

Approved: 3-22-93  
Date

## MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on March 11, 1993 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Norman Furse, Revisor of Statutes  
William Wolff, Legislative Research Department  
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

State Representative Ted Powers  
State Representative Henry Helgersen  
State Representative Carolyn Weinhold  
Kharon Hunter, Kharon Hunter Day Care, Topeka  
Paula Marmet, Director, Office of Chronic Disease and Health Promotion, KDHE  
Phyllis Mosher, Phyllis's Happy Hours Child Care, Topeka  
Stephen N. Paige, Director, Bureau of Environmental Health Services, KDHE  
Frances Kastner, Governmental Affairs, Kansas Food Dealers Association  
Lynn E. Couch, Director of Environmental Health, Topeka-Shawnee County Health Agency  
Judy M. Willingham, Riley County - Manhattan Health Department  
Roger L. Smith, Environmental Services Supervisor, Wichita-Sedgwick County Dept. of Community Health  
George Puckett, Kansas Restaurant and Hospitality Association, Wichita  
Phil Wittek, Environmental Director, Johnson County

Others attending: See attached list

The Chair opened the hearing on **HB 2136** - Smoking prohibited in all public places.

Representative Ted Powers appeared in support of **HB 2136** giving a summary of its history, which originally started as a bill to prohibit smoking in a public places statewide in Kansas, amended in the House Public Health and Welfare Committee to ban smoking in the statehouse in 1995, and then amended on the House floor to include child care homes. Representative Powers stated the major problem is still "smoking in a public place" which was stricken from the bill by a House floor amendment. (Attachment 1)

Representative Henry Helgersen appeared in support of **HB 2136** and noted there is still a concern among state employees regarding smoking in state buildings (offices and cafeterias). Since there are so many versions of a smoking bill this year, he suggested recommending all versions be put into one bill and work the bill in a conference committee -- he would suggest the same to the House Public Health and Welfare Committee.

Representative Carolyn Weinhold appeared in support of **HB 2136** and stated she is primarily in favor of banning smoking in day care homes. (Attachment 2) Kharon Hunter, a home day care provider, also testified in favor of the bill. (Attachment 3)

Paula Marmet, KDHE, expressed her support of **HB 2136** and noted that because the Capitol serves as a work site to more than 300 state employees, banning smoking can provide substantial economic benefits to the state as an employer. On-the-job exposure to secondhand smoke can be four times higher than in the home and is particularly dangerous to workers who are already exposed to substances that can cause lung disease. Of state employees, smokers incur 33% more hospital admissions and average 41% more hospital days than non-smokers. KDHE supports the banning of smoking tobacco products in public places and all state office buildings, and request clarification if the intent is to only prohibit smoking indoors. In regard to banning smoking in day care homes, KDHE requests clarification if the intent to prohibit smoking includes the outside premises of the day care home or if the intent is to only prohibit smoking indoors. The current definition of day care home includes the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S  
Statehouse, at 10:00 a.m. on March 11, 1993.

outside premises of the day care home. KDHE also recommends that the term "day care homes" be replaced with "child care programs" so that child care centers and preschools are included. A balloon of the bill with the recommended changes was distributed with the testimony. (Attachment 4) Committee discussion related to restricting smoking in licensed day care facilities, and if the language "child care programs" was amended into the bill, and the definition of play ground areas left intact, then the prohibition would be increased.

Phyllis Moser, Topeka child care home owner, appeared in opposition to **HB 2136** because the rights of the smoker must be presented. She is also concerned about children subjected to secondhand smoke and suggests patrons choose a smoke free facility. (Attachment 5)

Hearing on **HB 2118** - Lodging establishment licensing requirements.

Stephen N. Paige, KDHE, appeared in support of **HB 2118** that requires food service establishments to pay license fees to the Secretary of KDHE, and those fee revenues would defray the cost of the inspection and licensure program. The bill as introduced would have increased the food service establishment license fee limit from \$40 to \$100, and action by the House amended the fee limit to \$45. Mr. Paige recommends the bill be amended to change the fees from \$45 to \$70 in order to cover the cost of the program. (Attachment 6) Discussion related to setting the cap at \$100, and whether KDHE would not have to request more money the following year. It was noted that the department requires a single fee for any type of establishment.

Frances Kastner, Kansas Food Dealers Association, appeared before the Committee and submitted written testimony on **HB 2118**. Ms. Kastner stated her organization opposed the bill as introduced during testimony before the House Public Health and Welfare Committee and now supports the amended bill as passed by the House. She noted if legislators permit an appointed agency department head to set fees without legislators voting for the increase, fees may be increased to \$100 next year. (Attachment 7)

Lynn E. Couch, Topeka-Shawnee County Health Department, expressed support for the original bill that set the cap at \$100, and if that amount is not possible, then he would recommend a fee of \$70 be imposed with the thought that it is costing more than double the reimbursable amount to provide a minimal level of service. The Shawnee County Agency is reimbursed to the extent of 80% of the fees collected for state licensing. During the calendar year (1992) this amounted to \$35,097 on a program with expenditures of \$83,112.54. He stated the existing fee of \$40 is clearly insufficient to cover program expenses at the local level. (Attachment 8) During Committee discussion, it was pointed out that the \$45 fee amended in the bill by the House was in consideration to the rural areas as being a just amount rather than the \$100 fee.

Judy M. Willingham, Riley County Health Department, also expressed support for the original bill with the \$100 fee cap or "make it pay for itself". (Attachment 9) Speaking in support of the \$70 cap was Roger L. Smith of the Wichita-Sedgwick County Department of Community Health. (Attachment 10)

George Puckett, Kansas Restaurant and Hospitality Association, stated his organization does not object to the proposed changes in **HB 2118**, but would recommend that the Committee might consider updating the Application Fee which is not a part of the proposed changes in the bill. He noted that it currently costs \$100 to apply for a food service license, and this fee might be increased slightly as a consideration of the Committee in order to help keep annual licensing fees the very lowest possible for food service and hospitality industry operators. (Attachment 11)

Phil Wittek, Environmental Director of Johnson County, appeared in support of the original bill to raise the licensing fee from \$40 to \$100. (Attachment 12) In answer to a member's question, Mr. Wittek stated they are currently attempting to get certification in order to participate in state contracts.

Written testimony was received from Ann Scheve, Lyon County Health Department, in support of increased fees for inspection and stated that the proposed \$45 fee would be a waste of taxpayer dollars, because this amount would do little more than cover the cost of printing new forms. She noted that increased funding is needed to increase the number of inspectors thus increasing the number of adequate inspections. (Attachment 13)

The meeting was adjourned at 11:00 A.M.

The next meeting is scheduled for March 12, 1993.

# GUEST LIST

COMMITTEE: SENATE PUBLIC HEALTH AND WELFARE

DATE: 3-11-93

NAME	ADDRESS	COMPANY/ORGANIZATION
Chris Ross - Baze	Topeka	KDHE
Carolyn Wainhold	House of Rep	from Salina
Janet Rutter	Emporia KS	
Sharon Hunter	Topeka	Family Child Care
Phyllis Mosher	Topeka	Family Child Care
Olivia Hudak	Topeka	BSI Wisconsin
KATH R LANDIS	TOPEKA	CHRISTIAN SCIENCE CENTER ON PUBLICATION FOR KS
Adam Villalobos	Topeka	Dept. of Administration
Don Richards	Topeka	KRCG/KGAE
Chip Wheelen	Topeka	Ks Med Society
Harold E. Lerma	TOPEKA	KADM
Kimberly K	Wichita	Wichita Hosp Assoc
Judy M. Williamson	Manhattan	Riley Co - M-H.D. / Kansas Asn. Sanitation
Steve Puzie	Topeka	KDHE
Roger Smith	Wichita	Wichita Sedg. County Health Dept.
Nusan Alexander	Atong City	FNPS
Julia L. Hart	Topeka	Helm Ehart & Rosen
Janet Ann Hart	Topeka	See J. Hart
Lynn Couch	Topeka	TOPEKA SHAWNEE CO HEALTH AGENCY

TESTIMONY ON HB 2136  
REPRESENTATIVE TED POWERS  
Room 446-N (7686)

Thank you Madame Chairman and Public Health and Welfare Committee for hearing HB 2136, Smoking in Public Places.

Seems most fitting that this bill should come before the Committee at this time.

Nothing is more important than the air we breath. Ben Franklin said "if man were made to smoke, God would have turned his nostrils to the sky like a chimney". I am not here to ban smoking, just to remove it from you, our peers, children, and grandchildren in the Public Place.

Even alcohol is not as immediate a danger to us as ETS (Enviromental Tobacco Smoke). I call your attention to the fact sheet as presented - - - -

Now I call your attention to Kansas Statutes, Vol. 2A, Pg. 275. Seems like there is a question as to a public place. Before we start. This Bill is strindgent--I make no apologies for that, but just observe as you leave this room today. - - - - 21-4009.

I call your attention to HB 2136 - - - - .

In closing, may I say ETS is by far our most immediate danger. 'I guess' a person should be allowed to smoke but not in public where it is a detriment to us all. Hillary is on the move, EPA is on the move, let Kansas be on the move for the betterment and protection of you, me, and our children.

Smoking is not the issue. The elimination of ETS in the public place is not our issue, it is a mission. Please help. Thank you.

Representative  
Ted Powers

P.S. This Mission is dedicated to my friend, the late Chuck Glaser, a chain smoker of 62 years who died last October from emphysemic lung cancer and to my friend Letha Gammon, a non-smoker, who died from emphysemic non-smokers' lung cancer three years ago. They both drowned. It took nine-horrid months, but they both drowned of ETS.

*Senate PHFW*  
*Attachment #1*  
*3-11-93*



#### Coalition Members

American Cancer Society,  
Kansas Division

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

Governor's Office of  
Drug Abuse Programs

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 Health Foundation

Kansas Respiratory  
Care Society

Kansas State Board  
of Education

Kansas State Nurses  
Association

Kansans for  
Non-smokers 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

Wichita-Sedgwick County  
Dept. of Community Health

# Tobacco Free Kansas

900 SW Jackson, Room 1051, Topeka, KS 66612-1290 913/296-1200 FAX 913/296-1231

## TOTAL BAN ON SMOKING IN THE STATE CAPITOL AND ALL STATE OWNED BUILDINGS AND OTHER TOBACCO-CONTROL LEGISLATION

### FACT SHEET

ETS is a human lung carcinogen, responsible for approximately 3,000 lung cancer deaths annually in U.S. nonsmokers. There only 15 substances named as class A carcinogens, among these are asbestos and radon.

Secondhand smoke causes 30 times as many lung cancer deaths as all other regulated air pollutants combined.

Body fluids of nonsmokers exposed to cigarette smoke contain significant amounts of nicotine, carbon monoxide, and other evidence of passive smoking.

More that 90 % of Americans favor restricting or banning smoking in public places.

In 1991 Smoking-attributable illness cost Kansans \$594 million.

Policies enacted to reduce exposure to secondhand smoke may encourage smokers to quit, thus increasing their overall well-being and decreasing their susceptibility to cancer.

Workers exposed to secondhand smoke on the job are 34 percent more likely to get lung cancer.

The simple separation of smokers from nonsmokers within the same airspace will reduce, but cannot eliminate, the exposure of nonsmokers to secondhand smoke.

Of state employees, smokers incur 33% more hospital admissions and average 41% more hospital days than non-smokers. In 1991, the total medical claim payment averaged \$280.62 more for smokers than for non-smokers.

More than 60% of Kansan adults who work outside the home are exposed to ETS in their workplace.

82% of Kansans are willing to create a special purpose tax on items such as cigarettes and alcohol, in order to create a basic standard for all Kansans.



convicted of crime. Obtaining money or other thing of value by this means is a species of theft and is prohibited by section 21-3701.

This section restates part of former K.S.A. 21-2451.

**21-4007. Hypnotic exhibition.** (1) Hypnotic exhibition is:

(a) Giving for entertainment any instruction, exhibition, demonstration or performance in which hypnosis is used or attempted; or

(b) Permitting oneself to be exhibited for entertainment while in a state of hypnosis.

(2) "Hypnosis," as used herein, means a condition of altered attention, frequently involving a condition of increased selective suggestibility brought about by an individual through the use of certain physical or psychological manipulations of one person by another.

(3) Hypnotic exhibition is a misdemeanor punishable by a fine of not to exceed fifty dollars (\$50).

**History:** L. 1969, ch. 180, § 21-4007; L. 1978, ch. 125, § 1; July 1.

**Source or prior law:**

21-2471, 21-2472, 21-2473, 38-703.

**21-4008.**

**History:** L. 1975, ch. 310, § 1; Repealed, L. 1987, ch. 110, § 7; July 1.

**21-4009. Smoking in a public place; definitions.** As used in this act: (a) "Public place" means enclosed indoor areas open to the public or used by the general public including but not limited to: Restaurants, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, educational facilities, libraries, courtrooms, state, county or municipal buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities.

(b) "Public meeting" includes all meetings open to the public.

(c) "Smoking" means possession of a lighted cigarette, cigar, pipe or any other lighted smoking equipment.

**History:** L. 1987, ch. 110, § 1; July 1.

**21-4010. Same; smoking in public place prohibited, exceptions; designated smoking areas.** (a) No person shall smoke in a public place or at a public meeting except in designated smoking areas.

(b) Smoking areas may be designated by proprietors or other persons in charge of public places, except in passenger elevators, school

buses, public means of mass transportation and any other place in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation.

(c) Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.

**History:** L. 1987, ch. 110, § 2; July 1.

**Attorney General's Opinions:**

Statutes are penal, subject to strict construction; designated smoking area is not limited, subject to existing local regulation. 87-89.

**21-4011. Same; posting smoking prohibited signs and designated smoking area signs; proprietor or person in charge of public place authorized to establish designated smoking area.** The proprietor or other person in charge of the premises of a public place shall post or cause to be posted in a conspicuous place signs clearly stating that smoking is prohibited by state law. The person in charge of the premises shall also post or cause to be posted in any designated smoking area, signs stating that smoking is permitted in such room or area. The proprietor or person in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area.

**History:** L. 1987, ch. 110, § 3; July 1.

**21-4012. Same; unlawful acts; penalties; action to enjoin repeated violations.** Any person found guilty of smoking in violation of this act is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs as required by this act, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of this act.

**History:** L. 1987, ch. 110, § 4; July 1.

**21-4013. Same; local regulation of smoking.** Nothing in this act shall prevent any city or county from regulating smoking within its boundaries, so long as such regulation is at least as stringent as that imposed by this act. In such cases the more stringent local regulation shall control to the extent of any inconsistency between such regulation and this act.

**History:** L. 1987, ch. 110, § 5; July 1.

**CAROLYN WEINHOLD**

REPRESENTATIVE, SIXTY-NINTH DISTRICT  
SALINE COUNTY  
417 W. BELOIT  
SALINA, KANSAS 67401  
HOME (913) 827-4764  
CAPITOL OFFICE (913) 296-7675



TOPEKA

HOUSE OF  
REPRESENTATIVES

## COMMITTEE ASSIGNMENTS

ENERGY & NATURAL RESOURCES  
STATE & FEDERAL

MEMBER: CHILDREN & YOUTH ADVOCACY  
COMMITTEE OF THE CORPORATION  
FOR CHANGE

**TESTIMONY FOR  
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE  
HB 2136  
MARCH 11, 1993**

Thank you to the Chairperson and Committee for permitting me to testify in favor of HB 2136. Although I am totally in favor of banning all smoking in all state buildings, I'm here primarily to discuss banning smoking in Family Day Care Homes.

For six and a half years I worked as the Child Care Surveyor for the Saline County Health Department. Although we didn't keep statistics, I would estimate that 20 to 30 percent of the family day care homes had at least one smoker. As I got to know the smokers, it was often obvious that quite a few of them were not aware of the second hand smoke health concern. That's why I look at the law mainly as an educational tool both for parents and providers. I believe most of the providers will try to comply if they are told "it's the law".

Playing the devil's advocate, I will address some common concerns about the bill.

**Q. How can you possibly enforce such a law?**

A. Laws in day care homes are like many other laws. They are difficult to enforce. For instance, regulations state that children must have outdoor play and nutritious meals and snacks every day. These are impossible to enforce without daily monitoring; therefore, education is the logical answer. Prohibiting smoking is a way to educate.

If violations and/or complaints are called in, they are investigated, otherwise, there is a good faith attitude that providers are following the regulations between annual licensing visits. Registered homes are not visited unless there is a complaint or a city ordinance requires it.

*Senate P H&W  
Attachment # 2  
3-11-93*

**Q. What right does the State have to tell a person that she/he can't smoke in the home?**

A. Since the provider is using the home for a business, they must give up some of the rights of the person not doing a business.

**Q. Don't the parents have the right to choose if they want their child in a smokeless or smoke filled home?**

A. Many parents are so desperate to find child care that they have very low expectations of their providers. Through education, we hope that parents will soon demand smoke-free homes, but until then it is up to the state to guard the health of its most vulnerable citizens.

**Q. Will the providers be allowed to smoke outside?**

A. It was my intention to compromise on this item. Although I would hope in time that providers would not smoke in front of the children (modeling bad habits), it seems that parents can address this question without the interference from the State.

**Q. Can the provider's spouse smoke in the back room?**

A. The intent of the bill is to prohibit all smoking in the home while unrelated children are in care. This will be an issue in some homes, but we can't take the easy way out on this critical health issue.

In conclusion, I think we can take pride in addressing this problem. Kansas already prohibits smoking in child care centers and preschools, but far more young children are in family day care homes and they are often there for many hours every week. Most providers do not smoke on the job, and it would promote professionalism if all smoking was prohibited.

**I welcome any questions you might have.**





Legislators:

March 11, 1993

Regarding HB #2136

I have been a family day care provider for over 25 years, mostly in Shawnee County. In the earlier years, parent-clients and visitors would walk into our home with cigarette in-hand. Later I put a no-smoking sign on the front door, and required all guest to extinguish before entering. That meant business clients but also our family guest and friends of our four children. A few years ago, when the city no smoking ordinance #15584 went into effect for business's, I welcomed that assistance, and installed a permanent door plate near my front door.

Usually when potential families inquire about my day care services, parents will ask, or else I'll tell them that our house is "smoke" free. As often however, parents will ask about pets and animals and my home is also "pet" free.

I'm particularly sensative to the smell of smoke. When a child comes to my door smelling of smoke, it is very hard to welcome their admittance. I often take their coat from the clothes rack and set it outside to air. I can only imagine the air that child has had to breathe, which can not be healthy.

When I walk into another providers or families' home that have smokers, I can tell even though they've made attempts to disguise the smell. When the smoking is allowed in a designated smoking area, the smoke easily flows throughout the house and contaminates the air that children and adults are breathing.

In this House Bill #2136, Sec 2 (b), prohibits smoking during business hours for non-related children. I know of day care licensed providers who only care for grandchildren or other relatives. As I read the bill, smoking could continue all day in those homes. It seems to me, if the provider has chosen be licensed to obtain the state and federal monetary benefits, they also need to follow the same regulations as providers enrolling non-related children.

I have another concern, that monitoring the compliance of this smoking regulation will be another impossible task for licensing surveyors. The facility that is smoked in during non-business hours will always smell of smoke.

However, by regulating that lighted tobacco is prohibited will clearly send the message to parents and providers of children, that a smoke filled room is not healthy for breathing. I applaud any bill that helps educate parents and caregivers of children.

Sincerely,

*Kharon Hunter*

Kharon Hunter, provider  
NAFDC Accredited & NAEYC CDA Credential

*Senate PHW  
attachment 3  
3-11-93*



Department of Health and Environment

Robert C. Harder, Secretary Reply to:

Testimony Presented to

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

HB 2136

House Bill 2136, as amended, proposes to decrease human exposure to Environmental Tobacco Smoke by prohibiting smoking of tobacco products in day care homes and in the State Capitol.

The Environmental Protection Agency has designated environmental tobacco smoke (ETS) as a "class A" carcinogen, a classification reserved for only 15 substances, including radon and asbestos. According to the Environmental Protection Agency's report released January 7, 1993, Environmental Tobacco Smoke (ETS) as a human lung carcinogen, is responsible for approximately 3,000 lung cancer deaths annually in U.S. nonsmokers.

Exposure to ETS has also been linked to heart disease in non-smokers. The January, 1992 issue of Circulation, a journal of the American Heart Association concludes that passive smoking causes about 10 times as many deaths from heart disease as it does from cancer. These deaths contribute greatly to the estimated 53,000 annual deaths caused by passive smoking, which ranks as the third leading preventable cause of death in the U.S. today, following active smoking and alcohol.

In 1991, an estimated 3,888 Kansans died due to smoking related illnesses. This makes cigarette smoking the second leading cause of death, behind non-smoking related heart disease. Smoking attributable illness cost Kansans \$594 million during that same year.

The Kansas Department of Health and Environment through the Child Care Licensing and Registration program defines and enforces minimal health and safety standards for out of home child care facilities and homes. HB 2136 as amended proposes to decrease the exposure of tobacco smoke to children and adults by prohibiting smoking in all day care homes.

According to recent studies, body fluids of nonsmokers exposed to cigarette smoke contain significant amounts of nicotine, carbon monoxide, and other evidence of passive smoking. These substances appear in the segment of the population (more than 70%) who are choosing NOT to actively smoke, in order that the 25-30% of the population who chooses to smoke may continue to smoke in public places of their choice.

*Senate PH&W  
Attachment #4*

X The impact of second hand smoke on children was documented in the December 1992 issue of EPA Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders:

Each year, exposure to second-hand smoke causes 150,000 to 300,000 lower respiratory tract infection (such as pneumonia and bronchitis) in U.S. infants and children younger than 18 months of age. These infections result in 7,500 to 15,000 hospitalizations yearly. Second-hand smoke increases the number of asthma attacks and the severity of asthma in about 20 percent of this country's 2 million to 5 million asthmatic children. Chronic cough, sneezing, and phlegm are more frequent in children whose parents smoke. Children exposed to second-hand smoke at home are more likely to have middle-ear disease and reduced lung function. Each year U.S. mothers who smoke at least 10 cigarettes a day can actually cause between 8,000 and 26,000 new cases of asthma among their children.

Children model behavior of adults. Over 65% of Kansas youths under 18 years of age indicated they had smoked cigarettes within the previous 30 days. It is estimated that 30 young people in Kansas start smoking everyday. If we add yesterday's 30 to today's 30 and tomorrow's 30, and so on; the numbers amount to an alarming 11,000 youth per year. By banning smoking in day care homes and in public places, such as the capitol, we can encourage these young people not to start this life-threatening habit.

Recent surveys show from 80 to 90 percent of Americans favor restricting or banning smoking in public places. Numerous editorials in newspapers across the state are supporting the need for a smoking ban in public places. Federal Lawmakers are targeting federal office buildings, including the White House and Capitol building in their efforts to eliminate human exposure to tobacco smoke. Earlier this session, Hilary Clinton designated the White House as a smoke-free environment.

Because the Capitol serves as a worksite to more than 300 state employees, banning smoking can provide substantial economic benefits to the state as an employer. On-the-job exposure to secondhand smoke can be four times higher than in the home and is particularly dangerous to workers who are already exposed to substances that can cause lung disease. Secondhand smoke in the workplace can only increase the danger. Workers exposed to secondhand smoke on the job are 34 percent more likely to get lung cancer.

X Of state employees, smokers incur 33% more hospital admissions and average 41% more hospital days than non-smokers. According to Blue Cross Health Insurance data on the Kansas Active Employee Group, the total medical claim payment in 1991 averaged \$280.00 more for smokers than for non-smokers. (see attached graph)

#### Recommendations

The Kansas Department of Health and Environment supports both of these bills which call for a ban on smoking tobacco products in public places and all state office buildings. Passage of these measures will help protect Kansas adults and children from exposure to a deadly environmental substance.

X The Department requests clarification if the intent to prohibit smoking includes the outside premises of the day care home or if the intent is to only prohibit smoking indoors. The current definition of day care home includes the outside premises of the day care home.

Furthermore, the Department recommends that the term "day care Homes" be replaced with "child care programs" so that child care centers and preschools are included.

The Department also recommends that KSA 65-504 and KSA 65-521 be added so that all the enforcement actions, including revocation can be available to the Department in enforcing the smoking prohibition. Additional language is recommended to amend KSA 65-521 to include violations of the smoking prohibition.

Testimony presented by:

Paula Marmet  
Director, Office of Chronic Disease and Health Promotion  
March 11, 1993

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1993

## HOUSE BILL No. 2136

By Representative Powers

1-27

11 AN ACT concerning crimes and punishment; relating to smoking  
12 in public places; amending K.S.A. 21-4010, 21-4011 and 21-  
13 4013 and repealing the existing sections the state capitol.;  
14 concerning smoking in the state capitol and in day care homes;  
15 amending K.S.A. 65-523 and repealing the existing section.]  
16

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

18 [New] Section 1. Prior to July 1, 1995, no person shall smoke  
19 in any area, room or hallway in the state capitol except in offices  
20 occupied as office space by state officers and employees which have  
21 been designated as smoking areas in accordance with K.S.A. 21-  
22 4009 *et seq.* and amendments thereto. On and after July 1, 1995,  
23 no person shall smoke in any area, room, hallway, or other place  
24 in the state capitol and no area of the state capitol shall be estab-  
25 lished as a designated smoking area under K.S.A. 21-4010 and  
26 amendments thereto.

27 [New Sec. 2. (a) As used in this act:

28 [(1) "~~Day care home~~" means a day care home as defined under  
29 Kansas administrative regulation 28-4-113, a group day care home  
30 as defined under Kansas administrative regulation 28-4-113 and a  
31 family day care home as defined under K.S.A. 65-517 and amend-  
32 ments thereto.

33 [(2) "Smoking" means possession of a lighted cigarette, cigar,  
34 pipe or burning tobacco in any other form or device designed for  
35 the use of tobacco.

36 [(b) Smoking in a ~~day care home~~ during a time when children  
37 who are not related by blood, marriage or legal adoption to the  
38 person who maintains the home are being cared for in the home  
39 is hereby prohibited.

40 [(c) Each registration certificate or license shall contain a state-  
41 ment in bold print that smoking is prohibited in the ~~home~~ under  
42 the conditions specified in subsection (b). The statement shall be  
43 phrased in substantially the same language as subsection (b). The

"Child care program"

, a child care center or  
preschool as defined under  
Kansas Administrative  
Regulation 28-4-420

child care program

child care program

child care program

44



1 registration certificate or license shall be posted in a conspicuous  
2 place in the home.

child care program

3 [(d) The secretary of health and environment may levy a civil  
4 fine under K.S.A. 65-526 and amendments thereto against any day  
5 care home for a first or second violation of this section. A third or  
6 subsequent violation shall be subject to the provisions of K.S.A. 65-  
7 523 and amendments thereto.

,K.S.A. 65-504 or K.S.A 65-  
521

8 [Sec. 3. K.S.A. 65-523 is hereby amended to read as follows:  
9 65-523. The secretary may suspend any license, certificate of reg-  
10 istration or temporary permit issued under the provisions of K.S.A.  
11 65-501 to 65-522, inclusive, and amendments thereto upon any of  
12 the following grounds and in the manner provided in this act:

13 [(a) Violation by the licensee, registrant or holder of a temporary  
14 permit of any provision of this act or of the rules and regulations  
15 promulgated under this act;

16 [(b) aiding, abetting or permitting the violating of any provision  
17 of this act or of the rules and regulations promulgated under this  
18 act;

19 [(c) a third or subsequent violation by the licensee, registrant or  
20 holder of a temporary permit of subsection (b) of section 2 and  
21 amendments thereto;

22 [(e) (d) conduct in the operation or maintenance, or both the  
23 operation and maintenance, of a boarding home for children or  
24 family day care home which is inimical to health, morals, welfare  
25 or safety of either an individual in or receiving services from the  
26 home or the people of this state; and

27 [(d) (e) the conviction of a licensee, registrant or holder of a  
28 temporary permit, at any time during licensure or registration or  
29 during the time the temporary permit is in effect, of crimes as  
30 defined in K.S.A. 65-516 and amendments thereto.

31 [Sec. 4. K.S.A. 65-523 is hereby repealed.]

32 Section 1. K.S.A. 21-4010 is hereby amended to read as  
33 follows: 21-4010. (a) No person shall smoke in a public place  
34 or at a public meeting except in designated smoking areas.

35 (b) Smoking areas may be designated by proprietors or other  
36 persons in charge of public places, except in passenger ele-  
37 vators, school buses, public means of mass transportation and  
38 any other place in which smoking is prohibited by the fire  
39 marshal or by other law, ordinance or regulation.

40 (c) Where smoking areas are designated, existing physical  
41 barriers and ventilation systems shall be used to minimize the  
42 toxic effect of smoke in adjacent nonsmoking areas.

43 Sec. 2. K.S.A. 21-4011 is hereby amended to read as fol-

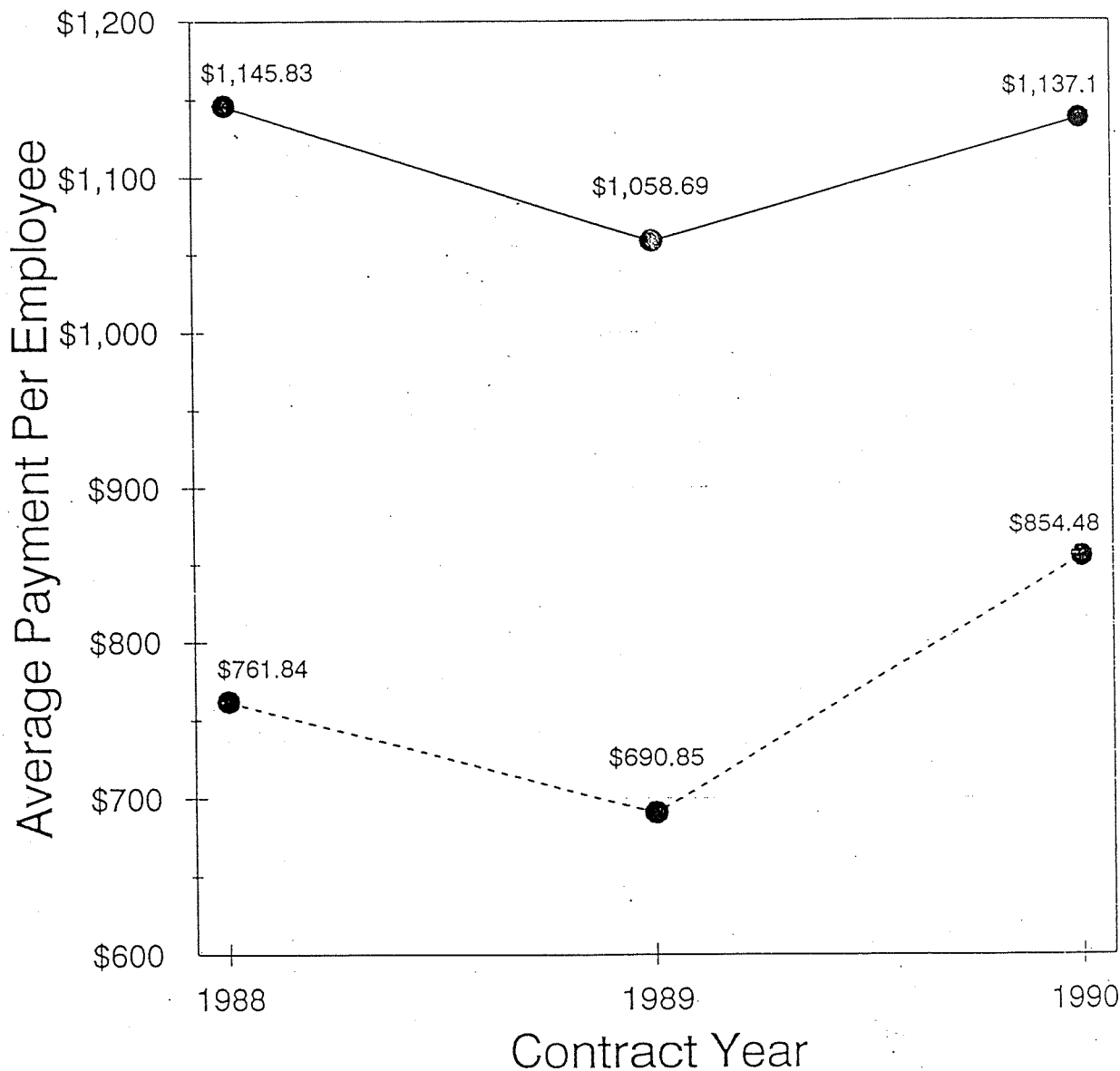
**65-521.** Denial, revocation or nonrenewal of certificate of registration; notice and hearing; application for certificate of registration or licensure after revocation or refusal to renew. (a) The secretary may deny, revoke or refuse to renew a certificate of registration upon a determination by the secretary that the registrant falsified information on the application or willfully and substantially has violated K.S.A. 65-516 to 65-522, inclusive, and amendments thereto. The secretary shall not revoke or refuse to renew any certificate without first giving notice and conducting a hearing in accordance with the provisions of the Kansas administrative procedure act.

(b) If the secretary revokes or refuses to renew a certificate of registration, the registrant who has had a certificate of registration revoked or not renewed shall not be eligible to apply for a certificate of registration or for a license to maintain a boarding home for children under K.S.A. 65-504 and amendments thereto for a period of one year subsequent to the date such revocation or refusal to renew becomes final.

History: L. 1930, ch. 134, § 7; L. 1984, ch. 313, § 96; L. 1986, ch. 230, § 4; L. 1988, ch. 239, § 2; L. 1989, ch. 188, § 2; July 1.

or a third or subsequent violation by the licensee, registrant or holder of a temporary permit of subsection (b) of section 1

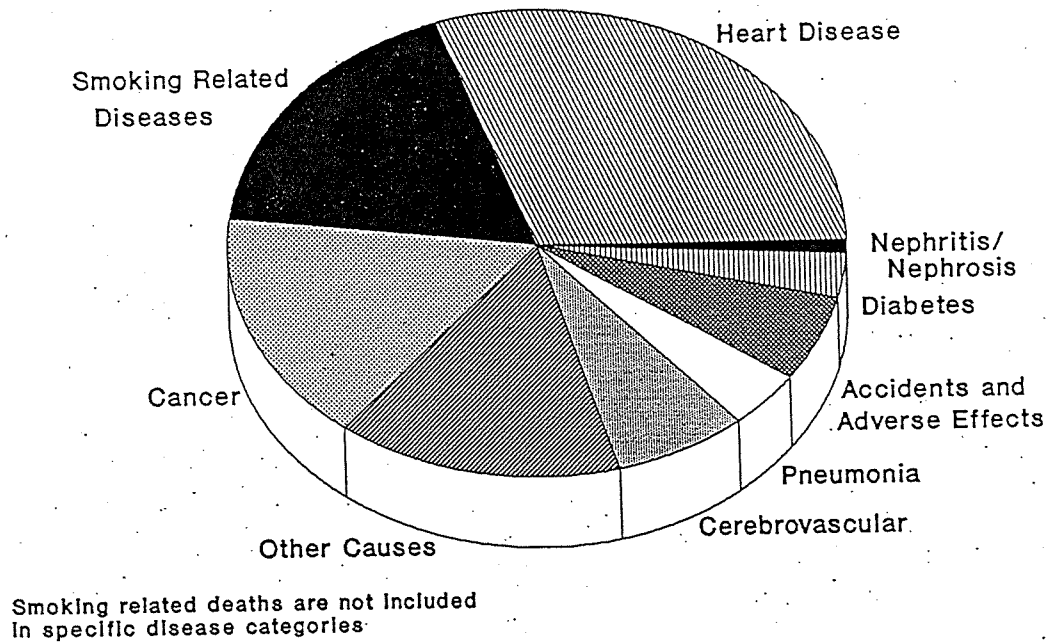
STATE OF KANSAS ACTIVE EMPLOYEE GROUP  
TOBACCO USERS VS. NON TOBACCO USERS  
AVERAGE PAYMENT PER EMPLOYEE



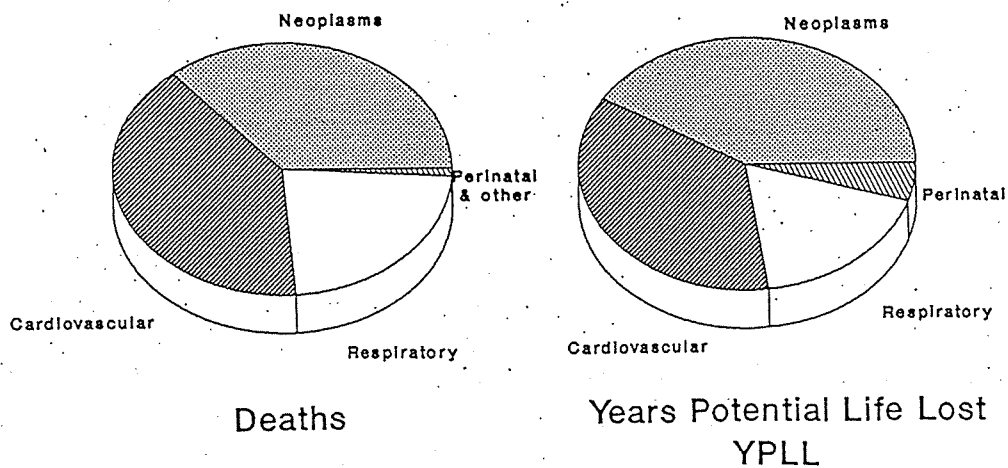
Tobacco Users    Non Tobacco Users

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

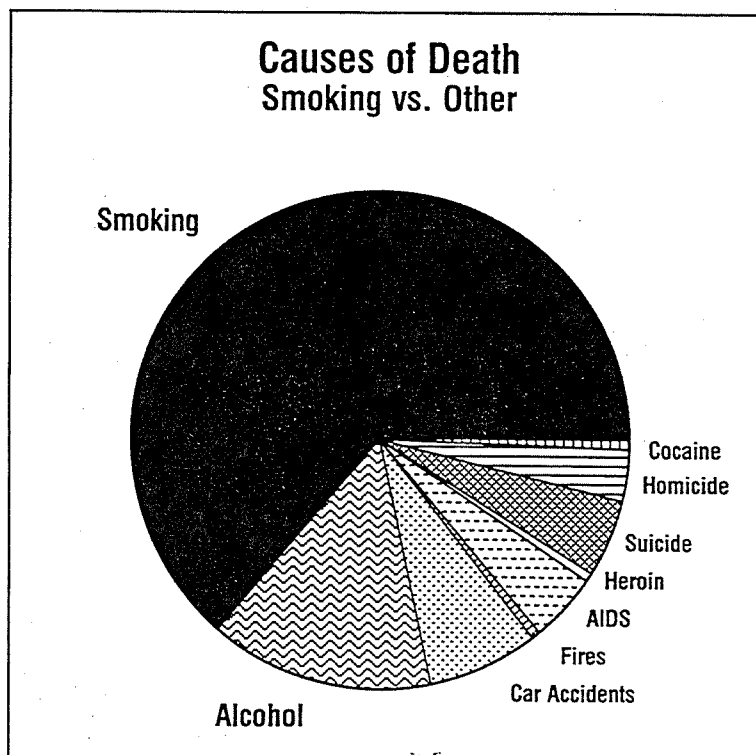
<sup>1</sup>U.S. Centers For Disease Control, 1988 data

<sup>2</sup>U.S. Centers For Disease Control, 1987 data

<sup>3</sup>National Safety Council, 1989 data

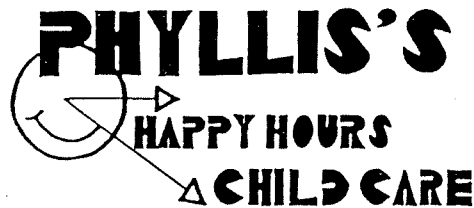
<sup>4</sup>U.S. Centers For Disease Control, 1990 data

<sup>5</sup>National Center For Health Statistics, 1988 data



SmokeFree Educational Services, Inc., New York, NY





421 POLK  
(913) 232-2008

TOPEKA, KS 66603

March 10, 1993

TO WHOM IT MAY CONCERN:

I am not a smoker, but I feel the rights of the smoker must be presented. I realize the home provider has worked hard to be a business, but still the location is in a home environment. Patrons of a home child care facility choose this type of care for their children. The patron can choose a smoke free facility or not. A room for smoking must be designated. I feel very strongly about having children subjected to second hand smoke. I can't agree with denying the chose of a smoking provider or her family to smoke in the house they reside in.

I wonder how a smoke free facility would be monitored. Unlicensed care goes without dection or recourse. How and what would be the initiative for the provider or family member to acknowledge this legislation if passed?

Phyllis Mosher

*Senate P H & W  
Attachment #5.  
3-11-93*

State of Kansas  
Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

Reply to:

Testimony presented to

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

House Bill 2118

K.S.A. 36-503 requires food service establishments to pay license fees to the Secretary, Kansas Department of Health and Environment. The law also requires that fee revenues defray the cost of the inspection and licensure program. House Bill 2118, as introduced, would have increased the food service establishment license fee limit from \$40 to \$100 per year. Action by the House amended the fee limit to \$45.

The KDHE annually collects approximately \$660,000 in food service establishment fees. The actual license fee amounts are established by administrative regulation as authorized by K.S.A. 36-503. Currently, all food service establishments pay an annual license of \$40. Passage of HB 2118 will allow the Secretary to amend K.A.R. 28-36-30 allowing collection of fee revenues in an amount necessary to pay costs of the inspection and licensure program.

Approximately \$225,000 are paid annually to local agencies conducting inspections under contract with the Secretary. The balance of fee revenues are credited to the State General Fund. The annual cost of the inspection and licensure program is approximately \$650,000 based on the KDHE's proposed FY 94 budget request. An increase in license fees from the current \$40 per establishment to \$70 per establishment is needed to defray the cost of the inspection and licensure program as mandated by K.S.A. 36-503. The \$30 increase in fees would generate an estimated \$360,000 in additional revenue to be shared between the SGF and local agencies. The local agencies share is estimated at \$122,000 annually, with \$238,000 to the SGF. Contracting counties are reimbursed at a rate equal to 80 percent of license fee revenues collected in their respective jurisdictions.

In addition to increasing fee limits for food service license fees, House Bill 2118 also proposes removing the requirement for annual inspections of lodging establishments. The lodging establishments fee revenues will continue at the existing level and will not be effected by reduced inspections. It has been our experience that the lodging industry has responded very well to the Kansas Department of Health and Environment standards in the last 10 years. As a result, our inspections find that lodging establishments are routinely in compliance with applicable standards. Continued routine inspections of facilities consistently found to be in compliance are considered by the Kansas Department of Health and Environment a poor use of scarce resources. Time spent inspecting facilities consistently in compliance could be used more wisely if directed toward inspecting facilities found to be chronically noncompliant.

Passage of House Bill 2118 will not require or fund additional FTEs.

The Kansas Department of Health and Environment recommends favorable consideration of House Bill 2118.

Testimony presented by:

Stephen N. Paige  
Director, Bureau of Environmental Health Services  
Division of Health  
March 11, 1993

*Senate PH&W  
attachment #6  
3-11-93*



EXECUTIVE DIRECTOR  
JIM SHEEHAN  
Shawnee Mission

Senate Public Health & Welfare Comm

March 11, 1993

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Carbondale

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Abilene

DIRECTOR OF  
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

**SUPPORTING HB 2118 As Amended by the House Committee**

Senator Praeger, and members of the Committee, I am Frances Kastner, Director of the Kansas Food Dealers Association. Our members include wholesalers, distributors and retailers of food products throughout Kansas.

Over the years we have seen increases in not only the number of licenses grocers need in order to operate their business, but also the constant increase in the amount of those fees after they are established.

Information on licenses received from a Topeka grocery store include: State Food Service License \$40; Shawnee County Food Service License \$30; Selling non-prescription drugs requires a Pharmacy License of \$20; cigarette license is \$12; a city license to stay open after midnight is \$25. If the store sells cereal malt beverages, they pay a local CMB license of \$125, a State Fee of \$25, and need a Federal CMB license costing \$250.

Most of the larger counties have contracts with the State to inspect food service establishments for a fee of at least \$30. The Topeka store referred to above is inspected by the Shawnee County Health Department which receives 80% to the \$40 state license fee. Adding that to County's fee of \$30, it totals \$62 for the inspection of a food service establishment. Some local city or county fees are much higher than the \$30 paid in Topeka.

X During testimony before the House Public Health Committee we OPPOSED HB 2118 as introduced, allowing a fee up to \$100. If legislators permit an appointed agency department head to set fees without legislators voting for the increase, we have little doubt that fee by next year will be \$100. And, local health departments will get \$80 to add to their own fee of at least \$30. Retailers see fees as a hidden tax, and a cost of doing business. That cost has to be passed on to the consumer.

I appreciate the opportunity to share our concerns with you and request that you keep the annual fee for food service establishments at \$45 as passed by the House.

*Frances Kastner*  
Frances Kastner, Director  
Governmental Affairs, KFDA

*Senate PH&W*  
*Attachment #7*

TESTIMONY BEFORE  
THE KANSAS SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE  
MARCH 11, 1993

Presented by

Lynn E. Couch, P.E.  
Director of Environmental Health  
Topeka Shawnee County Health Agency

The Topeka Shawnee County Health Agency has contracted with the Kansas Department of Health and Environment to provide food service inspections for the past 12 years. The Agency is reimbursed to the extent of 80% of the fees collected for state licensing. During the calendar year 1992 this amounted to \$35,097 on a program with expenditures of \$83,112.54. The existing fee is clearly insufficient to cover program expenses at the local level and I am sure the Kansas Department of Health and Environment is underfunded as well.

There are currently 726 licensed food service establishments in Shawnee County. Each of these establishments is inspected at least twice each year to ensure compliance with food service regulations. My Agency is fixed in its position that this is the minimum activity level which will ensure the maintenance of minimum sanitation levels necessary to protect the public health. At this level the General Fund monies appropriated by the City of Topeka and Shawnee County underwrite the program in the amount of \$48,015. Since the program provides the food service community with a level playing field and provides the operators with a source of defense in cases brought for damages, the food service owners/operators should bear the cost of these services.

The cost to the Topeka Shawnee County Health Agency to provide food service inspection and related services was \$114 with a reimbursement of \$32 from the \$40 relicensure fee. The Shawnee County taxpayer is picking up the excess \$82 required to provide a minimum service to the benefiting industry. Based upon this my Agency supports House Bill 2118 with the \$100 cap established by the bill as introduced. If this is not possible a cap of at least \$70 should be imposed with the thought that it is costing more than double the reimbursable amount to provide a minimal level of service.

*Senate PH&W  
Attachment #8  
3-11-93*

Testimony presented to  
Senaate Public Health and Welfare Committee  
by  
Kansas Association of Sanitarians

House Bill 2118

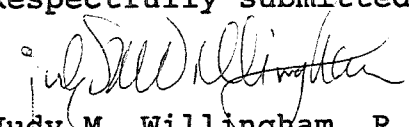
The inspection of food service establishments is an ongoing program mandated by State law and conducted by the Kansas Department of Health and Environment. As the Committee is aware, K.S.A. 36-503 requires that fees be generated to defray the cost of the program. Fifteen years ago the fee limitation was set at \$40.00 per year. This amount has not covered these expenses for several years, making it necessary and appropriate to change the fee limit.

Currently \$70.00 per establishment would cover the cost of the program. The fee limitation as set forth at \$45.00 is therefore not adequate to meet the expenses of the current program. Based on past history, we should anticipate that expenses will increase with time. It is logical to plan for future increases now.

Everyone understands that every proceeding such as this one, costs money. Therefore, common sense dictates that it is appropriate to set fee limitations ABOVE the current cost, and thereby avoid frequent revisions of the law. Setting the fee ceiling at \$100.00, well above the \$70.00 currently necessary to cover program costs, makes efficient and wise use of the Legislature's time. The fees are determined by regulations, which are subject to review by the Legislature. Should future needs reveal the justification for an increased fee, the proposed regulation change can be delt with by the Legislature efficiently.

The Kansas Association of Sanitarians strongly supports setting the licensing fee limit at a level which defrays the cost of administering the food service establishment and licensure activities of the Secretary of Health and Environment. Furthermore, the Association advocates a licensing fee limit of no less than \$100.00.

Respectfully submitted,

  
Judy M. Willingham, R.S.  
Environmental Health Supervisor  
Riley County - Manhattan Health Department  
Manhattan, KS 66502

*Senated H&W  
Attachment # 9  
3-11-93*



Testimony Before the Kansas Senate Public Health and Welfare  
Committee Relative to House Bill 2118

March 11, 1993

Roger L. Smith, R.S., Environmental Services Supervisor  
Wichita-Sedgwick County Department of Community Health

On behalf of our agency, I wish to speak in support of House Bill 2118. It is my belief, and that of our agency, that the license fees originally proposed in House Bill 2118 are both fair to the industry being regulated and necessary for continued operation of a program with significant impact on public health.

The Wichita-Sedgwick County Department of Community Health has performed food service evaluations under contract to the Kansas Department of Health and Environment for the past fifteen years. My personal involvement in our local food protection program spans seventeen years, involving service as an inspector, first line supervisor, and administrator.

In return for conducting inspections, investigating complaints, and providing consultations for operators, our agency receives 80% of application and license fees generated in Sedgwick County. This year, reimbursement from the State will cover 68% of our direct program costs. Our average program cost per establishment is \$70.29; we receive an average of \$47.91 in application and license fees per establishment from K.D.H.E. The currently eroding levels of support for contracting counties will eventually reduce inspection services; our agency was forced to reduce the field staff performing evaluations by 25% in 1985.

X The proposed cap of one hundred dollars, with license fees to be set at seventy dollars initially, is appropriate. Based on increases in the Consumer Price Index, the 1981 license fee of forty dollars would equal \$ 68.45 today. Our direct program costs of \$ 70.29 further support the proposed fee structure.

By charging license fees sufficient to fund the program the burden of support will rest on those who benefit from the services. A food service establishment's license fees are paid indirectly by its customers; those whose patronage is minimal pay virtually nothing. This method of funding is equitable for urban and rural areas, and treats all constituencies equally.

I urge the Committee to recommend approval of House Bill 2118 with the original fee limits in place. The amended version, as passed by the House, is of virtually no benefit to food protection efforts in the State of Kansas. The original proposal is reasonable, necessary, and workable.

*Senate PH&W  
Attachment #10  
3-11-93*



# KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION

359 SOUTH HYDRAULIC • P.O. BOX 235 • WICHITA, KANSAS 67201 • (316) 267-8383 • FAX (316) 267-8400

My name is George Puckett, and I represent the Kansas Restaurant and Hospitality Association, a group of approximately 750 foodservice and hospitality industry businesses in Kansas.

KRHA does not object to the proposed changes in HB2118, including that which would propose any reasonable increase in the maximum annual license fees allowable. While KRHA is not seeking to find ways to increase expenses, or the difficulties of doing day to day business for its members, we realize there comes a time when reasonable and periodic adjustments might be necessary in matters such as our annual licensing fee. We also understand there has not been an increase in the annual fee for more than ten years. KRHA realizes this will help assure the continued and necessary services of the Department for our members and their customers.

Therefore, the Kansas Restaurant and Hospitality Association would ask that the proposed license fee increase be a policy making decision by the legislature based on the information submitted by the secretary of health and environment. I personally would also like to make a suggestion that the committee might consider updating the Application Fee which is not a part of the proposed changes in HB2118. (Page 2, Lines 2-5). It currently costs \$100 to apply for a foodservice license. This fee might be increased slightly as a consideration of the committee in order to help keep annual licensing fees the very lowest possible for our foodservice and hospitality industry operators. Thank you.

*Senale PHEW*  
*Attachment #11*

Prepared Testimony  
on  
House Bill 2118

Presented By  
Phil Wittek  
Environmental Director  
Johnson County, Kansas

March 11, 1993

On behalf of Johnson County and the Johnson County Environmental Department, I would like to thank the Committee for the opportunity to offer testimony here today on House Bill No. 2118.

Specifically, we support the original wording of the Bill as drafted and introduced to raise the maximum limit of the food service licensing fee from \$40 to \$100.

I offer these basic reasons as follows:

1. We support our fellow regulators at the Department of Health and Environment, and are sympathetic to problems associated with program budget support based on a fixed fee. It is our understanding that the current fee limit has been in place for over a decade.
2. Local health departments throughout the State, acting as agents for the State through the current contract structure, would welcome the added budget relief afforded by the originally proposed higher fee.
3. Johnson County has maintained its food service inspection program through total general fund reliance at a current estimated cost of \$100,000. Our services does not include coverage on our largest city of Overland Park.

If Johnson County Environmental Department is successful in becoming certified to act as agents for the State, we will be able to recover a significant portion of our cost and add enforcement, inspection, administration consistency by covering the whole County.

Again, thank you for allowing this opportunity to appear before you.

*Senate PHW  
Attachment 12  
3-11-93*

# LYON COUNTY HEALTH DEPARTMENT

420 WEST 15TH  
PHONE 316-342-4864  
FAX 316-342-6555

March 8, 1993

EMPORIA, KANSAS 66801-5367

Senator Sandy Praeger Chairperson  
Public Health and Welfare Committee  
Statehouse  
Topeka, Kansas 66612

Re: Testimony in Favor of HB 2118

Dear Senator Praeger:

It is my understanding that HB 2118, addressing increasing fees for inspection of food service establishments, will come before the Public Health and Welfare Committee on March 11. I strongly support increased fees for inspection.

However, the current status of the fee increase from the current \$40 annually to the proposed \$45 would be a waste of taxpayer dollars. This amount would do little more than cover the cost of printing new forms. Increased funding is needed to increase the number of inspectors thus increasing the number of inspections.

The FDA has rated compliance by Kansas food service establishments with Kansas Food Service Regulations as marginally acceptable. I have worked for the Lyon County Health Department for six years. In that time it has become abundantly clear that there is a lack of adequate staffing among the Food and Drug Officials of the State. In addition, Kansas has no training requirement for the food service industry. Anyone who wishes to open a restaurant may do so if they meet construction requirements. Lack of personnel directly impacts the ability of the State to educate restaurant owner's and employees on safe food handling practices.

Local government assesses much higher fees for a beer license. In Emporia an annual fee of \$225 to \$250 is required to sell beer in the city limits. At a recent meeting of the Kansas Association of Sanitarian's, the Kansas Public Health Association, and the Kansas Association of Local Health Departments consensus was reached that Food Service Renewal Fees should be NO LESS THAN \$100 annually.

The people of Kansas expect and deserve adequate inspection of food establishments. This is not possible without adequate personnel. Kansas is not immune to incidents similar to the deaths caused by improper food handling by Jack in the Box Restaurants. Prevention has proven time and again to be more cost effective than cure. Foodborne illness can and does result in death.

Sincerely,



Ann Scheve, MS, RS  
Director, Environmental Health  
Lyon County Health Department

*Senate PH&W  
Attachment #13  
3-11-93*