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**HOUSE BILL No. 2876**

By Representative Wilson  
(By request)

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10 AN ACT concerning cigarettes and tobacco products; relating to the legal  
11 age required to purchase such products; amending K.S.A. 2001 Supp.  
12 79-3321, 79-3322 and 79-3391 and repealing the existing sections.  
13

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

15 Section 1. K.S.A. 2001 Supp. 79-3321 is hereby amended to read as  
16 follows: 79-3321. It shall be unlawful for any person:

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

20 (b) To mutilate or attach to any individual package of cigarettes any  
21 stamp that has in any manner been mutilated or that has been heretofore  
22 attached to a different individual package of cigarettes or to have in pos-  
23 session any stamps so mutilated.

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

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

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

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

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

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

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

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

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

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

9 (k) To vend small cigars, or any products so wrapped as to be con-  
10 fused with cigarettes, from a machine vending cigarettes, nor shall a vend-  
11 ing machine be so built to vend cigars or products that may be confused  
12 with cigarettes, be attached to a cigarette vending machine.

13 (l) To sell, furnish or distribute cigarettes or tobacco products to any  
14 person under ~~18~~ 21 years of age.

15 (m) Who is under ~~18~~ 21 years of age to purchase or attempt to pur-  
16 chase cigarettes or tobacco products.

17 (n) Who is under ~~18~~ 21 years of age to possess or attempt to possess  
18 cigarettes or tobacco products.

19 (o) To sell cigarettes to a retailer or at retail that do not bear Kansas  
20 tax indicia or upon which the Kansas cigarette tax has not been paid.

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

23 (q) To sell a vending machine without having a vending machine dis-  
24 tributor's license.

25 (r) Who is a retail dealer to fail to post and maintain in a conspicuous  
26 place in the dealer's establishment the following notice: "By law, ciga-  
27 rettes and tobacco products may be sold only to persons ~~18~~ 21 years of  
28 age and older."

29 (s) To distribute samples within 500 feet of any school when such  
30 facility is being used primarily by persons under ~~18~~ 21 years of age unless  
31 the sampling is: (1) In an area to which persons under ~~18~~ 21 years of age  
32 are denied access; (2) in or at a retail location where cigarettes and to-  
33 bacco products are the primary commodity offered for sale at retail; or  
34 (3) at or adjacent to an outdoor production, repair or construction site or  
35 facility.

36 (t) To sell cigarettes or tobacco products by means of a vending ma-  
37 chine in any establishment, or portion of an establishment, which is open  
38 to minors, except that this subsection shall not apply to:

39 (1) The installation and use by the proprietor of the establishment,  
40 or by the proprietor's agents or employees, of vending machines behind  
41 a counter, or in some place in such establishment, or portion thereof, to  
42 which minors are prohibited by law from having access;

43 (2) the installation and use of a vending machine in a commercial

1 building or industrial plant, or portions thereof, where the public is not  
2 customarily admitted and where machines are intended for the sole use  
3 of adult employees employed in the building or plant; or

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

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

11 (1) Any cigarettes the package of which (A) bears any statement, la-  
12 bel, stamp, sticker or notice indicating that the manufacturer did not  
13 intend the cigarettes to be sold, distributed or used in the United States,  
14 including but not limited to, labels stating "For Export Only", "U.S. Tax-  
15 Exempt", "For Use Outside U.S." or similar wording; or (B) does not  
16 comply with (i) all requirements imposed by or pursuant to federal law  
17 regarding warnings and other information on packages of cigarettes man-  
18 ufactured, packaged or imported for sale, distribution or use in the United  
19 States, including but not limited to the precise warning labels specified  
20 in the federal cigarette labeling and advertising act, 15 U.S.C. 1333; and  
21 (ii) all federal trademark and copyright laws;

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

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

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

33 (v) To alter the package of any cigarettes, prior to sale or distribution  
34 to the ultimate consumer, so as to remove, conceal or obscure:

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

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

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

43 Sec. 2. K.S.A. 2001 Supp. 79-3322 is hereby amended to read as

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

9 (b) (1) It is a class B person misdemeanor punishable by a minimum  
10 fine of \$200 for any person to: (A) Sell, give or furnish any cigarettes or  
11 tobacco products to any person under ~~18~~ 21 years of age; or (B) buy any  
12 cigarettes or tobacco products for any person under ~~18~~ 21 years of age.

13 (2) It shall be a defense to a prosecution under this subsection if: (A)  
14 The defendant is a licensed retail dealer, or employee thereof, or a person  
15 authorized by law to distribute samples; (B) the defendant sold, furnished  
16 or distributed the cigarettes or tobacco products to the person under ~~18~~  
17 21 years of age with reasonable cause to believe the person was of legal  
18 age to purchase or receive cigarettes or tobacco products; and (C) to  
19 purchase or receive the cigarettes or tobacco products, the person under  
20 ~~18~~ 21 years of age exhibited to the defendant a driver's license, Kansas  
21 nondriver's identification card or other official or apparently official doc-  
22 ument containing a photograph of the person and purporting to establish  
23 that the person was of legal age to purchase or receive cigarettes or to-  
24 bacco products.

25 (3) It shall be a defense to a prosecution under this subsection if: (A)  
26 The defendant engages in the lawful sale, furnishing or distribution of  
27 cigarettes or tobacco products by mail; and (B) the defendant sold, fur-  
28 nished or distributed the cigarettes or tobacco products to the person by  
29 mail only after the person had provided to the defendant an unsworn  
30 declaration, conforming to K.S.A. 53-601, and amendments thereto, that  
31 the person was ~~18~~ 21 or more years of age.

32 (4) For purposes of this subsection the person who violates this sub-  
33 section shall be the individual directly selling, furnishing or distributing  
34 the cigarettes or tobacco products to any person under ~~18~~ 21 years of age  
35 or the retail dealer who has actual knowledge of such selling, furnishing  
36 or distributing by such individual or both.

37 (c) Violation of subsection (m) or (n) of K.S.A. 79-3321, and amend-  
38 ments thereto, is a cigarette or tobacco infraction for which the fine is  
39 \$25. In addition, the judge may require the juvenile to appear in court  
40 with a parent or legal guardian.

41 (d) Any agent, employees or others who aid, abet or otherwise partic-  
42 ipate in any way in the violation of the Kansas cigarette and tobacco  
43 products act or in any of the offenses hereunder punishable shall be guilty

1 and punished as principals to the same extent as any person violating this  
2 act.

3 Sec. 3. K.S.A. 2001 Supp. 79-3391 is hereby amended to read as  
4 follows: 79-3391. (a) In addition to or in lieu of any other civil or criminal  
5 penalty provided by law, the secretary of revenue or the secretary's des-  
6 ignee, upon a finding that a licensee under this act has violated any pro-  
7 vision of this act or any provision of any rule and regulation of the sec-  
8 retary of revenue adopted pursuant to this act shall impose on such  
9 licensee a civil fine not exceeding \$1,000 for each violation.

10 (b) It shall be unlawful for any person, directly or indirectly, to: (1)  
11 Sell, give or furnish any cigarettes or tobacco products to any person  
12 under ~~18~~ 21 years of age; or (2) buy any cigarettes or tobacco products  
13 for any person under ~~18~~ 21 years of age. In determining the fine to be  
14 imposed under this subsection by a licensed retail dealer whose employee  
15 sold, furnished or distributed the cigarettes or tobacco products, the sec-  
16 retary of revenue or the secretary's designee shall consider it to be a  
17 mitigating circumstance if the employee had completed a training pro-  
18 gram, approved by the secretary of revenue or the secretary's designee,  
19 in avoiding sale, furnishing or distributing of cigarettes and tobacco prod-  
20 ucts to persons under ~~18~~ 21 years of age.

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

27 (d) Any fine collected pursuant to this section shall be remitted to  
28 the state treasurer in accordance with the provisions of K.S.A. 75-4215,  
29 and amendments thereto. Upon receipt of each such remittance, the state  
30 treasurer shall deposit the entire amount in the state treasury to the credit  
31 of the cigarette and tobacco products regulation fund.

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

39 (f) If a person violates subsection (b) for a second or subsequent  
40 occurrence within a three-year period, the secretary may impose a grad-  
41 uated fine upon such person for the second or subsequent occurrence.  
42 For the purposes of imposing a fine under this section, if three or more  
43 years have elapsed since a person has been found to have violated the

1 provisions of subsection (b), such person shall be treated as never having  
2 violated subsection (b).

3 Sec. 4. K.S.A. 2001 Supp. 79-3321, 79-3322 and 79-3391 are hereby  
4 repealed.

5 Sec. 5. This act shall take effect and be in force from and after its  
6 publication in the statute book.

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