Approved: April 29, 2010
Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Brenda Landwehr at 1:30 p.m. on February 10, 2010, in Room 784 of the Docking State Office Building.

All members were present except:
Representative Owen Donohoe
Representative Peggy Mast
Representative Don Schroeder
Representative Marc Rhoades

Committee staff present:
Norm Furse, Office of the Revisor of Statutes
Kathie Sparks, Kansas Legislative Research Department
Debbie Bartuccio, Committee Assistant

Conferees appearing before the Committee:
Father H. Setter, Pastor of All Saints Catholic Church in Wichita and Chaplain of the International Premium Cigar and Pipe Retailers Association (Attachment 1)
Bill Nigro, Member of the Free State Business Rights Coalition and President of the Kansas City Business Rights Coalition (Attachment 2)
Todd Gambal, Part Owner of Jaywalkers Bar & Grill in Wyandotte County (Attachment 3)
Sheila Martin, Top Hat Tavern, Hutchinson, Kansas (Attachments 4 and 5)
Whitney Damron, Flint Hills National Golf Club, Flint Oak LLC (Attachments 6 and 7)
Thomas Jacob, Cigar Chateau, LLC, (Attachment 8)
Phillip Bradley, Kansas Licensed Beverage Association, (Attachments 9 and 10)
Rachel Smit, M.P.A., Senior Analyst, Kansas Health Institute (Attachment 13)
Ron Hein, on behalf of the Kansas Restaurant and Hospitality Association, (Attachment 14)
Dr. Jason Eberhart-Phillips, State Health Officer and Director of Kansas Department of Health and Environment (Attachment 16)
Cindy Claycomb, Ph.D. (Attachment 17)
Larry Doss, Walt's Great American Sports Bars and Grill (Attachment 18)
Stan Watt, Chairman, Clean Air Manhattan (Attachment 19)
Dr. Michael Munger, M.D., President, Kansas Academy of Family Physicians (Attachments 20 and 21)

Others attending:
See attached list.

HB 2642 - Kansas nonsmoker protection act.

Chairperson Landwehr opened the hearing on **HB 2642**.

Father H. Setter, Pastor of All Saints Church and Chaplain of the International Premium Cigar and Pipe Retailers Association, provided testimony in support of the bill. He is also a philanthropist and founder and chairman of the Setter Foundation which raises monies for local charities through his Annual Benefit Cigar Dinners each year. He applauded the writers of the bill for the following reasons:

1) It is a compromise bill and not a comprehensive bill.
2) Because it is a compromise plan, it includes an exemption for his cigar dinners which are the sole source of the monies he gives to local charities.
3) Since tobacco products are still legal in this country, business owners need to have their rights protected in order to continue offering their customers a venue to smoke if that is their decision as a business owner, providing they follow age restrictions regarding tobacco products.
4) On the issue of health and well being: Since the inception of this country, the bar has been the designated place to consume alcohol and tobacco, since both of these products are age sensitive. If a comprehensive ban is put in place, that would effectively relegate the designated place to smoke to the home. How can that

possibly be the best thing for people under the age of 18 when you know as well as he does, that most people who smoke are not going to go outside all the time to smoke. If protecting young people from second-hand smoke is the goal, how does that really help when adults are forced to smoke in their home exclusively? (Attachment 1)

Bill Nigro, resident of Overland Park, a member of the Free State Business Rights Coalition, and President of Kansas City Business Rights Coalition, provided testimony in support of the bill. He commented the state government has no role in taking away the property rights of small businesses and how they run their business. He urged the committee members to leave the issue up to the small business owners of the state. (Attachment 2)

Todd Gambal, one of the partners who own Jaywalkers Bar & Grill in Wyandotte County, provided testimony in support of the bill. He requested that provisions be allowed for business owners to have the choice to make their establishment smoking or non-smoking. (Attachment 3)

Sheila Martin, Top Hat Tavern in Hutchinson, Kansas, provided testimony in support of the bill. One of her attachments included a document entitled "Are Smoking Bans Necessary?" by Dr. Patrick Basham and Dr. Juliette Roberts, Democracy Institute, December 2009. (Attachments 4 and 5)

Whitney Damron, on behalf of Flint Hills National Golf Club and Flint Oak, LLC, presented testimony in support of the bill with the addition of a balloon amendment with the exemption for "outdoor recreational facilities" as adopted in HB 2221. He explained that both Flint Hills National and Flint Oak are member and guest facilities. However, at certain times of the year, they open their doors to charitable endeavors and public events that raise hundreds of thousands of dollars for charities and also in the case of Flint Oak, the property is open to the general public from April 1 through September 30. (Attachments 6 and 7)

Thomas Jacob, on behalf of Cigar Chateau, LLC, provided testimony in support of the bill. He appreciates the exemptions in the bill, especially for tobacco shops. However, he respectfully requested the committee not take action on the bill if it supercedes any smoking ordinances that now exist. He offered an amendment for the committee to consider. He stated his smoking lounge allows cigar and pipe smoking, and the remainder of the retail space is smoke free so families can shop for gifts and wine accessaries for special occasions. The bill as written is gray to this point, stating that no one under 18 can enter the tobacco shop. He would like to see the age requirement only pertain to the smoking rooms. (Attachment 8)

Phillip Bradley, representing the Kansas Licensed Beverage Assn., provided testimony in support of the bill as the first true attempt as a real and fair statewide ban. He requested the following amendments to the bill:

1) New Sec. 4 sets $1 per square foot. This seems high and should take into consideration that some hospitality establishments require large areas, such as for pool tables, shuffle board and other types of entertainment. They would ask that this be reduced to "$1 per square foot up to and not to exceed a total fee of $500".

2) Second new Sec. 12 sets a violation punishment for violation of "this act". They believe this is meant to apply to violation of **K.S.A 79-3311.** They want to ensure that is only for that statute.

In addition to his testimony (Attachment 9), a document entitled "Smoking Ban Health Miracle Is a Myth" was included (Attachment 10).

Written testimony in support of the bill was provided by Curt Diebel, Diebel's Sportsmens Gallery. (Attachment 11)

Written testimony in support of the bill was provided by Kurt Van Keppel, President of XIKAR, Inc. (Attachment 12)

Rachel Smit, M.P.A., Senior Analyst, Kansas Health Institute, provided neutral testimony in support of the bill. (Attachment 13)

Chairperson Landwehr commented she struggles with the statewide ban being proposed for health reasons, yet, there is an exemption for the casinos. How can we talk about the health benefits and the positives but

exempt the state owned casinos without a study on what the real impact is? It seems we also tell the private sector we know better than they do - how it's not going to effect their business and they don't need to worry about going out of business, etc.

Ron Hein, on behalf of the Kansas Restaurant and Hospitality Association, presented neutral testimony on the bill. (Attachment 14)

Neutral written testimony was provided by Ron Hein on behalf of Reynolds Services, Inc. (Attachment 15)

Dr. Jason Eberhart-Phillips, State Officer and Director of Health, Kansas Department of Health and Environment, provided testimony in opposition to the bill. The KDHE firmly opposes the bill because it provides no real protection from the dangers of secondhand smoke and it obliterates the public health protections currently in place for almost half of Kansans. Furthermore, the bill prohibits future actions by counties or cities to take stronger action to protect the health of their citizens in a manner consistent with their local values. It also does not protect workers. (Attachment 16)

Cindy Claycomb, Ph.D., provided testimony in opposition to the bill. She stated the bill is a complex, smoker-friendly bill with lots of exemptions that will make enforcement difficult and citizen understanding of the law almost impossible. If local communities are prohibited from strengthening smoking restrictions at the local level, it will shortchange the vast majority of Kansans who want to maintain or adopt even stronger smoke free policies in their own communities. (Attachment 17)

Larry Doss, owner and operator of Walt's Great American Sports Bars and Grills in Wichita, provided testimony in opposition to the bill. He referred to the Wichita Ordinance which he believes is good for all because it gives us the right to choose what is best for our customer base and it gives the customer the right to choose what is best for them. (Attachment 18)

Stan Watt, Chairman, Clean Air Manhattan, provided testimony in opposition to the bill. He stated if the bill is approved, it will eliminate the will of citizens, as well as community ordinances brought about by the elected governing bodies of at least 36 other communities in Kansas. He said the bill has so many exemptions contained in it, that it is ineffective legislation. (Attachment 19)

Dr. Michael Munger, M.D., President, Kansas Academy of Family Physicians (KAFP) presented testimony in opposition to the bill. In addition to his testimony (Attachment 20), he also included an article concerning the cardiovascular effect of bans on smoking in public places (Attachment 21).

Due to time constraints, the following individuals who had originally planned to speak, provided written testimony in opposition to the bill:

- Roger Smith, Wichita, Kansas (Attachment 22)
- Bob Strawn, Mayor of Manhattan, Kansas (Attachment 23)
- Trent Davis, M.D., Salina, Kansas (Attachment 24)
- Judi O'Grady, Endora, Kansas (Attachment 25)
- Tonia Carlson, Paxico, Kansas (Attachment 26)
- Jeff Haaga, high school student from Abilene (Attachment 27)
- Sonya Olmos, MSW, Projects Manager, Kansas Health Consumer Coalition (Attachment 28)
- Elaine Schwartz, Executive Director, Kansas Public Health Association (Attachment 29)
- Robert J. Vancrum, Kansas Government Affairs Consultant for the Greater Kansas City Chamber of Commerce (Attachment 30)
- Craig Gunther, RN, Kansas State Nurses Association (Attachment 31)
- Sandy Jacquot, Director of Law/General Counsel (Attachment 32)
- Chris Masoner, American Cancer Society (Attachment 33)
- John Neuberger, DrPH, MPH, MBA, Professor, Department of Preventive Medicine and Public Health, University of Kansas School of Medicine (Attachment 34)
- Ernest Kutzley, Advocacy Director, AARP Kansas (Attachment 35)
- Brett Malone, MD/MPH Student, University of Kansas (Attachment 36)

Minutes of the House Health and Human Services Committee at 1:30 p.m. on February 10, 2010, in Room 784 of the Docking State Office Building.

- Deborah Swank, City Council Representative, District 6, Topeka, Kansas (Attachment 37)
- Dave Pomeroy, Topeka, Kansas (Attachment 38)
- Stephanie Weiter, Topeka, Kansas (Attachment 39)
- Leo Horgan, Topeka, Kansas (Attachment 40)
- Molly Johnson, Graduate, University of Kansas (Attachment 41)

The following individuals provided written testimony only in opposition to the bill:

- Ed Anderson, MS, RRT, President, Kansas Respiratory Care Society (Attachment 42)
- Caressa Potter, on behalf of sever asthmatics, (Attachment 43)
- James Dixon Gardner, MD, FACP, Chairman of the Public Health & Policy Committee of the Kansas Chapter of the American College of Physicians (Attachment 44)
- Teresa Walters, Executive Director, Emporians for Drug Awareness, Inc. (Attachment 45)
- Marshall Post, RRT, BHS, AE-C, Respiratory Therapist (Attachment 46)
- Don Cardin, BS, RCP, RRT, Registered Respiratory Therapist (Attachment 47)
- Chad Austin, Kansas Hospital Association (Attachment 48)
- Cathy Porter (Attachment 49)
- Andrew Tricomi, Shawnee, Kansas (Attachment 50)
- Judy Young, Wichita, Kansas (Attachment 51)
- Rita Jones, Gardner, Kansas (Attachment 52)
- Jake Lowen, Director of Clean Air Kansas (Attachment 53)
- Dan Morin, Kansas Medical Society (Attachment 54)

Chairperson Landwehr indicated the hearing would continue on another day if there was time available.

The next meeting is scheduled for February 11, 2010.

The meeting was adjourned at 3:25 p.m.

HOUSE HEALTH & HUMAN SERVICES COMMITTEE

DATE: 02/10/10

NAME	REPRESENTING
Lynn Tumlinson	American Cancer Society
Lori McDaniel	
Lee Hergan	
Ginger Park	
Jeffrey Hauga	
Sara Vopat	
Jessie Noble	KDHE
Jason Eberhart-Phillips, MD	KDHE
Michelle Butler	Cap. Strategies GBA
Matt Casey	
Carol Rima	KDADS
Craig Gunther	KSNA
Martha Butler	KSNA | Southwestern College
Hannah Sanders	KHPA
Sue Jurkovsky-Sanders	ACS
Deborah Swank	Topeka City Council
Chris Gigstad	Federico Consulting
Jane Schlickau	Southwestern College Dept of Nursing
Trenton Davis, MP	Salvia Tob. Prev. Coalition

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HOUSE HEALTH & HUMAN SERVICES COMMITTEE

DATE: 2-10-10

NAME	REPRESENTING
Atalie Tompkins	state concerned citizen
Peggy Johnson	Susan G Komen for the Cure Kansas Cancer Partnership
Cindy Claycomb	Clean Air
Charlie Claycomb	" "
Tonia Carlson	State concerned citizen / ACS Volunteer
Catherine Phares	Southwestern College Nursing Dept
Blake Ridgway	Southwestern College Nursing Dept
Terry Stuart	"
Jill Massey	Clean Air
Ella Reusser	Clean Air
GARY CARUTHERS	SHAWNEE COUNTY MEDICAL SOCIETY
Linda Martin	American Cancer Society
Chris Masoner	American Cancer Society
Linda DeCoursey	American Heart Association
Anne Sojess	American Cancer Society
Katie Linden	Susan G Komen Greater KC
Connie Edwards	KS Health Consumer Coalition
Dodie Wellshear	KAFP
Ali Jones	Pharmacy Intern w/ Rep. Hill

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HOUSE HEALTH & HUMAN SERVICES COMMITTEE

DATE: 2-10-10

NAME	REPRESENTING
Joan Smith	Clean Air Manhattan
Kristen Hellebust	
Dave Pomeroy	my family
Grant Kelly	AARP KS
Whitney Damron	Hein Law Firm
Fagan & Setter	Setter Foundation
Jay Hall	KRGC
Bob Vancrum	Greater KC Chamber

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February 10, 2010 HOUSE BILL No. 2642 Testimony

Members of the House Health Human Services Committee: I thank you for the opportunity to speak in support of HB No. 2642.

My name is Father H Setter. I am the pastor of All Saints Catholic Church in Wichita. I am also the Chaplain of the International Premium Cigar and Pipe Retailers Association. In addition, as a philanthropist I am the founder and chairman of the Setter Foundation which raises monies for local charities through my Annual Benefit Cigar Dinners each year. A brief history is attached. I would like to applaud the writers of this bill for the following reasons.

First, it is a compromise bill and not a comprehensive bill. In Wichita we have a compromise ordinance about public smoking that has been in place for over a year now. I believe it works and works well. There has never been more non-smoking places in Wichita. That has made many non smokers happy. At the same time, there are those who have decided to continue to be smoking establishments. That has made many smokers happy as well. Everyone I have talked to about the ordinance has said it is working.

Second, because HB 2642 is a compromise plan, it includes an exemption for my cigar dinners which is the sole source of the monies I give to local charities.

Third, since tobacco products are still legal in this country, business owners need to have their rights protected in order to continue offering their customers a venue to smoke if that is their decision as a business owner, providing they follow age restrictions regarding tobacco products. Again it is important to remember that tobacco products are legal, and many people who work in producing them, selling them, or providing a place to consume them is their livelihood, whether we like the product or not, be it tobacco products, music videos, violent computer games, pornography, fatty foods, guns, or slot machines in casinos to name a few. It is the customer who decides whether or not he or she wants to support a business. Hence, business owners need their rights protected to offer their customers products that are legal. This Bill provides such rights.

Fourth, on the issue of health and well being: Since the inception of this country, the bar has been the designated place to consume alcohol and tobacco, since both of these products are age sensitive. If a comprehensive ban is put in place that would effectively relegate the designated place to smoke into the home. How can that possibly be the best thing for people under the age of 18 when you know as well as I do, that most people who smoke are not going to go outside all the time to smoke. If protecting young people from second hand smoke is the goal, how does that really help when adults are forced to smoke in their home exclusively?

Compromise can and does work. I ask that you prepare legislation that includes these considerations. I thank you for your time.

Father H Setter

Health & Human Services Committee

Date: 2-10-10

Attachment: 1-1

House Health and Human Services 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 Homeless Prevention Agency $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 Men's Homeless Shelter, The Lord's Diner, Center of Hope, Gerard House, The ARC (Wichita Association for Retarded Children) $13,000

2008 Cigar Family Foundation, Center of Hope, ARC of Sedgwick County, Girard House for Unwed Mothers, The Lord's Diner, Mother Mary Anne Clinic, Union Rescue Mission $15,000

2009 Cigar Family Foundation, Center of Hope, Mother Mary Anne Clinic, Girard House for Unwed Mothers, ARC of Sedgwick County, Union Rescue Mission, Independent Living Resource Center Medical Equipment Recycling Network, Shoes and Socks for Wichitans: $10,000

Total To Date: $191,100.00

Madam Chairman and Members of the House Health and Human Services Committee:

Good Morning, my name is Bill Nigro, and I am resident of Overland Park, a member of the Free State Business Rights Coalition, and President of Kansas City Business Rights Coalition. These organizations are small business organizations 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 there 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 involuntary 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
13312 W. 142nd St.
Overland Park, KS 66221

I am not going to stand here today and tell you smoking is bad, there are multi-million dollar ad campaigns to tell us that, and it is mandated by the federal government, that each person who buys a pack of cigarettes have the chance to read of its dangers.

Rather than echoing what everyone else has said I would like to bring you a different perspective. I am here to tell you, from a first hand experience, few things that I would call the butterfly effect of a smoking ban.

Hello, my name is Todd Gambal and I am one of the partners who own Jaywalkers Bar and Grill in Wyandotte County, One block from the Missouri state line.

In these harsh economic times, I chose to make the trip to our capitol to have my voice heard, in the state to which my business pays taxes. I have business in both Kansas and Missouri, and can tell you from a first hand experience, having gone through a smoking ban what can happen. I can tell you that I saw an immediate drop in my Missouri business sales of 38% after the smoking ban in Missouri was passed. Consequently in my Kansas business, which again, is one block off the Missouri state line, I saw and immediate increase of 22%, in sales. While I find that sharing my losses and gains are informative, they are but anecdotal and trivial.

While you as a state are trying to cut millions in state spending, I myself as a business am trying to increase my bottom line. I would like to offer up -

Ordinances affect all of us in different ways. If a state wide ban in Kansas affects my business the same as in Missouri. I wont be putting money back into our economic system by buying 8-10 cartons of cigarettes a week to sell in my store, I won't buy the license to sell cigarettes, I wont pay the taxes on those cigarettes, and I will have lower sales taxes on my business, to NO sales taxes if I find that I have to close my doors.

With the passing of the Wyandotte County smoking ban I was offered the ability to have the ban as my choice. I pay what is basically a smoking tax to allow my patrons the privilege to smoke in my establishment. To me this is a win / win situation for both myself and the county, I make money and so do they.

If I could offer my voice, all I ask is that provisions are allowed, to have the choice to make my establishment smoking or non-smoking, in a win / win situation for my patrons, myself and my state.

Thank you for your time. My name is Todd Gambal, I am a bar owner and I am a non-smoker.

Testimony to House Health and Human Services Committee
Re: HB 2642
February 10, 2010

There is one solution that would level the playing field in Kansas. Ban pharmaceutical company lobbyists and the groups who receive grant funding from them. And I am including State employees, County employees, the American Cancer Society, the American Heart Association, the Kansas Health Institute, Kansas Health Foundation, Tobacco Free Kansas, and the American Lung Association, who are lobbyists for nicotine replacement companies who give them their grants. Then small businesses could get as much ear time with our Representatives as the pro ban people do. The Representatives that I have talked to don't go into taverns or pool halls. They don't have any idea of how many businesses are closing due to smoking bans. Many of you that I have spoken to accept any And all rose colored "studies" given you by pro ban people. You do not question their motives or their means. You won't even read studies that directly conflict with what these lobbyists tell you. It seems politically correct to jump on this bandwagon, without regard to long term small business people.

Those people have your ear, while small business people can't even get a return call or email.

Judging from this Bill, you seem to think that we are rolling in the money.

Sorry to disillusion you, it's not true. I already pay a City License of $250 per year, and a Kansas Department of Health License for $250 per year, and a State liquor License of $1,010 per year. So you think that it would be alright to add a $1 per square foot tax on top of that. In my tiny business, that would add $1,178 per year.

I don't have a money printing machine.

So, the way this Bill stands, WITH a smoking ban we close for lack of customers, Or without a smoking ban we go bankrupt from license fees.

As Woody Allen put it, "we stand at a crossroads, one way leads to utter despair the other to complete annihilation". Which would you chose?

We agree with Bill 2642 insofar as it would restore the rights of business owners in towns with bans, where businesses have already closed, And others are barely hanging on, to serve And hire adults only. We agree that posting signs at entrances would be fine. I personally would paint a white 6

foot tall skull And crossbones on every door, if that would appease the nicotine replacement funded ENEMIES of small business. I know it WON'T. You know it WON'T. And They darn sure know as long as They can get the grants from nicotine replacement, They will never stop hounding Legislators for rent seeking legislation.

Where we disagree, on House Bill 2642, is the $1 per foot extra tax. We simply cannot afford it.

A three tier tax set up, based on capacity, would be less damaging. $250, $500, or $750. And this fee should be paid to the State. This would provide much needed revenue to use against the deficit. KILLING the goose, by over taxing And licensing, will take your revenue to ZERO. We have to have money to pay bills And our employees with. Otherwise we are slave labor.

Six tax paying businesses have already closed in Salina. The OWNERS attribute this to the smoking ban.

If you feel you HAVE to stick it to us, at least give us a chance.

I thought you might be interested in knowing that all those grubby little taverns And pool halls, like mine, collected $36,565,645.00 in Liquor Excise Tax for the State in the last full fiscal year. $35,613,659.00 in '08. That is ONLY collected at point of individual sales. To sell that much, we had to buy all that beer And liquor from distributors. We paid %8 to the State to buy it all.

In 1999 a keg was $45. It has just gone up to almost $90. Would you agree that the State has had a windfall in increased tax collection due to industry increases? Would you agree that the Department of Revenue has misled Legislators into believing that there has been no increase in tax?

More people aren't drinking in Kansas. Prices have simply gone up. From '06 to '09 the %8 collected has gone up $9,559,699.00, And the 10% collected at taverns has gone up $4,530,611.00.

To what should we attribute the 8%, collected at Liquor Stores, going up DOUBLE what the 10%, collected at bars, has? Smoking bans. What else could it be????

Do the lobbyists from the drug companies, And the grant spongers who work for the State of Kansas, And the private foundations, CARE if taverns close---NO!

Should the State of Kansas care if taverns close-YES!

It is in the interest of this State to preserve jobs, And to preserve revenue streams, that's what this session was supposed to be about. Yet you all seem determined to close small businesses.

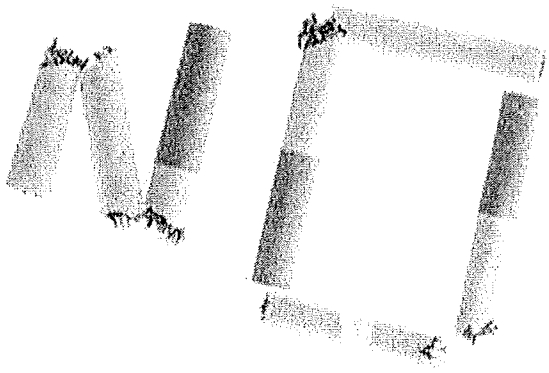
We should have a statewide ban that says no one under 18 admitted into this smoking allowed business, And signs should be on every door that states that. And that this Bill will override any local ordinance. And if you want an extra $250 from me for that privilege, that I can do.

But, I want a guarantee from YOU, that next session, when these SAME people get their same grants from the same nicotine replacement companies, to start up their yapping again, that you will SHOW THEM THE DOOR!

Either that or make the selling of all nicotine products illegal in Kansas. That would level the playing field, end the hypocrisy, And the grant funded lobbyist would be out of work with the bar tenders!

Sheila Martin
Top Hat Tavern
Hutchinson, KS

Are Public Smoking Bans Necessary?



Dr Patrick Basham & Dr Juliette Roberts

Democracy Institute

Social Risk Series Paper

December 2009

Democracy Institute

The Democracy Institute is a politically independent public policy research organisation based in London and Washington DC. Founded in January 2006, the Democracy Institute serves to further public education through the production and dissemination of accessible commentary and scholarship. The Democracy Institute aims to provide a balanced and thoughtful perspective on topical issues, promoting open and rational debate based on evidence rather than ideology. An Advisory Council, comprised of internationally renowned scholars and writers in a variety of disciplines, guides the work of the Democracy Institute's research staff. Collectively, they seek to challenge conventional wisdom, stimulate policy debate, and enlighten the public conversation.

Many of our research projects have a transatlantic or international flavor. We conduct and commission work in the following areas: social risk and regulation; obesity; public health care; education policy; fiscal studies; foreign policy and international relations; democratisation; and electoral studies. The Democracy Institute welcomes enquiries, exchanges of ideas, and contributions from individuals or groups with an interest in these issues.

Director

Dr Patrick Basham

Advisory Council

Dr Nigel Ashford – Institute of Humane Studies
Dr Juliette Roberts – Public Health Fellow
Mr Jason Clemens – Pacific Research Institute
Dr Veronique de Rugy – Mercatus Center
Mr Jamie Dettmer – International Foundation for Electoral Systems
Mr Chris Edwards – Cato Institute
Dr Ivan Eland – Independent Institute
Mr Jeremy Lott – Senior Fellow
Dr Michael Mosbacher – Social Affairs Unit
Mr Gerry Nicholls – Senior Fellow
Mr Charles Pena – George Washington University
Dr Christopher Preble – Cato Institute
Dr Marian Tupy – Cato Institute
Dr Martin Zelder – University of Chicago

Democracy Institute

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INTRODUCTION[1]

The great tragedy of Science – the slaying of a beautiful hypothesis by an ugly fact.

Thomas H Huxley
English biologist (1825-1895)

Given that the UK public smoking ban, introduced in July 2007, is due for a review in 2010, it is appropriate to revisit the rationale advanced in favour of this controversial measure.

The champions of public smoking bans, both here in the UK and elsewhere, have argued that such bans are justified on the basis of four facts:

1. Environmental tobacco smoke (ETS) poses fatal health risks for nonsmokers.
2. Such bans encourage smoking cessation and reduced smoking initiation.
3. There are no acceptable alternatives to such bans.
4. There are no perverse and unintended consequences arising from the bans.

This paper examines each of the four reasons cited by proponents of the ban in an effort to determine their validity.

ENVIRONMENTAL TOBACCO SMOKE & NONSMOKERS' HEALTH

The first and most significant reason advanced as a justification for public smoking bans in the UK is that environmental tobacco smoke (or secondhand, or passive smoke) poses fatal risks to the health of *all* nonsmokers. It should be noted that the health risks to nonsmokers allegedly associated with ETS go beyond lung cancer and heart disease. For example, some of the other

[1] Patrick Basham directs the Democracy Institute and is a Cato Institute adjunct scholar. Juliette Roberts practises osteopathic medicine and is a public health fellow at the Democracy Institute.

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health risks that are claimed to be linked to ETS exposure are the exacerbation of asthma and respiratory infections in young children. These risks, however, are never cited as providing the decisive reason for public smoking bans. Rather, it is the risks for lung cancer and heart disease associated with ETS exposure that are routinely cited as the definitive justification for smoking bans.

The scientific support for such claims about the risks from ETS comes from a series of epidemiological studies conducted over the last 30 years that have examined the relationship between ETS exposure (in home, social, and occupational settings) in healthy nonsmokers and diseases such as lung cancer and heart disease. In the case of lung cancer, there have been 76 such studies and 42 studies on the association between ETS exposure and heart disease. In addition to these individual studies, there have been at least 20 meta-analyses of the ETS data, as well as numerous reports by public health agencies and governments, all of which have been also been used to justify public smoking bans.

For the proponents of public smoking bans, the scientific evidence about the risks of ETS exposure for healthy nonsmokers is definitive. In its 2008 consultation paper on the *Future of Tobacco Control*, the UK Department of Health argues that, 'Exposure to second-hand smoke is a serious health hazard, and there is no safe level of exposure'.[1] According to the US Surgeon General, the 'science is clear' and the 'debate is over'.[2]

Dr Richard Carmona, the US Surgeon General report's author, echoes the UK Department of Health by claiming that, 'Breathing secondhand smoke for even a short time can damage cells and set the cancer process in motion'. He says, 'There is no risk-free level of secondhand smoke exposure'. But a careful examination of the methodology used in the relevant studies, the actual scientific evidence, itself, and the findings of various government and

public health reports suggests that this is not the case.

METHODOLOGY OF ETS STUDIES

Environmental tobacco smoke research is bedeviled, some would suggest fatally, by two problems. The first of these is what Dr Gio Bata Gori, the leading epidemiologist and toxicologist, has called the 'measurement problem'.[3] Scientific claims about risk depend on accurate, reliable, and replicable measurements about exposure to a risk. In the case of ETS, this means accurate measurements about the exposure of nonsmokers to ETS. Yet, claims about the effects of ETS on nonsmokers provide no actual measurements of exposure but, rather, are based on recall studies, generally at the end of life, in which nonsmokers are asked to recall and estimate their childhood and adult exposure to secondhand smoke. As Gori observes:

> Epidemiologists traditionally interpret such recalls as 'measurements'. Yet, by any factual standards – scientific or otherwise – this qualification is not sustainable, because the *sine qua non* of statistical elaborations is that discrete characteristics of individuals must have been physically measured using the same meter, that the measurement error is known from prior testable experience, or that it has been determined in the study at hand by multiple measurements of each characteristic, on a sufficient number of subjects.

In the International Agency for Research on Cancer (IRAC) European Multicentre Case-Control Study of Lung Cancer in Nonsmokers, for example, subjects were asked to recall how often their parents or other people living in the home smoke, how many hours they spent in a room with tobacco smoke, and how smoky the room was. Nonsmokers living with smokers were asked to remember how many cigarettes their spouse smoked over the years and how many hours a day they spent exposed to such smoking. Given that most people have considerable

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difficulty accurately remembering even recent events, it is highly unlikely that these 30, 40, and 50 year-old recollections are accurate. They certainly fail to provide scientific measurements of ETS exposure. Yet, is these imprecise and scientifically unverifiable and unreplicable memories that provide the measurement basis for the supposedly very precise risks cited as justifying public smoking bans.

The second problem is that these studies are plagued by sampling errors, confounders, biases, and misclassifications of smoking status (when a smoker is in fact classified as a nonsmoker) that can only be subjectively, as opposed to objectively, adjusted for. Consider, for instance, the multiplicity of risk factors for both lung cancer and heart disease – 30 for the former and over 300 for the latter.

Since no ETS study to date has controlled for more than a handful of these, there is no legitimate basis for claiming that the association between the disease and ETS exposure is genuinely a result of ETS, as opposed to some other risk factor.

INDIVIDUAL ETS STUDIES

The results of the individual ETS studies fail to establish that ETS exposure is associated with lung cancer and heart disease in healthy nonsmokers. Of the 76 studies that have examined the relationship between ETS and lung cancer in nonsmokers in home, occupational, and social settings, only 15 show a statistically significant association. Of the 42 studies on the relationship between ETS and heart disease in nonsmokers in home, occupational, and social settings, only 18 show a statistically significant association.

Especially relevant in terms of public policy, of the 24 studies that have examined ETS exposure and lung cancer risks among nonsmokers exposed to ETS in the workplace, 19 find no statistically significant association. Moreover, the relative risk reported in the studies

showing a statistically significant association between ETS exposure and heart disease is 1.3. This is a peculiar finding given that the relative risk for heart disease in smokers is 1.7 and nonsmokers ETS exposure is 1/500th of that of active smoking.

One of the possible reasons that so few of these studies report positive associations between ETS exposure and lung cancer is that the dose that nonsmokers exposed to ETS receive, even allowing for the lack of accurate measurements, is so minimal. There is considerable evidence, for instance, that smokers who smoke 3-4 cigarettes a day have about the same lung cancer risks as nonsmokers. But nonsmokers exposed to ETS have dramatically lower dose levels than 3-4 cigarettes a day, making their cancer risks dramatically lower. Dr Geoffrey Kabat of Albert Einstein College of Medicine reports that using the results from Roger Jenkins' studies of actual ETS exposure in the United States, a nonsmoker living with a smoker would receive the same ETS exposure as smoking eight to ten cigarettes a year.[4]

But dose, that is, levels of ETS exposure, also comes into the debate over public smoking bans in a different way. Underlying the use of these studies in justifying public smoking bans is the assumption, stated baldly in the Department of Health consultation, that there is *no* safe level of exposure to ETS. This, however, is simply not true, particularly in light of what is known about the way in which a variety of biological structures work to defend the body against low-level carcinogen exposure.

The scientific understanding of dose-response relationships suggests that there are thresholds below which an exposure to a carcinogen has no significant consequences. This is true, for example, with formaldehyde, arsenic, nitrosamines, and hydrocarbons. It is therefore not necessarily true that there is no threshold of safe ETS exposure.

What is striking about the primary ETS study data is that after three decades of research, the pattern of largely statistically non-significant or marginally significant results has continued unabated. This is telling since studies of genuine, as opposed to phantom, risks are usually weak at first but gain strength and clarity over time. But this has not been the case as ETS studies have continued to produce highly equivocal results. Consider two recent studies:

Enstrom and G Kabat 'Environmental Tobacco Smoke and Tobacco Related Mortality in a Prospective Study of Californians, 1960-98' *British Medical Journal* 2003 326: 1057-1066.

This study looked at 35,561 non-smoking Californians with smoking spouses. The participants were part of the American Cancer Society Cancer Prevention Study (CPS) and their lives and deaths were followed in detail from 1960-1998. The relative risk for never-smokers married to smokers was a statistically non-significant 0.94 for coronary heart disease and 0.75 for lung cancer. As the authors note about the study, 'none of the other cohort studies...has more strengths, and none has presented as many detailed reports'.

Curiously, this study is not cited in the US Surgeon General's report on ETS or in other advocacy reports championing public smoking bans.

Stayner et al 'Lung Cancer Risk and Workplace Exposure to Environmental Tobacco Smoke' *American Journal of Public Health* 2007 97: 545-551.

This meta-analysis looks at ETS exposure in the workplace and lung cancer risk in nonsmokers. It reports a relative risk for lung cancer of 1.24 for occupationally exposed non-smokers. However, of the 25 studies in the analysis, 23 are not statistically significant, including the definitive IARC-World Health Organization workplace study with the largest number of subjects of any workplace research.

But the problem of ETS science in support of public smoking bans is not simply that most of the primary studies report findings that are not statistically

significant, but also that the relative risks, when significant, are extraordinarily weak, falling generally in the range of 1.20-2.00. Relative risks of less than 2 are generally given little weight by epidemiologists and cannot provide robust support for public policy.

As Professor Samuel Shapiro of Columbia University has observed, 'We can only be guardedly confident about relative risk estimates of the order of 2, occasionally; we can hardly ever be confident about estimates of less than 2.0, and when estimates are much below 2.0 we are simply out of business'.[5]

Given that most of the ETS studies of lung cancer and heart disease risk report relative risks below 2.0, the scientific basis for public smoking bans is quite clearly 'out of business'.

GOVERNMENT AND PUBLIC HEALTH AGENCY ETS REPORTS

Several key government and public health agency reports also severely undermine the claim that ETS represents a major health risk for healthy nonsmokers.

First, the 1992 US Environmental Protection Agency report[6] that has been the fundamental scientific support for public smoking bans was subjected to a devastating empirical analysis in 1998 by the US District Court,[7] which nullified the EPA's risk assessment for ETS. In effect, the EPA's central claim that there was sufficient scientific evidence to classify ETS as a Group A human carcinogen, and as a cause of lung cancer, was rejected. While the court decision was overturned on appeal, due to technical issues, its finding of fact were left untouched.[2]

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[2] The fullest discussion of the EPA report and the court case overturning is found in G B Gori and J C Luik *Passive*

Second, the International Agency for Research on Cancer's Multi-centre Study from Europe failed to find statistically significant associations between ETS and lung cancer in childhood exposures, workplace exposures, home exposures, or social exposures.[8]

Third, after an exhaustive six year investigation into ETS and the demands for workplace smoking bans, the US Occupational Safety and Health Administration (OSHA), which regulates US workplaces, concluded that the 'original risk and exposure estimates [for ETS] are not valid'. Based on this, it withdrew its Notice of Proposed Rulemaking with respect to workplace ETS limits and smoking bans.[9]

Fourth, in 2006, the Economic Affairs Committee of the House of Lords examined at length the issues of ETS, health risks, and public smoking bans. One of the witnesses before the committee was Sir Richard Peto, the Oxford epidemiologist. Sir Richard told the committee that ETS risks 'are small and difficult to measure directly...The exposure that one would get when breathing other people's smoke obviously depends on the circumstances, but even heavy exposure would be something like one percent of what a smoker gets, maybe in other circumstances 0.1 percent'. Sir Richard noted that he 'did not want to be cast in the role of advocating banning smoking in public places or in private places', because the relative risks from ETS are so very small. As he noted, 'the main way smokers kill people is by smoking themselves, not by killing other people'.

Based on this testimony and other expert evidence, the committee concluded that the risks of ETS are 'uncertain and unlikely to be large' and that 'the decision to ban smoking in public places may represent a disproportionate response to a relatively minor health concern'.[10]

Smoke: The EPA's Betrayal of Science and Policy Fraser Institute Vancouver 1999.

PUBLIC SMOKING BANS AND REDUCED SMOKING

In addition to the claim that public smoking bans are necessary to protect nonsmokers from the serious risks of lung cancer and heart disease, advocates of such bans also argue that such bans, through reducing the opportunities for smoking as well as denormalising it, serve to reduce smoking through encouraging cessation and preventing smoking initiation.

For example, Dr Thomas Farley, New York City's Health Commissioner, has recently proposed banning smoking at all of the city's parks and beaches.[11] Dr Farley admits that the rationale for the ban has nothing to do with any risks posed by ETS to the health of nonsmokers, but rather with preventing people, particularly children, from having to see anyone smoking in public. Farley says, 'We don't think children should have to watch someone smoking'. Farley also defends the proposed public smoking ban extension to outdoor areas by arguing that it is 'part of a broader strategy to further curb smoking rates'. Such outdoor bans are already in place in other areas of the US.

The UK government has maintained that the public smoking ban has forced record numbers of smokers to quit. According to a July 2008 report prepared on the first anniversary of the ban by the Chief Medical Officer, Sir Liam Donaldson, 234,000 people quit smoking in the months prior to and after the ban. In the forward to the report, Sir Liam claims that the 'significance of the smoke-free laws cannot be underestimated'.

But Sir Liam's claims about the effect of the smoking ban on smoking cessation are not supported by the *Health Survey for England 2007* produced by the National Centre for Social Research and the Department of Epidemiology and Public Health at University College London. According to the *Health Survey for England*, not only did the smoking ban fail to reduce smoking, its first year

saw an increase in cigarette consumption among males aged 18-34. Reporting on smoking after the ban, the *Health Survey* notes that, 'There was no significant difference in cigarette smoking prevalence after the implementation of the smoke free legislation on 1st July. Among smokers the mean number of cigarettes smoked per day did not fall significantly'.

In fact, smoking prevalence amongst male smokers increased from 23 to 24 percent. Even more crucially, amongst smokers from the lowest socioeconomic quintile, who have some of the highest smoking rates in the country, the number of cigarettes consumed by men actually increased. Thirty percent of smokers reported that the ban had encouraged them to stay at home where they were free to smoke.

Further evidence suggesting the failure of public smoking bans to reduce smoking is found in a study by Holliday et al, which found that after Wales' public smoking ban there was a non-significant decline in mean cotinine concentrations in children.[12]

This should not, of course be surprising, for it echoes the experience elsewhere. The state of Ohio, after passing similar public smoking legislation in 2006 saw its smoking prevalence increase by 3 percent since 2007. In France, tobacco consumption for 2008 equalled that of 2004 despite a smoking ban. A French government spokesman recently commented that, 'Measures to prevent passive smoking have not had any effect whatsoever on active smoking. They have completely failed'.[13] In the three years since Spain banned smoking in bars, restaurants, and most other public places, tobacco consumption has increased. According to data from the Tobacco Market Commission, 3.8 billion packs of cigarettes were sold in 2008 compared with 3.75 billion in 2006.

Why is this the case? Part of the answer is to be found in the fact that, like so much of the UK Government's anti-smoking strategy, public smoking bans are built on a foundation of ignorance

rather than knowledge. There is very little evidence, for example, that shows that public smoking bans motivate smokers over the long run to give up smoking. A major review of why smokers stop found that it was 'health concerns'[14] that drive cessation, not social or legal pressure, or even the cost of cigarettes.

Then, again, part of the answer why such bans fail to increase quitting or prevent initiation no doubt lies in 'reactance', in which smokers become increasingly resistant to the external efforts of what they perceive as a hostile and judgemental society to force them to change their ways. The more society pushes, as with smoking bans, the more smokers push back by declining to quit, or, in some instances, smoking more.

In a study about motivations to quit smoking, Curry et al found that smokers who had decided to quit voluntarily and were strongly motivated, as opposed to those who had in some respect felt externally pushed, whether through social pressure or legislation, were far more successful at quitting.[15]

The evidence from the UK and elsewhere, as well as the literature on smoking cessation, suggests that public smoking bans have not resulted in fewer smokers and might well have a perverse, unintended consequence of encouraging smokers not to quit.

In an effort to shift the justification for public smoking bans away from the clearly false claim that such bans reduce smoking, proponents of such bans, both in the UK and elsewhere, have asserted that such bans have other public health benefits, most notably, that they reduce heart attacks. In support of this claim, a number of studies have been produced. A review of all of these is beyond the scope of this paper. Here, we review the report on public smoking bans and heart attacks issued by the US Institute of Medicine and the sensational new claim from the Chief Medical Officer of Wales that the public smoking ban there had reduced heart attacks.

Institute of Medicine *Secondhand Smoke and Cardiovascular Effects: Making Sense of the Evidence* October 2009.

According to the press release from the Institute of Medicine (IOM), 'Smoking bans are effective at reducing the risk of heart attacks and heart disease associated with exposure to secondhand smoke'. Lynn Goldman, professor of environmental health sciences at Johns Hopkins, and chair of the committee which produced the IOM report, noted public smoking bans 'reduce the risks of heart attack in nonsmokers as well as smokers'.

A careful examination of the evidence adduced by the IOM, however, suggests that these claims are false. The report examines 11 published studies of the alleged effect of public smoking bans on myocardial infarction (AMI). However, it omits numerous unpublished studies, including the largest study to date, which looked at the US as a whole, along with studies from Scotland, England, Wales, Denmark, Florida, California, Oregon, and New York. We examine the US study, produced by the National Bureau of Economic Research, below.

However, the central problem with the IOM report is not in excluding non-confirming evidence; rather, it is the fact that its own evidence simply does not support its conclusion. This is because the report cannot, as with the primary studies on ETS exposure, provide any reliable measurements of the effects that it is supposedly studying. The report itself concedes this in writing that:

> The committee was unable to determine the magnitude of effect on the basis of the 11 studies because of the variability among and uncertainties within them. Characteristics of smoking bans vary greatly among the locations studies and must be taken in account in reviewing results of epidemiologic studies. Those characteristics include the venues covered by the bans...and compliance with and enforcement of the bans. Other differences or potential differences among the studies include the length of follow-up after implementation, population characteristics (such as underlying rates of

> acute coronary events and prevalence of other risk factors for acute coronary events, including diabetes and obesity) and size, secondhand smoke exposure levels before and after implementation, preexisting smoking bans or restrictions, smoking rates and method of statistical analysis. The time between implementation of a ban and decreases in secondhand smoke and acute cardiovascular events cannot be determined from the studies, because of the variability among the studies and indeed the difficulty of determining the precise time of onset of a ban.

Two factors from this list of limitation render any claims about reduced or, indeed, increased heart attack rates impossible to substantiate. First, the studies did not measure ETS exposure levels before and after implementation in order to determine whether there was an actual change in exposure. Without knowing this, it is impossible to determine whether a reduction in heart attacks was a result of a reduction in exposure. In other words, the studies are nonsensical.

Second, the studies do not measure the time between the onset of a smoking ban and the occurrence of the heart attacks, which again makes it impossible to determine whether the one is at least associated with, if not a cause of, the other. Because of these problems, the committee concludes that it had 'little confidence in the magnitude of the effects and...thought it inappropriate to attempt to estimate an effect size from such disparate designs and measures'.

Since science is based on the ability to measure effect sizes, this means that the IOM report *sans* effects is essentially not science, for without being able to say what the size of an effect is, it cannot claim that there is in fact *any* effect. In plain terms, the IOM committee admits that it cannot really say whether smoking bans have had any effect, positive or negative, on heart attack rates.

As Dr Michael Siegel of Boston University observes:

> [W]hat the committee is saying is they have no confidence in

> making any estimate of the size of an effect of smoking bans on heart attack rates. Another way to say that is this: the committee has no idea of what the effect of smoking bans on heart attack is.[16]

But the IOM report is also undermined by a recent US National Bureau of Economic Research study.[17] This study covers eight years and over 200,000 AMI admissions and two million AMI deaths in 468 US counties. It is in sharp contrast to the studies cited in the IOM report – and in the press – that generally focus on very short time periods, hundreds as opposed to thousands of AMI admissions, and a single location. The NBER study concludes:

> We find no evidence that legislated U.S. smoking ban were associated with short-term reductions in hospital admission for acute myocardial infarction or other diseases...We also show that there is a wide year-to-year variation in myocardial infarction death and admission rates even in large regions such as counties and hospital catchment areas.

Indeed, the study notes that 'large short-term increases in myocardial infarction incidence following a workplace ban are as common as the large decreases reported in the published literature'. Even more interesting, the report notes that the supposed sudden large decreases in AMI's following smoking bans are biologically implausible, as 'the mechanism for these tremendous declines in AMI rates reported in the small studies is unclear'.

Dr Tony Jewell Chief Medical Officer for Wales *Preventing the Preventable* Annual Report 2008.

As we have seen, there is little compelling scientific evidence that public smoking bans reduce heart attacks. Despite this, last week, in his annual report, the Chief Medical Officer for Wales, Dr Tony Jewell, said that there was evidence that they did.

Jewell noted that hospital admissions in Wales for AMI in 2007-2008 declined by 3.7 percent, from 4,324 to 4,164. According to a BBC news report, 'The

number of people suffering heart attacks has reduced since the smoking ban in Wales began, a report by the chief medical officer has found'.[18] In response to Dr Jewell's report, ASH Wales noted, falsely, that 'bans on smoking in enclosed public places have been demonstrated to effectively reduce heart attack rates so it is not surprising to see Wales following this positive trend'.

However, despite the claims of Dr Jewell and ASH Wales, data on emergency room heart attack admission from Health Solutions Wales fails to support these claims. If one examines the data from 2007 – the year of the smoking ban – to 2008, the decline in heart attack admissions was the same as in previous years, that is, between 5 and 10 percent. In other words, there was no reduction in heart attacks in Wales attributable to the smoking ban. Indeed, as we have seen, it is impossible simply on the basis of the raw numbers to conclude anything about the relationship between smoking bans and heart attack admissions.

It is also interesting to note that, if one looks at the most recent data one finds an *increase* in the number of hospital heart attack admissions. According to Health Solutions Wales, hospital admissions for AMI were 3,999 in 2007-2008 and 4,126 in 2008-2009.

ALTERNATIVES TO PUBLIC SMOKING BANS – THE EFFICACY OF VENTILATION

The third fact supporting the necessity of public smoking bans is that there are no acceptable alternatives, such as ventilation. This, of course, is based on the claim that ETS poses fatal health risks to nonsmokers in even the smallest quantities. Of course, this is a claim that we have seen is not supported by the weight of the scientific evidence.

According to the Canadian Nonsmokers Rights Association, for example, 'Ventilation as a solution to

[secondhand smoke] in bars and restaurants is a propaganda brainchild of the tobacco industry, and is not based on public health protection'.[19] But is this, in fact, true? Is properly designed and maintained ventilation unable to remove ETS from venues such as pubs and restaurants?

While it might be true that some forms of conventional ventilation may be unable to deal with ETS in hospitality venues, the scientific evidence does not suggest that this is true for all forms of ventilation. For example, a 2001 study by Jenkins et al found that a directional airflow and heat-recovery ventilation system used in a Toronto, Canada, pub with both smoking and nonsmoking areas maintained the ETS components in the nonsmoking section of the pub at the same level as in the control nonsmoking facilities.[20] As the authors observe:

> Based on the data collected in this study, mean ETS component concentrations in the nonsmoking section of the Black Dog Pub were not statistically different...from those determined in the control nonsmoking facilities...This...study clearly shows that a suitably designed ventilation system installed in a restaurant/bar with both smoking and nonsmoking sections can produce ETS levels in the nonsmoking section that are not statistically different from those found in venues where smoking is prohibited...This small study provides important evidence to the regulator, the hospitality industry and the nonsmoking public that there are cost-effective alternatives to a prohibition of smoking in hospitality establishments, alternatives that can satisfy the concerns and interests of both nonsmoking and smoking customers.

The policy implications, as the authors note, are significant: 'If the hospitality venue that provides both smoking and nonsmoking areas can assure its nonsmoking customers that the ETS level in their area is comparable to that which they would find in a completely nonsmoking facility, then there would seem to be no rational reason for a prohibition of smoking in the controlled areas'.

In addition to the Jenkins et al study, a 2007 study commissioned by Imperial Tobacco, found similar results.[21] The study looked at ventilation and indoor air quality in two UK pubs and a restaurant where smoking was allowed in 2006. The study measured respirable suspended particles, carbon monoxide, and nitrogen oxides levels and found that levels inside, with smoking permitted, were comparable with the outside air quality. Equally important, the levels of particles and gases measured in the three venues with smoking were similar to the levels measured in two other studies, one US and the other Irish, where smoking was *not* allowed.[22]

As the authors conclude:

> The results of this study which includes three well-ventilated hospitality venues which are typical of similar venues located throughout the UK demonstrates that ventilation systems when operated effectively can achieve levels of particles and gases in an indoor environment where smoking occurs that are comparable to levels of particles and gasses present in the outdoor environment.

This suggests that even *if* ETS represented a fatal health risk to nonsmokers, which we have seen the scientific evidence does *not* suggest, properly installed, functioning, and maintained ventilation is able to remove it from smoking environments so it does not affect nonsmokers.

PERVERSE AND UNINTENDED CONSEQUENCES

The final claim made by supporters of public smoking bans in the UK is that such bans do not have any perverse and unintended consequences. Again, the evidence does not support this claim. Two sorts of perverse and unintended consequences are particularly important.

First, there have been significant economic consequences in terms of

decreased trade in the hospitality industry. For example, a 2006 study that examined the economic consequences of the Scottish public smoking ban found that it resulted in a 10 percent decrease in food and drink sales in hospitality venues, as well as a 14 percent decrease in custom in Scottish pubs during the first three months following the ban's introduction.[23]

A similar pattern of significant economic consequences has been found in England, with pubs suffering the most damage. According to 2008 data from the British Beer and Pub Association, pub closures have averaged almost four per day, that is, 27 per week since 2007. This rate is significantly different from that in 2006 before the public smoking ban and 14 times more than in 2005. According to the British Beer and Pub Association, some 1,409 pubs closed during 2007.

Second, in addition to the economic and, indeed, social and cultural consequences given the importance of pubs to neighbourhood and community life, there are also perverse and unintended health consequences of the public smoking ban.

In a just-published paper, Dr Jerome Adda from University College London and Dr Francesca Cornaglia of the London School of Economics examine the unintended effects of public smoking bans on nonsmokers, particularly children, in the US.[24] They report that while smoking bans decrease ETS exposure in workplaces and other public places, they 'can lead to a perverse increase in exposure by displacing smoking towards private areas'. Though smoking bans do not have a causal effect on either smoking prevalence, smoking cessation, or quit attempts, they do have a displacement effect in that they lead individuals to change the way in which they spend their time in public and private places.

Using data from 2003-2006, Adda and Cornaglia find that smoking bans in bars and restaurants decrease the time spent in these venues by smokers by roughly 20 minutes per day. More crucially,

smokers increase the amount of time that they spend at home under smoking bans in bars and restaurants by an average of 57 minutes. Adda and Cornaglia next examine the effects of these sorts of displacements, including workplace smoking bans, on the ETS exposure of nonsmokers, including children, through an analysis of cotinine levels in 42,009 nonsmokers.

The results are striking. Workplace smoking bans lead to an 'increase in cotinine in children aged 8 to 12', an increase that is statistically significant. Smoking bans in bars and restaurants also results in a statistically significant cotinine increase in teens aged 13-19. As the authors note, 'Smokers spend less time in bars and restaurants following the introduction of smoking bans...which would tend to increase the exposure of other family members in private places'. Hence, the American experience has been that 'smoking regulations can have perverse effects on non-smokers. By displacing smoking, and to some extent smokers, bans can contribute to an increase in exposure to tobacco smoke. This effect is particularly strong for young children and those living with smokers'.

Adda and Cornaglia's research challenges a study by Holliday et al that claims to have found no statistically significant changes in mean salivary cotinine concentrations following the Welsh public smoking ban in 2007.[25] Curiously, Holliday et al claim that concerns about the 'potential displacement of smoking from public places into the home, affecting non-smokers and, in particular, children...[have] found little support to date', and indeed, make no reference to Adda and Cornaglia's study. Instead, Holliday et al claim that 'increasing number of successful smoking cessation efforts amongst adults and an increase in the proportion of smoke-free homes have been observed'.

As we have seen, there is substantial evidence both from the US and England that public smoking bans have *not* led to either more cessation attempts or greater success at quitting, and the

increase in the proportion of smoke-free homes is irrelevant to the problem at hand, which is the unintended and perverse consequence of *greater* ETS exposure for the children of smokers displaced from smoking at work and in bars and restaurants. Indeed, the claimed reductions in children's ETS exposure in Scotland were not true for children with two parents who smoked or with a mother who smoked.

The Holliday et al study suffers from several problems when compared with Adda and Cornaglia.

1. It is a very small sample of less than 2,000 children, compared with the enormous numbers in the Adda and Cornaglia study from across the US.

2. The Holliday et al data and conclusions are compromised by the fact that it relies on imputation for 47 percent of the subjects.

3. The study does not report cotinine concentration levels for children by household smoking status, as do Adda and Cornaglia. Instead, Table 2 reports cotinine concentration levels for all children.

4. The study focuses only on primary school children, whereas Adda and Cornaglia look at both younger children (8-12) and teenagers aged 13-19.

5. Adda and Cornaglia examine displacement both from the workplace and social settings, such as bars and restaurants.

This suggests that the reason that Holliday et al did not find any evidence of displacement is that they failed to look in the right place. It also suggests that this research is not a reliable guide to policymakers of the unintended consequences of public smoking bans.

CONCLUSION

We conclude that none of the reasons offered in defense of public smoking bans provides unequivocal support for such bans.

The scientific evidence is not compelling that ETS poses fatal health risks for nonsmokers and, even if it were, there are viable alternatives to blanket public smoking bans that address not only the health but also the irritant and annoyance concerns of nonsmokers. Moreover, such bans have not significantly reduced smoking in the UK. Finally, such bans have had dramatic and perverse health and economic consequences.

Despite the claims of the champions of public smoking bans, it is clear that the beautiful hypothesis that ETS is a major killer and, hence, a major public health problem that defies solution – except through total prohibition of public smoking – and which leads to reductions in smoking, all without any costs, has been slain by very many ugly facts.

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[19] Non-Smokers' Rights Association *Ventilation and Designated Smoking Rooms* Toronto 2003.

[20] R Jenkins et al 'Environmental Tobacco Smoke in the Nonsmoking Section of a Restaurant: A Case Study' *Regulatory Toxicology and Pharmacology* 2001 34: 213-220.

[21] E Sterling and M Glassco, 'A Study of Ventilation and Indoor Air Quality of UK Hospitality Venues Where Smoking is Allowed' Proceedings of CLIMA Helsinki 10-14 June 2007.

[22] J Repace 'Respirable Particles and Carcinogens in the air of Delaware hospitality venues before and after a smoking ban' *Journal of Occupational and Environmental Medicine* 2004 46: 887-905; M Mulcahy et al 'How does the Irish smoking ban measure up? A before and after study of particle concentrations in Irish pubs' Proceedings of the Indoor Air Association 2005.

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[24] J Adda and F Cornaglia *The Effect of Bans and Taxes on Passive Smoking* CEP Discussion Paper No 950 London October 2009.

[25] J Holliday et al 'Changes in child exposure to secondhand smoke after implementation of smoke-free legislation in Wales' *BMC Public Health* 2009 9: 430.

5-26

WHITNEY B. DAMRON, P.A.

TESTIMONY

TO: The Honorable Brenda Landwehr, Chair
And Members of the House Health and Human Services Committee

FROM: Whitney Damron

On behalf of:

- Flint Hills National Golf Club
- Flint Oak, LLC

RE: HB 2642 – An Act enacting the Kansas nonsmoker protection act.

DATE: February 10, 2010

Good afternoon Madam Chair Landwehr and Members of the House Health and Human Services Committee. I am Whitney Damron and I appear before you today on behalf of Flint Hills National Golf Club and Flint Oak, LLC to offer comments on HB 2642, the Kansas nonsmoker protection act.

By way of information, Flint Hills National Golf Club is located near Andover, Kansas and is a premier golf club developed by Tom Devlin with the goal of becoming a beautiful and challenging golf course with clubhouse amenities second to none in the United States. Flint Hills National is a special place where members come from throughout Kansas and around the country to enjoy a great round of golf, enjoy a fine meal, consume an adult beverage if they so choose and in some instances, relax with a cigar or cigarette in their Men's Grill, which is the only designated smoking area on the property.

Flint Oak, LLC is located in Elk County and is one of the nation's leading hunting, shooting and outdoor recreational facilities in the United States, again with members from throughout Kansas and around the U.S. Tom Devlin is a partner in Flint Oak with several other individuals from the Wichita area.

Flint Oak provides a similar experience for its members and guests for the hunting and outdoor recreational enthusiast as Flint Hills National does for the golfer. Both of these establishments are steeped in the traditions of their respective offerings. Golf and hunting are both sports long on tradition, sportsmanship and camaraderie. And oftentimes those traditions might include a fine cigar following the events of the day.

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HEALTH AND HUMAN SERVICES
DATE: 2-10-10
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In 2009, we provided testimony before the Senate Committee on Public Health and Welfare and this committee to outline our concerns with a broad smoking ban that provided little, if any opportunity for incorporation of community opinions and values. We acknowledge that HB 2642 does attempt to address those issues by creating a statewide standard with clearly outlined exemptions under certain, limited circumstances.

Flint Hills National and Flint Oak are concerned with the potential exclusion of our facilities under definitions contained in the bill and would ask the Committee to consider amending in language approved in the Senate last year that would allow for a limited exemption for outdoor recreational facilities as defined in HB 2221 from 2009, which is in a House/Senate Conference Committee.

Both Flint Hills National and Flint Oak are member and guest facilities. However, at certain times of the year, they open their doors to charitable endeavors and public events that raise hundreds of thousands of dollars for charities and also in the case of Flint Oak, the property is open to the general public from April 1 through September 30.

Flint Oak is the largest employer in Elk County and Flint Hills National employs a significant number of people at its operations in Butler County as well.

These facilities attract members from within Kansas and well beyond with patronage from around the world. A smoking ban that prohibits smoking in limited, designated areas of these facilities will have a negative impact on their operations and ultimate financial viability.

We respectfully ask this Committee to incorporate language from HB 2221 into this legislation and going forward, please keep in mind how a statewide smoking ban with limited, or no reasonable exemptions could have a devastating impact upon those businesses affected, their employees, their communities and ultimately the State of Kansas.

Attached to my testimony is a balloon amendment with the exemption for "outdoor recreational facilities" as adopted in HB 2221.

Finally, if you are not familiar with Flint Hills National Golf Club or Flint Oak, LLC, I encourage you to visit their websites if you cannot visit their properties in person.

Thank you for your consideration of my remarks.

WBD

Attachment

Flint Hills National Golf Club
www.flinthillsnational.com

Flint Oak, LLC
www.flintoak.com

Session of 2010

HOUSE BILL No. 2642

By Committee on Health and Human Services

2-3

AN ACT enacting the Kansas nonsmoker protection act; amending K.S.A. 2009 Supp. 79-3321 and 79-3391 and repealing the existing sections; also repealing K.S.A. 21-4009, 21-4010, 21-4011, 21-4012, 21-4013 and 21-4014 and repealing the existing sections.

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

New Section 1. Sections 1 through 10, and amendments thereto, shall be known and may be cited as the Kansas nonsmoker protection act.

New Sec. 2. As used in this act: (a) "Adult day care" shall have the meaning ascribed to it in K.S.A. 39-923 and amendments thereto.

(b) "Employee" means any person who performs any service on a full-time, part-time or contracted basis whether or not the person is denominated an employee, independent contractor or otherwise and whether or not the person is compensated or is a volunteer;

(c) "employer" means a person, business, partnership, association, the state of Kansas and its political subdivisions, corporation, including a municipal corporation, trust or nonprofit entity that employs the services of one or more individual persons;

(d) "enclosed area" means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows, exclusive of doorways, which extend from the floor to the ceiling. "Enclosed area" also includes a reasonable distance from any entrances, windows and ventilation systems so that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and so that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means;

(e) "medical care facility" means a doctor's office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425 and amendments thereto. "Medical care facility" also includes any psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto;

(f) "motor vehicle" shall have the meaning ascribed to it in K.S.A. 40-3103 and amendments thereto.

(g) "person" means an individual, partnership, corporation, limited liability company, entity, association, governmental subdivision or unit of

Proposed Amendment by:

Flint Hills National Golf Club
Flint Oak, LLC

Prepared by:

Whitney Damron
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"Outdoor recreational facility" means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its members, members and their guests and not normally open to the public.

HEALTH AND HUMAN SERVICES
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a governmental subdivision or a public or private organization of any character;

(h) "physically separated" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows, exclusive of a door or passageway, which is independently ventilated from smoke-free areas, so that air within permitted smoking areas does not drift or get vented into smoke-free areas;

(i) "place of employment" means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, any office building, work area, auditorium, employee lounge, restroom, conference room, meeting room, classroom, cafeteria, hallway, stair, elevator, health care facility or private office. The term "place of employment" includes any vehicle owned and operated by the employer during working hours when such vehicle is occupied by more than one person. For the purposes of this section, a private residence is not a "place of employment" unless such residence is used as a licensed child care facility, adult day care or medical care facility;

(j) "public place" means an enclosed area of any place to which the public is invited or in which the public is permitted, including, but not limited to, any airport, bank, common area of a multi-family housing facility, such as any apartment building and condominium, entertainment venue, medical care facility, hotel and motel common area, laundromat, public transportation facility, reception area, restaurant, retail food establishment, retail service establishment, retail store, school, shopping mall, sports facility, theater and waiting room. A private residence or vehicle is not a "public place" unless it is used as a licensed child care, adult day care or medical care facility. The term "public place" does not include any taxi or other commercial vehicle for hire;

(k) "retail tobacco store" means a retail store that derives not less than 50% of the annual gross revenues of the business from sales of cigars and all tobacco products and sales or rentals of cigar accessories. The term "retail tobacco store" does not include any grocery store, convenience store, gas station, general retailer or similar retail establishment;

(l) "smoking" means inhaling, exhaling, burning or carrying or possessing any lighted tobacco product, including any cigar, cigarette, pipe tobacco and any other lighted tobacco product.

New Sec. 3. Smoking is prohibited in all public places and places of employment within the state of Kansas, except the following:

(a) Any private residence, except when used as a licensed child care, adult day care or medical care facility.

(b) Any hotel and motel room that is rented to guests and is designated as a smoking room. The number of designated smoking rooms in

"Private club" means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.

"Substantial dues or membership fee requirements" means initiation costs, dues or fees proportional to the cost of membership in similarly-situated outdoor recreational facilities that are not considered nominal and implemented to otherwise avoid or evade restrictions of a statewide smoking ban.

2-7

is organized not for profit and which qualifies under section 501(c)(3) of the federal internal revenue code of 1986.

New Sec. 4. Any facility which desires to utilize an exemption pursuant to either subsection (g) or subsection (h) of section 3, and amendments thereto, shall pay an annual fee in the amount of $1 per square foot of space designated as a smoking area pursuant to such exemptions. The fee required by this section shall be paid to:

(a) The city if the facility is located within the boundaries of the city;

(b) the county if the facility is not located within the boundaries of the city.

Such fee shall be paid in accordance with requirements designated by a governing body of the city or county.

New Sec. 5. To protect the private property rights of all persons who own property or businesses in this state, the state of Kansas finds and determines a single statewide standard for smoking in enclosed areas that are also public places to be a matter of statewide concern. It is declared that this act preempts all municipal and county laws, charters, ordinances and rules and regulations relating to smoking in the locations set forth in this act.

New Sec. 6. (a) (1) At every entrance to each public place and to each place of employment where smoking is prohibited by this act, there shall be posted a conspicuous sign clearly stating that smoking is prohibited. The sign shall contain either the term "No Smoking" or the international "no smoking symbol" consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

(2) The sign required by paragraph (1) shall:

(A) Be posted by the owner, operator, manager or other person in control of the public place or place of employment.

(B) Be no smaller than 4 inches by 4 inches in size.

(C) Clearly identify where smoking is prohibited by this act.

(D) Clearly state where complaints regarding violations may be made or registered.

(b) All ashtrays shall be removed by the owner, operator, manager or other person having control of the area from any premises where smoking is prohibited by this act.

(c) If pursuant to subsection (h) of section 3, and amendments thereto, the entirety of any facility has been designated as a totally smoking facility, there shall be a conspicuous sign posted on the outside of the business clearly stating:

"This business is a totally smoking facility. Persons under 18 years of age are prohibited. Persons entering are advised that smoking is permitted at all locations in this facility."

New Sec. 7. (a) No employer may discharge or retaliate against an

(j) An outdoor recreational facility.

7-3

TESTIMONY

TO: **The Honorable Brenda Landwehr, Chair**
And Members of the House Health and Human Services Committee

FROM: **Thomas Jacob**
On behalf of Cigar Chateau, LLC

RE: **HB 2642 – Statewide Smoking Ban Legislation**

DATE: **February 10, 2010**

Madam Chairman and Members of the Committee:

My family owns Cigar Chateau, LLC in Wichita. We are tobacconists that sell premium handmade cigars, pipes, pipe tobacco and accessories to compliment their enjoyment. Cigar Chateau is a destination shop with customers that are of all ages and demographics, they are adult men and women.

I appreciate all the exemptions in HB 2642, especially for tobacco shops. However, on behalf of Cigar Chateau, I respectfully request this Committee not take action on HB 2642 if it supersedes any smoking ordinances that now exist. Over 55% of the state population is in cities and counties throughout the State that allow for smoking in cigar lounges, drinking establishments and private clubs, under local restrictive criteria. **Local control works!** The Wichita ban works because it was a compromise between local government and business. The businesses that chose to allow smoking expended a lot of capital to meet the criteria required in the Wichita ordinance. **Local control works**. As a side note, I own Jacob Liquor Exchange, a large provider of wine, spirits, and beer to restaurants and drinking establishments in Wichita. When the Wichita ordinance became law in September 2008, several of our customers chose to be smoke free, some smoking and others chose to be both. Over the last 17 months they have expressed that they made the right choice for their establishment, whatever direction they took.

Cigar Chateau has within its space a private "Diamond Crown Cigar Lounge" (one of forty-five licensed lounges throughout the US). This space is ventilated as per a City of Wichita ordinance that also requires various other very restrictive policies. The Federal Government research lab acknowledges that technology does exist that **will** and **does** filter smoke from enclosed areas; our cost was over $200 per square foot, and it works. I would like to offer an

amendment for the committee to consider. Our smoking lounge allows cigar and pipe smoking, and the remainder of the retail space is smoke free so families can shop for gifts and wine accessories for special occasions. The bill as written is gray to this point, stating that no one under 18 can enter the tobacco shop. I would like to see the age requirement only pertain to the smoking rooms.

Cigar and pipe smoking is a choice, not an addiction habit. The truth is, smoking premium cigars is more like enjoying a glass of fine wine. It helps make ordinary moments special and special moments extraordinary. Premium tobacco is a product of **leisure, pleasure and socializing – a life style choice.**

Thank you.

Tom Jacob
Cigar Chateau, LLC
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Wichita, KS 67226
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KLBA

Kansas
Licensed
Beverage
Association

February 10, 2010
Testimony on HB 2562, House Health and Welfare Committee

Chair Landwehr, and Representatives 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.

There is one new attachment for this year's testimony. It follows this letter. There is also a list of sites and attachments from last year's testimony. If you have misplaced any of those and would like them please let me know.

We urge your support of HB 2642 as the first true attempt as a real and fair Statewide ban. We ask you to amend this act as follows;

New Sec. 4 sets $1 per square foot. This seems high and should take into consideration that some hospitality establishments require large areas, such as for pool tables, shuffle board and other types of entertainment. **We would ask that this be reduced to "$1 per square foot up to and not to exceed a total fee of $500".**

Second new Sec. 12 sets a violation punishment for violation of "this act". I believe this is meant to apply to violation of KSA 79-3311. **We want to ensure that is only for that statute.**

Now for some general comments. First the good news! In 2007, the Kansas Supreme Court's decision to not overturn, the case against locally imposed bans, 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 07 Interim Committee took the position that the local options were working, local governments were acting and responding. Now, to 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 uniform preemption** in order to achieve the goal of an equal opportunity and level playing field. Without such this is just an action for appearances. You have heard from the opponents that an essential reason for a statewide ban is to "prevent a patchwork which is unacceptable" . A bill without preemption, allowing local elections and allowing local ordinances guarantees just such a patchwork. And you heard much about a "level playing field". That is an argument about economic impact. ***If there is no economic impact then there is no need for a "level playing field".*** It would not matter.

CEO
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info@klba.org

We oppose smoking ban proposals previously introduced and those efforts to limit the choices of adults and businesses about a legal product, so we support HB 2562. Please consider these points.

ABL
AMERICAN BEVERAGE LICENSEES

Drink Responsibly.
Drive Responsibly.

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 9-1

If this is an air quality issue, why are we not addressing air quality? There are many more air contaminates that 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 the desired" 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. ***You allow smoking as 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 crops of city ordinances are considering compromises and exemptions. The highly touted Lawrence ban includes exemptions. And all other state bans include exemptions, including the proponent mentioned VA ban and State owned casinos.

Fourth, we support the inclusion of 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.

Fifth allow me to discuss the argument that this will save the state money. We have had smoking bans in this state in large population areas for many years. Some as many as 8 years, where is the savings in these communities? **Where are the figures of real KANSAS savings?** You were told that bans have this effect and yet are given no documented proof that that has been the case here in our state. Those should be available now and leads one to question why they are not cited. And if bans would mean return to Kansans of health care premiums, how much have premiums been reduced in those Kansan communities that have bans now? And how much have the premiums been reduced in Nebraska, and Iowa and the other states with bans?

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

Thank you for your time and as always I am available for your questions,

Philip Bradley

Philip B. Bradley

The difficulty in life is the choice

. The Bending of the Bough. Act iv.

Smoking Ban Health Miracle Is a Myth

Restrictions on smoking around the world are claimed to have had a dramatic effect on heart attack rates. It's not true.

Environment & Climate News > February 2010
Written By: Christopher Snowdon
Published In: Environment & Climate News > February 2010
Publication date: 01/19/2010
Publisher: The Heartland Institute

"Heart attacks plummet after smoking ban" declared the UK's *Sunday Times*, as it reported that England's smoking ban has "caused a fall in heart attack rates of about 10 per cent." A few days later, the *Scotsman* upped the ante, informing its readers that "Smoking ban slashes heart attacks by up to a third across world."

Tales of heart attacks being "slashed" by smoking bans have appeared with such regularity in recent years that it is easy to forget there is a conspicuous lack of reliable evidence to support them. It is almost as if the sheer number of column inches is a substitute for proof.

Mythical Study

The most recent reports are a case in point. Although *The Sunday Times* claimed a 10 percent drop in heart attacks, nowhere in the 500-word article was a source mentioned, and no one was quoted giving this figure.

The "study" the newspaper referred to does not exist, and the anti-smoking pressure group Action on Smoking and Health (ASH)--not renowned for downplaying the risks of passive smoking--went to the unusual lengths of posting a notice on its Web site the following day to point out "the figures reported in *The Sunday Times* yesterday (and now circulating elsewhere) are not based on any research conducted to date."

Although the story quickly went around the globe, no one seems to know where the figure came from. It's all rather strange. Basing journalism on anonymous sources is commonplace in the world of politics, but it is surely not necessary in the realms of science.

Cherry-Picked Data

The second story--reported by a host of news organizations, including the BBC--also had no new data to report. Instead it took its cue from an article in the journal *Circulation*, which examined previous smoking ban/heart attack studies. If nothing else, the *Circulation* paper offers an opportunity to reflect on just how feeble the collected evidence is on this issue.

The first study to claim smoking bans "slash" heart attacks was met with howls of derision when it was published in the *British Medical Journal* in 2004. Studying the modest population of Helena, Montana--where the number of monthly heart attacks seldom strayed into double digits--the study's authors made the astounding claim that the town's smoking ban had led to the rate of acute myocardial infarction (heart attacks) plummeting by 40 percent.

Dubbed the "Helena miracle" by a legion of skeptics, the 40 percent finding was damned by its very enormity. Since the authors were adamant that the drop was due to secondhand smoke (rather than smokers quitting), the finding required the reader to believe 40 percent of heart attacks in pre-ban Helena had been solely caused by passive smoking in bars and restaurants.

To understand quite how miraculous the Helena miracle was, one must bear in mind that around 10 to 15 percent of coronary heart disease cases are attributed to active smoking. That passive smoking could be responsible for a further 40 percent strains all credibility.

Hope for More Miracles

Despite the inherent implausibility of the hypothesis, further studies were swiftly commissioned. If smoking bans could be shown to immediately save lives, it would be a compelling reason to implement bans elsewhere and expand those already in place.

And since all that was required to "prove" the hypothesis was a rough correlation between a declining heart attack rate and the start of a smoking ban, the prospects were good. Heart attack rates had been falling for years in most countries, and there were plenty of smoking bans to choose from. The law of averages dictated another heart miracle would soon come to light.

Replicating Flaws

Flawed though it may have been, the Helena research was followed by several studies that displayed such a cavalier approach to the scientific process that they bordered on the comical. Researchers in Bowling Green, Ohio, for example, saw a large rise in heart attacks during the first year of the smoking ban. Sidestepping this awkward fact, they simply redefined year two of the ban as the "real" post-ban period, and since that year followed an abnormal peak, there was naturally a decline in the heart attack rate.

As a consequence, the researchers could triumphantly declare the smoking ban had led to a 47 percent reduction in heart attacks.

In the Piedmont region of Italy, there was an inconvenient rise in heart attacks among those over the age of 60 after the ban, so those people were simply ignored. In a study reported by the BBC ("Smoking ban reduces heart risk"), the researchers focused entirely on those under 60, thereby recording an 11 percent drop in cases.

Studies such as these form the basis for the recent reports of smoking bans slashing heart attacks by "up to a third." The *Circulation* paper gathers them together and concludes that, on average, smoking bans cause rates of acute myocardial infarction to fall by 17 percent. It includes the studies from Ohio and Italy, as well as three studies that have never been published and have only been "reported at meetings."

Big Study Ignored

The *Circulation* paper does not include a mammoth, published study of the entire United States, "Changes in U.S. Hospitalization and Mortality Rates Following Smoking Bans," which concluded, "In contrast with smaller regional studies, we find that workplace bans are not associated with statistically significant short-term declines in mortality or hospital admissions for myocardial infarction or other diseases."

No es the *Circulation* paper mention an unpublished paper that found no statistically significant fall in attacks amongst the entire populations of California, Florida, New York, and Oregon.

Bans Have No Effect

Perhaps the most remarkable aspect of the ongoing heart-miracle farrago is the eagerness to focus on small studies when complete hospital data is so freely available. It is extraordinary that no BBC journalist, for example, has thought of taking a few minutes to see how many people were rushed to hospital with acute myocardial infarction before and after the smoking bans of England, Scotland, and Wales.

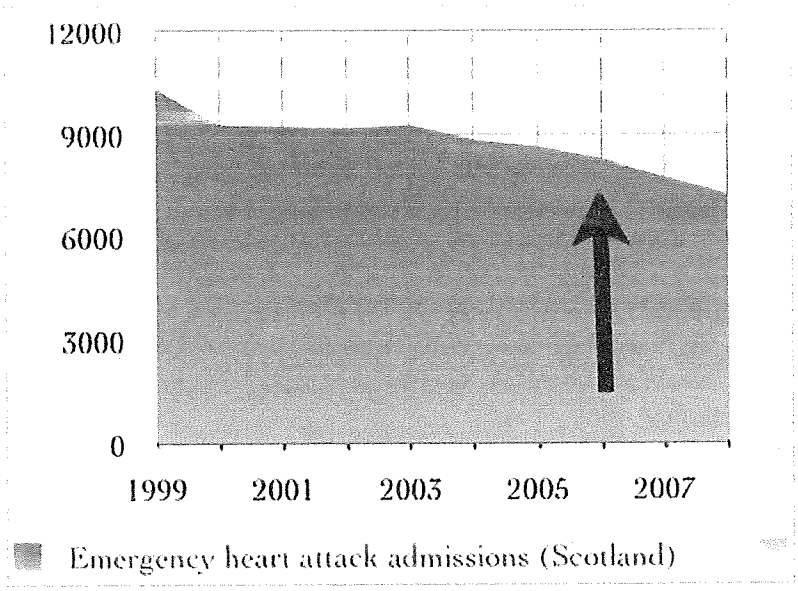
If they did so, they would see that smoke-free legislation has had no tangible influence on heart attack rates at all.

The graphs below show the number of emergency admissions for acute myocardial infarction, with the arrow indicating the start of the smoking ban. What is abundantly clear in each case is that the number of heart attack admissions has been falling for some time. Far from causing further dramatic cuts in heart attack rates, the bans had no discernible effect

Scotland

The press said: "Heart attacks drop by 17 per cent after smoking ban" (*Telegraph*)

The data say heart attacks were already in a long-term decline and accelerated little, if at all, after the ban:

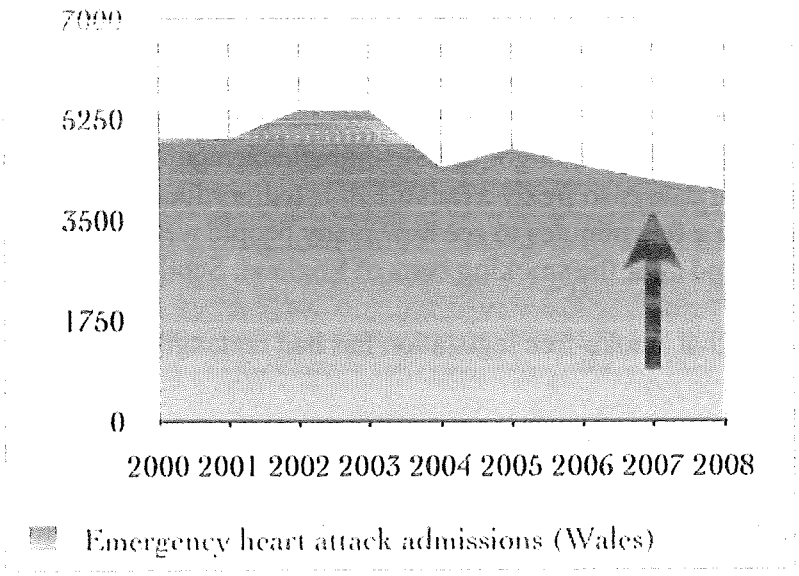


Source: Information Services Division, Scotland. The arrow indicates when the smoking ban was implemented.

Wales

The press said: "The number of patients suffering a heart attack in Wales has fallen dramatically following the ban on smoking" (*Wales Online*).

Th. ata say the drop was very slight and continued a decline that began before the ban:

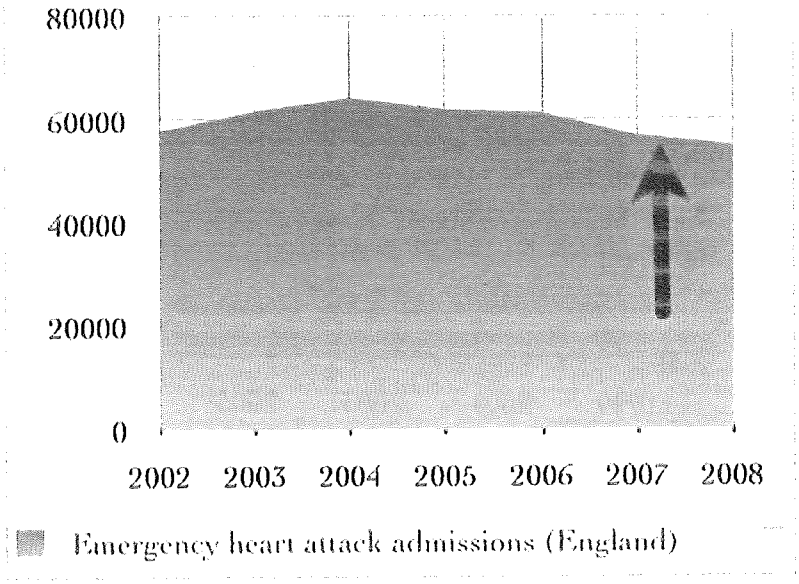


Source: National Health Service, Wales. The arrow indicates when the smoking ban was implemented.

England

The press said: "Heart attacks plummet after smoking ban" (*The Sunday Times*).

The data say the drop was very slight and continued a decline that began before the ban:



Source: Hospital Episode Statistics Online. The arrow indicates when the smoking ban was implemented.

Hospital Data Conclusive

P ly accessible hospital admissions data are like kryptonite to those who are so eager to believe in mi...es. In most epidemiological studies pertaining to secondhand smoke, the raw data are not published. Here. the data are open to all and show quite clearly that the long-term downward trend in heart attacks has not been affected in any way by the implementation of smoking bans.

This provides such a simple and straightforward rebuttal to the heart attack "slashing" hypothesis that one wonders what level of hubris drives those who still espouse it.

The three graphs shown here cover a population larger than the sample groups in all the studies reviewed in *Circulation* combined, but no matter how much empirical evidence exposes the fantasy of the Helena miracle, it may be too late for the anti-smoking lobby to back down on this issue. Too many reputations are at stake.

After five years of covering these stories so uncritically, the same may be true of the media. One can scarcely blame newspapers for covering stories that offer such dramatic conclusions as the heart miracles. The irony is that if they dug just a little deeper, they might have found a more interesting, and more believable, tale of human folly.

C

hristopher Snowdon (author@velvetgloveironfist.com

) *is author of* Velvet Glove, Iron Fist: A History of Anti-smoking, *published by Little Dice. This article first appeared on spiked-online.com and is reprinted with permission.*

For more information ...

K. Shetty, "Changes in U.S. Hospitalization and Mortality Rates Following Smoking Bans," National Bureau of Economic Research Working Paper No. 14790, March 2009: http://www.nber.org/papers/w14790.pdf

Not attached from 2009 testimony a MSWord document containing;

Economic fears are snuffing out smoking bans
The Associated Press updated 4:42 p.m. CT, Wed., Feb. 4, 2009

Newsflash, Heart attacks increase in Scotland.
Article excerpt By Phil Williams

Physician, Freedom Lover, says Second-Hand Smoke Science is Junk
By John Dale Dunn MD JD

Clearing the Haze? New Evidence on the Economic Impact of Smoking Bans
By Michael R. Pakko Attached

Smoking Bans Negative Impact on Bar Revenues Proven for Two States.
Article Published: 27/07/2007

Opposition to Smoking Bans Heats Up
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

And a PDF file;

The Case Against Smoking Bans by Thomas A. Lambert
University of Missouri-Columbia School of Law

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http://stlouisfed.org/publications/re/2008/a/pages/smoking-ban.html

DIEBEL'S SPORTSMENS GALLERY
426 WARD PARKWAY KANSAS CITY, MISSOURI 64112 (816) 931-2988

Distinguished committee members,

As lawmakers, we, the citizenry, trust that you perform your due diligence. Every issue has 2 sides and you should examine both when confronted with new legislation. The challenge comes when one side dominates. Is it then OK to not seek the contrasting viewpoint? We are trusting that 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, MO 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.

Proponents site 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 none 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. This was a time when 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 period of proof? 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 has declined from 1980 – from 631.5 billion to 360 billion. - 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 help 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 the 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- OSHA has no stated position regarding secondhand smoke. How can this be if it is so toxic?

Compromise – the members of this committee I am sure compromise all the time. A little give and take is common in politics. Isn't it interesting that the anti's demand a 100% ban with no exemptions. No compromise.

My father started our business in 1954. We are in our 56th 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

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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? I appreciate the tobacco shop exemption. It is certainly appropriate.

As a general rule I oppose smoking bans. Bans cause direct and undue hardship upon my business. It is unnecessary government intrusion in the marketplace. I am not big business. I am not Big Tobacco. General Cigar Co, my largest vendor, tells me their experience throughout the country is that smoking bans reduce cigar sales by 20%. But this bill overrides a more restrictive ban I am currently subject to in Overland Park. This bill shows a sense of compromise, of moderation and empathy for the smokers in Kansas. The authors did their due diligence. I support HB 2642 and I hope this committee will as well.

Curt Diebel
DiebelSG@gmail.com

SUBMITTED TESTIMONY

TO: The Honorable Brenda Landwehr, Chair
And Members of the House Health and Human Services Committee

FROM: Kurt Van Keppel
President, XIKAR, Inc.

RE: HB 2642 – The Kansas nonsmokers protection act.

DATE: February 10, 2010

Madam Chair Landwehr and Members of the Senate Committee on Public Health and Welfare: I am Kurt Van Keppel, President, founder and co-owner of XIKAR, Inc., the United States' largest cigar accessory brand, a company which Scott Almsberger and I started in 1996, with a $5000.00 investment out of our garages in Shawnee, Kansas.

XIKAR is considered "the" accessory brand of the cigar trade; we are known as the experts in cutting, lighting, humidifying, storing and transporting cigars. And, we now produce our very own brand of award-winning cigars for retail sale. We employ 22 people at our corporate offices, twelve additional sales reps across the USA and two others overseas. XIKAR exports 20% of our sales to more than 20 nations. And, I am proud to say that in just over 10 years, we have built this business from a startup with no revenues to a company with revenues in excess of $6 million, adding payroll and significant tax revenue to the local economy.

XIKAR holds a warranty registration database of than 30,000 consumers. More than 600 of these cigar smokers who own a XIKAR product AND who registered their warranty live in the state of Kansas.

Cigar smoking's history began on this continent, and was integral to our nation's formation, economic development and settlement. Cigar smoking is more than a pleasure. It is known and enjoyed as a celebration, a respite, a "one hour vacation". Above all, it is a legal, pleasurable and non-narcotic way to relax, facilitate camaraderie, where a "plumber and a president can be friends".

Regarding HB 2642, we have previously supported efforts to permit smoking ordinances to stay in the hands of local government, who understand the needs of their communities. Only local government can balance the needs the community at large, in this case the majority, with the rights of smokers, a minority enjoying a legal product.

A statewide ban on smoking without tolerance for local input will usurp the legal rights of more than 600 known *cigar* smokers, and will damage the good business of XIKAR, Inc. and our four retail customers in Kansas. A statewide ban without appropriate exemptions will abrogate the right of Kansans to congregate, communicate and enjoy each other's company while enjoying the consumption of a legal product that facilitates that very gathering.

Thank you for your kind attention to my remarks. I apologize for being unable to deliver them in person.

Sincerely yours,
Kurt Van Keppel

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A Kansas Corporation
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KANSAS HEALTH INSTITUTE

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House Health and Human Services Committee

February 10, 2010

Statewide Smoking Bans: A Research Perspective

Rachel Smit, M.P.A.
Sharon Homan, Ph.D.
Anne Nugent, M.P.H.
Kansas Health Institute

Information for policymakers. Health for Kansans.

The Kansas Health Institute is an independent, nonprofit health policy and research organization based in Topeka, Kansas. Established in 1995 with a multiyear grant from the Kansas Health Foundation, the Kansas Health Institute conducts research and policy analysis on issues that affect the health of Kansans.

Chairwoman Landwehr, members of the committee, thank you for this opportunity to talk about smoke-free policies from a research perspective. The Kansas Health Institute does not advocate for or against legislation; our mission is to inform policymakers by identifying, producing, analyzing and communicating information that is timely, relevant and objective. As a neutral conferee, I hope to shed light on the conflicting testimony you may hear regarding smoking bans and their impact, both on health and on the bottom line of businesses.

As policymakers, you are challenged to address tobacco use among Kansans, since it is the number one leading cause of preventable death and illness in the U.S. We can all hopefully agree that government has a compelling interest in 1) reducing the number of Kansans who initiate tobacco use and 2) increasing the number who stop using tobacco. Research shows that the third-prong of any effective strategy to address the negative health impact of tobacco is a sustained effort to reduce exposure to secondhand smoke.

The science is clear: secondhand smoke results in preventable deaths and illness. A large body of published research indicates that exposure to secondhand smoke increases the risk of coronary heart disease by 25-30 percent. Moreover, data from experimental studies indicate that negative cardiovascular effects are seen after very brief (less than one hour) exposures to secondhand smoke.

Rigorous research also documents that smoke-free policies effectively reduce exposure to secondhand smoke. The Institute of Medicine went so far as to conclude that there is sufficient scientific evidence to infer a cause-and-effect relationship between smoking bans and decreases in acute coronary events (i.e. heart attacks); however, these types of studies are subject to many methodological challenges.

If improvements in public health are the committee's primary concern, then it stands to reason that a smoking ban that covers as many workplaces and public spaces as possible will be more effective in achieving this goal than one containing exemptions. However, we recognize that as policymakers you have competing priorities and important decisions to make, including a decision about the appropriate role of government in protecting the public's health. As you weigh the pros and cons of allowing exemptions for certain businesses, we would remind you of the KHI study completed last year about the economic impact of the 2004 smoking ban in Lawrence. We found no evidence of an economic impact on overall sales in the restaurant and bar industry as a result of that ban. This finding is consistent with other published, peer-reviewed studies, which find no evidence of an association between smoking bans and long-term economic impacts on the restaurant or bar industry. While an individual business could well be affected by

a statewide smoking ban as the marketplace adjusts to the new regulation, the challenge for this committee is to weight any value in allowing some businesses to exempt themselves from the ban against the known costs in terms of workers' and patrons' health. Thank you for your time.

HEIN LAW FIRM, CHARTERED

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Ronald R. Hein
Attorney-at-Law
Email: rhein@heinlaw.com

Testimony Re: HB 2642
House Health and Human Services Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
February 10, 2010

Madam Chair, 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 is neutral on HB 2642.

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, 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 in the past, and we developed legislation which would establish a ban that would be acceptable to these opponents of these types of smoking ban legislation. HB 2642 is very similar to provisions of SB 81 that we indicated we could remain neutral on last year.

In the past, the KRHA has agreed to a major concession, which is that the KRHA would be neutral on a ban which would prohibit smoking areas in restaurants if smoking was permitted in a separate and distinct room, separated by floor-to-ceiling walls and separately ventilated. This should eliminate any exposure for non-smokers. HB 2642

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recognizes such protections, as well age-restricted venues and other businesses/operations which allow all entertainment venues to compete on a level playing field.

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 smoking. 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. The studies and the empirical evidence both support the fact that smoking bans can and do have an adverse affect upon numerous businesses in the entertainment, restaurant, liquor and hospitality industries.

When the Senate passed a smoking ban last year, they intellectually agreed with the KRHA that it is rationale to make appropriate exemptions to a smoking ban. Although the Senate Committee of the Whole agreed with the opponents of smoking bans that exemptions are appropriate, they limited their exemptions only to a selected few. However, we have now ALL agreed that the bill needs exemptions, and now we are debating which exemptions are appropriate.

While the Senate felt that a smoking ban would threaten the State's business (state owned and operated gaming casinos and slots at tracks), the Senate members who supported the ban apparently felt that it is appropriate to exempt themselves from losing business, but they weren't concerned about the businesses owned by their constituents, and the taxpayers of the state. This doesn't seem fair for the state to exempt their own businesses from a law, and then force private citizens to operate by the law, even to the businesses' economic detriment.

KRHA owes 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.

It is also important to the KRHA that any smoking ban contain a preemption provision, so that there is a level playing field between entertainment venues. To allow a patch-work quilt of different provisions in the local jurisdictions, or to allow one business an

exemption and not a competitor, are objectionable to the KRHA.

Therefore, if the Committee were to take action on HB 2642, the KRHA would not oppose enactment of this legislation.

Thank you very much for permitting me to testify with regards to HB 2642.

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Ronald R. Hein
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Email: rhein@heinlaw.com

Testimony re: HB 2642
House Health and Human Services Committee
Presented by Ronald R. Hein
on behalf of
Reynolds Services, Inc.
February 10, 2010

Madame Chairman, Members of the Committee:

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

RSI, on behalf of Americans who choose to consume a legal product, is unequivocally opposed to many of 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. RSI is neutral on HB 2642.

RSI agreed to join a coalition of businesses which have developed legislation which would establish a ban that would be acceptable to opponents of these types of smoking ban legislation. SB 81, which was introduced by this coalition in Senate Public Health and Welfare in 2009, provides for a smoking ban that would still permit businesses to accommodate smokers and non-smokers alike, and yet to avoid the kind of economic damage which smoking bans inherently create.

HB 2642, recognizes the economic realities facing numerous business in Kansas today, including businesses from private clubs to taverns to restaurants to casinos.

We appreciate that the Senate last year agreed with our argument that certain exemptions are appropriate to avoid damages to our businesses, especially in the entertainment and hospitality business. Thus, they provided for an exemption for Class A and Class B clubs. In addition, ironically and somewhat hypocritically, the Senate provided for the exemption of the STATE's business, the state-owned and operated gambling facilities, but failed to provide any exemption for numerous privately owned businesses that would be in competition with the state businesses, namely drinking establishments and restaurants, which also will be economically damaged by a smoking ban. The Senate recognized that banning smoking at the casinos would cause the state and the casinos to lose business, but the Senate denied such protection to privately owned restaurants, bars, taverns, or other businesses owned by private citizens.

HB 2642 treats all of these entertainment venues with the same provisions. This way there is no competitive advantage for any one competing business.

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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 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 beverages 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, RSI 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. We believe HB 2642 provides exemptions ONLY when there is a separate smoking room, or where there are age restriction requirements to protect children and the non-smokers.

HB 2642 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, bars, and casinos must provide separate smoking areas where non-smokers are not affected, or restrict minors access. 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, RSI would not object or oppose action on HB 2642.

Thank you for permitting me to submit this written testimony.

KANSAS

DEPARTMENT OF HEALTH
AND ENVIRONMENT
Division of Health

Mark Parkinson, Governor
Roderick L. Bremby, Secretary

www.kdheks.gov

Testimony on House Bill 2642
Nonsmoker Protection Act

Presented to
House Health and Human Services Committee

By
Jason Eberhart-Phillips, MD, MPH
State Health Officer and Director of Health
Kansas Department of Health and Environment

February 10, 2010

Chairwoman Landwehr and members of the committee, I am Dr. Jason Eberhart-Phillips, State Health Officer and Director of Health for the Kansas Department of Health and Environment. Thank you for the opportunity to discuss HB 2642, which proposes to allow public places to declare themselves smoking establishments; permit separately ventilated smoking and nonsmoking indoor public areas; and preempt existing local laws and regulations regarding public indoor smoking.

KDHE firmly opposes HB 2642 because it provides no real protection from the dangers of secondhand smoke and it obliterates the public health protections currently in place for almost half of Kansans. Furthermore, this bill prohibits future actions by counties or cities to take stronger action to protect the health of their citizens in a manner consistent with their local values. To date, 36 Kansas cities and three counties have adopted clean indoor air laws to protect employees and the public from the negative health impacts of secondhand smoke. Ninety-nine percent of these local laws (covering 49% of the state's population) provide stronger health protection than HB 2642.

HB 2642 does not protect workers. It allows establishments serving the public to allow smoking throughout the establishment or permit it in separately ventilated rooms as long as they prohibit anyone under 18 years old from entering the areas where smoking is occurring. These businesses are required only to post signs and pay a nominal fee. This provision is in direct conflict with the aim to protect health. Numerous scientific and industry studies concluded that there is no ventilation system capable of providing adequate protection from exposure to secondhand smoke. Ventilation systems do not protect the employees who work in these rooms. Public establishments that choose under this bill to allow any degree of smoking will expose both patrons and employees to the dangerous health effects of secondhand smoke.

The U.S. Surgeon General summarized the current science related to secondhand smoke quite eloquently in stating: "The debate is over. The science is clear. Secondhand smoke is a serious health hazard that causes premature death and disease in children and nonsmoking adults." The Surgeon General's 2006 Report went on to conclude that there is no safe level of exposure to secondhand smoke. Even brief exposure to secondhand smoke is known to result in severe consequences, including heart attack and acute distress from a multitude of lung diseases such as asthma and COPD (chronic obstructive pulmonary disease). Given the extensive scientific evidence presented in the Surgeon General's Report, there can be no doubt that Kansans statewide need robust limits on the public's exposure to this harmful environmental contaminant.

The positive effects of comprehensive clean indoor air laws such as that proposed by alternative HB 2221 are also clear. Research from our own University of Kansas has shown that within one year of such laws, heart attacks in a community can be expected to decline by 17%. Further population health improvements are seen the longer these laws are in place along with reductions in associated healthcare costs. A study of the impact of strong clean indoor air laws in Massachusetts found that children who live in communities with clean indoor air laws are 40% less likely to become regular smokers than those with no laws or weak laws. If we are serious about improving our health, containing our healthcare costs, and making Kansas the best place to raise a child, then we must respect these data and allow them to guide us to an evidence-based decision.

Kansans need a state law that sets a solid foundation for secondhand smoke protection, not one that establishes a ceiling. HB 2642 would propel Kansas backward in protecting citizens from the health dangers of secondhand smoke.

Thank you for the opportunity to appear before the committee today. I will now stand for questions.

Testimony In Opposition to HB 2642
Before the House Committee on Health & Human Services
February 10, 2010

Presented by: Cindy Claycomb, Ph. D.

Chairperson Landwehr and Members of the Committee:

Kansas needs a comprehensive clean indoor air law for all workplaces and public establishments. I am part of a team of researchers that has analyzed data from a scientific, random survey of registered voters in Wichita. This study showed that over 70% of survey respondents favored a comprehensive clean indoor air law, with over 60% strongly favoring one. These results are reflected in statewide surveys also. In addition, 18% of respondents to the Wichita survey stated that they would visit restaurants and bars more frequently if these establishments were totally smoke free, while only five percent said they would visit less often. Based on their reported spending patterns, this would equate to over two million dollars more in sales revenue every month in Wichita alone. In these times of tight budgets and competition for tourist dollars, why would we want to put Kansas at a disadvantage relative to surrounding states when the majority of people want smoke-free indoor environments? I am saddened by the lack of respect shown to voters on this issue.

House Bill 2642 is a complex, smoker-friendly bill with lots of exemptions that will make enforcement difficult and citizen understanding of the law almost impossible. I know this from experience with the Wichita ordinance.

Whether you are a public health advocate or a business-rights proponent on this issue, this conclusion is undeniable: the Wichita ordinance is a confusing and complicated ordinance with various age and smoking restrictions, much like the proposed House Bill 2642. There are at least two issues when a law is not simple, strong, and fair.

First, ask owners of retail or service establishments about the specifics of the Wichita ordinance that apply to them. Most of them are confused about the various signage, smoking, and age restrictions that are in the ordinance. This same confusion would be statewide if House Bill 2642 were passed.

Second, the variety of exemptions, some of which are occasional exemptions, makes it very difficult to enforce the ordinance in Wichita. It is too great a burden on the resources of any city or of the state to enforce a non-comprehensive ordinance or law with the provisions in the Wichita ordinance. Because of the complexity of the ordinance and the different agencies involved with enforcement issues, the City of Wichita is hard pressed to ensure all establishments are adhering to the ordinance. Noncompliance reports often take months to resolve or remain unaddressed. If the Kansas legislature passes House Bill 2642, it would be spreading confusion across the state while providing no assistance to ensure that the majority of Kansans are protected from exposure to secondhand smoke.

If local communities are prohibited from strengthening smoking restrictions at the local level, it will shortchange the vast majority of Kansans who want to maintain or adopt even stronger smoke free policies in their own communities. It would take away Wichita's (and other cities') ability to improve and strengthen local ordinances—which was the intent when the Wichita ordinance was passed.

Please do not pass a state law that is convoluted and confusing. Thank you.

Cindy Claycomb, Ph. D.
151 N. Rock Island Loft 4A, Wichita, KS 67202
316-260-8999; cindyclaycomb@cox.net

My name is LARRY DOSS and I own and operate WALT'S GREAT AMERICAN SPORTS BARS AND GRILLS in WICHITA.

I am sure you will be hit today with a barrage of statistics and so called facts for all the reasons we need a state wide smoking ban. We were told that in Sedgwick county alone in 2007, fifty two people died of second hand smoke, and Gov. Mark Parkinson is quoted in the *WICHITA FOCUS MAGAZINE* that 338 died of secondhand smoke in the state last year. Do me a favor; ask for one death certificate that says cause of death is secondhand smoke. I assure you that they cannot produce even one.

They will tell you that they are concerned about secondhand smoke in the workplace, please ask them about the study that OSHA did that they do not want you to read.

On March 1st I will celebrate my fortieth anniversary as an independent businessman, Through the years I have experienced good and bad times. There are two main reasons why I have been successful, one; I pay great attention to what my customer base wants, and two; we treat our coworkers like we would want to be treated.

Ladies and Gentleman, let me sum this up in common sense, we have a front door and on that door there is a handle. If you do not like the fact that we use tobacco products in our establishment, then you do not have to pull the handle.. And also, no one is forcing anyone to be employed at WALT'S. It is amazing to me that we have these overzealous bureaucrats who feel people are not capable of making decisions on there own.

The Wichita Ordinance is good for all; it gives us the right to choose what is best for our customer base and it gives the customer the right to choose what is best for them.

Larry Doss
Walt's Great American Sports Bars and Grill
Wichita

Written Testimony in Opposition to HB 2642
Before the
House Committee on Health & Human Services
February 10, 2010

Presented by: Stanley F. Watt
Chairman, Clean Air Manhattan
Former Board Member, Kansas Lung Association
25 year, Republican Precinct Committeeman
Member, Manhattan Chamber of Commerce
2817 Arbor Drive
Manhattan, KS.
785-537-3310, stan.watt@yahoo.com

Chairperson Landwehr and members of the Committee:

I am writing in strong opposition to HB 2642. On November 4, 2008, the citizens of Manhattan Kansas strongly endorsed and overwhelmingly passed a community ballot petition ordinance "Eliminating Smoking in Places of Employment and Public Places". The community ballot vote was 9,440 (56.2%) in favor and 7,346 (43.8%) opposed. This is a 2,100 vote and 12.4% margin in favor of eliminating smoking in public places and places of employment. This ballot ordinance, with very limited exemptions, was brought by the grassroots citizens and overwhelmingly approved by the citizens of Manhattan. The citizens of Salina and Emporia approved similar ballot ordinances. HB 2642, if approved, will eliminate the will of these citizens, as well as community ordinances brought about by the elected governing bodies of at least 36 other communities in the State of Kansas.

HB 2642 also has so many exemptions contained in it that it is ineffective legislation. It is so weakened that it makes it unenforceable. The Manhattan Area Chamber of Commerce has gone on record as supporting statewide legislation prohibiting smoking indoors, with no exemptions. The fairest legislation is one that is equal across the board with no exemptions, giving no advantage or disadvantage to one business over another. The idea of allowing a business to "buy" their way out of this legislation by paying a fee is absurd and unfair to small business. Having exemptions based on filtration systems and separate rooms does not correlate with the extensive research on the effects of second hand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate secondhand smoke exposure. Cancer doesn't happen only during certain hours of operation or just to children as implied by HB 2642. The research is clear, second hand smoke kills. It causes cancer and heart disease.

The Manhattan Clean Air Ordinance, which I am sure you have reviewed, has very limited exemptions, took effect just over a year ago. Virtually all of the feedback I have received from business owners in Manhattan, including restaurant and bar owners, has been extremely positive. There is no evidence of a decline in business. In fact all indications are that their business has actually increased. I had a restaurant business owner who had opposed the ordinance seek me out to tell me how pleased he was for the passage and implementation of the ordinance. As a senior commercial lender at one of Manhattan's local banks, I have observed no ill effects of businesses in Manhattan from this citizen drawn and citizen mandated ordinance.

The people of Manhattan, Salina, Emporia, Lawrence, and Overland Park want comprehensive and complete indoor smoking ordinance. Not one like HB 2642, which is so watered down it is ineffective. Don't undermine the will of the citizens of Kansas. Follow the lead of the State of Iowa and eliminate HB 2642 and give the State of Kansas a complete and comprehensive ban on indoor smoking.

Thank you for your consideration.

Stan Watt
Manhattan CAM, Chairman

KANSAS ACADEMY OF FAMILY PHYSICIANS
CARING FOR KANSANS

February 10, 2010

To: House Health & Human Services Committee
From: Michael L. Munger, MD, President
Re: Opposing HB 2642

Chairman Landwehr and Members of the House Health & Human Services Committee:

Thank you for this opportunity to present testimony on House Bill 2642, on behalf of the Kansas Academy of Family Physicians (KAFP). Our organization has over 1,530 members across the state, of which more than 960 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 historical 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.

KAFP opposes HB 2642.

Second hand smoke is a public health issue, not just a nuisance. Second hand smoke (SHS) has been determined to be a Class A carcinogen, just as asbestos. The health effects of tobacco use are well-documented. The very sickest people seen in my office, the emergency room, and the hospital are the people who have damaged their hearts, blood vessels, and lungs through tobacco use. In the last month I have personally cared for an elderly lady in the hospital who had an exacerbation of emphysema. She never smoked, but her husband smoked in their house for 47 years before he died from lung cancer. I treated an asthma attack in a 14 year old girl whose parents both smoke, her illness the direct result of this second hand smoke exposure. Tobacco use is the leading preventable cause of death in Kansas. In Kansas, 3,900 adults die each year from their own smoking. [4,5,6] Secondhand smoke is the third leading cause of preventable death in this country. Secondhand smoke kills 290 – 520 Kansans each year. [7]

Tobacco use and secondhand smoke costs the state millions each year, and are the leading preventable health care costs in Kansas.

- $927 million in health care costs in Kansas each year are directly caused by tobacco use. [1,2,3]

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HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 20-1

- $38.9 million in health care costs in Kansas each year are directly caused by exposure to secondhand smoke.[1,2,3]
- $196 million each year of the Kansas Medicaid program's total health expenditures are caused by tobacco use.[1,2,3]

There is evidence that clean air laws help people quit tobacco use, with significant positive effects upon the health of the communities involved, as well as the health care costs of the states.[7] Kansas University School of Medicine recently published in the Journal of the American College of Cardiology an excellent analysis of the effects of comprehensive Clean Indoor Air ordinances upon heart attack rates. It shows a 17% reduction in acute myocardial infarctions (heart attacks) with the initiation of a smoking ban within the first year. In Helena, Montana, there was a 40% decline in heart attacks within the first 10 months of a smoking ban. This ban was repealed judicially, and within 6 months the heart attack rate had returned to the pre-smoking ban levels. It is estimated that there are 92,000 heart attacks in the United States yearly. With a nationwide indoor comprehensive clean air statue, there would be 156,400 less heart attacks.

Decreased tobacco use saves money – big money! Preventing just one smoking-related low birth weight baby can result in the avoidance of more than $40,000 in health care expenditures. Preventing just one heart attack can save 80,000. Multiply this savings by the 156,400 less AMI estimated by a nationwide indoor smoking ban and the savings to the health care system is tremendous.

Clean indoor air laws help people to quit or smoke less and improve their health, and they especially impact hospitality workers.

- Food service workers have a 50% greater risk of dying from lung cancer than the general population, in part, because of secondhand smoke exposure in the workplace.
- A nonsmoking worker who spends an eight hour shift in a smoking environment will inhale the equivalent second hand smoke carcinogens as if he/she actively smoked 16 cigarettes.
- The *Surgeon General's 2006 Report on The Health Consequences of Involuntary Exposure to Tobacco Smoke* concluded that, "workplace smoking restrictions lead to less smoking among covered workers". The report cited numerous studies that found "an association between workplace smoking policies, particularly more restrictive policies, and decreases in the number of cigarettes smoked per day, increases in attempts to stop smoking, and increases in smoking cessation rates."

So if all that is true of Clean Indoor Air Acts, why does KAFP oppose HB 2642? Here is why:

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Preemption: I am from Overland Park. If this bill were enacted, the comprehensive action of our city council would no longer protect our community. We would lose the protection from second hand smoke that our city leaders put into place. We need a clean, clear comprehensive state wide ban for protection of workers as well as citizens. More than 30 other communities' actions to protect citizens would also be overturned. In a state where local control is highly prized, your action to nullify the forward-thinking, progressive and protective work by many of our local communities makes no sense. Preemption by a state authority to lead to the lowest common denominator is not acceptable.

Numerous exemptions: HB 2642 has many exemptions. I have heard some denounce HB 2221 because it would exempt casino floors. However, HB 2642 exempts the entire casino. We would rather not see any exemptions at all. But if the exemption of casino floors enabled HB 2221 to make it through the Senate, we can live with it and fight that exemption another day. If you are truly concerned about that exemption we would welcome your assistance to work with us to pass HB 2221 and then fight that exemption. Yet beyond casinos, HB 2642 exempts bars, restaurants with separately ventilated areas, restaurants that choose to allow smoking during certain days and hours if children are prohibited (with no special ventilation required), tobacco manufacturing and storage facilities, any food service establishment with a physically separate smoking area (a phrase that could include any place where food is served), class A and B clubs, and charitable benefit cigar dinners.

Enforcement: Enforcing HB 2642 would be extremely difficult because so many venues are exempted or could be if certain conditions were met. There is no responsibility of enforcement by business proprietors, other than posting a "no smoking" sign and asking the smoker to stop. Failure to post a sign may result in a fine that cannot exceed $50. Someone caught smoking in a nonsmoking establishment can be fined between $50 and $300. And there is no incentive to proprietors to adhere to any smoke free policies because no penalties would be assessed to them if there are violations.

Private property rights: Some may argue that Clean Indoor Air Ordinances are an attempt to legislate morality, and "it can't be done." But think for a moment about other issues in which that is exactly what is done because of the public health and safety issues involved. We have seat belt laws. We have laws regarding drunken driving. A person's car and home is his private property. Yet the state still sees fit to require the use of seat belts and to prohibit drunk driving.

Business "rights:" Some may argue that the "right" to smoke and to allow smoking in a business is a "personal right," and that the government should not infringe upon business rights. But think for a moment about other issues in which that is exactly what is done because of public health issues

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involved. We have laws governing restaurants' requirements to provide clean water, to keep hot food hot and to keep cold food cold. We have laws requiring water safety standards. We no longer allow asbestos, also a Class A carcinogen, to be used as insulation. 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 highest degree possible by law- from secondhand smoke.

At the end of the day, the family physicians of Kansas believe Clean Indoor Air is truly a public health issue, not a private property or business owner rights' issue.

We look at the evidence and it is clear. Comprehensive Clean Indoor Air Acts will protect the health of the public. They will:

- Prompt smokers to try to quit
- Increase the number of successful quit attempts
- Reduce the number of cigarettes that continuing smokers consume
- Discourage kids from ever starting to smoke
- Help protect restaurant and bar employees and patrons from the harmful effects of secondhand smoke

In the interest of public health, KAFP strongly urges you to vote "No" on HB 2642, and to bring forth HB 2221 for a vote in the House. Thanks again for the opportunity to speak. I would be happy to stand for your questions.

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QUARTERLY FOCUS ISSUE: PREVENTION/OUTCOMES

Cardiovascular Effect of Bans on Smoking in Public Places

A Systematic Review and Meta-Analysis

David G. Meyers, MD, MPH,*† John S. Neuberger, DrPH, MPH, MBA,† Jianghua He, PhD‡

Kansas City, Kansas

Objectives A systematic review and a meta-analysis were performed to determine the association between public smoking bans and risk for hospital admission for acute myocardial infarction (AMI).

Background Secondhand smoke (SHS) is associated with a 30% increase in risk of AMI, which might be reduced by prohibiting smoking in work and public places.

Methods PubMed, EMBASE, and Google Scholar databases plus bibliographies of relevant studies and reviews were searched for peer-reviewed original articles published from January 1, 2004, through April 30, 2009, using the search terms "smoking ban" and "heart" or "myocardial infarct." Investigators supplied additional data. All published peer-reviewed original studies identified were included. Incidence rates of AMI per 100,000 person-years before and after implementation of the smoking bans and incidence rate ratios (IRRs) with 95% confidence intervals (CIs) were calculated. Random effects meta-analyses estimated the overall effect of the smoking bans. Funnel plot and meta-regression assessed heterogeneity among studies.

Results Using 11 reports from 10 study locations, AMI risk decreased by 17% overall (IRR: 0.83, 95% CI: 0.75 to 0.92), with the greatest effect among younger individuals and nonsmokers. The IRR incrementally decreased 26% for each year of observation after ban implementation.

Conclusions Smoking bans in public places and workplaces are significantly associated with a reduction in AMI incidence, particularly if enforced over several years. (J Am Coll Cardiol 2009;54:1249–55) © 2009 by the American College of Cardiology Foundation

Secondhand smoke (SHS) increases the risk of acute myocardial infarction (AMI) by 25% to 31% (1–5). In countries where smoking prevalence is high, for example, Britain 50% (6), Europe 62% (7), and Greece 156% (8), versus 22% in the U.S. (2,9), AMI in nonsmokers is particularly increased. The dose-response relationship between SHS and AMI is nonlinear, increasing rapidly even at low concentrations (10–12). Bans on smoking in public places and workplaces have been instituted in several countries, 32 U.S. states, and many cities and counties in the U.S. We performed a systematic literature review and meta-analysis to estimate the overall effect of public (workplace and public place) smoking bans on the risk of AMI in the general population.

Methods

We searched PubMed, EMBASE, and Google Scholar from January 1, 2004, through April 30, 2009, using the search terms "smoking ban" and "heart" or "myocardial infarct" and reviewed pertinent bibliographies. One unpublished abstract and 1 nonpeer-reviewed report were excluded, leaving 11 peer-reviewed published studies concerning 10 geographic locations. Duplicate data abstracting was performed by 2 authors (D.G.M. and J.S.N.). Only AMI cases were included (some investigators supplied additional data), except where the case definition was acute coronary syndrome (ACS), which required an elevated serum troponin.

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To avoid duplicate cases (Piedmont and Latium [Rome] were separately reported), only the regions of Fruili Venezia Giulia (Trieste) and Campania (Naples) were analyzed from the Italian study of 4 regions. Results were converted to incidence rates (new cases/100,000 person-years) using the most recent official census and including all age groups.

Meta-analysis used the random-effects model in the *metan* statistical package in STATA version 10 (Stata Corp., College Station, Texas) (13) because heterogeneity was significant in the fixed effects model ($p < 0.001$). Unlike previously pub-

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Abbreviations and Acronyms

ACS = acute coronary syndrome
AMI = acute myocardial infarction
CI = confidence interval
ICD = International Classification of Diseases
IRR = incidence rate ratio
SHS = secondhand smoke

lished meta-analyses, which used average yearly incidence rates (14,15), we weighted studies by person-years, thus considering both population size and duration of observation, and assumed that the incidence of AMI satisfied a Poisson process (16). Because the funnel plot showed systematic heterogeneity among the study results, we performed a meta-regression analysis using the *metareg* package of STATA 10 to examine whether the estimate of incidence rate ratio (IRR) depends on such factors as post-ban duration, population size, or region (U.S. or non-U.S.).

Results of the Systematic Review

Abstractor agreement was 100%. Results are summarized in Table 1. All studies reported decreases in incidence (at least in a subgroup), with the largest decreases observed in the U.S. Table 2 lists important study parameters based on the Newcastle-Ottawa scale (17). No study had all parameters, although the Scotland study had nearly all. All studies excluded transients and matched observation periods by season.

Helena, Montana. This community of 47,154 persons passed a ban on public smoking (all but 2 businesses complied) in June 2002, which was judicially suspended in December 2002 (18). Investigators screened cases of AMI by International Classification of Diseases (ICD) 9th Edition codes (410xx) and confirmed cases by chart review (criteria not published). Incidence decreased from 170 to 102 cases/100,000 person-years, then returned to baseline, a 40% temporary decline. In the surrounding area, incidence increased from 118 to 172 cases/100,000 person-years, an increase of 46%. This was the first study of a public smoking ban and the only study to include data from after a ban was suspended.

Pueblo, Colorado. Pueblo (population 103,648) banned smoking in bars, restaurants, bowling alleys, and business establishments, whereas Colorado Springs (population 370,448), 45 miles distant in El Paso County, did not (19). Cases included a primary diagnosis of AMI by ICD-9 code 410xx (with no confirmation by biomarkers) for 18 months before and the initial 18 months during ban enforcement. During the ban, AMI incidence in the city of Pueblo decreased by 27% (257 to 187 cases/100,000 person-years, IRR: 0.73, 95% confidence interval [CI]: 0.64 to 0.82). The surrounding Pueblo County (noncity population 44,103) decreased 15% (135 to 115 cases/100,000 person-years, IRR: 0.85, 95% CI: 0.56 to 1.14). Adjacent El Paso County (population 550,478) experienced a 4% decrease (157 to 150 cases/100,000 person-years, IRR: 0.96, 95% CI: 0.87 to 1.04). An additional 18 months of observation noted a further 19% reduction in Pueblo City (152 cases/100,000 person-years) for an overall 3-year reduction of 41% (IRR: 0.59, 95% CI: 0.49 to 0.70) with no reduction in either Pueblo County (IRR: 1.03, 95% CI: 0.68 to 1.39) or adjacent El Paso County (IRR: 0.95, 95% CI: 0.87 to 1.03) (20). This study used well-separated communities and shared the longest observation period.

New York State. Many communities in New York State (population 18,976,457) had banned public smoking, and the state had increased taxation on tobacco before the July 2003 implementation of a statewide ban on work and public smoking (bars, restaurants, and hospitality venues) (21). A statewide database (252 hospitals) was searched for the primary diagnosis of AMI cases (ICD-9 codes 410.0 to 410.99 with no biomarker confirmation) for 1995 through 2004. The AMI incidence decreased 8%, from 483 (46,332 cases) to 445 cases/100,000 person-years (45,412 cases). Compliance with the ban was 93%. Had there been no local laws, the comprehensive state law would have been associated with a 19% decline in admissions. From 2002 to 2004, New York City smoking prevalence decreased from 21.5%

Table 1 Summary Results of Smoking Bans

Ban Location	Population Exposed to Ban	Post-Ban Observation Period (Yrs)	Pre-Ban Rate*	Post-Ban Rate*	Incidence Rate Change in Ban Area	Incidence Rate Change in Non-Ban Area
U.S.						
Helena	68,140	0.5	170	102	−40%	+46%
Pueblo	698,229	3.0	257	152	−41%	−5%
New York	18,976,457	1.0	483	445	−8%	None
Indiana	239,332	1.5	14	7	−50%	−20%
Ohio	29,636	3.0	277	223	−20%	−5%
Canada						
Saskatoon	202,340	1.0	176	152	−13%	None
Europe						
Piedmont	~4,300,000	0.5	200	204	+2%†	None
Rome	2,663,182	1.0	252	253	0%‡	None
Italy	7,033,451	0.2	159	149	−6%	None
Scotland§	~3,000,000	0.8	129	107	−17%	−4%

*Cases per 100,000 person-years. †The acute myocardial infarction incidence decreased 9.8% in those age <65 years and increased 6.2% in those age >65 years. ‡The acute myocardial infarction incidence decreased 11% in those age <65 years and decreased 8% in those age 75 to 84 years, particularly among men. §The end point was acute coronary syndrome.

Table 2 Important Study Parameters

Location	Prospective Design	Population >1 Million	Follow-Up >1 Yr	AMI Primary Diagnosis	Case Smoking Status Ascertained	SHS Measured	Compliance With the Ban	Smoking Prevalence	Contemporaneous Controls
U.S.									
Helena							×		×
Pueblo			×	×					×
New York		×	×	×		×	×	×	
Indiana			×		×				×
Ohio			×	×					×
Canada									
Saskatoon			×	×			×	×	
Europe									
Piedmont		×		×		×	×	×	
Rome		×	×			×		×	
Italy		×		×					
Scotland	×	×		×	×	×	×		×

AMI = acute myocardial infarction; SHS = secondhand smoke.

to 18.5% (22). Exposure, as measured by salivary cotinine, decreased 47% (23). This is the largest population studied.

Monroe County, Indiana. Monroe County (population 120,563) banned smoking in all restaurants, retail outlets, and workplaces in 2003, but excluded bars until 2005 (24). Delaware County (population 118,769), 90 miles distant, did not restrict smoking. Cases during 18 months before and during the ban were ascertained by ICD-9 codes for primary and secondary diagnosis of AMI (410.0x to 410.9x) and confirmed with biomarkers. Patients with a ". . .past cardiac procedure. . ." or who had ". . .comorbidity such as hypertension and high cholesterol that could have precipitated acute myocardial infarction. . ." were excluded (24). Case smoking status was ascertained. The AMI incidence decreased 50%, from 14 to 7 cases/100,000 person-years. The Delaware County rate of 15 cases/100,000 person-years declined by 20% to 12 cases/100,000 person-years. The reduction was primarily among nonsmokers, whose admissions decreased 70% (−12 cases, 95% CI: −21.2 to −2.8). The exclusion of subjects with prior cardiac procedures or risk factors likely reduced AMI incidence.

Bowling Green, Ohio. Investigators compared admissions for coronary heart disease (ICD-9 codes 410 to 414 and 428 including angina, heart failure, atherosclerosis, and AMI with no biomarker confirmation) in Bowling Green, Ohio (population 29,636), which banned smoking in workplaces and public places except bars, to admissions in Kent, Ohio (population 27,906), 150 miles distant with no ban (25). Hospital discharge data for 3 years before and after the ban (6 months immediately after ban implementation were excluded) for cases in the 2 cities were obtained from a state database. The AMI incidence in Bowling Green decreased by 19%, from 277 to 223 cases/100,000 person-years ($p = 0.015$). Incidence in Kent did not significantly change (440 cases/100,000 person-years in 1999 to 2002 and 417 cases/100,000 person-years in 2003 to 2005, $p = 0.22$). This study shared the longest observation period. Only AMI data supplied by the investigators were used.

Saskatoon, Canada. Saskatoon (population 202,340) implemented a smoking ban in all enclosed public places and outdoor seating areas in July 2004. The AMI cases (ICD-9 410.00 to 410.92 and ICD-10 121.1 to 121.9) in the database of the Strategic Health Information Planning Service were identified (no biomarker confirmation) for 1 year during the ban and for the previous 4 years (26). Compliance was 99%. Incidence of AMI decreased 14%, from 176 (95% CI: 165 to 187 cases/100,000 person-years) to 152 cases/100,000 person-years (95% CI: 135 to 169 cases/100,000 person-years). Smoking prevalence was 24% in 2003 and 18% in 2005.

Piedmont, Italy. Italy banned smoking in cafes, restaurants, bars, and discos in 2005. Investigators used ICD-9 codes (410.xx) in the Hospital Discharge Registry of the Piedmont region (population 4,300,000) to identify AMI cases (no confirmation) before and during 5 months after ban initiation (27). Before the ban, an average of 3,581 AMIs were reported between February and June (200 cases/100,000 person-years). During the comparable 5 months of ban enforcement, 3,655 cases were reported (204 cases/100,000 person-years). A decrease was observed only among women <60 years of age (women IRR: 0.75, 95% CI: 0.58 to 0.96; men IRR: 0.91, 95% CI: 0.83 to 1.01). Cases in persons >60 years of age were unchanged (IRR: 1.05, 95% CI: 1.00 to 1.11). The ban was almost universally observed (28), nicotine vapor in public places decreased 90% to 95% (29), cigarette sales declined 8.9% (28), and cigarette consumption decreased 7.6% (28). The investigators suggested a greater effect of the ban on younger people and a lower attributable risk of AMI from smoking among older people (27). This study provided age- and sex-specific data.

Rome, Italy. Investigators in Rome (population 2,663,182), using 2 databases, identified all hospital admissions with a primary or secondary diagnosis of ACS, including AMI (ICD-9-CM code 410.xx without biomarker confirmation)

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or other forms of ischemic heart disease (ICD-9-CM code 411) and all out-of-hospital deaths caused by ischemic heart disease, among persons >34 years of age before and after enactment of the smoking ban (30). Pre-ban incidence was 252 cases/100,000 person-years. During the ban, incidence was 253 cases/100,000 person-years. Incidence decreased significantly in 35- to 64-year-old men (IRR: 0.89, 95% CI: 0.85 to 0.93) and in 65- to 74-year-old men (IRR: 0.92, 95% CI: 0.88 to 0.97), but not in 75- to 84-year-old men (IRR: 1.02, 95% CI: 0.98 to 1.07). Among women (30% of AMI cases), the decrease was confined to the young (IRR: 0.90, 95% CI: 0.81 to 1.00 in 35- to 64-year-old women and IRR: 0.95, 95% CI: 0.88 to 1.04 in 65- to 74-year-old women). Decreases occurred in indoor particle and urinary cotinine concentrations and per capita cigarette sales, whereas nicotine replacement product sales increased (31,32). This study adjusted for several confounders, including weather and temporal trends. The meta-analysis used AMI data supplied by the investigators.

Four regions, Italy. The Italian Health Ministry used regional databases to identify cases (age 40 to 64 years) discharged with AMI (ICD-9 code 410.xx, no biomarker confirmation) in 4 regions of Italy with 16,995,734 people (Piedmont, Friuli Venezia Giulia, Latium, and Campania), representing 28% of the Italian population, during corresponding 2-month periods before and during the national ban (33). The AMI incidence decreased 6%, from 159 to 149 cases/100,000 person-years. The preceding years had increasing rates. Reduction in incidence was limited to 45- to 54-year-old men, an 8% decrease. No sex or age group experienced an increase in AMIs. This study had the shortest observation period. The meta-analysis excluded the regions of Piedmont and Latium (Rome), reported separately (27,30).

Scotland. Since March 2006, smoking has been prohibited in all enclosed public places in Scotland (population 5.1 million). Investigators identified all patients admitted to 9 hospitals (catchment area included approximately 3 million persons, accounting for 64% of the country's hospital admissions) for a diagnosis of ACS from June 2005 through March 2006 and for the corresponding 10 months after ban institution (34). An ACS was defined as chest pain with "a detectable level of cardiac troponin," routinely measured in all cases of chest pain. Case smoking status was ascertained by self-report and serum cotinine levels, which allowed estimation of passive exposure to SHS. Results were compared with admissions in England, which did not have a ban. In the 10 months before the ban, 3,235 patients were admitted. After the ban, 2,684 patients were admitted, a 17% decrease (95% CI: 16% to 18%). England experienced a 4% decrease. In Scotland, admissions decreased by 14% in smokers, 19% in former smokers, and 21% in never smokers. The investigators estimated that 67% of the admissions prevented involved nonsmokers. Nonsmokers reporting exposure to SHS decreased from 43% to 22%. Serum cotinine levels decreased by 18%. Compliance was 98%: SHS in bars decreased by 86% within 2 weeks of ban implementation (35). This is the only prospective study and used both direct and indirect measurement of exposure.

Results of the Meta-Analysis

As shown in Figure 1, the overall IRR comparing AMI before and after smoking bans is 0.83 (95% CI: 0.75 to 0.92), indicating that smoking bans on average reduced AMI incidence by 17%.

To further examine the adequacy of a random-effect meta-analysis, a funnel plot of the estimated IRR versus the standard error of natural log of IRR was obtained (Fig. 2).

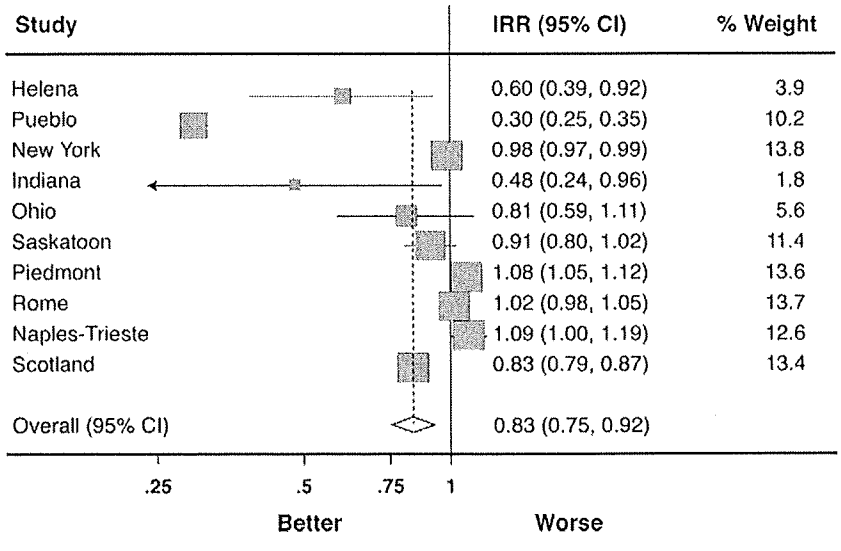

Figure 1 **Effects of Community Smoking Bans on Incident Acute Myocardial Infarction (Person-Year Approach)**

Meta-analysis results for 11 studies in 10 geographic locations. CI = confidence interval; IRR = incidence rate ratio.

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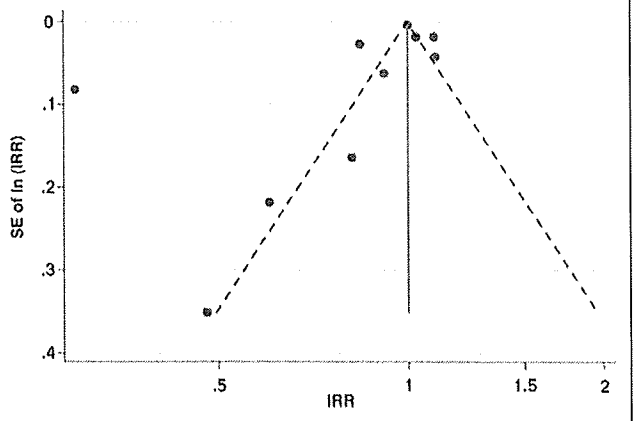

Figure 2 **Funnel Plot of Estimated IRRs**

A funnel plot with all points evenly distributed on both sides of the **solid vertical line** indicates no publication bias. In this plot there are more points to the **left of the vertical line**, suggesting heterogeneity caused by either variation in length of observation or publication bias. IRR = incidence rate ratio.

The funnel plot shows asymmetry, indicating either publication bias or heterogeneity that cannot be explained by a random-effect meta-analysis. Contact with other investigators has not indicated the presence of unpublished peer-reviewed studies. Meta-regression modeling showed that heterogeneity is at least partially explained by variation in population size and observation duration.

We notice that studies with smaller effect sizes (IRR close to 1.0) include all non-U.S. studies and the New York State study, all of which have large populations and short post-ban durations (≤1 year). Meta-regression analysis was used to examine whether region (U.S. or non-U.S.), population size, and post-ban duration affect IRR. When tested separately the effect of population size is not significant ($p = 0.19$), whereas both post-ban duration ($p = 0.002$) and region (U.S. vs. non-U.S., $p = 0.03$) are significant. Post-ban duration becomes borderline significant ($p = 0.096$) and region becomes not significant ($p = 0.399$) when they are included in the same model. Because the effect of bans may not be maximal in ≤1 year, it is likely that post-ban observation time is inversely related to IRR (effect size). This relationship is shown in Figure 3, in which the trend line illustrates the overall relationship between the estimated IRR and post-ban duration estimated by meta-regression analysis. The size of each bubble is proportional to the weight of the study (the inverse of the standard deviation of the natural log of IRR). The coefficient of post-ban duration in the meta-regression model is −0.30 (95% CI: −0.49 to 0.11), meaning that the IRR decreases by 26% (95% CI: 10% to 39%) for each year of post-ban observation (e.g., IRR: 0.74 after 1 year, then 0.55, then 0.41 compared with pre-ban).

Discussion

This meta-analysis of 11 studies in 10 locations suggests that community smoking bans are associated with an overall 17% reduction in risk of AMI. This is consistent with reductions of 5% to 19% predicted by modeling (36,37). A meta-analysis of the 4 earliest studies reported a relative risk (RR) of 0.73 (14). Subsequent meta-analysis by the same author (15) included 8 studies (including an unpublished report noting an 11% decrease in ACS (38), which was not used in the current analysis) and yielded a pooled risk reduction estimate of 19% (95% CI: 14% to 24%). The large studies from the Italian Piedmont (27), 4 regions (33), and Scotland (34), which observed smaller effects than the earlier American studies, had not yet been published.

In New York, local laws were enacted beginning in 1995, before the implementation of a statewide law on July 24, 2003. Our analysis may capture only the additive effect of this state law, in addition to local laws, rather than the cumulative effect of local and state laws together. Because 1995 is the year within 1995 to 2004 that is affected the least by local laws, we reanalyzed the data using only 1995 as the pre-ban period, versus 2004 as the post-ban period. The estimated IRR for New York State is only slightly smaller than the original estimate based on all data within 1995 to 2004 (0.97 vs. 0.98).

The evidence for an association between smoking bans and reduced AMI incidence is strengthened by beneficial changes in several intermediate factors: high levels of compliance with bans (28,35,39), decreased smoking prevalence and sales of tobacco (20,28,32), improved air quality (29,31,35), and reduced environmental exposure to tobacco smoke (28–30,35,40). Noteworthy is the Helena study (18), which documented a return to the pre-ban AMI incidence rate in the 6 months after suspension of the ban.

Two studies determined the smoking status of AMI cases (24,34). The Indiana study (24) observed a 70% decline in nonsmokers compared with no change among smokers,

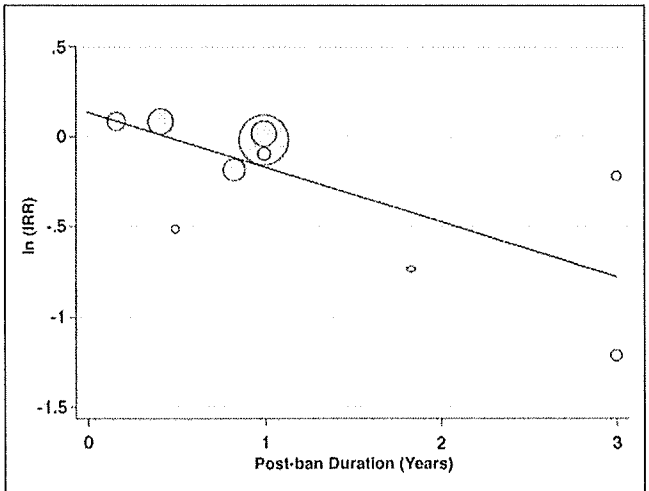

Figure 3 **Bubble Plot of Estimated Effects of Smoking Bans (Log of IRR) and the Post-Ban Duration (Years)**

The **size of the bubbles** indicates the weight of each study in the meta-analysis. The **trend line** indicates the degree to which the incidence rate ratio (IRR) decreases as the duration of the post-ban period increases.

whereas the Scottish study (34) noted a 19% to 21% decrease in admissions among nonsmokers and a 14% decrease among smokers.

The Italian 4 regions study (33) observed a reduced risk in men only, whereas the Piedmont region (27) and Scotland (34) studies experienced a larger decrease in women. A greater benefit in men might be attributed to their higher prevalence of smoking, allowing for a larger percentage to quit. In Italy, men were more likely than women to quit smoking after the ban (41). Because the workforce has proportionately more men, workplace bans might have a greater effect on SHS exposure among men. Yet, a greater post-ban reduction in serum cotinine levels in nonsmoking women (47%) compared with men (37%) in Scotland (34) suggests that exposure decreased more among women. The relative risk associated with smoking is greater in women than men and has a steeper dose response (42).

A greater effect in younger individuals was noted in the studies that evaluated age-specific incidence (27,30,33,34). Smoking bans encourage cessation particularly among young smokers (43–45). Older individuals might benefit less from smoking restrictions in the workplace, bars, and discos. As risk of AMI associated with smoking decreases with age, the largest effect of eliminating SHS would occur in younger persons.

The smaller effect size in the 5 non-U.S. studies (RR: 0.95 vs. 0.75) may be partially explained by their shorter post-ban observation time. Additional causes might include differences in AMI case definition (although a uniform definition has been suggested [46]), lifestyle and diet, smoking prevalence (U.S. 22.1%, Canada 21.3%, Europe 30.0%), and compliance. Yet, studies from Italy (47) and Ireland (48) indicate substantial reductions in SHS exposure.

The beneficial effect of smoking bans seems to be rapid, with declines in AMI incidence within 3 months (33). Among smokers, incident ACS is reduced within days after smoking cessation (11,41). In nonsmokers, even brief exposure to SHS has been associated with changes in platelet activation (49–51), vascular elasticity (52), endothelial function (53), heart rate variability (54), and lipid metabolism (55,56), supporting the biological plausibility of smoking bans' effect on AMI.

The 11 studies are all ecological in design. Such a design is primarily hypothesis generating. Many of these studies differ in case definition, SHS exposure information, smoking prevalence data, and case confirmation. Many were of short-term duration.

The advantage of person-year analysis in the current study is that analysis is based on the actual total counts of AMI events rather than the estimated average rate. Thus, the total variation of incidence over time is considered. One population estimate for each region was used regardless of the pre- and post-ban observation times. This may explain why our estimates of IRR are sometimes different from the RR based on average age-adjusted rate as published in the original reports. With the limited number and durations of studies, we are unable to ascertain whether the IRR changes associated with post-ban observation time follow a nonlinear pattern, as suggested by the dose-response relationship of SHS to AMI (10–12).

A non–peer-reviewed working paper (57) used U.S. databases and smoking ban implementation dates to model the effect of workplace and public place smoking bans on mortality and AMI admissions. The investigators found no significant effect of these bans in any outcome for any age group. The investigators suggest that the observed benefits in other studies are attributable to the wide variation in incidence related to small samples.

Although additional reports can be expected (e.g., Ireland and France), the 11 reports included represent the current findings. These studies include nearly 24 million people, observed 215,524 cardiac events, and suggest that community smoking bans are associated with a 17% reduction in AMI incidence. If this association represents a cause-and-effect relationship, and assuming approximately 920,000 incident AMIs each year in the U.S., a nationwide ban on public smoking might ultimately prevent as many as 156,400 new AMIs yearly.

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Key Words: smoking ▪ myocardial infarct ▪ public health ▪ secondhand smoke ▪ incidence.

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Testimony In Opposition to HB 2462
Before the House Committee on Health & Human Services
February 10, 2010

Presented by Roger L. Smith

Chairperson Landwehr and Members of the Committee:

For the record, my name is Roger Smith; I reside at 132 S. Edwards, in Wichita. I wish to speak in opposition to House Bill 2462.

While I urge you to consider the science, financial data, and public opinion findings that all support a more comprehensive measure than House Bill 2462, I won't take up your time by restating them. The public health questions have been answered, and the decision you now face is purely political. It's a matter of whose interests are served, and whose are ignored. This is not an opportunity for a "win/win" compromise, but rather a "lose/lose" scenario.

I believe that many who support House Bill 2462 do so in an attempt to derail or delay more meaningful legislation; they would really prefer no action at all. Those desiring a comprehensive clean indoor air law view House Bill 2462 as being little better than our current situation, and a step backward for many of the communities who have passed meaningful local ordinances.

House Bill 2462 contains many elements of Wichita's flawed local ordinance. I would caution you against making the mistakes that the city council in my hometown made. Despite what some would have you believe, ours is not a "model" for Kansas to adopt.

Clean indoor air advocates in Wichita aren't happy with our local ordinance; it is less than we deserved, and we hold our Council responsible. Opponents of our ordinance aren't happy either; they view any regulation, no matter how well justified, as an infringement on their rights. House Bill 2462 will be viewed similarly.

Enforcement of Wichita's ordinance is difficult; the complicated language leads to varying interpretations, valuable staff time is expended unnecessarily, and businesses don't fully understand what is required of them. House Bill 2462 will be equally difficult to enforce, and will consume scarce resources at the worst possible time.

Under Wichita's current ordinance, workers in some businesses are forced to choose between their long term health and this week's paycheck. They can't always go elsewhere. House Bill 2462 will deny protection to food service and bar employees statewide.

In addition to the deficiencies listed, House Bill 2462 will preempt implementation of more stringent local regulations. Valuable public health protections that have been put in place by a number of cities will cease to exist.

It's been said that House Bill 2462 is an improvement over what we now have, and that it is better than nothing. "Better than nothing" has never been an appropriate standard for public health policy. Please give your constituents what they want, deserve, and expect.

BOB STRAWN

February 9, 2010

Testimony opposed to House Bill 2642 before the House Committee on Health and Human Services

I give this statement as Mayor of Manhattan, a Republican, a business manager, and citizen of Kansas. Although I strongly support a statewide ban on smoking in public places, I vigorously oppose proposed House Bill 2642.

My primary concern with this bill is that it would override Manhattan's smoke-free ordinance which was passed by citizen petition in 2008. This ordinance continues to receive broad public support in our town. To overturn it now would be a slap in the face of our community which voted by a 2 to 1 margin for its implementation.

At a time when we struggle with issues of financial forbearance, it seems odd to me that we would waste your energy and resources in an attempt to overrule the principle and practice of home rule on this important issue of public health.

I urge you to move forward with smoking legislation that meets the expectations of the majority of Kansans.

Respectfully,

Bob Strawn

RJS/s

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HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 23-1

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Written Testimony Opposing Kansas House Bill 2642
House Health and Human Services Committee
Wednesday, February 10, 2010

Rather than take the lead and seize momentum created by the first few dozen local Clean Indoor Air ordinances in the state, the Kansas legislature has as yet to perform its duty to protect the health of its citizens. Several policy makers have offered the opinion that wasn't the State's responsibility to "let the local governments off the hook" in this important of clean indoor air.

As a result, citizens in many additional Kansas communities, small and very large, have organized and promoted Clean Indoor Air ordinances. Typically incorporating results of the most recent and accurate health and financial data, newer ordinances have generally approached the ideal of a truly comprehensive approach to this issue. In a wonderful testament to the democratic process, healthy and orderly discussions led to enactment of ordinances at the local level, as requested by some legislators.

"Topeka" said "Show me what you can do at the local level," and it was done. The same discussions and arguments that you might entertain here have played out before Kansans at the local level for more than ten years. The voices of Kansas have spoken in unison – the majority of Kansas want Clean Indoor Air, free of involuntary exposure to tobacco smoke.

The natural next step, as evidenced in so many other states in the Union, including most of our neighbors, as well as in a growing number of *entire countries*, is to pass a statewide ordinance. Such brings a uniformity of custom across the State and allows local citizenry to not have to take the time and money to duplicate the same type of ordinance.

A statewide ordinance protects its citizens from a known health hazard that costs us many dollars as well as lives. To NOT have enacted such legislation by this time, with all the irrefutable evidence that tobacco exposure is detrimental to our health and economic fortunes, borders on gross dereliction of duty to protect the State's health and financial interests. If this was a previously unknown hazard, the situation could be excused … …. but this public health issue has been known for years.

HB 2642 is a poorly, yet cleverly, conceived masquerade of a Clean Indoor Air ordinance. There is the potential for much negative fallout from having to even *consider* this bill, let alone passing it.

1. Because HB 2642 is so much weaker than most local ordinances already in existence, and pre-empts them, this type of law if enacted would be telling the same local citizens and governments upon whose shoulders it rested the burden of coming up with ordinances in the first place, that their hard work and commitment to "the process" isn't valuable and should be discarded. This will turn citizens away from future civic involvement at the local level. Our cities and towns need an invigorating infusion of local activism, not apathy and resentment borne from an "it really doesn't matter what I think" attitude.

2. The number of exemptions identifies some workers, more often than not at the lower end of the wage scale, and more often minorities and inexperienced younger workers, that their health is not as important as others. Rich or poor, asbestos, DDT, and lead paint are *verboten* – tobacco smoke exacts a toll greater than all three of these known poisons.

3. HB 2642 is at least fifteen years out of date considering the knowledge that is now available and the wealth of other city and state ordinances that could have been used as models. What was used as the reference or framework for this? This bill, in health and financial terms, will keep Kansas the butt of jokes on late night television for years to come. When I lived elsewhere, I used to laugh at those jokes; I take personal offense at them now.

4. This bill suggests the drafters will, or have, fallen for the same false claims of economic ruin that have been used every time this issue comes up. Data, real data, shows that businesses generally do better. People who don't smoke (more than three quarters of our population, by the way) are more likely to patronize a business with clean indoor air. I can only hope than no legislator still doubt the health impact of tobacco. There is no way to mix smoking and non-smoking sections under the same roof, or to remove the residue in the same room for non-smoking "hours." Many legislators have travelled to places with comprehensive ordinances and experienced how vibrant restaurants, bars, and other businesses are. Don't just take my word for it.

5. It hasn't taken long for insurance companies to realize that smokers were causing a disproportionate financial drain on profits. They are now proactive in encouraging people to quit, but failing that, are charging higher premiums for people who smoke. Why should our government financial planners view this any differently? There are healthcare dollars to be saved down the road.

Individual House members may not realize these savings during their present term. Frankly, and with all due respect, five years or so down the road most people will have long forgotten who was on this committee or in the House at large, if a good bill is passed. What they will remember is that the "State Legislature" has the foresight to enact

legislation that didn't cost anything to put into action, improved health, saved lives also and saved many millions of dollars in State expenditures. (Anyone looking ahead for solutions to future school funding crises?) Here's some free money.) It is *fiscally* irresponsible to not pass a legitimate comprehensive Clean Indoor Air ordinance. Personal political gain should take a back seat to sustaining the viability of our state.

6. Please don't ignore the well intentioned efforts of the many Kansans who have worked the system and expressed their opinion, through local legislation, on this issue, just as state policy members have asked them to. Please don't insult the intelligence of Kansas voters by even considering HB 2642 any further. I know that this bill is not the best Kansas can do.

Respectfully,

Trent W. Davis, M.D.

February 10, 2010

The Honorable Brenda Landwehr
Chair, House Health and Human Services Committee
Kansas State Capitol
10th and Jackson, Room 151-S
Topeka, Kansas 66612

Re: Written Testimony in opposition to House Bill 2642.

Dear Representative Landwehr:

I am part of the vast majority of Kansans that support a strong statewide bill. Everyone deserves the right to breathe clean indoor air. I am writing today to urge you to support comprehensive smoke-free legislation.

The numbers show that this is becoming more of an issue for non smokers as we do not appreciate having to eat or enjoy an evening out with friends in a cloud of smoke. As a child I was always embarrassed when my friends would smell the cigar smoke on my clothes if my Daddy drove me to school. It didn't seem like a big deal but still it bothered me. Luckily I am not and never have been a smoker and went through the time when I was scoffed at for wanting to set in the non smoking area even though you could still smell the smoke. Besides the fact it is terrible for your health. I feel that if you must smoke you should smoke in a smoking area and not in a general public area. It seems to me that that has become more the normal, so I see no reason to not request all of the above places to request non smoking.

Help make Kansas a better place to live and breathe by helping to pass HB 2221, and not HB 2642.

Sincerely,

Ms. Judi Ol'Grady
1309 Locust St
Eudora, KS 66025-9553
(785) 766-6060

Cc: Kansas House Health and Human Services Committee
Rep. Dave Crum - Vice-Chair
Rep. Scott Schwab
Rep. Lana Gordon
Rep. Ann E. Mah
Rep. Marc Rhoades
Rep. Clark Shultz
Rep. Don Schroeder
Rep. Peggy L. Mast
Rep. Ed Trimmer
Rep. Gail Finney
Rep. Jim Ward
Rep. Bill Otto
Rep. Phil L. Hermanson
Rep. Geraldine Flaharty
Rep. Aaron Jack
Rep. Jim Morrison
Rep. Jill Quigley
Rep. Cindy Neighbor
Rep. Dolores Furtado
Rep. Mike Slattery
Rep. Valdenia C. Winn
Rep. Owen Donohoe

TO: HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
REPRESENTATIVE BRENDA K. LANDWEHR, CHAIR

FROM: TONIA CARLSON
PAXICO, KANSAS

DATE: FEBRUARY 10, 2010

RE: HB 2642 – KANSAS NONSMOKER PROTECTION ACT

Good morning. My name is Tonia Carlson and I am a volunteer for the American Cancer Society and its sister organization the Cancer Action Network. We are working hard to encourage the passage of HB 2221, the Smoke Free Kansas bill.

I would like to tell you a little bit about myself. I am a mother of 2, a high school biology and anatomy teacher and am working on my Masters degree in biology. I have volunteered for ACS for 9 years, being the chairperson of the Relay for Life committee in my community for 6 of those. As part of ACS CAN, I have been to Washington DC to speak to our federal representation about the FDA tobacco bill and numerous other priorities on behalf of those fighting cancer.

I tell you all this because tobacco legislation is an important issue for me. I am a smoker. That may sound counterintuitive, but it isn't. I have been smoking since I was 15- a total of 21 years, give or take. I am fully aware of the negative health consequences of smoking, and often practice the "do as I say, not as I do" logic, holding myself up as Nan example of the choices one SHOULDN'T make.

I am an expert at quitting smoking since I have done it so MANY times. It is the "staying quit" that I haven't got a handle on yet. The tobacco industry it working hard to keep me a smoker by manipulating the nicotine and other addictive substances in cigarettes to make quitting harder than ever, and I can give you all kinds of excuses as to why I haven't succeeded in becoming a non-smoker. But I won't. I know it can be done.

Many people have succeeded where I have failed. And I will continue to wage my personal battle against my addiction to nicotine until I too have won.

All the measures being taken to discourage young people from smoking are a good thing, and while it hurts my pocketbook to pay higher taxes for my cigarettes, I gladly pay it in hopes that it will keep other 15 year-olds from following my path. The legislation being considered currently, to make Kansas a smoke-free state has my wholehearted approval as well. Being a mother, I chose long ago to take my bad habit outside. I have no desire to make my children suffer the direct effects of my second-hand smoke, so I do not smoke in my house or in my car when they are there, nor do I take them to businesses that allow smoking inside. I even step outside to smoke when I am not required to, partly out of habit, and partly because I respect the choices of others to be non-smokers and try to be considerate of them. I believe there are many smokers who feel as I do, and do not wish to impose our lifestyle choices onto others. Just because we pollute ourselves does not mean we want to pollute others. Yes, it is uncomfortable in the cold and the wet, but most businesses in the communities that have already passed smoking bans have done a great job of providing outside areas for their smoking clientele, and those are the places I choose to give my business to.

Sometimes the rights of the individual are superseded by the rights of the majority, and this is one of those times. Kansans who smoke are a minority, and that number continues to decrease. My right to smoke is less important that the right of every Kansan to breath air free of second-hand smoke. And until I succeed in kicking this bad habit, I am more than happy to take it outside.

Thank you.

House Committee on Health & Human Services

February 10, 2010

Presented by: Jeffrey Haaga,

Abilene High School Student, Abilene Ks.

Chairperson Landwehr and Members of the Committee:

My name is Jeffrey Haaga and I am a senior at Abilene High School. I am standing before you today, because we are facing a major battle on a very important issue, a smoking ban. I'm sure that you will be hearing a lot of arguments for and against this issue. I am here as a proponent of a strong smoking ban throughout our state. Throughout this speech I will focus on the health issue of smoking, the rights issue, and will end with the common sense issue.

Second hand smoke is a health issue. I first became involved in a smoking ban in my community after my grandma was diagnosed with cancer. I fought for the smoking ban, because people with health conditions such as allergies and cancer should be able to go out and enjoy a nice meal or drink without having to worry about the thirty plus shots or how sick they will become if they are exposed to second hand smoke. We need to stand up and give all people the right to enjoy life whether they have health problems or not.

Now many opponents to the smoking ban will throw out the rights card. Well doesn't a nonsmoker have the right to not be exposed to second hand smoke? What people need to realize is that we are not banning smoking all together, but we are providing a safe place for both smokers and nonsmokers to go. As for the business rights issue, I find it just to be a joke. If businesses had the right to do what they want to do why do we have health standards? Honestly, Would you go to a business that doesn't pass a health inspection? Why not? What's the difference with smoking? I think that businesses should have the right to run and operate their own business as they wish until they go over the line by putting their employee's health at risk. As a senior I am preparing the next stepping-stone of my life. That next stepping stone is college. I am also going to be searching for a job to help pay for my expenses. One place that I am considering is at a business where I can earn the most money, which will probably be at a restaurant. Now, shouldn't I be able to work somewhere it won't hurt my health? As you can see this rights issue is a ridiculous never-ending argument and is not a good argument against the ban. I hope that you will step up and realize that this argument is just another tobacco lobbyist's excuse to get out of smoking bands.

As a representative, each of you was voted in to office by your constituents. With most of Kansas supporting a smoking ban I would hope that you would vote with your common sense and pass a smoking ban that your constituents want. Now when I say pass a smoking ban, I

mean a strong smoking ban. Kansans want a smoke free Kansas, not a smoke free joke. By passing Landwehr's bill you reserve all the hard work that 36 communities including my hometown of Abilene went through to make our communities smoke free. I am urging you to take Kansas a step forward by passing a strong smoking ban and not to take Kansas a step back by passing this Smokers choice bill. I would like to thank all of you for listening to me and representing this great state of Kansas. I would like to urge you to vote yes for a strong smoking ban. I'm sure that each of you will make the right choice. Thank you.

KANSAS HEALTH CONSUMER COALITION

STRENGTHENING THE VOICE OF KANSANS ON CRITICAL HEALTH CARE ISSUES.

534 S. Kansas Ave, Suite 1220 | Topeka, Kansas 66603 | Ph: 785.232.9997 | F: 785-232.9998 | corrie@kshealthconsumer.org

Testimony in Opposition to HB 2642

Corrie Edwards, Executive Director, Kansas Health Consumer Coalition

House Health and Human Services Committee

Madam Chair:

The Kansas Health Consumer Coalition (KHCC) has consistently supported efforts to establish a statewide clean indoor air law in Kansas. We believe it is a simple, low-cost initiative that will have a far-reaching impact on improving the health of Kansans. KHCC looks at the impact on every consumer when determining appropriate policies to pursue on their behalf. The decision to support clean indoor air was an easy one that protects the 80 percent of Kansans who choose not to smoke, as well as the 20 percent who do.

I have several concerns about HB 2642 and its impact on the health of Kansans. From my perspective, HB 2642 turns the clock back on the great strides that our local communities have made in facing and solving the issue of secondhand smoke exposure. In response to evidence proving the harms of secondhand smoke exposure, 39 Kansas communities have adopted ordinances aimed at restricting smoking in indoor public places. As the evidence mounts, local ordinances have become increasingly more comprehensive to provide sufficient consumer protection. HB 2642 overturns local laws that residents have embraced. These laws will be null and void, including at least three that were approved by voters.

The statewide standard established in HB 2642 provides numerous exemptions, including a loophole to allow smoking in virtually any establishment that dispenses food. Bars and casinos are exempted entirely. Rather than prohibiting smoking in public places, this legislation contains only the faintest suggestion that proprietors might not want to allow smoking. The enforcement provisions provide no tools for compliance for those establishments that might have a smoke free policy. Proprietors' only responsibility is to post a "no smoking" sign. Failure to do so could result in a $50 fine. There is no penalty on proprietors if patrons are smoking.

KHCC encourages this committee and the House to support a true clean indoor air compromise, HB 2221. HB 2221 balances consumer protection with local control by allowing local ordinances to be more restrictive than the standards established in the legislation. HB 2221 also represents a more uniform application of clean indoor air by prohibiting smoking in all restaurants and bars, making enforcement much easier as the same rules apply to similar venues.

I ask you to reject HB 2642 and support HB 2221, the Kansas Clean Indoor Air Act. Your support on this issue is the most important health initiative that could be accomplished this year.

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www.kshealthconsumer.com
corrie@kshealthconsumer.org

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 28-1

KANSAS PUBLIC HEALTH ASSOCIATION, INC.

Kansas Public Health Association, Inc.
AFFILIATED WITH THE AMERICAN PUBLIC HEALTH ASSOCIATION
P.O. Box 67085
Topeka, Kansas 66667
Phone: 785-233-3103 Fax: 785-233-3439
E-mail: director@kpha.us
Web Site: http://www.kpha.us

February 10, 2010

Testimony in Opposition to HB 2642
Before the House Health & Human Services Committee

Dear Chairwoman Landwehr and Members of the Committee:

I am Elaine Schwartz, Executive Director of the Kansas Public Health Association, presenting testimony on behalf of our Legislative and Policy Committee Chair, who could not be here today. Below is his testimony:

My name is Marvin Stottlemire, and I am the Chair of the Kansas Public Health Association's Legislative and Policy Committee. The Kansas Public Health Association is the oldest and *largest organization of public health professionals* and health advocates in the state. Today we represent more than **700 members** from over 50 occupations and 145 organizations all across the state. Our members include: researchers, academics, medical and dental care providers, health educators and advocates, administrators, teachers, private or public organizations and foundations in a unique, multidisciplinary environment of professional exchange, study, and action, in public health practice and the public health policy process.

Our position on clean indoor air is clear and well known. We have presented testimony citing the hazards of second hand smoke on numerous occasions to this and other legislative committees over the past two years, and I won't repeat that testimony today. I will only ask that in the interest of the health of all Kansans you do not pass this bill out of committee.

In supporting legislation such as SB 25, we have often heard opponents say that clean indoor air regulation should be a local issue. Now this bill proposes to not only usurp local rights, but to undo ordinances passed in many local governments, including my home city of Topeka.

KPHA believes that the state should set minimum clean indoor air standards; that STRONGER local ordinances already in place should be allowed to stand; and that local governments be allowed to enact more stringent standards than the state minimums.

Thank you for your attention. Submitted by Marvin Stottlemire,

(Marvin Stottlemire has earned a BA in political science from the University of Oregon; a MA and PhD in political science from Rice University; and, a JD from the University Of Kansas School Of Law. He taught political science at Louisiana State University in Shreveport and was the Assistant Director of the University of Kansas Public Management Center. He is currently Adjunct Associate Professor in the Department of Preventive Medicine and Public Health at the University of Kansas Medical Center,-Health Policy and Management. He is past president of the Kansas Public Health Association.)

Thank you, Madame Chair. I would be happy to stand for questior

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 29-1

THE CHAMBER
Greater Kansas City Chamber of Commerce

Testimony Against HB 2642

before Kansas House Health and Human Services Committee
Robert J. Vancrum, Kansas Government Affairs Consultant
for the Greater Kansas City Chamber of Commerce

February 10, 2010

Chairman Landwehr and Other Honorable Representatives:

The Greater Kansas City Chamber of Commerce believes that smoking in public places costs businesses in our state millions of dollars every year. As we testified last year, the Chamber supports a restrictive statewide smoking ban such as that imposed by SB 25 (which still sits in this committee) to significantly decrease tobacco-related illnesses and death and to reduce the costs to business from tobacco.

The Chamber and its Healthcare Council have invested significant time in studying the health effects of smoking as well as the financial burden caused by increased health care costs due to smoking. These key findings have influenced Greater Kansas City business support for a smoking ban that will make our state a better place to do business:

- Studies indicate that 10-12 percent of today's health care costs are attributable to smoking-related conditions and diseases.—Kansas Health Policy Institute
- The Society of Actuaries has determined that second-hand smoke costs the United States economy $10 billion a year—$5 billion in exposure to illness and $4.6 billion in lost wages.
- The Centers for Disease Control and Prevention estimates annual healthcare expenditures in Kansas directly caused by tobacco use are $927 million and that secondhand smoke exposure costs the state $38.9 million a year.
- The CDC also reports that smoking costs the U.S. economy $92 billion a year in lost productivity.
- Total annual health care expenditures for the State Medicaid program caused by tobacco use are estimated at $196 million.—Kansas Health Policy Authority
- Based on the health impact on cities that have enacted indoor smoking bans, a statewide ban in Kansas could result in 2,160 fewer heart attacks and $21 million less in associated hospital charges for heart attacks alone.—Kansas Health Policy Authority.

The Chamber believes restrictive smoking bans in public places have been successful in improving the financial and physical health of a community. The Chamber believes now is the time to put good healthcare measures and reduction of healthcare costs as a top priority and join

38 other states with a statewide smoking ban in Kansas that would ***improve*** the wellness of the workforce.

HB 2642 falls far short of this goal and in fact would actually repeal and loosen standards citizens have strongly supported in localities across this state. Among the broad exemptions are: bars, casinos, restaurants with separately ventilated areas, restaurants that choose to allow smoking during certain days and hours if children are prohibited (no ventilation required), any food service establishment with a physically separate smoking area (more expansive than restaurants and may mean any place where food is served), and all class A and B clubs . By expanding the list of exemptions to the broadest list in force anywhere in the state, workers in those establishments and those guests who don't smoke are being exposed to second hand smoke even if a wide majority of the workers and guests would prefer to be a smoke free establishment.

In short, and with all due respect, we ask you to oppose passage of this bill and pass a bill more like SB 25 of last year.

KSNA
KANSAS STATE NURSES ASSOCIATION
The Voice & Vision of Nursing in Kansas

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Caring Hearts, Healing Hands
Decade of the Nurse in Kansas
2005 2015

President Patricia J. Plank, MSN, RN

Testimony in Opposition to HB 2642
Presented to the House Health and Human Services Committee
by Craig Gunther, RN

February 10, 2010

Representative Landwehr and Members of the Committee:

On behalf of the Kansas State Nurses Association, I appear in opposition to HB 2642. As nurses, we support comprehensive clean indoor air legislation. Not only does this bill fail to adequately protect the public and workers from the dangers of secondhand smoke, it reverses progress made on local levels over the last decade. Legislation that fully prohibits smokings indoors in public places without any exceptions or exemptions is the only way to adequately protect non-smokers and even smokers from the cumulative effects of secondhand smoke. I am a Topeka resident who worked diligently with others to encourage passage of a comprehensive ordinance. We succeeded because the City Council understood that the public's health required it, it hasn't been shown to significantly impact businesses elsewhere and their constituents demanded it. Polling showed that nearly 70 percent of Topekans supported a clean indoor air ordinance. According to the Centers for Disease Control, the number of states preempting local clean indoor air ordinances dropped to 12 percent from 19 percent over the last five years. That is a trend we would like to see growing, not shrinking.

The scientific and medical research pertaining to the dangers of secondhand smoke speaks for itself. It causes cancer; Sixty-nine carcinogens have been identified in secondhand smoke. According to the CDC, secondhand smoke increases the risk of lung cancer by 20 to 30 percent. Cardiovascular disease is another issue. A recent report by the Institute of Medicine suggested that the number of heart attacks could be decreased by nearly 25 percent from enacting public smoking bans. The immune system is also significantly weakened by secondhand smoke, leading to a whole host of other illnesses. At a time when we are faced with a budget shortfall and skyrocketing medical costs, we need to look at the economic impact of tobacco use. According to the Kansas Department of Health and Environment, Kansans incur 927 million dollars in annual medical costs attributable to tobacco. This includes an estimated 196 million dollars in medicaid expenditures.

Those who are employed in places where smoking is permitted bear the brunt of inaction. Research has identified that working in a smoky bar or restaurant for eight hours is equivalent to smoking sixteen cigarettes. This makes these workers full-time accidental smokers. These are often entry level jobs, or jobs held by those struggling to find other work. With unemployment rates as high as they are, I don't think it is acceptable to tell them to look for other work if they don't like the secondhand smoke. All workers deserve a workplace free of unnecessary occupational hazards.

KSNA does support HB 2221, however. Although it is not optimal, it is the best compromise at this time to protect the health of Kansans. KSNA strongly urges the committee to reject HB 2642.

Sincerely,

Craig Gunther, RN
Kansas State Nurses Association

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 31-1

LKM
League of Kansas Municipalities

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

TO: House Health and Human Services Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

DATE: February 10, 2010

RE: Opposition to HB 2642

First, I would like to thank the Committee for allowing the League of Kansas Municipalities to testify today in opposition to HB 2642. 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 all those ordinances. Attached to this testimony are several pages in spreadsheet form analyzing all of the city ordinances and county resolutions on smoking. As the committee can see, there are currently 38 ordinances and resolutions in effect across the state covering 1,530,529 Kansas residents.

HB 2642, Section 5, to "protect private property rights," preempts all city ordinances relating to smoking. Interestingly, it also states that it is preempting "charters," which presumably means charter ordinances. With a uniform enactment the state may preempt charter ordinances, but LKM is unaware of any cities that have regulated smoking with charter ordinances, since there are no particular statutes out of which to charter. 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. HB 2642 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. In addition, the League urges this committee to at least allow ordinances that mirror state law. Almost all enforcement of this type is local and allowing city ordinances would enable the city to prosecute violations of the smoking ban in municipal court, rather than burdening the state court system with such cases.

Again, thank you for allowing the League to testify in opposition to HB 2642 for the reasons stated above. I would be glad to stand for questions at the appropriate time.

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 32-1

Basic Information Prepared by the League of Kansas Municipalities, 1/27/2010

32-2

City or County	Pop.	Region	Ordinance	Adopted	Enclosed Public Places	Enclosed Places of Employment	Distance Req.
Abilene	6,400	NE	3037	6/27/2005	Prohibited	Prohibited	Reasonable
Bel Aire	6,797	SC	431	11/1/2005	Prohibited	Prohibited	None
Concordia	5,208	NC	2005-2889	5/18/2005	Not Regulated	Not Regulated	None
Derby	22,517	SC	1885 & 1951	4/10/2007	Prohibited	Prohibited	20 feet
Emporia	26,380	NE	08-44	12/3/2008	Prohibited	Prohibited	10 feet
Fairway	3,843	NE	Code 6-1001 *et seq .*	11/13/2005	Prohibited	Prohibited	20 feet
Garden City	28,557	SW	Code 50-73 *et seq.*	8/8/2006	Specified Places Only	Not Regulated	50 feet
Hesston	3,741	SC	010-2007-172	10/9/2007	Prohibited	Prohibited	20 feet
Hutchinson	40,889	SC	2004-08	2/24/2004	Not Regulated	Not Regulated	None
Kansas City	142,562	NE	0-91-08	12/18/2008	Prohibited (except "smoker friendly" until 2011)	Prohibited	None
Lawrence	89,852	NE	Code 9-801 *et seq.*	5/11/2004	Prohibited	Prohibited	None
Leawood	31,342	NE	2195C	11/20/2006	Prohibited	Prohibited	10 feet
Lenexa	46,822	NE	4965	7/3/2007	Prohibited	Prohibited	10 feet
Lyons	3,399	SC	1685	7/7/2003	Not Regulated	Not Regulated	15 feet
Maize	3,094	SC	762	7/24/2008	Prohibited	Exempt in Non-Public Areas	None
Manhattan	52,284	NE	6737	11/4/2008	Prohibited	Prohibited	20 feet
Merriam	10,814	NE	1038	6/15/1987	Designated Smoking Areas (DSA)	Not Regulated	None
Mission	9,765	NE	1261 & 1269	5/21/2008	Prohibited	Prohibited	25 feet
Mission Woods	160	NE	160	6/6/2006	Prohibited	Prohibited	Reasonable
Newton	18,133	SC	4646-07	11/13/2007	Prohibited	Prohibited	20 feet
North Newton	1,592	SC	525-07	12/10/2007	Prohibited	Prohibited	20 feet
Olathe	119,993	NE	35582	8/15/2006	Prohibited	Prohibited	10 feet
Ottawa	12,850	NE	3657-07	12/5/2007	Prohibited	Not Regulated	None
Overland Park	171,231	NE	POC-2632	11/6/2006	Prohibited	Prohibited	10 feet
Park City	7,787	SC	803-2007	9/25/2007	Designated Smoking Areas (DSA)	Not Regulated	None
Parsons	11,065	SE	6100	9/18/2006	Specified Places Only	Not Regulated	None
Prairie Village	21,479	NE	2109	11/21/2005	Prohibited	Prohibited	None
Pratt	6,397	SC	0903	2/2/2009	Prohibited	Prohibited	None
Roeland Park	6,960	NE	793	4/7/2006	Prohibited	Prohibited	None
Salina	46,483	NC	02-10077/09-10481	1/26/2009	Prohibited	Prohibited	10 feet
Shawnee	60,954	NE	2860	9/24/2007	Prohibited	Prohibited	None
Topeka	123,446	NE	19315	9/29/2009	Prohibited	Prohibited	10 feet
Walton	286	SC	297	9/6/2005	Prohibited	Not Regulated	None
Westwood	1,481	NE	883	12/13/2007	Prohibited	Prohibited	25 feet
Wichita	366,046	SC	47-892	6/3/2008	Any place of business (except "smoker friendly")	DSA	10 feet
Harvey Co.	5,470	SC	2007-23	11/5/2007	Prohibited	Prohibited	20 feet
Johnson Co.	14,450	NE	001-07	1/4/2007	Prohibited	Not Regulated	10 feet
Pratt Co.	2,298	SC	03-02-09	3/2/2009	Prohibited	Prohibited	None
	1,530,529						
Kansas Pop.	2,802,134				**Kansans Covered Under a Smoking Ordinance**	55%	

Prepared by the League of Kansas Municipalities, 1/27/2010

City or County	Outdoor Theaters/ Recreation	Indoor Theaters/Recreation	Indoor Bars/Drinking Establishments	City or County
Abilene	Prohibited	Prohibited	Exempt (if less than 45% food)	Abilene
Bel Aire	Not Regulated	Prohibited	Prohibited	Bel Aire
Concordia	Not Regulated	Not Regulated	Exempt (if less than 30% food)	Concordia
Derby	Not Regulated	Prohibited	Prohibited	Derby
Emporia	Prohibited (within 10 feet of food vendors)	Prohibited	Prohibited	Emporia
Fairway	Not Regulated	Prohibited	Prohibited	Fairway
Garden City	Prohibited (if publicly owned)	Prohibited (if publically owned)	Prohibited	Garden City
Hesston	Prohibited	Prohibited	Prohibited	Hesston
Hutchinson	Not Regulated	Not Regulated	Exempt (if less than 50% food)	Hutchinson
Kansas City (Unified Govt.)	Not Regulated (except enclosed places)	Prohibited	Prohibited	Kansas City (Unified Govt.)
Lawrence	Not Regulated	Prohibited	Prohibited	Lawrence
Leawood	Not Regulated	Prohibited	Prohibited	Leawood
Lenexa	Not Regulated (except enclosed places)	Prohibited	Prohibited	Lenexa
Lyons	Not Regulated	Not Regulated	Exempt (if less than 30% food)	Lyons
Maize	Not Regulated	Prohibited	Prohibited	Maize
Manhattan	Prohibited (in Seating Areas & Enclosed Areas)	Prohibited	Prohibited (& Outdoors)	Manhattan
Merriam	Not Regulated	DSA	DSA	Merriam
Mission	Prohibited (within 20 feet of food & seating)	Prohibited	Prohibited	Mission
Mission Woods	Not Regulated	Prohibited	Prohibited	Mission Woods
Newton	Prohibited (within 20 feet of food vendors)	Prohibited	Prohibited	Newton
North Newton	Not Regulated	Prohibited	Prohibited	North Newton
Olathe	Not Regulated	Prohibited	Prohibited	Olathe
Ottawa	Not Regulated	Prohibited	Exempt	Ottawa
Overland Park	Not Regulated (except enclosed places)	Prohibited	Prohibited	Overland Park
Park City	Not Regulated	DSA	DSA	Park City
Parsons	Not Regulated	Not Regulated	Prohibited (except after 9:00 p.m.)	Parsons
Prairie Village	Not Regulated	Prohibited	Prohibited	Prairie Village
Pratt	Not Regulated	Prohibited	Prohibited (after 1/5/2010)	Pratt
Roeland Park	Not Regulated	Prohibited	Prohibited	Roeland Park
Salina	Not Regulated	Prohibited	Prohibited	Salina
Shawnee	Prohibited	Prohibited	Exempt (if less than 30% food)	Shawnee
Topeka	Not Regulated	Prohibited	Prohibited	Topeka
Walton	Not Regulated	Prohibited	Prohibited	Walton
Westwood	Not Regulated	Prohibited	Prohibited	Westwood
Wichita	Unclear	DSA	DSA	Wichita
Harvey County	Prohibited in seating and concession areas	Prohibited	Prohibited	Harvey County
Johnson County	Not Regulated (except enclosed places)	Prohibited	Prohibited	Johnson County
Pratt County	Not Regulated	Prohibited	Prohibited	Pratt County
		Page 2		

Prepared by the League of Kansas Municipalities, 1/27/2010

32-4

Private Clubs & Fraternal Organizations	Indoor Restaurants	Tobacco Shops	Designated Hotel and Motel Rooms	Bowling Alleys	City or County	Private Residences
Exempt (if less than 45% food)	Prohibited	Exempt	Exempt (up to 40%)	Exempt	**Abilene**	Exempt
Prohibited	Prohibited (except private functions)	Exempt	Exempt (up to 25%)	Prohibited	**Bel Aire**	Exempt
Exempt	Prohibited	Not Regulated	Not Regulated	Exempt	**Concordia**	Not Regulated
Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	**Derby**	Exempt
Prohibited	Prohibited	Exempt	Prohibited	Prohibited	**Emporia**	Exempt
Prohibited	Prohibited	Prohibited	Exempt (up to 25 %)	Prohibited	**Fairway**	Exempt
Prohibited	Prohibited	Not Regulated	Not Regulated	Not Regulated	**Garden City**	Not Regulated
Exempt	Prohibited (& Outdoors)	Prohibited	Exempt (up to 25%)	Prohibited	**Hesston**	Exempt
Exempt (if less than 50% food)	Prohibited	Not Regulated	Not Regulated	Not Regulated	**Hutchinson**	Not Regulated
Exempt	Prohibited	Exempt	Exempt (up to 25%)	Prohibited	**Kansas City (Unified Govt.)**	Exempt
Prohibited	Prohibited (except private functions)	Exempt	Exempt (up to 25%)	Prohibited	**Lawrence**	Exempt
Prohibited	Prohibited	Exempt	Prohibited	Prohibited	**Leawood**	Exempt
Prohibited	Prohibited	Exempt	Prohibited	Prohibited	**Lenexa**	Exempt
Exempt (if less than 30% food)	Prohibited	Not Regulated	Not Regulated	Not Regulated	**Lyons**	Not Regulated
Prohibited	Prohibited	Exempt	Exempt (up to 25%)	Prohibited	**Maize**	Exempt
Prohibited	Prohibited (& Outdoors)	Prohibited	Prohibited	Prohibited	**Manhattan**	Exempt
DSA	DSA	DSA	DSA	DSA	**Merriam**	Not Regulated
Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	**Mission**	Exempt
Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	**Mission Woods**	Exempt
Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	**Newton**	Not Regulated
Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	**North Newton**	Not Regulated
Exempt	Prohibited	Exempt	Exempt (up to 25%)	Prohibited	**Olathe**	Exempt
Exempt	Prohibited	Exempt	Exempt (upt to 25%)	Prohibited	**Ottawa**	Exempt
Prohibited	Prohibited	Exempt	Prohibited	Prohibited	**Overland Park**	Exempt
DSA	DSA	DSA	DSA	DSA	**Park City**	Not Regulated
Exempt	Prohibited	Not Regulated	Exempt	Not Regulated	**Parsons**	Not Regulated
Prohibited	Prohibited	Prohibited	Exempt (up to 25%)	Prohibited	**Prairie Village**	Exempt
Prohibited	Prohibited (except private functions)	Exempt	Exempt (up to 25%)	Prohibited	**Pratt**	Exempt
Prohibited	Prohibited	Prohibited	Exempt (up to 25%)	Prohibited	**Roeland Park**	Exempt
Exempt	Prohibited	Prohibited	Prohibited	Prohibited	**Salina**	Not Regulated
Prohibited	Prohibited	Exempt	Exempt (up to 25%)	Prohibited	**Shawnee**	Not Regulated
Prohibited	Prohibited	Exempt	Exempt (up to 20%)	Prohibited	**Topeka**	Exempt
Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	**Walton**	Exempt
Prohibited	Prohibited	Exempt	Prohibited	Prohibited	**Westwood**	Exempt
DSA	DSA	DSA	DSA	DSA	**Wichita**	Not Regulated
Prohibited	Prohibited	Exempt	Exempt (up to 25%)	Prohibited	**Harvey County**	Exempt
Exempt	Prohibited	Prohibited	Prohibited	Prohibited	**Johnson County**	Exempt
Prohibited	Prohibited (except private functions)	Exempt	Exempt (up to 25%)	Prohibited	**Pratt County**	Exempt
	Page 3					

hild Care/Health Care Facility	Area Separately Ventilated	Gaming Area/Bingo Hall
Prohibited	Exempt	Prohibited
Prohibited	Exempt	Prohibited
Not Regulated	Not Regulated	Exempt
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
Not Regulated	Not Regulated	Not Regulated
Prohibited	Prohibited	Prohibited
Not Regulated	Exempt	Not Regulated
Prohibited	Prohibited	Exempt
Prohibited	Exempt (break rooms)	Prohibited
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
Not Regulated	Exempt	Not Regulated
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
DSA	DSA	DSA
Prohibited	Prohibited	Prohibited
Prohibited	Exempt	Prohibited
Prohibited	Exempt	Prohibited
Prohibited	Intermittent Only	Prohibited
Prohibited	Prohibited	Prohibited
Not Regulated	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
DSA	DSA	DSA
Not Regulated	Exempt	Not Regulated
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
Prohibited Indoors	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
DSA	Exempt	DSA
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
Prohibited	Prohibited	Prohibited
	Page 4	

City or County	Sign Posting Requirement	Non-Retailiation Clause	Owner/Operator Penalty	Individual Penalty
Abilene	Yes	Yes	$100/day	$100/day
Bel Aire	Yes	Yes	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
Concordia	Yes	No	Up to $500/6 months	$25
Derby	Yes	Yes	$100/$200/$500 (within 1 year)	$50
Emporia	Yes	Yes	$100/$200/$500 (within 1 year)	$50
Fairway	Yes	Yes	$100/$200/$500 (within 1 year)	$50
Garden City	Yes	No	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
Hesston	Recommended	Yes	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
Hutchinson	Yes	No	Up to $500/1 month	Up to $500/1 month
Kansas City (Unified Govt.)	Yes	Yes	$100/$200/$500 (within 1 year)	$50
Lawrence	Yes	Yes	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
Leawood	Yes	No	$100/$200/$500 (within 1 year)	$50
Lenexa	Yes	No	$100/$200/$500 (within 1 year)	$50
Lyons	Yes	No	Up to $500/6 months	Up to $500/6 months
Maize	Yes	No	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
Manhattan	Yes	Yes	$100/$200/$500 (within 1 year)	$50/$100/$200 (within 1 year)
Merriam	Yes	No	$50	$20
Mission	Yes	No	$100/$200/$500 (within 1 year)	$50
Mission Woods	Yes	No	$100/$200/$500 (within 1 year)	$50
Newton	Encouraged	No	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
North Newton	Recommended	Yes	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
Olathe	Yes	Yes	$50/$100/$250 (within 1 year)	$50
Ottawa	Yes	No	$50/$100/$250 (within 1 year)	$50/$100/$250 (within 1 year)
Overland Park	Yes	No	$100/$200/$500 (within 1 year)	$50
Park City	Yes	No	Up to $500/1 month	Up to $500/1 month
Parsons	Yes	No	$25	$25
Prairie Village	Yes	Yes	$1000/179 days	$1000/179 days
Pratt	Yes	Yes	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
Roeland Park	Yes	Yes	$100/$200/$500 (within 1 year)	$50
Salina	Yes	No	$50/$100/$200 (within 1 year)	$50/$100/$200 (within 1 year)
Shawnee	Yes	No	$50/$100/$250 (within 1 year)	$50
Topeka	Yes	Yes	$100/$200/$500 (within 1 year)	$50/$100/$200 (within 1 year)
Walton	Yes	No	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
Westwood	Yes	No	$100/$200/$500 (within 1 year)	$50
Wichita	Yes	No	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
Harvey County	Recommended	Yes	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
Johnson County	Yes	No	$50/Day	$50/Day
Pratt County	Yes	Yes	$100/$200/$500 (within 1 year)	$100/$200/$500 (within 1 year)
			Page 5	

- Hours restrictions do not work. First, hours restrictions do not protect nonsmokers against the dangers of secondhand smoke because the harmful chemicals in secondhand smoke can linger in a building for days after the visible smoke has dissipated. If smoking is permitted at night when no minors are admitted, the chemicals will still contaminate the indoor air when the minors are allowed to enter the building the next morning. Second, voluntary compliance is much more difficult to achieve when a business permits smoking at some times of the day, but attempts to prohibit smoking at other times.
- Enforcement under HB 2642 is nearly impossible. As a practical matter, enforcement will be much more difficult due to the many exceptions contained in the bill. For example, the enforcement agency will need to determine whether or not a business has provided a truly independent ventilation system, whether or not a business has prohibited minors from entering the premises, whether or not a business has paid the $1/square foot "buy-out" fee, and, if a person is smoking near the entrance to a building, whether or not the person is a "reasonable" distance away from the door. Even if the enforcement agency has determined that a violation of the act has occurred, the operator of the business is immune from liability as long as it has posted a "no-smoking" sign.
- HB 2642 prohibits local control. Section 5 of the bill would preempt all municipal and county ordinances that have already been enacted. Thousands of Kansans have worked very hard over many years in order to pass meaningful protection from secondhand smoke at the local level. HB 2642 undoes all of that work and would, once again, subject hundreds of thousands of Kansans who have been enjoying clean indoor air to the harms of secondhand smoke.
- HB 2642 unduly restricts individual rights. Curiously, HB 2642 would prohibit smoking in a private motor vehicle at any time there is more than one person in the vehicle. While we would prefer that nobody smoke, we recognize that an individual may choose to smoke as long as smoking doesn't impact the health of someone who chooses not to smoke. Under HB 2642, one person may choose to smoke in a private car, but if two people choose to smoke in a private car, they would be in violation of the law and subject to a fine.

SMOKE-FREE COMPARISON

Issue:	HB 2221	HB 2642
Smoking in places of employment	Prohibited	Prohibited, unless the employer is a manufacturer, importer, or wholesaler of tobacco products, a tobacco leaf dealer or processor, or a tobacco storage facility
Smoking in restaurants and bars	Prohibited, except for certain Class A and Class B private clubs licensed as of January 1, 2009	Permitted in separately-ventilated smoking areas, or in the entire premises if persons under the age of 18 are not allowed to enter
Smoking in casinos	Permitted only on the gaming floor of the casino facility	Permitted to the same extent as restaurants and bars
Smoking in motor vehicles	Permitted, except in taxicabs and limousines	Prohibited if more than one person is in the motor vehicle
Smoking in private residences	Permitted, except when used as a daycare facility	Permitted, except when used as a licensed child care, adult day care, or medical facility
Smoking in tobacco shops	Permitted ("tobacco shop" defined by 65% or more of gross receipts from sale of tobacco)	Permitted ("retail tobacco store" defined by 50% or more of annual gross revenues from sale of cigars, tobacco products, and sales or rentals of cigar accessories)
Smoking in entryways	Prohibited within 10-foot radius of any doorway or open window	Prohibited within a "reasonable" distance from any entrance or window
Preemption	Allows municipalities to enact more restrictive ordinances	Abolishes all municipal ordinances
Enforcement	Any person who smokes, and any person who controls a public place and knowingly permits a person to smoke, is subject to a fine from $0-$500	Any person who smokes in violation of the Act is subject to a fine from $50-$300 Any person who fails to post a "No Smoking" sign is subject to a fine not to exceed $50

KU THE UNIVERSITY OF KANSAS
School of Medicine

February 10, 2010

Testimony in Opposition to HB 2642
Before the House Committee on Health and Human Services

Presented by: Dr. John S. Neuberger

Chairperson Landwehr and Members of the Committee:

I am opposed to HB 2642 because it has multiple exemptions, buy-out provisions, and a pre-emption clause that would eliminate stronger ordinances in many Kansas cities. For example, over 80% of the close to 40 Kansas cities and counties with existing ordinances totally prohibit smoking in indoor restaurants. Comparable figures for indoor drinking establishments, private clubs, and gaming facilities range from 65 to 75%.

On March 10, 2009 I testified in front of this committee concerning Senate Bill 25, which has been tabled. I described numerous health problems related to exposure to second-hand smoke, including heart and lung disease. Second hand smoke can cause changes in heart rate, lipid metabolism, vascular elasticity, platelet activity, and oxygen delivery to the tissues. I indicated that this smoke exposure therefore needs to be controlled in indoor workplaces and public places and that a strong statewide clean indoor air law was needed. Surveys that have been conducted of elected city officials and Kansas citizens in general indicate majority support for a comprehensive statewide clean indoor air law with few or no exemptions.

Several studies have found a significant reduction in the incidence of heart attacks as a result of implementation of indoor smoking bans. We analyzed 11 peer reviewed studies in 10 locations before and after implementation of a smoking ban. The studies included 24 million people and observed over 215,000 cardiac events. We found a significant reduction in the incidence of heart attacks, with a greater reduction the longer the ban was in effect. Thousands of heart attacks could be prevented each year in the U.S. with the adoption of a countrywide clean indoor air law.

HB 2642 does not adequately address the public health concerns and would override stronger clean indoor air ordinances in many Kansas cities and counties.

Sincerely,

John S. Neuberger

John S. Neuberger, DrPH, MPH, MBA
Professor

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 34-1

Department of Preventive Medicine & Public Health
MS 1008 | 3901 Rainbow Blvd. | Kansas City, KS 66160 | (913) 588-2775 | Fax (913) 58

AARP Kansas
555 S. Kansas Avenue
Suite 201
Topeka, KS 66603

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F 785-232-8259
TTY 1-877-434-7598
www.aarp.org/ks

February 10, 2010

The Honorable Brenda Landwehr, Chair
House Health and Human Services Committee

HB 2642 –Health and Human Services Committee Smoking Ban

Good afternoon Madam Chairperson and members of the House Health and Human Services Committee. My name is Ernest Kutzley and I am the Advocacy Director for AARP Kansas. AARP's top priority is health care. I am submitting written testimony today on behalf of our 359,000 Kansas members to express our *opposition to HB 2642.*

AARP believes that states should take specific and effective steps to control all forms of pollution which threaten health, safety and quality of life and should enact legislation banning smoking in nonresidential public buildings, on public transportation and in restaurants. HB 2642 will not meet those goals.

We believe that HB 2642 will allow businesses to purchase exemptions and will overturn the work done by Kansas communities, to date, to improve the health of those in their communities. HB 2642 will preempt all existing city and county smoke free ordinances of the thirty six communities and 3 counties in Kansas that have gone smoke free. This is not a good bill for those who have worked hard in their communities to create a healthier atmosphere or for all Kansans.

Secondhand smoke is a serious public health issue. It costs lives and money. Each year hundreds of Kansans die, suffer heart attacks or are diagnosed with many types of cancers caused by secondhand smoke. Older Americans and children are especially affected by secondhand smoke. It is linked to dementia in elders, and women who inhale secondhand smoke may be at risk of preterm labor and delivering a low-birth weight baby. Secondhand smoke related illnesses costs Kansas millions of dollars each year.

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HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 35-1

It's time we took a clean indoor act seriously. We believe a *good* clean indoor air act, such as HB 2221, with minimum exemptions, will improve the health of all Kansans and visitors to our state, protecting them from secondhand smoke in all public places. It will greatly improve the health of many Kansans almost immediately and save millions in healthcare related costs. With all we know about the harmful effects of secondhand smoke, it makes sense to ban indoor smoking in public places on a statewide basis, eliminating the fear that a local ban would put a community at a competitive disadvantage to its neighbors.

Therefore AARP Kansas *opposes HB 2642* and *supports HB 2221,* a good clean indoor bill that will truly protect the lives of Kansans.

Testimony in Opposition to HB 2642
Before the House Health & Human Services Committee

Dear Chairwoman Landwehr and Members of the Committee:

My name is Brett Malone, and I am an MD/MPH student at the University of Kansas. I am here representing myself and my fellow students. I will read a statement which I have prepared along with one from a classmate who was not able to attend.

For the past two and half years I have lived in the Kansas City area and have enjoyed the benefits of having smoke-free establishments nearby in both Johnson County and Kansas City, MO. Unfortunately, no such restrictions exist in Kansas City, KS, so whenever I choose to go out, I choose to go to places outside my home city. I make that decision based out of preference, but, as a medical and public health student, I am also well aware of how avoiding secondhand smoke exposure benefits my health. I support the current indoor air restrictions in communities like Johnson County, Lawrence, and Topeka. However, I believe that if HB 2642 is passed, then it will nullify the progress made in those communities. HB 2642 is not a valid compromise but is a regressive piece of legislation. HB 2221 is a more progressive bill which builds on the current ordinances in local communities. HB 2642 should be voted down and efforts should be made to pass HB 2221.

As a constituent and a Public Health Student advocate, I am writing to urge you to Please vote YES for HB2221, a strong clean indoor air law to protect the health of Kansans. I want Kansas to become a smoke free state in 2010 because I believe a comprehensive, statewide clean indoor air law offers a no-cost solution to reducing health care costs while saving taxpayer money and lives. We lose 400 Kansans annually due to the harmful effects of second-hand smoke, and in spite of this, thousands of Kansas workers remain exposed to secondhand smoke in the workplace.

It is time for the Kansas legislature to provide smoke free public places and workplaces. Thirty-eight states now require those protections for their citizens. Kansas should be the 39th state. I am asking you my local state legislator to support a smoke free law for Kansas in 2010. I want protections for all, not exemptions that create confusion. Everyone in Kansas deserves the right to breathe clean air.

Sincerely,

Lisa M Hammerschmidt

Thank you for your attention.

Public Testimony in Opposition to House Bill 2642
Before the House Committee on Health and Human Services
February 10, 2010

By Deborah Swank
City Council Representative
District 6
Topeka, Kansas

In August of 2009, I introduced the Clean Indoor Air Ordinance to the Topeka City Council. The ordinance was passed by a super majority of the council in September 2009 and implemented in the city of Topeka on December 4, 2009. The City of Topeka recognized the importance of passing this important health initiative for our citizens and for visitors to our city. The Topeka ordinance bans smoking in all indoor public places and places of employment with few exceptions.

Large numbers of Topeka citizens showed their overwhelming support for the clean indoor air ordinance by appearing at public hearings, emailing, writing, and phoning their council members. Local polling has shown that the majority of citizens of Topeka support a strong ordinance without exceptions. House Bill 2642 is an attempt to deny the serious health consequences of second hand smoke.

The dangers of second hand smoke, the health of our citizens, and the unfair impact of second hand smoke on employees of businesses where smoking has continued cannot be dismissed. Attempting to reverse the positive impact of good legislation seems to be some kind of political ploy to appease a small minority who refuse to accept the proven and obvious dangers of second hand smoke.

Topeka citizens of all ages, Topeka businesses who support fair across the board legislation, Topekans working to attract business to our community, and young adults looking to choose Topeka as a place to raise their families ask you to throw out House Bill 2642, respect our progress, and get busy passing true clean indoor air legislation that will protect all Kansans from second hand smoke.

Sincerely,

Deborah Swank

From: Dave Pomeroy
To: Debbie Bartuccio
Subject: Testimony Against House Bill #2642
Date: Wednesday, February 10, 2010 10:15:57 AM

Secondhand tobacco smoke has been harmful to many members of my family and I have worked as a member of the Topeka community to support efforts to bring smokefree air to indoor public places. Last year I was pleased that the Kansas Senate passed a bill that would help protect Kansans from toxic tobacco smoke. I was disappointed that it did not pass in the House. However, I am hopeful that it will pass this year and our state will join many others including the top tobacco producing state of North Carolina with a decent statewide law relating to smoking in public places. I have read the proposed HB #2642 and am here today in rare opposition to a bill regarding smoking in indoor public places. Not only would this bill not protect nonsmokers in any significant manner but it would take a big step backward by disposing of some very good laws in such towns as Salina, Abilene, Newton, Lawrence and now in Topeka as well as most of Johnson County. The bill is titled the "Nonsmokers Protection Act." But this act should be called the "Tobacco Industry Protection Act. I urge you not to approve HB #2642.

Stephanie K. Weiter
1930 SW Webster Ave.
Topeka, KS 66604

February 10, 2010

The Honorable Brenda Landwehr
Chair, House Health and Human Services Committee
Kansas State Capitol
10th and Jackson, Room 151-S
Topeka, Kansas 66612

Re: Written Testimony in opposition to House Bill 2642.

Dear Representative Landwehr:

Help make Kansas a better place to live and breathe by helping to pass a STRONG smoke-free law this session. More than **half** of the states in the country, including the tobacco producing North Carolina, have implemented comprehensive smoke-free laws! It is time to listen to the growing number of Kansas communities who have already adopted comprehensive smoke-free laws and add Kansas to the list of progressive states.

One of my biggest concerns is the health and welfare of workers who are casualties of the smoking debate. My oldest daughter is a college student, and while her Dad and I do pay for her education, she is responsible for her living expenses. Although she worked in the "non-smoking" section at a local establishment in Topeka, she suffered from bronchitis and sinus infections on a regular basis. We were constantly taking her to the doctor and ultimately she had to have surgery to remove the chronic infection in her sinuses. After she moved to Lawrence to attend KU, she transferred her server position to the Lawrence location, the only difference being the Lawrence establishment was smoke-free. That was two years ago and she has not had bronchitis or a sinus infection since! That is not a coincidence!

Smoke-free air is everyone's right! HB 2642 will reverse what many communities in Kansas have worked hard at the grassroots level to accomplish and goes against the will of the people! Over 80% of Kansans don't smoke and 70% of Kansans support a strong smoke-free law for our state. HB 2642 is wrong for public health, wrong for business and wrong for Kansas! Please follow the will of your constituents and ONLY enact a comprehensive smoke-free law!

Sincerely,

Stephanie K. Weiter
Topeka

Cc: Kansas House Health and Human Services Committee
Rep. Dave Crum - Vice-Chair
Rep. Scott Schwab
Rep. Lana Gordon
Rep. Ann E. Mah
Rep. Marc Rhoades
Rep. Clark Shultz
Rep. Don Schroeder
Rep. Peggy L. Mast
Rep. Ed Trimmer
Rep. Gail Finney

Rep. Jim Ward
Rep. Bill Otto
Rep. Phil L. Hermanson
Rep. Geraldine Flaharty
Rep. Aaron Jack
Rep. Jim Morrison

Rep. Jill Quigley
Rep. Cindy Neighbor
Rep. Dolores Furtado
Rep. Mike Slattery
Rep. Valdenia C. Winn
Rep. Owen Donohoe

Date: February 10, 2010

To: Members of the House Health and Human Services Committee

From: Leo Horgan

Re: Testimony Opposing HB 2642

I want to speak to you today about the importance of having a clean indoor law for the state of Kansas that will protect the most people from the known dangers of second hand smoke. HB 2642 could very well cause many of the public places in Topeka to return to the smoky atmosphere of years past.

I speak to you as a Vietnam Veteran and a life time member of the Veterans of Foreign Wars and the American Legion. I know that I speak for many veterans who have not been able to participate in veteran activities because of the heavy exposure to secondhand smoke, which everyone agrees is a toxic substance.

I am also a member of a band that has played in private veterans clubs as well as at the Moose Club. Musicians in particular have a hard time when they play in smoky clubs.

It is almost impossible to get these clubs to go smoke free voluntarily. I have been trying to do so for years, but many of the officers were afraid to make such changes because they are afraid that they will offend some of the members. That was the case in Topeka until the clean indoor air ordinance was adopted this past December. Since then I have not observed any problems with members abandoning the private clubs where I play. In fact we are getting more people back in now that the air is clear. Even those members who still smoke have adapted without complaint to going outside if they need to take a cigarette break.

Even the national leaders of the VFW are stressing the importance of local chapters adapting to the new healthier rules in order to expand their membership. The national leaders recognize that it is difficult to attract new younger members if the perception is that these clubs are smoke filled.

I really enjoy going to these clubs now and playing our music for them.

HB 2642 could well destroy that enjoyment for me and many other veterans and their spouses. HB 2642 would again let businesses and clubs go back to being smoker friendly. And even worse, the bill would not let local communities adopt their own stronger ordinances.

Please do not act on HB 2642. Another bill, HB 2221, does have some exemptions for private clubs and gaming floors, but it would still let local communities keep their current stronger ordinances and let other Kansas cities adopt their own stronger rules.

I appreciate the smoke free status of Topeka. Please do not take it away from me and the other veterans in the capitol city.

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 40-1

Testimony Submitted for the House Health and Human Services Committee,

Kansas Clean Indoor Air Act, February 10, 2010

House Bill 2642

Molly L. Johnson

Graduate, University of Kansas, Lawrence, Kansas.

Madame Chair and members of the committee, thank you for the opportunity to provide you my testimony opposing the Statewide Clean Indoor Air, HB 2642. I am providing testimony because I care about my health and that of my generation. Between being a life long asthmatic and being involved with various health organizations I cannot remember a time when healthy living has not been a priority for me. Although I know there are some aspects of our environment and medical history that we cannot control, there certainly are areas where changes can be made in order to create healthier surroundings for everyone. One such area is creating policy that will improve the quality of air in indoor public settings by removing the health dangers caused by secondhand smoke. I was raised in a non-smoking home, by parents that were adamant about not subjecting me to smoky environments due to my medical condition. At restaurants we were always seated in non-smoking sections, but even that was not enough at times. I always had to carry an emergency inhaler because there was never a guarantee of not being exposed to smoke, even in non-smoking sections.

The Surgeon General has told us for many years that smoking causes cancer and being exposed to secondhand smoke has been proven to cause cancer as well. It does not take too long to notice the difference between smoke free communities and those that still allow smoking indoors. I grew up in Wichita, but moved to Lawrence for college. As I'm sure you all know Lawrence implemented an indoor smoking ban years ago, while Wichita has only done so recently and to a lesser degree. The affects of the clean indoor air in Lawrence had immediate results on my health, more so than I even expected or noticed until returning to Wichita during breaks. During one summer break I was able to find a job at a restaurant and bar in Wichita as a hostess that allowed smoking. I was lucky, I worked at the front door and was able to get fresh air constantly, so my asthma was not as much of a factor. But I also chose to work as a hostess instead of a server so I would not be constantly subjected to smoky air.

We teach our children not to smoke, that it's bad for you. It seems that if this is truly how society feels then much more effort needs to be put into creating public environments where smoke is not a factor. If someone wants to smoke it is their decision, but why do I also have to live with the implications of their decision? In my experiences it seems that if someone is exposed to smoking they are more apt to take up the behavior themselves. Although secondhand smoke causes harm to everyone, it is important to consider the effects of individuals in my age group. First, the people that typically have jobs in industries that allow smoking indoors are around my age. We are always told not to smoke, but then are exposed to it the most at an age when we are making our own choices regarding our behaviors.

It is also important to consider the air quality in bars and clubs. It's no surprise that college students spend time in these places, and providing clean indoor air in these locations should also be a priority. The majority of people I know favor the smoking ban currently used in Lawrence because when you leave you don't reek of smoke and just feel better in general. I also feel it is important to note that even people I know who are smokers prefer and enjoy the indoor smoking ban because it just creates a better environment for everyone.

In closing I want to thank you for this opportunity to provide my testimony. I am opposed to the passage of HB 2642. Please don't change what others have already worked hard to establish, please consider passing a bill that will provide clean indoor air to everyone, not just a few.

Kansas
Respiratory
Care
Society

Date: February 10, 2010

To: Kansas House of Representatives
Health and Human Services Committee

From: Ed Anderson, MS, RRT
President, Kansas Respiratory Care Society

Subject: **In Opposition to House Bill 2642 Kansas Nonsmokers Protection Act**

Madame Chair and Members of the Committee,

As President, I am writing on behalf of the Kansas Respiratory Care Society (KRCS), to voice opposition to House Bill 2642 Kansas Nonsmokers Protection Act.

As respiratory therapists caring for the respiratory health of the citizens of Kansas, we are dedicated to preventing lung disease and promoting lung health. We work every day with patients suffering from the ill effects of smoking. We also see the impact of secondhand smoke on our patients with asthma, cystic fibrosis, lung cancer and COPD.

The KRCS opposes HB 2642 because it does not provide adequate protection to nonsmokers. The bill contains exemptions and exclusions that would allow designated smoking areas in restaurants and clubs. The bill preempts all local ordinances with stronger clean air protection provisions placing our citizens at risk. Instead the KRCS fully supports HB 2221with its stronger provisions for Clean Indoor Air. HB 2221 presents the most direct path for achieving a smoke free law for Kansas this year.

The Kansas Respiratory Care Society requests the Committee to vote **NO** on HB 2642 and to do the right thing and support HB 2221.

Ed Anderson, MS, RRT
President, Kansas Respiratory Care Society

Respiratory Therapy Program Director
Seward County Community College◆Area Technical School
1801 N. Kansas
Liberal, Kansas 67901
Email: ed.anderson@sccc.edu
Office Phone: (620) 417-1409

Date: February 10th, 2010

To: House Health & Human Service committee

From: Caressa Potter- Asthmatic and on behalf of a severe asthmatic

Re: Testimony in support of House Bill 2221 Kansas Clean Indoor Air Act and against House Bill 2642

Having a restricted lung disease like asthma, makes it very hard to breathe. Having an asthma attack is like taking a soda straw and trying only to breathe, not through your nose and/or mouth, but only that straw. Once it starts becoming difficult to breathe, you may start feeling shortness of breath, you might have some discomfort in your chest, you then can remove the straw and begin to breathe again normally. But for asthmatics, during an attack, they are incapable of removing the straw. Some medications may help ease the shortness of breath and the chest discomfort, but it really never totally disapates. And for some asthmatics they may require more invasive procedures.

When these asthmatics are having symptoms, all they want to do is try to obtain their next breath. Hopefully that next breath is clean air. And in some places that might not be possible due to smoking. When I am exposed to smoke, I start coughing and become short winded. Fortunately for me, I can take my rescue inhaler and remove myself from that environment and be fine. When my brother David gets around smoking, he becomes very congested. He develops excess mucus and phylum. His chest becomes tight and he starts to cough. If we move him away from the smoke, and takes his rescue inhaler he gets better. But if we have to stay in that enviroment, he starts becoming more short of breath, his coughing increases, and he makes wheezing sounds. We then have to move to the car where he takes a breathing treatment from a portable nebulizer. Why should we have to be kept in the house all the time, because of places where they can breathe and smoke? Why should asthmatics have to breathe in harmful chemicals when they can barely get the amount of oxygen to breathe normally?

Remedies that do not eliminate second-hand smoke exposure are insufficient. Ventilation systems do not totally remove the smoke from the air or filter the air. The chemicals can attach to the walls and ceilings allowing the smoke molecules to still be there. It does not work to separate the smokers from the non-smokers, due to the smokers blowing the smoke out and filling the area.

The reason why secondhand smoke should be eliminated is it affects the health of others. Opponents will argue that this law will lead to government intervention into other health issues such as obesity. The fundamental difference between the issues is smoking impacts me as a bystander, overeating by someone else does not. The state rightfully has laws against drunken driving because of its harmful impact on others. Secondhand smoking should be addressed for the same reason.

The following is an article written by Blue Cross and Blue Shield of Kansas: "A report released by the U.S. Surgeon General warns that secondhand smoke may be more dangerous than we

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 43-1

realize. In fact, regular exposure to secondhand smoke increases the risk for cardiovascular disease and lung cancer in nonsmokers.

Working or living in an environment where there's smoking poses the greatest health risk. But experts now know that any amount of exposure may be harmful."

- Sitting behind a smoker for three hours at a sporting event = 1 Cigarette
- Spending two hours in the non-smoking section of a restaurant= 1.5 Cigarettes
- Living with a pack-day smoker, 24 hours a day= 3 Cigarettes
- Working for 8 hours in a smoker-friendly office = 6 Cigarettes
- Working an 8-hour shift in a restaurant with smoky bar= 16 cigarettes

Smoking, second hand smoking, and third hand smoking all have been proven to show severe health risks not only for individuals without lung disease but for those who do. I ask that you vote in favor of this bill HB 2221 as approved by the Senate and take the next step in protecting Kansans from these types of smoking.

Written Testimony In Opposition to HB 2642
Before the House Committee on Health & Human Services
February 10, 2010
Presented by: James Dixon Gardner M.D. FACP
Chairman of the Public Health and Policy Committee of the Kansas Chapter of the American College of Physicians.

Trustee of the Manhattan Township of Riley County Kansas
30 Year member of The Manhattan Chamber of Commerce
Past Treasurer of Clean Air Manhattan
Primary Care Physicians of Manhattan 1133 College Ave. Suite C143 , Manhattan, KS 66502
785 537 4940 Fax 785 537 0836 email gardner@pcpman.com

Chairperson Landwehr and Members of the Committee: : I am writing in opposition to HB 2642 and encourage the full house of representatives **to move forward in concurring in the adoption of HB 2221** which was presented last year after much work and debate. Even with some exemptions in HB 2221, HB2221 would be a positive improvement in the interest of public health of the citizens of Kansas.

The **ACP Kansas Chapter** formally supports a state wide ban of smoking in all public places. I am aware that the **Kansas Medical Society** also has a formal policy on an effective clean air bill. I recently confirmed that The **Manhattan Chamber of Commerce** continues to have a formal policy that encourages the State Legislature to ban smoking in all indoor areas of public use without exemptions. **At the November 2009 ballot on a clean indoor air petition, the people of Manhattan, Kansas spoke** through the election process, demonstrating that a significant majority of the voters favored a local ordinance that meets these standards. As a physician who sees a lot of patients affected by second hand smoke and understands how the will of these people plays itself out in the election process, I know the vast majority of Kansans favor such a state wide law. Numerous communities have over the last few years spent much time energy and resources to bring about clean air change in their communities. In Manhattan I have really not heard of any who feel that our clean air ordinance has not been a positive change. Most people express their gratefulness that they can use more of the hospitality services now in the community.

HB 2642 is a real threat to Manhattan and its citizens. It is not in keeping with the Chamber of Commerce resolution to have no exemptions. **The most offensive aspect of this bill would be its preemption of our local ordinance** which the voters put into place after such a substantial effort of its citizens. **HB 2642 has many exemptions in it** and actually allows business owners to **purchase an exemption by paying a fee of 1 dollar a square foot for such a privilege**. Such a law would not level the field for bar owners who are sensitive about a fair playing field. It would create a much greater burden on the cost of enforcement of such a law. It would have the effect of continuing the severe consequences from second hand smoke which are so well documented by massive amounts of good research. **Nearly all of the issues which protect those who do not want to have the hazards of second hand smoke would be violated by HB 2642. Please reject HB 2642 in its entirety** at this time. Please **consider passing HB 2221which is bill that still allows for local communities to pass additional stronger provisions.** I feel I speak for the Manhattan area and the vast majority of the Manhattan citizens who appreciate their local ordinance and want other Kansans to have similar protections. The State organizations listed above put forth similar policy for all Kansans.

James Dixon Gardner M.D.

James Dixon Gardner M.D. FACP 2/6/2010

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 44-1

Emporians for Drug Awareness, Inc.
Working for a Safer Community Since 1990

PO Box 2015 Emporia KS 66801

620.341.2450 voice
620.341.2356 fax

Honorable Chair Landwehr and Members of the House Health and Human Services Committee:

It is with grave concern that I write to you regarding recently proposed **HB 2642**. Having spent countless hours over a 14 month period educating our community and local lawmakers on the importance of adopting a clean air ordinance in Emporia, it almost makes me physically ill to think that a weak and ineffective bill such as HB 2642 might replace the fair and comprehensive ordinance our voters passed last April and would also supersede all other effective ordinances that have been adopted across our state.

It boils down to the real intent of a statewide law to prohibit smoking in indoor places. If the intent is to merely pay lip service to the idea of public health while allowing certain businesses to buy their way out of the law by paying a fee that permits them to continue to expose segments of our population to known carcinogens, HB 2642 is the right choice. If, however, the intent is to protect ALL Kansans in ALL public places from the dangers of secondhand smoke exposure, then HB 2642 misses the mark by a wide margin.

HB 2642 is smoker-friendly only, ignoring the importance of using legislation to protect the health and safety of ALL Kansans. Ventilation and separate smoking areas have both been proven to be ineffective at protecting people from secondhand smoke exposure and are not legitimate alternatives to a complete ban. Having signs posted that a facility allows smoking may prevent customers from entering but does nothing to protect employees whose health is put at risk due to their job requirements. Hospitality workers are especially vulnerable as they are often without insurance and need to provide for a family and/or pay education expenses with limited options for jobs.

In Emporia, we eliminated smoking in <u>all</u> public places, including clubs, bars, restaurants and <u>all</u> motel rooms. No business has closed due to the ordinance, employees have expressed their gratitude for a healthier work environment and there are even longer lines at popular bars and restaurants, although now they are more likely to include families with children and those who could not previously patronize the establishment because of health issues caused by secondhand smoke. It would be a travesty if HB 2642 were adopted and allowed to undermine our own successful efforts to protect public health in Emporia as well as the success of other communities and counties across our state.

This is not a difficult decision to make. Adopting a weak, exemption-heavy law such as this would set our state *<u>back</u>* decades! Please do not give serious consideration to this poor example of legislation.

Sincerely,

Teresa Walters
Executive Director

HEALTH AND HUMAN SERVICES
DATE: 2-18-15
ATTACHMENT: 45-1

Date: **February 8, 2010**

To: **Madam Chair and Members of the Committee**

From: **Marshall L. Post, RRT, BHS, AE-C**
Respiratory Therapist

Re: **In opposition to HB 2642: Kansas Nonsmoker Protection Act**

I am writing to you with my concerns about HB 2642: Kansas Nonsmoker Protection Act. As a Respiratory Therapist in a major hospital in Wichita, KS, I see the detrimental effects of smoking on public health on a daily basis. Over the past 30 years in this profession, it has become more and more evident that smoking affects many more people than just those who are holding the cigars or cigarettes! In 2006, the U.S. Surgeon General issued a report titled *The Health Consequences of Involuntary Exposure to Tobacco Smoke* which made several major conclusions, including:

- Scientific evidence indicates that ***there is no risk-free level of exposure to secondhand smoke***
- Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke
- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma. Smoking by parents causes respiratory symptoms and slows lung growth in their children.
- Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. *Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke.*
- Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.

There is a substantial amount of scientific evidence to support these conclusions. 22 national experts who were selected as primary authors wrote this report. 40 peer reviewers reviewed the report chapters, and the entire report was reviewed by 30 independent scientists and by lead scientists within the Centers for Disease Control and Prevention and the Department of Health and Human Services.

Sadly enough, with our current state laws there is nothing to protect the public or us in general, from these detrimental effects of secondhand smoke. Several local municipalities throughout the state of Kansas, including my home city of Wichita, have passed local ordinances to address the issue of secondhand smoke. While these ordinances vary in there restrictions, they are all a positive step in the direction of protecting the public. **I am very concerned that HB 2642 would evidently preempt ALL local smoking ordinances currently in existence.** Local governments likely pass these ordinances because they understand the need to protect the general public from the effects of secondhand smoke exposure. Why would the State of Kansas simply want to roll back the restrictions that these localities have already put into place? It appears to me that this is a huge step backwards that will undo years of work by many, many people interested in the welfare of our public! This bill would severely limit the ability to adopt strong clean indoor air provisions in Kansas.

With the above facts in mind, I am urging the 2010 House Health and Human Services Committee to adopt **HB 2221** (***NOT HB 2642)*** to provide for a statewide Kansas law to protect residents, especially workers, from the contaminated air pollution caused by unrestricted smoking in enclosed places The legislation allows for some local control in that communities could adopt ordinances that are more restrictive than the standards set in the bill. For communities that already have more restrictive ordinances, **HB 2221** would not preempt those ordinances. Understanding the importance of public health, more than half of the other

states have put their citizens first by restricting smoking in restaurants and bars. If Kansas follows in their footsteps by passing **HB 2221**, lives will be saved.

Thank you,

Marshall L. Post
5558 Legion
Wichita, KS 67204-1814

Date: February 10, 2010

To: Kansas House of Representatives
Health and Human Services Committee

From: Donald Carden, BS, RCP, RRT
Registered Respiratory Therapist

Subject: **House Bill 2642 Kansas Nonsmokers Protection Act**

As a registered respiratory therapist and concerned resident of Kansas, I am writing to voice opposition to House Bill 2642 Kansas Nonsmokers Protection Act introduced by the House Health & Human Service committee. This bill would undo years of clean indoor air ordinances all across Kansas because it would allow smoking in every food or liquor establishment in Kansas. This bill would also roll back the stronger provisions already passed in Salina, Topeka, Emporia, Manhattan, Lawrence, Derby, Harvey County, Johnson County. The proposed HB 2642 would allow smoking in:

- Private residences; Designated hotel rooms (not to exceed 20%); Retail Tobacco Stores that prohibit minors; Benefit Cigar dinners; The entirety of, or physically separate designated smoking areas of Restaurants, Class A/B Clubs, Casinos, or Bars

I ask for the defeat of House Bill 2642. Instead I fully support HB 2221with its stronger provisions for Clean Indoor Air. HB 2221 presents the most direct path for achieving a smoke free law for Kansas this year. Passage of HB 2221 would prohibit smoking in:

- Restaurants; Bars; 80% of hotel/motel rooms; Home day care; Any enclosed place of employment; Taxicabs and limousines.

HB 2221 does allow smoking in:

- Casino floors; 20% of hotel/motel rooms; Tobacco shops with 65% tobacco revenue; Private A and B clubs; Designated area of adult care facilities

During this time of state budget shortages passage of HB 2221 is one way to help reduce the health care costs of the state and insurers by improving the health of all citizens. Prior research clearly demonstrates that exposure to second hand smoke increases the incidence of lung disease, heart disease, hospitalizations, and death. Research also shows that passage of comprehensive clean indoor laws reduces the need for health care services. Further the evidence is now clear that passage of comprehensive restrictive smoking legislation improves the health of a community without hurting local business.

Respectfully,

Donald Carden, BS, RCP, RRT
Registered Respiratory Therapist
912 W 17th St
Newton, KS 67114
Email: dcarden4@cox.net
Office Phone: (316) 268-58047

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT:
47-1

Tom Bell
President and CEO

TO: House Health and Human Services Committee

FROM: Chad Austin
Vice President, Government Relations

DATE: February 10, 2010

RE: House Bill 2642

The Kansas Hospital Association appreciates the opportunity to comment regarding the provisions of House Bill 2642, which establishes the Kansas Nonsmoker Protection Act. KHA and its members have a long history of favoring a comprehensive statewide smoking ban. House Bill 2642 contains provisions that do not fully meet our criteria of a comprehensive statewide smoking ban. Regrettably, we cannot support House Bill 2642 and would urge the committee to reconsider House Bill 2221 as a more practical alternative.

Tobacco is the number one source of preventable disease worldwide and is responsible for an estimated 438,000 deaths, or nearly one of every five deaths, each year in the United States. As health care providers, we feel it is necessary to take a stand to stop the use of tobacco. Second hand smoke has been proven hazardous to people's health. Several reports, including the one issued by the U.S. Surgeon General in June 2006 state that "*there is no risk-free level of exposure to secondhand smoke. Nonsmokers exposed to secondhand smoke at home or work increase their risk of developing heart disease by 25 to 30 percent and lung cancer by 20 to 30 percent*". According to the Centers for Disease Control and Prevention, second-hand smoke exposure is a known cause of sudden infant death syndrome, respiratory problems, ear infections, and asthma attacks in infants and children.

In a statewide public opinion poll conducted in December 2008 by the ETC Institute on behalf of KHA, 75 percent of the respondents indicated that they would support a statewide smoking ban in all indoor public places. Of the 25 percent that answered in opposition, 40 percent indicated that they would support a partial smoking ban. The results of the poll demonstrate that overwhelming public support for a statewide indoor smoking ban does exists.

Kansas hospitals have been smoke free facilities since 1994. The implementation of that law took time; it was, after all, a culture change. The same will be true with the passage and implementation of a comprehensive statewide smoking ban. It must not be forgotten that tobacco use is not a right; it is a privilege that should be restricted when it is detrimental to others. A comprehensive statewide smoking ban will help Kansas become a more healthy and safe environment. We appreciate your leadership and support on this major health issue and encourage your consideration of House Bill 2221.

Thank you for your consideration of our comments.

American Heart Association®
Learn and Live℠
Midwest Affiliate
Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin and two counties in Kentucky

February 10, 2010

TO: House Committee on Health and Human Services

FROM: Cathy Porter, Volunteer for American Heart Association

RE: HB 2642—Kansas nonsmoker protection act

Madam Chairwoman and members of the committee:

Thank you for allowing me to submit written testimony on this most important issue of a law for clean indoor air. My name is Cathy Porter and I am a volunteer for the American Heart Association. The reason I want to speak out on this issue is that I am a heart attack survivor. My story began almost 11 years ago when I suffered a massive heart attack the day before my 45th birthday. After many, many tests...doctors came to the conclusion that my only risk factor was smoking.

In a landmark study of more than 32,000 women, constant exposure to secondhand smoke—in the workplace or home– nearly doubles the risk of having a heart attack for women. The smoke weakens the lining of your arteries and causes the soft plaque to become unstable, many times resulting in a heart attack. That is how it happened to me. I had to undergo open heart surgery, and because of the damage caused by my heart attack, the pumping function of my heart is only half of what it should be. I cannot be with you today because of a checkup of my heart's condition.

As a woman and a volunteer for the American Heart Association, I cannot remain silent when I see the legislature of the state of Kansas truly considering a fake proposal. A real smoke free law is simple, strong and fair. They protect everyone, employees and customers alike from harmful exposure to secondhand smoke. Any time, any where. The American Heart Association continues to support smoke-free policies that provide for 100% smoke free public places, including restaurants and bars... free of exemptions for separately ventilated rooms, size or hours of operation exemptions, exemptions for bars or private clubs or recreational establishments, casinos and opt-out provisions. We want to make Kansas to make a healthier place for all its citizens, not in just a few cities.

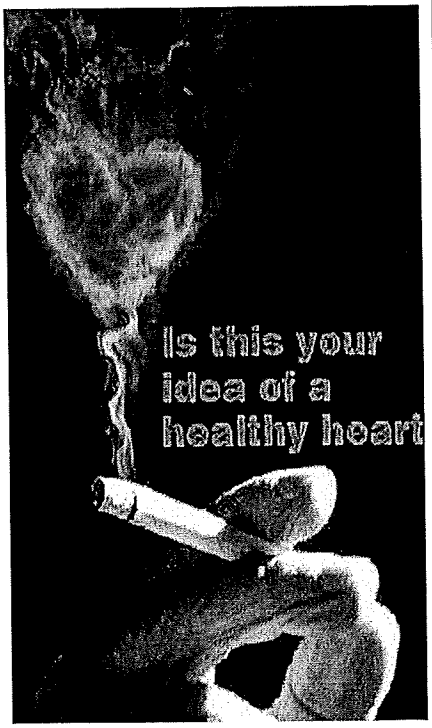
We consider this issue a PUBLIC health issue, in a public arena. Fake proposals allow different rules for different businesses. Fake proposals still allow smoking, failing to protect the public from secondhand smoke exposure. Fake proposals are confusing, full of holes and offer little protection. For instance, confusing public and private issues (public arenas vs. your private vehicle), confusing ventilation systems that cannot remove the 4,000 toxins contains in the smoke, confusing hours, and age limits.

Why have a fake law that leaves you unprotected, when studies show that if you want to dramatically lower the odds that you'll die of heart disease, go live someplace where public smoking is restricted. Representing women in Kansas, I want that place to be Kansas. We deserve REAL protection from a real law, not a fake one.

I urge this committee to vote no on passage of such a proposal as HB 2642. Thank you .

Heart Disease and Stroke. You're the Cure.
5375 SW 7th St. ~ Topeka, KS 66606 785-228-3437 785-272-3435 linda.decoursey@heart.org

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 49-1



American Heart Association. | American Stroke Association.
Learn and Live.

How to tell if a smoke-free proposal is fake...OR for real!

real

Smoke free laws are simple, strong and fair. They protect everyone, employees and customers alike, from harmful exposure to secondhand smoke. Anytime. Anywhere.

fake

Other proposals are confusing, full of holes, and offer little protection.

Fake proposals allow different rules for different businesses. No workplace should be exempt. Fake proposals still allow smoking in many establishments, failing to protect the public and workers from secondhand smoke and its 4,000 toxins. Fake proposals allow smoking between the hours of 9:00 p.m. and 5:00 a.m. and protect no one as smoke lingers in a room for two weeks. Fake proposals do not protect the public or workers with the smallest voice and the greatest exposure to secondhand smoke.

Separating smokers from nonsmokers, cleaning the air, ventilating buildings or limiting the number of hours of smoking **cannot** eliminate the exposure of nonsmokers to secondhand smoke. **There is no safe level of exposure to secondhand smoke,** according to the 2006 Surgeon General's report.

In a land mark study of more than 32,000 women (published in *Circulation*), constant exposure to secondhand smoke—in the workplace or home—nearly doubles the risk of having a heart attack for women.

That's why the American Heart Association's work in this area ensures that more and more people can reduce their exposure to secondhand smoke.

Why have a fake law that leaves you unprotected?
Vote "no" on HB 2642

Smoke Free : Good For People - Good For Business

49-2

Andrew J. Tricomi
5517 Noble Street
Shawnee, KS 66218

February 10, 2010

The Honorable Brenda Landwehr
Chair, House Health and Human Services Committee
Kansas State Capitol
10th and Jackson, Room 151-S
Topeka, Kansas 66612

Re: Written Testimony in opposition to House Bill 2642.

Dear Representative Landwehr:

Help make Kansas a better place to live and breathe by helping to pass a STRONG smoke-free law this session. We need to continue to move forward with a statewide ban on smoking in public places to protect the health of everyone. We know the health risks of second hand smoke. Why would we ever move away from a ban on smoking in public places?

On October 25th, 2006, my mother lost her fight with emphysema. She had been battling the disease for 6 years. A disease she developed from her 40 plus years of smoking. It was not only heart breaking to loose her, but it was devastating to watch the life of someone I loved so dearly, deteriorate year after year. My mother was someone who was vital and enjoying life to the fullest. Just six short months after loosing my mother, I came very close to loosing my father. In late May, he survived a heart attack which lead to the diagnosis of him needing open-heart surgery. My father had a six bypass. His doctor's definite reason for having to have so many arteries replaced was the result of my father being subjected to second hand smoke for most of his adult life.

My father was surprised that someone like himself who was in good health, could have a heart attack and have such damage to his arteries. When my father asked the doctor the reason, he was told, "it was your generation. They smoked and smoked and if they didn't smoke, they were subjected for hours to second hand smoke." We didn't know then we what know now. We know that second smoke causes health issues for those who are exposed to it. We have a morale responsibility to protect the public.

I could go on and on about this since I have such a personal message to convey. My other stories include; my grandmother's doctor once asking my father how long my grandmother smoked. My grandmother didn't smoke a day in her life. But we were told her lungs were black as coal due to the years she spent being exposed to second hand smoke. My grandmother lost her life in 1986 from her third stroke. I've lost many family members to smoking related diseases. A few of my aunts and uncles are now battling emphysema. I continue to support my family members who are trying to quit. I have a cousin who is 25 years old and the current ban in Kansas has assisted her in quitting. My belief is with a statewide ban we will not only save the lives of those exposed to second hand smoke but the ban will encourage those who do smoke to quit.

When I thought about this ban the other day, the first thing I thought about was the fact that we know drinking and driving is a public health issue. We know that it can kill. To address this issue we have made it illegal in every state for people to drink and drive. We know we must protect the health and lives of the general public.

My second thought on this was, maybe I was going overboard in my comparison. But at the end of the day, it's about saving lives. We know that second hand smoke is a public health issue and those exposed to second hand smoke have increased chances of developing certain health issues. Since we know this to be true, shouldn't we put laws into effect to address this issue?

Why would we put legislation like HB2642 into effect that moves us backwards on such an important public health issue? This piece of legislation also has numerous exemptions for bars, casinos and restaurants. Do we say it's illegal to drink drive, but since less people are on the roads from 1am to 4am, we'll allow it? We need to ensure we put legislation into place to protect EVERYONE. I realize smoking isn't against the law and you have the right to smoke. But why should a non-smoker be subjected to increased health risks when they are out in public? I don't believe in smoking and non-smoking sections when they're in the same building. I highly doubt any of these places turns off the ventilation system.

I am asking you not to let HB2642 make it's way through legislation and to ensure we continue to move forward with a statewide ban on smoking in public places.

Sincerely,

Andrew J. Tricomi
Shawnee, KS

Cc: Kansas House Health and Human Services Committee
Rep. Dave Crum - Vice-Chair
Rep. Scott Schwab
Rep. Lana Gordon
Rep. Ann E. Mah
Rep. Marc Rhoades
Rep. Clark Shultz
Rep. Don Schroeder
Rep. Peggy L. Mast
Rep. Ed Trimmer
Rep. Gail Finney
Rep. Jim Ward
Rep. Bill Otto
Rep. Phil L. Hermanson
Rep. Geraldine Flaharty
Rep. Aaron Jack
Rep. Jim Morrison
Rep. Jill Quigley
Rep. Cindy Neighbor
Rep. Dolores Furtado
Rep. Mike Slattery
Rep. Valdenia C. Winn
Rep. Owen Donohoe

The Honorable Brenda Landwehr
Chair, House Health and Human Services Committee
Kansas State Capitol
10th and Jackson, Room 151-S
Topeka, Kansas 66612

Re: Written Testimony in opposition to House Bill 2642

House Representative Brenda Landwehr I wish to share with you my personal experience with secondhand smoke. I was a three pack-a-day smoker when I choose to quite 20 years ago. Believe me I was not one of those "terrible" reformed smokers who couldn't stand to be around smokers. In fact I continued to work in a smoking environment for a couple of years but found over time I preferred to stay out of "stinky" places.

It was not until I had a smoker move into the apartment directly behind mine three years ago that I got into real trouble. The landlord did everything possible to stop the filtration of smoke into my apt. We had totally separate heating and ventilation systems so that was not the cause of the intrusion. They placed foam shields in all the electrical outlets along our common wall. They sprayed foam sealant around all the plumbing fixtures along that common wall. They use clear plastic sealant all along the entire baseboard.

None of that worked because smoke seeps directly through wallboard. Yes, it does. Keep in mind wallboard is only thin-sheets of paper holding powder.

The situation was made worse when the tenant would open his patio door trying to remove the smoke. Doing so actually worked as a vacuum and pulled all those nasty carcinogens directly through the wallboard and into my home. I developed serious respiratory problems and my doctor demanded I move. It took me over a year after moving to a non-smoking property to regain some of my lung capacity however it has left me with a terrible allergic reaction to secondhand smoke. I am sure you have witnessed if not in person then on television what happens to an asthmatic when they are unable to breathe. It is the same for me when I am exposed to secondhand smoke even if from a distance and out of doors. Please think of me when you discuss smoking in public or private spaces.

Judy Young
3400 E. Murdock
Wichita, KS 67208

Rita Jones
238 E. Westhoff Court
Gardner, KS 66030

February 10, 2010

The Honorable Brenda Landwehr
Chair, House Health and Human Services Committee
Kansas State Capitol
10th and Jackson, Room 151-S
Topeka, Kansas 66612

Re: Written Testimony for House Bill 2642

Dear Representative Landwehr:

I am writing to you to ask that you help to make Kansas a better place to live and breathe by helping to pass a STRONG smoke-free law this session. ***Four out of five Kansans*** choose not to smoke, yet many will face the harmful effects of secondhand smoke simply by going out to eat or going to work.

Secondhand smoke kills 53,000 non-smoking Americans and is a known cause of lung cancer, heart disease, chronic lung ailments, and other significant health problems. Right now, 36 communities and 3 counties in Kansas have STRONG clean indoor air laws. But ***ALL*** Kansans deserve the same right to breathe clean air. It is time for Kansas to join the 27 states (plus Washington, D.C.) that have passed ***comprehensive, statewide clean indoor air laws***, and to put the health of Kansans first.

HB 2642 ***reverses*** the work of local officials and in three communities it reverses the will of the voters. The bill contains numerous exemptions, including casinos in their entirety and charitable benefit cigar dinners – seriously?? – charitable benefit cigar dinners would only benefit the tobacco industry, certainly not anyone attending them!!! There is also the way enforcement of the bill would be extremely difficult, no penalties assessed to proprietors if there are violations equals no incentive to adhere to any smoke-free policies. This bill clearly does not cut through the smoke for a STRONG smoke-free law in Kansas.

Sincerely,

Rita Jones
Gardner, KS

Cc: Kansas House Health and Human Services Committee
Rep. Dave Crum - Vice-Chair
Rep. Scott Schwab
Rep. Lana Gordon
Rep. Ann E. Mah
Rep. Marc Rhoades
Rep. Clark Shultz
Rep. Don Schroeder
Rep. Peggy L. Mast
Rep. Ed Trimmer
Rep. Gail Finney
Rep. Jim Ward
Rep. Bill Otto
Rep. Phil L. Hermanson
Rep. Geraldine Flaharty
Rep. Aaron Jack
Rep. Jim Morrison
Rep. Jill Quigley
Rep. Cindy Neighbor
Rep. Dolores Furtado
Rep. Mike Slattery
Rep. Valdenia C. Wi
Rep. Owen Donohoe

HEALTH AND HUMAN SERVICES
DATE: 2-10-10
ATTACHMENT: 52-1

clean air KANSAS

SMOKE FREE. EVERYONE HAS THE RIGHT TO BREATHE CLEAN AIR.

My name is Jake Lowen and I am the Director of Clean Air Kansas. As confirmed by several recent statewide polls we know that most Kansans support comprehensive legislation to create smoke-free public places. Over the last few months we have had the opportunity to talk with many Kansans and have collected thousands of stories.

We've heard from business owners like:

- **Vern Schwanke** who owns a bowling center in Colby who wants to see a statewide comprehensive law and a level playing field.
- AND **David Bradshaw** from Vassar KS whose own wife can not step a foot inside the two restaurants they own together because of her severe COPD

We've heard from those who have watched loved ones die from exposure to second hand smoke like:

- **Norma Weber** from Grainfield, **Karen Lucas** from Goodland, **Ella Krider** from Chetopa.
- **Gil Manley** from Hoisinginton who recently lost his wife from emphysema even though she never touched a cigarette herself. And **Cindy Keller** from Ellis who tells the exact same story but about her parents.
- **David Rohla** from Clay Center who lost his father, mother, and brother to smoking and as he says *"That's enough."* Thats enough.

We've talked to Workers who want protection from secondhand smoke on the job like:

- **Susie Thiel** from Rago, **Diane Petty** from Protection (its by Coldwater) or
- **Virginia Phelps** from Herington who worked for decades in smoky bars, which she says "wrecked her health"

Remember that as you contemplate half measures like "separately Ventilated rooms" that the workers who must in those rooms are not protected.

We've heard the concerns of health care professionals who know the health benefits of comprehensive smoke-free policies like:

Margaret Harrison from Oswego, **Amy Greenfield** from Scranton, **Evelyn McCormick** from right here in Topeka.

4021 SW 10th Street #302 | Topeka, KS 66604 | tel: 1-877-620-CAKS | www

There are those who want to enjoy their city's bars and restaurants and protect their own health like:

- **Tabitha Larkin** from Lindsborg, **John Noltensmeyer** from Parsons, **Ben Streeter** from Vassar, **Eldon Huschka** from McPherson, **Marcella Birzer** from Ellinwood, and
- Arnold Villegas from Topeka who *"doesn't want to die of lung cancer because he likes to go out to bars"* or
- Craig Leu from Harper who describes exposure to second hand smoke as a *"Slow moving bullet"*

And there are many many more who agree that this is fundamentally a "Rights issue". The right of people to breathe clean, smoke-free, indoor air.

- **Janet Macy** from Longford reminds us that *"its my right, my children's right, my grandchildren's right"* or
- **Virginia Crider** from Wakefield who is dependent upon her oxygen tank and can not enter many of the public places in her town because the presence of second hand smoke is a severe health risk.
- **Dennis Oetting** from Olathe recently had bypass surgery and has been ordered by his doctor to stay away from smoky places because it might trigger a heart attack.

We must consider their rights.

Ira Walker who is a truck driver from Lincolnville says *"I Don't Understand why Kansas has waited so long to enact legislation protecting those of us who do not smoke from people who do smoke. Most of the states I go through as an open-road trucker do not allow smoking in bars, restaurants, and truck stops. Quite often I won't stop in a place that does permit smoking, because I don't smoke, my family doesn't smoke, and I don't need to smoke. If I want to do something to harm myself I have many selections from which to choose. It's a filthy, dirty, expensive, habit that I don't need and I don't enjoy being around people who participate in it."*

I could go on and on, we've collected over 5000 similar stories. I invite you to learn these stories for yourselves. I submit as written testimony the stories and contact information of the individuals I named and many more.

Please review them, contact them if you will. 70% of Kansans support a statewide comprehensive smoke-free law, but all do so many different and equally compelling reasons.

What is clear is that these Kansans want measures that protect public health and not half-measures like the bill you are considering today. Please reject HB2642 and vote to stand with these Kansans in supporting a more comprehensive law like has been passed by the Senate twice.

Voices of Kansans in Support of a Smoke-free State

Vernon Schwanke 2458 Hwy 25, Colby, KS 67701

"Well I run a bowling center. You know and for years the bowling industry has kind of fought the no-smoking laws you know. But in the last several years you know as smoking laws have been put into effect around the country, the proprietors that are affected by them have found out that in the long run it does not decrease their business it increases their business. The bar business might go down a little bit but the open bowling and recreational bowling increases almost immediately. And so we found that there's nothing but fear about the no smoking laws you know. And you know we've come full circle where we now really, really would like to see the state do a comprehensive state-wide no smoking ban, because when you leave it up to the cities you know then you got small towns like Iola you know where maybe the mayor owns the most smoke-filled bar in town you know and he wasn't want to do anything about it you know. You know so we're kind of you know left out of the equation. Bigger cities you know can go ahead and get the momentum up against no smoking bills. But smaller towns it's a lot harder you know. We would much rather have a comprehensive no-smoking ban; because when somebody comes into the state or lives in the state they know what the score is anywhere they go. You know unlike "what town are we in now?" and "what is the law here?" and "what days can we smoke?" It just makes it easier to navigate. You know years ago we had different drinking laws you know in each county and it made it hard for anybody to really know as you went from county to county what the score was. We much rather see a state-wide ban that a city by city ban. We are definitely the bowling proprietors of the group are definitely in favor of a no-smoking ban.

David Rohla 818 Lincoln Ave, Clay Center, KS 67432

"This is David Rohla. I had a dad that died from smoke and cancer. I had a mother that died from getting second-hand smoke from it. I had a brother that died from second-hand smoke and cancer, and I think that's enough."

Ira Walker 2380 270th, Lincolnville, KS 66858

"Ira Walker. I don't understand why Kansas has waited so long to enact legislation protecting those of us who do not smoke from people that do smoke. Most of the states I go through as an open-road trucker do not allow smoking in bars, restaurants, truck stops. That's why often I won't stop at a place that does permit smoking. Because I don't smoke, my family doesn't smoke, I don't need to smoke. If I wanted to do something to harm myself I have many selections from which to choose. That's a filthy, dirty, expensive habit that I don't need, and I don't enjoy being around people who participate in it. Thank you for your time."

Marcella Birzer 306 E 2nd, Ellinwood, KS 67526

"I'm Marc Birzer and I am against having second-hand smoke in public places. I bowled for years and there was always somebody on our team that smoked and every week came home with smoke in my hair, my clothes, even now when I go to a restaurant that does allow smoking I come home and my clothes smell like smoke. That's all."

Gail Manley 551 W Broadway, Hoisington, KS 67544

"My name is Gail Manley. I live at Hoisington, Kansas. I've been a widower now for about six years. I smoked early on in my life, until approximately twenty years ago. My wife had never smoked, but she lived with me, with a person that did. When she died she had emphysema and some lung damage. It wasn't known until after her death. That's one of the reasons why I support your legislation to banning second-hand smoke."

Colleen Krom 307 E 5th, Ellinwood, KS 67526

"Okay my name is Colleen Krom and I am absolutely against second-hand smoke. I am completely against it because of the effects it has on our health, our children, and our environment. I am very adamant I talked to everyone around me, and I pray that one day Kansas will be smoke free. I'm finished."

Tabitha Larkin 306 S Main, Lindsborg, KS 67456

"My name is Tabitha Larkin and I am very opposed to smoking in bars and restaurants for the health of not only myself for being a patron, but for the people who are serving. And I used to be a smoker myself so it bothers me a lot more now. I have that and I just really hope this will keep other people from smoking in public places and maybe make them want to quit too. That's it, thank you."

Christina Wexler 410 S Fisher, McPherson, KS 67460

"Hi my name is Christina Wexler. I am a full-time mom and this issue is very important to me. I go places with my son and future children and not have them exposed to second-hand smoke. And I think it's a habit that could affect them for the rest of their lives. It's a major issue, so please, please, please stop the second-hand smoke exposure. Again this Christina Wexler, thank you."

Norma Weber 2431 K-23, Grainfield, KS 67737

"My name is Norma Weber and I suffer from second-hand smoke. I have had lots of breathing problems whenever I'm around smoke and it takes my breath away. I've never had an asthma attack but I can't breathe and that is very difficult to deal with. And people don't even realize I think how much their smoke, just a tiny whiff of it, can take a person's breath away, and it inhibits them from breathing. And I have noticed this especially at a bar, I mean not necessarily a bar, a restaurant or any public place that somebody has lit up a cigarette and I can smell it. I mean you can be a half a mile away and I can smell your cigarette. And it's really hard to get them to understand what they've done to my health and the problems that I have. I spend a lot of money daily on medicine to keep me so I can breathe. And I've never smoked a cigarette in my life, never ever. I don't live with a smoker. I have family members that do smoke and they have to go outside. When they come back in I can smell it on them and it's really hard to deal with. I am fifty years old and I don't know what this going to lead to for me for my medical problems. Every time I go to the doctor it seems like I have to add something else to help me breathe. It's getting very expensive. I'm sad that I'm the one that has to deal with it when I've never smoked in my life. Thank you for listening."

Cindy Keller 380 Ave, Ellis, KS 67637

"I'm Cindy Keller and I am against second-hand smoke because it literally killed my mother. My dad was a smoker and she was not, but she was with him and rode with him a lot, worked with him and eventually that is what killed her. So definitely I am against second-hand smoke."

Timothy Floyd 403 E. St Joseph St, Wathena, KS 66090

"Okay my name is Tim Floyd. I live in Wathena. I am a smoker, have been for thirty years. I have no problem at all with banning smoking in public places. For those who don't smoke it is a horrible irritant. It stinks; we don't even smoke in our own home. And I've got no problem at all with them banning it public places across the whole state of Kansas. Thank you."

Karen Lucas 1406 Harrison, Goodland, KS 67735

"I am Karen Lucas from Goodland, KS. I would like to speak on no smoking in public places. I lost a dear friend just a month ago to second hand smoke, cancer of the lung. She never smoked a cigarette in her life. I don't think that the smokers in the state of Kansas realized the hazards the fumes they are putting out. I ask Kansas to pass the law. Thank you."

Dennis Oetting 11814 W. 149th St, Olathe, KS 66062

"My name is Dennis Oetting, and I am supporting the proposed legislation for no smoking. I have a personal reason to do that, I am a heart transplant patient and probably bought the first pack of Marlboro's in Overland Park, Kansas. I smoked for a number of years and there's no question in my mind that my heart problems are due to smoking."

Linda Bissing 11765 W. 144th Terr, Olathe, KS 66062

"Yes, I just don't know why you wouldn't, with all the proof that's out that's there why you wouldn't want to protect people and why you would put their health at risk. It seems like the only common sense thing to do. It's such an easy thing to do. And I think you need to protect your workers and your patrons. And if there was no science behind I would understand why you wouldn't, but there's plenty of science to back it up and it seems like it's the logical thing to do and that's all I have to say."

Craig Leu 120 E. 13th, Harper, KS 67058

"My name is Craig Leu. Second-hand smoke has been proven to kill. So in public venues I don't see any difference in that than shooting people. You are just using a very slow bullet. So if you put your brain to it, think that freedom that we think we're giving up when we tell smokers they can't smoke is actually the freedom you are taking away from the people that breathe the smoke."

Allen Bab 225 N Fifth St, Kiowa, KS 67070

"This is Allen Bab. I'm against smoking in buildings period. I worked at a casino and it was so bad that you could not hardly see. I've been in bars where it's bad enough that you can't see, and the second hand smoke is killing everybody. And I've got COPD, it's from smoking so I know what the hell I'm talking about. I'm done talking."

Susie Thiel 13378 SE Main St, Rago, KS 67128

"Okay, my name is Susie Thiel and I support the legislation for no-smoking in bars and restaurants and work places. I work in an air-craft factory and it went smoke-free about ten, fifteen years ago. It was the best thing that ever happened to us. At that time I was confined to an area that enclosed and I was subjected to second hand smoke. I'm sure health wise it was a detriment to me. I do support it, thank you."

Ella Krider 722 Walnut, Chetopa, KS 67336

"This is Ella Krida, and I am very interested in this program of no smoke. I'm seventy, almost seventy three years old. I worked for a doctor almost twenty-four years. I am now working for a drug store. My husband passed away in 96; he had congestive heart failure. It was impossible for him to be around anywhere where there was smoke. Not only that, the smoke damages not only the person that is smoking, it damages the person who is inhaling that smoke in the air. I'm very concerned about this due to the fact that I have granddaughters and I have a very precious great granddaughter. And I would appreciate our legislator taking a firm stance against the smoke in Kansas, making it smoke-free. That would be an ideal project. And I appreciate you asking me my opinion. I thank you.

Aleta Chamberlain 611 S 17th, Parsons, KS 67357

"My name is Aleta Chamberlain. I grew up in a smoking home. Over the years I have developed allergies that have made it very difficult for me to be around smoke. So when I go into a public, a gathering point of some with other people are smoking it makes it very difficult for me to breathe at times. I do use oxygen part of the time. So I see this as an issue that certainly needs to be addressed. It would be very helpful to have a law that supports this."

Margaret Harrison 1201 4th Apt B4, Oswego, KS 67356

"I'm a registered nurse, retired. I understand the hazards of smoking and I believe in banning it from every place you can ban it. It's the most preventable cause of death there is. And that's it."

Martha Lanter 8980 Twighlight Ln, Lenexa, KS 66219

"My name is Martha Lanter. I am definitely a proponent of smoke-free work places and bars although I am a smoker. But I do feel that it is in the best interest of the community at large that these areas be kept smoke-free. Thank you."

Arnold Villegas 237 NE Scotland Ave, Topeka, KS 66616

"Hello my name is Arnold Villegas the second. I am pro, as far as getting smoking out of the bars and stuff like that. I don't, I hate coming home stinking like smoke when I go because I don't smoke. You know, it burns my eyes. You get stuff in your nose and everything. Second hand smoke is not good. We need to reevaluate and take that out, to where we can go out and have a healthy way of going out without having to worry about if I am going to get cancer because I went out to a bar. Other than that that's pretty much it."

Evelyn McCormick 3410 NW 18th St, Topeka, KS 66618

"This is Evelyn McCormick and I have very strong feelings as nurse and as an individual for the smoking in any public areas for others like restaurants and bars, public places like that. My concerns are basically one: for health. It has been shown scientifically that second-hand smoke is damaging. My second concern is for myself and others who have reactions such as asthma, COPD, just having nausea, headaches caused by second-hand smoke. And my third reaction is that everybody has rights, not just smokers, but everybody. I cannot understand why our legislature is so adamant that something that is going to be damaging is allowed to be occurring. They just need to take their cigarettes and their pipes in the open, and preferably not around the restaurant or bar door because then again you walk right through their second-hand smoke. I'm finished, thanks."

Vernon Hay J-9 Lake Rd, Council Grove, KS 66846

"Hello my name is Vernon Hay. I support the clean air initiatives in the state of Kansas. I'm concerned about the clean air from the standpoint, among other things, healthcare costs. We talk a great game across the nation in terms of reducing the health care costs, yet smoking, which is a major contributor to healthcare costs, is still not controlled in any fashion in the state of Kansas with a few exceptions. I feel strongly this is one of the things we should be doing if we are serious about health care costs. Thank you."

Virginia Phelps 206 S 9th St, Herington, KS 67449

"Okay I'm Virginia Phelps and I am against smoking because I worked in a bar, and I've ruined my lungs with second-hand smoke. So I do not smoke. And that's terrible. So that's what I think about smoking. Thank you. Bye."

Virginia Cridler 509 Grove St. apt. 211, Wakefield, KS 67487

"I am on oxygen because of other people's smoking around me. You say I could've got up and walked away. I did many times but family was the ones that smoked. And at that time they didn't know but, second-hand smoke was so dangerous. But I am on oxygen because of it, day and night. (Cough cough) It's not much fun I can tell you. You have to haul a tank of oxygen around. And if the electricity goes off you have back up to the portable. So, that's no fun either, especially in the middle of the night. I'm eighty years old. I'll be eighty one this month. I didn't ever think I'd see that age but I am because of the oxygen. And I'm definitely against second-hand smoke. My name is Virginia Cridler. I think I said what was important."

Janet Macy 450 Jayhawk Rd, Longford, KS 67458

"My name is Janet Macy, and regarding smoking I am a registered nurse. I take care of lots of patients right now, in fact several today who have lung disease from their smoking. I don't think that I should have to be subject to somebody else's smoke. I think it's my right to have clean air, and my children's right to have clean air, and my grandchildren's right to have clean air. If somebody wants to smoke and inhale, they need to go outside where is can be disseminated and not concentrated. And that's my opinion; I think all public places and restaurants should not have smoking."

Ben Streeter 22351 S Berryton Rd, Vassar, KS 66543

"Yeah my name is Ben Streeter and I live in Vassar, KS. I am very concerned about second hand smoke. I have sinus problems to the point that any smoke or cigarette smoke really bothers me. Therefore we kind of select restaurants and go places where we know that won't be a problem. However, you can't always do that. I have to take medicine constantly. I also have a daughter-in-law who is a waitress in a restaurant who refuses to really even provide a smoke-free area that amounts to anything. And she has to breathe that stuff everyday and it makes her cough and gets her too. I think it's time...I smoked in the past, about twenty years ago; thirty years ago I guess I quit. I think it's time for smokers to realize that they're jeopardizing the health of all those who have to breath it and be around it. While I respect their right to smoke I think they need to do it where it doesn't bother other people. And that's about all I have to say. Thank you.

David Bradshaw 718 S Burlingame Rd, Scranton, KS 66537

"I believe that workers should be protected. I believe that a business, that a bar or restaurant, should have a smoking section outside. No one should be exposed to cigarette smoke while they are on their job."

Mark Brooks 10973 S Woodring Rd, Overbrook, KS 66524

"Okay my name is Mark Brooks and my father died of COPD. He smoked for many, many years and finally gave it up. He was restaurant proponent of the anti-smoking in bars and restaurants the proposal and he thought that a restaurant would allow

smoking inside his walls is absolutely ludicrous. But, it is very primitive the idea that we continue to have smoking in bars and restaurants where people who hired on to work there would be subjected to all that second-hand smoke. I watched as this all has passed several years ago and it's done nothing but good. Thank you."

Amy 18740 S Morrill Rd, Scranton, KS 66537

"My name is Amy and I support the legislation about stopping cigarette smoking in public places. I'm on oncology nurse and I spend a lot of my day treating patients with lung cancer both from their own smoking and many patients who have never smoked before but have been exposed to second-hand smoke, and anything we can do to promote community health which trickles down to individual health would be advantageous to the entire state. And that's it."

Stephen Smith 200 N Fourth, Marion, KS 66861

"This is Stephen James Smith, Marion, KS. I think second-hand smoke is very dangerous. I was a doctor for twenty-five years and I got to see the ravages of people who have uh not smoke and been among those people who smoked in businesses and the stores and so forth. I think it's wrong."

KANSAS MEDICAL SOCIETY
Established 1859

To: House Committee on Health & Human Services

From: Dan Morin
Director of Government Affairs

Date: February 10, 2010

Subject: HB 2642--Smoking ban

The Kansas Medical Society appreciates the opportunity to appear today as you consider HB 2642 which would institute a statewide smoking ban similar to 2008 city-wide ordinance enacted in Wichita. We respectfully request the committee not report the bill favorably for passage.

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

Smoking creates a health hazard for the surrounding public when someone chooses to do it; therefore we can, and should, stop people from doing it if they are posing a health threat to other people. The concept is similar to the public health goal of vaccinations. All 50 states have stringent, and compulsory vaccination laws based on the premise that individuals who may potentially carry or spread diseases pose a threat to other members of society and increase the cost burdens on the health care system. The same holds true for smoking in public places. The Kansas Legislature can play a significant role in lowering health care costs and can protect an overwhelming majority of Kansas residents from the dangers of second hand smoke.

We do not support HB 2642 as it includes preemption language to override numerous strong local clean air ordinances. The bill before you would also allow exemptions to allow smoking in bars, restaurants, private clubs and casinos and allow certain establishments to pay a fee in order to allow smoking.

The Kansas Medical Society would like to reiterate its support for the comprehensive statewide clean air legislation currently contained in House Bill 2221 which offers extensive protections from second hand smoke for a vast majority of Kansans and includes bars and restaurants. Thank you for your time and attention to our comments.

623 SW 10th Avenue • Topeka, Kansas