

1980

Smoking and No-Smoking Sections -- Initiative Statute

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_props

Recommended Citation

Smoking and No-Smoking Sections -- Initiative Statute California Proposition 10 (1980).
http://repository.uchastings.edu/ca_ballot_props/886

This Proposition is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Propositions by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

Official Title and Summary Prepared by the Attorney General

SMOKING AND NO-SMOKING SECTIONS. INITIATIVE STATUTE. Provides for designation of smoking and no-smoking sections in every enclosed public place, enclosed place of employment, enclosed educational facility, enclosed health facility and enclosed clinic. Does not limit smoking in outdoor areas or private residences. Establishes criteria for defining smoking and no-smoking sections. Requires signs be posted designating no-smoking areas. Violation is infraction punishable by \$15 fine per violation. Provides no person may be taken into custody or subject to search for violation. Allows enactment of further legislation and regulations relating to smoking. Requires implementation standards be adopted by Department of Health Services. Fiscal impact on state and local governments: Issuance of regulations by state, posting of nonsmoking signs by state and local governments, and enforcement of measure by state and local governments would result in minor costs to state and local governments. Indeterminable reduction in state and local tax revenues could result from reduced cigarette consumption. Indeterminable savings could result from decline in smoking-related illness among employees and participants in state health-related programs and from decline in fire losses.

Analysis by the Legislative Analyst

Background:

Existing state law restricts smoking of tobacco in *publicly* owned buildings and retail food stores. As a result:

1. Signs must be posted that smoking is prohibited within an area of a publicly owned building (other than in lobbies) when the area is used to exhibit motion pictures, present stage dramas, music recitals, and certain other types of performances.

2. When a public meeting is held in a government building, at least 50 percent of the meeting space must be designated and posted as a no-smoking area.

3. At least 20 percent of the dining area within publicly owned health facilities and clinics and within publicly owned buildings must be designated and posted as a no-smoking area.

4. Smoking is prohibited in retail food stores during business hours, except for areas set aside for smoking by employees only.

Under a state law which will take effect January 1, 1981, smoking will also be prohibited and signs required in certain areas of *privately* owned health facilities and clinics.

Some California cities and counties have local ordinances which prohibit smoking in other private buildings, such as retail stores, in portions of movie theaters, and in portions of restaurants.

Proposal:

This measure would extend the requirement for designation and posting of smoking and no-smoking sections or areas to additional enclosed buildings and facilities, both publicly and privately owned. The types of enclosed buildings and facilities affected by the measure include public places, such as restaurants and retail stores, places of employment, educational facilities, health facilities and clinics. The measure would not limit smoking in outdoor areas or in private residences.

The measure would require the State Department of Health Services to adopt, by February 2, 1981, specific regulations covering the designation of smoking and

no-smoking sections or areas. These regulations will become effective when the remainder of the measure becomes effective on March 4, 1981. The regulations would, among other things, specify the types of facilities and areas which *may* be designated in their entirety as smoking areas, or which *must* be designated in their entirety as no-smoking areas. These regulations would have to be consistent with the following general criteria:

1. Smoking and no-smoking sections need not be separated by walls or partitions.

2. Areas in which it would be inappropriate to limit smoking, such as motel rooms, or rooms normally occupied exclusively by persons who smoke, may be designated in their entirety as smoking areas.

3. Areas in which it would be impractical to designate smoking and no-smoking sections, such as public areas of retail stores, elevators, and buses, shall be designated in their entirety as no-smoking areas.

4. Employees in enclosed places who request work stations in no-smoking areas shall be accommodated.

This measure would not prevent the owner or manager of any facility or area to designate the facility or area in its entirety as a no-smoking area. This measure specifies that the State Department of Health Services shall use existing resources to fulfill its requirements under the measure, and shall not request or obtain additional funding for this purpose.

The measure would also require the owner or lessee of buildings or facilities to post conspicuous signs identifying smoking or no-smoking areas. At *private* facilities, *no-smoking* signs would be required in no-smoking areas. Smoking would be permitted in all other areas. At *government* facilities, *smoking-permitted* signs would be required in designated *smoking areas*; and additional signs, stating that smoking is prohibited except in designated smoking areas, would be required indoors at every facility entrance.

The measure limits state and local government expenditures for signs to 50 cents per sign (plus a reason-

able cost adjustment for inflation since November 15, 1979) and requires governmental entities to install signs using existing funds.

A fine of \$15 would be imposed upon anyone violating the provisions of this measure. The measure provides that no person may be taken into custody or be subject to search for violating its provisions. Each day in which the sign-posting requirements are violated would be considered a separate and distinct offense. The measure also prohibits discrimination in employment against a person who exercises the rights afforded by the measure.

Local governing bodies would be permitted to make smoking unlawful in areas not regulated by this measure in any manner that is not inconsistent with the provisions of state law. In addition, the Legislature would be authorized, with certain exceptions, to amend the measure as long as the amendment is consistent with the intent declared in the measure.

Fiscal Effect:

Direct Fiscal Effect. The Department of Health Services would incur minor increased costs in issuing regulations implementing the measure. The department's workload would also be increased because of its responsibility to enforce sign-posting requirements. However, because the measure specifies that the department perform all responsibilities with existing funds, the department would have to divert funds from

other programs to cover the costs of issuing regulations and enforcing the sign-posting requirement.

All state and local agencies would incur minor costs in purchasing the required signs. The agencies would use existing staff to install the signs.

Local governments would also experience minor costs in enforcing the measure. These costs could be absorbed within ongoing enforcement activities and would not have a significant effect on existing law enforcement and judicial budgets. Local governments would also receive increased revenue collected through fines, but the amount would be minor.

Indirect Fiscal Effect. The measure could have significant indirect effects on state and local expenditures and revenues. For example:

1. If the measure leads to a significant reduction in smoking, there could be a substantial reduction in government health-related costs *over an extended period of time*. There also could be reductions in other smoking-related costs, such as for property loss caused by fires.

2. If the measure results in a significant reduction in smoking, there would be a substantial reduction in state and local revenue from lower sales and cigarette tax collections.

There is no adequate basis on which to predict the magnitude of these indirect effects, and therefore we are unable to estimate the net ongoing fiscal impact of this measure.

Text of Proposed Law

This initiative measure proposes to add sections to the Health and Safety Code; therefore, new provisions to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1: Chapter 10.7 is added to the Health and Safety Code to read: "Chapter 10.7 Smoking and No Smoking Sections

§ 25930 Name

This Chapter shall be known and may be cited as the "Smoking and No Smoking Sections Act of 1980."

§ 25931 Findings

The People of the State of California find that:

(a) *Breathing second-hand smoke for extended periods may cause disease in healthy nonsmokers;*

(b) *Breathing second-hand smoke can aggravate the condition of more than 2½ million Californians with heart or lung disease;*

(c) *Second-hand smoke, like all tobacco smoke, contains more than 4,600 chemicals, many of which are dangerous to human health;*

(d) *Air pollution above Federal standards can occur in enclosed places because of second-hand smoke, even with normal ventilation;*

(e) *Second-hand smoke can cause burning of the eyes and nasal passages, headaches, nausea and discomfort in nonsmokers, and can aggravate the condition of persons with allergies to other substances.*

COMMENT: *The findings stated in Section 25931 are identical to conclusions reached in a November 1979 compilation of the world scientific research entitled*

"Tobacco Smoke and the Nonsmoker" by Luther Terry MD (US Surgeon General 1961-65); Jesse Steinfeld MD (US Surgeon General 1969-73); Raymond Weisberg MD (President, American Cancer Society, Calif. Div.); Peter Pool MD (President-Elect, American Heart Assn., Calif. Affiliate); Robert Fallat MD and Charles Mittman MD (Board Members, American Lung Assn. of Calif.); and Stanton Glantz PhD (Asst. Professor of Medicine, UCSF).

§ 25932 Purpose and Intent

(a) *The purpose of this Chapter is to protect the health, comfort and environment of nonsmokers in certain enclosed places.*

(b) *The intent of this Chapter is to strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air should have priority.*

§ 25933 Smoking and No Smoking Sections

(a) *Subject to the criteria set forth in Section 25934, smoking and no smoking sections or areas shall be established and designated in every enclosed public place, enclosed place of employment, enclosed educational facility, enclosed health facility and enclosed clinic. No person shall smoke in a no smoking section or area.*

(b) *This Chapter shall not limit smoking in outdoor areas, in private residences, or in any place not established pursuant to this Chapter as a no smoking section or area, nor prohibit the sale of tobacco products.*

§ 25934 Criteria

Smoking and no smoking sections and areas established and

Continued on page 54

Argument in Favor of Proposition 10

The medical evidence is in!
The health of nonsmokers is harmed by other people smoking in their presence.

WHAT CAN YOU DO ABOUT IT?

Your "yes" votes on Proposition 10 will make sure that smokers have areas in buildings where smoking is allowed where they can smoke without interfering with the health or comfort of nonsmokers.

WHO WILL BENEFIT FROM PROPOSITION 10?

Nonsmokers will benefit. They will not have to involuntarily breathe smoke from other people's tobacco.

People who are trying to quit smoking will benefit. They will be able to separate themselves from the temptations of smokers and smoke in the air.

Young children will benefit by not being exposed to the social lure of smoking as often and by not having to breathe other people's smoke.

Smokers will benefit by being able to enjoy their habit without enduring the scowls of nonsmokers.

HOW MUCH WILL ALL THIS COST?

According to independent studies by University of California professors, government would save \$49 million a year and private businesses would save \$129 million a year in medical costs of smoking-induced illness to employees, property loss from smoking-caused fires, and extra sick leave used by smoking employees.

HOW WILL PROPOSITION 10 WORK?

In public places smoking would be permitted in designated areas, and nonsmokers could simply stay away from those areas.

In offices and on the job, employees could simply request that there be a reasonable distance between themselves and other employees who smoke.

Nonsmoking workers who don't care either way could be located between the two groups as a buffer zone.

Restaurants and other similar places would have to provide nonsmoking areas for those who want them.

WILL THIS MEAN COSTLY DIVIDERS AND SIGNS?

Not at all. Proposition 10 does not require any walls or room dividers—just a reasonable distance between smokers and nonsmokers.

Proposition 10 also says government agencies need post signs only at building entrances, can spend no more than 50 cents per sign, and must pay for signs out of current revenues with no new taxes.

WHY IS PROPOSITION 10 NEEDED?

Many nonsmokers are annoyed by other people's smoke. Some nonsmokers with heart or lung ailments have their conditions worsened by other people's smoke. Healthy nonsmokers can develop lung ailments from breathing other people's smoke.

The decision to smoke is a smoker's own business and a matter of personal choice. But smokers don't want to harm or annoy others. Proposition 10 will provide areas where smokers can exercise their right to smoke, while allowing nonsmokers the right to remain separated from those smoking areas.

WHO SPONSORS PROPOSITION 10?

The Cancer Society, the Lung Association, the Heart Association, the California Medical Association, and many other individuals and organizations have reviewed the health hazards to nonsmokers from breathing other people's smoke and have endorsed a "yes" vote on Proposition 10.

RAYMOND L. WEISBERG, M.D.

President, American Cancer Society, California Division

DIANE E. WATSON

State Senator, 30th District

Vice Chair, Senate Health Committee

PETER E. POOL, M.D.

President, American Heart Association of California

Rebuttal to Argument in Favor of Proposition 10

Read the fine print, then vote "No" on Proposition 10.

This proposal is loaded with hidden taxpayer costs and unfair and misleading requirements.

The State Legislative Analyst estimates beginning taxpayer costs for printing signs and issuing regulations will be \$180,000.

It is difficult to estimate the actual costs to install signs or to enforce Proposition 10. Using an estimate of 260,000 signs, if we assume an installation cost of from \$3 to \$10 each, \$750,000 to \$2.5 million could be diverted from other governmental programs. And, to the extent that the cost of issuing and processing citations exceeds the \$15 fine, the taxpayers must carry the burden.

Our police and courts should use our tax money to catch and prosecute real criminals, instead.

Proposition 10 is a vague law which allows political appointees and State Health Department bureaucrats to "fill in" specific regulations later . . . with no reviews by the voters.

Proposition 10 is a misleading and costly overkill approach to a minor social annoyance.

Please vote "No" on Proposition 10.

HOUSTON I. FLOURNOY

Former State Controller

PETER J. PITCHESS

Sheriff, County of Los Angeles

DAVID BERGLAND

President, Californians Against Regulatory Excess

Argument Against Proposition 10

Your "No" vote on Proposition 10 can stop this costly and misleading proposal from becoming law.

Proposition 10 is a cleverly reworded version of the proposal Californians rejected in 1978.

There are several major problems with Proposition 10:

- *True and complete taxpayer costs are hidden from the public.*
- *Police and court personnel are required to enforce the plan.*
- *Political appointees and bureaucrats in the Department of Health will have the authority to create the regulations, with no review by voters.*
- *Important health services may have to be reduced to provide enforcement of this complex, statewide law.*

THE FULL COSTS ARE HIDDEN

The full costs of Proposition 10 will be hidden in the Health Department budget and local police and court budgets because Proposition 10 provides no new funds for implementation.

The Legislative Analyst found that if Health Department enforcement requires funding from existing programs "the department would have to divert funds from other programs . . ."

Many small businesses may be hurt the most, being forced to pay for expensive reorganization that many cannot afford in our troubled economy.

Businesses large or small pass the costs of regulations on to the consumer by raising prices. *Consumers will be forced to pay the costs of reorganizing every enclosed public place in California!*

POLICE AND COURTS WILL SUFFER

Police officers will be required to issue tickets for illegal smoking.

Police should spend their time patrolling our streets for burglars . . . not prowling office buildings searching for illegal smokers.

WASTE OF TAXPAYER DOLLARS

Proposition 10 is a blank check for bad government. Political appointees will have authority to draft the standards and regulations after Proposition 10 is approved.

This proposition takes away our right to control the costs and amount of government regulation we will tolerate. You will not have a chance to overrule these appointed regulators.

Proposition 10 invites unfair discrimination against poor people and small businesses. Inspectors and police officers are not likely to intrude into wealthy private clubs or corporate boardrooms.

IT'S UP TO YOU

Before you vote, ask these questions:

- *"Do I want police and judges spending time and my tax dollars enforcing no-smoking laws?"*
- *"Do I want political appointees and bureaucrats to have the authority to make regulations, with no review by the taxpayers?"*
- *"Should enforcement of a no-smoking law have equal priority with vital health services, like control of hazardous chemical waste, inspections of convalescent hospitals or providing services for crippled children?"*

Our society is already too complex, expensive and difficult. We should not make matters worse by creating more ways to divide us.

Proposition 10 is an expensive, misleading and unfair law. We urge you to vote "No" on Proposition 10.

HOUSTON I. FLOURNOY
Former State Controller

PETER J. PITCHESS
Sheriff, County of Los Angeles

DAVID BERGLAND
President, Californians Against Regulatory Excess

Rebuttal to Argument Against Proposition 10

"You have engaged in a reprehensible form of dishonesty and have thereby perpetrated a fraud upon the voters of California. You have also misused my name in what I consider to be a most unfair manner."

That's what Dr. Jonathan E. Rhoads, past President of the American Cancer Society, wrote two years ago to protest the way the tobacco industry misquoted him in their ballot argument against a similar California proposition.

TWO OF THE SIGNERS OF THAT DISCREDITED BALLOT STATEMENT WERE MR. FLOURNOY AND MR. PITCHESS, WHO NOW HAVE SIGNED THEIR NAMES TO THE ARGUMENT AGAINST PROPOSITION 10.

"You quote my words out of context to make it appear that I believe secondhand smoke is harmless to nonsmokers," Dr. Rhoads said of Mr. Pitchess' and Mr. Flournoy's statements in 1978. Dr. Rhoads went on to point to medical evidence that secondhand smoke can cause respiratory disease and worsen heart and lung disorders in nonsmokers.

You should consider Mr. Pitchess' and Mr. Flournoy's cur-

rent statements with a full knowledge of the proven distortions and deceptions they participated in before.

The medical evidence of how nonsmokers are harmed by other people's smoke is conclusive.

No amount of tobacco industry spending and deception can change the facts.

Proposition 10 is a reasonable measure that protects the rights and comfort of smokers as well as nonsmokers.

Vote "YES" on PROPOSITION 10 for a free choice for everyone.

Thank you.

RAYMOND L. WEISBERG, M.D.
President, American Cancer Society, California Division

DIANE E. WATSON
State Senator, 30th District
Vice Chair, Senate Health Committee

PETER E. POOL, M.D.
President, American Heart Association of California

Text of Proposed Law—Proposition 10—Continued from page 41
designated pursuant to this Chapter shall be consistent with the purpose and intent of this Chapter and shall conform with the following criteria:

(a) Smoking and no smoking sections need not be separated by walls, partitions or other barriers. No construction or erection of walls, partitions or other barriers shall be required to comply with this Chapter.

(b) Facilities and areas in which it would be inappropriate to limit smoking (including, but not limited to, any enclosed room normally occupied exclusively by persons who smoke; hotel and motel rooms designed for rental to overnight guests; and areas used for private social functions while being so used) may be designated in their entirety as smoking areas.

(c) Facilities and areas in which it would be impractical to create smoking and no smoking sections (including, but not limited to, elevators, buses and, except for tobacco stores, those portions of retail stores open to the public) shall be designated in their entirety as no smoking areas.

(d) Any employee working in an enclosed place of employment who desires his or her work station to be in a no smoking section or area shall be so accommodated.

(e) Smoking shall not be limited in private hospital rooms. Smoking may be permitted in semi-private hospital rooms and wards only if all patients therein have requested to be placed in a room in which smoking is permitted.

(f) Notwithstanding any other provision of this Chapter, any facility or area may be designated in its entirety as a no smoking area by the owner or manager thereof.

§ 25935 Signs

(a) Except in facilities owned and used or leased and used by governmental entities subject to this Chapter, clearly legible signs shall be conspicuously posted in every no smoking section and no smoking area established pursuant to this Chapter stating that smoking therein is unlawful. Such signs shall be sufficiently large and numerous as to give reasonable notice to all persons in a no smoking section or no smoking area that smoking is unlawful there. Such posting shall be the obligation of the lessee of leased premises and the obligation of the owner of premises which are not leased.

(b) In any facility owned and used or leased and used by a governmental entity subject to this Chapter, clearly legible signs shall be conspicuously posted indoors at every entrance to the facility. Such signs shall state that smoking is unlawful throughout such facility except in designated smoking areas and in single-occupant offices. No such governmental entity shall pay more than fifty cents (plus a reasonable adjustment for inflation since November 15, 1979) for any sign referred to in this Subsection. Such governmental entities shall use existing resources to install such signs and shall not request or obtain increased budgetary allocations to install such signs.

(c) Notwithstanding any other provision of this Section, the Standards adopted pursuant to Section 25939 shall set forth areas, facilities and entrances where the posting of no smoking signs is unnecessary to fulfill the purpose of this Chapter including, but not limited to, entrances to elementary school classrooms. No signs need be posted in such areas and facilities or at such entrances.

(d) Notwithstanding any other provision of this Section, in any no smoking section or area in which signs indicating that smoking is not permitted are already conspicuously posted on the date this measure is approved by the electorate, signs otherwise required by this Section need not be posted until such pre-existing signs are worn out or removed.

§ 25936 Violations

(a) Violation of any provision of this Chapter is an infraction. Any person who violates any provision of this Chapter shall be subject to a fine of \$15 per violation.

(b) Enforcement of this Chapter shall be by citation. No person may be taken into custody or be subject to search by peace officers solely because of the violation or suspected violation of this Chapter.

(c) Each day on which a violation of the sign-posting requirements of this Chapter occurs shall be a distinct and separate violation.

(d) Enforcement of the sign-posting requirements of this Chapter shall be by the State Department of Health Services, local health departments and local law enforcement departments. Enforcement of all other provisions of this Chapter shall be by local law enforcement departments.

§ 25937 No Discrimination

No person shall discharge, refuse to hire, or in any manner discriminate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this Chapter.

§ 25938 No Preemption

It is not intended that this Chapter preempt the field of smoking legislation. The State Legislature, local governing bodies and state and local administrative agencies may enact further legislation and regulations to protect the health, comfort and environment of nonsmokers. This Chapter does not permit smoking where otherwise restricted by law.

§ 25939 Standards

(a) Within 90 days after approval of this measure by the electorate, the State Department of Health Services shall adopt specific Standards in accordance with Chapter 4.5 (commencing with Section 11371, Part 1, Division 3, Title 2 of the Government Code) to implement the provisions of this Chapter. The Standards shall, among other things, specify those facilities and areas which may be designated in their entirety as smoking areas pursuant to Section 25934(b) and which shall be designated in their entirety as no smoking areas pursuant to Section 25934(c). The Standards may be amended in accordance with Chapter 4.5 of the Government Code.

(b) The State Department of Health Services shall have exclusive administrative jurisdiction under this Chapter with respect to the issuance of Standards for the establishment and designation of smoking and no smoking sections and areas in places of employment.

(c) The State Department of Health Services shall use existing resources and shall not request or obtain increased budgetary allocations to carry out its duties under this Chapter. No special bureaucracy shall be created within the State Department of Health Services or within any other governmental agency for the administration of this Chapter or the Standards.

§ 25939.1 Definitions

(a) "Place of Employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, meeting rooms, and employee cafeterias. A private residence is not a "place of employment."

(b) "Public Place" means any area to which the public is invited or in which the public is permitted, including, but not limited to, restaurants, theaters, waiting rooms, reception areas and instrumentalities of public transportation. A private residence is not a "public place."

(c) "Second-hand Smoke" means both smoke from the burning ends of cigarettes, cigars and pipes and smoke exhaled by persons who smoke.

(d) "Smoking" or to "Smoke" means and includes the carrying or holding of a lighted cigarette, cigar, pipe or any other lighted smoking equipment used for the practice commonly known as smoking, or the intentional inhalation or exhalation

of smoke from any such lighted smoking equipment.

(e) "State Department of Health Services" means such Department or any successor thereof.

(f) Any facility or area which qualifies as both a "Place of Employment" and as a "Public Place" shall be treated for purposes of this Chapter solely as a "Public Place."

(g) The Standards adopted pursuant to Section 25939 shall contain such other definitions as the State Department of Health Services shall deem appropriate.

§ 25939.2 Amendment

With the exception of this Section, Section 25937 and the purpose and intent expressed in Sections 25932 and 25938, this Chapter may be amended by the State Legislature; provided, however, that any amendment to this Chapter shall be con-

sistent with such purpose and intent.

§ 25939.3 Severability

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, any such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are severable.

SECTION 2: Effective Date

Chapter 10.7 of the Health and Safety Code shall become effective 120 days after approval by the electorate; provided, however, that the duty of the State Department of Health Services to begin the process of promulgating Standards thereunder shall become effective immediately.

**If you have any questions on voting
call your County Clerk or
Registrar of Voters**