

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans at 1:30 p.m. on February 15, 1995 in Room 423-S of the State Capitol.

All members were present.

Committee staff present: Emalene Correll, Legislative Research Department
Bill Wolff, Legislative Research Department
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:

Representative Ted Powers
Kathleen O'Connell, Kansas Nurses Association
Jerry Slaughter, Executive Director, Kansas Medical Society
Ron Hein, Legislative Counsel, R. J. Reynolds Tobacco Co.
Terry Leatherman, Executive Director, Kansas Industrial Council,
Kansas Chamber of Commerce and Industry
Tuck Duncan, Kansas Wine & Spirits Wholesalers Association
Hal Hudson, State Director, Kansas Chapter of National Federation
of Independent Business
Pat MacDonald, Tobacco Free Wichita, Wichita Health Department
Elaine Needham, Member, Olathe City Council
Kevin Robertson, Executive Director, Kansas Lodging Association
George Puckett, Kansas Restaurant & Hospitality Association
Karren Friess, Restaurant Owner, Topeka
Betty Dicus, American Cancer Society, Kansas Division, Inc.
Brian Gilpin, Tobacco Free Kansas Coalition, American Heart Association
Doug Wright, Vice President, American Lung Association of Kansas
Dr. Jerry Bergen, Program Director, Shawnee County Prevention and
Recovery Services
Donna Malone, Member, Wichita-Sedgwick County Board of Health
Dr. Steven Potsic, KDHE Director of Health
Jim Twigg, Special Projects Coordinator, City of Overland Park
Don Moler, General Counsel, Kansas Association of Counties
Dave Pomeroy, Kansans for NonSmokers Rights

Others attending: See Guest List, Attachment 1.

The meeting was opened for the hearing on **HB 2153**.

HB 2153 - Prohibiting smoking in public places and public meetings

State Representative Ted Powers, author of the bill, testified that the bill does not ban smoking, but does ban smoking in public places. He listed health reasons as the priority for the ban, and urged support for passage of the bill (see Attachment 2).

Kathleen O'Connell, a Registered Nurse and Research Psychologist, representing the Kansas Nurses Association, testified in support of the bill. She stated that in researching factors that lead to relapse among those trying to quit smoking, it was found that 90% would prefer to quit if there was an easy way to do it. Findings of her research and articles on smoking are included in her testimony.

Jerry Slaughter, Executive Director of the Kansas Medical Society, testified in favor of **HB 2153** and encouraged the committee to report the bill favorably (see Attachment 3).

The hearing was opened to questions of the proponents. Representative Landwehr asked Representative Powers if he approved of government control. He replied, "yes, in this case." Representative Yoh asked him how private groups fit into this? Representative Powers answered the bill applies to public places.

CONTINUATION PAGE

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S State Capitol, at 1:30 p.m. on February 15, 1995

HB 2245 - Regulation of smoking in public places, state preemption of local regulation of cigarettes and tobacco products

The hearing was opened on **HB 2245**.

Ron Hein, Legislative Counsel for R. J. Reynolds Tobacco Company, testified in support of the bill, stating it preempts and supersedes the regulation by any city, county or other political subdivision of the state on smoking in public places (see Attachment 4).

Terry Leatherman, Executive Director, Kansas Industrial Council of the Kansas Chamber of Commerce and Industry, testifying in support of the bill, stated their belief that decision on smoking privileges should be determined between the employer, employees and/or their customers (see Attachment 5).

Tuck Duncan, representing the Kansas Wine and Spirits Wholesalers Association, Inc., supporting **HB 2245**, expressed the idea that the bill is a step in the right direction to extract government from private decision making (see Attachment 6).

Hal Hudson, State Director, Kansas Chapter of National Federation of Independent Business, stated support of **HB 2245** because it helps to preserve a right of self-determination for small business owners (see Attachment 7).

Pat MacDonald, representing Tobacco Free Wichita of the Wichita Health Department, testified in support of the bill. She stated 77% of Kansans do not smoke; that Wichita malls and businesses have found it to be good business to have a smoke free environment (see Attachment 8).

Elaine Needham, of Olathe, supports **HB 2245** because it is non-intrusive on the business community. As a uniform state law, it will allow local officials to stay focused on issues (see Attachment 9).

Kevin Robertson, Executive Director, Kansas Lodging Association, testifying in support of **HB 2245**, noted this is an issue of who can best determine the needs of business customers. The association surveyed its members and determined (as an example, the lodging industry) is responding to the needs of smokers and non-smokers (see Attachment 10).

George Puckett, Kansas Restaurant and Hospitality Association, reiterated that businesses regulate their policies on smoking that best suits the type of business and its clientele. He urged passage of the bill (see Attachment 11).

Karren Friess, Restaurant Owner of Topeka, in supporting **HB 2245**, stated as someone operating a small business, she could not emphasize strongly enough how important it is to run her business as she sees fit. She views **HB 2245** as pro-business and helping non-smokers (see Attachment 12).

Chairperson Mayans indicated the following had submitted written testimony in support of **HB 2245**:

Charles M. Yunker, Adjutant, Kansas American Legion (Attachment 13)

Carol Griffin, Co-Owner, River City Brewing Company, Wichita (Attachment 14)

Tad Travis, Publisher, *Kansas Bowling News* (Attachment 15)

Neal Whitaker, Executive Director, Kansas Beer Wholesalers Association, Inc. (Attachment 16)

The hearing was opened for questions to the proponents. Representative Freeborn asked Mr. Leatherman if local units should have the right to have regulations separate from others. He answered the law should apply on an individual basis due to the difference in the kinds of businesses. Representative Kirk questioned the OSHA threshold for coverage of the law. This bill uses 50 employees; what if OSHA sets 100? Mr. Hein answered that the federal law would preempt the state.

Chairperson Mayans then asked the opponents to present their testimony.

Betty Dicus, for the American Cancer Society, Kansas Division Inc., presented the Society's opposition to **HB 2245**, especially the preemption of local ordinances and regulations. The Society objects to the bill taking government away from the local level (see Attachment 17).

Brian Gilpin, speaking in behalf of the Tobacco Free Kansas Coalition, American Heart Association, testified in opposition to the bill outlining the Coalition's points that secondhand smoke is deadly; that the bill is a

CONTINUATION PAGE

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S State Capitol, at 1:30 p.m. on February 15, 1995

preemption of the State Constitution's home rule; the bill makes workplace smoking policies a mandatory subject of collective bargaining; and their belief that the bill is an attempt by the tobacco industry to circumvent local tobacco control legislation (see Attachment 18).

Doug Wright, Vice President, American Lung Association of Kansas, spoke in opposition to **HB 2245**, outlining the city of Topeka's smoking ordinance and its enforcement as an example of good local regulation. He urged defeat of the bill (see Attachment 19).

Dr. Jerry Bergen, Program Director, Shawnee County Prevention and Recovery Services, Topeka, testified in opposition to preemption of local authority (see Attachment 20).

Pat MacDonald, presented testimony prepared by Dr. Phillip M. Allen of Tobacco Free Wichita, in opposition to **HB 2245** and stated that it is seriously detrimental to the public health (see Attachment 21). She also distributed Dr. Larry Jecha's written testimony in opposition to the bill. Dr. Jecha is President of the Kansas Association of Local Health Departments (see Attachment 22).

Dr. Steven Potsic, KDHE Director of Health, testified in opposition, stating it is against good health policy and against the protection of the welfare of the citizens of Kansas (see Attachment 23).

Jim Twigg, Special Projects Coordinator, City of Overland Park, testified on the city's opposition to **HB 2245**, stating it opens the door to smoking in virtually all public places and workplaces, ignores the public health implications of exposure to tobacco smoke, and preempts the ability of local governmental units to meet the needs of constituents (see Attachment 24).

Don Moler, General Counsel, Kansas Association of Counties, expressed the League's strong opposition to the bill because of its preemption of all local regulations currently in place. He requested the bill be reported adversely (see Attachment 25).

Dave Pomeroy, Kansans for NonSmokers Rights, Topeka, stated **HB 2245** is a step backwards and will force more Kansans to breath tobacco smoke against their will. He requested that the bill be voted down (see Attachment 26).

Donna Malone, Member of the Wichita-Sedgwick County Board of Health, testified that the bill would provide less protection than the state statute now in effect and would wipe out progress made in Wichita for clean air (see Attachment 27).

Chairperson Mayans indicated that the written testimony of Brad Thome, of Wichita (Attachment 28) has been distributed to the committee members.

Some questions were asked of the opponents. Representative Mayans asked Mr. Moler if local government preempts the rights of the business persons when it passes an ordinance or regulation. He replied, "Yes." Representative Hutchins questioned Mr. Wright if local enforcement should be the rule. He replied that public health and welfare laws should be enforced by a health related agency. Mr. Gilpin stated taking away from local government is taking control away from the people.

The meeting was adjourned at 3:12 p.m.

The next meeting is scheduled for February 16, 1995.

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE
GUEST LIST
FEBRUARY 15, 1995

NAME	REPRESENTING
<i>Ron Hein</i>	<i>KJ Reynolds</i>
Ted Powers Rep 81	The Good!
<i>Don Moler</i>	<i>League of KS Municipalities</i>
<i>Carol Crane</i>	<i>American Cancer Society</i>
<i>Stephanie Weiter</i>	<i>American Cancer Society</i>
<i>Jonnie Jurjenc</i>	<i>American Cancer Society</i>
<i>Betty Dicus</i>	<i>American Cancer Society</i>
<i>Bob Safford</i>	<i>KDHE</i>
<i>Marlene</i>	<i>AMER. CANCER SOC.</i>
<i>Mindel Peerce</i>	<i>KDHE</i>
Ed GARVER	Ks Assoc Local Health Depts.
<i>Pat Mac Donald</i>	<i>Wichita-Sedgwick Co Health Dept</i>
<i>Donna RAE Malone</i>	<i>Wichita-Sedgwick Bd. of Health</i>
JERRY BERGEN	SHAWNEE REGIONAL PREV. CENTER
<i>Rich Gutwric</i>	<i>Health Midwest</i>
PHILIP HURLEY	PATRICK J. HURLEY & CO.
<i>KEVIN ROBERTSON</i>	<i>KS. LODGING ASSN.</i>
Ron Wright	Ks Lodging Assn.
KARZEN FRIESS	THE DOWNTOWNER

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE
GUEST LIST
FEBRUARY 15, 1995

NAME	REPRESENTING
Donald H. Richard	KS Lung Association
Deey Wright	ALAK
FRANCES KASTNER	Ks Food Dealers Assn.
Judy Keller	American Lung Assn of Kansas
Jim Wigg	City of Overland Park
Ralph Fessier	Ks Restaurant Assn
Allison Peterson	Kansas Medical Society

TED POWERS
REPRESENTATIVE, 81ST DISTRICT
HAYSVILLE • MULVANE
RR #1, BOX 430
MULVANE, KANSAS 67110
(316) 777-4310
ROOM 155-E CAPITOL BLDG.
TOPEKA, KANSAS 66612
(913) 296-7683

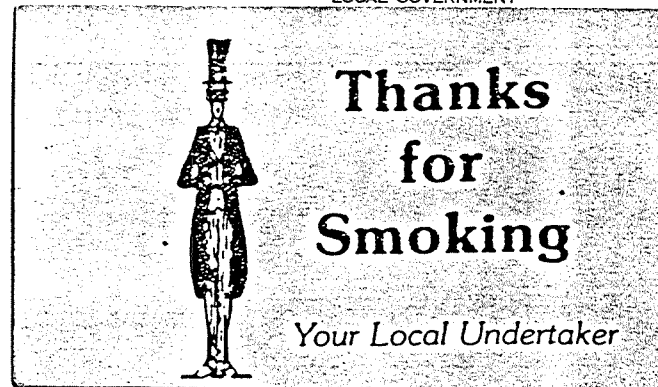


TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
AGRICULTURE
EDUCATION
LOCAL GOVERNMENT

February 15, 1995



To: Chairman Mayans & The House Health & Human Services Committee

From: Rep. Ted Powers

Re: HB-2153 and HB-2245

First of all, let's not confuse the two bills. HB-2153 is a ban on smoking in the public place, while HB-2245 is a pre-emption or repeal of local tobacco laws.

HB-2153 is the good. HB-2245 is the bad. To compare them is ugly.

HB-2153 does not ban smoking. It bans smoking in the public place.

There are many who do not want smoking in the public place. A few who do.

The air we breathe is now. Governor Finney signed an executive decree that cleaned up the Docking Cafeteria. It's wonderful to be able to take our people there as compared to last year. The difference between heaven and hell.

I have lost many friends, both smokers and non, to lung cancer. As I talk, I fear for myself and you in this room for what is happening to our lungs as we breathe.

The designated area does not get it. When we enter the enclosed public place we either have to walk through, or get the drift of stream and/or second hand smoke.

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It is proven to be cancerous to our lungs. If you must smoke, smoke but not in the public place. It is killing human beings.

Remember, the good HB-2153. The bad HB-2245, and the ugly.

Thank you for not smoking!

Ted Powers



KANSAS MEDICAL SOCIETY

623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

February 15, 1995

TO: House Health and Human Services Committee

FROM: Jerry Slaughter
Executive Director

SUBJECT: Smoking in public places; HB 2153 & HB 2245

The Kansas Medical Society appreciates the opportunity to appear today as you consider two bills that deal with smoking in public places. We have always been supportive of legislation which prohibits or restricts smoking in public places, and we support the concepts embodied in these bills.

The two bills take a different approach to the issue: HB 2153 basically prohibits smoking in public places, which are defined in the statutes at K.S.A. 21-4009; and HB 2245 clarifies current law to identify several places which are not to be considered public. HB 2245 also would clearly preempt local ordinances which would be more restrictive than it. Of the two, HB 2153 is the most restrictive in terms of prohibiting smoking. The policy choice you face with these bills centers around the degree to which you want to make it difficult to smoke in public places.

By now the deleterious health effects of second-hand smoke are well documented. As a matter of public policy, it is questionable whether non-smokers should have to be subjected to the harmful effects of second-hand smoke in order to accommodate an ever shrinking minority of Kansans who do smoke (fewer than 30% of the population). This issue is not about scolding or pointing fingers at smokers. If people smoke in the face of overwhelming evidence that it causes serious disease, diminished quality of life, and even death - then no amount of government intervention will change their behavior. However, those who choose not to smoke should not have to suffer the choices made by their fellow citizens who do smoke. That is what these two bills are all about.

We would favor a stricter ban on smoking, such as the one contained in HB 2153. However, anything the Legislature can do to make the air we all must breathe a little more smoke-free is a step in the right direction. We would encourage you to give serious consideration to reporting this bill favorably. Thank you for the opportunity to comment.

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Attachment 3

HEIN, EBERT AND WEIR, CHTD.

ATTORNEYS AT LAW

5845 S.W. 29th Street, Topeka, KS 66614-2462

Telephone: (913) 273-1441

Telefax: (913) 273-9243

*Ronald R. Hein
William F. Ebert
Stephen P. Weir
Stacey R. Empson*

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

TESTIMONY RE: HB 2245

Presented by Ronald R. Hein

on behalf of

R. J. Reynolds Tobacco Company

February 15, 1995

Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for R. J. Reynolds Tobacco Company.

R. J. Reynolds Tobacco Company supports HB 2245.

HB 2245 establishes a state policy recognizing that smoking and tobacco use policies with regards to private businesses should be made by the private business itself.

HB 2245 provides that the person in charge of the premises of a public place shall post notices that smoking is prohibited by state law. The person must also post notice with regards to any designated smoking areas.

The proprietor of any restaurant with a seating capacity larger than 50 shall designate no-smoking areas, except for any area being used exclusively as a private function or where notice is provided that smoking will not be restricted.

Any employer with 100 or more employees must maintain and post a written smoking policy. The designation of smoking and no-smoking areas is made a mandatory subject of collective bargaining.

Fines for violation of the act are established, and the Department of Revenue is authorized to enjoin repeated violations of the Act. Private or public businesses are immune from liability for establishing the smoking policy pursuant to this act.

HB 2245 makes this law uniformly applicable and prohibits local units of government from passing resolutions or ordinances with regards to sale and use of tobacco products in conflict with this Act. Such local government units may adopt resolutions or ordinances under this act that are identical to the act.

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Attachment 4-1

HB 2245 does only one thing: it establishes who has the authority and the right to set the policy--the business owner or the city or county commission. HB 2245, if approved, would vest private business with the control of its own facility. The business community has demonstrated time and time again that it can and it will be responsive to its customers and their needs.

HB 2245 does not eliminate the right of local units of government to set policy for their own buildings and facilities. Just as a private property owner should be able to set the policy for his or her business facility, the county is permitted to set the policy on county owned property, the city on city owned property, and the state on state owned property. Reports to the contrary, including at least one newspaper reference, are inaccurate.

As you will hear from other conferees today, business has been able to accommodate the wishes of smokers and non-smokers alike. Businesses should be able to make this decision with the least amount of government intervention and the least amount of government mandates possible.

Some businesses will choose to be smoke-free, as many already have. Some businesses may choose to designate smoking areas. But that should be their decision.

We often hear the local units of government complain, and complain loudly, about state and federal mandates. They argue that local control is preferable, more responsive to the needs of the citizens in that locale. And they are right. But local units forget that they are not the most local form of control. They sometimes forget that businesses and individuals in this country still have rights, and are entitled to protection from all forms of government interference, even interference from local government.

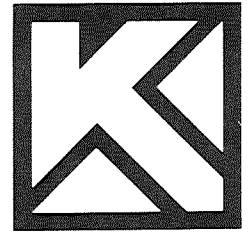
The private sector should be permitted to be responsive to their citizens, their customers. They can and they will make wise decisions. They do not need big government, local or not, deciding what their business policy should be.

I urge the Committee to approve HB 2245.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732
HB 2245

February 15, 1995

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Health and Human Services

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for permitting me to explain why KCCI supports HB 2245.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The members of the Kansas Chamber fundamentally believe that decisions on smoking privileges at a business should be resolved between an employer and their employees and/or customers. In fact, the employer's authority should run the full spectrum from banning smoking on

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the premises, to permitting smoking throughout their operation, to an accommodating position in between the two extremes.

There are a myriad of reasons why KCCI feels why smoking policy belongs with the employer. First, it is the business owner's operation on the line. The entrepreneur took the chance of starting a business, serving clients, and employing workers. Important decisions like smoking which affect the business should be made by the owner. Second, cookie cutter government policy does not convert well to the variety of businesses we have in Kansas.

The paradox of HB 2245 is KCCI promoting an employer's right to decide business policy by endorsing a state smoking regulation. However, HB 2245 is very permissive in allowing business decisions regarding smoking to rest with business men and women. In addition, a state regulation which supersedes local government decisions on smoking would create a consistent smoking policy across Kansas, which KCCI also supports.

Thank you for this opportunity to comment on HB 2245. I would be happy to attempt to answer any questions.

5 - 2

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

MEMORANDUM

To: House Committee on Health and Human Services
From: R.E. "Tuck" Duncan
RE: House Bill 2245

Hearing: 2/15/95 Room 423-S

I am here today as a representative of the beverage alcohol industry, an element of the hospitality industry, to encourage your support of this legislation. In our work we find that there are establishments (clubs, hotels, motels, drinking establishments, restaurants) across the state operated by common ownership in which it is desirable to establish a uniform statewide policy for their operations. HB 2245 preserves this prerogative.

As you are aware the hospitality industry is in the business of being hospitable. To that end members of this industry establish policies to attract business not detract from it. As the hospitality industry attracts patrons, tourists, customers, etc. then communities benefit from the circulation of the dollars spent within the industry and the state benefits from the taxes generated.

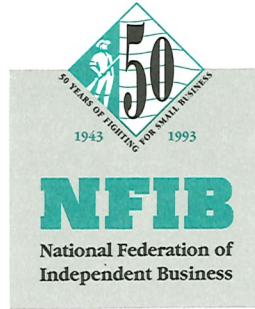
This legislation is not state intervention in local decision making -- it preserves decision making by local businesses for their business. We would respectfully submit that those who suggest this bill is a state mandate on local governments are in error. This bill codifies a policy to uphold the rights of individuals to make their own choices affecting their business.

This legislation is a statutory clarification of the Kansas Constitution's promise at Section 20 of our Bill of Rights wherein it states: "*This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people.*" At a time when government is examining ways to extract itself from private enterprise... this bill is a step on that path.

We appreciate your kind attention to and consideration of this matter.

(2) HB2245.

HOUSE H&HS COMMITTEE
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Attachment 6



**Testimony of
Hal Hudson, Kansas State Director
National Federation of Independent Business**

**Before the
Kansas House Health & Human Services Committee
on House Bill 2245**

Wednesday February 15, 1994

Mr. Chairman and members of the Committee: Thank you for this opportunity to appear here today. My name is Hal Hudson, and I am State Director for the Kansas Chapter of National Federation of Independent Business. NFIB is the State's largest small-business advocacy group, with over 8,000 members who employ more than 100,000 Kansans. NFIB represents a broad cross section of Kansas employers who have one thing in common -- they all are small businesses. Over 80 percent of our members have 15 or less employees, and only one percent of our members employ over 100.

Let me say at the outset that NFIB does not have a policy regarding smoking or the use of tobacco products. However, we support enactment of H.B. 2245 because it would help preserve a right of self-determination for small business owners.

Two years ago, we opposed a bill that could have imposed penalties on business owners accused of discriminating against employees for use of tobacco or alcohol products outside the workplace. We argued that such legislation violated the doctrine of "employment at will," a Kansas heritage held almost sacred by some. We believe our position today is consistent with the position we have taken in the past.

Today, the principle at stake is whether or not a property owner or the manager of a

business has the right to establish a smoking policy on their own premises. They should have that right.

Many businesses - even small businesses - in Kansas operate in multiple cities, across county lines. In the absence of a statewide policy, these firms could be faced with compliance with a myriad of local smoking rules, regulations, or ordinances, affecting their daily operations.

We believe the message small business in Kansas is trying hardest to get across to government is "get out of our face, get out of our pocket -- leave us alone, and let us do what we do best." That is to create jobs to bolster the state's economy.

Enactment of H.B. 2245 would be step in the right direction.

Thank you for your attention. I will stand for questions at the pleasure of the chair.

A B O U T N F I B / K A N S A S

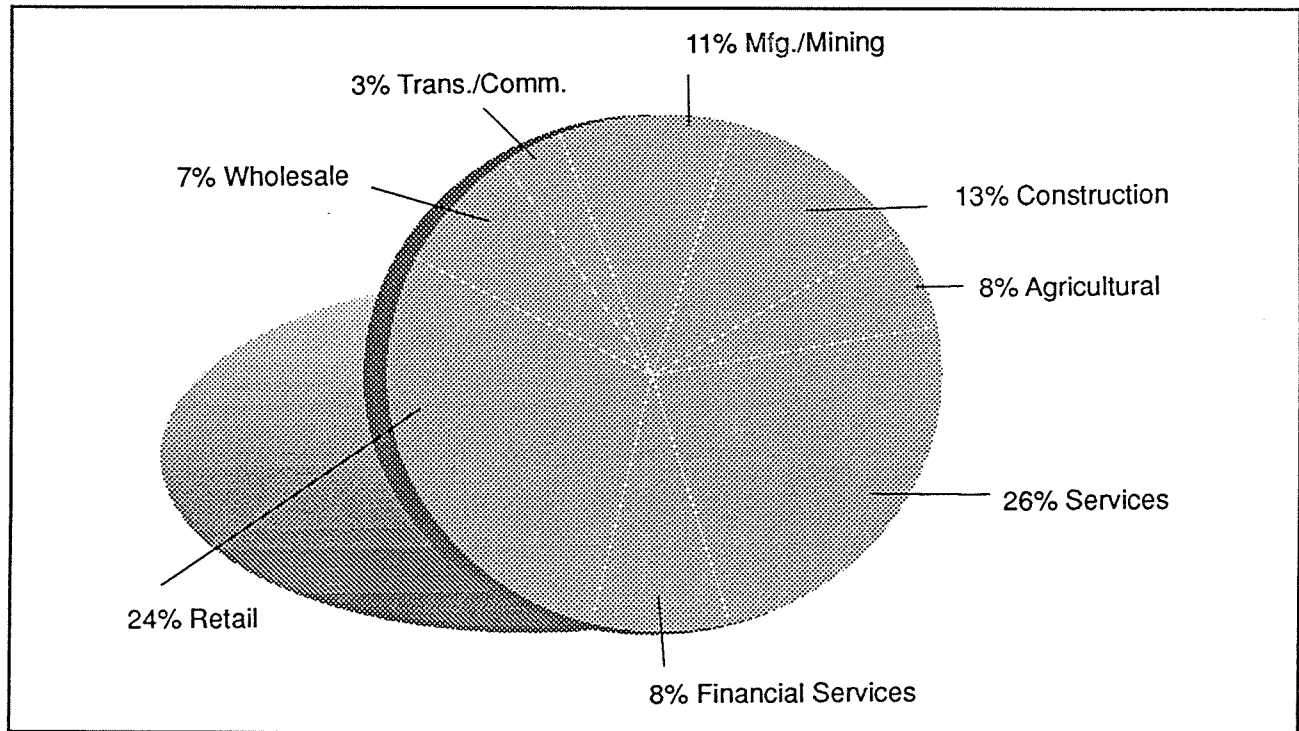
With nearly 8,000 members, the Topeka-based National Federation of Independent Business/Kansas is the state's largest small-business advocacy organization. Independent-business owners join the federation to have a greater say in the crafting of legislation and regulations that affect their lives and livelihoods.

NFIB/Kansas draws its members from all walks of commercial life: from family farmers to neighborhood retailers, from independent manufacturers to doctors and lawyers, from wholesalers to janitorial service firms.

Each year NFIB/Kansas polls its diverse membership on a variety of issues. The federation uses the poll results to form its legislative agenda, aggressively lobbying in support of positions approved by majority vote.

Because policy is determined by direct vote of the membership rather than by a steering committee or board of directors, NFIB/Kansas lobbyists have exceptional credibility as spokespersons for the entire small-business community. Rather than represent the narrow interests of any particular industry or trade group, NFIB/Kansas promotes the consensus view of small-and independent-business owners from throughout the state.

N F I B / K A N S A S M E M B E R S H I P by Industry Classification



NFIB Federal Legislative Office
600 Maryland Ave. Sw, Ste. 700
Washington, DC 20024
(202) 554-9000

3601 S.W. 29th St.
Ste. 107
Topeka, KS 66614
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NFIB Membership Development
53 Century Blvd., Suite 205
Nashville, TN 37214
(615) 872-5300

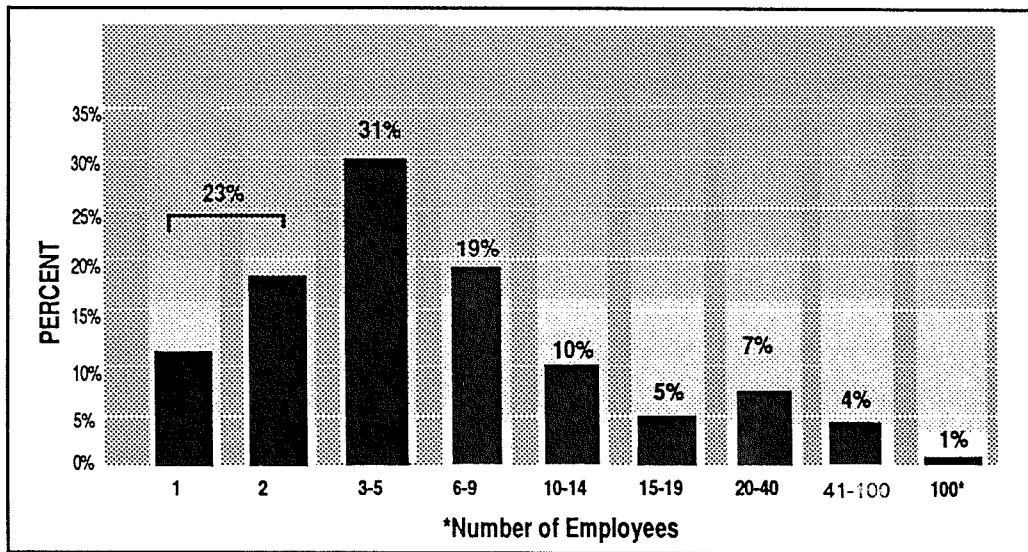
NFIB
National Federation of
Independent Business

N F I B / K A N S A S M E M B E R S H I P P R O F I L E

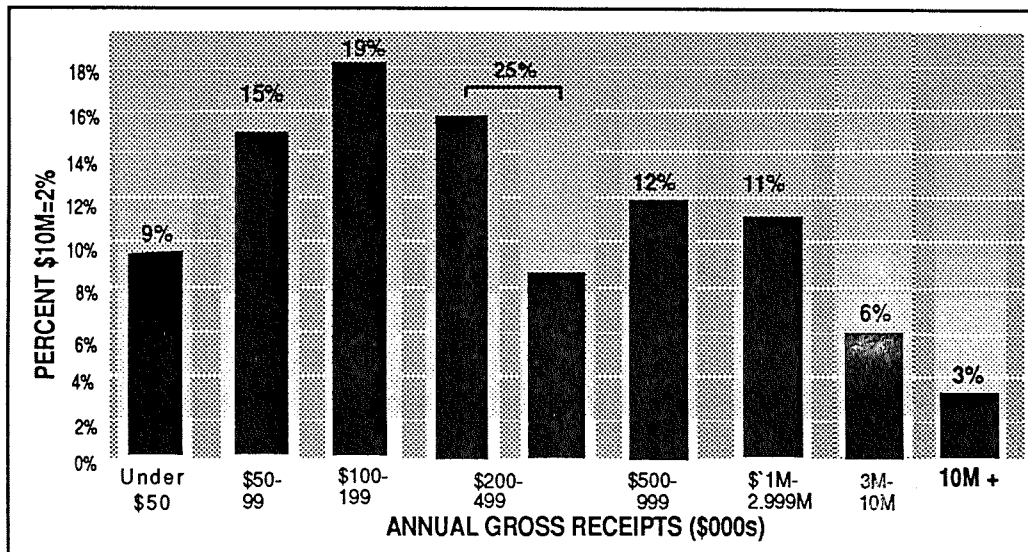
NFIB/Kansas represents the entire spectrum of independent business, from one-person "cottage" operations to quite substantial enterprises.

The typical NFIB/Kansas member employs five workers and rings up gross sales of about \$270,000 per year. In aggregate, the organization's members employ nearly 92,000 workers.

N F I B / K A N S A S M E M B E R S H I P by Number of Employees



N F I B / K A N S A S M E M B E R S H I P by Annual Gross Receipts





TESTIMONY
HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES
HOUSE BILL 2245 HEARING FEBRUARY 15, 1995

Ladies and gentlemen:

The Wichita-Sedgwick County Health Department appreciates the opportunity to have our testimony presented today. We wish to speak against House Bill 2245. This bill would preempt any action we have taken or wish to take in Wichita to regulate the sale of cigarettes or other tobacco products and to control smoking in public places.

This bill also preempts and prohibits future regulation on marketing, advertising, licensing, distribution, sampling, promotion or display of any tobacco product. This bill would wipe out any progress and any action we have taken in Wichita to control these activities and would prevent us from taking any action in the future. Such an all inclusive preemption by the State in the affairs of Wichita, the state's largest city, is unacceptable.

You may hear arguments that the tobacco industry needs the same regulation across the state, this is simply for their convenience. Wichita is a city of 400,000 people, the largest city in Kansas. Our amenities and our problems are both unique in the state. We have little in common with neighboring cities such as Valley Center and Andover, let alone smaller, more rural cities across the state. We do not all have the same problems and we do not all need the same solutions, particularly, coming from the State.

In most cases, such preemptive clauses are not in the best interests of Kansasans. In this case, the situation is clear. Wichita needs to be able to craft its own ordinance in accordance with our needs and wishes.

Studies have shown the most effective public health tool in the prevention of teens taking up smoking addiction is local control. House Bill 2245 removes this valuable tool from Wichita and other Kansas communities. We urge you to vote the bill down.

Patricia MacDonald, Director of Health Education

PM/dp

HOUSE H&HS COMMITTEE
2 - 15 - 1995
Attachment 8

HB 2245 Would Serve Local Government

Thank you for giving me this chance to address you on the topic of House Bill 2245. It is an important bill that adds local control in a day when government is so big. I believe that the State should support this bill and would hope that local government would also.

My name is Elaine Needham. I have been in local government for over fifteen years. I currently serve on the Olathe City Council. I represent Ward 3 and serve on the Planning and Parks & Recreation Committee as well as the Finance & Administration Committee. Additionally, I serve on the Convention & Tourism Board and have helped in long-range planning for the Mahaffie House, a historical tourist attraction in Olathe. City long-range planning and community consensus building are important political issues for me. I have also served as a City Manager in New Carlisle, Ohio and Osage City, Kansas, and Assistant City Manager in Mankato, Minnesota.

I also teach State & Local Government, American National Government, and Introduction to Political Science at Penn Valley Community College in Kansas City. I have a management consultant firm that assists organizations with grant requests, fund-raising, and other initiatives.

In these various professional capacities, I have seen local government from both the inside and out. As a result, I believe I have a good grasp of the kind of government regulations that work best and what will serve the interests of the community.

House bill 2245 is the kind of non-intrusive, commonsense law that will serve the best interest of the public, the business community and local government authorities in every Kansas community.

In my campaign for city council, I ran on a platform that government should not give people more than they want, nor buy more than what they need. The same is true for policies, regulations, and law. These principles have been affirmed--not just by my own election -- but by the general, nationwide results in the elections held last November. The message sent by the

voters last November was loud and clear: People want less government; not more. At the local level this specifically means that the electorate want less regulation and less government interference in daily life.

Small business people in particular are tired of government giving them more than what they want or need. More regulations on small businesses create a drain on scarce resources including time, money and specialized skills. House Bill 2245 preserves the right of small businesses serving the public to implement---and change-- their own smoking policies to suit the wishes of their particular clientele.

At the same time, HB 2245 ensures that every Kansas restaurant provides non-smoking accommodations for those customers who need or desire it. Restaurants can even ban smoking entirely, if that is what they determine their customers want.

Preserving this individual freedom and flexibility is good for business, and I submit to you that it is also good for local government.

As a uniform state law, HB 2245 will allow local officials to stay focused on priority issues. Battles over smoking sections can be highly emotional and divisive at a time when our communities need to pull together to resolve serious problems like crime and economic adversity.

Community resources and infrastructure are the primary issues focusing local officials. These issues are expensive and time-consuming. Smoking in restaurants is an issues best resolves by market forces and individual initiatives.

A uniform statewide law will also prevent the economic harm restaurants can suffer when one community bans restaurant smoking while a neighboring community does not.

Proponents of smoking bans in restaurants often claim that such bans are justified because the public wants them. But if that were true, we wouldn't need a law to prompt restaurant

owners and managers to ban smoking. If the restaurant-going public truly desired a smoke-free dining experience, restaurants would rush to ban smoking on their own initiative. While some groups argue for a completely smoke-free environment and cite allergies and potential aggravation to ill persons, those restaurants that wish to establish a completely smoke-free environment should be able to do that without a local law banning smoking in every restaurant.

Evidence from communities that have banned restaurant smoking--in California and elsewhere---argues otherwise. When smoking is banned, restaurants in the banned community lose business, as smokers cross county lines to find more accommodating establishments.

Enactment of HB 2245 would create a level playing field for all Kansas restaurants, accommodating non-smokers while placing the least intrusive and least burdensome law on the books. By allowing local government to pass specific regulations, it also means that local government has the responsibility for enforcement. Depending upon the extent and nature of this local law, enforcement can be time consuming and expensive. Overland Park spent over \$ _____ in enforcing its no smoking provision.

In the final analysis, the real question: Where is this issue best resolved? Is it best resolved by business owners and managers who have daily contact with their customers and know their desires? Or should it be enforced by over-worked local officials who may even be reluctant to enforce a hastily written law that "seemed like a good idea at the time"?

Thank you for your attention today and for giving me this opportunity to present my personal views on this matter. I hope you will elect to give restaurant managers the authority they deserve and local officials the break they need by voting for HB 2245.



Date: February 15, 1995
To: House Committee on Health and Human Services
From: Kevin Robertson
Executive Director
Re: House Bill ²²⁴⁵~~2425~~ - Private Business Owners' Rights

Chairman Mayans and members of the Committee my name is Kevin Robertson. Thank you for the opportunity to appear before you today on behalf of the 150 statewide members of the Kansas Lodging and Hotel Associations in support of HB 2425.

This is not a smokers versus non-smokers issue. This is an issue of who can best determine the needs of business customers: government or the business serving their customers?

The Kansas Lodging and Hotel Associations believe individual hotel and motel operators can best determine the needs and wishes of their diverse and unique clientele. As you might imagine, the location within a city, room rental rate, size, facilities, policies, and amenities all draw guests to a particular hotel or motel. Further, many hotels and motels negotiate contracts for guest rooms with businesses such as heavy contractors, trucking companies, railroads and local companies to put up their employees while staying in their local vicinity. Hotel owner/operators must be allowed the right to establish their own policies regarding smoking on their property to negotiate the best mutually beneficial contract with area businesses and meet the needs of their clientele.

The members of the Kansas Lodging and Hotel Associations' Board of Directors have thoroughly discussed the issue of smoking in public places and the right of business owners to choose smoking policies on their property. Many have indicated a need in their respective hotels to expand the number of non-smoking guest rooms available to the public, while others said "they can't even rent non-smoking guest rooms."

The members of the Kansas Lodging and Hotel Associations are generally non-smokers. As far as I know only two persons on our 24 member Board are smokers, however, smokers and the non-smokers alike understand the need to allow smoking in their business or they will alienate a large portion of their market and likely lose customers and revenue.

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Last week I mailed a survey to the members of the Kansas Lodging and Hotel Associations asking them to answer two simple questions: How many guest rooms does your hotel have, and; how many non-smoking guest rooms are available to your guests? 97 of 150 members returned the survey. The survey respondents show that 41% of their guest rooms are classified as non-smoking. The percentage of non-smoking guest rooms varied from less than 0% to near 100%. Most chains, such as Choice Hotels, Holiday Inn Worldwide, and Best Western require their franchises to have a minimum of non-smoking guest rooms available to the public. Many indicated they were planning to increase the number of non-smoking guest rooms available to their guests as they renovate rooms.

From the survey you can see that the lodging industry is responding to the needs of non-smokers based on the free enterprise system and the pressures of market demand! There are no government laws, rules, or regulations requiring hotels and motels to offer non-smoking guest rooms, yet, they are doing just that! In the same way hotels and motels will respond to the needs of both smokers and non-smokers in their public areas.

Let Kansas businesses determine the smoking policies which affect their clientele based on the free market system - that's the American way! The Kansas Lodging and Hotel Associations ask for your support of HB 2425.



KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION

WICHITA - HEADQUARTERS OFFICE
359 SOUTH HYDRAULIC
WICHITA, KANSAS 67211
(316) 267-8383
FAX (316) 267-8400

TOPEKA - LEGISLATIVE OFFICE
500 S. KANSAS AVE., SUITE "K"
TOPEKA, KANSAS 66603
(913) 235-6300
FAX (913) 235-5454

My name is George Puckett and I represent the Kansas Restaurant and Hospitality Association a statewide group of approximately 800 foodservice and hospitality industry businesses. The KRHA supports HB2245 in an effort to establish a uniform state smoking law as it pertains to smoking in public places. Serious problems are feared by many of our restaurant members as the result of recent proposed local ordinances in Overland Park and in Wichita. As a result of these experiences we believe there is a need to seek assistance from the state regarding the matter of smoking in public places. KRHA opposes smoking bans at local levels because of its negative impact on business, the potential loss of business to adjacent cities without such ordinances, the negative impact on the tourism and convention industry, and the loss of a city's consideration as a potential site location for certain new restaurants.

KRHA's position is not one of support for an individual's right to smoke, nor is it opposed to the rights of non-smokers. The matter is one of economic consequences and we believe those consequences should not be imposed differently on private business from community to community. HB2245 would allow all retail businesses to comply equally with smoking regulations in the state of Kansas. The need for businesses to have the least burdensome administrative costs and obligations justifies allowing restaurants and other businesses in Kansas to have a uniform application of the law.

The restaurant and hospitality industry is a very competitive business. At the present time, customers who smoke make up an estimated 25% to 30% of many restaurants' customer base. They have provided this group of customers with designated smoking areas leaving adequate space for their non-smoking patrons since this issue was resolved several years ago. This system -- a system of choice in patron seating -- has met our customers' needs.

The competitive nature of the marketplace already forces restaurants throughout the state to accommodate the needs of non-smokers. Many establishments have banned smoking entirely in response to customer demand, while other restaurants would fail without their clientele who choose to smoke. This would have serious economic ramifications and could result in the loss of jobs in those communities.

HB2245 would let the business owner regulate his or her own business by determining the smoking policy that best suits its type of business and its clientele. The public is free to patronize or not patronize that business. The citizenry, not city governments, should be the judge of the prudence of that choice.

We urge your favorable support of HB2245 and request a uniform and equal state law that would help protect and insure the free enterprise system of allowing small businesses in Kansas to be free to meet the needs of their clientele thus protecting their private businesses and individual livelihoods.

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SMOKING

Two months after passing a tough no-smoking ordinance, Arlington, Texas, restaurants survey the damage

TOWN WITHOUT SMOKE



BY DON NICHOLS

FOR 21 YEARS, OWEN HENN has owned and operated an International House of Pancakes in Arlington, Texas. For the first time in nearly a decade, his business is down—by 20%. And the blame, says an angry Henn, falls squarely on local politicians. Since they enacted one of the country's toughest no-smoking ordinances on March 1, traffic has plummeted, and "I'm not happy," he barks.

A study of smoking bans in other towns and cities found no adverse effect on restaurant sales. Business actually

increased after smoking was prohibited in the restaurants of Telluride, Colo., and Palo Alto, Calif., according to the data compiled by the University of California at San Francisco.

But those findings don't jibe with the experiences of operators in Arlington, a city of 275,000 people and 300 restaurants about midway between Dallas and Fort Worth.

Sales also are off 20% at Bale Vietnamese Restaurant; 15% at Al's Hamburgers; more than 10% at Burger Box, a three-unit hamburger chain; and they're off 5% at one of the city's four

SAY WHAT?: The day the town's smoking ban took hold, smokers converged at Veterans Park to protest

PHOTOGRAPH BY OWEN WOOTTE FOR RESTAURANT BUSINESS

SMOKING

At the same time, restaurants that have put off compliance say they've had a surge in traffic. The ordinance requires eating places to either go smoke-free or install a ventilator system in a separate smoking section encompassing no more than 30% of their seating. The city agreed to give a 90-day extension to restaurants that needed time to check out the exhaust option.

The 70 that filed for the extension say they've become a refuge for consumers who still want a butt with their meal. "I'm getting people coming from Denny's, Waffle House, MOR Pancho's, and other places," says Old Main Street Cafe owner Judy Lundberg, who estimates that her business is up 40%. "New customers are coming in and telling me they turned around and walked out of other restaurants when they were told they couldn't smoke."

Business is also up at restaurants in Pantego and Dalworthington Gardens, two incorporated cities of 2,000 people each that lie within Arlington. The ordinance does not apply in those landlocked cities. "New faces are coming in and I've also noticed a lot more repeat business," says Jimmy Davis, owner of David's Barbecue in Pantego, where sales have risen 18% since Arlington began its snuff-out.

"Our business is up 25%," adds Sam Saxton, manager of Camp Verde restaurant in Dalworthington Gardens. "I'm seeing a lot of first-time customers and a lot of it has to do with the smoking situation." When the ordinance first went into effect, he adds, the restaurant was receiving up to 20 calls a day from people wanting to know if it still allowed smoking. It's still getting at least five calls a day.

Smoker himself, Saxton says he, too, as well as others, had frequenting Arlington restaurants. Instead of eating at the local Olive Garden a couple of times a month, he now goes to places outside of town.

ARLINGTON RESTAURATEURS grumble that customers don't even have to leave town to evade the new law. Bars are exempted if they don't permit anyone under 18 inside, and the city left in a loophole for eight restaurants that were developed while the ordinance was being passed. Those places are allowed to designate up to 50% of their seating for smoking. "It's not a level playing field," says Lane Cardwell, executive vice president of Brinker International, which is set out to build its fourth restaurant in Arlington. "They grandfathered in a few restaurants that opened by a certain date, but all other new ones must comply with the ordinance."

Robert Byrd, assistant director of community development for the Arlington health department, says those restaurants were merely allowed to operate as expected when they were being built. "Those restaurants weren't grandfathered. They have ventilator systems and they complied with the ordinance that was in effect before the city passed the new one," he says. That rule said the restaurants would need to designate 50% of their seats as a smoking area if they were built with the right ventilation systems.

Managers of two of those eight restaurants say they aren't cashing in on any unfair advantage. "We don't have a lot of smokers come into the restaurant. Our smoking section is our smallest section and it has very little business," says Dana Peterson, manager of Emiliano's, which opened in December.

"We're still doing about the same amount of business since the smoking ordinance passed," says Greg Stephens, a manager at Applebee's, which opened early last year.

But plenty of other operators say they'd like to be in that situation. "I've seen a steady increase in business for eight years, but now this smoking ban is hurting me," says Henn.

"We've done business in Arlington for 18 years, but I no longer feel any friendship with the city. They are totally out of bounds on this issue," says Burger Box president Steve Fox, who's trying to lure back customers with specials like a burger, fries, and drink for \$2.99. He's also considering new menu items.

Ventilation systems that exhaust air directly to the outside every 15 minutes let operators offer at least some okay-to-smoke seating. But bitter restaurateurs complain that such systems are expensive—some have received bids as high as \$17,000—and will increase their monthly energy bills by up to one-third.

They also fret about investing in equipment that might soon be use-

CHANGE OF PLAN: Al Matthews yanks the sign that used to offer his customers a non-smoking area.



less. "Are the feds going to be telling us in two years to unplug these systems? I've heard there are bills in the House and Senate proposing smoking bans in restaurants," says Randy Ford, owner of J. Gilligan's Bar and Grill. "If they ban smoking, there's talk the feds may allow restaurants to have ventilation systems. But what if they require a different system than what some Arlington restaurant operator just spent \$10,000 to \$15,000 to install?"

It'll all go up in smoke.

Testimony of Karren Friess
Owner, The Downtowner Restaurant
In Favor of HB 2245

My name is Karren Friess and I am the owner of "The Downtowner" restaurant here in Topeka. I thank the committee for the opportunity to express my support for HB 2245, a measure which sets uniform standards for smoking policy in our state.

I support HB 2245 because I strongly believe business owners should have the right set smoking policy in their own establishments. Unfortunately, that right is increasingly under attack these days from an intolerant minority that believes smoking should be banned.

The issue isn't whether non-smokers have the right to avoid the annoyance of tobacco smoke. Of course they do. And restaurant owners who fail to respond to customer demand for non-smoking sections are shooting themselves in the foot.

But it is one thing to say non-smokers should be accommodated and quite another to demand that business owners turn away people who wish to enjoy a cigarette with their meal. Both groups can be accommodated, and both groups should be.

When local governments respond to an intolerant but highly vocal minority and enact bans or extreme restrictions on smoking, they are doing more than inconveniencing smokers. They are hurting businesses.

If smoking is banned in one community, it is quite easy for people to drive to a neighboring town where the laws are more reasonable. The restaurants in one town lose business through no fault of their own, and those in the other gain without doing anything to deserve it.

HB 2245 would prevent such unfair outcomes by creating a level playing field for all businesses in the state. It provides a baseline for smoking policy by insuring that non-smokers will be able to find designated no-smoking areas in restaurants and other public places. But it leaves the details of implementation where they belong: in the hands of the individual business owner.

Some business owners may wish to ban smoking entirely, and they will have a perfect right to do so. Others will wish to accommodate all their customers, smokers and non-smokers alike. Whatever policy they choose, business owners will be free to do what makes sense for them.

As someone who runs a small business, I cannot express strongly enough how important it is to me to have the maximum possible freedom to run my establishment as I see fit. A law which tells me who I may or may not accommodate in my own establishment is a law which not only hurts my business, but takes away my freedom.

On the other hand a law which simply requires that non-smokers be accommodated, and leaves the details up to me, is not only acceptable, it is positively helpful because I know I don't have to worry about unreasonable local legislation that will cost me business.

That's why, in addition to looking upon HB 2245 as a law which helps non-smokers, I see it as a pro-business law. It creates an environment in which businesses can compete with each other on equal terms and it prevents localities from passing unwise measures that interfere with competition. I urge you to give HB 2245 your favorable consideration.

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TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2245
BEFORE THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
BY CHARLES M. YUNKER, ADJUTANT, KANSAS AMERICAN LEGION
FEBRUARY 14, 1995

Thank you for allowing me the opportunity to submit this written testimony in favor of House Bill No. 2245. I apologize for not presenting The American Legion's position on HB 2245 in person, however a prior scheduled meeting at Ft. Riley prevents me from appearing before you.

I would like to begin by stating that I smoke. But I am very conscientious of the health and welfare, as well as the comfort, of those who do not smoke. Personally I do not smoke in my home and unless I am alone or with someone who also smokes, I normally sit in non smoking sections of restaurants, etc. I also make a conscientious effort to limit or restrict my smoking in confined places such as my automobile.

Whether or not a person chooses to smoke is a personal choice which should be left to the individual. Whether or not a private club, drinking establishment, etc. permits smoking within its premises should also be left to the discretion of that club or business. It seems as though this issue is about the freedom of choice; one of the founding principles of our democracy.

Granted total freedom of choice is not, and can not be, extended to everything. Reasonable restrictions either voluntary or by law must be established. The American Legion believes HB 2245 does establish reasonable restrictions and guidelines without infringing on personal choices or freedom of trade.

Many American Legion Posts conduct and advertise "Smoke Free Bingo"; others have installed venting systems to remove most if not all

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the smoke emanating from the "Smoking Section" during Bingo games. American Legion Posts have established smoke free Bingo and/or restricted smoking areas because their patrons desired such an atmosphere in which to play Bingo. If those Posts failed to respond to the wants and needs of their Bingo players their crowds and ultimately their Bingo income would all but evaporate. Yet many of those same Posts allow smoking in their restricted access (members and their guests only) club rooms, lounges, restaurants, etc.

The same principle holds true for other establishments, both non profit and for profit. The American Legion is not unique in this respect. That is; our members and patrons dictate our smoking policies to the satisfaction of the majority.

House Bill 2245 will continue to permit the exercise of freedom on choice for smokers and non smokers alike. Therefore I urge your expediant passage of HB 2245.

Again thank you for allowing me to present this written passage.

Sincerely,



Charles M. Yunker, Adjutant
The Kansas American Legion



February 15, 1995

Rep. Carlos Mayans
Chairman
Health and Human Services Committee
Statehouse
Topeka, KS 66612

BESTAURANT
BANQUETS
BREWERY
BAKERY

Dear Rep. Mayans:

Business commitments preclude my testifying in person before your committee today, but I ask you to consider this letter as my testimony in favor of HB 2245. I believe it is critical that the state adopt a single position on smoking in public places, rather than allow individual cities and counties to develop their own, often contradictory, ordinances.

I speak to you today as a restaurant owner and restaurant industry consultant. I am both a co-owner of the River City Brewery (a microbrewery and restaurant in Wichita), and a management consultant to the Old Mill Restaurant in Newton. Additionally, my company is developing other restaurant management consulting and acquisition opportunities throughout the state. HB 2245 is particularly important to my company, since it would uniformly apply smoking ordinances statewide. Without HB 2245, I may be forced to change my policies and operations each time I enter a new market.

Restaurants are in the business of customer service -- and that means customer accommodation. We strive to satisfy our customers -- both through our food product and through our atmosphere. That atmosphere must be mindful of the preferences of smokers and non-smokers alike, and we work very hard to meet the needs of both. We believe that smoking and non-smoking areas should be separated, and we willingly make these separations by using physical barriers or walls in our properties. The bottom line is this: it is simply good business to accommodate our smoking customers in ways that do not offend non-smoking customers.

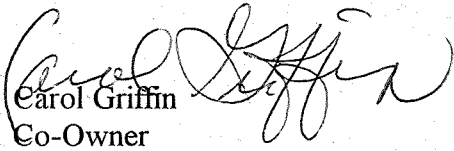
We know from our own customer research, as well as from National Restaurant Association data, that smokers account for a major portion of our restaurant and brewery sales. Our sales would be significantly threatened if we were forced -- by local or state ordinances -- to prohibit smoking entirely. Conversely, by allowing designated smoking and non-smoking areas, as HB 2245 ensures, we can serve all our customers without inhibiting our sales.

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As a small business owner, I should have the freedom to decide how best to service my clientele. I believe HB 2245 ensures my right to accommodate my customers in the fairest and most courteous manner possible.

I strongly urge your support of HB 2245 and I thank you for your attention and consideration.

Sincerely,


Carol Griffin
Co-Owner

Feb. 6, 1995
Kansas Bowling News
P.O. Box 37, Valley Center, Kan. 67147
Phone & Fax: 316-755-0772

Rep. Carlos Mayans
Chairman, Committee on Health and Human Services
Statehouse
Topeka, Kan. 66612

Dear Rep. Mayans,

I'm writing today in support of H.B. 2245, which ensures small-business owners the right of choice regarding smoking on premises. As publisher and editor of the Kansas Bowling News, I'm in a position to gauge the mood of bowlers and bowling center proprietors throughout the state of Kansas. From my discussions with these people, I've experienced a strong distaste for any regulation banning smoking from bowling centers, whether the ban be city- or state-generated. Bowling center proprietors are a fiercely independent group, and they resent government intrusion that would adversely affect their business, especially at a time when the industry is seeing a decrease in participation. Obviously, any regulation banning smoking would seriously hamper a bowling center's ability to draw customers, as a majority of bowlers enjoy smoking while they bowl.

A better way to handle the situation would be to let the center proprietors work out compromise arrangements within their own centers, something they're already doing. In some instances, smoking during youth leagues is banned, and in others, the centers are establishing no-smoking leagues for those wishing to bowl in a smoke-free environment. The point is, bowling center proprietors are facing the issue in their own fashion, keeping their own self-interest, and the interest of bowlers in mind, without the threat of government intrusion. The marketplace should be the final arbiter of the smoking issue, and it will, if government allows business owners to work out compromise arrangements that fit their circumstances.

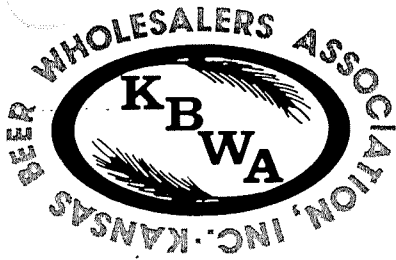
H.B. 2245 would ensure that bowling center proprietors can run their businesses as they see fit. That's all any small-business owner can ask. I strongly urge you to support H.B. 2245. Thank you for your attention to this matter.

Sincerely,



Tim Travis
Publisher

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Attachment 15



February 15, 1995

The Honorable Carlos Mayans, Chairman
House Committee on Health and Human Services
State House
Topeka, Kansas 66612

Dear Chairman Mayans:

Please accept this letter as an indication of Kansas Beer Wholesalers Association's support of **House Bill 2245** for the following reasons.

We believe that independent businessmen and women should be allowed to make their own decisions on the daily operation of their establishments. Without a state law, a local patchwork of different laws will plague businesses which operate in different communities across the state.

House Bill 2245 truly gets government off the back of small business by setting a statewide standard.

Sincerely,

Neal Whitaker
Executive Director

NW/km

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KANSAS DIVISION, INC.

THERE'S NOTHING MIGHTIER THAN THE SWORD

STATEMENT IN PARTIAL OPPOSITION TO HB 2245
BY THE AMERICAN CANCER SOCIETY
KANSAS DIVISION, INC.

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
FEBRUARY 15, 1995

MISTER CHAIRMAN AND MEMBERS OF THE COMMITTEE

MY NAME IS BETTY DICUS, AND I APPEAR ON BEHALF OF THE AMERICAN CANCER SOCIETY, KANSAS DIVISION, INC. THANK YOU FOR THE OPPORTUNITY TO SPEAK WITH YOU IN PARTIAL OPPOSITION TO HOUSE BILL 2245.

THE AMERICAN CANCER SOCIETY OPPOSES THE PART OF THIS BILL THAT WOULD PROHIBIT LOCAL GOVERNMENTS FROM ENACTING TOBACCO CONTROL ORDINANCES THAT SUIT THE NEEDS OF THEIR OWN COMMUNITIES. AS THE NUMBER OF LOCAL TOBACCO CONTROL ORDINANCES HAS INCREASED DRAMATICALLY OVER THE LAST FEW YEARS, THE TOBACCO INDUSTRY HAS BEGUN TO FEEL THE PRESSURE. AS A RESULT, THAT INDUSTRY HAS TURNED TO PREEMPTION OF LOCAL ORDINANCES AS ONE OF THEIR CHIEF MECHANISMS FOR PROTECTING THEIR DEADLY PRODUCTS.

THIS BILL WOULD NOT ONLY PROHIBIT FUTURE ORDINANCES AT THE LOCAL LEVEL, IT WOULD ALSO WIPE FROM THE BOOKS ANY EXISTING ORDINANCES THAT HAVE BEEN IMPLEMENTED IN THE LOCAL LEGISLATIVE PROCESS. COMMUNITIES WITH EXISTING ORDINANCES THAT WOULD BE PREEMPTED INCLUDE LAWRENCE, OVERLAND PARK, WICHITA AND OTHERS. IN OUR VIEW, LOCAL GOVERNMENTS SHOULD BE ENTITLED TO ENACT STRICTER LOCAL ORDINANCES THAT PROVIDE TOBACCO LEGISLATION ACCORDING TO THE WISHES OF THE PEOPLE IN THAT COMMUNITY.

2.

STRICTER LOCAL ORDINANCES ARE NOT BASED ON SOCIAL WHIM, BUT ARE BASED ON DECADES OF SCIENTIFIC RESEARCH WHICH HAS INCREASINGLY DOCUMENTED THE HEALTH CONSEQUENCES OF TOBACCO USE FOR USERS AND NON-USERS ALIKE. THE EVIDENCE PROVIDING TOBACCO USE AS BY FAR THE LEADING CAUSE OF PREMATURE DEATH AND DISABILITY IN OUR SOCIETY HAS BEEN CLEARLY ESTABLISHED BY MANY STUDIES OVER A LONG PERIOD OF TIME. IT IS PROBABLY THE ONLY LEGAL PRODUCT IN OUR SOCIETY THAT IF USED AS INTENDED BY THOSE WHO SELL IT, WILL KILL THE USER. IN PARTICULAR MINORS ARE SUSCEPTIBLE TO THE LURE OF TOBACCO AND ITS ADDICTIVE QUALITIES.

THERE IS A LOT OF TALK ABOUT MANDATES THESE DAYS. ONE OF THE BIGGEST OBJECTIONS TO MANDATES IS THAT THEY TAKE GOVERNMENT AWAY FROM THE LOCAL LEVEL. THIS PREEMPTION BILL IS NOTHING MORE THAN A MANDATE TO LOCAL GOVERNMENT THAT ELIMINATES STRICTER LOCAL ORDINANCES. IN ADDITION, NO ASSISTANCE IS PROVIDED FOR ENFORCEMENT. AT LEAST WHEN LOCAL LEGISLATION IS WRITTEN, THAT GOVERNING BODY CAN ALSO PROVIDE THE METHOD OF ENFORCEMENT, AND DO IT IN A WAY THAT PROBABLY WILL BE SUCCESSFUL.

THE ROLE OF TOBACCO CONTROL POLICY, IN HEALTH CARE CONTAINMENT - WHETHER AT THE NATIONAL, STATE OR LOCAL LEVEL - CANNOT BE OVERSTATED. WE URGE YOU NOT TO REMOVE THE AUTHORITY TO DEAL WITH THIS PROBLEM FROM LOCAL GOVERNMENT OR TO WEAKEN LOCAL ORDINANCES. WE OPPOSE PASSAGE OF THAT PART OF HOUSE BILL 2245 THAT PREEMPTS LOCAL ORDINANCES. THANK YOU FOR YOUR CONSIDERATION.

Testimony in opposition to HB 2245
Health and Human Services Committee
February 15, 1995

Brian Gilpin
Tobacco Free Kansas Coalition
American Heart Association
913-272-7056

THIS BILL IS BAD

This bill is a sneaky attempt by the tobacco industry to circumvent local tobacco control legislation. Local governments have enacted tobacco control legislation as they have seen fit in order to provide better safety and security for their communities.

THE TOBACCO INDUSTRY LIES

The tobacco industry is telling everyone that people all over Kansas are confused by all the different tobacco control laws all over the state and that we need uniformity to make things easier. Well, that's a lie. The only people that are upset over local tobacco control laws are tobacco lobbyists. It is not difficult to comply with local tobacco control laws. If the sign says no smoking then you don't smoke. It's just that simple.

The same goes for local traffic laws. When I travel across the state I go through many small towns that have different speed limit laws. Some places the speed limit is 35 mph and in others it's 40 mph, or 30 mph and so on. Do I break out in a cold sweat over the differing laws from city to city. No, I just read the sign. It's just that simple. So don't believe tobacco industry lies when they say that the patchwork quilt of laws is confusing. They're not.

**THE TOBACCO INDUSTRY SAYS SMOKING ISN'T HARMFUL
WE KNOW THE TRUTH, SECONDHAND SMOKE IS DEADLY**

Local governments have responded as they have seen fit to the overwhelming evidence on the hazards of secondhand smoke. In 1986 Surgeon General C. Everett Koop, who was nominated by President Ronald Reagan, released the report: "The Health Consequences of Involuntary Smoking". In January 1993 the EPA, under President George Bush, classified secondhand smoke as a class A carcinogen, a classification reserved for the most dangerous cancer causers. (See attached the EPA summary report and article from Consumer Reports).

In 1987 the Kansas legislature felt it was necessary to set a minimum standard in regards to smoking in public places. However, many local governments have not been content with the minimum mediocre standards set forth by the state and have developed their own stricter clean indoor air standards. Local governments have responded as they have seen fit to the overwhelming evidence on the hazards of secondhand smoke. And they should continue to have the right to enact community standards and not be forced to live under mediocre and substandard conditions just because the tobacco industry doesn't like it.

-more-

HOUSE H&HS COMMITTEE
2 - 15 - 1995
Attachment 18-1

PREEMPTION IS ANTI-AMERICAN

This bill paints itself as a clean indoor air bill, but under section 8 this bill preempts all local tobacco control efforts.

This bill tells local governments that they can't govern their own affairs and that they need big brother from big government to tell them what to do. This anti-american legislation will start us down the slippery slope into the quagmire of bigger government and diminishing local authority. This legislation is a direct affront to the ideals of our representative form of government.

In our Kansas State Constitution, Article 12 number 5 describes home rule,) which empowers local governments with the authority to govern their own affairs. HB 2245 is a direct attack on the constitutional principle of home rule. With the many local governments in Kansas that have enacted clean indoor air laws that are stricter than the state law, none have experienced any negative economic consequences as a result of their ordinances. In fact, their ordinances have had a very positive effect on their communities.

There isn't another kind of governing body in the world that is more concerned with business than local governing bodies in the United State of America. Local governments have been very mindful of business concerns with regards to clean indoor air laws. But again numerous studies have shown that clean indoor air laws don't hurt business, except maybe tobacco business.

If a tobacco lobbyist or anyone else has a concern with a law in Wichita, Topeka, or Overland Park, then tell them to take their concerns to those local governments that made those laws. Those laws are constitutional and were initiated by the citizens of those communities.

Why is the tobacco industry concentrating their efforts at the state and federal level? The reason quite clearly is that local governments are more sensitive to the needs of their own community and the health and welfare of their own citizens, not the health and welfare of the giant tobacco companies from North Carolina.

DON'T BARGAIN AWAY SAFETY

Section 6 of this bill would make private workplace smoking policies a mandatory subject of collective bargaining. Hundreds of businesses have implemented significant clean indoor air policies in order to protect worker safety and to lower maintenance costs. This bill tells businesses that safety issues should be bargaining chips. Well safety should never be bargained away! Businesses are trying to protect the safety of their workers. But the tobacco industry doesn't care about worker safety and businesses in Kansas, they care only about their business and how much tobacco they can sell.

Section 7 of this bill exempts proprietors from liability from harm caused from secondhand smoke. Why? Because the tobacco industry knows that secondhand smoke is harmful. We need more personal responsibility in our society, not less. We need to hold people accountable for their actions. That's one of the problems with our country today. We are afraid to hold people accountable for their behavior.

PLEASE PROTECT THE SOVEREIGNTY OF LOCAL GOVERNMENTS

Let's stick to the "Declaration of Change" and keep government in the hands of the people, and not in the hands of the tobacco industry. Please oppose HB 2245.

-end-

January 1993



Respiratory Health Effects of Passive Smoking

Fact Sheet

Summary

The U.S. Environmental Protection Agency (EPA) has published a major assessment of the respiratory health risks of passive smoking (*Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders; EPA/600/6-90/006F*). The report concludes that exposure to environmental tobacco smoke (ETS) – commonly known as secondhand smoke – is responsible for approximately 3,000 lung cancer deaths each year in nonsmoking adults and impairs the respiratory health of hundreds of thousands of children.

Background

EPA studies of human exposure to air pollutants indicate that indoor levels of many pollutants often are significantly higher than outdoor levels. These levels of indoor air pollutants are of particular concern because it is estimated that most people spend approximately 90 percent of their time indoors.

In recent years, comparative risk studies performed by EPA and its Science Advisory Board have consistently ranked indoor air pollution among the top five environmental risks to public health. EPA, in close cooperation with other federal agencies and the private sector, has begun a concerted effort to better understand indoor air pollution and to reduce peoples' exposure to air pollutants in offices, homes, schools and other indoor environments where people live, work and play.

Tobacco smoking has long been recognized as a major cause of death and disease, responsible for an estimated 434,000 deaths per year in the United States. Tobacco use is known to cause lung cancer in humans, and is a major risk factor for heart disease.

In recent years, there has been concern that non-smokers may also be at risk for some of these health effects as a result of their exposure ("passive smoking") to the smoke exhaled by smokers and smoke given off by the burning end of cigarettes.

As part of its effort to address all types of indoor air pollution, in 1988, EPA's Indoor Air Division requested that EPA's Office of Research and Development (ORD) undertake an assessment of the respiratory health effects of passive smoking. The report was prepared by ORD's Office of Health and Environmental Assessment.

The document has been prepared under the authority of Title IV of Superfund (The Radon Gas and Indoor Air Quality Research Act of 1986), which directs EPA to conduct research and disseminate information on all aspects of indoor air quality.

Public and Scientific Reviews

A draft of this assessment was released for public review in June 1990. In December 1990, EPA's Science Advisory Board, a committee of independent scientists, conducted a review of the draft report and submitted its comments to the EPA Administrator in April 1991. In its comments, the SAB's Indoor Air Quality/Total Human Exposure Committee concurred with the primary findings of the report, but made a number of recommendations for strengthening it.

Incorporating these recommendations, the Agency again transmitted a new draft to the SAB in May of 1992 for a second review. Following a July 1992 meeting, the SAB panel endorsed the major conclusions of the report, including its unanimous endorsement of the classification of environmental tobacco smoke (ETS) as a Group A (known human) carcinogen.

EPA also received and reviewed more than 100 comments from the public, and integrated appropriate revisions into the final risk assessment.

Major Conclusions

Based on the weight of the available scientific evidence, EPA has concluded that the widespread exposure to environmental tobacco smoke in the U.S. presents a serious and substantial public health risk.

In adults:

- ETS is a human lung carcinogen, responsible for approximately 3,000 lung cancer deaths annually in U.S. nonsmokers. ETS has been classified as a Group A carcinogen under EPA's carcinogen assessment guidelines. This classification is reserved for those compounds or mixtures which have been shown to cause cancer in humans, based on studies in human populations.

In children:

- ETS exposure increases the risk of lower respiratory tract infections such as bronchitis and pneumonia. EPA estimates that between 150,000 and 300,000 of these cases annually in infants and young children up to 18 months of age are attributable to exposure to ETS. Of these, between 7,500 and 15,000 will result in hospitalization.
- ETS exposure increases the prevalence of fluid in the middle ear, a sign of chronic middle ear disease.
- ETS exposure in children irritates the upper respiratory tract and is associated with a small but significant reduction in lung function.
- ETS exposure increases the frequency of episodes and severity of symptoms in asthmatic children. The report estimates

that 200,000 to 1,000,000 asthmatic children have their condition worsened by exposure to environmental tobacco smoke.

- ETS exposure is a risk factor for new cases of asthma in children who have not previously displayed symptoms.

Scope of the Report

In 1986, the National Research Council (NRC) and the U.S. Surgeon General independently assessed the health effects of exposure to ETS. Both of these reports concluded that ETS can cause lung cancer in adult non-smokers and that children of parents who smoke have increased frequency of respiratory symptoms and lower respiratory tract infections. The EPA scientific assessment builds on these reports and is based on a thorough review of all of the studies in the available literature.

Since 1986, the number of studies which examine these issues in human populations has more than doubled, resulting in a larger database with which to conduct a comprehensive assessment of the potential effects which passive smoking may have on the respiratory health of adults as well as children.

Because only a very small number of studies on the possible association between exposure to secondhand smoke and heart disease and other cancers existed in the scientific literature at the time this assessment was first undertaken, EPA has not conducted an assessment of the possible association of heart disease and passive smoking. EPA is considering whether such an assessment should be undertaken in the future, but has no plans to do so at this time.

Scientific Approach

EPA reached its conclusions concerning the potential for ETS to act as a human carcinogen based on an analysis of all of the available data, including more than 30 epidemiologic (human) studies looking specifically at passive smoking as well as information on active or direct smoking. In addition, EPA considered animal data, biological measurements of human uptake of tobacco smoke components and other available data. The conclusions were based on what is commonly known as the total "weight-of-evidence" rather than on any one study or type of study.

The finding that ETS should be classified as a Group A carcinogen is based on the conclusive evidence of the dose-related lung carcinogenicity of mainstream smoke in active smokers and the similarities of mainstream and sidestream smoke given off by the burning end of the cigarette. The finding is bolstered by the statistically significant exposure-related increase in lung cancer in nonsmoking spouses of smokers which is found in an analysis of more than 30 epidemiology studies that examined the association between secondhand smoke and lung cancer.

The weight-of-evidence analysis for the noncancer respiratory effects in children is based primarily on a review of more than 100 studies, including 50 recent epidemiology studies of children whose parents smoke.

Beyond the Risk Assessment

Although EPA does not have any regulatory authority for controlling ETS, the

Agency expects this report to be of value to other health professionals and policymakers in taking appropriate steps to minimize peoples' exposure to tobacco smoke in indoor environments.

In cooperation with other government agencies, EPA will carry out an education and outreach program over the next two years to inform the public and policy makers on what to do to reduce the health risks of ETS as well as other indoor air pollutants.

For Further Information

A limited number of copies of the complete report can be obtained free of charge from:

Center for Environmental Research
Information (CERI)
U.S. EPA
26 W. Martin Luther King Drive
Cincinnati, OH 45268
Telephone: 513-569-7562
Fax: 513-569-7566

Ordering Number: EPA/600/6-90/006F

or

U.S. Environmental Protection Agency
Indoor Air Quality Information
Clearinghouse (IAQ INFO)
P.O. Box 37133
Washington D.C. 20013-7133
Telephone: 1-800-438-4318
Fax: 301-588-3408

A number of government agencies can provide additional information addressing the health risks of environmental tobacco smoke. These include:

Office on Smoking and Health/Centers for
Disease Control
Center for Chronic Disease Prevention and
Health Promotion
Mail Stop K-50, 4770 Buford Highway
Atlanta, GA 30341

National Cancer Institute
Building 31, Room 10A24
Bethesda, MD 20892
1-800-4-CANCER

The National Heart, Lung, and Blood
Institute
Information Center
4733 Bethesda Avenue, Suite 530
Bethesda, MD 20814

National Institute for Occupational Safety
and Health
4676 Columbia Parkway
Cincinnati, Ohio 45226-1998
1-800-35-NIOSH

SHOPPING BY TV: BARGAINS OR BUNKUM?

JANUARY
1995

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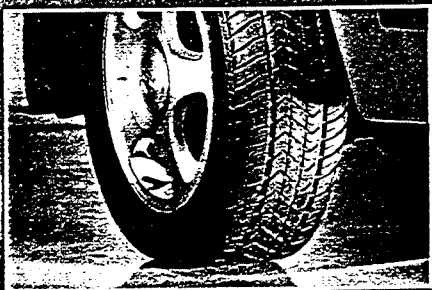
Consumer Reports

FAMILY SEDANS

Buick Century
Chevrolet Lumina
Dodge Intrepid
Ford Taurus

The Truth About Secondhand Smoke

TEST REPORTS



- Performance tires
- Vacuum cleaners
- Comfort shoes
- Tampons & pads
- Steam irons
- Egg substitutes



18 - 7

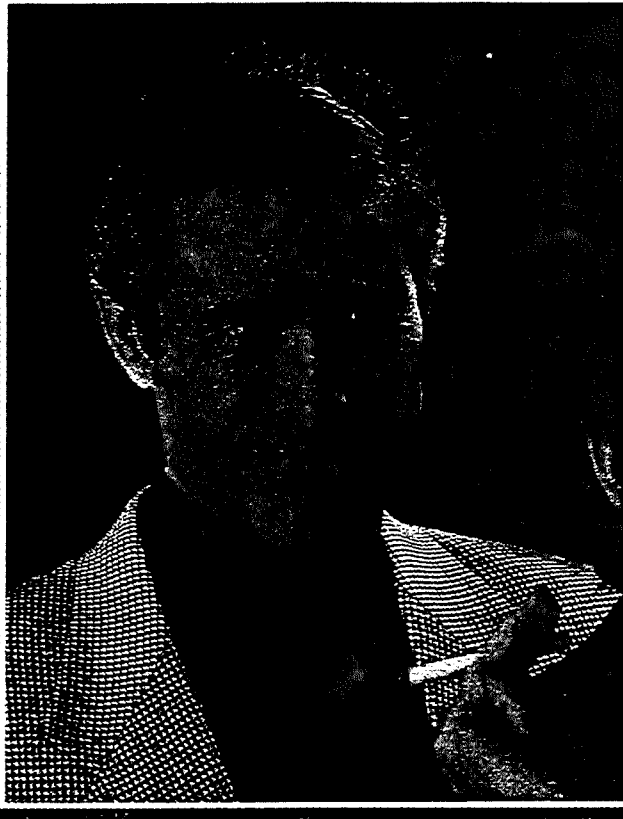
SECONDHAND SMOKE IS IT A HAZARD?

In the 1950's and 60's, as scientists piled up a mountain of evidence on the life-threatening health consequences of smoking, the tobacco industry mounted a fierce and sophisticated campaign to keep doubt alive in the public mind.

The effort ultimately flopped; even scientists funded by tobacco-industry money today concede that smoking is bad for you. But it did succeed in putting off that day of reckoning when everyone acknowledged the hazard. That delay bought many years of robust sales.

The industry is at it again, only this time the target is secondhand smoke. A review of the record shows that tobacco companies are doing exactly what they did with "firsthand" smoke: They're using a little bit of scientific uncertainty and a lot of public relations to suggest there is still a serious debate about the health hazards of breathing smoke from other people's cigarettes.

At one time, such a controversy was real. When we reported on the subject 10 years ago, we described the evidence as "sparse and often conflicting." That's no longer true. A number of studies make a consistent case that secondhand smoke, like firsthand smoke, causes lung cancer. Many reputable groups that have inspected the evidence have reached this conclusion, including the U.S. Surgeon General's office, the National Research Council, the National Institute of Occupational Safety and



Health, the International Agency for Research on Cancer, and the U.S. Occupational Safety and Health Administration (OSHA).

Other studies have found strong links between passive smoking and a host of other ills, such as asthma and bronchitis in children. Furthermore, evidence is accumulating that secondhand smoke contributes to the development of heart disease.

Early in 1993, the U.S. Environmental Protection Agency, after a painstaking and wide-ranging scientific review, declared secondhand smoke a known—not just "probable," or "possible"—human carcinogen. The EPA estimated that such smoke is responsible for several thousand cases of lung cancer in U.S. nonsmokers each year. Passive smoke joins a select company of only about a dozen other environmental pollutants in this risk category.

For the \$48-billion U.S. tobacco

industry, the EPA decision has been the worst setback since 1964, when the Surgeon General first declared that smoking causes cancer.

The EPA decision added momentum to widespread efforts to limit or ban smoking in public or at work. It gave employers a reason to fear workers' compensation claims based on exposure to workplace smoke. Businesses and organizations ranging from Taco Bell to the U.S. military have already banned or restricted smoking in their facilities. Seventy percent of the nation's shopping malls are now smoke-free.

Several states, including California, Maryland, Utah, Vermont, and Washington, have proposed or enacted strict controls on workplace smoking. As this report went to press, OSHA was considering nationwide rules that would, in effect, ban smoking on the job except in specially ventilated areas. Pending in the courts are at least two lawsuits brought against tobacco companies by relatives of nonsmokers who died of lung cancer after long exposure to secondhand smoke at work.

All those developments have helped to turn smoking from a public activity to a practice increasingly indulged in private. What's more, they have helped persuade many smokers to cut back or quit. The smoking rate has dropped significantly, from one in three adults in 1980 to one in four today, cutting deeply into the tobacco industry's domestic market.

The tobacco merchants claim there's still a controversy. We don't buy it.

Choice



ONE OF AMERICA'S 45 MILLION SMOKERS.
I'M NOT A MOANER OR A WHINER.
BUT I'M GETTING
TO GET THE GOVERNMENT BACK

LOW THE EPA
MANIPULATED SCIENCE
TO SERVE A
POLITICAL CAUSE

"THE SMELL OF
CIGARETTE SMOKE ANNOYS ME,
BUT NOT NEARLY AS MUCH AS THE
GOVERNMENT
TELLING ME WHAT TO DO"

Going public Ads from tobacco companies have tried to recast the secondhand smoke issue in terms of rights and courtesies, while casting doubt on scientific evidence. These and similar ads have appeared in many newspapers and magazines during the past year.

The industry is fighting back. It has sued in Federal court in an effort to overturn the EPA's decision. It has spent millions to block or roll back state and local public-smoking restrictions. Its public-relations firms are creating bogus "grassroots" organizations as fronts for lobbying against smoking restrictions. (See "Public-Interest Pretenders," CONSUMER REPORTS, May 1994.)

In its most visible effort, a months-long national advertising campaign, the industry has attempted to spread doubt about the science behind the EPA decision and to recast the issue of secondhand smoke as one of individual rights versus an overzealous government agency.

The evidence?

For years, researchers have accumulated information about the effects of the compounds in secondhand smoke. Cigarette smoke and tars condensed from it induce cancer in laboratory animals. The smoke causes genetic mutations in bacteria, another common test for carcinogenic potential. And several of its components are known or probable human carcinogens.

If scientists had only this animal and laboratory evidence to go on, secondhand smoke would still qualify as a "probable" or "possible" human carcinogen. But in addition, tobacco smoke is among a handful of substances—asbestos, vinyl chloride, and radon are others—for which abundant human evidence exists. That evidence comes from epidemiology, the study of disease patterns in human populations. It's the scientific field responsible for identifying all the known human carcinogens.

There are 33 published epidemiological studies of secondhand smoke, 13 of which were conducted in the U.S. Most used standard epidemiological technique: They looked at nonsmoking women who developed lung cancer, to see whether they were more likely to be married to smokers than were women who didn't get the disease. (Other re-

searchers studied cancer rates in people exposed to smoke at work or from other family members; a few also studied husbands of women smokers.)

In all such studies, it is difficult to accurately measure every variable. Most of the smoking occurred decades ago, and the details can't be learned. Some women whose husbands didn't smoke might still have breathed smoke at work or with friends. And some wives of smokers might have been able to avoid their spouses' smoke. But both of those factors would tend to hide any true relationship between exposure and disease. So, if anything, the studies should underestimate the risk of secondhand smoke.

Nevertheless, 26 of the 33 studies indicated a link between secondhand smoke and lung cancer. Those studies estimated that people breathing secondhand smoke were 8 to 150 percent more likely to get lung cancer sometime later. Of the remaining seven studies, one found no connection with lung-cancer rates. Six suggested that people exposed to secondhand smoke had *lower* rates of lung cancer, although no one suggests passive smoking really reduces the risk.

Seven of the 26 positive studies included enough subjects, and found a sufficient effect, to attain "statistical significance"—meaning there was no more than a 5 percent probability that the results in those studies occurred by chance. In contrast, just one of the negative studies reached statistical significance.

Strength in numbers

The nonsignificant studies can still be valuable when combined with all the rest for analysis. This technique, called meta-analysis, is commonly used with carefully designed clinical trials of drugs. But its use in epidemiology is controversial, since no two studies have identical designs and the analysts must make certain assumptions as they combine data. So, the result of a meta-analysis is supporting evidence but is not definitive by itself.

Six different meta-analyses have been carried out on the secondhand-smoke studies. Every one of them yielded a statistically significant increase in lung-cancer risk of approximately 20 to 40 percent. The EPA's study is the most recent of these meta-analyses. It found an increased risk of 19 percent among U.S.

nonsmokers married to smokers.

More evidence for a link between cancer and secondhand smoke comes from 19 of the studies, which grouped subjects into exposure categories. In every one of those, women exposed to the most smoke for the most years had higher cancer risks than women exposed to less smoke. That dose-response relationship—an increase in risk with an increase in exposure—is an important indication of a true cause-effect relationship.

Evidence for a dose-response relationship got important support from the most recent secondhand-smoke study, published last summer by epidemiologist Elizabeth Fontham of Louisiana State University Medical Center. The largest such study ever done, it's also considered by experts in the field to be the best in design and execution. Fontham found increased risks of lung cancer with increasing exposure to secondhand smoke, whether it took place at home, at work, or in a social setting. A spouse's smoking alone produced an overall 30 percent increase in lung-cancer risk. Women with the greatest lifetime exposure—from smoking by parents, husbands, friends, and coworkers—had a 225 percent increase in risk. (That's much less than the hazard posed by active smoking, which confers a 1100 to 2400 percent increase in lung-cancer risk.)

For any given nonsmoker, the lifetime risk of getting lung cancer remains small—4 to 5 in 1000 ordinarily, 6 to 7 in 1000 if he or she has a smoking spouse. But exposure to secondhand smoke is so commonplace that, according to the EPA's calculations, it produces an extra 3000 lung-cancer deaths among adults in the U.S. each year.

That makes secondhand smoke the third-ranking known cause of lung cancer, after active smoking and indoor radon.

Lung problems

Despite all the attention given to lung cancer, it may not be the most significant health effect of secondhand smoke. Two others stand out as well—respiratory disorders in children and heart disease in adults.

The ill effects of smoke on children begin even before birth, since many of the components of smoke reach the developing fetus through the mother. Infants born to smoking mothers weigh less and have weaker lungs than unexposed newborns. Regardless of birth weight, babies

born to smoking mothers are more likely to die in infancy than unexposed infants.

Whether from these prenatal effects or from secondhand exposure to smoke after birth, children reared around smoking parents have about twice as many respiratory infections—bronchitis and croup, for example—as the children of nonsmokers. After reviewing a number of studies, the EPA's risk analysis concluded that secondhand smoke causes an extra 150,000 to 300,000 respiratory infections a year among the nation's 5.5 million children under the age of 18 months.

Asthma, the other major childhood respiratory ailment, also turns out to be about twice as common in children exposed to high levels of secondhand smoke. Wheezing from asthma and cough from bronchial irritation occur more frequently among children of smokers. And among children with asthma, living with smoking parents markedly worsens the disease. The EPA blames secondhand smoke for causing between 8000 and 26,000 new cases of childhood asthma a year, and for aggravating the condition in about 200,000 children. "Children just should not be around people smoking," says Ross Brownson, professor of epidemiology at the St. Louis University School of Public Health.

Heart disease

The epidemiological evidence on secondhand smoke and heart disease is not as abundant as that on lung cancer, and the experts are still debating the implications. But about a dozen studies exist, and they consistently show an elevated risk. Among nonsmokers who are exposed to their spouses' smoke, the chance of death from heart disease increases by about 30 percent. (The effects of active smoking on the heart were established some years ago. Smoking about doubles a person's chance of dying from a cardiovascular condition.)

Although the heart-disease evidence isn't as strong as that for lung cancer, a number of authorities have already declared secondhand smoke a risk factor for heart disease. They include the states of California and Maryland, OSHA, the American Heart Association, and the American

College of Cardiology. They point not only to the epidemiological evidence, but to animal studies, which have shown that exposure to specific elements of secondhand smoke causes blood to clot more easily and damages arterial linings—two critical steps in the development of heart disease. In addition, human studies show that the carbon monoxide in secondhand smoke decreases the supply of oxygen reaching the heart muscle, which could cause serious problems for someone with coronary heart disease.

If exposure to secondhand smoke does increase the risk of heart disease by 30 percent, then it is causing an estimated 35,000 to 40,000 heart-disease deaths a

year in the U.S.—about 10 times the number of lung-cancer deaths attributed to secondhand smoke. That would make the annual toll from secondhand smoke comparable to that from motor-vehicle accidents.

The industry's campaign

The tobacco industry foresaw the health debate over secondhand smoke—and the problems it would cause for cigarette makers. In 1978, a Roper poll commissioned by the Tobacco Institute, the industry's trade group, called growing public concern about secondhand smoke "the most dangerous development yet to the viability of the tobacco industry" and recommended "developing and widely publicizing clear-cut, credible medical evidence that passive smoking is not harmful."

In 1986, Imperial Tobacco Ltd., Canada's largest cigarette company, commissioned a secret study on how to combat the growing success of antismoking activists. The study documents, made public in the course of a lawsuit, lay out in prescient detail the industry's current strategy on secondhand smoke:

"Passive smoking [should be] used as the focal point. . . . Of all the health issues surrounding smoking . . . the one which the tobacco industry has the most chance of winning [is] that the evidence proclaimed by the anti-group is flawed. . . . It is highly desirable to control the focus of the debate." The document goes on to urge "an attack on the credibility of evidence presented to date." The ideal advocate would be a medical

professional, the report said, but "the challenge will be to find a sympathetic doctor who can be demonstrated to take a largely independent stance."

The recommended message on secondhand smoke: "Now that you have seen that all which has been said is not true, let's be adult and get down to the real business, a respect for each other's choices and space."

Whether or not U.S. tobacco companies ever saw the Canadian report, their current public-relations campaign is following its advice.

Influencing science

In its efforts to construct the sort of "credible medical evidence" its pollsters recommended, the tobacco industry has commissioned research from sympathetic scientists, sponsored scientific meetings carefully tailored to bring out their point of view, and published the results in the medical literature.

The research support comes through various channels: direct grants from companies or industry-funded research institutes—such as the Council for Tobacco Research and the Center for Indoor Air Research—and consulting contracts from tobacco companies, public-relations firms, and law firms. To get favorable research on the record, the industry has borrowed a technique from the pharmaceutical industry: sponsoring scientific symposia and seeing to it that their findings end up on medical library shelves.

Lisa Bero, a health policy analyst at the University of California, San Francisco, has documented the results of such symposia. She identified four symposia on passive smoking held between 1974 and 1990 that were paid for by the tobacco industry. She then compared the articles generated by the symposia with a random sample of articles on secondhand smoke that appeared in other scientific journals over the same period.

Only 4 percent of the articles from the industry-funded symposia said that passive smoking was unhealthy, compared with 65 percent of the other journal articles. Fully 72 percent of symposia reports argued that secondhand smoke wasn't harmful, compared with 20 percent of independent journal articles. (The balance of the articles were neutral.)

The symposium reports did not undergo the standard scientific process of peer review, meaning they were not scrutinized by other ex-



Campaign tactics
New York City arts groups that receive millions in grants from Philip Morris were asked by company executives to remind city lawmakers, who were considering a tough new anti-smoking bill, how important the grants were to the city's cultural scene.

**More clues
Autopsies of
nonsmoking wives
of smokers in
Greece found more
pre-cancerous
cells in their lungs
than in wives of
nonsmokers.**

perts in the field. Instead, they were published as non-peer-reviewed supplements to journals, or as freestanding books or monographs. Nevertheless, they can be found in the computerized databases of the medical literature. That makes them available for citation by others.

This careful construction of a citable scientific record came in handy when the tobacco industry set out to attack early drafts of the EPA's report on secondhand smoke. Bero found that two-thirds of comments critical of the report came from industry scientists, who drew heavily on industry-generated literature. The Tobacco Institute's own submission, for instance, cited 32 papers from symposia, but only seven peer-reviewed articles.

As the industry has learned, however, research support doesn't guarantee that a scientist will go along with the company line. At least five members of an independent scientific advisory board that reviewed the EPA report had ties to industry research groups, either as advisers or grant recipients, including a scientist awarded a \$1.2-million grant from Philip Morris during the review period. Yet the board unanimously agreed that passive smoking was a cancer risk.

Public persuasion

In a public-relations campaign, scientific articles don't mean much if only scientists read them. The industry is bringing its perspective to a much wider audience, with the help of a few journalists. This became clear when we studied industry-generated material on secondhand smoke and looked over newspaper and magazine articles sympathetic to the industry's position.

To read this material is to enter a house of mirrors that endlessly reflects the same set of opinions, voiced by the same few people, again and again. A person who saw nothing else could conclude that there were only four or five scientists in all of North America qualified to speak about secondhand smoke—all of them skeptical of its danger.

You can see how this works by tracing the public utterances of one of those scientists, Gary Huber, a lung specialist at the University of Texas. Shook, Hardy & Bacon, the

tobacco industry's longtime law firm, pays Huber's university to support his group's compilation of research on lung disease. Despite this, he told us, his views are his own.

In 1991, Huber wrote an article for Consumers' Research—a small-circulation magazine not connected to CONSUMER REPORTS—in which he

argued that the scientific evidence on the hazards of passive smoking is "shoddy and poorly conceived." He felt the epidemiological studies were too weak and the composition of secondhand smoke too poorly understood to reach a conclusion on any risk.

In early 1993, Huber was prominently quoted in an article in Investor's Business Daily. Writer Michael Fumento stated that "many in the scientific and medical community" dispute the EPA's opinion. All five scientists quoted to back up this viewpoint have received some type of industry support.

Both Huber's and Fumento's articles became, in turn, sources for a series of opinion pieces written by another journalist, Jacob Sullum. In The Wall Street Journal and Forbes Media Critic, Sullum built on Fumento's arguments and quoted three of the same scientists, including Huber. When we asked the Tobacco Institute for material on secondhand smoke, it sent us a packet that included Fumento's article.

R.J. Reynolds reprinted Sullum's Wall Street Journal article nationwide in a full-page ad. The ad's headline: "If We Said It, You Might Not Believe It." Philip Morris went even further, buying full-page ads in major national publications for six straight days to reprint Sullum's longer Forbes Media Critic article.

The effect: Huber's argument has undoubtedly now been seen by millions more people than ever read the original EPA report, never mind any of the hundreds of scientific articles on the subject in medical journals.

The industry's strategy has been effective. John Pierce, a researcher at the University of California, San Diego, who specializes in tobacco issues, checked the calls made to a statewide smokers' hotline immediately after the Reynolds and Philip Morris ads started appearing in print. Although the hotline was intended

to give support to smokers who wanted to quit, the calls coming in during that period were overwhelmingly accusatory. "We had a whole heap of people calling us, asking why we were misleading them," Pierce recalls. "There are all too many people willing to believe the industry when it says this thing's not really bad for you."

Attacking the science

The heart of the cigarette makers' campaign appears to be their attack on the scientific methods used to measure the risk of secondhand smoke. In its advertising, its public statements, and its lawsuit against the EPA, the industry argues that the agency "cherry-picked" data to reach a foregone conclusion and violated the rules of statistical analysis. That's a clever strategy; it takes advantage of the public's unfamiliarity with research methods and the common perception that one week's scientific report will be debunked the following week.

To evaluate the industry arguments, we consulted CU's own professional statisticians and also turned to Charles Hennekens and Julie Buring, epidemiologists at Harvard Medical School and coauthors of a leading epidemiology textbook. They have no ties to the tobacco industry, and their own research includes studying various causes of heart disease and cancer. Here's what they said about the criticisms.

■ **Pooling studies.** The industry argues that the EPA had no business pooling smaller studies, many failing the "statistical significance" test, into one large collection of data. This is the meta-analysis technique we described above. "They've combined studies as different as night and day, which is not an accepted way to do a meta-analysis," says Walker Merryman, vice president of the Tobacco Institute.

In truth, the EPA made an effort to compare comparable studies. It sorted them by country or region, excluded the poorest-quality studies, and then pooled data only within each geographical group. The pooled results for Greece, Hong Kong, Japan, and the U.S. all showed statistically significant risk increases. The pooled results from Western Europe and China, though positive, didn't reach significance.

"Having a number of studies that show similar results but are not large enough individually to be statistically



significant on their own is exactly the situation where meta-analysis is appropriate," Buring says.

☐ **The significance level.** When they analyze their data, most researchers try to set their "statistical significance" hurdle at 5 percent. In everyday language, that means there is less than a 5 percent probability the results occurred by happenstance.

However, the tobacco industry argues that the EPA lowered its hurdle to 10 percent when it pooled the various studies. Jacob Sullum said it "in effect doubles the odds of being wrong." An industry scientific consultant called it a "confidence game."

But here too, the EPA played fair.

It did set a 5 percent significance level. The agency used a standard statistical technique, called a one-tailed test, that allowed a 5 percent chance of wrongly concluding that secondhand smoke increases the risk of cancer. This technique, taught in every introductory statistics course, is appropriate when, as in this case, there is already independent evidence that a substance is harmful.

What's more, when Hennekens and Buring analyzed pooled data from the 11 U.S. studies on which the EPA relied most heavily, they found that the data do meet the even tougher standard the critics are demanding.

☐ **Confounding factors.** Since epidemiologists can't control everything that happens in the lives of their subjects, they have to be wary of confounding factors, possible alternative causes for the results. Relatively small risks, like that from secondhand smoke, are especially vulnerable to confounding.

The tobacco industry and its defenders have raised just such a possibility. "There are numerous, and in many cases unaccounted for, factors which makes the whole process exceedingly difficult," Merryman says. "Since we're dealing with an issue of such magnitude, I think it's proper to insist they be accounted

READING BETWEEN THE LINES

HOW TO COUNT CIGARETTES

A persuasive newspaper ad that R.J. Reynolds published last spring offered to shed light on the secondhand smoke issue by considering how many "cigarette equivalents" nonsmokers are exposed to when they live or work with smokers. For instance, it said, a nonsmoker working among smoking colleagues inhales the equivalent of just 1½ cigarettes a month. A waiter working full-time in a restaurant breathes just 2 cigarettes' worth. A reasonable person might wonder how that could be harmful.

It might not be harmful, if it were the whole story. The numbers look benign because the cigarette company counted only a part of the smoke that doesn't harm nonsmokers. Here's the trick:

Secondhand smoke is different from inhaled smoke. It consists mostly of the "sidestream" smoke that curls from the smoldering end of the cigarette when the smoker isn't inhaling. Sidestream smoke contains higher concentrations of certain toxic substances, including several cancer-causing ones, than mainstream smoke.

The RJR ad focused on nicotine in the smoke. Good choice. Nicotine is addictive to active smokers, but it's not a carcinogen. What's more, it happens to be found in about the same concentrations in mainstream and sidestream smoke. A nonsmoker can breathe diluted, secondhand nicotine all month and, as the ad pointed out, only get a couple of cigarettes' worth.

In the fine print, the ad revealed that "use of other compounds may give different results." What if RJR had instead counted "cigarette equivalents" using the more car-

cinogenic components of sidestream smoke? Katharine Hammond, an environmental health expert at the University of California, Berkeley, did just that. In testimony she submitted to the U.S. Occupational Safety and Health Administration, she considered the hypothetical nonsmoking office worker in the ad and added up a month's exposure.

She found that. "In that same room, at that same time, the nonsmoker is getting as much benzene [a known human carcinogen] as a smoker gets in smoking six cigarettes; as much 4ABP, a known human carcinogen, as if smoking 17 cigarettes; and as much NDMA, the potent animal carcinogen, as one who smoked 75 cigarettes."

Hammond told OSHA, "R.J. Reynolds is using the complex chemistry of tobacco smoke to obscure the truth."

"We're not trying to hoodwink people. The main thing is that the concentrations are very very small," an RJR scientist told us.

A Tobacco Institute official told us it's wrong to assume that nonsmokers are breathing the same mix of compounds as that measured in laboratory studies of sidestream smoke. However, there is evidence that nonsmokers are taking in harmful smoke constituents. A New York research team reported in 1993 that it had measured the metabolic products of a tobacco carcinogen, NNK, in the urine of nonsmokers exposed to the conditions of a very smoky bar. The measurements were 10 times as high as those taken before the volunteers were exposed to smoke.

SIDESTREAM SMOKE DIFFERS

"Sidestream" smoke, which curls off the end of a smoldering cigarette, is the main component of secondhand smoke and is different in composition from the "mainstream" smoke that smokers inhale. Sidestream smoke contains higher concentrations of several known or probable human carcinogens. Among them:

Component	How much more is in sidestream smoke
Polonium-210	1 to 4 times
Benzo[a]pyrene	2.5 to 3.5 times
Hydrazine	3 times
1,3-butadiene	3 to 6 times
Benzene	5 to 10 times
N-nitrosopyrrolidine	6 to 30 times
Cadmium	7.2 times
Nickel	13 to 30 times
N-nitrosodimethylamine	20 to 100 times
Aniline	30 times
2-Naphthylamine	30 times
4-Aminobiphenyl	31 times
N-nitrodiethylamine	up to 40 times

Source: U.S. Occupational Safety and Health Administration

for." The critics have usually focused on diet or socioeconomic status, both of which have been linked to the incidence of cancer. If people exposed to secondhand smoke were more likely to be poor or to have poor diets, data could be muddled.

In fact, the EPA considered possible confounding factors. Five of the studies it analyzed included information on diet. None of those five studies suggested that diet could account for the increased risk in people exposed to secondhand smoke.

The studies the EPA relied on didn't record socioeconomic status, but Fontham's newer study did—and found no link to risk. She also looked at diet and found that a diet high in fruits and vegetables did seem to protect people from lung cancer. But even after accounting for that, there was still a significant relationship between secondhand smoke and lung cancer.

Epidemiologists readily concede they can never account for all the factors that affect health. But since studies done in many countries with different cultures and habits all point to

an elevated risk, confounding factors are not likely to be the explanation.

☐ The 'excluded' studies. The industry has repeatedly implied that the EPA ignored two 1992 studies because they didn't support the agency's conclusions. In fact, both studies were published during the seven-month period after the EPA report was written but before the agency released it. And neither study suggests the EPA is wrong.

In one, University of South Florida researcher Heather Stockwell found that nonsmoking women married to smokers had a 60 percent higher risk of lung cancer than women married to nonsmokers. The most highly exposed group—women exposed for 40 years or more—had a 130 percent increase in risk. In the other study, Ross Brownson, then of the Missouri Department of Health, found no risk increase for all exposed women as a group—but the most highly exposed

had a 30 percent increase.

Both the EPA and the industry have calculated, but not published, re-analyses that include all the new studies. The EPA says it still finds a statistically significant risk; R.J. Reynolds says it doesn't.

The bottom line

There's no question that all epidemiological studies have a built-in imprecision, Buring told us. "But when you see different investigators, using different definitions and study designs, all showing similar re-

sults, then you have to believe there's something going on."

The case against secondhand smoke has reached that point. Short of conducting an impossible experiment—deliberately exposing thousands of people to secondhand smoke for decades, to see what happens—this is about as good as the human evidence on secondhand smoke is likely to get.

When those results are combined with the laboratory studies, the abundant evidence that firsthand smoke causes cancer, and the evidence for a dose-response relationship, the health implications are clear—and the EPA's conclusion inescapable.

"If we didn't have the tobacco companies spending millions of dollars to confuse the facts, this issue would be an open-and-shut case," says Stanton Glantz, a longtime tobacco researcher at the University of California, San Francisco. "The fact is that passive smoking causes lung cancer."

Your personal risk? Since the amount of smoke inhaled appears related to the risk of disease, there probably is a minimal hazard from brief exposure. But steady doses of secondhand smoke at home or on the job aren't so benign.

A nonsmoker's individual risk of dying from lung cancer, normally small, is increased slightly by living or working for years among people who smoke heavily. And although the individual risk is relatively small, the numbers add up to an issue of public health. Thousands of people in the U.S. may be dying or made sick every year from other people's smoking.

James Repace and Alfred Lowrey, two statistical researchers who study the effects of secondhand smoke,



QUITTING SMOKING

IF AT FIRST YOU DON'T SUCCEED

As any heavy smoker who's tried to quit knows all too well, nicotine dependence is one of the toughest addictions to shake. Little wonder, since every puff provides not only a psychological reinforcement of the habit but also a satisfying micro-dose of nicotine.

Nevertheless, about half of all Americans alive today who ever smoked have managed to quit—and the overwhelming majority of those who still smoke want to do likewise. Here's what we know about the best ways to stop smoking:

■ **Keep trying.** Most smokers try to quit—and fail—several times before succeeding. There's some evidence that the more times a smoker has tried and failed to quit, the better the chance of success the next time.

■ **Go cold turkey.** Most ex-smokers did it that way. Cutting back gradually doesn't seem to work as well, probably because it continues to reinforce the habit. There's also evidence that addicted smokers who try to cut back end up inhaling more of the cigarettes they do smoke in order to keep their nicotine levels up.

■ **Get support.** Especially for the most highly addicted smokers, support programs

can make a crucial difference. These group programs generally feature a combination of lectures, behavioral management techniques, and peer support. Low-cost or free programs are offered by many hospitals as well as local chapters of the American Lung Association (call 800 586-4872 for information) and the American Cancer Society (800 227-2345).

Support at home is important, too. Nonsmokers: Tell your smoking friends and relatives how happy and proud you'd be if they tried to quit. If they make the effort, support it with praise, small favors, and help with concrete strategies like exercising and staying away from smoke-filled rooms. If they fail, encourage them to try again later.

■ **Consider the patch.** On the market for more than three years, the nicotine replacement patches, although not a magical solution, have proven to be a helpful adjunct to other treatment methods for smokers who can't seem to quit on their own. The skin patches provide a steady stream of nicotine that takes the edge off the craving for cigarettes. One warning: There have been a few reports of heart attacks among people who continued to smoke while wearing the patches.

have concluded that a lifetime increase in lung-cancer risk of 1 in 1000 could be caused by long-term occupational exposure to air containing more than 6.8 micrograms of nicotine per cubic meter of air. (The nicotine itself doesn't cause lung disease but is a marker for smoke concentration.) Concentrations that heavy occur regularly in many homes and workplaces.

For its study, the EPA found 19 reports of measurements of nicotine levels in enclosed spaces where people smoked. Nicotine levels in homes of smokers had averages that ranged, from study to study, between 2 and about 11 micrograms; in offices, the range of averages was about 1 to 13. Restaurants were even smokier, with averages between about 6 and 18 micrograms.

What should be done

If secondhand tobacco smoke were not connected to the profits of a powerful industry, we doubt there would be much argument about drastically restricting people's exposure to it.

The lifetime added risk of developing lung cancer from prolonged exposure to secondhand smoke is roughly 1 in 1000—1000 times greater than the one-in-a-million lifetime cancer risk considered unacceptable for many other environmental contaminants. Even in small doses, it can be an uncomfortable irritant, at the very least.

In response to the data, the tobacco industry has accelerated its campaign against public smoking restrictions. For instance, five companies together laid out nearly \$8-million last year in an unsuccessful effort to persuade California voters to approve a smoking-control law that would have invalidated stronger state and local restrictions.

The 1994 elections greatly improved the industry's legislative prospects. Out as chairman of the House Subcommittee on Health and Environment is Democrat Henry Waxman of California. His hearings last year produced the widely seen image of tobacco-company chiefs swearing they didn't think cigarettes were addictive. His likely replacement is Republican Thomas Bliley. The major employer in Bliley's Virginia district is Philip Morris, and Bliley has already said, "I don't think we need any more legislation concerning tobacco."

We disagree. We believe non-

smokers have a right to breathe smoke-free air, and we have long favored restrictions on where people may smoke. The medical evidence makes it imperative to impose such limits. In particular, we support measures to keep smoke out of the workplace—not just offices and factories but also restaurants, stores, and public transportation, because of the risk to the millions of Americans who work there, too.

We support OSHA's efforts to limit workplace smoking to certain ventilated rooms. OSHA calculates that over the next 45 years a workplace smoking ban would eliminate between 5500 and 32,500 lung-cancer deaths and 98,000 to 578,000 deaths from heart disease. (The variation comes from uncertainty about current levels of exposure to second-hand smoke.)

That makes control of smoke one of the great public-health bargains. Getting rid of workplace smoke requires posting signs, putting a few chairs and an ashtray outdoors, or putting an appropriate ventilation fan into a special smoking room—an improvement that OSHA estimates would cost \$4000 per building. In contrast, the bill for removing asbestos from a commercial building averages \$300,000.

Stopping, and starting

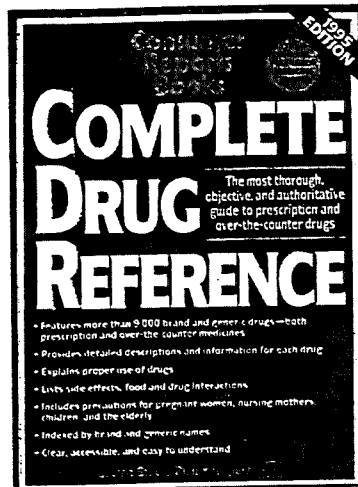
Though the intended beneficiaries of smoking restrictions are non-smokers, smokers may benefit, as well. That's because, as many studies have now confirmed, the imposition of smoking restrictions is enough to motivate some smokers to quit.

Those who smoke at home, we think, should make heroic efforts to quit for the sake of their families, if not themselves. (For advice on quitting, see the facing page.)

The declining rates of smoking in the U.S. show that people can quit. But unfortunately, one group of smokers has stopped shrinking. Teen-age smoking rates, after years of decline, seem to have leveled off and may even have begun growing again, especially among girls. This phenomenon, and the ways cigarette makers' messages are delivered to teens, will be the focus of our next report on smoking. ■

Reprints of these reports will be available. For pricing information, write: CU/Reprints, 101 Truman Ave., Yonkers, NY 10703-1057. Or call: 914 378-2448.

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BEFORE THE
HEALTH AND HUMAN SERVICES COMMITTEE
OF THE
KANSAS HOUSE OF REPRESENTATIVES

February 15, 1995

My name is Doug Wright. I appear before you as Vice-President of the American Lung Association of Kansas (ALAK) in opposition to HB 2245. I am a lawyer and served as Mayor of Topeka from 1983 to 1989. During this time, the City of Topeka and many other cities in Kansas and throughout the USA adopted ordinances restricting smoking in public places. Cities acted earlier and quicker than state or federal government did, in the interest of public health, safety and welfare of their citizens. HB 2245 which preempts cities from regulating smoking in public places is a step backward and I urge its defeat.

When Topeka's smoking ordinance was first proposed, many believed it would have a harmful impact on our business community. That has not been the case. To the contrary, most employers, including state government, have extended the reach of the law into the workplace by adopting workplace smoking policies.

City government and state government both have a responsibility to protect the public health, safety and welfare of their citizens. But, quite often cities are able to act quicker than state government and with more focus or detail when acting to protect the public health, safety or welfare of the citizens. The state meets its responsibility to protect the public health, safety and welfare of the citizens when it encourages cities to act, rather than when it ties the hands of local officials and preempts local action.

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In addition to the profound public policy implications of HB 2245, I also see some serious mechanical flaws in this legislation.

1. Topeka's smoking ordinance is enforced by the local city-county health agency. HB 2245 removes local health departments from enforcement authority and replaces them with the state department of revenue.

2. Section 2 (c) prohibits smoking in a taxi except when all persons in the taxi agree to allow smoking. One person, then, can control whether state policy applies or not. Moreover, with this type of a provision in the law, just what is the state policy? The effect of this provision is that smoking may be permitted at times yet prohibited at other times, with one person, not the legislature or city council, deciding when the law applies.

Is the legislature now going to allow a group of people to assemble in a taxicab or a room such as this one and decide which of the governmental policies it will follow and which it will ignore?

In my opinion, HB 2245 as written is not equal and uniform in its application and it unlawfully delegates legislative authority to set public policy.

Any law enacted to protect the public health, safety and welfare of the citizens should encourage cooperation and partnerships with local authorities, not preemption of local regulation with this type of a law that overrides existing, workable local ordinances. I urge the defeat of HB 2245.

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES
REPRESENTATIVE CARLOS MAYANS, CHAIR
TESTIMONY FEBRUARY 15, 1995
GERALD R. BERGEN, PhD

MR. CHAIRMAN , MEMBERS OF THE COMMITTEE I THANK YOU FOR THE OPPORTUNITY TO SPEAK TO YOU ON A MATTER OF UTMOST IMPORTANCE TO MANY OF US WHO ARE IN THE BUSINESS OF HELPING THE YOUNG PEOPLE OF THIS COMMUNITY AND ACROSS KANSAS CHOOSE TO LIVE PRODUCTIVE, HEALTHY LIVES.

I AM JERRY BERGEN, PROGRAM DIRECTOR FOR THE SHAWNEE REGIONAL PREVENTION & RECOVERY SERVICES. OUR AGENCY'S MISSION IS TO PROVIDE EDUCATIONAL AND PREVENTION PROGRAMS TO THE CITIZENS OF SHAWNEE COUNTY ON THE PROBLEMS CREATED BY THE USE AND ABUSE OF ALCOHOL, TOBACCO, AND OTHER DRUGS.

TODAY, I WANT TO ADDRESS THE SPECIFIC CLAUSE; " PREEMPTING CERTAIN LOCAL REGULATION" IN HB 2245. IF MY INTREPRETATION OF THIS CLAUSE IS ACCURATE IT REVERSES THE YEARS OF EFFORT BY MANY PEOPLE TO PROVIDE A MINIMUM STANDARD FOR A SAFE, SMOKE FREE ENVIRONMENT FOR THOSE OF US WHO CHOOSE NOT TO BE CONTAMINATED BY OTHERS' SMOKE.

HOME RULE IS A CONCEPT THAT MANY OF US SUPPORT, HOWEVER THIS CLAUSE APPEARS INSTEAD TO GIVE NO LATITUDE TO LOCAL GOVERNING UNITS TO ESTABLISH MORE STRINGENT LIMITATIONS THAN WHAT STATE LEGISLATION MAY PROVIDE. IT PREEMPTS ALL LOCAL ORDINANCES RELATING TO SALES, MARKETING, ADVERTISING, PROMOTION, DISPLAYS, COUPONS, ETC. WHERE IS HOME RULE IN THIS LEGISLATION? IS THIS WHAT WE ASKED OF OUR ELECTED OFFICIALS IN THE ELECTION?

HOUSE H&HS COMMITTEE
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Attachment 20-1

DESPITE WHAT MAY BE CLAIMED DURING THIS HEARING, HEALTH PROFESSIONALS, IN THE MAJORITY, WILL ATTEST THAT THERE ARE DEFINITIVE, SERIOUS, PHYSICAL HEALTH RISKS TO ANY ONE USING THIS PRODUCT AS IT IS INTENDED. YOU WILL BE BOMBARDED WITH MIND BOGGLING STATISTICS THAT NEED NOT BE REPEATED HERE. SUFFICE IT TO SAY, IF YOU CANNOT DECIDE WHOM TO BELIEVE PLEASE CALL YOUR PRIMARY CARE PHYSICIAN BEFORE YOU MAKE A DECISION.

IN OUR WORK WITH YOUNG PEOPLE WE FIND THAT TOBACCO IS CONSIDERED ONE OF THE GATEWAY DRUGS. A GATEWAY DRUG IS ONE THAT'S USE OFTEN PRECEDES GREATER EXPERIMENTATION IN THE USE OR ABUSE OF OTHER DRUGS.

WHAT WE FIND WITH TOBACCO IS THAT IT IS A LEGITIMATELY MARKETED DRUG FOR THE POPULATION OVER 18. WHAT WE WANT TO PREVENT IS ANY LEGISLATION OR REGULATION THAT WOULD MAKE THAT RESTRICTION ON AVAILABILITY TO THOSE UNDER 18 MORE DIFFICULT TO MONITOR OR REGULATE THAN IT CURRENTLY IS. THE PREEMPTION IN HB2245 WOULD PRECLUDE ALL LOCALLY INITIATED EFFORTS TO CURTAIL THE PROMOTION, SALE, OR FREE DISTRIBUTION OF TOBACCO PRODUCTS TO YOUNG PEOPLE.

THIS AGENCY WANTS TO GO ON RECORD AS BEING UNALTERABLY OPPOSED TO HB 2245 BECAUSE IT WILL PERMIT A RETURN TO AN ENVIRONMENT THAT INCREASES THE RISKS OF THE HEALTH OF ALL CITIZENS, BUT PARTICULARLY TO YOUNG PEOPLE.

THANK YOU.

Tobacco Free Wichita

Wichita Interagency Council on Smoking and Health



HR2245 - Testimony before the Committee on Health and Human Services, Kansas House of Representatives, February 15, 1995

My name is Dr. Phillip M. Allen, a resident of Wichita. I wish to speak on behalf of the Tobacco-Free Wichita Coalition, a consortium of community groups and organizations of which the the Wichita/Sedgwick County Board of Health is a member.

My hope, in so testifying, is to discourage the enactment of HR2245 as seriously detrimental to the public health and to the realization of one of its most important goals: reducing the cost of, as well as the need for, health care. Such reduction presupposes, in a critically important way, the prevention of diseases such as lung cancer, chronic obstructive pulmonary disease, and cardiovascular disease, which overburden the health care system, far too many instances of which I have myself seen at autopsy in the course of my professional career, and for all of which smoking is a major risk factor.

If I may assume the members of this committee to be familiar with the extensively documented evidence of the pathologic, frequently carcinogenic, and highly addictive properties of tobacco, I will forego a rehearsal of that evidence and address the present bill (HR2245) on its merits or, more frankly, on its almost complete lack of merit.

It seems quite obvious that the net effects of this bill are unrelievedly negative from the point of view of public health. Those effects, briefly stated, include the following:

(1) The bill would free a sizable class of businessmen and other employers of nearly all regulatory restraints on smoking in their respective establishments.

(2) The bill would absolve these individuals of liability in the event of the development of, or exacerbation of, disease or disability among employees and others as a result of their inescapable exposure to tobacco smoke.

(3) Through its pre-emption clause, the bill would dismantle almost the entire body of existing rules and regulations controlling the use of tobacco, and would preclude all further legislative initiatives of either state or local governments to restrict the promotion and use of tobacco products.

Specifically, the bill would confer upon proprietors and employers essentially unlimited discretion as to whether to permit smoking in their establishments, as well as to the size and location of smoking areas, to the means, degree and effectiveness of physical barriers, ventilation, etc. The committee should note that the bill identifies no specifications whatsoever for any of these measures, to which the proprietor is at liberty to give the most permissive interpretation.

Aside from the virtually meaningless provisions concerning signs and the easily manipulated and circumvented "smoking policy" as defined in Section 7, there is no interest, stated or implied, in the actual protection of employees or the non-smoking public, especially persons -- children in particular -- with respiratory disorders. On the contrary, the only form of protection expressly provided is for the employers themselves, who are declared exempt from legal suit by persons harmed by smoke.

In brief, the provisions of the bill through section 7 uniquely serve the interests of owners and proprietors, not to mention the tobacco industry by which they are so heavily supported and for which they are known to front. The bill does little if anything to protect workers and the non-smoking public.

These considerations alone would warrant dismissal of HR2245. But the feature which should excite the strongest opposition, and for which it should be summarily rejected, is the pre-emption clause, Section 8. This is a crowning insult to the committee, to the legislature, and to the people of Kansas. It represents a most commanding insolence toward, and contempt of, the democratic paradigm of representative government responsible for public policy in furtherance of the public good.

This section is boilerplate for pre-emption clauses which have appeared in nearly all recently proposed tobacco control legislation across the nation, especially at the state level. It is similar in many details of language, and entirely so in spirit and intent, to the pre-emption clause of the Kansas Senate bill introduced by the restaurant association last year, which was, fortunately, rejected.

It is an act of the highest presumption on the part of the tobacco industry -- and would have been equally so on the part of any trade association acting on its own rather than fronting for the industry -- to demand, in the manner of this clause, that state and local governments shall bow to its will and to its will alone.

This disreputable industry has no more honorable motive than to remove all obstacles to the marketing of its notoriously harmful and addictive products and to the perpetuation of smoking among those already habituated. It has moved shamelessly to seduce young people, minorities and the most vulnerable, and will stop at nothing, including the disabling of legislative bodies at every level, in the pursuit of its discreditable objectives. No industry could have made a more poorly disguised attempt to manipulate the legislative and regulatory processes than is represented in this bill, HR2245.

Respectfully submitted,
Phillip M. Allen, M.D., Ph.D.



HB2245

February 15, 1995

From: Larry Jecha, MD, MPH, President
Kansas Association of Local Health Departments

Ladies and Gentlemen of the committee on Health and Human Services, we appreciate this opportunity to submit this testimony to you today. The Kansas Association of Local Health Departments (KALHD) is a voluntary organization of the directors and administrators of 62 health departments across Kansas. It is funded by the cities and counties themselves.

We pulled together in order to present a unified, local view to the Kansas Department of Health and Environment as they and you consider issues that would affect us all.

We all want what is best for our people. We in the KALHD recognize that this bill is not in our best interests. It is more top down regulation. Please don't force it on us. Even if you removed Section 8 and replaced it with a Section allowing communities to pass smoking regulations on their own that are more stringent, there are still too many other problems with this bill concerning smoking in workplaces and restaurants for example, to move it forward.

Rather than try to fix this smoker's protection bill, please vote it down. We will be glad to work with you and craft a truly health-friendly bill that will protect the health of Kansans yet provide places for those who still smoke to indulge in a way which will harm only themselves and not others.

We urge you to vote NO on Bill 2245 and we look forward to working with you on a fresh approach.

KANSAS ASSOCIATION
OF LOCAL HEALTH
DEPARTMENTS

2535 CLOVER LANE

WICHITA, KANSAS

67216-2207

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HOUSE H&HS COMMITTEE

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Attachment 22

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

TESTIMONY PRESENTED TO

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

BY

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

HOUSE BILL 2245

House Bill 2245, regulating the smoking of tobacco products in public places appears, at first glance, to be a pro-health bill aimed at banning smoking in public places. In reality, however, the legislation proposed in HB 2245 provides so many exceptions it becomes actually less effective than the current law K.S.A. 21-4009-4014. What HB2245 in fact provides, is not only a weaker version of the Kansas 1988 "Clean Indoor Air Act," but also a means to prevent any local community to improve their own policies.

Second hand smoke was designated as a Class A carcinogen by the Environmental Protection Agency in January 1993. As a result of the well established understanding of the health consequences of tobacco use and second hand smoke, local communities across Kansas are beginning to take action to protect their citizens from the devastating effects of this toxic substance. Citizens, who at one time, because of breathing disorders or other health concerns, could not enter such public buildings as grocery stores, court houses, and restaurants, are beginning to feel the relief of being able to breath unpolluted indoor air. The reason for this relief, is that local city and county councils have passed ordinances in order to protect their right to breathe non smoked-filled air. These people have been the victims of second hand smoke and, as a result, have suffered from asthma attacks, bronchitis, and headaches because of their serious allergy to tobacco smoke. House Bill 2245 will not only prohibit the passage of any future ordinances by local communities to protect these vulnerable citizens, it will also render any ordinances which are now in place null and void.

How many communities will be affected? At the present, over 15 counties have smoke-free courthouses, many as a result of local ordinances. Overland Park, Kansas, has recently passed a local ordinance to restrict smoking in public places, including their city building. The Wichita City Council adopted an ordinance last year which will ban smoking in all public buildings in Sedgwick County. An ordinance which bans smoking in public buildings in Topeka has been in effect since 1986.

KDHE has recently completed two studies to evaluate the public's understanding of the relationship between tobacco and health in order to develop more effective public education programs. The first study was of Sedgwick County residents, which showed that 82% of adults in Sedgwick County believe secondhand smoke is harmful to nonsmoker's health, compared to 74% of adults statewide. The studies further showed that over half (54%) of Sedgwick County residents favor laws that completely eliminate smoking in all public places compared to a

HOUSE H&HS COMMITTEE

2-15-1995

Attachment 23-1

Office of the Director of Health
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Testimony on HB 2245

Page Two

slightly lower number in the statewide study (48%). The stronger sentiment favoring a ban on smoking in public places in Sedgwick county underscores the importance of preserving the rights of local communities to establish policies that are more restrictive than the state as a whole.

The success of the local communities to enact ordinances that provide for smoke free indoor air remains remarkable even in the face of increased efforts by the tobacco industry to defeat local efforts. If we are to make an impact on the death and disease caused by tobacco use in our state, we must continue to support the efforts of local communities to protect their citizens.

Testimony presented by: Steven R. Potsic, M.D., M.P.H.
 Director of Health
 February 15, 1995

City Hall • 8500 Santa Fe Drive
Overland Park, Kansas 66212
913/381-5252 • FAX 913/381-5756

February 14, 1995

TO: CHAIRMAN CARLOS MAYANS
MEMBERS OF THE COMMITTEE ON HEALTH AND HUMAN SERVICES

RE: HOUSE BILL 2245

Chairman Mayans, members of the Committee, my name is Jim Twigg, and I am the Special Projects Coordinator for the City of Overland Park. Thank you for allowing me to testify before you this afternoon.

Overland Park has, since the mid 1980's, been a leader in protecting our citizens from the effects of environmental tobacco smoke both in public places and the workplace and I applaud this committee for seeking to address this difficult issue.

I am concerned however that H.B. 2245 opens the door to smoking in virtually all public places and workplaces, ignoring the public health implications of exposure to tobacco smoke, while simultaneously preempting the ability of local governmental units to meet the needs of their constituents by regulating smoking within their jurisdiction.

Overland Park has successfully met the needs of our citizens by creating an ordinance which helps them to make an informed choice about exposure to second hand tobacco smoke. Restaurants in Overland Park are required to post signage stating that the establishment has chosen one of three options: smoke-free, smoking, or smoke restricted. Those which choose to allow smoking must maintain a non-smoking area adequate to meet the needs of their patrons. The restaurants are also required to have non-smoking common facilities such as public telephones and restrooms, and non-smokers must be able to access these facilities without passing through smoking areas. H.B. 2245 would strip away the ability of cities to act on behalf of their residents by enacting ordinances such as ours.

Overland Park has addressed the concerns of working people in our city by requiring that smoking in the workplace be restricted to enclosed offices which are either equipped with an adequate filtration system or are separately ventilated to the outside in order to prevent the circulation of smoke laden air in non-smoking workspaces. H.B. 2245 would abolish the ability of cities to protect their workforce from the adverse effects of smoking in the workplace.

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As I stated earlier, Overland Park believes strongly in working for our residents health and well-being, and H.B 2245 by eliminating restrictions on smoking in the workplace and in public places would be a significant step backwards for our citizens. I urge you to allow local governments, such as Overland Park, to do what we do best, and allow us to fully serve the needs of our residents by opposing against this bill.

I would like to thank you again for the opportunity to present this testimony, and offer that Overland Park would be happy to cooperate and assist this committee in formulating a bill to help protect the health of all Kansans.



**League
of Kansas
Municipalities**

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KAC KANSAS
ASSOCIATION
OF COUNTIES

"Service to County Government"

Kansas Association of Counties
215 SW 8th Street
Topeka, Kansas 66603
(913) 233-2271

LEGISLATIVE TESTIMONY

TO: House Committee on Health and Human Services
FROM: Don Moler, League General Counsel
RE: Opposition to HB 2245
DATE: February 15, 1995

First I would like to thank the Committee for allowing the League to testify in opposition to HB 2245.

Since the passage of K.S.A. 21-4009 et seq. in 1987, cities and counties have had certain responsibilities with regard to the regulation of smoking in city and county owned and operated buildings. Further, due to public health concerns, recently confirmed by the U.S. Environmental Protection Agency's study about the negative effects of second hand smoke, a small number of cities have considered and adopted regulations dealing with smoking in public accommodations – e.g., restaurants, offices, etc. These efforts in a handful of cities have received considerable public and media attention.

HB 2245 would preempt all local regulations currently in place which regulate the sale, marketing, licensing, distribution, advertising, sampling, promotion, display or smoking of cigarettes and tobacco products and would create a state statutory scheme which sets all rules on the subject. Section 8 of the bill does allow cities and counties to adopt ordinances which mirror the provisions of HB 2245, but, unlike most other provisions of state criminal law, it would prevent local regulations that are more stringent than those contained in the bill.

The League and the KAC cannot express how strongly we oppose the underlying component of this legislation. Essentially, it acts to prevent local governments and their locally elected governing bodies, from doing what the public of the city requests as far as smoking and the use of tobacco products within their cities. It is not a wild statement to say that the current state "law on smoking" found at K.S.A. 21-4009:4014 is more of a regulation on the posting of signs than it is a regulation of smoking. This can be seen in the current state statute and the language found in Section 4 of HB 2245 when we see that smoking in violation of the act is punishable by a fine of up to \$20 but failure to post appropriate signs is punishable by a fine of up to \$50. So let us not kid ourselves, the state is not currently in the smoking regulation business. The only entities in Kansas that are actively involved in this pursuit are local governments. If this bill is passed, the simple fact of the matter is we would have no effective smoking regulation in the state and all local governments would be preempted from imposing any regulation of substance. It is amazing to us at the League of Kansas Municipalities that the public's health could be taken so lightly that the local regulation of smoking and tobacco products would be preempted and replaced by a state statute that effectively does nothing. We believe it is inappropriate and shortsighted to take this authority away from local governments

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in Kansas and believe it represents a blatant attempt to eliminate all effective smoking regulations in the State.

RECOMMENDATION: The League and the KAC respectfully submit that the State of Kansas should not preempt the ability of the cities and counties in Kansas to act to protect the public health of their residents. We strongly urge that HB 2245 be reported adversely.

Thank you for consideration of our views.



**Kansans for
NonSmokers
Rights**

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

Statement by Dave Pomeroy
Spokesperson
February 15, 1995

An article in the January 1995 issue of "Consumer Reports" about the hazards of tobacco smoke contained the following paragraph:

"In response to the data, the tobacco industry has accelerated its campaign against public smoking restrictions. For instance, five companies together laid out nearly \$8-million last year in an unsuccessful effort to persuade California voters to approve a smoking-control law that would have invalidated stronger state and local restrictions."

After reading House Bill No.2245, it is apparent that that is exactly what the tobacco industry is trying to do to Kansans--that is to take a step backward and force more Kansans to breathe deadly tobacco smoke against their will.

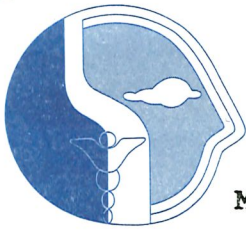
House Bill No.2245 offers no protections to the majority of Kansans who have chosen to be non-smokers. It takes current state law which allows the proprietor or other person in charge of the premises of a public place to designate all of the space as a smoking area and weakens smoking restrictions by preempting local ordinances in such cities as Topeka and Overland Park. It is designed to increase the profits of the tobacco industry and not to protect non-smokers from the proven hazards of tobacco smoke.

Restaurants in Topeka have proliferated since Topeka ordinance Number 15584 was passed ten years ago. Many employees are now able to work in smoke-free environments because of the Topeka ordinance and children are protected in daycare facilities as well. What would be accomplished by passing House Bill No.2245? Certainly not the improvement of public health.

The current smoking restrictions do not prohibit smokers from smoking. Smoking tobacco products is not illegal in any of the cities where smoking has been restricted. They simply give people who chose not to smoke the opportunity not to smoke. There are many legal activities which cannot be engaged in everywhere. Smoking should only take place where it will not affect non-smokers. There is a reason why I can't drive my car on a sidewalk. It's like smoking in a public place--it's a danger. It is not an infringement of my rights.

The tobacco industry kills 1,000 Americans each day. Don't let them add more non-smoking Kansans to their list of victims. Vote against House Bill No.2245.

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TESTIMONY
HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES
HOUSE BILL 2245 HEARING FEBRUARY 15, 1995
BY DONNA RAE MALONE
MEMBER, WICHITA-SEDGWICK COUNTY BOARD OF HEALTH

Ladies and Gentlemen of the Committee on Health and Human Services:

I am Donna Rae Malone, a member of the Board of Health for the Wichita-Sedgwick County Health Department. I have given hours of my personal time for 14 years to help the Health Department protect the health and safety of our community. This protection has involved both education and regulation over the years.

Smoking cigarettes is the real leading cause of death in Kansas when you add up the deaths that smoking causes in categories such as heart disease, cancer, stroke and accidents. We know that most people who smoke started when they were teenagers, before they knew any better.

Last year our Board of Health presented the Wichita City Council with an ordinance designed to reduce the sale of cigarettes to minors. With some revisions, the Council passed our ordinance last May. Today in Wichita you will see a much stronger effort being made to sell cigarettes and chewing tobacco only to persons 18 or older. Now we are working on a local ordinance regulating smoking in public places to further protect our community.

The bill before you would wipe out all of our hard work, and worse, it would not do one thing to protect the health of Kansans.

At first reading, this bill appears to be one to regulate smoking in public places, but when you look at it carefully you will see that what it really does is guarantee places to smoke.

Many public places in Wichita have gone smoke free on their own. They know it is good business. They know that most people don't smoke and these people don't want to have to breathe someone else's smoke. We, on the Board of Health, agree that they should not have to.

We know you want to protect the health of Kansans. That is why you are on this committee.

We, the Wichita-Sedgwick County Board of Health, urge you to vote this bill down. It provides less protection than the state statute we already have and it wipes out the progress we have made in Wichita. This bill would even prevent us from doing anything further.

Thank you for your time.

Donna Rae Malone
Donna Rae Malone, Board of Health

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House Committee on Health and Human Services
February 15th, '95

Testimony concerning HB 2245, concerning cigarettes and tobacco products; regulating smoking in public places; and preempting certain local regulation.

Chairperson Mayans and distinguished members of the Committee:

At first glance, this proposed act may appear to be a legitimate effort to regulate smoking in public places. In reality, this proposed act is designed to undermine pro-health efforts in individual communities across this state. As the Chairperson of the Wichita/Sedgwick County Board of Health, I was involved in local efforts resulting in the passage of a true pro-health ordinance that elevates local tobacco enforcement as a means to limit access to minors. Studies show that if smoking is delayed until after age 18 there is less likelihood of tobacco addiction. Delaying the onset of smoking also delays the onset of smoking related illnesses, which are a major burden to our health care system. I am alarmed that this proposed act expressly **preempts** and **supersedes** any local ordinances adopted before, on or after the effective date of the act. If this bill passes the efforts of our 14 member board and countless other local health proponents will have been fruitless.

Owners of restaurants, bars, and other hospitality related businesses will frame this act as a means to retain control over policy in running their businesses. They see local ordinances to further restrict smoking in public places and worksites as increased government intervention, another means to take away rights. However, these business owners already must comply and adhere to regulations that protect the health and safety of the public while limiting their ability to do as they see fit. While one can argue that patrons have a choice to simply not frequent establishments or events where smoking is permitted. For the workers in these establishments, economic realities may not make such a choice so simple. We must remember that restaurants are workplaces for many individuals. Individuals who work in these establishments are exposed to more second hand smoke than office workers, have four times the lung cancer deaths, and twice the heart disease than office workers. Many of our young people work in these environments while going to school. My first job, as a thirteen year old, was as a busboy in a local restaurant, my wife worked for many years as a waitress throughout high school and while attending college. Though non-smokers, we both were exposed to second hand tobacco smoke while performing the duties of our jobs. This proposed act **ensures** that both patrons and personnel will continue to be exposed to a group A carcinogen and all the negative health aspects associated.

As members of the committee hearing testimony on this proposed legislation, you have the unenviable task of weighing the **rights** of each of the many constituencies that will speak or contact you on this issue; proprietors, patrons, and personnel of public places. I urge you to oppose this bill so that the general public and governing bodies of each community can continue to consider the issue of smoking in public places, and retain the **right** to enact local community ordinances that are more restrictive than existing or proposed State laws if they deem appropriate for their respective community.

Respectfully,



Brad Thome
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