

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Stephen Morris at 1:10 p.m. on April 4, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Christine Downey - excused
Senator Tim Huelskamp - excused

Committee staff present:

Deb Hollon, Kansas Legislative Research Department
Carolyn Rampey, Kansas Legislative Research Department
Michael Corrigan, Assistant Revisor of Statutes
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

John Campbell, Senior Deputy Attorney General

Others attending: See attached list

Bill Introductions

Senator Kerr moved, with a second by Senator Barone, to introduce a bill concerning social welfare; enacting the senior pharmacy plus act (1rs2312). Motion carried on a voice vote.

Senator Jordan moved, with a second by Senator Kerr, to introduce a bill concerning retirement and pensions; relating to the Kansas employees retirement system; death and disability (1rs2268). Motion carried on a voice vote.

Chairman Morris opened the public hearing on:

HB 2982--Tobacco product manufacturers making required escrow payments and being participating manufacturers

Staff briefed the Committee on the bill.

John Campbell, Senior Deputy Attorney General, testified in support of **HB 2982** (Attachment 1). He explained that **HB 2982** would make the escrow requirement nearly self-executing by prohibiting licensed distributors from applying tax stamps to the products of Non Participating Manufacturers (NPM) who have not complied with Kansas law. The Attorney General's Office would maintain a list of those brands which are part of the Master Settlement Agreement, or which are sold by NPMs who are complying with the law. All the distributors would have to do is check the list.

Written testimony was submitted by Ron Hein, Hein Law Firm, Chartered, in support of **HB 2982** (Attachment 2).

Committee questions and discussion followed. There being no further conferees to come before the Committee, the Chairman closed the public hearing on **HB 2982**.

Senator Feleciano moved, with a second by Senator Adkins, to recommend **HB 2982** favorable for passage. Motion carried on a roll call vote.

Bill Introduction

Senator Kerr moved, with a second by Senator Schodorf, to introduce a bill concerning school district budgeting (1rs2411). Motion carried on a voice vote.

The meeting was adjourned at 1:25 p.m. The next meeting is scheduled for April 5, 2002.



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Testimony in Support of
House Bill 2982

John W. Campbell
Senior Deputy Attorney General

April 4, 2002

Mr. Chairman, members of the Committee, my name is John Campbell. I am the Senior Deputy Attorney General of the State and I appear before the Committee today in support of House Bill 2982.

In November 1998, the State of Kansas settled its tobacco litigation by signing the Master Settlement Agreement (MSA). Currently 52 jurisdictions and 38 tobacco companies are parties to the MSA. To date, the State of Kansas has received more than \$137,000,000 in payments as a result of the settlement. Our next payment will be on April 15th and is currently estimated at \$43,381,786.50

There are potential hazards to our continuing to receive payments. One is known as the Nonparticipating Manufacturer (NPM) adjustment. The MSA requires Kansas' diligent enforcement of K.S.A. 50-6a01, which requires tobacco manufacturers to either join the MSA or establish NPM escrow accounts. These accounts hold a portion of the money received from the sale of cigarettes and cigarette tobacco by NPMs. The principle must be held for 20 years in order to settle health related claims filed by citizens, though the interest on such accounts may be withdrawn at any time

Our failure to diligently enforce the Kansas NPM escrow statute could result in the loss of some or even all of our tobacco settlement money in a given year. One major tobacco company is contending that none of the states have diligently enforced their NPM escrow statutes. That matter will soon be the subject of arbitration.

Senate Ways and Means
4-4-02
Attachment 1

The Attorney General's Office, with the assistance of the Department of Revenue, has diligently enforced the Kansas NPM escrow statute. However, enforcement of that statute has been costly and difficult. HB 2982, developed in cooperation with one of the MSA tobacco companies, would greatly help in the enforcement of our NPM escrow statute.

Some manufacturers, often foreign, start a company, produce and sell a cheap brand of cigarettes for a year, and disappear before the escrow payment is made. The Attorney General has no choice but to sue the NPMs that do not obey the law. To not to do so would endanger our claim to tens of millions of dollars in tobacco settlement every year. However, our current methods are not an efficient use of time and resources. The cost of service of process alone may far exceed the value of the lawsuit. Our office sued one manufacturer for an annual escrow payment of less than \$30.

We were granted a default judgment in that case. Assuming we will ever find the manufacturer, going into another jurisdiction to enforce the injunctive orders of the Kansas court and collect the penalties would be very expensive. HB 2982 creates a more efficient and effective approach by prohibiting distributors from selling the products of noncompliant manufacturers.

House Bill 2982 would make the escrow requirement nearly self-executing by prohibiting licensed distributors from applying tax stamps to the products of NPMs who have not complied with Kansas law. The Attorney General's Office would maintain a list of those brands which are part of the MSA, or which are sold by NPMs who are complying with the law. All the distributors would have to do is check the list.

We urge the Committee to favorably pass this bill. While Kansas has and will continue to diligently enforce our NPM escrow statute, the passage of this bill would greatly assist that effort. Other states, including Maine and New York, have passed similar bills. South Dakota and Utah have such bills in their legislatures. If Kansas enacts HB 2982 into law, it will provide assistance in any arbitration or litigation in which it is claimed our share of the tobacco settlement moneys should be reduced.

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Testimony re: HB 2982
Senate Ways and Means Committee
Presented by Ronald R. Hein
on behalf of
R. J. Reynolds Tobacco Company
April 4, 2002

Mr. Chairman, Members of the Committee:

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

RJR supports HB 2982 which will protect Kansas's payments under the Master Settlement Agreement (MSA) by increasing compliance with escrow legislation enacted by Kansas in 1999.

Under the MSA, participating cigarette manufacturers are obligated to make payments to Kansas projected to exceed \$1.6 billion over the next 25 years. These payments, however, are tied to the sales volume of the four biggest participating manufacturers.

In 1999, Kansas enacted a "Model Statute" implementing the MSA. The Model Statute requires non-participating manufacturers (NPMs) to make payments into an escrow account, based on their sales in the state, to provide Kansas with a source of recovery if it sues them.

There is widespread concern that many NPMs are not making the escrow payments required by the Model Statute, and thus are able to charge lower prices for their cigarettes, resulting in sales being siphoned away from the participating manufacturers. When NPMs siphon sales away from participating manufacturers, the participating manufacturers' MSA payments to Kansas go down.

NPM sales have more than doubled since 1998. RJR estimates that NPM sales could grow significantly in the next few years. Meanwhile, Kansas has received significantly less than it was projected to receive under the MSA, due to sales declines by participating manufacturers.

Some of that sales decline is due to reduced smoking, but some is due to NPM sales growth enabled by avoiding making the escrow payments required by the Model Statute.

Senate Ways and Means
4-4-02
Attachment 2

Senate Ways and Means Committee

HB 2982

April 4, 2002

Page 2

HB 2982 would prohibit distributors from stamping cigarettes of manufacturers that are not either participating manufacturers or NPMs in compliance with the Model Statute. The bill would give the attorney general additional tools to ensure that escrow payments are being made by NPMs, thereby protecting Kansas's settlement payments under the MSA.

Five other states have already enacted Model Statute compliance legislation in 2001 and 2002. A sixth state has just passed legislation awaiting the Governor's signature, and other states are actively considering similar legislation.

We urge the Committee to approve HB 2982 as amended by the House Appropriations Committee.

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