

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on January 17, 2007, in Room 123-S of the Capitol.

All members were present except:

Terry Bruce arrived, 9:38 A.M.
Donald Betts arrived, 9:40 A.M.
David Haley arrived, 9:47 A.M.
Les Donovan, excused

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Noboko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Kyle Smith, Deputy Director, KBI
Karen Arnold-Berger, Judge, Overland Park Municipal Court
Sandy Jacquot, League of Kansas Municipalities
Senator David Wysong
Dr. Jon Hauxwell, President, Tobacco Free Kansas Coalition, Inc.
Dr. Karen Kelly, Deputy Director, University of Kansas Cancer Center
Dr. Howard Rodenberg, Director of Health, KDHE
Dr. James Hamilton, Jr., Chair, Commission on Cancer, Kansas Cancer Partnership
Dr. Dennis Teitze, Kansas Academy of Family Physicians
Dr. Stephen Bruner, Clean Air Lawrence
Kathy Bruner, Chair, Clean Air Lawrence
Linda De Coursey, Advocacy Director, American Heart Association
Dan Morin, Director of Government Affairs, Kansas Medical Society
Terri Roberts, Kansas State Nurses Association
Lisa Benlon, American Cancer Society
Ron Heim, Reynolds American, Inc.
Marlee Carpenter, Vice President of Government Affairs, The Kansas Chamber
Chuck Magerl, Owner, Wheatfields Bakery & Free State Brewery, Lawrence
Philip Bradley, Kansas Licensed Beverage Association
Ed Nelson, President, Kansas City Business Rights Coalition
Jeff Martin, Operations Manager, Armour Amusement
Tom Conroy, Owner, Conroy's Pub, Lawrence
Joann Corpstein, Chief Legal Counsel, Kansas Department on Aging

Others attending:

See attached list.

The hearing on **SB14--Offender registration; convictions for manufacture of controlled substance, possession of certain drugs with intent to manufacture controlled substance required to register** was continued.

Kyle Smith spoke in support, stating registration will provide benefits to law enforcement and the public (Attachment 1). Mr. Smith requested an amendment clarifying that the \$20 fee requirement be specifically designated for the sheriff's department.

There being no further conferees, the hearing on **SB 14** was closed.

The hearing on **SB 31--Jurisdiction of municipal court** was opened.

Karen Arnold-Berger appeared as a proponent indicating the bill is an attempt to clarify the subject matter jurisdiction of municipal courts (Attachment 2). A balloon amendment was submitted which would slightly

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MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 17, 2007 in Room 123-S of the Capitol.

modify the general language regarding jurisdiction, making it clear that it is an enhancement, not a limitation on jurisdiction.

Sandy Jacquot spoke in favor of the bill which would clarify the jurisdiction of municipal courts in certain situations when they adjudicate a crime that later is found to have been a felony due to prior convictions (Attachment 3).

Written testimony in support of **SB 31** was submitted by:

Mike Taylor, Public Relations Director, Unified Government Public Relations (Attachment 4)

There being no other conferees, the hearing on **SB 31** was closed.

The hearing on **SB 37--Concerning the crime of smoking in indoor areas** was opened.

Dr. Jon Hauxwell spoke as a proponent, emphasizing that the Surgeon General's 2006 report on tobacco smoke pollution indicates that tobacco smoke is a grave health hazard with no known safe level of exposure (Attachment 5). Dr. Hauxwell indicated his written testimony addresses the need for legislative regulation and the issues of "personal responsibility", merchant autonomy, economics, and smokers' rights.

Dr. Karen Kelly appeared in favor of the bill, relating her experience with the adverse health effects of secondhand smoke (Attachment 6).

Dr. Howard Rodenberg spoke in support, providing information on tobacco use in Kansas (Attachment 7). Dr. Rodenberg feels this legislation has the potential to influence the attitudes and behaviors of Kansans, especially adolescents, to either quit smoking or not start smoking. In addition it will impact the number of people who die each year from second hand smoke, while saving health care costs.

Dr. James Hamilton appeared in support of **SB 37** indicating that smoking causes most lung cancers and children are particularly vulnerable to illnesses caused by exposure to secondhand smoke (Attachment 8). Enactment of this bill will eliminate nonsmokers' exposure to second hand smoke and make a positive impact on reducing cancer in Kansas.

Dr. Dennis Tietze testified in support, presenting information regarding tobacco use and related health issues (Attachment 9). Dr. Tietz indicated that:

- tobacco use is the leading preventable cause of death in Kansas,
- secondhand smoke is the third leading cause of preventable death in the United States,
- tobacco and secondhand smoke costs the state millions each year in health costs,
- clean indoor air laws help people quit, smoke less & improve their health, and
- enactment would provide a fair business climate across the state.

Dr. Steven Bruner spoke as a proponent, reiterating the health risks associated with smoking and secondhand smoke (Attachment 10).

Kathy Bruner, proponent, provided information on the smoking ban ordinance in Lawrence, Kansas, and other states (Attachment 11). Ms. Bruner endorsed the elimination of the private clubs exemption.

Linda De Coursey appeared as a proponent, providing additional information on the effects of secondhand smoke (Attachment 12).

Dan Morin spoke in favor of the bill, indicating support of all public policies that protect people from the harmful effects of smoking (Attachment 13).

Terri Roberts appeared in support ,providing background on California's smoking ban (Attachment 14).

Lisa Benlon testified in support, relating that 17 cities in Kansas currently have smoke-free laws (Attachment 15). Ms. Benlon also stated, contrary to a popular arguments, workers do not always have the option to choose their place of employment, especially high school and college students who are at especially high risk of

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becoming smokers.

Senator David Wysong appeared in support, stating that 19 states have all passed similar laws banning smoking ([Attachment 16](#)). Senator Wysong indicated that enactment of this bill has the potential to save millions of dollars in health care as well as save tens of thousands of lives.

Ron Heim testified in opposition to the bill, indicating restaurant and bar customers have a choice when deciding to patronize an establishment and employees have a choice when seeking employment ([Attachment 17](#)). Mr. Heim also stated that smoking bans have an economic impact on private businesses, especially restaurants and bars and that smoking is virtually non-existent in non-hospitality related workplaces.

Marlee Carpenter spoke in opposition, requesting the committee exercise restraint in setting mandates for businesses and allow the free market to dictate the business environment ([Attachment 18](#)).

Chuck Magerl appeared in opposition stating his experiences with ownership of both a smoking and a non-smoking restaurant in Lawrence, Kansas ([Attachment 19](#)).

Philip Bradley testified in opposition, suggesting the issue is air quality and recommending an air quality bill that would protect all citizens while allowing private businesses to serve their customers ([Attachment 20](#)). Mr. Bradley also requested, should this bill pass, to exempt establishments licensed primarily for on-premise liquor sales or create a class of establishment that would be a "Smoking Establishment".

Ed Nelson, opponent, stated that businesses would be negatively impacted by this bill ([Attachment 21](#)).

Jeff Martin appeared in opposition, relating the negative effect on his business as a result of the smoking ban in Lawrence ([Attachment 22](#)).

Tom Conroy spoke in opposition, providing information on the reduction of revenue in his business due to the smoking ban enacted in Lawrence ([Attachment 23](#)).

Joann Corpstein provided neutral testimony, requesting the committee consider the wording of Section 2(a)(11) which would allow residents to smoke in their rooms ([Attachment 24](#)). Currently, adult care homes that elect to allow smoking are required to provide a designated smoking area for residents where smoke is exhausted to the outside. This ensures that residents who desire to live in a smoke-free environment may do so. Ms. Corpstein also stated that the term "retirement facilities" used in the bill is not defined and not among the various types of adult care homes as defined in K.S.A. 39-923.

Written testimony in support of **SB 37** was submitted by:

Michelle Bernth, Vice President of Marketing & Advocacy, American Lung Assn ([Attachment 25](#))

Written testimony in opposition of **SB 37** was submitted by:

Ron Heim, Kansas Restaurant and Hospitality Association ([Attachment 26](#))

Joe P. Vise, Attorney, Shawnee Mission ([Attachment 27](#))

Tom Intfen, Owner, Paddy O'Quigley's, Leawood ([Attachment 28](#))

Jerry & Sue Nerverve, Owners, Red Lyon Tavern, Lawrence ([Attachment 29](#))

Kim Moffitt, Owner, Twin City Tavern, Kansas City ([Attachment 30](#))

Vic Alfred, Owner, JAZZ, Kansas City ([Attachment 31](#))

Bill Hannegan ([Attachment 32](#))

Joni Bocelewatz, Business owner, Kansas City ([Attachment 33](#))

Joseph T. Boulduc, President & Founder, Kansas Business Rights Association ([Attachment 34](#))

Jim Fager, Manager, Tanner's Bar ([Attachment 35](#))

Alan Cobb, State Director, Americans for Prosperity ([Attachment 36](#))

There being no further conferees, the hearing on **SB 37** was closed.

The meeting adjourned at 10:31 A.M. The next scheduled meeting is January 18, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/17/07

NAME	REPRESENTING
Sarah Green	KHBE News Service
Tom Whitaker	KMCA
Harold [unclear]	KDHE
Sue [unclear]	KDHE
Brenda DeCoursey	Am. Heart Assn
PHILIP HURLEY	PAT HURLEY & CO
Marlee Carpenter	KS Chamber
Dan Morin	KS Medical Society
[unclear]	KA FIP
James Hamilton	Commission on Cancer Kansas Comprehensive Cancer Control Plan
Erik Sartorius	City of Overland Park
Jeff B. Honberg	Kansas Sheriffs Ass'n
Michael Hooper	Kearney & Assoc
BRANDON BOHNING	WHITNEY PAMRON PA KIBA
Brenda Hammen	KSC
Helen Rudigo	KSC
Garby Jaquet	LKM
Jay Couch	Shawnee County Medical Society
Alvin Obermeyer MD	Lawrence, Ks

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/17/06

NAME	REPRESENTING
Tara Olson	SSA
Terri Roberts	Kansas State Nurses Assn.
Mary Anne Kellum	Tobacco Free Kansas Coalition
Karen Kelly MD	Univ. of Kansas Cancer Center
Roy Hein	Reynolds American, Inc.
Kathy Bruner	Claw Air Lawrence
Lynne Crabtree	American Lung Association of the Central States / Kansas
Barb Conant	Ks Dept on Aging
Sera Dun Braggion	Ks Dept. on Aging
Joann Crysten	Ks. Dept on Aging
Jim Clout	KBA



Kansas Bureau of Investigation

Larry Welch
Director

Paul Morrison
Attorney General

Senate Judiciary Committee Testimony in Support of SB 14

Kyle G. Smith
Deputy Director
Kansas Bureau of Investigation
January 16, 2007

Chairman Vratil and Members of the Committee,

I appear today on behalf of the KBI and the Kansas Peace Officers Association in support of SB 14. The bill simply adds persons convicted of manufacturing methamphetamine to the list of offenders who must register under the Kansas offender registration act.

Registration has several benefits to both law enforcement and the public. The public has access to the registration lists and can use that information in making important decisions such as whom to rent a house to or helping them decide whether suspicious activity by a neighbor should be referred to law enforcement.

Besides actually giving law enforcement a lot of information about a person who has demonstrated a certain criminal ability, the act of registering is a regular reminder to the offender that law enforcement has their information and is aware of their previous activity, and has all their information such as DNA, vehicles, etc., surely a bit of deterrence. The registry is also a handy resource to check for matching information on possible suspects. The idea of the registry works best with crimes that show a high risk of recidivism and pose a substantial risk to the public. Certainly the manufacture of methamphetamine fits both categories and such information would be helpful to both the public and law enforcement.

There has been some concern raised by sheriffs on the additional burden the expansion of the registry sometimes poses on their offices. Last year the legislature tried to address that problem by requiring a \$20 fee be paid to the sheriffs. However, several sheriffs report that the language is too vague and the money has gone to the general fund of the county, usually never to return to their department. As such, I would respectfully suggest a friendly amendment to clarify the legislature's intent. The language proposed to be added to K.S.A. 22 4904(f) is taken verbatim from the concealed carry bill from last year, which had a similar provision.

Thank you for your interest and support. I would be happy to answer your questions.

Proposed Amendment to SB 14.

Add K.S.A. 22-4904 as section 2, and amend section (f) of that statute by adding language the following italicized language (from 2006's HB 2118 dealing with fees sheriffs can collect to offset their costs in handling concealed carry applications). Renumber the remaining sections.

K.S.A. 22-4904(f) Every person who is required to register under this act shall remit payment to the sheriff in the amount of \$20 on each occasion when the person reports to the sheriff's office in the county in which the person resides or is otherwise located. *All funds retained by the sheriff pursuant to the provisions of this section shall be credited to a special fund of the sheriff's office which shall be used solely for law enforcement and criminal prosecution purposes and which shall not be used as a source of revenue to meet normal operating expenses of the sheriff's office.*



KANSAS

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SB 31
Testimony Before the Senate Judiciary Committee
Karen Arnold-Burger, Presiding Judge, Overland Park Municipal Court
January 17, 2007

My name is Karen Arnold-Burger, and I am here today to speak about SB 31. I am currently the Presiding Judge for the City of Overland Park Municipal Court. I am also a member of the Municipal Judges Education and Testing Committee and the Municipal Judges Manual Committee and have been active in the state municipal judges association.

SB 31 is an attempt to clarify the subject matter jurisdiction of municipal courts. A recent court decision has made it difficult, particularly in the case of DUI, theft and drug offenders for the judge to know whether the municipal court has jurisdiction over the case, or whether the conviction will be set aside at a later date when the defendant has even more serious charges for which he or she is being sentenced. This legislation is simply an attempt to clarify municipal court jurisdiction in light of *State v. Elliott*, 281 Kan. 583 (2006).

As a judge, I certainly understand the importance of punishing repeat offenders more harshly. This bill will restore that ability and not allow persons to have municipal court convictions voided when they are faced with subsequent offenses.

To use DUI as an example, unfortunately there are times when a third or fourth-time DUI offender is charged as a first-time or second-time offender. This is not done to avoid the mandatory penalties, but is required under certain circumstances.

For example, a person may be sentenced erroneously to a second time offense, when the person is really a third-time or subsequent offender because the prosecution is unable to get certified copies of all prior convictions or is simply unable to discover priors. For example, when the 5 year decay for DUI was in effect, the motor vehicle division dropped DUI convictions off the driving record after 5 years. When the decay was eliminated, those convictions were not reinstated on the driving record. Therefore, if a person has a DUI conviction in Kansas prior to 1996 it will not be found on a Kansas driving record. Unless the defendant reveals the prior, which he or she is not required to do, the Court may not know it is actually dealing with a third time offender, not a second. The defendant is not required, constitutionally, to reveal his or her criminal history. The prosecution has the burden of proving it. To allow a defendant to have that conviction voided later for lack of

subject matter jurisdiction in the municipal court when faced with more serious consequences on a new offense, as was the case in *Elliott*, does not seem to be in the best interest of justice.

As a second example, and one that is also addressed in this legislation, the courts have made it clear that if a person was not given the opportunity for representation by an attorney prior to conviction and sentencing and did not freely and voluntarily waive the right to counsel, the prior conviction cannot be counted for purposes of enhancement. So, the city or the state is required to only charge a second offense, when the person may in fact be a third time offender. Keep in mind that does not mean that the person cannot have his or her criminal record taken into account in imposing the sentence, as long as the maximum allowable sentence for the crime charged is not exceeded. *Elliott*, it appears, would require that such a case be filed in district court, even though it must be charged as a misdemeanor and, more importantly, would void any municipal court convictions obtained under these circumstances.

The second provision of this bill addresses an anticipated issue arising out of *Elliott*. This would make it clear that if, for example, evidence is presented in a theft case that the value of the items stolen is \$1,001 (anything over \$1,000 is enhanced to a felony under state law) **and** if the district or county attorney has declined prosecution of the case as a felony, the municipal court will have jurisdiction to hear the case as a misdemeanor.

Therefore, the purpose of this bill is to try to fill these loopholes. After speaking with some of my colleagues in the legal profession, there has been one suggestion to slightly modify the general language regarding jurisdiction to make it clear that this is an enhancement, not a limitation, on jurisdiction. I have attached a copy of that suggested amendment and would ask that if this bill receives further consideration the amendment be made when the bill is worked up by this Committee.

Thank you for your consideration.

SENATE BILL NO.31

AN ACT concerning municipal courts; relating to jurisdiction; amending K.S.A. 12-4104 and 22-2601 and repealing the existing sections.

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

Section 1. K.S.A. 12-4104 is hereby amended to read as follows: 12-4104. (a) The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. Search warrants shall not issue out of a municipal court *not issue search warrants*.

(b) *The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city.* ~~In addition, the municipal court shall have jurisdiction in the following circumstances:~~

(1) (A) A violation that may be charged as a felony in the district court, due solely to an enhancement based upon the number of prior convictions. In order to have jurisdiction of such violation in municipal court, at least one of the following circumstances must be present:

(i) The prior convictions used to determine enhancement to the felony level were without the assistance of counsel and the prosecution is unable to establish that the right to counsel was knowingly and voluntarily waived;

(ii) the city prosecutor or the county or district attorney is unable to obtain certified copies of the record of conviction of the necessary number of prior convictions for the felony enhancement and the defendant has not stipulated, in writing, to the number of prior convictions necessary for the felony enhancement; or

(iii) due to any other facts or circumstances, the defendant may be sentenced for only a misdemeanor in district court.

(B) Charging of the case as an ordinance violation shall not be done to avoid the enhanced penalty.

(2) (A) A violation that, due to a statutory enhancement provision, could have been charged as a felony in the district court due solely to an enhancement based upon the dollar amount of damage or loss if the county or district attorney has declined felony prosecution.

(B) Charging of the case as an ordinance violation shall not be done in an effort to avoid the enhanced penalty. The municipal court shall have jurisdiction to hear such case as an ordinance violation if a dollar amount of damage or loss exists.

Sec. 2. K.S.A. 22-2601 is hereby amended to read as follows: 22-2601. The district court shall have exclusive jurisdiction to try all cases of felony and other criminal cases under the laws of the state of Kansas, *except that the district court shall have concurrent jurisdiction with municipal courts as provided in K.S.A. 12-4104, and amendments thereto.*

Sec. 3. K.S.A. 12-4104 and 22-2601 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Deleted: Such violations may include violations of ordinances that prohibit acts prohibited by state statutes, except for sentencing provisions.



League of Kansas Municipalities

300 SW 8th, Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: Senate Judiciary Committee
FROM: Sandy Jacquot, Director of Law/General Counsel
DATE: January 17, 2007
RE: Support for SB 31

Thank you for allowing me to testify on behalf of the League of Kansas Municipalities and our member cities in favor of SB 31. This bill would clarify the jurisdiction of municipal courts in certain situations when they adjudicate a crime that later is found to have been a felony due to prior convictions. In *State v. Elliott*, 281 Kan. 583, the Kansas Supreme Court held that municipal courts do not have jurisdiction over crimes that are felonies, particularly third and subsequent DUI charges. In that case and in many situations in municipal court, despite attempting to ascertain whether or not the defendant had prior DUI convictions, the municipal court adjudicated the defendant on what should have gone to district court as a felony. The convictions were voided and unable to be used in district court to enhance the defendant's sentence. This raises questions about municipal court jurisdiction on any crime that uses prior convictions or dollar amounts of damage or theft to enhance the severity of the crime.

The City of Overland Park will be offering some alternative language to further clarify what this bill attempts to accomplish. The original language appeared to inadvertently narrow the jurisdiction of municipal courts, so the amendatory language would clarify that the jurisdiction may be extended in certain circumstances beyond ordinance violations that are already properly in municipal court.

This bill effectuates the policy of the Legislature to enhance the penalties for some crimes by allowing jurisdiction in municipal court for certain violations that might later be found to be felonies. Justice is served by allowing such jurisdiction and LKM urges the committee to report SB 31 favorably for passage.

www.lkm.org

Senate Judiciary

1-17-07
Attachment 3



Testimony

Unified Government Public Relations
701 N. 7th Street, Room 620
Kansas City, Kansas 66101

Mike Taylor, Public Relations Director
913.449.4848 mtaylor@wycokck.org

Senate Bill 31 Jurisdiction of Municipal Court

Delivered January 17, 2007
Senate Judiciary Committee

The Unified Government of Wyandotte County/Kansas City supports Senate Bill 31 which clarifies the jurisdiction of municipal courts. Specifically, the bill establishes concurrent jurisdiction in municipal court and district court for crimes that are felonies because of prior convictions and/or the monetary value involved.

A recent Kansas Supreme Court case has created some confusion over the jurisdiction of municipal courts due to the inability to discover or prove prior convictions for enhancement purposes in some cases. This finding especially creates difficulties in Driving Under the Influence cases where the individual has two or more prior convictions. That's because third and subsequent DUI charges amount to felonies.

DUI cases aren't the only ones potentially effected. There are a number of charges that are enhanced to felonies based on prior convictions. And, there are cases that are enhanced to felonies based on the monetary value involved. Without passage of Senate Bill 31, many of these cases risk never making it into the justice system because if Municipal Courts don't handle them, no one will. District Courts are swamped with cases and rely on Municipal Courts to help with the load in many cases.

Senate Bill 31 should be passed and the role of Municipal Courts clarified.

Senate Judiciary

1-17-07
Attachment 4



Tobacco *Free* Kansas Coalition, Inc.

**Executive Summary
Senate Judiciary Committee
Senate Bill 37
Testimony of Jon Hauxwell
January 17, 2007**

The Science: The science is now beyond responsible dispute. Exposure to Tobacco Smoke Pollution (TSP) can injure or kill human beings, even in small amounts and for brief periods. There is no safe level of TSP.

Need for Legislative Regulation: Protecting the public health against TSP is within the legitimate purview of the government. Many local municipalities look to the state government for such relief, seeking the “level playing field” needed to avoid inconsistent coverage for citizens and businesses resulting from geographic population distributions. Relying on localities alone to provide protection is dangerously slow and unreliable. While statewide clean air guarantees are indispensable, they should not preempt the adoption of even stronger provisions at local levels.

Personal Responsibility: Some smokers and business operators still ignore or dismiss the toxic effects of TSP. Many persons must enter smoky public settings against their wishes due to circumstantial pressures. Others lack the understanding of TSP necessary for them to give truly informed consent to exposing themselves to potential injury. Employees, who are at particular risk, might have acquired the pay and benefits they depend on prior to learning of TSP hazards; others for various reasons cannot easily quit one job and find another.

Merchant Autonomy: In matters of public health, there are abundant precedents for regulating business behaviors. Clean air does not abrogate merchant freedom of operation to any greater degree than other state-mandated safety precautions (such as unimpeded fire exits or sanitary food storage,) all of which derive from the need to protect the public health.

Economics: When clean air exemptions are minimized and all citizens are granted protection regardless of the nature of their public business, numerous objective studies have demonstrated that strong, fair clean air ordinances have an overall neutral or even positive benefit on revenues. Even in the worst plausible case, if a very small number of businesses lose net revenues due to loss of smoking clientele, it must be emphatically affirmed that there is no constitutional or moral right to injure one’s employees or customers in order to succeed at business.

“Smokers’ Rights”: Smoking is only a private behavior when it is conducted in private. Clean air ordinances do not preclude smoking, they only make it less convenient in certain locations. The right to breathe safely during the conduct of public business trumps any desire to satisfy addictive cravings conveniently. There is no constitutional or moral right to injure others in order to indulge an addiction.

Tobacco Free Kansas Coalition Officers:

President
Jon Hauxwell, MD

Vice-President
Lisa Benlon

Secretary
Diane McNichols, RN

Treasurer
Terri P

Mary Jayne Hellebust, Executive Director
4300 SW Drury Lane ★ Topeka, Kansas 66604

Phone 785-272-8396 ★ Fax 785-272-9297 ★ www.tobaccofreekansas.org

Senate Judiciary

1-17-07

Attachment 5

**Attachment to Executive Summary of Testimony
Regarding Senate Bill 37
Before the Senate Judiciary Committee**

Mr. Chairman, members of the Judiciary Committee:

I'm Jon Hauxwell, a family physician from Stockton and Hays. I am currently serving as president of the Tobacco Free Kansas Coalition. My address is: 1335 Central, Hays, KS 67601.

I'm here to support the passage of Senate Bill 37, which I regard as a statewide clean indoor air bill.

THE SCIENCE: The Surgeon General's 2006 report on tobacco smoke pollution represents the most recent summary of our knowledge on the adverse health effects of Tobacco Smoke Pollution (TSP). Relatively little here is brand new, but Dr. Carmona states unequivocally that TSP is a grave health hazard, capable of causing injury or death after exposure to very small amounts for very short periods of time. There is no known safe level of exposure.

The Environmental Protection Agency designates TSP as a Class A carcinogen, known (not merely suspected) to cause cancer in human beings. TSP is also a causal agent in the development of primary heart and lung disease, as well as in the aggravation of a variety of respiratory impairments such as allergies and asthma. The scientific indictment of TSP is now beyond responsible dispute. The lethality of TSP is not inconsequential, either. Nationwide, it is the third leading cause of preventable premature death (primary smoking remains number one!).

THE NEED FOR LEGISLATIVE REGULATION: Many smokers are considerate and responsible, but some are not. Some business people are fully aware of TSP's hazards, but some are not; some dismiss it as overhyped, and some are simply willing to ignore it, having been misled into believing a smokefree environment would guarantee financial losses.

Elimination of this workplace and public health hazard will therefore require legislative action, as has often been the case before.

While some local municipalities have been willing to assume the responsibility for passing clean indoor air ordinances for themselves, the fact is that most have not. Some policymakers simply desire to avoid the responsibility for addressing a potentially contentious issue. Many others shift responsibility to the state, saying they personally support such action, but want a "level playing field" with respect to nearby communities.

Whatever the reasons, the current "island-hopping campaign" for clean air has been slow, unreliable, inconsistent, and expensive. When Kansas joins the growing number of states committed to protecting any and all citizens who wish to conduct business in public from the risks of TSP, it will establish a level playing field, and at one stroke protect the health and lives of large numbers of citizens. Every day we procrastinate, people needlessly pay the price of disability and death.

THE ISSUE OF "PERSONAL RESPONSIBILITY": Opponents of clean air regulations sometimes assert that since anyone can hardly be unaware of smoke when they enter a smoky enclosure, it should be left up to the individual to decide for himself whether to do so. If he chooses to enter, and subsequently suffers death or disability as a result – well, it's his own darn fault!

While this has a certain superficial libertarian appeal, closer examination reveals it to be predicated on false premises. First, it presumes that everyone does in fact endure smoke of his/her own free will. Those at the mercy of caretakers - the young, very old, or infirm - might simply be obliged to go where they're taken. A member of a business group whose leader decides to conduct a working lunch at a smoky restaurant might reasonably worry about not being seen as a "team player," or might seem to imply that the boss is cavalier or ignorant about a health hazard, were he/she to refuse to accompany the group. People lacking the knowledge or skills to do other work might be forced to seek employment in a smoky enterprise, or go jobless. No one should have to choose between their life and their livelihood.

Another patently false assumption is that everyone possesses the necessary knowledge and understanding of TSP's effects sufficient to make their decisions rationally – it presumes that everyone is capable of *de facto informed consent*. No regulation is needed, just education. And really, doesn't everyone sort of know secondhand smoke isn't good for you?

In a perfect world, all education would be effective. Everyone would be a straight-A student, everyone would be valedictorian, no one would drop out of school. But for a variety of reasons, this isn't the case. Some people simply aren't interested in TSP topics; they skip the articles in the paper, tune out the TV segments. Some have heard the news, but don't believe it. This is largely because we are more likely to trust our own personal experiences than the warnings of "experts." It just doesn't seem plausible that TSP could be all that dangerous – haven't they walked into a smoky bar, downed a few, and walked out again, all without suffering any calamity? TSP damage is insidious, like radiation poisoning. Unless you have asthma or angina, you can suffer significant damage while you're exposed to TSP, and you simply don't feel a thing. Not until later, and by the time you do get sick, you just don't make the connection.

"Employees, who are at particular risk, might have acquired the pay and benefits they depend on prior to learning of TSP hazards; others for various reasons cannot easily quit one job and find another."

Some don't know any better, some dismiss the concern, and some just think they're being macho. Disability or death are harsh penalties for hubris, or for being unconvinced or uninformed.

THE ISSUE OF MERCHANT AUTONOMY: "Nobody can tell me how to run my business!" That might, or should, be true in the realm of esthetics. The color of the drapes, the menu selection – here, it is quite feasible to "let the marketplace decide." But TSP is not about esthetics, although some do find it unpleasant on such grounds alone. It's about public health, and there are abundant precedents for regulating business enterprises to protect that. You have to keep hot food hot and cold food cold; no rat droppings in the oatmeal; even if you need the space to make more money, you can't add another table that happens to block a fire exit.

Nor is simple signage sufficient. Merely posting signs that warn of smoke within is just another appeal to the "personal responsibility" conceit. If this approach were effective, we could've saved millions of dollars by posting "this building is insulated with asbestos" signs, instead of tearing out the asbestos and replacing it at great expense. The morbidity and mortality due to asbestos is miniscule compared to those related to TSP.

THE ISSUE OF ECONOMICS: The tobacco industry has long fought hard against clean air laws. They know that with reduced social modeling of smoking as a "part of the good life," fewer kids will become addicted. By making it less convenient to smoke, we encourage employees to consider quitting; many already have thought about it, and this gives them the nudge they need. Restaurants and bars are not major points of sale for tobacco products, but they have been energetically courted by the industry as allies against clean indoor air, chiefly by posing dire threats of economic collapse if people can't smoke, eat, and drink simultaneously or in rapid sequence.

In virtually every place clean air laws' economic impact has been objectively studied – not using loaded opinion surveys, but sales tax revenues, for example – the effect has been shown to be neutral or even positive. It can come as a shock when merchants discover that a lot of nonsmokers (that is, about 80% of the population) are more likely to patronize them when breathing smoky air is no longer part of the deal.

Still, it is possible that isolated businesses will experience a sustained decrease in revenues after clean air is required. When a merchant claims he's had to close his doors within a very short time after the new law takes effect, such claims must be regarded with extreme skepticism. Those enterprises could well be endangered at all times by their own tenuous business practices; there's nothing unusual about businesses failing in communities where no clean air laws exist at all.

But let us postulate a worst possible case scenario; based on available data, to be plausible such a scenario might involve the failure of a small number of enterprises due solely to a loss of smoking clientele.

The recognition of TSP-related hazards represented a significant advance in our knowledge. When our knowledge of electricity finally allowed rural electrification, the purveyors of kerosene lamps were effectively put out of business. This was regrettable, but we could hardly justify penalizing the entire population merely to sustain an obsolete approach to the problem of lighting.

What if clean air laws did put a small number of unfortunate proprietors out of business? Should we sustain them at the expense of everyone else?

Or let me be even more blunt: *There exists no constitutional or moral right to injure or kill one's employees and customers in order to succeed at business.*

THE ISSUE OF SMOKERS' RIGHTS: Clean air laws do not prevent smokers from maintaining their blood nicotine levels; it merely makes doing so less convenient. Smoking is legal, but that doesn't mean it should be legal anytime, anyplace. You can legally drink a pint of whiskey in your kitchen, but not while driving down the interstate. You can legally drive 70 mph down the interstate, but not down Topeka Avenue. The unifying principle is society's right to limit individual freedom when exercising it threatens harm to others.

We understand that most smokers are addicted to nicotine, and that they experience strong urges to satisfy that addiction. They deserve our sympathies, but not our indulgence; it is when satisfying their cravings leads them to endanger the rest of us that we are entitled to limit that personal freedom. Smoking is only a private behavior when it is conducted in private.

It is the rapid airborne diffusion of TSP that makes regulating it completely different from, let us say, outlawing the public consumption of Big Macs. Eating a Big Mac doesn't make your neighbor fat!

I appreciate the time and thought you have invested in this looming public health issue. It is my hope that you will be able to summon the wisdom and the fortitude to take this significant step toward protecting the public; this is the highest calling for a government, and well within the legitimate exercise of its powers. Please support Senate Bill 37.

Jon Hauxwell, M.D.

Dr. Karen Kelly
Deputy Director, University of Kansas Cancer Center

Senate Judiciary Committee Hearing
Wednesday, January 17, 2007, 9:30am

Mr. Chairman, thank you for allowing me to testify today in favor of SB 37. I appear today on behalf of myself and my colleagues at the University of Kansas Cancer Center. As health care professionals who focus on diagnosing and treating cancer, we see every day the effects of smoking and secondhand smoke. In my own career, I have focused on prevention, screening, early detection, and treatment of lung cancer.

We've just begun a new year, and already looming is the sad truth that approximately 173,000 Americans will be diagnosed with lung cancer this year. About 164,000 will die from lung cancer.

Lung cancer is the number one cancer killer in America and worldwide. It is not just my opinion but a medical fact, published by the Surgeon General of the United States, that there is no risk-free level of secondhand smoke exposure. Secondhand smoke contains over 50 chemicals that can cause cancer. Researchers have determined that separating smokers from non-smokers, proper ventilation, and even air filtration cannot eliminate exposure to secondhand smoke.

Although I am a native Kansan, I lived in Colorado for several years before returning to Kansas last fall. On July 1, 2006, Colorado enacted a statewide indoor smoking ban. Additionally, many cities across the country have gone smoke-free in bars and restaurants, and before all of these smoke-free proposals were enacted, there were certainly concerns. Business owners understandably have concerns about lost revenue from smokers. However, in New York City, restaurants and bars actually saw a 9 percent increase in revenue after becoming smoke-free? That is not unique to New York City, either. The Surgeon General found after examining evidence from peer-reviewed studies, that smoke-free policies and regulations do not have an adverse economic impact on the hospitality industry. A statewide law is the best way to ensure that all nonsmokers are protected and all businesses operate on the same level playing field.

Because I am a physician, I'd like to tell you about the health effects of secondhand smoke. Even a short time spent around secondhand smoke causes adverse health effects. Upon exposure person's blood platelets become stickier and the secondhand smoke begins damaging the lining of blood vessels. Further, it has been proven that secondhand smoke causes low birth weight, lower respiratory difficulties in children, and worse, in infants it can cause Sudden Infant Death Syndrome.

A new year is a chance for a fresh start. In Kansas, we have the opportunity, with legislation like SB 37, to reduce that 173,000 number.

Again, thank you for allowing me to testify today. I would be happy to answer any questions you might have for me.

Senate Judiciary
1-17-07
Attachment 6



K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on Senate Bill 37
Crime and Punishments Relating to Smoking in Indoor Public Places

To
Senate Judiciary Committee

Presented by
Howard Rodenberg, MD, MPH
Director of Health

Kansas Department of Health and Environment

January 17, 2007

Chairman Vratil and members of the Senate Judiciary Committee, my name is Dr. Howard Rodenberg. I am the Director of Health for the Kansas Department of Health and Environment and Kansas State Health Officer. Thank you for the opportunity to appear before you today regarding Senate Bill 37, which proposes to enact a statewide smoking ban.

The Kansas Department of Health and Environment wholeheartedly supports the concept of clean indoor air that is described in SB37 and sincerely appreciates the Committee's leadership in recognizing the significant toll of tobacco use upon the health of Kansas citizens.

Tobacco Use in Kansas

Tobacco use is the most preventable cause of death and disease in Kansas. Cigarette use alone is responsible for killing nearly 4,000 Kansans each year. Together, we've made significant strides in Kansas in decreasing tobacco use. Over the past four (4) years, cigarette use rates in Kansas have dropped from 22.1% to 17.8%. Over 80,000 fewer adult Kansans are active smokers. However, the negative health impact of tobacco use affects many more people than just smokers. Nearly 60% of Kansas students report being exposed to tobacco smoke on a regular basis. Exposure to second hand smoke early in life not only causes children to suffer negative health consequences (asthma, inner ear infections and other respiratory problems), but models a behavior that unfortunately, many children adopt by the time they enter middle school. In Kansas, more than one in five (21%) high school students report being current smokers.

Senate Judiciary

1-17-07
Attachment 7

The health costs of tobacco use are enormous. Cigarette use alone currently costs Kansas \$927 million in direct medical costs per year. This includes \$196 million in Medicaid program expenditures. These costs will continue at this level or increase into the second quarter of this century if we fail to take action to reduce tobacco use and exposure.

Clean Indoor Air Acts

Two years ago, during one of my first presentations to the legislature, I spoke in favor of a clear indoor air act. At the time, there were lingering questions about the health impact of secondhand smoke, the impact of ventilation systems, and the level of acceptance of both the public and the hospitality industry to these types of acts. These were understandable concerns at the time.

Much has changed in the last two years. On the scientific side, the 2006 United States Surgeon General's report on the health effects of secondhand smoke has effectively shut the door on the debate regarding the health harms of secondhand smoke. The report concluded that there is no safe level of second hand smoke, and that separate ventilation systems for smoking areas of enclosed spaces are ineffective in eliminating exposure to secondhand smoke. A copy of the Executive Summary of this report accompanies this testimony for your review.

Public sentiment was also in transition two years ago. Since that time, however, a groundswell of support has sprung up in favor of clean indoor air acts. Twenty states, and more than 8,000 cities and communities in thirty-five states, have adopted smoke-free ordinances that protect the health of their citizens. Already in Kansas, 17 cities have adopted clean indoor air ordinances, affecting nearly 20% of the state's population. From Overland Park to Garden City, city leaders have been successful in protecting their working public as well as the general constituency from the harmful effects of secondhand smoke. Public support of clean indoor air legislation is increasing. Nationally and in Kansas, polls indicate that a majority of adults support clean indoor air legislation. Additionally, editorials appear with an increasing frequency throughout the state advocating for clean indoor air legislation. I've enclosed a sampling of these editorials in the material accompanying this testimony.

Importantly, the Kansas Restaurant and Hospitality Association has been a leader in recognizing the smoke-free preferences of diners and lodgers, the desire to insure the health of their workers, and the need to establish a level standard across the state for exposure to secondhand smoke. The KRHA, in conjunction with the Clean Air Kansas City alliance, formulated the compromise that underlies the provisions within this bill. We'd like to commend and thank them for their vision.

A statewide ban would cover 100% of Kansas communities, and meet the desires of both the public and the hospitality industry for a policy that promotes a consistent program of regulation and protection.

Taking action today to protect Kansans from second hand smoke, such as that proposed in SB37, can have an exponential impact on future use of tobacco by changing social norms related to tobacco use. The CDC Guide to Community Preventive Services states that "smoke-free" policies challenge the perception of smoking as a normal adult behavior. By changing this

perception through adoption of laws such as that proposed in SB37, the attitudes and behaviors of adolescents will also change, resulting in a reduction in tobacco use initiation over time. A 1999 study published in Tobacco Control found that "Requiring all workplaces to be smoke free would reduce smoking prevalence by 10%. Workplace bans have their greatest impact on groups with the highest smoking rates." A separate study published in a 2001 issue of Tobacco Control concluded that, "employees in workplaces with smoking bans have higher rates of smoking cessation than employees where smoking is permitted."

The scientific evidence that clean indoor air laws, as public policy to protect against exposure to secondhand smoke, will produce immediate improvements in the health of the public is mounting. The experiences of communities who enact smoke-free laws indicate without exception that smoking bans have a positive impact on reducing both morbidity, mortality, and health care costs associated with exposure to secondhand smoke exposure. For example, A recent study conducted in Pueblo, Colorado, showed that heart attack rates among Pueblo city residents decreased by nearly 30% after implementation of the city's Smoke-free Indoor Air Act during the 18 months following the implementation of the ordinance. If a clean indoor air law in Kansas produced equal results, we could expect up to 2,160 fewer heart attacks, saving approximately \$21million in hospital charges in a single year.

Business owners are understandably concerned that a prohibition on tobacco use might adversely impact their business. Studies across the nation have shown this not to be the case. In states and communities where clean indoor air acts have been adopted, the hospitality business does not suffer, and in some cases increased volumes of patrons lead to the opening of even more establishments. This trend has been demonstrated in Kansas as well: a study of the economic impact of the smoking ban in Lawrence reveals no adverse impact from the clean indoor air ordinance. One of the handouts in your folder documents the positive economic experience of clean indoor air communities throughout the nation.

Currently more than 250 Kansans die each year from exposure to second hand smoke. By passing this bill, we can make a significant impact not only on the number of people who die from second hand smoke, but also in others who are influenced to quit smoking or to not start smoking, preventing future death, disability, and saving health care costs. We urge you to support this bill.

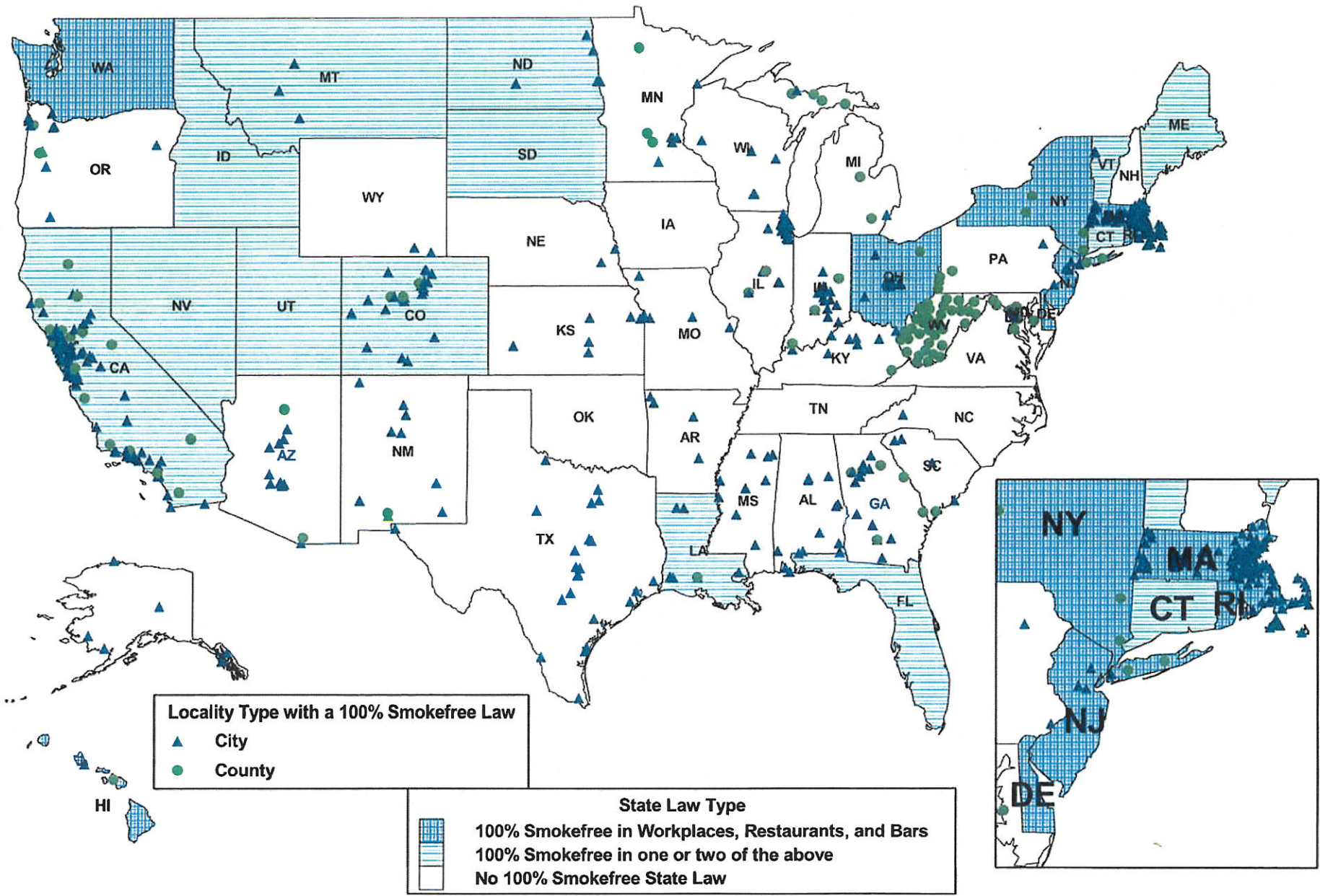
Thank you, and I'll be pleased to stand for any questions you might have.

100% Smokefree Laws at the State, County, and City Level

American Nonsmokers' Rights Foundation

In effect as of January 12, 2007

7-4



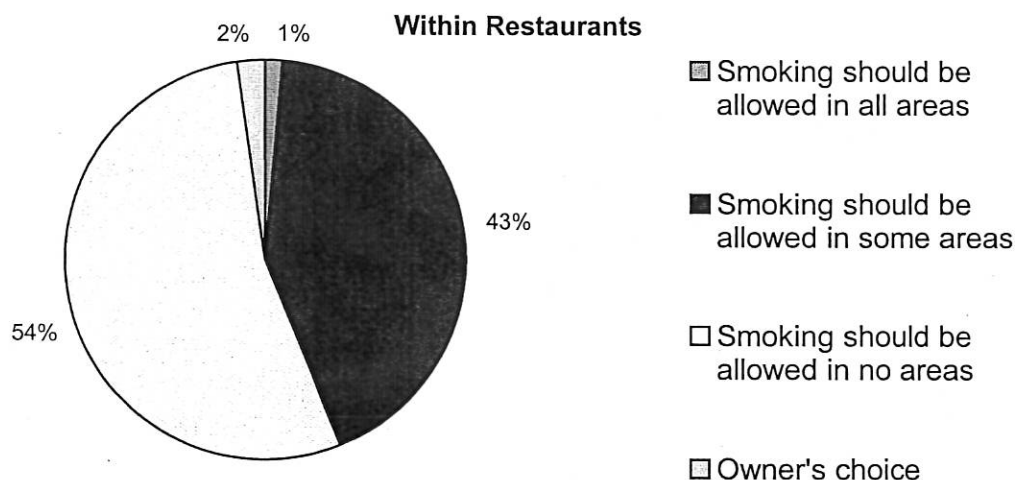
State of Kansas

Clean Indoor Air Fact Sheet

Support for Clean Indoor Air

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, finds that even brief secondhand smoke exposure can cause immediate harm. The report says the only way to protect nonsmokers from the dangerous chemicals in secondhand smoke is to eliminate smoking indoors. The report summarizes the extensive research findings, documenting that secondhand smoke exposure to cigarette smoke will cause heart disease and lung cancer in nonsmoking adults and is a known cause of sudden infant death syndrome (SIDS), respiratory problems, ear infections and asthma attacks in infants and children.

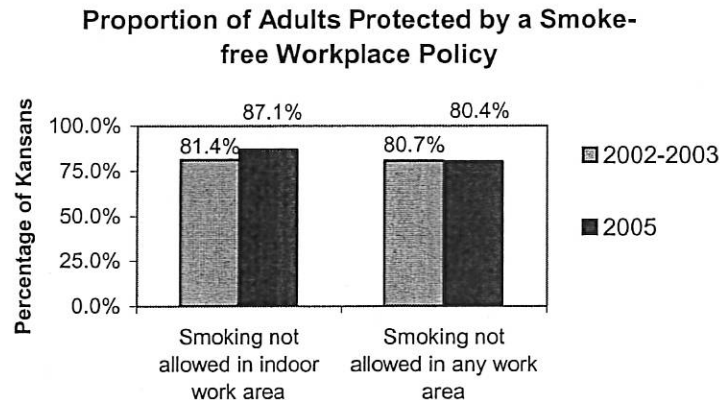
The majority of Kansas adults, 54%, report that they would prefer if smoking was not allowed in any area of restaurants. In the same survey, it was found that 70% of Kansas adults report that they would prefer if smoking was not allowed in any area of public malls.



Source: Kansas Adult Tobacco Survey 2002-2003

Protection from Secondhand Smoke in the Workplace

Nearly 1 in 5 adult Kansans report no protection against exposure to secondhand smoke while at their workplace. Between 2003 and 2005, the proportion of Kansas working adults who reported working in an environment where smoking was prohibited in indoor areas increased from 81.4% to 87.1%. This increase can be partially attributed to the increases in community awareness of the harms of secondhand smoke, increases in individual workplace policies, as well as an increase in local ordinances addressing secondhand smoke.



Sources: Kansas Adult Tobacco Survey 2002-2003, Kansas Behavior Risk Factor Surveillance System 2005

Youth Exposed to Secondhand Smoke

In addition to increasing the risk of developing respiratory conditions, ear infections and asthma attacks, youth who are exposed to secondhand smoke in social settings are more likely to have a positive perception of tobacco use and become smokers than those youth who are not exposed.

According to the 2005/2006 Youth Tobacco Survey:

- 53% of students in grades 6 – 8 who participated in the survey report being exposed to secondhand smoke in a car *or* room in the past 7 days.
- 62% of students in grades 9 – 12 who participated in the survey report being exposed to secondhand smoke in a car *or* room in the past 7 days.

Proportion of Students Who Report Living with Someone Who Smokes

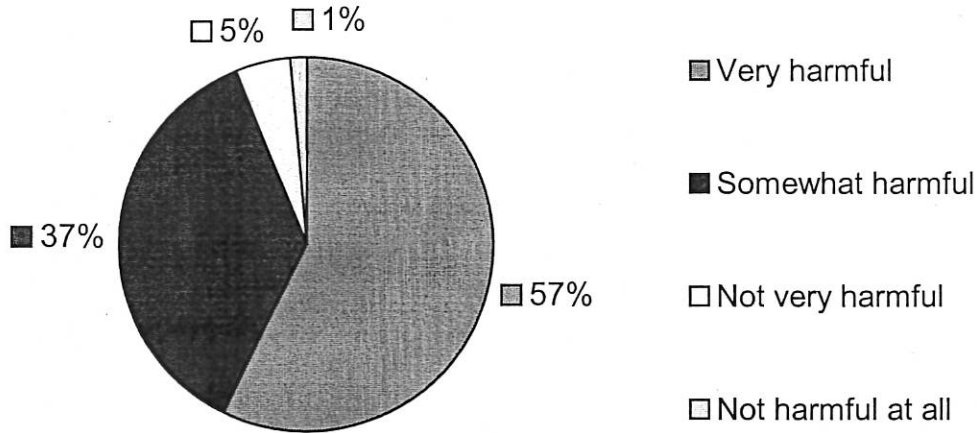
	Grades 6 – 8	Grades 9 - 12
Current Youth Smoker	58%	55%
Never Youth Smoker	29%	26%

- From the table above, it can be inferred that living with a smoker increases the probability a youth will become a current smoker. The majority of current youth smokers live with someone who smokes where the majority of never youth smokers live with someone who does not smoke.

Knowledge and Opinions Concerning Exposure to Secondhand Smoke

The overwhelming majority of Kansas adults believe that secondhand smoke is harmful. According to the Kansas Adult Tobacco Survey, 94% of adult Kansans believe that secondhand smoke is harmful.

Proportion of Kansas Adults Who Believe that Secondhand Smoke is Harmful



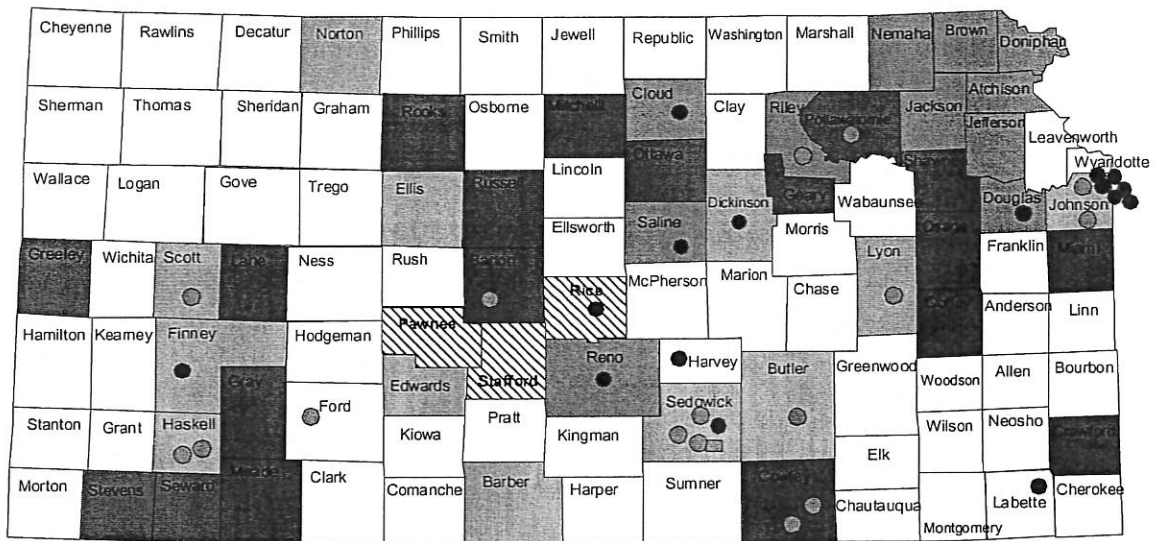
Source: Kansas Adult Tobacco Survey 2002-2003

This trend is consistent among youth. Among students in grades 6 – 8 who participated in the 2005/2006 Kansas Youth Tobacco Survey, 92% believe that smoke from other peoples' cigarettes is harmful to them. Among students in grades 9 – 12 who participated in the 2005/2006 Kansas Youth Tobacco Survey, 92% believe that smoke from other peoples' cigarettes is harmful to them.

City Ordinances

The city of Salina passed the state's first meaningful clean indoor air ordinance in 2002. In July 2004 the city of Lawrence implemented the state's first model comprehensive tobacco-free workplace ordinance. A host of other cities have since taken similar action to protect the health of their citizens. As a result, slightly more than 19% of the state's population now lives in cities that have passed clean indoor air ordinances. These include Abilene, Bel Aire, Concordia, Fairway, Garden City, Hutchinson, Lawrence, Leawood, Lyons, Mission Woods, Olathe, Overland Park, Parsons, Prairie Village, Roeland Park, Salina and Walton. These cities represent 2.7% of all incorporated cities in Kansas.

Kansas Tobacco Use Prevention Grantees and Communities with Clean Indoor Air Ordinances



LEGEND

- Level A - Chronic Disease Risk Reduction Grantees
19 counties
- Level B - Enhancement Grantees
12 counties
- Partner Counties 3
- Level C - Comprehensive Grantees
10 counties
- Ordinances Passed
17 communities
- Ordinances Proposed or Discussed
16 communities

State Laws

A growing number of states have enacted statewide Clean Air Acts, aimed at protecting all workers in the state. Currently the states with the most comprehensive statewide laws are Colorado, Delaware, Hawaii (will take effect January 2007) and Washington. The intent of clean air laws is to protect all workers in all workplaces. The most effective state laws are those that do not include pre-emption of local authority to adopt ordinances more restrictive than state law and that do not allow exemptions or grandfather clauses for specific types of worksites or public places.

Expected Impact of Clean Indoor Air Law on Reduction of Acute Myocardial Infarction Cases in Kansas

A recently published research study (Pueblo, Colorado Heart Study) showed that the implementation of city's smoke free ordinance (clean indoor air ordinance) resulted in 27% reduction in new cases of acute myocardial infarction or heart attacks among residents of Pueblo, Colorado. The reduction in number of heart attacks cases will also result in health care cost savings.

Reduction in number of new cases of heart attack in Kansas:

In the United States it has been estimated that approximately 865,000 (0.31%) new cases of heart attack occur annually.

Based on the national estimate, it has been estimated that approximately 8,000 new heart attack cases occur annually in Kansas.

Cost of hospital discharges for new heart attack cases in Kansas:

Using the experience from the Pueblo Heart Study, we estimate that a clean indoor air law could result in up to 2,160 fewer cases of heart attack each year in Kansas. This estimate is based upon the 5, 840 new cases of heart attack reflected in the 2004 Kansas Hospital Discharge data.

In 2004, Kansas Hospital Discharge data reported that the private health insurance, Medicare and Medicaid were the payment sources for 78.8% of the hospital discharges for acute heart attacks (Medicare for 60.3% of hospital discharges, private health insurance for 15.5% hospital discharges, Medicaid for 3.0% hospital discharges). The remaining discharges were paid by other payment sources which included other public and private resources.

In 2004, estimated average charges paid by Medicare and private health insurance claims for an inpatient hospital discharge for acute heart attack in Kansas were \$7,200 and \$ 16,256 respectively. We assumed that Medicaid also paid same average charges (\$7,200) as Medicare. Average charge for other payment sources was calculated as average of Medicare and Private health insurance claim average charges. **Thus, based on the average charges paid by above-mentioned different payment sources, cost of discharges for 8,000 new heart attack cases in a single year is estimated as 77 million dollars.**

If we assume that clean indoor air law similar to Pueblo is passed in Kansas and has the same effect, approximately 2,160 fewer new cases of heart attack will result in Kansas. **This estimate translates to a potential cost saving of approximately 21 million dollars in a single year in terms of payment of hospital discharges paid by public and private payment sources.**

The estimated cost savings for hospital discharges for 2,160 new cases from different payment sources are shown below:

Amount for 1305 patients paid by Medicare = \$ 9,393,408
(60% of total hospital discharges)

Amount for 335 patients paid by private insurance = \$ 5,445,760
(15.5% of total hospital discharges)

Amount for 67 patients paid by Medicaid = \$ 482,112
(3.0% of total hospital discharges)

Amount for 456 patients paid by other sources = \$ 5,469,120
(21.0% of total hospital discharges)

Total amount paid for hospital discharges for 2,160 patients from different payment sources = \$ 20,790,400

Thus, by reducing new heart attack cases by 27%, we may save approximately an estimated amount of 21 million dollars annually.

Source:

- Bartecchi C, Alsever RN, Nevin-Woods C, et al. Reduction in the incidence of acute myocardial infarction associated with a citywide smoking ordinance. *Circulation*. 2006; 114: 1490-1496.

- 2004 Kansas Hospital Association Discharge Data. Center for Health and Environmental Statistics. Kansas Department of Health and Environment.

- 2005 Kansas Health Insurance Survey database (KHIS)

- 2004 Medicare Claims database

Economic Impact of Clean Indoor Air Laws

The 2006 Surgeon General's Report "The Health consequences of Involuntary Exposure to Tobacco Smoke" states that evidence from peer-reviewed studies shows that smoke-free policies and regulations do not have an adverse economic impact on the hospitality industry.

Below are the highlighted results from some of studies noted in the 2006 Surgeon General's Report.

- A study (Glantz and Smith, 1994) of sales tax data in California and Colorado found no effect on restaurant retail sales in communities with clean indoor air ordinances compared to sales in communities without ordinances. The communities studied varied in population from a few thousand to more than 300,000 and the length of time the ordinances were in effect ranged from a few months to more than 10 years. A follow-up study (Glantz and Smith, 1997) found the same result.
- Studies on retail restaurant sales in a small suburb of Austin, Texas, (CDC, 1995) and in El Paso, Texas, (CDC 2004) also found ordinances banning smoking had no effect on sales.
- A New York City study actually found an increase in sales after a smoking ban. Using taxable sales data from eating and drinking establishments in New York City, Hyland and colleagues (1999) observed a 2.1% increase in sales following implementation of a citywide smoking ban in restaurants compared with sales two years before the law took effect.
- A study in California (Cowling and Bond 2005) on tax revenue data from 1990 to 2002 also found an increase in restaurant revenues after a statewide smoke-free restaurant law and an increase in bar revenues after a statewide smoke-free bar law. A study of the California smoke-free bar law found the proportion of bar patrons who reported they were just as likely or more likely to visit bars that had become smoke-free increased from 86% three months after the law took effect in 1998 to 91% in 2000 (Tang et al. 2003).
- A recent report from New York City (New York City Department of Finance, 2004) assessed all four economic indicators (sales tax receipts, revenues, employment, and the number of licenses issued) and reported increases in all four economic measures after the passage of city and state clean indoor air laws. Restaurant and bar business tax receipts had increased by 8.7%; employment in restaurants and bars had increased by about 2,800 seasonally adjusted jobs, and there was a net gain of 234 active liquor licenses for restaurants and bars.
- Glantz and Charlesworth (1999) examined hotel revenues and tourism rates in six cities before and after passage of smoke-free restaurant ordinances. The results indicated that smoke-free restaurant ordinances do not adversely affect tourism revenues and may, in fact, increase tourism (Glantz 2000).

While some organizations may site results of adverse economic impact, the Surgeon General's Report states, "Discrepancies between economic impact studies of clean indoor air laws conducted either by the tobacco industry or by non-industry-supported scientists can be traced in part to variations in the types of data analyzed. Studies commissioned by or for the tobacco industry to assess the economic impact of smoke-free restaurant and bar regulations have generally relied on proprietor predictions or estimates of changes in sales, rather than on actual sales or revenue data. Such estimates are subject to significant reporting bias and are viewed with skepticism because they do not constitute empirical data."

- “Supports smoking bans”
- “It’s about time”
- “The other guy’s smoke can kill you”
- “Smoking ban a smart move”
- “There’s no reason to reject a smoking ban”
- “Even smokers know their habit is harmful and offends nonsmokers”
- “Ordinance needed to protect residents from tobacco smoke”
- “City shouldn’t undercut ban on smoking with exemptions”
- “Restaurants should be smoke-free environments”
- “Eating in a smoke-free environment makes eating more healthful”
- “Snuff out public smoking”
- “How can city commissioners not support a smoke-free ordinance?”
- “Thanks for not smoking”
- “Healthy move”
- “Smoking has no place here”
- “10 things you should know about secondhand smoke”
- “Take your smoking outside”
- “Smoke-free ordinances can benefit businesses”
- “Hotel firm sets a good example”
- “Smoking ills call for some restraint”
- “All Kansans deserve similar protection”
- “I am a second-hand smoker, and I can’t quit”
- “Effort to rid Manhattan workplaces of second-hand smoke is prudent”
- “Clearing air: firm stand needed with smoking ban”
- “No proof ban hurts business”
- “Kansas should join the list of states banning smoking”
- “Our view: smoking ban a good thing”
- “Secondhand smoking in city poses great health risk for all”
- “What are we waiting for?”
- “Stop killing the innocent”
- “Tobacco smoke: killer at work”
- “Dangers of second hand smoke do hurt people”
- “Push for smoking ban”
- “Surgeon General’s report shows need for smoke-free city ordinance”
- “For citizens’ health, smoking ban should not include any exemptions”
- “It’s time to adopt smoke-free laws”
- “Time to breathe free”
- “Debate over”
- “Honey, our smoke is killing the kids”
- “Secondhand smoke evidence indisputable”
- “Report gives KC the facts to support smoking bans”
- “Toughen city ban on smoking”
- “Clear all the air”
- “Smoking ban common sense”
- “Time to clear air”
- “Why can’t KC smell like Lawrence?”
- “No right to poison air”
- “Smoke free: Kansas should follow neighboring Oklahoma with smoke-free laws”
- “Smoke-free cities discover positive, healthy results”
- “Much to gain in smoking ban”

Editorial and Letters to the Editor Headline Highlights

- “Get with the times”
- “Opponents are wrong”
- “Carcinogens in air”
- “Kids and smoking”
- “Stop making excuses for smoking at city hall”
- “Non-smokers waiting for the ban”
- “Ban isn’t detrimental”
- “Smoke and children”
- “Smoking bans needed”
- “Time has come for smoking ban”
- “Set an example”
- “We advocate”
- “Time to act on smoke ban”
- “Danger, disgust accompany popular vice of tobacco”
- “This air is clean”
- “Overland Park ordinance”
- “Out with the bad air, in with the good”
- “City should keep smoking ban in place”
- “Clearing the air”
- “Great American Smokeout”
- “Cities need to clear the smoke-filled air”
- “Need to protect public health”
- “Smoking ban a positive move”
- “KC should step up and pass smoking ban”
- “Smoking bans protect communities’ health”
- “Smoking affects quality of life”
- “Ban smoking? Yes”
- “Well? Pressure on for smoking ban”
- “Anti-smoking is good for tourism”
- “We all pay”
- “Smoke not harmless”
- “Commission ignored overwhelming support for strong smoking ban”
- “People need clean air”
- “Voters should approve two tough smoking bans”
- “Smokers’ rooms don’t work”
- “Evidence for a tough smoking ordinance”
- “Don’t let smokers’ poor choices jeopardize the health of others”
- “Hazards of second-hand smoke are well known; it’s time to act”
- “Smoking ban won’t undermine citizens’ rights; it will protect them”
- “Passing a smoking ordinance with exemptions dodges the issue”
- “City commission should adopt simple, strong, fair smoking ban”
- “OP: Make up for lost time”
- “Ban benefits”
- “Commissioners shouldn’t weaken proposed smoke-free ordinance”
- “Tobacco users should realize that second-hand smoke harms others”
- “Commission should enact smoking ban”
- “Stop the smoking debate”
- “Smoking bans are great”

Editorials in Support of Clean Indoor Air Summary Sheet

From **June 1, 2006 to December 18, 2006**, 170 editorials and letters to the editor in support of clean indoor air were printed in local newspapers across Kansas. Authors of these articles were from the following cities (52):

- Abilene
- Alma
- Arkansas City
- Atchison
- Belleville
- Bonner Springs
- Burlington
- Caney
- Clay Center
- Coffeyville
- Colby
- Concordia
- Conway Springs
- Dodge City
- Edwardsville
- Eskridge
- Garden City
- Gardener
- Garnett
- Great Bend
- Hays
- Jetmore
- Junction City
- Kansas City, KS
- Lawrence
- Lincoln
- Madison
- Manhattan
- Mankato
- Marquette
- Marysville
- Minneapolis
- Neodesha
- Newton
- Olathe
- Osage City
- Oskaloosa
- Ottawa
- Overland Park
- Paola
- Parsons
- Pittsburg
- Pleasant Hill
- Pratt
- Quinter
- Salina
- Shawnee
- Spring Hill
- Stilwell
- Topeka
- Wichita
- Winfield

110-169
Honey, our smoke is killing the kids

The surgeon general's report this week ended for me — and I suspect for many other people — the debate about public smoking bans.

Did you hear about it?

U.S. Surgeon General Richard Carmona made the strongest statement ever that secondhand smoke isn't just an annoyance — it's a killer.



RANDY SCHOLFIELD

On that point, the debate is over. He cited "massive and conclusive" scientific evidence that involuntary smoking kills as many as 50,000 Americans every year — more than die on the nation's highways.

That's 50,000 people dying from heart

disease, lung cancer and other ailments caused by breathing in someone else's smoke.

Children are especially vulnerable.

Asthma, Sudden Infant Death Syndrome, chronic ear and respiratory infections — Carmona pointed to a long list of the ailments afflicting kids who grow up in smoke-filled homes.

One elementary school teacher I spoke with told me that she can tell which kids have smoking parents — she can smell it on their hair, clothes, backpacks. Even their pencils.

Sometimes, she can see it in their gray faces.

A message for parents who smoke:
You're killing your kids.

I always cringe when I see it, and maybe you do, too: Mom or Dad behind the wheel, puffing away on a cigarette, while the kids sit huddled in the back seat.

Gag me.

I've seen grown-ups holding a newborn infant, smoking up a storm — the adults, that is, not the baby.

But the baby might as well have fired one up, too.

Ban public smoking

I hope this report gives new momentum to efforts to ban public smoking in Wichita.

In 2004, a local tobacco-free coalition presented the Wichita City Council with a model no-smoking ban that included restaurants and bars.

Mayor Carlos Mayans and the other City Council members wouldn't touch it. The Eagle's editorial board was also resistant.

But armed with this report, the coalition needs to remake its case — and it will be much harder for city leaders to ignore.

More Wichita restaurants are voluntarily going smoke-free, but this needs to be part

of the city's health policy.

One present solution — setting up smoking sections — is no solution at all, according to the surgeon general, who stressed that separate sections and ventilation systems don't protect nonsmokers from breathing poisonous fumes.

He also stressed that there is no safe level of breathing tobacco smoke, which causes immediate and harmful cardiovascular changes.

Most Wichitans, I think, would welcome a smoking ban.

Yes, I understand and appreciate smokers' argument that government shouldn't be able to tell owners how to regulate their private businesses. But government already regulates the health standards of restaurants every day, in many ways. And what about the thousands of restaurant and bar workers? Shouldn't guarantees of a safe, healthy work environment apply to them, too?

Doesn't hurt business

Critics of smoking bans like to argue that businesses suffer because smokers are driven away — but Carmona blew away that argument, too, citing numerous economic studies that showed, at worst, a neutral effect and, in many cases, a positive uptick in business.

I remember going into a bar in New York City a few years ago. I asked the middle-aged barkeep what he thought about the city's no-smoking ban.

I was expecting to get an earful. He shrugged his shoulders. "It's no big deal," he said. "People seem to like it."

That's what strikes me about the public smoking bans already in effect in more than 400 U.S. towns, cities and counties and 17 states, not to mention many foreign countries such as Ireland and England.

It's no big deal.

In fact, the popularity of no-smoking ordinances suggests that even many smokers want to clear the air.

Ireland! If that pub-loving culture can live with a smoking ban, then surely so can Wichita.

Unfortunately, the home poses the greatest secondhand health threat to children: About one in five kids grow up with a parent who smokes.

Parents, do the right thing and declare your home a smoke-free zone. If you want to smoke, fine, but as the Kansas Health Foundation ads urge — take it outside.

Our children are among those who will breathe easier, and live longer, for it.

Randy Scholfield is an Eagle editorial writer. His column appears on Fridays. Reach him at 316-268-6545 or rscholfield@wichitaeagle.com

Wichita Eagle
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169
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EDITORIALS

SECONDHAND SMOKE

Step outside

We have health laws against spitting in public places; why not one against smoking there?

Many, but not all, smokers strongly oppose laws to prevent smoking in public places such as bars and restaurants.

That's not surprising. What is difficult to understand, though, is the waffling position of the Kansas Department of Health and Environment on the issue.

After the strongest ever warning from the U.S. surgeon general that secondhand smoke can sicken or even kill non-smokers, KDHE offered a very weak response.

Surgeon General Richard Carmona said last week that the dangers of secondhand cigarette smoke were "indisputable," and nonsmoking sections in restaurants and bars weren't enough protection for consumers. Carmona calls secondhand smoke "involuntary smoking" and says it puts people at increased risk of death from lung cancer, heart disease and other illnesses.

One study done by California health officials estimated that secondhand smoke kills about 3,400 American non-smokers from lung cancer each year, 46,000 from heart disease, and 430 from Sudden Infant Death Syndrome.

"The good news is that, unlike some

public health hazards, secondhand smoke exposure is easily prevented," Carmona said.

KDHE's response: we encourage local communities to adopt laws banning smoking in public places, but we don't advocate a statewide or national law.

How can that be the position of an agency whose purpose is to protect and to improve the health of all the citizens of the state?

If secondhand smoke is killing people in Lawrence restaurants (or was before Lawrence banned it), why is it not dangerous to someone eating in a restaurant in Wamego or Holton?

Citizens in 11 Kansas cities, unwilling to wait for the state to take action, have adopted smoking bans in public places: Abilene, Bel Aire, Concordia, Fairway, Hutchinson, Lawrence, Lyons, Prairie Village, Roeland Park, Salina and Walton.

Twelve more cities are in the process of drafting ordinances. Topeka isn't one of them.

Fourteen states have statewide smoking ban laws.

Kansans — all Kansans — deserve similar protection.

169.125
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OUR VIEW

SMOKING BAN A GOOD THING

Daily Union
Junction
City, KS
Circ. 4862
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31369



Last week, state health officials said they were considering a push for a statewide ban on smoking in public places. In addition, they encouraged cities to also consider similar bans now.

The call for a no-smoking ban comes in the wake of a national report by the U.S. surgeon general on second-hand smoke. That report concluded that even a small amount of secondhand smoke can be harmful and that having separate areas for non-smokers and smokers or ventilation systems doesn't offer enough protection.

Last year, state lawmakers left a bill to ban smoking in committee because they felt it should be handled on the local level. Currently, 11 cities in the state, including Lawrence and Salina, have some type of smoking ban.

We would favor the city looking at a total ban on smoking in public places, similar to an ordinance passed in Lawrence. We think restaurants and bars should be on equal footing when it comes to smoking. Non-smokers enjoy bars and restaurants just as much as smokers, and there could actually be an increase in business, if such a ban was enacted.

While there are some who say the bar business is hurt in Lawrence by smoking ban, we haven't noticed a shortage of patrons in bars and restaurants, if they are offering the amenities that patrons want.

Locally, the Junction City/Geary County Health Department recently received a Chronic Disease Risk Reduction grant that will focus on education concerning the harms of tobacco and correcting adolescents access to tobacco in the county. A possible off-shoot of the grant could be a smoking ban request to the city commission.

However in order to have an effective ban, city and county officials should work with Riley County and Manhattan officials to install a regional no-smoking ban to allay fears of unfair competitive edges between the two areas.

Secondhand smoke should be taken seriously as a serious health issue. Governmental agencies should strongly consider a no-smoking ordinance for bars and restaurants.

The Daily Union

Kansas City Star
Kansas City, MO
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169.110

It's time for city to get off sidelines of serious health issue

KC should step up and pass smoking ban

In the last few days the Kansas City area has made tremendous strides on smoking bans. These rules protect public health and reduce health-care costs, which is why they are becoming more popular across America.

But even with recent successes, it's essential to note that a large hurdle remains to cleaner air in the region's workplaces.

The Kansas City Council and Mayor Kay Barnes have refused to revise the city's 2004 half-baked smoking ordinance. It won't take effect for the city's bars and restaurants until similar smoke-free ordinances exist for 85 percent of the area's population.

With this onerous requirement, city leaders have prolonged the exposure of thousands of people to the damaging effects of smoking.

Other cities have done better.

Last week, Independence voters overwhelmingly approved a tough ban for workplaces, including restaurants and bars.

Lee's Summit voters endorsed a ban on smoking in all bars and restaurants, overriding a weaker ordinance endorsed by elected officials.

A pleasant surprise came in Overland Park, where Mayor Carl Gerlach and other politicians for months had resisted considering a smoke-free law for the area's second-largest city. But a recent compromise with the Kansas Restaurant and Hospitality Association led to swift City Council passage last Monday of a ban that includes bars and restaurants. It will take effect in January 2008.

Given recent events, the Kansas City Council needs to move forward on a no-smoking ordinance for all restaurants and bars.

Barnes led the charge for the unfortunate 85 percent requirement two years ago. Leadership on this issue needs to come from the five council members running for mayor in 2007: Becky Nace, Jim Glover, John Fairfield, Chuck Eddy and Alvin Brooks.

Garden City
Telegram
Garden City, KS
Circ. 9139
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Healthy move

110-169-125
City sets example
with smoking ban.

Garden City has taken an important step toward better health.

The City Commission's unanimous vote Tuesday to ban smoking in public places was a welcome move that will protect citizens and workers alike from the irrefutable dangers of secondhand smoke.

Commissioners did, however, choose to exclude private offices in the ordinance, which doesn't make sense if a goal was to protect workers. Curtis Clark, director of the Finney County Health Coalition, rightly criticized that exclusion as tantamount to picking and choosing which workers to protect.

But Clark, who also said "I have a hard time being celebratory," shouldn't consider the ordinance a failure.

It is indeed something to celebrate.

To be enacted Jan 8, 2007, the ordinance would prohibit smoking in all restaurants, bars, private clubs/fraternal organizations, educational facilities and public seating areas such as bleachers.

Along with protecting nonsmokers in those places from secondhand smoke that

causes cancer, heart disease and other serious ailments, the ban promises to protect the vast majority of workers.

The ordinance isn't perfect, but is a positive step — and one Finney County elected officials should follow if they value good health.

But some Finney County commissioners have suggested they'd reject the notion of such a ban, rather than taking the much more difficult, yet responsible step of protecting workers and defending the right of all nonsmokers to breathe clean air.

It's no surprise that many Garden City residents also oppose the smoking ban. They'll no doubt exercise their right to protest with a petition drive to put the ordinance to a public vote.

In the meantime, Garden City is set to join more than a dozen Kansas cities — so far — that have enacted smoking bans. Those communities will serve as models for others.

The City Commission deserves praise for proving Garden City is a progressive community that values local health — a move that promises to make the city and its establishments even more inviting to others.

Basehor
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Bonner
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OURVIEW 169-110 What are we waiting for?

Time to move on smoking ban

If such a thing is possible, last week's Surgeon General's report makes even more urgent the need to come to grips with the hazards of secondhand smoke.

In his latest report released June 27 to great fanfare, U.S. Surgeon General Richard Carmona made the point that no level of secondhand smoke can be considered safe. He declared an end to the debate about the hazards of secondhand smoke.

"The science is clear: secondhand smoke is not a mere annoyance but a serious health hazard," he said.

The surgeon general's advice to nonsmokers was blunt: "Stay away from smokers," he said.

It's not as if the report contained any new data. It is merely a compilation of the best research on the topic since the surgeon general's last report in 1986, which found — guess what? — that exposure to secondhand smoke increases nonsmokers' risks of lung cancer and heart disease.

The report says more than 126 million Americans continue to be exposed to secondhand smoke in homes, vehicles, workplaces and public places.

According to studies by the California Environmental Protection Agency, exposure to secondhand smoke causes approximately 3,400 lung can-

cer deaths and 22,700 to 69,600 heart disease deaths annually among U.S. nonsmokers.

A U.S. Environmental Protection Agency study found that secondhand smoke exposure was responsible for an estimated 150,000-300,000 new cases of bronchitis and pneumonia in children aged less than 18 months.

One place where children are especially vulnerable to exposure to secondhand smoke is in the homes of parents or caregivers who smoke. Carmona encouraged parents who cannot kick the habit to smoke outdoors — never in a home or in a car with children inside. Opening a window is not enough, he said.

And so, in the face of such overwhelming evidence, how does government, at every level, react? It dithers. Congress can no more bestir itself to act on this than it can on anything else. State governments defer to local municipalities. And too many local government are so fearful of controversy that they cave in to restaurant and bar owners' misstated fears that customers will desert them. (Experience and research seem to point in the opposite direction: receipts actually increased after New York City banned smoking in bars and restaurants, and a study conducted earlier this year for the Johnson County Commission suggested that people would eat out more often if they didn't have to run the smokers' gauntlet in local eateries.)

As long as it remains legal to purchase and use tobacco, government can do little, of course, to attack the problem of smoking in private homes. But it can relatively easily deal with the problem of smoking in public places, and it should. There is no reason to wait. Our cities should draft and pass ordinances prohibiting smoking in public places — certainly in bars and restaurants to start — but preferably in all public places. In the face of such demonstrated health risks, there is simply no excuse to wait any longer.

Coffeyville
Journal
Coffeyville, KS
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34114



169-110-33
Kansas should follow
neighboring Oklahoma
with smoke-free laws

Oklahoma takes the edge over Kansas with its high dollar tourism promotions, lower gasoline taxes and horse race tracks that make ours look like stick horses on an old tractor tire.

Add another one: You can't smoke cigarettes in Oklahoma restaurants.

That makes the Okies taller in every regard: General intelligence, health awareness, environment concern and, of course, their eateries smell better than those on the Kansas side.

An old wives' tale among restaurateurs goes something like this: "We will lose business if we don't allow smoking in our cafes and restaurants."

That saying has been proven false by Oklahoma patrons of eating establishments. Not only has business increased in smoke-free restaurants, the amount spent per customer has gone up, too.

With casual smoke as a proven cause of cancer, there should be no doubt about the future of smoking in Kansas restaurants. It should be like Oklahoma -- none allowed by anyone of any age at any time.

For this state to hang on to smelly air and stagnant thinking in the name of saving the dining business is a cop-out. It simply doesn't line up with provable reality.

The city of Lawrence is far out in front of other Kansas communities, making it easier for non-smokers to shop, dine and socially drink without choking on the smoke that others belch out. Los Angeles, too, has stiff laws controlling where smoking can take place. Other states and communities are sure to follow.

Once considered a cool habit, smoking has long bypassed that reputation, now becoming the dirge of those who simply want to breathe clean air, keep their clothes from smelling like Marlboros and, most importantly, keeping cancer cells out of their lungs.

Following Oklahoma's smoke-free restaurants law would be a good start for the state of Kansas.

Rudy Taylor - Editorial writer

Rudy Taylor can be contacted at: <chronicletaylors@cox.net

Gardner News
Gardner, KS
Circ. 1890
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6/30/2006
33243



Time to ban

The issue: Smoking ban in public places, including restaurants and bars

Our view: There's no excuse for communities to not institute a ban as a result of the U.S. Surgeon General's announcement

169.110
Now that U.S. Surgeon General Richard Carmona officially declared dead, so-to-speak, the debate about whether second-hand tobacco smoke is harmful to non-smokers, it will be interesting to see how many communities will take up the smoking ban issue and how fast it will take for them to pass local ordinances.

"The debate is over," Carmona said. "The science is clear: Second-hand smoke is not a mere annoyance, but a serious health hazard."

Period.

A 670-page study revealed what he termed as "overwhelming scientific evidence" that second-hand smoke causes "tens of thousands" of deaths each year because it causes heart disease, lung cancer, and a list of other serious illnesses. The report also says that separate smoking sections and ventilation systems don't protect non-smokers. Carmona warned non-smokers to stay away from smokers because even a short period of time around the second-hand smoke can cause asthma attack, make blood more prone to clot, damage heart arteries and initiate cell damage that, over time, can cause cancer.

We've urged Gardner and Spring Hill city governments to ban smoking in public places, which includes parks, restaurants, and bars. Spring Hill has taken up the issue in the past. Gardner has yet to even discuss it.

The "businesses-will-lose-customers-and-money" argument already as been proven false. The fact is, that restaurants and bars with no-smoking policies have seen an increase in customer business.

And the "government-shouldn't-interfere-with-private-businesses" diatribe is hypocritical when being spouted by any elected official: The precedent of government interference in private business happened a long time ago with building codes, customer capacity limits, ordinances for hours of operation, and what kinds of materials can and cannot be used in construction.

Government already intrudes in private lives when restricting a homeowner of what he can or cannot do



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on his own property such as not allowing vehicles to be parked on the grass next to the house or ordering the driveway to be paved rather than graveled.

So when elected officials declare that government shouldn't enact a smoking ban because government they don't want government interfering with private businesses, they are nothing more than hypocrites.

And in doing so, they are risking the lives of innocent constituents, including the community's children.

It's time for Gardner and Spring Hill council members to stop risking the lives of their citizens. It's time for the communities to institute complete smoking bans now.

• *Rhonda Humble, Chuck Kurtz and Mark Taylor comprise the newspaper's editorial board.*

Testimony on Senate Bill 37
Crime and Punishment Relating to Smoking in Indoor Public Places
To
Senate Judiciary Committee

Presented by James Hamilton, Jr., MD, FACS
Kansas Cancer Partnership
Commission on Cancer State Chair, Kansas
January 17, 2006

Chairman Vratil and members of the Senate Judiciary Committee, my name is Dr. James Hamilton and I am here today representing the Kansas Cancer Partnership as Chairman of the Commission on Cancer for the State of Kansas. Thank you for allowing me this time today regarding Senate Bill 37, which proposes to enact a statewide smoking ban.

The Kansas Cancer Partnership supports cancer prevention and control and this legislation addresses tobacco and second hand smoke as the health risk that it is to Kansas citizens statewide.

Nearly 12,000 Kansans are diagnosed with cancer each year and 5,000 will die from the disease. Cancer costs the state nearly \$1.6 billion each year in direct medical costs and the cost of lost productivity due to illness and premature death. As a doctor and surgeon, I can also testify to the personal toll it takes on my patients and their families. Prevention, early detection and quality treatment are keys to reducing the burden of cancer in the state. However, this legislation can provide a direct health benefit to every Kansan- those who are now currently exposed to second hand smoke in public places.

Many cancers are preventable with sound health initiatives and awareness of factors that contribute to the disease. The Kansas Cancer Plan promotes tobacco prevention, cessation and elimination of nonsmokers' exposure to second hand smoke. Smoking causes most lung cancers and tobacco contributes to other cancers of the mouth and oral cavity. Children are particularly vulnerable to illnesses caused by exposure to secondhand smoke. Unfortunately, we know that about 500 Kansas children begin smoking each month.

The members of the Kansas Cancer Partnership, which currently number nearly 140 individuals representing public and private entities across that state, support cancer risk reduction for Kansas and its citizens. The group supports an increase in community smoke-free policies, excise taxes on cigarettes and tobacco products and an increase in tobacco cessation programs.

A copy of the Kansas Comprehensive Cancer Control and Prevention Plan was delivered to each of your offices last Friday. I would urge you to take a look at this Plan and realize the great work that is already being accomplished by the members of the Partnership.

There is some good news—cancer rates are dropping in Kansas. However, they are dropping at only half the rate they are nationally. Kansas needs to take action to address this problem. I believe that this legislation can make a difference in helping to prevent and reduce cancer in the state and I urge you to vote in favor of this lifesaving legislation.



Thank you and please let me know if you have any questions.

Senate Judiciary

1-17-07

Attachment 8

Kansas Academy Of Family Physicians



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*The largest medical
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Kansas.*

January 17, 2007

To: Senate Judiciary Committee
From: Dennis D. Tietze, MD
Re: SB 37

Sen. Vratil and Members of the Senate Judiciary Committee:

Thank you for this opportunity to present testimony on Senate Bill 37 on behalf of the Kansas Academy of Family Physicians (KAFP). My name is Dennis Tietze and I am a family physician here in Topeka. I have been honored to serve as a past president of the KAFP. Our organization has over 1,500 members across the state, of which more than 890 are practicing physicians, 155 are resident-physician members, and the others are medical students and retired members.

I am writing to urge you to support SB 37, an act related to smoking. The very sickest people that we physicians see in our offices, emergency rooms, and in hospitals across Kansas are the people who have damaged their hearts, blood vessels, and lungs through tobacco use.

1. Tobacco use is the leading preventable cause of death in Kansas.
 - Nearly half a million people die each year of smoking-related causes in the U.S. More people die of smoking related diseases than the combined deaths from alcohol, cocaine, heroin, suicide, homicide, motor vehicle accidents, and AIDs. Tobacco use is responsible for one in five deaths.
 - In Kansas, 3,900 adults die each year from their own smoking.
2. Secondhand smoke is the third leading cause of preventable death in this country.
 - Secondhand smoke kills 53,000 nonsmokers in the U.S. each year.
 - Secondhand smoke kills 290 – 520 Kansans each year.
 - The 2006 U.S. Surgeon General's Report on The Health Consequences of Involuntary Exposure to Tobacco Smoke concluded that there is "no risk-free level of exposure to secondhand smoke." Even if you can't smell it, secondhand smoke is harmful. This report was a watershed event in our understanding of the effects of secondhand smoke.
 - For every eight smokers who are killed by tobacco, one nonsmoker dies from secondhand smoke as well, through cancer, heart attack and heart disease, stroke, lung disease and other diseases.

The mission of the Kansas Academy of Family Physicians is to promote access to and excellence for all Kansans through education and advocacy for family physicians and their patients.

Senate Judiciary
1-17-07
Attachment 9



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- Nonsmokers regularly exposed to secondhand smoke suffer death rates 30% higher than those of unexposed nonsmokers.
 - Secondhand smoke exposure to a mom is as damaging to her fetus as it would be if the mother were inhaling the smoke directly from a cigarette.
 - Regular exposure to secondhand smoke heightens the chance of stroke by 50%.
 - Employees who work in smoke-filled businesses suffer 25-50% a higher risk of heart attack.
 - For children, exposure to secondhand smoke results in more than 10,000 annual cases of low birth weight, more than 2,000 cases of SIDS (sudden infant death syndrome), more than 8,000 new cases of asthma, and as many as 1 million cases of exacerbated asthma.
3. Tobacco and secondhand smoke costs the state millions each year, and are the leading preventable health care costs in Kansas.
- \$927 million in health care costs in Kansas each year are directly caused by tobacco use.
 - \$38.9 million in health care costs in Kansas each year are directly caused by exposure to secondhand smoke.
 - \$196 million each year of the Kansas Medicaid program's total health expenditures are caused by tobacco use.
 - Each household in Kansas pays \$582 / year in state and federal taxes to cover smoking-caused government costs. These costs total \$624.2 million to Kansans yearly.
 - \$863 million / year is lost in Kansas due to smoking-caused productivity losses.
 - Each pack of cigarettes pack sold in Kansas cost \$11.66 in smoking-caused health costs and productivity losses.
4. Clean indoor air laws help people quit, smoke less & improve their health, especially impacting hospitality workers.
- Food service workers have a 50% greater risk of dying from lung cancer than the general population, in part, because of secondhand smoke exposure in the workplace.
 - Smoke free laws:
 - Prompt more smokers to try to quit
 - Increase the number of successful quit attempts
 - Reduce the number of cigarettes that continuing smokers consume
 - Discourage kids from ever starting to smoke
 - Help protect restaurant and bar employees and patrons from the harmful effects of secondhand smoke

The mission of the Kansas Academy of Family Physicians is to promote access to and excellence in health care for all Kansans through education and advocacy for family physicians and their patients.



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- The Surgeon General's 2006 Report on The Health Consequences of Involuntary Exposure to Tobacco Smoke concluded that, "workplace smoking restrictions lead to less smoking among covered workers". The report cited numerous studies that found "an association between workplace smoking policies, particularly more restrictive policies, and decreases in the number of cigarettes smoked per day, increases in attempts to stop smoking, and increases in smoking cessation rates."
- The Surgeon General's 2000 Report on Reducing Tobacco Use found that smoke free laws "have been shown to decrease daily tobacco consumption and to increase smoking cessation among smokers."
- Smoke-free workplaces are associated with a 5% to 6% decline in smoking prevalence and an average reduction in cigarette consumption of 2.3 cigarettes per day per smoker.
- Smokers who worked in communities with strong ordinances were 38% more likely to quit smoking than smokers in communities with no ordinance.
- Adolescents who worked in a smoke-free workplace were found to be 32% less likely to smoke than adolescents who worked in a workplace with no smoking restrictions.

5. Suggested amendment to level the playing field

- We urge you to consider removing the exemption for private clubs. Olathe has an ordinance that exempts private clubs but not bars. Since Olathe went smoke-free on Nov. 16, at least six bars have changed to private clubs so they may allow smoking, and one other has filed paperwork to change.
- Allowing such an exemption promotes an unfair playing field. We urge you to remove the exemption for private clubs to level the playing field.

Leveling the playing field is one of the big advantages of a statewide law, as many states across the U.S. are finding when they adopt such bans. That effort is sweeping through many states and Kansas communities. Adoption of a statewide ban would promote good health and fairness across the board.

For all these reasons we urge you to support SB 37, and to consider strengthening it by removing the exemption for private clubs. Thanks again for this opportunity to provide our testimony. I'd be happy to answer questions.

Sincerely,

Dennis D. Tietze, MD
Past President



THE TOLL OF TOBACCO IN KANSAS

Tobacco Use in Kansas

- High school students who smoke: 21% [Girls: 20.1% Boys: 21.7%]
- High school males who use smokeless tobacco: 17.4%
- Kids (under 18) who try cigarettes for the first time each year: 12,100
- Additional Kids (under 18) who become new regular, daily smokers each year: 3,400
- Packs of cigarettes bought or smoked by kids in Kansas each year: 6.9 million
- Kids exposed to second hand smoke at home: 161,000
- Adults in Kansas who smoke: 17.8% [Men: 18.9% Women: 16.8% Pregnant Females: 12.7%]

Nationwide, youth smoking has declined significantly since the mid-1990s, but that decline appears to have slowed or even reversed. The 2005 Youth Risk Behavior Survey found that the percentage of high school students reporting that they have smoked cigarettes in the past month increased to 23 percent in 2005 from 21.9 percent in 2003. Adult smoking has been decreasing gradually over the last several decades, and 20.9 percent of U.S. adults (about 45 million) currently smoke.

Deaths in Kansas From Smoking

- Adults who die each year in Kansas from their own smoking: 3,900
- Annual deaths in state from others' smoking (secondhand smoke & pregnancy smoking): 290 to 520
- Kansas kids who have lost at least one parent to a smoking-caused death: 2,300
- Kids alive in state today who will ultimately die from smoking: 54,000 (given current smoking levels)

Smoking, alone, kills more people each year than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined. For every person in Kansas who dies from smoking approximately 20 more state residents are suffering from serious smoking-caused disease and disability, or other tobacco-caused health problems.

Tobacco-Related Monetary Costs in Kansas

- Annual health care expenditures in the State directly caused by tobacco use: \$927 million
- Annual health care expenditures in Kansas from secondhand smoke exposure: \$38.9 million
 - State Medicaid program's total health expenditures caused by tobacco use: \$196.0 million
- Citizens' state/federal taxes to cover smoking-caused gov't costs: \$624.2 million (\$582/household)
- Smoking-caused productivity losses in Kansas: \$863 million
- Smoking-caused health costs and productivity losses per pack sold in Kansas: \$11.66

The productivity loss amount, above, is from smoking-death-shortened work lives, alone. Additional work productivity losses totaling in the tens of billions nationwide come from smoking-caused work absences, on-the-job performance declines, and disability during otherwise productive work lives. Other non-health costs caused by tobacco use include direct residential and commercial property losses from smoking-caused fires (about \$400 million nationwide); and the costs of extra cleaning and maintenance made necessary by tobacco smoke and tobacco-related litter (about \$4+ billion per year for commercial establishments alone).

Tobacco Industry Advertising and Other Product Promotion

- Annual tobacco industry marketing expenditures nationwide: \$15.4 billion (\$42+ million per day)
- Estimated portion spent in Kansas each year: \$125.9 million

Published research studies have found that kids are three times more sensitive to tobacco advertising than adults and are more likely to be influenced to smoke by cigarette marketing than by peer pressure, and that one-third of underage experimentation with smoking is attributable to tobacco company marketing.

Kansas Government Policies Affecting The Toll of Tobacco in Kansas

- Annual State tobacco prevention spending from tobacco settlement and tax revenues: \$1.0 million [National rank: 43 (with 1 the best), based on percent of CDC recommended minimum]
- State cigarette tax per pack: \$0.79 [National rank: 29th (average state tax is \$1.00 per pack)]

Campaign for Tobacco-Free Kids / January 4, 2007

Sources

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Related Campaign for Tobacco-Free Kids Fact Sheets, available at:
<http://www.tobaccofreekids.org> or <http://tobaccofreekids.org/research/factsheets>.

Myths On An Indoor Smoking Ban

Steven C. Bruner MD Lawrence, Kansas brunersc@yahoo.com

Second hand smoke risks are overblown

There is no remaining debate as to the deadly effects of environmental tobacco smoke. The 2006 US Surgeon General's report "The Health Consequences of Involuntary Tobacco Smoke" (available online and very comprehensive with a 35 page executive summary and 685 pages of documentation.) estimates US deaths in 2005 from second hand smoke exposure at 49,430—3000 deaths from lung cancer, 46,000 deaths from exacerbation of coronary heart disease and 430 deaths from Sudden Infant Death Syndrome. In addition, many individuals, especially workers, suffer serious respiratory symptoms including exacerbations of asthma and COPD, chronic cough or bronchitis, chronic nasal irritation or sinusitis and chronic eye irritation or conjunctivitis. Plus, it stinks.

Tobacco smoke exposure doesn't affect non-smokers if they just choose to not frequent or work in bars and other smoky environments.

One of the great challenges facing our state and our country is the ever expanding cost of health care. In the age of global competition, it threatens the very viability of our national economy and the solvency of our governmental units. The cause of health care expenditures is illness and the most preventable major cause of illness is cigarette smoking. Economists at the University of California estimated in 1998 that the cost of treating smoking related illness paid in 1993 was \$72.7 Billion, including \$12.9 Billion paid by Medicaid, or over \$1000 for every family of four in the US. Based on the overall rise in health care expenditures, that amount would be more than doubled today. A 75 year follow-up of a population of smokers revealed that over 50% of them died of smoking related illness, and 25% of them died of such illness before the age of 65. 450,000 of them die every year in the US. We will all die, but in this day and age we don't let relatively young individuals just slip away. Rather we spend thousands, often hundreds of thousands of dollars fighting their preventable diseases.

In the 2000 US Surgeon General's report "Reducing Tobacco Use" it was determined that the two most effective governmental approaches to reduction of tobacco use (short of out-right bans on sales) were increasing cigarette taxes, which mostly affects teen age smoking, and restrictions on social and workplace smoking, which have been shown to decrease tobacco consumption in both workers and the general public by discouraging new social smokers, reducing consumption by established smokers and increasing quit rates. Some of the strongest data were leaked from Phillip Morris' internal research—"Smokers facing these restrictions consume 11-15% less than average and quit at a rate that is 84% higher than average." New York City, which passed both a cigarette tax increase and an indoor smoking ban three years ago, now has an estimated 180,000 fewer smokers.

Smoking is a major preventable risk factor for serious disease and health care expenditures which we can no longer afford. Smoking related disease may not affect all of us, but smoking related health care expenditures most certainly do. A healthy concern about taxpayer dollars dictates using the tools available to conserve them. One of the proven tools is a state-wide indoor smoking ban.

Smokers have a right to smoke their legal product anywhere they want and an indoor smoking ban infringes on civil liberties

Everyone is supportive of the widest range of freedoms consistent with the public interest, but it is axiomatic that one person's rights end where another person's begin. It is the right of a smoker to endanger his/her own health by using a substance they know is injurious, but it is not their right to pass those risks on to those around them or force others out of the marketplace in order to avoid those risks. When 25% of the population asserts a right to contaminate the common air pool in conflict with the right of 75% of the population to breathe clean air, it is clear what the position of government must be.

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Government does not have the right to control the business decisions of a private business owner, including the decision to allow smoking in their establishments.

Nonsense. Governmental regulation of business in defense of public health is a well established practice. A restaurant owner is required to refrigerate the meat he sells or he will be shut down. To quote the Kentucky Supreme Court in adjudication of the constitutionality of the Lexington, Kentucky Clean Air Ordinance: "Protection of the public health is uniformly recognized as a most important municipal function. It is not only a right but a manifest duty."

The ill effects of indoor smoking can be avoided by adequate ventilation.

To quote the Surgeon General: "The scientific evidence indicates that there is no risk-free level of exposure to second hand smoke. Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to second hand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to second hand smoke. To quote the American Society of Heating, Refrigerating and Air-Conditioning Engineers: "At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity. No other engineering approaches, including current and advanced dilution ventilation or air cleaning technologies have been demonstrated or should be relied upon to control health risks from environmental tobacco smoke exposure in spaces where smoking occurs."

An indoor smoking ban will significantly and adversely affect business in the hospitality industry resulting in decreased tax revenues.

No study of sales tax revenues from the hospitality industry from ANY location EVER has shown more than a temporary (<6 months) slump in sales tax receipts, and most have shown significant gains. New York City bar and restaurant sales taxes increased 8.7% for example. This myth was planted by the tobacco industry and rings true with bar owners who look out and see half their clientele smoking and are scared to death that they will lose them. The bar owners forget two things. 1. 75 to 80% of the population are nonsmokers, many of whom cannot or will not tolerate an environment thick with tobacco smoke. Elimination of indoor smoking will double or triple the available market for bar owners. 2. Smokers will not become nondrinkers simply because they can no longer smoke indoors. They may go to another venue if one is available, but they will not quit drinking socially. The secret is a wide geographic level playing field where all bar owners play by the same rules. Then they can have the best of both worlds and see an increase in business and an increase in their health, their workers health and their customer's health at the same time.

In Lawrence, Kansas, opponents predicted a 2.5 million dollar per year decrease in hospitality sector business should an indoor smoking ban be enacted. Instead, that sector out performed the rest of our economy by 85% in the year following the institution of our ban. Sales tax receipts for the hospitality sector went up 7.3% compared to the previous 12 months, whereas general sales tax receipts went up only 3.9%. That represented an additional \$3,728,000 in sales, an additional \$197,584 in state sales taxes and an additional \$37,280 in city sales taxes. We can indeed have a healthier population and a healthier economy at the same time.

An indoor smoking ban is better enacted on a community level rather than state wide

In addition to the rather obvious fact that all of our state's citizens deserve a healthy environment and relief from the health related costs of smoking, the one thing bar owners dread most from an indoor smoking ban is their customers taking their business to the next town. This problem is largely obviated by a state wide approach to the problem. That is why 19 states have already enacted such state wide legislation. Even the Kansas Hospitality Association, in throwing its support behind a metropolitan wide indoor smoking ban in the Kansas City area, has recognized the importance of such a level playing field.

Testimony
January 17, 2007
In support of HB 2337

My name is Kathy Bruner, I serve as the voluntary Chair of Clean Air Lawrence a grass roots organization affiliated with the other Clean Air organizations around the state of Kansas. In the last 2 years I have also worked with advocates successfully in Lee's Summit, Mo., Independence, Mo., Columbia, Mo., Olathe, Overland Park, Leawood, Fairway, Westwood, Roeland Park, and Garden City, and continue to provide support to other communities including KCMO in the adoption of comprehensive indoor smoking bans.

I was last here March 5, 2005 to speak in support of HB 2495. I am happy to return in support of HB 23. You have a better bill, and I have new data that has come about in the last 2 years., that you might find interesting and helpful in your quest.

First let me share with you that in my hometown, Lawrence, Kansas our comprehensive smoking ban is now 2 1/2 years old and the residents consider it to be the norm. They only comment when they go outside of the city and have to endure the smoking environment of the uninformed and the unfortunate. Former Mayor David Dunfield says even now he gets more positive feedback from the smoking ordinance than any other topic in his years in public office.

In the first year of our comprehensive ban, we had **16 new liquor licenses issued**. These establishments ran the gauntlet from Mom and Pop places, to chains, to gourmet dining establishments. Sales tax receipts, projected by the bar owners to go down, actually went up across the city. Sales tax receipts for the hospitality sector went up 7.3% compared to the previous 12 months, and the general sales tax receipts went up only 3.9%. That increase represented an increase in \$3, 728,000, and an **additional \$197,584 in state sales taxes** and an additional \$37,280 in city sales taxes. So it might be said that the smoking ban in Lawrence has generated money for the state of Kansas.

Since I spoke with you last, the Surgeon General's office has re issued it's report first done in my youth, 40 years ago, and the news is worse than ever. We cannot continue to ignore this huge public health issue, and must deal with the resulting health care costs to the public sector.

When I spoke with you 2 years ago, there were 7 states with comprehensive smoking bans, now there are 19 states with smoking bans, many cities with comprehensive bans in states that allow smoking There are many foreign countries that have adopted comprehensive smoking bans, including Ireland, and Italy. Hong Kong even went smoke free lately. This is a world wide cultural change, and it is time for Kansas to step up to the plate.

Interestingly enough, New Jersey enacted a smoking ban last April that exempted casinos as they thought it was the only way to get a ban enacted. The casino workers themselves then asked for a meeting with the Atlantic City council to let the commissioners hear the workers litany of the health concerns. In addition to the usual cases of lung cancer and heart disease from this working environment, two women who worked in the casinos flunked the nicotine test for life insurance and they had never smoked. The Atlantic City council has unanimously approved this measure on January 12, 2007 in a preliminary vote and the mayor is expected to approve the measure to take the casino floors in Atlantic City smoke free. This positive step will have a ripple effect for the good health of workers in casinos around the world.

This action eliminates the barrier that the KCMO metro council has imposed upon itself, saying they could not enact a level playing field if the local casino's allowed smoking on the gaming floors. If Atlantic City casinos can go smoke free, so can the ones in Kansas City.

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The ban in Lawrence is comprehensive, but there are a few things we have learned.

We left in exemptions for tobacco shops. Now there is a family pizza parlor in west Lawrence in a shopping mall that has a common wall with a new cigar bar. The patrons complain about the stink of cigars. Perhaps we should have said "free standing" tobacco shops and cigar bars. We do have one bar owner who has a suit against the city that is winding its way through the system, which is his right. He is the only bar owner to have taken such action and his case has been thrown out in lower courts.

In Olathe, they left in an exemption for "private clubs". Suddenly they have a number of applications for "private clubs". This movement will negate a level playing field that bar and restaurant owners are asking for. That commission was responding to the VFW who equated the service of our country to their right to smoke. Perhaps those members were not aware of a nationwide proposal by the new national VFW Commander Gary Kurpius in his inauguration speech on August 31, 2006. He stressed that as long as smoking is still permitted indoors, no one will want to join. " Many VFW members and spouses no longer attend post events because of the smoke. To have 20% of the members dictate to the entire population of VFW is "just bunk". "Some members have been quoted in the newspaper, celebrating that they have just won a great battle against government and social interference. Comrades, that is not a victory, it is a sad commentary that unfortunately paints all of us with the same brush. " He stated "The VFW's future rests with attracting new members who want to believe that the VFW is more than just a bar; and who wants to believe that the VFW is an organization that regards change as a recognition of the future and not a criticism of the past"

To avoid this problem with this state bill. I suggest you observe the sign that is over the doors to many surgical suites "KISS" Keep It Simple Stupid

Keep your bill clean, and simple, without exemptions to keep a level playing field for all concerned and in doing so avoid future conflicts. Eliminate the "Private club" provision in House Bill 23.

We celebrated our Sesquicentennial in Lawrence 2 years ago and we buried a coffin sized time capsule to be opened 50 years from now. In it we placed a copy of the Lawrence smoking ordinance and an apology to our great grandchildren of the future that it took us so long to recognize the disaster that tobacco has been to our lives and potentially on theirs.

Thank you for this opportunity to speak.
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January 17, 2007

TO: Senate Committee on Judiciary

FROM: Linda J. De Coursey
Advocacy Director – Kansas

RE: SB 37 – statewide clean indoor air

Mr. Chairman and members of the Committee:

Thank you for allowing us the opportunity to discuss SB 37. My name is Linda De Coursey, and I am with the American Heart Association. Dr. Lambert Wu, Cardiologist at Cotton-O'Neil Heart Center would have been before you today, but due to the weather planes were iced-in at the Houston airport and now he is doing double time to catch up in his patients' care. If he was here, he would say....

Involuntary smokers: Beware! Tobacco smoke is everywhere. Environmental tobacco smoke (ETS) or secondhand smoke, or involuntary smoking or passive smoking is the tobacco smoke in the air we breathe. It is estimated that as many as 126 million nonsmoking individuals are exposed to ETS and are therefore involuntary smokers by definition. Sadly many of these are children. Statistics from 2006 show that more than 46,000 adult nonsmokers died from coronary heart disease due to ETS, and even more heart-breaking were the deaths of more than 400 newborns from sudden infant death syndrome attributed to ETS...ETS is lethal. And it is time to do something about it.

Mr. Chairman and committee members, too many people forget that smoking causes cardiovascular diseases – the nation's no. 1 killer. And, it is forgotten or perhaps ignored that secondhand smoke is dangerous and deadly.

We consider this issue one of public health, and find it inexcusable that workers in restaurants, bars and other facilities are forced to inhale secondhand smoke in order to earn a living. It is clear there are significant dangers associated with exposure to secondhand smoke.

The American Heart Association will continue to support smoke-free policies that provide for 100% smoke free public places, including restaurants and bars... free of exemptions for separately ventilated rooms, size or hours of operation exemptions, or exemptions for bars or recreational establishments...one city at a time if you do not pass this bill. We want to make Kansas to make a healthier place for all its citizens, and that can happen through passage of this bill and some amending (specifically by including private clubs).

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Chairman of the Board
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Barbara Miller
Omaha, Nebraska

Peter S. Strassner
St. Louis, Missouri

Jill Sumfest, M.D.
Wichita, Kansas

Marcia Wanamaker
Des Moines, Iowa

Executive Vice President
Kevin D. Harker
Overland Park, Kansas

We have been given the second study by the Surgeon General again affirming that scientific conclusion. **There is no debate. There are no safe levels of second hand smoke.** Even the most expensive ventilation systems only remove the odor, and cannot eliminate the carcinogens in secondhand smoke that still lingering in the air.

Cigarette smoke not only harms the smokers, but those they smoke around:

- ♥ **especially** employees in establishments that allow smoking, (do you know their risk of lung cancer triples; and increases your risk of heart attack up to 50%).....AND,
- ♥ **especially** children who each year develop asthma, lower respiratory tract infections and other breathing difficulties, and with low birthweight in babies due to secondhand smoke contributing to infant mortality and health complications into adulthood.....AND
- ♥ **especially** minorities who are less likely to be covered by smoke-free policies due in part because they comprise a larger percentage of blue-collar and service industry jobs....AND
- ♥ **especially** youth and young adults who work in an environment where only 28% have the benefits of a smoke-free workplace.

Some may argue that smoke free ordinances adversely impact the economy of a community. As elected leaders, I am sure you are torn by that argument and your desire protect their citizens. Because of the studies of sales tax data from 81 localities in six states found that clean indoor air ordinances had no overall effect on revenues, I'd like to think that argument doesn't hold water. In fact, just recently a report was released a few months ago by the New York State Department of Health: The Health and Economic Impact of New York's Clean Indoor Air Act (CIAA) .

1. The law took affect in July 2003, and the report shows that second hand smoke has declined by 50 percent since the law took effect.
2. Surveys of New Yorkers and direct observations indicate overall declines by 78 percent in smoking in bars, restaurants and bowling facilities statewide.
3. Public support for the law is strong and has increased steadily over time.
4. The CIAA has NOT had an adverse financial impact on bars and restaurants. The whole 32 page document is available for your reading pleasure at:
http://www.health.state.ny.us/prevention/tobacco_control/docs/ciaa_impact_report.pdf

Closer to home, the Lawrence economy didn't collapse when all workplaces, public places, restaurants and bars went smoke free in July 2004. In fact, 16 new hospitality businesses have opened up since then. A National Public Radio report interviewed a bowling establishment and he was delighted to report his business was doing better than before. Many people who have previously avoided smoky environments now frequent these establishments – once the smoke clears.

Cardiovascular disease is the number one cause of death in Kansas and nationally. This IS a public health issue and it IS an economic issue...but not the kind you are likely to think...because health care cost for tobacco-related illnesses in Kansas are responsible for more than \$900 million a year and growing.

Many states and municipalities have passed smoke-free air laws without a negative economic impact. Elected leaders must continue to move toward a 100 percent smoke-free nation and help reduce death and disability from cardiovascular diseases and other diseases. When we come together in public, all things being equal, the least that should be expected of all of us is to do no harm to one another. It's time to do the right thing...and that's saving lives.

Again, thank you for allowing testimony on SB 37 and we would urge the committee to recommend SB 37 favorable for passage.



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To: Senate Judiciary Committee

From: Dan Morin
Director of Government Affairs

Subject: SB 37 An Act concerning crimes and punishments; relating to smoking

Date: January 17, 2007

The Kansas Medical Society appreciates the opportunity to appear in support of SB 37, which amends the current non-smoking law to prohibit smoking in any indoor area excluding private homes, tobacco related businesses, and private clubs. The Kansas Medical Society has historically supported public policies at the local, state and federal levels that protect all people from the harmful effects of tobacco smoke. And, U.S. Surgeon General Richard H. Carmona's report last year on the dangers of secondhand smoke stated the evidence is now "indisputable" that it is a public health hazard.

As an organization that sees the results that tobacco use has on people's health every day we recognize tobacco use is contrary to the mission of promoting and protecting health. It is well documented that tobacco use and health are incompatible and many patients are seen by Kansas physicians for illnesses caused or exacerbated by tobacco use. Any person observing the adverse effects that lung cancer, emphysema, and oral cancer from chewing tobacco can have on the lives of loved ones can surely empathize with those wanting to eliminate such diseases.

The American Cancer Society reports for the first time since record-keeping began in the 1930s; the number of cancer deaths nationwide has dropped. We believe these encouraging numbers come as a result of successful education programs and the enactment of smoking laws regulations. The Kansas Medical Society urges members of this committee to favorably pass out SB 37.

Thank you for the opportunity to offer these comments supporting standards to ensure a safe and healthy environment.

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Clean Indoor Air Tobacco-Free Policy Statement

June 2005

As health care providers and/or health related organizations, we recognize that secondhand smoke is classified as a Group A Carcinogen—a substance known to cause cancer in humans—by the United States Environmental Protection Agency(EPA). The Center for Disease Control and Prevention estimates that secondhand smoke causes approximately 35,000 heart disease deaths in nonsmokers each year.¹ The Center for Disease Control's new advisory that heart patients, or those at risk, avoid indoor smoke-filled environments is something we need to consider.

The statistics, in and of themselves, present evidence of an overwhelming epidemic which needs to be addressed. As local health care providers/health related organizations in the Topeka-Shawnee County community, we advocate for an atmosphere conducive to physical, mental and spiritual well-being. Therefore, we have established tobacco-free organizations-meaning tobacco use is not permitted in any of our facilities.

Furthermore, as local healthcare providers/health related organizations we support public policies at the local, state and federal levels that protect all people from secondhand smoke. Additionally, we actively support local ordinances that broaden the scope and raise the standards of current state laws to protect all persons from the harmful effects of tobacco smoke.

Communities should enact comprehensive smoke-free public and workplace laws that protect all workers and all community members from the proven dangers of secondhand smoke. All workers have the right to breathe clean air regardless of the occupation they choose. The negative effects of secondhand smoke are not exclusive to any one industry or type of employee.

***We encourage our community to enact 100%
smoke free policies for a healthier tomorrow.***

This statement is supported and advanced in a collaborative manner by the following organizations and their leaders:

Shawnee County Medical Society
Kansas Medical Society

Blue Cross and Blue Shield of Kansas
Kansas Foundation for Medical Care
Kansas Optometric Association

Stormont-Vail Regional Medical Center Medical Staff
St. Francis Health Center Medical Staff
Kansas Rehabilitation Hospital & Medical Staff
Shawnee County Community Health Center Governing Board

¹ (MMWR, Vol. 51, No. 14, 2002, CDC/NCHS)



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ELLEN CARSON, PH.D., A.R.N.P., B.C.
 PRESIDENT

THE VOICE AND VISION OF NURSING IN KANSAS

TERRI ROBERTS, J.D., R.N.
 EXECUTIVE DIRECTOR

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S.B. 37—Eliminate Smoking in Public Places
 January 17, 2007

Chairman Vratil and members of the Senate Judiciary Committee, my name is Terri Roberts, R.N., and I am here representing the KANSAS STATE NURSES ASSOCIATION (KSNA). KSNA is the professional organization for Registered Nurses, representing the more than 27,000 RN's licensed in the state of Kansas.

We are very pleased that this committee is having a hearing on Senate Bill 37. In June of 2006, U.S. Surgeon General Richard Carmona issued the federal government's scientific report, which concludes that there is no risk-free level of exposure to secondhand smoke. S.B. 37 raises a significant public policy debate about one aspect of prevention in the leading cause of preventable death, tobacco usage. Secondhand smoke, as you heard from other conferees, poses an unnecessary health risk forced upon those non-smokers who are in public places where smoking is unrestricted. Statewide smoking prohibitions have been implemented in fourteen states, and the Delaware statutes passed in 2003 is the strongest and most sought after by tobacco control advocates throughout the country (attached).

This public policy debate is about eliminating an unnecessary health risk and protecting those who don't smoke from secondhand smoke. I'm going to share with you some highlights from the California Case Study that are designed to refute arguments opponents will offer, with evidence based data.

Attached to my testimony is the Chronological Description of the Preparation and Implementation Activities following the first, a 1994 statute passed in California. The first law did not include bars and or gaming clubs, these were not added to law until four years latter, 1998. There were also substantial challenges to the state law, referendum votes and other court challenges are referenced in the list with an annotated outcome description.

First, the Health Data
The Dangers of Secondhand Smoke

During the early to mid 1990s, Californians increasingly recognized secondhand smoke as a serious threat to their health, on the job, in public places and at home. Secondhand smoke exposure was scientifically linked to lung cancer, nasal sinus cancer, chronic coronary heart disease, heart attack, exacerbation of asthma in children and Sudden Infant Death Syndrome (SIDS).² In fact, secondhand smoke was identified as America's third leading cause of preventable death.³ While exposure to secondhand smoke was a critical health hazard for all indoor employees, studies showed that food service workers, especially bar and restaurant employees, were in particular danger.

Bar employees working an 8-hour shift involuntarily inhaled amounts of smoke that were the approximate equivalent of smoking 16 cigarettes, nearly a pack. This made secondhand smoke a significant occupational health hazard for food-service workers:

THE MISSION OF THE KANSAS STATE NURSES ASSOCIATION IS TO PROMOTE PROFESSIONAL NURSING, TO PROVIDE A UNIFIED VOICE FOR NURSING IN KANSAS AND TO ADVOCATE FOR THE HEALTH AND WELL-BEING OF ALL PEOPLE.
 CONSTITUENT OF THE AMERICAN NURSES ASSOCIATION

Senate Judiciary
 1-17-07
 Attachment 14

California waitresses died from higher rates of lung cancer and heart disease than any other female occupational group and were found to have four times the expected lung cancer mortality rate and 2.5 times the expected heart disease mortality rate of any female occupation group.1

Bartenders were discovered to have rates of lung cancer higher than firefighters, miners, duct workers and dry cleaners.4

The Economic Impact is misrepresented and scare tactics are used about economic losses (jobs, revenue, etc.)

The California Department of Health Services tracked Economic indicators throughout the implementation of both aspects of their laws implementation.

Statewide Patron and Market Data: Tracking studies in 1997 and 1998 indicated that the majority of California bar patrons were non-smokers who preferred smoke-free environments. Findings included:

Although patronage patterns were unrelated to smoking status, 78% of frequent bar users and 82% of frequent restaurant users were nonsmokers. 17

Nearly 9 in 10 (87%) of adult bar patrons said that a ban on smoking in bars would increase or have no effect on their overall patronage of bars. 11

As sales tax data accumulated from 1998 forward, following the implementation of the ban in bars and gaming clubs, economic fears proved groundless. Support from business owners increased as sales tax figures for each succeeding quarter emerged from the California State Board of Equalization, showing no negative statewide economic impact from the law. The California Smoke-free Workplace Act went into effect in bars in January, 1998. Nearly 89% of all California bars were attached to restaurants at that time.

Annual Taxable Sales figures from the California Board of Equalization (BOE) for such establishments selling beer and wine and for those selling all types of liquor increased every single quarter of 1998, 1999 and into 2000. 16

Revenue data from the BOE, the only state agency that collected sales data directly from business owners also showed that:

For establishments selling beer and wine, annual sales in 1997 were \$7.16 billion dollars; annual sales in the same category for 1998 increased to \$7.6 billion and in 1999 they rose to \$8.27 billion.

For establishments selling all types of alcohol, 1997 sales were \$8.64 billion dollars; 1998 sales increased to \$9.08 billion and 1999 annual sales increased to \$9.82 billion.

An additional \$879,816,000 in sales were made in California's beer, wine and liquor serving establishments during 1998 as compared to 1997—after the California Smoke-free Workplace Act became effective for bars.

The rate of growth in beer, wine and liquor serving establishments outpaced all retail outlet taxable sales in 1998 compared to 1997 by 7.7%. In fact, in 2000, California's bars and restaurants had over 108,000 more employees than in 1995, bringing the total workforce to nearly 926,000 people for the hospitality sector.

In summary, the BOE reported increased sales tax revenues for California's smoke-free liquor licensees every quarter from January 1998 through the year 2000. Sales tax figures indicated that Taxable Annual Sales for bars and restaurants serving just beer and wine and for those serving all types of alcohol increased in 1998 over 1997 figures by more than 5%. Their sales increased again in 1999 over 1998 by more than 8% and the increases continued in 2000.

Tourism in California

Reports from the California Department of Tourism showed that smoke-free work-place laws did not have an adverse affect on visitor activity or spending, contrary to tobacco industry claims that tourists would resent California's smoke-free policies. While the California Smoke-free Workplace Act was not directly responsible for an increase in tourism to the state, the fact remained that the tourist industry flourished since the statewide ban went into effect.

Demonstrated Improvement in Employee Health

Reaction to the law from bar and restaurant employees was understandably favorable. Elated servers, bartenders, casino dealers, musicians and other hospitality industry employees declared they would never go back to smoke-filled work environments. Their high regard for the law was well founded. A 1998 University of California, San Francisco, study revealed that 59% of bartenders surveyed who had symptoms of respiratory ailments and impaired lung capacity before the law went into effect for bars showed a significant decrease in symptoms and measurably improved lung capacity just one month after the law took effect. 1

Conclusion

Research on public opinion and statewide compliance rates clearly demonstrated that support for the California Smoke-free Workplace Act and levels of compliance with the law grew from quarter to quarter between 1998 and 2001. Polls showed more than 72% of bar patrons and over 80% of the general public approved of smoke-free workplaces, including bars. In California, smoke-free environments became the accepted norm, at work, in public places, and at home

Additionally, smoke-free workplace legislation withstood repeated attacks by the tobacco industry and its front groups between 1994 and 2000. Voters delivered a clear rejection of tobacco industry propaganda when Proposition 188, attempting to overturn Labor Code 6404.5 was voted down in 1994. The tobacco industry made no progress in their lobbying efforts to halt smoke-free bars. **Subsequent attempts to limit or overturn the state's smoke-free bar law have failed. Why? Because cancer rates went down, revenues went up and public acceptance of smoke-free bars became a "social norm."**

References

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3. Reynen, D. "Statements re: California Board of Equalization Data on Eating and Drinking Permits for Three Selected Cities." California Department of Health Services, Tobacco Control Section, unpublished analysis, 8/2/96.
4. California State Board of Equalization, April 2001.
5. Biener, L. and Siegel, M. "Behavior Intentions of the Public after Restaurant and Bar Smoking Bans." *American Journal of Public Health*, 1997; 87: 204-2044.
6. California Department of Tourism, "California Travel Spending and Related Impacts 1995-1997," 1998.

Thank you.

Terri Roberts, J.D., R.N.
Executive Director, KSNA

**Eliminating
Smoking**
in Bars, Taverns and Gaming Clubs:

**The California
Smoke-Free
Workplace
Act**

A Case Study

California Department of Health Services • Tobacco Control Section
November 2001

14-4

APPENDIX D

CHRONOLOGICAL OUTLINE OF PREPARATION AND IMPLEMENTATION ACTIVITIES FOR THE CALIFORNIA SMOKE-FREE WORKPLACE ACT

Interventions

1994

- **AB 13 (Labor Code 6404.5) passed in legislature (7/94)**
- Governor signs bill into law (9/94)
- Proposition 188 "Philip Morris Initiative" defeated. (11/94)
- Materials development: AB 13 brochure, implementation kit, fact sheets etc. (11/94)
- AB 13 Information Training given in Northern and Southern CA. (12/94)
- California Smoke-Free Cities Project presentation of "The Latest on Smoking Ordinances" at Mayors and City Council Members Executive Forum (7/96)
- Survey for Bar Plan ideas: LLAs, regions, ethnic networks, grantees and voluntaries. (7/96)
- Canella Bill (AB 3037) signed by Gov. Wilson; TCS established new timeline for bar implementation plan (9/96)
- California Smoke-Free Cities Project and TCS present "Tobacco Control Regulations" to Code Enforcers' Conference, Ventura, CA (9/96)

1995

- **Labor Code 6404.5 takes effect in restaurants and other workplaces January 1, 1995.**
- Implementation Kits: sent to local lead agencies, cities, regions, voluntaries, the California Restaurant Assn., and businesses upon request.
- Mailing from League of California Cities/Smoke-Free Cities Project to city managers
- Media and PR kits developed and distributed to local lead agencies.
- Training given at League of California Cities events and annual conference.
- Spokesperson training for local media contacts throughout the state.
- California Smoke-Free Cities Project presents "The Tobacco Industry & California Smoke-Free Cities" and "Smoke-Free Cities Update: Suing the Tobacco Industry" at League of California Cities Conference, Anaheim (10/96)
- Smoke-Free Bar Workgroup Meeting, including bar owners, in large planning effort for state/local implementation (11/96)
- AB 3037 Press Release distributed by TCS announcing AB 3037 extension and support for smoke-free bars (12/96)

1997

- Anniversary Update and Press Kit Packets to local lead agencies: "One Year Later" (12/95)
- Update Packet sent to State Legislators (6/96)
- Smoke-Free Bar Implementation Plans developed and reviewed (1/97 – 5/97)
- BREATH, The California Smoke-free Bar Program (a project of the American Lung Association) is established and becomes a Proposition 99 Grantee of TCS (3/97)
- Smoke-Free Bar Brochure completed (3/97)

- Smoke-Free Bar Media Plan developed (5/97)
- First Field Poll study of California adults and smoke-free bars conducted (7/97)
- Smoke-Free Bar Focus Groups conducted for media plan (6/97)
- Social Will Index Survey used by BREATH to prioritize 'lead' cities and counties (6/97)
- First Field Poll study of California adults and smoke-free bars released (7/97)
- Plan Developed for Bar-Owner Presentations in cities and counties (8/97)
- Pilot Presentations to Bar Owners and Managers begin (9/97)
- Second Smoke-Free Bar Brochure completed and mailed to all California bar owners (12/97)

1998

- **Labor Code 6404.5 takes effect in bars and gaming clubs (1/1/98)**
- Smoke-Free Bar Implementation Trainings developed and conducted (1/98 – 9/98)
- Second Field Poll study of California bar patrons and smoke-free bars conducted (3/98)
- Field Poll of bar workers/owners conducted for program planning (3/98)
- Second Field Poll study of California bar patrons and smoke-free bars released (6/98)
- Third Field Poll study of California bar patrons and smoke-free bars conducted (8/98)
- Third Field Poll study of California bar patrons and smoke-free bars released (10/98)
- California Adult Tobacco Survey (CATS) Comparison results released (10/98)
- Curriculum for Mixology and Dealer Schools completed and distributed (11/98)

- Tourism Information collected from California Trade and Commerce Agency (11/98)
- Anniversary Communications kit developed and released (12/98)
- UCSF Bartender Health Study results released (JAMA-12/98)

1999

- Smoke-free Bar Legal Binders distributed by BREATH to law enforcers (1/99)
- Regional Law Enforcement Trainings conducted throughout California (2/99-5/99)
- Smoke-free bar policy leadership trainings developed and conducted (2/99-12/99)
- "Clearing the Air in the New Millennium" Conference (9/99)
- Annual Sales Tax Figures available from Board of Equalization (11/99)

2000

- Fourth Field Poll study of California bar patrons and smoke-free bars conducted (7/00)
- Fourth Field Poll study of California bar patrons and smoke-free bars released (10/00)
- Shasta County refers two repeat offenders to Cal-OSHA (12/00)
- Private attorneys begin Unfair Business Practices Cases in selected cities (12/00)

2001

- Cal-OSHA fines two recalcitrant bars \$54,000.00 each in Shasta County (1/01)
- Grants from Master Settlement Agreement funds for enforcement of LC 6404.5 (2/01)
- National Second Hand Smoke (ETS) Conference-San Diego, CA (5/01)



VOTERS ACROSS THE COUNTRY EXPRESS STRONG SUPPORT FOR SMOKE-FREE LAWS

The results of numerous ballot initiatives, as well as polls conducted in states and communities throughout the country, show broad voter support for smoke-free laws – both before and after these laws go into effect.

Election Results

In the November 2006 election, voters in three states embraced strong smoke-free laws and soundly rejected proposals by the tobacco industry to pass laws that would continue to allow smoking in many public places and workplaces.

- **Arizona** voters approved Proposition 201 by a 54.4 to 45.6 percent margin. The law requires that all Arizona workplaces and public places be smoke-free, including restaurants and bars. At the same time, by 57.3 to 42.7 percent, voters rejected Proposition 206, the tobacco industry's alternate smoke-free initiative, which would have allowed smoking in bars and many restaurants and rolled back existing smoke-free laws.
- **Nevada** Question 5, approved 53.9 to 46.1 percent, requires that Nevada workplaces and public places be smoke-free, with the exception of casino gambling areas and bars that do not serve food. It also gives local governments the authority to pass tougher smoke-free laws. By 52 to 48 percent, voters rejected a much weaker initiative, Question 4.
- **Ohio** Issue 5, approved 58.3 to 41.7 percent, requires that all Ohio workplaces and public places be smoke-free, including restaurants and bars. By 64.3 to 35.7 percent, voters rejected Issue 4, the tobacco industry's fake smoke-free initiative.

Previous elections also demonstrate public support for smoke-free laws.

- In November 2005, **Washington** state voters overwhelmingly approved Initiative 901, which prohibited smoking in all workplaces, including restaurants and bars. The measure won with 63 percent of the vote, including majority support in every county across the state.
- In November 2002, **Florida** voters approved the statewide smoke-free law by a margin of 71 percent to 29 percent.

Post Implementation Surveys

- By more than a two-to-one margin (65 percent to 32 percent), **Colorado** residents feel that the statewide smoke-free law should remain in place. A 56 percent majority of residents also noted that Colorado's law prohibiting smoking in public places made going out more enjoyable (26 percent said it made no difference while just 18 percent said the law made going out less enjoyable). (Survey USA survey of 500 randomly selected state residents ages 18 and older conducted for KUSA-TV Denver 10-06).
- In a survey conducted just days after **New Jersey's** smoke-free law went into effect, 70 percent of New Jersey residents indicated that they favored the new law, with 61 percent *strongly* favoring the Smoke-Free Air Act. (Monmouth University Polling Institute survey of 803 randomly selected state residents ages 18 and older 4-17-06 to 4-20-06).

- An overwhelming majority of **Vermont** voters (82 percent) support the state law prohibiting smoking in all workplaces, with 73 percent expressing strong support. Only 14 percent oppose the smoke-free law. (Mellman Group survey of 400 Vermont voters 1-24-06 to 1-26-06).
- While there has always been strong support for the smoke-free law in **New York** state, in 2005 support for the Clean Indoor Air Act reached its highest level, with 80 percent of adults favoring the policy, including between one-third and one-half of all smokers. (New York ATS data for 2005, reported in *The Health and Economic Impact of New York's Clean Indoor Air Act*, New York State Department of Health - July 2006
http://www.health.state.ny.us/prevention/tobacco_control/docs/ciaa_impact_report.pdf).
- A year after **Massachusetts** implemented a law prohibiting smoking workplaces, including restaurants and bars, a poll found that more than three out of four residents (76 percent) supported the smoke-free law, with 68 percent expressing strong support. Just 22 percent oppose the law. (Poll of 400 MA adults conducted by KRC/Communications Research for the State House News Service 7-20-05 to 7-23-05).
- In **California**, 90 percent of adult residents, including 75 percent of smokers, approve of the state's smoke-free workplace law. (Field Research Corporation survey of 1,701 California adults September 2004).
- A poll of **Maine** residents found strong public support for the state's smoke-free law. Nine months after the law went into effect, a survey found that 76 percent of Maine residents (including 54 percent of smokers) support the law making all bars, taverns, lounges, and pool halls smoke-free. (Critical Insights survey of 600 Maine residents 9-10-04 to 9-23-04).
- In **Connecticut**, 85 percent of voters support the new law prohibiting smoking inside all workplaces in the state, including offices, restaurants and bars. Just 14 percent oppose the law. (Global Strategy Group Survey of 400 voters in Connecticut 8-28-04 to 8-30-04). Although the survey questions were not identical (so the results cannot be compared directly), a poll conducted before the law was enacted found that 64% of Connecticut voters would support "a total ban on smoking in restaurants and bars." (Quinnipiac University survey of 1,239 Connecticut voters, 4-28-03 to 4-28-03,
<http://www.quinnipiac.edu/x5859.xml>).
- A March 2004 poll of **New York City** voters found that three out of four voters supported the law. By a margin of 75 percent to 24 percent, New York City voters supported the City's smoke-free workplace law, a five-point increase in popularity since August 2003 (70 percent support, 27 percent oppose). The March 2004 survey came one year after the city passed their smoke-free law. (Global Strategy Group Survey of 500 voters in New York City 3-21-04 to 3-22-04).
- Nearly a year after **Delaware** implemented a law prohibiting smoking in all workplaces, including restaurants, bars and casinos, a poll found that more than three out of four Delaware voters (77 percent) supported the smoke-free workplace law, with 62 percent expressing strong support. (Mason Dixon survey of 625 DE voters 10-24-03 to 10-27-03).
- A survey conducted in September of 2003 (more than one year after the law went into effect) found that 75% of **Florida** voters supported the law with just 25 percent opposing the law (Mason Dixon survey of 625 FL voters 9-25-03 to 9-27-03).
- Residents of **Minnesota** communities that implemented smoke-free policies in restaurants and bars in the spring of 2005 strongly support the new laws. In surveys conducted nearly one year after the laws went into effect, support for the ordinances exceeds 70 percent in all of the communities surveyed: Hennepin County (75 percent), Bloomington (73 percent),

Golden Valley (81 percent), Minneapolis (76 percent) and Beltrami County (72 percent). (Mellman Group Survey of residents of Beltrami and Hennepin counties and the cities of Minneapolis, Bloomington and Golden Valley March 2006).

- By more than a two-to-one margin (68 percent to 29 percent), **Madison, Wisconsin** voters favor the law prohibiting smoking in most public places, including restaurants and bars. (Mellman Group Survey of 400 Madison voters 8-20-05 to 8-23-05).

Other Surveys

- By a four-to-one margin (76 percent to 19 percent), **Pennsylvania** voters favor a statewide law that would prohibit smoking all workplaces, including restaurants and bars. (Global Strategy Group survey of 505 Pennsylvania voters 5-9-06 to 5-14-06).
- In **Illinois**, 68% of voters favor a "statewide ban on smoking in restaurants, bars and other public indoor places." (Research 2000 survey of 800 likely voters conducted 3-6-06 to 3-8-06 for Post-Dispatch and KMOV-TV (Channel 4)).
- By a margin of more than four-to-one (79 percent to 18 percent), **New Hampshire** voters support a statewide law prohibiting smoking inside all workplaces, including restaurants and bars. (University of New Hampshire Survey Center survey of 402 registered NH voters 1-20-06 to 1-26-06).
- An overwhelming majority of **Hawaii** voters (85 percent) support a statewide law to prohibit smoking in all enclosed public places including workplaces, public buildings, offices, restaurants and bars. (Ward Research, Inc. survey of 605 registered Hawaii voters 10-28-05 to 11-5-05).
- In **Maryland**, nearly 7 out of 10 voters (69 percent) favor a law smoke-free law that would cover restaurants and bars. Just 30 percent oppose the law. (Gonzales Research & Marketing Strategies survey of 815 registered MD voters 10-17-05 to 10-21-05).
- In a survey conducted soon after **Montana** passed a smoke-free law, 71 percent of Montana voters said that they approved of the law while just 25 percent opposed the law. The first phase of the law went into effect October 1, 2005. The state's bars and casinos will become smoke-free in 2009. (Mason Dixon Polling & Research/Lee Newspapers survey of 625 registered Montana voters 5-23-05 to 5-25-05).
- Two-thirds of **Colorado** voters (66 percent) favor a law that would prohibit smoking in all indoor public places, including workplaces, restaurants, bars and casinos. (Harstad Strategic Research, Inc. survey of 502 Colorado voters 4-5-05 to 4-10-05).
- By nearly a three-to-one margin (71 percent to 25 percent), **Iowa** voters would favor a local ordinance in their community that would prohibit smoking in most indoor public places and workplaces, including restaurants and bars. More than half of voters (57 percent) strongly favor a local smoke-free ordinance. (QEV Analytics survey of 500 Iowa voters 1-21-05 to 1-23-05).
- A survey of **Rhode Island** voters found that 72 percent support a law prohibiting smoking inside all workplaces in the state, including offices, restaurants and bars. Just 25 percent would oppose such a law. The survey was conducted prior to the state's enactment of a comprehensive smoke-free law. (Mellman Group Survey of 500 RI voters 1-15-04 to 1-18-04).

- Nearly seven out of ten **Houston, Texas** residents (68 percent) favor expanding the city's smoke-free ordinance to prohibit smoking in all workplaces, including offices, restaurants and bars. (Baselice & Associates survey of 502 Houston adults 8-10-06 to 8-13-06).
- More than three out of four **Mecklenburg County, North Carolina** voters (76 percent) support laws in their local community that would make offices, restaurants, bars and other workplaces smoke-free. (Clark & Chase Research survey of 500 Mecklenburg County NC voters July 2006).
- By more than a three-to one margin (75 percent to 23 percent), **St. Cloud, Minnesota** voters support an ordinance prohibiting smoking in all workplaces. The survey also found strong support for a smoke-free workplace ordinance in the surrounding communities of Sauk Rapids (78 percent), Sartell (79 percent) and St. Joseph (74 percent). (Mellman Group survey of 800 voters in the St. Cloud region 6-06 to 7-06)
- By a margin of 70 percent to 25 percent, **Charleston, South Carolina** residents would support a city law prohibiting smoking inside all workplaces, including restaurants and bars. (University of South Carolina Institute for Public Service and Policy Research survey of 618 Charleston SC residents conducted 11-10-05 to 12-14-05).
- A large majority of **Chicago** voters – 60 percent – favor a comprehensive smoke-free ordinance which includes restaurants and bars, compared to just 36 percent who oppose the proposal. (Fako & Associates survey of 601 registered Chicago voters 8-20-05 to 8-23-05).
- Nearly three out of four **Washington DC** voters (74 percent) favor a law that would prohibit smoking in all indoor workplaces, including offices, restaurants, and bars. (Lake Snell Perry & Associates survey of 502 likely DC voters 12-15-04 to 12-21-04).
- A 2002 survey of **California** bar owners, managers, assistant managers and bartenders found overwhelming support for the state's smoke-free bar law, with more than eight in ten bar managers and employees (83 percent) saying they think the smoke-free workplace law protects their health and the health of other bar employees, and 77 percent of bar managers and employees saying that complying with the law has been "very" or "fairly" easy. (Field Research Corporation, "Bar Establishment Survey," conducted September – October 2002 for California Department of Health Services (CDHS)).

Campaign for Tobacco-Free Kids, November 13, 2006

14-10

Testimony for the Senate Judiciary Committee
Lisa Benlon, Leg/Government Relations Director
American Cancer Society
Re: **SB 37**-Statewide Smoke-free Bill



Chairman Vratil and Committee Members,

I have traveled throughout the state of Kansas as various cities discuss this issue. There are currently 17 cities in Kansas with smoke-free laws and nearly that many again where the city staff or an organized group of citizens are working to make the city smoke-free. The state is not treading uncharted waters in supporting state-wide smoke-free bill. Twenty one U.S. states have passed statewide smoke-free laws.

Being from a health organization, I could bore you with statistics due to second-hand smoke. I will simply say all workers and patrons should be afforded the ability to breathe clean air, free from the 4,000 chemicals and more than 60 carcinogens in second-hand smoke. Second-hand smoke is a proven cause of lung cancer, heart disease and other serious illnesses.

An argument sometimes used by the opposition is people can choose where to work. That is not always the case. High school and college students often work in the hospitality industry while they are working on their degree. They don't have the luxury of choosing a smoke-free environment in which to work. No one should have to endure such health risks in order to earn a paycheck.

Hard economic data has shown smoke-free laws do not harm sales or employment in restaurants and bars. Often, these laws have a positive impact. These findings have been corroborated by scientific studies in jurisdictions from New York to Texas to California.

When we think about economic issues surrounding smoke-free workplaces, even though research concludes revenue issues are often positive, it goes beyond that... Economic costs can be found in the time off work of employees due to smoke-related illnesses. It can be found in health insurance policy costs for employers and employees. And, it can be found in the cost of building maintenance to continually clean the residue left from smoking.

I have provided two hand outs. One is from the Greater Kansas City Chamber of Commerce. On page 3, I have highlighted their analysis of second-hand smoke. The other is statistics that show the toll of tobacco on Kansas. The statistics are all interesting, but a couple that stand out:

- Annual deaths in Kansas from others' smoking: 290-520
- Annual health care expenditures in Kansas from secondhand smoke exposure: \$38.9 million

You, as members of the Kansas legislature, have not only an opportunity but a responsibility to set basic safety standards for citizens and all those who visit this great state. The American Cancer Society stands firm on our focus on the health of Kansas workers and citizens. Therefore, I ask you to enact SB37.



NATIONAL AND INTERNATIONAL NEWS AFFECTING LOCAL BUSINESS

Economic Decline Starts to Hurt Vendors of “Small Luxuries”

When the economic history of the last decade is written the small luxury vendors will play a prominent role. A large number of business ventures grew up around the concept of spending a little more for a product in order to enjoy the status it brings or to soak the ambience that surrounds its delivery. The best know examples of these concepts have been the \$4 cup of coffee at Starbucks, the foodie experience at Whole Foods or Dean and DeLuca or the home furnishings provided by Crate and Barrel or Pottery Barn. All of these brands are starting to suffer in the marketplace as people are being forced to reduce their expenditures to keep up with the price of fuel for their homes and cars or to pay higher bills for medical care or education. The jumps in prices have been hitting the solid middle income consumer hard and the result has been a withdrawal of some of the discretionary spending that has been fueling a whole genre of retail and service outlet. Each of the companies listed above along with many others in this category are going to miss Wall Street expectations and in some cases the miss will be significant. This will lead to an overall decline in their stock value and may well impact their growth plans. Assuming that the economic slowdown continues, these businesses will be forced to make some serious adjustments to weather the coming storm and analysts are already busy suggesting just what that course of action might be.

Analysis: Traditionally there are four strategic moves that tend to follow an erosion of a company's core market. The first is to strip as much cost out of the operation as possible. This will mean reduced labor forces, pressure on suppliers and probably reduced marketing. The second response is to attempt to win some new consumers with different product offerings. There will be both downmarket moves and upmarket moves as these businesses seek the most natural adjustment. Starbucks is likely to try to find ways to bring consumers in who balk at \$4 lattes while Dean and DeLuca will likely aim at even higher spending clientele with more exclusives and more service. The third strategy is to shrink and withdraw from marginal markets which are failing to meet expectations. Patience will be thin for non-performers and most will be given a matter of weeks to execute a turnaround. The four strategies will be based on taking market share from a competitor through tactics that range from discounts to aggressive marketing. This is more than likely to be the case with restaurants and other service outlets. Regardless of which of these strategies are employed or combined, the future of this category of business is a little murky and there will doubtless be some casualties in the months and years to come. -CK



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(SGI) is a daily
intelligence
brief focused
on global
events that
affect US
businesses.**

(See page 3)

Oil Prices Rise As Iranian Leadership Reminds World of Their Fanaticism

It seemed too good to last and as it turns out it was. The per barrel price of oil jumped back up by a dollar as the analysts community reacts to the latest wave of defiance and bombast from Iran. The country's President Mahmoud Ahmadi-Nejad seems to have missed his time in the limelight and has taken steps to ensure that he is the number one story again. Today is now thought to be a key day as he intends to make his nuclear intentions clear – mostly by defying yet another UN directive that he give up his plans to develop nuclear weapons. There are rumors that his military will stage some kind of event to commemorate this statement as August 22 is a significant date in the Islamic calendar – the day that Jerusalem fell to the attack by Saladin. Beyond all the conjecture about what kind of symbolic act will take place today there is the concrete issue of what will happen to oil prices in the wake of this new threat from Iran. It is clear to anyone paying even a modicum of attention that Iran is intent on building nuclear weapons and that inevitably there will be confrontation between Iran and the US and other allies concerned about what such a development would mean to regional and global stability. This means that Iran's oil will become a political weapon at some point, starting with a threat to cut it off and eventually an actual withdrawal of the oil produced in Iran from the world market.

Analysis: There are any number of plots and subplots affecting Iran these days and any given week could present the world with some truly dramatic changes in this part of the world. The Iranian business community is growing extremely frustrated with the current regime in their country as the economy is in very bad shape. The vast wealth that has come to the country from oil has been squandered on military build-up and pet projects favored by Ahmadi-Nejad. Corruption is worse than it has ever been and the 50% of the population that is under 23 are generally unemployed or underemployed and growing frustrated. Social breakdowns are taking place almost daily and actual riots have broken out in more remote areas. The government is essentially using the threat of the US and Israel to stay in power but experts on the country don't expect Ahmadi-Nejad to remain in power if the key clerics start to turn on him. - CK

(Continued)



US Rice Exports in Trouble – Does it have an Impact?

South Korea, Japan, the European Union and others have temporarily threatened to (or have in some cases) ban exports of rice to their countries. The action comes at the end of an investigation that found cross-contaminated long-grain rice in supplies destined for these export markets. Whereas the genetically modified substances don't create a threat or concern for consumers, it does make a difference for countries that have banned any genetically modified materials in their grains and meat products. Scientists are working to identify which grains may have been contaminated and the source of that contamination.

Analysis: There are a number of ways in which this material could have gotten into the supplies. In the US, distribution systems are shared between various forms of grains. Without the proper cleansing of the holding bins, trailers, and other carrying devices, there is a possibility that supplies can get cross-contaminated. Again, the material that was found to be suspect in the shipments was not harmful to humans – but it violated trade laws that prevent the import of some of this material into those countries. The impact based on the rice market is significant – to those that rely on it for farming revenue and companies that export the product. The export value of those goods is worth approximately \$1.9 billion to the US economy. Not a small amount – but minor compared to total GDP. One of the bigger concerns is the impact that it could have on other grain exports. This has increased focus on the genetically modified issue – and brought the handling of these grains into question. The benefit of this activity is that the US will tighten their inspection of exports to ensure that the countries in question feel safe with the current system. -KP

Copper Spikes after Workers Reject Contract Proposal

Global prices for copper spiked more than 2% after striking Chilean workers rejected a contract offer from management of BHP. The Chilean mine produces more than 8% of the global output of copper. As a result of this and predictions of a supply shortage, the price of copper on the world exchanges have risen more than 75% this year according to The Independent. Chilean officials have said that the mine is operating at between 40-60% capacity using temporary workers to keep the mine active. Workers have been striking on a demand for higher wages to keep pace with increased cost of living, at a time when the copper mining companies have been “pocketing record profits”.

Analysis: Analysts expect the supply of copper to fall far behind demand, with a shortage of more than 200,000 tons expected in 2006 alone. The primary drivers of this demand are from production and manufacturing operations in China and the rest of the developed world. Record production of aircraft and electronics, automobiles and machinery has stimulated this growth. Couple this with the reduced output of mines like the BHP facility in Chile, and the situation is much worse than many had anticipated. Given the significant increase in raw material costs, the price of manufactured goods that use copper has raised accordingly – adding to inflationary pressures. The gap between company offers to workers and worker demands are still “significantly” apart. Workers had asked for an increase in wages of 10-13%. Management countered with an offer of 4% and a \$30,000 USD signing bonus for all workers that were willing to sign a 4 year contract. Thus far, the deal has not been good enough to meet worker demands and the strike was given little hope of ending in the next day or so. Given the impact on earnings for BHP, and the outlook on copper demand for the foreseeable future, there would seem to be several motivators that would get the two sides together. For manufacturers that rely on copper supplies to feed their supply chains, an end to this strike can't come too soon. - KP

Lowe's Provides Clearer Forecast for 2006

The largest home improvement companies in the nation have now both adjusted their outlook for the year, announcing that sales would follow a general softening in the economy heading into the important third quarter of the year. Lowe's, the second largest home improvement retailer behind the Home Depot, adjusted expectations downward – citing a reduction in the number of housing starts and a more difficult employment market moving forward. The company did post strong revenue growth and a solid earnings picture for the second quarter, with sales up nearly 12%. Home Depot had reported last week that earnings were up 5.2% for the quarter – but that sales were beginning to show the signs of a slow-down commensurate with the general economic atmosphere.

Analysis: The Home Improvement industry is interesting. It tends to move with the general new construction market – seemingly as new homeowners get into their new dwellings, there is a host of items that they end up purchasing to improve the new construction (personalization). Everything from items to improve the yard to window coverings and light fixtures are driven by sales of new homes. On the flip side of this activity, as the housing market slows down from higher interest rates, many homeowners put aside their thoughts of purchasing a new home and begin to think about investing in their existing home. There is a lag between these two psychological events – which many retailers in the sector try to explain to Wall Street to justify their forward-looking guidance. Once this lag is over, homeowners will once again start to hit the home improvement market harder – purchasing everything from windows and screen doors to new lighting and plumbing fixtures. Analysts have given the industry a brighter longer-term outlook, citing a rebound in the remodeling industry and a stronger job market into 2007. Economists also indicate that there will likely be more of a soft landing in this environment, lending more credence to the forecast of the home improvement retailers in the sector. -KP

(Continued)

Tobacco Use Exposed as Dangerous to the Heart No Matter What the Form

The latest studies on the impact of tobacco use confirm what many researchers have been contending for the past several years. Tobacco is a toxic substance at virtually any dose and this toxin increases the potential for heart disease substantially. This applies to smoking cigarettes of course but it also applies to any kind of tobacco ingestion – chewing, smoking cigars, pipes and even breathing the smoke of somebody else’s tobacco. This latter point has the most serious implication for business and public policy in general. The fact that second hand smoke has been found to dramatically increase the threat of heart disease will prompt more and more restrictions on the consumption of tobacco. Most public buildings in most cities have been declared smoke free and more communities are banning the consumption of tobacco in restaurants and other places. Many businesses have gone smoke free as well. The pace of this adjustment will likely increase as people get more and more evidence that even passive exposure can be deadly.

Analysis: The legal implications are becoming stark. A non-smoker consistently exposed to second hand smoke is now clearly at risk and may well have grounds for legal redress if they were forced to work in an environment where they were exposed to the smoke of others. Many analysts suspect that smoking will eventually become an activity that will be limited to a private residence. Failure to protect employees from passive smoke will become a serious human resources matter and communities will consider the implications of passive exposure to people entering or using public facilities. Many businesses allow employees to smoke outside but if they congregate near entrances they subject every person who enters of leaves to the smoke and that may soon be deemed unacceptable. This issue is going to gain some momentum in the months ahead. -CK

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Armada Staff –Chris Kuehl, Keith Prather, Karen Sanchez



THE TOLL OF TOBACCO IN KANSAS

Tobacco Use in Kansas

- High school students who smoke: 21% [Girls: 20.1% Boys: 21.7%]
- High school males who use smokeless tobacco: 17.4%
- Kids (under 18) who try cigarettes for the first time each year: 12,100
- Additional Kids (under 18) who become new regular, daily smokers each year: 3,400
- Packs of cigarettes bought or smoked by kids in Kansas each year: 6.9 million
- Kids exposed to second hand smoke at home: 161,000
- Adults in Kansas who smoke: 17.8% [Men: 18.9% Women: 16.8% Pregnant Females: 12.7%]

Nationwide, youth smoking has declined significantly since the mid-1990s, but that decline appears to have slowed or even reversed. The 2005 Youth Risk Behavior Survey found that the percentage of high school students reporting that they have smoked cigarettes in the past month increased to 23 percent in 2005 from 21.9 percent in 2003. Adult smoking has been decreasing gradually over the last several decades, and 20.9 percent of U.S. adults (about 45 million) currently smoke.

Deaths in Kansas From Smoking

- Adults who die each year in Kansas from their own smoking: 3,900
- Annual deaths in state from others' smoking (secondhand smoke & pregnancy smoking): 290 to 520
- Kansas kids who have lost at least one parent to a smoking-caused death: 2,300
- Kids alive in state today who will ultimately die from smoking: 54,000 (given current smoking levels)

Smoking, alone, kills more people each year than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined. For every person in Kansas who dies from smoking approximately 20 more state residents are suffering from serious smoking-caused disease and disability, or other tobacco-caused health problems.

Tobacco-Related Monetary Costs in Kansas

- Annual health care expenditures in the State directly caused by tobacco use: \$927 million
- Annual health care expenditures in Kansas from secondhand smoke exposure: \$38.9 million
 - State Medicaid program's total health expenditures caused by tobacco use: \$196.0 million
- Citizens' state/federal taxes to cover smoking-caused gov't costs: \$624.2 million (\$582/household)
- Smoking-caused productivity losses in Kansas: \$863 million
- Smoking-caused health costs and productivity losses per pack sold in Kansas: \$11.66

The productivity loss amount, above, is from smoking-death-shortened work lives, alone. Additional work productivity losses totaling in the tens of billions nationwide come from smoking-caused work absences, on-the-job performance declines, and disability during otherwise productive work lives. Other non-health costs caused by tobacco use include direct residential and commercial property losses from smoking-caused fires (about \$400 million nationwide); and the costs of extra cleaning and maintenance made necessary by tobacco smoke and tobacco-related litter (about \$4+ billion per year for commercial establishments alone).

Tobacco Industry Advertising and Other Product Promotion

- Annual tobacco industry marketing expenditures nationwide: \$15.4 billion (\$42+ million per day)
- Estimated portion spent in Kansas each year: \$125.9 million

Published research studies have found that kids are three times more sensitive to tobacco advertising than adults and are more likely to be influenced to smoke by cigarette marketing than by peer pressure, and that one-third of underage experimentation with smoking is attributable to tobacco company marketing.

Kansas Government Policies Affecting The Toll of Tobacco in Kansas

- Annual State tobacco prevention spending from tobacco settlement and tax revenues: \$1.0 million [National rank: 43 (with 1 the best), based on percent of CDC recommended minimum]
- State cigarette tax per pack: \$0.79 [National rank: 29th (average state tax is \$1.00 per pack)]

Campaign for Tobacco-Free Kids / January 4, 2007

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Related Campaign for Tobacco-Free Kids Fact Sheets, available at:
<http://www.tobaccofreekids.org> or <http://tobaccofreekids.org/research/factsheets>.

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TESTIMONY to SB 37

over

Senate Judiciary

1-17-07

Attachment 16

Someone asked me why I would take on a controversial subject such as smoking. My response was...It's not so controversial when 19 American states, France, Ireland, Spain, Scotland, along with Hong Kong, Singapore, New York City, Overland Park, Lawrence, and Garden City have all passed similar laws. What's your reason? Why you? I was asked.

Because I decided last April to introduce this bill after I learned that my sister-in-law had been diagnosed with lung cancer. We lost her in the fall. Because I have now lost three family members to tobacco related cancer and have a friend, a physical trainer who never has smoked yet spent 15 years as a bartender and has lung cancer from the second hand smoke she worked in. Because I have asthma which may well be due to growing up in a household of second hand smoke. And because bottom line, **it is the right thing to do.**

I am going to leave the facts of tobacco use and second hand smoke to the experts which you are about to hear. I doubt that we will hear testimony directly from the tobacco industry. What could they possibly say? But I am certain we will hear testimony through them.

We probably will hear that the State will lose a great deal of tax revenue because of this bill. If so, my response would be that passing this law doesn't necessarily mean people won't buy cigarettes. Secondly, as a member of the Kansas Children's Cabinet, I can tell you that the State received \$39 million last year from the major tobacco settlement and that number is calculated to possibly go below \$20 million within five years. Also, although tobacco companies are estimated to spend \$125 million annually in Kansas to promote its products, the State only spends \$1 million annually for tobacco prevention.

We also must weigh the loss in any tobacco tax revenue against the \$153 million in taxpayer dollars that go directly to Medicaid costs due to tobacco related illnesses. According to KDHE, tobacco related illnesses in Kansas are responsible for more than \$720 million in medical expenses and more than \$800 million in lost productivity costs. There simply is no comparison between tax dollars lost and what tobacco diseases cost.

We may hear through big tobacco that this bill will hurt the restaurant and bar business, yet I hold a dozen or so economic impact studies and reports, from California to Massachusetts, that these statements are unfounded. If California with its nearly 40,000 bars and restaurants and New York City with its thousands can pass a smoking ban law, that argument just doesn't hold up.

I know one piece of testimony we won't hear through big tobacco, and that is about the nearly 4,000 Kansans who die of tobacco related diseases every year.

In closing, suffice it to say, this committee doesn't have an opportunity very often to make a decision which ultimately will save tens of thousands of lives. Today you do. Advancing this bill and beginning the process will do just that. **It is the right thing to do.**

Senator Wypson

16-2

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**Testimony re: SB 37
Senate Judiciary Committee
Presented by Ronald R. Hein
on behalf of
Reynolds American, Inc.
January 17, 2007**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Reynolds American, Inc. (RAI).

RAI is unequivocally opposed to SB 37 which proposes a total ban on smoking in all indoor places - including bars and restaurants. The reasons for RAI's opposition are numerous, but I've set out a few of the most salient points.

SB 37 seems to assume that restaurant and bar customers and employees are forced to be exposed to cigarette smoke whenever they wish to go out or look for employment. This is simply not true. Here in Kansas, and across the country, the free market is addressing the smoking/smoke-free issue. Smoke-free dining choices are easily found at restaurants throughout Kansas and the U.S. Those wishing to work in smoke free environments may avail themselves of multiple potential employment opportunities.

In non-hospitality related workplaces, smoking is virtually non-existent. In fact, the Occupational Safety and Health Administration (OSHA) in Washington declined to issue workplace smoking rules, in part, because of that fact. In America and in Kansas, the free market is already deciding this issue. Government intervention into what should be a private property right decision is unnecessary and unwarranted.

Some proponents of measures such as this have stated that smoking bans have no economic impact on private businesses, especially in bars and restaurants. Those statements do not bear accurate witness to the facts. One has to look only as far as Lawrence to see the impact of draconian smoking bans. In 2004, as reported in the *Lawrence Journal-World*, a survey conducted by the paper indicated an average 25% decrease in business following the smoking ban.

One restaurant owner in Lawrence is quoted as saying the ban has "killed" his business. Another reported his business is down 20%.

The loss of business that Lawrence restaurant and bar owners experienced is seen wherever business owner's rights are taken away by smoking bans. In New York, a st

by the New York Nightlife Association and the Empire State Restaurant Association showed 2,000 jobs were lost along with almost \$30 million in wages and salary payments since a statewide smoking ban took effect in 2003. In Dallas, Texas, the Dallas Restaurant Association reported sales of alcoholic beverage declined \$11.7 million following the passage of their citywide smoking ban.

Just last year, the Restaurant Association of Maryland reported that one county that passed a smoking ban (Talbot County) has seen not only a decrease in sales but a decrease in the number of actual businesses with alcohol licenses. Specifically, the organization reported that, according to sales tax figures from the Maryland Comptroller, May through December 2004, sales at Talbot County restaurants/bars with liquor licenses declined by \$2,906,100 (or 11 percent) when compared to the same period in 2003. Moreover, the total number of Talbot County restaurants/bars with liquor licenses (per state sales tax records) declined from a high of 39 establishments in November 2003 to a low of only 29 by the end of December 2004.

Business owners are not the only ones to suffer economically. Smoking ban bills are ostensibly meant to protect restaurant and bar workers. In reality, workers are oftentimes financially damaged by smoking bans. Tips are down for numerous employees in numerous areas since smoking bans were enacted. Without a doubt, smoking bans economically hurt those they are meant to protect.

Philosophically, this legislation is the epitome of government infringing on the personal property rights of the state's citizens and the state's businesses. Ironically this bill would take away private business owners' rights to make decisions for themselves and their properties at the same time that businesses are providing more and more smoke-free dining options. We underestimate the power of a free-market to determine these issues.

RAI would respectfully request the committee to defeat SB 37.

Thank you very much for permitting me to submit this written testimony.

Legislative Testimony

SB 37

Wednesday, January 17, 2007

**Testimony before the Kansas Senate Judiciary Committee
By Marlee Carpenter, Vice President of Government Affairs**

Senator Vratil and members of the Committee;

The Kansas Chamber of Commerce and our over 10,000 members believe that government should exercise restraint in setting mandates for business. For this reason, we must oppose SB 37. Free enterprise without intrusive government regulation is the cornerstone of our marketplace economy. Companies must be allowed the flexibility to anticipate and respond to the rapidly changing business environment without government roadblocks.

While specific issues and causes may be perceived as politically correct, enacting burdensome regulations and mandates is economically incorrect. Kansas businesses have responded to market forces by opening smoke free bars and restaurants and banning smoking in most workplaces. In addition, most hotels offer smoke free rooms.

The market has responded adequately to protect those who do not wish to be exposed to tobacco smoke and also to the business owner who wishes to serve customers who do use cigarettes.

Thank you for allowing us the opportunity to voice our opposition to this legislation. This bill asserts government regulation into the marketplace and thus should be defeated.



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The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, Chamber Federation, have more than 10,000 member businesses, including local and regional chambers and trade organizations. The Chamber represents small, medium and large employers all across Kansas.

Senate Judiciary

1-17-07

Attachment 18

January 16, 2007
Regarding SB 37

Mr. Chairman and Members of the Committee:

My name is Chuck Magerl, and I have a far ranging experience with the questions of smoking accommodation, since one of my restaurants in Lawrence, WheatFields bakery, was non smoking, and one of them, Free State Brewery was open accommodation. My academic training was as a scholarship student in pre-med biology, as well as civil engineering and water resources. Those studies confirmed for me the need to search for connections in science and public health and safety issues. As a disclaimer, I have smoked perhaps a dozen cigarettes in my life, and have neither paid money to, nor received money from any tobacco company. I've never allowed the sale of tobacco at any of the businesses I have operated in Lawrence for the past 30 years. I have made sure that my retirement funds are not invested in tobacco companies. I am not just a nonsmoker, but also anti-smoking, though certainly not anti-smoker. With this background I was selected as one of 7 members on the Lawrence Task Force on Smoking. As you may guess, it was a massive undertaking.

My personal belief is that smoking stinks, it burns your eyes, irritates your nasal passages and fouls your hair and clothes, and for smokers, it cuts your life expectancy by 7 to 10 percent. If smokers quit, the health of Lawrence will improve, but it most likely won't have much of any impact on the mortality of us nonsmokers, and therein rests my concern with this bill.

The reality behind the Lawrence smoking ban is that it is designed to abate the nuisance for us nonsmokers, and hopefully entice a few smokers to quit, so they can reap the health benefits of a nonsmoking lifestyle. I believe government has no role in accommodating personal preferences at the expense of private businesses, especially when a person has many options to enjoy a smoke free environment if that is important to him.

I'm the father of two girls, who have spent many hours over the years at my restaurants, healthy, intelligent kids, the oldest has been on the principal's honor roll through junior high and high school, every semester, and her younger sister is matching her pace. To suggest that I would risk their health, my wife's health, my health or the health of the 110 employees I care for, is simply wrong.

I appreciate Sen. Vratil providing a forum for the second hand smoke issue facing our state. This consideration is an example of one of the wonderful features of Kansas: true, broad based care for the future of our state. Sometimes wise and principled individuals may find themselves in disagreement on plans of action, and the smoking ban issue is a grand example. I believe that our democracy is posited on a Socratic "educated masses", not a deferral to a Platonic "enlightened ruler".

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My assumption is that members of this committee and myself both want the same thing, responsible hospitality and healthy lifestyles. We want moderation, we want healthy citizens. My commitment is to life, liberty and the pursuit of happiness, and the individual's right to make personal choices based on informed decisions.

I am not a tobacco user, and as a member of the Mayor's Task Force, I've had quite a bit of exposure to the implications and problems associated with tobacco use. I also am an advocate of programs promoting abstinence from tobacco products as a healthy and better choice for members of our society, especially youth. I have instructed my smoking employees on the real dangers of a smoking lifestyle.

The two thoughts that seem to encapsulate this discussion most completely come from some highly esteemed gentlemen. The first came on a wonderful Public Radio broadcast with the noted surgeon Dr. Michael DeBakey. The summation of his lengthy interview was the thought, "I hope we realize that our health and our freedom are the two most valuable things we have." The other item that resonates with this discussion is the often quoted English Prime Minister Benjamin Disraeli's quip, "there are three kind of lies: lies, damned lies and statistics."

As I reviewed these statistics and reports for the Task Force, several perplexing questions arose about the threat level of second hand smoke. The first thing I noted is the fact that of the 18 developed nations with a greater life expectancy than the US, 15 have greater rates of smoking, and by extension, greater exposures of secondhand smoke (sometimes much greater, e.g. Japan). Something else may be a factor in the US life expectancy than secondhand smoke?

Additionally, there was the troubling report of a huge drop in heart attacks in Helena, Montana during a brief smoking ban. It was initially reported that heart attacks dropped 60 percent (later changed to 40 percent). According to the U.S. Centers for Disease Control and Prevention, smoking accounts for about one-fifth of heart disease deaths. So even if every smoker in Helena quit (which no one claims happened), you would not get anything like the drop that was attributed to the ban.

If smoking bans cut heart attacks in half, it's odd that no one had noticed it before, especially in big cities such as Los Angeles and San Francisco, where an effect of such magnitude should have been obvious. Indeed, why didn't the authors study hospital data in places within the State of California where the samples would have been much bigger and the results more meaningful, instead of focusing on what one author calls "a tiny little community in the middle of nowhere"?

California's ban on smoking in workplaces took effect in 1995; it was extended to bars in 1998. Yet according to CDC data, the number of heart disease deaths in California did not drop substantially in either year compared with national trends. If smoking bans cut heart attacks in half, surely the effect would have shown up in these numbers.

The oddity of the report from Helena is further called into question by the results from the Western New York health study, published just 3 months ago. This was an extensive study over 5 years, with a team of researchers under the auspices of the Department of Social and Preventive Medicine, School of Public Health and Health Professions, of the University at Buffalo,

They reported their results: "After adjustment for covariates, exposure to SHS (second hand smoke) was not significantly associated with an increased risk of MI (myocardial infarction). In the absence of high levels of recent exposure to SHS, cumulative lifetime exposure to SHS may not be as important a risk factor for MI as previously thought."

In my own community of Lawrence, when I extrapolated the often repeated number of 50-60,000 deaths each year from ETS, it suggests that in my 35 years in Lawrence there were 500-600 people who died from second hand smoke. I've known people who have been murdered, people who have drowned, people who have been killed in car accidents, but not one who died from second hand smoke. My doctor, who has practiced in Lawrence longer than 30 years, could not cite any cases either.

I believe government has a legitimate role in health and safety issues. I accept that appropriate government intervention must be considered in regards to worker health and secondhand smoke. In fact, a specific government agency is responsible for all these concerns, and is mandated to seek action to remedy safety and health problems. That agency, however, is not our hard working citizen legislators of the Kansas Senate, but rather the expert staff of the Occupational Safety and Health Administration of the Federal government.

For five years OSHA reviewed studies and testimony on the workplace impact of secondhand smoke. They factored the components of smoke exposure based on their tabulated data for air contaminant substances, and the established Permissible Exposure Levels. Their conclusion? "Field studies of environmental tobacco smoke indicate that under normal conditions, the components in tobacco smoke are diluted below existing Permissible Exposure Levels. It would be VERY RARE to find a workplace with so much smoking that ANY individual PEL would be exceeded."

As continued calls came to OSHA from state and local governments seeking information on the workplace threat of secondhand smoke, OSHA reiterated their findings in 2003. "Although OSHA has no regulation that addresses tobacco smoke as a whole, 29 CFR 1910.1000 limits employee exposure to several of the main chemical components found in tobacco smoke. In normal situations, exposures would not exceed these PELs." It's within the scope of this legislative body to act as you wish, but you should know that some well informed experts disagree with the ban approach.

As a responsible and caring business owner, I am concerned about the employees, guests and my family, who frequent my businesses. Using the best data from KDHE, CDC and the American Cancer Society, the statistics suggest the possibility of a case of lung cancer with a non-smoking employee for every 949 years we are in business. I know

some people would suggest that the precautionary principle applies here, but please review this.

Everything in life involves a risk of some kind. Throughout our evolution and development we have sought to minimize and manage risk, but not to eliminate it. Even if this were possible, it would undoubtedly be undesirable. A culture in which people do not take chances, where any form of progress or development is abandoned 'just to be on the safe side', is one with a very limited future. The very nature and structure of all human societies are what they are because individuals, in co-operation with each other, have taken their chances - seeking the rewards of well-judged risk-taking to the enervating constraints of safe options. Had the precautionary principle been applied, the Pilgrim Fathers would never have set sail for America in their fragile ships.

As an individual facing risks, the only sane response is to analyze the risk factors and make your own decisions based on the concerns you value.

That what we have to do in our businesses every day as well. The bar and restaurant business is fiercely competitive, and the people running venues are smart enough to do everything they can to increase their bottom line. If banning smoking really were good for their business, wouldn't they have discovered it by now, and wouldn't that make laws mandating bans unnecessary?

Numerous studies have been undertaken in an attempt to determine economic impact after smoking ban laws are placed into effect. Most "community-wide" statistical studies appear to show little or no overall negative impact when laws are passed restricting smoking in restaurants. However, non-smoking ordinances have been found to have significant impact on the sales and profits of individual restaurants in certain cases.

Available data from the Kansas Department of Revenue tracks the reporting of Liquor Drink Tax from Drinking Establishments in Lawrence. In the six months preceding the ban, a reviving economy had resulted in a 6.13 percent growth in beverage sales at restaurants and bars. In the twelve months after the July 1st ban, beverage sales were slightly negative. Some of this, to be sure, is a measure of the local economy. Lawrence has lagged the State in growth in retail sales for quite some time. We certainly haven't enjoyed the growth of communities such as Wichita or Topeka, let alone the amazing growth of Manhattan, Olathe or Kansas City.

Another item to recognize is that smoking bans do not impose identical economic effects on all businesses. Bars are more than twice as likely to experience revenue drops than restaurants. Similarly, losses are more likely in restaurants that are more "bar-like" (sports bars, pubs) than other restaurants. Chain restaurant franchises are also less likely to experience revenue reduction. Fast food outlets and other carryout type establishments typically see an increase in revenues as restaurant customers rearrange their purchasing patterns.

Several of the studies from California localities indicate that although the revenues from restaurant sales continued to increase, they did not keep pace with inflation and population growth, even in the mid 1990's boom economy. U.S. Department of Commerce data reports that in the 1993 – 1998 period spanning the enactment of the restaurant smoking ban in California, the position of the industry in the state did not keep pace with the growth in other states. Prior to the ban, 9 of the top 50 metropolitan per capita restaurant sales locations were in California. After the ban, that number had fallen to 4 of the top 50. The rate of restaurant sales growth in California cited in the most noted study (Glantz, et.al.) was 29% below our rate of growth in Lawrence during the same period.

Could we have done a better job of abating the smoke nuisance at Free State Brewery? Absolutely. One of the most positive aspects of my year of research with the Task Force has been my understanding of the advancements in ventilation and filtration technology that would greatly enhance the comfort level of our guests and staff. I was prepared to invest \$30-40,000 in updated heat recovery ventilation systems to make the Brewery a more hospitable and relaxing environment for people to enjoy our food and beer. And that would benefit us all, since we know moderate alcohol consumption decreases heart disease by 40 percent.

For some very legitimate reasons, some activists have declared war on tobacco companies. Unfortunately, frustrated with losing the direct confrontations, they have taken a different attack. This bill would conscript hundreds of small, independent Kansas businesses in a proxy war against the tobacco companies. And that's too bad. It's not really our war.

If you wish to ban smoking outdoors, please realize you may be leaving science behind in your rationale. A newspaper article this week in California reported on the debate there about outdoor bans. One insight came from Dr. Michael Siegel:

"Today's anti-smoking crusaders, he says, have lost their moorings in science by advocating smoking bans in the last refuge for smokers — the great outdoors. 'I've been working in this field for 21 years,' said Siegel, who earned an M.D. from Yale University and a master's degree in public health from UC Berkeley. I never understood that the goal was to get rid of smoking so that no one even gets a whiff of smoke.' 'It's a grass-roots social movement that's been so successful that it doesn't know where to stop,' Siegel continued. 'It's getting to the point where we're trying to protect people from something that's not a public health hazard.' At risk, he and other like-minded tobacco control advocates assert, is not only the credibility of public health officials, but the undermining of a freedom prized in democracies — do as you wish so long as you don't harm others."

Dr. Siegel went on to comment that he believes there is not sufficient scientific evidence to conclude that there is any substantial public health risk posed by allowing smoking in most open outdoor environments where people can move freely about.

If this committee believes that smoking is devastating to the health of smokers, and that tobacco smoke is devastating to the health of non-smokers, then I urge you to have the

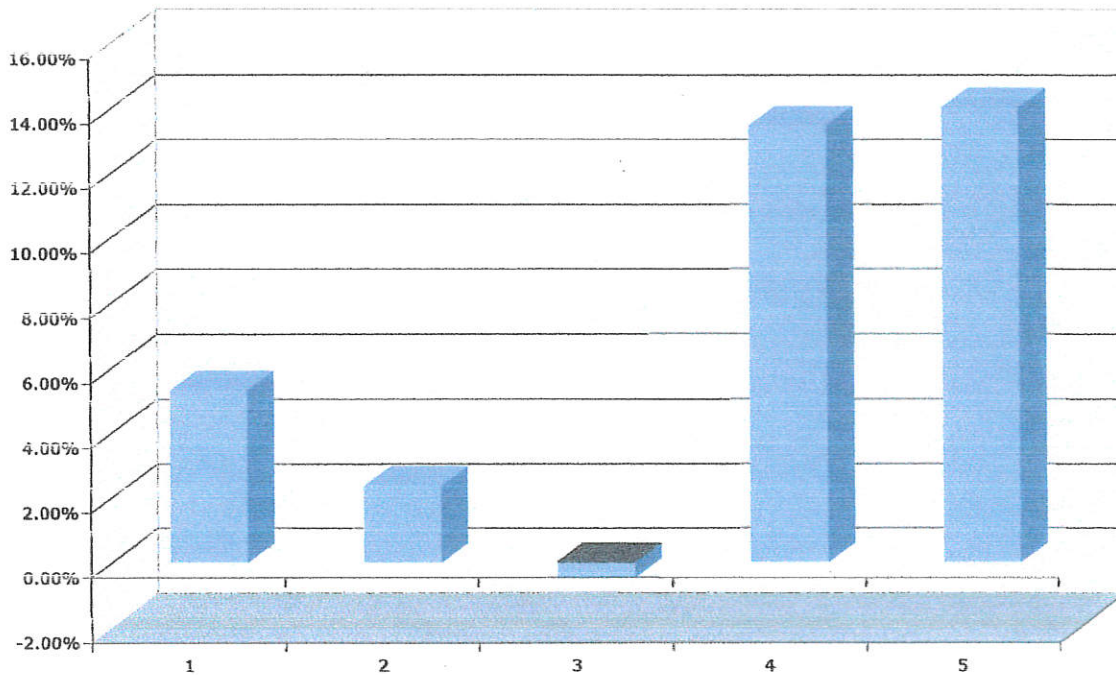
courage to ban the sale of tobacco in Kansas. Banning smoking in businesses will not address the greatest venue for second hand smoke exposure, private homes and automobiles. Why take timid, half way measures? This is not a new idea for Kansas, we banned tobacco for several decades in the Carry Nation years, we could do it again. Take the stance of forsaking the \$190 million in revenue that Kansas gathers from tobacco sales. If you can't take the step of banning the product, then please have the respect and decency to allow Kansas businesses and Kansas citizens the personal intelligence to decide how to balance the use of a legal product on private property. The innovations of Kansas businesses should not be underestimated.

My regard for cigarette smoking in restaurants is highlighted in the swimming pool analogy. Having a non-smoking area in a restaurant is like having a non-peeing area in a swimming pool or lake. It may be obnoxious, it may be gross, but it's something we have all been exposed to, and the health risk is virtually non-existent. Filtration and dilution is a wonderful thing. Like they taught us in pre-med biology, the poison is in the dose.

Thanks for taking the time to consider my thoughts. I truly do not envy the task ahead of you, and I wish you extraordinary wisdom and courage in the weeks to come.

Chuck Magerl
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Most Recent 12 Month Sales Data



We use this one as a "guess the pattern" test. Three of the cities represented here have smoking bans, and two do not. This shows the change in alcohol beverage sales at on-premise businesses (restaurants, bars and clubs) in the past 12 month period.

(KS Dept of Revenue data through third Quarter 2006)

City number 1 is in year 2 of the smoking ban. City number 2 is attempting to rebound from a smoking ban, but has not been able to keep pace with the most comparable cities, numbers 4 and 5, in terms of growth.

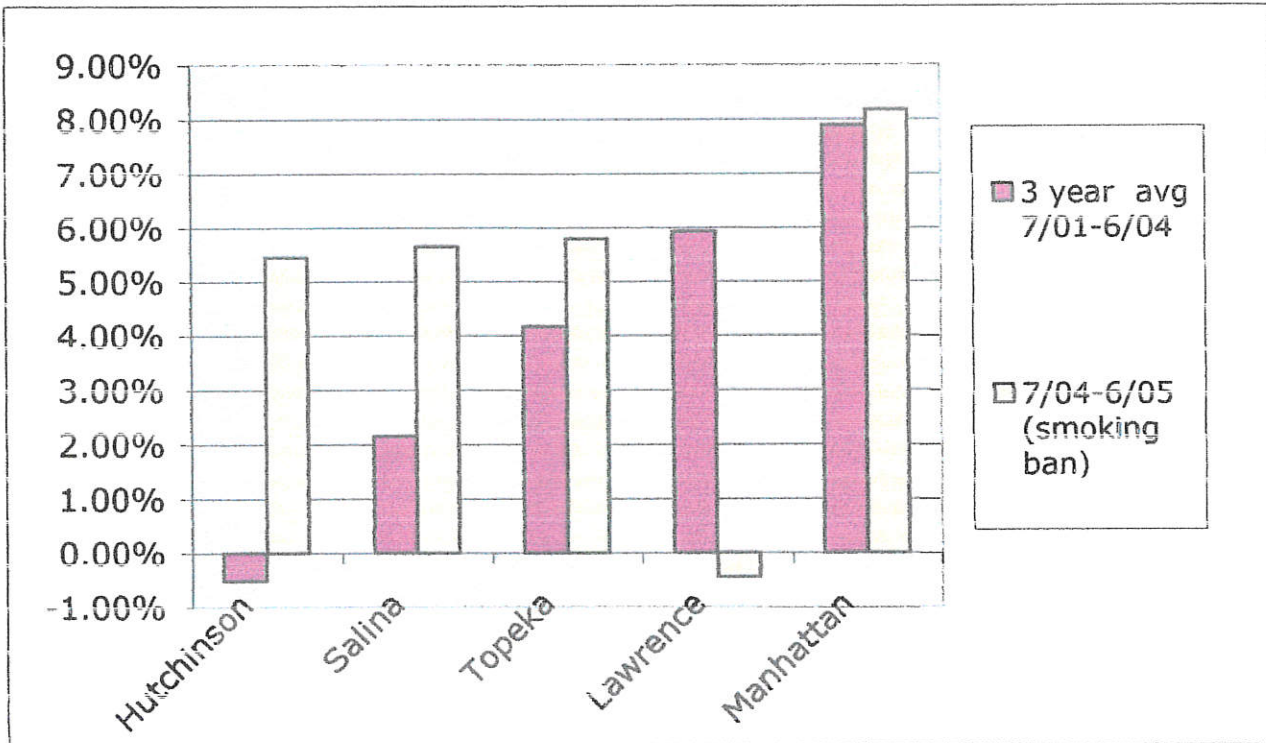
So, does business bounce back? Yes, but it seriously lags comparable markets.

- 1) Hutchinson
- 2) Lawrence
- 3) Salina
- 4) Topeka
- 5) Manhattan

SMOKING BAN - First year impact in Lawrence, with additional Kansas cities:

Changes in Alcohol Beverage Sales at Licensed Establishments in Selected Kansas cities, July 2001-June 2005

	Hutchinson	Salina	Topeka	Lawrence	Manhattan
avg July 2001-June 2004	-0.52%	2.15%	4.17%	5.93%	7.88%
July 2004-June 2005	5.45%	5.65%	5.79%	-0.45%	8.16%



Hutchinson - Smoking ban in restaurants, unless separate room, Jan 1, 2005

Salina - Smoking ban in restaurants 5am - 9 pm, Jan 9, 2003

Lawrence - Smoking ban in restaurants, bars, private clubs, July 1, 2004

Source: Kansas Department of Revenue

This chart solely the sales of alcohol beverages at on-premise businesses using the first year of the Lawrence smoking ban as the time frame. Lawrence's ban was complete, Salina's was with many exemptions, and Hutchinson holds multiple exemptions, and was only in place for half this sample period. Lawrence's demographics are most similar to the other University city of Manhattan.

The percents indicate the annualized growth rate of alcohol beverage sales at the restaurants, bars & clubs.



***Kansas
Licensed
Beverage
Association***

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James "Jim" Fager

Vice Presidents
Tammy Davis
Tom Intfen
Robert Farha
Jim Hendricks
Curt Melzer
Richard Markle
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**Drink Responsibly.
Drive Responsibly.**

Testimony on SB-37, January 17, 2007
Senate Judiciary Committee

Mr. Chairman, and Senators of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Assn., the men and women, in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels and restaurants where beverage alcohol are served. These are the over 3500 places you frequent, enjoy and the over 70,000 employees that are glad to serve you. Thank you for the opportunity to speak today.

We oppose SB-37.

If this is an air quality issue, why are we not addressing air quality. There are many more air contaminants than environmental smoke and if it is the desire of this body to protect all citizens from them then an air quality standard bill would be in order. This would set a level playing field and allow all businesses to meet this standard for all the air particulates and gasses. This is the fair and most effective way to address the issue and removes the emotional element. This would allow for the advancement of science and the creative capabilities of industry to work and continually improve lives and living conditions. If however the real goal is to get rid of all smoking then the legislature should propose the prohibition of smoking and vote on that issue and the subsequent loss to the general fund revenue. Please do not make the hospitality establishments the unwitting victims in a battle between the anti-tobacco activists and the smoking public!

Second, this is an issue of the rights of private businesses to serve their customers. Smoking is a legal activity and the establishments that are targeted in this bill are places that all persons have a choice, whether or not they enter and frequent. All are very responsive to their customers and if their customers were to stop coming due to conditions at the venue, then owners would change their place to accommodate and re-win those customers or they would soon be out of business. There are options of non-smoking venues.

Third, if you believe you must pass this bill we ask for an exemption for businesses licensed for primarily on-premise liquor sales. You already allow an exemption for smoke-shops, and cigar bars based upon the belief that those that work or frequent these smoke shops have a reasonable expectation of being exposed to environmental smoke and have made a choice. We believe that the same is true for licensed establishments with proper signage. Further, with that expectation and choice, that individuals are taking responsibility for their own actions and whatever risks that are present.

Fourth, if you still must include licensed establishments, we ask you to amend this bill to include a class of establishment that would be a "Smoking Establishment" similar to the "cigar bar" exemption. With a separate permit and requirements, such as adequate signage, time limitations and/or age restrictions to make sure all who approach and enter have the information to make a rational choice knowing that by entering or working here they have the expectation of being exposed to environmental smoke.

I am available for your questions. Thank you for your time.

Philip B. Bradley

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Mr. Chairman and Members of the Committee:

My name is Ed Nelson and I am President of the Kansas City Business Rights Coalition. I am here to testify in opposition to Senate Bill 37. Senate Bill 37 is an egregious piece of legislation that is much more far reaching than the parameters of public health.

The Kansas City Business Rights Coalition is an organization that has over 60 member businesses in both Kansas and Missouri. Our coalition's number one priority is to see that a smoking ban does not become the public policy of Kansas City. Our 60+ member businesses employ approximately 2000 people in the greater Kansas City area. These 2000+ people will be negatively impacted if a smoking ban were to be implemented.

Many of our members have stated that if a smoking ban is enacted, they will be forced to lay off employees to compensate for the loss in revenue they will incur. As you know, we can not afford to lose more jobs in the state of Kansas. The economic situation in Kansas City, Kansas is far from perfect. We would surely see a spike in the unemployment rate if many of these hospitality jobs are forfeited. This would be devastating to community.

You, as distinguished members of the Kansas State Senate have an opportunity here to stand up for employees in our great state. You have the opportunity to stand up and support job growth. Please do what is in the best interest of the businesses, employees, and their families and do not support Senate Bill 37.

Thank you for your consideration. I would be more than happy to answer any questions at this time.

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Chairman and Members of the Senate Committee:

I thank you for allowing me to testify on behalf of Armour Amusement in opposition to Senate Bill 37. My name is Jeff Martin and I have been the Operations Manager for nearly 13 years. Armour Amusement is a vending company in Kansas City, Kansas that has already seen the negative effects a smoking ban has had. We have already lost 50% of our business from Lawrence due to their smoking ordinance.

If this bill were to pass I would be losing an even more overwhelming amount of business state-wide. I would estimate a loss of at least 50% of our business in Kansas. I supply my clients with cigarette vending equipment and if they are forced to eliminate smoking, my equipment is no longer needed in their establishments. Not only would we lose business but we would have no other choice but to lay off more employees as well. We would see a 20-30% loss in employment, if we are even able to survive at all.

This ban would bring with it a negative impact on the entire hospitality industry in Kansas. This would cost a number of businesses a loss in customers, resulting in lost jobs and revenue. I am in strong opposition to this state wide ban for obvious reasons and I encourage you to oppose it as well.

Thank you for your time.

Jeff Martin
Armour Amusement
2500 S. Mill St
Kansas City, Kansas 66103

Mr. Chairman and Members of the Committee:

My name is Tom Conroy and I own Conroy's Pub in Lawrence. I am here to testify in opposition to Senate Bill 37, "The Kansas Employment Reduction Act."

The smoking ban issued in Lawrence has been devastating to my business, and ended a soon to be record year. It has resulted in a drop in sales of 30%-50% on most days. My total number of employees has dropped from 27 to a current number of 13, thus eliminating 14 Lawrence jobs in my place alone. My wife and I work most of those shifts in order to make ends meet, and we do very little hiring.

I resent very much the small group of people who convinced three people on our commission to deny citizens the freedom of choice- the business owners who listen very closely to customers needs and adjust accordingly, the customers who can choose to enter or not, and to potential employees who can decide for themselves whether the workplace is a good fit. I also resent this small group of people (in my case, a group called "Clean Air Lawrence") telling city officials and the media how smoking bans actually increase business. I know of no owner/manager in my profession in Lawrence that has experienced an increase in sales since the ban. All one has to do is check their website. The list of current members contains no one from the food and beverage industry. I and many others would gladly join their organization and be proud spokespeople if their cause was good for business. It is not.

There is so much more to say, but I will end by telling you I'm tired of these groups who distort facts with religious fervor in an effort to save the world, save people from themselves, and deny other people's freedoms as they see fit. I am not political on this issue. Whatever is good for business and gives people the freedom to choose, is good with me. A smoking ban, in my experience, is bad for business.

Tom Conroy
Conroy's Pub
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KANSAS

DEPARTMENT ON AGING
KATHY GREENLEE, ACTING SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

SB 37
The Senate Committee on Judiciary

by Joann Corpstein
Chief Legal Counsel

Kansas Department on Aging

Jan. 17, 2007

Sen. Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to appear before you today. I am Joann Corpstein, chief legal counsel for the Kansas Department on Aging. KDOA appears as a neutral conferee.

We appreciate the acknowledgment that residents have rights, the recognition of the resident's room as part of their home, and that some residents are life-long smokers. We applaud the intent of SB 37 to make Kansas public areas free of cigarette smoke, but we have concerns about impact of Sec. 2(a)(11) on nursing facilities and their residents.

As written, Section 2(a)(11) states that "no person shall smoke in any indoor area, including, but not limited to: . . . (11) *the common areas of retirement facilities, publicly owned housing facilities and nursing homes, not including any resident's private residential quarters; . . .*"

Currently, adult care homes can elect to allow smoking or not allow smoking in the facility. Residents are **not** allowed to smoke in their individual rooms. If an adult care home allows smoking, the facility is required to provide a designated smoking area for residents where smoke is exhausted to the outside. SB 37 would allow residents to smoke in their own room which may not be designed to filter and exhaust the smoke in such a way to keep the rest of the facility smoke free. As written, SB 37 would now allow residents even in non-smoking facilities to smoke in their rooms.

Adult care homes are also required to ensure that residents who desire to live in a smoke-free environment may do so. This would be an issue in semi-private rooms where one resident smokes, and the other does not.

Adult care homes are also required to provide direct supervision of each resident, when smoking, who has been identified as having a mental, psychosocial or physical impairment that could make unsupervised smoking dangerous to the individual and/or to others. As stated in SB 37, nursing home residents would be allowed to smoke in their rooms. Many adult care homes will

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not be able to provide the direct supervision that will be necessary to keep not only the resident who wants to smoke safe but other residents as well.

The bill also uses the term "retirement facilities." However, this term is not defined. "Retirement facilities" are not among the various types of adult care homes as defined in K.S.A. 39-923. It is unclear how SB 37 will impact other types of adult care homes such as assisted living, residential health care, home plus, boarding care and adult day care facilities. Some home plus facilities are located in private homes.

KDOA currently requires designated well-ventilated smoking areas for residents who smoke as a way to strike a balance between providing a smoke-free environment for non-smokers and recognizing the rights and safety of residents who continue to smoke.

Thank you for the opportunity to offer our concerns regarding SB 37. We request the Committee revise this section as to exempt adult care homes from this bill.

January 16, 2007

**Written Testimony in Support of SB 37
for Submission to the Senate Judiciary Committee
from Michelle Bernth, Vice President of Marketing and Advocacy
American Lung Association of the Central States**

On behalf of the Board of Directors, volunteers and staff of the American Lung Association of the Central States/Kansas, I ask that the Judiciary Committee approve SB 37 so Kansas can join with the other twenty states that have adopted statewide laws to protect residents from the air pollution caused by unrestricted smoking in enclosed public places.

While the use of tobacco is legal, it is also deadly. Tobacco use remains our state's leading cause of preventable death.

We all know that smokers have a markedly increased risk of cancer, heart disease, stroke and lung problems. But exposure to second hand smoke in public places has similar deadly consequences.

1. Second hand smoke contains 4,000 substances, more than 50 of which are known to cause cancer in people and pets.
2. Second hand smoke, like asbestos, is classified by the United States Environmental Protection Agency as a Group A Carcinogen, meaning it is known to cause cancer in humans.
3. Second hand smoke causes 3,000 lung cancer deaths per year in nonsmokers and leads to 35,000 deaths per year related to heart disease in nonsmokers.
4. Employees who are exposed to second hand smoke have more illnesses and miss more work.
5. Peer-review studies continue to demonstrate that going smoke-free has a neutral or even a positive impact on profits of restaurants and bars.

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Kansas faces higher medical expenses and lost productivity every day because of smoking. Restriction of smoking in public places provides a healthy environment for workers and customers and assists people who do smoke to reduce their use of cigarettes, sometimes helping them to stop smoking completely. Adoption of SB 37 will save lives and saves health costs for Kansas.

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Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

Testimony Re: SB 37
Senate Judiciary Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
January 17, 2007

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association (KRHA). The Kansas Restaurant and Hospitality Association, founded in 1929, is the leading business association for restaurants, hotels, motels, country clubs, private clubs and allied business in Kansas. Along with the Kansas Restaurant and Hospitality Association Education Foundation, the association works to represent, educate and promote the rapidly growing industry of hospitality in Kansas.

For a number of years, the Kansas Restaurant and Hospitality Association has been one of the primary opponents to smoking ban legislation. This year, the KRHA is appearing neither in support of nor opposed to SB 37, the statewide smoking ban.

The current KRHA CEO and President received an earlier draft of this legislation, but had not yet seen the bill that was going to be approved for introduction, and after it was introduced, it has forced the KRHA to re-evaluate their most recently adopted position paper on smoking bans.

The former KRHA CEO and President, shortly before leaving his position, attempted to negotiate an agreement related to a local city ordinance, which resulted in a document being prepared and ultimately signed by that individual and the former Chairman of the KRHA Board. The KRHA now has a new CEO and President and a new Board Chairman, and some concerns have come to light which have resulted from the communications relating to smoking bans.

The KRHA had attempted to establish a policy whereby they were not going to oppose local smoking bans as long as they were uniformly applied "without exceptions". The genesis of that desire resulted from the amount of time and resources that local smoking bans were taking from the KRHA and its executive staff in relationship to numerous other issues and projects that are required of the association. The feeling was that the KRHA would no longer oppose a smoking ban which was uniformly applied at the statewide level so that local municipalities were not buffeting local restaurants with competition

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that was within the customers' geographical availability.

This issue was especially hot and heavy in the Kansas City metropolitan area.

However, since SB 37 does not meet the criteria that was set out in the position, nor does it meet the intent of many members of the association, the KRHA does not feel that it can state, at this time, that it is not in opposition to SB 37. However, we believe some communication has occurred which would indicate that some group and/or individuals have been lead to believe that the KRHA has adopted a position contrary to what has been adopted. We are concerned about the possible misinterpretation and do not feel that we can testify in opposition to this legislation at this time even though it does not meet the technical requirements of the position of the association since it is full of exceptions.

The KRHA Board will be updating and revising the KRHA position paper in the near future, and we will reserve further comment on this legislation until the Board has spoken on that matter.

Thank you very much for permitting me to testify, and to state on the record the stance of the KRHA on this important matter.

SMOKING ISSUES - THE BROADER PICTURE

An Editorial Letter Responding to Proposals For Banning Smoking In All "Public" Places and More.

By

Joe B. Vise

Attorney at Law

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Just as we should accept the premise that smoking can cause various health problems, so should we accept the premise that tobacco is not an illegal substance - - meaning that we remain *free* to choose whether or not we wish to smoke, just as we should equally remain *free* to choose whether or not we will expose ourselves to any smoking environment.

No matter how well-intentioned may be the governing bodies that enact them, ordinances that broadly ban smoking in and around privately owned property (meaning property not owned by that governmental entity) take from all of us, smokers and nonsmokers alike, some of the *liberties* and *freedoms* bestowed upon us by our forefathers - - being our *right*, within the limits of the law of course, to make personal choices on such things as how we wish to live our lives and what we choose to do upon our own property. Our forefathers did not intend that any public authority should have the power to dictate otherwise. Shortsighted and ill-advised it is for any governing body or ban proponent to support or advocate legislation that effectively would make it unlawful to engage in an otherwise lawful activity and would deny the members of any identifiable group of a personal or property *right* to exercise an attendant *freedom* of choice. After all, if our elected officials do not at some point take a stand against progressively greater governmental intervention into our private lives, who's to say that the next *right* or *freedom* taken from us will not be one held dear by the very people who now support or advocate a taking of that *freedom* as it pertains to tobacco use/exposure. Left alone, as the impact of our *freedom to make private choices* predictably plays out within our free enterprise system, our exercise of this *right* is necessarily self-regulating in addressing the concerns of nonsmokers. This has already demonstrated itself in the marketplace to be progressively and materially effective in addressing such concerns. These self-regulating results must not be ignored because they make self-evident the nonexistent need for governmental intervention and the far greater worthiness for vigilance over prospective threatened erosion of our individual *liberties*. Irresponsible at best it would be, under these circumstances, to credibly consider any proposition that would condemn the *right* to exercise our *freedom* of choice as pertains to smoking issues and substitute therefor the personal preferences (mandates) of any group of people

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(governing body) who may believe themselves better qualified to make choices for us. A very unappealing and frightening thought indeed! Let me edify.

Should any property or business owner have the *right* to choose whether to permit or to prohibit a legal activity (smoking, concealed firearms, etc.) upon his or her premises? Absolutely! A homeowner is *free* to choose to prohibit or permit smoking in his or her home, and a business owner should be equally *free* to choose to prohibit or permit smoking in his or her business establishment. A smoking ban in/around all business establishments would deny business owners, as a group, the *right* to exercise a *freedom* previously enjoyed. Such a ban would further raise a constitutional question of the permissibility of taking from a property owner his or her personal *right* to perform an otherwise lawful act upon his or her own property. Whether business owners may make their choices for profit or other personal reasons, they should be allowed to retain their *right* to make those choices. Owners of multi-tenant buildings should remain *free* to choose, through provisions made within their lease documents, whether or not smoking will be permitted upon their property. Prospective tenants should remain *free* to choose whether or not they wish to conduct their business in a building where smoking is either permitted or prohibited. Through the posting at the entrance to any building or separate business premises a uniform sign announcing that smoking therein is either permitted or prohibited, all persons who might enter would be alerted and *free* to choose, in advance, to enter or to not enter those premises.

Should prospective employees have the *right* to choose either to work in an environment that permits smoking or in one that prohibits smoking? Absolutely! This *freedom* to choose is also self-regulating in advancing the goal of ban proponents. Difficulty in hiring employees to work in a smoking environment would, ultimately, cause a smoking-permitted business to become a smoking-prohibited business. Additionally, employers in this day and age have become unwilling to expose themselves to the potential of future claims by employees who may claim that they suffered some work-related infirmity as a result of being exposed, on the job, to secondhand smoke. Most employers have already, without governmental intervention, created smoke free workplaces for these and other reasons. More are choosing to do so every day. The proof of this self-regulating effect is self-evident. However, smoking bans applicable to all workplaces, both public and private, would deny prospective employees, as a group, the *right* to choose to work in a smoking environment, whether that choice may be made for income or other personal reasons.

Should we have the *right* to choose either to patronize a business (be it a bar, restaurant or any other enterprise) that permits smoking or one that prohibits smoking? Absolutely! This *freedom* to choose is, again, self regulating in advancing the goal of ban proponents. Our free enterprise system is such, because of controlling profit motives, that business owners will choose to prohibit or permit smoking depending upon their perception of which choice will be the more profitable for them. Beyond question, the greatest majority of businesses and a great many restaurants and bars have already become smoke free establishments. They have become such as a result of choices that business owners have been free to make, not as a result of governmental prohibitions. This result has provided the public with alternatives that enable all to effectively exercise the *freedom* to choose - - to effectively exercise individual preferences, whatever if any they may be, for patronizing a smoke free or a smoking-permitted establishment. That is as it should be! Smoking bans applicable to all businesses, restaurants, bars and the like would not only deny each of us our *right* to make personal choices and exercise our preferences but would, as well, materially interfere with a free enterprise system that should not be tampered with. The law of supply and demand does work! As the demand for smoking-permitted establishments falls, as it undeniably has and will continue to do, the supply of smoke free establishments will rise, as it undeniably has and will continue to do. The number of smoke free establishments that are available to us has already risen to the level of giving us plentiful comparable alternatives for choosing to avoid smoking environments, if we so prefer (see www.cleanairkc.com). We are not now compelled to expose ourselves to secondhand smoke because there are sufficient alternatives available for us to choose. The numbers of those alternative choices will only continue to grow, and that will happen because our system of free enterprise will continue to work - - furthering the goals of ban proponents, without more governmental regulation and without the sacrifice of individual *liberties*.

Are there any measures that could enhance and further the *rights* of nonsmokers to be free of secondhand smoke and, at the same time, preserve the *rights* of smokers to not be denied their pleasure/habit in every establishment, restaurant and bar in town? Absolutely! Our system of free enterprise has proven itself to be working. It is working because we have the *freedom* to make choices for ourselves. If left alone, it will continue to work. There is simply nothing that needs to be fixed and, most certainly, not at the expense of our individual *liberties*. There may, however, be two missing links necessary to make worthy the underlying premise of this editorial. (a) First, the public needs to have the ability to make informed choices as to their preference, if any, for nonsmoking or smoking environments. This might be most

effectively and economically accomplished through the required posting at the front entry to all buildings and separate establishments of a small sign or decal that announces to all comers that smoking is permitted, that smoking is permitted only in designated areas or that smoking is prohibited therein. Whoever might find the environment within to be unacceptable for any reason need only walk away. In the alternative and without burdening all property and business owners, an ordinance could state that smoking is prohibited within all buildings unless a building or business premises is so posted to the contrary. Either way, the purpose of such a measure would be to enable the public to make an informed choice before, and not after, entry. A municipal or other governmental entity could enact the approved form and content of such a sign or decal, have them printed and make them available to property and business owners within its jurisdiction at a nominal charge to cover its cost. Such an ordinance would represent a reasonable regulation of a lawful activity and it would not infringe upon the *rights* of any identifiable group or person! **(b)** Second, different regulations may be justified in the cases of truly public events that are conducted within a congested environment or indoor facility even though that environment or facility may be privately owned or controlled. In cases where alternative events and facilities are not available to the smoking and nonsmoking public (such as football and baseball games, other athletic events, racing, concerts and the like) then, perhaps, our *freedoms* must necessarily become subject to some reasonable regulation. I know of none where smoking remains permitted in public seating areas, again demonstrating the self regulating nature of our free enterprise system, but the proponents of smoking bans might feel better if smoking were legislatively prohibited in the public seating areas of such events. Doing so should only be exercised with appropriate caution, however, so as to give due respect for the *right* of the smokers to choose to step away from the restricted area to enjoy a smoke, without imposing upon the quality of the air within the regulated environment. Those who truly cater to the public at large as their target customer, can be reasonably required to furnish appropriate smoking areas that are relatively convenient and do not require smokers to subject themselves to harsh or intolerable weather conditions. In many cases, there would be little or no cost to designate and provide for such smoking areas. In a lesser number of cases involving indoor facilities, however, there may be some material cost in providing for separately ventilated areas. By targeting a classification of businesses that cater truly public events to the public-at-large, such regulations would be no more burdensome than is the requirement for a given number of public toilets. It would simply represent another requirement and cost for conducting that classification of business. An ordinance of this nature (prohibiting smoking in public seating areas of public events and requiring designated smoking areas) would represent a reasonable regulation of a lawful activity that reasonably attempts to balance the *rights* of nonsmokers, smokers and property/business owners alike.

Far too many folks seem willing to see more and more governmental control over our lives, in careless disregard for the resulting loss of individual *rights* and *liberties*. Actually, most do not realize the cost or ask themselves the question - what will be the next *freedom* that is lost? If their motives are pure, being the *right* of nonsmokers to not be exposed to second-hand smoke, then I submit that the preservation of the *freedom* of choice for smokers and nonsmokers alike, as I have described it, adequately and effectively so protects the nonsmoker without infringing upon the *freedom* of those who choose to smoke or permit smoking within their establishments. Far too many tabloids, such as the Kansas City Star and the Shawnee Dispatch as examples, are more than willing to violate their public trust by routinely promoting their own agendas under the guise of staff editorials (not guest editorials) advocating smoking bans. It is abundantly clear that neither the authors of those editorials nor the editors of those newspapers care about the irresponsible damage they do to the public good. Their misuse of this editorial method enables them to promote more governmental regulation without necessity for worry or objective reporting on the stakes involved. In furtherance of their cause, they can and do avoid objectively reporting on the progress and success of self-regulation. The most irresponsible aspect of their abuse of the editorial vehicle is their access to the populace to promote, as they have, a false belief among the naive that they are likely to die of exposure to secondhand smoke by spending an hour or two in a smoke-filled bar once a year, once a month or even once a week. The more tragic consequence, however, is the resulting fear of the misinformed that they put themselves at risk by passing a smoker on the street or on their way into a restaurant. That is simply not true! The responsibility for advancing such misconceptions among the public is, in substantial part, attributable to the willingness of newspapers such as the above to have so little regard or respect for their public trust. Be that as it may, this observation brings me to my final thought on these smoking issues.

That final thought is the folly of ban proponents in advocating for the prohibition of smoking outdoors, in the open air, within a specified number of feet of an entry to a business premises. If there may be any greater evidence of just how distorted has become the propaganda that has been fed by the media (exemplified above) to the gullible public, at the underlying instance of the regional branch of our federal government (Mid-America Regional Council), I cannot find it. I suspect that these same proponents would like, as well, to ban the burning of prairie grazing lands, wood burning fireplaces, leaves and charcoal cookers so they will not have to unwillingly take a whiff.

We are more than capable of making our own decisions to smoke or not, to permit smoking on our premises or not, to work in an environment where smoking is permitted or not, and to frequent establishments where smoking is permitted or not. Proponents of smoking bans must, then, necessarily advocate (whether they realize or not that they do so) either that the public lacks the intellectual capacity to make such simple choices for themselves or that it better serves the public good to eliminate, via more governmental regulation, any need for the making of personal choices. Perhaps their enthusiasm for a smoke free environment blinds such proponents from full realization of the very high cost of the goal they advocate, being the sacrifice of yet more of our individual *liberties*. The end simply does not justify the means in this instance! Whether proponents do not understand or whether they do not care, we must rely upon our elected officials to be vigilant and insure that our individual *rights* and *liberties* are duly preserved and protected at all cost. That includes the making of decisions that may be conceived to be unpopular! Any student of constitutional law will quickly warn of the risk of not exercising such vigilance. Smoking regulations typically have not been, but most definitely should be, carefully analyzed as they infringe upon the *rights of nonsmokers and smokers alike to make decisions for themselves*. Then, if found to be justifiably warranted, any additional regulations should be cautiously and appropriately limited in scope to those instances where the public is not able to effectively choose, giving paramount consideration always to preserving and safeguarding our individual *liberties* and our *freedom* to choose for ourselves.

Until tobacco might be designated as an illegal substance and the possession or use of it thereby made to be a crime, the determination of where smoking should be permitted or prohibited is best left with the private sector. If left alone, the *freedom* to choose will, in and of itself, ultimately regulate smoking to the satisfaction of those folks who choose not to be exposed, and it will happen in a fashion that deprives no identifiable group or groups of any *liberty* or *freedom* previously enjoyed. The interests of smokers and nonsmokers alike would thusly be far better served!

Philip Bradley

From: magnum ti [ti731@hotmail.com]
Sent: Tuesday, January 16, 2007 10:06 AM
To: vratil@senate.state.ks.us
Cc: dlalbert@att.net; phil@klba.org; jimfager@earthlink.net
Subject: KS. Smoking Ban

Senator Vratil,

I would like to add my .02c to the Ks. Smoking Ban issue at hand. As a Leawood resident and restaurantuer, i will be glad when this issue is settled across the country. But in the KC metropolitan area , it must be done on a level playing field for the sake of the livelyhood of so many employees and their families. Please tie this into and co-ordinate any statewide effort, into the Jan. '08 targeted deadline already in play in so many Jo. Co. cities.

Please allow the exemption of outdoor patios and designate outdoor smoking areas. I am not a smoker, but business owners have rights , as well as individuals. Please try to work with us all, as we would like to achieve harmonious results we can all abide by.

Regards,

Tom Intfen ~ Paddy O'Quigley's ~ Leawood , Ks

MAY THE LORD 'n THE LUCK OF THE IRISH
BE WITH YOU ALWAYS

A letter from Jerry and Sue Neverve owners of the Red Lyon Tavern 944 Mass. Lawrence, KS. Jerry has been in business for over 30 years in Lawrence. Sue is also a Interrelated Services Teacher, & Special Services Department Chair at Lawrence High School. This letter refers to SB 37 and to the current ban in Lawrence.

Testimony on SB-37, January 17, 2007
Senate Judiciary Committee

Mr. Chairman, and Senators of the Committee,

I am in favor of a compromise ban that matches the economic and geographic climate of the state of Kansas. Senate Bill 37 does not.

In the Midwest, several cities have "hours" that ban smoking (Salina, KS, Ames, IA, etc.) or exempt non-food places (Dallas, for one). The proponents are emphasizing employee health and safety which is why there are no exemptions although there are no scientific measures or any clean air standards to meet either. Also ignored is the fact that employees are "at will" and do not have to work in an environment with smoke or any other condition.

Also this ban does not allow businesses to respond to the market (basic supply and demand). Months ago, we installed several thousands dollars worth of ionizers and equipment to keep our business as smoke free as possible and eradicate smoke overnight. This was before this issue arose. People here choose whether to patronize a place, and smoke is one of the factors. We know that. Some businesses continue to be smoky, and others are like us in investing to control the smoke and appeal to many customers without losing the smokers.

We also have some smoke-free bars and restaurants already (and all restaurants have SF sections), but the main SF bars struggle economically (and will now totally lose its competitive edge). None of the proponents seem to patronize the already SF places and are not the social regulars of places that serve alcohol. (Smoke-free place closed soon after ban went into effect.)

Because our bar is located downtown, we are subject to further restrictions. Senate Bill 37 states that people have to go at least 10 feet from the door to smoke. If my patrons have to go 10 feet away, they are in front of another business or in the street. Therefore I can't provide them with any protection from the inclement weather or any place to put out their smokes. I do not want to be a burden on my neighbors nor do I want to have to send my patrons hundreds of feet away to smoke.

An outdoor area is not very useful in inclement weather, the winter, or the hottest part of summer. Even so, Jerry and I just finished a major renovation of our facade in February, and we would have moved the whole front back ten feet to have an outside area if we had known the ban would be passed. Our place is so small (with a very tall ceiling) that it is hard to lose square footage but we would try to accommodate.

The ban is on all businesses, private clubs, vehicles related to the business, etc. Our friend has to tell his 80-year-old mother and office manager that she cannot smoke in her own private office any more AND build her an open area outside of their business. He does not smoke, but his mom does.

Many people are upset about additional regulations being imposed upon an activity they regard as a choice--especially since there are SF options. The ban criminalizes a legal activity.

Oh, by the way, you're probably wondering who gets the consequences of violations. The business owner. Yep, sometime, someone will violate this ban, and I will get cited and fined \$100, 200, 500, etc., AND I will have a misdemeanor criminal record. So, no to this ban, and yes to something that fits Kansas better.

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January 17, 2007

Mr. Chairman and Members of the Senate Judiciary Committee:

My name is Kim Moffitt and I am a taxpaying resident of the great state of Kansas. Today I respectfully ask that you oppose Senate Bill 37. A smoking ban sounds like a great idea for sound bites, but the negative economic impact it will have on our fellow citizens of Kansas will be astronomical.

I own a bar on the Missouri/Kansas border called Twin City Tavern. Although my bar is in Missouri, we will be negatively impacted by a statewide ban in Kansas. First off, if Kansas passes a smoking ban, the 85 % trigger will be enacted and Kansas City, Missouri will go smoke free as well. Although this may on the surface not appear to be a concern for the legislative body in Kansas, it will have a direct negative impact on many in Kansas. Like myself, many of my employees live in Kansas and work in Missouri. If I loose business due to a smoking ban, I will be forced to lay-off employees to compensate for my loss of revenue. This predicament will be the same for many bar owners as they will have to do the same.

Please allow business owners to determine their own smoking policies.

Please oppose Senate Bill 37. Thank you for your time and consideration on this very important matter.

Kim Moffitt
4728 W. 61st St.
Mission, Kansas 66205

January 17, 2007

Distinguished Members of the Senate Judiciary Committee:

Thank you for the opportunity to submit written testimony to the Committee. I know that you have a lot of information in front of you, so I will be brief. In short, I am asking that you vote against Senate Bill 37. A state-wide smoking ban is bad for business here in Kansas.

As the owner of several businesses in Kansas, I will directly feel the negative economic impact that a smoking ban will have. My newest establishment, JAZZ, is located in close proximity to the new NASCAR facility in Kansas City, Kansas. I anticipate having a large amount of "spill-over" from that facility into mine. As you can gather, many of the fans of NASCAR are in fact smokers. I would love to have these customers frequent my establishment. However, in order to maximize the profitability of such a spill-over, I would prefer to allow smoking.

It would be amiss for me not to mention my employees in this testimony. As a business owner, I employ many people in Kansas. I would like to expand upon that and hire more hard-working men and women to work in my establishments. If a smoking ban were to be imposed, not only would I not be able to hire more people, but most likely I will have to let employees go. I do not want to do that. I do not want to lay off hard-working people who depend on my business to provide them a living wage to support their families.

Please support the hard working men and women in the hospitality industry and vote against Senate Bill 37.

Thank you for your time and consideration.

Vic Allred
Kansas City, Kansas

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Dear Chairman Vratil and Honorable Committee Members,

The bars of Kansas and their patrons deeply don't want a smoking ban! The life risks from environmental tobacco smoke in bars and restaurants would have to be both very large and established beyond a reasonable doubt to justify such a threat to business and criminalization of adult citizens using a legal product on private property. The following evidence strongly argues that tobacco smoke in any Kansas bar is merely a foreseeable nuisance and irritant that can be almost entirely eliminated through ventilation and filtration:

The longest-running and highest-quality secondhand smoke study ever done, completed too late (2003) to be included in Surgeon General Carmona's report, found no link between secondhand smoke and lung cancer or heart disease.

<http://bmj.bmjournals.com/cgi/content/full/326/7398/1057>

A study by the Oak Ridge National Laboratory found that restaurant ventilation/filtration systems can make the air of a nonsmoking section of a smoking restaurant as clean as the air of smoke-free restaurant.

<http://www.data-yard.net/2/21/rtp.pdf>

Another Oak Ridge National Laboratory study of tavern workers in 16 major cities found that the tobacco smoke exposure of bar and restaurant workers to be minimal. No bartender was found to breathe more than the equivalent of a single cigarette per 40 hour work week. The average bartender breathed .1 of a cigarette per 40 hour week.

http://www.ornl.gov/info/press_releases/get_press_release.cfm?ReleaseNumber=mr20000203-00

A huge recent study of heart attack rates in California and New York has proven that smoking bans do not lead to a reduction in heart attack rates:

<http://tobaccoanalysis.blogspot.com/2005/11/new-study-casts-doubt-on-claim-that.html>

In an estimate of health benefits of the New York City smoking ban, American Council on Science and Health President, Elizabeth M. Whelan Sc.

D., M.P.H., admits that "There is no evidence that any New Yorker - patron or employee - has ever died as a result of exposure to smoke in a bar or restaurant." Whelan further states that "The link between secondhand smoke and premature death, however, is a real stretch."

http://www.acsh.org/factsfears/newsID.215/news_detail.asp

Surgeon General Carmona's report and press statements have come under severe criticism from respected public health authorities even within the antismoking movement. The Surgeon General's contention that there is no safe level of exposure to secondhand smoke is especially disputed. The Surgeon General's report needs much more analysis and scrutiny before it can become the proper basis for law. It is important to remember that the EPA Report which declared secondhand smoke to be a human carcinogen was subject

to years of scrutiny by scientists and epidemiologists before being vacated as a fraud by a federal judge four years after its release.

http://www.acsh.org/factsfears/newsID.800/news_detail.asp

<http://tobaccoanalysis.blogspot.com/2006/06/surgeon-generals-communications.html>

<http://www.forces.org/evidence/epafraud/files/osteen.htm>

After analyzing the EPA Report linking secondhand smoke and lung cancer, the Congressional Research Service concluded that: "The statistical evidence does not appear to support a conclusion that there are substantial health effects of passive smoking.... Even at the greatest exposure levels....very few or even no deaths can be attributed to ETS."

<http://www.forces.org/evidence/files/crs11-95.htm>

The refusal of OSHA, the government agency charged with the protection of worker health, to ban workplace smoking, calls into question the danger of tobacco smoke exposure in a bar or restaurant. OSHA has established PELs (Permissible Exposure Levels) for all the measurable chemicals, including the 40 alleged carcinogens, in secondhand smoke. PELs are levels of exposure for an 8-hour workday from which, according to OSHA, no harm will result. OSHA explains that under normal workplace circumstances, secondhand smoke "exposures would not exceed these permissible exposure limits (PELs)"

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATION&p_id=24602

"Field studies of environmental tobacco smoke indicate that under normal conditions, the components in tobacco smoke are diluted below existing Permissible Exposure Levels (PELs.) as referenced in the Air Contaminant Standard (29 CFR 1910.1000)...It would be very rare to find a workplace with so much smoking that any individual PEL would be exceeded." -Letter From Greg Watchman, Acting Ass't Sec'y, OSHA, To Leroy J Pletten, PHD, July 8, 1997

Chairman Vratil and Honorable Committee Members, if the maximum tobacco smoke exposure for any Kansas bartender is 1 cigarette per 40 hour work week, the ordinary exposure only a tenth of that, and the exposure of any patron only a tiny fraction of that tenth, is a public health intervention as severe as a smoking ban justified? If OSHA does not deem environmental tobacco smoke a workplace health risk worth regulating, and the death of any Kansas citizen due to bar or restaurant smoke is questionable, why restrict the freedoms of Kansas citizens and the private property rights of Kansas business owners with a smoking ban? A recent study showed that even with a "level playing field", smoking bans reduced the business of bars by 20 percent. There is no compelling public health reason to add Kansas bars to the long list of bars across the country that have been injured or killed by such bans:

<http://www.davehitt.com/facts/badforbiz.html>

<http://www.pubcoalition.com/economic%20impact%20head%20page.html>

Chairman Vratil and Honorable Committee Members, please allow Kansas citizens over 21 to make and live by their own free lifestyle and employment choices. Please vote down any smoking ban on Kansas bars.

Sincerely,

Bill Hannegan

Mr. Chairman and Members of the Senate Judiciary Committee:

As a Wyandotte County resident and owner of two drinking establishments in Kansas City, Kansas, I submit this testimony to the council to urge each of you to oppose Senate Bill 37. A total smoking ban will add to the growing restrictions being placed on businesses like mine, making it difficult to survive. I ask that you leave it up to the individual business owner to decide what is best for his or her establishment and let the customers make the decision on where they choose to go – whether into a smoking or nonsmoking environment.

There are quite a few smokers who come into these establishments and it would make it very difficult to run this business in the manner I see fit if these patrons cannot smoke and drink at the same time. These businesses depend on our loyal crowd of regular customers to stay solvent. We will not be able to keep them in our establishment if they cannot smoke.

This is true all over the state of Kansas, but it is even more significant for the “border” towns. As close as we are to Kansas City, Missouri, Parkville, and other cities that do not have a smoking ban, I fear we will lose customers who will be willing to drive another mile or two to relax in an environment where they can smoke.

Please stand up for the rights of business owners and the citizens in the state of Kansas by opposing this bill. I am depending on your support.

Sincerely,

Joni Bocelewatz
279 Orchard Street
Kansas City, Kansas 66101

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Mr. Chairman and Members of the Senate Judiciary Committee:

"Hello, my name is Joseph T. Bolduc.

I am president and founder of the Kansas Business Rights Association

I have been involved with this smoking ban issue for at least 15 years. I'd like to state up front I am not pro-smoking. I fight these bans as a concerned citizen who sees our rights, our freedom of choice, our individualism, being slowly but surely eroded away by a self-centered vocal minority. I fight against the falsehoods being perpetuated by this minority because I believe in the truth. I fight because I see our country being "nannified" by a vocal minority of self-important individuals who feel it is their purpose in life to tell others how they should be living. Who think nothing of forcing them to do so when they won't do it voluntarily. To me this is no different than what occurred in Nazi Germany, Soviet Russia, or Communist China. Governments with little or no respect for individual freedoms.

Regarding the smoking ban issue I have had the opportunity to witness it's effects in a way most have not. My career path has involved a lot of travel, taking me from coast to coast frequently. I have seen first hand the damage caused by these bans from Massachusetts to California and can say that the pro-ban supporters are wrong. I've seen small mom and pop type businesses, places that have around for years destroyed almost overnight. These are the people who take the brunt of these bans, the small, neighborhood businesses. I've talked to people who have lost everything, their businesses, their homes. People who have suffered heart attacks and other stress related illnesses. People who've had to explain to their children why they can't live and go to school where they used to anymore. These bans affect the core of our country, the small businessman and woman. The families with a dream of being self sufficient.

In many cases these families survive in the face of corporate competition because of the smokers. I know of a family that owns a restaurant in Overland Park surrounded by corporate owned competition that survives because of the smokers, more than 50+% of their customer base are smokers. This is a husband/wife operation with 3 children under 10 years of age. A family that would lose their house and be quite literally put on the street if the business failed. The pro-ban supporters claim they are trying to protect the health of their workers yet 70% of those workers smoke. Workers whose health would be more severely impacted by the loss of their jobs yet do the ban supporters really care? Do they care about what happens to people like my friends? No, because this isn't really about workers health, it's about smoking in general and using any means available to stomp it out, whatever the cost. Ironic that in the name of "public health" they destroy peoples health and well being, all because of what is basically a pet peeve.

People like the family above are the backbone of America and I fight because of them. I fight for their dreams. Below are facts to back what I fight for. Facts that the pro-ban supporters cannot refute. I have for the last several months publically challenged Clean Air Kansas to a debate. They have so far refused because they know they cannot support their claims. *Unlike my opponents I can support every claim I make below using solid, verifiable, respected sources.*

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Joseph T. Bolduc
Merriam, KS.

BAN PROPONENTS MAIN CLAIMS: TRUE OR FALSE?

4,000 chemicals:

FALSE. If there were that many chemicals cigarette smoke wouldn't float, it would just fall to the floor. If much heavier wood smoke contains about 150 chemicals how could lighter cigarette smoke contain 4,000? Think about it. Have you ever actually seen a list of these alleged 4,000 chemicals? The truth is a tobacco company researcher D.L. Roberts working on flavoring in 1988 supposed a possible 4,000 compounds. In other words mixtures of the 50 or so measurable chemicals the CDC lists with other chemicals for flavoring purposes. Even the CDC's data shows 81.2-99% of cigarette smoke is harmless.

50,000 deaths:

FALSE. If so then there would have been 500,000 deaths from ETS in the last ten years resulting in reams of reinforcing data, autopsies, studies, etc. So.... where is it? The truth is a Mr. Judson Wells (a chemical physicist PHD but not a medical doctor or researcher) cherry picked through existing studies and surmised this figure without a shred of verifiable evidence. His study was rejected by a peer review when submitted for publication to American Environmental Journal and invalidated by the Congressional Research Service, the 7th Federal District Court and just last year he was rejected by the 8th Federal District Court as not being qualified to testify on ETS. This 50,000 figure gained notoriety when it was promoted by Stanton Glantz (PHD, engineering) at an AMA meeting in the early nineties and has assumed urban legend status since.

Harm to employees:

FALSE, and TRUE. The American Cancer Society, the Oak Ridge National Laboratory, and the St. Louis Park MN EPA have all found levels of nicotine (the largest and only measurable smoke component) to be anywhere from 20,000 (restaurant with separate smoking area) to 584 (bingo hall) times safer than OSHA recommended 8hr levels. Bars were all over in the middle. We have also found that in OP and Shawnee(KS) bar and bar and grills smoking employees constituted 80% of all employees. Several local establishments were 100% smoking employees. So who would a ban be protecting there?

Yes, it will have an effect on those workers sensitive to environmental particulates. Such as people with allergies or asthma. The resolution for this is don't work in those environments. These same people wouldn't dream of working in a dust filled construction environment or as firepersons would they? So what is their problem here when there are numerous options.

Second Hand Cigarette Smoke is Deadly:

MOSTLY FALSE: From a World Health Organization 15 member nation study and a 118,094, 38 year American Cancer Society member study:

World Health Organization: "Our results indicate no association between childhood exposure to ETS and lung cancer risk. We did find weak evidence of a dose-response relationship between risk of lung cancer and exposure to spousal and workplace ETS. There was no detectable risk after cessation of exposure. [Natl Cancer Inst 1998;90:1440-50]" Interestingly, this study also found that non-smoking children of smokers were less likely to develop lung cancer than other non-smokers later in life.
ACS Conclusions: The results do not support a causal relation between environmental tobacco smoke and tobacco related mortality, although they do not rule out a small effect. The association between exposure to environmental tobacco smoke and coronary heart disease and lung cancer may be considerably weaker than generally believed.

There would be no Financial Impact:

FALSE. If there is no impact then why are casinos always exempted? Why does the KBRA have a list of damaged and failed businesses totaling 39 pages? Why did CA restaurant and bar growth go negative while other retail soared 172% positive? Why did 58 businesses fail in 8 months in Hennepin County MN, a county comparable to Johnson County, forcing them to relax their ban? How can you not have financial damage when 60-80%(bars) and 20-30%(restaurants) of your customers have been banned? This is the most illogical, but typical, of the ban supporters claims. They will tell you of how nice a trip somewhere was but neglect to tell you how few places there were to go to.

Everything anti-ban is Tobacco funded:

FALSE. You all know the saying that those who live in glass houses shouldn't throw stones. Ever wonder where the ban proponents get the funding for their campaigns? In large part from the companies that make products such as Nicorette, Nicotrol, Zyban, etc. Johnson & Johnson itself, via the Robert Wood's Foundation, has given over \$500,000,000 since the mid nineties. Millions more than they give for other needier causes. Why? Profit. The extremely profitable nicotine control product line has topped \$1 billion in sales and keeps going thanks to government bodies such as yourselves. What a great deal for them, get the government to create a customer base for a highly addictive product through regulation. It's a much better return on investment than regular advertising venues.

If you've bothered to read this far then hopefully you have some doubts now. Many of you've likely never even heard any of this. So, given this new information are you still going to blindly follow the "politically correct" path or think for yourselves and realize something is very wrong here?

For sources see KANSAS BUSINESS RIGHTS ASSOCIATION-
<http://kansasbusinessrights.org>

Chairman and Members of the Judiciary Committee:

My name is Jim Fager, and I am the manager of Tanner's Bar and Grille and I am testifying on behalf of the owner Kevin King. We have three locations in Kansas, two in Overland Park and one in Lenexa. As the manager of a business that allows smoking, I know a smoking ban across the state would devastate our businesses and many others. Several of our frequent customers have already expressed their opposition to a statewide smoking ban and have also said they might as well stay home.

Contrary to what smoking ban supporters say, restaurants and bars do suffer a significant loss in customers and in revenue. Because many people that drink also smoke, banning smoking in bars and restaurants could destroy profits.

Please keep in mind that people make the choice to visit our establishments and spend their money. Leave the choice to the patrons what places they go into, and leave the choice to the owners how to regulate the smoking.

Thank you for your time and support.

Jim Fager



AMERICANS FOR PROSPERITY
K A N S A S

January 17, 2007

Chairman and Members of the Judiciary Committee:

On behalf of the more than 6,500 Kansas members of Americans for Prosperity, we oppose SB 37.

We oppose this bill because it infringes upon business and personal property rights and freedoms.

Kansas citizens can and do choose the businesses and locations they visit.

And in fact, the marketplace is working. Many Kansas workplaces and businesses have already made their locations smoke-free. They made this decision based on market conditions.

In light of this fact, we can see that the market has responded therefore intervention by the government is unneeded.

There is little justification for usurping private property rights by banning smoking in private establishment when citizens already have the option of visiting smoke-free establishments without such a ban.

Thank you for you time and support.

Alan Cobb
AFP Kansas State Director