

February 17, 2016

Testimony in opposition to SB 455  
Submitted by Doug Mays on behalf of the Cigar Association of America

Thank you Chairman King and members of the Committee for allowing me to testify today in opposition to SB 455.

In 2009 Congress passed the Prevent All Cigarette Trafficking (PACT) act. As stated in the 2009 PACT act, there was evidence at the time that the online sale of cigarettes and moist snuff (which makes up the bulk of all tobacco sales by volume) was funding terrorist organizations. The cigar industry made the case that because of the way our distribution system works the cigar industry couldn't be complicit with nor contribute to funding this type of activity by the misappropriated sale of our products. Further, half of all the volume our manufacturers sell on the premium cigar side is done via mail order. There simply isn't the proliferation or demand for enough premium cigar retailers to meet the needs of cigar consumers. Mail order must be allowed. Which is why congress didn't include cigars and other products in the PACT Act.

After reading the bill, it appears to have taken a section of statute relating to mail order sales of cigarettes made obsolete by the PACT act, and included "other tobacco products" to expand the scope of what products fall under that previous regulatory scheme. The state of Kansas has no authority to require any business that does not have nexus, (meaning a physical presence in the state, Quill v. ND) to obtain a registration and become a taxpayer of the state.

Prior to the PACT Act in 2009, because the cigarette companies had sales people, distributorships, etc., they didn't have a problem registering with the state. But companies that don't have that connection to Kansas, such as mail order companies, cannot be compelled to become a creature of the state as if they were an instate business. This is one of those instances where the state is overreaching and attempting to collect tax from someone that is not obligated by federal law to become a state taxpayer. See Quill v North Dakota.

While the bill doesn't expressly prohibit mail order sales, it would require tax collection by mail order companies. It is clear that this enacting this bill would be in direct violation of federal law regarding nexus.

Thank you for allowing me to appear before you today. I would be happy to stand for questions at the appropriate time.