

As Amended by Senate Committee

Session of 2010

SENATE BILL No. 478

By Committee on Assessment and Taxation

1-28

10 AN ACT concerning the Kansas cigarette and tobacco products act; vi-
11 olations of act; amending K.S.A. 79-3304, 79-3309, 79-3371 and 79-
12 3378 and K.S.A. 2009 Supp. 79-3301, 79-3302, 79-3303, 79-3310, 79-
13 3311, 79-3312, 79-3316 and 79-3321 and repealing the existing
14 sections; also repealing K.S.A. 2009 Supp. 79-3310c.

15

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

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

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

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

24 (c) "*Cigar*" means any roll of tobacco wrapped in leaf tobacco or in
25 any substance containing tobacco other than any roll of tobacco which is
26 a cigarette as defined in this section.

27 (d) "Cigarette" means any roll for smoking, made wholly or in part
28 of tobacco, irrespective of size or shape, and irrespective of tobacco being
29 flavored, adulterated or mixed with any other ingredient ~~if the wrapper~~
30 ~~is in greater part made of any material except tobacco wrapped in paper~~
31 ~~or any substance not containing tobacco or any roll of tobacco wrapped~~
32 ~~in any substance containing tobacco that because of appearance, the type~~
33 ~~of tobacco used in the filler, or packaging and labeling, is likely to be~~
34 ~~offered to, or purchased by consumers as a cigarette as described in this~~
35 ~~subsection. Cigarettes include little cigars.~~

36 ~~(e)~~ (e) "Consumer" means the person purchasing or receiving ciga-
37 rettes or tobacco products for final use.

38 ~~(f)~~ (f) "Dealer" means any person who engages in the sale or man-
39 ufacture of cigarettes in the state of Kansas, and who is required to be
40 licensed under the provisions of this act.

41 ~~(g)~~ (g) "Dealer establishment" means any location or premises, other
42 than vending machine locations, at or from which cigarettes are sold, and
43 where records are kept.

- 1 ~~(g)~~ (h) “Director” means the director of taxation.
- 2 ~~(h)~~ (i) “Distributor” means: (1) Any person engaged in the business
3 of selling tobacco products in this state who brings, or causes to be
4 brought, into this state from ~~without~~ *outside* the state any tobacco prod-
5 ucts for sale; (2) any person who makes, manufactures, fabricates or stores
6 tobacco products in this state for sale in this state; or (3) any person
7 engaged in the business of selling tobacco products ~~without~~ *outside* this
8 state who ships or transports tobacco products to any person in the busi-
9 ness of selling tobacco products in this state.
- 10 ~~(i)~~ (j) “Division” means the division of taxation.
- 11 ~~(j)~~ (k) “License” means, in addition to the privilege of a licensee to
12 sell cigarettes or tobacco products in the state of Kansas, the written
13 evidence of such authority or privilege to so operate as evidenced by any
14 license issued by the director of taxation.
- 15 ~~(k)~~ (l) “Licensee” means any person holding a current license issued
16 pursuant to this act, *or any person whose license expired and who sub-*
17 *mitted a renewal application which was received by the director prior to*
18 *expiration of the previous licensing period.*
- 19 ~~(l)~~ (m) “Little cigar” means *any roll of tobacco wrapped in leaf to-*
20 *bacco or any substance containing tobacco and as to which 1,000 units*
21 *weigh not more than three pounds.*
- 22 (n) “Manufacturer’s salesperson” means a person employed by a cig-
23 arette manufacturer who sells cigarettes, manufactured by such employer
24 and procured from wholesale dealers.
- 25 ~~(m)~~ ~~(o)~~ “Meter imprints” means ~~tax indicia applied by means of ink~~
26 ~~printing machines.~~
- 27 ~~(n)~~ ~~(p)~~ (o) (1) “Package” means a container in which no more than
28 25 individual cigarettes are wrapped and sealed by the manufacturer of
29 cigarettes prior to shipment to a wholesale dealer.
- 30 (2) For the purposes of subsections (u), (v) and (w) of K.S.A. 79-
31 3321, and amendments thereto, “package” ~~shall have the meaning as-~~
32 ~~cribed thereto~~ *means the same as provided in 15 U.S.C. §1332(4).*
- 33 ~~(o)~~ ~~(q)~~ (p) “Person” means any individual, partnership, society, as-
34 sociation, joint-stock company, corporation, estate, receiver, trustee, as-
35 signee, referee or any other person acting in a fiduciary or representative
36 capacity whether appointed by a court or otherwise and any combination
37 of individuals.
- 38 ~~(p)~~ ~~(r)~~ (q) “Received” means the coming to rest of cigarettes for sale
39 by any dealer in the state of Kansas.
- 40 ~~(q)~~ ~~(s)~~ (r) “Retail dealer” means a person, other than a vending ma-
41 chine operator, in possession of cigarettes for the purpose of sale to a
42 consumer.
- 43 ~~(r)~~ ~~(t)~~ (s) “Sale” means any transfer of title or possession or both,

- 1 exchange, barter, distribution or gift of cigarettes or tobacco products,
 2 with or without consideration.
- 3 ~~(s)~~ ~~(t)~~ **(t)** “Sample” means cigarettes or tobacco products distributed
 4 to members of the general public at no cost for purposes of promoting
 5 the product.
- 6 ~~(t)~~ ~~(u)~~ **(u)** “Stamps” means tax indicia applied either by means of
 7 ~~water applied gummed paper or heat process~~ **heat process or pressure**.
- 8 ~~(u)~~ ~~(v)~~ **(v)** “Tax indicia” means visible evidence of tax payment in the
 9 form of stamps ~~or meter imprints~~.
- 10 ~~(v)~~ ~~(x)~~ **(w)** “Tobacco products” means cigars, cheroots, stogies, pe-
 11 riques; granulated, plug cut, crimp cut, ready rubbed and other smoking
 12 tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and
 13 other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and
 14 sweepings of tobacco, *cigarette wrappers made of tobacco* and other kinds
 15 and forms of tobacco, prepared in such manner as to be suitable for
 16 chewing or smoking in a pipe or otherwise, or both for chewing and
 17 smoking. Tobacco products does not include cigarettes *or little cigars*.
- 18 ~~(w)~~ ~~(y)~~ **(x)** “Vending machine” means any coin operated machine,
 19 contrivance or device, by means of which merchandise may be sold.
- 20 ~~(x)~~ ~~(z)~~ **(y)** “Vending machine distributor” means any person who sells
 21 cigarette vending machines to a vending machine operator operating
 22 vending machines in the state of Kansas.
- 23 ~~(y)~~ ~~(aa)~~ **(z)** “Vending machine operator” means any person who
 24 places a vending machine, owned, leased or operated by such person, at
 25 locations where cigarettes are sold from the machine. The owner or lessee
 26 of the premises upon which a vending machine is placed shall not be
 27 considered the operator of the machine, nor shall the owner or lessee, or
 28 any employee or agent of the owner or lessee be considered an authorized
 29 agent of the vending machine operator, if the owner or lessee does not
 30 own or lease the machine and the owner’s or lessee’s sole remuneration
 31 from the machine is a flat rental fee or commission based upon the num-
 32 ber or value of cigarettes sold from the machine, or a combination of
 33 both.
- 34 ~~(z)~~ ~~(bb)~~ **(aa)** “Wholesale dealer” means any person who sells ciga-
 35 rettes to other wholesale dealers, retail dealers, vending machine opera-
 36 tors and manufacturer’s salespersons for the purpose of resale in the state
 37 of Kansas.
- 38 ~~(aa)~~ ~~(ee)~~ **(bb)** “Wholesale sales price” means the original net invoice
 39 price for which *a* manufacturer sells a tobacco product to a distributor,
 40 as shown by the manufacturer’s original invoice.
- 41 ~~(bb)~~ ~~(dd)~~ **(cc)** “Importer” ~~shall have the same meaning ascribed~~
 42 ~~hereto means the same as provided in 26 U.S.C. §5702(l).~~
- 43 ~~(cc)~~ ~~(ee)~~ **(dd)** “Manufacturer” ~~shall have the same meaning ascribed~~

1 ~~thereto~~ means the same as provided in 26 U.S.C. §5702(d)(k).

2 Sec. 2. K.S.A. 2009 Supp. 79-3302 is hereby amended to read as
 3 follows: 79-3302. (a) ~~K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309,~~
 4 ~~79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-~~
 5 ~~3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3371, 79-3373,~~
 6 ~~79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-3388, 79-~~
 7 ~~3391, 79-3392, 79-3393, 79-3394 and K.S.A. 2009 Supp. 79-3395 through~~
 8 ~~79-3398, and amendments thereto, The provisions of article 33 of this~~
 9 *chapter* shall be known and may be cited as the Kansas cigarette and
 10 tobacco products act.

11 (b) It is the purpose and intent of this act to regulate the sale of
 12 cigarettes and tobacco products in this state and to impose a tax thereon.

13 Sec. 3. K.S.A. 2009 Supp. 79-3303 is hereby amended to read as
 14 follows: 79-3303. (a) Each person engaged in the business of selling cig-
 15 arettes in the state of Kansas and each vending machine distributor shall
 16 obtain a license as provided by this act. A separate application, license
 17 and fee is required for each dealer establishment owned or operated by
 18 a dealer. A vending machine operator is required to obtain a vending
 19 machine operator's master license and, in addition, a separate permit for
 20 each vending machine operated by the operator. A vending machine op-
 21 erator may submit one application for the vending machine operator's
 22 master license and all permits for vending machines operated by the op-
 23 erator. The license shall be displayed in the dealer establishment and the
 24 vending machine permit shall remain securely and visibly attached to the
 25 vending machine and contain such information as the director may re-
 26 quire. Any vending machine found without such permit attached to the
 27 machine shall be sealed by an agent of the director and such seal shall be
 28 removed only by an agent of the director after payment of the permit fee
 29 and the penalties provided by this act.

30 (b) The application for a vending machine operator's master license
 31 and vending machine permits shall list the brand name and serial number
 32 of each machine and such other information as required by the director.
 33 Except in accordance with proper judicial order or as otherwise provided
 34 by law, it shall be unlawful for any officer or employee of the division to
 35 divulge or make known in any way the location of any vending machine
 36 to any person not an officer or employee of the division, except that such
 37 information may be divulged to any law enforcement officer for use in
 38 the officer's official duties. Any officer or employee revealing any such
 39 location in violation of this provision, in addition to the penalties otherwise
 40 provided in this act, shall be dismissed from office.

41 (c) A vending machine operator, in the course of business as a vend-
 42 ing machine operator, may dispose of or sell vending machines without
 43 securing a license to sell vending machines. The vending machine oper-

1 ator may move vending machines from one location to another and, if a
2 vending machine becomes inoperative or is disposed of, the permit for
3 such machine may be transferred to another machine. A vending machine
4 operator, within 10 days, shall notify the director of the brand name and
5 serial number of vending machines that become inoperative or that the
6 operator disposes of, sells, acquires or brings into service in this state as
7 additional machines.

8 (d) The key to the lower or storage compartment of a vending ma-
9 chine shall remain only in the possession of the vending machine operator
10 or the operator's authorized agent. All services connected with the op-
11 eration of a vending machine shall be performed by the vending machine
12 operator or the operator's authorized agent. All vending machines shall
13 be subject to inspection by the director or the director's authorized
14 agents. No permit shall be issued for a vending machine unless it is con-
15 structed so that at least one package of each vertical column of cigarettes
16 located therein is visible showing tax indicia.

17 (e) All vending machines operated on military installations shall have
18 a permit affixed to the machines and the cigarettes shall show tax indicia
19 of the Kansas tax.

20 (f) On or before the 10th day of each month, each vending machine
21 distributor shall report to the director, on forms provided by the director,
22 all sales of cigarette vending machines by the distributor to persons in
23 the state of Kansas during the preceding month; the name and address
24 of the purchaser; and the brand name, serial number and sale price of
25 the machines. *The director may require such reports to be filed electron-*
26 *ically.*

27 (g) Concurrently with a change in ownership of a dealer establish-
28 ment the license applicable to the establishment is void and shall be sur-
29 rendered to the director and shall not be transferred. On removal of a
30 dealer establishment from one location to another, the owner of the es-
31 tablishment shall notify the director and surrender the owner's license.
32 The director shall issue a new license for the unexpired term of the sur-
33 rendered license on payment of a fee of \$2. If a dealer's license is lost,
34 stolen or destroyed, the director may issue a new license on proof of loss,
35 theft or destruction, at a cost of \$2. The director shall remit all moneys
36 received under this subsection to the state treasurer in accordance with
37 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt
38 of each such remittance, the state treasurer shall deposit the entire
39 amount in the state treasury to the credit of the state general fund.

40 Sec. 4. K.S.A. 79-3304 is hereby amended to read as follows: 79-
41 3304. (a) The license fee for each biennium or portion thereof shall be
42 as follows:

43 (1) For retail dealer's license, \$25 for each dealer establishment.

- 1 (2) For retailer's license on railroad or sleeping cars, \$50. Only one
2 retail license need be obtained by each railroad or sleeping car company
3 to permit the sale of cigarettes on any or all of its cars within the state.
- 4 (3) For show, carnival or catering license, \$50 for each concession.
- 5 (4) For resident retail dealer's temporary license for a place of busi-
6 ness of a temporary nature, \$2 for each seven days or portion thereof.
- 7 (5) For wholesale dealer's license, \$50 for each dealer establishment.
8 No wholesale dealer's license shall be issued until the person applying
9 therefor has filed with the director a bond payable to the state of Kansas
10 in such an amount as shall be fixed by the director, but in no event less
11 than \$1,000, with a corporate surety authorized to do business in the state
12 of Kansas, and approved by the director. If a wholesale dealer is unable
13 to secure a corporate surety bond, the director may issue a license to such
14 wholesale dealer, upon the wholesale dealer furnishing a personal bond
15 meeting the approval of the director. Such bond shall be conditioned on
16 the wholesale dealer's compliance with all the provisions of this act during
17 the license period.
- 18 (6) For vending machine distributor's license, \$50.
- 19 (7) For manufacturer's salesperson license, \$20 for each salesperson.
20 The manufacturer's salesperson shall, with respect to each sale made to
21 a retail dealer, make and deliver to the retail dealer a true invoice wherein
22 such salesperson shall insert the name of the wholesale dealer from whom
23 such salesperson secured such cigarettes, together with such salesperson's
24 own name and the name of the retail dealer purchasing the cigarettes.
- 25 (8) For vending machine operator's license, no fee.
- 26 (9) For vending machine permit, \$25 for each permit.
- 27 (b) An application for any license required under the provisions of
28 this act may be refused to: ~~(1) A person who is not of good character and~~
29 ~~reputation in the community in which such person resides; or (2) a person~~
30 ~~who has been convicted of a felony or of any crime involving moral tur-~~
31 ~~pititude or of the violation of any law of any state or the United States~~
32 ~~pertaining to cigarettes or tobacco products and who has not completed~~
33 ~~the sentence, parole, probation or assignment to a community correc-~~
34 ~~tional services program imposed for any such conviction within two years~~
35 ~~immediately preceding the date of making application for any of such~~
36 ~~licenses: any applicant who: (1) Has been convicted of a felony under the~~
37 ~~laws of this state, any other state or the United States; (2) has been con-~~
38 ~~vinced of a violation of any law of this state or any other state or the~~
39 ~~United States pertaining to any regulated substance; or (3) has had a~~
40 ~~license revoked under the provisions of this act within ten years preceding~~
41 ~~the date of making an application for such license. The term "applicant"~~
42 ~~includes president, vice president, secretary, treasurer, manager, member~~
43 ~~or any other officer, owner, or majority shareholder if the license holder~~

1 *is a corporation, limited liability corporation, partnership or other busi-*
2 *ness entity.*

3 Sec. 5. K.S.A. 79-3309 is hereby amended to read as follows: 79-
4 3309. (a) Whenever the director has reason to believe that any person
5 licensed under this act has violated any of the provisions of this act, the
6 director shall notify the person by certified mail of the director's intention
7 to suspend or revoke the person's license or licenses. Within 10 days after
8 the mailing of the notice, the person may request a hearing in writing
9 before the director. The hearing shall be conducted in accordance with
10 the provisions of the Kansas administrative procedure act. If, after such
11 hearing, it appears to the satisfaction of the director that the person has
12 violated any of the provisions of this act, the director is hereby authorized
13 and empowered to suspend or revoke the person's license or licenses ~~and~~.
14 *As used in this act, "revocation" means termination by formal action of a*
15 *license issued under this act or the privilege to operate as a retailer-dealer*
16 *or distributor, which termination shall not be subject to renewal or res-*
17 *toration, except that an application for a new license may be presented*
18 *and acted upon by the director after the expiration of 10 years. The di-*
19 *rector may in addition deny the application of the person for a license or*
20 *licenses for a portion of the succeeding calendar year for such period as*
21 *the director determines is necessary but in no case for a period ending*
22 *more than one year following the date upon which the license or licenses*
23 *were suspended or revoked. The suspension or revocation of a vending*
24 *machine operator's master license shall suspend or revoke all vending*
25 *machine permits issued to the vending machine operator for the term of*
26 *the license suspension or revocation. If a person continues to engage in*
27 *activities requiring a license while such license is suspended, the license*
28 *shall be immediately revoked and additional fines and penalties may apply*
29 *pursuant to this act.*

30 (b) If a person continues to engage in activities requiring a license
31 under this act after having notice or knowledge of the suspension or
32 revocation of the person's license or licenses or after becoming more than
33 10 days delinquent in the payment of any tax, penalty or interest imposed
34 pursuant to this act, the state shall be entitled, in any proceedings brought
35 for such purposes, to have an order and judgment restraining and enjoin-
36 ing such unlawful sale and no bond shall be required for the issuance of
37 any such restraining order or injunction.

38 Sec. 6. K.S.A. 2009 Supp. 79-3310 is hereby amended to read as
39 follows: 79-3310. There is imposed a tax upon all cigarettes sold, distrib-
40 uted or given away within the state of Kansas. ~~On and after July 1, 2002,~~
41 ~~and before January 1, 2003, the rate of such tax shall be \$.70 on each 20~~
42 ~~cigarettes or fractional part thereof or \$.875 on each 25 cigarettes, as the~~
43 ~~case requires. On and after January 1, 2003, The rate of such tax shall be~~

1 \$.79 on each 20 cigarettes or fractional part thereof or \$.99 on each 25
2 cigarettes, as the case requires. Such tax shall be collected and paid to
3 the director as provided in this act. Such tax shall be paid only once and
4 shall be paid by the wholesale dealer first receiving the cigarettes as herein
5 provided. *For any purchaser of cigarettes on which such tax has not been*
6 *paid by the wholesale dealer, the director of taxation may proceed directly*
7 *against such purchaser to collect the full amount of tax due. A purchaser*
8 *of cigarettes includes a consumer as defined by K.S.A. 79-3301, and*
9 *amendments thereto.*

10 The taxes imposed by this act are hereby levied upon all sales of ciga-
11 rettes made to any department, institution or agency of the state of Kan-
12 sas, and to the political subdivisions thereof and their departments, insti-
13 tutions and agencies.

14 Sec. 7. K.S.A. 2009 Supp. 79-3311 is hereby amended to read as
15 follows: 79-3311. The director shall design and designate indicia of tax
16 payment to be affixed to each package of cigarettes as provided by this
17 act. The director shall sell ~~water applied stamps only to licensed wholesale~~
18 ~~dealers in the amounts of 1,000 or multiples thereof.~~ stamps applied by
19 the heat process ~~shall be sold only in amounts of 30,000 or multiples~~
20 ~~thereof, except that such stamps which are suitable for packages contain-~~
21 ~~ing 25 cigarettes each shall be sold in amounts prescribed by the director.~~
22 ~~Meter imprints shall be sold only in amounts of 10,000 or multiples~~
23 ~~thereof. Water applied stamps in amounts of 10,000 or multiples thereof~~
24 ~~and~~ Stamps applied by the heat process ~~and meter imprints~~ shall be sup-
25 plied to wholesale dealers at a discount of .90% on and after July 1, 2002,
26 and before January 1, 2003, and .80% thereafter from the face value
27 thereof, and shall be deducted at the time of purchase or from the re-
28 mittance therefor as hereinafter provided. Any wholesale cigarette dealer
29 who shall file with the director a bond, of acceptable form, payable to the
30 state of Kansas with a corporate surety authorized to do business in Kan-
31 sas, shall be permitted to purchase stamps, and remit therefor to the
32 director within 30 days after each such purchase, up to a maximum out-
33 standing at any one time of 85% of the amount of the bond. Failure on
34 the part of any wholesale dealer to remit as herein specified shall be cause
35 for forfeiture of such dealer's bond. All revenue received from the sale
36 of such stamps ~~or meter imprints~~ shall be remitted to the state treasurer
37 in accordance with the provisions of K.S.A. 75-4215, and amendments
38 thereto. Upon receipt of each such remittance, the state treasurer shall
39 deposit the entire amount in the state treasury. The state treasurer shall
40 first credit such amount as the director shall order to the cigarette tax
41 refund fund and shall credit the remaining balance to the state general
42 fund. A refund fund designated the cigarette tax refund fund not to ex-
43 ceed \$10,000 at any time shall be set apart and maintained by the director

1 from taxes collected under this act and held by the state treasurer for
2 prompt payment of all refunds authorized by this act. Such cigarette tax
3 refund fund shall be in such amount as the director shall determine is
4 necessary to meet current refunding requirements under this act.

5 The wholesale cigarette dealer shall affix to each package of cigarettes
6 stamps ~~or tax meter imprints~~ required by this act prior to the sale of
7 cigarettes to any person, by such dealer or such dealer's agent or agents,
8 within the state of Kansas. ~~The director is empowered to authorize whole-~~
9 ~~sale dealers to affix revenue tax meter imprints upon original packages of~~
10 ~~cigarettes and is charged with the duty of regulating the use of tax meters~~
11 ~~to secure payment of the proper taxes. No wholesale dealer shall affix~~
12 ~~revenue tax meter imprints to original packages of cigarettes without first~~
13 ~~having obtained permission from the director to employ this method of~~
14 ~~affixation. If the director approves the wholesale dealer's application for~~
15 ~~permission to affix revenue tax meter imprints to original packages of~~
16 ~~cigarettes, the director shall require such dealer to file a suitable bond~~
17 ~~payable to the state of Kansas executed by a corporate surety authorized~~
18 ~~to do business in Kansas. The director may, to assure the proper collection~~
19 ~~of taxes imposed by the act, revoke or suspend the privilege of imprinting~~
20 ~~tax meter imprints upon original packages of cigarettes. All meters shall~~
21 ~~be under the direct control of the director, and all transfer assignments~~
22 ~~or anything pertaining thereto must first be authorized by the director.~~
23 ~~All inks used in the stamping of cigarettes must be of a special type~~
24 ~~devised for use in connection with the machine employed and approved~~
25 ~~by the director. All repairs to the meter are strictly prohibited except by~~
26 ~~a duly authorized representative of the director. Requests for service shall~~
27 ~~be directed to the director. Meter machine ink imprints on all packages~~
28 ~~shall be clear and legible. If a wholesale dealer continuously issues illeg-~~
29 ~~ible cigarette tax meter imprints, it shall be considered sufficient cause~~
30 ~~for revocation of such dealer's permit to use a cigarette tax meter. Cig-~~
31 ~~arette stamps shall be securely affixed in a manner that preserves the~~
32 ~~legibility of the serial numbers and other identifying characteristics of the~~
33 ~~stamp. If a wholesale dealer continuously issues illegible stamped ciga-~~
34 ~~rettes, it shall be considered sufficient cause for an administrative fine,~~
35 ~~suspension or revocation, or combination thereof.~~

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

40 Sec. 8. K.S.A. 2009 Supp. 79-3312 is hereby amended to read as
41 follows: 79-3312. The director shall redeem any unused stamps ~~or meter~~
42 ~~imprints~~ that any wholesale dealer presents for redemption within six
43 months after the purchase thereof, at the face value less .90% on and

1 after July 1, 2002, and before January 1, 2003, and .80% thereafter ~~thereof~~
2 if such stamps ~~or meter imprints~~ have been purchased from the director.
3 The director shall prepare a voucher showing the net amount of such
4 refund due, and the director of accounts and reports shall draw a warrant
5 on the state treasurer for the same. Wholesale dealers shall be entitled
6 to a refund of the tax paid on cigarettes which have become unfit for sale
7 upon proof thereof less .90% on and after July 1, 2002, and before January
8 1, 2003, and .80% thereafter of such tax.

9 Sec. 9. K.S.A. 2009 Supp. 79-3316 is hereby amended to read as
10 follows: 79-3316. (a) All purchases of cigarettes by any dealer shall be
11 evidenced by an invoice, a duplicate of which shall be furnished the party
12 receiving the cigarettes from any dealer.

13 (b) Purchases of cigarettes by wholesale dealers shall be made from
14 the manufacturers of cigarettes or from other Kansas licensed wholesale
15 dealers. Purchases of cigarettes by retail dealers or vending machine op-
16 erators shall be from wholesale dealers.

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

24 (d) All records pertaining to sales of cigarettes by dealers in the state
25 of Kansas shall be preserved for a period of three years and shall be
26 available for inspection by the director or the director's designee at the
27 dealer's place of business or, if the dealer has more than one place of
28 business in the state, at a central location of the dealer.

29 (e) Every wholesale dealer shall report to the director on or before
30 the 10th day of each month, stating the amount of cigarettes sold during
31 the preceding month and the amount of all cigarettes returned to the
32 manufacturer. Any wholesale dealer who refuses any shipment or part of
33 a shipment of unstamped cigarettes or has a shortage in the shipment of
34 cigarettes consigned to such dealer shall in the monthly report next fol-
35 lowing the refusal or shortage report to the director the number of pack-
36 ages or cartons of cigarettes refused or short and the name of the carrier
37 from whom the cigarettes were refused or shortage occurred. Such report
38 shall be made on forms provided by the director and shall contain such
39 other information as the director may require. *The director may require*
40 *such reports to be filed electronically.*

41 (f) Exemption from payment of cigarette tax on sale of cigarettes
42 made outside the state by any wholesale dealer shall be filed on forms
43 provided by the director.

- 1 Sec. 10. K.S.A. 2009 Supp. 79-3321 is hereby amended to read as
2 follows: 79-3321. It shall be unlawful for any person:
- 3 (a) To possess, except as otherwise specifically provided by this act,
4 more than 200 cigarettes without the required tax indicia being affixed as
5 herein provided.
- 6 (b) To mutilate or attach to any individual package of cigarettes any
7 stamp that has in any manner been mutilated or that has been heretofore
8 attached to a different individual package of cigarettes or to have in pos-
9 session any stamps so mutilated. *To affix any stamp in such a manner*
10 *that does not preserve the legibility of the serial number printed on the*
11 *stamp and other identifiable characteristics as determined by the director.*
- 12 (c) To prevent the director or any officer or agent authorized by law,
13 to make a full inspection for the purpose of this act, of any place of
14 business and all premises connected thereto where cigarettes are or may
15 be manufactured, sold, distributed, or given away.
- 16 (d) To use any artful device or deceptive practice to conceal any vi-
17 olation of this act or to mislead the director or officer or agent authorized
18 by law in the enforcement of this act.
- 19 (e) Who is a dealer to fail to produce on demand of the director or
20 any officer or agent authorized by law any records or invoices required
21 to be kept by such person.
- 22 (f) Knowingly to make, use, or present to the director or agent thereof
23 any falsified invoice or falsely state the nature or quantity of the goods
24 therein invoiced.
- 25 (g) Who is a dealer to fail or refuse to keep and preserve for the time
26 and in the manner required herein all the records required by this act to
27 be kept and preserved.
- 28 (h) To wholesale cigarettes to any person, other than a manufacturer's
29 salesperson, retail dealer or wholesaler who is:
- 30 (1) Duly licensed by the state where such manufacturer's salesperson,
31 retail dealer or wholesaler is located, or
- 32 (2) exempt from state licensing under applicable state or federal laws
33 or court decisions including any such person operating as a retail dealer
34 upon land allotted to or held in trust for an Indian tribe recognized by
35 the United States bureau of Indian affairs.
- 36 (i) To have in possession any evidence of tax indicia provided for
37 herein not purchased from the director.
- 38 (j) To fail or refuse to permit the director or any officer or agent
39 authorized by law to inspect a carrier transporting cigarettes.
- 40 (k) To vend small cigars, or any products so wrapped as to be con-
41 fused with cigarettes, from a machine vending cigarettes, nor shall a vend-
42 ing machine be so built to vend cigars or products that may be confused
43 with cigarettes, be attached to a cigarette vending machine.

- 1 (l) To sell, furnish or distribute cigarettes or tobacco products to any
2 person under 18 years of age.
- 3 (m) Who is under 18 years of age to purchase or attempt to purchase
4 cigarettes or tobacco products.
- 5 (n) Who is under 18 years of age to possess or attempt to possess
6 cigarettes or tobacco products.
- 7 (o) To sell cigarettes to a retailer or at retail that do not bear Kansas
8 tax indicia or upon which the Kansas cigarette tax has not been paid.
- 9 (p) To sell cigarettes without having a license for such sale as provided
10 herein.
- 11 (q) To sell a vending machine without having a vending machine dis-
12 tributor's license.
- 13 (r) Who is a retail dealer to fail to post and maintain in a conspicuous
14 place in the dealer's establishment the following notice: "By law, ciga-
15 rettes and tobacco products may be sold only to persons 18 years of age
16 and older."
- 17 (s) To distribute samples within 500 feet of any school when such
18 facility is being used primarily by persons under 18 years of age unless
19 the sampling is: (1) In an area to which persons under 18 years of age are
20 denied access; (2) in or at a retail location where cigarettes and tobacco
21 products are the primary commodity offered for sale at retail; or (3) at or
22 adjacent to an outdoor production, repair or construction site or facility.
- 23 (t) To sell cigarettes or tobacco products by means of a vending ma-
24 chine in any establishment, or portion of an establishment, which is open
25 to minors; ~~except that this subsection shall not apply to:~~
- 26 ~~—(1) The installation and use by the proprietor of the establishment,~~
27 ~~or by the proprietor's agents or employees, of vending machines behind~~
28 ~~a counter, or in some place in such establishment, or portion thereof, to~~
29 ~~which minors are prohibited by law from having access;~~
- 30 ~~—(2) the installation and use of a vending machine in a commercial~~
31 ~~building or industrial plant, or portions thereof, where the public is not~~
32 ~~customarily admitted and where machines are intended for the sole use~~
33 ~~of adult employees employed in the building or plant; or~~
- 34 ~~—(3) a vending machine which has a lock-out device which is inoper-~~
35 ~~able in the continuous standby mode and which requires manual activa-~~
36 ~~tion by the person supervising the operation of the machine each time~~
37 ~~cigarettes or tobacco products are purchased from the machine.~~
- 38 (u) To sell or distribute in this state; to acquire, hold, own, possess
39 or transport for sale or distribution in this state; or to import or cause to
40 be imported, into this state for sale or distribution in this state:
- 41 (1) Any cigarettes the package of which (A) bears any statement, la-
42 bel, stamp, sticker or notice indicating that the manufacturer did not
43 intend the cigarettes to be sold, distributed or used in the United States,

1 including but not limited to, labels stating “For Export Only”, “U.S. Tax-
2 Exempt”, “For Use Outside U.S.” or similar wording; or (B) does not
3 comply with (i) all requirements imposed by or pursuant to federal law
4 regarding warnings and other information on packages of cigarettes man-
5 ufactured, packaged or imported for sale, distribution or use in the United
6 States, including but not limited to the precise warning labels specified
7 in the federal cigarette labeling and advertising act, 15 U.S.C. 1333; and
8 (ii) all federal trademark and copyright laws;

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

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

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

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

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

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

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

30 (x) *To sell or transfer any tax indicia to any person or entity other*
31 *than the director.*

32 (y) *To buy any cigarettes or tobacco products for any person under*
33 *18 years of age.*

34 Sec. 11. K.S.A. 79-3371 is hereby amended to read as follows: 79-
35 3371. A tax is hereby imposed upon the privilege of selling or dealing in
36 tobacco products in this state by any person engaged in business as a
37 distributor thereof, at the rate of ten percent (10%) of the wholesale sales
38 price of such tobacco products. Such tax shall be imposed at the time the
39 distributor (a) brings or causes to be brought into this state from without
40 the state tobacco products for sale; (b) makes, manufactures, or fabricates
41 tobacco products in this state for sale in this state; or (c) ships or transports
42 tobacco products to retailers in this state to be sold by those retailers. *For*
43 *any purchaser of tobacco products on which such tax has not been paid*

1 *by the distributor, the director of taxation may proceed directly against*
2 *such purchaser to collect the full amount of the tax due. A purchaser of*
3 *tobacco products includes a consumer as defined by K.S.A. 79-3301, and*
4 *amendments thereto.*

5 Sec. 12. K.S.A. 79-3378 is hereby amended to read as follows: 79-
6 3378. On or before the twentieth day of each calendar month every dis-
7 tributor with a place of business in this state shall file a return with the
8 director showing the quantity and wholesale sales price of each tobacco
9 product (1) brought, or caused to be brought, into this state for sale; and
10 (2) made, manufactured, or fabricated in this state for sale in this state
11 during the preceding calendar month. Every licensed distributor outside
12 this state shall in like manner file a return showing the quantity and
13 wholesale sales price of each tobacco product shipped or transported to
14 retailers in this state to be sold by those retailers, during the preceding
15 calendar month. Returns shall be made upon forms furnished and pre-
16 scribed by the director. Each return shall be accompanied by a remittance
17 for the full tax liability shown therein, less four percent (4%) of such
18 liability as compensation to reimburse the distributor for his or her ex-
19 penses incurred in the administration of this act. As soon as practicable
20 after any return is filed, the director shall examine the return. If the
21 director finds that, in his or her judgment, the return is incorrect and any
22 amount of tax is due from the distributor and unpaid, he or she shall
23 notify the distributor of the deficiency. If a deficiency disclosed by the
24 director's examination cannot be allocated by him to a particular month
25 or months, he or she may nevertheless notify the distributor that a defi-
26 ciency exists and state the amount of tax due. Such notice shall be given
27 to the distributor by registered or certified mail. *The director may require*
28 *such reports to be filed electronically.*

29 Sec. 13. K.S.A. 79-3304, 79-3309, 79-3371 and 79-3378 and K.S.A.
30 2009 Supp. 79-3301, 79-3302, 79-3303, 79-3310, 79-3310c, 79-3311, 79-
31 3312, 79-3316 and 79-3321 are hereby repealed.

32 Sec. 14. This act shall take effect and be in force from and after its
33 publication in the statute book.