

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2324

By Committee on Corrections and Juvenile Justice

2-11

1 AN ACT concerning cigarettes and tobacco products; relating to electronic
2 cigarettes; amending K.S.A. ~~2010~~ 2011 Supp. 79-3321 and repealing
3 the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. ~~2010~~ 2011 Supp. 79-3321 is hereby amended to
7 read as follows: 79-3321. It shall be unlawful for any person:

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

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

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

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

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

25 (f) Knowingly to make, use, or present to the director or agent thereof
26 any falsified invoice or falsely state the nature or quantity of the goods
27 invoiced.

28 (g) Who is a dealer to fail or refuse to keep and preserve for the time
29 and in the manner required by this act all the records required by this act to
30 be kept and preserved.

31 (h) To wholesale cigarettes to any person, other than a manufacturer's
32 salesperson, retail dealer or wholesaler who is:

33 (1) Duly licensed by the state where such manufacturer's salesperson,
34 retail dealer or wholesaler is located; or

35 (2) exempt from state licensing under applicable state or federal laws
36 or court decisions including any such person operating as a retail dealer

1 upon land allotted to or held in trust for an Indian tribe recognized by the
2 United States bureau of Indian affairs.

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

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

7 (k) To vend small cigars, or any products so wrapped as to be
8 confused with cigarettes, from a machine vending cigarettes, nor shall a
9 vending machine be so built to vend cigars or products that may be
10 confused with cigarettes, be attached to a cigarette vending machine.

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

13 (m) Who is under 18 years of age to purchase or attempt to purchase
14 cigarettes, *electronic cigarettes* or tobacco products.

15 (n) Who is under 18 years of age to possess or attempt to possess
16 cigarettes, *electronic cigarettes* or tobacco products.

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

19 (p) To sell cigarettes without having a license for such sale as
20 provided herein.

21 (q) To sell a vending machine without having a vending machine
22 distributor's license.

23 (r) Who is a retail dealer to fail to post and maintain in a conspicuous
24 place in the dealer's establishment the following notice: "By law,
25 cigarettes, *electronic cigarettes* and tobacco products may be sold only to
26 persons 18 years of age and older."

27 (s) To distribute samples within 500 feet of any school when such
28 facility is being used primarily by persons under 18 years of age unless the
29 sampling is:

30 (1) In an area to which persons under 18 years of age are denied
31 access;

32 (2) in or at a retail location where cigarettes and tobacco products are
33 the primary commodity offered for sale at retail; or

34 (3) at or adjacent to an outdoor production, repair or construction site
35 or facility.

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

40 (1) The installation and use by the proprietor of the establishment, or
41 by the proprietor's agents or employees, of vending machines behind a
42 counter, or in some place in such establishment, or portion thereof, to
43 which minors are prohibited by law from having access;

1 (2) the installation and use of a vending machine in a commercial
2 building or industrial plant, or portions thereof, where the public is not
3 customarily admitted and where machines are intended for the sole use of
4 adult employees employed in the building or plant; or

5 (3) a vending machine which has a lock-out device which is
6 inoperable in the continuous standby mode and which requires manual
7 activation by the person supervising the operation of the machine each
8 time cigarettes or tobacco products are purchased from the machine.

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

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

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

14 (v) To sell or distribute in this state; to acquire, hold, own, possess or
15 transport for sale or distribution in this state; or to import or cause to be
16 imported, into this state for sale or distribution in this state:

17 (1) Any cigarettes the package of which (A) bears any statement,
18 label, stamp, sticker or notice indicating that the manufacturer did not
19 intend the cigarettes to be sold, distributed or used in the United States,
20 including but not limited to, labels stating "For Export Only," "U.S. Tax-
21 Exempt," "For Use Outside U.S." or similar wording; or (B) does not
22 comply with (i) all requirements imposed by or pursuant to federal law
23 regarding warnings and other information on packages of cigarettes
24 manufactured, packaged or imported for sale, distribution or use in the
25 United States, including but not limited to the precise warning labels
26 specified in the federal cigarette labeling and advertising act, 15 U.S.C. §
27 1333; and (ii) all federal trademark and copyright laws;

28 (2) any cigarettes imported into the United States in violation of 26
29 U.S.C. § 5754 or any other federal law, or federal regulations
30 implementing such laws;

31 (3) any cigarettes that such person otherwise knows or has reason to
32 know the manufacturer did not intend to be sold, distributed or used in the
33 United States; or

34 (4) any cigarettes for which there has not been submitted to the
35 secretary of the U.S. department of health and human services the list or
36 lists of the ingredients added to tobacco in the manufacture of such
37 cigarettes required by the federal cigarette labeling and advertising act, 15
38 U.S.C. § 1335a.

39 (w) To alter the package of any cigarettes, prior to sale or distribution
40 to the ultimate consumer, so as to remove, conceal or obscure:

41 (1) Any statement, label, stamp, sticker or notice described in
42 subsection (v); or

43 (2) any health warning that is not specified in, or does not conform

1 with, the requirements of, the federal cigarette labeling and advertising act,
2 15 U.S.C. § 1333.

3 (x) To affix any stamp required pursuant to K.S.A. 79-3311, and
4 amendments thereto, to the package of any cigarettes described in
5 subsection (v) or altered in violation of subsection (w).

6 (y) *As used in this section, "electronic cigarette" means a battery-*
7 *powered device, **whether or not such device is shaped like a cigarette,***
8 *that can provide inhaled doses of nicotine by delivering a vaporized*
9 *solution and cartridges and other chemical delivery systems for use in*
10 *such device.*

11 Sec. 2. K.S.A. ~~2010~~ 2011 Supp. 79-3321 is hereby repealed.

12 Sec. 3. This act shall take effect and be in force from and after its
13 publication in the statute book.

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