

# KANSAS DEPARTMENT OF REVENUE

## Chapter 79.--TAXATION

### Article 33.—Cigarette and Tobacco Products

#### **79-3301. Definitions. As used in this act:**

- (a) "Carrier" means one who transports cigarettes from a manufacturer to a wholesale dealer or from one wholesale dealer to another.
- (b) "Carton" means the container used by the manufacturer of cigarettes in which no more than 10 packages of cigarettes are placed prior to shipment from such manufacturer.
- (c) "Cigarette" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.
- (d) "Consumer" means the person purchasing or receiving cigarettes or tobacco products for final use.
- (e) "Dealer" means any person who engages in the sale or manufacture of cigarettes in the state of Kansas, and who is required to be licensed under the provisions of this act.
- (f) "Dealer establishment" means any location or premises, other than vending machine locations, at or from which cigarettes are sold, and where records are kept.
- (g) "Director" means the director of taxation.
- (h) "Distributor" means: (1) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale; (2) any person who makes, manufactures, fabricates or stores tobacco products in this state for sale in this state; or (3) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to any person in the business of selling tobacco products in this state.
- (i) "Division" means the division of taxation.
- (j) "License" means, in addition to the privilege of a licensee to sell cigarettes or tobacco products in the state of Kansas, the written evidence of such authority or privilege to so operate as evidenced by any license issued by the director of taxation.
- (k) "Licensee" means any person holding a current license issued pursuant to this act.
- (l) "Manufacturer's salesperson" means a person employed by a cigarette manufacturer who sells cigarettes, manufactured by such employer and procured from wholesale dealers.
- (m) "Meter imprints" means tax indicia applied by means of ink printing machines.
- (n) (1) "Package" means a container in which no more than 25 individual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer.  
(2) For the purposes of subsections (u), (v) and (w) of K.S.A. 79-3321, and amendments thereto, "package" shall have the meaning ascribed thereto in 15 U.S.C. §1332(4).
- (o) "Person" means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise and any combination of individuals.
- (p) "Received" means the coming to rest of cigarettes for sale by any dealer in the state of Kansas.
- (q) "Retail dealer" means a person, other than a vending machine operator, in possession of cigarettes for the purpose of sale to a consumer.
- (r) "Sale" means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration.
- (s) "Sample" means cigarettes or tobacco products distributed to members of the general public at no cost for purposes of promoting the product.
- (t) "Stamps" means tax indicia applied either by means of water applied gummed paper or heat process.
- (u) "Tax indicia" means visible evidence of tax payment in the form of stamps or meter imprints.
- (v) "Tobacco products" means cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Tobacco products do not include cigarettes.
- (w) "Vending machine" means any coin operated machine, contrivance or device, by means of which merchandise may be sold.
- (x) "Vending machine distributor" means any person who sells cigarette vending machines to a vending machine operator operating vending machines in the state of Kansas.
- (y) "Vending machine operator" means any person who places a vending machine, owned, leased or operated by such person, at locations where cigarettes are sold from the machine. The owner or lessee of the premises upon which a vending machine is

placed shall not be considered the operator of the machine, nor shall the owner or lessee, or any employee or agent of the owner or lessee be considered an authorized agent of the vending machine operator, if the owner or lessee does not own or lease the machine and the owner's or lessee's sole remuneration from the machine is a flat rental fee or commission based upon the number or value of cigarettes sold from the machine, or a combination of both.

(z) "Wholesale dealer" means any person who sells cigarettes to other wholesale dealers, retail dealers, vending machine operators and manufacturer's salespersons for the purpose of resale in the state of Kansas.

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

(bb) "Importer" shall have the same meaning ascribed thereto in 26 U.S.C. §5702(l). (cc) "Manufacturer" shall have the same meaning ascribed thereto in 26 U.S.C. §5702(d).

**History:** L. 1933, ch. 122, § 1 (Special Session); L. 1939, ch. 329, § 1; L. 1966, ch. 46, § 1 (Budget Session); L. 1967, ch. 498, § 1; L. 1969, ch. 456, § 1; L. 1984, ch. 357, § 1; L. 1996, ch. 214, § 1; L. 2000, ch. 92, § 1; July 1

**79-3302. Title and purpose of act.** (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309, 79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3371, 79-3373, 79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-3388, 79-3391, 79-3392, 79-3393, 79-3394 and K.S.A. 2008 Supp. 79-3395 through 79-3398, and amendments thereto, shall be known and may be cited as the Kansas cigarette and tobacco products act.

(b) It is the purpose and intent of this act to regulate the sale of cigarettes and tobacco products in this state and to impose a tax thereon.

**History:** L. 1933, ch. 122, § 2 (Special Session); L. 1939, ch. 329, § 2; L. 1972, ch. 342, § 105; L. 1984, ch. 358, § 1; L. 1996, ch. 214, § 2; L. 2000, ch. 92, § 2; July 1

**79-3303. Licenses and permits; requirements relating to vending machines.** (a) Each person engaged in the business of selling cigarettes in the state of Kansas and each vending machine distributor shall obtain a license as provided by this act. A separate application, license and fee is required for each dealer establishment owned or operated by a dealer. A vending machine operator is required to obtain a vending machine operator's master license and, in addition, a separate permit for each vending machine operated by the operator. A vending machine operator may submit one application for the vending machine operator's master license and all permits for vending machines operated by the operator. The license shall be displayed in the dealer establishment and the vending machine permit shall remain securely and visibly attached to the vending machine and contain such information as the director may require. Any vending machine found without such permit attached to the machine shall be sealed by an agent of the director and such seal shall be removed only by an agent of the director after payment of the permit fee and the penalties provided by this act.

(b) The application for a vending machine operator's master license and vending machine permits shall list the brand name and serial number of each machine and such other information as required by the director. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the division to divulge or make known in any way the location of any vending machine to any person not an officer or employee of the division, except that such information may be divulged to any law enforcement officer for use in the officer's official duties. Any officer or employee revealing any such location in violation of this provision, in addition to the penalties otherwise provided in this act, shall be dismissed from office.

(c) A vending machine operator, in the course of business as a vending machine operator, may dispose of or sell vending machines without securing a license to sell vending machines. The vending machine operator may move vending machines from one location to another and, if a vending machine becomes inoperative or is disposed of, the permit for such machine may be transferred to another machine. A vending machine operator, within 10 days, shall notify the director of the brand name and serial number of vending machines that become inoperative or that the operator disposes of, sells, acquires or brings into service in this state as additional machines.

(d) The key to the lower or storage compartment of a vending machine shall remain only in the possession of the vending machine operator or the operator's authorized agent. All services connected with the operation of a vending machine shall be performed by the vending machine operator or the operator's authorized agent. All vending machines shall be subject to inspection by the director or the director's authorized agents. No permit shall be issued for a vending machine unless it is constructed so that at least one package of each vertical column of cigarettes located therein is visible showing tax indicia.

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

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

(g) Concurrently with a change in ownership of a dealer establishment the license applicable to the establishment is void and shall be surrendered to the director and shall not be transferred. On removal of a dealer establishment from one location to another, the owner of the establishment shall notify the director and surrender the owner's license. The director shall issue a new license for the unexpired term of the surrendered license on payment of a fee of \$2. If a

dealer's license is lost, stolen or destroyed, the director may issue a new license on proof of loss, theft or destruction, at a cost of \$2. The director shall remit all moneys received under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

**History:** L. 1933, ch. 122, § 3 (Special Session); L. 1939, ch. 329, § 3; L. 1953, ch. 438, § 1; L. 1967, ch. 498, § 2; L. 1969, ch. 457, § 1; L. 1996, ch. 214, § 3; L. 2001, ch. 5, § 449; July 1

**79-3304. License and permit fees and bond; qualifications for license.** (a) The license fee for each biennium or portion thereof shall be as follows:

- (1) For retail dealer's license, \$25 for each dealer establishment.
- (2) For retailer's license on railroad or sleeping cars, \$50. Only one retail license need be obtained by each railroad or sleeping car company to permit the sale of cigarettes on any or all of its cars within the state.
- (3) For show, carnival or catering license, \$50 for each concession.
- (4) For resident retail dealer's temporary license for a place of business of a temporary nature, \$2 for each seven days or portion thereof.
- (5) For wholesale dealer's license, \$50 for each dealer establishment. No wholesale dealer's license shall be issued until the person applying therefor has filed with the director a bond payable to the state of Kansas in such an amount as shall be fixed by the director, but in no event less than \$1,000, with a corporate surety authorized to do business in the state of Kansas, and approved by the director. If a wholesale dealer is unable to secure a corporate surety bond, the director may issue a license to such wholesale dealer, upon the wholesale dealer furnishing a personal bond meeting the approval of the director. Such bond shall be conditioned on the wholesale dealer's compliance with all the provisions of this act during the license period.
- (6) For vending machine distributor's license, \$50.
- (7) For manufacturer's salesperson license, \$20 for each salesperson. The manufacturer's salesperson shall, with respect to each sale made to a retail dealer, make and deliver to the retail dealer a true invoice wherein such salesperson shall insert the name of the wholesale dealer from whom such salesperson secured such cigarettes, together with such salesperson's own name and the name of the retail dealer purchasing the cigarettes.
- (8) For vending machine operator's license, no fee.
- (9) For vending machine permit, \$25 for each permit.

(b) An application for any license required under the provisions of this act may be refused to: (1) A person who is not of good character and reputation in the community in which such person resides; or (2) a person who has been convicted of a felony or of any crime involving moral turpitude or of the violation of any law of any state or the United States pertaining to cigarettes or tobacco products and who has not completed the sentence, parole, probation or assignment to a community correctional services program imposed for any such conviction within two years immediately preceding the date of making application for any of such licenses.

**History:** L. 1933, ch. 122, § 4 (Special Session); L. 1939, ch. 329, § 4; L. 1949, ch. 482, § 1; L. 1959, ch. 394, § 1; L. 1966, ch. 46, § 2 (Budget Session); L. 1967, ch. 498, § 3; L. 1980, ch. 319, § 1; L. 1985, ch. 326, § 1; L. 1986, ch. 123, § 30; L. 1996, ch. 214, § 4; July

**79-3305. History:** L. 1933, ch. 122, § 5 (Special Session); L. 1939, ch. 329, § 5; L. 1967, ch. 498, § 4; **Repealed**, L. 1996, ch. 214, § 40; July 1

**79-3306. License; application forms; issuance.** Licenses shall be issued by the director for a biennium or portion thereof upon application for the license made on forms furnished by the director containing such information as the director may require subscribed to by the applicant or the applicant's authorized representative.

**History:** L. 1933, ch. 122, § 6 (Special Session); L. 1939, ch. 329, § 6; L. 1967, ch. 498, § 5; L. 1985, ch. 326, § 2; April 25

**79-3307. History:** L. 1933, ch. 122, § 7 (Special Session); L. 1939, ch. 329, § 7; **Repealed**, L. 1967, ch. 498, § 20; July 1

**79-3308. History:** L. 1933, ch. 122, § 8 (Special Session); **Repealed**, L. 1939, ch. 329, § 25; July 1

**79-3309. Suspension or revocation of license.** (a) Whenever the director has reason to believe that any person licensed under this act has violated any of the provisions of this act, the director shall notify the person by certified mail of the director's intention to suspend or revoke the person's license or licenses[.] Within 10 days after the mailing of the notice, the person may request a hearing in writing before the director. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If, after such hearing, it appears to the satisfaction of the director that the person has violated any of the provisions of this act, the director is hereby authorized and empowered to suspend or revoke the person's license or licenses and may in addition deny the application of the person for a license or licenses for a portion of the succeeding calendar year for such period as the director determines is necessary but in no case for a period ending more than one year following the date upon which the license or licenses were suspended or revoked. The

suspension or revocation of a vending machine operator's master license shall suspend or revoke all vending machine permits issued to the vending machine operator for the term of the license suspension or revocation.

(b) If a person continues to engage in activities requiring a license under this act after having notice or knowledge of the suspension or revocation of the person's license or licenses or after becoming more than 10 days delinquent in the payment of any tax, penalty or interest imposed pursuant to this act, the state shall be entitled, in any proceedings brought for such purposes, to have an order and judgment restraining and enjoining such unlawful sale and no bond shall be required for the issuance of any such restraining order or injunction.

**History:** L. 1933, ch. 122, § 9 (Special Session); L. 1935, ch. 309, § 1; L. 1939, ch. 329, § 8; L. 1943, ch. 290, § 4; L. 1949, ch. 483, § 1; L. 1957, ch. 429, § 19; L. 1966, ch. 46, § 3 (Budget Session); L. 1967, ch. 498, § 6; L. 1988, ch. 356, § 331; L. 1996, ch. 214, § 5; July 1

**79-3310. Tax on cigarettes imposed; rates.** There is imposed a tax upon all cigarettes sold, distributed or given away within the state of Kansas. On and after July 1, 2002, and before January 1, 2003, the rate of such tax shall be \$.70 on each 20 cigarettes or fractional part thereof or \$.875 on each 25 cigarettes, as the case requires. On and after January 1, 2003, the rate of such tax shall be \$.79 on each 20 cigarettes or fractional part thereof or \$.99 on each 25 cigarettes, as the case requires. Such tax shall be collected and paid to the director as provided in this act. Such tax shall be paid only once and shall be paid by the wholesale dealer first receiving the cigarettes as herein provided.

The taxes imposed by this act are hereby levied upon all sales of cigarettes made to any department, institution, or agency of the state of Kansas, and to the political subdivisions thereof and their departments, institutions and agencies.

**History:** L. 1933, ch. 122, § 10 (Special Session); L. 1935, ch. 309, § 2; L. 1939, ch. 329, § 9; L. 1947, ch. 459, § 1; L. 1957, ch. 505, § 1; L. 1964, ch. 37, § 1 (Budget Session); L. 1965, ch. 529, § 1; L. 1967, ch. 498, § 7; L. 1970, ch. 396, § 1; L. 1983, ch. 329, § 1; L. 1984, ch. 357, § 2; L. 1985, ch. 327, § 1; L. 2002, ch. 185, § 1; July 1

**79-3310a. History:** L. 1983, ch. 329, § 2; **Repealed,** L. 1984, ch. 357, § 4; July 1

**79-3310b. History:** L. 1983, ch. 329, § 3; L. 1984, ch. 357, § 3; **Repealed,** L. 1996, ch. 214, § 40; July 1

**79-3310c. Inventory tax on cigarettes; procedures for payment.** (1) On or before July 30, 2002, each wholesale dealer, retail dealer and vending machine operator shall file a report with the director in such form as the director may prescribe showing cigarettes, cigarette stamps and meter imprints on hand at 12:01 a.m. on July 1, 2002. A tax of \$.46 on each 20 cigarettes or fractional part thereof or \$.575 on each 25 cigarettes, as the case requires and \$.46 or \$.575, as the case requires upon all tax stamps and all meter imprints purchased from the director and not affixed to cigarettes prior to July 1, 2002, is hereby imposed and shall be due and payable in equal installments on or before July 30, 2002, on or before September 30, 2002, and on or before December 30, 2002. The tax imposed upon such cigarettes, tax stamps and meter imprints shall be imposed only once under this act. The director shall remit all moneys collected pursuant to this section to the state treasurer who shall credit the entire amount thereof to the state general fund.

(2) On or before January 30, 2003, each wholesale dealer, retail dealer and vending machine operator shall file a report with the director in such form as the director may prescribe showing cigarettes, cigarette stamps and meter imprints on hand at 12:01 a.m. on January 1, 2003. A tax of \$.09 on each 20 cigarettes or fractional part thereof or \$.115 on each 25 cigarettes, as the case requires and \$.09 or \$.115, as the case requires upon all tax stamps and all meter imprints purchased from the director and not affixed to cigarettes prior to January 1, 2003, is hereby imposed and shall be due and payable in equal installments on or before January 30, 2003, on or before March 30, 2003, and on or before June 30, 2003. The tax imposed upon such cigarettes, tax stamps and meter imprints shall be imposed only once under this act. The director shall remit all moneys collected pursuant to this section to the state treasurer who shall credit the entire amount thereof to the state general fund.

**History:** L. 2002, ch. 185, § 2; June 6

**79-3311. Stamps and meter imprints; sale; discount; corporate surety bond; tax meter, use and bond; cigarette tax refund fund established; transportation for out-of-state sale.** The director shall design and designate indicia of tax payment to be affixed to each package of cigarettes as provided by this act. The director shall sell water applied stamps only to licensed wholesale dealers in the amounts of 1,000 or multiples thereof. Stamps applied by the heat process shall be sold only in amounts of 30,000 or multiples thereof, except that such stamps which are suitable for packages containing 25 cigarettes each shall be sold in amounts prescribed by the director. Meter imprints shall be sold only in amounts of 10,000 or multiples thereof. Water applied stamps in amounts of 10,000 or multiples thereof and stamps applied by the heat process and meter imprints shall be supplied to wholesale dealers at a discount of .90% on and after July 1, 2002, and before January 1, 2003, and .80% thereafter from the face value thereof, and shall be deducted at the time of purchase or from the remittance therefor as hereinafter provided. Any wholesale cigarette dealer who shall file with the director a bond, of acceptable form, payable to the state of Kansas with a corporate surety authorized to do business in Kansas, shall be permitted to purchase stamps, and remit therefor to the director within 30 days after each such purchase, up to a maximum outstanding at any one time of 85% of the amount of the bond. Failure on the part of any wholesale dealer to remit as herein specified shall be cause for forfeiture of such dealer's bond.

All revenue received from the sale of such stamps or meter imprints shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. The state treasurer shall first credit such amount as the director shall order to the cigarette tax refund fund and shall credit the remaining balance to the state general fund. A refund fund designated the cigarette tax refund fund not to exceed \$10,000 at any time shall be set apart and maintained by the director from taxes collected under this act and held by the state treasurer for prompt payment of all refunds authorized by this act. Such cigarette tax refund fund shall be in such amount as the director shall determine is necessary to meet current refunding requirements under this act.

The wholesale cigarette dealer shall affix to each package of cigarettes stamps or tax meter imprints required by this act prior to the sale of cigarettes to any person, by such dealer or such dealer's agent or agents, within the state of Kansas. The director is empowered to authorize wholesale dealers to affix revenue tax meter imprints upon original packages of cigarettes and is charged with the duty of regulating the use of tax meters to secure payment of the proper taxes. No wholesale dealer shall affix revenue tax meter imprints to original packages of cigarettes without first having obtained permission from the director to employ this method of affixation. If the director approves the wholesale dealer's application for permission to affix revenue tax meter imprints to original packages of cigarettes, the director shall require such dealer to file a suitable bond payable to the state of Kansas executed by a corporate surety authorized to do business in Kansas. The director may, to assure the proper collection of taxes imposed by the act, revoke or suspend the privilege of imprinting tax meter imprints upon original packages of cigarettes. All meters shall be under the direct control of the director, and all transfer assignments or anything pertaining thereto must first be authorized by the director. All inks used in the stamping of cigarettes must be of a special type devised for use in connection with the machine employed and approved by the director. All repairs to the meter are strictly prohibited except by a duly authorized representative of the director. Requests for service shall be directed to the director. Meter machine ink imprints on all packages shall be clear and legible. If a wholesale dealer continuously issues illegible cigarette tax meter imprints, it shall be considered sufficient cause for revocation of such dealer's permit to use a cigarette tax meter.

A licensed wholesale dealer may, for the purpose of sale in another state, transport cigarettes not bearing Kansas indicia of tax payment through the state of Kansas provided such cigarettes are contained in sealed and original cartons.

**History:** L. 1933, ch. 122, § 11 (Special Session); L. 1935, ch. 309, § 3; L. 1939, ch. 329, § 10; L. 1957, ch. 505, § 2; L. 1964, ch. 37, § 2 (Budget Session); L. 1965, ch. 529, § 2; L. 1967, ch. 498, § 8; L. 1970, ch. 396, § 2; L. 1971, ch. 315, § 1; L. 1983, ch. 329, § 4; L. 1985, ch. 327, § 2; L. 1986, ch. 381, § 1; L. 2001, ch. 5, § 450; L. 2002, ch. 185, § 3; July 1

**79-3312. Redemption of stamps and meter imprints.** The director shall redeem any unused stamps or meter imprints that any wholesale dealer presents for redemption within six months after the purchase thereof, at the face value less .90% on and after July 1, 2002, and before January 1, 2003, and .80% thereafter thereof if such stamps or meter imprints have been purchased from the director. The director shall prepare a voucher showing the net amount of such refund due, and the director of accounts and reports shall draw a warrant on the state treasurer for the same. Wholesale dealers shall be entitled to a refund of the tax paid on cigarettes which have become unfit for sale upon proof thereof less .90% on and after July 1, 2002, and before January 1, 2003, and .80% thereafter of such tax.

**History:** L. 1935, ch. 309, § 4; L. 1939, ch. 329, § 11; L. 1957, ch. 505, § 3; L. 1964, ch. 37, § 3 (Budget Session); L. 1967, ch. 498, § 9; L. 1970, ch. 396, § 3; L. 1971, ch. 315, § 2; L. 1983, ch. 329, § 5; L. 1985, ch. 327, § 3; L. 2002, ch. 185, § 4; July 1

**79-3312a. Cigarettes refused by consignee; duty of carrier; liability for tax; damaged or missing cigarettes.** Carriers are hereby required to report to the director the amount of cigarettes refused by any consignee and all such cigarettes returned to the manufacturer on forms and in the manner and time provided by the director. Failure of carriers to file such reports shall make the carrier liable for unpaid tax on such cigarettes. Carriers may sell cigarettes damaged in transit when refused by the consignee if the carrier first obtains written authority of the director for such sale and pays the tax due thereon. Cigarettes damaged in transit, refused by the consignee and not returned to the manufacturer or sold as herein provided shall be destroyed in the presence of an agent of the director and in such case the tax shall be waived. Any consignee signing receipt of delivery and then discovering shortage in transit shall be responsible for the tax on the amount of cigarettes shown in the said receipt of delivery. In all other cases of shortage in shipment of cigarettes as evidenced by waybill or invoice the carrier shall be liable for the tax due on the missing cigarettes unless the said carrier shall furnish to the director on forms and in the manner and time provided by the director proof satisfactory to the director that such shortage was occasioned by the theft of said cigarettes by a person or persons outside of the employment of said carrier. In the event that said proof is satisfactory to the director, the tax on said missing cigarettes shall be waived.

**History:** L. 1967, ch. 498, § 10; L. 1969, ch. 458, § 1; July 1

**79-3313. Cigarettes required to be sold in packages; distribution of free sample packages; violations and sanctions; hearing.** All cigarettes sold in this state shall be in packages, and each of the packages shall bear evidence of payment of the tax thereon except that any railroad or sleeping car company licensed as a retailer is hereby authorized to sell cigarettes upon its cars without affixing stamps to the packages of cigarettes provided that monthly reports and payment of the tax due is made directly to the director in the manner and under the terms provided for by the director. In addition, manufacturers are hereby authorized to distribute in the state, through their authorized representatives or wholesale dealers, free sample packages of cigarettes containing less than 20 cigarettes without affixing stamps to the packages provided that monthly reports and payment of a tax at the rates prescribed by law are made directly to the director. No wholesale dealer or

manufacturers' authorized representatives shall sell or distribute cigarettes, except free sample packages, to any person in the state of Kansas not holding a dealer's license as provided in this act. Such packages of sample cigarettes shall bear the word "sample" or "not for sale" and "state tax paid" in letters easily read.

Whenever the director shall have reason to believe that any manufacturer has violated the provisions of this section or the conditions provided by the director, the director shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act. If upon the basis of such hearing it appears to the satisfaction of the director that such manufacturer has violated any of the provisions of this section or the conditions provided by the director, the director is hereby authorized to suspend or revoke the authorization to the manufacturer for such period as the director determines is necessary but in no case for more than one year.

**History:** L. 1933, ch. 122, § 12 (Special Session); L. 1935, ch. 309, § 5; L. 1939, ch. 329, § 12; L. 1953, ch. 439, § 1; L. 1957, ch. 429, § 20; L. 1967, ch. 498, § 11; L. 1969, ch. 459, § 1; L. 1984, ch. 358, § 2; L. 1988, ch. 356, § 332; L. 2004, ch. 145, § 44; July 1, 2007

**79-3314. History:** L. 1933, ch. 122, § 13 (Special Session); L. 1935, ch. 309, § 6; L. 1939, ch. 329, § 13; **Repealed**, L. 1967, ch. 498, § 20; July 1

**79-3315. History:** L. 1933, ch. 122, § 14 (Special Session); **Repealed**, L. 1935, ch. 309, § 13; April 1

**79-3316. Certain records required of dealer; restrictions on purchase by dealer; tax exemption forms.** (a) All purchases of cigarettes by any dealer shall be evidenced by an invoice, a duplicate of which shall be furnished the party receiving the cigarettes from any dealer.

(b) Purchases of cigarettes by wholesale dealers shall be made from the manufacturers of cigarettes or from other Kansas licensed wholesale dealers. Purchases of cigarettes by retail dealers or vending machine operators shall be from wholesale dealers.

(c) All invoices issued by wholesale dealers shall be in duplicate and a copy must accompany the consigned cigarettes. Cigarettes sold by a wholesale dealer to any other dealer shall be evidenced by invoices bearing the vendee's name and license number. A wholesale dealer selling cigarettes to a manufacturer's salesperson shall at the time of delivery of same make a true duplicate invoice inserting therein the name of the salesman together with the name of such salesperson's employer.

(d) All records pertaining to sales of cigarettes by dealers in the state of Kansas shall be preserved for a period of three years and shall be available for inspection by the director or the director's designee at the dealer's place of business or, if the dealer has more than one place of business in the state, at a central location of the dealer.

(e) Every wholesale dealer shall report to the director on or before the 10th day of each month, stating the amount of cigarettes sold during the preceding month and the amount of all cigarettes returned to the manufacturer. Any wholesale dealer who refuses any shipment or part of a shipment of unstamped cigarettes or has a shortage in the shipment of cigarettes consigned to such dealer shall in the monthly report next following the refusal or shortage report to the director the number of packages or cartons of cigarettes refused or short and the name of the carrier from whom the cigarettes were refused or shortage occurred. Such report shall be made on forms provided by the director and shall contain such other information as the director may require.

(f) Exemption from payment of cigarette tax on sale of cigarettes made outside the state by any wholesale dealer shall be filed on forms provided by the director.

**History:** L. 1933, ch. 122, § 15 (Special Session); L. 1935, ch. 309, § 7; L. 1939, ch. 329, § 14; L. 1955, ch. 418, § 1; L. 1967, ch. 498, § 12; L. 1996, ch. 214, § 6; L. 1998, ch. 192, § 10; May 28

**79-3317. History:** L. 1935, ch. 309, § 8; L. 1939, ch. 329, § 15; **Repealed**, L. 1967, ch. 498, § 20; July 1

**79-3318. History:** L. 1935, ch. 309, § 9; **Repealed**, L. 1996, ch. 214, § 40; July 1

**79-3319. History:** L. 1933, ch. 122, § 16 (Special Session); L. 1939, ch. 329, § 16; **Repealed**, L. 1967, ch. 498, § 20; July 1

**79-3320. History:** L. 1933, ch. 122, § 17 (Special Session); L. 1939, ch. 329, § 17; L. 1967, ch. 498, § 13; **Repealed**, L. 1969, ch. 180, § 21-4701; July 1, 1970

**79-3321. Unlawful acts.** It shall be unlawful for any person:

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

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

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

- (d) To use any artful device or deceptive practice to conceal any violation of this act or to mislead the director or officer or agent authorized by law in the enforcement of this act.
- (e) Who is a dealer to fail to produce on demand of the director or any officer or agent authorized by law any records or invoices required to be kept by such person.
- (f) Knowingly to make, use, or present to the director or agent thereof any falsified invoice or falsely state the nature or quantity of the goods therein invoiced.
- (g) Who is a dealer to fail or refuse to keep and preserve for the time and in the manner required herein all the records required by this act to be kept and preserved.
- (h) To wholesale cigarettes to any person, other than a manufacturer's salesperson, retail dealer or wholesaler who is:
  - (1) Duly licensed by the state where such manufacturer's salesperson, retail dealer or wholesaler is located, or
  - (2) exempt from state licensing under applicable state or federal laws or court decisions including any such person operating as a retail dealer upon land allotted to or held in trust for an Indian tribe recognized by the United States bureau of Indian affairs.
- (i) To have in possession any evidence of tax indicia provided for herein not purchased from the director.
- (j) To fail or refuse to permit the director or any officer or agent authorized by law to inspect a carrier transporting cigarettes.
- (k) To vend small cigars, or any products so wrapped as to be confused with cigarettes, from a machine vending cigarettes, nor shall a vending machine be so built to vend cigars or products that may be confused with cigarettes, be attached to a cigarette vending machine.
- (l) To sell, furnish or distribute cigarettes or tobacco products to any person under 18 years of age.
- (m) Who is under 18 years of age to purchase or attempt to purchase cigarettes or tobacco products.
- (n) Who is under 18 years of age to possess or attempt to possess cigarettes or tobacco products.
- (o) To sell cigarettes to a retailer or at retail that do not bear Kansas tax indicia or upon which the Kansas cigarette tax has not been paid.
- (p) To sell cigarettes without having a license for such sale as provided herein.
- (q) To sell a vending machine without having a vending machine distributor's license.
- (r) Who is a retail dealer to fail to post and maintain in a conspicuous place in the dealer's establishment the following notice: "By law, cigarettes and tobacco products may be sold only to persons 18 years of age and older."
- (s) To distribute samples within 500 feet of any school when such facility is being used primarily by persons under 18 years of age unless the sampling is: (1) In an area to which persons under 18 years of age are denied access; (2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or (3) at or adjacent to an outdoor production, repair or construction site or facility.
- (t) To sell cigarettes or tobacco products by means of a vending machine in any establishment, or portion of an establishment, which is open to minors, except that this subsection shall not apply to:
  - (1) The installation and use by the proprietor of the establishment, or by the proprietor's agents or employees, of vending machines behind a counter, or in some place in such establishment, or portion thereof, to which minors are prohibited by law from having access;
  - (2) the installation and use of a vending machine in a commercial building or industrial plant, or portions thereof, where the public is not customarily admitted and where machines are intended for the sole use of adult employees employed in the building or plant; or
  - (3) a vending machine which has a lock-out device which is inoperable in the continuous standby mode and which requires manual activation by the person supervising the operation of the machine each time cigarettes or tobacco products are purchased from the machine.
- (u) To sell or distribute in this state; to acquire, hold, own, possess or transport for sale or distribution in this state; or to import or cause to be imported, into this state for sale or distribution in this state:
  - (1) Any cigarettes the package of which (A) bears any statement, label, stamp, sticker or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States, including but not limited to, labels stating "For Export Only", "U.S. Tax-Exempt", "For Use Outside U.S." or similar wording; or (B) does not comply with (i) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including but not limited to the precise warning labels specified in the federal cigarette labeling and advertising act, 15 U.S.C. 1333; and (ii) all federal trademark and copyright laws;
  - (2) any cigarettes imported into the United States in violation of 26 U.S.C. 5754 or any other federal law, or federal regulations implementing such laws;
  - (3) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or
  - (4) any cigarettes for which there has not been submitted to the secretary of the U.S. department of health and human services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal cigarette labeling and advertising act, 15 U.S.C. 1335a.
- (v) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

- (1) Any statement, label, stamp, sticker or notice described in subsection (u) of K.S.A. 79-3321, and amendments thereto; or
- (2) any health warning that is not specified in, or does not conform with, the requirements of, the federal cigarette labeling and advertising act, 15 U.S.C. 1333.
- (w) To affix any stamp required pursuant to K.S.A. 79-3311, and amendments thereto, to the package of any cigarettes described in subsection (u) or altered in violation of subsection (v).

**History:** L. 1933, ch. 122, § 18 (Special Session); L. 1939, ch. 329, § 18; L. 1967, ch. 498, § 14; L. 1969, ch. 460, § 1; L. 1988, ch. 384, § 1; L. 1996, ch. 214, § 7; L. 2000, ch. 92, § 3; July 1

**79-3322. Penalties.** (a) Any person who violates any of the provisions of the Kansas cigarette and tobacco products act, except as otherwise provided in this act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both. In addition thereto any person found liable for any license fee or tax imposed under the provisions of this act shall be personally liable for such license fee or tax plus a penalty in an amount equal to 100% thereof.

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

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

(3) It shall be a defense to a prosecution under this subsection if: (A) The defendant engages in the lawful sale, furnishing or distribution of cigarettes or tobacco products by mail; and (B) the defendant sold, furnished or distributed the cigarettes or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601, and amendments thereto, that the person was 18 or more years of age.

(4) For purposes of this subsection the person who violates this subsection shall be the individual directly selling, furnishing or distributing the cigarettes or tobacco products to any person under 18 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

(c) Violation of subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, is a cigarette or tobacco infraction for which the fine is \$25. In addition, the judge may require the juvenile to appear in court with a parent or legal guardian.

(d) Any agent, employees or others who aid, abet or otherwise participate in any way in the violation of the Kansas cigarette and tobacco products act or in any of the offenses hereunder punishable shall be guilty and punished as principals to the same extent as any person violating this act.

**History:** L. 1933, ch. 122, § 19 (Special Session); L. 1939, ch. 329, § 19; L. 1967, ch. 498, § 15; L. 1984, ch. 358, § 4; L. 1996, ch. 214, § 8; L. 1998, ch. 192, § 11; L. 2000, ch. 92, § 4; July 1

**79-3323. Contraband goods; seizure.** (a) The following are declared to be common nuisances and contraband:

- (1) All packages of cigarettes, in quantities of 20 packages or more, not bearing indicia of tax payment as required in this act and all devices for vending cigarettes in which unstamped packages are found;
- (2) all cigarettes or tobacco products in the possession of a minor; and
- (3) all property, other than vehicles, used in the retail sale of unstamped packages of cigarettes.

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

(b) Any cigarettes or property constituting a common nuisance and contraband as provided by this section may be seized by the director or the director's authorized agent or any duly constituted peace officer with or without process or warrant and shall be subject to forfeiture as provided in this act. The party making the seizure shall deliver to the owner of the property and to the person or persons found in possession of the property a receipt stating from whom the property was seized, the place of seizure and a description and the brand of the property seized. A duplicate of the receipt shall be filed in the office of the director and shall be open for public inspection.

**History:** L. 1933, ch. 122, § 20 (Special Session); L. 1939, ch. 329, § 20; L. 1953, ch. 440, § 1; L. 1967, ch. 498, § 16; L. 1980, ch. 319, § 2; L. 1996, ch. 214, § 10; July 1.

**79-3324. History:** L. 1933, ch. 122, § 21 (Special Session); L. 1939, ch. 329, § 21; L. 1953, ch. 440, § 2; L. 1967, ch. 498, § 17; **Repealed,** L. 1980, ch. 319, § 4; July 1

**79-3324a. Contraband goods; seizure and sale; disposition of proceeds.** (a) All of the cigarettes and property seized shall first be listed and appraised by the officer making the seizure, and turned over to the county sheriff of the county in which the seizure is made and a receipt therefor taken. The person making the seizure shall immediately make

and file a written report thereof showing the name of the person making the seizure, the place where, and the person from whom the property was seized, and inventory and appraisal thereof, at the usual and ordinary wholesale price of the articles received to the director of taxation. The county or district attorney of the county in which the seizures are made may, at the request of the director, file in the district court forfeiture proceedings in the name of the state of Kansas, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found, directing him or her to answer within ten (10) days. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in five (5) public places in the county not less than ten (10) days before the date of the sale, except that cigarettes shall be withheld from public sale and shall be sold by the director of taxation to the manufacturer of such cigarettes or to a licensed distributor and the purchase price shall be paid to the director of taxation and treated as cigarette tax collected. The proceeds of any public sale shall be deposited with the clerk of the court, who shall after deducting costs, including the costs of the sale, pay the balance to the treasurer of the county wherein said sale is constructed. Said treasurer shall credit the entire amount thereof to the county general fund.

(b) The seizure and sale of the cigarettes shall not relieve the person from whom the cigarettes were seized from any prosecution on the payment of any penalties provided for under the provisions of K.S.A. 79-3301 *et seq.*, and amendments thereto; nor shall it relieve the purchaser thereof from any payment of the regular cigarette tax and the placing of proper stamps thereon before making any sale of the cigarettes or the personal consumption of the same.

(c) The forfeiture provisions of this act shall only apply to persons having possession of or transporting cigarettes with intent to barter, sell or give away the same. The possession of cigarettes in any quantity of more than two (2) cartons, twenty (20) packages or four hundred (400) cigarettes, not bearing indicia of tax payment as required by the provisions of K.S.A. 79-3301 *et seq.*, and amendments thereto, shall be prima facie evidence of intent to barter, sell or give away the cigarettes in violation of the provisions of K.S.A. 79-3301 *et seq.*, and amendments thereto.

**History:** L. 1980, ch. 319, § 3; July 1.

**79-3325. History:** L. 1933, ch. 122, § 22 (Special Session); **Repealed**, L. 1939, ch. 329, § 25; July 1

**79-3326. Duties of director; enforcement of act.** The director of taxation shall administer and enforce the provisions of this act. The secretary of revenue shall adopt rules and regulations for the administration of this act. For the purpose of enforcing this act the director may call to the director's aid any law enforcement officer of this state to prosecute all violators of any of the provisions of this act. The police of any city shall have the right to inspect all premises, records and invoices pertaining to the wholesale distribution, retail sale or sampling of cigarettes or tobacco products within the city at all reasonable times. All agents and representatives designated by the director are hereby invested with all the powers of peace and police officers within the state of Kansas in the enforcement of the provisions of this act throughout the state.

**History:** L. 1933, ch. 122, § 23 (Special Session); L. 1935, ch. 309, § 10; L. 1939, ch. 329, § 22; L. 1967, ch. 498, § 18; L. 1972, ch. 342, § 106; L. 1996, ch. 214, § 11; July 1

**79-3327. History:** L. 1933, ch. 122, § 24 (Special Session); L. 1935, ch. 309, § 11; L. 1939, ch. 329, § 23; L. 1943, ch. 305, § 1; L. 1947, ch. 460, § 1; L. 1951, ch. 494, § 1; L. 1957, ch. 505, § 4; **Repealed**, L. 1961, ch. 456, § 1; June 30

**79-3327a. History:** L. 1933, ch. 122, § 24 (Special Session); L. 1935, ch. 309, § 11; L. 1939, ch. 329, § 23; L. 1943, ch. 305, § 1; L. 1947, ch. 460, § 1; L. 1951, ch. 494, § 1; L. 1957, ch. 429, § 21; L. 1964, ch. 37, § 4 (Budget Session); L. 1965, ch. 530, § 1; L. 1967, ch. 498, § 19; L. 1970, ch. 396, § 4; L. 1971, ch. 315, § 3; **Repealed**, L. 1978, ch. 401, § 9; Jan. 1, 1979

**79-3328. Expenses of enforcement.** The director is hereby authorized and instructed to pay all proper expenses incurred in the enforcement of this act and for that purpose shall present the necessary vouchers approved by him or her to the director of accounts and reports, who shall issue his or her warrants upon the state treasurer for the amount due upon such vouchers and such warrants shall be paid by the state treasurer as by law provided.

**History:** L. 1933, ch. 122, § 25 (Special Session); Jan. 1, 1934

**79-3329. Unconstitutionality of part.** If any part or parts of this act are held to be unconstitutional the remaining part thereof shall be unaffected thereby.

**History:** L. 1933, ch. 122, § 26 (Special Session); Jan. 1, 1934

**79-3330. History:** L. 1933, ch. 122, § 27 (Special Session); L. 1935, ch. 310, § 1; **Repealed**, L. 1951, ch. 478, § 1; June 30

**79-3331. History:** L. 1935, ch. 309, § 12; **Repealed**, L. 1939, ch. 329, § 25; July 1

**79-3332. History:** L. 1939, ch. 329, § 24; **Repealed**, L. 1951, ch. 478, § 1; June 30

**79-3333. Sale of cigarettes; requirements; internet, telephone or mail order transactions, requirements; packages of cigarettes; penalties.** (a) Each person engaged in the business of selling cigarettes to persons who reside in Kansas shall obtain a license as provided by the Kansas cigarette and tobacco products act.

(b) All cigarettes sold to persons who reside in Kansas shall have a valid Kansas cigarette tax stamp affixed to each package.

(c) All retail cigarette dealers, whether located in or outside the state of Kansas, shall have a registration certificate as provided in K.S.A. 79-3608, and amendments thereto, and be subject to the provisions of the Kansas retailers' sales tax act. Each licensed retail cigarette dealer selling cigarettes over the internet, telephone or other mail order transaction shall file all sales tax returns and remit taxes owed pursuant to K.S.A. 79-3607, and amendments thereto.

(d) All sales transactions over the internet, telephone or other mail order transaction shall not be completed, unless, before each delivery of cigarettes is made, whether through the mail, through a transportation company or any other delivery system, the seller has obtained from the purchaser a certification that includes a reliable confirmation that the purchaser is at least the legal minimum age to purchase cigarettes; that the cigarettes purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase cigarettes; and a written statement signed by the purchaser that certifies the purchaser's address and that the purchaser is at least the minimum legal age to purchase cigarettes. Such statement shall also confirm: (1) That the purchaser understands that signing another person's name to such certification is illegal; (2) that the sale of cigarettes to individuals under the legal minimum purchase age is illegal; and (3) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of Kansas.

(e) The retail cigarette dealer shall verify the information contained in the certification provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the purchaser.

(f) All invoices, bills of lading, sales receipts and any other document related to the sale of cigarettes through the internet or other mail order transaction shall contain the current, valid retailer Kansas cigarette dealer license number, Kansas sales tax registration number, business name and address of the seller.

(g) All packages of cigarettes shipped from a cigarette dealer to purchasers who reside in Kansas shall clearly print the package with the word "CIGARETTES" on all sides of the package. In addition, such package shall contain an externally visible and easily legible notice located on the same side of the package as the address to which the package is delivered as follows:

"IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES."

(h) The provisions of this section shall not apply to tobacco products, as defined in K.S.A. 79-3301, and amendments thereto.

(i) Violation of the provisions of subsection (a), (d) or (e) is a severity level 8, nonperson felony. Violation of any provision of this section other than the provisions of subsection (a), (d) or (e) is a misdemeanor and upon conviction shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

(j) The provisions of this section shall be part of and supplemental to the Kansas cigarette and tobacco products act.

**History:** L. 2004, ch. 140, § 1; July 1

**79-3334. Active cigarette and tobacco licensees, list.** (a) The Kansas department of revenue shall publish a list of active cigarette and tobacco licensees and shall update such list monthly.

(b) The list of active cigarette and tobacco licensees published as provided in subsection (a) shall contain the following information: County name, owner, business name, address, license type and license number.

(c) The provisions of this section shall be part of and supplemental to the Kansas cigarette and tobacco products act.

**History:** L. 2004, ch. 140, § 2; July 1

**79-3335. Counterfeit cigarettes; seizure.** (a) Counterfeit cigarettes shall be seized by the director. For purposes of this section, counterfeit cigarettes includes cigarettes that have false manufacturing labels or packages of cigarettes bearing counterfeit tax stamps.

(b) The provisions of this section shall be part of and supplemental to the Kansas cigarette and tobacco products act.

**History:** L. 2004, ch. 140, § 3; July 1

**79-3336 to 79-3350. Reserved**

**79-3351 to 79-3369. History:** L. 1969, ch. 461, §§ 1 to 19; **Repealed,** L. 1973, ch. 400, § 1; July 1

**79-3370. History:** L. 1972, ch. 375, § 1; **Repealed,** L. 1996, ch. 214, § 40; July 1

**79-3371. Tax on privilege of selling tobacco products.** A tax is hereby imposed upon the privilege of selling or dealing in tobacco products in this state by any person engaged in business as a distributor thereof, at the rate of ten

percent (10%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (a) brings or causes to be brought into this state from without the state tobacco products for sale; (b) makes, manufactures, or fabricates tobacco products in this state for sale in this state; or (c) ships or transports tobacco products to retailers in this state to be sold by those retailers.

**History:** L. 1972, ch. 375, § 2; July 1

**79-3372. History:** L. 1972, ch. 375, § 3; **Repealed**, L. 1996, ch. 214, § 40; July 1

**79-3373. Distributor's license.** No person shall engage in the business of selling or dealing in tobacco products as a distributor in this state without first having received a license from the director. Every application for such license shall be made on a form prescribed by the director and shall state the name and address of the applicant; if the applicant is a firm, partnership or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the director may require for the purpose of the administration of this act. A person outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, may make application for license as a distributor, be granted such a license by the director and thereafter be subject to all the provisions of this act and entitled to act as a licensed distributor if the person files with the application proof that the person has appointed the secretary of state as the person's agent for service of process relating to any matter or issue arising under this act.

**History:** L. 1972, ch. 375, § 4; L. 1996, ch. 214, § 12; July 1

**79-3374. License fees; surety bond; application for each place of business.** Each application for a distributor's license shall be accompanied by a fee of twenty-five dollars (\$25). The application shall also be accompanied by a corporate surety bond issued by a surety company authorized to do business in this state, conditioned for the payment when due of all taxes, penalties and accrued interest which may be due the state. The bond shall be in an amount to be determined by the director and in a form prescribed by the director. Whenever it is the opinion of the director that the bond given by a licensee is inadequate in amount to fully protect the state, he or she shall require an additional bond in such amount as he or she deems sufficient. A separate application for a license shall be made for each place of business at which a distributor proposes to engage in business as such under this act, but an applicant may provide one bond in an amount determined by the director for all applications made by him or her. A distributor applying for a license between June thirtieth and December thirty-first of any year shall be required to pay only one-half of the license fee provided for herein.

**History:** L. 1972, ch. 375, § 5; July 1

**79-3375. Issuance, expiration and display of licenses; license not transferable.** Upon receipt of an application in proper form and payment of the license fee required hereunder, the director shall, unless otherwise provided by this act, issue to applicant a license hereunder, which license shall permit the applicant to whom it is issued to engage in business as a distributor at the place of business shown on the license. Each license shall expire on December thirty-first following its date of issue unless sooner revoked by the director, or unless the business for which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the director. Each license shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person.

**History:** L. 1972, ch. 375, § 6; July 1

**79-3376. History:** L. 1972, ch. 375, § 7; **Repealed**, L. 1996, ch. 214, § 40; July 1

**79-3377. Certain records required of distributor; access to premises.** (a) Each distributor shall keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of: (1) Tobacco products held, purchased, manufactured, brought in or caused to be brought in from outside the state or shipped or transported to retailers in this state; and (2) all sales of tobacco products made, except sales to an ultimate consumer. Such records shall show the names and addresses of purchasers and other pertinent papers and documents relating to the purchase, sale or disposition of tobacco products. When a licensed distributor sells tobacco products exclusively to ultimate consumers at the addresses given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subsection to be kept shall be preserved for a period of at least three years after the date of the documents or the date of the entries thereof appearing in the records, unless the director, in writing, authorizes their destruction or disposal at an earlier date.

(b) At any time during usual business hours duly authorized agents or employees of the director may enter any place of business of a distributor and inspect the premises, the records required to be kept under this act and the tobacco products contained therein, to determine whether or not all the provisions of this act are being fully complied with. Refusal to permit such inspection by a duly authorized agent or employee of the director shall be grounds for revocation of the license.

(c) Each person who sells tobacco products to persons other than an ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale and all prices and discounts. Such person shall preserve legible copies of all such invoices for three years after the date of sale.

(d) Each distributor shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The distributor shall preserve a legible copy of each such invoice for three years after the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the director at the distributor's place of business.

**History:** L. 1972, ch. 375, § 8; L. 1996, ch. 214, § 13; July 1

**79-3378. Monthly tax returns; remittance of tax; deficiencies.** On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing the quantity and wholesale sales price of each tobacco product (1) brought, or caused to be brought, into this state for sale; and (2) made, manufactured, or fabricated in this state for sale in this state during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the director. Each return shall be accompanied by a remittance for the full tax liability shown therein, less four percent (4%) of such liability as compensation to reimburse the distributor for his or her expenses incurred in the administration of this act. As soon as practicable after any return is filed, the director shall examine the return. If the director finds that, in his or her judgment, the return is incorrect and any amount of tax is due from the distributor and unpaid, he or she shall notify the distributor of the deficiency. If a deficiency disclosed by the director's examination cannot be allocated by him to a particular month or months, he or she may nevertheless notify the distributor that a deficiency exists and state the amount of tax due. Such notice shall be given to the distributor by registered or certified mail.

**History:** L. 1972, ch. 375, § 9; July 1

**79-3379. Refunds and credits of tax.** Where tobacco products, on which the tax imposed by this act has been reported and paid, or which have been reported for the purpose of determining and imposing the tax for the privilege of doing business under the provisions of this act and on which the tax has been paid, are sold, shipped or transported by the distributor to retailers, distributors or ultimate consumers without the state, or are returned to the manufacturer by the distributor, or destroyed by the distributor, a refund or credit of such tax shall be made to the distributor. For the purpose of making such credit or refund, or any combination thereof, the director may issue a tax credit memoranda or may prepare a voucher showing the net amount of such refund due and the director of accounts and reports shall draw a warrant upon the state treasurer for the amount of any such refund certified by the director.

**History:** L. 1972, ch. 375, § 10; L. 1975, ch. 503, § 1; July 1

**79-3380. History:** L. 1972, ch. 375, § 11; **Repealed,** L. 1996, ch. 214, § 40; July 1

**79-3381. History:** L. 1972, ch. 375, § 12; L. 1980, ch. 308, § 19; **Repealed,** L. 1996, ch. 214, § 40; July 1

**79-3382. History:** L. 1972, ch. 375, § 13; **Repealed,** L. 1996, ch. 214, § 40; July 1

**79-3383. History:** L. 1972, ch. 375, § 14; L. 1988, ch. 356, § 333; **Repealed,** L. 1996, ch. 214, § 40; July 1

**79-3384. History:** L. 1972, ch. 375, § 15; L. 1988, ch. 356, § 334; **Repealed,** L. 1996, ch. 214, § 40; July 1

**79-3385. History:** L. 1972, ch. 375, § 16; L. 1988, ch. 366, § 46; **Repealed,** L. 1996, ch. 214, § 40; July 1

**79-3386. History:** L. 1972, ch. 375, § 17; **Repealed,** L. 1996, ch. 214, § 40; July 1

**79-3387. Disposition of revenues.** (a) All revenue collected or received by the director from taxes imposed by this act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(b) All moneys received from license fees imposed by this act shall be collected by the director and shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the cigarette and tobacco products regulation fund created by K.S.A. 79-3391, and amendments thereto.

**History:** L. 1972, ch. 375, § 18; L. 1996, ch. 214, § 14; L. 2001, ch. 5, § 451; July 1

**79-3388. Tobacco products not exempt from sales tax.** The imposition of the tax as provided in this act shall not render tobacco products exempt from the retailers' sales tax act under the provisions of K.S.A. 79-3606 (a).

**History:** L. 1972, ch. 375, § 19; July 1

**79-3389. Reserved**

**79-3390. History:** L. 1984, ch. 358, § 3; **Repealed,** L. 1996, ch. 214, § 40; July 1

**79-3391. Administrative fines; cigarette and tobacco products regulation fund created.** (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the secretary of revenue or the secretary's designee, upon a finding that a licensee under this act has violated any provision of this act or any provision of any rule and regulation of the secretary of revenue adopted pursuant to this act shall impose on such licensee a civil fine not exceeding \$1,000 for each violation.

(b) It shall be unlawful for any person, directly or indirectly, to: (1) Sell, give or furnish any cigarettes or tobacco products to any person under 18 years of age; or (2) buy any cigarettes or tobacco products for any person under 18 years of age. In determining the fine to be imposed under this subsection by a licensed retail dealer whose employee sold, furnished or distributed the cigarettes or tobacco products, the secretary of revenue or the secretary's designee shall consider it to be a mitigating circumstance if the employee had completed a training program, approved by the secretary of revenue or the secretary's designee, in avoiding sale, furnishing or distributing of cigarettes and tobacco products to persons under 18 years of age.

(c) No fine shall be imposed pursuant to this section except upon the written order of the secretary of revenue or the secretary's designee 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 manner provided by the Kansas administrative procedure act.

(d) Any fine collected pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the cigarette and tobacco products regulation fund.

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

(f) If a person violates subsection (b) for a second or subsequent occurrence within a three-year period, the secretary may impose a graduated fine upon such person for the second or subsequent occurrence. For the purposes of imposing a fine under this section, if three or more years have elapsed since a person has been found to have violated the provisions of subsection (b), such person shall be treated as never having violated subsection (b).

**History:** L. 1996, ch. 214, § 15; L. 1998, ch. 192, § 12; L. 2000, ch. 92, § 10; L. 2001, ch. 5, § 452; July 1

**79-3392. Application of certain laws to taxes under act.** The provisions of K.S.A. 75-5133, 79-3610, 79-3611, 79-3612, 79-3613, 79-3615 and 79-3617, and amendments thereto, relating to the assessment, collection, appeal and administration of the retailers' sales tax, insofar as practical, shall have full force and effect with respect to taxes imposed by this act.

**History:** L. 1996, ch. 214, § 16; L. 2005, ch. 110, § 5; July 1

**79-3393. Cigarette or tobacco infraction; procedure.** (a) When a person is stopped by a law enforcement officer for a cigarette or tobacco infraction, the law enforcement officer shall prepare and deliver to the person a written cigarette or tobacco citation on a form approved by the secretary of revenue or the secretary's designee. The citation shall contain a notice to appear in court, the name and address of the person, the offense or offenses charged, the time and place when and where the person shall appear in court, the signature of the law enforcement officer and any other pertinent information. The time specified in the notice to appear shall be at least five days after the alleged infraction unless the person charged with the infraction demands an earlier hearing. The place specified in the notice to appear shall be before a judge of the district court within the county where the infraction is alleged to have been committed or before a judge of the municipal court where the infraction is alleged to have been committed in a city which has adopted an ordinance which prohibits the same acts.

(b) The notice to appear may provide that the person charged with the infraction shall appear in court with a parent or legal guardian and shall provide that the person charged has a right to trial.

(c) Acts classified as cigarette or tobacco infractions by subsection (c) of K.S.A. 79-3322, and amendments thereto shall be classified as ordinance cigarette or tobacco infractions by those cities adopting ordinances prohibiting the same acts. The fine for an ordinance cigarette or tobacco infraction shall be \$25.

**History:** L. 1996, ch. 214, § 9; L. 1998, ch. 192, § 13; May 28

**79-3394. Use of minors to determine compliance, limitations.** No person shall engage or direct a minor to violate any provision of this act for purposes of determining compliance with provisions of this act or the Kansas consumer protection act unless such person has procured the written consent of a parent or guardian of the minor to so engage or direct the minor and such person is:

- (a) An officer having authority to enforce the provisions of this act;
- (b) an authorized representative of the attorney general, a county attorney or a district attorney; or
- (c) an authorized representative of a business acting pursuant to a self-compliance program designed to increase compliance with the provisions of this act.

**History:** L. 1996, ch. 214, § 17; July 1

**79-3395. Cigarettes imported into the United States; certain information to be filed with the director.** On the first business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the director, for all cigarettes imported into the United States to which such person has affixed the tax stamp in the preceding month:

- (a) A copy of (1) the permit issued pursuant to the internal revenue code, 26 U.S.C. 5713, to the person importing such cigarettes into the United States allowing such person to import such cigarettes; and (2) the customs form containing, with respect to such cigarettes, the internal revenue tax information required by the U.S. bureau of alcohol, tobacco and firearms;
- (b) a statement, signed by such person under penalty of perjury, which shall be treated as confidential by the commissioner and exempt from disclosure under the open records act, K.S.A. 45-215 through 45-223, and amendments thereto, identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale; and
- (c) a statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with (1) the package health warning and ingredient reporting requirements of the federal cigarette labeling and advertising act, 15 U.S.C. 1333 and 1335a, with respect to such cigarettes; and (2) the provisions of K.S.A. 50-6a01 et seq., and amendments thereto, including a statement indicating whether the manufacturer is, or is not, a participating tobacco product manufacturer within the meaning of K.S.A. 50-6a01 et seq., and amendments thereto.

**History:** L. 2000, ch. 92, § 5; July 1

**79-3396. Failure to file; penalty.** (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the director, upon a finding that a licensee has violated the provisions of subsection (u), (v) or (w) of K.S.A. 79-3321, and amendments thereto, or has failed to comply with the provisions of K.S.A. 2008 Supp. 79-3395, and amendments thereto, or any rule and regulation adopted pursuant thereto, may revoke or suspend the license of any licensee in the manner provided by K.S.A. 79-3309, and amendments thereto; the director also may impose a civil fine in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000. Such fine shall be imposed in the manner provided by K.S.A. 79-3391, and amendments thereto.

(b) Any cigarettes that are acquired, held, owned, possessed, transported, imported, sold or distributed in this state in violation of subsection (u), (v) or (w) of K.S.A. 79-3321, and amendments thereto, or has failed to comply with the provisions of K.S.A. 2008 Supp. 79-3395, and amendments thereto, shall be deemed contraband under K.S.A. 79-3323, and amendments thereto, and shall be subject to seizure and forfeiture as provided therein and in K.S.A. 79-3324a, and amendments thereto. All such cigarettes seized and forfeited shall be destroyed. Such cigarettes shall be deemed contraband whether the violation of this act is knowing or otherwise.

**History:** L. 2000, ch. 92, § 6; July 1

**79-3397. Enforcement of act; civil liability for violation of act.** (a) The provisions of subsection (u), (v) or (w) of K.S.A. 79-3321 and K.S.A. 2008 Supp. 79-3395, and amendments thereto, shall be enforced by the director. At the request of the director or the director's duly authorized agent, the Kansas bureau of investigation and all local law enforcement agencies shall enforce such provisions. The attorney general shall have concurrent power with the district and county attorneys of the state to enforce such provisions.

(b) For the purpose of enforcing the provisions of subsection (u), (v) or (w) of K.S.A. 79-3321 and K.S.A. 2008 Supp. 79-3395, and amendments thereto, the director and any agency to which the director shall have delegated enforcement responsibility pursuant to subsection (a) may request information from any state or local agency, and may share information with, and request information from, any federal agency and any agency of any other state or any local agency thereof.

(c) Any person who may be damaged or injured by a violation of the provisions of subsection (u), (v) or (w) of K.S.A. 79-3321 or K.S.A. 2008 Supp. 79-3395, and amendments thereto, shall have a cause of action against any person causing such damage or injury. Such action may be brought by any person who is injured in such person's business or property by reason of any violation of such provisions, regardless of whether such injured person dealt directly or indirectly with the defendant. The plaintiff in any action commenced hereunder in the district court of the county wherein such plaintiff resides, or the district court of the county of the defendant's principal place of business, may sue for and recover treble the damages sustained. In addition, any person who is threatened with injury or additional injury by reason of any person's violation may commence an action in such district court to enjoin any such violation, and any

damages suffered may be sued for and recovered in the same action in addition to injunctive relief. In any action commenced under this act, the plaintiff may be allowed reasonable attorney fees and costs. The remedies provided herein shall be alternative and in addition to any other remedies provided by law.

**History:** L. 2000, ch. 92, § 7; July 1

**79-3398. Exceptions to applicability of act.** The provisions of subsection (u), (v) or (w) of K.S.A. 79-3321 and K.S.A. 2008 Supp. 79-3395, and amendments thereto, shall not apply to:

(a) Cigarettes allowed to be imported or brought into the United States for personal use; and

(b) Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations, except that this act shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

**History:** L. 2000, ch. 92, § 8; July 1