

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.

Secondhand Smoke and Casinos

Although smoke-free workplace laws have proliferated across the United States and beyond, many of these laws do not cover gambling venues, such as casinos. Ironically, casino employees are often exposed to much higher levels of secondhand smoke than employees in other workplaces.

The Tobacco Control Legal Consortium's new synopsis, entitled *Secondhand Smoke and Casinos*, examines the benefits of establishing smoke-free environments in casinos and the potential legal liability for casinos that expose their employees and others to secondhand smoke. It reviews smoke-free workplace laws and relevant policy concerns and discusses legal options available to casino employees exposed to secondhand smoke in the workplace. Finally, it briefly describes the intersection between smoke-free laws and Native American sovereignty.

The synopsis was written by Micah Berman, Executive Director, and Caris Post, Legal Director of the Tobacco Public Policy Center at Capital University Law School. The Tobacco Public Policy Center is the Legal Consortium's Ohio affiliate.

To view a PDF version of the synopsis, click on the image above. The synopsis is also available online at <http://www.tobaccolawcenter.org/> under Tobacco Control Legal Consortium, "Resources and Publications." We hope you find this publication a useful and informative resource in your work as a tobacco control professional.



More Communities Considering Smoke-free Casinos

Officials in Atlantic City and the state of Colorado are both moving ahead to limit smoking in casinos. On February 8, Atlantic City council members approved an ordinance that prohibited smoking on 75 percent of each casino's gaming floor. Originally, the bill prohibited all smoking in casinos. The casinos have five months to submit plans for their smoking areas. The deadline for the gaming floors to be 75 percent smoke-free is April 15, 2007.

On February 2, a bill was introduced in the Colorado legislature to make the state's casinos smoke-free. The Colorado legislation is the result of a grassroots campaign by casino patrons that favor gambling in a smoke-free environment. To read the Colorado bill, click [here](#).

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Affiliated Legal Resource Centers:

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- **Colorado**
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- **Maryland**
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- **Minnesota**
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Connecticut Supreme Court Upholds State Smoke-free Law

On February 5, 2007, the Connecticut Supreme Court upheld the state's 2003 law that prohibits smoking in bars and restaurants, ending a two and a half year-long lawsuit. The plaintiffs, a group of bars and restaurants, claimed that exempting private clubs and the state's two tribal casinos violated their equal protection rights under the Constitution. Connecticut restaurants have been smoke-free since Oct. 1, 2003, while the law took effect in bars, cafes and taverns on April 1, 2004.

Justice Christine S. Vertefeuille, writing for the majority, said that the legislature has the right to make exemptions under the law, adding that the casino exemption is justified because of limits on the state's power to regulate smoking due to tribal sovereignty and other issues. She said that exempting private clubs from the smoke-free law, while prohibiting smoking in new private clubs, is justified because current members may have joined the clubs and paid their membership fees expecting that they would be able to smoke in the clubs. To read the decision, click [here](#).

Laws Prohibit Smoking in Cars with Children

The City Council of Bangor, Maine just passed an ordinance that prohibits any driver or passenger from lighting up a cigarette or other smoking material in a motor vehicle if anyone under the age of 18 is in the vehicle. The law applies to any vehicle on any public road within the city limits. Violators of the new law can be fined \$50. Similar measures have been adopted on a statewide basis in [Arkansas](#) and [Louisiana](#). Meanwhile, Utah legislators are considering a [bill](#) that will prevent adults from smoking in cars when children under the age of 5 are present.

Latest on the Schwab "Light" Cigarette Case

In January, the Tobacco Control Legal Consortium joined the Tobacco Control Resource Center in filing an *amicus* ("friend of the court") brief in the U.S. Court of Appeals for the Second Circuit, supporting class certification in the massive class action lawsuit, *Schwab v. Philip Morris, USA*. The \$200 billion *Schwab* lawsuit claims that Philip Morris USA and other tobacco companies deceived consumers by marketing "light" cigarettes as safer products than regular cigarettes. Our *amicus* brief argues that class action litigation is an essential tool in "correcting deeply ingrained misconceptions created by the tobacco industry, compensating the parts of society wronged by the tobacco industry, and deterring the tobacco industry from engaging in conduct that continues to threaten millions of Americans." For a copy of the brief, click [here](#).

Lorillard "Cigarette Giveaway" Case to Proceed

A Massachusetts Superior Court judge denied Lorillard Tobacco Company's motion to dismiss a lawsuit filed against the cigarette maker by the family of Marie Evans, a woman who died of lung cancer five years ago at the age of 54, after smoking for 40 years. The suit, which will now go forward to trial, accuses the tobacco company of inducing minority children to smoke by illegally giving them free sample packs of Newport cigarettes. For a copy of the ruling, click [here](#).

Other Significant Tobacco Litigation

The Tobacco Control Legal Consortium's attorneys track legal challenges to smoke-free laws and other tobacco-related litigation around the United States and elsewhere. In addition to the cases discussed above, two key rulings were issued recently in Guam and Ireland.

- **U.S. Territory of Guam.** The Supreme Court of Guam upheld the Natasha Protection Act, a territory-wide law prohibiting smoking in all dining establishments. The Act is named after teenage cancer patient Natasha Perez who died last year. The Supreme Court dismissed the appeal of former attorney general Douglas Moylan, who argued that the law was unconstitutional. To read the law, click [here](#).
- **Ireland.** On January 31, the Irish High Court dismissed a legal challenge to the Public Health (Tobacco) Acts of 2002 and 2004 when the plaintiffs, including sixteen tobacco companies, suddenly dropped their case the week before trial. Plaintiffs had challenged new laws to restrict the advertisement and promotion of cigarettes and other tobacco products, claiming the legislation was unconstitutional. The legislation can now be implemented.

Resource Roundup

- **“Economic Impact of a Smoke-Free Law in a Tobacco-Growing Community.”** An exciting new economic study by researchers at the University of Kentucky, published in this month’s *Tobacco Control*, reports that Lexington, Kentucky’s smoke-free law, enacted in 2004, has had no negative economic impact on Lexington’s economy. The study is based on data on employment and restaurant and bar openings and closings. To access an abstract of the article, click [here](#).
- **Annual ALA State of Tobacco Control Report.** The American Lung Association just released its annual State of Tobacco Control Report, documenting progress in tobacco control legislation at the state and federal level. To read the report, click [here](#).

Upcoming Events

- **The 2007 National Conference on Tobacco or Health**, which will be held October 24-26 in Minneapolis, Minnesota, is seeking abstracts for presentations. The deadline for abstract submissions is March 5, 2007. For more information, click [here](#).
- **“States of Change: A Regional Tobacco Control Conference”** will be held March 5-6, 2007 in Columbus, Ohio. This conference will examine how regional and industry leaders, policymakers, and tobacco control and prevention advocates have approached policy and systems changes that result in tobacco-free environments. For registration information, click [here](#).

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