

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2197

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2197

Senate Industry, Business and Labor

Check here for Conference Committee

Hearing Date: January 28, 2009

Recorder Job Number: 8042

Committee Clerk Signature

Minutes:

Chairman Klein opened the IBL hearing, all members presents.

Senator Wanzek introduced SB 2197, written testimony provided. (See attachment #1)

Allen Stenehjem testified in support of SB 2197. (See attachment #2), also presented a written letter from Mike Cummings, a tobacco wholesaler in Fargo, supporting SB 2197. Also presented a letter from Louella Moseley, president of BCTGM Local 196T, in support of SB 2197.

Senator Klein: By changing the weight-based, what numbers are we going to?

Allen Stenehjem: I don't want to calculate off the top of my head, the tax on product A would go from 73% to 26.5%, the tax on product B would go from 23% to 26.5%. The important factor is not which company benefits, it's the consumer who is paying the extra tax.

Senator Andrist: It is my understanding that Kentucky has a unit-based tax, what's wrong with this concept.

Allen Stenehjem: the crux of the whole thing is who is paying the extra cost? The consumer

Senator Andrist: From a public policy standpoint, we are looking at the same damage, so why not have the same tax?

Senator Behm: It makes sense, what **Senator Andrist** says, why don't we tax it all the same, weight, volume, ect?

Senator Potter: Is the national market growing, shrinking, or holding

Allen Stenehjem: The business is good and market is growing.

Senator Potter: Has the state been losing money due to the weight-based tax? And would we have made the losses if we would have had the price-based tax?

Allen Stenehjem: When you look at the tax, this is not revenue neutral. The state of ND lost out on \$1 million dollars of tax income last biennium. This is a business decision. Competition and fairness in the market is where we need to focus. Do we favor one company over the other through our tax policy?

Senator Horne: My understanding is each product has a base-price and our current system adds a weight-based tax, and then a sales tax beyond that?

Senator Klein: At the end of the day, what does the consumer actually see?

Stanley Arnold, representing Conwood Company, testified in favor of SB 2197. (See attachment #3)

Kent Tupa: representing American Cancer Society, testified in favor of SB 2197. (See attachment #4)

Senator Horne: My concern is the base-price would be lower, which would increase the usage and encourage youth. This then turns to a health issue, I understand fair tax issues, however, we don't need to encourage youth into buying the cheaper brand because kids are not price conscious.

Senator Klein Any testimony in opposition to SB 2197?

John Job: representing AMCON Distribution Co. testified in opposition to SB 2197. (See attachment #5)

Robert Shepherd: representing UST Public Affairs Inc., testified in opposition of SB 2197. (See attachment #12)

Senator Andrist: It seems the weight-based system would have a declining tax.

Robert Shepherd: If you adopt the old system, you will take a tax hit.

Senator Andrist: Then you would concede there should be adjustment for inflation

Robert Shepherd: You as the legislature set your tax according to the economy.

Kerry Paulson: representing US Tobacco Public Affairs testified in opposition to SB 2197. (See attachment #13)

Jeb Elke: representing ND Chamber of Commerce testified in opposition to SB 2197, just reiterated Kerry Paulson's testimony.

Myles Kolsberg testifying for the Tax Office, there are charts and files pertaining to increases ounces, amount of increase, and revenue.

Senator Wanzek: If you look at taxes as weight based taxes in 2001. What % would that be at looking forward to 2008, with relationship to value?

Myles Kolsberg: We do not have that information.

Allen Stenehjem: Looking at fiscal notes, they base their assumptions on market shares. It may not be an exact science but you can infer what tier a product sells in or comes from.

Myles Kolsberg: Fiscal Notes approach range of 300K-700K, and came up with the ranges of 500K.

Chairman Klein closed the meeting with no action being taken.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2197

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8702

Committee Clerk Signature

Minutes:

Chairman Klein: reopened the hearing on SB 2197, all members present.

Chairman Klein: We have worked this over and there is some concern about an amendment.

Senator Wanzek: The amendment changes are lowering the percentage from 28% to 26.5%.

It has the intent to stay revenue neutral, and this is what it takes to do that.

Chairman Klein: one of the presenters miscalculated some numbers and wanted to correct it so he is passing that out.

Senator Wanzek: It was the intent to change to method of calculation and not the total state dollars.

Senator Andrist: To me, the biggest deficiency to weight-based system is that so much per pound has no inflation component as the dollar tax would, as the value of the dollar goes up. I am very sensitive to any measure that makes tobacco more readily accessible to our young people. If we stay with a weight-based system, we should add an inflation escalator.

Chairman Klein: I disagree with that because if we are going to do that, we will have to address every other sin product because we are doing it that way for cigarettes, beer, and soon all wines. It doesn't matter if you are down on the low end (tier one) or in the high (tier three), your still only paying \$.44 per pack. It is the way it is.

Senator Potter: I resist the amendment because and recognize exactly what it does, it drives up the cost and produces revenue for the state of North Dakota and that's ok by me.

Senator Behm: It bothers me these are taxed at different. Why is weight-per-ounce taxed different than the price?

Chairman Klein: We are charging tax per ounce.

Senator Behm: Thanks for straighten me out.

Senator Wanzek: We are putting a tax increase on tobacco.

Senator Wanzek: I will make a motion to pass the amendment

Senator Andrist: Seconded

Chairman Klein: We have a motion for a Do Pass on the SW amendment as it has been handed out. Motion failed 4-3

Senator Wanzek: Motion for a Do Pass

Senator Behm: Seconded

Chairman Klein: Motion fails 4-3

Senator Nodland: Made motion to Do Not Pass

Senator Potter: Seconded

Chairman Klein: Motion for a Do Not Pass passes 5-2, CK will carry.

FISCAL NOTE
Requested by Legislative Council
01/14/2009

Bill/Resolution No.: SB 2197

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$500,000			
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2197 changes the method of computing the wholesale tobacco tax on certain types of tobacco products from a 'tax per ounce' to a tax based on the wholesale price of the product.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

In 2008, there were 4.581 million ounces of "snuff" on which \$2.748 million in wholesale tobacco tax was collected at the current tax rate of \$.60 per ounce. This bill would change the method of taxing this product to 28% of the wholesale price.

The fiscal impact of this switch back to 28% of the wholesale price would depend on the relative market share of each of the various-priced products (there are three basic price tiers of snuff sold in the state).

Industry representatives have provided some information relative to the respective market share of each of these tiers, and based on this information, and the expected rate of growth in the amount of product sold, we estimate the fiscal impact of the switch back to 28% of the wholesale price will increase state general fund revenues by an amount between \$300,000 and \$700,000 for the 2009-11 biennium. The midpoint of this range is shown above.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/27/2009

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Date: 2/4/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2197

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number Amendment

Action Taken **Pass** **Do Not Pass** **Amended**

Motion Made By Senator Wanzek Seconded By Senator Andrist

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne		✓
Senator John M. Andrist		✓	Senator Tracy Potter		✓
Senator George Nodland		✓			

Total (Yes) 3 No 4

Absent 0

Floor Assignment Senator

If the vote is on an amendment, briefly indicate intent:

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Date: 2/4/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2197

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass Do Not Pass Amended

Motion Made By Senator Nodland Seconded By Senator Potter

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓	 	Senator Arthur H. Behm	 	✓
Senator Terry Wanzek - V.Chair		✓	Senator Robert M. Horne	✓	
Senator John M. Andrist	✓	 	Senator Tracy Potter	✓	
Senator George Nodland	✓	 			

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

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Date: 2/4/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2197

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass Do Not Pass Amended

Motion Made By Senator Nodland Seconded By Senator Potter

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman		✓	Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair		✓	Senator Robert M. Horne	✓	
Senator John M. Andrist		✓	Senator Tracy Potter	✓	
Senator George Nodland		✓			

Total (Yes) 4 No 3

Absent 0

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

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Date: 2/4/09
Roll Call Vote #: ~~2197~~ 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2197

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Pass

Do Not Pass

Amended

Motion Made By Senator Wanzek Seconded By Senator Behm

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman		✓	Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist		✓	Senator Tracy Potter		✓
Senator George Nodland		✓			

Total (Yes) 3 No 4

Absent 0

Floor Assignment Senator

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 4, 2009 4:58 p.m.

Module No: SR-22-1679
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2197: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO NOT PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2197 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

SB 2197

#2

Chairman Klein and fellow IBL Committee Members,

For the record, my name is Terry Wanzek, State Senator from District 29. I am here to introduce SB 2197.

SB 2197 makes one substantive change which is the most controversial part of the bill. It changes the current method of taxation on most tobacco products, mainly snuff or chewing tobacco, from a weight based tax to value tax. In other words the tax will be assessed on a percentage of dollar value versus by weight. It is my understanding that this is how we already tax cigars and pipe tobacco.

As an agricultural businessman, I know how a simple competitive advantage can yield a tremendous increase in market share. In my business, if I want a larger market share, I have to do so by becoming more efficient in production or by increasing my marketing expenses. I do not have the option to raise the tax on my competitor's crops. To me, this seems to be an unfair practice. With free enterprise everyone should compete on a level playing field.

It seems fair to have a discussion about the merits of one manufacturer paying a much higher percentage in taxes as related to the total amount of revenue charged to ND consumers versus another enjoying a much lower percentage of tax. In other words, the company taking a larger share of the ND market share pays a much lower percentage of tax from those ND consumer dollars than another company extracting fewer dollars or market share from ND consumers.

Many of us can argue and would argue on the merits of tobacco use; however it is a legal product. Stating this fact, we need to provide a fair business climate to any producer of this legal product. A basic principle in the business world is to analyze the internal and external strengths, weaknesses, opportunities, and threats. When I see tax structure as an opportunity for one Tobacco Company and a threat to another, this serves as a red flag to unfair business practice. Tax policy should be equitable. Knowing this, I introduced SB 2197 to allow for this discussion. I trust in the wisdom of the Senate IBL committee to give this issue a fair hearing and objective consideration.

Thank you Mr. Chairman & fellow committee members.

Proposed Amendments for SB 2197
Sen. Terry Wanzek

- Page 1, line 15- after snuff, insert chewing tobacco
- Page 1 line 18- after snuff, insert chewing tobacco
- Page 1, line 23- after snuff, insert chewing tobacco
- Page 2, line 5-after snuff, insert chewing tobacco
- Page 2, line 16-after snuff, insert chewing tobacco
- Page 2, line 19-after snuff, insert chewing tobacco
- Page 2 line 24-after snuff, insert chewing tobacco
- Page 2 line 27-after snuff, insert chewing tobacco
- Page 2, line 28-after snuff, insert chewing tobacco
- Page 3, line 5-after snuff, insert chewing tobacco
- Page 3 line 12-after snuff, insert chewing tobacco
- Page 3, line 28-after snuff, insert chewing tobacco
- Page 4 line 1-after snuff, insert chewing tobacco
- Page 4, line 4-after snuff, insert chewing tobacco
- Page 4, line 6-after snuff, insert chewing tobacco
- Page 5, line 8-after snuff, insert chewing tobacco
- Page 5 line 16-after snuff, insert chewing tobacco
- Page 6, line 21-after snuff, insert chewing tobacco
- Page 6. Line 24- change twenty-eight percent to twenty-six point five percent
- Page 6, line 24-after snuff, insert chewing tobacco
- Page 6, line 28-after snuff, insert chewing tobacco
- Page 7, line 1-after snuff, insert chewing tobacco
- Page 7, line 27-after snuff, insert chewing tobacco
- Page 8, line 5-after snuff, insert chewing tobacco

Estimated North Dakota Moist Smokeless Tobacco Prices

During the hearing on SB-2197 before the Industry, Business and Labor Committee on January 28, 2009, Senator Robert M. Horne asked to be provided with information relating to the prices of Moist Smokeless Tobacco under the present weight-based system, and the ad valorem method provide for in SB-2197.

Below are the estimated figures, based on the following assumptions:

- Tier wholesale prices are representative prices of brands within that Tier (Premium-Tier 1; Price Value – Tier 2; Sub Price value –Tier 3)¹.
- Weight-based tax is calculated at 60¢ per ounce on a 1.2 ounce can.
- Ad valorem tax is calculated at 28% of wholesale price, per SB-2197.
- Sales Tax is based on 5% statewide sales tax, and does not include any local sales tax imposed on some cities.
- Calculations do not include any potential wholesale or retail markup.

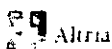
Calculations under current Weight-Based Excise Tax

Tier	Wholesale Price	Excise tax at 60¢ per ounce	Estimated price including excise tax	State sales tax at 5%	Estimated final price without wholesale or retail markup
1	\$ 3.01	\$.72	\$ 3.73	\$.19	\$ 3.92
2	\$ 1.35	\$.72	\$ 2.07	\$.10	\$ 2.17
3	\$.98	\$.72	\$ 1.70	\$.09	\$ 1.79

Calculations under ad valorem method per SB-2197

Tier	Wholesale Price	Excise tax at 28%	Estimated price including excise tax	State sales tax at 5%	Estimated final price without wholesale or retail markup
1	\$ 3.01	\$.84	\$ 3.85	\$.19	\$ 4.04
2	\$ 1.35	\$.38	\$ 1.73	\$.09	\$ 1.82
3	\$.98	\$.28	\$ 1.26	\$.06	\$ 1.32

¹ USSTC RAD-SVC database. These are the wholesale prices (nationally and in ND) for representative brands in each of the three tiers. Copenhagen was used for the Tier 1 price, Husky was used for the Tier 2 price and Longhorn was used for the Tier 3 price. As of February 1, 2009, the price of Copenhagen was \$3.01, the price of Husky was \$1.35 and the price of Longhorn was \$0.98.



Senate Industry, Business and Labor Committee
 Senate Bill 2197

Summary of Tobacco Tax Reported FY 2002 - 2008

Fiscal Year	Chewing Tobacco		Snuff Tobacco		Other Tobacco Products	
	Ounces	Tax at 16¢	Ounces	Tax at 60¢	Wholesale Value	Tax at 28%
FY2003	191,043	\$30,567	3,096,862	\$1,858,117	\$1,589,208	\$444,978
FY2004	179,166	28,667	3,099,902	1,859,941	1,495,441	418,723
FY2005	186,641	29,863	3,474,236	2,084,542	1,414,963	396,190
FY2006	192,875	30,860	3,777,562	2,266,537	1,521,976	426,153
FY2007	202,532	32,405	3,965,426	2,379,256	1,673,608	468,610
FY2008	218,419	34,947	4,462,570	2,677,542	1,678,076	469,861

Prepared by Office of State Tax Commissioner
 February 3, 2009

Ad Valorem is clearly the preferred tax method for moist snuff in the United States - because it works!



Mr Chairman and members of the committee for the record my name is Allan Stenehjem and I represent Conwood Company, a manufacturer of moist snuff.

As you can see from the chart, it is clear that almost all states which tax smokeless tobacco do so based on ad valorem or percentage of price bases. Prior to 2001, North Dakota taxed smokeless tobacco at a percentage of wholesale price.

Over the past few years, bills have been introduced in a number of targeted states that address the taxation of smokeless tobacco. Most bills change the taxation from a percentage of price to a weight-based system. This approach has been pushed aggressively by UST, the largest U.S. smokeless tobacco manufacturer, this was done primarily to reduce the effective tax rates on the higher-priced premium products it sells, while raising the effective tax rates on the lower-priced smokeless products sold by its competition. UST's claim is "to level the playing field

Most businesses follow the "Affected Performance Competition Model. That is, businesses have knowledge of what their competition is doing, thus affecting their own business and marketing strategies. Competition consists of trying to get the customer to buy your product instead of the one offered by the competitor. In

selling the same product, a company's performance determines their success. Can you offer a better product at a competitive price?

When UST discovered they were losing market share of their premium brands of smokeless tobacco to their competitors' value-priced products, UST chose to abandon the performance competition model of making a better product at a lower price. Instead, they turned to the states to make their products more competitive in the market by lobbying for changes in the state tobacco tax from a percentage of price to a weight-based system. North Dakota was one of its first targets.

The weight-based initiative is the result of an unbridled attempt by the leading manufacture, UST, to use tax law as a weapon to improve the competitiveness of its products.

At some point in today's testimony you will hear and see charts showing that from 2001, when the tax was changed from a percentage of price method to a weight based tax method, the tax revenue from the sale of OTP in North Dakota experienced a steady increase. That statement is true. Revenues from Other Tobacco Products (OTP) have increased every year since 2003. In 2003, the state of North Dakota collected nearly \$1.9 million in taxes and in 2008 it collected