

March 15, 2012

SUPPORTERS, EMPLOYEES OF LOCAL 'LET'S ROLL TOBACCO' STORES TRAVEL TO LANSING FOR TESTIMONY ON BILL THAT WOULD SHUT THEM DOWN

By Adam Bouton
The Saginaw News (MI)
March 14, 2012

Members of local Roll Your Own tobacco stores were on hand today in Lansing for testimony on Senate Bill 930, which would threaten to close down those businesses.

Supporters and employees of Let's Roll Tobacco stores in Saginaw Township and Bay City joined the Roll-My-Own Coalition of Michigan in Lansing.

Testimony in the state house was set for today. The bill was already passed in the state senate, 36-2.

Part of Senate Bill 930 would call for the taxing of automated cigarette rolling machines, as they would be considered as a manufacturing tool.

The Let's Roll Tobacco shops in Bay City and Saginaw Township possess these machines and without them, the shops would be out of business.

The bill was introduced by State Sen. Roger Kahn, R-Saginaw Township.

"The bill is about people paying their fair share of taxes," Kahn said. "Michigan suffers from people who evade taxes, smuggle cigarettes into the state.

"It would force them to pay their taxes like everyone else."

There are over 300 stores throughout Michigan that use the automated rolling cigarette machines.

"It would shut us down," Saginaw Township Let's Roll Tobacco assistant manager Bryan Crawford said. "It would put tons of people out of work."

MLive readers have chimed in on the debate.

From Think4Yourself:

I don't smoke, but this law is stupid. All it's going to do is put people out of work. The people that roll their own will just waste time.

From CappGuy:

I am sick with elected crap heads using the same old line "It would force them to pay their taxes like everyone else." That's like saying everyone is being taxed on their pensions fairly. Which they are not.

From nowaygreatlakesbay:

Should we now tax a person for auto parts who repairs his own car at the same rate that we tax an Auto repair service? Salad bars? Build a bear?

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http://www.mlive.com/news/saginaw/index.ssf/2012/03/supporters_employees_of_local.html

TOBACCO TAX BILL TO SEE SECOND HEARING

Gongwer News Service (MI)

March 14, 2012

Those who packed a House committee room Wednesday hoping for a chance to oppose language intended to impose cigarette taxes on smokes rolled by in-store machines will have to wait another week.

The House Tax Policy Committee essentially got through only two of the substantial stack of testimony cards after extensive questioning of bill sponsor Sen. Roger Kahn (R-Saginaw Township) and officials with the Department of Treasury on the effects of the bill.

In addition to leaving some frustrated roll-your-own shop owners, who were unable to testify because of time constraints, the hearing also left committee members with some unanswered questions. In particular, Rep. Mark Meadows (D-East Lansing) asked that an assistant attorney general working on the national tobacco settlement attend the next hearing to explain how the bill would affect the state's share of those settlement dollars.

The bill (SB 930Description: Description: *) would convert the state from its current wax-seal tax stamps for cigarettes to a digital stamp. Treasury officials said the current stamps are being phased out by the company that supplies them and the digital stamps could carry information that would aid in enforcement actions.

But the bill also would define tobacco stores that use large roll-your-own machines as manufacturers and require that they collect the per-pack cigarette tax just as wholesalers do for prepackaged cigarettes.

Mr. Kahn said it was an issue of fairness: the machines produce cigarettes, but because of the way loose tobacco and pipe tobacco are taxed compared to prepackaged cigarettes, they pay less into state coffers.

"They're able to avoid paying their fair share of taxes, in my opinion, by relabeling cigarette tobacco as pipe tobacco," Mr. Kahn said.

The state is also losing out on tobacco settlement funds in part because it is allowing the roll-your-own shops to avoid both its cigarette tax and a fee that other cigarette manufacturers pay into the national settlement fund, he said.

The state currently has some \$200 million in escrow that the tobacco companies are fighting having to pay because they argue the state has not done its share to contribute to the settlement revenues, he said.

Mr. Meadows later asked for testimony from the Department of Attorney General, if someone was willing, to provide a legal interpretation of the escrow process and how the various parts of the bill would affect that process.

Mr. Meadows also questioned whether the two parts of the bill, the new stamps and the roll-your-own shops, could be separated.

To correct the tax collection problem, the bill would require the roll-your-own shops using electronic rolling machines to become licensed as manufacturers, both with the state and federal governments.

In addition to storeowner arguments that they are not manufacturers because the customers actually operate the machines, not the store staff, Brian Haines, attorney for the Roll-My-Own Coalition of Michigan, said it was not legally possible for the stores to be licensed.

Under a federal court injunction, from a case where federal officials had tried to have roll-your-own stores designated as manufacturers, the federal government currently cannot license any new manufacturers, Mr. Haines said.

Patrick Brazil, owner of That's How We Roll in Lansing and president of the Roll-My-Own Coalition of Michigan, said to the committee and at a press conference earlier in the morning that the bill would put him out of business. Even if he could obtain the licenses, the costs of complying with them would be prohibitive, he said.

And he said the net result to the state would be a loss because his customers would continue to roll their own cigarettes, they would just go back to doing it at home rather than using his machine and supporting his business.

ROLL YOUR OWN: TAX EVASION OR SMALL BIZ?

MIRS News (MI)

March 14, 2012

Sen. Roger KAHN (R-Saginaw) today told members of the House Tax Policy Committee his SB 0930 will help curb tax evasion in "roll your own" (RYO) cigarette businesses, but RYO groups argued Kahn's bill will smoke them out of business entirely.

The bill, which would classify businesses that let customers roll their own cigarettes as manufacturers, passed the Senate 36-2. The bill would also make changes in digital stamping requirements for cigarettes and spend \$6 million toward enforcing those requirements.

Kahn told the committee Michigan's high tobacco tax rates -- among the highest in the country -- encourage illicit and cross-border trade in tobacco products. He estimated there is more than \$100 million a year lost due to illicit tobacco trade.

He said his bill is about "protecting legitimate wholesalers and retailers who cannot compete with the illegals."

Howard RYAN, director of legislative affairs for the Treasury Department, said Treasury is neutral on the bill.

The department worked with Kahn's office to develop the language, Ryan said, and is in favor of provisions in the bill that he said are aimed at "enforcing the Master Settlement Agreement and modernizing taxation."

Michigan signed the Master Settlement Agreement in 1998 as part of a nationwide agreement with tobacco product manufacturers. The manufacturers agreed they would deposit funds into an escrow account for distribution to the settling states. The funds are to be used to settle existing and potential suits filed by the states against the tobacco product manufacturers. Kahn's bill would require RYO retailers to pay into the escrow account.

Ryan said the only part the Treasury Department cannot concur with right now is the \$6 million appropriation toward the stamping requirements and enforcement because it has not been cleared with the State Budget Office.

Bea GONZALEZ, from the Roll Your Own Coalition, argued RYO businesses are not manufacturers and should not have to be subject to the same taxes as big tobacco manufacturers.

She showed the committee a video of a mass production line for cigarettes running next to a RYO machine, which churns out about 200 cigarettes in 8-10 minutes compared to the tens of thousands pumped out every minute on the big lines. She made the argument that since RYO businesses have their customers do their own work with the RYO machines, they are retailers, not manufacturers.

Rep. Vicki BARNETT (D-Farmington Hills) asked whether there was some kind of use tax that could be instituted to ensure that any tobacco that becomes a cigarette at the end of the day is taxed the same.

"Leveling the playing field is destroying the playing field in our market," Gonzalez said.

Ryan HAINES, also with the Roll Your Own Coalition, said customers at RYO businesses would have to pay an extra \$30 in taxes and escrow contributions per 200 cigarettes if Kahn's bill were to make it into law. That would put RYO out of business in Michigan, he said.

Haines also said that as long as a state complies with the escrow statute in the Master Settlement Agreement they do not have to do anything further.

"You don't have to pass new laws or make payment obligations; you don't have to add groups to the escrow," Haines said.

He rebuffed Kahn's label of RYO businesses as tax evaders, saying RYO customers "are folks by and large who were already rolling their own cigarettes at home."

"If this law passes these machines will shut down, and these consumers will go back to rolling their cigarettes at home with the exact same tax collections you get when they roll in our stores now," he said.

Haines also said customers are required to show they paid the appropriate sales tax if they bring tobacco into the RYO stores to roll. If customers were to roll at home, they could just buy tobacco online and avoid paying any sales tax to the state, he said.

The Roll Your Own Coalition also had a press conference today before the House Tax Policy Committee meeting.

Patrick BRAZIL, chairman and spokesman for the Roll Your Own Coalition, said he was "disappointed with the Senate" for "hastily" passing the bill.

He described RYO shop owners as "small business owners on the front line of creating jobs," adding Kahn's bill "will kill jobs in Michigan."

Brazil said the RYO shops enhance communities by filling vacant storefronts, paying property tax, sales tax, unemployment insurance, and other fees owed to the state by businesses.

The impact of the bill will be deeper than Kahn's expectations if it passes and Michigan's 31 RYO shops have to shut down, Brazil said.

DEBATE HEATS UP OVER TAXING ROLL-YOUR-OWN CIGARETTES

By Lee Ann Schutz

Minnesota House of Representatives – Public Information Services

March 14, 2012

Brew your own beer, make your own wine — should it come as a surprise that smokers are interested in rolling their own cigarettes?

While not yet widely available, the tobacco marketplace is seeing new businesses that provide supplies and equipment enabling customers to create their own tobacco blends and roll cigarettes — as many as 20 per minute.

With the average cost of manufactured cigarettes about \$50 a carton (more than \$19 of that being state taxes) the \$25-carton option is getting attention from new entrepreneurs like Todd Long, who owns Super Smokes. He isn't subjected to the host of state tobacco-related taxes. This is what piques the interest of mainstream cigarette distributors and manufacturers, who view these startups as unfair competition.

Rep. Greg Davids (R-Preston) says these new retailers are “manufacturers” and wants to make sure they pay the same taxes as their tobacco counterparts. He also wants assurance the paper being used meets the fire safety requirements. HF2489 would address the issues. The bill has no Senate companion.

The bill was heard in the House Taxes Committee March 14, and while no action was taken, it sparked a lively discussion about the new ways to manufacture and distribute tobacco.

The bill defines “manufacturer” to include those who maintain a machine at a retail establishment that enables someone to roll tobacco.

However, Long, who owns four stores with the rolling machines, emphasized they are not manufacturers, according to the law. If they were, they would be subjected to a host of regulations that would put them out of business.

“We are a retail store. Our customers use the machine, which is about the size of an ATM machine,” he said. Bill supporters say it's a matter of fair competition.

“It is very simple. The bill makes sure that those with roll-your-own machines are treated the same,” said Tom Briant, executive director of the Minnesota Wholesale Marketers Association and the National Association of Tobacco Outlets.

Rep. Melissa Hortman (DFL-Brooklyn Park) was among those advocating an equitable tax on the tobacco, instead.

“The more I hear about this bill, it is like putting a round peg in a square hole. ... They are not manufacturers, and it's the tobacco that should be taxed.”

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ROLL-YOUR OWN CIGS ROIL REPUBLICANS

By Rich Miller

The Illinois Times (Springfield, IL)

March 15, 2012

Despite a long Illinois tradition of supporting them, it's not exactly news that Republican members of the General Assembly no longer like voting for taxes of any kind. And that attitude created a couple of somewhat absurd positions last week.

Let's start with the "roll your own" bill. Legislation has been proposed to tax a growing practice of allowing people to use commercial machines to roll their own cigarettes in convenience stores and gas stations.

The stores sell their customers loose, bulk tobacco and then the customers dump the product into special rolling machines, which cost several thousand dollars each. The result is a per carton sale price that is about half the price of a pre-rolled carton of brand-name cigarettes, mainly because the taxes on loose tobacco are much lower than on commercial cigarettes.

Several states are confronting the issue after the machines started appearing in stores throughout the country. Legislatures in Indiana and Virginia are considering bills to up the tax on loose tobacco used in the machines, for instance. Wisconsin's Department of Revenue told the stores last October to start paying taxes on the tobacco as if they were selling actual cigarettes.

Critics say these stores with the machines are little more than cigarette factories set up to avoid high cigarette taxes. Defenders say they're not doing anything different than coffee shops which allow customers to pick specific blends, grinds and brands.

Tobacco giant Philip Morris is just one of the companies backing the Illinois bill. The company is worried that the roll-your-own machines will eventually eat into its profits. The tobacco company's lobbying team is also warning that if the bill doesn't pass, Philip Morris and other tobacco companies will likely jump into the machine-rolling business themselves, which could potentially cost the state hundreds of millions of tax dollars a year.

But the Republicans on the Senate Executive Committee balked at backing the measure, and it was "shelled out" last week by an amendment and moved to the Senate floor as basically an empty bill. The bill's sponsor, Sen. Terry Link (D-Waukegan), said last week that he doubted he could come to an agreement with the opponents and would likely propose very similar language in the next few weeks.

Republicans admitted privately that they backed away from voting for anything that might look like a tax increase. They also say they'll probably support the bill after the primary ends because of the very real negative revenue consequences for the state.

Then there's state Sen. Toi Hutchinson's (D-Olympia Fields) proposal to charge a \$5 per head entrance fee tax on strip clubs which sell alcohol. The money generated would be sent to the state's Sexual Assault Prevention Fund. The proposal sailed out of the Senate Public Health Committee last week on a unanimous vote, but there was a catch. Actually, there were two catches.

The bill has generated a bit of controversy, but it apparently presented a unique dilemma for a couple of Republicans who sit on the Public Health Committee. Possibly harming the business interests of "immoral establishments" might be a plus. But voting to tax those establishments still meant voting for a tax.

So two Republicans in hotly contested GOP primaries, Sen. Shane Cultra (R-Onarga) and Sen. Christine Johnson (R-Shabbona), discreetly left the hearing room just before the committee began voting on what some wisecrackers have called the "pole tax." The bill passed unanimously, but without those two votes.

Johnson's primary opponent, Sen. Dave Syverson (R-Rockford), also sits on the Public Health Committee, but he voted for the bill. Johnson has been running television ads blasting Syverson for favoring tax hikes and touting herself as the true social and fiscal conservative in the race.

The other walkout, Sen. Cultra, is also the more socially conservative candidate in his Republican primary race against state Rep. Jason Barickman (R-Champaign).

As I mentioned earlier, things are expected to calm down a bit after the March 20 primary. The Republicans will still oppose most taxes, but the mere mention of the word probably won't spook them so badly once they get past their elections. Maybe then everybody can grow up and start acting like adults.

Originally published here: <http://www.illinoistimes.com/Springfield/article-9768-roll-your-own-cigs-roil-republicans.html>

CONVENIENCE STORES APPLAUD ENFORCEMENT ACTION AGAINST RYO CIGARETTE DEALERS

Press Release from the New York Association of Convenience Stores
March 14, 2012

New York convenience store operators today applauded the initiative of state and local officials to halt the expansion of "roll-your-own" cigarette shops that are circumventing laws relating to taxation, public health, and fire safety.

State Attorney General Eric Schneiderman and New York City Corporation Counsel Michael Cardozo yesterday announced they are suing two RYO shops that dodge cigarette taxes and regulations by claiming they don't technically sell cigarettes, but merely facilitate their customers' use of an on-premise, self-serve cigarette rolling machine.

"We're grateful to Mr. Schneiderman and Mr. Cardozo for confronting the RYO nuisance head-on – by putting violators out of business unless they play by the rules," said Jim Calvin, President of the New York Association of Convenience Stores. By contrast, he said, state budget negotiators are currently considering an RYO plan focused on collecting more tax revenue, without addressing the double standard on enforcing myriad regulations governing cigarette retailing.

By hiking the excise tax on all loose tobacco as much as 800 percent, that plan would inflict collateral damage on legitimate retailers of take-home pipe and leaf tobacco. "If a tax hike quadruples the price of someone's favorite brand of pipe tobacco, he's not going to quit smoking, he's just going to quit coming to his local convenience store to buy it," said Calvin. "He will quickly discover that while New York wants to charge him \$27 in tax on a six-ounce bag, Pennsylvania, Internet vendors, and tribal stores charge zero tax on the same product. Consequently, tax-collecting, law-abiding New York retailers will lose those customers, and the state and counties will lose all that tax revenue. Has New York State learned

nothing from the cigarette tax evasion epidemic it created over the past 12 years through hyper-taxation?"

The better solution, NYACS believes, is for the Legislature to declare on-premise RYO activity what it really is – cigarette manufacturing, making it subject to the same taxes and regulations as pre-packaged cigarettes. A bill to do that (S.6476 Libous/A.9085 Dinowitz) has been introduced and has widespread support, including that of NYACS. In addition, the U.S. Senate recently passed similar legislation, and it is pending in the House of Representatives.

While roll-your-own machine manufacturers have hired high-profile Albany lobbyists to spread misinformation and threaten lawsuits if such legislation passes at the state level, Calvin said permitting certain competitors to ignore tobacco regulations undermines law-abiding small businesses, taxpayers, and public health.

"For example, if a state inspector finds even one pack of cigarettes without a state tax stamp in a convenience store, under state law the owner is presumed guilty of tax evasion and subject to criminal arrest," Calvin pointed out. "None of the cigarettes produced at RYO shops bear tax stamps, yet those shopkeepers risk no penalty whatsoever?"

Fire safety standards, Tobacco Master Settlement Agreement provisions, product display restrictions, health warning labels, minimum package sizes, and minimum pricing requirements are among the many other federal and state cigarette laws that licensed tobacco retailers are supposed to comply with.

Originally published here: <http://readme.readmedia.com/Convenience-Stores-Applaud-Enforcement-Action-Against-Unregulated-RYO-Cigarette-Dealers/3753688>

ERIC SCHMEIDERMAN TAKES ON SMALL TOBACCO

By James King
Village Voice (NYC)
March 13, 2012

Nanny State of Mind: AG's Office Suing Two Roll-Your-Own Tobacco Shops

Bad news, hipsters...

Apparently out of bigger fish to fry, New York Attorney General Eric Schneiderman -- in cahoots with New York City Corporation Counsel Michael Cordoza -- has set his sights on small tobacco; he's filed lawsuits against two roll-your-own cigarette businesses in New York City for allegedly evading state cigarette taxes.

Additionally, Schneiderman says, the two businesses -- BB's Corner, at 8415 18th Avenue in Brooklyn, and Nitecap Entertainment, at 690 Gulf Avenue in Staten Island -- sold cigarettes that weren't rolled with "fire safe" rolling papers, which violates New York's Cigarette Fire Safety Act.

The businesses, it seems, thought they found a loophole in the state's cigarette tax code -- but they screwed it up, and brought on the wrath of Schneiderman (more on that below).

Here's how their operations worked: rather than selling tobacco, the businesses claimed to essentially be renting the equipment needed to roll your own cigarettes. If you happen to find some tobacco and rolling papers kickin' around the store (which you will), lucky you.

By claiming to not technically be selling tobacco, the two businesses avoided paying state cigarette taxes.

However, they were done in by advertising -- according to Schneiderman, the businesses advertised their cigarette factories with promises of "200 count cartons" of "smokes" for "\$29.95 per carton," which is less than half of the amount the tax would be on a regular carton of cigarettes.

"Rather than playing by the rules, these stores and others like them are cheating the State and City of New York out of millions of dollars per year in legitimate tax revenue and endangering public health and safety while they're doing it," Schneiderman says.

But it's not just the money that has Schneiderman's panties in a bunch, he's also concerned about the health risks of selling smokes on the cheap.

"The illegally low prices these businesses are charging for their store-made machine-rolled cigarettes have been shown time and again to encourage people to take up smoking and to discourage smokers from quitting," he says.

Both businesses have been forced to shut their doors thanks to Schneiderman's lawsuit.

Originally published here: http://blogs.villagevoice.com/runninscared/2012/03/eric_schneiderm_5.php

SIX CHEAP "ROLL YOUR OWN" SMOKE SHOPS SHUT DOWN, TWO MORE IN CITY'S CROSSHAIRS

Gothamist News Blog (NYC)

March 15, 2012

Smoke shop entrepreneurs who thought they'd found a way around the city's exorbitant cigarette tax laws are learning that what they thought was a loophole is more like a noose. You might even say their dreams are going up in smoke (if you have no shame). City lawyers have been aggressively cracking down on smoke shops that sell discount "roll your own" cigarettes—customers buy loose tobacco, which is taxed at a much lower rate than cigarettes, then roll their own smokes using in-store machines. Six of these shops have already agreed to shut down in the face of legal action, and now two more are being targeted by the city and New York State.

NYC Corporation Counsel Michael A. Cardozo and Attorney General Eric T. Schneiderman yesterday announced a federal lawsuit against BB's Corner at 8415 18th Avenue in Brooklyn, and Nitecap Entertainment, at 690 Gulf Avenue in Staten Island. Prosecutors say these businesses evade cigarette

taxes "by providing customers with loose tobacco, tubes of cigarette paper, and access to machinery that instantly produces finished cigarettes for the customer onsite."

No one at BB's would comment, and Nitecap Entertainment simply hung up on us. But they've probably got their hands full running "The Cleanest Dirty Store in America"—in addition to roll your own smokes, Nitecap sells sex toys, and porn, and even uses porn star Ron Jeremy in several promotional videos, the Staten Island Advance reports. (Video below) BB's Corner and Nitecap advertise "200 count cartons" of "smokes" for "\$29.95 per carton," which is less than half of the amount of the taxes alone on a carton of cigarettes, prosecutors say.

"The City has successfully shut down all six of the illegal operations that were previously uncovered, and we are pleased that the State is joining our efforts to go after more smoke shops," said Corporation Counsel Michael A. Cardozo in a statement. And AG Schneiderman chimed in, "The illegally low prices these businesses are charging for their store-made machine-rolled cigarettes have been shown time and again to encourage people to take up smoking and to discourage smokers from quitting." He also pointed out that New York State requires "all cigarettes sold in the state be fire-safe; these cigarettes are not."

Original story and video here:

http://gothamist.com/2012/03/14/six_cheap_roll_your_own_smoke_shops.php

NYC, AG SUE "ROLL YOUR OWN" CIGARETTE BUSINESSES

North Country Gazette (NY)

March 14, 2012

The Attorney General's Office and New York City have jointly filed a federal lawsuit against BB's Corner, located at 8415 18th Ave. in Brooklyn, and Nitecap Entertainment, at 690 Gulf Ave. in Staten Island, businesses that evade cigarette taxes by providing customers with loose tobacco, tubes of cigarette paper and access to machinery that instantly produces finished cigarettes for customers onsite. Please understand this is a subscription site. Unlimited free access is not available. One free read per visitor, after that access will be denied except to subscribers or advertisers.

These "roll-your-own" businesses sell cigarettes in violation of tax and other regulatory statutes applicable to cigarettes, by claiming that they do not sell cigarettes, but merely facilitate the customers' assembly of the cigarettes.

The state and city's lawsuit against BB's Corner and Nitecap, filed in the Federal District Court for the Southern District of New York, charges that these businesses, along with their owners and employees, violate the Federal Contraband Cigarette Trafficking Act, the New York State Cigarette Marketing Standards Act, and New York State tax law, by selling cigarettes on which the required taxes have not been paid. The lawsuit also charges the defendants with violating New York's Cigarette Fire Safety Act by selling cigarettes that have not been certified as "fire-safe" as required by New York State law.

As described by investigators with the New York City Sheriff's Office, Division of Tax Enforcement, customers at BB's Corner and Nitecap purchase loose tobacco and packages of cigarette paper tubes with attached filters. Store employees then assist customers in making cigarettes on machines located in

and owned by the store. The machines fill the paper tubes with compacted tobacco to produce completed cigarettes, which the customers then pay for by the pack or the carton. Despite claiming not to sell cigarettes, BB's Corner and Nitecap advertised "200 count cartons" of "smokes" for "\$29.95 per carton – less than half of the amount of the taxes alone on a carton of cigarettes."

Sales of non-taxed cigarettes deprive the State and City of millions of dollars in lost cigarette tax revenues, hurt law-abiding small businesses and undercut public health measures designed to discourage smoking, the AG's office says. The joint State-City lawsuit against BB's Corner and Nitecap seeks an injunction to stop the defendants from continuing their illegal sale, distribution, and advertising of non-taxed cigarettes, as well as compensation for the tax revenue lost by the City and State as a result of defendants' unlawful activities.

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