

The New Battleground: California's Experience With Smoke-Free Bars

ABSTRACT

Objectives. This study examined the tobacco industry's tactics in the political, grassroots, and media arenas in attempting to subvert California's smoke-free bar law, and the efforts of health advocates to uphold and promote the law by using the same 3 channels.

Methods. Interviews with key informants involved in the development and implementation of the smoke-free bar law were conducted. Information was gathered from bill analyses, internal memoranda, tobacco industry documents, media articles, and press releases.

Results. The tobacco industry worked both inside the legislature and through a public relations campaign to attempt to delay implementation of the law and to encourage noncompliance once the law was in effect. Health groups were able to uphold the law by framing the law as a health and worker safety issue. The health groups were less successful in pressing the state to implement the law.

Conclusions. It is possible to enact and defend smoke-free bar laws, but doing so requires a substantial and sustained commitment by health advocates. The tobacco industry will fight this latest generation of clean indoor air laws even more aggressively than general workplace laws. (*Am J Public Health*. 2001;91:245-252)

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In 1994, the California Legislature enacted the California Smoke-Free Workplace Law (Assembly Bill [AB] 13), which required indoor workplaces in California to be smoke free.^{1,2} AB 13 went into effect January 1, 1995, except for the provisions governing bars, taverns, and gaming rooms; these provisions, which aimed to give bar employees the same protections as other workers, took effect on January 1, 1998. The tobacco industry claimed that making bars smoke free would devastate business, deny adults the freedom to smoke, violate the rights of business owners, and be difficult to enforce³ (also J. Miller, interview with authors, December 4, 1998).

The tobacco industry always opposes smoke-free workplace legislation.⁴⁻⁶ Except for 1 unsuccessful attempt to undermine implementation of a local clean indoor air ordinance after it passed in 1987,⁷ the industry generally retreats and accepts the law after it takes effect. However, the tobacco industry went to extraordinary lengths—9 repeal attempts, an unsuccessful \$18 million initiative campaign,⁴ and a statewide public relations campaign—to prevent the implementation of the Smoke-Free Workplace Law in California bars. Public health groups countered with surveys and community activities to demonstrate that the personal testimonials the tobacco industry solicited did not reflect the broader public sentiment, which favored smoke-free bars. Tobacco control groups upheld smoke-free bars by expending considerable resources to mobilize public support, working in the legislature, and remaining focused on smoke-free bars as a workplace safety measure.

Methods

We interviewed representatives from voluntary health organizations, legislative offices, advocacy groups, state agencies, state contractors, interest groups, trade groups, and media observers. We obtained information

from news reports, internal tobacco industry memoranda, personal correspondence, public documents, and legislative meetings. We contacted tobacco industry agency Burson-Marsteller for an interview; it deferred questions to its client, the National Smokers' Alliance (NSA), which declined to participate.

Results

Delaying Initial Implementation of the Smoke-Free Bar Provisions of AB 13

On February 23, 1996, AB 3037 was introduced to extend the bar exemption in AB 13—originally scheduled to expire on January 1, 1997—to January 1, 2000, to give the state Occupational Safety and Health Standards Board or federal Environmental Protection Agency additional time to develop a ventilation standard.⁸ Neither AB 13 nor the proposed AB 3037 placed an affirmative duty on either agency to produce ventilation standards. In the more than 2 years between the passage of AB 13 in 1994 and January 1, 1997, no representatives from bars, taverns, gaming clubs, or the tobacco industry petitioned either agency to create a standard (L. Aubry Jr, memorandum to Gov. Pete Wilson, September 12, 1996).

The senate reduced AB 3037 to a 1-year extension (to January 1, 1998), and the bill passed without controversy. The health groups did not oppose the 1-year extension. John Miller, chief of staff for the Senate Health and Human Services Committee, explained why:

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“When we imposed a statewide ban on restaurants and workplaces, it was the first [such state law] in the country. Nobody really knew if it would work or not. And we did not know what the effects would be. We never anticipated what the [tobacco industry] said they were. But you need to demonstrate that. And you need to win the sympathy of the press. It took a little time for the public to get used to that idea” (J. Miller, interview with authors, December 4, 1998).

1997–1999 Attempts to Repeal Smoke-Free Bar Law

After AB 3037 passed, 8 additional bills were introduced to overturn the smoke-free bar provisions of AB 13, both before and after the law took effect.⁹ Rather than the tobacco industry or its known front groups, the organizations publicly supporting the repeal laws were Tavern Owners United for Fairness, Northern California Coalition Against Prohibition, Northern California Tavern and Restaurant Association, and California Licensed Beverage Association, as well as individual bars and bowling alleys. Groups on record as opposing the repeal included the American Cancer Society, the American Lung Association, the American Heart Association, Americans for Nonsmokers’ Rights, the California Medical Association, California Labor Federation (American Federation of Labor and Congress of Industrial Organizations [AFL-CIO]), the California Nurses Association, and the League of California Cities.

Two bills illustrate the key legislative battles.

AB 297. AB 297 was introduced by Assemblyman Ed Vincent (D-Inglewood) in February 1997 to amend the law relating to gaming clubs. In May 1997, Vincent inserted amendments into AB 297 written by a lobbyist¹⁰ for Philip Morris and Hollywood Park, a casino and racetrack in Vincent’s district.¹¹ AB 297 would have extended the exemption for bars until January 1, 2001, and required that if the federal Occupational Safety and Health Administration adopted a standard for secondhand smoke exposure, bars would have 2 years to comply.

AB 297 passed the Assembly Labor Committee in July, too late to be enacted during the current legislative session,¹² so it could not delay implementation of the smoke-free bar provisions on January 1, 1998. The bill, however, would remain alive when the legislature returned on January 5, 1998, and would provide a vehicle for tobacco industry efforts to overturn the law after it was in effect.

Senate Bill 137. In August 1997, Vincent amended Senate Bill (SB) 137, a horse-racing bill authored by Senator Ken Maddy (R-Fresno), to extend smoking in bars until January 1, 2001. SB 137 had already passed in the

senate and could still be enacted during the 1997 legislative session to prevent the smoke-free bar law from going into effect. Assembly Speaker Cruz Bustamante (D-Fresno) granted SB 137 rule waivers that suspended the normal filing and hearing deadlines.^{13,14} The California Occupational Safety and Health Administration was to create standards for safe levels of smoke in the bars and casinos by January 1999 or smoking would be permitted until 2001.¹² Because of the cost of developing such standards, the bill would have been sent to the Assembly Appropriations Committee, where the committee chair, a strong public health advocate who refused tobacco industry campaign contributions, opposed it.¹² To avoid this hostile committee, Vincent and Maddy removed the requirement that the state Occupational Safety and Health Administration develop ventilation standards. Bustamante then referred SB 137 to the Assembly Governmental Organization Committee, which approved it 11–2. This parliamentary maneuvering illustrates how the tobacco industry is able to use insider strategies to operate quietly through legislative leaders who control the process.¹⁵

Between July and September, the media reported on Maddy and Vincent’s intentions to use SB 137 to delay implementation of smoke-free bars.^{12,14,16} To counter the industry’s insider strategies, the health groups publicized its activities. On August 28, 1997, the day SB 137 was amended into a smoke-free bar repeal law, the American Heart Association and Americans for Nonsmokers’ Rights took out a full-page advertisement in the *New York Times* Western Edition headlined “Don’t all workers deserve smoke-free workplaces? The law says yes. Big tobacco says no.”

On August 29, the assembly passed SB 137 by a vote of 44–28. Legislators voting yes on SB 137 (pro-tobacco) received a total of \$433 700 in tobacco industry campaign contributions in the period 1997 to 1998 (mean, \$9857 per vote)⁹; those voting no on SB 137 (pro-health) received \$1000 in tobacco industry campaign contributions in the period 1997 to 1998 (mean, \$36 per vote) ($P < .001$ by Mann-Whitney test). Previous research in California,^{9,17,18} other states,¹⁵ and the US Congress¹⁹ has shown that tobacco industry campaign contributions both influence legislators’ voting patterns on tobacco issues and serve as a reward for voting favorably for the tobacco industry.

The amended bill went back to the senate for concurrence. Senate President Pro Tem Bill Lockyer (D-Hayward), who had been a strong ally of the tobacco industry,^{18,20} had come to view protection of bar employees from secondhand smoke as a “worker’s rights issue.”²¹ He referred SB 137 to the Senate Judiciary Committee to kill it.

The week before SB 137 was to be heard in the Judiciary Committee, the American Cancer Society held a widely covered press conference and took out a full-page advertisement in the *Sacramento Bee*—headlined “Can Californians Afford the Best Legislature Money Can Buy?”—lambasting the assembly and exposing the industry’s manipulation of the legislative process.

The day before SB 137 was heard in the Senate Judiciary Committee, the American Heart Association, American Lung Association, American Cancer Society, and California Medical Association took out a full-page advertisement in the *Sacramento Bee* headlined “Big Tobacco Is At It Again!” The advertisement highlighted the industry’s unjustified claims that the law was hurting business and costing jobs and contested the industry’s claim that ventilation standards could control secondhand smoke. The advertisement also listed phone numbers of the members of the Senate Judiciary Committee and urged constituents to call. The next day, September 9, 1997, the Judiciary Committee deferred a vote on SB 137, killing it.

During the last days of the 1997 legislative session, a tobacco industry lobbyist proposed a 5-cent tax increase on cigarettes to Lockyer in exchange for legislation allowing smoking to continue in bars.²² Lockyer refused, and California became the first state to have smoke-free bars.

AB 297 revisited. AB 297 was alive when the legislature returned on January 5, 1998, just 4 days after the smoke-free bar provisions went into force. According to American Lung Association lobbyist Paul Knepprath, “As soon as the [smoke-free bar provisions] went into effect, it changed the legislative landscape completely. Now the onus was on the tobacco industry and [its] supporters and allies to undo and repeal a law that had gone into effect, which is much more difficult than stopping something from going into effect” (P. Knepprath, interview with authors, November 23, 1998). Nevertheless, on January 28, the assembly passed AB 297 by 42–26. Those voting yes received \$412 800 in tobacco industry contributions in the period 1997 to 1998 (mean, \$9829), and those voting no received \$1000 (mean, \$38) ($P < .001$).⁹

AB 297 then moved to the senate. Lockyer had stepped down as president pro tem, and Senator John Burton (D-San Francisco), who had a strong public health record, succeeded him. Recognizing the controversy the tobacco industry’s public relations campaign generated, Burton was willing to consider the alleged negative economic impact of smoke-free bars.²³ Because he viewed the law as a “worker safety issue” and not a “customer-preference issue,”²⁴ Burton put the burden of

proof on opponents to prove that the law was actually hurting business.^{21,25,26}

Burton directed the bill to the Senate Health and Human Services Committee, chaired by anti-tobacco Senator Diane Watson (D-Los Angeles), who planned a public hearing.²¹ Watson was concerned that the industry was “undermining the implementation of this public health law”²⁷ by urging noncompliance. Vincent wanted the hearing delayed until June, which would give the industry more time to build opposition, so he attempted to pull the bill off the voting calendar (J. Miller, interview with authors, December 4, 1998) and did not appear at the hearing in an effort to prevent a vote.²⁷ Watson kept AB 297 on the calendar and held the hearing.

The health advocates used the hearing as a focal point for their activities (M. Burtat, interview with authors, November 17, 1998). On March 12, 16, and 23, 1998, the health groups ran advertisements in the *Sacramento Bee*, *New York Times* Western Edition, and *La Opinion*, countering the tobacco industry’s argument that AB 297 was about individual rights rather than employee protection from secondhand smoke.

On March 25, the day of the hearing, the American Cancer Society released the results of a poll conducted in February 1998 demonstrating public support for smoke-free bars²⁸; 61% of voters surveyed supported the 2-month-old law. In another survey conducted for the California Department of Health Services, 61% reported that the new law had no effect on the likelihood of their visiting a bar, and 24% reported that they would be more likely to visit a smoke-free bar.²⁹ In addition, 75% of bar patrons who were smokers reported complying with the law when in a bar. This poll was consistent with other independent polls (Table 1) indicating public support for smoke-free bars and was used to counter widely accepted anecdotal claims of lost income and noncompliance in news reports orchestrated by the tobacco industry, mostly through the NSA, an organization created by the public relations firm Burson-Marsteller for Philip Morris.³⁶

Americans for Nonsmokers’ Rights linked groups such as the Northern California Bar and Tavern Association (created by the Dolphin Group, under contract with Philip Morris³⁷) back to the tobacco industry or the NSA (C. Hallett, interview with authors, November 16, 1998). It also publicized Philip Morris documents disclosed during Minnesota’s litigation against the tobacco industry that demonstrated that the NSA was a front group for the industry rather than an organization representing smokers.³⁸

The hearing was a direct confrontation between the tobacco industry and the health groups. Bar owners, club owners, and bartenders opposing the law complained of lost

business and infringement of their rights as business owners.³⁹ The health groups presented evidence that smoke-free workplaces were an integral part of the decline in smoking prevalence in California.³⁹ The president of the California Labor Federation (AFL-CIO) stated, “We believe disease and death should not be a condition of employment.”²⁷ To put a human face on the issue, the health groups were also represented by individual bartenders, waitresses, and club owners who supported the law (M. Burtat, interview with authors, November 17, 1998; P. Kneppath, interview with authors, November 23, 1998).

AB 297 died in committee.

Putting the Economic Argument to Rest

In May 1998, the American Beverage Institute released a survey³ of selected bar owners and managers in California that claimed a decline in business of 59.3% since January 1998, with stand-alone bars claiming a 81.3% drop.³ Similar anecdotal claims of lost revenues have been used to fight smoke-free restaurant laws,⁴⁰⁻⁴² despite the fact that they have been repeatedly shown to be false in studies of actual restaurant⁴³⁻⁵² and bar⁴⁸ revenues.

Burton requested that the state Board of Equalization, California’s sales tax collection agency, rapidly produce a preliminary analysis of taxable sales. On June 24, 1998, the board reported that the state’s smallest 1161 establishments that serve alcohol (less than \$50,000 in taxable sales per month) had a 1.06% increase in revenues in January 1998 compared with January 1997.⁵³ The board also found that the state’s 131 smallest bars—those the industry claimed would be hurt most—showed the largest increase in business, 35% over the previous January.⁵³ Later, the board released data comparing January 1997 and 1998 sales for 1175 larger bars and restaurants with bars that showed a 1.07% increase in sales.⁵⁴ For the first quarter of 1998, there was a 6.0% increase in taxable sales for all eating and drinking establishments compared with 1997.⁵⁵ While the tobacco industry continued to press its economic claims in the media, the board reports ended the economic argument in the legislature.

State Efforts to Implement Smoke-Free Bars

As with other public health laws, the primary mode for implementing the Smoke-Free Workplace Law in 1995 was education, with formal enforcement actions (citations and fines) kept to a minimum. A public education campaign focusing on the dangers of secondhand smoke (the justification for the law) that started 6 months before the law took effect eased implementation and minimized the need for formal enforcement (R. Shimizu, Califor-

nia Department of Health Services (DHS), memo to J. Howard, D. Bal, and D. Lyman, May 27, 1997; C. Stevens, DHS, memo to M. Genest, September 30, 1997; C. Stevens, DHS, memo to L. Frost, May 23, 1997).

Refusal to use media campaign. Public health advocates were concerned that the tobacco industry would run a campaign to undercut compliance with the smoke-free bar provisions and felt it was important that the health message reach the public first. The Tobacco Control Section of the California Department of Health Services had 2 resources to undertake this task, a contract agency responsible for the implementation of the smoke-free bar provisions and a large statewide media campaign funded by the tobacco tax.^{56,57} The Tobacco Education and Research Oversight Committee, the body with the legislative mandate to oversee the California Tobacco Control Program, recommended that an educational campaign begin as early as August 1997.⁵⁸

The administration of Governor Pete Wilson (R) ignored this advice (M. Genest, memo to J. Howard and J. Stratton, May 28, 1997) and refused to implement an educational campaign on the grounds that promoting the new bar law would be considered “lobbying” against tobacco industry’s efforts to overturn the law.^{58,59} By October 1997, the American Heart Association and the American Cancer Society were complaining that bar patrons would be unprepared for the new provisions and that the tobacco industry would incite bar owners and patrons to violate the law.⁶⁰

The Tobacco Education and Research Oversight Committee and public health advocates asked that, even if the administration would not allow advertisements while the legislature was in session, it at least develop and approve advertising that could air quickly after the legislature adjourned in September 1997. The administration refused (M. Genest, DHS, memo to J. Howard and J. Stratton, May 28, 1997), despite the fact that detailed advertising concepts had been presented by its advertising agency in April 1997 (A. Schafer, Asher/Gould Advertising, letter to C. Stevens, April 8, 1997). Only when legislative attempts to repeal the smoke-free bar law failed when the legislature adjourned did the administration begin working on an advertising campaign.¹ The first advertisement promoting smoke-free bars aired just 6 weeks before the law went into effect.

Supporting local agencies. By July 1996, when planning of the implementation of the smoke-free bar provisions began, 85% of California localities already had agencies designated to enforce the Smoke-Free Workplace Law because of the general workplace provisions implemented in 1995 (D. Kiser, interview with authors, November 11, 1998). In 1996, the Tobacco Control Section conducted

TABLE 1—Surveys of Popular Support of and Compliance With the California Smoke-Free Bar Law

| Study Sponsor | Major Findings | Additional Findings |
|--|---|--|
| California Smokefree Cities ^a (March 1996) | 64% agreed that bar employers had a responsibility to protect bar employees. 61% agreed that bar employers had a responsibility to protect bar patrons. | 36% reported that they would be less likely to go to a bar that allowed smoking, as opposed to 11% who reported that they would be more likely to go to a bar that allowed smoking. |
| California Department of Health Services ^b (July 1997) | 60% of bar patrons reported that they would prefer a smoke-free bar. 87% of bar patrons stated that it would make no difference or that they would be more likely to visit bars if they went smoke free. | 75% of bar patrons reported that they did not smoke at all or did not smoke in bars. 64% of Californians had visited a bar in the past year; 11% reported being weekly bar patrons. |
| Los Angeles County Department of Health ^c (March 4, 1998) | 85% of bar patrons were more likely to go to a smoke-free bar, or it made no difference. 70% of bar patrons reported that it was very or somewhat important to have smoke-free bars. | 78% of frequent bar goers (1 or more times per week) reported that law increased or had an effect on their intent to visit bars. 61% of frequent bar goers strongly or somewhat approved of the smoking ban. |
| American Lung Association, Contra Costa–Solano ^d (March 11, 1998) | 100% of bars in Jack London Square (Oakland) were smoke free. 96% of bars in Fisherman's Wharf (San Francisco) were smoke free. | The 2 areas are heavily patronized by tourists. |
| American Cancer Society, California Division ^e (March 25, 1998) | 61% of voters supported the smoke-free bar law. 69% of voters were concerned about the effects of secondhand smoke on bar workers and patrons. | 61% strongly agreed that the tobacco industry spent too much money on lobbying and advertising. 90% agreed that secondhand smoke is harmful to health. 75% favored a complete ban on smoking in all workplaces. |
| California Department of Health Services ^f (March 1998) | 66% of bar patrons reported that having smoke-free bars was important. 61% reported that the law would have no effect on their likelihood of visiting a bar. 24% reported that they were more likely to visit a bar because of the new law. | 33% of bar patrons reported that having smoke-free bars was not important. 14% reported that they were less likely to visit a bar because of the new law. 75% of smokers abided by the law the last time they were in a bar after January 1. |
| Los Angeles Times Poll ^g (May 27, 1998) | 60% of respondents approved of the smoke-free bar law. | 25% of smokers approved of the new law. 20% of respondents were smokers. 65% of Democrats, 57% of Republicans, and 59% of Independents supported the new law. |
| California Department of Health Services ^h (October 5, 1998) | 65% of bar patrons approved of the smoke-free bar law. 68% reported that it was important to have a smoke-free environment inside bars. | 87% went to bars more often, or did not change their behavior, after law was implemented. Since poll conducted in March, an increased number of smokers went outside to smoke (63% compared with 53% before March poll). |
| San Francisco Tobacco Free Project ⁱ (December 14, 1998) | Patrons were in compliance with AB 13 in 78.3% of San Francisco bars visited. 96.5% of restaurant bars visited in San Francisco were in compliance. 100% of hotel bars visited were in compliance. | 50.6% of stand-alone bars visited were in compliance. 77.8% of nightclubs visited were in compliance. 57.9% of complying bars posted no-smoking signs. 76.5% of noncomplying bars posted no-smoking signs. |

^aRandom-digit-dial telephone survey from February 7 to March 17, 1996, of 1283 adult members of California households. Sampling error is $\pm 2.7\%$; sampling error with subsample of smokers ($n=411$) is $\pm 4.8\%$. Survey was conducted by the Gallup Organization, Princeton, NJ.³⁰

^bRandom-digit-dial telephone survey from July 11 to 17, 1997, of 1023 California adults 21 years or older, including 686 who were bar patrons. Sampling error is $\pm 3.2\%$. Survey was conducted by the Field Research Corporation, San Francisco, Calif.³¹

^cRandom-digit-dial telephone survey in February 1998 of 455 Los Angeles County residents who had been inside a bar, nightclub, lounge, or bar attached to a restaurant after January 2, 1998, and who were 21 years or older. Sampling error is $\pm 4.7\%$. Survey was conducted by Communication Sciences Group, San Francisco, Calif.³²

^dSite visits to 36 bars in Fisherman's Wharf, San Francisco, and 11 bars in Oakland by American Lung Association staff.³³

^eRandom-digit-dial telephone survey in March 1998 of 600 California registered voters. Participants were 18 years or older. Sampling error is $\pm 4.0\%$. Survey was conducted by Charlton Research Company, Walnut Creek, Calif.²⁸

^fRandom-digit-dial telephone survey in February and March 1998 of 1001 California bar patrons, 21 years or older. A patron was defined as any adult 21 or older who reported visiting a bar, tavern, or nightclub, including one attached to a restaurant, hotel, or card club, in the last 12 months. Sampling error is $\pm 3.2\%$. Survey was conducted by Field Research Corporation, San Francisco, Calif.³⁴

^gRandom-digit-dial telephone survey in May 1998 of 1514 adults in California. Sampling error is $\pm 3\%$. Survey was conducted by the Los Angeles Times Poll.

^hRandom-digit-dial telephone survey in August 1998 of 1020 bar patrons 21 years or older who in the last 12 months had visited a bar, tavern, or nightclub, including one attached to a restaurant, hotel, or card club. Sampling error is $\pm 3\%$. Survey was conducted by Field Research Corporation, San Francisco, Calif.³⁵

ⁱRandom sample of 225 bars in the city of San Francisco were generated. Each bar was initially contacted to confirm that a bar was in operation and to find out hours and location. A total of 217 bars were open and received compliance checks from 5 PM to 10 PM by consultants for the project for a 3-week period in November and December 1998.²⁹

a Gallup poll to gauge public opinion on the Smoke-Free Workplace Law²⁸ and surveyed the county and city health departments (known as local lead agencies) to assess how to handle the transition to smoke-free bars.⁶¹ The local lead agencies suggested various activities, including text for no-smoking signs informing people about the law, tip sheets for bar owners, bartenders, and wait staff, and enforcement suggestions.⁶¹ In addition, by the end of 1996, 77 California communities had already implemented smoke-free bar ordinances, so the Tobacco Control Section could identify individuals who could advise state and local officials on implementation (T. Buffington, interview with authors, November 18, 1998). These efforts were less visible to political appointees within the Wilson administration and were easier for the Tobacco Control Section to complete than a media campaign.

To support the local implementation of the bar provisions, on March 1, 1997, the Tobacco Control Section awarded an American Lung Association affiliate a contract to assist the local lead agencies in implementing smoke-free bars. This project, named BREATH, allowed the Tobacco Control Section to support smoke-free bar implementation in a way that was more resistant to political interference.

In June 1997, information about the new law, answers to common questions, results from the Department of Health Services' 1997 poll showing public support for smoke-free bars (Table 1), and a letter from the department's director were sent to all 36000 bars in the state. BREATH followed with a poster mailing in late 1997 describing the new legal requirements regarding smoke-free bars, penalties for non-compliance, myths about ventilation and anticipated impacts, and public support. After the bar provisions went into effect, BREATH published 2 full-page advertisements in the *New York Times* Western Edition listing 140 well-known bars and restaurants with bars that supported the law to protect the health of their workers and customers.

The War of Perceptions

In 1994, well before implementation of the smoke-free bar provisions, Philip Morris contracted with a political public relations firm, the Dolphin Group, to develop a "California Action Plan" to "safeguard bars and taverns against the threat of a total smoking ban" and "protect and support point of sale retail/marketing strategies, visibility, and promotion."³⁷ Both Philip Morris and the NSA contacted bar owners and smokers through direct mail campaigns using Philip Morris's database of smokers^{36,62-64} (also C. Hallett, interview with authors, November 16, 1998) to mobilize them against smoke-free bars.

Starting in February 1996, the NSA mounted a bar poster and coaster campaign, warning bar patrons, "You are being targeted," in more than 2000 bars¹⁶ to enlist them in the campaign to postpone the phase-in of smoke-free bars (C. Hallett, interview with authors, November 16, 1998). The April 1996 NSA newsletter claimed that "California consumers now have a way to send a message to state lawmakers that they won't stand for an upcoming smoking ban that will force every bar in the state to quit serving their smoking customers."⁶⁵ Customers were asked to fill out the "action coasters" that were sent to state legislators. The NSA also took out a 4-page advertisement in the *Nation's Restaurant News* to promote the message that it wanted to help restaurateurs fight for their rights and that restaurants lose business when smoking ordinances go into effect.³⁸

In December 1997 and January 1998, the NSA supplied 3000 bars with "action kits," which included a window sticker to register the bar's opinion of smoke-free bars, customer awareness posters to place in the bar, and customer action coasters that stated, "I'm a constituent, not a criminal," to be sent in NSA-provided envelopes to the bar owner's state legislator.⁶⁶ By March 1998, 4119 printed cards reached the Senate Health and Human Services Committee.⁶⁷

The NSA, working through Burson-Marsteller, used print and electronic media to convey the impression that there were rampant public dissatisfaction with smoke-free bars and negative economic effects on small businesses (C. Hallett, interview with authors, November 16, 1998). Between January 1998 and June 1998, Burson-Marsteller issued more than 70 press releases claiming problems with the implementation of smoke-free bars.

The tobacco industry dominated early media coverage of the impact and popularity of smoke-free bars. Articles that were published the week before the smoke-free bar provisions went into effect, and until 3 months afterward, emphasized opposition to the law and claims of lost business, lost jobs, and problems with enforcement, as well as the probability that the law would be repealed^{25,66,68-76} (also J. Miller, interview with authors, December 4, 1998). The Department of Health Services had tried to anticipate this argument by commissioning opinion polls in 1996 and 1997, which demonstrated that about two thirds of the population supported smoke-free bars (Table 1). These polls, however, did not have the same emotional appeal as the personal stories that the tobacco industry's media operation generated. Even so, support for smoke-free bars increased throughout 1998³⁴ (also C. Hallett, interview with authors, November 16, 1998).

Discussion

The tobacco industry's campaign to fight smoke-free bars in California was unprecedented in its duration and intensity and evolved over time.

The industry's initial arguments against the law centered on predictions of economic disaster and government interference with free choice. The economic argument lost steam after studies showed no effect of local smoke-free bar laws on bar revenues⁴⁸ and effectively ended after the Board of Equalization reported that bar business increased (D. Kiser, interview with authors, November 11, 1998; P. Hunting, interview with authors, December 18, 1998). The free-choice argument subsided as polling data from the state, voluntary health agencies, and the *Los Angeles Times* showed that most bar patrons supported smoke-free bars.⁷⁷ Research showing that bar workers' health improved 4 to 8 weeks after the law took effect⁷⁸ reinforced the concept of smoke-free bars as a workplace safety issue.

Throughout these battles, the industry tried to create a positive feedback loop in which smokers would be encouraged to ignore the law because it was going to be repealed, and the industry then used the noncompliance as an argument in the legislature for repeal. Although this strategy failed to get the law repealed; however, it did create compliance problems.

Although the health groups were outspent by the tobacco industry,⁷⁹ they were willing to make the implementation of smoke-free bars a priority and commit resources to defending the law (P. Knepprath, interview with authors, November 23, 1998). In addition to funds for polling and advertising, these groups used their credibility to garner public support for smoke-free bars and to counter the tobacco industry's activities, both outside and inside the legislature. Repeating the successful strategy used in other legislative battles,¹ the groups directly attacked the tobacco industry and state legislators willing to support the industry through a series of advertisements, which served as both a call to action for the public and a message to the legislature that the health groups were willing to use their public regard to hold the industry's political allies accountable. In addition, the health groups were able to attract critical support for smoke-free bars from entities outside the traditional public health community, including the California Labor Federation, the California League of Cities, and individual cities across the state (M. Burgat, interview with authors, November 17, 1998; P. Knepprath, interview with authors, November 23, 1998).

The public health groups also were aided by powerful legislators sympathetic to their cause. For years, Democrat Willie Brown, who

received more tobacco industry campaign contributions than any other legislator in the country,^{18,80} used his power as speaker of the assembly to protect the tobacco industry. After Brown left the legislature in 1996, anti-tobacco senators in the Democratic Caucus convinced President Pro Tem Lockyer that the Democrats were on the wrong side of the tobacco issue, particularly since the industry was favoring Republicans in its campaign contributions (D. Watson, T. Hayden, N. Petris; memorandum to Caucus Position on Tobacco Interests; April 24, 1996). As the bar law went into effect in 1998, new President Pro Tem Burton made it clear that the only reason the senate would reconsider the smoke-free bar law was if there was a substantial negative economic impact. After the Board of Equalization results were released, repeal of the smoke-free bar provisions was a dead issue in the senate.

The health groups were not as successful in getting the Wilson administration to ensure implementation of the smoke-free bar law. Despite the recommendations of the Department of Health Services' advertising agency, the Tobacco Education and Research Oversight Committee, and the health groups, the administration delayed using the statewide media campaign to educate the public. It also refused to use the licensing power of the Department of Alcoholic Beverage Control to see that bars did not participate in the tobacco industry's efforts to encourage people to ignore the law (M. Espinoza, letter to Assemblyman Brett Granlund, December 18, 1997). As elsewhere,^{81,82} the health groups were not willing to be as public or aggressive in dealing with the administration as they were with the legislature, and they enjoyed less success there.

This situation left pro-health forces limited to lower-profile implementation efforts that would not attract the attention of high-level political figures in the administration. Fortunately, they could build on the infrastructure present in California, created by its large tobacco control program⁵⁷ and through the implementation of smoke-free workplaces and restaurants in 1995. Because approximately 90% of the state's bars are part of bar-restaurant combinations⁸³ (also D. Kiser, interview with authors, November 11, 1998), a large majority of bar owners and managers had already implemented the Smoke-Free Workplace Law in the restaurant sections of their establishments in 1995. As a result, compliance in bar-restaurant combinations was high from the beginning (88% of local lead agencies estimated that "most," "almost all," or "all" bar-restaurant combinations in their jurisdictions were complying with AB 13 by the end of January 1998⁸³) and remained high (D. Kiser, interview with authors, November 11, 1998). Virtually all the controversy and problems centered on stand-alone bars.

Why Bars?

Why did the tobacco industry fight so hard against the smoke-free bar law, particularly since the number of cigarettes smoked in bars is much smaller than the number smoked in workplaces? Part of the answer may lie in the fact that bars have become viewed as the "last bastion"⁸⁴ of socially acceptable smoking, and smoke-free bars send a strong message that smoking is not socially desirable (A. Henderson, interview with authors, February 12, 1999).

A more direct reason may have to do with marketing tobacco products. In recent years, the tobacco industry's marketing efforts directed at young children have become a political liability. As a result, the industry may be shifting at least some of its marketing efforts to young adults, where the arguments that public health advocates have mounted about smoking and children do not apply. Smoking is increasing among college-age students (aged 18–24),^{85,86} and young adults (aged 21–30) represent a substantial percentage of bar patrons.⁸⁷ The industry explicitly protected bars as promotional venues in the Master Settlement Agreement that settled lawsuits that the states brought against the tobacco industry.⁸⁸

As early as 1996, Philip Morris and RJ Reynolds started marketing efforts in bars and clubs through the Camel Club and Marlboro Days campaigns.^{89–96} The Camel Club program seeks to "create an alternative marketing campaign and cigarette distribution network that will not be affected by changing federal regulations or the scores of tobacco related lawsuits."⁹⁰ KBA Marketing, the Chicago firm that runs the Camel Club program, states in its marketing material that "[b]y operating in the nightlife scene, the objective is to directly reach the trend influencers, the people who start and maintain trends. Our association with trend influencers will have a lasting impact on club goers who will begin to associate Camel with what is 'cool.'"⁹⁷ In addition to reaching these young adults, this group serves as important role models for teens. Increasing smoking among young adults also promotes teen smoking.⁹⁸

Although there is nothing in AB 13 that prohibits these promotional activities in bars, conducting them in a smoke-free bar presumably may reduce the effectiveness of these promotional campaigns: smoke-free bars send a strong social message that smoking is no longer socially acceptable.

Lessons Learned

Don't start with bars. The smoke-free bars were phased in 3 years after all other workplaces in California went smoke free. It was

beneficial to implement the Smoke-Free Workplace Law incrementally to prepare for the tobacco industry responses to the law and to conduct educational efforts targeting bar owners and workers and the public.

Don't let the tobacco industry define the issue. The industry attempted to make the fight over smoke-free bars an economic debate, framing the small business owner as the victim of this law. Instead of using public appearances to respond to the tobacco industry's message, the health groups framed AB 13 as a health and worker safety issue.

Health groups must commit resources to upholding the law. The health groups spent an estimated \$200 000 to promote and uphold the law. Polling, advertising, action alerts, and lobbying all take commitment and resources. The health groups were also willing to take on not only the tobacco industry but also tobacco's political allies in the legislature.

Once the law passes, the fight has just begun. The passing of AB 13 was only the beginning of the fight over smoke-free bars. The tobacco industry will continue to seek to undermine the law, even after it is passed. Although low-level officials in the Department of Health Services sought to implement the law, they did not receive high-level political support, and this reduced the effectiveness of their efforts. The private health groups did not apply effective pressure on the administration to secure optimal implementation. Long-term success requires that public health groups work to ensure not only passage but active implementation of clean indoor air laws. □

Contributors

Both authors contributed to the design of this study, the analysis of results, and the writing of the paper.

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