

HOUSE BILL No. 2221

AN ACT concerning crimes and punishments; relating to smoking and cigarette sales; amending K.S.A. 21-3105, 21-4009, 21-4010, 21-4011, 21-4012 and 65-530 and K.S.A. 2008 Supp. 79-3301 and 79-3321 and repealing the existing sections; also repealing K.S.A. 21-4016 and 21-4017.

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

Section 1. On and after January 2, 2010, K.S.A. 21-3105 is hereby amended to read as follows: 21-3105. A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions.

(1) A felony is a crime punishable by death or by imprisonment in any state correctional institution or a crime which is defined as a felony by law.

(2) A traffic infraction is a violation of any of the statutory provisions listed in subsection (c) of K.S.A. 8-2118, and amendments thereto.

(3) A cigarette or tobacco infraction is a violation of K.S.A. 21-4009 through 21-4014 and subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto.

(4) All other crimes are misdemeanors.

Sec. 2. On and after January 2, 2010, K.S.A. 21-4009 is hereby amended to read as follows: 21-4009. As used in ~~this act~~ K.S.A. 21-4009 through 21-4014, and amendments thereto:

(a) "Access point" means the area within a ten foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to subsection (d) of K.S.A. 21-4010, and amendments thereto.

~~(a)~~ (b) "Bar" means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-premises consumption.

(c) "Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers their services for a nonprofit entity.

(d) "Employer" means any person, partnership, corporation, association or organization, including municipal or nonprofit entities, which employs one or more individual persons.

(e) "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or doorways which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an "enclosed area": (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times; and (2) rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and which comprise an area that is at least 30% of the total perimeter wall area of such room or area.

(f) "Food service establishment" means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(g) "Gaming floor" means the area of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, where patrons engage in Class III gaming. The gaming floor shall not include any areas used for accounting, maintenance, surveillance, security, administrative offices, storage, cash or cash counting, records, food service, lodging or entertainment, except that the gaming floor may include a bar where alcoholic beverages are served so

long as the bar is located entirely within the area where Class III gaming is conducted.

(h) “Medical care facility” means a physician’s office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto.

(i) “Outdoor recreational facility” means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.

(j) “Place of employment” means any enclosed area under the control of a public or private employer, including, but not limited to, work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways, that is used by employees during the course of employment. For purposes of this section, a private residence shall not be considered a “place of employment” unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

(k) “Private club” means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.

(l) “Public building” means any building owned or operated by: (1) The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof; (2) any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or (3) any other separate corporate instrumentality or unit of the state or any municipality.

(m) “Public meeting” means any meeting open to the public pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of this state.

(n) “Public place” means any enclosed ~~indoor~~ areas open to the public or used by the general public including, but not limited to: ~~Restaurants~~ Banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, ~~medical care facilities~~, educational facilities, libraries, courtrooms, ~~state, county or municipal~~ public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a “public place” unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

~~(b) “Public meeting” includes all meetings open to the public.~~

~~(e) (o) “Smoking” means possession of a lighted cigarette, cigar, pipe or any other lighted smoking equipment burning tobacco in any other form or device designed for the use of tobacco.~~

(p) “Tobacco shop” means any indoor area operated primarily for the retail sale of tobacco, tobacco products or smoking devices or accessories, and which derives not less than 65% of its gross receipts from the sale of tobacco.

(q) “Substantial dues or membership fee requirements” means initiation costs, dues or fees proportional to the cost of membership in similarly-situated outdoor recreational facilities that are not considered nominal and implemented to otherwise avoid or evade restrictions of a statewide ban on smoking.

Sec. 3. On and after January 2, 2010, K.S.A. 21-4010 is hereby amended to read as follows: 21-4010. (a) No person shall smoke in a ~~public place~~ an enclosed area or at a public meeting ~~except in designated smoking areas~~, including, but not limited to:

- (1) Public places;
- (2) taxicabs and limousines;
- (3) restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
- (4) restrooms, lobbies and other common areas in hotels and motels

and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;

(5) access points of all buildings and facilities not exempted pursuant to subsection (d); and

(6) any place of employment.

~~(b) Smoking areas may be designated by proprietors or other persons in charge of public places, except in passenger elevators, school buses, public means of mass transportation and any other place in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation.~~

~~(c) Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.~~

(b) Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.

(c) Notwithstanding any other provision of this section, K.S.A. 21-4011 or 21-4012, and amendments thereto, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.

(d) The provisions of this section shall not apply to:

(1) The outdoor areas of any building or facility beyond the access points of such building or facility;

(2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;

(3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;

(4) the gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;

(5) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;

(6) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;

(7) tobacco shops;

(8) a class A or class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and

(9) a private club in designated areas where minors are prohibited.

Sec. 4. On and after January 2, 2010, K.S.A. 21-4011 is hereby amended to read as follows: 21-4011. The proprietor or other person in charge of the premises of a public place, or other area where smoking is prohibited, shall post or cause to be posted in a conspicuous place signs displaying the international no smoking symbol and clearly stating that smoking is prohibited by state law. ~~The person in charge of the premises shall also post or cause to be posted in any designated smoking area, signs stating that smoking is permitted in such room or area. The proprietor or person in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area.~~

Sec. 5. On and after January 2, 2010, K.S.A. 21-4012 is hereby amended to read as follows: 21-4012. ~~Any person found guilty of smoking in violation of this act is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs as required by this act, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of this act.~~ (a) *It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of the provisions of K.S.A. 21-4009 through 21-4014, and amendments thereto.*

(b) *It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person: (1) Has knowledge that smoking is occurring; and (2) acquiesces to the smoking under the totality of the circumstances.*

(c) *It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of K.S.A. 21-4010, and amendments thereto.*

(d) *Any person who violates any provision of K.S.A. 21-4009 through 21-4014, and amendments thereto, shall be guilty of a cigarette or tobacco infraction punishable by a fine:*

(1) *Not exceeding \$100 for the first violation;*

(2) *not exceeding \$200 for a second violation within a one year period after the first violation; or*

(3) *not exceeding \$500 for a third or subsequent violation within a one year period after the first violation.*

For purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.

(e) *Each individual allowed to smoke by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, in violation of subsection (b) shall be considered a separate violation for purposes of determining the number of violations under subsection (d).*

(f) *No employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer reports or attempts to prosecute a violation of any of the provisions of K.S.A. 21-4009 through 21-4014, and amendments thereto.*

New Sec. 6. The director of alcoholic beverage control is hereby authorized to promulgate rules and regulations to insure any exemption from the statewide ban on smoking is bona fide and the entity seeking such exemption is not inappropriately seeking to circumvent the smoking ban created under this act.

Sec. 7. On and after January 2, 2010, K.S.A. 65-530 is hereby amended to read as follows: 65-530. (a) As used in this section:

(1) “Day care home” means a day care home as defined under Kansas administrative regulation 28-4-113, a group day care home as defined under Kansas administrative regulation 28-4-113 and a family day care home as defined under K.S.A. 65-517 and amendments thereto.

(2) “Smoking” means possession of a lighted cigarette, cigar, pipe or burning tobacco in any other form or device designed for the use of tobacco.

(b) Smoking within any room, enclosed area or other enclosed space of a facility or facilities of a day care home during a time when children who are not related by blood, marriage or legal adoption to the person who maintains the home are being cared for, as part of the operation of the day care home, within the facility or facilities is hereby prohibited. Nothing in this subsection shall be construed to prohibit smoking on the premises of the day care home outside the facility or facilities of a day care home, including but not limited to porches, yards or garages.

(c) Each day care home registration certificate or license shall contain a statement in bold print that smoking is prohibited within a room, enclosed area or other enclosed space of the facility or facilities of the day care home under the conditions specified in subsection (b). The state-

ment shall be phrased in substantially the same language as subsection (b). The registration certificate or license shall be posted in a conspicuous place in the facility or facilities.

(d) The secretary of health and environment may levy a civil fine under K.S.A. 65-526 and amendments thereto against any day care home for a first or second violation of this section. A third or subsequent violation shall be subject to the provisions of K.S.A. 65-523 and amendments thereto.

(e) *In addition to any civil fine which may be levied pursuant to subsection (d), any day care home that violates any provision of this section may also be subject to criminal punishment pursuant to K.S.A. 21-4012, and amendments thereto.*

New Sec. 8. On and after January 2, 2010, the amendments made to K.S.A. 21-4009 through 21-4012, and amendments thereto, and K.S.A. 21-4013 and 21-4014, and amendments thereto, shall constitute the Kansas indoor clean air act.

Sec. 9. K.S.A. 2008 Supp. 79-3301 is hereby amended to read as follows: 79-3301. As used in ~~this act~~ K.S.A. 79-3301 *et seq.*, and amendments thereto:

(a) “Carrier” means one who transports cigarettes from a manufacturer to a wholesale dealer or from one wholesale dealer to another.

(b) “Carton” means the container used by the manufacturer of cigarettes in which no more than 10 packages of cigarettes are placed prior to shipment from such manufacturer.

(c) “Cigarette” means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.

(d) “Consumer” means the person purchasing or receiving cigarettes or tobacco products for final use.

(e) “Dealer” means any person who engages in the sale or manufacture of cigarettes in the state of Kansas, and who is required to be licensed under the provisions of this act.

(f) “Dealer establishment” means any location or premises, other than vending machine locations, at or from which cigarettes are sold, and where records are kept.

(g) “Director” means the director of taxation.

(h) “Distributor” means: (1) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from ~~without~~ *outside* the state any tobacco products for sale;

(2) any person who makes, manufactures, fabricates or stores tobacco products in this state for sale in this state; or

(3) any person engaged in the business of selling tobacco products ~~without~~ *outside* this state who ships or transports tobacco products to any person in the business of selling tobacco products in this state.

(i) “Division” means the division of taxation.

(j) “License” means, ~~in addition to~~ the privilege of a licensee to sell cigarettes or tobacco products in the state of Kansas, *and* the written evidence of such authority or privilege ~~to so operate as evidenced by any license as issued by the director of taxation.~~

(k) “Licensee” means any person holding a current license issued pursuant to this act.

(l) “Manufacturer’s salesperson” means a person employed by a cigarette manufacturer who sells cigarettes, manufactured by such employer and procured from wholesale dealers.

(m) “Meter imprints” means tax indicia applied by means of ink printing machines.

(n) (1) “Package” means a container in which no more than 25 individual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer;

(2) for the purposes of subsections (u), (v) and (w) of K.S.A. 79-3321, and amendments thereto, “package” ~~shall have the meaning ascribed thereto~~ *means the same as provided in 15 U.S.C. §1332(4).*

(o) “Person” means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity

whether appointed by a court or otherwise and any combination of individuals.

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

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

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

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

(t) “*Self-service display*” means a display that contains cigarettes or tobacco products and is located in an area openly accessible to a retail dealer’s consumers, and from which such consumers can readily access cigarettes or tobacco products without the assistance of a salesperson. A display case that holds cigarettes or tobacco products behind locked doors does not constitute a self-service display.

(u) “Stamps” means tax indicia applied either by means of water applied gummed paper or heat process.

~~(tt)~~ (v) “Tax indicia” means visible evidence of tax payment in the form of stamps or meter imprints.

~~(tv)~~ (w) “Tobacco products” means cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Tobacco products ~~does~~ do not include cigarettes.

(x) “*Tobacco speciality store*” means a dealer establishment that derives at least 75% of such dealer establishment’s revenue from cigarettes or tobacco products.

~~(tw)~~ (y) “Vending machine” means any coin operated machine, contrivance or device, by means of which merchandise may be sold.

~~(tx)~~ (z) “Vending machine distributor” means any person who sells cigarette vending machines to a vending machine operator operating vending machines in the state of Kansas.

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

~~(tz)~~ (bb) “Wholesale dealer” means any person who sells cigarettes to other wholesale dealers, retail dealers, vending machine operators and manufacturer’s salespersons for the purpose of resale in the state of Kansas.

~~(taa)~~ (cc) “Wholesale sales price” means the original net invoice price for which a manufacturer sells a tobacco product to a distributor, as shown by the manufacturer’s original invoice.

~~(tbb)~~ (dd) “Importer” ~~shall have the same meaning ascribed thereto~~ means the same as provided in 26 U.S.C. §5702(l).

~~(tee)~~ (ee) “Manufacturer” ~~shall have the same meaning ascribed thereto~~ means the same as provided in 26 U.S.C. §5702(d).

Sec. 10. K.S.A. 2008 Supp. 79-3321 is hereby amended to read as follows: 79-3321. It shall be unlawful for any person:

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

(b) To mutilate or attach to any individual package of cigarettes any stamp that has in any manner been mutilated or that has been heretofore

attached to a different individual package of cigarettes or to have in possession any stamps so mutilated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) To sell a vending machine without having a vending machine distributor's license.

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

(s) To distribute samples within 500 feet of any school when such facility is being used primarily by persons under 18 years of age unless the sampling is: (1) In an area to which persons under 18 years of age are denied access;

(2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or

(3) at or adjacent to an outdoor production, repair or construction site or facility.

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

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

(2) the installation and use of a vending machine in a commercial building or industrial plant, or portions thereof, where the public is not

customarily admitted and where machines are intended for the sole use of adult employees employed in the building or plant; or

(3) a vending machine which has a lock-out device which is inoperable in the continuous standby mode and which requires manual activation by the person supervising the operation of the machine each time cigarettes or tobacco products are purchased from the machine.

(u) *To sell cigarettes or tobacco products by means of a self-service display in any establishment, except that the provisions of this subsection shall not apply to:*

(1) *A vending machine that is permitted under subsection (t); or*

(2) *a self-service display that is located in a tobacco specialty store.*

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

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

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

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

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

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

(1) Any statement, label, stamp, sticker or notice described in subsection ~~(u)~~ of K.S.A. 79-3321, and amendments thereto (v); or

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

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

Sec. 11. K.S.A. 2008 Supp. 79-3301 and 79-3321 are hereby repealed.

Sec. 12. On January 2, 2010, K.S.A. 21-3105, 21-4009, 21-4010, 21-4011, 21-4012, 21-4016, 21-4017 and 65-530 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.