

Approved \_\_\_\_\_

Date

4/9/88

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at \_\_\_\_\_  
Chairperson

9:30 a.m. ~~xxx~~ on April 8, 1988 in room 254-E of the Capitol.

All members were present except:

Senators Anderson, Ehrlich, Hoferer and Vidricksen.

Committee staff present:

Mary Galligan , Legislative Research  
Mary Torrence , Assistant Revisor of Statutes  
Emalene Correll , Legislative Research  
June Windscheffel , Committee Secretary

Conferees appearing before the committee:

The Chairman directed the Committee's attention to SB720, concerning cigarette tax exemption for Indians. He pointed out that the Committee did adopt an amendment earlier that was on line 37, where it placed a period and struck the rest. A letter is before the Committee from the Secretary of Revenue, along with some proposed amendments. This is language the Department feels will address the situation. (Attachment #1)

Senator Martin moved the Committee follow the amendment prepared by the Secretary of Revenue. The motion was seconded by Senator Bond.

Senator Morris moved the Committee reconsider its previous action (taken on March 6, 1988). The motion was seconded by Senator Martin. Motion carried.

Senator Bond made the motion that the Committee withdraw the amendment on lines 37 and 38. The motion was seconded by Senator Morris. The motion carried.

Senator Martin then moved for the adoption of the amendments recommended by the Department of Revenue. Senator Bond seconded the motion. The motion carried.

Senator Morris moved to recommend SB720 favorably as amended. The motion was seconded by Senator Martin. The motion carried.

The Chairman asked the Committee to turn its attention to SB703, concerning issuance of citations for alcoholic beverage law violations. The Chairman pointed out this had been discussed by the Committee on a number of occasions.

Senator Martin moved that SB481 be inserted into SB703. Senator Martin withdrew his motion.

Mr. Leonard Robinson, ABC Assistant Attorney General, answered questions from the Committee concerning SB703.

Senator Morris moved that SB481 be reported adversely. The motion was seconded by Senator Martin. The motion carried.

The Committee looked at SB480, but no action was taken. This bill concerns sale and delivery of liquor.

The Committee continued on with discussion concerning SB703. Senator Morris moved that SB404, concerning unlawful use of driver's license or state I.D. card, be amended into SB703. The motion was seconded by Senator Bond. The motion carried. No other action was taken.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,  
room 254-E, Statehouse, at 9:30 a.m. ~~XXXX~~ on April 8, 1988.

The Chairman requested from a Deputy Attorney General an advisory opinion relative to the content of SB598, farm wineries, as amended by the House of Representatives and being considered by the Senate-House Conference Committee. The Deputy Attorney General believed the bill as drafted was non-conforming, and thus subject to the use of home rule by cities under Section 3, (c)(3), possibly providing for Sunday sales of packaged alcoholic liquors.

The Committee looked at SCR1616, concerning lotteries, and SB754, concerning raffles. No action was taken.

Senator Morris moved that the Minutes of March 24, 1988, be approved. The motion was seconded by Senator Bond. The motion carried.

The meeting was adjourned.

786-2750

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

**MEMORANDUM**

**TO:** Senator Edward F. Reilly, Chairman  
Senate Committee on Federal and State Affairs

**FROM:** Harley T. Duncan  
Secretary of Revenue

**RE:** SB 720

**DATE:** April 6, 1988

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The attached "balloon" of SB 720 is language suggested by the Department to address the Indian cigarette issue if the **Committee wishes to pass legislation in this area.**

The amendments on the first page of the balloon would make clear that tax does not apply to sales by Indian tribes or retailers approved by the tribe if the sale occurs on Indian land and is made to a member of an Indian tribe recognized by the Bureau of Indian Affairs. This language is intended primarily to address the situation of Kansas Indians. It would broaden the current situation by exempting sales to a member of any Indian tribe rather than being restricted to members of the tribe owning or approving the retail shop.

The amendments on the second page address primarily the situation of Kansas wholesalers selling to Indian tribes or retailers approved by Indian tribes in other states. In conjunction with the amendments on page one, it would allow a Kansas wholesaler to sell untaxed cigarettes to Indian tribes or retailers approved by Indian tribes in other states.

**I want to emphasize that the Department of Revenue does not necessarily support these amendments.** We believe the position we have taken with respect to sales to Oklahoma tribes is correct under the law and in the best interests of cooperative tax enforcement. If, however, you want to address these subjects, we believe this is the appropriate way to do it and not create unwarranted opportunities for cigarette tax evasion.

cc. Senator Gordon  
Committee Members

General Information (913) 296-3909  
Office of the Secretary (913) 296-3041 • Legal Services Bureau (913) 296-2381  
Audit Services Bureau (913) 296-7719 • Planning & Research Services Bureau (913) 296-3081  
Administrative Services Bureau (913) 296-2331 • Personnel Services Bureau (913) 296-3077

*Senate FSA*  
*4/8/88*  
*Attachment 1*

## SENATE BILL No. 720

By Committee on Federal and State Affairs

3-7

0016 AN ACT relating to cigarette taxation; exempting certain sales  
0017 made to Indians; amending K.S.A. 1987 Supp. 79-3310 and  
0018 repealing the existing section.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 1987 Supp. 79-3310 is hereby amended to  
0021 read as follows: 79-3310. There is imposed a tax upon all ciga-  
0022 rettes sold, distributed or given away within the state of Kansas.  
0023 The rate of such tax shall be \$.24 on each 20 cigarettes or  
0024 fractional part thereof or \$.30 on each 25 cigarettes, as the case  
0025 requires. Such tax shall be collected and paid to the director as  
0026 provided in this act. Such tax shall be paid only once and shall be  
0027 paid by the wholesale dealer first receiving the cigarettes as  
0028 herein provided.

0029 The taxes imposed by this act are hereby levied upon all sales  
0030 of cigarettes made to any department, institution or agency of the  
0031 state of Kansas, and to the political subdivisions thereof and their  
0032 departments, institutions and agencies. *The taxes imposed by*  
0033 *this act shall not be levied upon sales of cigarettes made to an*  
0034 *Indian tribe or to a retailer approved by the tribe if the sales of*  
0035 *cigarettes made by such tribe or its approved retailer take place*  
0036 *upon land owned by such tribe or by the United States govern-*  
0037 *ment in trust for such tribe and such sales are made solely to*  
0038 *members of ~~such tribe.~~*

0039 Sec. 2. K.S.A. 1987 Supp. 79-3310 is hereby repealed.

0040 Sec. 3. This act shall take effect and be in force from and  
0041 after its publication in the Kansas register.

Indian tribes recognized by the  
United States Bureau of Indian  
Affairs.

**79-3321. Unlawful acts.** It shall be unlawful for any person: (a) To possess, except as otherwise specifically provided by this act, more than two hundred (200) cigarettes without the required tax indicia being affixed as herein provided.

(b) To mutilate or attach to any individual package of cigarettes any stamp that has in any manner been mutilated or that has been heretofore attached to a different individual package of cigarettes or to have in possession any stamps so mutilated.

(c) To prevent the director or any officer or agent authorized by law, to make a full inspection for the purpose of this act, of any place of business and all premises connected thereto where cigarettes are or may be manufactured, sold, distributed, or given away.

(d) To use any artful device or deceptive practice to conceal any violation of this act or to mislead the said director or officer or agent authorized by law in the enforcement of this act.

(e) Who is a dealer to fail to produce on demand of the said director or any officer or agent authorized by law any records or invoices required to be kept by said person.

(f) Knowingly to make, use, or present to said director or agent thereof any falsified invoice or falsely state the nature or quantity of the goods therein invoiced.

(g) Who is a dealer to fail or refuse to keep and preserve for the time and in the manner required herein all the records required by this act to be kept and preserved.

(h) To wholesale cigarettes to any person, other than a ~~duly licensed~~ manufacturer's salesman, retail dealer or wholesaler

(i) To have in his or her possession any evidence of tax indicia provided for herein not purchased from the director.

(j) To fail or refuse to permit the director or any officer or agent authorized by law to inspect a carrier transporting cigarettes.

(k) To vend small cigars, or any products so wrapped as to be confused with cigarettes, from a machine vending cigarettes, nor shall a vending machine be so built to vend cigars or products that may be confused with cigarettes, be attached to a cigarette vending machine.

(l) To sell cigarettes to any person under eighteen (18) years of age.

(m) For any person under eighteen (18) years of age to purchase cigarettes.

(n) To sell cigarettes to a retailer or at retail that do not bear Kansas tax indicia or upon which the Kansas cigarette tax has not been paid.

(o) To sell cigarettes without having a license for such sale as provided herein.

(p) To sell cigarette vending machines without having a license as provided herein for sale of vending machines.

who is:

- (1) duly licensed by the State where such manufacturer's salesperson, retail dealer or wholesaler is located, or
- (2) exempt from state licensing under applicable state or federal laws or court decisions.

in Kansas

unless such sales are exempt from the tax imposed by this act under applicable state or federal laws or court decisions.