

SESSION OF 2004

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2682

As Recommended by House Committee on
Taxation

Brief*

HB 2682 would enact a number of requirements for individuals and companies selling cigarettes over the Internet, telephone, or by any other type of mail-order transaction. Such entities selling to Kansas residents by such means would be required to obtain licenses pursuant to the Kansas Cigarette and Tobacco Products Act; would be prohibited from selling cigarettes without valid Kansas cigarette tax stamps; and would be required to register as a retailer for sales tax purposes and collect and remit state and local sales or use taxes.

Sellers would be required to obtain certifications from purchasers confirming that purchasers are of legal age; and that the cigarettes are not intended for consumption by others not of legal age. Sellers would subsequently be required to verify the information provided in such certifications against a commercially available database of governmental records or, in the alternative, obtain a photocopy or other image of valid identifications showing the age or date of birth of purchasers. Sellers further would be required to obtain written statements signed by purchasers certifying age and address and acknowledging that purchasers understand the illegality of signing another person's name and of selling cigarettes to individuals not of legal age.

All invoices, bills of lading, sales receipts and other documents relating to the sales of cigarettes over the Internet or by any other mail-order transaction would be required to contain current, valid retailer Kansas cigarette dealer license numbers; Kansas sales tax registration numbers; and business names and addresses of sellers.

All packages of cigarettes shipped to purchasers residing in Kansas would be required to have "CIGARETTES" printed clearly on all sides of such packages. All such packages also would be required to

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

contain externally visible and easily legible notices stating:

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

Violation of any of the licensure, certification, or certification verification provisions would be deemed a severity level 8, nonperson felony. Violation of any of the other requirements would be deemed a misdemeanor punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

The Department of Revenue would be required to publish a monthly list of active cigarette and tobacco licensees.

Finally, additional language would require the Department to seize counterfeit cigarettes, including cigarettes that have false manufacturing labels; and packages bearing counterfeit tax stamps.

Background

Proponents included Representative David Huff, the Department of Revenue, RJ Reynolds, Phillip Morris USA, the Petroleum Marketers and Convenience Store Association, the Kansas Motor Carriers Association, the Kansas Licensed Beverage Association, and the Tobacco Free Kansas Coalition. Representative Huff noted that the bill was developed in part as a result of a “working group” established as a result of an interim study by the Special Committee on Assessment and Taxation.

A fiscal note indicated that additional cigarette and use tax receipts would be expected, but the amount could not be quantified. Additional revenues also would be expected from retailers license fees

to the extent that remote sellers would be encouraged to register, though that amount also could not be quantified.

Cigarettes have been subject to sales taxation (as well as the cigarette tax) since 1961.