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Thank you Mr. Chairman and members of the committee. I appear before you today to testify in support of HB2690. One of the most difficult parts of our job as legislators is to discern the truth about the many issues we must decide on. It is nearly impossible to know about all aspects of every concern. We often have to make decisions based on the input of our sources. Today you will hear arguments from both sides of this issue. As you listen to them and read the written testimony, I ask that you do not let your prejudices interfere with the facts.

I am sure all of us agree smoking is not healthy. I have never smoked and do not encourage it. My first wife smoked from the age of 13 until she died of lung cancer at the age of 48. The question is, what about secondhand smoke? We all know that cigarette smoke smells bad and causes irritation to the eyes. It also affects those who have asthma. But does that give us the right to tell private businesses that they cannot allow smoking in their establishment?

I could go on for some time about why our current law is wrong. However, I probably would not sway you one way or the other. So I ask you to read page two. I believe we are here to protect the rights of our citizens by giving them the freedoms they are entitled to under our constitution. If we don't stand for them, who will?

Respectfully,

A handwritten signature in cursive script that reads "Randy Garber".

Randy Garber
Representative 62nd District

House Federal & State Affairs

Date: 3-12-12

Attachment # 1

I received this email from my constituent who believes they should have the right to dictate to business owners what they can do in their place of business. Pay particular attention to the reference of Dr. Madden. I personally talked with this man over the phone. He claims was the president of the New York chapter of the American Cancer Society in the 1970's. How easy it is to deny someone is or was associated with your organization when they tell a different story than what you want to be told.

This packet of information has been frequently circulated by Sheila Martin, a bar owner in Hutchinson. Her conspiracy theory is that the only reason the American Cancer Society wants people to quit smoking is that we receive money from the Robert Wood Johnson Foundation, which was funded by Johnson and Johnson, which has sold Chantix for the past few years. It's absolute bunk.

The fact is that the Society has fought to limit tobacco use for decades (long before Chantix ever hit the market) because it causes cancer! We certainly do not get paid by anyone to advocate for smoke-free policies.

The science proving the harmful effects of secondhand smoke is well established by respected, peer-reviewed researchers. The fact that a few outlying crackpots publish different opinions does not negate the overwhelming weight of the scientific evidence.

I won't worry about responding to every article in Ms. Martin's packet, but I will note that the first letter is from a Dr. Madden who claims to be a "member" of the American Cancer Society. As you know, ACS does not have members and there is no constituent record of a Dr. Madden.

I'll also point out that one of the articles comes from Michael Marlow, who has admittedly been funded by Phillip Morris. If he's really interested in following the money, he should ask how much is at stake for Big Tobacco.

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State Ignores Financial Damage of Smoking Ban

Posted By [Paul Soutar](#) On March 10, 2012 @ 6:27 pm In [Column A, Economy, Kansas Government, Private property rights](#) | [1 Comment](#)

Proponents of the statewide smoking ban approved by the 2010 Kansas Legislature said businesses would not be appreciably harmed by the ban.

[1]But a growing body of evidence and experience from Kansas and other states shows they were wrong.

House Bill [2690](#) [2], a proposal to exempt bars from the statewide smoking ban, would address the double standard of the 2010 Kansas Indoor Clean Air Act that exempted casinos – but not privately-owned bars – from the smoking ban.

The statewide ban also exempts tobacco shops, Class A and B Clubs licensed before January 1, 2009, up to 20 percent of hotel rooms and certain long-term care homes.

Legislators justified the [casino](#) exemption because of concerns the ban would reduce state-owned casino revenue, and thus the state's 22 percent cut of anticipated \$82 million net revenue in 2012.

The fiscal note for [HB2690](#) [2], prepared by the Division of the Budget, says approval of the bill could cost the state as much as \$7,051 to produce and mail signs that newly exempt bars must post as a condition of the exemption.

The fiscal note doesn't mention any positive impact of broadening the exemption including the potential for the state to continue collecting the 10 percent liquor excise and sales [taxes](#) from bars that will have a better chance of staying open and prospering with the bill's approval.

The state also is [losing lottery revenue](#) [3] because of the smoking ban, said lottery director Dennis Wilson. In an October story in the [Wichita Eagle](#) [3], Wilson said Keno sales were down nearly 10 percent from 2010. Wilson blamed the smoking ban for part of the decline.

There's also plenty of anecdotal evidence of locally owned bars suffering under the ban.

40 years and done

Miles Everhart purchased the RBar in Hutchinson two months after the statewide smoking ban started. The bar had been a successful business for more than 40 years before he purchased it. He told KansasWatchdog he believed claims by smoking ban proponents that businesses would do OK under the ban.

The bar, licensed as a private club, had been exempt from the Hutchinson and statewide smoking bans under the previous owner, but a new owner meant a new license and no exemption from the state ban. Public drinking establishments, including private clubs licensed after Jan. 1, 2009, are not exempt from the ban.

Everhart [completed](#) some remodeling and lined up live music, believing that he'd still turn a



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reasonable profit. "I knew I would lose a percentage of the clientele, but I didn't expect an impact that huge," Everhart said.

[4] He learned that the nature of a bar isn't as compatible with a smoking ban as he hoped. "A bar is a place to go, so you can get out of the house and enjoy some social time with somebody," Everhart said. "People getting off work can go have a beer, relax and smoke a cigarette before they go home."



Now they skip the bar, buy a 30-pack of beer and go home to invite friends over, Everhart said. "People are staying home, because it's the last place for freedom," he said.

Everhart said he thought live music would give the bar a boost. "The experience of a live show is about being with a lot of people and enjoying it," Everhart said.

But because of the smoking ban, customers had to go outside and away from the door to smoke. They couldn't take a drink out with them — that's against the law too — so liquor sales dropped. Since customers couldn't smoke inside and couldn't drink or hear the band very well outside, many of them just went home.

The hot summer of 2011 also clashed with the smoking ban. "We had a really hot summer, but people had to go outside to smoke. In the heat, with the doors constantly opening and closing, the air conditioning couldn't keep up," Everhart said.

By November, the RBar closed. "It put me way upside down," Everhart said. "I had to pay a lot of expenses out of pocket, because the revenue wasn't there. I was in the business to make money, and it just wasn't coming in."

Sheila Martin also owns a bar in Hutchinson, a private club that's exempt from the ban. In June the American Beverage Licensees Association [5] recognized Martin for helping defend the rights of others.

She's familiar with the RBar and Everhart and said her Top Hat Tavern is about the same size and probably does about the same amount of business that the RBar did before the ban.

Martin told KansasWatchdog she paid almost \$18,000 in liquor and beer taxes to the state in 2011. Her sales increased about \$9,000 over last year, largely, she said, due to rising prices for beer and liquor. She also paid about \$50,000 in salaries.

Toni Svitak, owner of The Office bar in Herington, told KansasWatchdog that she saw about a 30 percent drop in business in the first 12 months of the statewide ban.

"Money has definitely been tight over the past year," Svitak said. "I've put a lot more on my Visa. What's saved me is some retirement savings I cashed in — at a loss — so I'd have the money to keep the bar going."

She said her usual nightly crowd started coming in two to three nights per week, then not at all. "Losing that group meant about \$1,000 week loss. They went to the American Legion, where they can smoke all night," Svitak said. "I know it was completely due to smoking."

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The ban also has added costs for her bar's remaining customers. This year, Svitak had to license her bar as a private club, the only one in Dickinson County.

State regulations say public drinking establishments must make at least 30 percent of gross receipts from the sale of food on the premises. "I only sold 29 percent," Svitak said. "So when I applied for my license this year, I had to apply as a private club. Now my customers have to pay for a membership or come in with a member."

"They say the smoking ban has not hurt businesses, but I don't see how that can be true," she said.

Ban proponents say bar employees are entitled to breathe clean air too, and bars and casinos shouldn't be exempted.

Svitak usually has about three or four employees, mostly family, and they all smoke, she said. "My attitude is that if you work in a bar, you know that people smoke," she said.

Svitak also said the casino exception is ridiculous. "I don't see why it's OK for the state to do it," she said. She also disagrees with granting an exemption to private clubs licensed before Jan. 1, 2009.

Killing the casino exemption

House Substitute for House Bill 2340 ^[6], introduced in 2011 as House Bill 2039, takes the opposite approach to ending the double standard in the Kansas Clean Air Act. It would remove the casino exemption from the smoking ban.

According to the bill's fiscal note gaming facility managers, independent experts in the gaming field and information included in independent gaming studies say applying the smoking ban to state gaming facilities would cause an annual revenue drop of between 10 percent and 30 percent.

The note said Kansas anticipates 2012 revenue for the state's casinos to be \$82 million. The state's 22 percent cut would be \$18.04 million. Cities and counties with gaming facilities will receive 3 percent of the revenue, \$2.46 million, and the Problem Gambling and Addictions Grant Fund will receive 2 percent, or \$1.64 million.

A 20 percent drop in casino revenue would cost the state \$3.6 million and would have a dramatic impact on casino operators' business models.

The fiscal note also warns that, "Net gaming revenue would be reduced further in (fiscal year) 2013 and beyond, as additional gaming facilities plan to open or as existing gaming facilities have planned expansions that were expected to grow net gaming revenues in the future."

The fiscal note ends with this warning:

"It is also important to note that other casino-style gaming facilities in the region are not affected by smoking bans. Gaming facilities in Missouri, Oklahoma, as well as the tribal gaming facilities that currently exist would all continue to operate without a smoking ban on their gaming floors. It is possible that these 'competitors' could further affect revenue at state-owned lottery gaming facilities beyond the \$16.4 million revenue decrease estimate."

A report for the St. Louis Fed ^[7] showed that Illinois gaming revenue dropped after the state became the first to apply a smoking ban to casinos.

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The report estimated that, "The smoking ban is associated with a 20 to 22 percent revenue decline, amounting to a total loss in casino revenue of more than \$400 million." That translated to about a \$200 million loss in state tax revenue in 2008, according to the report.

Some ban supporters point out that the number of drinking establishments in Kansas has increased since the statewide ban started on July 1, 2010.

In an email received Friday, Jeannine Koranda, KDOR's public information officer, told KansasWatchdog, "The Drinking establishments, which include the bars, restaurants, breweries, etc have increased every year since 2007." The email also said, "There is no indication that the smoking ban has influenced the overall number of club and drinking establishment licenses."

But the Kansas Department of Revenue ^[8] does not specifically track tax filings by bars subject to the ban in an easy-to-access format, Koranda said in an earlier email. They're lumped in with all drinking establishments, including restaurants. That puts a statistical evaluation of the impact of the smoking ban on bars out of reach for now.

Koranda's most recent email also said, "Class A clubs are on the decline because they are losing membership due to the age of their current members and that for some reason, veterans from the gulf conflicts are not joining when they return." Class A clubs include VFW posts and American Legion halls.

George Ratzlaff, club manager of VFW Post 1361 ^[9] in Hutchinson, said his club's business is up 20 percent from the year before.

"We've expanded our club and our bar. Life is good," Ratzlaff said. "As far as gulf vets, we're getting them signing up all the time. Four out of seven of our post officers are Gulf War veterans."

"A lot of smokers join us," Ratzlaff said. "And the Iraq vets are coming back and joining."

"A (VFW) club up in Lawrence closed and a lot was due to the no smoking issue," Ratzlaff said. "People just quit coming in."

State tax collections from the sale of alcoholic beverages also have gone up since the ban, but so has the price of alcoholic beverages.

Koranda said the only way to know for certain which of the state's 1,693 drinking establishments are restaurants is to conduct an audit for food sales. That would probably take more than 300 staff hours, Koranda said.

Michael Marlow ^[10], an economics professor at California Polytechnic State University, has studied the economics of tobacco control measures. He questioned the Kansas DOR's inability to provide segregated tax data on bars and restaurants.

"It's really hard for me to understand in this day and age with our statistical abilities and our software and the degree to which the tax authorities are collecting tax revenue that they can't separate bars and restaurants. All you have to do is look at the sales tax data. To say that by liquor license or establishment type, they can't differentiate is ... hard for me to believe it. Maybe it's true, but if so it just means that their system is pretty antiquated."

Marlow has studied data on enforcement of Ohio's comprehensive smoking ban ^[11]. He said, "The preponderance of the violations were on bars. Restaurants had violations, but as a percentage they were pretty small minority."

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Marlow said he discovered that restaurants cited for a violation were unlikely to be cited again. "Bars, on the other hand, not only (received) the majority of the citations, but there were cases of the same bar being cited repeatedly, maybe 50 to 150 times," Marlow said, "which means they had a really large level of harm exerted on them, otherwise, they would just comply. They found it would be more costly to have a full enforcement of the smoking ban. That shows a lot of harm being done."

That finding supports a broader economic theory, said Marlow. "If you impose a smoking ban on bars and restaurants, there won't be a one-size-fits-all effect," he said.

A case before the Ohio Supreme Court is challenging the constitutionality and enforcement of the Ohio smoking ban. Maurice Thompson, executive director of the 1851 Center for Constitutional Law, in an [article](#) ^[12] on the center's website, said, "These enforcement complications are largely a function of trying to fit a square peg into a round hole. At local 'mom and pop' taverns, alcohol and cigarette consumption have always gone hand-in-hand, and owners of these properties have a right to decide how their indoor air is used, just as potential patrons have a right to freely enter or exit."

The 1851 Center for Constitutional Law says it is a non-profit, non-partisan legal center dedicated to protecting the constitutional rights of Ohioans from government abuse.

In July 2010 The Kansas Department of Revenue's Division of Alcoholic Beverage Control ([ABC](#) ^[13]) overstepped its authority by prohibiting discounted pitchers of beer, an action Governor Mark Parkinson reversed the same day KansasWatchdog published a [story](#) ^[14] on the regulation change.

House Speaker Mike O'Neal told KansasWatchdog at the time, "The timing of this is so suspect that it appears to be totally related to an effort to try to inflate bar revenues so it doesn't look like they're losing money because of the smoking ban."

In 2010 O'Neal said, "You've got the argument out there that we absolutely can't impose the smoking ban on casinos because there'd be a loss of revenue. That's exactly what the bar owners have been arguing all along. Their argument has been really consistent with the state-owned casinos. So, how do you combat that argument? You start having the bars charge more."

[HB2690](#) ^[2] is scheduled for a hearing before the [House Committee on Federal and State Affairs](#) ^[15] at 1:30 p.m. Monday.

Upcoming stories on KansasWatchdog will look at the science behind health claims related to smoking bans and connections of major pharmaceutical companies to smoking bans.

Video:

Are bars public or private places?

Kansas Smoking Ban: A Bar Owner's Perspective

Related:

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State smoking ban has been taking fiscal toll on local venues ^[16] (hutchnews.com)

Kansas Bar Owner Fights for Property Rights Across the U.S. ^[17] (kansaswatchdog.org)

Pitcher Beer Pricing Policy May Fall Flat ^[14] (kansaswatchdog.org)

St. Louis Fed: No Ifs, Ands or Butts, Smoking Ban Hurt Revenues ^[18] (kansaswatchdog.org)

Clearing the Air on Smoking Ban Revenue Claims ^[19] (kansaswatchdog.org)

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URLs in this post:

[1] Image: <http://kansas.watchdog.org/files/2010/06/NoSmoking.png>

[2] 2690: http://www.kslegislature.org/li/b2011_12/asures/hb2690/

[3] losing lottery revenue: <http://www.kansas.com/2011/10/14/2061623/kansas-ticket-sales-drop-even.html>

[4] Image: <http://kansas.watchdog.org/files/2012/03/Smoking-bar.jpg>

[5] American Beverage Licensees Association: <http://ablusa.org/convention.asp>

[6] House Substitute for House Bill 2340: http://kslegislature.org/li/b2011_12/asures/hb2340/

[7] report for the St. Louis Fed: http://www.stlouisfed.org/publications/re/2009/c/pages/casino_smoking.cfm

[8] Kansas Department of Revenue: <http://www.ksrevenue.org/>

[9] VFW Post 1361: <http://www.vfwwebcom.org/ks/post1361>

[10] Michael Marlow: http://digitalcommons.calpoly.edu/cgi/query.cgi?field_1=lname&value_1=Marlow&field_2=fname&value_2=Michael&advanced=1

[11] data on enforcement of Ohio's comprehensive smoking ban: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1632411

[12] article: <http://www.ohioconstitution.org/2011/01/04/legal-center-asks-high-court-to-accept-smoking-ban-challenge/>

[13] ABC: <http://www.ksrevenue.org/abc.htm>

[14] story: <http://kansas.watchdog.org/4265/pitcher-beer-pricing-policy-may-fall-flat/>

[15] House Committee on Federal and State Affairs: http://kslegislature.org/li/b2011_12/committees/ctte_h_fed_st_1/

[16] State smoking ban has been taking fiscal toll on local venues: <http://www.hutchnews.com/Todaystop/SUN--smoking-ban-hurting-bars--1>

[17] Kansas Bar Owner Fights for Property Rights Across the U.S.: <http://kansas.watchdog.org/7034/kansas-bar-owner-fights-for-property-rights-across-the-u-s/>

[18] St. Louis Fed: No Ifs, Ands or Butts, Smoking Ban Hurt Revenues: <http://kansas.watchdog.org/4348/st-louis-fed-no-ifs-and-or-butts-smoking-ban-hurt-revenues/>

[19] Clearing the Air on Smoking Ban Revenue Claims: <http://kansas.watchdog.org/4441/clearing-the-air-on-smoking-ban-revenue-claims/>