

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman David Corbin at 10:45 a.m. on March 23, 2004, in Room 519-S of the Capitol.

All members were present except:

Senator Barbara Allen- excused

Committee staff present:

Chris Courtwright, Legislative Research Department

Martha Dorsey, Legislative Research Department

Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Representative David Huff

Kathy Damron, Philip Morris USA

Sally Finney, Kansas Public Health Association, Inc.

Tom Whitaker, Kansas Motor Carriers Association

Tom Palace, Petroleum Marketers and Convenience Store Association

Ron Hein, R. J. Reynolds Tobacco Company

Others attending:

See Attached List.

Senator Corbin called the Committee's attention to the minutes of the March 22 meeting. Senator Taddiken moved to approve the minutes of the March 22, 2004, meeting, seconded by Senator Buhler. The motion carried.

HB 2682-Sale and shipment of cigarettes to Kansas residents; licensure and requirements of dealers; unlawful acts

Representative David Huff testified in support of **HB 2682**, noting that it has been one year in the making and that it is the best possible bill with the number of groups involved. He explained that the bill would require a cigarette license for all Internet providers, a Kansas cigarette tax stamp, a registration certificate for all Internet providers, and confirmation that the purchaser is of legal age. It would also require dealers selling cigarettes over the Internet to file sales tax returns with the State of Kansas. In addition, all packages of cigarettes shipped from an Internet cigarette dealer to purchasers who reside in Kansas must have "CIGARETTES" printed on all sides of the package along with a notice that the purchaser is legally responsible for all applicable state taxes on the cigarettes. The Department of Revenue would publish a list of active licensees, and counterfeit cigarettes would be seized by the Department. (Attachment 1)

Kathy Damron, representing Philip Morris USA, testified in support of **HB 2682**. She noted that the bill gives the state more effective tools to deal with the increasing sales of counterfeit cigarettes in the United States. She pointed out that, basically, the bill provides for better controls throughout the distribution system, a more workable age verification for direct shipment sales, and stronger enforcement tools. She pointed out that there is a strong possibility that the bill would result in an increase in sales tax collections. (Attachment 2)

Sally Finney, Kansas Public Health Association, testified in support of **HB 2682**. She noted that the bill would benefit the health of Kansans first by limiting the ability of children to purchase cigarettes through the Internet. Secondly, the bill will encourage Internet cigarette vendors to raise the price of their goods. Therefore, it has the potential to discourage smoking in both children and adults as there is an inverse relationship between cigarette price and cigarette consumption. (Attachment 3)

Tom Whitaker, Kansas Motor Carriers Association, testified in support of **HB 2682**. He reminded the Committee that he testified before the interim Assessment and Taxation Committee in opposition to the original proposal. He now supports the proposal because the language that would have made the truck drivers delivering the cigarettes felons has been removed. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on March 23, 2004, in Room 519-S of the Capitol.

Tom Palace, Petroleum Marketers and Convenience Store Association (PMCA), testified in support of **HB 2682**. PMCA is an advocate of responsible tobacco retailing and feels that the bill is a step in the right direction to control the number of sellers of tobacco products. He pointed out that Internet sales of tobacco have taken a bite out of PMCA's sales because Internet sales are tax free. He applauded Representative Huff's effort to make Internet sellers of tobacco accountable and pay their fair share of excise taxes. (Attachment 5)

Kevin Walker, American Heart Association, testified in support of **HB 2682**. He noted that the Association believes that the bill represents a good compromise and urges its passage. (Attachment 6)

Ron Hein, representing R. J. Reynolds Tobacco Company, testified in support of **HB 2682**. He applauded the diligent efforts of Representative Huff to solve the concerns of opponents and yet meet the goals to prevent under-age acquisition of cigarettes and ensure that the Kansas excise and sales taxes on Internet sales of cigarettes are paid. He urged passage of the bill without any amendments. (Attachment 7)

Richard Cram, Kansas Department of Revenue, confirmed for Senator Taddiken that intent of the bill was to discourage the shipping of cigarettes into Kansas by Internet sellers by making the violation of any of the licensure, certification, or certification verification provisions a nonperson felony.

Senator Corbin called attention to written testimony in support of **HB 2682** submitted by Gwendolyn Cargnel, American Cancer Society (Attachment 8), and Dr. Philip Bradley, Kansas Licensed Beverage Association (Attachment 9).

There being no others wishing to testify, the hearing on **HB 2682** was closed.

With regard to previously heard bill, **SB 532**, Senator Donovan reminded Mr. Cram that, on March 22, he requested a new fiscal note on destination sourcing sales, using only complying companies. Mr. Cram provided a copy of an e-mail message he sent in response to the request, noting that the fiscal note is based upon the assumption that all 14,000 merchants will eventually comply. Senator Donovan noted that his request was for a fiscal note applied only to the 2,000 retailers currently complying with destination sourcing. Mr. Cram concurred that a fiscal note only for retailers currently complying would be much lower. However, when preparing the fiscal note, he felt it was important to consider that all 14,000 will be implementing destination sourcing. Senator Donovan noted that all retailers will not come aboard at one time, but it will be a gradual process. He noted that his request was an attempt to illustrate that the fiscal note to the State General Fund will be much lower at this time. He explained further that the intent of his proposal was to show people who are having difficulty with the idea of complying with destination sourcing that the program will benefit them in the long run.

Senator Buhler emphasized that retailers need a reason to comply with destination sourcing and expressed his support for Senator Donovan's concept. Senator Corbin commented that the problem with the concept is that, once a number is thrown out, everyone will assume that number will remain the same when applied to all sales. He suggested that the concept be the topic of an interim study when there would be more time for serious discussion.

The meeting was adjourned at 11:15 a.m.

No further meetings are scheduled.

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: March 23, 2004

NAME	REPRESENTING
Jean Wagner	KDOT
Beth J. Dammann	Philip Morris
Tom PALACE	IMGA OF KANSAS
Mike Hein	Hein Law Firm
Jane Steve	Keony's Associates
Cheri Protschman	Budget
Ron Hein	RJ Reynolds Tobacco Co.
LARRY R BAER	Lkm
Bill Brady	sprint
JOHN C. BOTTENBERG	PHILIP MORRIS USA
Peter R. Doherty	Export Man of America
Tom WHITAKER	Ks MOTOR CARRIAGES ASSN
KEVIN M. WALKER	AMERICAN HEART ASS'N.
Ewendolyn Cargnel	American Cancer Society
MQ Hellebrun +	TFKC
Sally Finney	Ks. Public Health Assn.
Daniel Garlow	

HB 2682

Senate Tox
Rep. Huff

Thank you Mr. Chairman Corbin, Vice Chair Donovan and Ranking Member Lee. HB-2682 has been one year in the making. Mr. Chairman, as you know, this bill went through a summer interim committee with a positive recommendation to get all parties involved on the same page. We have done this with special meetings of all parties. I feel this bill is the best possible bill we could have with the number of groups involved. As with any bill it is not perfect, but very close in stopping internet sales of cigarettes to minors.

Mr. Chairman, a special thanks to Chairman Edmonds, Ranking Member

Senate Assessment & Taxation
3-23-04
Attachment 1

Larkin and Secretary Wagnon for their help and support in formulating this bill. I would also like to thank the talented and hard working people at our Alcoholic Beverage Control Department. And finally a special thanks to Revisor Gordon Self who spent many hours on this bill which came out of House Tax Committee with no amendments and no opponents. This bill passed the House 122 - 3.

This bill will require a cigarette license for all internet providers. This bill will require a Kansas cigarette tax stamp. This bill will require all internet providers to get a registration certificate which is subject to the provisions of the Kansas Sales Tax act. This bill will require dealers selling cigarettes over the

internet to file sales tax returns to the state of Kansas.

This bill will require an internet supplier to obtain from the purchaser a certification that requires reliable confirmation that the purchaser is legal minimum age. It also requires a statement signed by the purchaser, showing his address and that he or she is of legal age and that signing another persons name to such certification is illegal.

The retail cigarette dealer of internet sales shall verify the information contained in the certification provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy or other image of the valid, government-issued

identification stating the date of birth or age of the purchaser.

All invoices, bills of lading, sales receipts and any other document related to the sale of cigarettes through the internet or other mail order transaction shall contain the current, valid retailer Kansas cigarette dealer license number, Kansas sales tax registration number, business name and address of the seller.

All packages of cigarettes shipped from an internet cigarette dealer to purchasers who reside in Kansas shall clearly print on the package with the word "CIGARETTES" on all sides of the package. In addition, such package shall contain an externally visible and easily legible notice located on the same side of the package as the address to which the

package is delivered as follows:

“IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES.

The Kansas Department of Revenue shall publish a list of active cigarette and tobacco licensees and shall update such list monthly.

The list of active cigarette and

tobacco licensees published as provided in the subsection shall contain the following information: County name, owner, business name, address, license type and license number.

Counterfeit cigarettes shall be seized by the director. Counterfeit cigarettes includes cigarettes that have false manufacturing labels or packages of cigarettes bearing counterfeit tax stamps.

Mr. Chairman this may not completely stop internet sales of cigarettes to minors, but it makes it very, very difficult. If I were an internet dealer I would not want to jump through this many hoops in order to sell a carton of cigarettes to a minor child.

Mr. Chairman I will stand for questions!

REP. DAVID HUFF

Republican Bill Brief for HB 2682

Sponsored by: Committee on Taxation

Final Action: Be Passed

Reporting Committee: Committee on Taxation

Date: 2-25-04

A Bill Concerning: Cigarettes; relating to sales by licensed dealers; sales tax requirements; shipment; providing penalties for certain unlawful acts; counterfeit cigarettes, and sales to minors over the Internet and from catalog sales.

What Bill Does:

1. All retail cigarette dealers, located in or outside of Kansas, selling cigarettes over the Internet, by telephone or by mail order must be licensed and must file all sales tax returns and pay all applicable taxes.
2. All cigarettes sold to persons residing in Kansas must have a valid Kansas cigarette tax stamp affixed to each package.
3. Before any cigarettes sold over the Internet, by telephone or by mail order are delivered, the seller must have confirmation that the purchaser is of legal minimum age to purchase cigarettes and that the purchaser understands that the sale of cigarettes to minors is illegal.
4. The dealer must make this confirmation through the use of governmental records or by obtaining a copy of the purchaser's valid government-issued identification that states the birth or age of the purchaser.
5. All documentation regarding the sale of cigarettes over the Internet, by telephone or by mail order must contain the dealer's Kansas cigarette dealer license number, sales tax registration number, business name, and business address.
6. All cigarette packages shipped to Kansas residents must have the word "cigarettes" printed clearly on all sides of the package, and must contain a specified message regarding the purchaser's legal obligation for any unpaid state taxes on cigarettes purchased from an out-of-state dealer.

Political Reality/Implications: Will make it much harder for underage children to purchase cigarettes over the Internet or through catalog sales.

Committee Amendments: None

Possible Floor Amendments: None

Proponents: Rep. David Huff
Ron Hein - R. J. Reynolds
Kathy Damron - Phillip Morris
Gwen Carget - KS Motor Carriers
Joan Wagon - Sec. Of Revenue
Salley Finney - KS Public Health Assoc.
Tom Palace - Petroleum Marketers Dealer

Opponents: None

Fiscal Note: Will have a positive fiscal note from Dealer Internet License fees and Cigarette Tax Revenue.

Who will carry the Bill: Rep. David Huff

HB-2682

1-8



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David Huff #30

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Senate Passes Bill to Capture Illegal Cigarette Sales

by John Skorburg

The U.S. Senate passed on December 9 a bill (S. 1177) intended to curtail illegal cigarette trafficking and strengthen enforcement of cigarette tax collection from Internet vendors. The measure passed late in the evening by voice vote.

Senator Orrin G. Hatch (R-Utah), chairman of the Senate Judiciary Committee, and Senator Herb Kohl (D-Wisconsin) introduced the Prevent All Cigarette Trafficking (PACT) Act on June 3, 2003.

"Contraband cigarettes contribute heavily to the profits of organized crime syndicates, specifically global terrorist organizations," stated Hatch at the bill introduction. "Furthermore, illegal cigarette trafficking has had a damaging impact on the economies of numerous states."

"It is clear that cigarette trafficking is becoming a method of terrorist financing," added Kohl. "This legislation will comprehensively combat tobacco smuggling. In reducing cigarette smuggling, we will simultaneously help deny terrorists a needed source of funding and help our financially struggling states collect their revenue."

The PACT Act would:

- Strengthen the reporting requirements for interstate cigarette sellers.
- Lower the threshold for cigarettes to be treated as contraband from 60,000 to 10,000.
- Make violating reporting requirements a felony.
- Create a substantial civil penalty for

violating reporting requirements.

- Empower state attorneys general to prosecute violators.

The bill "is designed so that the profits of those currently benefitting from contraband cigarettes will go up in smoke," Hatch said when the measure passed.

The legislation also gives state attorneys general the ability to bring action in federal court against Internet vendors who violate state laws by failing to report sales to state tax administrators.

"The PACT Act will give states the authority to collect millions of dollars in lost state tax revenue resulting from online and other remote sales of cigarettes and smokeless tobacco," said Vermont Senator Patrick Leahy, ranking member of the Senate Judiciary Committee, during a July 31 hearing. "It also ensures that every tobacco retailer, whether a brick-and-mortar or remote retailer of tobacco products, plays by the same rules by equalizing the tax burdens."

In the House, Reps. Martin Meehan (D-Massachusetts) and Mark Green (R-Wisconsin) have sponsored similar legislation.

Philip Morris USA, the largest cigarette company in the United States with nearly 50 percent of U.S. retail sales, supports legislation "aimed at stopping the illegal sale of cigarettes," including stolen, illegally imported, counterfeit, and untaxed or under-taxed cigarettes that enter into or are diverted from the legal distribution chain through illegal

"Contraband cigarettes contribute heavily to the profits of organized crime syndicates, specifically global terrorist organizations. Furthermore, illegal cigarette trafficking has had a damaging impact on the economies of numerous states."

SENATOR ORRIN HATCH
R-UTAH

means. According to the company's Web site, "Illegal trade deprives governments of tax revenue and can result in stolen products, hijacked cigarette trucks, tarnished trademarks and brand reputations, and distortions in the legitimate market.

"As excise taxes and other costs increase," the Web site statement continues, "many smokers are seeking lower-priced cigarettes through a variety of alternative venues and channels, many of which are illegal, creating a need for increased enforcement and more stringent penalties. Philip Morris USA is working to support legislation that can provide law enforcement authorities with additional tools to combat illegal trade in cigarettes."

INTERNET INFO

The full text of S.1177, The PACT Act, is available through *PolicyBot*. Point your Web browser to <http://www.heartland.org>, click on the *PolicyBot* icon, and search for document #14098.

The Philip Morris position statement on illegal trade in tobacco products is available online at http://www.philipmorrisusa.com/policies_practices/legislation_regulation/illegal_trade.asp.

John Skorburg is managing editor of Budget & Tax News. His email address is skorburg@heartland.org.

DAVID HUFF
David Huff #30



NCSL CAPITOL TO CAPITOL

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VOLUME 11 #03
January 22, 2004

FEDERAL

COMMITTEE TO MOVE ON INTERNET TOBACCO TAX BILL. On January 28, the House Judiciary Committee will mark up H.R. 2824 (Representative Mark Green, R-Wisconsin), bipartisan legislation that would facilitate collection of state taxes on the sale of tobacco and smokeless tobacco products over the Internet. H.R. 2824 would bolster state enforcement tools to collect these taxes. It would also require on-line cigarette vendors to report their sales to state tax administrators under the decades old Jenkins Act. The U.S. General Accounting Office claims states lost \$550 million in tax revenues in FY 2003 and will lose \$1.2 billion by FY 2005. NCSL supports H.R. 2824 and backed S. 1177, similar but broader legislation that passed the Senate on unanimous consent last December. State legislators should contact their House members and urge their support and co-sponsorship of H.R. 2824. (NCSL staff contacts: Joy Johnson Wilson, Molly Stauffer)

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.

FAST FACTS ON TEEN SMOKING

- ◆ 4.5 million kids under age 18 are current smokers.
- ◆ 10.7 percent of eighth graders and 17.7 percent of 10th graders are current smokers.
- ◆ 26.7 percent of teens are smokers by the time they graduate.
- ◆ More than half of all smokers begin before age 14.
- ◆ More than a third of kids who try smoking become daily smokers before leaving high school.
- ◆ More than 6.4 million kids under 18 alive today will eventually die from smoking-related diseases, unless current trends are reversed.
- ◆ 87 percent of teenagers prefer Marlboro, Camel and Newport—the three most heavily advertised brands.
- ◆ Teen smokers are three times more likely than nonsmokers to use alcohol, eight times more likely to use marijuana and 22 times more likely to use cocaine.
- ◆ Smoking by youngsters can hamper lung growth and the level of maximum lung function.
- ◆ Resting heart rates of young adult smokers are two to three beats per minute faster than those of nonsmokers.

Source: Campaign for Tobacco-Free Kids; Centers for Disease Control and Prevention

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Topeka, Kansas 66612-2205

March 23, 2004

The Honorable David Corbin
Chairman
Senate Committee on Taxation
Statehouse
Topeka, Kansas 66612

Dear Chairman Corbin and members of the Tax Committee:

I am please to appear before you this morning in support of House bill 2682 on behalf of Philip Morris USA. This measure is a positive step forward in the state's effort to strengthen public policy regarding sales and shipment of cigarettes in Kansas. We are please to support this bill and wish to commend the Representative from Lenexa, Representative David Huff, for his leadership on this issue.

Philip Morris USA supports legislation aimed at stopping the illegal sale of cigarettes. As the value of cigarettes increases, due to increased excise taxes and other factors, so too does this traffic of counterfeit cigarettes. This bill gives the state more effective tools to deal with this growing problem. In addition, the bill also addresses the issue of internet and direct mail sales of cigarettes and makes important improvements in this area, as well.

All cigarette manufacturers and retail dealers would be licensed by the state and accordingly would have to file all applicable taxes.

The Department of Revenue would publish this active list of licensees monthly, thus raising the visibility of these businesses. And the bill sets out a definition for a counterfeit cigarette and requires the secretary to seize all such products.

As many of you heard this fall in the interim committee, the problem of counterfeit cigarettes is a growing concern and proposals to better combat it are being considered in many statehouses across the country. It isn't a problem that is isolated to one part of the nation. It is everywhere. It is also interesting to note that other states are looking at the work product in 2682 for possible enactment in their states this session.

I think it is important to point out that this bill doesn't contain all of the provisions that many of us involved originally suggested. There were additional ideas that each of us involved in developing this proposal agreed to leave behind in the true spirit of compromise and in recognition of the need to make advances this year. While an exact estimate of increased tax collection was not developed by the Department of Revenue, it is only logical to acknowledge that some increased revenue, however, modest the total can be expected with this bills enactment.

Mr. Chairman, thank you for investing the time of the committee to hear this legislation and our testimony. We urge your favorable consideration of HB 2682.

Senate Assessment + Taxation

Public Relations and Governmental Affairs

3-23-04

Attachment 2



Kansas Public Health Association, Inc.

AFFILIATED WITH THE AMERICAN PUBLIC HEALTH ASSOCIATION

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Web Site: <http://kpha.bluestep.net>

**Testimony Presented to
Senate Committee on Assessment and Taxation
Tuesday, March 23, 2004**

Chairman Corbin and members of the committee, I appreciate the opportunity to appear before you today on behalf of the members of the Kansas Public Health Association to express our support of House Bill 2682.

KPHA is a statewide, non-profit membership organization whose mission is to promote sound public health programs and policies for Kansans. Cigarettes, when used as directed, kill, and we believe HB 2682 has the potential to benefit the health of Kansans in two ways.

First, HB 2682 contains provisions limiting the ability of children to purchase and/or access cigarettes available through the Internet. Studies have repeatedly shown that children are more susceptible to tobacco industry marketing than adults and, therefore, are more likely to begin smoking in their pre-teen years. Keeping cigarettes out of the hands of children is essential to encouraging healthy behaviors as adults.

Secondly, collecting state cigarette tax from Internet vendors will encourage them to raise the price of their goods. We know there is an inverse relationship between cigarette price and cigarette consumption. For every 10 percent increase in price, youth consumption drops by seven percent, and adult consumption decreases by four percent. HB 2682 has the potential to discourage smoking in both children and adults.

On behalf of the Kansas Public Health Association, I ask that you support HB 2682.

Sally Finney
Executive Director

*Senate Assessment & Taxation
3-23-04
Attachment 3*

**Legislative Testimony
before the
Senate Assessment and Taxation Committee
Senator David Corbin, Chairman
Tuesday, March 23, 2004**

**MR. CHAIRMAN AND MEMBERS OF THE
SENATE ASSESSMENT AND TAXATION COMMITTEE:**

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this morning representing our more than 1,200 member companies in support of House Bill No. 2682 an Act targeted at the sale of cigarettes over the internet.

KMCA testified before the Interim Special Committee on Assessment and Taxation expressing our opposition to initial legislative proposals concerning the sale and transportation of cigarettes. A copy of the testimony presented to the Interim Special Committee on Assessment and Taxation is attached.

KMCA would like to express our sincere thanks to Rep. Huff for inclusion in the development of HB 2682. The bill addresses our previous concerns and we feel that it strengthens Kansas law by requiring those that sell and ship cigarettes into Kansas to be in compliance with all required tax and licensing laws. In addition, the bill requires that the buyer of cigarettes be informed that their name will be reported to the Department of Revenue and that the buyer is responsible for any unpaid taxes.

KMCA supports HB 2682. We thank you for the opportunity to appear today and would be pleased to respond to questions you may have.

Kansas Motor Carriers Association
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tomw@kmca.org

*Senate Assessment & Taxation
3-23-04
Attachment 4*



KANSAS MOTOR CARRIERS ASSOCIATION

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TOM WHITAKER
Executive Director

Legislative Testimony
before the
Special Committee on Assessment and Taxation
Senator David Corbin, Chairman
Thursday, October 9, 2003

**MR. CHAIRMAN AND MEMBERS OF THE SPECIAL
COMMITTEE ON ASSESSMENT AND TAXATION:**

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this afternoon representing our 1,250 member firms to discuss Topic No. 5: *Transportation of Cigarettes. Review taxation and other implications of internet cigarette sales and the proposal in 2003 HB 2422 that would prohibit transportation of cigarettes under certain circumstances and review the illegal sale of stolen, counterfeit, untaxed and under-taxed cigarettes that may be available in Kansas.*

Specifically, we are opposed to the transportation by common or contract carrier provisions of HB 2422. The bill is patterned after New York Public Health Law Section 1399-11 which makes it "unlawful for any common or contract carrier to 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 delivered to a home or residence, the legislation presumes that the carrier knew that such consignee was not an authorized recipient.

HB 2422 is not about cigarettes, it is about the shipping business. You cannot have an efficient nationwide economy if before crossing a state border, a trucker has to consult with an endless variety of state and local regulations. In 1994, Congress passed the Federal Aviation Administration Authorization Act. The FAAAA preempts state laws "related to price, routes 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 system 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 undeliverable packages. Compliance with these provisions would create a substantial burden on the carrier in the form of labor, costs and delay, and would affect the timeliness of the carriers' service.

Additionally, this bill does not apply to one of our industry's major competitors, the **UNITED STATES POSTAL SERVICE.**

Topic No. 5 – Special Committee on Assessment and Taxation – Page 2

The New York 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 lawsuit 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 reversed the district court and allowed the New York law to become effective on March 6, 2003.

On June 27, 2003, the New York State Motor Truck Association, the New Jersey Motor Truck Association and the Motor Transport Association of Connecticut filed suit against the State of New York in U. S. District court challenging the transportation provisions of Public Law 1399-11 based on the provisions of the FAAAA. As of today, the U.S. District Court has not handed down a ruling.

Imagine if Kansas penalized SBC if someone used its phone lines to order cigarettes, or the railroad that transported the trailer containing the package was fined, or the cigarette companies were fined for selling the cigarettes to the shipper in the first place. Such a law would be crazy, unworkable and unfair. The same is true here. Regulate the conduct, not the carrier.

KMCA respectfully requests that recommendations by the Special Committee on Assessment and Taxation to the full Legislature not include the common and contract carrier provisions of HB 2422. I thank you for the opportunity to appear before you and would be pleased to respond to any questions you may have.



MEMO TO: Senate Assessment and Taxation Committee
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and
Convenience Store Association of Kansas
DATE: March 22, 2004
RE: HB 2682

Mr. Chairman and members of the Senate Assessment and 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 260 independent petroleum marketers and convenience store owners throughout Kansas.

I appreciate the opportunity to appear before you today in support of HB 2682.

In an effort to control the Internet sales of tobacco products to minors, HB 2682 will require businesses selling tobacco products to Kansas consumers to be registered with the State of Kansas. PMCA has testified in the past as to how Kansas consumers can bypass the retail system using the Internet to buy tobacco products tax free. We can show you 30-40 Internet sites where a consumer can purchase cigarettes tax free, with no transportation charges and no verification of age when the product is delivered to a residence or business.

When the legislature increased the taxes on tobacco products, the smoking consumer changed their buying habits, looking for ways to purchase tobacco products cheaper. The Internet has become a great resource to purchase just about any product at a price less expensive than going to a retail outlet, and tobacco products are probably at the top of the list.

PMCA is an advocate of responsible tobacco retailing and feels that HB 2682 is a step in the right direction to control the number of sellers of tobacco products. Requiring tobacco sellers to be registered with the Kansas Department of Revenue should cut down on the number of Internet sites that are now available and will act as a catalyst for companies to pay the state excise tax. The bill also requires that the seller of tobacco products certify that the sale of cigarettes being sold over the Internet are being purchased by a person of legal age.

Mr. Chairman, Kansas retailers have been hit hard with the increase in taxes on tobacco and gasoline. These two products alone account for over 85% of gross sales at a convenience store. Tobacco compliance is a big issue not only to the state but to our retailers as well, and as you can imagine, Internet sales of tobacco have taken a bite out of our sales. PMCA applauds the efforts of Representative Huff to make sellers of tobacco products over the Internet be accountable and pay their fair share of excise taxes. We urge your support of HB 2682.

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

*Senate Assessment & Taxation
3-23-04 Attachment 5*

**American Heart Association
Testimony in Support of HB 2682
Senate Assessment and Taxation Committee
10:30 AM - Tuesday, March 23, 2004**

I am Kevin Walker, Senior Director of Advocacy for the American Heart Association. I appear before you today in support of HB 2682. The American Heart Association supports this legislation because it offers the State of Kansas an additional tool to ensure that the youth of our State do not have access to tobacco products.

The evidence is the clear that a majority of smokers begin their deadly addiction before the age of 18. By closing the avenues in which the youth of our state have access to tobacco products we are sending a message that Kansas will not tolerate anyone selling tobacco products to minors.

While this bill does not include everything that tobacco control advocates would like to see in such a bill, it does represent a step forward. Furthermore, the bill represents a compromise between language that tobacco control advocates desired and language the tobacco industry had offered.

Thank you for the opportunity to appear before you today. On behalf of the thousands of volunteers of the American Heart Association I urge you to support this legislation and recommend it for passage by the Senate.

*Senate Assessment + Taxation
3-23-04
Attachment 6*

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Ronald R. Hein

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Testimony re: HB 2682
Senate Assessment and Taxation Committee
Presented by Ronald R. Hein
on behalf of
R. J. Reynolds Tobacco Company
March 23, 2004

Mr. Chairman, Members of the Committee:

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

Last year, Rep. Huff introduced legislation to solve the problem of internet sales of cigarettes that are being made to under-age purchasers and that are being made without payment of the appropriate taxes. RJR opposed the language but not the intent of that legislation. We offered instead a model bill which would meet the objectives yet eliminate the concerns of many of the opponents. Rep. Huff and the Department of Revenue worked with all of the conferees this summer to craft HB 2682.

RJR supports HB 2682 as an appropriate way for the state 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 selling the cigarettes.

RJR has set high standards of conduct regarding sales to minors and believes that any legislation dealing with interstate sale of cigarettes should provide 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.

We not only support this bill, but we also applaud the diligent efforts of Rep. Huff to solve the concerns of the opponents and yet to meet his goals to protect against under-age acquisition of cigarettes, and to insure that the Kansas excise and sales taxes on internet sales of cigarettes are paid.

Since this has been such a careful crafting of language, with significant effort by Rep. Huff and the Department of Revenue and numerous groups involved, we would respectfully request that the legislation be approved without any amendments.

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

Senate Assessment & Taxation
3-23-04
Attachment *7*



Tobacco *Free* Kansas Coalition, Inc.

Senate Committee on Assessment and Taxation
HB 2682

Mr. Chairman and members of the Committee, I am Gwendolyn Cargnel, policy chair for the Tobacco Free Kansas Coalition and registered lobbyist for the American Cancer Society. I appreciate the opportunity to provide written support for HB 2682.

The Tobacco Free Kansas Coalition (TFKC) 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.

TFKC stands in support of this bill. Limiting youth access to tobacco products and ensuring better compliance with the state's taxation requirements on these products is important to the members of TFKC.

Restricting the sale of cigarettes to only those people who are licensed to sell them will not only make it more difficult for youth who get their access to cigarettes via the internet to purchase them, but it will also benefit the state with added revenue.

I would like to thank the committee for seeing this as an important issue and for addressing it. I urge this committee to recommend HB 2682 for passage to the Senate.

*Senate Assessment & Taxation
3-23-04
Attachment 8*

TOBACCO FREE KANSAS COALITION, INCORPORATED OFFICERS

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

Kevin Walker

Joan Smith

EXECUTIVE DIRECTOR

ADVOCACY DIRECTOR

HEALTH EDUCATOR

KANSAS STATE NURSES ASSOCIATION

AMERICAN HEART ASSOCIATION

RILEY COUNTY/MANHATTAN HEALTH DEPARTMENT

KANSAS DIVISION

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Phone 785-272-8396

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Testimony on HB 2682, Tuesday, March 23, 2004
Senate Assessment & Taxation Committee

Chairman Corbin and Senators of the Committee,

*Kansas
Licensed
Beverage
Association*

*President
Tom Intfen*

*Secretary/Treasurer
Tammy Davis*

*Vice Presidents
Robert Farha
Glenda Dewey
Jim Hendricks
James Fager
Curt Melzer
Richard Markle
Paul Boone
Billy Long*

*Executive Director
Philip Bradley, PhD*

*745 New Hampshire
Suite Four
P.O. Box 442066
Lawrence, KS 66044*

*Voice/Fax: 785.331.4282
phil@klba.org
www.klba.org*

I am ^{Phil} Philip Bradley representing the Kansas Licensed Beverage Assn., a group of men and women, in the hospitality industry, who own and manage bars, clubs, caterers, restaurants and hotels where beverage alcohol are served. Thank you for the opportunity to submit testimony today.

We support HB-2682 and its efforts to reduce counterfeit cigarettes, and unlawful sales of cigarettes in Kansas. We particularly are encouraged with the section addressing internet/mail order sales.

Millions of dollars and thousands of man hours are expended on our side, the "supply" side, of this equation to accomplish these goals. This bill adds to those efforts with measures to "raise the bar" and provide penalties for these unlawful acts.

We hope and work for, the goal of total compliance with this objective.

As always we are available for questions. Thank you for your time.

Dr. Philip B. Bradley
Executive Director

What is the KLBA?

The Kansas Licensed Beverage Association is a non-profit group of men and women licensed to serve beverage alcohol in the state of Kansas. We are small business owners who formed to educate ourselves about this industry and in the process help the public to understand as well. We represent the interests of over 3000 establishments, the women and men who as a part of their business hold a license for on premise alcohol service. We are the restaurants, hotels, clubs, bars, breweries, vineyards and caterers you frequent and enjoy. We are in the hospitality business. We advocate safe responsible consumption and are training our servers to practice these principals.

We work with the ABC to educate, train and promote compliance and responsible practices. We have a server-training program certified by the ABC for Kansas. We believe that education is the single most useful tool in reducing alcohol-related incidents.

Senate Assessment & Taxation
3-23-04
Attachment 9