

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2384 SHESS HB 84

We, the undersigned, smokers and non-smokers alike, would like our voices heard in the hostile atmosphere that has been created by a minority of individuals who rabidly insist that we conduct our lives according to their personal wishes and dictates, at the work place, at home, and in any public establishment be it State property or privately owned.

For several years, we, as smokers, have extended the utmost courtesy to those who dislike cigarette smoking. We have not objected to the requirement to smoke in designated areas in restaurants or the work place. We have politely observed the preference of friends and have refrained from smoking if they wished it.

In spite of this consideration we have suffered repeated personal insult, harrassment, theft of personal property (ash trays); discrimination, segregation, scorn and threat, but we have resolutely continued to be polite, believing in the rights of others.

We have been forced to observe State and Company equipment, material and work time being used to further the cause of those few who would deny personal rights to all of us.

It is now that we unanimously object to the invasion of our rights as citizens entitled to the peaceful pursuit of gainful employment as well as pleasure on the home front.

Our concern is not riveted only to the subject of smoking, it extends to our rights as contributing members of a democratic nation wherein we believe we should be allowed individual decision regarding personal habit as well as the expectation of freedom from harrassment on the job by those few who would have it otherwise.

We wish to believe that our votes, our taxes, and our voices raised in protest will make a small positive sound in the present controversy surrounding not only smoking, but all individual rights as granted by the Constitution, a document that some of us regard as the only instrument that defines the real difference between America and Russia.

February 1, 1984
Juneau, Alaska

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RECEIVED

Description

TO: ALL SENATORS & COMMISSIONERS

SUBJECT: H.B. 84 - SMOKING IN PUBLIC PLACES

We the undersigned, represent the Alaska Division Board of Directors of the American Cancer Society support H.B. 84 and urge your strong consideration in its passage.

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TO: ALL SENATORS & COMMISSIONERS

SUBJECT: H.B. 84 - SMOKING IN PUBLIC PLACES

We the undersigned, represent the Alaska Division Board of Directors of the American Cancer Society support H.B. 84 and urge your strong consideration in its passage.

NAME

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Joe, Vic, Pappy, Rick,

Jan. 16, 1984
CS HB 84 (fin)

"smoking in public places & vehicles"

Mike Miller, Dano - Don Clocksin will join on
enforcement.

- Milo Fritz gave good testimony on second
hand smoke dangers.
- outlined bill and gave report on present
law (which is very weak)

Clocksin - worked in ^(A) Judiciary on Enforcement.
minimum ventilation and air quality
standards

D.E.C. - has increased present fines \$15-\$25 for
smoking in non-smoking
Failure to post a sign - (10-100)
raised by pays \$50/2nd offense \$100/other

new law: 4 methods of enforcing:

- 1) civil fine initiated by complaint to DEC
to be mailed in
- 2) Criminal penalties - citation by police officers
but no mandatory court appearance
- 3) Commissioner of DEC or anyone can file
a civil injunction for repeated violations
- 4) public education requirement through DEC

\$3,000 penalties on secondary smoke

Rufford - question on discrimination between
Smokers & non-smokers.

Mace - question concerning schools - law
says you must be 18 or older to buy
Cigarettes but schools designate Smoking
Areas but it is not enforced.

Joe - is this bill patterned after other States?

MM - Looked at many other States, would be
among the better bills in other States

Stu Caban - OHS; public health

position paper submitted in May has creators
support bill. "Enlightened"

(*) pg 3 line 16 - need to define smoker in
this subsection - further that it says: "a place of
employment if all the employees consent to
designate in entirety"

Ventilation, even w/ mechanical aids, is very poor in
modern offices, as many more windows lack of windows etc.

- majority of people do not smoke and are vocal
- better documentation on effects of second hand smoke - disease
linked to Smoking in respiratory system / cardiac arrest

pg 4; line 1 add per US 18.35.300 to language required in Sign.

Gary Miller - Lung Association

- Gallup poll 38% of adults smoke.
- 36 States restrict smoking.
- 2/3 to 90% of smokers wish they didn't smoke.
- presenting findings of several studies.
- Cost of this legislation - - smoking employees have higher absenteeism; more health care needs etc. increased cost in insurance
- Ombudsman has received complaints over discrimination in employment; it is legal to discriminate ~~for~~ over this basis.

Kalitta Banko - supports bill.

as a state employee, have had a difficulty in getting a compromise on smoking areas on the job.

- presented petitions for the bill and a letter from local Junction Chapter of AFSA.

Marilyn Martin - allergic to cigarette smoke.

non-protected employees have to go to legal means to get help, work environment.

Rock Lawrence - Tobacco Institute

Findings of study on second hand smoke - Institute

disagrees with studies claiming damage from ambient smoke. These studies quoted have been challenged for their non-scientific means.

1982 Surgeon General's report - quoted lack of evidence.

- findings not necessary since they address second hand smokers & bill addresses smokers.
- current law (1975) is a stiff law but has not been enforced.
- imposing this on the private sector - may cause unanticipated problems.
- NREA - says this bill would cause renegotiating of contracts
- cost of compliance may be substantial.

Don Allen - Ok Lung Association

Council on Smoking & Health (1984 coalition) and other statewide groups in favor of this bill.

- ① smokers & non-smokers favor this type of bill that limits smoking to designated areas.
- ② Evidence on secondary smoke hazards, especially to kids
- ③ smoke-free environments cost-effective & employment morale problems
- ④ enforcement - San Francisco said not self-enforcing.

Mr Boman - supports.

gicery & food areas very important.

(b) Subject to the approval of the attorney general, the board may employ temporary legal counsel from time to time in matters in which the board is involved. (§ 4 ch 72 SLA 1973)

Sec. 18.60.060. Cooperation by other state agencies. The agencies of the state shall cooperate with the Department of Labor in its program of safety activities, and shall make available information needed by the Department of Labor relative to the accident problems and methods employed or recommended for accident prevention. The agencies may lend the personnel who may be spared from their regular duties for short periods to assist in safety programs. (§ 8 ch 109 SLA 1955)

Sec. 18.60.070. Control of funds. Funds appropriated by the legislature for AS 18.60.010 — 18.60.105, funds in the boiler fund created for AS 18.60.380, and contributions shall be spent only for the purposes of AS 18.60.010 — 18.60.105. (§ 9 ch 109 SLA 1955; am § 5 ch 148 SLA 1957)

Editor's notes. — AS 18.60.380, referred to in this section, was repealed by § 3, ch. 29, SLA 1968.

Sec. 18.60.075. Safe employment. (a) An employer shall do everything necessary to protect the life, health and safety of employees including, but not limited to:

(1) complying with all occupational safety and health standards and regulations promulgated by the department;

(2) furnishing and prescribing the use of suitable protective equipment, safety devices and safeguards as are prescribed for the work and work place;

(3) adopting and prescribing control or technological procedures and monitoring and measuring employee exposure in connection with hazards, as may be necessary for the protection of employees; and

(4) furnishing to each of his employees employment and a place of employment which are free from recognized hazards which, in the opinion of the commissioner, are causing or are likely to cause death or serious physical harm to his employees.

(b) An employee shall comply with occupational safety and health standards and all rules and regulations issued under AS 18.60.010 — 18.60.105 that are applicable to his own actions and conduct.

(c) Repealed by § 9 ch 72 SLA 1973. (§ 43-2-21 ACLA 1949; am § 1 ch 148 SLA 1957; am § 1 ch 104 SLA 1970; am §§ 5, 6, 9 ch 72 SLA 1973; am § 4 ch 276 SLA 1976)

March 3, 1983

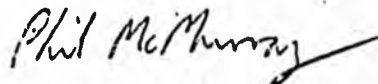
TO WHOM IT MAY CONCERN:

At the regular monthly meeting of the Juneau General Government Unit of the Alaska Public Employees Association, held at APEA Headquarters conference room at 340 N. Franklin on Tuesday, March 1, 1983, the following resolution was passed by a majority vote of members present:

"WHEREAS, smoking is a health and safety hazard and may contribute to reduced productivity at the workplace; and

WHEREAS, Alaska State House Bill 84 would reduce the amount of smoking in public places;

BE IT THEREFORE RESOLVED that the majority of GGU members present at the March meeting of same do endorse House Bill 84.



Phil McMurray
APEA Juneau GGU Chapter Secretary

VI. LITIGATION

A. Private Actions to Prohibit or Restrict Smoking in Private Places of Work

1. Shimp v. N. J. Bell Telephone Co.,
368 A 2^d 408 (N.J. Sup. Ct. 1976):

In the single case in which a court has found an employee has a right to a smoke-free work environment, a New Jersey court prohibited smoking in all work areas of a company office. Alleging a severe allergic reaction to cigarette smoke, the plaintiff Shimp sued her employer to compel it to provide her a no-smoking work area. This case was not actively defended by N.J. Bell Telephone.

2. Mitchell v. Bell Telephone Co.,
C-4159-76 (N.J. Sup. Ct. 1978):

This was another case in which the plaintiff, an employee of the defendant and allegedly allergic to tobacco smoke, sought an injunction compelling the defendant to provide him with a smoke-free place of work. The court dismissed the case, in response to the defendant's motion which was based on preemption grounds. Mitchell, which was actively defended, was brought by the same attorney who represented Shimp and the dismissal was entered by the same judge.

3. Gordon v. Raven Systems and Research, Inc.,
14092-79 (D.C. Sup. Ct. 1981):

Plaintiff sought reinstatement and damages from her former employer, alleging that she was fired when she insisted that she be provided with a smoke-free environment because of her allergy to tobacco smoke. The court dismissed the case, finding that defendant had no contractual or legal obligation to accede to plaintiff's demands. The court expressly declined to follow Shimp, discussed above, and observed that "neither statute, regulation, nor principles of common law required the Raven Corporation to furnish the plaintiff with the kind of smoke-free workplace she demanded."

VI. LITIGATION

4. Kensell v. State of Oklahoma et al.,
Civ. No. 81-786-T (W.D. Okla. 1982):

The plaintiff, an employee of the Oklahoma Department of Human Services, filed suit in U.S. District Court against his employer, the State of Oklahoma and numerous state officials and employees, contending, inter alia, that their refusal to provide him with a smoke-free workplace violated his rights under the First, Fifth, Ninth and Fourteenth Amendments. Citing FENSR and Gaspar, discussed below, the court dismissed the plaintiff's suit, concluding that "[f]or the Constitution to be read to protect non-smokers from inhaling tobacco smoke would be to broaden the rights of the Constitution to limits heretofore unheard of." Like the court in Gaspar, the Kensell court noted that the results sought by the plaintiff might better be accomplished through the legislative process.

5. Vickers v. Veterans Administration,
No. (81-85V) (W.D. Wash., August 31, 1982):

A U.S. District Court in Washington State ruled that a federal employee who is hypersensitive to tobacco smoke is "handicapped" within the meaning of the Rehabilitation Act, 29 U.S.C. § 794. The court, however, found that the supervisor's reasonable efforts in this case to accommodate the employee's handicap satisfied the Act's requirement that federal agencies not discriminate against handicapped persons. No damages were awarded to the plaintiff.

6. Smith v. Western Electric Company,
No. 44286 (Mo. Ct. of Appeals, Sept. 14, 1982):

The Missouri Court of Appeals held that an employer's common law duty to provide a reasonably safe workplace might include an obligation to ensure a smoke-free environment for employees sensitive to burning tobacco. The court did not base its decision on any statute but rather on the "well-settled" law that employers must protect employees from avoidable perils. Western Electric had contended that the federal Occupational Safety & Health Act preempted any state action on this issue. This decision will allow plaintiff the opportunity to prove his allegation at a trial.

VI. LITIGATION

7. Parodi v. Merit Systems Protection Board,
80-7671 (9th Cir., Oct. 21, 1982):

The U.S. Court of Appeals for the 9th Circuit ruled a government employee with a hypersensitivity to cigarette smoke must be given a smoke-free office within 60 days or be granted disability payments. While acknowledging that most disability claims involve a physical or mental limitation, the court stated that an "environmental limitation", such as Parodi's hypersensitivity to smoke, may form the basis for an employee's disability.

8. Hentzel v. The Singer Co.,
(Calif. Ct. of Appeals, Dec. 20, 1982):

The California Court of Appeals found that an employee allegedly fired for insisting on a smoke-free workplace has the right to sue his former employer for damages. The decision, reversing a trial court's dismissal of the Hentzel complaint, emphasized the need to protect employees who voiced dissatisfaction with allegedly hazardous working conditions.

B. Private Actions to Prohibit or Restrict Smoking in Public Places

1. Gasper v. Louisiana Stadium and Exposition District
418 F. Supp. 716 (E.D. La. 1976), aff'd,
F.2d 897 (5th Cir. 1978), cert. denied,
439 U.S. 1079 (1979):

Plaintiffs sued to compel the authorities who manage the Louisiana Superdome to prohibit smoking in the Superdome during sporting and other public events. In support of this request, the plaintiffs claimed a constitutional right to a smoke-free environment, relying on the First Amendment (freedom of speech), Fifth and Fourth Amendments (due process right to life and liberty) and Ninth Amendment (which protects so-called unspecific but "fundamental" rights). The district court unequivocally rejected each of these claims. The court of appeals affirmed this decision in all respects, while noting that the legislature, as opposed to a court, would have broad power to regulate smoking in public places. The Supreme Court denied the plaintiff's petition for review of the lower courts' decisions.

VI. LITIGATION

2. Federal Employees for Non-Smokers Rights (FENSR) v. United States,
446 F. Supp. 181 (D.D.C. 1978), aff'd, 598 F. 2d 310 (D.C. Cir.), cert. denied, 444 U.S. 926 (1979).

Several anti-smoking organizations, whose members included federal employees, sought to compel the federal government to prohibit smoking in federal facilities except in designated smoking areas. Plaintiffs asserted a private right of action under the Occupational Safety and Health Act (OSHA); a deprivation of their First and Fifth Amendments rights (freedom of speech and right to due process) and a common law right to a smoke-free workplace. The district court, relying on the decision in Gasper, rejected the constitutional claims, held that OSHA implies no private cause of action and found that it had no jurisdiction to consider the common law claim advanced by the plaintiffs in support of their demands. The court of appeals affirmed the district court decision and the Supreme Court refused to review the case.

3. Church v. Brown, et. al.,
Civ. No. 78-4073 (S.D. Ill. 1979):

The plaintiff, an employee of Scott Air Force Base, brought this action in U.S. District Court alleging that the commander of the base and the United States had a duty, under both the common law and OSHA, to provide him with a smoke-free working environment. Accepting "wholeheartedly" the analysis of the court in FENSR, the Church court found that it had no jurisdiction to consider the common law claim propounded by the plaintiff and rejected his OSHA claim, finding "that no private implied cause of action exists under OSHA..."

4. GASP v. Mecklenburg County,
256 S.E. 2d 477 (N.C. 1979):

An anti-smoking group sought an injunction forcing county authorities to prohibit smoking in all county public buildings and places of work, relying, like the plaintiffs in FENSR and Gasper, on an alleged constitutional right to a smoke-free environment. The North Carolina Court of Appeals, citing FENSR and Gasper, held that no such constitutional right exists and dismissed the plaintiff's suit.

VI. LITIGATION

C. Other Decisions

1. Stevens v. Employment Security Commission
(Iowa, Nov. 1976):

An Iowa state court ruled eligible for unemployment benefits a woman whose health required that she accept a job only in a smoke-and-dust free environment. Suffering from asthma, the plaintiff quit her job because the cigarette smoke in her office allegedly aggravated her illness. Unable to find a job that met the conditions required by her health, she applied for unemployment benefits. The Employment Security Commission said her restrictions on possible employment had made her unavailable for work and ineligible for benefits. But a District Court in Iowa disagreed, saying her limitation was not so great as to remove any possibility of employment. The court compared her situation to the cases where benefits were granted to persons limited to "light work".

2. Ellen L. Meyer v. C.P. Clare & Co.,
(Idaho Industrial Comm., Nov. 1978):

Unemployment benefits were also granted to an Idaho worker who had quit because two cigar smokers were transferred into her work area. She could have been given a leave of absence until a suitable position opened, but no one told her of this option. According to the state industrial commission, her limited choice "would compel a reasonable person to leave her employment." Thus she had good cause for quitting and was eligible for benefits.

3. Alexandria Volunteer Fire Dept. v. City of Alexandria, (E.D. VA, Dec. 13, 1982):

A federal district court rejected a lawsuit by Alexandria volunteer firefighters which challenged a regulation requiring volunteer firefighters to meet city fire department standards, including no smoking. No violations of the due process or equal protection clauses were found in the requirement that the volunteers meet the same physical, mental and training standards that the professional firefighters must meet.

VI. LITIGATION

4. San Mateo County Fire Fighters, Local 2400 v. City of San Mateo, No. 268890 (Calif. Sup. Ct. Dec. 16, 1982):

Stating the city may have violated a state law that requires local officials to negotiate working conditions, a superior court temporarily barred the city of San Mateo from enforcing a no-smoking policy for rookie firefighters. Under the court order, the city may continue to require fire department applicants to sign the no-smoking pledge, however, it would be unenforceable unless the temporary injunction is overturned at trial.

TELEGRAM

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1984 JAN 18 AM 3 34

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PMS SEN JOE JOSEPHSON

JUN

2015

REFERENCE SMOKING

PLEASE REFER TO U.S. CONSTITUTIONAL AMMENDMENT XIV SEC-1
REGARDING LIBERTY AND EQUAL PROTECTION OF THE LAWS.

RECEIVED

AS A SMOKER IN ALASKA FOR OVER 33 YEARS I CHERISH MY
LIBERTY AND BELIEVE I AM ENTITLED TO EQUAL PROTECTION TO
SMOKE OR NOT SMOKE.

Josephson

PRIVATE INTERPRISES SHOULD BE ALLOWED TO DECIDE, WITHOUT
GOVERNMENT INTERVENTION IF THEY WILL OR WILL NOT ALLOW
SMOKING.

AS FOR FEDERAL STATE AND MUNICIPAL BUILDINGS-DON ONLY NON-
SMOKERS TAXES SUPPORT THESE EDIFICES. I HAVE PAID TERRITORIAL
AND STATE INCOME TAX, AND AM STILL PAYING TAXES ON MY MARLBOROS
BOOZE AND PROPERTY PLUS TAX'S TO THE FEDS. DONT THESE TAXES
COUNT TOWARD EQUAL RIGHTS.

MARION T. STREET 272-2292

902 E 8TH AV

ANCH., AK. 99501

To Surgeon General, Smoking Is Heartache

By Victor Cohn
Washington Post Staff Writer

Surgeon General C. Everett Koop said yesterday that heart disease among cigarette smokers is causing nearly one death in 10 in the United States, a toll greater than smoking-linked deaths from lung cancer.

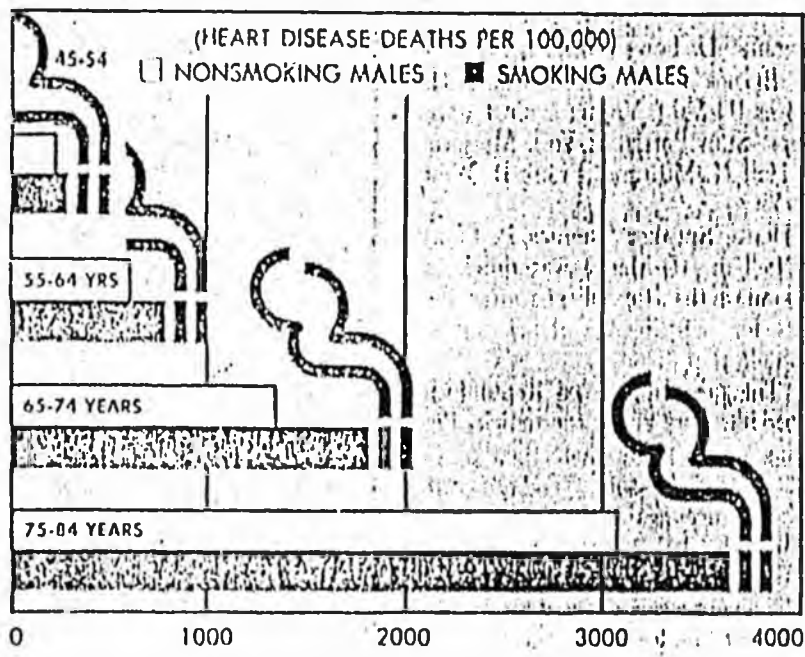
This is "an incredible assault" on Americans' health, and both government and the private sector should do substantially more about it, Koop, a medical doctor, told a news conference. Americans do not understand yet that "smoking actually causes more deaths annually from coronary heart disease than from all cancers," he said.

In his 1983 report titled "The Health Consequences of Smoking: Cardiovascular Disease," Koop made the government's strongest statement yet on smoking's effect on heart and blood vessel diseases.

The report coincided with the Great American Smokeout, the annual campaign that urges smokers to give up cigarettes for one day.

Koop said statistics show that cigarette smoking puts a person at greater risk of heart ailments than either of the two best-known "risk factors" for developing heart disease: high blood pressure and a high level of artery-clogging cholesterol.

CORONARY HEART DISEASE BY AGE AND SMOKING STATUS



SOURCE: DEPARTMENT OF HEALTH & HUMAN SERVICES AND AMERICAN CANCER SOCIETY
By Oail McGrovy - The Washington Post

Scientists don't know exactly why smoking causes heart disease, but they think it helps build up cholesterol, eventually blocking the arteries that carry blood to the heart.

Though knowledge of the mechanism is inexact, Koop called the

link between cigarette smoking and heart disease beyond doubt. He said more government action should mean more public education and stronger warning labels on cigarette packages and ads, a cause currently stalled in Congress.

Ending federal tobacco price supports, he maintained, might do more harm than good because tobacco would be cheaper. Koop said cigarette makers likely would use their savings to spend more "for promotion and advertising."

But education helps, he said, citing the drop of the country's smoking population from 41.7 to 32.6 percent of the total since 1965. He reported:

- On average, cigarette smokers have a 70 percent greater rate of coronary heart disease than do nonsmokers, and two pack-a-day smokers have two to three times the nonsmokers' rate.

- Pipe and cigar smokers are at equal risk of getting heart disease if they inhale. Whether or not they inhale, they may face a greater risk of oral and throat cancers.

- Smokers may cut their risk of heart attack by up to 45 percent by quitting, especially if they're still under age 65.

- There is no evidence that breathing smoke of healthy smokers causes heart disease. But there is evidence of increased risk of lung cancer, and children from homes with cigarette smokers have more respiratory diseases, disabilities and lost school days than do others.

Idea of smoke-free work place catches fire

By PHILIP HAGER

The Los Angeles Times

SAN FRANCISCO — The new office policy on smoking took effect on a Monday morning. Four days later, Ann Williamson was still ecstatic.

"I can't tell you what a difference it makes," she said. "Believe me, it's wonderful to be able to breath clean air and earn a living at the same time."

Williamson, an employment interviewer in the state Employment Development Department office in nearby Berkeley, and some other non-smoking workers had been trying for nearly two years to get the department to establish a smoke-free workplace. Weary of the pervasive blue haze in the air, they finally brought a lawsuit against the department.

But now a new policy has gone into effect: there is no smoking in the main office — by the employees or the public. Employees can take work-breaks and smoke in the restroom, coffee shop or conference room if it is not being used.

The success of Williamson and her co-workers is far from isolated. Responding to protests, lawsuits and new concern over the health hazards of "second-hand smoke," a growing number of employers — public and private — are establishing smoke-free environments in the workplace.

Until now, the focus of anti-smoking campaigns had been on theaters, restaurants and public meeting places. Now that focus has shifted to the workplace, where people spend more time. Some workers cite fears of contracting lung cancer, respiratory infection or some other illness from smokey environments. Others are just tired of headaches, nausea and burning eyes and throats.

The state of California, in a new law covering 144,000 state employees, requires all state agencies to adopt a

policy on office smoking. No sweeping office renovations are mandated. But agencies have been told they should ban smoking from formal meetings, encourage workers in small meetings to ask permission to smoke and, where feasible, provide no-smoking areas, ventilated smoking areas or other arrangements to separate smoker from non-smoker.

Ordinances restricting smoking in the workplace have been adopted recently in such cities as San Diego and Ukiah. And a proposed ordinance that would require employers to set aside smoke-free office space — and also that would provide city tax incentives for installing partitions, air cleaners and other structural changes — is being considered by Board of Supervisors here. Employers who do not comply would face civil fines of \$100 per day.

However, proposals like this are not going unchallenged.

In San Francisco, the city's Chamber of Commerce has expressed concern over the measure, raising questions about its cost to employers and objections to the prospect of fines for violations.

The Washington-based Tobacco Institute is staunchly opposing court or government-ordered smoking bans in the workplace. It contends such prohibitions amount to "job discrimination" against smokers and that there is no conclusive proof of health hazards from second-hand smoke.

"It's eminently preferable to strike a balance between what smokers' desire and what anti-smokers' desire," says Walker Merryman, a spokesman for the institute. "But no courts have said that there's a constitutional right to be free of someone else's tobacco smoke. Such a right just doesn't exist."

Nonetheless, a number of private employers have responded to the demands of non-smokers. Several large companies

— IBM, AT&T and Pratt & Whitney Aircraft, among others — have set aside smoke-free work areas. In San Francisco, companies ranging from Bancroft-Whitney, a publishing concern, to Just Desserts, a pastry maker, limit smoking to specific times and places.

Pacific Telephone Co., with 103,000 employees the largest private employer in the state, is drafting a far-reaching program in the wake of two petition campaigns by employees and a subsequent employee survey that found surprising sentiment — both among smokers and non-smokers — for setting aside smoke-free work areas.

The company plans not only to set aside smoke-free areas, but to sponsor its own programs to help employees to quit smoking.

Eriksen notes that, among its other benefits, the new program is expected to reduce certain costs attributable to smoking, including medical care, fire insurance, maintenance of facilities and worker absences.

The question of cost savings is receiving considerable debate. One widely noted study, published in 1981 by William L. Weis, a business administration professor at Seattle University, cited the additional expenses of insurance, absenteeism and disability payments and concluded that employers may be spending an extra \$4,011 per year per smoking employee.

On the other side, Lewis C. Solomon, an education professor at the University of California, Los Angeles, calls that analysis "faulty." Solomon, in a paper published in connection with his work as an economic consultant to tobacco companies, contended among other things that worker absenteeism was more likely related to job boredom, low pay and lack of company loyalty than to smoking.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

September 19, 1983

SUBJECT: Smoking in public places and vehicles
(CSHB 84 (Finance))

TO: Representative Mike M. Miller

FROM: Edward H. Hein
Legislative Counsel

Section 1. This section states the legislative findings and public-purpose rationale for the bill. Under Article VII, section 4 of the Alaska Constitution, the legislature is required to provide for the promotion and protection of public health. The findings state that (1) studies have shown so-called "second-hand smoke" to be a health hazard; (2) courts are beginning to recognize the rights of employees to work in a smoke-free environment; and (3) smokers as a group cost their employers and the public money in the form of higher job absenteeism and higher premiums for insurance.

Section 2. This section amends AS 18.35.300 by stating that smoking is a public health hazard. Again, this provides the public-purpose rationale for regulating smoking. The section also represents a significant change in the state's approach to regulating smoking. Existing law contains an exclusive list of places and vehicles in which smoking is prohibited. If a place is not listed, then smoking is not prohibited in that place. Under the bill, the presumption is that smoking is prohibited in any vehicle or indoor place that is open to the public, unless the vehicle or place, or a portion of it, is exempted by law. The list of prohibited places in this section is illustrative and open-ended, rather than exclusive. Thus, any indoor area or vehicle which is open to the public and not otherwise exempted by law is covered, even if it is not specifically listed in this section. The expanded list makes clear that the legislature intends to regulate smoking in virtually all vehicles of public passenger transportation (common

carriers); indoor entertainment and recreation facilities open to the public; all schools; places of public meetings under the control of the state or a municipality; places where the public goes for health care, such as hospitals and doctors' and dentists' offices; business premises, such as restaurants, banks and retail stores; and other places of employment, such as offices that are open to the public.

Section 3. This section amends (by repealing and re-enacting) AS 18.35.310, which exempts certain vehicles and areas from the smoking prohibition of AS 18.35.300. The revised section retains two of the four existing exemptions and adds one new exemption. Under the new section, as under current law, smoking is not prohibited in an area properly designated as a smoking section and smoking is allowed on stage as part of a theatrical performance. The new exemption is for taxicabs and limousines for hire in which the driver and all passengers consent to the smoking. This exemption is provided because these vehicles are too small to divide into smoking sections and nonsmoking sections. The exemption under current law for private gatherings has been transferred to AS 18.35.320. The exemption allowed under current law for state buildings and rooms that are adequately ventilated has been deleted. That exemption has never been used, according to the Department of Environmental Conservation. In addition, the revised AS 18.-35.320(d) provides that a smoking section may not be designated unless the area to be designated meets the minimum ventilation and air quality standards adopted by the Department of Environmental Conservation.

Section 4. Under existing law, AS 18.35.320, "reasonable" smoking areas must be provided in certain buildings, "unless prohibited for the protection of the public safety or the protection and preservation of the building and its contents". The concern here seems to be with fire hazards and possible damage to the contents of libraries and museums from smoke. Section 4 of the bill repeals and reenacts AS 18.35.320 to provide that portions of indoor areas and vehicles of public transportation (other than taxicabs and limousines for hire) may be designated as smoking sections. A smoking section may not be any larger than necessary to accommodate the needs of smokers. The area or vehicle must meet minimum ventilation and air quality standards before a smoking section can be designated. An entire vehicle, room or building cannot be made into a smoking area, except for bars and taverns, tobacco shops, and vehicles or areas while

being used for private social functions. An entire place of employment where all the employees smoke can be designated as a smoking area, except for reception areas, waiting areas, lobbies, and restrooms open to the public.

Section 5. This section repeals and reenacts AS 18.35.330, which currently requires persons in control of places or vehicles where smoking is prohibited to post a sign reading "Smoking prohibited by law". Under the revised version of this section, the signs must be conspicuously displayed, must read "Smoking prohibited by law - maximum fine \$300", and must measure at least 18 inches wide by six inches high, with lettering at least 1.25 inches high. Where a smoking section has been designated, the person in charge of the place or vehicle must conspicuously display both "no smoking" and "smoking allowed" signs.

Section 6. AS 18.35.340 currently provides that smoking in a nonsmoking area is punishable by a mandatory civil fine of from \$5 to \$25 for each offense. Failure to post a "no smoking" sign is punishable by a mandatory civil fine of from \$10 to \$100 for each offense. Punishment can be initiated only by civil complaint or citation. The court is authorized to establish procedures for payment of fines by mail. This section of the bill repeals and reenacts AS 18.-35.340 and requires the commissioner of Environmental Conservation to develop and maintain a procedure for processing reports of smoking law violations. A procedure already exists under 18 AAC 55.050. This provision in the bill assures that the department will maintain some procedure for processing complaints. Under the existing procedure, a person who observes a violation may notify an office of the department, sign an affidavit describing the violation, and agree to testify in court under subpoena if necessary. The department then has discretion to file a complaint in small claims court. This bill provides that the commissioner must investigate all reports of violations. The commissioner then has the discretion to file a civil complaint in superior court to enforce the statutes and regulations. The fine for smoking in a nonsmoking area is doubled to \$10 to \$50. Failure to post proper signs would be punishable by a mandatory fine of \$20 to \$300. The department is authorized to provide for the payment of fines by mail.

Section 7. This section adds two new sections to the law. AS 18.35.341 provides for the issuance of citations by peace

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officers for violations of the smoking or sign-posting statutes. Under this section there is no mandatory fine, but the maximum for either offense is \$300. This is an alternative enforcement mechanism to complaints filed by the Department of Environmental Conservation. The citations would be handled as traffic tickets are, with payment by mail provided for. This section also adds AS 18.35.342, which provides for the commissioner of Environmental Conservation or any aggrieved party to seek an injunction to restrain future violations of the smoking law.

Section 8. This section merely eliminates the reference in AS 18.35.350 to the masculine pronoun "his" and corrects the statutory references in light of the changes made by the bill.

Section 9. This section adds a new section requiring the commissioner of Environmental Conservation to take measures to inform the public of their rights under the bill.

Section 10. This amendment to AS 18.35.360 requires the Department of Environmental Conservation to adopt regulations to implement the bill, rather than allowing the department discretion to adopt or not adopt as it sees fit.

Section 11. This section adds definitions for the terms "commissioner", "department". and "peace officer".

Section 12. This section annuls 18 AAC 55.060, which reads as follows:

18 AAC 55.060. WAIVER OF PROVISIONS. (a) The department will, in its discretion, waive a provision of 18 AAC 55.010 - 18 AAC 55.900 if it determines that the public health and the satisfaction of the purpose of the provision are reasonably assured and that the requirements of AS 18.35.300 - 18.35.360 are satisfied.

(b) Application for a waiver must be made in writing and must include

(1) identification of the provision for which the waiver is requested;

(2) reasons why the provision cannot be satisfied; and

Representative Mike Miller

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(3) a description of an alternative method, if any, proposed for meeting the purpose of the provision to be waived.

(c) The department will answer a request for a waiver in writing within 30 days after receipt of the request.

If I may be of further assistance, please advise.

EHH:ljb
29/008

Showdown On Smoking

To smoke or not to smoke has changed from a simple question of health and habit to an explosive issue of civil rights and social etiquette.

Warning: cigarettes can endanger your health in ways the surgeon general never imagined. Consider two signs of the times. In an East Hampton, N.Y., movie theater, writer Fran Lebowitz lights up a Carlton—thereby incensing the man in the next seat, who grabs for the cigarette. Lebowitz calls in the cops and has him arrested for harassment. Verdict: not guilty. In Cambridge, Mass., Daniel Radler, 25, chides a female passenger for smoking on a bus. She beans him with her umbrella. He sues the transit authorities with the help of the local Group Against Smoking Pollution (GASP) and wins \$3,500 in damages. And so it goes. Massachusetts GASP president Rita Addison anticipates more mayhem ahead. "We all have fantasies of violence,"

she says. "Sometimes, this feels like war."

Nearly 20 years ago the first surgeon general's report on smoking warned that cigarettes could harm the health of people who used them. The result was a generation of quitters, would-be quitters and failed quitters. But now smoking is under attack by people who *don't* smoke. They are madder than hell and aren't going to take it anymore—not in airplanes or offices, not in elevators or restaurants. Increasingly, the nonsmokers regard smoking as a public transgression rather than a private indulgence. "We're really on the defensive," says public-relations executive Dick Arnold, a two-pack-a-day man from San Francisco, which just passed a tough smoking law. "Every time I light up, I feel like a pariah."

What makes the showdown on smoking such a hard-fought battle is that smokers are no easy target. In fact, after a decade of relatively rapid decline, America's smoking population seems to be on the rise again. A forthcoming Gallup poll will show that 38 percent of American adults now smoke, up from 35 percent two years ago. This beleaguered minority confronts a newly militant majority of non-, ex- and antismokers. Last year antismoking sentiment helped persuade Congress to double the cigarette tax. This year Congress is considering a bill to strengthen the health warnings that already appear on every pack of cigarettes.

The rich and powerful tobacco industry is fighting back, but it faces enemies on many fronts. Today 36 states restrict smok-

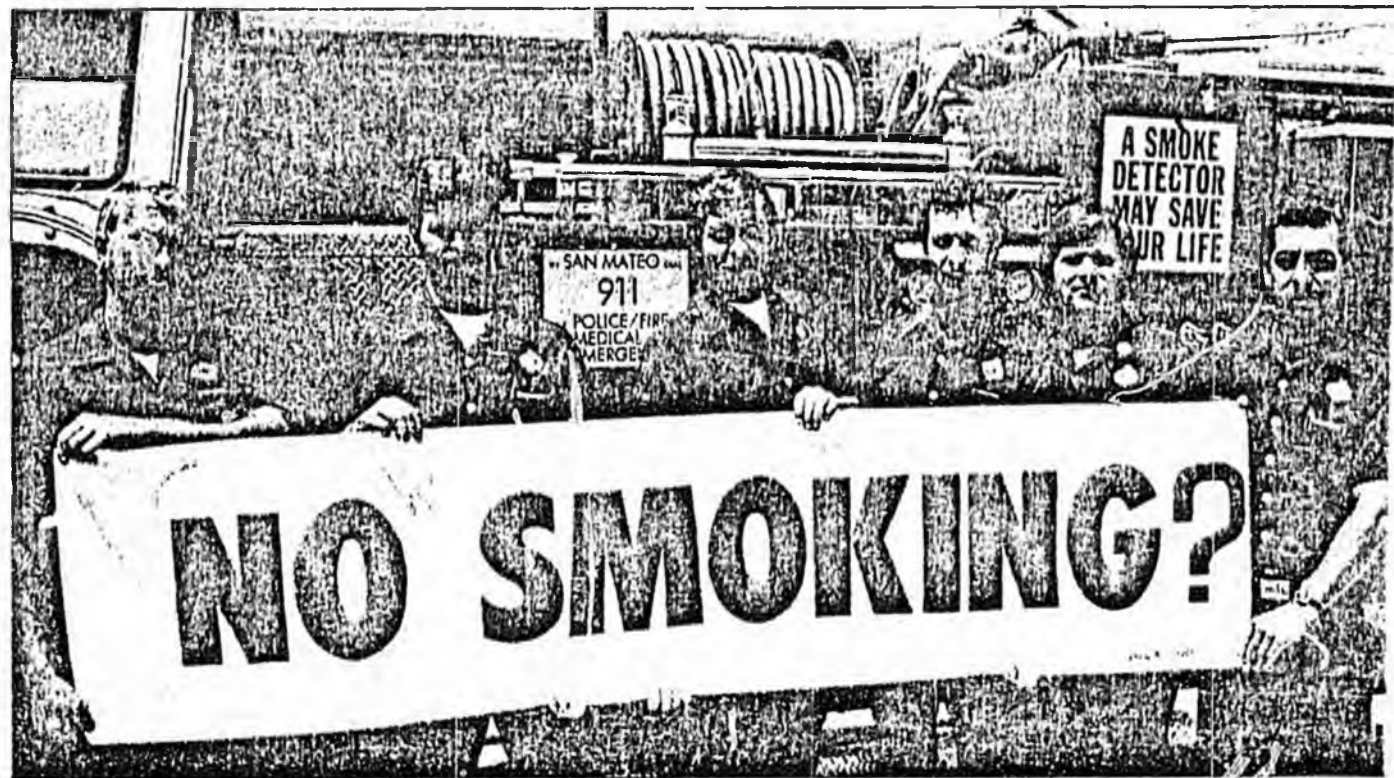


Mitch Kazar—Black Star

Company cafeteria in Minnesota: Keeping smokers in their place

Firemen in San Mateo, Calif., where the department won't hire men who smoke at work or home: The union is suing

James D. Wilson—Newsnet



ng, compared with only five in 1971. Cities are taking vigorous action against smoking in public. San Francisco's new ordinance, which Mayor Dianne Feinstein is expected to sign into law this week, requires all private employers to provide "reasonable accommodations" for both smokers and nonsmokers. But if a single nonsmoking employee objects to the arrangements, the company must ban smoking in his or her area or face a possible \$500-a-day fine.

Given many a smoker's volatile mix of emotions—desire, resentment and remorse—blowups are predictable. Ex-smokers, who now number approximately 34 million, can be especially irritating. "There is an air of fanaticism with a lot of those people," says Pat Carr, past president of the Idaho Lung Association. "My father used to say that there's nothing worse than a reformed whore. He was wrong. A reformed smoker is worse."

Consolation: Purveyors of tobacco have been squashing their critics since the 17th century, when King James I proclaimed the native American crop "loathsome to the eye, hateful to the nose." Cigarettes have survived periodic suppressions—13 states instituted some form of ban during the early 1900s—thanks to superb salesmanship and a willing public. But during World War II, advertising rendered smokes second only to Betty Grable pinups as the GI's consolation; by 1955 the postwar male smoking population had peaked at 53 percent. Subsequent cancer revelations, the advent of warning labels (1966) and the ban on broadcast commercials (1971) all shook the industry—temporarily. On each occasion, cigarette makers managed to rebound with innovations, from filter tips to low- and ultra-low tars.

Most recently, smoking interests have been challenged in the workplace. At least one-fifth of all U.S. firms now post some restrictions on smoking, according to Washington's Action on Smoking and Health (ASH). The Pacific Telephone & Telegraph Co., California's largest private employer, is formulating smoking guidelines for its 103,000 workers, after a survey showed that nearly three-fourths of the employees who responded—including more than half the smokers—wanted controls. When rules cannot be worked out amicably, nonsmokers are taking legal action. Courts in Missouri, California and New Jersey have sided with nonsmokers, ruling that those who are sensitive should be provided with either a smoke-free environment or disability payments. On the other side of the case, the District of Columbia Court of Appeals in Washington recently held that employers have no obligation to

satisfy the demands of nonsmokers.

In a potential landmark case in Massachusetts, the rights of smokers and nonsmokers are pitted directly against each other for the first time: one allergic case-worker wants the Attleboro Department of Public Welfare to ban smoking from its open offices, while a colleague claims to be an addicted smoker who can't function without cigarettes. A pending case in San Mateo, Calif., could prove even more important. The county fire department won't hire anyone who smokes—on or off the job. The department claims the policy will save millions in workmen's compensation, since some job-related ailments appear to be smoking-related as well. But the firemen's union is suing, charging an unconstitutional

respiratory impairment that a doctor would expect to find in a "light" smoker of 11 cigarettes a day. "For the first time, we have a quantitative measurement of a physical change, a fact that may tip the scales in favor of the nonsmokers," says Dr. Claude Lenfant of the National Institutes of Health.

'Dangerous Development': As the Roper Organization predicted in a 1978 survey for the Tobacco Institute: "What the smoker does to himself may be his business, but what the smoker does to the nonsmoker is quite a different matter . . . this we see as the most dangerous development to the viability of the tobacco industry that has yet occurred."

Born in the '60s, the antismoking movement came of age in the early '70s when ASH persuaded the Civil Aeronautics Board to restrict smoking on airplanes. Under catchy acronyms like GASP or FANS (Fresh Air for NonSmokers), at least 50 local groups have since flourished, abetted by such national forces as the American Cancer Society and the American Lung Association. What they lack in funds, local foes of smoking make up in determination. When repeated remonstrances against an illegal smoker failed, MIT Prof. David Gordon Wilson—the founder of Massachusetts GASP—uncorked his secret weapon, a vial of ammonium isovalerate, and waved it in the air. "It smells like a cross between Limburger cheese and an athlete's foot," he reports. Little escapes the grasp of New Jersey GASP; the energetic organization urges corporations to create smoke-free office space and pickets tobacco-sponsored events such as the Metropolitan Museum of Art's Vatican exhibit, backed by Philip Morris.

A major campaign against cigarettes has been waged in California. In 1977 the tobacco industry spent more than \$6 million to help defeat a statewide referendum to restrict public smoking. Since that setback, many antismokers have changed tactics to concentrate on local governments. The results are remarkable: 20 California communities have passed restrictions in the last three years alone. Smoking is illegal in most public places in Berkeley, where no-smoking placards outnumber stop signs 10 to 1. San Diego recently adopted a public-smoking law that, among other things, requires all restaurant seating more than 20 to provide smokeless zones. San Francisco's attempt to regulate smoking in the office goes even further. "In a restaurant or bar, you can walk out," says board of supervisors president Wendy Nelder, who drafted the recent legislation with the help of the Bank of America. "In the workplace, you have no choice."

As health-conscious as California seems to be, it is Minnesota that leads the nation in smoking controls. Eight years ago the legis-



Fighting back: Angry smokers on the Long Island Rail Road

invasion of privacy—and the decision could reverberate widely as other employers consider the economic benefits of such discrimination.

Medical research has encouraged the nonsmokers' cause. Evidence on the link between smoking and lung cancer, cancer of the mouth, larynx and esophagus, heart disease and strokes has mounted over the years almost to the point of numbness. But recently, preliminary studies have suggested other potentially explosive findings: cigarette smoke may also endanger the hearts and lungs of those who do not smoke. Dr. Wilbert Aronow of the Creighton University School of Medicine in Omaha showed that angina sufferers develop chest pains when exercising in poorly ventilated, smoke-filled rooms much more quickly than do patients working out in smoke-free conditions. In another study, Dr. Herman Fraeb of the University of California, San Diego, found that nonsmokers exposed to second-hand smoke from their co-workers for 20 years or more had the same degree of

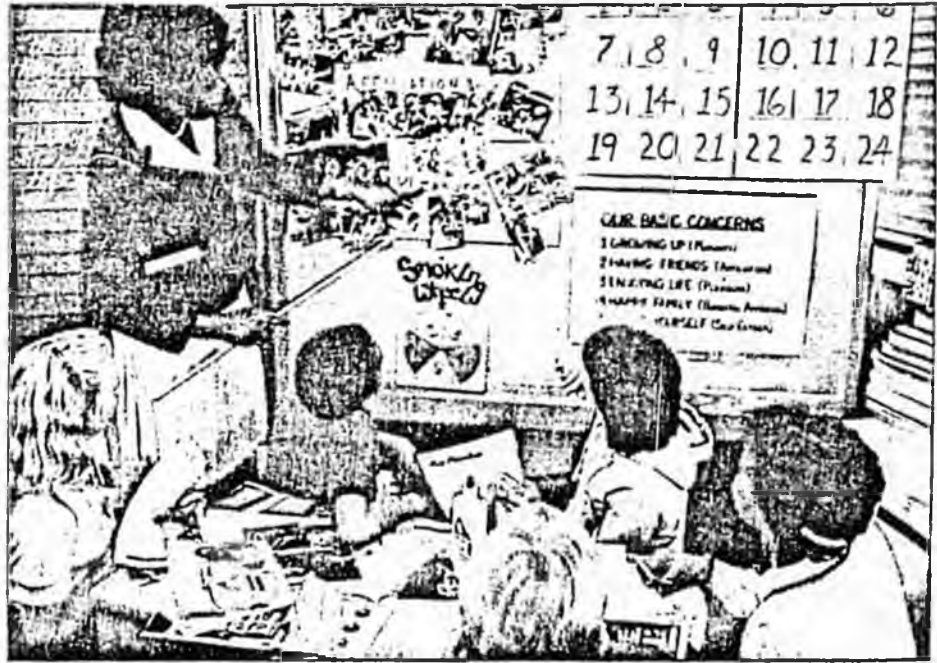
LIFE/STYLE

lature passed a Clean Indoor Air Act, barring smoking in banks, stores, offices and almost any other public space except where expressly permitted. "The law regulates virtually every place indoors except bars and private homes," says Charles Schneider, the health-department official in charge of enforcement. Penalties range from warnings to \$100 fines, depending on the circumstances. The penalty for giving a cigarette to a minor is harsher than that for giving him a joint.

But Minnesota's law is largely self-policing. "Smoking permitted" and "prohibited" signs blanket the state like its trademark snowdrifts, and citizens aren't shy about making reprimands. "If you don't obey, you'll be reminded," says Jeanne Weigum, president of the Association for Nonsmokers' Rights. At the Hubert H. Humphrey Metrodome, fans actually applaud the no-smoking announcements at the beginning of sports events. When the Minnesota Vikings play in Michigan's Silverdome, Coach Bud Grant complains, "You can see the blue haze start from the top and work its way down over the field. Afterward, you go in the dressing room and take off your shirt, and you reek like you were in some bar all night."

Squabbles: The joys of clean air do not come without struggles. As amended, the Minnesota law requires restaurants to set aside at least 30 percent of their seats for nonsmokers. Many reserve more—and that often causes squabbles. When one burly customer at Robbie Stair's Mud Pie restaurant in Minneapolis rejected the admonitions of his fellow diners by growling, "I smoke when I eat," Stair snatched away his plate and declared, "Now you're done." The fellow stormed out. "This is a very emotional issue," says Steve Roberts, a safety engineer who has plumbed the mysteries of buffer zones, air exchanges and stationary partitions while drafting smoking policy for Honeywell's 17,000 workers in Minneapolis and St. Paul. "A lot of our people have perceived smoking as a right; it isn't, it's a privilege."

The spread of comprehensive smoking regulations is far from inevitable, given the clout of the tobacco industry. Nearly one-third of the almost \$23 billion Americans spent on 624 billion cigarettes last year poured into the tax coffers of federal, state and local governments—making most of them less than eager to restrict consumption. Although more American adults were smoking last year than the year before, the number of cigarettes sold decreased for the first time in five years, due partly to higher taxes. But a barrage of brand launches is in the works to offset another anticipated drop in 1983. R.J. Reynolds, the giant producer of Camel, Winston and Salem, is trumpeting Bright, a minty low-tar; king-size Philip Morris Inc. is ballyhooing its Players brand. American Brands has reincarnated Lucky Strikes as low-tar filters, Liggett & Myers



James D. Wilson—Newsweek

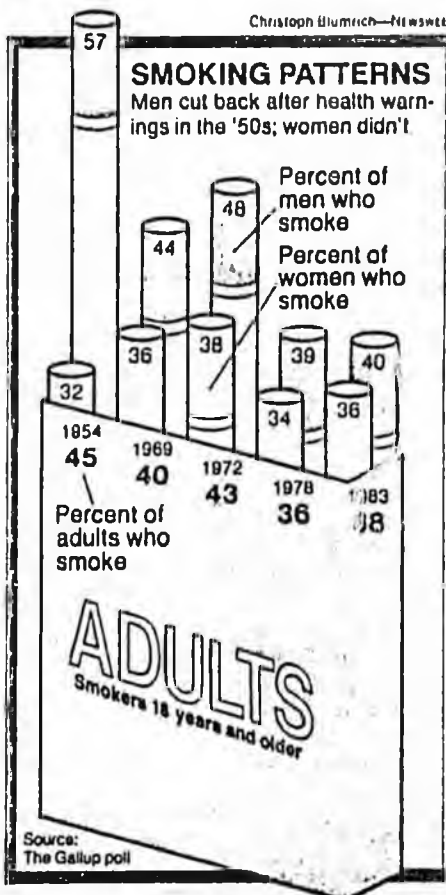
Antismoking class for sixth-graders in Oakland, Calif.: Using facts to fight the image

has scored a smash with low-price generic cigarettes and Lorillard is staging a lavish bow for high-status Satins. Says I. W. Hughes, chairman of Brown & Williamson Tobacco Corp.: "I'd be a fool to tell you we aren't concerned as hell about what's going on, but this industry can adapt."

Finding ways to assuage fears about health hazards has been the primary objective of tobacco's \$1 billion-a-year ad budgets for the last few years as brands contain-

ing as little as one milligram of tar captured 60 percent of the market. But recent medical research suggested that low-tars might do as much harm as good by prompting smokers to smoke more and take deeper drags. Now, sales of low-tar are flattening out. "Everything we do now is bad for our health according to *some*," says leading tobacco analyst John C. Maxwell Jr. of Lehman Brothers Kul Loeb. "People simply decide, 'The hell with it.'" Instead of stressing "safer" cigarettes, ads have returned to touting sensations, or such Marlboro Country tangibles as machismo. "You're taste success and it sure tastes good," exclaim Vantage ad, showing a brawny scuba diver stretched out on his boat. Many pitches are aimed at women, the growth market of you've-come-a-long-way-but smokers that Virginia Slims has reaped with such success.

'Evangelical Zealots': The industry's most visible advocate is the 25-year-old Tobacco Institute in Washington. With only 12 registered lobbyists, it is relatively small; the companies have as many as 200. But mighty. The Tobacco Institute will pay lawyers and dispatch professional witnesses to the most obscure arenas; members of Environmental Control Board in Evanston, Ill., were startled when four representatives turned up last winter to testify against proposed citywide ban on cigarette ways (it was defeated). From a man adorned by a placard that says "kick butt," TI vice president Walker Merritt denounces the more extreme antismoking "shrill, evangelical zealots indulging in bridled rescue fantasies." TI contests methods and conclusions of most studies that link smoking and ill health. Recent Institute ad campaign exhorts consumers to "weigh both sides before you



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sides" on smoking issues. Other ads make a Libertarian argument: "Are occasional annoyances enough of a reason to limit freedom?" "Anyone who is an adult has a right to make a choice," Merryman says.

Tobacco draws its deepest strength from the fields of North Carolina, Kentucky and 20 other states, where "the golden leaf" helps support nearly 500,000 farmers and employs about 2 million jobs. Many growers are bewildered by the antismoking onslaught. "We can't understand why they only pick on one commodity," complains S. J. Stokes Jr., who farms near Lexington, Ky. "If you do anything in excess—eat bread, or pizza—it will be bad for your health."

Quota: Since tobacco is so lucrative per acre, it has long been the crop of choice among small Southern farmers. To prevent their widespread failure during the Depression, Congress created an elaborate federal system of allotments—permits to grow tobacco on a specified number of acres. To further control overproduction, yearly marketing quotas were established by the secretary of agriculture. Any farmer who wanted to plant more had to rent or buy the rights to other allotments, which were sometimes held by large non-growers who functioned as absentee landlords. Surplus crop were warehoused by growers' co-operatives until they could be sold. The cooperatives borrowed federal funds to pay farmers a minimum support price set yearly by the government and repaid the low-interest loans when the tobacco was actually sold.

The system functioned quietly until recently when some small tobacco farmers started protesting that allotments were unfair and costly, while supports kept prices too high to compete with cheaper foreign leaf. To stem their grumbles last year—and to resist pressure from anti-smoking and free-market forces in Congress—some tobacco-state congressmen endorsed reforms that were designed to make the system largely self-supporting. That still didn't satisfy dissidents. This spring 300 renegade farmers formed the United Tobacco Growers Association in North Carolina—the bedrock of Tobacco Road—to lobby for an end to the whole "feudal" system, which is still supported by the majority of allotment holders and farmers.

The mere thought of a free tobacco market might have been hooted off Capitol Hill five years ago, but not today. "I think we can save the [support] program, but it gets harder all the time," admits Sen. Walter (Dee) Huddleston of Kentucky. Once again, tobacco troops in Congress are trying to forestall abolition by proposing more reforms and hoping for help from their farm-belt allies.

More remarkably, congressional oddsmakers give fair-to-even chances for passage of a bill that would strengthen cigarette warnings to a point just short of a skull and crossbones. One version proposed by California Democrat Henry Waxman reads: Warning: Cigarette smoking

■ causes lung cancer and emphysema.

■ is a major cause of heart disease.

■ is addictive and may result in death.

In an unprecedented move, representatives of the Tobacco Institute and the public-health service are now meeting to come up with a mutually acceptable alternative to submit when Congress reconvenes in June.

The labeling bill would also require cigarette makers to inform the federal government—for the first time—precisely what their products contain. Unlike the ingredients in other widely used products that are monitored by the Food and Drug Administration or the Consumer Product Safety Commission, the contents of cigarettes are



GASP president Addison: "Sometimes, this feels like war"

unregulated by any federal agency. The Federal Trade Commission polices ads and the Civil Aeronautics Board regulates smoking on airplanes, but no agency reviews the ingredients. Only after three years of requests did the secretary of health recently obtain a list of some of the 1,400 additives commonly used in the manufacture of cigarettes.

Group Therapy: It's no secret that most smokers have an urge to quit: numerous surveys show that anywhere from two-thirds to 90 percent wish they didn't have the habit. And even though most successful quitters manage to stop on their own, commercial helpmates abound. Some offer hypnosis for \$200 a session, while others administer acupuncture for \$200 a treatment. The 10 Schick Centers in three states practice aversion therapy; for \$495, smokers are clobbered in tiny rooms with glutted ashtrays, forced to puff constantly and zapped with a 9-volt shock each time they do. Group therapy and behavior modification are especially popular; the eight-week SmokEnders course has drawn 300,000 customers since 1969. Experts say the best

programs make people confront their dependency—perhaps by keeping a cigarette diary—and substitute exercise and other gratifications.

Almost any cessation program will work—for a while. The long-term success rate, however, tends to be only 20 to 30 percent; within a year of quitting, 70 to 80 percent of smokers will relapse. The habit is wrenchingly hard to abandon because it can be both physically and psychologically addicting, according to the National Institute on Drug Abuse. Smoking can soothe or stimulate, focus the mind or serve as a social prop. More crucially, the desire for a cigarette is reinforced by daily rituals or social situations: every cup of coffee, every cocktail, every meeting or waiting room presents a challenge. "Smoking cigarettes is one of the greatest pleasures of my life in spite of what I have to go through to smoke them," says legal secretary Carolyn Lundmark of Oakland, who has tried to stop seven times because of chest pains and a hacking cough.

Upticks: As committed smokers fight for what they see as their rights, they are being joined by younger recruits. After several years of decline, teen-age smoking seems to be increasing. Two recent surveys for NIDA both reported upticks. The National Household Survey on Drug Abuse by George Washington University showed the percentage of smokers 12 to 17 years old had moved from 12.1 in 1979 to 14.7 in 1982, while the annual survey of high-school seniors conducted by the Institute of Social Research at the University of Michigan revealed the first increase in five years, from 20 to 21 percent. Fearing that teens have

stopped hearing health warnings—or consider themselves immortal—educators are revamping antismoking programs to stress esthetics and social acceptance. "Emphasizing the immediate consequences, like smelly hair and yellow teeth and fingers, is a lot more effective," says social psychologist Brian Flay, who along with his colleagues supervises antismoking programs for 60,000 junior-high students in the Los Angeles area.

Kids, however, still tend to view smoking through a glamorous haze. Some adults, as well, secretly see themselves as Bette Davis or Humphrey Bogart whenever they brandish a cigarette. Tobacco companies trade on such romantic fancies; but despite the "upscale," sophisticated images that dominate cigarette ads, smoking appears to be more the habit of the blue-collar segment of the population. The University of Michigan survey found that college-bound seniors were less than half as likely to smoke as those who had no college plans. "Increasingly, the upper-class, more educated people are stopping

or not taking it up in the first place," says epidemiologist Joanne Hoover of the University of Washington.

What's more, the producers of everything from toothpaste to air-purifying machines now drum away at the message that smoking is an offensive habit. Abstinence is often rewarded. At least 100 life-insurance companies give discounts to non-smokers. They're the only welcome guests at the year-old Non-Smokers Inn in Dallas, where employees weed out violators and add a \$100 fine to their bill. Two-year-old Muse Air flies nothing but nonsmoking sections out of Texas; desperate habitues on the long run from Houston to Los Angeles are given "survival kits" containing gum, candy and plastic pacifiers. And since last fall, Thrifty Rent-A-Car has offered some smoke-free vehicles (their ashtrays are filled with mints).

Unorganized Resistance: Smokers are only now sporadically organizing against the opposition. New Yorker James Stewart, former chairman of a major insurance company was so fed up with antismoking lectures that he started Smokers United to combat smoking bans, and in Terre Haute, Ind., this spring the ad-hoc Smokers' Club was formed for similar reasons. There is, of course, much unorganized resistance to encroachments on smokers' rights. Two of the world's least luxurious conveyances have been rocked recently by smoking show-downs. Earlier this year, after smoking scowflaws emerged as the No. 1 complaint of New York City subway riders, transit police started issuing tickets, and at least two policemen were injured in scuffles during the crackdown. And last week on the Long Island Rail Road, some commuters revolted when they lost one of their two remaining smoking cars. The third reduction in 12 years provoked a blizzard of pro-smoking stickers throughout the train, a few speeches about oppression and a flood of angry letters of complaint to the railroad.

For the near future the uncivil war over smoking will probably escalate. Antismoking forces predict eventual victory: "Smoking will go the way of spitting," says GASP's Wilson. "You just wait and see." But the cigarette companies sound just as confident. "There is no product whose supposed dangers are more well known, and yet 59 million Americans still enjoy their cigarettes," says James Morgan, executive vice president for marketing of Philip Morris, U.S.A. But enjoyment is precisely the point. Should the day-to-day hassles over smoking get more unpleasant, beleaguered smokers may decide the pleasure's not worth the problems. In the end, social pressure and self-image will probably do more to influence whether or not people smoke than any battery of laws—or the best-armed regiment of surgeons general.

LYNN LANGWAY with GERALD C. LUBENOW and PAMELA ABRAMSON in San Francisco, JOHN McCORMICK in Minneapolis, PETER McALEVEY in New York, MARSHA ZADARSKY in Boston, MARY HAGE in Washington and bureau reports

MUSIC



Tony Homano

'Gentlemen of Japan' in Sellars's 'Mikado': Sayonara to the Savoyards

Two Wandering Minstrels

When was the last time—truthfully now—that you went to the opera simply for the music? The superstar singers and conductors, sad to say, have all but taken over the show from the composer. Now superstar directors are recasting opera as well. What began as a trickle of European film and theater directors who worked in opera—Bergman, Zeffirelli, Visconti—has swelled into a fashionable flood. Directors as varied as John Schlesinger, Joseph Losey and Robert Altman are rushing to make their mark in opera, often with questionable results. Two highly provocative cases in point are the Lyric Opera of Chicago's recent production of "The Mikado," directed by Peter Sellars, and "Madama Butterfly," directed by Ken Russell, the inaugural production of the current

Spoletto Festival U.S.A. in Charleston, S.C. Ken Russell is the British film director famous—or infamous—for such hallucinatory, erotic movies as "The Music Lovers," "Tommy" and "Lisztomania." His operatic debut, a production of Stravinsky's "The Rake's Progress" last year at the Maggio Musicale festival in Florence, relocated that glitteringly artificial, neoclassical opera in the drug-ridden world of today. Sellars is a 25-year-old theatrical *enfant terrible* from Harvard who won acclaim in 1981 for a modernized version of Handel's "Orlando," which featured American astronauts. Until he was sacked by the producers, who reportedly found his ideas too avant-garde for Broadway, he was also the director of "My One and Only," the new Gershwin musical with Tommy Tune and Twiggy.

Lamy, Galbraith in 'Butterfly': America the ugly

William Struss



Western Fantasy: For "Butterfly" and "The Mikado," Sellars and Russell had surprisingly similar ideas. Both works, of course, are set in Japan, or at least a Western fantasy of Japan—Gilbert and Sullivan's in the late Victorian era, Puccini's at the beginning of the century. Sellars's scheme was to set "The Mikado" in modern Japan, thereby changing what was meant to be a satire of British society, thinly disguised as Japan, into a comment on the Westernization of the East. Russell's notion was to transform Butterfly from a geisha into a prostitute and move the action forward into the increasingly nationalistic Japan of the 1930s.

Of the two, "The Mikado" is ripe for updating. Richard Savoyards aside, the Gilbert and Sullivan operettas have become so lacquered over the years that their

January 26, 1984

Senator Josephson:

I attended another session of the HESS Committee meeting yesterday on CSHB 84.

Pappy Moss mentioned contacts from citizens saying their constitutional rights would be violated if HB 84 is enacted.

I have done some research and found all sorts of common law decisions protecting non-smokers in the workplace, but I have been holding my presentation until State Affairs meets on the bill. Should you find it useful, attached is my future presentation to the other committee.

Also attached is a decision stating that there is no constitutional right to have the workplace declared a no smoking area. I am certain the principle works in the opposite direction also--that smokers have no constitutional right to smoke anywhere they wish.

Marilyn Martin

Room 508

Anthony KENSELL, Plaintiff-Appellant,

v.

STATE OF OKLAHOMA; Oklahoma Department of Human Services; the Honorable George Nigh, Governor of Oklahoma; Reginald D. Barnes, Chairman, Oklahoma Public Welfare Commission; Lloyd E. Rader, Director, Oklahoma Department of Human Services; Clifford E. Burns, Executive Assistant Coordinator; Lowell E. Green, Executive Assistant Coordinator; Raymond Nance, Disability Insurance Unit Program Administrator; Thurma Fiegel, M.D., Chief Medical Consultant of Disability Insurance Unit; Peggy Ezernack, Disability Insurance Unit Supervisor, Defendants-Appellees.

No. 82-1361.

United States Court of Appeals,
Tenth Circuit.

Sept. 13, 1983.

Employee of the state of Oklahoma brought action against the state and various officers and employees thereof seeking damages and injunctive relief arising from defendants' failure to prohibit smoking in the area in which he worked. The United States District Court for the Western District of Oklahoma, Ralph G. Thompson, J., granted defendants' motion to dismiss for failure to state a claim upon which relief could be granted, and plaintiff appealed. The Court of Appeals, Logan, Circuit Judge, held that plaintiff could not prove that he was deprived of a federal right.

Affirmed.

Civil Rights — 13.13(3)

Civil rights claimant who allegedly suffered from respiratory and cardiovascular ailments and who sought damages and in-

1. The trial court correctly noted that, regardless of the merits of Kensell's complaint, the Eleventh Amendment would require dismissal of the State of Oklahoma as a defendant and

injunctive relief against his employer, the state of Oklahoma, and various officers and employees thereof failed to prove that he was deprived of a federal right by defendants' failure to prohibit smoking in the area where he worked. 42 U.S.C.A. § 1983.

Sylvia Marks-Barnett, Oklahoma City, Okl., for plaintiff-appellant.

David A. Brown, Oklahoma Dept. of Human Services, Oklahoma City, Okl., for defendant-appellee Oklahoma Dept. of Social Services.

Jan Eric Cartwright, Atty. Gen., John E. Douglas, Asst. Atty. Gen., Oklahoma City, Okl., for defendants-appellees Nigh and State of Okl.

Before SETH, Chief Judge and LOGAN, and SEYMOUR, Circuit Judges.

LOGAN, Circuit Judge.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed.R. App.P. 34(a); Tenth Cir.R. 10(e). The cause is therefore ordered submitted without oral argument.

Plaintiff L. Anthony Kensell appeals a judgment granting a motion to dismiss his amended complaint for failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6). Alleging that he suffers from respiratory and cardiovascular ailments, the plaintiff brought suit under 42 U.S.C. § 1983, claiming that the State of Oklahoma and various officers and employees of the State of Oklahoma violated his constitutional rights under the First, Fifth, Ninth, and Fourteenth Amendments by failing to prohibit smoking in the area where plaintiff worked at the Oklahoma Department of Human Services. He sought damages and injunctive relief.¹

Dismissal of the claim for damages against state officers acting in their official capacity. *Lohman v. Jordan*, 415 U.S. 651, 34 S.Ct. 1347, 391 F.2d 662 (1974).

against his employer, the state, and various officers and employees. He failed to prove that he has a federal right by defendant to prohibit smoking in the area. 42 U.S.C.A. § 1981

Barnett, Oklahoma City, Appellant.

John E. Barnett, Oklahoma Dept. of Human Resources, Oklahoma City, Oklahoma Dept. of Social Services, Oklahoma City, Appellants-appellees Nigh and

Chief Judge and LOGAN, Circuit Judges.

Chief Judge and LOGAN, Circuit Judges.

Chief Judge.

On appeal from the three-judge panel has previously that oral argument material assistance in this appeal. See Fed.R.C.P. 10(e). The case was submitted without oral

Anthony Kensell appeals a motion to dismiss his complaint for failure to state a claim on which relief can be granted (1986). Alleging that he suffers from respiratory and cardiovascular disease, the plaintiff brought suit under 42 U.S.C. § 1981, claiming that the State of Oklahoma violated his constitutional rights under the First, Fifth, and Thirteenth Amendments by prohibiting smoking in the area where he worked at the Oklahoma Department of Human Services. He seeks injunctive relief and

claim for damages accrued during their official capacity. 415 U.S. 651, 91 S.Ct. 1117 (1974)

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to recover. *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). We affirm the district court's dismissal of the complaint; clearly the plaintiff could not prove that he was deprived of a federal right.

The plaintiff asserts that the defendants' failure to provide a smoke-free workplace violated his First Amendment rights because the smoke interfered with his ability to think. In support of that argument, the appellant cites only *Rogers v. Okin*, 478 F.Supp. 1342 (D.Mass.1979), *aff'd in part, rev'd in part*, 634 F.2d 650 (1st Cir.1980), *vacated sub nom. Mills v. Rogers*, 457 U.S. 291, 102 S.Ct. 2442, 73 L.Ed.2d 16 (1982), a class action brought by patients at a Massachusetts state mental institution. Part of the relief those patients sought was an injunction against the forcible injection of psychotropic drugs. The district court held that the right to think was an aspect of the right of privacy, with its roots in the First Amendment, and that, absent an emergency, forcible injections of such drugs violated the patients' right to think. *Id.* at 1367.

The plaintiff also claims that by allowing smoking in his workplace the defendants assaulted him and thereby deprived him of his constitutional rights. In support he cites cases in which police and prison personnel have been held liable under section 1983 for assaults against persons in their custody. Finally, the plaintiff alleges that he was deprived of a property right in his state job because his only options were to endure cigarette smoke or quit. We note that the plaintiff still is an employee of the Department of Human Resources; thus, he has no constructive discharge claim. His contention that he must quit his job or endure the smoke is legally indistinguishable from his claim that his constitutional rights are violated by his being assaulted on the job by cigarette smoke.

The intrusions upon the plaintiff's person resulting from working with fellow servants who smoke is a far cry from forcible

injections of mind altering drugs and assaults committed by police or prison officials to intimidate or punish persons in their custody. This is not a case in which governmental officers are abusing power they possess only because the government is sovereign. In essence, the plaintiff has voluntarily accepted employment in an office in which he knew or should have known other employees smoke. Upon discovering that he is allergic to smoke or that it exacerbates his health problems, instead of quitting or transferring he seeks to force his employer to install a no-smoking rule in the office or to segregate smokers from nonsmokers. The state as his employer no doubt has the power to grant his request. As sovereign, it can make exposing him to smoke a tort, see *Shimp v. New Jersey Bell Telephone Co.*, 145 N.J.Super. 516, 368 A.2d 408 (1976), or a crime. See Okla.Stat. Ann.

tit. 21, § 1217. We are certain, however, that the United States Constitution does not empower the federal judiciary, upon the plaintiff's application, to impose no-smoking rules in the plaintiff's workplace. To do so would support the most extreme expectations of the critics who fear the federal judiciary as a superlegislature promulgating social change under the guise of securing constitutional rights. *Accord Fed. Employees For Nonsmokers' Rights (FENSUR) v. United States*, 446 F.Supp. 181 (D.D.C. 1978), *aff'd, mem.*, 598 F.2d 310 (D.C.Cir. 1979); *Gasper v. Louisiana Stadium and Exposition Dist.*, 418 F.Supp. 716 (E.D.La. 1976), *aff'd*, 577 F.2d 897 (5th Cir.1978).

The plaintiff appears to have eliminated his pendent state claims when he amended his complaint. In any event, when federal claims are dismissed before trial, pendent state claims should be dismissed as well. *United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966).

AFFIRMED.



I support HB 84 in its entirety, however, I have a very special interest in one of its provisions -- that of protecting Alaskan non-smokers in the workplace. Very few of us are independently wealthy and able to live in this world without working.

To those of you who may be skeptical of HB 84, let me provide the following information. HB 84 is not bizarre; it is not even on the cutting edge. Instead, it is the culmination in our state of events that have occurred for years around our country.

In 1965, Congress officially recognized the dangerous nature of cigarette smoke and declared a national policy to warn the public of danger and to discourage cigarette smoking. In 1970, congress banned the advertising of cigarettes from radio and television.

Also in 1970, the American people expressed in law the strong sentiment that U.S. employers, including the State of Alaska in its role as employer, must provide safe and healthy places of work and that employers have the duty of eliminating all foreseeable and preventable hazards in the workplace. 29 U.S.C.A. § 651 et seq. This particular legislation recognized, however, the concurrent state power to act either legislatively

or judicially under the common law with regard to occupational safety; this is why we are here today.

Later, in 1972 and 1975, the U.S. Surgeon General declared that smoking is dangerous to the health of human beings.

The tobacco industry lobbyist in just a few minutes will once more tell the Legislature that the review of federal actions I just gave and the material on common law decisions protecting non-smokers in the workplace which I am about to present, is irrelevant. Don't you believe it. The laws are still in effect. I researched the following cases last week; they have not been overturned by higher courts. They have not even been appealed. They are alive and viable as precedents for use by other courts in considering litigation. In fact, since there are no Alaska cases relating to this issue, these may be the very cases an Alaska court would turn to for precedent.

Possibly because the federal protective law mentioned earlier did not speak specifically to cigarette smoke in the workplace, workers began filing court actions in order to obtain such protection. In 1976, a New Jersey judge, after listening to and considering voluminous evidence relating to the negative effects of cigarette smoke on human beings, stated the following:

Where a matter is generally accepted by mankind as true and is capable of ready demonstration by means commonly recognized as authoritative, the court may use the matter as an aid in its consideration.

Shimp v. New Jersey Bell Telephone Co., 368 A.2d 408, 413 (1976)

Saying thus, the New Jersey judge would have made short shrift of a tobacco lobbyist claiming that evidence proving smoke was dangerous should be ignored.

The judge continued:

"The evidence is clear and overwhelming. Cigarette smoke contaminates and pollutes the air, creating a health hazard not merely to the smoker but to all those around her who must rely upon the same air supply. The right of an individual to risk his or her own health does not include the right to jeopardize the health of those who must remain around him or her in order to properly perform the duties of their jobs...The employees' right to a safe working environment makes it clear that smoking must be forbidden in the work area...."

Shimp v. New Jersey Bell Telephone Co., 368 A.2d 408, 416 (1976)

Then, on October 21, 1982, the Ninth Circuit Court of Appeals in San Francisco (ou: Court of Appeals) decided in favor of another hypersensitive non-smoker, a Federal employee. Parodi v. Merit Systems Protection Board, 690 F.2d 731 (1982) The Court used a term new to me, "environmental limitation," to describe the situation in which the employee, Mrs. Parodi, found herself:

Parodi has an environmental limitation...[She] cannot...perform her job due to its location in a smoke-filled office. She is as disabled for her job at her assigned worksite as she would be had she actually suffered chronic bronchitis or another physically disabling disease. She cannot perform her job, not due to choice or bad habits, but due to a disease which limits the environment in which she can work...If, however, the government cannot find a suitable position or refuses to offer one, the claimant is then entitled to disability benefits (my emphasis). (p. 739)

Last year in another decision, (Smith v. Western Electric Co., 643 SW 2d 10, 13 (1983)) a court declared:

The allegations of the instant case . . . show that the tobacco smoke of co-workers smoking in the work area is hazardous to the health of employees in general and plaintiff in particular. The allegations also show that defendant knows the tobacco smoke is harmful to plaintiff's health and that defendant has the authority, ability, and reasonable means to control smoking in areas requiring a smoke-free environment.

On August 31, 1983, a U.S. District Court in Seattle found after reviewing evidence that the plaintiff was hypersensitive to cigarette smoke and that he fell under the definition and protection of the federal law assisting handicapped persons in the workplace (29 U.S.C. § 706(7)(b)). (Vickers v. Veterans Administration, W.D. Wash.)

In a related incident late in 1983, the Fifth World Conference on Smoking and Health meeting in Winnipeg declared that "the primary objective of international and national smoking-control programs should be to establish nonsmoking and the right to a smoke-free atmosphere as the norm."

Closer to home, two Alaska Department of Labor employees within the past six months have been awarded payment of medical costs necessitated by exposure to tobacco smoke in the Plywood Palace. One claim cost the state over \$1,600, the other total amount had not been determined when I last checked with the Worker Compensation office.

A handbook on state employee benefits in my possession states, "You are eligible for Occupational Disability benefits if it is determined that your disability is a result of a hazard undergone ... while you were performing the usual duties of your job." I have often wondered if one of the many thousands of state employees unfortunate enough to work in a smoky office were to apply for disability retirement benefits (as did Mrs. Parodi), submitting a medical report proving allergy or hypersensitivity to tobacco smoke, whether our courts would find him or her eligible for Alaska disability retirement benefits. With six percent of the population allergic to tobacco smoke, the State of Alaska might face an interesting financial liability should this be the case.

The point in this disertation is that HB 84 is neither off the wall nor even a new idea. Two out of three American adults do not smoke. On January 25, the Director of the Alaska Lung Association testified at a hearing of the Senate HESS Committee that current statistics indicate only 24% of Americans smoke. It is this majority that requests you to pass HB 84 to the floor

of the Senate for approval. Thirty-one states now have legislation relating to smoking in public places. Five states have legislation relating specifically to smoking in the workplace. Some cities, San Francisco, probably being the best known, also have protective legislation; at the request of the Anchorage Assembly, several types of suggested ordinances protecting Anchorage non-smokers in the workplace have been submitted by the Lung Association Director and are under consideration for adoption.

Smoking in public I feel is a situation analogous to drunk driving. In other words, if you drink, that is your business until you climb drunk into an automobile and point it at me. Then, it becomes my business. If you smoke, that is your business, until you pollute the air which I must breathe. Then, it becomes my business.

Should this committee wish copies of my footnoted text, I have them available for review. Thank you very much for your courtesy and consideration.

Should this committee wish additional information regarding the legal background of this issue, in a related case, Hentzel v. Singer Co., 188 Cal.Rptr. 159, in 1982, the court in a footnote said:

We note that there is a developing body of law in other jurisdictions which recognizes an obligation on the part of an employer under some circumstances to protect employees from health hazards which may be posed by cigarette smoking. (The footnote cites the above cases and then continues with references to other writings on this legal topic.) See, Blackburn, Legal Aspects of Smoking in the Workplace (1980) 31 Labor L.J. 564; Axel-Lute, Legislation Against Smoking Pollution (1978) 6 Environmental Affairs 301.



Alaska Dental Society

3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4675

ALASKA DENTAL SOCIETY

ENDORSEMENT OF HB 84 "An Act relating to prohibiting smoking in Alaskan public places and public vehicles."

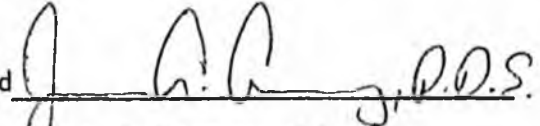
WHEREAS: numerous studies have shown second-hand smoke to be a significant health hazard, and

WHEREAS: recent court decisions recognize an emerging right of employees to work in a smoke-free environment, and

WHEREAS: smoking results in increased costs to employers and the public in the form of more frequent absenteeism by employees who smoke and higher costs for health insurance, fire insurance, life insurance and worker's compensation, therefore,

BE IT RESOLVED that the Alaska Dental Society supports the 1983 House Bill entitled: "An act relating to prohibiting smoking in Alaskan public places and public vehicles," which states in part that smoking in public places and public vehicles is prohibited. Smoking in any form is (MAY constitute) a nuisance and a public health hazard and is prohibited in vehicles and indoor areas that are open to the public.....

Signed


James A. Cerney, DDS
President
Alaska Dental Society

cc: Governor Bill Sheffield
Alaska House of Representatives
Alaska State Senate
GASP - Juneau, Ak.

RECEIVED

Unofficial

January 29

Dear Nancy,

One big THANKS for your help and hospitality while Ann and I were in Juneau. I was beginning to feel like I had staked out a permanent position on your floor.

It's unfortunate that we may lose part of the Bill, but such are the realities and vagaries of the Wonderful World of Politics. Even the watered down version will provide us with one of the strongest non-smoking rights bills in the Country.

Equally important to the Bill, has been the opportunity for public education. In the final analysis, public awareness and concern are the critical factors in this particular issue.

I look forward to continuing to work with you on HB 84 and other legislation which promotes health in Alaska. Hopefully, will be able to take advantage of the coalition we've created!

One issue of particular interest to the Alaska Association is the institution of a comprehensive K-12 health education curriculum for Alaska. (I've written to Rocky on the issue!) Again thanks,

Sincerely, Curt Mekonen



Curtis Mekenson
Alaska Lung Association
P.O. 103056
Anchorage, Ak. 99510



Nancy Deitrick
Pouch V
Juneau, Ak.
99811

Joe, Pappy, Rick

Feb 1, 1909

CSHB 84

Draft CS to remove the private sector from the bill.

does not include restaurants.

- Michigan covers food service establishments w/ seating over 50 needs no smoking area.

Fines are not equal in civil complaints and citations.

Pappy object to using draft.

two areas of classification

"reasonable" to include establishments serving food. to provide smoking and non smoking.

Court will allow you to be arbitrary to some extent. as long as you have "reasonable" grounds for choosing number more inclined to square footage.

fire marshall - does seating capacity relate to square footage.

CORRECTION

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Feb 1, 1984

JOE, Pappy, Rick

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fire marshall - does seating capacity relate to square footage.

Joe Josephson

We, the undersigned, smokers and non-smokers alike, would like our voices heard in the hostile atmosphere that has been created by a minority of individuals who rabidly insist that we conduct our lives according to their personal wishes and dictates, at the work place, at home, and in any public establishment be it State property or privately owned.

For several years, we, as smokers, have extended the utmost courtesy to those who dislike cigarette smoking. We have not objected to the requirement to smoke in designated areas in restaurants or the work place. We have politely observed the preference of friends and have refrained from smoking if they wished it.

In spite of this consideration we have suffered repeated personal insult, harrassment, theft of personal property (ash trays), discrimination, segregation, scorn and threat, but we have resolutely continued to be polite, believing in the rights of others.

We have been forced to observe State and Company equipment, material and work time being used to further the cause of those few who would deny personal rights to all of us.

It is now that we unanimously object to the invasion of our rights as citizens entitled to the peaceful pursuit of gainful employment as well as pleasure on the home front.

Our concern is not riveted only to the subject of smoking, it extends to our rights as contributing members of a democratic nation wherein we believe we should be allowed individual decision regarding personal habit as well as the expectation of freedom from harrassment on the job by those few who would have it otherwise.

We wish to believe that our votes, our taxes, and our voices raised in protest will make a small positive sound in the present controversy surrounding not only smoking, but all individual rights as granted by the Constitution, a document that some of us regard as the only instrument that defines the real difference between America and Russia.

February 1, 1984
Juneau, Alaska

Shirley J. Akrop 013-24-7650
W. Green 779-32-773 Y
Jean Charney 574-14-6750
Patricia Reed 555-98-9479
Mary Brown 395-20-5595
Elizabeth A. Doble 479-28-3361
Harvey Frazier
Lisa Woodward 033-32-5563
Clara A. Reppertson 536-20-0997

Joni A. Coe 584-20-6556
Joyce Johorst 539-40-4902
Risa Edwards 531-68-7895
Margaret D. 547-44-0657
Eden M. Dean 517-68-9096
Weather S. Taylor 544-70-5416
Zey Hamrod 574-18-8184
D. W. Miller 574-52-9550
Elizabeth M. Coyle 032-40-8104
Dennis J. Nevill 156-38-9870
Carol R. Roys 032-24-5310
Mel Torgerson ?
BHW 021-28-4288

RECEIVED

Albert Shaw 574-01-2677

Eileen Blackburn

W. E. Blanton 382-26-5256

Jensen M. Davis 399-38-9830

Christine J. Kelly 550-92-3577

Zodi D. Cardinal 502-72-5513

Nicole M. Elms 574-48-4995

Naura Lee Kurt 043-60-9707

This petition has been composed on privately owned material and equipment. Signatures have been obtained during non-work hours. We do not pursue this cause at the expense of our employers.

February 2, 1984

Jan E. Fitte
4056 Birch Way
Fairbanks, Alaska 99701

Joe P. Josephson
State Senator
Chairman, Health, Education and Social Services Committee
Pouch V
Juneau, AK 99811

RECEIVED

FEB 2 1984

Josephson,

Re: HB 84

Dear Senator Josephson:

Thank you very much for your reply to my request to pass HB 84 and a copy of the bill itself. This morning on the radio, I heard that the committee had a stumbling block in the portion regarding banning smoking in public places. Again, I state, that my health and the health of others in public places is foremost in this issue. One does not appreciate being "fumigated" while leaning over fresh vegetables in the grocery store or while taking a bite of a hamburger in a restaurant.

I have heard the pros and cons from smokers and non-smokers alike. The cons center around the smoker's right to smoke; and I would concur with his right to smoke if his smoke was confined to his general nasal area and his lungs; however, we all know that smoke has an unusual habit of going wherever it will and thus that person's right begins to infringe on other persons' rights to the detriment of their health.

We, in America, believe in individual freedoms and we have gone through the "I" generation of the 60s and 70s, where everyone believed that doing your own thing was the norm; however, the pendulum must swing the opposite direction and find an even keel. Somewhere the line has to be drawn and out of common courtesy, smokers must realize that they are infringing on someone else's well-being! Out of common courtesy, we keep our radios turned down low at our desks; out of common courtesy, we use accepted English without foul language; out of common courtesy, we see that we treat people with respect...why does the line of common courtesy have to be drawn at smoking? I dare say, the reason for this problem is that smokers do not want to give up their drug addiction to nicotine. Senator, I would ask you to ask the Committee members and those in the decision arenas what their impression would be if I did not want to give up my right to drink alcoholic beverages and had a bottle of liquor on my desk and was drunk all day??? Sure, I may keep the alcohol at my desk, however, my actions in and around the office and on the telephone would most certainly infringe on my colleagues' and the public's rights. However, out of common courtesy, I refrain. (Of course, I will advise you this is hypothetical).

Sec. 18.35.300 (3) needs rewording. Currently, you show smoking prohibited "... in a room, chamber, place of meeting or public assembly under the control of the state, or a department or agency of the state, or a municipality, while a public meeting held under the auspices of the state, or a department or agency of the state, or a municipality, is in progress;..." I, and my fellow State employees would like to see "offices where State employees work" included in this ban. There is a grey area in this section that leaves room for doubt. The current phrasing

February 2, 1984

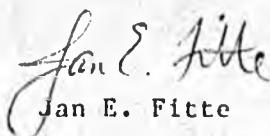
Page Two

lends itself to the impression that no smoking would be enforced only at a public meeting under the auspices of the State or Municipality. It needs to reflect, without any doubts, the right of workers in any government office to be free from the smoke cloud while working in their offices. It also needs to reflect that the smoking allowed areas not be the common lunchroom. Currently, I cannot take a break nor eat my lunch, without being fumigated. My lungs clamp shut and from the sound of my "hacking", you would think I smoked a pack a day.

Sec. 18.35.320 (b)(4) needs revision also. The allowance of smoking in an area where all employees are smokers does not protect the future changes of employees and thus the future employees' health (those who choose not to smoke). We all know that once an office with all smokers agrees to allow smoking, that those new employees who enter into this atmosphere will have a tough haul in getting a decent atmosphere in which to work.

Your fourth paragraph assuring me that you "will make every effort to see that the rights of non-smokers to be present in a smoke-free environment will be protected" gave me the assurance I needed. . .that someone out there is finally listening! Thank you for caring about your constituents' health, thank you for trying to insure that we won't develop lung cancer in the future; and thank you for protecting the future generation's (and I have a 6 year old son) health. Change is always hard; but it can be done.

Sincerely,


Jan E. Fitte

MEMORANDUM

TO: JOE
FROM: NANCY
RE: TODAY'S MEETING

CSHB 84 SMOKING BILL

I HAVE REMINDED THE COMMITTEE MEMBERS THAT THEY ARE TO BRING IN THEIR PROPOSED AMENDMENTS TODAY.

THE COMMITTEE SUBSTITUTE WILL BE READY BY MEETING TIME. LEGAL DISAGREED WITH SOME OF THE CHANGES YOU WANTED IN THE BILL (PRIVATELY OWNED FACILITIES MUST BE MADE OPTIONAL IN ALL SITUATIONS ACCORDING TO ED HEIN, AND WE CANNOT MAKE EXCEPTIONS FOR PLACES OF RECREATION).

I HOPE TO HAVE THE TIME TO GET FURTHER COMMENTS ON THE DRAFT PRIOR TO THE MEETING.

LEGAL SUGGESTED ADDING TO THE SECTION RELATING TO SIGNS, A REQUIREMENT FOR DEC TO PRINT AND DISTRIBUTE SIGNS TO PUBLIC AGENCIES AND ON REQUEST TO OTHERS FOR THE SAKE OF UNIFORMITY.

FROM A CONSTITUTIONAL VIEWPOINT, ED FEELS THAT THE DIFFERENCE IN THE FINES DEPENDING ON IT BEING A CIVIL COMPLAINT OR A CITATION FROM A PEACEOFFICER MAY CAUSE TROUBLE. HE FEELS THAT THE FINES SHOULD BE THE SAME REGARDLESS OF THE METHOD.

SB 346 MENTAL HEALTH COMMITMENT LAW

WE HAVE THREE ZERO FISCAL NOTES.

THE DEPARTMENT IS RECOMMENDING THAT THE LANGUAGE PROHIBITING HOLDING A MENTALLY ILL PERSON IN A PRISON FACILITY BE DELETED. THEY FEEL THAT IT WOULD PROHIBIT THE EVALUATION AND TREATMENT OF THE PERSON WHILE BEING HELD, AND THAT IT HAPPENS RARELY AND IS NOT ABUSED. CURRENT LAW ALLOWS A PERSON TO BE HELD IN A CORRECTIONAL FACILITY AND EVALUATED THERE.

WE HAVE HAD ONE LETTER FROM A PSYCHOLOGIST COMPLAINING THAT ALL PEOPLE LISTED UNDER "MENTAL HEALTH PROFESSIONAL" ARE LICENSED EXCEPT SOCIAL WORKERS, AND THAT THAT ASPECT DOES NOT PROVIDE EQUAL PROTECTION.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Box 2295
Kodiak, Alaska 99615
February 18, 1984

Anne Morris, M.D., Chairperson
HB 84 Coalition
State of Alaska Legislative Offices
Room 7
Juneau, Alaska 99811

Dear Dr. Morris:

After reading an editorial in the Kodiak Daily Mirror yesterday I became greatly encouraged that HB 84 might take care of a problem that we have been concerned with for several years now. The enclosed copies will give you a background. This problem concerns smoking in jury rooms which we thought AS 13.06.300 (6) took care of, but found that when attorneys get hold of legislation, the intent of the law is often overridden. I've only served on the jury in Kodiak, but if our jury room is typical, there are no more overcrowded, light quarters anywhere; and when just one, no less half of the 14 jurors stick up, the air in the room becomes quickly unbreathable.

My reason for writing to you is to insure that this problem is taken care of in three ways in the bill that is passed. The only alternative is to discourage smokers from serving on juries - that and, for health reasons or else submit to a health endangering atmosphere.

Please help! Thank you.

Sincerely,

Marie Powell
Marie Powell

cc: Committee Chairman Joe Josephson
Committee Chairman Vic Fischer
Committee Chairman Jan Larks

Box 2285
Kodiak, Alaska 99615
November 6, 1976

Roy W. Madsen,
Superior Court Judge
Alaska Court System
State of Alaska
Box 1367
Kodiak, Alaska 99615

Dear Roy,

Please assist me and my fellow non-smoking members of the grand jury in obtaining relief from being required to serve long hours in the smoke-filled jury room.

It is my impression that state legislation was passed that prohibited smoking in public assemblies in state buildings. I would hope this include jury rooms from which the non-smoker is not at liberty to excu himself.

Thank you for any assistance you can provide.

Sincerely,

Guy C. Powell

Box 2285
Kodiak, Alaska 99615
May 24, 1977

Ray H. Madsen
Superior Court Judge
Alaska Court System
State of Alaska
Box 1367
Kodiak, Alaska 99615

Your Honor:

I need help! Recently I served on my first jury session since the state statute prohibiting smoking in public assembly rooms of state buildings was passed (Alaska Statute 18.35.300). I was quite frustrated and upset that the court disregards this law and allows the situation to exist that requires non-smokers to be confined in a very small room that quickly fills with smoke because smoking is not prohibited in the jury room.

After only ten to fifteen minutes while waiting in the jury room with other prospective jurors for jury selection to begin, I had a severe headache that results anytime I am in a close smoke-filled area. I had to insist during jury deliberation that a window be left open because of the smoke, even though the air was cold and the outside noise was sometimes so loud it prevented ease of hearing each other in discussing the case. Even then the open window only slightly eased the unpleasant effects.

I was not the only non-smoking juror and most probably every jury consists of some non-smokers. I request that this situation be corrected; that the ash trays be removed and a "Smoking Prohibited by Law" sign be posted (Sec. 18.35.330). Last November, almost six months ago, while on the grand jury, my husband wrote requesting relief from smoking in the jury room, pointing out the laws, and smoking was immediately prohibited, but evidently only for that session. The decision on whether or not to smoke should not be up to each new jury, since the statute already exists to take care of the problem. For the court, of all agencies, to be found in violation of state statutes seems quite serious to me. If it is impossible for some reason for local powers to enforce these laws continuously from now on, to whom do you recommend that I appeal for assistance?

I would appreciate hearing from you on this matter at your earliest convenience. Thank you for any assistance you can provide.

Sincerely,

Merle Howell



Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
BOX 1367
KODIAK, ALASKA 99615

May 25, 1977

Chamber of
JUDGE ROY H. MADSEN

Merle Powell
P. O. Box 2889
Kodiak, Alaska 99615

Dear Mrs. Powell:

Thank you for your letter of May 24th concerning jury room conditions in
Jury Room.


I may be mistaken, but from my reading of section of A.S. 17.15.300,
I do not believe it covers jury rooms. "The only sentence that could be
so interpreted is (3) which reads:

"(3) a public school; or an office, court, office of medicine
or public assembly under the control of the state, or a depart-
ment or agency of the state, while a public meeting held under
the auspices of the state or a department or agency of the state,
is in progress."

A jury deliberating in a jury room is not, under the law, a public
meeting or an assembly. However, I am referring your letter and my
response to the President Judge of this district, Hon. Ralph E. Moody,
for his consideration, as I don't know how the matter is handled in
Anchorage.

In the meantime, all I can do is offer my sincere apologies for the
discomfort you were put to and assure you that every effort will be made
in the future to see that non-smokers are not placed in the mercy of those
who smoke.

Very truly yours,


ROY H. MADSEN,
SUPERIOR COURT JUDGE

RMH:tn
cc: Hon. Ralph E. Moody
Encl.

STATE OF ALASKA
Avrum Gross
Attorney General
Juneau, Alaska

Dear Avrum:

9/20/77

For about a year now my wife and I have been questioning the legality and the credibility of condoning smoking in the Kodiak state jury room. (enclosed are four letters to and from Judge Madsen on this subject). Our efforts only seem to be effective when we are on the jury and voice a formal protest. The resulting ridicule from unhappy smokers makes jury duty even more unpleasant. Only a non-smoker closed in a jury room with smokers (be it few or many) can understand the discomfort, which may continue long after returning home.

Since my wife and I have not heard from Judge Moody in answer to the enclosed letter from Judge Madsen we appeal to you for your assistance. I'm sure Kodiak is not the only court that will benefit from a favorable ruling on this matter. If Judge Madsen is correct, that at present non smokers must suffer in Alaska jury rooms whether they like it or not, then something must be done because the present situation is nothing short of cruel and unusual punishment. Forcing someone to sit in a smoke filled room can't be legally tolerated in our opinion.

We would appreciate your help on this matter at your earliest convenience.

Best wishes,

Guy and Merle Powell
Box 2285
Kodiak, Alaska 99615

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
BUREAU 88011

September 29, 1977

Mr. and Mrs. Guy Powell
Box 2285
Kodiak, Alaska, 99615

Re: Smoking in jury
room

Dear Mr. and Mrs. Powell:

I must agree with Judge Madsen that AS 18.35.-300(3) does not forbid smoking in jury rooms, but we recently advised the Office of the Governor that smoking may be prohibited under AS 18.35.300(6) in state offices not generally open to the public if the person who has control of the premises posts a sign to that effect. It must be emphasized that this is entirely within the discretion of the judge -- either the local one or the presiding judge of the district -- and he is not compelled to order such signs posted.

The problem, though, is not simply that of prohibiting smoking. Just as you cannot deliberate effectively in a smoky room, there are others who will be unable to relax while considering a verdict, unless they are able to smoke. Therefore, it will probably be necessary to provide a place where some jury members can go to smoke from time to time.

Since there appears to be no absolute prohibition in the statutes of smoking in a jury room, the resolution of this problem will depend upon cooperation by the judge, and both smoking and non-smoking jurors. We are sending a copy of your correspondence and our memorandum on the subject to Judge Moody.

Sincerely,

Avrum M. Gross
Attorney General

AMG:jf

cc: The Honorable Ralph E. Moody
Anchorage

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

ALASKA STATE SENATE

JOE P. JOSEPHSON
DISTRICT G - ANCHORAGE
1526 F STREET
ANCHORAGE, ALASKA 99501
(907) 277-4419



WM. LE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907
(907) 465-4525

COMMITTEES
HEALTH, EDUCATION & SOCIAL SERVICES (CHAIR)
JUDICIARY (VICE-CHAIR)
FINANCE
MAJORITY CAUCUS (CHAIR)

February 27, 1984

Anne Morris, M.D.
Alaska Lung Association, Inc.
406 G Street
P.O. Box 103056
Anchorage, Alaska 99510

Dear Anne:

Your letter of February 17 was most gracious and I appreciate it.

I appeared at the Senate Rules Committee session the other day when the matter of deleting the proposed subsection mentioned in the third paragraph of your letter was considered. As you know, the deletion was recommended by Senator Fahrenkamp. I wanted, by my appearance, to indicate to the Rules Committee my own strong interest in preserving the Committee bill as prepared by the Senate HESS Committee.

Happily, the only change which the Rules Committee adopted is a proposal to make the no smoking provisions applicable to all grocery stores, including those with fewer than four checkout counters, lanes or registers. I have no objection to that change, of course, as long as it does not jeopardize the passage of the measure on the floor.

During the session, I made the same point that you made, to the effect that we had already compromised on the question of ventilation standards and that the bill had already undergone all of the dilution which it reasonably could be expected to sustain.

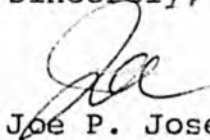
I will continue to support the measure on the Floor of the Senate.

Anne Morris, M.D.
February 27, 1984
Page Two

Thank you again for writing as you did.

With best wishes, I am

Sincerely,



Joe P. Josephson
State Senator

JPJ:rak

ALASKA  LUNG ASSOCIATION, Inc.

February 17, 1984

Curtis Mekemson, Executive Director

Senator Joe Josephson
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Senator Josephson,

The members of the Coalition would like to take this opportunity to express our appreciation for your contributions to and support of SENATE CS FOR CS FOR HOUSE BILL NO. 84 (HESS).

As the bill itself states, "numerous studies have shown second-hand smoke to be a significant health hazard;" and its passage will be an important step in providing more protection from this health hazard in public areas. (Remember 3 out of 4 of this "public" have already chosen not to smoke to protect their own health.)

We are concerned however about an amendment being introduced in Senate Rules to delete Sec. 4 AS 18.35.320. "(b) A smoking section designated under this section shall make reasonable accommodations for the needs of the smokers and non-smokers who use the place or vehicle."

Since ventilation standards and space requirements for non-smoking and smoking sections have already been deleted, the additional deletion of this section could remove any guarantee that the reasonable rights and needs of a non-smoker would be accommodated in an indoor place or vehicle in which the majority are smokers.

We encourage your ongoing support of this bill in its present form while in Senate Rules and when it comes to the Senate floor.

Thank you very much,



Anne Morris, M.D., Chair
HB 84 in 84 Coalition

AM:gm

The health of Alaskans: An assessment of the prevalence of behaviors posing health risks

Prepared for

The Alaska Department of Health and Social Services
Health Education Risk Reduction Project

by

John A. Kruse
Elsa Aegerter
Institute of Social and Economic Research
University of Alaska
707 A Street
Anchorage, Alaska 99501

February 1983

Introduction

Traditionally, government intervention to improve public health has focused on communicable diseases. Today, however, most of the deaths and illnesses which occur in the United States as a whole and in Alaska in particular result from things people do themselves. Ex-

amples of behaviors which pose health risks include smoking, drinking, and lack of exercise. Untreated conditions such as being overweight or having high blood pressure or high cholesterol levels also result in needless illness or death. To assess the prevalence of these

health risks, the Alaska Department of Health and Social Services asked the Institute of Social and Economic Research to conduct a survey of Alaskan adults. This report contains an overview of the survey results.

Study Design

The Federal Center for Disease Control (CDC) developed a questionnaire to assess health risks, and we used a modification of the questionnaire. The CDC and Alaskan questionnaires differ primarily in format; we attempted to make it easier for interviewers and data-entry people to use the questionnaire and changed the order in which question topics appeared so that the interview would start with questions that are relevant to most Alaskans. In addition, we added several questions of particular interest in Alaska, including a question on whether or not Alaskans think the state should have programs which attempt to get Alaskans to lead more healthy lifestyles.

CDC has developed a simple, but effective, set of procedures for contacting a random sample of adults. The CDC approach assumes that virtually every adult can be reached

through a residential telephone number. To assess the validity of this assumption, we contacted 29 Alaskan telephone companies and determined that 86 percent of the state's population live in communities in which at least 80 percent of the households have telephones. Outside of Anchorage, Fairbanks, Juneau, Ketchikan, Sitka, and the Mat-Su and Kenai Boroughs, however, only 47 percent of the population live in communities with adequate telephone service (i.e., 80 percent or more). Therefore, it is impossible to conduct a survey of Alaskan adults without resorting to some face-to-face interviews, a substantially more expensive means of data collections.

On the basis of this information and cost assumptions derived from our past survey experience in Alaska, we developed a preliminary sample design involving a mixed sampling strategy of telephone and

face-to-face interviews. We refined the design during discussions with CDC sampling consultants. The final sample design is presented in Table 1. It represents a compromise between the objective of developing reliable statewide estimates and the objective of differentiating between urban and rural conditions.

We hired and trained 14 interviewers during the week of September 13, 1982. Telephone interviews began September 18 and face-to-face interviewing began October 11. We completed our field work on November 17, 1982. Our final sample consisted of 846 interviews, reflecting a 78 percent response rate. The sample includes 250 Anchorage interviews, 248 interviews in other urban areas, and 348 rural interviews.

The telephone sample frame included all prefixes in Alaska in which 80 percent or more of

Table 1 — Final sample design

	Desired Number of Telephone Interviews	Desired Number of Face-to-Face Interviews	Total Number of Interviews
Anchorage	250	—	250
Other Rural*	250	—	250
Rural	175	147	<u>322</u>
			822

*Includes Fairbanks, Juneau, Ketchikan, Sitka, Kenai Peninsula Borough, and Matanuska-Susitna Borough.

the households possessed residential telephones. We calculated the degree of telephone coverage from individual utility records as of the spring of 1982 and from 1980 census statistics. In order to raise the probability of randomly dialing a residential number, we analyzed published telephone listings and eliminated sequences of numbers which contained no residential numbers. Once we refined the telephone sample frame, we programmed the University of Alaska computer to generate random numbers for each prefix. The number of sample elements drawn for each prefix varies according to the number of households served by the prefix. Thus, we can determine the probability of selection of a household in each prefix. These probabilities are equal within

each of the three sample strata (Anchorage, other urban, and rural).

The face-to-face sample frame consisted of all places of 25 persons or more not included in the telephone sample frame. We selected 30 places with probabilities of selection proportional to place size. We then listed all housing units in each selected place, calculated the sampling fraction necessary to choose 12 housing units and attempted to interview one randomly selected adult in each of the 12 housing units. As in the case of the telephone sample, we recontacted the household until we obtained an interview with the originally selected respondent or until we decided that further attempts would not be worthwhile (households in the latter category count against the response rate). Finally, we

verified the disposition of 10 percent of the numbers drawn in the telephone sample.

We edited all of the completed interviews and prepared them for data entry. J and J Enterprises of Anchorage entered the data on machine-readable computer disks and performed a 100 percent verification of their work. J and J then produced a computer tape which we installed in the University computing system. We then constructed a computer program file and produced a data dictionary along with a permanent computer file consisting of the original data, constructed variables, variable labels, value labels, and missing data specifications. Anyone with a moderate familiarity with computers could access this file and conduct their own analyses.

Maximum estimated sampling errors
(percent)

Number of Interviews	Observed Proportions				
	10 or 90%	20 or 80%	30 or 70%	40 or 60%	50%
850	2	3	3	3	3
500	3	4	4	4	4
200	4	6	6	7	7
100	6	8	9	10	10
50	8	11	13	14	14

The data file also includes a weighting variable designed to:

- Adjust for deliberate over-sampling in rural areas.
- Adjust for the under-sampling of adults in larger households (a product of conducting one interview per household).
- Adjust for the under-sampling of young male adults (a product of the selection table we used).
- Adjust for the over-sampling of households with more than one telephone number.

The weighting variable should be applied when using the data to estimate the characteristics of any group of Alaskan adults.

All of the survey results are subject to sampling errors, an inevitable product of the fact that we are using a sample of

adults, 18 years old or older, to generalize to the entire adult population. Estimated sampling errors are larger for survey results which are based on relatively fewer interviews or which vary widely across the population. The following table provides a rough guide for estimating sampling errors.

To use the table, find the table cell which corresponds to the particular survey proportion you are considering. For example, 37 percent of 846 respondents currently smoke. The appropriate sampling error is located in the first row and in the fourth column. Loosely interpreting the meaning of sampling errors, you can be 95 percent sure that the true population proportion lies between 37 ± 3 percent or 34-to-40 percent.

Survey data is subject to additional sources of error; unfor-

tunately, the size of these errors is impossible to determine without expensive, further studies. Of particular concern in this study is response bias. For example, we think respondents significantly underreported the amount of alcohol they drink. We cannot tell, however, the extent of underreporting and, therefore, cannot adjust the data or attach a range of estimates around the observed survey results. We can only advise data users to apply their own expertise and experience to the interpretation of the data.

The fact that 37 percent of the adult population in Alaska currently smoke is not as interesting as the fact that an estimated 90,000 Alaskan adults currently smoke. Translating survey proportions into population estimates is an easy matter. According to 1980 U.S. Census

figures, the number of Alaskan adults not living on military bases and not living in institutional quarters (e.g., hospitals, jails, dormitories, nursing homes) is 240,194. To derive a

population estimate, multiply the proportion being considered by the appropriate population figure. If the proportion applies to the entire population, multiply the proportion by 240,194

(e.g., $.375 \times 90,100 = 88,872$). In reports, round the results so as not to mislead people into thinking that your estimates are more precise than they really are.

Survey Results

Blood Pressure

The vast majority of Alaskan adults (89 percent) report that they have had their blood pressure checked in the last two years. Based on the survey results, we estimate that

some 44,000 Alaskans have been told that they have high blood pressure and about 6,000 believe that their blood pressure is still high. Only an estimated 200 Alaskans, however, believe that they still have high blood

pressure yet are not regularly following their prescribed treatment.

Exercise

We estimate that 7,400 Alaskan adults get virtually no

Table 2 — Weekly physical activity

Frequency of Active Exercise ¹	Frequency of Light Exercise ²	Level of Physical Effort in Daily Activities ³	Proportion of Population	Estimated Number of Alaskan Adults
none	none	light	3%	7,400
none	1-7 times per week	light	8%	19,300
none	0-7 times per week	medium	22%	53,400
once per week	0-7 times per week	light or medium	23%	53,700
none or once/week	0-7 times per week	heavy	9%	22,200
2-to-3 times/week	0-7 times per week	light to heavy	20%	46,900
4 or more times/wk.	0-7 times per week	light to heavy	15%	34,700

¹Examples of active exercise include running, skiing, and calisthenics.

²Examples of light exercise include gardening, dancing, and bowling.

³Light daily activities include office work, driving, or sitting; medium daily activities include walking, housework, or carpentry; and heavy daily activities include moving heavy loads.

exercise (see Table 2). On the other hand, some 104,000 actively exercise at least two times a week or work in a physically demanding job. In between, we find that about 126,000 Alaskans participate in some exercise at least weekly or work in a job that involves moderate physical activity — walking, housework, or carpentry, for example.

The main forms of physical exercise in Alaska are running or walking (28 percent), wage work (19 percent), housework (13 percent), calisthenics (5 percent), team sports (4 percent), and wood cutting (3 percent). Since these activities only comprise 72 percent of the main forms of physical exercise in Alaska, variability is clearly the rule, not the exception. It is clear, however, that most Alaskans (58 percent) get more exercise in the summer than they do in the winter. Only 12 percent of Alaskan adults think that they get equal amounts of exercise year-round.

Since there are so many ways to actively exercise, it is difficult to identify groups which overall get too little exercise. CDC uses an exercise index reflecting the amount of light and heavy exercise and the amount of physical effort required in daily activities to compare the overall amount of exercise experienced by persons of different sex, ages, and ethnic backgrounds. We think the

CDC index may give too little weight to the amount of exercise many Alaskans get in their daily activities. Taken at face value, however, the index scores suggest that, on the average, women, Natives, and persons over 65 engage in fewer physical activities than men, Non-Natives, and younger persons.

Weight and Cholesterol Level

Almost a third of the Alaskan adult population think of themselves as being overweight. In most cases, they are right; 74 percent of those that perceive of themselves as overweight weigh 110 percent or more than the median weight for their sex and height. About 10 percent, or 24,000 Alaskans, weigh at least 130 percent of the median weight for their sex and height. For example, for a six-foot man to be 130 percent of his median weight, he would weigh 222 pounds. Not surprisingly, adults between the ages of 45 and 64 are relatively more likely to be overweight. Thirty-one percent of this group weighs at least 130 percent of the median weight appropriate to their height compared to 14 percent of both younger and older age groups.

Only 8,200 Alaskans (3 percent) are under medical advice to reduce or maintain their cholesterol level and, of these, only an estimated 2,000 are not following their physicians' medical advice.

Stress

In our survey, we did not attempt to identify situations which may cause an individual to experience stress. The measurement of stress itself is extremely difficult in a short interview and the two questions on stress developed by CDC are crude, at best. In response to the question,

During the past year, how often were you unable to do your daily activities because of worry or nervousness; would you say: often, sometimes, rarely, or never?

2 percent of our respondents said often; 10 percent said sometimes; 21 percent said rarely; and 67 percent said never. We cannot tell how many respondents interpreted the question to refer to times that they literally were immobilized or how many interpreted the question to refer to times that their productivity was reduced. We can estimate that some 78,000 Alaskans at least occasionally experience stress that affects their daily activities. There appear to be no major differences in the prevalence of stress by region, age, or race. Women are more likely to report that stress at least occasionally interferes with their daily activities (44 percent among women versus 22 percent among men).

The second CDC stress question asks:

How often do you get uptight or irritable with those around you; would you say: often, sometimes, or rarely?

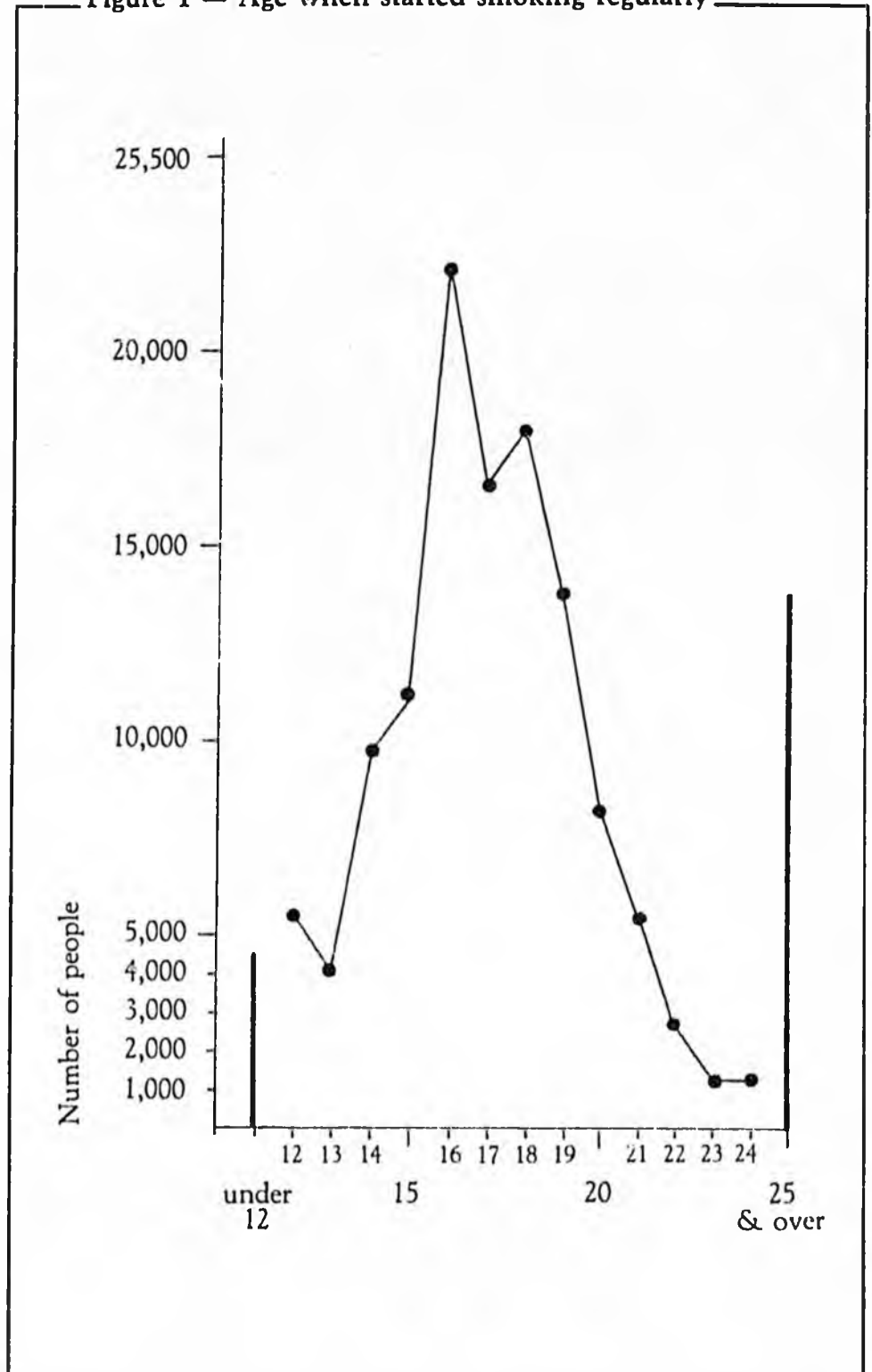
In response to this question, 12 percent, or an estimated 29,000 Alaskans, said often. Younger adults appear somewhat more likely to perceive that they become uptight or irritable, as do women. Combining responses to the two questions on stress, we find that 48 percent of the population feel that stress never interferes with their daily activities and that they are rarely irritable or uptight.

Unfortunately for their health, one-in-four Alaskans smoke cigarettes to cope with stress. The second most popular choice differs by sex: men are more likely to exercise, and women are more likely to eat. Few Alaskans (5 percent) perceive that they drink to cope with stress.

Smoking Cigarettes

We estimate that 90,100 Alaskans, 18 years old or older, currently smoke cigarettes. Based on the survey results, some 27,100 Alaskan adults smoke more than one pack of cigarettes per day. Smoking is just about equally prevalent among women (35 percent) as it is among men (40 percent) and among 18-to-34-year olds (37 percent) as it is among all age groups, ex-

Figure 1 — Age when started smoking regularly



cept 65 and older in which the percent who currently smoke drops to 13. A higher proportion of Alaska Natives currently smoke than non-Natives (47 percent versus 36 percent). At the same time, however, Alaska Native smokers tend to smoke fewer cigarettes per day; 24 percent of Native smokers consume more than two packs per day compared with 34 percent of non-Native smokers.

The critical age period when Alaskans picked up their smok-

ing habit is between 14 and 19 (see Figure 1). Since 60 percent of Alaska's adult population spent their teen age years in other states, a maximum of only 40 percent of current smokers could be influenced by an anti-smoking program in Alaska's secondary schools.

Drinking Alcoholic Beverages

Based on sales of alcoholic beverages in Alaska, one would think that most Alaskans consume significant amounts of

alcohol. While the majority of Alaskans (79 percent) have had at least one alcoholic drink in the last year, our survey results suggest that the vast majority of Alaskans drink only small or moderate amounts of alcohol (see Table 3 and Figure 2). Only 3 percent of our respondents reported having at least five drinks on five or more occasions in the month previous to the survey.

Table 3 — Reported number of drinks consumed in average week over past year

Number of Drinks per Week	Percent	Estimated Number of People
None	27	64,100
Less than one	29	70,400
1 - 3	12	28,300
4 - 13	21	51,600
More than 13	11	25,700
	100	240,100

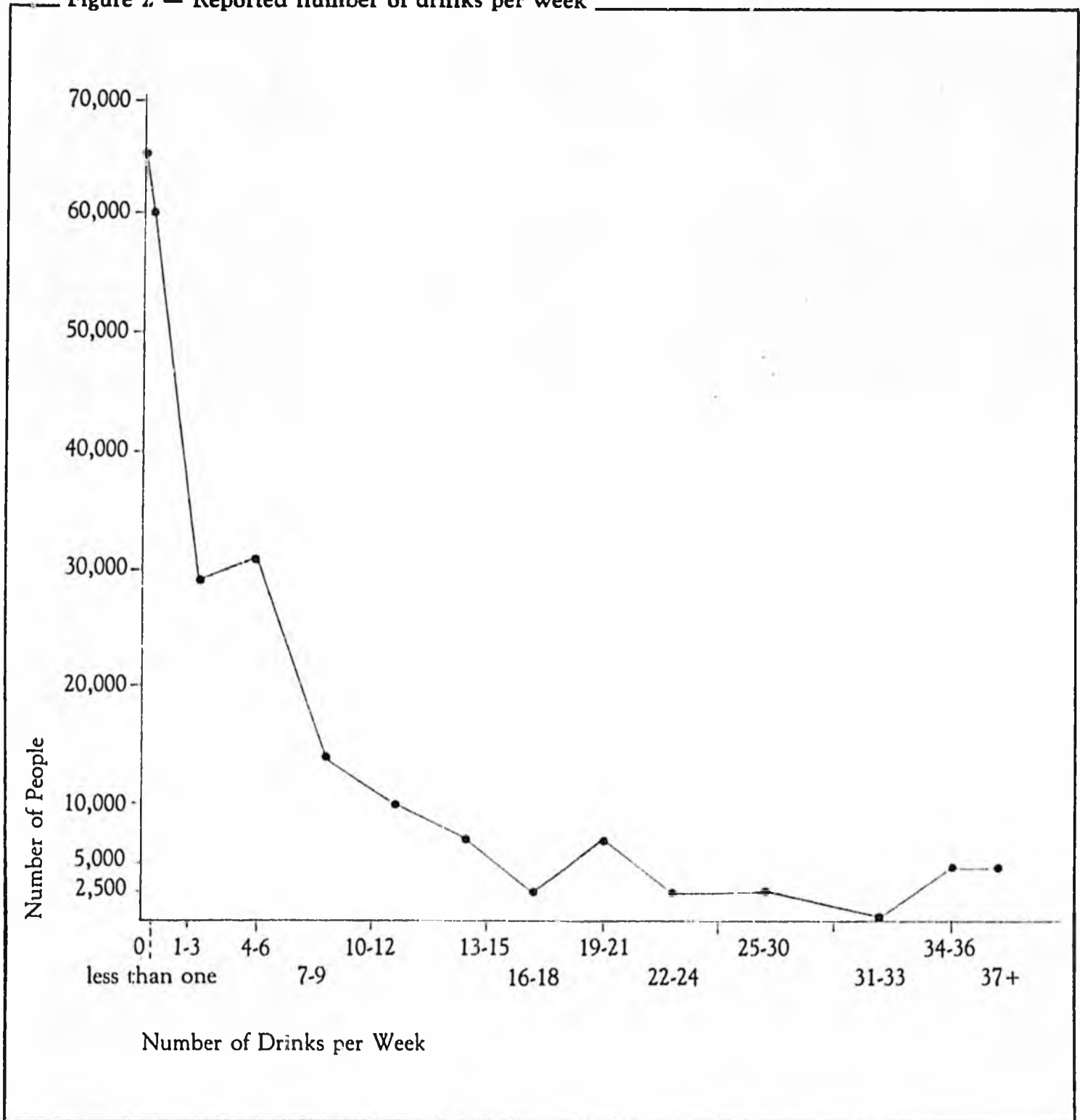
*A drink consists of one can or bottle of beer, one glass of wine, one mixed drink, or one shot of liquor.

We question the validity of these survey results. As we will show below, Alaskans are more concerned about alcohol abuse than any other health risk. No doubt this concern largely stems from the perception that alcohol

abusers are a threat not only to themselves but also to others. Although our respondents knew their answers would remain confidential, we think that the strong societal disapproval of alcohol abuse caused them to

understate the amount of alcohol they consume. Looking back to Table 3, we think that a significant proportion of those reporting that they consume an average of 4-to-13 drinks per week, in fact, consume more

Figure 2 — Reported number of drinks per week



than 13 drinks per week. Even if this is true, however, it is still difficult to use the survey results to estimate the number of alcohol abusers or alcoholics in the population.

The problem in interpreting the responses of Native Alaskans is particularly acute. By their reports, 46 percent consumed no alcohol in the previous twelve months, and an additional 33 percent reported drinking an average of less than one drink per week. Natives living in legally "dry" villages may be reluctant to admit that they consume any alcohol. Therefore, the Native responses may not only understate the amount of alcohol consumed but may also understate the proportion of Natives who drink at all. We did include a question specifically asking about binge drinking (a phrase commonly used in rural Alaska) and found that only 6 percent of our respondents (an estimated 2,600 Natives) said that they had gone on at least one binge of drinking in the previous year. Again, this figure may underestimate the frequency of alcohol use.

Assuming that the group of respondents who report consuming more than 13 drinks a week contains most of the heavy drinkers who fell into the sample, we can construct a profile of the most common heavy drinker. Because of the prevalence of young people in Alaska, the largest number of

heavy drinkers are between 18 and 34 years old. Proportionately, however, more adults between the ages of 45 and 54 and, particularly, between the ages of 55 and 64 drink heavily. One-in-five adults, in the 55-to-64 age group reported drinking more than 13 drinks a week. Men are almost three times as likely as women to consume more than 13 drinks per week.

Given the evidence that our survey respondents understate the amount they drink, the survey responses concerning driving while intoxicated are alarming. We asked,

How many times during the last four weeks have you driven a car, boat, or three-wheeler when you've had perhaps too much to drink?

Four percent of our respondents mentioned that they had done so at least once in the past month. This translates to an estimated 10,700 Alaskans. We observed no regional differences in response; but men, particularly young men, were the most likely to report that they drove while intoxicated. We are confident that responses to this question are understated even more than are the responses to other questions on alcohol use.

The final survey question on alcohol asked if respondents favored or opposed an increase in the tax on alcoholic beverages in order to pay for the treatment and prevention of

alcohol abuse. Seventy-eight percent of our respondents and an estimated 187,000 of 240,000 Alaskan adults said that they favor the tax increase. Public support for the tax increase is evenly spread across the state and among persons of different age, race, and sex.

Coincidence of Smoking, Drinking and Stress

We have seen that significant, but not in all cases, large numbers of Alaskans smoke or drink heavily and/or find that stress interferes with their daily activities. To what extent do these high-risk behaviors involve the same people? To answer this question, we defined heavy drinkers to be those who reported consuming five or more drinks on at least two occasions in the previous month. We defined heavy smokers to be those who say they smoke ten or more cigarettes a day, and we defined those under heavy stress to include respondents who said that stress makes them unable to perform their daily activities sometimes or often.

Under these definitions, only 1 percent of Alaskan adults both drink and smoke heavily and experience significant stress. Another 5 percent drink and smoke heavily and do not report significant stress. At the other extreme, 15 percent of the population reported that they consume no alcohol or cigarettes, nor do they feel that stress

makes them unable to perform their daily activities more than rarely. Seventy-nine percent of the population falls in between, with 37 percent reporting only one of the three high-risk behaviors and 42 percent reporting some combination of more than moderate-risk behaviors. Together, these results suggest that health risk behaviors are not concentrated among the same individuals but are spread across the adult population.

Personal Safety

Half of the Alaskan adult population (52 percent) seldom, if ever, use seat belts while driving. Seat belt use is relatively greater in Anchorage (38 percent nearly always use them) than in other urban areas or in rural Alaska (where the comparable proportions are 26 percent and 10 percent, respectively).

We designed the comparable question on the use of personal

floatation devices (PFDs) to reflect the Coast Guard requirement that PFDs be available on the boat but not necessarily worn. Under this liberal definition, 73 percent of Alaskan adults always have a PFD along when they ride in boats. Most Alaskans (82 percent) also think they can swim. However, the proportion of Alaskan adults who say they can swim varies by region, sex, and race (see Table 4).

Table 4 — Number of Alaskan adults who say they cannot swim

Total Estimated Number That Cannot Swim	43,200
Urban Residents	25,200
Rural Residents	18,000
Men	11,000
Women	32,200
Native	16,900
Non-Native	26,300

Attitudes Toward State Intervention

It is no secret that Alaskans, more than Americans in general, value personal freedoms and, therefore, a minimum of government interference. In designing the study, we thought that the prospect of the state's encouraging Alaskans to drink and smoke less, to exercise more, and to change other behaviors to improve their

health would encounter strong objections. To their credit, those coordinating this study within the Department of Health and Social Services (HSS) agreed to let us include a question which tests public support for existing and potential HSS programs.

The question asked was as follows:

Most of the deaths and illnesses in Alaska result from

things people do themselves. Some examples are drinking while driving, and smoking. Do you think the state should have programs to encourage Alaskans to lead healthy lifestyles?

In response, 86 percent said that they favored such programs. We also asked those who did not favor these programs, why. The primary objection was one we expected to find shared by more

Alaskans: the state shouldn't interfere with personal choices. Half of the 14 percent opposed to state intervention cited this as the basis of their objection. Thirty-five percent of those opposed felt that such programs wouldn't work and a small proportion (2 percent) either thought that there were better uses for state funds or that the programs would be too expensive to be worthwhile.

We asked the 86 percent favoring state intervention to tell us which of the following health areas is most important: alcohol abuse, stress, smoking,

exercise, diet, or accident prevention. By far the most important health area in the public's view is alcohol abuse. Sixty percent of those favoring state intervention and half of the population as a whole identified alcohol abuse as the most important health area. Accident prevention (13 percent), stress (8 percent), and exercise (7 percent) were also mentioned by some as the most important health area.

The survey results suggest that there is a consensus that reducing alcohol abuse should be the first priority of state health risk reduction programs.

The results should not be interpreted to mean, however, that alcohol abuse is viewed as four or five times more important than the next most frequent mentioned — accident prevention. We did not attempt to measure the relative importance of each health area, but rather we tried to determine the amount of public agreement about the most important health area. A majority of the public clearly agrees that reducing alcohol abuse is the first priority. They may also think that accident prevention, stress, and exercise are important as well.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

OFFICE OF THE COMMISSIONER

February 28, 1984

DOCUMENT #84-54

The Honorable Joe Josephson
Alaska State Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Josephson:

Did you know that among Alaskan adults -

- 90,100 currently smoke cigarettes, and that a significantly higher proportion of Alaska natives currently smoke than non-natives?
- 24,000 weigh at least 130% of the median weight for their sex and height?
- 44,000 have been told they have high blood pressure?
- at least 10,700 adults have driven a boat, car, or three-wheeler during the last month when they've had too much to drink?
- 206,400 adults favor state programs to encourage Alaskans to lead healthy lifestyles?

These are but a few of the findings contained within the attached report entitled "The Health of Alaskans: An Assessment of the Behaviors Posing Health Risks."

As you may know, data increasingly indicate that "lifestyle" or personal health habits have a direct influence on illness or death. In the past, infectious and communicable diseases were the major killers and disablers of the population. Today, however, many of the leading causes of death and illness are caused by, or associated with, high risk health behaviors; cigarette smoking, immoderate alcohol and drug consumption, lack of exercise, inadequate or inappropriate dietary intake, stress, etc. In fact, the five leading causes of death in Alaska in 1980 were: accidents, diseases of the heart, cancer, suicide, and cerebrovascular diseases. All of these diseases and conditions are associated with lifestyle issues. To sum, we are increasingly engaging in behaviors which make us sick and eventually kill us.

Separate and apart from these issues of mortality and morbidity is the issue of cost. During the period 1970 to 1982, the nation's health care bill increased from \$75 billion to \$322 billion, reflecting a rate of increase that will double health care costs approximately every 5.5 years. These health care expenditures

The Honorable Joe Josephson

-2-

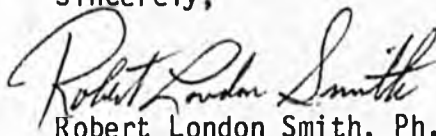
February 28, 1984

currently constitute 10.5% of the nation's Gross National Product (GNP). Closer to home, the Alaska State health appropriations amount to 6 percent of the State's operating budget for FY 84. This does not include funds appropriated for Pioneer Homes, the \$1.6 billion for health-related capital projects, direct grants to municipalities and institutions for the purchase of health-related facilities, funds for State employee health insurance plans, etc., nor does it include funds spent by Indian Health Service and other Federal programs or from private sources. Clearly, total health care expenditures constitute a significant portion of Alaska's economy.

I present this information to you essentially to establish a connection between the spiraling costs of "illness" care and the trends we find in both morbidity and mortality data. We must begin to review the vast sums of money spent for the treatment of diseases that could have been prevented. Many states in the nation are using data similar to that which is contained within this report to take progressive action to do what 206,400 Alaskans favor - to encourage our people to lead healthier lifestyles.

I encourage you to review this brief and very readable report as you fulfill your legislative decision-making responsibilities pertaining to health promotion and preventive health legislation. The expertise and experience of our departmental staff is available should you need additional information.

Sincerely,


Robert London Smith, Ph.D.
Commissioner

Enclosure

Geog M?

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

February 22, 1984

RECEIVED

The Honorable Jan Faiks
Alaska State Senate
Pouch V
Juneau, AK 99811

RE: House Bill 84,
"An Act relating to
smoking in public places
and vehicles."

Dear Senator Faiks:

In reviewing this legislation, it would be unenforceable, from a law enforcement standpoint, because the offense is a violation rather than a criminal offense.

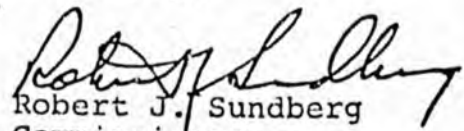
I would offer the following scenario as an example of why we feel this is unenforceable from a Trooper standpoint.

Hypothetically, an individual could be seated in a restaurant smoking and another person could complain to the police that the individual is violating the law by smoking in a prohibited area. The responding officer would ask the individual violating the smoking regulation for his identification in order to issue a citation. The individual could refuse to identify himself, and the officer would have no choice other than to leave the situation. There are no provisions in the law mandating that a person suspected of an offense has to identify himself to a peace officer. The only exception to this is that a person operating a motor vehicle has to produce a driver's license.

I checked with the Department of Law, Chief Prosecutor's Office, and they concur as to the unenforceability of this regulation by a peace officer.

If you have any other questions, please feel free to contact me.

Sincerely,


Robert J. Sundberg
Commissioner

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

March 19, 1984

[RECEIVED]

MAR 19 1984

The Honorable Joe Josephson
Alaska State Senate
Pouch V
Juneau, Alaska 99811

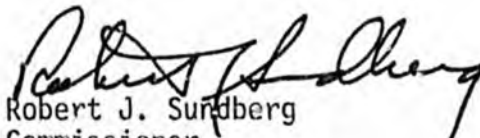
Josephson,

Dear Senator Josephson:

RE: House Bill 84, "An Act relating to smoking in public places and vehicles."

It is the Department's current position that under a proposed modification to the above-referenced bill amending Section 18.35.341(a) "Citations; Penalty" to read that the issuance of a citation would be effected only if a violation was committed in the presence of a peace officer; and that the Department of Environmental Conservation, as currently written into the bill, will remain responsible for investigations of smoking violations, it would not oppose the bill.

Sincerely,


Robert J. Sundberg
Commissioner

STATE OF ALASKA

MAR 12 1984

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 12, 1984

REPLY TO:

- OFFICE OF THE CHIEF PROSECUTOR
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428
- OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

The Honorable Frank R. Ferguson
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Ferguson:

You have asked for the Department of Law's opinion on the enforceability of HB 84 - an Act relating to smoking in public places and vehicles. As you may know, the most recent version of that bill is SCS CSHB 84 (HESS). It is interesting that you should ask about this aspect of the bill, as the Criminal Division of the Department of Law has recently reviewed the enforcement sections of the bill and have suggested some amendments to the bill's prime sponsor, Representative Milo Fritz.

Under current law, if a person smokes in a prohibited area designated under AS 18.35.300, he is punishable by a civil fine of not less than \$5 nor more than \$25 for each offense. If a person or entity does not display the appropriate signs as required under AS 18.35.330, a civil fine of not less than \$10 nor more than \$100 can be imposed.

Violations of the above provisions are enforced by means of a civil complaint system. A person who observes such a violation must fill out an affidavit form provided by the Department of Environmental Conservation (DEC) and agree to testify in court concerning the violation if testimony becomes necessary. If the complainant fulfills both of the above requirements, then DEC may file a complaint in small claims court. The court will then determine whether a civil fine, court costs, and attorneys fees should be assessed against the violator.

Thus, there is a workable process to enforce the laws, although this process is evidently not used very often. One of the main thrusts of HB 84 is apparently to make the law more "enforceable". The latest version does that, but we recommend some changes to improve the bill.

Specifically, SCS CSHB 84 (HESS) offers a complainant two options for enforcement, the filing of a civil complaint or

March 12, 1984

the issuance of a citation by a peace officer. The civil complaint section is essentially the same as current law except that:

- (1) it requires DEC to file a complaint in the superior court instead of the small claims (district) court, and
- (2) the amount of the civil fines have been raised.

Section 7 of the bill broadens the enforceability of the law by giving a peace officer the authority to issue a citation for smoking and sign violations.

The new civil complaint section is enforceable in the same manner and to the same extent as the comparable provisions in existing law. The Criminal Division has recommended that this entire section be eliminated, however, so that enforcement would be accomplished through citations issued by a peace officer. DEC employees could then be designated by the Commissioner of DEC as "peace officers" for the purpose of enforcing these laws. This would give the employees the authority to issue citations for smoking violations in the same manner as other peace officers. There appears to be no reason to provide two options for enforcement. The existence of only one enforcement mechanism would make the process simpler and less confusing for both complainant and violator.

A practical enforcement problem may arise when a peace officer attempts to cite a patron in a restaurant, for example, and that patron refuses to identify himself. AS 12.25.180(b), however, states:

When a person is stopped or contacted by a peace officer for the commission of an infraction or a violation, he shall be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

(1) the person does not furnish satisfactory evidence of identity; or

(2) the person refuses to accept the citation or to give his written promise to appear as provided for under AS 12.25.190(c).

Therefore, a peace officer, whether a police officer or a DEC employee, could arrest a person who refuses to identify himself or promise to appear in court.

March 12, 1984

Under SCS CSHB 84 (HESS), once a person has received a citation, the process for paying the appropriate fine is similar to that used for traffic citations. Under the proposed bill, a new AS 18.35.341(f) would state: "If the person cited fails to pay the bail amount established under (c) of this section or to appear in court as required, the citation is considered a summons for a violation." As in traffic court, an arrest warrant may be issued for a person who fails to appear in response to such a summons.

I hope this letter has answered your question about the enforceability of the current draft of HB 84. As it stands now, the bill is legally enforceable. Of course, as you are well aware, the form of the bill may be considerably altered by the time it reaches the Senate floor.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 

Lisa B. Nelson

Assistant Attorney General

LBN/so-03