

Approved March 23, 1987  
Date

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

The meeting was called to order by Senator Fred A. Kerr at  
Chairperson

11:00 a.m./p.m. on March 19, 1987 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Tom Severn, Research  
Chris Courtwright, Research  
Don Hayward, Revisor's Office  
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Secretary Harley Duncan, Department of Revenue  
Gene Johnson, Kansas Community Alcohol Safety Action Projects Assoc.  
Brenda Braden, Attorney General's Office  
Elizabeth Taylor - Alcohol & Drug Program

Chairman Kerr called the meeting to order and said the agenda for the day was to have a hearing on H.B. 2140. He said the bill was sponsored by Representatives Miller and Rolfs. They were both unable to attend but sent word of their support for the bill.

Secretary Duncan testified in support of H.B. 2140. (Attachment 1) He stated that some of the key features of the bill are as follows:

1. A tax is imposed on marijuana and controlled substances illegally acquired, possessed, transported, transferred or offered for sale.
2. The rates of tax are: (1) \$3.50 per gram of marijuana (\$99.00 per ounce); (2) \$200.00 per gram of controlled substances sold by weight, \$5,670 per ounce); and (3) \$2,000 per fifty dosage units for substances not sold by weight (\$40.00 per dose). Stamps are valid for three months.
3. The Department of Revenue is to administer the tax. If taxation is not paid, the Director of Taxation is to establish a jeopardy assessment based on personal knowledge or information available. Written notice of assessment is to be mailed, and if payment is not made "immediately", the Director is to proceed to collect the tax through garnishments, warrants or seizure of property. The taxpayer may request a hearing on a jeopardy assessment.
4. Burden is placed on the taxpayer to prove that the assessment of the Director is incorrect.
5. The Director and employees are prohibited from disclosing any information contained in any tax report and such information cannot be used in any criminal proceedings.
6. If taxes are not paid, a penalty equal to 100% of the tax due is to be imposed. Failure to pay tax is a crime punishable by a maximum fine of \$10,000 or five years in prison, or both.

Secretary Duncan stated that this bill is patterned closely after a Minnesota law which has been in effect since August, 1986. Actual cash collections have totaled \$22,000. Secretary Duncan said the fiscal note for enactment of this bill would be approximately \$55,000.

In answer to questions, Secretary Duncan said that this is a tax bill and it can raise revenue. He said it also would likely be a deterrent to illegal drug traffic.

Secretary Duncan requested an amendment to the bill beginning at the end of line 51 reading as follows: "The weight of the marijuana or controlled substance includes all material, compound, mixture or preparation that is added to the marijuana or controlled substance."

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,

room 519-S, Statehouse, at 11:00 a.m./~~PM~~ on March 19, 1987.

Gene Johnson testified in support of H.B. 2140. (Attachment 2) He said that he felt individuals involved in the sale of an illegal substance should be punished under the criminal aspects of the crime. He said he felt they should also be punished financially, especially since they pay no tax on the income from these illegal acts.

Brenda Braden testified in support of H.B. 2140. She stated that she was present on behalf of the Attorney General's office supporting this bill. She said that the state of Arizona had a similar law for several years and they felt it has helped. She stated that Arizona has collected \$6 million dollars under this law. She stated that many times it is very difficult to try to prove intent of sale for criminal reasons. She noted that tax evasion can be much easier to prove. The act of "possession provided in this will would still bring revenue to the Department and also be a hopeful deterrent.

Elizabeth Taylor testified in support of H.B. 2140. (Attachment 3) She said she felt it would provide additional funds to be used in the fight against alcohol and drug abuse. It would also address the tax question of evasion in underground economy. It would hopefully discourage consumption, and would also provide another way of prosecuting drug dealers.

She stated that KAADPD supports passage of this bill and urges that monies generated from it be used in the programs serving the community on behalf of drug and alcohol abuse.

Secretary Duncan stated that Al Rush of the Governor's office was not present to testify but sent his support of H.B. 2140.

COMMITTEE DISCUSSION ON HOUSE BILLS 2168 and 2169

After brief committee discussion, Senator Frey made a motion to amend the bill and include the language "capable of flight." Senator Burke seconded. Motion carried.

After further discussion, Senator Hayden moved that having voted on the prevailing side of the motion to amend, he would like to reconsider the amendment. Senator Karr seconded. Motion carried.

Senator Frey withdrew the original motion to the amendment. Senator Burke withdrew his second to the amendment.

Senator Montgomery made the motion to recommend H.B. 2168 favorably for passage. Senator Karr seconded. Motion carried.

Senator Montgomery made the motion to recommend H.B. 2169 favorably for passage. Senator Karr seconded. Motion carried.

Senator Hayden made the motion to accept the minutes of the March 18, 1987 meeting. Senator Allen seconded. Motion carried.

Chairman Kerr said there would be no meeting on Friday, March 20, 1987.

Meeting adjourned.



**KANSAS DEPARTMENT OF REVENUE**  
*Office of the Secretary*  
Robert B. Docking State Office Building  
Topeka, Kansas 66612-1588

**MEMORANDUM**

**TO:** The Honorable Fred A. Kerr, Chairman  
Senate Committee on Assessment and Taxation

**FROM:** Harley T. Duncan, Secretary  
Kansas Department of Revenue

**RE:** House Bill No. 2140

**DATE:** March 19, 1987

Thank you for the opportunity to appear before you today on HB 2140 which would impose a tax on marijuana and controlled substances.

**Key Features of the Bill**

1. A tax is imposed on marijuana and controlled substances illegally acquired, possessed, transported, transferred or offered for sale. Each "dealer" (persons in possession of certain threshold amounts) are responsible for paying the tax as soon as the substance is acquired and is responsible for affixing the stamps or other indicia evidencing payment of the tax to the substances.
2. The rates of tax are: (1) \$3.50 per gram of marijuana (\$99 per ounce); (2) \$200 per gram of controlled substances sold by weight (\$5,670 per ounce); and (3) \$2,000 per fifty dosage units for substances not sold by weight (\$40 per dose). Stamps will be valid for a three month period of time.
3. The Department of Revenue is to administer the tax. If the tax is not paid, the Director of Taxation is to establish a jeopardy assessment based on personal knowledge or information available to the Director. Written notice of the assessment is to be mailed to the dealer's last known address and if not paid "immediately", the Director is to proceed to collect the tax through such tools as are available to the Department including garnishments, warrants and seizure of property. A taxpayer may request a hearing on the correctness of the jeopardy assessment.
4. The burden is placed on the taxpayer to prove that the assessment of the Director is incorrect. The Director is given broad authority to compel records, witnesses and other evidence to determine the proper level of tax to be assessed.

5. The Director and employees are prohibited from disclosing any information contained in any tax report or return required under the act and such information cannot be used in any criminal proceeding against the dealer except in a proceeding involving the taxes due under the act.
6. If taxes due are not paid, a penalty equal to 100 percent of the tax due is to be imposed. Failure to pay the tax is a crime punishable by a fine of not more than \$10,000, or five years in prison, or both.

In short, the bill attacks the problems associated with illegal drugs in two ways. It creates a situation in which a dealer can be convicted of a criminal tax evasion charge. It also imposes significant taxes on illegal drugs and grants extraordinary authority to the Department of Revenue to collect those taxes.

### **Minnesota Experience**

The bill is patterned closely after a Minnesota law which has been in effect since August 1986. Minnesota has had 136 stamp sales for \$1,360 in revenue. They have also issued 46 assessments for a total of \$7.8 million. Actual cash collections have totalled \$22,000. Minnesota expects that most of the stamp sales are to collectors, and stamped drugs have not been confiscated. Two law suits challenging the constitutionality of the Minnesota law have been filed. These actions have halted collection efforts on many of the assessments.

The first suit alleges that the act violates the right to protection from self-incrimination. A similar challenge to a South Dakota statute was successful. South Dakota law, however, provided that law enforcement officers had access to the tax stamp records whereas the Minnesota law (and HB 2140) specifically prohibit such disclosure. Further Minnesota has designed procedures to allow the stamps to be purchased without divulging one's identity. Minnesota feels comfortable with its position in this statute.

The second action challenges the Minnesota act on the grounds that it violates due process of law in some of the procedures and authority allowed the Minnesota Department of Revenue. Specifically, it is my understanding that the Minnesota law does not require the collection of the jeopardy assessments to await certain appeal rights and hearings need not be held on the assessment. Again, the Minnesota Department feels comfortable with its position.

Despite the fact that the law has not produced sizeable amounts of revenue to this point, the Minnesota Commissioner of Revenue believes that over time, it will prove to be an effective revenue generator and a deterrent to dealing in illegal drugs.

### Recommendations

The Department of Revenue believes this act can be effective in collecting taxes on illegal drugs. Recommendations we offered to improve the bill and possibly avoid or minimize the potential for success in a constitutional challenge were adopted by the House. We still have some concerns about potential Due Process and Double Jeopardy challenges, but I do not think they can be addressed through any changes in language.

At the suggestion of the Minnesota Department of Revenue, we would suggest that language similar to the following be added to the bill at the end of line 51:

**"The wieght of the marijuana or controlled substance includes all material, compound, mixture or preparation that is added to the marijuana or controlled substance."**

Thank you for the opportunity to appear before you. I would be glad to answer any questions.

TESTIMONY ON HOUSE BILL 2140


Before the Senate Assessment and Taxation Committee

Mr. Chairman, and members of the committee, the Kansas Community Alcohol Safety Action Project Coordinator's Association, who provide the evaluations for all D.U.I. offenders in the state of Kansas, wholeheartedly support the concept of House Bill 2140.

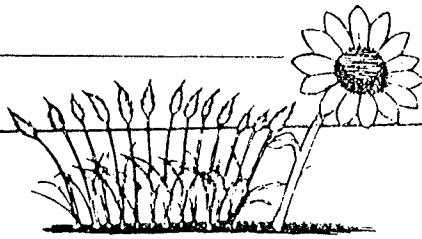
We believe that those individuals who are involved in the sale of an illegal substance in the state of Kansas, whether it be a controlled substance or marijuana, should be punished under the criminal aspects of their crime. However, sometimes that's not enough. We must also hit them where it hurts the most, that being in their pocketbook. Let us remember that they pay no tax on their income, nor do they report it. Any buck that they make is all theirs to keep. If they wish to maintain an illegal profession, they should pay a hefty tax for operation contrary to our laws.

We urge this committee to take favorable action on this much needed legislation. We must send a message to the illegal drug dealers in our state that we are sincere in our efforts to reduce the drug traffic in our state.

Thank You

  
Gene Johnson  
Kansas Community Alcohol  
Safety Action Project  
Coordinator's Association

GJ/1kt



# Kansas Association of Alcohol and Drug Program Directors

March 19, 1987

TO: Members of the Senate Assessment & Taxation Committee  
FROM: Elizabeth E. Taylor, Legislative Consultant to KAADPD  
RE: Support for HB 2140

The Kansas Association of Alcohol and Drug Program Directors represents approximately 45 of the 70 alcohol and drug programs in Kansas. We would like to share our support for HB 2140, the "grass tax", on the grounds that it would provide four benefits to the state of Kansas, and hopefully, the alcohol and drug programs of Kansas:

- It would provide an additional avenue for generating funds to be used in the fight against the social and personal cost of alcohol and drug abuse;
- It would address the tax question of evasion in the underground economy;
- Issuing a tax on these substances would discourage consumption; and
- It would provide another way of prosecuting drug dealers.

In 1986, Minnesota passed the first "grass tax". Since October 1, \$7.8 million has been levied on the drug dealers. Of that amount, \$28,000 has been collected thus far. The other monies are expected to be tied up in court action for some time.

KAADPD supports issuing a tax on the illegal substances and would strongly urge that the monies generated be used in the programs serving the results of the problem of alcohol and drug abuse.

Thank you for the opportunity to present our support for HB 2140.

## *Minnesota finds advantages of taxing illegal drugs*

By PHILIP M. DEARBORN  
and ROBERT D. EBEL  
L.A. Times-Washington Post Service

When a tax on the illegal drug trade was recommended by the Minnesota Tax Study Commission, there were a few snickers, but no one outside the commission paid much attention. What, after all, does state tax policy have to do with drug pushing? When the legislation was introduced in the Minnesota legislature, however, with the support of the State Revenue Department and police officials, it was different: The bill's sponsor received a death threat. No more snickering — this must be pretty serious business.

It is. And, as a result of a far-seeing citizens' commission, good legislative and state agency staff work and some political courage, the "Minnesota grass tax" passed. Beginning last August, the state began requiring drug dealers to buy stamps for their supplies of marijuana, cocaine and other illegal drugs just as cigarette manufacturers and liquor distillers must put stamps on their products. After three months of operation, some local law enforcement officials call it the best piece of anti-narcotics legislation to come along in years.

The Minnesota law is quite simple. It says that drug dealers — people who are in illegal possession of specified minimums of marijuana or controlled substances (thereby exempting licensed pharmacists, persons with prescriptions and casual users) — must pay an excise tax as

follows: \$3.50 per gram on marijuana, \$200 per gram of controlled substances and \$2,000 per 50 dosage units of controlled substances sold by weight. When the tax has been paid, it will be evidenced by a tax stamp printed and sold by the state. Drug dealers arrested in Minnesota are now subject to two actions. First, the usual criminal proceedings from arrest to bail to plea bargaining begin. During this process the pusher is probably soon back on the street on bail or, too often, off to another jurisdiction after jumping bail.

But in addition to the usual judicial proceedings, the state can now prosecute for felony tax evasion if tax stamps are not affixed to the illegal drugs. At the time of arrest, the police call tax officials, who can impose a penalty on the unpaid tax of 100 percent of the tax. The tax and penalty are due whether or not the dealer is convicted on other drug charges.

The tax officials can immediately issue an assessment on the pusher's assets and begin to collect the tax and the penalty. This means that when a pusher selling drugs is caught and has no evidence of the tax stamps, tax officials can bill the pusher for the amount of the tax and penalty due, and initiate collection efforts by attaching motor vehicles, bank accounts, real estate or other assets. In the first three months of use in Minnesota, the state has billed drug dealers for more than \$6 million.

In order to ensure the constitutional protection against self-incrim-

ination, there are very strict confidentiality rules associated with tax payment. Not only is the stamp sale confidential, but the tax records are off limits to local police and interstate data exchange services.

Are taxes on the illegal drug trade an appropriate way to use tax policy? We think there are three good arguments for them:

- Equity. The tax addresses one part of a growing problem — tax evasion occurring in the underground economy. It does not follow that because activities are illegal that their participants should be preferentially treated relative to persons who engage in legal and taxable market transactions.

- Discouraging consumption. Throughout history, taxes have been imposed for "sumptuary" reasons — to discourage consumption of products, such as tobacco and alcohol, held to be morally or ethically undesirable.

- Support for the system of law. The tax creates another way to prosecute drug dealers. They can now be charged with tax evasion in addition to current criminal drug statutes.

defense against the law. The "grass tax" could be used to exploit that weakness.

### About the writers

Drug dealers may be odious characters, but they are also entrepreneurs who must buy, sell and turn a profit to stay in business. The basic commercial aspect of the business creates a weak spot in the dealers'

Philip M. Dearborn is vice president of the Greater Washington Research Center. Robert D. Ebel was director of tax study commissions for the District of Columbia and Minnesota.