



The
UNIVERSITY
of VERMONT

Vermont Legislative Research Shop

Indoor and Outdoor Smoking Bans

In recent years there has been an increased amount of attention paid to Environmental Tobacco Smoke (ETS). More commonly known as second hand smoke, ETS has been actively studied and its effects are better known today than ever before. There have been several campaigns in recent years that have spearheaded the fight against ETS. The main argument against allowing people to smoke in public establishments is the detrimental effects that ETS has on workers. Although OSHA regulates air quality standards for employees, there have been no regulations put in place by the federal government to date that refer to ETS exposure. States and cities are now taking it upon themselves to protect workers and create a cleaner atmosphere in the smokiest public places, most notably bars and cabarets. There is also an effort in some cities and states to extend smoking bans to outdoor areas. According to the Environmental Protection Agency, cigarette smoking kills approximately 434,000 people every year in the United States.¹ The EPA also estimates that ETS leads to fatal lung cancer in approximately 3,000 U.S. nonsmokers each year. It also leads to respiratory tract infections, such as bronchitis and pneumonia, in 150,000 to 300,000 infants and children up to 18 months every year. Of those cases, 7,500 to 15,000 will result in hospitalization.²

Health Issues

Due to the fact that ETS is a known human carcinogen it has become an important issue for several federal agencies who deal with the regulation of occupational and environmental risks. The Environmental Protection Agency's Science Advisory Board has ranked indoor air pollution as one of the top five environmental risks to public health.³ Studies have found that levels of ETS are 1.6 to 2.0 times higher in restaurants and 3.9 to 6.1 times higher in bars than in office workplaces and 1.5 times higher and 4.4 to 4.5 times higher, respectively, than in residences. According to the Massachusetts Department of Public Health, Bureau of Health Statistics, the risk of lung cancer may be increased by as much as 50 percent for employees of these industries.⁴ Researchers conducted another study using bar workers in Tayside, Scotland and published their findings in *The Journal of the American Medical Association*. The authors of this

¹ Environmental Protection Agency "Fact sheet: respiratory health effects of passive smoking" <http://www.epa.gov/smokefree/pubs/etsfs.html> Visited on 1/23/2008.

² EPA, "Fact sheet: respiratory health effects of passive smoking."
² EPA, "Fact sheet: respiratory health effects of passive smoking."

⁴Davis, Ronald M, "Exposure to Environmental Tobacco Smoke: Identifying and Protecting Those At Risk," *The Journal of the American Medical Association*, December 1998, Vol. 280: 1947-19449, <http://jama.ama-assn.org/cgi/citemap?id=jama;280/22/1947>, visited on 1/23/08.

study found that 61 bar workers (79.2% of the total sample) experienced respiratory symptoms before the bans introduction. As soon as one month after the bans inception date, only 41 (53.2%) reported symptoms. After two months, that number decreased even more to only 38 (46.8%) bar workers. The median number of symptoms reported also decreased from 2 one month before the ban to 1 a month after the ban. This also further declined, with participants reporting a median of zero symptoms after two months. The researchers concluded that “the recent introduction of legislation in Scotland prohibiting smoking in enclosed public places has led to a rapid and marked improvement in the health of bar workers. Indeed, on average employees had been working in a bar for more than 9 years, but improvements in health were evident only 1 month after the introduction of a smoke-free policy.”⁵

Extra ventilation is not a plausible alternative according to information published by the Centers for Disease Control and Prevention on their website. They have determined that there is actually no risk-free level of exposure to ETS. All levels can affect the health of the non-smoker in a negative way. They also found that no level of ventilation could completely eliminate the smoke from the air. This finding is concurrent with that of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers. The CDC maintains that “Even separately enclosed, separately exhausted, negative-pressure smoking rooms cannot keep secondhand smoke from spilling into adjacent areas”. The only truly safe environment for non-smokers is one that is completely smoke-free.⁶

In a guide released by the CDC for employers on how to make workplaces smoke-free, they cite Surgeon General findings from as early as 1986, which establish ETS as a cause of disease in nonsmokers. That report also introduces the findings mentioned above concerning the shortcomings of ventilation. The guide also mentions other positive effects of making workplaces smoke-free, other than the obvious health improvements for workers. Included in these benefits are reductions of cleaning and maintenance costs for workspaces and equipment, as well as an obvious increase in the overall morale of the employees.⁷

Ordinances/Legislation

Before examining the recent legislation that has been adopted by various states in regards to smoking bans, research was conducted to investigate whether or not constitutional rights existed for smokers. The findings indicated that no such protections existed for these individuals that may have provided them with grounds to challenge ordinances and legislation.

⁵ Menzies, Daniel et. al, “Respiratory Symptoms, Pulmonary Function, and Markers of Inflammation Among Bar Workers Before and After a Legislative Ban on Smoking in Public Places,” *The Journal of the American Medical Association*, October 11, 2006, 296: 1742-1748, <http://jama.ama-assn.org/cgi/content/full/296/14/1742?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=health+aft+er+smoking+bans&searchid=1&FIRSTINDEX=0&resourcetype=HWCIT>, visited on 1/23/08.

⁶ Center for Disease Control and Prevention, U.S. Department of Health and Human Services, “Fact Sheet: Ventilation Does Not Effectively Protect Nonsmokers from Secondhand Smoke,” October 2006, http://www.cdc.gov/tobacco/data_statistics/Factsheets/Ventilation.htm, visited on 1/23/08.

⁷ CDC, “Making Your Workplace Smokefree—A Decision Maker’s Guide,” http://www.cdc.gov/tobacco/secondhand_smoke/00_pdfs/intro.pdf, visited on 1/23/2008.

Effective July, 24th 2003, New York State amended its Clean Indoor Air Act (Public Health Law, Article 13-E) to prohibit smoking in virtually all workplaces, including restaurants and bars. New York enforces its regulations with penalties of up to \$2,000.⁸ Although this is relatively recent legislation, there is a lot of support for the move from the medical community and much opposition from the proprietors of the establishments that the regulation has affected.

Another state that has taken the initiative to ban smoking in their bars is California. In 1994 California banned smoking in almost all indoor workplaces, and in 1998 the California State Assembly passed a provision to the state labor code that banned smoking in all bars, this law went into effect on January 01, 1998.⁹

In an article in the *American Journal of Public Health*, Hao Tang, *et al* report on a series of random sample computer assisted telephone surveys about the smoking ban that were conducted by Field Research Corporation for the California Department of Health and Services. Overall the series of surveys concluded that California bar patrons increasingly support and comply with the smoke-free bar law.¹⁰ About 1000 people were surveyed at three different intervals, three months, six months, and two and a half years after the law was enacted on January 1, 1998. Overall approval of the ban rose 13.4% and self-reported noncompliance with the law decreased 10.6%. Figure 1 shows an increase of the likelihood of bar patronage since the passage of the law among both smokers and non-smokers. Figure 2 illustrates increased approval of the law by both smokers and non-smokers over time. The approval rate among smokers surveyed rose

Figure 1: Likelihood of bar patronage after ordinance

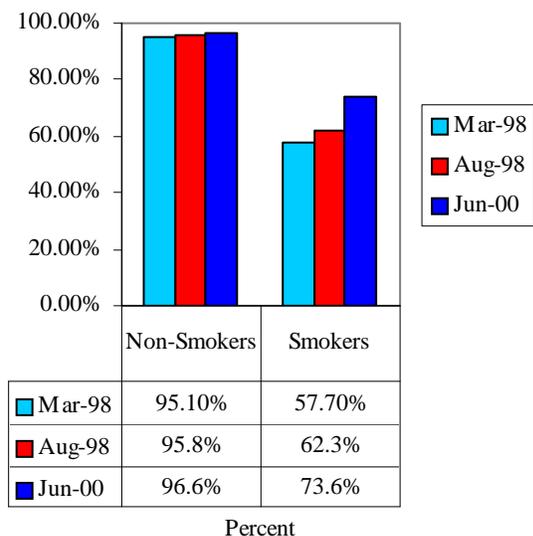
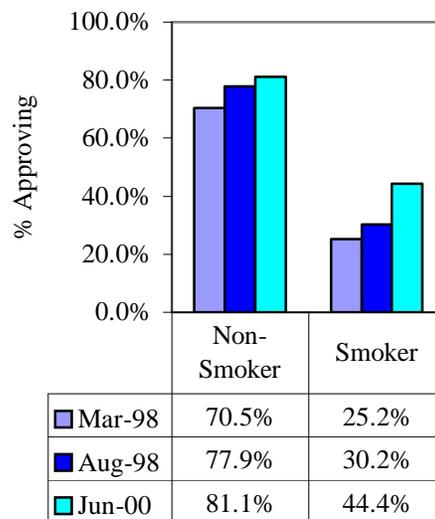


Figure 2: Approval of the Law



⁸ New York Department of Health, "A Guide for Restaurants and Bars to New York State's Clean Indoor Air Act," July 2003. http://www.health.state.ny.us/nysdoh/clean_indoor_air_act/restaurants_and_bars.htm Visited on 1/30/2008

⁹ California Labor Code Section 6400-6413.5, specifically Labor Code 6404.5 <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=06001-07000&file=6400-6413.5> Visited on 1/30/2008

¹⁰ Tang, Hao, et. al, "Changes of Attitudes and Patronage Behaviors in Response to a Smoke-Free Bar Law," *American Journal of Public Health*. April 2003, Vol. 93, No. 4. <http://www.ajph.org/cgi/content/full/93/4/611> Visited on 1/30/2008

19.2% since March 1998.

New York offers a waiver to businesses that can prove undue financial hardships due to the Clean Indoor Air Act or if other factors exist which would render compliance unreasonable. In addition, every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand.¹¹

Economic Issues

Restaurant and bar owners who oppose the proposed smoking ban fear a ban will cause a drastic decline in patron business based on the idea that many regular customers will find a new establishment in an adjacent town or county not subject to smoke-free legislation.

Numerous surveys have been taken in areas that have already imposed a smoking ban, but many have not been conclusive enough to prove that a smoking ban will in fact cause a decline in business for those restaurants and bars that allow smoking indoors. These surveys include studies reviewed and summarized by the Centers for Disease Control and Prevention, including results from California, New York, Texas, and Florida. The preponderance of evidence shows no change in business revenues following implementation of a smoking ban, and, in some cases an increase.¹² In California, studies found that the ban on smoking in restaurants in 1995 was followed by an increase in restaurant revenues. Bar revenues in California were also increased following a 1998 ban on smoking in bars. In New York, studies found that the restaurant and bar revenues were increased by 8.7% following the smoke-free law enactment. Employment in those industries also increased at this time. In El Paso, Texas, there were also no declines in revenues from restaurants, bars, or mixed beverages. In Florida, a study found that, again, there were no negative effects on sales and employment in the leisure and hospitality industries following the implementation of smoke-free laws in that state.

Shifting Outdoors

According to Americans for Nonsmokers Rights, outdoor bans have been put into effect in 415 parks, zoos, outdoor dining facilities, bus stops, and beaches as of January 2, 2008.¹³ Smoke free park legislation has become increasingly popular in recent years. In the past fourteen years, beginning in June 1993, there have been 262 examples of municipalities passing legislation that has banned smoking in parks. This has ranged across the country from California to Vermont.

¹¹ New York Department of Health, "Regulation of smoking in public and work places"
http://www.health.state.ny.us/nysdoh/clean_indoor_air_act/ciaalaw.htm Visited on 1/30/2008

¹² CDC, U.S. Department of Health and Human Services, "Fact Sheet: Smoke-Free Policies Do Not Hurt the Hospitality Industry," October 2006. http://www.cdc.gov/tobacco/data_statistics/Factsheets/SmokefreePolicies.htm
Visited on 1/23/2008

¹³ American Nonsmokers' Rights Foundation, "Smokefree Lists, Maps, and Data,"
<http://www.no-smoke.org/goingsmokefree.php?id=519>, accessed 2/4/08. We conducted a spot check of a sample of the ordinances to test the reliability of the data provided by this group and found no errors.

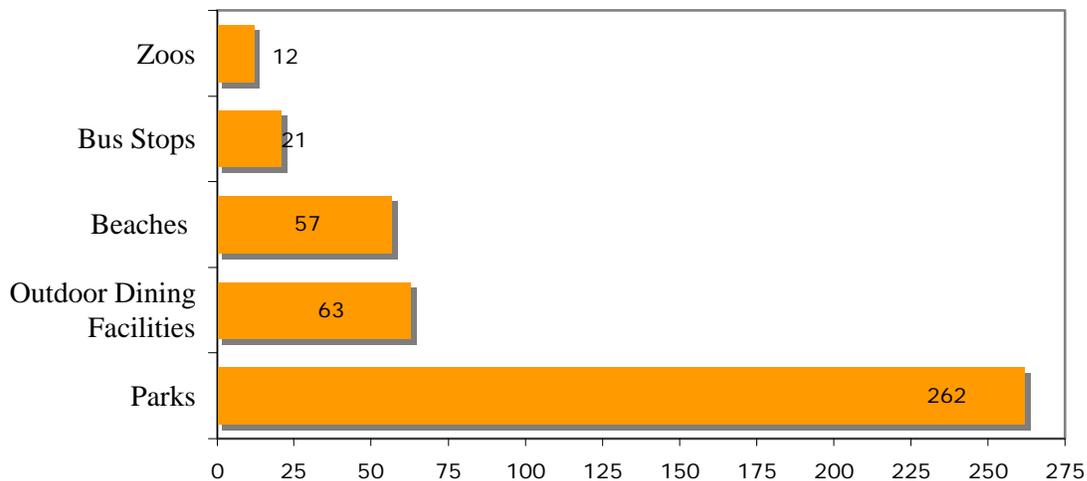
Similar action has been taken regarding outdoor zoos implementing smoking bans. Twelve municipalities in eight different states, from June 1998 to April 2007, have successfully banned smoking within the confines of the zoo.

Cities have also been passing legislation that makes outdoor dining 100% smoke free. From August 1993 to November 2007, there have been 63 municipalities in eleven different states that have passed legislation.

In addition, there have been an increasing number of cities that have banned smoking at bus stops. There have been 21 total bans, 12 of which passed in 2007.

Beaches are another outdoor area that has been subject to smoke free regulations. As far back as May 1995, to more recently in October 2007, 57 municipalities have made their beaches smoke free.¹⁴ These findings are summarized below in Figure 3. Figure 4 provides a summary of the total number of outdoor smoking bans implemented per state.

Figure3: Outdoor Smoking Bans(1993-2008)



Source: American Nonsmokers' Rights Foundation, "Smokefree Lists, Maps, and Data," <http://www.no-smoke.org/goingsmokefree.php?id=519>, accessed 2/4/08.

Vermont Outdoor Ban

In May 2004, Rutland, Vermont specified that Northwood Park and Dewey Park must be smoke free. According to Chad Ummel of the Rutland Town Recreation Department, "the primary reason is simply to send a message: healthy lifestyles, athletics and well-being to the youth of tomorrow." This action sets a precedent in Vermont, as no other outdoor ban of its kind exists in the state. The smoking prohibition in the Rutland parks is not a criminal ordinance, which means

¹⁴ American Nonsmokers' Rights Foundation "Smokefree Lists, Maps, and Data" <http://www.no-smoke.org/goingsmokefree.php?id=519> Visited on 2/4/08

that if people are caught smoking they won't be prosecuted by the law. Instead, offenders will be simply asked to put the cigarette out, or asked to leave the park.¹⁵

California Outdoor Bans

California has been leading the way in the effort to ban smoking in outdoor places. The San Francisco Board of Supervisors, in an 8-3 vote, banned smoking in outdoor spaces owned by the city, such as parks, public squares, and other outdoor spaces. In accordance with the decision, fines have been implemented to curb smoking. Those caught smoking in designated smoke-free areas will be fined \$100 for the first offense, \$200 for the second, and \$500 for each additional violation.¹⁶

Oakland, California has enacted its own version of a smoke-free ban in public places. According to a September 19, 2007 *USA Today* article a regulation has been put in place that bans smoking in public places, including ATMs, parks and trails, golf courses, outdoor cafes and service lines, child-care centers, hotels, and within ten feet of bus stops.¹⁷

On March 17, 2006 Calabasas, California put into effect an ordinance banning smoking in all public places, indoor and outdoor, and is said to include outdoor cafes, bus stops, soccer fields, condominium pool decks, parks, and sidewalks. In terms of enforcement, fines of up to \$500 come for repeat offenses, and misdemeanor charges can occur.¹⁸

International Bans

There have also been a few international cases of smoking bans in outdoor areas. In October 2002, legislation passed that banned smoking in crowded stations and other busy areas in the heart of Tokyo's government and business district. The prohibition was sparked by many people's complaints that smokers were holding cigarettes too close to the level of their children's faces. Smokers who violate this law are subject to a 20,000-yen (\$164) penalty.¹⁹

Another country that has banned smoking outdoors is Singapore. There, smoking is prohibited in outdoor eateries, coffee shops, canteens and cafes, which will affect 7,400 outdoor food outlets. Singapore's National Environment Agency said that officers will be doing check ups to monitor compliance to the law and remind business owners that they are responsible under the law to enforce the ban.²⁰

¹⁵ Perron, Darren, "Taking Smoking Bans A Step Further," *WCAX News*. May 24, 2004.
<http://www.wcax.com/Global/story.asp?S=1892515&nav=4QcSNO2m> Visited on 2/4/08

¹⁶ Risberg, Eric, "San Francisco enacts broad smoking ban," *USA Today*, January 26, 2005,
http://www.usatoday.com/travel/news/2005-01-26-san-fran-smoking-ban_x.htm, visited on 2/4/08

¹⁷ Winter, Michael, "Oakland expands outdoor smoking ban to ATMs, parks," *USA Today*, September 19, 2007,
<http://blogs.usatoday.com/ondeadline/2007/09/oakland-expands.html>, visited on 2/4/08.

¹⁸ Broder, John, "Smoking Ban Takes Effect, Indoors and Out," *The New York Times*, March 19, 2006,
<http://www.nytimes.com/2006/03/19/national/19smoke.html>, visited 2/4/08.

¹⁹ "Smoking Ban on Tokyo's Streets," *BBC News*. October 2, 2002, <http://news.bbc.co.uk/1/hi/world/asia-pacific/2292007.stm>, visited 2/4/08.

²⁰ "Singapore Bans Outdoor Smoking," *News 24*, April 7, 2006,
http://www.news24.com/News24/World/News/0,,2-10-1462_1962360,00.html, visited 1/16/08.

Smoking and Driving

The latest trend in smoking bans now sweeping the country involves those in vehicles used to transport children. Currently in the Vermont House there is debate going on addressing this same issue.²¹ This effort was introduced following a study in October 2006 by Harvard University showing that the common technique of rolling the window partially down does not protect children from second hand smoke exposure and harm. The first ban, however, actually came out in Arkansas in April 2006, which banned smoking in a car where a child is strapped into a car seat. Most formal bans in states follow this model, banning smoking in any car with a child under age 6 or weighing less than 60 pounds. Other localities that have enacted the ban include the states of Louisiana, California, and the city of Bangor, Maine. The legislatures of at least 14 other states are also looking at following in Arkansas' footsteps, all introducing similar bills during the last six months. The punishment for violation of these laws seems to be most often set at a uniform \$100 fine, though there is some variability by state. The harshest bills are coming out of states such as Montana, Arizona, and New York, with the age limit being increased to as high as 17 or 18 and the fines being increased as high as \$500 for first offense and \$1,500 (and jail time) for the third offense in one year.²²

Originally prepared by Jared Bombaci, Dave Vega, Stephanie Nemore under the supervision of Professor Anthony Gierzynski in response to a request from Representative J. Donovan, February 11, 2004

Updated by Kevin Channell, Ryan McCormick, and Jamie Parot under the supervision of Professor Anthony Gierzynski, February 11, 2008

Disclaimer: This report has been prepared by the undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the reports does not reflect official policy of the University of Vermont.

²¹ "Prohibiting Smoking in Motor Vehicles When Children Are Present," The Vermont Legislative Bill Tracking System, Current Status of a Specific Bill or Resolution 2007-2008 Legislative Session.

<http://www.leg.state.vt.us/database/status/summary.cfm?Bill=H%2E0772&Session=2008> Visited on 2/13/08

²² Knapp, Andrew, "States go after smoking in vehicles with kids," Stateline.org, March 6, 2007, <http://www.stateline.org/live/details/story?contentId=186298>, visited on 2/13/08.

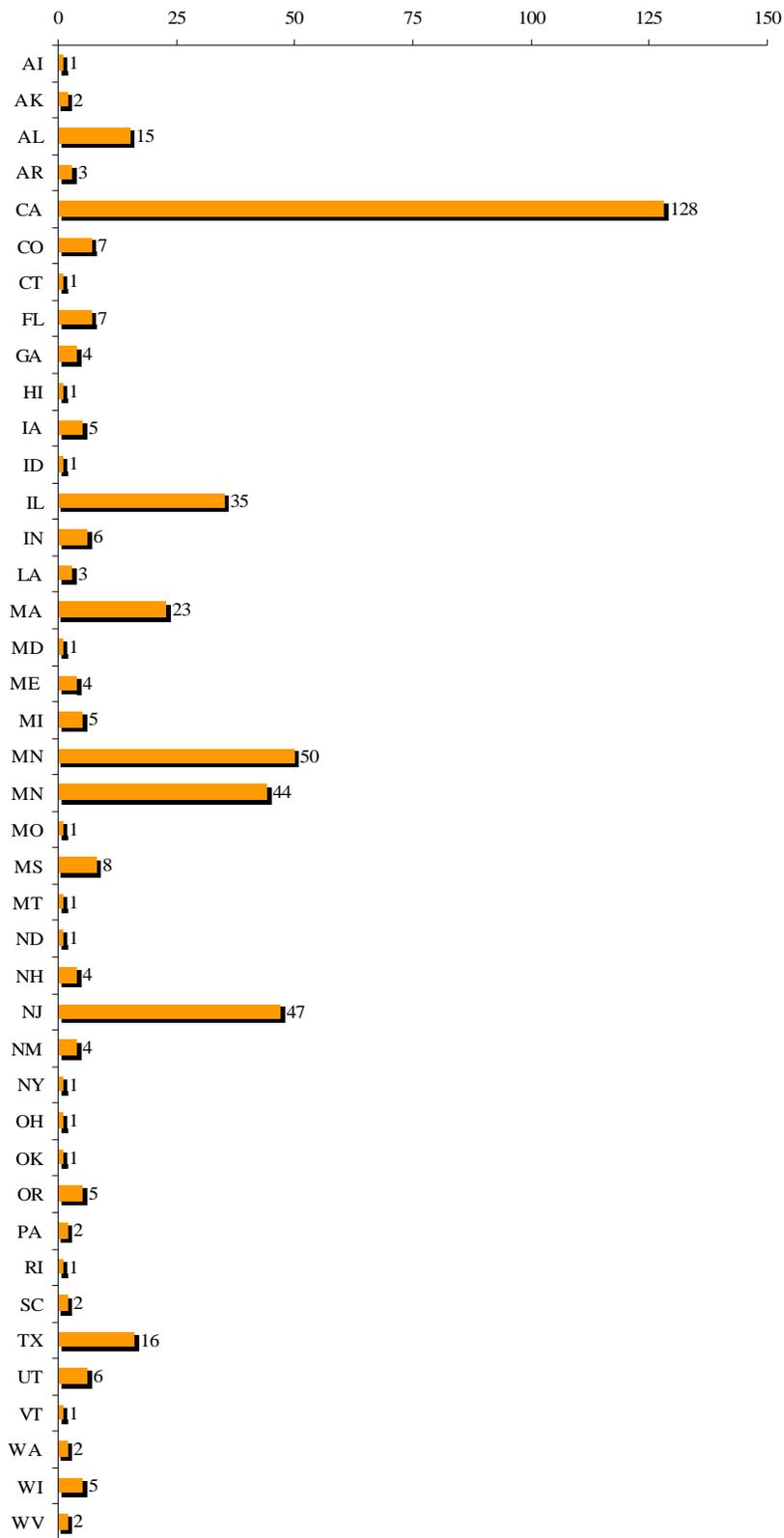


Figure 4: Number of Outdoor Smoking Bans by State

Source: American Nonsmokers' Rights Foundation, "Smokefree Lists, Maps, and Data," <http://www.no-smoke.org/goingsmokefree.php?id=519>, accessed 2/4/08.