

Approved: MARCH 22, 1994
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 18, 1994 in Room 254-E of the Capitol.

All members were present except:
Sens. Hensley and Jones 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 agenda

Others attending: See attached list

Sen. Oleen continued the hearing (from yesterday) on SB 721 and introduced the following proponents:

Ron Hein, (Attachment 1);
Terry Leatherman, (Attachment 2);
Kevin Robertson, (Attachment 3);
Mr. Robertson submitted testimony (Attachment 4) from Jean Barbee.

Sen. Oleen called committees' attention to written testimony (Attachment 5) submitted from Hal Hudson, National Federation of Independent Business. Note: The American Legion and VFW have not submitted testimony at this time.

Sen. Oleen stated several committee members have commitments at 12:00, and she wants the committee to consider SB 631 today. She introduced Jim Conant who explained information, which had been requested by the committee, and an amendment (Attachment 6). Mr. Conant stated, upon checking, his agency found all 50 states require photos for drivers' licenses; the military also has photo IDs. Sen. Oleen stated she had checked with community colleges, and they also have photo IDs. She also asked Mr. Conant if it is possible to have a list of acceptable IDs posted in the bars, and he answered that would be possible. He also stated the Division of Vehicles is coding drivers licenses as well as printing the date when the minor will be 21 years of age. Sen. Oleen asked Mary Torrence to explain provisions of the bill. She called attention to Page 2, Line 8, and striking the words "knowingly or unknowingly", and stated whether the words are stricken or left in the bill, that is not a defense, in her opinion. Members recalled discussing the bill previously and asked Mr. Conant why the ABC has requested that language on Page 2, Line 8, be left in the bill. Mr. Conant explained his agency believes it would hamper the Division's ability to hold licensees responsible for underage violations and could cause potential problems. He stated he does not disagree with Ms. Torrence, but reminded the committee the language being discussed also refers to the administrative hearing process. He stated the Assistant Attorney General working with the ABC requested striking the language and stated if the language is left in tact, it puts the ABC in a position of having to prove legislative intent. The Assistant Attorney General also believes that criminally, it is not a severe impact. Sen. Gooch stated he is still concerned that businesses are held responsible after a false ID is used, and he believes there should be a serious penalty for persons using fake IDs. Mr. Conant replied they are not opposed to that defense; however, accepting a fake ID is a problem for bartenders and his Division must be able to have recourse for action against the licensee/bartenders who are not trying to discourage minors from drinking - his Division does not want to send a message which relieves the licensee from responsibility. Sen. Walker made a motion to reinsert the stricken language discussed on Page 2, Line 8, and include Mr. Conant's amendment (See Standing Committee Report, Attachment 7), and it was seconded by Sen. Tillotson. Sen. Oleen referred to Section 2, subsection (b), Page 2 of the bill and questioned Mr. Conant what the fine would be. Mr. Conant responded that the \$100 to \$250 is the criminal fine; however, the maximum administrative fine for a violation is zero to \$1,000, depending upon previous violations, etc. Sen. Oleen then asked Mr. Conant what the fine would be for a first

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E
Statehouse, at 11:05 a.m. on February 18, 1994.

time violation, and Mr. Conant stated the average fine would probably be \$300.00, dependent upon the circumstances. Sen. Oleen asked if most establishment owners bring an attorney with them to the administrative hearing, and Mr. Conant answered that less than 50% of them retain counsel. However, if a licensee has multiple violations, or their license is in jeopardy, an attorney usually represents them at the hearing. Sen. Oleen asked who is present at an administrative hearing, and Mr. Conant replied the Division staff attorney is present along with the Assistant Attorney General, who is the prosecutor, and the Director of ABC serves as Hearing Officer. He outlined the process for appealing a conviction: if the licensee is found responsible for a violation, it may be appealed to the Secretary of the Department of Revenue; if licensee further seeks appeal, it could be appealed to the District Court. Mr. Conant stated that ABC had requested the committee outline the defense for administrative hearings. Sen. Walker stated that was in his motion, and Sen. Tillotson stated she understood and was in agreement. The motion passed.

Sen. Oleen announced continuation of the hearing on SB 731, and the following appeared as opponents:

Dr. Steven Potsic, (Attachment 8);
Anne Smith, (Attachment 9);
Jim Twigg, (Attachment 10);
Betty Dicus, (Attachment 11);
Brian Gilpin, (Attachment 12);
Dave Pomeroy, (Attachment 13).

Sen. Praeger questioned Mr. Twigg on the Overland Park ordinance banning smoking in public places, and he explained places where smoking is prohibited and/or where it is restricted, dependent upon if the area is ventilated and/or has a filter system. Sen. Vidricksen stated he thought a clarification was in order, since some of the testimony stated the tobacco industry is pushing this bill. He stated the request for the bill came from the Board of Directors of the Restaurant and Hospitality Association, not from the tobacco industry.

Meeting adjourned at 12:00.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: Feb. 18, 1994

[illegible]

Attach. 1

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SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
TESTIMONY RE: SB 721
Presented by Ronald R. Hein
on behalf of
R. J. Reynolds Tobacco Company
February 17, 1994

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for R. J. Reynolds Tobacco Company.

RJR has generally opposed efforts by government to impose unnecessary restrictions or requirements on our customers who choose to smoke a lawful product. However, we have also recognized the rights of private business or public entities to determine the smoking policies of their own buildings and facilities.

Although we are strong proponents of the rights of smokers, we have always encouraged smokers to also recognize the rights of non-smokers, and to smoke at times, and in places, and in a manner which is the least offensive or obtrusive to non-smokers.

SB 721 is not the bill that the tobacco industry would write if it alone could decide how smoking policy should be set by state law. However, we are in an era when approximately one-third of the communities in one state, California, have overreacted to the point that they have imposed a complete ban on smoking in restaurants. According to polling data conducted by the American Lung Association, 70% of the public opposes such restaurant bans. (See newspaper article attached.)

Politics is the art of the possible, and RJR believes that SB 721 brings some sanity to the verbal and sometimes physical debate involving smoking.

The issue here is not public health. The EPA report finding ETS to be a carcinogen has been roundly criticized by the scientific community as not being based on science.

Senate Fed + State
Feb. 18, 1994
Attachment #1

The EPA ignored one major study in the area, and of the studies that the EPA reviewed, only a few found any statistical significance while the vast majority found no effect for ETS exposure.

To put the EPA report in perspective, the relative carcinogenic risk of environmental tobacco smoke is lower than the carcinogenic risk of drinking whole milk. And yet, I don't think you will find anyone in Kansas proposing a ban on milk.

This relatively low degree of risk was acknowledged by Dr. Morton Lippmann, head of the EPA risk assessment panel, when announcing results of its analysis. Lippmann told reporters attending a press conference they had exposed themselves to greater risk driving across town in Washington traffic to attend the meeting than any hazard from ETS. (See Consumer's Research article attached.)

Since the issue is not health, then the issue becomes a political issue involving the rights of smokers, the rights of non-smokers, and the rights of the business community.

We believe SB 721 as introduced establishes a state policy which strikes a reasonable balance between the rights of all interested groups and individuals and insures that businesses and the public can have uniformity of policy regardless of business location.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Don't like the results? Kill the poll

ALTHOUGH this poll is now more than a year old, I'm willing to bet you didn't read about it in *any* newspaper, never saw a mention in any newsmagazine, didn't hear about it on the radio and never heard about it on any television news program.

It was an election year, which means at least one poll a day. Almost all of those polls, as the stories carefully noted, used samples of fewer than 1,500 people, sometimes samples as small as 700 or 800. Carefully conducted surveys, allowing for a few percent one way or the other, can be valid with samples that small.

But even defensive statisticians will concede that a poll would be a lot more trustworthy if the scientifically chosen sample were 11,000 adult Americans — and that it was conducted by the Elmo Roper organization, one of the most honest, scrupulous and experienced polling groups in the world.

That was the poll you didn't read about. The subject was cigarette smoking in restaurants. Do

Gene Marine is a veteran Bay Area journalist and author.

Americans believe that it should be banned? Seventy percent of them said, "Absolutely not."

Please note: I am not making this up. This newspaper has a number of excellent reporters (at least one of whom, Craig Marine, has a highly gifted parent), and some fine editors. It has one of the best science writers around. Everything I say here can be easily and independently checked.

Only about a third of adult Americans smoke cigarettes, so that doesn't account for 70 percent (and not all smokers came down on the same side). And there was, as you might guess, more to the poll than that.

Respondents were also asked about smoking and nonsmoking sections. The overwhelming majority who oppose banning restaurant smoking split on that question, approximately half and half. In case your mathematics are weak, that means that for every American who wants to ban smoking in restaurants, more than one doesn't even care about nonsmoking sections.

(As an aside, I don't know any cigarette smokers who object to nonsmoking sections, or to the

right of a restaurateur to ban smoking entirely in a particular restaurant. But in any case, I'm not making an argument for or against anything; I'm only providing information that for some mysterious reason you've been denied.)

The more zealous among you, I would guess, are already halfway through your angry responses, beginning with your opinion of tobacco-industry polls. Bear with me; there's more to the story.

AS IT happens, the sponsor of the poll flat-out disbelieved the result, despite the reputation and skill of the Roper organization. Convinced of a flaw somewhere, the sponsor ordered the poll repeated, with a different sample. The Roper people obliged — thus increasing the overall scientific sample to 22,000 Americans.

If tobacco people had sponsored the poll, they would have trumpeted the results immediately.

The sponsor was in fact the vigorously anti-tobacco American Lung Association, which is among the backers of a proposed smoking ban in San Francisco restaurants. Supervisor Angela Alioto may not

know that most Americans oppose the idea, but the association certainly does, having spent many donated dollars to learn it.

Of course, the tobacco industry did find out, which is how, indirectly, I happened to find out. But as a journalist, I consider it something of a disgrace to my profession that this information, readily available a year ago, has never been given to the readers of newspapers and the viewers of television — and has never been sought out by reporters and editors.

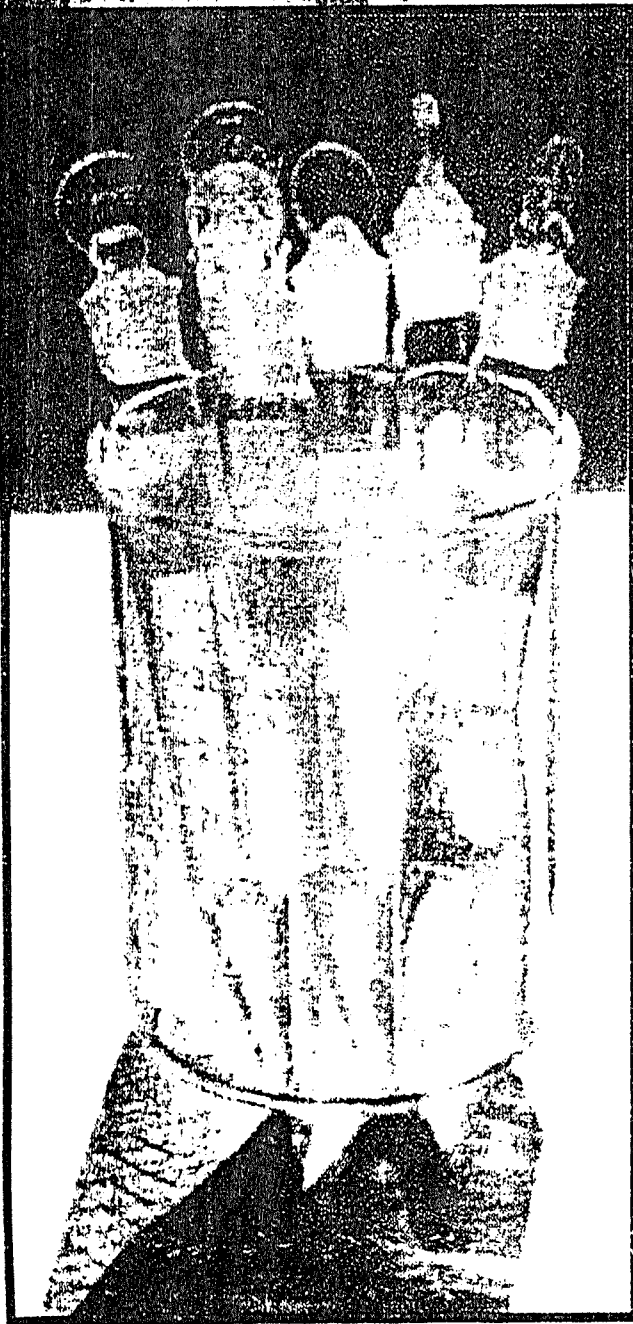
I do not know whether there is any real danger from "second-hand smoke." Medical degree or not, I doubt you do either. You're taking someone's word for it, and probably second-hand, by way of newspaper and television.

If, as I suspect, the reporting and editing are more faddish than accurate, a sort of political correctness having undermined the healthy skepticism that should lead us to challenge every "scientific" claim as thoroughly as we challenge releases from the Tobacco Institute, then legislators have no business basing hasty laws on the inaccurate, unfiltered and unexamined reports that result.

CONSUMERS Research

ANALYZING PRODUCTS, SERVICES AND CONSUMER ISSUES

MAGAZINE



Federal 'Science' Under Fire

Also: When Numbers Lie, Central A/C, Infant Formulas

Facts Catch Up With 'Political' Science

Peter Samuel, Peter Spencer, and the editors of *CR*

Officials in charge of federal regulatory policy have come increasingly under fire in recent months for use of allegedly faulty "science" that leads to mistaken programs, enormous costs, and disservice to taxpayers and consumers.

These charges are not unusual, of course, and many such have been reported in previous issues of *Consumers' Research*. What is noteworthy in this case is that the accusations have been coming, not simply from outside critics and/or people affected by the programs, but from spokesmen within the regulatory community itself, and other official agencies of the government—including federal courts and science advisory bodies.

This means, in essence, that the government in certain cases is admitting the erroneous nature of much regulatory policy. In particular, there is a rising consensus that a good deal of what has been cited as a science-research basis for that policy has been constructed the other way around: The policy has dictated or influenced the "science," and the evidence has been sorted out to fit an existing mind-set, if not a preconceived conclusion.

While charges of this type afflict a number of government regulatory bodies, by far the major focus of such criticism is the Environmental Protection Agency (EPA). Through a wide variety of programs, this agency has spread a network of controls throughout society, dealing with hazardous substances, clean air and water, wetlands, and many others. The officially estimated cost of this is at least \$140 billion a year. Yet serious questions are being raised as to whether this enormous sum is being well-spent, or whether the policy it pays for helps, or hurts, the public.

According to a recent series on environmental policy in *The New York Times*, "leading scientists,

economists and government officials had reached the dismaying conclusion that much of America's environmental program had gone seriously awry. They said the nation's environmental policy had been allowed to evolve in reaction to popular panics rather than in response to sound scientific analysis."

The *Times* notes that some of the sweeping environmental laws written in the late 1970s—"in reaction to popular concerns about toxic waste dumps or asbestos in schools, as examples—were based on little if any sound research about the true nature of the threat." The result, as Richard Morgenstern, in charge of policy planning and administration at the EPA, told the paper, was that "we're now in the position of saying in quite a few of our programs, 'Oops, we made a mistake.'"

Such an indictment of the quality of science used to drive regulations is particularly harsh because it comes from the highest government authorities. Among these sources is the EPA itself: Former EPA Administrator William K. Reilly, for example, admitted in 1991 that "there has been plenty of emotion and politics, but scientific data have not always been featured prominently in environmental efforts and have sometimes been ignored even when available."

The findings of an EPA-appointed expert panel went even further. The panel's March 1992 report, *Safeguarding the Future: Credible Science, Credible Decisions*, found a "climate and culture" within the EPA that cast serious doubt on the quality of science used by the agency to justify its programs. Indeed, scientists play a minor role inside the agency, which tends to be dominated by lawyers and other non-scientists. Even many agency personnel perceived that EPA science was "adjusted to fit policy." Among its specific findings:

- EPA's "science activities to support regulatory development...do not always have adequate, credible quality assurance, quality control, or peer review." And although the agency receives

Mr. Samuel, who specializes in environmental reporting, is a contributing editor of National Review. Mr. Spencer is editor of CR.

"sound advice," it "is not always heeded."

- The EPA "has not always ensured that contrasting, reputable scientific views are well-explored and well-documented from the beginning to the end of the regulatory process." Instead, "studies are frequently carried out without the benefit of peer review or quality assurance. They sometimes escalate into regulatory proposals with no further science input, leaving EPA initiatives on shaky scientific ground."

- The agency "does not scientifically evaluate the impact of its regulations," and "scientists at all levels throughout EPA believe that the agency does not use their science effectively."

"...scientists play a minor role inside the agency, which tends to be dominated by lawyers and other non-scientists. Even many agency personnel perceived that EPA science was 'adjusted to fit policy.'"

From substances such as asbestos, dioxin, environmental tobacco smoke, and radon to controls on urban air pollution, recent official findings have questioned the scientific basis of regulations along these very lines. Here are some significant examples:

Asbestos. A ruling of a federal Circuit Court of Appeals says that efforts to ban this substance have been out of line with the scientific evidence—possibly increasing risk to consumers, workers, and schoolchildren.

In 1989 the EPA issued a rule under the Toxic Substances Control Act (TSCA) completely banning all uses of asbestos, a move that escalated concern about the safety of the substance, which had already been removed from public buildings across the United States at the cost of some tens of billions of dollars. The total asbestos ban attempted by the EPA was overthrown in October 1991 by the U.S. Court of Appeals in a hearing in the Fifth Circuit. (See "The Hazards of 'Political' Science," *CR*, February 1992.)

The court decision was a withering indictment of the EPA's behavior. It said the agency had presented "insufficient evidence" to justify a ban. It was required by law to articulate a "reasonable basis" for its action but had failed to do so. It had failed to follow the statutory requirement under the TSCA to adopt the least burdensome regulation, failed to consider benefits as

well as costs, and failed to look at the relative safety of alternatives.

The court characterized EPA's rejection of intermediate regulation such as warnings and restrictions on the use of asbestos as "offhand." It noted that the EPA explicitly rejected considering the harm that may flow from the use of substitutes "even where the probable substitutes themselves are known carcinogens," and said this was a clear violation of the law.

"Eager to douse the dangers of asbestos, the agency inadvertently actually may increase the risk of injury Americans face," the court said.

The court also questioned what amounted to EPA's pursuit of "zero risk" with regard to asbestos. The ruling noted, for example, that the proposed ban of three asbestos products would theoretically save seven lives over a span of 13 years, at a cost of up to \$300 million. The number of deaths supposedly prevented in this way would be roughly half the fatality toll in a similar period to accidents with toothpicks, according to the decision.

"As...our review of the EPA case law reveals, such high costs are rarely, if ever, used to support a safety regulation," the court said.

Costs such as these, however, are dwarfed by what the EPA caused to be spent in its campaigns concerning asbestos in public buildings. *The Wall Street Journal* reports that an estimated \$3 billion was spent last year alone toward removing asbestos used in insulation and building materials.

While many scientists and health authorities say the type of asbestos most often used in the United States poses little health threat, government studies now show that the removal process doesn't do any good anyway; in many cases it actually increases asbestos fiber levels.

Gerard Ryan, an asbestos expert at the Occupational Safety and Health Administration, found in a preliminary study that removal of asbestos increases airborne asbestos levels more often than it reduces them, even where the removal job is done as well as technology permits. Levels of airborne asbestos remain elevated for several years after removal.

"We spend an awful lot of taxpayer money [on asbestos removals] without decreasing risk," Ryan says.

Other studies by EPA itself have found similar results—prompting agency officials to admit three years ago that ripping out the asbestos had been a serious mistake. In one recent report, for instance, the agency found that average asbestos levels had risen two years after abatement projects at nine of 17 New Jersey schools.

Dioxin. Further evidence that EPA initiatives

been on "shaky scientific ground" in the case of officials comes with the case of dioxin—and by extension a number of other chemical substances widely thought to be extremely toxic.

In 1982, all 2,240 residents of the Missouri township of Times Beach were evacuated and the site was permanently closed by order of the EPA because of traces of dioxin in the dirt roads. But Vernon Houk, M.D., the federal official who urged the evacuation, now says the scientific data show this was a mistake.

Houk, then director of environmental health and injury control at the Centers for Disease Control, made his initial decision on the premise that dioxin was "the most toxic man-made chemical known to man," even in extremely minute quantities. This view developed from accepted practice at the time of applying a concept of "linear risk" to assess the cancer threat of chemicals. This assumed that if there is a definable risk at a high dose of a chemical, then there must also be a projected lower risk at lower doses.

Government researchers use animal tests to determine environmental dangers. In these tests rats (or mice) are fed massive quantities of a chemical until the animals develop cancer. From this, researchers designate a "maximum tolerable dose" and use statistical scales to speculate on how people might react at lower levels of exposure.

One problem, of course, is that the huge amounts fed the animals have no direct, or realistic, relation to what people normally might contact. (The maximum tolerable dose for animals, has been estimated to be, on average, 380,000 times the level used to assess human exposure.) Besides the problems of translating risk in animals to risk in humans, Houk said at a major environmental health conference at the University of Missouri, the use of such an approach at the time "stood in stark contrast to a fundamental rule in toxicology—that is, the dose makes the poison."

And "without evidence" this widely held belief "determined that for chemically induced carcinogenesis, no exposure is free from threat"—with obvious consequences for chemicals that, at low exposure, might not actually pose a threat at all. As Houk noted:

"In 'chronic' feeding studies of laboratory animals at the maximum tolerated dose, more than half of the chemicals tested (man-made and naturally occurring) have been shown to increase the incidence of tumors. As a result, these chemicals have been classified as carcinogenic, even though many have shown little or no mutagenicity and evidence in humans is lacking."

In fact, most scientists "now recognize that all chemicals do not fit" this linear risk model of car-

cinogenesis, Houk said. In the case of dioxin, studies of chemical industry workers with 60 times normal levels of dioxin in their blood showed they had no increase in disease. "The evidence is that dioxin is not a carcinogen in the population exposed to lower doses. If it is a human carcinogen at high-dose exposure, it is a weak one."

None of this revisionism has had any effect on the EPA's policy regarding dioxin. Its safe limit for ingestion of dioxin remains at 6 *trillionths* of a gram per kilogram body weight per day (tg/kg/d). Houk points out that it is now understood that dioxin is quite widespread in the environment. Many forms of combustion and even heat treatment produce dioxins. He notes that the normal daily intake of the chemical by the average inhabitant of an industrial economy ranges between 1,000 and 10,000 tg/kg/d, or up to 1,700 times what the EPA standard says is safe.

"In the last decade, the U.S. government has spent over \$400 million on dioxin research," according to Houk. "That and other research has given us the science base for good scientific judgment. Now let us have the common sense to use it."

Passive Smoking. A case study of EPA's recent scientific methods is provided by its numerous statements on "environmental tobacco smoke" (ETS)—the basis for wide-ranging regulatory efforts concerning smoking in public places.

As discussed in two *CR* articles on this subject by Dr. Gary Huber, *et al.*, smoking has long been the target of a "social movement" that has impacted strongly on the scientific-regulatory activities of the federal government.* As stated by EPA itself in a recent report, its use of unusual scientific methods on this subject—lowering the statistical standard used to estimate risk—"is based on the *a priori* hypothesis...that a positive association exists between exposure to ETS and lung cancer."

EPA's basis for assuming ETS, or passive smoking, causes cancer is that many studies indicate *direct* smoking does so. The equation of the two, however, ignores the fact that ETS is much more dilute than direct smoking, by a tremendous margin, and also has different chemical properties—as spelled out by Huber and his associates. EPA's approach, again, is basically that of "zero risk": Assuming that, if huge amounts of something are dangerous, then infinitesimally tiny amounts will be dangerous also.

Available scientific data, however, fail to support this hypothesis. Almost all studies done on the

* See "Passive Smoking: How Great A Hazard?" *CR*, July 1991 and "Passive Smoking and Your Heart," *CR*, April 1992.

e. of passive smoking show either no risk from ETS or a weak relative risk ratio that would not be considered significant if applied to other subjects.

This relatively low degree of risk was acknowledged by Dr. Morton Lippmann, head of the EPA risk assessment panel, when announcing results of its analysis. Lippmann told reporters attending a press conference they had exposed themselves to greater risk driving across town in Washington traffic to attend the meeting than any hazard from ETS.

In such studies, a "strong" risk is usually considered to be in the range of five to 20—meaning the incidence of the problem studied is five- to twenty-fold higher in the group exposed to something than in a control group that isn't. Ratios of less than three are usually considered so low they might be the result of mere variation, and a ratio of one would indicate no risk at all, meaning the subject and the controls were statistically even.

Yet EPA uses risk ratios of less than 3.0—averaging only 1.3 or so—in its classification of passive smoking as a major carcinogen. An example is a study conducted by H. G. Stockwell, *et. al.*, and recently published by the National Cancer Institute (NCI), a division of the National Institutes of Health, which says "we found no statistically significant increase in risk associated with exposure to environmental tobacco smoke at work or during social activities."

The findings of the NCI report otherwise did not indicate risk ratios above 2.4 for lung cancer of all types among women exposed to spousal smoking for *upwards of 40 years*. Only in the case of these 40-year exposures did ratios rise above 3.0 for any type of lung cancer. Despite this, the publicized finding from this study is that "long term exposure" to ETS increases lung cancer risk and this is cited by EPA in support of its conclusions.

Concerning the 30 different studies on which EPA initially based its views, Huber and his colleagues note: "None of the studies reports a strong relative risk. Nine of the studies report risk ratios of *less than 1.0*. Thus, the results from all epidemiologic studies consistently reveal only weak lung cancer risks for nonsmokers exposed to spousal smoking, with only six of the studies reaching statistical significance; 24 epidemiologic studies report no statistically significant effect for ETS exposure."

To come up with its findings, EPA used a controversial statistical technique called "meta-analysis"—mixing together studies from the United States and abroad. This has the disadvantage of adding apples and oranges, since not all the studies were conducted on the same basis, had ade-

quate controls, or screened out for variables. Even so, the currently-cited results of this approach yield an average risk ratio of only 1.19 to 1.81, according to EPA summaries of the material.

In designating passive smoking as a "highly significant risk," moreover, EPA also changed the "confidence interval" by which such things are estimated. As Michael Fumento reports in *Investor's Business Daily*, "a 95% confidence interval means there is a 95% possibility that the result didn't happen from chance, or a 5% possibility that it did. Until the passive smoking report, the EPA has always used a 95% confidence interval, as have most researchers doing epidemiological studies.... Yet in its averaging of...ETS studies, the EPA decided to go with a 90% confidence interval."

"...Dr. Morton Lippmann, head of the EPA risk assessment panel,...told reporters...they had exposed themselves to greater risk driving across town in Washington traffic to attend the meeting than any hazard from [environmental tobacco smoke]."

In effect, this doubled the chance that the numbers cited were merely the result of random variation, but it also meant the data could be treated as more persuasive. UCLA epidemiologist James Enstrom told Fumento: "That doubles the chance of being wrong.... They're using it so they can get an effect. They're going all-out to get something they can call significant." Even so, the reported risk ratios are weak.

Of interest is the question of what could happen if these same standards and techniques were applied to other substances in society, many of which have much higher risk ratios than does ETS. For instance, EPA has previously said that the relationship between lung cancer and electromagnetic fields is weak because "the relative risks in the published reports have seldom exceeded 3.0." Yet this is double the risk ratio for ETS.

Using this approach would involve many other matters as well—such as chlorinated water used for drinking and taking showers. In fact, an EPA draft report says existing data provide "a basis for consistent risk management decisions to reduce showering exposure," and one government scientist said at a recent conference: "Let me remind you that the relative risk we are talking about

from chlorinated water] is higher than the relative risk for environmental tobacco smoke."

Air Pollution and Your Car. The pattern of EPA problem science, as revealed by official analysis, is not limited to instances of assessing carcinogenic risk.

Environmental regulations concerned with urban smog, estimated to cost upwards of \$12 billion a year—and the impetus behind efforts to change the cars consumers drive and many of the products they use—are also suspect.

According to a congressionally mandated (and EPA-sponsored) report by the National Academy of Sciences, the scientific understanding behind ozone regulations is inadequate, so it is difficult to know how best to combat smog in various areas, or even know how severe the problems really are.

"...an EPA draft report says existing data provide 'a basis for consistent risk management decisions to reduce showering exposure'..."

According to the report, for instance, attempts to measure changes in ozone levels—the main component of urban smog—are hampered by methodology that does not account for the role of weather in ozone formation. In any given year, for example, abnormal periods of high temperatures will show a large increase in ozone levels, as warmer temperatures increase ozone formation.

The EPA, which sets ozone pollution standards and monitors trends, does not take weather into account in its tabulations of whether or not cities meet these standards, according to the report. This has led to the listing of cities as having "serious" or "severe" ozone problems when the ranking is unjustified.

Dr. Kay Jones, who served for eight years in the EPA as the senior scientist and research manager, and whose research was cited in the NAS report, says "the EPA intends to enforce all of the 'serious' and 'severe' classification strategies, whether they are needed or not."

To do this, the agency first delays release of data that show fewer cities fail to meet the smog standard, and then explains that the law cannot be changed anyway—having been set in the Clean Air Act Amendments of 1990. In other words, the policy regulations in scores of cities, controlling millions of automobiles and other consumer prod-

ucts, is now the law of the land—a law, however, which was based in part on information EPA supplied to Congress.

To complicate matters for automobile owners, the prescribed methods for monitoring cars for air pollution have been called into question. One General Accounting Office report examining the effectiveness of a new vehicle inspection/maintenance program found that 28% of the vehicles tested "failed an initial emissions test but passed a second emissions test, even though no repairs were made to the vehicles."

"The results," the report concludes, "raise questions about whether the...test procedure [prescribed by the EPA] is reliable in identifying out-of-compliance vehicles and whether inaccurate identification of emission problems could result in unnecessary repairs." (See "Are Auto Emissions Tests Really Necessary?" *CR*, December 1992.)

Radon. The examples could go on, but one more will suffice: The EPA, with the tacit approval of the new EPA administrator Carol M. Browner, announced new "voluntary" building codes for reducing radon in the home. Builders and some agency economists, according to *The New York Times*, "estimated the cost of new construction standards and testing requirements for radon could be as much as \$1 billion to \$2 billion a year nationwide." Meanwhile, the agency is urging new home buyers to require radon testing before they close a deal.

Some see the agency's approach to radon following the same path it took on asbestos eight years ago. Then, the public was confronted with scary scenarios of children developing lung cancer from exposure to asbestos in schools. For some years the EPA has been touting estimates that about 20,000 people may die each year of lung cancer triggered by radon. It has been urging everyone to test their household radon levels and to install elaborate venting systems in their underfloor areas if they find levels above a so-called "action level" of four picocuries per liter of air. The agency recently made headlines with the claim that there is a dangerously high level of radon gas in 73,000 schoolrooms in 15,000 schools around the country.

The agency has already gone after radon in water, which by any measure is substantially less of a risk than indoor airborne levels. Through its jurisdiction over the Safe Drinking Water Act, for instance, the agency attempted to force the town of Hastings, Nebraska, to install expensive filtering equipment to remove radon from the water of the town. As the *Times* reports:

"But critics of the proposal, including some

gency officials, said the EPA's decision to tackle the radon issue was an inglorious lesson in the dangers of using weak scientific assumptions to write an expensive new regulation, even while many experts found the idea absurd."

Risk from radon, as with other substances under discussion here, is also estimated using the "zero risk" approach, this time citing data from miners exposed to large radon levels.


Here too, the very authorities cited by the EPA in justification of their anti-radon program express serious doubts about projecting the experience of miners exposed to high levels of radon and other hazards in underground mines onto generally much lower exposures in the general population in houses, schools and other buildings.

For example, Jonathan Samet and Richard Hornung refer to the "substantial uncertainties" involved in the extrapolation of risk estimates from miners to non-miners. Samet notes that the "exposure-response relationship was non-linear across the full range of exposure" of miners though the extrapolations used by the EPA assume exactly that linear relationship

down to low exposure levels in homes.

A National Research Council report frequently cited by the EPA in justification of its radon policy concludes: "...the committee acknowledges that the total uncertainty in its risk projection (from miners to householders) is large."

Action by federal regulators on these and various other assumed hazards—pesticides come obviously to mind—frequently are justified on grounds that a conservative, i.e. extremely cautious, or zero risk, approach is most prudent. Oftentimes, federal law is cited as the reason to apply particularly strict regulations. But when the basis for any such approach comes into question from the authorities charged with protecting public health, people well might wonder how such caution can be serving their interests.

When policies involve costly solutions to poorly defined problems or even increase the public's risk, it would seem action by the federal regulators is not in the public interest. Only with a sound scientific base behind our environmental regulations can we be sure such regulations will help rather than harm. 

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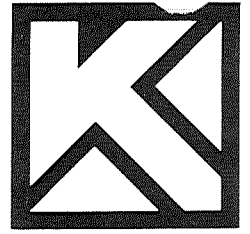
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LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SB 721

February 17, 1994

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:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for permitting me to explain why KCCI feels SB 721 presents a sound approach for regulating the smoking privileges of Kansans.

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.

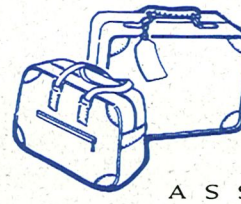
The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Senate Fed. State
Feb. 18, 1994
Attachment # 2

Fundamentally, decisions on smoking privileges at a business should be resolved between an employer and their employees. For businesses with public access, weighing the desires of customers should lead to sound business decisions on the permissibility of smoking.

While KCCI feels decisions on smoking should be made by individual businesses, government has a history of involvement in this issue. In light of this reality, a consistent and rational smoking policy for Kansas seems appropriate.

SB 721 would bring businesses across the state under the same rules to follow regarding regulation of smoking. Thank you for the opportunity to comment on SB 721. I would be happy to attempt to answer any questions.



Attach. 3
KANSAS
HOTEL
ASSOCIATION

Date: February 17, 1994

To: Senate Committee on Federal and State Affairs

From: Kevin Robertson
Executive Director

Re: **Senate Bill 721 - Private Businesses' Right to Choose**

Chairman Oleen and members of the Committee my name is Kevin Robertson. I am appearing before you today to testify on behalf of the 140 statewide members of the Kansas Lodging and Hotel Associations in **support of SB 721**.

The Kansas Lodging and Hotel Associations believe individual hotel and motel operators can best determine the needs and wishes of their diverse and unique clientele. As you might imagine, the location within a city, room rental rate, size, facilities, policies and amenities all influence customers to be drawn to a particular hotel or motel. Most hotels and motels negotiate contracts for guest rooms with businesses such as heavy contractors, trucking companies, railroads and local companies to put up their employees while staying their local vicinity. Hotel owner/operators must be allowed the right to establish there own policies regarding smoking on there property to negotiate the best mutually beneficial contract with area businesses and meet the needs of their clientele!

At our January 11 board meeting here in Topeka, the members of the Kansas Lodging and Hotel Associations' board of directors thoroughly discussed the issue of smoking in public places and the right of business owners to choose smoking policies on their property. Going around the table, many indicated a need in their respective hotels to expand the number of non-smoking guest rooms available to the public, while others said "they couldn't even rent non-smoking guest rooms". Madame Chair, the members of the Kansas Lodging and Hotel Associations are generally non-smokers. In fact, only two or three persons on our 24 member board considers themselves smokers, however, the non-smokers understand that business decisions often dictate the need to allow smoking in their hotels or they will alienate a large portion of their market and likely lose customers and revenue.

Locally, potential city ordinances to ban smoking in public places risk having a negative impact on hotels and motels in the city which imposes them as well as hotels and motels located in surrounding communities and the ENTIRE STATE which currently have no say on this local issue. If any of the larger Kansas

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Attachment #3



communities were to pass a ban on smoking in public places including hotels, convention business to these particular communities would likely be negatively impacted. The result would not only be lost transient guest and sales taxes generated from hotels and restaurants in the local community, but, also the surrounding communities that depend heavily on "spill over" business from the larger communities. In turn, the state loses revenue due to lost sales tax collections and income tax from unemployed service industry employees who can no longer find work.

Due to the hard work of the Division of Tourism Development and the travel industry in Kansas, attracting tourists and conventions to Kansas has become increasingly successful in recent years. You are all likely familiar with past and present efforts by the Wichita Convention and Visitors Bureau to attract the Miss USA Pageant and American Bowling Congress to that city. Promoting major conventions into Kansas is not an easy task, but, Kansas does have many positive selling points such as its people, cost of living, and central location. Let's not give groups considering bringing a convention to a Kansas city a reason to take their lucrative business to another U.S. city. When this happens Kansas hotels, motels, restaurants, service stations, museums, retail businesses and, therefore, state taxpayers are the real losers!

The Kansas Lodging and Hotel Associations ask for your support of SB 721. Let Kansas businesses determine the smoking policies which affect their clientele based on the free market system - that's the American way!



Travel
Industry
Association of
Kansas

Jayhawk Tower
700 S.W. Jackson St., Suite 702
Topeka, Kansas 66603-3740
913/233-9465 FAX 913/357-6629

TESTIMONY

DATE: February 17, 1994
TO: SENATE FEDERAL & STATE AFFAIRS COMMITTEE
FROM: Jean Barbee, Executive Director
RE: SMOKING OF TOBACCO IN PUBLIC PLACES (SB-721)

The Travel Industry Association of Kansas (TIAK) is a membership organization made up of hotels, motels, attractions, promotional agencies and other businesses which are suppliers to the travel industry. TIAK supports Senate Bill 721.

Each business owner who serves the public should have the right to make the decision as to whether smokers will be served or not served. It could be detrimental to some travel-related service businesses for smoking to be prohibited by law.

The owner of a business assumes many risks and liabilities when serving the public. The owner must have the right and flexibility to make the best business decision for that particular business.

*Senate Fed. & State
Feb. 18, 1994
Attachment # 4*

**NFIB**National Federation of
Independent Business

February 16, 1994

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

Dear Senator Oleen:

I am writing you because I will be unable to attend the hearing you have scheduled on Senate Bill 721, Thursday, February 17, at 11:00 a.m., but I do want you and members of the committee to know of our interest in this proposed legislation.

First of all, please let me state that NFIB has absolutely no interest in asking for legislation designed to promote smoking of tobacco products, or in placing restraints on customers who choose to smoke. Our position simply is that business owners or operators should have the right and authority to establish the rules that govern behavior within their places of business, within the guidelines of existing law on this subject.

We believe this position is consistent with the position we took before this committee last year, when we opposed a bill to prohibit employers from including use of tobacco products in their personnel policies. We find nothing in this bill that would prohibit business owners or operators from establishing a "smoke-free" environment in their places of business, if they choose voluntarily to establish such policies.

It is not often that NFIB supports enactment of new regulations on business enterprises. However, it appears that S.B. 721 provides a unique opportunity for establishing uniform statewide regulation, and relief from confusing city-by-city or county-by-county regulation pertaining to smoking in "public places."

Because we believe strongly in the right of business owners to establish the rules of conduct in their places of business, and because S.B. 721 would prevent business firms in one community from being placed at a competitive disadvantage with those in a neighboring community by the enactment of local smoking ordinances more stringent than existing state law, we urge you to recommend S.B. 721 favorably for enactment.

Thank you for consideration of our position on this bill.

Sincerely,

Hal Hudson, State Director

cc: Members, Senate Federal & State Affairs Committee

Senate Fed. State
Feb. 18, 1994
Attachment # 5

ABOUT NFIB / KANSAS

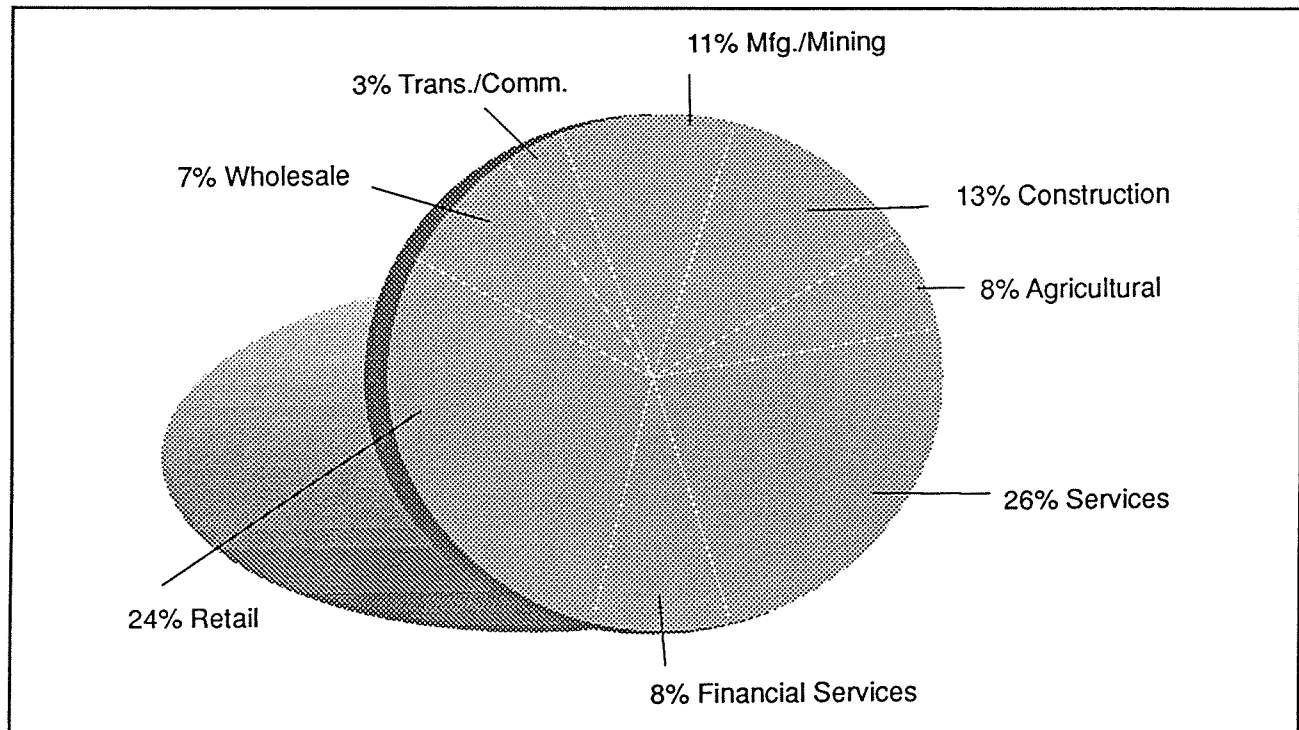
With nearly 8,000 members, the Topeka-based National Federation of Independent Business/Kansas is the state's largest small-business advocacy organization. Independent-business owners join the federation to have a greater say in the crafting of legislation and regulations that affect their lives and livelihoods.

NFIB/Kansas draws its members from all walks of commercial life: from family farmers to neighborhood retailers, from independent manufacturers to doctors and lawyers, from wholesalers to janitorial service firms.

Each year NFIB/Kansas polls its diverse membership on a variety of issues. The federation uses the poll results to form its legislative agenda, aggressively lobbying in support of positions approved by majority vote.

Because policy is determined by direct vote of the membership rather than by a steering committee or board of directors, NFIB/Kansas lobbyists have exceptional credibility as spokespersons for the entire small-business community. Rather than represent the narrow interests of any particular industry or trade group, NFIB/Kansas promotes the consensus view of small-and independent-business owners from throughout the state.

N F I B / K A N S A S M E M B E R S H I P by Industry Classification



NFIB Federal Legislative Office
600 Maryland Ave. Sw, Ste. 700
Washington, DC 20024
(202) 554-9000

3601 S.W. 29th St.
Ste. 107
Topeka, KS 66614
(913) 271-9449

NFIB Membership Development
53 Century Blvd., Suite 205
Nashville, TN 37214
(615) 872-5300

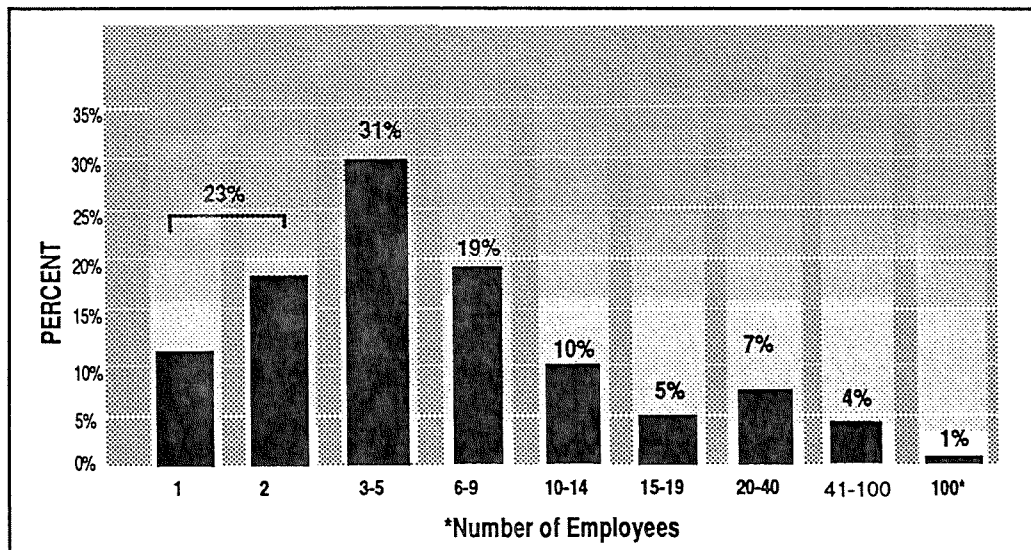
NFIB
National Federation of
Independent Business

N F I B / K A N S A S M E M B E R S H I P P R O F I L E

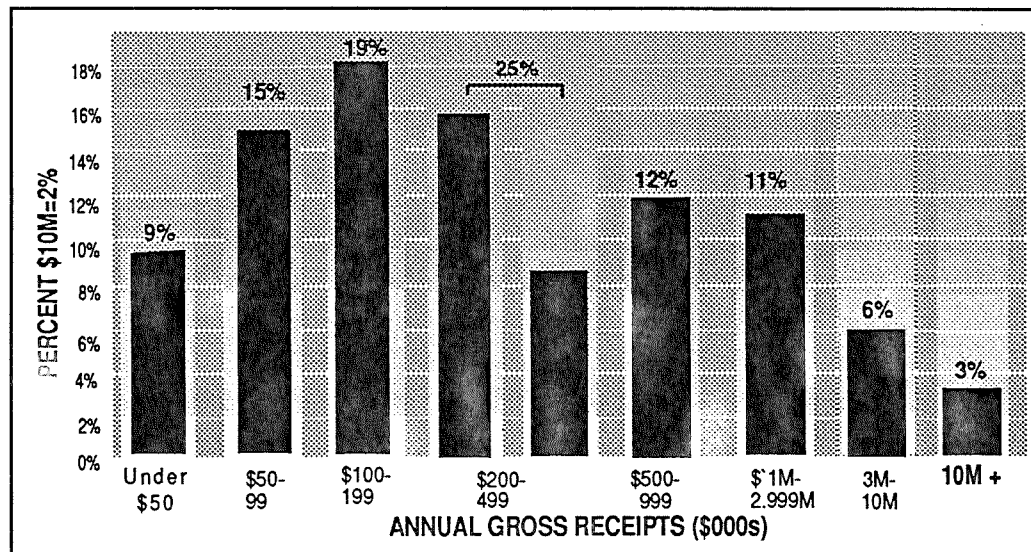
NFIB/Kansas represents the entire spectrum of independent business, from one-person "cottage" operations to quite substantial enterprises.

The typical NFIB/Kansas member employs five workers and rings up gross sales of about \$270,000 per year. In aggregate, the organization's members employ nearly 92,000 workers.

N F I B / K A N S A S M E M B E R S H I P by Number of Employees



N F I B / K A N S A S M E M B E R S H I P by Annual Gross Receipts



Attach. 6

STATE OF KANSAS

Robert A. Engler, Director
4 Townsite Plaza Suite 210
200 S.E. 6th Street
Topeka, Kansas 66603-3512



(913) 296-3946
FAX (913) 296-0922

Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: The Honorable Lana Oleen, Chairperson
Senate Committee on Federal & State Affairs

FROM: Jim Conant, Chief Administrative Officer
Alcoholic Beverage Control Division

DATE: February 9, 1994

SUBJECT: Senate Bill 631

Thank you for the opportunity to appear before the committee today regarding Senate Bill 631. The ABC Division is generally supportive of any measure intended to reduce underage access to alcoholic beverages. Senate Bill 631 accomplishes this by providing increased penalties when a minor is apprehended in possession of an alcoholic beverage (Section 1) and an incentive to licensees to check identification (Section 2).

The inclusion of a defense to prosecution under K.S.A. 41-2615 recognizes the growing problem with use of false identification by minors. The opportunity for a defense actually provides increased incentive for all licensees to make a thorough ID check when there is any question of the purchaser's age. Since K.S.A. 41-2615 is normally cited in administrative citations to on-premise licensees for underage violations, we would respectfully recommend that additional language be added to clarify the availability of a defense in administrative hearings. A balloon draft of an amendment which would establish an affirmative defense for administrative hearings is included with this testimony.

The Division also recommends that the bill be amended on page 2 at line 8 to retain the words "knowingly or unknowingly." Removal of this language from K.S.A. 41-2615(a) would seriously hamper the Division's ability to hold licensees responsible for underage violations on licensed premises. As introduced, it would appear that the bill would require evidence of the licensee's or employee's actual intent or active participation in permitting a minor to possess or consume. While the minor in unlawful possession would be in violation of K.S.A. 41-727, no one could be held responsible for furnishing the alcoholic beverage unless the act of furnishing had been observed by the investigating officer. Removal of the knowing or unknowing provisions effectively eliminates the licensee's responsibility for illegal activity on the premises beyond the actual point of sale or service of alcoholic beverages. Reinstatement of these terms would not preclude use of the proposed defense by licensees who check IDs in an effort to comply with the law.

Thank you for your consideration of these issues. I would be happy to answer any questions the committee may have.

Senate Fed. State
Feb. 18, 1994
Attachment # 6

1 (f) Any city ordinance or county resolution prohibiting the acts
2 prohibited by this section shall provide a minimum penalty which
3 is not less than the minimum penalty prescribed by this section.

4 (g) This section shall be part of and supplemental to the Kansas
5 liquor control act.

6 Sec. 2. K.S.A. 41-2615 is hereby amended to read as follows:
7 41-2615. (a) No licensee or permit holder, or any owner, officer or
8 employee thereof, shall ~~knowingly or unknowingly~~ permit the
9 possession or consumption of alcoholic liquor or cereal malt beverage
10 by a minor on premises where alcoholic beverages are sold by such
11 licensee or permit holder, except that a licensee's or permit holder's
12 employee who is not less than 18 years of age may serve alcoholic
13 liquor or cereal malt beverage under the on-premises supervision of
14 the licensee or permit holder, or an employee who is 21 years of
15 age or older.

16 (b) Violation of this section is a misdemeanor punishable by a
17 fine of not less than \$100 and not more than \$250 or imprisonment
18 not exceeding 30 days, or both.

19 (c) *It shall be a defense to a prosecution under this section if:*
20 *(1) The defendant permitted the minor to possess or consume the*
21 *alcoholic liquor or cereal malt beverage with reasonable cause to*
22 *believe that the minor was 21 or more years of age; and (2) to*
23 *possess or consume the alcoholic liquor or cereal malt beverage, the*
24 *minor exhibited to the defendant a driver's license, Kansas non-*
25 *driver's identification card or other official or apparently official*
26 *document, containing a photograph of the minor and purporting to*
27 *establish that such minor was 21 or more years of age.*

28 Sec. 3. K.S.A. 41-727 and 41-2615 are hereby repealed.

29 Sec. 4. This act shall take effect and be in force from and after
30 its publication in the statute book.

(d) In any administrative proceeding pursuant to the Kansas liquor control act to suspend or revoke a license or to impose a civil fine for a violation of this section, it shall be a defense if evidence is presented which indicates that: (1) The defendant permitted the minor to possess or consume alcoholic liquor or cereal malt beverage with reasonable cause to believe that the minor was 21 or more years of age; and (2) to possess or consume the alcoholic liquor or cereal malt beverage, the minor exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age.

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Federal and State Affairs

Recommends that Senate Bill No. 631

"AN ACT concerning alcoholic beverages; relating to certain offenses involving minors; amending K.S.A. 41-727 and 41-2615 and repealing the existing sections."

Be amended:

On page 2, in line 8, before "permit", by inserting "knowingly or unknowingly"; after line 27, by inserting:

"New Sec. 3. In any administrative proceeding pursuant to the Kansas liquor control act to suspend or revoke a license, or to impose a civil fine, for a violation of K.S.A. 21-3610, 21-3610a or 41-2615, and amendments thereto, it shall be a defense if evidence is presented which indicates that: (a) The defendant permitted the minor to possess or consume the alcoholic liquor or cereal malt beverage with reasonable cause to believe that the minor was 21 or more years of age; and (b) to possess or consume the alcoholic liquor or cereal malt beverage, the minor exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age.";

By renumbering sections 3 and 4 as sections 4 and 5;

And the bill be passed as amended.

Chairperson

Oleary

Senate Fed + State
Feb. 18, 1994
Attachment # 7

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

Testimony presented to

Federal and State Affairs Committee

by

The Kansas Department of Health and Environment

Senate Bill 721

Senate Bill 721, regulating the smoking of tobacco products in public places appears, at first glance, to be a pro-health bill aiming to ban smoking in public places. As we now know, smoking is now the second leading cause of death in Kansas, responsible for nearly 4,000 deaths annually, which is 18% of all deaths in the state. Smoking-related diseases also cost the Kansas economy over \$500 million in death and disability and related costs. In addition, policies that restrict secondhand smoke have proven to be effective public health interventions, as documented by the Environmental Protection Agency in its statement released in January 1993. For example, each year secondhand smoke kills an estimated 3,000 adult nonsmokers from lung cancer. However, SB721, as it is proposed, provides so many exceptions it becomes actually less restrictive than the current K.S.A. 21-4009 thru 4014 passed in 1987 which defines and regulates smoking in public places. Not only does this proposal weaken the Kansas 1987 law, but it also serves as a means to prevent any local community from improving its local policies.

Local communities across Kansas have begun to recognize secondhand smoke for the serious health problem that it is and to respond with appropriate public protection measures. People who have been the victims of unregulated second hand smoke have suffered from asthma attacks, bronchitis, headaches and other disabling conditions because of serious physical reactions to tobacco smoke. The disabling effect of breathing secondhand tobacco smoke prohibited them from entering public buildings such as grocery stores, courthouses, and restaurants, but in some communities these people are beginning to feel the relief of being able to breath unpolluted indoor air. The credit for their new found freedom lies with local city and county councils who have enacted ordinances that protect their right to breathe smoke-free air.

At the present time, at least 15 counties have smoke-free courthouses, many as a result of local ordinances. The city of Overland Park recently passed a local ordinance to restrict smoking in public places, including their city building. The Wichita City Council is also considering a smoking restriction ordinance this month which would serve to reduce exposure to secondhand smoke in public places in their community. Senate Bill 721 will not only prohibit the passage of similar ordinances by other local communities, but will render any such existing ordinances null and void.

Senate Fed. State
Feb. 18, 1994
Attachment # 8

The KDHE recently completed a survey of Sedgwick County residents which documented that 82% of residents believe secondhand smoke is harmful to nonsmoker's health. Results of the survey further showed that 54% of Sedgwick County residents favor laws eliminating smoking in all public places.

Success of the tobacco control movement at the local level in implementing local control is growing, even in the face of increased tobacco industry opposition to defeat local efforts. The KDHE stands opposed to this proposal primarily because of the detrimental effect it would have on prohibiting local communities from exercising local control in addressing the number two cause of death in our state.

We strongly urge for the good health of your constituents that this legislation, SB721, be defeated.

Testimony presented by: Steven R. Potsic, MD, MPH
 Director of Health
 Kansas Department of Health and Environment
 February 17, 1994



"Service to County Government"

215 S.E. 8th
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(316) 995-3973

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Saline County Sheriff
300 W. Ash
Salina, KS 67401
(913) 826-6500

Executive Director

John T. Torbert, CAE

TO: Senate Federal and State Affairs Committee
Chairperson Lana Oleen

FROM: Anne Smith
Director of Legislation

DATE: February 17, 1994

RE: SB 721--Regulating the smoking of tobacco in
public places

Thank you, Senator Oleen for allowing me the opportunity to appear before the committee today. The Kansas Association of Counties opposes SB 721, which would regulate the smoking of tobacco in public places.

Sec. 9 of the bill states, " This act expressly preempts the regulation of smoking to the state and supersedes any city or county ordinance or resolution regulating smoking in public places adopted before, on or after the effective date of this act."

This legislation would remove local government's authority to govern on an issue that has been traditionally their responsibility. KAC feels a decision of this nature should be made at the local level. A number of counties have smoking regulations in place and it would be a step backwards to undo the work that local governments have accomplished.

We thank the Committee for their careful consideration of our position on SB 721.

Senate Fed. & State
Feb. 18, 1994
Attachment # 9

City Hall • 8500 Santa Fe Drive
Overland Park, Kansas 66212
913/ 381-5252 • FAX 913/ 381-5756

February 17, 1993

SUBJECT: Hearing before the Committee on Federal and State Affairs regarding Senate Bill No. 721, AN ACT regulating the smoking of tobacco products in public places.

Chairperson Oleen and Members of the Senate Committee on Federal and State Affairs:

Madam Chair, members of the Committee: Thank you for allowing me to testify before you this morning. My name is Jim Twigg. I am the Special Projects Coordinator for the City of Overland Park.

Overland Park has, since the mid 1980's, been a leader in protecting our citizens, both in public places and the workplace from the effects of environmental tobacco smoke, and we applaud this committee for seeking to address this difficult issue.

We are concerned however, that S.B. 721 eliminates the ability of local units of government to meet the wishes of their constituents by regulating smoking within their jurisdiction.

As I stated earlier, Overland Park believes strongly in protecting the health and well-being of our residents, and S.B 721 by allowing smoking in the workplace and in public places without meaningful restrictions would be a significant step backwards for our citizens.

I would like to thank you again for this opportunity, and offer that we would be happy to cooperate and assist this committee in formulating a bill to help protect the health of all Kansans.

Senate Fed. State
Feb. 18, 1994
Attachment # 10

Attach. 11



KANSAS DIVISION, INC.

THERE'S NOTHING MIGHTIER THAN THE SWORD

STATEMENT IN OPPOSITION TO SB 721
BY THE AMERICAN CANCER SOCIETY
KANSAS DIVISION, INC.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
FEBRUARY 17, 1994

Madam Chairperson and members of the Committee:

My name is Betty Dicus, and I appear on behalf of the American Cancer Society, Kansas Division, Inc. Thank you for the opportunity to speak with you in opposition to Senate Bill 721.

The American Cancer Society opposes this bill because it is designed to prohibit local governments from enacting tobacco control ordinances that suit their own communities. As the number of local tobacco control ordinances has increased dramatically over the last few years, the tobacco industry has begun to feel the pressure. As a result, they have turned to preemption of local ordinances as one of their chief mechanisms for protecting their deadly products.

This bill would not only prohibit future ordinances at the local level, it would also supersede any existing ordinances that have been hammered out in the local legislative process. In addition, this bill is much weaker than the local ordinances that now control tobacco use for many Kansans.

These stricter local ordinances are not based on social whim, but are based on decades of scientific research which has increasingly documented the health consequences of tobacco for users and non-users alike. The evidence linking cigarette smoking with death and disability has been clearly established by more than 40,000 studies over the last three decades. In addition, a growing body of statistical and clinical evidence has also determined that the inhalation of environmental tobacco smoke is a factor in death and disease among nonsmokers. The Environmental Protection Agency's Risk Assessment for Environmental Tobacco Smoke classifies it as a Group A Carcinogen, putting it in the same class as asbestos and benzene.

Tobacco use is by far the leading cause of premature death and disability in our society. Therefore, the role of tobacco control policy in health care containment -- whether at the national, state, or local level -- cannot be overstated. We urge you not to remove the authority to deal with this problem from local government or to weaken local ordinances. We oppose passage of Senate Bill 721. Thank you for your consideration.

Attach. 12

Testimony in Opposition to SB 721
Federal and State Affairs Committee
February 17, 1994

Brian Gilpin
Tobacco Free Kansas Coalition
American Heart Association
913-272-7056

This bill tells local governments that they can't govern their own affairs and that they need big brother from big government to tell them what to do. This anti-American legislation will start us down the slippery slope into the quagmire of bigger and bigger government and diminishing local authority. This legislation is a direct affront to the ideals of our representative form of government.

In our Kansas State Constitution, Article 12 number 5 describes the concept of home rule, which empowers local governments with the authority to govern their own affairs. SB 721 is a direct attack on the constitutional principle of home rule.

Local governments have responded as they have seen fit to the overwhelming evidence on the hazards of secondhand smoke. The 1986 Surgeon General's report on the Health Consequences on Involuntary Smoking and the most recent 1993 EPA report that named secondhand smoke as a class A carcinogen are some of the most notable reports on secondhand smoke.

In 1987 the Kansas Legislature responded to the 1986 Surgeon General's report on the Health Consequences of Involuntary Smoking by the then Surgeon General C. Everett Koop, M.D. The Kansas Legislature felt it was necessary to set a minimum standard in regards to smoking in public places. However, many local governments have not been content with the minimum mediocre standards set forth by the state and have developed their own stricter clean indoor air standards.

With the more than 20 local governments in Kansas that have enacted clean indoor air laws that are stricter than the state law, none have experienced any negative economic consequences as a result of their ordinances. In fact, their ordinances have had a very positive effect on their individual communities.

There isn't another kind of governing body in the world that is more concerned with business than local governing bodies in the United States of America.

Local governments have been very mindful of business concerns with regards to clean indoor air laws. But again numerous studies have shown that clean indoor air laws don't hurt business, except maybe tobacco business.

If a business has a concern with a law in Wichita, Overland Park, Topeka, or Riley County, then tell them to take their concerns to those local governments that made those laws.

Why is the tobacco industry concentrating their efforts at the state and federal level? Because they're relatively ineffective at the local level. (Some say it's because they don't make enough campaign contributions to officials at the local level.) The reason quite clearly is that local governments are more sensitive to the needs of their own community and the health and welfare of their own citizens, not the health and welfare of the giant tobacco companies from North Carolina.

This bill also wants to make private workplace smoking policies a mandatory subject of collective bargaining. Hundreds of businesses have implemented significant clean indoor air policies in order to protect worker safety and to lower maintenance costs. This bill tells businesses that safety issues should be bargaining chips. Well safety should never be bargained away! Businesses are trying to protect the safety of their workers. But the tobacco industry doesn't care about worker safety and other businesses in Kansas, they care only about their business and how much tobacco they can sell.

Please protect the sovereignty of local governments. Please oppose SB 721.

Senate Fed. State
Feb. 18, 1994
Attachment # 12



Kansans for NonSmokers Rights

P.O. Box 204 Topeka, Kansas 66601-0204

Testimony by Dave Pomeroy, Spokesperson, in opposition to Senate Bill #721

An article earlier this week in The Wichita Eagle quoted a gentleman from the Kansas Restaurant and Hospitality Association in support of SB 721 which would virtually eliminate any legal protection non-smokers in Kansas have from the effects of tobacco smoke (classified as a Class A carcinogen by the EPA) in public places.

I found this odd and thought maybe I didn't understand the meaning of hospitality. My dictionary confirmed that it means hospitable treatment and a check of hospitable said it meant "offering a pleasant or sustaining environment." Strange, isn't it, that a hospitality association would try to eliminate what little protection Kansans now have from an inhospitable substance that could even kill them?

I'm a 51-year-old grandfather who has signed up to make my third bicycle trip across our beautiful state. What will greet me and my fellow riders when we stop for meals and refreshment? My experience in traveling across Kansas shows it will be inhospitality from the "the restaurant and hospitality" folks, not smoke-free dining areas. Why shouldn't I be able to take my parents, spouse, children, grandchildren and friends into a smoke-free, healthy environment whenever we go out to eat? You should be looking a legislation designed to protect the health of Kansans if you want a uniform law from Colorado to Missouri and not the profits of the tobacco industry. They already kill over 1,000 Americans each day. Don't let them add my name to their list of victims.

Last year my daughter in Lawrence lost her job when her physician recommended she not work as a waitress in order to avoid cigarette smoke. That had a negative financial impact on a young family trying to get started. Several members of Kansans for NonSmokers Rights have had to make similiar decisions to protect thier health. Freedom of Choice? The American Way? Hardly!

The "hospitality association" says business will suffer if they have to protect the health of their patons. I fail to see how meeting the needs of almost 80% of adult Kansans will hurt restaurants. And what about our children? Aren't they more valuable than tobacco industry profits?

An article in the November 22, 1993 issue of "Nation's Restaurant News" says eliminating smoking (in restaurants) "can both increase revenue and reduce health risks for themselves and employees." A lawsuit by an employee who contracts lung cancer because of secondhand smoke could be quite expensive to a business.

The article says that of the nearly 300 restaurants in Wisconsin that have gone smoke-free, "not one has experienced sustained losses as a result" and that most have shown increases. Some increases have been only slight (3-5%) some have been moderate (1-15%) and others significant (30-60%). Why is this so? First, customers chased away by smoke come back. Other non-smokers who don't eat out because of the smoke start eating out again. Finally, non-smokers are attracted from smoky competitors. It states, most smokers don't stop eating at their favorite restaurant, they just quit smoking in it. There are a lot of dangerous things you can't do in public.

I urge you to defeat SB 721 and work to protect the health of our citizens.

KNSR-Working for clean indoor air.

Senate Fed. State
Feb. 18, 1994
Attachment # 13