

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.

Minneapolis Hosts National Conference on Tobacco or Health

On October 24–26, 2007, less than a month after Minnesota's new statewide smoke-free law took effect, the city of Minneapolis hosted the National Conference on Tobacco or Health. More than 3,000 public health professionals and advocates attended the conference, a biennial gathering of the tobacco control community to help improve and sustain the effectiveness of tobacco control programs and activities in the United States.

Approximately 1,200 speakers presented on seven areas of tobacco control:

1. Comprehensive Tobacco Control Programs or Combined Strategies
2. Evaluation and Surveillance
3. Cessation, Nicotine and the Science of Addiction
4. Increasing Diversity/Eliminating Disparities
5. Public Policy and Advocacy Strategies
6. Media and Communications Strategies
7. Tobacco-Use Prevention Among Youth

More than a dozen national organizations held ancillary events and meetings on a variety of tobacco control-related topics the same week as the conference. Among these events were training workshops conducted by the National Cancer Institute and the Centers of Disease Control and Prevention; an anti-tobacco summit of national LGBTI advocates and allies; sessions on “Human Rights, the Burden of Disease and Tobacco Control,” hosted by the University of Minnesota and the Tobacco Law Center; presentations on “Tobacco Education, Prevention and Policy in Indian Country” by the National Tribal Tobacco Prevention Network; and a symposium, hosted by the Tobacco Control Legal Consortium, that explored the legal and ethical limits of smoking regulation.

On October 25, hundreds of conference attendees, representing all 50 states, held a rally



Rally participants at the 2007 National Conference on Tobacco or Health in Minneapolis. (Photo: Andy Berndt, Catalyst)

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[Public Health Law & Policy Technical Assistance Legal Center](#)

Colorado

[Tobacco Advocacy Resource Partnership](#)

Maryland

[Legal Resource Center for Tobacco Regulation, Litigation & Advocacy](#)

Massachusetts

[Public Health Advocacy Institute, Inc.](#)

Michigan

[Smoke-Free Environments Law Project](#)

Minnesota

[Tobacco Law Center](#)

New Jersey

[Tobacco Control Policy and Legal Resource Center/New Jersey GASP](#)

Ohio

[Tobacco Public Policy Center](#)

outside the Minneapolis Convention Center to raise awareness about the benefits of smoke-free policies and celebrate the progress of smoke-free laws across the U.S. The rally was sponsored by Americans for Nonsmokers' Rights, the Campaign for Tobacco-Free Kids, the American Legacy Foundation, youth advocacy groups from across the country, and other partners.

The 2009 National Conference on Tobacco or Health will be held June 10–12, 2009 in Phoenix, Arizona.

California Prohibits Smoking with Kids in Car

In October, California joined [Arkansas](#) and [Louisiana](#) in making it an offense to smoke in a car with children under the age of 18. As of January 1, 2008, California motorists can be issued tickets of \$100 for violating the law, although vehicles will need to have been stopped for another cause, such as speeding, before the driver can be cited for smoking. Maine lawmakers will consider a similar law in January. To read California's new law, click [here](#).

Recent Significant Tobacco Cases

U.S. Supreme Court Denies Tobacco Companies' Appeal in *Engle*

On October 1, 2007, the U.S. Supreme Court denied *certiorari* in [Engle v. R.J. Reynolds, et. al](#)—the class action lawsuit by approximately 700,000 Florida smokers that resulted in a landmark \$145 billion punitive damages award against the major cigarette manufacturers. In 2006, the Florida Supreme Court overturned the lower court's verdict, threw out the record award and dismantled the class, holding the plaintiffs were too diverse. For an overview of that decision, see our [July 2006 Legal Update](#). By declining to review the case, the justices left intact the Florida Supreme Court's ruling that key findings against the tobacco companies can be used in individual suits by former members of the class—a decision that opens the way for hundreds of individual lawsuits to be brought on behalf of Florida smokers.

U.S. Supreme Court to Hear Maine Internet Law Case

On November 28, the U.S. Supreme Court is scheduled to hear oral arguments in [Rowe v. New Hampshire Motor Transport Association, 06-457](#), a case involving federal preemption and the right of a state to regulate the sale of tobacco via the Internet. For background information about this case, please see our [July 2007](#) and [August 2007 Legal Updates](#). For a copy of the Legal Consortium's *amicus* brief, written by our Maryland affiliate, click [here](#).

Oregon Supreme Court Hears Tobacco Class Action Case

In September, the Oregon Supreme Court heard oral arguments in a class action lawsuit that seeks to require five major tobacco companies to pay for medical monitoring and tests for smokers to detect tobacco-related illnesses. [Lowe v. Philip Morris](#). Patricia Lowe of Beaverton, Oregon, a former smoker in her mid-60s who smoked a pack of cigarettes a day for more than five years, filed the original lawsuit in 2001. The lawsuit, which the lower courts rejected, is based on negligent conduct by the defendants that exposed the plaintiff to hazardous substances and caused her a significantly increased risk of early death. The suit does not seek monetary damages from the tobacco companies, but injunctive relief consisting of medical monitoring and smoking-cessation therapy. What sets it apart from similar cases is that the plaintiff suffers no present physical injury, but is basing her claim on her increased risk of future physical harm. The lawsuit could cover as many as 400,000 Oregonians.

Latest Statewide Smoke-free Laws

Since September 2007, statewide smoke-free laws took effect in two more states.

- On September 17, New Hampshire's statewide law took effect, prohibiting smoking in all restaurants and bars. The law allows smoking in designated areas in some public places and workplaces.
- On October 1, Minnesota's Freedom to Breathe Act of 2007 took effect, prohibiting smoking in almost all public places and workplaces, including bars and restaurants.

For additional information on these laws, click [here](#).

Meanwhile, several states have recently passed statewide smoke-free laws that have not yet gone into effect. Illinois and Maryland have enacted smoke-free laws that will take effect in 2008, while smoke-free laws in Utah, Montana, and Oregon will take effect in 2009.

If you have a question about a tobacco law-related issue that you'd like us to address in this column, or a topic you'd like us to cover in future publications, please send us an e-mail at tobaccolaw@wmitchell.edu. Thank you!

Q “We keep hearing talk in our community about putting a citywide smoke-free ordinance on the ballot. What’s the difference between an initiative and a referendum?”

A An initiative is the process by which voters in a community can petition to place a question on the ballot seeking adoption of a particular ordinance. If voters approve the initiative, the ordinance must be adopted regardless of the desire of the governing body. A referendum, on the other hand, is an election that typically seeks to amend or repeal an existing or proposed law. If, for example, a referendum is passed, the ordinance previously adopted by the governing body may be amended or repealed. Otherwise, the ordinance will remain on the books, unaltered.

Not all local or state governments have the legal authority to use initiatives and referenda, and among those that do, the laws vary widely, both procedurally and substantively. For example, rules differ on the number of petitioners required to place an issue on the ballot (an absolute number, a percentage of registered voters, a percentage of votes cast at the previous mayoral election, etc.); the format of the petition; the ballot language; the approval process; and the timelines. Also, some communities restrict the topics that can be addressed by initiatives or referenda, and do not allow public health policies, such as a smoke-free ordinance, to be placed on the ballot.

Most smoke-free laws are enacted through the traditional legislative process by state or local governments, such as city councils, boards of health, or county boards. Initiatives and referenda are often introduced by opponents of smoke-free legislation to delay, weaken, compromise or defeat smoke-free laws or proposals.

— *Kerry Cork, J.D.*



Kerry Cork, J.D., Tobacco Control Legal Consortium, answers this month's question.

Belmont Passes Historic Smoke-free Ordinance

On October 9, 2007, the Belmont City Council approved the California city's widely publicized smoke-free ordinance by a vote of 3 to 2. The law prohibits smoking in all workplaces, public places, and multi-unit residence common areas. What makes the ordinance unprecedented is that it also prohibits smoking in all individual apartments, condominiums and townhouses that share common floors or ceilings with at least one other unit, and that it includes all private patios, decks and balconies. The law does not distinguish between leased and owned units. Property owners are required to insert no-smoking terms in their residential lease agreements—provisions that will go into effect 14 months after the adoption of the ordinance.

Smoking will still be allowed on all streets and sidewalks, unless they are used as outdoor workplaces or for city-sponsored events; in detached single-family homes; in city-designated or multi-unit residence owner-designated outdoor smoking areas; in cars; and in apartments, condominiums, and townhouses that do not share any common floors or ceilings with other units. Smoking will also be permitted in adult-only tobacco shops; in up to 10 percent of hotel and motel guest rooms; and by performers during theatrical productions if smoking is an integral part of the plot. To read the Belmont, California ordinance, click [here](#).

The Global Perspective



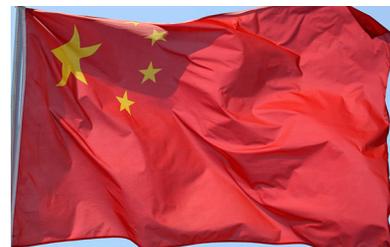
China Works Toward Smoke-free Olympics Goal

When China ratified the Framework Convention on Tobacco Control and the Chinese government later vowed to host a smoke-free 2008 Summer Olympics Games, hopes were high that smoke-free efforts would begin to take hold in this country of 350 million smokers. According to the report “Smoking Control in China 2007,” recently released by China’s Ministry of

Health, approximately 540 million non-smoking Chinese are exposed to secondhand smoke each year. China is home to a third of the world’s smoking population, and more than half of its male population smokes.

Recently, the Ministry of Health published a proposed draft regulation prohibiting smoking in all public transportation, such as taxis, buses, trains, and planes. Just last month Beijing implemented a smoke-free law in taxi cabs, under which drivers of the city’s 66,000 taxis will be fined 100 yuan to 200 yuan (U.S. \$13 to \$26) if they are caught smoking. Cab passengers who are caught smoking will be “exposed” through the media.

Meanwhile, other efforts are underway to implement smoke-free laws in China. For example, tobacco control advocates are campaigning to prohibit smoking in Beijing’s hospitals, schools, restaurants, and government offices. Beijing officials have also drafted proposed regulations prohibiting smoking at Olympic venues, athletes’ accommodation areas, and inside vehicles designated to serve the event. Cigarettes cannot be sold at Olympic venues and training and accommodation areas.



Israeli Restaurant Loses Class Action Suit for Violating Smoke-free Law

The first-ever class action lawsuit in Israel against a restaurant for failing to enforce a smoke-free law has resulted in a settlement of NIS 2.5 million (approximately U.S. \$630,000), plus expenses. A district court judge ruled that Foccachetta restaurant in Jerusalem must pay NIS 600 (U.S. \$150.00) to any of the restaurant’s customers who declare in front of a lawyer that they patronized Foccachetta in May or June of 2007, and were involuntarily exposed to tobacco smoke. The current law requires food establishments not to serve patrons who smoke in violation of the law. A new law going into effect on November 7 requires proprietors to file a complaint with a municipal authority against any smokers in their establishments who refuse to extinguish cigarettes or tobacco products. The new law also significantly raises the penalties against both smokers and proprietors who violate its provisions.



Smokin’ Links

Global Tobacco Control Training. Check out www.GlobalTobaccoControl.org, a website launched by the Bloomberg Global Initiative to Reduce Tobacco Use. This site offers free instructional training for policy makers, researchers, educators and the general public on developing and implementing effective tobacco control programs, advocating for substantial smoke-free regulations and crafting media campaigns. The site’s multimedia educational modules are developed by faculty at the Johns Hopkins Bloomberg School of Public Health,

Sample modules on the GlobalTobaccoControl.org website include “Best Practices in Tobacco Control Policy,” “Framework Convention on Tobacco Control,” and “Fundamentals of Tobacco Control.”

Resource Roundup

- **U.S. Department of Justice Collection.** The Legacy Tobacco Documents Library now has a “U.S. Department of Justice” collection, a special collection of approximately 8,900 documents that defendants in *United States v. Philip*

Morris, et al. initially withheld from production to the United States on grounds of alleged privilege or other protection, but which were later ruled not to be protected from release. This collection includes both voluntarily-produced documents and documents produced subject to court order. For more information on this collection, click [here](#).

- **CDC's Best Practices for Comprehensive Tobacco Control Programs—2007.** The Centers for Disease Control and Prevention has issued important new recommendations and benchmarks to guide states in establishing effective comprehensive programs to prevent and reduce tobacco use. The evidence-based standards support substantial increases in state funding for tobacco control, even in the few states currently funding programs at the levels previously recommended by CDC. To download a copy of these important standards, click [here](#).
- **ANR's Smoke-free Update.** Check out the Americans for Nonsmokers' Rights Foundation's latest quarterly update to see lists and maps of U.S. municipalities and states with 100% smoke-free laws now in effect. By ANR's calculations, fully 58.6 percent of the U.S. population is now protected by smoke-free laws covering bars, restaurants or workplaces. To access the update, click [here](#).

Upcoming Events

The American Cancer Society's annual Great American Smokeout will be held November 15, 2007. The purpose of this event is to encourage smokers to quit for a day in the hope they will quit for good. For more information, call your local health department, American Cancer Society or smoke-free coalition. The toll-free telephone number for the American Cancer Society is 1-800-ACS-2345. For more information about the event, click [here](#).

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

Note: While we make every effort to ensure the information in this newsletter is accurate and complete, the Tobacco Control Legal Consortium is unable to guarantee this information. Material is provided for informational purposes and is not intended as legal advice. We encourage readers with questions to consult an attorney familiar with the laws of their jurisdictions.

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