

**Eliminating
Smoking
in Bars, Taverns and Gaming Clubs:**

**The California
Smoke-Free
Workplace
Act**

A Case Study

TOBACCO CONTROL SECTION

California Department of Health Services
P.O. Box 942732, MS #555
Sacramento, California 94234-7320

This training document, intended for use by our contractors, was authored for the California Department of Health Services by the following:

Catherine Wingo, Media Specialist
California Department of Health Services, Tobacco Control Section

Dian Kiser, M.S., CFRE, Co-Director
BREATH—The California Smoke-free Bars, Workplaces and Communities Program

Theresa Boschert, J.D., Co-Director
BREATH—The California Smoke-free Bars, Workplaces and Communities Program

Paul Hunting, M.P.H., Program Consultant
California Department of Health Services, Tobacco Control Section

Tacey Buffington, Program Consultant
California Department of Health Services, Tobacco Control Section

Joanne Wellman-Benson, R.D.H, M.P.H., Program Consultant
California Department of Health Services, Tobacco Control Section

Funding was made possible through Cooperative Agreement number UIA/CCU916769 between the California Department of Health Services and the Centers for Disease Control and Prevention, Office on Smoking and Health.

Design by Kim Dugoni.

CONTENTS

Introduction	5
Chapter 1	
<i>Laying the Groundwork for Smoke-Free Workplaces (1976–1994)</i>	7
Chapter 2	
<i>Legislative Chronology: The Battle to Achieve a Statewide Law</i>	12
Chapter 3	
<i>Implementation Strategies for Smoke-Free Bars</i>	18
Chapter 4	
<i>Evaluation Methods: Tracking Public Support, Economic Impact, and Public Health Impact</i>	28
Chapter 5	
<i>Discussion: Future Implications for Smoke-Free Bars</i>	34
References	39
Appendices	
Assembly Bill 13—Appendix A	40
Assembly Bill 3037—Appendix B	45
Labor Code 6404.5—Appendix C	46
Chronology Outline of Preparation and Implementation Activities for the California Smoke-Free Workplace Act—Appendix D	52
Resources—Appendix E	54
Acknowledgments	55

INTRODUCTION

On January 1, 1998, California became the first state in the nation to eliminate smoking in virtually all indoor workplaces, including bars, taverns and gaming clubs. A large part of California's subsequent success in implementing this landmark public health policy was due to careful ground-work laid by the *California Tobacco Control Program*, mandated by voters through the 1988 ballot initiative known as Proposition 99. Established and administered by the Tobacco Control Section (TCS) of the California Department of Health Services (CDHS), the *California Tobacco Control Program* helped develop local tobacco use prevention programs and coalitions. TCS and these local agencies, along with non-profit health groups such as the American Cancer Society (ACS), American Heart Association (AHA) and the American Lung Association (ALA), set in motion a comprehensive statewide effort to increase public awareness about tobacco use and the harmful effects of secondhand smoke.

The force behind California's determination to reduce exposure to secondhand smoke was scientific research, which clearly demonstrated that non-smokers exposed to secondhand smoke showed a marked increase in cancers and heart disease. For instance, studies showed that during an eight hour work shift, a non-smoking employee could inhale secondhand smoke equivalent to actively smoking 16 cigarettes, nearly a pack.¹ By 1994, over 100 California cities and counties passed their own workplace smoking restrictions. In 1994, the state legislature followed suit by enacting the *California Smoke-free Workplace Act*, also known as Assembly Bill 13 (AB 13). This worker-protection measure became part of the California Labor Code as Section 6404.5. Although the new clean indoor air law took effect in most enclosed workplaces, including restau-

rants, on January 1, 1995, the legislation provided a two-year exemption period for stand-alone bars, bars attached to restaurants, and other establishments with licenses to serve and consume alcohol on-site, including entertainment venues and gaming clubs. Subsequent legislation added a third year to the bar and gaming club transition period.

Without a large-scale public awareness campaign about the dangers of secondhand smoke and the importance of the law to protect workers, especially as it related to bars and gaming clubs, the law might well have been undermined by the tobacco industry. An illustration of the importance of public education was seen in the City of Toronto, Ontario, Canada. In 1997, Toronto's City Council attempted to ban smoking in all bars and restaurants with bars. The citywide ordinance was imposed without substantial secondhand smoke education for city residents prior to its passage. With significant backing by the tobacco industry and their front groups, a vocal group of Toronto citizens protested the new law. The tobacco industry promoted news articles decrying the loss of personal freedoms and the potential loss of revenues. The well-funded propaganda campaign took the public health community by surprise and led to the appearance of panic among business owners. Ultimately, the uproar persuaded Toronto's City Council to overturn the smoke-free workplace measure *within six weeks of its passage*. In contrast, *California's Tobacco Control Program* recognized the importance of creating widespread public awareness of the very real dangers of secondhand smoke, particularly to nonsmokers. This was done through an aggressive media campaign and grassroots activities by a network of local tobacco use prevention programs.

This case study describes the groundswell of public demand for smoke-free environments and specific actions taken by the *California Tobacco Control Program*, in concert with county health departments throughout California, to prepare for a statewide ban on smoking inside bars, taverns and gaming clubs.



LAYING THE GROUNDWORK FOR SMOKE-FREE WORKPLACES (1976-1994)

Formation of the California Tobacco Control Program

In 1988, California voters passed Proposition 99, a ballot initiative, which increased the state cigarette tax by 25 cents per pack, from 10 to 35 cents. The revolutionary aspect of Proposition 99 was that it earmarked 20% of the new revenues for tobacco-related health education and authorized the State to establish a formal tobacco control program. As a result, in 1989 the Tobacco Control Section (TCS) was established under the auspices of the California Department of Health Services (CDHS). TCS formulated a plan of action known as California's *Tobacco Control Program* around the following goals:

- change the social norms of tobacco use;
- achieve a smoke-free California; and
- reduce tobacco use by 75% before the year 2000.

The *California Tobacco Control Program* was, and continues to be, a multi-faceted effort, reaching out to every segment of California society. Under the mandate of Proposition 99, TCS coordinated tobacco control efforts by means of grants to fund four layers of grassroots endeavor: a) 61 County and City health departments, known

as Local Lead Agencies (LLAs); b) 11 agencies serving large geographic regions, known as Regional Community Linkages Projects; c) 4 organizations serving the unique interests of specific ethnic groups, called Ethnic Tobacco Education Networks; and d) numerous community-based organizations, known as Competitive

Grantees, to conduct specific tobacco use prevention activities. TCS also conducted a state-wide media and public relations campaign, which included creating and placing its own television, radio and print ads, providing media training to local agencies, developing informational packages for media outlets and supporting independent media activities by grantees. Additionally, TCS evaluated the progress of the entire program by gathering survey data and conducting timely data analysis to monitor tobacco use prevalence in California. In a separate but parallel mandate, Proposition 99 also required the California Department of Education to provide tobacco education through public schools.

Outside the official organizational structure of TCS, a wide array of private, volunteer non-profit agencies, such as the American Cancer Society (ACS), American Lung Association (ALA), American Heart Association (AHA) and many others collaborated with TCS to deliver tobacco use interventions and tobacco-related health messages to Californians. Private, non-profit voluntary agencies were able to involve themselves in political actions and lobbying efforts that fell outside the mandate and permitted activities of the state's *Tobacco Control Program*.

Underlying California's extraordinary success was the *Tobacco Control Program*'s "de-normalization" strategy that repositioned tobacco use as undesirable and outside accepted social norms. Essentially, the strategy aimed to:

- reduce exposure to secondhand smoke;
- counter pro-tobacco influences; and
- reduce the availability of tobacco products to minors.

These core elements brought tobacco issues to the forefront of public attention and supported the state's policy commitment to protect Californians from the harmful effects of tobacco use.

The Dangers of Secondhand Smoke

During the early to mid 1990s, Californians increasingly recognized secondhand smoke as a serious threat to their health, on the job, in public places and at home. Secondhand smoke exposure was scientifically linked to lung cancer, nasal sinus cancer, chronic coronary heart disease, heart attack, exacerbation of asthma in children and Sudden Infant Death Syndrome (SIDS).² In fact, secondhand smoke was identified as America's third leading cause of preventable death.³

While exposure to secondhand smoke was a critical health hazard for all indoor employees, studies showed that food service workers, especially bar and restaurant employees, were in particular danger.

- Bar employees working an 8-hour shift involuntarily inhaled amounts of smoke that were the approximate equivalent of smoking 16 cigarettes, nearly a pack. This made secondhand smoke a significant occupational health hazard for food-service workers.¹
- California waitresses died from higher rates of lung cancer and heart disease than any other female occupational group and were found to have four times the expected lung cancer mortality rate and 2.5 times the expected heart disease mortality rate of any female occupation group.¹
- Bartenders were discovered to have rates of lung cancer higher than firefighters, miners, duct workers and dry cleaners.⁴

Secondhand Smoke Media Warnings Hit California Airwaves

California's *Tobacco Control Program* launched its media campaign in 1990. The campaign created innovative and captivating media spots, reaching far beyond bland public service an-

nouncements about the harmful effects of tobacco use. With its Proposition 99 funding source, TCS could afford to go head-to-head against the tobacco industry's slick advertising style. In the early 1990s, the program's bold messages permeated mainstream television, radio and print media.

The campaign demonstrated that smoking was not just a personal-risk decision, but an act that threatened friends and loved ones as well. Advertisements about secondhand smoke focused on several motivating themes such as health effects (secondhand smoke kills); protection (caring for family and loved ones); and passive dangers (secondhand smoke doesn't know how to stay in the smoking section). The ads were placed conspicuously in a broad array of media formats in order to reach general and targeted audiences, such as youth, ethnic groups or pregnant women. To reach these specific audiences, the media campaign used both mainstream and specialty media outlets including ethnic radio television and print, print ads in general market publications, trade journals, neighborhood billboards.



Californians were told upfront that this tobacco use prevention campaign was funded by and for the public interest, through the tobacco tax. Tobacco company advertisements no longer stood as the only messages, but now faced

counter-messages telling the truth about the health hazards associated with exposure to secondhand smoke. Throughout the state, these messages helped to support the public's demand for healthier, smoke-free environments for all employees working indoors.

NO SMOKING IN BARS?
Sounds Crazy... Until You Hear The Facts.

- BECOMING SMOKE-FREE HAS NOT HURT CALIFORNIA BARS AND RESTAURANTS.**
* Rules for bars passed that lowering and the bar and limited sales to bars restaurants in California. -American Journal of Public Health October 2007
** 70% of California bars and 1 California restaurant accepted smoke-free law
- CALIFORNIANS WANT TO EAT, DRINK AND SOCIALIZE IN SMOKE-FREE ESTABLISHMENTS.**
* 80 percent of California's bars.
** 77 percent of bar patrons prefer smoke-free establishments or don't care.
** 80 percent of bar patrons say they would stop going to bars to smoke the bar.
- RESTAURANT AND BAR WORKERS ARE GETTING SICK AND DYING FROM EXPOSURE TO SECONDHAND SMOKE.**
* California employees die from higher rates of lung and heart disease than any other state (American Lung Association).
** Exposure to secondhand smoke causes higher blood pressure, asthma, heart disease and other illnesses.

**DOESN'T SOUND SO CRAZY NOW, DOES IT?
TO GET THE FACTS AND TO GET HELP IN BECOMING
A SMOKE-FREE ESTABLISHMENT CALL US:**

BREATHE
The California Smoke-Free Bar Program
A National Program of the American Lung Association/California Center for Tobacco Use Research and Promotion
1-(800) 622-2829

Educational Programs

As public awareness of the dangers of second-hand smoke grew, changes began to occur. Hundreds of local and regional groups, funded by TCS, created interventions to eliminate second-hand smoke exposure in communities. In response, people began to take charge of the health of their families and loved ones by creating

smoke-free policies at home. In fact, by 1995, over 60% of Californians reported having a ban on in-home smoking. By 1997, this number had grown to nearly 80%. Thus, an estimated 26.5 million of the 33.2 million residents of California at that time, were protected from secondhand smoke at home.⁵ Similarly, business owners and employers began implementing voluntary smoke-free policies to protect their workers. The California Department of Education stepped up its statewide tobacco use prevention programs as well and required all school districts to become smoke-free by July 1995.

Local Ordinances Take the Lead to Prohibit Smoking in Bars

In reality, California had begun the clean indoor air journey nearly two decades earlier, through the efforts of local public health activists such as those who proposed and won a 1976 ordinance in the City of Berkeley, restricting smoking in selected indoor public areas and requiring separate sections for smokers and nonsmokers in restaurants. When the citizen advocates behind this measure attempted to take their fledgling movement to the state Legislature, they were outspent and outmaneuvered in the Capitol. It was clear the tobacco industry was in control of the Legislature. However, fueled by the victory in Berkeley, tobacco control advocates turned their attention to other cities and set aside attempts to engage in statewide legislative policy-making, *for the time being*. The plan to seek clean indoor air ordinances on a community-by-community basis took off in the San Francisco Bay Area. In addition to the work of the ALA, AHA and ACS, groups such as Americans for Nonsmokers' Rights (ANR) played an active role in these campaigns. The decision to work locally paid off. As tobacco control ordinances multiplied, these early efforts provided opportunities to educate voters and raise public consciousness about secondhand tobacco

smoke and the deceitful actions of the tobacco industry.

In 1983, tobacco control advocates launched the "Proposition P" Campaign in the City of San Francisco. They used three arguments in support of "Proposition P":

- nonsmokers have rights;
- cigarette smoke is a health hazard; and
- cigarette smoke is more than an annoyance and irritation.⁶

These points made sense to the citizens of San Francisco. Although the margin was narrow, the "Proposition P" victory set the stage for future indoor clean air ordinances in California cities and counties.

A growing segment of the public began to expect smoke-free environments and the movement toward a smoke-free California accelerated. In the early 1990s, with support from local health departments, more city and county governments took action to protect the health of their residents. Local ordinances requiring smoke-free worksites and public places became increasingly common. Several cities took the next step by adopting smoke-free requirements for restaurants. Such diverse cities as Lodi, Beverly Hills, Long Beach and Sacramento successfully passed smoke-free restaurant ordinances. Meanwhile, in 1991 the small coastal college town of San Luis Obispo became the first city in the nation to eliminate smoking in both restaurants and bars, including stand-alone bars (bars selling no meals, just beverages). In 1992, Shasta County and the City of Tiburon enacted smoke-free bar laws. The year after, the cities of Davis, Redding, Belvedere and Anderson followed with similar policies. Ordinance activity gathered momentum in cities and counties up and down the state.

By June 1994, over 100 cities and counties in California had passed ordinances requiring smoke-free workplaces, which included restaurants. In a study by the CDHS between 1994 and 1995, it was reported that over 86% of California adults believed they were protected from secondhand smoke in their indoor workplace.⁵ This was the result of a clearly defined public demand for protection from the deadly toxins and carcinogens in secondhand smoke.

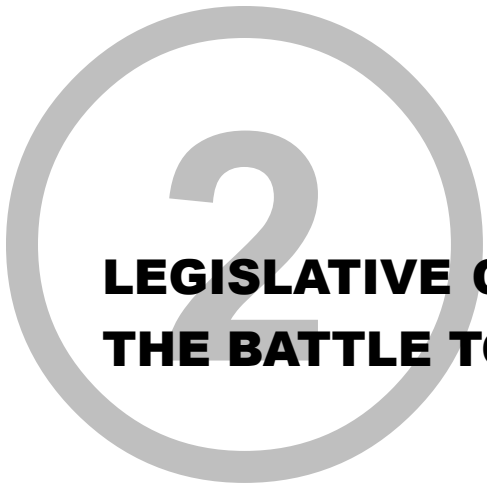
By March 1997, 48 cities and six counties had enacted ordinances that eliminated smoking in bars attached to restaurants. Sixteen California cities and two counties went on to enact ordinances eliminating smoking in all freestanding bars.⁷ Each of these city and county ordinances enhanced the smoke-free climate in California and paved the way for future broad-scale legislation in the state.

Voluntary Smoke-Free Bars

At the individual level, many bar owners made a personal decision to operate smoke-free, voluntarily protecting the health of their employees and

patrons while lowering operating and maintenance costs. They also appreciated the prospect of increasing their patron base since customer preference and polling data showed that over 80% of Californians did not smoke and that most non-smokers and many smokers preferred smoke-free bars.

Beginning in 1994, the Mono County Health Department initiated an entirely voluntary smoke-free bar program in the resort community of Mammoth Lakes. The County Health Department worked closely with bar owners to develop smoke-free policies and implementation strategies. While surveys found residents were ambivalent about smoke-free bars, the bar owners felt that eliminating indoor smoking would complement the healthy attitude of their sports-minded clientele. To reward their efforts, the Mono County Health Department provided free newspaper and radio advertising for all participating bars and bar/restaurant combinations. This incentive program proved to be a major component in the success of voluntary smoke-free bars in Mammoth Lakes and the strategy was used by many local jurisdictions when the subsequent statewide ban went into effect in January 1998.



LEGISLATIVE CHRONOLOGY: THE BATTLE TO ACHIEVE A STATEWIDE LAW

The California Smoke-Free Workplace Act

By 1993, support for smoke-free worksites and public areas was sweeping the state. Several statewide clean indoor air ordinances were introduced in the California Legislature in the early 1990s.

However, they contained preemptive language, which would remove the right of local governments to pass stricter laws. As a result of active lobbying by nonprofit health groups, these preemptive statewide proposals were defeated. At that time, local ordinances protected about 60% of California residents. But, nonprofit health group lobbyists representing the ALA, ACS and AHA were alarmed when several important areas in the state such as San Diego, passed weak clean indoor air laws. Worse yet, parts of the Central Valley, Inland Empire and some local governments in rural areas refused to even consider clean indoor air ordinances. At the time, the nonprofit health groups were concerned that, in reality, 40% of the state's workforce remained unprotected. This situation opened a door for state legislators to address the matter. Momentum for a statewide law to protect all indoor workers grew and Assembly Member Terry Friedman (D-Santa Monica), a close and trusted ally of the nonprofit health groups, introduced AB 13 in 1993. Backed

by many local governments, labor associations and progressive business owners, AB 13 was designed to serve as a statewide minimum standard to protect California employees from the dangers of secondhand smoke. The purpose of AB 13 was to address workplace smoking in a non-preemptive piece of legislation that would ensure clean indoor air for virtually all of California's workers, including those who worked in bars. A welcomed political surprise was the support of the California Restaurant Association. Their justification was fear of litigation by employees who were being exposed to cigarette smoke. In addition, they supported this uniform statewide measure because it would reduce unfair competition. However, other sectors of the hospitality and tourism industries strongly opposed the bill. Their response was to introduce a competing, weaker bill, AB 996 by Assembly Member Curtis Tucker (D-Inglewood), that would preempt local smoking ordinances and which proposed meaningless ventilation standards.

Both bills were assigned to committees for consideration and both bills gained the attention of the media and the California public. The bills were labeled by the press. AB 13 was called the “Good Guys” bill belonging to the AHA, ACS, ALA, California Labor Federation, the League of California Cities and a coalition of other pro-health organizations. AB 996, on the other hand, was known as the “Tobacco Industry” bill.

Both bills failed to pass out of any Assembly Committees during the 1993 session. Assembly Member Friedman conferred with Assembly and Senate leadership and made AB 13 a two-year bill. AB 996 was abandoned by the tobacco industry. Preparation commenced for the reintroduction of AB 13 in the early part of the 1994 legislative session. During the spring and summer of 1994, the health groups were resolutely focused on AB 13, with Assembly Member Friedman ready to once again introduce the bill. After a series of amendments, including one to permit smoking in bars until January 1, 1997 and another to allow some exceptions for motel and hotel rooms and portions of lobbies, a promise of neutrality was garnered from the hospitality industry. The bill was ready to begin its path through legislative committee hurdles. The question of preemption was very much alive in discussions between the health groups and member groups of the ad hoc AB 13 Coalition. Assembly Member Friedman was well aware of the position held by all of the health groups regarding preemption and skillfully crafted a uniform, statewide standard making those workplaces named in the bill 100% smoke-free. If any local ordinance or resolution was weaker, it would be subsumed by the state standard, yet local communities were allowed to enact ordinances stricter than AB 13. However, an amendment preempting all subsequent local clean indoor air ordinance language passed in the Senate Judiciary Committee and immediately galvanized opposition from the health

groups. Major news stories, including a piece on the front page of the *Los Angeles Times*, characterized the Judiciary Committee’s preemptive language as a ‘Rape in Sacramento.’⁶ That story and many others added pressure to remove the preemptive language. Within a week, the preemptive language was removed and AB 13 was back on course passing through the Senate. The Assembly concurred in July of 1994. In September of that year, Governor Pete Wilson signed AB 13 into law where it became part of the California Labor Code, Section 6404.5.

To achieve smoke-free workplaces, AB 13 relied on California’s Occupational Safety and Health Act of 1973, which required worker protection from harmful work environments. AB 13 amended the state Labor Code in Section 6404.5 to prohibit smoking in most indoor workplaces. Through a series of legislative compromises, AB 13 permitted a few narrow exceptions where indoor smoking would be allowed: up to 65% of hotel and motel guest rooms; portions of hotel and motel lobbies; hotel and motel meeting and banquet rooms except during food service and exhibits; retail or wholesale tobacco shops with private smokers’ lounges; cabs of motor trucks when non-smoking workers were not present; large warehouse facilities with open bays; and owner-operated bars. The most significant compromise allowed for a two-year postponement of the law for gaming clubs, bars and taverns. (See Appendix A for copy of AB 13).

AB 13 charged local governments with enforcing the law. At the option of the local government, this could include police and sheriff departments, city code enforcement agencies, fire departments, district and city attorneys and/or local health departments. Violators would be subject to the lowest form of criminal penalty, an infraction with fines of \$100 for a first violation; \$200 for a

second violation within one year; and \$500 for third and subsequent violations. The law also provided that, if an employer was found guilty of three violations within one year, his or her case could be referred to the California Occupational Safety and Health Administration (Cal-OSHA), where fines could be levied in excess of \$7,000 per violation.

Voters Defeat Proposition 188

Concerned by the ever-increasing number of local ordinances and the imminent passage of AB 13 in late 1994, the tobacco industry and Philip Morris in particular, stepped up their efforts on the political front. Still stinging from the failure of AB 996 and seriously concerned about the ground swell of local ordinance activity, tobacco industry lobbyists organized covertly to introduce a statewide initiative strikingly similar to AB 996. Ostensibly aimed at preempting a “patchwork” of new local ordinances, the proposed ballot measure would have also overturned 84 existing local ordinances, which prohibited smoking in restaurants. Appearing on the November 1994 ballot as Proposition 188, this tobacco industry “accommodation law” was being advanced in the event that AB 13 passed. This proposition would have preempted AB 13 and all other state and local smoke-free ordinances in California, replacing them with a watered down, statewide smoking law written by the tobacco industry. Proposition 188 even included a requirement for mandating, “smoking sections” in restaurants and other workplaces. Tobacco interests outspent the voluntary health agencies (ACS, ALA, AHA) and their allies California Medical Association (CMA) and the California Dental Association (CDA), nearly twenty to one during the campaign. In a massive effort, Philip Morris spent \$12.5 million promoting the ballot measure, marking the largest

contribution to any initiative in state history at that time. Other tobacco companies and industry supporters contributed an additional \$6.9 million to the campaign, bringing total tobacco industry expenditures to \$18,905,992. In contrast, only \$1,037,939 was spent by the “No on 188” campaign, funded mostly by voluntary health agencies which mounted a grassroots information campaign through local chapters, divisions, affiliates and community allies.

Although some voters initially supported Proposition 188, the tide turned once they learned of the tobacco industry’s role and backing. The campaign by the voluntary health groups called it what it was, the “Philip Morris Initiative.” Voters did not want local smoke-free ordinances or AB 13 repealed. They soundly defeated Proposition 188 by a landslide 71% to 29%. Proposition 188’s failure delivered the public’s message loud and clear. Californians were no longer willing to be exposed to secondhand smoke in the workplace nor would they be duped by a tobacco industry public relations machine.

Following the passage of AB 13, public opinion surveys found the majority of Californians supported the law and appreciated the benefits of their healthier work environments. However, the tobacco industry funded and coordinated activities by “front groups” such as *FORCES (Fight Ordinances and Restrictions to Control and Eliminate Smoking)* and the *NSA (National Smokers Alliance)* to oppose the new law. These front groups waged a publicity war that predicted frightening economic losses for business owners. They organized “smoke-ins” at many business sites especially corner coffee shops and bowling alleys. This furor eventually diminished as patrons and business owners became accustomed to the law and, most importantly, the much-publicized

forecasts of economic disaster never materialized.

Assembly Bill 3037: Pro-Tobacco Interests Gain a Temporary Victory

The tobacco industry launched its next assault on AB 13 through its coalition composed of the California Licensed Beverage Association, National Smokers Alliance, Californians for Smokers' Rights and similar front groups. In 1996, these groups supported Assembly Bill 3037, designed to extend AB 13's start date for the smoking ban in bars, taverns and gaming clubs from January 1, 1997 to January 1, 2000. Although AB 3037 was adopted, the extension was reduced to just one year, ending on January 1, 1998. Under AB 3037, smoking in virtually all indoor workplaces including bars, taverns and gaming clubs would be prohibited after January 1, 1998 *unless* Cal-OSHA or the Federal Environmental Protection Agency (EPA) adopted ventilation standards for exposure to secondhand smoke. The proposed law also required that during the additional one-year extension, gaming clubs, bars or taverns establish a non-smoking area "*if feasible*" (See Appendix B for copy of AB 3037).

AB 3037 was vigorously opposed by ACS, AHA, ALA and other health agencies and associations. They argued that this bill denied bar, tavern and gaming club workers the equal protection of a safe and smoke-free work environment enjoyed by virtually all other indoor workers in the state. In this skirmish, the tobacco industry prevailed and AB 3037 was passed, giving bars, taverns and gaming clubs an additional year to comply with AB 13.

Tobacco Industry on the Defensive

The tobacco industry had long focused enormous energy toward minimizing smoking controls imposed in California. Highly paid and influential professionals staged the attacks, including such

firms as Burson Marsteller Public Relations, The Dolphin Group (political consultants) and Nielsen, Merksamer, Parrinello, Mueller & Naylor (lawyer-lobbyists). *The industry's first concern was that California's momentum and expertise was spreading to other states.* California's tobacco control groups gained ground every year with support from Proposition 99's tax revenues. The state's success was being closely studied by nearly every state in the nation and by other countries around the world.

As the state with the greatest number of smokers, California also represented a huge customer base. Larger counties in California had more smokers than some states. As revenues diminished, tobacco companies found the battles increasingly expensive on multiple fronts — at the ballot box, in legislative chambers, and in the courts. Nevertheless, the industry pursued vigorous efforts to roll back support for smoke-free environments. They systematically attacked credible scientific studies and conducted massive public relations campaigns. Additionally, numerous front groups were funded by tobacco companies, particularly Philip Morris, to stir discontent with smoking restrictions. According to a Los Angeles Times article, tobacco industry tactics included intimidation, threats and other underhanded measures against groups who might support tobacco control.⁷ They also aligned themselves with various groups interested in diverting Proposition 99 cigarette tax revenues into state budget needs that were less threatening than tobacco control.

An example of these efforts was the role of Burson Marsteller, a public relations firm representing Philip Morris. They created "The Tobacco Institute," a national tobacco industry-funded, lobbying and public relations organization masquerading as a pseudo-educational agency. In 1993, Burson Marsteller created the National

Smokers Alliance (NSA), another tobacco industry front group operating out of Virginia. The NSA received funding from Philip Morris, R.J. Reynolds, and Brown & Williamson Tobacco Corporation. Guided by Burson Marsteller, NSA attacked California's Smoke-free Workplace Act on multiple fronts:

- 1) NSA launched a statewide public awareness campaign in 1996 to rally bar owners and the public against smoke-free bars. They used anecdotal claims and unscientific surveys to predict economic disaster for restaurant owners and managers. They orchestrated editorials, op-ed pieces, 'letters to the editor' and direct mail campaigns that claimed "personal rights" were being infringed and argued that the health movement had gone too far.
- 2) NSA claimed the science regarding the health hazards of secondhand smoke was exaggerated, overrated and misleading. A subgroup of NSA, calling themselves "Californians for Scientific Integrity", was created in a futile attempt to use the legal system to shed doubt on recent anti-tobacco research. In particular, research conducted by Stanton Glantz, Ph.D., of the University of California, San Francisco, was attacked in the press and in the courts.
- 3) NSA distributed special kits to help bar owners influence their patrons to send pro-tobacco messages to legislators. NSA set up a short-lived but highly publicized, toll-free telephone hot line that linked bar owners directly to their legislators. They also created web sites to share information on activities aimed at repealing the law.

Fortunately, tobacco control advocates were prepared and countered each attack. Results of a statewide public opinion poll, which indicated strong support for the law, were distributed in press releases throughout the state. Factual reports discredited the NSA's misleading claims and proved that neither tax revenues nor tourism activity dropped after local smoke-free ordinances went into effect. The *Tobacco Control Program*, through its local allies, enlisted the support of employees and owners of smoke-free bars to share their personal views on the positive benefits of smoke-free establishments.

Continuing Legislative Attempts to Repeal the Law

Encouraged by the success of AB 3037, the tobacco industry backed several measures during the 1997-98 legislative session. Tobacco industry allies sponsored five bills, each of which sought to rollback or eliminate statewide implementation of the smoke-free workplace law in bars. All five were opposed by the alliance of California's voluntary health agencies, ACS, ALA, AHA and ANR, along with key support from the California Labor Federation (AFL-CIO), CMA and other pro-health and pro-labor groups. At legislative hearings, a pithy and oft-repeated message of California Labor Federation President, Tom Rankin, was that "*Death by cigarette smoke should not be a condition of employment.*" It was highly effective, particularly with Democratic legislators.

During the autumn of 1997, key legislators including Senate Health Committee Chair Diane Watson (D-Los Angeles) and Senate President Bill Lockyer (D-Fremont) rebuffed tobacco lobbyists' attempts to undermine or eliminate the law. *The*

California Smoke-free Workplace Act finally went into effect for bars, restaurants with bars, gaming clubs, bingo parlors, casinos and entertainment venues on January 1, 1998. Legislative battles continued but, nine months later, at the close of the 1998 session, not one of those five tobacco industry bills had been passed by the legislature. At last, smoke-free bars were on their way to becoming a “social norm” in California.

Tobacco Control Groups Keep Up Their Campaign

Throughout the campaign to secure safe work environments for bar and gaming club employees, tobacco control advocates, backed by a groundswell of public support, honed their ability to counter tobacco industry assaults. Local health department tobacco control programs and Competitive Grantees, funded through grants provided by the *California Tobacco Control Program*, (using Proposition 99 cigarette tax revenues) continued to conduct hundreds of educational activities in every corner of the state to counter tobacco industry ploys as they surfaced. To meet

the challenge, local groups put tobacco control messages on racecars and raffled off leather jackets, sporting the slogan “Breathe Free” at motorcycle rallies. They provided umbrellas for bar patrons during the rainy season. And of course, they placed ads in local newspapers, on cable and mainstream television, and radio, as well as conducting customized “rapid response” publicity.

At the same time, a vigorous *statewide* media campaign by TCS kept the tobacco control messages fresh and compelling. To consolidate public support for the law, TCS aired television ads featuring actual waitresses and bar staff. Local TCS-funded tobacco use prevention programs intensified efforts to educate bar owners and employees about the new law and its benefits.

Responding to these efforts, the California public grew increasingly aware that the tobacco industry was interested only in promoting its corporate bottom line, no matter the cost to public health and well-being. The vast majority of Californians recognized smoke-free workplaces as fundamental to employee safety and productivity and as a result, supported clean indoor air regulations.



IMPLEMENTATION STRATEGIES FOR SMOKE-FREE BARS

California's varied geography and diverse population offered special challenges for implementing public health policies. When AB 13 went into effect as part of California Labor Code 6404.5, the state's economy was, and continues to be, larger than that of most nations. On a grand scale, the state had over 32 million residents spread over 58 counties, which ranged from intensely urban to remotely rural. Income levels varied tremendously as did ethnic and cultural backgrounds. Yet, California also was home to an active voluntary health community, a strong pro-health movement, and a majority of residents who were receptive to healthy changes, once they were given the facts.

Through local programs, a statewide media campaign, regional activities, and "bar-focused" technical assistance provided by BREATH (a statewide, Proposition 99-funded grantee sponsored by the ALA of the East Bay, and assigned to work exclusively on implementation of Labor Code 6404.5), the *California Tobacco Control Program* successfully reached into every corner of the state. The Program was sensitive to the state's diversity and unique characteristics and counted those qualities as assets when planning its implementation campaign.

In late 1997, as time ran out on AB 3037's last ditch extension on indoor smoking for bars and gaming clubs, the multi-layered *Tobacco Control Program* took steps to ensure a smooth transition. The implementation plan was carried out by TCS in many dimensions simultaneously through statewide programs such as BREATH, local and regional interventions and media buys. In conjunction with TCS, the state's nonprofit voluntary health agencies (ACS, AHA and ALA) continued their campaigns to educate residents and policy leaders about the harm of secondhand smoke and the benefits of smoke-free environments.

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

PETE WILSON, Governor

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
P.O. BOX 942732
SACRAMENTO, CA 94234-7320
(916) 657-1425



July 11, 1997

TO: Bar, Tavern, Restaurant/Bar Combination, and Gaming Club Owners

SUBJECT: ASSEMBLY BILL 3037 (CHAPTER 989, STATUTES OF 1996)

Governor Pete Wilson signed into law, Assembly Bill (AB) 3037 (Chapter 989, Statutes of 1996), which amends California's Law for a Smoke-free Workplace (Labor Code Section 6404.5) to provide a one-year deadline extension to bars, restaurant/bar combinations, taverns, and gaming clubs. The new deadline is January 1, 1998.

This new law states that in order to qualify for the deadline extension, each business must, if practical, designate a nonsmoking section, and, if feasible, not require employees to enter the smoking section as part of their job.

AB 3037 provides establishments such as yours with an opportunity to plan for the transition to a smoke-free environment. The California Department of Health Services (CDHS) is committed to assisting you in this effort and helping you to understand the impact of this legislation. Enclosed are: 1) a copy of the new law; 2) a brochure describing the requirements and impact of the new law; 3) a copy of the suggested AB 13 no smoking sign; and 4) a question and answer document which addresses issues related to transitioning to a smoke-free establishment. Additionally, CDHS will send supplementary materials to you in the coming year, which current smoke-free establishment owners have found useful.

If you have questions, concerns, recommendations, or are interested in becoming a smoke-free establishment before 1998, please contact your local health department. CDHS is committed to making this transition a success for you.

A handwritten signature in cursive script that reads "S. Kimberly Belshé".

S. Kimberly Belshé
Director

Enclosures

Implementation Strategies on the State Level

TCS used its Proposition 99-funded network of 58 counties and 3 city health departments known as Local Lead Agencies (LLAs), 11 Regional Linkages Programs, 4 Ethnic Tobacco Education Networks and numerous Competitive Grantees to ease the transition to smoke-free bars. To prepare bars and enforcement agencies for the expiration of AB 3037's time extension, this network of state-funded tobacco control programs provided free training assistance, information packets, media kits, multi-language brochures, and "No Smoking" signs to business owners.

In July 1997, TCS released Labor Code 6404.5 (AB 3037) informational package specifically designed for the nearly 35,000 bar, restaurant and gaming club owners in California. The package included a letter from the Director of the CDHS, a copy of the law, an explanatory brochure, a model "No Smoking" sign which referenced the law, and a comprehensive question and answer packet.

TCS worked closely with BREATH, the LLAs, Regions and Competitive Grantees to:

- determine the attitudes of local health department directors about smoke-free bars, the status of smoke-free nightspots in their areas, and the need for implementation strategies in their community;
- create a workgroup to monitor, develop and implement statewide program activities;
- conduct an initial focus group comprised of smoke-free bar workgroup members, bar owners and other health professionals experienced with smoke-free bar programs and ordinances;
- monitor the successes and challenges faced by communities with smoke-free bar policies in place prior to the creation of the statewide Smoke-free Workplace Act;
- assist local health departments, regional projects and Competitive Grantees to dialogue with bar owners, educate enforcers and respond to questions from the general public; and
- analyze and disseminate economic impact data on smoke-free ordinances and distribute key findings to local agencies.

Grassroots Community Implementation Strategies

Prior to the establishment of BREATH, the statewide project assigned to work exclusively on implementation of the Smoke-free Workplace Law in bars, taverns and gaming clubs, TCS had funded the *California Smoke-Free Cities Project*, a statewide program through the California Healthy Cities Project that was on the frontlines when Labor Code 6404.5 first went into effect for restaurants and other workplaces in 1995. The program educated city officials and local tobacco control projects about Labor Code 6404.5 and pending legislation. It also conducted in-depth analysis of enforcement protocols for smoke-free workplace policies in venues other than bars, taverns and gaming clubs. As a result, it developed the *social will index*, which was used by BREATH to prioritize cities and counties for interventions and actions. The social will index measured a community's "readiness for change" in regard to tobacco control policies. The readiness profile was based upon factors such as how the community voted on Propositions 99 and 188, how their state legislators voted on tobacco control measures in Sacramento and the community's level of success in passing local tobacco control ordinances. The California Smoke-Free Cities Project ended in December 1997, on the eve of smoke-free bar implementation.

BREATH-The California Smoke-Free Bar Project

From 1997 onward, TCS worked closely with its full network of cooperating local health agencies to ensure that smoke-free workplace policies would be successfully received on January 1, 1998. At that point, Labor Code 6404.5 became fully effective in virtually all indoor workplaces, including bars, restaurants with bars, casinos, bingo parlors, bowling alleys and entertainment venues throughout California.

BREATH was funded in March 1997 to facilitate the transition from smoke-filled to smoke-free bars. BREATH staff traveled from town meeting to town meeting, listening to the concerns of bar owners, managers, employees, entertainers and gaming club workers and responding to their questions with reliable information and practical support. BREATH's mission was to relieve the fears and reduce the adversarial relationship between business owners and government that the tobacco industry fostered through an on-going public relations campaign of misinformation about the law.

A key tool was BREATH's toll-free information hotline for bar owners. The project also provided technical assistance, along with media support and advocacy training for local tobacco control coalitions. It also conducted legal workshops for local law and code enforcement agencies.

BREATH developed numerous materials for smoke-free bars and gaming clubs including a resource kit with suggestions on "How to Go Smoke-Free." It also developed brochures, promotional items and a 14-minute video entitled, "*Bar Profits—Up In Smoke?*" that featured bar owners encouraging their peers to comply with the law in order to enhance business revenues.

Materials were designed specifically for bar employees and owners. Information on economic

impact, question and answer guides, and consensus legal interpretations of the law were provided in clear and easy-to-understand language. Templates were created for use by LLAs and Regional Linkage Programs and Ethnic Networks including a bar industry newsletter called "Tips and Trends."

In addition, BREATH ran newspaper advertisements in January and February of 1998, listing bar and restaurant owners who successfully complied with and supported the smoke-free bar law. These particular ads effectively countered the tobacco industry's lies that bar owners would suffer economically. They also gave a face to the majority of bar owners who wanted to be recognized as the responsible, law-abiding business people they were.

During this crucial period of transition, and in order to address head-on the economic misinformation being spread by NSA and other tobacco industry front groups, BREATH placed full-page ads in bar trade journals such as the *Beverage Industry News* and *Patterson's Beverage Journal*. The ads focused on public support for the law and bar worker health. As a result, the *Beverage Industry News* also ran an editorial by a supportive bar owner. BREATH staffed booths at the California Restaurant Association's trade shows in Los Angeles and San Francisco to meet and talk with thousands of bar and restaurant owners about the California Smoke-free Workplace Act.

Serving as a hub for information sharing, BREATH was instrumental in supporting local agencies responsible for enforcing Labor Code 6404.5. Over 65 local and statewide training workshops were conducted, featuring legal interpretations of the law, protocols for enforcement, court case history, inter-agency networking,

and techniques for working through resistance. Each workshop featured local enforcement representatives, local business owners and “best practices” from around the state. Several of these workshops were presented collaboratively with BREATH’s subcontractor, the Law Enforcement Assistance Network (LEAN), a law enforcement consulting group comprised of active duty police officers.

In three major urban areas, San Diego, the San Francisco Bay Area and the greater Orange County area, BREATH with the help of local agencies, organized membership coalitions of bar and casino employees. In-roads were also made with musicians and entertainers who performed in venues that were once smoke-filled, but now smoke-free. A statewide advisory board comprised of members of the hospitality industry assisted BREATH in leading the way for many business owners.

Local Lead Agencies

Comprehensive local tobacco control programs were funded in 58 county and 3 city health departments under Proposition 99’s enabling legislation. These Local Lead Agencies (LLAs) played a critical role in the implementation of the Smoke-free Workplace Law in bars within their jurisdictions. They developed smoke-free bar interventions based upon local needs, such as the number of cities within a county, ethnic make-up, language challenges, and geographic restrictions. Often times, in coordination with BREATH, the LLAs provided technical assistance, support materials, special events and media activities for bar owners, employees and patrons. A good example was the San Francisco LLA.

In 1997, in anticipation of the coming law, the San Francisco Department of Public Health, Tobacco-Free Project carried out a successful, multi-faceted strategy for introducing smoke-free bars

in a highly diverse and urban setting, using the following program components:

- **Community Input:** Over 1,000 community residents were surveyed in four languages (English, Spanish, Cantonese, and Vietnamese) to determine opinions on smoke-free bars.
- **Operator Input:** San Francisco developed and mailed a survey questionnaire to all (2,831) San Francisco bar/restaurant owners in order to: a) inform them of public opinion regarding smoke-free bars, b) invite them to operate smoke-free for a day during the 1997 Great American Smoke Out, and c) encourage them to become smoke-free on an ongoing basis before the implementation of Labor Code 6404.5.
- **Incentives:** Voluntarily smoke-free establishments were identified in a newly published *San Francisco Guide to Smoke-Free Restaurants and Bars*. Guides were distributed through direct mail to targeted neighborhoods. This effort also generated media coverage for bars that went smoke-free for the 1997 Great American Smoke-Out.
- **Employee Outreach:** Encouragement and technical support were provided to bar workers interested in securing voluntary smoke-free bar policies at their work place, prior to the January 1, 1998 deadline. An educational kit was also provided for workers to use when approaching owners and/or managers. Participating bars and restaurant owners were recruited as spokespersons to raise public awareness.

- Technical Support: Informational materials addressing legal parameters, employer responsibility, enforcement technicalities, and legal definitions were developed.
- Media: An assertive media and public relations campaign was launched. It resulted in at least 13 print, 4 radio and 7 television news stories on smoke-free bars. The project aired public service announcements from the ALA and developed their own advertisement to de-glamorize cigar nights. They developed print ads and street signs informing the public of the new law and provided multi-lingual materials to bar owners. “Question and Answer” packets about the law were also distributed to bar owners and the media.
- Follow Up: More than a year after Labor Code 6404.5 became applicable to bars, taverns and gaming clubs, the San Francisco City Attorney was the first prosecutor’s office to sue recalcitrant bar owners under California’s Unfair Business Practices Law (Business and Professions Code, Section 17200). This action was taken against only a handful of establishments that had received numerous warnings and citations, but refused to comply with the law, thereby creating an uneven playing field for the majority of law-abiding bar owners.

Highlights of Innovative and Effective Smoke-free Bar Activities by Other Local Lead Agencies

- Orange County LLA mailed information packets to bar owners and kits to public officials; purchased a half-page ad in the

Orange County Register and other English and foreign language newspapers; distributed press releases; and contacted area groups and churches about the benefits of the new smoke-free bar law. Numerous follow-up meetings were conducted with enforcement agencies to ensure full and fair enforcement in that county.

- Placer County LLA sponsored smoke-free activities during the Great American Smoke Out; ran print and radio ads promoting bars that were already smoke-free; distributed promotional materials (napkins, stickers, and flashing buttons); and hosted meetings for bar owners and managers. A special awards banquet was held for the Red Lobster Restaurant, acknowledging its groundbreaking role by becoming smoke-free in January 1995. Enforcement training workshops and local media activities were also conducted.
- LLAs in Shasta and Riverside Counties, at opposite ends of the state, implemented similar, centralized enforcement procedures. Shasta County hired a retired law enforcement officer (paid out of county general funds) to work directly with the District Attorney’s office on bar compliance. Riverside County authorized one of its health educators (also paid out of general revenue funds) to cite noncompliant bars throughout the county. In addition to writing citations where necessary, both counties focused on educating local judges and court commissioners to ensure fair, informed hearings in court. Both counties followed through with sustained enforcement efforts to attain exceptionally high compliance rates by 2001.

- Fresno County LLA and the Fresno County Economic Opportunities Commission organized a policy leadership training conducted by BREATH. The newly energized coalition of citizens attended a city council meeting to demand improved enforcement of Labor Code 6404.5 and received excellent media coverage.
- Amador County LLA ran a full-page ad in their local newspaper, featuring the signature of every physician in their area, urging support for Labor Code 6404.5.
- San Mateo County LLA staff members ‘rode-along’ with city police officers to witness citations of non-compliant stand-alone bars, raising compliance to nearly 90%.
- Most LLAs in California worked tirelessly to implement Labor Code 6404.5 during 1998, 1999 and 2000. Their efforts made the work of law enforcement agencies easier. The result was an estimated overall statewide compliance rate above 90% by December of 2000, as reported to BREATH and TCS by local tobacco control projects. These estimates were based upon on-site surveys of bars and/or interviews with local code enforcement personnel. Counties reporting 95-100% compliance with the law by December 2000 represented both urban and rural demographic landscapes, including Butte, Imperial, Madera, Marin, Mono, Monterey, Nevada, Riverside, San Benito, San Luis Obispo and Yolo counties.

Regional Community Linkage Projects

The *California Tobacco Control Program* also funded 11 Regional Community Linkage Projects with Proposition 99 tax revenues to connect and coordinate local health departments and community-based organizations and in particular, to provide regional public relations and media activities.

Regional programs helped local organizations sponsor and coordinate tobacco use prevention, policy and media activities that cut across traditional political, geographical and organizational jurisdictions. These efforts brought together diverse groups of individuals, agencies and organizations to work in partnership toward common goals.

An excellent example of regional activities in an urban setting was the Los Angeles Link (LA Link) program, which encompassed 88 cities within Los Angeles County, including Long Beach and Pasadena. This regional effort trained spokespersons, distributed informational kits to over 7,000 bar owners, and placed advertising and public service announcements about smoke-free bars. LA Link sponsored smoke-free events at 20 area nightspots during the 1997 Great American Smoke-Out and hosted an information booth at the California Restaurant Association Trade Show. LA Link surveyed bar and restaurant owners about smoking compliance rates and city code enforcement agencies about the adoption of enforcement procedures for Labor Code 6404.5. Armed with this information, LA Link then sponsored a training workshop for local code enforcement officers and city managers featuring speakers from BREATH, the Long Beach LLA, local law enforcement agencies and smoke-free bar owners who provided information on enforcement and maintaining customer satisfaction. Following the enactment of Labor Code 6404.5, LA Link was

instrumental in working with the Los Angeles City Council to pass a local ordinance establishing a centralized complaint hot line for city residents.

The Gold Country Region provided another example of activities in a multi-ethnic region of rural to medium sized communities, consisting of fourteen counties (Alpine, Amador, Calaveras, El Dorado, Inyo, Mono, Nevada, Placer, Sacramento, San Joaquin, Stanislaus, Sutter, Tuolumne and Yolo). The region began educating bar owners, followed this with widespread volunteer bar observations and eventually shared data with law enforcement agencies. They issued a series of press releases to local newspapers and television news stations explaining the importance of the California Smoke-free Workplace Act, and featured interviews with local bar owners who had voluntarily gone smoke-free. As many regions did, the Gold Country Region also provided mini-grants to support free entertainment, advertising or publicity for bars that were smoke-free.

Other important work by Regional Community Linkage Projects took place throughout the state. Tri-Country South Region, North Valley Region and BARTER (Bay Area Regional Tobacco Education Resource) conducted patron surveys in dance clubs and provided excellent bar owner recognition activities such as visiting compliant bars in tourist and high traffic areas, awarding certificates of appreciation, celebratory messages and holiday sweets. Best yet, these activities inevitably garnered local media attention.

Ethnic Tobacco Education Networks
The four Ethnic Tobacco Education Networks of the *California Tobacco Control Program* provided ethnic-specific technical assistance and training for Hispanic/Latino, Asian/Pacific Islander, African American, and American Indian

populations throughout California. Each of these networks offered culturally relevant and appropriate tobacco education interventions.

For example, the Asian and Pacific Islander Tobacco Education Network developed strategies for smoke-free bar implementation in the city of San Francisco and its outlying areas. The Network created and distributed language-specific materials for use by bar owners and community organizations. These materials made a difference in educating immigrant groups about the law since mainstream messages often did not reach this segment of the population.

In collaboration with BREATH, the African-American Tobacco Education Network placed full-page ads in African-American-owned newspapers such as *The Observer* in Sacramento, recognizing ethnic businesses in compliance with the smoke-free bar law.

The Hispanic/Latino Tobacco Education Network conducted surveys of Hispanic-owned bars and urged compliance through educational materials, media information and face-to-face visits with business owners.

BREATH consulted with the American Indian Tobacco Education Network regarding voluntary smoke-free nights in tribal casinos, which, as sovereign territory, were not subject to the mandatory provisions of California Labor Code 6404.5.

Community-Based Programs
Several community-based programs throughout the state were also funded by the *California Tobacco Control Program* to implement smoke-free workplace programs. Overall, these projects supported the efforts of the *Tobacco Control*

Program in highly urban areas and/or offered access to hard-to-reach rural and ethnic populations. These grantees included groups such as Catholic Charities in San Diego and Libreria Del Pueblo in San Bernardino, who provided a unique understanding of their communities and provided tailored education to meet specific community and cultural needs.

Just how far-reaching the work of Competitive Grantees could be was demonstrated by two such grantees in San Diego County. First, the American Lung Association of San Diego and Imperial Counties hosted bar owner forums; posted ads at city bus stops and on buses; held press conferences; and ran radio, TV and print advertisements. To further generate media exposure and public awareness, the program used the Great American Smoke-Out to feature 14 bars voluntarily going smoke-free on a trial basis prior to the January 1, 1998 implementation date. Second, the San Diego-based Labor's Community Services Agency created a full-time project to work on smoke-free bar implementation. In January 1998, local tobacco control educators conducted a compliance survey in a popular nightclub area immediately prior to the Super Bowl, which was held in San Diego. Of the 37 bars surveyed, all 37 were found to be smoke-free. Subsequently, both agencies developed outstanding working relationships with the San Diego Police Department and city prosecutors. As a result, San Diego was the scene of some of the most innovative and effective prosecutorial work done in the state.

Voluntary Non-Profit Agencies as Collaborating Partners

California's major voluntary health agencies were major players in cultivating public acceptance of smoke-free laws. The ACS, ALA, AHA, California Labor Federation (AFL-CIO) and others collectively lent a powerful voice in the battle to protect bar and gaming club workers from

secondhand smoke. Each of these agencies activated their grass-root volunteers and professional staff to fight repeated legislative efforts to delay the implementation of the smoke-free bar law.

The voluntary agencies created and paid for their own hard-hitting advertising and public relations campaign to educate the public and legislators about the importance of smoke-free workplace laws. They testified before legislative committees and organized letter-writing campaigns among their local affiliates. The California Division of the ACS organized joint press conferences and circulated news releases about the importance of implementing the final segment of the California Smoke-free Workplace Act in bars and casinos. The ALA of California led lobbying efforts to protect the legislation during five repeal attempts initiated by the tobacco industry. ALA also filed a successful Friend of the Court brief in a district court case that challenged the constitutionality of the law. The California Labor Federation joined the nonprofit health organizations to create a potent pro-health, worker-protection voice in the state capitol.

Additionally, the League of California Cities, the California Nurses Association, California Medical Association, Smoke-free Air for Everyone (SAFE) and the California Parent-Teacher's Association (PTA) provided support to the *California Tobacco Control Program*. These groups used their networks and advocacy skills to garner support for the California Smoke-free Workplace Act and mobilized opposition to Proposition 188 and subsequent attempts to delay or repeal smoke-free bars.

With these important partnerships, the *California Tobacco Control Program* was able to leverage its resources exponentially, beyond what a state agency could accomplish on its own.

California would not have achieved the same success in creating smoke-free indoor work environments without these cooperative affiliations.

The Role of Statewide Media

The TCS statewide media campaign played a vital role in the successful implementation of smoke-free bars. The media campaign provided public relations support, and multimedia advertisements to reinforce on-going, community-based educational activities. Working with LLAs and others, the media campaign targeted a statewide television and radio audience.

The messages developed and disseminated by the media campaign supported and called attention to widespread acceptance of smoke-free bars, and resulted in broad-based community recognition of the smoke-free bar provisions in the California Smoke-free Workplace Act. Through its media campaign and local programs, TCS also:

- Educated bar patrons and the general public about the harm of secondhand smoke, the requirements of the new law, and community support for smoke-free bars.
- Created television, radio and print advertisements supporting the new law.
- Publicized results of statewide public opinion polls, surveys and revenue data.

- Distributed these ads via network and cable television, popular radio stations, primary and secondary newspapers, and beverage and restaurant industry magazines.
- Developed promotional items including signs, coasters and napkins to be distributed by LLAs, free of charge, to bar and nightclub owners.
- Provided a binder containing background and media outreach materials, sample ads and interview talking points to tobacco control program directors around the state.
- Provided bar owners and employees with an informational brochure on transitioning to a smoke-free environment.
- Created multiple public relations and media events to announce the law and support its implementation.

Technical assistance training provided by the media campaign proved invaluable for tobacco control programs throughout the state. Leading up to the January 1998 deadline, the media campaign combined information and strategies from previous activities with timely and targeted press releases. This effort reinforced the campaign's earlier activities and provided "air support" for the successful grassroots implementation activities taking place in cities, counties and regions throughout California.



EVALUATION METHODS: TRACKING PUBLIC SUPPORT, ECONOMIC IMPACT AND PUBLIC HEALTH IMPACT

Public Opinion Polls Confirm Support

In 1989, long before enactment of the California Smoke-free Workplace Act, TCS was charged with the responsibility for evaluating the results of the *Tobacco Control Program* and began collecting data on tobacco-related beliefs and behavior. The widespread public acceptance that greeted the introduction of the Smoke-free Workplace Act in 1995 clearly demonstrated that Californians supported and were ready for smoke-free workplaces.

But how would the public respond to eliminating smoking in bars and gaming clubs? The answer emerged through a series of studies and polls conducted to assess public attitudes about smoke-free environments, including bars. Four broad-based statewide opinion polls confirmed the public's knowledge of, and support for smoke-free policies. Each survey provided the *Tobacco Control Program* with statistical data to support the rising tide of smoke-free policies and especially to promote implementation of smoke-free restaurant and bar requirements.

The "Social Will" Index

As early as 1996, the California Smoke-Free Cities Program conducted a study measuring

potential community receptiveness to tobacco control measures. The project analyzed voting margins on issues such as the Proposition 99 tobacco tax increase and the Philip Morris-sponsored Proposition 188. It also conducted in-depth interviews with law enforcement agents and city officials to measure "*social will*." In high *social will* communities, the public expected and welcomed smoke-free environments; whereas, in low *social will* communities, officials expressed apprehension about the law and in some cases, revealed personal resistance to indoor smoking restrictions. The *California Tobacco Control Program* was able to use this information to identify communities most ready and most worried about implementing smoke-free workplaces.

California Adult Tobacco Surveys

Another measure of the effectiveness of the state's public education campaign on smoke-free worksites is the California Adult Tobacco Surveys (CATS), which was first conducted in 1994.⁵ CATS is an automated, random-digit-dial telephone survey that interviews approximately 4,000 California adults annually about their smoking behaviors, attitudes and beliefs. The survey also measures public opinion concerning secondhand smoke and smoke-free environments such as bars and restaurants. CATS data reported by TCS in 1996 revealed that:

- More than 80% of Californians believed that exposure to secondhand smoke caused lung cancer in nonsmokers.
- Over 93% believed that secondhand smoke could harm the health of babies and children.
- Almost 90% of nonsmokers and 70% of smokers felt that indoor work sites should be smoke-free.
- Over 85% of California adults reported a preference to dine in a smoke-free restaurant.
- Eighty-nine percent of California adults agreed that secondhand smoke was a serious health hazard.
- Californians reported by a ratio of 3 to 1 that they preferred to patronize smoke-free bars.
- More than half of Californians working outside their homes believed that protection from secondhand smoke should be extended to bars and taverns; 64% felt employees in bars should be protected.
- Ninety-Seven percent of 10th graders in the state were aware that secondhand smoke disables and kills.
- Most adults (87%) reported having smoke-free policies at their worksites.
- The majority of adults supported extending smoke-free policies to other areas such as bars (75%) and outdoor public places (57%).
- Five out of six Californians, working outside their homes, agreed that employers had a responsibility to protect employees from secondhand smoke.

Gallup Poll

In March 1996, well after Labor Code 6404.5 went into effect for restaurants and other indoor worksites, but did not yet apply to bars, the CDHS commissioned a Gallup poll to determine the effectiveness of the *California Tobacco Control Program* and attitudes of Californians on tobacco-related issues.⁸ The longitudinal study included both an analysis of interventions as well as direct reports from those polled. The Gallup Poll found that:

Field Institute Survey of California Adults

In July 1997, twice in 1998 and once more in 2000, studies by the Field Research Corporation found strong support for smoke-free environments and laws.⁹ In 1997, Field surveyed the attitudes of California bar patrons (age 21 or older) about smoking policies and smoke-free bars. This survey tracked the attitudes of Californians who actually patronized bars and gaming clubs. They were asked about smoking behaviors, environmental preferences, patronage habits and policy opinions. These three surveys found that:

- Seventy-five percent of bar patrons did not smoke in bars in 1997; **increasing to 86% by 2000.**
- Sixty-eight percent of bar patrons preferred smoke-free environments in bars in 1998; **increasing to 75% by 2000.**
- Sixty-five percent of bar patrons either “strongly” or “somewhat” approved of the law in 1998; **increasing to 72.5% by 2000.**
- **Eighty-seven percent** of bar patrons reported they were “as likely” or “more likely” to visit bars since they had become smoke-free by 2000.

These timely surveys provided tremendous insight, which the *California Tobacco Control Program* used statewide, to successfully implement the smoke-free bar law, Labor Code 6404.5. The surveys confirmed public support for smoke-free bars despite tobacco industry allegations to the contrary.

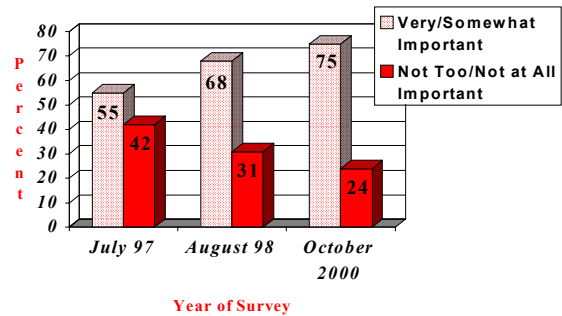
Field Institute Survey of Bar Establishments

The March 1998 Field Research Corporation Poll of Bar Establishments, a polling of individuals who worked in or owned/managed bars contributed significantly in the development of educational materials and activities for bar owners and public health educators at the county and community level, who were responsible for implementing this law.¹¹

Key points brought to light by these surveys were communicated to TCS, BREATH, and all TCS-funded contractors to help them communicate more effectively with bar owners and workers. For example the surveys revealed that:

Bar Patrons Support Smoke-Free Bars

A Survey of California Bar Patrons: July 97, August 98 & October 2000

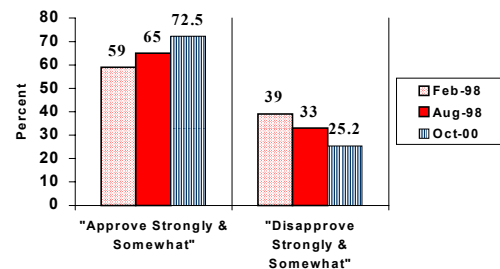


July 1997, August 1998 & October 2000 surveys conducted by the Field Poll Corporation for the California Department of Health Services, Tobacco Control Section.

Patron Approval for Smoke-Free Bars

FIELD POLL February 1998, August 1998 & October 2000.

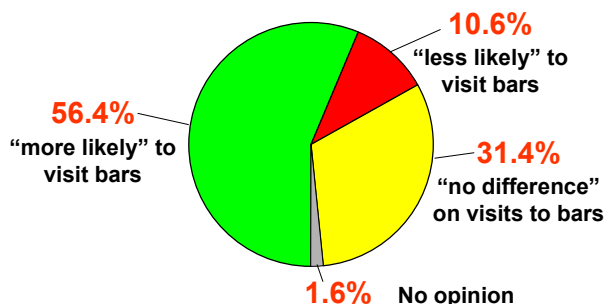
Approval for Smoke-Free Bars Increases



March 1998, August 1998 & October 2000 surveys conducted by the Field Poll Corporation for the California Department of Health Services, Tobacco Control Section.

Bar Patrons More Likely to Visit Smoke-Free Bars

Now that smoking is prohibited in bars, are you more likely, ..., to visit them?



October 2000 survey conducted by the Field Poll Corporation for the California Department of Health Services, Tobacco Control Section.

1. Bar workers in stand-alone bars estimated that over half (52%) of their patrons smoked in their establishments; whereas, the March 1998 patron survey showed that only 26% of bar patrons reported smoking in bars. Bar worker perceptions were off double that of bar patrons, indicating bar owners and servers consistently overestimated the percentage of their customer base that smoked.
2. When bar employees merely stated to smoking patrons that it was against the law to smoke indoors, only 57% of patrons stopped smoking. However, when employees asked a smoking patron to stop smoking or go outside to smoke, 82% readily complied.

Examples of effective tools prepared by BREATH and used by local tobacco control programs based upon this research included “Seven Suggestions for Bar Owners” and “Building Relationships-Meeting with Bar Owners.” These and other materials focused on increasing the understanding of bar owners and workers about the hazards associated with long-term exposure to secondhand smoke and their rights and responsibilities regarding the California Smoke-free Workplace Act. A compelling need to develop such materials was discovered when this 1998 survey by the Field Research Corporation revealed that 35% of non-smoking bar workers were “not at all” or “not very concerned” about the effects of secondhand smoke on their health.

Conclusive Data on Economic Impact of Smoking Restrictions

At the inception of Labor Code 6404.5, statewide economic data for California was not yet available. So, studies of individual cities that had previously adopted smoke-free ordinances were used to alleviate the fear that bar and restaurant

revenues might drop off due to smoke-free policies. Local studies measured impacts on revenues, patronage and tourism. Overall, they showed little or no economic impact resulting from smoke-free bar ordinances and showed consistent market support for the laws.

Local Revenue Data: Taxable retail sales statistics were used in several studies to measure the economic impact to cities and counties with 100% smoke-free bar laws. Some of the findings included:

- A 1994 study based upon state sales tax data (1986-1993) from 15 cities with smoke-free policies, concluded that smoke-free restaurant ordinances in California and Colorado cities did not adversely affect restaurant sales.¹² A follow-up to this initial study reconfirmed those findings.¹³
- Studies found no evidence of negative economic impact caused by San Luis Obispo’s 1990 smoke-free bar and restaurant policy.¹⁴ A later study showed a consistent increase in taxable sales transactions for eating and drinking establishments through 1994 in that city after passing its local smoking ban.¹⁵
- Following the 1993 implementation of a smoke-free ordinance in Redding, the city’s average taxable transactions per eating and drinking establishment increased 2.2% and then expanded that increase in 1994 by 7.3%.¹⁵

Statewide Patron and Market Data: Tracking studies in 1997 and 1998 indicated that the majority of California bar patrons were non-smokers who preferred smoke-free environments. Findings included:

- Although patronage patterns were unrelated to smoking status, 78% of frequent bar users and 82% of frequent restaurant users were nonsmokers.¹⁷
- Nearly 9 in 10 (87%) of adult bar patrons said that a ban on smoking in bars would increase or have no affect on their overall patronage of bars.¹¹

As sales tax data accumulated from 1998 forward, following the implementation of Labor Code 6404.5 in bars, taverns and gaming clubs, economic fears proved groundless. One California bar owner stated the reason for this was clear, “The odds are in the bar owner’s favor because 82% of California adults don’t smoke.”

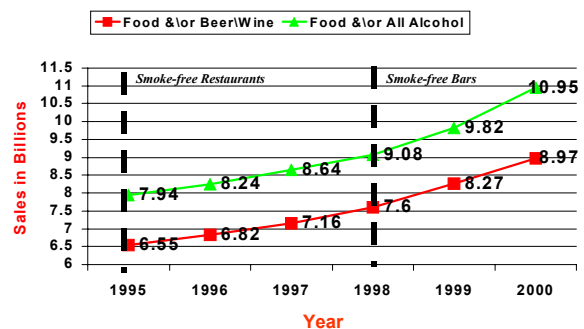
Support from business owners increased as sales tax figures for each succeeding quarter emerged from the California State Board of Equalization, showing no negative statewide economic impact from the law. The California Smoke-free Workplace Act went into effect in bars in January, 1998. Nearly 89% of all California bars were attached to restaurants at that time. **Annual Taxable Sales figures from the California Board of Equalization (BOE) for such establishments selling beer and wine and for those selling all types of liquor increased every single quarter of 1998, 1999 and into 2000.**¹⁶ Revenue data from the BOE, the only state agency that collected sales data directly from business owners also showed that:

- For establishments selling beer and wine, annual sales in 1997 were \$7.16 billion dollars; annual sales in the same category for 1998 increased to \$7.6 billion and in 1999 they rose to \$8.27 billion.
- For establishments selling all types of alcohol, 1997 sales were \$8.64 billion dollars; 1998 sales increased to \$9.08 billion and 1999 annual sales increased to \$9.82 billion.

- An additional \$879,816,000 in sales were made in California’s beer, wine and liquor serving establishments during 1998 as compared to 1997—after the California Smoke-free Workplace Act became effective for bars.
- The rate of growth in beer, wine and liquor serving establishments outpaced all retail outlet taxable sales in 1998 compared to 1997 by 7.7%.

In fact, in 2000, California’s bars and restaurants had over 108,000 more employees than in 1995, bringing the total workforce to nearly 926,000 people for the hospitality sector.

Annual Taxable Sales Figures California: 1995 - 2000



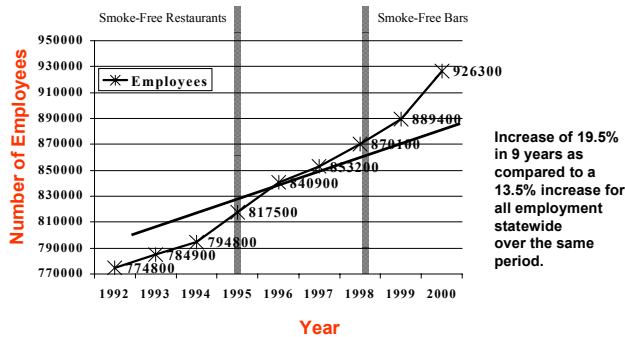
Source: California Board of Equalization, 10/01

In summary, the BOE reported increased sales tax revenues for California’s smoke-free liquor licensees every quarter from January 1998 through the year 2000. Sales tax figures indicated that Taxable Annual Sales for bars and restaurants serving just beer and wine and for those serving all types of alcohol increased in 1998 over 1997 figures by more than 5%. Their sales increased again in 1999 over 1998 by more than 8% and the increases continued in 2000.

California’s Tobacco Control Program proactively sought feedback from the business community to address their economic concerns. It soon became clear that bar owners could see

Number of Individuals Employed in Eating and Drinking Places in California: 1992-1999

Annual Average Labor Force



Source: State of California, Employment Development Department, Labor Force Statistics (401)

the advantages of going smoke-free. They cited lowered operating costs resulting from less routine maintenance as well as happier customers and employees. As early as February, 1998, in *Patterson's Beverage Journal*, California Restaurant Association spokesperson, Christine Granados, described the simple reality for the vast majority of law-abiding bar and restaurant owners, "The new California statewide law prohibiting smoking in bars has now been in effect for over two months and is running very smoothly so far."

Tourism: Reports from the California Department of Tourism showed that smoke-free workplace laws did not have an adverse affect on visitor activity or spending, contrary to tobacco industry claims that tourists would resent California's smoke-free policies. While the California Smoke-free Workplace Act was not directly responsible for an increase in tourism to the state, the fact remained that the tourist industry flourished since the statewide ban went into effect.

1995 was a banner year for tourism in California. That pace was sustained into 1998 and figures released by the California Department of Tourism in 1999 indicated more of the same:¹⁸

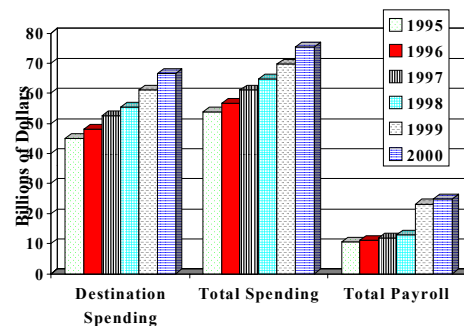
- Total destination spending (spending on hotels, restaurants and travel-related

expenses) in California increased \$13.7 billion dollars between 1995 and 1999.

- Total payroll expenses in the tourism industry jumped \$3.3 billion dollars between 1995 and 1999 and employment in the tourism sector increased by more than 55,000 jobs.

Tourism in California

California Travel Spending and Related Impacts: 1995-2000*



Source: California Trade and Commerce Agency, Division of Tourism, April, 2001

* Year end 2000 data is preliminary. "Total Payroll" definition changed in 1999 to include sole proprietors such as owners of Bed & Breakfasts and their family members instead of just the hired staff of such establishments.

Destination Spending includes spending on accommodations, eating and drinking, groceries, ground transportation, recreation and retail sales. Total spending also includes air transportation and travel arrangement services.

Demonstrated Improvement in Employee Health

Reaction to the law from bar and restaurant employees was understandably favorable. Elated servers, bartenders, casino dealers, musicians and other hospitality industry employees declared they would never go back to smoke-filled work environments. Their high regard for the law was well founded. A 1998 University of California, San Francisco study revealed that 59% of bartenders surveyed who had symptoms of respiratory ailments and impaired lung capacity before the law went into effect for bars showed a significant decrease in symptoms and measurably improved lung capacity just one month after the law took effect.⁶ Between 1998 and 2001, scores of beverage service employees spoke out before legislative bodies, City Councils and County Boards of Supervisors about their improved health conditions and the pleasure of working in clean indoor environments.



DISCUSSION: FUTURE IMPLICATIONS FOR SMOKE-FREE BARS

Where We Are Now: A Status Report

Estimates by BREATH in 2001, based upon on-site bar surveys and LLA interviews with law enforcers, place statewide compliance with Labor Code 6404.5 at an unprecedented 90% for bars attached to restaurants, statewide. Heavily visited areas, such as Fisherman's Wharf in San Francisco, Monterey's Cannery Row, Carmel-by-the-Sea, the Gaslamp District in San Diego, Santa Monica Pier, Mammoth Lakes ski resort and other tourist and resort areas reported even higher compliance rates of 95% or more.

It is key to note that bars attached to restaurants comprise 88% of all on-site consumption liquor licenses in California. Whereas, stand-alone bars (those serving no food) account for only 12% of the liquor licenses. Further, the number of licensed establishments in California totaled nearly 37,000 in 2001. Fully 33% of these are concentrated in Los Angeles County, which had a documented compliance rate among bar/restaurant combinations of 92%, as of February 2001.

From December 1997 through February 2001, BREATH and the LLAs responded to over 2,800 technical assistance calls from bar and restaurant owners, employees, law enforcement representatives and members of the public. Questions frequently asked included topics such as which

areas were suitable for smoking (patios, decks etc.), how to prepare staff for the law, questions concerning legal interpretations of Labor Code 6404.5 and, of course, how to report bars that were allowing indoor smoking.

Testing the Law: California Court Decisions on Smoke-Free Bars

As recalcitrant bar owners were cited and the California Smoke-free Workplace Act came under challenge, California courts defined and clarified the smoke-free bar law. For example between 1998 and 2001, the courts ruled that the law was constitutional, was not vague, provided equal protection and did not preempt local governments from establishing even more strict

local tobacco control prohibitions. Further, the courts ruled that there was no constitutional right to smoke, the presence of ashtrays demonstrated owners are “knowingly and intentionally” allowing patrons to smoke and that bar owners must do more than just post “no smoking” signs and ask patrons to refrain from smoking—in short, bar owners were told by the courts to stop serving patrons who refused to stop smoking.

Since Labor Code 6404.5 went into effect for bars, taverns and gaming clubs three years ago, no meaningful challenge to the law has succeeded in any court in California. On the contrary, local jurists took a common sense approach to cases, looking at owners’ overall conduct to determine whether or not they were doing what the law required. In addition, the courts found that absent owners could be cited through the mail, cities and individuals could sue non-compliant bar owners for “unfair business practices” and bar staff who smoked while preparing or serving drinks were guilty of violating the Labor Code and California’s Health and Safety Code, leading to court-ordered, temporary closure of at least one establishment.

Not only California courts, but also regulatory agencies such as Cal-OSHA (California Occupational Safety and Health Administration) stepped up to the plate to carry out the intent of Labor Code 6404.5. In late 2000, two bar owners who had been repeatedly warned and cited for violating the law were referred to Cal-OSHA, investigated and determined to be in “willful and serious” violation of the smoke-free workplace law. As a result, they were each fined over \$50,000 for the violations.

Very few bar owners have had to face the courts under this law. But when it has been necessary, California courts responded by not only upholding the law in concept, but also establishing a body of sound legal interpretations in a variety of real-life

factual circumstances that have provided owners with fair warning and a level playing field.

Recommendations for Others Considering Smoke-free Workplace Laws

Big tobacco will not freely surrender any ground, no matter how small the market potential or plain the threat to public health. Establishing and implementing a smoke-free workplace law in California took hard work by many people. Tobacco control proponents had to be prepared to face aggressive tactics by the tobacco industry. Fortunately, the tide of public awareness across the country and around the globe is turning against the tobacco industry and many groups have had successes that others can learn from. But public understanding does not happen automatically.

The first step on the road to smoke-free workplaces is public education about the dangers of secondhand smoke. Public awareness activates popular demand for smoke-free public places. Once the public has the facts, the time is ripe for smoke-free policies to take hold.

To take advantage of positive momentum and give a voice to the public desire for smoke-free workplaces consider these 10 steps:

1. **Gather Facts:** Identify the social profile of your target populations. Survey your community to determine their level of knowledge about the danger of secondhand smoke and their readiness for community-wide policies. Collect information on changing attitudes and emerging acceptance of smoke-free environments throughout the hospitality industry, including restaurants and bars. Gather reliable economic impact indicators for your public relations campaign. Interview people from cities and counties with

existing smoke-free policies to gain insight into issues such as enforcement, compliance, public opinion, and implementation strategies. *California's taxable sales data, indicated that revenues increased statewide following the enactment of smoking regulations; this data was essential to counter false claims by the tobacco industry that were intended to panic small business owners.*

2. **Focus on Workers:** Support for the California Smoke-free Workplace Act was enormously aided precisely because it was a worker protection law, rather than a consumer protection law. This approach increased support for the law because most Americans believe, as a matter of equity, that workers are entitled to a safe and healthy work environment. *The public embraced the notion that exposure to deadly secondhand smoke should not be a condition of employment.* This framing of the issue became particularly important in countering legislative attempts to permit certain workplaces such as bars, taverns and gaming clubs, to allow smoking. Californians understood that workers in these environments deserved that same level of health protection as workers in high-rise office buildings, factories and schools.
3. **Move Incrementally:** Capitalize upon the experiences of others by planning your campaign in stages. For instance, begin by making government offices smoke-free. Then address private industry, including restaurants, and finally progress to bars and gaming clubs. Plan on enough lead-time to prepare the public and key community leaders. A broad base of local tobacco control policies is ideal to support statewide smoke-free mandates.
4. **Collaborate:** Cooperative efforts among public health agencies, voluntary health nonprofits and community-based organizations are fundamental to a successful public health campaign. Leverage the resources, experience, and abilities of numerous agencies in your area. This approach offers your program a greater wealth of knowledge and talents. Create ways for groups to communicate with and support each other. Cultivate partners with the means and know-how to work with and, when necessary, bring political pressure to bear on legislators and public officials.
5. **Involve Business Owners and Employees:** Encourage bar owners, managers and employees to work with you, not against you. An important early step is involving industry professionals in the planning process. Listen carefully when soliciting their input. They feel ownership of the program when they see their suggestions incorporated into your campaign.
6. **Advertise:** Use appropriate paid and unpaid media outlets to reach constituencies (bar owners and managers, bar patrons, public officials, health professionals and the general public). Print and television advertising coupled with billboards, trade journal advertising and other mediums make a powerful combination. Advertising is most effective when focused on the facts surrounding the threat of secondhand smoke to public health, rather than focusing on particular outcomes or policy. California's experience demonstrates that a skillful advertising campaign can effectively counterbalance the slick ad campaigns run by the tobacco industry.

- 7. Cultivate Unpaid Public Relations:** Identify and educate opinion-makers in all forms of public media, such as newspaper editorial boards, T.V. reporters, radio talk show hosts and magazine publishers. They can help you deliver your facts. Plan and disseminate letters to the editor, conduct press conferences and distribute promotional items to support your program's message.
- 8. Understand Diversity:** Take the time to gather input from culturally diverse groups. Learn how to communicate accurate messages in the appropriate idiom and context. Tailor your support materials and ads to each community's interests and customs. Be sure to use credible translators and focus groups to test your products.
- 9. Develop a Revenue Base:** California's success was underwritten by the Proposition 99 cigarette tax. This was an earmarked portion of 25 cents per pack that generated millions of dollars annually to fund local programs and the media campaign that led to grassroots pressure for local and statewide action. Explore sources of revenue that may be appropriate in your area.
- 10. Enforce the Law:** Research and collect proven enforcement protocols that can be easily adapted by local enforcement personnel. Set up practical programs to train local enforcement agencies, alert the public about ways to voice their complaints, and encourage and recognize voluntary compliance among bar owners/operators as well as responsive enforcement by authorities.

Conclusion

Research on public opinion and statewide compliance rates clearly demonstrated that support for the California Smoke-free Workplace Act and levels of compliance with the law grew from quarter to quarter between 1998 and 2001. Polls showed more than 72% of bar patrons and over 80% of the general public approved of smoke-free workplaces, including bars. In California, smoke-free environments became the accepted norm, at work, in public places, and at home. As early as 1998, a spokesperson for the CDHS could state to the press without fear of contradiction that, *"If you go to restaurants throughout California, you rarely see anyone smoking. It's because people generally understand the law, not because there's an officer standing there."*¹⁹

Additionally, smoke-free workplace legislation withstood repeated attacks by the tobacco industry and its front groups between 1994 and 2000. Voters delivered a clear rejection of tobacco industry propaganda when Proposition 188, attempting to overturn Labor Code 6404.5 was voted down in 1994. The tobacco industry made no progress in their lobbying efforts to halt smoke-free bars. **Subsequent attempts to limit or overturn the state's smoke-free bar law have failed. Why? Because cancer rates went down, revenues went up and public acceptance of smoke-free bars became a "social norm".**

In early 2001, confirmation of the success of smoke-free bars in California even came from former Republican Assemblymember Brett Granlund, one of the fiercest opponents of smoke-free bars. Commenting in the *Sacramento Bee* on bar owners who continued to violate the law and, as a result received stiff penalties from increasingly impatient judicial and regulatory authorities, Granlund acknowledged,

“The law is the law and there have been many efforts to challenge it, but it appears to me that fight is over. It’s just something smokers have to get used to.”^{20,21} Californians, smokers and nonsmokers alike, have more than “gotten used to

it”. Today, they proudly view smoke-free dining, drinking and entertainment venues, along with other smoke-free workplaces, as a sign of the good life for which the state is so well known.

REFERENCES

1. Siegel, M. "Smoking and Restaurants: A Guide for Policy-Makers" 1992.
2. California Environmental Protection Agency. "Health Effects of Exposure to Secondhand Smoke," 1997.
3. United States Department of Health Services, "Special Report to U.S. Congress on Alcohol and Health from the Secretary of Human Services."
4. California Department of Health Services, "California Occupational Mortality Study, 1979-1981" California Department of Health Services, 1981.
5. California Department of Health Services, "What Californians Believe About Secondhand Smoke" Source: California Adult Tobacco Survey, 1994-1995. California Department of Health Services, Tobacco Control Section, 1996.
6. Glantz, S. and Balbach, E. Tobacco War—Inside the California Battles, University of California Press-2000.
7. Americans for Nonsmokers' Rights, "Survey of Smoke-Free Ordinances" March 6, 1997.
8. Los Angeles Times, "An Inside Look at Battles of Big Tobacco," 6-11-98.
9. The Gallup Organization "A Survey on California's Law For a Smoke-Free Workplace (AB 13): Attitudes After the First Year of Implementation," March 1996.
10. Field Research Corporation, "A Survey of California Adults Age 21 or Older About Smoking Policies and Smoke-free Bars," July 1997.
11. Field Research Corporation, A Survey of California Bar Patrons About Smoking Policies and Smoke-Free Bars," October 1998.
12. Glantz, S. and Smith, L. "The Effect of Ordinances Requiring Smoke-Free Restaurants on Restaurant Sales." *American Journal of Public Health*. 1994; 84:1081-1085.
13. Glantz, S. and Smith, L. "The Effect of Ordinances Requiring Smoke-Free Restaurants and Bars on Revenues." *American Journal of Public Health*, October 1997:1687.
14. Taylor Consulting Group. "A Study of the Economic Impacts on San Luis Obispo Restaurants and Bars" 1993.
15. Reynen, D. "Statements re: California Board of Equalization Data on Eating and Drinking Permits for Three Selected Cities." California Department of Health Services, Tobacco Control Section, unpublished analysis, 8/2/96.
16. California State Board of Equalization, April 2001.
17. Biener, L. and Siegel, M. "Behavior Intentions of the Public after Restaurant and Bar Smoking Bans." *American Journal of Public Health*, 1997; 87: 204-2044.
18. California Department of Tourism, "California Travel Spending and Related Impacts 1995-1997," 1998.
19. San Luis Obispo Telegraph-Tribune, "Californians Keep Lighting Up Despite Smoking Ban," 9/25/98.
20. *Ubhi v. State Compensation Insurance Fund*, California Workers' Compensation Appeals Board, 1990.
21. BREATH, The California Smoke-Free Bar Program, A Project of the American Lung Association of the East Bay, "Collected Abstracts and Case Studies on the Development and Implementation of Smoke-Free Bars in California," 1998-2000.

APPENDIX A

ASSEMBLY BILL 13

As passed in 1995

BILL NUMBER: AB 13 CHAPTERED 07/21/94

BILL TEXT CHAPTER 310 FILED WITH
SECRETARY OF STATE JULY 21, 1994

APPROVED BY GOVERNOR JULY 21, 1994

PASSED THE ASSEMBLY JULY 7, 1994

PASSED THE SENATE JUNE 30, 1994

AMENDED IN SENATE JUNE 16, 1994

AMENDED IN SENATE MAY 24, 1994

AMENDED IN SENATE APRIL 6, 1994

AMENDED IN SENATE MARCH 7, 1994

AMENDED IN SENATE AUGUST 30, 1993

AMENDED IN SENATE AUGUST 19, 1993

AMENDED IN SENATE AUGUST 17, 1993

AMENDED IN SENATE JULY 1, 1993

AMENDED IN ASSEMBLY MAY 24, 1993

AMENDED IN ASSEMBLY APRIL 12, 1993

AMENDED IN ASSEMBLY FEBRUARY 22, 1993

INTRODUCED BY Assembly Member Terry Friedman (Principal coauthor: Assembly Member Margolin) (Coauthors: Assembly Members Archie-Hudson, Bates, Caldera, Eastin, Gotch, Isenberg, Klehs, and Solis) (Coauthors: Senators Petris, Torres, and Watson) DECEMBER 7, 1992 An act to add Section 6404.5 to the Labor Code, relating to occupational safety and health. LEGISLATIVE COUNSEL'S DIGEST AB 13, T. Friedman. Occupational safety and health: tobacco products. The existing California Occupational Safety and Health Act of 1973, administered and enforced by the Division of Occupational Safety and Health within the Department of Industrial Relations, prohibits any employer from occupying or maintaining any place of employment that is not safe and healthful. It also provides, under specified circum-

stances, for misdemeanor penalties with respect to violations of the act, except where another penalty is specifically provided. This bill would additionally prohibit any employer from knowingly or intentionally permitting, or any person from engaging in, the smoking of tobacco products in an enclosed space at specified places of employment. The bill would specify that, for purposes of these provisions, "place of employment" does not include certain portions of a hotel, motel, or other lodging establishments, meeting or banquet rooms subject to certain exceptions, retail or wholesale tobacco shops, private smoker's lounges, cabs of motortrucks or truck tractors as specified, bars and taverns and gaming clubs subject to certain prescribed conditions, warehouse facilities, theatrical production sites, and medical research or treatment sites, employee breakrooms under prescribed conditions, patient smoking areas in long-term health care facilities, as defined, and specified smoking areas designated by employers with fewer than 5 employees. It would also specify that, for purposes of these provisions, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has taken certain reasonable steps to prevent smoking by a nonemployee. This bill would also specify that the smoking prohibition set forth in these provisions shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment, and shall supersede and render unnecessary specified local ordinances regulating the smoking of tobacco products in enclosed places of employment. This bill would additionally provide that a violation of the smoking prohibition set forth in these provisions is an infraction punishable by specified fines. It would further provide that the smoking prohibition shall be enforced by local law enforcement agencies, as specified, but would

specify that the division shall not be required to respond to any complaint regarding a violation of the smoking prohibition, unless the employer has been found guilty of a 3rd violation of the smoking prohibition within the previous year. By establishing a new prohibition the violation of which is, under specified circumstances, an infraction, this bill would create a new crime and would thereby establish a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS: SECTION 1. Section 6404.5 is added to the Labor Code, to read: 6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a “place of employment” pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products. (b) No employer shall knowingly or

intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment. (c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has taken the following reasonable steps to prevent smoking by a nonemployee: (1) Posted clear and prominent signs, as follows: (A) Where smoking is prohibited throughout the building or structure, a sign stating “No smoking” shall be posted at each entrance to the building or structure. (B) Where smoking is permitted in designated areas of the building or structure, a sign stating “Smoking is prohibited except in designated areas” shall be posted at each entrance to the building or structure. (2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace. For purposes of this subdivision, “reasonable steps” does not include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee. (d) For purposes of this section, “place of employment” does not include any of the following: (1) Sixty-five percent of the guest room accommodations in a hotel, motel, or similar transient lodging establishment. (2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking by the establishment. Such an establishment may permit smoking in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, “lobby” means the common public area of such an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment’s guests and members of the public typically congregate. (3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel,

restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking is not permitted in such a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking in corridors and prefunction areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis. (4) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph: (A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes. (B) "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories. (5) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present. (6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floor space, and 20 or fewer full-time employees working at the facility, but does not include any area within such a facility that is utilized as office space. (7) Gaming clubs, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "gaming club" means any gaming club as defined in Section 19802 of the Business and Professions Code or bingo facility as defined in Section 326.5 of the Penal Code that restricts access to minors under 18 years of age. (8) Bars and taverns, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restau-

rant, "bar" or "tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein. (9) Theatrical production sites, if smoking is an integral part of the story in the theatrical production. (10) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted. (11) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present. (12) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code. (13) Breakrooms designated by employers for smoking, provided that all of the following conditions are met: (A) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building. (B) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency. (C) The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this paragraph, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied. (D) There are sufficient nonsmoking breakrooms to accommodate nonsmokers. (14) Employers with a total of five or fewer employees, either full-time or part-time, may permit smoking where all of the following conditions are met: (A) The smoking area is not accessible to minors. (B) All employees who enter the smoking area consent to permit smoking. No one, as part of his or her work responsibilities, shall be required to work in an area where smoking is permitted. An employer

who is determined by the division to have used coercion to obtain consent or who has required an employee to work in the smoking area shall be subject to the penalty provisions of Section 6427. (C) Air from the smoking area shall be exhausted directly to the outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building. (D) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency. This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable paragraph of this subdivision that has become inoperative. (e) Paragraphs (13) and (14) of subdivision (d) shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers. (f) (1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), until the earlier of the following: (A) January 1, 1997. (B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons. (2) If a regulation specified in subparagraph (B) of paragraph (1) is

adopted on or before January 1, 1997, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, such a regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency. (3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1997, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall be inoperative on and after January 1, 1997, until such a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1997, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, such a regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency. (g) The smoking prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in

enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100 percent of) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions. (h) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason. (i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, any area not defined as a “place of employment” or in which the smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products. (j) Any violation of the prohibition set forth in subdivision (b) is an infraction subject to subdivision (d) of Section 17 of the Penal Code and, notwithstanding Section 19.8 of

the Penal Code, is punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five hundred dollars (\$500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies including, but not limited to, local health departments, as determined by the local governing body. (k) Notwithstanding Section 6309, the division shall not be required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (j) of a third violation of subdivision (b) within the previous year. (l) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision of application, and to this end the provisions of this act are severable. SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

APPENDIX B

Assembly Bill 3037

Delaying for one year the effective date of AB 13 for bars, taverns & gaming clubs

Assembly Bill No. 3037

CHAPTER 989

An act to amend Section 6404.5 of the Labor Code, relating to employment.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

AB 3037, Cannella. Places of employment:
smoking.

Existing law, with delineated exceptions, prohibits smoking of tobacco products in enclosed spaces at places of employment. Among the exceptions in existing law are specified bars and taverns and gaming clubs, but these exceptions are suspended on January 1, 1997, unless and until the Occupational Safety and Health Standards Board or the Environmental Protection Agency adopts prescribed standards for reducing employee exposure to secondhand smoke. Under existing law, once those standards have been adopted, a condition to continuance of the exemption is

conformity with the standards within 2 years following their adoption.

This bill would extend from January 1, 1997, to January 1, 1998, the date by which the standards board or Environmental Protection Agency must adopt those standards for employee exposure to secondhand smoke in order to permit continuance of the exemption for bars and taverns and gaming clubs. However, in order to qualify for this exemption in 1997, the bill would require that, if practicable, the gaming club, bar, or tavern establish a designated nonsmoking area and that, if feasible, not require any employee, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.

APPENDIX C

CALIFORNIA STATE LABOR CODE SECTIONS 6404 & 6404.5 (Formerly, Assembly Bill 13)

As it became effective for bars taverns and gaming clubs on January 1, 1998

6404.

No employer shall occupy or maintain any place of employment that is not safe and healthful.

(b) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment.

6404.5.

(a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this **section** to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this **section**, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this **section**, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this **section**, it is the intent of the Legislature that any area not defined as a “place of employment” pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

(c) For purposes of this **section**, an employer who permits any non employee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has taken the following reasonable steps to prevent smoking by a non employee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating “No smoking” shall be posted at each entrance to the building or structure.

(B) Where smoking is permitted in designated areas of the building or structure, a sign stating “Smoking is prohibited except in designated areas” shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a non-employee who is smoking refrain from smoking in the enclosed workplace. For purposes of this subdivision, “reasonable steps” does not include

(A) the physical ejection of a non employee from the place of employment or

- (B) any requirement for making a request to a non employee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee.
- (d) For purposes of this **section**, “place of employment” does not include any of the following:
- (1) Sixty-five percent of the guest room accommodations in a hotel, motel, or similar transient-lodging establishment.
 - (2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking by the establishment. An establishment may permit smoking in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, “lobby” means the common public area of an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment’s guests and members of the public typically congregate.
 - (3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking is not permitted in a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking in corridors and pre-function areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis.
- (4) Retail or wholesale tobacco shops and private smokers’ lounges. For purposes of this paragraph:
- (A) “Private smokers’ lounge” means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.
 - (B) “Retail or wholesale tobacco shop” means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.
- (5) Cabs of motor trucks, as defined in **Section 410** of the **Vehicle Code**, or truck tractors, as defined in **Section 655** of the **Vehicle Code**, if no nonsmoking employees are present.
- (6) Warehouse facilities. For purposes of this paragraph, “warehouse facility” means a warehouse facility with more than 100,000 square feet of total floor space, and 20 or fewer full-time employees working at the facility, but does not include any area within a facility that is utilized as office space.
- (7) Gaming clubs, in which smoking is permitted by subdivision (f). For purposes of this paragraph, “gaming club” means any gaming club, as defined in **Section 19802** of the **Business and Professions Code**, or bingo facility, as defined in **Section 326.5** of the **Penal Code**, that restricts access to minors under 18 years of age.
- (8) Bars and taverns, in which smoking is permit-

ted by subdivision (f). For purposes of this paragraph, “bar” or “tavern” means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. “Bar or tavern” includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, “bar” or “tavern” includes only those areas used primarily for the sale and service of alcoholic beverages. “Bar” or “tavern” does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

- (9) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.
- (10) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.
- (11) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family daycare homes and in those areas where children are present.
- (12) Patient smoking areas in long-term health care facilities, as defined in **Section 1418** of the Health and Safety **Code**.
- (13) Breakrooms designated by employers for smoking, provided that all of the following conditions are met:
 - (A) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building.
 - (B) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.
 - (C) The smoking room shall be located in a non-work area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this paragraph, “work responsibilities” does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.
 - (D) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.
- (14) Employers with a total of five or fewer employees, either full-time or part-time, may permit smoking where all of the following conditions are met:
 - (A) The smoking area is not accessible to minors.
 - (B) All employees who enter the smoking area consent to permit smoking. No one, as part of his or her work responsibilities, shall be required to work in an area where smoking is permitted. An employer who is determined by the division to have used coercion to obtain consent or who has required an employee to

work in the smoking area shall be subject to the penalty provisions of **Section 6427**.

- (C) Air from the smoking area shall be exhausted directly to the outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building.
- (D) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable paragraph of this subdivision that has become inoperative.

- (e) Paragraphs (13) and (14) of subdivision (d) shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.
- (f) (1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d),

until the earlier of the following:

- (A) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.
- (2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.
- (3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in

paragraphs (7) and (8) of subdivision (d) shall be inoperative on and after January 1, 1998, until a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

- (4) From January 1, 1997, to December 31, 1997, inclusive, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:
- (A) If practicable, the gaming club or bar or tavern shall establish a designated non-smoking area.
 - (B) If feasible, no employee shall be required, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.
- (g) The smoking prohibition set forth in this **section** shall constitute a uniform statewide standard for regulating the smoking of to-

bacco products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this **section** is applicable to all (100 percent of) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this **section** is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

- (h) Nothing in this **section** shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason.
- (i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this **section** remains in effect. In the event this **section** is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this **section**, any area not defined as a “place of employment” or in which the smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products.

- (j) Any violation of the prohibition set forth in subdivision (b) is an infraction, punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five hundred dollars (\$500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies including, but not limited to, local health departments, as determined by the local governing body.
- (k) Notwithstanding **Section 6309**, the division shall not be required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (j) of a third violation of subdivision (b) within the previous year.
- (l) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision of application, and to this end the provisions of this act are severable.

APPENDIX D

CHRONOLOGICAL OUTLINE OF PREPARATION AND IMPLEMENTATION ACTIVITIES FOR THE CALIFORNIA SMOKE-FREE WORKPLACE ACT

Interventions

1994

- **AB 13 (Labor Code 6404.5) passed in legislature (7/94)**
- Governor signs bill into law (9/94)
- Proposition 188 “Philip Morris Initiative” defeated. (11/94)
- Materials development: AB 13 brochure, implementation kit, fact sheets etc. (11/94)
- AB 13 Information Training given in Northern and Southern CA. (12/94)

1995

- **Labor Code 6404.5 takes effect in restaurants and other workplaces January 1, 1995.**
- Implementation Kits: sent to local lead agencies, cities, regions, voluntaries, the California Restaurant Assn., and businesses upon request.
- Mailing from League of California Cities/Smoke-Free Cities Project to city managers
- Media and PR kits developed and distributed to local lead agencies.
- Training given at League of California Cities events and annual conference.
- Spokesperson training for local media contacts throughout the state.

1996

- Anniversary Update and Press Kit Packets to local lead agencies: “One Year Later” (12/95)
- Update Packet sent to State Legislators (6/96)

- California Smoke-Free Cities Project presentation of “The Latest on Smoking Ordinances” at Mayors and City Council Members Executive Forum (7/96)
- Survey for Bar Plan ideas: LLAs, regions, ethnic networks, grantees and voluntaries. (7/96)
- Canella Bill (AB 3037) signed by Gov. Wilson; TCS established new timeline for bar implementation plan (9/96)
- California Smoke-Free Cities Project and TCS present “Tobacco Control Regulations” to Code Enforcers’ Conference, Ventura, CA (9/96)
- California Smoke-Free Cities Project presents “The Tobacco Industry & California Smoke-Free Cities” and “Smoke-Free Cities Update: Suing the Tobacco Industry” at League of California Cities Conference, Anaheim (10/96)
- Smoke-Free Bar Workgroup Meeting, including bar owners, in large planning effort for state/local implementation (11/96)
- AB 3037 Press Release distributed by TCS announcing AB 3037 extension and support for smoke-free bars (12/96)

1997

- Smoke-Free Bar Implementation Plans developed and reviewed (1/97 – 5/97)
- BREATH, The California Smoke-free Bar Program (a project of the American Lung Association) is established and becomes a Proposition 99 Grantee of TCS (3/97)
- Smoke-Free Bar Brochure completed (3/97)

- Smoke-Free Bar Media Plan developed (5/97)
- First Field Poll study of California adults and smoke-free bars conducted (7/97)
- Smoke-Free Bar Focus Groups conducted for media plan (6/97)
- Social Will Index Survey used by BREATH to prioritize 'lead' cities and counties (6/97)
- First Field Poll study of California adults and smoke-free bars released (7/97)
- Plan Developed for Bar-Owner Presentations in cities and counties (8/97)
- Pilot Presentations to Bar Owners and Managers begin (9/97)
- Second Smoke-Free Bar Brochure completed and mailed to all California bar owners (12/97)

1998

- **Labor Code 6404.5 takes effect in bars and gaming clubs (1/1/98)**
- Smoke-Free Bar Implementation Trainings developed and conducted (1/98 – 9/98)
- Second Field Poll study of California bar patrons and smoke-free bars conducted (3/98)
- Field Poll of bar workers/owners conducted for program planning (3/98)
- Second Field Poll study of California bar patrons and smoke-free bars released (6/98)
- Third Field Poll study of California bar patrons and smoke-free bars conducted (8/98)
- Third Field Poll study of California bar patrons and smoke-free bars released (10/98)
- California Adult Tobacco Survey (CATS) Comparison results released (10/98)
- Curriculum for Mixology and Dealer Schools completed and distributed (11/98)

- Tourism Information collected from California Trade and Commerce Agency (11/98)
- Anniversary Communications kit developed and released (12/98)
- UCSF Bartender Health Study results released (JAMA-12/98)

1999

- Smoke-free Bar Legal Binders distributed by BREATH to law enforcers (1/99)
- Regional Law Enforcement Trainings conducted throughout California (2/99-5/99)
- Smoke-free bar policy leadership trainings developed and conducted (2/99-12/99)
- "Clearing the Air in the New Millennium" Conference (9/99)
- Annual Sales Tax Figures available from Board of Equalization (11/99)

2000

- Fourth Field Poll study of California bar patrons and smoke-free bars conducted (7/00)
- Fourth Field Poll study of California bar patrons and smoke-free bars released (10/00)
- Shasta County refers two repeat offenders to Cal-OSHA (12/00)
- Private attorneys begin Unfair Business Practices Cases in selected cities (12/00)

2001

- Cal-OSHA fines two recalcitrant bars \$54,000.00 each in Shasta County (1/01)
- Grants from Master Settlement Agreement funds for enforcement of LC 6404.5 (2/01)
- National Second Hand Smoke (ETS) Conference-San Diego, CA (5/01)

APPENDIX E**RESOURCES**

Tobacco Control Section
California Department of Health Services
P.O. Box 942732, MS #555
Sacramento, CA 94234-7320
Website: www.dhs.ca.gov/tobacco

Tobacco Education Clearinghouse of California (TECC)
ETR Associates
P.O. Box 1830
Santa Cruz, CA 95061-1830
Phone: 800-258-9090 (831) 438-4822
FAX: 831-438-3618
Website: www.tecc.org

BREATH,
The California Smoke-free Bars, Workplaces and Communities Program
A Statewide Project of the American Lung Association of the East Bay
5495 Carlson Drive, Suite D
Sacramento, CA 95819
Phone: 916-739-8925
FAX: 916-739-8927
Email: breath@jps.net
Website: www.breath-ala.org

Technical Assistance Legal Center (TALC)
Public Health Institute
505 14th Street, Suite 810
Oakland, CA 94612
Phone: 510-444-8252
FAX: 510-444-8253
Email: talc@phi.org
Website: www.phi.org/talc

ACKNOWLEDGMENTS

The tobacco control movement in California did not begin with the passage of Proposition 99, the California Tobacco tax, in 1988. Many committed agencies and individuals began advocating for smoke-free environments long before that. The formulation of the Tobacco Control Section within the Department of Health Services and the funding of county health departments and community agencies statewide simply fortified an already existing effort statewide. The authors would like to thank the following: the hundreds of people and agencies that aided in the passage and implemen-

tation of smoke-free laws at both the local and state level; the dozens of committed local tobacco control professionals who contributed their time and expertise, and personal insight included in this document; and specifically, the dedicated advocates of Americans for Nonsmokers' Rights Foundation, the American Lung Association, the American Cancer Society, and the American Heart Association.

