

Approved: 4-26-96  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:05 a.m. on March 19, 1996 in Room 254-E of the Capitol.

Members present were: Senator Oleen, Chair  
Senator Tillotson, Vice Chair  
Senator Jones, Ranking Minority Member  
Senator Hensley  
Senator Gooch  
Senator Jordan  
Senator Papay  
Senator Praeger  
Senator Ramirez  
Senator Vidricksen  
Senator Walker

Committee staff present: Mary Galligan, Legislative Research  
Mary Torrence, Revisor  
Nancy Wolff, Committee Secretary

Conferees appearing before the committee:  
Jim Conant, Kansas ABC  
Julie Hein, R.J.Reynolds Tobacco Co.

Others attending meeting: See attached list

Discussion was continued on HB2544 relating to cigarettes and tobacco products; regulation and taxation; enforcement of prohibitions relating to minors. Before beginning discussion, Senator Oleen requested that the motion currently before the committee be acted on. For purposes of review, Senator Tillotson made the motion to adopt the subcommittee report on HB2544 and Senator Hensley seconded the motion. The motion carried.

Senator Oleen asked Jim Conant of the ABC if he had researched the request of the committee of 3/18/96 for any other alternatives for enforcement of the confiscation of cigarettes from minors. Mr. Conant distributed a balloon of a provision that would allow confiscation of cigarettes as contraband and may be held by an officer or agent for not less than thirty days. The person from whom the cigarettes are confiscated will have the opportunity to file an appeal within 15 days after the seizure to request the return of the cigarettes or tobacco products. Should such an appeal not be granted or requested, the cigarettes may be destroyed (Attachment 1). The proposed amendments would allow for the seizure of the contraband and also allow an avenue for appeal by the person from whom the cigarettes are taken.

Senator Walker made a motion that possession be made a misdemeanor charge similar to a traffic offense with a \$25.00 fine and the option to mail the payment in or have the option to go to court. The language should be worded with "shall" rather than "may" to allow the officer the option of confiscating the cigarettes. Senator Papay seconded the motion.

Senator Tillotson made a substitute motion to incorporate the language of Jim Conant's Attachment 1 as an amendment to the bill. Senator Jones seconded the motion. The motion failed.

The vote was called for on the original motion and the motion carried.

Senator Walker made a motion to report HB2544 favorable for passage as amended and Senator Ramirez seconded the motion. Senator Oleen requested that the committee look at additional amendments to the bill and Senator Ramirez withdrew his second and Senator Walker withdrew the motion.

Senator Praeger made a motion that there be a provision included in the bill that would make education to employees a defensible item in the event of a charge against a convenience store to make it an incentive for more education for the employees. Senator Hensley seconded the motion.

Senator Tillotson stated that there are already incentives in the bill, the fines. Senator Vidricksen stated that a fine of \$250 with a \$50 fee for court costs. It would be less expensive to pay the fine than to hire an attorney

to defend against the charges. Senator Tillotson pointed out that under the consumer protection act the fine is \$5,000. Steve Rarrick of the Attorney General's office stated that the case pending against Casey's General Store had a fine of \$750 plus investigative fees. Bob Alderson responded that he did not know if that was correct or not. Following the discussion, Senator Hensley withdrew the second and Senator Praeger withdrew the motion.

Senator Hensley made a motion that the amendatory language be deleted on Page 14, Section 9 of the balloon and Senator Praeger seconded the motion. The motion carried.

Senator Gooch asked if there was any language in the bill that would preempt local laws. Senator Tillotson told him that there was no preemptive language in the amendments.

Julie Hein, appearing for R.J.Reynolds Tobacco Co., stated that the only other concern the industry might have with the bill was regarding the amendment proposed to Section 3, subsection B that requires an affidavit declaring that such a person to be 18 or more to purchase cigarettes by mail because an affidavit would need to be notarized to be legal (Attachment 2). Mary Torrence stated that there could be a declaration rather than an affidavit which could be utilized to state that a purchaser is over 18. Senator Praeger made a motion to adopt such language and Senator Hensley seconded the motion. The motion carried.

Senator Tillotson made a motion that the license fee for a vending machine be increased from \$12.00 for two years to \$25.00. Senator Hensley seconded the motion and the motion carried.

Senator Walker made a motion that **HB2544** be reported favorable for passage as amended and Senator Praeger seconded the motion. The motion carried.

Senator Oleen requested the committee consider **HB2471**, state preemption and standardization of firearms regulation. Senator Jones made a motion that **HB2471** be reported adversely and Senator Praeger seconded the motion. The motion carried. Senator Hensley and Senator Gooch requested to be recorded as voting "no".

The next meeting for the committee was scheduled for 3/20/96.

The meeting was adjourned at 12:05 p.m.





(d) Any agent, employees or others who aid, abet or otherwise participate in any way in the violation of this act or in any of the offenses hereunder punishable shall be guilty and punished as principals to the same extent as any person violating the this act.

Sec. 9. K.S.A. 79-3323 is hereby amended to read as follows: 79-3323. (a) *The following are declared to be common nuisances and contraband:*

(1) All packages of cigarettes, in quantities of ~~twenty~~ 20 packages or more, not bearing indicia of tax payment as required in this act ~~and all devices for vending cigarettes in which unstamped packages are found;~~ and all devices for vending cigarettes in which unstamped packages are found;

(2) all cigarettes or tobacco products in the possession of a minor; and

(3) all property and paraphernalia, other than vehicles, used in the retail sale of such unstamped packages; other than vehicles; are hereby declared to be common nuisances and contraband ~~unstamped packages of cigarettes; and~~

~~(3) all vending machines used to dispense cigarettes or tobacco products.~~

Cigarettes in vending machines and exposed to view not showing indicia of tax payment required by this act to be visible from the outside of the vending machine shall be presumed to be unstamped.

Cigarettes in vending machines and exposed to view not showing indicia of tax payment required by this act to be visible from the outside of the vending machine shall be presumed to be unstamped.

(b) ~~Any cigarettes~~ or property constituting a common nuisance and contraband as herein provided by this section may be seized by the director or his or her the director's authorized agent or any duly constituted peace officer with or without process or warrant and shall be subject to forfeiture as provided in this act. The party making the seizure shall deliver to the vending machine operator owner of the property and to the person or persons found in possession of the same property a receipt stating from whom the property was seized, the place of seizure, and a description and the brand of the goods or the property seized. A duplicate of said the receipt shall be filed in the office of the director and shall be open for public inspection.

Sec. 10. K.S.A. 79-3326 is hereby amended to read as follows: 79-3326. The director of taxation shall administer and enforce the provisions of this act. The secretary of revenue shall adopt rules and regulations for the administration of this act. For the purpose of enforcing this act the director may call to his or her the director's aid any law enforcement

New Sec. 9. (a) The sale of cigarettes or tobacco products to any person under 18 years of age in violation of this act shall be deemed an unconscionable act or practice within the meaning of K.S.A. 50-627 and amendments thereto.

(b) Notwithstanding the provisions of K.S.A. 50-636 and amendments thereto, civil penalties and contempt penalties sued for and recovered by the attorney general for an unconscionable act or practice described in subsection (a) shall be credited to the cigarette and tobacco products regulation fund.

Renumber sections accordingly

Except as provided by subsection (c), any cigarettes or tobacco products or other

(c) Any cigarettes or tobacco products found to be in the possession of a minor and seized as provided in subsection (b) shall be held by the officer or agent making such seizure for a period of not less than 30 days. The person from whom such cigarettes or tobacco products were seized may, within not more than 15 days from the date of the seizure, file an appeal with the director requesting the return of the cigarettes or tobacco products. The officer or agent holding the cigarettes or tobacco products shall destroy the cigarettes or tobacco products unless otherwise ordered by the director. The provisions of K.S.A. 79-3324a shall not apply to cigarettes and tobacco products found to be in the possession of a minor.

Attachment

Submittal 1  
Federal and State Affairs

3/19/96

(3) It shall be a defense to a prosecution under this subsection if:  
(A) The defendant is authorized by law to sell, furnish or distribute cigarettes or tobacco products by mail; and (B) the defendant sold, furnished or distributed the cigarettes or tobacco products to the person by mail only after the person had provided to the defendant an affidavit declaring that such person was 18 or more years of age.

*Exhibit 2  
Federal and State Affairs  
3/19/96*