

Drafting Effective Smoke-Free Laws



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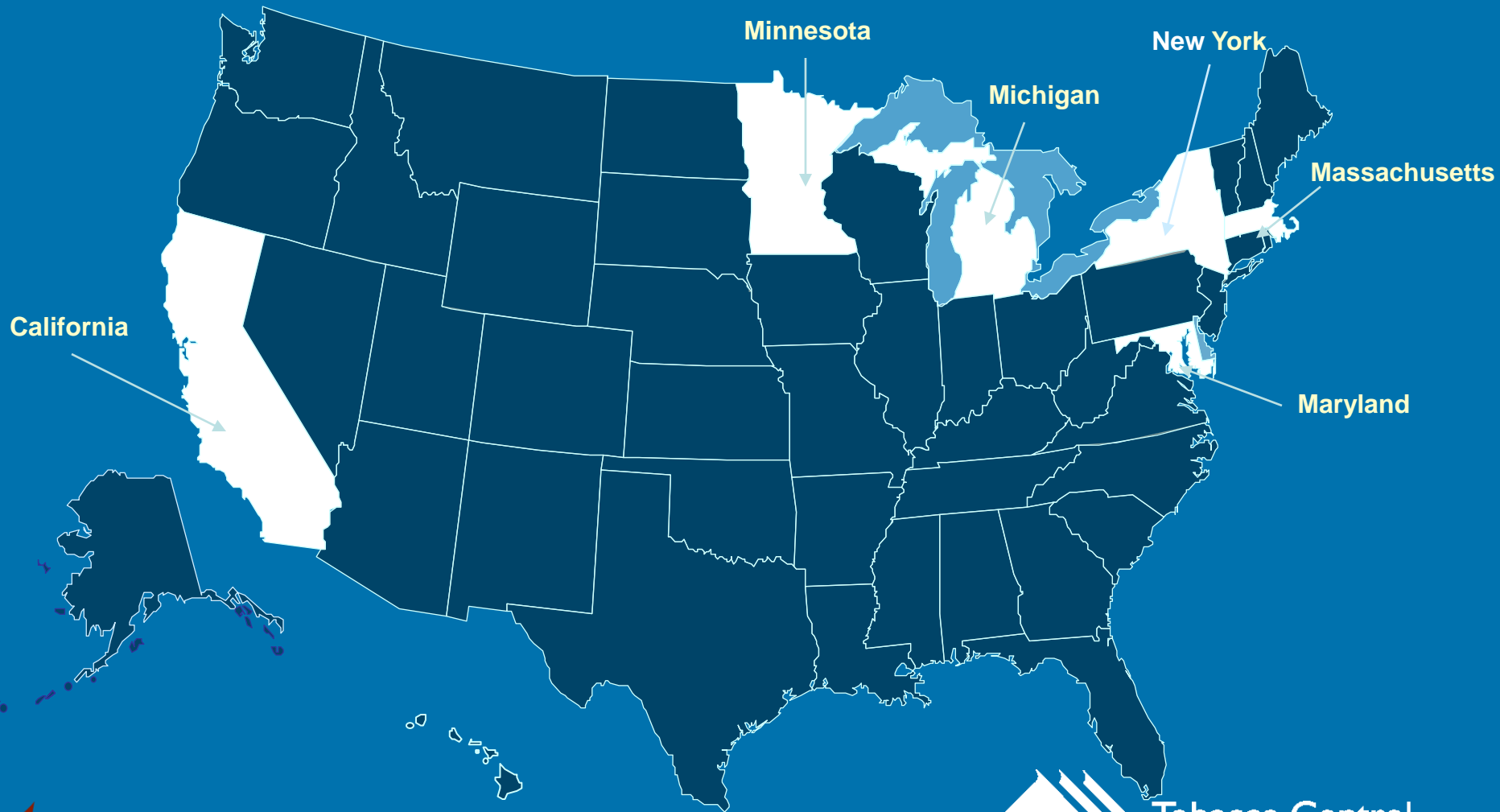


Tobacco Control
Legal Consortium

The Tobacco Control Legal Consortium

A national legal network supporting tobacco control policy change.

Tobacco Law Centers

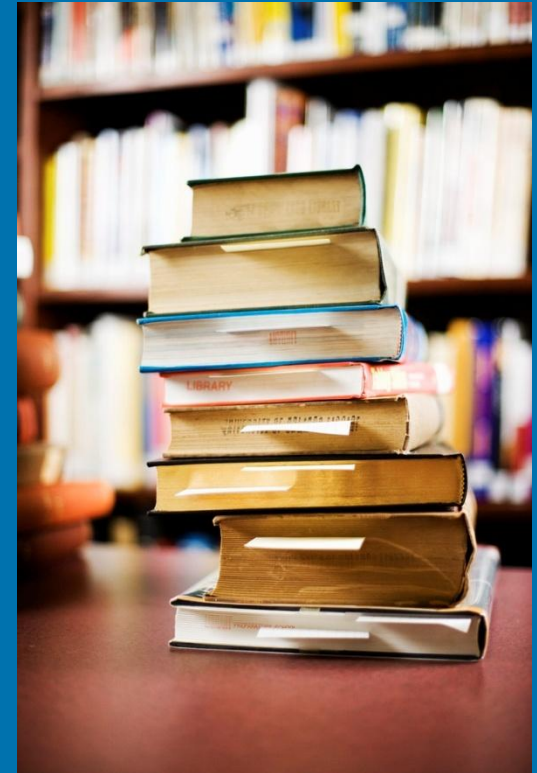


Who We Serve:

- Public health advocacy organizations and community coalitions
- Public health officials
- Elected officials
- City and county attorneys
- Private attorneys and individual citizens

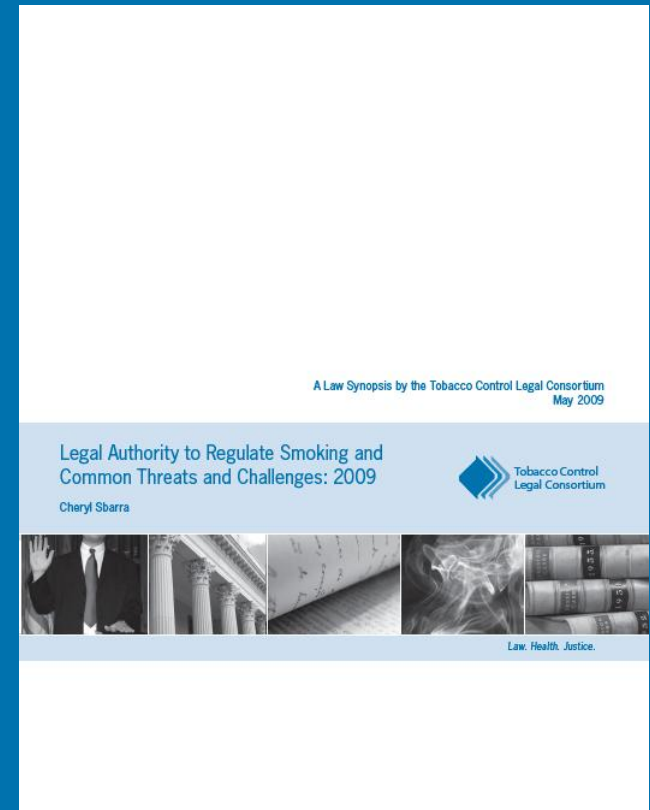
What We Do:

- Policy development
- Litigation Support
- Legal research, analysis, and interpretation
- Education and training*



What We Do: Education and Training

- Seminars
- Law Synopses
- Fact Sheets
- Legal Updates
- www.TCLCOnline.org



Legal Tools in Tobacco Control

- Legislation
- Regulation
- Litigation



Smoke-Free Laws



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Drafting Effective Smoke-Free Laws

Drafting Pointers – “DOs”

- ✓ be clear & succinct
- ✓ be consistent
- ✓ be specific
- ✓ be practical



Do: Be Clear & Succinct



Do: Be Clear & Succinct

- Use definitions appropriately
- Eliminate unnecessary words*
 - “There is a useless lawsuit in every useless word of a statute.” (Elihu Root, 1914)

Do: Be Clear & Succinct

(E) Owners, managers, operators, or employees of establishments regulated by this Ordinance shall inform persons seen violating this Ordinance of the requirements of this Ordinance. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance, he or she shall immediately direct the person or persons in violation to extinguish the item being smoked. Failure of the person directed to extinguish his/her item shall result in the violator being directed to leave the premise.

1. In the event the person [or persons] violating this Ordinance complies with this directive, no violation shall exist for the owner, manager, operator or employee witnessing the violation. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance and fails to immediately direct the person [or persons] in violation to extinguish the item being smoked, the owner, manager, operator or employee failing to take appropriate steps required by this Ordinance shall be in violation of this Ordinance.

2. In the event the person [or persons] violating this Ordinance fails or refuses to comply with this directive, the owner, manager, operator or employee directing the person [or persons] violating this Ordinance shall take immediate and reasonable steps to obtain the removal of the person [or persons] from the premises. As an example of the reasonableness required, if there is a person violating the ordinance who, the owner, manager, operator or employee of an establishment regulated by this Ordinance is required to remove from the premises, but the person is intoxicated or otherwise reasonably believed to be unable to safely drive or conduct himself or herself if required to leave those premises, in this event the owner, manager, operator or employee reasonably determine to allow the person violating this ordinance to remain on the premises until appropriate arrangements may be made for the person's removal.

In the event the person [or persons] violating this Ordinance is timely removed from the premises; no violation shall exist for any owner, manager, operator or employee related to the establishment in which these events occurred. In no event is an owner or agent of the premises to forcibly remove the person violating the Ordinance. Compliance is achieved under this subsection if the owner or agent of the premises orders the person violating the Ordinance to leave its premises and promptly notifies the police if the person refuses.

(E) Owners, managers, operators, or employees of establishments regulated by this Ordinance shall inform persons seen violating this Ordinance of the requirements of this Ordinance. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance, he or she shall immediately direct the person or persons in violation to extinguish the item being smoked. Failure of the person directed to extinguish his/her item shall result in the violator being directed to leave the premise.

1. In the event the person [or persons] violating this Ordinance complies with this directive, no violation shall exist for the owner, manager, operator or employee witnessing the violation. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance and fails to immediately direct the person [or persons] in violation to extinguish the item being smoked, the owner, manager, operator or employee failing to take appropriate steps required by this Ordinance shall be in violation of this Ordinance.

2. In the event the person [or persons] violating this Ordinance fails or refuses to comply with this directive, the owner, manager, operator or employee directing the person [or persons] violating this Ordinance shall take immediate and reasonable steps to obtain the removal of the person [or persons] from the premises. As an example of the reasonableness required, if there is a person violating the ordinance who, the owner, manager, operator or employee of an establishment regulated by this Ordinance is required to remove from the premises, but the person is intoxicated or otherwise reasonably believed to be unable to safely drive or conduct himself or herself if required to leave those premises, in this event the owner, manager, operator or employee reasonably determine to allow the person violating this ordinance to remain on the premises until appropriate arrangements may be made for the person's removal.

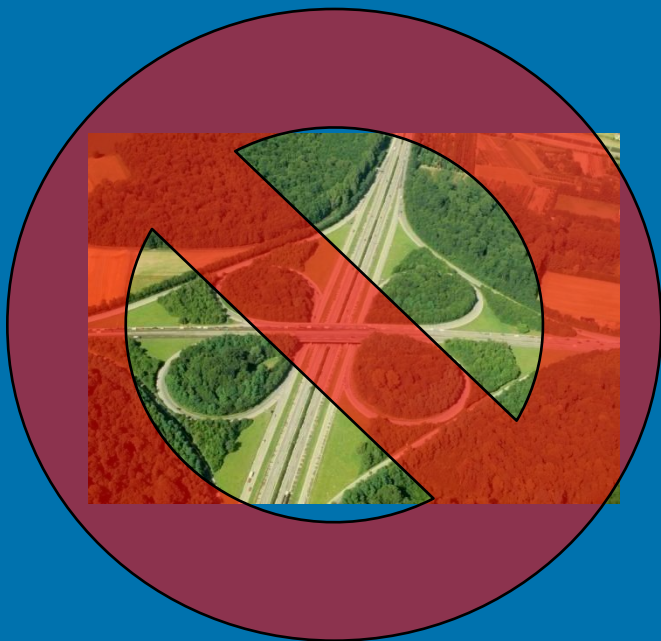
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If an owner, manager, operator, or employee of an establishment regulated by this Ordinance observes a person[s] violating this Ordinance, he or she shall immediately ask the person[s] in violation to stop smoking. If the person[s] violating the Ordinance does not stop smoking, the owner, manager, operator, or employee shall immediately ask the person[s] to leave the premises. If the person[s] in violation refuses to leave the premises, the owner, manager, operator, or employee shall call the police or other appropriate enforcement agency.

In no event is an owner or agent of the premises to forcibly remove the person[s] violating the Ordinance. Compliance is achieved under this subsection if the owner or agent of the premises follows these steps.

An employee who observes a person[s] violating this Ordinance may immediately notify the owner, manager or supervisor of the violation in satisfaction of the employee's responsibility under this Ordinance. The failure of the owner, manager, or supervisor to take the steps required by this subsection in response to the employee's notice shall not constitute a violation on the part of the employee.

Do: Be Consistent



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Do: Be Consistent

- Focus on ordinance objectives
- Avoid faulty logic
 - smoking allowed if minors not present
 - smoking allowed in private offices, or if employees give their consent
 - exempting certain places of employment (e.g., bars, factories, small employers)

Do: Be Specific



- Proprietors' Duties

- Enforcement

- Penalties

- Findings & Intent

- Severability



Do: Be Specific

- Spell out the essential elements
 - Proprietors' responsibilities
 - Enforcement agents and mechanisms
 - Penalty procedures for violations
 - Findings and Intent
 - Severability

Do: Be Practical



Do: Be Practical

- Know what works
 - Make “reasonable distances” reasonable
 - Avoid overnight or delayed effective dates
 - Be wary of timing provisions (e.g., temporary exemptions, “sunset” provisions, and grandfather clauses)

Drafting Smoke-Free Laws Effectively

Common Drafting Mistakes – “DON'Ts”

- ✓ don't forget your homework
- ✓ don't draft by “Xerox”
- ✓ don't draft in isolation
- ✓ don't misuse exemptions



Don't Forget Your Homework



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Don't Forget Your Homework

- Meet early with your lawyer
- Use a strong model ordinance
- Stick to your “deal breakers”
- Know the stakeholders
- Understand your authority
- Anticipate legal challenges*

Don't Forget Your Homework

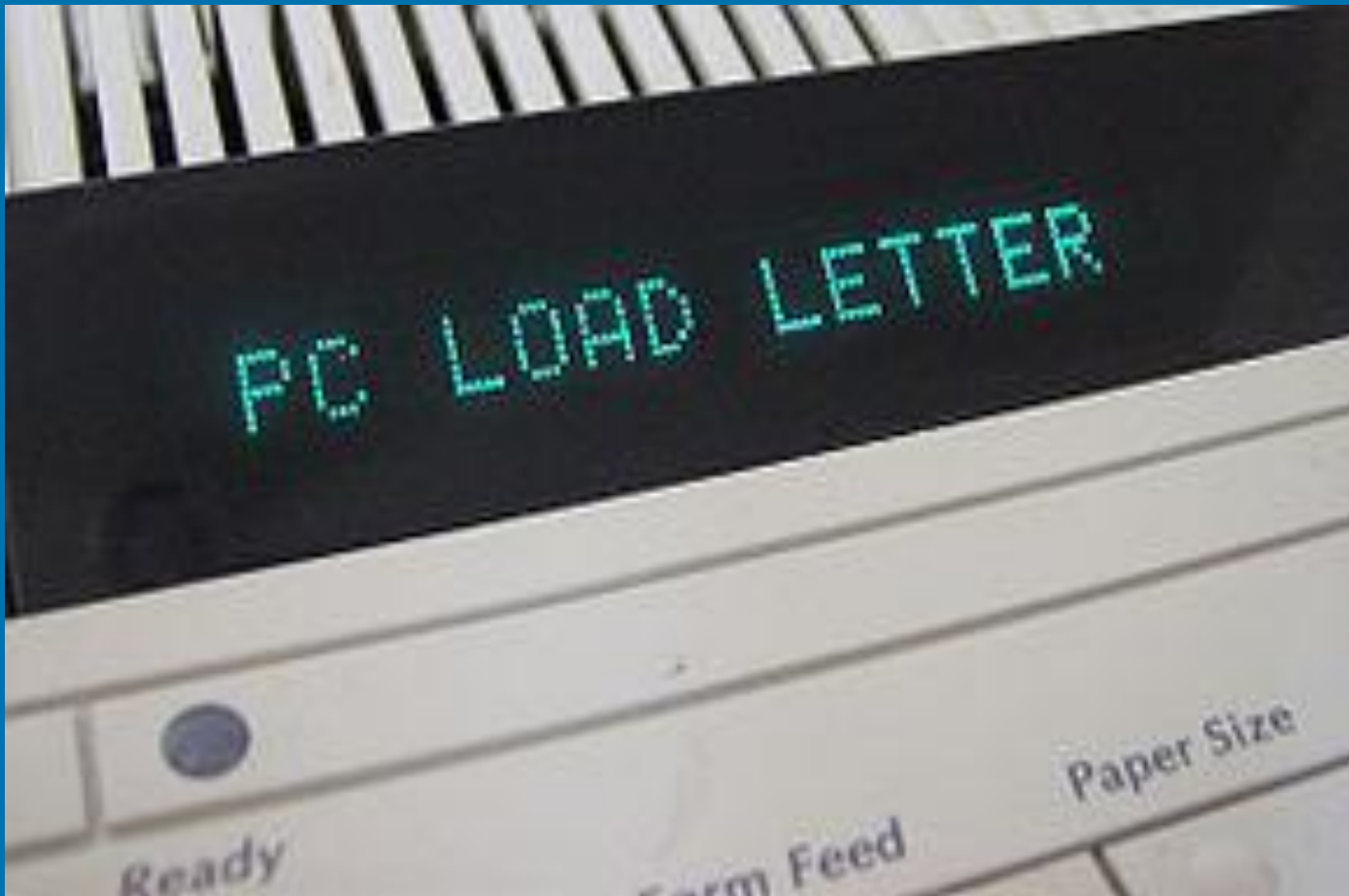


Anticipate Legal Challenges

- Equal Protections
- Due Process
- Privileges and Immunities
- Special Legislation



Don't Draft by "Xerox"



Don't Draft by “Xerox”

- Don't cut and paste entire ordinances
- Don't lift clauses in their entirety
- Don't simply do what's been done before – it may not work for you



Don't Draft in Isolation



Don't Draft in Isolation

- You are not alone
- Your smoke-free ordinance is not an island

Don't Overuse Exemptions



Don't Overuse Exemptions

- Weaken the law's justifications and objectives.
- Make law more difficult to interpret, implement, and enforce.
- Often inspire litigation.



Drafting Effective Smoke-Free Laws

- Questions & Answers
- Contact Us Directly

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