

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 26, 2006 in Room 313-S of the Capitol.

All members were present except:

Marti Crow- excused  
Michael Peterson- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Dan Johnson  
Representative Virgil Peck  
Kyle Smith, Kansas Bureau of Investigations  
Ron Carnine, Former Officer for Coffeyville Police Department  
Chief Brian Helkenberg, Cherryvale Police Department  
Assistant Chief Kirby Lee, Cherryvale Police Department  
Ron Rooks, Montgomery County Sheriff's Department  
Representative Jim Ward  
Lisa Benlon, American Cancer Society  
Dr. Howard Rodenberg, Kansas Department of Health & Environment  
Gary Brunk, Executive Directory, Kansas Action for Children  
David Remes, RJ Reynolds

Chairman O'Neal opened the hearing on **HB 2606- theft of services.**

Representative Dan Johnson appeared as the sponsor of the proposed bill. He explained that the bill would add "water" to the list of items listed under the theft of services statute. He proposed an amendment which would include rural water districts and rural electric cooperative as public utilities. (Attachment 1)

The hearing on **HB 2606** was closed.

The hearing on **HB 2414 - penalties for battery against a law enforcement officer and aggravated battery against a law enforcement officer,** was opened.

Representative Virgil Peck appeared as the sponsor of the proposed bill. Current statute allows for felony charges when battery is committed against a state correctional officer, juvenile correctional facility officer, a juvenile detention officer, city or county correctional officer and a university or college police officer. Misdemeanor charges are allowed to be filed on battery of a law enforcement officer. This would simply include law enforcement officers in the list because they are at most risk for battery. (Attachment 2)

Kyle Smith, Kansas Bureau of Investigations, stated that there is a need for deterrence due to the high number of batteries against law enforcement officers. He acknowledged that the proposed bill would have a high impact on bed space therefore creating a substantial fiscal note. (Attachment 3)

Ron Carnine, Former Officer for Coffeyville Police Department, relayed his story of how he was battered while on the police department. (Attachment 4)

Chief Brian Helkenberg, Cherryvale Police Department, provided the committee with a copy of the Oklahoma statute. He commented that assaults and battery are a constant problem in the law enforcement profession and those who are committing these types of crimes need to be held more accountable. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 26, 2006 in Room 313-S of the Capitol.

Assistant Chief Kirby Lee, Cherryvale Police Department, believes that the proposed bill would help deal with individuals who are violent and have no respect for the law. The current fine of \$50-\$100 does not seem to be deterring those individuals. ([Attachment 6](#))

Ron Rooks, Montgomery County Sheriff's Department, was concerned that if individuals are allowed to continue to commit misdemeanor battery against officers, they will turn eventually turn more violent. ([Attachment 7](#))

Chairman O'Neal informed the committee that the bed impact for fiscal year 07 would be 53-76 additional beds with 393-546 by FY 2015.

Written testimony in support of the bill was provided by Stephen Shook, Cherryvale Police Department ([Attachment 8](#))

The hearing on **HB 2414** was closed.

Chairman O'Neal opened the hearing on **HB 2552 - ban of flavored cigarettes.**

Representative Jim Ward appeared before the committee as the sponsor of the proposed bill which would prohibit flavored cigarettes in Kansas, along with setting a \$500 fine. ([Attachment 9](#))

Lisa Benlon, American Cancer Society, appeared as a proponent of the proposed bill. She believes that tobacco companies are targeting youths with these new flavored tobacco products. She suggested that the packaging of the products are enticing for youths. ([Attachment 10](#))

She requested an two amendments:

- page 4, after line 2..."any cigarette advertised as having or producing a taste, flavor, or aroma other than tobacco or menthol shall be deemed to have a characterizing flavor and be subject to the prohibitions of..."
- page 3, line 41 ... no person shall sell, offer for sale, or distribute in this state....

Dr. Howard Rodenberg, Kansas Department of Health & Environment, stated that most all tobacco use begins during the teen years and that it cost Kansans more than \$700 million in medical costs. The new flavored brands come in flavors like cola, Caribbean Chill, Midnight Berry and Mocha Taboo. A restriction on the sale of flavored cigarettes would support current efforts in preventing youths from beginning to smoke. It is estimated that less than 1/3 of teens who smoke obtain their cigarettes by purchasing them at retail stores. ([Attachment 11](#))

Gary Brunk, Executive Directory, Kansas Action for Children, informed the committee that youth smoking jumps from 5.7 percent in middle school to 21.1 percent in high school. Prohibiting the sale of flavored cigarettes would help lower the percentage of underage smokers. ([Attachment 12](#))

The following proponents did not appear before the committee but requested their written testimony be included in the minutes:

- Kansas Academy of Family Physicians ([Attachment 13](#))
- American Heart Association ([Attachment 14](#))
- Kansas State Nurses Association ([Attachment 15](#))
- Tobacco Free Kansas Coalition ([Attachment 16](#))
- American Lung Association ([Attachment 17](#))

David Remes, RJ Reynolds, appeared as an opponent of the bill. He was concerned that the proposed bill would ban the sale of any cigarette that RJ Reynolds makes because they use cocoa, herbs and spices in their regular line of cigarettes. He reminded the committee that it is against Federal law to market tobacco products to those under the age of 18. ([Attachment 18](#))

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 26, 2006 in Room 313-S of the Capitol.

Committee members expressed concern about how broad the proposed bill could be and wasn't sure that it was needed due to the fact that it is currently illegal to market and sell to anyone under the age of 18.

The following opponents did not appear before the committee but requested their written testimony be included in the minutes:

Petroleum marketers and Convenience Store Association of Kansas (Attachment 19)

Kansas Licensed Beverage Association (Attachment 20)

The hearing on **HB 2552** was closed.

Representative Watkins made the motion to approve the minutes of January 11, 17, 18 & 19, 2006.

Representative Kelly seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled in room 313-S on Monday, January 30, 2006 at 3:30 p.m.

DAN JOHNSON  
REPRESENTATIVE, 110TH DISTRICT  
BARTON, ELLIS, ROOKS, RUSH  
AND RUSSELL COUNTIES  
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TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

CHAIRMAN: AGRICULTURE  
MEMBER: BUSINESS, COMMERCE AND LABOR  
ENVIRONMENT

PRESENTATION TO THE HOUSE JUDICIARY COMMITTEE

By Representative Dan Johnson

January 26, 2006

Thank you,, Chairman O'Neal and members of the committee. I am here to testify in favor of HB 2606.

I am a member of the board of directors of Trego County Rural Water District number 2. Recently one of our members decided to get some free water.

Our lawyer believes it will be easier to deal with this problem if the word water is added to current law.

Also, we believe a rural water district is a quasi-municipality and probably is a public utility but may not be since it has members.

To help clarify current law, I feel there should be a statement indicating "rural water districts and rural electric cooperatives shall be considered public utilities under this statute."

I have prepared a balloon to show how it could be added.

Thank you for your favorable consideration of this bill. I will be happy to stand for questions.

House Judiciary

Date 1-26-06

Attachment # 1

# HOUSE BILL No. 2606

By Committee on Environment

1-12

Proposed amendment  
Representative Dan Johnson  
January 25, 2006

2-1

9 AN ACT; concerning crimes, punishment and criminal procedure; relat-  
10 ing to theft of services; amending K.S.A. 2005 Supp. 21-3704 and re-  
11 pealing the existing section.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 21-3704 is hereby amended to read as  
15 follows: 21-3704. (a) Theft of services is obtaining services from another  
16 by deception, threat, coercion, stealth, tampering or use of false token or  
17 device.

18 (b) "Services" within the meaning of this section, includes, but is not  
19 limited to, labor, professional service, cable television service, public or  
20 municipal utility or transportation service, telephone service, lodging, en-  
21 tertainment and the supplying of equipment for use.  $\Delta$

For purposes of this section, rural water districts and rural electric  
cooperatives shall be considered public utilities.

22 (c) "Tampering" within the meaning of this section, includes, but is  
23 not limited to:

24 (1) Making a connection of any wire, conduit or device, to any service  
25 or transmission line owned by a public or municipal utility, or by a cable  
26 television service provider;

27 (2) defacing, puncturing, removing, reversing or altering any meter  
28 or any connections, for the purpose of securing unauthorized or unmea-  
29 sured electricity, natural gas, *water*, telephone service or cable television  
30 service;

31 (3) preventing any such meters from properly measuring or  
32 registering;

33 (4) knowingly taking, receiving, using or converting to such person's  
34 own use, or the use of another, any electricity, *water* or natural gas which  
35 has not been measured; or any telephone or cable television service which  
36 has not been authorized; or

37 (5) causing, procuring, permitting, aiding or abetting any person to  
38 do any of the preceding acts.

39 (d) In any prosecution under this section, the existence of any of the  
40 connections of meters, alterations or use of unauthorized or unmeasured  
41 electricity, natural gas, *water*, telephone service or cable television serv-  
42 ice, specified in subsection (c), shall be prima facie evidence of intent to  
43 violate the provisions of this section by the person or persons using or

1 receiving the direct benefits from the use of the electricity, natural gas,  
2 *water*, telephone service or cable television service passing through such  
3 connections or meters, or using the electricity, natural gas, *water*, tele-  
4 phone service or cable television service which has not been authorized  
5 or measured.

6 (e) (1) Theft of services of the value of \$100,000 or more is a severity  
7 level 5, nonperson felony.

8 (2) Theft of services of the value of at least \$25,000 but less than  
9 \$100,000 is a severity level 7, nonperson felony.

10 (3) Theft of services of the value of at least \$1,000 but less than  
11 \$25,000 is a severity level 9, nonperson felony.

12 (4) Theft of services of the value of less than \$1,000 is a class A  
13 nonperson misdemeanor.

14 Sec. 2. K.S.A. 2005 Supp. 21-3704 is hereby repealed.

15 Sec. 3. This act shall take effect and be in force from and after its  
16 publication in the statute book.

STATE OF KANSAS

**VIRGIL PECK, JR.**

REPRESENTATIVE, DISTRICT 11  
BOX 251  
TYRO, KANSAS 67364



TOPEKA

STATE CAPITOL - RM 427-S  
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peck@house.state.ks.us

**Testimony Regarding HB2414**  
**January 26, 2006**

I was approached in December 2004 by Sergeant Shook of the Cherryvale Police Department about an incident he had while performing his duties as a police officer. Sergeant Shook wanted to testify before this committee, but due to the passing of his mother he is unable to be here today. I believe you have copies of his written testimony.

I won't go into the details of his incident; I'll leave that to other conferees.

HB2414 provides equal protection for all law enforcement officers who are battered while in the line of duty.

Under current statute it is a felony when battery is committed against a state correctional officer, juvenile correctional facility officer, juvenile detention facility officer, city or county correctional officer and even a university or campus police officer. Meanwhile battery committed against a uniformed or properly identified state, county or city law enforcement officer is a class A person misdemeanor. These officers are the guys out on the street, the first line of defense between law abiding citizens and the criminal element. Those who, in my opinion, are most at risk of battery.

I fear we are sending the wrong message to our Officers on the street since we don't provide the same penalty when they are battered as we do when other law enforcement officers are battered. For this reason, I sponsored the bill.

I must confess, last year when I sponsored this bill, I was a freshman legislator who didn't realize the value of having other legislators as co-sponsors. Had I understood that fact I believe you would see other names listed.

I realize making battery of all law enforcement officers a felony possibly creates a need for additional bed space. But, I feel it is important for us to do what we can to give Law Enforcement Officers a tool to help reduce the likelihood of being battered by those who refuse to show them the proper respect.

I believe what you will hear from the following Conferees, who are members of the law enforcement community, will help you see why we need the changes proposed in HB2414.

Thank you for your consideration and I will be happy to stand for questions at the appropriate time.

House Judiciary

Date 1-26-06  
Attachment # 2



## Kansas Bureau of Investigation

Larry Welch  
*Director*

### House Judiciary Committee

Phill Kline  
*Attorney General*

### Testimony in Support of HB 2414

Kyle G. Smith  
Deputy Director  
Kansas Bureau of Investigation  
January 26th, 2006

I am pleased to appear on behalf of the Kansas Bureau of Investigation and the Kansas Peace Officers Association before this committee in support of HB 2414. This legislation would provide deterrence regarding battery of law enforcement officers by treating such assaults the same as they are when committed against jailers and correctional officers.

Current law makes battery on a law enforcement officer, K.S.A. 21-3413, a class A misdemeanor if the victim is a regular law enforcement officer, but makes the same action a level 5 felony offense for hitting a jailer or other correctional officer. Not surprisingly, many law enforcement officers feel they are being treated as second-class victims. I do remember when the department of corrections first asked for an enhancement in 21-3413 for their correctional officers as a way to deter convicted felons from attacking guards as a threat of misdemeanor time was meaningless to a felon looking at years to serve. In fact, the cons enjoyed getting out and going to local court as a change of scenery and possibly a chance for escape.

That reasoning is undoubtedly still sound. However, is that reasoning any less sound for the officer out on the street, alone, making the original arrest of that same felon? Officers are the almost routinely attacked, particularly when making arrests of defendants surrounded by friends, relatives or gang members. The number of batteries against law enforcement officers shows the need for higher deterrence but, we realize, also creates a serious fiscal note. Hopefully, the deterrence originally sought by the higher penalty will reduce the number of these cases and the impact won't be so severe.

Thank you for your time and consideration. I'll be happy to answer any questions.

House Judiciary

Date 1-26-06

Attachment # 3



January 26, 2006

Testimony of Ronald W. Carnine

August 15, 1997, may not be a day that goes down in infamy, nevertheless it resulted in changing my life for the duration. It was fair and rodeo time in Coffeyville and we were extremely busy. I was the sergeant at the time of the incident. All of my officers were too busy to respond to a request for assistance from Safehouse so I responded. I went to an area of Coffeyville characterized by low rent housing and street gangs. Street gangs were a phenomena relatively new to Coffeyville, created by inner city unrest and the popularity of the gang lifestyle.

I had recently been sent to Wichita to train with the Wichita P.D.'s gang unit with two other sergeants from Coffeyville's police department. I now commanded Coffeyville's brand new gang unit. However, when I pulled up to the apartment complex, I wasn't thinking about gangs but rather domestic violence. Yet as I parked my police cruiser, there in front of me was a young gang member sitting on a bicycle. Instantly my mind was aware that this man was wanted by Coffeyville's detective unit for kidnaping and rape. Because of the seriousness of the crime, I called for assistance and tried to make the arrest. As I began to place the handcuffs on the suspect, he pulled away from me and threw the bicycle he was sitting on at me. I jumped, thinking I could avoid the bicycle, but the bicycle hit the top of my foot causing me to trip. I did not have a sensation of pain until after I had lost the suspect in a foot chase.

After the arrival of the other Coffeyville units and the units from the Montgomery County Sheriff's Department, the suspect was taken into custody and I went to the Coffeyville Regional Medical Center.

An x-ray revealed that my left foot was broken and the doctor informed me that I was going to surgery. Later, the doctor advised me that the top of the foot had collapsed because of the force of the blow.

I have had ten surgeries trying to save my foot. The surgeries included trying to repair bones, ligaments, tendons, nerves, an amputation, and knee surgery. Because of the numerous surgeries and the recuperation time, I spent most of my time in a chair.

After three years it was determined that it would be best to have my leg amputated. The day before Thanksgiving, in 2000, my leg was amputated at KU Medical Center in Kansas City.

I currently deal with nerve damage, hip damage and knee damage. I have been diagnosed with Post Traumatic Stress Disorder and I have osteomyelitis (a bone infection in my limb that can spread into all my bones). Another amputation is recommended to eliminate the danger of this infection spreading throughout my body. I see a pain management doctor in Kansas City each month in order to deal with the chronic pain syndrome that leaves me in constant pain that is often excruciating. I am on seven medications to help me be able to do the simple things that

House Judiciary

Date 1-26-06

Attachment # 4

most people can do without even thinking. I can't walk around the block without intense pain. I have to walk with a cane to prevent falls. I have to borrow an electric wheel chair when we try to get away for the day because of the intense pain.

This has changed every aspect of my life. I was 43 years old when this incident occurred. I am trapped in a body that is extremely limited and I have to deal with constant pain. I should be young enough to enjoy vacationing with my wife, I should be able to play ball with my grandchildren and chase them, I should be able to mow the yard, and any of the other activities that are part of most people's daily lives. My disability limits me to only having jobs where I am not required to constantly be on my feet and where I have the freedom to take off time for monthly medical follow up visits in Kansas City.

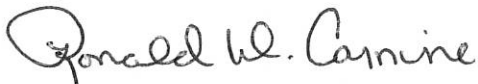
The day that I was told that I would no longer be a police officer was the worst day of my life. I wept with the loss. I had lost my leg, I had lost my job, and I had lost a large part of my life.

What happened to my assailant? Surely, he was locked up forever. After all, he had battered and crippled one of Kansas' finest. Instead, I was the one who received a life sentence. He served about 30 days. After this attack on me, he attempted to shoot a Highway Patrol officer in Texas. Had there been a bill established when this occurred, this criminal would have been off the streets and another officer's life would not have potentially been changed forever.

Please ladies and gentlemen, this bill needs to be passed. I trust you will do what needs to be done to insure the justice for those who give their lives to protect and to serve.

Thank you.

Proud to have served,

A handwritten signature in cursive script that reads "Ronald W. Carnine". The signature is written in dark ink and is positioned above the printed name.

Ronald W. Carnine

# CHERRYVALE POLICE DEPARTMENT

123 WEST MAIN STREET  
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Brian Helkenberg  
Chief of Police

**To Serve and Protect**

Kirby Lee  
Assistant Chief

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## WRITTEN TESTIMONY, IN REGARDS TO HOUSE BILL No. 2414

Honorable Representatives, my name is Brian Helkenberg, Chief of Police for the City of Cherryvale, Kansas. I have been in Law Enforcement for 17 years, both in Kansas and Oklahoma. I come from a family of public servants, Fire and Law Enforcement.

During my career I have witnessed officers being battered and have been battered myself, all in the performance of duty. These assaults and batteries are a constant problem in this profession, and unfortunately looked at as part of the job, and not a serious offense by people outside of law enforcement. What people do not realize is that in every altercation with an officer there is a firearm involved, the officer's service weapon. What this means is a potential for a life and death situation arising from a "simple" assault and battery situation.

I recall one incident, occurring in Independence, Kansas, in 2003. Two Officers working evening shift came into contact with a male, of average size, who was intoxicated, while answering a "routine" call. During the contact the senior officer, 6 feet 5 inches 275 pounds, felt the situation was getting bad and he placed his Beretta handgun on safety, while it was still in the holster. The suspect soon after attacked the much larger officer, causing him to lose balance on the ice and fall to the ground. The officer's handgun fell from the holster and the suspect grabbed the gun and attempted to shoot the officer in the head, but the gun was on safe and did not fire, then the suspect pointed the gun at the second officer, a rookie officer, and tried to fire the weapon at him. Before the suspect figured out how to make the weapon fire, the senior officer was able to wrestle the gun away from the suspect and eventually arrest the suspect.

The incident I described would have only been a misdemeanor offense, for battery on a law enforcement officer, if the weapon had not come into play. Every time an officer makes contact with an individual the chance for a deadly force situation is present. In my opinion stronger penalties are justified and needed for batteries on law enforcement officers. Officers put their lives on the line daily for lower pay. Every time an officer is assaulted and battered it only constitutes a misdemeanor offense.

House Judiciary

Date 1-26-06

Attachment # 5

# CHERRYVALE POLICE DEPARTMENT

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PHONE: 620-336-2400 FAX: 620-336-2803  
EMAIL: [police@cityofcherryvale.kscoxmail.com](mailto:police@cityofcherryvale.kscoxmail.com)

Brian Helkenberg  
Chief of Police

**To Serve and Protect**

Kirby Lee  
Assistant Chief

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I would like to make one final comment: Law Enforcement Officers are dedicated to protect and serve communities; the Law needs to help protect them by making batteries on Law Enforcement Officers a felony offense. I believe this would be a positive change for all law enforcement.

I have attached a copy of the Oklahoma Law for your information. I thank you for your time and express my gratitude for the efforts of Rep. Virgil Peck.

Thank you,



Brian Helkenberg  
Chief of Police

§21-649. Assault, battery or assault and battery upon police officer or other peace officer - Penalties.

A. Every person who, without justifiable or excusable cause, knowingly commits any assault upon the person of a police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or state peace officer employed or duly appointed by any state governmental agency to enforce state laws while said officer is in the performance of his duties is punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

B. Every person who, without justifiable or excusable cause knowingly commits battery or assault and battery upon the person of a police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other state peace officer employed or duly appointed by any state governmental agency to enforce state laws while said officer is in the performance of his duties, upon conviction, shall be guilty of a felony punishable by imprisonment of not more than five (5) years in a state correctional institution or county jail for a period not to exceed one (1) year, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

C. As used in this section and in Section 650 of this title, "corrections personnel" means any person, employed or duly appointed by the state or by a political subdivision, who has direct contact with inmates of a jail or state correctional facility, and includes but is not limited to, Department of Corrections personnel in job classifications requiring direct contact with inmates, persons providing vocational-technical training to inmates, education personnel who have direct contact with inmates because of education programs for inmates, and persons employed or duly appointed by county or municipal jails to supervise inmates or to provide medical treatment or meals to inmates of jails.

Added by Laws 1965, c. 221, § 2, emerg. eff. June 16, 1965. Amended by Laws 1989, c. 183, § 1, eff. Nov. 1, 1989; Laws 1990, c. 58, § 1, eff. Sept. 1, 1990; Laws 1997, c. 133, § 219, eff. July 1, 1999; Laws 1999, 1st Ex. Sess., c. 5, § 126, eff. July 1, 1999; Laws 2001, c. 324, § 4, eff. July 1, 2001.

Comment [1]: BDERIV

NOTE: Laws 1998, 1st Ex. Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 219 from July 1, 1998, to July 1, 1999.

Comment [2]: EDERIV

# CHERRYVALE POLICE DEPARTMENT

123 WEST MAIN STREET

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Brian Helkenberg  
Chief of Police

**To Serve and Protect**

Kirby Lee  
Assistant Chief

Written testimony, in regards to  
House bill number 2414

Honorable Representatives of The State of Kansas

I would like to thank you for your time. My name is Kirby Lee. I attended Palm Beach Junior College in Palm Beach County Florida I also attended Jacksonville State University in Jacksonville, Alabama. I started my career as a Peace Officer in Dodge City Kansas in 1979 and attended the Kansas Law Enforcement Training Center in 1980. I have worked as a police officer, deputy sheriff and an under sheriff. I am currently the assistant chief of police in Cherryvale Kansas. I do bring life experience and insights with me some may not have.

This bill would help in dealing with violent people who have little respect for the law or self control by sending a message to those elements of society that battery on any peace officer will not be tolerated.

I think anyone who would attack a police officer would have no second thought about hurting anyone. I heard a statement in a municipal court in 1980 or 1981 from a person found guilty of battery on a police officer. "It only cost me 50 bucks to hit a cop, maybe I should do it more often". Police officers represent all of society and as such try to get people to live by the rules made by this body and others that represent all of the people. Those that would break these laws not only strike out at the officer, but all of the people. When the consequence of battery on a police officer are so small that some thumb their nose at all of society it is time to get the attention of those that would say "it is just a misdemeanor" it will only cost me \$50.00 or \$100.00 and no jail time.

It seems to me that time in lock up after conviction is what some of those are most afraid of having happen. Striking a Police officer is not an accident, like overtime parking or speeding. Battery on a police officer happens because someone makes a decision to strike out, even if this decision comes from anger or a plot to escape or just bad judgment. Striking any officer is just like striking out at all of the people that we all represent and have sworn to serve and protect.

This bill will help people understand that self control and respect for the law is important and it is directed at violent offenders.

In closing I want to thank Representative Peck and Sgt. Steve Shook of the Cherryvale Police Department for their efforts in this matter.

House Judiciary

Date 1-26-06

Attachment # 6

Detective Lt. Ron Rooks  
Montgomery County Sheriff's Office  
300 East Main  
Independence, Kansas 67301

Mr. Chairman and Committee Members:

Good afternoon and thank you for allowing me the time to express my support for House Bill No. 2414.

My Name is Ron Rooks, Detective Lt. from the Montgomery County Sheriff's Office. My Law Enforcement career spans 24 years as of March of this year. My responsibilities have included duties associated with positions from Street Officer to Chief of Police of two cities leading me to my present position of Detective Lt. of my agency.

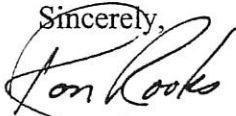
My concern today is that if we continue to allow criminals to disrespect the Law Enforcement Officer and the Lawmakers by sending the message that disrespecting the law and it's enforcers only carries minor repercussions, we will convey the message that brutality is only a minor concern of us all. I have learned during my career that respect earns respect and if those of us in the capacity to protect and serve individuals in our communities are not given the support to promote non-violent interventions to solve community conflict we will in-fact be promoting violent behaviors.

Another concern I have at this time is that if we allow criminals to abuse the Law Enforcement personnel, it will eventually be difficult for our profession to attract responsible and respected individuals who will dedicate themselves to upholding and enforcing the laws of the land made by our distinguished lawmakers.

Violence is a daily challenge to law enforcement in today's society and I feel the message needs to be sent that it is not acceptable behavior by or in violation of any human being. We as enforcers of the law and you as lawmakers can make a difference to individuals and communities by passing House Bill No. 2414.

I again thank you for allowing me your time to express my support of House Bill No. 2414.

Sincerely,



Detective Lt. Ron Rooks

House Judiciary

Date 1-26-06

Attachment # 7

# CHERRYVALE POLICE DEPARTMENT

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Brian Helkenberg  
Chief of Police

**To Serve and Protect**

Kirby Lee  
Assistant Chief

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## WRITTEN TESTIMONEY CONCERNING HOUSE BILL 2414

To the Honorable Representatives of the State of Kansas my name is Stephen Shook. I am a police sergeant for the city of Cherryvale KS., where I have been employed as such since December of 1999.

This testimony today is in regards to House Bill 2414. On October 22, 2004, I was notified of a domestic dispute at a residence in the city of Cherryvale. Upon my arrival, I made contact with both the victim and the suspect concerning this incident. Both parties were intoxicated with the resulting lowering of acceptable personal and interpersonal behavior. During the course of the investigation, the suspect decided that this would be a good time to try and attack the victim in my presence. As a result, the suspect was arrested by me. When the suspect was told she was arrested, the suspect decided that she was not going to be arrested and go to jail. The suspect then stopped her attack on the victim and attacked me. After a short period of struggle the suspect was subdued and arrested. The suspect was charged with four counts of Battery (DV), Disorderly Conduct, Obstruction of Official Duty and Battery on a Law Enforcement Officer. All four counts are misdemeanors and as such were dealt with in Municipal Court.

My concern with this is very simple. As I have been with this agency for 9 years, I have a good working knowledge of a number of people that could be considered a danger to the health of the community. The suspect in the above described situation fit that description. If the suspect had been able to gain control of my duty weapon, there was a strong possibility I would have been dead as well as the victim. It was only due to my training that I was able to retain control of my duty weapon and no one was hurt in this situation.

During the ensuing period of time that has passed since this incident, I have often wondered why Battery on a Law Enforcement Officer has been carried as a misdemeanor instead of a felony. In the course of my research into this, I have discovered that Oklahoma statutes make Battery on a Law Enforcement Officer a felony, Missouri makes this a misdemeanor for the first occurrence and a felony for second or subsequent occurrences, Colorado makes it a felony for the first offense. As it now is written in Kansas law, Battery on a Law Enforcement Officer is carried as a misdemeanor only, yet

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Battery on a Corrections Officer is a felony from the first time. Based on this law, and as it now stands, I could walk up to a local officer, a county sheriff, a trooper of the Kansas Highway Patrol or a Kansas Bureau of Investigation agent or anyone in a law enforcement capability and strike the officer knowing that all I would be charged with is a misdemeanor. This is unacceptable both to the officer, their families and the State of Kansas.

Kansas Law Enforcement Officers deserve better than this. We routinely risk our lives day in and day out carrying out our duties and responsibilities for all the citizens and visitors to Kansas. The vast majority of Kansas Law Enforcement officers are professionally trained and equipped to carry out their duties. I only ask that the state support us by passing House Bill 2414 and give the officers a better chance to provide the type and kind of services that anyone in Kansas has a right to demand and expect.

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TESTIMONY IN FAVOR OF HB 2552  
CHILDREN'S HEALTH CARE PROTECTION ACT

The American Lung Association estimates more that every day more than 5,000 kids under the age of 18 will try their first cigarette. Two thousand of these children each day will develop a daily smoking habit. As a result, 438,000 Americans will die of cigarette smoking.

Tobacco industry documents have long suggested that flavored tobacco products appeal specifically to young teenagers. As early as 1972, a Brown & Williamson document on the project "Youth cigarette – new concepts" listed cola, apple, and sweet flavored cigarettes as suggestions and stated, "It's a well-known fact that teenagers like sweet products."

The conclusion of a 2005 Harvard School of Public Health study found that "Flavored cigarettes can promote youth initiation and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of smoke and increasing the acceptability of a toxic product." Internal tobacco company documents found by the study authors stated, "Growing interest in new flavor sensations (i.e., soft drinks, snack foods) among younger consumers may indicate new opportunities for enhanced-flavor tobacco products that could leverage current brand strength among younger adult smokers."

Masking the natural toxic products of smoke with candy flavors, and hip names, such as Caribbean Chill, Mocha Mint, Warm Winter Toffee, Midnight Berry, Pineapple Coconut, and Mocha Taboo are all products designed to appeal to children. These flavorings are introduced into cigarettes through a variety of methods, typically spraying or adding a pellet to the filter.

The legislative intent of House Bill 2552 is to prohibit such flavor additives in cigarettes in Kansas. The bill would set a fine of \$500.00, for violation of this section. The Kansas Department of Revenue stated in its fiscal note for this bill that flavored cigarettes are such a very small share of the overall cigarette market in Kansas that this ban would not affect state revenues.

Today, I am asking the committee to join with me to give parents another tool to protect their children from a toxic product disguised as candy or fruit. Prohibit flavored cigarettes in Kansas. Thank you.

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### MANDARIN MINT



A touch of citrus flavor and a splash of menthol put a refreshingly cool twist on Camel's Turkish and Domestic blend. A tropical, mellow smoke.

### DARK MINT



Creamy hints of chocolate and refreshing mint complement Camel's Turkish and Domestic blend. A rich, velvety smooth smoking experience.

### IZMIR STINGER



A sophisticated smoke that's sweet and tart, this cigarette goes nicely with any highball or your favorite shot.

### CREMA



Crema delivers a hint of vanilla to our unique blend, a creamy indulgent flavor that offers an intriguing and pleasurable smoking experience.

### TWIST



By adding a splash of citrus flavor to our unique blend, Twist offers a uniquely refreshing taste.

Testimony of Lisa Benlon  
American Cancer Society  
Supporting HB 2552-Prohibiting the Sale of Flavored Cigarettes

My name is Lisa Benlon. I am the Kansas Government Relations Director for the American Cancer Society.

I am appearing in support of HB 2552 – a bill that will prohibit the sale of flavored cigarettes in Kansas.

This issue is quite simple—it is about common sense and about protecting our kids.

Phillip Morris Company has a commercial which has been playing regularly on TV that reports, “There is no safe cigarette”. Not that it needs to be said, but there is a tremendous amount of substantial evidence proving tobacco products are not only a serious health hazard to those who smoke, but also to those who choose not to smoke themselves, yet they are forced to breathe the air of nearby smokers.

In 1998, forty six states, including Kansas, signed an agreement with tobacco companies that prohibits companies from taking “any action, directly or indirectly, to target youth...in the advertising, promotion or marketing of tobacco products”.

However, since the settlement, the tobacco companies have **increased** their marketing expenditures by more than 84% to a record \$12.7 billion a year, or \$34.8 million a day, according to the Federal Trade Commission. That figure is estimated to be \$121.7 million per year in Kansas alone.

As the public heeds health warnings to quit smoking, the tobacco industry is working on ways to encourage new smokers. It is illegal to sell cigarettes, chewing tobacco and all other tobacco products to individuals under the age of 18. The tobacco industry claims their products are for adults only, but if you look at the packaging, you will agree it is clearly a case of the industry enticing, and even encouraging underage smokers.

Targeting kids to become new smokers is apparently a hard addiction to break for the tobacco industry.

A recent study by the Campaign for Tobacco-Free Kids says the following:

- 21.1% of Kansas High School students smoke
- 5,000 Kansas kids (under 18) become new smokers each year-nearly 14 new underage smokers **every day**.
- 8.6 million packs of cigarettes are bought or smoked by kids each year
- 60,100 Kansas kids now under 18 will die prematurely from smoking

After weighing the facts, I hope you will agree the flavored cigarettes are no more than a ploy to encourage young smokers to take up the habit.

Please support HB2552 for passage.

Mr. Chairman, I will be happy to stand for questions.

House Judiciary

Date 1-26-06

Attachment # 10

# CAMEL

PLEASURE  
— TO —  
BURN



BEACH BREEZER, MARGARITA MIXER: 11 mg "tar", 0.9 mg nicotine av. per cigarette by FTC method. For more product information, visit [www.rjt.com](http://www.rjt.com).

**SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.**

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call 1-800-265-1173.  
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Deep and velvety, MIDNIGHT BERRY surrounds you with the enchantment of the darkest night.

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SMOOTH FUSIONS  
FROM THE HOUSE OF MENTHOL

MIDNIGHT BERRY

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**SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.**

Mintigua, Caribbean Chill, Mocha Tabaco, Midnight Berry KS Box, 10 mg. "tar", 0.9 mg. nicotine; Box King 17 mg. "tar", 1.3 mg. nicotine av. per cigarette by FTC method. The amount of tar and nicotine you get from this product varies depending on how you smoke it. There is no such thing as a safe cigarette. For more information visit [www.bwtsale.com](http://www.bwtsale.com) ©2004 B&W





# K A N S A S

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DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on HB 2552

To

House Committee on Judiciary

By Howard Rodenberg, MD, MPH  
Director of Health

Kansas Department of Health and Environment

January 26, 2006

Chairman O'Neal and members of the House Committee on Judiciary, my name is Dr. Howard Rodenberg. I am the Director of Health for the Kansas Department of Health and Environment and Kansas State Health Officer. Thank you for the opportunity to appear before you today in support of House Bill 2552, which proposes to ban the sale of flavored cigarettes in Kansas.

Tobacco related illnesses are responsible for nearly 4,000 deaths in Kansas every year, costing Kansans more than \$700 million in medical costs alone. Almost all tobacco use begins during the teen years. When a teenager experiments with smoking they have no intention of becoming addicted, or of smoking long enough to suffer disease and death that results from that addiction. Unfortunately, that very addiction is usually the end result of the experiment.

The proliferation of new flavored brands comes at a time when advertising and marketing restriction have made it more difficult to target young smokers. Tobacco industry documents that were opened up as part of the Master Settlement Agreement revealed that cigarette manufacturers were exploring adding different flavors to their cigarettes as early as the 1960's. A report from RJ Reynolds in 1985 stated: "Sweetness can impart a different delivery taste dimension which younger adult smokers may be receptive to, as evidenced by their taste wants in other product areas". A Brown & Williamson report from 1972 suggested consideration of developing a Cola-flavored cigarette and states: "It's a well known fact that teenagers like sweet products. Honey might be considered."

Just after the 1998 Master Settlement Agreement prohibiting tobacco marketing to children was signed, R.J Reynolds started putting various flavors into its Camel line of

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Date 1-26-06

Attachment # 11



cigarettes when it launched the Camel Exotic Blends. The company added several new flavors in August 2000. Brown & Williamson joined the flavored cigarette business in 2005 by manufacturing flavored versions of its Kool menthol cigarette, which was marketed as the "Kool Mixx" campaign using hip-hop imagery on the packaging and a promotional DJ contest in 13 cities to appeal to African-American youth. The cigarettes had such names such as Caribbean Chill and Mintrigue, Midnight Berry and Mocha Taboo.

While the companies deny marketing to children, data confirm that these new, flavored products are much more popular among younger smokers than older smokers. Researchers at the Roswell Park Cancer Institute in Buffalo, NY, recently released the results of several surveys that showed that 20 percent of smokers ages 17 to 19 smoked flavored cigarettes in the past 30 days while only 6 percent of smokers over the age of 25 did. These flavored tobacco products are clearly used by our teens, and may serve as a gateway to a lifelong nicotine addiction.

A restriction against selling flavored cigarettes is one that supports current efforts to prevent youth from beginning to smoke cigarettes. Nearly all tobacco use begins before the age of 20. Adding flavor to tobacco products is a recognized marketing strategy of the tobacco industry to make their products more appealing and pleasurable to youth.

How does the use of flavored cigarettes promote tobacco use? First experiences of tobacco use are often not pleasant. As a result, tobacco use typically begins with light products, filtered products and flavored products that are more tolerable. Once the youth has graduated to stronger products, they find themselves struggling with a full blown nicotine addiction. Like regular tobacco products, these flavored notions still cause heart disease, stroke, cancer, and emphysema. If current trends are allowed to continue, 50,000 of today's youth who are alive today, will die prematurely of tobacco related diseases.

While it's true the current law prohibits underage tobacco sales, less than 1/3 (28%) of the teens who smoke obtain their cigarettes by purchasing them at retail stores. Most youth users get their cigarettes from friends or family or by giving money to someone of legal age to buy them. Therefore, banning the sale of flavored cigarettes is the best way to keep them out of the hands of children.

One of the major goals of the Tobacco Use Prevention Program is to reduce the initiation of tobacco use by youth. De-glamorizing tobacco products and making them inaccessible is critical to success of eliminating tobacco use among the youth of Kansas.

Mr. Chairman and Committee members, thank you again for the opportunity to speak in support of HB 2552. I will be happy to answer any questions you might have.



January 26, 2006

To: House Judiciary Committee  
From: Gary Brunk  
Re: Support for House Bill No. 2552

**Kansas Action for Children strongly supports enactment of House Bill 2552.**

Given what we know about the harmful effects of tobacco use, it would seem hardly necessary to argue that we should make every effort to prevent the addiction to tobacco by children and youth.

The 1998 legal settlement between the states and tobacco companies included a specific prohibition from directly or indirectly making youth the targets of the companies' marketing or advertising efforts.

Yet it is hard to imagine whom else but youth are the targets of the tobacco industry's introduction of flavored cigarettes with names such as "Kauai Kolada," and "Midnight Berry."

According to the American Lung Association – which gives Kansas an F for youth access to tobacco - the youth smoking rate in Kansas jumps from 5.7 percent in middle school to 21.1 percent in high school. It's bad enough that almost 6 percent of middle school children admit to smoking. We must do everything we can to prevent to prevent an addiction that kills people and adds a large burden to the costs of health care for all of us. Prohibiting the sale of flavored cigarettes would be a small but important step.

Kansas Action for Children Inc.  
720 SW Jackson | Suite 201  
Topeka, KS 66603

P 785-232-0550 | F 785-232-0699  
kac@kac.org | www.kac.org

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Attachment # 12



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January 23, 2006

To: House Judiciary Committee  
From: Joe D. Davison, MD, President  
Re: HB 2552

Rep. O'Neal and Members of the House Judiciary Committee:

Thank you for this opportunity to present our position on House Bill 2552 on behalf of the Kansas Academy of Family Physicians (KAFP). My name is Joe Davison, MD, and I am the president of KAFP this year. We have over 1,430 members in our organization, including over 850 practicing physicians, 155 resident-physician members, medical student members, and retired members.

I am writing to urge you to support HB 2552 banning flavored cigarettes. The bill:

- Would ban cigarettes similar to RJ Reynolds' pineapple and coconut-flavored cigarette "Kauai Kolada" and its citrus-flavored cigarette called "Twista Lime," Camel's "Winter Blends" of "Winter Warm Toffee" and "Winter MochaMint and Brown and Williamson's variations for Kool, called: Caribbean Chill," "Midnight Berry," "Mocha Taboo" and "Mintrigue."
- Does not ban menthol cigarettes such as Newport, Salem or Kool
- Does not ban flavored tobacco products such as chew or cigars.
- Provides for a fine of \$500 for violations.

Flavored cigarettes are clearly an inducement to children and teens to start smoking. Specially-flavored cigarettes help disguise the strong taste of tobacco for youth experimenting with smoking. The addictive qualities of tobacco use are so pervasive that experimentation can lead to habitual smoking all too easily. Minority youth seem to be particularly targeted through advertising of flavored cigarettes using hip-hop music themes and images. We have seen recent drops in the youth smoking rates, but these candy-flavored cigarettes could reverse that good trend.

As physicians, the very sickest group of people that we see in our offices, emergency rooms, and hospitals across Kansas, are those individuals who have damaged their hearts, blood vessels, and lungs through tobacco use.

Cigarette smoking is the number one cause of death and disease in the United States. Nearly half a million people die each year of smoking related causes. More people die of smoking related disease than the combined deaths from alcohol, cocaine, heroin, suicide, homicide, motor vehicle accidents, and AIDs. Tobacco use is responsible for one in five deaths.

The mission of the Kansas Academy of Family Physicians is to promote a  
for all Kansans through education and advocacy for family phy

House Judiciary

Date 1-26-06

Attachment # 13



# Family Physicians

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*The largest medical specialty group in Kansas.*

**Cancer:** Tobacco accounts for at least 30% of cancer deaths, and 87% of lung cancer deaths. Smokers who die of lung cancer, die 20-25 years earlier than those who do not smoke. Lung cancer mortality rates are 22 times higher for male smokers and 12 times higher for female smokers than for those who have never smoked. Smoking also increases the risk for cancers of the mouth, nasal cavities, throat, windpipe, esophagus, stomach, pancreas, liver, cervix, kidney, and bladder, and for myeloid leukemia. In addition to cancer, smoking is the major cause of chronic bronchitis, and emphysema.

**Vascular disease.** Smokers have five times as many heart attacks as non-smokers. Tobacco use is responsible for 75-80% of all heart attack deaths in young smokers, under the age of 50. The use of tobacco damages blood vessels, causing arteriosclerosis – hardening of the arteries – that dramatically increases heart disease and stroke, as well as other problems associated with poor circulation.

**Other:** For our diabetics, smoking greatly accelerates vascular, renal, and cardiac disease. Smoking diabetics have earlier amputations and earlier need for kidney dialysis. Smoking causes stomach ulcers. It increases allergies, asthma, and eye irritation. It causes chronic coughs, sinus inflammation, and increased tooth and gum disease.

For all these reasons we urge you to support HB 2552. Thanks again for this opportunity to provide written testimony.

Sincerely,

Joe D. Davison, MD  
President

January 26, 2006

TO: House Committee on Judiciary

FROM: Linda J. De Coursey, Advocacy Director – Kansas

RE: HB 2552 – ban of flavored cigarettes

Mr. Chairman and Members of the Committee:

Thank you for allowing this opportunity to discuss our position on HB 2552. My name is Linda De Coursey, and I am the Advocacy Director of Kansas for the American Heart Association.

We respectfully ask your favorable consideration of HB 2552 which would:

1. Ban all cigarette products similar to RJ Reynolds' pineapple and coconut-flavored cigarette "Kauai Kolada" and its citrus-flavored cigarette called "Twista Lime," Camel's "Winter Blends" of "Winter Warm Toffee" and "Winter MochaMint and Brown and Williamson's variations for Kool, called: Caribbean Chill," "Midnight Berry," "Mocha Taboo" and "Mintrigue."
2. Does **not** ban regular menthol cigarettes.
3. Does **not** ban flavored tobacco products such as chew or cigars.
4. Provides for a fine of \$500 for violations.

American Heart Association supports meaningful efforts to reduce tobacco use, particularly among children. These specially-flavored cigarettes should be considered as inducements to entice children into smoking.

When a staggering three out of four middle and high school students have tried tobacco and one in three are currently using it, it is appropriate to prohibit special flavored products which can lure more children and teens, and the "new" customers for cigarettes into smoking.

In Kansas, current tobacco use leads to approximately 4,000 deaths each year. Statistics show that 1 in 5 adults in Kansas are smokers. Tobacco-related illnesses in Kansas are responsible for more than \$720 million in medical expenditures each year. The state spends \$153 million in Medicaid costs to treat tobacco-related illnesses and more than \$80 million in lost productivity costs are directly related to tobacco use in Kansas each year. These costs are expected to continue at this level into the second quarter of the century if smoking rates do not decline.

We respectfully urge you to consider HB 2552 favorably for passage. Thank you again for this opportunity to provide written testimony.

House Judiciary

Date 1-26-06  
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**H.B. 2552: An Act Concerning Crimes, Punishment, and Criminal Procedure;  
Relating to Cigarettes (Flavored Cigarettes)**

*January 26, 2006*

Chairman O'Neal and Members of the House Judiciary Committee:

The KANSAS STATE NURSES ASSOCIATION is in support of HB 2552, which bans the sale and distribution of flavored cigarettes in the state of Kansas.

Flavored cigarettes will be particularly enticing to youth, and the adult population with established smoking preferences is not the intended market for this product.

Public policy should embrace a concept which will prevent Kansas youth from seeking and obtaining cigarettes, or at least reduce their numbers.

We would like to encourage your support of HB 2552. Thank you.

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Date 1-26-06  
Attachment # 15

Testimony in Favor of HB 2552  
January 26, 2006

Chairman O'Neal and Members of the House Judiciary Committee, on behalf of the Tobacco Free Kansas Coalition, I would like to outline our reasons for supporting HB 2552.

The tobacco industry has long recognized the importance of recruiting the very young as customers. The profitability, if not the survivability, of an industry that kills a third of its customers and disables another third clearly depends on constantly replacing the patrons lost to disease and death. Recruiting children as new smokers adds years of profitable sales. More importantly, children are more susceptible to the all-important addiction process per se, due to the vulnerability and plasticity of their neurochemistry.

The proof of the industry's success in its efforts to target children is unequivocal: 90% of those people who become addicted to tobacco do so by or before the age of 19. The average age of tobacco use initiation in Kansas is 12!

In recent years the industry has faced a growing public awareness of its clandestine program to recruit children into the ranks of addicted smokers. The involuntary disclosure of secret industry documents has astounded many who were previously skeptical that tobacco moguls would behave in such fashion. As a result, various sanctions and restrictions have been imposed in attempts to reduce the industry's ability to market to children. While repeating the disingenuous claim that it has no interest whatsoever in recruiting the underaged, the industry continues to seek and explore ever more subtle ways of continuing the practice upon which their survival depends.

But their latest effort is really not that subtle. Children like candy. Many kids' only personal esthetic exposure to tobacco has been with the objectionable smells emanating from ashtrays and other sources of stale smoke. This "yuck factor" might well serve to dissuade them from trying a cigarette at all. But now cigarettes would be available in a host of sweet, candy-like flavors. "Yuck" yields to "Yum!" in an appeal that has relatively little attraction for older potential smokers.

Despite industry disclaimers, the proposed marketing of candy-flavored cigarettes is a transparent invitation for the very young to go ahead and try something that they have already been warned against. This is no accident. And the leopard has not changed its spots.

HB 2552 can be an important step toward frustrating tobacco marketers' latest attempt to addict our children. Please give it your full consideration and support.



Jon Hauxwell, MD  
President  
Tobacco Free Kansas Coalition



Jon Hauxwell, MD  
PRESIDENT

1335 Central  
Hays KS 67601  
TEL 785-623-4230

Tobacco 

House Judiciary

Date 1-26-06  
Attachment # 16

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**Written Testimony in Support of HB 2552**  
**Submitted to the House Judiciary Committee**  
**By Judy Keller, Executive Director, American Lung Association of Kansas**  
**January 26, 2006**

Chairman O'Neal and Members of the Committee:

I appreciate the opportunity to submit testimony in support of House Bill 2552.

The American Lung Association fully supports efforts to ban flavored cigarettes in Kansas. Flavored or candied products have special appeal to youngsters and will draw them to become addicted to tobacco products at an early age. The product, which hides the tobacco taste, with strong sweet flavors, is marketed with music and images clearly designed to appeal to youngsters, **more than 400 of whom** will try their first cigarette this month. Of those, one third will die prematurely as a result of their addiction, adding millions of health care costs to the state every year.

The State of Kansas has recently seen significant progress in the fight to reduce high school smoking rates of **26% in 2000 to 21% in 2002**. Despite that progress, we received three F's and a D in the annual *American Lung Association State of Tobacco Control: 2005* (attached), which measures state progress in tobacco control.

HB 2552 ensures we maintain our hard fought progress in reducing high school smoking rates and that we continue to work to reduce all youth smoking rates.

Tobacco Free Wichita Coalition has suggested specific language that would strengthen the proposed bill. We fully support their suggestions and urge you to consider their amendments.

Thank you for taking the initiative to address this important health issue and for the opportunity to lend our support for the bill.

**Improving Life,  
One Breath  
at a Time**

*Please fight lung disease by remembering*

House Judiciary

Date 1-26-06

Attachment # 17

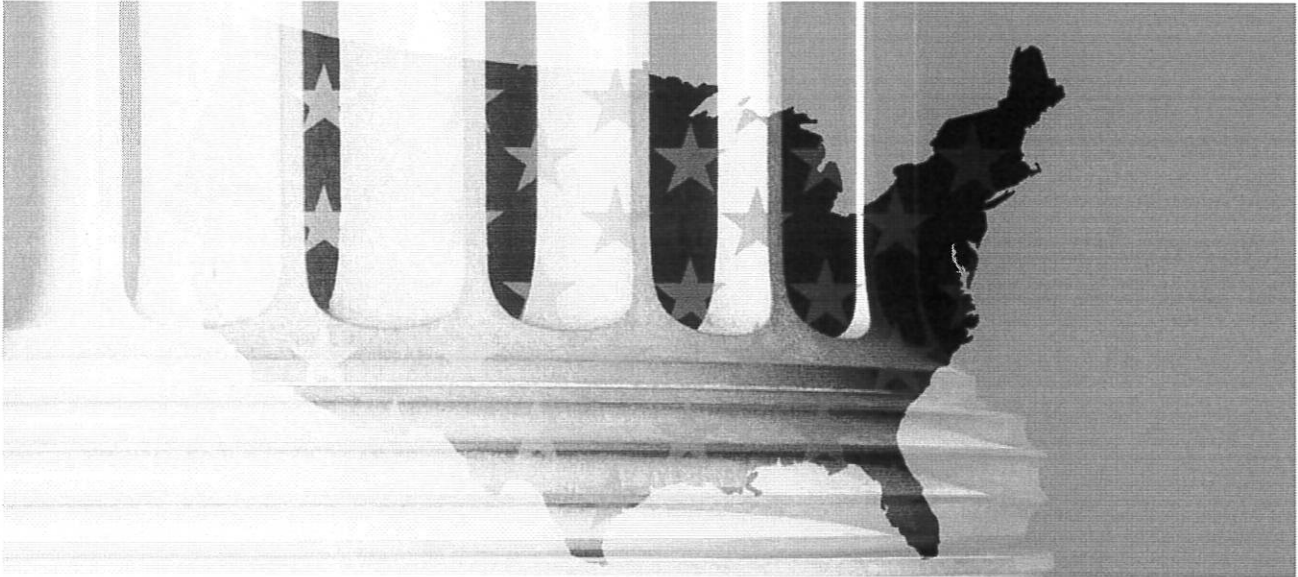


**+** **AMERICAN LUNG ASSOCIATION®**  
**State of Tobacco Control: 2005**

[www.lungusa.org](http://www.lungusa.org)

*Improving Life, One Breath at a Time*

1-800-LUNGUSA



# Kansas

**State Overview**

# KANSAS

## Grades:

<b>Tobacco Prevention and Control Spending</b>	<b>F</b>
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FY 2006 Tobacco Prevention and Control Appropriations:\* \$3,567,418

CDC Best Practices Minimum State Spending Requirement: \$18,050,000

\*Includes FY 2005 funding from the Centers for Disease Control and Prevention

<b>Smokefree Air</b>	<b>F</b>
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### Overview of Smokefree Air Law (s):

Government Worksites: **Restricts**

Private Worksites: **No provision**

Schools: **Bans**

Childcare Facilities: **Bans**

Restaurants: **Restricts**

Bars: **No provision**

Retail Stores: **Restricts**

Recreation/Cultural Facilities: **Restricts**

Penalties: **Yes**

Enforcement: **Yes**

Preemption: **No**

Citation: KS STAT. ANN. § 21-4009 et seq.

<b>Cigarette Tax</b>	<b>D</b>
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Tax Rate per pack of 20: \$0.79

<b>Youth Access</b>	<b>F</b>
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### Overview of Youth Access Law(s):

Minimum Age Requirement: **Yes**

Packaging: Prohibits all cigarette sales other than in a sealed package conforming to federal labeling requirements: **Yes**

Clerk Intervention: Prohibits access to or purchase of tobacco products without the intervention of a sales clerk: **No**

Photographic Identification: Require merchants to request photographic identification for customers who appear to be under 21 years of age: **No**

Vending Machines: **Restricts**

Free Distribution: **Restricts**

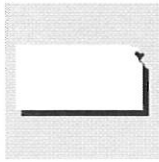
Graduated penalties or fines on retailers: **No**

Establishes random, unannounced inspections: **No**

Establishes statewide enforcement agency: **Yes**

Preemption: **No**

Citation: KS STAT. ANN. § 79-3321 et seq.



**Behind the Scenes:**

The American Lung Association of Kansas, as a lead agency of the Tobacco Free Kansas Coalition, works with more than 100 organizations and individuals to ensure that tobacco control initiatives are an integral part of policymakers' decisions.

The state's adult smoking rate, which paralleled the national trend for the past 10 years with few noticeable changes, dropped between 2002 and 2003, from 22.1 percent to 20.4 percent. This change is estimated to mean 42,000 fewer adult smokers. The trend continued in 2004, dropping to 19.8 percent. Kansas is tied with North Dakota for the 11th lowest adult smoking prevalence rate in the country.

The Kansas Legislature historically has been very protective of maintaining local control on many issues, including clean indoor air. In 2005, the chair of the House Federal and State Affairs Committee introduced a statewide clean indoor air bill, which is the first time such a concept has been addressed by the committee. The discussion it provoked provided new, powerful legislative advocates for smokefree air and valuable information for continuing the effort in 2006.

Local clean indoor air initiatives are underway in a number of communities following the 2004 implementation of the state's first such ordinance in Lawrence. Especially promising are current efforts in the many independent municipalities surrounding Kansas City, the state's largest population center. Smaller communities, including Corcordia and Abilene, adopted smokefree restaurant ordinances in 2005.

Gov. Kathleen Sebelius has proposed a \$50 million plan to reduce the number of people without health insurance through funding from a \$0.50 increase in the cigarette excise tax and a five percent increase in the tobacco products excise tax. Although the Republican majority did not provide the plan a legislative hearing in 2005, the governor intends to continue promoting the user tax as part of her Healthy Kansans initiative in 2006.

Master Settlement Agreement funds in Kansas are dedicated to children's issues; in the early years, a portion was allocated to help balance the state budget. For the first five fiscal years, the legislature appropriated \$500,000 annually for tobacco prevention programs. In 2004, funds were increased to \$750,000 and in 2005 to \$1 million. Kansas youth empowerment programs received funding via an

American Legacy Foundation grant, which ended in 2005. Additional funding from a cooperative program with the Kansas Sunflower Foundation continues the flow of grant dollars to local youth movement chapters. In addition, local community grants to implement several Best Practices components are funded by the Centers for Disease Control and Prevention, enhanced by private foundations.

American Lung Association of Kansas 2006 legislative priorities are: 1) an increase in the excise tax on cigarettes and tobacco products, 2) a statewide clean indoor air law, 3) continued local clean indoor air initiatives, and 4) Tobacco Free Kansas Coalition mobilization and education activities.

<b>Kansas State Facts</b>	
Economic Costs Due to Smoking:	\$1,535,328,000
Adult Smoking Rates:	19.8%
High School Smoking Rates:	21.1%
Middle School Smoking Rates:	5.7%
Smoking Attributable Death Rates:	270.8
Smoking Attributable Lung Cancer Death Rates:	84.9
Smoking Attributable Respiratory Disease Death Rates:	76.3

Adult smoking rates are taken from the 2004 Behavioral Risk Factor Surveillance System. High school and middle school rates are taken from the 2002 Youth Tobacco Survey.

Health impact information is taken from the Smoking Attributable Mortality, Morbidity and Economic Costs (SAMMEC) software. Smoking attributable death rates reflect average annual estimates for the period 1997-2001, are calculated for persons aged 35 years and older and are age-adjusted to the 2000 U.S. population. They do not take into account deaths from burns or secondhand smoke. Respiratory diseases include pneumonia, influenza, bronchitis, emphysema and chronic airway obstruction. The estimated economic impact of smoking is based on smoking-attributable healthcare expenditures in 1998 and the average annual productivity losses for the period 1997-2001.

To get involved with your American Lung Association, please contact:

**American Lung Association of Kansas**  
 4300 SW Drury Lane  
 Topeka, KS 66604-2419  
 (785) 272-9290  
 www.kslung.org

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January 25, 2005

## HB 2552 IS UNWISE AND UNCONSTITUTIONAL

HB 2552 would ban the sale of any cigarette that contains any “*natural or artificial constituent or additive*” that gives the cigarette or its smoke a “*characterizing flavor*.” The bill states that “the phrase, ‘*characterizing flavor*’ shall include, but not be limited to, any fruit, chocolate, vanilla, honey, candy, mint, cocoa, dessert, alcoholic beverage, herb or spice flavoring.” The term does not include tobacco or menthol.

Any person who “willfully” sells such a cigarette would be subject to a fine of up to \$500 for “each violation.” Anyone who aids, abets or otherwise participates in any way in sale would be punished as a principal to the same extent as any person making the sale. If each cigarette sold is a “violation,” the fine for selling a single pack of such cigarettes is \$10,000.

### **1. HB 2552 Would Ban the Sale of Virtually All Cigarettes in Kansas.**

The definition of “characterizing flavor” names several flavorings (chocolate, vanilla, honey, cocoa, and herbs and spices) that are widely used in cigarette brands currently on the market. Under HB 2552, all of these cigarettes would be banned.

### **2. HB 2552 Would Likely Be Construed To Apply To All Cigarette Flavorings.**

The definition of “characterizing flavor” in HB 2552 “shall include, but not be limited to” the illustrative examples. Under established principles of statutory construction, it is likely that this definition would be construed to mean *any* flavoring. The phrase “shall include, but not be limited to” normally refers to the larger group that is defined – and therefore limited – by the illustrative examples. See *Berniger v. Meadow Green-Wildcat Corp.*, 945 F.2d 4, 7-8 (1991). But the illustrative examples of flavorings in HB 2552 do not define a limited group because they do not share a “common thread” that distinguishes them from all other flavors. See *State Bd. of Nursing v. Ruebke*, 913 P.2d 142, 157-58 (Kan. 1996). If the definition of “characterizing flavor” is construed to be all-encompassing as a result, the effect of HB 2552 would be to ban the sale of virtually all cigarettes in Kansas.

### **3. If Read To Ban Only Some Flavorings, HB 2552 Would Be Void for Vagueness.**

A law defining an offense is “void for vagueness” under the Due Process Clause of the Fourteenth Amendment if the law “forbids . . . the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.” *United States v. Lanier*, 520 U.S. 259, 266-67 (1997). See *State v. Adams*, 254 Kan. 436, 441-45, 866 P.2d 1017, 1021-23 (Kan. 1994). If the definition of “characterizing flavor” is construed to mean only *some* flavorings – those specifically listed, and some but not all others – a retailer could only guess as to which other flavorings are in-

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cluded. If so construed, HB 2552 would be unconstitutionally vague. Further complicating the matter is how one can be prosecuted for “willfully” violating a vague statute.

#### **4. If “Characterizing Flavor” Refers to Marketing, HB 2552 Is Unconstitutional.**

FDA food regulations define “characterizing flavor” as a flavor that a food, *as marketed*, would commonly be expected to have. For example, a food marketed as “strawberry shortcake” would be expected to have a strawberry taste. 21 C.F.R § 101.22(i). If “characterizing flavor” is understood in this way, HB 2552 is preempted by the Federal Cigarette and Labeling Act, 15 U.S.C. § 1331 *et seq.* (“FCLAA”) The Supreme Court has held that FCLAA “pre-empts state regulations targeting cigarette advertising” – even regulations motivated by “concerns about minors. *Lorillard Tobacco Co. v. Reilly* 533 U.S. 525, 550 (2001). Under *Lorillard*, HB 2552 would also violate the First Amendment. *See id.* at 556-57. This is particularly so because Kansas has not attempted to accomplish its goals by means that do not restrict speech. “If the First Amendment means anything, it means that regulating speech must be a last – and not a first – resort. Yet here it seems to have been the first strategy the Government thought to try.” *Thompson v. W. States Med. Ctr.*, 535 U.S. 357 (2002).

#### **5. No Other State Has Enacted Similar Legislation.**

Proponents of HB 2552 have suggested that as many as 12 other states have already enacted similar legislation. That is incorrect. The proponents are apparently referring to state laws the ban or limit the sale of a particular type of cigarette known as “bidis.” Federal health authorities define “bidis” as “small brown cigarettes, often flavored, consisting of tobacco hand-rolled in tendu or temburni leaf and secured with a string at one end. They are primarily produced in India and in some Southeast Asian countries, and are imported into the United States.” Bidi Use Among Urban Youth – Massachusetts, March-April, 1999. *MMWR Highlights*, Sept. 17, 1999, available at [http://www.cdc.gov/tobacco/research\\_data/youth/mmwr999fs.htm](http://www.cdc.gov/tobacco/research_data/youth/mmwr999fs.htm) (last visited Jan. 25, 2005).

#### **6. Federal Proposals To Ban “Characterizing Flavors” Refer To Marketing.**

Five years ago, the Supreme Court ruled that the federal Food and Drug Administration lacked statutory authority to regulate cigarettes. *United States v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000). Since then, legislation has been introduced in Congress that would authorize FDA to regulate cigarettes, and some proposals would ban cigarettes with “characterizing flavors.” *E.g.*, S. 1074, 109th Cong., § 231 (2005) (proposed § 907(a)(1) of Federal Food, Drug, and Cosmetic Act). As used in this legislation, however, “characterizing flavor” would have the same meaning as the FDA food regulation described above, which refers not to what is in a cigarette but to the way a cigarette is marketed. As indicated, if “characterizing flavor” in HB 2552 were construed in this fashion, the bill would be preempted by federal law and violate the First Amendment.

\* \* \*

For these reasons, HB 2552 is unwise and unconstitutional, and should be rejected

*This memorandum of law was prepared  
at the request of R.J. Reynolds Tobacco Co.*



MEMO TO: House Judiciary Committee  
FROM: Thomas M. Palace  
DATE: January 26, 2006  
RE: HB 2552

Mr. Chairman and members of Senate Agriculture Committee:

My name is Tom Palace. I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas petroleum distribution companies and convenience store owners throughout Kansas.

PMCA members have been advocates of responsible tobacco retailing for many years. We are active supporters of the state approved "We Card" program, a program designed to help retailers prevent underage tobacco sales. We know that training employees on a regular basis is an essential part of preventing underage tobacco sales.

Tobacco sales in convenience stores usually lead to additional sales such as; gasoline, fountain drinks, coffee and food products. This financial incentive adds another layer of importance to managing age related tobacco sales. We work to avoid infractions, keeping our tobacco licenses in good standing. Kansas retailers are well aware of the penalties that are associated with underage tobacco sales, and work very hard educating their employees on the consequences of failing a compliance check. **Kansas law states that a person must be at least 18 years of age to purchase tobacco products.**

Unfortunately, I am unaware of the impact that this bill may have on my membership. Frankly, only since the publication of this bill did I become aware that cigarettes were made with different flavors.

Mr. Chairman, current law prohibits any person under the age of 18 years of age to possess or attempt to possess tobacco products. With this regulation in place, it is apparent to me that flavored cigarettes, being a legal product, carry the necessary safeguards similar to other age-related products.

As of this date, I am unaware of any state that has prohibited the sale of flavored cigarettes, and like Kansas, every state must adhere to state law that prohibits the sale of tobacco products to minors.

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

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*Kansas  
Licensed  
Beverage  
Association*

*President*  
James "Jim" Fager

*Vice Presidents*  
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Tom Intfen  
Robert Farha  
Jim Hendricks  
Curt Melzer  
Richard Markle  
Paul Boone  
Billy Long  
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Sean Haydock

*Treasurer*  
Mark Barrett

*National Director*  
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*Executive Director*  
Philip Bradley, PhD.

745 New Hampshire  
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Testimony on HB-2552, January 26, 2006  
House Judiciary Committee

Mr. Chairman, and Representatives of the Committee ,

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

*We oppose HB-2552.*

We applaud efforts to keep adult products out of the hands of underage persons. We devote many resources and time to ensure the correct use of alcohol and tobacco in our establishments. We promote responsibility and are in the midst of national campaign to encourage responsibility. We believe that efforts have been and are currently in place to ensure the legal sale and use of these products. We assist and encourage these efforts. We believe that the apparent intent of this bill is good but that it will have unintended consequences.

Many of our businesses allow smoking for their patrons and some even sell these products to their customers of age. We believe that our customers that chose to partake of this legal activity have that right. We also believe that if a person of age prefers a product that has particular flavors, they should be allowed to do so.

We believe that the way that this bill is written technically that it would prohibit most tobacco products on the market in Kansas today. It would be a penalty to our patrons who choose to partake of these products

*Therefore, we ask and urge you to not pass HB-2552.*

Thank you for your time.

Philip Bradley  
Executive Director

 Drink Responsibly  
Drive Responsibly House Judiciary

Date 1-26-06  
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