

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Brenda Landwehr at 1:40 p.m. on March 11, 2009, in Room 784 of the Docking State Office Building.

All committee members were present.

Committee staff present:

Norm Furse, Office of the Revisor of Statutes  
Melissa Calderwood, Kansas Legislative Research Department  
Reed Holwegner, Kansas Legislative Research Department  
Janet Grace, Committee Assistant

Conferees appearing before the Committee:

Whitney Damron, Swisher International ([Attachment 1](#))  
Patrick Hubbell, The Cigar Association of America ([Attachment 2](#))  
Father H Setter, All Saints Catholic Church in Wichita ([Attachment 3](#))  
Robin Jennison, Jennison Government Services ([Attachment 4](#))  
W. Paul Degener, Citizens Against Illegal Immigration ([Attachment 5](#))  
Sheila Martin, Bar owner ([Attachment 6](#))  
Bill Nigro, Free State Business Rights Coalition ([Attachment 7](#))  
Todd Gambal, Jaywalkers Bar and Grill ([Attachment 8](#))  
Derrick Sontag, Americans for Prosperity, Kansas State Director ([Attachment 9](#))  
Phillip Bradley, Kansas Licensed Beverage Association ([Attachment 10, 11, 12, 13](#))  
Ron Hein, Reynolds American, Inc ([Attachment 14](#))  
Cathy Nugent, Free State Business Rights Coalition ([Attachment 15](#))  
Tom Devlin, Flints Hills National Golf Club ([Attachment 16](#))  
Tom Jacob, Cigar Chateau, LLC ([Attachment 17](#))  
Kurt Van Keppel, XIKAR ([Attachment 18](#))  
Chuck Magerl, Free State Brewing Co and Wheatfields ([Attachment 19](#))  
Tom Conroy, Conroy's Pub ([Attachment 20](#))  
Jeff Martin, Armour Amusement ([Attachment 21](#))  
Kim Winn, League of Kansas ([Attachment 22](#))  
Barbara Conant, Kansas Department of Aging ([Attachment 23](#))

Others attending:

See attached list.

Chairman Landwehr called the meeting to order. The hearing was opened for **SB 25 - State-wide prohibition on smoking in indoor public areas.** (Opponents and neutral testimony)

Whitney Damron with Swisher International provided opponent testimony on **SB 25**. Swisher International is a leader in the tobacco business accounting for one-third of the nation's cigar sales and is one of the nation's largest cigar exporters. ([Attachment 1](#)) The bill moves cigarettes, cigars, and smokeless tobacco behind a counter to restrict product placement, which in turn decreases sales due to lack of visibility and shelf space ability. Phillip Morris and Copenhagen are financially able to pay slotting fees and ease competition out of space. They also oppose a statewide smoking ban. Swisher International believes communities should make the decision on smoking restrictions.

Patrick Hubbell, representing The Cigar Association of America, expressed concern regarding the sale of the moderately priced cigar. ([Attachment 2](#)) This product will be placed out of view of the consumer, therefore leading to fewer sales. The moderately priced cigars don't have the inventory turnover that Phillip Morris and Copenhagen have and cannot compete with them in this area. The consumer wants to be sure the cigars are fresh and will not be able to do that when they are placed behind a counter.

Father H. Setter, All Saints Catholic Church in Wichita, is the Chaplain of the International Premium Cigar and Pipe Retailers Association, along with being a nationally recognized cigar connoisseur. ([Attachment 3](#)) The Setter Foundation has assisted charities over the last twelve years by hosting the Annual Benefit Cigar dinners for local charity. The yearly event is the sole source of raising funds for the charities. Father Setter's

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unique affiliation with the cigar industry as a consumer and cigar personality makes this event successful. This bill literally eliminates the possibility of continuing this endeavor. Father Setter's attachment describes the four levels of his disapproval of this bill. Father Setter believes in compromise by letting the communities vote on a smoking ban.

Robin Jennison, Jennison Government Services, provided opponent testimony for **SB (Attachment 4)** Mr. Jennison discussed the issue of giving premium space to others based on volume. The companies that provide something other than cigarettes or are of less volume, will be moved out of the stores. The premium space will be given to the high volume products. Smokeless tobacco is put in with cigarettes and they should not be together. It is not fair to put them in the same category, particularly when space will be an issue when the products vie for space behind the counters.

Paul Degener, Citizens Against Illegal Immigration, stated he appreciates having the freedom to smoke and the freedom to choose not to smoke. (Attachment 5) Mr. Degener said this was a personal choice, not a decision made by government. Mr. Degener opposes the bill because it takes away the freedom of business owners to exercise their rights to designate their respective establishment as a smoking or non-smoking business.

Sheila Martin, bar owner, wants the legislature to level the playing field by opposing **SB 25. (Attachment 6)** Ms. Martin read excerpts from studies that second-hand smoke is not an issue. Ms. Martin showed the committee advertising for not smoking that look like smoking ads.

Bill Nigro, Free State Business Rights, stated that smoking bans have devastated the bar industry which has led to the lay off of workers. (Attachment 7) Creating laws like this one is putting people out of work and closing businesses. Mr. Nigro stated that allowing smoking is the choice of a bar owner.

Todd Gambal, Jaywalker's Bar and Grill, experienced a dramatic drop in business when the smoking ban was implemented in Missouri. (Attachment 8) He tried to keep his employees by cutting hours. Some left due to the decrease in hours, others he has had to eventually cut by 18%. His Kansas bar increased in business due to the those in Missouri wanting to smoke come to his bar. Mr. Gambal described the smoking ban in Kansas City, Kansas, where bars can buy a smoking permit which a yearly fee and a 3-year expiration.

Derrick Sontag, Americans For Prosperity, agrees with the previous testimony from business owners. (Attachment 9) They are in business for profits which they are losing. Mr. Sontag stated the smoking ban is for those who believe smoking is harmful to their health.

Phillip Bradley, Kansas Licensed Beverage Association, provided a summary of his opponent testimony with documents showing why smoking bans do not work. (Attachments 10, 11, 12, 13) The amendment exemptions choose winners and losers in this bill. Mr. Bradley poised this thought: "If there is not an economic impact then there is not a need to level the playing field." Mr. Bradley discussed his viewpoints pertaining to yesterday's testimony. He discussed that if second-hand smoke was truly an issue, there would be more education available from tobacco funds.

Ron Hein, representing Reynolds American, defended the business owners rights to allow smoking, non-smoking, prices, etc., in their own establishments. (Attachment 14) If the State wants to run businesses, don't run them out of business. Exemptions or not, there are several exemptions to the bill. The provisions built into the bill are for closed-in areas where the damage is done from second-hand smoke.

Kim Winn, representing League of Kansas, appeared as a neutral testimony on **SB 25. (Attachment 22)** They provided survey information in their attachments to show cities and counties currently having ordinances, how the ordinances treat each area of concern, the enforcement of the ordinance and penalties for violations.

The following opponents presented written testimony:

Cathy Nugent, Free State Business Rights Coalition (Attachment 15)

Tom Devlin, Flint Hills National Golf Club (Attachment 16)

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Tom Conroy, Conroy's Pub ([Attachment 20](#))

Jeff Martin, Armour Amusement ([Attachment 21](#))

Kim Winn, League of Kansas ([Attachment 22](#))

Barbara Conant, Kansas Department of Aging, provided answers to the committee's questions from yesterday's questions. ([Attachment 23](#))

The next meeting is scheduled for March 12, 2009.

The meeting was adjourned at 3:17 p.m.