

Approved: March 21, 2000
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Senator Lana Oleen at 11:00 a.m. on March 15, 2000 in Room 245-N of the Capitol.

All members were present except: Senator Laurie Bleeker

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

Conferees appearing before the committee: Steve Kearney, Petroleum Marketing and Convenient Stores
Russell Jobbins, Winchester
Representative Joann Flower

Others attending: See Attached Sheet

Chairman Oleen ask the committee for action on minutes before the committee for March 9, March 10 and March 13, 2000. Senator Biggs moved to approved the minutes, Senator Gooch seconded the motion. The motion carried.

Russell Mills, Legislative Research Department, presented a review of **HB 2670** for the committee. New federal regulations enacted January 1, 2000, make it illegal to import "for export only" cigarettes and introduce them directly into the domestic U.S. market. Cigarettes intended for export are not subject to the \$4.50 tobacco settlement tax. This bill would make Kansas law parallel to the federal law.

Chairman Oleen opened hearing on:

HB 2670—Cigarettes; sales of certain cigarettes restricted

Chairman Oleen recognized Steve Kearney, of Petroleum Marketers and Convenience Store Association of Kansas, (PMAC) a proponent to **HB 2670**. Mr. Kearney stated that PMAC represents over 360 independent Kansas Petroleum companies and convenience stores throughout Kansas. (Attachment 1). Mr. Kearney explained to the committee that these cigarettes are referred to as "Gray market cigarettes" and as price of tobacco increases, these cigarettes will become much more attractive. Mr. Kearney stated that more than 20 states, have enacted or are in the process of enacting state laws against gray market cigarettes.

Chairman Oleen recognized Russell Jobbins, an individual from Winchester, who offered an amendment to **HB 2670**. Mr. Jobbins explained that his amendment is to include **HB 2917** relating to administrative fines. (Attachment 2). Mr. Jobbins explained under present law a violation it stays on the record forever and even after many years without a violation, the next violation counts as the second violation.

Chairman Oleen recognized Representative Flower, a proponent to the amendment of **HB 2670**. Representative Flower stated that Mr. Jobbins brought the matter to her attention concerning the violations and fines for selling cigarettes to a minor. (Attachment 3). She stated there is a bill in the house **HB 2917** which did have hearings and was passed out of the House Federal and States Affairs Committee.

In response to questions from Senator Oleen regarding training provided to sales clerks and records of that training, Mr. Jobbins stated that he had used the "We Card Program" and that because of this training his fine for a first offense had been changed to \$150.00. HE had not gone to a hearing yet.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 2245-N Statehouse, at 11:00 a.m. on March 15, 2000.

Senator Biggs offered an amendment to **HB 2670** which would include a bill heard in this committee last session and passed out of the Senate 36 to 6. This bill has not had hearings in the House of Representative this year. Senator Biggs stated that this bill allowed for notification to the ABC prior to the distribution of free samples. Senator Biggs moved that SB 278 be amended into HB 2670. Senator Gooch seconded the motion

Chairman Oleen stated that the committee would hold the motion to give Senator Biggs an opportunity to talk with the Representative Powell, the Chair of House Federal and State Affairs Committee.

Written testimony on **HB 2670** was received from Gilbert A. Fritz, Fritz Oil Company (Attachment 4).

Chairman Oleen announced that the subcommittee for the Newborn Infant Protection Act would be Senators Vidricksen, Biggs and Oleen. The subcommittee will meet at 1:30 p.m. today in Room 525-S.

The meeting adjourned at 12:05 p.m. The next meeting is March 16, 2000 at 11:00 a.m.

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST**

DATE: MARCH 15, 2002

NAME	REPRESENTING
Kasey Gillis	
Clara Remyer	RTL of Ho
John C. Sotterby	PMM
Bill McGee	KDOR
Bob Long	KDOR ABC
Pete Body	KDOR/ABC
Maree Peppel/Elbert	KSK1
DENISE KOCH	LIST PUB. AFFAIRS INC
Pat Hattell	Brown + Williamson
Neal Whitaker	KBWA
R. Fin	KBWA + KQVA



Testimony: Senate Federal and State Affairs Committee
From: Thomas M. Palace
Date: March 15, 2000
RE: HB 2670 Gray Market Cigarette Legislation

Madam Chairman, and members of the Senate Federal and State Affairs Committee:

My name is Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 360 independent Kansas Petroleum companies and convenience stores throughout Kansas.

We appreciate the opportunity to appear before you in support of HB 2670.

HB 2670 amends the current tobacco statutes to prohibit the sale of cigarettes that are labeled "for export use only." The term that you will hear me use today in reference to the above mentioned cigarettes is "gray market cigarettes.

Gray market cigarettes are produced in the United States and are exported to foreign markets. Independent brokers purchase them abroad and re-import them into the U.S. Gray market cigarettes benefit from the fact that international wholesale prices may be about \$10 a carton less than domestic prices. The gray market in cigarettes has raised numerous concerns about its negative consequences. The most important is its vulnerability to being manipulated by organized criminals who dominate in cigarette smuggling. This is because the gray market tends to be less tightly regulated than the domestic system used to distribute cigarettes.

Although Kansas has not had a major influx of gray market cigarettes, there have been several tobacco retailers that have been identified by the tobacco companies as sellers of gray market cigarettes. As such, the tobacco companies have rescinded the retailers' advertising contracts. However, as the price of tobacco increases, gray market cigarettes become much more attractive because they are cheaper to buy.

The gray market problem has become so significant that various initiatives have been undertaken to address the issue. These include:

New federal regulations enacted January 1, 2000, that make it illegal to import "for export only" cigarettes and introduce them directly into the domestic U.S. market regardless of whether all the applicable taxes have been paid, and labeling requirements met. Under the proposed new regulations, "for export only" cigarettes re-entering the United States must either go to a manufacturer or be re-exported.

Petroleum Marketers and Convenience Store Association of Kansas
201 NW Highway 24 • Suite 320 • PO Box 8479
Topeka, KS 66608-0479
785-233-9655 Fax: 785-354-4374

Sen. Federal & State Affairs C
Date: 3-15-00
Attachment: # 1-1

Tobacco companies are canceling tobacco retailer contracts to stop the sale of gray market cigarettes.

More than 20 states, either have enacted, or are in the process of enacting, state laws against gray market cigarettes.

The current system under which gray market cigarettes are imported, distributed and sold is far less regulated than the domestic distribution system. Moreover, it does not yield the kind of comprehensive audit trail that ensures compliance in the domestic distribution system. The result: the gray market is much more vulnerable to black market diversion. This is a major concern in other parts of the country but locally the major concerns with regard to gray market cigarettes include:

Reduced states' revenue under the Tobacco Settlement, as payments under the Settlement framework are calculated on the basis of the domestic sales of manufacturers.

Unfair competition for domestic wholesalers and retailers who charge higher prices as a result of the Tobacco Settlement.

Undermines qualitative product standards, like freshness. Concerns have been raised about the manner in which cigarettes outside normal distribution channels are handled (how long they sit in a warehouse waiting to be shipped).

Consumers confusion because gray market cigarettes are often different from the versions consumed in the United States. Cigarettes are blended to meet the different taste requirements of the individual markets. Packaging is also a concern.

Warning labels that are different from the federally required Surgeon General's messages on all domestic cigarette packages..

Elimination of gray market cigarettes will not be easy. Although there are new federal regulations that make gray market cigarettes illegal, federal enforcement will be limited, especially here in Kansas. Passage of HB 2670 reinforces the federal regulations at the state level whereby the sale of gray market cigarettes will be enforced at the local level. Any person that violates provisions of the Kansas cigarette and tobacco products act, upon conviction can be fined up to \$1,000 or imprisoned for not more than one year, or both.

Madam Chairman, and members of the committee. I appreciate the opportunity to appear before you today, and will stand for any questions you may have.

Thank you Mr. Chairman and other committee members for giving me this opportunity to speak with you today. My name is Russell Jobbins and I own a convenience store in Winchester.

I am here today to discuss Representative Flower's proposed amendment to House Bill Number 2917 (Illegal Tobacco sales). Currently the bill has no time limitations in regard to any potential violation. The first offence results in a fine and each offence after that results in a steeper fine up to a point where a store's license to sell tobacco can be revoked.

We (C-Store owners) as responsible business men understand the need for such laws; and through constant training and retraining of our employees, do our best to abide by these laws. The problem is human error. With today's law, if you make an illegal sale of tobacco in the year 2000, 2004, and 2008 you have just committed your third offence. Offences in which several years have gone by do not represent a matter of pattern or practice, but a matter of human error.

In November one of my cashiers asked a customer for his ID, she made an error and read a 4 as a 1 and sold tobacco to a minor. The arresting officer, well trained in regards to the law, who should know more about it than most people filled out the citation wrong (copy attached). He signed the form waving my right to a hearing, something he can not legally do for my company. Did he do it on purpose? No. Did he make a mistake just as my cashier did? Yes, I think so.

Now if a highly trained officer can make a mistake in regards to the law, shouldn't a cashier be entitled to an error as well. My store has been investigated at least 3 times that I know of, once before the violation and once since, neither visit resulted in any further violations.

Simply put, it is my position that an occasional violation of this law does not represent a matter of pattern or practice. The need for some sort of time frame for any violation of this law needs to be in place, and I support the amendment made by Representative Flower.

Thank you for your time and do you wish to ask me any questions?

B McCay
296-7015

BEFORE THE STATE DIRECTOR OF TAXATION
KANSAS DEPARTMENT OF REVENUE
4 TOWNSITE PLAZA, SUITE 210
200 SE 6TH STREET
TOPEKA, KANSAS 66603-3512

June

In the Matter of:

Citation No. _____

KT'S Shortstop
300 Delaware St.
Winchester Ks 66097

*Donna Swann
296-2381
Only one who knew
everything!*

CIGARETTE RETAILER CITATION

YOU ARE HEREBY NOTIFIED by this citation of a violation in regard to your license as a Cigarette Retailer issued under the Kansas Cigarette and Tobacco Products Act, 79, K.S.A. Article 33.

The charge(s) or complaint(s) you are called upon to answer being that:

K.S.A. 79-3321(l) - Licensee did on or about 11-29-99 sell, furnish or distribute cigarettes or tobacco products to a person under 18 years of age.

Below is a waiver form which is required to be completed and returned to this office by the specified date or the citation will be set for a hearing before the Director of Taxation or his designee. Licensee will be notified of the hearing date

IT IS SO ORDERED.
Dated this 14th day of December, 1999.

[Signature] #301
Revenue Enforcement Agent/ID No.

Licensee Rep. Signature:

[Signature]

Print Name & Title:

Russell Jobbins Sec.

NOTICE OF WAIVER (READ CAREFULLY)

Except in cases involving certain types of offenses, you may pay the prescribed fine by mail. If you wish to plead guilty or no contest to the offense(s) charged against you, and you desire to dispose of your case, you may do so by signing this waiver of your right to a hearing, and mailing this form with your remittance within 15 business days from 11-29-99. If you wish to appear for a hearing check the space provided and return this form by the above deadline date.

Request Hearing Amount of Fine: \$ 250.00
Comments: Not Guilty, but can't win, 50 miles from store when done

Remittance payable to: Kansas Department of Revenue
(Cashier's Check or Investigation and Criminal Enforcement
Money Order only) Topeka, Kansas 66612-1584

WAIVER

I, the undersigned, do hereby waive my right to a hearing on the Citation(s) above. I have read and fully understand the foregoing, and I wish to enter a plea of:

check one 1. () Guilty 2. () No Contest

If this waiver is not received in this office on or before the date specified above, you will be notified by mail of the hearing date in regard to the Citation(s), in which you will be required to appear. No extension of the time period on the waiver form will be allowed.



This is your office's signature not mine. Does he wish to dispose of this case or did he make an error like we did. Selling tobacco to minors is not a matter of pattern or practice for our store the clerk made an error, just like the clerk did with his own form.

OFFICER'S Signature → *[Signature]* #301
(Signature of authorized agent)

JOANN FLOWER
REPRESENTATIVE, 47TH DISTRICT
JEFFERSON AND NORTHEAST
DOUGLAS COUNTY AREA
P.O. BOX 97
OSKALOOSA, KANSAS 66066-0097
(785) 863-2918



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIR: AGRICULTURE
MEMBER: TRANSPORTATION
LOCAL GOVERNMENT
GOVERNOR'S ADVISORY
COUNCIL ON AGING

STATE CAPITOL, RM. 426-S
TOPEKA, KANSAS 66612
(785) 296-7684

February 16, 2000

Thank you Madam Chairman and committee members, for allowing us to come before your committee today.

The reason we are here is an un-anticipated consequence of legislation - brought to my attention by a constituent who owns a convenience store in Winchester, Kansas. He realized that when one of his clerks sold tobacco to a minor his first offense would be \$250, the second offense \$500, the third \$750, and the fourth offense \$1,000 or removal of his license. However, the law does not provide any relief to the retailer if he remains violation free for an extended period of time (after 5 years a DUI record is wiped clean if there has been no further offense.) This bill passed out of the House committee unanimously.

Mr Bill McCoy of the Kansas Department of Revenue Investigation and Criminal Enforcement and Mr. Pete Bodyk Revenue Enforcement Supervisor of the Department of Revenue were present and stated they were neutral. We would like to amend HB 2917 into the bill you are considering today, HB 2670.

I want to introduce Russell Jobbins of Winchester, Kansas, a town of 450 people, a trade area of probably 750 people. He has an economics degree from K-State. He and his wife were raised in the community and chose to return to raise their family. They bought a local business; virtually the only store in town. I would like to see them get every chance to succeed in their business and that is why we are here today.

Sen. Federal & State Affairs Com
Date: 3-15-00
Attachment: # 3-1

March 6, 2000

Senator Lana Oleen
3000 Stagg Hill Road
Manhattan, KS 66502

Dear Senator Oleen:

As owner of a small family business, I would like to express some concerns. Fritz Oil Co. is a service station located in Leonardville, KS, started by my grandfather in 1950. I bought the business from my father twelve years ago.

Recently, I was cited by the Department of Revenue Tobacco Sting Operation. A young lady entered my business and asked to buy cigarettes. My employee asked for ID; however, he calculated her age incorrectly. According to information I previously received from the Food and Drug Administration, the retailer will receive a warning the first time for sales to a minor and a \$250 fine the second time. I immediately received a \$250 fine for my first citation...no warning.

As the business owner, I received a \$250 fine; however, I was never shown the Photo ID. I feel this should have been presented to me along with the citation. I was under the impression State of Kansas Drivers Licenses had a different color background for minors. If this is incorrect, maybe this would be a good policy making it easier to ID a minor.

This seemed like an opportune time to ask some questions. For instance, does a salesperson need to be 18 years old to sell cigarettes? The answer I received, "I think so...well, yes, I think so." This was not a satisfactory answer and after finally obtaining a telephone number, which is not available for easy access on state forms, I talked to a man from the Department of Revenue. He gave me a weak "no" answer and said it really wasn't clear in the state statute. This is the same type answers I receive from the Department of Revenue or KDHE when inquiring about sales tax, fuel tax, etc.

As a small service station owner, I would like to express some additional concerns. It seems I pay more taxes and fees than other types of business. For example: \$50 KDHE AGST Fee, 20¢ per gallon gas tax, 22¢ per gallon diesel fuel tax, 50¢ per tire excise tax, \$25 Office of the State Bank Commissioner Fee, \$25 cigarette

license, \$50 state required Fuel Bond, lottery ticket sales and license fee, etc. I realize some of these are paid by the consumer, unfortunately not as quickly as the state requires their payment. A much larger payment than my gross profit, especially when it's combined with a \$555 monthly payment for the KDHE Storage Tank Act (20 year loan).

It's fairly easy to calculate monthly fuel received; however, very time consuming to determine the amount of fuel remaining. This has only been necessary the last five years and I don't understand why it's necessary to report the balance of remaining fuel which tax has previously been paid.

My business is in a rural community mostly serving farmers receiving some kind of payment, credit, or tax break for a small business. With all the enforced KDHE expenses and taxes, the only assistance I've been offered is the fuel tax credit to purchase computer equipment for filing taxes electronically. This requires a 50,000 gallon minimum monthly purchase. Again, my business is not large enough to qualify. Instead of helping small businesses, the fees and taxes required by the State of Kansas are making it almost impossible to continue.

Thank you for letting me express a few concerns. I respect you and everything you have accomplished. I realize you are very busy and receive a lot of requests; however, I would appreciate your response.

Sincerely,



Gilbert A. Fritz
Fritz Oil Company
PO Box 144
Leonardville, KS 66449-0144