

*Smoking Policy
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SMOKING RESTRICTIONS
POLICY DISCUSSION

For The
Committee of Counsel
The Tobacco Institute
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The purpose of this document is to consider the issue of smoking restrictions as it exists in legislation and as it has expanded to include litigation and voluntary decision-making. This paper reviews the stated and practiced policy of The Tobacco Institute in this area, and proposes further policy.

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INTRODUCTION

The notion of restricting "when," "where" and even "how" a person may smoke has been debated, quite possibly, for as long as people have smoked. (There is evidence of smoking restrictions in this country as far back as 1639.)

The proponents of such restrictions argue that cigarette smoking is annoying and harmful (as a pollutant, as a fire hazard and to the health of smokers) and should therefore be restricted.

Proposals to restrict smoking come in several forms:

- o More than 1,000 bills and ordinances have been proposed over the past decade. All have sought to limit smoking in public places. Some have broadly defined the term "public place," others have not. Almost all have had penalties attached, some more onerous than others. Less than 10 percent of this legislation has become law but it is becoming increasingly difficult to defeat. The Institute is organized to systematically and aggressively deal with this legislation.
- o Compared to legislation, there has been relatively little litigation in this area. There is no conclusive

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pattern of law. Where it has existed, litigation typically involves an individual demanding the right to a smoke-free environment. The Institute has dealt with these cases on an ad hoc basis.

By and large, the courts have held that there is no constitutional right to a smoke-free environment. At the same time, a number of courts have held that state common law protects people, at least in the work place, against unreasonable exposure to tobacco smoke. The courts also have held, with the exceptions noted below, that private employers may impose smoking restrictions unilaterally in places under their control.

There have been instances where unions have challenged the right of a company to unilaterally impose smoking restrictions. In at least two cases, the courts have agreed with the unions that restrictions are matters for collective bargaining.

The voluntary smoking restrictions not involving government action have taken several forms:

- o limits on employees, ranging from separate smoking sections and "smoke break" periods to hiring practices which discriminate against smokers and the outright prohibition of smoking on site.

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- o limits on customers, principally the creation of separate sections.

- o marketing strategies which seek to exploit smoking, i.e. "non-smoker discounts," special services or products for smokers or non-smokers.

As with litigation, The Institute has dealt with incidents of voluntary restrictions on an ad hoc basis, frequently relying on letters of protest and personal contact with individuals representing the offending organizations.

The voluntary restriction of smoking is hardly a new situation. But, in recent years, at the prompting of anti-smokers, a growing number and variety of organizations have considered the issue. As a result, voluntary limits have proliferated.

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CURRENT PUBLIC SMOKING POLICY

The Tobacco Institute's policies reflect the business, legal and political concerns of its member companies.

The Institute's current policy on public smoking opposes most public smoking restrictions.

This policy is based on three philosophies:

1. Smoking is an adult custom. The decision to smoke should be based on mature and informed individual freedom of choice.
2. Smoking restrictions are unnecessary, unfair, costly, and unenforceable.
3. Mutual consideration is the answer. Cooperation is and must be the business of people, not of government. Whether and where their customers and employees should be allowed to smoke must be the business of proprietors, not lawmakers.

Taken alone, the first two philosophies unambiguously state that smoking is an individual matter; that there is no reason to restrict smoking.

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Taken alone, the third philosophy contradicts the first two by implying that the proprietor of a business could properly limit employee and customer smoking.

Taken together, as they constantly have been, the three philosophies support the individual's freedom of choice and the organization's right to govern itself.

The Institute formed this policy primarily in response to public smoking legislation. We established field offices, hired additional state lobbyists, and developed communications materials to deal with the flood of public smoking bills introduced in the 1970's.

Armed with these tools and this philosophy, we have been effective in the legislative arena.

Increasingly, public smoking restrictions are being introduced in new forms. In addition to legislated restrictions, we are faced today with public smoking policies resulting from litigation and voluntary decisions by organizations.

These new developments call for a thorough review of our current public smoking policy and philosophies. We must ask whether The

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Institute's policy remains supportive of the industry's business, legal, and political needs.

The following section looks at the Institute's policy more specifically.

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POLICY DISCUSSION

This section includes a series of policy-related questions and staff response to each.

I. The Institute's policy now suggests that voluntary limits on smoking may be acceptable.

o Now that smokers are facing such limits, what is our position?

o If we now disagree with the concept of voluntary restrictions, are we willing to revise our position when opposing future public smoking legislation?

o What are the implications of maintaining two positions: one which serves us legislatively, and another for voluntary situations?

Staff recommends that The Institute policy continue to state that smoking restrictions are unnecessary, unfair and unenforceable; and that government should never impose such restrictions.

However, if an organization considers the issue and then decides (for whatever reason) to voluntarily restrict smoking, The

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Institute would disagree with the decision but respect that organization's right to decide.

Staff does not think The Institute can afford to undermine its existing legislative position by now opposing voluntary restrictions, or worse, by maintaining two conflicting positions.

II. Assuming that The Institute still supports voluntary decision-making:

- o To what extent should The Institute become involved in another organization's decision-making? What is possible, what is appropriate?

- o What are our expectations of success in influencing another organization in a voluntary matter?

As a practical matter, there are relatively few ways one organization can affect another:

Economic pressure

An individual company, as a private matter, could choose not to do business with organizations restricting smoking. The Institute, as the agent of a number of companies, can not do so.

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Litigation

Given the proper issue, litigation can be a powerful, far-reaching tool. On the smoking restriction issue, counsel sees litigation as having an uncertain outcome potentially damaging to our position. (Exceptions to this may be (1) assisting a union that insists that restrictions are a matter of collective bargaining, and (2) responding to complaints based on purported constitutional right to a smoke-free environment.)

Legislation

One organization can lobby for legislation affecting another. However, The Institute could not propose much less support legislation that would prevent a proprietor from restricting smoking.

Persuasion

Within all organizations are key individuals who make decisions. Their decisions are based on personal bias, experience, education, new information and on pressures exerted by those with an interest in the organization, i.e. employees, stockholders, customers.

Given our four options, one (economic pressure) would be of questionable legality; two (litigation, legislation) appear impractical and the fourth (persuasion) is clearly limited.

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Complicating this challenge is the enormous number of organizations (businesses, unions, public agencies, associations, clubs, etc.) capable of restricting smoking.

Therefore, our capacity to influence voluntary decision-making will depend on (a) the quality of our arguments, (b) our ability to deliver our arguments to the proper decision-maker(s) in a timely way and, (c) given the enormous number of organizations capable of restricting smoking, our ability to identify those organizations which affect the most people, are most visible, and are most likely to be influenced by our arguments.

There will be instances where an organization feels it must restrict smoking (to satisfy employees, customers, etc.) but wishes to do so in the fairest possible way.

In these instances, staff believes The Institute should work actively with these organizations to seek the fairest, most feasible solutions. We make this recommendation for three reasons:

1. If there are to be restrictions, we still have an interest in protecting the rights of our industry's customers. This approach may be the only real way of having an influence on the actual restrictions.

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2. This approach will provide evidence that we support voluntary decision-making even when we disagree with the decision.
3. In the overall interest of building coalitions, we should seek to minimize unnecessary confrontation with other organizations and seek cooperative opportunities.

III. Assuming that another organization voluntarily restricts smoking (for whatever reason) to what extent is The Institute willing to accept that organization's right to make the decision?

There comes a point when a voluntary decision is made either to restrict or not restrict smoking.

If the decision is not to restrict smoking, The Institute can easily express its support for both the decision and the voluntary process.

However, if the decision is to restrict smoking, The Institute's dilemma is obvious. As stated earlier, staff believes The Institute can not afford to strongly criticize the decision or, worse, to attempt to overturn it.

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In this case, staff should be permitted to choose from the following options:

1. The Institute can ignore the decision, and by so doing, not add to the decision's visibility.
2. The Institute can restate its opposition to restrictions but accept, and even possibly endorse, the organization's right to decide for itself.

IV. The Institute necessarily has concentrated on legislative matters and has little expertise or experience in influencing voluntary decisions.

- o Compared to our legislative workload, how seriously do we view voluntary restrictions? What priority do we place upon the problem?
- o In what ways should The Institute change to meet the increasing challenge of voluntary restrictions?
- o To what extent is The Institute or its members willing to use existing relationships (i.e. with legislators, customers, allies, unions, suppliers) to deal with the problem?

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There is little question that voluntary smoking restrictions pose a serious problem. Unlike legislation, voluntary restrictions appear to spread slowly and without publicity. There is no known process to monitor such developments. Where legislation tends to focus on public places which are occasionally visited by smokers, voluntary restrictions tend to affect the workplace where smokers are likely to spend large portions of their waking hours. And where legislation is generally limited to "where" one may smoke, voluntary restrictions can and do go much further.

The Institute has many legislative concerns beyond public smoking restrictions. Therefore (with the possible exception of influencing public agencies' administrative decision-making) The Institute can divert little if any of its anti-legislation apparatus to deal with the voluntary issue.

Staff feels that (a) The Institute must first create in-house expertise in this area either through retraining or the addition of limited staff, (b) identify and rely upon appropriate consultants, and (c) enlist experts from member companies to help analyze the issue from financial, marketing, employee relations and operational perspectives, and to help The Institute gain access to other organizations.

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RECOMMENDED SMOKING RESTRICTION POLICY

We recommend that The Institute maintain its policy of aggressively opposing the legislative restriction of smoking as unnecessary, unfair and unenforceable encroachments of private individual and organizational freedom.

If an organization chooses voluntarily to restrict smoking, we recommend that the Institute be authorized to accept (and possibly even to support) that decision.

Clearly, The Institute wants to influence such decisions.

Therefore, an industry-sponsored program aimed at arguing the case against voluntary restrictions is vital.

We recommend the adoption of the program submitted to member companies on April 6, (summarized on the following pages) and the continued development of strategies to deal with the issue.

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OUTLINE OF PROPOSED PROGRAM

Objective:

Discourage businesses, institutions, and public agencies from unfairly discriminating against employees and customers who smoke.

Audience:

Workplace policy makers.

Strategies:

1. Respond directly to Weis and others with similar views.
2. Convince those responsible for setting workplace policies that unnecessary smoking restrictions may deter productivity by:
 - . distracting management and legal resources and
 - . disrupting the workforce.

Tactics:

Tobacco industry task forces and consultants will devise and implement tactics ranging potentially from trade journal advertising to briefings and presentations before key workplace policy makers.

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Objectives II:

Increase public understanding that smoking restrictions are unnecessary and unfair.

Audience:

The working public.

Strategies:

Demonstrate that:

1. Anti-smokers seek to ban smoking, not simply restrict it.
2. Smokers are courteous.
3. There is no persuasive evidence that cigarette smoke in the air causes disease in healthy non-smokers.
4. Unfair restrictions such as those on smoking ultimately infringe on the rights of all persons.

Tactics:

Tobacco industry task forces and consultants will rely principally on mass media approaches such as spokesman appearances on radio and television, carton stuffers, and possibly advertising.

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TASK FORCES DETAIL

Following is a description of the task forces as envisioned in the April 6 plan to deal with the voluntary smoking restriction issue.

It answers the questions most frequently asked about the task forces:

1. What is the role and authority of the task forces?
2. Who is assigned to the task forces and why?
3. What responsibilities do the task forces have?

Q.1. What is the role and authority of the task forces.

The plan assumes that the task forces will work closely with a professional staff member devoted solely to the issue and with labor, public relations, legal and management consultants.

One task force is identified for each major audience addressed in the plan; e.g., the organized labor task force will deal with strategies aimed at unions.

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The role of the task forces is envisioned as one of analyzing problems or situations and recommending appropriate policy. That is, the role is more one of counseling and guiding to ensure consistency and thoroughness than one of planning and implementing activities.

When necessary and appropriate, task force members may be involved in tactics; e.g., contacting counterparts at other organizations whom they know personally.

Q's 2, 3 Who is assigned to the task forces and why?

What responsibilities do the task forces have?

The plan proposes five task forces composed of TI staff, representatives of member companies, and consultants as needed. The task forces' responsibilities are tied directly to strategies and tactics identified throughout the plan. The specific assignments and responsibilities are listed below:

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Financial/ Personnel Administration Task Force

Chairperson: senior vice president for administration, TI.

Members: one senior personnel administration manager and one financial manager from each member company; public relations and management consultants as needed.

These individuals were designated because they are most knowledgeable about finance and administration and a significant portion of the issue deals with employee relations and the economics of smoking restrictions.

Their responsibilities would be to:

- o Assist staff and public relations counsel in developing arguments persuasive to personnel administration and financial managers; help refine materials used with these individuals.
- o Contact their counterparts at other businesses and institutions, to prompt discussion of the issue at a professional level.

Legal Task Force

Chairperson and members are not designated; the plan recommends that the Committee of Counsel designate the task force chairperson and members.

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This group will focus on corporate and institutional defense of non-smokers suits demanding restrictions.

Their responsibilities would be to:

- o Develop arguments, witnesses, and other resources useful to businesses defending against workplace suits.
- o Work with the U.S. Chamber of Commerce's National Chamber Litigation Center, which may soon address the issue.
- o Contact their counterparts at other organizations to discuss the legal ramifications of such suits.

Organized Labor Task Force

Chairperson: labor relations counsel.

Members: senior officer of the Tobacco Workers Union, a labor relations official from a member company (appointed by The Institute Chairman), and public relations counsel.

These individuals, whose expertise is in labor relations, will focus on smoking restrictions as a bargaining issue and the role, if any, of ambient smoke in the worker safety and health issue.

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Their responsibilities would be to:

- o Assist staff and public relations counsel in developing arguments persuasive to union officials and help refine materials for external use.

- o Contact union officials representing both public and private sector employees to prompt discussion of the issue from an organized labor perspective.

Public Agency Task Force

Chairperson: senior vice president, state activities, TI.

Members: one public affairs representative from each member company; two lobbyists from The Institute State Activities Division; one member of the Federal Relations Division; and public relations counsel.

These individuals, who are most familiar with government and public agencies, will focus on two elements of the issue:

(1) the cost of administering smoking restrictions in public agencies and (2) the public employees unions' concerns over non-negotiated changes in terms and conditions of employment.

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Their responsibilities would be to:

- o Assist staff and public relations counsel to develop arguments persuasive to elected officials, particularly the chairpersons and members of committees dealing with the administration, cost, and labor relations of government agencies.
- o Work with the organized labor task force on the question of public employee unions' responses to smoking restrictions.
- o Brief all field staff on the above arguments and coordinate contacts with key elected and appointed officials.

Small Business Task Force (Optional)

Chairperson: vice president of region II, TI.

Members: one representative from the National Association of Tobacco Distributors, one from the Retail Tobacco Dealers of America, one from the Tobacco Growers Information Committee, three from the National Tobacco Council, and public relations counsel.

These task force members will focus on how the issue affects small, local businesses and on how the industry can communicate with significant portions of these businesses.

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Their responsibilities would be to:

- o Assist staff and public relations counsel to develop arguments and materials persuasive to proprietors and operators of small businesses.
- o Identify local audiences and secure speaking engagements on the issue for TI speakers and other industry representatives.
- o Work with associations and agencies which represent small business nationally and locally.

Coordinating Committee

Chairperson: President, TI.

Members: Chairpersons of each task force and one new professional staff member assigned on a full-time basis to the issue.

The committee's responsibilities would be to:

- o Approve a coordinated plan, encompassing the activities of all five task forces; track progress against that plan.
- o Ensure communication and cooperation between the task forces.
- o Approve any contacts with corporations or organizations about the issue.

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