

BILL ANALYSIS
SENATE COMMITTEE ON JUDICIARY
David Roberti, Chairman
1993-94 Regular Session

AB 13 (T. Friedman)
As amended March 7, 1994
Hearing date: March 22, 1994
Labor Code
GWW

TOBACCO PRODUCTS
- ENCLOSED WORKPLACE RESTRICTIONS ON USAGE -

HISTORY

Source: California Restaurant Association; California Medical Association; California Labor Federation, AFL-CIO; American Heart Association - California and Greater Los Angeles Affiliate

Prior Legislation: None

Support: American Lung Association of California; Alameda County Board of Supervisors; Counties of El Dorado, San Mateo and Santa Cruz; State Building and Construction Trades Council of California; American Cancer Society, California Division, Inc.; California Hotel and Motel Ass'n.; California Lodging Ass'n.; California Federation of Teachers; California Nurses Association; Children's Advocacy Institute; Central Labor Council of Contra Costa County; 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; 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

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Committee; California Mental Health Directors Association; Heart Disease Prevention and Fitness Test Center; Pleasant Hill CASA (Community Against Substance Abuse); Lone Tree Family Chiropractic; FHP, Inc.; Charles R. Drew University of Medicine and Science; National Black Leadership Initiative on Cancer; California Society for Respiratory Care; Cities of Bell Garden, Camarillo, San Diego, South Lake Tahoe, Huntington Park, Modesto, Del Mar, Los Angeles, Menlo Park, Martinez, Norco, Palo Alto, Fremont, Rancho Palos Verdes; San Mateo, Santa Monica, Belmont, Tracy, Agoura Hills, Oceanside, Laguna Beach, Visalia, Vista, Napa, Oakland, San Luis Obispo, and San Jose; Sierra Club California; Worksafe North/Worksafe South; California Conference of Parents, Teachers, and Students (PTA); Church State Council; The Church of Jesus Christ of Latter-Day Saints; Linkages; Smokefree Air for Everyone (S.A.F.E.); Los Angeles Area Chamber of Commerce; Trucking Services; Animal Care Equipment and Services; Fresno Indian Health Association, Inc.; American Indian Council of Central CA; Merced Family Health Centers, Inc.; Merced Lao Family Community, Inc.; Chawanakee Joint School District; United Health Centers of the San Joaquin Valley, Inc.; California Society of Internal Medicine; Kaiser Permanente; California Chapter of the American College of Cardiology; California Society for Respiratory Care; Mervyn's; State Bar Conference of Delegates; National Lawyers Guild, San Francisco; Sorensen's Resort; Lyons Restaurants; over 536 individuals; numerous restaurants

Opposition: The Tobacco Institute; California Manufacturers Association; Golden Gate Restaurant Association; Association of Sheet Metal Contractors; Western States Sheet Metal Workers; Southern California Business Association; Ventura Visitors and Convention Bureau; several truck stops, restaurants, and hotels; various individuals

Assembly Floor vote: Ayes 47 - Noes 25

KEY ISSUE

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SHOULD A COMPREHENSIVE SCHEME, AS SPECIFIED, TO PROTECT WORKERS FROM EXPOSURE TO ENVIRONMENTAL TOBACCO SMOKE IN ENCLOSED PLACES OF EMPLOYMENT, BE ENACTED?

SHOULD LOCAL COMMUNITIES BE PERMITTED TO ENACT LOCAL REGULATIONS THAT ARE MORE RESTRICTIVE THAN STATE LAW AS PROPOSED BY AB 13, INCLUDING LOCAL RULES THAT WOULD PROHIBIT ANY SMOKING IN ANY WORKPLACE?

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PURPOSE

Existing law, the Occupational Safety and Health Act of 1973, requires California employers to provide safe and healthful workplaces. Misdemeanor penalties are provided for a violation of the act.

This bill would prohibit employers from knowingly or intentionally permitting, or any person to engage in, the smoking of tobacco products in an enclosed workplace. It would further provide that an employer who permits any nonemployee access to the workplace on a regular basis is not liable if he or she: (1) has posted clear and prominent signs at entrances to the workplace describing any smoking limitations in the area, and (2) requests, when appropriate, that a nonemployee stop smoking in the enclosed workplace. An employer would not be required to physically eject the smoker from the workplace or request the smoker to cease if the request would involve a risk of harm to the employee or employer.

The bill would generally apply to all enclosed places of employment, but would exclude the following:

- 65% of hotel and motel guest rooms.
- Hotel and motel lobbies, defined to mean the common public area of a hotel or motel in which registration and other similar transactions are conducted and in which the public and hotel guest typically congregate. Smoking would be allowed only in a designated area that does not exceed 25% of the lobby's total floor space, or up to 50% of the total lobby space if the total area of the lobby is 2000 square feet or less.
- Meeting and banquet rooms in a hotel, motel, restaurant, or public convention center, except during exhibits and when food or beverage functions are taking place.

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- Warehouse facilities with more than 100,000 square feet of total
§ floor space and which employ 20 or fewer employees.
- Retail and wholesale tobacco shops and any attached "private
§ smokers' lounge".
- Designated "breakrooms" which meet specified ventilation
§ standards: (a) air from the smoking room must be exhausted
directly to the outside by an exhaust fan or transferred to a
system which exhausts directly to the outside; (b) air may not be
re-circulated to other parts of the building; (c) the ventilation
system must comply with any standards developed by OSHA or
federal EPA; and (d) the smoking room must be located in a

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non-work area where no person is required to enter as part of his
or her work responsibilities. (The bill would not preclude the
performance of maintenance and custodial responsibilities in an
unoccupied room.)

- Cabs in motor trucks when no other non-smoking employee is
§ present.
- Theatrical production sites when smoking is integral to the
§ production.
- Medical research and treatment sites when smoking is integral to
§ the research or treatment.
- Private residences, except if and when the home is used as a
§ child care facility.

The bill would also establish a conditional exemption for gaming
§clubs and bars in a tavern, hotel, or restaurant. Generally,
§smoking would be permitted in these areas of employment until the
§earlier of the following:

- January 1, 1997.
- Cal OSHA or the federal EPA adopts regulations to limit
§ permissible employee exposure to environmental tobacco smoke to
level that will prevent anything other than "insignificant
harmful effects" to exposed employees. Upon the adoption of
regulations, the employer would have two year to comply. Failure
to comply within that period would result in a smoking
prohibition in that place of employment until compliance is
achieved. If the regulations are adopted after January 1, 1997,

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smoking would again be permitted in a gaming club or bar, subject to full compliance with the state or federal standard within two years of the standard being adopted.

- the adoption of a stricter local regulation limiting or prohibiting smoking in that workplace.

The bill would make a violation an infraction punishable by a \$100 fine for a first offense, and by a \$200 fine for a second offense.

The bill would specify that its smoking prohibition is intended to create a uniform statewide standard for regulating the smoking of tobacco products in enclosed areas of employment. However, local jurisdictions may enact stricter local controls on smoking in the workplace, including a complete prohibition of smoking.

The purpose of this bill is to enact a comprehensive scheme to protect workers from exposure to environmental tobacco smoke in enclosed places of employment.

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COMMENT

1. Recent amendments reflect compromise with hotel industry

The March 7 amendments are the result of a compromise reached between the proponents of AB 13 and the hotel, motel and lodging industry. They address some of the concerns raised at the prior hearing of AB 13 by the hotel industry and opponents to the measure. With these amendments, the hotel industry now supports the bill, However, other opponents remain, including a few individual marquee hotels, restaurant owners, and the tobacco industry.

Generally, the revised measure seeks to protect workers in enclosed places of employment while also attempting to provide some flexibility to certain employers in certain trades, whose employees unavoidably come into contact with environmental tobacco smoke in today's culture. For these employers, such as tavern and hotel bar operators, the smoking prohibition is stayed for a limited period of time to permit state or federal agencies to adopt regulations that would protect employees from smoke in the workplace. The prohibition would be stayed until January 1, 1997.

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WOULD TWO YEARS BE SUFFICIENT TIME FOR THE STATE OSHA OR
FEDERAL EPA TO ADOPT THE CONTEMPLATED STANDARD?

The bill, however, would not specifically direct or require
OSHA to act to adopt a regulation. In the absence of any
action by OSHA, the smoking prohibition would go into effect in
1997 and stay in effect until the adoption of standards.

2. Remaining key points of controversy

a) Issue of Pre-emption

According to the California Hotel Association, statewide
uniform standards are necessary to ensure a level playing
field in the competition between cities for tourist and
convention business. That consideration was paramount in
their efforts to achieve a fair compromise.

AB 13 addresses that concern in part by creating a
statewide floor for smoking prohibitions in the workplace.
It thus creates a statewide standard level of protections
for all workers, with all employers subject to the same
rules.

Language on page 10, beginning on line 26, through page 11,

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line 6, would appear to permit local jurisdictions to enact
stricter local rules, including a complete ban on smoking.
Thus, if local jurisdictions choose to enact stricter rules
certain employers will continue to be subject to more
stricter rules than other employers.

SHOULD THE AB 13 SMOKING RESTRICTIONS BE ESTABLISHED AS A
UNIFORM STANDARD, OR SHOULD THEY YIELD TO STRICTER LOCAL
RULES?

b. Question of hardship for small restaurants

The Golden Gate Restaurant Association and other opponents
assert that small restaurants with a seating of 50 or less
should be categorically exempted from AB 13. A smoking
ban, it is asserted, could pose a great hardship for small
restaurants.

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3. Studies show harmful effects of secondary smoke

In December, 1992, the federal Environmental Protection Agency (EPA) issued a report classifying ETS as a group A carcinogen and estimating that ETS causes 3,000 lung cancer deaths annually among non-smokers.

In an earlier 1986 report, the U.S. Surgeon General stated, "exposure to environmental tobacco smoke is a cause of lung cancer." The report, "The Health Consequences of Involuntary Smoking," analyzed 13 studies and determined that non-smokers exposed to ETS have a 30% higher risk of lung cancer than those not exposed to ETS.

A 1990 University of California report, "Passive Smoking and Heart Disease: Epidemiology, Physiology and Biochemistry" concluded that ETS-induced heart disease may account for ten times as many deaths as ETS-induced lung cancer. Additionally, a recent study presented at the American Heart Association's annual meeting on heart disease epidemiology shows that exposure to ETS significantly narrows the arteries of nonsmokers, increasing their risk of heart disease.

A separate UC study suggests that food service workers may face a 50% increase in lung cancer risk (compared to the general population) that is in part attributable to tobacco smoke exposure in the workplace.

In a June, 1991 report, the National Institute for Occupational Safety and Health (NIOSH) listed 21 known or suspected carcinogens, co-carcinogens and tumor promoters identified as components of ETS. The report concluded that "Workers should not be involuntarily exposed to tobacco smoke...Worker exposure

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to ETS is most efficiently and completely controlled by simply eliminating tobacco use from the workplace."

ETS is now considered the third leading preventable cause of death in the United States, after mainstream smoking and alcohol.

The tobacco industry disputes such findings and questions the scientific basis of the conclusions regarding ETS. It continues to dispute the association between smoking and cancer.

4. Stated need for workplace protection from ETS

The California Restaurant Association, the California Medical Association, the California Labor Federation, AFL-CIO, and the American Heart Association - California and Greater Los Angeles Affiliate, sponsors of AB 13, assert that this bill is needed to protect California workers from the serious adverse health effects of environmental tobacco smoke (ETS) as evidenced by mounting scientific evidence regarding the health risks of ETS.

The California Restaurant Association states that there are increasing numbers of workers' compensation claims based on workplace exposure to ETS. The Association points to a recent case in Marin County in which a non-smoking waiter received over \$80,000 in workers' compensation benefits for a heart attack which he claimed was caused by ETS. The Association argues that the EPA report will lead to an explosion in workers' compensation claims by nonsmokers who believe they have suffered illnesses as a result of ETS exposure on the job, and that the only protection for employers is to prohibit smoking completely.

In addition to its liability concerns, the Restaurant Association expressed two other reasons for support: 1) to establish uniform state standards so that they don't have to worry about local variation; and 2) to equalize the playing field so that their asserted competitors for the food business (convention centers and meeting rooms which serve/cater food) are also under a "no smoking" ban. (Apparently, most local ordinances only go so far as banning smoking in restaurants - few, but some, do go as far as addressing smoking in convention and meeting facilities.)

The California Nurses Association (CNA) states in support of the bill that most employees spend more than half their waking hours in or around their workplace. CNA believes that, because ETS is a major contributor to lung cancer and heart disease, eliminating involuntary exposure to secondhand tobacco smoke in

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the workplace will help employers comply with their legal obligation to provide a safe and healthful workplace.

In support of the bill, Mervyn's states that its adoption of a "no smoking" policy for its stores has had a positive financial impact by reducing maintenance costs and likely lowering health care and workers' compensation costs.

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5. Opposition concerns

(a) Unnecessary government interference

Some individual restaurant owners and hoteliers contend that the issue should be left to the operators to decide. The Golden Gate Restaurant Association (GGRA), in opposition, points out that an increasing number of restaurants are choosing to go "smoke-free," and that a state prohibition would deny smoking diners the ability and choice to patronize a restaurant that allows smoking. GGRA also contends that smokers who work in the food service industry would also benefit from the ability to choose between smoke-free and smoking-allowed facilities.

(b) Adverse impact on business climate

Opponents of AB 13 believe that the proposed statewide ban on workplace smoking would contribute to the perceived negative business climate in California and would result in substantial losses to the hospitality/tourism/ convention business. Opponents assert that, based on private polling, California could lose up to five percent of its business or \$1.2 billion in tourism and convention sales.

The Southern California Business Association contends that the recently enacted Los Angeles City ordinance to prohibit smoking have severely impacted Los Angeles hotels and restaurants. They report an average loss of 24% in 55% of the restaurants surveyed and loss of a previously booked major convention due to the smoking ban.

The proponents respond that prior research has indicated there is little or no economic effect of smoking restrictions in domestic markets. Proponents 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.

(c) Total pre-emption advocated

Opponents contend that any comprehensive state scheme which

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establishes a state guideline for smoking in indoor workplaces should be the uniform statewide standard and not

subject to stricter local regulation. They argue that upon adoption on OSHA or EPA standards, stricter local ordinances should be pre-empted.

6. Conflicting legislation

AB 996 (Tucker), presently stalled in the Senate Health Committee, would establish less restrictive statewide smoking regulations than those proposed in AB 13 and would pre-empt any local ordinance regulating the sale, distribution, advertising, sampling, promotion, or display of tobacco products.

AB 996 is supported by those who oppose AB 13 and is opposed by those who support AB 13.

7. State smoking ban

By executive order, Governor Wilson has prohibited smoking in all executive state office buildings.

8. ASHRAE standards - purpose

A significant part of a previous Judiciary Committee hearing focused upon using "ASHRAE" ventilation standards as a way of protecting worker safety in employment situations where smoking was allowed. ASHRAE (the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.) standards are industry standards promulgated every five years by an "ASHRAE Standards Project Committee" which attempts to develop a consensus or substantial agreement among the committee members as to the appropriate standards.

The purpose of the ASHRAE Standard "is to specify minimum ventilation rates and indoor air quality that will be acceptable to human occupants and are intended to avoid adverse health effects. For substantive information on health effects, the Standard must rely on recognized authorities and their specific recommendations. Therefore, with respect to tobacco smoke and other contaminants, this Standard does not, and cannot, ensure the avoidance of all possible adverse health effects, but it reflects recognized consensus criteria and guidance." (Foreword, ASHRAE Standard 62-1989.)

The standards are updated on a five-year cycle. The current standards were adopted in June, 1989; and the next revision is scheduled for 1994. The new EPA studies and recommendation may well influence the adoption of higher ASHRAE ventilation requirements standards in 1994 in situations involving ETS.

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The ASHRAE standard sets forth recommended supply rates of outdoor air "to ensure acceptable indoor air quality." The "values" are chosen to control carbon dioxide and other contaminants with an adequate margin of safety and to account for health variations among people, and a moderate level of smoking. ASHRAE standards are adopted for various settings, such as lobbies, conference rooms, restaurants, bars, etc.

AB 13 does not establish any specific ventilation standard. Indeed it leaves open the question of which technology might be used to achieve compliance with the OSHA or EPA standards. In fact, other forms of technology are available which are reported to be more effective in disseminating smoke and reducing an employee's exposure to ETS.

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