

HOUSE BILL No. 2946

By Committee on Appropriations

3-24

9 AN ACT concerning tobacco; relating to requirements for sale of ciga-
10 rettes; concerning payments by certain tobacco product manufacturers
11 under the master settlement agreement; prescribing penalties for cer-
12 tain unlawful acts; amending K.S.A. 2003 Supp. 50-6a01, 50-6a02, 50-
13 6a03, 50-6a04, 79-3301 and 79-3321 and repealing the existing
14 sections.
15

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

17 Section 1. K.S.A. 2003 Supp. 50-6a01 is hereby amended to read as
18 follows: 50-6a01. (a) Cigarette smoking presents serious public health
19 concerns to the state and to the citizens of the state. The surgeon general
20 has determined that smoking causes lung cancer, heart disease and other
21 serious diseases, and that there are hundreds of thousands of tobacco-
22 related deaths in the United States each year. These diseases most often
23 do not appear until many years after the person in question begins
24 smoking.

25 (b) Cigarette smoking also presents serious financial concerns for the
26 state. Under certain health-care programs, the state may have a legal
27 obligation to provide medical assistance to eligible persons for health con-
28 ditions associated with cigarette smoking, and those persons may have a
29 legal entitlement to receive such medical assistance.

30 (c) Under these programs, the state pays millions of dollars each year
31 to provide medical assistance for these persons for health conditions as-
32 sociated with cigarette smoking.

33 (d) It is the policy of the state that financial burdens imposed on the
34 state by cigarette smoking be borne by tobacco product manufacturers
35 rather than by the state to the extent that such manufacturers either
36 determine to enter into a settlement with the state or are found culpable
37 by the courts.

38 (e) On November 23, 1998, leading United States tobacco product
39 manufacturers entered into a settlement agreement, entitled the "master
40 settlement agreement," with the state. The master settlement agreement
41 obligates these manufacturers, in return for a release of past, present and
42 certain future claims against them as described therein, to pay substantial
43 sums to the state (tied in part to their volume of sales); to fund a national

1 foundation devoted to the interests of public health; and to make sub-
2 stantial changes in their advertising and marketing practices and corpo-
3 rate culture, with the intention of reducing underage smoking.

4 (f) It would be contrary to the policy of the state if tobacco product
5 manufacturers who determine not to enter into such a settlement could
6 use a resulting cost advantage to derive large, short-term profits in the
7 years before liability may arise without ensuring that the state will have
8 an eventual source of recovery from them if they are proven to have acted
9 culpably. It is thus in the interest of the state to require that such man-
10 ufacturers establish a reserve fund to guarantee a source of compensation
11 and to prevent such manufacturers from deriving large, short-term profits
12 and then becoming judgment-proof before liability may arise. *However,*
13 *it is the state's experience that such reserve funds are administratively*
14 *burdensome, and enforcement difficult, and the formula by which such*
15 *reserves are determined allows nonparticipating manufacturers continued*
16 *enjoyment of a cost advantage over participating manufacturers. This cost*
17 *differential allows for the sale of inexpensive cigarettes which attract*
18 *young smokers in contradiction to the stated purpose of the master set-*
19 *tlement agreement, and such sale of cigarettes by nonparticipating man-*
20 *ufacturers substantially diminishes the amounts owed to the state under*
21 *the master settlement agreement. Now therefore, it is deemed appropriate,*
22 *on and after January 1, 2005, pursuant to K.S.A. 2003 Supp. 50-6a03,*
23 *and amendments thereto, to impose an upfront assessment upon tobacco*
24 *manufacturers prior to the introduction of their products for sale into the*
25 *state.*

26 Sec. 2. K.S.A. 2003 Supp. 50-6a02 is hereby amended to read as
27 follows: 50-6a02. As used in this act:

28 (a) "Adjusted for inflation" means increased in accordance with the
29 formula for inflation adjustment set forth in exhibit C to the master set-
30 tlement agreement.

31 (b) "Affiliate" means a person who directly or indirectly owns or con-
32 trols, is owned or controlled by, or is under common ownership or control
33 with, another person. Solely for purposes of this definition, the terms
34 "owns," "is owned" and "ownership" mean ownership of an equity inter-
35 est, or the equivalent thereof, of 10% or more, and the term "person"
36 means an individual, partnership, committee, association, corporation or
37 any other organization or group of persons.

38 (c) "Allocable share" means allocable share as that term is defined in
39 the master settlement agreement.

40 (d) "Cigarette" means any product that contains nicotine, is intended
41 to be burned or heated under ordinary conditions of use and consists of
42 or contains (1) any roll of tobacco wrapped in paper or in any substance
43 not containing tobacco; or (2) tobacco, in any form, that is functional in

1 the product, which, because of its appearance, the type of tobacco used
2 in the filler, or its packaging and labeling, is likely to be offered to, or
3 purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped
4 in any substance containing tobacco which, because of its appearance, the
5 type of tobacco used in the filler, or its packaging and labeling, is likely
6 to be offered to, or purchased by, consumers as a cigarette described in
7 clause (1) of this subsection (d). The term “cigarette” includes “roll-your-
8 own” (i.e., any tobacco which, because of its appearance, type, packaging
9 or labeling is suitable for use and likely to be offered to, or purchased by,
10 consumers as tobacco for making cigarettes). For purposes of this defini-
11 tion of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall con-
12 stitute one individual “cigarette.”

13 (e) “Master settlement agreement” means the settlement agreement
14 (and related documents) entered into on November 23, 1998, by the state
15 and leading United States tobacco product manufacturers.

16 (f) “Qualified escrow fund” means an escrow arrangement with a fed-
17 erally or state chartered financial institution having no affiliation with any
18 tobacco product manufacturer and having assets of at least
19 \$1,000,000,000 where such arrangement requires that such financial in-
20 stitution hold the escrowed funds’ principal for the benefit of releasing
21 parties and prohibits the tobacco product manufacturer placing the funds
22 into escrow from using, accessing or directing the use of the funds’ prin-
23 cipal except as consistent with subsection (b)(2) of K.S.A. 2003 Supp. 50-
24 6a03, and amendments thereto.

25 (g) “Released claims” means released claims as that term is defined
26 in the master settlement agreement.

27 (h) “Releasing parties” means releasing parties as that term is defined
28 in the master settlement agreement.

29 (i) “Tobacco product manufacturer” means an entity that after the
30 date of enactment of this act ~~directly (and not exclusively through any~~
31 ~~affiliate):~~

32 (1) *Manufactures or whether in the capacity of a trademark holder,*
33 *distributor, or other entity, contracts for manufacture of* cigarettes any-
34 where that such manufacturer intends to be sold in the United States,
35 including cigarettes intended to be sold in the United States through an
36 importer (except where such importer is an original participating manu-
37 facturer, as that term is defined in the master settlement agreement, that
38 will be responsible for the payments under the master settlement agree-
39 ment with respect to such cigarettes as a result of the provisions of sub-
40 sections II(mm) of the master settlement agreement and that pays the
41 taxes specified in subsection II(z) of the master settlement agreement,
42 and provided that the manufacturer of such cigarettes does not market
43 or advertise such cigarettes in the United States);

1 (2) is the first purchaser anywhere for resale in the United States of
2 cigarettes manufactured anywhere that the manufacturer does not intend
3 to be sold in the United States; or

4 (3) becomes a successor of an entity described in paragraph (1) or
5 (2). The term “tobacco product manufacturer” shall not include an affil-
6 iate of a tobacco product manufacturer unless such affiliate itself falls
7 within any of parts (1) - (3) of subsection (i) above.

8 (j) “Units sold” means the number of individual cigarettes sold in the
9 state by the applicable tobacco product manufacturer (whether directly
10 or through a distributor, retailer or similar intermediary or intermediar-
11 ies) during the year in question, as measured by excise taxes collected by
12 the state on packs (or “roll-your-own” tobacco containers) bearing the
13 excise tax stamp of the state. The department of revenue shall promulgate
14 such rules and regulations as are necessary to ascertain the amount of
15 state excise tax paid on the cigarettes of such tobacco product manufac-
16 turer for each year.

17 Sec. 3. K.S.A. 2003 Supp. 50-6a03 is hereby amended to read as
18 follows: 50-6a03. Any tobacco product manufacturer selling cigarettes to
19 consumers within the state (whether directly or through a distributor,
20 retailer or similar intermediary or intermediaries) after the effective date
21 of this act shall do one of the following:

22 (a) Become a participating manufacturer (as that term is defined in
23 section II(jj) of the master settlement agreement) and generally perform
24 its financial obligations under the master settlement agreement; or

25 (b) (1) place into a qualified escrow fund by April 15 of the year
26 following the year in question the following amounts (as such amounts
27 are adjusted for inflation):

28 (A) 1999: \$.0094241 per unit sold after the effective date of this act;

29 (B) 2000: \$.0104712 per unit sold;

30 (C) for each of 2001 and 2002: \$.0136125 per unit sold;

31 (D) for each of 2003 through 2006 and 2004: \$.0167539 per unit sold;

32 (E) ~~for each of 2007 and each year thereafter: \$.0188482 per unit~~

33 ~~sold for each of 2005 and each year thereafter, no further amounts shall~~
34 ~~be placed into a qualified escrow fund, except that funds previously placed~~
35 ~~into a qualified escrow fund or required to be placed into a qualified~~
36 ~~escrow fund shall remain in the qualified escrow fund and only released~~
37 ~~as provided herein.~~

38 (2) A tobacco product manufacturer that places funds into escrow
39 pursuant to paragraph (1) of subsection (b) shall receive the interest or
40 other appreciation on such funds as earned. Such funds themselves shall
41 be released from escrow only under the following circumstances:

42 (A) To pay a judgment or settlement on any released claim brought
43 against such tobacco product manufacturer by the state or any releasing

1 party located or residing in the state. Funds shall be released from escrow
2 under this subparagraph (i) in the order in which they were placed into
3 escrow and (ii) only to the extent and at the time necessary to make
4 payments required under such judgment or settlement;

5 (B) to the extent that a tobacco product manufacturer establishes that
6 the amount it was required to place into escrow in a particular year was
7 greater than the state's allocable share of the total payments that such
8 manufacturer would have been required to make in that year under the
9 master settlement agreement (as determined pursuant to section IX(i)(2)
10 of the master settlement agreement, and before any of the adjustments
11 or offsets described in section IX(i)(3) of that agreement other than the
12 inflation adjustment) had it been a participating manufacturer, the excess
13 shall be released from escrow and revert back to such tobacco product
14 manufacturer; or

15 (C) to the extent not released from escrow under subparagraphs (A)
16 or (B) of paragraph (2) of subsection (b), funds shall be released from
17 escrow and revert back to such tobacco product manufacturer 25 years
18 after the date on which they were placed into escrow.

19 (3) Each tobacco product manufacturer that elects to place funds into
20 escrow pursuant to this subsection shall annually certify to the attorney
21 general that it is in compliance with this subsection. The attorney general
22 may bring a civil action on behalf of the state against any tobacco product
23 manufacturer that fails to place into escrow the funds required under this
24 section. Any tobacco product manufacturer that fails in any year to place
25 into escrow the funds required under this section shall:

26 (A) Be required within 15 days to place such funds into escrow as
27 shall bring it into compliance with this section. The court, upon a finding
28 of a violation of this subsection, may impose a civil penalty to be credited
29 to the state general fund in an amount not to exceed 5% of the amount
30 improperly withheld from escrow per day of the violation and in a total
31 amount not to exceed 100% of the original amount improperly withheld
32 from escrow;

33 (B) in the case of a knowing violation, be required within 15 days to
34 place such funds into escrow as shall bring it into compliance with this
35 section. The court, upon a finding of a knowing violation of this subsec-
36 tion, may impose a civil penalty to be paid to the state general fund in an
37 amount not to exceed 15% of the amount improperly withheld from es-
38 crow per day of the violation and in a total amount not to exceed 300%
39 of the original amount improperly withheld from escrow; and

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

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

7 (c) *On and after January 1, 2005, in addition to subsection (a) or (b)*
8 *of this section, any tobacco product manufacturer selling cigarettes to*
9 *consumers within the state (whether directly or through a distributor,*
10 *retailer or intermediaries) shall pay an assessment on all cigarettes sold*
11 *in the state, hereinafter referred to as the "MSA assessment". (1) The MSA*
12 *assessment shall be levied in the following amounts (as such amounts are*
13 *adjusted for inflation):*

14 (A) *for each of 2005 and 2006: \$.0167539 per unit sold;*

15 (B) *for each of 2007 and each year thereafter \$.0188482 per unit sold.*

16 (2) *The director of taxation shall design and designate indicia of MSA*
17 *assessment payment to be affixed to each package or container of ciga-*
18 *rettes, to include all cigarette products as defined by K.S.A. 2003 Supp.*
19 *50-6a02, and amendments thereto, and to be administered in a manner*
20 *consistent with K.S.A. 79-3311, K.S.A. 79-3312 and K.S.A. 79-3316, and*
21 *amendments thereto.*

22 (3) *The MSA assessment shall be collected and paid by the distributor*
23 *of tobacco products, as defined by K.S.A. 79-3301, and amendments*
24 *thereto, and such distributor shall be required to obtain reimbursement*
25 *of the MSA assessment due from the tobacco product manufacturer. Re-*
26 *imbursement to the distributor by the tobacco product manufacturer may*
27 *be achieved either by the manufacturer giving a credit against the nego-*
28 *tiated price of cigarettes sold to the distributor, or as a cash payment.*

29 (4) *The tobacco product manufacturer shall reimburse the distributor*
30 *for the full value of the applicable MSA assessment. The distributor shall*
31 *retain any applicable discount upon the purchase of MSA assessment pay-*
32 *ment indicia from the state.*

33 (5) *MSA assessment amounts collected for a given year attributed to*
34 *a participating manufacturer (as that term is defined in section II(jj) of*
35 *the master settlement agreement), shall be credited against the state's al-*
36 *locable share amount owed by the participating manufacturer under the*
37 *master settlement agreement for that year. However, in no event shall the*
38 *credit for the MSA assessment amount exceed the state's allocable share*
39 *due and owing from the particular participating manufacturer.*

40 (6) *A tobacco product manufacturer which became a subsequent par-*
41 *ticipating manufacturer under the master settlement agreement within 60*
42 *days of the execution date (November 23, 1998), shall be eligible to file*
43 *with the director of taxation not later than June 30 following the close of*

1 *the year for a refund of MSA assessment amounts attributable to the*
2 *manufacturer's cigarette volume during the year, and for which the man-*
3 *ufacturer has made the required MSA assessment reimbursement to a*
4 *distributor, and the amount of the MSA assessments the manufacturer*
5 *has actually paid directly to the state, or both, subject to the following:*
6 (A) *Such refund shall be based on the sales volume so attributed, but*
7 *not to exceed a percentage of the requesting manufacturer's sales within*
8 *the state equal in percentage (not actual units sold) to the manufacturer's*
9 *market percentage exempted from payment obligations under the master*
10 *settlement agreement provision IX(i);*
11 (B) *in no event shall the refund exceed the total MSA assessment*
12 *amounts attributable to the manufacturer and actually collected during*
13 *the year for which the refund is being requested;*
14 (C) *any request for a refund filed after June 30 following the close of*
15 *the year for which a refund is requested shall be deemed invalid and the*
16 *manufacturer no longer eligible for a refund for that particular year;*
17 (D) *regardless of any amendment or modification to the master set-*
18 *tlement agreement that expands the volume exempted from payment ob-*
19 *ligations under section IX(i), no more than the market share percentage*
20 *(not actual units sold) so exempted as of the expiration of the original 60*
21 *day provision shall be applicable to the refund calculation herein;*
22 (E) *should the master settlement agreement, or its provisions cited in*
23 *this section 6, and amendments thereto, cease to be in effect, the provisions*
24 *of this section 6, and amendments thereto, shall immediately terminate.*
25 *Only valid refund requests filed prior to this termination shall be*
26 *processed.*
27 (7) *Not later than March 15 following each year, the department of*
28 *revenue shall notify the independent auditor (as designated pursuant to*
29 *the master settlement agreement) and the participating manufacturers of*
30 *the amounts of credits available for the year.*
31 (8) *Distributors of cigarettes shall make all such filings as the director*
32 *may require to comply with this statute.*
33 (9) *MSA assessment amounts collected in excess of the state's allocable*
34 *share under the master settlement agreement shall be deposited to the*
35 *credit of the state general fund for appropriation by the legislature.*
36 (d) *If this act, or any portion of the amendment to K.S.A. 2003 Supp.*
37 *50-6a03, and amendments thereto, made by this act, is held by a court of*
38 *competent jurisdiction to be unconstitutional, then such amendment of*
39 *K.S.A. 2003 Supp. 50-6a03 shall be deemed repealed and K.S.A. 2003*
40 *Supp. 50-6a03, and amendments thereto, shall be restored in the form as*
41 *it existed prior to the amendments made by this act. Neither any holding*
42 *of unconstitutionality nor the repeal of K.S.A. 2003 Supp. 50-6a03, and*
43 *amendments thereto, shall affect, impair or invalidate any other portion*

1 of K.S.A. 2003 Supp. 50-6a03, and amendments thereto, or the application
2 of such section to any other person or circumstance.

3 (e) Should the master settlement agreement cease to be in effect,
4 whether in part or in whole, as the case may be, this statute shall remain
5 in full force and effect.

6 Sec. 4. K.S.A. 2003 Supp. 50-6a04 is hereby amended to read as
7 follows: 50-6a04. (a) No person may affix, or cause to be affixed, tax
8 stamps, MSA assessment stamps or meter impressions to individual pack-
9 ages of cigarettes or pay the required tax on roll-your-own tobacco in
10 accordance with K.S.A. 79-3371, and amendments thereto, or K.S.A. 2003
11 Supp. 50-6a03, and amendments thereto, or both, unless the tobacco
12 product manufacturer that makes or sells such cigarettes or roll-your-own
13 tobacco has:

14 (1) Become a participating manufacturer; or

15 (2) made all required escrow payments.

16 (b) Not later than July 1, 2002, the attorney general shall develop a
17 list, to be posted on the attorney general's website, of all tobacco product
18 manufacturers that have become participating manufacturers or made all
19 required escrow payments. This list shall include the brand families iden-
20 tified by each such tobacco product manufacturer under subsection (c).
21 The list shall be updated as necessary. A person may rely upon the attor-
22 ney general's list in affixing or causing to be affixed stamps or meter
23 impressions to individual packages of cigarettes or paying the tax on roll-
24 your-own tobacco as required by K.S.A. 79-3371, and amendments
25 thereto, of any brand family included on the list. *On and after January*
26 *1, 2005, the attorney general shall not be required to post such list.*

27 (c) In order to be included on the list developed by the attorney
28 general under subsection (b), a tobacco product manufacturer shall (1)
29 submit to the attorney general a list of brand families whose cigarettes
30 are to be counted in calculating the participating manufacturer's annual
31 payments under the master settlement agreement or required escrow
32 payments whichever is applicable, (2) appoint a registered agent for serv-
33 ice of process in the state and identify such registered agent to the attor-
34 ney general, and (3) certify, under penalty of perjury, that all escrow
35 payments have been made by all other tobacco product manufacturers
36 that previously made or sold brand families identified under this subsec-
37 tion or brand style included within such brand families, except that, if the
38 brand family or brand style was made or sold by the manufacturer before
39 the effective date of this act, such manufacturer shall be required only to
40 identify such predecessor manufacturer or manufacturers. A tobacco
41 product manufacturer may update the list to reflect changes.

42 (d) In addition to or in lieu of any other civil or criminal penalty
43 provided by law, upon a finding that a licensee has violated subsection

1 (a) or any rules and regulations adopted pursuant thereto, the director
2 may revoke or suspend the license of any licensee in the manner provided
3 by K.S.A. 79-3309, and amendments thereto. The director may also im-
4 pose a civil fine in an amount not to exceed the greater of 500% of the
5 retail value of the cigarettes or roll-your-own tobacco involved or \$5,000
6 upon a finding of a violation of subsection (a) or any rules and regulations
7 adopted pursuant thereto. Such fine shall be imposed in the manner
8 provided by K.S.A. 79-3391, and amendments thereto.

9 (e) Any cigarettes or roll-your-own tobacco that are stamped, to
10 which a meter impression is affixed or for which tax is paid as required
11 by K.S.A. 79-3371, and amendments thereto, in violation of subsection
12 (a) shall be deemed contraband under K.S.A. 79-3323, and amendments
13 thereto, and shall be subject to seizure and forfeiture as provided therein
14 and in K.S.A. 79-3324a, and amendments thereto. All such cigarettes and
15 roll-your-own tobacco seized and forfeited shall be destroyed. Such cig-
16 arettes and roll-your-own tobacco shall be deemed contraband whether
17 the violation of subsection (a) is knowing or otherwise.

18 (f) (1) The director may require wholesale dealers and distributors
19 to submit such information as is necessary to enable the attorney general
20 to determine whether a nonparticipating manufacturer has made the re-
21 quired escrow payments.

22 (2) The attorney general may require nonparticipating manufacturers
23 to submit such information as the attorney general may determine is
24 necessary to enable the attorney general to determine whether a non-
25 participating manufacturer has made the required escrow payments.

26 (g) The attorney general may require a nonparticipating manufac-
27 turer to make the required escrow payments in quarterly installments
28 during the year in which the sales covered by such payments are made
29 in order to be placed on the list developed by the attorney general under
30 subsection (b).

31 (h) (1) It shall be unlawful for a nonparticipating manufacturer, di-
32 rectly or indirectly, to falsely represent to any person in Kansas:

33 (A) Any information about a brand family pursuant to the list sub-
34 mitted pursuant to subsection (b);

35 (B) that it is a participating manufacturer;

36 (C) that it has made all required escrow payments; or

37 (D) that it has satisfied any other requirements imposed pursuant to
38 this statute.

39 (2) Violation of this section is a class A, nonperson misdemeanor.

40 (i) The director and the attorney general may enter into a written
41 agreement authorizing the exchange of information reasonably necessary
42 to the enforcement and administration of this section.

43 (j) As used in this section:

- 1 (1) "Participating manufacturer" has the meaning ascribed thereto in
2 subsection (a) of K.S.A. 2003 Supp. 50-6a03, and amendments thereto.
- 3 (2) "Required escrow payments" means the amounts described in
4 subsection (b)(1) of K.S.A. 2003 Supp. 50-6a03, and amendments thereto.
- 5 (3) "Director" means the director of taxation.
- 6 Sec. 5. K.S.A. 2003 Supp. 79-3301 is hereby amended to read as
7 follows: 79-3301. As used in this act:
- 8 (a) "Carrier" means one who transports cigarettes from a manufac-
9 turer to a wholesale dealer or from one wholesale dealer to another.
- 10 (b) "Carton" means the container used by the manufacturer of cig-
11 arettes in which no more than 10 packages of cigarettes are placed prior
12 to shipment from such manufacturer.
- 13 (c) "Cigarette" means any roll for smoking, made wholly or in part
14 of tobacco, irrespective of size or shape, and irrespective of tobacco being
15 flavored, adulterated or mixed with any other ingredient if the wrapper
16 is in greater part made of any material except tobacco, *except that for*
17 *purposes of an MSA assessment, as prescribed in article 6a of chapter 50*
18 *of the Kansas Statutes Annotated, the term cigarette shall have the mean-*
19 *ing ascribed thereto by K.S.A. 2003 Supp. 50-6a02, and amendments*
20 *thereto.*
- 21 (d) "Consumer" means the person purchasing or receiving cigarettes
22 or tobacco products for final use.
- 23 (e) "Dealer" means any person who engages in the sale or manufac-
24 ture of cigarettes in the state of Kansas, and who is required to be licensed
25 under the provisions of this act.
- 26 (f) "Dealer establishment" means any location or premises, other
27 than vending machine locations, at or from which cigarettes are sold, and
28 where records are kept.
- 29 (g) "Director" means the director of taxation.
- 30 (h) "Distributor" means: (1) Any person engaged in the business of
31 selling tobacco products in this state who brings, or causes to be brought,
32 into this state from without the state any tobacco products for sale; (2)
33 any person who makes, manufactures, fabricates or stores tobacco prod-
34 ucts in this state for sale in this state; or (3) any person engaged in the
35 business of selling tobacco products without this state who ships or trans-
36 ports tobacco products to any person in the business of selling tobacco
37 products in this state.
- 38 (i) "Division" means the division of taxation.
- 39 (j) "License" means, in addition to the privilege of a licensee to sell
40 cigarettes or tobacco products in the state of Kansas, the written evidence
41 of such authority or privilege to so operate as evidenced by any license
42 issued by the director of taxation.
- 43 (k) "Licensee" means any person holding a current license issued

1 pursuant to this act.

2 (l) "Manufacturer's salesperson" means a person employed by a cig-
3 arette manufacturer who sells cigarettes, manufactured by such employer
4 and procured from wholesale dealers.

5 (m) "Meter imprints" means tax indicia applied by means of ink print-
6 ing machines.

7 (n) (1) "Package" means a container in which no more than 25 in-
8 dividual cigarettes are wrapped and sealed by the manufacturer of ciga-
9 rettes prior to shipment to a wholesale dealer.

10 (2) For the purposes of subsections (u), (v) and (w) of K.S.A. 79-
11 3321, and amendments thereto, "package" shall have the meaning as-
12 cribed thereto in 15 U.S.C. §1332(4).

13 (o) "Person" means any individual, partnership, society, association,
14 joint-stock company, corporation, estate, receiver, trustee, assignee, ref-
15 erree or any other person acting in a fiduciary or representative capacity
16 whether appointed by a court or otherwise and any combination of
17 individuals.

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

20 (q) "Retail dealer" means a person, other than a vending machine
21 operator, in possession of cigarettes for the purpose of sale to a consumer.

22 (r) "Sale" means any transfer of title or possession or both, exchange,
23 barter, distribution or gift of cigarettes or tobacco products, with or with-
24 out consideration.

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

28 (t) "Stamps" means tax indicia applied either by means of water ap-
29 plied gummed paper or heat process.

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

32 (v) "Tobacco products" means cigars, cheroots, stogies, periques;
33 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;
34 snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other
35 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings
36 of tobacco, and other kinds and forms of tobacco, prepared in such man-
37 ner as to be suitable for chewing or smoking in a pipe or otherwise, or
38 both for chewing and smoking. Tobacco products does not include
39 cigarettes.

40 (w) "Vending machine" means any coin operated machine, contri-
41 vance or device, by means of which merchandise may be sold.

42 (x) "Vending machine distributor" means any person who sells ciga-
43 rette vending machines to a vending machine operator operating vending

1 machines in the state of Kansas.

2 (y) “Vending machine operator” means any person who places a
3 vending machine, owned, leased or operated by such person, at locations
4 where cigarettes are sold from the machine. The owner or lessee of the
5 premises upon which a vending machine is placed shall not be considered
6 the operator of the machine, nor shall the owner or lessee, or any em-
7 ployee or agent of the owner or lessee be considered an authorized agent
8 of the vending machine operator, if the owner or lessee does not own or
9 lease the machine and the owner’s or lessee’s sole remuneration from the
10 machine is a flat rental fee or commission based upon the number or
11 value of cigarettes sold from the machine, or a combination of both.

12 (z) “Wholesale dealer” means any person who sells cigarettes to other
13 wholesale dealers, retail dealers, vending machine operators and manu-
14 facturer’s salespersons for the purpose of resale in the state of Kansas.

15 (aa) “Wholesale sales price” means the original net invoice price for
16 which[a] manufacturer sells a tobacco product to a distributor, as shown
17 by the manufacturer’s original invoice.

18 (bb) “Importer” shall have the same meaning ascribed thereto in 26
19 U.S.C.§5702(l).

20 (cc) “Manufacturer” shall have the same meaning ascribed thereto in
21 26 U.S.C.§5702(d).

22 Sec. 6. K.S.A. 2003 Supp. 79-3321 is hereby amended to read as
23 follows: 79-3321. It shall be unlawful for any person:

24 (a) To possess, except as otherwise specifically provided by this act,
25 more than 200 cigarettes without the required tax indicia *and MSA as-*
26 *essment indicia* being affixed as herein provided *and as prescribed by*
27 *K.S.A. 2003 Supp. 50-6a03, and amendments thereto.*

28 (b) To mutilate or attach to any individual package of cigarettes any
29 stamp that has in any manner been mutilated or that has been heretofore
30 attached to a different individual package of cigarettes or to have in pos-
31 session any stamps so mutilated.

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

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

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

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

1 therein invoiced.

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

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

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

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

13 (i) To have in possession any evidence of tax indicia provided for
14 herein *or the MSA assessment indicia as prescribed by K.S.A. 2003 Supp.*
15 *50-6a03, and amendments thereto, as the case may be*, not purchased from
16 the director.

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

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

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

25 (m) Who is under 18 years of age to purchase or attempt to purchase
26 cigarettes or tobacco products.

27 (n) Who is under 18 years of age to possess or attempt to possess
28 cigarettes or tobacco products.

29 (o) To sell cigarettes to a retailer or at retail that do not: (1) Bear
30 Kansas tax indicia or upon which the Kansas cigarette tax has not been
31 paid; and (2) bear *MSA assessment indicia for which the distributor has*
32 *not been reimbursed by the manufacturer pursuant to K.S.A. 2003 Supp.*
33 *50-6a03, and amendments thereto.*

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

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

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

42 (s) To distribute samples within 500 feet of any school when such
43 facility is being used primarily by persons under 18 years of age unless

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

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

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

12 (2) the installation and use of a vending machine in a commercial
13 building or industrial plant, or portions thereof, where the public is not
14 customarily admitted and where machines are intended for the sole use
15 of adult employees employed in the building or plant; or

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

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

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

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

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

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

1 U.S.C. 1335a.

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

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

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

9 (w) To affix any stamp required pursuant to K.S.A. 79-3311, and
10 amendments thereto, *or K.S.A. 2003 Supp. 50-6a03, and amendments*
11 *thereto*, to the package of any cigarettes described in subsection (u) or
12 altered in violation of subsection (v).

13 Sec. 7. K.S.A. 2003 Supp. 50-6a01, 50-6a02, 50-6a03, 50-6a04, 79-
14 3301 and 79-3321 are hereby repealed.

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