

ECONOMIC IMPACT OF INSTITUTING
SMOKING PROHIBITIONS
IN NEW YORK

Prepared For
The New York State Public
Employees Federation
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EXECUTIVE SUMMARY

Executive Summary

The following report assesses the economic impacts of imposing smoking restrictions in private workplaces and a variety of public and private locations in New York. This report examines the benefits and costs of these restrictions in detail. The proposal is analyzed, the potential impacts on the private sector are discussed and the costs of those impacts are then quantified under the assumption that the regulations will be enforced. A section-by-section summary follows.

Section I: Introduction

Section II: Overview of the Proposed Amendments to the New York Sanitary Code

The major provisions of the proposed smoking regulations are reviewed and definitional problems and ambiguities are discussed. Questions are raised as to the exact specifications of the "smoking area" and whether or not the regulation is to be enforced. Other questions are raised and potential problems are highlighted.

Section III: Economic Impacts on Affected Establishments

New York's businesses and taxpayers will bear significant costs if the smoking bans are enforced. This section discusses these costs, including the cost of physical alterations, loss of revenue from demand declines, and productivity losses.

Productivity losses in private workplaces could cost \$72.3 million, based on conservative estimates. Given moderate enforcement efforts, losses suffered in other sectors of the New York economy will be of similar magnitude. For the owners of restaurants and other establishments in the private sector, the possibility of losses in business if the non-smoking regulation is adopted could be significant. For example, assuming a small one percent decline in restaurant and bar business in the state, direct losses of \$72.6 million will result.

In summary, the potential direct costs to the private sector and to the taxpayers of New York are:

| | <u>Conservative Estimate</u> |
|--|----------------------------------|
| (1) Private Workplaces | |
| - Productivity losses | \$ 72.3 million |
| - Physical alterations and signs | <u>13.1</u> |
| - Total | \$ 85.4 million |
| (2) Eating and Drinking Establishments | |
| - Revenue losses | \$ 72.6 million |
| - Physical alterations and signs | <u>4.5</u> |
| - Total | \$ 77.1 million |
| (3) Public Workplaces | |
| - Productivity losses | <u>\$ 89.1 million</u> |
| (4) Other Indoor Areas | |
| - Revenue losses | \$369.9 million |
| - Signs | <u>2.2</u> |
| - Total | \$372.1 million |
| Total | <u>\$623.7 million</u> |

It is important to note that these cost estimates do not cover the entire number of affected establishments. Data limitations precluded total coverage. Our estimates are, therefore, very conservative and based on the assumption that the regulation

will be enforced. Obviously, if the regulation is not enforced, there will be little economic impact. Such a scenario, however, makes no economic sense.

Section IV: Impact on New York

The potential impact of the regulation on New York is presented in this section. Not only may the state incur enforcement costs, but it may also experience revenue losses from a declining income tax base due to loss of business income, the possibility of small business failure and subsequent declines in employment. Even a small 2% decline in the tax base will reduce revenues by \$414 million. The negative impact on future economic growth is also discussed.

It is pointed out that the economic outlook is one of moderate economic growth. Federal aid has declined dramatically since 1981 and Congressional concern with the federal budget deficit should exacerbate this situation. The highest priority, in this environment, should be given to maintaining adequate levels of services. The state cannot afford to divert resources to enforcement of smoking bans, precipitate revenue losses and deter economic development.

Section V: Social Costs versus Private Costs

Government intervention into the affairs of private citizens and business firms is warranted only when the activity in question imposes costs on third parties and no offsetting compensation is paid. This section discusses the difference between social costs and private costs, and argues that in a private

market setting, the social costs of environmental tobacco smoke are proximately zero. Government regulation of smoking behavior is thus not justified.

Section VI: Prohibiting Smoking and the Impact on Individuals

There are certain inequities inherent in the smoking ban. This section discusses the increased potential for abuse of enforcement authority if the smoking prohibitions are instituted. In addition, it presents some evidence that illustrates minorities and low- and moderate-income individuals are more likely to be charged with violating nuisance laws, and thus more affected by the smoking regulation.

The disproportionate impacts on low- and moderate-income working people are also discussed and supported by data detailing smoking habits by occupation and income.

Section VII: Conclusion

The report has attempted to quantify the economic effects of extending the smoking prohibition in New York. A conservative estimate of the potential costs associated with imposing these restrictions in 1983 is \$623.7 million, which may be borne directly by private establishments and by taxpayers. Other costs not quantified may be imposed on all residents of the state through secondary or multiplied negative economic effects. Over 96 percent of these costs would be incurred year after year, and increase with inflation. The negligible benefits of the New York regulation have also been detailed, as have the inequities of the regulation.

The state must consider priorities in its deliberations on this issue. Given the current economic climate, the serious social needs that exist and the limited resources available to both public and private sectors to meet these needs, is enforcing such a regulation worth the consequences?

I. INTRODUCTION

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The Public Health Council of the State of New York is considering regulations which would prohibit smoking in virtually all indoor public places, including places of work, except in a very limited number of designated smoking areas. Private homes, residences, and automobiles are among the few locations exempted from the proposed smoking restrictions. The economic impacts of the proposed regulations have not been quantified in the debate in the state, yet if enforced they have the potential to impose significant costs on the private sector and employers and employees in affected workplaces. We feel that the state must consider the economic and social implications of this proposal, as well as the costs and benefits expected to accrue to all affected parties, before reaching a final decision.

This study will review these major issues. In the following report, we will discuss the economic impacts of the regulation in general terms and quantify to the extent possible the costs that will be imposed on the private sector if the regulation is enforced. Arguments and evidence will be presented in opposition to the regulations.

In this report, we have attempted to lay out a comprehensive set of arguments in support of our position. We have tried to avoid the emotionalism that surrounds an issue such as environmental tobacco smoke and have relied on the economic facts available to us. Many of the arguments and cost estimates are based on verifiable data, while others are more difficult to quantify.

Indeed, given the lack of enforcement provisions, it is difficult to determine whether or not the proposals will have any effect whatsoever. We have decided, however, to be as complete as possible and, therefore, to present all arguments that we feel should be considered by the Public Health Council.

II. OVERVIEW OF THE PROPOSED AMENDMENTS
TO THE NEW YORK SANITARY CODE

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TO THE NEW YORK SANITARY CODE

A. Review of the Major Provisions of the Regulation

1. Coverage

The regulation under consideration in New York would prohibit smoking in all indoor areas open to the public, including places of work. Very few exceptions to the smoking ban are allowed. In a restaurant or other establishment in which food is served, the owner, manager, or operator may designate a portion of the dining area as a place where smoking is permitted, but smoking must be prohibited in at least 70 percent of the seating capacity of the dining area. An exception also permits employers to designate smoking areas in the workplace, provided that the employer may not permit smoking in a common work area unless all employees at that site consent to such designation. Employers may further designate portions of employee lounges and cafeterias as smoking areas provided that at least 70 percent of these facilities are set aside as areas where smoking is not permitted. General exemptions from the smoking regulations are provided only for private homes, residences, automobiles, and separate enclosed rooms not otherwise covered by the regulation set aside solely for use as smoking areas.

Smoking is to be completely prohibited in virtually all other indoor areas open to the public in the State of New York. Places covered by the proposed smoking restrictions include but

are not limited to all means of public transportation (except separate smoking cars on trains not necessary for egress by passengers seated in other cars); libraries, museums, and theaters (except restrooms, lobbies, and other designated areas physically separate from the spectator area); all schools, including elementary and secondary schools, colleges and other educational and vocational institutions; hospitals; and arenas, auditoria, clubhouses, courthouses, stadiums, elevators, gymnasias, restrooms, waiting rooms and waiting areas, spas and health clubs, swimming pools, and stores.

2. Enforcement

The owners, operators, managers, or persons in charge of places covered by the proposed regulations are, however, required to post signs, request compliance by patrons, and prohibit employees from smoking except in designated areas.

B. Failure to Prepare Regulatory Impact Statement

The provisions of the New York State Administrative Procedure Act require that proposed rules be submitted to the Office of Business Permits and Regulatory Assistance for review. Among other procedures, the regulatory review process involves the preparation of a regulatory impact statement, detailing the legislative authority for the proposed rulemaking and estimating the costs to be imposed on state and local government, and an analysis of regulatory flexibility, which is to contain a discussion of the effects of the rule on small business and the costs to regulated parties of complying with the rulemaking initiative.

By any standard, the proposed regulation is a major rule and should therefore be subject to the regulatory review process. No regulatory impact statement has been prepared, but if it were, there are at least two reasons for believing that the smoking restrictions would be found not in compliance with the State Administrative Procedure Act. First, the stated purpose of the regulations mandated by the public health regulation amendments is "to preserve and improve the public health by limiting the exposure of the public to tobacco smoke," but standards for such exposure are not established. Secondly, the proposed regulation does not provide sufficient information to enable regulated parties to evaluate the impact of the rulemaking initiative. In short, the absence of indoor air quality standards for environmental tobacco smoke and the lack of guidance as to what regulated parties must do to comply with the regulation would make it quite difficult for the public health authorities to establish that the proposed regulation meets the statutory criteria found in the State Administrative Procedure Act. The cost estimates contained in Section III of this report further suggest that the smoking regulations would fail a benefit-cost test.

C. Definitional Problems

As the regulation is written, it contains a great deal of definitional vagueness, which serves to make its application unpredictable and uncertain. These issues are addressed in Appendix A.

D. Conclusion

Overall, the New York regulation is an attempt to regulate personal behavior. The ambiguities of the regulation may subject employers and the owners of restaurants and other indoor public places to arbitrary and unnecessary costs, which are threatened by misinterpretation, misunderstanding and the possibility of litigation over what employers and proprietors must do to comply with the regulation.

In addition to these items, businesses affected by the regulation will be forced to bear significant costs associated with compliance if the regulation is enforced. The potential costs are outlined and quantified in Section III.

III. ECONOMIC IMPACT ON AFFECTED ESTABLISHMENTS

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This section provides estimates of the costs of complying with the proposed regulation under the assumption that the regulation is enforced. Because no enforcement provisions are contained in the regulations, it may well be the case that its economic impact is nil. If enforcement efforts are undertaken, however, the private sector and the state's taxpayers will bear substantial costs.

A. Private Workplaces

The regulation sets down certain requirements for prohibiting smoking in private workplaces. The major category of workers affected is clerical workers or other non-professionals in open office environments.

1. Productivity Losses

A major concern of private employers in implementing a smoking policy is the potential loss in productivity that would occur if employees were not allowed to smoke at their worksite. In order to accommodate smokers, and to comply with the regulation as written, it may be necessary to institute a "smoking break" for employees who will now be prohibited from smoking at their worksites. Such breaks necessitated by the regulation are costly to the employer because they result in significant amounts of lost work time and, therefore, lost production.

In order to estimate the magnitude of the direct loss in production, we examined employment of office and manufacturing workers, looked at the incidence of smoking among various occupational groups and evaluated the cost of instituting smoking breaks based on average hourly compensation rates. In our calculations, it was assumed that employees would be given two ten-minute smoking breaks per day. A description of the methodology and the data used are contained in Appendix B.

Our estimates of the dollar value of lost work time are just under \$465.6 million in 1985. Note that this cost will increase year after year with increases in compensation rates and will continue to be borne by private employers.

Another point should be made here regarding the equity of instituting smoking breaks for smokers and not providing any comparable breaks for non-smokers. Although this may not be a serious concern in high-paid white collar jobs, it will be a concern to non-professionals and clerical workers, especially unionized workers. Expanding smoking breaks to all workers would cause costs to rise dramatically since our estimates are based on a small percentage of the workforce being affected. Extending the break time to all clericals, for example, would cost the private sector an additional \$471.9 million, raising the value of lost work time from \$465.6 million to \$937.5 million. Including other employees could easily double or triple the costs. Alternative estimates of productivity losses based on different assumptions concerning the number and lengths of smoking breaks and the number and types of employees affected are given in the following table.

| Productivity Losses (\$ Millions) | | | | |
|---|-----------------------|----------------------|-----------------------|---------------------------|
| Affected Workers | One Five-Minute Break | One Ten-Minute Break | Two Ten-Minute Breaks | Two Fifteen-Minute Breaks |
| Clericals who smoke | \$ 72.3 | \$144.7 | \$289.3 | \$ 434.0 |
| All clericals | \$190.3 | \$380.6 | \$761.2 | \$1,141.8 |
| Clericals and professional and technical workers who smoke | \$116.4 | \$232.8 | \$465.6 | \$ 698.4 |
| All clericals plus professional and technical workers who smoke | \$234.4 | \$468.8 | \$937.5 | \$1,406.3 |

Losses of this magnitude will result even if formal smoking breaks are not instituted. If employees are unable to smoke at their worksites, they may take longer, or more frequent, trips to the water fountain, they may be able to concentrate less on their tasks, and so on. Such considerations can easily translate into ten or twenty minutes of lost productive work time per day.

2. Physical Alterations

As with eating establishments, discussed below, the data do not exist which would allow us to exactly identify and quantify the costs of physical alterations necessary to comply with the regulation. However, previous survey data, in which 30% of the respondents felt that alterations would be in excess of \$1,000, suggest a total cost for New York of \$11.8 million in New York's 39,303 establishments providing legal, engineering, accounting, and other business-related services alone.¹

3. Signs

Signs are required to be posted by the regulation in appropriate places. A minimum of three signs appear necessary in private workplaces. If signs cost \$25.00, three signs per service establishment will cost \$2,947,725; five \$6.50 signs per service establishment will cost \$1,277,348.

B. Eating Establishments

According to the latest available data from the U.S. Census Bureau, there were 20,107 eating establishments located in New York, employing 261,147 workers with sales of \$6,626 million.² Since the time these data were collected, employment in the general retail trade sector has expanded by 5% which would add approximately 13,057 more workers to the total. Note that use of these data will understate the costs outlined below.

1. Reduction in Revenue

The restaurant owners and operators in the state would bear significant costs from imposition of the smoking prohibition. Loss of business is one major concern. The dilemma facing these establishments in deciding whether or not to maintain a smoking area is that if they choose to do so they may be put in the position of turning away customers if appropriate seating is not available.

Suppose that a restaurant owner sets aside a certain number of tables in an area as smoking tables. (No more than 30 percent of the dining area may be so designated.) During the busy lunch or dinner hour, the smoking section fills up and the non-smoking section does not. Patrons wishing to sit in a smoking area will

be forced to stand in line, waiting for a free table to open up while non-smoking tables remain empty. Three outcomes are equally likely: (1) the potential customers will become angry and leave; (2) they will remain in line, waiting for an opening in the smoking section; or (3) they will demand to sit in the non-smoking section. Under scenarios (1) and (2), the restaurant owner will incur revenue losses simply because non-smoking tables remain empty despite the fact that other customers wait to be seated. If the owner refuses to seat patrons in the non-smoking section, revenue losses will also be incurred under (3). This amounts to a forced reduction in capacity and a subsequent reduction in revenues for these establishments.

The restaurant owner will incur additional losses under the scenarios described above. If (1) occurs, it is clear that a customer loss equals a revenue loss, unless that restaurant is assured of a steady flow of replacement customers. This is exceedingly unlikely (except perhaps for a handful of exceptionally popular establishments) given the competitive nature of the restaurant business. There are over 20,107 eating establishments in New York alone, in addition to the multitude of facilities in contiguous states, many of which are within access of New York residents. The proximity of New York to Philadelphia and New Jersey poses special problems. In this situation, some permanent customer loss is a distinct possibility.

Under the third scenario, a great deal of unpleasantness will result. If a smoking customer demands to be seated in the non-smoking area, he or she will be in violation of the ordinance. A disturbance may be created when the proprietor re-

quests that the patron refrain from smoking. In either circumstance, there will be additional costs imposed on the owner of the establishment. Again, customer dissatisfaction may result in permanent customer loss.

Other impacts are likely. Consumer preferences may shift away from dining out, causing a long-term revenue loss to the restaurant industry. Individuals who are contemplating opening new restaurants will hesitate because the smoking regulation will make it more costly to do so.

The data do not exist which allow us to exactly quantify the drop in demand that may occur. However, some assumptions will allow us to obtain a sense of the relative magnitudes. In New York, eating establishments had a sales volume of \$6,626 million in 1982. Even a 1% decline in business will result in a loss of \$66.2 million; a 5% decline will result in a \$331 million loss.

Note that this is only the direct impact of the revenue loss. Declines in business in this sector will set off a chain reaction of income and employment declines in other sectors of the economy and have a multiplied effect on other economic activity in the state. Loss of business by restaurants (or any other establishment) will have negative spill-over effects and entail even greater costs than we have detailed above.

It is important to note that even if eating establishments in New York do not suffer direct revenue losses as a result of the smoking regulation, the regulation will nevertheless impose substantial costs on restaurant customers. These costs will be in the form of longer lines at restaurants as customers wait for appropriate smoking or non-smoking seating to become available.

Such situations are particularly likely during the busy lunch or dinner hour for groups of patrons consisting of both smokers and non-smokers. Suppose that as a result of the regulation, only 20 percent of the restaurants in New York experience one time during the day when the number of customers exceeds the number of available seats. Further suppose that 4 customers must wait ten minutes longer for a table than they otherwise would have. Valuing this extra waiting time at the average hourly wage of professional and technical workers in the state (\$12.43; see Appendix B), suggests a cost of \$8.29 per restaurant per day. Assuming that these additional waiting times are experienced on 250 work days each year, the total cost imposed on restaurant customers is \$8.33 million annually.

2. Physical Alterations

The ambiguity surrounding the exact definition of a "smoking" area makes the determination of the cost of establishing such an area difficult. Although the regulation seems to permit use of existing physical barriers and ventilation systems, in a previous survey of restaurant owners facing a similar smoking prohibition, almost three-quarters of the respondents felt that physical alterations would be necessary; 16% of the sample estimated costs in excess of \$1,000.³ Extrapolating this information to 20,107 establishments in New York yields a total cost of \$3,217,120. Note that costs for individual restaurants will vary considerably depending on their current physical characteristics and the exact requirements mandated by the State.

3. Signs

A minimum of four signs are required to be posted by the regulation in appropriate places, two at the entrance to the restaurant, one in the no-smoking area, and one in the area where smoking is permitted. The purchase of four signs at \$25.00 each,⁴ assuming four signs per establishment, will cost \$2.01 million. Restaurants with more than one smoking area or entrance will, of course, have to purchase more signs and the total cost will increase. Restaurants may also be able to obtain signs at a lower cost. For example, the purchase of 8 signs per establishment, assuming a value of \$6.50 per sign, will cost \$1.05 million.

C. Bars and Other Drinking Establishments

In 1982, there were 6,061 drinking places doing business in New York, employing 23,065 workers and generating sales of just under \$641.1 million.⁵ The use of these data will tend to understate the costs outlined below because of the expansion in retail sales and employment over the past four years.

1. Reduction in Revenue

As in the case of eating establishments, the major cost of the proposed health code regulations to the owners of drinking places is the loss of business that may be experienced if the smoking restrictions are adopted. Indeed, the cost to bar owners is likely to be substantially higher than for restaurants because there are no provisions in the regulation allowing for the designation of smoking areas in these establishments. This appears to mean that smoking must be prohibited entirely in all bars in the State.

If drinking establishments experience a small 1 percent decline in revenue because of the smoking ban, the cost will be \$6.4 million per year; a 5 percent decline in demand will cost bar owners over \$32.0 million annually. Other adverse effects are likely. For example, because places in which food is served may designate up to 30 percent of the bar area as an area where smoking is permitted, but drinking places that do not serve food must ban smoking entirely, restaurants will benefit at the expense of small neighborhood saloons.

2. Signs

A minimum of two signs are required to be posted in appropriate places, one at the entrance to the drinking place and one inside the establishment notifying customers that smoking is prohibited. The purchase of two signs at \$25.00 each will cost a total of \$303,050. If more signs are required (for example, there is more than one entrance), the total cost may be higher. The purchase of 4 signs per establishment, assuming a value of \$6.50 per sign, will cost \$157.586.

D. Public Workplaces

The proposed regulations would also require that smoking be prohibited in all state and local government offices, except in workplace locations that agency heads or other management personnel may choose to designate as smoking areas. As in the case of private workplace environments, the major cost of implementing such rules is the potential loss in productivity if public employees are prohibited from smoking at their worksites. It is important to emphasize that this cost, as well as the expenses

associated with posting signs and making physical alterations to government offices necessary to implement the smoking ban, will be borne entirely by the taxpayers of New York.

In 1984, the most recent year for which data are available, 284,874 individuals (including both full- and part-time workers) were employed by state government agencies in New York, and another 867,464 workers were employed by local governments.⁶ These employees had average annual earnings of approximately \$24,744 in that year, which translates into an hourly wage of \$12.37, assuming 250 eight-hour workdays per year.⁷ If we assume that only 30 percent (or 345,701) of these 1,152,338 state and local government employees smoke and that to comply with the regulation these individuals are given one five-minute smoking break per workday, the total cost of lost productivity to New York's taxpayers will be just under \$89.1 million annually. Note that this cost will increase every year with increases in government employee compensation rates. Of course, if a larger percentage of public sector employees smoke or if the number and length of smoking breaks is more than we have assumed, the cost of the smoking restrictions to New York's taxpayers will go up. Even a conservative estimate of the potential cost is quite substantial, however.

The data necessary to estimate the magnitude of the other costs that will be incurred to implement the proposed restrictions on smoking in public sector workplaces are not available. Signs will have to be posted in all state and local government offices and physical alterations may be necessary in many public buildings. Although we were unable to determine the number of

offices and buildings that will be affected by the regulation, suffice to say that the costs incurred by the public sector to comply with the regulation will be substantial.

E. Other Indoor Public Places

The owners or managers of all retail stores, financial institutions, theaters, and other indoor public places must also comply with the regulation. In practice, the provisions appear to require that smoking must be banned in all areas of these establishments to which the public has general access. A complete census of the establishments in New York affected by the regulation is not available. However, a partial list would include the 62,190 retail trade establishments not covered by other provisions of the non-smoking regulation, and 4,819 financial institutions.⁸ A detailed breakdown of these establishments is as follows:

| | | |
|---|---------------|---------------|
| - Building materials, hardware, garden supply stores | 3,708 | |
| - General merchandise stores | 2,018 | |
| - Food stores | 14,850 | |
| - Automotive dealers | 4,276 | |
| - Apparel and accessory stores | 10,993 | |
| - Furniture, home furnishings, and equipment stores | 6,503 | |
| - Cigar stores and stands | 379 | |
| - Miscellaneous retail stores | <u>19,103</u> | |
| - Total retail trade establishments | | 62,190 |
| - Commercial bank branches | 3,600 | |
| - Mutual savings bank branches | 1,144 | |
| - Savings and loan associations | <u>75</u> | |
| - Total financial institutions | | 4,819 |
| | Total | <u>67,009</u> |

1. Revenue losses

In 1984, New York's retail establishments generated sales of \$73,971 million.⁹ If these establishments experience a 0.5% drop in demand as a result of some customers shifting their purchases elsewhere, the cost to New York will be \$369.9 million annually.¹⁰ A 1% revenue loss will cost New York's retailers \$739.7 million each year.

2. Signs

The purchase of three \$25.00 signs per establishment will yield a total cost of \$5,025,675; if each establishment buys 5 signs at \$6.50 each, the cost will be \$2,177,793.

F. Public Transportation

It is not possible to quantify the cost of continuing to prohibit smoking on buses or other public conveyances in New York. Two points about this regulation are worth mentioning, however. First, the incidence of smoking on public buses is already quite low, and railroads have traditionally required that passengers who wish to smoke do so only in specially marked cars. These observations suggest that the regulation is unnecessary at best. Second, individuals who operate taxicabs and other vehicles for hire currently impose their own smoking policies on passengers. This allows riders to choose a vehicle that suits their own preferences. For example, if a particular driver allows passengers to smoke, non-smokers can simply wait for the next available cab in which smoking is prohibited. On this account, a regulation that prohibits smoking in all such vehicles imposes costs on smokers by reducing their freedom of choice. In addition, all

riders will be made worse off by the regulation because fewer cabs will be in service at any one time. Overall taxicab capacity will be reduced because drivers who wish to smoke will be forced to stop their vehicles for a smoking break. These operators will accordingly suffer a loss in revenue.

G. Additional Costs to Affected Establishments

The regulation may impose additional private costs on employers and businesses in the state. For example, increased costs might be created for both employers and labor union representatives upon the passage of the regulation. More than 38% of the New York labor force is covered by collective bargaining agreements, some of which have provisions pertaining to smoking and others do not. If smoking in the private workplace were restricted as outlined in the proposed regulation, it is reasonable to assume that contractual provisions would have to be negotiated in those instances where the contract is now silent on smoking. To the extent that the regulation caused present contract language to be irrelevant, new negotiations between the employer and the union would be necessary.

Initially, sitting down with the employer to discuss the new regulation in addition to on-going enforcement of collective bargaining agreements would have to take place. Regulations such as smoking prohibitions always increase interdisciplinary proceedings, causing additional costs for both the union representatives and the employers in terms of time and personnel involved in the resolution of disciplinary proceedings against employees for violation of the state's non-smoking provision.

It is also important to analyze the impact that this regulation might have on employee relations in these New York establishments without collective bargaining agreements. In these establishments, employees are often covered by personnel rules and regulations enforced by a personnel department. In small establishments, the owner of the business or office or shop manager is usually the individual responsible for employee relations. It is obvious that the state's regulation will create additional personnel problems for these establishments. Consider for a moment a very conservative estimate of what the regulation could cost in time for personnel problems stemming from its imposition.

There are approximately 32,651 manufacturing establishments in New York.¹¹ Assume that only 10%, or 3,265 of these establishments ever have any personnel problems stemming from the imposition of the non-smoking provision and that in those 3,265 establishments the personnel problems which do arise over a year take only one day to be resolved. One day per year amounts to 26,120 hours per year for additional personnel management time devoted to resolving smoking problems.

The average compensation for a professional and technical worker is \$12.43 an hour and for a clerical worker is \$7.88 an hour.¹² Involving these two employees in resolution of disputes which take one hour will cost \$19.50 in lost time. Multiplying that \$20.31 times the total hours spent in resolving these problems (26,120 hours) provides an estimate of cost equal to \$530,497 per year. Note that this, again, is based on very conservative assumptions. It would not be unreasonable to assume

that the actual cost for resolution of personnel problems stemming from imposition of smoking prohibitions would be significantly greater.

H. Summary

Private businesses and the state's taxpayers will be forced to bear significant direct costs if the smoking ban in New York is enforced. Even our conservative estimate amounts to \$623.7 million without inclusion of any estimate of legal costs resulting from the serious ambiguities of the regulation. In the private sector, smoking-related problems are usually resolved voluntarily. Concerns over employee morale and customer satisfaction dictate their behavior, making imposition of the state's smoking prohibition unnecessary.

If the regulation is enforced, certain segments of the private sector may be asked to bear significant costs of compliance, loss of productivity and direct revenue loss from this regulation for no discernible benefits. In addition, the spill-over or multiplied effects of decreased revenues in these establishments and the closure of marginal businesses will depress other private sector employment and growth. More will be said about this in our discussion of the impact on New York.

The next section will discuss the impact of the proposed regulation on New York State.

IV. IMPACT ON NEW YORK

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The major costs detailed previously have outlined the possible effects of imposing the proposed smoking ban on the private sector and individuals in New York. In addition to these substantial costs, adverse effects may be felt by the public sector in both the short- and the long-run.

Direct enforcement costs may be incurred by the state government. Although not specified in the regulation, we assume that police and other regulation enforcement personnel will be involved in enforcing the smoking bans. The enforcement costs will depend on the length to which the state goes to insure compliance. If the regulation is taken seriously, and appropriate enforcement procedures are established, the employment of each additional inspector or regulator would cost the state over \$24,744 per year.¹³ Tax revenue that would otherwise be used to feed and shelter poverty stricken families or pay for additional police officers to protect citizens from violent crimes may, instead, be diverted to ensuring that individuals smoke only in designated areas. Such priorities should be reexamined.

Enforcement costs are not the only costs the New York government may incur. Decreases in tax revenues in the future are likely for a number of reasons. As was discussed in previous sections, passage of the ordinance may impose significant costs on the private sector. Loss of income, especially business revenues, increase the possibility of small business failure and

subsequent declines in employment which will reduce the taxable income base in the state. Even a small 2% decline in the ability of the state to tax will mean a \$414 million revenue loss.¹⁴ And, therefore, the state will have \$414 million less to spend to provide services to residents.

Additional tax revenue loss will occur to the extent that people are discouraged from smoking and purchase fewer tobacco products as a result of the smoking ban. This will have a direct effect on tobacco tax collections. Cigarette excise tax revenue in New York state and in New York city amounted to nearly \$500 million in FY1985.¹⁵ Even a conservative 1% decline in state tobacco tax revenue will mean over \$4.3 million less for New York.

The state should also consider the impact on its economic growth if this smoking ban is imposed. Prohibiting smoking in private places is viewed by businesses as another unnecessary burdensome regulation and, therefore, a negative factor in assessing the business climate in the state. Since regulations are important inputs into business decisions to expand and/or relocate, a smoking ban which private employers view as an invasion of their privacy and their property rights will enhance the perception of a negative business climate. It is ironic that, at the same time the New York is expanding its initiatives for business to locate within its boundaries, the Public Health Council is countering these efforts by enacting unnecessary regulations.

In addition, the proposed regulations will act as a deterrent to the establishment and expansion of small businesses. Why

start a new business or add employees if it means additional costs to comply with a smoking ban? The state should be especially sensitive to this point since small businesses create the majority of new jobs and employment opportunities.

The fact that the regulation applies to food service facilities and office workplaces in service-related businesses raises additional concerns. Such service-related businesses are less cyclically sensitive and, therefore, help to stabilize local economies during downturns. New York should look to encourage these employment-generating businesses, not discourage them.

Conclusion

The costs we have outlined above are direct revenue losses to the state government. In times of strong economic growth and low unemployment, such revenue losses may not be cause for great concern. However, the recession of 1981-82 is not the distant past, and many sectors of the economy have still not recovered.

The State of New York currently has weathered the recession far better than most states. Its ability to attract new enterprises, especially high-tech firms, has aided its economic growth. And the fact that it has become a more service-based economy contributed to its better-than-average performance during our last recession. Unnecessary regulation of business will harm the long-term growth potential in New York.

In addition to the pessimistic economic outlook for state tax receipts, it is necessary to make some rough estimates of projected federal aid. Federal aid to state and local governments has been slashed by \$42 billion since 1981. New York lost \$105.9

million between 1981 and 1984 alone.¹⁶ With the federal budget deficit running in excess of \$200 billion annually, further cuts in federal aid to New York are a virtual certainty.

In this environment, the highest priority should be given to maintaining adequate levels of service. Diverting resources to enforcement of smoking bans, precipitating revenue losses and deterring economic development reflects spending priorities that are not easily understood. The state should move with extreme caution on this issue.

The previous discussions have detailed the significant private costs that will be incurred if New York enforces this smoking regulation. Now that we have established the high private costs associated with this regulation, it is necessary to analyze the reasons put forth by the proponents. Such an analysis will demonstrate that the negligible benefits of imposing the bans are swamped by the costs. It is precisely these criteria that should be used in determining the appropriateness of any government regulation.

V. SOCIAL COSTS VERSUS PRIVATE COSTS

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Government intervention into the affairs of private citizens and business firms is warranted only when the activity in question imposes costs on third parties and no offsetting compensation is paid. In evaluating the proposed regulations, the State must determine whether there are uncompensated costs ("social" costs) associated with environmental tobacco smoke and, if so, whether these costs are large enough to justify government action.

The principal targets of the smoking regulations proposed in New York are the private workplace and "public" establishments such as restaurants, bars, and retail stores. In these settings, where a regime of private property rights prevails, the social costs of smoking are proximately zero.¹⁷ This is because the owners have an incentive to provide the type of environment that workers and customers want. The point is that owners will internalize the costs of smoking in public places; government intervention cannot improve the situation.

Consider some simple examples. Suppose that all restaurant customers prefer to smoke while dining, but that the owner of one eating establishment objects strongly to tobacco smoke. Clearly, the owner must bear the costs of indulging his preferences. One way of doing so would be to ban smoking completely in his establishment, but to retain customers he must lower the prices of the

meals he serves by an amount that is just sufficient to make dining in his restaurant as attractive as in other eating establishments where there are no restrictions on smoking. On the other hand, the owner can charge the going market price for meals, allow smoking in his restaurant, and invest in smoke-removal devices that bring the air quality to his liking. In either case, the costs of establishing a given smoking policy are borne by the owner -- there are no social costs requiring government intervention.

Now suppose that the owner is indifferent between smoke-filled and smoke-free dining environments, but that some customers wish to smoke and others prefer no tobacco smoke in the restaurant. How does the owner reconcile these conflicting preferences? There are several alternatives. As before, the owner can ban smoking completely in his establishment. The cost to him of doing so is the revenue lost from smokers who no longer patronize his restaurant in favor of establishments who adopt other arrangements for their customers. On the other hand, the restaurant owner can choose to allow smoking with no restrictions, foregoing revenue from nonsmoking customers who find the dining environment not to their liking. Other options are to segregate smoking and nonsmoking customers or to install smoke-removal equipment. Which of these options is chosen will depend on such factors as the mix of smokers and nonsmokers in the restaurant's customer base, the cost and effectiveness of air cleaners, and the size and physical arrangement of the establishment's dining area, that is, can customers be separated without adverse effects on the restaurant's overall ability to

serve its patrons? Market forces will lead the owner to select the smoking policy that achieves the result customers demand at the lowest possible cost. In a competitive market, one would therefore expect to observe a variety of different smoking policies adopted across eating establishments, each of which is optimal for the given circumstances.

In short, the market for dining out will discipline firms in the restaurant industry to provide the eating and drinking environments preferred by customers. If a restaurant bans smoking, smokers will patronize the establishment only if the price-quality combination offered is as attractive as alternative eating places where smoking is allowed. The opposite applies for nonsmokers if smoking is permitted. The owner can indulge his own preferences at a cost. Thus, a variety of smoking policies will arise in the marketplace, and in the process the social costs of smoking in restaurants and bars are minimized.

Where a regime of private property rights prevails, the social costs of public smoking are proximately zero. The bar, the restaurant, the retail store, and the firm are privately-owned entities with owners or managers having an economic incentive to provide the type of smoking environment that employees and customers want. The implication of this observation is that government intervention cannot improve the situation; there are no social costs to be taken into account.

VI. PROHIBITING SMOKING AND THE IMPACT ON INDIVIDUALS

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Previous sections of this report focused on the potential private sector costs of the proposed regulation. This section highlights some of the inequities inherent in banning smoking.

Failure to weed out non-essential regulations creates a situation where the potential for abuse of enforcement authority is maximized. The results of such a situation can be tragic. For example, in the past, a Chicago man died as a result of injuries he received while being arrested for allegedly violating a local non-smoking ordinance. Quoting from a Chicago Sun-Times account of the incident, "The officers, assigned to the Department's mass transit unit, were wearing civilian clothes on duty. They said that they identified themselves and asked Ramey to put out his cigarette, but that he refused, and resisted when they tried to arrest him. On Wednesday, (the next day), the Cook County medical examiner's office said Ramey's death was a homicide. He suffered shock from multiple injuries, including two broken ankles, apparently inflicted with a blunt object, the office said."¹⁸

The New York regulation will implement smoking prohibitions in public and private places and, therefore, increase the probability of such incidents occurring. Although this kind of abuse can probably not be totally eliminated, it can certainly be minimized by resisting enactment of non-essential regulation.

One issue that the state should be aware of is the fact that a preponderance of individuals charged with violating nuisance

regulations are minority or low-income individuals. Evidence suggests that the likely probability of a minority or a low-income person being cited for a smoking violation is much greater than the probability of a well-dressed suburbanite being cited. We have some evidence to corroborate this assertion. For example, Chicago instituted a Smoker's Court to hear cases involving violations of the City's anti-smoking regulations. Approximately ninety percent of those who were arrested for violating these nonsmoking regulations were members of minority and low-income groups. Also, in New York, more than 55,000 summonses were issued to persons who allegedly violated health code regulations such as the non-smoking ordinance. Of these 55,000 summonses nearly 40,000 were issued to Blacks and Hispanics.

Not only are minorities and low-income individuals more likely to be cited for violations, the disruption to their lives for these violations is likely to be much greater than it is for other individuals. Take just one example from the Chicago Smoker's Court history. In 1976, a woman was arrested for smoking on one of the City's elevated trains. She was unable to post the required \$50 bond and was forced to spend the night in jail.¹⁹ Most people would agree that spending time in jail for a violation of a non-smoking ordinance is punishment not befitting the crime -- and lower income individuals would be forced into this situation.

There are other aspects of the regulation which are disturbing. It would likely prohibit smoking in common work areas, but may not apply to private, enclosed offices. In a regulation office, the attorneys will not be affected but their secretaries

will. In a real estate office, the agents will not be affected but the secretarial personnel will. In a bank, the higher management personnel will not be affected but the tellers will. This list goes on and on. As this reveals, the sanctions proposed by this regulation will be directed disproportionately at low- and moderate-income individuals and, therefore, are discriminatory.

If the state had before it a proposal which would increase the taxes on individuals who work in open offices but not on individuals in private offices, such a proposal would be quickly rejected. This smoking ban might have the same kind of disproportionate impact.

This unfairness is supported by data on the smoking habits of the population according to occupation. A close look at available data indicates that there are significant variations in smoking habits by occupation and that the actual impact of the regulation will be much greater upon certain categories of workers than on others.

Tables 4 and 5 (see Appendix C) show by detailed occupation percentages of persons who smoke. These numbers demonstrate that the effect of the proposed smoking ban will be felt by occupations which traditionally are referred to as blue-collar. It is clear that the proposed ordinance will have a disproportionate impact upon low- and moderate-income workers in New York.

Data on smoking by income class supports this contention. Table 6 (see Appendix C) shows the percentage of smokers by income according to the latest survey (1980) conducted by the National Center for Health Statistics. As the data reveal, the percentage of people who smoke between the ages of 25 and 65

falls as income increases. For example, over half of the 35-44 year-olds who earn less than \$7,000 smoke, while only 35% of those earning over \$25,000 smoke. As the data illustrate, the incidence of smoking is higher among lower-income groups.

In summary, application of smoking bans in private workplaces will have a disproportionate impact on low- and moderate-income working people.

VII. CONCLUSION

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This report has attempted to quantify the major effects of imposing smoking prohibitions in New York, has discussed the economic impacts of such prohibitions and has reviewed the issue of environmental tobacco smoke in terms of the need for government regulation.

Our conclusion is that if enforced the proposed New York regulation would put serious fiscal pressure on certain segments of the private sector, and on the public sector as well. The costs of imposing this regulation would be borne directly by private employers and indirectly by all residents of the state through secondary or multiplied economic effects. Other effects are inequitable: low- and moderate-income working people are the most likely group to be directly affected, as are marginal, low-profit establishments. At the same time, the benefits of the regulation are negligible: instances of smoking-related problems in workplaces, restaurants, and other facilities are few and where they occur, voluntary efforts by managers and owners can resolve these problems without arbitrary government regulation.

The state must consider priorities in its deliberations on this issue. Given the current economic climate, the serious social needs that exist and the limited resources available to both public and private sector to meet these needs, is such a regulation worth the consequences?

APPENDICES

APPENDIX A

Definitional Problems

1. Definition of the designated smoking area

As written, the regulation contains a variety of ambiguities and definitional problems that will limit its effectiveness. The authors of the regulation apparently have a purpose in mind, yet the regulation gives little or no guidance to those who must comply with its provisions. Some very important questions surround the definition of a "smoking" area. The only guidance given in the regulations is that in eating establishments and employee lounges and cafeterias, no more than 30 percent of the available space may be designated as an area where smoking is permitted. Are there other minimal requirements that such areas must meet or are the arrangements made entirely at the discretion of the person in charge? The vague language of the regulation will result in a multitude of different standards and definitions which vary from place to place and, therefore, cause confusion and uncertainty. There seems to be little reason to impose a regulation that requires individuals to take action and at the same time not tell them what they must do to comply.

2. Enforcement and penalties

Although the owners or managers of the affected establishments are given the responsibility for designating smoking areas and posting signs, no provisions are made for enforcing these requirements. Will the persons in charge of indoor public

areas be forced to defend the arrangements they adopt against complaints made by nonsmoking customers or employees? What does it mean to require that persons in charge "request compliance" by patrons and "prohibit employees from smoking" except in designated smoking areas? Are customers to be ejected and employees fired? How are disputes to be resolved? Law enforcement is likely to be very haphazard. Because no penalties are levied on violators, the extent of compliance with the regulation depends ultimately on existing good manners and consideration of others shown by smokers.

3. Inconsistencies in coverage

There are several provisions of the proposed smoking regulations that are not applied consistently across similar public places. For example, Section 25.2 (a)(2) does not preclude smoking in restrooms, lobbies, or other designated areas physically separated from the spectator areas of theaters. No such exemption is provided for in Section 25.2 (a)(5), which applies to arenas, auditoria, and stadiums. Does this mean that smoking is permitted in the restrooms of the Schubert Theater, but not in the restrooms of Madison Square Garden?

Similarly, Section 25.2(b) provides for the designation of smoking areas in employee cafeterias and lounges, but no such provisions are made in Section 25.2(a) for lounges and cafeterias of educational institutions and other public places. Does this mean, for example, that smoking is to be banned completely in college dormitories, lounges, and eating facilities? Such inconsistencies in coverage will cause confusion and result in unequal treatment of individuals.

4. Lack of collective bargaining provisions

Smoking policies that affect union members are a condition of employment and should be subject to collective bargaining agreements. Indeed, many union locals and members have negotiated such agreements for their coworkers where circumstances have warranted. These existing policies address the specific needs of individual worksites and contain provisions that protect the rights of smokers and nonsmokers alike.

The proposed public health regulations make no attempt to protect the rights workers have won through collective bargaining. As such, the regulations severely undermine labor relations in both the public and private sectors. A particular concern is that the rules contain no enforcement provisions. Because creation of a "smoking police force" is unlikely, enforcement authority will fall to management personnel. Indeed, the regulations appear to give arbitrary powers to management who might use their authority under the no-smoking rules to harass employees in terms of pay, promotion, and job assignments if smoking becomes a criterion for how work is scheduled and how offices are organized. Workers who smoke will clearly be vulnerable to unfair treatment, perhaps to the point of being denied job assignments or promotions if the personnel action requires that they be moved into an office area where smoking is banned. The potential for abuse is even greater if the worker is a union activist.

The regulations do give one right to workers -- the right to refuse to consent to smoking in a common work area, which in the case of restaurant employees includes the right to refuse to work in food service areas where smoking is permitted -- but the State

has apparently made no attempt to determine whether members of the Hotel and Restaurant Employees Union want this protection. This is just another example of the State's disregard for the preferences and rights of workers. The workplace smoking policies mandated by the regulations make little or no allowance for addressing the specific needs of individual worksites or individual employees. Such concerns are taken into account by the collective bargaining process. Allowing workplace smoking policies to be a matter of negotiation is much preferable to the State's arbitrary rules giving unilateral enforcement authority to management.

5. Property rights

The proposed regulation gives nonsmoking employees ultimate control over office workplace smoking policies. That is, if the employer is unable to reach an accommodation that is satisfactory to all nonsmokers, he or she may have to establish a policy which prohibits smoking in entire portions of the workplace. This means that a single employee can dictate that all of his fellow workers not be permitted to smoke on the job.

Economic theory will not support such an assignment of property rights. In privately-owned firms, the employer has an incentive to provide the type of smoking environment that employees prefer, and he will therefore bear the associated costs. This may involve smoker-nonsmoker segregation on the job, investment in smoke-removal devices, paying smokers or nonsmokers a wage premium to work in a given office environment, and so on. The point is that the employer will have already borne the costs of smoking in the workplace. Government intervention cannot

improve the situation; there are no costs of smoking unaccounted for.

Consider a simple example. Suppose that all but one employee prefers to smoke on the job. To induce the remaining employees to refrain from smoking, the employer must pay over and above the market wage a premium that is just sufficient to make employment in his firm as attractive as alternative jobs where there are no restrictions on smoking. On the other hand, the owner can offer the market wage to smokers, allow smoking on the job, and increase the pay of the nonsmoker just enough to induce him to work in an environment not to his liking. In either case, the costs of a given smoking policy are borne by the employer in the form of wage premiums. More importantly, the preferences of the nonsmokers are taken into account in both instances.

6. Tobacco smoke contributes little to indoor air pollution.

Although health complaints associated with poor indoor air quality have been increasing in recent years, relatively few of these have involved environmental tobacco smoke. For example, the National Institute for Occupational Safety and Health (NIOSH) completed 203 indoor air quality evaluations through December 1983, 154 (75.9 percent) of which involved government and private business offices of the type subject to the State's proposed rule.²⁰ In only 4, or 2 percent, of the investigations was cigarette smoking found to be a contributor to poor indoor air quality.²¹ Even this low figure overestimates the impact of environmental tobacco smoke on indoor air quality because the NIOSH study did not include its investigations of asbestos-

related problems in workplace settings.²² Similarly, high levels of environmental tobacco smoke have been determined to be the immediate cause of indoor air problems in only 5, or 4 percent, of the 125 major buildings investigated between 1981 and early 1986 by a private company, ACVA Atlantic Inc., that specializes in the study of indoor air pollution.²³ Indeed, ACVA has determined that in cases where high accumulations of environmental tobacco smoke have been found, an excess of fungi and bacteria also has been present in the building's ventilation system; these microorganisms usually were found to be the primary causes of the complaints reported by the occupants.²⁴

Environmental tobacco smoke is not a major contributor to poor indoor air quality. The state should consider giving higher priority to minimizing factors that have been found to be much more important in indoor air pollution -- asbestos, bacteria, fungi, ozone, textile and fiberglass fibers, to name a few.

APPENDIX B

Table 1 shows employment by major sector in New York estimated from Bureau of Labor Statistics data contained in the Supplement to Employment, Hours, and Earnings, States and Areas, Data for 1980-84. First, the data cover employees in establishments with 500 or more employees. Second, significant numbers of clerical and professional and technical workers in construction and certain service categories (e.g., hospitals, legal firms) are not included. The exclusion of firms with less than 500 employees as well as the exclusion of the industries and other occupations mentioned above result in a very conservative estimate of total cost.

The number of smokers in each occupational category was determined using data published in the Journal of Occupational Medicine. In this study, the authors surveyed employees and reported the incidence of smoking by occupation. Table 2 details the percentage of smokers in each occupational category as determined by this survey. That percentage is applied to the employment figures to obtain the estimated number of smokers by type of employment (third column).

The next step was to determine the value of lost production. In order to arrive at this figure, compensation rates are necessary. These were derived from BLS wage surveys in the New York, NY and New Jersey, Nassau-Suffolk, Albany-Schenectady-Troy, Buffalo, and Poughkeepsie metropolitan areas which contained average wage rates by occupation. A weighted average of the

various job titles within each occupation and across cities yields the average hourly earnings contained in Table 3. Although wages in the five metropolitan areas considered are probably higher than for the state as a whole, overall our estimates tend to understate the total cost of the regulation.

Under the assumption that smoking employees would be given two ten-minute smoking breaks, the lost work time would be 20 minutes per day per smoking employee. Valuing this lost time on the basis of current compensation rates yields estimates of the dollar value of the lost work time. As Table 3 shows, our conservative estimate is just under \$465.6 million in 1985. This cost will grow year after year with increases in compensation rates.

Table 1
Employment in New York, 1984

| | <u>Employment</u> | <u>Percent Clerical</u> | <u># Clerical</u> | <u>Professional & Technical</u> | <u>Professional & Technical</u> |
|---|-------------------|-----------------------------|-------------------|---|---|
| Non-manufacturing | 4,786,500 | - | - | - | - |
| Transportation, Communication Public Utilities | 553,100 | 21.7 | 120,023 | 4.9 | 27,102 |
| Wholesale and Retail Trade | 1,567,900 | 21.7 | 340,234 | 4.9 | 76,827 |
| Finance, Insurance, Real Estate | 703,500 | 26.2 | 184,317 | 16.9 | 118,892 |
| Services | 1,962,000 | 26.2 | <u>514,044</u> | 16.9 | <u>331,578</u> |
| | | | 1,158,618 | | 554,399 |

Source: Supplement to Employment, Hours, States and Areas, Data for 1980-84. Occupation breakdown based on national data from BLS.

Table 2

Impact on Clerical Workers

| | |
|----------------------------|-----------|
| Number of Clerical Workers | 1,158,618 |
| Percent Smokers | 38.0 |
| Number Affected by Law | 440,275 |

Impact on Professional and Technical Workers

| | |
|--------------------------------------|---------|
| Number of Professional and Technical | 554,399 |
| Percent Smokers | 30.7 |
| Number Affected by Law | 170,200 |

Table 3Private Sector Costs: Lost Work Time

| | <u>Average Hourly Earnings</u> | <u>Cost of Smoking Breaks</u> | <u>Number of Workers</u> | <u>Total Cost</u> |
|----------------------------|------------------------------------|-----------------------------------|----------------------------------|-------------------|
| Clerical | \$ 7.88 | \$ 657 | 440,275 | \$ 289,260,675 |
| Professional and Technical | \$ 12.43 | \$1,036 | 170,200 | \$ 176,327,200 |
| | | | | \$ 465,587,875 |

Source: New York, NY and New Jersey (May 1985), Nassau-Suffolk (Aug. 1985), Albany-Schnectady-Troy (Sept. 1985), Buffalo (Oct. 1985), and Poughkeepsie (Sept. 1985) Metropolitan Area Wage Surveys. Based on two 10-minute smoking breaks per day and 250 days per year. The earnings data are weighted averages of the wage rates in the 5 cities.

APPENDIX C

Table 4

Percentage Male Smokers by Detailed Occupational Category

| <u>Category</u> | <u>Percentage Smokers</u> |
|-------------------------------|---------------------------|
| Garage Laborers | 58.5 |
| Cooks (Not Private Household) | 57.5 |
| Maintenance Painters | 56.3 |
| Pressmen and Plateprinters | 55.7 |
| Auto Mechanics | 54.6 |
| Assemblers | 52.7 |
| Buyers, Store | 52.1 |
| Shipping and Receiving Clerks | 50.0 |
| Personnel, Labor Relations | 36.9 |
| Draftsmen | 34.2 |
| Accountants and Auditors | 33.3 |
| Architects | 32.3 |
| Lawyers | 30.3 |
| Compositors and Typesetters | 29.3 |
| Engineers, Aeronautical | 26.2 |
| Engineers, Electrical | 20.3 |

Source: Sterling, T., and Weinkam, J., "Smoking Characteristics by Type of Employment," Journal of Occupational Medicine, 18 (11), 1976, pp. 743-754.

Table 5

Percentage Female Smokers by Detailed Occupation Category

| <u>Category</u> | <u>Percentage Smokers</u> |
|------------------------------------|---------------------------|
| Waitresses | 49.6 |
| Shipping and Receiving Clerks | 48.5 |
| Buyers, Store | 46.5 |
| Assemblers | 43.6 |
| Bookkeepers | 38.6 |
| Nurses, Professional | 38.4 |
| Laundry and Drycleaning Operatives | 38.3 |
| Secretaries | 37.8 |
| Accountants and Auditors | 30.8 |
| Stenographers | 28.4 |
| Payroll and Timekeeping Clerks | 24.4 |
| Technicians, Medical and Dental | 23.6 |
| Elementary School Teachers | 19.4 |
| Librarians | 16.4 |

Source: See Table 4.

Table 6
Percentage of Smokers by Income*

| <u>Age Group</u> | <u>Less than \$7,000</u> | <u>\$7,001 - \$14,999</u> | <u>\$15,000 - \$24,999</u> | <u>\$25,000+</u> |
|------------------|------------------------------|-------------------------------|--------------------------------|------------------|
| 17-19 | 30.14 | 27.91 | 23.01 | 17.2 |
| 20-24 | 37.8 | 40.8 | 30.5 | 33.4 |
| 25-34 | 45.9 | 41.9 | 36.3 | 29.0 |
| 35-44 | 51.4 | 41.8 | 37.2 | 35.0 |
| 45-65 | 40.1 | 38.8 | 35.8 | 31.0 |
| 65+ | 17.4 | 18.0 | 15.6 | 18.2 |

* Unpublished data from the National Health Interview Survey, National Center for Health Statistics. Survey interviews took place during last six months of 1980.

FOOTNOTES

Notes

1. Census of Service Industries 1982. U.S. Department of Commerce, Bureau of the Census.

2. Census of Retail Trade 1982. U.S. Department of Commerce, Bureau of the Census. This is the most recent year for which such data are available. The Census of Retail Trade as well as the Census of Service Industries will next be conducted in 1987.

3. Survey of Businesses and Eating Establishments in Montgomery County, Maryland, Hamilton and Associates, 1982.

4. This was the lowest estimate obtained from a sampling of firms.

5. Census of Retail Trade 1982.

6. Book of the States 1986-87. Council of State Governments, Lexington, Kentucky, 1986, p. 298.

7. Ibid., p. 300.

8. Census of Retail Trade 1982. Summary of Deposits in Commercial and Mutual Savings Banks, 1979; and 1983 Savings and Home Financing Source Book.

9. Telephone conversation with Department of Commerce.

10. In addition to traveling out of state to purchase these goods and services, in the long run New York stores may suffer a permanent revenue loss as customers shift to mail-order catalogs. These two possibilities are quite real. About 70 percent of the population of New York lives within 30 miles of another state. This means that the no-smoking regulations put up to 70 percent of New York's retail sales at risk. Moreover, mail order retail sales have increased rapidly in recent years. The 1986 Statistical Abstract of the United States (p. 779) reports, for example, that between 1977 and 1982, the sales of mail order houses in the U.S. rose by just over 50 percent (from \$7,560 million to \$11,362 million). Thus, the proposed regulations have the potential for reducing the revenue of New York's retailers substantially.

11. Statistical Abstract of the United States 1986. U.S. Department of Commerce, Bureau of the Census.

12. New York, NY and New Jersey, Nassau-Suffolk, Albany-Schenectady-Troy, Buffalo, and Poughkeepsie Metropolitan Area Wage Surveys, May 1985, August 1985, September 1985, October 1985, and September 1985, respectively.

13. The Book of the States 1986-87.

14. Ibid., p. 264.

15. The Tax Burden on Tobacco, Historical Compilation, Vol. 20, 1985. The Tobacco Institute, Washington, D.C.

16. The Book of the States 1986-87.

17. See William F. Shughart II and Robert D. Tollison, "Smokers versus Nonsmokers," in Robert D. Tollison, ed., Smoking and Society: Towards a More Balanced Assessment (Lexington, Mass: Lexington Books, 1986), pp. 217-224.

18. Chicago Sun Times, July 13, 1980, p. 20. The two policemen involved in this incident were convicted of involuntary manslaughter and sentenced to prison. See Chicago Sun Times, February 4, 1982.

19. Remarks of Dr. Theodore Gill, Provost and Dean of Faculty, John Jay College of Criminal Justice, before the First Annual Conference of the National Minority Council on Criminal Justice, Washington, D.C., October 18, 1980.

20. James Melius et al., "Indoor Air Quality -- the NIOSH Experience," Ann. Am. Conf. Gov. Ind. Hyg. 10 (1984): 3-7.

21. Ibid., p. 4.

22. Ibid., p. 3.

23. Statement of Gray Robertson, President, AVCA Atlantic Inc., Before the National Academy of Sciences Concerning the Contribution of Environmental Tobacco Smoke to Indoor Air Pollution, January 14, 1986, p. 8.

24. Ibid.