

MINUTES OF THE SENATE JUDICIARY COMMITTEE

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

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

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

Others attending:

See attached list.

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

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

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

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

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

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

## CONTINUATION SHEET

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

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

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

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

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

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

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

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

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

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

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

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

John Todd spoke in opposition, stating that we live in a democracy and the state should not use state law to restrict the rights and freedoms of its citizens ([Attachment 17](#)). The "market-driven" solution to smoke free establishments is happening all over Kansas without the need for a state law.

Jeff Martin, opponent, stressed the loss of revenue his vending business has suffered due to the smoking ban

CONTINUATION SHEET

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

enacted in Lawrence, Kansas ([Attachment 18](#)). A statewide ban would further decrease his business and urged the bill not be enacted.

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

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

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

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

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

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

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

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