

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Bill Mason at 1:30 p.m. on February 18, 2003 in Room 313-S of the Capitol.

All members were present except: Representative Judith Loganbill

Committee staff present: Russell Mills, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee: **Proponents:**

Bart Freedman, Attorney, Brown & Williamson Tobacco
(no written testimony)
Prof. Dwight Lee, PhD, University of Georgia
Dan Tri, Star Fuel Centers, Inc., Overland Park, KS
Mark Boswell, Midway Oil, Wichita, KS
Ricky Voss, John's Cigarette Outlets, Merriam, KS
William J. Murphy, Wilcops, Inc., Atchison
Al Alfano, Bassman, Mitchell & Alfano, Wash.D.C.
(written testimony only)

Opponents:

Julie Hein, R. J. Reynolds Tobacco
John Bottenberg, Phillip Morris, U.S.A.

Others attending: See Attached

HB 2042 - Prohibitions on cigarette manufacturers requirements of retailers of cigarettes.

Bart Freedman, Brown & Williamson, distributed the testimony of Al Alfano, Bassman, Mitchell & Alfano. He expressed support of **HB 2042**, stating the bill is designed to provide retailers in the State of Kansas the freedom to manage their stores in the manner best suited to their business (Attachment 1). He explained the importance of shelf and display space to the small retail business. The bill would prohibit manufacturers from conditioning discounts and other promotional incentives on the retailer's agreement to restrict the display, advertising and promotion of competing brands.

Dr. Dwight Lee, University of Georgia, appeared in favor of **HB 2042** (Attachment 2). The bill would make it illegal for one manufacturer to withhold discounts to retailers unless they impose restrictions on the shelf and display space available to competing brands. The bill leaves cigarette manufacturers free to make discounts available. It does nothing to prevent manufacturers from paying retailers for promotional displays and any amount of shelf space they want - as long as a manufacturer doesn't restrict the retailer's ability to sell display and shelf space to other manufacturers.

Dan Tri, Star Fuel Centers, Inc., rose in support of **HB 2042** (Attachment 3). The bill would allow retailers of cigarettes to promote and market all brands of cigarettes fairly. Retailers would keep more sales in the state by having more promotions helping to eliminate some of the cross border purchasing. Other products in the retail business have space allowance contracts, however none are controlled by any one company. He urged passage of the bill.

Mark Boswell, Midway Oil, spoke favorably of **HB 2042** (Attachment 4). Midway Oil is the largest independent retailer in Wichita and currently does not participate in Philip Morris discount programs. He believed that it was in his customers best interest for owners to have the freedom to display and advertise cigarettes in their own store. He urged the Committee to pass the bill in order that everyone may compete on an even basis.

Rick Voss, John's Cigarette Outlet, rose in support of **HB 2042** (Attachment 5). He stated that the bill provided a level playing field for all manufacturers who sell cigarettes. He presented one hundred eighty-two signed declarations from retailers that supported legislation to prohibit manufacturers from limiting retailers from displaying manufacturers' cigarettes in the way they want to promote and display them. (One copy is attached and remainder are on file in 170-W, office of Representative Bill Mason, Chairman of the Federal and State Affairs Committee).

William J. Murphy, Wilcops, Inc., voiced his support of **HB 2042**. He expressed concern over the contract restrictions and business practices of Philip Morris regarding shelf space in his store and the impact that has on their business (No written testimony). He urged passage of the bill.

Discussion followed regarding; specifics of the restrictive Philip Morris contract, industries where competition for shelf space is applied and changes that would occur with the enactment of the bill.

Julie Hein, Hein Law Firm, Chartered, representing R .J. Reynolds Tobacco Company, appeared in opposition to **HB 2042** (Attachment 6). R. J. Reynolds has joined Brown and Williams in a lawsuit against Philip Morris regarding restraint of trade, however they believe that the actions that are occurring are governed by applicable federal law. **HB 2042** is detrimental to the solution of the problem and new legislation would result in new litigation, that would be costly and time consuming to the parties and taxpayers of the state.

John C. Bottenberg, Philip Morris USA, voiced his opposition to **HB 2042** (Attachment 7). He stated that the bill would severely limit the terms on which retailers are able to enter into merchandising agreements with cigarette manufacturers.

Discussion followed regarding: enforcement of current legislation regarding restraint of trade and the difference between the bill and the on-going anti-trust lawsuit.

The hearing was closed on **HB 2042**. The meeting adjourned at 2:50 p.m. with the next meeting scheduled for February 19, 1:30 p.m., room 313-S at the Capitol.

CONTINUATION SHEET