state or any rules and regulations, order or requirement adopted or issued thereunder requires or permits a matter to be supported, evidenced, established or proved by the sworn written declaration, verification, certificate, statement, oath or affidavit of a person, such matter may be supported, evidenced, established or proved with the same force and effect by the unsworn written declaration, verification, certificate or statement dated and subscribed by the person as true, under penalty of perjury, in substantially the following form:
- (1) If executed outside this state: “I declare (or verify, certify or state) under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct. Executed on (date). _____ (Signature)”
 - (2) If executed in this state: “I declare (or verify, certify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). _____ (Signature)”
- (b) The provisions of subsection (a) do not apply to the following oaths:
- (1) An oath of office.
 - (2) An oath required to be taken before a specified official other than a notary public.
 - (3) An oath of a testator or witnesses as required for wills, codicils, revocations of wills and codicils and republications of wills and codicils.
- (c) A notarial act performed prior to the effective date of this act is not affected by this act. Nothing in this act diminishes or invalidates the recognition accorded to notarial acts by other laws of this state or rules and regulations adopted thereunder.

- (d) On or after July 1, 1989, whenever an officer or partner listed in subsection (b) of K.S.A. 17-2718, subsection (c) of K.S.A. 17-7503, subsection (c) of K.S.A. 17-7504, subsection (c) of K.S.A. 17-7505, subsection (d) of K.S.A. 56-1a606 or subsection (d) of K.S.A. 56-1a607 and amendments thereto is required to execute a report before a notary or swear an oath before an officer authorized to administer oaths, in lieu thereof, such person may execute an unsworn declaration if such declaration is in substantial conformity with subsections (a), (b) and (c) of this section.
- (e) On or after July 1, 1990, subsections (a), (b) and (c) of this section shall have general application.
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KANSAS RETAILERS' SALES TAX

79-3606. Exempt sales. The following shall be exempt from the tax imposed by this act:

- (a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301 and amendments thereto, cereal malt beverages and malt products as defined by K.S.A. 79-3817 and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02 and amendments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A. 65-3424d, and amendments thereto, drycleaning and laundry services taxed pursuant to K.S.A. 65-34,150, and amendments thereto, and gross receipts from regulated sports contests taxed pursuant to the Kansas professional regulated sports act, and amendments thereto.

79-3607. Time for returns and payment of tax; forms; extension of time; exceptions.

- (a) Retailers shall make returns to the director at the times prescribed by this section upon forms prescribed and furnished by the director stating:
- (1) The name and address of the retailer;
 - (2) the total amount of gross sales of all tangible personal property and taxable services rendered by the retailer during the period for which the return is made;

- (3) the total amount received during the period for which the return is made on charge and time sales of tangible personal property made and taxable services rendered prior to the period for which the return is made;
- (4) deductions allowed by law from such total amount of gross sales and from total amount received during the period for which the return is made on such charge and time sales;
- (5) receipts during the period for which the return is made from the total amount of sales of tangible personal property and taxable services rendered during such period in the course of such business, after deductions allowed by law have been made;
- (6) receipts during the period for which the return is made from charge and time sales of tangible personal property made and taxable services rendered prior to such period in the course of such business, after deductions allowed by law have been made;
- (7) gross receipts during the period for which the return is made from sales of tangible personal property and taxable services rendered in the course of such business upon the basis of which the tax is imposed.

The return shall include such other pertinent information as the director may require. In making such return, the retailer shall determine the market value of any consideration, other than money, received in connection with the sale of any tangible personal property in the course of the business and shall include such value in the return. Such value shall be subject to review and revision by the director as hereinafter provided. Refunds made by the retailer during the period for which the return is made on account of tangible personal property returned to the retailer shall be allowed as a deduction under subdivision (4) of this section in case the retailer has theretofore included the receipts from such sale in a return made by such retailer and paid taxes therein imposed by this act. The retailer shall, at the time of making such return, pay to the director the amount of tax herein imposed, except as otherwise provided in this section. The director may extend the time for making returns and paying the tax required by this act for any period not to exceed 60 days under such rules and regulations as the secretary of revenue may prescribe. When the total tax for which any retailer is liable under this act, does not exceed the sum of \$80 in any calendar year, the retailer shall file an annual return on or before January 25 of the following year. When the total tax liability does not exceed \$3,200 in any calendar year, the retailer shall file returns quarterly on or before the

25th day of the month following the end of each calendar quarter. When the total tax liability exceeds \$3,200 in any calendar year, the retailer shall file a return for each month on or before the 25th day of the following month. When the total tax liability exceeds \$32,000 in any calendar year, the retailer shall be required to pay the sales tax liability for the first 15 days of each month to the director on or before the 25th day of that month. Any such payment shall accompany the return filed for the preceding month. A retailer will be considered to have complied with the requirements to pay the first 15 days' liability for any month if, on or before the 25th day of that month, the retailer paid 90% of the liability for that fifteen-day period, or 50% of such retailer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs computed at the rate applicable in the month in which the fifteen-day period occurs, and, in either case, paid any underpayment with the payment required on or before the 25th day of the following month. Such retailers shall pay their sales tax liabilities for the remainder of each such month at the time of filing the return for such month. Determinations of amounts of liability in a calendar year for purposes of determining filing requirements shall be made by the director upon the basis of amounts of liability by those retailers during the preceding calendar year or by estimates in cases of retailers having no previous sales tax histories. The director is hereby authorized to modify the filing schedule for any retailer when it is apparent that the original determination was inaccurate.

- (b) All model 1, model 2 and model 3 sellers are required to file returns electronically. Any model 1, model 2 or model 3 seller may submit its sales and use tax returns in a simplified format approved by the director. Any seller that is registered under the agreement, which does not have a legal requirement to register in this state, and is not a model 1, model 2 or model 3 seller, may submit its sales and use tax returns as follows:
- (1) Upon registration, the director shall provide to the seller the returns required;
 - (2) seller shall file a return anytime within one year of the month of initial registration, and future returns are required on an annual basis in succeeding years; and
 - (3) in addition to the returns required in subsection (b)(2), sellers are required to submit returns in the month following any month in which they have accumulated state and local sales tax funds for this state in the amount of \$1,600 or more.

79-3608 Registration certificates; application; display; revocation by director, when; appointment of agent; sellers registering under streamlined sales and use tax agreement.

- (a) Except as otherwise provided, it shall be unlawful for any person to engage in the business of selling tangible personal property at retail or furnishing taxable services in this state without a registration certificate from the director of taxation. Application for such certificate shall be made to the director upon forms furnished by the director, and shall state the name of the applicant, the address or addresses at which the applicant proposes to engage in such business, and the character of such business. Utilities taxable under this act shall not be required to register but shall comply with all other provisions of this act. The taxpayer may be registered by an agent. Such appointment of the agent by the taxpayer shall be in writing and submitted to the director. The taxpayer shall be issued a registration certificate to engage in the business for which application is made unless the applicant at the time of making such application owes any sales tax, penalty or interest, and in such case, before a registration certificate is issued, the director of taxation shall require the applicant to pay the amount owed.
- (b) A separate registration certificate shall be issued for each place of business, and shall be conspicuously displayed therein.
- (c) A seller registering under the agreement is considered registered in this state and shall not be required to pay any registration fees or other charges to register in this state if the seller has no legal requirement to register. A written signature from the seller registering under the agreement is not required. An agent may register a seller under uniform procedures determined by the secretary. A seller may cancel its registration under the system at any time under uniform procedures determined by the secretary. Cancellation does not relieve the seller of its liability for remitting to this state any taxes collected.

75-4215. Remittance of state moneys; fee agency accounts; reports; post audit.

- (a) All moneys collected by any state agency shall be remitted daily to the state treasurer unless otherwise authorized by the board to remit less frequently.
- (b) If a state agency is authorized by the board to maintain a fee agency account pursuant to K.S.A. 75-4214, and amendments thereto, any moneys collected by the state agency shall be deposited daily in the fee agency account. Fee agency account balances shall be remitted daily or less often if authorized by the board, to the state treasurer by such agency drawing on

such fee agency account all moneys therein except for any balances required for direct refunds of tuition, fees or charges from such fee agency account authorized under K.S.A. 76-738, and amendments thereto. When requested, such agency shall file with the board a detailed and verified report with each deposit showing the sources from which such moneys were received. The board shall have the authority to limit specific types of moneys that can be deposited in a fee agency account.

- (c) Fee agency accounts and moneys to be deposited therein shall be subject to post audit under article 11 of chapter 46 of Kansas Statutes Annotated.]