

Approved: 3-24-98  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:15 a.m. on March 17, 1998, in Room 254-E of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department  
Robin Kempf, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Midge Donohue, Committee Secretary

Conferees appearing before the committee:

Mr. Whitney Damron, Smokeless Tobacco, Inc.  
Mr. Ronald R. Hein, R. J. Reynolds Tobacco Company  
Mr. Tom Palace, Kansas Oil Marketers Association/Convenience Store Association  
of Kansas  
Ms. Kathy Porter, Office of Judicial Administrator

Others attending: See attached list

Senator Oleen announced that time did not permit all conferees to be heard yesterday on **SB 606**, concerning cigarettes; thus the hearing would continue today with testimony being presented by opponents of the bill.

The hearing was opened on:

**SB 606** **An Act concerning cigarettes**

Mr. Whitney Damron, representing the Smokeless Tobacco Council (STC), and speaking in opposition to **SB 606**, (Attachment #1) told the committee that, although the title of the bill appears to indicate this legislation is directed at cigarettes, the Council believes smokeless tobacco products may be included in the ban on distribution of samples. He addressed his comments to the STC's opposition to the bill, pointing out that sampling is an important method of competition among manufacturers, and a ban on sampling would help the largest manufacturers at the expense of smaller competitors. Additionally, he stated that smokeless tobacco product usage among underage individuals is low and decreasing and, if this bill is intended to prevent underage kids from using or gaining access to tobacco products, it is misguided because smokeless products are not sampled to minors. Mr. Damron showed the committee the "Under 18" sign displayed in grocery and convenience stores and mentioned the comprehensive training program of the tobacco industry in working with grocery and convenience stores to educate their employees in proper identification and sales practices. Mr. Damron urged the committee to report the bill unfavorably.

A question was raised by a committee member regarding enforcement responsibilities under current laws governing the sale of cigarettes to minors. The chair advised that staff had prepared a memo comparing current law to proposed legislation. She indicated this information would be presented tomorrow during the committee meeting.

Mr. Ronald R. Hein, representing the R. J. Reynolds Tobacco Company (RJR), spoke in opposition to **SB 606**, (Attachment #2). Mr. Hein pointed out that current law already places significant restrictions on marketing tobacco products and that sampling or distribution of the products to minors is already prohibited. He called attention to the significant restrictions imposed on marketing and distribution of tobacco products as a result of 1996 legislation which RJR supported as a means of prohibiting youth smoking. He said he was not aware of any problem that needed to be corrected and urged the committee to report the bill unfavorably.

The chair entered into the record written testimony in opposition to **SB 606** submitted by:

Mr. Doug Williams, Kaw Valley Rodeo, Manhattan (ATTACHMENT 3)  
Ms. Connie I. Hedrick, Booster Club, Inc., Pretty Prairie (ATTACHMENT 4)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E, Statehouse, at 11:15 a.m., on March 17, 1998.

Attention was then directed to **HB 2726**, concerning cigarette or tobacco infractions, and staff briefed the committee on the provisions of the bill, comparing existing law with proposed legislation.

Several committee members expressed concern over inclusion of New Sec. 13, the provision on disposition of monies received as a result of tobacco litigation at the federal level. The chair explained that this came about as a result of a floor amendment in the House and provided background on the amendment. She pointed out that the bill had the support of the governor prior to amendment on the floor.

Another question raised by a committee member dealt with the provision calling for juveniles to complete an educational program; specifically, whether juveniles in outlying areas would have access to counselors or such educational programs to satisfy this provision.

Staff concluded briefing on the bill by pointing out technical amendments for consideration when the bill is worked.

The hearing was opened on:

**HB 2726** **An act concerning cigarettes and tobacco products; relating to cigarette or tobacco infractions; penalties therefor; certain records of sales; (disposition of amounts received pursuant to certain litigation arising from sales and marketing of cigarettes and tobacco products**

Mr. Tom Palace, Executive Director of the Kansas Oil Marketers Association, a statewide trade association representing independent petroleum companies, a proponent of the bill, (Attachment #5), related the history of **HB 2726**, saying it is almost identical to a senate bill vetoed by the governor last session. He recalled, however, that the veto was the result of interpretation of language in the bill, but the language in question had been amended in **HB 2726** to satisfy that concern. Mr. Palace told the committee the Kansas Oil Marketers Association and the Convenience Store Association of Kansas support **HB 2726** in its entirety and urge the committee to support its passage.

Ms. Kathy Porter, Office of the Judicial Administrator, appeared as neither a proponent or opponent of **HB 2726** but, rather, for informational purposes (Attachment #6). She told the committee the Judicial Administrator's Office had been requested to review the bill at the request of the governor's staff to determine if the bill clearly provides that appeals to the district court from convictions of cigarette and tobacco infractions are to be tried to the court, without a jury. As a result, she presented clarifying language, (set out in her written testimony), for committee consideration which she said would make it clear to all parties that there is no right to a jury trial on appeal to the district court.

Ms. Porter called attention to another suggested amendment, which was attached to her written testimony, that would provide similar language to KSA 22-3609, a corresponding provision for appeals to the district court from municipal court convictions.

Responding to a question from the chair about any appreciable changes in cigarette infraction caseloads, Ms. Porter told the committee her records indicate there were 850 citations filed in district court for cigarette infractions during FY 97. She said it is unknown whether the increase in the caseload was a result of awareness of the bill or the amended provisions which apply to retailers. Ms. Porter explained that where charges are filed depends on whether the officer files the charge under state law or municipal ordinance, and the number of cases filed in municipal court is not reflected in records of the Office of the Disciplinary Administrator. She indicated she would check with the League of Municipalities on the number of cigarette infraction cases filed in municipal court and report back to the committee.

Senator Oleen inquired if anyone else wished to speak in regard to **SB 2726**. There being none the hearing was closed.

Senator Becker moved for approval of the minutes of the March 4, 5, 6, and 10 meetings. Senator Gooch seconded the motion, and the motion carried

The meeting adjourned at 12:00 noon. The next meeting is scheduled for March 18, 1998.



**WHITNEY B. DAMRON, P.A.**  
**COMMERCE BANK BUILDING**  
**100 EAST NINTH STREET – SECOND FLOOR**  
**TOPEKA, KANSAS 66612-1213**  
**(785) 354-1354 ♦ 232-3344 (FAX)**

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**TO: Senator Lana Oleen, Chair  
And Members Of The  
Senate Committee on Federal and State Affairs**

**FROM: Whitney Damron  
On Behalf Of The  
Smokeless Tobacco Council, Inc.**

**RE: SB 606 - Tobacco Sampling Ban Legislation**

**DATE: March 16, 1998**

Good morning Madam Chair Oleen and Members of the Senate Committee on Federal and State Affairs. My name is Whitney Damron and I appear before you this morning on behalf of my client, the Smokeless Tobacco Council, Inc., in opposition to SB 606 prohibiting the sampling of tobacco products in the state.

Although the title of SB 606 appears to indicate this legislation is directed at cigarettes, due to references made throughout the bill to "cigarettes and tobacco products", we believe smokeless tobacco products may be included in the ban on sampling proposed by SB 606 as currently written, or, in the alternative, proponents may suggest inclusion and therefore we appear before you today to express our concerns with this legislation.

The Smokeless Tobacco Council, or STC, is the industry's Washington, D.C.-based trade association representing Conwood Company, The Pinkerton Tobacco Company, Swisher International, National Tobacco and Brown & Williamson Tobacco Corporation on policy, legislative and regulatory issues affecting the smokeless tobacco industry.

Sen. Federal & State Affairs Comm.  
Date: 3-17-98  
Attachment: #1

I would like to first address my comments to why STC opposes a ban on sampling:

- Sampling is an important method of competition that enables manufacturers to introduce new products to existing adult consumers of smokeless tobacco products.
- Sampling is an important competitive tool that allows manufacturers to encourage adult consumers of smokeless tobacco products to switch brands of smokeless tobacco products.
- A ban on sampling helps the largest manufacturers in an industry at the expense of smaller competitors. Stripping all manufacturers of this important competitive tool will only serve to help cement and grow market shares of dominant manufacturers.
- Smokeless tobacco product usage among underage individuals is low and decreasing. According to the Federal government's National Household Survey on Drug Abuse, smokeless tobacco use by 12-17 year olds within the past thirty days declined to 1.9 percent in 1996. Banning sampling will not contribute to our shared goal of reducing underage use of smokeless tobacco products.

STC believes it is important to look at the intent of this legislation before considering its passage:

If this legislation is intended to prevent underage kids from using or gaining access to tobacco products, then it is misguided. Smokeless products are not sampled to minors, period. STC was an industry pioneer in denying tobacco product access to underage youth through such programs as the very successful "We Card" program which has become a model in the tobacco industry. Included with my testimony is a copy of the "Code of the Smokeless Tobacco Industry" outlining advertising and sampling guidelines adhered to by our member companies.

I would also note that STC Member Companies do not sample smokeless tobacco products through the mail. Samples are given by adults to adults under controlled settings.

Current state law prohibits the selling or giving of tobacco products to minors. Current law prohibits sampling within 500 feet of any school with very few exceptions. If there are problems with sampling by tobacco companies to minors, STC would strongly support appropriate punitive action by law enforcement agencies against these practices and the guilty parties. However, we have no information which suggests there are any instances of tobacco product sampling being done or directed to minors in Kansas.

We would suggest this legislation is an inappropriate attempt to limit lawful business practices of the smokeless tobacco industry and other tobacco companies that are complying with current laws and regulations. Adults who choose to consume tobacco products should be allowed to participate in these programs at their own discretion. Minors are not allowed nor welcome. If proponents can point to instances of youth access to samples in Kansas, either anecdotal or statistical, we would welcome the opportunity to address those situations in efforts to see that they are not repeated. However, we believe such is not the case and that therefore, this legislation is unwarranted.

On behalf of the Smokeless Tobacco Council, I thank you for your time this morning and urge this Committee to reject this anti-consumer legislation.

I would be pleased to stand for questions at the appropriate time.

# THE CODE

of the

## Smokeless Tobacco Industry

**I**n order to ensure that the advertising and the sampling or free distribution of smokeless tobacco products — chewing tobacco and snuff — are conducted in a responsible and uniform manner, the Subscribing Members of the Smokeless Tobacco Industry Code, hereby adopt and make known to all the following standards. In accordance with their long-standing policy, the Subscribing Members confirm 18 years as the minimum age for purchase of smokeless tobacco products.

### ADVERTISING

- Smokeless tobacco advertisements shall be directed to adults and shall not appear in publications that are primarily youth-oriented.
- Models who appear in smokeless tobacco advertising shall be at least 25 years of age.
- No athlete actively competing in professional sports shall be used to present any smokeless tobacco product in any advertisements by way of oral or written endorsement or by depiction of use of any such product.
- No professional entertainer who appeals primarily to persons under the age of 18 shall be used to present any smokeless tobacco product in any advertisements by way of oral or written endorsement or by depiction of use of any such product.
- Promotional offers of smokeless tobacco products and of premium items that require proof of purchase of smokeless tobacco products shall carry the designation "Offer not available to minors" and, on the coupon for mail-in offers, a statement by which the person requesting product certifies that (s)he is 18 years of age or older.
- Mail-in and telephone requests for smokeless tobacco products may be honored by a company if it can be reasonably ascertained that the intended recipients are at least 18 years of age.

### SAMPLING

- Smokeless tobacco samples shall be distributed only to persons who are at least 18 years of age. Persons who appear to be under 18 years of age shall be required to furnish proof of age.
- No sampling shall be conducted within two blocks of any premises identified as being used primarily for youth activities, such as schools or organized youth centers, at times when such premises are being used for their primary purpose.
- Sample products shall be kept secure and under control at all times, so that samples will not be obtained by persons under 18 years of age.
- No unsolicited samples shall be sent through the mails.
- Persons conducting sampling activities shall do so in such manner as to avoid the impairment or obstruction of orderly pedestrian and vehicular traffic.
- Persons conducting sampling shall ensure that no littering or unsightly conditions are created as a result of the activity.
- All sampling activities shall be conducted in compliance with state and local laws and ordinances.
- All persons conducting sampling activities — whether in the direct employ or as agents of the Subscribers to the Code — shall be furnished copies of this Code and shall agree to comply with its terms.
- All persons conducting sampling activities shall be at least 18 years of age.
- Persons found to have violated any provisions of this Code shall be immediately removed from sampling activities and disciplined.

We, the Subscribing Members, shall monitor and enforce the provisions of this Code in order to ensure compliance.



Smokeless Tobacco Council, Inc., 2550 M Street, N.W., Suite 300, Washington, DC 20037



EDITORIALS

Good News: The Kids Ain't Chewin'

The new numbers are out from the National Household Survey on Drug Abuse. They look good — if you don't look too closely. While teens' overall drug abuse may have fallen, too many are still flocking to the hard stuff.

The survey, done by the Department of Health and Human Services, said illegal drug use by 12- to 17-year-olds fell from 10.9% in 1995 to 9.0% last year.

The Clinton administration hailed that drop as evidence of "the beginning of an arrest of the astronomical level of drug use among our children."

Drug czar Barry McCaffrey said, "This survey has some tentative good news."

Perhaps the best news is that marijuana use took a slight downturn in 1996. The number of 12- to 17-year-olds who smoked pot in the last month fell 13.4% from last year. Still, 7.1% of teens reported marijuana usage.

Cocaine use also showed a decrease — continuing a trend begun in the 1980s. Past-month use dropped from 0.8% to 0.6%.

Cigarette use by adolescents stayed about the same, but Johnny's chewing less. The use of smokeless tobacco fell from 2.8% in 1995 to 1.9% in 1996. Alcohol use dropped from 21.1% to

18.8%.

But before the administration breaks its arm patting itself on the back, it should look at the grim numbers for especially dangerous, addictive drugs such as heroin and hallucinogens. And if it wants to take credit for a mildly good year, it also has to assume the blame for three prior years of miserable failure. Illegal drug use by adolescents is still up more than 69% since 1992, when it bottomed out after a decline that started in the '80s.

This is also the *only* recent study showing a downturn in drug use by teens. This raises the possibility that its modestly optimistic result may be due to sampling errors.

"Don't break out the champagne yet," said Lloyd Johnston, director of Monitoring the Future, an HHS-funded study at the University of Michigan. "I have serious concerns there has been a decline. There has been a coincidence (of increase) in all recent study results — except this one."

Johnston's latest Monitoring the Future study, released in December, showed illegal drug use — especially marijuana use — up sharply among high schoolers.

It said lifetime marijuana use by eighth-graders grew from 19.9% to 23.1% in 1996. And nearly 40% of 10th-graders had taken marijuana. Current use of the drug — within the prior 30 days — was also up, increasing 18.6% among 10th-graders since 1995. Use of hallucinogens, PCP, tranquilizers, cocaine and heroin had also risen.

Another study, released in September by the Parents Resource Institute for Drug Education, found student drug use at the "highest level in nine years." According to PRIDE, more than one in four of all high school seniors — some 26.5% — had used an illicit drug once a month or more during the past school year.

In fact, more students reported getting "very high, bombed or stoned" when they use drugs. Almost three-quarters of 12th-graders said they get very high when they smoke marijuana — up from 62.8% in 1988.

The Centers for Disease Control's survey of youth-risk behavior also backed up these findings.

Even the new HHS survey has its share of bad news.

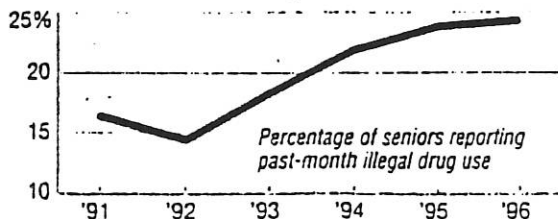
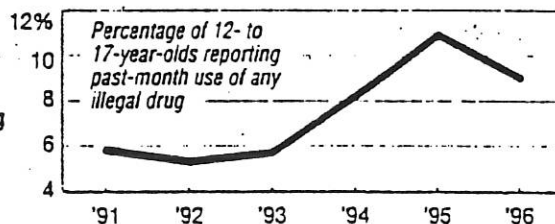
First-time use of heroin among all age groups is soaring. The survey said 141,000 people tried it for the first time in 1995, the latest year reported. That's up from 40,000 in 1992. And the age of first-time heroin users is plunging — a reliable sign of drug chic. The average age for a first-time heroin user was 25 in 1988. Today the average age is 19.3 years old.

Hallucinogen use is also exploding. Two percent of the teens in the 1996 HHS survey said they had used them, up from 1.7% in 1995 and nearly double the 1.1% reported in 1994.

We'd love to say that teen drug use has stopped its upward trajectory. But we should wait and see before we start the celebration.

Something To Crow About?

New Clinton administration survey says teen drug abuse is declining...



...but University of Michigan's Monitoring the Future study shows no drop among high school seniors.

Sources: Department of Health and Human Services, 1996 Monitoring the Future study



# HEIN AND WEIR, CHARTERED

ATTORNEYS AT LAW

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*Ronald R. Hein*

*Stephen P. Weir*

*Susan Baker Anderson*

## SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

TESTIMONY RE: SB 606

Presented by Ronald R. Hein

on behalf of

R. J. Reynolds Tobacco Company

**March 16, 1998**

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for R. J. Reynolds Tobacco Company.

R. J. Reynolds Tobacco Company opposes SB 606. Current law places significant restriction on marketing of tobacco products. Sampling or distribution of tobacco products to minors in any manner is already prohibited. Sampling to adults is strictly limited. Significant restrictions were imposed on marketing and distribution of tobacco products by HB 2554 which passed in 1996. RJR supported that legislation at that time as a means of prohibiting youth smoking.

RJR uses sampling only for purposes of brand competition, and on an extremely limited basis. No sampling is permitted with persons under the age of 21, and no sampling is done with non-smokers. Normally a sample is given to an adult smoker who is smoking another brand of cigarettes for the purposes of trying the sample brand.

In addition, RJR has utilized sampling as a means of marketing or getting feedback on new products. SB 606 would prohibit manufacturers from utilizing focus groups to test new products before they are available in the market place. The manufacturer would be prohibited from providing a sample, and the individual would not be able to purchase the product because it is not yet on the market. Although that may not be the intent of this legislation, it is one of the results of such a blanket ban.

I am not aware that there is any problem that needs to be corrected. This does not appear to be a bill that is aimed at the problem of youth smoking, nor is it directed at a specific problem with the current restrictions on sampling. It appears that all it would do would be to interfere with brand competition with existing adults smokers, and by imposing another government restriction would inhibit marketing of new products to adult smokers.

Therefore, on behalf of R. J. Reynolds Tobacco, I would urge the committee to defeat SB 606.

Thank you very much for permitting me to testify, and I will yield to questions.

Sen. Federal & State Affairs Comm.

Date: 3-17-98

Attachment: # 2

*DOUG WILLIAMS*  
537-8366

*MARCIE WOOD*  
*Interior Designs*

March 16, 1998

Honorable Lana Oleen  
Kansas Senate  
Topeka, Kansas

Dear Senator Oleen,

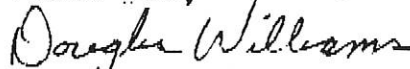
I would like to offer a few comments on Kansas Senate Bill 606 which I am strongly opposed to.

It is my understanding that Kansas has one of the most stringent laws in the United States regarding the distribution of tobacco samples already in place.

I know from personal experience in seeing how Copenhagen-Skoal operates at the Kaw Valley Rodeo and Country Stampede that they are very diligent in following the law pertaining to the distribution of their samples.

These samples, as in many other products, are not forced upon us and as adults it should be left up to us as individuals whether to accept them or not.

Thank you,



Douglas Williams

Sen. Federal & State Affairs Comm.  
Date: 3-17-98  
Attachment: #3

WILLIAMS DECORATING SHOWCASE

1401 Pillsbury, Manhattan, Kansas 66502

DOUG WILLIAMS  
537-8366

MARCIE WOOD  
Interior Designs

To: Sen Lana Oleen ATTN: Midge Ext 64336

Fax #: 785-368-7119

Re: Senate Bill 606

Pages: Cover & 1

Comments:

Midge,  
Per our conversation Friday  
I would like this entered in the  
record of the committee meeting.

Thank you,

Doug Williams



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**Pretty Prairie**

March 17, 1998

**Booster Club, Inc.  
P.O. Box 36  
Pretty Prairie, KS 67570  
(316) 459-6205**

Senator Oleen and Members of the Committee:

I am Connie Hedrick, Secretary of the Booster Club, Inc., sponsor of Kansas' Largest Night Rodeo, held in Pretty Prairie every year for the past 61 years. For ten years I have worked closely with the national sponsorship programs that the Professional Rodeo Cowboys Assoc. has secured for all PRCA rodeos. These programs and the assistance they provide for the sport of rodeo is imperative to the future of rodeos such as ours.

Currently, Copenhagen Skoal Pro Rodeo (United States Tobacco Sales & Marketing Co. Inc.) assists with our advertising & provides an automated scoreboard at no charge to us, on which we sell ads to help our bottom line. In addition they provide posters, contestant back numbers & daysheets. Their assistance is extremely important to our rodeo.

Copenhagen Skoal employees have always conducted themselves in the most professional manner and never deviate from the laws which restrict the promotion of their product. We have never had an incident that would cause us to consider not allowing Copenhagen Skoal to participate at our rodeo. **In fact, we have never had any negative community reaction to their adult sampling booth.** They are dressed in identifiable clothing, the age restriction signs are in prominent view, and the entrance to their booth is roped off. You actually have to walk out of your way to get to the sampling area. We are proud to have our rodeo associated with Copenhagen Skoal Pro Rodeo Program.

I ask you to vote against Senate Bill 606. I believe we can handle this issue on a local level, without state intervention.

Yours truly,  
*Connie I. Hedrick*  
Connie I. Hedrick, Sec.  
Booster Club, Inc.

Sen. Federal & State Affairs Comm.  
Date: 3-17-98  
Attachment: # 4



## KANSAS OIL MARKETERS ASSOCIATION

Convenience Store Association of Kansas

Testimony on HB 2726  
Submitted by the Kansas Oil Marketers Association/  
Convenience Store Association of Kansas  
Senate Federal and State Affairs Committee

Madam Chair, members of the Senate Federal and State Affairs Committee. My name is Tom Palace. I am Executive Director of the Kansas Oil Marketers Association, a statewide trade association representing over 350 independent Kansas petroleum companies which distribute petroleum products at the wholesale and/or retail level. KOMA is also the flagship organization for the Convenience Store Association of Kansas, and as such, represents the interests of the owners and operators of convenience stores across the state.

We appreciate the opportunity to appear before you today in support of HB 2726.

House Bill 2726 is almost identical to SB 87 that passed both chambers overwhelmingly, only to be vetoed by the Governor during the veto session in 1997. SB 87 was introduced to make needed clarifications to the cigarette and tobacco infractions law passed in 1996. The bill included language to remove criminal penalties for licensees who are not directly involved in the sale of tobacco products to minors. However, during the veto session, the language in the bill was interpreted as removing the ability for the Department of Revenue to impose any penalties on licensees when their employees sell tobacco products to minors. The Governor ruled that the effect of the bill would undermine the State's ability to enforce existing laws prohibiting the sale of tobacco products to minors.

Having said that, please refer to Section 10. K.S.A. 79-3322 on page 9 line 9 of the bill. The new wording reads "For purposes of this subsection the person who violates this subsection shall be the individual directly selling, furnishing or distributing the cigarettes or tobacco products to any person under 18 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both." This language clarifies that the retailer will not be held criminally liable for the action of an employee that sells a tobacco product to a minor if the retailer has no actual knowledge of such selling practice. This leaves intact the civil penalties that currently exist.

KOMA/CSAK supports HB 2726 in its entirety and urges your support of this bill.

We appreciate the opportunity to appear before you today and will stand for questions.

KANSAS OIL MARKETERS ASSOCIATION  
POSITION PAPER - HB 2726 - TOBACCO BILL

February 4, 1998

KOMA has initiated the introduction of House Bill 2726 concerning tobacco products. You will recall that the Governor vetoed Senate Bill 87 last year due to some technical confusion over the removal of criminal liability for the retailer. His veto message indicated his support of the concept if the Revisor of Statutes would clarify the language. House Bill 2726 has been redrafted to address that problem and the Governor's Chief Counsel and Legislative Liaison have both reviewed and signed off on the measure. The bill contains the following provisions:

1. Graduate the penalties for second and subsequent convictions for cigarette and tobacco infraction violations by minors by providing for a \$25 fine for a first conviction for a cigarette or tobacco infraction; a \$50 fine for a second conviction ; and \$150 for third and subsequent convictions;
2. Allow judges to require a parent or legal guardian to appear with a juvenile in these cases;
3. Allow a judge to order a juvenile to complete, at the juvenile's expense, a minimum two hour educational program on the dangers of tobacco and cigarette use;
4. Amend a tax statute dealing with cigarettes to require that records of sales by dealers could be preserved at the central location of the dealer, if the dealer has more than one place of business;
5. Remove criminal liability for the retailer, if an employee sells tobacco products to a minor, without the retailer's knowledge or direct involvement.
6. Clarify that no right to a jury trial exists for a tobacco infraction.

## Testimony to the Senate Federal and State Affairs Committee

March 17, 1998

House Bill 2726

Kathy Porter  
Office of Judicial Administration

The Office of Judicial Administration was asked to determine if HB 2726 clearly provides that appeals to the district court from convictions of cigarette and tobacco infractions are to be tried to the court, without a jury. This applies to both appeals from municipal courts and to appeals from district magistrate judges.

By deleting the words "cigarette or tobacco infraction" from section 8 (5) of the bill (page 7), it appears that the intent of the bill is to provide no right to a jury trial on appeals from district magistrate judges to the district court. However, to make it clear to all parties, some of which may be *pro se* litigants, that there is no right to a jury trial on appeal to the district court, we would suggest adding the following language to section 8 (5):

"All appeals by a defendant from a district magistrate judge in traffic infraction and cigarette or tobacco cases shall be tried by the court without a jury."

To supply a corresponding provision for appeals to the district court from municipal court convictions, we would suggest adding similar language to K.S.A. 22-3609, which provides for appeals from municipal courts. A copy of that suggested amendment is attached.

Thank you for the opportunity to provide testimony on HB 2726. I would be glad to respond to any questions.

Statute # 22-3609  
Chapter 22.--CRIMINAL PROCEDURE  
Article 36.--APPEALS  
Appeals from municipal courts.

*K.S.A. 22-3609 is hereby amended to read as follows: 22-3609.*

(1) The defendant shall have the right to appeal to the district court of the county from any judgment of a municipal court which adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas. The appeal shall be assigned by the administrative judge to a district judge.

The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. No appeal shall be taken more than ten days after the date of the judgment appealed from.

(3) The notice of appeal shall designate the judgment or part of the judgment appealed from. The defendant shall cause notice of the appeal to be served upon the city attorney prosecuting the case. The judge whose judgment is appealed from or the clerk of the court, if there is one, shall certify the complaint and warrant to the district court of the county, but failure to do so shall not affect the validity of the appeal.

(4) The trial of municipal appeal cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived at the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant. A jury in a municipal appeal case shall consist of six members. *All appeals taken by a defendant from a municipal judge in traffic infraction and cigarette or tobacco cases shall be tried by the court without a jury.*

(5) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416 and amendments thereto shall be conducted only on the record of the stipulation of facts relating to the complaint.

#### History

History: L. 1970, ch. 129, S. 22-3609; L. 1971, ch. 114, S. 10; L. 1975, ch. 202, S. 1; L. 1976, ch. 163, S. 21; L. 1977, ch. 112, S. 10; L. 1981, ch. 154, S. 3; L. 1982, ch. 149, S. 1; L. 1982, ch. 144, S. 18; L. 1983, ch. 115, S. 1; L. 1986, ch. 115, S. 66; L. 1992, ch. 176, S. 1; July 1.