

MINUTES OF THE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Landwehr at 1:30 p.m. on March 16, 2011 , in Room 784 of the Docking State Office Building.

All members were present except:

Representative Owen Donohoe – excused
Representative Bob Bethell – excused

Committee staff present:

Norm Furse, Office of the Revisor of Statutes
Katherine McBride, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Dorothy Noblit, Kansas Legislative Research Department
Jay Hall, Kansas Legislative Research Department
Debbie Bartuccio, Committee Assistant

Conferees appearing before the Committee:

Bob Williams, Kansas Association of Osteopathic Medicine (No Attachment)
Philip Bradley, Kansas Licensed Beverage Association (Attachment 1)
Sheila Martin, Business Owner, Hutchinson, KS (Attachment 2)
Paul Weigand, Business Owner, Wichita, KS (No Attachment)
Dr. Jen Brull, President, Kansas Academy of Family Physicians (Attachment 3)
Tonia Carlson, Citizen, Paxico, Kansas (Attachment 4)
Dave Pomeroy, Citizen, Topeka, Kansas (Attachment 5)
Ann Garvin, AARP Kansas (Attachment 6)
Dani Weiter, Kansas University Senior (Attachment 7)
John Neuberger, DrPH, MPH, MBA, Kansas University School of Medicine (Attachment 8)
Karen Bailey, Director of Public Affairs for Penn National Gaming, Developers of
Hollywood Casino at Kansas Speedway (Attachment 9)
Jeff Boerger, President, Kansas Speedway Development Corp. (Attachment 10)
Elizabeth Tranchina, Vice President of Legal Affairs and Compliance Officer for
Peninsula Gaming, LLC, Parent Company of Kansas Star Casino, LLC (Attachment 11)
Sharon Stroborg, Corporate Marketing Director, Butler National Corporation, Co-Manager
of Boot Hill Casino and Resort, Dodge City, Kansas (Attachment 12)
Edward Ellerbeck, MD, MPH, Chair, Department of Preventive Medicine and Public Health,
University of Kansas School of Medicine and Program Director, Cancer Control and
Population Health, Kansas University Cancer Center (Attachment 13)
Jessica Hembree, MPA, Health Care Foundation of Greater Kansas City (Attachment 14)

Others attending:

See attached list.

The Chair recognized Bob Williams, Kansas Association of Osteopathic Medicine, who discussed a “Know Your Doctor” wheel of information distributed by the American Medical Association. The wheel shows by doctor title the length of graduate-level education, the years of residency/fellowship training and the total patient care hours required through training.

HB 2340 – Smoking ban; allow smoking in the bars that sell lottery tickets.

HB 2039 – Smoking regulations; casino exemption deleted.

Chairperson Landwehr opened the hearings on **HB 2340** and on **HB 2039**.

Phillip Bradley, representing the Kansas Licensed Beverage Association, presented testimony in support of the **HB 2340**. The Kansas Licensed Beverage Assn., represents the men and women, in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels and restaurants where beverage alcohol is served. These are the over 3,000 places you frequent, enjoy and the tens of thousands of employees that are glad to serve you.

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We ask this committee to equalize the current ban if repeal is not possible. We ask that all clubs be allowed to have the same smoking exemption that is allowed to grandfathered clubs. There is a current injunction that is effectively allowing just that as a lawsuit that the State is guilty of unequal treatment is adjudicated.

To the crux of the matter, since local options are working and the options of local elections exist already, why would the State and this committee feel it necessary to act? We believe that the only reason is to create a statewide standard. It would seem that if there is to be an amended statute, it must be uniform and include uniform preemption in order to achieve the goal of an equal opportunity and level playing field. Without such, this is just an action for appearances. You have heard from the proponents that an essential reason for this measure is to, pardon the paraphrase, prevent a "patchwork" which is unacceptable. A bill without preemption, allowing local elections and allowing local ordinances guarantees just such a patchwork. And you heard much about a "level playing field". That is an argument about economic impact. If there is no economic impact then there is no need for a "level playing field". It would not matter.

We oppose smoking ban proposals previously introduced, and efforts to limit the choices of adults and businesses about a legal product. Please consider these points.

If this is an air quality issue, why are we not addressing air quality? There are many more air contaminants than environmental smoke and if it is the desire of this body to protect all citizens from them then an air quality standard bill would be in order. This would set the desired "level playing field" and allow all businesses to meet this standard for all the air particulates and gasses. This is the fair and most effective way to address the issue and removes the emotional element. This would allow for the advancement of science and the creative capabilities of industry to work and continually improve lives and living conditions. If however the real goal is to get rid of all smoking, then the legislature should propose the prohibition of smoking and vote on that issue and the subsequent loss to the general fund revenue. Please do not make the hospitality establishments the unwitting victims in a battle between the anti-tobacco activists and the smoking public!

Second, this is an issue of the rights of private businesses to serve their customers. You allow smoking as a legal activity and the establishments that are targeted in this bill are private property with public access, places that all persons have a choice, whether or not they enter and frequent. All are very responsive to their customers. If their customers were to stop coming due to conditions at the venue, then owners would change their place to accommodate and re-win those customer. If not they would soon be out of business. There are a majority of non-smoking venue options.

Third, we ask for an exemption for businesses licensed for primarily on-premise liquor sales. Most local ordinances to expand smoking bans, already allow an exemption for smoke-shops, and cigar bars based upon the belief that those that work or frequent these smoke shops have a reasonable expectation of being exposed to environmental smoke and have made a choice. We believe that the same is true for licensed establishments with proper signage. Further, with that expectation and choice, that individuals are taking responsibility for their own actions and whatever risks that are present. Furthermore, the current crops of city ordinances are considering compromises and exemptions. The highly touted Lawrence ban includes exemptions. And all other state bans include exemptions, including the proponent mentioned VA ban.

Fourth, if you still must include licensed establishments, we ask you to amend this bill to include a class of establishment that would be a "Smoking Establishment" similar to the "cigar bar" exemption. This exemption exists in most statewide bans including California. With a separate permit and requirements, such as adequate signage, time limitations and/or age restrictions to make sure all who approach and enter have the information to make a rational choice knowing that by entering or working here they have the

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expectation of being exposed to environmental smoke.

Fifth allow me to discuss the argument that this will save the state money. We have had smoking bans in this state in large population areas for many years. Some as many as 8 years, where is the savings in these communities? Where are the figures of real KANSAS savings? You were told that bans have this effect and yet are given no proof that that has been the case here in our state. Those should be available now and leads one to question why they are not cited. And if bans would mean return to Kansans of health care premiums, how much have premiums been reduced in those Kansan communities that have bans now? And how much have the premiums been reduced in Nebraska, and Iowa and the other states with bans?

Sixth, the penalty provisions are extremely high and appear to be complaint driven w/o due process allowed under most criminal law. They also apply to areas that the establishments are required to be responsible for w/o the authority to limit access or refuse entry. A "safe haven" clause is needed.

And finally, in review if there is to be an amended statute, we would ask that it be uniform, include exemptions, safe haven and include preemption in order to achieve the goal of an equal opportunity and level playing field. (Attachment 1)

Sheila Martin, business owner, Hutchinson, Kansas provided testimony in support of **HB 2340**. She spoke on behalf of small businesses which have been harmed by the smoking ban. (Attachment 2)

Paul Wiegands, business owner, Wichita, Kansas provided testimony in support of **HB 2340**. He owns a club in Wichita which will be negatively effected if a casino which allows smoking is located south of Wichita. He does not think it is right that the state-owned casinos are exempted but private businesses are not able to allow smoking in their establishment. He believes the local municipality should be able to determine the smoking regulations for their area. (No Attachment)

Dr. Jen Brull, President of the Kansas Academy of Family Physicians (KAFP), as well as a family physician in Plainville, provided testimony in opposition to **HB 2340** and provided support for **HB 2039**. KAFP represents over 1,500 practicing, resident and medical student members from across this great state of Kansas. The mission of the Kansas Academy of Family Physicians is to promote access to and excellence in health care for all Kansans through education and advocacy for family physicians and their patients. As family physicians, we see people of all ages, both men and women, and we work with almost every type of ailment and illness that afflicts our patients. We see the effects of smoking and of secondhand smoke in our practices every day.

HB 2039 would delete the current exemption for smoking on the floor of state-owned casinos. We support it, as it would strengthen the act. The bill would add an exemption for bars who sell lottery tickets to the Kansas Clean Indoor Air Act. We oppose **HB 2340** as it would expand the number of Kansans not protected from the harms of secondhand smoke in the workplace. Secondhand smoke causes premature death and disease in children and in adults who do not smoke. Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer. Scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke. Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke.

Glen Bolger of Public Opinion Strategies conducted a poll of 500 likely Kansas voters and released the results in February. The survey margin error was $\pm 4.38\%$. It found 77% of Kansas voters support the state's indoor clean air law as it currently stands. This support cuts across party and across ideological lines. Even 54% of smokers themselves support the current law. The survey also shows that 84% of the members of the public view exposure to secondhand smoke as a health hazard.

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Scientific data clearly shows that secondhand smoke is a very real public health threat. The Fact Sheets provided show citations of several important studies. The health effects of tobacco use and secondhand smoke are well-documented. And I know you've heard statistics before. As a family physician, the very sickest people I see in my clinic, the ER and our hospital are those who have damaged their lungs, hearts and blood vessels by smoking or by being exposed to secondhand smoke.

In conclusion, we urge you to vote yes on **HB 2039** and vote no on **HB 2340**. Clean Indoor Air is strongly supported in Plainville, in communities across the state, and by 77% of the general public across Kansas. Secondhand smoke is a public health issue, not just a nuisance. Please oppose any bill that would weaken the current Clean Indoor Air Act.

I have provided fact sheets from the CDC for those of you who like to examine the studies and their factual basis. Here is the URL where many additional informative documents are accessible: <http://www.cdc.gov/tobacco/>. (Attachment 3)

Tonia Carlson, a high school and college biology teacher from Paxico, Kansas provided testimony in opposition of **HB 2340**. She stated supporting this legislation creates a massive loophole for businesses and seriously weakens the Clean Indoor Act already in place in Kansas. She commented she has seen the effects of secondhand smoke on people who have to work those jobs in businesses which allowed smoking and that weakening the current law puts people's health at risk. (Attachment 4)

Dave Pomeroy, citizen from Topeka, Kansas provided testimony in opposition of **HB 2340**. He stated if the bill passes there is no doubt in his mind that the health of many Kansans will suffer and someone will eventually die as a result. (Attachment 5)

Ann Garvin, volunteer training leader for AARP Kansas, provided testimony in opposition of **HB 2340**. AARP believes that states should take specific and effective steps to control all forms of pollution which threaten health, safety and quality of life and should enact legislation banning smoking in nonresidential public buildings, on public transportation and in restaurants. This bill will not meet the goals of enhancing the quality of health for Kansans. Her testimony included information discovered in a recent 2011 AARP Kansas survey "Voices of 50+ Kansans: Dreams and Challenges". Secondhand smoke is a serious public health issues. It costs lives and money, and the high percentage of survey and poll respondents expressing concern about secondhand smoke suggests it is an important issue for the majority of Kansans. AARP believes this bill will allow more businesses to basically purchase exemptions by participating in the lottery program and will also overturn the work done by Kansas communities to improve the health of their citizens. Kansas AARP believes a good clean air act, such as the one passed in 2010, with minimum exemptions, has and will continue to enhance the health of all Kansans and visitors to our state, protecting them from secondhand smoke in all public places. It has greatly improved the health of many Kansans already, reducing lost work hours and wages and lessening healthcare related costs. They would submit that in many small communities, Kansans may not have the option of patronizing eating establishments that would remain smoke free. That lack of choice would subject them once again to the perils of secondhand smoke which is a serious health issue. (Attachment 6)

Dani Weiter, senior at Kansas University, provided testimony in opposition to **HB 2340**. She shared her experiences of health issues she incurred when working at establishments which allowed smoking. (Attachment 7)

John Neuberger, DrPH, MPH, MBA, provided testimony in opposition to **HB 2340** and a proponent of **HB 2039**. Passing this bill would indicate a lack of support for a very important public health measure

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for disease prevention and control. Ingredients in environmental tobacco smoke include benzene, carbon monoxide, formaldehyde, arsenic, lead, hexavalent chromium, polonium 210, and tar. Health problems resulting from these exposures include lung cancer, heart disease, low birth-weight, bronchitis, and asthma. A strong clean indoor air law will help reduce both these exposures and the consequent related morbidity and mortality. Passing **HB 2039** would strengthen the current law by eliminating the exemption for casino gaming floors. (Attachment 8)

Karen Bailey, Director of Public Affairs for Penn National Gaming, on behalf of the developers of Northeast Gaming Zone Casino, Hollywood Casino at Kansas Speedway provided testimony in opposition to **HB 2039**.

Penn National Gaming is opposed to this bill aimed at banning smoking in Kansas' state-owned casinos. As members of the hospitality industry, we strive to accommodate BOTH our non-smoking and smoking customers. With construction well underway on our over \$300 million investment in Kansas City, Kansas, we have included in our design the latest ventilation technologies, along with high ceilings and separation, to provide a comfortable environment for all without the need for an outright smoking ban.. While we recognize, this is an emotional, highly contentious issue, as we've seen in every other jurisdiction that has instituted a smoking ban, there are very real consequences that must be considered in terms of the significant economic impact to our business and the State's projected revenues. Penn National Gaming is the owner of three riverboat casinos in the State of Illinois – all of which are located in border markets (Indiana and Missouri respectively). In 2007 the Illinois legislature approved a statewide smoking ban that took effect on January 1, 2008. The impact to gaming revenues was seen almost immediately. Since the implementation of the ban, statewide revenues have decreased by over thirty percent. While some of that decrease can be attributed to the bad economic times we all have experienced over the course of those same three years, it is important to note what Illinois' losses are compared to its neighboring states; specifically Indiana and Missouri. Between FY2007 and FY2010, Missouri's gaming revenues decreased by a rate of 3.1%. For purposes of this testimony the revenues generated by Lumiere Place and River City casinos were removed from the gross revenue figures because they were nonexistent or not in full operation in 2007.

Between FY2007 and FY2010, Indiana's gaming revenues decreased by a rate of 14%; also significantly lower than the losses experienced by the State of Illinois. Also for purposes of this testimony, two new racetrack casinos became operational after FY2007 and their revenue has been removed from the total revenue used to calculate this percentage. Some proponents of smoke free casinos in this state have tried to point to Illinois' Rock Island as a poster child for the success of smoke free facilities due to the increase in revenues generated by the facility between 2007 and 2008. It is important to set the record straight in the matter of the Rock Island Casino which is located on the Illinois/Iowa border. During that same time period the Rock Island Casino completed a major expansion project and relocation with better access to main traffic arteries. The facility that preceded today's facility was abysmal and it was the much needed improvements that drove its revenue growth, not the fact that it went smoke-free. In reviewing Illinois-Iowa revenues between 2007 and 2008, you will find a similar pattern as I described with Indiana and Missouri. You might also hear about the so-called successful experience in implementing a smoking ban in casinos in Delaware. What smoking ban advocates there fail to mention is that while business did indeed come back after the casinos suffered through nearly 25% losses, it was because the State was forced to take dramatic steps to mitigate the negative impact, including expanding the number of slot machines and hours of operation and adjusting the tax rate. Finally, it's important to note that in addition to our smoking customers voting with their feet and taking their business across the border or to Tribal casinos, there is the simple issue of our smoking customers spending less "time on device." An average visit to one of our facilities is around two hours in duration. If much of that time is spent in the parking lot, it's pretty easy to understand the economic consequences of continually inconveniencing a significant portion of our customer base. I urge you to oppose this bill. As an operator who will have to compete with four casinos across the river in Missouri and a Tribal casino in downtown Kansas City, Kansas – all who allow smoking – it will be difficult enough to recapture the State's gaming dollars that have been flooding across the border all these years, without the State tying one arm behind our back with a smoking ban. Through state-of-the-art ventilation, high ceilings and separation we can meet the needs of ALL of our customers and respectfully ask you to support accommodation, no prohibition. (Attachment 9)

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Jeff Boerger, President of Kansas Speedway Development Corporation (KSDC) presented testimony in opposition of **HB 2039**. KSDC is one of the partners representing Kansas Entertainment, LLC (“KE”) – the joint venture partnership between International Speedway Corporation (“ISC”) and Penn National Gaming (“PNG”). As background for the Committee, our development group was chosen by the State to develop the destination casino for the Northeast Kansas Gaming Zone.

In 2001 we opened Kansas Speedway to host major league racing including the premier NASCAR Sprint Cup Series. Kansas Speedway took a risk in western Wyandotte County and was the anchor business that launched what is today a vibrant retail and dining destination called Village West. Village West is home to Cabela’s, Nebraska Furniture Mart, The Legends, four hotel groups and numerous dining and retail businesses.

And now we look forward to the creation of more than \$500 million in new investment in the Village West area with the addition of the Livestrong Sporting Stadium, Cerner’s new office park and of course, the biggest new development for us is our destination gaming facility; Hollywood Casino at Kansas Speedway.

Each year Kansas Speedway attracts close to 500,000 visitors and generates \$242,000,000 in economic impact for the State of Kansas. Our guests fill Kansas hotels, restaurants and shops that generate millions of dollars of tax revenues back to the Kansas taxpayer. Kansas Speedway has been an outstanding corporate citizen and we have given millions of dollars to support numerous charitable organizations in Wyandotte County and the State. Kansas Speedway delivered on its commitments by securing a second NASCAR Sprint Cup event for June 5, 2011 and will soon start constructing a 2.5 mile road course that will host a Grand-AM event for 2012. In addition, the speedway has continued to re-invest millions of dollars in Kansas by installing lights that will be ready this April and upgrading its seating.

KE is building a first class destination casino for Kansas and the Kansas City market. The initial investment is over \$300 million, with an anticipated workforce of over 1,000 full time employees and approximately 1,700 construction jobs. Construction is well under way and we are scheduled to be open first half of 2012. We do not intend to exploit the smoking exemption at our facility. It only applies to the gaming floor, where we are investing approximately \$1.7 million in a state of the art air handling system that help will mitigate second hand smoke.

This exemption will help keep Hollywood Casino at Kansas Speedway at the same competitive level as the five Kansas tribal casinos that are not affected by a State smoking ban. More importantly, the Missouri casinos located just minutes from of our facility are also exempt from their locally-imposed smoking ban. Hollywood Casino’s restaurants, bars, and planned hotel will be subject to the State smoking ban.

It is a fact that the Statewide smoking ban adopted in 2010 includes certain exemptions but not only for the state owned casinos. Compromise and deliberation is a part of any controversial piece of legislation and the Statewide smoking ban is no different in that regard. Because of Kansas Speedway’s continued commitment and the steps Kansas Entertainment has taken to mitigate second hand smoke, I strongly urge you to oppose **HB 2039**. (Attachment 10)

In response to the Chair's question as to their position on **HB 2340**, he indicated they were neutral to the bill.

Elizabeth Tranchina, Vice President of Legal Affairs and Compliance Officer for Peninsular Gaming, LLC, parent company of Kansas Star Casino, LLC, provided testimony in opposition of **HB 2039**.

As you may be aware, Peninsula Gaming is the parent company of Kansas Star Casino, LLC, which has entered into a contract with the State of Kansas to construct, manage and operate the Lottery Gaming Facility for the South Central Gaming Zone. We are investing more than \$260 million in the development

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of the Kansas Star Casino, Hotel and Event Center in the next four years - a project that is expected to create more than 1,600 construction jobs and more than 1,400 permanent jobs. While we are admittedly concerned about our investment, we are equally concerned about the economic and practical impacts to the State of Kansas, including those Kansans who are non-smokers and those Kansans who have no interest in casino gaming. We want to ensure that the State of Kansas receives the full benefit of the economic development resulting from this very significant capital investment. We believe a casino smoking ban will undermine much of the expected benefit.

In short, a casino smoking ban will significantly reduce state tax revenues resulting in reduced budget funding for State programs, fewer jobs and jeopardizing future capital investment in the State.

Impact of Casino Smoking Bans on Gaming Revenue in other Jurisdictions

Objective studies done in other jurisdictions definitively demonstrate that gaming revenues typically decline between 15% and 30% during the first year of implementation of a casino smoking ban. We refer you to two such studies, printed copies of which were provided to the Committee along with written copies of our testimony. Those reports are *Iowa Smoking Ban Economic Impact*, by Norman E. Kjono and *The Final Report to the Iowa Gaming Association*, prepared by Personal Market Research. These reports demonstrate the relatively consistent impacts on gaming revenue during the first year of implementation of casino smoking bans in multiple jurisdictions. Here are a few findings from these studies:

Nevada experienced revenue declines of between 18 % and 25% for slot route operators (for example, slots in bars and convenience stores); We note that Nevada's smoking ban exempts destination casinos;

Delaware experienced an average reduction in gaming revenue of 22%; this reduction was significantly greater than 22% for those properties with competition from jurisdictions that permitted smoking;

Illinois experienced an average reduction in gaming revenue of approximately 20%, with measurable increases in revenue for Iowa and Indiana, competing jurisdictions; **Colorado** experienced an average reduction in gaming revenue of approximately 20%; and

Ontario, Canada experienced an initial reduction in gaming revenue of 25%, with a significant increase in revenue for Detroit, MI casinos, a competing jurisdiction.

Both reports also identify two key factors that amplify the negative impact of a casino smoking ban: One, competing jurisdictions that permit smoking; and two, tribal casinos located within the State that permit smoking. We note that both of these factors are expected to magnify the impact of a casino smoking ban in Kansas. Casinos in Missouri and Oklahoma permit smoking and are within the competitive markets of the Hollywood Casino in Kansas City Kansas and the Kansas Star, in Mulvane, Kansas. The five tribal casinos located in Kansas also permit smoking. As such, we believe the reduction in gaming revenue will be closer to the high end of the range, resulting in an anticipated loss in revenue of approximately 30%.

Negative Consequences for All Kansans from Casino Smoking Ban

This significant reduction in gaming revenue directly translates into a corresponding percentage reduction in tax revenue, thus reducing the State of Kansas General Fund. As such, a casino smoking ban will directly impact numerous state programs with far reaching effects for all Kansans, including increasing budget short-falls and reducing funding for education and infrastructure. Overall, the State of Kansas

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stands to lose approximately Five Hundred Million Dollars (\$500,000,000.00) in the next 15 years from the State's budget should HB 2039 become law.

Financial losses to the State are not the only negative consequences from banning smoking in casinos. A reduction in gaming revenue will require gaming operators to correspondingly reduce payroll expenses, leading to a reduction in jobs in the local community. These lost jobs will impact many Kansas families – not just the families of casino employees.

Further, lost gaming revenue directly reduces funds available for future capital investment in both gaming and non-gaming investments, and indirectly reduces spending by other local businesses that are impacted by significant reductions in employee payrolls.

Alternative Means of Addressing Smoking Health Consequences

Peninsula Gaming recognizes the serious health consequences of smoking and the importance of reducing the impact of smoking on non-smokers in our casinos. We have a proven record of addressing this issue in each of Peninsula Gaming's properties where state-of-the-art heating and air ventilation systems are installed to minimize the impact of second hand smoke. This will include a significant investment in a state-of-the-art heating and air ventilation system at the Kansas Star Casino, Hotel, and Event Center.

The gaming areas of the Kansas Star will be served by air handling units that introduce up to 100 percent outside air. This system utilizes a ventilation rate based on 30 cubic feet per minute per person. In other words, this system provides 30 cubic feet of outside air per minute per person. This is 300 percent of the American Society of Heating, Refrigeration, and Air Condition Engineers (ASHRAE) Standard 62.1, which requires 9 cubic feet of outside air per minute per person. The indoor air quality will be controlled by carbon dioxide space sensors that will measure carbon dioxide (as a measure of occupancy) and will adjust the amount outside air ventilation to ensure that 30 cubic feet of outside air per person is provided.

We have chosen a system design for the Kansas Star that exceeds applicable air quality standards. This system is comparable to the systems in our existing properties. We have made this choice in our existing properties and for the Kansas Star because it is good business and it is good for all of our customers and our employees. While every casino's system is designed differently, in general modern, properly designed ventilation systems are very effective. Air quality studies that have been performed on various casino properties have shown that casinos with modern, properly designed ventilation systems are capable of maintaining high air quality that meets Occupational Safety and Health Administration (OSHA) and American Conference of Industrial Hygienists (ACIH) standards for exposure to environmental tobacco smoke and respirable suspended particulate matter (ETS-RSP) during an eight hour period (the standard work day) and reducing carbon dioxide to recommended levels. The air quality in the casinos studied was normally at or near the quality of outdoor air, and typically comparable to the air quality of non-smoking businesses.

The State can protect non-smokers and employees from second hand smoke without the implementation of a casino smoking ban, through the implementation of properly designed ventilation systems in state-owned casinos. This avoids the extremely high cost of a casino smoking ban for Kansans, measured by the loss of State and local tax revenue, jobs, and investment and passes along the much lower cost of compliance to the private sector.

Peninsula Gaming believes that a significantly lower cost solution that obtains comparable results and is paid for by the private sector (and is justified for business reasons and voluntarily implemented) is a vastly superior solution to a casino smoking ban that will directly and indirectly hurt all Kansans. (Attachment 11)

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Sharon Stroburg, Corporate Marketing Director, Butler National Corporation, co-manager of Boot Hill Casino and Resort, Dodge City, Kansas, provided testimony in opposition to **HB 2039**. She indicated both Boot Hill Casino and Resort and ultimately the gaming revenue paid to the State of Kansas would be negatively impacted by the imposition of a smoking ban at state lottery gaming facilities.

Casinos are a competitive, customer service business catering to adults over the age of 21. Casino customers make a choice when deciding which casino to visit. All current evidence indicates patrons visit a casino with a ban on smoking less frequently and thus, the revenue to the state decreases.

Examples of this include the following: Canada experienced an overall 15% decrease the first 3 months following a smoking ban, with Casino Windsor at 33.8%, Niagara Falls at 8.2% and Casino Rama at 9.2%. Delaware reported a 10-19% decrease after a ban was imposed in 2002, according to a 2006 study by the University of Louisville and the University of Kentucky. New Jersey reported a 19.5% decrease in the 12 days the ban was imposed in Atlantic City casinos in October 2008, confirmed by the states Casino Control Commission. The 2009 Federal Reserve Bank of St. Louis study estimated that Illinois revenue decreased by 20% or \$400 million in the first year. Revenues from smoking areas with slots outperformed the non-smoking slot areas in a range from 60%-185% in 7 Pennsylvania casinos, according to the 2008 State of Pennsylvania study.

On March 9, 2011, the House Executive Committee of the Illinois legislature approved two bills that, if passed, would loosen the restrictions on smoking. The Illinois Casino Gaming Association attributes a majority of the 31% decline in casino revenues to the smoking ban enacted in 2008. During this time Indiana, Iowa, and Missouri (states without smoking bans) have seen revenue increases.

In most states, a smoking ban in casinos becomes even more devastating when surrounding states (Oklahoma, Missouri, Iowa) allow smoking in their casino's and when tribal casinos (Oklahoma, Kansas), under sovereign control, are able to offer smoking in their casinos.

If the smoking is banned, over the 14 years remaining on the contract with Boot Hill Casino & Resort, it is estimated the State of Kansas will see a reduction in revenue of over \$32 million. This does not include lost revenue from any other Kansas casinos. As the lost revenue also will impact the casinos, the state will also see an impact from lost jobs, reductions in sales tax, purchases with vendors, etc.

Dodge City has its own ban on smoking in public places, and specifically exempted Boot Hill Casino & Resort provided a proper air filtration system was installed. In the specification, design and construction of the Boot Hill Casino & Resort, an air handling system that pressurizes the gaming floor to move air and virtually remove the presence of smoke on the gaming floor was purchased. The specialized air handling system cost in excess of \$1.8 million. This purchase was made to allow for the comfort of both smokers and non-smokers on the gaming floor. Boot Hill believes this system adequately addresses the concerns regarding second-hand smoke for our patrons while allowing the State of Kansas to maintain competitiveness with other regional casinos that permit smoking. Additionally, Boot Hill believes the local government in Dodge City is in the best position to determine the appropriate level of regulation in its smoking regulations. (Attachment 12)

In response to the Chair's question as to their position on **HB 2340**, she indicated they were neutral to the bill.

Edward Ellerbeck, MD, MPH, Chair, Department of Preventive Medicine and Public Health, University

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of Kansas School of Medicine and Program Director, Cancer Control and Population Health, Kansas University Cancer Center, presented testimony in opposition to **HB 2340**. It is a bill that would expose thousands of Kansans every day to the hazards of second-hand smoke, a bill that would frustrate the efforts of thousands of Kansas smokers who are trying to quit, a bill that would move us backwards in our efforts to control cancer in the state of Kansas.

If I were to speak to you today from my perspective as a public health professional, I would tell you that the hazards of second-hand smoke are very real and that the people at greatest risk are adults -particularly elderly and middle-aged adults like myself who are at risk of heart disease. And that risk occurs as soon as I step into a smoky bar room. Tobacco combustion products trigger oxidative stress that promotes platelet adhesion and creates an immediate increase in my risk for a heart attack. Indeed, 90 percent of the 65,000 deaths each year that can be attributed to second-hand smoke are due to heart attacks.

If I were to speak to you today as a bar patron, I'd tell you that the clean indoor air bill has made my Monday evenings at our local bar much more enjoyable. The bar seems as crowded as ever, but my clothes no longer stink in the morning and my friends who smoke don't seem to mind stepping outside for a few minutes every once in a while. But facts and science aside, this legislation is about people. And today I'd like to speak to you from my role as a doctor, a primary care physician who takes care of patients like Greg, a 53-year-old man who is highly addicted to cigarettes. He quit smoking two years ago, but prior to the passage of the Clean Indoor Air Act, Greg went to a local bar to enjoy a drink with his friends. That first beer sure tasted good, but it also lowered his resistance. Pretty soon the sights and smells of the other smokers in the bar were too much for him. He bummed a cigarette from another bar patron and the next day found he was back to smoking a pack per day. I'd like to tell you about patients like Kathleen, a lovely young woman in her mid-20s who loves her job working at a local bar. Prior to the passage of the Clean Indoor Air Act, Kathleen was suffering recurrent hospitalizations related to exacerbation of her lung disease --exacerbations most likely triggered or worsened by exposure to tobacco smoke. The Clean Indoor Air Act allowed Kathleen to keep her job without putting her life at risk every time she went to work. I'd like to tell you about Joe, a 64-year-old man who is recovering from a heart attack. At this point, I don't have any problems with Joe going to the bar to have a drink with his friends (although I'll recommend that he have the grilled chicken sandwich rather than the 113-pound cheeseburger with fries and onion rings on the side). But if the bars in Kansas return to their previous smoke-filled state, I'll need to advise Joe and the thousands of Kansans like him with heart disease to stay at home. On behalf of all of my patients like Greg, Kathleen, and Joe, I ask you to let them enjoy the bars of Kansas without putting their health at risk. On behalf of the faculty of the Department of Preventive Medicine and Public Health and the members of the KU Cancer Center, we are opposed to this bill or any other efforts to weaken the protections from second hand smoke that now exist in Kansas. (Attachment 13)

Jessica Hembree, MPA, Program and Policy Officer, Health Care Foundation (HFC) of Greater Kansas City, presented testimony in opposition to **HB 2340** and in support of **HB 2039**. The Health Care Foundation of Greater Kansas City was created in 2003 and seeks to provide leadership, advocacy and resources to eliminate barriers and promote quality health for uninsured and underserved. Our grant making focuses on safety net, mental health, and health lifestyles in six counties in the Kansas City-area, including Allen, Johnson, and Wyandotte in Kansas. They have been fortunate to support both local and statewide smokefree air efforts, including the work of Clean Air Kansas. Their support is based upon a large and established body of evidence that exposure to secondhand smoke is harmful to health. She referred to a report in which after reviewing data over a period of ten years, the researchers concluded that smokefree policies have no negative impact on economic activity in the hospitality sector. The research looked at the hospitality sector in the aggregate and concludes that there are not negative economic consequences that can be attributed to smokefree laws. It does not report on the impact on individual restaurant and bar businesses in the hospitality industry, a sector with a high turnover rate. The Health Care Foundation encourages the committee to oppose **HB 2340** because it weakens protections from secondhand smoke in Kansas. The HCF supports **HB 2039** as it is written and would oppose any efforts to weaken or repeal statewide public smoking restrictions. (Attachment 14)

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Diane Cline, former owner of The Shadow Bistro and Bar in Wichita, provided written testimony only in opposition to **HB 2340**. In May, 2004, she made the decision to go smoke-free in her establishment. That year was by far the best year she ever had at The Shadow and years to come exceeded all of the “smoking” years. She is committed to a clean air state and her experience is an example that a smoke-free policy will not affect business in a poor way and everyone will be healthier. ([Attachment 15](#))

Chad Austin, Kansas Hospital Association, provided written testimony only in opposition to **HB 2340**. Tobacco is the number one source of preventable disease worldwide and is responsible for an estimated 438,000 deaths, or nearly one of every five deaths, each year in the United States. Secondhand smoke, and most recently, “thirdhand smoke”, has been proven hazardous to people's health. As health care providers, the Kansas Hospital Association feels it is necessary to take a stand to stop the use of tobacco. ([Attachment 16](#))

James Dixon, Gardner, MD, President of the Board of Tobacco Free Kansas, Chairman of the Public Policy and Public Health Committee of the Kansas Chapter of the American College of Physicians, provided written testimony only in opposition to **HB 2340**. These organizations have supported the Kansas Indoor Clean Air Law because it limited smoking materials in those public places and work sites where second hand smoke would contaminate the breathing area and cause adverse health to those who choose not to smoke. We continue to support this concept and do not want to have the statewide smokefree law weakened. ([Attachment 17](#))

Clean Air Manhattan, provided written testimony in opposition to **HB 2340**. The bill would allow smoking in a variety of places, undermine the current Kansas law, and would definitely be a giant step backwards for public health. The current law is a major health and economic benefit for the people of Kansas. ([Attachment 18](#))

Roger L. Smith, Tobacco Free Wichita Board, provided written testimony only in opposition to **HB 2340**. The sole provision of the bill allows smoking in bars that sell Kansas lottery tickets. The sale of lottery tickets is not a valid criterion for exemption from the requirements of K.S.A. 21-4010. It does not share the same purpose of the exemption provided last year to state owned casinos, which were exempted to allow competition with tribal casinos that are not subject to Kansas law. In fact, this bill would treat lottery retailers differently, based solely on the possession of a liquor or cereal malt beverage license. The vast majority of Kansans, in excess of seventy percent, want clean indoor air in public places. This bill only serves the selfish interests of a limited number of individuals whose personal behavior harms others, and a few businesses which place a desire for perceived additional profits ahead of the health of their employees and customers. ([Attachment 19](#))

Shirley Voran, Business Owner, Cimarron, Kansas, provided written testimony only in opposition to **HB 2340**. This bill would create a giant loophole in the law by exempting business with both liquor licenses and lottery licenses. It would, in effect, repeal some of the strongest provisions in our statewide smoke free law. There is no need for additional exemptions to the Kansas Indoor Clean Air Act that would allow some business owners to buy their way out of providing protections from second hand smoke for their employees and patrons. ([Attachment 20](#))

Marilyn Hattan, Citizen, Atchison, Kansas, provided written testimony only in opposition to **HB 2340**. She stated it is horrible to have to watch your loved ones die from something that may have been prevented had it not been for tobacco. If the law is changed to smoking where lottery tickets are sold, every business will be selling the tickets. She thinks the current smoke-free law is wonderful and does not want to see it changed. ([Attachment 21](#))

Mary Jayne Hellebust, Executive Director, Tobacco Free Kansas Coalition, Inc., provided written

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testimony only in opposition to **HB 2340**. The more than 200 members, coalitions and network partners within Tobacco Free Kansas Coalition oppose the bill because it would undermine a law whose express purpose was to protect the most people possible from unwanted exposure to secondhand smoke, a known toxin. Offering smoking exemptions to businesses with both liquor and lottery licenses makes a mockery of the concept of a smokefree state law. The bill would negate the gains achieved from the 2010 Kansas Indoor Clean Air law and would allow many establishments, especially in small communities, to again allow tobacco smoke pollution which is a known cause of serious heart and lung diseases and premature death for both workers and customers.

A February 2011 poll of Kansas voters cites 77% of Kansas voters in support of the current Kansas Indoor Clean Air Act because they are free from exposure to secondhand smoke and their time in hospitality arenas is much more pleasant. Since the 1960's, scientific studies at private and governmental research centers have continued to show the dangers of exposure to secondhand smoke for children as well as adults. With Kansas facing severe budgetary crises, much of which is driven by health costs related to Medicaid, health policy decisions must be based on improving health for Kansans. The current law is what Kansans want: 79% of Kansas voters want to give the current law a chance to work before making any changes, and even 54% of non smokers are satisfied with the law. The testimony also included a copy of a report titled "Air Quality Effect of the Kansas Indoor Clean Air Law" from the Roswell Park Cancer Institute. ([Attachment 22](#))

Jace Smith, Citizen, Kansas City, Kansas provided written testimony only in opposition to **HB 2340**. She shared her health problems with asthma when working in a smoking environment and requested the current smoke-free law be maintained. ([Attachment 23](#))

Kevin Walker, Regional Vice President of Advocacy, American Heart Association (AHA), provided written testimony only in opposition to **HB 2340**. Cigarette smoking remains the leading cause of preventable morbidity and premature death in the United States. The American Heart Association has long advocated for strong public health measures that will reduce the use of tobacco products in the United States and limit exposure to secondhand smoke. The AHA maintains that smoke free laws should be comprehensive and should apply to all workplaces and public environments, that there should be no preemptions of local ordinances and no exemptions for hardship, opting out, or ventilation. There is no doubt the law enacted last year by the legislature was popular with Kansans and the level of support continues to grow. ([Attachment 24](#))

Margi Grimwood, Emporia Clean Air Ordinance Committee, provided written testimony only in opposition to **HB 2340**. Since the passage of the Emporia and Kansas smoke free laws, the committee has heard from many Emporians how much they appreciate being able to go into a bar or restaurant and enjoy the smoke free atmosphere. Public health interests should always trump business owner's rights or personal preferences. ([Attachment 25](#))

Mitzi McPatrick, Executive Director, Kansas Advocates for Better Care (KABC) provided written testimony only in opposition to **HB 2340**. KABC is a not-for-profit organization which works to improve the quality of long-term care available in Kansas. KABC opposes expanding smoking exemptions for businesses selling lottery tickets, either now or that would apply as a lottery sales site in the future. Such a step would reduce the quality of health for persons employed at those businesses and Kansans who do business in them. The bill would contribute to the rising tide of health care costs attributable to secondhand smoke and to the suffering that accompanies exposure to secondhand smoke. ([Attachment 26](#))

Tracy Russell, American Lung Association, provided written testimony only in opposition to **HB 2340**. The American Lung Association sees this bill as a significant erosion of the clean indoor air law that was approved last year. The proposed legislation grants an exemption to the smoke-free policy for bars that

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have lottery licenses. This proposal is more than just a weakening of the law, it is a virtual repeal of the clean indoor air law. Bars, as defined in current law, are “any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor...as defined for on-premises consumption.” Allowing such a broad exemption also creates a patchwork of laws across the state. Under this broad definition, bars could be restaurants, bowling alleys, bingo parlors and any other venue with a liquor license. Such a sweeping exemption essentially nullifies existing law. Reverting back to local ordinances eliminates the uniformity of application that business owners favored. If adopted, the bill could result in one standard being applied in a city with a more restrictive ordinance and the county applying the law with this broad exemption. The American Lung Association joins a majority of Kansans in supporting the Kansas Clean Indoor Air Act as a public health initiative that protects Kansans from the impact of secondhand smoke. ([Attachment 27](#))

Abby Brungardt, Citizen, Wichita, Kansas, provided written testimony only in opposition to **HB 2340**. She related her experiences with parents who smoked and a mother who died of lung cancer. She is committed to helping others to understand the importance of staying healthy and has dedicated herself to help raise money to fight lung disease. ([Attachment 28](#))

Caressa Potter, Kansas Citizen, provided written testimony only in opposition to **HB 2340**. She related her family's experiences with asthma and how they have been able to go to many eating establishments and participate in more indoor activities without the worry of an asthmatic episode or a coughing episode leading into shortness of breath. No one needs to be exposed to secondhand smoke. ([Attachment 29](#))

Chris Masoner, American Cancer Society, provided written testimony only in opposition to **HB 2340**. ([Attachment 30](#)) The American Cancer Society has long supported a strong statewide smoke-free law to protect Kansans from the dangers of secondhand smoke. After many years of discussion and debate, the enactment of the Kansas Indoor Clean Air Act during the 2010 Session was a major public health victory for our State. Since the Act took effect, Kansans across the State have enjoyed protection from the harmful effects of secondhand smoke in the vast majority of workplaces. This bill, by allowing smoking to return to bars, restaurants, bowling alleys, and other licensed drinking establishments, would be a tremendous step backwards for the health of our State, and would be contrary to the wishes of an overwhelming majority of Kansas voters. The key components of the Society's position are as follows:

- Secondhand Smoke Is A Public Health Hazard
- Hospitality Workers Deserve Protection from Secondhand Smoke
- The Indoor Clean Air Act Is Working
- The Indoor Clean Air Act Enjoys Broad Support
- Clean Air Policies Do Not Harm the Hospitality Industry
- The So-Called “Casino Exemption” - The American Cancer Society has never supported the casino exemption, or indeed any other exemption in the law, and welcomes genuine efforts to make the law stronger to provide greater protection for more workers.

Tonya Dorf Brunner, Executive Director, Oral Health Kansas, provided written testimony only in opposition to **HB 2340**. Oral Health Kansas is a statewide advocacy organization dedicated to promoting the importance of lifelong dental health by shaping policy and educating the public so Kansans know that all mouths matter. The link between tobacco use and periodontal disease is strong. According to the American Academy of Periodontology, smokers are more likely to have calculus (hard plaque), deep pockets between the teeth and gums, and loss of the bone and tissue that support the teeth. Untreated, periodontal disease can lead to tooth loss. The health benefits of the smoking ban extend to the oral health of thousands of Kansans, and these benefits translate into savings in the state's health care system. Oral Health Kansas stands in support of the current Kansas Clean Indoor Air Act. ([Attachment 31](#))

Louie Riederer, Johnny's Tavern, Overland Park, Kansas provided written testimony only in opposition to

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HB 2340. He has six locations in Kansas City, Johnson County and two locations in Lawrence. He did experience some dips in revenue at some of his locations after smoking restrictions were put into place, but after time, business transitioned, oftentimes even improving. The new law is working, his customers and staff like it. Give the current law a chance before trying to change it. ([Attachment 32](#))

Anna Lambertson, Executive Director, Kansas Health Consumer Coalition (KHCC), provided written testimony only in opposition to **HB 2340**. KHCC is a statewide non-profit organization with the mission to advocate for affordable, accessible and quality health care in Kansas. The important benefits of the Kansas Clean Indoor Air Act are numerous and can have long-lasting positive effects on our state as a whole. The proposed amendments in this bill could weaken the law overall and increase the number of public places that Kansans could be exposed to unhealthy cigarette smoke. ([Attachment 33](#))

Meg Trumpp, MEd, RRTI, AE-C, President, Kansas Respiratory Care Society (KRCS), provided written testimony only in opposition to **HB 2340**. As respiratory therapists caring for the respiratory health of the citizens of Kansas, we are dedicated to preventing lung disease and promoting lung health. We see the impact of secondhand smoke on our patients with asthma, cystic fibrosis, lung cancer and COPD. The States with strong smoke-free laws have lower rates of smokers and fewer children that take up smoking. The KRCS opposes the bill because it provides additional exemptions and weakens the law considerably. An overwhelming 77% of Kansans support the law as written. Even a majority of smokers support the law. Kansans deserve the right to breath clean indoor air. ([Attachment 34](#))

Dan Morin, Director of Government Affairs, Kansas Medical Society, provided written testimony only in opposition to **HB 2340** and in support of **HB 2039** as written. As an organization composed of members who see the results that tobacco use has on people's health every day, we recognize tobacco use is contrary to the mission of promoting and protecting health. It is well documented that tobacco use and health are incompatible and many patients are seen by Kansas physicians for illnesses caused or exacerbated by tobacco use. Smoking creates a health hazard for the surrounding public when someone chooses to do it; therefore we can, and should, stop people from doing it if they are posing a health threat to other people. The Kansas Medical Society has consistently supported a statewide and comprehensive smoking ban with no exceptions. We believe adding exceptions would soften the extensive protections passed just last session which already benefit a vast majority of Kansans. ([Attachment 35](#))

Terri Roberts, J.D., R.N., Legislative Committee, Kansas State Nurses Association, provided written testimony only in opposition to **HB 2340**. The Kansas State Nurses Association remains committed to protecting citizens from secondhand smoke, and promoting public policies that are aimed at embracing healthier life-styles for all. Weakening the Kansas Clean Indoor Air law is not supported by the professional nursing community. ([Attachment 36](#))

Don Yothers, Citizen, Manhattan, Kansas, provided written testimony only in opposition to **HB 2340**. He related he has COPD due to smoking and is now against allowing smoking in public places, including bars. ([Attachment 37](#))

Duane Goossen, Vice President for Fiscal and Health Policy, Kansas Health Institute, provided written only testimony neutral to both bills. Their testimony included copies of the testimony submitted in 2010 to the Health and Human Services Committee and an issue brief describing the 2009 study that the Kansas Health Institute published on the economic impact of the Lawrence smoke-free ordinance on bars and restaurants. ([Attachment 38](#))

Father H. Setter, pastor of All Saints Catholic Church in Wichita and Chaplain of the International Premium Cigar and Pipe Retailers Association, presented written only testimony requesting an exemption be made to allow his Annual Benefit Cigar Dinner. Father Setter is the Founder and Chairman of the

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Setter Foundation, a 501(c)(3) established to raise monies for local charities. To date, he has been able to give about \$200,000 to local charities that has been raised at these annual dinners. (Attachment 39)

Jim Cochran, business owner in Wichita, presented written only testimony requesting an exemption to include facilities that are licensed to operate a bingo game that also sell State lottery tickets. He stated as a direct result of the current smoking ban, he had to close a bingo facility and force Kansas non-profit organizations to raise their funds in a different manner. (Attachment 40)

The next meeting is scheduled for March 17, 2011.

The meeting was adjourned at 3:15 p.m.