

**MINUTES OF THE  
SENATE COMMITTEE ON TAXATION**

**Seventy-third Session  
June 3, 2005**

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 2:43 p.m. on Friday, June 3, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mike McGinness, Chair  
Senator Sandra J. Tiffany, Vice Chair  
Senator Randolph J. Townsend  
Senator Dean A. Rhoads  
Senator Terry Care  
Senator John Lee

**COMMITTEE MEMBERS ABSENT:**

Senator Bob Coffin (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Bob Seale, Assembly District No. 21

**STAFF MEMBERS PRESENT:**

Chris Janzen, Deputy Fiscal Analyst  
Tanya Morrison, Committee Secretary  
Ardyss Johns, Committee Secretary

**OTHERS PRESENT:**

Victoria Oldenburg, Senior Deputy Attorney General, Office of the Attorney General  
Dino DiCianno, Deputy Executive Director, Department of Taxation  
Samuel P. McMullen, Las Vegas Chamber of Commerce; Retail Association of Nevada; Philip Morris USA, Incorporated, Altria Corporation

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Erin McMullen, Las Vegas Chamber of Commerce

CHAIR MCGINNESS:

This meeting of the Senate Committee on Taxation is called to order. We will open the hearing on Assembly Bill (A.B.) 464.

ASSEMBLY BILL 464 (2nd Reprint): Makes various changes regarding manufacture, sale and use of tobacco products. (BDR 32-1028)

VICTORIA OLDENBURG (Senior Deputy Attorney General, Office of the Attorney General):

On behalf of the Attorney General, I speak in favor of A.B. 464. This is good legislation for the State, not only from the perspective of the Attorneys General Master Tobacco Settlement Agreement (MSA), but as a general complement to the complementary legislation passed earlier in this Session regarding the MSA. As many of you may know, this was a bill presented last Session on behalf of the Office of the Attorney General. It did not pass and has come back again this Session in essentially the same form.

CHAIR MCGINNESS:

I see there is a lot in the bill about counterfeit stamps, et cetera. Does the Office of the Attorney General have some sort of enforcement? Is that what your division does?

MS. OLDENBURG:

Currently, we do not do any counterfeit enforcement. Our tobacco unit is primarily focused on enforcing the MSA against nonparticipating manufacturers. Those are tobacco manufacturers who failed to put money into the escrow agreements as they are required to do under the MSA. Therefore, at this point, we have not really established an enforcement unit for counterfeit stamps.

DINO DICIANNO (Deputy Executive Director, Department of Taxation):

The Department of Taxation is in favor of this legislation as amended in the first reprint of the bill. There was a fiscal note with respect to the original bill. Those impacts have been removed in the second reprint. Plus, the language contained within the bill will assist us. As you know, last Session you authorized for our budget two additional audit investigators.

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I am glad you mentioned the counterfeit stamp issue. That is something we are very serious about in our enforcement procedures with respect to contraband cigarettes and illegal types of tobacco that come into the State.

SENATOR CARE:

We need to do this in order to be in full compliance with the MSA. Is that correct?

MS. OLDENBURG:

No, that is not correct. This is not a requirement of the MSA, although its concept is supported by the National Association of Attorneys General. I apologize if I misspoke, or if you have a misunderstanding. This bill will help us with our enforcement obligations under the MSA because it is just one more arm to reach those who are not complying with the nonparticipating manufacturers requirements of *Nevada Revised Statute* (NRS) 370A.

SENATOR CARE:

Was this bill requested by the Attorney General?

MS. OLDENBURG:

Actually, this was one of our bills in the last Session. It was not our bill this Session; however, we are still 100 percent in support of it.

SENATOR CARE:

Did someone introduce it on behalf of the Attorney General?

MS. OLDENBURG:

Yes, it was introduced by the Assembly Committee on Ways and Means.

SENATOR CARE:

This is the second reprint. Is there anything in A.B. 464 now that was not asked for by the Attorney General?

MS. OLDENBURG:

There is nothing new that I am aware of.

SENATOR CARE:

What has happened with this bill along the way?

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MS. OLDENBURG:

Along the way, we have removed the fiscal note, the effective date has changed and many of the mandatory provisions have been amended. We are satisfied with the bill and support it. It will give us the first necessary step in addressing this problem.

SENATOR CARE:

This provides the necessary circuitous language to allow for sales on Indian reservations and, for example, the Nellis Air Force Base military installation. Does this bill govern those sales? Are military installations and reservations outside the jurisdiction of this bill?

SAMUEL P. McMULLEN (Las Vegas Chamber of Commerce; Retail Association of Nevada; Philip Morris USA, Incorporated, Altria Corporation):

The provisions in the bill would apply just like the current tobacco statutes. There are no specific changes with respect to any jurisdiction.

CHAIR MCGINNESS:

Senator Care, if you look on page 3, line 37, it talks about current valid licenses. It says, "The Department shall create and maintain on its Internet Web site ... ." I am not sure if that answers your question, but it includes current valid licenses, and on line 39 it shows "Indian tribes on whose reservations or colonies ... ."

MR. McMULLEN:

The references to tribes are, generally, recognition that due to sovereignty, they cannot be considered licensees. Consequently, the utilization of the word "tribe" clarifies that like a licensed wholesale dealer, they can be in the position of distributing cigarettes or selling them as a retail dealer. Any time "tribe" is mentioned in the bill, it is just to clarify for reporting purposes. For instance, in section 16, there will be a list of people who hold licenses and the brands they offer, et cetera. That is just to make sure the information is complete and available for the public to see. That should be the only reference to Indian tribes. Consequently, it does not change existing law with respect to military installation and/or tribal jurisdiction.

SENATOR CARE:

If I read this right, section 23 refers to delivery. I read this in a hurry, and I am not sure I read it correctly. Obviously, someone who is under 18 years of age

cannot sell cigarettes over the counter. Does this also mean if you have a young man who works in the rear of a grocery store and takes boxes off of trucks, he cannot handle the shipment when it comes in? Am I reading that right?

MR. McMULLEN:

That issue is referenced in other sections of laws relating to tobacco. Our thought process in section 23 was a delivery sale, which is a sale accomplished by someone outside the State or, at least, by mail. The language you see in line 16 on page 8 goes to the individual requesting the purchase via the Internet, making sure they validate that they are over 18. I do not know if it applies to anybody who is handling those boxes, but under this section, it should be shipped from a licensed dealer to an individual in the State, not from a licensed dealer to a licensed dealer.

Sections 1 through 14 are definitions, and many of them are new. We are trying to make sure the Department of Taxation and the Office of the Attorney General, as well as local law enforcement and prosecuting authorities, have the resources and the tools they need to make these cases.

Section 15 tightens up the renewal or issuance of licenses relating to convictions and those types of things. Section 16 is about the Internet posting of the Department. Section 17 relates to who can receive unstamped cigarette packages directly from a person. It relates that to federal law, clearing it up and connecting it. Section 18 is a discretionary section with no fiscal impact. It sets forth some of the important things that would be in regulations about reporting by wholesalers or manufacturers. On page 6, sections 19 through 23, are some clarifications and extension of existing laws relating to Internet and mail-order sales. These are now called delivery sales under this bill. The statutes going forward strengthen and clarify the restrictions and procedures. In section 24, we move into the penalties and strengthen some of those. For example, first violations in certain categories were only misdemeanors, which were never being prosecuted because they did not want to go through all the work just for a misdemeanor. That is why some of these penalty provisions have a little more depth and substance to them.

Section 25, on page 9, is a forfeiture section. It makes it clear that a wholesaler or a retail dealer who is using property or equipment to violate the statutes is subject to forfeiture, a clear right that can be exercised on the part of the State. Of course, that is discretionary. Sections 26, 27 and 28 are criminal or penalty

sections. Section 29 starts with amendments to NRS 370 and existing definitions through section 33. Section 34 clarifies the right of the Department of Taxation to enter and inspect the premises of licensees.

Section 35 is clarification of the language of what a license means in terms of engaging in an activity. It also separates the licenses of retail dealers and manufacturers. It creates a manufacturer's license, which was not required up until now. There is no fee requirement because of the fiscal restrictions. At least this gets to the point of making sure we have licenses established for each of the categories. Similarly, section 37 clarifies what the license authorizes a wholesale and retail dealer to do. It just expands the language and makes it clearer.

MR. McMULLEN:

Section 39 sets time frames for when the stamps have to be affixed to the packages in the warehouse or stamping facility. It sets a 20-day rule and clarifies that the product cannot be allowed to lie around unstamped for excessive periods of time.

Section 41 talks about records that must be maintained and the requirements for record keeping on the premises of the licensees. Section 42 gives the Department clear access to those records and the ability to share them with other law-enforcement officials. Section 44 increases the penalties for violation of provisions already in statute.

Section 49 allows district attorneys clear authority to investigate and prosecute any civil or criminal violation of this chapter. Section 50 contains forfeiture laws. Section 51 clarifies that any personal property utilized in the commission of these crimes can be forfeited and seized by the State. This could possibly be even another revenue source.

Section 52 contains the effective dates. There will be some time allowed for implementation. The changes in both the first and second reprints have been only for clarification or effective-date provisions. The amendment for the second reprint was necessary to remove the fiscal note. None of the amendments have been of any major substance. We have had about 30 people involved in this bill over the last 3 years, all of whom signed off on every change.

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SENATOR TIFFANY:

Did this go to the Assembly Committee on Ways and Means because of the fee?

MR. McMULLEN:

It went to the Assembly Committee on Ways and Means because additional staff would have been required by the Department of Taxation and the Office of the Attorney General to manage some of the requirements in A.B. 464 as introduced.

SENATOR TIFFANY:

Have those requirements been removed, or has staff been added?

MR. DiCIANNO:

Those provisions were removed, which removed the fiscal impact. We are no longer requesting those additional individuals necessary to carry out those provisions.

SENATOR TIFFANY:

What in the original bill would have required more people?

MR. DiCIANNO:

Initially, when we filed the fiscal note, we had asked for two additional audit investigators and several management assistants to take care of the paperwork needed to have been filed by the manufacturers with respect to the different brands of cigarettes. Also, it would have put some additional duties on the audit investigators to review those records to make sure they were accurate and being filed properly. Since those requirements were removed, so was the fiscal note.

MS. OLDENBURG:

The Department of Taxation's removal of its fiscal note has somewhat of a domino effect on our fiscal note, because our work is generated by the results of the Department's investigative tasks. Therefore, we were able to remove our fiscal note as well.

SENATOR TIFFANY:

Was the reporting requirement that was removed from the bill for consumer protection?

MR. McMULLEN:

To see what that would have entailed, look at section 18. We tried to maintain some of the language that had been negotiated for purposes of what reports were to be required if ever we got into this. However, by changing it from a mandatory filing of those reports periodically to a discretionary one, it could be implemented when and if it is possible within existing resources.

SENATOR TIFFANY:

What would the reports have done?

MR. McMULLEN:

Part of the issue with respect to contraband, counterfeit or smuggled cigarettes is knowing exactly what type of product is in each store, when and where it was stamped and being able to track it. It is more for proving a case. You have to sometimes be able to prove exactly what product is moving through what store. That is the reason this record keeping was important.

SENATOR TIFFANY:

Will strengthening the penalties help the situation?

MR. McMULLEN:

Local government law enforcement resources are looking at the violations of these provisions now, as it is an even bigger criminal activity. If you make the prosecution for the second offense a felony and the first one a misdemeanor, then the first offense does not get prosecuted because no one would bother for just a misdemeanor. There is a whole set of law enforcement resources. This gives our resources, both local and State, the ability to participate in those law enforcement efforts.

SENATOR TIFFANY:

Does this create a three-tiered system?

MR. McMULLEN:

It is currently a three-tiered system.

SENATOR TIFFANY:

It looks like this manufacturer's license is new.



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MR. McMULLEN:

It is new for the purpose of reporting, but they are allowed to hold multiple licenses.

ERIN McMULLEN (Las Vegas Chamber of Commerce):

We are in support of this legislation because it will close the loopholes in the taxation of cigarettes and also bring in some revenue for the State. It will also protect legitimate businesses.

SENATOR TIFFANY MOVED TO DO PASS A.B. 464.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR COFFIN WAS ABSENT FOR THE VOTE.

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CHAIR MCGINNESS:

We will open the hearing on A.B. 570.

**ASSEMBLY BILL 570**: Prevents issuance of additional allodial titles.  
(BDR 32-1477)

ASSEMBLYMAN BOB SEALE (Assembly District No. 21):

Allodial title was introduced to the Nevada Legislature with S.B. No. 403 of the 69th Session. Basically, what allodial title does is allow the owner of a primary residence to pay property tax on that residence and the land on which it is located in advance. It is paid in a lump sum, amount certain, to cover those taxes for the balance of the homeowner's natural life and/or that of his or her spouse. Because this program has not been particularly successful, A.B. 570 would remove it from State laws.

When the program was first instituted, it had no appropriation and we have not expanded it. I have been concerned from the inception of S.B. No. 403 of the 69th Session that there was a potential for some negative impact on the finances of the State of Nevada, and as we saw, property taxes did go up. The calculation of the lump sum amount is based on the mortality tables of individuals, what is happening with the marketplace and what is happening with

property taxes. As we all know, property taxes have been somewhat volatile. Therefore, given there is no appropriation to properly run this program, the State is at risk and it makes sense to cease it, which is why I bring this bill forward.

There is but one participant in this program to date. That participant has put up some \$850,000 to cover property tax for the rest of his life. Removal of this program will not impede this family because they will be able to continue with this program. They will not, however, be able to pass it off to the heir, which is not a particular problem with this family.

SENATOR LEE:

Is an allodial title where you own your property free and clear and you want to pay your property tax in advance, so you give the treasurer \$5,000 and instruct him to take your property taxes out of that money? Are you paying in advance for your property taxes?

ASSEMBLYMAN SEALE:

In effect, that is what you are doing. You are prepaying your property taxes for the balance of the time you live on the property and/or your life.

SENATOR LEE:

This bill says if I pass on, my heir can continue to do this. Is that correct?

ASSEMBLYMAN SEALE:

This bill removes the allodial title opportunity from the State laws. Allodial title does allow you to do those things you mentioned, but we are suggesting with this bill that it be removed from the statute. We are not enabling anything, we are disabling something.

SENATOR LEE:

Was the reason you brought this forward because it affects the county?

ASSEMBLYMAN SEALE:

It affects the county and the State. If the amount of money paid up front is not adequate sometime in the future, then both the State and the counties are going to have to share in the revenue loss of those property taxes.

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SENATOR LEE:  
I do not understand.

ASSEMBLYMAN SEALE:

I did not explain it well. Allow me to try again. If you wanted to do allodial title, you would make application to the county, and the county would come to the Office of the State Treasurer. The Treasurer would calculate, for allodial title, the amount of money you would have to put up in order to pay your property taxes for the rest of your life. You would then pay a lump sum, and you would never be bothered by the sovereignty of the State of Nevada or the county. This bill is just undoing that. The State Treasurer is anxious to be finished with this program. It costs something to run the program, and there is no appropriation for it, so there is just no good reason to continue with it.

SENATOR TIFFANY MOVED TO DO PASS A.B. 570.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS COFFIN AND CARE WERE ABSENT FOR THE VOTE.

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CHAIR MCGINNESS:

If there is nothing further to come before this Committee, we are adjourned at 3:17 p.m.

RESPECTFULLY SUBMITTED:

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Ardyss Johns,  
Committee Secretary

APPROVED BY:

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Senator Mike McGinness, Chair

DATE: \_\_\_\_\_