

## 2023 Kansas Statutes

**79-3322. Criminal penalties; defenses to prosecution; cigarette or tobacco infractions; aiding and abetting; referral to attorney general or proper county or district attorney.** (a) (1) Except as otherwise provided in this act, a violation of K.S.A. 79-3321(a), (c), (d), (f), (h), (i), (j), (v), (w), (x) or (y), and amendments thereto, is a:

(A) Class A misdemeanor for a first violation, and the offender shall be fined not less than \$1,000 nor more than \$2,500 upon a first conviction;

(B) severity level 6, nonperson felony for a second violation, and the offender shall be fined not less than \$50,000 nor more than \$100,000 upon a second conviction; and (C) severity level 6, nonperson felony for a third and all subsequent violations, and the offender shall be fined \$100,000 upon a third and all subsequent convictions.

(2) It shall be a defense to prosecution under K.S.A. 79-3321(a), and amendments thereto, that a licensee has: (A) Segregated the cigarettes from public view; (B) marked the cigarettes as not for retail sale to consumers; and (C) within 72 hours of receipt, notified the licensee's wholesale dealer, in writing, that the cigarettes do not bear indicia of Kansas tax and that the wholesale dealer shall remove the cigarettes from the licensee's premises.

(b) Except as provided in subsections (a), (c) or (d), a violation of K.S.A. 79-3321, and amendments thereto, is a class B misdemeanor and upon conviction, an offender shall be fined not less than \$500 nor more than \$1,000 or imprisoned for not more than one year, or both for each separate violation. 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.

(c) (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 21 years of age; or (B) buy any cigarettes or tobacco products for any person under 21 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 21 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 21 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 21 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 21 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

(d) Violation of K.S.A. 79-3321(m) or (n), 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.

(e) 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.

(f) The secretary of revenue or the secretary's authorized agent may refer such evidence as may be available concerning violations of this act or any rules and regulations or order hereunder to the attorney general or the proper county or

district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the department of revenue prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the secretary or the secretary's authorized agent, such employee shall be appointed a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the attorney general or the county attorney or district attorney. If an attorney employed by the secretary or secretary's authorized agent acts as a special prosecutor, the secretary may pay extradition and witness expenses associated with the case.

**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; L. 2017, ch. 96, § 12; L. 2023, ch. 18, § 4; July 1.