

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on February 13, 2008, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Marcia Nielsen, Executive Director, Kansas Health Policy Authority
Dr. Deborah Clements, Kansas Academy of Family Physicians
Joann Corpstein, Chief Counsel, Kansas Department on Aging
Tim Shallenburger, Penn National Gaming, Inc.
Gilbert Cruz, Kansas State Long-Term Care Ombudsman
Sandy Jacquet, General Counsel, League of Kansas Municipalities
Curt Diebal, Business owner, Kansas City
Frank Naylor, Churchill's, Topeka
Vic Allred, Jazz-A Louisiana Kitchen, Kansas City, Kansas
Father H. Setter, All Saints Catholic Church, Wichita
Alan Cobb, Americans for Prosperity
Bill Nigro, President, Kansas City Business Rights Coalition
Phil Bradley, Kansas Licensed Beverage Association
Ron Hein, Reynolds American
Matthew Goolsby, Wichita
Larry Doss, Walt's Bar & Grill, Wichita
John Todd
Jeff Martin, Amour Amusement
Tom Conroy, Conroy's Public House, Lawrence

Others attending:

See attached list.

The Chairman opened the hearing on **SB 493—State-wide prohibition on smoking in indoor public areas.**

Marcia Nielsen testified in a neutral capacity, indicating support for a statewide smoking ban (Attachment 1). At this time the Board has not discussed **SB 493** and could not either support or oppose the current bill. Ms. Nielson related that smoking bans do improve health and reduce the need for medical care services.

Dr. Deborah Clements provided neutral testimony stating the Kansas Academy of Family Physicians fully supports restrictions on smoking in public areas (Attachment 2). Dr. Clements raised concern regarding the county-by-county vote and urged that it be struck from the bill.

Joann Corpstein testified in a neutral capacity, requesting an exemption for adult care homes as defined by K.S.A. 39-923, provided the homes give notice to potential residents and employees prior to admission or employment (Attachment 3).

Tim Shallenburger appeared in opposition, stating such legislation will have a negative impact on destination gaming facilities such as the proposed state operated casinos in Cherokee and Sumner counties (Attachment 4). Losses will go beyond lost revenue streams due to the unique markets and proximity of tribal casinos. The smoking ban would be detrimental to the gaming facility managers and detract from revenues to be realized by the State of Kansas.

Gilbert Cruz testified in opposition, stating in its current form **SB 493** would ban smoking in adult care homes that currently allow smoking (Attachment 5). Although the number of homes that offer a smoking option is decreasing, some would like to continue to offer a smoking option. Banning the adult care homes' ability to

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35A.M. on February 13, 2008, in Room 123-S of the Capitol.

offer a smoking choice violates the right of residents of the facilities to self-determination.

Sandy Jacquot spoke in opposition, stating the League had no position on the statewide smoking ban in general (Attachment 6). Their concern was in regard to existing ordinances that have exemptions. Many cities have adopted ordinances that work in those cities. Ms. Jacquot requested either amend the preemptive language or grandfather existing ordinances. She also raised concern about the election provision. Ms. Jacquot requested clarifying language to ensure that cities may adopt smoking bans even if the county has chooses to opt out.

Curt Diebal, spoke against **SB 493**, stating as the owner of a tobacco shop, he believed his customers should be allowed to sample products in the shop (Attachment 7). Patrons of tobacco shops have make a conscience choice to be in a smoking environment. Mr. Diebal requested the exemption of tobacco shops.

Frank Naylor spoke in opposition, relating the severe impact **SB 493** will have on his tobacco shop and requested exemption in the bill (Attachment 8).

Vic Allred testified in opposition, stating a statewide smoking ban will have an adverse effect on many small businesses (Attachment 9). He indicated enactment of the bill will hasten the demise of many small restaurant establishments.

Fr. H. Setter appeared in opposition, stating he is a nationally recognized cigar connoisseur (Attachment 10). Fr. Setter's foundation raises monies for local charities in the Wichita area by hosting an annual benefit cigar dinner. Passage of **SB 493** would eliminate the possibility of continuing this endeavor. Fr. Setter feels legitimate, practical and common sense restrictions are currently in place, and a statewide smoking ban removes a citizen's right of choice.

Alan Cobb spoke in opposition, stating **SB 493** infringes upon business rights and personal property rights and freedoms (Attachment 11). Mr. Cobb stated smoking bans are a reckless expansion of government and set a dangerous precedent.

Bill Nigro appeared as an opponent, stating the free market place is already addressing the issue of smoke free establishments (Attachment 12). More and more businesses are gong smoke free every day for people that do not like smoking and for employees that want to work in a smoke-free environment. Mr. Nigro feels it is a contradiction for the state to continually increase taxation and collect revenues from tobacco products while at the same time trying to enforce restrictions on the use of those products.

Phil Bradley appeared in opposition, stating voluntary and mandatory smoke-free establishments are increasing and smoking rates are down (Attachment 13). Since local options are working, Mr. Bradley feels **SB 493** is unnecessary and opposes efforts to limit the choices of adults and businesses. If the bill is enacted, Mr. Bradley encouraged the inclusion of language that would allow a "Smoking Establishment" exemption.

Ron Hein spoke as a opponent, indicating Reynolds American opposes smoking bans because the bans will have an adverse effect on the local economy (Attachment 14). Additionally, while smoking bans are enacted for the safety of restaurant and bar workers, they are often negatively impacted due to reduced business. This legislation infringes on the rights of the state's citizens to make decisions for themselves and their business properties.

Matthew Goolsby spoke in opposition, stating the statewide smoking ban is a private property rights issue (Attachment 15). Mr. Goolsby encouraged the committee to vote against the bill.

Larry Doss appeared in opposition, indicating that as a long-time business in Wichita, Kansas, his establishment is marked clearly as a smoking facility (Attachment 16). Mr. Doss stated it should be the property owner's right to operate his business as he wishes and opposes **SB 493**.

John Todd spoke in opposition, stating that we live in a democracy and the state should not use state law to restrict the rights and freedoms of its citizens (Attachment 17). The "market-driven" solution to smoke free

CONTINUATION SHEET

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establishments is happening all over Kansas without the need for a state law.

Jeff Martin, opponent, stressed the loss of revenue his vending business has suffered due to the smoking ban enacted in Lawrence, Kansas ([Attachment 18](#)). A statewide ban would further decrease his business and urged the bill not be enacted.

Tom Conroy testified in opposition, stating the smoking ban in Lawrence, Kansas has caused a large decrease in his business ([Attachment 19](#)). Mr. Conroy disagrees with the argument that smoking bans do not hurt business and people should be left to make their own choices.

Written testimony in opposition of **SB 493** was submitted by:

Lisa Benlon, Government Relations Director, American Cancer Society in Kansas ([Attachment 20](#))

Larry Seckington, Legal Counsel, The Woodlands, Kansas City ([Attachment 21](#))

Ron Hein, Kansas Restaurant and Hospitality Association ([Attachment 22](#))

Written testimony in support of **SB 493** was submitted by:

Mitzi McFatrach, Executive Director, Kansas Advocates for Better Care ([Attachment 23](#))

There being no further conferees, the hearing on **SB 493** was closed.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-13-08

NAME	REPRESENTING
Matthew Coolsby	Myself
BILL NIGRO	K.C. BUSINESS RITES COALITION
LARRY WICK	OTA
Stacy Chamberlain	SRS
Pat McElbell	Cyber Assn of America
Sam Weaver	Kennedy Association
Jeff Martin	Armour Amusement
My Rieper	KHPA
Biffel	Supply Fuel
JEAN MILLER	CAPITOL STRATEGIES
Carolyn Smith	VCHS
Megan Embers	
LARRY DOSS	WICKITA BUSINESS MAN
Vil Albed	Jazz, A Louisiana Kitchen KCS
TOM PALACE	PMCA OF KS
LORI DESCH	PMCA OF KS
TOM CONROY	KLBA, LAWRENCE
Phil Bradley	KLBA

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-13-08

NAME	REPRESENTING
Lindsay Douglas	Hein Law Firm
Roy Hein	Hein Law Firm, Chld
Ron May	LITTLE GOV. RELATIONS
Christy Campbell	LITTLE GOV + Relations
Dodie Wellshear	Ks Academy of Family Physicians
Deborah S Clements MD	Kansas Academy of Family Physicians
Sandy Jaquost	LKM
Mavis Nielsen	KHPA
Jim Sullinger	KC STAR
Jeanette Lynn	KDOA
James Carlson	Cap-Journal
Bobbi Sauder	Emporia Clean Air
Tracy Kiesel	KHPA
BARB Coxant	KDOA
FRANK NAYCOR	Churchills of Topeka
Mike Reed	Xcaliber
FRANK H SERRER	SERRER FOUNDATION
John Todd	mgs 1f - an ordinary citizen who loves freedom



KHPA Testimony on SB 493 to the Senate Judiciary Committee

February 12, 2008

Marcia Nielsen, PhD, MPH
Executive Director
Kansas Health Policy Authority

1



The Purpose of Health Reform

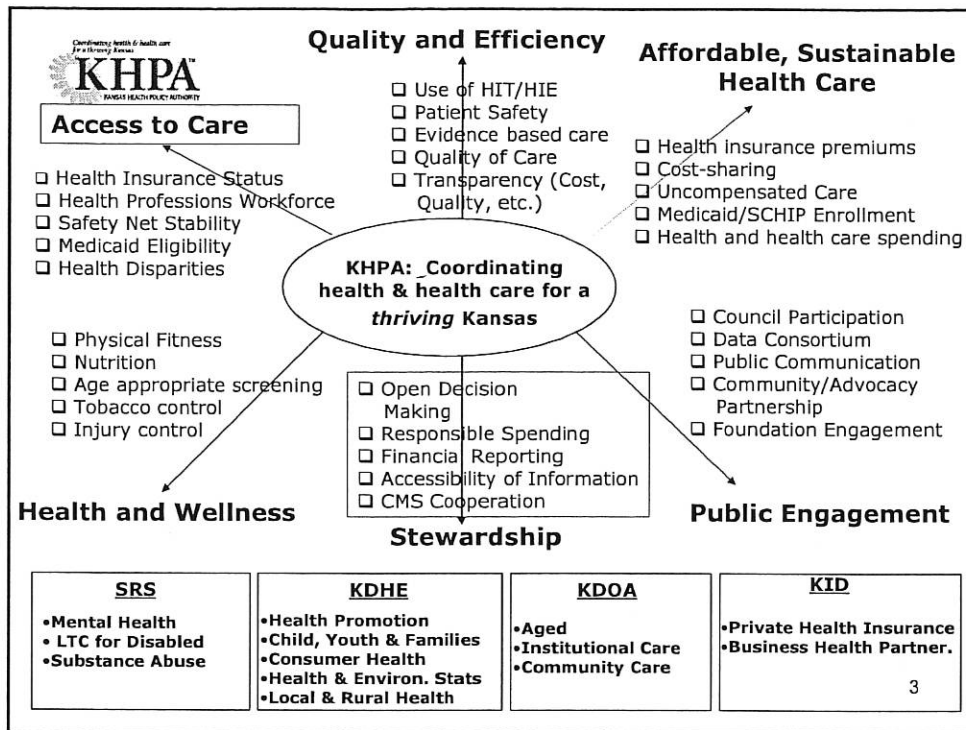
To improve the *health* of
Kansans – not just health
insurance or health care –
but the *health* of our
children, our families, and
our communities

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Senate Judiciary

2-13-08

Attachment 1



KHPA
Coordinating health & health care for a thriving Kansas
KANSAS HEALTH POLICY AUTHORITY

Moving Towards Health Reform in 2007

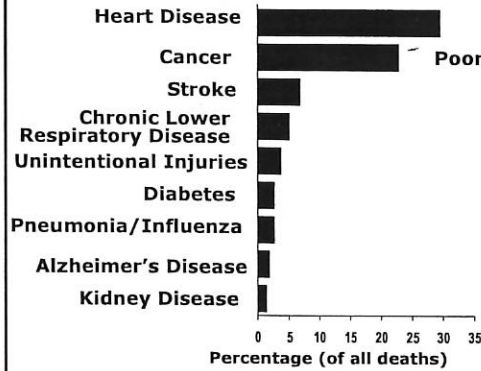
- **Kansas Legislature:**
 - Legislators tasked KHPA with addressing ways to improve health care access and the general health of all Kansans (SB 11)
- **Stakeholder Input:**
 - Formed *Health for All Kansans Steering Committee*
 - Formed Health Reform Advisory Councils
 - Held 22-City Listening Tour on health reform
- **Health Reform:**
 - KHPA Board delivered health reform options to Kansas legislature on November 1, 2007

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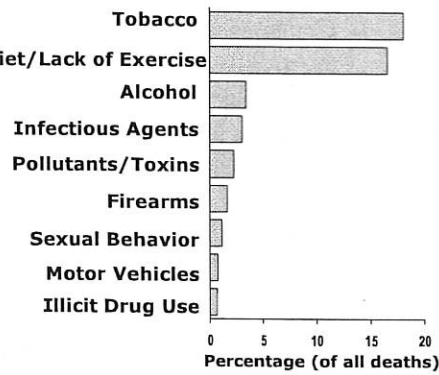


Causes of Death United States, 2000

Leading Causes of Death*



Actual Causes of Death†



* National Center for Health Statistics. Mortality Report. Hyattsville, MD: US Department of Health and Human Services; 2002

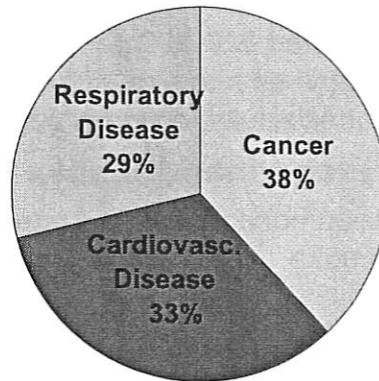
† Adapted from McGinnis Foege, updated by Mokdad et. al.

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Smoking Kills Kansans

Average of 3,900 Deaths per Year
in Kansas Due to Smoking



Source: Smoking Attributable Morbidity, Mortality and Economic Cost, CDC

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Tobacco Costs Kansans

- **Smoking is the #1 preventable cause of death in Kansas**
 - Causes 4,000 deaths annually in Kansas
 - Estimated 54,000 Kansans currently younger than 18 years old will die prematurely due to smoking
- **All Kansans pay for smoking-related health care services**
 - Health care costs due to smoking are over \$7 per pack of cigarettes, most of which is paid by non-smokers
 - Costs \$927 million in health care costs yearly; \$196 million in Medicaid program alone
 - Annually costs taxpayers \$582 per household to pay for government expenditures on smoking-related health care services

Source: The Toll of Tobacco in Kansas, Campaign for Tobacco-Free Kids

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Secondhand Smoke Impacts Kansans

- **Secondhand Smoke Kills**
 - In Kansas, estimated 220-630 people die every year due to secondhand smoke and smoking while pregnant (includes adults, children, and infants)
- **Exposure to Secondhand Smoke**
 - In US, 126 million nonsmokers are exposed to secondhand smoke
 - Estimated 161,000 Kansas children are exposed to secondhand smoke at home
 - More than one in four workers are NOT protected by worksite non-smoking policies in Kansas

Sources: The Toll of Tobacco in Kansas, Campaign for Tobacco-Free Kids;

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Tobacco Use in Kansas: Starting Young

- **Adolescents (50% of smokers begin by age 14)**
 - Middle Schools:
 - 6% current smokers
 - High Schools:
 - 21% current smokers
 - 15% currently use smokeless tobacco
- **Adults**
 - 20% are current smokers

Source: CDC Sustaining State Programs for Tobacco Control Data Highlights, 2006

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KHPA Reform Priorities

- **Promoting personal responsibility (P1)**
 - Responsible health behaviors
 - Informed purchase of health care services
 - Contributing to the cost of health insurance, based on ability to pay the cost of health insurance, based on ability to pay
- **Prevention and medical homes (P2)**
 - Focus on obesity, tobacco control, chronic disease management and incentives for primary care medical homes
- **Providing and protecting affordable health insurance (P3)**
 - Focus on small businesses, children, and the uninsured

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Priorities: Systems Reform and Better Health

Transforming Medical Care	Improving Public Health	Expanding Affordable Insurance
<ul style="list-style-type: none"> •Transparency project: health care cost and quality •Health literacy •Medical home definition •Medicaid provider reimbursement •Community Health Record (HIE) •Form standardization 	<ul style="list-style-type: none"> •Increase tobacco user fee •Statewide smoking ban •Partner with community organizations •Education Commissioner •Collect fitness data in schools •Promote healthy foods in schools •Increase physical fitness •Wellness for small businesses •Healthier food for state employees •Dental care for pregnant women •Tobacco cessation in Medicaid •Expand cancer screening 	<ul style="list-style-type: none"> •Aggressive outreach and enrollment of eligible children (target population: 20,000) •Premium assistance for low income adults without children (target population: 39,000) •Small business initiatives (target population: 15,000 young adults and 12,000 employees of small businesses)

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Movement for Public Smoking Bans

- **United States:**
 - Over 20 states have statewide smoking bans that include restaurants and bars (Midwest: CO, IL, MN, OH)
 - Four additional states have implemented statewide smoking bans for restaurants, but not bars (FL, ID, LA, NV)
- **Kansas:**
 - Around 20 Cities/Counties in Kansas have already implemented smoke-free ordinances

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Smoke-Free Laws Don't Hurt Businesses

- Evidence that smoke-free laws do not harm businesses
 - New York 1996 Economic Study found no impact on sales tax receipts in bars and restaurants after smoke-free bans implemented
 - 2004 Harvard Study found smoke-free ordinances in Massachusetts did not affect meals or alcoholic beverage excise tax sales
- Independent studies find no negative impact to businesses
- Studies funded by tobacco industry are the only studies to find negative impacts on businesses

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Smoking Bans Improve Health Outcomes

- **Helena, MT:**
 - Implemented public smoking ban for Helena in 2002
 - Study found 40% reduction in heart attacks after implementation of the ban (British Medical Journal, 2003)
- **New York:**
 - Statewide Clean Indoor Air Act implemented in 2003
 - Outlawed smoking in bars, restaurants, and other public spaces
 - Smoking ban reduced hospital admissions for heart attacks by 3,813 in 2004 (American Journal of Public Health, Sept. 2004)

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Summary

- KHPA Board supports a statewide smoking ban
- KHPA Board to meet in mid-February to discuss SB 493
- Movement towards implementing public smoking bans
 - Evidence that bans do not hurt businesses
 - Evidence that bans improve health outcomes and reduce need for medical care services

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Smoking Restriction Fact Sheet

P2 (6) Improve Healthy Behaviors in Families and Communities: Enact a Statewide Restriction on Smoking in Public Places

POLICY

Enact a statewide smoking restriction in public places, coupled with a Governor's Executive Order requiring state agencies to hold meetings in smoke-free facilities will allow Kansans to work and gather without exposure to the negative consequences of secondhand smoke on their health.

BACKGROUND

This policy option recommends that legislation be enacted that prohibits smoking in all public places. Based on the health impact on cities that have enacted strict clean indoor air laws, a statewide law in Kansas could result in 2,160 fewer heart attacks and \$21 million less in associated hospital charges for heart attacks alone. A recent poll indicated that 73% of Kansas adults favor such a state law or local ordinance.

Secondhand smoke is ingested in two ways: 1) through the lit end of the cigarette; and 2) by the exhaled smoke of the smoker. Cigarette smoke contains over 4,000 chemicals and is a known carcinogen. At its most severe impact, secondhand smoke results in 3,000 annual cancer deaths in the US and 35,000 deaths from heart disease. This statistic represents a stark consequence of secondhand smoke, but fails to show the full impact. Exposure to cigarette smoke also results in an increase of asthma attacks, lower respiratory tract infections in children under 18 months old, coughing, and reduced lung function. Pregnant women are particularly susceptible to having low birth weight babies as a result of secondhand smoke exposure. A 2006 Surgeon General's report notes that, "the scientific evidence indicates there is no risk-free level of exposure to secondhand smoke." The National Institute for Occupational Safety and Health (NIOSH) recommends that secondhand smoke be considered as a potential occupational carcinogen.

Enactment of smoke free policies at the state level would address the issue of business owners who believe that local control of smoking bans results in an uneven playing field as businesses compete with other jurisdictions that may have no ban in place. In Kansas, 72% of the working population is protected by worksite nonsmoking policies. (CDC Sustaining State Programs for Tobacco Control Data Highlights, 2006). More than 40 states have imposed restrictions on smoking in public places. (National Conference of State Legislatures 2004).

Smoking is the number one preventable cause of death in Kansas and 83% of Kansas adults believe it is a serious health hazard. (Sunflower Foundation 2007). Evidence has shown that statewide smoking bans decrease the smoking rate among active smokers by 10%, a potential decrease of 40,000 smokers in Kansas (KDHE).

POPULATION SERVED

In Kansas, 1.4 million working adults would benefit from working and living in a smoke-free environment.

Rm. 900-N, Landon Building, 900 SW Jackson Street, Topeka, KS 66612-1220

www.khpa.ks.gov

Medicaid and HealthWave:

Phone: 785-296-3981

Fax: 785-296-4813

State Employee Health

Benefits and Plan Purchasing:

Phone: 785-368-6361

Fax: 785-368-7180

State Self Insurance Fund:

Phone: 785-296-2364

Fax: 785-296-6995

Frequently Asked Questions

Recommendation: Enact a statewide smoking restriction in public places so that Kansans can gather and work without exposure to secondhand smoke and the health consequences that result.

Background: Twenty-six states have adopted smoke-free ordinances in response to the harmful effects of secondhand smoke. In a Kansas Adult Tobacco Survey conducted in 2002-2003, 94% of those polled believe that secondhand smoke is harmful to health. This belief is supported by the data. A 2006 Surgeon General's Report states "scientific evidence is indisputable that secondhand smoke causes premature death and serious disease in both children and adults who do not smoke." The Report goes on to state that secondhand smoke is a proven cause of heart disease and lung cancer in nonsmoking adults, as well as a cause of SIDS, low-birth weight, acute respiratory infections, ear infections, and asthma attacks in infants and children. The Surgeon General noted that there is no safe level of exposure to secondhand smoke. In Kansas, 17 communities have adopted clean indoor air ordinances and several others are considering them.

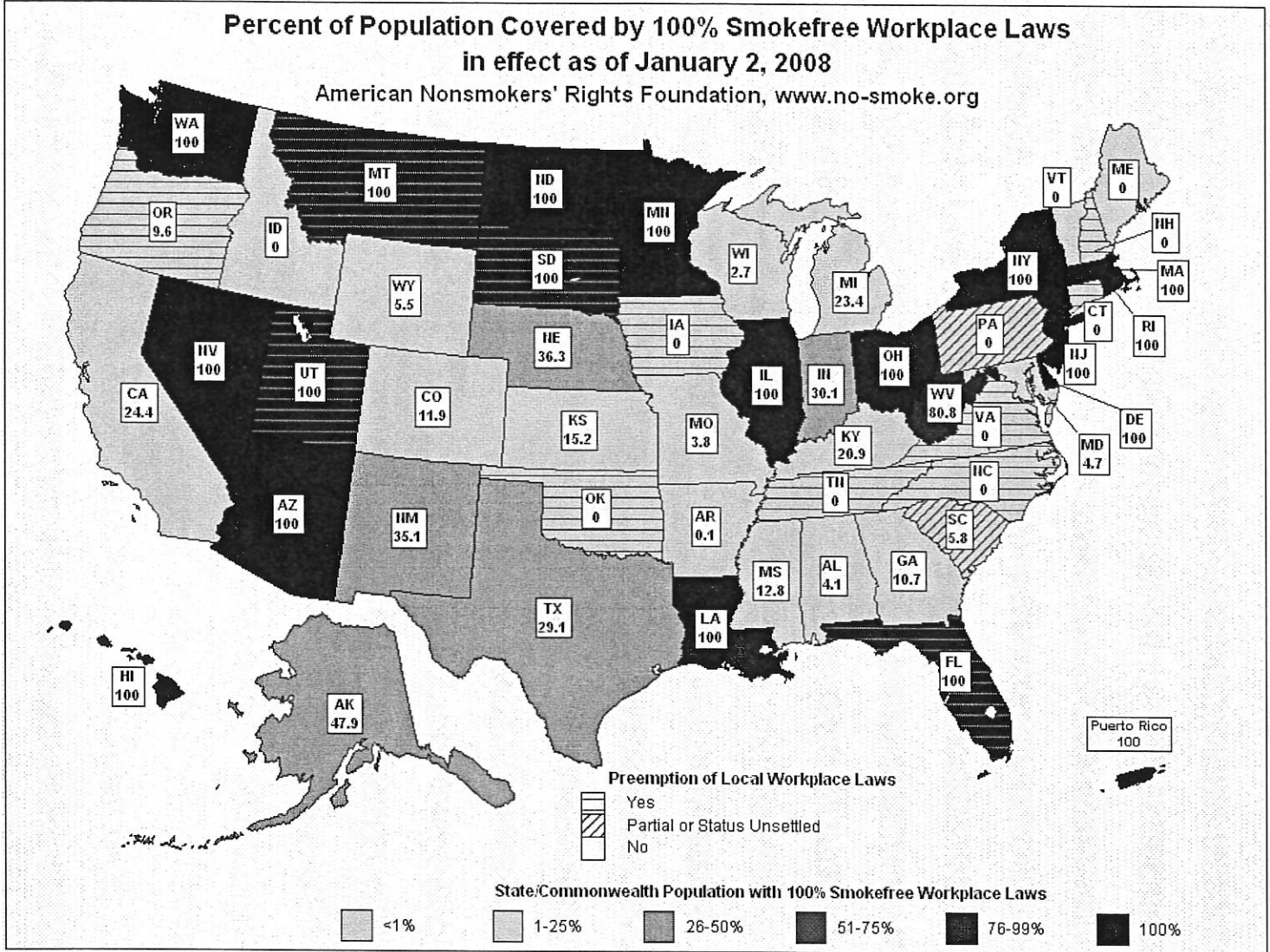
Should state government set this policy? KHPA supports local ordinances that have been adopted in the absence of a statewide standard. However, a uniform policy must be enacted to ensure protection from secondhand smoke for all Kansans. A statewide policy would address the concern of business owners who believe that local control of smoke free policies results in an uneven playing field as businesses compete with other jurisdictions that may not have a smoke free policy in place. State government often takes the lead in pre-empting local control when public health is at stake.

Will a statewide smoke free law have an economic impact on hospitality businesses? The data from other states and localities does not indicate a negative financial impact. The Surgeon General's 2006 Report examined several studies and concluded "smoke-free policies and regulations do not have an adverse economic impact on the hospitality industry." In a 2006 Zagat Survey of America's top restaurants, 58% of respondents stated they would dine out at the same frequency if restaurants were smoke free and 39% indicated they would dine out more frequently if smoke-free. Only 3% claimed they would dine out less often. Again, a statewide, uniform standard helps businesses attract clientele.

Are smoke free policies an infringement on individual rights?

An absence of a smoke free policy is an infringement on the rights of 80% of the population that does not smoke. The data confirms that there are health consequences to secondhand smoke exposure. Workers and the general public should be allowed to work and gather in places without taking on the risk of secondhand smoke. Seventy-six percent of white collar workers already enjoy protection from secondhand smoke, but only 52% of blue collar workers get the same consideration.

Legislative Action: Adopt a statewide smoking restriction in public places.



Restaurant and Bar Laws shown on separate maps. Please see [Percent of U.S. State/Commonwealth Populations Covered by 100% Smokefree Air Laws](#) to view the percentages in a table format, alphabetized by state/commonwealth.

100% Smokefree Workplaces: Municipalities or states/commonwealths with laws that cover all workplaces (public and private non-hospitality workplaces, including, but not limited to, offices, factories, and warehouses), that do not allow smoking in separately ventilated rooms, and do not include an employee number exemption greater than one.

States with Partial Preemption of Local Workplace Laws or with Preemption Status Unsettled:

Pennsylvania: The law with respect to preemption is unsettled. Although both an appellate court and a trial court have ruled that there is preemption, the trial court case is being appealed and another trial court case is underway. Thus, the situation remains to be resolved either by the appellate courts or the Legislature.

South Carolina: The law with respect to preemption is unsettled, as two trial courts have reached opposite conclusions on the issue. This must now be resolved either by the appellate courts or the Legislature.

Note: Oregon's statewide preemption law has been repealed, effective January, 2009, when the state's smokefree law goes into effect, and Montana's preemption law expires on September 1, 2009, when the state's smokefree air law becomes effective with respect to bars and casinos.

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**KANSAS ACADEMY OF
FAMILY PHYSICIANS
CARING FOR KANSANS**

February 13, 2008

To: Senate Judiciary Committee
From: Deborah Clements, MD, representing the Kansas Academy of Family Physicians
Re: SB 493 Uniform Smoking Prohibition Act

Chairman Vratil and Members of the Senate Judiciary Committee:

Thank you for this opportunity to present testimony on Senate Bill 493, on behalf of the Kansas Academy of Family Physicians (KAFP). Our organization has over 1,500 members across the state, of which more than 900 are practicing physicians, 155 are resident-physician members, and the others are medical students and retired members. The roots of family medicine go back to the historic generalist tradition. The specialty is three dimensional, combining knowledge and skill with a unique process. The patient-physician relationship in the context of the family is central to this process and distinguishes family medicine from other specialties.

The intention of this bill, referred to as the uniform smoking prohibition act, is to eliminate exposure to secondhand smoke in most public places. Members of our organization fully support efforts to enact clean indoor air ordinances and bills on both the local and the statewide level. We are involved in the Tobacco Free Kansas Coalition and in local efforts in many communities to promote clean air policies in any way possible. We applaud the first eight sections of the bill and if it ended after Section 8, we would whole-heartedly support it. The statements included defining the terms and stating the enforcement would be an excellent policy for clean indoor air.

However, KAFP is concerned about Section 9, starting on line 8 on page 5 through line 17 on page 6, which would require a November 8 vote by each county to adopt the law's provisions. We would urge you to amend the bill by striking the provisions requiring the county-by-county vote.

We believe that public health measures should not be subject to counties' votes to "opt out." A county-by-county vote could lead to a mix of coverage in which some areas have the protection of a strong clean air provision and others do not.

While on the surface that section may make you feel comfortable, we submit that it is based upon a false premise – the premise that counties should be able to vote and opt out of health measures. That kind of thinking may be fine with other issues but with those related to health issues, especially secondhand smoke, it does not make sense.

President Michael L. Kennedy MD <i>Kansas City</i>	Secretary Jennifer L. Brull MD <i>Plainville</i>	Delegates Joel E. Hornung MD <i>Council Grove</i> Robert P. Moser Jr MD <i>Tribune</i>	Directors Ronald C. Brown MD <i>Wichita</i> Karen E. Bruce MD <i>Topeka</i> Gene Cannata MD <i>Pratt</i> Deborah Clements MD <i>Kansas City</i> Christian Cupp MD <i>Scott City</i> Rob Freelove MD <i>Salina</i>	Doug Gruenbacher MD <i>Quinter</i> LaDonna M. Schmidt MD <i>Salina</i> Jon O. Sides MD <i>Burlington</i> Gregory T. Sweat MD <i>Overland Park</i>	Resident Representative Jennifer Bacani MD <i>Wichita</i>
President-Elect Terry L. Mills MD <i>Newton</i>	Treasurer Todd A. Miller MD <i>Wichita</i>	Alternate Delegates Charles T. Allred MD <i>Salina</i> Carol A. Johnson MD <i>Park City</i>	Foundation President Marty Turner MD <i>Rose Hill</i>	Senate Judiciary	
Vice President Michael L. Munger MD <i>Overland Park</i>	Board Chair Brian Holmes MD <i>Abilene</i>			2-13-08	

We do not allow a county to vote on whether or not to accept the seat belt laws. We do not allow a county to vote on whether or not to accept and abide by laws regarding drunken driving. We do not allow a vote on whether or not restaurateurs have to provide clean water, keep hot food hot and cold food cold, or virtually any other health related provision covered by law. A statewide clean air bill would best be provided by a vote of the legislature to ensure that everyone in the state is protected- to the degree possible by law- from secondhand smoke.

The Academy applauds the committee for bringing this legislation forward and would strongly support SB 493, if the county opt-out provisions are removed.

Sincerely,

Deborah S Clements MD, FAAP

Deborah Clements, MD
For the Kansas Academy of Family Physicians

SB 493
The Senate Committee on Judiciary

by Joann E. Corpstein
Chief Counsel

Kansas Department on Aging

February 13, 2008

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

The KDOA is responsible for the regulation of adult care homes in Kansas. This includes adult day care, nursing facilities, nursing facilities for mental health, intermediate care facilities for the mentally retarded, assisted living facilities, residential health care facilities, homes plus, and boarding care homes. With the exception of adult day care, these facilities are the private homes of the residents. Some residents are life-long smokers.

One of the purposes of SB 493 is to prohibit smoking in places of employment thereby limiting the amount of second hand smoke employees are exposed to on the job. The bill also recognizes that individuals, who choose to, can smoke in their homes or private residences. Adult care homes are both private homes and places of employment.

We are requesting that an additional exemption be added to SB 493. Specifically, we request that adult care homes, as defined in K.S.A. 39-923, be exempt from the Kansas uniform smoking prohibition act, provided, the adult care homes give notice to potential residents and employees of their smoking policy prior to their admission or employment. This would permit adult care homes to continue to allow smoking indoors. Potential or prospective residents would know whether or not they would be able to smoke somewhere in the facility. It would also let prospective employees know that they will be exposed to secondhand smoke.

Currently, adult care homes make the decision if they want to allow smoking indoors or be a smoke-free facility. Adult care homes are expected to let potential residents know the smoking policy through the admissions process.

We request the Committee revise New Section 3 (c) to exempt adult care homes from this bill provided the homes give notice prior to admission or employment of their smoking policy. Our proposed exception is:

New Sec. 3

(c)The provisions of this section shall not apply to:

(8) an adult care home, as defined in K.S.A. 39-923, provided that it gives notice to potential residents and employees of its smoking policy prior to their admission or employment.



PENN NATIONAL
GAMING, INC.

**TESTIMONY OF TIM SHALLENBURGER OPPOSING SB 493
REPRESENTING PENN NATIONAL GAMING, INC.
SENATE JUDICIARY COMMITTEE FEBRUARY 13, 2008**

Mr. Chairman and members of the Committee, my name is Tim Shallenburger. I am here today representing Penn National Gaming to oppose SB 493 which would impose a statewide smoking ban.

Penn National is an applicant for lottery destination gaming facilities in Cherokee and Sumner counties. If Penn National is selected to be the manager of these state-owned and operated facilities, and the facilities are designated smoke free under the provisions of SB 493, the economics of these facilities will be dramatically and adversely impacted, as will revenues to the state, local governments and the addictions fund.

The negative impacts also go beyond important lost revenue streams. There will be negative impacts on jobs in the destination lottery facilities and in ancillary businesses that would provide goods and services. These jobs will be key to providing significant and long lasting economic growth to the local economies that are long overdue for a new economic jump start.

The negative impact is all the more acute because the Kansas Expanded Lottery Act requires a minimum investment of \$225 million plus a \$25 million license fee; \$250 million total.

Recently enacted smoking bans affecting casinos in Delaware, Ontario, Canada and as of January 1, 2008, the State of Illinois, have shown that casino revenue declines in the area of 20% are experienced.

We estimate that lost revenue for Cherokee and Sumner County facilities will exceed 20 percent due to the unique markets and proximity of tribal casinos to Cherokee County - where a \$200 million tribal casino is being built 100 yards from the Cherokee County site - and even in Sumner County where large tribal gaming resorts are about two hours away and smaller facilities are even closer.

Tribal casinos already enjoy a major advantage in that they pay little or no state taxes. To subject potential lottery gaming facility managers in Kansas to a smoking ban would be detrimental not only to the companies involved but would severely detract from the revenues to be realized by the State of Kansas and local governments and the addictions fund as noted earlier.

And, while SB 493 does provide for a local county option vote whereby it is possible that voters could make their county exempt from this smoking ban, the bill also provides that county commissioners can at anytime call future elections to impose the smoking ban. Thus, SB 493 will be a continual threat forever creating a difficult and unstable operating environment in the extremely competitive world of casino gaming.

In closing, I would like to also emphasize that Penn National, if selected by the Lottery Commission, will build world class resorts with state of the art air handling and ventilation systems to ensure that we accommodate both smoking and non-smoking guests.

Therefore I would urge this committee to defeat SB 493, and in the event that it is the will of the committee to pass the bill, that it be amended to exempt lottery gaming facilities that the State of Kansas is requiring to invest \$250 million at a minimum plus pay a 27% effective tax rate on gross revenues.

Thank you and I will be pleased to answer any questions.



OFFICE OF THE STATE
LONG-TERM CARE OMBUDSMAN

Kathleen Sebelius, Governor
Gilbert Cruz, RRT MPA
State Long-Term Care Ombudsman
Gilbert.Cruz@da.ks.gov

TESTIMONY

**Senate Judiciary Committee
Chairman John Vratil**

**Presented by Gilbert Cruz
Kansas State Long-Term Care Ombudsman
February 13, 2008**

Chairman Vratil and members of the Judiciary Committee:

Thank you for allowing me to testify in opposition of Senate Bill 493. I am the State Long-Term Care (LTC) Ombudsman representing the rights of nearly 28,000 individuals located in Adult Care Homes throughout Kansas. This includes nursing facilities, assisted living facilities, home plus facilities, long-term care units (LTCU) and adult daycares. We are a state agency specifically designed under the Older Americans Act to provide FREE advocacy assistance to residents residing in long-term care facilities in the United States, Puerto Rico, and Guam.

In its current form, SB 493 would ban adult care homes from offering designated smoking rooms. Although the number of adult care homes that allow smoking is decreasing, there are still some that would like to continue to offer a smoking option for residents. For example, the Veteran Nursing Homes in Winfield and Fort Dodge.

Advocating for resident choice is paramount to the LTC ombudsman program. Every year our program documents and acts on complaints that residents and their families have dealing with adult care homes. Resident choice accounts for nearly one-third of these complaint calls. Banning the adult care homes ability to offer a smoking choice violates the right of residents of these facilities to self determination. The designated smoking rooms meet a strict standard of ventilation, filtration and safety systems per Kansas regulations and State Fire Marshal mandates. Likewise, when these regulations and mandates are followed by long-term care facilities, there is no infringement of the rights of non-smoking residents. SB 493 is not consistent with the Older Americans Act to maintain resident choice even when admitted to a nursing home.

The ombudsman program strongly encourages the committee to amend SB 493 not to include Adult Care Homes. I encourage your comments or questions the committee might have for me.

OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN
900 S.W. Jackson, Suite 1041 • Topeka, KS 66612-1220
Ph: (785) 296-3017 • Fax: (785) 296-3916 • Toll-Free: 1 (877) 662-8362
E-mail: LTCO@da.ks.gov • Website: <http://www.da.ks.gov/care>

Senate Judiciary

2-13-08
Attachment 5



League of Kansas Municipalities

TO: Senate Judiciary Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

DATE: February 13, 2008

RE: SB 493

First, I would like to thank the Committee for allowing the League of Kansas Municipalities to testify today in opposition to SB 493. The League has no position on a statewide smoking ban or smoking bans in general. This bill, however, would impact municipalities that have adopted ordinances and repeal most of those ordinances, which have more lenient provisions than the SB 493. It also is unclear on when cities may regulate in conjunction with the state law.

In SB 493, Section 6 allows cities to have ordinances “at least as stringent as that imposed” in the bill. It allows cities’ ordinances that are more stringent to control over the less stringent provisions of the state law. The bill, however, does not contain any exceptions to the smoking prohibition and, therefore, would preempt any ordinances that have exceptions. Out of the 20 plus ordinances in place in Kansas cities, virtually all have some form of exception to the general smoking prohibition. Some have periods of time during which smoking is allowed in certain types of establishments and some exempt drinking establishments from the prohibition. The key is that almost all of the cities that have adopted ordinances have worked with the businesses and citizens in the community to adopt ordinances that work in those cities. As those on this committee are aware, it is not an easy decision to make to ban smoking and those cities that have done so should not see their ordinances repealed by operation of law. SB 493 as it is written, however, would do just that. Therefore, the League requests that either the preemption language be amended to allow the types of ordinances already in place, or the bill should grandfather in those ordinances already adopted.

The final concern about the bill has to do with the election provision. If the citizens in a county vote not to have the smoking ban apply in their county, may cities in that county continue to adopt ordinances banning smoking in that city? The bill is unclear, but in its silence, the League assumes ordinances would still be permissible. It would be helpful, however, to clarify that in the bill as an explicit authorization. That will forestall the inevitable future litigation.

Again, thank you for allowing the League to testify in opposition to SB 493 for the reasons stated above. I would be glad to stand for questions at the appropriate time.

DIEBEL'S SPORTSMENS GALLERY

4829 W 119TH STREET OVERLAND PARK KANSAS 66209 913-663-0123



My father started our business in 1954. We are in our 54th year. I employ 14 people. I sell cigars. A legal product that is as old as our great country. Premium * Imported * Luxury * All tobacco * Hand-made by Artisans in the Caribbean. There are no chemicals. There are no additives. None of my customers are addicted. My customers are all old enough to fight in Iraq. We do not sell to kids. The great majority of my customers are college educated. My customers smoke cigars for the taste, relaxation and camaraderie of fellow smokers. I hold events in my store to introduce new products. If you were going to try a new cigar, wouldn't it be reasonable to expect to do so in my store? At the very least, tobacco shops deserve an exemption.

This ban is political correctness taken to the nth degree. The citizens are not mandating a smoking ban. . In Overland Park, Neil Sader ran for mayor in 2005 on an anti-smoking platform. He lost – nearly 2 to 1. Our neighboring state Missouri has twice defeated a referendum seeking increases in cigarette and cigar taxes. A Kansas City mayoral candidate ran on an anti-smoking platform in 2007 and secured <1% of the vote. A survey is not mandate enough to take away the personal rights of the citizens of Kansas. Let the free market work. Already 80% of restaurants are smoke-free. My mother is allergic to seafood. She doesn't go to seafood restaurants. If she were an anti-seafooder, she would go there, complain, and then initiate a petition for seafood restaurants to stop selling seafood.

This proposed ban, the lack of exemption for tobacco shops and the 470% increase in OTP tax will cause direct and undue hardship upon my business. I am not big business. I am not Big Tobacco. Please do not write this bill with a blind eye to the effects upon the true tobacconist.

Thank you,

Curt Diebel
President
816-931-2988
DiebelSG@gmail.com

Senate Judiciary

2-13-08
Attachment 7

To: Senate Judiciary Committee

From: Frank Naylor
Churchill's
Gage Center
4025 SW Gage Center Drive, Topeka

Subj: Opposition to Senate Bill 493

February 13, 2008

I will get right to the point—to support SB493, including the banning of smoking in retail tobacco shops, would have disastrous results on my business. My shop primary sells premium, handmade cigars, pipe tobacco, and related accessories. Our only customers are those who enjoy premium tobacco, a product of leisure and pleasure, not one of addiction.

Premium tobacco shop owners such as myself provide a specialized service to a small segment of the community, and provide a special place that has been lost over the years—a quiet, out-of-the way public location where responsible adults, of different backgrounds, financial means, race, religion, can come together and share a common pleasure—a premium cigar or pipe.

To ban smoking in a premium tobacco shop would be like telling a bartender he could serve all the alcoholic drinks he wants, just as long as none of his customers drink their cocktails in his bar. It prevents me, the tobacconist, from providing the best customer service expected.

This is not only a question of business rights or the rights of non-smoking workers—it is a question of facts. Considering the following:

- Despite popular belief, smoking bans do cause economic harm. Many local economic markets have seen dramatic drops in tax revenues from public smoking bans.
- Of the ten states that have introduced statewide smoking bans that include bars and restaurants, four, including New York, continue introducing legislation to roll back portions of their states' smoking bans, coming to the conclusion that their state legislators unfairly and unduly hindered the freedom of a free-market society.
- Smoking is already regulated throughout the United States by age-restriction. Banning adult-age restricted venues such as bars, taverns, and restaurant lounges from allowing their customers to smoke is simply government oppression of small business owners.
- If public smoking is banned due to supposed individual health concerns, then should the government not ban individuals from wearing perfumes or using fragrant-laced body washes and hair products? What of beauty salons using hair treatment chemicals and chemical-based nail polishes? Why do restaurants allow pets on their premises when other customers may be allergic? Should the government not also

regulate these businesses and ban the public dissemination of these potentially harmful allergens?

- Even the U.S. Surgeon General's latest report offers no CONCLUSIVE data that secondhand smoke is related to human illnesses, despite popular media claims.

Thank you for your attention.

Frank Naylor



Racing Notions, Inc., dba Jazz, A Louisiana Kitchen

1859 Village West Parkway, Kansas City, Kansas 66111

Phone: 913-328-0003, Fax:

Good Morning,

Mr. Chairman, I want to thank you and your honorable colleagues for listening to my concerns today on the proposed Statewide Smoking Ban. My name is Vic Allred and I own Jazz, A Louisiana Kitchen, located at the Legends in Village West Shopping Center in Kansas City, Kansas.

It is naïve to think that any ban on smoking will not adversely affect my business. I find it somewhat comical that others can forecast more information about my business than I do, the one who works in it every day. We operate on a margin of less than 10 %, made smaller everyday by the growing costs of doing business. Have you seen the price of gas lately? My utility bills are up 300 percent and my food bills are up over ten. It is estimated that one fourth or more of all the citizens in our state smoke. I would say that number is higher depending on the time of day. It doesn't take a rocket scientist or economist to realize that by eliminating 25% of my clientele, without a guaranteed mechanism to replace them, it would effectively put me out of business. I currently employ over 40 full and part time employees and provide a comprehensive medical insurance policy for them. Any loss of sales will result in a reduction of employees or employee related benefits. Is it fair to eliminate benefits my employees count on?

Lawrence KS is a good example of lost revenue even when a ban promotes a level playing field. Most businesses are off in sales considerably and the promise that those empty smoking seats would be filled with eager non-smokers has proven to be a myth. Try paying your employees with good will. You cannot cash the check. In addition, there are no provisions for enforcement, leaving the small business owner in the middle of the argument, and to suffer consequences if they do not enforce the ordinance. Also, no one has addressed the security concerns when employees who smoke seek to go outside, leaving my multimillion dollar business at risk for theft or other lost resources or security breaches.

I understand the State of Kansas in its desire to rid the state of smokers and improve its health. However, if this is indeed a health issue, then this Legislature should defer to the Federal Government. The only true way to level the playing field is to get rid of smoking at a national level with uniform requirements for all. However, this argument is always inevitably weakened by leaders whom add exceptions to a particular party, like casinos, or by lawmakers inability to find a replacement for the vast amount of taxes generated by tobacco sales. Almost all bans and all that I am aware of, have some exceptions. Some government officials even make the point that their own casinos would be at a competitive disadvantage if theirs were non-smoking and others in Kansas City were not.

Senate Judiciary

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Attachment 9

This is the exact argument that most small business owners are making, but each of us doesn't carry as much weight as the huge revenue generating casino can. The thought of allowing an exception for casinos in any way, will lead me to adamantly oppose the ban and allow any influence I might have to work in opposition to the proposal. Are the employees of a casino any less valuable than mine? And don't even get me started on the idea that the casino exemption would drive customers out of our small business restaurants and move them directly into casinos.

A common theme from our opposition is the argument that Smoking Bans don't decrease revenue for the state. It is the basis to suggest they in turn do not hurt our business. I want to let you know why. As with the normal evolution process in the leasing and real estate business, some businesses close and other businesses open in their place. This process happens everyday, regardless of a smoking ban. However, the ban significantly increases the evolutionary process. A good example is the ban in California. By the way, California has an exception for outdoor patios which is highly conducive to smoking outside and thus greatly diminishes ban. I guess we all know the weather here is not the same as California. But the point I want to make is that in the year following the ban, over 2000 liquor licenses were not renewed because they went out of business. While they were replaced with other businesses, some of whom may even generate more income for the state, the fact is that many small businesses took a beating and many more were forced to close.

Again, I thank you for your time and prayerfully and respectfully ask you to reconsider your support of the proposed ban. It comes with no guarantee of a level playing field, no answer for enforcement and no provision for security issues which should be the right of any small business owner. Your vote no will be a voice for small business throughout our great state.

February 13, 2008: Senate Judiciary Committee, Senate Bill 493

Good Morning. Mr. Chairman and members of the Senate Judiciary Committee: I thank you for the opportunity to speak to you today in opposition of Senate Bill 493.

My name is Father H Setter. I am the Pastor of All Saints Catholic Church in Wichita. I am a nationally recognized cigar connoisseur and the Chaplain of the International Premium Cigar and Pipe Retailers, formerly known as the Retail Tobacco Dealers of America. In addition I am a philanthropist as the Founder and Chairman of the Setter Foundation which raises monies for local charities in the Wichita area. Attached you will find a list of those agencies and organizations I have assisted over the last eleven years by hosting my Annual Benefit Cigar Dinners For Local Charity. This event happens once a year and is the sole source of raising funds for my charity because of my unique affiliation with the Cigar industry as a consumer and a cigar personality. Passage of Senate Bill 493 would literally eliminate the possibility of me continuing this endeavor.

With respect to smoking in public apart from my benefit cigar dinner event, I believe there is no need for a legislated smoking ban since legitimate, practical and common sense restrictions are currently in place based upon the individuals who own and operate private businesses and have decided their businesses should or should not be smoke free.

To legislate a smoking ban in private businesses by any level of government is at best, an act of benevolent dictatorship and hypocrisy. While thinking it's in the best interest of citizens, it blatantly denies the rights of business owners who choose to cater to and offer a place for those who wish to consume a legal product. It is hypocritical in the fact that as a government, you tax tobacco products, (in most cases with exorbitant excise taxes) and want the revenue from those taxes to fund your projects, while denying those of us who legally choose to purchase and consume them, the right to a public place, chosen by private business owners to indulge in them. To me, that is the epitome of political hypocrisy. You want me to buy the product so you can gain my tax dollars, but you want to deny me the rights of a place where I can consume the product you are benefitting from. In 2006 the State of Kansas collected \$116,017,000 in Excise Taxes on tobacco products alone. How can this scenario be anything but political hypocrisy?

Of all those who choose to use tobacco products that are legally sold and purchased in this country, cigars smokers face the most stringent and aggressive restrictions. Many restaurants and clubs have signs on their doors or entry areas that clearly state, no pipes or cigars while at the same time they do allow the smoking of cigarettes. And you know what, I have no problem with that at all, as long as I can still go to other establishments that do allow me to smoke a cigar after dinner or with a drink, because the owner of that establishment has chosen to make his or her restaurant or club cigar friendly. Why can't that be his or her right as a private business owner? It seems to have worked for years up to the present time.

Senate Judiciary

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Attachment 10

I would like to conclude by reminding all of us that the right to choose to smoke in this country is a choice that legal adults are afforded as consumers. Tobacco products in the United States of America are legal. Simultaneously a private business owner should have the right to decide what he or she thinks is in the best interest of their business. If they think their business will benefit by restricting smoking then let them make that choice. If on the other hand a business owner wishes to cater to my decision to consume a legal product by giving me that opportunity and place, then let them make that choice as well. My final point is this. This great nation affords me the right to make choices in things like where I shop, how I dress, where and what I eat and drink, where and how I am entertained, to name a few. The laws of this nation DO NOT say I have to go to businesses that allow smoking. If one doesn't like smoking environments, then don't go to establishments that offer them. That is your right. And there are more and more businesses in this country every day that provide smoke free environments. At the same time however, for those of us who do choose to frequent establishments that allow smoking, I would humbly ask this Committee to kindly keep our rights and the rights of private business owners in tact as well. Thank you.

Father H Setter

Senate Judiciary Committee Attachment

Father H's Annual Benefit Cigar Dinner Beneficiaries

- 1997 Orpheum Theater Renovation Effort \$3,600
- 1998 Guadalupe Clinic \$8,000
- 1999 Kansas Foodbank \$20,000
- 2000 Anthony Family Shelter \$18,000
- 2001 Literacy Resources of the Metropolitan Area \$21,000
- 2002 Lord's Diner \$18,000
- 2003 Center of Hope \$18,000
- 2004 A.C.P./Dodge House \$16,000
- 2005 Shelter the Heart Campaign \$20,000
- 2006 Gerard House, Cigar Family Foundation, Center of Hope & Several Donations to area charities \$10,500
- 2007 Mother Mary Anne Clinic, Union Rescue Mission, The Lord's Diner, Center of Hope, Gerard House, The ARC \$13,000



AMERICANS FOR PROSPERITY K A N S A S

February 13, 2008

Chairman and Members of the Judiciary Committee:

On behalf of the more than 13,000 Kansas members of Americans for Prosperity, we oppose this proposed restriction on personal choice.

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.

Smoking bans violate property rights. The proprietor of an establishment should have the right to set policies for the use of his or her property. This is fundamental to our economic system. Smoking bans tell bar and restaurant owners that the government will determine how they run their businesses.

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.

Smoking bans are a reckless expansion of government and set a dangerous precedent. While the science of second hand smoke is still highly disputed, even if it is dangerous exposure is voluntary. Smoke is visible and avoidable. With worker shortages across many industries no employee who wants to avoid smoke is forced to take a job in a bar or restaurant.

The public health establishment wants to use the coercive power of government to prohibit smoking, by continuously expanding the scope of smoking bans. Non-smokers are threatened to because the implications of this push have already extended to things like New York City's ban on trans fats, and there is no logical stopping point short of criminalizing every voluntary behavior that may have adverse health consequences, at enormous cost to both freedom and prosperity.

Sincerely,

Alan Cobb
AFP Kansas State Director

Mr. Chairman and Members of the Judiciary Committee:

Good Morning, my name is Bill Nigro, and I am resident of Overland Park and the President of the Kansas City Business Rights Coalition. The Kansas City Business Rights Coalition is a small business organization with members in Kansas and Missouri dedicated to protecting the rights of small businesses. I am here today to testify before you on behalf of our Kansas members, and to urge you to strongly oppose a statewide smoking ban for the state of Kansas.

I have been a business owner and property on both sides of the state line for over 20 years, and I know from my firsthand experiences the devastating effects of excessive regulation of small businesses. Many of my friends and members in the bar and restaurant industry in places that have enacted smoking bans, which includes Overland Park, Lawrence, Lees Summit and Independence, have had to lay off employees and some have even had to close their doors.

Do you really want to see the loss of Kansas jobs and Kansas businesses go under because you enacted a needless government regulation? This is a non-issue. No one is forced to involuntarily expose themselves to second hand smoke. The free market place is already taking care of this issue. More and more businesses are going smoke free every day for people that do not like smoking to patronize and for employees that want to work in a smoke free bar and restaurant environment.

Furthermore, it is amusing to me that our state government is considering raising the tobacco tax, and then they are also considering smoking ban legislation that would cut down on the number of places where someone could smoke the very same product that they are looking to increase taxes on to raise revenue. Our state government should be focused on issues that really matter like schools, roads and lowering taxes. The state government has no role in taking away the property rights of small businesses and how they run their business.

Please leave this issue up to the small business owners in our state, and do not run us out of business with another needless government regulation.

Sincerely,

Bill Nigro
President KCBRC Coalition
13312 W. 142nd St.
Overland Park, KS 66221

Senate Judiciary

2-13-08

Attachment 12



*Kansas
Licensed
Beverage
Association*

*CEO
Philip Bradley*

*P.O. Box 442066
Lawrence, KS 66044*

*V: 785.766.7492
F: 785.331.4282
www.klba.org
info@klba.org*

February 13, 2008
Testimony on SB 493, 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 is served. These are the over 3000 places you frequent, enjoy and the tens of thousands of employees that are glad to serve you. Thank you for the opportunity to speak today.

First the good news! The Kansas Supreme Court's decision to not overturn, in this specific case, means that the system is currently working. Voluntary and mandatory smoke free areas and establishments are increasing. Smoking rates are down. And by these measures, health considerations are improving. It is for these reasons the Interim Committee just this past interim took the position that the local options were working, local governments were acting and reponding.

Now the crux of the matter. Since local options are working and the options of local elections exist already, why would the State and this committee feel it necessary to act? We believe that the only reason is to create a statewide standard. It would seem that if there is to be an amended statute, it must be uniform and include preemption in order to achieve the goal of an equal opportunity and level playing field. Without such this is a just a action for appearences. Yesterday you heard from the proponents that an essential reason for this measure is to, pardon the paraphrase, prevent a "patchwork" which is unacceptable. A bill without preemption, allowing local elections and allowing local ordinances guarentees just such a patchwork.

Also I should point nout this is not a local option bill. It is a mandatory state wide ellection with individual county results.

We oppose smoking ban proposals previously introduced, and we oppose SB 493 and efforts to limit the choices of adults and businesses about a legal product. Please consider these points.

If this is an air quality issue, why are we not addressing air quality. There are many more air contaminates 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 private property with public access, places that all persons have a choice, whether or not they enter and frequent. All are very responsive to their customers. 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 customer. If not they would soon be out of business. There are a majority of non-smoking venue options.

Third, if you believe you must pass a statewide ban we ask for an exemption for businesses licensed for primarily on-premise liquor sales. Most local ordinances to expand smoking bans, 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. Furthermore, the current crop of city ordinances are considering comprimises and exemptions. The highly touted Lawrence ban includes exemptions.

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. *This exemption exists in most statewide bans including California.* 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.

And finally in review if there is to be an amended statute, we would ask that it be uniform **and include preemption** in order to achieve the goal of an equal opportunity and level playing field.

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



Philip B. Bradley

The difficulty in life is the choice

. The Bending of the Bough. Act iv.

Philip Bradley, Ph.D.
CEO

Kansas Licensed Beverage Association
phil@klba.org 785-766-7492



Drink Responsibly.
Drive Responsibly.

13-2

Attachments

Word document containing;

Clearing the Haze? New Evidence on the Economic Impact of Smoking Bans

By Michael R. Pakko Attached.

Separate document

Smoking Bans Negative Impact on Bar Revenues Proven for Two States.

Article Published: 27/07/2007

Opposition to Smoking Bans Heats Up V

By Norman E. Kjono, February 27, 2007 By Link

Running the Gauntlet Once Again: Secondhand Fat

Article Published: 27/07/2007

ETS Environmental Tobacco Smoke in Perspective: New ASHRAE 62.1Standard—2007

Article Published: 30/05/2007

A monologue on AIR

Elio F. Gagliano, MD Article Published: 22/08/2007

Attached separately as a PDF file;

The Case Against Smoking Bans by Thomas A. Lambert

University of Missouri-Columbia School of Law



13-3
Drink Responsibly.
Drive Responsibly.

Clearing the Haze? New Evidence on the Economic Impact of Smoking Bans

By Michael R. Pakko

When making decisions about adopting smoke-free laws, advocates often give policymakers a Pollyannaish outlook in which communities can achieve public health benefits with no economic consequences. In particular, the lack of statistically significant economic effects is interpreted as indicating an absence of economic costs. Recent economic research indicates that this is a far too simplistic view of the issue.

A previous article in *The Regional Economist* ("Peering Through the Haze," July 2005) described some early evidence on the economic impact of smoke-free laws and suggested that the findings were far from conclusive.¹

As more communities have adopted smoke-free laws and more data have been gathered, economists have discovered new, significant findings. As an earlier article suggested, economic costs often focus on specific business categories—those that smokers tend to frequent.

Gambling and Smoking

Several papers have examined the cost of smoke-free laws on the gambling business, using data from slot machine revenue at Delaware racetracks ("racinos")² Recent economic research finds conclusive evidence of revenue declines at the racinos after the Delaware Clean Indoor Air Law took effect in December 2002.

In my recent research on the topic, I find statistically significant losses at all three Delaware racinos—ranging from 8.9 percent to 17.8 percent.³ Overall, the statewide revenue decline was 14.9 percent. Using slightly different methods that estimate demand for casino gambling, economists Richard Thalheimer and Mukhtar Ali estimate the total revenue loss at 15.9 percent.

These revenue estimates may significantly understate profit losses. For example, the racino that suffered the smallest loss in revenues—Dover Downs—also was the only one with a luxury hotel on site. Dover Downs management responded to initial revenue losses by offering more discounts on hotel rooms.⁴ Efforts to prop up revenue may have been partly successful, but at a cost to the bottom line.

Evidence on the effect of smoking bans on gaming revenue shows that when analysis can be narrowly focused on data from specific businesses, statistically significant findings emerge. Another approach is to use very large data sets. As smoking bans have spread across the country, the variety and timing of adopting smokefree laws have generated data that can help identify effects.

Bar and Restaurant Employment

Two papers, one by Ryan Phelps and the other by Scott Adams and Chad Cotti, have used data available from the Bureau of Labor Statistics to examine the employment effects of smoking bans. Using nationwide county-level data, these two studies examine the changes in employment at bars and restaurants after communities adopt smoking bans. Neither study finds significant employment changes at restaurants, on average, but both find statistically significant employment declines at bars, with loss estimates ranging from 4 percent to 16 percent.

Adams and Cotti also examine some additional factors. For communities in states with a higher ratio of smokers to nonsmokers than the national average, employment losses at bars were significantly larger, and the employment changes at restaurants went from a small positive effect to a small negative effect (in neither case, statistically significant). Climate also affected restaurant employment. Restaurants in warm climates fared better than those in cooler climates. The authors suggest that the reason for this might be that restaurants in warmer climates can more easily provide outdoor seating where smoking is not prohibited. (See also the sidebar on Columbia, Mo.) Restaurants that suffered the dual curse of being in regions with colder climates and a high prevalence of smokers suffered statistically significant employment losses, on average.

California Dreamin'

Another recent economic study examines taxable sales receipts of bars and restaurants in California, the home of the smoke-free movement. Because California communities passed some of the nation's first smoke-free laws, much of the early evidence on the subject was based on these data on California taxable sales receipts; as time has passed, those data have accumulated. The experience of California also provides a case in which a statewide smoking ban was superimposed on a patchwork of local smokefree laws, providing useful variation in the coverage and jurisdiction of smoking bans that can be exploited in empirical analysis.

Economists Robert Fleck and Andrew Hanssen analyzed quarterly restaurant sales data for 267 California cities over 25 years. They find that the measured impact of smoking bans differs between local bans and the statewide ban. In what the authors call their "naïve" specification that treats all smoke-free laws the same, they find a statistically significant 4 percent decline in revenues associated with smoking bans.

When they estimate the effects of the statewide ban and local bans independently, they find that the measured decline in restaurant sales is attributable to the statewide ban on cities without local bans. The measured effect of the statewide ban is nearly 4 percent, and it is statistically significant. The independent effect of local smoking ordinances is estimated to be very small and is not significant. These findings are consistent with the interpretation that locally originated smoking bans have little effect, but smoking bans that are imposed on a community by a higher jurisdiction can have a detrimental economic impact.

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Drink Responsibly.
Drive Responsibly.

Fleck and Hanssen go on to uncover an important specification problem: They find that cities that adopted smoke-free laws were systematically different from those that did not. The authors find that sales growth tends to be a predictor of smoking bans, rather than the other way around. This “reverse causality” calls into question many earlier findings, and it poses problems for using data from California in drawing inferences about the economic impact of smoking bans elsewhere.

The Role of Economic Research

Economic effects of smoke-free laws may be difficult to identify and interpret, but analysis suggests that at least some businesses do suffer costs. When they consider passing smoking bans, policymakers should study evidence both from public health professionals and from economists.

Sidebar

District Focus: Smoking Ban Sings Columbia, Mo.

Since January 2007, all bars and restaurants in Columbia, Mo., have been required to be smoke-free. Only some sections of outdoor patios are exempt from the requirement.

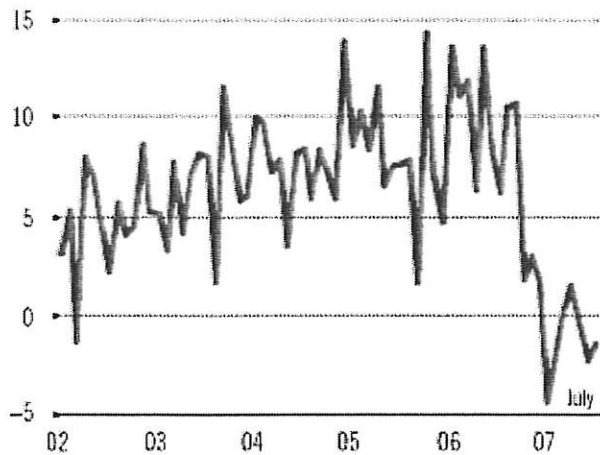
Some local businesses have continued to oppose the Columbia Clean Air Ordinance, circulating petitions to repeal the law by ballot initiative. According to local press reports, owners of at least four establishments have cited the smoking ban as a factor in their decision to close their doors in 2007.

Recent data from the city of Columbia show a distinct decline in sales tax receipts at bars and restaurants. After rising at an average rate of 6.8 percent from 2002 through 2006, tax revenue declined at an annual rate of 1.3 percent over the first seven months of 2007. (See graph.) Although the data are still preliminary, initial analysis suggests a 5 percent decline in overall sales revenue at Columbia dining establishments since the implementation of the smoking ban. This estimate takes into account past trends, seasonal fluctuations in the data and an overall slowdown in sales tax revenue in Columbia⁶

One interesting feature of the Columbia story is the response of restaurant owners to the patio exemption. According to an article in the Columbia Missourian, owners of at least two bars are building or planning outdoor patio expansions. One owner was quoted as saying, “You have to have a patio to survive.”⁷ The expenses associated with these renovations may help buffer the sales revenue of these establishments, but they also represent profit losses that are above and beyond the measured sales declines.

Columbia, Mo., Dining Tax Revenue

YEAR-OVER-YEAR GROWTH



SOURCES: City of Columbia, Mo., and author's calculations

Michael R. Pakko is an economist at the Federal Reserve Bank of St. Louis. To see more of Pakko's work, go to <http://research.stlouisfed.org/econ/pakko/index.html>.

This article is based on a presentation at the Sixth Annual ERIE Conference on Local Government and Economics, Erie Pa., Aug.14, 2007.

Endnotes

1. Scollo et al. (2003) provide a review of previous literature, much of which has been published in medical and public health journals.
2. Previous studies of the Delaware racino case study have been published—and disputed—in the public health journal *Tobacco Control*.
3. See Pakko (forthcoming).
4. See Dover Downs (2004).
5. Bar employment was not significantly affected by climate differences.
6. See Pakko (2007).
7. See Solberg (2007).

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**Testimony re: SB 493
Senate Judiciary Committee
Presented by Ronald R. Hein
on behalf of
Reynolds American, Inc.
February 13, 2008**

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 the types of smoking bans which have been proposed in the past, which do not reflect any concern for the adverse economic impact suffered by restaurants, bars, taverns, and casinos when smoking bans are imposed. RAI is also specifically opposed to SB 493.

Many legislators voted to oppose smoking bans on the recently passed casinos, apparently because the legislators recognized that the casinos would lose business, and income if a smoking ban were to be imposed on the casino. Since the casinos are required to be "state owned and operated" by the Kansas Constitution, it would indeed be hypocritical if the state were to exempt themselves from a smoking ban so that their business interests are protected, while denying such protection to restaurants, bars, taverns, or other private interests owned by private citizens.

It is interesting that this bill pretends to care about local citizens and their right to govern themselves. However, the bill does not give local control at all. First of all, the bill mandates what the locals must adopt. Then it supersedes the local ordinances unless they are more stringent. Then, the bill allows the vote to count ONLY if it supports adoption of the ban. If it does not support adoption of the ban, another ban, existing law, is mandated in its place. Lastly, if the vote fails, only then can the issue be re-voted, and re-voted, until the anti-tobacco folks get their way. There is no provision for a revote if the ban is adopted. The drafters of this bill have no interest in being fair, or in giving the local citizens the right to express their views. They are simply developing a scheme to make it their way or no way.

I understand that approximately 18 communities have imposed smoking bans, but there are 924 local communities in this state, and many of them already have smoking regulations which do not involve a total ban. Some of these local ordinances provide protections for their local businesses that would be stripped through this state mandate. I would urge this committee to recognize this fact and not to usurp the local powers of these communities. For example, I understand that Hutchinson provides relief from a ban for a business that suffers adverse economic impact. I also understand that Salina recognizes the economic impact on night life businesses. If passage of this bill causes

such businesses, or others, to go out of business, will the state provide just compensation to its citizens who lose their business and livelihood?

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 owners' rights are taken away by smoking bans. In New York, a study 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.

Recently, 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

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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 voluntarily providing more and more smoke-free dining options. We underestimate (and a statewide smoking ban would undermine) the power of a free-market to determine these issues.

RAI would respectfully request this committee to report SB 493 adversely.

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

Matthew Goolsby
355 N Rock Island #302
Wichita, KS 67202
316-393-7476
February 13, 2008

Senate Judiciary Committee
Kansas Legislature
State Capitol
Topeka, Kansas 66612

We're here today to discuss the potential of a statewide smoking ban. There have been several variations of bans in cities all over our state. Lawrence being one of the most stringent, to Dodge City requiring separate enclosed and declared spaces. Proponents ask that smoking be banned in all public places and point to other governmental bodies that have done just that. California, France, and Ireland. I interrupt this as peer pressure. When in high school I was told to ignore this tactic. How can it be a rational means to enact a ban? This is a private property rights issue, everyday I feel as if we loose more and more private property rights. I come before you today to voice my opposition to a statewide ban.

Thank you,

Matthew Goolsby

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Lawrence Doss
38 Via Roma
Wichita, KS 67230
316-619-9126
February 13, 2008

Senate Judiciary Committee
Kansas Legislature
State Capitol
Topeka, Kansas 66612

I own Walt's Bar & Grill at 7732 E Central Ave in Wichita. I have history in the bar business dating back to 1970 and I am very familiar with my customer base. I have clearly posted on my front door that my private business is a smoking facility, and believe I have a right as a business owner to operate my business the way I do. If second hand smoke was too dangerous for the workplace, why has OSHA not deemed it so? The following is taken straight from www.osha.gov OSHA's mission is to assure the safety and health of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health. Their mission statement clearly establishes that it is their duty to protect America's workforce. But nowhere do they ever classify second hand smoke a danger to the workforce. I am here today to voice my opposition to a statewide ban.

Thank you for your time,

Lawrence Doss

1559 Payne
Wichita, Kansas 67203
(316) 312-7335 cell
john@johntodd.net e-mail
February 13, 2008

Senate Judiciary Committee
Kansas Legislature
State Capitol
Topeka, Kansas 66612

Subject: My testimony presented in **OPPOSITION to Senate Bill No. 493** concerning *crimes* and *punishments* relating to smoking. Kansas smoking prohibition act.

Mr. Chairman and members of the Senate Judiciary Committee, thank you for allowing me this opportunity to speak to you in Opposition to passage of Senate Bill No. 493 concerning *crimes* and *punishments* relating to smoking, aka the Kansas smoking prohibition act.

My name is John Todd. I am a self-employed real estate broker and land developer from Wichita. I currently serve on the Governmental Affairs Committee and the Board of Directors of Wichita Independent Business Association. I am the Wichita Area Volunteer Coordinator for Americans For Prosperity—Kansas. I have been working with the Wichita Business and Consumer Rights Coalition in an effort to stop a smoking ban ordinance currently being debated by the Wichita City Council. I appear before you today as a private citizen, speaking only for myself and not for any other group.

I do not smoke, but does that give me, or even the majority of non-smokers in our state the right to use state law to restrict the rights and freedoms of those people who choose to smoke? A Democracy is like two wolves and a sheep deciding where to go for lunch. The lone sheep would have to agree with De Toquville who described that situation as the “tyranny of the majority”. The pledge of allegiance describes our country as a “republic”. Our founders established a republican form of government in order to protect the individual’s rights from the tyranny of the majority.

The sale and use of tobacco products is legal in our state. The sale of tobacco products produces tax revenue for our state, and government officials think that is positive. And, our Federal Government still subsidizes the growing of tobacco in tobacco growing states.

The passage of Senate Bill # 493 is not needed because the smoking problem has been solving itself, for several years on the local level, without government intervention by the natural and voluntary action of our free market economic system. Over the last two to three decades, restaurants, bars, and other businesses have been “voluntarily” regulating smoking and non-smoking in their businesses all over our state without the need for government mandated regulations, and without the need for government enforcement. This move to non-smoking establishments has been consumer driven, and businesses have voluntarily responded to this demand. Some businesses owners still choose to offer smoking for their customers since their customers demand the freedom to

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smoke. Freedom demands choice by business owner and customer. And, Private Property Rights are best preserved when property owners are free to use their property as they see fit. State government needs to stay out of the smoking debate.

Several cities in our state have adopted smoking ban ordinances while others have not. There are studies that show smoking bans cause economic harm to some businesses, and I have heard testimony from business owners in Wichita who have or will be impacted negatively by the passage of a proposed smoking ordinance by the City of Wichita. Like most regulations, the ordinance is complicated to the point of making it unenforceable. And, who is going to enforce the ordinance? Will additional city staff and the resultant bureaucracy be required for enforcement? What is enforcement going to cost? Will enforcement be selective or arbitrary? What economic impact will the ordinance have on business? Is the ordinance even necessary?

The proponents of the ordinance are voicing concerns about public health and public health costs associated with smoking. Will this same group be pushing for city ordinances dealing with obesity with mandated diet and exercise? What will the penalties for failure to comply? Who will decide the standards?

The proponents of the proposed city smoking ban ordinance appear to be the same group who want to direct the lives of other people since they know what is best for them. They have no problem supporting law that limits individual freedom of choice, and private property rights.

Milton Friedman says, "A major source of objection to a free economy is precisely that...it gives people what they want instead of what a particular group thinks they ought to want. Underlying most arguments against the free market is a lack of belief in freedom itself."

The "voluntary" and "market-driven" solution to the "so-called" smoking problem has been happening automatically all over Kansas without the need for additional state law that criminalizes and punishes people who are partaking in their freedom to enjoy a legal product and activity. Senate Bill #493 looks like another regulation on the backs of business and property owners with the potential for creating an enforcement process that will be impossible to police, but at the same time create another level of expensive bureaucracy for a non-existent problem. I ask you to **oppose** the passage of Senate Bill #493.

Sincerely,

John R. Todd

Attached is a copy of an article by William L. Anderson entitled "Smoking and Property Rights" from the [mises.org](http://www.mises.org) web page.

<http://www.mises.org/story/1244>

Smoking and Property Rights

By William L. Anderson

Posted on 6/3/2003

A week ago I received an email that was part of a mass mailing by an anti-smoking activist who was championing all of the new "smoke-free" legislation that is being churned out by state, local, and national governments around the world.

Although I am not a smoker, I must admit to having more than a passing interest in the recent assault on tobacco companies and individuals who use tobacco. ([See the recent article by Candice Jackson and me on tobacco litigation.](#)) For the most part, when I receive emails from people and organizations that I believe are anti-freedom, I discard them, but in this case I answered and the director and I then followed with an interesting exchange of emails. From what I read both in his responses to my question, and to the questions that he asked, I was able to look into what I can only say is a totalitarian mindset.



Yes, the activists claim they are only protecting public health and keeping individuals from unwanted intrusions into their "private space," but the methods that they employ only can be successful when government seizes private property—with no compensation for the owners, of course.

After successfully forcing tobacco companies to finance government spending schemes, along with advertisements that use propaganda methods in an attempt to convince people not to smoke, the next step has been to ban smoking in "the workplace." While most of us tend to think of workplaces as offices and the like, the definition that the activists use is much wider, and especially includes establishments like bars and restaurants, which traditionally have been favorite haunts of smokers.

The smoking ban in bars and restaurants in New York City received publicity when a smoker became so enraged after being told to leave a bar that he killed the bouncer. Although anti-smoking activists have jumped on the situation as an example of why smokers are dangerous people, the incident does little to tell us that the real problem with the bans is that they are a form of state theft.

Advocates for "smoke-free workplaces" contend that since nonsmokers work in bars and restaurants, and that since even second-hand smoke contains so-called Class A carcinogens that in large doses can cause cancer, people should be entitled to "safe" places wherein to work. In other words, by banning smoking in these places, government simply is protecting the "rights" of workers.

On the surface, such arguments may sound good, but when one barely scratches the surface, they not only are specious, but downright dangerous. Such laws amount to a confiscation of property. Whatever governing body makes the ruling is using force to limit behavior that can occur on private property, yet it is the owner who is liable for enforcing the rule—on pain of losing the property and perhaps even his or her freedom. Property owners, who in a free market would be his or her freedom to decide on their own whether or not they want to permit smoking, have that right taken away from them by the state.

One forgets that people who either are employees or patrons of a bar or restaurant are there by *choice*. To put it another way, those individuals who decide either to work at such an establishment or to eat and drink there freely have made the decision to spend time at that place. No restaurant or bar owner can force anyone to work or eat at his or her establishment, so at best, the state is "rescuing" people from their own free choices, which means that the political authorities—and the activists cheering them on—are in effect also coercing those workers and patrons into making choices that meet state approval.

Much has been made of nonsmokers being "victims" of passive smoke created by smokers. Those of us who are nonsmokers on occasions have complained about breathing the smoke of others, to be sure, and there have been times when I have not gone to certain places where people were smoking. However, it is one thing for me to refuse to patronize a place where people are smoking; it is quite another to employ the state as a vehicle to impose my desires upon others.

The anti-smoking policies in effect give disaffected persons (along with politicians and activists) *de facto* property rights, something I pointed out to the activist. His response was as follows: "I think ALL Group A carcinogens should be prohibited in the workplace, to the extent possible."

The "Class A Carcinogens" argument, while at first sounding good, is yet another rhetorical trick. According to cancer researchers, tobacco smoke carries the "Class A" carcinogens, and these supposedly also have an effect upon nonsmokers. Given the political motivation of much anti-tobacco research, one must take these results with a very large bag of salt. (For example, the media recently trumpeted a "study" which claimed that smoking bans could cut heart attacks in half. [Jacob Sullum of the Reason Foundation clearly debunks that and other studies.](#))

However, as I pointed out in my responses, there are many hazards in this world, and his reasoning would give unhappy people an absolute veto power over nearly everything. For example, if one is able to walk into any establishment and demand people stop smoking, would not someone who is offended by "R" rated movies have the right to order the theater to stop showing that particular film? For that matter, all of us are quite aware of the dangers of alcoholic beverages, and if it is dangerous for people to smoke, it certainly can also be dangerous for them to drink.

That being the case, one would expect the political authorities to be so concerned about alcohol abuse that they order bars and restaurants to stop serving such beverages, or at least permit anyone to enter a bar and declare that all drinking must be stopped.

In fact, if one really wants to get at the source of most cancers, there is the sun. If these public health cancer fighters truly were serious about keeping Americans from being exposed to the dangers of cancer, then they would demand legislation that either would prevent the sun from shining or at least require that we block all windows during the day and venture out only at night, something reminiscent of Frederic Bastiat's "Petition of the Candlemakers."

However, my activist email partner emphasized time and again that he wanted only the "Class A" carcinogens to be eliminated from the workplace. That is not as easy a task as one might think, even if all tobacco smoke is eliminated. Carcinogens, you see, come in all places, including clothing and carpet. It is nearly impossible to go through life without coming into contact with such things.

Thus, the safety issue is nothing more than a red herring, or yet another version of the "Camel's Nose." Anti-tobacco activists most likely will not stop until we have something akin to the 1920s version of Prohibition, this time tobacco being the target, the failures of alcohol and drug bans not affecting them in the least.

While many libertarians have fashioned the argument as a contest between the rights of smokers and nonsmokers, it is a mistake to stop there. There are no doubts that conflicting rights exist here, but legislation targeting tobacco use is not the answer. The real issue here is not whether the law will be used as a mediation device between smokers and nonsmokers, but rather the fact that activists are using the state as a vehicle to hijack private property rights and to take choices away from individuals who are quite capable of thinking for themselves.

"If one abolishes man's freedom to determine his own consumption, one takes all freedoms away," writes Mises.

The decision of whether or not to ban smoking on private property should be solely left up to the property owner, period. Furthermore, individuals who choose to work or patronize such places should not be permitted to claim later that secondhand smoke made them sick (and then have a jury make them multimillionaires).

For all of the "halo-effect" that supposedly surrounds anti-smoking activists, they are little more than closet thieves. Yes, free speech dictates that they should be able to

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say what they want in a proper forum. And, yes, private property rights should also dictate that they mind their own business when it comes to the property of others.

William Anderson, an adjunct scholar of the Mises Institute, teaches economics at Frostburg State University. Send him [MAIL](#). See his Mises.org [Articles Archive](#).

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Chairman and Members of the Committee:

I thank you for allowing me to testify on behalf of Armour Amusement in opposition to a Statewide smoking ban in Kansas. My name is Jeff Martin and I have been the Operations Manager for nearly 14 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 statewide, I would see further declines in my business. 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 a smoking 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

Sept. 24, 2007
Testimony on SB 493
Senate Judiciary Committee

My name is Tom Conroy and I own Conroy's Pub in Lawrence. Conroy's Pub has a capacity of 214 and can be described as a family friendly restaurant with a full menu of homemade food, kid-friendly amusement machines, and we have a side room which many families and local businesses use for banquets and meetings. I have never smoked in my life, so I am not a partisan on the issue.

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 and business owners the freedom of choice. 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, and I resent these people lying to government officials saying the opposite. They seem more interested in their own personal legacies than in the facts. All one has to do is check their website. The list of current members contains none from the food and beverage industry. Many others and I would gladly join their organization and be proud spokespeople if their cause was good for business. It is not, and two years later, it has not recovered.

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
3115 W.6th St. Suite D
Lawrence, Ks 66049
785 856 3663

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Testimony in Opposition To Provisions of SB 493
Senate Judiciary Committee
February 13, 2008

Chairman Vratil and Committee Members,

My name is Lisa Benlon. I am the Legislative/Government Relations Director for the American Cancer Society in Kansas.

The American Cancer Society stands in opposition to certain provisions of SB 493. We wish to commend those who have taken the time to introduce this piece of legislation. We believe their intent was sincere in wanting clean indoor air legislation, and we would support the bill if not for the concerns stated below. We believe there are flaws in the bill that, if passed, would not lead to anywhere near the level of smoke-free public place coverage intended by the bill sponsors.

- **First and foremost, we believe that every legislator should vote to make the entire state smoke-free instead of putting the issue on the ballot in 105 counties—because it is a health issue.**
 - We wouldn't allow counties to "opt out" of immunizing children—because it is a health issue.
 - We wouldn't allow counties to "opt out" of requiring restaurant workers to wash their hands--because it is a health issue.
 - We wouldn't allow counties to "opt out" of drunk driving laws – a similar issue in which another's behavior can impact those around him or her--because it is a health issue.
- **The tobacco companies will spend millions in the 105 campaigns to confuse the electorate, thus making the county elections risky.**
 - If there were campaigns without tobacco money, I know the election would be successful. The polls show Kansans overwhelmingly support smoke-free indoor public places.
- **If this legislature deems it necessary to take smoke-free legislation to a vote of the people, it should be done as a statewide up or down vote, not as a county "opt out"** which could lead to wide confusion, lack of ability to track timely supporter and opponent campaign expenditures, and significant implementation problems if passed in some counties but not all. Also there remains a question of home rule cities and whether a county opt out provision would affect them.
- **The title of the bill—the "Kansas Uniform Smoking Prohibition Act".**
 - By requiring all 105 counties to vote, it will not be "uniform" unless all 105 counties support the question. The title is misleading.

Without the changes suggested, the American Cancer Society encourages the committee members to oppose SB493.

the
WOODLANDS



Kansas City, Kansas

February 11, 2008

Senator John Vratil
Chairman
Senate Judiciary Committee

Re: SB-493

Dear Senator Vratil:

In many indoor places reasonable ways exist to respect the comfort and choices of both non-smoking and smoking adults. We believe that business owners, particularly owners of bars and racinos, are most familiar with how to accommodate the needs of their patrons and should be afforded the opportunity and flexibility to determine the smoking policy for their establishment. The public can then choose whether or not to frequent places where smoking is permitted.

In indoor public places where smoking is permitted, business owners should have the flexibility to decide how best to address the preferences of non-smokers and smokers through separation, separate rooms and/or high-quality ventilation systems.

If this committee decides to work this bill we would suggest an amendment exempting gaming facilities and bars from the smoking ban.

Very truly yours,

KANSAS RACING, LLC

A handwritten signature in cursive script that reads "Larry Seckington".

Larry Seckington
Legal Counsel

LS/mh

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**Testimony Re: SB 493
Senate Judiciary Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
February 13, 2008**

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.

KRHA opposes SB 493 for the following reasons.

For a number of years, the Kansas Restaurant and Hospitality Association has been one of the leading defenders of the right of business owners to make their own business decision about the use of legal products in private businesses operated by our members. In short, the KRHA believes that our business owners know best what food to serve, what business decisions to make, and what customers they seek for the best success for their personal businesses. The KRHA has always believed that the business owner, not the government regulators, is in the best position to determine their customer base. As such, the KRHA has generally opposed governmental smoking bans.

Unfortunately, there has been some misunderstanding of the KRHA position on smoking regulations as it was modified last year. The KRHA has always opposed smoking bans as being a violation of business owners' rights. However, since some businesses have been subjected to a local smoking ban which has given their competitors a competitive advantage, the KRHA determined they would not oppose a statewide smoking ban which has absolutely no exceptions to the ban. Thus far, no such legislation has been put forth. Exceptions for cigar bars, casinos, and other exceptions do not meet the criteria established by the KRHA board. SB 493 does not meet the criteria, because the local vote will create a patchwork of policies throughout the state, which will still result in some competitors being at a competitive advantage.

Likewise our position has also been misconstrued because some have claimed that the KRHA would support a ban with no exceptions. This is incorrect. At no time has the KRHA ever indicated it would support a ban of any sort. The KRHA is also willing to refrain from opposing a bill which truly recognizes the rights of restaurant and hospitality

businesses to accommodate smokers, and yet to preserve protections for non-smokers.

We have explored alternatives that allow for increasing the number of locations which are non-smoking, while recognizing the adverse economic impact which smoking bans have on numerous food and beverage businesses. We will continue that dialogue as this issue continues.

According to our best information, the vast majority of hospitality industry establishments in the state have chosen to be non-smoking, and we believe many businesses are choosing to be non-smoking every day. Non-smokers have plenty of choices of food service establishments if they desire to avoid a facility that allows smokers. Many businesses have gone to tremendous lengths, cost and effort to provide facilities which can cater to both smokers and non-smokers. Discussion of a smoking ban seems to be addressing a problem which is correcting itself.

There have been comments about no negative economic impact to restaurants when a smoking ban is passed, which is an oversimplification. Smoking bans have no effect on some restaurants while they may have a devastating effect on others, which the market as a whole does not recognize. While the effects of the total market are gauged by sales tax trends, sales are naturally increasing every year due to more people eating out more often.

KRHA members are divided on some of the details of this issue. So, the KRHA believes it is important that the association solicit our members to let their views be heard by the legislature, and that the association serve as a facilitator of communication, while still asserting the fundamental belief that we are an organization of business people, and our obligation is to defend the rights of our business owners to make their own business choice regarding decisions that may make or break their businesses. One of these fundamental rights is the right to determine their clientele, especially given the significant amount of investment required for restaurant and other hospitality businesses in today's world.

Thank you very much for permitting us to submit written testimony in opposition to SB 493.



Kansas Advocates
for
Better Care

“Advocating for Quality Long-Term Care” since 1981

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**Chairman John Vratil and
Members of the Senate Judiciary Committee**

While in support of Senate Bill 493, Kansas Advocates for Better Care is requesting the Judiciary Committee to create an exemption from the public ban as it relates to residents of Adult Care Homes that currently allow smoking in their facilities. We are not requesting an exemption for staff smoking in adult care homes.

For approximately 12,000 older adults in Kansas, an Adult Care Home is their private residence. Kansas Advocates for Better Care would request that Judiciary Committee members make allowances for this in Senate Bill 493. Some long-term care homes currently disallow smoking. These facilities would be exempt from this request. Facilities could create contracts for execution with future residents that disallowed smoking. In facilities that currently allow smoking by residents, Kansas Advocates for Better Care would ask the Committee to exempt those adult care homes from the statewide smoking ban, under the provision that they are in fact “private homes” for the older adults who reside in them.

Kansas is actively participating in a national movement promoting “Culture Change” in adult care homes. As such Kansas Department on Aging and Centers for Medicare and Medicaid Services are proponents of resident-centered care and choice, working to maximize “home-like” environments in adult care homes across the state. The driving philosophy of this movement is independence and autonomy in resident decision-making as much as possible within adult care homes. This independence and autonomy extends to what and when to eat, time for rising and retiring, fostering of “neighbors and neighborhoods.” For most residents, nursing homes will be the last home in which they live. Rooms will be full of their clothes, furniture, art, music, etc.

As SB 493 allows for smoking in a percentage of rooms in a hotel, so could allowance be made for some percentage of rooms in adult care facilities that currently allow smoking to be exempted from the ban. Steps that protect air quality for non-smokers could be required to provide for adequate ventilation and elimination of smoke from re-circulated air.

Thank you for hearing our concern on this issue.
Mitzi E. McFatrigh, Executive Director