

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 10, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Connie Burns, Committee Assistant

Conferees appearing before the Committee:

Steven Hilbert, Attorney for the Department of Revenue
Mary Jayne Hellebust, Tobacco Free Kansas Coalition, Inc.
Whitney Damron, on behalf of Swisher International, Inc.

Others attending:

See attached list.

Testimony was provided in support of **SB 454** from City of Salina. (Attachment 1) A memo was received from Melissa Wangemann, KAC, in response to questions asked by the committee on **SB 301**. (Attachment 2)

Suggestion to **SB 453** and **SB 454** were provided by Amy Campbell, Kansas Association of Beverage Retailers, (Attachment 3), and Philip Bradley, Kansas Licensed Beverage Association. (Attachment 4)

SB 478 - Revision of the Kansas cigarette and tobacco products act

Chairman Brungardt opened the hearing on **SB 478**.

Staff provided an overview of the bill. (Attachment 5)

Steven Hilbert, Attorney for the Department of Revenue, spoke in favor of the bill. (Attachment 6) The bill will improve the regulation of cigarette and tobacco products and will continue to ensure that the State of Kansas collects the appropriate taxes and passage of this bill will allow the State to adequately regulate these products and those licensed to sell and handle these products.

Mary Jayne Hellebust, Tobacco Free Kansas Coalition, Inc., appeared as a proponent of the bill. (Attachment 7) The bill would classify little cigars as cigarettes for taxation purposes, just as the federal government does. This change would provide some additional revenue to the state, but the price increase would also deter some Kansans, particularly young Kansans from using little cigars as cheaper versions of cigarettes.

Whitney Damron, on behalf of Swisher International, Inc., spoke in opposition to the bill. (Attachment 8) The bill would redefine "little cigars" as "cigarettes" and thereby significantly increase the taxes on these tobacco products and improperly reclassify a "little cigar" to be something it is not - a cigarette; and objects to other portions of the bill making changes to the Kansas Cigarette and Tobacco Products Act. Mr. Damron suggests that it is inappropriate to include a tax increase for little cigars in an otherwise technical cigarette and tobacco act enforcement bill and to change the definition of a little cigar by re-labeling it as a cigarette. A balloon was provided to strike the small cigar tax and regulatory change language from the bill, and respectfully ask the Committee to adopt this amendment if the bill is advanced.

Committee questioned why the little cigars have not been taxed the same as cigarettes in Kansas, and why they are not. Whitney Damron stated he would get back to the committee with the information.

CONTINUATION SHEET

Minutes of the Senate Federal and State Affairs Committee at 10:30 a.m. on February 10, 2010, in Room 144-S of the Capitol.

Chairman Brungardt closed the hearing on **SB 478**.

Final Action:

SB 222 - Emergency medical services, criminal history record checks

Staff stated that there was a technical amendment that changes the name of the fund to "Emergency Medical Services Criminal Background and Fingerprinting Fund" lines 36 and 37.

Senator Francisco moved the amendment. Senator Faust-Goudeau seconded the motion. The motion carried.

Senator Reitz moved an amendment that would change the word in line 13 from "may" to "shall" . Senator Owens seconded the motion. The motion carried.

Senator Reitz moved to pass **SB 222** out favorably as amended. Senator Owens seconded the motion. The motion carried.

The Chairman will send a letter to affected Behavior Sciences groups on the may and shall issue.

SB 453 - Alcoholic beverages; permit for packaging and warehousing facilities

A balloon was provided by staff. (Attachment 9) The balloon strikes the word *or* and adds a ";" after manufacturer and inserts "or broker" after supplier page 1, line 13 and adds a definition of broker in section (f).

Senator Ostmeyer moved the balloon. Senator Reitz seconded the motion. The motion carried.

Senator Reitz moved to pass **SB 453** out favorably as amended. Senator Ostmeyer seconded the motion. The motion carried.

Staff provided a chart on **SB 454**, breaking down the fees requested by ABC. (Attachment 10)

The next meeting is scheduled for February 11, 2010. The meeting was adjourned at 11:59 a.m.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

GUEST LIST

DATE 2-10-10

NAME	REPRESENTING
Spencer Duncan	Capitol Connection
Ginger Park	KS Dept of Health & Environ.
MQ Hellum	TIFKC
Dave Newman	ACS
Whitney Jam	Swishy Intl.
TED HEWEL	CAPITOL STRATEGIES.
Hannah Sanelar	KHPA
Amy Campbell	KABR
TUCK DUNCAN	KS wine & spirits who berry,
Deey Maye	Cigar Assn of America ASSH.
SARAH BYRNE	KDOR / ABC
Ann Zinn	KDOR / ABC

CITY MANAGER'S OFFICE
Jason A. Gage
City Manager
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SB 454 Testimony to Senate Committee on Federal and State Affairs

By: Jason A. Gage – February 8, 2010

LEGISLATIVE REQUEST:

The City of Salina is respectfully requesting that you consider amending current state statutes relating to drinking establishment licenses by supporting the passage of Senate Bill 454. Our specific request as provided for under SB 454 is to amend the current statutes to acknowledge governmental entities as a licensee for the purpose of obtaining a drinking establishment license without the private background investigation requirements that are currently applicable to private persons, but not to governmental entities.

ISSUE OR CHALLENGE:

The current statutory language dealing with the issuance of drinking establishment licenses is not written with the intent to include governmental entities. While we believe the Kansas Department of Revenue's Alcohol Beverage Control division (aka "ABC") has implemented the current statutes to the best of their ability, it is clear from Salina's experience that the statutes hinder our ability to sell alcohol by the drink within "City-owned" facilities without a tremendous burden and various limitations. In past years, the City of Salina has been allowed to sell alcoholic beverages at our Bicentennial Center arena/convention facility with a caterer's type license. This approach, while not ideal, had minimally met our needs. Late last year, a different legal interpretation by the ABC, with the assistance of the Kansas Attorney General's Office, indicated that current statutes do not anticipate governmental entities as applicants. This interpretation results in the requirement that a full governing body and/or individual take on the responsibility on behalf of the governmental entity, including all related liability exposure. The City's legal counsel has reviewed the ABC's interpretation and are in full agreement with it; thus prompting our request to the Kansas legislature.

REASON FOR CHANGE:

To specifically include governmental entities as a licensee for the purpose of obtaining a drinking establishment license for the purpose of selling alcoholic beverages at City-owned facilities.

FINANCIAL AND/OR TAXING IMPLICATIONS:

We do not find that this item will have any negative financial or taxing impact on the State of Kansas, any other governmental entities or alcohol retailers.

Thank you once again for taking the time to consider SB 454, which we believe to be a very timely and worthwhile statutory revision request.

January 28, 2010

Melissa A. Wangemann, General Counsel
Kansas Association of Counties
300 SW 8th Ave, Third Floor
Topeka, KS 66603

RE: Responses to questions posed by Senators Abrams and Francisco at hearing on Senate Bill 301

Dear Melissa:

This is in response to your request for assistance in providing a fuller response to Senator Abrams and Senator Francisco's questions.

Senator Abrams asked if the error in surveying that caused a 3' discrepancy in one survey from another of the same parcel of land would be less or more likely to occur with the repeal of KSA 58-2005. As happens so often with technical discussions, the answer is neither 'yes' nor 'no' but maybe. Section 58-2005 pertains to reviews that are based on the "foundation" of information required in the four previous sections of the regulations [58-2001 through 58-2004]. If the discrepancy in a survey is caused by: lack of or poor monumentation (58-2001), misjudgment or misrepresentation of a section corner, quarter section of other visible maker (58-2002 & 58-2003), or failure to record a reference corner or an error in closure of the exterior/perimeter boundary (58-2004) then the answer is "yes". Factors would be identified in the survey submittal that would require returning a survey to a surveyor for double-checking and correction. If the discrepancy was caused by some other factor, for example, transposition of a measurement (310' for 301'), review under 58-2005 may not catch this error resulting in the filing of a survey that provides an inaccurate description of a parcel of land. Some County Surveyors or appointed surveyors do all of their review work from a desktop, others have been known to send a survey crew to the field to locate pins and check dimensions. The "tag line" of a current TV commercial "too light" or "too heavy" comes to mind as an apt description of the breadth of strategies undertaken by individual counties to carry out the duties of review required in 58-2005. The problem is less with the law than with the administration and implementation of it. That is why KACPZO's position has been fix the problem by working to amend 58-2005 to establish standards for the review – not eliminate a law that identifies the need for 'double checking' and oversight of surveys that revise the legal descriptions of land and many time, property ownership.

Senator Francisco asked if the KAR developed by the Board of Technical Professions for Licensed Land Surveyors accomplished the same end as the sections under repeal. The audience and the focus of the Board of Technical Professionals is different than that the State Statutes considered for repeal in this bill. To note just a few differences:

- Licensure requirements and review apply to the conduct of work of the individual licensed land surveyor. They do not correct, edit, repeal or in any way alter the broad template of work a

land surveyor performs over his or her lifetime that has been recorded, incorporated into a deed for Transfer Upon Death or inheritance purposes.

- Minimum standards for boundary surveys used by the Board of Technical Professionals are written by a board of peers (land surveyors). Public input from other related professions may be solicited but are not required to be given full weight for inclusion in a KAR.
- State Statutes provide a public level of expectation that all land development related fields can access and rely on including: other professionals (Architects, Engineers, Landscape Architects, and Planners), banks, title companies, appraisers, Register of Deeds, and other property owners.¹
- The Board of Technical Professionals is concerned with the representation of the profession of land surveying and establishing a base level of professionalism. Kansas Statutes are concerned with the end product created by a professional and the conformity of multiple professionals to a minimum level of work product. Though these two are interrelated, they are not a duplication of service to the public.

Hopefully, this provides you with a better level of understanding of the issues involved in response to the questions raised. Please let me know if I can be of additional service to you.

Sincerely,

Linda M. Finger, AICP, RLA
Planning Resource Coordinator
Douglas County, KS
Member of KACPZO legislative committee

¹ Related to this, a comment was made at the meeting today that if there are errors in a survey that is what the title companies are suppose to find. All surveys do not go to title companies before being filed. For many reasons, an owner can have his property surveyed and divided, often for wills or future sale. In these cases, a title company become involve at the point of sale – which is after the survey has been filed of record at the Register of Deeds office.

Kansas Association of Beverage Retailers

P.O. Box 3842, Topeka, KS 66604
785-969-1617 campbell525@sbcglobal.net

February 10, 2010

Chairman Brungardt and Committee Members:

RE: Senate Bill 453 – Warehouse Bill

KABR opposes amending this bill to create a new license for “brokers”. It appears that the proposed amendment would allow a retailer to ship in liquor products, package them with food products, and ship them out with no tax to Kansas. It is currently illegal for any retailer to ship liquor to Kansans – and it seems short-sighted to create this loophole for one retailer. The publicized purpose of last year’s wine shipping legislation was to allow wineries to ship products which they have manufactured themselves. This retailer is not a winery and is not a licensed liquor retailer.

RE: Senate Bill 454 – License Bill

KABR supports the following sections of SB 454:

- Biennial licenses – would like to see an option for annual payments.
- Verifying the Director’s authority to extend licenses up to 30 days.

KABR requests amendments to the following:

- Liquor stores do not oppose a reasonable fee increase, particularly if it is implemented gradually. However, it is unrealistic to expect a family owned business to come up with \$1050 on their next renewal date, when their budget had anticipated a \$260 expense.
- Amendment: Please amend to implement the dues increase over four years – two biennial license terms.
- Page 5 line 3 and line 8 - change “shall” to “may” – not all cities charge an occupant tax to retail liquor stores.
- Insert Page 11 line 1 – “except that such bond may be waived by the Director for a retailer deemed in good standing for a period of 24 months.”

KABR opposes the following sections of SB 454:

- Delete page 10 lines 3 – 28 (expedited license process)
- Delete the agency amendment in section 8 and section 11 that changes “shall” to “may”.
 - The statute should state that “a refund SHALL be made of that portion of the license fee...”
 - If needed, add language to clarify that the refund begins on the date of notification that the licensee is giving up his or her license, and that the State may withhold funds for taxes owed.

Thank you for considering our suggestions.

Sincerely,

Amy A. Campbell

Sn Fed & State
Attachment 3
2-10-10



*Kansas
Licensed
Beverage
Association*

February 10, 2010
Amendment request on SB 454
Senate Federal & State Affairs Committee

Mr. Chairman, and Senators of the Committee,

Our members ask you to oppose SB 454 and not forward to the Senate without amendments to alter the parts explained below.

Keep multiyear licenses.

Reduce fee increases to keep the same rate as assessed on all licenses now. For example a Drinking Establishment, 2 year license would be \$2000. We could support a small additional increase for a payment plan. Such as add a 10% fee (\$50 per payment) for a payment plan such as four \$550 payments over the 24 months for \$2200 total.

Eliminate the Filing Fee.

Eliminate the expedited processing section and fees.

Keep the ability of the Director to extend a license for up to 30 days. Add language to address the Occupation fee(local city/county stamp) and extend it to run concurrently with the license if extended.

Amend to eliminate the requirement of a certified ck, money order or cash for a license fee. The DOR accepts check from these licensees each month as payment for taxes. And each licensee has to have a bond, CD or a 24 month history of compliance and timely payments. Applications submitted on time are 30 days in advance which would be ample time to clear and ensure the state receives their funds. This requirement makes for another fee for the licensee as the have to purchase these items or bring cash.

If these concerns are addressed then we could support multiyear licenses.

Thank you for your time.

CEO
Philip Bradley

P.O. Box 442066
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info@klba.org

The KLBA represents the interests of the men and women in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels, and restaurants. These are the places you frequent and enjoy with the tens of thousands of employees that are glad to serve you. Thank you for the opportunity to speak today and I will be brief.

In addition today, **The Craft Brewers Guild**, (Kansas microbrewers & brewpubs) and **Kansas Viticulture and Farm Winery Association** (grape growers and wine makers) have asked me to represent them and their concerns.



**Drink Responsibly.
Drive Responsibly.**

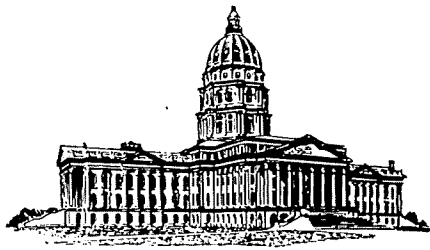
Sn Fed & State
Attachment 4

2-10-10

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

Briefing on Senate Bill 478
Amendments to Kansas Cigarette and Tobacco Products Act

Jason B. Long
Assistant Revisor
Office of Revisor of Statutes

February 10, 2010

SB 478 makes various amendments to the Kansas Cigarettes and Tobacco Products Act (the "Act"). This Act governs the regulation and taxation on the sale of cigarettes and other tobacco products by the department of revenue. The first amendments to the Act are in section 1 to the definitions section of the Act. The bill would add a new definition of "cigar" to distinguish cigars from cigarettes for purposes of the Act. It also adds a new definition of "little cigar," which is different from a cigar and is considered a cigarette under the Act.

The second set of amendments in HB 478 give the director of taxation the authority to require certain reports be filed electronically. Such reports include: (1) the vending machine sales report required by K.S.A. 79-3303; (2) the wholesale dealer's report required by K.S.A. 79-3316; and (3) the distributor's report required by K.S.A. 79-3378.

The third set of amendments in the bill pertain to the issuance of licenses under the Act. Under current law an applicant may not be issued a license if they are not of good moral character, have been convicted of a felony or crime of moral turpitude, or have been convicted of a crime pertaining to cigarettes or tobacco products and not completed their sentence within the last two years. Under section 4 of the bill these restrictions would be replaced with the following

restrictions: (1) conviction of a felony; (2) conviction of a crime pertaining to a regulated substance; and (3) revocation of previous license within the last ten years. The bill also provides a clear definition of “revocation” for purposes of revoking or suspending a license.

The fourth set of amendments in HB 478 pertain to tax collection. Under the bill if a wholesale dealer or distributor fails to pay the tax due on the cigarettes, the director may proceed directly against the purchaser of the cigarettes to collect the tax due. The term “purchaser” includes the consumer who purchases the cigarettes for final use.

Finally, the bill amends provisions in the Act relating to tax stamps. The bill eliminates references to water applied stamps and meter imprints. New language in these provisions requires that tax stamps be securely affixed and legible.

Senate Federal & State Affairs Committee
SB478
Testimony of
Steven Hilbert
Attorney for the Department of Revenue

February 10, 2010

Good morning Mr. Chairman and members of the committee. I thank you for the opportunity to appear before you today and present testimony in support of the SB 478.

This Bill, currently before the Committee, proposes five main changes to the Kansas Cigarette and Tobacco Products Act. In addition, the Bill clarifies and updates other sections of this Act.

First, the Bill defines 'little cigars' and authorizes this product to be taxed as a cigarette. Section one specifically defines the terms 'little cigar' and 'cigar.' The definition also expands the definition of 'cigarette,' so it includes little cigars.

Little cigars are defined, in part, as 1,000 units weighing not more than three pounds. This proposal follows the federal definition of little cigars and is similar to definitions already ratified by many other states.

Second, the Bill gives the Director of Taxation the authority to require electronic filing of reports. This is consistent with the electronic initiatives that the Department of Revenue is currently implementing. This will aid in the reduction of administrative costs to process monthly reports that are required to be filed under the Act.

Third, SB 478 allows the department of revenue to collect unpaid taxes on cigarettes and tobacco products that would otherwise be paid by a licensed wholesale dealer or licensed distributor. This means that if the taxes are not paid to the State of Kansas, the Department of Revenue can pursue the responsible party, including the end consumer. This modification arose from internet sales of cigarettes and tobacco products into Kansas. These products are often purchased from parties not licensed in Kansas.

Fourth, Section 4 addresses some of the issues the Department of Revenue has encountered when denying a license under the Cigarette and Tobacco Products Act. This modification will allow the Department of Revenue to deny a license if the applicant has been convicted of a felony; if the applicant has been convicted of violating any law regarding regulated substances; or, if the applicant has had a license, issued under the Cigarette and Tobacco Products Act, revoked. This Section further defines the distinction between revocation and suspension of the license.

Fifth, the existing statutes allow vending machines to be placed in areas accessible by minors under certain conditions. This Bill strikes these exceptions permitting the

placement of vending machines in areas open to those under 18 years of age. Prohibiting the placement of vending machines in youth accessible establishments and areas will assist the State in maintaining the federal mandated Synar compliance rate. Last year, Kansas compliance rate was 92%.

Lastly, SB 478 addresses some of the dated procedures and methods used in the past such as meter imprints and water applied gummed paper. Neither of these processes is currently used, and there are no plans to re-establish such processes. The Bill also addresses, in part, the issues surrounding the application of the tax stamp and permits recourse if there is a continuous stamping issue with a wholesale dealer.

Passing SB 478 will improve the regulation of cigarette and tobacco products and will continue ensure that the State of Kansas collects the appropriate taxes. Further, passage of this Bill will allow the State to adequately regulate these products and those licensed to sell and handle these products.

Thank you for your time and consideration for passing SB 478.

7



Tobacco *Free* Kansas Coalition, Inc.

**Testimony in Support of SB 478 before
The Senate Federal and State Affairs Committee
February 10, 2010
By Mary Jayne Hellebust**

Chairperson Brungardt and Members of the Committee,

I represent more than 100 individual and organizational members of the Tobacco Free Kansas Coalition, including the American Lung Association, the American Heart Association and the American Cancer Society, all of which are working to reduce the toll of tobacco in Kansas in order to improve the health of all Kansans.

We support SB 478 which would classify little cigars as cigarettes for taxation purposes, just as the federal government now does. Such a change would provide some additional revenue to the state, but the price increase would also deter some Kansans, particularly young Kansans from using little cigars as cheaper versions of cigarettes.

Little cigars look like cigarettes, have filters like cigarettes, are often in packages like cigarettes, are sometimes inhaled like cigarettes, are sold like cigarettes, are often mistaken for cigarettes and used as replacements for cigarettes. SB 478 merely defines little cigars for what they really are. Little cigars also come with the federally required warnings about the dangers of using such products with specific warnings about mouth and throat cancer, lung cancer, birth defects and heart disease.

Even with the new federal tax increases on little cigars, the packs of little cigars are much cheaper than cigarettes and are often used in place of cigarettes. A pack of little cigars can cost as little as \$1.00 or as much as \$3.29 for a pack of Swisher Sweets Grape Flavor Little Cigars can versus a package of Camel or Marlboro at close to \$5.00 per pack. Price is often the determining factor when cigarettes and tobacco products are bought legally by adults or illegally by minors. This bill to impose the current Kansas cigarette excise tax on little cigars would increase the price and eliminate some of the pricing differentiation between little cigars and cigarettes.

Another factor is that some little cigars are available in flavors that particularly appeal to underage users—grape, cherry, vanilla, and peach seem to be favorites. The sale of little cigars in the U.S. has increased by 240% between 1998 and 2007. At the same time that the sales volume of cigarettes has declined due to price increases, MSA payments and clean indoor air legislation.

The adoption of SB 478 would provide a little additional revenue to the state of Kansas, deter Kansans, especially young Kansans, from using little cigars as cheaper but unhealthy replacements for cigarettes, and enhance efforts to reduce tobacco use prevalence in Kansas.

Tobacco Free Kansas Coalition Officers:

President
Linda DeCoursey

Vice-President
James Gardner, MD

Secretary
Nicole Brown

Treasurer
Terri Robe Sn Fed & State
Attachment 7

Mary Jayne Hellebust, Executive Director
5375 SW 7th Street, Ste. 100; Topeka, KS 66606
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2-10-10

Cigars, Cigarillos & Little Cigars Fact Sheet

Cigars are defined by the US government as “any roll of tobacco wrapped in leaf tobacco.”¹ While there are currently *three* major cigar products—cigars, cigarillos and little cigars—current federal classifications narrowly define them into *two* categories: little cigars and large cigars.² This two-pronged classification groups cigarillos with large cigars because they generally weigh more than three pounds per thousand. These products, colloquially known as “cigarillos,” “blunts” or “cheroots” (referred to as cigarillos in this fact sheet), are included in the “large cigar” category despite significant differences in their marketing and packaging from that of typical large cigars.

Little Cigars: Weighing less than 3 pounds/1000, these products resemble cigarettes.



CIGARETTE



LITTLE CIGAR

Cigarillos: Weighing more than 3 pounds/1000, cigarillos are classified as large cigars.



CIGARILLO (TIPPED)



CIGARILLO

Large Cigars: Weigh more than 3 pounds/1000.



CIGAR

Flavors

- Some cigars—usually small cigars or cigarillos—come in flavored varieties, including cherry, chocolate, vanilla, peach rum, raspberry and sour apple.³
- As is the case with flavored cigarettes, such flavorings may appeal to youth and young people.^{4,5}
- Flavorings in cigars are not regulated by the federal government.

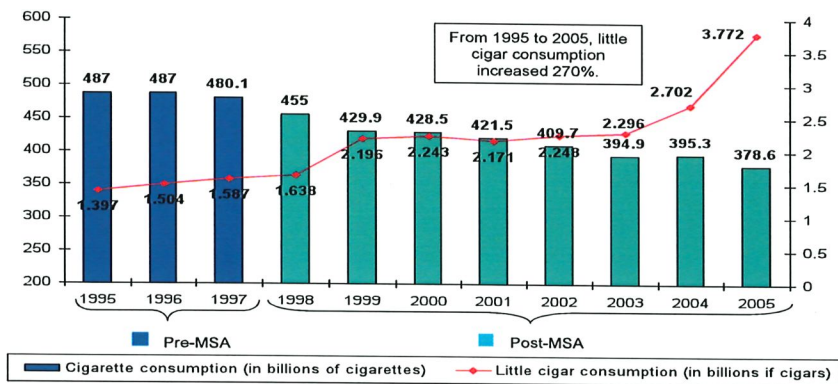
Increase in Consumption of Little Cigars and Cigarillos

In the last decade, cigarette consumption rates have declined while cigarillos' and little cigars' sales rates have increased dramatically.^{6,7} In addition, Philip Morris now owns the most popular cigarillo brand: “Black & Mild’s.”⁸

- Sales of little cigars has increased by 240% while cigarillo sales increased by almost 150% between 1997 and 2007. Large cigar sales decreased by 6% during the same time period.⁷
- U.S. imports of little cigars increased from 34 million pieces in 1997 to 311 million pieces in 2007, an increase of more than 800%. Large cigar imports jumped from 587 million to 889 million during the same time period, an increase of only 51%.⁹
- A review of formerly-secret tobacco industry documents finds that little cigars were intended to replace cigarettes as cigarette advertising became increasingly restricted, and taxes on cigarettes, but not cigars, continued to increase.¹⁰

- The recent increase in sales of little cigars is frequently attributed to increases in taxes on cigarettes, and historically much lower taxes on cigars.^{11,12,13}
- Effective April 1, 2009, federal excise taxes on little cigars were increased by \$0.97 to \$1.01 per pack of 20 – bringing the tax rate on little cigars in line with cigarettes. The tax on large cigars and cigarillos was raised from 20.719% of the manufacturer's price (capped at \$0.05) per cigar to 52.75% of the manufacturer's price (capped at \$0.40) per cigar.¹⁴ This means that a premium cigar with a manufacturer's price of \$5.00 would have its taxes raised from 5 cents to 40 cents (it hits the 40 cent cap). A cheaper cigar or a cigarillo with a manufacturer's price of \$0.40 would have its taxes raised from 5 cents to 21 cents per cigar.

Increases in U.S. little cigar consumption compared to cigarette consumption, 1995-2005



Sources: US Department of Agriculture, US Alcohol & Tobacco Tax and Trade Bureau, Bureau of the Census

Prevalence of Cigar Use Among Youth

- There is no national prevalence data for little cigar or cigarillo products specifically. Among high school youth in 2006, nearly 12% of high school students reported use of any type of cigar. Over 12% of Whites, nearly 9% of African Americans, 12% of Hispanics, and almost 5% of Asians were current cigar smokers. Nearly 17% of males and over 7% of females were current cigar users.¹⁵
- Among middle school youth in 2006, 4% were current cigar smokers. Three percent of Whites, nearly 6% of African Americans, over 6% of Hispanics, and 1.6% of Asians reported current cigar use. Over 5% of males and 2.7% of females were current cigar users. Again, it is important to note that this survey question asked about all cigar use, and did not differentiate between, large cigars, little cigars and cigarillos.⁹
- While no national-level data is available on prevalence of little cigar/cigarillo use, in 2005, the leading brand preferred by cigar smokers of any kind aged 12 to 17 was Black & Mild (41.4%), a cigarillo brand. Among cigar smokers, nearly 20% of males and 38% of females reported using Black & Mild cigarillos most frequently of any type of cigar. Over 16% of Whites, 55% of African Americans, and 24% of Hispanics who smoked cigars usually preferred Black & Milds.¹⁶

Health Risks of Large Cigars, Little Cigars, and Cigarillo

- There is a misperception by some that these products are less addictive and less harmful than cigarettes,¹⁷ but large cigars, little cigars, and cigarillos contain the same compounds as cigarettes and can be just as harmful and addictive.¹⁸
- Just like cigarettes, all types of cigars can cause lung, oral, laryngeal, and esophageal cancers and impart the cigar smoker with a greater risk of chronic obstructive pulmonary disease (COPD) than nonsmokers.¹⁸

SOURCES

- ¹26 USC 5702 Available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+26USC5702
- ²U.S. Department of Treasury, Alcohol and Tobacco Tax Trade Bureau. Tobacco Products home page. Available at: http://www.ttb.gov/tobacco/tobacco_products.shtml
- ³Trinkets and Trash: Artifacts of the Tobacco Epidemic. Available at: <http://www.trinketsandtrash.org> Accessed March 10, 2009.
- ⁴Carpenter CM, et al. New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies. *Health Affairs*, 2005; 24(6):1601-1610.
- ⁵Lewis M. et al. Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands. *American Journal of Public Health*, 2006; 96(2).
- ⁶US Dept of Agriculture, Economics Research Service. Tobacco Outlook. Oct 24, 2007, TBS-263. Available at: <http://usda.mannlib.cornell.edu/usda/ers/TBS//2000s/2007/TBS-10-24-2007.pdf>. Accessed January 24, 2009.
- ⁷Maxwell JC. The Maxwell Report: Cigar Industry in 2007. Richmond, VA: John C. Maxwell, Jr. 2008. Original concept in Kozlowski LT, Dollar KM, Giovino GA. Cigar/cigarillo surveillance: limitations of the U.S. Department of Agriculture system. *American Journal of Preventive Medicine*, 2008; 34(5): 424-6.
- ⁸Altria Group, Inc. Agrees to Acquire John Middleton, Inc. for \$2.9 Billion. Nov. 1, 2007. Available at: http://www.altria.com/media/02_00_NewsDetail.asp?reqid=1070876
- ⁹U.S. Department of Treasury, Alcohol and Tobacco Tax Trade Bureau. Tobacco Statistics home page. Available at: http://www.ttb.gov/tobacco/tobacco_stats.shtml
- ¹⁰Delnevo CD, Hrywna M. "A whole 'nother smoke" or a cigarette in disguise: how RJ Reynolds reframed the image of little cigars. *American Journal of Public Health*, 2007; 97(8):1368-75.
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TESTIMONY

TO: The Honorable Pete Brungardt, Chair
And Members of the Senate Committee on Federal and State Affairs

FROM: Whitney Damron
On behalf of Swisher International, Inc.

RE: SB 478 – Revision of the Kansas cigarette and tobacco products act.

DATE: February 10, 2010

Good morning Chairman Brungardt and Members of the Senate Committee on Federal and State Affairs. I am Whitney Damron and I appear before you today on behalf of Swisher International, Inc., in opposition to the provisions of SB 478 that would redefine “little cigars” as “cigarettes” and thereby significantly increase the taxes on these tobacco products and improperly reclassify a “little cigar” to be something it is not – a cigarette.

We do not have objections to other portions of the bill making changes to the Kansas Cigarette and Tobacco Products Act, but do suggest it is inappropriate to include a tax increase for little cigars in an otherwise technical cigarette and tobacco act enforcement bill and to change the definition of a little cigar by relabeling it as a cigarette.

Little cigars are different from cigarettes and they have been treated differently for regulatory purposes at the Federal level since the 1800’s.

Little cigars differ from cigarettes based upon three criteria established by the Bureau of Alcohol, Tobacco and Firearms (ATF) in 1973: Wrapper, filler and packaging & labeling.

“Little cigars” are defined at the Federal level as “any cigar weighing less than three pounds per thousand.” And while they may resemble cigarettes, that is where the similarities end; they are distinctly a cigar product and have long been treated differently from cigarettes.

- Wrapper: Little cigars are wrapped in 100% tobacco leaf or reconstituted tobacco wrapper consisting of at least 2/3rds tobacco; cigarettes are typically wrapped in white paper.

- Filler: Little cigar filler tobacco consists predominantly of air-cured and naturally fermented tobaccos and the smoking characteristics are quite different from cigarettes, which are chemically more acidic and contain more sugar.
- Packaging & Labeling: Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations require different labeling and advertising for little cigars and cigarettes, which clearly informs the consumer that the product is a cigar, not a cigarette.

So we must ask the question, "Why is the Kansas Department of Revenue proposing a tax increase on little cigars and a reclassification of the product to a cigarette in an otherwise technical change bill?"

While we cannot say for sure what the motivation of the Department of Revenue is with these provisions, we are aware that there have been two bills devoted exclusively to changing the tax rate on little cigars that were introduced at the request of a very large cigarette company: SB 412 and HB 2466. These bills would amend the definition of little cigars and tax the product at the same rate as cigarettes and also deviate from the Federal standard of "three pounds per 1,000" and increase that number to "four pounds per 1,000," which would expand the higher tax to include even more products than those affected under SB 478. But those bills do not reclassify little cigars as cigarettes.

Whether complicit or not, the Department of Revenue is promoting a change in longstanding regulatory and tax policy that will benefit the big cigarette companies who see increasing the taxes on little cigars as beneficial to their bottom line since they do not sell these products.

Some have suggested that consumers are moving to little cigars to avoid paying the higher prices of cigarettes. The facts do not support that premise.

The market for little cigars is very small. In 2008, consumers spent an estimated \$80 billion on cigarettes, but less than \$350 million on little cigars, meaning more was spent on cigarettes in one week than was spent on little cigars during the entire year. And, during the time period of 2004-2008, consumption of cigarettes declined by 52 billion sticks, yet the consumption of little cigars increased by less than 3 billion sticks, meaning consumers are not transitioning to little cigars as a product replacement.

It is incumbent upon the Federal Government to insure that cigarette products are not being repackaged as little cigars to evade the appropriate application of tax and they take that job seriously. Tobacco products are manufactured in secured, bonded facilities; detailed reports are required for inflow and outflow of materials and taxable products and the TTB goes to great lengths to insure cigarettes are not being misclassified to avoid higher Federal taxes.

Little cigars can be differentiated from cigarettes through chemical testing and the TTB is currently in development of a bright line test that will further enhance its ability to enforce compliance.

We have not seen a fiscal note on SB 478, but there is one available for SB 412, which indicates it will cost the state \$16,100.00 to implement that bill and they are “unable to quantify the fiscal effect for the change in taxation of little cigars on cigarette and tobacco product revenues.” The fiscal note goes on to say that “the proposed changes would also require additional enforcement and auditing requirements.”

Mr. Chairman and Members of the Committee: The state has historically followed the Federal Government in acknowledging regulatory differences between cigarettes and tobacco products. This tax increase language doesn't belong in this bill, nor does language reclassifying a little cigar as a cigarette and the Department of Revenue shouldn't be advancing the anti-competitive, anti-consumer proposals of the cigarette industry.

Believe me; they don't need any help from the State of Kansas.

Attached to my testimony is a balloon to strike the small cigar tax and regulatory change language from the bill. We would respectfully ask the Committee to adopt this amendment if you are inclined to advance SB 478.

On behalf of Swisher International, I thank you for consideration of our position on this legislation and would be pleased to stand for questions at the appropriate time.

WBD

Attachment

Swisher International, Inc.
www.swisher.com

SENATE BILL No. 478

By Committee on Assessment and Taxation

1-28

8-4

9 AN ACT concerning the Kansas cigarette and tobacco products act; vi-
10 olations of act; amending K.S.A. 79-3304, 79-3309, 79-3371 and 79-
11 3378 and K.S.A. 2009 Supp. 79-3301, 79-3302, 79-3303, 79-3310, 79-
12 3311, 79-3312, 79-3316 and 79-3321 and repealing the existing
13 sections; also repealing K.S.A. 2009 Supp. 79-3310c.

14

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

16 Section 1. K.S.A. 2009 Supp. 79-3301 is hereby amended to read as
17 follows: 79-3301. As used in this act:

18 (a) "Carrier" means one who transports cigarettes from a manufac-
19 turer to a wholesale dealer or from one wholesale dealer to another.

20 (b) "Carton" means the container used by the manufacturer of cig-
21 arettes in which no more than 10 packages of cigarettes are placed prior
22 to shipment from such manufacturer.

23 ~~(c) "Cigar" means any roll of tobacco wrapped in leaf tobacco or in~~
24 ~~any substance containing tobacco other than any roll of tobacco which is~~
25 ~~a cigarette as defined in this section.~~

26 (d) "Cigarette" means any roll for smoking, made wholly or in part
27 of tobacco, irrespective of size or shape, and irrespective of tobacco being
28 flavored, adulterated or mixed with any other ingredient ^{if the wrapper}
29 ^{is in greater part made of any material except tobacco} ~~wrapped in paper~~
30 ~~or any substance not containing tobacco or any roll of tobacco wrapped~~
31 ~~in any substance containing tobacco that because of appearance, the type~~
32 ~~of tobacco used in the filler, or packaging and labeling, is likely to be~~
33 ~~offered to, or purchased by consumers as a cigarette as described in this~~
34 ~~subsection. Cigarettes include little cigars.~~

35 ~~(d)~~ (e) "Consumer" means the person purchasing or receiving ciga-
36 rettes or tobacco products for final use.

37 ~~(e)~~ (f) "Dealer" means any person who engages in the sale or man-
38 ufacture of cigarettes in the state of Kansas, and who is required to be
39 licensed under the provisions of this act.

40 ~~(f)~~ (g) "Dealer establishment" means any location or premises, other
41 than vending machine locations, at or from which cigarettes are sold, and
42 where records are kept.

43 ~~(g)~~ (h) "Director" means the director of taxation.

Delete: New language on lines 23-25

Reinsert: *if the wrapper is in greater part made
of any material except tobacco.*

Delete: New Language on lines 29-34.

1 ~~(h)~~ (i) "Distributor" means: (1) Any person engaged in the business
 2 of selling tobacco products in this state who brings, or causes to be
 3 brought, into this state from ~~without~~ *outside* the state any tobacco prod-
 4 ucts for sale; (2) any person who makes, manufactures, fabricates or stores
 5 tobacco products in this state for sale in this state; or (3) any person
 6 engaged in the business of selling tobacco products ~~without~~ *outside* this
 7 state who ships or transports tobacco products to any person in the busi-
 8 ness of selling tobacco products in this state.

9 ~~(i)~~ (j) "Division" means the division of taxation.

10 ~~(j)~~ (k) "License" means, in addition to the privilege of a licensee to
 11 sell cigarettes or tobacco products in the state of Kansas, the written
 12 evidence of such authority or privilege to so operate as evidenced by any
 13 license issued by the director of taxation.

14 ~~(k)~~ (l) "Licensee" means any person holding a current license issued
 15 pursuant to this act, *or any person whose license expired and who sub-*
 16 *mitted a renewal application which was received by the director prior to*
 17 *expiration of the previous licensing period.*

18 ~~(l)~~ (m) "*Little cigar*" means ~~any roll of tobacco wrapped in leaf to-~~
 19 ~~bacco or any substance containing tobacco and as to which 1,000 units~~
 20 ~~weigh not more than three pounds.~~

21 (n) "Manufacturer's salesperson" means a person employed by a cig-
 22 arette manufacturer who sells cigarettes, manufactured by such employer
 23 and procured from wholesale dealers.

24 ~~(m)~~ (o) "Meter imprints" means tax indicia applied by means of ink
 25 printing machines.

26 ~~(n)~~ (p) (1) "Package" means a container in which no more than 25
 27 individual cigarettes are wrapped and sealed by the manufacturer of cig-
 28 arettes prior to shipment to a wholesale dealer.

29 (2) For the purposes of subsections (u), (v) and (w) of K.S.A. 79-
 30 3321, and amendments thereto, "package" ~~shall have the meaning as-~~
 31 ~~cribed thereto~~ *means the same as provided in 15 U.S.C. §1332(4).*

32 ~~(o)~~ (q) "Person" means any individual, partnership, society, associa-
 33 tion, joint-stock company, corporation, estate, receiver, trustee, assignee,
 34 referee or any other person acting in a fiduciary or representative capacity
 35 whether appointed by a court or otherwise and any combination of
 36 individuals.

37 ~~(p)~~ (r) "Received" means the coming to rest of cigarettes for sale by
 38 any dealer in the state of Kansas.

39 ~~(q)~~ (s) "Retail dealer" means a person, other than a vending machine
 40 operator, in possession of cigarettes for the purpose of sale to a consumer.

41 ~~(r)~~ (t) "Sale" means any transfer of title or possession or both,
 42 exchange, barter, distribution or gift of cigarettes or tobacco products,
 43 with or without consideration.

Delete: New language on lines 18-20.

1 ~~(s)~~ (u) “Sample” means cigarettes or tobacco products distributed to
 2 members of the general public at no cost for purposes of promoting the
 3 product.

4 ~~(t)~~ (v) “Stamps” means tax indicia applied either by means of water
 5 applied gummed paper or ~~heat process~~ pressure.

6 ~~(u)~~ (w) “Tax indicia” means visible evidence of tax payment in the
 7 form of stamps or meter imprints.

8 ~~(v)~~ (x) “Tobacco products” means cigars, cheroots, stogies, periques;
 9 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;
 10 snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other
 11 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings
 12 of tobacco, ~~cigarette wrappers made of tobacco~~ and other kinds and forms
 13 of tobacco, prepared in such manner as to be suitable for chewing or
 14 smoking in a pipe or otherwise, or both for chewing and smoking. To-
 15 bacco products does not include cigarettes or little cigars.

16 ~~(w)~~ (y) “Vending machine” means any coin operated machine, con-
 17 trivance or device, by means of which merchandise may be sold.

18 ~~(x)~~ (z) “Vending machine distributor” means any person who sells
 19 cigarette vending machines to a vending machine operator operating
 20 vending machines in the state of Kansas.

21 ~~(y)~~ (aa) “Vending machine operator” means any person who places a
 22 vending machine, owned, leased or operated by such person, at locations
 23 where cigarettes are sold from the machine. The owner or lessee of the
 24 premises upon which a vending machine is placed shall not be considered
 25 the operator of the machine, nor shall the owner or lessee, or any em-
 26 ployee or agent of the owner or lessee be considered an authorized agent
 27 of the vending machine operator, if the owner or lessee does not own or
 28 lease the machine and the owner’s or lessee’s sole remuneration from the
 29 machine is a flat rental fee or commission based upon the number or
 30 value of cigarettes sold from the machine, or a combination of both.

31 ~~(z)~~ (bb) “Wholesale dealer” means any person who sells cigarettes to
 32 other wholesale dealers, retail dealers, vending machine operators and
 33 manufacturer’s salespersons for the purpose of resale in the state of
 34 Kansas.

35 ~~(aa)~~ (cc) “Wholesale sales price” means the original net invoice price
 36 for which a manufacturer sells a tobacco product to a distributor, as shown
 37 by the manufacturer’s original invoice.

38 ~~(bb)~~ (dd) “Importer” ~~shall have the same meaning ascribed thereto~~
 39 ~~means the same as provided in 26 U.S.C. §5702(l).~~

40 ~~(cc)~~ (ee) “Manufacturer” ~~shall have the same meaning ascribed~~
 41 ~~thereto means the same as provided in 26 U.S.C. §5702(d)(k).~~

42 Sec. 2. K.S.A. 2009 Supp. 79-3302 is hereby amended to read as
 43 follows: 79-3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309,

Delete: New language on line 12.

Session of 2010

SENATE BILL No. 453

By Committee on Federal and State Affairs

1-26

9 AN ACT concerning alcoholic beverages: relating to packaging and ware-
10 housing facility permits.

11

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

13 Section 1. (a) Any manufacturer ~~or~~ supplier of alcoholic liquor or ,
14 cereal malt beverage, whether licensed in this state or any other state, or broker
15 may apply for an annual packaging and warehousing facility permit. The
16 application shall be on a form prescribed by the director and shall include
17 all information the director deems necessary.

18 (b) A packaging and warehousing facility permit shall allow:

19 (1) The transfer of alcoholic liquor or cereal malt beverage to the
20 licensed premises of a packaging and warehousing facility for the purpose
21 of packaging or storage, or both;

22 (2) the sale and transfer from the licensed premises of a packaging
23 and warehousing facility to the licensed premises of a spirits, wine or beer
24 distributor licensed in Kansas or to a Kansas supplier; and

25 (3) the transfer from the licensed premises of a packaging and ware-
26 housing facility to another state.

27 (c) The annual fee for a packaging and warehousing facility permit
28 shall be \$2,500.

29 (d) Each brand and label of alcoholic liquor or cereal malt beverage
30 that is intended for sale to distributors in Kansas and is transported, pack-
31 aged or stored at a licensed packaging and warehousing facility must be
32 registered in accordance with the provisions of K.S.A. 41-331, and amend-
33 ments thereto.

34 (e) The tax imposed pursuant to K.S.A. 41-501, and amendments
35 thereto, shall be paid on alcoholic liquor or cereal malt beverage imported
36 into this state under a packaging and warehousing facility permit only if
37 the alcoholic liquor or cereal malt beverage is sold to a distributor for sale
38 at wholesale in this state and shall be paid by the distributor who pur-
39 chases the alcoholic liquor or cereal malt beverage for sale at wholesale.

40 (f) This section shall be part of and supplemental to the Kansas liquor
41 control act.

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

(f) For purposes of this section, the term "broker" means a person located in this state, other than a retailer, who solicits or accepts orders for alcoholic liquor to be shipped from this state and delivered to residents located outside this state.
[and by relettering the remaining subsections accordingly]

