

2021 Kansas Statutes

79-3333. Sale of cigarettes, smokeless tobacco and roll-your-own tobacco; requirements; internet, telephone or mail order transactions, requirements; packages of cigarettes; penalties. (a) Each person engaged in the business of selling cigarettes, smokeless tobacco or roll-your-own tobacco 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 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 licensee or other person selling cigarettes, smokeless tobacco or roll-your-own tobacco 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, smokeless tobacco or roll-your-own tobacco 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, smokeless tobacco or roll-your-own tobacco; that the cigarettes or tobacco products purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase cigarettes, smokeless tobacco or roll-your-own tobacco; 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, smokeless tobacco or roll-your-own tobacco. 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, smokeless tobacco or roll-your-own tobacco to individuals under the legal minimum purchase age is illegal; and (3) that the purchase of cigarettes, smokeless tobacco or roll-your-own tobacco 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, smokeless tobacco or roll-your-own tobacco through the internet or other mail order transaction shall contain the current, valid retailer Kansas cigarette, smokeless tobacco or roll-your-own tobacco 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) (1) Each retail dealer that sells cigarettes to Kansas consumers without indicia of Kansas tax shall file an annual statement for each consumer to the department of revenue on such forms as are provided or approved by the department to the director for all Kansas consumers by March 1 of each year showing such information as the Kansas department of revenue shall require by rules and regulations, including the: (A) Name and address of such Kansas consumer; (B) the date of purchase; and (C) the total number of packs of cigarettes purchased by such Kansas consumer made from the retail dealer in the previous calendar year.

(2) The director may require any retail dealer that sells cigarettes to Kansas consumers without indicia of Kansas tax of more than \$100,000 in a calendar year to file the annual statement described in paragraph (1) by electronic format, including magnetic media or another machine-readable form for that year.

(3) Failure to file the annual statement required in paragraph (1) shall subject the retailer dealer to a penalty of \$10 for each consumer that should have been included in such annual statement, unless the retailer shows reasonable cause for such failure.

(i) Except as otherwise provided by this act, a violation of subsection (a), (d), (e) or (h) is a:

(1) 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;

(2) 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

(3) 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.

(j) Each separate violation of any provision of this section, other than the provisions of subsection (a), (d), (e) or (h) shall be a class B misdemeanor, and the offender shall be fined not less than \$500 nor more than \$1,000.

(k) 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 as 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.

(l) 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; L. 2017, ch. 96, § 16; June 22.