

Approved 5-2-91  
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at  
Chairperson

3:30 <sup>XX</sup> a.m./p.m. on March 6, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville and Hamilton who were excused

Committee staff present:

Jerry Donaldson, Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Representative Elizabeth Baker  
Representative Barbara Allen  
Cheryl DeBrot, a Respiratory Therapist, registered by the National Board of  
Respiratory Care and the State Board of Healing Arts  
Reverend Richard Taylor, Kansans for Life at It's Best  
Jerry Slaughter, Executive Director, Kansas Medical Society  
Janet Waid, SRS  
Elizabeth E. Taylor, Executive Director, Kansas Tobacco and Candy Distributors  
and Vendors Inc.,  
Paula F. Marmet, Director, Office of Chronic Disease and Health Promotion,  
Department of Health and Environment  
Alan F. Alderson, Legislative Counsel, The Tobacco Institute  
William M. Henry, Topeka Attorney  
Frances Kastner, Director, Governmental Affairs, Kansas Food Dealers Assoc.  
Ronald R. Hein, representing R. J. Reynolds Tobacco, U.S.A.  
Representative Don Smith  
Nikki Adams, representing the Ks. Medical Record Association and Ks. Hospital  
Association.  
Jerry Slaughter, representing the Kansas Medical Society  
Lance Burr, Attorney General for the Kickapoo Tribe  
Steve Cadue, Elected Tribal Chairman of Kickapoo Tribe  
Representative Michael R. O'Neal  
Representative Tim Carmody

The Chairman called for hearing of HB 2212, cigarettes, prohibitions regarding  
minors, sample cigarettes and vending machines.

Representative Elizabeth Baker, a co-sponsor of HB 2212, appeared in support of  
the bill. (See Attachment # 1).

Committee questions followed.

Representative Barbara Allen, a co-sponsor of HB 2212, appeared in support of  
the bill. (See Attachment # 2). Representative Allen distributed a balloon bill  
(Attachment # 3).

Committee questions followed.

Cheryl DeBrot, a Respiratory Therapist, registered by the National Board of  
Respiratory Care and the State Board of Healing Arts, appeared in support of HB  
2212. Ms. DeBrot read testimony in support of HB 2212, from Susie Faulkender,  
a private citizen, suffering from lung disease attributed to cigarette smoking.  
(See Attachment # 4). Ms. DeBrot also presented her own testimony. (See Attachment  
# 5).

Committee questions followed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,  
room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 6, 1991.

Reverend Richard Taylor representing Kansans for Life At It's Best, appeared in support of HB 2212. (See Attachment # 6).

Committee questions followed.

Jerry Slaughter, Executive Director, Kansas Medical Society, appeared in support of HB 2212 (See Attachment # 7).

Janet Waid, representing SRS, appeared in support of HB 2212, excluding new Section 3. (See Attachment # 8).

Elizabeth E. Taylor, Executive Director, Kansas Tobacco Candy Distributors and Vendors, Inc., appeared in support of HB 2212. (See Attachment # 9). Ms. Taylor distributed materials from the "It's the Law" program, which her association sponsors.

Committee questions followed.

Paula F. Marmet, Director, Office of Chronic Disease and Health Promotion, Division of Health, Department of Health and Environment, appeared in support of HB 2212. (See Attachment # 10).

Committee questions followed.

Mr. Alan F. Alderson, Legislative Counsel, The Tobacco Institute, appeared to testify that a compromise position has been worked out with Representative Allen and that her balloon bill (Attachment # 3) removes the severe objections of The Tobacco Institute. (See Attachment # 11).

There were no committee questions.

William M. Henry, Topeka Attorney, appeared on behalf of Philip Morris, U.S.A. Mr. Henry said the proposed amendments are a more fair way to deal with the areas of concern; that Philip Morris can probably concur with the amendments. (See Attachment # 12).

Frances Kastner, Director, Governmental Affairs, Kansas Food Dealers Association, appeared with concerns about HB 2212. Ms. Kastner said if the amended version of the bill is used, her association would appreciate having input. (See Attachment # 13).

Ronald R. Hein, representing R.J. Reynolds Tobacco U.S.A., appeared to oppose HB 2212 in its present form. (See Attachment # 14).

There being no further conferees, the hearing on HB 2212 was closed.

The Chairman called for hearing on HB 2467, access to medical records.

Representative Don Smith appeared to explain that the intent of HB 2467 was to bring about uniformity in charges for copying medical records; that HB 2467 copies an Oklahoma statute verbatim; that it was not the intent to make this a Class B misdemeanor or to impose a fine.

Nikki Adams, representing the Kansas Medical Record Association and the Kansas Hospital Association, appeared in opposition to HB 2467 (See Attachment # 15).

There were no committee questions.

Jerry Slaughter, representing the Kansas Medical Society, appeared in opposition to HB 2467. (See Attachment # 16).

There were no committee questions.

There being no further conferees, the hearing on HB 2467 was closed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S Statehouse, at 3:30 ~~am~~/p.m. on March 6, 1991.

The Chairman called for hearing of HB 2466, allowing Indian Nations to petition the federal government to retrocede from the federal jurisdiction conferring criminal jurisdiction to the State of Kansas.

Lance Burr, Attorney General for the Kickapoo Tribe, was present for the hearing and deferred to Steve Cadue, Elected Tribal Chairman of the Kickapoo Tribe. Mr. Cadue requested the committee to pass HB 2466 to restore the principal of self-determination to the four Indian Nation tribal governments in Kansas. (See Attachment # 17). Mr. Cadue noted that the Cherokee Tribe has self-law in Oklahoma, that the four tribes of Kansas have reached an agreement that 18 USCA 3243 should be rescinded.

Committee questions followed.

Lance Burr reappeared to note that Chairman Wahquaboshkuk of the Prairie Band Pottawatomie Tribal Council had been present to offer testimony but had to depart because of another commitment; that the Iowa Nation could not attend the hearing due to a press conference. Mr. Burr introduced Sandra Keo, representing the SAC and FOX Tribe of Missouri, located at Reserve, Kansas.

Mr. Burr pointed out that the Resolution of the Iowa Tribe (See Attachment # 19) contains the request of the four nations.

Mr. Burr distributed a letter dated 6/8/88 to Mr. Donald P. Hodel, Secretary, U.S. Department of the Interior, Washington, D.C. from Governor of the State of Washington with official State of Washington Proclamation and Resolution enclosed (See Attachment # 18). Mr. Burr said they feel civil jurisdiction lies with the tribes on all matters occurring within the boundaries of the reservation; that if there is a Supreme Court case in the criminal area, that can be handled off the reservation; that HB 2466 would save the state money; that about \$400,000 in federal money would be received by the tribal court system per nation; that some of the federal funds might be passed on to the county for patrols and jail space. Mr. Burr asked the committee to especially note interim study report dated November 22, 1988. Mr. Burr said HB 2466 is needed before going to Congress, so the position of Kansas is clarified.

Steve Cadue reappeared to acknowledge other tribal members in attendance in addition to himself as Chairman: Wilson Wahwassuck, Vice Chairman, Kickapoo Tribal Council; Chief Keo, Elected Tribal Treasurer, Kickapoo Tribal Council; Barbara Simon, Elected Tribal Secretary, Kickapoo Tribal Council.

There being no further conferees, the hearing on HB 2466 was closed.

The Chairman called for hearing on HB 2469, release of taxes during bankruptcy.

Representative Michael R. O'Neal distributed a letter, dated June 15, 1990, from William F. Bradley, Jr., of Hinkle, Eberhart and Elkouri, Attorneys at Law, Wichita, Kansas, to himself requesting an amendment to K.S.A. 79-1703 (b). (See Attachment # 20).

Representative Carmody testified he believes the bill to be excellent and is a proponent.

Committee discussion followed.

Representative Carmody made a motion that HB 2469 be passed. Representative O'Neal seconded the motion. The motion carried.

The meeting adjourned at 5:20 P.M. The next meeting is scheduled on March 7, 1991, at 3:30 P.M. in room 313-S.



ELIZABETH BAKER  
REPRESENTATIVE, EIGHTY-SECOND DISTRICT  
SEDGWICK COUNTY  
601 HONEYBROOK LANE  
DERBY, KANSAS 67037



TOPEKA  
HOUSE OF  
REPRESENTATIVES

CHAIR: SEDGWICK COUNTY  
LEGISLATIVE DELEGATION  
MEMBER: BOARD OF TRUSTEES  
WICHITA STATE UNIVERSITY  
REGIONAL OMBUDSMAN: KANSAS  
COMMITTEE FOR EMPLOYEE  
SUPPORT OF THE GUARD AND  
RESERVE  
COMMITTEE ASSIGNMENTS  
RANKING MINORITY MEMBER: FEDERAL &  
STATE AFFAIRS  
MEMBER: ECONOMIC DEVELOPMENT  
ELECTIONS

**March 6, 1991**

**To: House Committee on Judiciary**

**Re: HB 2212**

**Chairman Solbach, Representative O'Neal and members of the Committee, I appreciate the opportunity to testify before you this afternoon. Recognizing your full agenda and its time limitations, I will keep my remarks brief and to the point.**

**The addictive properties of nicotine are recognized and understood and we are knowledgeable as to the damaging results of tobacco consumption. What we haven't accomplished is to provide a suitable deterrent to that consumption by minors. HB 2212 is a high profile, virtually no-cost piece of legislation that was proposed with the intention of sending a clear message to the young people of Kansas. Smoking is not a decision to be made at a young age! The possession and consumption of tobacco products by minors will not be tolerated in our state and that our children's health is a state priority.**

**As an educator I have observed many minors either smoking, chewing or spitting on and off school property. They are all very much aware that there are no laws governing possession of tobacco products by a minor. Young people need to understand that they must be held accountable for their actions and HB 2212 accomplishes that objective. I urge your favorable support of HB 2212. Thank you.**

*HJUD  
Attachment # 1  
3-6-91*

BARBARA P. ALLEN  
 REPRESENTATIVE, TWENTY-FIRST DISTRICT  
 JOHNSON COUNTY  
 P.O. BOX 8053  
 PRAIRIE VILLAGE, KANSAS 66208  
 (913) 642-1273  
 STATE CAPITOL, ROOM 155-E  
 TOPEKA, KANSAS 66612  
 (913) 296-7640



TOPEKA  
 HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: FEDERAL AND STATE AFFAIRS  
 JUDICIARY  
 PENSIONS, INVESTMENTS AND BENEFITS  
 RULES AND JOURNAL

March 6, 1991

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to appear before you today on H.B. 2212. This bill was introduced with one purpose in mind - to prevent children under 18 from smoking.

The bill makes the following substantive changes to current law.

**New Section 2** 1. Makes it a crime to furnish or attempt to furnish a cigarette or tobacco product to anyone under 18; it is currently illegal to sell cigarettes and smokeless tobacco, but not other tobacco products, to someone under 18. This section also continues the current prohibition on distributing samples of cigarettes or smokeless tobacco to minors.

2. Makes penalty for furnishing cigarette or tobacco products to a minor a class B misdemeanor for which the minimum fine is \$200 - this parallels the current penalty for selling liquor or CMB to a minor. K.S.A. 1990 Supp. 21-3610; K.S.A. 1990 Supp. 21-3610a. Sets up defenses to prosecution for retailers who had reasonable cause to believe the minor was of legal age.

**New Section 3** 1. Makes it a crime for a person under 18 to possess or attempt to possess any cigarette or tobacco product; currently illegal for someone under 18 to purchase, but not illegal to possess. Also, extends the prohibition on purchasing to tobacco products as well as to cigarettes.

2. This section is patterned after and parallels current Kansas law for the purchase or possession of liquor or CMB by a minor. K.S.A. 1990 Supp. 41-727. It places offending minors under the Kansas juvenile offenders code instead of under the Kansas Code For Care Of Children, thus putting teeth in Kansas' law regarding the purchase and possession of cigarettes or tobacco products. While it is currently illegal for a minor to purchase cigarettes, there is no penalty imposed on a "Child in need of care" for doing so, as that act is not intended to punish youth who have broken the law. It is aimed at children who have been abused and neglected.

HJUD  
 Attachment # 2  
 3-6-91

- a) fine of \$100 - \$500 is required
- b) judge may order community service
- c) balloon strikes language providing that court may order educational training program on effects of use of tobacco products, because we know of no such programs currently in place.

Section 5, P. 4, subsection (o) 1. Balloon strikes this language because sampling for minors is already prohibited under current law; prohibition continues under New Section 2.

subsection (p) 2. Requires a retail dealer to display a sign stating "We do not sell tobacco products to persons under 18."

subsection (q) 3. Requires that a cigarette vending machine located on premises open to the general public must be supervised by someone who is 18 or over who is employed on the premises.

Mr. Chairman, I will be happy to stand for questions.

HOUSE BILL No. 2212

By Representatives Baker, Allen, Brown, Flottman,  
Fuller, Lawrence and Samuelson

2-12

9 AN ACT concerning cigarettes and tobacco products; prohibiting  
10 certain acts and providing penalties for violations; amending  
11 K.S.A. 79-3309, 79-3321 and 79-3322 and repealing the existing  
12 sections; also repealing K.S.A. 79-3390.  
13

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

15 New Section 1. As used in sections 2 and 3:

16 (a) "Cigarettes" has the meaning provided by K.S.A. 79-3301 and  
17 amendments thereto.

and includes sample cigarettes

18 (b) "Furnish" means sell, buy for, give or otherwise furnish.

19 (c) "Person" means any individual, association, partnership, lim-  
20 ited partnership, corporation or other entity.

21 (d) "Retail dealer" has the meaning provided by K.S.A. 79-3301  
22 and amendments thereto.

23 (e) "Retailer" has the meaning provided by K.S.A. 79-3370 and  
24 amendments thereto.

25 (f) "Tobacco products" has the meaning provided by K.S.A. 79-  
26 3370 and amendments thereto.

and includes sample tobacco products

27 New Sec. 2. (a) No person shall furnish or attempt to furnish  
28 any cigarette or tobacco product to any person under 18 years of  
29 age.

30 (b) Violation of this section is a class ~~A~~ <sup>B</sup> misdemeanor for which  
31 the fine shall be not less than ~~\$500~~ <sup>\$200</sup>.

32 (c) It shall be a defense to a prosecution under this section if:  
33 (1) The defendant is a retailer or a licensed retail dealer, or an  
34 employee thereof; (2) the defendant sold the cigarettes or tobacco  
35 products to the person with reasonable cause to believe that such  
36 person was 18 or more years of age; and (3) to purchase the cigarettes  
37 or tobacco products, the person exhibited to the defendant a draft  
38 card, driver's license, birth certificate or other official or apparently  
39 official document purporting to establish that such person was 18 or  
40 more years of age.

41 New Sec. 3. (a) No person under 18 years of age shall possess,  
42 obtain, purchase or attempt to possess, obtain or purchase any cig-  
43 arette or tobacco product.

HJUD  
Attachment #3  
3-6-91



1 (b) Any person who violates this section is a juvenile offender  
2 under the Kansas juvenile offenders code. Upon adjudication thereof  
3 and as a condition of disposition, the court shall require the offender  
4 to pay a fine of not less than \$100 nor more than \$500.

5 (c) In addition to any other penalty provided for a violation of  
6 this section, the court may order the offender to do either or both  
7 of the following:

- 8 (1) Perform 40 hours of public service; or
- 9 (2) attend and satisfactorily complete a suitable educational or  
10 training program dealing with the effects of tobacco, drugs or other  
11 chemical substances when ingested by humans.

strike bracketed language

12 Sec. 4. K.S.A. 79-3309 is hereby amended to read as follows:  
13 79-3309. (a) Whenever the director ~~shall have~~ has reason to believe  
14 that any dealer in cigarettes has violated any of the provisions of  
15 the cigarette tax law, *or whenever the director has reason to believe*  
16 *that a retail dealer has violated section 2*, the director shall notify  
17 such dealer by registered or certified mail of the director's intention  
18 to suspend or revoke the license or licenses of such dealer. Within  
19 10 days after mailing such notice, such dealer may request a hearing  
20 in writing before the director. The hearing shall be conducted in  
21 accordance with the provisions of the Kansas administrative proce-  
22 dure act. If, after such hearing, it appears to the satisfaction of the  
23 director that such dealer has violated any of the provisions of the  
24 cigarette tax law, the director ~~is hereby authorized and empow-~~  
25 ~~ered to~~ may suspend or revoke the license or licenses of any such  
26 dealer and may, in addition, may deny the application of any such  
27 dealer for a license or licenses for a portion of the succeeding calendar  
28 year for such period as the director determines is necessary but in  
29 no case for a period ending more than one year following the date  
30 upon which such license or licenses were suspended or revoked.

31 (b) The suspension or revocation of the vending machine oper-  
32 ator's master license shall suspend or revoke all vending machine  
33 permits issued to such vending machine operator for the term of  
34 such suspension or revocation of such license.

35 (c) If any dealer ~~shall continue~~ continues to sell cigarettes at  
36 any dealer establishment or from a vending machine, after having  
37 notice or knowledge of the suspension or revocation of a license or  
38 permit issued to such dealer for such establishment or vending ma-  
39 chine, or ~~shall continue~~ continues for more than 10 days after  
40 becoming delinquent in the payment of any tax, penalty or interest,  
41 to sell cigarettes, the state shall be entitled, in any proceedings  
42 brought for such purposes, to have an order and judgment restraining  
43 and enjoining such unlawful sale and no bond shall be required for

3-3

1 the issuance of any such restraining order or injunction.

2 Sec. 5. K.S.A. 79-3321 is hereby amended to read as follows:  
3 79-3321. It shall be unlawful for any person:

4 (a) To possess, except as otherwise specifically provided by this  
5 act, more than 200 cigarettes without the required tax indicia being  
6 affixed as herein provided.

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

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

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

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

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

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

27 (h) To wholesale cigarettes to any person, other than a manu-  
28 facturer's salesman, retail dealer or wholesaler who is:

29 (1) Duly licensed by the state where such manufacturer's sales-  
30 person, retail dealer or wholesaler is located; or

31 (2) exempt from state licensing under applicable state or federal  
32 laws or court decisions including any such person operating as a  
33 retail dealer upon land allotted to or held in trust for an Indian tribe  
34 recognized by the United States bureau of Indian affairs.

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

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

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

3-4

1 (l) To sell cigarettes to any person under 18 years of age.  
2 (m) For any person under 18 years of age to purchase  
3 cigarettes.

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

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

9 (p) (n) To sell cigarette vending machines without having a li-  
10 cense as provided herein for sale of vending machines.

11 (o) Who is a dealer, or any person on behalf of a dealer, to give  
12 away, or distribute or sell for less than cost, any package of ciga-  
13 rettes, including packages of sample cigarettes, on premises open to  
14 the public, except that a dealer may, so long as not otherwise pro-  
15 hibited by law: (1) Give away cigarettes on premises which are closed  
16 to the public and which are owned, leased or rented by the dealer;  
17 or (2) give cigarettes to friends or family members of the dealer;

delete bracketed language

18 (p) Who is a retail dealer to fail to maintain in a conspicuous  
19 place at each dealer establishment a sign, in a size and form pre-  
20 scribed by the director, stating "We require ID for tobacco  
21 purchases."

(o)

do not sell tobacco products to persons under 18

22 (q) To vend cigarettes from a vending machine located on prem-  
23 ises open to the public unless such machine is in the view of and  
24 supervised by a person 18 or more years of age who is employed  
25 on such premises.

(p)

general

26 Sec. 6. K.S.A. 79-3322 is hereby amended to read as follows:  
27 79-3322. (a) Any person who violates any of the provisions of this  
28 act, except as otherwise provided in this act, shall be guilty of a  
29 misdemeanor and upon conviction shall be punished by a fine of  
30 not more than \$1,000 or imprisonment for not more than one year,  
31 or by both. In addition thereto any person found liable for any license  
32 or permit fee or tax imposed under the provisions of this act shall  
33 be personally liable for such license or permit fee or tax plus a  
34 penalty in an amount equal to 100% thereof.

35 (b) Any person who violates this act by distributing sample  
36 cigarettes or sample smokeless tobacco to any person under 18  
37 years of age shall be guilty of a misdemeanor and upon con-  
38 viction shall be punished by a fine of not less than \$500 nor  
39 more than \$2,500 or imprisonment for not more than one year,  
40 or by both.

41 (c) (b) Any agent, employees or others who aid, abet or otherwise  
42 participate in any way in the violation of this act or in any of the  
43 offenses hereunder punishable shall be guilty and punished as prin-

1 cipals to the same extent as any person violating the act.  
2 Sec. 7. K.S.A. 79-3309, 79-3321, 79-3322 and 79-3390 are hereby  
3 repealed.  
4 Sec. 8. This act shall take effect and be in force from and after  
5 its publication in the statute book.

3-5

## Testimony to the House Judiciary Committee

My name is Susie Faulkender and I am here today to testify in support of House Bill 2212. I am 59 years old and suffer with emphysema, chronic bronchitis, and asthma. I need the oxygen that is coming through this cannula into my nose in order to be able to live and be able to do things.

I started smoking at age 15 because everybody else was smoking. When I first started, I was only smoking not even a pack a day. Cigarettes such as Lucky Strikes were heavily promoted on large billboards and through catchy radio jingles. By the time I was 18, I was smoking at least one pack a day. To me smoking is more addictive than alcohol or drugs. I was at home more by the time I was 22 with our daughter and was up to two packs per day. Around the age of 35, I started smoking three packs a day. I usually smoked a pack of cigarettes in the morning before leaving for work.

I used to work at the Caravan Supper Club here in Topeka. The late Governor Robert Docking and many legislators came to socialize there. Many of them smoked at that time. As we know, the Governor died from emphysema.

This lung disease has changed my life. It will never be the same again. I get mad at myself because I smoked and sometimes feel angry at everybody and everything. This has affected my nerves. My whole life depends on what I can do or where I can go from day to day depending on how my lung disease is doing at that time. My appearance has been changed because of it and the medicines that I have to take. I can't do the activities that I used to do with my grandkids. My family is definitely affected now because I couldn't quit smoking when I should have.

If you want to do something to ruin your health and your life, keep smoking.

HJUD  
Attachment #4  
3-6-91

I am in support of this bill because I don't want my grandkids to be able to easily obtain cigarettes. I am one of many examples of what the addictiveness of smoking can do to somebody. I don't want young people to go through in the future what I am going through today, tomorrow, and the day after tomorrow.

My name is Cheryl DeBrot and I am a Respiratory Therapist Registered by the National Board of Respiratory Care as well as with the State Board of Healing Arts. I am here to testify in support of HB 2212 as representative of the Kansas Respiratory Care Society . Because of my experience in Pulmonary Rehabilitation, I have particularly strong feelings and opinions about this legislation.

I will list here only some of the facts about smoking as published in the 1989 Report of the Surgeon General as well as in the Public Citizen Health Research Group 1989.

1. Approximately \$65 billion/year spent in lost wages and productivity.
2. 33% of U.S. population are smokers. Deaths due to smoking approximately 390,000/yr or 1/6 deaths per year.
3. Cigarettes are the only legal product that when used as intended, cause death. (Dr. L. Sullivan-Section of Health and Human Services)
4. "One cigarette contains 2000times more benzene than the perrier water recalled because of benzene contamination." (Senator Kennedy at recent hearing on tobacco regulation.)
5. Smoking is a contributing factor in bladder, pancreatic, and renal cancer. It is also associated with gastric and cervical cancer.

Every day more than 3,000 youngsters begin smoking. Most start before their 14th birthday, and by the time they are 18 they are heavily addicted to nicotine.(Tobacco and Youth Reporter, STAT). Dr. Jack Henningfield, Chief of the Clinical Pharmacology Branch of the National Institute on Drug Abuse Addiction Research Center has written the following:

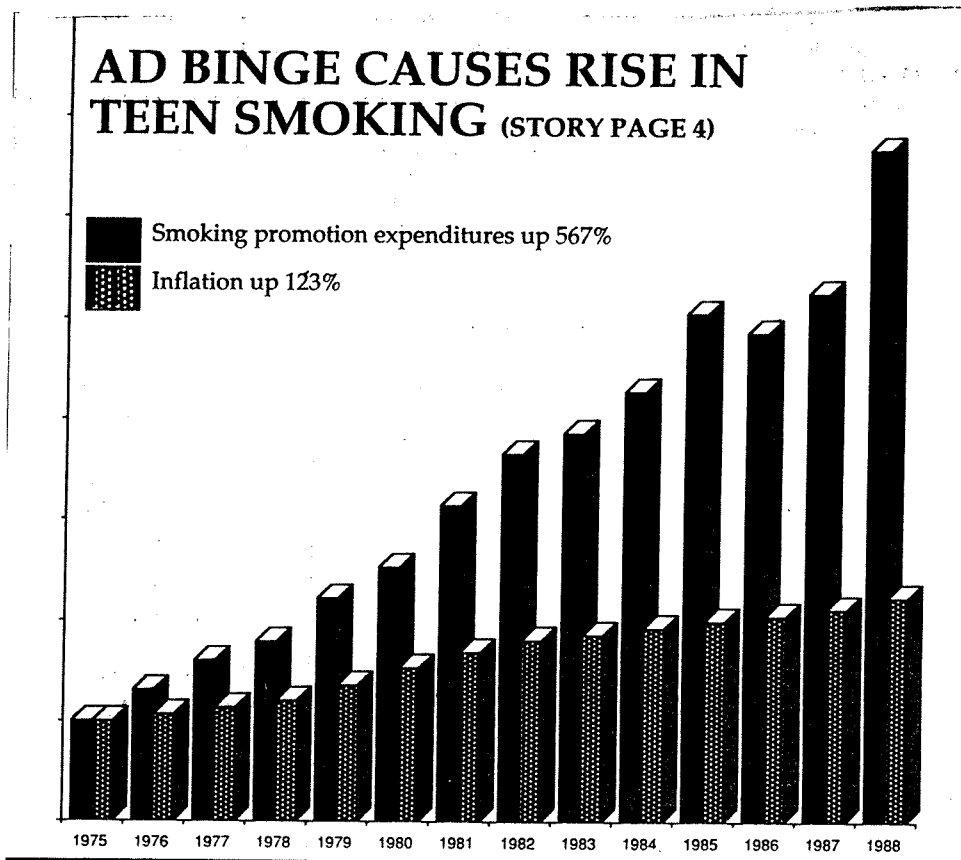
Our research has shown that, whereas cigarette smokers increase their usage gradually, reaching a peak level of cigarette consumption after about eight years of regular smoking, smokeless tobacco users increase their daily dosage rapidly, peaking in about two years. This rapid escalation in nicotine-dependence with smokeless is probably a direct outcome of the targeted marketing of starter products with subsequent "graduation" to higher nicotine products...In much the same way that smoking can pave the way for illicit tobacco use by teaching the young person to use a chemical substance to modulate

17JUD  
Attachment #5  
3-6-91

moods and cope with stress, smokeless tobacco can serve as a gateway drug.....Reducing tobacco use is one of the most important elements in all long-range strategies for reducing drug addiction.

A survey of incoming college freshmen for the class of 1992 found that smoking rates were sharply higher than in previous years, reversing a 22-year trend. The survey of 308,000 incoming freshmen by the American Council on Education and the Higher Education Research Institute of UCLA determined that smoking ~~smoking~~ rates increased by 13.5% between 1987 and 1989. (Tobacco and Youth Reporter, STAT)

The following graph, helps to explain why.



I have distributed among you examples of the kinds of advertising that is being placed in those media that appeal to the youth market. Simply put, these corporations are not tobacco companies; they are nicotine pushers.



The reason that serious consideration of this bill is needed on your part is obvious. We do not stand in condemnation of the smoker but rather seek to help in any way that we can to intervene early in this devastating addictive cycle. The impact on us as individuals, families, communities, states, and as a nation are incalculable..

One thousand people at least will die today in America because of smoking. Tomorrow, one thousand people will die from smoking. Friday, one thousand people at least will die from smoking. On behalf of these victims and the future victims of nicotine dependency, don't close your eyes to the problem. Begin the process of leading Kansas and these future citizens of the 21st century into a healthier and saner lifestyle.

Many may consider this bill radical, but the truth of the matter is that the nicotine dependency problem is radical and continues to call for radical and innovative solutions.

March 6, 1991 3:30 p.m.  
Hearing on House Bill 2212  
House Judiciary Committee

Rev. Richard Taylor  
KANSANS FOR LIFE AT ITS BEST!

SMOKERS' RIGHTS on car bumpers reminds me of a similiar slogan carried into Lawrence by Sheriff Jones and his lawless gang who sacked the city in 1856. Most persons remember Quantrell and his murdering band, but that TERRORISM was years later.

THE ENGLISHMAN IN KANSAS is a book by T. H. Gladstone, a correspondent of the London TIMES who was here in 1856 so he could report first hand what was taking place in "bleeding Kansas." Attached are three pages from his book.

CHOICE, a service of R. J. Reynolds Tobacco Company, is a mailing sent nationwide to help tobacco companies make more money. As southern slave holders fought desperately to maintain their "liberty" and "freedom" to profit from human slavery, so tobacco companies are fighting desperately to maintain their "liberty" and "freedom" to enslave human beings to their addicting and deadly drug.

SOUTHERN RIGHTS meant the right to exploit human beings through chattel slavery so their owners could make more money.

SMOKERS' RIGHTS means the right to exploit human beings by promoting sales of a product that brings sickness and death so tobacco companies can make more money.

To maintain current sales, tobacco companies must replace dead smokers. This poster from STAT, Stop Teenage Addiction to Tobacco, ought to be required by law to be displayed in all places where tobacco products are sold.

Tobacco companies proclaim loudly their support for FREEDOM OF CHOICE. This poster would help persons make an informed choice. Tobacco companies will want to support such a law.

HB 2212 should be a step in the right direction - if you are concerned for public health.

Respectfully yours,

*Richard Taylor*

## STAT

Stop Teenage Addiction to Tobacco

P.O. Box 50039 • Palo Alto, CA 94303  
(408) 943-9747

P.O. Box 60658  
Longmeadow, MA 01116 (413)567-7587



June 1988

Special Friends of STAT:

I thought you would enjoy the enclosed poster, "Replacement Smoker" by Vern Herschberger. Vern created this painting exclusively for STAT; I hope it will find a place on your wall.

HJD  
Attachment #6  
3-6-91

their brass howitzer and some small pieces, the only arms that were not private property. Jones then demanded the removal of the furniture from the hotel, stating that the District Court for Douglas County had adjudged the hotel and the two free-state newspaper offices to be nuisances, and as nuisances to be removed, and that he was there as Sheriff to execute these indictments, and summarily remove the obnoxious buildings.

In the mean time the forces had left the hill, and were at the entrance of the town, under Titus and Buford, Atchison and Stringfellow. General Atchison's address to his men on this occasion may be cited as an example of the mode of speech adopted by a late Vice-President of the United States. From various reports of it made at the time, the following is gathered, being in substance and language that in which all agree:—

“Boys, this day I am a Kickapoo ranger, by —. This day we have entered Lawrence, ‘Southern Rights’ inscribed on our banners, and not one — abolitionist has dared to fire a gun. No, by —, not one! This, boys

is the happiest day of my whole life. We have entered the — city, and to-night the abolitionists will learn a Southern lesson that they will remember to the day of their death. And now, boys, we will go in with our highly honourable Jones, and test the strength of that — Free-state Hotel, and learn the Emigrant Aid Society that Kansas shall be ours. Boys! ladies should be, and I trust will be, respected by all gentlemen; but, by —, when a woman takes on herself the garb of a soldier by carrying a Sharpe's rifle, then she is no longer a woman, and, by —, treat her for what you find her, and trample her under foot as you would a snake. By —, come on, boys! Now to your duties to yourselves and your Southern friends! Your duty I know you will do; and if a man or woman dare to stand before you, blow them to hell with a chunk of cold lead!”

Thus inspired by their leaders, the Sheriff's posse, or rather the armed and inflamed rabble, proceeded to their work of demolition. The South Carolinians planted the red flag, with its lone star and its inscription of “Southern Rights,” upon the roof of the large hotel. The banner of the Doniphan Tigers bore the

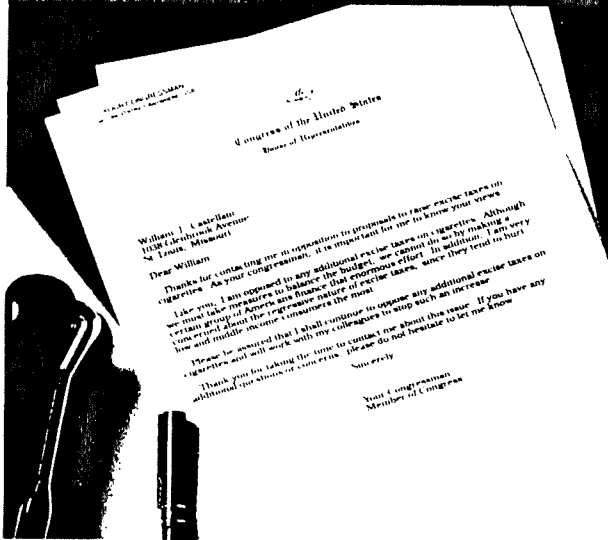
device of a tiger rampant. Another flag had black and white stripes; and a fourth displayed in blue letters on a white ground the following admonitory lines:—

“Let Yankees tremble,  
And abolitionists fall!  
Our motto is,  
‘Give Southern rights to all.’”

The newspaper offices were the first objects of attack. First that of the *Free State*, then that of the *Herald of Freedom*, underwent a thorough demolition. The presses were in each case broken to pieces, and the offending type carried away to the river. The papers and books were treated in like manner, until the soldiers became weary of carrying them to the Kaw, when they thrust them in piles into the street, and burnt, tore, or otherwise destroyed them.

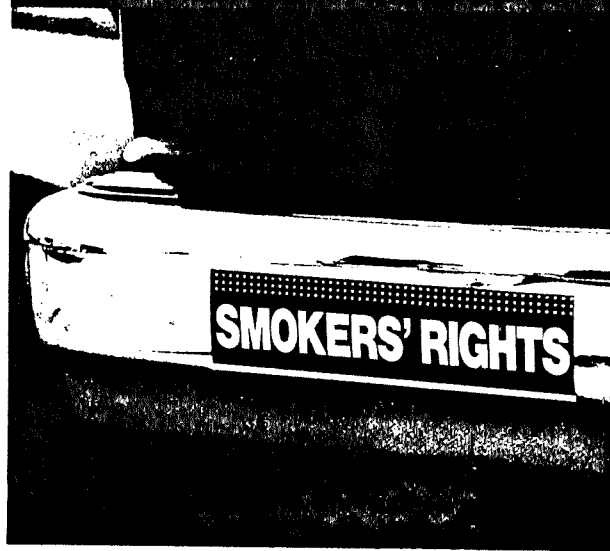
From the printing offices they went to the hotel. The Eldridge House, or Free-state Hotel, was a building of size and strength. It was solidly built of stone and concrete, consisted of three stories above ground, had a breadth of five windows in the front, and

**SEND US  
ONE OF THESE**



When William Castellani of St. Louis, Mo., found out how his officials planned to vote on a cigarette tax hike, he sent copies of his officials' letters to CHOICE. We appreciate hearing from smokers who've taken action to protect their rights. If you've received similar letters from your officials, send us copies so we can share their views with other smokers in your area!

**AND WE'LL SEND YOU  
ONE OF THESE**



We'll send you a Smokers' Rights bumper sticker when we receive copies of your officials' letters. With this sticker on your car, there'll be no mistake about where *you* stand on smokers' rights!

Send us copies of your officials' letters today. Mail them to "Official Letters," c/o CHOICE, P.O. Box 650238, Dallas, TX 75265-9662.

## In The Cradle Of Liberty, Freedom Is Vanishing

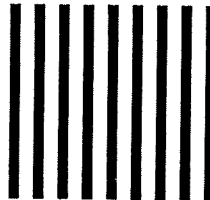
MARBLEHEAD, Mass. — Rocco Losano sits at a table in what was once his restaurant's smoking section. "I've found that the old adage is true," he says with an air of resignation. "You can't fight City Hall."

Smokers who have fought City Hall, and won, would disagree. But considering Rocco's experience, you can't blame him for feeling the way he does. Anonymous complaints and a zealous local government have left Rocco's restaurant completely no-smoking — and his smoking customers out in the cold.

Cast your line into this seafaring community, and you're cer-

fold where indicated. ▼

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



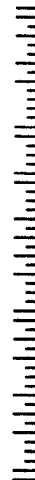
*R.J. Reynolds*  
Tobacco Company

P.O. Box 453  
Winston-Salem, NC 27102

**BUSINESS REPLY MAIL**  
FIRST CLASS PERMIT NO. 2312 DALLAS, TEXAS

POSTAGE WILL BE PAID BY ADDRESSEE

R.J. REYNOLDS TOBACCO COMPANY  
PO Box 650238  
Dallas TX 75265-9662





## KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383  
Kansas WATS 800-332-0156 FAX 913-235-5114

March 6, 1991

TO: House Judiciary Committee

FROM: Jerry Slaughter  
Executive Director *J. Slaughter*

SUBJECT: HB 2212; Concerning Cigarettes and Tobacco Products

The Kansas Medical Society appreciates the opportunity to appear and express our support for HB 2212. We support this bill in principal, because anything we can do in terms of public policy that discourages young Kansans from smoking is a step in the right direction. HB 2212 appears to work towards that objective, and it is this concept that we support.

Cigarette smoking is the most harmful of all the personal vices. In our country it kills 350,000 per year, equivalent to three fully loaded 747s going down each day. The health risks associated with smoking are well documented and well known. The cigarette smoker has twice as many heart attacks, four times as many strokes, 300 times more lung cancer, 300 times more emphysema and bronchitis, and twice the incidence of high blood pressure. Smokers are less healthy, less vigorous and spend twice as much time in the hospital than non-smokers. Heavy smokers spend four times as much time in the hospital. Obviously, the cost in terms of both diminished health and increased health care expenditures is substantial as a result of smoking. Statistics show that if you can prevent or discourage young people from taking up smoking, they are less likely to smoke in later years. That is why legislation such as this which creates a disincentive for young people to smoke is good public policy.

We appreciate the opportunity to offer these comments in support of HB 2212.

JS:ns

*HJUD  
Attachment # 7  
3-6-91*

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony before

House Judiciary Committee

regarding

**House Bill 2212**

March 6, 1991

Carolyn Risley Hill  
Acting Commissioner  
Youth & Adult Services  
Department of Social and  
Rehabilitation Services  
(931)296-3284

HJUD  
Attachment #8  
3-6-91

TESTIMONY IN SUPPORT OF HOUSE BILL 2212

**AN ACT concerning cigarettes and tobacco products; prohibiting certain acts and providing penalties for violation; amending KSA 79-3309, 79-3322 and repealing the existing sections; also repealing KSA 79-3390.**

Mr. Chairman, Members of the Committee, I appear today in support of House Bill 2212, excluding New Section 3.

Scientific research certainly substantiates that the usage of products containing nicotine are not only habit forming but also a detriment to ones health. The younger an individual is when they use such a product the more difficult it is to change the habit. More importantly the risk is even greater that they will develop one of the many diseases related to the use of such products. The Department of Social and Rehabilitation Services has a commitment to the well being and protection of children. Taking steps to prevent persons from furnishing cigarette or tobacco products to any person under 18 years of age; providing education to minors regarding the usage of such products and the health hazards involved; and preventing the industry from targeting minors through advertising are positive ways to address the problem.

Such preventive measures are positive steps in dealing with the current and future health problems related to the use of cigarette or tobacco products by persons under 18 years of age.

The Department also supports holding any person over 18 years of age responsible if they "furnish" such products to a person under 18 years of age.

The Department of Social and Rehabilitation Services must oppose New Section 3 of House Bill 2212, which states that any person under 18 years of age is a juvenile offender under the Kansas Juvenile Offender Code on the basis that the number of young people currently using tobacco products would overwhelm the courts and SRS resources.

Carolyn Risley Hill  
Acting Commissioner  
Youth & Adult Services  
Department of Social and  
Rehabilitation Services  
(913)296-3284



# Kansas Tobacco-Candy Distributors & Vendors, Inc.

Elizabeth E. Taylor - Executive Director

President

RONDA WASSENBERG (06-92)  
Marysville, Kansas

Vice President

TOM GUTHRIE (06-92)  
Kansas City, Kansas

Secretary

ROBERT PIOTROWSKI (06-91)  
Fort Scott, Kansas

Treasurer

RON OSWALD (06-91)  
Lawrence, Kansas

Chairman of the Board of Directors

JOE WESTERMAN (06-92)  
Iola, Kansas

Directors

DUANE ZARGER (06-92)  
Leavenworth, Kansas

MICHAEL MADDOCK (06-92)  
Overland Park, Kansas

JOHN FRAZEE (06-92)  
Paola, Kansas

DAVID GREENE (06-92)  
El Dorado, Kansas

GEORGE LAWRENCE (06-91)  
Hutchinson, Kansas

DOYLE PEPPER (06-91)  
Topeka, Kansas

FRANK ROTH (06-91)  
Salina, Kansas

Directors at Large

KENNETH HAGMAN  
Pittsburg, Kansas

DAVE MINICH  
Overland Park, Kansas

FRED STEVENS  
Wichita, Kansas

GALE CYNOVA  
Junction City, Kansas

March 6, 1991

TO: House Judiciary Committee  
Representative Solbach, Chair

FR: Elizabeth E. Taylor, Executive Director

RE: Support for HB 2212

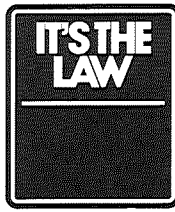
The Kansas Tobacco & Candy Distributors & Vendors Association is made up of the grocery wholesalers and vendors in Kansas selling and/or vend tobacco, candy, groceries, paper products, snacks and juices, health & beauty aids and other related items to retail stores, restaurants, concessions, etc. throughout Kansas and adjoining states. Most of our wholesale houses and vendors are family owned and operated businesses and have been in existence for an average of twenty years.

In the state of Kansas, our Association is the sole official sponsor of the "It's the Law" program designed to uphold the restriction of sales of tobacco products to children under 18 as provided by the law. In this capacity, we do support the concepts presented in HB 2212 and want to ensure that the philosophy behind this measure is to disallow the sale to minors while not imposing any restrictions on the sale of any legal product to adults. Further, we would hope that before we utilize the businessman to police our children's actions, that the responsibility for the actions of these children might fall rightly on parents and others with direct impact.

Thank you for the opportunity to express our support for the concepts of HB 2212.

HJUD  
Attachment # 9  
3-6-91





## **PROGRAM SUMMARY:**

# **A Tobacco Product Retailing Program for Retail/Vending Industries**

### **Objectives**

- To continue to discourage those who are underage from purchasing tobacco products.
- To reaffirm that the tobacco industry does not want young people to use tobacco products -- and continues to take affirmative steps to reinforce this position.

### **Background**

In the face of growing concerns about smoking by those who are underage, the tobacco industry is calling upon the retailers and vending machine operators who sell tobacco products to visibly demonstrate adherence to both state laws and our own conviction that the use of tobacco products is an adult decision.

The issue of smoking by those who are underage is attracting increased attention around the country. In some localities, "sting" operations designed to trap retailers selling tobacco products to those who are underage have been staged. Violators are being prosecuted. The penalties, which vary among localities, may include stiff fines and jail terms. Those who have a retail tobacco license may face the loss of that license.

This program is designed to assist the retailing and vending machine industries, and to enlist their support and cooperation in discouraging the sale of tobacco products to those who are underage.

### **Participants**

The primary audiences for this tobacco retailing program include:

- Convenience stores
- Grocery stores
- Drug stores
- Discount stores
- Small independent businesses (e.g., "mom and pop stores")
- Gas stations
- Vending machine industry
- Other retail outlets (e.g., truck stops, etc.)

### **Messages**

This program is designed to convey several messages, including:

- Smoking is an adult custom based on informed choice.

9-2

(over please)

- It is against the law in most states to sell tobacco products to those who are underage. Due to growing anti-tobacco activities and the focus on sales to youth, the law can and should be enforced. Retailers are therefore urged to participate in the program.
- Publicly participating in a program such as this can improve community relations as retailers not only continue to address the issue of youth access to tobacco but are seen as doing so.

## **Theme**

The theme of the campaign, which will be incorporated into all program materials, is as follows:

**IT'S THE LAW;  
WE DO NOT SELL TOBACCO PRODUCTS  
TO PERSONS UNDER 18**

(OR 19, IF THE STATE LAW DESIGNATES 19 AS THE MINIMUM AGE)

## **Program Materials**

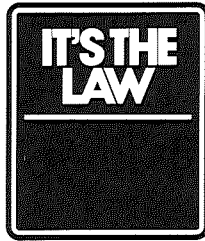
We have designed a package of print and display materials for use by the tobacco product retailer. Materials include:

- A state-specific brochure describing the program and applicable laws. The brochure, in addition to detailing minimum age laws for a state and penalties for violation, provides tips to the retailer and the employee on verification of age, acceptable forms of identification, and how to deal with a customer who becomes upset when asked for identification. The brochure includes a tip sheet on how to verify age, for display at the cash register as a reminder when employees prepare to ring up a sale.
- Storefront and window display signs and point-of-purchase materials, all bearing the program theme: "It's the Law: We do not sell tobacco products to persons under 18." These colorful blue, orange and white signs and decals will assist store owners in reminding employees and customers of the state law and their compliance with it.
- Lapel buttons, also using the blue-orange-white colors and the program theme, for store employees to wear while on duty.
- Employee Acknowledgement Form.

Materials are available only in states whose minimum age for purchase of cigarettes is 18 or 19.

## **Distribution**

Distribution will be through the membership of the co-sponsoring organizations. The Tobacco Institute will provide promotional kits in numbers requested by the sponsoring organization. All program materials will be provided at no cost to the co-sponsoring organization and its members.



## Employee Acknowledgement

I have read the "It's the Law" brochure and understand the requirements mandated by state law with respect to the prohibition of the sale of cigarettes and other tobacco products to underage persons.

---

*(Employee)*

---

*(Date)*

# Multiple State Order Form

(please indicate amounts in the spaces provided)

	State-Specific Brochure	Decals			Button	Employee Acknowledgement Form
		5 1/2 x 7 1/2	2 x 11	3 x 4		
AL (19)	_____	_____	_____	_____	_____	_____
AK (19)	_____	_____	_____	_____	_____	_____
AZ	_____	_____	_____	_____	_____	_____
AR	_____	_____	_____	_____	_____	_____
CA	_____	_____	_____	_____	_____	_____
CO	_____	_____	_____	_____	_____	_____
CT	_____	_____	_____	_____	_____	_____
FL	_____	_____	_____	_____	_____	_____
HI	_____	_____	_____	_____	_____	_____
ID	_____	_____	_____	_____	_____	_____
IL	_____	_____	_____	_____	_____	_____
IN	_____	_____	_____	_____	_____	_____
IA	_____	_____	_____	_____	_____	_____
KS	_____	_____	_____	_____	_____	_____
ME	_____	_____	_____	_____	_____	_____
MA	_____	_____	_____	_____	_____	_____
MD	_____	_____	_____	_____	_____	_____
MI	_____	_____	_____	_____	_____	_____
MN	_____	_____	_____	_____	_____	_____
MS	_____	_____	_____	_____	_____	_____
NE	_____	_____	_____	_____	_____	_____
NV	_____	_____	_____	_____	_____	_____
NH	_____	_____	_____	_____	_____	_____
NJ	_____	_____	_____	_____	_____	_____
NY	_____	_____	_____	_____	_____	_____
ND	_____	_____	_____	_____	_____	_____
OH	_____	_____	_____	_____	_____	_____
OK	_____	_____	_____	_____	_____	_____
OR	_____	_____	_____	_____	_____	_____
PA	_____	_____	_____	_____	_____	_____
RI	_____	_____	_____	_____	_____	_____
SC	_____	_____	_____	_____	_____	_____
SD	_____	_____	_____	_____	_____	_____
TN	_____	_____	_____	_____	_____	_____
TX	_____	_____	_____	_____	_____	_____
UT (19)	_____	_____	_____	_____	_____	_____
WA	_____	_____	_____	_____	_____	_____
WV	_____	_____	_____	_____	_____	_____
WI	_____	_____	_____	_____	_____	_____

(Over, please)

Please Print Clearly:

Chain Name \_\_\_\_\_

Contact \_\_\_\_\_ Title \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_

If you wish to have your order sent to a regional address, please attach a list indicating where you want the materials shipped and those states you wish to have sent to each location. Return order form in the postage paid envelope provided.

9-6



# State of Kansas

Joan Finney, Governor

Department of Health and Environment

Division of Health

Stanley C. Grant, Ph.D., Acting Secretary

Landon State Office Bldg., Topeka, KS 66612-1290

Reply to: \_\_\_\_\_

FAX (913) 296-6231

Testimony presented to  
House Judiciary Committee

by

The Kansas Department of Health and Environment

House Bill 2212

I am pleased to present testimony as a representative of the Kansas Department of Health and Environment in support of House Bill 2212. Tobacco is the number one preventable cause of death in our country. Adoption of this proposal would provide an important step towards helping our Kansas youth avoid the health consequences of nicotine addiction.

Each year approximately 390,000 Americans die from tobacco-related illness. This includes 21 percent of all coronary heart disease deaths, 87% of lung cancer deaths and 30% of all cancer deaths. Cigarette smoking during pregnancy accounts for 20 to 30 percent of low birth weight babies, up to 14 percent of preterm deliveries, and about 10 percent of all infant deaths.

Of the 54 million Americans who smoke, 90% began smoking as teenagers. The average age of initiation is 13 years. Because nicotine is an addicting drug, a minor who starts smoking is likely to be a lifelong smoker--and one in four will die prematurely of lung cancer or other smoking-related disease. In Kansas, there are at least 3,200 deaths attributable to smoking each year.

On the average, each smoker who dies from a smoking-related disease loses 15 years of life compared with his or her nonsmoking counterparts. Costs to society amount to an astounding \$53 billion nationally each year. The smoking attributable economic costs to Kansas is over \$370 million each year.

Each day more than 3,000 teenagers start smoking--that amounts to more than 1 million annually. A Journal of the American Medical Association article estimates that more than 3 million American children under age 18 consume 947 million packs of cigarettes yearly. A wide array of factors promote smoking by children, including peer pressure, parental smoking behavior, lack of knowledge and understanding of health consequences, advertising and promotion and the easy availability of cigarettes in unsupervised vending machines (1989 Surgeon General's report). Many of these individuals will become addicted to a lifetime of tobacco use and ultimately suffer from a smoking-related disease.

HJUD  
Attachment # 10  
3-6-91

Charles Konigsberg, Jr., M.D., M.P.H.

Director of Health

(913) 296-1343

Director of Environment

(913) 296-1535

Lorne Phillips, Ph.D.

Director of Information

Systems

Roger Carlson, Ph.D.

Director of the Kansas Health

and Environment Laboratory

Advertising has a significant influence on the youth of America. Despite the claims of the tobacco companies that they discourage underage youth from purchasing tobacco products, the industry spends billions of dollars each year on ads that make smoking look like a glamorous, danger-free pastime.

Nicotine is an addictive substance. Former Surgeon General C. Everett Koop warned in his 1988 Surgeon General's report that nicotine is as addictive as heroin and cocaine. He recommended licensing of those who sell tobacco products and tougher laws prohibiting their sale to minors. In 1990, a report by the Inspector General of the US Department of Health and Human Services (HHS) was published describing results of a national study that assessed the enforcement of State laws prohibiting the sale of cigarettes to minors. The report concluded that, despite the fact that 44 States have laws to restrict the sale of tobacco products to minors, these laws are not being enforced. Children can easily purchase cigarettes, and active efforts to enforce laws are few. The 1991 national high school senior drug abuse survey revealed that while use of alcohol, marijuana cocaine and PCP continue to decrease, cigarette smoking by high school seniors has remained constant since 1984. In response to the alarming statistics regarding the health effects of tobacco use by youths, Louis W. Sullivan, MD, Secretary of the Department of Health and Human Services has declared the availability of tobacco to minors as a national health priority to be addressed in this decade.

A series of surveys conducted in Wichita and Topeka demonstrate that the same easy access to tobacco exists in Kansas. By virtue of current Kansas law, (KSA 79-3321 and KSA 79-3390) it is unlawful to sell tobacco products to minors. Two surveys of Kansas retail merchants were conducted by mail in 1989 and 1990. These surveys revealed that 91% of the Topeka merchants who responded to the survey were aware of the law. 98% of the statewide sample of retailers who responded to the survey indicated that they were aware of the law. (The response rate for each survey was 35% and 38% respectively.)

Kansas retailers' knowledge of the law is not reflected in actual practice, however. A 1988 study published in The Journal of Family Practice demonstrated that two minors aged 12 and 15 years who attempted to purchase tobacco products in 67 Wichita retail stores were able to purchase tobacco 34% of the time. The surveyed stores represented 20% of the grocery stores, convenience stores, gas stations and drugstores in the community. Although grocery stores sold cigarettes to the minors 50% of the time, the most dramatic difference in success related to source was reflected in vending machines. The minors were able to purchase cigarettes from vending machines in every attempt. (This was after they had approached the clerk to obtain change for the vending machine.) In fact, on two occasions in which the minor was refused a sale of cigarettes by retail store clerks, they were specifically referred to a cigarette vending machine by the clerk who refused the sale.

A similar survey of Topeka merchants was conducted as a joint effort of the Kansas Department of Health and Environment and the American Lung Association of Kansas in the fall of 1989. Using the same methods as the Wichita survey

6 youths aged 13-17 made purchase attempts in 64 Topeka area retail stores. They were successful in purchasing tobacco products 59% of the time.

A second survey of Wichita area merchants was conducted shortly thereafter. Eighteen minors ranging in age from 9 to 17 were recruited to enter various stores across Wichita and attempt to purchase tobacco products. Collectively, the youths made 153 purchase attempts and were successful 55.6% of the time.

HB 2212 proposes to strengthen enforcement of existing laws by initiating a licensing system similar to that which is used to control the sale of alcoholic beverages, under which a store may sell tobacco to adults only if it avoids making sales to minors. It will restrict unauthorized sales through vending machines and apply penalties for those who violate the law.

The Kansas Department of Health and Environment recommends support of HB 2212. The existing state laws prohibiting sales of tobacco products to minors have largely been ineffective as demonstrated by the retail surveys recently conducted in Kansas. This proposal offers a workable procedure for enforcement, thus deterring thousands of Kansas youth from developing a deadly habit.

Testimony presented by: Paula F. Marmet, MS, RD  
Director, Office of Chronic Disease and Health  
Promotion  
Division of Health  
March 6, 1991



ALDERSON, ALDERSON, MONTGOMERY & NEWBERY

ATTORNEYS AT LAW

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P.O. BOX 237

TOPEKA, KANSAS 66604-3174

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ALAN F. ALDERSON

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JOSEPH M. WEILER

JOHN E. JANDERA

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TELEPHONE:

(913) 232-0753

FAX:

(913) 232-1866

MEMORANDUM

TO: MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

FROM: ALAN F. ALDERSON, LEGISLATIVE COUNSEL, THE TOBACCO INSTITUTE

RE: HOUSE BILL NO. 2212

DATE: MARCH 6, 1991

I am Alan Alderson, Legislative Counsel for The Tobacco Institute, a national association of tobacco products manufacturers.

Although the Tobacco Institute would oppose House Bill No. 2212 as introduced, we have worked hard with Representative Allen during the last two weeks to reach a compromise position. The amendments being offered today by the sponsors of this bill remove our serious opposition to this proposed legislation.

With the proposed amendments to HB 2212, we believe this legislation is not substantially at odds with the tobacco industry's youth initiatives program announced December 11, 1990, and designed to discourage youth smoking and address concerns about cigarette marketing. The five new initiatives now in effect that expand and reaffirm the industry's long-standing commitment and positive actions against youth smoking are:

1. A national program to help retailers observe and enforce state laws prohibiting tobacco sales to youth. The store signage and education campaign's theme is "It's The Law."
2. Industry support for passage of new state laws setting a minimum age of eighteen for cigarette sales in those states without a minimum age law or one lower than eighteen.
3. Industry support for new state laws requiring supervision of cigarette vending machines located in places frequented by minors.
4. Sharp new limitations on the distribution of product samples and premiums, requirements that billboard advertisements for cigarettes be located away from areas near schools and playgrounds, and other strong new industry guidelines that supplement current industry codes.
5. Direct assistance to parents to help them assist their children in resisting peer pressure to smoke with new, tobacco-specific educational

Attachment 11  
HJUD  
3-6-91

materials to be promoted through a multi-million dollar advertising campaign.

There were several areas of concern to the tobacco industry in the bill as introduced. Because HB 2212 makes it illegal to furnish cigarettes to persons under eighteen years of age, the sponsors have deleted subsection (o) of section 5 of the bill, which would have banned virtually all public sampling. The sponsors have agreed to amend subsection (p) of section 5 to conform the signage language to that which is now being provided at no cost to retailers under the youth initiatives program. Subsection (q) of section 5 is being amended to clarify that cigarette machine placement is not prohibited in places open to other than the "general public" unless said machine is supervised.

Although the tobacco industry would prefer to have more specific exceptions to the illegal placement of vending machines, including authorization to have unsupervised machines in places to which persons under age eighteen are not permitted access; places where alcoholic liquor is served; and in factories, offices or other businesses not open to the "general public", we believe the insertion of the term "general" in line 23 of page 4 helps to distinguish between those places which might be considered public generally and those which, like office buildings, factories, and the like, are not held open to the general public for entry and egress without the permission of the owner. Although this may still seem to be a vague distinction, this compromise between the sponsors and the Tobacco Institute is not intended to prohibit the location of unsupervised vending machines in those types of settings.

The tobacco industry recognizes the reality of a declining United States market, with a 2% or more annual drop in consumption now being the norm. The industry does not need to recruit new smokers outside of the existing adult smokers ranks. The Tobacco Institute supports the youth initiatives and supports reasonable proposals generally designed to promote the same goals of preventing youth access to cigarettes. The tobacco industry does not support an outright ban on sampling and vending because such bans tend to prohibit access by adults, not those under age eighteen.

Recent vending industry surveys by the Response Research Corporation indicates that eight out of ten cigarette vending machines are located where children are prohibited or rarely go, such as taverns, bars, factories and office settings. Banning these machines denies access to adult smokers without affecting underage consumption. Another survey conducted by the National Automated Merchandising Association indicates that only 20% of those under age eighteen have purchased cigarettes and, of those, only 9% have purchased them from vending machines. This means that less than 2% of all youth have ever purchased cigarettes from vending machines. Perhaps 20% of cigarette vending machines are located in public areas where youth may have access and it is those cigarette vending machines that deserve attention -- not to ban them but to mandate supervision.

In summary, the tobacco industry would prefer to have some more specific guidelines with respect to the prohibition of unsupervised vending machines, but we believe the amendments to this bill will permit a reasonable

interpretation in line with my prior comments. We commend the sponsors of this bill for their recognition that the tobacco industry has already taken great steps to prevent advertising and sampling directed at youth and appreciate their willingness to withdraw burdensome and unnecessary provisions of the bill.

Although I am, by no means, an expert on cigarette vending and sampling, nor am I completely conversant about all aspects of the industry's youth initiatives program, I would be glad to try to answer any questions you may have and will certainly provide you with written materials that will help in your further understanding of this significant program.

*William M. Henry*

Attorney at Law  
627 S. Topeka, P.O. Box 477  
Topeka, Kansas 66601

Testimony before the House Judiciary Committee  
HB 2212  
On Behalf of Philip Morris U.S.A.  
March 6, 1991

Mr. Chairman, members of the House Judiciary Committee, I am Bill Henry and I appear before you today on behalf of Philip Morris U.S.A.

Philip Morris concurs with the purpose of the sponsors of HB 2212, which is to discourage those who are underage from purchasing tobacco products.

However, Philip Morris cannot support HB 2212 as it is currently drafted.

Specifically Philip Morris objects to subsection (o) which would limit the sampling of tobacco products and subsection (q) which severely limits the location of vending machines dispensing tobacco products.

Philip Morris also believes the warning language in subsection (p) might be amended to state the same purpose by inserting "It's the Law. We do not sell tobacco products to persons under 18."

In addition Philip Morris believes whatever legislation is enacted in this area should be enforced uniformly. To accomplish that uniformity the committee may wish to add a preemption clause so that the legislation could not be altered on a locality basis.

Philip Morris is amenable to any amendments which would cure our objections as previously described so that we could join the sponsors of HB 2212 as supporters of this measure.

Respectfully Submitted,  
William M. Henry  
Attorney at Law

HJUD  
Attachment # 12  
3-6-91



EXECUTIVE DIRECTOR  
JIM SHEEHAN  
Shawnee Mission

March 6, 1991

**OFFICERS**

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Leavenworth

1st VICE-PRESIDENT  
SKIP KLEIER  
Carbondale

2nd VICE-PRESIDENT  
TREASURER  
MIKE BRAXMEYER  
Atwood

ASST. TREASURER  
JOHN CUNNINGHAM  
Shawnee Mission

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DIRECTOR OF  
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

**HOUSE JUDICIARY COMMITTEE**

**OPPOSING HB 2212**

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association and our membership includes manufacturers, distributors and retailers of food products throughout Kansas.

We have a number of concerns about HB 2212. The major problem is on page 4, subsection (q) which says vending machines located on premises open to the public must be in the view of, and under the supervision of, a person over the age of 18.

Not all vending machines located in buildings open to the public are inside a retail establishment. Some could be in a "vending area" of a business office or even a hospital. Would this bill require a person be employed to watch over the vending machine area and required to check ID's?

And if the machine is inside the retail establishment and situated so it is in view of an employee over the age of 18, who has other duties, such as working in the courtesy booth, or as a checker, will they be required to stop and check ID's of anyone they suspect to be under the age of 18?

We believe that Kansas has enough safeguards in place to prohibit the sale of cigarettes to anyone under the age of 18. We believe passage of this measure would impose an undue burden upon the retailers and respectfully request that you NOT consider HB 2212 favorable for passage.

Frances Kastner, Director  
Governmental Affairs, KFDA

HJUD  
Attachment # 13  
3-6-91

HEIN AND EBERT, CHTD.

ATTORNEYS AT LAW

5845 S.W. 29th, Topeka, Kansas 66614

Telefax 913/273-9243

913/273-1441

Ronald R. Hein

William F. Ebert

Steven D. Rosel

HOUSE JUDICIARY COMMITTEE  
TESTIMONY RE: HB 2212

PRESENTED BY RONALD R. HEIN ON BEHALF OF  
R. J. REYNOLDS TOBACCO USA  
March 6, 1991

Mr. Chairman, members of the committee:

My name is Ron Hein, and I am legislative counsel for R. J. Reynolds Tobacco. As HB 2212 is currently written, we must oppose this legislation.

R. J. Reynolds is supportive of the general intent of the legislation, and in fact, is supportive of model legislation in this arena. However, we are strong proponents of the nationwide effort undertaken by the Tobacco Institute to remedy the problem of underage smoking.

Such a national effort works best when there is commonality of effort on an interstate basis. For instance, we would propose that on page 4, lines 18-21, that the language be rewritten to require the statement to read, "We do not sell tobacco products to persons under 18." This is consistent with the Tobacco Institute program of "It's the Law". This program is available to retailers and others on a no cost basis to discourage underage smoking. It is not good public policy to require the State of Kansas to utilize an entirely different standard for warning the public, and would run contrary to actions being taken in other states.

We also feel that the language on page 4, lines 11-17 is unduly restrictive. We would support language that is set out in the recommended model legislation as earlier described by the Tobacco Institute. That language, once again, will provide for commonality in the interstate treatment of this matter.

We also support the Tobacco Institute's position with regards to the insertion of language from the model bill in lieu of what is proposed in lines 22-25 on page 4.

In the event that the committee would make the changes as proposed to conform to the model bill and to permit warnings consistent with the national "It's the Law" program which has been initiated by the tobacco industry, R. J. Reynolds would be willing to support this bill, and, in fact, would enthusiastically support and promote this legislation.

However, we cannot support this legislation in its current form for the reasons stated above, and for the reasons set out in the testimony by the Tobacco Institute.

Thank you very much for permitting me to testify, and I would be happy to yield for any questions.

HJUD  
Attachment # 14  
3-6-91

Date: March 5, 1991

To: John M. Solback, Chairperson, Committee on Judiciary

From: Nikki Adams, A.R.T., Vice Pres., Kansas Medical Record Association

Re: House Bill No. 2467 An ACT concerning medical records; relating to access thereof.

Mr. Chairman, thank you for the opportunity to appear before you this afternoon. My name is Nikki Adams. I am representing the Kansas Medical Record Association (KMRA) and the Kansas Hospital Association (KHA). KMRA is a professional organization of 543 members with the responsibility of maintaining the medical record. KHA represents 150 member institutions.

The Kansas Medical Record Association (KMRA) is not opposed to patient access of their records. Guidelines have been established in the Health Information Guide for release of medical records to the patient. The Health Information Guide is a joint publication of the Kansas Hospital Association and the Kansas Medical Record Association approved in 1987. The policies for disclosure to patients are attached.

We do oppose setting a fee for copies of medical records. There are too many varying factors that enter into charges for copies. KMRA surveyed 150 member institutions; 132 being acute care hospitals in December, 1990. This survey showed the average charge to be \$.46 per page. The December Journal of the American Medical Record Association (AMRA) showed the "usual copying service fees" to be \$.55 to \$1.00 per page.

Entering into the determination of the fee is:

1. Verifying the validity of the request.
2. Retrieving the record.
  - a. Is the record stored off site?
  - b. Is the record on micro-film?
3. Identifying and securing items requested.
4. Making appropriate copies.
5. Logging the request in and out.
6. Mailing/telefaxing the requested information.
7. Equipment costs.
8. Maintenance of the equipment.
9. Supplies such as paper, toner, envelopes, etc.

We feel our charges are fair. This is not a money making proposition for the hospital.

HJUD  
Attachment # 15  
3-6-91

## VI. POLICIES FOR DISCLOSURE TO PATIENTS

Although the health record is the property of the institution, courts generally recognize that the patient has the right of access to the information contained in the record.

Since there are no specific laws in the state of Kansas that address patient access to health records, the health care institution should set policy addressing patient access to their records. If the attending physician decides that it is not medically advisable to give such information to the patient, the information should be available to an appropriate person on his/her behalf.

The following guidelines are suggestions for procedures to follow when direct patient access is allowed by a health care institution. These are guidelines only and are not intended to convey that institutions are required to give patients direct access to their health records.

### A. Notification

The patient or the legal guardian should notify the health care institution in writing or verbally at least one (1) working day prior to being allowed to review his/her record or obtain copies. This may not always be practical and each health care institution will need to evaluate its own internal procedures to determine how to handle patient requests. Requesting at least a one-day notification allows the institution to process the request smoothly and gives the opportunity to contact the patient's physician to determine if there are any reasons why the patient should not have access to his/her records.

### B. Patient Access

The patient should have the right of access of his/her own health record, unless there are specific contraindications, such as:

- 1) Minors;
- 2) Those deemed legally incompetent; and/or
- 3) Specific restriction by the attending physician that access could be detrimental to the patient.

The patient should be encouraged to discuss his/her care with the physician. The attending physician should be notified when a patient requests access to his/her record before releasing these records to the patient. The physician can advise the institution as to whether the patient is capable of reviewing the information directly or should have someone receive the information on his/her behalf. In some instances, records contain information which may be detrimental to the physical and/or mental health of the patient. This may require the presence of a physician or a designee to inspect the



record and advise the HID as to the portions of the record which should not be released to the patient.

C. Written Authorization

A signed and dated authorization should be required for the patient to review and/or obtain photocopies of the record. This authorization should be filed in the medical record. The authorization provides a signature for comparison purposes as well as notification to health care professionals that such a release has been made.

D. Photocopy Charges

The patient should be required to pay the charges for copies of the health record. The cost should be based on the institution-wide policy as approved by administration.

E. Location for the Review

Once the patient has given proper notification, shown proper identification that he/she is that patient and signed an authorization for release of the information, he/she should review the health record in the HID during regular working hours of the department. A physician or qualified facility personnel should remain with the patient until he/she has completed the review. Under no circumstances should the patient be allowed to remove an original health record from the institution.

F. Requests for Correction or Amendment to the Health Record

1. A patient's request for correction or amendment to the health record should be submitted in writing and should specify the entry or entries in dispute. With the exception of requests for correction of such items as time of admission, birthdate, spelling of name and other such admission data that can be handled by qualified employees, the attending or other responsible physician should be notified of any such requests for corrections or amendments. The individual who made the entry should also be involved in the discussion. The individual making the entry, along with the attending physician and the institution, should then decide whether or not the correction or amendment is to be allowed.
2. If the decision is made to correct or amend the record, the patient should be so advised. Any correction or amendment should be made in such a manner as to not obliterate the material present in the health record. Any corrections that are of a significant nature should be sent to any party that may have copies of this information, e.g. physicians, other health care institutions, etc.

3. If the request for correction or amendment is not granted, the patient should be informed that a statement of the patient's disagreement can be filed with the health care institution and that the disputed entries in the health record will be appropriately annotated to reflect this disagreement. Any further disclosure of the health record should include this statement of disagreement and the annotations.



## KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383  
Kansas WATS 800-332-0156 FAX 913-235-5114

March 6, 1991

TO: House Judiciary Committee  
FROM: Kansas Medical Society *[Signature]*  
SUBJECT: House Bill 2467; Concerning Medical Records

Thank you for the opportunity to appear and express our opposition to HB 2467.

This legislation would do three things: 1) require health care providers to charge not more than 10¢ per page for any medical record transferred to a patient; 2) abrogate the physician-patient confidential relationship in any and all medical malpractice lawsuits, regardless of the patient's desires; and 3) make it a criminal offense to violate this act. One of the most offensive and intrusive provisions in the bill is subsection (b), in which the patient's right of confidentiality is simply waived in many cases in which there may be a medical malpractice claim. Not only does this abrogate a fundamental right to privacy and confidentiality, but it would open up virtually all patient records to inspection by any party, not necessarily the patient. This is an unwarranted and inappropriate intrusion into the physician-patient relationship.

The penalty section found at subsection (d) is also unnecessary in that the Healing Arts Act already contains a provision that makes failure to transfer medical records to another physician upon request grounds for revocation of a license.

Finally, in subsection (a) health care providers transmitting medical records could not charge more than 10¢ per page. This is not only an inappropriate provision to be placed in statute, but it is also an unreasonable limitation. Currently the Kansas Secretary of State's office charges 25¢ per page for reproduction of documents, and we would submit that the duplication of medical records is a little more complex. Frequently, when physicians receive a request for production of medical records, they must first review the record to determine if there is information, possibly relating to the mental health of the patient, which might be damaging to the patient upon release of the record. This requires the time of both the physician and his or her staff.

In summary, we believe there is adequate opportunity for patients to currently access the information in their medical records, especially in cases involving litigation. There simply is no need for HB 2467, and we would urge you to report it unfavorably. Thank you for considering our concerns.

JS:ns

*HJUD  
Attachment # 16  
3-6-91*

# KICKAPOO TRIBE IN KANSAS

P.O. BOX 271 HORTON, KANSAS 66439-0271  
PHONE: (913) 486-2131 FAX: 913/486-2801

ADDRESS ON HOUSE BILL 2466

March 6, 1991

My name is Steve Cadue and I am the elected tribal chairman of the Kickapoo Indian Nation with six other elected tribal council people. The governing powers of the Kickapoo Nation are inherent and these sovereign powers of self-government are recognized in treaties made between the Kickapoo Nation and the United States of America. These powers are subject to qualification by treaties and by express legislation of the United States Congress.

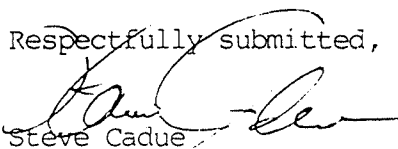
It should be understood by this state of Kansas legislative committee that the Kickapoo Nation practiced Indian self-government long before the organs of Kansas state government were established. It was the Kickapoo's cession of thousands of acres of land that enabled the first settlers a place to be called Kansas. The honored founders of the Kansas Enabling Act and the Kansas Constitution so recognized the sovereign powers of the Indian Nations.

**Self-government and Self-Determination** are a principle that is based so strongly in the United States Constitution, the State of Kansas Constitution and in the constitutions of the four Indian Nations in Kansas. Wars between nations were fought for this **Self-Determination** and indeed wars are still engaged in today. Yes, we engaged in war with the United States and Indian treaties were ratified between the President, the Congress and the four Indian nations in Kansas. At this moment, our country is at war with Iraq because of the principle of **Self-Determination**. Today, a gentleman truly revered among the Indian people, Mr. Phillip Wewenis, a war veteran of World War I resides on the Kickapoo Indian Nation Reservation. Mr. Wewenis served in honored duty to defend freedom, sovereignty and **Self-Determination**. Mr. Wewenis served his country before the Indian people were granted United States citizenship which was in 1924. We are grateful to the Creator that Phillip returned from the war but sadly some of our people did not return from that war and other wars.

We now ask that in your vision and infinite wisdom to let us live in peace and sovereignty. We ask that you vote to pass House Bill 2466 and fully restore the principle of **Self-Determination** to the four Indian nation tribal governments in Kansas. All governments should be allowed to practice local self-government. Your action would be in keeping with other states which have retroceded state jurisdiction. (See attached State of Washington for documents).

It is extremely important for you to also know as state legislators that federal government appropriations are being denied to the four Indian nations in Kansas while 18 USCA 3243 is in effect. Upon rescindment of 18 USCA 3243 the four Indian tribes in Kansas can be funded for tribal law enforcement programs. The Kickapoo Tribe is already operating a tribal civil court of laws but cannot practice a true Kickapoo **Self-Determination** within its own sovereignty until the State of Kansas and the United States Congress rescinds 18 USCA 3243. Thank you and we need your support to restore a true sovereignty principled on **Self-Determination**.

Respectfully submitted,

  
Steve Cadue  
Tribal Chairman

HJUD  
Attachment #17  
3-6-91



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

OLYMPIA  
98504-0413

BOOTH GARDNER  
GOVERNOR

June 8, 1988

Mr. Donald P. Hodel  
Secretary  
United States Department of the Interior  
Interior Building  
Washington, D.C. 20240

Dear Don:

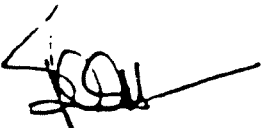
I am writing to you regarding the retrocession of certain jurisdictions exercised by the State of Washington over the Confederated Tribes of the Chehalis Reservation, Quileute Indian Reservation, Swinomish Tribal Community to the United States Government.

A gubernatorial proclamation dated December 13, 1957, placed the Confederated Tribes of Chehalis Reservation, December 2, 1957, placed the Quileute Indian Reservation, July 7, 1963 placed the Swinomish Tribal Community under the jurisdiction of the State of Washington. Earlier this year, the Washington Legislature passed, and I signed legislation permitting a partial retrocession of civil and criminal jurisdictions over the Chehalis Tribe, Quileute Tribe, Swinomish Tribe to the United States.

The enclosed official State of Washington Proclamation and resolution of the duly recognized Council of the Confederated Tribes of the Chehalis Reservation supersede the 1957 proclamation, Quileute Indian Reservation supersede the 1957 proclamation, Swinomish Tribal Community supersede the 1963 proclamation. With the new proclamation, pursuant to Sec. 4, Chapter 267, laws of 1986, any jurisdiction exercised by the State of Washington over the Confederated Tribes of the Chehalis Reservation, Quileute Indian Reservation, Swinomish Tribal Community, except as provided in RCW 37.12.010 and Chapter 267, laws of 1986, is retroceded to the United States government in accordance with 25 USC Sec. 1323 (82 Stat. 78, 79) and the procedures established by the United States for acceptance of such partial retrocession of jurisdiction.

Thank you for your acceptance of the proclamation and cooperation in completing the transfer of the jurisdictions.

Sincerely,

  
Booth Gardner  
Governor

Enclosures

HJUD  
Attachment # 18.  
3-6-91



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

OLYMPIA  
98504-0413

BOOTH GARDNER  
GOVERNOR

PROC. NO. 3

PROCLAMATION

WHEREAS, on the 13th day of December, 1957, at the request of the Confederated Tribes of the Chehalis Reservation, 2nd day of December, 1957, at the request of the Quileute Indian Reservation, 7th day of July, 1963, at the request of the Swinomish Tribal Community by resolution, a Proclamation was issued by Governor Rosellini of the State of Washington, proclaiming that "The criminal and civil jurisdiction of the State of Washington shall apply to the Confederated Tribes of the Chehalis Reservation, Quileute Indian Reservation, Swinomish Tribal Community, their people, reservation, territory, lands and country, and all persons being and residing therein"; and

WHEREAS, the Proclamation was issued under the provisions of Chapter 240, laws of 1957, 1957, 1963), enacted pursuant to the authority granted the State of Washington by Public Law 83-280, 67 stat. 588 (1953) which authorized the extension of law and order to any Indian reservation in the State of Washington when requested by the governing body of the tribe thereof; and

WHEREAS, under provisions of Chapter 267, laws of 1986, the Washington State Legislature authorized a process whereby the CONFEDERATED Tribes of the Chehalis Reservation, Quileute Indian Reservation, Swinomish Tribal Community may request a partial retrocession of state criminal jurisdiction over the Confederated Tribes of the Chehalis Reservation, Quileute Indian Reservation, Swinomish Tribal Community; and

WHEREAS, the governing authority of the confederated Tribes of the Chehalis Reservation transmitted by letter dated March 9, 1988 and Resolution 1988-7 adopted March 9, 1988; Quileute Indian Reservation transmitted by letter dated March 18, 1988, Resolution 88-A-23 dated March 17, 1988; Swinomish Tribal Community, Resolution 88-3-12 dated March 17, 1988, transmitted by letter dated March 18, 1988, resolutions requesting a partial retrocession of state criminal jurisdiction over the Confederated Tribes of the Chehalis Reservation, Quileute Indian Reservation, Swinomish Tribal Community;

NOW, THEREFORE, I, Booth Gardner, Governor of the State of Washington, do hereby proclaim that Governor Rosellini's proclamation of the 14th day of October, 1957, proclaiming state criminal and civil jurisdiction over the Confederated Tribes of the Chehalis Reservation, 3rd day of October, 1957, proclaiming state criminal and civil jurisdiction over the Quileute Indian Reservation, 7th day of June, 1963, proclaiming state criminal and civil jurisdiction over the Swinomish Tribal Community, their people, reservation, territory, lands and country, is hereby revoked and proclaimed null and void and superseded by this proclamation.

IT IS FURTHER PROCLAIMED, pursuant to Sec. 4, Chapter 267, laws of 1986, that any jurisdiction exercised by the State of Washington over the Confederated Tribes of the Chehalis Reservation, Quileute Indian Reservation, Swinomish Tribal Community, except as provided in RCW 37.12.010 and Chapter 267, laws of 1986, is retroceded to the United States Government in accordance with 25 USC Sec. 1323 (82 Stat. 78, 79), and in accordance with procedures established by the United States for acceptance of such partial retrocession of jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia this 8th day of June, A.D., nineteen hundred and eighty-eight.



*[Handwritten Signature]*  
\_\_\_\_\_  
Governor of Washington

BY THE GOVERNOR:

*[Handwritten Signature]*, ASSISTANT  
\_\_\_\_\_  
Secretary of State

IOWA TRIBE OF KANSAS & NEBRASKA  
EXECUTIVE COMMITTEE  
JANUARY 30, 1991

- WHEREAS, *The Iowa Executive Committee being duly organized, met in Regular Session this 30th day of January, 1991, and,*
- WHEREAS, *The Iowa Executive Committee has authority to act for the Iowa Tribe under the present Constitutional authority as provided in Sec. 3, Article IV - Governing Bodies, and,*
- WHEREAS, *The Iowa Tribe of Kansas & Nebraska being organized and empowered by their Constitution and Bylaws (approved November 6, 1978), and,*
- WHEREAS, *The Iowa Nation of Kansas and Nebraska, also known as the Iowa Tribe of Kansas and Nebraska was granted full jurisdiction by the United States of America over all matters within their Reservation boundaries in Kansas and Nebraska pursuant to the "Treaty With The Iowa of 1861;" and,*
- WHEREAS, *The Iowa Nation of Kansas and Nebraska established and adopted a Constitution and Bylaws which were accepted and approved by the United States of America on the 26th day of February, 1937; and,*
- WHEREAS, *The Iowa Nation of Kansas and Nebraska is a federally recognized Indian Nation with its powers of self-government being derived from the Iowa Nation's inherent and continuing sovereignty and from Treaties entered into with the United States of America; and,*
- WHEREAS, *The President, the Congress, and the Supreme Court of the United States of America, continue to recognize the special and exclusive relationship of Nation to Nation that exists between federally recognized Indian Nations and the United States of America; and,*
- WHEREAS, *The powers of the Iowa Nation's tribal self-government which have never been extinguished, include the power to define conditions of Tribal membership, to enter into governmental relations with other sovereign powers, to regulate domestic relations of members, to levy taxes, to regulate property use within the jurisdiction of the Tribe, to control the conduct of members by Tribal legislation and regulation, and to administer justice; and,*
- WHEREAS, *The Iowa Nation of Kansas and Nebraska contend that the governing body of the Iowa Nation never officially or legally requested or conceded that the State of Kansas be given criminal jurisdiction over any major or minor criminal offenses committed within the confines of their Reservation boundaries pursuant to 18 USCA 3243; and,*
- WHEREAS, *The Iowa Nation of Kansas and Nebraska contend that the State of Kansas has never been granted the legal authority to exercise civil jurisdiction over any matters within the confines of their Reservation boundaries; and,*
- WHEREAS, *The Iowa Nation of Kansas and Nebraska have enacted and do enforce their own use tax, gasoline tax, cigarette tax, water tax and tax on construction and certain other taxes on sales; and,*
- WHEREAS, *The Iowa Nation of Kansas and Nebraska throughout its long history of existence as a Nation, has exercised and shall continue to exercise civil jurisdiction over all matters of importance to its citizens; and,*

HJUO  
Attachment # 19  
3-6-91



WHEREAS, Pursuant to the Constitution of the State of Kansas, all Indian territory created by treaty with the United States of America "shall be excepted out of the boundaries and constitute no part of the State of Kansas. . ." and,

WHEREAS, The Iowa Nation of Kansas and Nebraska request that the State of Kansas and the United States of America cooperate to assist in providing for retrocession of criminal jurisdiction from the State of Kansas to those Indian Nations in Kansas who desire to exercise criminal jurisdiction over offenses committed within their jurisdictional boundaries, excluding major crimes over which the United States has sole jurisdiction to prosecute pursuant to 18 USCA 1153, the Major Crimes Act; and,

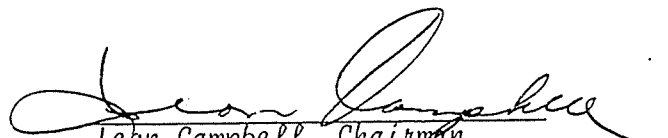
WHEREAS, The Iowa Nation of Kansas and Nebraska agree and request that criminal jurisdiction should be retroceded only to those Indian Nations that adopt a resolution requesting retrocession passed by majority vote of the adult Indians of such Nation voting at a special election for that purpose; and,

NOW THEREFORE BE IT RESOLVED THAT the State of Kansas and United States of America cooperate to assist in providing for retrocession of criminal jurisdiction from the State of Kansas to those Indian Nations in Kansas who desire to exercise criminal jurisdiction over offenses committed within their jurisdictional boundaries, excluding major crimes over which the United States has sole jurisdiction to prosecute pursuant to 18 USCA 1153, the Major Crimes Act; and,

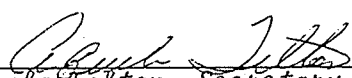
BE IT FURTHER RESOLVED that criminal jurisdiction should be retroceded only to those Indian Nations that adopt a resolution requesting retrocession passed by a majority vote of the adult Indians of such Nation voting at a special election for that purpose.

#### C E R T I F I C A T I O N

The foregoing Resolution was duly adopted this date, January 30, 1991 in a Regular Session of the Executive Committee at which 4 members of the Committee were present, constituting a quorum, by a vote of 3 for, 0 against. Chairman abstained.

  
Leon Campbell, Chairman  
Iowa Executive Committee

ATTEST:

  
Aquila Tilton, Secretary  
Iowa Executive Committee

# HINKLE, EBERHART & ELKOURI

ATTORNEYS AT LAW  
2000 EPIC CENTER  
301 NORTH MAIN STREET  
WICHITA, KANSAS 67202-4820

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WINTON M. HINKLE  
MAX E. EBERHART  
DAVID S. ELKOURI  
JOHN E. CATON  
JOHN R. STALLINGS  
ERIC S. NAMEE  
JOHN TERRY MOORE  
DAVID M. RAPP  
WILLIAM F. BRADLEY, JR.  
DAN C. PEARE  
BRIAN K. McLEOD

June 15, 1990

Representative Michael R. O'Neal  
Gilliland & Hayes, P.A.  
335 North Washington Street, Suite 260  
P.O. Box 2977  
Hutchinson, Kansas 67504-2977

Re: K.S.A. 79-1703

Dear Mike:

I am involved in a case in bankruptcy court in which I represent a secured creditor. Reno County has a substantial tax lien against property securing the debt to my client for unpaid personal property taxes in the amount of approximately \$250,000. If they are correct, my client is likely to receive nothing. We believe we have defenses to these taxes which may reduce the amount recovered by the county, perhaps to zero. In a related case, Sedgwick County has an identical problem. The county counselors have raised K.S.A. 79-1703 as a bar to any negotiation of settlement. Obviously, in a case where either side may receive all or nothing, settlement may well be appropriate. A review of K.S.A. 79-1703 indicates that subsection (b) allows compromise only in the event of a railroad in bankruptcy. Any other attempt to compromise anyone else's taxes, apparently even in bankruptcy, could result in a claim against the county commissioners personally.

I have not given much thought to whether or not there should be available to counties the authority to compromise claims outside of bankruptcy, but I do know that limiting the authority of counties to compromise claims in bankruptcy to cases in which railroads are involved, is likely to lead in this instance to litigation which would otherwise be unnecessary. I urge you to consider an amendment during the next session of the legislature to K.S.A. 79-1703(b) to provide "in the event a person, partnership, or corporation has failed to pay any portion of the taxes assessed or levied against its property located within any county by reason of a pending bankruptcy proceeding...".

HJUD  
ATTACH #20  
3-6-91

HINKLE, EBERHART & ELKOURI

Representative Michael R. O'Neal  
Re: K.S.A. 79-1703  
June 15, 1990  
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Thank you very much for your attention.

Sincerely yours,



William F. Bradley, Jr.  
HINKLE, EBERHART & ELKOURI

WFB:kkn  
cc: Beverly Bradley  
Kansas Association of Counties

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