

Legal Update



Tobacco Control
Legal Consortium

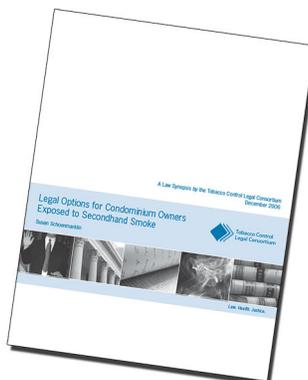


Dear Tobacco Control Professional:

Welcome to the latest issue of the *Legal Update*, the newsletter of the Tobacco Control Legal Consortium. The Consortium is a national network of legal programs supporting tobacco control policy change across the United States. We invite you to visit our website at www.tclconline.org.

Legal Options for Condominium Owners Exposed to Secondhand Smoke

Condominiums are among the fastest growing segments of the housing market today. As the number of multi-unit dwellings rises, and evidence of the hazards of secondhand smoke continues to mount, more people are asking for advice on what they can do to protect their living space from secondhand smoke infiltration. We hope our latest publication will be a useful resource for you, as a tobacco control professional, as well as for condominium owners and associations and others concerned about drifting tobacco smoke from a neighboring unit.



The Tobacco Control Legal Consortium's new law synopsis, entitled *Legal Options for Condominium Owners Exposed to Secondhand Smoke*, is a follow-up to our [earlier synopsis](#) on legal remedies for landlords, owners and residents of multi-unit dwellings concerned about secondhand smoke infiltration. Both synopses were written by Susan Schoenmarklin, a seasoned tobacco control attorney at the Smoke-Free Environments Law Project (SFELP), our affiliated legal center in Ann Arbor, Michigan.

The synopsis describes preliminary steps a condominium owner exposed to secondhand smoke should take before considering legal action and it explains legal options available under federal and state laws, including the use of arbitration and mediation. It also examines legal theories that could be used in a lawsuit against a condominium neighbor or association. Finally, it includes an appendix of authoritative sources on smoke-free housing and the health effects of secondhand smoke exposure.

To view a PDF version of the synopsis, click [here](#), or contact the [Tobacco Control Legal Consortium](#) to request a printed copy. We hope you find this publication a useful and informative resource in your work as a tobacco control professional.

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Affiliated Legal Resource Centers:

- **California**
[Technical Assistance Legal Center \(TALC\)](#)
- **Maryland**
[Legal Resource Center for Tobacco Regulation, Litigation & Advocacy \(LRC\)](#)
- **Massachusetts**
[Tobacco Control Resource Center \(TCRC\)](#)
- **Michigan**
[Smoke-Free Environments Law Project \(SFELP\)](#)
- **Minnesota**
[Tobacco Law Center](#)
- **New Jersey**
[Tobacco Control Policy and Legal Resource Center](#)
- **Ohio**
[Tobacco Public Policy Center](#)

Colorado Hires Manager for New Tobacco Control Resource Center

The [American Lung Association of Colorado](#) (ALAC) has hired attorney Kay Bond as Tobacco Legal Resource Manager at its new Secondhand Smoke Technical Assistance Resource Center. Previously, Kay worked for the Southern Environmental Law Center in North Carolina. She has joint Juris Doctor and Master of Public Health degrees.

Colorado's ALA Technical Assistance Resource Center provides training, technical assistance, and now legal support, to local health agencies and advocates throughout the state. The center's focus for 2006–07 includes ensuring successful implementation of the Colorado Clean Indoor Air Act, and developing strategies to provide smoke-free workplaces for casino employees and smoke-free housing in multi-unit dwellings. With its Secondhand Smoke Technical Assistance Resource Center now up and running, Colorado is the latest state to join the Tobacco Control Legal Consortium. Welcome, Colorado!

The Secondhand Smoke Technical Assistance Resource Center is located at:

American Lung Association of Colorado
5600 Greenwood Plaza Blvd, Suite 100
Greenwood Village, CO 80111

Ohio and Nevada Statewide Indoor Air Acts Challenged

Last November, voters in Arizona, Ohio, and Nevada passed initiatives to enact smoke-free statewide laws. On December 7, 2006, noteworthy activity took place on lawsuits recently filed in Ohio and Nevada challenging two of these important new laws.

- Ohio's new law requires the Ohio Department of Health to develop rules for enforcing the smoke-free legislation. On December 7, the Ohio Department of Health agreed that it will not enforce Ohio's law until it develops those rules. Plaintiffs in Franklin and Hamilton Counties agreed not to pursue their lawsuit until the rules are finalized sometime in the next six months. In a recent news article on this case and related tobacco litigation, Micah Berman, Executive Director of Ohio's Tobacco Public Policy Center (an affiliate of the Tobacco Control Legal Consortium), pointed out that "Lawsuits are filed at the very last minute, usually as a delaying tactic. They go through the challenges, and they're all rejected." To read the article, click [here](#). For information on Ohio's draft rules, click [here](#).
- On December 7, Nevada's Clark County District Court granted an application for a temporary restraining order (TRO) that was sought by tavern, casino, and other business owners. The TRO barred enforcement of the new Nevada law in Clark County until the court could consider the plaintiffs' motion for a preliminary injunction. Following a December 19 preliminary injunction hearing, the court decided to allow enforcement of the law in some circumstances. Another hearing will be held January 23. To read more about this case, click [here](#).

Other Litigation Developments

Over the last month, the Tobacco Control Legal Consortium responded to a flurry of legal challenges to smoke-free laws. In addition to the two lawsuits discussed above, courts recently issued significant rulings on preemption issues in Pennsylvania and South Carolina.

- In Allegheny County, Pennsylvania, Court of Common Pleas Judge Michael Della Vecchia issued an order upholding Allegheny County's smoke-free ordinance, but delayed implementation for restaurants and bars until April 30, 2007, to give the state legislature time to consider new legislation clarifying whether or not local governments are preempted from regulating indoor tobacco smoking. To read the decision, click [here](#). This important case is likely to determine whether smoke-free ordinances are preempted throughout Pennsylvania.
- In the Town of Sullivan's Island, South Carolina, Court of Common Pleas Judge Deadra Jefferson dismissed a local bar's challenge to the town's new smoking ordinance. The bar claimed state law prevents South Carolina municipalities from passing smoke-free ordinances. Judge Deadra L. Jefferson found

neither “express” nor “implied” preemption in state law. This ruling is particularly welcome at a time when several other local governments in South Carolina, including Greenville, Columbia, Liberty, Bluffton, and Beaufort County, have passed smoke-free laws, and others, including Hilton Head Island, Charleston, Aiken County, and Lexington County, have announced plans to consider similar laws. To read the Sullivan’s Island decision, click [here](#).

Atlantic City Considering No Smoking in Casinos

The Atlantic City city council has given unanimous preliminary approval to an ordinance that would prohibit smoking in the city’s casinos, but has delayed a final vote on the measure until January 24. In delaying the measure, the council expressed a desire to give the casinos more time to prepare for the new law. If approved January 24, the new Atlantic City ordinance will go into effect April 15, one year after the statewide smoke-free law that originally exempted New Jersey casinos. Atlantic City is the largest gaming city in the United States outside of Nevada, and the elimination of smoke from the city’s casinos will be watched closely by other states with non-tribal gambling.

Ohio “Smoking Break” Case

The Ohio Supreme Court recently heard an appeal brought by a death-row inmate who had been convicted of killing his ex-girlfriend. The jury that convicted and sentenced him was not allowed to take smoking breaks. The defendant argued that his conviction should be overturned because jurors desperate for a cigarette would not have given his case the thorough and deliberate consideration the constitution requires. The Ohio Supreme Court rejected the inmate’s arguments, stating that they were speculative. To read more about this case, click [here](#).

Resource Roundup

The Tobacco Documents Bibliography

Check out the 13th edition of the Tobacco Documents Bibliography on the University of California, San Francisco’s Tobacco Control Archives website at <http://www.library.ucsf.edu/tobacco/docsbiblio.html>. This bibliography, originally created and maintained by Dr. Norbert Hirschhorn, cites publications based on research and analysis of tobacco industry documents. The December 2006 edition has 32 new or updated items.

Project Sunrise

Every advocate tired of being outmaneuvered by tobacco manufacturers should have a look at newly-revealed Phillip Morris documents from the 1990s, outlining “Project Sunrise,” a 10-year master plan to do an “end run” around the tobacco control movement and create “a new cultural paradigm for smoking.” Among the plan’s seven recommended strategies are: positioning Philip Morris as “reasonable,” minimizing environmental tobacco smoke, promoting “values that support smoking,” and dealing “proactively” with tobacco control advocates. Key documents from the initiative have been posted by the Legacy Tobacco Documents Library at http://legacy.library.ucsf.edu/doc_research_sunrise.html. The industry’s efforts to divide the tobacco control movement, as revealed by these documents, were reported recently in *Tobacco Control*. “Philip Morris’s Project Sunrise: Weakening tobacco control by working with it.” McDaniel PA, Smith EA, Malone RE. *Tobacco Control* 2006, 15:215-223.

Upcoming Event

The Society for Research on Nicotine and Tobacco is holding its 13th annual meeting on February 21–24, 2007, at the Hilton Austin in Austin, Texas. For more information about the conference, click [here](#).

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The Legal Update newsletter is a service of the Tobacco Control Legal Consortium.