

Approved: 4-26-96
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:10 a.m. on March 14, 1996 in Room 254-E of the Capitol.

Members present were: Senator Oleen, Chair
Senator Tillotson, Vice Chair
Senator Jones, Ranking Minority Member
Senator Hensley
Senator Gooch
Senator Jordan
Senator Papay
Senator Praeger
Senator Ramirez
Senator Vidricksen
Senator Walker

Committee staff present: Mary Galligan, Legislative Research
Mary Torrence, Revisor
Nancy Wolff, Committee Secretary

Conferees appearing before the committee:
Gary Haulmark, Lukas Liquor Super Store
R. E. "Tuck" Duncan, Kansas Wine & Spirits Wholesalers Association, Inc.
Neal Whitaker, Executive Director, Kansas Beer Wholesalers Association
John Webb, a beverage alcohol merchant from Lawrence

Others attending meeting: See attached list

Mary Torrence, Revisor's office, presented the background on HB2722 Alcoholic beverages; will-call delivery at distributor's warehouse; withdrawal of samples from distributor's warehouse; retailer's spouse allowed to be licensed as a retailer.

Gary Haulmark, representing Lukas Liquor Super Store was the first conferee in support of HB2722 (Attachment 1). He stated that his primary interest in the bill is the component that currently does not allow both a husband and a wife to own a retail liquor store. He stated that there is nothing in the statutes that denies a child, or several children, to own a liquor store and the current prohibition is "out of date".

Also appearing in support of the bill was R. E. "Tuck" Duncan representing the Kansas Wine & Spirits Wholesalers Association, Inc. who spoke in support of Sections 1, 2, 3, and 6 (Attachment 2). He stated that his organization is not opposed to sections 4 and 5, but they do not affect the Wine & Spirits Wholesalers.

Neal Whitaker, Executive Director of the Kansas Beer Wholesalers Association appeared in support of Sections 5 and 6 of HB2722 (Attachment 3).

The final conferee in support of HB2722 was John Webb, a beverage alcohol merchant from Lawrence. He stated that the Kansas beverage alcohol law does not address wholesale price discrimination with regard to on-premise or off-premise cereal malt beverage retailers, i.e., wholesale to retail. He also said that the Kansas beverage alcohol law does not address retail pricing with regard to off-premise cereal malt beverage retailers, i.e., retail to consumer. He then requested that an amendment be submitted for consideration of the committee and stated that he had previously discussed such changes with the ABC and with the Revisor (Attachment 4). There being no conferees in opposition to HB 2722, the hearing was closed.

The committee then returned to the Subcommittee report on HB2544 relating to cigarettes and tobacco products; regulation and taxation; enforcement of prohibitions relating to minors. Mary Torrence continued the report as reflected by the attached balloon of the bill (Attachment 5). Also attached are two proposals for amendments to the bill (Attachment 6)

Senator Oleen requested clarification of the penalties for possession of cigarettes and what court such an offense would be referred to under option "A" of the proposed amendment. Mary Torrence stated that a \$25.00 fine would be imposed and depending on the location of the infraction, referred either to a municipal court or district court. Senator Oleen expressed concern over clogging the district courts with tobacco offenses.

Senator Jones stated that he could see the outcome of the bill allowing police to stop young people on tobacco offenses and then looking for a greater offense.

Senator Oleen requested clarification as to the current cost of a vending machine license. Mary Torrence stated the cost is currently \$12.00 for a two-year license and it will be increased to \$25.00 for a two-year license.

Senator Oleen announced that the committee would be meeting on Friday to continue discussion on the bill.

There being no other business, the meeting was adjourned at 12:05 p.m.

Testimony in favor of HB 2722
by Gary Haulmark
representing Lukas Liquor Super Store

Mr Chairman and members of the committee, thank you for the opportunity to testify today in favor of HB 2722. We wholeheartly support this legislation.

As you know this bill has four components. I would like to focus on one in particular. This bill would allow a husband and wife to each own a retail liquor store. The current prohibition seems silly and out of date. Nothing else would be changed such as, background checks, etc.

Thank you for your consideration of this bill.

Sincerely,



Gary Haulmark

*Attachment
Exhibit 1
Federal and State Affairs
3/14/96*

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALERS ASSOCIATION, INC.

March 14, 1996

TO: Senate Committee on Federal and State Affairs

FROM: R.E. "Tuck" Duncan
Kansas Wine & Spirits Wholesalers Association

RE: HB 2722

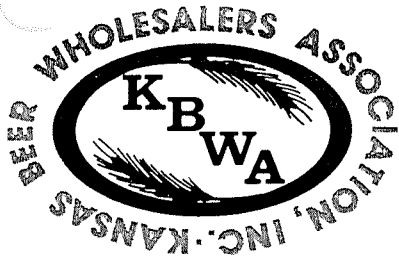
The Kansas Wine & Spirits Wholesalers Association supports sections 1, 2, 3, and 6 of HB 2722. We are not opposed to sections 4 and 5, but they do not affect our tier of the industry.

Sections 1, 2 and 3 will allow wholesalers (beer, wine and spirits) to use each others docks for will-call. The Alcoholic Beverage Control (A.B.C.) has informed us that without a statutory change one wholesaler cannot utilize the dock of another wholesaler so that a retailer can pick-up "will call" orders. This bill allows wholesalers to enter into agreements subject to the approval of the A.B.C. Inasmuch as different distributors' warehouses are located in different cities across the state, this modification will provide for a more cost efficient and service oriented "will-call" system. We understand that the A.B.C. has no objection to this provision.

Section 6 will allow distributors (beer, wine and spirits) to withdraw from their warehouses in limited circumstances inventories for internal and/or approved seminar use. Currently when a distributor desires to offer samples of its products at seminars it sponsors for industry members, they must purchase those goods at retail. The Director of the A.B.C. would issue regulations to govern this activity.

HB 2722 was introduced January 24, a hearing was held February 6, the House Federal & State Affairs Committee reported the bill favorably with several technical amendments, and the House passed the bill 70-50 on February 16. Both of these matters received favorable action by the House last year, but were removed in conference at the end of the session because there had not been an opportunity for Senate consideration of these subjects. We ask for your favorable action on this bill. Thank you for your attention to and consideration of these matters.

Attorney General
Robert L. Anderson
Federal and State Affairs
3/14/96



TESTIMONY
before
THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
March 14, 1996
Kansas Beer Wholesalers Association
Neal Whitaker, Executive Director

Kansas Beer Wholesalers Association appears in support of the amendments to K.S.A. 41-708, Section 5 and K.S.A. 41-709, Section 6 of House Bill 2722.

In 1988, the Liquor Control Act was completely renovated in anticipation of liquor by the drink. Many outdated provisions were removed from the act. One that was overlooked was a sentence that allowed a licensed retailer to purchase or receive beer from a licensed beer manufacturer having a place of business in this state. The repeal of this language is cleanup.

We have another statute, K.S.A. 41-305, which sets out a manufacturer's rights of license that requires them to sell only to distributors, non-beverage users, or persons outside the state. There is some concern that because of GATT a foreign manufacturer may be able to use this provision to circumvent the liquor control act.

Introducing new products and sampling in Kansas is a very difficult process. Presently in order to introduce a new product we must first convince a retailer to buy it, then buy it back from the retailer to use as samples to convince other retailers to purchase the product. This provision will simplify that process. As the bill is amended it will require enforcement taxes to be paid by the wholesaler.

The other provisions of **House Bill 2722** affect other parts of the industry and we certainly support their efforts to modernize the law.

*Attest my
Signature 3
Federal's State Affairs
3/14/96*



located shall be used to determine if such city is located in a township in a majority of the qualified electors voted the amendment.

History: L. 1949, ch. 242, § 18; L. 1985, ch. 161, § 4; July 1.

Research and Practice Aids:

Intoxicating Liquors §§ 32(1), 34(1), 41(1).

Intoxicating Liquors §§ 66, 70, 75 et seq., 86.

On requesting vote on city option, Vernon's Kansas Statutes Annotated § 3124.

Attorney General's Opinions:

Decision to permit or prohibit sale of liquor by the city's authority to prevent licensure thereof. 91-91.

303. Licenses issued to persons outside cities in townships over 11,000; effect of increase in population. The director may license the sale of alcoholic liquor at retail in original package on premises not located in an incorporated city for use or consumption on the premises, if such premises are located in a township having a population of more than eleven thousand (11,000). No such license shall be granted to any applicant unless he shall possess all the qualifications required of other applicants for retailers' licenses except the requirement of residence within a city. In the event that any license has been issued under the provisions of this section in a township having a population of more than eleven thousand (11,000), and thereafter such township population decreases or has decreased to eleven thousand (11,000) or less, such licenses shall continue to be valid and the licensees shall be eligible for renewal of such licenses at the appropriate time if they are otherwise qualified.

In the event that any license has been issued under the provisions of this section in a township having a population of more than eleven

Research and Practice Aids:

Intoxicating Liquors §§ 59(1).

C.J.S. Intoxicating Liquors § 136.

CASE ANNOTATIONS

1. Discussed, construed; director properly refused reissuance of township retailer's license. *Murphy v. Curtis*, 184 K. 291, 293, 336 P.2d 411.

2. Mentioned; application for cereal malt beverage license denied. *Horyna v. Board of County Commissioners*, 194 K. 445, 448, 399 P.2d 844.

41-304. Classes of licenses. Licenses issued by the director shall be of the following classes: (a) Manufacturer's license; (b) spirits distributor's license; (c) wine distributor's license; (d) beer distributor's license; (e) retailer's license; (f) microbrewery license; (g) farm winery license; and (h) nonbeverage user's license.

History: L. 1949, ch. 242, § 20; L. 1983, ch. 161, § 2; L. 1987, ch. 182, § 11; Jan. 1, 1988.

Attorney General's Opinions:

Licensing and related provisions; classes of persons to whom licenses not issued; conviction of violation of intoxicating liquor laws. 85-44.

41-305. Manufacturer's license; rights of licensee. A manufacturer's license shall allow the manufacture and storage of alcoholic liquor and cereal malt beverage and the sale of alcoholic liquor and cereal malt beverage to distributors and nonbeverage users licensed in this state and to such persons outside this state as permitted by law.

History: L. 1949, ch. 242, § 21; L. 1985, ch. 168, § 3; L. 1987, ch. 182, § 12; Jan. 1, 1988.

Research and Practice Aids:

Intoxicating Liquors §§ 49.

C.J.S. Intoxicating Liquors §§ 122, 124 et seq.

41-306. Spirits distributor's license; rights of licensee. A spirits distributor's license, shall allow:

**KANSAS SENATE / FEDERAL AND STATE AFFAIRS COMMITTEE
REQUEST FOR AMENDMENT CONSIDERATION
RE: HB 2722**

14 March 1996

**John Webb
Beverage Alcohol Merchant / Lawrence, Kansas**

Madame Chairperson and Members of the Committee, I am respectfully asking for your assistance in completing the task that was initiated during the 1995 legislative session. The "disallowance of quantity discounts" legislation was intended to deal with club purchases of cereal malt beverage from off-premise cereal malt beverage retailers for the purpose of avoiding taxation. As illustrated on the following page, it is clear that the full intent of the legislation has not been realized.

1. Kansas beverage alcohol law does not address wholesale price discrimination with regard to on-premise or off-premise cereal malt beverage retailers. ie: Wholesale to Retail.
2. Kansas beverage alcohol law does not address retail pricing with regard to off-premise cereal malt beverage retailers. ie: Retail to Consumer.

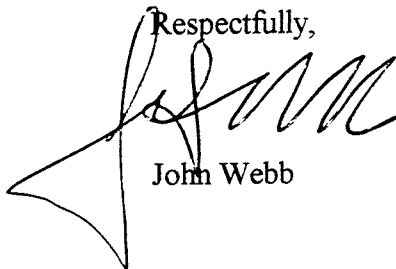
Wholesale price discrimination is illegal with regard to all strong beverage alcohol products, both on-premise and off-premise. **Wholesale price discrimination is legal with regard to all cereal malt beverage products, both on-premise and off-premise.** This seems to be very inconsistent and inequitable public policy.

Retail pricing is addressed for all strong beverage alcohol products, both on-premise and off-premise; all products must be sold for at least cost plus tax. Retail pricing is also addressed for on-premise cereal malt beverage sales; all products must be sold for at least cost plus tax. **The only retail sector of the beverage alcohol industry where pricing has not been addressed is the off-premise cereal malt beverage licensees.** This is not consistent public policy, nor does it allow the realization of the intent of the 1995 legislation.

Madame Chairperson and Members of the Committee, I would like to submit an amendment to address both of the aforementioned inconsistencies. Thank you for your consideration of these matters. I would be happy to answer any questions.

- * Wholesale / storage and delivery agreements.
- * Wholesale / sample withdrawal.
- * Retail / spousal licenses.
- * Retail / Kansas brewery restrictions.

Respectfully,


John Webb

*Attachment
Exhibit 4
Federal and State Affairs
3/14/96*

1 agency having custody of where and with whom the child will live.

2 (o) "Secretary" means the secretary of social and rehabilitation
3 services.

4 (p) "Relative" means a person related by blood, marriage or
5 adoption but, when referring to a relative of a child's parent, does
6 not include the child's other parent.

7 (q) "Court-appointed special advocate" means a responsible
8 adult other than an attorney guardian *ad litem* who is appointed by
9 the court to represent the best interests of a child, as provided in
10 K.S.A. 38-1505a and amendments thereto, in a proceeding pur-
11 suant to this code.

12 (r) "Multidisciplinary team" means a group of persons, ap-
13 pointed by the court or by the state department of social and re-
14 habilitation services under K.S.A. 38-1523a and amendments
15 thereto, which has knowledge of the circumstances of a child in
16 need of care.

17 (s) "Jail" means:

18 (1) An adult jail or lockup; or

19 (2) a facility in the same building or on the same grounds as an
20 adult jail or lockup, unless the facility meets all applicable stan-
21 dards and licensure requirements under law and there is (A) total
22 separation of the juvenile and adult facility spatial areas such that
23 there could be no haphazard or accidental contact between juve-
24 nile and adult residents in the respective facilities; (B) total sepa-
25 ration in all juvenile and adult program activities within the facil-
26 ities, including recreation, education, counseling, health care,
27 dining, sleeping, and general living activities; and (C) separate ju-
28 venile and adult staff, including management, security staff and
29 direct care staff such as recreational, educational and counseling.

30 (t) "Kinship care" means the placement of a child in the home
31 of the child's relative or in the home of another adult with whom
32 the child or the child's parent already has a close emotional at-
33 tachment.

34 Sec. 16 18. K.S.A. 79-3301, 79-3302, 79-3303, 79-3304, 79-3305, 79-
35 3309, 79-3310b, 79-3316, 79-3318, 79-3321, 79-3322, 79-3323, 79-3326,
36 79-3370, 79-3372, 79-3373, 79-3376, 79-3377, 79-3380 through 79-3387
37 and 79-3390 and K.S.A. [1994] Supp. 38-1502 are hereby repealed.

1995

38 Sec. 17 19. This act shall take effect and be in force from and after
39 its publication in the statute book.

4-2

Kansas Beverage Alcohol Pricing

Strong

Cereal Malt Beverage

On-Premise Consumption

- Drinking Establishments
- Clubs & Etc.

Off-Premise Consumption

- Liquor Stores

Off-Premise Consumption

- Grocery Stores
- Convenience Stores
- Gas Stations & Etc.

On-Premise Consumption

- Cereal Malt Beverage Bars

Cannot Sell Below
Cost Plus Tax

Cannot Sell Below
Cost Plus Tax

Can Sell
Below Cost
Plus Tax

Cannot Sell Below
Cost Plus Tax

10% Club Tax

8% Enforcement Tax

State & Local Sales Tax

Wholesale Price Discrimination Illegal

Wholesale Price Discrimination Legal

Kansas Wholesale Cost ±

Kansas Wholesale Cost ±

\$12⁴⁵

\$12

\$11

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Kansas Law Does Not
Control Wholesale Pricing

Kansas Law Does Not
Control Wholesale Pricing

HOUSE BILL No. 2544

By Committee on Federal and State Affairs

2-21

10 AN ACT concerning cigarettes and tobacco products; relating to regula-
11 tion and taxation thereof; prohibiting certain acts and providing pen-
12 alties for violations; amending K.S.A. 79-3301, 79-3302, 79-3303, 79-
13 3304, 79-3309, 79-3316, 79-3321, 79-3322, 79-3323, 79-3326, 79-3373,
14 79-3377 and 79-3387 and K.S.A. ~~1994~~ Supp. 38-1502 and repealing
15 the existing sections; also repealing K.S.A. 79-3305, 79-3310b, 79-
16 3318, 79-3370, 79-3372, 79-3376, 79-3380 through 79-3386 and 79-
17 3390.

[1995

18
19 *Be it enacted by the Legislature of the State of Kansas:*

20 Section 1. K.S.A. 79-3301 is hereby amended to read as follows: 79-
21 3301. ~~The following words, terms and phrases~~ As used in this act, ~~are~~
22 hereby defined as follows:

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

25 (b) "Carton" means the container used by the manufacturer of ciga-
26 rettes in which no more than 10 packages of cigarettes are placed prior
27 to shipment from such manufacturer.

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

32 (b) "Person" means any individual, partnership, society, association,
33 joint stock company, corporation, estate, receiver, trustee, assignee, ref-
34 erree or any other person acting in a fiduciary or representative capacity
35 whether appointed by a court or otherwise and any combination of in-
36 dividuals;

37 ~~(e)~~ (d) "Consumer" means that the person purchasing or receiving
38 cigarettes or tobacco products for final use;

39 ~~(d)~~ (e) "Dealer" means every person, firm, corporation, or association
40 of persons who shall sell any person who engages in the sale or manufac-
41 ture of cigarettes in the state of Kansas, and who is required to be licensed

42 der the provisions of this act;

43 (e) "Wholesale dealer" means those persons who sell cigarettes to

Federal and State Affairs
Carthage
3/14-96

1 plied gummed paper or heat process.

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

4 (v) "Tobacco products" means cigars, cheroots, stogies, periques;
5 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;
6 snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other
7 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings
8 of tobacco, and other kinds and forms of tobacco, prepared in such man-
9 ner as to be suitable for chewing or smoking in a pipe or otherwise, or
10 both for chewing and smoking. Tobacco products does not include ciga-
11 rettes.

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

14 (x) "Vending machine distributor" means any person who sells
15 cigarette vending machines to a vending machine operator oper-
16 ating vending machines in the state of Kansas.

17 (y) "Vending machine operator" means any person who places
18 a vending machine, owned, leased or operated by such person, at
19 locations where cigarettes are sold from the machine. The owner
20 or lessee of the premises upon which a vending machine is placed
21 shall not be considered the operator of the machine, nor shall the
22 owner or lessee, or any employee or agent of the owner or lessee
23 be considered an authorized agent of the vending machine oper-
24 ator, if the owner or lessee does not own or lease the machine and
25 the owner's or lessee's sole remuneration from the machine is a
26 flat rental fee or commission based upon the number or value of
27 cigarettes sold from the machine, or a combination of both.

28 (*) (z) "Wholesale dealer" means ~~those persons who sell~~ any person
29 who sells cigarettes to other wholesale dealers, retail dealers, vending
30 machine operators and manufacturer's salespersons for the purpose of
31 resale in the state of Kansas.

32 (y) (aa) "Wholesale sales price" means the original net invoice price
33 for which manufacturer sells a tobacco product to a distributor, as shown
34 by the manufacturer's original invoice.

35 Sec. 2. K.S.A. 79-3302 is hereby amended to read as follows: 79-
36 3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309, 79-3310,
37 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-3322, 79-
38 3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3371, 79-3373, 79-3374,
39 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-3388 and sections ~~14~~
40 ~~and 15, 15 and 16~~ and amendments thereto, shall be known and may
be cited as the Kansas cigarette and tobacco products act.

41 (b) It is the purpose and intent of this act to levy a tax on cigarettes
42 sold, distributed, conveyed or given away in this state, and to collect such
43

[9, 15, 16 and 17

5-2

2 to another machine. A vending machine operator, within 10 days,
3 shall notify the director of the brand name and serial number of
4 vending machines that become inoperative or that the operator
5 disposes of, sells, acquires or brings into service in this state as
6 additional machines.

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

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

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

26 (g) Concurrently with a change in ownership of a dealer establish-
27 ment the license applicable ~~thereto to the establishment~~ is void and
28 shall be surrendered to the director and shall not be transferred. On
29 removal of a dealer establishment from one location to another, the owner
30 thereof of the establishment shall notify the director and surrender his
31 or her the owner's license. The director shall issue a new license for the
32 unexpired term of the surrendered license on payment of a fee of two
33 dollars ~~(\$2)~~ \$2, to be deposited in the general revenue state treasury and
34 credited to the state general fund. ~~Should a dealer's license become~~ If a
35 dealer's license is lost, stolen, or destroyed, the director may issue a
36 new license on proof of loss, theft, or destruction, at a cost of two dollars
37 ~~(\$2)~~ \$2, to be deposited in the general revenue state treasury and credited
38 to the state general fund.

39 Sec. 4. K.S.A. 79-3304 is hereby amended to read as follows: 79-
40 3304. (a) Commencing with the biennium beginning January 1, 1986, the
41 The license or permit fee for each biennium or portion thereof shall be
as follows: ~~(a) Retail dealer's license.~~

(1) For retail dealer's license, ~~[\$12]~~ for each dealer establishment.

(b) ~~Retail dealer on railroad.~~ (2) For retailer's license on railroad or

\$25

5-3

5-A

- 1 retail dealer or wholesaler is located, or
- 2 (2) exempt from state licensing under applicable state or federal laws
- 3 or court decisions including any such person operating as a retail dealer
- 4 upon land allotted to or held in trust for an Indian tribe recognized by
- 5 the United States bureau of Indian affairs.
- 6 (i) To have in possession any evidence of tax indicia provided for
- 7 herein not purchased from the director.
- 8 (j) To fail or refuse to permit the director or any officer or agent
- 9 authorized by law to inspect a carrier transporting cigarettes.
- 10 (k) To vend small cigars, or any products so wrapped as to be con-
- 11 fused with cigarettes, from a machine vending cigarettes, nor shall a vend-
- 12 ing machine be so built to vend cigars or products that may be confused
- 13 with cigarettes, be attached to a cigarette vending machine.
- 14 (l) To sell, furnish or distribute cigarettes or tobacco products to any
- 15 person under 18 years of age.
- 16 (m) ~~For any person Who is under 18 years of age to purchase or~~
- 17 ~~possess, or attempt to purchase or possess, attempt to purchase ciga-~~
- 18 ~~rettes or tobacco products.~~
- 19 (n) **Who is under 18 years of age to possess or attempt to pos-**
- 20 **sess cigarettes or tobacco products.**
- 21 ~~(n)~~ (o) To sell cigarettes to a retailer or at retail that do not bear
- 22 Kansas tax indicia or upon which the Kansas cigarette tax has not been
- 23 paid.
- 24 ~~(o)~~ (p) To sell cigarettes without having a license for such sale as
- 25 provided herein.
- 26 ~~(p)~~ (q) To sell cigarette vending machines without having a license
- 27 as provided herein for sale of vending machines ~~[cigarettes or tobacco~~
- 28 ~~products from a vending machine.]~~
- 29 ~~(q)~~ (r) *Who is a retail dealer to fail to post and maintain in a con-*
- 30 *spicuous place in the dealer's establishment the following notice: "By law,*
- 31 *cigarettes and tobacco products may be sold only to persons 18 years of*
- 32 *age and older."*
- 33 ~~(r)~~ (s) *To distribute samples within 500 feet of any school when such*
- 34 *facility is being used primarily by persons under 18 years of age unless*
- 35 *the sampling is: (1) In an area to which persons under 18 years of age*
- 36 *are denied access; (2) in or at a retail location where cigarettes and to-*
- 37 *bacco products are the primary commodity offered for sale at retail; or*
- 38 *(3) at or adjacent to an outdoor production, repair or construction site or*
- 39 *facility.*
- 40 (t) **To sell cigarettes or tobacco products by means of a vending**
- 41 **machine in any establishment, or portion of an establishment,**
- 42 **which is open to minors, except that this subsection shall not apply**
- 43 **to:**

[a vending machine without having a vending machine distributor's license.

5-5

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.

Sec. 8. K.S.A. 79-3322 is hereby amended to read as follows: 79-3322. (a) Any person who violates any of the provisions of this act, except as otherwise provided in this act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both. In addition thereto any person found liable for any license or permit fee or tax imposed under the provisions of this act shall be personally liable for such license or permit fee or tax plus a penalty in an amount equal to 100% thereof.

~~[(b) Any person who violates this act by selling, furnishing or distributing sample cigarettes or sample smokeless tobacco cigarettes or tobacco products to any person under 18 years of age shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$500 nor more than \$2,500 or imprisonment for not more than one year, or by both.]~~

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

~~It shall be a defense to a prosecution under this subsection if: [(1)] The defendant is a licensed retail dealer or a person authorized by law to distribute samples; [(2)] the defendant sold, furnished or distributed the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; and [(3)] to purchase or receive the cigarettes or tobacco products, the person under 18 years of age exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes or tobacco products.~~

[(2)]
[(A)]
[(B)]
[(C)]

See insert on next page
See alternatives A and B

(c) A person who violates subsection (n) of K.S.A. 79-3221 and amendments thereto shall not be subject to punishment by fine or imprisonment.

(3) It shall be a defense to a prosecution under this subsection if:
(A) The defendant is authorized by law to sell, furnish or distribute cigarettes or tobacco products by mail; and (B) the defendant sold, furnished or distributed the cigarettes or tobacco products to the person by mail only after the person had provided to the defendant an affidavit declaring that such person was 18 or more years of age.

1 (d) Any agent, employees or others who aid, abet or otherwise partic-
 2 ipate in any way in the violation of this act or in any of the offenses
 3 hereunder punishable shall be guilty and punished as principals to the
 4 same extent as any person violating ~~the this act.~~

5 Sec. 9. K.S.A. 79-3323 is hereby amended to read as follows: 79-
 6 3323. (a) *The following are declared to be common nuisances and con-*
 7 *traband:*

8 (1) All packages of cigarettes, in quantities of ~~twenty (20)~~ 20 packages
 9 or more, not bearing indicia of tax payment as required in this act ~~and all~~
 10 ~~devices for vending cigarettes in which unstamped packages are found;~~
 11 ~~and and all devices for vending cigarettes in which unstamped~~
 12 ~~packages are found;~~

13 (2) ~~all cigarettes or tobacco products in the possession of a mi-~~
 14 ~~nor; and~~

15 (3) ~~all property and paraphernalia, other than vehicles, used in the~~
 16 ~~retail sale of such unstamped packages; other than vehicles; are hereby~~
 17 ~~declared to be common nuisances and contraband unstamped packages~~
 18 ~~of cigarettes; and~~

19 (3) ~~all vending machines used to dispense cigarettes or tobacco prod-~~
 20 ~~ucts.~~

21 Cigarettes in vending machines and exposed to view not showing in-
 22 dicia of tax payment required by this act to be visible from the outside of
 23 the vending machine shall be presumed to be unstamped.

24 Cigarettes in vending machines and exposed to view not showing
 25 indicia of tax payment required by this act to be visible from the
 26 outside of the vending machine shall be presumed to be un-
 27 stamped.

28 (b) Any cigarettes or property constituting a common nuisance and
 29 contraband as herein provided *by this section* may be seized by the di-
 30 rector or ~~his or her~~ *the director's* authorized agent or any duly constituted
 31 peace officer with or without process or warrant and shall be subject to
 32 forfeiture as provided in this act. The party making the seizure shall de-
 33 liver to the ~~vending machine operator~~ *owner of the property* and to the
 34 person or persons found in possession of the ~~same property~~ a receipt
 35 stating from whom the property was seized, the place of seizure, and a
 36 description and ~~the~~ brand of the ~~goods or the~~ property seized. A duplicate
 37 of ~~said the~~ receipt shall be filed in the office of the director and shall be
 38 open for public inspection.

39 Sec. 10. K.S.A. 79-3326 is hereby amended to read as follows: 79-
 40 3326. The director of taxation shall administer and enforce the provisions
 41 of this act. The secretary of revenue shall adopt rules and regulations for
 2 the administration of this act. For the purpose of enforcing this act the
 43 director may call to ~~his or her~~ *the director's* aid any law enforcement

New Sec. 9.(a) The sale of cigarettes or tobacco products to any person under 18 years of age in violation of this act shall be deemed an unconscionable act or practice within the meaning of K.S.A. 50-627 and amendments thereto.

(b) Notwithstanding the provisions of K.S.A. 50-636 and amendments thereto, civil penalties and contempt penalties sued for and recovered by the attorney general for an unconscionable act or practice described in subsection (a) shall be credited to the cigarette and tobacco products regulation fund.

Renumber sections accordingly

1-5

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1 written order of the secretary of revenue or the secretary's designee to
2 the licensee who committed the violation. Such order shall state the vi-
3 olation, the fine to be imposed and the right of the licensee to appeal the
4 order. Such order shall be subject to appeal and review in the manner
5 provided by the Kansas administrative procedure act.

6 (c) Any fine collected pursuant to this section shall be paid to the
7 state state treasurer, who shall deposit the entire amount in the state
8 treasury and credit it to the cigarette and tobacco products regulation
9 fund.

10 (d) There is hereby created, in the state treasury, the cigarette and
11 tobacco products regulation fund. Moneys in the fund shall be expended
12 only for the enforcement of this act and rules and regulations adopted
13 pursuant to this act. Such expenditures shall be made in accordance with
14 appropriation acts upon warrants of the director of accounts and reports
15 issued pursuant to vouchers approved by the secretary of revenue or a
16 person designated by the secretary.

17 New Sec. 15. The provisions of K.S.A. 79-3610, 79-3611, 79-3612,
18 79-3613, 79-3614, 79-3615 and 79-3617, and amendments thereto, relat-
19 ing to the assessment, collection, appeal and administration of the retail-
20 ers' sales tax, insofar as practical, shall have full force and effect with
21 respect to taxes imposed by this act.

22 New Sec. 16. No person shall engage or direct a minor to vi-
23 olate any provision of this act for purposes of determining compli-
24 ance with provisions of this act [unless such person is an] officer
25 having authority to enforce the provisions of this act [and has pro-
26 cured the written consent of a parent or guardian of the minor to
27 so engage or direct the minor].

28 Sec. 17. K.S.A. [1994] Supp. 38-1502 is hereby amended to read
29 as follows: 38-1502. As used in this code, unless the context oth-
30 erwise indicates:

31 (a) "Child in need of care" means a person less than 18 years
32 of age who:

33 (1) Is without adequate parental care, control or subsistence
34 and the condition is not due solely to the lack of financial means
35 of the child's parents or other custodian;

36 (2) is without the care or control necessary for the child's phys-
37 ical, mental or emotional health;

38 (3) has been physically, mentally or emotionally abused or ne-
39 glected or sexually abused;

40 (4) has been placed for care or adoption in violation of law;

41 (5) has been abandoned or does not have a known living par-
42 ent;

43 (6) is not attending school as required by K.S.A. 72-977 or 72-

or the Kansas consumer protection act unless such
person has procured the written consent of a
parent or guardian of the minor to so engage or
direct the minor and such person is:

(a) An

;

(b) an authorized representative of the
attorney general, a county attorney or a
district attorney; or

(c) an authorized representative of a
business acting pursuant to a self-compliance
program designed to increase compliance with the
provisions of this act

[1995

1 1111, and amendments thereto;

2 (7) except in the case of a violation of K.S.A. 41-727 or, subsec-
3 tion (j) of K.S.A. 74-8810 or subsection ~~(n) of K.S.A. 79-3321~~ ^{[(m) or (n) of K.S.A. 79-3321} and
4 amendments thereto, or, except as provided in subsection (a)(12); of
5 K.S.A. ~~[1994 Supp.] 21-4204a~~ and amendments thereto, does an act
6 which, when committed by a person under 18 years of age, is pro-
7 hibited by state law, city ordinance or county resolution but which
8 is not prohibited when done by an adult;

9 (8) while less than 10 years of age, commits any act which if
10 done by an adult would constitute the commission of a felony or
11 misdemeanor as defined by K.S.A. 21-3105 and amendments
12 thereto;

13 (9) is willfully and voluntarily absent from the child's home
14 without the consent of the child's parent or other custodian;

15 (10) is willfully and voluntarily absent at least a second time
16 from a court ordered or designated placement, or a placement
17 pursuant to court order, if the absence is without the consent of
18 the person with whom the child is placed or, if the child is placed
19 in a facility, without the consent of the person in charge of such
20 facility or such person's designee;

21 (11) has been residing in the same residence with a sibling or
22 another person under 18 years of age, who has been physically,
23 mentally or emotionally abused or neglected, or sexually abused;
24 or

25 (12) while less than 10 years of age commits the offense de-
26 fined in K.S.A. ~~[1994 Supp.] 21-4204a~~ and amendments thereto.

27 (b) "Physical, mental or emotional abuse or neglect" means the
28 infliction of physical, mental or emotional injury or the causing of
29 a deterioration of a child and may include, but shall not be limited
30 to, failing to maintain reasonable care and treatment, negligent
31 treatment or maltreatment or exploiting a child to the extent that
32 the child's health or emotional well-being is endangered. A parent
33 legitimately practicing religious beliefs who does not provide spec-
34 ified medical treatment for a child because of religious beliefs shall
35 not for that reason be considered a negligent parent; however, this
36 exception shall not preclude a court from entering an order pur-
37 suant to subsection (a)(2) of K.S.A. 38-1513 and amendments
38 thereto.

39 (c) "Sexual abuse" means any act committed with a child which
40 is described in article 35, chapter 21 of the Kansas Statutes An-
41 notated and those acts described in K.S.A. 21-3602 or 21-3603, and
42 amendments thereto, regardless of the age of the child.

43 (d) "Parent," when used in relation to a child or children, in-

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PROPOSED ALTERNATIVE AMENDMENTS TO HOUSE BILL NO. 2544

ALTERNATIVE A

Amend page 13, lines 41 through 43, to read as follows:

"(c) Violation of subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto is a misdemeanor punishable by a fine of \$25. A court of competent jurisdiction may hear a prosecution of such violation."

ALTERNATIVE B

Amend page 13, lines 41 through 43 to read as follows:

"(c) A person who violates subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto is a juvenile offender under the Kansas juvenile offenders code. Upon adjudication thereof, the court shall require the offender to pay a fine of \$25.";

Add to the bill the following:

"Sec. 18. K.S.A. 1995 Supp. 38-1602 is hereby amended to read as follows: 38-1602. As used in this code, unless the context otherwise requires:

(a) "Juvenile" means a person 10 or more years of age but less than 18 years of age.

(b) "Juvenile offender" means a person who does an act while a juvenile which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto or who violates the provisions of K.S.A. 21-4204a ~~or~~ K.S.A. 41-727 ~~or~~ subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, but does not include:

(1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117 and amendments thereto;

(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated;

(3) a person 16 years of age or over who is charged with a felony or with more than one offense of which one or more is a felony after having been adjudicated in a separate prior juvenile

*Attaching
 6
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proceeding as having committed an act which would constitute a felony if committed by an adult and the adjudications occurred prior to the date of the commission of the new act charged;

(4) a person who has been prosecuted as an adult by reason of subsection (b)(3) and whose prosecution results in conviction of a crime;

(5) a person whose prosecution as an adult is authorized pursuant to K.S.A. 38-1636 and amendments thereto;

(6) a person who has been convicted of aggravated juvenile delinquency as defined by K.S.A. 21-3611 and amendments thereto; or

(7) a person 16 years of age or over who has been adjudicated to be a juvenile offender under the Kansas juvenile offender's code and who is charged with committing a felony or more than one offense of which one or more is a felony while confined in any training or rehabilitation facility under the jurisdiction and control of the department of social and rehabilitation services or while running away or escaping from any such institution or facility.

(c) "Parent," when used in relation to a juvenile or a juvenile offender, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the juvenile.

(d) "Law enforcement officer" means any person who by virtue of that person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(e) "Youth residential facility" means any home, foster home or structure which provides twenty-four-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

(f) "Juvenile detention facility" means any secure public or private facility which is used for the lawful custody of accused or adjudicated juvenile offenders and which must not be a jail.

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(g) "State youth center" means a facility operated by the secretary for juvenile offenders.

(h) "Warrant" means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(i) "Secretary" means the secretary of social and rehabilitation services.

(j) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(k) "Court-appointed special advocate" means a responsible adult, other than an attorney appointed pursuant to K.S.A. 38-1606 and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in ~~section 16-of-1994-Senate-Bill-No.-657~~ K.S.A. 1995 Supp. 38-1606a and amendments thereto, in a proceeding pursuant to this code.

Sec. 19. K.S.A. 1995 Supp. 38-1663 is hereby amended to read as follows: 38-1663. (a) When a respondent has been adjudged to be a juvenile offender, the judge, except as provided by subsection (i), may select from the following alternatives:

(1) Place the juvenile offender on probation for a fixed period, subject to the terms and conditions the court deems appropriate, including a requirement of making restitution as required by subsection (d).

(2) Place the juvenile offender in the custody of a parent or other suitable person, subject to the terms and conditions the court orders, including a requirement of making restitution as required by subsection (d).

(3) Place the juvenile offender in the custody of a youth residential facility, subject to the terms and conditions the court orders.

(4) Place the juvenile offender in the custody of the secretary.

(5) Impose any appropriate combination of subsections (a)(1) and (2), subsection (a)(3) or subsection (a)(4) and make other orders directed to the juvenile offender as the court deems appropriate.

(6) Commit the juvenile offender, if 13 years of age or older, to a state youth center if the juvenile offender:

(A) Has had a previous adjudication as a juvenile offender under this code or as a delinquent or miscreant under the Kansas juvenile code; or

(B) has been adjudicated a juvenile offender as a result of having committed an act which, if done by a person 18 years of age or over, would constitute a class A, B or C felony as defined by the Kansas criminal code or, if done on or after July 1, 1993, would constitute an off-grid crime or a nondrug crime ranked in severity level 1 through 5 or a drug crime ranked in severity level 1 through 3.

(7) Place the juvenile offender under a house arrest program administered by the court pursuant to K.S.A. 21-4603b and amendments thereto.

(b) (1) In addition to any other order authorized by this section, the court, except as provided by subsection (i), may order the juvenile offender and the parents of the juvenile offender to:

(A) Attend counseling sessions as the court directs; or

(B) participate in mediation as the court directs.

Participants in such mediation may include, but shall not be

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limited to, the victim, the juvenile offender and the juvenile offender's parents. Mediation shall not be mandatory for the victim.

(2) Upon entering an order requiring a juvenile offender's parent to attend counseling sessions or mediation, the court shall give the parent notice of the order. The notice shall inform the parent of the parent's right to request a hearing within 10 days after entry of the order and the parent's right to employ an attorney to represent the parent at the hearing or, if the parent is financially unable to employ an attorney, the parent's right to request the court to appoint an attorney to represent the parent. If the parent does not request a hearing within 10 days after entry of the order, the order shall take effect at that time. If the parent requests a hearing, the court shall set the matter for hearing and, if requested, shall appoint an attorney to represent the parent. The expense and fees of the appointed attorney may be allowed and assessed as provided by K.S.A. 38-1606 and amendments thereto.

(3) The costs of any counseling or mediation may be assessed as expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater than that the center would have charged the person receiving the counseling if the person had requested counseling on the person's own initiative. No mediator shall charge a fee for court-ordered mediation greater than that the mediator would have charged the person participating in the mediation if the person had requested mediation on the person's own initiative.

(c) (1) If a respondent has been adjudged to be a juvenile offender, the court, in addition to any other order authorized by this section, except as provided by subsection (i), may suspend the juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state. The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court

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shall require the juvenile offender to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the juvenile offender may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the juvenile offender's privilege to operate a motor vehicle is in effect. As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto. Any respondent who is adjudged to be a juvenile offender who does not have a driver's license may have such juvenile offender's driving privileges revoked. No Kansas driver's license shall be issued to a juvenile offender whose driving privileges have been revoked pursuant to this section for a definite time period to be determined by the court.

(2) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any respondent adjudged to be a juvenile offender, as provided in subsection (c)(1), the court in which such juvenile offender was adjudged to be a juvenile offender may enter an order which places conditions on such juvenile offender's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such juvenile offender shall be required to carry any time such juvenile offender is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed and shall specify that such duration shall be for a definite time period to be determined by the court. Upon entering an order restricting a juvenile offender's license hereunder, the court shall require such juvenile offender to surrender such juvenile offender's driver's license to the court who shall cause it to be transmitted to the division of vehicles, together with a copy of

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the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the juvenile offender for whom the license was issued any time such juvenile offender is operating a motor vehicle on the highways of this state. If the juvenile offender convicted is a nonresident, the court shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator of such juvenile offender's state of residence. Such court shall furnish to any juvenile offender whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this subsection. Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such juvenile offender may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such juvenile offender's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any juvenile offender shall violate any of the conditions imposed under this subsection, such juvenile offender's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period as determined by the court in which such juvenile offender is convicted of violating such conditions.

(d) Whenever a juvenile offender is placed pursuant to subsection (a)(1) or (2), the court, unless it finds compelling circumstances which would render a plan of restitution

unworkable, shall order the juvenile offender to make restitution to persons who sustained loss by reason of the offense. The restitution shall be made either by payment of an amount fixed by the court or by working for the persons in order to compensate for the loss. If the court finds compelling circumstances which would render a plan of restitution unworkable, the court may order the juvenile offender to perform charitable or social service for organizations performing services for the community.

Nothing in this subsection shall be construed to limit a court's authority to order a juvenile offender to make restitution or perform charitable or social service under circumstances other than those specified by this subsection or when placement is made pursuant to subsection (a)(3) or (4).

(e) In addition to or in lieu of any other order authorized by this section, the court, except as provided by subsection (i), may order a juvenile offender to pay a fine not exceeding \$250 for each offense. In determining whether to impose a fine and the amount to be imposed, the court shall consider the following:

(1) Imposition of a fine is most appropriate in cases where the juvenile offender has derived pecuniary gain from the offense.

(2) The amount of the fine should be directly related to the seriousness of the juvenile offender's offense and the juvenile offender's ability to pay.

(3) Payment of a fine may be required in a lump sum or installments.

(4) Imposition of a restitution order is preferable to imposition of a fine.

(5) The juvenile offender's duty of payment should be limited in duration and in no event should the time necessary for payment exceed the maximum term which would be authorized if the offense had been committed by an adult.

(f) In addition to or in lieu of any other order authorized by this section, if a juvenile is adjudged to be a juvenile offender by reason of a violation of the uniform controlled

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substances act (K.S.A. 65-4101 et seq. and amendments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall order the juvenile offender to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation, except that such evaluation may be waived by the court if the court finds that the juvenile offender has successfully completed an alcohol and drug evaluation, approved by the community-based alcohol and drug safety action program, subsequent to the offender's arrest on this offense. If the court finds that the juvenile offender and those legally liable for the offender's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary or the department of social and rehabilitation services.

(g) The board of county commissioners of a county may provide by resolution that the parents or guardians of any juvenile offender placed under a house arrest program pursuant to subsection (a)(7) shall be required to pay to the county the cost of such house arrest program. The board of county commissioners shall further prepare a sliding financial scale based on the ability of the parents to pay for such a program.

(h) In addition to any other order authorized by this section, if child support has been requested and the parent or parents have a duty to support the respondent the court, except as provided by subsection (i), may, and when custody is placed with the secretary shall, order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the respondent. If the parent is not presently ordered to pay support for the respondent and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 38-16,117

and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq. and amendments thereto for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-16,119 and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

(i) When a respondent has been adjudged to be a juvenile offender solely for a violation of subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto, the judge shall fine the juvenile offender \$25 and shall order no other disposition.

(j) Any order issued by the judge pursuant to this section shall be in effect immediately upon entry into the judge's minutes.";

Renumber remaining sections and amend repealer and title

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