

Approved \_\_\_\_\_

Date 2-15-88

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin L. Littlejohn at \_\_\_\_\_  
Chairperson

1:30 a.m./p.m. on February 10, 1988 in room 423-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Research  
Bill Wolff, Research  
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Representative Branson  
Dr. Gary Hulett, Under Secretary of Department Health & Environment  
Dr. Maurice Levy, Surgeon at Veterans Administration Hospital  
Dave Pomeroy, volunteer for Kansans for Non-Smokers Rights  
George Puckett, Kansas Restaurant Association, Wichita, Ks.  
Richard Taylor, Kansans for Life At Its Best  
Sandy Laird, R.N., CCRM, a volunteer for American Lung Association  
Frederick Holmes, M.D., President American Society, Ks. Division  
Professor University of Ks. Medical Center  
E. W. Holden, Interested Citizen

Chairman called meeting to order. He made announcements, i.e., there will be committee discussion on HB 2464. He asked committee members to contain their questions to committee and staff and not ask questions of anyone in the audience.

Chair called on Chairman of sub-committee on HB 2464, Representative Weimer to give their report and recommendations.

Rep. Weimer thanked his committee, Rep. Neufeld, and Rep. Whiteman for their diligence in the many hours they had worked to resolve concerns in HB 2464. He noted they recommend licensure as level for HB 2464, and that it be passed favorably with their recommended amendments. He explained that he and Rep. Whiteman voted the majority in favor of passage, Rep. Neufeld voted in the minority against the proposal. (See Attachment No. 1 for sub-committee report).

Rep. Weimer moved the sub-committee report be adopted, seconded by Rep. Whiteman. No discussion. Vote taken, motion carried.

The balloon copy of proposed amendments was distributed to members, see (Attachment No. 2) for details.

Ms. Correll, Research Staff member highlighted the balloon recommendations, i.e., indicated policy changes; Secretary means Secretary of Health and Environment; she raised question on Advisory Board, meetings would need to be set by the Secretary and not their own Advisory Board. She further explained in detail all language changes; New Section 12 replaces code of ethics, sets down how license could be revoked if and when necessary; Section 13 explains the exception provisions of the act. She answered questions, i.e., the requirement of not more than 15 hours, and not less than 14, means the Secretary may not require more than 15 hours of continuing education in licensure period. This is more a restriction on the Secretary than on an individual seeking licensure. Noted, a person, i.e., Army Private is engaged in some type of practice that comes within the scope of practice of furnishing general nutrition information as to use of food, food materials, dietary supplements, he would be exempt from having to be licensed as a dietitian.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S Statehouse, at 1:30 a.m./p.m. on February 10, 1988

Discussion continued on sub-committee report of HB 2464:-

Questions continued, i.e., yes, it is believed this bill will provide the safe guards the public needs, Rep. Weimer replied, it will allow the Health Food Shop owners to continue doing what they are currently doing. It was noted that a baccalaureate degree in nutrition or other related field is required, then they may function in the field of nutrition. Lines 159-162 of original bill explain these requirements. Further questions, the only persons who are licensed to practice the Healing Arts are M.D.'s, D.O's, and Chiropractors, these are the only three.

There was discussion in regard to, does this bill read like a bill for registration or licensure. It was finally determined that language in lines 66-67 of HB 2464 do constitute the protection of practice, so it does read as a licensure bill, not a registration bill.

Motion to recommend amendments be added to HB 2464 as proposed by SubCommittee was made by Rep. Cribbs, seconded by Rep. Hassler. Discussion ensued, i.e., this is contrary to state law. We have a credentialing act that clearly says we are to credential groups at the lowest level that is necessary for public protection.

At this point, Rep. Gatlin made a motion HB 2464 be passed favorably. Motion out of order as vote had not been taken on previous motions.

Vote taken, motion carried. Those wishing to be recorded as NO votes, Rep. Shallenburger, Rep. Borum, Rep. Neufeld.

Rep. Gatlin made a motion HB 2464 be passed out of committee favorably as amended, seconded by Rep. Hassler. Discussion ensued, i.e., some members feel the public is not being protected as it should be; some people are being given in-appropriate nutritional advice and diagnosis and prescribing, and it is alarming; yes, to recognize the dietitians for their years of education and experience is fine; third party payments were discussed for work done by dietitians; exclusions are difficult, but some believe these proposed amendments are about as good as we can get them; some opposed to out of state persons calling to urge for votes in a particular way; this legislation is a step in the right direction for the protection of Kansans.

Vote taken, motion carried. Recorded as NO votes, Rep. Shallenburger, Rep. Borum, Rep. Neufeld. Recorded as YES vote, Rep. Pottorff.

Hearings began on HB 2717:

Rep. Branson noted she had introduced this legislation at the request of a coalition of groups, i.e., American Lung, American Cancer, American Heart Associations, that wished to have language clarified in statutes concerning percentage of smoking areas in public places, or businesses. She referred to the Attorney Generals' opinion 8789, see (Attachment No.3), for details. She noted paragraphs she had highlighted, i.e., the intent of original legislation was to force proprietors to make a conscious effort if they wish to permit smoking on their premises.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 423-S Statehouse, at 1:30 /a.m./p.m. on February 10, 1988

Hearings continued on HB 2717:-

Dr. Hulett, Under Secretary of Health and Environment gave hand-out, (Attachment No.4). He stated several conclusions had been noted, i.e., involuntary smoking causes disease in health of non-smokers; simple separation of smokers and non-smokers in the same air space does not eliminate exposure to the non-smoker; children of parents who smoke have increased frequency of respiratory infections. Department of Health and Environment supports HB 2717. He answered questions.

At this point, Representative Branson noted conferees would offer amendments to help in areas of several concerns in regard to waiting lines, waiting areas, and perhaps questions committee would have in this regard would be addressed at that time.

Dr. Maurice Levy, a surgeon at Veterans Administration Hospital offered hand-out, (Attachment No.5). He restricted his comments to involuntary smoking, also known as passive or second hand smoking. Data is available that indicates second hand smoke causes many health problems, lower birth weight in babies born to a household of smokers, more allergies, more respiratory infections, retarded growth all are also evident in smokers homes for the non-smokers as well as for smokers. He believes it is the function of government to provide for public safety, and appropriate to regulate smoking in public places. Non-smokers have the right to breath clean air. He urged for a state-wide smoking ban in the workplace. He urged for favorable passage of HB 2717.

Dave Pomeroy, spokesperson for Kansans for Non-smokers Rights, offered hand-out, (Attachment No.6). He stated, today, we all know more about the hazards of cigarette smoke. It is harmful to non smokers as well as to smokers. Last year HB 2412 was passed, and it has helped, but generally has been ineffective due to a "loophole" which allows a proprietor to designate up to 100% of a public place as a smoking area. HB 2717 will help correct some deficiencies in current law, in that it will restrict smoking areas in public places to no more than 50%. He recommended the word, "contiguous" should be included in language to avoid proprietors from interspersing smoking and non-smoking areas. A checkerboard effect would defeat intent of this legislation. He urged for support. Data now indicates, 80% adult Kansans do not smoke and they should not be forced to smoke against their will.

George Puckett, Kansas Restaurant Association gave hand-out, (Attachment No.7). He stated the reasons HB 2717 would harm the small business person, why restricting a 50% area would work for some restaurants and not for others. He answered numerous questions.

Richard Taylor, Kansans for Life AT Its Best, gave hand-out. (Attachment No.8) HB 2717 is a step in the right direction. He related his personal story of having had malignant cancer in his vocal chords, and the loss of his voice. He is a non-smoker. When smokers talk about their rights, he wonders why they have no concern for the rights of non-smokers. He urged for support of HB 2717.

Sandy Laird, R.N., CCRM, a volunteer for American Lung Association gave hand-out, (Attachment No.9-A and 9-B). She stated revisions in HB 2717 will clear up confusion in existing law, and bring the letter of the law into agreement with the intent of the law. Data indicates 94% surveyed agree that public places should have no-smoking areas. The number of non-smokers is increasing, so it seems logical larger proportions of non-smoking areas should be provided. She urged for favorable consideration and offered amendments indicated as part of record this date as (Attachment 9-B).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S Statehouse, at 1:30 /a.m./p.m. on February 10, 1988

Proposed amendments suggested by Ms. Laird:--

To strike words, "waiting lines", in line 26, "waiting areas and lobbies" in line 27, "or claim property" in line 29. Also amend by adding the word, "customarily" in between the words "must", and "gather" in line 28, add the word "contiguous" in between the words "total" and "area" in line 45; add the sentence, "This includes public places of 500 square feet or less, total area" after line 46.

Dr. Frederick Holmes, President American Society, Ks. Division and Professor of University of Kansas Medical Center offered hand-out, (Attachment No.10). Attachment included brochures on smoking hazards. He stated HB 2717 seeks to limit smoking in public places so that non-smokers, now the majority of Kansans, will suffer less from passive inhalation of smoke from others' smoking. He cited numerous medical journals that have been written in regard to dangers of smoking, i.e., increase in risk of lung cancer for non-smokers; the fetus of a non-smoking pregnant woman may be affected by her passive inhalation of others' cigarette smoke. He stated, if a person chooses to risk death from lung cancer by smoking, that is his or her own business, however, the pollution in our environment by proven cancer-causing substances is an important public health matter, and well within the purview of the legislature of the state of Kansas. He urged for support of HB 2717.

Mr. E.W. Holden told of his wife's severe allergies to smoke, cited how she had suffered after being in this Capitol Building this week while here to attend a committee meeting. A few years ago she was forced to give up her job in the Legislature a year before she would have been eligible for a pension, because of her health problems related to allergies to smoke in the work-place. He urged for approval of HB 2717.

Hearings closed on HB 2717.

Chair noted at this point there were attachments before members, i.e., (Attachment No. 11), from Tom Bell, Ks. Hospital Association regarding HB 2643. This information will be important to consider when this bill is worked in committee.

( Attachment No. 12) is printed testimony from Senator Ben Vidricksen on HB 2717 who was unable to present his testimony in person this date. It will reflect his views on smoking from a personal standpoint, also how the small business man will be affected if 50% of his establishment must be set aside for non-smoking.

(Attachment No. 13) is a fiscal note on HB 2715, prepared by Michael F. O'Keefe. This information will be important when considering HB 2715 at a future date.

Chair thanked all committee members, and especially the sub-committee for their hard work on HB 2464. He thanked them also for their cooperation, and thanked conferees.

Meeting adjourned 3:35 p.m.



GUEST REGISTER

HOUSE

PUBLIC HEALTH AND WELFARE COMMITTEE

Date Feb 10, '88

NAME	ORGANIZATION	ADDRESS
Jan Michel	American Lung Assn.	4300 Bway Ln.
Stacy Hoogstraten	American Cancer Society	3003 Van Buren Topeka
Dave Pomeroy	Kansas For Non Smokers Rts.	P.O. Box 204, Topeka 66601
M. Leibel Lewis		614 N. Main, El Dorado, KS 67042
Kay Baker	Diet Center	Topeka KS
Bob Perkins	Kans. Hospital Assn	Topeka, KS
Chip Wheelen	Ks Medical Society	Topeka
Fairy K. Hulet	KS. DEPT HEALTH & ENVIRON	Topeka
Evo (Bill) Kolder	Kans For Non Smokers Rts.	Topeka
Maurice D Levy	self	3347 SW ACAMEDA TOPEKA 66614
Dick Foyles	Life at its Best	Topeka
Val Smith	Ks Occupational Therapy Assn	Topeka
Carson Niles	Ks. Dietetic Assoc	Lynsion
Denise Wiseman	Ks. Diet Assoc	Manhattan, Ks
Cynthia Hill	Ks Dietetic Assoc.	St. George KS.
Sue Greig	Ks. Dietetic Assoc.	Manhattan, Ks.
Helen McManis	Ks. Dietetic Assoc.	Manhattan, Ks.
Marcy Bates	Ks. Dept Health & Env. / Ks Diet. Assoc.	Wamego, KS
Tom Beckers	KOHE/KOA	Topeka, KS.
Judith Johnston	Riverside Hospital	Wichita, KS
Gene Wilson	Community Mental Hlth	Lawrence, Ks.
S. STREFF	AP	Topeka
GEORGE PUCKETT	KS RESTAURANT ASSN	WICHITA
Ken Bahr	Ks. Dietetic Assn	Topeka
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS	TOPEKA

February 5, 1988

SUBJECT: HOUSE BILL 2464. SUBCOMMITTEE REPORT

TO: Representative Marvin Littlejohn  
Chairman, Public Health and Welfare Committee

Your subcommittee on the licensure of dietitians recommends House Bill 2464 favorable for passage as amended.

The subcommittee conducted four meetings on this bill. We considered staff comments, previous testimony on both sides, and various written recommendations for amendment. We then reviewed the draft bill line by line in its entirety.


Our final recommendation retains the original thrust of HB 2464. It provides licensure for qualified dietitians and protects those in the health food industry who give out nutritional information.

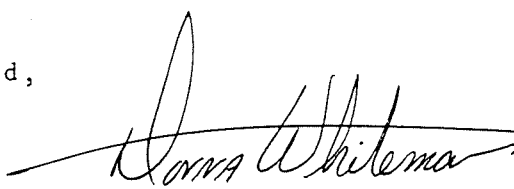
A balloon containing all of the recommended amendments should be available to you on Monday, February 8. The more significant suggested changes include keeping the reference to the term dietitian and deleting references to the term nutritionist; giving the secretary authority to approve courses of training but not the schools where training is conducted; setting standards for denying or revoking a dietitian license; and establishing an effective date for the act of July 1, 1989.

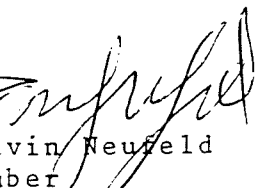
The major exlusions to the act would be persons licensed to practice the healing arts; employees of licensed adult care homes and similar facilities; students; those furnishing general nutrition information on food, food materials, or dietary supplements so long as the person does not hold himself out as being licensed; those who provide counseling related to religious beliefs and practices; and other noncontroversial exemptions.

The committee was in general agreement on all of the amendments proposed, with one exception. Representative Neufeld expressed a firm conviction that the appropriate level of credentialling would be registration rather than licensure. Representatives Whiteman and Weimer feel that licensure would serve to remind those seeking qualified advice that there is a professional level of qualified advisors. This legislation would encourage a distinction between dietitians and those who provide evaluation and counseling without a formal education in dietetics.

Respectfully submitted,

  
Franklin E. Weimer  
Subcommittee Chairman

  
Donna Whiteman  
Member

  
Melvin Neufeld  
Member

Attn #1  
2-10-88  
PA/W

# HOUSE BILL No. 2464

By Committee on Public Health and Welfare

2-23

*Attom # 2  
2-10-88  
PHW*

0017 AN ACT providing for licensure of dietitians; providing for  
0018 administration of the act by the secretary of health and envi-  
0019 ronment; creating the advisory board on dietetics; prohibiting  
0020 certain acts and providing penalties therefor.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. This act shall be known and may be cited as the  
0023 dietitians licensing act.

0024 Sec. 2. For the purposes of this act:

0025 (a) "Secretary" means the secretary of health and environ-  
0026 ment.

0027 (b) "Department" means the department of health and envi-  
0028 ronment.

0029 (c) "Board" means the advisory board on dietitians.

0030 ~~[(d) "Degree" means a degree received from a college or~~  
0031 ~~university that was regionally accredited at the time the degree~~  
0032 ~~was confirmed.]~~

0033 ~~[(c)] "Licensed dietitian" means a person licensed under this~~ (d)  
0034 ~~act.~~

0035 ~~[(f)] "Provisionally licensed dietitian" means a person provi-~~ (e)  
0036 ~~sionally licensed under this act.~~

0037 ~~[(g)] "Dietetics practice" means the integration and applica-~~ (f)  
0038 ~~tion of principles derived from the sciences of nutrition, bio-~~

0039 ~~chemistry, food, physiology, management and behavioral and~~  
0040 ~~social sciences to achieve and maintain the health of people~~  
0041 ~~through the provision of nutrition care services]~~

0042 ~~[(h)] "Nutrition care services" means:~~ clients  
0043 (1) Assessing the nutritional needs of individuals and groups

0044 ~~and determining resources and constraints in the practice set-~~  
0045 ~~tings]~~

*Attom # 2  
2-10-88  
PHW*



0016 (2) establishing priorities, goals and objectives that meet  
nutritional needs ~~and are consistent with available resources and~~  
~~constraints;~~ of clients

0049 ~~(3) providing nutritional counseling in health and disease;~~

0050 ~~(4) developing, implementing and managing nutrition care~~  
0051 ~~systems;~~ and

0052 ~~(5) evaluating, making changes in and maintaining appro-~~  
0053 ~~priate standards of quality in food and nutrition care services.~~

0054 ~~(4) "Nutritional assessment" means the evaluation of the nu-~~  
0055 ~~tritional needs of individuals and groups based upon appropriate~~  
0056 ~~biochemical, anthropometric, physical and dietary data to deter-~~  
0057 ~~mine nutrient needs and recommend appropriate nutritional~~  
0058 ~~intake including enteral and parental nutrition.~~

0059 ~~(4) "Nutrition counseling" means~~ advising and assisting in- (3)  
0060 ~~dividuals or groups on appropriate nutritional intake by inte-~~ a

0061 ~~grating information from~~ the nutritional assessment with infor-  
0062 ~~mation on food and other sources of nutrients and meal~~  
0063 ~~preparation~~ consistent with cultural background and social eco-  
0064 ~~nomic status.~~

(g) "Nutritional assessment" means the evaluation of the nu-  
tritional needs of clients based upon appropriate biochemi-  
cal, anthropometric, physical and dietary data to determine  
nutrient needs and recommend appropriate nutritonal intake  
including enteral and parental nutrition.

0065 ~~(4) "Dietitian" means a person engaged in dietetics practice.~~ (h)

0066 Sec. 3. (a) ~~Only a person licensed or otherwise authorized to~~ On and after July 1, 1989,

0067 ~~practice under this act shall practice dietetics. Only a person~~  
0068 ~~licensed under this act shall use the title "dietitian,"~~ nutrition-  
0069 ~~ist," "licensed dietitian"~~ alone or in combination with other or  
0070 ~~titles or use the letters L.D. or any other words or letters to~~  
0071 ~~indicate that the person using the same is a licensed dietitian.~~

(c) In lieu of or in addition to prosecution under subsec-  
tion (b), the secretary may bring an action to enjoin an  
alleged violation of this section.

0072 (b) Violation of this section is a class C misdemeanor.

0073 Sec. 4. There is hereby created the advisory board on dieti-  
0074 tians which shall be advisory to the secretary. The board shall  
0075 consist of five members, three of whom shall be licensed dieti-  
0076 tians under this act ~~and two of whom shall be members of the~~

with respect to the initial administration of this act and  
with respect to the development of the rules and regulations  
necessary to commence the initial regulatory activities unde-  
this act

0077 ~~public.~~ All members shall be appointed by the governor and  
0078 shall serve terms ~~of three years except that for the initial ap-~~  
0079 ~~pointment, two shall be appointed for a term of three years, one~~  
0080 ~~for a term of two years and two for a term of one year as specified~~

or for members appointed to such board prior to July 1, 1989  
eligible for licensure under this act, one of whom shall be  
a person licensed to practice medicine and surgery and one  
of whom shall be a licensed pharmacist

0081 ~~by the governor.~~ Each dietitian appointed to the board shall have which expire on the expiration date of this section

0082 ~~been engaged in the practice of dietetics for not less than five~~



0083 ears. Members of the advisory board on dietitians attending  
0084 meetings of such board or attending a subcommittee meeting  
0085 hereof authorized by such board shall be paid amounts provided  
0086 in subsection (e) of K.S.A. 75-3223 and amendments thereto.

¶ This section shall expire on July 1, 1991.

0087 Sec. 5. The secretary may adopt rules and regulations nec-  
0088 essary for the implementation of this act including ~~the adoption~~  
0089 ~~of a code of ethics, setting standards to determine the qualifica-~~  
0090 ~~tions and fitness of applicants, setting standards for approval of~~  
0091 ~~educational programs under this act, setting procedures for the~~  
0092 ~~issuance and reissuance of licenses, for the revocation, suspen-~~  
0093 ~~sion or denial of licenses, for the receiving and processing of~~  
0094 ~~complaints and for the providing of examination for applicants.~~  
0095 ~~Standards established under this section to determine the quali-~~  
0096 ~~fications and fitness of applicants shall be established at a level~~  
0097 ~~adequate to assure the competent performance by licensed die-~~  
0098 ~~titians of dietetics practice.~~

, but not limited to, setting standards for approval of courses of study under this act, setting standards for approval of planned, continuous programs of dietetic experience and establishing procedures for the examination of applicants

0099 Sec. ~~5~~ (a) No person shall be granted a license as a dietitian  
0100 unless such person has:

Sec. 6. The secretary may contract with investigative agencies, commissions or consultants to assist the secretary in obtaining information about courses of study to be approved by the secretary under section 7.

0101 (1) Filed an application and paid the required application  
0102 fee;

7

0103 (2) received a baccalaureate or post-baccalaureate degree  
0104 ~~from a college or university~~ with a major course of study in  
0105 human nutrition, food and nutrition, dietetics or food service  
0106 management approved by the secretary as meeting the standards  
0107 for approval of ~~educational programs~~ under this act;

such course of study

0108 (3) ~~(A)~~ completed a planned, continuous program of dietetic  
0109 experience ~~of not less than 900 clock hours under the supervi-~~  
0110 ~~sion of a licensed dietitian which is approved by the secretary; or~~  
0111 ~~(B) received a master's degree or a doctor's degree from a college~~  
0112 ~~or university in nutrition or a related course of study approved by~~  
0113 ~~the secretary as meeting the standards for approval of educa-~~  
0114 ~~tional programs under this act;~~ and

approved by the secretary

0115 (4) passed an examination approved by the secretary.  
0116 (b) Licenses shall be issued for a period of two years.

8

0117 Sec. ~~7~~ (a) A ~~provisional permit~~ to practice as a dietitian may  
0118 be issued by the secretary upon the filing of an application,  
0119 payment of the required application fee and submission of evi-

temporary license

0120 dence of successful completion of the education requirements  
0121 for licensure under this act.

0122 (b) The ~~provisional permit~~ shall expire ~~one year~~ from the  
0123 date of issuance. The ~~provisional permit~~ may be renewed for one  
0124 period of not to exceed six months if the secretary determines  
0125 that ~~a satisfactory explanation exists for~~ the ~~applicant's failure~~ to  
0126 become licensed within the original period and if the applicant  
0127 has paid the required renewal fee.

0128 ~~(c) A provisional permit shall permit the holder to practice~~  
0129 ~~only under the supervision of a dietitian licensed in this state.~~

0130 Sec. ~~8~~. For one year beginning on the ~~effective date of this~~  
0131 ~~act~~, the secretary shall waive the examination requirement and  
0132 grant a license to a person ~~who:~~

0133 (a) Meets the educational and ~~experienced~~ requirements set  
0134 forth by this act on ~~the effective date of this act~~; or

0135 (b) meets the educational requirements and on the effective  
0136 date of this act has been employed ~~as a dietitian~~ for at least three  
0137 of the five years immediately preceding ~~the effective date of this~~  
0138 ~~act~~.

0139 Sec. ~~9~~. Licenses may be renewed upon payment of the re-  
0140 quired renewal fee and successful completion of ~~at least~~ 15 hours  
0141 continuing education during the licensure period.

0142 Sec. ~~10~~. The secretary may license, without examination,  
0143 any person who is duly licensed in another state if the standards  
0144 for licensure in such other state are not less than the standards for  
0145 licensure under this act.

0146 ~~Sec. 11. So long as the following persons do not hold them-~~  
0147 ~~selves out to the public to be a licensed dietitian, nutritionist, or~~  
0148 ~~use the abbreviation L.D., or any combination thereof, nothing~~  
0149 ~~in this act shall prohibit:~~

0150 ~~(a) A student enrolled in an approved academic program in~~  
0151 ~~dietetics or nutrition, or both, from engaging in dietetics practice~~  
0152 ~~under the supervision of a person licensed under this act as part~~  
0153 ~~of such academic program;~~

0154 ~~(b) a licensed health care professional from engaging in die-~~  
0155 ~~tetics practice if the licensing or regulatory statutes of such~~  
0156 ~~health care professional provide for or allow the giving of diete-~~

temporary license  
six months  
temporary license

applicant has failed

9  
date the rules and regulations first adopted under this  
act become effective

who pays the renewal fee and  
experience  
July 1, 1989

in dietetics practice  
July 1, 1989

10

not more than  
as specified by the secretary by rules and regulations

11

Sec. 12. see attached

Sec. 12. (a) The secretary may deny, refuse to renew, suspend or revoke a license where the licensee or applicant:

(1) Has obtained a license by means of fraud, misrepresentation or concealment of material facts;

(2) has been guilty of unprofessional conduct as defined by rules and regulations adopted by the secretary;

(3) has been convicted of a felony if the acts for which such person was convicted are found by the secretary to have a direct bearing on whether such person should be entrusted to serve the public in the capacity of a dietitian;

(4) is mentally ill or physically disabled to an extent that impairs the individual's ability to engage in the practice of dietitics;

(5) has used any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(6) has violated any lawful order or rule and regulation of the secretary; or

(7) has violated any provision of this act.

(b) Such denial, refusal to renew, suspension or revocation of a license may be ordered by the secretary after notice and hearing on the matter in accordance with the provisions of the Kansas administrative procedure act.

(c) Upon the end of the period of time established by the secretary for the revocation of a license, application may be made to the secretary for reinstatement. The secretary shall have discretion to accept or reject an application for reinstatement and may hold a hearing to consider such reinstatement. An application for reinstatement shall be accompanied by the application fee established by the secretary.

0157 ~~the or nutritional advice within the scope of professional practice~~  
0158 ~~such health care professional, or~~  
0159 ~~any person who holds a baccalaureate degree in home~~  
0160 ~~economics from engaging in dietetics practice insofar as the~~  
0161 ~~services and activities are within the scope of that person's~~  
0162 ~~education and training:~~

Sec. 13. see attached

14

examination fees and reinstatement fees

0163 Sec. ~~12~~. The secretary shall fix by rules and regulations fees  
0164 for applications for and renewal of licenses ~~and special permits~~  
0165 under this act. Such fees shall be fixed in an amount to cover the  
0166 costs of administering the provisions of this act. The secretary  
0167 shall remit all moneys received from fees, charges or penalties  
0168 under this act to the state treasurer at least monthly. Upon  
0169 receipt of each such remittance the state treasurer shall deposit  
0170 the entire amount thereof in the state treasury and credit the  
0171 same to the state general fund.

15

0172 Sec. ~~13~~. This act shall take effect and be in force from and  
0173 after its publication in the statute book.



Sec. 13. (a) Nothing in this act shall be construed to require any insurer or other entity regulated under chapter 40 of the Kansas Statutes Annotated or any other law of this state to provide coverage for or indemnify for the services provided by a person licensed under this act.

(b) So long as the following persons do not hold themselves out to the public to be a licensed dietitian or use the abbreviation L.D., or any combination thereof, nothing in in this act shall be construed to apply:

(1) To any person licensed to practice the healing arts, a licensed dentist, a licensed dental hygienist, a licensed professional nurse, a licensed practical nurse, a licensed psychologist, a registered masters level psychologist, a licensed pharmacist or an employee thereof, a physicians' assistant, a registered professional counselor;

(2) to any unlicensed employee of a licensed adult care home or a licensed medical care facility as long as such person is working under the general direction of a licensee in the healing arts, nursing or a dietetic services supervisor as defined in regulations adopted by the secretary of health and environment or a consultant licensed under this act;

(3) to any dietetic technician or dietetic assistant;

(4) to any student enrolled in an approved academic program in dietetics, home economics, nutrition, education or other like curriculum, while engaged in such academic program;

(5) to any person, including persons employed in health food stores, furnishing general nutrition information as to the use of food, food materials, or dietary supplements, nor to prevent in any way the free dissemination of information or of literature as long as no individual engaged in such practices holds oneself out as being licensed under this act;

(6) to individuals who market or distribute food products, including dietary supplements, or to prevent such persons from providing information to customers regarding the use of such products;

(7) to prevent employees of the state or a political subdivision who are employed in nutrition-related programs from engaging in activities included within the definition of dietetics practice as a part of such persons' employment;

(8) to persons who perform the activities and services of a licensed dietitian or nutrition educator as an employee of the state or a political subdivision, an elementary or secondary school, an educational institution, a licensed institution, or a not-for-profit organization;

(9) to any person serving in the armed forces, the public

health service, the veterans administration or as an employee of the federal government;

(10) to any person who has a degree in home economics insofar as the activities of such person are within the scope of such person's education and training;

(11) to any person who counsels or provides weight control services as a part of a franchised or recognized weight-control program or a weight-control program that operates under the general direction of a person licensed to practice the healing arts, nursing or a person licensed under this act;

(12) to any person who holds at least a baccalaureate degree in nutrition or other related field;

(13) to any person who is acting as a representative of a trade association and who engages in one or more activities included within the practice of dietetics as a representative of such association;

(14) to a registered physical therapist who makes a dietetic or nutritional assessment or gives dietetic or nutritional advice in the normal practice of such person's profession or as otherwise authorized by law;

(15) to a dietitian licensed, registered or otherwise authorized to practice dietetics in another state who is providing consultation in this state;

(16) to any person conducting a teaching clinical demonstration which is carried out in an educational institution or an affiliated clinical facility or health care agency;

(17) to persons conducting classes or disseminating information relating to nonmedical nutrition; or

(18) to any person permitted to practice under K.S.A. 65-2872a and amendments thereto.

(c) Nothing in this act shall be construed to interfere with the religious practices or observances of a bona fide religious organization.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

June 18, 1987

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 87- 89

The Honorable Jessie M. Branson  
State Representative, Forty-Fourth District  
800 Broadview Drive  
Lawrence, Kansas 66044-2423

Re: Crimes and Punishments--Crimes Involving Violations  
of Personal Rights--Smoking in a Public Place

Synopsis: Penal statutes must be strictly construed. Since 1987 House Bill No. 2412 is penal in nature, the language granting total discretion must be given its ordinary meaning. Therefore, the proprietor or person in charge of the premises is free to designate any percentage of the premises as a smoking area, subject only to the limitations of any existing local regulation which are at least as stringent as those imposed by the act. Cited herein: 1987 House Bill No. 2412.

\* \* \*

Dear Representative Branson:

As state representative for the forty-fourth district, you request our opinion concerning 1987 House Bill No. 2412 (to be codified at K.S.A. 1987 Supp. 21-4008 through 21-4014) which regulates smoking in public places and at public meetings. Specifically, you inquire whether a proprietor or person in charge of a public place could designate 100% of the premises as a smoking area under the new law.

Reference to non-smoking areas is made in Section 2(c) of the bill, which states:

*Attn # 3  
2-10-8  
PAW*

"Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas." (Emphasis added.)

This section would seem to imply that any time there is a smoking area designated, there must be some adjacent non-smoking area on the premises.

However, Section 3 of the bill states in relevant part:

"The proprietor or person in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area."

The Supreme Court of Kansas in the recent case of State v. Thompson, 237 Kan. 562, 566 (1985), reviewed the rules of construction of penal statutes:

"Penal statutes must be strictly construed in favor of the persons sought to be subject to them. The rule of strict construction simply means ordinary words are to be given their ordinary meaning. The statute should not be read to add that which is not readily found therein or to read out what, as a matter of ordinary English language, is contained therein. A statute should never be given a construction that leads to uncertainty, injustice or confusion, if it is possible to construe it otherwise. In construing a statute, words and phrases should be construed according to the context, and the approved usage of the language and words in common use are to be given their natural and ordinary meaning. State v. Dubish, 234 Kan. 708, 675 P.2d 877 (1984)."

1987 House Bill No. 2412 is penal in nature. Section 4 of the bill sets forth penalties for violations of the act. Though there is not a penalty prescribed for designating an improper percentage of area in a public place as a smoking area, the bill as a whole is penal and therefore must, as a whole, be



strictly construed. General Foods Corp. v. Priddle, 569 F.Supp. 1378 (D.C. Kan. 1983). Additionally, all sections of the bill are to be placed in the criminal code, further indicating the appropriateness of strict construction.

In our opinion, the implication left by a reading of section 2(c) of the bill would lead to uncertainty and confusion as to the percentage of the area of the premises that a proprietor must designate as a non-smoking area. Additionally, the plain language of section 3 buttresses our opinion that complete discretion is left to the proprietor or person in charge of the premises. Without any words of limitation appearing in the language of the statute, the language granting total discretion must be given its ordinary meaning. Therefore, the proprietor or person in charge of the premises is free to designate any percentage of the premises as a smoking area.

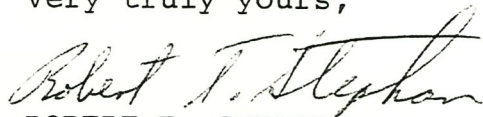
It should be noted, however, that section 5 of the bill provides for regulation of smoking by local units of government within their boundaries. Therefore, although there are no statewide restrictions on the percentage of public areas which may be designated as smoking areas, any more stringent local regulation would control.

Additionally, we believe that the purpose of the bill was to encourage, if not mandate, at least some percentage of the premises as non-smoking areas in all public places. The intent of the legislature, although not evident on the face of the bill, was to force proprietors to make a conscious effort if they wish to permit smoking on their premises. However, because of the penal nature of the statute, rules of statutory construction do not allow us to consider this intent in our consideration.

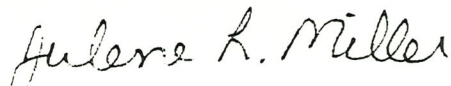
In conclusion, penal statutes must be strictly construed. Since 1987 House Bill No. 2412 is penal in nature, the language granting total discretion must be given its plain meaning. Therefore, the proprietor or person in charge of the premises is free to designate any percentage of the premises

as a smoking area, subject only to the limitations of any local regulation which is at least as stringent as that imposed by the act.

Very truly yours,



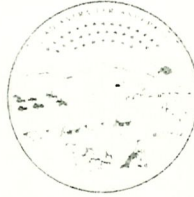
ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

*Forbes Field*

*Topeka, Kansas 66620-0001*

*Phone (913) 296-1500*

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

Testimony Presented to  
House Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

HOUSE BILL 2717

We recommend that smoking be prohibited in waiting lines and public access areas of facilities and be restricted to designated areas in public places with a maximum allowable area of 50% designated for smoking. This would provide clear guidelines that would benefit the non-smoking public and be a more clearly defined law in terms of public understanding and enforcement.

The detrimental health hazards of second hand tobacco smoke is well documented. A 1986 report of the Surgeon General entitled, "The Health Consequences of Involuntary Smoking" examines the evidence that even a low exposure to smoke received by the non-smoker carries with it a health risk. This report makes the following conclusions:

1. Involuntary smoking is a cause of disease, including lung cancer, in healthy non-smokers.
2. Simple separation of smokers and non-smokers within the same air space may reduce, but does not eliminate, exposure of non-smokers to environmental tobacco smoke.
3. The children of parents who smoke, compared with the children of non-smoking parents, have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.

*Attn: #4  
2-10-88  
PH/aco*

Page 2  
H.B. 2717 (cont.)

A 1986 article in the British Medical Journal entitled, "Does Breathing Other People's Tobacco Smoke Cause Lung Cancer?" reviewed data from 13 epidemiological studies of lung cancer and exposure to other people's smoke. It found that non-smokers living with smokers have a 35 percent increase in the risk of lung cancer compared with non-smokers who live with non-smokers. This analysis supports the conclusion that breathing other people's tobacco smoke causes lung cancer.

We support the bill because it would help protect the non-smoker from the involuntary health consequences of exposure to tobacco smoke in public places.

Presented by:

Gary K. Hulett, Ph.D.  
Under Secretary

February 10, 1988



MY NAME IS DR. MAURICE DOUGLAS LEVY. I AM A GENERAL SURGEON AT THE VETERANS ADMINISTRATION HOSPITAL AND A LT. COLONEL IN THE KANSAS AIR NATIONAL GUARD. HOWEVER, I REPRESENT NEITHER INSTITUTION. I AM HERE AS A CONCERNED CITIZEN.

I AM NOT HERE TO SPEAK ABOUT VOLUNTARY SMOKING. IF YOU CHOSE TO INDULGE IN SUCH A SELF-DESTRUCTIVE BEHAVIOUR, I BELIEVE THAT IS YOUR BUSINESS. UNLESS, OF COURSE, YOU HAPPEN TO BE A PATIENT OF MINE. THEN YOU'LL HEAR ~~AR~~ ABOUT THE HEALTH HAZARDS INVOLVED.

I AM HERE, RATHER, TO TALK ABOUT INVOLUNTARY SMOKING. ALSO KNOWN AS PASSIVE OR SECOND HAND SMOKING. THERE IS A WEALTH OF SCIENTIFIC DATA TO PROVE THAT SECOND HAND SMOKING IS DELETERIOUS TO ONE'S HEALTH. A BABY BORN TO A NONSMOKING MOTHER WILL HAVE A LOWER BIRTH WEIGHT IF HIS FATHER SMOKES THAN IF HIS FATHER DOESN'T SMOKE. CHILDREN OF SMOKING PARENTS HAVE MORE RESPIRATORY INFECTIONS, MORE ASTHMA ATTACKS, AND MORE ALLERGIES THAN CHILDREN OF NONSMOKING PARENTS. AND THEIR GROWTH WILL BE RETARDED. NONSMOKING WIVES OF SMOKERS HAVE THREE TIMES THE RISK OF LUNG CANCER AND CHRONIC LUNG DISEASE THAN NONSMOKING WIVES OF NONSMOKERS. OBVIOUSLY ONE PUFF OF SMOKE WON'T HURT YOU, BUT CONTINUOUS EXPOSURE EIGHT HOURS A DAY WILL.

THOSE OF US WHO ARE CONCERNED ABOUT OUR HEALTH, WHO HAVE CHOSEN NOT TO SMOKE, FEEL VERY MUCH THREATENED BY THESE STATISTICS. WE CAN AVOID THE NIGHT CLUBS AND BARS, WE CAN AVOID THE INCONSIDERATE BUSINESSES THAT ALLOW SMOKING, WE

*Attn: #5  
2-10-8  
PNW*

CAN AVOID THE BOWLING ALLEYS. BUT WE CAN NOT AVOID OUR JOBS. AND WE SPEND A GOOD DEAL OF TIME THERE, ENOUGH TO INCREASE THE RISK OF LUNG CANCER OR EMPHYSEMA CONSIDERABLY. AND WHAT ABOUT THE SMELLY CLOTHES, AND THE IRRITATED EYES, AND THE RASPY THROAT THAT OCCURS AFTER LONG HOURS EXPOSED TO SECOND HAND SMOKE. SURELY THESE ARE MORE THAN JUST NUISANCES, BUT HEALTH HAZARDS AS WELL.

I BELIEVE IT IS THE FUNCTION OF GOVERNMENT TO PROVIDE FOR THE PUBLIC SAFETY. I THINK IT IS APPROPRIATE FOR THE GOVERNMENT TO REGULATE SMOKING IN PUBLIC PLACES. AND I FEEL ESPECIALLY STRONGLY THAT THE GOVERNMENT SHOULD REGULATE SMOKING IN THE WORKPLACE, THE ONE PLACE WHERE THE PUBLIC IS FORCED TO SPEND A MAJOR PORTION OF THEIR WAKING TIME, WITHOUT ANY SAY WHATSOEVER ON THIS IMPORTANT ISSUE. I THEREFORE URGE YOU TO PUT SOME TEETH INTO A STATE-WIDE SMOKING BAN IN THE WORKPLACE.



# Kansans for NonSmokers Rights

P.O. Box 204 Topeka, Kansas 66601-0204

Statement by Dave Pomeroy, Spokesperson; February 10, 1988

When I first became involved in Kansans for NonSmokers Rights four years ago I thought that tobacco smoke was only an irritant which caused discomfort to non-smokers. I knew that it gave me headaches, burned my eyes, and irritated my throat but little did I know that it could make me seriously ill or even kill me.

Today, we know more about the hazards of cigarette smoke. A warning on some packs of cigarettes even warns smokers that cigarette smoke contains carbon monoxide. The debate over the effects of tobacco smoke is over. It is harmful to non-smokers as well as to smokers themselves.

A year ago, the Kansas Legislature recognized the danger of tobacco smoke and passed HB 2412 which regulated smoking in public places. It has helped somewhat, especially in government buildings, but has been generally ineffective due to a "loophole" which allows a proprietor to designate up to 100% of a public place as a smoking area.

House Bill No. 2717, while still weak, will help correct some of the deficiencies of the current law in that it will restrict smoking areas in public places to no more than fifty percent. While this will not provide adequate protection in all public places, that change will be an improvement.

The bill, however, should include the word "contiguous" to avoid proprietors from interspersing smoking and non-smoking areas. Such a "checkerboard" effect would defeat the intent of this legislation. The ideal solution to the tobacco smoke problem would be to restrict smoking of tobacco products in all indoor areas as the Surgeon General in the 1986 Report on Smoking stated that there was no safe level of exposure to tobacco smoke.

Kansans for NonSmokers Rights hopes that you will support 2717 or a stronger version of it so that the almost eighty percent of adult Kansans who, according to the Kansas Department of Health and Environment, do not smoke can for the first time in reality always be non-smokers when they are in public places in our state. Non-smokers should no longer be forced to smoke against their will. All we want is a choice!

*Attn #6  
2-10-88  
p#1400*





# KANSAS RESTAURANT ASSOCIATION

359 SOUTH HYDRAULIC • P.O. BOX 235 • WICHITA, KANSAS 67201 • (316) 267-8383

My name is George Puckett, and I represent the Kansas Restaurant Association, a statewide group of owners and managers representing the Kansas foodservice and hospitality industry. We maintain the position that government imposed restrictions create problems for our operators that fall in a different category than other public buildings.

First, I emphasize we represent the hospitality industry. For those who do not understand I would like to explain that, to keep a restaurant's doors open one must obviously have customers. In our situation, smoking and non-smoking customers are equally important. We continue to oppose government imposed restrictions on smoking because of their unenforceability. Any attempt to try and enforce them will invite disorder and economic sanctions which the restaurateur and his/her employees should not have to bear.

Secondly, we believe the establishment of areas where smoking is prohibited is feasible and desirable in some restaurants, but, the decision to establish such areas must be left to the individual operator who, after all, is in business to please the public. If the public is not pleased, they don't come back. Consequently, if there is an air exchange problem, the owner is forced to deal with the problem, or lose customers. We contend the customer will determine what is comfortable, and that will have a direct impact on the return business of that restaurant. You've all been customers in restaurants who took too long to serve you, who took too long to take your order, and who served you food that did not meet your expectations. Did you return to that restaurant again in the near future? We know some complain verbally, and some don't say anything, they just don't come back.

Finally, regarding the 50% limitation of a designated area, be it smoking or non-smoking, I would ask the committee to imagine yourself as the owner of a 15 seat diner in a small community. What would you do if there were 14 people needing served that insisted on non-smoking sections, ... no problem. The next day you might have 14 who insist on smoking at some point. Would you tell them they "can't sit in a certain place?" This is a practical problem the small, independent business operator will have to deal with. What is fair to that small businessperson who must risk losing business because of "delegating authority and making customers mad." We are not exactly like a library, or this statehouse. This needs careful consideration by the legislature to be fair and practical.

Therefore, KRA ~~supports to~~ opposes any measure that will designate percentages of smoking and non-smoking sections in restaurants. We ask the committee, in its wisdom, to support our industry regarding this position.

Attn. #7  
PH:rw  
2-10-8

*"...Promoting Excellence in the Foodservice and Hospitality Industry Since 1933"*

One year ago you approved House Bill 2412, NO SMOKING IN PUBLIC PLACES EXCEPT IN DESIGNATED SMOKING AREAS. Thank you. That was a good step in the right direction. The bill today is another good step in the right direction.

Some persons who object to this public health issue will tell you the current law is not being enforced and should be repealed. I enjoy history. Recently a friend left on my desk a copy of THE CIVIC BULLETIN from Albany, New York, dated April 7, 1933.

The New York Civic League was opposed to commercial gambling in that state. The argument made by some was that since the restrictive gambling laws were not being enforced, such laws should be repealed. Then came this response. "If we repealed every law being violated we would soon have anarchy and no law. The thing to do is to have a law against any crime that will reduce that crime to the minimum. We have prohibition laws against murder, theft, arson and prostitution, yet all those laws are being continually and in some places shamefully violated, but who thinks it would reduce vice, theft, arson and murder to license them?" Some things never change.

As you know, doctors at the KU Medical Center in Kansas City found a leision on my vocal chord in 1974. As a non-smoker, they assured me it would be benign. Lab tests proved it maligant. I was told second hand smoke may have contributed to cancer on the vocal chord I lost to surgery.

In early December of 1973 I was speaking in the Overbrook United Methodist Church. A reporter was present. In his full column story on the front page of the Wall Street Journal for December 28, 1973, he stated, "A colorful orator with a hearty baritone voice. . ." Five months later that voice was lost forever - a major handicap for me.

When smokers talk about their rights, with a heavy heart I wonder why they have no concern whatever for the rights of non-smokers.

This bill before you is truly a public health and welfare issue. May you give it your solid approval.

*Attn #8  
2-10-8  
P.H.W.*



STATEMENT OF SANDY LAIRD, R.N., CCRN  
Before the Public Health & Welfare Committee  
Re: House Bill 2717  
February 10, 1988

I'm Sandy Laird, volunteer Board Member for the American Lung Association of Kansas. I believe the revisions in Bill 2717 clear up the confusion that existed in the original Bill 2412, and brings the letter of the law into agreement with the intent of the law.

A recent survey sponsored by the American Lung Association, American Cancer Society and the American Heart Association revealed that 94% of those surveyed agree that public places should have a "NO SMOKING" area. In light of recent statistics that indicate that the number of smokers in America is decreasing, it seems logical to me that space required for smoking areas should also decrease accordingly. As you can see, this legislation would allow some consideration of the smoking population until such time that smoking is totally unacceptable in public places.

I am pleased that the Kansas Lawmakers did recognize in the existing legislation that smoking is harmful to the smoker and nonsmoker alike. Now I ask only that you allow for the protection of nonsmokers as was originally intended. Thank you for your further consideration of this important issue.

*Attn: #9-A  
2-10-8  
PH&W*



# REPORTER

FORMERLY **SMOKING AND HEALTH REPORTER** Vol 4., No. 4, Fall, 1987

Progress Toward a Tobacco-Free Young America...

## NEW SURVEYS SHOW THAT SMOKING RATES CONTINUE TO DROP!

by  
William J. Bailey

Two recent surveys confirm that the prevalence of adult cigarette smoking in the United States continued to drop during the past two years.

Two years ago, we reported several public opinion polls showed that the prevalence of smoking among adults had dropped below 30% for the first time in recent history. The newest surveys show that the progress has continued these past two years.

A survey conducted in the last quarter of 1986 by the U. S. Office on Smoking and Health (OSH) and the Centers for Disease Control (CDC) revealed that only 26.5% of adult respondents aged 17 and older were smokers, representing a sharp decline from the 41% of adults who were smokers in 1944, when the first national poll of smoking was conducted.

The OSH survey consisted of telephone interviews with 13,031 adults aged 17 and older. It showed that 29.8% of adult males and 23.8% of adult females were current smokers. 28.4% of blacks and 26.4% of whites were smokers in late 1986. The total number of adult smokers in the United States has dropped to about 47 million.

The last National Health Interview Survey (which uses a slightly different sampling technique) showed that 30.4% of adult Americans smoked in 1985—33.2% of the males and 27.9% of the females. At the time

of the 1964 Surgeon General's report, about 40% of adults smoked—53% of the men and 32% of the women.

The latest OSH survey also revealed that over 43 million Americans have quit smoking in the past 25 years.

Another recent telephone survey found almost identical results. A Louis Harris & Associates, Inc. poll conducted for *Prevention* magazine found that only 27% of Americans were smokers at the start of 1987. This was the lowest smoking level ever measured in a Harris

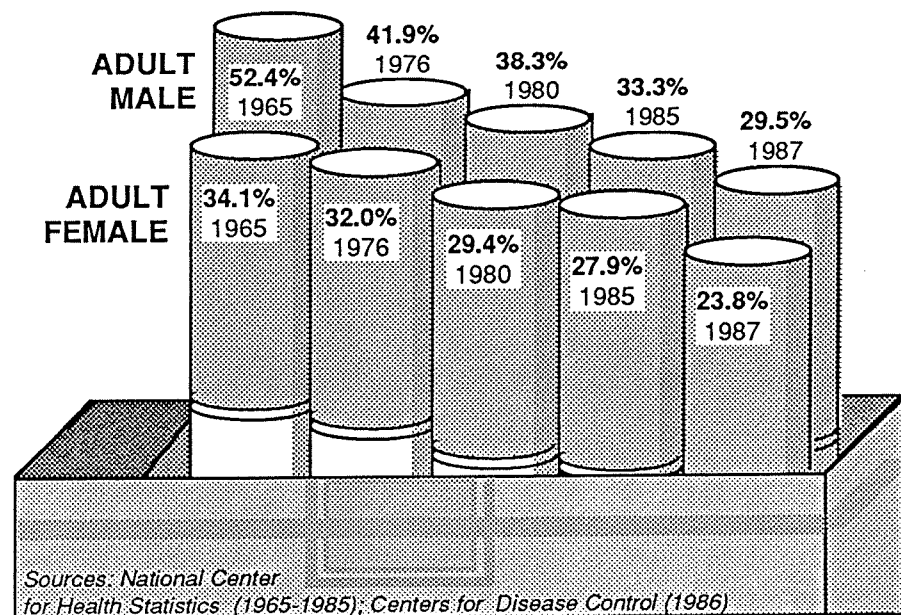
survey. The results of this poll were included in *The Prevention Index 1987: A Report Card on the Nation's Health*, published by the Rodale Press.

The total number of adult smokers in the United States has dropped to about 47 million.

**Notes About Smoking Statistics:** Direct comparisons between and among surveys are not always completely accurate, due to differences in definitions and sampling techniques. For example, some surveys use age 17 as a cut-off point for "adult smokers" while others use 18, 20, or 21. "Telephone" surveys miss people without phones, while "household" surveys miss college students living on campus. Differences in survey techniques cause slight differences in the estimates of smoking prevalence.

### Fewer people lighting up

Smoking prevalence among Americans, 1965 to 1987



Sources: National Center for Health Statistics (1965-1985); Centers for Disease Control (1986)

Leonard Fischer/Desktop Computer Publishers

We would propose an amendment to strike the words: "waiting lines" in line 26, "waiting areas and lobbies" in line 27, and "or claim property" in line 29. We would also add the word "customarily" in between the words "must" and "gather" in line 28; the word "contiguous" in between the words "total" and "area" in line 45; and ~~add~~ the sentence, "This excludes public places of 500 square feet or less, total area." after line 46.

Attn 9-B

2-10-88

PNW

OBSERVATIONS ON HOUSE BILL NO. 2717

Frederick F. Holmes, M.D.

President  
American Cancer Society  
Kansas Division

Edward Hashinger Distinguished Professor  
University of Kansas Medical Center

More than 30 years ago one of my medical school professors in Seattle characterized smoking as a highly personalized form of air pollution and surely harmful to smokers' health. He was correct in his assessment but could not have known then that scientific evidence would ultimately establish that smoking also pollutes the air of non-smokers to the detriment of their health. House Bill No. 2717 seeks to limit smoking in public places so that non-smokers, now the majority of Kansas citizens, will suffer less from the passive inhalation of smoke from others' smoking materials. It should be supported by legislators.

In respect to cancer, the evidence that non-smokers have an increased risk of lung cancer from the passive inhalation of cigarette smoke generated by others is mounting. In the past two years alone there have been 53 papers in the medical literature dealing with lung cancer and passive inhalation of cigarette smoke by non-smokers. They come from all parts of the world. Highlights of these papers are as follows:

1. A paper published in the Scandinavian Journal of Work and Environmental Health states that the increased risk of lung cancer for non-smokers who must passively inhale the cigarette smoke of others is 30%. This is cited as an unacceptable risk for any environmental cancer-causing substance.
2. A paper published in the Canadian Medical Association Journal calculates that 330 lung cancer deaths in Canada per year can be attributed to passive inhalation of smoke by non-smokers. Such a figure could be extrapolated to about 3,300 such lung cancer deaths per year in the United States or about 33 such deaths in Kansans.
3. A paper in Environmental Health Perspectives suggests that, even in respect to cancer, the fetus of a non-smoking pregnant woman may be affected by her passive inhalation of others' cigarette smoke.
4. A study of Chinese women in Hong Kong published in the International Journal of Cancer showed that the types of lung cancer most often associated with cigarette smoking were increased in non-smoking women whose husbands smoked or who had workplace passive exposure to cigarette smoke.

*Attn. #10  
2-10-8  
PHW*

5. A study in Colorado published in the American Journal of Epidemiology found a 68% increase in risk of lung cancer in non-smoking women passively exposed to cigarette smoke with rate of risk increasing significantly with increased hours per day of exposure.

6. A large and important study of the relationship of passive smoking and lung cancer in a cohort of 27,409 non-smoking Swedish women found a 300% increase in lung cancer for women married to smokers and a significant dose-response relation.

7. Four British authors in the British Medical Journal summarized the data in 13 studies published previous to the past several years. They concluded that about a third of the cases of lung cancer in non-smokers who live with smokers, and about a quarter of the cases in non-smokers in general may be attributed to passive inhalation of others' cigarette smoke.

8. An American study published in Cancer Research of 99 lung cancer patients and 736 controls who had never used tobacco in any form found a significant increasing risk of lung cancer in non-smokers related to how long and how much their spouses smoked. The risk was restricted to those types of lung cancer known to be associated with cigarette smoking and was of the order of 300%.

Thus, it seems that the world and its scientists know that passive inhalation of cigarette smoke by non-smokers increases their risk of developing lung cancer by at least 30% and perhaps much more. Applying these statistics we can state that this next year 33 Kansans who have never smoked will die of lung cancer because they have passively inhaled the cigarette smoke of others at home, at work, and in public places. If a person chooses to risk death from lung cancer by smoking cigarettes that is his or her own business and is beyond the concern of legislative bodies. However, the pollution of our environment by proven cancer-causing substances is a very important public health matter and well within the purview of the legislature of the State of Kansas.





## Memorandum

**Donald A. Wilson**  
President

February 10, 1988

TO: House Public Health and Welfare Committee  
FROM: Thomas L. Bell  
RE: House Bill 2643

In its testimony regarding House Bill 2643, KHA recommended the deletion of language in Section 3 referring to agents or employees of medical care facilities. The Kansas Department of Health and Environment has responded to our testimony by requesting that such language not be deleted, because to do so would limit the responsibility for reporting to only those professionals now considered "health care providers."

KHA does not have strong feelings about whether or not that language is left in the statute. However, we would like to comment on these issues. Contrary to the Department of Health and Environment's letter, Section 2 of House Bill 2643 does not increase the number of employees who must report. Current law states that all agents and employees of medical care facilities directly involved in delivery of health care services are obligated to make such reports. Included in this term would be those health care providers added by House Bill 2643. Kansas hospitals have, therefore, been operating under a broad definition since the inception of the risk management reporting requirements.

The suggestion in our testimony was made because that broad definition is also fairly ambiguous. Those professionals specified in HB 2643 are clearly the major groups to be involved in risk management. By tying down the reporting obligations to certain specified employees of a facility, those involved in coordinating the hospital risk management program would have a better idea of what is desired by the state. As it stands now, there is some question as to when an employee is obligated to report. Our request was made only to attempt to add a little certainty to this statute.

TLB:pac

*Attn. # 11  
2-10-88  
JHrcw*

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

BEN E. VIDRICKSEN

SENATOR, DISTRICT 24  
SALINE, ELLSWORTH,  
LINCOLN COUNTIES  
713 N. 11TH STREET  
SALINA, KANSAS 67401

(913) 827-4251  
827-2551  
827-5964

STATE CAPITOL  
TOPEKA, KANSAS 66612  
(913) 296-7390

COMMITTEE ASSIGNMENTS

CHAIRMAN GOVERNMENTAL ORGANIZATION  
VICE CHAIRMAN ENERGY AND NATURAL RESOURCES  
MEMBER CONFIRMATIONS  
FEDERAL AND STATE AFFAIRS  
PUBLIC HEALTH AND WELFARE  
TRANSPORTATION AND UTILITIES  
ELECTIONS  
LEGISLATIVE POST AUDIT  
MEMBER WATER PLANNING ADVISORY COMMITTEE  
MEMBER NATIONAL CONFERENCE OF STATE  
LEGISLATURES

February 10, 1988

Subject: HB 2717

From: Senator Ben E. Vidricksen

To: Chairman Marvin Littlejohn and  
Members of the House Public Health and Welfare Committee

I will be unable to appear before your Committee today to offer my input on HB 2717. I am taking this opportunity to submit a statement regarding the bill.

I have never smoked a cigarette in my life and thoroughly detest smoking for many reasons. I also support non-smoking areas that are practical and workable and do not present problems that could result in closing of certain types of restaurants and food service establishments or any business. My concensus centers on the question of the impact on the small business man.

There are so many questions this measure brings up--an operator with a few seats, how does he handle the fact that a majority of his or her patrons one day are smokers and the next day are non-smokers? How does he explain the empty seats? What happens in a tavern type setting when in most cases the majority are smokers? What about the fine dining facility where liquor is served? The majority in most

. . . One must become involved in the accomplishments of his time, lest he be judged not to have lived . . .

*Attn. #12  
2-10-88  
B.H.W.*



cases may be smokers and to set aside 50% of your seats could cause an extreme hardship.

I speak on a personal basis as one who operates a family restaurant, a lounge type food establishment, a fine dining establishment and also private party rooms. How do you control the private party room where a large banquet is held? I support the basic rule that a proprietor establishes the non-smoking areas.

This bill creates an extreme hardship on the hospitality business. It also creates more problems than solutions to the smoking problems and has the potential to destroy.

I urge your non support of the amendment starting on line 44 in the bill. I see nothing wrong with the remainder of the amendments. It does not appear to create hardships.

I would be happy to discuss this subject with any member of the committee on a person to person basis.

Fiscal Note  
1988 Session  
February 5, 1988

Bill No.

The Honorable Marvin Littlejohn, Chairperson  
Committee on Public Health and Welfare  
House of Representatives  
Third Floor, Statehouse

Dear Representative Littlejohn:

SUBJECT: Fiscal Note for House Bill No. 2715 by Committee on Public Health and Welfare

In accordance with K.S.A. 75-3715a, the following fiscal note concerning House Bill No. 2715 is respectfully submitted to your committee.

House Bill No. 2715 eliminates the position of local registrar of vital statistics and establishes a statewide direct reporting system for filing vital statistics records and data. The bill would allow all hospitals and funeral homes to submit birth and death certificates directly to the Bureau of Vital Statistics, rather than submitting them through local registrars. Local registrars are now used for initial recording of births and deaths in all but 38 counties in the state.

Enactment of House Bill No. 2715 would reduce county general fund expenditures in the 67 counties that still use local registrars in recording vital statistics information. Under current law the local registrar, who usually is a city clerk, is reimbursed by the county in which the registrar is located, with the amount of reimbursement determined by the volume of certificates processed. If local registrars are abolished, it is estimated that the 67 affected counties will save approximately \$17,000 per year. Receipts to affected cities would decline by a like amount, but those cities would no longer have to perform the local registrar function.

The Department of Health and Environment reports no fiscal impact on the agency as a result of this bill.



Michael F. O'Keefe  
Director of the Budget

MFO:JJ:pks

cc: Dr. Stan Grant, Secretary of Health and Environment  
John Torbert, Kansas Association of Counties  
Ernie Mosher, League of Kansas Municipalities

1624

Attn: #13  
2-10-8  
PHW