

## Senate Counsel & Research

G-17 STATE CAPITOL  
75 REV. DR. MARTIN LUTHER KING JR. BLVD.  
ST. PAUL, MN 55155-1606  
(651) 296-4791  
FAX (651) 296-7747  
JO ANNE ZOFF SELLNER  
DIRECTOR

# Senate

---

## State of Minnesota

### COUNSEL

PETER S. WATTSON  
JOHN C. FULLER  
BONNIE L. BEREZOVSKY  
DANIEL P. MCGOWAN  
KATHLEEN E. PONTIUS  
PATRICIA A. LIEN  
KATHERINE T. CAVANOR  
CHRISTOPHER B. STANG  
KENNETH P. BACKHUS  
CAROL E. BAKER  
JOAN E. WHITE  
THOMAS S. BOTTERN  
ANN MARIE BUTLER

### LEGISLATIVE ANALYSTS

DAVID GIEL  
GREGORY C. KNOPFF  
MATTHEW GROSSER  
DANIEL L. MUELLER  
JACK PAULSON  
CHRISTOPHER L. TURNER  
ALEXANDER VENNEWITZ  
MAJA WEIDMANN

## S.F. No. 404 - The Freedom to Breathe Act of 2005 (first engrossment)

**Author:** Senator D. Scott Dibble

**Prepared by:** David Giel, Senate Research (651/296-7178)

**Date:** February 16, 2005

---

**S.F. No. 404** strengthens the Minnesota Clean Indoor Air Act. It establishes state policy to protect the public from the hazards of second-hand smoke by eliminating smoking in public places, places of employment, public transportation, and at public meetings. It makes changes in the Clean Indoor Air Act designed to achieve that purpose.

**Section 1 (144.412)** modifies the section establishing the public policy behind the act. It states the purpose of the act to eliminate, rather than limit, smoking in public places in order to protect the public from the known hazards of second-hand smoke, and it adds places of employment and public transportation to the list of places where the policy applies.

**Section 2 (144.413, subdivision 1a)** adds a definition of "place of employment" to the definitions section of the act. Place of employment includes any indoor area where two or more persons engage in employment or perform services without compensation for which persons are usually paid.

**Section 3 (144.413, subdivision 2)** modifies the definition of "public place." The definition is expanded to include bars and outdoor seating at restaurants and bars. References to places of work and public transportation, which are now defined separately in the act, are removed.

**Section 4 (144.413, subdivision 4)** clarifies the definition of "smoking."

**Section 5 (144.413, subdivision 5)** adds a definition “public transportation,” which includes public means of transportation; enclosed bus and transit stops; taxis, vans, limousines, and other for-hire vehicles other than those being operated by the lessee; and ticketing, boarding, and waiting areas in public transportation terminals.

**Section 6 (144.414)** modifies the section governing smoking prohibitions.

**Subdivision 1** expands the prohibition on smoking in public places and public meetings to also govern places of employment and public transportation, and deletes a reference to designated smoking areas. Exceptions in current law for certain private social functions and certain places of work are removed. A requirement that the Commissioner of Health adopt rules regulating smoking in certain work places is removed.

**Subdivision 2** expands the current bans on smoking in day care centers and homes during their hours of operation. The proprietors of a family day care home or group family day care home must disclose orally and in writing if the proprietor permits smoking in the home when it is not being used to provide day care.

**Subdivision 3** modifies the current regulation of smoking in health care facilities and clinics. Currently, smoking is prohibited in any area of a health care-related facility, other than a nursing home, boarding care facility, or licensed residential facility. This section extends the total prohibition to apply to licensed residential facilities for children. It allows smoking only by patients or residents in facilities for adults and only in a separate, enclosed room with a separate ventilation system. Limits on smoking as part of a scientific study are deleted here and restated elsewhere in the act.

**Subdivision 4** prohibits smoking in public transportation vehicles but allows the driver to smoke in the vehicle when it is in personal use, provided a conspicuous sign is posted inside the vehicle to inform passengers.

**Subdivision 5** prohibits smoking in the outdoor seating area of a restaurant or bar, but allows the proprietor to designate for smoking up to 50 percent of the outdoor seating capacity.

**Section 7 (144.416)** modifies the responsibilities of proprietors to enforce the smoking ban. The duty to make reasonable efforts to prevent smoking is extended to the proprietors of public transportation, places of employment, and public meeting places. Arranging seating to provide a smoke-free area or asking smokers to refrain from smoking if others complain of discomfort are removed as appropriate means to enforce the ban. Instead, proprietors must ask smokers in smoking-prohibited areas to refrain from smoking, and ask the person to leave if the person refuses to refrain from smoking. If the offending party refuses to leave, the proprietor must handle the situation consistent with lawful methods for dealing with disorderly conduct or trespassing. Proprietors are prohibited from providing smoking equipment, including ashtrays or matches, in areas where smoking is prohibited. Nothing prohibits proprietors from taking more stringent measures to protect

individuals from second-hand smoke. Restaurants and bars may not serve anyone who is in violation of the act.

**Section 8 (144.4167)** creates several exemptions under which smoking is permitted.

**Subdivision 1** restates language removed elsewhere in the law that allows smoking by participants in certain scientific studies.

**Subdivision 2** allows smoking by adult Indians as part of traditional American Indian spiritual and cultural ceremonies.

**Subdivision 3** states that, except for limits on smoking in day care homes, the act does not prohibit smoking in private residences or automobiles or in hotel or motel rooms.

**Section 9 (144.417)** modifies the section governing enforcement and penalties.

**Subdivision 1** deletes the requirement that rules to implement the Clean Indoor Air Act adopted after January 1, 2002, may not take effect until approved by the Legislature.

**Subdivision 2** makes it unlawful:

- (1) for any entity that controls an area where smoking is prohibited to fail to comply with the Clean Indoor Air Act. It creates an affirmative defense if it can be demonstrated that the area was actually controlled by another person;
- (2) for any employer subject to the act to fail to comply. It is an affirmative defense if the employer has made good faith efforts to ensure that employees comply; and
- (3) for any person to smoke in an area where smoking is prohibited or restricted under the act. The penalty for persons who smoke in prohibited or restricted areas remains a petty misdemeanor.

This subdivision also prohibits retaliation by proprietors against persons who report violations of the act or exercise any right to a smoke-free environment provided under the act.

**Subdivision 3** expands the commissioner's injunctive authority to apply to repeated violations of any portion of the act.

**Section 10** allows cities and counties to enact more stringent measures to protect individuals from second-hand smoke.

404

February 16, 2005

Page 4

**Section 11** repeals Minnesota Statutes, section 144.415, allowing the designation of smoking areas in public places where smoking is permitted.

DG:rdr

1 A bill for an act

2 relating to health; requiring persons to refrain from  
3 smoking in certain areas; amending Minnesota Statutes  
4 2004, sections 144.412; 144.413, subdivisions 2, 4, by  
5 adding subdivisions; 144.414; 144.416; 144.417;  
6 proposing coding for new law in Minnesota Statutes,  
7 chapter 144; repealing Minnesota Statutes 2004,  
8 section 144.415.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

10 Section 1. Minnesota Statutes 2004, section 144.412, is  
11 amended to read:

12 144.412 [PUBLIC POLICY.]

13 The purpose of sections 144.411 to 144.417 is to protect  
14 ~~the-public-health,-comfort-and-environment-by-prohibiting~~  
15 ~~smoking-in-areas-where-children-or-ill-or-injured-persons-are~~  
16 ~~present,-and~~ employees and the general public from the known  
17 hazards of second-hand smoke by limiting eliminating smoking in  
18 public places, places of employment, public transportation, and  
19 at public meetings to-designated-smoking-areas.

20 Sec. 2. Minnesota Statutes 2004, section 144.413, is  
21 amended by adding a subdivision to read:

22 Subd. 1a. [PLACE OF EMPLOYMENT.] "Place of employment"  
23 means any indoor area at which two or more individuals perform  
24 any type of a service for consideration of payment under any  
25 type of employment relationship, including, but not limited to,  
26 an employment relationship with or for a private corporation,  
27 partnership, individual, or government agency. Place of

1 employment includes any location where two or more individuals  
2 gratuitously perform services for which individuals are  
3 ordinarily paid. Examples of a place of employment include  
4 public conveyances, factories, warehouses, offices, retail  
5 stores, restaurants, bars, banquet facilities, theaters, food  
6 stores, banks, financial institutions, employee cafeterias,  
7 lounges, auditoriums, gymnasiums, restrooms, elevators,  
8 hallways, museums, libraries, bowling establishments, employee  
9 medical facilities, rooms or areas containing photocopying  
10 equipment or other office equipment used in common, vehicles  
11 owned or leased by a company if a nonsmoking employee is  
12 present, government-owned vehicles, or a similar place of  
13 employment.

14 Sec. 3. Minnesota Statutes 2004, section 144.413,  
15 subdivision 2, is amended to read:

16 Subd. 2. [PUBLIC PLACE.] "Public place" means any  
17 enclosed, indoor area used by the general public ~~or-serving-as-a~~  
18 ~~place-of-work,~~ including, but not limited to, restaurants~~;~~  
19 bars; outdoor seating at restaurants and bars; retail stores;  
20 ~~offices and other commercial establishments;~~ public  
21 ~~conveyances;~~ educational facilities other than public schools,  
22 as defined in section 120A.05, subdivisions 9, 11, and 13~~;~~  
23 ~~hospitals;~~ nursing homes~~;~~ auditoriums~~;~~ arenas~~;~~  
24 meeting rooms~~;~~ and common areas of rental apartment buildings~~;~~  
25 ~~but-excluding-private,-enclosed-offices-occupied-exclusively-by~~  
26 ~~smokers-even-though-such-offices-may-be-visited-by-nonsmokers.~~

27 Sec. 4. Minnesota Statutes 2004, section 144.413,  
28 subdivision 4, is amended to read:

29 Subd. 4. [SMOKING.] "Smoking" means the inhaling,  
30 exhaling, or combustion of any cigar, cigarette, pipe, or any  
31 other lighted smoking equipment. Smoking includes carrying a  
32 lighted cigar, cigarette, pipe, or any other lighted smoking  
33 equipment.

34 Sec. 5. Minnesota Statutes 2004, section 144.413, is  
35 amended by adding a subdivision to read:

36 Subd. 5. [PUBLIC TRANSPORTATION.] "Public transportation"

1 means public means of transportation, including light and  
2 commuter rail transit; buses; enclosed bus and transit stops;  
3 taxis, vans, limousines, and other for-hire vehicles other than  
4 those being operated by the lessee; and ticketing, boarding, and  
5 waiting areas in public transportation terminals.

6 Sec. 6. Minnesota Statutes 2004, section 144.414, is  
7 amended to read:

8 144.414 [PROHIBITIONS AND EXCEPTIONS.]

9 Subdivision 1. [PUBLIC PLACES, PLACES OF EMPLOYMENT,  
10 PUBLIC TRANSPORTATION, AND PUBLIC MEETINGS.] Smoking shall not  
11 be permitted in and no person shall smoke in a public place or,  
12 at a public meeting except-in-designated-smoking-areas, in a  
13 place of employment, or in public transportation, except as  
14 provided in this section or section 144.4167. This-prohibition  
15 does-not-apply-in-cases-in-which-an-entire-room-or-hall-is-used  
16 for-a-private-social-function-and-seating-arrangements-are-under  
17 the-control-of-the-sponsor-of-the-function-and-not-of-the  
18 proprietor-or-person-in-charge-of-the-place.--Furthermore,-this  
19 prohibition-shall-not-apply-to-places-of-work-not-usually  
20 frequented-by-the-general-public,-except-that-the-state  
21 commissioner-of-health-shall-establish-rules-to-restrict-or  
22 prohibit-smoking-in-factories,-warehouses,-and-those-places-of  
23 work-where-the-close-proximity-of-workers-or-the-inadequacy-of  
24 ventilation-causes-smoke-pollution-detrimental-to-the-health-and  
25 comfort-of-nonsmoking-employees.

26 Subd. 2. [DAY CARE PREMISES.] Smoking is prohibited in a  
27 day care center licensed under Minnesota Rules, parts 9503.0005  
28 to 9503.0175, or in a family home or in a group family day care  
29 provider home licensed under Minnesota Rules, parts 9502.0300 to  
30 9502.0445, during its hours of operation. The proprietor of a  
31 family home or group family day care provider must disclose to  
32 parents or guardians of children cared for on the premises if  
33 the proprietor permits smoking outside of its hours of  
34 operation. Disclosure must include posting on the premises a  
35 conspicuous written notice and orally informing parents or  
36 guardians.

1 Subd. 3. [HEALTH CARE FACILITIES AND CLINICS.] ~~(a)~~ Smoking  
2 is prohibited in any area of a hospital, health care clinic,  
3 doctor's office, licensed residential facility for children, or  
4 other health care-related facility, ~~other-than~~ except that a  
5 patient or resident in a nursing home, boarding care facility,  
6 or licensed residential facility,~~except-as-allowed-in-this~~  
7 subdivision.

8 ~~(b)-Smoking-by-participants-in-peer-reviewed-scientific~~  
9 ~~studies-related-to-the-health-effects-of-smoking-may-be-allowed~~  
10 ~~in-a-separated-room-ventilated-at-a-rate-of-60-cubic-feet-per~~  
11 ~~minute-per-person-pursuant-to-a-policy-that-is-approved-by-the~~  
12 ~~commissioner-and-is-established-by-the-administrator-of-the~~  
13 ~~program-to-minimize-exposure-of-nonsmokers-to~~ for adults may  
14 smoke in a designated separate, enclosed room if the room has a  
15 separate ventilation system from the rest of the facility.

16 Subd. 4. [PUBLIC TRANSPORTATION VEHICLES.] Smoking is  
17 prohibited in public transportation vehicles except that the  
18 driver of a public transportation vehicle may smoke when the  
19 vehicle is being used for personal use. For purposes of this  
20 subdivision, "personal use" means that the public transportation  
21 vehicle is being used by the driver for private purposes and no  
22 for-hire passengers are present. If a driver smokes as  
23 permitted under this subdivision, the driver must post a  
24 conspicuous sign inside the vehicle to inform passengers.

25 Subd. 5. [OUTDOOR SEATING.] Smoking is prohibited in the  
26 outdoor seating area of a restaurant or bar, except that the  
27 proprietor may designate for smoking up to 50 percent of the  
28 outdoor seating capacity of the restaurant or bar provided the  
29 location is appropriately signed as a smoking area.

30 Sec. 7. Minnesota Statutes 2004, section 144.416, is  
31 amended to read:

32 144.416 [RESPONSIBILITIES OF PROPRIETORS.]

33 (a) The proprietor or other person in charge of a public  
34 place, public transportation, place of employment, or public  
35 meeting shall make reasonable efforts to prevent smoking in the  
36 public place, public transportation, place of employment, or



1 public meeting by:

2 (a) (i) posting appropriate signs or by any other means  
3 which may be appropriate; and

4 ~~(b)-arranging-seating-to-provide-a-smoke-free-area;~~

5 ~~(c)-asking-smokers-to-refrain-from-smoking-upon-request-of~~  
6 ~~a-client-or-employee-suffering-discomfort-from-the-smoke,-or~~

7 ~~(d)-any-other-means-which-may-be-appropriate-~~

8 (ii) asking any person who smokes in an area where smoking  
9 is prohibited to refrain from smoking and, if the person does  
10 not refrain from smoking after being asked to do so, asking the  
11 person to leave. If the offending party refuses to leave, the  
12 proprietor or other person in charge shall handle the situation  
13 consistent with lawful methods for handling other persons acting  
14 in a disorderly manner or as a trespasser.

15 (b) The proprietor or other person in charge of a public  
16 place, public meeting, public transportation, or place of  
17 employment must not provide smoking equipment, including  
18 ashtrays or matches, in areas where smoking is prohibited.  
19 Nothing in this section prohibits the proprietor or other person  
20 in charge from taking more stringent measures than those under  
21 sections 144.414 to 144.417 to protect individuals from  
22 second-hand smoke. The proprietor or other person in charge of  
23 a restaurant or bar may not serve an individual who is in  
24 violation of sections 144.411 to 144.417.

25 Sec. 8. [144.4167] [PERMITTED SMOKING.]

26 Subdivision 1. [SCIENTIFIC STUDY PARTICIPANTS.] Smoking by  
27 participants in peer reviewed scientific studies related to the  
28 health effects of smoking may be allowed in a separated room  
29 ventilated at a rate of 60 cubic feet per minute per person  
30 pursuant to a policy that is approved by the commissioner and is  
31 established by the administrator of the program to minimize  
32 exposure of nonsmokers to smoke.

33 Subd. 2. [TRADITIONAL NATIVE AMERICAN  
34 CEREMONIES.] Sections 144.414 to 144.417 do not prohibit the  
35 lighting of tobacco by an Indian adult as part of a traditional  
36 Indian spiritual or cultural ceremony. For purposes of this

1 section, an Indian is a person who is a member of an Indian  
2 tribe as defined in section 260.755, subdivision 12.

3 Subd. 3. [PRIVATE PLACES.] Except as provided in section  
4 144.414, subdivision 2, nothing in sections 144.411 to 144.417  
5 prohibits smoking in:

6 (1) private homes, private residences, or private  
7 automobiles; or

8 (2) a hotel or motel sleeping room rented to one or more  
9 guests.

10 Sec. 9. Minnesota Statutes 2004, section 144.417, is  
11 amended to read:

12 144.417 [COMMISSIONER OF HEALTH, ENFORCEMENT,  
13 PENALTIES VIOLATIONS.]

14 Subdivision 1. [RULES.] (a) The state commissioner of  
15 health shall adopt rules necessary and reasonable to implement  
16 the provisions of sections 144.411 to 144.417, ~~except as~~  
17 ~~provided for in section 144.414.~~

18 ~~(b) Rules implementing sections 144.411 to 144.417 adopted~~  
19 ~~after January 17, 2002, may not take effect until approved by a~~  
20 ~~law enacted after January 17, 2002. This paragraph does not~~  
21 ~~apply to a rule or severable portion of a rule governing smoking~~  
22 ~~in office buildings, factories, warehouses, or similar places of~~  
23 ~~work, or in health care facilities. This paragraph does not~~  
24 ~~apply to a rule changing the definition of "restaurant" to make~~  
25 ~~it the same as the definition in section 157.157, subdivision 12.~~

26 Subd. 2. [PENALTIES VIOLATIONS.] (a) It is unlawful for  
27 any person, firm, limited liability company, corporation, or  
28 other entity that owns, manages, operates, or otherwise controls  
29 the use of an area in which smoking is prohibited under sections  
30 144.414 to 144.417 to fail to comply with sections 144.414 to  
31 144.417. For violations of this subdivision, it is an  
32 affirmative defense that during the relevant time period, actual  
33 control of the area was not exercised by the respondent, but  
34 rather by a lessee, a sublessee, or any other person. To  
35 establish an affirmative defense, the respondent shall submit an  
36 affidavit and may submit any other relevant proof indicating

1 that the respondent did not exercise actual control of the area  
2 during the relevant time period. The affidavit and other proof  
3 shall be mailed by certified mail to the appropriate enforcement  
4 officer within 30 days of receipt of a notice of violation.

5 (b) It is unlawful for an employer whose place of  
6 employment is subject to sections 144.414 to 144.417 to fail to  
7 comply with sections 144.414 to 144.417. For violations of  
8 sections 144.414 to 144.417, it is an affirmative defense that  
9 the employer has made good faith efforts to ensure that  
10 employees comply with sections 144.414 to 144.417.

11 (c) It is unlawful for any person to smoke in an area where  
12 smoking is prohibited or restricted under sections 144.414 to  
13 144.417.

14 (d) Any person who violates ~~section 144.414 or~~  
15 ~~144.4165~~ paragraph (c) is guilty of a petty misdemeanor.

16 (e) A proprietor or person in charge of a public place,  
17 public meeting, place of employment, or public transportation  
18 must not retaliate or take adverse action against an employee or  
19 anyone else who, in good faith, reports a violation of sections  
20 144.414 to 144.417 to the proprietor or person in charge of the  
21 public place, public meeting, place of employment, or public  
22 transportation or to the commissioner of health or other  
23 designee responsible for enforcing sections 144.414 to 144.417.

24 (f) No person or employer shall discharge, refuse to hire,  
25 penalize, discriminate against, or in any manner retaliate  
26 against any employee, applicant for employment, or customer  
27 because the employee, applicant, or customer exercises any right  
28 to a smoke-free environment provided by sections 144.414 to  
29 144.417 or other law.

30 Subd. 3. [INJUNCTION.] The state commissioner of health, a  
31 board of health as defined in section 145A.02, subdivision 2, or  
32 any affected party may institute an action in any court with  
33 jurisdiction to enjoin repeated violations of ~~section 144.416 or~~  
34 ~~144.4165~~ sections 144.414 to 144.417.

35 Sec. 10. [LOCAL GOVERNMENT ORDINANCES.]

36 Nothing in Minnesota Statutes, sections 144.414 to 144.417,

1 prohibits a statutory or home rule charter city or county from  
2 enacting and enforcing more stringent measures to protect  
3 individuals from second-hand smoke.

4 Sec. 11. [REPEALER.]

5 Minnesota Statutes 2004, section 144.415, is repealed.

APPENDIX  
Repealed Minnesota Statutes for S0404-1

**144.415 DESIGNATION OF SMOKING AREAS.**

Smoking areas may be designated by proprietors or other persons in charge of public places, except in places in which smoking is prohibited by the fire marshal or by other law, ordinance or rule.

Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas. In the case of public places consisting of a single room, the provisions of this law shall be considered met if one side of the room is reserved and posted as a no smoking area. No public place other than a bar shall be designated as a smoking area in its entirety. If a bar is designated as a smoking area in its entirety, this designation shall be posted conspicuously on all entrances normally used by the public.

H.O.#1

**Testimony of  
Edward P. Ehlinger, M.D., M.S.P.H.  
Director and Chief Health Officer  
Boynton Health Service, University of Minnesota**

**Minnesota State Senate Commerce Committee**

February 21, 2005

I'm Dr. Ed Ehlinger, Director and Chief Health Officer of Boynton Health Service at the University of Minnesota. I am also a member of the Hennepin Medical Society Board and Chair of the Minnesota Medical Association Committee on Public Health. On behalf of the over 9,000 physicians, medical residents, and medical students represented by the MMA, and for the sake of college students and others who are disproportionately affected by second hand smoke, I urge you to adopt the Freedom to Breathe Act. With one policy initiative you can do more to improve the health of all citizens of Minnesota than anything I can do as a physician.

Secondhand smoke (like asbestos) is classified as a Group A carcinogen by the EPA. This means that secondhand smoke is known to cause cancer in humans. Mountains of research data show that the numerous carcinogens and poisons contained in secondhand smoke lead not only to lung cancer but also to heart disease and other illnesses in nonsmokers and especially in children. The National Cancer Institute has concluded that more than 53,000 non-smokers die every year because of exposure to secondhand smoke – making it the third leading cause of preventable death in America.

Sixty-five percent of Minnesotans are exposed to secondhand smoke in a typical week – mostly in bars and restaurants. College students (a group with whom I now work on a daily basis) experience exposure to second-hand smoke at a similar rate but, because of where they work and socialize, the intensity of exposure is much greater – especially on weekends. Over 50% of students exposed to second-hand smoke are exposed for over 2 hours per day on the weekend. Over 70% of that exposure occurs in bars and restaurants. In addition, because of the close link between tobacco and alcohol among college students, bars where smoking is allowed help to perpetuate and increase tobacco use among students. Bars are one of the major places where new smokers are recruited and current smokers are encouraged not to quit. Passage of this bill would not only help reduce second hand smoke exposure of student workers and bar patrons but also help reduce the number of students who begin or continue to smoke.

Today is Presidents Day – a day to commemorate two presidents who led us in our quest for freedom and rights. You will hear from opponents of this bill that the issue before you today is a matter of freedom and rights. I agree – by passing this bill, you will be protecting the right of everyone to breathe clean air (versus the right of a few businesses to do whatever they want to do, even if it endangers the health of workers and patrons) and you will be giving all members of our society the freedom to work and socialize without being exposing to deadly chemicals.

Government's role is to protect its citizens and government has frequently stepped in to protect us from things like asbestos and arsenic because we believe that no one has the right to do whatever he or she wants if it endangers others. Now is the time for you to protect Minnesotans from the biggest killer of all – tobacco.

The medical community strongly supports efforts to protect everyone from the dangers of secondhand smoke and urges you to pass the Freedom to Breathe Act. And I personally urge you to pass this bill because Wednesday, when I attend the funeral of the best man at my wedding – someone who died of tobacco-induced lung cancer – I would feel better knowing that we have done all that we can to control the ravages of tobacco – the number one public health problem and the number one killer in this country.

**Testimony of  
Marc Manley, M.D., M.P.H.  
Executive Director, Center for Tobacco Reduction and Health Improvement  
Blue Cross and Blue Shield of Minnesota**

**Minnesota Senate Commerce Committee  
February 21, 2005**

Madame Chair and members of the Committee, my name is Marc Manley. I am a physician and the Director of the Center for Tobacco Reduction and Health Improvement, at Blue Cross and Blue Shield of Minnesota. Prior to joining Blue Cross, I worked at the National Cancer Institute for 12 years, where I was the chief of the Tobacco Control Research Branch.

Thank you for the opportunity to testify on the Freedom to Breathe Act (SF 404). Blue Cross is among the many health organizations enthusiastically supporting this bill.

This issue has been studied very thoroughly. The conclusions of the research are very consistent: When smoke-free environments are created, everyone wins.

**Non-Smokers Win**

The first and largest group of winners from this legislation will be the 80% of Minnesotans who are not smokers. Secondhand smoke is deadly. This legislation will make nonsmokers healthier.

**Smokers Win**

But non-smokers aren't the only beneficiaries of this legislation. More than half of all smokers try to quit smoking each year, and very few succeed. But smoke-free areas help smokers who are trying to quit.

Creating smoke-free environments encourages people to try to quit, and makes their attempts to quit more successful. The tobacco industry itself agrees with us on this point, according to their own internal memos. Helping people who are trying to quit is a huge benefit of this legislation.

Right now, smoking costs the nation \$150 billion every year. That includes \$75.5 billion in excess medical expenses. Each pack of cigarettes sold in the United States costs the nation an estimated \$7.18 in medical care costs and lost productivity.

In Minnesota, we pay \$1.6 billion in health care costs for diseases caused by smoking and another \$1 billion in lost productivity. The cost of healthcare is paid by employers who purchase health insurance and by the state and federal governments. In this time

of concern about rising health care costs, this is the type of legislation that will help to bring down the cost of diseases caused by tobacco.

### **Employers Win**

Businesses, including restaurants and bars, are more profitable when they are smokefree. Smokefree workplaces help workers who are trying to quit smoking. And businesses are more profitable when fewer of their employees smoke. They have fewer health care costs. There is less absenteeism. There are fewer workers' compensation payments.

The fear that clean air will harm restaurant and bar business is just that, a fear. But clean air is good for these businesses. In Duluth, restaurant and bar business increased after a clean indoor air bill was passed. The same in New York City, which saw increases in business and employment in restaurants and bars. California has also watched business and employment increase since its bars and restaurants became smokefree.

### **The Time to Act Has Come**

At Blue Cross, we care about this legislation because it will improve the health of Minnesotans. And by improving their health, it helps to control health care costs, which is something we all care about. Non-smokers, smokers, and employers all will benefit if this legislation passes.

The data is in, and all of the myths have been debunked. The time for Minnesota to resume its leadership role and protect its citizens is now.



# The Freedom to Breathe

## Believe the Facts, Not the Fears

### The Helena, MT Study

In a study published in a recent edition of the British Medical Journal, researchers found that hospital admissions for heart attacks in Helena, Montana, fell by 40% during the six months that a smokefree workplaces law was implemented. The number quickly returned to its former level after the law was struck down in court. This study is especially important when you consider that the leading cause of health care costs in Minnesota is treating heart disease. This study suggests that “smoke-free laws not only protect people from the long-term dangers of secondhand smoke but that they may also be associated with a rapid decrease in heart attacks.

Centers for Disease Control and Prevention (CDC) researchers commenting on the study said, “[t]he data are sufficient to warrant caution regarding exposure to secondhand smoke.” They advised patients at risk for heart disease to “avoid all indoor environments that permit smoking.” The CDC researchers also reiterated the US Surgeon General’s statement that “much of this important health risk is preventable by the implementation of comprehensive smoke-free policies similar to the policy that was implemented in Helena for six months.

In his commentary, Terry Pechacek, Associate Director of Science at CDC’s Office on Smoking and Health, wrote that the research underscores evidence that secondhand smoke rapidly increases the tendency of blood to clot, which can restrict flow to the heart. Pechacek said the new study strengthens the growing body of research pointing to potentially fast and acute reactions to secondhand smoke.

### What the Opposition Will Say

Recently, opposition to the Freedom to Breathe Act in Minnesota has undertaken a concerned effort in legislative committees, meetings with legislators, and in public blogs to undermine the results of this landmark study. In particular, they have reported that:

- The number of heart attacks in Helena dropped from seven to four, which is a statistically insignificant number, and that
- Helena experienced the same decline four years ago—long before it implemented a smoking.

### The Truth

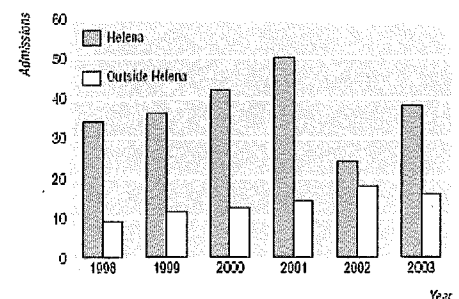
The opposition is very mistaken on both counts, and by being so, works to undermine the important message of this study: all Minnesotans risk their cardiovascular health when they are exposed to secondhand smoke.

#### **Countering the point that the number of heart attacks dropped from seven to four and is statistically insignificant**

This statement is painfully uneducated. According to even the most conservative statistical analysis, there are less than five chances in 100 that the drop in heart attacks in Helena was a random drop. By making the claim, any person doing so is claiming that they alone are smart enough to draw a conclusion that none of the statisticians at the British Medical Journal and CDC agree with. CDC looked at the results of this study and also looked at the literature on cardiovascular disease and secondhand smoke and concluded that the results of this survey were not only statistically significant, but also biologically and epidemiologically plausible.

#### **Countering the point that Helena experienced the same decline four years ago—long before it implemented a smoking**

The graph tells the story. Number of heart attacks admissions in 2002: 24. Number of heart attack admissions in 1998: 35. Also, this argument does not take into consideration that there had been an upward trend over a number of years in Helena, and a significant drop happened even within this trend.



Admissions for acute myocardial infarction during six month periods June-November before, during (2002), and after the smoke-free ordinance (ordinance did not apply outside Helena). The law was implemented on 5 June 2002

Believe the facts, not the fears.

For more information, contact the Minnesota Office of Public Advocacy at

(952) 278-3643 or (800) 331-6889 ■ [advocacymn@heart.org](mailto:advocacymn@heart.org)

Or visit our website at [www.americanheart.org](http://www.americanheart.org)



**AMERICAN LUNG ASSOCIATION®**

**Tobacco Policy Trend Alert**

**September 2004**

## **Fuzzy Math**

How the Tobacco Industry Distorts the Truth about the Economic Effects of Smokefree Restaurants and Bars

## Fuzzy Math

### How the Tobacco Industry Distorts the Truth about the Economic Effects of Smokefree Restaurants and Bars

Across the United States, the trend is toward smokefree indoor air in public places and workplaces. In 2004 alone, Idaho, Massachusetts, and Rhode Island<sup>1</sup> joined eight other states in prohibiting smoking in most public places and workplaces.<sup>2</sup> Massachusetts and Rhode Island's laws prohibit smoking in restaurants and bars while Idaho's law applies to restaurants only. And these are just the states. Across the United States, 135 municipalities had a 100% smokefree air ordinance at the local level that covers restaurants and bars as of July 1, 2004.<sup>3</sup> State or local laws protect a growing percentage of Americans from secondhand smoke, and the momentum for these laws has been accelerating rapidly over the past two years. Recent studies are adding to the overwhelming evidence that even limited exposure to secondhand smoke can be hazardous for your health.

In the early 1990s, smokefree restaurants and bars were limited to cities on the east or west coast. Waiters and bartenders are now protected in such disparate locations as Lexington, KY, Tempe, AZ, and Minneapolis, MN. Increasingly, smokefree air laws are no longer seen as a partisan issue and are being embraced across the political spectrum. This fact is not lost on the tobacco industry. Because of the role of smokefree air laws in changing social norms – and reducing overall consumption – the tobacco industry fears smokefree air laws more than any other tobacco control initiative. A 1992 Philip Morris memo stated: “Total prohibition of smoking in the workplace strongly affects cigarette volume. Smokers facing these restrictions consume 11%-15% less than average and quit at a rate that is 84% higher than average.”<sup>4</sup>

The tobacco industry and its various front groups have employed a number of strategies in fighting smokefree air laws, including business rights, “level playing field” or preemption, and the health effects of secondhand smoke. The latter argument has been dismissed by numerous studies demonstrating the hazardous effects of exposure to secondhand smoke.<sup>5</sup>

One of the most powerful tools in the tobacco industry's advocacy kit is flawed economic claims. For years, they have bludgeoned legislators with predictions of economic disaster in the hospitality industry if patrons are no longer allowed to smoke in restaurants and bars. They use this tactic despite overwhelming evidence to the contrary.

The evidence about the economic impact of smokefree air laws is completely one-sided. No objective, peer-reviewed study ever conducted has found a significant negative economic impact associated with smokefree air legislation. Some have even found a positive economic effect.

The evidence about the economic impact of smokefree air laws is completely one-sided. No objective, peer-reviewed study ever conducted has found a significant negative economic impact associated with smokefree air legislation.

---

<sup>1</sup> Idaho's law took effect 7/1/04, Massachusetts' law took effect 7/5/04, Rhode Island's law will take effect 3/1/05.

<sup>2</sup> California, Connecticut, Delaware, Maine, and New York prohibit smoking in restaurants and bars. Florida, Utah, and Vermont prohibit smoking in restaurants only.

<sup>3</sup> “Overview List – How Many Local Smokefree Laws?” American Nonsmoker's Rights Foundation. Available at: [www.no-smoke.org/mediaordlist.pdf](http://www.no-smoke.org/mediaordlist.pdf), accessed 8/17/04.

<sup>4</sup> Heironimus, J. “Impact of Workplace Restrictions on Consumption and Incidence.” Philip Morris. January 22, 1992. Bates No.:2023914280. URL: <http://tobaccodocuments.org/landman/2023914280-4284.html>.

<sup>5</sup> To see a comprehensive bibliography of studies on the health effects of secondhand smoke, go to: [www.no-smoke.org/SHSBibliography.pdf](http://www.no-smoke.org/SHSBibliography.pdf).

The resource bibliography at the end of this summary lists a number of scientific studies that have shown that smokefree air laws do not drive down profit. Just this year studies in Florida, New York City and El Paso, TX continue to show the tobacco industry's claims of economic doom and gloom are full of hot air. All looked for, but did not find, a statistically significant negative economic impact. The bibliography also includes some useful resources on the economic effects of smokefree air laws.

### The "Saying It Makes It So" School of Advocacy

How is it possible that the tobacco industry often successfully plays the economic doom card in spite of the facts? By repeating it so often that people begin to accept the risk as a given. In politics, perception is often more important than reality, the status quo is easy to defend to constituents, and the unknown is feared. Convincing legislators that the jury is still out on the question is sometimes all it takes.

The tobacco industry used a similar tactic successfully for decades to muddy the debate on the carcinogenic and addictive nature of cigarette smoking. Pro-tobacco lobbyists have become experts at drumming up unscientific studies that predict economic ruin, then playing the "moderate" by suggesting that since there is no consensus, more research is needed before making any changes in the law.

### Impact Studies: The Good, the Bad and the Ugly

We've all heard Mark Twain's axiom: "There are lies, damn lies and statistics." Twain's point – that people can use statistics to prove virtually anything – is a valid one. But there are sound statistics and there are unsound statistics. Because data can be massaged, statisticians have developed a number of techniques and safeguards to better ensure meaningful results. Some of these are simple: Take all data into account rather than picking and choosing, use neutral data-collection techniques, have results peer-reviewed for accuracy and relevancy, as well as others.

In the end, it is not necessary to have a firm grasp of statistical analysis in order to debunk tobacco industry-sponsored economic impact studies, because the industry's studies employ very little statistical analysis. Instead, such studies rely on informal surveys of hospitality group membership or anecdotal evidence from one or two proprietors. Often, pro-tobacco researchers have identified a time and a place in which a smokefree ordinance happened to coincide with an economic downturn, then claimed

#### ANECDOTAL EVIDENCE FROM THE OTHER SIDE

True story from a hearing on a statewide workplace smoking ban

*After having testified that all of her clientele smoke, and that she would lose all her business if they could not, a bar owner (B) is questioned by an assemblyman (A).*

A: So you're saying that your patrons would stop going out to bars?

B: Oh no, I don't think they'd stop going out.

A: So they would drive to another state?

B: No, I doubt that. It's about an hour to the border.

A: So they'd go to a different bar nearby? They wouldn't be able to smoke there either, so why do that?

B: I guess they wouldn't.

A: So you don't actually expect to lose business?

B: I guess not.

that the economic damage was obviously due to the fact that people couldn't smoke in restaurants and bars.

Sound analyses of the economic impact of smokefree ordinances include certain fundamentals. Look for studies that measure hard numbers from independent sources, like state tax revenue, rather than opinion polls of proprietors. Look for control data, like numbers from other jurisdictions and from before and after the ordinance went into effect. Look for an examination of other factors that might impact the data, like underlying economic conditions. Above all, look to see who did the study and how it was funded.

A good example of a typical tobacco industry study is seen in an analysis of New York state's smokefree air law on bars done by Ridgewood Economic Associates for the New York Nightlife Association and the Empire State Restaurant and Tavern Association. The study claimed that the statewide smokefree air law had cost New York 2,650 jobs and \$71.5 million in worker earnings in one year.<sup>6</sup> However, when two researchers at the University of California San Francisco tried to replicate the study they found the law actually created 1,500 jobs and worker earnings increased by \$29 million using the same data.<sup>7</sup> Both groups that funded the Ridgewood Economic Associates study were the main opponents of New York state's smokefree air law in 2003, and have a long record of past collaboration with the tobacco industry.

For an excellent synopsis of both good and bad studies, go to the analysis at the University of California at San Francisco site at [www.tobaccoscam.ucsf.edu/fake](http://www.tobaccoscam.ucsf.edu/fake). For a list of some industry-sponsored studies to look out for, see the American Nonsmokers' Rights Foundation discussion at [www.no-smoke.org/ti\\_econ.html](http://www.no-smoke.org/ti_econ.html). For a comprehensive review of studies on the economic impact of smokefree air laws before August 2002, see Michelle Scollo's article in the March 2003 issue of the journal *Tobacco Control*.<sup>8</sup>

### Is the Impact Negative in Certain Places?

Another tactic of the tobacco industry is to "divide and conquer." Any given smokefree ordinance, according to tobacco lobbyists, will be an economic mistake because it is in a small state, or a big state, in a remote city, or a city with lots of others nearby. The message to decision makers is even if you believe that smokefree air laws do not generally

#### TRICKS OF THE TRADE

How pro-tobacco studies are skewed:

**Apples and oranges:** "compare" different types of data

**Blinders:** ignore factors that don't support your conclusion

**Small samples:** isolate just a few data sources

**Cloak the source:** add credibility by conducting the study through an intermediary

**Snapshot:** identify a single point in time when the data are cooperative

**Extrapolate:** interview a few people and then generalize results across the economy

**Fuzzy math:** use anecdotal evidence rather than hard data

Summarized from *Cooking the Books*, [www.tobaccoscam.ucsf.edu/fake](http://www.tobaccoscam.ucsf.edu/fake)

<sup>6</sup> Ridgewood Economic Associates, "The Economic Impact of the New York State Smoking Ban on New York's Bars," Ridgewood, NJ: May 12, 2004.

<sup>7</sup> Alamar, Benjamin and Glantz, Stanton A., Comment on "The Economic Impact of the New York State Smoking Ban on New York's Bars," <http://www.nosmoke.org/NYRestaurants.pdf>, July 2004.

<sup>8</sup> Scollo M. et al., Review of the Quality of Studies on the Economic Effects of Smoke-Free Policies on the Hospitality Industry, *Tobacco Control* 2003; 12: 13-20.

hurt the economy, you are in a special situation, which belies all the research. They can often point to a misleading study conducted in a similar locality.

These claims are as false as the overall economic disaster prediction. Smokefree air laws and ordinances have been passed in every conceivable type of community, from small towns and suburbs to a number of states, and economists have studied communities across the spectrum. It is worth repeating: No objective, peer-reviewed study of a smokefree air law/ordinance has ever found a significant negative economic impact.

The chart below lists some objective economic assessments, and the types of communities they examined. Together, they encompass every level of government and every size of community. All of the studies cited can be found in the bibliography.

ASSESSMENTS	Jurisdiction			Environment		
	State	County	City	Urban	Suburban	Rural
Bartosch: The Economic Effect of Smoke-Free Restaurant Policies on Restaurant Business in <b>Massachusetts</b>		X	X	X	X	X
Dai: The Economic Impact of <b>Florida's</b> Smokefree Workplace Law	X			X	X	X
Dresser: Multiple Impacts of a Bar Smoking Prohibition Ordinance in <b>Corvallis, Oregon</b>			X			X
Glantz: Tourism and Hotel Revenues Before and After Passage of Smoke-Free Restaurant Ordinances ( <b>U.S.</b> )	X	X	X	X	X	X
Glantz: The Effect of Ordinances Requiring Smoke-Free Restaurants on Restaurant Sales ( <b>U.S.</b> )			X	X	X	X
Glantz: Effect of Smokefree Bar Law on Bar Revenues in <b>California</b>	X			X	X	X
Glantz: The Effect of Ordinances Requiring Smoke-Free Restaurants and Bars on Revenues: A Follow Up ( <b>U.S.</b> )	X	X	X	X	X	X
Goldstein: Environmental Tobacco Smoke Regulations Have Not Hurt Restaurants' Sales in <b>North Carolina</b>	X			X	X	X
Hayslett: Impact of Clean Indoor Air Ordinances on Restaurant Revenues in Four <b>Texas</b> Cities			X	X	X	X
Huang: Impact of a Smoking Ban on Restaurant and Bar Revenues – <b>El Paso, Texas, 2002</b>			X	X	X	
Hyland: Analysis of Taxable Sales Receipts: Was <b>New York City's</b> Smoke-Free Air Act Bad for Restaurant Business?			X	X		
Hyland: The Effect of the Clean Air Act of <b>Erie County, New York</b> on Restaurant Employment		X			X	X
Hyland: Before and After Smoke-Free Regulations in New Taxable Sales From Eating and Drinking Places in <b>New York</b> State	X			X	X	X
Hyland: Restaurant Employment Before and After the <b>New York City</b> Smoke-Free Air Act			X	X		
Pope: Preliminary Analysis of the Economic Impact of <b>Brookline's [MA]</b> Smoking Ban			X	X	X	
Styring: A Study of the <b>Fort Wayne (IN)</b> Restaurant Smoking Ban: Has It Impacted the Restaurant Business?			X		X	X

Note: Rural includes small towns and cities.

## **The Debate Is Over**

Legislators need to be made aware that there is no longer any need to argue about the economic impact of smokefree air laws. The only economic issue left in the debate is the influence tobacco industry lobbyists and their front groups have in the halls of state capitals. This influence is eroding as more evidence surfaces regarding smokefree ordinances that have been in place for years. Even some restaurant and bar associations are beginning to take notice and have changed their stance to neutral on the issue, including groups in California and Florida. The New York State Restaurant Association actively supported passage of New York state's smokefree-air law in 2003.

We also are seeing a positive "domino effect" in smokefree air laws at both the state and local level. Seven states have passed laws prohibiting smoking in restaurants and/or bars in the past two years. Georgia came close to passing a statewide law prohibiting smoking in most workplaces and restaurants in 2004. Cities such as Columbus, OH, Lawrence, KS, Lincoln, NE, and Minneapolis, MN have enacted smokefree ordinances in 2004 as well. These are encouraging trends, but we shouldn't lose sight of the fact that it doesn't matter what neighbors are doing. Whether the jurisdiction is a small suburb or a large state where most of the population lives hours from the border, smokefree air laws simply don't have a negative economic impact.

## BIBLIOGRAPHY OF RESOURCES

### Economic Impact Studies

Bartosch, W., Pope, G., Economic Effect of Restaurant Smoking Restrictions on Restaurant Business in Massachusetts, 1992 to 1998, *Tobacco Control* 2002; 11(suppl. II): ii38-ii42.

Bartosch, W., Pope, G., The Economic Effect of Smoke-Free Restaurant Policies on Restaurant Business in Massachusetts, *Journal of Public Health Management Practice* 1999; 5(1): 53-62.

Bartosch, W., Pope G., Preliminary Analysis of the Economic Impact of Brookline's Smoking Ban, Health Economics Research Inc., 1995.

Bourns, B., Malcomson, A., Economic Impact Analysis of the Non-Smoking Bylaw on the Hospitality Industry in Ottawa, KPMG, 2001.

Dai, Chifeng, et al., The Economic Impact of Florida's Smokefree Workplace Law, Bureau of Economic and Business Research, University of Florida, June 2004.

Dresser, J., Boles, S., Lichtenstein, T., et al., Multiple Impacts of a Bar Smoking Prohibition Ordinance in Corvallis, OR, Pacific Research Institute, 1999.

Dresser, L., Clearing the Air, Wisconsin: Tobacco-Free Wisconsin Coalition, 1999.

Ferrence, R., Luk, R., Gmel, G., The Economic Impact of a Smoke-Free Bylaw on Restaurant and Bar Sales in Ottawa, Canada, Ontario Tobacco Research Unit, 2003.

Fletcher, J., An Analysis of Sales Tax Receipts from Restaurants with Bars and Free Standing Bars in Chico, CA 1995-1997, California Department of Health Services, Tobacco Control Section, 1998.

Glantz, S., Wilson-Loots, R., No Association of Smoke-Free Ordinances with Profits from Bingo and Charitable Games in Massachusetts, *Tobacco Control* 2003; 12: 411-413.

Glantz, Stanton A., Effect of Smokefree Bar Law on Bar Revenues in California, *Tobacco Control* 2000; 9:111-112.

Glantz, Stanton A., and Charlesworth, Annemarie, Tourism and Hotel Revenues Before and After Passage of Smoke-Free Restaurant Ordinances, *Journal of the American Medical Association (JAMA)* 1999; 281: 1911-1918.

Glantz, S., Smith, L., The Effect of Ordinances Requiring Smoke-Free Restaurants and Bars on Revenues: A Follow Up, *American Journal of Public Health* 1997; 87: 1687-1693.

Glantz, S., Smith, L., The Effect of Ordinances Requiring Smoke-Free Restaurants on Restaurant Sales, *American Journal of Public Health* 1994; 84: 1081-1085.

Goldstein, A., Sobel, R., Environmental Tobacco Smoke Regulations Have Not Hurt Restaurants' Sales in North Carolina, *North Carolina Medical Journal* 1998; 59:284-287.



Hayslett, James A., Huang, Philip P., Impact of Clean Indoor Air Ordinances on Restaurant Revenues in Four Texas Cities, Bureau of Disease, Injury and Tobacco Prevention, Texas Department of Health, March 2000.

Huang, P., De, A.K., McCusker, M.E., Impact of a Smoking Ban on Restaurant and Bar Revenues – El Paso, Texas, 2002, Morbidity and Mortality Weekly Report (MMWR) February 2004; 53(07): 150-152.

Huang, P., Tobias, S., Kohout, S., et al., Assessment of the Impact of a 100% Smoke-Free Ordinances on Restaurant Sales – West Lake Hills, Texas, 1992-1994, Morbidity and Mortality Weekly Report (MMWR), May 1995; 44(19): 370-372.

Hyland, A., Before and After Smoke-Free Regulations in New Taxable Sales From Eating and Drinking Places in New York State, Roswell Park Cancer Institute, June 2002.

Hyland, A., Cummings, K., Restaurant Employment Before and After the New York City Smoke-Free Air Act, Journal of Public Health Management Practice 1999; 5(1): 22-27.

Hyland, A., Cummings, K., and Nauenberg, E., Analysis of Taxable Sales Receipts: Was New York City's Smoke-Free Air Act Bad for Restaurant Business? Journal of Public Health Management Practice 1999; 5(1): 14-21.

Hyland, A., Puli, V., Cummings, K.M., Sciandra, R., New York's Smoke-Free Regulations: Effects on Employment and Sales in the Hospitality Industry, Cornell Hotel and Restaurant Administration Quarterly 2003; June.

Hyland, A., Tuk, J., Restaurant Employment Boom in New York City, Tobacco Control 2001; 10: 199-200.

Hyland, A., Vena, C., Cummings K., et al., The Effect of the Clean Air Act of Erie County, New York on Restaurant Employment, Journal of Public Health Management Practice 2000; 6(6): 76-85.

Hild, C., Larson, E., Weiss, L., et al., Review of Municipality of Anchorage Chapter 16.65 – Prohibition of Smoking in Public Places, Institute for Circumpolar Health Studies, October 2001.

Lal, A., Siahpush, M., Scollo, M., The Economic Impact of Smoke-Free Policies on Sales in Restaurants and Cafes in Victoria (Australia), Australian and New Zealand Journal of Public Health 2003; 27 (5): 557-558.

Maroney, N., Sherwood, D., Stubblebine, W., The Impact of Tobacco Control Ordinances on Restaurant Revenues in California, Claremont, California: The Claremont Institute for Economic Policy Studies, 1994.

Moseley, F., Schmidt, K., The Economic Impact of Minot's Smoke-Free Restaurant Ordinance, Minot State University, 2003.

New York City Departments of Finance, Health and Mental Hygiene, Small Business Services and New York City Economic Development Corporation, The State of Smoke-Free New York City: A One-Year Review, March 2004.

Ong, M., Lightwood, J. and Glantz, S., Health and Economic Impacts of the Proposed Florida Smokefree for Health Initiative, Center for Tobacco Control Research and Education, University of California, San Francisco, 2002.

Pope, G., Bartosch, W., Effect of Local Smokefree Restaurant Policies on Restaurant Revenues in Massachusetts, Center for Health Economics Research, April 1997.

Sciacca, J., Eckrem, M., Effects of City Ordinance Regulating Smoking in Restaurants and Retail Stores, *Journal of Community Health* 1999; 18(3): 175-182.

Sciacca, J., Ratliff, M., Prohibiting Smoking in Restaurants: Effects on Restaurant Sales, *American Journal of Health Promotion* 1998; 12: 176-184.

Styring, W., A Study of the Fort Wayne (IN) Restaurant Smoking Ban: Has It Impacted the Restaurant Business? Indianapolis: Hudson Institute, 2001.

Taylor Consulting Group, The San Luis Obispo Smoking Ordinance: Study of the Economic Impacts on San Luis Obispo Restaurants and Bars, San Luis Obispo, California, 1993.

Wakefield, M., Siahpush, M., Scollo, M., et al., The Effect of a Smoke-Free Law on Monthly Restaurant Retail Turnover in South Australia, *Australian and New Zealand Journal of Public Health* 2002; 26: 375-382.

#### **Useful Resources**

*Cooking the Books: What Makes a Study "Good" and Why?* University of California San Francisco, available at [http://www.tobaccoscam.ucsf.edu/fake/fake\\_ctb.cfm](http://www.tobaccoscam.ucsf.edu/fake/fake_ctb.cfm).

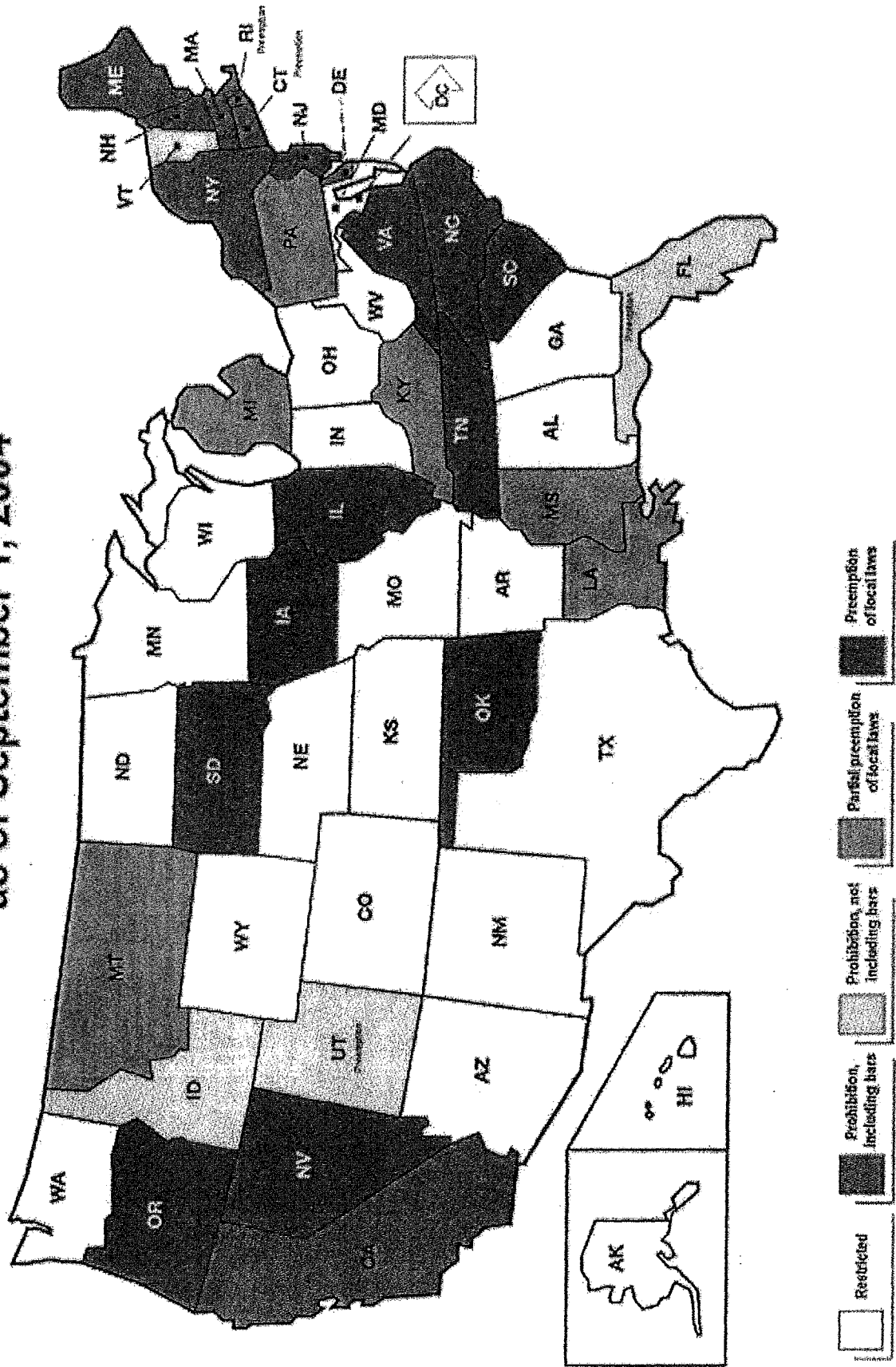
*Economic Impact of Smokefree Air Laws and Policies*, American Nonsmokers' Rights Foundation, May 2003, available at [http://www.no-smoke.org/economic\\_impact.html](http://www.no-smoke.org/economic_impact.html).

*Economic Impact Studies Circulated by the Tobacco Industry*, American Nonsmokers' Rights Foundation, February 2004, available at [http://www.no-smoke.org/ti\\_econ.html](http://www.no-smoke.org/ti_econ.html).

Scollo, M., et al., Review of the Quality of Studies on the Economic Effects of Smoke-Free Policies on the Hospitality Industry, *Tobacco Control* 2003; 12: 13-20.

*Smoke-Free Laws Do Not Harm Business at Restaurants and Bars*, Campaign for Tobacco Free Kids, March 2004, available at <http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=19>.

# Summary of Smokefree Workplace Laws as of September 1, 2004



Source: State Legislated Actions on Tobacco Issues (SLATI) Database, 2004



*Funded with a technical assistance contract provided by the Tobacco Technical Assistance Consortium*

---

***Celebrating its 100<sup>th</sup> anniversary, the American Lung Association works to prevent lung disease and promote lung health. Lung diseases and breathing problems are the leading causes of infant deaths in the United States today, and asthma is the leading serious chronic childhood illness. Smoking remains the nation's leading preventable cause of death. Lung disease death rates continue to increase while other leading causes of death have declined.***

***The American Lung Association has long funded vital research on the causes of and treatments for lung disease. It is the foremost defender of the Clean Air Act and laws that protect citizens from second-hand smoke. The Lung Association teaches children the dangers of tobacco use and helps teenage and adult smokers overcome addiction. It educates children and adults living with lung diseases on managing their condition. With the generous support of the public, the American Lung Association is "Improving life, one breath at a time."***

***For more information about the American Lung Association or to support the work it does, call 1-800-LUNG-USA (1-800-586-4872) or log on to [www.lungusa.org](http://www.lungusa.org).***



**CHANGE IN RETAIL SALES FOR FOOD AND FOOD w / Alcohol  
in DULUTH: YEARS 2003-2004**

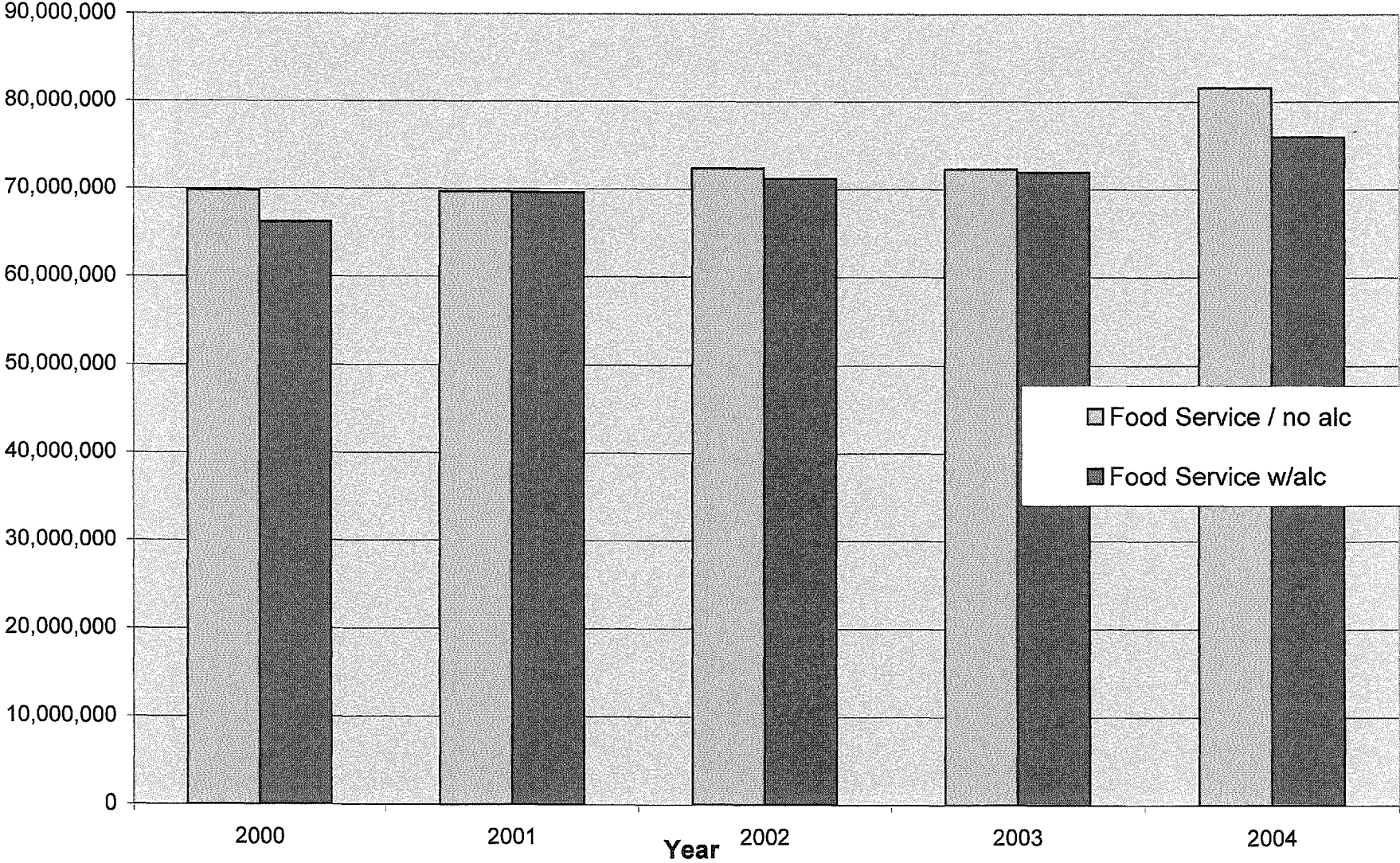
	Food Service / no alc (5812)				Food Service w/alc (5800)		
	2003	2004	change		2003	2004	change
Jan	5,180,835	5,437,709	5.0%		5,068,967	5,387,270	6.3%
Feb	4,871,380	5,707,766	17.2%		5,149,158	5,621,661	9.2%
March	5,908,558	6,770,897	14.6%		5,753,362	6,246,201	8.6%
April	5,817,292	6,254,631	7.5%		5,010,841	5,680,902	13.4%
May	6,061,561	6,297,940	3.9%		5,729,311	6,312,170	10.2%
June	6,080,983	7,409,961	21.9%		6,528,993	6,766,177	3.6%
July	6,987,489	7,286,135	4.3%		6,475,604	7,155,482	10.5%
August	6,859,274	7,480,544	9.1%		7,604,716	7,522,708	-1.1%
Sept	6,403,967	7,718,310	20.5%		6,971,028	7,127,434	2.2%
Oct	6,386,336	7,199,548	12.7%		6,105,844	6,360,467	4.2%
Nov	5,346,124	6,488,676	21.4%		5,135,150	5,407,797	5.3%
Dec	6,370,623	7,515,303	18.0%		6,364,465	6,389,814	0.4%
<b>TOTAL</b>	<b>72,274,422</b>	<b>81,567,420</b>	<b>12.9%</b>		<b>71,897,439</b>	<b>75,978,083</b>	<b>5.7%</b>
<b>Change</b>	<b>+</b>	<b>\$9,292,998</b>		<b>+</b>	<b>\$4,080,644</b>		

Data from City of Duluth Sales Tax Department. 5812 and 5800 are Sales Tax Department codes.

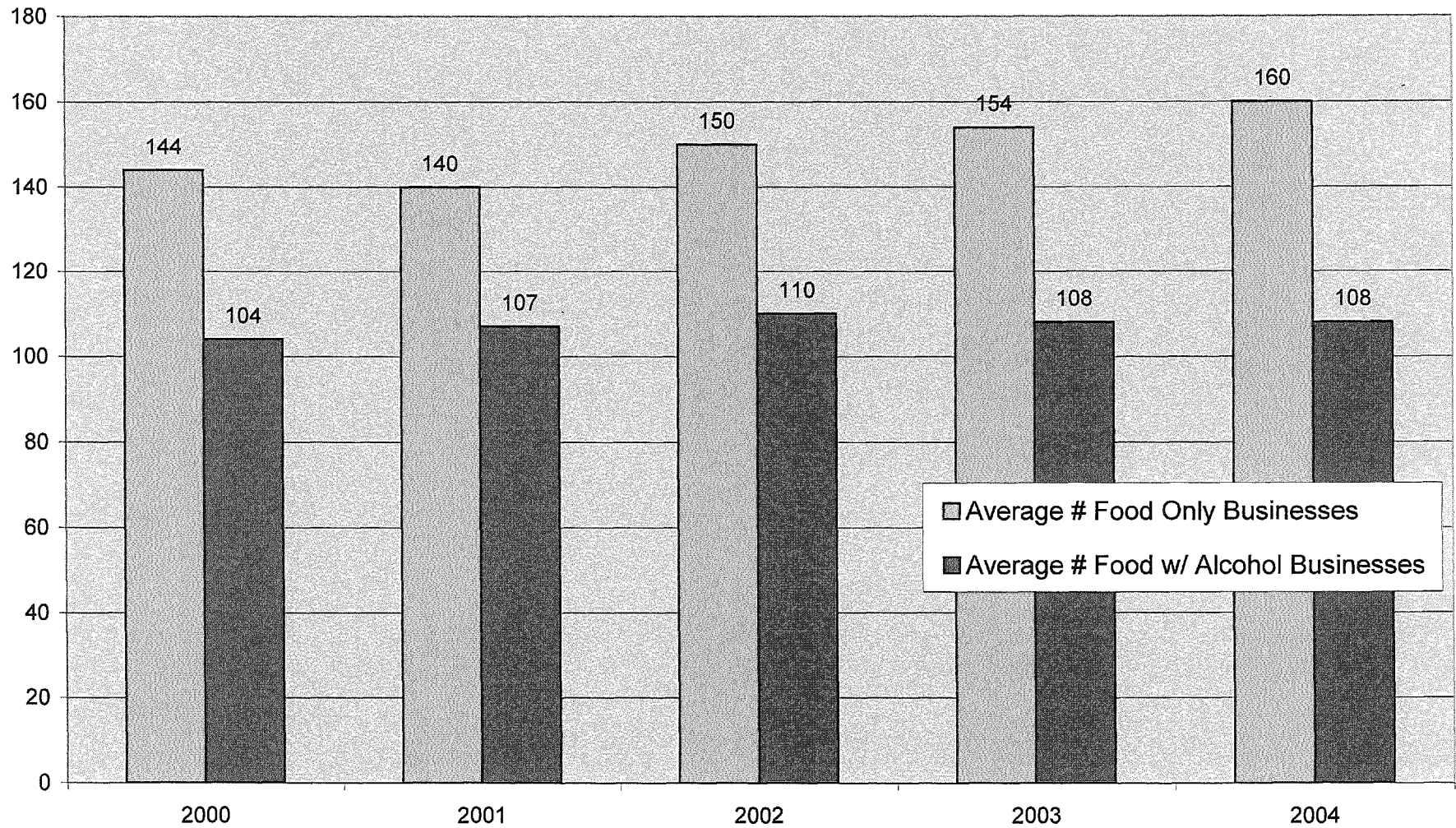
Duluth smoke-free ordinances became effective Jan 1, 2001 (first version) and Dec 1, 2001 (second version)

Updated 2/14/05

# 2000-2004 Sales



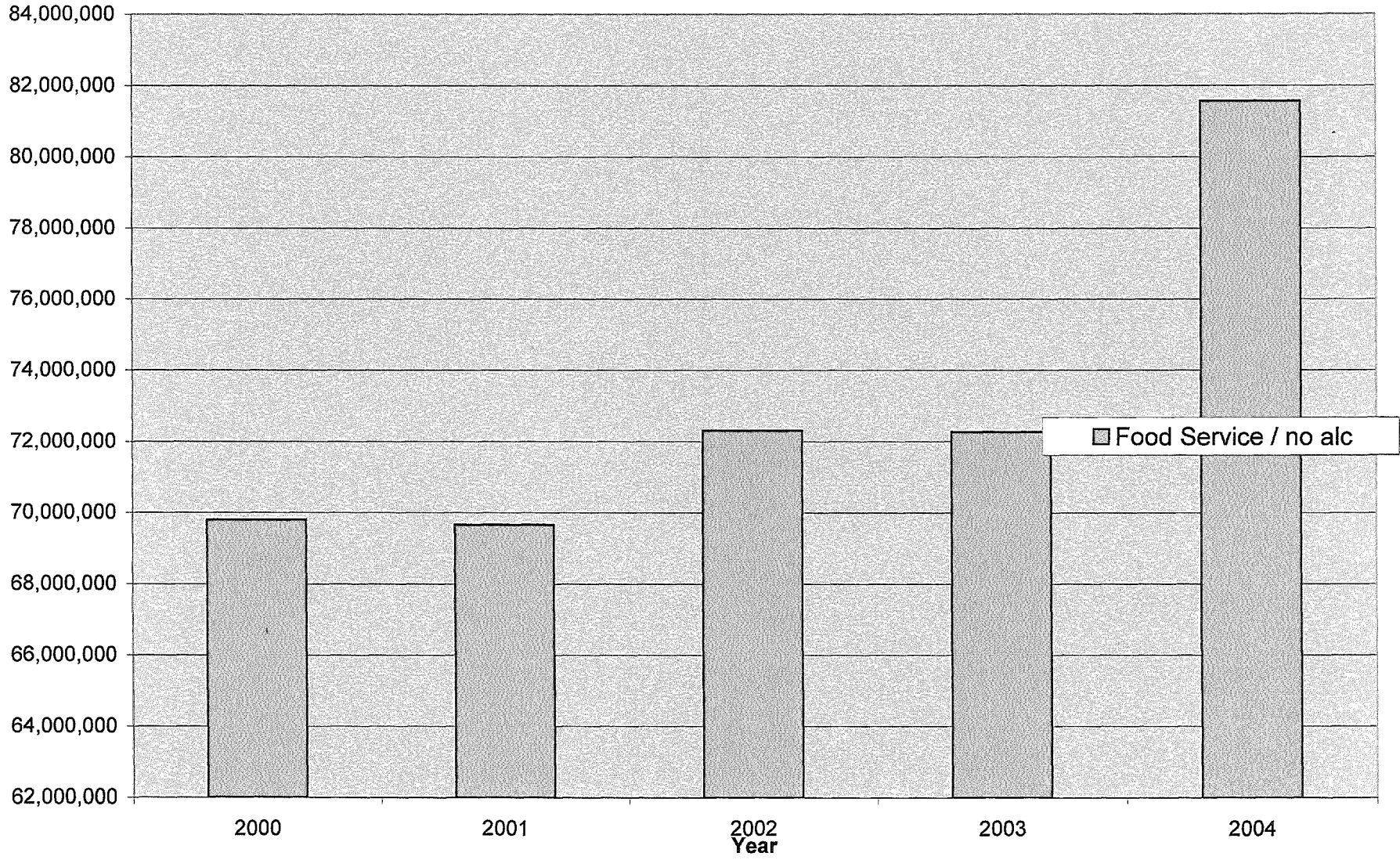
## 2000-2004 Duluth Business - Food Only / Food w/ Alcohol



	Average # Food Only Businesses	Average # Food w/ Alcohol Business	Food Service / no alc	Food Service w/alc
2000	144	104	69,801,343	66,174,599
2001	140	107	69,660,761	69,559,346
2002	150	110	72,311,107	71,184,511
2003	154	108	72,274,422	71,897,439
2004	160	108	81,564,820	75,978,083



### 2000-2004 Food Sales No Alcohol





## BOARD OF HENNEPIN COUNTY COMMISSIONERS

A-2400 GOVERNMENT CENTER  
MINNEAPOLIS, MINNESOTA 55487-0240

February 8, 2005

Senator Linda Scheid  
303 Capitol  
75 Martin Luther King Blvd.  
St. Paul, MN 55155

Dear Senator Scheid,

The Hennepin County Board of Commissioners recently passed a resolution supporting statewide efforts to protect hospitality workers and patrons from dangers of secondhand smoke through the passage of comprehensive smoke-free legislation. Hennepin County led the way with Minnesota's first countywide ordinance that protects restaurant *and* bar workers. Because we are Minnesota's most populous county, we hope that Hennepin's leadership will help build the momentum toward a strong statewide law.

As debate continues over H.F. 405 and S.F. 404, we wanted to make sure that you were aware of Hennepin County's support for state action, as well as the language of Hennepin's smoke-free ordinance. Ordinance 24 is modeled after the ordinances previously passed in Bloomington and Minneapolis. The ordinance covers restaurants and bars and will go into effect on March 31, 2005. The response from the public has been overwhelmingly positive.

We thank you for your leadership on important public health issues. Please feel free to be in touch if you have any questions about the Hennepin County ordinance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Randy Johnson". The signature is fluid and cursive.

Randy Johnson  
Chair, Hennepin County Board of Commissioners

A handwritten signature in black ink, appearing to read "Gail Dorfman". The signature is fluid and cursive.

Gail Dorfman  
Hennepin County Commissioner, District 3

Encl. Hennepin County Ordinance 24  
Hennepin County Board Resolution 05-27



# Legislative Issues

...Nickel

## MLBA's Position Statement on Smoking Bans

At the 2004 Annual Meeting of the Minnesota Licensed Beverage Association (MLBA) the Board of Directors created the following position statement as a guide for use during the 2005 legislative session.



***It is the position of the Minnesota Licensed Beverage Association (MLBA) to oppose all attempts to manipulate government authority to prohibit smoking in licensed alcohol on-premise establishments as long as the act of smoking tobacco products is lawful. MLBA takes the position that the decision to allow smoking to occur in a lawfully licensed alcohol on-premise establishment is a decision best left to the individual licensee, their employees and customers.***

***Should a majority of elected officials disagree with MLBA and determine that the Minnesota Clean Indoor Air Act should be amended to prohibit smoking, MLBA takes the position that partial prohibitions similar to those adopted in Olmsted and Ramsey Counties, the cities of Duluth and Moorhead are preferable to a total prohibition provided that all licensed establishments are treated the same regardless of whether operated as a public establishment, private club or municipal operation.***

***Should a partial prohibition be adopted as stated, MLBA strongly believes that a statewide solution is better than a patchwork approach supported by anti-tobacco advocates. To achieve the goal of a statewide solution, MLBA supports preemption of local governments unilaterally adopting city ordinances that arbitrarily pick winners and losers based on political boundaries.***

***MLBA requests that any remaining revenue sources continuing from the creation of the tobacco endowments be used to assist our members and employees by covering the costs associated with individual members and employees seeking access to smoking cessation programs.***

***This is the unanimous position of the MLBA Board of Directors on behalf of its members statewide.***

It is clear that the smoking prohibition is an emotional issue for many involved, both pro and con. It is best for all involved to remember that civility during political debate is the cornerstone for the success of a democracy and to keep that in mind while members approach legislators this year.

- Legislative Issues
- ..... • Video Lottery
- ..... • Wine in Grocery
- ..... • Smoking Bans
- ..... • 2 am Closing
- ..... • Keg Registration
- ..... • Nickel-a-Drink Tax
- ..... • Direct Shipment
- ..... • Dram Shop Ins.
- PROOF Magazine
- Midwest Expo
- MMBA
- SMART Website

LETTER FROM TOLEDO, OH, TAVERN OWNER DISCUSSING  
DAMAGE TO BUSINESSES AFTER LOCAL SMOKING BAN WAS  
IMPOSED

PROVIDED BY: RYAN M. PACYGA, ATTORNEY FOR M.A.S.B.

3 of my pool teams left to go to the suburbs where they could smoke. I have a small blue collar tavern where 95% smoke. The first week the ban went into effect and I complied, my liquor order was done from 23 to 5 bottles and I lost 75% business. My bartender had one person in on a Saturday night. The bars near the Michigan line were severely hurt. Five minutes away, the Michigan bars were full. I took my chances and still smoked, as most of the bars did to survive. Always watching the door. I was raided by the health inspector and 4 police officers one night and resulted in a warrant for my arrest. My business continued to fall even while smoking. I was down 45% and put all of my savings into the place to keep it afloat. 45K. I was not going to give in to building the smoke room which would have cost 10 to 40K when it was all said and done to comply with city code. I even went so far as to put a keyless entry system on the door with a camera. Got a clipboard? Sorry, you can't come in. It was a living hell.

After 2 attempts, we finally got an amendment on the ballot and won by a narrow margin. Now bars can smoke. Our group still meets (what's left of us) and get involved with trying to fight the cities dirty

politics. As a whole and including myself, our businesses have turned around. I am not where I should be. (People get comfortable on other bar stools) But, I can reasonably pay my bills.

In Toledo, 17 bars have shut down along with numerous diners. We did an independent survey with forty bars and restaurants. The revenue lost to the already struggling city was 7 million and 600 jobs. People do not realize the horrific trickle down effect from this situation.

The fight is never over as I expect this to go statewide. I am now trying to help other business owners raise money for smoking ban expenses at my web site:

[www.smokershaverights.com](http://www.smokershaverights.com)

Check it out.

I hope I have been of some help. Please don't hesitate to ask me for more info as I am happy to help.

Have a great day Ryan!

Joyce Welling, Public House Inc. dba Geo. Fitzpatrick's Tavern

The facts about second hand smoke in bars & restaurants

Proper ventilation systems do work, and tests proved it, does that mean that all odor is removed? Of course not, but odor which may be offensive is not a killer, nor is it a public health hazard.

The OSHA safe PEL for nicotine is 0.5 milligrams/ cu. M or expressed in decimal form 0.0005 /cu. M. The city of St. Louis Park's Health Dept. (MN) first tested all it's bars & restaurants for nicotine in milligrams / cu. M, and results came in overwhelmingly at 0 milligrams /cu. M. So what they did next is indicative of what anti-smoking activists have always done to try to defend the indefensible; they lowered the bar. They decided to test nicotine in micrograms / cu. M, and received new test results ranging from 1-32ug /cu. M. with the median result of 3.3ug /cu. M; as a decimal it is expressed as 0.000003.3 / cu. M. In other words the tested air quality for nicotine in bars & restaurants in St. Louis Park Minnesota was 150 times below OSHA guidelines. (the second hand smoke in St. Louis Park, MN. bars & restaurants is of course no different than other bars & restaurants around the country)

I expect that once these test results are fully understood, we will see municipalities, counties, and states, which previously banned smoking, reverse those bans (or face new litigation); because they were misled into believing second hand smoke was a public health hazard.

One might ask why other states banned smoking if the readings are so insignificant, after all the air quality with regard to nicotine in the median bar / restaurant in St. Louis Park was 150 times safer than what OSHA PEL allows. The answer..... no other health department ever tested, they simply believed the rhetoric and feelings spouted by the usual suspects. In fact once I caught wind of the testing going on in St. Louis Park I started to provide that information to Minneapolis, St. Paul, & Bloomington city councils; only to get an angry phone call from a St. Louis Park Health Dept. official demanding I cease & desist.

After meeting with the city engineers in Eden Prairie, MN. a couple of years back and explaining the filtration method that our Smokeeter brand electro-static precipitator (ESP) systems worked on, they decided against a smoking ban. Smokeeter ESP systems with odor reducing carbon modules remove 99% harmful airborne particulate to 0.01 micron particle size, fiber filter air cleaners on the other hand, are only effective to 0.3 microns. Stanford Research Institute measured tobacco smoke and found that it's make-up is particle sizes ranging from 0.5 microns – 0.01 microns i.e. It will flow thru fiber filters like water, Smokeeter brand ESP therefore, is the ideal tobacco smoke removal filtration system.

Mark Wernimont    612-203-0901  
Smokeeter air cleaning technology  
[cleanairquality@yahoo.com](mailto:cleanairquality@yahoo.com)  
[http://www.fightcityhall.net/\\_wsn/page2.html](http://www.fightcityhall.net/_wsn/page2.html)

1 Senator <sup>Sparks</sup> ..... moves to amend S.F. No. 404 as follows:

2 Page 6, after line 2, insert:

3 "Subd. 3. [BARS.] Sections 144.414 to 144.417 do not  
4 prohibit smoking in a bar provided it it is licensed for the  
5 on-sale of alcoholic beverages under chapter 340A; and

6 (1) the bar's sales of alcoholic beverages are demonstrated  
7 for an existing licensee to be, or for an initial licensee  
8 projected to be, more than 50 percent of the total net sales of  
9 food and beverages, after taxes, that are served in the  
10 establishment. For the purposes of this section, "sales" are  
11 the sales reported to the Department of Revenue from the most  
12 recent calendar year; or

13 (2) the bar:

14 (i) is separated from the restaurant on all sides by  
15 continuous floor-to-ceiling walls, which are interrupted only by  
16 closeable doors that are continuously closed, except when a  
17 person is actively entering or exiting the bar;

18 (ii) has ventilation systems that are totally separated  
19 from the restaurant, with the bar maintaining a negative air  
20 pressure in relation to the adjacent restaurant;

21 (iii) does not permit entrance or employment of minors at  
22 any time notwithstanding section 340A.503, subdivision 4,  
23 paragraph (b); and

24 (iv) has a food or beverage license, which is separate from  
25 the restaurant, issued by the appropriate licensing agency.

26 Subd. 4. [PRIVATE CLUBS.] Sections 144.414 to 144.417 do  
27 not prohibit smoking in private clubs, except when they are open  
28 to serve food or drink to members of the public who are not  
29 members of the club. Guests accompanied by members are  
30 considered the same as members. For the purposes of this  
31 section, a private club is an incorporated organization  
32 organized under the laws of the state for civic, fraternal,  
33 social, or business purposes; intellectual improvement; or  
34 promotion of sports or is a congressionally chartered veterans'  
35 organization that:

36 (1) has more than 25 members;



1       (2) has owned or rented a building or space in a building  
2 for more than one year that is suitable and adequate for the  
3 accommodation of its members;

4       (3) is directed by a board of directors, executive  
5 committee, or other similar body chosen by the members at a  
6 meeting held for that purpose. No member, officer, agent, or  
7 employee shall receive any profit from the distribution or sale  
8 of beverages to the members of the club or their guests beyond a  
9 reasonable salary or wage fixed and voted upon each year by the  
10 governing body;

11       (4) does not restrict its membership on the basis of race,  
12 color, creed, religion, or national origin; and

13       (5) was not established to avoid compliance with sections  
14 144.414 to 144.417.

15       Subd. 5. [RESTAURANTS.] Sections 144.414 to 144.417 do not  
16 prohibit smoking in restaurants that are closed to the public  
17 while being used for a private function."

18       Page 6, line 3, delete "3" and insert "6"

Larson

1 Senator ..... moves to amend S.F. No. 404 as follows:

2 Page 6, after line 2, insert:

3 "Subd. 3. [ARMED FORCES POSTS AND ORGANIZATIONS.] Sections  
4 144.414 to 144.417 do not prohibit smoking at a facility under  
5 the proprietorship of a post or organization of past or present  
6 members of the armed forces or other organization that meets the  
7 requirements of section 501(c)19 of the Internal Revenue Code,  
8 including, but not limited to, Veterans of Foreign Wars posts  
9 and American Legion posts. This subdivision applies only to  
10 those parts of the facility where:

11 (1) food and beverages are sold; and

12 (2) the majority of the patrons are past or present members  
13 of the armed force of the United States, other members of the  
14 post or organization and their guests."

15 Page 6, line 3, delete "3" and insert "4"

Metzen

1 Senator ..... moves to amend S.F. No. 404 as follows:

2 Page 6, after line 10, insert:

3 "Subd. 4. [TOBACCO PRODUCTS SHOP.]

4 Sections 144.414 to 144.417 do not prohibit the lighting of  
5 tobacco in a tobacco products shop by a customer or potential  
6 customer for the specific purpose of sampling tobacco products  
7 prior to purchase. For the purposes of this subdivision, a  
8 tobacco products shop is a retail business that earns at least  
9 90 percent of its gross receipts from the sale of tobacco  
10 products and related items."

1 Senator Scheid from the Committee on Commerce, to which was  
2 re-referred

3 S.F. No. 404: A bill for an act relating to health;  
4 requiring persons to refrain from smoking in certain areas;  
5 amending Minnesota Statutes 2004, sections 144.412; 144.413,  
6 subdivisions 2, 4, by adding subdivisions; 144.414; 144.416;  
7 144.417; proposing coding for new law in Minnesota Statutes,  
8 chapter 144; repealing Minnesota Statutes 2004, section 144.415.

9 Reports the same back with the recommendation that the bill  
10 be amended as follows:

11 Page 6, after line 9, insert:

12 "Subd. 4. [TOBACCO PRODUCTS SHOP.] Sections 144.414 to  
13 144.417 do not prohibit the lighting of tobacco in a tobacco  
14 products shop by a customer or potential customer for the  
15 specific purpose of sampling tobacco products prior to  
16 purchase. For the purposes of this subdivision, a tobacco  
17 products shop is a retail business that earns at least 90  
18 percent of its gross receipts from the sale of tobacco products  
19 and related items."

20 And when so amended the bill do pass. Amendments adopted.  
21 Report adopted.

22 .....  
23 *Linda Scheid*  
24 (Committee Chair)

25 February 21, 2005.....  
26 (Date of Committee recommendation)