

Approved: 4-6-93
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Lana Oleen at 11:05 a.m. on February 25, 1993 in Room 254-E of the Capitol.

All members were present except:
Sens. Jones and Vidricksen were excused

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
See attached list

Others attending: See attached list

Sen. Oleen announced the committee would begin hearing testimony on SB 284, even though some members and conferees were not present, due to the weather. She also stated the fiscal note (Attachment 1) on SB 284 has been distributed to members. The following proponents presented testimony:

Tuck Duncan, (Attachment 2);
Alan Alderson, (Attachment 3);

Norman Wilks stated he was appearing as neither an opponent or proponent, and offered two amendments to SB 284 (Attachment 4). Terry Leatherman appeared as a proponent (Attachment 5).

The following opponents presented testimony:

Paula Marmet, (Attachment 6);
Betty Dicus, (Attachment 7);
Hal Hudson, (Attachment 8);
Brian Gilpin, (Attachment 9).

Carla Dugger did not testify, but submitted written testimony (Attachment 10). Several questions were asked of the conferees, in particular, Sen. Tillotson questioned Ms. Marmet on her statement regarding controlling healthcare expenditures, and the Department's objections to employees' rights while away from the workplace and the broad expansion to include other activities such as skiing and sunbathing, as examples. Ms. Marmet stated the Department could not respond since they have no statistical data.

Sen. Oleen recognized Sen. Praeger, who introduced a proposal (Attachment 11) regarding the hospice licensure act and asked for committee approval. Sen. Tillotson made a motion the committee sponsor it as a bill, and it was seconded by Sen. Ramirez; the motion passed.

Sen. Oleen introduced Sen. Vidricksen's pages, who are from Topeka, assisting the committee today, since he is out of the state. She reminded the committee of bill deadlines. Even though this is an exempt committee, it was noted that the Chairman will try to accommodate time to fully work bills.

Sen. Oleen directed the committees' attention to SB 82, which relates to alcoholic beverages and consumption by minors, and asked for clarification on several aspects of the bill. Sen. Praeger made a motion the committee pass the bill favorably, and it was seconded by Sen. Parkinson; the motion passed.

The committee also discussed SB 111, concerning transfer of funds for the Lottery Commission, and Mary Galligan explained an amendment (Attachment 12) proposed by The Lottery to change the amount reserved for the Gaming Revenue Fund to 25% of all ticket sales, regardless of the type. Sen. Oleen stated information

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E
Statehouse, at 11:05 a.m. on February 25, 1993.

from the Lottery (Attachment 13) has been distributed to members showing estimated revenues. Sen. Parkinson made a motion to adopt the amendment, and it was seconded by Sen. Papay. Sen. Walker asked for clarification - that the amount transferred to the State Gaming Fund would be reduced from 30% to 25%, and Sen. Oleen answered that it would be reduced. The motion passed. Sen. Parkinson made a motion the bill be passed as amended, and it was seconded by Sen. Papay; the motion passed. The bill will be passed favorably to the Senate as amended.

Meeting adjourned at 11:55.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: Feb. 25, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Paula Marmet		KDHE
Julia Francisco		KDHE
Brian Gilpin	Topeka	Tobacco Free Kansas Coalition
Betty Deans	Topeka	ACS
Donnie Durjanic	Topeka	American Cancer Society
Don Bruner	"	KDHE
Jim Kaidor	Topeka	Ks. Lottery
Berith L Sutton	Topeka, KS	Kansas Lottery
RODOLPH DOCKER	Topeka KS	Kansas Lottery
Jack Good	TOPEKA, KS	SELF
Hal Hudson	Topeka	NFIB/Kansas
B. Marini	Topeka	Dy A DPS
TERRY LEATHERMAN	Topeka	KCCI
Norm Wicks	TOPEKA	KASB
Kathy Ketteron	" "	Distilled Spirits
Albert Hollan	TOPEKA	LOTTERY RETAILERS
Jim Karsick	"	ABC
Jim Conant	"	ABC
BILL HENRY	"	Philip Morris USA
John C. Bottenberg	Topeka	Ks Wine & Spirits
Virginia M. Valenzuela	AP - Topeka	
ALAN ANDERSON	TOPEKA	TOBACCO INSTITUTE
Mr. J. Perab	TOPEKA	DPS/Dy A
KATH R LANDIS	TOPEKA	CHRISTIAN SCIENCE MONITOR KANSAS PUBLICATION FOR KANSAS
Jack Duncan	TOPEKA	RWSWA

COMMITTEE:

Senate Federal & State Affairs

DATE: _____

[illegible]

SENATE FEDERAL AND STATE AFFAIRS

AGENDA

FEBRUARY 25, 1993

SENATE BILL 284

Proponents:

Tuck Duncan, Wine & Spirits Wholesalers Assoc.

Alan Alderson, The Tobacco Institute

Terry Leatherman, KCCI

Norm Wilkes, Assoc. of School Bds

Opponents:

Paula Marmet, Dept. of Health & Environment

Betty Dicus, American Cancer Society

Hal Hudson, National Federation of Independent Business

Brian Gilpin, Tobacco Free Kansas Coalition

Proponent:

Carla Dugger, ACLU, will submit written testimony



DIVISION OF THE BUDGET

Room 152-E

State Capitol Building

Topeka, Kansas 66612-1504

(913) 296-2436

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Joan Finney
GovernorGloria M. Timmer
Director

February 24, 1993

The Honorable Lana Oleen, Chairperson
Committee on Federal and State Affairs
Statehouse, Room 136-N
Topeka, Kansas 66612

Dear Senator Oleen:

SUBJECT: Fiscal Note for SB 284 by Senate Committee on
Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note
concerning SB 284 is respectfully submitted to your committee.

SB 284 would prohibit employers from using an individual's known use of lawful consumable products during non-working hours as a basis for discharging or refusing to hire that individual or for determining an individual's compensation and privileges of employment. Employers who violate the bill's provisions would be liable for civil penalties of up to \$2,500 as assessed by the Department of Human Resources. Under the bill, an employer may apply rules to specific instances or specific individuals in which the use of certain lawful products would constitute a conflict of interest or in which a limit or ban on certain products relates to a justified occupational requirement.

For FY 1994, SB 284 would increase State General Fund expenditures by \$80,294 above the amounts included in the FY 1994 Governor's Budget Report, as amended. The Department of Human Resources estimates an increase of 50 to 75 complaint investigations per year as a result of this bill. In order to meet the increased demand for investigations, the Department foresees the need to add 1.0 Labor Conciliator I and 1.0 Office Assistant III to the Labor Relations and Employment Standards Program. The total estimated FY 1994 cost for salaries and fringe benefits would be \$54,694 from the State General Fund. The Department estimates

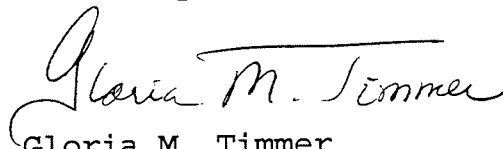
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act 1

The Honorable Lana Oleen, Chairperson
February 24, 1993
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\$25,600 for FY 1994 other operating expenditures, which includes \$5,000 in one-time capital outlay purchases.

SB 284, Section 1(c), states that "it is not a practice to disadvantage" if an employer were to impose a difference in cost or type of coverage for health or life insurance based upon an employee's use of lawful consumable products. Therefore, the discount offered to non-smokers within the state health insurance plan would not appear to be prohibited by SB 284.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer". The signature is written in dark ink and is positioned above the printed name and title.

Gloria M. Timmer
Director of the Budget

cc: Sid Snider, Human Resources
Nancy Echols, Division of Personnel Services

284.fn

K • A • N • S • A • S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

284
Attach. 2

To: Senate Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan
RE: Senate Bill 284

The bill before the committee preserves the privacy rights of an individual in our society. There is an old legal maxim that says: "Public laws favor domestic privacy." This bill achieves that policy.

Justice William O. Douglas stated that "The right to be let alone is indeed the beginning of all freedom." Another outstanding Justice, Lewis D. Brandeis summarized the concept of privacy as "The right to be alone -- the most comprehensive of rights, and the right most valued by civilized men." One author has said that "civilization is the progress toward a society of privacy."

And so, the question before this committee is whether or not the counsel provided us by these persons should be followed.

Without this enactment there will be discriminatory treatment of employees due to personal preferences of employers. The effort to eliminate discrimination in the workplace over the last several decades has resulted in many federal and state laws protecting people against employer prejudices due to age, race, color, religion, sex, national origin and individual disabilities. The EEOC has also held that various questions relating to personal matters may be discriminatory and should not be asked in job interviews or on application forms unless it can clearly be shown that the requested information is a bona fide occupational related issue. Prohibited pre-employment subjects include questions relating to height and weight, availability for work on religious holidays, marital status, number of children or provisions for child care, economic status, without proof of a business necessity.

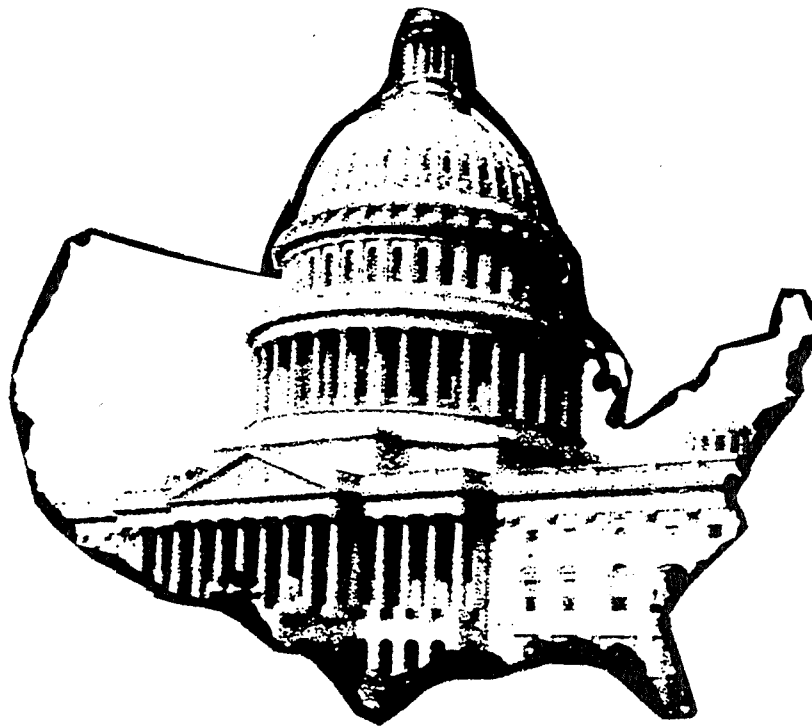
Can there be, therefore, any reason for an employer to inquire with regard to the employee's lawful consumption of certain products outside the workplace? We would suggest not. I am asking the committee to amend S.B. 284 to provide in section 1 as follows: "(a) As used in this section, 'lawful consumable products' means food, alcoholic or nonalcoholic beverages and tobacco."

The Ninth Amendment of the United States Constitution provides that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." We are after all "Endowed by [our] Creator with certain inalienable Rights..." The Kansas Constitution at Section One of the Bill of Rights establishes that "All men are possessed of equal and inalienable rights..." and, as set forth in Section Twenty "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people."

This state has declared as its public policy the following: "Economic insecurity due to unemployment is a serious menace to health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which required appropriate action by the legislature to prevent its spread and lighten its burden which so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life." (K.S.A. 44-702)

Sen 7 & 8A.
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Thus, if we want to preserve the expression of state policy set forth, and the historical traditions of this Nation and State as codified by the pronouncements set forth herein, and protect against injustice when persons lawfully consume certain products away from the workplace, then the committee will enact this legislation.



Bills to prohibit employment discrimination based on a persons use of lawful products or involvement in legal activities have been enacted in 27 states and the District of Columbia. They are:

OR	NM	IL	KY	SC	NJ
NE	ND	MO	IN	ME	OK
AZ	SD	LA	WV	NH	RI
WY	MN	MS	NC	NY	DC
CO	WI	TN	CT		

In 1993, 13 states have introduced similar legislation. In Virginia, a privacy bill has passed the House and Senate. The Montana Senate has passed a privacy proposal having to do with use of lawful products off-the-job.

Attach 3

ALDERSON, ALDERSON, MONTGOMERY & NEWBERY

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OF COUNSEL

DANIEL B. BAILEY

MEMORANDUM

TO: MEMBERS OF THE SENATE FEDERAL AND STATE AFFAIRS
COMMITTEE

FROM: ALAN F. ALDERSON, LEGISLATIVE COUNSEL, THE TOBACCO
INSTITUTE

RE: SENATE BILL NO. 284

DATE: FEBRUARY 25, 1993

I am Alan Alderson, Legislative Counsel for the Tobacco Institute, a National Association of Tobacco Product Manufacturers. The Tobacco Institute, on behalf of its member companies, strongly supports Senate Bill 284, and urges you to give your positive support to this measure.

Legislation similar to Senate Bill 284 has been enacted in over half the states, and is currently pending in a number of others. That fact is a dramatic illustration that lawmakers throughout this country are concerned with the elimination of unfair and discriminatory practices in employment policies wherever they exist.

There are many reasons why you should see that Senate Bill 284 also becomes the law of the State of Kansas. First, is that employment policies which discriminate against people who use lawful products goes against the spirit of a number of state and federal laws currently in effect. Such policies open the door to measures that may have a chilling effect on other protected employee activities. But even putting legal questions aside, it is illogical to discriminate against workers for any reason not related to job performance.

You only need to call upon your common sense and your senses of fairness and decency to understand the need to protect the individual freedoms addressed in this legislation. Discrimination in employment based upon unrelated practices is inconsistent with the fundamental values of equal protection.

A poll conducted for the National Consumers League showed that Americans overwhelmingly support privacy legislation. 74% of respondents indicated that an employer had no right to ask job applicants whether or not they smoke on their own time. An

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overwhelming majority also indicated an employer has no right to ask an employer to quit smoking.

Policies which allow an employer to discharge an individual who smokes during his or her time away from the job also have no bearing on the determination of who is the best individual for a job. Is the secretary who enjoys smoking in the privacy of her own home more likely to make typographical errors than a non-smoker?

Discrimination based upon smoking also disproportionately harms the career advancement opportunities of blue collar workers. Of the 25% or 30% of adult Americans who smoke, a disproportionate percentage tend to hold blue rather than white collar jobs. Discrimination -- particularly when its a product of unilateral action by an employer -- undermines basic employee and collective bargaining rights.

The decision as to whether or not to enjoy tobacco products during one's personal time is a purely private choice -- not an option that employers should be able to dictate or control. Our concern about these policies is not hypothetical -- this discrimination, in fact exists. For this, and many other reasons, the Tobacco Institute urges you to support the passage of Senate Bill No. 284.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



1420 S.W. Arrowhead Rd. Topeka, Kansas 66604
913-273-3600

Testimony on S.B. 284
before the
Senate Committee on Federal and State Affairs

by

Norman Wilks, Director of Labor Relations
Kansas Association of School Boards

February 25, 1993

Madam Chairperson and Members of the Committee:

On behalf of the members of the Kansas Association of School Boards, we wish to offer an amendment to S.B. 284 as drafted. Our current concern is the application of S.B. 284 and the relationship school employees have with their communities.

We urge the committee to amend S.B. 284 according to one of the examples attached.

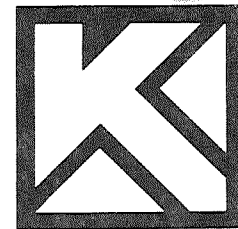
Thank you for your consideration of this matter.

*Sen. 7 + SA.
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att 4*

(g) The provisions of this act shall not apply to any unified school district, community college, area vocational-technical school, or any educational service center or cooperative.

(g) The provisions of this section shall not be construed to prohibit unified school district, community college, area vocational-technical school, or any educational service center or cooperative policies that forbid use of legal consumable products by employees of such entities at events conducted by such entities, at any time when the employee is performing duties as an employee or at any social or casual gathering of an employee and any student of such entity unless the student is a member of the employee's household.

LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SB 284

February 25, 1993

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
Senate Committee on Federal and State Affairs
by
Terry Leatherman
Executive Director
Kansas Industrial Council

Madam Chairperson and members of the Committee:

My name is Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear today to express KCCI's position regarding SB 284.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The Kansas Chamber has always been, and will remain, a staunch supporter of the employment-at-will doctrine. Employment-at-will benefits employers and employees by

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...ing flexibility to employment arrangements. However, KCCI does concede that strict application of employment-at-will can conflict with equally important issues of individual privacy. As a result, when proposals such as SB 284 surface, KCCI hinges its position on whether a proposal will disrupt an employer's ability to maintain their business.

In the case of SB 284, KCCI will remove all objection to the legislation if the definition of "lawful consumable products" is amended to limit its application to food, alcoholic and non-alcoholic beverages, and tobacco. It is my understanding the principal proponents of the bill do not object to this amendment. If this Committee chooses to amend SB 284 as suggested by KCCI, employers will have a clear understanding of how their actions might violate the provisions of this bill.

KCCI feels the definition change of "lawful consumable products" is critical to the Kansas Chamber removing opposition to the bill. However, there is one other item which KCCI would appreciate receiving Committee consideration. SB 284 provides a civil penalty arrangement to violators of this bill. KCCI does not disagree with the civil penalty process being used to render justice for violations, but does respectfully suggest the potential \$2,500 civil penalty provision be reduced.

Thank you very much for the opportunity to explain where KCCI stands on this issue. I would be happy to attempt to answer any questions.



Department of Health and Environment

Robert C. Harder, Secretary Reply to:

Testimony presented to
Senate Federal and State Affairs Committee

by

The Kansas Department of Health and Environment

Senate Bill 284

The Kansas Department of Health and Environment opposes SB 284 which would prohibit any employer from requiring that a potential employee abstain from any lawful activity at anytime on or off the job. Additionally, the proposal would make it illegal for employers to charge more for health or life insurance based on the employees' use of lawful consumable products. Essentially, this proposal is a part of a nationwide campaign launched by the tobacco industry to protect their domestic tobacco market.

The negative health effects of tobacco products are well documented. According to the 1992 report of the Surgeon General, Smoking in the Americas, tobacco products are "easily designated the single most important risk to human health in the United States." Cigarettes are the only commercial product we sell in Kansas, that when used as intended, **kills approximately one in three of its users**. Smoking kills more people than crack, cocaine, alcohol, fire, suicide, auto accidents, and AIDS combined (see attached graph).

It costs more to employ an employee who smokes and employers in Kansas are feeling the effects. A comparison of health care costs of employees in the State of Kansas Active Employee Group illustrates this point very well. As illustrated on the attached graphs, health care costs for state employees are significantly higher for smokers than for non-smokers. In fact, state employees who smoke incur 33% more hospital admissions and average 41% more hospital days than non-smoking state employees. The average medical claim was \$283.00 more for smokers in the State of Kansas Active Employee Group than for nonsmokers during 1990.

Overall, smoking related diseases cause nearly 4,000 deaths annually in Kansas, second only to non-smoking related heart disease. Smoking related diseases cost Kansans a \$186 million in direct medical expenses, and another \$347 million in indirect costs, for a total cost of \$580 million annually.

SB 284 would also make it unlawful to charge more for health insurance or life insurance for those who smoke or use alcohol. If people choose to use

tobacco products, they should be prepared to pay more for medical services, and therefore, the insurance to provide them. An increase in insurance costs may contribute to a smoker's decision to quit.

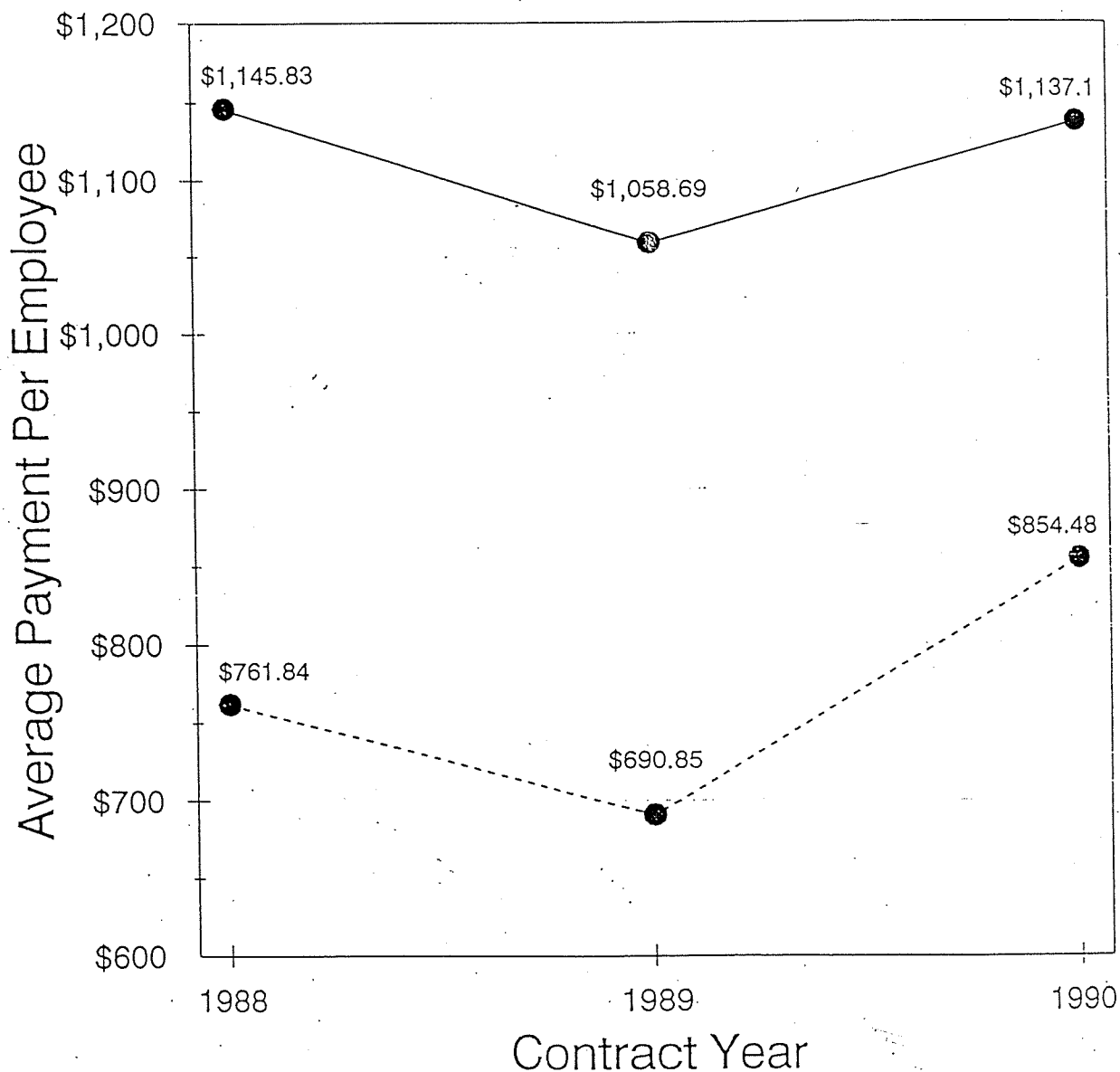
Employers throughout Kansas are beginning to respond to the critical need to reduce health care costs to their businesses. A 1990 study of randomly selected Kansas households found that about 1/3 of Kansas adults who work outside the home are protected from environmental smoke by total smoking bans in the workplace. As business and industry leaders have begun to understand the implications of this legislation, it is beginning to affect their decisions as to whether to locate in our state. Most recently, the KDHE legal staff were consulted as to whether the state had "smoker's rights" legislation in place. If so, the caller indicated that he would not consider opening a branch of the company in Kansas. Is it appropriate to respond to business and society's growing concern about health care expenditures and subsequent intolerance of smoking by barring employers from refusing to hire smokers and by clouding the health care issues of smoking with those of civil rights?

Proponents of the bill pretend that smoking is a privacy issue. It should be noted that it is not the users of the product, most of whom wish they could quit, but the makers of cigarettes who endorse this bill, creating the idea of imaginary wrongs that need righting. The real wrong, of course, is that people get addicted to the tobacco and die. Cigarettes are a deadly substance, that when used as intended, kill one out of three of its users.

The Department of Health and Environment encourages you to kill this bill and join us in our mission to protect the health of Kansans and help in containing unnecessary health care expenditures.

Testimony presented by: Paula Marmet
Director
Office of Chronic Disease and Health Promotion
February 25, 1993

STATE OF KANSAS ACTIVE EMPLOYEE GROUP
TOBACCO USERS VS. NON TOBACCO USERS
AVERAGE PAYMENT PER EMPLOYEE



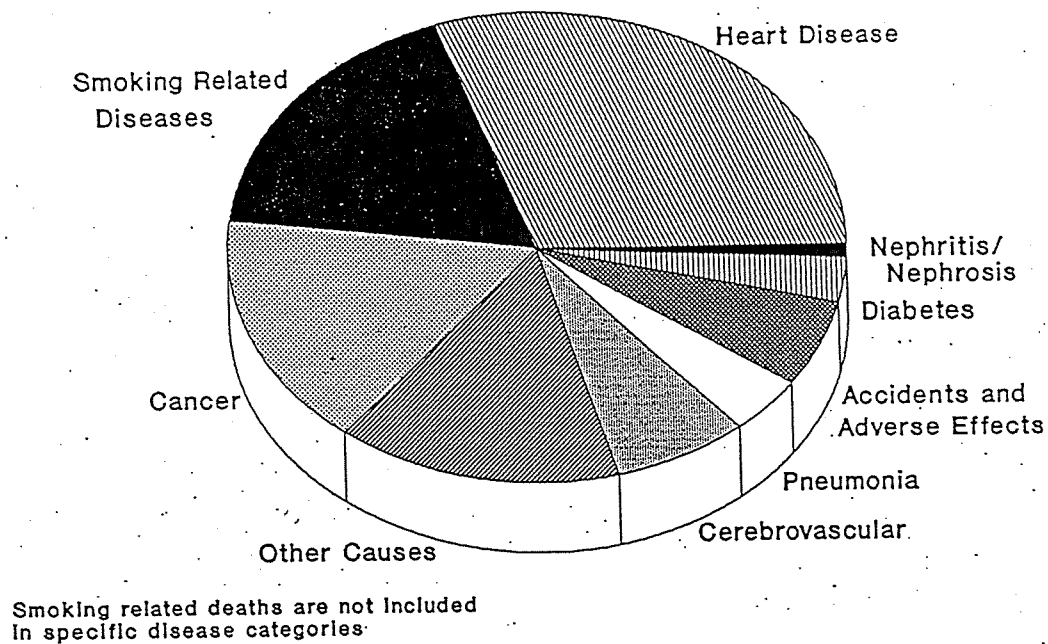
Tobacco Users Non Tobacco Users

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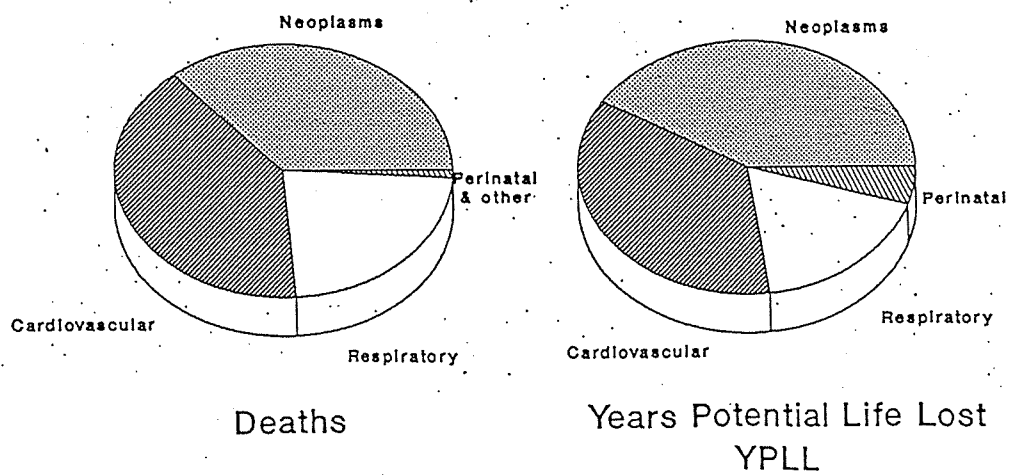
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Based on 1988, 1989, and 1990 Blue Cross Data

LEADING CAUSES OF DEATH KANSAS, 1991



SMOKING RELATED DEATHS AND YPLL BY CAUSE KANSAS, 1991



Smoking Kills More Americans Each Year Than Alcohol, Cocaine, Crack, Heroin, Homicide, Suicide, Car Accidents, Fires, and AIDS combined.

Approximate Number of Deaths:

Smoking	434,000 ¹
Alcohol (Incl. drunk driving)	105,000 ²
Car Accidents (Incl. drunk driving)	49,000 ³
Fires	4,000 ³
AIDS	31,000 ³
Heroin and Morphine	2,400 ⁴
Suicide	31,000 ⁵
Homicide	22,000 ⁵
Cocaine and Crack	3,300 ⁵

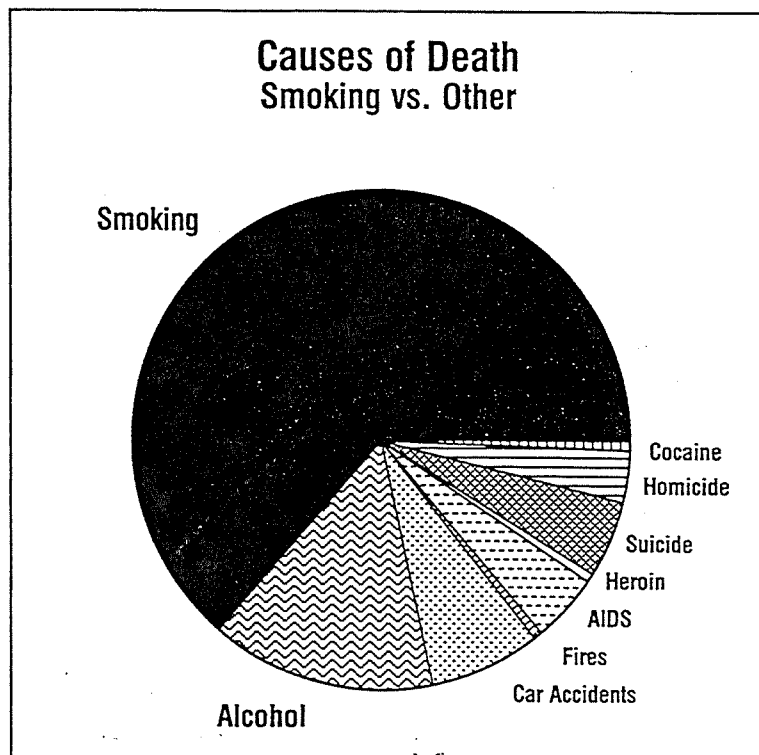
¹U.S. Centers For Disease Control, 1988 data

²U.S. Centers For Disease Control, 1987 data

³National Safety Council, 1989 data

⁴U.S. Centers For Disease Control, 1990 data

⁵National Center For Health Statistics, 1988 data



SmokeFree Educational Services, Inc., New York, NY



KANSAS DIVISION, INC.

THERE'S NOTHING MIGHTIER THAN THE SWORD

**STATEMENT IN OPPOSITION TO SB 284
BY THE AMERICAN CANCER SOCIETY
KANSAS DIVISION, INC.**

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
FEBRUARY 25, 1993**

Madam Chairperson and members of the Committee:

My name is Betty Dicus, and I appear as a volunteer on behalf of the American Cancer Society, Kansas Division, Inc. Thank you for the opportunity to appear before you in opposition to SB 284.

The American Cancer Society opposes this bill because it is a bill designed to protect and promote the use of tobacco products. Across the country, bills of this type are known as so-called "smokers' rights" bills. Some states have rejected these bills, others have passed them, and they have been vetoed by the governors of several states, including former Governor Clinton in Arkansas, Governor Cuomo in New York, and Governor Florio in New Jersey.

In 1991, President Clinton vetoed such a bill when he was governor of Arkansas. In his veto message, then Governor Clinton said:

"This bill is part of a national effort to grant rights to smokers similar to those protected by the First Amendment's guarantee of free speech or those extended to people protected from discrimination on the basis of race, sex, or some other innate

condition. While Americans plainly may smoke in many circumstances, smoking is an acquired behavior. Given the overwhelming evidence of the toll it takes every year in disease and death, it should not be accorded legal protection like freedom of speech; nor should smokers be a protected class like those who have been wrongly discriminated against because of race, sex, age or physical handicaps."

The American Cancer Society opposes this bill and others like it because the bill encourages tobacco use by humans. This use is a proven health hazard in our society to both users and nonusers. Tobacco use costs us millions of dollars each year for health care that could be prevented. It destroys and devastates the lives of many people. Its use should be eliminated, not encouraged.

This bill is part of a broad promotion by the tobacco industry to foster tobacco use in this country. The real purpose of this bill is to sell tobacco under the guise of so-called "rights". A similar effort was made by the tobacco industry with women's tennis in the Virginia Slims advertising campaign when tobacco interests tried to tie the use of tobacco products to the emerging rights of women in our society. In the Virginia Slims campaign, smoking for women was portrayed as just as important to women as the social, political, and economic rights that women sought. Unfortunately, many women, particularly young women, couldn't make the distinction, and their smoking is not only costing them their health, it is costing the health of those around them, and it is exacting a severe price from our society in our health care system.

The crucial question is: What right will be protected by this legislation? Is there a legitimate right to protect what is not already protected by law?

Race, sex, religion, ethnic origin, age, and disability already are protected by specific state and federal laws. A general right of privacy already is protected by our federal constitution. Just what right is this particular bill supposed to protect--other than a right to ruin one's health by smoking at home and to ruin the health

of others who must live with the smoker? We submit that this is not a right worthy of protection.

The rapidly rising costs of health care may be the biggest problem facing this State and our nation at the present time. Many people are without health insurance coverage because they can't afford it, while others pay dearly for it. Tobacco use is a significant contributor to the mushrooming cost of our health care. Many health insurance plans include a discount for nonsmokers because tobacco is such a proven health hazard and because insureds have a choice not to use tobacco products. There is such a discount in place for state employees in Kansas.

It makes no sense to add to our health care dilemma by using this bill to encourage the use of a deadly product at home. It also makes no sense to have this bill jeopardize health care arrangements such as those for our state employees that are designed to discourage the use of this deadly product, and cause a significant increase in the cost of insuring our state employees if the premium paid by smokers is eliminated.

On behalf of the American Cancer Society, I urge this Committee to oppose the passage of Senate Bill 284. Thank you.

MAR 11 1993

NFIB Kansas

National Federation of
Independent Business

March 9, 1993

The Honorable Lana Oleen
Kansas Senate
Statehouse - Room 136-N
Topeka, KS 66612

Dear Senator Oleen:

On behalf of NFIB/Kansas members, I urge you to oppose passage of Senate Bill 284. Sometimes known as an "employee rights" or "smokers' rights" bill, S.B. 284 is nothing less than "anti-employer rights."

Because the issue addressed in S.B. 284 is not new, the question on the NFIB/Kansas 1993 Ballot asked:

"Should NFIB/Kansas support or oppose legislation which prohibits employment decisions based on an employee's legal activities outside the workplace?"

Our member response was clear. The majority oppose such legislation as S.B. 284 as just one more intrusion by government, interfering with the right of a business owner or manager to run his business.

Employees have adequate protection under existing law to protect them from discrimination because of race, creed, color, sex or national origin. Why should they be protected because of their actions of choice?

If S.B. 284 becomes law, many of our members think they would be busy defending themselves against lawsuits brought by "creative" lawyers, alleging that personnel actions were taken because an employee engaged in some activity off company premises. They feel employers would lose one more element of control over the employment practices of their business.

Under provisions of S.B. 284, any aggrieved employee, or former employee, could bring an action claiming any personnel action was a violation, subjecting the employer to payment of a civil penalty of up to \$2,500. The employer's only recourse to an unfavorable administrative ruling is "judicial review."

They point out that smokers and heavy drinkers often have higher than average absentee rates, higher health care costs, and often lower job productivity, than other employees. These issues, they say, are part of an employer's legitimate interest, because they are part of the employer's cost of doing business.

State Office
Suite 107
3601 S.W. 29th St.
Topeka, KS 66614-2015
(913) 271-9449

At a time when big business is downsizing, the Kansas economy is vitally dependent upon small business for growth. Why add to these employers' risk in creating jobs?

You can help by refusing to impose an unnecessary restrictive measure on business owners. We urge you to vote "NO" - opposing passage of S.B. 284.

Sincerely,



Hal Hudson, State Director



The Guardian of
Small Business

Sen. F. + S. Q.
2-25-93
all 8

The following member's comments were selected from the hand written "comments or suggestions" section of the NFIB Kansas 1993 State Ballot:

"...support employer's right to discriminate against (self-destructive) activities that increase employer's expenses."

NFIB member, Manhattan

"Another source for litigation if enacted."

NFIB member, Lenexa

"If it involved your employee being a drunk...who wants them on your payroll?"

NFIB member, Marysville

"This is another example of the government sticking their nose into places where they shouldn't be. We don't need more laws telling us what we can and can't do. Most small businesses are very sensitive to the needs of their employees and help wherever they can. They don't need more laws to tell them what to do."

NFIB member, Hutchinson

"The employer should run the business to the best of his ability. We DON'T need legislation for everything & we DON'T need others forcing us to run our business according to their dictates."

NFIB member, Pratt

"Too restrictive. This could be taken to extremes."

NFIB member, Salina

"I feel very strongly about this. An employer should be able to hire based upon past history, activities or life style."

NFIB member, Paola

"When we run a business, we shouldn't lose our right to select the people we feel will do best with the least absent days, etc."

NFIB member, Winfield

"You are just setting yourself up for the lawyers. They would love for someone to fire someone or not hire someone because of something they do away from work."

NFIB member, Marysville

"I favor an employer's right to discriminate on the basis of smoking, etc., when making a hiring decision."

NFIB member, Topeka

NFIB/Kansas - 3601 S.W. 29th St., Suite 107, Topeka, KS 66614-2015 - (914) 271-9449



Coalition Members

American Cancer Society

American Heart Association
Kansas Affiliate, Inc.

American Lung Association
of Kansas

Cancer Information Service

Dickinson County Council on
Alcohol and Drugs, Inc.

Extension Human
Development and Family
Studies, Kansas State
University

Group to Alleviate
Smoking Pollution

Kansas Academy of
Family Physicians

Kansas Association of Local
Health Departments

Kansas Dental Association

Kansas Department
of Administration

Kansas Department of Health
and Environment

Kansas Department of
Human Resources

Kansas Employer Coalition
on Health

Kansas Respiratory
Care Society

Kansas State Board
of Education

Kansas State Nurses
Association

Kansans for
Non-smoker's Rights

National Council on Alcoholism

New Mondays Seminars

Preventative Cardiology, PA

Project Freedom

Smoky Hill Family Practice
Residency Program

Stormont-Vail Regional
Medical Center

Topeka-Shawnee County
Health Department

University of Kansas
Medical Center

Tobacco Free Kansas

900 SW Jackson, Room 1051, Topeka, KS 66612-1290

913/296-1200

FAX 913/296-1231

TESTIMONY IN OPPOSITION TO SB 284

BRIAN GILPIN

2-25-93

Do smokers, or any user of a legal product need special civil rights protection?

NO!!

This bill places smokers and those who use lawful products in their homes (which includes everyone) in a similar type class as those that society has traditionally determined to be truly discriminated against because of their race, religion, color, sex, disability, national origin or ancestry. Kansas has rightfully sought to protect these very limited number of groups, whose need for protection can usually be traced to several common factors:

* Their status as a member of a particular group is permanent and involves no choice or measure of consent on the part of the individual. In other words their condition is immutable.

* Their mistreatment by others is extreme and outrageous, irrational, long standing and the product of hatred, ignorance or chauvinism.

As you can see, smoking, drinking beer and eating pizza meets none of these criteria. Elevating smokers or any other habit to the status of a protected class is sure to water down and trivialize the importance of our civil rights laws.

Booth Gardner, Governor of the State of Washington vetoed similar legislation last year on April 2, 1992. He stated: "I am concerned that this bill, if it were to become law, would significantly increase employment litigation based on the argument that an employee was dismissed or disadvantaged because of the consumption of a legal product off premises during nonworking hours.

This veto does not affect existing laws that constrain employers from inquiring into their employee's private lives. But because there is no evidence that employers are abusing their current authority, the concerns created by the bill outweigh its possible merits."

Please note the attached veto messages by former Governor Bill Clinton of Arkansas, Governor Jim Florio of New Jersey, Governor Norman H. Bangerter of Utah, and Governor Lawton Chiles of Florida.

Please, vote no.

*Sen. F. + S.A.
2-25-93
att 9*



STATE OF ARKANSAS
OFFICE OF THE GOVERNOR
State Capitol
Little Rock 72201

Bill Clinton
Governor

March 4, 1991

David P. Cook
American Lung Association of Arkansas
211 Natural Resources Drive
Little Rock, AR 72205-1539

Dear David:

Thank you for expressing your opposition to House Bill 1441, known as the Smokers' Rights Bill.

I have vetoed House Bill 1441 for the following reasons:

The bill prohibits employers from deciding to hire only non-smokers. Some Arkansas companies have chosen to hire only non-smokers to reduce the cost of health care and other benefits, such as term life insurance. This bill would overturn these hiring policies and would prevent other employers from developing similar ones.

The bill has an uncertain reach. While it has been described as a bill which only prevents employers from firing, refusing to hire, or otherwise discriminating against employees because they smoke away from work, it contains language that could give smokers rights in the workplace itself. I believe that is inappropriate. Several Arkansas employers who have established smoke-free work environments asked me to veto the bill for that reason.

This bill is part of a national effort to grant rights to smokers similar to those protected by the First Amendment's guarantee of free speech or those extended to people protected from discrimination on the basis of race, sex, or some other innate condition. While Americans plainly may smoke in many circumstances, smoking is an acquired behavior. Given the overwhelming evidence of the toll it takes every year in disease and death, it should not be accorded legal protection like freedom of speech; nor should smokers be a protected class like those who have been wrongly discriminated against because of race, sex, age, or physical handicaps.

I appreciate your contacting me to let me know how you feel about this issue.

Sincerely,

A handwritten signature in cursive script that reads "Bill Clinton".
Bill Clinton

BC:sm

9-2

JIM FLORIO
GOVERNOR



STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
TRENTON
08625

February 25, 1991

Dear Friend:

As you probably know, I recently vetoed legislation which would have elevated smoking to the status of a civil right. The Senate has since overridden my veto and the Assembly is considering similar action. The reason why I am writing to you now is to reiterate my commitment to opposing this legislation, and to encourage you to get involved in the debate on this important issue.

The civil rights laws of our country have been crafted to protect citizens who, by birth, become members of a class because of certain unalterable personal characteristics such as their skin color, gender or national origin. Smoking does not fit into this category. Unlike the color of one's skin, smoking is an individual choice. It is not an immutable characteristic or a matter of such value and importance so as to warrant the status of being considered a civil right.

There are additional reasons for opposing this legislation. For instance, smoking is one of the leading causes of the rapidly rising cost of health care. It contributes to heart disease, lung cancer, emphysema, and many other tragic illnesses. In fact, it is now estimated that nearly 500,000 smoking-related deaths occur each year in the United States. At a time when health care costs are spiraling and our own health-care system in New Jersey is overwhelmed and underfunded, it would be unconscionable to raise the use of tobacco to a protected civil right when it is responsible for so much harm.

One final reason for opposing the elevation of smoking to the status of a civil right is that such a move would establish a dangerous precedent. If we begin by protecting the rights of smokers, we may soon find ourselves being asked to protect the rights of other individuals who voluntarily participate in activities that are deemed unhealthy by society. Furthermore, by declaring smoking to be a civil right, we would be inviting the tobacco industry to re-enter the debate of whether smoking should be permitted in public places such as schools, restaurants and the workplace.

For all the reasons stated above, I remain committed to opposing the efforts to encourage smoking as a civil right. I thank you for your commitment to this issue. Please do not hesitate to contact me if you wish to share your views with me on this or any other issue.

Very truly yours,

JIM FLORIO
Governor

JJF:jd

9-3



NORMAN H. BANGERTER
GOVERNOR

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114

March 19, 1991

The Honorable Arnold Christensen
President of the Senate
and
The Honorable H. Craig Moody
Speaker of the House
BUILDING MAIL

Dear President Christensen and Speaker Moody:

This is to inform you that on March 19, 1991, I have vetoed SB 122 - ANTIDISCRIMINATION IN EMPLOYEE'S USE OF LAWFUL PRODUCTS and have forwarded this to the Lieutenant Governor for filing.

Both our State and federal government have long recognized that certain members of our society need protection from discrimination in employment based on certain characteristics (such as race or gender) or fundamental rights enjoyed by all citizens (such as the right to vote). Current Utah law, prohibits employment discrimination on the basis of a suspect class or through intrusion on a fundamental right. UTAH CODE ANN. Sec. 34-35-7.1.

SB 122 seeks to add to existing law the "use of a lawful product" either as a new suspect class or a new fundamental right. Under either interpretation, however, the use of a lawful product does not rise to the level of a class or "right" meriting additional government intrusion into an employer's hiring practices.

Invidious discrimination on the basis of a suspect class such as race or gender is prohibited because it has no rational basis and because those characteristics are immutable. Further, our society has recognized that certain rights are so basic that they are of paramount importance over any other rights with which they may conflict. The designation of a right as "fundamental", however has been understandably limited.


In my view, the use of any lawful product, whether it be alcohol, tobacco, prescription medications, food or any other product, does not merit the stringent protections afforded the categories described above. It is not my intent to tell the

people of Utah what they may and may not do with lawful products when they are not at their places of employment. At the same time, the State of Utah should not unduly burden the employers of this State by further restricting their right to choose their employees. People in our State have the right to use lawful products in whatever lawful manner they choose; however, that choice does not entitle them to special protection under the law. Adding the changes proposed under SB 122 would create an unwarranted intrusion into the relationship between employers and employees.

It is my goal as Governor to provide protection from discriminatory hiring practices for those who need it due to certain immutable characteristics or the exercise of fundamental rights. It is further my goal to allow the employers of Utah the maximum latitude permissible to enable and encourage them to operate and expand their businesses. The current law appropriately strikes the balance between these two goals.

I believe it necessary to express my displeasure and resentment at the misinformation campaign waged by the tobacco industry to convince Utahns that this bill is somehow necessary to protect their "fundamental right of privacy." There is not a single instance in which current law has been or could be used to interfere with an individual's decision to smoke in their own home.

Sincerely,


Norman H. Bangert
Governor

NHB/eg/nlc

Subject: TEXT OF GOVERNOR CHILES' VETO LETTER

April 10, 1992

The Honorable T. K. Wetherell
Speaker of the House
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Dear Mr. Speaker:

By the authority vested in me as Governor of Florida, under the provisions of Article III, Section 8, of the Constitution of the State of Florida, I do hereby withhold my approval of and transmit my objections to Committee Substitute for House Bill 1753, enacted by the 94th Session of the Legislature since Statehood in 1845, during the Regular Session of 1992, and entitled:

An act relating to employment; providing that it is unlawful to discriminate through any employment action because an individual is a user of legal agricultural products; providing an exception; providing an effective date.

Committee Substitute for House bill 1753 purports to make it unlawful for an employer to discriminate against an individual who is a user of "legal agricultural products." Yet, there is not a scintilla of evidence that such "discrimination" even remotely exists in the State of Florida. To my knowledge, there is not one documented case in Florida that shows an employee was terminated because he used "legal agricultural products" while "off the premises of the workplace during nonworking hours."

Committee Substitute for House bill 1753 is vague and imprecise. It fails to provide any definition for "agricultural products." This could lead to the protection of abusers of alcohol -- a "legal agricultural product" -- who excessively drink off the job. And the Florida Statutes contain numerous and inconsistent definitions for "agricultural products," which surely do not demand the protection of antidiscrimination laws. For example, Florida's general agricultural laws define "agricultural products" to mean "the natural products of the farm, nursery, grove, orchard, vineyard, garden and apiary (raw or manufactured); livestock; milk and milk products; poultry and poultry products; and limes (meaning the fruit Citrus aurantifolia, variety Persian, Tahiti, Bearss, or Florida Key limes) produced in the state EXCEPT TOBACCO, tropical foliage, sugarcane, and citrus other than limes." Such vagueness will lead to significant employment litigation that is wholly unnecessary.

Committee Substitute for House bill 1753 raises the use of "legal agricultural products" to the status of a protected civil right. Smokers and other such users of these products would have the same or more rights than those individuals who already confront invidious discrimination. Florida's laws protect people from discrimination because of their race, age, handicap or national origin -- qualities that cannot be changed. Our laws deter discrimination based on religion which go to the profoundly held beliefs of our citizens. These antidiscrimination laws are rooted in the very foundation of our society and are values deeply imbedded in the constitutions of the United States and Florida. Committee Substitute for House bill 1753 protects a class of people based solely on what they consume -- cigarettes. We should not trivialize people's fundamental civil rights with an unnecessary new class of "smokers." Quoting Montesquieu: "useless laws weaken necessary laws."

I am quite mindful of an individual's right to privacy. My veto of this bill, of course, does not affect existing laws that already prevent intrusion into one's personal life. And I do not intend to tolerate the invasion of our sacred right to privacy. But simply put, Committee Substitute for House bill 1753 is not needed as a protection of this right.

For these reasons, I am withholding my approval of Committee Substitute for House bill 1753 and do hereby veto it.

With kind regards, I am

Sincerely,
LAWTON CHILES

Attach. 10

Carla Dugger
Associate Director
American Civil Liberties Union of Kansas and Western Missouri
(816) 421-4449

Testimony in Support of SB 284
Submitted to the Senate Federal and State Affairs Committee
Senator Lana Olsen, Chair
February 25, 1993

The American Civil Liberties Union of Kansas and Western Missouri is an affiliate of the national ACLU. We have 1,000 members in Kansas. Our purpose is to defend civil liberties against erosion and to advocate for their extension to previously unprotected classes.

We consider private employees one of these unprotected classes. The Constitution and Bill of Rights, specifically the right to privacy under the Fourth Amendment, limit the ability of the government to infringe on those rights. ACLU therefore would be able to assist a public employee who is terminated for smoking in his or her own home because that action would violate the employee's right to privacy.

The American Civil Liberties Union of Kansas and Western Missouri encourages this committee to support Senate Bill 284, which would ensure that the private employees of Kansas also would have the right to use or consume "lawful products" in the privacy of their own homes without fear of reprisal by their employers.

We believe the provisions in SB 284 which protect the legitimate interests of the employer are appropriate and satisfactory.

The only amendment we would suggest would be the addition or substitution of the more inclusive term "lawful activities."

Thank you very much. I am sorry that I was not able to appear today in person. Please contact me at the above number if you have any questions regarding this testimony from ACLU.

Sen. F. & S.A.
2-25-93
Att 10

SENATE BILL NO. _____

AN ACT enacting the hospice licensure act; providing for licensing hospices; granting certain powers to and imposing certain duties upon the secretary of health and environment; providing for administrative procedures relating to licensure.

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

Section 1. This act shall be known and may be cited as the hospice licensure act.

Sec. 2. As used in this act, unless the context otherwise requires:

(a) "Department" means the Kansas department of health and environment.

(b) "Hospice" means a legally constituted not-for-profit organization, or agency, centrally administered, medically directed, nurse coordinated program providing comprehensive, continuous outpatient and home-like inpatient care for terminally ill patients and their families. It systematically joins together employed professionals and trained volunteers to form an interdisciplinary group, to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social and economic stresses which are experienced during the final stages of illness and during the dying and bereavement processes, regardless of ability to pay.

(c) "Hospice inpatient facility" means that the hospice provides inpatient care in compliance with section 418.100 of the code of federal regulations.

(d) "Hospice patient" means a patient diagnosed or referred, or both, to a hospice as terminally ill by an attending physician, who alone, or in conjunction with designated family

Sen. F. & S. C.
2-25-93
Att 11

members, has voluntarily requested admission into a licensed hospice program or whose guardian has requested admission on behalf of such patient into a licensed hospice program and who has been accepted into a licensed hospice program.

(e) "Hospice patient's family" means the hospice patient's immediate family, including a spouse, brother, sister, child or parent. Other relations and individuals with significant personal ties to the hospice patient may be designated as members of the hospice patient's family by mutual agreement among the hospice patient, the relation or individual and the hospice team.

(f) "Hospice team or interdisciplinary group" means the attending physician, and the following hospice personnel: Physician, licensed professional or licensed practical nurse, nurse, licensed social worker, pastoral or other counselor. Providers of special services, such as mental health, pharmacy, home health aides, trained volunteers and any other appropriate allied health services shall also be included on the interdisciplinary group as the needs of the patient dictate.

(g) "Identifiable hospice administration" means an administrative group, individual or legal entity that has an identifiable organizational structure, accountable to a governing board directly or through a chief executive officer. This administration shall be responsible for the management of all aspects of the program.

(h) "Medically directed" means that the delivery of medical care is directed by a physician who is employed by the hospice for the purposes of providing ongoing palliative care as a participating member of the hospice team.

(i) "Nurse coordinated" means the hospice must designate a registered nurse to coordinate the implementation of the plan of care for each patient.

(j) "Palliative care" means treatment directed at controlling pain, relieving other physical and emotional symptoms and focusing on the special needs of the hospice patient and the hospice patient's family, as they experience the dying process

rather than treatment aimed at investigation and intervention for the purpose of cure or prolongation of life.

(k) "Physician" means a person licensed to practice medicine and surgery.

(l) "Secretary" means the secretary of health and environment.

Sec. 3. (a) The hospice shall provide access to planned, coordinated medical and nursing services to hospice patients on a 24-hour basis, seven days per week.

(b) The hospice shall establish formal admission criteria that reflect the patient's and family's desire and need for hospice care.

(c) The admission criteria shall reflect, to the extent possible, that the hospice will admit patients regardless of diagnosis or ability to pay for services.

(d) The hospice shall organize its services to respond to patient and family needs whenever and wherever they arise. The hospice shall provide both structure and staff to ensure continuation of the hospice care plan in home, outpatient and home-like inpatient settings.

(e) The hospice shall provide coordinated access to inpatient care, made available either directly by a hospice inpatient facility or through arrangement with a licensed inpatient facility, assuring the continued involvement of the interdisciplinary group on a 24-hour-a-day basis.

(f) The hospice program shall provide evidence that it has established written policies for an interdisciplinary plan of care, including but not limited to:

(1) Assessments, identified problems, proposed interventions, level and frequency of services and goals;

(2) policies and procedures for maintaining appropriate reports, patient bill of rights, informed consent, quality assurance and utilization review programs;

(3) policies and procedures for conducting ongoing assessments reflecting the interdisciplinary natures of hospice

services, including assessments of volunteer participation and bereavement counseling; and

(4) policies and procedures for maintaining accurate, current, integrated clinical records for all patient and family units and assurances for the confidentiality of these records.

(g) The hospice program shall provide opportunities for appropriate continuing education of its interdisciplinary group members, as well as assuring the competent training and supervision of its volunteers and bereavement counselors.

(h) The hospice shall provide bereavement services under the supervision of a qualified professional. The plan of care for these services shall reflect family needs as well as a clear delineation of services to be provided for not more than one year following the death of the patient.

(i) The hospice shall offer trained volunteer support to each patient and patient's family admitted to its program of care. Volunteers shall be used in defined roles, under the supervision of designated hospice staff.

Sec. 4. (a) No agency, organization or individual shall hold itself out as providing hospice or hospice-like care unless licensed in accordance with the provisions of this act.

(b) The provisions of this act shall not apply to any person or organization conducting a program by and for the adherents of any recognized church or religious denomination or sect for the purpose of providing for the care of the dying who depend upon prayer or spiritual means for support and consolation in the practice of the religion of such church, religious denomination or sect.

(c) A license issued under this act is not assignable or transferable and must be separate from any existing license and is subject to suspension or revocation at any time for failure to comply with the provisions of this act or with appropriate rules and regulations adopted by the secretary.

Sec. 5. (a) A hospice certified under the hospice medicare benefit, regardless of whether the hospice obtains or seeks

medicare reimbursement, shall be licensed by the secretary after receipt of proof confirming the hospice is certified according to the standards and conditions of the hospice medicare benefit.

(b) Any organization or agency, operational as of January 1, 1993, which provides one or more hospice services as defined in this act, but is not in complete compliance with the provisions of this act, may petition the secretary for a provisional license, in order to fulfill the requirements for hospice licensure established by this act. The deadline for demonstrating complete compliance shall be January 1, 1996. If any such organization, or agency fails to comply with the provisions of this act by the stated date, such organization or agency shall no longer be called a hospice.

(c) Any organization or agency which does not qualify under subsections (a) or (b) and which wishes to establish and hold itself out as providing hospice or hospice-like care shall be licensed according to the provisions of this act.

(d) Any organization or agency which wishes to be licensed as a hospice shall file a written application with the secretary on a form prescribed by the secretary. The application shall be accompanied by a license fee fixed by rules and regulations of the secretary under section 6 and amendments thereto.

Sec. 6. (a) The secretary may adopt rules and regulations necessary to carry out the provisions of this act. The rules and regulations shall be initially adopted within one year after the effective date of this act.

(b) The rules and regulations adopted by the secretary under the provisions of this act shall apply to all organizations and agencies providing hospice care.

(c) The secretary may fix, charge and collect license fees and license renewal fees as may be necessary to cover the expenses incurred in administering the provisions of this act.

Sec. 7. (a) There is hereby created within the department the hospice advisory council which shall advise and make recommendations to the secretary relating to the rules and

regulations adopted and the implementation and administration of this act. All budgeting, purchasing and related management functions of the council shall be administered under the direction and supervision of the secretary. All vouchers for expenditures and all payrolls of the council shall be approved by the chairperson of the council and the secretary.

(b) The hospice advisory council shall be composed of five members. All members of the hospice advisory council shall be residents of Kansas and shall be appointed by the secretary for a term which shall expire on the expiration date of this section under subsection (e). The five members of the council shall be representatives of hospice programs. A vacancy on the hospice advisory council shall be filled by appointment of the secretary until expiration of this section under subsection (e).

(c) The hospice advisory council shall meet not less than quarterly, or as necessary, at a place, day and hour determined by the council. The council may also meet at such other times and places as may be designated by the chairperson or upon the request of the majority of the members of the council.

(d) Members of the hospice advisory council attending meetings of the council, or attending subcommittee meetings thereof authorized by the council, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto.

(e) The provisions of this section shall expire on July 1, 1994.

Sec. 8. (a) Any person may make a complaint against a hospice licensed under the provisions of the act by filing a complaint in writing with the secretary stating the details and facts supporting the complaint.

(b) If the secretary determines after an investigation that the charges are sufficient to warrant a hearing to determine whether the license of the hospice should be suspended or revoked, the secretary shall fix a time and place for a hearing and require the hospice to appear and defend against the complaint in accordance with the provisions of the Kansas

administrative procedures act.

(c) A copy of the complaint shall be given to the hospice at the time it is notified of the hearing. The notice of the hearing shall be given at least 20 days prior to the date of the hearing.

Sec. 9. (a) The secretary shall refuse to issue, shall suspend or shall revoke the license of any hospice (1) for failure to substantially comply with any provision of this act or with any rule and regulation of the secretary adopted under the provisions of this act or (2) for obtaining the license by means of fraud, misrepresentation or concealment of material facts.

(b) Any hospice agency which has been refused a license or which has had its license suspended or revoked by the secretary may request a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedures act.

Sec. 10. The secretary may maintain, in the manner provided by the act for judicial review and civil enforcement of agency actions, an action in the name of the state of Kansas for injunction or other process against any person to restrain or prevent any violation of the provisions of the hospice licensure act or any rule and regulation adopted pursuant thereto.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL No. 111

By Committee on Federal and State Affairs

1-27

8 AN ACT amending the Kansas lottery act; relating to transfers to
9 the state gaming revenues fund; amending K.S.A. 74-8711 and
10 repealing the existing section.
11

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

13 Section 1. K.S.A. 74-8711 is hereby amended to read as follows:
14 74-8711. (a) There is hereby established in the state treasury the
15 lottery operating fund.

16 (b) The executive director shall remit at least weekly to the state
17 treasurer all moneys collected from the sale of lottery tickets and
18 shares and any other moneys received by or on behalf of the Kansas
19 lottery. Upon receipt of any such remittance, the state treasurer
20 shall deposit the entire amount thereof in the state treasury and
21 credit it to the lottery operating fund. Moneys credited to the fund
22 shall be expended or transferred only as provided by this act. Ex-
23 penditures from such fund shall be made in accordance with ap-
24 propriations acts upon warrants of the director of accounts and reports
25 issued pursuant to vouchers approved by the executive director or
26 by a person designated by the executive director.

27 (c) Moneys in the lottery operating fund shall be used for:

28 (1) The payment of expenses of the lottery, which shall include
29 all costs incurred in the operation and administration of the Kansas
30 lottery; all costs resulting from contracts entered into for the purchase
31 or lease of goods and services needed for operation of the lottery,
32 including but not limited to supplies, materials, tickets, independent
33 studies and surveys, data transmission, advertising, printing, pro-
34 motion, incentives, public relations, communications, and distribu-
35 tion of tickets and shares; and reimbursement of costs of facilities
36 and services provided by other state agencies;

37 (2) the payment of compensation to lottery retailers;

38 (3) transfers of moneys to the lottery prize payment fund pursuant
39 to K.S.A. 74-8712 and amendments thereto;

40 (4) transfers to the state general fund pursuant to K.S.A. 74-8713
41 and amendments thereto;

42 (5) transfers to the state gaming revenues fund pursuant to sub-
43 sion (d) of this section and as otherwise provided by law; and

*Sen. F. + S.A.
2-25-93
Oct 12*

12-2

(6) the transfers to the county reappraisal fund as prescribed by law.

(d) The director of accounts and reports shall transfer moneys in the lottery operating fund to the state gaming revenues fund created by K.S.A. 79-4801 and amendments thereto, on or before the 15th day of each month, for fiscal years commencing on or after July 1, 1988 in an amount certified monthly by the executive director and determined as follows, whichever is greater:

(1) ~~In~~ An amount equal to the moneys in the lottery operating fund in excess of those needed for the purposes described in subsections (c)(1) through (c)(4); or

(2) ~~(A)~~ an amount equal to not less than 30% of total monthly revenues from the sales of ~~on-line~~ lottery tickets and shares less estimated returned tickets; ~~plus (B) an amount equal to not less than 20% of the total monthly revenues from the sales of instant and pull tab lottery tickets and shares less estimated returned tickets.~~ 25

Sec. 2. K.S.A. 74-8711 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.



Terry P. Presta
President

John Perkins
Executive Vice-President

Douglas Wald
Vice-President/Operations

February 22, 1993

Mr. Ralph Decker
Executive Director
128 N. Kansas Ave.
Topeka, KS. 66603

Dear Ralph:

I am in full support of Senate Bill #111. I believe that the lottery could greatly increase its sales and increase revenue to the State by increasing the payback. The number one reason people play is the excitement of winning, therefore more winners equals more excitement and more players. On behalf of Presta Oil Inc. and our 18 Presto stores please put down a large **Yes!** for S.B. #111. Thanks.

Sincerely,

Terry Presta
President,
Presta Oil Inc.



INC.

CONVENIENCE STORES:

3706 S.W. Topoka Blvd., #201, Topoka, Kansas 66609

(913) 287-2951

February 24, 1993

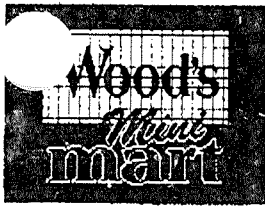
Mr. Ralph Decker
Executive Vice President
The Kansas Lottery
128 N. Kansas Avenue
Topeka, Kansas 66603-363A

Dear Ralph:

As you may or may not know, the EZ Shop chain of convenience stores abruptly changed its marketing philosophies two years ago when we decided to go after VOLUME instead of margin. We felt that the more customers we attracted through better promotions and pricing the more business we would gain, it worked to the tune of an increase in sales of 16% over the prior year! We have found that more and more people are after a value, they want bigger and better deals and will travel to find it. We are very excited to see Senate Bill #111 on the legislative list; we could use a boost in sales this year. Between higher insurance, workers compensation costs, and property taxes we need some HELP! We know because we've seen it - bigger payouts equal increased sales! I thank you for your ever increasing interest in our business, our relationship with the Kansas Lottery is highly valued. Best of luck this year, Ralph.

Sincerely,

Susie Frisbie
Executive Vice President
General Manager



CHARLES R. WOOD OIL CO., INC.

P.O. Box 67
Leavenworth, Kansas 66048

CHARLES M. (MIKE) WOOD
President
Office Phone 727-1163

24 Feb. 1993

Ralph Decker
Executive Director Kansas Lottery

Dear Ralph:

Being a Corporate Lottery Retailer and a member of the
Lottery Retailer advisory Board, I support Senate Bill 111
and the amendment reducing the state share from 30 to 25%.

I think this program has done a lot of good for
Kansas and any means of enhancing it will benefit us all.

Sincerely

Art Ballentine

Art BALLENTINE
Supervisor.

FAX Message

Date: 2/24/93

To: Mr. Ralph W.E.Decker

Company: Kansas Lottery, Executive Director

Fax Phone Number: 1-913-296-5712

CC:

From: J.R."Rocky" Gilger

Subject: SB#111

of Pages (including this cover sheet): 1

Message:

Ralph.....

I'm writing this to confirm my support for your position on SB#111.

Being in the field and dealing 1st hand with the consumer, I can earnestly convey that a better "payback percentage" would generate greater enthusiasm and greater sales per customer.

Too, any attempt to help us retailers gain our TRUE 5% comm. is greatly appreciated.

If the state would only release a small percent more, can you imagine.... a more effective Lottery, happier more proffitable retailers, happier consumers, and perhaps, more net dollars for the state to enhance it's projects. What a deal.....
EVERYBODY WINS !!!!!

I respect your expertise and admire your efforts on our behalf. THANK YOU !

Cordially.....Rocky

If you do not receive all pages, please call back immediately.

Voice:

Fax:

Telex:

12-6

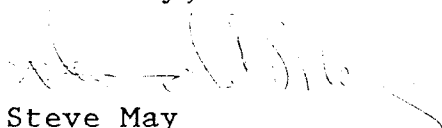
February 24, 1993

Steve May
Holiday Square Amoco
2901 SW Topeka Blvd
Topeka, KS 66611

Dear Mr. Decker,

I would like to express my support for Senate Bill 111. As a retailer I would like to see an increase in the profit margin for selling lottery products. I would also like to see an increase in the prize payouts for the instant tickets which would boost sales.

Sincerely,



Steve May
Owner, Holiday Square Amoco

FEBRUARY 24, 1993
ROBERSONS RETAIL LIQUOR
115 W. 5TH
NEWTON, KS. 67114

RALPH DECKER
KANSAS LOTTERY
128 N. KANSAS AVE.
TOPEKA, KANSAS 66603

RALPH,

I WAS PLEASED TO HEAR YOU WERE GOING TO TESTIFY BEFORE THE SENATE IN SUPPORT OF SENATE BILL 111. AS A RETAILER WHO SELLS ALL THE LOTTERY GAMES, I FEEL LIKE WE CAN INCREASE THE AMOUNT OF REVENUE THE STATE RECEIVES FOR BUSINESS DEVELOPMENT, BY OFFERING OUR CUSTOMERS MORE PRIZES, AND OUR RETAILERS MORE INCENTIVE TO SELL TICKETS.

WITH A LARGER BUDGET, I THINK WE CAN GET MORE INFORMATION TO OUR CUSTOMERS ABOUT WHERE THE MONEY IS GOING. WHEN I CAN SHOW MY CUSTOMERS WHERE THE DOLLARS ARE GOING RIGHT HERE IN HARVEY COUNTY, THEY ARE MUCH MORE SUPPORTIVE OF THE LOTTERY. OBVIOUSLY AS JACKPOTS BUILD, AND PRIZES ARE MORE FREQUENT, PEOPLE PLAY MORE, AND THE STATE RECEIVES MORE MONEY.

I GET DISCOURAGED AT TIMES OVER THE LOW RETAILER INCENTIVES THAT THE LOTTERY IS ABLE TO OFFER THE RETAILER. ALL IT TAKES IS ONE MISTAKE TO WIPE OUT WHAT LITTLE MONEY WE RECEIVE, AND IT IS IN COMPETITION WITH OUR OTHER PRODUCTS. ONE OF THE REASONS I CONTINUE TO SUPPORT THE LOTTERY, IS BECAUSE I KNOW THAT THE STATE BUDGET CANNOT FUND ALL THE PROGRAMS FOR BUSINESS WE NEED, AND I BELIEVE WE NEED TO ENCOURAGE NEW BUSINESS FOR KANSAS, IN ANY WAY WE CAN. IT'S ALSO NEAT TO HAVE FUN WHILE YOU'RE DOING IT.

PLEASE VOICE MY SUPPORT OF SENATE BILL 111 WHILE YOU ARE THERE, AND ALSO THE SUPPORT OF THE HUNDREDS OF PEOPLE WHO PLAY LOTTERY GAMES IN OUR STORE EVERY WEEK.



MARJORIE L. ROBERSON
ROBERSON RETAIL LIQUOR
115 W. 5TH
NEWTON, KANSAS 67114
(316) 283-0980



Convenience Stores

SHOP QUIK, LLC.
1115 WESTPORT DR. SUITE G
MANHATTAN, KS 66502
(913) 537-8076



Convenience Stores

Ralph Decker
Executive Director Kansas Lottery
(913) 296-5712

February 25, 1993

Dear Sir,

SHOP QUIK, LLC. would like to go on record as stating that we are in support of Senate Bill 111. We also stand behind the proposed amendment reducing the now 30% state withholding to the proposed 25%. As a retailer for the Kansas Lottery, we feel that this Senate Bill and the proposed amendment would be in the best interest of the Lottery and all retailers.

Sincerely,

Mick Wunder
Operations Manager


Feb 25, 1993

Attention Ralph Decker

Reference SB111

Mr. Decker we support Senate
Bill 111. We are certain
the reduction from 30% to 25%
will greatly aid lottery sales.

Thank you

A handwritten signature in cursive script that reads "Randy Hawk". The signature is fluid and stylized, with a large, sweeping "H" and a long, trailing flourish at the end.

Vice President
Saw-A-Trip Stores

The Kansas Lottery

QUESTIONS

The State now gets about \$30,000,000 from the Lottery sales of \$100,000,000. Why should we lower the State share by 5 million dollars?

On Instant tickets alone, an increase of 10% in payouts statistically will produce an increase of approximately 60% or more in sales. This alone would make up the \$5,000,000 at a cost of about two-thirds of that amount. A further increase in payouts would add to the State share.

Other Lottery products would also be expected to show gains through the wider distribution of instant tickets and the consequent introduction of new and lapsed players to our various games.

Would not extra printing costs for instant tickets consume most of the remaining moneys available to the Lottery?

No! Extra tickets costs would be very minimal because of the favorable terms of our recently negotiated printing contract. Prices decrease per thousand tickets as quantities ordered increase. This not only makes extra tickets cost less, but also lowers the price on the quantities now being ordered.

Where else could you expect extra sales and for what reasons?

Other areas, which could lead to increased sales if the Lottery had slightly increased funds available would be:

A slight improvement in retailer commissions and/or incentives for increased performances would unquestionably lead to greater cooperation by the retailers in the form of additional space for in-store advertising materials. Conversely, we may lose some present retailers if nothing is done to improve their financial return from the sale of Lottery products.

Some funds could usefully be applied to change the retailer phone line charge structures in order to provide incentives for superior performances and remove the present regressive line charge structures.



Attach.

WHERE DOES THE MONEY GO?

The most frequently asked question at the Kansas Lottery is "Where does the money go?" Of every dollar spent on a Lottery ticket, 30 cents is transferred to the State Gaming Revenues Fund. Of that 30 percent, 90 percent is earmarked for the Economic Development Initiative Fund and 10 percent is allocated to prison construction. **IN FY 1993 THE LOTTERY WILL TRANSFER AN ESTIMATED \$22,950,000.** The Kansas Racing Commission will transfer an estimated \$5,565,600. This report was supplied by the Division of Budget and represents EDIF distribution for fiscal year 1993.

ESTIMATED REVENUES

Beginning Balance.....	6,916,741
LOTTERY	22,950,000
Racing.....	5,565,600
Interest.....	250,000
Total Available.....	35,682,341
Transfers	28,993,399
Balance Forward.....	6,688,942

TRANSFERS

State Water Plan	2,000,000
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Department of Commerce and Housing

Small Business Development and Centers	325,000
Certified Development Companies	475,000
Kansas Industrial Training/Retraining	2,250,000
Trade Show Promotion	220,894
Strategic Planning Grants.....	445,000
Main Street Program	123,500
Tourism Promotion.....	1,535,577
Industrial Marketing	725,833
International Representation.....	540,600
Operations	2,132,325
Subtotal Commerce and Housing	8,773,729

Kansas Technology Enterprise Corporation

Research Matching Grants	1,009,613
Business Innovative Research Grants	25,000
Training Equipment	150,000
Industrial Liaison.....	300,000
Database Development	35,000
Centers of Excellence.....	3,715,000
Special Projects.....	321,250
Commercialization.....	250,000
Industrial Ag Products	200,000
Mid-America Manufacturing Technology Center	1,000,000
Value Added Processing Center.....	622,705
Operations	691,786
Subtotal KTEC	8,320,354

Department of Education

Cultural Arts Center.....	25,000
Foundation for Agriculture.....	25,000
At-Risk/ Innovative Program Assistance.....	1,500,000
Matching Grants- AVTS	500,000
Postsecondary- AVTS	500,000
Capital Outlay- AVTS.....	1,000,000
Subtotal Education	3,550,000
Agriculture Market Promotion.....	275,004
KSSB Accessible Arts Program	19,300
Kansas, Inc.	1,600,874
Revenue	3,000,000
Wildlife and Parks	20,000
State Fair.....	100,000
Arts Commission	786,938
Historical Society.....	223,500
Board of Regents	40,000
State Library.....	283,700

EDIF TOTAL **\$28,993,399**

Don. F. & Co.
2-25-93
Att 13