

Approved: 3-24-98  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Nancey Harrington, Vice Chair, at 11:15 a.m. on March 18, 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. Pete Bodyk, Alcohol Beverage Control Division, Department of Revenue

Others attending: See attached list

In the brief absence of Senator Oleen, who was offering testimony before the Senate Assessment and Taxation Committee, Senator Harrington, vice chair, opened the meeting by calling upon staff to provide information requested yesterday during the hearing on **SB 606**. It relates to cigarettes, and the staff memo concerns current laws governing the sale of cigarettes to minors.

A memo (Attachment #1) prepared by staff was distributed and staff addressed current Kansas law concerning the use of cigarettes and other tobacco products. Staff also responded to questions raised by a committee member yesterday by citing statutes specific to enforcement responsibilities as they relate to tobacco infractions.

The chair recognized Mr. Pete Bodyk of the Alcohol Beverage Control Division for a response to questions from a committee member regarding law enforcement responsibilities as they relate to the sale of cigarettes to minors. Mr. Bodyk advised that the department has nineteen field agents assigned to enforcement of sales to minors, an attorney who prosecutes the cases and hearing officers who hear the cases. He told the committee that 212 cases were filed administratively in FY 97, with the majority paying a fine which averaged \$125.

Senator Oleen pointed out that the nineteen field agents are not specifically assigned to enforcement of cigarette infractions, and Mr Bodyk advised that they have other enforcement duties, statewide, such as liquor law violations, criminal tax investigations and tax on illegal drugs.

Senator Oleen told the committee she would make available a copy of the Notice to Appear issued for cigarette and tobacco product infractions which reflects the fine assessed and amount of court costs.

The chair then recognized Senator Biggs who made available to the committee a letter from the Department of Revenue (Attachment #2) providing information on the number of sample packages of cigarettes distributed in Kansas during calendar year 1997 and the taxes paid on sample cigarettes.

Senator Oleen announced that next week the committee would be reviewing a recent Legislative Post Audit report on an audit of the Alcohol Beverage Control Division which she felt would be helpful in dealing with liquor and tobacco related issues that come before the committee.

The chair directed attention to subcommittee work and deferred to Senator Jones, who chaired the subcommittee appointed to consider **SB 322**, relating to licensure and regulation of private detectives and agencies. Senator Jones reported that the subcommittee had met three times. He provided a handout listing the proposed amendments resulting from the work of the subcommittee (Attachment #3), and staff reviewed in detail the balloon amendment that was prepared.

Senator Jones moved to adopt the subcommittee report and to favorably report the bill, as amended, to the full senate with the recommendation that a substitute bill be introduced reflecting the proposed amendments. Senator Bleeker seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E, Statehouse, at 11:15 a.m., on March 18, 1998.

The chair recognized Senator Harrington, who chaired the subcommittee appointed to study **SB 496**, relating to bids and request for proposals. Senator Harrington reported that the subcommittee received testimony similar to that presented to the full committee. She advised that a motion had been made to amend the bill to require that the bids remain sealed and returned to the bidders, but the committee could not reach an agreement because the bill was too far reaching. Senator Biggs, who served on the subcommittee, commented that the bill sought to address a single issue which will probably not occur again.

Senator Oleen advised that she and Senator Becker had an opportunity to visit with the secretaries of administration and corrections and a commitment had been made to return all documentation to Wackenhut Corrections, with a sealed copy being retained.

Senator Biggs moved to report **SB 496** unfavorably to the full senate. Senator Harrington seconded the motion, and the motion carried.

Attention was then directed to **SB 581**, concerning the sale of alcohol and relating to certain elections. Senator Oleen noted there were no opponents to the bill when it was heard by the committee.

Senator Harrington moved to report the bill favorably to the full senate. Senator Becker seconded the motion. The motion carried.

The meeting adjourned at 12:10 p.m. The next meeting is scheduled for March 19, 1998.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE  
GUEST LIST

DATE: 3-18-98

NAME	REPRESENTING
Bob McEORT	Visitor
Virginia McEort	"
James & Ellen Tom Darches	KC DAA McGILL ASSN.
BRAD AMMINGTON	INDIAN AMERICAN AFFAIRS LIAISON TO THE GOVERNOR
Bridget Mburu	Tobacco Free KS. Coalition
Cecelia C. Stollers	ATTA
Maury Anne Bellhus	Kansas Smokeless Kids Initiative
Dawn Reid	KSNA
Tom Roberts	KSNA
Pete Bodyk	KDOR / ABC
Julio Francisco	KDHE
TOM PALACE	KOMA
Amy A. Campbell	KRLDA
Ron Hein	RJ Reynolds Tobacco Co.
Heather Randall	Whitney Damron, EA
DENNIS KOCH	UST PUBLIC AFFAIRS
Whitney Damron	KS Bar Assn. & STC

March 11, 1998

## Current Kansas Law Addressing the Use of Cigarettes and Other Tobacco Products

In Kansas, cigarettes and tobacco products are regulated in a variety of ways. The most comprehensive Kansas enactment regulates those persons involved in the sale of tobacco and involves licensure and taxation; however, several statutes specifically target the use, rather than the sale, of tobacco and cigarettes. This memo summarizes current Kansas law on this topic and identifies three primary types of regulation: age restrictions, location restrictions, and education.

### Minors May Not Possess Tobacco Products

Minors (persons under the age of 18) are prohibited from purchasing, attempting to purchase, possessing, or attempting to possess cigarettes or tobacco products. K.S.A. 79-3321(l), (m). A violation of these provisions is a cigarette or tobacco infraction for which the fine is \$25. K.S.A. 79-3322(c) and K.S.A. 21-3105a(e).

An individual who directly or indirectly sells, distributes or furnishes cigarettes or tobacco products to or buys them for a minor has committed a class B person misdemeanor punishable by a minimum fine of \$200. (The maximum penalty of a class B misdemeanor is a \$1,000 fine, six months in jail, or both.) When determining the penalty for a violation by a licensed retail dealer whose employee sold the tobacco products, the court must consider as a mitigating circumstance the employee's completion of a training program on how to comply with this law. K.S.A. 79-3322(b).

Defenses to prosecution for the violations related to minors are provided by statute. A defense exists for a licensed retailer or person who legally distributes samples if the defendant had reasonable cause to believe the minor was of legal age and if the minor showed the defendant an apparently legitimate photo identification document to establish that the minor was of legal age. A defense is also created in the statute for persons who legally sell cigarettes or tobacco products through the mail. That defense exists if the cigarettes or tobacco products were provided to the minor by mail after the minor provided an unsworn declaration that the minor was at least 18. K.S.A. 79-3322(b)(2) and (3).

### Smoking Is Prohibited in Specific Areas

Several separate enactments prohibit smoking in specific locations.

**Smoking is prohibited in public places.** No person may smoke in a public place or public meeting, except in designated smoking areas. Proprietors of public places must post signs that

clearly state that smoking at that location is prohibited by state law. K.S.A. 21-4010. "Public place" is defined as enclosed indoor areas open to the public, including but not limited to: restaurants, retail stores, public means of mass transportation, passenger elevators, places where health care services are provided, libraries, courtrooms, state, county or municipal buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas, and recreational facilities. K.S.A. 21-4009(a). Public meetings are defined as all meetings open to the public. K.S.A. 21-4009(b). Smoking means possession of a lighted cigarette, cigar, or any lighted smoking equipment.

Proprietors are restricted in regard to determining the location of designated smoking areas. Designated smoking areas may not be located in passenger elevators, school buses, public means of mass transportation, and other places where smoking is prohibited by Fire Marshal or other law, ordinance, or regulation. K.S.A. 21-4010(b). When designating smoking areas, proprietors must use existing physical barriers and ventilation systems to minimize the effect of smoke in adjacent nonsmoking areas. K.S.A. 21-4010(c). Signs which state that smoking is only permitted in the designated area must be posted. K.S.A. 21-4011.

A person who smokes in violation of the law is guilty of a misdemeanor punishable by a maximum fine of \$20 per violation. Failure to post the signs required by law is a misdemeanor punishable by a maximum fine of \$50. The Kansas Department of Health and Environment (KDHE) or local health departments may bring an action in court to enjoin repeated violations. K.S.A. 21-4012.

The statutes expressly state that counties and cities can regulate smoking areas more stringently than the state law. Such stricter regulation will control in an instance where a local ordinance conflicts with state law. K.S.A. 21-4013.

**Smoking is prohibited in the Capitol Building.** Smoking has been completely banned from any area, room, hallway, or other place in the Capitol since July 1, 1995. K.S.A. 21-4106.

**Smoking is prohibited in medical care facilities.** Since July 1, 1994, smoking in a Kansas medical care facility has been prohibited. K.S.A. 21-4017(b). A medical care facility is defined as a general or special hospital, an ambulatory surgery center, a recuperation center and any licensed psychiatric hospital. K.S.A. 21-4017(a). The only statutory exception to the blanket prohibition is smoking in a well-ventilated area of a licensed long-term care unit of a medical care facility. A person who violates the general prohibition is guilty of a misdemeanor punishable by a maximum fine of \$20.

The chief administrative officer of the facility is required to post signs stating that smoking is prohibited by state law. Failure to post the required signs is a misdemeanor punishable by a maximum fine of \$50. KDHE or the local health department may take action in district court to enjoin repeated violations of the sign provision. K.S.A. 21-4017(c).

**Smoking is prohibited in day care homes.** By statute, a "day care home" is defined as the premises in which care is provided for a maximum of 12 children under 16 years of age with a limited number of children under kindergarten age or a family day care home where a limited number of children are provided food or lodging or both away from such children's home or homes for less than 24 hours a day. K.A.R. 28-4-113(b), (h); K.S.A. 1997 Supp. 65-517. Smoking is prohibited in those locations any time when children, who are not related to the

person who maintains the home, are being cared for as part of the operation of the home. The statute provides that smoking may occur outside the facility, for example, on porches, in a yard, or inside a garage. K.S.A. 1997 Supp. 65-530(b). Each day care home license or registration certificate must contain a statement in bold print that smoking is prohibited on the premises. The home operator is required to post the license or certificate in a conspicuous place. K.S.A. 1997 Supp. 65-530(c).

First and second violations of the smoking prohibition will result in a maximum \$500 civil fine imposed by the Secretary of KDHE. K.S.A. 1997 Supp. 65-526. Third and subsequent violations are grounds for suspension of the day care home's license, certificate of registration, or temporary permit. K.S.A. 65-523(e).

**The use of tobacco products is prohibited in public school buildings.** Since July 1, 1988, both smoking and chewing tobacco has been prohibited in Kansas public school buildings. A "school building" is defined as any enclosed building used for pupil attendance purposes by the board of education of a unified school district. The statutory prohibition cannot be altered by the local board of education. K.S.A. 72-53,107. This prohibition has been in place since July 1, 1988.

#### **The Kansas Department of Health and Environment Disseminates Educational Materials Regarding the Negative Effects of Smoking**

The Secretary of KDHE is charged with conducting an ongoing public awareness campaign regarding pre-conceptual and perinatal effects of certain substances including tobacco. K.S.A. 65-1,160. This campaign is directed towards both men and women. The Secretary is required to provide educational materials to health care professions who provide health services to pregnant women, and such materials will address the services available from local health departments as well as the perinatal effects of the use of tobacco while pregnant. K.S.A. 65-1,161.

**STATE OF KANSAS***Bill Graves, Governor***DEPARTMENT OF REVENUE***John D. LaFaver, Secretary*

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**Office of the Secretary**

March 17, 1998


Senator Donald E. Biggs  
State Capitol, Room 140-N  
Topeka, Kansas 66612

Dear Senator Biggs:

I have been asked by Secretary LaFaver to respond to your request earlier today asking the number of sample packages of cigarettes that were distributed in Kansas, January through December of 1997. Since K.S.A. 79-3313 specifies that sample packages must contain less than 20 cigarettes, and those sample packages can contain any number of cigarettes as long as it is less than 20, I am unable to tell you the number of packages that were distributed. However, during 1997, a total of \$6,402.72 in taxes was paid on sample cigarettes. With the current tax rate at \$0.24 per pack of 20 cigarettes, the \$0.012 per cigarette rate translates into a total of 533,560 sample cigarettes having been distributed during calendar year 1997.

If I can be of further assistance, please let me know. My phone number is 296-4014.

Sincerely,

  
Steve Neske

Policy & Program Analyst  
Kansas Department of Revenue

Sen. Federal & State Affairs Comm.  
Date: 3-18-98  
Attachment: #2

# MEMO

**To:** Senate Committee on Federal and State Affairs  
**From:** Theresa M. Kiernan  
**Subject:** Subcommittee Report on SB 322  
**Date:** March 13, 1998

The subcommittee met and proposed several amendments to SB 322. The proposed amendments are contained in the attached balloon.

The amendments include:

- (1) Reducing the amount of the fees authorized to be imposed.
- (2) Eliminating the amendment that would authorize a private investigator to carry a concealed weapon at all times.
- (3) Requiring the issuance of a subpoena or a court order based upon a complaint prior to the inspection of a licensee's records by the attorney general. In addition, subpoenas issued by the attorney general would be subject to confidentiality standards or limits imposed under other provisions of law.
- (4) Numerous technical and wording changes.

The subcommittee recommends that a substitute bill be prepared to reflect those amendments and the substitute bill be introduced by the full committee.