



*Kansas  
Licensed  
Beverage  
Association*

March 12, 2012  
Testimony on HB 2690, House Federal & State Affairs Committee

Chairman Brunk, 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 present this testimony today. The Kansas Viticulture and Farm Winery Assn. and the KS Craft Brewers Guild join in this position and request.

We have testified on this issue for several years and provided reams of materials. In an effort to save trees, your filing cabinets, and resources we are not including all today. We have attached an especially interesting piece and a list of materials. 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/or would like them please let me know.

***We urge your support of and ask you to pass the Kansas Indoor Clean Air Act -HB 2690 as a true attempt at a real and fair statewide ban.***

*HB 2690 would amend the Kansas Indoor Clean Air Act to allow smoking on the premises of any private business where one or more persons are employed or engaged in the purchase, sale, or manufacture of commodities, or the provision of services, as long as the business is not controlled by any state or local government. The bill would further restrict smoking to businesses that employ or serve persons 21 years of age or older, and would require that the businesses post signs that smoking is allowed on the premises at all entrances, and also post the Kansas Quit Line Signs that are produced by the Kansas Department of Health and Environment*

**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. 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

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House Federal & State Affairs

Date: 3-12-12

Attachment # 9

argument about economic impact. *If*

*there is no economic impact then there is no need for a "level playing field". It would not matter.*

**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 2690. Please consider these points.**

This is an air quality issue, why are we not addressing air quality? There are many more air contaminants than environmental smoke and if it is the desire of this body to protect all citizens from them then an air quality standard bill would be in order. This would set 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!*

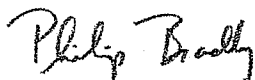
Second, this is an issue of the rights of private businesses to serve their customers. *You allow smoking as a legal activity* and the establishments that are targeted by this ban are private property with public access, places that all persons have a choice, whether or not they enter and frequent. All 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, you have passed a statewide ban, we now ask for an exemption as outlined in this measure. 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, State owned casinos and CA "cigar bar" exemption. *This exemption exists in most statewide bans including California.*

Fifth allow me to discuss the argument that bans 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 B. Bradley

*The difficulty in life is the choice. The Bending of the Bough. Act iv.*

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# 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

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“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.”

Nor does the *Circulation* paper mention an unpublished paper that found no statistically significant fall in heart 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.

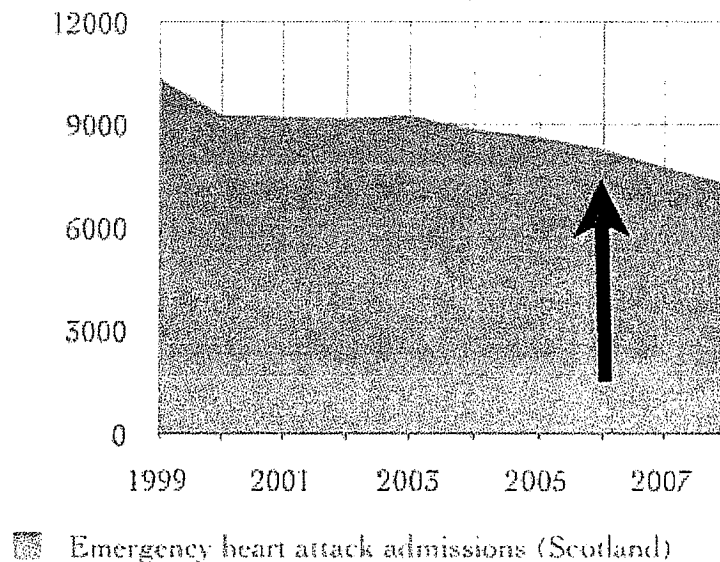
If they did so, they would see that smoke-free legislation has had no tangible influence on heart attack rates at all.

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:

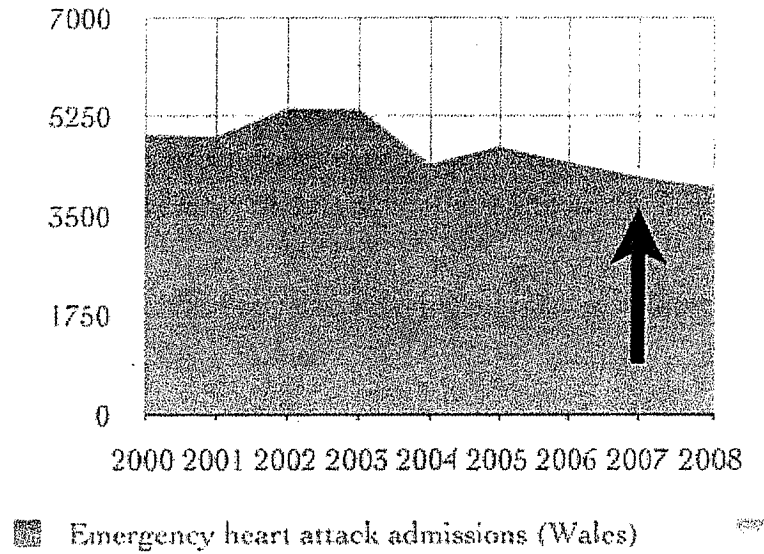


Source: Information Services Division, Scotland. The arrow indicates when the smoking ban was implemented.

## Wales

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

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

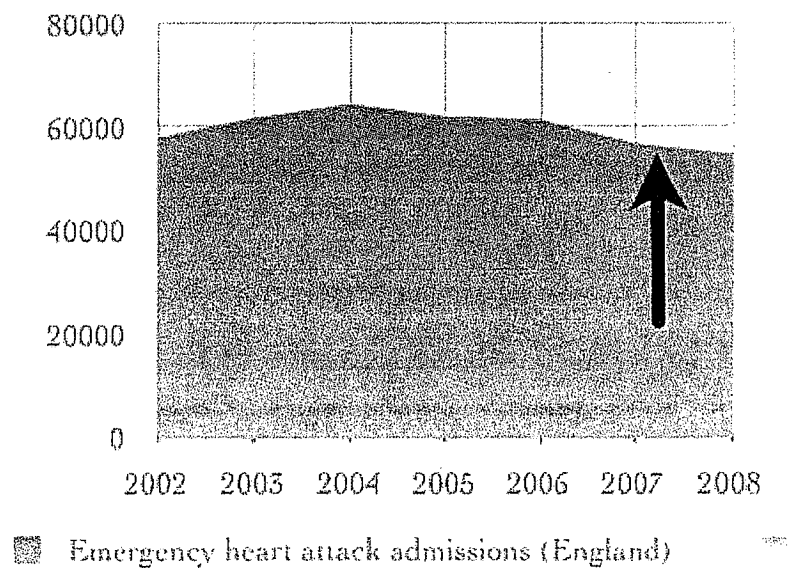


Source: National Health Service, Wales. The arrow indicates when the smoking ban was implemented.

## 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:



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

### **Hospital Data Conclusive**

Publicly accessible hospital admissions data are like kryptonite to those who are so eager to believe in miracles. 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.

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*Christopher Snowdon ([author@velvetgloveironfist.com](mailto: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](http://spiked-online.com) and is reprinted with permission.*

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### **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 but available upon request by CD or 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 V**

By Norman E. Kjono, February 27, 2007

*By Link*

**Running the Gauntlet Once Again: Secondhand Fat**

Article Published: 27/07/2007

**ETS Environmental Tobacco Smoke in Perspective: New ASHRAE 62.1 Standard—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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Solberg, Christy. "Effects of Smoking Ban Still Debated." *Columbia Missourian*, Sept. 27, 2007. See [www.columbiamissourian.com/stories/2007/09/27/effects-smoking-ban-still-debated/](http://www.columbiamissourian.com/stories/2007/09/27/effects-smoking-ban-still-debated/).

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