

Approved: March 8, 1999  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Senator Lana Oleen at 11:00 a.m. on February 23, 1999 in Room 254-E of the Capitol.

All members were present except: Senator Becker, Excused

Committee staff present: Mary Galligan, Legislative Research Department  
Theresa Kiernan, Revisors of Statutes  
Judy Glasgow, Committee Secretary

Conferees appearing before the committee: Senator Biggs  
Shelby Smith  
Terri Roberts, Kansas State Nurses Association  
Susan Stanley, American Heart Association  
Sally Finney, Kansas Public Health Association  
Don Abdllah, American Cancer Society  
Jerry M. Scott, Tobacco Free Kansas Coalition  
Jim Conant, ABC  
Whitney Damon, Smokeless Tobacco Council  
Ron Hein, R. J. Reynolds Tobacco

Others attending: See Attached Sheet

Theresa Kiernan reviewed **SB 239, 278 and 279** for the committee. **SB 239** is similar to a bill that was introduced last session. **SB 278** would require that four weeks notice be given to the Director of ABC prior to distribution of tobacco products and where the distribution will be made. **SB 279** would require the payment and taxes the same as retail sales on sample distributions.

Chairman opened hearings on **SB 239, relating to the sale and distribution of cigarettes and tobacco products; SB 278 concerning cigarettes and tobacco products relating to samples and SB 279 concerning sale or distribution of tobacco products.**

Chairman Oleen recognized Senator Biggs, a proponent on **SB 239, SB 278 and SB 279**. Senator Biggs spoke on what has changed since last year. The first is the \$206 billion settlement from tobacco companies with Kansas to receive approximately \$1.5 billion over 25 years and beyond. (Attachment 1) In addition to money the tobacco companies agreed to a ban on youth access to free samples, severe limitations on marketing and strong limitations on lobbying for tobacco. He indicated that Kansas has a higher rate of use at the 8<sup>th</sup> grade of tobacco, alcohol and other drugs and that a vast majority of Kansans are opposed to the free distribution of tobacco products.

Chairman Oleen called on Shelby Smith, for Tobacco Free Kansas Coalition, Inc. Mr. Smith stated the coalition of eleven health organization represent well in excess of 691,000 constituents. (Attachment 2)

Chairman Oleen recognized Terri Roberts. Terri Roberts, Executive Director of the Kansas State Nurses Association a proponent on **SB 238, 278**. (Attachment 3) The bill would eliminate the practice of cigarette and smokeless tobacco sampling in Kansas. Nebraska outright bans the distribution of tobacco product samples to anyone. The most effective way to ensure that cigarette products do not get into the hands of minors is to ban the distribution of all cigarette and tobacco samples. Ms. Roberts ask for the committee's support of **SB 239**. If this bill is not passed she ask for consideration of **SB 278** which would require 4 weeks notice before free distribution of samples (Attachment 4) and **SB 279** which would make it a statutory requirement to pay the 10% tax on wholesale price of samples. (Attachment 5).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E  
Statehouse, at 11:00 a.m. on February 23, 1999.

Chairman Oleen called on Susan Stanley a proponent to **SB 239**. Susan Stanley addressed the enforcement provisions of K.S.A. 79-3313 and suggested amendments contained in **SB 239**. (Attachment 6) This provides no samples of cigarettes or smokeless tobacco may be distributed. She asked for the committee's consideration on **SB 239**.

Chairman Oleen recognized Sally Finney, Executive Director, Kansas Public Health Association, Inc. as a proponent of **SB 239**. Sally Finney stated that the members of Kansas Public Health Association and the Tobacco Free Kansas Coalition ask that the legislature send a message to Kansas citizens that it is no longer tolerable to allow the legal distribution of free samples. She asked for the committee support of **SB 239**. (Attachment 7).

Don Abdllah, American Cancer Society was recognized by Chairman Oleen as a proponent to **SB 239**. He supported elimination of the distribution of free tobacco product of any kind. Free tobacco now means more addicted teen smokers, less tax revenue, greater medical expenses and the untold amount of sorrow for those individuals that must watch loved ones die from cancers. (Attachment 8). He urged the committee to pass **SB 239**.

Chairman Oleen recognized Jerry M. Scott, proponent to **SB 239**. Mr. Scott, a members of Tobacco Free Kansas Coalition, Inc., urged the committee to favorably pass this bill to effectively eliminate sampling of tobacco products in Kansas. (Attachment 9).

Chairman Oleen recognized Whitney Damron, an opponent of **SB 239**, **SB 278**, and **SB 279**. Mr. Damron, represented the Smokeless Tobacco Council, Inc. (Attachment 10). Mr. Damron stated that sampling is an important method of competition that enables manufacturers to introduce new products to existing adult consumers of smokeless tobacco products; it is an important competitive tool. A ban on sampling helps the largest manufacturers in an industry at the expense of smaller competitors and smokeless tobacco product usage among underage individuals is low and decreasing. He asked the committee to reject this legislation. Mr. Damron stated that **SB 278** would place unneeded marketing restrictions on the tobacco industry which will have no impact upon youth access. (Attachment 11). He requested that the committee reject **SB 278**. Mr. Damron noted that **SB 279** the STC member companies interpretation requires those sampling tobacco products to pay taxes on them as if they were being sold. He believed that **SB 279** is unnecessary recodification of current law. (Attachment 12).

Chairman Oleen recognized Ron Hein, an opponent of **SB 239**, **SB 278**, and **SB 279**. Mr. Hein, legislative counsel for R. J. Reynolds Tobacco Company, stated that Current law places significant restriction on marketing of tobacco products. (Attachment 13) Sampling or distribution of tobacco products to minors in any manner is already prohibited by Kansas law, and sampling to adults is strictly limited. **SB 239** would prohibit manufacturers from utilizing focus groups to test new products before they are available in the market place. Manufacturers 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. Mr. Hein stated that R. J. Reynolds Tobacco Company opposes **SB 278** since current law prohibits sampling or distribution of tobacco products to minors in any manner. (Attachment 14) The Master Settlement Agreement (MSA) agreed imposes additional restrictions, including limiting sampling to adult-only environments. Mr. Hein stated that R. J. Reynolds Tobacco Company opposes **SB 279**. The Department of Revenue and all tobacco companies interpret current law to impose the tax on sampled products. This bill seems to imply that current law does not require the tax to paid. (Attachment 15). He urged the committee not to pass **SB 279** and to have the minutes reflect a finding that this bill is unnecessary due to interpretation of current law and that failure to pass this bill does not imply that the tax should not be imposed on sampling.

Chairman Oleen recognized Jim Conant, Director of Alcoholic Beverage Control. Mr. Conant, spoke in support of **SB 278**, requiring that advance notice be given to the department prior to the public distribution of free samples of cigarettes or tobacco products. (Attachment 16) This advance notice would allow the department to plan and conduct compliance checks at these events in the same manner as with licensed businesses.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E, Statehouse, at 11:00 a.m. on February 23, 1999.

Committee members questioned Mr. Conant about annual events at which sampling takes place and if local agencies would have the advance notice to investigate the sampling practices at those events. Mr. Conant that the local agency if they chose could perform the law enforcement or compliance action themselves at the local level.

Chairman Oleen called the committee's attention to written testimony supporting **SB 239** from Janet Worthy, Community Awareness Team, Regional Prevention Center of Northwest Kansas, (Attachment 17); Sue Evans, Regional Prevention Center Northwest Kansas (Attachment 18); Members of the S.A.D.D. Organization (Attachment 19) and John Pepperdine, American Cancer Society, (Attachment 20)

Chairman Oleen recognized Senator Vidricksen for introduction of a bill. Senator Vidricksen asked for introduction of bill concerning taxes and recordation of plats. Senator Jones made a motion for the introduction of the bill. Senator Biggs seconded the motion. The motion carried.

Chairman Oleen stated that the hearings on **SB 238, SB 278 and SB 279** were closed and the committee will continue to accept written testimony.

The meeting adjourned at 12:03 p.m. The next meeting of the committee will be held February 24, 1999

SENATE FEDERAL & STATE AFFAIRS COMMITTEE  
GUEST LIST

DATE: FEBRUARY <sup>23</sup> ~~22~~, 1999

NAME	REPRESENTING
Carolyn Maddendox	Ks St Ns Assn
HEATHER COAY	CITIZEN
Sally Finny	Ks. Public Health Association
Cindee C. Strallers	American Heart Association
Doreen Dreyer	American Heart Assn.
Don Abdalla	American Cancer Society
John Peppardine	American Cancer Society
Whitney Duncan	<del>FE</del> Smokeless Tobacco Council, Inc
Ken Hoeber	McGill, GACITES = ASSN.
Pete Bodyk	KDOR / ABC
Terri Roberts	KSNA
SHEETS & Smith	TFKC



DONALD E. BIGGS  
SENATOR, 3RD DISTRICT  
LEAVENWORTH & JEFFERSON COUNTIES



COMMITTEE ASSIGNMENTS  
RANKING MINORITY MEMBER:  
ENERGY AND NATURAL RESOURCES  
MEMBER:  
AGRICULTURE  
ARTS AND CULTURAL RESOURCES  
FEDERAL AND STATE AFFAIRS  
FINANCIAL INSTITUTIONS AND  
INSURANCE

LEGISLATIVE HOTLINE  
1-800-432-3924  
(DURING SESSION)

TOPEKA

SENATE CHAMBER

February 23, 1999

TO: SENATE FEDERAL & STATE AFFAIRS COMMITTEE

TESTIMONY ON SB239, SB278 and SB279 by Senator Don Biggs

SB239 is similar to SB606 on which this committee held hearings last year. It prohibits the distribution of free samples of tobacco products in Kansas. What has changed since last year?

1. The \$206 billion settlement to states from tobacco companies with Kansas to receive approximately \$1.5 billion payable over 25 years and beyond.
2. In addition to money, the tobacco companies agreed to a ban on youth access to free samples, severe limitations on marketing, and strong limitations on lobbying for tobacco issues.
3. Kansas 8<sup>th</sup> graders report using alcohol, tobacco and other drugs at higher rates than the national average of all 8<sup>th</sup> graders in 1997. Smokeless tobacco use by Kansas 12<sup>th</sup> graders was 6.2% higher than the national average in 1997.
4. A vast majority of Kansans, including smokers, are opposed to the free distribution of tobacco products.
5. This from today's Kansas City Star: "For years, tobacco companies provided free samples of chewing tobacco to ball clubs. No longer, as a result of the recent tobacco settlement with states. Major league baseball is prohibiting club personnel from distributing the chaw."

With what is known today and with what has been admitted by the tobacco companies, it is totally inconsistent to have a public policy in Kansas that permits continued free sampling of tobacco products. The strongest testimony is from our committed youth. Please read the attachments to my testimony and remember the 400 plus teenagers who rallied in Topeka on February 4, for the 3<sup>rd</sup> annual Smoke-Free Teens Are Rising (STAR\*). Let's pass SB239 for them and all the youth of Kansas.

SB278 and SB279 are for consideration if the committee fails to recommend SB239 favorably for passage by the Kansas Senate.

SB278 requires that the distributor of sample cigarettes or tobacco products at any event open to the public give at least 4 weeks notice to the Department of Revenue. The written notice shall include the date, time, and location of the distribution. This will enable enforcement agents to do compliance checks regarding youth access.

SB279 requires that tax be paid on smokeless tobacco samples as currently required for cigarette samples. This will enable determination of the volume of smokeless tobacco being distributed in Kansas.

Thanks for your consideration.

Don Biggs,  
State Senator, Third District



# COMMUNITY AWARENESS TEAM

c/o Regional Prevention Center  
 of Northwest Kansas  
 990 South Range, Suite 7  
 Colby, Kansas 67701

(785) 462-8152

May 20, 1998

Dear Senator Biggs:

We wanted to write to let you know that Colby's Community Awareness Team (CAT), some of whom have signed below, supported SB 606 which you introduced to ban the distribution of free samples of cigarettes and smokeless tobacco in our state. One of our members, Colby High School junior Tenille Poling, provided testimony to your Committee regarding the potential tobacco give-away at our county fair which our Team effectively blocked.

An April 1, 1998 article in the *Leavenworth Times* stated that you planned to reintroduce a similar bill next year. If our Community Awareness Team could be notified, we would again provide testimony from one of our students as well as letters and phone calls from our members. This is an issue about which we feel strongly and our Team is willing to advocate for a statutory ban on all tobacco give-aways.

Thank you for sponsoring this important public health initiative to help protect Kansas children.

## Members of the Community Awareness Team

Vice (Name) - Regional Prevention Center  
 Emily Strange - Thomas County Health Department  
 Guss Taylor - Thomas Co. ADAC BOARD  
 Tina Carpenter, Thomas County ADAC  
 Robin Bennett, CHS Junior  
 Cassie Brown, CHS Sophomore  
 Amanda Jeromann, CHS Sophomore  
 Kris Shuman, CHS Freshman  
 Carolan Sharp, Citizens Medical Center  
 Sgt Willoughby Sh. Co. ADAC  
 Lindsey Harrison, CHS Sophomore  
 James Worley - USD 315 Drug Free School  
 Carey Holtwick, CHS Junior  
 Tenille Poling, CHS Junior  
 Becca Jones 'J'  
 Jill Zan, CHS Sophomore  
 Julia Johnson Senior  
 SADD President  
 Judi A. Hansen Senior  
 CHS Student Council Pres.  
 1-3



# COMMUNITY AWARENESS TEAM

c/o Regional Prevention Center  
of Northwest Kansas  
990 South Range, Suite 7  
Colby, Kansas 67701

(785) 462-8152

TO: Members of the Kansas Senate  
FROM: Tenille Poling  
RE: SB 606  
DATE: March 9, 1998

My name is Tenille Poling and I am a student at Colby High School. I have been involved in clubs, varsity sports, and this fall I was inducted into National Honor Society. I am also the vice-president of the junior class. In 1996 I was crowned Thomas County Rodeo Princess. As a member of my Community Awareness Team (CAT), I would like to thank you for allowing me to come and voice my opinions and support of senate bill 606.

Two years ago, at the Thomas County Fair, free samples of tobacco were going to be given away as part of the entertainment contract. Members of our Community Awareness Team felt that this would be an inappropriate message to be sent to the young fair participants. We petitioned the fair board and convinced them to renegotiate their contract. If the proposed bill is passed, community groups like ours wouldn't have to worry about these situations.

One reason we first opposed free samples being given away was that there is a high availability to kids whether these actions are strictly controlled or not. Almost all new tobacco users are children. Tobacco companies know this, and giving away free samples is an easy way to gain new addicts. A man I know was first hooked on chewing tobacco from a free sample that was given to him at a rodeo. Four years later he was fighting his addiction. These free samples can also be used as ploys to gain names for mailing lists that give away free merchandise and coupons.

Not all free samples will get into the hands of children, but somehow a few will find their way there. It is the responsibility of all of us to try and give these kids a better fighting chance. This would be a major step towards the effort of keeping kids and all Kansans from becoming addicted to one of the most addictive drugs there is--tobacco.

Miranda Raney  
1500 Manhattan Avenue  
Manhattan, KS 66502  
(785) 395-2919

March 31, 1998

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

Dear Senator Biggs:

My name is *Miranda Raney* and I am a freshman at Kansas State University and an advocate for a smoke-free society. In the last 4 years I have visited various secondary and elementary schools, speaking with children about the effects of tobacco. I have listened to children explain to me how they do not like people smoking around them, but that they think Joe Camel is "cool." It is through advertisements that children can become attracted to smoking. When the tobacco industry decides to give away free samples along with advertising, children become addicted.

While it may be illegal to distribute free cigarette samples to minors in the state of Kansas, we know that it is still being done. As long as we have proof that retailers are selling cigarettes to minors, then we can assume that they are also giving away free samples to minors.

This kind of distribution can be very hard to monitor and control. I know that the best way to prevent our youth from obtaining free samples would be to prohibit the distribution of tobacco samples. This would eliminate minors receiving free samples and having the instruments to start smoking.

I urge you to take this letter in consideration when voting on the proposed amendment by Senator Biggs to H.B. 2726.

Sincerely,

  
Miranda Raney



**Testimony**

Shelby Smith, Lobbyist  
Tobacco Free Kansas Coalition, Inc.

**Senate Federal and State Affairs Committee  
February 23, 1999  
Senate Bills 239, 278, and 279**

Our coalition of eleven health organizations represent well in excess of 691,000 constituents. To conserve time, only five conferees will speak in support of Senate Bills 239, 278 and 279 regarding the distribution, tax, and notice of promotional tobacco samples. Written testimony is being submitted by Janet Worthy and Sue Evans, Northwest Regional Prevention Center, Colby. Today's conferees are:

Jerry Scott, Salina  
Terri Roberts, Kansas State Nurses Association  
Susan Stanley, American Heart Association  
Don Abdallah, American Cancer Society  
Sally Finney, Kansas Public Health Association

Additionally, if I may reflect on the briefing yesterday regarding the tobacco law suit. One, it will have accomplished little or nothing unless sufficient funds are invested in children-related tobacco use prevention and cessation programs. And two, the settlement payments are NOT A WINDFALL. They do not begin to compensate Kansas for real costs incurred by the state in the past, present, or in the future which are most certain to mount.

Thank you.

132 South Fountain  
Wichita, Kansas 6721  
316-684-1371

820 Quincy, Suite 310.  
Sen. Federal & State Affairs Comm  
Date: 2-23-99  
Attachment: # 2-1



700 SW Jackson, Suite 601  
Topeka, Kansas 66603-3758

785/233-8638 \* FAX 785/233-5222  
www.nursingworld.org/snas/ks

**the Voice of Nursing in Kansas**

Debbie Folkerts, A.R.N.P.--C.  
President

Terri Roberts, J.D., R.N.  
Executive Director

FOR MORE INFORMATION, CONTACT:  
Terri Roberts, J.D. R.N.  
Executive Director  
Kansas State Nurses Association  
785-233-8638

February 23, 1999

## **SB 239 TESTIMONY**

# **PROHIBITION OF THE DISTRIBUTION OF TOBACCO PRODUCT SAMPLES**

Senator Oleen and members of the Senate Federal and State Affairs Committee, my name is Terri Roberts, and I am the Executive Director of the Kansas State Nurses Association. Thank you for the opportunity to address SB 239. This bill would eliminate the practice of cigarette and smokeless tobacco sampling in Kansas--as a parent, registered nurse and healthcare advocate it makes sense that free access to an addictive and harmful substance (when used as intended) should not be permitted.

A recent study released by the Journal of the American Medical Association focused on the impact of cigarette promotion on adolescent smoking. The objective was to evaluate the association between the influence of tobacco advertisements and promotional activities, such as the distribution of free cigarette samples and those who were ultimately influenced to smoke. A total of 1752 adolescents ranging in age from 12 to 17 years, who had never smoked, were interviewed in 1993, and then again interviewed in 1996. The study included demographic data on sex, school performance, and ethnic background. More than half of the teens (979 teens) were able to name a favorite cigarette advertisement in 1993. The results found minimal differences in answers from respondents of different ages or sexes. 10% of those in the study possessed a promotional item and were willing to use it. The research concluded that 34% of all experimentation between 1993-1996 was attributed to tobacco promotional activities. This is projected nationally to over 700,000 adolescents per year. The findings are the first longitudinal study to show a causal relationship between tobacco promotional activities and the onset of smoking.

Kansas currently restricts the distribution of cigarette samples to minors. Forty-three states restrict the distribution in some manner. Nebraska, our neighboring state to the North, outright bans the distribution of tobacco product samples to anyone. While we do not contest the right of an adult to smoke, we maintain that enforcement efforts to keep tobacco samples away from minors are almost impossible, and a waste of law enforcement time and tax payers dollars. The most effective way to ensure that cigarette products do not get in to the hands of minors, is to ban the distribution of all cigarette and tobacco samples in the state.

With the tobacco companies admitting complicity in focusing their advertising activities on children and adolescents, this is one arena where the state of Kansas does not have to participate. Ultimately, banning samples has no fiscal impact on area businesses. Free samples, with no purchases required, are merely an advertising ploy to entice the susceptible.

Kansas should not allow tobacco companies to provide free samples of a deadly, albeit legal agricultural product, particularly at a time when the tobacco industry is admitting to focusing advertising and marketing schemes at defenseless children.

**THANK YOU**





Tobacco *Free* Kansas Coalition, Inc.

FOR MORE INFORMATION, CONTACT:  
 Terri Roberts, J.D. R.N.  
 Executive Director  
 Kansas State Nurses Association  
 785-233-8638

February 23, 1999

## ***SB 278 TESTIMONY***

# **FOUR WEEKS NOTICE PRIOR TO DISTRIBUTION OF TOBACCO PRODUCT SAMPLES**

Senator Oleen and members of the Senate Federal and State Affairs Committee, my name is Terri Roberts, and I am the Executive Director of the Kansas State Nurses Association and currently serving as the Chair of the Tobacco Free Kansas Policy Committee. Thank you for the opportunity to address SB 278. This bill would make it a requirement that the distributors of sample tobacco products (cigarettes and smokeless) give the Director of Taxation (Ks. Department of Revenue) four weeks notice about the public events they intend to provide free samples. During the 1998 legislative session there was a bill introduced (S.B. 606) to ban the sampling of tobacco products in Kansas, and we began researching this issue, including requests for information regarding enforcement of sampling distribution-- to ensure that minors did not have access to these free products at public events. We had received information from several youth groups that smokeless tobacco, in particular, was available to youth at rodeo events. We were unable to get documentation regarding either the number of public events where tobacco products were distributed or the locations. What we found was that the Department of Revenue division responsible for enforcement for sales (or other distribution to minors) has no way of knowing where or when the public events are going to be held, where sampling will occur. This bill will provide the Department of Revenue with the information, in a timely fashion, that will permit surveillance for compliance with the statutes regarding children below 18 years of age and possession of tobacco products. Its a reasonable request for the industry to comply with, and it provides for efficiency in enforcement activities.

While we are committed to the concept of eliminating the distribution of tobacco product samples in our state as a matter of public policy, we respectfully request that consideration to this legislation and S.B. 279 be passed if this committee cannot support the prohibition model contained in S.B. 239.

TOBACCO FREE KANSAS COALITION, INCORPORATED

Gary Doolittle, M.D.

Judy Keller, B.A., M.B.A.

Maxine Burch,

ASSISTANT PROFESSOR  
OF ONCOLOGY, UNIVERSITY  
OF KANSAS MEDICAL CENTER



EXECUTIVE DIRECTOR  
AMERICAN LUNG  
ASSOCIATION OF KANSAS



CHRONIC DISEASE R  
HEALTH PROMOTION  
MARION COUNTY HEA

Sen. Federal & State Affairs Comm  
 Date: 2-23-99  
 Attachment: # 4-1





Tobacco *Free* Kansas Coalition, Inc.

FOR MORE INFORMATION, CONTACT:  
Terri Roberts, J.D. R.N.  
Executive Director  
Kansas State Nurses Association  
785-233-8638

February 23, 1999

## **SB 279 TESTIMONY**

# **STATUTORY AUTHORITY FOR COLLECTION OF TAX ON SMOKELESS TOBACCO SAMPLES DISTRIBUTED IN KANSAS**

Senator Oleen and members of the Senate Federal and State Affairs Committee, my name is Terri Roberts, and I am the Executive Director of the Kansas State Nurses Association and currently serving as the Chair of the Tobacco Free Kansas Policy Committee. Thank you for the opportunity to address SB 279. This bill would make it a statutory requirement that the distributors of smokeless tobacco products pay the 10% tax on the wholesale sales price. During the 1998 legislative session there was a bill introduced (S.B. 606) to ban the sampling of tobacco products in Kansas, and in our research we were told by the Department of Revenue that we could not obtain the amount of smokeless tobacco given out as samples, because distributors were not required to pay taxes--and the tax collections are used by the Department of Revenue to determine the "amount" and volume of samples distributed. *(This is how Revenue has determined cigarette sample distribution volume)*

The Fiscal Note on S.B. 279 presumably prepared by the Department of Revenue, reflects that there would be no or limited fiscal impact, because they are already receiving the 10% tax on smokeless samples anyway, despite no law requiring such payment. (They use the term "tobacco products" in the statute describing smokeless tobacco--this may be confusing) It then appears that Revenue is receiving tax revenues for which no statutory authority exists, and that today we are just here to make the laws reflect current practice in the state. We are grateful for this opportunity to clean-up this small, but significant statute, to make it correspond to the current statutes regarding collection of the tax on "cigarette samples" distributed in Kansas. I have attached copies of the current statutes for cigarette sample tax collection and the current statute for smokeless tobacco (tobacco products) for your reference.

Again, the Tobacco Free Kansas Coalition, is committed to the concept of eliminating the distribution of tobacco product samples in our state as a matter of public policy, however, we respectfully request that consideration to this legislation and S.B. 278 be passed if this committee cannot support the prohibition model contained in S.B. 239.

TOBACCO FREE KANSAS COALITION, INCORPORATED

Gary Doolittle, M.D.

Judy Keller, B.A., M.B.A.

Maxine Burch, M.D.

ASSISTANT PROFESSOR  
OF ONCOLOGY, UNIVERSITY  
OF KANSAS MEDICAL CENTER



EXECUTIVE DIRECTOR  
AMERICAN LUNG  
ASSOCIATION OF KANSAS



CHRONIC DISEASE RISK  
HEALTH PROMOTION CENTER  
MARION COUNTY HEALTH DEPARTMENT

Sen. Federal & State Affairs Comm.  
Date: 2-23-99  
Attachment: # 5-1



# SMOKELESS TOBACCO TAX

## CURRENT STATUTES

*(SAMPLES NOT REQUIRED TO HAVE TAXES PAID ON THEM)*

**79-3371. Tax on privilege of selling tobacco products.** A tax is hereby imposed upon the privilege of selling or dealing in tobacco products in this state by any person engaged in business as a distributor thereof, at the rate of ten percent (10%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (a) brings or causes to be brought into this state from without the state tobacco products for sale; (b) makes, manufactures, or fabricates tobacco products in this state for sale in this state; or (c) ships or transports tobacco products to retailers in this state to be sold by those retailers.

**History:** L. 1972, ch. 375, § 2; July 1.

### CASE ANNOTATIONS

1. Applied; allegations of payment of tobacco products tax would be avoided not upheld. *Kansas Tobacco-Candy Distributors and Vendors, Inc. v. McDonald*, 214 K. 67, 72, 519 P.2d 1110.
2. Various constitutional objections to act considered; constitutionality upheld. *Kansas Tobacco-Candy Distributors and Vendors, Inc. v. McDonald*, 214 K. 67, 68, 69, 519 P.2d 1110.

# CIGARETTE TAXES ON SAMPLES

## *Current Statutes*

**79-3310. Tax on cigarettes imposed; rates.** There is imposed a tax upon all cigarettes sold, distributed or given away within the state of Kansas. The rate of such tax shall be \$.24 on each 20 cigarettes or fractional part thereof or \$.30 on each 25 cigarettes, as the case requires. Such tax shall be collected and paid to the director as provided in this act. Such tax shall be paid only once and shall be paid by the wholesale dealer first receiving the cigarettes as herein provided.

The taxes imposed by this act are hereby levied upon all sales of cigarettes made to any department, institution or agency of the state of Kansas, and to the political subdivisions thereof and their departments, institutions and agencies.

**History:** L. 1933, ch. 122, § 10 (Special Session); L. 1935, ch. 309, § 2; L. 1939, ch. 329, § 9; L. 1947, ch. 459, § 1; L. 1957, ch. 505, § 1; L. 1964, ch. 37, § 1 (Budget Session); L. 1965, ch. 529, § 1; L. 1967, ch. 498, § 7; L. 1970, ch. 396, § 1; L. 1983, ch. 329, § 1; L. 1984, ch. 357, § 2; L. 1985, ch. 327, § 1; Oct. 1.

**Source or prior law:**  
79-3020.

**Research and Practice Aids:**  
Taxation ¶ 1292.  
C.J.S. Licenses §§ 30, 47, 48.

**Attorney General's Opinions:**  
Sales tax enforcement provisions on Indian reservations. 89-115.

**79-3313. Cigarettes required to be sold in packages; distribution of free sample packages; violations and sanctions; hearing.** All cigarettes sold in this state shall be in packages, and each of the packages shall bear evidence of payment of the tax thereon except that any railroad or sleeping car company licensed as a retailer is hereby authorized to sell cigarettes upon its cars without affixing stamps to the packages of cigarettes provided that monthly reports and payment of the tax due is made directly to the director in the manner and under the terms provided for by the director. In addition, manufacturers are hereby authorized to distribute in the state, through their authorized representatives or wholesale dealers, free sample packages of cigarettes containing less than 20 cigarettes without affixing stamps to the packages provided that monthly reports and payment of a tax at the rates prescribed by law are made directly to the director. No wholesale dealer or manufacturers' authorized representatives shall sell or distribute cigarettes, except free sample packages, to any person in the state of Kansas not holding a dealer's license as provided in this act. Such packages of sample cigarettes shall bear the word "sample" or "not for sale" and "state tax paid" in letters easily read.

Whenever the director shall have reason to believe that any manufacturer has violated the provisions of this section or the conditions provided by the director, the director shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act in the office of the director at Topeka. If upon the basis of such hearing it appears to the satisfaction of the director that such manufacturer has violated any of the provisions of this section or the conditions provided by the director, the director is hereby authorized to suspend or revoke the authorization to the manufacturer for such period as the director determines is necessary but in no case for more than one year.

**History:** L. 1933, ch. 122, § 12 (Special Session); L. 1935, ch. 309, § 5; L. 1939, ch. 329, § 12; L. 1953, ch. 439, § 1; L. 1957, ch. 429, § 20; L. 1967, ch. 498, § 11; L. 1969, ch. 459, § 1; L. 1984, ch. 358, § 2; L. 1988, ch. 356, § 332; July 1, 1989.

**Source or prior law:**  
79-3021.



American Heart Association of Kansas  
5375 S.W. 7th Street  
Topeka, KS 66606-2395  
Tel 785 272-7056  
Fax 785 272-2425  
<http://www.americanheart.org>

**Heartland Affiliate**  
Arkansas  
Iowa  
Kansas  
Missouri  
Nebraska  
Oklahoma

Good morning and thank you for the opportunity to address this committee on behalf of the American Heart Association in support of SB 239.

My name is Susan Stanley and I am a volunteer with the American Heart Association and a former prosecutor.

I have been directed to address my testimony to the enforcement provisions of K.S.A. 79-3313 and suggested amendments contained in SB 239.

Under the language of the current statute, companies are allowed to hand out free samples of their product as long as those samples are not provided to anyone under 18. From an enforcement prospective, this means law enforcement officials would need to be present at events such as concerts and rodeos to execute "controlled buys." A controlled buy requires the assistance of an underage volunteer acting in cooperation with local law enforcement to attempt to receive the free samples. If the sample is provided to the underage person, a citation is written and directs the individual violating the law to appear at a hearing or to plead guilty or nolo contendere and pay a fine.

This is a labor-intensive investigation. Currently, the Department of Revenue, A.B.C. is charged with the enforcement of this statute. Its efforts are concentrated almost entirely on executing controlled buys at retail establishments (grocery stores, convenience stores, etc.) Revenue reports the bulk of its underage sale complaints stem from these businesses.

The proposed amendment is cleaner than the current statute. It provides no samples of cigarettes or smokeless tobacco may be distributed. Knowing that this activity is totally prohibited, it is a safe assumption, companies will cease distribution of samples in the state therefore policing themselves.

The American Heart Association also supports those measures set forth in SB 278 and SB 279.

Thank you for your consideration.

Sen. Federal & State Affairs Comm  
Date: 2-23-99  
Attachment: # 6-1



KANSAS PUBLIC HEALTH ASSOCIATION, INC.
AFFILIATED WITH THE AMERICAN PUBLIC HEALTH ASSOCIATION
215 S.E. 8TH AVENUE
TOPEKA, KANSAS 66603-3906
PHONE: 785-233-3103 FAX: 785-233-3439
E-MAIL: kpha@networksplus.net

Testimony on Senate Bills 239, 278, 279
Presented by Sally Finney, Executive Director
on February 23, 1999

Thank you, Madam Chair and members of the Senate Committee on Federal and State Affairs, for allowing me to speak with you today and ask you to support restricting the distribution of samples of tobacco products in Kansas.

Tobacco, when used as directed, kills. This distinguishes it from every other ingestible product marketed in the United States. The tobacco companies will try very hard to distract you by saying things like, "What will those 'health nuts' want next? A ban on McDonald's french fries?" What they do not want you to think about is that this is not about french fries, hamburgers, or ice cream. These things, when used as directed, are all part of a balanced diet. If all I ate were apples, a very healthful food, I would eventually become very ill. Everyone here is capable of distinguishing between use and abuse.

Tobacco is a lethal substance. We explain this simple, irrefutable fact to our children. Yet, we defeat our message with our own public policies. We tell our children that we care about them and do not want them to hurt themselves by smoking or chewing tobacco. Then, we take them out for some family fun - to the fair, the rodeo, a car race. What do they see? They see tents and booths with big, colorful signs like, "Marlboro," "Winston," and "Camel." And they see adults, their role models, going to these places to pick up free samples of the same substance against which we have tried so hard to warn them.

Our adversaries will also tell you that this is about choice. They are right. This is a matter of choice, but not the kind of choice of which they speak. The issue before you today is about the choice you as leaders of this state will make. Will you allow this hypocrisy to continue, or will you choose to stand up to the tobacco companies and say, "Enough!"

The members of Kansas Public Health Association and the Tobacco Free Kansas Coalition to implore you to send a message to our citizens and, more importantly, to our children, that it is no longer tolerable to allow the legal distribution of free samples of this deadly substance.

Thank you for your time.

Sen. Federal & State Affairs Comm
Date: 2-23-99
Attachment: # 7-1

NAME DON ABDLLAH  
 VOLUNTEER American Cancer Society  
 POSITION Chairmen Patient Services  
 WORK Administrative Director Cancer Program

I am here today to speak in favor of the changes in Senate Bill 239 that would eliminate the distribution of free tobacco products. The advantages of eliminating the distribution of free tobacco are numerous. The first and most important is this year in Kansas 1600 men and women will be diagnosed with lung cancer. Of these 1600 cases nearly 1500 will be cigarette smokers. The SEER Program of the National Cancer Institute estimates that in five years less than 250 of the original 1600 will be alive. The cost for treating these 1600 patients will be between 25 and 50 million dollars. Presently these are no promising cures for treating lung cancer and it remains the most difficult cancer to cure of the major cancers.

Giving out free cigarettes robs the state of its opportunity to tax an addictive substance that causes the state, insurance companies and individuals to pay millions in medical care for these patients. At present there is no means to keep these free cigarettes from being passed from the eighteen-year-old legal smoker to his younger and more impressionable friends. We cannot protect our teen population by allowing them easy access to an addictive substance.

Sen. Federal & State Affairs Comm  
 Date: 2-23-99  
 Attachment: # 8-1



If we truly seek to protect this age group only a high tax on cigarettes will serve as an effective deterrent and allow the tobacco industry the opportunity to pay for the deaths and health care expenditures caused by tobacco products. I fully realize that increasing taxes or the cost of cigarettes is a highly unpopular position with voting smokers. I also realize that voting in favor of tobacco is a highly unpopular position in the **much larger group of registered voters** who are **non-smokers**.

In conclusion I urge you to pass this bill to eliminate the distribution of free tobacco product of any kind. Free tobacco now means more addicted teen smokers, less tax revenue, greater medical expenses and the untold amount of sorrow for those individuals that must watch their loved ones die from this most difficult of cancers.

Thank You



Tobacco *Free* Kansas Coalition, Inc.

## SENATE BILL 239 Elimination of Tobacco Product Sampling

February 23, 1999

Chairman Oleen and members of the Senate Committee on Federal and State Affairs:

I am Jerry M. Scott, Retired Fire Marshal, Salina, Kansas. I have served in the Fire Service since 1966 in Georgia and Kansas. Currently I serve on the Tobacco Prevention Committee in the Salina area, as Co-Chair of the Salina Chapter of Safe Kids and as Chair of the Planning Council for Children and Families in Salina. I am also a member of the All American Partnership of Salina and serve on the Health and Wellness Committee of the First United Methodist Church of Salina.

I am here today testifying on behalf of the Tobacco Free Kansas Coalition to support S.B. 239 which will eliminate sampling of tobacco products in Kansas..

I personally have witnessed free tobacco sample distribution throughout my career in the Fire Service. Tobacco distributors have provided samples of free tobacco products to first responders in the Fire Department station houses. The tobacco industry favors the HERO Image of the fireman. The tobacco industry should not be allowed to use the HERO Image of the fireman to promote sale of their deadly products. As a fireman, I have been witness to many fires caused by smoking materials, matches and lighters left within the reach of children by adults who smoke cigarettes. Smoking remains the national leading cause of deaths by fire (National Fire Protection Statistics).

Many local communities have excellent policies against the use of tobacco. The Workforce 2000 Plans include a drug free, smoke free, healthy workforce that has a reduced risk. Senate Bill 239 will contribute to that continuity as we move forward to clean up this social ill.

Management of the Emergency Services, even under strict policy, may not be able to keep free sample distribution of tobacco products from their personnel. Sample tobacco products may be distributed after hours, or on weekends, without management's knowledge. This is how I have personally encountered such samples that I display before you today. These samples were left on a weekend and given directly to the personnel. It was by chance that I found these on the apparatus floor one morning and questioned their source. I then collected these smokeless tobacco samples and advised the Chief of our Department who promptly established a policy. However, we don't know which fire station the next samples will be left. Distributors try to increase sales through providing free samples and nothing currently prevent this. Spit tobacco products are becoming a choice of some Emergency Service Personnel and other role models in our community, especially sports role models. Although current law prohibits tobacco access to minors, promoting the HERO image of the fireman and sports role model are tactics used to increase tobacco sales. Although many first responders are adults, the volunteer first responders have many students involved as well as interns. These students frequent the firehouses with school to work programs now being initiated aggressively by the Workforce 2000 advocates. These young students do not need tobacco samples or their role models using tobacco.

I have a new grandson born February 18, 1999. Senate Bill 239, will directly affect his future. Members of the Senate Committee, I urge you to favorably pass this bill to effectively eliminate sampling of tobacco products in Kansas..

Jerry Scott \* 1219 McAdams Road \* Salina\* Kansas \* 67401\* Home Phone 785.827.4668. jerry.scout@salhelp.org

TOBACCO FREE KANSAS COALITION, INCORPORATED

Judy Keller, B.A., M.B.A.

Rence Kelley

Maxine Burch,

EXECUTIVE DIRECTOR  
AMERICAN LUNG  
ASSOCIATION OF KANSAS

DIRECTOR OF TOBACCO CONTROL/  
SCHOOL HEALTH EDUCATION  
AMERICAN CANCER SOCIETY, HEARTLAND DIVISION

CHRONIC DISEASE  
HEALTH PROMOTION  
MARION COUNTY HE

Sen. Federal & State Affairs Comm.  
Date: 2-23-99  
Attachment: # 9-1

10

**WHITNEY B. DAMRON, P.A.**  
**1100 MERCANTILE BANK TOWER**  
**800 SW JACKSON STREET**  
**TOPEKA, KANSAS 66612-2205**  
**(785) 354-1354 ♦ 354-8092 (FAX)**

---

- TESTIMONY -

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

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

**RE:           SB 239           Prohibition of Sampling of Tobacco Products**

**DATE:        February 23, 1999**

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 239 prohibiting the sampling of tobacco products in the state.

The Smokeless Tobacco Council, or STC, is the industry's Washington, D.C.-based trade association representing the Conwood Company, L.P., North Atlantic Trading Company, R. C. Owen Company, Swedish Match North America, Inc., and Swisher International, Inc. on policy, legislative and regulatory issues affecting the smokeless tobacco industry. Some of our members' products include: Kodiak, Hawken and Timberwolf moist snuff; Levi Garrett, Chattanooga Chew and Beech-Nut loose leaf chewing tobacco and Taylor's Pride, Cannon Ball and Day's Work plug tobacco. Our member companies also sell a variety of other tobacco products that many of the people in this room would have no idea they existed or were still marketed, such as twist chewing tobacco and dry snuff.

Sen. Federal & State Affairs Comm  
Date: 2-23-99  
Attachment: # 10-1

As drafted, SB 239 would prohibit the sampling of cigarettes or tobacco products in the state of Kansas. Current law prohibits the distribution of samples “*within 500 feet of any school when such facility is being used primarily by persons under 18 years of age unless the sampling is: (1) In an area to which persons under 18 years of age are denied access; (2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or (3) at or adjacent to an outdoor production, repair or construction site or facility.*” {K.S.A. 79-3321(s)}

I would first like to comment as 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. This figure remained virtually unchanged at 2.0 percent in 1997. Banning sampling will not contribute to our shared goal of reducing underage use of smokeless tobacco products.
- In another study, the U. S. Department of Health and Human Services’ *Monitoring the Future* study published in December of last year reports a continuing decline in smokeless tobacco use. Specifically, it reports that

among 12<sup>th</sup> graders (some of whom may be of legal age), smokeless tobacco use declined from 4.7 percent in 1986 to 3.2 percent in 1998. The same study also documents a decline in smokeless tobacco use by 10<sup>th</sup> graders from 3.3 percent to 2.2 percent, and by 8<sup>th</sup> graders from 1.6 percent to 1.0 percent from 1991 to 1997. The years 1986 and 1991 are the first years data was available for 12<sup>th</sup> and 8<sup>th</sup> – 10<sup>th</sup> grade students, respectively.

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.

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.

I am aware of several major entertainment events which were held in 1998 at which sampling of tobacco products occurred, including the Country Stampede music



festival in Manhattan, Kansas. I am not aware of any instances of sampling to minors at such events and our industry would be pleased to work with ABC and others if there are problems at these kinds of events. As a matter of fact, I heard of compliments from enforcement officers in regards to how professional and thorough those operating the sampling operations were at preventing underage access and even denying non-consumers sample products.

We believe a sampling ban is simply punitive in nature towards an industry selling a legal product and has no nexus to controlling illegal underage access to tobacco products.

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 not warranted.

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.

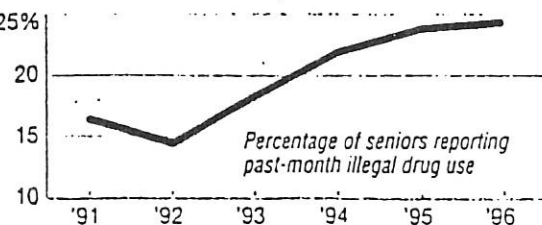
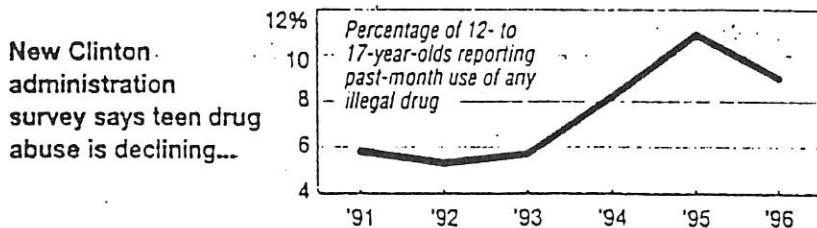
Even the new HHS survey has its share of bad news.

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 Grow About?



...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

**WHITNEY B. DAMRON, P.A.**  
**1100 MERCANTILE BANK TOWER**  
**800 SW JACKSON STREET**  
**TOPEKA, KANSAS 66612-2205**  
**(785) 354-1354 ♦ 354-8092 (FAX)**

---

**- TESTIMONY -**

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

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

**RE: SB 278 Four Week Notice to Director of Taxation for Sampling  
Of Tobacco Products.**

**DATE: February 23, 1999**

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 278 which requires a four-week notice be given to the Director of Taxation prior to the distribution of sample cigarettes or tobacco products.

The Smokeless Tobacco Council, Inc., of STC, is the industry's Washington, D.C.-based trade association representing the Conwood Company, L.P., North Atlantic Trading Company, R. C. Owen Company, Swedish Match North America, Inc., and Swisher International, Inc., on policy, legislative and regulatory issues affecting the smokeless tobacco industry.

STC opposes SB 278 as a punitive restraint of trade of a lawful product sold in our state. Our member companies adhere to stringent industry-enforced sales and marketing practices. SB 278 is simply an attempt to place additional marketing restrictions on a lawful business already operating in a highly regulated industry.

Sen. Federal & State Affairs Comm  
Date: 2-23-99  
Attachment: # 11-1

The STC believes a four-week notice requirement prior to sampling tobacco products would place unneeded marketing restrictions on the tobacco industry which will have no impact upon youth access or payment of appropriate taxes on tobacco product samples. As such, this bill is an unnecessary and punitive in nature.

Samples are marketed by adults to adults in controlled settings. We do not believe the addition of notice requirements for sampling in the state will have any impact upon underage access to tobacco products. I would reiterate our testimony from SB 239: If the 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 to see that they are not repeated.

We are aware of no problems with current sampling restrictions and practices, significant or otherwise, and respectfully request the Committee reject placing an additional restraint of trade on a lawful business activity in this state.

Thank you.



**WHITNEY B. DAMRON, P.A.**  
**1100 MERCANTILE BANK TOWER**  
**800 SW JACKSON STREET**  
**TOPEKA, KANSAS 66612-2205**  
**(785) 354-1354 ♦ 354-8092 (FAX)**

---

- TESTIMONY -

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

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

**RE:           SB 279           Taxation of Sample Tobacco Products.**

**DATE:        February 23, 1999**

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., on SB 279 placing a tax on the distributors of sample tobacco products.

The Smokeless Tobacco Council, or STC, is the industry's Washington, D.C.-based trade association representing the Conwood Company, L.P., North Atlantic Trading Company, R. C. Owen Company, Swedish Match North America, Inc., and Swisher International, Inc. on policy, legislative and regulatory issues affecting the smokeless tobacco industry.

At the time of drafting our testimony for this hearing, we were unclear of the objective of SB 279. I have spoken to Mr. Jim Conant of the Alcoholic Beverage Control and have been informed this bill is an attempt to clarify current law.

Sen. Federal & State Affairs Comm.  
Date: 2-23-99  
Attachment: # 12 -1

SB 279  
Senate Committee on Federal and State Affairs  
Page Two of Two

From STC Member Companies interpretation, we have assumed the term “dealing” as stated on line 15 of the bill requires those sampling tobacco products to pay taxes on them as if they were being sold. I believe the Kansas Department of Revenue will confirm that the smokeless tobacco industry is paying taxes on such samples distributed in Kansas. If that is the case, then we believe SB 279 is an unnecessary recodification of current law.

Thank you for your consideration of my testimony.

13  
**HEIN AND WEIR, CHARTERED**

*ATTORNEYS AT LAW*

5845 S.W. 29th Street, Topeka, KS 66614-2462

Telephone: (785) 273-1441

Telefax: (785) 273-9243

*Ronald R. Hein*

*Stephen P. Weir*

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE**

**TESTIMONY RE: SB 239**

**Presented by Ronald R. Hein**

**on behalf of**

**R. J. Reynolds Tobacco Company**

**February 23, 1999**

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 239. 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. Since then, the Master Settlement Agreement agreed to by my client and other companies imposes additional restrictions such as those presented by Assistance Attorney General John Campbell yesterday.

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.

RJR has utilized sampling as a means of marketing or getting feedback on new products. SB 239 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.

On behalf of R. J. Reynolds Tobacco, I urge the committee to defeat SB 239. Thank you very much for permitting me to testify, and I will yield to questions.

Sen. Federal & State Affairs Comm.

Date: 2-23-99

Attachment: # 13-1

14

# HEIN AND WEIR, CHARTERED

ATTORNEYS AT LAW

5845 S.W. 29th Street, Topeka, KS 66614-2462

Telephone: (785) 273-1441

Telefax: (785) 273-9243

*Ronald R. Hein*

*Stephen P. Weir*

## SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

TESTIMONY RE: SB 278

Presented by Ronald R. Hein  
on behalf of

**R. J. Reynolds Tobacco Company**

**February 23, 1999**

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 278. This bill requires notice of sampling activities to be given to the ABC Director of event open to the public. Current law prohibits sampling or distribution of tobacco products to minors in any manner. The Master Settlement Agreement agreed to by my client and other companies imposes additional restrictions, including limiting sampling to adult-only environments.

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. RJR has utilized sampling as a means of marketing or getting feedback on new products.

SB 278 prohibits sampling that is not pre-planned. It would require onerous paperwork on the companies and the state and, in some cases, could result in violations occurring because of clerical errors where there is no other wrongful conduct.

The old saying, and probably still true today, is that "if it ain't broke, don't fix it." This is a bill that proposes a solution where there is no problem.

On behalf of R. J. Reynolds Tobacco, I urge the committee to defeat SB 278. Thank you very much for permitting me to testify, and I will yield to questions.

Sen. Federal & State Affairs Comm.

Date: 2-23-99

Attachment: # 14-1

15  
**HEIN AND WEIR, CHARTERED**

*ATTORNEYS AT LAW*

5845 S.W. 29th Street, Topeka, KS 66614-2462

Telephone: (785) 273-1441

Telefax: (785) 273-9243

*Ronald R. Hein*

*Stephen P. Weir*

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE**

**TESTIMONY RE: SB 279**

**Presented by Ronald R. Hein**

**on behalf of**

**R. J. Reynolds Tobacco Company**

**February 23, 1999**

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 279. This bill seems to imply that current law does not require this tax to be paid on sampled products. The Department of Revenue and all tobacco companies interpret current law to impose the tax on sampled products.

The Division of Budget has confirmed that interpretation of current law in the fiscal note on SB 279. The fiscal note states, "... SB 279 would not impact state revenues because the Department of Revenue is currently receiving a 10.0 percent tax on the distribution of sample products coming into the state."

The key here is legislative intent. Passage of this bill without commensurate notation of legislative intent in the minutes could be interpreted that current law does not permit collection of the tax and result in the state potentially being liable for a rebate of tax previously collected. Since notation in the minutes of intent would be appropriate regardless of action on SB 279, I would urge the committee not to pass SB 279, and to have the minutes reflect a finding that this bill is unnecessary due to interpretation of current law and that failure to pass this bill does not imply that the tax should not be imposed on sampling.

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

Sen. Federal & State Affairs Comm

Date: 2-23-99

Attachment: # 15-1



Jim Conant, Director  
Division of Alcoholic Beverage Control  
4 Townsite Plaza, Suite 210  
200 S.E. 6th Street  
Topeka, KS 66603-3512



(785) 296-7015  
FAX (785) 296-0922

Division of Alcoholic Beverage Control

**Memorandum**

**TO:** Senator Lana Oleen, Chairperson  
Senate Committee on Federal & State Affairs

**FROM:** Jim Conant, Director

**RE:** Senate Bill 278

**DATE:** February 23, 1999

---

Thank you for the opportunity to appear before the committee in support of Senate Bill 278. Senate Bill 278, as introduced, would require that advance notice be given to the department prior to the public distribution of free samples of cigarettes or tobacco products. This advance notice would allow the department to plan and conduct compliance checks at these events in the same manner as with licensed businesses. Since we have limited experience with free sampling, no data is available regarding any violations which may occur at these events. Senate Bill 278 would ensure that compliance efforts are applied consistently at any location where cigarettes or tobacco products are made available.

I would be happy to attempt to answer any questions the committee may have.

Sen. Federal & State Affairs Comm.  
Date: 2-23-99  
Attachment: #16-1



# COMMUNITY AWARENESS TEAM 17

c/o Regional Prevention Center  
of Northwest Kansas  
990 South Range, Suite 7  
Colby, Kansas 67701

(785) 462-8152

DATE: February 22, 1999

TIME: 1:30 P. M.

TO: Committee on Federal and State Affairs  
Senator Biggs

FROM: Janet Worthy

RE: SB 239

As program director for the Community Awareness Team, which is a group of 97 concerned Colby citizens representing local government, law enforcement, health care, school, and youth, I would like to urge the Committee on Federal and State Affairs to support SB 239, an act regulating the distribution of free samples of cigarettes and tobacco products.

Many of our members signed a letter of support last year, and we were disappointed that the bill did not pass. This is an issue about which we feel strongly, and we hope the results this year will be more positive.

Thank you for any support you can give SB 239.

Sen. Federal & State Affairs Comm.

Date: 2-23-99

Attachment: # 17-1

TOWARD A  
DRUG-FREE



KANSAS

regional prevention center  
of northwest kansas  
990 s. range, suite 7  
post office box 203  
colby, kansas 67701  
nwksrpc@colby.ixks.com  
(785) 462-8152  
fax (785) 462-8152

DATE: February 22, 1999

TIME: 1:30 P. M.

TO: Committee on Federal and State Affairs  
Senator Biggs

FROM: Sue Evans *Sue Evans*

RE: SB 239

As director of the Regional Prevention Center of Northwest Kansas-West, I would like to urge the Committee on Federal and State Affairs to support SB 239, an act regulating the distribution of free samples of cigarettes and other tobacco products.

Those of us who work in the field of substance abuse prevention have learned that a strong risk factor predicting substance use by youth is the availability of the substance. SB 239 would make cigarettes and other tobacco products less available to our young people, reducing their risk for health problems related to tobacco use.

Thank you for giving your support to Senate Bill 239.

Sen. Federal & State Affairs Comm.  
Date: 2-23-99  
Attachment: # 18-1

c/o Regional Prevention Center  
of Northwest Kansas  
416 Main  
Atwood, Kansas 67730  
(785) 626-9046

February 22, 1999

Dear Senator Biggs:

We wanted to write and let you know that Atwood's S.A.D.D. organization is supporting SB606, which you introduced to ban the distribution of free samples of cigarette and smokeless tobacco in our state. We have support from S.A.D.D. members which have signed below.

Our S.A.D.D. organization would love to help out and do what we can to provide testimony from a student's point of view. We feel strongly about this issue and our members are willing to endorse a statutory ban on all tobacco give-aways.

We would like to thank you for sponsoring this important public health initiative to help protect Kansas children.

Members of the S.A.D.D. Organization

Kristina Morton, AHS Senior  
Jennifer Ruda, AHS Senior  
Sarah Green, AHS Junior  
LAW WOTERS, AHS Junior  
Tyler Zeitner, AHS Junior  
Rex Miller, AHS Junior  
Denise Neill  
Emily Braveman, AHS Sophomore  
Crista Brown, AHS Senior  
Sarah Hawkins, AHS Senior  
DeAdra Horinek, AHS Senior  
Le Andra, AHS Junior  
Stephanie Cahoy, AHS Freshman  
Stephanie Riepl, AHS Senior

Sarina Ruda, AHS Senior  
Tonya Mitchell, AHS Sophomore  
Amy Sandall  
Kristina Cooper, AHS Sophomore  
Katy Tompkins  
Tyul Rudeaux  
Amy Green, AHS Freshman



February 23, 1999

Written testimony by John Pepperdine  
Manager of Government Relations

**SUPPORT OF SENATE BILL 239 UNDER REVIEW  
BY THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE**

Twenty-two states restrict the distribution of free samples of tobacco products. Minnesota and Utah completely ban the distribution of cigarettes, smokeless tobacco products, cigars, pipe tobacco, or other tobacco products suitable for smoking. California and Washington prohibit the free distribution of tobacco products in public places. Iowa prohibits the free distribution of tobacco to persons under 18 and within 500 feet of a school, playground or other location normally populated by people under 18. Kansas prohibits the distribution of sample cigarettes. Nebraska prohibits the distribution of sample smokeless tobacco products.

It is the hope of the American Cancer Society that Kansas will ban such a deadly and addictive substance. Why a total ban, because tobacco giveaways inevitably fall into the hands of minors. The tobacco industry claims that its promotional activities are designed to induce existing tobacco users to switch brands, and not to attract new smokers.

If this were true their market would vanish. To reiterate what the Attorney General's assistant, John Campbell, told the committee yesterday, **90% of all adults who smoke became addicted by the age of 18** - prior to the age most states permit the purchase. These statistics are from the Surgeon General's report entitled, Reducing The Health Consequences of Smoking - 25 Years of Progress.

**Tobacco is responsible for 87% of lung cancer deaths, surpasses breast cancer in deaths among women, and is responsible for 1 out of every 5 or 4,200 deaths in Kansas.** Can we afford to treat tobacco as just another product? American Cancer Society urges you to ban free addiction and death. Help eliminate the number one most preventable cause of death in Kansas.

HEARTLAND DIVISION, INC.  
1315 S.W. ARROWHEAD ROAD • TOPEKA, KANSAS  
(785) 273-4422 • 800-359-1025 • FAX (785) 273-  
DISTRIBUTION FAX (785) 273-7560

Sen. Federal & State Affairs Comm.  
Date: 2-23-99  
Attachment: # 20-1





## ORAL CAVITY AND OROPHARYNGEAL CANCER

### WHAT ARE THE RISK FACTORS FOR ORAL CAVITY AND OROPHARYNGEAL CANCER?

A risk factor is anything that increases a person's chance of getting a disease such as cancer. Different cancers have different risk factors. For example, unprotected exposure to strong sunlight is a risk factor for skin cancer, and a diet high in fat and low in fiber is a risk factor for colorectal cancer. Scientists have found certain risk factors that make a person more likely to develop oral cavity and oropharyngeal cancer.

Some people with oral cavity or oropharyngeal cancer do not have any known risk factors, and others with several risk factors never develop the disease. Even if a patient does have one or more risk factors for oral cavity and oropharyngeal cancer, it is impossible to know for sure how much that risk factor contributed to causing the cancer.

**Tobacco: 90% of patients** with oral cavity and oropharyngeal cancer use tobacco, and the risk of developing these cancers increases with the amount smoked or chewed and duration of the habit.

Smokers are six times more likely than nonsmokers to develop these cancers. About 37% of patients who persist in smoking after apparent cure of their cancer will develop second cancers of oral cavity, oropharynx, or larynx, compared with only 6% of those who stop smoking. Tobacco smoke from cigarettes, cigars, or pipes can cause cancers anywhere in the oral cavity or oropharynx, as well as causing cancers of the larynx, lungs, esophagus, kidneys, bladder, and several other organs. In addition, pipe smoking has a particularly significant risk for cancers in the area of the lips that contact the pipestem.

**Smokeless tobacco**, ("snuff" or chewing tobacco) is associated with cancers of the cheek, gingiva (gums), and inner surface of the lips. **Smokeless tobacco increases the risk of these cancers by about 50 times.** Often cancer associated with smokeless tobacco will begin as leukoplakia or erythroplakia.



## LEGISLATION BANNING TOBACCO SAMPLES

Albert Lea, MN  
Amherst, MA  
Atlanta, GA  
Austin, TX  
Belmont, MA  
Boston, MA  
Bowie, MD  
Cambridge, MA  
Cincinnati, OH  
Dallas, TX  
Elmhurst, IL  
Gillette, WY  
King County, WA  
Leominster, MA

Minneapolis, MN  
New Bedford, MA  
New Orleans, LA  
Newton, MA  
New York, NY  
Northampton, MA  
Rancho Mirage, CA  
St. Paul, MN  
San Francisco, CA  
Somerville, MA  
Takoma Park, MD  
Washington, D.C.  
Weymouth, MA  
Worcester, MA

State of Minnesota

State of Utah