

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

As Amended by House Committee

Session of 2009

HOUSE BILL No. 2221

By Committee on Health and Human Services

2-3

~~14 AN ACT concerning child care; disclosure of certain information;~~
~~15 amending K.S.A. 2008 Supp. 65-525 and repealing the existing section.~~
16 AN ACT concerning crimes and punishments; relating to smoking and
17 cigarette sales; amending K.S.A. 21-3105, 21-4009, 21-4010, 21-4011,
18 21-4012 and 65-530 and K.S.A. 2008 Supp. 79-3301 and 79-3321 and
19 repealing the existing sections; also repealing K.S.A. 21-4016 and 21-
20 4017.

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

23 ~~Section 1. K.S.A. 2008 Supp. 65-525 is hereby amended to read as~~
24 ~~follows: 65-525. (a) Records in the possession of the department of health~~
25 ~~and environment or its agents regarding child care facilities, maternity~~
26 ~~centers or family day care homes shall not be released publicly in a man-~~
27 ~~ner that would identify individuals, unless except individual names of li-~~
28 ~~censees, registrants, applicants, facilities and maternity centers may be~~
29 ~~released. Nothing in this section prohibits release of any information as~~
30 ~~required by law.~~

31 ~~—(b)—Records containing the name, address and telephone number of~~
32 ~~a child care facility, maternity center or family day care home in the~~
33 ~~possession of the department of health and environment or its agents~~
34 ~~shall not be released publicly unless required by law.~~

35 ~~—(c)—Records that cannot be released by subsection (a) or (b) in the~~
36 ~~possession of the department of health and environment or its agents~~
37 ~~regarding child care facilities, maternity centers or family day care homes~~
38 ~~may be released to: (1) An agency or organization authorized to receive~~
39 ~~notice under K.S.A. 65-506, and amendments thereto; (2) a criminal jus-~~
40 ~~tice agency; (3) any local, state or federal agency that provides child care~~
41 ~~services, funding for child care or child protective services governmental~~
42 ~~entity or subdivision thereof; (4) any federal agency for the purposes of~~
43 ~~compliance with federal funding requirements; (5) any local fire depart-~~

1 ~~ment, (6); (3) any child and adult care food program sponsoring agency;~~
2 ~~or (7) (4) any local disaster agency or emergency entity.~~

3 ~~—(d) Any state or federal agency or any person receiving records under~~
4 ~~subsection (a) or (b) shall not disseminate the records without the consent~~
5 ~~of the person whose records will be disseminated unless required by law.~~
6 ~~Any state or federal agency or any person receiving records under sub-~~
7 ~~section (c) may disseminate the information contained in the records~~
8 ~~without the consent of the person whose records will be disseminated.~~

9 ~~—(e) (c) The secretary of health and environment may prohibit the~~
10 ~~release of the name, address and telephone number of a maternity center,~~
11 ~~child care facility or family day care home when the secretary determines~~
12 ~~that **prohibition of** the release of the information is necessary to protect~~
13 ~~the health, safety or welfare of the public or the patients or children~~
14 ~~enrolled in the maternity center, child care facility or family day care~~
15 ~~home.~~

16 ~~—(f) Any records under subsection (a) or (b) shall be available to any~~
17 ~~member of the standing committee on appropriations of the house of~~
18 ~~representatives or the standing committee on ways and means of the~~
19 ~~senate carrying out such member's or committee's official functions in~~
20 ~~accordance with K.S.A. 75-4319, and amendments thereto, in a closed or~~
21 ~~executive meeting. Except in limited conditions established by 2/3 of the~~
22 ~~members of such committee, records received by the committee shall not~~
23 ~~be further disclosed. Unauthorized disclosure may subject such member~~
24 ~~to discipline or censure from the house of representatives or senate. Such~~
25 ~~records shall not identify individuals but shall include data and contract~~
26 ~~information concerning specific facilities.~~

27 ~~—(g) (d) In any hearings conducted under the licensing or regulation~~
28 ~~provisions of K.S.A. 65-501 et seq. and amendments thereto, the presid-~~
29 ~~ing officer may close the hearing to the public to prevent public disclosure~~
30 ~~of matters relating to persons restricted by other laws.~~

31 ~~—Sec. 2. K.S.A. 2008 Supp. 65-525 is hereby repealed.~~

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

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

43 *(2) A traffic infraction is a violation of any of the statutory pro-*

1 **visions listed in subsection (c) of K.S.A. 8-2118, and amendments**
2 **thereto.**

3 **(3) A cigarette or tobacco infraction is a violation of K.S.A. 21-**
4 **4009 through 21-4014 and subsection (m) or (n) of K.S.A. 79-3321,**
5 **and amendments thereto.**

6 **(4) All other crimes are misdemeanors.**

7 **Sec. 2. On and after January 2, 2010, K.S.A. 21-4009 is hereby**
8 **amended to read as follows: 21-4009. As used in this act K.S.A. 21-**
9 **4009 through 21-4014, and amendments thereto:**

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

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

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

22 (d) “Employer” means any person, partnership, corporation, associ-
23 ation or organization, including municipal or nonprofit entities, which
24 employs one or more individual persons.

25 (e) “Enclosed area” means all space between a floor and ceiling which
26 is enclosed on all sides by solid walls, windows or doorways which extend
27 from the floor to the ceiling, including all space therein screened by par-
28 titions which do not extend to the ceiling or are not solid or similar struc-
29 tures. For purposes of this section, the following shall not be considered
30 an “enclosed area”: (1) Rooms or areas, enclosed by walls, windows or
31 doorways, having neither a ceiling nor a roof and which are completely
32 open to the elements and weather at all times; and (2) rooms or areas,
33 enclosed by walls, fences, windows or doorways and a roof or ceiling,
34 having openings that are permanently open to the elements and weather
35 and which comprise an area that is at least 30% of the total perimeter
36 wall area of such room or area.

37 (f) “Food service establishment” means any place in which food is
38 served or is prepared for sale or service on the premises. Such term shall
39 include, but not be limited to, fixed or mobile restaurants, coffee shops,
40 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich
41 shops, soda fountains, taverns, private clubs, roadside kitchens, commis-
42 saries and any other private, public or nonprofit organization or institu-
43 tion routinely serving food and any other eating or drinking establishment

1 or operation where food is served or provided for the public with or
2 without charge.

3 (g) “Gaming floor” means the area of a lottery gaming facility or
4 racetrack gaming facility, as those terms are defined in K.S.A. 74-8702,
5 and amendments thereto, where patrons engage in Class III gaming. The
6 gaming floor shall not include any areas used for accounting, mainte-
7 nance, surveillance, security, administrative offices, storage, cash or cash
8 counting, records, food service, lodging or entertainment, except that the
9 gaming floor may include a bar where alcoholic beverages are served so
10 long as the bar is located entirely within the area where Class III gaming
11 is conducted.

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

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

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

28 **[(k) “Private club” means an outdoor recreational facility op-**
29 **erated primarily for the use of its owners, members and their guests**
30 **that in its ordinary course of business is not open to the general**
31 **public for which use of its facilities has substantial dues or mem-**
32 **bership fee requirements for its members.]**

33 ~~[(l)]~~ **[(l)]** “Public building” means any building owned or operated by:
34 (1) The state, including any branch, department, agency, bureau, com-
35 mission, authority or other instrumentality thereof; (2) any county, city,
36 township, other political subdivision, including any commission, author-
37 ity, agency or instrumentality thereof; or (3) any other separate corporate
38 instrumentality or unit of the state or any municipality.

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

42 ~~[(n)]~~ **[(n)]** “Public place” means any enclosed ~~indoor~~ areas open to
43 the public or used by the general public including, but not limited

1 ~~to: Restaurants~~ Banks, bars, food service establishments, retail service
 2 establishments, **retail stores, public means of mass transportation,**
 3 **passenger elevators, health care institutions or any other place**
 4 **where health care services are provided to the public,** medical care
 5 facilities, **educational facilities, libraries, courtrooms,** ~~state, county or~~
 6 ~~municipal~~ **public buildings, restrooms, grocery stores, school buses,**
 7 **museums, theaters, auditoriums, arenas and recreational facilities.**
 8 For purposes of this section, a private residence shall not be considered
 9 a “public place” unless such residence is used as a day care home, as
 10 defined in K.S.A. 65-530, and amendments thereto.

11 ~~(b) “Public meeting” includes all meetings open to the public.~~
 12 ~~—(c) ~~(m)~~ [(o)]~~ **“Smoking” means possession of a lighted cigarette,**
 13 **cigar, pipe or any other lighted smoking equipment burning tobacco in**
 14 **any other form or device designed for the use of tobacco.**

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

19 [(q) **“Substantial dues or membership fee requirements” means**
 20 **initiation costs, dues or fees proportional to the cost of membership**
 21 **in similarly-situated outdoor recreational facilities that are not con-**
 22 **sidered nominal and implemented to otherwise avoid or evade re-**
 23 **strictions of a statewide ban on smoking.]**

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

- 28 (1) Public places;
- 29 (2) taxicabs and limousines;
- 30 (3) restrooms, lobbies, hallways and other common areas in public
 31 and private buildings, condominiums and other multiple-residential
 32 facilities;
- 33 (4) restrooms, lobbies and other common areas in hotels and motels
 34 and in at least 80% of the sleeping quarters within a hotel or motel that
 35 may be rented to guests;
- 36 (5) access points of all buildings and facilities not exempted pursuant
 37 to subsection (d); and
- 38 (6) any place of employment.

39 ~~(b) Smoking areas may be designated by proprietors or other persons~~
 40 ~~in charge of public places, except in passenger elevators, school buses,~~
 41 ~~public means of mass transportation and any other place in which smoking~~
 42 ~~is prohibited by the fire marshal or by other law, ordinance or regulation.~~
 43 ~~—(c) Where smoking areas are designated, existing physical barriers~~

1 ~~and ventilation systems shall be used to minimize the toxic effect of smoke~~
2 ~~in adjacent nonsmoking areas.~~

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

11 (c) *Notwithstanding any other provision of this section, K.S.A. 21-*
12 *4011 or 21-4012, and amendments thereto, the proprietor or other person*
13 *in charge of an adult care home, as defined in K.S.A. 39-923, and amend-*
14 *ments thereto, or a medical care facility, may designate a portion of such*
15 *adult care home, or the licensed long-term care unit of such medical care*
16 *facility, as a smoking area, and smoking may be permitted within such*
17 *designated smoking area.*

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

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

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

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

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

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

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

39 (7) *tobacco shops; ~~and~~*

40 (8) *a class A or class B club defined in K.S.A. 41-2601, and amend-*
41 *ments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq.,*
42 *and amendments thereto, as of January 1, 2009; and (B) notifies the sec-*
43 *retary of health and environment in writing, not later than 90 days after*

1 *the effective date of this act, that it wishes to continue to allow smoking*
2 *on its premises]; and*

3 *[(9) a private club in designated areas where minors are*
4 *prohibited.]*

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

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

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

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

37 (d) *Any person who violates any provision of K.S.A. 21-4009 through*
38 *21-4014, and amendments thereto, shall be guilty of a cigarette or tobacco*
39 *infraction punishable by a fine:*

- 40 (1) *Not exceeding \$100 for the first violation;*
41 (2) *not exceeding \$200 for a second violation within a one year period*
42 *after the first violation; or*
43 (3) *not exceeding \$500 for a third or subsequent violation within a*

1 *one year period after the first violation.*

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

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

9 *(f) No employer shall discharge, refuse to hire or in any manner re-*
10 *taliate against an employee, applicant for employment or customer be-*
11 *cause that employee, applicant or customer reports or attempts to pros-*
12 *ecute a violation of any of the provisions of K.S.A. 21-4009 through*
13 *21-4014, and amendments thereto.*

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

19 ***Sec. ~~6~~ [7.] On and after January 2, 2010, K.S.A. 65-530 is***
20 ***hereby amended to read as follows: 65-530. (a) As used in this***
21 ***section:***

22 ***(1) “Day care home” means a day care home as defined under***
23 ***Kansas administrative regulation 28-4-113, a group day care home***
24 ***as defined under Kansas administrative regulation 28-4-113 and a***
25 ***family day care home as defined under K.S.A. 65-517 and amend-***
26 ***ments thereto.***

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

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

39 ***(c) Each day care home registration certificate or license shall***
40 ***contain a statement in bold print that smoking is prohibited within***
41 ***a room, enclosed area or other enclosed space of the facility or fa-***
42 ***ILITIES of the day care home under the conditions specified in sub-***
43 ***section (b). The statement shall be phrased in substantially the same***

1 *language as subsection (b). The registration certificate or license*
2 *shall be posted in a conspicuous place in the facility or facilities.*

3 (d) *The secretary of health and environment may levy a civil*
4 *fine under K.S.A. 65-526 and amendments thereto against any day*
5 *care home for a first or second violation of this section. A third or*
6 *subsequent violation shall be subject to the provisions of K.S.A. 65-*
7 *523 and amendments thereto.*

8 (e) *In addition to any civil fine which may be levied pursuant to*
9 *subsection (d), any day care home that violates any provision of this sec-*
10 *tion may also be subject to criminal punishment pursuant to K.S.A. 21-*
11 *4012, and amendments thereto.*

12 *New Sec. ~~7~~ [8.] On and after January 2, 2010, the amendments*
13 *made to K.S.A. 21-4009 through 21-4012, and amendments thereto,*
14 *and K.S.A. 21-4013 and 21-4014, and amendments thereto, shall*
15 *constitute the Kansas indoor clean air act.*

16 *Sec. ~~8~~ [9.] K.S.A. 2008 Supp. 79-3301 is hereby amended to*
17 *read as follows: 79-3301. As used in this act K.S.A. 79-3301 et seq.,*
18 *and amendments thereto:*

19 (a) *“Carrier” means one who transports cigarettes from a man-*
20 *ufacturer to a wholesale dealer or from one wholesale dealer to*
21 *another.*

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

25 (c) *“Cigarette” means any roll for smoking, made wholly or in*
26 *part of tobacco, irrespective of size or shape, and irrespective of*
27 *tobacco being flavored, adulterated or mixed with any other ingre-*
28 *redient if the wrapper is in greater part made of any material except*
29 *tobacco.*

30 (d) *“Consumer” means the person purchasing or receiving cig-*
31 *arettes or tobacco products for final use.*

32 (e) *“Dealer” means any person who engages in the sale or man-*
33 *ufacture of cigarettes in the state of Kansas, and who is required to*
34 *be licensed under the provisions of this act.*

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

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

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

43 (2) *any person who makes, manufactures, fabricates or stores*

- 1 *tobacco products in this state for sale in this state; or*
2 (3) *any person engaged in the business of selling tobacco prod-*
3 *ucts without outside this state who ships or transports tobacco prod-*
4 *ucts to any person in the business of selling tobacco products in this*
5 *state.*
6 (i) *“Division” means the division of taxation.*
7 (j) *“License” means, in addition to the privilege of a licensee to*
8 *sell cigarettes or tobacco products in the state of Kansas, and the*
9 *written evidence of such authority or privilege to so operate as evi-*
10 *denced by any license as issued by the director of taxation.*
11 (k) *“Licensee” means any person holding a current license is-*
12 *sued pursuant to this act.*
13 (l) *“Manufacturer’s salesperson” means a person employed by*
14 *a cigarette manufacturer who sells cigarettes, manufactured by*
15 *such employer and procured from wholesale dealers.*
16 (m) *“Meter imprints” means tax indicia applied by means of ink*
17 *printing machines.*
18 (n) (1) *“Package” means a container in which no more than 25*
19 *individual cigarettes are wrapped and sealed by the manufacturer*
20 *of cigarettes prior to shipment to a wholesale dealer;*
21 (2) *for the purposes of subsections (u), (v) and (w) of K.S.A. 79-*
22 *3321, and amendments thereto, “package” shall have the meaning*
23 *ascribed thereto means the same as provided in 15 U.S.C. §1332(4).*
24 (o) *“Person” means any individual, partnership, society, asso-*
25 *ciation, joint-stock company, corporation, estate, receiver, trustee,*
26 *assignee, referee or any other person acting in a fiduciary or rep-*
27 *resentative capacity whether appointed by a court or otherwise and*
28 *any combination of individuals.*
29 (p) *“Received” means the coming to rest of cigarettes for sale*
30 *by any dealer in the state of Kansas.*
31 (q) *“Retail dealer” means a person, other than a vending ma-*
32 *chine operator, in possession of cigarettes for the purpose of sale to*
33 *a consumer.*
34 (r) *“Sale” means any transfer of title or possession or both,*
35 *exchange, barter, distribution or gift of cigarettes or tobacco prod-*
36 *ucts, with or without consideration.*
37 (s) *“Sample” means cigarettes or tobacco products distributed*
38 *to members of the general public at no cost for purposes of pro-*
39 *moting the product.*
40 (t) *“Self-service display” means a display that contains cigarettes or*
41 *tobacco products and is located in an area openly accessible to a retail*
42 *dealer’s consumers, and from which such consumers can readily access*
43 *cigarettes or tobacco products without the assistance of a salesperson. A*

- 1 *display case that holds cigarettes or tobacco products behind locked doors*
2 *does not constitute a self-service display.*
- 3 (u) **“Stamps” means tax indicia applied either by means of water**
4 **applied gummed paper or heat process.**
- 5 ~~(tt)~~ (v) **“Tax indicia” means visible evidence of tax payment in**
6 **the form of stamps or meter imprints.**
- 7 ~~(w)~~ (w) **“Tobacco products” means cigars, cheroots, stogies, pe-**
8 **riques; granulated, plug cut, crimp cut, ready rubbed and other**
9 **smoking tobacco; snuff, snuff flour; cavendish; plug and twist to-**
10 **bacco; fine cut and other chewing tobaccos; shorts; refuse scraps,**
11 **clippings, cuttings and sweepings of tobacco, and other kinds and**
12 **forms of tobacco, prepared in such manner as to be suitable for**
13 **chewing or smoking in a pipe or otherwise, or both for chewing and**
14 **smoking. Tobacco products does do not include cigarettes.**
- 15 (x) **“Tobacco speciality store” means a dealer establishment that de-**
16 **rives at least 75% of such dealer establishment’s revenue from cigarettes**
17 **or tobacco products.**
- 18 ~~(y)~~ (y) **“Vending machine” means any coin operated machine,**
19 **contrivance or device, by means of which merchandise may be sold.**
- 20 ~~(z)~~ (z) **“Vending machine distributor” means any person who**
21 **sells cigarette vending machines to a vending machine operator op-**
22 **erating vending machines in the state of Kansas.**
- 23 ~~(aa)~~ (aa) **“Vending machine operator” means any person who**
24 **places a vending machine, owned, leased or operated by such per-**
25 **son, at locations where cigarettes are sold from the such vending**
26 **machine. The owner or lessee of the premises upon which a vending**
27 **machine is placed shall not be considered the operator of the ma-**
28 **chine, nor shall the owner or lessee, or any employee or agent of**
29 **the owner or lessee be considered an authorized agent of the vend-**
30 **ing machine operator, if the owner or lessee does not own or lease**
31 **the machine and the owner’s or lessee’s sole remuneration from the**
32 **machine is a flat rental fee or commission based upon the number**
33 **or value of cigarettes sold from the machine, or a combination of**
34 **both.**
- 35 ~~(bb)~~ (bb) **“Wholesale dealer” means any person who sells ciga-**
36 **rettes to other wholesale dealers, retail dealers, vending machine**
37 **operators and manufacturer’s salespersons for the purpose of resale**
38 **in the state of Kansas.**
- 39 ~~(cc)~~ (cc) **“Wholesale sales price” means the original net invoice**
40 **price for which a manufacturer sells a tobacco product to a distrib-**
41 **utor, as shown by the manufacturer’s original invoice.**
- 42 ~~(dd)~~ (dd) **“Importer” shall have the same meaning ascribed thereto**
43 **means the same as provided in 26 U.S.C. §5702(l).**

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

3 **Sec. 9: [10.] K.S.A. 2008 Supp. 79-3321 is hereby amended to**
4 **read as follows: 79-3321. It shall be unlawful for any person:**

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

8 (b) *To mutilate or attach to any individual package of cigarettes*
9 *any stamp that has in any manner been mutilated or that has been*
10 *heretofore attached to a different individual package of cigarettes*
11 *or to have in possession any stamps so mutilated.*

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

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

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

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

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

28 (h) *To wholesale cigarettes to any person, other than a manu-*
29 *facturer’s salesperson, retail dealer or wholesaler who is:*

30 (1) *Duly licensed by the state where such manufacturer’s sales-*
31 *person, retail dealer or wholesaler is located;* or

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

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

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

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

1 *machine.*

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

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

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

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

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

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

15 *(r) Who is a retail dealer to fail to post and maintain in a con-*
16 *spicuous place in the dealer's establishment the following notice:*
17 *"By law, cigarettes and tobacco products may be sold only to per-*
18 *sons 18 years of age and older."*

19 *(s) To distribute samples within 500 feet of any school when*
20 *such facility is being used primarily by persons under 18 years of*
21 *age unless the sampling is: (1) In an area to which persons under*
22 *18 years of age are denied access;*

23 *(2) in or at a retail location where cigarettes and tobacco prod-*
24 *ucts are the primary commodity offered for sale at retail; or*

25 *(3) at or adjacent to an outdoor production, repair or construc-*
26 *tion site or facility.*

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

30 *(1) The installation and use by the proprietor of the establish-*
31 *ment, or by the proprietor's agents or employees, of vending ma-*
32 *chines behind a counter, or in some place in such establishment, or*
33 *portion thereof, to which minors are prohibited by law from having*
34 *access;*

35 *(2) the installation and use of a vending machine in a commer-*
36 *cial building or industrial plant, or portions thereof, where the pub-*
37 *lic is not customarily admitted and where machines are intended*
38 *for the sole use of adult employees employed in the building or*
39 *plant; or*

40 *(3) a vending machine which has a lock-out device which is in-*
41 *operable in the continuous standby mode and which requires man-*
42 *ual activation by the person supervising the operation of the ma-*
43 *chine each time cigarettes or tobacco products are purchased from*

1 ***the machine.***

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

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

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

7 ***(v) To sell or distribute in this state; to acquire, hold, own, pos-***
8 ***sess or transport for sale or distribution in this state; or to import***
9 ***or cause to be imported, into this state for sale or distribution in***
10 ***this state:***

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

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

26 ***(3) any cigarettes that such person otherwise knows or has rea-***
27 ***son to know the manufacturer did not intend to be sold, distributed***
28 ***or used in the United States; or***

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

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

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

39 ***(2) any health warning that is not specified in, or does not con-***
40 ***form with, the requirements of, the federal cigarette labeling and***
41 ***advertising act, 15 U.S.C. 1333.***

42 ~~***(x)***~~ ***To affix any stamp required pursuant to K.S.A. 79-3311,***
43 ***and amendments thereto, to the package of any cigarettes described***

- 1 *in subsection ~~(v)~~ (v) or altered in violation of subsection ~~(w)~~ (w).*
2 *Sec. ~~10~~ [11.] K.S.A. 2008 Supp. 79-3301 and 79-3321 are*
3 *hereby repealed.*
4 *Sec. ~~11~~ [12.] On January 2, 2010, K.S.A. 21-3105, 21-4009, 21-*
5 *4010, 21-4011, 21-4012, 21-4016, 21-4017 and 65-530 are hereby*
6 *repealed.*
7 *Sec. ~~3~~ ~~12~~ [13.] This act shall take effect and be in force from and*
8 *after its publication in the statute book.*