

Nick Jordan, Secretary
Doug Jorgensen, Director

Sam Brownback, Governor

Senate Federal and State Affairs Committee
SB 462

Testimony of
Doug Jorgensen
Director, Alcoholic Beverage Control

March 15, 2012

Good afternoon Mr. Chairman and members of the committee. I thank you for the opportunity to appear here today to present testimony on SB 462.

The Alcoholic Beverage Control (ABC) is neutral on the passage of this bill. However, if the bill passes we would like the committee to be aware of the following effects it will have on ABC and its administrative and enforcement processes.

This bill encompasses several different tasks.

1. It raises the tax on other tobacco products,
2. The tax increase would create a one time inventory tax,
3. Ties any future cigarette tax increase to other tobacco products
4. Creates a licensing requirement for retailers selling other tobacco products,
5. Defines little cigars eliminating the loophole,
6. Eliminates all exceptions to free samples,
7. Creates a 10 year period after revocation for reapplication,
8. Changes the standard of licensee character analysis,
9. Allows the director to require reports to be filed electronically, and
10. Cleans up meter imprint language

(1) Raises taxes on other tobacco products. SB 462 (the bill) will raise taxes on other tobacco products from 10% to 30% of wholesale price.

(2) The tax increase would create a one time inventory tax. This issue will affect the Kansas Department of Revenue (KDOR) and ABC. Other tobacco product tax is collected by the distributor when it is sold to the retailer. The distributor pays the collected tax to KDOR. At the retail level, the tax is reflected in the cost of goods to the consumer.

In the case of an other tobacco products tax increase, on the day the tax rate goes into effect, the retailer will have inventory that they have paid the lower tax rate. The retailer and distributor would be responsible for reporting the inventory at the date of

the increase and paying the difference in the amount already collected and the amount owed. Retailer and wholesalers would be provided instructions and reporting forms for self-reporting inventory tax. The retailer would declare the value of the other tobacco products on hand and pay the extra 20% tax.

The increase in the other tobacco products tax to a rate of 30% will increase other tobacco product revenues by \$10.8 M in fiscal year 2013. The tax increase would generate \$9.67 M and the inventory tax \$1.13 M. All proceeds would be deposited into the state general fund.

- (3) Ties any future cigarette tax increase to other tobacco products. The bill has language tying any future cigarette tax increase to the other tobacco product rate.
- (4) Creates a licensing requirement for retailers selling other tobacco products. Currently retailers selling other tobacco products only are not required to be licensed. A licensing requirement would subject the retailer to compliance inspections as well as require other tobacco product distributors to only sell to licensed retailers. It is not known how many new licensed will be generated by this requirement. Many of the sellers of other tobacco products are licensed cigarette retailers and this will not affect the license status of these retailers. It would only affect tobacconists and stores that currently do not sell cigarettes.
- (5) Defines little cigars eliminating the loophole. The bill defines little cigars using the federal definition as a model but increased the weight to four pounds not the three pounds of the federal definition. This would close the "loophole" created by consumers purchasing little cigars at a lower tax rate and consuming them as cigarettes. Little cigars can then be taxed as cigarettes not at the other tobacco product rate. ABC agreed to the definition for enforcement purposes but in neutral on the consumer usage issue.
- (6) Eliminates all exceptions to free samples. The bill will eliminate all present exceptions for distributions of free samples.
- (7) Creates a 10 year period after revocation for reapplication. The bill would increase the time a licensee that has a revoked license can re-apply from the current three years to ten years.
- (8) Changes the standard of licensee character analysis. The bill eliminates the current standard of "a person who is not of good character and reputation in the community" and replaces with felony conviction standards and also restates the 10 year revocation renewal rule.
- (9) Allows the director to require reports to be filed electronically. The bill will allow the director to require all monthly, quarterly, and annual reports from retailers, wholesalers, and distributors to be filed electronically. This is consistent with the KDOR modernization policy and will promote efficiencies.
- (10) Cleans up meter imprint language. The bill cleans up the no longer used meter imprint language and eliminates or clarifies other statutory language.

Thank you for considering our testimony.

SENATE BILL NO. 356

By Committee on Commerce

1-30

Proposed Amendments to SB 356
For Committee on Federal & State Affairs
March 14, 2012
Prepared by: Jason B. Long, Senior Ass't Revisor

1 AN ACT concerning amusement rides; relating to regulation of home-
2 owned amusement rides; amending K.S.A. 2011 Supp. 44-1601 and 44-
3 1613 and repealing the existing sections.

and 44-1614

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

5 Section 1. K.S.A. 2011 Supp. 44-1601 is hereby amended to read as
6 follows: 44-1601. As used in this act:

New Section 1. The owner of a home-owned amusement ride shall acquire and maintain a general liability insurance policy, and shall annually submit proof of such insurance to the secretary in such form and manner as prescribed by the secretary. The owner of the home-owned amusement ride shall make such proof of insurance available for inspection upon request.

7 (a) (1) "Amusement ride" means any mechanical or electrical device
8 that carries or conveys passengers along, around or over a fixed or
9 restricted route or course or within a defined area for the purpose of giving
10 its passengers amusement, pleasure, thrills or excitement and shall include,
11 but not be limited to:

12 (A) Rides commonly known as ferris wheels, carousels, parachute
13 towers, bungee jumping, reverse bungee jumping, tunnels of love and
14 roller coasters;

15 (B) equipment generally associated with winter activities, such as ski
16 lifts, ski tows, j-bars, t-bars, chair lifts and aerial tramways; and

17 (C) equipment not originally designed to be used as an amusement
18 ride, such as cranes or other lifting devices, when used as part of an
19 amusement ride.

20 (2) "Amusement ride" does not include:

21 (A) Games, concessions and associated structures;

22 (B) any single passenger coin-operated ride that: (i) is manually,
23 mechanically or electrically operated; (ii) is customarily placed in a public
24 location; and (iii) does not normally require the supervision or services of
25 an operator; or

26 (C) nonmechanized playground equipment, including, but not limited
27 to, swings, seesaws, stationary spring-mounted animal features, rider-
28 propelled merry-go-rounds, climbers, slides, trampolines, moon walks and
29 other inflatable equipment and physical fitness devices.

30 (b) "Certificate of inspection" means a certificate, signed and dated
31 by a qualified inspector, showing that an amusement ride has satisfactorily
32 passed inspection by such inspector.

33 (c) "Department" means the department of labor.

34 (d) "~~Home-owned amusement ride~~" means ~~an amusement ride owned~~
35 ~~by a not-for-profit entity and operated;~~

; or
(D) home-owned amusement rides

<p>(d) "Home-owned amusement ride" means an amusement ride owned by a not-for-profit entity and operated:</p> <p>(1) Solely within a single county;</p> <p>(2) by individuals on a volunteer basis; and</p> <p>(3) for a period not to exceed 12 days within one calendar year.</p>

- 1 ~~(1) Solely within a single county;~~
- 2 ~~(2) by individuals on a volunteer basis; and~~
- 3 ~~(3) for a period not to exceed 12 days within one calendar year; _____~~
- 4 ~~(e) (d) "Nondestructive testing" means the development and~~
- 5 ~~application of technical methods such as radiographic, magnetic particle,~~
- 6 ~~ultrasonic, liquid penetrant, electromagnetic, neutron radiographic,~~
- 7 ~~acoustic emission, visual and leak testing to:~~
- 8 (1) Examine materials or components in ways that do not impair the
- 9 future usefulness and serviceability in order to detect, locate, measure and
- 10 evaluate discontinuities, defects and other imperfections;
- 11 (2) assess integrity, properties and composition; and
- 12 (3) measure geometrical characters.
- 13 ~~(f) "Operator" means a person actually engaged in or directly~~
- 14 ~~controlling the operations of an amusement ride.~~
- 15 ~~(g) "Owner" means a person who owns, leases, controls or~~
- 16 ~~manages the operations of an amusement ride and may include the state or~~
- 17 ~~any political subdivision of the state.~~
- 18 ~~(h) (g) "Parent or guardian" means any parent, guardian or~~
- 19 ~~custodian responsible for the control, safety, training or education of a~~
- 20 ~~minor or an adult or minor with an impairment in need of a guardian or a~~
- 21 ~~conservator, or both, as those terms are defined by K.S.A. 59-3051, and~~
- 22 ~~amendments thereto.~~
- 23 ~~(h) (1) "Patron" means any individual who is:~~
- 24 (A) Waiting in the immediate vicinity of an amusement ride to get on
- 25 the ride;
- 26 (B) getting on an amusement ride;
- 27 (C) using an amusement ride;
- 28 (D) getting off an amusement ride; or
- 29 (E) leaving an amusement ride and still in the immediate vicinity of
- 30 the ride.
- 31 (2) "Patron" does not include employees, agents or servants of the
- 32 owner while engaged in the duties of their employment.
- 33 ~~(i) "Person" means any individual, association, partnership,~~
- 34 ~~corporation, limited liability company, government or other entity.~~
- 35 ~~(j) "Qualified inspector" means a person who holds a current~~
- 36 ~~certification or other evidence of qualification to inspect amusement rides,~~
- 37 ~~issued by a program specified by rules and regulations adopted under~~
- 38 ~~K.S.A. 2011 Supp. 44-1603, and amendments thereto.~~
- 39 ~~(k) "Secretary" means the secretary of labor.~~
- 40 ~~(m) (l) "Serious injury" means an injury that results in:~~
- 41 (1) Death, dismemberment, significant disfigurement or permanent
- 42 loss of the use of a body organ, member, function or system;
- 43 (2) a compound fracture; or

1 (3) other significant injury or illness that requires immediate
2 admission and overnight hospitalization and observation by a licensed
3 physician.

4 ~~(#)~~ (m) "Sign" means any symbol or language reasonably calculated
5 to communicate information to patrons or their parents or guardians,
6 including placards, prerecorded messages, live public address, stickers,
7 pictures, pictograms, guide books, brochures, videos, verbal information
8 and visual signals.

9 Sec. 2. K.S.A. 2011 Supp. 44-1613 is hereby amended to read as
10 follows: ~~(a) The provisions of K.S.A. 2011 Supp. 44-1601 through 44-~~
11 ~~1612, and amendments thereto, shall not apply to home-owned amusement~~
12 ~~rides, as defined in K.S.A. 2011 Supp. 44-1601, and amendments thereto.~~
13 (b) The provisions of K.S.A. 2011 Supp. 44-1601 through 44-1612,
14 and amendments thereto, and this section, and amendments thereto, shall
15 be known as the Kansas amusement ride act.

16 Sec. 3. K.S.A. 2011 Supp. 44-1601 and 44-1613 are hereby repealed.

17 Sec. 4. This act shall take effect and be in force from and after its
18 publication in the statute book.

and section 1,

Sec. 4. K.S.A. 2011 Supp. 44-1614 is hereby amended to read as follows: 44-1614. The secretary of labor shall adopt rules and regulations necessary to implement provisions of the Kansas amusement ride act, K.S.A. 2011 Supp. 44-1601 through 44-1612, 44-1613 and section 1, and amendments thereto; and K.S.A. 2011 Supp. 44-1613, and amendments thereto. Nothing herein shall be construed to authorize the secretary of labor to adopt rules and regulations regulating amusement rides exempted from the Kansas amusement ride act. Such rules and regulations shall be adopted on or before July 1, 2010.

and 44-1614

