

## **Initiative 901 Would Extinguish Most Public Smoking in Washington** 05-11

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In November, voters will choose whether to implement Initiative 901, which would ban smoking in and around public places, often with a barrier of 25 feet between a public place and a designated smoking zone. Initiative 901 would add several types of private establishments to the list of places where it is illegal to smoke.

Initiative 901 would ban smoking in, “bars, taverns, bowling alleys, skating rinks, reception areas, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests.” Since 1985, restaurants that allowed smoking could only do so because of an exemption in state law. Initiative 901 would revoke this exemption thereby making all restaurants part of the public places where smoking is banned.

The initiative would also include a “reasonable minimum distance...of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area...” Initiative backers say the 25-foot rule is needed because of concerns over second-hand smoke exposure.

Private residences would not be affected unless they are used to provide licensed childcare, foster care, adult care or similar social service care on the premises.

Supporters of Initiative 901 rely heavily on the argument for making workplaces healthier and curtailing the exposure of second-hand smoke to patrons of these public businesses. Initiative 901, often referred to as “The Healthy Indoor Air

Initiative” by supporters, is backed by several major medical associations, including the American Cancer Society, the American Lung Association of Washington, the American Heart Association, Breathe Easy Washington, Swedish Hospital and the Campaign for Tobacco-Free Kids.

Washington’s 1985 Clean Indoor Air Act banned smoking in public places with the exception of designated smoking areas. The Clean Indoor Air Act was created to “secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population...to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.”

Supporters point to seven other states that have passed smoke-free workplace legislation: California, Connecticut, Delaware, Maine, Massachusetts, the state of New York and Rhode Island. Several other states are considering smoke-free legislation in 2005: Minnesota, Maryland, Utah, Colorado, Oregon, New Jersey, and Vermont.

Touted as “good for jobs and businesses,” supporters of Initiative 901 play up the potential health benefits for not just patrons of bowling alleys, restaurants, etc., but also health benefits for the establishments’ employees; saying employees have a “right” to work in a safe environment.

A fundamental difference between 1985's Clean Indoor Air Act and Initiative 901 is that in the Clean Indoor Air Act a smoking area may be designated by the owner of a public place, or in the case of a rented or leased space, by the lessee or other person in charge (with exceptions for public areas such as retail stores, banks, waiting rooms, museums, theaters, indoor sports arenas, and many other public areas). Initiative 901 would remove that choice from the establishment owner.

Opponents of Initiative 901 base their arguments largely on two principles; first, that the rights of business owners—particularly of small businesses—are being disregarded by government mandates that would ban their ability to offer a certain environment to their patrons. They argue that Initiative 901 grants “extreme powers to local health departments against private citizens, workers and property owners.” The local health department officials are unelected and therefore they are subject to very little accountability.

Initiative 901 opponents cite the 2004 Pierce County smoking ban as evidence of overzealous county health department officials implementing a regulation that harmed both businesses and consumers.

In 2004, Pierce County health officials instituted a ban similar as to what is being proposed by Initiative 901. For several weeks all restaurants, bowling alleys, mini casinos and more were forced to become smoke-free. Both sides claim that the smoking ban had differing effects on business establishments. Proponents claim that business increased for restaurants in Pierce County while opponents claim just the opposite—that the ban on smoking hurt businesses, particularly mini-casinos, because of a competitive advantage from tribal businesses, which were exempt from the ban.

In line with this argument, opponents also touch on the idea that the owner of a restaurant, mini-casino, or bowling alley should enjoy the right to be able to offer a smoking environment. The No on 901 campaign says, “Shouldn't private property owners have the right to determine whether smoking should be allowed or should the state take that right away from only one class of owners?”

The “Yes on 901” side responds by saying that essentially, “everyone has the right to be protected in any public place from exposure to secondhand smoke.” To which opponents in turn say that employees and customers freely choose to work or frequent these smoking establishments on their own and that no one is forcing either employees or customers to continue in a known smoking establishment.

The wide scope of the ban from the initiative also causes problems, opponents say, because it could affect private clubs such as the Eagles, Elks, VFW and charitable bingo halls. It would also ban smoking on cruise ships in port, and for-hire vehicles like taxis and limousines.

The opponents of Initiative 901 also emphasize that businesses on tribal lands are excluded from the proposed ban and that this constitutes an unfair advantage for Indian-owned businesses. Non-tribal business owners, especially ones whose business is in close proximity to tribal lands, are often worried that they will lose customers to smoking establishments.

No one discounts the findings of prominent medical organizations such as the American Lung Association that smoking is a dangerous activity. Exposure to second-hand smoke, while the exact extent of the danger is debatable, is also not good for one's health. However, most public places and establishments in Washington state have been smoke free since the original 1985 Indoor Clean Air Act.

Cracking down on businesses (both large and small) and forcing them to uphold the smoking ban along with the minimum twenty-five foot barrier will put strong government-mandated pressure on smaller businesses and homeowners, in the case of foster parents, to comply. Limiting choice for the owner of a business also limits the choices for the consumer.

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