

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 11:05 a.m. on March 18, 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:
Julene Miller, Attorney General's Office
Bob Alderson, Casey's General Stores
Steve Rarick, Attorney General's Office

Others attending meeting: See attached list

Senator Oleen stated that **SB733**, Interstate Emergency Management Assistance Compact was listed on General Orders today and that she wanted to remind the committee of which bill it was and that it came from the Governors Conference. She then requested that the subcommittee chairman for **HB2544** continue with the discussions that were held on Friday.

Discussion was continued on **HB2544**--cigarettes and tobacco products; regulation and taxation; enforcement of prohibitions relating to minors.

For discussion purposes, Senator Tillotson made a motion that the committee adopt the subcommittee report for amendments to **HB2544**. Senator Hensley seconded the motion.

Senator Oleen then requested that Mary Torrence review the committee report again to refresh the memories of the committee. Mary referred to the committee report on the bill and the proposed amendments. (Attachments 1 and 2)

Senator Oleen made note that the bill would raise the fee for a retail dealers' license to \$25.00 for a two-year license. The current fee is \$12.00 for a two-year license. The bill does not increase the licensing fee for a vending machine and the fee for that license will stay at \$12.00 for a two-year license.

Senator Tillotson presented another alternative to provide for confiscation and penalties for under-age possession of tobacco products (Attachment 3). This proposal was presented by the Attorney General's office as another option that could be used as an enforcement option for the bill.

Senator Jones requested an opportunity to speak to the memorandum. He stated that his understanding of the purpose of **HB2544** would be to curb the smoking of cigarettes by youngsters and the selling or giving of cigarettes to youngsters. If purchasing or selling are against the law, then confiscating such cigarettes would be legal as they are the "fruit" of the crime.

Senator Papay stated that without some kind of penalty or fine, the legislature is just wasting their time. The current laws haven't worked and there is a need to get attention. Senator Gooch expressed concern as to the outcome of a violation. He stated that although a person receives a ticket for a moving violation, it is not always necessary to go to court, many people simply pay the fine. Senator Tillotson stated that the proposal of the Attorney General's office is separate from the subcommittee report--simply a third option for enforcement.

Julene Miller of the Attorney General's office stated that the purpose of the proposal was two-fold: 1) to allow for the confiscation of the contraband cigarettes and 2) to allow for a hearing if the offender desired. Senator Praeger expressed a desire that the law allow that the extent of the training of employees of a convenience store be taken as a defensible item when charging the store for violations.

Senator Jones expressed a concern about what occurs when a 17-year-old from Missouri comes into the state of Kansas. In Missouri a 17 year old is considered an adult, but in Kansas a minor. Julene Miller said that such an individual would still be considered a minor and would be required to abide by Kansas law.

Bob Alderson, representing Casey's General Stores, presented a memorandum regarding a case that is currently pending as the outcome of a "sting" operation conducted under the Kansas Consumer Protection Act (Attachment 4).

Senator Praeger asked Steve Rarrick of the Attorney General's office whether he agreed with Mr. Alderson's information with regard to "unconscionable act of practices" as defined in the statutes. Mr. Rarrick replied that the attorney general's office currently has the ability to conduct their "sting" operations without any clarification from the courts.

The next meeting for the committee was scheduled for 3/19/96.

The meeting was adjourned at 12:05 p.m.

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 pena-
12 lities 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.

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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) "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 (c) (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 under the provisions of this act;

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

Attachment
Exhibit 1
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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
41 be cited as the Kansas cigarette and tobacco products act.

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

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

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

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

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

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

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

42 (1) For retail dealer's license, ~~[\$12]~~ for each dealer establishment. [\$ 25

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

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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 (n) (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.]~~

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

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:

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(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)(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.

~~[(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.]~~

~~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.~~

(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.

(2) (A)

(B)

(C)

See alternatives A and B

(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
 42 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

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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 ~~sate 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 com-
24 pliance 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 nt;
- 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

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1 1111, and amendments thereto;

2 (7) except in the case of a violation of K.S.A. 41-727 or, subsection
3 tion (j) of K.S.A. 74-8810 or subsection ~~(n) of K.S.A. 79-3329~~ and (m) or (n) of K.S.A. 79-3321
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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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. 46 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.

38 Sec. 47 19. This act shall take effect and be in force from and after
39 its publication in the statute book.

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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

*Attachment Exhibit 2
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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.

(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

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

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

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

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

KANSAS ATTORNEY GENERAL
MEMORANDUM

TO: NANCYL ATTYGEN Lindberg, Nancy
FROM: JULENEM ATTYGEN Miller, Julene
DATE: January 22, 1996
SUBJECT: Confiscation of Cigarettes from Minors
REFERENCE: AG's request for thoughts

I asked Camille to look into the issue of taking cigarettes away from minors without charging or convicting them of some offense. She and I raised it in the LOGiC division meeting to get input from other attorneys in the division. The consensus was that the government cannot, within the confines of the 4th and 5th amendments, confiscate non-contraband property without due process.

The U.S. Supreme Court case law is clear that minors are entitled to the same protections under the 4th and 5th amendments as are adults; they are protected from unreasonable searches and seizure (i.e. warrantless searches or those that don't meet exceptions from warrant) and are entitled to due process before their property can be taken.

However, the state may be able to make possession a minor offense like a traffic infraction instead of a misdemeanor or felony allowing issuance of citations rather than making an arrest. Perhaps this would be less of a blemish on a minor's record. A possible example is the seat belt law where an individual cannot be stopped or cited unless stopped and cited for another offense. It is really more of an educational tool than an offense.

Attachment
Exhibit 3
Federal and State Affairs
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ALDERSON, ALDERSON & MONTGOMERY, L.L.C.

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*LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

MEMORANDUM

TO: Senate Committee on Federal and State Affairs

FROM: Bob Alderson, Kansas Counsel for Casey's General Stores, Inc.

RE: Proposed Amendments to House Bill No. 2544

DATE: March 18, 1996

This Memorandum is submitted on behalf of Casey's General Stores, Inc. ("Casey's"), a leading operator of convenience stores in the midwest. Casey's has more than 980 stores in Iowa, Nebraska, Missouri, Illinois, Minnesota, Wisconsin, South Dakota, Indiana and Kansas. Company-wide, approximately eighty percent of the stores are owned or leased by Casey's, with the balance being operated by franchisees. Nearly all of the 75 Casey's stores in Kansas are company owned.

Casey's is opposed to the Subcommittee recommendation to amend House Bill No. 2544 by adopting the proposal of the Attorney General to provide in the act that the unlawful sale of cigarettes to minors is an unconscionable act or practice under K.S.A. 50-627, a section of the Kansas Consumer Protection Act. Casey's generally applauds the work of the Subcommittee, and it wholeheartedly concurs in other amendments the Subcommittee has proposed to increase the penalties for and enhance the enforcement of the prohibited sales of cigarettes to minors. However, Casey's believes the Attorney General's proposed amendment is unwarranted and respectfully requests that it be excluded from the bill.

In determining the propriety of the Attorney General's proposed amendment, we would ask the Committee to consider the following:

- K.S.A. 50-627 does not define an "unconscionable act or practice." However, the Kansas appellate courts have defined an unconscionable act or practice under K.S.A. 50-627 as being one which is "so outrageous as to shock the conscience of the court."

*Attachment Exhibit 4
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- K.S.A. 50-627 does not list specific violations. Rather, as shown by the attached copy of the statute, it lists circumstances which a court should consider in determining whether an act or practice is unconscionable. Thus, the proposed amendment would be the only instance where a specific act, one for which criminal and administrative penalties are already provided, is defined as an unconscionable act or practice under K.S.A. 50-627.
- The circumstances enumerated in K.S.A. 50-627 are generally not dealt with elsewhere in the statutes and, as suggested in the Kansas Comment to this section (see attachment), this statute "forbids unconscionable advertising techniques, unconscionable contract terms, and unconscionable debt collection practices."
- Licensees identified in the Attorney General's recent "sting" operation as unlawfully selling cigarettes to a minor have been advised unequivocally by the Attorney General's Office that they have committed an unconscionable act and practice under the Kansas Consumer Protection Act. (See attached letter to Casey's store in Holton.) Hence, the proposed amendment should be unnecessary.
- Litigation is likely to result from the Attorney General's sting operation, and before "clarifying" the law, the legislature should allow the courts to determine whether the unlawful sale is an act "so outrageous that it shocks the conscience of the court."
- The penalties provided elsewhere in HB 2544 (including the Subcommittee's proposed amendments) reflect an intent that there should be increased enforcement of the prohibited sale to minors and that penalties for violations should be increased. However, these enhanced penalty and enforcement provisions do not reflect a legislative finding that a violation of this prohibition is an act "so outrageous as to shock the conscience of a court."
- The proposed amendment would promote great disparity in enforcing HB 2544. A violation of the proposed amendment would authorize the Attorney General or a county or district attorney to seek recovery of a civil penalty up to \$5,000; whereas, violations cited by other law enforcement officers would be

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Class B misdemeanors having a minimum fine of \$200 and a maximum fine of \$1,000.

- K.S.A. 79-3309 (amended by Section 5 of HB 2544) authorizes suspension or revocation of a dealer's license for violation of the act. This potential sanction alone makes the proposed amendment unwarranted.
- Although the unlawful sales of alcoholic liquor and cereal malt beverages to minors would appear to be offenses as serious as the sale of cigarettes to minors, they are not declared to be unconscionable acts and practices under the Kansas Consumer Protection Act.

For the foregoing reasons, Casey's respectfully suggests that the amendment proposed by the Attorney General is not only unnecessary, but unwarranted, in light of the extensive criminal and administrative regulatory scheme already in place and being substantially augmented by HB 2544. Thus, we would reiterate our request that this proposed amendment not be adopted.

In conclusion, Casey's wants the Committee to understand that it strongly supports the Subcommittee's efforts to strengthen the law regarding underage sales of cigarettes. Casey's takes very seriously its obligations in this regard, and it undertakes to train thoroughly its employees as to their responsibilities regarding prohibited sales of alcoholic liquor, cereal malt beverage and cigarettes to minors.

Attached to this Memorandum are copies of the training and other materials utilized by Casey's throughout all of its convenience stores. Included in these materials are pages from the Employee's Manual; an example of a notice posted in Casey's stores advising patrons that they must be of proper age to purchase cigarettes or alcoholic beverages; a separate handout provided to each sales clerk; one of the periodic communications sent every three or four months to Managers, Supervisors and District Managers, concerning their obligations to train employees regarding sales to minors; and, finally, a document which restates the company's policies regarding sales to minors and the instructions to sales clerks regarding their obligations in this regard and which must be signed by each new employee, as well as the store manager who provided training to that employee.

Again, these attachments demonstrate that Casey's takes great precautions to avoid the unlawful sales of cigarettes and alcoholic beverages to minors. Notwithstanding these

concerted efforts, careless mistakes are made occasionally, as evidenced by the Attorney General's recent sting operation. While Casey's believes that it should bear responsibility for proven violations and be subject to appropriate penalties, we respectfully suggest to the Committee that these violations are not "so outrageous as to shock the conscience of the court," thereby subjecting Casey's to a potential civil penalty of \$5,000.

Thank you for your attention to these remarks.

Bailey v. Morgan Drive-Away, Inc., 647 F.Supp. 648, 656 (1986).

15. Cited; act held applicable to real estate transactions; claim dismissed on theory no evidence of deceptive act or practice shown. Hoffman v. Haug, 242 K. 867, 873, 752 P.2d 124 (1988).

16. Cited; punitive damages award for fraud, attorney fees award even though factor in considering punitive damages examined. Equitable Life Leasing Corp. v. Abbick, 243 K. 513, 514, 757 P.2d 304 (1988).

17. Section (b)(3) does not proscribe mere nondisclosure, only intentional failure to state or concealment of a material fact. Heller v. Martin, 14 K.A.2d 48, 52, 782 P.2d 1241 (1989).

18. Considered in determining propriety of removal to federal court; preemption by federal law considered. State of Kan. ex rel. Stephan v. TWA, 730 F.Supp. 366 (1990).

19. Question of deceptive practice is one for jury; what constitutes deceptive act examined. Farrell v. General Motors Corp., 249 K. 231, 243, 815 P.2d 538 (1991).

20. Considered in action for damages based on agreement for replacement of roof of residence. Enlow v. Sears, Roebuck & Co., 249 K. 732, 739, 822 P.2d 617 (1991).

21. Discussed in holding a university student is not considered an aggrieved consumer under 50-634. Finstad v. Washburn University, 252 K. 465, 470, 473, 845 P.2d 685 (1993).

22. Trial court's refusal to instruct on intent as a required element is reversible error. Porras v. Bell, 18 K.A.2d 569, 571, 857 P.2d 676 (1993).

50-627. Unconscionable acts and practices. (a) No supplier shall engage in any unconscionable act or practice in connection with a consumer transaction. An unconscionable act or practice violates this act whether it occurs before, during or after the transaction.

(b) The unconscionability of an act or practice is a question for the court. In determining whether an act or practice is unconscionable, the court shall consider circumstances of which the supplier knew or had reason to know, such as, but not limited to the following:

(1) That the supplier took advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor;

(2) that, when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by similar consumers;

(3) that the consumer was unable to receive a material benefit from the subject of the transaction;

(4) that, when the consumer transaction was entered into, there was no reasonable probability

of payment of the obligation in full by the consumer;

(5) that the transaction the supplier induced the consumer to enter into was excessively one-sided in favor of the supplier;

(6) that the supplier made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment; and

(7) that the supplier excluded, modified or otherwise attempted to limit either the implied warranties of merchantability and fitness for a particular purpose or any remedy provided by law for a breach of those warranties.

History: L. 1973, ch. 217, § 5; L. 1976, ch. 236, § 4; L. 1983, ch. 180, § 1; L. 1991, ch. 159, § 3; July 1.

KANSAS COMMENT, 1973

1. Section 50-627 forbids unconscionable advertising techniques, unconscionable contract terms, and unconscionable debt collection practices. As under the UCC (K.S.A. 84-2-302), unconscionability typically involves conduct by which a supplier seeks to induce or to require a consumer to assume risks which materially exceed the benefits to him of a related consumer transaction. It involves over-reaching, not necessarily deception. The Old Buyer Protection Act had no such provision. "Knowledge or reason to know" often will be established by a supplier's course of conduct.

2. Subsection (b)(1) includes such conduct as selling an English-language encyclopedia set for personal use to a Spanish-American bachelor laborer who does not read English, or using legal verbiage in a manner which cannot be readily comprehended by a low-income consumer who both reads and speaks English.

Subsection (b)(2) includes such conduct as a home solicitation sale of a set of cookware to a housewife for \$375 in an area where a set of comparable quality is readily available to such a housewife for \$125 or less.

Subsection (b)(3) includes such conduct as the sale of two expensive vacuum cleaners to two poor families whom the salesman knows, or has reason to know, share the same apartment and the same rug.

Subsection (b)(4) includes such conduct as the sale of goods, services, or intangibles to a low-income consumer whom the salesman knows, or has reason to know, does not have sufficient income to make the stipulated payments.

Subsection (b)(5) includes such conduct as requiring a consumer to sign a one-sided adhesion contract which is loaded too heavily in favor of the supplier, even though some or all of the contract terms are lawful in and of themselves.

Subsection (b)(6) applies to misleading subjective expressions of opinion on which a supplier should reasonably expect a consumer to rely to his detriment. For example, a violation of this subsection would occur if a prospective purchaser asked a supplier what the useful life of a paint job was and the supplier, with reason to know that repainting would be necessary within two years, responded, "in my opinion the paint will wear like iron." Overt factual misstatements expressed in form of opinion are dealt with by 50-626's prescription of deceptive consumer sales practices. For example, a violation of 50-626 would occur if a prospective purchaser

Doug Keech Legal
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State of Kansas

Office of the Attorney General

CONSUMER PROTECTION DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597

PHONE: (913) 296-3751 FAX: (913) 291-3699

CONSUMER HOTLINE
1-800-432-2810

CARLA J. STOVALL
ATTORNEY GENERAL

February 10, 1996

Carol Hubach
Cascys
208 W. 5th
Holtan, KS 66436

RE: Cigarettes sales to minors in violation of State law

Dear Kansas Merchant:

Your business has been observed selling cigarettes to a minor in violation of Kansas law. This illegal sale, witnessed by a Special Agent of the Attorney General's Office, constitutes an unconscionable act and practice under provisions of the Kansas Consumer Protection Act (KCPA). The Attorney General's Office is charged with the enforcement of the KCPA, and is authorized to bring an action against violators of the Act to (1) enjoin further violations of the Act, (2) recover civil penalties up to \$5,000 per violation, (3) recover investigative fees and expenses, and (4) recover damages on behalf of consumers.

Please contact Assistant Attorney General James J. Welch by February 15, 1996, to discuss this matter.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

C. Steven Rarrick
Deputy Attorney General
Chief, Consumer Protection Division

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SELLING TO A MINOR

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INTRODUCTION

As you know, selling beer, liquor, tobacco and ammunition to a minor is against the law. If it is proven that a store was involved in the illegal sale of one of these items, it can result in fines and/or the loss of our license. The employee, if convicted, can also incur a fine, jail sentence, and lose their job.

In order for you and the Company to be protected from this happening, Company policy states that all beer, liquor, tobacco and ammunition sales requires an I.D. for proof of legal age.

1. Ask all purchasers of beer, liquor, tobacco, or ammunition their age first and then ask for their I.D.
 - a. Check to make sure they are of legal age as of the current date. Their date of birth must be on or before this date.
 - b. Check to make sure the photo matches the customer's appearance.
 - c. Check to make sure the physical description on the I.D. matches the customer's appearance.
 - d. Check to make sure the I.D. is current.

The laws concerning the sale of beer and liquor has other regulations that you need to be aware of.

In most states, both the Company and the individual employees may be held liable for damages caused by an impaired person who has been sold alcoholic beverages unlawfully.

The unlawful sales include:

1. To an underage person
2. To an intoxicated person
3. To a third party who provides the beverage to such persons
4. After hours sales

As the owner/operator of a retail establishment, we could be criminally charged along with the employee who makes the illegal sale of alcoholic beverages.

Conviction of an employee is very costly to them personally along with the store losing it's license to sell beer and/or liquor.

If an employee allegedly sells beer or liquor to a minor, their employment status will be reviewed prior to taking actions.

If an employee is convicted of selling beer to a minor, he/she is faced with a fine and/or jail sentence and will be terminated as a Casey employee. The convicted employee will also have to pay all lawyer fees and court costs.

To help prevent these things from happening, there are a few guidelines that must be followed.

1. Ask all purchasers of alcoholic beverages their age first and then ask for their I.D.
 - a. Check to make sure they are of legal age as of the current date. (minus 21 from the current year)
 - b. Check to make sure the photo matches the customer's appearance.
 - c. Check to make sure the physical description on the I.D. matches the customer's appearance.
 - d. Check to make sure the I.D. is current.
2. If you feel that a customer is intoxicated, refuse to sell the alcoholic beverage to them.
 - a. Intoxicated persons could have slurred speech, might stagger, show a lack of coordination, or might be belligerent.
 - b. Use prudent judgment before concluding that a customer is intoxicated as some medical conditions may cause sober people to display the same symptoms as above.
3. Never sell alcoholic beverages during hours that are not permitted by law.

DO NOT TAKE THE CHANCE

I.D. EVERYONE

If you are suspicious of an I.D., ask for another form of I.D. If you still are not satisfied, refuse to sell them the beer, liquor, tobacco, or ammunition. This is your right, it's also YOUR JOB.

WHEN IN DOUBT, DON'T SELL.

LEGAL AGE REQUIREMENTS

The Federal Firearms Regulations booklet states that a person must be 18 years of age or older to purchase longgun (shotgun-rifle) ammunition. Anyone between the ages of 18 to 21 purchasing 22 caliber shells must be asked what type of gun the shells are being purchased for. If they state longgun, you may sell the shells. If they state handgun, refuse the sale. When 22 caliber shells are purchased specifically for use in a handgun, the buyer must be 21 years of age or older. Some state and local ordinances have higher age requirements for ammunition purchases, so check with your state's Natural Resources Department or Parks and Game Commission if you have questions about your specific area.

Since we have stores in eight states, it will be necessary for you to check the age guidelines for beer, liquor, and tobacco listed below.

STATE	BEER/LIQUOR	TOBACCO
ILLINOIS	21 YEARS OLD	18 YEARS OLD

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STATE	BEER/LIQUOR	TOBACCO
IOWA	21 YEARS OLD	18 YEARS OLD
KANSAS	21 YEARS OLD	18 YEARS OLD
MINNESOTA	21 YEARS OLD	18 YEARS OLD
MISSOURI	21 YEARS OLD	Local officials determine (in most cases 18)
NEBRASKA	21 YEARS OLD	18 YEARS OLD
SOUTH DAKOTA	21 YEARS OLD	18 YEARS OLD
WISCONSIN	21 YEARS OLD	18 YEARS OLD

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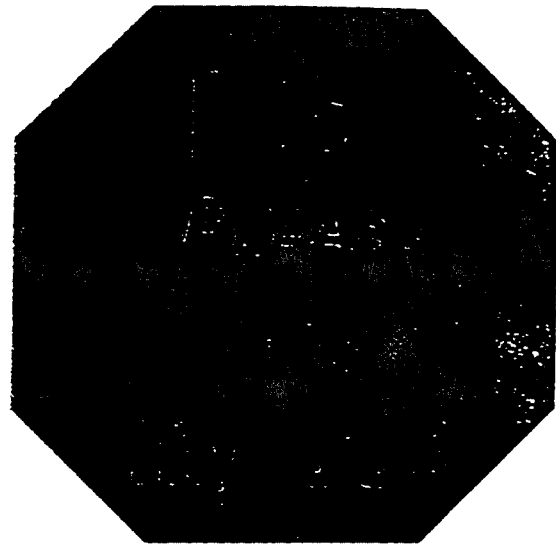
TO PURCHASE ALCOHOLIC BEVERAGES
YOUR BIRTHDAY MUST BE
ON OR BEFORE TODAY'S DATE IN

1974

TO PURCHASE TOBACCO
YOUR BIRTHDAY MUST BE
ON OR BEFORE TODAY'S DATE IN

1977

Expires 12-31-95



You must be 21 years old
to purchase beer, wine, or liquor.
A driver's license and a second I.D.
must be presented to the clerk.
Minors attempting to buy beer, wine
or liquor will be reported to
authorities.

CASEY'S GENERAL STORES, INC.

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Selling Age Restricted Products

Introduction

The law regarding the sale of age restricted products to minors is very clear:

- No one under the age of 21 is allowed to purchase alcoholic beverages.
- No one under the age of 18 is allowed to purchase tobacco products, ammunition or play the lottery.

The rules are the same in all states. Employees caught selling age-restricted products to underage persons are subject to criminal penalties, including heavy fines. The Company has no obligation to provide a defense and will not pay an employee's fine. Retail establishments whose employees are caught selling alcoholic beverages to underage persons are also subject to fines and can lose their liquor licenses. It is an important job responsibility to obey the law. **Do not sell age-restricted products to underage persons!** Casey's employees caught violating this rule will be subject to disciplinary action, up to and including immediate dismissal.

Instructions

1. **Ask the customer's age.**
 - a. If the customer appears to be under the age of 25, ask the customer how old they are.
 - b. Regardless of the answer, demand proof.
2. **Ask the customer for a picture ID and determine the validity of the ID.**
 - a. Have the customer remove the ID from any plastic holder or wallet.
 - b. Make sure the photo and the written description match the customer's physical appearance. Things to look for would be eye color, height, weight, hair color, etc.
 - c. Check the ID to make sure it has not been altered or tampered with and that it is currently valid.
 - d. Make sure the ID is readable. If in doubt, question the customer about the information on the ID, asking the name, date of birth, etc.
3. **Calculate the customer's age.**
 - a. Calculate the age of the customer based on the birthdate shown on the ID. Take the current date and subtract 21 years for beer or liquor purchases to determine if the person is of legal age based on the individual's birthdate as shown on the ID. Subtract 18 years for tobacco, ammunition or lottery purchases.
 - b. The sticker on the cash register should tell you the year by which the customer must have been born to be old enough to make the purchase.

c. Take sufficient time for your subtraction to make sure your calculations are accurate.

4. When to refuse a sale.

a. If the ID is not acceptable, ask the customer for an additional form of identification. Compare it with the information on the ID. If it is inconsistent or does not provide additional information, DO NOT MAKE THE SALE.

5. Dealing with an upset customer.

a. If the customer becomes upset, remember to remain calm and polite. If you become upset, the situation will become more difficult.

b. Explain that it is Casey's policy and that your job requires you to check identifications for making any sales regarding the sale of age-restricted products to underage persons.

c. If the customer remains upset, offer to put the customer in contact with the Manager, if it is possible.

d. Do not allow an upset customer to intimidate you into making a sale. As the employee, the decision on whether to sell the product is yours. Casey's will support your decision if you are not satisfied with the customer's identification.

REMEMBER, WHEN IN DOUBT DO NOT MAKE THE SALE.

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CASEY'S GENERAL STORES, INC.

P.O. Box 3001 • Ankeny, Iowa 50021-8045 • 515-965-6100

TO: Managers, Supervisors & District Managers

FROM: Cleo R. Kuhns, Vice President of Store Operations

DATE: July 28, 1995

SUBJ: Sales to Minors

Please train all employees on the proper procedures for selling alcohol, tobacco and ammunition. Have all employees read and sign this letter and post it on the bulletin board.

Selling alcohol, tobacco and ammunition to a minor is against the law. If it is proven our store was involved in the illegal sale of one of these items, it can result in fines and/or the loss of our license. The employee, if convicted, can also incur a fine, jail sentence and loss of their job.

In order for you and the Company to be protected from this happening, Company policy states that all alcohol, tobacco and ammunition sales require an I.D. for proof of legal age.

1. Ask all purchasers of alcohol, tobacco and ammunition their age first and then ask for an I.D.
 - a. Check to make sure they are of legal age as of the current date.
 1. for alcohol sales, subtract 21 from the current year
 2. for tobacco/ammunition sales, subtract 18 from the current year
 - b. Check to make sure the photo matches the customer's appearance.
 - c. Check to make sure the physical description on the I.D. matches the customer's appearance.
 - d. Check to make sure the I.D. is correct.
2. If you feel that a customer is intoxicated, refuse to sell the alcoholic beverage to them.
 - a. An intoxicated person could have slurred speech, may stagger, show lack of coordination or be belligerent.
 - b. Use prudent judgement before concluding that a customer is intoxicated as some medical conditions may cause sober people to display the same symptoms as above.
3. Never sell alcoholic beverages during hours that are not permitted by law.

The company and the individual employee may be held liable for damage caused by an impaired person who has been sold alcoholic beverages illegally.

These unlawful sales include:

1. To an underaged person.
2. To an intoxicated person.
3. To a third party who provides the beverage to such persons.
4. After hours sales.

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OVER

As the owner/operator of a retail establishment, we could be criminally charged along with the employee who makes the illegal sale of alcohol, tobacco and ammunition.

Conviction of an employee is very costly to them personally as well as the store losing it's license to sell alcohol, tobacco and ammunition.

If an employee allegedly sells alcohol, tobacco or ammunition to a minor, their employment status will be reviewed prior to taking action. If an employee is convicted of selling alcohol, tobacco or ammunition to a minor he/she may be faced with a fine and/or jail sentence and be subject to disciplinary action up to and including termination.

DO NOT TAKE THE CHANCE - I.D. EVERYONE

If you are suspicious of an I.D., ask for another form of identification. If you are still not satisfied, refuse to sell the alcohol, tobacco or ammunition. This is your right, it's also your job.

WHEN IN DOUBT, DON'T SELL

If you have any questions, contact your supervisor.

cc: Ron Lamb
Regional Managers
Laurie Cox

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SELLING AGE RESTRICTED PRODUCTS

Store Location _____ Store Number _____

Employee Name _____ S.S. # _____
(please print)

POLICY: It is the policy of Casey's General Stores, Inc. to prohibit the sale of age restricted products to minors.

As a Casey's employee it will be your responsibility to enforce this policy. The legal purchasing age for all states is:

Alcohol or Beer	21
Tobacco	18
Ammunition	18
Lottery (Iowa 21)	18

When a customer attempts to purchase beer, alcohol, tobacco, ammunition or lottery you must:

1. Ask the customer's age.
 - a. If the customer appears to be under the age of 25, ask the customer how old they are.
 - b. Regardless of the answer, demand proof.
2. Ask the customer for a picture ID and determine the validity of the ID.
 - a. Have the customer remove the ID from any plastic holder or wallet.
 - b. Make sure the photo and written description match the person's physical appearance. Things to look for would be eye color, height, weight, hair color, etc.
 - c. Check the ID to make sure it has not been altered or tampered with and that it is currently valid.
 - d. Make sure the ID is readable. If in doubt, question the customer about the information on the ID, asking the name, date of birth, etc.
3. Calculate the customer's age.
 - a. Calculate the age of the customer based on the birthdate shown on the ID. Take the current date and subtract 21 years and determine if the person is of legal age based on the individual's birthdate as shown on the ID for beer or liquor purchases. Subtract 18 years for tobacco, ammunition or lottery purchases.

- b. The sticker on the cash register should tell you the year by which the customer must have been born to be old enough to make the purchase.
- c. Take sufficient time for your subtraction to make sure your calculations are accurate.

4. When to refuse a sale.

- a. If the ID is not acceptable, ask the customer for an additional ID. Compare it with the information on the ID. If it is inconsistent or does not provide additional information, DO NOT MAKE THE SALE.

5. Dealing with an upset customer.

- a. If the customer becomes upset, remember to remain calm and polite. If you become upset, the situation will become more difficult.
- b. Explain that it is Casey's policy and that your job requires you to check identifications for making any sales regarding the sale of age-restricted products to underage persons.
- c. If the customer remains upset, offer to put the customer in contact with the Manager, if it is possible.
- d. Do not allow an upset customer to intimidate you into making a sale. As the employee, the decision on whether to sell the product is yours. Casey's will support your decision if you are not satisfied with the customer's identification.

- 6. Any employee who is convicted of selling an age-restricted product will be facing fines, a possible jail sentence, attorney fees, court costs, and may be terminated as a Casey's employee.

REMEMBER, WHEN IN DOUBT DO NOT MAKE THE SALE.

EMPLOYEE'S PLEDGE

I have read and understand the company policy and procedures concerning the sale of age-restricted products as stated above. I have been informed of the legal ages for my state and will not sell age-restricted products, including beer or liquor, tobacco, ammunition, or lottery tickets, to underage persons. I understand that the consequences of violating these rules may include criminal sanctions as well as disciplinary action by the Company, and that my employment may be terminated.

Employee _____ Date _____
(signature)

MANAGER'S STATEMENT

I have given complete instructions to this employee on the proper procedures to follow when selling age-restricted products.

Manager _____ Date _____
(signature)

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