

February 17, 2016

Memorandum:

To: The Senate Judiciary Committee  
From: Thomas M. Palace Executive Director PMCA of Kansas  
Re: Testimony opposing SB 455

Mr. Chairman and Members of the Senate Judiciary Committee:

My name is Tom Palace. I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas petroleum distribution companies and convenience store owners throughout Kansas.

### **PMCA Opposes SB 455.**

It is disappointing that when the Kansas Department of Revenue, or any agency for that matter, makes sweeping changes to a statute that Industry stakeholders are included in the process. SB 455 makes changes to the tobacco statutes that will impact tobacco retailers and if a coordinated effort to review the statute with industry was arranged...PMCA may not be up here opposing the departments bill.

SB 455 appears to be going after counterfeit cigarettes. PMCA has no problem with halting this process. In fact, we support those efforts. However, I work with a group of people from various agencies; KDHE, KDOR/ABC and others and we have not discussed the proliferation of counterfeit cigarettes! We have not been advised that Kansas is being inundated with counterfeit cigarettes...but I do understand the potential for problems associated with counterfeit/contraband cigarettes especially with the recent \$.50 tax hike on cigarettes.

New section 1 states; “notwithstanding any other provision in this act, any person who purchases, possesses, uses or consumes more than 400 cigarettes in this state without the required tax indicia being affixed as herein provided shall be liable for the tax imposed by this act.” If I am correct that means ONLY the retailer is going to be cited and not the consumer because the retailer is purchasing the product from a distributor. Tobacco retailers will be required to be the enforcement agent. What happens if a tobacco retailer receives, by mistake, a carton of cigarettes (out of a case) that does not have the tax indicia affixed, has called his distributor notifying them of the error but has it in his possession? What happens to the retailer if an ABC agent happens to conduct an audit and finds this carton of cigarettes (in the back room) without the tax stamp? The statute makes no provision for an honest mistake. I have some other concerns with SB 455:

- Wholesalers and Distributors affix the tax stamps on packs of cigarettes that are sold to tobacco retailers. SB 455 only hold the retailer liable if one carton or pack is missing the tax stamp. Why is the retailer the only entity being fined?
- Section 6 and 7 - defines who won't be given a tobacco license and it states a certified letter will be sent to notify the directors intent to revoke a license. The statute also states that “within 10 days after the mailing of the notice, the person may request a hearing in writing before the

director.” With today’s mail service being what it is 10 days does not seem like ample time for someone to make contact with the director. We would recommend 30 days.

- Section 10, paragraph (e) record keeping - line 11 states “Filed electronically in the manner prescribed.” I am not sure all tobacco retailers can file electronically so some provision would be needed for them to comply.
- Section 14 – line 9, the language here indicates that the director can seize counterfeit/contraband cigarettes. Will they only seize the counterfeit cigarettes or will they seize the entire case that may include properly stamped cigarette packages?
- Section 19 raises the civil fine from \$1000 to \$2500. This language gives the Director of the Alcohol Beverage Control the ability to fine a retailer \$2500 for their first violation. This is ludicrous.
- Raising the penalty (selling to a minor) to \$2500 for the first infraction when there is no evidence that a violation has become so egregious to warrant a penalty of this magnitude is nothing more than a money grab on the very businesses that Kansas relies upon. Convenience stores are well aware of the penalties for selling to minors and they have worked hard complying with tobacco regulations. In fact, Kansas retailers have performed admirably the past 6-7 years with compliance rates over 90%; that is well above the 80% federal compliance rate. This is an indication that the current penalty structure (and clerk training) is effective in preventing the sale of cigarettes to minors.
- We would recommend some type of graduated scale for fines and would be happy to work with the department on our ideas.

Convenience stores sell age restricted products and as such they take compliance very seriously. This bill gives NO credit to a retailer that has had a good compliance track record. They would be penalized just like the retailer that has had 5-6 infractions (selling to minors). There is no delineation between a store that works hard at compliance and one that doesn’t. Convenience stores hire lots of responsible Kansans and unfortunately the human element will make a mistake from time-to-time and in the regulatory world that means loss of a job and a hefty fine to the business.

PMCA represents most of the tobacco retailers in Kansas. We do not support the sale of counterfeit/contraband cigarettes. We support efforts to fix this problem. But SB 455 goes much further than counterfeit/contraband cigarettes. If Kansas has a problem, we would like to have a hand in developing a solution...and simply raising fines for no reason should not be the solution.

I urge the committee to oppose this bill.