

## MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Jim Barnett at 1:30 p.m. on January 29, 2009, in Room 136-N of the Capitol.

All members were present.

## Committee staff present:

Nobuko Folmsbee, Office of the Revisor of Statutes  
Doug Taylor, Office of the Revisor of Statutes  
Kelly Navinsky-Wenzl, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Jan Lunn, Committee Assistant

## Others attending:

See attached list

## Conferees appearing before the committee:

Sandy Jacquot representing Kim Winn, League of Kansas Municipalities  
W. Paul Daegner, Private Citizen  
Ron Hein, Kansas Restaurant & Hospitality Association and Reynolds American, Inc.  
Bill Nigro, Free State Business Rights Coalition  
Father H. Setter, Wichita  
Tom Jacob, Cigar Chateau, Wichita  
Sheila Martin, Hutchinson  
Kurt Diebel, Diebel's Sportsmens Gallery  
Jeff Martin, Armour Amusement  
Larry Doss, Walt's Bar, Wichita  
Derrick Sontag, AFT  
Phil Bradley, Kansas Licensed Beverage Association

Senator Barnett recognized Amy Campbell, Kansas Mental Health Coalition who requested conceptual introduction of a bill that would provide for mental health parity language related to mental health coverage under private insurance. Senator Pilcher-Cook moved introduction of the bill; Senator Kelsey seconded the motion. The motion passed.

Representative Garcia introduced a bill related to patient safety which would provide for establishment of a data bank of available interpreters for certain purposes and development of qualifications for interpreters. Senator Kelsey moved introduction of the bill; Senator Pilcher-Cook seconded the motion. The motion passed.

Senator Barnett introduced Julia Mowers from the Kansas Board of Healing Arts. Ms. Mowers requested a bill that provides authority to the Kansas Board of Healing Arts to conduct background checks for all licensure applicants and allows the Board of Healing Arts to post disciplinary information on their web site. Senator Colyer moved introduction of the bill; Senator Haley seconded the motion. The motion passed.

Senator Barnett opened the hearing for opponents on **SB 25** - State-wide prohibition on smoking in indoor public areas.

Senator Barnett recognized Sandy Jacquot representing Kim Winn, Director of Policy Development and Communications, League of Kansas Municipalities, who testified that to date, 34 cities and 2 counties (covering 54% of the State's population) have adopted local smoking bans (Attachment 1). A spreadsheet was provided showing those ordinances and penalties. She pointed out that if a state-wide smoking ban is legislated, all the ordinances previously in place would become null and void. She requested language in the proposed bill indicating that any city ordinance adopted prior to the effective date of the state-wide smoking ban legislation would continue with full force and effect.

Paul Daegner a private citizen spoke in opposition to **SB 25**. He testified that the legislation violates freedom of choice and allows state government to intrude into the private lives of citizens. Ms. Daegner's

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testimony is attached and becomes part of this record. ([Attachment 2](#))

Ron Hein representing Kansas Restaurant and Hospitality Association and Reynolds American, Inc was recognized. Mr. Hein testified that there is a duty to uphold the obligation to defend the rights of business owners to make their own business choices that might aid or hinder their businesses. One of those is the right to determine their clientele (smoker or non-smoker). He emphasized that the legislation has the power to destroy lives of employees and to close businesses. Mr. Hein stated that government intervention into what should be a private property right decision is unnecessary and unwarranted ([Attachments 3 and 4](#)).

Senator Wysong inquired of Ron Hein whether Reynolds American, Inc., believes smoking hurts people? Mr. Hein responded he could not answer or speak for Reynolds American, Inc. on that subject. Senator Wysong requested follow-up from Mr. Hein, if possible.

Bill Nigro, Free State Business Rights Coalition, spoke regarding the effects of regulating small businesses such as unemployment, small businesses closing, etc. He encouraged committee members to leave this issue to small business owners in the state. ([Attachment 5](#)).

Father H. Setter, pastor of All Saints Catholic Church in Wichita and Chaplain of the International Premium Cigar and Pipe Retailers, testified that tobacco is a legal product in this nation and consumers can choose whether to use the product; business owners have the right to decide whether to allow smoking in their establishments; and from where will tax revenue come (resulting from tobacco product sales) if a smoking ban is implemented. He encouraged a compromise ordinance similar to the one enacted in Wichita ([Attachment 6](#)).

Mr. Tom Jacob, managing partner of Cigar Chateau, sells premium handmade cigars, pipes, tobacco and accessories. The business is considered a “destination shop” with customers of all demographics ([Attachment 7](#)). He encouraged the committee not to take action on **SB 25**, but in the event action is taken, he requested revision of the sales percentage of tobacco from 80% to 60% or accessories such as humidors, pipes and lighters be included in the 80% sales requirement, and that **SB 25** not supercede any smoking ordinance that is already in place or implemented.

Sheila Martin, a tavern owner from Hutchinson, testified relative to the loss of liquor excise tax revenue the state would experience if **SB 25** is passed ([Attachment 8](#)). Ms. Martin indicated that if legislation is favorably passed, her business would be closed. She indicated 85% of her patrons are smokers, and this legislation would put her out of business.

Curt Diebel, Diebel’s Sportsmens Gallery in Overland Park, spoke regarding the rising health care costs and the popularity of proposing substantial savings resulting from smoking bans. He cited that cigarette smoking has declined 43 % from 1980 to 2008 ([Attachment 9](#)), however, no health care cost savings have been realized. Mr. Diebel indicated that passage of **SB 25** would do harm to his business and livelihood. He requested reduction in the 80% tobacco sales threshold should **SB 25** be favorably considered.

Mr. Larry Doss of Walt’s Old Fashioned Hamburgers in Wichita was recognized. Mr. Doss testified about the implementation of the Wichita smoking ordinance and the impact on his businesses ([Attachment 10](#)). He discussed the repercussions he would experience if a smoking ban is implemented. He explained to committee members his business decisions result from being responsive to his customers, and his negative perception of putting restrictions on a legal product.

Derrick Sontag, State Director of Americans for Prosperity, spoke relating to his opposition to **SB 25** and its proposed restrictions on personal choice. He encouraged committee members to allow proprietors to determine their own smoking policies ([Attachment 11](#)).

Phil Bradley representing the Kansas Licensed Beverage Association spoke regarding the impact of local options related to smoking ([Attachment 12](#)) and, the issue of the rights of private businesses to serve their customers. He indicated that if a statewide ban is favorably considered, an exemption for businesses licensed for primarily on-premise liquor sales be included as well as an exemption for a “smoking

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establishment” similar to the “cigar bar” exemption. Mr. Bradley discussed the economic impact on Lawrence (presented at the 1/27/09 meeting) following implementation of a smoking ban. In addition, Mr. Bradley requested that if **SB 25** is passed, additional consideration be given to reducing the radius of smoking outside existing establishments and new construction and to amending criminal penalties/civil actions included in the legislation.

Chairman Barnett call attention to the following written testimony submitted in opposition to **SB 25**:

Jeff Martin, Armour Amusement, Kansas City ([Attachment 13](#))

Whitney Damron, Flint Oak, LLC and Flint Hills National Golf Course ([Attachment 14](#))

Kurt Van Keppel, President, AIKAR, Inc. ([Attachment 15](#))

Tom Devlin, Flint Hills National Golf Course ([Attachment 16](#))

Cathy Nugent, Free State Business Rights Coalition ([Attachment 17](#))

Kim Moffitt, Private Citizen ([Attachment 18](#))

Tom Conroy, Conroy’s Pub, Lawrence ([Attachment 19](#))

Chuck Magerl, WheatFields Bakery and Free State Brewery, Lawrence ([Attachment 20](#))

Senator Barnett closed the hearing on **SB 25** - State-wide prohibition on smoking in indoor public areas.

The next meeting is scheduled for February 2, 2009.

The meeting was adjourned at 2:34p.m.