

31-606. Same; sales in violation of act; fines, forfeiture, injunctive relief, costs. (a) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, that do not meet the performance standard of K.S.A. 2014 Supp. 31-603, and amendments thereto, are not listed on the directory as required by K.S.A. 2014 Supp. 31-604, and amendments thereto, or are not marked in accordance with K.S.A. 2014 Supp. 31-605, and amendments thereto, shall be subject to a civil penalty not to exceed \$500 for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any such person or entity exceed \$100,000 during any thirty-day period.

(b) A retail dealer or vending machine operator who knowingly sells or offers to sell cigarettes that are not listed on the directory as required by K.S.A. 2014 Supp. 31-604, and amendments thereto, or are not marked in accordance with K.S.A. 2014 Supp. 31-605, and amendments thereto, shall be subject to a civil penalty not to exceed \$500 for each pack of such cigarettes sold or offered for sale, provided that in no case shall the penalty against any retail dealer or vending machine operator exceed \$25,000 for sales or offers to sell during any thirty-day period.

(c) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to K.S.A. 2014 Supp. 31-604, and amendments thereto, shall be subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

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

(e) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by K.S.A. 2014 Supp. 31-603, and amendments thereto, shall be considered contraband and subject to forfeiture. Cigarettes forfeited pursuant to this section shall be destroyed. Prior to the destruction of any cigarette forfeited pursuant to this subsection, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

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

(g) Whenever any law enforcement personnel or duly authorized representative of the state fire marshal, director, or attorney general shall discover any cigarettes that have not been marked in the manner required by K.S.A. 2014 Supp. 31-605, and amendments thereto, or for which a certification has not been filed as required by K.S.A. 2014 Supp. 31-604, and amendments thereto, such personnel are hereby authorized and empowered to seize and take possession of such cigarettes with or without process or warrant. Such cigarettes shall be turned over to the division of taxation, and shall be subject to forfeiture proceedings. Cigarettes seized pursuant to this section shall be destroyed. Prior to the destruction of any cigarette seized pursuant to this subsection, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

(h) Any action taken pursuant to this section is subject to review in accordance with the Kansas judicial review act.

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

History: L. 2008, ch. 135, § 6; L. 2010, ch. 17, § 48; July 1.