

MINUTES OF THE HOUSE TAXATION COMMITTEE.

The meeting was called to order by Chairperson John Edmonds at 9:00 a.m. on March 18, 2003 in Room 519-S of the Capitol.

All members were present except:

Representative Vaughn Flora

Committee staff present:

Chris Courtwright, Legislative Research Dept.
April Holman, Legislative Research Dept.
Gordon Self, Office of the Revisor of Statutes
Carol Doel, Committee Secretary

Conferees appearing before the committee:

Representative David Huff
Representative Stephanie Sharp
Kathy Damron - Phillip Morris
Kevin Walker - Tobacco Free Kansas
Tom Palace - Convenience Store Association
Tom Whitaker - Kansas Motor Carriers
Ron Heins - Legislative Counsel for R.J.
Reynolds Tobacco Company

Others attending:

See attached list

Chairman Edmonds opened the meeting calling for bill introductions. Hearing none, the meeting was opened for public hearings on **HB 2422** - *Prohibiting certain shipment or transport of cigarettes*.

The Chairman asked for approval of minutes from 3-5, 3-6 and 3-7. Representative Larkin made a motion to adopt the minutes as read. Representative Owens seconded the motion. Minutes were adopted.

Representative Huff appeared before the committee with testimony in favor of **HB 2422**. His testimony reports that passage of this bill would help in making it more difficult for underage persons to obtain cigarettes and secondly and most important the bill will force the purchasers of cigarettes to purchase their cigarettes in Kansas and protect our tax base that we impose on cigarette sales. (Attachment 1) Also included in Representative Huff's testimony was an E-Commerce report entitled *Sales of Cigarettes Online Hit* written by Bob Tedeschi (Attachment 2)

Representative Stephanie Sharp testified in support of **HB 2422** which she stated was a bill that protects the health of Kansas children, the livelihood of Kansas businesses, and maximizes the state's ability to collect excise tax revenue. (Attachment 3)

Representing Philip Morris was Kathy Darmon as a proponent for **HB 2422**. As a part of Philip Morris' commitment to responsible retailing, they believe that consumer cigarette sales should occur where there is reliable age verification, such as in face-to-face transactions with adult smokers. They also believe that cigarettes should be sold in compliance with the terms of the MSA (Master Settlement Act) and all applicable laws. (Attachment 4) Philip Morris also has adopted a Statement of Principles regarding internet and a commercial direct mail tobacco sales legislation. (Attachment 5)

President of the Tobacco Free Kansas Coalition, Kevin Walker, appeared before the committee in support of **HB 2422**. The coalition includes more than 125 organizations. They urge the State of Kansas to pass this bill and encourage them to include all tobacco products such as loose tobacco, chewing tobacco and cigars. (Attachment 6)

Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas was next to present testimony in conceptual support of **HB 2422**. They conceptually support a legislative proposal to make transporting of cigarettes to those other than licensed retailers or warehouse operators an unlawful act. The question of acceptable levels of civil fines for common or contract carrier violations can best be answered by representatives of the transportation industry. (Attachment 7) Mr. Palace also included

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on March 18, 2003 in Room 519-S of the Capitol.

in his testimony information from a web site which shows an ordering form as well as several site where cigarettes can be purchased over the internet. (Attachment 8)

Richard Cram, representing the Department of Revenue, Policy and Research presented testimony in support of **HB 2422**. This bill makes the shipment or transport of cigarettes into Kansas illegal if delivered to a person who was licensed to sell cigarettes as provided by Kansas law; an export warehouse proprietor, or operator of a customs bonded warehouse pursuant to federal law; or a person who is not a state or federal agent acting under official duties. It outlaws direct sale or shipment of cigarettes to the ultimate consumer in Kansas. (Attachment 8) The Department suggests two amendments to the bill. (Attachment 9)

Tom Whitaker, Executive Director of Kansas Motor Carriers Association, appeared in opposition to **HB 2422**. His testimony related that the bill represents an effort to stop the purchase of cigarettes on the internet and assure collection of Kansas' cigarette tax. The bill is directed to the shipper of cigarettes as well as a common or contract carrier that transports them. They believe that Kansas law should focus directly on the shipper and not involve the transporter in possible criminal action. (Attachment 10)

Ron Hein, legislative counsel for R.J. Reynolds Tobacco Company, presented testimony in opposition to **HB 2422**. R.J. Reynolds supports legislation to insure that internet and other interstate sales of cigarettes are handled in a manner that only persons of lawful age are able to obtain cigarettes, and that tobacco excise taxes, sales taxes, and any other taxes applicable are collected from the entities shipping cigarettes. They do have concerns about the working of the bill and feel that it would need to be amended before they could support it. (Attachment 11) They included a copy of the suggested wording with their testimony. (Attachment 12)

With no one further wishing to testify, Chairman Edmonds closed the hearing on **HB 2422**.

The Chairman opened the hearings on **HB 2162** - *income tax credits for contributions to community service organizations*.

Representative McKinney appeared as a proponent to **HB 2162** stating the bill would seek to target 80% of our community development tax credits to medical services for indigent and foster care to replace some of the lost state support in these areas. (Attachment 13)

There being no further conferees on **HB 2162**, Chairman Edmonds closed the meeting for hearings.

With no further business before the committee, Chairman Edmonds adjourned the meeting at 10:33 a.m.

HOUSE TAXATION COMMITTEE

GUEST LIST

DATE March 18, 2003

NAME	REPRESENTING
Steve Elton	KTN
Christy Caldwell	Tennessee Chamber of Comm
Bob Johnson	KLA
Walter Lee Smith	KIMBA
Mark A. Burghart	
Shirley Little	Went Energy
Moulee Carpenter	KPTZ
Ron Seber	Air Hawk Farm
Leslie Kaufman	KFB
Danielle Nee	Johnson County

HB- 2422

The State of Kansas does a great job of enforcing the sale of cigarettes to minors. I have also seen our retailers in action when they I.D. potentially underage purchasers. They also do a great job. It is so important to discourage our children any way we can to not start this destructive habit. There is one other area we need to look at for underage cigarette sales, The Internet. Buying cigarettes over the internet has been one way for underage children to make these purchases. The state of New York passed a law in the year 2000 outlawing internet sales. The law passed and was signed by the governor. Immediately the Brown & Williamson Tobacco company sued the state of New York. The suit went all the way to the court of appeals which ruled in favor of New York. This law was largely intended to curb under age smoking which on-line cigarette sights do little to verify. Number one HB-2422 would help in making it more difficult for underage persons to obtain cigarettes. Number two and most important this will force the purchasers of cigarettes to purchase their cigarettes in Kansas and protect our tax base that we impose on cigarette sales.

Representative David Huff

<p>HOME</p> <p>JOB MARKET</p> <p>REAL ESTATE</p> <p>AUTOS <i>NEW</i></p> <p>NEWS</p> <p>International National Washington Business Technology - Circuits - Columns Science Health Sports New York Region Education Weather Obituaries NYT Front Page Corrections</p> <p>OPINION</p> <p>Editorials/Op-Ed Readers' Opinions</p> <p>FEATURES</p> <p>Arts Books Movies Travel NYC Guide Dining & Wine Home & Garden Fashion & Style Crossword/Games Cartoons Magazine Week in Review Multimedia/Photos College Learning Network</p> <p>SERVICES</p> <p>Archive Classifieds Book a Trip Personals Theater Tickets NYT Store NYT Mobile E-Cards & More About NYTDigital Jobs at NYTDigital Online Media Kit Our Advertisers</p> <p>MEMBER CENTER</p> <p>Your Profile E-Mail Preferences News Tracker Premium Account Site Help Privacy Policy</p> <p>NEWSPAPER</p>	<p>SEARCH Go to Advanced Search/Archive</p> <p>Past 30 Days </p> <p>QUOTES </p> <p>Symbol Lookup</p> <p>GO TO MEMBER C</p> <p>Welcome, SCS</p> <p><input checked="" type="checkbox"/> E-Mail This /</p> <p><input type="checkbox"/> Printer-Frien</p> <p><input type="checkbox"/> Most E-Mails</p> <p><input type="checkbox"/> Reprints</p> <p><input type="checkbox"/> Single-Page</p> <p>ARTICLE TOOLS SPONSORED BY</p>
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E-COMMERCE REPORT

Sales of Cigarettes Online Hit

By **BOB TEDESCHI**

ONLINE sellers of cigarettes have been in an enviable position — until recently. As states steadily raised cigarette taxes in an effort to balance budgets and curb teenage smoking, more and more consumers turned to the Web, where cheap cigarettes abound.

But such bargains may not be so easily found in the future, some analysts said, as states like New York prepare to outlaw online tobacco sales, while others crack down on cigarette buyers who do not pay taxes.

For now, the savings are significant. When a smoker in New York City, for instance, buys a carton of Marlboro Full Flavor Kings from a site like DirtCheapCig.com, the price is \$35.18, including shipping. For the same carton in Manhattan, where customers pay an excise tax of \$1.50 a pack to both the city and the state, taxes alone would amount to \$30.

The reason the Internet is a smoker's haven, analysts and state government investigators said, is that DirtCheapCig and hundreds of other Internet sites do not meet their legal responsibilities to report customers' names to the state taxing authorities, so that states can collect excise taxes.

Executives at DirtCheapCig.com, based in Paducah, Ky., did not return calls seeking comment, but a customer service representative said the site did not report sales to a customer's state. Rather, he said, it charges the Kentucky excise tax of 3 cents a pack.

According to Forrester Research, online bargains will help Web sites sell \$2.2 billion worth of cigarettes this year, up from \$1.2 billion last year. Forrester projects sales of \$5 billion in 2005.

But those rosy figures could be in jeopardy, given the states' growing distaste for online tobacco merchants. New York, for instance, passed a law in 2000 barring the online and mail-order sale of cigarettes to its residents. After the law was initially struck down by the Federal District Court in Manhattan in 2001, it was upheld by a federal appeals panel

House Taxation

Attachment 2Date 3-18-03

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earlier this month, and is likely to go into effect in the coming days.

The law was largely intended to curb under-age smoking, since many online cigarette sites do little, if anything, to verify the age of customers. But skeptics point to legislation in other states to enforce online cigarette tax collection, and say the law's true intent is to protect state coffers, not coughers.

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"We all know this isn't about public health," said Joseph F. Crangle, a lawyer with Colucci & Gallagher in Buffalo, who has represented online cigarette sellers from Indian reservations in upstate New York. Mr. Crangle, who declined to identify his clients' Web sites, said traditional merchants lobbied Albany to protect the economic interests of both the state and the merchants, who have lost substantial sales to the online retailers. The states with some of the highest cigarette taxes have been among the most aggressive in their pursuit of Internet tobacco merchants.

California, which has a tax of 87 cents a pack, enacted two laws this year aimed largely at online cigarette sellers. The first requires online retailers to verify that customers are 18 or older, by, among other things, matching names, addresses and dates of birth to government records. Online sellers must also accept only checks or credit cards, in part because other methods of payment, like money orders, are more accessible to teenagers.

Laura Kaplan, a deputy attorney general for California, said the state had yet to prosecute a Web site under the law. That could change, though. "This is a very hot topic right now," she said.

The second new California law is aimed at tax evaders. It requires Internet and mail-order tobacco sellers who do not collect the state's excise tax at the time of a California resident's purchase to include on the outside of the shipping container a notification that the merchant has told the state about the sale, and that the customer is liable for taxes.

Those who work with the online cigarette sellers differ on how much the new laws will affect business. Robert Rubin, a Forrester Research analyst, said online cigarette retailers were likely to flout the law. "States can get tougher with the regulations, but their ability to police is limited," Mr. Rubin said. "It's so hard to police because these sites can pop up and go away so quickly. The anonymity of the Internet is great for this."

Continued

1 | 2 | Next>>

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SEARCH RESULTS FROM THE ARCHIVE

Cigarette Tax, Highest in Nation, Cuts Sales by Half (August 6, 2002) \$

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Internet
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TOPEKA

March 18, 2003

COMMITTEE ASSIGNMENTS

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HEALTH AND HUMAN SERVICES
ETHICS AND ELECTIONS
INSURANCE

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REPRESENTATIVE, 17TH DISTRICT

300 SW 10TH AVENUE

STATE CAPITOL, ROOM 175-W

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(785) 296-7616

(800) 432-3924

TTY (785) 296-8430

sharps@house.state.ks.us

**Testimony in support of House Bill 2422
House Committee on Taxation**

Thank you for allowing me to testify before you today in support of a bill that protects the health of Kansas children, the livelihood of Kansas businesses, and maximizes the state's ability to collect excise tax revenue.

House Bill 2422, though it has some inconsistencies with other areas of statute which will be discussed later (lines 34-37), is a progressive attempt to pre-empt underage smoking in Kansas. When a bill can bring together health advocates, cigarette retailers, and Alcoholic Beverage Control – who enforce cigarette sales laws – and even a cigarette manufacturer trying to protect their own market share, you have done something good.

This bill is patterned the bill passed by the New York State Assembly and Senate that withstood a New York Supreme Court legal challenge by Brown & Williamson Tobacco. It is not the intent of the proposers to hold transporters responsible or liable. I encourage the committee to work with a Revisor to iron out these wrinkles. Additionally, I strongly suggest amending the language to include tobacco products as well as cigarettes. Kansas ranks higher than the national average in smokeless tobacco use rates:

- High school boys use smokeless tobacco at a rate of 15.2 percent, which amounts to 9,300 Kansas boys. The national average for high school is 11 percent.
- Four percent (2,400) of middle school boys have already started using spit tobacco.

With this bill, Kansas has the opportunity to set a precedent that protects children, businesses, and the State General Fund – not something you find very often. To that end, I urge you to consider HB 2422 favorably with the suggested changes.

House Taxation
Attachment 3

Date 3-18-03

Stephanie Sharp

From: Stephanie.Walters@Cancer.org
Sent: Tuesday, March 18, 2003 7:56 AM
To: ssharp@ink.org
Subject: NY internet tobacco sales law

Per your request, please contact us for any further information. Thank you.

Stephanie Walters
Legislative and Legal Associate
American Cancer Society
19 Dove St Ste 103
Albany NY 12210
(518) 449-5438 Ext 10
(518) 449-7283

S 1399-II. Unlawful shipment or transport of cigarettes. 1. It shall be unlawful for any person engaged in the business of selling cigarettes to ship or cause to be shipped any cigarettes to any person in this state who is not: (a) a person licensed as a cigarette tax agent or wholesale dealer under article twenty of the tax law or registered retail dealer under section four hundred eighty-a of the tax law; (b) an export warehouse proprietor pursuant to chapter 52 of the internal revenue code or an operator of a customs bonded warehouse pursuant to section 1311 or 1555 of title 19 of the United States Code; or (c) a person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state, when such person is acting in accordance with his or her official duties. For purposes of this subdivision, a person is a licensed or registered agent or dealer described in paragraph (a) of this subdivision if his or her name appears on a list of licensed or registered agents or dealers published by the department of taxation and finance, or if such person is licensed or registered as an agent or dealer under article twenty of the tax law.

2. It shall be unlawful for any common or contract carrier to knowingly transport cigarettes to any person in this state reasonably believed by such carrier to be other than a person described in paragraph (a), (b) or (c) of subdivision one of this section. For purposes of the preceding sentence, if cigarettes are transported to a home or residence, it shall be presumed that the common or contract carrier knew that such person was not a person described in paragraph (a), (b) or (c) of subdivision one of this section. It shall be unlawful for any other person to knowingly transport cigarettes to any person in this state, other than to a person described in paragraph (a), (b) or (c) of subdivision one of this section. Nothing in this subdivision shall be construed to prohibit a person other than a common or contract carrier

from transporting not more than eight hundred cigarettes at any one time to any person in this state.

3. When a person engaged in the business of selling cigarettes ships or causes to be shipped any cigarettes to any person in this state, other than in the cigarette manufacturer's original container or wrapping, the container or wrapping must be plainly and visibly marked with the word "cigarettes".

4. Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his or her special duties, shall discover any cigarettes which have been or which are being shipped or transported in violation of this section, such person is hereby empowered and authorized to seize and take possession of such cigarettes, and such cigarettes shall be subject to a forfeiture action pursuant to the procedures provided for in article thirteen-A of the civil practice law and rules, as if such article specifically provided for forfeiture of cigarettes seized pursuant to this section as a pre-conviction forfeiture crime.

5. Any person who violates the provisions of subdivision one or two of this section shall be guilty of a class A misdemeanor and for a second or subsequent violation shall be guilty of a class E felony. In addition to the criminal penalty, the commissioner may impose a civil fine not to exceed five thousand dollars for each such violation on any person who violates subdivision one or two of this section. The commissioner may impose a civil fine not to exceed five thousand dollars for each violation of subdivision three of this section on any person engaged in the business of selling cigarettes who ships or causes to be shipped any such cigarettes to any person in this state.

Kathy Damron

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E-MAIL: MKDTopeka@aol.com

800 SW JACKSON STREET, SUITE 1100

Topeka, Kansas 66612-2205

Mr. Chairman and members of the House Taxation Committee:

I am Kathy Damron representing Philip Morris regarding HB 2422 concerning cigarettes and the shipment and sale of these products. We appreciate the committee's interest in this matter and certainly support efforts to ensure responsible retailing.

As a part of Philip Morris' commitment to responsible retailing, we believe that consumer cigarette sales should occur where there is reliable age verification, such as in face-to-face transactions with adult smokers. We also firmly believe that cigarettes should be sold in compliance with the terms of the Master Settlement Agreement (MSA) and all applicable laws, including those requiring the payment of state and local excise tax and the deposit of escrow payments on sales by companies that did not participate in the MSA.

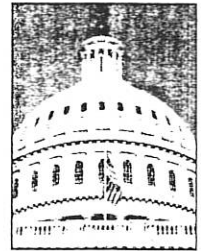
We have adopted a Statement of Principles at Philip Morris regarding Internet and commercial direct mail tobacco sales legislation. I have attached a copy of these principles to my testimony and would urge the committee to give consideration to amendatory language suggested by Mr. Ron Hein on behalf of RJR Tobacco Company. We believe these suggestions strengthen the proposed legislation.

Thank you for your consideration of these important matters.

House Taxation
Attachment 4
Date 3-18-01

STATEMENT OF PRINCIPLES

Internet and Commercial Direct Mail Tobacco Sales Legislation



1. Cigarette sales to individual purchasers via the Internet or direct mail should occur only where there is reliable age verification.
2. In addition to reliable age verification, we believe that those selling cigarettes commercially via direct mail or over the Internet should be required to comply with all applicable laws, including those regarding collection of state excise taxes, and make payments pursuant to the MSA or state laws requiring escrow payments. Toward this end, those selling cigarettes over the Internet and through direct mail should be required to ensure the state tax is paid on products shipped into the state, as well as provide to the taxing authority for the state into which cigarettes are being shipped the names and addresses of the companies shipping cigarettes into the state and the names and addresses of the individuals receiving the cigarettes.
3. Those selling cigarettes commercially to individuals over the Internet and through direct mail should first verify the purchaser's age. Individual purchasers should also be required to provide a signed statement in writing certifying that age verification information provided at the point of purchase correctly identifies the individual and correctly states their address and date of birth. The statement should also confirm that the individual understands that forging another person's signature is illegal, that the individual understands that tobacco sales to minors are illegal, and that tobacco purchases by minors may be illegal under applicable state law. Individual purchasers may also be asked to provide their e-mail address.
4. Before mailing or shipping cigarettes to an individual purchaser, the seller must verify the above requested information against a commercially available database; send an e-mail or other notice of the order requesting confirmation that the order was placed by the individual; and receive payment by credit or debit card. We would support efforts to establish a Federal database available for such verification.
5. The seller must employ a method of shipping that requires that either the individual purchaser, who must also be the addressee, or an adult authorized by the individual purchaser (addressee), personally sign for delivery of the package and, if the person appears under 27 years of age, takes delivery of the package only after producing valid, government-issued identification that bears a photograph of the individual and indicates that the person is not under 18* years of age. The bill of lading should clearly state these requirements and indicate that the law mandates they be met.
6. Any Internet or direct mail tobacco sales legislation should only apply to sales to individual purchasers and should not impose new or onerous requirements on a cigarette manufacturers' ability to provide products to its wholesale and retail customers using the Internet.
7. Any person selling tobacco products for purchase through an Internet site who advertises such products for sale on that website must:
 - include on the part of the website that is immediately visible when accessed, a prominent and clearly legible warning label stating that tobacco-product sales to persons under 18* are illegal;
 - include, on website pages offering tobacco products for purchase that are immediately visible when accessed, a prominent and clearly legible health warning label; and
 - restrict sales to only those individuals who provide verifiable proof of age, as outlined above.



8. Federal legislation addressing commercial Internet and direct mail sales of cigarettes should include provisions to ensure that product shipped from Native American Reservations to individual purchasers who are non-native Americans or individual purchasers who live outside of the Native American Reservation shall bear the appropriate state tax stamp and that the seller shall ensure that state excise taxes are paid on that product.
9. In addition, it shall be illegal for a shipper to transport cigarettes into a state unless the tax is paid to the state into which the product is being shipped.
10. These provisions should be fully enforceable and carry reasonable civil penalties for those selling and shipping tobacco products that fail to comply with minimum age laws and with the age verification requirements outlined above.

** Except Alabama, Alaska and Utah, where the legal age to purchase cigarettes is 19.*

For more information, visit our website at www.philipmorrisusa.com.

5-2





Tobacco *Free* Kansas Coalition, Inc.

**Tobacco Free Kansas Coalition
Testimony In Support of HB 2422
House Taxation Committee
Tuesday, 18 March 2003**

Mr. Chairman and members of the Committee, I am Kevin Walker, President of the Tobacco Free Kansas Coalition and I appear before you today in support of HB 2422.

The Tobacco Free Kansas Coalition has more than 125 members including organizations such as the American Cancer Society, the American Heart Association, the American Lung Association, the Kansas State Nurses Association and the Kansas Public Health Association.

This bill follows an example applied in New York that seeks to restrict the delivery of tobacco products in order to ensure better compliance with the state's youth access laws and ensure compliance with the state's taxation requirements on tobacco products.

We believe this is a good policy for the State of Kansas and urge you to pass this bill.

We understand that several amendments may be offered to this bill and urge you to carefully consider each one. Some may be offered to reconcile the provisions of this bill with current statutes and make it stronger, while others may actually have the reverse impact and weaken the provisions of this bill. We would find any amendment that weakens this bill to be unacceptable, and hope that you would agree.

During our review of the bill we found that this proposal deals only with cigarettes. We encourage you to include all tobacco products such as loose tobacco, chewing tobacco and cigars in this measure.

We applaud the Committee for addressing this issue and welcome the opportunity to work with you to seek passage of this bill.

House Taxation
Attachment 6
Date 3-18-03

TOBACCO FREE KANSAS COALITION, INCORPORATED OFFICERS

Kevin Walker

ADVOCACY DIRECTOR
AMERICAN HEART ASSOCIATION
HEARTLAND AFFILIATE



Stephanie Sharp

ADVOCACY DIRECTOR
AMERICAN CANCER SOCIETY
HEARTLAND DIVISION



Joan Smith

HEALTH EDUCATOR
RILEY COUNTY/MANHATTAN HEALTH DEPARTMENT

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MEMO TO: House Taxation Committee
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and
Convenience Store Association of Kansas
DATE: March 18, 2003
RE: HB 2422

Mr. Chairman and Members of the House Taxation Committee:

My name is Tom Palace and I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 360 independent petroleum marketers and convenience stores throughout Kansas.

PMCA appreciates the opportunity to appear before you today in support, conceptually to HB 2422.

The burgeoning business of selling cigarettes "other than through the customary retail outlet" has become a problem for states (loss of tax revenue) and for the small businessman (loss of business revenue); therefore PMCA can conceptually support a legislative proposal to make transporting of cigarettes to those other than licensed retailers or warehouse operators an unlawful act.

Internet sales have become more attractive due to the heavy tax burden now placed on tobacco products in Kansas. The smoking consumer has been forced to look for alternative ways to purchase tobacco products. The Internet provides tobacco products to anyone with a click of the mouse at a price that cannot be matched at the retail level. As long as the person ordering the cigarettes has a valid credit card and can answer the simple question "are you 18 years of age or older?" the sale can be completed in several minutes...regardless of age. **I have attached a sample purchase of cigarettes from the Internet and a web site for other tax free tobacco sites where cigarettes can be shipped free.**

PMCA tobacco retailers wholeheartedly support and utilize the *We Card* program as a proven method of limiting access to tobacco products by minors. When cigarettes are purchased by means other than retail (i.e. Internet), the age-restriction safeguards are absent. Also, when cigarettes are sold to licensed retailers, the state has the assurance of product quality. Cigarettes shipped to private citizens or other nonlicensed vendors, provides no such assurance. When the retail level is by passed, the state has little or no control to enforce the Kansas statutes. I would assume that placing the onus of enforcement on the transportation companies will meet with some resistance

As we stated from the outset, PMCA supports HB 2422 conceptually. The tobacco retail industry has been victimized by sales made over the Internet. Tobacco sales account for 25% of

Petroleum Marketers and Convenience Store Association of Kansas
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House Taxation
Attachment 7
Date 3-18-03

gross revenue to a convenience store retailer. The recent hike in cigarette excise tax has pushed more people to consider different options to purchase tobacco products... the Internet is the easiest and least expensive place to do so.

This bill provides for civil fines to transportation companies. The question of acceptable levels of civil fines for common or contract carrier violations can best be answered by representatives of the transportation industry. As to whether or not the 800 (4 carton) shipping exemption is appropriate, we don't have an answer. We are aware that buying habits are subject to price differentials, and nontaxed products have the edge.

In conclusion, as small businessmen and more importantly, as tax collectors for a state in financial difficulty, we support efforts to halt further erosion of our sales as well as diminished tax revenue for the state.

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Cigarettes: Bond Camel Chesterfield Dallas Davidoff Dunhill Gitanes Kent L&M
Lucky Strike Magna Marlboro Monte Carlo Pall Mall Parliament Prince
Rothmans Salem Virginia Slims Vogue Winston West

Your Order

Your Name

Title, Given Name, Middle Initial, Family Name

Mr

E-mail Address

Contact Number(s)

Telephone: _____

Facsimile: _____

Shipping Address

Billing Use Shipping

Street: _____

Suburb: _____

City: _____

State: _____ (abbreviation only) _____ (abbreviation only)

Country: - Select Country - - Select Country -

Zip: _____

Due to customs restrictions we cannot ship to the countries which are not in the shipping list.

Current shipping times are 2-4 weeks.

aLLsmoke

Item Details	Price	Quantity	Total (US\$)
Winston. 6 cartons. 1200 cigarettes	83.94	1	83.94

Sub-Total:	83.94
Taxes:	-
Shipping and Handling: Shipping by Air Mail	4.49
Total:	88.43

You must be 18 years of age and over to purchase from this site.

By checking this box you are acknowledging the following:

- I am at least 18 years of age.
- JUMBOMALL.COM will appear in my next credit card statement for this purchase.
- Possible fluctuations due to international currency conversions could slightly affect the purchase total
- I will contact sales@allsmoke.com for a prompt resolution should I have any problems with my order

Automatic Order Placement

Would you like us to automatically place this order on a regular basis?
If so tell us how often you would like these orders.

- Please reorder every:
- Don't Auto Deliver
 - Week
 - Two Weeks
 - Three Weeks
 - Month
 - Six Weeks
 - Two Months

To cancel your automatic order, send email to reorder@jumbomall.com at any time.

Payment Options

Card Type

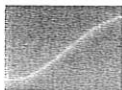
Name on Card

Expiry Date (Month/Year)

Card Number

*Please click the button **ONLY ONCE** to avoid processing of mutpial identical order.*





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tax free cigarettes

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Results 1-15 of about 84338 containing "tax free cigarettes"

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• **SenecaSmokes**

Cigarettes and tobacco products at discount **tax free** prices! Be sure to try our Native all natural and Seneca brands
www.senecasmokes.com

• **All Cigarettes - Not More Than \$19.80**

Marlboro - \$18.50 per carton. Dunhill - \$19.80 per carton. Pall Mall - \$14.90 per carton. L&M - \$16.49 per carton.
www.allsmoke.com

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1. **Cigarettes**

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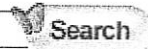
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K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
POLICY AND RESEARCH

KATHLEEN SEBELIUS, GOVERNOR

March 18, 2003

To: John Edmonds, Chair
House Taxation Committee

From: Richard L. Cram

Re: Testimony in Support of House Bill 2422

This bill makes the shipment or transport of cigarettes into Kansas illegal if delivered to a person who was not a person licensed to sell cigarettes as provided by Kansas law; an export warehouse proprietor or operator of a customs bonded warehouse pursuant to federal law; or a person who is not a state or federal agent acting under official duties. This bill outlaws direct sale or shipment of cigarettes to the ultimate consumer in Kansas. Such cigarettes, if discovered by a law enforcement officer, would be subject to seizure and forfeiture. The bill is aimed at cigarettes purchased directly by consumers over the Internet and is modeled after a New York statute recently upheld in the federal appellate courts.

Outlawing the direct sale cigarettes to consumers over the Internet, and the shipment of them, is sound public policy. Such a law may also be helpful in tracking illegal sales of cigarettes to minors. Direct sale of cigarettes over the Internet already violates Kansas law. Presumably, no tax stamps will have been purchased for any cigarettes purchased directly by consumers over the Internet. The sale or possession of unstamped cigarettes is a misdemeanor, subject to a fine of up to \$1,000. K.S.A. 79-3322. Both the retailer and purchaser are subject to punishment. The Department can seize cigarettes as contraband if the possessor in Kansas has 20 or more packages of cigarettes without Kansas tax stamps affixed to them. K.S.A. 79-3323(a)(1). Additionally, K.S.A. 79-3321 provides that it is "unlawful for any person" (a) "to possess...more than 200 cigarettes without the required tax indicia being affixed as herein provided." K.S.A. 79-3321 makes it is unlawful to (p) "sell cigarettes without having a license for such sale..." and (u) "sell or distribute in this state...or to import...into this state for sale or distribution in this state" except as authorized.

The Department suggests two amendments to the bill. At lines 34 through 37 on page 1, it states "Nothing in this subsection shall be construed to prohibit a person other than a common or contract carrier from transporting not more than 800 cigarettes at any one time to any person in this state." Given the existence of K.S.A. 79-3321(a) (making it a violation to possess more than 200 untaxed cigarettes), this provision in House Bill 2422 should be deleted.

Subsection (f) states that "the director of taxation may impose a civil fine not to exceed \$5,000 for each violation on any person who violates the provisions of subsection (a) or (b)." However, the director of taxation has no general authority over common or contract carriers. They are not registered with, licensed by or otherwise regulated by the director of taxation. It is suggested that this provision be deleted. The suggested amendments to the bill are attached.

HOUSE BILL No. 2422

By Committee on Taxation

2-28

AN ACT concerning cigarettes; relating to unlawful shipment or transport thereof; prescribing certain penalties therefor.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Unlawful shipment of cigarettes is shipping or causing to be shipped any cigarettes by any person engaged in the business of selling cigarettes to any person in this state who is not: (1) A person licensed to sell cigarettes as provided by K.S.A. 79-3301 et seq. and amendments thereto; (2) an export warehouse proprietor pursuant to chapter 52 of the internal revenue code or an operator of a customs bonded warehouse pursuant to section 1311 or 1555 of title 19 of the United States Code; or (3) a person who is an officer, employee or agent of this state or the United States government, or a department, agency, instrumentality or political subdivision of this state or the United States government, when such person is acting in accordance with such person's official duties.

(b) Unlawful transport of cigarettes is: (1) Knowingly transporting cigarettes by any common or contract carrier to any person in this state reasonably believed by such carrier to be other than a person described in subsection (a)(1), (a)(2) or (a)(3). For purposes of this subsection, if cigarettes are transported to a home or residence, it shall be presumed that the common or contract carrier knew that such person was not a person described in subsection (a)(1), (a)(2) or (a)(3); or (2) knowingly transporting cigarettes by any person other than a common or contract carrier to any person in this state, other than to a person described in subsection (a)(1), (a)(2) or (a)(3). ~~Nothing in this subsection shall be construed to prohibit a person other than a common or contract carrier from transporting not more than 800 cigarettes at any one time to any person in this state.~~

(c) When a person engaged in the business of selling cigarettes ships or causes to be shipped any cigarettes to any person in this state, other than in the cigarette manufacturer's original container or wrapping, the container or wrapping must be plainly and visibly marked with the word "cigarettes."

(d) Whenever a law enforcement officer discovers any cigarettes

1 which have been or which are being shipped or transported in violation
2 of this section, such law enforcement officer is hereby empowered and
3 authorized to seize and take possession of such cigarettes, and such cig-
4 arettes shall be subject to a forfeiture action pursuant to the procedures
5 provided for in K.S.A. 79-3324a and amendments thereto.

6 (e) (1) Except as otherwise provided in subsection (e)(3), unlawful
7 shipment of cigarettes is a class A nonperson misdemeanor.

8 (2) Except as provided in subsection (e)(3), unlawful transport of cig-
9 arettes is a class A nonperson misdemeanor.

10 (3) Unlawful shipment of cigarettes or unlawful transport of ciga-
11 rettes by a person or common or contract carrier who has one or more
12 prior convictions of a violation of this section or substantially similar of-
13 fenses from another jurisdiction is a severity level 8, nonperson felony.

14 ~~(f) The director of taxation may impose a civil fine not to exceed~~
15 ~~\$5,000 for each violation on any person who violates the provisions of~~
16 ~~subsection (a) or (b).~~

17 Sec. 2. This act shall take effect and be in force from and after its
18 publication in the statute book.

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**Legislative Testimony
before the
House Taxation Committee
Representative John Edmonds, Chairman
Tuesday, March 18, 2003**

**MR. CHAIRMAN AND MEMBERS OF THE
HOUSE TAXATION COMMITTEE:**

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this morning representing our 1,250 member firms in opposition to the transporter provisions of House Bill No. 2422.

The bill represents an effort to stop the purchase of cigarettes on the internet and assure collection of Kansas' cigarette tax. The bill is directed to the shipper of cigarettes as well as a common or contract carrier that transports them. We believe that Kansas law should focus directly on the shipper and not involve the transporter in possible criminal sanctions. KMCA would support HB 2422 if Section 1 (b) and the reference to common or contract carriers in the penalty sections are removed from the bill.

HB 2422 is patterned after New York Public Health Law Section 1399-11 which makes it "unlawful for any common or contract carrier to knowingly transport cigarettes" to any person in New York state "reasonably believed" by the carrier to be other than: (a) a licensed cigarette tax agent or wholesale or retail dealer; (b) an export warehouse or customs bonded warehouse proprietor, or (c) a federal or state government official acting in an official capacity. If cigarettes are transported to a home or residence, it is presumed that the carrier knew that such consignee was not an authorized recipient.

The statute was scheduled to take effect on November 14, 2000, but was challenged by tobacco companies in the U.S. District Court for the Southern District of New York. Their lawsuits contended that the statute violated the Constitution's Commerce Clause by improperly discriminating against interstate commerce. On November 13, 2000, the district court issued a TRO that enjoined enforcement of the statute. Following a five-day bench trial, on June 8, 2001, the district court permanently enjoined the statute. The Second Circuit Court of Appeals recently reversed the district court and allowed the New York law to become effective on March 6, 2003. Further appeals are possible.

House Taxation
Attachment 10
Date 3-18-03

House Bill No. 2422 – March 18, 2003 – Page 2

KMCA believes this legislation violates the Federal Aviation Administration Authorization Act of 1994. The FAAAA preempts state laws “related to a price, route or service” of any motor carrier with respect to the transportation of property. HB 2422 would require carriers: (1) to identify those packages in their systems that both contain cigarettes and are bound for Kansas, (2) as to such packages, to determine whether the consignee is an authorized recipient, and (3) as to unauthorized recipients, to create a procedure for the undeliverable packages. Compliance with these provisions would create a substantial burden on the carriers in the form of labor, costs and delay, and would affect the timeliness and effectiveness of the carriers’ services. This legislation would directly and significantly affect the carrier’s routes and service.

Additionally, this bill does not apply to one of our industry’s major competitors, the United States Postal Service.

KMCA respectfully requests that the House Taxation Committee eliminate the provisions of HB 2422 that directly affect motor carrier industry. I thank you for the opportunity to appear before you and would be pleased to respond to any questions you may have.

HEIN LAW FIRM, CHARTERED

5845 SW 29th Street, Topeka, KS 66614-2462

Phone: (785) 273-1441

Fax: (785) 273-9243

Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

**Testimony re: HB 2422
House Taxation Committee
Presented by Ronald R. Hein
on behalf of
R. J. Reynolds Tobacco Company
March 18, 2003**

Mr. Chairman, Members of the Committee:

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

RJR supports legislation to insure that internet and other interstate sales of cigarettes are handled in a manner that only persons of lawful age are able to obtain cigarettes, and that tobacco excise taxes, sales taxes, and any other taxes applicable are collected from the entities shipping cigarettes.

RJR has set high standards of conduct regarding sale to minors and believes that any legislation dealing with interstate sale of cigarettes should be subject to sufficient protections to insure that minors do not obtain cigarettes. In addition, RJR, while utilizing internet or interstate sales on only a limited basis, also strongly believes that all taxes should be collected on such transactions.

It is my understanding that this is the intent of Rep. Huff, who asked for the introduction of HB 2422.

We have some concerns about the wording of HB 2422, and feel that it would need to be amended before we can support it. I have attached a copy of an amendment which, if adopted in lieu of the language proposed by the current bill, would accomplish the goals that I understand Rep. Huff has with HB 2422.

As you can see, the attached amendment is not in balloon form, and would need some references to Kansas statutes, but it is a form of model legislation which we believe is the best way to protect against under-age acquisition of cigarettes, and yet will insure that Kansas does not lose revenue by internet or other interstate sales of cigarettes which are not paying the Kansas excise tax or sales taxes.

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

House Taxation
Attachment 11

Date 3-18-03

§ 1. Definitions.

For purposes of this article:

"Adult" means a person who is at least the legal minimum purchase age.

"Consumer" means an individual who is not licensed as a wholesaler or retailer pursuant to § _____.

"Delivery sale" means any sale of cigarettes to a consumer in the State where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes are delivered by use of the mails or of a delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the State. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer shall not be a delivery sale.

"Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

"Department" means the _____.

"Legal minimum purchase age" is the minimum age at which an individual may legally purchase cigarettes in the State.

"Mails" or "mailing" means the shipment of cigarettes through the United States Postal Office.

"Person" means the same as that term is defined in § _____.

"Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

§ 2. Requirements for delivery sales.

A. No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in the State.

B. Each person accepting a purchase order for a delivery sale shall comply with:

1. The age verification requirements set forth in § _____;
2. The disclosure requirements set forth in § _____;
3. The shipping requirements set forth in § _____;
4. The registration and reporting requirements set forth in § _____;
5. The tax collection requirements set forth in § _____; and
6. All other laws of the State generally applicable to sales of cigarettes that occur entirely within the State, including, but not limited to, those laws imposing: (i) excise taxes, (ii) sales taxes, (iii) license and revenue-stamping requirement, and (iv) escrow payment obligations as set forth in § [insert citation to Model Statute].

§ 3. Age verification requirements.

A. No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to such consumer :

1. Obtains from the prospective consumer a certification that includes (i) a reliable confirmation that the consumer is at least the legal minimum purchase age, and (ii) a statement signed by the prospective consumer in writing that certifies the prospective consumer's address and that the consumer is at least 18 years of age. Such statement shall also confirm (a)

that the prospective consumer understands that signing another person's name to such certification is illegal, (b) that the sale of cigarettes to individuals under the legal minimum purchase age is illegal, (c) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the State, and (d) that the prospective consumer wants to receive mailings from a tobacco company;

2. Makes a good faith effort to verify the information contained in the certification provided by the prospective consumer pursuant to subsection A against a commercially available database, or obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order;
3. Provides to the prospective consumer, via e-mail or other means, a notice that meets the requirements of § 4; and;
4. In the case of an order for cigarettes pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name, or by check.

B. Persons accepting purchase orders for delivery sales may request that prospective consumers provide their e-mail addresses.

§ 4. Disclosure requirements.

The notice required under § 3(A)(3) shall include:

1. A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum purchase age are illegal;
2. A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1333(a)(1)) rotated on a quarterly basis;
3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with § 58.1-1022.3; and
4. A prominent and clearly legible statement that cigarette sales are subject to tax under § [insert correct Code citation], and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

§ 5. Shipping requirements.

A. Each person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale:

1. Shall include as part of the bill of lading or other shipping documents a clear and conspicuous statement providing as follows: "Cigarettes: [State] Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";
2. Shall use a method of mailing, shipping, or delivery that obligates the delivery service to require (i) the consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery of the shipping container, and (ii) proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that he is either the addressee or another adult of legal minimum purchase age residing at the consumer's address. However, proof of the legal minimum purchase age shall be required only if such individual appears to be under 27 years of age; and
3. Shall provide to the delivery service retained for such delivery sale evidence of full compliance with § 7

B. If the person accepting a purchase order for a delivery sale delivers the cigarettes without using a delivery service, such person shall comply with all requirements of this article applicable to a delivery service and shall

be in violation of the provisions of this article if he fails to comply with any such requirement.

§ 6. Registration and reporting requirements.

A. Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, every person shall file with the Department a statement setting forth such person's name, trade name, and the address of such person's principal place of business and any other place of business.

B. Not later than the tenth day of each calendar month, each person that has made a delivery sale or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale during the previous calendar month shall file with the Department a memorandum or a copy of the invoice that provides for each and every such delivery sale:

1. The name and address of the consumer to whom such delivery sale was made;
2. The brand or brands of the cigarettes that were sold in such delivery sale; and
3. The quantity of cigarettes that were sold in such delivery sale.

C. Any person that satisfies the requirements of section 376 of title 15 of the United States Code shall be deemed to satisfy the requirements of this section.

§ 7. Collection of taxes.

Each person accepting a purchase order for a delivery sale shall collect and remit to the Department all cigarette taxes imposed by the State with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof (in the form of the presence of applicable tax stamps or otherwise) that such taxes already have been paid to the State.

§ 8. Penalties.

A. Except as otherwise provided in this section, a first violation of any provision of this chapter shall be punishable by a fine of \$1,000 or 5 times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation of any provision of this article shall be punishable by a fine of \$5,000 or 5 times the retail value of the cigarettes involved, whichever is greater.

B. Any person who knowingly violates any provision of this article, or who knowingly and falsely submits a certification under subdivision § 3(A)(1) in another person's name, shall, for each such offense, be fined \$10,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than 5 years, or both.

C. Any person failing to collect or remit to the Department any tax required in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of 5 times the retail value of the cigarettes involved.

D. Forfeiture.

1. Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the requirements of this article shall be forfeited to the State and destroyed.
2. All fixtures, equipment, and all other materials and personal property on the premises of any person who, with the intent to defraud the State,

violates any of the requirements of this article, shall be forfeited to the State.

§ 9. Enforcement.

The Attorney General or his designee, or any person who holds a valid permit under 26 U.S.C. § 5712, may bring an action in the appropriate court in the State to prevent or restrain violations of this article by any person, or any person controlling such person.

March 18, 2003

To: House Tax Committee

From: Rep. McKinney

Subject: HB 2162

For fiscal years 2003 and 2004 we have made substantial cuts in medicaid services, foster care, and other social services. Therefore, HB 2162 would seek to target 80% of our community development tax credits to medical services for indigent and foster care to replace some of the lost state support in these areas.

Every dollar of tax revenue given up in this area generates \$1.42 total impact in a rural area and \$2 in an urban area.

Thank you Mr. Chairman.