

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:30 A.M. on February 8, 2008 in Room 519-S of the Capitol.

All members were present except:

Representatives Davis - Excused  
Representative Owens - Excused  
Representative Peck - Excused  
Representative Whitham - Excused

Committee staff present:

Chris Courtwright, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Ryan Hoffman, Legislative Research Department  
Scott Wells, Office of Revisor of Statutes  
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Ron Hein, Reynolds American, Topeka  
Lisa Benlon, American Cancer Society, Johnson County  
Corrie Edwards, KS Health Consumer Coalition, Topeka  
Terry Roberts, Executive Director, KS Nursing Association  
Mary Jayne Hellebust, Tobacco Free Kansas Coalition  
Paula Marmet - Director, Office of Health Promotion, KDHE, Topeka  
Linda De Coursey, American Heart Association, Topeka  
Eric Donaldson, United States Tobacco, Texas  
Jeff Martin, Armor Amusement, Kansas City Business Rights Coalition  
Patrick Hubbell, Cigar Association of America, Topeka  
Karl Peterjohn, Kansas Taxpayers Network  
Tom Palace, Petroleum Marketers and Convenience Store Assoc., Topeka  
Whitney Damron, Swisher International, Inc.

Written Only

April Holman, KS Action for Children, Topeka  
Michelle Bernth, American Lung Assoc. Of the Central States  
Chad Austin, Kansas Hospital Association  
Dan Morin, Director of Governmental Affairs, KMA  
Cynthia Smith, Sisters of Charity of Leavenworth Health System  
Dr. Phil Bradley, Kansas Licensed Beverage Assn.  
Dr. James Hamilton, Kansas Cancer Partnership, Topeka  
Alan Cobb, Americans for Prosperity  
John Bottenberg, Phillip Morris  
Nizar Ali, Discount Smokes  
Patti Solomon, Smoke EEZ  
Jerry D. Davidson, Crescent Oil Company, Inc.

Others attending:

See attached list.

The following bill introductions were requested:

Representative Bethel requested a bill introduction regarding taxing authority for Barton county roads. Chairman Wilk moved the request. Representative Carlson seconded. The motion carried.

Representative Sloan requested a bill introduction concerning income taxation relating to credits, contributions of professional time by certain physicians and dentists. Chairman Wilk moved the request for introduction, seconded by Representative Carlson. The motion carried.

Representative Holland requested a Committee bill regarding counties preparation of back-up plans

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regarding property valuation data. Representative Goyle seconded the motion. The motion carried.

Representative Lukert requested a bill introduction for taxing authority for Brown county to increase sales tax for jail construction.

The Chairman continued the hearing from yesterday on **HB 2737**

**HB 2737 -- An act increasing the rate of tax upon cigarettes and tobacco products and creating a health reform fund.**

Ron Hein, Reynolds American, provided the history of past tax increases and spoke about the effect additional taxes would have on Kansas retailers; cross border threat; regressivity; New Jersey Experience and the Anti-Tobacco group projections. He distributed two memorandums: 1) a multi-state map, reflecting estimated losses from 50-cent cigarette tax increase, and 2) a comparable chart, (Kansas and Missouri), reflecting taxes paid on cigarette sales, since the 2002 Kansas Tax increase (Attachment 13).

Lisa Benlon, stated the state of Kansas is spending \$927 million in annual health care costs directly caused by smoking. The smoking-caused productivity losses in Kansas are \$863 million (Attachment 14). She answered two questions raised at yesterday's hearing:

- 1) Kansas would not necessarily see a decline in the Master Settlement Agreement (MSA) funds, if less cigarettes were sold in Kansas, since the state MSA revenues are based on a percentage of the volume of cigarettes sold nationwide - not state volume
- 2) Proceeds from the MSA funds are placed in the Children's cabinet, and used for early childhood programs.

The Children's Cabinet has provided \$1 million on the smoking cessation program in Kansas, while the Center for Disease Control states Kansas should be spending \$32.1 million annually to be effective in cessation/prevention programs.

Corrie Edwards, Executive Director, Kansas Health Consumer Coalition, addressed the regressivity issue discussed yesterday. She said that in general, cigarette taxes are regressive. On average, low-income taxpayers pay more of their income in these taxes than upper-income families. However, the harm from smoking are regressive as well. Lower-income families already suffer disproportionately from smoking-caused disease, disability, death, and costs. Cigarette tax increases, offer one of the best ways to help low-income families who are currently suffering from direct and secondhand smoking (Attachment 15).

Terry Roberts, Executive Director, KS Nursing Association, appeared in support of **HB 2737** because it will decrease consumption of tobacco products. She said in 1998 and 1999, when the legislature considered an excise tax increase, she held various positions in the Tobacco Free Kansas Coalition. Through ninety-four studies from the Kansas Health Institute, they assured her that the ranges used to determine what amount of taxes the state will collect, despite what they hope will be a decrease in use of cigarette and tobacco products are accurate. She said she would provide testimony at a later date (no written testimony).

Steve Brunken, Kansas Department of Revenue, explained that during the compilation of figures for the fiscal note, they considered elasticity, tax erosion, cross state sales, and the lag factor. Chris Courtwright added that the current \$.79 cent a pack rate raises about \$113-\$115 million dollars. The assumption is that the next \$.50 proposed increase would raise only \$43 million dollars. There is significant slippage due to consumer behavior factored into the fiscal note. This is just on sale of cigarettes, with no other sales projected.

Mary Jane Hellebust, Tobacco Free Kansas Coalition, rose in support of the bill. She gave the demographics of the average smoker. She said that statistics show that \$430,000 Kansans are smoking, and 56% have tried to stop smoking in the past year; 40 % have income less than \$15,000; 28% have less than a high school education; 22% are disabled; and 36% do not have health insurance. Raising the cost is not regressive because low-income people are 4 times more likely to stop smoking or cut back (Attachment 16).

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Dick Morrissey spoke on behalf of Paula Marmet, Director, Office of Health Promotion, KDHE, whose testimony was distributed. He also distributed a 2006 Status Report on *Tobacco Use in Kansas*, which provides data and graphics for the Committee's perusal. He said that the toll of tobacco in Kansas remains very high and each year, nearly 3,900 adult Kansans die from cardiovascular disease, cancer and respiratory disease from their own smoking. In conclusion, he said seven out of ten Kansans support a tax increase on cigarettes, which includes smokers and non-smokers ([Attachment 17](#)).

Linda De Coursey, American Heart Association, Topeka, testified in support of the bill. She said that it is tough to be a smoker today as the culture weighs the fairness and health concerns of tobacco use. She said that smoking-caused health costs and productivity losses per pack sold in Kansas is \$11.66, and right now we collect \$.79 cents of pack, thus we are supporting the tobacco industry ([Attachment 18](#)).

The Chairman called attention to the following written testimony contained in ([Attachment 19](#)):

- 1) April Holman, KS Action for Children, Topeka
- 2) Michelle Bernth, American Lung Assoc. Of the Central States
- 3) Chad Austin, Kansas Hospital Association
- 4) Dan Morin, Director of Governmental Affairs, Kansas Medical Society
- 5) Dr. James Hamilton, Kansas Cancer Partnership, Topeka
- 6) Cynthia Smith, Sisters of Charity of Leavenworth Health System

Discussion followed regarding:

- 1) Formula for distribution of funds as outlined in the Kansas Health Reform Authority proposal and whether the Legislature has authority to determine how funds are allocated.
- 2) Similarity between [HB 2737](#) and [SB 542](#)
- 3) Dependency of Health Policy Recommendations on the proposed increase in taxes.

The following questions were posed:

- 1) Was there consideration given to setting policy guidelines and determining the dollar amount necessary to direct a sufficient amount of money to every Kansas High School for smoking prevention or cessation programs?
- 2) Are there any organizations that have considered putting forth the effort to make tobacco products illegal in Kansas?
- 3) Is there data that reflects a particular point at which the tax becomes so onerous to users that it impacts the ability to generate the revenue to fund the health programs?
- 4) Is there more money in the Health Reform Proposal that is allocated to smoking cessation programs?

The Chairman observed that many Committee members believed that more than the current allocation of \$1 million dollars, from the Master Settlement Agreements, should be spent on smoking cessation programs. He asked if any of the list of conferees could explain the rationale for that decision. He also suggested at the conclusion of the hearing, they might want to draft a letter to the Appropriation Committee advising them of the two day hearings, at which time the Committee recommends that they re-direct some of the funds toward this worthwhile project.

At this time, the Chairman turned attention to the opponents of the bill.

Eric Donaldson, United States Tobacco, Texas, said that instead of the proposal before them they should consider a "unit" based tax, like one laid out in [HB 2512](#) which was introduced last year. It treats all products the same and raises more revenue than its' "price" based counterpart ([Attachment 20](#)).

Patrick Hubbell, Cigar Association of America, said the tax increase in [HB 2737](#) simply threatens to put many cigar retailers in Kansas out of business. Today cigars are taxed by the state of Kansas at 10% of the wholesale price and would increase to 57% of the wholesale, a 470% increase. In conclusion, he said that the increased taxes ensure that Missouri tax coffers would grow as a result of across border sales([Attachment 21](#)).

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Karl Peterjohn, Kansas Taxpayers Network (KTN) , (Attachment 22) reviewed the history of taxes on cigarettes in 2002 compared to revenue gained. He explained the rationale for the data. KTN's position is that Kansans are already overtaxed, which places undue hardship on taxpayers and well as makes Kansans less competitive with neighboring states.

Tom Palace, Petroleum Marketers and Convenience Store Association spoke to the Committee about the concern of business owners located on the borders of the state. He said that tax increases will hurt small businesses, as consumers go across the border, because profit of sales for ancillary sales, such as candy, pop and fuel, have a significant impact on profitability of a small business. (Attachment 23).

Whitney Damron, Swisher International, Inc., testified that they respectfully find the imposition of a 470% increase in the existing tax on "Other Tobacco Products" as proposed in **HB 2737**, to be an outrageous recommendation from the Kansas Health Policy Authority. He said if the Legislature determines that the state should increase taxes to expand access to health care, then they believe the costs should be born by all Kansans and not assessed through targeted tax increases on cigarette and tobacco users. If this program is good public policy, then all Kansans should share in its cost, not the 20 percent of adults who lawfully consume tobacco products. His testimony included a memorandum containing data from the United Health Foundation on "America's Health Rankings" (Attachment 24).

The Chairman called attention to the following written testimony contained in (Attachment 25):

- 1) John Bottonberg, Phillip Morris
- 2) Jeff Martin, Armor Amusement
- 3) Alan Cobb, Americans for Prosperity
- 4) Dr. Phil Bradley, Kansas Licensed Beverage Assn
- 5) Jerry Davidson, Crescent Oil Company
- 6) Patty Solomon, Smoke-EEZ, Kansas City
- 7) Nizar Ali, Discount Smokes, Bonner Springs

Discussion followed regarding percent of taxes paid on cigarettes and tobacco products and loss of motor fuel taxes due to consumers purchasing fuel elsewhere.

In response to the question of why cigarettes are taxed per package, while other tobacco products are taxed at a percentage rate, staff reviewed the history of cigarette taxes from the 30's through the initiation of taxes on other tobacco products in the 70's.

The Chairman reviewed Committee requests for additional information: Dr. Marcia Niesen agreed to provide information on the smoking cessation programs brought forward by the Children's Initiative Council, which is funded by the Master Settlement Agreement. The data should include; current usage of the funds, how much has been spent and what are the results.

A second question was raised concerning the premise of the original tobacco suit and the amount the state of Kansas was awarded. Are actual expenses being covered by funds from the master settlement. It was suggested that perhaps this issue would be a good audit subject.

The Chairman closed the hearing on **HB 2737**.

Announcements were made for Monday Sub-committee meetings.

The meeting was adjourned at 11:30 A. M. The next meeting is February 12, 2008.