

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on March 7, 1994 in Room 526-S of the Capitol.

All members were present except: Representative Kenny Wilk, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Jim Conant, Chief Administrative Officer
Alcoholic Beverage Control Division
Judy Donovan, Director of Systems and Resource
Development, Alcohol and Drug Abuse Services,
Department of SRS
Alan F. Alderson, Legislative Counsel, The Tobacco
Institute
Betty Dicus, Chairman of the Board, American Cancer
Society
Brian Gilpin, American Heart Association
Dr. Steven Potsic, M.D., M.P.H., Director of Health
Mike Dalsing, Wyandotte Music Co., Inc.
Don Moler, General Counsel, The League of Kansas
Municipalities

Others attending: See attached list

The Chairperson opened the hearing on HB 3048.

Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division, testified in support of HB 3048 stating the bill was introduced at the request of the Department of Revenue in response to federal legislation regarding enforcement of the cigarette and tobacco products age laws. The federal law does not require any specific changes to Kansas statutes, rather the new requirement is that Kansas enforce the existing state law which prohibits the sale and distribution of cigarettes and tobacco products to persons under 18 years of age and show state is monitoring enforcement. (See Attachment #1)

It was asked what amount of funds the state would lose if they did not comply with the federal law.

Mr. Conant responded, \$860,000 in grant money for substance abuse prevention/substance abuse. The Block Grant would be reduced by 10% in 1994, 20% in 1995, and 30% in 1996.

Judy Donovan, Director of Systems and Resource Development, Alcohol and Drug Abuse Service, Kansas Department of Social and Rehabilitation Services, testified in support of HB 3048 stating it has a major impact on the state's substance abuse program and the budget. In 1993 Congress added the Synar Amendment to the Federal Alcohol and Drug Block Grant. This amendment requires states to develop and conduct "scientific studies" to monitor local compliance with the State's tobacco laws for youth and to develop public education efforts. HB 3048 will help in meeting the federal guidelines. (See Attachment #2)

Alan F. Alderson, representing The Tobacco Institute, a national association of tobacco product manufacturers testified in support of HB 3048. Passage of HB 3048 will enable the state of Kansas to prevent the loss of federal funds which, in 1993, totalled more than \$12 million. It would strengthen existing laws which prevent minors from purchasing and receiving tobacco products. As drafted, this bill would make it illegal, for the first time, for a minor to possess tobacco products. He requested the Committee to consider amending HB 3048, however, to eliminate the outright ban of the sale of cigarettes through vending machines. It is believed

there are effective methods of regulating the sale of cigarettes through vending machines without outright prohibition. These include mandatory remote control lockout devices, purchase of and use of tokens or mandatory direct supervision by physical presence and observation. (See Attachment #3)

Betty Dicus, American Cancer Society, testified in partial opposition to HB 3048. The American Cancer Society opposes the part of this bill that would prohibit local governments from enacting tobacco control ordinances that suit their own communities and maybe more stringent than state law. As a number of local tobacco control ordinances has increased dramatically over the last few years, the tobacco industry has begun to feel the pressure. As a result, they requested preemption of local ordinances as one mechanism for protecting the sale of their product. The American Cancer Society opposes the passage of that part of HB 3048 that preempts local ordinances. (See Attachment #4)

Brian Gilpin, American Heart Association and Americans For Non-Smokers Rights, testified in opposition of HB 3048. Mr. Gilpin read testimony submitted by George Potts, Ph.D., Chairperson, Wichita-Sedgwick County Board of Health that stated HB 3048 would pre-empt any action that has been taken or wish to take in Wichita to regulate the sale of cigarettes and other tobacco products. Not only does this bill regulate the sale of cigarettes it also pre-empts our regulation of the marketing, advertising, licensing, distribution, sampling, promotion or display of these products. (See Attachment #5)

Mr. Gilpin also distributed testimony on preemption. (See Attachment #6)

Steven R. Potsic, M.D., M.P.H., Director of Health, Department of Health and Environment, testified opposing HB 3048 unless the preemption clause (New Section 15) which would prevent local ordinances to reduce sale of cigarettes and tobacco products to minors either is amended or deleted. (See Attachment #7)

Mike Dalsing, Wyandotte Music Co., Inc., testified opposing HB 3048 stated there are studies showing that most minors purchase cigarettes from the same places that adults do, namely convenience stores, grocery stores, and other retail outlets where a sympathetic adult might buy the tobacco product for the minor or better yet a minor working at the store will sell to a peer. Since the laws already address this problem, it is felt that stricter enforcement of existing laws would be far more likely to keep tobacco products out of the hands of minors than the total ban of cigarette vending machines could ever do. Banning cigarette vending machines will cause hardships on many businesses, their employees, and the state of Kansas itself, while not doing a thing to stop the youth of Kansas from being able to purchase tobacco products. (See Attachment #8)

Don Moler, General Counsel, The League of Kansas Municipalities, opposed HB 3048, a bill which modifies regulations concerning cigarettes and tobacco products and removes the ability of local governments to legislate in this area. The League opposes HB 3048 specifically because it preempts local regulations concerning cigarettes and the use of tobacco products. (See Attachment #9)

Ronald R. Hein, legislative counsel for R. J. Reynolds Tobacco Company, testified stating that R. J. Reynolds generally supports the concepts contained in HB 3048. R. J. Reynolds has on its own and in conjunction with the Tobacco Institute, spent considerable time and resources in an effort to reduce if not eliminate youth smoking in America. The tobacco industry, on a voluntary basis, has distributed to retailers in the nation placards, stickers and brochures regarding the program "It's the Law". This program encourages retailers not to sell cigarettes and tobacco products to minors and to post placards at their place of business announcing that they do not sell cigarettes and tobacco products to minors. (See Attachment #10)

The Chairperson stated he understood members of the committee may have a proposed amendment to HB 3048 and the committee would look at the amendment on Thursday and take final action on the bill at that time.

Jack Stevens, President, Kansas Automatic Merchandising Association, provided written testimony opposing HB 3048 because it seeks to ban all vending of tobacco products and there is no evidence to indicate that eliminating cigarette vending machines will have any impact on the number of minors purchasing cigarette and tobacco products from convenience stores and other retail establishments. (See Attachment #11)

Mary Torrence, Revisor of Statutes, gave a briefing on HB 2824. This would change the existing liquor laws to allow Class A and Class B clubs to use reciprocal agreements.

Representative David Heinemann, testified in support of HB 2824 stating the Southwind Country Club in Garden City is a "for profit" country club. Most country clubs are non-profit. Regulations and Kansas statutes prevent "for profit - Class B clubs" from being reciprocal with "non-profit - Class A clubs". HB 2824 would allow Class A and Class B clubs to be reciprocal. (See Attachment #12)

Representative Heinemann suggested an amendment which is: On lines 18 and 34 add a "," after clubs and on lines 19 and 35 add a "," after restaurants.

It was asked how many Class A and Class B clubs there are in Kansas. There are 364 Class A clubs and 339 Class B clubs.

Representative Standifer moved and Representative Empson seconded a technical amendment to change on lines 18 and 34 and add a “,” after clubs and on lines 19 and 35 to add a “,” after restaurants. The motion carried.

Representative Lahti moved and Representative Benlon seconded that HB 2824 be moved out favorably as amended. The motion carried.

Representative Lahti moved and Representative Kline seconded to introduce legislation that deals with government ethics and limitations on lobbyists. The motion carried.

Chairperson Graeber stated he would request that a bill be introduced relating to income taxation; concerning refunds of income tax with interest paid on federal military retirement benefits for tax years 1984 through 1991. (See Attachment #13)

Representative Sebelius moved and Representative Benlon seconded to accept as a committee bill relating to income taxation; concerning refunds of tax with interest, on federal military retirement benefits for tax years 1984 through 1991 to be paid over a three year period and would set up a retirement fund. The motion carried.

Representative Lahti moved and Representative Cox seconded to introduce a bill regarding video lottery . The motion carried.

The Chairperson stated that Representative Snowbarger’s proposal constitutional amendment would have a hearing on March 8 and a hearing on SCR 1608 would be held on March 9.

The meeting adjourned at 3:10 PM and the next meeting will be March 8.

Cindy S. Fletcher, provided testimony opposing HB 3048. (See Attachment # 14)

Date: 3/7/94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Jarin, Mercedes	observer	Topeka
Ron Hein	RQ 11	Topeka
Julie Hein	RRA	Topeka
Donnie Durjanic	Am. Cancer Society	Topeka
Betty Dicus	Am Cancer Soc.	Topeka
Ken Bahr	Anheuser-Busch	"
Bill Sneed	STC	TOPEKA
Frances Kastner	Ks Food Dealers Assn	"
Phil Wilkos	ABC	"
Joan C. Bottenberg	Philip Morris - USA	" 11
MATT PALUSZEK	PHILIP MORRIS USA	OVERLAND PARK
Alan Anderson	TOBACCO INSTITUTE	TOPEKA
Mike Dalsing	K.A.M.A.	K.C.
Doug Smith	KAMA	Topeka
KEVIN ROBERTSON	KANSAS LODGING ASSN.	TOPEKA

Date: 3/7/94

FEDERAL and STATE AFFAIRS COMMITTEE

[illegible]

STATE OF KANSAS



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Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: The Honorable Clyde Graeber, Chairperson
House Committee on Federal & State Affairs

FROM: Jim Conant, Chief Administrative Officer
Alcoholic Beverage Control Division

DATE: March 7, 1994

SUBJECT: House Bill 3048

Thank you for the opportunity to appear before the committee today in support of House Bill 3048. This bill was introduced at the request of the Department of Revenue in response to federal legislation regarding enforcement of the cigarette and tobacco products age laws. The federal law, part of the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) Reorganization Act, requires states to have in place and enforce laws prohibiting the sale and distribution of cigarettes and other tobacco products to persons under 18 years of age. States which fail to achieve certain compliance standards will be subject to reductions in federal substance abuse block grants.

House Bill 3048 was requested in order to identify and bring for your consideration a number of issues which relate to regulation of the tobacco industry and enforcement of the age laws. It is important to note that the federal law does not require any specific changes to Kansas statutes. Rather, the new requirement is that Kansas enforce the existing state law which prohibits the sale and distribution of cigarettes and tobacco products to persons under 18 years of age. The current age restrictions, along with licensing requirements, are part of the tax laws covering these products. Historically, there has been no statewide priority placed on enforcement of the age laws. The Department of Revenue, in cooperation with the Department of Health and Environment and the Department of Social and Rehabilitative Services, is examining ways to comply with the federal enforcement standards without significant cost increases or duplication of effort. Research indicates that there is merit in limiting early access to tobacco products and the state already devotes certain resources towards prevention and education. Initial compliance testing, however, finds that less than 30% of licensed retailers actually comply with the underage sale restrictions. What we are lacking at this point is a clearly defined enforcement policy.

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Atch #1

The issues raised in House Bill 3048 can be categorized into two groups as follows:

Regulatory/enforcement issues

- General upgrade of Article 33, including consolidation of acts and modernization of tax collection procedures.
- Authorize administrative fines as penalty for licensees who violate the act (New Section 14). Current law only allows for suspension or revocation of license.
- Allocate license fees and fines for use in support of enforcement efforts (Section 13 & New Section 14). Shifts approximately \$30,000 per year from SGF to proposed cigarette and tobacco products regulation fund.
- Establish false ID defense for licensees (Section 8). Proposed defense is patterned after similar provisions for liquor licensees, recognizing that underage persons will attempt to purchase cigarettes using false identification documents.

Policy Issues

- Ban all vending machine sales of cigarettes and tobacco products (Section 7). Reduces license fees by approximately \$17,000 per year.
- Expand underage sale restrictions to include furnishing by non-licensees (Section 7). This would make it illegal for anyone to furnish cigarettes and tobacco products to underage persons, regardless of whether the products are sold or given without cost.
- Prohibit underage possession of cigarettes and tobacco products (Section 7). This would make it illegal for persons under age 18 to even be caught in possession of these products.
- Impose state regulatory controls on local units of government (New Section 15). As introduced, the bill would restrict the ability of local units of government to impose stricter regulatory controls than those authorized by state law.

The Department recommends two additional amendments to rectify oversights in the original draft. On page 4, at line 11, the definition of "tobacco products" references a statute which is repealed by the bill. The actual definition, as currently found in K.S.A. 79-3370, should be included in place of the statutory reference. Also, an additional subsection should be added to Section 8, establishing an affirmative false ID defense for the purposes of administrative hearings on licensee violations.

Thank you for your careful consideration of these issues. I would be happy to answer any questions the committee may have.

**KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
DONNA L. WHITEMAN
SECRETARY**

**HOUSE BILL 3048
AN ACT CONCERNING CIGARETTES AND TOBACCO PRODUCTS;
RELATING TO REGULATION AND TAXATION THEREOF;
PROHIBITING CERTAIN ACTS AND PROVIDING PENALTIES FOR VIOLATIONS

BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
MARCH 7, 1994**

SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

Madame Chair and members of the committee, I am testifying in support of House Bill 3048 on behalf of Secretary Whiteman.

House Bill 3048 has a major impact on the State's substance abuse program and our budget. In October 1993, the Federal Center For Substance Abuse Prevention/ Substance Abuse and Mental Health Services Administration and Congress added the Synar Amendment to the Federal Alcohol and Drug Block Grant.

This amendment requires States to develop and conduct "scientific studies," to monitor local compliance with the State's tobacco laws for youth and to develop public education efforts. If Kansas is not in compliance this year, the Substance Abuse Block Grant will be reduced by ten (10) percent in 1994; 20 percent in 1995; and 30 percent in 1996. The result will be a reduction in 1994 of \$870,000 for the continuum of community-based prevention and treatment services.

We have an excellent relationship with agencies such as Alcoholic Beverage Control and they have been invaluable in developing a plan to help us meet the Federal tobacco law enforcement requirements. House Bill 3048 will assist us in meeting the Federal guidelines.

The Synar Amendment also requires that we develop public education strategies on the risks of tobacco for Kansas youth. Recent SRS studies show that the use of tobacco and tobacco products by youth is increasing for the first time since the 1980's. The use of tobacco by youth has major social and health implications for

youth. Tobacco is a gateway for other drug use such as alcohol, marijuana and cocaine. SRS/Alcohol and Drug Abuse Services, the Kansas State Board of Education's Drug-Free Schools and Communities Program, the Kansas Department of Health and Environment's Tobacco-Free Coalition and the Alcoholic Beverage Control have formed a partnership to address these public education issues.

We urge you to support House Bill 3048.

Testimony Presented By Judy Donovan, Director of Systems and Resource Development, Alcohol and Drug Abuse Services, (913) 296-3925.

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3/7/94

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OF COUNSEL

DANIEL B. BAILEY

MEMORANDUM

TO: Members of House Federal and State Affairs Committee

FROM: Alan F. Alderson, Legislative Counsel,
The Tobacco Institute

RE: House Bill No. 3048

DATE: March 7, 1994

I am appearing before you today on behalf of The Tobacco Institute, a national association of tobacco product manufacturers. We appear in support of House Bill No. 3048.

House Bill No. 3048 is intended by the Alcoholic Beverage Control Division of the Kansas Department of Revenue to properly implement the so-called Synar amendment to the Alcohol, Drug Abuse and Mental Health Administration Reorganization Act of 1992 (ADAMHA), which will be implemented under regulations being proposed by the Department of Health and Human Services. The primary thrust of the federal statute and regulations is to require states to stringently enforce laws preventing youth access to tobacco products. Although we believe that, in some areas, this bill would go farther than we anticipate HHS regulations will require, we have no strong disagreement with the provisions of this bill and believe that, as drafted, it will allow the State of Kansas to meet federal guidelines for compliance over the next several years.

The tobacco industry has been publicly criticized for allegedly seeking to promote use of tobacco products by minors. Let me go on record here today as saying that The Tobacco Institute and its members are asking you to pass legislation which will make it substantially more difficult for our State's youth to obtain and use tobacco products.

Passage of HB 3048 will enable the State of Kansas to prevent the loss of federal funds which, in 1993, totalled more than \$12 million. It would substantially strengthen existing laws which prevent minors from purchasing and receiving tobacco products. As drafted, this bill would make it illegal, for the first time, for a minor to possess tobacco products.

FISA
3-7-94
Atch #3

We believe it is important that the authority to regulate the sale of and purchase of tobacco products by minors be vested in the Department of Revenue -- an agency which is already licensing and regulating the sale of tobacco products, and has the capability of enforcing it through its Division of Alcoholic Beverage Control. We also believe it is important for this law to be uniform throughout the state so that all of our citizens and the enforcing agency will know what the law is in each jurisdiction and be able to properly enforce it. For example, if local jurisdictions were able to absolutely prohibit sampling or prevent the display of tobacco products in a manner which is inconsistent with state law, it would become impossible for the enforcing agency to effectively police and enforce legitimate prohibitions.

We would ask this Committee to consider amending HB 3048, however, to eliminate the outright ban of the sale of cigarettes through vending machines. We believe there are effective methods of regulating the sale of cigarettes through vending machines without outright prohibition. These include mandatory remote control lockout devices, mandatory purchase of tokens from retail clerks or mandatory direct supervision by physical presence.

Again, I would urge you to support HB 3048, and I am very happy to be on record as supporting a measure which will make it very difficult for the youth of our state to obtain, possess or use tobacco products. At least two states have passed bills already this year to implement the provisions of ADAMHA. We would like to see Kansas adopt HB 3048.

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KANSAS DIVISION, INC.

THERE'S NOTHING MIGHTIER THAN THE SWORD

STATEMENT IN PARTIAL OPPOSITION TO HB 3048
BY THE AMERICAN CANCER SOCIETY
KANSAS DIVISION, INC.

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
MARCH 7, 1994

Mister Chairperson and members of the Committee:

My name is Betty Dicus, and I appear on behalf of the American Cancer Society, Kansas Division, Inc. Thank you for the opportunity to speak with you in partial opposition to House Bill 3048.

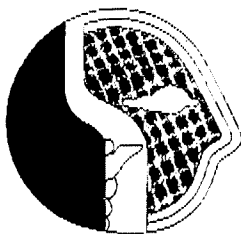
The American Cancer Society opposes the part of this bill that would prohibit local governments from enacting tobacco control ordinances that suit their own communities. As the number of local tobacco control ordinances has increased dramatically over the last few years, the tobacco industry has begun to feel the pressure. As a result, they have turned to preemption of local ordinances as one of their chief mechanisms for protecting their deadly products.

This bill would not only prohibit future ordinances at the local level, it would also supersede any existing ordinances that have been hammered out in the local legislative process. In our view, local governments should be entitled to enact stricter local ordinances to control tobacco use for their citizens, because those local governments are closer to the people they serve than state government.

Stricter local ordinances are not based on social whim, but are based on decades of scientific research which has increasingly documented the health consequences of tobacco use for users and non-users alike. The evidence linking tobacco use with death and disability has been clearly established by many studies over a long period of time. In particular, minors are susceptible to the lure of tobacco and its addictive qualities.

Tobacco use is by far the leading cause of premature death and disability in our society. It is virtually the only legal product in our society that if used as intended by those who sell it, will kill the user. Minors need protection from this product.

The role of tobacco control policy in health care containment -- whether at the national, state, or local level -- cannot be overstated. We urge you not to remove the authority to deal with this problem from local government or to weaken local ordinances. We oppose passage of that part of House Bill 3048 that preempts local ordinances. Thank you for your consideration.



Testimony
House Federal and State Affairs Committee
HB 3048, Regarding Sale of Cigarettes and Tobacco Products
March 7, 1994

Ladies and Gentlemen, the Wichita-Sedgwick County Board of Health appreciates the opportunity to have our testimony presented today as we were unable to be here with you in person.

We wish to speak against HB 3048. This Bill would pre-empt any action we have taken or wish to take in Wichita to regulate the sale of cigarettes and other tobacco products. Not only does this Bill regulate the sale of cigarettes it also pre-empts our regulation of the marketing, advertising, licensing, distribution, sampling, promotion or display of these products.

Such an all inclusive pre-emption by the state in the affairs of Wichita, the state's largest city, is totally unacceptable.

Arguments that cigarette vendors need the same regulation across the state are untenable.

Wichita is a city of 400,000 people, the largest city in Kansas. Our amenities and our problems are both unique. We have little in common with neighboring cities such as Valley Center and Andover, let alone smaller more rural cities across the state. We do not all have the same problems and we do not all need the same solutions. In most cases, such pre-emptive clauses are not in the best interests of Kansans.

In this case, the situation is clear. We need to be able to craft our own ordinances in accordance with Wichita's needs and wishes.

Studies have shown, the most effective public health tool in the prevention of teens taking up smoking addiction, is local control. HB 3048 removes this valuable tool from Kansas communities. We urge you to vote it down.

Thank you,

George D. Potts, PhD
George Potts, Ph.D., Chairperson
Wichita-Sedgwick County Board of Health

(Brian Gilpin)

Wichita-Sedgwick County Department of Community Health
1900 East Ninth Street-Wichita, Kansas 67214-3198 (316)268-8401

F45A
3-7-94
Atch #5

Please oppose preemption!

Special Issue: Preemption

The tobacco industry's leading legislative strategy during the past decade has been the promotion of preemptive state tobacco control laws (Pertschuk and Shopland, 1989; US DHHS, 1993b). Preemption is a mechanism by which a higher level of government (in this case, the state) takes away the power of lesser jurisdictions to regulate a given subject. Preemption in tobacco control has occurred in both the clean indoor air and access to minors arenas (US DHHS, 1993b). States with preemptive tobacco control laws include Florida, Pennsylvania, Virginia, Nevada, Illinois, and Oklahoma, among others.

The success of the tobacco control movement at the local level remains remarkable even in the face of increased tobacco industry opposition to defeat local efforts. In spite of their considerable efforts to defeat these laws, hundreds of strong, comprehensive tobacco control ordinances have passed (Sylvester, 1989; US DHHS, 1993b). The tobacco industry's local opposition has included hiring public relations firms, creating front organizations, disseminating false information, funding referendum and recall campaigns, and occasionally filing lawsuits.

Tobacco policy has succeeded at the local level in part because campaign contributions are relatively unimportant in local races. Local officials are closer to their constituents and tend to be more interested in the voters' views than in the rhetoric of tobacco industry lobbyists. In fact, the use of paid outside lobbyists can backfire locally, where local legislators may resent out-of-towners telling them how to manage their community.

In short, public health advocates have the home field advantage at the local level. As one Tobacco Institute executive put it, "We are under siege [at the local level]" (Matthews, 1990).

Because of its relative weakness at the local level, the tobacco industry turns to its allies in state legislatures to shift the battle to their state level. Tobacco control activists can rarely compete with the industry's campaign contributions, nor can they afford the high-profile professional lobbyists who have greater access to state legislators.

In Virginia, for example, the tobacco industry hired Anthony F. Troy, "a former state attorney general and one of the best-connected lawyers in Richmond. He has walked the hallways of the General Assembly for many years, has access to almost any member of the legislature and calls most by their first names" (Sylvester, 1989) to run a campaign to preempt local tobacco control ordinances. In contrast, the tobacco control advocates "were two lobbyists who don't call many legislators by their first names, and who don't — as Troy does — feel free to scribble amendments on legislators' bills" (Sylvester, 1989).

In Washington State, "tobacco lobbyists face little of the opposition they get in Congress from well-organized, resourceful health groups" (Weisskopf, 1993).

FISA
3-7-94
Atch #6

Tobacco companies "hired nine outside lobbyists, including two former lawmakers...and had three in-house lobbyists join in" (Weisskopf, 1993), compared with only one full-time lobbyist representing health groups. In state legislatures, tobacco money is used for more than campaign contributions: it buys access, friendships, and personal relationships. It buys influence that a volunteer could never acquire.

The industry flaunts its power at the state level. According to Walker Merryman, vice president of the Tobacco Institute, "[A]bout 90 percent of legislation at the state level [adversely] affecting our industry will not be enacted" (Sylvester, 1989).

In some cases, tobacco control advocates have accepted preemption as a temporary compromise in order to gain some statewide advances, hoping to remove the preemption in subsequent years. In reality, of all the states that have adopted preemption in tobacco control, only West Virginia has ever repealed their preemption. Extensive committee hearings make it far easier to stop a bill than to pass a bill in any state legislature. Tobacco companies have used this to their advantage to prevent amending preemptive laws once they are in place.

To play on these desires for a quick, temporary solution, the tobacco industry now attempts to create bills in which preemption is "coupled with smoking restrictions that appear at first glance to be reasonable, but really are riddled with loopholes" (Matthews, 1993). These bills shield legislators by allowing them to tell their constituents that they are addressing tobacco issues, when they are in fact aiding the tobacco industry. They may also lull tobacco control advocates into a false security, perhaps even getting the advocates to lobby for the bill themselves.

In California, a 1991 internal memo from the Smokeless Tobacco Council described a teleconference in which such a strategy was outlined. "[T]he trick to doing this would be that such an act would have to have the 'appearance' of a comprehensive scheme," the memo explained. "[Assembly] Speaker Brown and Chairman Floyd [Chair of the Assembly Governmental Organization Committee] would attempt to make the Tobacco Control Act as close as possible in 'appearance' to the concepts that the anti-tobacco groups were fostering.... [T]he main goal was to seek preemption of smoking restrictions at the local level..." (Kerrigan, 1991).

The language drafted by the industry ultimately would have preempted every aspect of tobacco control: smoking, licensing, vending machines, sampling, and advertising restrictions — in short, anything dealing with the sale, promotion, distribution, and use of tobacco products.

As part of their strategy, the industry had to mask their own involvement as well. "[T]he concept behind the bill was to be that the tobacco companies appeared to be against the bill" (Kerrigan, 1991). Fortunately, tobacco control advocates saw through the deception even before the memo was leaked, and intense media scrutiny, including calls for the Speaker's resignation, caused the bill to flounder.

Today, the tobacco industry often tries to disguise preemption of youth access to tobacco ordinances in subtle ways. Preemption of licensing ordinances, for example, may be hidden in tax laws or in laws licensing tobacco wholesalers. State laws prohibiting selling tobacco to minors can be subsequently interpreted to be implicitly preemptive. Tobacco companies have argued that the state intended to fully occupy the field of regulating tobacco sales with these laws. To avoid this result, state youth access legislation should contain an explicit anti-preemption clause.

In several states, vending machine companies (usually with funding from tobacco companies (Levin, 1991)) have sued communities over cigarette vending machine ordinances, arguing that state law preempts these local ordinances. In most cases, the challenges are based on a theory of *implicit* preemption — laws that do not clearly prevent cities and counties from regulating cigarette vending machines, but may be interpreted later by the courts to do so. Laws licensing vending machines, regulating over-the-counter sales of tobacco, or indicating who is responsible for illegal sales to minors through the machines, are usually used as the basis for these challenges. Fortunately, the courts have upheld almost every vending machine ordinance challenged on the grounds of implicit preemption. In Maryland, however, the Court of Appeals overturned vending machine ordinances in Bowie and Takoma Park, ruling that although state law does not specifically address vending machines, nor explicitly preempt local ordinances, it nevertheless represents a comprehensive scheme regarding tobacco sales issues and therefore fully occupies the field to the exclusion of local ordinances (Tapscott, 1993).

Activists have learned from these and other examples that once enacted, state laws take on a life of their own and may be interpreted differently than the authors and sponsors intend. Clear language and an explicit anti-preemptive clause will protect advocates from unintended consequences. Given the power of the tobacco industry, this is easier said than done.

Fortunately, the procedural issues that make it easier to kill a bill in the legislature can work to our advantage, too. If a stalemate in the legislature develops, where neither health advocates nor the tobacco industry can pass their legislation, we can still work in cities and counties to protect youth.

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

Testimony presented to

Committee on House Federal and State Affairs

by

The Kansas Department of Health and Environment

House Bill 3048

Kansas Department of Health and Environment opposes HB3048 unless the inclusion of the preemption clause (New Section 15) which would prevent local ordinances to reduce sale of cigarettes and tobacco products to minors either is amended or deleted.

Although there is some controversy concerning legislation to protect adults against the destructive behavior of tobacco use and second hand smoke, we must all be in harmony over the issue of our youth and tobacco. Thirty years ago the Surgeon General's Report spoke to the ill-health effects of tobacco use. Less than a week ago the new Surgeon General's Report was issued. "Preventing Tobacco Use Among Young People", targets childhood and adolescence as key opportunities for prevention of more than 400,000 premature deaths which occur each year from tobacco-related causes.

In the report evidence is presented that although smoking among adults has declined, smoking among youth has actually increased over the past decade. At least 3.1 million adolescents are current smokers. Smoking is most common among 17-and 18-year-olds, about 25 percent of these young people smoke. Practically no adult begins smoking. The new smokers are primarily teenagers.

Among the major conclusions of the Surgeon General's report is "most young people who smoke are addicted to nicotine and report that they want to quit but are unable to do so." A second major conclusion is, "The most effective preventive programs are community wide ones that combine education and public policy approaches." The ability to enact community-wide public policy changes is the issue which HB3048 addresses.

HB3048 appears to be legislation which would help reduce youth access to tobacco products, by adding enforcement mechanisms to our present law. The bill contains ingredients, however, that make it unacceptable for pro-health advocates to support. One component is page 11, line 6 stating "it will be unlawful for anyone under 18 to possess or attempt to possess cigarettes." This provision would be impossible to enforce, and would not place the responsibility on those who sell to youth.

The most anti-youth part of this legislation however, is the preemption clause. This clause does not only address the sale of tobacco products to minors in the future, it also addresses the regulation of the sale, marketing, licensing, distribution, advertising, sampling,

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promotion or display of cigarettes and tobacco products. It has been shown in local communities across the nation that the most successful deterrent to youth accessing tobacco products is to have strong local ordinances which empower local officials to enforce those ordinances.

The impact of strengthening youth access to tobacco products laws, has been shown to be overwhelming on the youth initiation to tobacco at local levels. A DePaul University study of Woodridge, Illinois Licensing Law, enacted in 1990, showed an overall smoking reduction by over 50%. Before licensing, 83% of stores sold to 13 year olds after a police warning! After suspending repeat offenders, zero sales were made in back to back tests. Woodridge is the only community to document 100% compliance with tobacco age restrictions; however, significant improvements are recorded consistently when forfeit of licensure occurs at a local level.

Both local and state enforcement is necessary. KDHE applauds the Kansas Department of Revenue, Alcoholic Beverage Control division for their efforts to enforce the provisions of the Synar amendment. We have assurances that they will do what they can to prevent businesses from selling tobacco products to our young people. However, HB3048 states that the Department of Revenue will be solely responsible for enforcement, and preempts the regulation or enforcement by local officials.

Mr. Chairman, and members of the committee, we are addressing a major health concern for our youth. They are becoming addicted to a drug which will cause them serious illness and premature death. This problem does not seem to be going away on its own. As health professionals, parents, grandparents, teachers, and lawmakers we must be able to attack this serious issue at every level; state legislature, city and county councils, town halls, churches, homes and schools.

There is a growing swell of support in local communities to approach this problem, as evidenced by the Wichita City Council Ordinance proposed by community health advocacy groups. A survey funded by the Kansas Health Foundation and conducted by KDHE in Sedgwick County showed that 90 percent of residents believe minors should not be able to buy tobacco products. Even 86% of current smokers who are registered to vote believe the same.

In order to send a clear message that you as a state lawmaker do not intend to tie the hands of communities to protect their youth from the ills of this devastating lifetime addiction, KDHE requests the following amendment to New Section 15:

~~This act expressly preempts~~ *Nothing in this act shall prevent the regulation of the sale, marketing, licensing, distribution, advertising, sampling, promotion or display of tobacco products, or any limitation of competition of tobacco products by any restriction of the use of coupons, discounts, promotional allowances or premiums by any city, or other political subdivision of this state so long as such regulation is at least as stringent as that imposed by this act. In such cases the more stringent local regulation shall control to the extent of any inconsistency between such regulation and this act.*

As the state health agency, KDHE has the responsibility to address the environmental and health causes of disease and death in Kansas. Tobacco use is the leading preventable cause of disease and death in our state, as well as the nation. The question is not, "How do we get our young people to stop smoking?", but instead, how do we help our young people to no longer want to smoke in the first place?" Strict enforcement of youth access laws at all levels is an effective way to tell young people that smoking is not normal behavior. KDHE supports local health departments and city/county councils to enact local ordinances to

further limit youth access to tobacco products. We strongly urge, for the good health of your constituents, that New Section 15 in this legislation, HB3048, be amended or deleted.

Testimony presented by: Steven R. Potts, M.D., M.P.H.
Director of Health
March 7, 1994

Wyandotte Music Company, Inc.

VALLEY POOL LEAGUES
&
N.D.A. DART LEAGUES

508 NORTH 10TH STREET
KANSAS CITY, KANSAS 66102

(913) 281-2612

Voice Mail: 840-8056

COIN OPERATED PHONOGRAPHS
CIGARETTE MACHINES
AMUSEMENT DEVICES

STATEMENT OF MIKE DALSING, WYANDOTTE MUSIC CO., INC. MARCH 7, 1994

To the Honorable members of the House Federal and State Affairs Committee

Mister Chairman and members of the Committee:

Thank you Chairman and members of the committee. My name is Mike Dalsing. I have been in the cigarette vending machine and amusement game business for over twenty years.

As a nonsmoker myself, I certainly agree that we must take steps to maintain the use of tobacco products as a strictly adult privilege, and that the laws prohibiting the sale of cigarettes to minors should be strongly enforced. I do not, however, agree with the government that banning cigarette vending machines is a valid way of keeping cigarettes out of the hands of minors.

To single out a retail source that amounts to less than fifteen percent of total cigarette sales, and to say that by eliminating that source we will stop minors from smoking, seems, at best, unrealistic.

It is my belief, and there are studies showing, that most minors purchase cigarettes from the same places that adults do, namely convenience stores, grocery stores, and other retail outlets where a sympathetic adult might buy the tobacco product for the minor or better yet a minor working at the store will sell to

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a peer. Since the laws already address this problem, I feel that stricter enforcement of existing laws would be far more likely to keep tobacco products out of the hands of minors than the total ban of cigarette vending machines could ever do.

Almost all of the cigarette vending machines that my company has placed, are in businesses that are already age restricted, such as bars and lounges. The main reason that most of these businesses have a cigarette machine instead of selling packs over the counter, is to control theft. If cigarette vending machines were banned, it would cause loss of incomes for these businesses, loss of jobs for the route people that myself and other vendors would have to lay off, and loss of revenues for the State of Kansas for license fees that we are now paying to the State, and all for not, since minors are already excluded from these businesses.

In other businesses where age restriction is not as strict, such as restaurants, there are other measures that can be taken to assure that minors are not allowed access to the cigarette vending machines. There are lockout devices that can be installed on the machine, making them unusable without the approval of an attendant. Much simpler still, the machine can be placed behind a counter where the public does not have direct access to the machine, only an employee of the establishment could operate it.

In closing, I hope that this committee will come to the same conclusions that I have about this legislation. That banning cigarette vending machines will cause hardships on many of the states businesses, their employees, and the State of Kansas itself, while not doing a thing to stop the youth of Kansas from being able to purchase tobacco products.

Thank you Chairman for allowing me to express my concerns to this committee.

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THE LEAGUE
OF KANSAS
MUNICIPALITIES

Municipal
Legislative
Testimony

AN INSTRUMENTALITY OF KANSAS CITIES 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: House Federal and State Affairs Committee

FROM: Don Moler, General Counsel

DATE: March 7, 1994

SUBJECT: HB 3048, Cigarettes, Tobacco Products and Local Powers

The League appears here today to oppose HB 3048, a bill which modifies regulations concerning cigarettes and tobacco products and removes the ability of local governments to legislate in this area. The League opposes HB 3048 specifically because it preempts local regulations concerning cigarettes and the use of tobacco products. The bill provides, in pertinent part, the following language: **"New Section 15. This act specifically preempts the regulation of the sale, marketing, licensing, distribution, advertising, sampling, promotion or display of cigarettes and tobacco products, or any limitation of competition of tobacco products by any restriction of the use of coupons, discounts, promotional allowances or premiums by any city, county or other political subdivision of this state and expressly supersedes any ordinance or resolution by any city, county or other political subdivision of this state that pertains to these matters which is adopted before, on or after the effective date of this act."**

We find this language completely unacceptable as it removes local elected officials from the ability to establish rules and regulations at the local level to control cigarettes and tobacco products in their jurisdictions. We are especially concerned at the attempt to remove authority from the decision-makers at the local level, apparently in an attempt to avoid regulation of tobacco products. We strongly feel that local elected officials should not be preempted from legislating on this issue and are concerned at the attempt to preempt them in this area. We wonder about the hidden agenda when local elected officials are prohibited from making decisions based on their constituents and community's needs.

Thank you for allowing the League to comment on this legislation.

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HEIN, EBERT AND WEIR, CHTD.

ATTORNEYS AT LAW

5845 S.W. 29th Street, Topeka, KS 66614-2462

Telefax: (913) 273-9243

(913) 273-1441

Ronald R. Hein
William F. Ebert
Stephen P. Weir

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

TESTIMONY RE: HB 3048

Presented by Ronald R. Hein
on behalf of

R. J. REYNOLDS TOBACCO COMPANY

March 7, 1994

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for R. J. Reynolds Tobacco Company.

RJR generally supports the concepts contained in HB 3048. RJR has, on its own, and in conjunction with the Tobacco Institute, spent considerable time and resources in an effort to reduce if not eliminate youth smoking in America.

The tobacco industry, on a voluntary basis, has distributed to retailers in the nation placards, stickers and brochures regarding the program "It's the Law". This program encourages retailers not to sell cigarettes and tobacco products to minors and to post placards at their place of business announcing that they do not sell cigarettes and tobacco products to minors.

The background of HB 3048 is that Congress passed an amendment to the Alcohol Drug Abuse and Mental Health Administration Act providing that any grants to be distributed to states under that act would only be available for states with programs to prevent youth smoking. HB 3048, so far as RJR is able to tell, would assist the State of Kansas in meeting the congressional and regulatory requirements necessary to insure that the state does not lose access to any federal funds.

However, we do have concerns about two provisions in the bill.

The bill outlaws cigarette vending machines in Section 7(p), and also deletes all references to vending machines in the existing laws. We believe this ban is unnecessary and is overly burdensome on the vending industry, and it is certainly not necessary to the bill. This restriction will have a greater impact on adults than on youth smoking and RJR believes strongly that such restrictions on adults' ability to choose should not be promulgated under the guise of protection from youth smoking.

If complete removal of the ban on vending machines does not, in the opinion of the Legislature, go far enough to insure that youth do not acquire cigarettes from vending machines, there are other more reasonable approaches which can insure that adults are not unduly restricted and that vending machine operators,

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ailers, or distributors are not unfairly disadvantaged. We would offer to work with this committee in supplying language that would meet the needs of restricting youth access to vending machines.

Our second concern relates to Section 8(b). There the language provides that a licensed retail dealer or person authorized to distribute samples will have a defense against prosecution if and only if the person purchasing the cigarettes or tobacco products exhibited to the retailer a driver's license or other official document containing a photograph. Therefore, a retailer who looks at an individual, determines that a reasonable person would conclude that individual is more than age 18, must still require I.D. to insure that he/she does not violate the law. It would not be a defense that the person purchasing the cigarettes looked 25 or 30 years old.

The effect of this will be significant numbers of adults being carded when they attempt to purchase cigarettes. RJR believes that is, once again, a restriction on adults.

We would suggest an amendment to make the defense available if a reasonable person would conclude that the purchaser was in excess of 18 years of age. If a reasonable person would conclude that the purchaser is under 18 years of age, then the retailer must require photo I.D. in order to permit the person to purchase cigarettes.

We would propose that lines 42-43 on Page 11 and lines 1-10 on Page 12 be deleted and the following language be inserted:

" It shall be a defense to a prosecution under this subsection if: The defendant is a licensed retail dealer or a person authorized by law to distribute samples: and (1) the defendant sold, furnished or distributed the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; or (2) if the defendant did not have reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products, the person under 18 years of age exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes or tobacco products."

Generally, criminal laws require that there be intent. The way HB 3048 is currently worded, a retailer could be found guilty of a violation without such intent.

With those amendments to HB 3048, we would have no objection to the bill and would urge its passage.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

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KANSAS AUTOMATIC MERCHANDISING ASSOCIATION, INC.

5332 NW 25th Street

Topeka, KS 66618

(913) 232-1050 or (913) 234-3686

"The voice of the Kansas coin-operated machine industry."

STATEMENT OF
JACK STEVENS, PRESIDENT
KANSAS AUTOMATIC MERCHANDISING ASSOCIATION
March 7, 1994

To the Honorable members of the House Federal and State Affairs Committee.

Mister Chairman and members of the Committee:

My name is Jack Stevens, I am President of the Kansas Automatic Merchandising Association (KAMA). I am pleased to provide testimony today on House Bill No. 3048. My remarks will be brief.

KAMA is a state-wide organization of Kansas businesses having a vital interest in the automatic vending industry. Our members are from all geographic regions of the state.

KAMA members supply and service cigarette vending machines at many locations all across Kansas. Our companies may have staff consisting of two to five employees, known as route people, to maintain the machines. The route people will regularly check the machines and see that they are fully stocked and in proper working order. For many of the route people handling tobacco products, their entire salary originates from the income produced by cigarette vending machines.

Automatic merchandising companies operate within a highly competitive environment, a majority of our association's membership is comprised of small family-owned businesses. And like all other small businesses, we operate on a small profit margin. Increasing the price of a candy bar is not a viable alternative to compensate for a lost revenue source. Larger corporations within our industry may be able to offset losses by splitting the salaries and expenses between the food

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machines, beverage machines and amusement games that they operate - we as small, independent businesses can not.

Although vending of tobacco products is not a large part of our business, it is an important aspect of our existence. Prohibiting the sale of cigarettes or tobacco products by vending machines will eliminate jobs and put small businesses within our industry at risk.

The intent of the United States Congress, when the Synar amendment was drafted, was to reduce the availability of tobacco products to minors, not a wholesale ban on the sale of cigarettes by vending machine. In fact, the Congressional Subcommittee on Health and the Environment expressly rejected vending machines restrictions as part of any compliance enforcement measure. Nationwide studies and surveys show that less than 20% of the minors, who purchase tobacco products, do so through vending machines. The reasons for this remarkably low number, when compared to other cigarette retailers, are;

1. The vending machines are placed in locations already inaccessible to minors.
2. The tobacco products sold in these machines are much more expensive than at any retail store.

Thus, vending machines are not a part of the compliance problem.

While we support the intent of House Bill No. 3048 and its sponsor's desire to limit the accessibility of cigarettes and other tobacco products to minors. We are here today to oppose House Bill No. 3048, because it seeks to ban all vending of tobacco products and there is no evidence to indicate that eliminating cigarette vending machines will have any impact on the number of minors purchasing cigarette and tobacco products from convenience stores and other retail establishments.

Thank you for allowing me to present this testimony.



January 25, 1994

Representative David Heinemann
State Capital
Topeka, Kansas 66612

Dear Representative Heinemann:

Thank you for meeting with Mr. David Johnson of Brookover Companies recently about Southwind's continuing operating problems as a result of the wording in Kansas Statutes and Kansas Alcoholic Control Regulations concerning Liquor Licenses.

Kansas Alcoholic Beverage Control Regulation Articles 19 and 20 provide:

- a. Class "A" Clubs - Every corporate applicant shall be a Kansas domestic not-for-profit corporation.
- b. Class "B" Clubs - Every corporate applicant shall be a Kansas domestic for-profit corporation.

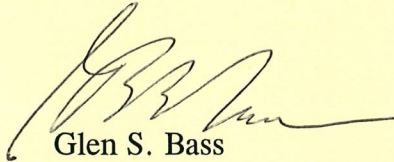
These regulations and Kansas statutes prevent Class "A" clubs from reciprocating with Class "B" clubs. In other words, during your numerous stays in Topeka, you are prohibited from utilizing the Topeka Country Club as a reciprocal member from Southwind Country Club simply because the Topeka Club is member-owned (not-for-profit) and Southwind is owned by Brookover Companies (for-profit). This obviously, prevents us from providing full value to our members by entering into reciprocal agreements with all bona fide Country and City Clubs in Kansas. We have no problems securing reciprocal arrangements with many prestigious clubs throughout the United States, except in our own state.

In my opinion the Kansas Statutes and Alcoholic Beverage Control regulations should be changed to recognize bona fide private Country Clubs and City Clubs and allow all of these corporations to carry the same license regardless if they are "not-for-profit" or "for-profit".

I have spoken with Mr. Mike Montague, General Manager, Tallgrass Country Club, in Wichita, which is a "for-profit" club. Hopefully, he will also communicate with you regarding this issue.

Your help in addressing this problem would be appreciated. Should you desire additional information, please advise.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Glen S. Bass', with a stylized, flowing script.

Glen S. Bass
General Manager

GSB/rb

HOUSE BILL NO. _____

AN ACT relating to income taxation; concerning refunds of tax, with interest, on federal military retirement benefits for tax years 1984 through 1991.

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

New Section 1. (a) The secretary of revenue is hereby authorized and directed to promptly negotiate, approve and recommend judicial approval of a settlement agreement to resolve all tax refund claims pending in the Barker class action for the amounts set forth in subsection (d). As used in this section, "Barker class action" means the consolidated class action styled Keyton E. Barker, et al. v. State of Kansas, et al., Nos. 89-CV-666 and 89-CV-1100, filed in the District Court of Shawnee County, Kansas. The settlement agreement shall include:

(1) any stipulations, terms and conditions which may be necessary to effectuate the prompt and final disposition of the Barker class action; and

(2) provisions for joint administration under the supervision of the secretary of revenue and class counsel or their respective designees in accordance with methodologies for the calculation and payment of refund claims to eligible persons.

The settlement agreement shall be submitted to the District Court of Shawnee County, Kansas no later than May 15, 1994.

(b) Subject to the provisions of subsection (c), any person who paid Kansas individual income tax on or on account of federal

military retirement benefits for any or all of the tax years from 1984 through 1991 shall be entitled to receive one or more refund payments in accordance with the terms of the settlement agreement referenced in subsection (a). As used in this section, "federal military retirement benefits" shall include all benefits calculated and paid by the United States in accordance with applicable provisions of Title 10 and 14 of the United States Code as retired pay, retainer pay or survivor's benefits. Where any person otherwise entitled to receive a refund payment under this section is deceased, the right to receive payment shall pass to the person's surviving spouse, except that if any such deceased person has no surviving spouse, the right to receive a refund shall be determined in accordance with the laws of intestate succession.

(c) There is hereby created a military retirees income tax refund fund in the state treasury which shall be administered by the secretary of revenue in accordance with this section and appropriation acts. No expenditures from the military retirees income tax refund fund shall be made until and unless the settlement agreement referenced in subsection (a) is approved by the District Court of Shawnee County, Kansas after eligible persons have been afforded reasonable notice and an opportunity to be heard.

(1) In the event of judicial approval, administration of the military retirees income tax refund fund shall be subject to the jurisdiction and supervisory control of the District Court of Shawnee County, Kansas, until such time as all refund payments

have been made to eligible persons in accordance with the terms of the settlement agreement. The payment of refunds as provided in the settlement agreement shall represent a final and complete settlement of all claims of all federal Military Retired Personnel for years 1984 through 1991 against the State of Kansas, its departments, agencies, officials, employees and agents regarding the taxation of federal military retirement benefits for the years 1984 through 1991.

(2) In the event that the settlement agreement does not receive judicial approval, no expenditures or refund payments shall be made pursuant to this section

(d) On July 1, 1994, the director of accounts and reports shall transfer \$21,446,935.00 from the state general fund to the military retirees income tax refund fund for expenditure pursuant to one or more vouchers approved by the secretary of revenue or by the secretary's designee. On July 1, 1995, the director of accounts and reports shall transfer \$21,446,935.00, plus interest thereon at the rate of 5% per annum from July 1, 1994 through June 30, 1995, from the state general fund to the military retirees income tax refund fund. On July 1, 1996, the director of accounts and reports shall transfer \$21,446,935.00, plus interest thereon at the rate of 5% per annum from July 1, 1995 through June 30, 1996, from the state general fund to the military retirees income tax refund fund.

Expenditures from the military retirees income tax refund fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the secretary of revenue or by the secretary's designee in accordance with the settlement agreement referenced in subsection (a) as approved by the District Court of Shawnee County, Kansas.

March 7, 1994

Dear Representative Graeber,

This letter is in response to HB 3048. I urge you to consider this bill unfavorable for passage due to the pre-emptive clause concerning bans on local smoking policies. As I understand this bill, it would make it virtually impossible for local governments to have ordinances banning smoking in public places. Some of these local ordinances currently have "tougher", more restrictive laws in place regarding where one can and cannot smoke. I currently work in a no-smoking environment (the smoking areas are outside) at a local hospital. The health-related problems I see every day that are attributed to smoking and second-hand smoke are numerous. While I think all individuals have the right to smoke if they so chose, I also think all individuals have the right not to be forced to inhale second-hand smoke if they so choose.

I feel that the tobacco industry has gotten away for far too long by denying the health risks associated with smoking. Hundreds of studies have been done with documented evidence that smoking and second-hand smoke is detrimental to your health. I cannot understand how the tobacco industry can pretend that it doesn't. And to think that they have convinced others that smoking and second-hand smoke is not dangerous is frightening.

Again, I strongly urge you to find HB 3048 unfavorable for passage.

Sincerely,



Cindy S. Fletcher
210 NW Knox
Topeka, KS 66606

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