

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:40 a.m. on January 28, 2002, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department  
April Holman, Legislative Research Department  
Don Hayward, Revisor of Statutes Office  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Dan Hermes, Kansas Alcohol & Drug Service Providers Assn.  
Tuck Duncan, Kansas Wine & Spirits Wholesalers Assn.  
Philip Bradley, Kansas Licensed Beverage Assn.  
Neal Whitaker, Kansas Beer Wholesalers Assn.  
Terry Presta, Petroleum Marketers & Convenience Store Assn.  
Mike Thornbrugh, Quik Trip  
Scott Van Gorden, Danny's Bar & Grill  
Ron Hein, R.J. Reynolds Tobacco Co. & Kansas Restayrabt  
& Hospitality Assn.  
Russell Loub, Little Apple Brewing Company  
Scott Redler, Timberline  
John Davis, Kansas Assn. of Beverage Retailers  
Frances Kastner, Kansas Food Dealers Assn.  
Mark Desetti, Kansas National Education Assn.

Others attending: See attached list.

The minutes of the January 23 and 24, 2002, meetings were approved.

**SB 425—Relating to government financing; providing tax revenue enhancements.**

For the Committee's information, Senator Lee distributed a handout entitled, "State of Health in Kansas," which was prepared by the Kansas Department of Health and Environment for a national health care conference in Florida which she attended. She called attention to information regarding the leading causes of death in Kansas and the rate of unhealthy behavior patterns in Kansas. Tobacco and alcohol were at the top of the list of causes of death in Kansas. (Attachment 1)

Dan Hermes, Kansas Alcohol and Drug Service Providers Association, testified in support of **SB 425**. He noted that state liquor taxes have not been increased in years, and because taxes are levied on quantity and not price, receipts have not kept pace with inflation. In addition, he noted that many studies indicate that an increase in the tax rate reduces consumption, especially for those underage. Mr. Hermes also suggested that the bill be amended to retain a portion of the current distribution formula. (Attachment 2)

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, testified in opposition to **SB 425**. (Attachment 3) At the outset, he called attention to a copy of his 2001 testimony in strong opposition to increasing taxes on alcoholic beverages attached to his written testimony on **SB 425**. He noted that his 2001 testimony points out that excise taxes are regressive and discriminatory, that the alcohol industry already contributes significantly to federal, state, and local taxes, and that proposed tax increases may not generate the anticipated revenues. In response to Mr. Hermes' comment that liquor taxes are not staying up with inflation, he distributed copies of a chart entitled, "Have Liquor Taxes Kept Up?" (Attachment 4) He noted that the statistics in the chart show that liquor taxes have exceeded the inflationary curve. Mr. Duncan went on to address the budgetary and taxation policies for 2002. He questioned the necessity of enacting revenue increases before the Legislature has established its Fiscal Year 2003 priorities. He noted that, with the

## CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:40 a.m. on January 28, 2002, in Room 519-S of the Capitol.

exception of inventory taxes, the tax increases proposed in **SB 425** do not bring revenues into the state treasury until the next fiscal year. He pointed out that, if the bill is passed, retail liquor dealers will have to pay approximately \$500,000 in inventory taxes in June and also will incur significant costs in conducting the inventory. With regard to the contention that new revenues are necessary to fund education, Mr. Duncan said every effort should be made to ascertain whether additional revenues are really required rather than continuing to pour money into the educational pipeline. In his opinion, if it is determined that more funding for education is needed, all Kansans should be asked to contribute, not just one segment. He urged the Committee not to shackle consumers and businesses with more taxes at a time when the economy is already suffering. In his opinion, the Legislature should establish budget priorities and make appropriate reductions and organizational changes before considering tax increases.

Philip Bradley, Kansas Licensed Beverage Association, testified in opposition to **SB 425**, contending that the proposed increase in taxes is a defacto increase in sales tax. He pointed out that the proposed tax increase creates compounded taxation for the liquor industry. He said that the proposed increase in taxes is asking for more from a hard hit, economically depressed sector of the business community. In closing, he reiterated Mr. Duncan's sentiment that the proposed increase in taxes is asking for the needs of all Kansans to be carried on the backs of a very few. (Attachment 5)

Neal Whitaker, Kansas Beer Wholesalers Association, testified in opposition to **SB 425**, noting that Kansas' taxing system already taxes alcoholic beverages at three levels. He pointed out that the bill raises the gallonage tax on beer by 28 percent and then increases the two sales taxes collected at liquor stores and drinking establishments by an additional 20 percent. He contended that the proposed increase in taxation will result in a reduction in the number of retail outlets. As to the claim that an increase in cost will reduce consumption, Mr. Whitaker reminded the Committee that the statement is historically inaccurate. He informed the Committee that the hospitality industry has seen a five to fifteen percent decline in sales during the last six months, and some well-known chain restaurants have recently filed for bankruptcy. He emphasized that passage of the bill will cause additional loss of jobs at a time when the Kansas economy is not strong. (Attachment 6)

Terry Presta, Chairman of the Petroleum Marketers and Convenience Store Association of Kansas, testified in opposition to the provision in **SB 425** which would increase the cigarette tax. He pointed out that today's business market is challenging due to competitive pressures from unregulated areas such as the flourishing cigarette trade on the Internet wherein no Kansas tax is collected. In addition, Kansas is surrounded by states with lower taxes on cigarettes. In his opinion, tobacco is being unfairly singled out to bear the brunt of the current revenue shortfall. He noted that persons who smoke are persons who are working, raising a family, and trying to make ends meet just as any other Kansas citizen. Rather than supporting any proposal to raise money from a tax increase, Mr. Presta would support a proposal which would expand the number of games offered by the Kansas Lottery. (Attachment 7)

Mike Thornbrugh testified on behalf of Quick Trip, a privately owned corporation based in Tulsa, Oklahoma. He noted that, last year, Quick Trip's sales amounted to approximately \$3 billion and that there are currently 374 Quick Trip locations, 60 of which are in Kansas. He explained that he has mixed emotions on **SB 425** because Quick Trip has a large presence across the border in Kansas City, Missouri. While passage of the bill will cause a decrease in sales of tobacco and a decline in motor fuel sales at Kansas Quik Trip stores, sales in Missouri stores will increase. He noted that Quick Trip operates in nine states, and all of the states have experienced a revenue shortfall. He commented that a tax increase on cigarettes is the first approach suggested by all states to address revenue shortfalls because only 25 to 30 percent of the population is affected. He informed the Committee that one to two percent of tobacco sales occur through the Internet. He explained that tobacco products are stored for long periods of time in underground caverns and shipped anywhere in the United States, and there is no way to make sure that taxes have been collected and remitted to the state. He noted that he could support the portion of the bill which equalizes the tax on CMB and single strength beer.

Scott VanGorden, general manger of Danny's Bar and Grill in Lenexa, discussed the effect that **SB 425** would have on a typical small business such as his. He said that the new taxes which would be imposed on breweries, distilleries, wineries, wholesalers, and distributorships would most likely be paid by retailers and drinking establishments in the form of higher prices. The increased cost of doing business would be compounded by the proposed increase in enforcement and excise taxes. The combined total impact of all

## CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:40 a.m. on January 28, 2002, in Room 519-S of the Capitol.

proposed taxes would increase the 2002 tax liability for Danny's Bar and Grill in excess of \$31,000. That increase in the cost of doing business would leave Danny's with two options. One option would be to increase the prices of alcoholic beverages, which would be detrimental to sales. The other option would be to reduce costs in other areas in an attempt to cover the additional taxes. He noted that the most obvious area to reduce costs is in hourly labor, and, in that case, Danny's would lose one to two employees. In conclusion, he echoed other conferees who maintained that the burden of paying for state's economic shortfalls should be shared by all Kansans. (Attachment 8)

Ron Hein testified in opposition to **SB 425** on behalf of the R.J. Reynolds Tobacco Company. He contended that the argument that Kansas smokers have not had a tax increase for cigarettes in years is not accurate. He noted that the cost of cigarettes has significantly increased since the Kansas excise tax was last increased. Due to the increased cost of cigarettes, smokers are paying an increased amount of sales tax. He commented that much of that tax increase goes to the state as a result of the Master Settlement Agreement (MSA) between the state attorneys general and the tobacco industry, and Kansas will receive approximately \$65 million per year in MSA payments. Mr. Hein further noted that the federal tax on smokers has increased substantially over the past 15 years. He said that, all together, Kansas smokers are currently financing the federal and state governments to the tune of \$1.33 per pack. He emphasized that, with the 35 cent tax increase proposed in **SB 425**, the total tax would rise to \$1.68 per pack. He pointed out that Kansas retailers would be confronted with a competitive challenge due to the low cigarette tax in border states (Missouri, Colorado, and Oklahoma). He explained that some of the price margins come close to or exceed the bootleg "flashpoint" of \$3.80 per carton. He commented that tax differences above the "flashpoint" are likely to encourage investments in cigarette smuggling. Mr. Hein noted that his written testimony includes information on the impact on border sales in New York and California after those states increased their cigarette tax. Also included is a chart which illustrates that government revenue is the largest portion of the cost of tobacco. (Attachment 9)

Mr. Hein followed with testimony in opposition to **SB 425** on behalf of the Kansas Restaurant and Hospitality Association. He contended that the proposed gallonage and enforcement increases are excessive for the businesses who will be asked to pay them. He noted that the increases will impact sales because, ultimately, consumers will be asked to bear the burden of the increased cost of doing business. In his opinion, the proposed tax increases are punitive. (Attachment 10)

Russell Loub, owner of the Little Apple Brewing Company in Manhattan, expressed his concern about the increase in gallonage taxes proposed in **SB 425**. He called attention to a spreadsheet which illustrates that microbreweries and brewpubs in Kansas are already triple taxed on production and sales due to a combination of federal and state taxes. He noted that, currently, \$16.98 is dedicated to taxes on a 15.5 gallon keg of beer priced at \$55. The increases called for in the bill would raise the amount to \$19.63, or 36 percent of his selling price. He believes the bill would only serve to further widen the competitive advantage major breweries have over microbreweries and, ultimately, stifle growth of the industry. In conclusion, he commented that, in his 25 years of experience in the restaurant industry, he has found that increased regulation and taxing reduce demand and subsequently tax revenues. (Attachment 11)

Scott Redler, the co-founder of Timberline Steakhouse, testified in opposition to **SB 425**. He commented that the hospitality industry has been struggling in recent months, and when taxes go up, only a certain amount can be passed on to the consumer. In his experience, he has never seen other states tax liquor three times before it hits the consumer. He noted that increased taxes on alcohol will contribute to a further decline in the hospitality industry which is currently facing other issues such as real estate taxes and increased license costs. He commented that the accumulation of these costs will force many businesses to go out of business or decrease the number of employees.

John Davis gave final testimony in opposition of **SB 425** on behalf of the Kansas Association of Beverage Retailers and as a owner of a retail liquor store in Wichita. (Attachment 12) He contended that the proposed 20 percent increase in taxes will result in a 20 percent decrease in stores. To illustrate his point, he noted that in 1983 there were approximately 1,200 liquor stores when the state enforcement tax on liquor products went from four percent to eight percent. Currently, there are only 700 stores. He reasoned that the state will not collect more revenue when the increased taxation contributes to the further reduction in the number of liquor stores.

Senator Corbin called the Committee's attention to written testimony in opposition to **SB 425** submitted by

## CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:40 a.m. on January 28, 2002, in Room 519-S of the Capitol.

Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas. (Attachment 13)

Frances Kastner, Kansas Food Dealers Association, commented that businesses statewide are experiencing economic difficulties, and increasing taxes on the products they sell may not be the way to help them. She encouraged the Committee to consider all the ramifications of **SB 425**. (Attachment 14)

Mark Desetti, spoke on behalf of the Kansas Association of School Boards, Schools for Quality Education, the Kansas National Education Association (KNEA), and U.S.D. 500 in Kansas City, noting that none of the groups he represents is an opponent to tax increases as revenue enhancements are necessary to fund the obligations of state government. However, the groups are not proponents of **SB 425** because it is not known how the funds will be used, and the amount of funding is not enough to solve the shortfall. Mr. Desetti suggested that the Committee amend the bill to include a comprehensive package of revenue enhancements to assist the state in funding all of its needed programs. (Attachment 15)

Senator Donovan quoted national statistics on the smoking habits of youth included in a report from the National Center for Tobacco Free Kids dated November 15, 2001. The report indicates that the national youth smoking rate is 28.1 percent, which is higher than the adult rate. The State of Rhode Island has a cigarette tax of \$1.00 per pack, and the percent of youth who smoke is 25 percent higher than the nation as a whole. North Dakota's cigarette tax is 44 cents, and 40.6 percent of the youth in the state smoke. Washington has the highest cigarette tax (\$1.42), and 28 percent of the youth smoke. Senator Donovan noted that the percent of youth who smoke is near the national average in states which have the lowest tax on cigarettes. He said that Kansas is one of the states with a lower than average tax on cigarettes (24 cents), and 26.1 percent of its youth smoke.

The hearing on **SB 425** was closed, and the meeting was adjourned at 11:55 a.m.

The next meeting is scheduled for January 29, 2002.

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:40 a.m. on January 28, 2002, in Room 519-S of the Capitol.