

1 HOUSE OF REPRESENTATIVES
2 COMMONWEALTH OF PENNSYLVANIA

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3 House Bill 1489

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5 House Health and Human Services Committee

6
7 Main Capitol Building
8 Majority Caucus Room, Room 140
9 Harrisburg, Pennsylvania

10 Wednesday, September 13, 2006 - 10:00 a.m.

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12 IN ATTENDANCE:

13 Honorable George Kenney, Majority Chairperson
14 Honorable Susan Cornell
15 Honorable John Fichter
16 Honorable Patrick Fleagle
17 Honorable Mauree Gingrich
18 Honorable Julie Harhart
19 Honorable Fred McIlhattan
20 Honorable Chris Ross
21 Honorable Katie True
22 Honorable Katherine Watson
23 Honorable Frank Oliver, Minority Chairperson
24 Honorable Todd Eachus
25 Honorable James Harold
Honorable Nick Kotik
Honorable Kathy Manderino
Honorable Ronald Waters

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1 ALSO PRESENT:

2

 Nancy Thompson
 Majority Secretary

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 Elizabeth Yarnell
 Majority Research Analyst

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 Sandra Bennett
 Minority Executive Director

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 Stanley Mitchell, Esquire
 Minority General Counsel

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(Written testimonies submitted by:

Vance Booher, Director
Pennsylvania American Hotel & Lodging Association

Samuel J. Bressi, President & CEO
Susan P. Byrnes Health Education Center

Bruce W. Dixon, MD, Director
Allegheny County Health Department

Sara Helmick, Program Coordinator
Clean Air Council

Denice Robinson, President
Business and Professional Women/PA

Lucinda S. Thomas, Executive Director
Tobacco Free Allegheny)

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1 total picture gathering all information. This
2 hearing does not supersede what we have heard in the
3 past. So it is not what we hear this day forward,
4 will be what this committee considers, but we are
5 trying to take all the information we gather and
6 produce the best bill for Pennsylvania consumers.

7 And we will continue to investigate all
8 the issues presented to us. Chairman Oliver and I
9 are are committed to working with our colleagues on
10 the committee. As you know, this legislation, we
11 thought we had the votes in June. And all 28
12 members participating, it was a fourteen-fourteen
13 tie. So we knew we had more work to do.

14 The sponsor of the legislation,
15 Representative Sue Cornell, is with us here today,
16 agreed to, let's continue to take comments and input
17 from all of those who believe they are impacted.

18 Again, Chairman Oliver and I agreed to do
19 that. This is part of that process. So I thank the
20 Chairman for his help and work and trying to move a
21 bill forward that best serves Pennsylvania's
22 citizens.

23 Chairman Oliver, do you have any opening
24 statement?

25 REPRESENTATIVE OLIVER: No, I don't.

1 CHAIRMAN KENNEY: Thank you.

2 How about, before we take our first
3 testifier, we have the members that are in
4 attendance identify themselves. Starting on my
5 right, Representative Sue Cornell.

6 REPRESENTATIVE CORNELL: Sue Cornell,
7 Montgomery and Philadelphia Counties.

8 REPRESENTATIVE MANDERINO: Good morning.
9 Kathy Manderino, Philadelphia and Montgomery
10 Counties.

11 REPRESENTATIVE GINGRICH: Good morning.
12 Mauree Gingrich from Lebanon County.

13 REPRESENTATIVE TRUE: Good morning.
14 Katie True, Lancaster County.

15 REPRESENTATIVE McILHATTAN: State
16 Representative Fred McIlhattan representing Clarion
17 and Armstrong Counties.

18 REPRESENTATIVE FICHTER: John Fichter,
19 Montgomery County.

20 REPRESENTATIVE KOTIK: Nick Kotik,
21 Allegheny County.

22 REPRESENTATIVE FLEAGLE: Pat Fleagle from
23 Franklin County.

24 REPRESENTATIVE OLIVER: Frank Oliver,
25 Philadelphia County.

1 CHAIRMAN KENNEY: Representative Harhart.

2 REPRESENTATIVE HARHART: Julie Harhart,
3 Lehigh and Northampton Counties.

4 REPRESENTATIVE ROSS: Chris Ross from
5 Chester County.

6 REPRESENTATIVE WATERS: Ron Waters from
7 Philadelphia and Delaware Counties.

8 CHAIRMAN KENNEY: Thank you. Do any
9 members have any opening comments?

10 (No response.)

11 CHAIRMAN KENNEY: Hearing none. Deputy
12 Secretary Joanne Grossi, who has testified before.
13 Joanne, welcome again.

14 MS. GROSSI: Thank you, Mr. Chairman.

15 CHAIRMAN KENNEY: Thank you for your work
16 on this issue. Welcome.

17 MS. GROSSI: Thank you, Mr. Chairman.

18 Good morning, Chairman Kenney, Chairman Oliver, and
19 Members of the House Health and Human Services
20 Committee. My name is Joanne Grossi. I am Deputy
21 Secretary for Health Promotion and Disease
22 Prevention at the Pennsylvania Department of Health.

23 Joining me at the table is Miss Judy
24 Ochs; she is the Director of the Division of Tobacco
25 Prevention and Cessation at the Department of

1 Health.

2 I really want to thank the committee for
3 allowing me the opportunity to testify again on
4 House Bill 1489.

5 Frankly, though, Mr. Chairman, I am
6 baffled as to why we are still debating this issue.
7 As you know, in June of this year, Philadelphia City
8 Council passed a law banning smoking in public
9 places;

10 And as I have testified in front of this
11 committee before and all the surveys taken in
12 Pennsylvania, Pennsylvanians overwhelmingly support
13 a ban on smoking in public places;

14 Furthermore, as I have also testified in
15 front of this committee, there has been no negative
16 economic impact shown in the fourteen other states
17 which have banned smoking in public places.

18 If all of that weren't enough, we now
19 have the Surgeon General's report on the negative
20 health consequences of secondhand smoke. The report
21 is titled, The Health Consequences of Involuntary
22 Exposure to Tobacco Smoke.

23 Let me remind this committee that
24 tobacco-related diseases are the most preventable
25 cause of death in the Commonwealth, killing 20,000

1 of our citizens every year; and that includes 3,000
2 deaths every year from secondhand smoke.

3 These somber facts are re-enforced in
4 this report. According to this report, 50,000
5 Americans die every year from secondhand smoke.

6 Furthermore, the report had six major
7 conclusions, and please let me read four of them
8 from the report.

9 First, the scientific evidence indicates
10 that there is no risk-free level of exposure to
11 secondhand smoke.

12 Second, secondhand smoke causes premature
13 death and disease in children and in adults who do
14 not smoke.

15 Third, eliminating smoking in indoor
16 spaces fully protects nonsmokers from exposure to
17 secondhand smoke. Separating smokers from
18 nonsmokers, cleaning the air, and ventilating
19 buildings cannot eliminate exposure of nonsmokers to
20 secondhand smoke.

21 And fourth, exposure of adults to
22 secondhand smoke has immediate adverse effects on
23 the cardiovascular system and causes coronary heart
24 disease and lung cancer. As Doctor Julie
25 Gerberding, Director of the Center for Disease

1 Control, states in this report, quote, smoke-free
2 policies are the most economic and effective
3 approach for providing protection from exposure to
4 secondhand smoke. The evidence is indisputable:
5 secondhand smoke kills and causes lung disease and
6 heart disease.

7 Mr. Chairman, if this committee is
8 serious about protecting the health of the 350,000
9 Pennsylvanians who work in our hospitality industry,
10 then we are going to ban smoking in public places.
11 You and I and all the members of this esteemed
12 committee get to go to work every day in a
13 smoke-free environment. Certainly, the hard-working
14 Pennsylvanians who work in our bars, restaurants,
15 and bowling alleys have that same right.

16 Now, let me outline how the Department
17 will implement the enforcement of this law. The
18 Department has conducted reviews of other state
19 initiatives for the implementation and enforcement
20 of their smoke-free law, including lessons learned.

21 Based on what we have learned from other
22 state agencies, enforcement of smoke-free laws is
23 primarily self-enforcing, a key role of the
24 Department will be to continue to be a positive
25 resource to both the business community and the

1 public.

2 Depending on the final language that
3 would be included in a clean air bill, the
4 Department of Health will work with our partners
5 (such as sister agencies, local coalitions, business
6 communities, et cetera) to identify the most
7 effective means of enforcing such a law.

8 Perhaps more important than enforcement,
9 however, will be education and awareness, a key role
10 of the Department will be to educate business
11 owners, local and state government officials, and
12 the general public about the new law requirements,
13 and what to do when the law is violated.

14 To educate business owners, the
15 Department will develop business notification
16 pamphlets which will include such things as a clear
17 cover letter from the Department explaining
18 compliance requirements, a no smoking decal to be
19 placed at entrances, a brochure explaining the new
20 law, a smoke-free restaurant fact sheet, and sample
21 language for business owners to communicate the
22 smoke-free policy to their employees.

23 We will work with other state agencies,
24 voluntary organizations, and businesses to include
25 such marketing materials in mailings already

1 scheduled, such as business license renewal notices,
2 newsletters, and payroll.

3 All materials will also be offered via
4 website that can be easily downloaded and printed.

5 As you can imagine, implementation will
6 be an ongoing process, and as the General Assembly
7 moves to protect the health of Pennsylvanians by
8 passing legislation such as House Bill 1489, the
9 Department of Health will be proud to participate in
10 a coordinated effort to make it a success for
11 consumers, restaurants, taverns, and service sector
12 employees.

13 The Department will monitor the
14 effectiveness of the implementation initiatives
15 through outcome reports from such things as a hot
16 line, and we will work with our primary and
17 statewide contractors, and their local youth and
18 adult coalitions.

19 To conclude, Mr. Chairman, many people
20 have argued that this is a personal choice issue and
21 government should stay out of it. I strongly
22 disagree. It is certainly legal for Pennsylvanians
23 to drink, but we do not let them drink and drive.

24 When the actions of one can harm the
25 health of another, government not only has a right,

1 but has an obligation to intervene. In passing this
2 law, you have the opportunity to protect not only
3 the 12 million Pennsylvanians currently alive, but
4 future generations as well.

5 I hope this committee will have the
6 courage and wisdom to pass this bill and make
7 Pennsylvania the 15th state to ban public smoking in
8 public places.

9 Thank you very much, and Miss Ochs and I
10 will now answer any questions you have for us.

11 CHAIRMAN KENNEY: Thank you. Any members
12 have a question? Representative McIlhattan.

13 REPRESENTATIVE McILHATTAN: I guess maybe
14 just a comment. It appears for me that you folks
15 are ready to go, as soon as this bill is passed, you
16 are ready to begin to implement this program, that
17 you talked about, immediately?

18 MS. GROSSI: Yes, sir. As you know, we
19 have primary contractors in all the counties in
20 Pennsylvania, and we already do compliance checks,
21 meaning that we already have to monitor illegal
22 sales to youths; and so we feel like we could do a
23 memorandum of understanding with our sister
24 agencies, such as the Department of Agriculture and
25 LCB and get started immediately.

1 REPRESENTATIVE McILHATTAN: You are going
2 to hit the road running as soon as we get this
3 passed then?

4 MS. GROSSI: Yes, sir.

5 REPRESENTATIVE McILHATTAN: Okay. Thank
6 you very much.

7 CHAIRMAN KENNEY: Secretary Grossi, House
8 Bill 1489, in its present form, is acceptable to you
9 and the Department?

10 MS. GROSSI: Yes, sir.

11 CHAIRMAN KENNEY: And to the Governor?

12 MS. GROSSI: Yes, sir.

13 CHAIRMAN KENNEY: Thank you very much.
14 Oh, Representative Sue Cornell.

15 REPRESENTATIVE CORNELL: Do you have
16 comments on any of the amendments that are being
17 offered right now?

18 MS. GROSSI: The Department supports the
19 bill as it is written.

20 REPRESENTATIVE CORNELL: Okay.

21 CHAIRMAN KENNEY: Thank you.

22 MS. GROSSI: Thank you. Thank you, Mr.
23 Chairman.

24 CHAIRMAN KENNEY: Joanne, do you want to
25 come back to the table for a minute?

1 Chairman Oliver.

2 REPRESENTATIVE OLIVER: If you will just
3 excuse me, please, but is the Department opposed to
4 any amendments at all?

5 MS. GROSSI: I am sorry, Mr. Chairman?

6 REPRESENTATIVE OLIVER: Is the Department
7 opposed to any amendments at all?

8 MS. GROSSI: Well, I would think we would
9 have to see the amendment, but we certainly like the
10 bill the way it is written now.

11 REPRESENTATIVE OLIVER: All right. Thank
12 you.

13 CHAIRMAN KENNEY: Mr. Ridington, welcome.

14 MR. RIDINGTON: Good morning, Mr.
15 Chairman, Chairman Oliver, Members of the Committee
16 and interested parties. I want to thank you for
17 this opportunity to appear before you to present
18 testimony relevant to the committee's desire to
19 examine the impact of a statewide workplace smoking
20 ban on Pennsylvania's tobacco business.

21 First, may I introduce myself. My name
22 is Orrin Ridington, Jr., and I serve as President
23 and Chief Operating Officer for John Middleton,
24 Incorporated. We manufacture pipe tobacco products
25 and pipe tobacco filled cigars. We have two

1 facilities located in Montgomery County in the
2 communities of King of Prussia and Limerick. This
3 year, we are celebrating 150 years of continuous
4 operations within the Commonwealth.

5 In light of the Health Department's
6 testimony, I am not sure I would want to proceed
7 forward to beat my drum. But I think I must because
8 there may be people who begin to chip away at the
9 exemption that has been placed into House Bill 1489
10 that it would allow tobacco-related business
11 operations to proceed to conduct their business
12 operations as they have for the past hundreds of
13 years in Pennsylvania.

14 My intention was to continue forward this
15 morning and read this. But as I watched the members
16 of the committee--and this is not to be demeaning in
17 any way--as I watched the members of the committee
18 listen to the testimony before me, I can see that
19 you fellows, you people, have worked very hard on
20 this issue and some of what you are hearing is
21 beginning to wash over you, and I don't want you
22 zoning out on my message, if you get my point.

23 So I am going to stick real close to my
24 message, and I want to look each and every one of
25 you in the eye as I deliver that message, because I

1 need to see that you are hearing it.

2 And I want you to be able to look me in
3 the eye, so that you understand that my message is
4 sincerely sent.

5 And that is, that if any workplace
6 smoking ban legislation is enacted in this state
7 that does not contain within it an exemption that
8 would allow tobacco-related businesses such as mine
9 to operate unrestricted in our ability to smoke
10 tobacco products, then I would have to exit this
11 state. It is as simply as that.

12 The jobs that we provide, the revenues
13 that we provide, the extended revenues that we
14 provide by doing business with other Pennsylvania
15 businesses would all disappear from the state and
16 never come back again.

17 Now, I am not empowered to speak for
18 Lancaster Leaf. I have been in communication with
19 Bill Powell; he has not empowered me to speak for
20 him. I am not empowered to speak for Parodi Cigars,
21 nor House of Windsor, or several other
22 tobacco-related businesses in this state. But it is
23 hard for me to believe that they would not be
24 affected, that their business would not be affected
25 similar to mine.

1 And I can tell you that the ability to
2 smoke tobacco products within our facilities,
3 without restriction, is absolutely vital to our
4 operations.

5 A quick example of this would be--and I
6 know many of you may have seen this, and I gave this
7 example this morning--and that is, that on a
8 commercial, you will see a brew meister bending over
9 a vat of beer, and in that he dips his ladle down
10 and brings it up and he tastes the beer. Why is
11 that? Because that's what he's selling, he's
12 selling taste, he has to be certain that it is of
13 good quality, it is what the company intends to
14 make.

15 Tobacco product manufacturing is not
16 unlike that. You can't relegate this into a
17 confined space that's been ventilated to the
18 outside. You can't relegate it to going outside.
19 It must be examined and quality controlled within a
20 real world atmosphere.

21 And that's what we have today, that's
22 what we are acquainted with, that's how we conduct
23 our business operations. And to ask us to do
24 anything other than that would require me to change
25 business locations, as simple as that.

1 The other thing I say is, don't be
2 misled. There may be people who may want to tell
3 that you, well, they only manufacture pipe tobacco
4 and cigars. Why not just exempt pipe tobacco and
5 cigar businesses from complying with this law?

6 I can tell you that we compete against
7 all tobacco products. Cigarettes included. So it
8 is important that within my facility, I maintain
9 that ability, also.

10 And who knows? Maybe one day I may
11 decide to be a cigarette manufacturer. It is a
12 legal business and it is a legal product. So it is
13 as simple as that. There is no compromise in this,
14 and I can't offer a compromise. I must implore you
15 to allow the exemption to stand, as it is. And we
16 worked with members of this committee to get that
17 language placed into that bill. Allow that
18 exemption to stand, don't tinker with it, don't
19 strip it out. And I think I just heard the Health
20 people say that they are okay with it, which is fine
21 with me.

22 Now, in closing, I would like to state
23 that I do believe that a change to Pennsylvania's
24 laws concerning smoking within our public facilities
25 is not really necessary. I think one thing that has

1 managed to take place in this state is that
2 levelheadedness and reason have prevailed, and I
3 don't see huge issues with interaction of people
4 sharing restaurants and taverns. But that is not my
5 business. And I won't go any further than say that,
6 that we are not coming out in support of this bill.
7 But I will say that, if one moves, it has to contain
8 that exemption.

9 I would like to thank you very much for
10 your time this morning.

11 CHAIRMAN KENNEY: Thank you.

12 Representative Ross.

13 REPRESENTATIVE ROSS: Yes. Mr.
14 Ridington, just so I can be quite clear on your
15 testimony. Are you exclusively asking for the
16 exemption for your manufacturing facility, or also
17 for retail outlets as well?

18 MR. RIDINGTON: I could be selfish and I
19 could say I have to have it exclusively for my
20 manufacturing facility, and absolutely I do.

21 As it relates to retail outlets,
22 distributors, and such, I can only assume that they
23 would experience the same dilemma in their
24 businesses that I would experience within mine.

25 A retail tobacco store that sells cigars,

1 let's say, it may be very important to allow his
2 customers to sample that product within the store,
3 to smoke that product within the store. A lot about
4 cigars and pipe tobaccos has to do with a bonded,
5 shared experience; and nowadays, it is hard to find
6 that, except in such stores.

7 REPRESENTATIVE ROSS: So by extension, if
8 we went down to the local convenience store which
9 sells lots of other things but might also sell
10 tobacco, you would ask for the exemption for the
11 convenience store?

12 MR. RIDINGTON: I am not a member of that
13 industry, and I am not going to sit here and try and
14 invent reasons why that should be.

15 REPRESENTATIVE ROSS: And your stated
16 intention to leave the state, would that occur if
17 the exemption was provided to your manufacturing
18 operations but not to your retail operations, would
19 you still leave?

20 MR. RIDINGTON: We have no -- Perhaps the
21 misunderstanding is that John Middleton,
22 Incorporated, has no retail operations; that's why I
23 am unable --

24 REPRESENTATIVE ROSS: I understand.

25 MR. RIDINGTON: -- to speak knowledgeably

1 on that issue.

2 Certainly, with respect to our
3 manufacturing operations, I would have to leave,
4 yes.

5 REPRESENTATIVE ROSS: Okay. But if you
6 were extended the exemption for your manufacturing
7 operations but we didn't extend it to retail
8 operations, would you still feel obliged to leave
9 the state?

10 MR. RIDINGTON: No, sir.

11 REPRESENTATIVE ROSS: Thank you.

12 CHAIRMAN KENNEY: So, Mr. Ridington, let
13 me just -- But House Bill 1489, as written today,
14 you support?

15 MR. RIDINGTON: As it contains the
16 exemption that I have read that it contains, I
17 support.

18 CHAIRMAN KENNEY: So as long as it
19 contains the language that's in the bill, all
20 workplaces of any manufacturer, importer or
21 wholesaler of tobacco products of any tobacco leaf
22 dealer or processor and all tobacco storage
23 facilities, if they are exempt, you support this
24 bill?

25 MR. RIDINGTON: Absolutely.

1 CHAIRMAN KENNEY: So you support House
2 Bill 14 --

3 REPRESENTATIVE MANDERINO: No, that's not
4 what he said.

5 MR. DASKAL: You are not supporting the
6 bill.

7 MR. RIDINGTON: I support the exemption.
8 I would like to correct that. I support the fact
9 that the exemption exists in there.

10 Now, supporting the smoking ban, I was
11 clear on that, a few minutes ago, when I said I am
12 not here arguing that there should be a ban on
13 smoking in workplaces in Pennsylvania. I am merely
14 stating that should the --

15 CHAIRMAN KENNEY: But as a compromise,
16 you would support this?

17 MR. RIDINGTON: As a --

18 (Laughter.)

19 MR. RIDINGTON: Let me be clear. Any
20 legislation, be it House Bill 1489 or some bill in
21 the future that relates to workplace smoking ban
22 enactment in the State of Pennsylvania, must contain
23 within it the exemption that you just read.

24 CHAIRMAN KENNEY: Okay. Thank you.

25 MR. RIDINGTON: Okay? And beyond that, I

1 have no comment.

2 CHAIRMAN KENNEY: Okay.

3 (Laughter.)

4 CHAIRMAN KENNEY: That's what I wanted to
5 hear, beyond that. Okay. Good. Thank you.

6 MR. RIDINGTON: Thank you very much.

7 CHAIRMAN KENNEY: Doctor Kolls of
8 Children's Hospital of Pittsburgh. Welcome, Doctor.

9 DOCTOR KOLLS: Good morning, Mr.
10 Chairman, Members of the Committee. I am Jay Kolls,
11 I am Chief of Pulmonary Medicine, Allergy, and
12 Immunology at Children's Hospital of Pittsburgh. I
13 have been studying lung disease for over 15 years.
14 I am a practicing pediatric pulmonologist, and I see
15 children with asthma. We also see children in --
16 out at -- actually in the school districts with
17 asthma, so we don't make them come to the Children's
18 Hospital of Pittsburgh, we go to them.

19 And it is very clear that environmental
20 tobacco smoke is a major factor in pediatric lung
21 disease at several levels. And I wanted to kind of
22 outline to the committee, at least on a scientific
23 level, what are the potential issues here.

24 So one is tobacco smoking increases the
25 risk of infection. And it does so by the lung.

1 Actually, just sitting here in the last
2 20 minutes, we have probably breathed in, you know,
3 about a hundred gallons of air; and so, the lung
4 is/has tremendous exposure to the external
5 environment, probably more so than any other organ,
6 including our gastrointestinal tract if we eat three
7 meals a day.

8 So the lung is constantly bombarded with
9 particulates that we handle. And the lung has
10 developed some very sophisticated resources to deal
11 with that. And probably the most sophisticated
12 resource that we have is cilia. So cilia are little
13 hairs on the epithelium that basically move mucus up
14 and particulates up and out of our lung.

15 And it is unfortunate that cigarette
16 smoke basically poisons these cilia and prevents
17 them from working, and it does so almost within
18 minutes of contact, and it persists for about six
19 hours after the exposure; so a child, eating, being
20 exposed to cigarette smoke in at the restaurant is
21 probably susceptible to viral infection within
22 several hours after this. And this has been clearly
23 shown.

24 But, typically, with the number one cause
25 of pediatric hospitalization in the wintertime:

1 bronchiolitis.

2 The United States currently has about a
3 hundred and ten thousand admissions for
4 bronchiolitis to Children's Hospital from November
5 to March. Both in Philadelphia and Pittsburgh are
6 filled with these kids. Environmental tobacco smoke
7 has been shown to be the number one risk factor for
8 this.

9 And, in fact, this is such a health
10 problem that during the winter months, we actually
11 have to cancel elective surgery and cancel some of
12 the health services that we administer.

13 So I think a ban on public smoking would
14 not only improve the health of the employees, but
15 have a significant improvement in pediatric health;
16 and also, our ability to deliver our health care to
17 the patients that we are trying to serve.

18 Secondly, environmental tobacco smoke has
19 been actually shown to affect lung development. And
20 this is also very critical.

21 So your lungs are probably -- We all know
22 that premature babies have trouble with respiratory
23 problems, they are on oxygen, and sometimes they
24 require mechanical inhalation.

25 This is the reason why, is because the

1 lung is the last organ to mature during pregnancy.
2 And so. And the lung continues to mature even after
3 the baby is born; so within the first two months,
4 the lung is still developing. Exposure, both
5 prenatal and postnatal tobacco smoke, can affect the
6 development of the lung. These children have lower
7 lung function as adults.

8 And you reach your maximal attained lung
9 function by about age 20. From age 20 to 30, your
10 lung function is pretty stable.

11 But like a lot of things in health, from
12 about age 30 on, it starts going downhill. And so,
13 you start losing about, you know, a hundred CCs a
14 year, about one percent of your lung function, per
15 year, from age 30 on to -- as you get older.

16 If you start at a lower lung function,
17 you are still losing that one percent per year. And
18 so, if you are at age 30 and you have a hundred
19 percent of your lung function and you get to age 60,
20 you are down to about 75 percent.

21 However, if you have been exposed to
22 environmental tobacco smoke significantly, or you
23 have chronic lung disease and you are starting at 70
24 percent, you are going to be down to about 45
25 percent. And about 30 percent is where we consider

1 a lung transplant.

2 So this is why about 15 to 20 percent of
3 adults that have chronic lung disease (emphysema,
4 chronic bronchitis), never smoked in their life, but
5 they probably had reduced lung growth, lung
6 development.

7 And so, one thing that we do as a
8 pediatric pulmonologist is maximize lung growth in
9 every chronic lung disease we treat, whether it is
10 prematurity, whether it is cystic fibrosis, whether
11 it is asthma. And avoiding environmental tobacco
12 smoke is a major part of our health care delivery to
13 these patients.

14 So, in my judgment, if there is anything
15 we can do to eliminate environmental tobacco smoke,
16 it is critically important, not only in improving
17 child health, but also in improving our ability to
18 deliver other health and human services to the
19 pediatric population.

20 Thank you.

21 CHAIRMAN KENNEY: Thank you, Doctor
22 Kolls.

23 Representative Fleagle.

24 REPRESENTATIVE FLEAGLE: Thank you, Mr.
25 Chairman.

1 Doctor Kolls, I believe it was either in
2 this morning's Harrisburg Patriot or yesterday's
3 that several hospitals have banned smoking on their
4 entire campus. And I was curious if the Children's
5 Hospital of Pittsburgh and surrounding hospitals
6 have banned smoking on their campuses?

7 DOCTOR KOLLS: Yes, we do. And also in
8 the planned new hospital in Lawrenceville, is a
9 green hospital, it will have banned smoking on that
10 campus. And our current physical plant, we are next
11 to Presbyterian Hospital and Presbyterian has a
12 smoking area that's --

13 REPRESENTATIVE FLEAGLE: Do you still
14 have a smoking area? And do you think that will
15 continue?

16 DOCTOR KOLLS: Well, we hope that that
17 will cease to continue. The Children's Hospital
18 right now is a separate entity from Presbyterian, so
19 I don't have much impact on their policy at the
20 current time.

21 REPRESENTATIVE FLEAGLE: What percentage
22 of health care workers do you think smoke? Just a
23 guess.

24 DOCTOR KOLLS: It is significant. And
25 among respiratory therapists and nursing, pediatric

1 nursing, I would say it is about 30 to 40 percent.

2 REPRESENTATIVE FLEAGLE: And what's the
3 general population?

4 DOCTOR KOLLS: It is about --

5 REPRESENTATIVE FLEAGLE: I am not asking
6 for specifics.

7 DOCTOR KOLLS: Yeah. It is about 25
8 percent. So it is a little bit higher in nursing.
9 Although, I think with -- It's been declining over
10 the last five years.

11 REPRESENTATIVE FLEAGLE: Okay. Thank
12 you, Doctor.

13 Thank you, Mr. Chairman.

14 CHAIRMAN KENNEY: Representative Cornell.

15 REPRESENTATIVE CORNELL: Thank you, Mr.
16 Chairman.

17 Thank you, Doctor Kolls, for being here
18 and your testimony. Have you seen any statistics
19 from any other states who have enacted smoking bans
20 that show that there has been a reduction in
21 respiratory infections or lung disease?

22 DOCTOR KOLLS: Well, it is clearly well
23 documented that control of environmental tobacco
24 smoke within the home reduces asthma exacerbation
25 rates and reduces childhood respiratory infection

1 rates. That that's very clear.

2 In terms of delivery of other health
3 services, like during the winter months, in terms of
4 actually an impact in instances of infection rates,
5 that would be harder to show because it is
6 multifactorial there.

7 But clearly, in terms of asthma
8 exacerbation rates and complications of respiratory
9 infection (like pneumonia) has been shown to be
10 reduced by environmental tobacco smoke control and
11 social control.

12 REPRESENTATIVE CORNELL: Thank you.

13 CHAIRMAN KENNEY: Representatives?

14 Hearing none, Doctor Kolls, thank you
15 very much.

16 DOCTOR KOLLS: Great. Thank you.

17 CHAIRMAN KENNEY: Jim Mann, Pennsylvania
18 Tavern Association. Welcome, Jim.

19 MR. MANN: Mr. Chairman, Members of the
20 Committee, thank you for inviting the Pennsylvania
21 Tavern Association to present testimony today. The
22 Tavern Association is a nonprofit organization
23 established to protect and preserve thousands of
24 small businesses across this Commonwealth, and
25 appreciate the opportunity to testify before you

1 today.

2 Unfortunately, we didn't get a
3 confirmation on our ability to testify at this
4 committee hearing until this past Friday and were
5 not able to get officers or board members from the
6 association to present. And, with that, I break a
7 12-year streak of never appearing before a
8 committee, Mr. Chairman, and present testimony, and
9 I do so today.

10 CHAIRMAN KENNEY: You are welcome.

11 (Laughter.)

12 MR. MANN: Now, we have been talking
13 about smoking bans for quite some time now. And
14 throughout all of these discussions, the
15 association's position really has not changed. We
16 oppose a smoking ban, as it is an infringement on
17 the individual's ability to meet market demands.

18 Now, we would like the committee to
19 understand that this isn't pro-smoking or
20 anti-smoking position. Tobacco, today, is a legal
21 substance in Pennsylvania. Taverns are
22 adult-oriented establishments in which persons over
23 the age of 21 go to engage in adult-oriented
24 activities. Children are not permitted in taverns
25 without parental supervision.

1 And until such time as tobacco products
2 are made illegal, the decision to permit smoking in
3 taverns is, and should continue to be, a decision
4 made by the proprietor. That's been our position
5 from the beginning.

6 Now, back about a year ago, one of the
7 first hearings, we talked about the Ridgewood Study.
8 And that was a New York study that talked about the
9 impact of smoking bans on the Empire State. And I
10 won't go into the details. And you have received
11 all of that data.

12 But today, the only opposition that the
13 anti-tobacco lobby has given to this study, their
14 sole reason for discrediting it, is that, it was
15 paid for by the New York State equivalent of the
16 State Tavern Association.

17 If this is the sole reason to dismiss a
18 study, then all studies proffered by the
19 anti-smoking lobby showing a positive impact of
20 smoking bans should be dismissed in like fashion.
21 However, we believe that there are more compelling
22 reasons to look at these positive studies with a
23 jaundiced eye.

24 For example, the anti-smoking lobby's
25 California study showed revenue growth in the

1 hospitality industry after implementation of a
2 smoking ban; but, if you review the US Department of
3 Revenue figures during that time frame, smoking ban
4 states like California actually show lost bar and
5 restaurant revenues in the tens of billions of
6 dollars when compared to revenue growth in
7 smoker-friendly states.

8 That statement actually holds true for
9 every state that instituted a smoking ban, except
10 for Utah, which, by the way only about one and a
11 half in ten people smoke in that state. The
12 anti-tobacco lobby hides this fact by doing an
13 apples and oranges comparison by showing overall
14 growth in hospitality industries.

15 In all of these studies that I know of,
16 they use numbers from fast-food restaurants and
17 take-out joints and other places that have nothing
18 to do with the tavern industry. They completely
19 ignore bowling centers, bingo parlors, pool halls,
20 and many other places where smokers tend to
21 congregate.

22 More recently, the anti-tobacco lobby has
23 promoted studies showing revenue growth in New York
24 City by using pre-ban and post-ban revenue numbers.
25 And these numbers sound great--they really do--until

1 you learn that the pre-ban revenue numbers they use
2 include six months in early 2002. That's
3 immediately after the 911 attacks when most of the
4 businesses downtown were shut down and relocated
5 across the river in New Jersey and very few tourists
6 were even allowed to frequent the Big Apple.

7 The anti-tobacco lobby talks a great deal
8 about the ban in the State of Delaware and how it
9 didn't hurt the slot parlors. But the Delaware and
10 New Jersey gaming executives that met at the Gaming
11 Congress here in Pennsylvania last year would tell a
12 different story.

13 When Delaware instituted its smoking ban,
14 they lost about 12 percent of their revenue almost
15 instantly. New Jersey folks loved the Delaware ban:
16 New Jersey casinos saw an increase in their gaming
17 revenue of nearly the same amount at the same time.

18 Now, the anti-tobacco lobby will infer
19 that if you ban smoking in all public places, more
20 nonsmokers will come out and taverns will actually
21 do better. Plus, they argue, the state will save
22 millions of dollars in health care costs. However,
23 there has never been a study to show that nonsmokers
24 who don't frequent taverns today would be more
25 likely to do so after a ban is implemented. And as

1 I understand it, states with smoking bans are
2 dealing with the very same health care cost
3 containment problems that we here in Pennsylvania
4 deal with today (and in some cases, they are worse
5 off).

6 More recently, in April of this year, the
7 State of New Jersey banned smoking in all public
8 places except casinos. The reasoning for the casino
9 exemption was pretty plain: people like to smoke
10 when they gamble. And banning smoking in the
11 casinos would cost the casinos and the state money.

12 While that argument makes sense (you
13 know, letting adults engage in adult activities in
14 places that only adults are permitted), failing to
15 include the state's taverns in their exclusion
16 doesn't.

17 Yesterday, the association staff talked
18 to Larry Shuemate, Jr. He owns Larry's Bar in
19 Millville, New Jersey. This small bar has been in
20 Larry's family for 34 years. His place has seating
21 for about a hundred people.

22 And, you know, he's a typical bar.
23 Millville, by the way, is about smack-dab between
24 Atlantic City and Chester, PA.

25 Since the smoking ban went into affect,

1 Larry's food sales are down 25 percent, his
2 on-premise liquor and beer sales are also down 25
3 percent. His sale of beer, wine, and spirits for
4 off-premises consumption (he has what's called a
5 package store in the State of New Jersey), they
6 haven't changed.

7 When asked if he had any message to
8 convey to you today, Larry said, in 34 years of
9 doing business, I have never seen it this bad.
10 Period.

11 I also represent the Bowling Proprietors
12 Association of Pennsylvania. We are proud of the
13 fact that Pennsylvania has over 400 bowling centers,
14 and the vast majority of which are family owned and
15 family operated. One of our proprietors, a fellow
16 by the name of John Perper from the Allentown area,
17 also owns Playdrome Woodcrest and Finnegan's Pub.
18 This place has 34 lanes and 21 tables in their
19 billiard room. They are located in Woodcrest, New
20 Jersey, and it is about a half-hour commute from
21 downtown Woodcrest over the Walt Whitman.

22 John knows how to run a bowling center.
23 He sent me comparative numbers for the months of May
24 through August for 2005 and 2006. And since New
25 Jersey's ban went into effect, John's bar sales are

1 down \$12,461; his billiard receipts are off \$22,708;
2 and his bowling receipts are down \$38,683. In
3 total, this family-owned, family-operated bowling
4 center (which is, like I said, a little further away
5 from Pennsylvania by about a half hour), lost
6 \$74,000 in the three months that the New Jersey ban
7 has been in effect.

8 John has told me that in his 40 years
9 that his family has run this center, they have never
10 lost sales year to year. When asked the same
11 question that we asked Larry, he said, don't let
12 anyone tell you that the smoking ban does not have
13 an effect on small business. It has been
14 devastating.

15 Now, most recently (and this is around
16 the 4th of July holiday), we received the US Surgeon
17 General Richard Carmona report (and it is about 729
18 pages) proclaiming that the passive smoking debate
19 is over. And to be candid, I haven't read 729 pages
20 of anything. But one of the more striking comments
21 from the report, the Surgeon General's press
22 releases, and his accompanying materials on the
23 report claim that even brief exposure to secondhand
24 smoke has an immediate adverse effect on the
25 cardiovascular system and increases the risk for

1 heart disease and lung cancer, and he attributes
2 these findings to the report.

3 Now, rather than give you my impression
4 of this report and its meaning, I offer you the
5 perspective of Doctor Michael Siegel. Doctor Siegel
6 is a licensed physician, a professor of social and
7 behavioral sciences at Boston University's School of
8 Public Health, and he's an outspoken anti-smoking
9 activist.

10 On this report, Doctor Siegel says, there
11 is absolutely no evidence to support this claim.
12 Certainly, no evidence is presented in the Surgeon
13 General's report to support this claim. And
14 certainly, the Surgeon General's report draws no
15 such conclusion.

16 It is also quite misleading to tell the
17 public that a brief exposure to secondhand smoke
18 increases the the risk of lung cancer. There is
19 certainly no evidence for this, and the Surgeon
20 General's report itself draws no such conclusion.
21 In fact, the report makes it clear that most studies
22 linking secondhand smoke and lung cancer studied
23 nonsmokers within many years of intense exposure.

24 By the way, the report compiled
25 approximately, I think 49 different studies that

1 have been done since the 1970s. Seven or eight of
2 them have found a link between secondhand smoke and
3 lung cancer. What that means is 41 or 42 of them
4 haven't.

5 It appears not to be simply an innocent
6 misrepresentation of scientific evidence. Instead,
7 it appears to be an intentional manipulation in
8 order to make public claims that are more startling
9 than they would otherwise be in an effort to promote
10 a desired public policy outcome.

11 There is more to his statement. I talked
12 to Doctor Siegel this morning. He stands by those
13 comments, and unfortunately the anti-smoking lobby
14 has basically vilified him for these comments.

15 The association believes that, you know,
16 to their credit, the Pennsylvania Department of
17 Health, the American Cancer Society, the Coalition
18 for Tobacco-Free Kids and Smoke-Free PA have all
19 made effective use of their portion of the tobacco
20 settlement money.

21 By all accounts, smoking among kids and
22 adults is down. Through education, counseling,
23 enforcement, and public service advertising
24 campaigns, they have proven a valuable point: a
25 child who does not smoke is more likely to grow up

1 to be an adult who does not smoke.

2 And rather than banning smoking in all
3 public places--an unprecedented restriction on the
4 use of a legal product in Pennsylvania-- the Tavern
5 Association urges the Commonwealth to provide these
6 organizations with even more resources to accomplish
7 this laudable goal.

8 Now, during previous meetings of this
9 committee, there have been various alternatives
10 offered in compromise between the current state of
11 the law and banning smoking in all public places.
12 Most notably, Representative Manderino's amendments
13 A7819 and A7847, and Representative Myers' amendment
14 A7805, showed some real promise.

15 Further, there are two amendments for
16 this bill proposed by Representative Ron Miller from
17 York County. He's not a member of this committee.
18 But his amendments A8272 and A8273 show equal
19 promise.

20 Now, I can't say whether the association
21 supports or opposes these amendments. But I do know
22 that the association leadership has been and will
23 continue to be willing to sit down and discuss these
24 and any other ideas that might facilitate the
25 purposes of the anti-smoking lobby, while at the

1 same time accommodating small business owners who
2 cater to the interests of an adult-only constituency
3 and the demands of the marketplace.

4 In the course of this testimony, I really
5 don't know if I have dispelled any doubts you might
6 have about the impact of a smoking ban and what it
7 would have on Pennsylvania's taverns. There are so
8 many conflicting studies that you may well do well
9 just to take a moment and throw them away and use
10 some basic common sense.

11 Before you attempt to pass a smoking ban
12 in this Commonwealth, I urge you to visit the
13 neighborhood bars in Erie, in Johnstown, Pottsville,
14 Pittsburgh, Scranton, or even nearby Steelton, and
15 meet the people who frequent these establishments.
16 The corporately-owned, chain restaurants will
17 survive a smoking ban: they have shareholders and a
18 huge financial cushion to fall back on. My
19 neighborhood bars will suffer the most: some of
20 them will lay off staff, while others will close
21 down within a year.

22 I thank you for your attention to this
23 testimony, and I will attempt to answer any
24 questions that you have at this time.

25 CHAIRMAN KENNEY: Representative

1 McIlhattan.

2 REPRESENTATIVE McILHATTAN: Mr. Mann, as
3 I heard your testimony, there is two compelling
4 things that you are trying to convince me of, and
5 one is you are trying to convince me that if you
6 can't smoke in the bar, then you won't go to the
7 bar; is that correct?

8 MR. MANN: That is correct, sir.

9 REPRESENTATIVE McILHATTAN: Where do all
10 of these people go? Do they stay home? What do
11 they do?

12 MR. MANN: Well, for example, let's
13 say --

14 REPRESENTATIVE McILHATTAN: They can't go
15 anywhere else and smoke either, in another person's
16 bar.

17 MR. MANN: Well, sir, if I have, say, a
18 steelworker who is married and has three kids. He
19 says, honey, I am going to go to the bar. He goes
20 to the bar and he smokes. He has a few beers and
21 then he comes back home. Under this proposal, that
22 steelworker with three children stays home and
23 smokes in front of his three kids. They will stay
24 home. Some of them will stay home for good. Some
25 of them will only stay home for a few months.

1 REPRESENTATIVE McILHATTAN: You mean they
2 won't go to the bar because they can't smoke a
3 cigarette?

4 MR. MANN: If I am a smoker and my
5 parents were smokers and my grandparents were
6 smokers, smoking is a way of socialization. I go to
7 the bar to sit down with my friends, smoke a
8 cigarette, drink a beer, and watch the football on
9 Monday nights. If I can't do that, why wouldn't I
10 grab a case of beer, turn on the TV at home, and
11 invite a few friends over?

12 REPRESENTATIVE McILHATTAN: Okay.

13 MR. MANN: This proposal will have a
14 direct and substantial impact on my client.

15 REPRESENTATIVE McILHATTAN: Okay. The
16 first thing was that, if you can't smoke, you won't
17 go to the bar and that will impact business. The
18 second thing you are trying to convince me of in
19 your testimony is, that secondhand smoke doesn't
20 cause damage to your health; is that correct?

21 MR. MANN: No, sir, that is not correct.

22 REPRESENTATIVE McILHATTAN: Okay.

23 MR. MANN: What I am saying is that the
24 jury is still out on the impact of secondhand smoke.
25 Common sense is, secondhand smoke is bad.

1 REPRESENTATIVE McILHATTAN: It is bad?

2 MR. MANN: Common sense would dictate
3 that it is.

4 REPRESENTATIVE McILHATTAN: Okay.

5 MR. MANN: How bad? Their reports are
6 out there (48, 49 reports). Only seven or eight of
7 them say it is really really bad. The other 41 or
8 42 say there is no impact.

9 REPRESENTATIVE McILHATTAN: Okay. I just
10 wanted to make sure that I understood what you were
11 trying to do. Thank you very much.

12 MR. MANN: Yes, sir.

13 CHAIRMAN KENNEY: Representative Ross.

14 REPRESENTATIVE ROSS: Thank you, Mr.
15 Chairman. And I take your point on the, you know,
16 debate that you are raising on the particular
17 language in the Surgeon General's report. But do
18 you have any reason to dispute the information that
19 we have heard here today, earlier, from Doctor
20 Kolls?

21 MR. MANN: I think what the Doctor said
22 is that secondhand smoke and smoking in general has
23 a direct impact on the development of children's
24 lungs. I don't dispute that at all.

25 REPRESENTATIVE ROSS: Okay.

1 MR. MANN: I think smoking around kids is
2 probably about the worst thing that you can do.

3 You are not allowed to bring your kids in
4 a bar. Kids aren't allowed to be in a bar
5 unaccompanied. They have to have an adult.

6 There is an adult somewhere along the
7 lines that makes the decision to expose their
8 children to secondhand smoke, sir. And while I
9 can't control that, I think I agree with the Doctor:
10 you should not expose kids to smoking.

11 REPRESENTATIVE ROSS: So generally,
12 reducing the opportunities and the locations where
13 children wind up being presented with secondhand
14 smoke isn't something that you all would dispute.

15 I think you have raised a challenge for
16 us here, which is, you know, going to be testing us
17 a little bit; and that is, the presentation of some
18 economic disadvantages perhaps of a transitory
19 nature compared to what we have seen from all the
20 medical personnel that have testified before us,
21 some real serious public health hazards and
22 concerns.

23 And, you know, I am not sure that I have
24 been persuaded by your testimony that the long-term
25 goal of trying to reduce the locations where smoking

1 is in the environment and in the atmosphere is a bad
2 one.

3 And I also am concerned about: if you
4 remember when the Tavern Association testified the
5 last time, one of the testifiers proudly announced
6 that he brought his 12-year-old into the bar on a
7 routine basis to learn the business, and that was a
8 matter of concern to me as well.

9 So I think we have got a challenge there.
10 And I am not sure that we should necessarily simply
11 say that the economic disadvantages that you
12 perceive coming your way or the bowling alleys
13 perceive coming their way should, in and of itself,
14 simply stop the ban.

15 But maybe we ought to be thinking a
16 little bit about how to find ways to mitigate the
17 negative (what I hope to be) short-term economic
18 disadvantages compared to the positive public health
19 benefits that have been broadly testified to.

20 MR. MANN: Representative, to expand on
21 that, we are not saying that business will be bad
22 forever. It may take a year or two--I don't know
23 exactly how long it might take--for some of our
24 local bars to recover.

25 What I am telling you is that I don't

1 think that small family-owned, family-operated
2 establishments like the corner bars in Erie or the
3 corner bars in Clarion can withstand that type of a
4 financial hit. They won't survive. Not all of
5 them.

6 REPRESENTATIVE ROSS: And my response is
7 that there may be ways to mitigate that for them,
8 other than just dropping the ban.

9 CHAIRMAN KENNEY: Representative Kotik.

10 REPRESENTATIVE KOTIK: Thank you, Mr.
11 Chairman.

12 Mr. Mann, I have a question relative to a
13 level playing field when we talk about different
14 organizations and public taverns and public bars.
15 How would this affect, as far as the other places
16 where they are family oriented, such as the American
17 Legion, the VFW, the Moose, the Elks, all of these
18 places would be permitted to have smoking?

19 MR. MANN: How would the bill as it --

20 REPRESENTATIVE KOTIK: As it presently
21 exists.

22 MR. MANN: Well, there is a lot of debate
23 on what exactly this bill does.

24 Now, I have heard at these hearings
25 where, yes, smoking would be banned at the clubs,

1 too. But every press accounting that I have seen
2 subsequent to the amendment says that smoking would
3 still be allowed in the clubs.

4 REPRESENTATIVE KOTIK: Hum-um (no).

5 MR. MANN: I have looked at this
6 language. And, sir, I have drafted language for 12
7 years now. And, to me, this language is both
8 confused and confusing. I have a difficult time
9 telling my client, for sure, that clubs are indeed
10 included in this ban. I just can't do it.

11 REPRESENTATIVE KOTIK: So many of the
12 establishments that you represent can simply go down
13 to the local VFW and have their drink and have their
14 beer and their cigarette or cigar?

15 MR. MANN: That is correct.

16 Now, there are amendments that are
17 proposed, such as Representative Miller's
18 amendments, and Representative Manderino's
19 amendments, and I think they all speak to the issue
20 of an adult-oriented establishment. If you are a
21 place where a kid should not be going to begin with,
22 you make the choice to be smoking or nonsmoking. We
23 find that to be, at least a fair starting point.

24 Right now, as the law exists, it is a
25 level playing field. At least on the smoking

1 issue --

2 REPRESENTATIVE KOTIK: Thank you.

3 MR. MANN: -- the choice is left to the
4 individual proprietor.

5 CHAIRMAN KENNEY: Representative
6 Manderino.

7 REPRESENTATIVE MANDERINO: Thank you, and
8 thank you for your testimony. I don't even know if
9 I am going to offer my amendments. But
10 Representative Miller's are very similar, and I
11 believe that he will, if this comes up.

12 But the point of where I was trying to go
13 to find a middle ground dealt with exactly what you
14 said, adult-only establishments. That may help your
15 taverns who would -- At least the way mine were
16 drafted, parents wouldn't have the option of
17 bringing an under 21-year-old child into the
18 establishment. But because it would be a black and
19 white: you do not bring a child in an establishment
20 that is a smokers' establishment, end of story.

21 But how does that help your bowling
22 alleys and your whatever? Bowling alleys would have
23 to then choose: I am going to be a family-oriented
24 venue and therefore there would be no smoking, or, I
25 am going to be an adult-only venue and I am going to

1 be a smokers' establishment. That's at least how I
2 had drafted it.

3 MR. MANN: Not necessarily,
4 Representative.

5 Bowling centers in the Commonwealth of
6 Pennsylvania, a good portion of them actually have
7 liquor licenses and have restaurants or bars within
8 their establishment.

9 Now, if you can separate them out as
10 businesses and say, look, it is okay to smoke in the
11 bar, but not out on the lanes, that's at least a
12 starting point.

13 REPRESENTATIVE MANDERINO: Okay.

14 MR. MANN: And kids aren't allowed to go
15 in the bar at the bowling center, any more than they
16 are allowed to go into the bar at McGraph's Pub down
17 the street.

18 REPRESENTATIVE MANDERINO: Okay. And
19 just so you know, at least the way I thought the
20 language of the last amendment I had, wouldn't have
21 allowed that.

22 MR. MANN: Okay.

23 REPRESENTATIVE MANDERINO: Now, somebody
24 else's amendment might have. But mine wasn't -- To
25 me, that's the same as a smoking versus a nonsmoking

1 section in the same building and I was getting away
2 from that.

3 I was getting to very specially
4 permitted. Like the guy -- He isn't here to
5 testify, but if you get a chance, take a look at the
6 written testimony of Vance Booher from Mountain View
7 Hotel & Conference Center, where he talked about
8 allowing a permit for the establishment of private
9 smoking clubs.

10 So, again, it is an isolated purpose, it
11 is an adult entertainment, or it is an adult-venue
12 only; that was the only place that I was going and I
13 just didn't want either you to be confused about
14 where I was going or anyone else to. Thanks.

15 MR. MANN: Thank you.

16 CHAIRMAN KENNEY: Representative Cornell.

17 REPRESENTATIVE CORNELL: Thank you, Mr.
18 Chairman. I just wanted to make a comment on the
19 purpose of the bill. Isn't -- It doesn't have much
20 to do with whether children go into bars or who is
21 frequenting these establishments.

22 It is more of a worker protection bill.
23 I think we need to treat all work places the same as
24 we do 73 percent of the other work places that we
25 have--excluding bars, taverns, things like that--

1 right now that get to go to work in a smoke-free
2 environment. I just don't want to lose sight of
3 that fact. That it's -- The purpose is to protect
4 these workers in these bars, establishments.

5 MR. MANN: And respectfully,
6 Representative, if that is the purpose of this
7 legislation, you leave some people out.

8 What you are saying is that you are doing
9 it to protect all workers and yet your language
10 makes exemptions for certain places and certain
11 workers; and you are quantifying the rights of
12 someone who works in a tobacco shop as being
13 greater, or less, depending on your perspective, of
14 those workers that work in a bar; or the ones that
15 work in a banquet facility that does a private
16 event, those that cater to that event, their rights
17 are greater, or less, than those in other places.

18 CHAIRMAN KENNEY: Representative
19 Manderino.

20 REPRESENTATIVE MANDERINO: Maybe by way
21 of further comment, which is why the approach, taken
22 my amendment is worth some serious consideration.
23 Because if you allow smokers-only establishments,
24 they have to be by special permit. And the clincher
25 for the worker, as I envisioned it is, is you allow

1 the worker total eligibility for unemployment
2 compensation. If you can't find another job and he
3 doesn't want to work in a smokers' establishment, I
4 think that goes further than any of the proposals I
5 have seen in trying to protect the workers.

6 MR. MANN: Okay.

7 REPRESENTATIVE MANDERINO: And then,
8 theoretically, folks who are smokers and want to
9 work where they can smoke, can apply for those jobs.
10 And those who aren't smokers and don't want to be
11 exposed to the smoke, can find other jobs. And if
12 they can't find other jobs, the employer who chose
13 to make his establishment a smoking establishment
14 bears the financial risk of that nonsmoking employee
15 through being eligible for unemployment.

16 MR. MANN: Unemployment comp. Yes.

17 And, Representative, to further comment
18 on that, both your amendment and the two Ron Miller
19 amendments do that very thing. They allow a certain
20 window in which an employee, at a licensed
21 establishment that allows smoking, has the option to
22 walk away and find other work and gives them six
23 months of unemployment compensation in which to do
24 it.

25 CHAIRMAN KENNEY: Representative True.

1 REPRESENTATIVE TRUE: Thank you, Mr.
2 Chairman.

3 I just was curious because I know of
4 Doctor Siegel. I was just wondering, in putting
5 together your testimony, how many physicians from
6 Pennsylvania are willing to step forward and agree
7 with Doctor Siegel, have you found any?

8 MR. MANN: Representative, I haven't gone
9 looking so I could not tell you the answer to that.
10 It was only Friday that I actually began writing
11 this testimony, and only Friday that I discovered
12 Doctor Siegel's testimony, and only this morning was
13 I able to confirm that these were actually his
14 comments and could attribute them to him.

15 REPRESENTATIVE TRUE: Okay. Well, I
16 appreciate that. I just, for the record, would much
17 rather give a lot of attention to some of our fine
18 physicians in Pennsylvania and the testimony we have
19 heard in the past as to the debate over secondhand
20 smoking or smoking, period, not only for children
21 but for adults also.

22 I just wanted to say that on the record.
23 And again, as I said, I know of Doctor Siegel. I am
24 not very impressed.

25 MR. MANN: And Doctor Siegel is all for

1 future, please let the committee know what
2 amendments you could support to lend your support to
3 the bill as a whole?

4 MR. MANN: Yes, sir.

5 CHAIRMAN KENNEY: Because that was the --
6 I guess the purpose of this hearing was to further
7 hear testimony, new testimony, updated testimony.
8 But if you could share that with the committee, we
9 would appreciate it.

10 MR. MANN: The association meets, I
11 think, in two weeks, and I will bring that to their
12 attention. And we will try and put together a
13 comprehensive list of proposals that might work for
14 us.

15 CHAIRMAN KENNEY: Now, my legislative
16 district is in Philadelphia, and I guess there is a
17 local Tavern Association.

18 MR. MANN: Yes, sir.

19 CHAIRMAN KENNEY: Which may or may not
20 have a position on House Bill 1489. But your
21 association is made up of all of these smaller
22 Tavern Associations or --

23 MR. MANN: The association is structured
24 with various chapters throughout the Commonwealth
25 that are all affiliated with the State Association.

1 Now, Philadelphia's chapter only recently
2 became affiliated with the State Association and
3 only since -- I guess the point of demarcation is
4 July 5th, that they became affiliated with the State
5 Association.

6 We have growing numbers of members in
7 both Allegheny and Philadelphia. So they are
8 affiliated with us. And they have--I would hope--
9 communicated the state's position, the State
10 Association's position, on House Bill 1489, and
11 smoking bans.

12 CHAIRMAN KENNEY: Thank you.

13 Any further questions?

14 (No response.)

15 CHAIRMAN KENNEY: Hearing none. Thank
16 you, Mr. Mann.

17 MR. MANN: Thank you, Mr. Chairman.

18 CHAIRMAN KENNEY: Thomas Helsel,
19 Secretary of the Pennsylvania Association of
20 Chartered Organizations.

21 MR. HELSEL: Nationally chartered
22 organizations, yes.

23 CHAIRMAN KENNEY: National?

24 MR. HELSEL: Yes.

25 CHAIRMAN KENNEY: Thank you.

1 MR. HELSEL: Good morning. Chairmen
2 Kenney and Oliver, Members of the House Health and
3 Human Services Committee, I would like to thank you
4 for extending me this opportunity to present
5 testimony to your committee today. As Chairman
6 Kenney said, my name is Tom Helsel. I am the
7 Secretary for the Pennsylvania Association of
8 Nationally Chartered Organizations.

9 PANCO is the legislative voice of five
10 nationally chartered organizations. We are
11 comprised of the Department of Pennsylvania American
12 Legion, the Pennsylvania Elks State Association, the
13 Department of Pennsylvania's Veterans of Foreign
14 Wars, the Pennsylvania Moose Association, and the
15 Fraternal Order of the Eagles.

16 I have with me today Mr. Gary Schenk, who
17 is the state President of the Pennsylvania Elks
18 State Association for this current year. I am here
19 to provide comment with regard to House Bill 1489,
20 commonly known as the Clean Indoor Air Act. PANCO
21 and its membership recognize the dangers of smoking
22 and its effect on the health and welfare of the
23 citizens of Pennsylvania. We acknowledge the
24 findings presented in the act, as well as those from
25 the report released by the US Surgeon General on

1 exposure to secondhand smoke.

2 While we do not encourage or necessarily
3 condone smoking, PANCO understands the painstaking
4 reality that a significant number of our membership
5 comprises the smoking population in Pennsylvania,
6 and that a prohibition of smoking would have a
7 negative impact on our organizations.

8 We contend that since we are made up of
9 private membership-only organizations, we do not fit
10 in the category of a public place as currently
11 defined in the legislation, and thereby we should be
12 exempt from the prohibition.

13 Each organization within PANCO requires
14 their membership to be at least 21 years of age.
15 Entrance to our lodges, aeries and posts are by
16 membership only and are not open to the general
17 public. We believe that one of the rights of being
18 a private organization is the right to choose. Our
19 national organizations have left the right to smoke
20 up to our subordinate memberships.

21 Most of our subordinate memberships have
22 long adopted smoking policies within their
23 facilities and there have been a few nationwide that
24 have adopted a totally nonsmoking attitude.

25 This is important to understand. While

1 we may have smoke-free facilities, the choice is up
2 to the subordinate membership. They made the
3 conscious decision to prohibit smoking. It was not
4 done by legislative action, but it was rather done
5 by voluntary one.

6 As a private organization, we envision
7 our social rooms as extensions of our living rooms,
8 places where we can gather and enjoy the fellowship
9 and camaraderie of our fellow members. While we can
10 and will place smoking bans on areas such as banquet
11 rooms, dining halls and the ubiquitous bingo room,
12 we cannot acquiesce to the prohibition of smoking
13 within our inner sanctums; the lodge or post grille
14 rooms. These are areas reserved for our membership
15 and rightfully need to be treated as private
16 nonpublic areas.

17 That brings me to where we are today. We
18 believe that the era of the smoke-filled lodge and
19 grille room is over. Each year, more and more of
20 our memberships take positive steps in the reduction
21 of the smoking environment. However, we adamantly
22 believe that the choice should remain ours. We,
23 after all, are private, adult, member-only,
24 fraternal, social, and veteran organizations.

25 We ask that when you look at this

1 legislation, you consider our unique position and
2 provide that the legislative intent of the bill not
3 apply to fraternal, social, and veteran
4 organizations. Thank you.

5 CHAIRMAN KENNEY: Representative
6 Manderino.

7 REPRESENTATIVE MANDERINO: Thank you.

8 And thank you for your testimony. I take
9 it from your testimony that you are unsure just like
10 the gentleman from the Tavern Association was unsure
11 as to whether the language as drafted now exempts
12 you from the Indoor Clean Air Act; is that correct?

13 MR. HELSEL: Yes, it is. That has been
14 an issue that not only my organizations had, but
15 also the federation of clubs.

16 We have discussed this and feel that if
17 you look at us under the definitions of public
18 places, we don't fall under that category. However,
19 as Mr. Mann pointed out, we are a workplace. That's
20 where we see, if there is going to be any place we
21 would fall under it, that's where we would be.

22 REPRESENTATIVE MANDERINO: Okay. Playing
23 a little devil's advocate, I guess, the Tavern
24 Association would make the argument that if we
25 exempt you but we don't exempt them, then what we

1 are doing is creating two different classes of
2 places where folks who are smokers, who want to
3 smoke and socialize over their beer will choose your
4 place over their place; do you think that is a fair
5 assessment?

6 MR. HELSEL: It may be. However, we are
7 member-oriented establishments. There are
8 guidelines in order to become members of our
9 organizations. So it wouldn't be extended to
10 everybody that is out there.

11 REPRESENTATIVE MANDERINO: I am familiar
12 with various fraternal organizations and even though
13 all of the members must be adults and adults are the
14 only ones that are to be at the bar drinking, most
15 fraternal organizations are one big room and there
16 might be tables where food is also served and a
17 smoking, drinking adult can bring their children,
18 accompanied by an adult, into your establishments if
19 that is a policy of the local club; is that not
20 correct?

21 MR. HELSEL: That would be correct.

22 REPRESENTATIVE MANDERINO: Okay. How
23 would a -- if the state kind of struck a middle
24 ground that said no children under 21 years of age
25 allowed under any circumstances, in any

1 establishment, public or private, if smoking was
2 happening there; could you live with that?

3 MR. HELSEL: If we were able to
4 segregate, let's say, our bar area and keep that
5 solely adult-oriented where we would have a dining
6 facility where children would be allowed at, that
7 would be something we could be in agreement with.

8 REPRESENTATIVE MANDERINO: But you are
9 talking about something similar to what exists now,
10 like this is the smoking side of the restaurant,
11 this is the nonsmoking side of the restaurant; this
12 is the smoking side of our VFW, and this is the
13 nonsmoking side of our VFW?

14 MR. HELSEL: I would say if it was
15 segregated by something more so than just saying
16 this side versus that side. Actual different rooms.

17 I know many of our establishments will
18 have a banquet facility that is physically separate
19 from their bar area. Those areas in most of our
20 places are now becoming smoke free.

21 REPRESENTATIVE MANDERINO: Okay. We
22 heard testimony earlier that 15 other states have
23 passed smoking bans. I do know that there is
24 probably 15 different extents to those smoking bans
25 with different exceptions in every state.

1 But to the extent that you know (since
2 your organization, you're the Pennsylvania, but your
3 organizations that you are presenting here in PA are
4 nationally chartered), can you give us any
5 perspective on how other states that have instituted
6 smoking bans have treated nationally-chartered
7 private organizations such as Elks, Moose, Eagles,
8 VFWs, et cetera?

9 MR. HELSEL: I have not gotten a lot of
10 information back on that.

11 REPRESENTATIVE MANDERINO: Thank you.

12 Thank you, Mr. Chairman.

13 CHAIRMAN KENNEY: Representative Ross.

14 REPRESENTATIVE ROSS: Thank you, Mr.

15 Chairman. I apologize for being a frequent
16 questioner here. But anyway, I keep on having some
17 questions in my mind.

18 And just so that I can understand. In
19 the areas that you are strongly urging us to
20 maintain the option of smoking in your facilities,
21 do you have paid employees who are nonmembers
22 serving in those areas, or is this a situation where
23 different members take turns behind the bar?

24 MR. HELSEL: There are establishments
25 that would have paid employees that would not be

1 members. It depends on the individual
2 establishment. From my own personal experience, my
3 Elks' lodge, we are all volunteers.

4 REPRESENTATIVE ROSS: Um-hum (yes).

5 MR. HELSEL: Other ones have paid
6 employees who are members. Others have paid
7 employees who are not.

8 REPRESENTATIVE ROSS: Yeah. And I think
9 the challenge from the Tavern Association at earlier
10 hearings and so forth, was that, if there is a
11 situation where there is a paid employee in your
12 facility and a paid employee in their facility that
13 they see some level of similarity, I guess, shall I
14 say, in that regard, particularly if the patron
15 might come to your lodge one day and maybe go to the
16 neighborhood bar or tavern the next. So that's
17 where I think they foresee the potential loss of
18 business for the dedicated smoker, shall I say.

19 MR. HELSEL: That, I understand.

20 One thing that we saw in the way the bill
21 is currently written is, under the definition of a
22 workplace, it also lists volunteers. So whether you
23 are actually receiving a paycheck or you are doing
24 it out of the goodness of your heart for the
25 organization, it would still be deemed a workplace.

1 REPRESENTATIVE ROSS: Um-hum. Thank you
2 very much.

3 CHAIRMAN KENNEY: Representative
4 McIlhattan.

5 REPRESENTATIVE McILHATTAN: You make a
6 statement here that the limitation of smoking would
7 have a large negative impact on your organizations.
8 Do you really believe that? People don't join the
9 Elks to smoke. People don't join -- I wouldn't
10 think. I don't know.

11 MR. HELSEL: I agree that they didn't
12 join the Elks or the Moose to come in to smoke. But
13 I think some of the testimony that Mr. Mann gave
14 regarding the socialization aspect of being at a
15 bar, that's where we would see a negative impact.

16 REPRESENTATIVE McILHATTAN: You are
17 talking about the business end, not the fraternal
18 end; is that what your trying to say to me?

19 MR. HELSEL: A lot of our funding that we
20 do comes through the bar.

21 REPRESENTATIVE McILHATTAN: Okay.

22 MR. HELSEL: You have a socialization,
23 you are meeting with your friends, your fellow
24 members, you have the opportunity to help raise
25 money through those.

1 REPRESENTATIVE McILHATTAN: Okay.

2 MR. HELSEL: We would see a downturn in
3 that. And, unfortunately, we would also see a
4 downturn in what we would be able to do in our
5 charitable acts: the monies that we give back to
6 our local communities.

7 As Mr. Mann pointed out, also, we don't
8 know if this is going to be long term or short term.
9 But we would see an impact from the very beginning.

10 REPRESENTATIVE McILHATTAN: But you are
11 not -- Over the long haul, you just don't know? You
12 are not willing to say that this is going to drive a
13 spike through your heart, that it's going to kill
14 you forever, right?

15 I guess my question was, in the long
16 term, you are not prepared to say that this would
17 drive a stake through your heart and really destroy
18 your organization and end its philanthropy; is that
19 correct?

20 MR. HELSEL: I believe that there are
21 some small lodges and posts within the state that
22 something like this could happen. I think for the
23 most part, no, you are right, this would not have an
24 impact that would destroy our organizations.

25 REPRESENTATIVE McILHATTAN: Thank you.

1 CHAIRMAN KENNEY: Representative Kotik.

2 REPRESENTATIVE KOTIK: Thank you, Mr.
3 Chairman.

4 I have a question as to whether this
5 legislation would be clarified, as far as standards,
6 if private clubs were exempted and the legislation
7 provided for certain pollution equipment, would most
8 of your clubs be able to afford to purchase that
9 kind of equipment to mitigate a lot of the effects
10 of the secondhand smoke?

11 MR. HELSEL: I believe a lot of our clubs
12 are out there purchasing the equipment already, that
13 they do have it in their facilities. I am sure
14 there are some throughout the state that do not.
15 That would be something that I believe we would look
16 at and see what we could do to work along that line,
17 yes.

18 REPRESENTATIVE KOTIK: I know many of the
19 clubs in my area just don't have the financial
20 wherewithal to purchase this kind of equipment.
21 This would be a great hardship on them.

22 MR. HELSEL: I am not aware of what the
23 social clubs that are outside of the purview of what
24 PANCO would be able to do.

25 Our lodges tend to be a little bit larger

1 because of the unique nature of being a fraternal or
2 being a veterans club.

3 I am aware that there are smaller clubs.
4 Fire companies, for example, they may be hindered by
5 something like that, yes.

6 REPRESENTATIVE KOTIK: Thank you.

7 CHAIRMAN KENNEY: Just a question. In
8 your testimony, you mention, you ask that PANCO --
9 well, PANCO asks that when you look at this
10 legislation, you consider our unique position and
11 provide that the legislative intent of House Bill
12 1489 not apply to fraternal, social, and veteran
13 organizations. And above that, two paragraphs
14 above, you say, while we can and we will place
15 smoking bans on areas such as banquet rooms and
16 dining halls and bingo rooms, am I misreading --
17 What are you saying? Help me.

18 MR. HELSEL: We are doing some of this
19 already.

20 CHAIRMAN KENNEY: Right.

21 MR. HELSEL: We are doing it voluntarily,
22 we are doing it because our membership is asking for
23 it.

24 It is our belief that, in time, is
25 smoking will cease to exist. I think people are

1 aware of the dangers that smoking presents.

2 We want to have the option to keep it at
3 our bar area for as long as we possibly can until
4 our membership tells us that they are no longer
5 smoking or they want the ban that's there.

6 I know they were questions that were
7 asked earlier if people would stop coming. I have
8 asked members, not only in my own lodge but
9 throughout the membership organizations of PANCO,
10 and there are people that are telling us that if you
11 ban smoking, we are not coming in.

12 Where do they go? They stay at home.

13 CHAIRMAN KENNEY: Okay. And following up
14 on Representative Manderino, she asked if you knew
15 of any language out there that has been passed that
16 addressed your concerns.

17 MR. HELSEL: I am not aware of any at
18 this point.

19 CHAIRMAN KENNEY: And I guess I am trying
20 to remember the Philadelphia language that was
21 passed. What did the Philadelphia language do
22 for -- Do you know?

23 MR. HELSEL: Unfortunately, I have no
24 membership in the Philadelphia County area. Most of
25 it is now outside.

1 CHAIRMAN KENNEY: Do you want us to get
2 you some, or what do you want us to do?

3 MR. HELSEL: Hey, that would be great. I
4 would love it. I know from the Elks' perspective,
5 Philadelphia was the second lodge in the nation. It
6 no longer exists. We would love to get one back
7 down there.

8 I have not seen anything that shows us as
9 being exempt in any language outside of this state.

10 CHAIRMAN KENNEY: Representative
11 Manderino, do you recall the Philadelphia language?

12 REPRESENTATIVE MANDERINO: I am trying to
13 remember, but I don't.

14 CHAIRMAN KENNEY: Because I think I read
15 this language and it is somewhat confusing. I guess
16 we'll -- Then I guess we said, you are not exempt
17 unless a party comes in and uses your facility and
18 then they have the ability to --

19 MR. HELSEL: I recognize that there is
20 a --

21 CHAIRMAN KENNEY: -- do their own thing,
22 I guess.

23 MR. HELSEL: There is an exemption here
24 in the bill where control is not of the proprietor.

25 CHAIRMAN KENNEY: Right.

1 MR. HELSEL: All of our facilities are
2 licensed by the Liquor Control Board, also. We
3 cannot give up that control. So the exemption of
4 having a banquet facility that would be smoking
5 because we ran into somebody who would have a party
6 there, we don't have that opportunity, nor do we
7 want to take the liability of letting that happen.
8 We have to maintain the control because of our
9 liquor license, and therefore it would be a
10 nonsmoking area.

11 The language kind of does the opposite of
12 what we are asking.

13 CHAIRMAN KENNEY: That's why I am asking
14 it. I was trying to -- Right. The language, as I
15 read it says, you can be entirely nonsmoking.

16 MR. HELSEL: Right.

17 CHAIRMAN KENNEY: Even if the public, you
18 rent one of your rooms out, you are still
19 nonsmoking.

20 MR. HELSEL: Correct.

21 CHAIRMAN KENNEY: But this language says
22 that if you are not entirely nonsmoking, you give
23 that option to those renting whether they want to
24 allow smoking at their private party using your
25 facility, right?

1 that.

2 CHAIRMAN KENNEY: You would -- That's
3 what I am -- I am trying to get to somewhere where
4 you --

5 MR. HELSEL: Right. If the public comes
6 in, we would have it as nonsmoking; that is correct.

7 CHAIRMAN KENNEY: And allow you to do
8 what you wanted.

9 MR. HELSEL: And we have at this point --
10 Many of our facilities are that way, where the
11 banquet facilities are nonsmoking.

12 CHAIRMAN KENNEY: Representative
13 Gingrich.

14 REPRESENTATIVE GINGRICH: Thank you. I
15 have appreciated all the testimony today. And it is
16 thought-provoking and reminds us that we need to be
17 very clear and we know what our intent is. But, you
18 are right, the interpretation of the language.

19 This is a critically important public
20 policy issue. And I appreciate your willingness and
21 some of the other testifiers to work with us on this
22 important issue.

23 You yourself have said people are asking
24 for this. I am a member of a social club and
25 frequent some others. And I have seen happen what

1 you have seen.

2 This is an issue that's public policy
3 first and, you know, also a judgment call on our
4 part regarding the economy and business. And we
5 want to be clear and we want to be most effective.

6 My concern is if we don't do it
7 uniformly, we open a lot of doors. And yet, you
8 feel that maybe we can clarify, deal with public and
9 private separately, or social clubs separately and
10 taverns separately. Do you think there is an
11 opportunity, and are you recommending that we look
12 at some of those amendments to do so?

13 MR. HELSEL: I believe there is an
14 opportunity.

15 REPRESENTATIVE GINGRICH: Thinking
16 realistically, knowing what you know from your type
17 of establishment, is that in the best interest of
18 both your consumer and the business?

19 MR. HELSEL: I believe it is. I believe
20 that there is a meeting ground that we can come to.

21 As it is now, as I have said, we have a
22 lot of our facilities that have their public areas
23 as nonsmoking. We would like to see it cease as
24 well as anybody else would. And it is going to take
25 some time. But the public is aware of the health

1 dangers of smoking and we are seeing it go.

2 REPRESENTATIVE GINGRICH: That's correct.
3 And the public is asking in high volumes for us to
4 do something about it. Thank you.

5 MR. HELSEL: Thank you.

6 CHAIRMAN KENNEY: Thank you both for your
7 testimony.

8 MR. HELSEL: Thank you.

9 CHAIRMAN KENNEY: Some of our colleagues
10 have joined us: Representative James, Harold James;
11 Representative Kathy Watson; and Representative Todd
12 Eachus. Anybody else?

13 Pat, is Ray with you?

14 MR. HOTTENSTEIN: I am Ray.

15 CHAIRMAN KENNEY: Oh, you are Ray.

16 MR. HOTTENSTEIN: I was speaking to
17 Representative True.

18 My name is Ray Hottenstein. Mr. Chairman
19 and Members of the House Health and Human Services
20 Committee, thank you for the opportunity to provide
21 testimony on this important topic of the smoking ban
22 legislation in the Commonwealth of Pennsylvania.

23 Again, my name is Ray Hottenstein. I am
24 the owner of The Olde Greenfield Inn, in Lancaster.
25 I am representing the Pennsylvania restaurant

1 Association and the association speaks for our
2 members and nearly 30,000 restaurants and food
3 service and beverage establishments all across
4 Pennsylvania and the Commonwealth.

5 Our members are individuals and
6 organizations operating both large and small,
7 independent, multiple chain, multiple units, and
8 franchise food and beverage establishments.

9 I am also a licensee for 30 years with a
10 wine program recognized by the Wine Spectator
11 magazine. I interject that in there because
12 generally people associate the connotation of
13 alcohol consumption and cigarette smoking.

14 I would also want to tell you that my
15 establishment has been nonsmoking for four years. I
16 have increased my business 11 percent this year.

17 This committee, I am quite sure, is fully
18 aware of the economic impact of the restaurant
19 industry in the Commonwealth. I would like to take
20 a moment, however, to share it with you our record
21 on the impact of the industry in Pennsylvania.

22 Eating and drinking places and our sales
23 are expected to exceed \$14.5 billion this year. We
24 employ 515,000 individuals and represent the largest
25 retail employer and the second largest private

1 sector employer in the Commonwealth. One out of
2 four retail outlets in Pennsylvania is an eating and
3 drinking place. Each one million in sales at an
4 eating and drinking place provides 36.5 jobs.

5 We serve more than meals. Nine out of
6 the ten restaurants in Pennsylvania are involved in
7 charitable and philanthropic activities in their
8 local communities. And our business owners, our
9 families and their employees are your constituents.

10 As you can see, Mr. Chairman, our
11 restaurant industry contributes significantly to the
12 economic viability of our Commonwealth. It is also
13 a highly competitive industry that operates on a
14 narrow average profit margin of about five percent.
15 Because restaurants already operate on such slim
16 margins, the Pennsylvania restaurant Association has
17 continually opposed any new government mandates that
18 affect our ability to meet the demands of their
19 customers in the marketplace or our marketplace.

20 However, based on our members' growing
21 concern about the health of our employees (all
22 515,000 of us), our association's board of directors
23 voted unanimously on June the 26th, 2006, to adopt a
24 resolution to urge the General Assembly to enact a
25 comprehensive smoking ban that would protect all

1 Pennsylvania workers including employees in our
2 restaurants, taverns, clubs, and casinos.

3 Ironically, on the following day, June
4 the 27th, 2006, the United States Surgeon General
5 issued a report saying that smoking sections do not
6 protect nonsmokers and that only smoke-free
7 buildings in public places truly protect nonsmokers
8 from the hazards of breathing other people's smoke.

9 This is a significant change for us or
10 our association. For many years, we, the
11 Pennsylvania restaurant Association had supported
12 Pennsylvania's existing Clean Indoor Air Act, and
13 firmly opposed any additional smoking mandates with
14 the belief that the marketplace works as it should,
15 or our customers can vote for us or against us.

16 However, after years of difficult
17 internal debate, our board decided now was the right
18 time to support a ban -- but only a comprehensive
19 ban that protects the health of all Pennsylvania
20 workers.

21 A comprehensive smoking ban would be an
22 exemption free without any carve outs that would
23 unfairly leave some workers unprotected from the
24 harmful effects of secondhand smoke and some
25 businesses at a competitive disadvantage with

1 others.

2 If we agree that the issue of smoking
3 bans is a health issue, we must fairly protect all
4 Pennsylvanians. A bartender, in a private club or a
5 casino, is no less important than a bartender in my
6 restaurant or a tavern.

7 A statewide comprehensive smoking ban
8 would also ensure that business owners, their
9 employees, local residents, or our customers, be
10 treated fairly no matter where they live or where
11 they work.

12 The Pennsylvania restaurant Association
13 is also concerned about recent uncertainty over the
14 ability of local governments to enact their own
15 local smoking bans. We believe that state
16 preemption is important. We have learned from other
17 states that patchwork or local patchwork of
18 different and confusing ordinances has created
19 serious problems for local governments, businesses,
20 and the public.

21 In closing, I thank the Chairman and the
22 Members of the House Health and Human Services
23 Committee for the opportunity to provide testimony
24 on this important topic of smoking bans. The
25 Pennsylvania restaurant Association appreciates the

1 opportunity to share our thoughts and views with
2 you, and we also look forward to participating in
3 future discussions as the public debate over smoking
4 bans continues.

5 I hope that this committee will continue
6 to call upon us, the Pennsylvania restaurant
7 Association, as a good industry resource for the
8 topic of smoking bans and other topics of interest
9 to the committee and to the the restaurant and food
10 service and beverage industry in the Commonwealth.
11 We want to be a good resource and an active
12 participant and we appreciate the opportunity to
13 work with you.

14 Once again, we thank you.

15 CHAIRMAN KENNEY: Thank you, Ray.
16 Representative Eachus.

17 REPRESENTATIVE EACHUS: Thank you, Mr.
18 Chairman.

19 Mr. Hottenstei, thank you for your
20 testimony. As you know, the committee is
21 considering some carve out language for certain
22 categories. I think there are a number of them for
23 me to consider that would allow for some groups,
24 what those could be defined as, that determine
25 whether it passes or not is up to the day of the

1 final vote. But I hear your testimony--I think I
2 hear it clearly--and that is, that you would oppose
3 any carve out of any setting in Pennsylvania that
4 would be allowable for smoking; is that correct?

5 MR. HOTTENSTEIN: That's our position,
6 yes, sir. And if I can answer why?

7 REPRESENTATIVE EACHUS: Go ahead. Sure.

8 MR. HOTTENSTEIN: And I think I did
9 answer that. The reason is because it is about
10 employees. It is about, in our case, our employees.

11 And, of course, it does filter down to
12 some business competition problems, which is where
13 we would be if we had all -- As it was in
14 California, when this all started, many, many years
15 ago, it only lasted about a year until they realized
16 the fault, that was, where you could go across the
17 street to smoke.

18 And if this is about employee health,
19 this is about employee health. And, as a small
20 business person who offers expensive health
21 insurance, it would be pretty unique to feel that
22 sooner or later our industry may have an advantage
23 with healthier employees because we don't allow
24 smoking in our industry any more.

25 And I find it unusual that we are forced

1 to allow people to smoke in our buildings. And
2 that's what the club is being done, that's what's
3 happening with the club, and if the casino gets it
4 or anybody else that does get the carve out.

5 Sheetz, who sells the cigarettes; Turkey
6 Hill, who sells the cigarettes; Weiss Markets; Acme,
7 none of those people allow you to smoke in their
8 buildings and they sell this product. But yet, we
9 are forced to allow our customers in there and to
10 smoke in our businesses because of competition.

11 REPRESENTATIVE EACHUS: Sure.

12 MR. HOTTENSTEIN: So we think that
13 because of the health issue, this is the greatest
14 perfect time to completely do away with the
15 cigarette smoking within buildings.

16 REPRESENTATIVE EACHUS: Oh. And I
17 appreciate that. And, as you know, we are
18 considering this seriously. And I know that the
19 association's position, up until June, was that
20 government mandates, of all types, are opposed.

21 But I would have to say that wouldn't the
22 next extension be, Mr. Chairman, that other kinds of
23 legal activities, such as drinking, which as you
24 know would somehow limit your business, that we
25 could somehow limit that in some way. I mean, isn't

1 that another extension?

2 I mean, what we are doing here is we are
3 limiting legal activity. So I understand your
4 position on mandates. I happen to hold the same
5 position on government intervention on legal
6 activity.

7 But I have to say to you that if you
8 extend the argument to alcohol, which is a legal
9 activity today, isn't that the next step?
10 Obviously, just as a logical extension of this next
11 step?

12 MR. HOTTENSTEIN: You are asking me this
13 question?

14 REPRESENTATIVE EACHUS: Because the
15 health effects of drinking would have -- You know,
16 alcoholism is a serious health effect. Wouldn't
17 that same alcohol use have the net effect of
18 degrading the quality of the health of your
19 employees?

20 MR. HOTTENSTEIN: I think that there may
21 be some merit to the fact that what you are
22 saying -- Well, there is merit, to alcoholism, is a
23 health issue. There is no question about that.

24 Except that, for me to sit here and smoke
25 a cigar is a little different than for me to sit

1 here and have a glass of Mondavi, Burgonay, or some
2 sort of wine, or a gin and tonic, on your health,
3 other than the fact that if I allow myself to have
4 ten of them and go out and drive a car and then
5 either hurt somebody else or myself. Except that
6 our industry already leads the state in training our
7 employees through the RAMP Program and through TIPS
8 Program to stop that. We can't do anything about
9 that or somebody consuming alcohol to that extent in
10 their own homes.

11 But in our own buildings and our
12 businesses, we are already doing that. We are
13 following, you know, rules and guidelines and laws.

14 And I am not sure that -- that -- It is a
15 good question. Difficult to answer. But it might
16 be -- And it is a fair question. But it might be a
17 little bit of an extension. And I think that the
18 smoke or the secondhand issue is more important and
19 more devastating towards our own health than the man
20 at the other side of the bar having a gin and tonic.

21 REPRESENTATIVE EACHUS: Thank you. And I
22 know, Mr. Chairman, that I am probably going to stay
23 in the minority on this. But my position as a
24 single legislator is that we should create a
25 scenario that can protect the public health.

1 But, once again, smoking is a legal
2 activity and I have a real problem with government
3 oversight of legal activities.

4 It is maybe a more conservative position
5 than most members of my party, but I have a problem
6 philosophically with it. I am struggling with it.
7 Thanks.

8 CHAIRMAN KENNEY: Representative
9 Manderino.

10 REPRESENTATIVE MANDERINO: Thank you, and
11 thank you for your testimony.

12 I understand it in general (the position
13 of the Restaurant Association), but I don't
14 understand it in particular to this bill.

15 As this bill is currently drafted, does
16 the Restaurant Association see it as containing
17 carve outs that you can't live with, or do you see
18 it as something that meets your test of exemption
19 free without any carve outs?

20 MR. HOTTENSTEIN: We would like to see a
21 bill with no exemptions and no carve outs. Other
22 than maybe, perhaps, for the tobacco industry if
23 they are doing their testing in Lancaster County,
24 Pennsylvania, which is the largest producer of
25 tobacco in Pennsylvania and one of the largest

1 producers of tobacco in the United States.

2 But other than that, we would like to see
3 it help all employees. If it is going to help our
4 employees, we need to make sure that it helps all
5 employees.

6 REPRESENTATIVE MANDERINO: And as it is
7 written now it doesn't do that, or you are not sure
8 what it does?

9 MR. HOTTENSTEIN: I would want to sit
10 down and read the bill again, if there has been any
11 changes within the -- I am not sure if there is any
12 amendments or changes within the last few weeks.

13 REPRESENTATIVE MANDERINO: If I can--and
14 I don't mean to put you on the spot--if you don't
15 have specific answers, I would appreciate if kind of
16 the association would discuss it and get back to us.

17 Some smoking bans have been proposed that
18 have allowed carve outs, for example, for smoking at
19 outdoor tables. Is that a exemption that you could
20 live with or you could not live with?

21 MR. HOTTENSTEIN: I think we are
22 concerned with smoking inside of buildings. So I
23 would assume, at this juncture, right now, that we
24 could live with somebody smoking outside of a
25 building.

1 REPRESENTATIVE MANDERINO: Okay. The
2 Pennsylvania Liquor Code provides for liquor
3 establishments to not allow what we will call adult
4 entertainment unless they have another special adult
5 entertainment license. You cannot have a liquor
6 establishment with adult entertainment unless you
7 have an adult entertainment license. And so, for
8 example, your restaurant--and I suspect that most
9 establishments that are part of the restaurant
10 Association--fall into the nonadult entertainment
11 liquor regulation; would that be fair?

12 MR. HOTTENSTEIN: Adult entertainment?
13 Help me.

14 REPRESENTATIVE MANDERINO: Strip joints.

15 MR. HOTTENSTEIN: I don't want to put you
16 on the spot here.

17 REPRESENTATIVE MANDERINO: I am trying to
18 think of what's the correct --

19 MR. HOTTENSTEIN: Give me a name.

20 REPRESENTATIVE MANDERINO: What's the
21 correct --

22 MR. HOTTENSTEIL: Give me names that I
23 can recognize.

24 REPRESENTATIVE MANDERINO: The point that
25 I want to make here is, there are legal activities.

1 It is not illegal to have a (oh, I guess the
2 old-fashioned term of) a go-go bar.

3 MR. HOTTENSTEIN: A gentlemen's club.

4 REPRESENTATIVE MANDERINO: A gentlemen's
5 club. Thank you. That was the word I was looking
6 for. A lady's club. A gentlemen and lady's club.
7 I don't know.

8 But I guess my point is, we have
9 recognized that that is not an illegal activity; but
10 there is a very small nitch market for that.

11 I mean, if you put all establishments
12 that serve food and alcohol together in a batch,
13 okay, I suspect that those that also have a special
14 license for adult entertainment are probably two
15 percent of the total population. (I am making that
16 number up). But they seem to be at such a minority
17 that they are a very small percentage of that total
18 market.

19 I would be interested in whether or not
20 the Restaurant Association believes there is a
21 potentially acceptable carve out for adult-only
22 smokers' establishments, such as what the gentleman
23 from -- which is one potential amendment that I have
24 drafted in the past and what the gentleman from the
25 Mountain View Hotel & Conference Center who gave us

1 written recommendations are.

2 But again, a special licensed facility.

3 If it was a special licensed facility that was then
4 distinguished from all other eating and drinking and
5 hotel and hospitality venues, would that be a
6 special exception carve out that you could not live
7 with? Or would you view that -- Because it seems to
8 me that you are making two distinctions with why you
9 want a exemption-free policy: one is with regard to
10 employee health; and the other one is with regard to
11 business competition.

12 MR. HOTTENSTEIN: Well, they are both the
13 same -- Not both the same. Let me go back to the
14 Mountain View, which I don't think is a gentlemen's
15 club.

16 REPRESENTATIVE MANDERINO: Not at all.
17 No. He was just suggesting permit --

18 MR. HOTTENSTEIN: I understand.

19 REPRESENTATIVE MANDERINO: -- the
20 establishment of private smoke room clubs, which is
21 what I had (an amendment), when I was trying to find
22 the middle ground for folks.

23 MR. HOTTENSTEIN: What happens to the --

24 REPRESENTATIVE MANDERINO: I was making
25 it by way of an example. And I don't mean to

1 you know, I had some health issues. And I saw that,
2 you know, there is -- the writing on the wall. This
3 is not what this is about.

4 It might be about my sister who passed
5 away from it, it could be about my mother who passed
6 away from it, or my grandmother who got lung cancer.
7 They all smoked. There has to be something to this.

8 Whether they are in Delilah's den or
9 whether they are in the Mountain View Hotel in the
10 West, doesn't matter to me or anybody else in our
11 industry. What we are concerned about is our
12 employee health.

13 Sooner or later, we are going to be
14 facing huge lawsuits (like the Armstrong Corp.
15 Company did) and we don't have the resources.

16 Because sooner or later, our employees
17 are going to say, you know, I worked here because
18 you forced me to work here and you forced me to work
19 in this environment. And maybe the guys worked here
20 for 15 or 18 years and you have changed the rules,
21 or now all of a sudden because the Mountain View is
22 allowed to have smoking in that area where they
23 could not before, that person is forced to be there.

24 His job goes away or he works, that's
25 what has to happen. I think that that is something

1 that you have to consider. And I think that
2 employee health is much more important than that.

3 And I go back again to saying that we are
4 forced, without some form of teeth, we are forced by
5 our customers to allow us or to make us allow them
6 to smoke in our businesses.

7 REPRESENTATIVE MANDERINO: Okay. I don't
8 get that. I really don't.

9 MR. HOTTENSTEIN: You can't smoke in the
10 House of Representatives.

11 REPRESENTATIVE MANDERINO: I believe they
12 are not -- Yeah, you can. There are places in the
13 building where you can. But I am getting -- Your
14 restaurant, you chose to go no smoking?

15 MR. HOTTENSTEIN: That's right. Exactly.
16 I chose it to be --

17 REPRESENTATIVE MANDERINO: But no --

18 MR. HOTTENSTEIN: I chose to cancel.

19 REPRESENTATIVE MANDERINO: But no
20 customer is -- can come into your facility and
21 smoke?

22 MR. HOTTENSTEIN: No; that's right.

23 REPRESENTATIVE MANDERINO: And no
24 employee in your facility is smoking?

25 MR. HOTTENSTEIN: Employees in my

1 facility must leave, punch out. If you are an
2 hourly employee, you must punch out, go to the edge
3 of the property, smoke. Come back, wash your face
4 and hands and spray your clothing. And you cannot
5 smoke during your shift, but during your -- if you
6 are serving food to somebody.

7 REPRESENTATIVE MANDERINO: And right now,
8 that has been good for your business because --

9 MR. HOTTENSTEIN: Yeah.

10 REPRESENTATIVE MANDERINO: -- you are in
11 the minority of places. Or at least you don't --
12 You view that there is enough clientele out there
13 who want that kind of establishment that they are
14 choosing you over a smoky kind of joint. Because I
15 am your customer, see? I am your customer, that's
16 where I am choosing to go (is to you) versus the
17 place across the street where it is as smoky as all
18 get out and I don't want to be in there.

19 MR. HOTTENSTEIN: Yeah. I think that you
20 have some merit to what you are saying.

21 And I will give you my history. When I
22 took this place over, it was bankrupt. And the
23 reason it was bankrupt is because they made it
24 nonsmoking. (They got an award from all four big --
25 the big Lung Cancer, the American Heart, and three

1 or four of them. I still have the awards). And
2 within six months, he went bankrupt. Because at
3 that point in time, 11 or 12 -- or 15 years ago, 16,
4 17 years ago, you know, you are required to do that.

5 Today, you can take a chance. And I am
6 taking that chance.

7 I don't put the little cigarette and the
8 X in anything I do, because I think that there is a
9 issue with that.

10 Because I want every customer, I need
11 every customer. At five percent on a dollar (that's
12 a nickel), it is not very much of a profit margin.
13 We work seven, nine days a week. Seven to nine days
14 a week. In order to maintain that margin, we need
15 every single customer we can get.

16 And by changing the playing fields
17 between all of these different kinds of businesses:
18 we all share these businesses, whether they go to
19 the corner tap, you know, on a Wednesday, or they
20 come to Olde Greenfield with their birthday or their
21 girlfriend's whatever celebration or their
22 daughter's rehearsal dinner, or they go to the Elks
23 Club; all of those places, we all happily compete
24 with one another.

25 By you cutting out our side of the

1 industry with allowing smoking in just some of those
2 segments, puts another amount of pressure on our
3 side.

4 I am not sure if I am making myself
5 clear.

6 REPRESENTATIVE MANDERINO: Well, I hear
7 the words, I just don't get the business model.

8 MR. HOTTENSTEIN: Nobody does. No one
9 does. That's why we have such huge failures in our
10 side of the business. You know, 85 percent in two
11 years, that's what happens.

12 It is only 15 percent of us make it in
13 any given period of time.

14 I mean, I have been 30 some years in this
15 business, 36 years in it, and I have seen a lot of
16 people come with a lot of different concepts and a
17 lot of people go. And that's why we are so
18 protective of our side of the business because of
19 the -- just the small amount of margins that it
20 takes for us to make it.

21 REPRESENTATIVE MANDERINO: Now, I
22 understand the profit business margin. I didn't mean
23 it that way.

24 I do not understand the business
25 competition forcing you to allow people to smoke

1 argument of the current marketplace, that's the part
2 I am not --

3 MR. HOTTENSTEIN: Well, let's take
4 California, for example.

5 REPRESENTATIVE MANDERINO: The employee
6 thing I get, okay?

7 MR. HOTTENSTEIN: Yeah, take California,
8 for example. When California started this, they --
9 And I am going to use: Mendocino County splits down
10 the middle of Rodeo Drive (I am not sure that's the
11 way it is) and then you have San Bernardino County.
12 Well, San Bernardino, they stopped smoking. And
13 what happened is, they had a 60, 65-percent failure
14 rate within six months, that place. These people
15 just went across the border (because they could walk
16 across the border) and utilized the places they
17 could smoke.

18 REPRESENTATIVE MANDERINO: So what's the
19 lesson that we take from that?

20 MR. HOTTENSTEIN: I think the lesson is
21 it is either all of us. It is all of us. We just
22 should not be smoking.

23 If you are going to do a smoking ban, it
24 must be comprehensive and nobody should smoke in
25 these public places.

1 Because, again, you know, I think that in
2 general you can't -- Well, you can't smoke in any
3 government building in Lancaster.

4 I think Harrisburg just enacted
5 something.

6 It is because you can. Because you are
7 the only game in town.

8 We are not the only game in town. There
9 are so many people -- or so many games that, you
10 know. And, again, I go back to the narrow
11 margin--and I am not wining--but it, anything that
12 will disrupt our margins, is devastating. So.

13 You are welcome.

14 REPRESENTATIVE MANDERINO: Thank you.

15 Thank you, Mr. Chairman.

16 CHAIRMAN KENNEY: Thank you.

17 Representative Ross.

18 REPRESENTATIVE ROSS: I will try and keep
19 it brief. One of the earlier testifiers from the
20 Tavern Association in particular worried that some
21 of their more marginal members, that if -- that even
22 if the loss of business was temporary, that it would
23 wind up putting some of their members out of
24 business. Have you been hearing from some of the
25 restaurant Association colleagues that you have that

1 and when -- We will be out there in a couple of
2 weeks. He's a chef out there. They don't allow
3 smoking out there any place.

4 The states that have done this
5 completely, there is a fear factor for the first
6 short amount of time. But where--I don't mean to be
7 smart--but where are they going to go? They are
8 going to step outside and smoke a cigarette.

9 And I find that with my own place. I
10 mean, we have comfortable chairs outside for them.

11 And I don't see very many people doing
12 that any more.

13 Or do they do it on a Friday night while
14 they are at press room, which is more of a place
15 that has alcohol consumption over their food? Yeah,
16 they do. But they step outside.

17 And I think less people smoke today than
18 they did two, three, five, eight years ago.

19 So to answer your question, we have not
20 had the backlash that we thought we would have. We
21 have had more positive comments from our side of the
22 industry.

23 But I also do understand that the
24 small -- And I am not a big place. I am the small
25 place. You know, family operated. My wife, my

1 daughter, work with us. We all had that big scare,
2 that big concern.

3 I didn't even know we went nonsmoking,
4 honestly, until I came back to work and we went
5 nonsmoking. I never realized it.

6 So I think that the true issue is, if you
7 exempt this person and that person and this person,
8 yes, there is going to be suffering. But if you
9 make them all nonsmoking, that's it and then
10 everybody's health is the same way and then it will
11 rebound very shortly.

12 REPRESENTATIVE ROSS: Thank you.

13 CHAIRMAN KENNEY: Representative Kotik.

14 REPRESENTATIVE KOTIK: Thank you, Mr.
15 Chairman.

16 I was just wondering, prior to enacting
17 the smoking ban, what percentage of the seating in
18 your restuarants was devoted to smoking and what
19 percentage was related to nonsmoking?

20 MR. HOTTENSTEIN: I never figured that
21 out. Well, I had 46 seats. I have a hundred and
22 ninety seats in various parts of the building.
23 Forty-six of them are -- were smoking. And that was
24 a bar/lounge type place. It had very little
25 smoking, but bar/lounge. So what would that be?

1 Thirty-five percent maybe?

2 That would be a little bit less than
3 that. That would be about 27 percent. Twenty-five.

4 REPRESENTATIVE KOTIK: So over a period
5 of time, would you say the demand for smoking
6 sections was increasing or decreasing?

7 MR. HOTTENSTEIN: Over the period of time
8 I would give you this answer: the demand for
9 smoking was decreasing. But the impact was
10 increasing on my 150 other seats, because I could
11 not seat people -- Those seats were full and I was
12 ending up with seats in the smoking area that were
13 empty because nonsmokers would not set in the
14 smoking area.

15 But my decision was not economic, because
16 I was fine the way we were.

17 My decision was because, quite frankly, I
18 became sick or I became ill and we just got tired of
19 that issue back and forth, back and forth, and we
20 just made a decision, that that's it.

21 REPRESENTATIVE KOTIK: So most of your
22 clientele then evolved into being nonsmoking then?

23 MR. HOTTENSTEIN: I think most -- My
24 opinion is most customers are nonsmoking. They are
25 affected by the smokers.

1 REPRESENTATIVE KOTIK: So a comprehensive
2 ban on smoking would not affect your establishment
3 as it might affect a bar or another place where a
4 preponderance of the people that occupy that bar are
5 smokers.

6 Your affect would be less, would be
7 minimal, compared to a bar or another establishment
8 where you have a great preponderance of smokers.

9 It seems like, in your particular
10 establishment, it became a thing where less and less
11 people would smoke in your restaurant and because
12 more people preferred the nonsmoking.

13 So in your particular establishment, it
14 seemed to me there would be less of an effect on
15 you, competitively speaking?

16 MR. HOTTENSTEIN: Okay. Answering your
17 question: you are absolutely right, because I don't
18 have smoking, so it isn't going to affect me at all.

19 REPRESENTATIVE KOTIK: So it is not going
20 to hurt you, but it may hurt someone else?

21 MR. HOTTENSTEIN: But this isn't about
22 me. This is not about me. This is not about me.

23 This is about our whole industry and the
24 fact that we are subject to requiring our -- being
25 required by our customers to allow smoking in our

1 properties, in general.

2 Me, I had -- Again, my wife and daughter
3 made the decision without me to do this. And so.
4 But moving by that, this would not affect me.

5 And I believe that had I had -- That if
6 that question was going to be asked, I would have
7 brought people along with me that have large bars
8 that would welcome this, also.

9 I don't think that -- The only way that
10 this will be effective or will affect them is if you
11 allow other places to be cut out of this.

12 If everybody has to step outside and
13 smoke a cigarette, it is not going to affect
14 everybody. It is not going to affect the
15 establishments. Because everybody is going to have
16 to abide by this.

17 And I would go back to telling you,
18 Florida, New York, Delaware, New Jersey, California,
19 there is only six states in the nation at this point
20 that don't have some sort of comprehensive smoking
21 laws. So they are doing it in other areas, and they
22 are all doing business.

23 REPRESENTATIVE KOTIK: Thank you.

24 MR. HOTTENSTEIN: You are welcome.

25 CHAIRMAN KENNEY: Thank you, Ray, for

1 your testimony.

2 MR. HOTTENSTEIN: Sure.

3 CHAIRMAN KENNEY: Thank you.

4 Does anyone else have any comments?

5 (No response.)

6 Vance Booher, who owns and operates the
7 Mountain View Hotel & Conference Center, he was to
8 testify, as I mentioned earlier. He's the past
9 Chairman of the Board of the Laurel Highlands
10 Visitors Bureau and the Pennsylvania Tourism and
11 Lodging Association. He is presently the
12 Pennsylvania Director of the American Hotel and
13 Lodging Association.

14 And in his testimony, he mentioned, on
15 September 7th, at its regular Quarterly Board
16 Meeting held at Hershey Country Club, the
17 Pennsylvania Tourism and Lodging Association voted
18 to extend its support of legislative efforts to ban
19 smoking in public and/or workplaces generally as
20 proposed in House Bill 1489.

21 So we will continue to work with them,
22 also, on language that would make them comfortable
23 in.

24 And this committee will continue to work
25 with those organizations. Some had mentioned that

1 they wanted to provide further information to the
2 committee, further language. We will welcome that.
3 And hearing no other comments, this meeting is
4 adjourned.

5 Oh. I am sorry. Representative
6 McIlhattan.

7 REPRESENTATIVE McILHATTAN: Just a
8 comment, Mr. Chairman. I assume this is going to be
9 the end of the basic hearings we have on this
10 legislation?

11 CHAIRMAN KENNEY: I was trying to recall
12 and I -- At our June meeting, I don't know if I
13 said -- We said we would take additional comments.
14 I forget if we said, if we stated a number of -- We
15 would have an additional. I forget if we said one
16 or two. If anyone recalls, remind me.

17 Was it two, Kathy, Representative Watson?

18 So, no, it is two. So I said two. So we
19 will give those members that mentioned. And I asked
20 as an example, the Tavern Association, you know,
21 the --

22 REPRESENTATIVE McILHATTAN: Well, I guess
23 just a closing comment then. Because when we
24 started these hearings some months ago, I must
25 confess that I had a sort of preconceived idea in my

1 mind that we should leave business alone to make
2 their own choices whether or not they wanted to be
3 smoke free. I will be honest, I came with somewhat
4 a biased opinion.

5 But I do take my responsibilities, as a
6 member of this committee, seriously. I listened
7 intently to all the testimony. I have taken it back
8 to my office, read it, reread it. I have spent a
9 lot of time examining the Surgeon General's report.
10 And if you go through all of this information and if
11 you take it seriously, I think you have to come down
12 to the fact that, without a doubt, secondhand smoke
13 is very harmful to our health; and we ought to,
14 within the bounds of reason, find a way to regulate
15 it as much as possible.

16 We have a bill before us that is
17 comprehensive and outlaws smoking in public places.
18 It is a bill that the Secretary of Health agrees
19 with and supports, it is a bill that she says the
20 Governor will sign if we get it to his desk.

21 I think that we need to start to move
22 quickly to get this legislation passed.

23 And one other thing. The majority of the
24 people in Pennsylvania want this legislation passed.

25 With all of that evidence before us and

1 all the testimony we have had, Mr. Chairman, I would
2 hope, that very soon, that we can move this
3 legislation forward. The people of Pennsylvania
4 deserve it.

5 Thank you very much.

6 (Applause.)

7 CHAIRMAN KENNEY: And, as you know, as
8 Representative McIlhattan knows, in June, we tried
9 to move this bill forward and we were unsuccessful.

10 And working with Chairman Oliver, we
11 committed to having two more meetings. We have
12 asked those that had new testimony to provide it.

13 And I am happy to say that the restaurant
14 Association has changed their position since we
15 began this debate.

16 I am happy to hear that the Pennsylvania
17 Tourism and Lodging Association has changed their
18 position.

19 Today, Mr. Mann, representing the Tavern
20 Association, said there may be something they would
21 support in this legislation. We get them on board.

22 So we committed to those two meetings.
23 This was one. We will squeeze in another one, with
24 the final say: this is it.

25 And, as Representative McIlhattan knows,

1 working with 28 members of this committee, we will
2 try to put a proposal together to have a committee
3 vote that can move the bill forward.

4 That's the commitment of the Chair,
5 working with Chairman Oliver. So I share your
6 commitment to a healthy Pennsylvania.

7 I think, as I remind myself, you know,
8 and Members of this Committee, we are the Health
9 Committee (smoking is not healthy; secondhand smoke
10 is not healthy). We have an obligation to protect
11 the Pennsylvania consumers, we have an obligation to
12 protect Pennsylvania workers that work in these
13 establishments; and to what degree we can do that,
14 we are trying to fashion a bill that can get that
15 done.

16 And I share your commitment to do it
17 sooner than later.

18 Any further comments?

19 (No response.)

20 CHAIRMAN KENNEY: Hearing none, this
21 meeting is adjourned. Thank you.

22 (At or about 12:15 p.m., the hearing
23 adjourned.)

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C E R T I F I C A T E

I, Roxy C. Cressler, Reporter, Notary
Public, duly commissioned and qualified in and for
the County of York, Commonwealth of Pennsylvania,
hereby certify that the foregoing is a true and
accurate transcript of my stenotype notes taken by
me and subsequently reduced to computer printout
under my supervision, and that this copy is a
correct record of the same.

This certification does not apply to any
reproduction of the same by any means unless under
my direct control and/or supervision.

Dated this 21st day of September, 2006.

Roxy C. Cressler - Reporter
Notary Public

My commission
expires 05/09/09