

HEARING DATE: July 7, 1993

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STAFF ANALYSIS OF ASSEMBLY BILL 13 (TERRY FRIEDMAN)  
AS AMENDED IN SENATE JULY 1, 1993

SUBJECT

Worksite Tobacco Restrictions

INTENT

This bill seeks to prevent involuntary workplace exposure to tobacco smoke and the resultant injury to workers.

ABSTRACT

1. States intent to completely eliminate smoking in enclosed workplaces throughout the state.
2. Prohibits smoking in enclosed workplaces. Defines reasonable actions to prevent nonemployees from smoking in workplaces and exempts hotel and motel guest rooms.
3. Pre-empts regulation of smoking in places of employment. Maintains such a pre-emption only for so long as the 100 percent prohibition remains in effect, and states authority of local jurisdictions to enforce stronger restrictions if the workplace plan is diminished.
4. Makes violation an infraction punishable by a fine of \$100 for first offense and \$200 for second violation within one year. States enforcement is through local law enforcement agencies including local health departments.
5. Contains severability clause and "crimes" mandate disclaimer.

FISCAL IMPACT

Ways and Means found no significant fiscal effect.

BACKGROUND AND DISCUSSION

AB 13 is intended to protect non-smokers from exposure to second-hand or environmental tobacco smoke. The bill proposes a complete ban on workplace smoking. The serious and harmful effects of smoking are well-established, but evidence of the harm of involuntary exposure to tobacco smoke has grown dramatically over the past few years. Smoking is the principal cause of avoidable death in the nation today, but involuntary exposure to smoking has recently been recognized as the third leading preventable cause of death. AB 13 proposes a uniform statewide ban by pre-empting local

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ordinances, but makes such pre-emption dependent on maintenance of the one-hundred percent ban.

Opponents challenge the value of AB 13, disputing the health claims, finding adverse economic effects, proposing alternative workplace regulation, and questioning the necessity of the statewide pre-emption.

#### Health Effects of Environmental Tobacco Smoke:

In the final days of the Bush Administration the Federal Environmental Protection Agency released a long-delayed report on the respiratory effects of second-hand or involuntary exposure to environmental tobacco smoke (ETS). The report classified tobacco, by the weight of total evidence, as a Group A (known human) carcinogen. The report found 3,000 annual adult lung cancer deaths caused by involuntary exposure to smoke and hundreds of thousands of hospitalizations. The Surgeon General has determined that 53,000 Americans die from exposure to ETS and related heart disease, lung cancer, and other cancers every year. This means ETS kills more people every year than homicide, AIDS, and illegal drugs combined.

The tobacco industry disputes such findings and questions the scientific basis of the conclusions regarding ETS, and continues to dispute the association between smoking and cancer. Specifically, the tobacco industry argues that the EPA report was motivated by politics, that EPA only conducted risk assessment, failed to include animal research and excluded a critical National Cancer Institute study. Proponents respond that the EPA report was released by an Administration with a strong pro-business philosophy and by a board with associations to the tobacco industry; that the EPA employed standard and confirmed methodology and did include animal studies. The critical report which was supposedly excluded was released after the EPA study, and is being misrepresented according to its author.

The EPA report followed earlier, research by the Surgeon General, National Institute for Occupational Safety, the University of California and others which supported similar conclusions regarding involuntary exposure to smoking. Tobacco Growers and RJ Reynolds are challenging the findings in civil court.

#### Adverse Economic Effects of Smoking Prohibitions

Opponents of AB 13 believe that a statewide ban on workplace smoking, which would include bars and restaurants, would contribute to the perceived negative business climate in California and would result in substantial losses to the hospitality/tourism/convention business. The California Hotel and Motel Association believe that the prohibitions on smoking in hotel convention facilities and bars will discourage Pacific Rim and European visitors. Hotels anticipate no problem making non-guest areas non-smoking but anticipate a substantial, if unquantified, loss of international business if AB 13 passes.

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The Southern California Business Association polled hospitality providers, and based on their opinions, felt California could lose up to five percent of its business or 1.2 billion in sales.

Prior research has indicated there is little or no economic effect for smoking restriction in domestic markets. Proponents of 13 indicate that there are very high costs associated with smoking, with a University of California study indicating the state loses \$7.6 billion annually in health care costs and lost production due to smoking.

Legal Effects

Proponents of AB 13 believe that the comprehensive ban proposed by the bill would actually benefit business by reducing workers' compensation claims and eliminating ETS injury actions.

The EPA report tends to support injury claims by employees who suffer from on the job exposure to smoke. Several recent claims have been settled in favor of employees who were injured by ETS. The author anticipates dramatic growth in such civil and workers compensation cases. A ban in workplace smoking would dramatically reduce this business/legal expense.

Controversial Pre-emption

Several organizations, while applauding the intent of AB 13, question the necessity or value of statewide pre-emption. Americans for Nonsmokers Rights is a leading advocate for local control, and expresses serious concerns regarding the potential harm of a statewide standard, even a complete ban. Cities and counties, they argue, have been able to avoid the influence of the tobacco industry and to more consistently protect their constituents. ANR feels the diversity and dispersion of decision making insulates local decision makers and that the popular effort required to pass such ordinances builds essential public commitment and compliance.

ARGUMENTS IN SUPPORT

Involuntary exposure to smoke is a serious physical threat, and we should not force people to endanger their health in order to earn a living. Without AB 13 protections, thousands of Californians will be injured or killed. The proposal is bold and expansive, but will do more for the state's health than any alternative.

ARGUMENTS IN OPPOSITION

AB 13 is an exaggerated and unwarranted response to questionable science. The business marketplace very adequately responds to popular tastes, and has made appropriate and individualized accommodations for protection of employees. The bill will dramatically reduce the competitiveness of California business.

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PRIOR ACTION

Labor and Employment: Do pass. (7-1)  
 Ways and Means: Do pass as amended. (11-7)  
 Assembly Floor: Passage refused. (34-31)  
 Reconsideration Granted. Passed. (47-25)

POSITIONS

**SUPPORT:** California Restaurant Association  
 California Medical Association  
 California Labor Federation, AFL-CIO  
 American Heart Association-California and Greater  
 Los Angeles Affiliates  
 American Lung Association of California  
 Mervyn's  
 Sorensen's Resort  
 Lyons Restaurants  
 California Medical Association  
 City of Santa Monica  
 City of Belmont  
 City of Tracy  
 City of Palo Alto  
 Alameda County Board of Supervisors  
 State Building and Construction Trades Council of  
 California  
 American Cancer Society, California Division, Inc.  
 California Nurses Association  
 Children's Advocacy Institute  
 Central Labor Council of Contra Costa County  
 San Marcos Bowl, Inc.  
 Service Employees International, California State Council  
 University of California  
 League of California Cities  
 Mariposa County School District  
 California Service Stations and Automotive Repair  
 Association  
 Building Owners and Managers Association of California  
 Greater Redding Chamber of Commerce  
 Southern California Gas Company  
 State Building and Construction Trades Council of CA  
 California State Council of Service Employees  
 California School Employees Association  
 Central Labor Council of Contra Costa County, AFL-CIO  
 Health Officers Association of California  
 California Conference of Local Health Officers  
 California Association of Hospitals and Health Systems  
 California Pharmacists Association  
 California Association of Health Maintenance  
 Organizations  
 California Council on Alcohol Problems  
 State of California Tobacco Education Oversight  
 Committee  
 California Mental Health Directors Association  
 Heart Disease Prevention and Fitness Test Center  
 Pleasant Hill CASA (Community Against Substance Abuse)

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Lone Tree Family Chiropractic  
 FHP, Inc.  
 Charles R. Drew University of Medicine and Science  
 National Black Leadership Initiative on Cancer  
 Oxnard / Simi Ear, Nose & Throat Medical Group  
 League of California Cities  
 California Society for Respiratory Care  
 City of San Diego  
 City of South Lake Tahoe  
 City of Huntington Park  
 City of Modesto  
 City of Del Mar  
 City of Santa Monica  
 City of Los Angeles  
 City of Menlo Park  
 Alameda County  
 County of El Dorado  
 City of Martinez  
 City of Norco  
 City of Palo Alto  
 City of Fremont  
 County of Santa Cruz  
 Rancho Palos Verdes  
 City of Belmont  
 Sierra Club California  
 Worksafe South  
 California Conference of Parents, Teachers,  
 and Students (PTA)  
 Children's Advocacy Institute  
 Church State Council  
 Over 536 individuals

**OPPOSE:**

The Tobacco Institute  
 California Manufacturers Association  
 California Hotel and Motel Association  
 Association of Sheet Metal Contractors  
 Western States Sheet Metal Workers  
 Kathy's Brokerage  
 Doctors Ought to Care  
 Americans for Nonsmokers' Rights  
 California Hotel and Motel Association  
 Hotel Bel Air  
 Southern California Business Association  
 Various individuals

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