

Approved: 3/21/94
Date

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 10, 1994 in Room 526-S of the Capitol.

All members were present except: Representative Phill Kline, 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: Representative Carlos Mayans
Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division
Neal Whitaker, Executive Director, Kansas Wholesalers Assn.
Don Bird, Kansans For Life At Its Best
Chuck Yunker, Adjutant, Kansas American Legion
Ronald R. Hein, Coalition for Instant Bingo

Others attending: See attached list

Representative Carlos Mayans offered an amendment on SB 467 which adds Columbus Day, the second Monday in October back into the bill on Page 1, line 25. (See Attachment #1)

Representative Wilk moved and Representative Cornfield seconded to accept the amendment to SB 467 adding back in Columbus Day, the second Monday in October as a legal public holiday. The motion carried.

Representative Wilk moved and Representative Cornfield seconded to move SB 467 out as amended favorably. The motion carried.

The Chairperson opened the hearing on SB 545 and stated that the law that permits bingo licensees to conduct games of instant bingo (commonly called "pull tabs") will expire on July 1, 1994.

Ron Hein, Coalition for Instant Bingo, testified in support of SB 545, stating instant bingo is a large organization, being comprised of the members of the Kansas Charities Cooperative, the American Legion, the VFW, the Elks, the Eagles, the Knights of Columbus, and the Sunflower Club members, as well as numerous other bingo licensees. These numbers are consistent with our original projection to the legislature that the instant bingo legislation could raise between \$500,000 and \$1 million in tax revenue for the state each year. (See Attachment #2)

Chuck Yunker, Adjutant, Kansas American Legion, testified in support of SB 545 stated bingo provided revenue for the state and bingo operators and entertainment for the participants. (See Attachment #3)

Don Bird, Kansans For Life At Its Best, testified opposing SB 545 stating that games have been conducted this year without rules and regulations and this needs to be addressed. (See Attachment #4).

Representative Benlon moved and Representative Lane seconded to put lines 36 - 39 on page 4 back in the bill but change the date to 1995.

The bill would then sunset again in one year and Rules and Regs could be written.

Representative Wilk stated he opposed the amendment

Representative Wilk moved and Representative Robinette seconded to pass SB 545 out of committee favorably. The motion carried.

The Chairperson opened the hearing on SB 544 relating to days of sales of alcoholic beverages.

Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division, testified in support of SB 544 which would standardize the sale of alcoholic beverages on election days for all licensees. This bill was requested by the ABC Division in an effort to address what has become a recurring enforcement concern for the Division and local Law enforcement agencies. Although the bill is drafted to allow all sales on election days, the Division's concern is with consistency, whether that means allowing all sales or banning all sales. (See Attachment #5)

Neal Whitaker, Executive Director, Kansas Beer Wholesalers Association, testified in support of SB 544, stating there was no uniformity in enforcement of the law. Election day closing creates a real distribution problem for beer wholesalers outside of the metropolitan areas. Most wholesalers send one truck to a community on a weekly basis. When some establishments in a town are open and some are closed it causes problems with the delivery schedule, creates additional costs in the form of overtime and fuel to service the closed accounts at another time. Beer is delivered 2-3 times a week as it has a short shelf life. (See Attachment #6)

Rebecca Rice, Legislative Counsel for Kansas Retail Liquor Dealers Association, provided testimony supporting SB 544 stating the bill clarifies the laws. (See Attachment #7)

R. E. "Tuck" Duncan, Kansas Wine & Spirits Wholesalers Association, provided testimony supporting SB 544 stating it was impossible to ascertain to whom the law applied and to whom it did not. (See Attachment #8)

Don Bird, Kansans For Life At Its Best, testified opposing SB 544, stating on a day when concentrated efforts are being made to encourage the American public to participate more fully in the honored democratic privilege of voting, the proposal to eliminate such a longstanding tradition raises some questions. (See Attachment #9)

Representative Plummer moved and Representative Robinette seconded to move SB 544 out favorably. The motion carried.

The Chairperson opened the hearing on HB 3048 dealing with cigarettes and tobacco products; relating to regulation and taxation and monitoring sales of persons under age 18.

Representative Smith objected to the \$1,000 fine on page 15, line 11. This amount is larger than a fine for beer.

Representative Standifer briefed the committee on an amendment to HB 3048. (See Attachment #10)

Representative Standifer moved and Representative Benlon seconded to amend HB 3048 on page 11, line 13, (p) by replacing with Bill Snell's recommendation. (See Attachment #11)

It was asked of Representative Standifer if Section 15 would be deleted?

Representative Standifer stated, yes.

Representative Weinhold questioned the charge for fines.

Representative Wiard stated that possession was a problem.

Representative Sebelius moved and Representative Gilbert seconded a substitute motion to Table HB 3048. The motion carried.

The Chairperson announced the Sub-committee on gaming would meet at 10:00 A.M. on Monday, March 14. and the Sub-committee on Initiative would meet Friday, March 11 at 8:00 A.M.

The meeting adjourned at 3:10 P.M. and the next meeting will be March 14.

Date:

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Charles M Yunker	American Legion	1314 SW Topeka Blvd Topeka KS 66612
Clyford Chappell	Capt Botth 1 Am Legion	3800 Michigan
Ronald R. Herin	Coalition for Instant Bingo	Topeka
Tom Fenn	C For Instant Bingo	Topeka
Kirby L. Stegman	KDOR	Topeka
Robert Engler	KDOR ABC	Topeka
Jim Conant	ABC	Topeka
JOHN C. BOTTENBERG	PHILIP MORRIS	TOPEKA
BILL HENRY	PHILIP MORRIS	TOPEKA
KEVIN ROBERTSON	KS. LODGING ASSN	TOPEKA

SENATE BILL No. 467

By Committee on Federal and State Affairs

1-11

AN ACT concerning legal public holidays; amending K.S.A. 35-107 and repealing the existing section.

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

Section 1. K.S.A. 35-107 is hereby amended to read as follows:
35-107. (a) ~~On and after January 1, 1976,~~ The following days are declared to be legal public holidays and are to be observed as such:

New Year's Day, January 1;
~~Lincoln's Birthday, the twelfth day in February;~~
~~Washington's Birthday, the third Monday in February;~~
~~Martin Luther King, Jr., Day, the third Monday in January;~~
~~Presidents' Washington and Lincoln Day, the third Monday in February;~~

Memorial Day, the last Monday in May;
Independence Day, July 4;
Labor Day, the first Monday in September;
~~Columbus Day, the second Monday in October;~~
Veterans' Day, ~~the eleventh day in~~ November 11;
Thanksgiving Day, the fourth Thursday in November;
Christmas Day, December 25.

(b) Any reference in the laws of this state concerning observance of legal holidays shall ~~on and after January 1, 1976,~~ be considered as a reference to the day or days prescribed in subsection (a) hereof for the observance of such legal holiday or holidays.

Sec. 2. K.S.A. 35-107 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after January 1, 1995, and its publication in the statute book.

Add Columbus Day, the second Monday in October;

F+SA
3-10-94
Atch #1

913 296 0231
03/10/94 13:40 ☎913 296 0231

Div of Budget KS

002/002

March 10, 1994

Division of the Budget

Elaine Frisbie



Representative Moyans:

In response to your question regarding SB 467, I would state that the addition of any holidays to the list of legal public holidays has no fiscal impact to state revenues or expenditures. The Governor designates holidays recognized by state agencies. If you have further questions, please contact this office.

Elaine Frisbie

3

	FEDERAL §	STATE §	GOVERNOR	JUDICIAL
NEW YEAR'S DAY	01/01/94	01/01/94	12/31/93 (F)*	12/31/93 (F)
MARTIN LUTHER KING	3rd Mon. in Jan.	-----	01/17/94 (M)	01/17/94 (M)
LINCOLN'S BIRTHDAY	-----	02/12/94	-----	-----
WASHINGTON'S BIRTHDAY	3rd Mon. in Feb.	3rd Mon. in Feb.	-----	-----
PRESIDENT'S DAY	-----	-----	-----	02/21/94 (M)
MEMORIAL DAY	last Mon. in May	last Mon. in May	05/30/94 (M)	05/30/94 (M)
INDEPENDENCE DAY	07/04/94	07/04/94	07/04/94 (M)	07/04/94 (M)
LABOR DAY	1st Mon. in Sept.	1st Mon. in Sept.	09/05/94 (M)	09/05/94 (M)
COLUMBUS DAY	2nd Mon. in Oct.	2nd Mon. in Oct.	-----	10/10/94 (M)
VETERANS' DAY	11/11/94	11/11/94	11/11/94 (F)	11/11/94 (F)
THANKSGIVING	4th Thurs. in Nov.	4th Thurs. in Nov.	11/24/94 (Th) 11/25/94 (F)	11/24/94 (Th) 11/25/94 (F)
CHRISTMAS	12/25/94	12/25/94	12/26/94 (M)*	12/26/94 (M)

(1) Discretionary (1) Discretionary

* Personnel Reg. 1-9-92

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: SB 545
Presented by Ronald R. Hein
on behalf of
Coalition for Instant Bingo
March 10, 1994

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Coalition for Instant Bingo. The Coalition for Instant Bingo is a large organization, being comprised of the members of the Kansas Charities Cooperative, the American Legion, the VFW, the Elks, the Eagles, the Knights of Columbus, and the Sunflower Club members, as well as numerous other bingo licensees.

The Coalition for Instant Bingo supports SB 545, which eliminates the one year repealer provision of the instant bingo legislation which was enacted in 1993.

Instant bingo is an extremely popular game which is played in at least thirty-two states, including all of the surrounding states of Oklahoma, Nebraska, Missouri, and Colorado. In 1993, we predicted that this legislation would be a win/win for the charitable and fraternal organizations which utilize bingo as a fundraising tool for their benevolent operations, and for the state of Kansas, which would receive additional tax revenues from the game.

Mr. Jim Conant distributed material on January 18, 1994, to the Senate Federal and State Affairs Committee showing the sales and corresponding 1% bingo enforcement tax receipts by the state for the first five months the game was in operation.

Attached to this testimony, I have prepared a chart which reflects the same numbers Jim Conant passed out to that Committee, but also includes the amount of revenues raised for the state and local units of government by virtue of the sales tax on such instant bingo sales.

These numbers are consistent with our original projection to the legislature that the instant bingo legislation could raise between \$500,000 and \$1 million in tax revenue for the state each year.

F.S.A.
3-10-94
Atch #2

march 10, 1994
Page Two

The one year repealer was put into the 1993 legislation for two reasons. One, to insure that the fiscal note was positive for the state, which obviously, it has been.

The second issue related to the constitutionality of instant bingo. The Attorney General filed an action challenging the constitutionality of the instant bingo legislation, which was filed against the Department of Revenue. The Topeka Moose Lodge, a representative organization of the Coalition for Instant Bingo, filed a Motion to Intervene in the action. The Shawnee County District Court Judge declared the act constitutional on a ruling from the bench, following a Motion for Summary Judgment which had been filed by the Attorney General.

However, the Attorney General has decided to appeal the litigation to the Court of Appeals, and that appeal will be heard later on this year.

The Coalition strongly believes that this appeal should have no impact on the passage of SB 545. If the appeal is unsuccessful, and the District Court decision declaring the instant bingo legislation constitutional is upheld by the Appellate Court, then there would be no further need for repealer legislation on the books. If the appeal is successful, and the act is struck down as unconstitutional, then the act will be null and void anyway, and, once again, there would be no need for a repealer action, as the court action would stop the legislation instantly.

Therefore, we strongly urge the committee and the legislature to approve SB 545.

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

2-2

BINGO STATISTICS - FY 94

'93

MONTH OF SALES	MONTH REC'D.	SALES	1% ENFORCEMENT TAX	4.9% STATE SALES TAX	TOTAL STATE TAX
July	Aug.	\$ 271,300	\$ 2,713	\$ 13,293	\$ 16,006
Aug.	Sept.	1,943,700	19,437	95,241	114,678
Sept.	Oct.	1,055,500	10,555	51,719	62,274
Oct.	Nov.	897,800	8,978	43,992	52,970
Nov.	Dec.	636,400	6,364	31,183	37,547
Dec.	Jan.	862,500	8,625	42,262	50,887
Jan. 94	Feb. 94	1,033,200	10,332	50,626	60,958
TOTALS		\$ 6,700,400	\$ 67,004	\$328,316	\$395,320
MONTHLY AVG		\$ 957,200	\$ 9,572	\$ 46,902	\$ 56,474
ANNUALIZED		\$ 11,486,400	\$114,864	\$562,827	\$677,691

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
TESTIMONY BY CHARLES M. YUNKER
ADJUTANT, KANSAS AMERICAN LEGION
ON SENATE BILL 545

Thank you for providing me the opportunity today to testify on behalf of the more than 90,000 members of The Kansas American Legion, American Legion Auxiliary and Sons of The American Legion in favor of Senate Bill 545. I want to thank this committee for holding hearings on SB 545 which would remove the repealer, or sunset clause, from the current Kansas Bingo laws regarding Instant Bingo.

In retrospect I think the repealer placed on Instant Bingo last year by this Committee was a good idea. Although I wish we wouldn't be discussing Bingo this year (or any future year for that matter) the repealer has provided everyone, (the State, Bingo Operators, and the public) a time frame in which to review Instant Bingo's performance as both a revenue generating source for the State and Bingo operators alike, but also as entertainment for the participants.

Based upon a report given to the Senate Federal and State Affairs Committee several weeks ago by Bingo Enforcement and I assume you have received, or will receive, a similar report; Instant Bingo is proving to be successful on all fronts. That is; the overall revenue of Bingo sales is up, thus revenue to the State of Kansas in the form of Enforcement taxes and sales taxes to the State General Fund are up. Further, the tax receipts to the State thus far are consistant with the projections presented to the Legislature last year by the proponents of Instant Bingo, and all at very minimal increases in costs or labor to the State.

F & S A
3-10-94
Atch #3

Given the performance and public acceptance of Instant Bingo, I believe Senate Bill 545 is non-controversial and urge your passage thus making Instant Bingo a permanent part of the Kansas Bingo Laws.

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

FROM: Don Bird
Kansans For Life At Its Best

DATE: March 10, 1994

RE: Senate Bill No. 545

Thank you for the opportunity to appear as an opponent to Senate Bill No. 545. Although we have some concerns with conceptual aspects of instant bingo, I would first like to ask your consideration concerning the monitoring of such games.

A recent discussion with a member of the Rules and Regulations Committee -- who, by the way, voted in favor of instant bingo -- revealed that these games have been conducted this year without rules and regulations as required by the enacted legislation. This was confirmed by Dr. Wolf, the revisor staffperson assigned to that committee. This is something that I believe this committee needs to address before it proceeds further on this issue.

Secondly, we request the committee to urge the attorney general to continue to completion the appeal of Judge Buchele's district court decision concerning the constitutionality of instant bingo.

And finally, we would ask, especially in light of recent discussion about the definition of gambling terminology, that you consider some questions in reference to Judge Buchele's decision.

- 1) Is our understanding correct, that the definition of bingo is not limited to its classic application but that it can assume any number of possible forms that the legislature may choose?
- 2) If this is the case, could the legislature in the future create bingo video, bingo keno, bingo slots, etc., etc.?
- 3) If that is true, can we assume, then, that as far back as 1975 the legislature could have conceivably created these same exotic forms of bingo?

If the answers to these questions are potentially in the affirmative, we would encourage the legislature to close the lid on Pandora's Box, leave the statute as it currently exists, and allow instant bingo to lapse.

FS 5A
3-10-94
Atch #4

STATE OF KANSAS

Robert A. Engler, Director
4 Townsite Plaza Suite 210
200 S.E. 6th Street
Topeka, Kansas 66603-3512



(913) 296-3946
FAX (913) 296-0922

Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

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

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

DATE: March 10, 1994

SUBJECT: Senate Bill 544

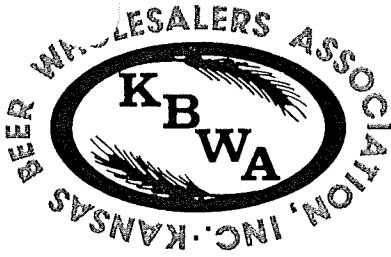
I appreciate the opportunity to appear before the committee today in support of Senate Bill 544, which would standardize the sale of alcoholic beverages on election days for all licensees. This bill was requested by the ABC Division in an effort to address what has become a recurring enforcement concern for the Division and local law enforcement agencies. Although the bill is drafted to allow all sales on election days, the Division's concern is with consistency, whether that means allowing all sales or banning all sales.

The laws governing the sale of alcoholic beverages on election days date back to 1937 in the case of cereal malt beverage (CMB), and 1949 in the case of alcoholic liquor. We believe these laws were enacted to deal with situations where bars and taverns were also used as polling places, and to deter attempts by unscrupulous candidates and their supporters to "buy votes" with liquor. Prior to the advent of private clubs and, subsequently, full liquor by the drink, these laws had the effect of halting all liquor sales during the time the polls were open in the state or a particular jurisdiction. Under current law, however, all alcoholic beverages may be sold for consumption on state-licensed premises, while package sales and on-premise CMB sales must be stopped while the polls are open.

The inconsistent treatment of package sales vs. on-premise sales creates confusion for local governing bodies and law enforcement agencies as well as licensees. Uncertainty exists as to the type of election covered by the laws (bond elections, for example, do not require a halt in liquor sales) and which licensees are affected (clubs and drinking establishments may sell CMB during elections, locally-licensed taverns may not). These differences make the laws hard to enforce on a consistent basis across the state, resulting in unnecessary efforts by local law enforcement and inappropriate closures of businesses due to misinterpretation of the laws. The state and local resources which must be diverted to interpret and enforce this confusing prohibition would be much better utilized if directed at more serious violations which threaten the public health and welfare.

Thank you for your consideration of this bill. I would be happy to answer any questions the committee may have.

Fd SA
3-10-94
Atch #5



Testimony
before the
House Federal and State Affairs Committee
on Senate Bill 544
March 10, 1994

Kansas Beer Wholesalers Association **supports** ABC's effort to make election day sales laws uniform. There is some irony in Kansas law today because the very establishments that election day closing laws were aimed at - open saloons - are now allowed to be open in the form of public drinking establishments.

Election day closing creates a real distribution problem for beer wholesalers outside of the metropolitan areas. Most wholesalers send one truck to a community on a weekly basis. When some establishments in a town are open and some are closed it causes problems with the delivery schedule, creates additional costs in the form of overtime and fuel to service the closed accounts at another time.

In addition, there is no uniformity in enforcement of the law. During a recent school bond election in Smith Center the county attorney told a 3.2 on-premise establishment that he must close during the time the polls were open, even though the law refers to only national, state, county or city elections.

We encourage you to report **Senate Bill 544** favorably .

Neal Whitaker
Executive Director
Kansas Beer Wholesalers Association



TESTIMONY PRESENTED TO THE
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
re: SB 544

March 10, 1994

by: Rebecca Rice
Legislative Counsel for Kansas Retail Liquor Dealers Association

Thank you Mr. Chairman and members of the committee. My name is Rebecca Rice and I appear before you today on behalf of the Kansas Retail Liquor Dealers Association in support of Senate Bill 544.

The Association supports Senate Bill 544, which clarifies the laws regarding Election Day sales. The Kansas Retail Liquor Dealers Association continues to support most legislation which eliminates the inconsistencies in laws between alcohol beverage licensees, and, in addition, allows the retailer greater flexibility in operating the business in a responsible and competitive manner.

I appreciate this opportunity to present our support of Senate Bill 544 and am willing to answer any questions you may have.

Thank you, Mr. Chairman.

F.S.A.
3-10-94
Atch #7

K • A • N • S • A • S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

March 10, 1994

Testimony to be distributed.

To: House Committee on Federal and State Affairs

From: R.E. "Tuck" Duncan
John Bottenberg
Kansas Wine & Spirits Wholesalers Association

RE: Senate Bill 544

The Kansas Wine and Spirits Wholesalers Association supports Senate Bill 544. During the last municipal/school board elections the KWSWA attempted to acquire a list of the various types of elections and in which cities each was being held. First, we asked the League of Kansas Municipalities and the Kansas County Association. They were unable to tell us so KWSWA then inquired of the office of Secretary of State, likewise without success. It was impossible to ascertain to whom the law applied and to whom it did not. As a result, the current law caused wholesalers disruption in their delivery patterns. As a general rule a retailer receives delivery on the same day each delivery cycle. The same disruption which occurs for various holidays in municipal services, is created by the current state of the law. Therefore, we support the uniformity as proposed by SB 544 and encourage the committee to recommend this bill favorably for passage.

Thank you for your attention to and consideration of this matter.

F+5A
3-10-94
Atch #8

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

FROM: Don Bird
Kansans For Life At Its Best

DATE: March 10, 1994

RE: Senate Bill No. 544

After a little investigation, I discovered that the policy which Senate Bill No. 544 proposes to change has been the practice of this state for well over 100 years. Kansas statutes have not allowed the sale of alcoholic liquor on election days since 1880. The state constitution prevented it until the repeal of prohibition in 1948, whereupon the state legislature in 1949 enacted K.S.A. 41-712 as it currently reads.

My opponents have suggested that it was oversight that kept us from changing an "outdated" law. I suggest that it may be oversight that prevented the legislature from making new policies consistent with one that was sound and reasonable.

In a day when concentrated efforts are being made to encourage the American public to participate more fully in the honored democratic privilege of voting, the proposal to eliminate such a longstanding tradition raises some questions.

1) Is it an assumption (or is it reality) that a vast majority of these businesses are showing disregard for the law? Shouldn't we assume that most retail owners are law-abiding citizens who practice voluntary compliance with the law? If so, then enforcement should not be an issue; if not, other more serious questions are in order.

2) Why should the legislature even consider changing a policy that promotes unimpaired judgment when its citizenry enters the voting booth?

3) Does the difficulty of monitoring a law by an enforcement agency necessarily stand as sufficient reason for government to reverse a practice that communicates such a valued message to its citizens?

My understanding is that the Alcoholic Beverage Control, who is on record as having no position on the issue, has simply asked for legislation that would bring consistency to the statute books and thereby make their task easier. If uniformity of the law is the need, then we encourage you to bring other statutes in accord with K.S.A. 41-712 as it currently reads.

F&SA
3-10-94
Atch #9

Proceeding as SB 544 proposes would, we believe, raise questions about government's initiative to urge its citizenry to vote with as much good reason and judgment as possible.

Considering the tradition in the state of Kansas for well over a century to promote sobriety in its citizens on election day, let's not eliminate a policy that conveys to American society the sacredness of the voting privilege granted its citizens.

I ask that the committee vote unfavorably on Senate Bill No. 544.

HOUSE BILL No. 3048

By Committee on Federal and State Affairs

2-16

8 AN ACT concerning cigarettes and tobacco products; relating to
9 regulation and taxation thereof; prohibiting certain acts and pro-
10 viding penalties for violations; amending K.S.A. 79-3301, 79-3302,
11 79-3303, 79-3304, 79-3309, 79-3316, 79-3321, 79-3322, 79-3323,
12 79-3326, 79-3373, 79-3377 and 79-3387 and repealing the existing
13 sections; also repealing K.S.A. 79-3305, 79-3310b, 79-3318, 79-
14 3370, 79-3372, 79-3376, 79-3380 through 79-3386 and 79-3390.

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

17 Section 1. K.S.A. 79-3301 is hereby amended to read as follows:
18 79-3301. ~~The following words, terms and phrases~~ As used in this
19 act, ~~are hereby defined as follows:~~

20 (a) "Carrier" means one who transports cigarettes from a man-
21 ufacturer to a wholesale dealer or from one wholesale dealer to
22 another.

23 (b) "Carton" means the container used by the manufacturer of
24 cigarettes in which no more than 10 packages of cigarettes are placed
25 prior to shipment from such manufacturer.

26 (a) (c) "Cigarettes," "Cigarette" means any roll for smoking,
27 made wholly or in part of tobacco, irrespective of size or shape, and
28 irrespective of tobacco being flavored, adulterated or mixed with any
29 other ingredient if the wrapper is in greater part made of any material
30 except tobacco.

31 (b) "Person" means any individual, partnership, society, as-
32 sociation, joint stock company, corporation, estate, receiver,
33 trustee, assignee, referee or any other person acting in a fi-
34 duciary or representative capacity whether appointed by a court
35 or otherwise and any combination of individuals;

36 (c) (d) "Consumer" means that the person purchasing or re-
37 ceiving cigarettes or tobacco products for final use;

38 (d) (e) "Dealer" means every person, firm, corporation, or
39 association of persons who shall sell any person who engages in
40 the sale or manufacture of cigarettes in the state of Kansas, and who
41 is required to be licensed under the provisions of this act;

42 (e) "Wholesale dealer" means those persons who sell cig-
43 arettes to other wholesale dealers, retail dealers, vending ma-

F45A
3-10-94
Atch #10

chine operators and manufacturers' salesmen for the purpose of resale in the state of Kansas;

(f) "Retail dealer" means a person other than a vending machine operator in possession of cigarettes for the purpose of sale to a consumer;

(g) "Sale" means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes, with or without consideration;

(h) (f) "Dealer establishment" means any location or premise, other than vending machine locations, premises at or from which cigarettes are sold, and where records are kept;

(i) "Tax indicia" means visible evidence of tax payment in the form of stamps or meter imprints;

(j) "Stamps" means tax indicia applied either by means of water applied gummed paper or heat process;

(k) "Meter imprints" means tax indicia applied by means of ink printing machines;

(l) (g) "Director" means the director of taxation;

(h) "Distributor" means any and each of the following: (1) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale; (2) any person who makes, manufactures, fabricates or stores tobacco products in this state for sale in this state; (3) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to any person in the business of selling tobacco products in this state.

(m) (i) "Division" means the division of taxation;

(n) "Manufacturer's salesman" means a person employed by a cigarette manufacturer who sells cigarettes, manufactured by such employer and procured from wholesale dealers;

(o) "Carton" means the container used by the manufacturer of cigarettes in which no more than 10 packages of cigarettes are placed prior to shipment from such manufacturer;

(p) "Package" means a container in which no more than 25 individual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer;

(q) "Received" means the coming to rest of cigarettes for sale by any dealer in the state of Kansas;

(r) "Vending machine" means any coin operated machine, contrivance or device, by means of which cigarettes are sold in their original package;

(s) "Vending machine operator" means any person who

1 places a vending machine, owned, leased or operated by such
2 person, at locations where cigarettes are sold therefrom; and
3 the owner or lessee of the premises upon which a vending
4 machine is placed, shall not be considered the operator of the
5 machine, if such person does not own or lease the machine
6 and if such person's sole remuneration therefrom is a flat rental
7 fee or a commission, based upon the number or value of cig-
8 arettes sold from the machine, or a combination of both nor
9 may such owner or lessee or such owner or lessee's agents or
10 employees be an authorized agent of a vending machine op-
11 erator;

12 (t) (j) "License" means, in addition to the privilege of a licensee
13 to sell cigarettes or tobacco products in the state of Kansas, the
14 written evidence of such authority or privilege to so operate as
15 evidenced by any license or permit issued by the director of tax-
16 ation;

17 (u) (k) "Licensee" means any person holding a current license
18 or permit issued under the provisions of the cigarette tax laws
19 of the state of Kansas; issued pursuant to this act.

20 (v) "Distributor or dealer of cigarette vending machines"
21 means any person who sells cigarette vending machines to a
22 vending machine operator, operating vending machines in the
23 state of Kansas;

24 (w) "Carrier" means one who transports cigarettes from a
25 manufacturer to a wholesale dealer or from one wholesale
26 dealer to another.

27 (l) "Manufacturer's salesperson" means a person employed by a
28 cigarette manufacturer who sells cigarettes, manufactured by such
29 employer and procured from wholesale dealers.

30 (m) "Meter imprints" means tax indicia applied by means of ink
31 printing machines.

32 (n) "Package" means a container in which no more than 25 in-
33 dividual cigarettes are wrapped and sealed by the manufacturer of
34 cigarettes prior to shipment to a wholesale dealer.

35 (o) "Person" means any individual, partnership, society, associ-
36 ation, joint-stock company, corporation, estate, receiver, trustee,
37 assignee, referee or any other person acting in a fiduciary or rep-
38 resentative capacity whether appointed by a court or otherwise and
39 any combination of individuals.

40 (p) "Received" means the coming to rest of cigarettes for sale by
41 any dealer in the state of Kansas.

42 (q) "Retail dealer" means a person in possession of cigarettes for
43 the purpose of sale to a consumer.

101
2
other than a vending machine operator,

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

(s) "Sample" means cigarettes or tobacco products distributed to members of the general public at no cost for purposes of promoting the product.

(t) "Stamps" means tax indicia applied either by means of water applied gummed paper or heat process.

(u) "Tax indicia" means visible evidence of tax payment in the form of stamps or meter imprints.

(v) "Tobacco products" has the meaning provided by K.S.A. 79-3370 and amendments thereto.

(w) "Vending machine" means any coin operated machine, contrivance or device, by means of which merchandise may be sold.

(z) ~~(x)~~ "Wholesale dealer" means those persons who sell cigarettes to other wholesale dealers, retail dealers and manufacturer's salespersons for the purpose of resale in the state of Kansas.

aa) ~~(y)~~ "Wholesale sales price" means the original net invoice price for which manufacturer sells a tobacco product to a distributor, as shown by the manufacturer's original invoice.

Sec. 2. K.S.A. 79-3302 is hereby amended to read as follows: 79-3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309, 79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3371, 79-3373, 79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-3388 and sections 14 through 16, and amendments thereto, shall be known and may be cited as the Kansas cigarette and tobacco products act.

(b) It is the purpose and intent of this act to levy a tax on cigarettes sold, distributed, conveyed or given away in this state, and to collect such tax from the wholesale or retail cigarette dealer, who first sells, distributes or conveys the cigarettes in the state of Kansas. It is further the intent and purpose of this act that where a wholesale dealer or manufacturer's authorized representative gives away cigarettes for advertising or for any other purpose whatever, the cigarettes shall be taxed in the same manner as if they were sold in this state, and that such tax shall be paid in the manner prescribed by rules and regulations of the secretary of revenue regulate the sale of cigarettes and tobacco products in this state and to impose a tax thereon.

Sec. 3. K.S.A. 79-3303 is hereby amended to read as follows: 79-3303. Each person engaged in the business of selling cigarettes in the state of Kansas shall secure obtain a license as hereinafter

(x) "Vending machine distributor" means any person who sells cigarette vending machines to a vending machine operator operating vending machines in the state of Kansas.

(y) "Vending machine operator" means any person who places a vending machine, owned, leased or operated by such person, at locations where cigarettes are sold therefrom. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of the machine, nor shall the owner or lessee, or any employee or agent thereof be considered an authorized agent of the vending machine operator, if the owner or lessee does not own or lease the machine and the owner's or lessee's sole remuneration therefrom is a flat rental fee or commission, based upon the number or value of cigarettes sold from the machine, or a combination of both.

means any person who sells

vending machine operators

and 15

1 set out *provided by this act*. A separate application, license, and
2 fee is required for each dealer establishment owned or operated by
3 said a dealer: *Provided*, That a vending machine operator may
4 submit one application for a vending machine operator's master
5 license and for permits for all vending machines operated by
6 him or her. The license shall be displayed in the dealer establish-
7 ment and the vending machine permit shall remain securely
8 and visibly attached to the vending machine and contain such
9 information as the director may require. Any vending machine
10 found without such permit attached thereto shall be sealed by
11 an agent of the director and said seal shall be removed only
12 by an agent of the director after payment of the permit fee and
13 penalties hereinafter provided. The application for a vending
14 machine operator's master license and vending machine per-
15 mits shall list the brand name and serial number of each ma-
16 chine, and such other information as required by the director.
17 Except in accordance with proper judicial order or as otherwise
18 provided by law it shall be unlawful for any officer or employee
19 of the department of taxation to divulge or make known in any
20 way, the location of any cigarette machine to any person not
21 an officer or employee of such division: *Provided*, That such
22 information may be divulged to any law enforcement officer
23 for use by such officer in his or her official duties and in such
24 capacity. Any officer or employee revealing any such location
25 in violation of this provision, shall in addition to the penalties
26 otherwise provided in this act be dismissed from office.

27 A vending machine operator, in the course of his business
28 as a vending machine operator, may dispose of or sell vending
29 machines without securing a license to sell vending machines.
30 The vending machine operator may move vending machines
31 from one location to another and should a vending machine
32 become inoperative or be disposed of, the permit pertaining
33 thereto may be transferred to another machine. A vending ma-
34 chine operator shall within ten (10) days notify the director of
35 the brand name, and serial number of vending machines that
36 become inoperative, that are disposed of by him or her, sold
37 by him or her, acquired by him or her or brought into service
38 in this state as additional machines. The key to the lower or
39 storage compartment of a vending machine shall remain only
40 in the possession of the vending machine operator or his or
41 her authorized agent. All services connected with the operation
42 of a vending machine shall be performed by the vending ma-
43 chine operator thereof or his or her authorized agent. All vend-

— Reinsert language regarding vending machines

ing machines shall be subject to inspection by the director or his or her authorized agents. No vending machine shall be licensed unless it is so constructed that at least one package of each vertical column of cigarettes located therein is visible showing tax indicia.

All vending machines operated on military installations shall have a permit affixed thereto and the cigarettes shall show tax indicia of the Kansas tax.

Concurrently with a change in ownership of a dealer establishment the license applicable thereto is void and shall be surrendered to the director and shall not be transferred. On removal of a dealer establishment from one location to another, the owner thereof shall notify the director and surrender his or her license. The director shall issue a new license for the unexpired term of the surrendered license on payment of a fee of two dollars (\$2) \$2 to be deposited in the general revenue state treasury and credited to the state general fund. Should a dealer's license become lost, stolen, or destroyed, the director may issue a new license on proof of loss, theft, or destruction, at a cost of two dollars (\$2) \$2, to be deposited in the general revenue state treasury and credited to the state general fund.

Sec. 4. K.S.A. 79-3304 is hereby amended to read as follows: 79-3304. (a) Commencing with the biennium beginning January 1, 1986, the license or permit fee for each biennium or portion thereof shall be as follows: ~~(a) Retail dealer's license.~~

(1) For retail dealer's license, \$12 for each dealer establishment.

~~(b) Retail dealer on railroad.~~ (2) For retailer's license on railroad or sleeping cars, \$50. Only one retail license need be obtained by each railroad or sleeping car company to permit it to sell the sale of cigarettes on any or all of its cars within the state.

~~(c) Show, carnival and catering license.~~ (3) For show, carnival or catering license, \$50 for each concession.

~~(d) Temporary retail license.~~ (4) Resident retail dealer's temporary license for a place of business of a temporary nature, \$2 for each seven days or portion thereof.

~~(e) Wholesale dealer's license.~~ (5) For wholesale dealer's license, \$50, for each dealer establishment. No wholesale dealer's license shall be issued until the person applying therefor has filed with the director a bond payable to the state of Kansas in such an amount as shall be fixed by the director, but in no event less than \$1,000, with a corporate surety authorized to do business in the state of Kansas, and approved by the director. Should a wholesale dealer be unable to secure a corporate surety bond, the director

1 may issue a license to such wholesale dealer, upon the wholesale
2 dealer furnishing a personal bond meeting the approval of the di-
3 rector. Such bond shall be conditioned that the wholesale dealer
4 therein named will faithfully comply with all the provisions of this
5 act during the license period. Wholesale dealers shall submit to
6 the director upon request such records of sale or distribution
7 of eigarettes made in the state of Kansas, as may be required
8 by the director. All records pertaining to sale of eigarettes in
9 the state of Kansas shall be preserved for a period of two years.
10 Failure to furnish the director with such information as may
11 be required shall be cause for suspension or revocation of any
12 license issued hereunder.

13 A wholesale dealer selling eigarettes to a manufacturer's
14 salesman shall at the time of delivery of same make a true
15 duplicate invoice inserting therein the name of the salesman
16 together with the name of such salesman's employer.

17 ~~(f) Distributor or dealer of vending machines license. A~~
18 ~~distributor or dealer who sells eigarette vending machines into~~
19 ~~the state of Kansas must secure a license at a fee of \$50, and~~
20 ~~report on or before the tenth day of each month all such sales~~
21 ~~made during the preceeding month in Kansas to the director on~~
22 ~~forms furnished by the director, showing the name and address~~
23 ~~of the purchaser; brand name of the machine; serial number~~
24 ~~of the machine and the sale price.~~

25 ~~(g) Manufacturer's salesman license. (6) Manufacturer's~~
26 ~~salesman salesperson licenses, \$20 for each salesman salesperson.~~
27 ~~The manufacturer's salesman salesperson shall, with respect to each~~
28 ~~sale made to a retail dealer, make and deliver to the retail dealer~~
29 ~~a true invoice wherein such salesman salesperson shall insert the~~
30 ~~name of the wholesale dealer from whom such salesman salesperson~~
31 ~~secured such cigarettes, together with such salesman's salesperson's~~
32 ~~own name and the name of the retail dealer purchasing the cigarettes.~~

33 ~~(h) Vending machine operator's master license. No vending~~
34 ~~machine operator shall place any vending machine owned,~~
35 ~~leased or operated by such operator at any location for the~~
36 ~~purpose of selling eigarettes therefrom without first having~~
37 ~~made application to and having received from the director, a~~
38 ~~vending machine operator's master license. No fee shall be~~
~~charged for such license.~~

39 ~~(i) Vending machine permit. In addition to the vending ma-~~
40 ~~chine operator's master license, the operator of each eigarette~~
41 ~~vending machine shall obtain a permit for each vending ma-~~
42 ~~chine operated by such operator for a fee of \$12 for each permit.~~
43

Reinsert language regarding vending machines

Reinsert language regarding vending machines

(b) An application for a ~~retail dealer's, wholesale dealer's or vending machine operator's master~~ any license required under the provisions of this act may be refused to: ~~(a)~~ (1) A person who is not of good character and reputation in the community in which such person resides; ~~(b)~~ or (2) a person who has been convicted of a felony or of any crime involving moral turpitude or of the violation of any law of any state or the United States pertaining to cigarettes or tobacco products and who has not completed the sentence, parole, probation or assignment to a community correctional services program imposed for any such conviction within two years immediately preceding the date of making application for any of such licenses.

Sec. 5. K.S.A. 79-3309 is hereby amended to read as follows: 79-3309. (a) Whenever the director ~~shall have~~ has reason to believe that any ~~dealer in cigarettes~~ person licensed under this act has violated any of the provisions of ~~the cigarette tax law~~ this act, the director shall notify ~~such dealer by registered or the person by~~ certified mail of the director's intention to suspend or revoke the ~~person's license or licenses of such dealer. Within 10 days after mailing such notice, such dealer within 10 days after the mailing of the notice, the person~~ may request a hearing in writing before the director. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If, after such hearing, it appears to the satisfaction of the director that ~~such dealer the person~~ has violated any of the provisions of ~~the cigarette tax law~~ this act, the director is hereby authorized and empowered to suspend or revoke the ~~person's license or licenses of any such dealer and may in addition deny the application of any such dealer the person~~ for a license or licenses for a portion of the succeeding calendar year for such period as the director determines is necessary but in no case for a period ending more than one year following the date upon which ~~such the~~ license or licenses were suspended or revoked. The ~~suspension or revocation of the vending machine operator's master license shall suspend or revoke all vending machine permits issued to such vending machine operator for the term of such suspension or revocation of such license.~~

Reinsert language regarding vending machines

(b) If ~~any dealer shall continue to sell cigarettes at any dealer establishment or from a vending machine, a person continues to engage in activities requiring a license under this act after having notice or knowledge of the suspension or revocation of a license or permit issued to such dealer for such establishment or vending machine, or shall continue for the person's license or~~ licenses or after becoming more than 10 days after becoming de-

permit,

linquent in the payment of any tax, penalty or interest; ~~to sell~~
cigarettes imposed pursuant to this act, the state shall be entitled,
in any proceedings brought for such purposes, to have an order and
judgment restraining and enjoining such unlawful sale and no bond
shall be required for the issuance of any such restraining order or
injunction.

Sec. 6. K.S.A. 79-3316 is hereby amended to read as follows:

79-3316. (a) All purchases of cigarettes by any dealer shall be evidenced by an invoice, a duplicate of which shall be furnished the party receiving said the cigarettes from any dealer and shall be preserved for a period of two (2) years which duplicates shall be retained at the place of sale.

(b) Purchases of cigarettes by wholesale cigarette dealers shall be made from the manufacturers of cigarettes or from other Kansas licensed wholesale dealers. Purchases of cigarettes by retail dealers shall be from wholesale dealers.

(c) All invoices issued by wholesale dealers shall be in duplicate and a copy must accompany the consigned cigarettes. Cigarettes sold by a wholesale dealer to any other dealer shall be evidenced by invoices bearing the vendee's name and license number. A wholesale dealer selling cigarettes to a manufacturer's salesperson shall at the time of delivery of same make a true duplicate invoice inserting therein the name of the salesman together with the name of such salesperson's employer.

(d) All records pertaining to sales of cigarettes by dealers in the state of Kansas shall be preserved for a period of three years and shall be available for inspection by the director or the director's designee at the dealer's place of business.

(e) Every wholesale dealer shall report to the director on or before the tenth 10th day of each month, stating the amount of cigarettes sold during the preceding month, and shall further report and the amount of all cigarettes returned to the manufacturer. Any wholesale dealer who refuses any shipment or part of a shipment of unstamped cigarettes or has a shortage in the shipment of cigarettes consigned to him or her such dealer shall in the monthly report next following the refusal or shortage report to the director the number of packages or cartons of cigarettes refused or short and the name of the carrier from whom the cigarettes were refused or shortage occurred. Such report shall be made on forms provided by the director and shall contain such other information as the director may require.

(f) Exemption from payment of cigarette tax on sale of cigarettes made outside the state by any wholesale dealer shall be filed on

forms provided by the director. ~~Purchase of cigarettes by retail dealers or vending machine operators shall be from wholesale dealers.~~

Sec. 7. K.S.A. 79-3321 is hereby amended to read as follows: 79-3321. It shall be unlawful for any person:

(a) To possess, except as otherwise specifically provided by this act, more than 200 cigarettes without the required tax indicia being affixed as herein provided.

(b) To mutilate or attach to any individual package of cigarettes any stamp that has in any manner been mutilated or that has been heretofore attached to a different individual package of cigarettes or to have in possession any stamps so mutilated.

(c) To prevent the director or any officer or agent authorized by law, to make a full inspection for the purpose of this act, of any place of business and all premises connected thereto where cigarettes are or may be manufactured, sold, distributed, or given away.

(d) To use any artful device or deceptive practice to conceal any violation of this act or to mislead the director or officer or agent authorized by law in the enforcement of this act.

(e) Who is a dealer to fail to produce on demand of the director or any officer or agent authorized by law any records or invoices required to be kept by such person.

(f) Knowingly to make, use, or present to the director or agent thereof any falsified invoice or falsely state the nature or quantity of the goods therein invoiced.

(g) Who is a dealer to fail or refuse to keep and preserve for the time and in the manner required herein all the records required by this act to be kept and preserved.

(h) To wholesale cigarettes to any person, other than a manufacturer's ~~salesman~~ salesperson, retail dealer or wholesaler who is:

(1) Duly licensed by the state where such manufacturer's salesperson, retail dealer or wholesaler is located, or

(2) exempt from state licensing under applicable state or federal laws or court decisions including any such person operating as a retail dealer upon land allotted to or held in trust for an Indian tribe recognized by the United States bureau of Indian affairs.

(i) To have in possession any evidence of tax indicia provided for herein not purchased from the director.

(j) To fail or refuse to permit the director or any officer or agent authorized by law to inspect a carrier transporting cigarettes.

(k) To vend small cigars, or any products so wrapped as to be confused with cigarettes, from a machine vending cigarettes, nor shall a vending machine be so built to vend cigars or products that

may be confused with cigarettes, be attached to a cigarette vending machine.

(l) To sell, furnish or distribute cigarettes or tobacco products to any person under 18 years of age.

(m) For any person Who is under 18 years of age to purchase or possess, or attempt to purchase or possess, cigarettes or tobacco products.

(n) To sell cigarettes to a retailer or at retail that do not bear Kansas tax indicia or upon which the Kansas cigarette tax has not been paid.

(o) To sell cigarettes without having a license for such sale as provided herein.

(p) To sell cigarette vending machines without having a license as provided herein for sale of vending machines ~~cigarettes or tobacco products from a vending machine.~~

without having a vending machine distributor's license

(q) Who is a retail dealer to fail to post and maintain in a conspicuous place in the dealer's establishment the following notice: "By law, cigarettes and tobacco products may be sold only to persons 18 years of age and older."

(r) To distribute samples within 500 feet of any school when such facility is being used primarily by persons under 18 years of age unless the sampling is: (1) In an area to which persons under 18 years of age are denied access; (2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or (3) at or adjacent to an outdoor production, repair or construction site or facility.

(s) To sell cigarettes or tobacco products from a vending machine, or to allow a vending machine to be placed on premises owned or operated by such person, unless purchases from such machine require intervention of an employee or agent of the owner or lessor of the premises.

Sec. 8. K.S.A. 79-3322 is hereby amended to read as follows: 79-3322. (a) Any person who violates any of the provisions of this act, except as otherwise provided in this act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both. In addition thereto any person found liable for any license or permit fee or tax imposed under the provisions of this act shall be personally liable for such license or permit fee or tax plus a penalty in an amount equal to 100% thereof.

(b) Any person who violates this act by selling, furnishing or distributing sample cigarettes or sample smokeless tobacco cigarettes or tobacco products to any person under 18 years of age shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$500 nor more than \$2,500 or imprisonment for not more than one year, or by both.

It shall be a defense to a prosecution under this subsection if: (1) The defendant is a licensed retail dealer or a person authorized by

law to distribute samples; (2) 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; and (3) to purchase or receive the 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.

(c) Any agent, employees or others who aid, abet or otherwise participate in any way in the violation of this act or in any of the offenses hereunder punishable shall be guilty and punished as principals to the same extent as any person violating the this act.

Sec. 9. K.S.A. 79-3323 is hereby amended to read as follows: 79-3323. (a) The following are declared to be common nuisances and contraband:

(1) All packages of cigarettes, in quantities of ~~twenty (20)~~ 20 packages or more, not bearing indicia of tax payment as required in this act ~~and all devices for vending cigarettes in which unstamped packages are found; and;~~

(2) all property and paraphernalia, ~~other than vehicles~~, used in the retail sale of such ~~unstamped packages; other than vehicles~~, are hereby declared to be common nuisances and contraband ~~unstamped packages of cigarettes; and~~

(3) all vending machines used to dispense cigarettes or tobacco products.

Cigarettes in vending machines and exposed to view not showing indicia of tax payment required by this act to be visible from the outside of the vending machine shall be presumed to be unstamped.

(b) Any cigarettes or property constituting a common nuisance and contraband as herein provided by this section may be seized by the director or his or her the director's authorized agent or any duly constituted peace officer with or without process or warrant and shall be subject to forfeiture as provided in this act. The party making the seizure shall deliver to the vending machine operator owner of the property and to the person or persons found in possession of the same property a receipt stating from whom the property was seized, the place of seizure, and a description and the brand of the goods or the property seized. A duplicate of said the receipt shall be filed in the office of the director and shall be open for public inspection.

It shall be a defense to a prosecution under this subsection if: (1) The defendant is not a retail dealer or a person authorized by law to distribute samples; and (2) the defendant furnished 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 receive cigarettes or tobacco products.

Reinsert

Reinsert

1 Sec. 10. K.S.A. 79-3326 is hereby amended to read as follows:
2 79-3326. The director of taxation shall administer and enforce the
3 provisions of this act. The secretary of revenue shall adopt rules and
4 regulations for the administration of this act. For the purpose of
5 enforcing this act the director may call to ~~his or her~~ *the director's*
6 aid any law enforcement officer of this state to prosecute all violators
7 of any of the provisions ~~hereof and of this act~~. The police of ~~all~~
8 ~~cities any city~~ shall have the right to inspect all *premises*, records
9 and invoices pertaining to the ~~purchase and sale of cigarettes of~~
10 ~~such dealers in their respective cities wholesale distribution, re-~~
11 ~~tail sale or sampling of cigarettes or tobacco products within the~~
12 ~~city~~ at all reasonable times. All agents and representatives ~~of des-~~
13 ~~ignated by~~ the director are hereby invested with all the powers of
14 peace and police officers within the state of Kansas in the enforce-
15 ment of the ~~cigarette tax law provisions of this act~~ throughout the
16 state.

17 Sec. 11. K.S.A. 79-3373 is hereby amended to read as follows:
18 79-3373. ~~From and after 12:01 o'clock a.m. on July 1, 1972,~~ No
19 person shall engage in the business of selling or dealing in tobacco
20 products as a distributor ~~in any place of business~~ in this state
21 without first having received a license from the director ~~to engage~~
22 ~~in such business at that place of business~~. Every application for
23 such license shall be made on a form prescribed by the director and
24 shall state the name and address of the applicant; if the applicant
25 is a firm, partnership or association, the name and address of each
26 of its members; if the applicant is a corporation, the name and
27 address of each of its officers; the address of its principal place of
28 business; the place where the business to be licensed is to be con-
29 ducted; and such other information as the director may require for
30 the purpose of the administration of this act. A person ~~without~~
31 ~~outside~~ this state who ships or transports tobacco products to retailers
32 in this state, to be sold by those retailers, may make application for
33 license as a distributor, be granted such a license by the director,
34 and thereafter be subject to all the provisions of this act and entitled
35 to act as a licensed distributor: *Provided, That he or she file proof*
36 ~~with his or her application that he or she if the person files with~~
37 *the application proof that the person* has appointed the secretary of
38 state as ~~his or her~~ *the person's* agent for service of process relating
to any matter or issue arising under this act.

1 Sec. 12. K.S.A. 79-3377 is hereby amended to read as follows:
2 79-3377. ~~Every~~ (a) *Each* distributor shall keep in each licensed place
3 of business complete and accurate records for that place of business,
4 including itemized invoices of: (1) Tobacco products held, purchased,

manufactured, brought in or caused to be brought in from ~~without~~
outside the state, or shipped or transported to retailers in this state,
and of; and (2) all sales of tobacco products made, except sales to
an ultimate consumer. Such records shall show the names and ad-
dresses of purchasers, and other pertinent papers and documents
relating to the purchase, sale, or disposition of tobacco products.
When a licensed distributor sells tobacco products exclusively to
ultimate consumers at the addresses given in the license, no invoice
of those sales shall be required, but itemized invoices shall be made
of all tobacco products transferred to other retail outlets owned or
controlled by that licensed distributor. All books, records and other
papers and documents required by this ~~section~~ subsection to be
kept shall be preserved for a period of at least ~~two~~ (2) three years
after the date of the documents, as aforesaid, or the date of the
entries thereof appearing in the records, unless the director, in
writing, authorizes their destruction or disposal at an earlier date.

(b) At any time during usual business hours duly authorized
agents or employees of the director may enter any place of business
of a distributor and inspect the premises, the records required to
be kept under this act, and the tobacco products contained therein,
to determine whether or not all the provisions of this act are being
fully complied with. Refusal to permit such inspection by a duly
authorized agent or employee of the director shall be grounds for
revocation of the license. ~~Every~~

(c) Each person who sells tobacco products to persons other than
an ultimate consumer shall render with each sale itemized invoices
showing the seller's name and address, the purchaser's name and
address, the date of sale, and all prices and discounts. ~~He or she~~
Such person shall preserve legible copies of all such invoices for ~~two~~
(2) years from three years after the date of sale. ~~Every retailer~~

(d) Each distributor shall procure itemized invoices of all tobacco
products purchased. The invoices shall show the name and address
of the seller and the date of purchase. The ~~retailer distributor~~ shall
preserve a legible copy of each such invoice for ~~two~~ (2) years from
three years after the date of purchase. Invoices shall be available
for inspection by authorized agents or employees of the director at
the ~~retailer's distributor's~~ place of business.

Sec. 13. K.S.A. 79-3387 is hereby amended to read as follows:
79-3387. (a) All revenue collected or received by the director from
the licenses and taxes imposed by this act shall be deposited
monthly with the state treasurer and by him or her credited
remitted daily to the state treasurer, who shall deposit the entire
amount in the state treasury and credit it to the state general fund.

(b) All moneys received from license fees imposed by this act shall be collected by the director and shall be remitted daily to the state treasurer who shall deposit the entire amount in the state treasury and credit it to the cigarette and tobacco products regulation fund created by section 14.

New Sec. 14. (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the secretary of revenue or the secretary's designee, upon a finding that a licensee under this act has violated any provision of this act or any provision of any rule and regulation of the secretary of revenue adopted pursuant to this act shall impose on such licensee a civil fine not exceeding \$1,000 for each violation.

(b) No fine shall be imposed pursuant to this section except upon the written order of the secretary of revenue or the secretary's designee to the licensee who committed the violation. Such order shall state the violation, the fine to be imposed and the right of the licensee to appeal the order. Such order shall be subject to appeal and review in the manner provided by the Kansas administrative procedure act.

(c) Any fine collected pursuant to this section shall be paid to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the cigarette and tobacco products regulation fund.

(d) There is hereby created, in the state treasury, the cigarette and tobacco products regulation fund. Moneys in the fund shall be expended only for the enforcement of this act and rules and regulations adopted pursuant to this act. Such expenditures shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of revenue or a person designated by the secretary.

New Sec. 15. This act expressly 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. A city, county or other political subdivision of this state may adopt an ordinance or resolution under the provisions of this act, but the conduct prohibited or restricted by such ordinance or resolution shall be identical to the conduct prohibited or restricted under this act and

(strike)

~~under no circumstances shall the provisions of any such ordinance
or resolution be more stringent than the provisions of this act.~~

New Sec. 16. The provisions of K.S.A. 79-3610, 79-3611, 79-3612, 79-3613, 79-3614, 79-3615 and 79-3617, and amendments thereto, relating to the assessment, collection, appeal and administration of the retailers' sales tax, insofar as practical, shall have full force and effect with respect to taxes imposed by this act.

Sec. 17. K.S.A. 79-3301, 79-3302, 79-3303, 79-3304, 79-3305, 79-3309, 79-3310b, 79-3316, 79-3318, 79-3321, 79-3322, 79-3323, 79-3326, 79-3370, 79-3372, 79-3373, 79-3376, 79-3377, 79-3380 through 79-3387 and 79-3390 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

Wichita Interagency Council on Smoking and Health

March 7, 1994



Rep. Clyde D. Graeber, Chairperson
House Federal and State Affairs Committee
State Capitol Building
Topeka, KS 66612

Dear Rep. Graeber:

House Bill #3048 appears worthy of support in the main, with the striking exception of its preemption clause, Section 15. May we request, urgently and emphatically, that this Section be eliminated from the bill.

This clause would prohibit local governments from interfering in any way with the tobacco industry's ubiquitous and unrelenting promotion of its product, and should be recognized for the subversive intent which motivates its inclusion in this bill.

Nothing could be more disingenuous than the argument that its effect would be to confer uniformity on local laws throughout the state. Uniformity of regulation and enforcement can be accomplished by means far less detrimental to the efforts of localities to control tobacco use than would be inflicted by this preemption clause. The clause clearly has no beneficent purpose and would serve only to disarm all opposition to the unconscionable seduction of the young and impressionable into this ruinously harmful and addictive habit.

Studies by health policy analysts have shown that similar attempts by the tobacco industry to nullify local initiatives through state preemption laws have been made, or are being made, in at least 45 states nationwide. As in the present instance, these are promoted by industry lobbyists or local front groups, and are unequivocally inimical to the public interest.

As confirmed by the Centers for Disease Control, smoking persists as the single leading cause of death in this country, by causing or significantly contributing to the development of seriously disabling diseases several of which, especially lung cancer and heart disease, are often fatal. The burdens imposed on society and the national economy are enormous. The devastating drain on welfare resources in Kansas made by indigent patients with tobacco-induced disease is a case in point.

We have a moral responsibility, such as by removing the preemption clause from HB 3048, to resist in the most effective ways possible all who would promote this destructive habit. To do otherwise is to condone the tobacco industry's exploitative purposes and to betray the trust of the people of Kansas.

Respectfully submitted,

Phillip M. Allen, M.D., Ph.D.

Atch #11

MEMORANDUM

TO: The Honorable Clyde Graeber, Chairman
House Federal and State Affairs Committee

FROM: William W. Sneed
Legislative Counsel
The Smokeless Tobacco Council

DATE: March 9, 1994

RE: H.B. 3048

As you are aware, H.B. 3048 was heard in your Committee on March 7, 1994. Since that time I have discussed the bill with several Committee members and have picked up several questions that have consistently been raised by the various members of your Committee. Inasmuch as several Committee members have raised the same issues, I thought it would be helpful if I provided you some additional information on these points.

1. Vending machines. In its current form the bill provides for a total ban on all vending machines. Several members of the Committee have requested information on other types of vending machine limitations as opposed to a complete ban. Attached to this memorandum is some language that is being used in other states to limit the use of vending machines.

2. Local enforcement. There appears to be some confusion as to the effect the uniformity provision will have on local enforcement (New Section 15 on page 15). From my review of the bill, Section 10 found on page 13, which amends K.S.A. 79-3326, keeps intact the ability of local law enforcement to enforce the provisions of the Act. However, if there is a concern that New Section 15 diminishes that ability, I would suggest the following amendment:

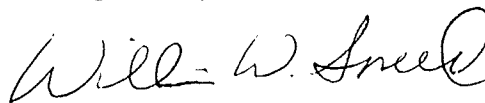
on page 16 in line 2 following the period, add a new sentence as follows:

Nothing in this act shall prohibit the enforcement of the provisions of this act by local law enforcement officials.

3. Uniformity. It is our contention that the uniformity provision found in H.B. 3048 should be a major component of this bill from the state's perspective. It is vitally important to remember that it is the state's responsibility under ADAMHA. Failure to demonstrate compliance will result in the state's losing valuable federal funding. The sample done by the Department of Revenue already demonstrates a lack of compliance, even though local units of government currently could be enforcing the laws now on the books. Further, a patchwork type of regulation may create an inability for the state to prove its compliance under federal law. Finally, from a business perspective, having one set of rules to comply with will create a much better working environment when training those individuals who will be involved in the point of sale on these products. Thus, the uniformity in and of itself creates a much better likelihood of greater compliance in the prohibition against minors procuring the tobacco product.

I hope that this information answers some of the questions raised by your Committee. Needless to say, if you have any additional questions, please feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script that reads "William W. Sneed". The signature is written in dark ink and is positioned above the printed name.

William W. Sneed

On page 11, line 13, add the following:

(p) To vend cigarettes or tobacco products at retail through a vending machine located other than in: (1) a factory business office or other place not open to the general public, in which event the vending machine shall be in a place to which persons under the age of 18 are denied access, or where the vending machine is under the supervision of the owner of the establishment or an employee of such owner; (2) a place to which persons under the age of 18 are denied access; (3) places where alcoholic beverages are offered for sale; or (4) a place where the vending machine is under the supervision of the owner of the establishment or an employee of such owner. This prohibition shall not apply if the machine can be operated only by the activation of an electronic switch by the owner of the establishment or an employee of such owner prior to each purchase, or is accessible only through the use of tokens.

NOTE: If the Committee chooses to amend the bill this or a similar fashion, the language on page 12, lines 26-27, would need to be stricken and where appropriate the term "vending machine" would have to be inserted throughout the bill.