

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Jim Barnett at 1:30 p.m. on February 3, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Nobuko Folmsbee, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Kelly Navinsky-Wenzl, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Jan Lunn, Committee Assistant

Others attending:

See attached list.

Senator Barnett called attention to the fact that testimony from Ron Hein (Attachment 1), Curt Dibel (Attachment 2), and clarification from Susan Homan (Attachment 3) is attached to committee members' folders, and therefore, becomes part of this permanent record. This clarified testimony was heard from opponents to **SB 25** on January 29, 2009.

SB 102 - Emergency medical services; use of automated external defibrillator.

Chairman Barnett opened the discussion on **SB 102** - Emergency medical services; use of automated external defibrillator, and recognized Nobuko Folmsbee, revisor of statutes office, who presented a balloon amendment which would delete the definition and requirement that only a "qualified person" may use an automated external defibrillator, and any person using an automated external defibrillator in good faith to render emergency care or treatment would be held harmless from any civil damages. The bill further removes the word "gratuitously" as one of the conditions under which a person can provide emergency medical care or treatment and be held harmless from any civil damages resulting from care or treatment. Senator Brungardt moved to adopt the amendment as presented; Senator Pilcher-Cook seconded the motion. The motion passed. Upon a motion by Senator Wysong to favorably move out SB 102, as amended, and a second by Senator Kelsey, the motion passed.

SB 25 - State-wide prohibition on smoking in indoor public areas

Senator Wysong indicated while **SB 25** has usually been referred to as "the smoking ban," the heart of the bill is public health protection, therefore, upon a motion by Senator Wysong to title the bill "An Act creating the Kansas indoor clean air act," and a second by Senator Kelly, the motion passed with eight senators voting yes and one senator voting no.

Senator Pilcher-Cook moved a substitute to SB 25 and amended to include contents of SB 81. The motion failed due to lack of a second.

Senators discussed testimony received from those conferees appearing in opposition and in favor of **SB 25**. Specifically, the bill currently exempts tobacco shops operated primarily for the retail sale of tobacco, tobacco products or smoking devices or accessories where not less than 80% of its gross receipts are from the sale of tobacco. Senator Kelly moved to amend the percentage of gross receipts on page 3, line 27 from 80% to 65%; Senator Wysong seconded the motion. The motion passed.

Discussion was also heard relative to the civil fines and penalties for anyone who owns, manages, operates or controls the use of areas or public places where smoking is prohibited. Senator Barnett recognized Jason Long, revisor of statutes office, to discuss infractions. Mr. Long recommended that an amendment be made to clarify what the owner, manager, operator must do to avoid liability and defined acquiescence to smoking under totality of circumstances which provides enhanced discretionary control to law enforcement/prosecutors to better determine whether the law was violated. Senator Kelsey moved to amend line 29 on page 5 by deleting the word "or" and inserting the word "and" in its place. Senator Colyer seconded the motion which passed.

CONTINUATION SHEET

Minutes of the Senate Public Health And Welfare Committee at 1:30 p.m. on February 3, 2009, in Room 136-N of the Capitol.

Senators discussed the effective date of the proposed legislation which is from the date of its publication in the statute book. Discussion focused on allowing businesses additional time to shift marketing approaches. Senator Kelly moved to amend the effective date of SB 25 to January 2, 2010. Senator Wysong seconded the motion; the motion passed.

Discussion was heard regarding the definition of "access point" for buildings and facilities in existing construction as within a 10-foot radius and in new construction as within a 15-foot radius of any doorway, operable window, or air intake. Senator Schmidt moved to amend SB 25 to reflect that the radius for both new and existing construction will be a 10 foot radius within any doorway, operable window or air intake leading into a building or facility that is not exempted, and to technically amend the bill to reflect an alphabetical listing for definitions. Senator Brungardt seconded the motion; the motion was passed.

Senator Kelly moved to recommend SB 25, as amended, favorable for passage; Senator Colyer seconded the motion. The motion carried with eight senators voting in favor and one senator voting in opposition to the motion.

Senator Barnett adjourned the meeting at 2:09pm.

The next meeting is scheduled for February 4, 2009.

Senate Public Health and Welfare

Guest List

Date: 2-2-09

DAVE HEINEMANN	ACS
D. Moyer	KHPA
PAUL DEGENER	CAIIT
Brad Stauffer	Carter Group
Phil BRADLEY	KLBA
Patrick R. Hubbell	Ega Associates
ARTHUR BAGYANTIS	KDOT
Finna Lambertson	Kansas Health Consumer Coalition
Gandy Jacquot	LKM
Dick Morrissey	KDAE
Carel Craner	KDHE
Molly Annelle Helms	TRKQ
Joyce Morrison	Clean Air KS
Etha Patterson	Little Government
TRAVIS LOWE	Pinegar, Smith & Assoc.
Jaylor Conerman	
Rachel Swit	KHI
Dodie Wellshear	KAFP
Patrick Vogelberg	Kearney and Assoc.
Linda McCurdy	Am. Heart Assoc.
Bob Burke	" "
Ron Heim	KRHA / RAI
Whitney Janson	Flint Oak, LLC

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**Testimony Re: SB 25
Senate Public Health and Welfare Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
January 28, 2009**

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 25 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.

The KRHA has 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 other food and beverage businesses. The KRHA has worked with other business interests, and we have developed legislation which would establish a ban that would be acceptable to these opponents of these types of smoking ban legislation. This year, on behalf of a coalition of such businesses, I requested introduction of a compromise bill, SB 81.

In SB 81, the KRHA has agreed to a major concession, which is that the ban would prohibit smoking areas in restaurants unless the smoking area was in a separate and distinct room, separated by floor-to-ceiling walls and separately ventilated. This should

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eliminate any exposure for non-smokers. SB 81 also protects age-restricted venues and other businesses/operations which do NOT threaten the rights of non-smokers..

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 erroneous comments made to the effect that there will be 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 believes we owe a duty to uphold our obligation 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.

Therefore, although we urge the committee to oppose SB 25, if the Committee were to take action on SB 81, we would not oppose enactment of that legislation.

Thank you very much for permitting us to submit written testimony and to appear briefly in opposition to SB 25.

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**Testimony re: SB 25
Senate Public Health and Welfare
Presented by Ronald R. Hein
on behalf of
Reynolds American, Inc.
January 28, 2009**

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 25.

When the gaming act was passed, many legislators voted to oppose smoking bans on the casinos, apparently because the legislators recognized that the casinos would lose business, and thus the state would lose income if a smoking ban were imposed on the casinos. Since the casinos are required to be "state owned and operated" by the Kansas Constitution, it would seem inappropriate 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.

SB 25, which primarily provides for exceptions for private homes and private cars, ignores the realities facing numerous business in Kansas today, whether it be drivers of commercial motor carries, or the interests of numerous other private businesses from private clubs to taverns to restaurants.

SB 25 basically overrides local governing powers by making unlawful actions which many local units have deemed to be permissible. I understand that approximately 20-something 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 question, 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

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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 smoking bans 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.

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 numbers following the ban, sales at Talbot County restaurants/bars with liquor licenses declined by \$2,906,100 (or 11 percent) when compared to the same period the previous year. 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 before the ban to a low of only 29 by the end of December following the ban.

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 argued to protect.

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Philosophically, smoking ban legislation is the epitome of government infringing on the personal property rights of the state's citizens and the state's businesses. Ironically this bill would take away private business owners' rights to make decisions for themselves and their properties at the same time that businesses are 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.

With these comments made, RAI recognizes that non-smokers are entitled to make choices which permit them to avoid smoking or second-hand smoke. In short, there should be room for a compromise that would acknowledge the rights of smokers, non-smokers, and business owners. Accommodation is the answer. Therefore, RAI has participated with other business groups and has presented SB 81, which legislation RAI would NOT oppose.

SB 81 establishes a state-wide smoking ban which would insure that non-smokers are protected while exercising their rights to patronize businesses of their choice. The exceptions have been carefully crafted to apply to areas which are age-restricted or which otherwise protect the non-smoking public. Restaurants and class B clubs must provide separate smoking areas where non-smokers are not affected. Other exceptions are similarly designed to insure that motor carriers and other businesses are not denied their rights to utilize a legal product in a legal way, or to insure that businesses may determine their own clientele.

Accordingly, RAI would not object or oppose action on SB 81, but would respectfully request this committee to report SB 25 adversely.

Thank you for permitting me to submit this written testimony and to testify briefly..

Due diligence – as lawmakers, we, the citizens, trust that you perform due diligence. Common sense tells us every issue has 2 sides. . Some refer to the smell test. The challenge comes when one side dominates. Is it OK then not seek the contrasting viewpoint? You were elected to represent all people, and we are trusting you will keep an open mind to both sides.

The anti-tobacco lobbies have the support of the national health groups. It is these national health groups who bombard the lawmakers year after year. When the NRA lobbies, they tell you they represent 4 million voting members. What is the membership size of the anti-tobacco lobby that is pushing the smoking ban agenda? How many people are actually behind this ban? The Kansas City referendum was passed by a margin of 2200 votes. The voter turnout was a whopping 7%. Do you define a mandate as 3.5% of the population? I do not.

Tuesday’s proponents sited the June 2006 Surgeon General’s Report. I am sure you all remember its release. Huge coverage – no substance. It was a re-hash of years of studies that suddenly were able to cumulatively yield a conclusion that no one could do on their own. It stated: “there is no risk-free level of exposure to secondhand smoke.” The second paragraph states: “that even brief secondhand smoke exposure can cause immediate harm.” Does that sound plausible? Have we all walked through a cloud of smoke and felt immediate harm? No, I’ve missed that somehow. The full report is 707 pages. 52 times it states: “the evidence is inadequate to infer, suggest or relate various health issues to secondhand smoke”. 56 times it states: “the evidence is suggestive but not sufficient to infer, suggest or relate various health issues to secondhand smoke”. But the headlines and the anti’s tell us they have found the silver bullet - the direct cause and effect that has been missing. 52 times one disclaimer, 56 times another disclaimer. 707 pages - sometimes due diligence take a lot of reading.

In 1964 the surgeon general came out with the first report regarding smoking and its effect upon health. Cigarette sales declined in that year for the first time from 523.9 billion to 511.2 billion (in the US?). This was a time when most everyone smoked. If smoking causes all the deaths and all the strain on the healthcare system that the anti’s claim, why didn’t 1964 become the panacea for the anti-smoking proponents? After all, this is the perfect test

tube. There was no other reason for the unexpected decline. Why haven't we been told about the sudden drop in healthcare spending in this window? How about the sudden drop in deaths? Why? It did not occur. There is no silver bullet. The perfect window for cause and effect never opened. Due diligence.

With rising health care costs, it is now popular to propose substantial savings from smoking bans. I am having trouble understanding the logic here. Cigarette smoking ^{RA} declined from 1980 – from 631.5 billion to 360 billion. - in 2008 43% decrease. Healthcare costs have increased in that same time from 253 billion to 2.4 trillion – 1000% increase. There doesn't seem to be much benefit in reducing cigarette smoking – but it sure sounds cool when someone says it will save millions when the state has a budget problem. Due diligence.

What does OSHA say? It's their job to protect our health. Anyone check with them?

"Field studies of environmental tobacco smoke indicate that under normal conditions, the components in tobacco smoke are diluted below existing Permissible Exposure Levels (PELS.) as referenced in the Air Contaminant Standard (29 CFR 1910.1000)...It would be very rare to find a workplace with so much smoking that any individual PEL would be exceeded."

-Letter From Greg Watchman, Acting Ass't Sec'y, OSHA, To Leroy J Pletten, PHD, July 8, 1997

I appreciate the tobacco shop exemption. It is certainly appropriate. However, the 80% threshold is too high. I also sell gift items for men. I have as extensive a cigar selection as you will find in Kansas. Am I to be penalized for selling other items successfully? My suggestion would be a dollar threshold or a lower percentage.

This proposed ban would cause direct and undue hardship upon my business. I am not big business. I am not Big Tobacco. General Cigar Co tells me their experience throughout the country is that smoking bans reduce cigar sales by 20%. Please do not write this bill with a blind eye to the effects upon the true tobacconist.

<http://www.chcf.org/documents/insurance/HealthCareCosts08.pdf>



To: Senator Barnett, Chair of the Senate Public Health and Welfare Committee

From: Sharon Homan, PhD and Rachel Smit, MPA, Kansas Health Institute

Date: February 2, 2009

Re: Impact of the Lawrence smoke-free ordinance on taxable liquor sales

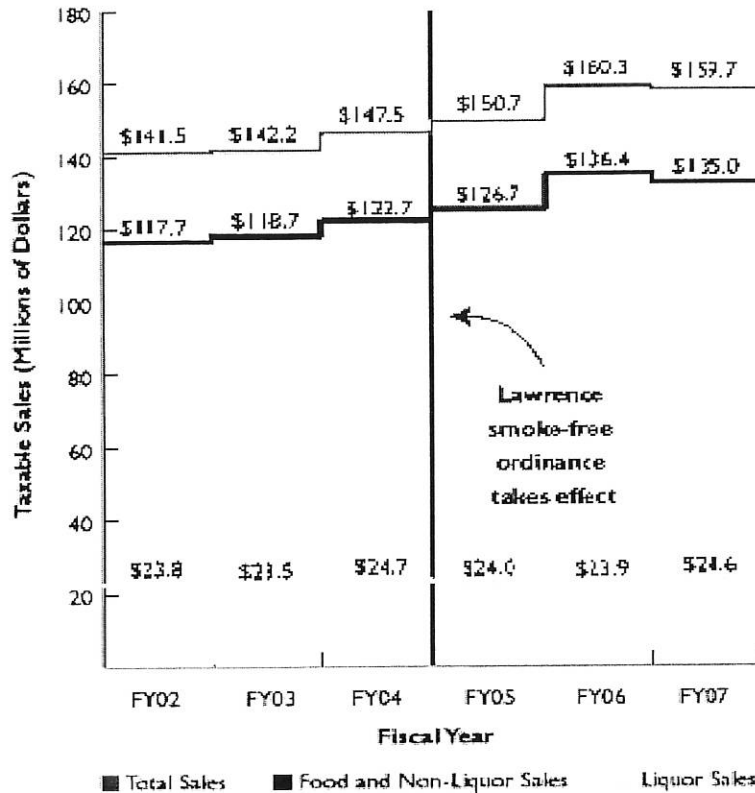
I want to thank you for the opportunity to testify before the Senate Public Health and Welfare Committee on January 27, 2009 regarding the economic impact of the Lawrence smoke-free ordinance. During testimony on January 29, 2009 by Mr. Philip Bradley representing the Kansas Licensed Beverage Association, information was provided that conflicted with our testimony. The following information provides additional factual detail regarding taxable liquor sales in Lawrence before and after implementation of the smoke-free ordinance. We also summarize the scientific literature related to the impact of smoke-free laws on bars and restaurants that sell liquor.

1. Trend of Liquor Sales in Lawrence Related to the Smoke-Free Ordinance

Figure 1 indicates that taxable liquor sales (adjusted for inflation) were relatively constant, with fluctuations both before and after the July 2004 smoke-free ordinance.

The complete liquor sales data are summarized in Table 1. The pattern of sales was relatively flat over the six year period. Prior to the ordinance, liquor sales declined by 1.3% in FY03 and then increased by 5.1% in FY04. Liquor sales declined by 3% in FY05, the first year after implementation of the ordinance, and by .6% in FY06. In FY07, liquor sales grew by 3.3%. It is difficult to establish a cause-and-effect relationship between the ordinance and the slowdown in sales.

Figure 1 Taxable Sales at Restaurants and Bars in Lawrence



Note: Total sales are food, non-liquor, and liquor sales combined. Sales have been adjusted for inflation and are in June 2007 dollars. Fiscal years are July to June.

Table 1. Taxable Liquor Sales at Restaurant and Bars in Lawrence Before and After Smoke-Free Ordinance, July 2004

Fiscal Year	Taxable Sales in Fiscal Year (Millions of Dollars)	Net Gain or Loss in Sales from Previous Year (Millions of Dollars)	Percentage Change In Sales from Previous Year	Direction of Change
Pre-Ordinance				
2002	23.84			
2003	23.54	-.31	-1.3	↓
2004	24.74	1.20	5.1	↑
Post Ordinance				
2005	24.01	-.73	-3.0	↓
2006	23.86	-.15	-0.6	↓
2007	24.63	.78	3.3	↑

2. Scientific Literature Related to the Impact of Smoke-Free Laws on Bars and Restaurants that Sell Liquor

In testimony heard by the Public Health and Welfare Committee on January 29, 2009, there were many references to studies finding that smoke-free laws harm the hospitality industry and alcohol-serving businesses in particular. Many of these studies have been conducted by consulting firms for restaurant and bar associations or the tobacco industry. These studies vary tremendously in terms of quality.

Because these types of studies are very difficult to do well, we have restricted our focus to those studies that have been published in peer-reviewed journals or high-quality publications such as the Centers for Disease Control and Prevention's Mortality and Morbidity Weekly Report.

Based on our review of literature, we have identified six studies that look at the impact of smoke-free laws specifically on alcohol-serving businesses. Two of these studies examined the impact of local smoke-free ordinances, two examined the impact of a state-wide law, and two did not distinguish between the types of policies.

- None of these studies found a long-term impact on bars or alcohol-serving restaurants.
- One study (4) examined the impact of both California's 1995 smoke-free restaurant law and their 1998 smoke-free bar law. The authors found that the smoke-free restaurant law was associated with an increase in restaurant revenues. The smoke-free bar law was associated with an increase in bar revenues.
- Another study (6) examined the impact of just California's smoke-free restaurant law. The authors found that revenues for restaurants that serve alcohol dipped by about 4 percent in the first quarter after implementation of the law. However, revenues returned to predicted levels immediately after. The same study found no impact on revenues for all restaurants combined.
- One study (1) examined county level data across the US and found a short-run decline in bar employment associated with smoking bans of about 4 percent. The study design did not allow the authors to make any firm conclusions about whether this effect persists in the long-run. The study also found a small, but insignificant increase in restaurant employment of about 0.5 percent.
- Three studies (2,3,5) found no significant impact of smoke-free laws on bars and/or alcohol-serving businesses, as measured by employment, business openings and closings, taxable sales, or the sales price.

3. Literature Cited

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4. Cowling, D.W. and Bond, P.B. (2005). Smoke-free laws and bar revenues in California – the last call, *Health Economics*. 14: 1273-1281.
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