

Date of Hearing: March 3, 1993

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

TERRY B. FRIEDMAN, Chair

AB 13 (T. Friedman) - As Amended: February 22, 1993

SUBJECT

Smoking in enclosed workplaces.

DIGEST

Existing law, the Occupational Safety and Health Act of 1973, requires California employers to provide safe and healthful workplaces.

This bill prohibits employers from knowingly or intentionally permitting, or any person from engaging in, the smoking of tobacco products in enclosed workplaces.

The bill specifies that an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has posted "no smoking" signs and requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace. It provides for specified infraction penalties to be enforced by local agencies in addition to existing Cal/OSHA enforcement authority.

The bill specifies that the smoking prohibition constitutes a uniform statewide standard and shall supercede and render unnecessary any local ordinances regulating smoking in enclosed workplaces, as long as the 100 percent ban is in effect.

FISCAL EFFECT

Unknown General Fund costs for enforcement. Unknown General Fund revenues from civil penalties. Unknown potential General Fund savings from prevention of future state employees' work-related illnesses.

COMMENTS

1. Need for Bill.

The bill's sponsors are 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. The sponsors state that the goal of the bill is to protect California workers from the serious adverse health effects of environmental tobacco smoke (ETS). While the

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health hazards of smoking have been well known for many years, the sponsors point to mounting scientific evidence regarding the health risks of ETS. The federal Environmental Protection Agency (EPA) issued a report in December, 1992 classifying ETS as a known human carcinogen and estimating that 3,000 lung cancer deaths annually among non-smokers are due to ETS exposure.

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. Additionally, the Restaurant Association states its strong desire for a uniform, statewide ban so that its members are not put at any economic disadvantage by the varying restrictions in different localities.

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 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 it officially converted all of its locations to smokefree environments in May, 1991. Mervyn's states that although it anticipated some problems, particularly in states with variable weather patterns or a larger percentage of smokers, employees have accepted the policy well. Mervyn's asserts that from a business perspective, the change has had a positive financial impact, by reducing maintenance costs and likely lowering health care and workers' compensation costs. Additionally, Mervyn's believes the smoke-free policy has sent a message to its employees that management wants a clean and healthy environment.

Supporters additionally point out that tobacco smoke contains thousands of hazardous chemicals, many of which are known carcinogens (e.g. benzene and formaldehyde.)

2. Federal Agency Says ETS is as Harmful as Asbestos and Radon. During the final days of the Bush administration, the federal Environmental Protection Agency (EPA) released a long-awaited report, "Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders." The report states that:

"1. Passive smoking is causally associated with lung cancer in adults, and ETS, by the total weight of evidence, belongs in the category of compounds classified by EPA as Group A (known human) carcinogens.

2. Approximately 3,000 lung cancer deaths per year among nonsmokers (never-smokers and former smokers) of both sexes are estimated to be attributable to ETS in the United States."

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3. More Evidence of Health Risk from ETS.

In a landmark 1986 report, the U.S. Surgeon General stated, "It is rare to have such an abundance of evidence on which to make a judgment, and given this abundance of evidence, a clear judgment can now be made: 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. ETS is now considered the third leading preventable cause of death in the United States, after mainstream smoking and alcohol.

The National Institute for Occupational Safety and Health (NIOSH) issued a report in June, 1991, which listed 21 known or suspected carcinogens, co-carcinogens and tumor promoters identified as components of ETS. They are:

- Benzene
- Formaldehyde
- 3-Vinylpyridine
- Hydrazine
- N-nitrosodimethylamine
- N-nitrosopyrrolidine
- Tar
- Phenol
- Catechol
- 1-Toluidine
- 2-Naphthylamine
- 4-Aminobiphenyl
- Benz(a)anthracene
- Benzo(a)pyrene
- Quinoline
- N'-nitrosonornicotine
- NNK
- N-nitrosodiethanolamine
- Cadmium
- Nickel
- Polonium-210.

The report concluded that "Workers should not be involuntarily exposed to tobacco smoke...Worker exposure to ETS is most efficiently and completely controlled by simply eliminating tobacco use from the workplace."

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4. A Workplace Ban.

The Surgeon General's report concluded that 'The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental smoke.' Supporters assert that by prohibiting smoking in enclosed workplaces, the bill protects employers from increased workers' compensation and disability claims. Additionally, it relieves employers from any requirement to provide separate, expensive ventilation systems for smokers and non-smokers.

5. Opposition Arguments. Americans for Nonsmokers' Rights (ANR) states in opposition that it is the policy of its organization to oppose any state bill regulating smoking if it does not include an anti-preemption clause and does not provide enforcement at the local level. ANR sees no legitimate reason to limit the legislative power of California cities and counties. Additionally, ANR expresses concern that AB 13 will have a chilling effect on local ordinances currently under consideration. The City and County of San Francisco opposes the bill because of the preemption clause and concerns about Cal/OSHA enforcement.

SPONSOR

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

SUPPORT

Hervyn's  
Sorensen's Resort  
State Building and Construction Trades Council of California  
American Lung Association of California  
American Cancer Society, California Division, Inc.  
California Nurses Association  
Children's Advocacy Institute  
Central Labor Council of Contra Costa County  
San Marcos Bowl, Inc.  
Service Employees International, California State Council

OPPOSITION

Americans for Nonsmokers' Rights  
The City and County of San Francisco  
California Hotel & Motel Association  
Hotel Bel-Air  
Various other individuals

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