

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on March 19, 2008 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Melissa Doeblin, Revisor of Statutes Office
Theresa Kiernan, Revisor of Statutes Office
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Others attending:

See attached list.

Final Action:

SB 622 - Cereal malt beverages; alcohol content, by ABC, retailers authorized to sale, taxation.

A balloon was provided with requested changes by ABC and the retailers: (Attachment 1)

- Change to 4% from 5% alcohol by weight
- Page 40 and 41 pertain to application, licensees, and proceedings or suspensions
- page 43 pertains to inspections
- page 46 pertains to tax
- Pages 77, 78, and 79 pertain to permit holders, distributors, and tax

The Chairman asked the pleasure of the committee on the bill and with no motion to move the matter was set aside.

Introduction of Bill:

Senator Brownlee requested a bill introduction regarding the state to back the private activity bonds for the intermodal in Gardner, Kansas.

Senator Brownlee moved that this request should be introduced as a committee bill. Senator Barnett seconded the motion. The motion carried.

Final Action:

SB 544 - Fireless cigarettes; distribution and sale of

Pat Broxtimer, Assistant Attorney General, provided a balloon with recommended changes: (Attachment 2)

- Page 1, amended definition of cigarettes and "vending machine operator" has been added throughout the bill
- page 2 and 3 technical change
- page 4 change the sell off period July 1, 2010 and section (d) was deleted to make the bill precise
- page 5 identification of manufacturers for cigarette for sale within the state
- page 6, delete section 5, and the markings "FSC" signifies fire standards compliant permanently printed, stamped, engraved or embossed on the package at or near the UPC code
- page 9, the New York statement was removed
- The AG's office is in charge of ensuring that non fire safe cigarettes will not be sold or offered for sale to persons in Kansas

The committee questioned using the date of January 1, 2008, to be compliant instead of July 1, 2008.

Senator Brownlee moved to strike section 13 (a) on page 9. Senator Reitz seconded the motion. The motion

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on March 19, 2008 in Room 526-S of the Capitol.

carried.

Senator Reitz moved to pass **SB 544** out favorably as amended. Senator Brownlee seconded the motion. The motion carried.

The meeting was adjourned at 11:25 am. The next scheduled meeting is March 20, 2008.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 3-19-08

NAME	REPRESENTING
SEAN MURPHY	CAPITOL STRATEGIES
Austin Hayden	Hain Law Firm
Joseph	FMCA of KS
Phil Bradley	KLBA
David Kershner	DFA LEO Inc.
Jim Conant	KDOR
Whitney Gunn	Distilled Spirits Council of U.S.A.
Spencer Duncan	Capitol Connection
Krysten Watkins	LSH
Dr. Jaraent Burt	LSH
Chris Baker	LSH
John Peterson	Capitol Strategies
JOHN C. BOTTEMBERG	BOTTEMBERG & ASSOC
Jamie Ann Lower	Wine Institute
John Steffen	Hy-Vee, Inc.
Shil Williams	ABC
Tom Groneman	ABC
Chas E. Murphy	WINE INSTITUTE
Rebecca Rice	Ks Beer Wholesalers Assn.
Neal Whittling	Ks Beer Wholesalers Assn.
Amy Campbell	KABR
Ray J. Knudsen	KABR
Thomas W Jacobson	KABR
Kathryn Kist	SHF
Sean Murphy	Murphy's Liqueur

Bob Alderson
3-19-08

Sen Fed & State
Attachment 1
3-19-08

SENATE BILL No. 622

By Committee on Federal and State Affairs

9 AN ACT concerning alcoholic beverage; relating to the regulation
10 thereof; amending K.S.A. 41-102, 41-210, 41-211, 41-304, 41-307, 41-
11 308, 41-601, 41-602, 41-701, 41-708, 41-717, 41-718, 41-724, 41-725,
12 41-726, 41-729, 41-806, 41-901, 41-905, 41-1001, 41-1002, 41-1004,
13 41-1101, 41-1102, 41-1122, 41-1123, 41-1125, 41-2604, 41-2610, 41-
14 2614, 41-2632, 41-2637, 41-2641, 41-2642, 41-2643, 41-2705, 41-2706,
15 41-2707, 41-2709, 41-2722, 41-2726, 79-4101, 79-4102, 79-4103, 79-
16 4104, 79-41a01, 79-41a02, 79-41a04, 79-41a06, 79-41a07 and 79-41a08
17 and K.S.A. 2007 Supp. 41-104, 41-209, 41-308b, 41-712, 41-805, 41-
18 2611, 41-2645, 41-2701, 41-2704, 41-2728, 79-3606 and 79-41a03 and
19 repealing the existing sections; also repealing K.S.A. 41-103 and 41-
20 2712 and K.S.A. 2007 Supp. 41-2702, 41-2703 and 41-2708.

21
22 *Be it enacted by the Legislature of the State of Kansas:*

23 Section 1. K.S.A. 41-102 is hereby amended to read as follows: 41-
24 102. As used in ~~this~~ *the Kansas liquor control* act, unless the context
25 clearly requires otherwise:

26 (a) "Alcohol" means the product of distillation of any fermented liq-
27 uid, whether rectified or diluted, whatever its origin, and includes syn-
28 thetic ethyl alcohol but does not include denatured alcohol or wood
29 alcohol.

30 (b) "Alcoholic liquor" means alcohol, spirits, wine, beer and every
31 liquid or solid, patented or not, containing alcohol, spirits, wine or beer
32 and capable of being consumed as a beverage by a human being, but shall
33 not include any cereal malt beverage.

34 (c) "Beer" means a beverage, containing more than ~~3.2% 5%~~ alcohol 4%
35 by weight, obtained by alcoholic fermentation of an infusion or concoction
36 of barley, or other grain, malt and hops in water and includes beer, ale,
37 stout, lager beer, porter and similar beverages having such alcoholic
38 content.

39 (d) "Caterer" has the meaning provided by K.S.A. 41-2601, and
40 amendments thereto.

41 (e) "Cereal malt beverage" has the meaning provided by K.S.A. 41-
2701, and amendments thereto.

(f) "Club" has the meaning provided by K.S.A. 41-2601, and amend-

1 (f) A microbrewery license or microbrewery packaging and ware-
2 housing facility license shall apply only to the premises described in the
3 application and in the license issued and only one location shall be de-
4 scribed in the license.

5 (g) No microbrewery shall:

6 (1) Employ any person under the age of 18 years in connection with
7 the manufacture, sale or serving of any alcoholic liquor, *cereal malt bev-*
8 *erage or domestic beer*;

9 (2) permit any employee of the licensee who is under the age of 21
10 years to work on the licensed premises at any time when not under the
11 on-premises supervision of either the licensee or an employee of the
12 licensee who is 21 years of age or over;

13 (3) employ any person under 21 years of age in connection with mix-
14 ing or dispensing alcoholic liquor, *cereal malt beverage or domestic beer*;
15 or

16 (4) employ any person in connection with the manufacture or sale of
17 alcoholic liquor, *cereal malt beverage or domestic beer* if the person has
18 been convicted of a felony.

19 (h) Whenever a microbrewery licensee is convicted of a violation of
20 the Kansas liquor control act, the director may revoke the licensee's li-
21 cense and all fees paid for the license in accordance with the Kansas
22 administrative procedure act.

23 Sec. 10. K.S.A. 41-601 is hereby amended to read as follows: 41-601.
24 Every manufacturer, distributor, *or* microbrewery which sells any beer
25 *or cereal malt beverage* to a beer distributor at wholesale and farm winery
26 which sells any wine to a distributor at wholesale shall between the 1st
27 and 15th day of each calendar month, make return under oath to the
28 director of all alcoholic liquor *or cereal malt beverage* manufactured and
29 sold by the manufacturer, distributor, microbrewery or farm winery in
30 the course of business during the preceding calendar month. In the case
31 of a distributor, the return shall also show: (a) The total amount of *alco-*
32 *holic liquor or cereal malt beverage*, purchased by the distributor during
33 the preceding calendar month, the names of the distillers or distributors
34 from whom purchased, the quantity of each brand and the price paid
35 therefor; and (b) the names and locations of the *liquor retailers and cereal*
36 *malt beverage* retailers to whom alcoholic liquor *or cereal malt beverage*
37 was sold by the distributor during the preceding calendar month, the
38 quantity of each brand and the price charged therefor. The return shall
39 be made upon forms prescribed and furnished by the director and shall
40 contain such other information as the director reasonably requires.

41 Sec. 11. K.S.A. 41-602 is hereby amended to read as follows: 41-602.

42 It is the duty of each manufacturer, distributor, microbrewery which sells
43 any ~~domestic~~ beer to a beer distributor and farm winery which sells any

1 (d) Temporary permits shall specify the premises for which they are
2 issued and shall be issued only for premises where the city, county or
3 township zoning code allows use for which the permit is issued. No tem-
4 porary permit shall be issued for premises which are not located in a
5 county where the qualified electors of the county:

6 (1) (A) Approved, by a majority vote of those voting thereon, to adopt
7 the proposition amending section 10 of article 15 of the constitution of
8 the state of Kansas at the general election in November, 1986; or (B) have
9 approved a proposition to allow the sale of liquor by the individual drink
10 in public places within the county at an election pursuant to K.S.A. 41-
11 2646, and amendments thereto; and

12 (2) have not approved a proposition to prohibit such sales of alcoholic
13 liquor in such places at a subsequent election pursuant to K.S.A. 41-2646,
14 and amendments thereto.

15 (e) A temporary permit shall be issued for a period of time not to
16 exceed three consecutive days, the dates and hours of which shall be
17 specified in the permit, except that the director may issue one temporary
18 permit, valid for the entire period of time of the Kansas state fair, which
19 authorizes the sale and serving by the drink of only wine, *cereal malt*
20 *beverage* or beer, or ~~both all such beverages~~, on the state fairgrounds on
21 premises specified in the temporary permit, by a person who has entered
22 into an agreement with the state fair board for that purpose. Not more
23 than four temporary permits may be issued to any one applicant in a
24 calendar year.

25 (f) All proceeds from an event for which a temporary permit is issued
26 shall be used only for the purposes stated in the application for such
27 permit.

28 (g) A temporary permit shall not be transferable or assignable.

29 (h) The director may refuse to issue a temporary permit to any person
30 or organization which has violated any provision of the Kansas liquor
31 control act, the *club and drinking establishment act*, the *Kansas cereal*
32 *malt beverage act* or K.S.A. 79-41a01 et seq., and amendments thereto.

33 Sec. 43. K.S.A. 2007 Supp. 41-2701 is hereby amended to read as
34 follows: 41-2701. As used in this act unless the context otherwise requires: the Kansas cereal malt beverage

35 (a) (1) "Cereal malt beverage" means any fermented but undistilled
36 liquor brewed or made from malt or from a mixture of malt or malt
37 substitute or any flavored malt beverage, as defined in K.S.A. 2007 Supp.
38 41-2729, and amendments thereto, ~~but does not include.~~

39 (2) "*Cereal malt beverage*" ~~does not mean~~ any such liquor which is 4%
40 more than ~~3.2% 5%~~ alcohol by weight.

41 (b) "Director" means the director of alcoholic beverage control of
42 the department of revenue.

43 (c) "Manufacturer" means a manufacturer as defined by K.S.A. 41-

1 102, and amendments thereto.

2 (d) "Person" means any individual, firm, partnership, corporation or
3 association.

4 (e) "Retailer" "Cereal malt beverage retailer" means any person who
5 sells or offers for sale any cereal malt beverage for use or consumption
6 and not for resale in any form.

7 (f) "Place of business" means any place at which cereal malt bever-
8 ages are sold.

pursuant to the Kansas cereal malt beverage act

9 (g) "Distributor" means a beer distributor licensed pursuant to the
10 Kansas liquor control act.

11 (h) "Legal age for consumption of cereal malt beverage" means 21
12 years of age, except that "legal age for consumption of cereal malt bev-
13 erage" shall mean 18 years of age if at any time the provisions of P.L. 98-
14 363 penalizing states for permitting persons under 21 years of age to
15 consume cereal malt beverage are repealed or otherwise invalidated or
16 nullified.

17 New Sec. 44. (a) No cereal malt beverage retailer shall sell any cereal
18 malt beverage without having secured from the director a license for each
19 place of business to be licensed.

20 (b) No cereal malt beverage retailer's license shall be issued to an
21 individual:

- 22 (1) Who is not a resident of this state;
- 23 (2) who has not been a resident of this state for at least four years
24 immediately preceding the date of application;
- 25 (3) who has not been a citizen of the United States for at least 10
26 years, except that the spouse of a deceased licensee may receive and
27 renew a cereal malt beverage retailer's license notwithstanding the pro-
28 visions of this subsection (b)(3), if such spouse is otherwise qualified to
29 hold a cereal malt beverage retailer's license and is a United States citizen
30 or becomes a United States citizen within one year after the deceased
31 licensee's death;
- 32 (4) who has beneficial interest in the manufacture, preparation or
33 wholesaling of alcoholic liquor or cereal malt beverages;
- 34 (5) who has been convicted of a felony under the laws of this state,
35 any other state or the United States;
- 36 (6) who has had a license revoked for cause under the provisions of
37 the Kansas liquor control act, the Kansas cereal malt beverage act or the
38 beer and cereal malt beverage keg registration act, or who has had any
39 license issued under the cereal malt beverage laws of any state revoked
40 for cause, except that a license may be issued to an individual whose
41 license was revoked for the conviction of a misdemeanor at any time after
42 the lapse of 10 years following the date of the revocation;
- 43 (7) who has been convicted of being the keeper or is keeping a house

1 cereal malt beverage in the original and unopened container or to sell
2 cereal malt beverage for consumption on the licensed premises, ~~but no~~
3 ~~person shall be licensed both to sell cereal malt beverage in the original~~
4 ~~and unopened container and to sell cereal malt beverage for consumption~~
5 ~~on the licensed premises.~~

6 (b) Applications for all licenses to sell cereal malt beverage shall be
7 upon forms prescribed and furnished by the director and shall be filed
8 with the director in duplicate. Each application shall be accompanied by
9 a state registration fee of \$50 for each initial application and \$10 for each
10 renewal application, to defray the cost of preparing and furnishing stan-
11 dard forms incident to the administration of the Kansas cereal malt bev-
12 erage act and the cost of processing the application. Each application also
13 shall be accompanied by a deposit of a certified or cashier's check of a
14 bank within this state, United States post office money order or cash in
15 the full amount of the license fee required to be paid for the license
16 applied for, which license fee shall be returned to the applicant if the
17 application is denied. All registration and license fees shall be paid into
18 the state treasury by the director and shall be credited to the state general
19 fund.

20 (c) Each applicant for a cereal malt beverage retailer's license shall
21 file with the application a joint and several bond on a form prescribed by
22 the director and executed by good and sufficient corporate sureties li-
23 censed to do business within the state of Kansas to the director, in the
24 amount of \$2,000. Such bond shall be conditioned on the licensee's com-
25 pliance with the provisions of the Kansas cereal malt beverage act and
26 payment of all taxes, fines and forfeitures which may be assessed against
27 the licensee.

28 (d) The annual fee for a cereal malt beverage retailer's license shall
29 be \$250, which shall be paid at the time application for a license is sub-
30 mitted to the director. In addition to the license fee:

31 (1) Any city in which the licensed premises are located shall levy and
32 collect an annual occupation or license tax on the licensee in an amount
33 not less than \$100 or more than \$300, but no other occupation or excise
34 tax or license fee shall be levied by any city against or collected from the
35 licensee; and

36 (2) any township in which the licensed premises are located shall levy
37 and collect an annual occupation or license tax on the licensee in an
38 amount not less than \$100 or more than \$300; the township board of the
39 township is authorized to fix and impose the tax and the tax shall be paid
40 by the licensee to the township treasurer, who shall issue a receipt there-
41 for to the licensee and shall cause the tax paid to be placed in the general
fund of the township.

42 (e) The license year for a cereal malt beverage retailer's license shall

1 commence on the date the license is issued by the director and shall end
2 one year after that date.

3 (f) Any person who was licensed on the date immediately preceding
4 the effective date of this act to sell cereal malt beverage, as such term
5 was defined in K.S.A. 41-2701 prior to its amendment by this act, shall
6 be deemed a licensed cereal malt beverage retailer for a period of 90
7 days after the effective date of this act. Thereafter, such person must be
8 licensed by the director as provided in this act, in order to operate as a
9 cereal malt beverage retailer.

10 (g) This section shall be a part of and supplemental to the Kansas
11 cereal malt beverage act.

12 New Sec. 47. (a) When an application for a license to sell cereal malt
13 beverage is filed with the director, the director shall notify the city clerk
14 of the city or the township clerk of the township where such license is
15 sought. Such notice shall state the date and place where a hearing will be
16 held on such application. No such license shall be issued by the director
17 until the expiration of at least 10 days from the time of filing such appli-
18 cation with the director, during which period the governing body of such
19 city or the township board of such township may make advisory recom-
20 mendations relative to the director's granting or refusal to grant a license.
21 The hearing on the application shall be conducted in accordance with the
22 provisions of the Kansas administrative procedure act.

or renewal of a license

governing body

county where the premises to be licensed are located, if such governing body has requested such notification

county may request the director to hold a hearing on the granting or renewal of such license

23 (b) Within 30 days after an application for a license to sell cereal malt
24 beverage is filed, the director shall enter an order either refusing or grant-
25 ing the license. If the director does not enter an order within the time
26 prescribed, the license applied for shall be deemed to have been refused.
27 The director, with the written consent of the applicant for a license, may
28 delay entering an order on an application for an additional period of not
29 to exceed 30 days.

At such hearing the governing body of such city or county shall have the right to appear before the director and present testimony and evidence and make recommendations regarding the granting of such license or the renewal of such license. In determining whether to grant or to refuse to grant such license or renewal, the director shall take into consideration the testimony and evidence and recommendations of the governing body of such city or county. The director may refuse to grant such license or renewal based on the evidence gathered at such hearing.

(c)

(d)

30 (e) Proceedings for the suspension, revocation or refusal to grant or
31 renew a license to sell cereal malt beverage, including the proceedings
32 for administrative appeal and judicial review, shall be in substantial con-
33 formity with the proceedings set forth in the Kansas liquor control act for
34 the suspension, revocation or refusal to grant or renew a liquor retailer's
35 license.

(e)

36 (d) This section shall be a part of and supplemental to the Kansas
37 cereal malt beverage act.

38 New Sec. 48. (a) Cereal malt beverage retailer licenses issued pur-
39 suant to the Kansas cereal malt beverage act shall apply only to the prem-
40 ises described in the application and in the license issued thereon, and
41 only one location shall be so described in each license. After such license
42 has been granted for particular premises in any city, the director, upon
proper showing, may endorse upon the license permission to abandon

Any suspension or revocation of the license of a cereal malt beverage retailer licensed to sell cereal malt beverage in the original and unopened containers shall not cause the closure of the licensed premises.

1 Kansas liquor control act.
2 Sec. 51. K.S.A. 2007 Supp. 41-2704 is hereby amended to read as
3 follows: 41-2704. (a) In addition to and consistent with the requirements
4 of the *Kansas* cereal malt beverage act, the board of county commission-
5 ers of any county or the governing body of any city may prescribe hours
6 of closing, standards of conduct and rules and regulations concerning the
7 moral, sanitary and health conditions of places licensed to *sell cereal malt*
8 *beverage* pursuant to ~~this act~~ *the Kansas cereal malt beverage act* and may
9 establish zones within which no such place may be located.

10 (b) Within any city where the days of sale at retail of cereal malt
11 beverage in the original package have not been expanded as provided by
12 K.S.A. 2007 Supp. 41-2911, and amendments thereto, or have been so
13 expanded and subsequently restricted as provided by K.S.A. 2007 Supp.
14 41-2911, and amendments thereto, and within any township where the
15 hours and days of sale at retail of cereal malt beverage in the original
16 package have not been expanded as provided by K.S.A. 2007 Supp. 41-
17 2911, and amendments thereto, or have been so expanded and subse-
18 quently restricted as provided by K.S.A. 2007 Supp. 41-2911, and amend-
19 ments thereto, no cereal malt beverages may be sold:

20 (1) *In the original package between the hours of 11 p.m. and 9 a.m.,*
21 *and for consumption on the licensed premises* between the hours of 12
22 midnight and 6 a.m.; or

23 (2) on Sunday, except in a place of business which is licensed to sell
24 cereal malt beverage for consumption on the premises, which derives not
25 less than 30% of its gross receipts from the sale of food for consumption
26 on the licensed premises and which is located in a county where such
27 sales on Sunday have been authorized by resolution of the board of county
28 commissioners of the county or in a city where such sales on Sunday have
29 been authorized by ordinance of the governing body of the city.

30 (c) Within any city where the days of sale at retail of cereal malt
31 beverage in the original package have been expanded as provided by
32 K.S.A. 2007 Supp. 41-2911, and amendments thereto, and have not been
33 subsequently restricted as provided in K.S.A. 2007 Supp. 41-2911, and
34 amendments thereto, and within any township where the days of sale at
35 retail of cereal malt beverage in the original package have been expanded
36 as provided by K.S.A. 2007 Supp. 41-2911, and amendments thereto, and
37 have not been subsequently restricted as provided by K.S.A. 2007 Supp.
38 41-2911, and amendments thereto, no person shall sell at retail cereal
39 malt beverage:

40 (1) *In the original package between the hours of 11 p.m. and 9 a.m.,*
41 *and for consumption on the licensed premises* between the hours of 12
42 midnight and 6 a.m.;

43 (2) in the original package before 12 noon or after 8 p.m. on Sunday;

(c) In addition to or in lieu of any suspension or revocation of a license, and in addition to or in lieu of any other civil or criminal penalty provided by law, the director, upon a finding that a licensee under the Kansas cereal malt beverage act has violated any provision thereof, may impose on such licensee a civil fine not exceeding \$1,000 for each violation. For such purpose, the secretary shall adopt rules and regulations providing guidelines for the imposition of fines and penalties pursuant to this section. Such guidelines shall be consistent with the comparable guidelines promulgated by rules and regulations pursuant to the Kansas liquor control act.

(d) No fine shall be imposed pursuant to this section except upon the written order of the director to the licensee who committed the violation. Such order shall state the violation, the fine to be imposed and the right of the licensee to appeal the order. Such order shall be subject to appeal and review in the same manner as orders of the director are appealed and reviewed under the Kansas liquor control act.

(e) Any fine imposed pursuant to this section shall be paid to the state treasurer, who shall deposit the same in the state treasury and credit it to the state general fund.

1 (3) on Easter Sunday; or
 2 (4) for consumption on the licensed premises on Sunday, except in a
 3 place of business which is licensed to sell cereal malt beverage for con-
 4 sumption on the *licensed* premises, which derives not less than 30% of
 5 its gross receipts from the sale of food for consumption on the licensed
 6 premises and which is located in a county where such sales on Sunday
 7 have been authorized by resolution of the board of county commissioners
 8 of the county or in a city where such sales on Sunday have been authorized
 9 by ordinance of the governing body of the city.

10 (d) No private rooms or closed booths shall be operated in a place of
 11 business, but this provision shall not apply if the licensed premises also
 12 are licensed as a club pursuant to the club and drinking establishment
 13 act.

14 (e) Each place of business shall be open to the public and to law
 15 enforcement officers at all times during business hours, ~~except that a~~
 16 ~~premises licensed as a club pursuant to the club and drinking establish-~~
 17 ~~ment act shall be open to law enforcement officers and not to the public.~~

18 (f) Except as otherwise provided by this subsection, no licensee shall
 19 permit a person under the legal age for consumption of cereal malt bev-
 20 erage to consume or purchase any cereal malt beverage in or about a
 21 place of business. A licensee's employee who is not less than 18 years of
 22 age may dispense or sell cereal malt beverage, if:

23 (1) The licensee's place of business is licensed only to sell at retail
 24 cereal malt beverage in the original package and not for consumption on
 25 the premises; or

26 (2) the licensee's place of business is a licensed food service estab-
 27 lishment, as defined by K.S.A. 36-501, and amendments thereto, and not
 28 less than 50% of the gross receipts from the licensee's place of business
 29 is derived from the sale of food for consumption on the premises of the
 30 licensed place of business.

31 (g) No person shall have any alcoholic liquor in such person's pos-
 32 session while in a place of business, unless the premises are currently
 33 licensed as a club or drinking establishment pursuant to the club and
 34 drinking establishment act.

35 (h) Cereal malt beverages may be sold on premises which are licensed
 36 pursuant to both the cereal malt beverage act and the club and drinking
 37 establishment act at any time when alcoholic liquor is allowed by law to
 38 be served on the premises.

39 Sec. 52. K.S.A. 41-2705 is hereby amended to read as follows: 41-
 40 2705. (a) Except to the *same* extent permitted *a liquor retailer* pursuant
 41 to K.S.A. 41-703, and amendments thereto, no *cereal malt beverage* re-
 42 tailer, or any officer, associate, member, representative or agent thereof,
 43 shall accept, receive or borrow money or anything else of value, or accept

, except a place of business licensed as a club pursuant to the club and drinking establishment act,

The right of immediate entry to and inspection of any licensed premises by any duly authorized officer or agent of the director, or by any law enforcement officer, shall be a condition on which every license is issued, and the application for, and acceptance of, any license shall conclusively be deemed to be the consent of the applicant and licensee to such immediate entry and inspection. Such right of immediate entry and inspection shall be at any time when the premises are occupied and is not limited to hours when the licensed premises are open for business. Such consent shall not be revocable during the term of the license. Refusal of such entry shall be grounds for revocation of the license.

1 ~~et seq. and amendments thereto~~ *the Kansas cereal malt beverage act* to
 2 sell cereal malt beverage in original and unopened containers and not for
 3 consumption on the licensed premises shall sell or offer for sale any cereal
 4 malt beverage at a price that is less than the acquisition cost of such cereal
 5 malt beverage to the licensee.

6 (b) Violation of this section is a misdemeanor punishable as provided
 7 by K.S.A. 41-2711, and amendments thereto.

8 (c) Violation of this section shall be grounds for suspension or revo-
 9 cation of the *cereal malt beverage* retailer's license as provided by ~~K.S.A.~~
 10 ~~41-2708 section 50~~, and amendments thereto.

11 Sec. 58. K.S.A. 2007 Supp. 41-2728 is hereby amended to read as
 12 follows: 41-2728. ~~From and after November 15, 2005:~~ (a) K.S.A. 41-2701
 13 through 41-2727 ~~and section 14~~, and amendments thereto, shall be known
 14 and may be cited as the Kansas cereal malt beverage act.

15 (b) Except as specifically provided in the Kansas cereal malt beverage
 16 act, the power to regulate all phases of the manufacture, distribution,
 17 sale, possession, transportation and traffic in cereal malt beverages is
 18 vested exclusively in the state and shall be exercised as provided in the
 19 Kansas cereal malt beverage act. No city or county shall enact any ordi-
 20 nance or resolution which is in conflict with the provisions of the Kansas
 21 cereal malt beverage act and any such ordinance or resolution shall be
 22 null and void.

23 (c) The provisions of this act are severable. If any provision of this
 24 act is held to be invalid or unconstitutional, it shall be presumed conclu-
 25 sively that the legislature would have enacted the remainder of this act
 26 without such invalid or unconstitutional provision.

27 Sec. 59. K.S.A. 2007 Supp. 79-3606 is hereby amended to read as
 28 follows: 79-3606. The following shall be exempt from the tax imposed by
 29 this act:

30 (a) All sales of motor-vehicle fuel, *cereal malt beverages, which are*
 31 *subject to taxation under K.S.A. 79-4101 et seq., and amendments thereto*,
 32 or other articles upon which a sales or excise tax has been paid, not subject
 33 to refund, under the laws of this state except cigarettes as defined by
 34 K.S.A. 79-3301 and amendments thereto, ~~cereal malt beverages and malt~~
 35 ~~products as defined by K.S.A. 79-3817 41-501~~ and amendments thereto,
 36 including wort, liquid malt, malt syrup and malt extract, which is not
 37 subject to taxation under the provisions of K.S.A. 79-41a02 and amend-
 38 ments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and
 39 amendments thereto, tires taxed pursuant to K.S.A. 65-3424d, and
 40 amendments thereto, drycleaning and laundry services taxed pursuant to
 41 K.S.A. 65-34,150, and amendments thereto, and gross receipts from reg-
 42 ulated sports contests taxed pursuant to the Kansas professional regulated
 43 sports act, and amendments thereto;

, or subject to taxation under K.S.A. 79-41a01 *et seq.*, and amendments thereto

1 contractor or any agent, employee or subcontractor thereof, who shall use
 2 or otherwise dispose of any materials purchased under such a certificate
 3 for any purpose other than that for which such a certificate is issued
 4 without the payment of the sales or compensating tax otherwise imposed
 5 upon such materials, shall be guilty of a misdemeanor and, upon conviction
 6 therefor, shall be subject to the penalties provided for in subsection
 7 (g) of K.S.A. 79-3615, and amendments thereto;

8 (zzz) all sales of tangible personal property purchased by the rotary
 9 club of shawnee foundation which is exempt from federal income taxation
 10 pursuant to section 501 (c)(3) of the federal internal revenue code of
 11 1986, as amended, used for the purpose of providing contributions to
 12 community service organizations and scholarships; and

13 (aaaa) all sales of personal property and services purchased by or on
 14 behalf of victory in the valley, inc., which is exempt from federal income
 15 taxation pursuant to section 501 (c)(3) of the federal internal revenue
 16 code, for the purpose of providing a cancer support group and services
 17 for persons with cancer, and all sales of any such property by or on behalf
 18 of any such organization for any such purpose.

19 Sec. 60. K.S.A. 79-4101 is hereby amended to read as follows: 79-
 20 4101. (a) For the purpose of providing revenue which may be used by
 21 the state, counties and cities in the enforcement of the provisions of this
 22 act, from and after the effective date of this act, for the privilege of en-
 23 gaging in the business of selling alcoholic liquor by liquor retailers or farm
 24 wineries to consumers in this state, ~~selling cereal malt beverage by liquor~~
 25 ~~retailers or cereal malt beverage retailers to consumers in this state or~~
 26 ~~selling alcoholic liquor or cereal malt beverage by distributors to clubs,~~
 27 ~~drinking establishments or caterers in this state,~~ there is hereby levied
 28 and there shall be collected and paid a tax at the rate of 8% upon the
 29 gross receipts received from: (1) The sale of alcoholic liquor by liquor
 30 retailers, microbreweries or farm wineries to consumers within this state;
 31 ~~and (2) the sale of cereal malt beverage by liquor retailers and cereal malt~~
 32 ~~beverage retailers to consumers in this state; and (3) the sale of alcoholic~~
 33 ~~liquor or cereal malt beverage by distributors to clubs, drinking estab-~~
 34 ~~lishments or caterers in this state.~~

35 (b) The tax imposed by this section shall be in addition to the license
 36 fee imposed on distributors, liquor retailers, microbreweries and farm
 37 wineries by K.S.A. 41-310, and amendments thereto, *and in addition to*
 38 *the license fee imposed on cereal malt beverage retailers by section 46,*
 39 *and amendments thereto.*

40 Sec. 61. K.S.A. 79-4102 is hereby amended to read as follows: 79-
 41 4102. The tax levied under K.S.A. 79-4101, and amendments thereto,
 shall be paid by the consumer or user to the liquor retailer, cereal malt
 beverage retailer, microbrewery or farm winery or by the club, drinking

selling alcoholic liquor or cereal malt beverage by a liquor retailer to temporary permit holders,

by liquor retailers or cereal malt beverage retailers licensed to sell cereal malt beverage in the original and unopened containers,

, temporary permit holders

or selling cereal malt beverage to cereal malt beverage retailers licensed to sell cereal malt beverage for consumption on the licensed premises

the sale of alcoholic liquor to temporary permit holders by liquor retailers; (4) the sale of cereal malt beverage to consumers in this state by cereal malt beverage retailers licensed to sell cereal malt beverage in the original and unopened containers; (5) the sale of cereal malt beverage by distributors to cereal malt beverage retailers licensed to sell cereal malt beverage for consumption on the licensed premises; and (6)

, temporary permit holders

1 establishment or caterer to the distributor. It shall be the duty of each
 2 *liquor retailer, cereal malt beverage* retailer, microbrewery, farm winery
 3 or distributor in this state to collect from the purchaser the full amount
 4 of the tax imposed by this act, or an amount equal as nearly as possible
 5 or practicable, to the average equivalent thereof.

6 Sec. 62. K.S.A. 79-4103 is hereby amended to read as follows: 79-
 7 4103. On or before the 25th day of each calendar month, every person
 8 engaged in the business of selling alcoholic liquor or cereal malt beverage
 9 at retail, every microbrewery selling beer to consumers, every farm winery
 10 selling wine to consumers in this state and every distributor selling alco-
 11 holic liquor or cereal malt beverage to clubs, drinking establishments or
 12 caterers in this state during the preceding calendar month shall make a
 13 return to the director of taxation upon forms prescribed and furnished
 14 by the director, stating: (a) The name and address of the seller; (b) the
 15 total amount of gross sales subject to the tax imposed by K.S.A. 79-4101,
 16 and amendments thereto, during the preceding calendar month; and (c)
 17 any other pertinent information the director requires. The person making
 18 the return shall, at the time of making the return, pay to the director of
 19 taxation the amount of tax imposed by K.S.A. 79-4101, and amendments
 20 thereto. The director of taxation may extend the time for making returns
 21 and paying the tax for any period not to exceed 60 days, under rules and
 22 regulations adopted by the secretary of revenue.

23 Sec. 63. K.S.A. 79-4104 is hereby amended to read as follows: 79-
 24 4104. Whenever the director of alcoholic beverage control issues a *liquor*
 25 *retailer's, cereal malt beverage* retailer's, distributor's, microbrewery or
 26 farm winery license, the director of alcoholic beverage control shall
 27 promptly notify the director of taxation of its issuance. The notice shall
 28 include the name of the licensee and, in the case of a *liquor retailer,*
 29 *cereal malt beverage* retailer, microbrewery or farm winery, the address
 30 of the licensed premises. Whenever the director of alcoholic beverage
 31 control revokes or suspends any *liquor retailer's, cereal malt beverage*
 32 *retailer's, distributor's, microbrewery or farm winery* license or whenever
 33 any retailer's, distributor's, microbrewery or farm winery license expires,
 34 the director of alcoholic beverage control *also* shall likewise notify the
 35 director of taxation.

36 Sec. 64. K.S.A. 79-41a01 is hereby amended to read as follows: 79-
 37 41a01. As used in K.S.A. 79-41a01 through 79-41a09, and amendments
 38 thereto:

39 (a) "Alcoholic liquor" means alcoholic liquor, as defined by K.S.A.
 40 41-102, and amendments thereto, and cereal malt beverage, as defined
 41 by K.S.A. 41-2701, and amendments thereto.

42 (b) "Caterer," "club," "drinking establishment" and "temporary per-
 43 mit" have the meanings provided by K.S.A. 41-2601, and amendments

pursuant to the Kansas liquor control act or the club and drinking establishment act,
 every liquor retailer selling alcoholic liquor or cereal malt beverage to temporary
 permit holders

, temporary permit holders

, every distributor selling cereal malt beverage to cereal malt beverage retailers
 licensed to sell cereal malt beverage for consumption on the licensed premises and
 every cereal malt beverage retailer licensed to sell cereal malt beverage in the
 original and unopened containers selling to consumers in this state

1 thereto.

2 (c) "Cereal malt beverage retailer" means a cereal malt beverage re-
3 tailer, as defined by K.S.A. 41-2701, and amendments thereto, which is
4 licensed under the Kansas cereal malt beverage act to sell cereal malt
5 beverage for consumption on the licensed premises.

6 (e) (d) "Gross receipts derived from the sale of alcoholic liquor"
7 means the amount charged the consumer for a drink containing alcoholic
8 liquor or cereal malt beverage, including any portion of that amount at-
9 tributable to the cost of any ingredient mixed with or added to the alco-
10 holic liquor contained in such drink.

11 Sec. 65. K.S.A. 79-41a02 is hereby amended to read as follows: 79-

12 41a02. (a) There is hereby imposed, for the privilege of selling alcoholic
13 liquor, a tax at the rate of 10% upon the gross receipts derived from the
14 sale of alcoholic liquor by any ~~cereal malt beverage retailer~~, club, caterer,
15 drinking establishment or temporary permit holder.

or cereal malt beverage

or cereal malt beverage

or by any cereal malt beverage retailer licensed to sell cereal malt beverage for
consumption on the licensed premises

16 (b) The tax imposed by this section shall be paid by the consumer to
17 the ~~cereal malt beverage retailer~~, club, caterer, drinking establishment or
18 temporary permit holder, and it shall be the duty of each and every ~~cereal
19 malt beverage retailer~~, club, caterer, drinking establishment or temporary
20 permit holder subject to this section to collect from the consumer the
21 full amount of such tax, or an amount equal as nearly as possible or prac-
22 ticable to the average equivalent thereto. Each ~~cereal malt beverage re-
23 tailer~~, club, caterer, drinking establishment or temporary permit holder
24 collecting the tax imposed hereunder shall be responsible for paying over
25 the same to the state department of revenue in the manner prescribed
26 by K.S.A. 79-41a03, and amendments thereto, and the state department
27 of revenue shall administer and enforce the collection of such tax.

or by a cereal malt beverage retailer licensed to sell cereal malt beverage for
consumption on the licensed premises

such

28 Sec. 66. K.S.A. 2007 Supp. 79-41a03 is hereby amended to read as

29 follows: 79-41a03. (a) The tax levied and collected pursuant to K.S.A. 79-
30 41a02, and amendments thereto, shall become due and payable by the
31 ~~cereal malt beverage retailer~~, club, caterer, drinking establishment or
32 temporary permit holder monthly, or on or before the 25th day of the
33 month immediately succeeding the month in which it is collected, but
34 any ~~cereal malt beverage retailer~~, club, caterer, drinking establishment or

licensed to sell cereal malt beverage for consumption on the licensed premises

such

35 temporary permit holder filing an annual or quarterly return under the
36 Kansas retailers' sales tax act, as prescribed in K.S.A. 79-3607, and amend-
37 ments thereto, shall, upon such conditions as the secretary of revenue
38 may prescribe, pay the tax required by this act on the same basis and at
39 the same time the ~~cereal malt beverage retailer~~, club, caterer, drinking
40 establishment or temporary permit holder pays such retailers' sales tax.

licensed to sell cereal malt beverage for consumption on the licensed premises

such

41 Each ~~cereal malt beverage retailer~~, club, caterer, drinking establishment
2 or temporary permit holder shall make a true report to the department
43 of revenue, on a form prescribed by the secretary of revenue, providing

SENATE BILL No. 544

By Committee on Federal and State Affairs

2-5

9 AN ACT concerning reduced ignition propensity cigarettes.

10

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

12 Section 1. (a) This act shall be known and may be cited as the fire
13 safety standard and firefighter protection act.

14 (b) If any provision of the fire safety standard and firefighter protec-
15 tion act is held to be unconstitutional, such holding shall not affect the
16 validity of any remaining portion of the act.

17 Sec. 2. As used in this act:

18 (a) "Agent" means any person authorized by the director to purchase
19 and affix stamps on packages of cigarettes.

20 (b) "Cigarette" means any roll for smoking, whether made wholly or
21 in part of tobacco or any other substance, irrespective of size or shape,
22 and irrespective of tobacco or substance being flavored, adulterated or
23 mixed with any other ingredient, ~~the wrapper or cover of which is made
24 in whole or part of paper or any other substance or material, other than
25 only leaf~~ tobacco.

if the wrapper is in greater part made of any material except

26 (c) "Director," "retail dealer," "sale" and "wholesale dealer" shall
27 have the meanings ascribed thereto in K.S.A. 79-3301, and amendments
28 thereto.

"vending machine operator,"

29 (d) "Manufacturer" means:

30 (1) Any entity which manufactures or otherwise produces cigarettes
31 or causes cigarettes to be manufactured or produced anywhere that such
32 manufacturer intends to be sold in this state, including cigarettes intended
33 to be sold in the United States through an importer;

34 (2) the first purchaser anywhere that intends to resell in the United
35 States cigarettes manufactured anywhere that the original manufacturer
36 or maker does not intend to be sold in the United States; or

37 (3) any entity that becomes a successor of an entity described in par-
38 agraph (1) or (2).

39 (e) "Quality control and quality assurance program" means the lab-
40 oratory procedures implemented to ensure that operator bias, systematic
41 and non-systematic methodological errors and equipment-related prob-
42 lems do not affect the results of the testing. Such a program ensures that
43 the testing repeatability remains within the required repeatability values

1 required by section 3, and amendments thereto, for all test trials used to
2 certify cigarettes in accordance with this act.

3 (f) "Repeatability" means the range of values within which the repeat
4 results of cigarette test trials from a single laboratory will fall 95% of the
5 time.

6 (g) "Sell" means to sell, or to offer or agree to do the same.

7 Sec. 3. (a) Except as provided in subsection ~~(e)~~ no cigarettes may (h)
8 be sold or offered for sale in this state or offered for sale or sold to any
9 person located in this state unless the cigarettes have been tested in ac-
10 cordance with the test method and meet the performance standard spec-
11 ified in this section, a written certification has been filed by the manu-
12 facturer with the state fire marshal in accordance with section 4, and
13 amendments thereto, and the cigarettes have been marked in accordance
14 with section 5, and amendments thereto.

15 (b) (1) Testing of cigarettes shall be conducted in accordance with
16 the American society of testing and materials (ASTM) standard E2187-
17 04, "Standard Test Method for Measuring the Ignition Strength of
18 Cigarettes."

19 (2) Testing shall be conducted on 10 layers of filter paper.

20 (3) No more than 25% of the cigarettes tested in a test trial in ac-
21 cordance with this section shall exhibit full-length burns. Forty replicate
22 tests shall comprise a complete test trial for each cigarette tested.

23 (4) The performance standard required by this section shall be ap-
24 plied only to a complete test trial.

25 (5) Written certifications shall be based upon testing conducted by a
26 laboratory that has been accredited pursuant to standard ISO/IEC 17025
27 of the international organization for standardization (ISO) or other com-
28 parable accreditation standard required by the state fire marshal.

29 (6) Laboratories conducting testing in accordance with this section
30 shall implement a quality control and quality assurance program that in-
31 cludes a procedure that will determine the repeatability of the testing
32 results. The repeatability value shall be no greater than 0.19.

33 (7) This section does not require additional testing if cigarettes are
34 tested in a manner which is consistent with this act for any other purpose.

35 (8) Testing performed or sponsored by the state fire marshal to de-
36 termine a cigarette's compliance with the performance standard required
37 shall be conducted in accordance with this section.

(c) ~~(b)~~ Each cigarette listed in a certification submitted pursuant to sec-
38 tion 4, and amendments thereto, that uses lowered permeability bands in
39 the cigarette paper to achieve compliance with the performance standard
40 set forth in this section shall have at least two nominally identical bands
41 on the paper surrounding the tobacco column. At least one complete band
42 shall be located at least 15 millimeters from the lighting end of the cig-
43

1 arette. For cigarettes on which the bands are positioned by design, there
2 shall be at least two bands fully located at least 15 millimeters from the
3 lighting end and 10 millimeters from the filter end of the tobacco column,
4 or 10 millimeters from the labeled end of the tobacco column for non-
5 filtered cigarettes.

(d) 6 (e) A manufacturer of a cigarette that the state fire marshal deter-
7 mines cannot be tested in accordance with the test method prescribed in
8 subsection (a) shall propose a test method and performance standard for
9 the cigarette to the state fire marshal. Upon approval of the proposed test
10 method and a determination by the state fire marshal that the perform-
11 ance standard proposed by the manufacturer is equivalent to the per-
12 formance standard prescribed in subsection (a)(3) of this section, the
13 manufacturer may employ such test method and performance standard
14 to certify such cigarette pursuant to section 4, and amendments thereto.
15 If the state fire marshal determines that another state has enacted re-
16 duced cigarette ignition propensity standards that include a test method
17 and performance standard that are the same as those contained in this
18 act, and the state fire marshal finds that the officials responsible for im-
19 plementing those requirements have approved the proposed alternative
20 test method and performance standard for a particular cigarette proposed
21 by a manufacturer as meeting the fire safety standards of that state's law
22 or regulation under a legal provision comparable to this section, then the
23 state fire marshal shall authorize that manufacturer to employ the alter-
24 native test method and performance standard to certify that cigarette for
25 sale in this state, unless the state fire marshal demonstrates a reasonable
26 basis why the alternative test should not be accepted under this act. All
27 other applicable requirements of this section shall apply to the
28 manufacturer.

(b)

(e) 29 (d) Each manufacturer shall maintain copies of the reports of all tests
30 conducted on all cigarettes offered for sale for a period of three years,
31 and shall make copies of these reports available to the state fire marshal
32 and the attorney general upon written request. Any manufacturer who
33 fails to make copies of these reports available within 60 days of receiving
34 a written request shall be subject to a civil penalty not to exceed \$10,000
35 for each day after the sixtieth day that the manufacturer does not make
36 such copies available.

(f) 37 (e) The state fire marshal may adopt a subsequent ASTM standard
38 test method for measuring the ignition strength of cigarettes upon a find-
39 ing that such subsequent method does not result in a change in the per-
40 centage of full-length burns exhibited by any tested cigarette when com-
41 pared to the percentage of full-length burns the same cigarette would
42 exhibit when tested in accordance with ASTM standard E2187-04 and
43 the performance standard in subsection (a)(3) of this section.

(b)

(g) ~~(f)~~ The state fire marshal shall review the effectiveness of this section and report every three years to the legislature the state fire marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this act. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

~~(g)~~ The requirements of subsection (a) shall not prohibit the sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

(i) ~~(h)~~ The provisions of this section shall take effect and be in force from and after July 1, 2009.

Sec. 4. (a) Each manufacturer shall submit to the state fire marshal a written certification attesting that: (1) Each cigarette listed in the certification has been tested in accordance with section 3, and amendments thereto; and (2) each cigarette listed in the certification meets the performance standard set forth in section 3, and amendments thereto.

(b) Each cigarette listed in the certification shall be described with the following information:

- (1) Brand or trade name on the package;
- (2) style, such as menthol, lights, ultra lights, low tar, kings, 100s or other;
- (3) length in millimeters;
- (4) circumference in millimeters;
- (5) flavor, such as menthol, chocolate or other, if applicable;
- (6) filter or non-filter;
- (7) package description, such as soft pack, box or other;
- (8) the name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
- (9) the date that the testing was conducted.

(c) For the purpose of compliance with this section, the state fire marshal shall accept completed certifications and make the completed certifications available to the attorney general.

~~(d) No later than six months after the effective date of this act the attorney general shall create a directory of cigarette brand styles certified under this act, to be posted on the attorney general's website. The directory shall include the cigarette varieties, brands and styles identified under subsection (b), and shall be updated as necessary. The directory may be combined with existing directories maintained by the attorney general as practicable. Any cigarette listed on the directory shall be deemed to~~

(h) The requirements of subsection (a) shall not prohibit:
 (1) A wholesale dealer, retail dealer or vending machine operator from selling their existing inventory of cigarettes on or after July 1, 2009, if the wholesale dealer, retail dealer or vending machine operator can establish that state tax stamps were affixed to such cigarettes prior to July 1, 2009, and if the wholesale dealer, retail dealer or vending machine operator can establish that the inventory was purchased prior to July 1, 2009, in comparable quantity to the inventory purchased during the same period of time in the prior year. In no event may a wholesale dealer, retail dealer or vending machine operator sell or offer for sale a cigarette in this state that does not comply with this act after July 1, 2010; or (2)

or low tar

1 ~~be in compliance with the requirements of this act.~~

(d) 2 ~~(e)~~ Each cigarette certified under this section shall be ~~retested and~~
3 recertified every three years. Initial cigarette certifications may be made
4 at any time. Subsequent certifications shall be made before ~~April 15th~~ of
5 the subsequent certification year.

July 31

6 ~~(f) Every manufacturer shall certify cigarettes within the state and be~~
7 ~~listed on the directory before the manufacturer, a retailer, or wholesaler~~
8 ~~may legally offer a manufacturer's cigarettes for sale within the state. In~~
9 ~~order to obtain and maintain a listing on the directory, a manufacturer~~
10 ~~shall consent to the jurisdiction of the Kansas courts for the purpose of~~
11 ~~enforcement of this act and shall appoint a registered agent for service~~
12 ~~of process in this state and identify the registered agent to the secretary~~
13 ~~of state.~~

(e) Every manufacturer shall certify cigarettes within the state before the manufacturer, retail dealer, wholesale dealer or vending machine operator legally may offer a manufacturer's cigarette for sale within the state. In order to obtain and maintain a listing on the directory created under subsection (i), a manufacturer shall consent to the jurisdiction of the Kansas courts for the purpose of enforcement of this act and shall appoint a registered agent for service of process in this state and shall identify the agent to the secretary of state.

14 ~~(g) Each time it submits a written certification under this section, a~~
15 ~~manufacturer shall pay to the state fire marshal a fee of \$500 for each~~
16 ~~style of cigarettes listed in the certification. The fee paid shall apply to all~~
17 ~~cigarette styles, identified under subsection (b) within the brand family~~
18 ~~certified and shall include any new cigarette styles certified within the~~
19 ~~brand family during the three-year certification period. Each year, the~~
20 ~~state fire marshal may adjust the amount of such fee in order to pay the~~
21 ~~actual costs of processing, testing, enforcement and oversight activities~~
22 ~~required by this act.~~

(f) For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a fee of \$250. The state fire marshal may adjust such fee annually, by rule and regulation, to ensure that such fee defrays the actual cost of processing, testing enforcement, administration and oversight activities required by law.

(g) 23 ~~(h)~~ There is hereby established in the state treasury a separate, non-
24 lapsing fund to be known as the fire safety standard and firefighter pro-
25 tection act enforcement fund which shall be administered by the state
26 fire marshal.

(h) 27 ~~(i)~~ If a manufacturer has certified a cigarette pursuant to this section,
28 and thereafter makes any change to such cigarette that is likely to alter
29 its compliance with the reduced cigarette ignition propensity standards
30 required by this act, that cigarette shall not be sold or offered for sale in
31 this state until the manufacturer retests the cigarette in accordance with
32 the testing standards set forth in section 3, and amendments thereto, and
33 maintains records of that retesting as required by section 3, and amend-
34 ments thereto. Any altered cigarette which does not meet the perform-
35 ance standard set forth in section 3, and amendments thereto, may not
36 be sold in this state.

(i) 37 ~~(j)~~ Not later than July 31, 2009, the attorney general shall develop a
38 directory of all certified cigarettes under this act. The directory shall be
39 updated as necessary and shall be posted on the attorney general's web-
40 site. ~~The directory shall include the brands or trade names and styles~~
41 ~~identified under subsection (b). Any cigarette listed on the directory shall~~
42 ~~be deemed to be in compliance with the requirements of this act.~~

Unless a wholesale dealer, retail dealer or vending machine operator has actual knowledge that cigarettes do not comply with this act, the wholesale dealer, retail dealer or vending machine operator shall consider any cigarette listed on the directory posted on the website to be lawful to sell in this state for the purpose of compliance with this act by such wholesale dealer, retail dealer or vending machine operator.

(j) 43 ~~(k)~~ The provisions of this section shall take effect and be in force

1 from and after July 1, 2009.

2 Sec. 5. (a) Cigarettes properly certified under this act shall be
3 marked with the letters "FSC." The marking shall be permanently, legibly
4 printed, in 8 point font or larger, around the area of the UPC code.

5 (b) A manufacturer shall apply this "FSC" marking uniformly for all
6 packages, including, but not limited to, packs, cartons, and cases and
7 brands marketed by that manufacturer.

8 (c) Manufacturers certifying cigarettes in accordance with section 4,
9 and amendments thereto, shall provide a copy of the certifications to all
10 wholesale dealers and agents to which they sell cigarettes, and also shall
11 provide sufficient copies of an illustration of the package marking utilized
12 by the manufacturer pursuant to this section for each retail dealer to
13 which the wholesale dealers or agents sell cigarettes. Wholesale dealers
14 and agents shall provide a copy of these package markings received from
15 manufacturers to all retail dealers to which they sell cigarettes. Wholesale
16 dealers, agents and retail dealers shall permit the state fire marshal, the
17 director, the attorney general and their employees to inspect markings of
18 cigarette packaging marked in accordance with this section.

19 (d) The provisions of this section shall take effect and be in force
20 from and after July 1, 2009.

21 Sec. 6. (a) A manufacturer, wholesale dealer, agent or any other per-
22 son or entity who knowingly sells or offers to sell cigarettes, other than
23 through retail sale, that are not listed on the directory as required by
24 section 4, and amendments thereto, or are not marked in accordance with
25 section 5, and amendments thereto, shall be subject to a civil penalty not
26 to exceed \$500 for each pack of such cigarettes sold or offered for sale
27 provided that in no case shall the penalty against any such person or entity
28 exceed \$100,000 during any thirty-day period.

29 (b) A retail dealer who knowingly sells or offers to sell cigarettes that
30 are not listed on the directory as required by section 4, and amendments
31 thereto, or are not marked in accordance with section 5, and amendments
32 thereto, shall be subject to a civil penalty not to exceed \$500 for each
33 pack of such cigarettes sold or offered for sale, provided that in no case
34 shall the penalty against any retail dealer exceed \$25,000 for sales or offers
35 to sell during any thirty-day period.

36 (c) In addition to any penalty prescribed by law, any corporation,
37 partnership, sole proprietor, limited partnership or association engaged
38 in the manufacture of cigarettes that knowingly makes a false certification
39 pursuant to section 4, and amendments thereto, shall be subject to a civil
40 penalty of at least \$75,000 and not to exceed \$250,000 for each such false
41 certification. All cigarettes certified by the violating manufacturer shall
42 be removed from the directory required by section 4, and amendments
43 thereto, and shall be considered illegal for sale in the state until such time

Cigarettes that are certified by a manufacturer in accordance with section 4, and amendments thereto, shall be marked with the letters "FSC", which signifies fire standards compliant, appearing in eight-point type or larger and permanently printed, stamped, engraved or embossed on the package at or near the UPC code. A manufacturer certifying cigarettes in accordance with section 4, and amendments thereto, shall provide a copy of the certifications to any wholesale dealer and its agents to which the manufacturer sells cigarettes. Any wholesale dealer, agent, retail dealer or vending machine operator shall permit the state fire marshal, the director, the attorney general, and employees thereof, to inspect cigarette packaging marked in accordance with this section.

(b)

do not meet the performance standard of section 3, and amendments thereto,

or vending machine operator

1 ~~as the cigarette manufacturer has paid the civil penalty in full and the~~
2 ~~state fire marshal has confirmed, to its satisfaction, that the manufac-~~
3 ~~turer's cigarettes will comply with the performance standards required by~~
4 ~~section 3, and amendments thereto. A second violation of this subsection~~
5 ~~shall result in the violating manufacturer being prohibited from selling~~
6 ~~cigarettes to consumers within the state for a period not to exceed two~~
7 ~~years. Following the prohibition, the state fire marshal shall again con-~~
8 ~~firm, to its satisfaction, that the manufacturer's cigarettes will comply with~~
9 ~~the performance standards required by section 3, and amendments~~
10 ~~thereto.~~

11 (d) Any person violating any other provision in this act shall be subject
12 to a civil penalty for a first offense not to exceed \$1,000, and for a sub-
13 sequent offense subject to a civil penalty not to exceed \$5,000 for each
14 such violation.

15 (e) Any cigarettes that have been sold or offered for sale that do not
16 comply with the performance standard required by section 3, and amend-
17 ments thereto, shall be considered contraband and subject to forfeiture.
18 Cigarettes forfeited pursuant to this section shall be destroyed. Prior to
19 the destruction of any cigarette forfeited pursuant to this subsection, the
20 true holder of the trademark rights in the cigarette brand shall be per-
21 mitted to inspect the cigarette. ~~A third violation of this subsection within~~
22 ~~two years shall constitute a knowingly false certification by the cigarette~~
23 ~~manufacturer under section 6, and amendments thereto.~~

24 (f) In addition to any other remedy provided by law, the state fire
25 marshal or attorney general may file an action in the district court for a
26 violation of this act, including petitioning for injunctive relief or to recover
27 any costs or damages suffered by the state because of a violation of this
28 act, including enforcement costs relating to the specific violation and at-
29 torney's fees. Each violation of this act or of rules or regulations adopted
30 under this act constitutes a separate civil violation for which the state fire
31 marshal or attorney general may obtain relief.

32 (g) Whenever any law enforcement personnel or duly authorized rep-
33 resentative of the state fire marshal, director, or attorney general shall
34 discover any cigarettes that have not been marked in the manner required
35 by section 5, and amendments thereto, or ~~are not listed on the directory~~
36 as required by section 4, and amendments thereto, such personnel are
37 hereby authorized and empowered to seize and take possession of such
38 cigarettes with or without process or warrant. Such cigarettes shall be
39 turned over to the division of taxation, and shall be subject to forfeiture
40 proceedings. Cigarettes seized pursuant to this section shall be destroyed.
41 Prior to the destruction of any cigarette seized pursuant to this subsection,
42 the true holder of the trademark rights in the cigarette brand shall be
43 permitted to inspect the cigarettes.

for which certification has not been filed

1 (h) Any action taken pursuant to this section is subject to review in
2 accordance with the act for judicial review and civil enforcement of
3 agency actions.

4 (i) The provisions of this section shall take effect and be in force from
5 and after July 1, 2009.

6 Sec. 7. (a) The director, in the regular course of conducting inspec-
7 tions of wholesale dealers, agents ~~and retail dealers~~, as authorized under
8 the Kansas cigarette and tobacco products or other state statutes, rules,
9 or regulations act may inspect such cigarettes to determine if the ciga-
10 rettes are marked as required by section 5, and amendments thereto. If
11 the cigarettes are not marked as required, the director may seize such
12 contraband with or without process or warrant and shall notify the state
13 fire marshal.

, retail dealers or vending machine operators

14 (b) The provisions of this section shall take effect and be in force
15 from and after July 1, 2009.

16 Sec. 8. (a) To enforce the provisions of this act, the attorney general,
17 the director and the state fire marshal, their duly authorized represen-
18 tatives and other law enforcement personnel are hereby authorized to
19 examine the books, papers, invoices and other records of any person in
20 possession, control or occupancy of any premises where cigarettes are
21 placed, stored, ~~sold~~ or offered for sale, as well as the stock of cigarettes
22 on the premises. Every person in the possession, control or occupancy of
23 any premises where cigarettes are placed, ~~sold~~ or offered for sale, is
24 hereby directed and required to give the attorney general, the director
25 and the state fire marshal, their duly authorized representatives and other
26 law enforcement personnel the means, facilities and opportunity for the
27 examinations authorized by this section.

stored

28 (b) The provisions of this section shall take effect and be in force
29 from and after July 1, 2009.

30 Sec. 9. (a) There is hereby established in the state treasury a sepa-
31 rate, nonlapsing fund to be known as the cigarette fire safety standard
32 and firefighter protection act fund which shall be administered by the
33 state fire marshal. The fund shall consist of all moneys recovered as pen-
34 alties under section 6, and amendments thereto. The moneys shall be
35 deposited to the credit of the fund and in addition to any other money
36 made available for such purpose, shall be made available to the state entity
37 responsible for administering the provisions of this act to support fire
38 safety and prevention programs.

39 (b) The provisions of this section shall take effect and be in force
40 from and after July 1, 2009.

41 Sec. 10. (a) Nothing in this act shall be construed to prohibit any
42 person or entity from manufacturing or selling cigarettes that do not meet
43 the requirements of section 3, and amendments thereto, if the cigarettes

1 are or will be stamped for sale in another state or are packaged for sale
2 outside the United States and that person or entity has taken reasonable
3 steps to ensure that such cigarettes will not be sold or offered for sale to
4 persons located in this state.

5 (b) The provisions of this section shall take effect and be in force
6 from and after July 1, 2009.

7 Sec. 11. Prior to July 1, 2009, the state fire marshal may promulgate
8 rules and regulations necessary to effectuate the purposes of this act. Such
9 rules and regulations shall not become effective until July 1, 2009. The
10 state fire marshal, director and attorney general may take any other action
11 deemed necessary to prepare for the implementation and enforcement
12 of the fire safety standard and firefighter protection act.

13 Sec. 12. Notwithstanding any other provision of law, a city or county
14 shall not enact nor enforce any ordinance, resolution or other regulation
15 conflicting with, or preempted by, any provision of this act or with any
16 policy of this state expressed by this act, whether that policy be expressed
17 by inclusion of a provision in this act or by exclusion of that subject from
18 this act.

19 Sec. 13. **The provisions of this** act shall become null and void if a
20 federal reduced cigarette ignition propensity standard that preempts **this**
21 act is adopted and becomes effective.

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

(a) This act shall be implemented in accordance with the implementation and substance of the laws of those states that have enacted reduced cigarette ignition propensity standards as of July 1, 2008.

(b) The provisions of the fire safety and firefighter protection

such