

**UCSF**

**Tobacco Control Policy Making: United States**

**Title**

Turning the Tide: Tobacco Industry Political Influence and Tobacco Policy Making in California 1997-1999

**Permalink**

<https://escholarship.org/uc/item/1jr817z1>

**Authors**

Magzamen, Sheryl, MPH  
Glantz, Stanton A., Ph.D.

**Publication Date**

1999-09-01

**Turning the Tide:  
Tobacco Industry Political Influence  
and Tobacco Policy Making in California  
1997-1999**

Sheryl Magzamen, MPH  
Stanton A. Glantz, Ph.D.

Institute for Health Policy Studies  
School of Medicine  
University of California, San Francisco  
San Francisco CA 94143-0936



September 1999

**Turning the Tide:  
Tobacco Industry Political Influence  
and Tobacco Policy Making in California  
1997-1999**

Sheryl Magzamen, MPH  
Stanton A. Glantz, Ph.D.

Institute for Health Policy Studies  
School of Medicine  
University of California, San Francisco  
San Francisco CA 94143-0936

September 1999

Supported in part by National Cancer Institute Grant CA-61021 and American Cancer Society Grant CCG-294. Opinions expressed reflect the views of the authors and do not necessarily represent the sponsoring agency or the Institute for Health Policy Studies. The authors would like to thank Fred Monardi and Michael Givel for their assistance with data collection and analysis. This report is available on the World Wide Web at <http://www.library.ucsf.edu/tobacco/ca9799>.

This report is the latest in a series of reports that analyze tobacco industry campaign contributions, lobbying, and other political activity in California and other states. The previous reports are:

- M. Begay and S. Glantz. *Political Expenditures by the Tobacco Industry in California State Politics* UCSF IHPS Monograph Series, 1991.
- M. Begay and S. Glantz. *Political Expenditures by the Tobacco Industry in California State Politics from 1976 to 1991*. UCSF IHPS Monograph Series, 1991.
- B. Samuels and S. Glantz. *Tobacco Control Activities and the Tobacco Industry's Response in California Communities, 1990-1991*. UCSF IHPS Monograph Series, 1991.
- M.E. Begay and S.A. Glantz. *Undoing Proposition 99: Political Expenditures by the Tobacco Industry in California Politics in 1991*. UCSF IHPS, 1992.
- S.A. Glantz and L.R.A. Smith. *The effect of ordinances requiring smokefree restaurants on restaurant sales in California*. UCSF IHPS Monograph Series, 1992.
- M.E. Begay, M. Traynor, S. A. Glantz. *Extinguishing Proposition 99: Political Expenditures by the Tobacco Industry in California Politics in 1991-1992*. UCSF IHPS, 1992.
- M.E. Begay, M. Traynor, S.A. Glantz. *Tobacco Industry Political Expenditures in California State Politics, January-June, 1993*. UCSF IHPS, 1993.
- M.E. Begay, M. Traynor, S.A. Glantz. *Tobacco Industry Political Expenditures in California in the 1991-1992 Election*. UCSF IHPS, 1993.
- M.E. Begay, M. Traynor, S.A. Glantz. *The Twilight of Proposition 99: Preauthorization of Tobacco Education Programs and Tobacco Industry Political Expenditures in 1993*. UCSF IHPS, 1994.
- H. Macdonald and S. Glantz. *Analysis of the Smoking and Tobacco Products, Statewide Regulation Initiative Statute*. UCSF IHPS, 1994.
- H. Macdonald, M. Traynor, S. Glantz. *California's Proposition 188 : An Analysis of the Tobacco Industry's Political Advertising Campaign*. UCSF IHPS, 1994.
- S. Aguinaga, H. Macdonald, M. Traynor, M. Begay, S. Glantz. *Undermining Popular Government: Tobacco Industry Political Expenditures in California 1993-1994*. UCSF IHPS, 1995. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/tobexp>)
- M. Begay, and S. Glantz. *Question 1: Tobacco Education Outlays From the 1994 Fiscal Year to the 1996 Fiscal Year* UCSF IHPS 1995. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/q1>)
- F. Monardi, E. Balbach, S. Aguinaga, S. Glantz. *Shifting Allegiances: Tobacco Industry Political Expenditures in California, January 1995 - March 1996*. UCSF IHPS 1996 (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/sa>)
- F. Monardi, A. O'Neill, and S. Glantz. *Tobacco Industry Political Activity in Colorado 1979 - 1995*. UCSF IHPS 1996. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/co>)
- F. Monardi, and S. Glantz. *Tobacco Industry Political Activity in Washington 1983 - 1996*. UCSF IHPS 1996. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/wa>)
- F. Monardi, and S. Glantz. *Tobacco Industry Political Activity and Tobacco Control Policy Making in New Jersey 1982 - 1995*. UCSF IHPS 1997. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/nj>)
- E. Balbach, F. Monardi, B. Fox, S. Glantz. *Holding Government Accountable: Tobacco Policy Making in California, 1995-1997*. UCSF IHPS 1997. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/ca9596/>)
- S. Aguinaga-Bialous and Stanton A. Glantz. *Tobacco Control in Arizona 1973-1997*. UCSF IHPS 1997. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/az/>)
- F. Monardi, and S. Glantz. *Tobacco Industry Political Activity and Tobacco Control Policy Making in Pennsylvania 1979 - 1996*. UCSF IHPS 1997. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/pa>)
- B.J. Fox, J.M. Lightwood, S.A. Glantz, *A Public Health Analysis of the Proposed Resolution of Tobacco Litigation*. UCSF IHPS 1998. (Available on the World Wide Web at <http://www.library.ucsf.edu/tobacco/ustl/>)
- L. Goldman, and S.A. Glantz. *Tobacco Industry Political Activity and Tobacco Control Policy Making in Oregon 1985 - 1997*. UCSF IHPS 1998. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/or/>)
- F. Monardi, and S.A. Glantz. *Tobacco Industry Political Activity and Tobacco Control Policy Making in Wisconsin 1981 - 1998*. UCSF IHPS 1998. (Available on the World Wide Web at <http://www.library.ucsf.edu/tobacco/wi>)
- F. Monardi, and S. Glantz. *Tobacco Industry Political Activity and Tobacco Control Policy Making in Ohio 1981 - 1998*. UCSF IHPS 1998. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/oh>)
- M. Givel, and S.A. Glantz. *Tobacco Industry Political Power and Influence in Florida from 1979 to 1999*. UCSF IHPS 1999. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/fl>)

## TABLE OF CONTENTS

INTRODUCTION .....	9
<b>TOBACCO INDUSTRY CAMPAIGN CONTRIBUTIONS .....</b>	<b>10</b>
<b>Proposition 208 .....</b>	<b>12</b>
<b>Tobacco Policy Scores .....</b>	<b>14</b>
<b>Legislative Officeholders and Candidates .....</b>	<b>15</b>
<b>The California Legislature Versus the United States Congress .....</b>	<b>19</b>
<b>Legislative Leaders .....</b>	<b>19</b>
<b>State Constitutional Officers .....</b>	<b>22</b>
<b>The Relationship Between Campaign Contributions and Legislative Behavior ...</b>	<b>22</b>
<b>THE BATTLE OVER SMOKE FREE BARS .....</b>	<b>25</b>
<b>Delaying the Initial Implementation of the Smoke Free Bar Provisions of AB 13 ..</b>	<b>25</b>
<b>1997-1999 Attempts to Repeal Smoke free Bar Law .....</b>	<b>26</b>
<b>AB 869 (April 1997) .....</b>	<b>27</b>
<b>AB 297 (May 1997) .....</b>	<b>27</b>
<b>SB 137 (August 1997) .....</b>	<b>28</b>
<b>AB 297 Revisited (January 1998) .....</b>	<b>29</b>
<b>AB 2191 (May 1998) .....</b>	<b>30</b>
<b>SB 1513 (June 1998) .....</b>	<b>30</b>
<b>SB 539 (June 1998) .....</b>	<b>31</b>
<b>AB 1159 (February 1999) .....</b>	<b>32</b>
<b>AB 1216 (February 1999) .....</b>	<b>32</b>
<b>PROPOSITION 99: THE CALIFORNIA TOBACCO CONTROL PROGRAM .....</b>	<b>33</b>
<b>The Budget .....</b>	<b>33</b>
<b>Changing of the Guard: A New Governor .....</b>	<b>34</b>
<b>ANR II .....</b>	<b>34</b>
<b>SAY NO .....</b>	<b>37</b>
<b>Legislative Oversight of the Media Campaign .....</b>	<b>38</b>
<i>Senate Budget Committee. ....</i>	<i>39</i>
<i>Senate Health and Human Services Committee. ....</i>	<i>39</i>
<i>Senate Judiciary Committee. ....</i>	<i>39</i>
<b>The New Administration .....</b>	<b>40</b>
<b>LITIGATION AGAINST THE TOBACCO INDUSTRY .....</b>	<b>41</b>
<b>Overturing the Napkin Deal .....</b>	<b>41</b>
<b>Overturing the Napkin Deal Revisited: The Same Law Did not Stop Texas .....</b>	<b>43</b>
<b>Attorney General Sues the Cigarette Companies .....</b>	<b>44</b>
<b>June 20<sup>th</sup>, 1997 “Global Settlement” .....</b>	<b>44</b>
<b>The Master Settlement Agreement .....</b>	<b>46</b>
<b>City, County, and Individual Suits .....</b>	<b>47</b>
<b>The Mangini Case against Joe Camel .....</b>	<b>47</b>

<i>Cordova</i> .....	48
<i>Cities' and Counties' Suits</i> .....	49
<i>Ellis</i> .....	49
The Cases Against the Cigarette Companies are Consolidated .....	50
The Cities and Counties Sue in Federal Court .....	52
Proposition 65 .....	52
<b>DIVESTMENT OF TOBACCO STOCKS</b> .....	<b>55</b>
San Francisco Divests its Tobacco Stocks .....	56
State Divestment .....	59
<i>AB 1744.</i> .....	59
<i>AB 1679.</i> .....	61
<i>SB 1433.</i> .....	61
<b>OTHER STATE TOBACCO CONTROL LEGISLATION</b> .....	<b>62</b>
Restrictions on Cigarette Advertising .....	62
<i>AB 752.</i> .....	62
<i>Wilson Fails to Enforce the Law.</i> .....	62
Industry Penalties (AB 2381) .....	63
<i>AB 2381.</i> .....	63
Evidence for Tobacco Lawsuits .....	65
<i>SB 1917.</i> .....	65
<i>SB 824.</i> .....	66
Tobacco Tax Increases .....	66
<i>AB 2144.</i> .....	66
<i>AB 2717.</i> .....	66
<i>AB 1143.</i> .....	66
Tobacco Settlement Funds .....	66
<i>AB 100.</i> .....	67
<i>AB 112.</i> .....	67
<i>AB 251.</i> .....	67
<i>AB 255.</i> .....	67
<i>AB 437.</i> .....	67
<i>AB 887.</i> .....	67
<i>AB 1071.</i> .....	68
<i>SB 748.</i> .....	68
<i>SB 822.</i> .....	68
Cigar Labeling .....	68
<i>AB 1595.</i> .....	68
Licensing .....	68
<i>SB 1180.</i> .....	68
<b>PROPOSITION 10, THE CALIFORNIA CHILDREN AND FAMILIES FIRST INITIATIVE</b> .....	<b>69</b>
Proposition 10 Legislation .....	72

<i>AB 877.</i> .....	72
<i>AB 1576.</i> .....	73
<i>SB 643.</i> .....	73
<i>SB 1268.</i> .....	73
<b>LOCAL ORDINANCE ACTIVITY</b> .....	<b>73</b>
<b>San Francisco Ends Outdoor Advertising</b> .....	<b>73</b>
<b>Los Angeles City and County Ends Outdoor Advertising</b> .....	<b>74</b>
<b>Lungren Argues that Cities Cannot Regulate Smoking</b> .....	<b>74</b>
<b>SOURCES CITED</b> .....	<b>79</b>
<b>APPENDICES</b> .....	<b>86</b>





## EXECUTIVE SUMMARY

The tobacco industry's trend of giving generously to California legislators continued in the 1997-1998 election cycle. Between January 1, 1997, and December 31, 1998, the tobacco industry contributed \$615,145 to state legislators and legislative candidates.

Since 1991-1992, campaign contributions to legislative candidates and parties by the tobacco industry favored the party in power. However, in the 1997-1998 election cycle, reflecting increasingly partisan contributions by the tobacco industry, Republicans received 81 percent of tobacco industry campaign contributions even though the Democrats controlled both houses of the Legislature.

The tobacco industry contributed a total of \$848,635 to state legislators and legislative candidates, state constitutional officers, political parties and party controlled committees for the 1997-1998 election cycle. This total is less than the three previous election cycles in the 1990s, and is in part most likely due to the passage of Proposition 208, which placed spending limits on individuals, corporations, and PACs for 1997.

On a per member basis, California legislators received more money than the members of Congress, \$5,117 per member compared to \$4,373 per member. For the 1997-1998 election cycle, Senator Minority Leader Ross Johnson (R-Irvine) the top recipient in California Senate (\$111,500) received more money than Senator Lauch Faircloth (R-North Carolina), the top recipient in the United States Senate (\$87,999). In addition, Assembly Minority Leader Bill Leonard (R- Rancho Cucamonga) received more tobacco industry campaign contributions (\$82,250) than Representative Edward Whitfield (R-Kentucky), who was the top recipient of tobacco industry campaign contributions in the House of Representatives (\$34,000).

On January 1, 1998, California enacted the country's first state-wide smoke free bar law as an extension of the state smoke free workplace law. The tobacco industry attempted nine times to either delay the enactment of the law, or have the law repealed. The tobacco industry, working primarily through the National Smokers' Alliance, sought to undermine the law by depicting the issue as unfair to small businesses, and problematic in terms of enforcement. Even so, health advocates prevented the law from being repealed.

In November 1998, California elected a Democrat to the governorship for the first time since 1982. Governor Gray Davis had begun to remedy the actions of the Wilson Administration in debilitating the state funded California Tobacco Control Program. Though the funding levels for the Proposition 99 programs were at the voted mandated levels, two suits filed against the state for misappropriation of Proposition 99 funds in 1991 and 1995 remain pending. Governor Davis vetoed \$32 million the Legislature had appropriated for anti-smoking education programs.

On June 12, 1997, the State of California became the 37<sup>th</sup> state to file suit against the tobacco industry. The state sought damages for violations of California Business and Professions Code and recovery of public health care expenditures for tobacco related disease. The state's claims for medicaid reimbursement were dismissed. The remaining claims were consolidated

with the City of Los Angeles, the City and County of San Francisco et al., and two private citizen suits against the tobacco industry. These suits were settled by the Multi-State Master Settlement Agreement in November 1998. California will receive approximately \$25 billion of the \$206 billion settlement over the next 25 years from the industry. In September 1999, the Legislature passed a bill to have these funds dedicated for health services in the state.

Other civil action suits against the tobacco industry are scheduled to be heard beginning in January 2000. These suits are mainly union trust fund suits against the industry, as well as local government failure to warn suits under Proposition 65, the state's toxic enforcement act.

In November 1998, the California voters passed Proposition 10, which resulted in the creation of local agencies throughout the state that will promote child development programs and educational campaigns. The proposition won by a vote of 50.5% to 49.5%, despite the \$29,397,147 the tobacco industry spent to defeat it. The program is funded by an additional \$.50 tax on cigarettes, and a commensurate tax increase on other tobacco products. The tax increase, along with a price hike from the industry, sales of cigarettes in California decreased 28.6 percent for the first six months of 1999.

## INTRODUCTION

January 1, 1997 to September 10, 1999 was an eventful period for tobacco policy California. As in previous years, the tobacco industry continued to be a large source of political money in California. Between January 1, 1997 and December 31, 1998, the tobacco industry contributed a total of \$615,145 to legislative officeholders and legislative candidates (Table 1). On a per member basis, California legislators received more money than the members of Congress, \$5,117 per member compared to \$4,373 per member, respectively. Senate Minority Leader Ross Johnson (D-Irvine), who received the most tobacco industry campaign contributions during the 1997-1998 election cycle (\$111,500), received more money than US Senator Lauch Faircloth (R-North Carolina), the largest Congressional recipient of tobacco industry funds (\$87,999)<sup>1</sup>. In addition, Assembly Minority Leader Bill Leonard (R-Rancho Cucamonga) received more tobacco industry campaign contributions (\$82,500) than Representative Edward Whitfield (R-Kentucky), who was the top recipient of tobacco industry campaign contributions in the House of Representatives (\$34,000)<sup>1</sup>.

The tobacco industry's trend of contributing more money to the party in power in the legislature changed in 1997-1998. Although Democrats controlled both houses of the Legislature, Republican legislators and legislative candidates received 77 percent of tobacco industry campaign contributions.

On January 1, 1998, California implemented the smoke-free bar component of the state smoke free workplace law (AB 13). Despite nine separate attempts to delay or repeal the law, pro health forces, including key legislators, the voluntary agencies (American Cancer Society, American Heart Association, American Lung Association, and Americans for Nonsmokers' Rights), and the state contract agency (BREATH) established to educate communities about the smoke free bar law were able to maintain the law. Aside from working with pro-tobacco legislators in the Senate and Assembly, the tobacco industry used a sophisticated public relations campaign to create controversy about the law, most notably by alleging that the law was difficult to enforce and was hurting small business owners around the state.

Proposition 99 programs have been funded at their full levels in 1997-1998. However, two suits against previous diversions of Proposition 99 funds remain pending. The Just Say No to Tobacco Dough Lawsuit seeks recovery of Proposition 99 health education funds that were diverted by the Legislature in 1989 and 1991. The ANR II lawsuit seeks the release of \$32 million in health education funds, which are currently in a restricted reserve. Although the funds in the reserve had been appropriated by the Legislature on two separate occasions, both Governor Pete Wilson and Governor Gray Davis had vetoed the appropriation of these funds for tobacco control activities.

A current problem with the Proposition 99 funding relates to the Proposition 10 \$.50 tax increase. Proposition 10 contains a backfill clause that will augment the Health Education and Research Accounts due to the reduction in consumption (and therefore, the revenue available) of the tax. However, there was controversy surrounding the amount of Proposition 99 funds that will be restored from Proposition 10 revenue.

The State of California settled its suit against the tobacco industry as part of the Multi-State Master Settlement Agreements. The 46 states that were part of the settlement will receive \$206 billion from the industry over the next 25 years. As of publication of this report, the Legislature has directed the state's portion of the settlement money to be placed in a specific fund strictly for health and health care services. As part of the state settlements, the cities' and counties' suits against the industry have also been settled: according to an agreement between the parties, the cities and counties will receive one-half of the state settlement money. Litigation against the tobacco industry on behalf of union members from various industries remains pending.

## **TOBACCO INDUSTRY CAMPAIGN CONTRIBUTIONS**

The tobacco industry remains a major political force in California. The industry spent \$33,731,147 on state level political activity in California during the 1997-98 legislative session (Table 1). Tobacco industry campaigns to legislators and legislative candidates, state constitutional officers, political parties, and party controlled committees totaled \$848,635 compared to \$3,737,327 in 1991-1992, \$1,489,904 in 1993-1994, and \$1,519,624 in 1995-1996. Tobacco industry lobbying expenditures totaled \$3,485,365 compared to \$3,504,037 in 1991-1992, \$4,198,077 in 1993-1994, and \$3,090,654 in 1995-1996 (Figure 1). Tobacco industry contributions to the defeat the Proposition 10 initiative totaled \$29,397,147. The industry's shift in contributions towards Republicans has also continued. The percentage of tobacco industry funds to Republicans legislators changed from 44% in 1991-92, to 57% in the 1995-96 session, to 77% in the 1997-98 election cycle. The percentage of tobacco funds to the Republican Party and Republican party controlled committees increased from 48% in 1991-92, to 83% in 1995-96, to 93% in 1997-98. In 1997-98, California Republicans legislators, legislative candidates, constitutional officers, political parties, and party controlled committees received 81% of all tobacco industry campaign contributions, compared to 41% in 1991-92, 46% in 1993-94, and 57% in 1995-96 (Figure 2).

### **Tobacco Industry Expenditures**

We obtained data on tobacco industry statewide political expenditures from disclosure statements filed with the Political Reform Division of the California Secretary of State's Office. We included the following organizations as "tobacco industry" sources of funds: American Tobacco Company, California Distributors Association, Brown and Williamson Tobacco Corporation, Cigar Association of America, Lorillard Tobacco Company, Philip Morris, Inc., Philip Morris Management Co., Philip Morris USA, RJR Nabisco, Inc., Smokeless Tobacco Council, Tobacco Industry Labor and Management Committee, the Tobacco Institute, and US Tobacco. Data in this report include contributions to legislators, legislative candidates, political parties, political parties, political party controlled committees, state constitutional officers, local candidates, and expenditures made for lobbying legislative or administrative officials. We collected campaign contribution data for candidates, political parties, and lobbying expenditures from January 1, 1997 to June 30, 1999. Contribution data from January 1, 1997 to December 31, 1998, and from January 1, 1999 to June 30, 1999 were considered separately, since the filings

**TABLE 1. SUMMARY OF TOBACCO INDUSTRY EXPENDITURES IN 1997-1998**

<b>Company</b>	<b>Legislature</b>	<b>Political Party</b>	<b>Constitutional Officers</b>	<b>Local Activity</b>	<b>Initiatives</b>	<b>Lobbying</b>	<b>Other</b>	<b>Total</b>
Brown and Williamson	\$8,500	\$63,946	\$2,000		\$5,039,056	\$395,664		\$5,509,166
Lorillard					\$2,835,489	\$81,877		\$2,917,366
Philip Morris	\$478,150	\$112,569	\$1,000		\$20,387,957	\$1,219,109		\$22,198,785
RJ Reynolds	\$66,050	\$42,250	\$1,000		\$738,024	\$700,760		\$1,548,084
Smokeless Tobacco	\$6,500		\$1,000			\$248,199		\$255,699
Cal. Distributors Assn	\$10,250		\$1,500			\$62,027		\$73,777
Tobacco Institute	\$38,000				\$185,601	\$320,512		\$544,113
US Tobacco	\$6,595	\$7,225	\$1,000		\$148,520	\$196,469		\$359,809
TILMC						\$191,998		\$191,998
Consolidated Cigar					\$10,000			\$10,000
General Cigar Holdings					\$10,000			\$10,000
John Middleton					\$10,000			\$10,000
Swisher International					\$10,000			\$10,000
Conwood Company					\$10,000			\$10,000
Swedish Match NA					\$2,500			\$2,500
Havatampa					\$10,000			\$10,000
<b>1997-1998 TOTAL</b>	<b>\$614,045</b>	<b>\$225,990</b>	<b>\$7,500</b>	<b>\$0</b>	<b>\$29,397,147</b>	<b>\$3,416,615</b>	<b>\$0</b>	<b>\$33,661,297</b>
<b>1976-1994</b>	<b>\$3,234,271</b>	<b>\$753,988</b>	<b>\$203,849</b>	<b>\$4,815,711</b>	<b>\$51,132,278</b>	<b>\$14,842,183</b>	<b>\$30,000</b>	<b>\$75,012,280</b>
<b>1995-96</b>	<b>\$1,252,804</b>	<b>\$2,031,227</b>	<b>\$47,500</b>	<b>\$500</b>		<b>\$3,090,654</b>		<b>\$4,594,685</b>
<b>GRAND TOTAL</b>	<b>\$5,101,120</b>	<b>\$3,011,205</b>	<b>\$258,849</b>	<b>\$4,816,211</b>	<b>\$80,529,425</b>	<b>\$21,349,452</b>	<b>\$30,000</b>	<b>\$113,268,262</b>

**Tobacco Ind. Political Expenditures**  
(excluding initiatives) 1975-1998

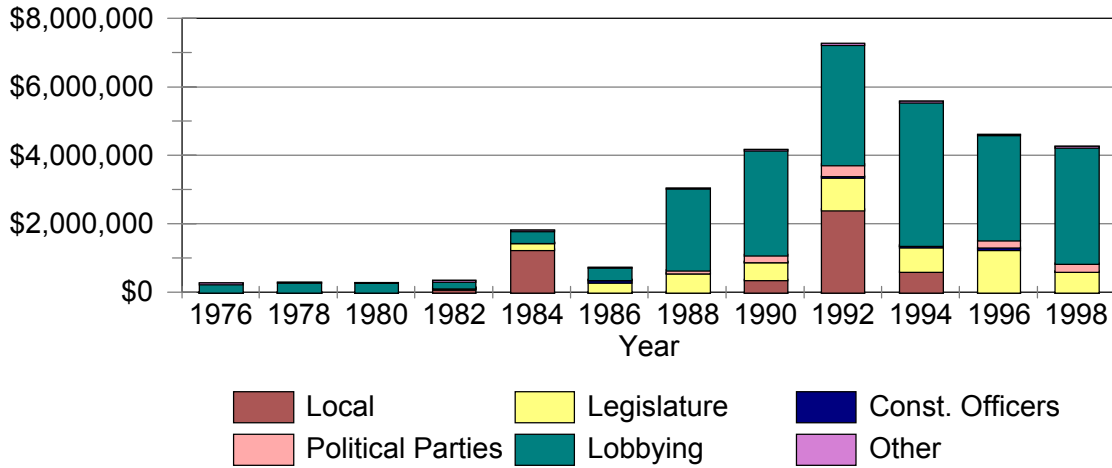


Figure 1.

represented two distinct legislative sessions. Only 1997-1998 contribution data was considered for analysis. 1999 contribution and lobbying data is included in the appendix (Table A-14).

In addition, tobacco industry contributions on statewide ballot initiatives were also collected from the Secretary of State’s Office, specifically relating to Proposition 10: State and County Early Childhood Development Programs: Additional Tobacco Surtax. The Proposition 10 opposition campaign was entitled the Committee Against Unfair Taxes, Sponsored by the Tobacco Companies and the California Distributors Association. In addition to the companies mentioned above, Consolidated Cigar, General Cigar Holdings, John Middleton Corporation, Conwood Company, Swedish Match North American, and Havatampa were also considered tobacco industry contributors.

There are some limitations to the data. As we have done in earlier reports, we did not include contributions from non-tobacco subsidiaries of these companies, such as Philip Morris’ Kraft Foods and Miller Beer, or personal contributions from employees and officers of the tobacco companies or their lobbyists. We also did not include contributions from non-tobacco sources collected at activities hosted by a tobacco company or donations solicited by a tobacco company from its contractors. Most of these monies are difficult, if not impossible, to trace.

**Proposition 208**

Proposition 208, an initiative which the voters passed in 1996 and went in to effect on January 1, 1997, radically changed the environment in which campaign contributions in California were made, which complicates comparison of contribution patters in the 1997-1998 election cycle with previous election cycles. Proposition 208 limited donations to legislative and constitutional candidates and put a cap on what an individual, political action committee (PAC), corporation, or union could contribute to all candidates combined. Specifically, Proposition 208

- Limited donations to campaigns from individuals, PACs, corporations, and unions to \$100 and \$250 for legislative and local elections (depending on the size of the district), and \$500 for statewide elections.
- Doubled these caps for candidates who accepted the voluntary campaign spending limits.
- Set voluntary spending limits for general elections at \$200,000 for the state Assembly races, \$400,000 for the state Senate races, \$2 million for statewide officers, and \$8 million for gubernatorial campaigns.

In addition, Proposition 208 ended all candidate-to-candidate transfers, all off year fund raising, bundling (having individuals donate personal income to a candidate, who are then reimbursed by their organization; in effect, laundering money), and limited the time during which candidates may receive contributions. Contributions to political parties by these groups were limited to \$5,000, in effect, closing the loophole for soft money. Prior to this initiative, California had no aggregate contribution limits.

Proposition 208 dramatically reduced campaign contributions from the tobacco industry during 1997. Total tobacco industry contributions to candidates and office holders totaled only \$16,200 in 1997, compared to \$598,945 in 1998. In the most recent non-election year, 1995, total tobacco industry contributions to candidates and officers totaled \$279,194.

Shortly after the initiative was passed, the California Prolife Council Political Action Committee sued to challenge Proposition 208 in United States District Court, Ninth Circuit. In January 1997, other challengers, including California Democratic and Republican Parties, several unions, and slate mailers (political consultants who send mailings endorsing candidates and propositions for a fee) also sued. These four actions were consolidated into one case, *California Prolife Council Political Action Committee; et al. v. Fair Political Practices Commission, et al.* In early 1998, US District Court Judge Lawrence K. Karlton enjoined the state Fair Political Practices Commission from enforcing Proposition 208 and ruled that the caps on spending and contributions were unconstitutional. The entire proposition was effectively enjoined. The Fair Political Practices Commission, with interveners Tony Miller and Ruth Holton (acting as the official proponents of Proposition 208) appealed to the Ninth Circuit Court of Appeals (Case No. 98-15308) Eastern District. Oral arguments were heard in December 1998. As of January 1, 1998, the contribution and spending limits were removed, permitting special interests such as the tobacco industry to resume large contributions, and opened the possibility for them to make up for money not contributed during 1997, when Proposition 208 was in effect. The Ninth Circuit upheld Judge Karlton's decision, and interveners Miller and Holton have asked for a reconsideration.

The typical channels that campaign contributions traveled through were ostensibly closed for the first part of the 1997-1998 legislative session. The tobacco industry, however, was still left options for wielding political influence. For example, during an April 1990 fund-raising event co-sponsored by Philip Morris for then US Senator Pete Wilson, a substantial number of

companies with direct financial ties to the tobacco industry had made donations to Wilson's gubernatorial campaign<sup>2</sup>. Despite Wilson's pledge not to accept donations from the industry, Leo Burnette Co., the advertising agency responsible for Philip Morris' Marlboro Campaign, Shook, Hardy & Bacon, counsel for Philip Morris in wrongful death suits filed against the manufacturer, as well as a dozen companies with whom Philip Morris maintains printing and marketing contracts, valued in the millions of dollars, had all contributed generously to Wilson's campaign. Though Wilson had returned \$16,000 in contributions that could be closely identified with the industry, he had kept \$35,000 from at least 35 businesses or people with direct ties to the tobacco industry<sup>2</sup>.

In the 1997-1998 election cycle, similar instances of people and companies with strong ties to the tobacco industry giving generously to campaigns occur. Vigo Nielsen, partner in the lobbying firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, individually contributed \$2,000 to Attorney General Dan Lungren in 1997. In May 1998, Nielsen also contributed \$2000 to Dave Stirling, the Republican candidate for Attorney General. Steven Merksamer, of Nielsen Merksamer, held a fund-raising event for Dan Lungren, in June 1998, costing \$3,552.51. Merksamer was chief of staff to former Governor George Deukmejian and an "informal advisor" to Attorney General Lungren<sup>3</sup>. Nielsen Merksamer lists among its clients Brown and Williamson, Philip Morris, RJ Reynolds, and Lorillard, and had lobbying contracts from the tobacco industry for 1997 and 1998 worth \$429,327, for a total of \$2.5 million dollars since the 1970s. Tobacco industry documents reveal that channeling industry money through lobbyists and lobbying firms has been tactic of supplying elected officials with industry contributions<sup>4</sup>.

Burson-Marsteller, the national public relations firm behind tobacco industry front group, the National Smokers' Alliance, donated \$5,000 in 1997 to Senator Charles Calderon's campaign for Attorney General. Of active legislators, Calderon is one of the top recipients of tobacco industry money (\$77,850 since 1984). Secretary of State Bill Jones received \$1,000 in June 1998 from Jonathan Tisch, the President and CEO of Loews, which owns Lorillard tobacco. Curt Pringle, former Speaker of the Assembly and Republican Candidate for Treasurer, received \$1,000 from Burson Marsteller.

A portion of the state treasury stocks, funds which build infrastructure in the state, are invested in the tobacco industry. Treasury money comes in the form of short duration government bonds or corporate bonds of companies such as Apple Computer, Dow Chemicals, and Philip Morris<sup>5</sup>. All of these funds are under the control of the State Treasurer's office, and have tobacco industry money approved for investment. State Treasurer Matt Fong had received \$9,900 from tobacco interests while in elected office.

Lieutenant Governor Gray Davis accepted \$500 from the Bakery Confectionery and Tobacco Workers Local 31 in June 1997, and accepted \$5,000 from Nabisco in June 1998. Nabisco is a subsidiary of RJR Nabisco.

## **Tobacco Policy Scores**

We sought to relate campaign contributions to legislative behavior. To do so, we



estimated a “tobacco policy score” for each member of the 1997-1998 Legislature. The score is obtained from polling five individuals knowledgeable about the Legislature and tobacco policy. Each legislator is evaluated on a scale of 0 to 10. A score of 0 represented an extremely pro-tobacco industry legislator and a score of 10 represented an extremely pro-tobacco control legislator. The average for each legislator is reported. Scores from 0.0 to 3.9 are considered pro-tobacco industry legislators, scores from 4.0 - 6.0 are considered neutral, and scores from 6.1 - 10.0 are considered pro tobacco control. Senator Diane Watson (D-Los Angeles) and Assembly Member Sheila James Kuehl (D-Santa Monica) had the highest tobacco policy scores in their chambers, 9.8 and 9.8. Assembly Member Curt Pringle (R-Garden Grove) and Senators Ken Maddy (R-Fresno) and Ross Johnson (R-Irvine) have the lowest scores for their chambers, 0.3, 0.5 and 0.5 respectively.

The tobacco policy scores did not significantly differ between Assembly Members and Senators (Assembly: mean 4.5, standard deviation 2.9, n=83; Senate: mean 5.0, standard deviation 3.1, n=41; p=.38 ). Republicans had significantly lower tobacco policy scores (more pro-tobacco industry) than Democrats (Republicans: mean 2.2, standard deviation 1.6, n=53; Democrats: mean 6.6, standard deviation 2.4, n=70; p<.001).

### Legislative Officeholders and Candidates

During the 1997-1998 electoral cycle, tobacco industry contributions directly to 52 legislative officer holders and candidates totaled \$615,145 (Table A-1). The tobacco industry

<b>Name</b>	<b>Party</b>	<b>House</b>	<b>1976-94</b>	<b>1995-96</b>	<b>1997-98</b>	<b>Grand Total</b>	<b>Tobacco Policy Score</b>
Johnson, Ross	R	S	\$38,250	\$46,000	\$111,500	\$195,750	0.5
Leonard, Bill	R	A	\$16,500	\$4,500	\$82,250	\$103,250	1.5
Baugh, Scott	R	A	\$0	\$2,000	\$59,000	\$61,000	1.5
Ashburn, Roy	R	A	\$0	\$1,000	\$40,500	\$41,500	1.5
Papan, Lou	D	A	\$8,500	\$25,000	\$33,000	\$66,500	2.0
Wright, Roderick	D	A	\$0	\$37,250	\$31,500	\$68,750	2.0
Machado, Mike	D	A	\$0	\$5,750	\$27,500	\$33,250	4.5
Granlund, Brett	R	A	\$1,000	\$32,448	\$27,250	\$60,698	0.5
Brewer, Marilyn	R	A	\$0	\$29,426	\$26,400	\$55,826	1.7
Olberg, Keith	R	A	\$500	\$26,500	\$26,250	\$53,250	1.3
Ackerman, Dick	R	A	\$0	\$1,000	\$24,000	\$25,000	2.5
Pringle, Curt	R	A	\$500	\$105,750	\$17,250	\$123,500	0.3
Hurt, Rob	R	S	\$3,000	\$87,668	\$14,000	\$104,668	1.0
Baca, Joe	D	A	\$4,000	\$7,600	\$8,100	\$19,700	1.3
Costa, Jim	D	S	\$32,500	\$17,250	\$7,000	\$56,750	3.8
Polanco, Richard	D	S	\$28,050	\$26,350	\$7,000	\$61,400	3.5
Haynes, Ray	R	S	\$8,500	\$4,000	\$6,750	\$19,250	1.0
Floyd, Richard	D	A	\$69,716	\$24,500	\$6,000	\$100,216	2.5
Peace, Steve	D	S	\$2,500	\$10,000	\$6,000	\$41,000	5.3
Vincent, Edward	D	A	\$0	\$1,000	\$6,000	\$7,000	1.0

contributions given directly to individuals during the 1997-98 session was lower than both the 1995-96 election cycle (\$1,252,804) and the 1993-94 election cycle (\$723,542), most likely due to Proposition 208. Table 2 presents the top 20 recipients of tobacco industry campaign contributions during the 1997-1998 election cycle. Senator Ross Johnson (R-Irvine) and Assembly Member Bill Leonard (R-Rancho Cucamonga) were the top recipients in their respective chambers, receiving \$111,500 and \$82,250 respectively. The average tobacco policy score among the top 20 recipients was 1.96 (standard deviation, 1.33), indicating a pro tobacco industry leaning. This average was significantly lower than the average tobacco policy score of the remaining legislators (mean, 5.1, standard deviation, 3.0,  $p < .001$ ).

Table 3 presents the 28 members of the 1997-98 Legislature who have never accepted tobacco industry contributions. Almost all non-recipients were Democrats. The three Republican non-recipients were Tom Bordonaro Jr. (R-San Luis Obispo), Peter Frusetta (R-Hollister), and Bruce McPherson (R-Santa Cruz). Twenty of the 28 non-recipients were first elected in 1996 and 1997. All freshman non-recipients were Democrats. In 1995-96, only 14 members of the Legislature did not accept tobacco industry campaign contributions.

Of the tobacco industry contributions directly to legislative officeholders and candidates during the 1997-1998 election cycle, 18 Democrats received \$139,950 and 34 Republicans received \$475,195. Twenty-four percent of Democratic legislators received tobacco industry campaign contributions, compared to 64 percent of Republican legislators whom received campaign contributions. One non-incumbent legislative candidate received tobacco industry campaign contributions (Marco Antonio Firebaugh, D-Cudahy), and was elected for the 1999-2000 legislative session. In the last decade, tobacco industry contributions to legislators and candidates have shifted from Democrats to Republicans. During the 1991-1992 election cycle, 36 percent of contributions to legislative officeholders and candidates went to Republicans (\$328,362 for Republicans and \$592,737 for Democrats). In the 1993-1994 election cycle, the Republican percentage increased to 48 percent (\$346,950 for Republicans and \$372,592 for Democrats). In the 1995-1996 election cycle, Republican legislators and candidates received a majority of tobacco industry campaign contributions (52 percent: \$651,249 for Republicans, \$601,555 for Democrats). This trend continued in 1997-1998, with Republicans receiving 77 percent of tobacco industry contributions.

### **Political Parties**

During the 1997-1998 election cycle, the tobacco industry contributed \$225,990 to political parties and party controlled committees (Table A-1). Contributions to political parties and party controlled committees exceeded contributions made to parties in 1995-1996, when the industry contributed \$203,227.

The vast majority of the tobacco industry political party contributions went to the Republican Party (\$209,475 or 93 percent). The Assembly Republican Leadership Fund, controlled by Bill Leonard (R-Rancho Cucamonga), received \$40,000. The tobacco industry also contributed \$35,000 to the Republican Victory Fund '98, controlled by Assembly Member Bruce Thompson (R-Fallbrook). The Assembly Republican Victory Fund,

controlled by former Assembly Speaker Curt Pringle, received \$2,250 from the tobacco industry. The California Hispanic Leadership Fund, received \$5,000. The largest beneficiary of contributions to party controlled committees was the California Republican Party, which received \$127,225.

**TABLE 3. LEGISLATORS WHO HAVE NEVER RECEIVED TOBACCO INDUSTRY CONTRIBUTIONS**

<b>Name</b>	<b>Party</b>	<b>House</b>	<b>Year Elected</b>	<b>Tobacco Policy Score</b>
Alquist, Elaine White	D	A	1996	8.3
Aroner, Dion	D	A	1996	8.0
Bordanaro Jr, Tom	R	A	1994	2.0
Cedillo, Gil	D	A	1997	
Davis, Susan A.	D	A	1994	8.0
Frusetta, Peter	R	A	1994	3.0
Hayden, Tom	D	S	1982	9.5
Hertzberg, Bob	D	A	1996	5.7
Honda, Mike	D	A	1996	7.7
Karnette, Betty	D	S	1996	7.3
Keeley, Fred	D	A	1996	8.7
Knox, Wally	D	A	1994	9.3
Kuehl, Sheila James	D	A	1994	9.8
Lempert, Ted	D	A	1996	8.7
Mazzoni, Kerry	D	A	1994	8.7
McPherson, Bruce	R	S	1993	3.8
Migden, Carole	D	A	1996	9.0
Ortiz, Deborah V.	D	A	1996	9.5
Perata, Don	D	A	1996	8.0
Schiff, Adam	D	S	1996	6.5
Scott, Jack	D	A	1996	5.3
Shelley, Kevin	D	A	1996	6.0
Sher, Byron D.	D	S	1980	9.0
Strom-Martin, Virginia	D	A	1996	8.0
Thomson, Helen	D	A	1996	8.5
Torlakson, Tom	D	A	1996	9.8
Wayne, Howard	D	A	1996	7.5
Wildman, Scott	D	A	1996	4.5

The California Democratic Party did not receive any tobacco industry funds during the 1997-1998 election cycle. (The California Democratic Party also did not receive funds from the tobacco industry during the 1995-1996 legislative cycle.) The Democratic Legislative Campaign Committee received \$16,515 in 1997-1998.

Tobacco industry contributions to the Republican Party and the Republican party controlled committees continued to increase during the 1997-1998 legislative cycle. In the

1991-1992 election cycle, the Republican Party received 48 percent of contributions intended for political parties or party controlled committees (\$167,188 to Republicans and \$182,000 to Democrats). In the 1993-1994 election cycle, this percentage decreased substantially to 26 percent (\$30,500 to Republicans and \$87,300 to Democrats). In the 1995-1996 election cycle, the tobacco industry contributed 82 percent of contributions to party related activities to Republican parties and party controlled committees (\$165,727 to Republicans and \$37,500 to Democrats).

The shift in tobacco industry contributions to Republicans (individuals plus party) continued in the 1997-1998 session (Figure 2). During the 1991-1992 election cycle, 41 percent of tobacco industry contributions to legislators, legislative candidates, constitutional officers, political parties and party controlled committees went to the Republican party (\$531,050 for Republicans and \$776,737 for Democrats). In the 1993-1994 election cycle, contributions to Republicans increased to 46 percent (\$396,850 for Republicans and \$470,391 for Democrats). In the 1995-1996 election cycle, the Republican party received 57 percent of tobacco industry contributions (\$864,476 for Republicans, \$639,055 to Democrats.) For 1997-1998, tobacco industry contributions to legislators, legislative candidates, constitutional officers, political parties and party controlled committees totaled \$848,685. Of this total, 81 percent (\$689,170) was contributed to the Republican Party. Democratic legislators, legislative candidates, party and party controlled committees received \$159,465.

## Tobacco Ind. Contributions by Party

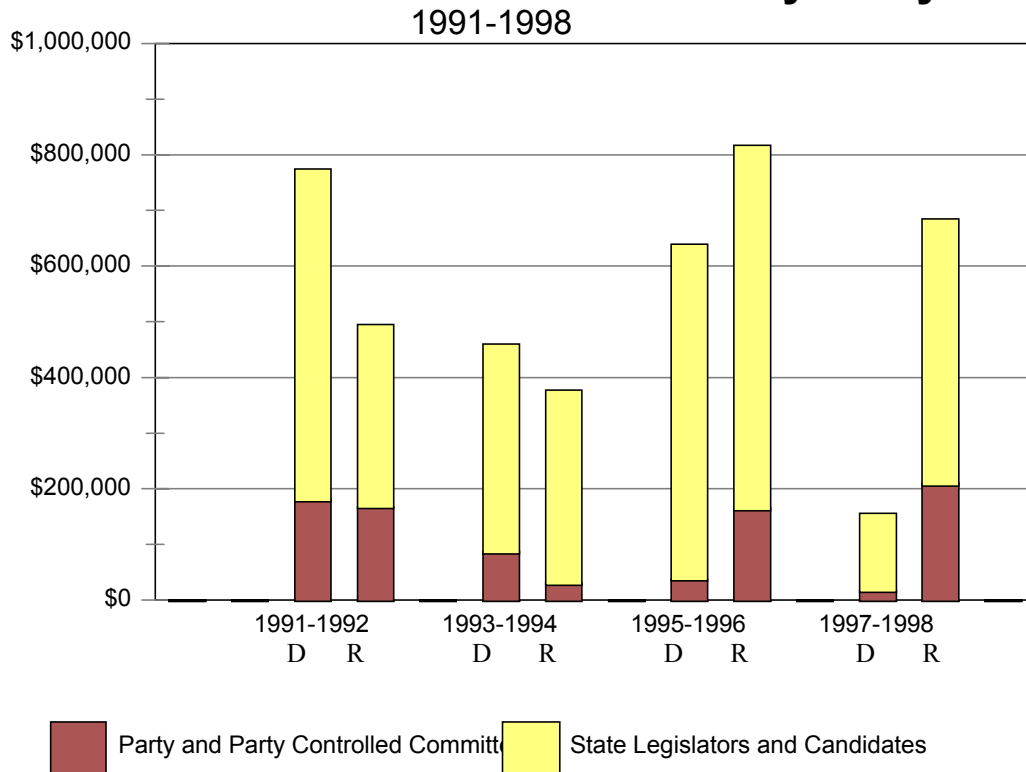


Figure 2. Over time, the tobacco industry has increasingly given more money to Republicans than Democrats in California.

### The California Legislature Versus the United States Congress

As in the past, the tobacco industry is contributing money to members of the California

Legislature more intensively than it is to the United States Congress. This fact may reflect the high priority the tobacco industry gives to influencing tobacco control policy making in California. On a per member basis, California Legislators in 1997-1998 received more money than members of Congress in 1997-1998. The tobacco industry contributed \$5,117 per member in the State of California. In comparison, the tobacco industry contributed \$4,373 per member of Congress.

The top two recipients of campaign contributions in each house of the California Legislature in 1997-1998 received more than the top two recipients from each house in Congress in 1997-1998. Senator Ross Johnson, the top recipient in the California Senate, received \$111,500, compared to Senator Lauch Faircloth (R-North Carolina), who received \$87,999 in tobacco industry campaign contributions. Assembly Member Bill Leonard received \$82,250 in the 1997-1998 election cycle <sup>1</sup>. Representative Edward Whitfield (R-KY) received \$34,000 in the same period. The four top recipients in the Senate, and the top

six recipients in the house are all from tobacco growing states <sup>1</sup>.

As reflected in California, a significant percentage of tobacco industry campaign contributions on the federal level went to Republicans. In the 1997-1998 election cycle, Republicans received 72 percent of all direct tobacco industry campaign contributions to federal legislators and legislative candidates (\$1,691,581) <sup>1</sup>.

Regarding tobacco industry contributions to political parties (“soft money”), the tobacco industry contributed \$5,669,380 to the federal Democratic and Republican Parties in the 1997-1998 election cycle. The Republican Party received 84 percent (\$4,743,161) of all tobacco industry campaign contributions. Philip Morris was the largest single donor to federal political parties during this election cycle, contributing \$2,446,316. 83 percent (\$2,027,752) of Philip Morris’ contributions to political parties went to the Republican Party <sup>6</sup>.

### **Legislative Leaders**

The Democrats controlled both houses of the California Legislature during the 1997-1998 legislative session. On February 5, 1998, Senator John Burton (D-San Francisco) succeeded Senator Bill Lockyer (D-Hayward) as President Pro-Tempore of the Senate. Lockyer had stepped down to run for state Attorney General in 1998. On February 26, 1998, Antonio Villaraigosa (D-Mt. Washington) succeeded Cruz Bustamante (D-Fresno) as Speaker of the Assembly. Bustamante had stepped down to run for Lieutenant Governor.

Several legislative leaders were among the largest recipients of tobacco industry money during the 1997-1998 legislative session. In the Assembly, Minority Floor Leader Bill Leonard (R- Rancho Cucamonga) received \$82,250, more than any other Assembly Member. Leonard, along with Assistant Speaker Joe Baca (D-Rialto) were the only Assembly leaders that have received any tobacco industry contributions in the 1997-1998 election cycle. Leonard also had a tobacco policy score of 1.5, one of the most pro-tobacco in the Assembly. Speaker Villaraigosa did not receive any tobacco industry campaign contributions in 1997-1998, and had a tobacco policy score of 5.0. The Speaker is perceived as neutral in terms of a position regarding tobacco control. Speaker Pro Tempore Sheila James Kuehl (D-Santa Monica) (tobacco policy score 9.8) and Majority Floor Leader Kevin Shelley (D-San Francisco) (tobacco policy score 6.0) have never accepted tobacco industry campaign contributions.

In the Senate, Minority Leader Ross Johnson received more tobacco industry campaign contributions than any other legislator in the 1997-1998 legislative session (\$111,500, grand total of \$195,750). Johnson has a tobacco policy score of 0.5, which along with Senator Ken Maddy (R-Fresno), is the lowest policy score in the Senate. Senate President Pro Tem Burton received \$1,000 in industry contributions in 1997-1998. Burton has a tobacco policy score of 9.0 and is perceived as extremely pro-tobacco control. Senate Majority Leader Richard Polanco (D-Los Angeles) received \$7,000 during the 1997-1998 session; Majority Whip Betty Karnette (D-Long Beach) has never received tobacco industry

campaign contributions. Table 4 summarizes the tobacco industry contributions given to Assembly and Senate Leaders.

### **Legislative Committees**

Several committees in the California Legislature typically consider legislation related to tobacco policy, particularly the Assembly and Senate Health Committees and the Assembly and Senate Budget Committees. These committees have considered legislation regarding revisions to AB 13, California's Smoke Free Workplace Law, and issues of divestment, tobacco industry advertising, tobacco industry penalties, tobacco tax increases, and disbursement of the Master Settlement Agreement funds. Contributions by committee are summarized in the appendix.

*Assembly Health Committee* (Table A-2). Nine of the twenty members of the Assembly Health committee received tobacco industry contributions in 1997 and 1998. The largest recipient was committee Vice Chair, Scott Baugh (R-Huntington Beach), who received \$59,000 during this election cycle (tobacco policy score, 1.5). Members of the Assembly Health Committee also included Curt Pringle (R-Garden Grove), who received the lowest tobacco policy score in the Legislature (0.3), and was the third highest recipient of tobacco money of any active legislator (\$123,500), and Brett Granlund, sponsor of two of bills to repeal the smoke free bar provisions of AB 13.

*Senate Health and Human Services Committee* (Table A-3). Two of the nine members of the Senate Health and Human Services Committee received tobacco industry campaign contributions in 1997-1998. Richard Polanco, who also served as the Senate Majority leader, received \$7,000. Ray Haynes (R-Riverside) received \$6,750, and had a

<b>Senate Leaders</b>	<b>Legislator</b>	<b>Party</b>	<b>1976-96</b>	<b>1997-98</b>	<b>Grand Total</b>	<b>Tobacco Policy Score</b>
Pres. pro Tempore	Burton, John	D	\$6,150	\$1,000	\$7,150	9.0
Majority Leader	Polanco, Richard	D	\$54,400	\$7,000	\$61,400	3.5
Majority Whip	Karnette, Betty	D	\$0	\$0	\$0	7.3
Minority Leader	Johnson, Ross	R	\$84,250	\$111,500	\$195,750	0.5
Sub-total			\$144,800	\$119,500	\$264,300	
<b>Assembly Leaders</b>						
Speaker	Villaraigosa, Antonio	D	\$35,000	\$0	\$3,500	5.0
Speaker pro Tempore	Kuehl, Sheila	D	\$0	\$0	\$0	9.8
Assistant Speaker	Baca, Joe	D	\$11,600	\$8,100	\$19,700	1.3
Majority Floor Leader	Shelley, Kevin	D	\$0	\$0	\$0	6.0
Minority Floor Leader	Leonard, Bill	R	\$21,000	\$82,250	\$103,250	1.5
Sub-total			\$67,600	\$90,350	\$126,450	
Total			\$212,400	\$209,850	\$390,750	

tobacco policy score of 1.0. Senator Ken Maddy (R-Fresno), who had the lowest tobacco policy score in the senate (0.5), was the second highest recipient of tobacco campaign contributions of any active legislator, and sponsored legislation to overturn the smoke-free bar provisions of AB 13, also served on the committee. Diane Watson (D-Los Angeles), chair of the committee, received the highest tobacco policy score in the Senate.

*Assembly Budget Committee* (Table A-4). Twelve of the twenty-five members of the Assembly Budget Committee received tobacco industry campaign contributions in 1997 and 1998. The largest recipient was Lou Papan (D-Millbrae), who received \$33,000 (tobacco policy score, 2.0). Committee Chair Denise Moreno Ducheny (D-San Diego) received \$1,000 during this election cycle, and had a tobacco policy score of 4.0.

*Senate Budget and Fiscal Review Committee* (Table A-5). Five of the fourteen members of the Senate Budget and Fiscal review committee received tobacco industry campaign contributions during the 1997-1998 legislative cycle. The largest recipient for the second consecutive electoral cycle was Rob Hurtt (R-Garden Grove), who received \$14,000 (tobacco policy score, 1.0). The chair of the committee, Mike Thompson (D-St. Helena), received no tobacco industry campaign contributions during 1997-1998, and had a tobacco policy score of 8.5.

*Assembly Appropriations Committee* (Table A-6). Nine of the twenty-one members of the Assembly Appropriations Committee received tobacco industry campaign



contributions during the 1997-1998 election cycle. Roy Ashburn (R-Bakersfield), the committee's vice chair, received \$40,500 during 1997-1998, and had a tobacco policy score of 1.5. Carole Migden (D-San Francisco), committee chair has never accepted tobacco industry campaign contributions, and had a tobacco policy score of 9.0.

*Senate Appropriations Committee* (Table A-7). Three of the thirteen members of the Senate Appropriations Committee received tobacco industry campaign contributions. The largest recipient was Ross Johnson (\$111,500), who was also the largest recipient in the legislature for this election cycle. Patrick Johnson (D-Stockton), committee chair, received no tobacco industry campaign contributions for this session, and had a tobacco policy score of 8.0.

### **State Constitutional Officers**

The tobacco industry contributed \$7,500 to four state constitutional officers during the 1997-1998 legislative session. The two candidates for Governor received the most industry contributions: Lieutenant Governor Gray Davis (D) received \$3,000 and Attorney General Dan Lungren (R) received \$2,000 (Table A-1).

After accepting contributions from the tobacco companies for years, Lungren had stopped taking tobacco money as he was preparing for the 1998 gubernatorial race. In Fall 1996, Lungren returned a \$5,000 contribution from RJ Reynolds, and a \$2,500 contribution from the Tobacco Institute<sup>7</sup>. Lungren accepted \$33,500 from Philip Morris, RJ Reynolds, and the Tobacco Institute in 1995 and 1996, and over the course of his political career, has received \$46,000 in tobacco industry campaign contributions. Lungren's relationship with the tobacco industry, both directly and indirectly through the Dolphin Group may have been factors that have influenced his reluctance to join the other states that have sued the tobacco industry for remuneration of state expenditures for smoking related illnesses. The Dolphin Group is a political consulting firm, which had created front groups for the industry to fight local ordinances and created a front group to qualify Philip Morris' 'California Uniform Tobacco Control Act' (Proposition 188) for the ballot in 1994<sup>8</sup>.

The other candidates receiving tobacco industry campaign contributions were State Board of Equalization District 3 member Ernest Dronenberg (R), who received \$1,000, and his opponent for the District 3 Chair, Craig Wilson (R), who received \$1,500.

### **The Relationship Between Campaign Contributions and Legislative Behavior**

There is a statistical relationship between tobacco industry campaign contributions and the tobacco policy scores, with the campaign contributions and the tobacco policy scores affecting each other. We sought to test the hypothesis that the campaign contributions sway legislators to be sympathetic towards the tobacco industry's point of view. While at the same time, the tobacco industry rewards those legislators that have helped it in the past. Simultaneous equations regression using two stage least squares was used to test the hypothesis that campaign contributions were affecting legislative behavior simultaneously

with behavior affecting contributions<sup>9-12</sup>.

The simultaneous equations regression model contains two equations. One equation predicts the 1997-1998 tobacco policy score (dependent variable) from the amount of campaign contributions in that election cycle (independent variable) and whether the candidate was a Republican, Democrat, or Independent. The second equation predicts the campaign contributions (dependent variable) whether the legislator was a member of the party in power in his or her chamber and dummy variables for Johnson and Leonard, who received significantly more tobacco industry money than other candidates. (This analysis is only based on direct contributions to legislators. It does not include money contributed to political parties or party controlled committees).

Table 5 presents the results of this analysis. For every \$1,000 a legislator received, his or her tobacco policy score decreased (i.e. became more pro-tobacco) by an average of 0.20 points. Republican legislators had tobacco policy scores that were 3.76 points lower than Democratic legislators for the same amount of tobacco industry campaign contributions received. For every one point reduction in a legislator's tobacco policy score, campaign contributions from the tobacco industry increased an average of \$3,690.

Compared to contribution data and tobacco policy scores from the 1995-96 election cycle, receiving tobacco industry campaign contributions had a greater effect on the decrease of policy score (-.20 in 1997-98 vs. -.04 in 1995-96). The difference in tobacco policy scores between Democratic legislators and Republican legislators in 1997-98 was similar to 1995-96 (-3.76 ± .45 vs. 3.07 ± .27).

For every point a legislator's tobacco policy score dropped (became more pro tobacco) in 1997-98, a legislator received more than twice the amount of money than for a point drop in tobacco policy score in 1995-96 (\$3,690 vs. \$1,820).

## **TOBACCO INDUSTRY LOBBYING EXPENSES**

The tobacco industry faced many challenges in the Legislature during the 1997-1998, including trying (unsuccessfully) to get the California smoke free bar law, AB 13, overturned, preventing the state from charging look back penalties to the industry (look back penalties involve fining the tobacco industry if rates of youth smoking do not annually decrease), divestment of state retirement funds from tobacco stocks, and increasing the tobacco tax. As a result, it is not surprising that industry lobbying expenditures continued to grow rapidly compared to previous election cycles. During 1997-1998, the tobacco industry reported spending a total of \$3,485,365 on lobbying, an increase from \$3,090,654 spent during 1995-96 (Table A-15). \$3,484,245 of this amount was spent in payments to lobbying firms; the remaining \$1,120 was spent on other lobbying activities to influence legislation. Philip Morris spent the most money on lobbying, \$1,219,109 followed by RJ Reynolds and the Tobacco Institute, which spent \$700,760 and \$320,512 respectively.

<b>TABLE 5. SIMULTANEOUS EQUATIONS RESULTS FOR TOBACCO POLICY SCORES AND 1997-1998 CAMPAIGN CONTRIBUTIONS</b>				
Dependent Variable = Tobacco Policy Score				
<b>Variable</b>	<b>Coefficient</b>	<b>St. Error</b>	<b>t</b>	<b>p</b>
Contributions (in thousands of dollars)	-0.20	.06	-3.49	<.001
Republican Party	-3.76	.44	-8.44	<.0001
Baugh	10.26	3.89	2.64	<.01
Johnson	20.00	6.70	2.99	<.01
Leonard	15.02	5.09	2.95	<.01
Constant	7.05			
Dependent Variable = Campaign Contributions (in thousands of dollars)				
Tobacco Policy Score	-3.69	1.04	3.79	<.0005
Republican Party	-13.22	4.81	-2.749	<.01
Baugh	51.2	9.00	5.69	<.0001
Johnson	100.1	9.16	10.9	<.0001
Leonard	74.5	9.00	8.273	<.0001
Constant	26.5			
n= 115				
R <sup>2</sup> =.54 for tobacco policy score; R <sup>2</sup> =.72 for campaign contributions				

Among the lobbying firms hired by the tobacco industry, Lang Hansen received the largest tobacco payments in 1997-1998, \$520,332 (Table A-15). Lang Hansen's only tobacco industry client was Philip Morris. Other top recipients included Flanigan Law Firm (\$479,981), representing RJ Reynolds, and Nielsen Merksamer (\$429,327) which represented Brown and Williamson, Lorillard, Philip Morris, and RJ Reynolds. Nielsen Merksamer has represented the tobacco industry for over 20 years, and is the largest recipient of tobacco industry lobbying dollars, a total of \$2,493,435. The lobbying firms representing tobacco companies often have other clients with seemingly contradictory purposes and political needs (Table 6). For instance, Nielsen Merksamer, in addition to its tobacco clients, represented two health care clients, a physicians' association, and two pharmaceutical companies. This pattern of representation raises the possibility of conflict of interests among lobbyists who represent the tobacco industry and health groups<sup>13</sup>. Washington DC lobbying firm Cassidy and Associates, San Francisco's representative on Capitol Hill, dropped RJ Reynolds as a client in to dismiss any perception of conflict of interest, in light of the city's lawsuit against

<b>Table 6. Tobacco Industry Lobbying Firms with Health Related Clients</b>		
<b>Firm</b>	<b>Tobacco Clients</b>	<b>Heath and Medical Clients</b>
Carpenter Snodgrass and Associates	Brown and Williamson Philip Morris RJ Reynolds Nabisco Lorillard	Health Insurance Association of America Physicians Mutual Insurance Co. Safeguard Health Enterprises
Nielsen, Merksamer, Parrinello, Mueller & Naylor	Brown and Williamson Philip Morris RJ Reynolds Nabisco Lorillard	Addus Health Care AIDS Healthcare Foundation California Association of Opthamology Merck and Co. Pfizer Inc.
Spencer-Roberts and Associates	Brown and Williamson	Eli Lilly
Livingston and Mattesich	Philip Morris for Miller Brewing	Pharmaceutical Care Management Association Novaris Pharmaceuticals
Dowd Relations	Tobacco Institute	Pharmaceutical Research and Manufacturers of America
Governmental Advocates	Philip Morris	California Association of Nurse Anesthetists California Chiropractic Association California Coalition of Nurse Practitioners California Optometric Association Foundation Health Co.

the tobacco industry<sup>14, 15</sup>.

## **THE BATTLE OVER SMOKE FREE BARS**

The California Smoke Free Workplace Law, AB 13 (D-Friedman 1994) mandated that almost all indoor workplaces in California would be smoke-free starting January 1, 1995.

Notable exceptions to the law included bars, taverns, and gaming rooms; a provision in AB 13 exempted these establishments until a federal regulatory agency (EPA or OSHA) or the state Occupational Safety and Health Standards Boards determined a level of exposure to environmental tobacco smoke that would prevent anything other than insignificantly harmful effects to exposed employees, or until January 1, 1997, which ever came first<sup>16</sup>.” If no regulations were created before January 1, 1997, AB 13 would go into effect in these establishments.

## **Delaying the Initial Implementation of the Smoke Free Bar Provisions of AB 13**

The general workplace and restaurant provisions of AB 13 went in to effect on January 1, 1995, with the bar provisions scheduled to take effect two years later, on January 1, 1997. Only an issuance of a federal or state ventilation standard could prevent the smoke free bar provisions from taking effect. The tobacco industry had successfully blocked federal OSHA's indoor air rule, and the state took no action. On February 23, 1996, Assembly Member Sal Cannella (D-Ceres) introduced AB 3037, which proposed to extend the bar exemption in AB 13 for three years, to January 1, 2000. Cannella reportedly proposed the bill to give the state Occupation Safety and Health Standards Board (OSHSB) or the federal EPA additional time to develop a ventilation standard<sup>17</sup>. The National Smokers Alliance, the Philip Morris created "grassroots" organization<sup>18</sup>, ran a poster campaign in more than 2,000 bars in the state, to delay the law<sup>19</sup>. The NSA also distributed "action coasters" for patrons and bar owners to send to legislators, urging delay of the law<sup>20</sup>.

The Senate Judiciary Committee amended AB 3037 to a one year extension to January 1, 1998. The bill was signed into law by Governor Pete Wilson.

It remained unlikely that the state would ever issue ventilation standards. On September 12, 1996, after AB 3037 passed, the state Department of Industrial Relations (the OSHSB oversight agency) wrote a memo to Governor Wilson, that directing the OSHSB to create a ventilation standard for secondhand smoke would be unworkable because "it would create further problems down the road, including requests for further extensions of the ban<sup>21</sup>" and the complex mixture of carcinogens in secondhand smoke meant that OSHSB "would probably have to recommend a ban, or require such significant engineering or redesign controls as to be prohibitively expensive<sup>21</sup>." Neither AB 13 nor AB 3037 placed an affirmative duty on OSHSB to produce ventilation standards. In the two year period between the inception of AB 13, and January 1, 1997, no representatives from bars, taverns, gaming clubs, or the tobacco industry petitioned OSHSB to create a standard of exposure to environmental tobacco smoke<sup>21</sup>.

### **1997-1999 Attempts to Repeal Smoke free Bar Law**

Historically, the tobacco industry has used its influence to try to prevent effective smoke free work place laws from passing. Once health groups succeeded in passing clean indoor-air initiatives or legislation, the tobacco industry has gone on to other fights. In contrast, the tobacco industry continued to try to overturn AB 13's bar provisions through nine separate bills, both before and after the law took effect (Table 7). Though there were some differences among the bills, all nine repeal efforts had the same premise: smoking should continue to be legal in bars, taverns, and gaming clubs. After AB 3037, the tobacco industry and the National Smokers Alliance stopped sponsoring bills to delay or repeal AB 13, and "grassroots" bar and tavern associations from California were the main organizations encouraging delay or repeal of AB 13 in bars.

All statistical analysis comparing campaign contributions received in 1997-1998 with votes on smokefree bar bills utilized the Mann-Whitney Rank Sum test.

<b>Table 7. Directives of pro-tobacco repeal/delay laws.</b>		
<b>Repeal/Delay Strategy</b>	<b>Vehicles</b>	<b>Dates</b>
Implementation of AB 13 should be delayed until California or federal OSHA can issue ventilation standards.	AB 3037 AB 869 AB 297 SB 137	February 1996 April 1997 May 1997, Jan 1998 August 1997
Employees can sign waiver and consent to work in a smoking bar.	AB 2191 SB 1513 AB 1216	April 1998 June 1998 January 1999
State should give small bars, taverns, gaming rooms a tax break since smoking law is adversely and disproportionately affecting these businesses.	AB 1159	February 1999
Rewrite AB 13 (labor code) in the Business and Professions Code.	SB 539	June 1998
Bars can apply for smoking permits	SB 1513	June 1998

*AB 869 (April 1997)*

Authored by Assembly Labor Committee Chair Dick Floyd (D-Wilmington), AB 869 would have delayed implementation of the smoke free requirements for bars, taverns, and gaming facilities indefinitely, until the federal Occupational Safety and Health Agency adopted ventilation standards for reduction of permissible exposure to environmental tobacco smoke<sup>22</sup>. Floyd is one of the tobacco industry's strongest supporters in the Assembly (tobacco policy score 2.5), and one of the largest recipients of tobacco industry campaign contributions (\$100,216 through 1998.) The supporters of the bill claimed that the smoking regulations would have "dire economic consequences for the entire tourism and convention industry in the state<sup>22</sup>," and that reasonable standards should be adopted before any restrictions on smoking in bars was enforced. When it was clear that the bill would not pass out of the labor committee, Floyd offered to limit the extension to three years, which also did not garner votes for the bill<sup>23</sup>. The bill was defeated in the Labor Committee, 5-6. Those voting yes on the bill received a total of \$37,983 in 1997-1998 (average of \$14,920 per vote), those voting no on the bill received a total of \$0 in 1997-1998. The difference in money received from those voting yes compared to those voting no was not significant (Table B-1).

*AB 297 (May 1997)*

Assembly Member Ed Vincent (D-Inglewood) introduced AB 297 in February 1997

in the Business and Professions Code relating to applying for gaming club licenses. In May 1997, Vincent inserted new amendments into AB 297 written by Joe Lang, a lobbyist with Sacramento firm Lang Hansen, which represents Philip Morris and Hollywood Park, a casino and racetrack in Vincent's district. The casino, built next to the sixty year old race track, was one of Vincent's projects as mayor of Inglewood<sup>24</sup>. Hollywood Park brings in \$10 million a year into the city of Inglewood in taxes and fees, constituting 20 percent of the city's revenue

The new amendments in AB 297 made it virtually identical to AB 869, defeated earlier in the Assembly Labor Committee. It required that if federal OSHA adopted a standard for reduction and control of permissible exposure to environmental smoke, establishments would have two years to come into compliance with the standards. The bill also contained a provision that forbade the Attorney General from administering or enforcing the law, or investigating violations of the law. AB 297 bill passed the Assembly Labor Committee 7-3, with votes from Carl Washington (D-Paramount), and Sally Havice (D-Cerritos), whom had both voted against AB 869. Those voting for AB 297 received a total of \$14,000 in 1997-1998 (average of \$2,000 per vote); those voting against AB 297 received a total of \$6,000 in 1997-1998 (average of \$2,000 per vote). The difference in money received between those voting no and those voting yes was not significant (Table B-2). Martha Escutia, who had voted no on AB 869, had resigned from the committee, and Speaker of the Assembly Cruz Bustamante (D-Fresno) appointed Martin Gallegos (D-Baldwin Park), chair of the Assembly Health Committee, to the Assembly Labor committee, who provided another yes vote. Even so, the committee approved AB 297 too late in the session for it to be considered in 1997<sup>25</sup>. However, the bill could still be enacted after the Legislature reconvened in January 1998.

### *SB 137 (August 1997)*

Senate Bill 137, a horse racing bill authored by Senator Ken Maddy (R-Fresno), was amended by Assembly Member Vincent to extend smoking in California bars until January 1, 2001. By August 1997, SB 137 had already passed in the Senate and could still be enacted during the 1997 Legislative session in time to prevent the smoke free bar provisions of AB 13 from going into force. Maddy is one of the most pro-tobacco members of the Legislature (tobacco policy score, 0.5; total industry campaign contributions of \$175,475 through 1998). Joe Lang had approached Maddy with the amendments to continue the smoking exemption for bars, taverns, and gaming clubs<sup>19</sup>. The Assembly Rules Committee granted SB 137 rule waivers that waived the normal filing and hearing deadlines<sup>26</sup> despite the fact that the amendments substantially changed the original content of the bill<sup>27</sup>. Assembly Member Vincent, with Senator Maddy's approval, deleted the bill language on horse racing and fairs, and replaced it with Lang's amendments (language also in AB 297). SB 137 would permit smoking in bars and casinos and directed the California Division of Occupational Safety and Health (Cal-OSHA) to create standards for safe levels of smoke in the bars and casinos. If standards were not created by January 1999, smoking would be permitted until 2001<sup>25</sup>.

SB 137 would have been sent to the Assembly Appropriations Committee, due to the

cost of creating Cal-OSHA standards. However, Assembly Appropriations Chairperson, Carole Migden (D-San Francisco), a strong public health advocate (tobacco policy score, 9.0; no tobacco industry campaign contributions), opposed the bill<sup>25</sup>. Maddy and Vincent removed the language that required Cal-OSHA to draft ventilation standards. The Assembly Rules committee referred SB 137 to the Assembly Governmental Organization Committee, which approved the bill, 11-2. Those voting for the bill received a total of \$104,300 in 1997-1998 (average of \$9,482 per vote); those voting no on the bill received a total of \$1,000 in 1997-1998 (average of \$500 per vote) ( $p < .05$ ; Table B-3).

The Assembly passed SB 137 44-28 (Table B-4). Legislators voting yes on SB 137 (pro-tobacco) received a total of \$433,700 in tobacco industry campaign contributions in 1997-1998, an average of \$9,857 per vote; those voting no on SB 137 (pro-health) received \$1,000 in tobacco industry campaign contributions in 1997-98, an average of \$36 per vote ( $p < .001$ ).

The amended version of the bill went back to the Senate for a consensus vote. Senate President Pro Tem Bill Lockyer (D-Hayward) had in the past been a strong ally of the tobacco industry and accepted substantial campaign contributions (\$177,850 through 1996, none after that). Lockyer, along with Assembly Speaker Willie Brown, had been the author of the 1987 “Napkin Deal” between trial lawyers, doctors, and the tobacco industry which gave the tobacco industry immunity from products liability laws in California<sup>28</sup>. By 1997 however, Lockyer opposed any further delays in implementing the smoke free bar provisions of AB 13<sup>29</sup>, and referred SB 137 to the Senate Judiciary Committee.

On September 9, 1997, the Senate Judiciary Committee deferred a vote on SB 137, killing the bill. California would be the first state to have smoke free bars.

#### *AB 297 Revisited (January 1998)*

The Legislature reconvened on January 5, 1998, just 5 days after AB 13's smoke free bar provisions went in to force. The California Smoke Free Bar Law had made state and national headlines, and was one of the top news stories in the country on New Year's Day<sup>30</sup>. On January 27, the Assembly Appropriations Committee passed AB 297 13 - 6, with those voting yes receiving a total of \$35,150 in tobacco industry campaign contributions in 1997-1998, (average of \$2,704), whereas those voting no received \$0 ( $p < .01$ ; Table B-5). On January 28th, the Assembly passed AB 297 on a 42 - 26 vote. Those voting yes received \$412,800 in tobacco industry contributions in 1997-1998, (average of \$9,829 per vote), and those who voted no received a total of \$1,000 in 1997-1998 (average of \$38 per vote) ( $p < .001$ ; Table B-6).

AB 297 moved to the Senate, where Senate Pro Tem Bill Lockyer had killed a similar measure (SB 137) by sending it to the Judiciary Committee, chaired by Senator John Burton (D-San Francisco)<sup>31</sup>. When the Legislature convened in January 1998, Lockyer stepped down as President Pro Tem and was succeeded by Burton. Burton had a strong record on public health (tobacco policy score, 9.0) and had only received \$7,150 in tobacco



industry campaign contributions during his long legislative career.

As the Senate leader, Burton controlled the Rules Committee, which could direct a bill to a particularly unfriendly committee to effectively kill it <sup>32</sup>. The Senate Rules Committee sent AB 297 to the Health and Human Services Committee, chaired by Senator Diane Watson (D- Los Angeles), one of the strongest advocates for tobacco control in the Legislature (tobacco policy score, 9.8; total tobacco industry campaign contributions \$300).

The Senate Health and Human Services committee held a hearing on AB 297 on March 26, 1998. After testimony from supporters of the repeal law and the health groups were presented, Watson announced that passing AB 297 was asking the Senate to “reverse a very popular legislative statute” that was approved by voters in 1994 and supported today by “three quarters of the public <sup>32</sup>.” (In 1994, the tobacco industry tried to pass an initiative that would have overturned AB 13; public health groups defeated it with a 71% no vote <sup>8</sup>.) AB 297 died in committee. The tobacco industry loss was a widely publicized defeat <sup>32-36</sup>. Although the industry made several more attempts to repeal the bar law, after the AB 297 hearing and the release of state tax data that showed that the law did not have a negative economic effect on bars and restaurants in the state <sup>37-40</sup>, the tobacco industry was not able to counter the pro-health and pro-labor forces in the Senate.

#### *AB 2191 (May 1998)*

AB 2191, sponsored by Assembly Member Brett Granlund, one of the most vocal supporters of the effort to repeal the smoke free bar law (tobacco policy score, 0.5; total tobacco industry campaign contributions through 1998, \$60, 698). Granlund had made attempts to circumvent AB 13, by qualifying that if a drinking establishment had their doors and windows open, they would not be considered an “enclosed space” <sup>41</sup>. AB 2191 was assigned to the Labor and Employment Committee, since it attempted to amend the Labor Code. AB 2191 was re-referred to the Labor Committee on three separate occasions, and was never put on the calendar for a vote.

#### *SB 1513 (June 1998)*

On June 23, 1998, pro-tobacco forces amended two senate bills (SB 1513 and SB 539) in the Assembly that began as minor measures dealing with horse racing to allow smoking in bars and casinos. Like SB 137, this tactic was a parliamentary maneuver to minimize the opportunities for the more pro-public health Senate to block the bills.

SB 1513, sponsored by Senator William “Pete” Knight (R-Palmdale) (tobacco policy score, 1.0; total tobacco industry contributions through 1998, \$14,000) sought to create new exceptions to AB 13 by allowing bars, card clubs, or restaurants to obtain a license from the state Department of Alcoholic Beverage Control (ABC) to permit smoking in these establishments. Smoking in bar-restaurant establishments would only be allowed in the bar area of the establishment, and businesses would not be allowed to apply for permits if local ordinances did not allow smoking in these facilities. The bill provided that no employee of

an establishment with a smoking license was required to work where smoking is permitted. Class I licenses would be issued to bars and taverns whose employees all consented to allow smoking in a premises. Class II licenses would be issued to bars, taverns, or gaming rooms that would install a “air system” approved by the state Building Standards Commission. (The ventilation standards would be set by the Building Standards Commission, rather than the state OSHA, which is responsible for worker safety.) Knight described SB 1513 as a “common sense solution to a problem that has had such a negative effect on small businesses and their employees throughout the state”<sup>42</sup>. While seeming more moderate than the previous attempts to roll back AB 13, the bill would have effectively repealed the smoke free bar provisions of AB 13.

The bill was sent to the Assembly Governmental Organizations Committee for consideration. Assembly Member Floyd, who appears to have modulated his strong pro-tobacco position, said he intended to fight to have the bill referred to his less friendly Assembly Labor Committee to kill the bill. Floyd appeared particularly concerned that allowing the Building Standards Commission to create the rules regarding ventilation; the bill breaks protocol by placing an issue historically was in the Labor Committee’s jurisdiction before a different committee<sup>42</sup>. A vote by the Assembly Governmental Organization committee to send the bill to the Labor Committee failed. President Pro Tem John Burton stated that if the bill got out of the Assembly, its chance in passing in the Senate were “not good.”<sup>42</sup>

Despite the 20 to 25 tobacco lobbyists present at the hearing, the Assembly Governmental Organizations Committee killed SB 1513 with a 8 - 8 vote on June 29, 1998. Those voting for the bill received a total of \$118, 550 in 1997-1998 (average of \$14, 819 per vote), those voting no on the bill received a total of \$31,500 in 1997-1998 (average of \$1,156 per vote). ( $p < .01$ ; Table B-7).

#### *SB 539 (June 1998)*

Senator Ross Johnson (total tobacco industry campaign contributions \$86,750; tobacco policy score 0.5) again tried to use a bill relating to horse racing that had already passed the Senate to weaken the smoke-free bar law. On June 23, 1998, Johnson amended SB 539 to weaken AB 13, pro-tobacco forces in the Legislature had given up on an immediate outright repeal of the smoke free bar law. On the surface, SB 539 simply restated current law in the Labor Code and placed it into the Business and Professions Code, which allowed employers to designate break-rooms for employees that allowed smoking. Public health advocates were concerned because the bill did not contain a definition of who may or may not use the employee break room, so these rooms could turn in to quasi public places, which patrons would utilize as well. The Business and Professions Code also deals with vendor-patron relationships, the frame the tobacco industry was trying to utilize, rather than employer-employee relationships, which was the original intent of the law<sup>43</sup>.

Johnson’s office claimed that “the ban on smoking in bars, taverns, and gaming clubs which took effect on January 1, 1998 has created economic hardships for many small

businesses in the state. Moreover, the ban, has resulted in uneven enforcement throughout California. This measure (SB 539) is intended to lessen those hardships by simply applying the existing break room exemption granted to other employers to bars, taverns, and gaming clubs. This measure will uphold strict employee protections in current law, while at the same time, allowing small businesses an opportunity to accommodate smoking employees and customers<sup>44</sup>.”

SB 539 passed the Assembly Governmental Organizations committee by a 10 -2 vote (Table B-8). Those voting for the bill received a total of \$66,300 in 1997-1998 (an average of \$6,630), those voting against the bill received \$0 in 1997-1998 ( $p < .1$ ). However, the bill was placed on the Assembly inactive file at the request of Assembly Member Valerie Brown, the Chairwoman of the committee, in effect killing the bill.

After AB 13 was in effect for an additional year, two bills were introduced in the 1999-2000 legislative session to overturn its smoke free bar provisions.

#### *AB 1159 (February 1999)*

AB 1159 was introduced by Assembly Member Brett Granlund (R-Yucaipa; total tobacco industry contributions through 1998, \$60,698; tobacco policy score, 0.5), with co-authors Assembly Member Lou Papan (D-Millbrae; total tobacco industry contributions through 1998, \$67,000; tobacco policy score, 2.0) and Assembly Member Roy Ashburn (R-Bakersfield; total tobacco industry contributions through 1998, \$41,500; tobacco policy score, 1.5). The bill, originally meant to be a change to the Business and Professions code, was later amended to change Labor Code (enacted by AB 13) to permit smoking in bars, clubs, and gaming rooms if the proper ventilation system had been installed in the facility. Clubs would then be allowed to deduct the improvements from their taxes. The Department of Alcoholic Beverage Control would set a fee for a smoking permit. The bill was scheduled for a hearing twice in the Assembly Labor Committee; both hearings were canceled at the request of Assembly Member Granlund.

#### *AB 1216 (February 1999)*

AB 1216 was introduced by Assembly Members Floyd and Granlund, with co-authors Assembly Members Papan and Rod Wright (D-South Central Los Angeles; total tobacco industry campaign contributions through 1998, \$68,750; tobacco policy score, 2.0), to add a section to the Labor Code. AB 1216 would have permitted smoking in stand alone bars, taverns, gaming rooms until ventilation standards were adopted, and employees of the establishment gave written consent to allow smoking in the facility. On April 21, 1999, AB 1216 failed to pass the Assembly Labor Committee, 3-6.

Because AB 1159 and AB 1216 bills were introduced in the 1999-2000 session, more recent tobacco policy scores and total tobacco industry campaign contributions for the 1999-2000 election cycle were not available at the time of publication.

## **PROPOSITION 99: THE CALIFORNIA TOBACCO CONTROL PROGRAM**

In November 1988, California voters passed Proposition 99, the Tobacco Tax and Health Promotion Act, which increased the state tobacco tax by 25 cents on a pack of cigarettes, and 42 cents on other tobacco products. The initiative established six separate accounts, specified the percentage of the new revenues to be allocated to each account, and earmarked each account to serve a specific purpose. These were:

*Health Education Account.* 20% for community and school-based tobacco education and prevention programs

*Hospital Account.* 35% for treatment of medically indigent hospital patients.

*Physicians' Services Account.* 10% for treatment of medically indigent patients by physicians

*Research Account.* 5% for research on tobacco-related diseases

*Public Resources Account.* 5% for public resources (conservation and other environmental issues)

*Unallocated Account.* 25% to be distributed by the legislature to any of the other accounts (The Unallocated Account has almost entirely been spent on medical services and environmental programs.)

The initiative only imposed the tax increase and created the broad outline for its expenditure. The implementation of the Proposition 99 programs required legislation establishing the actual programs and appropriating money to them. In contrast to past years, in which there were major battles between health advocates and the Legislature over the allocation of Proposition 99 revenues for anti-tobacco education and research, in 1997 and 1998<sup>9,11</sup>, the Legislature did not attempt to divert these funds into medical services or place restrictions on the scope of the anti-tobacco programs, most likely because the health groups had fought against the legislature and governors's diversion of the Proposition 99 funds in previous years. Rather than take a position hostile to public health, several key legislative committees conducted hearings designed to highlight problems with program implementation by the Wilson Administration that health advocates claimed were reducing program effectiveness. In addition, litigation over previous diversions of the Health Education Account and the Research Account were still pending.

### **The Budget**

One of the strategies that the health groups had used to oppose diversions of Proposition 99 funds out of health education and research in past years had been to go to court to assert the claims that these diversions were illegal<sup>9,11</sup>. At the time that the Legislature was considering the 1998-1999 budget, \$43 million of the Health Education

Account fund was in a “restricted reserve” pending outcome of litigation over the legality of the Legislature’s attempt to shift these funds out of health education and research into medical services in 1995 (SB 493). In an effort to end this litigation, the Legislature appropriated this \$39 million for purposes consistent with Proposition 99. To encourage the Legislature to take this action, the plaintiffs (Americans for Nonsmokers Rights, and the American Lung Association, American Cancer Society, and American Heart Association, in two related cases) committed themselves to dismiss their cases with prejudice once the appropriation was signed in to law, ending the litigation. Governor Wilson vetoed this appropriation, leaving the money unspent and creating a situation which will require additional litigation.

In the 1997-1998 budget years, there were no diversions of Proposition 99 funds. However, because of the passage of Proposition 10, and the projected reduction in consumption of cigarettes due to the price increase, along with the additional price increase imposed by the tobacco industry, revenues for the Proposition 99 program were estimated by the Department of Finance as follows:

- Budget Year 1998-1999, all Proposition 99 programs will lose a total of \$46 million compared to 1997-1998, a 10.4 percent drop. The Department of Finance estimated that the Health Education Account would lose \$5,580,000 and the Research Account would lose \$1,395,000 in 1998-1999 <sup>45</sup>.
- For Budget Year 1999-2000, all Proposition 99 programs will lose an additional \$18 million: \$2,740,000 from the Health Education Account, and \$685,000 from the Research Account <sup>45</sup>.

Therefore, the total drop from 1998-2000 would be \$66 million or 14.9 percent.

### **Changing of the Guard: A New Governor**

For the first time in 16 years, Californians elected a Democrat as Governor. Lieutenant Governor Gray Davis defeated Attorney General Dan Lungren in the November 1998 election. In his first year in office, Davis has made progress in reversing Governor Wilson’s policy regarding tobacco control in California, notably, opening up the review process for the media campaign to the Tobacco Education and Research Oversight Committee, and approving tough anti-tobacco ads. However, there remains pending litigation, as well as \$32 million of tobacco control funds in a restricted reserve from previous diversions in the Proposition 99 budget that Davis has yet to release.

### **ANR II**

In 1995, the Legislature passed SB 493, to change the percentages of Proposition 99 funds reserved for the Health Education and Research Accounts as allocated by the voters (20 percent and 5 percent, respectively) to 10 percent and 1 percent (unlike previous bills AB 75, AB 99, and AB 816 where money was misappropriated into the Proposition 99 Health

Services Account). After SB 493 was passed and signed by the governor, Proposition 99 funds were appropriated according to the percentages in SB 493; approximately \$65 million intended for the Health Education and Research Accounts as mandated by the original proposition were moved to the health services fund. ANR, followed by ACS, AHA, and ALA (in separate cases) filed suit against SB 493 in 1995 shortly after the diversion (*Americans for Non-Smokers Rights II v. State of California*). In August 1995, the Sacramento Superior Court issued a temporary restraining order preventing the contested funds from being spent on medical services, and followed on September 1, 1995 with a preliminary injunction. The governor appealed.

In 1997, the Court of Appeals ruled that the Superior Court should not have issued the temporary restraining order because the plaintiffs had not created an adequate record to justify this action. The plaintiffs appealed this decision to the California Supreme Court, which depublished the Court of Appeals decision on SB 493, so it would not be precedent for other cases. However, the Court of Appeals ruling stood for the ANR II case. The Supreme Court initially agreed to hear the case, but later declined to hear the case, sending it back to the Sacramento Superior Court for a trial based on the merits of the case.

The Attorney General's office has taken the position that the ANR II case was moot, since SB 493 had a sunset provision for one year. Further, ANR sued to have the contested money spent solely for health education and research. The Attorney General's office maintains that the money is presently in the Health Education Account and Research Accounts, albeit in a restricted reserve account, where it can not be spent.

Several years ago, Governor Wilson had placed the "ANR II Restricted Reserve" back into the appropriate Proposition 99 accounts as a line item, and stated that this money was not available for anti-tobacco activity because of the pending litigation. The Legislature appropriated the restricted reserve funds for use in the 1998-1999 budget, and ANR and ALA/ACS/AHA agreed to dismiss their lawsuits with prejudice if the money was appropriated. However, Governor Wilson vetoed the appropriation, and \$39.7 million remained in restricted reserve.

For the 1999-2000 budget, the legislature again appropriated the ANR II fund into the proper Proposition 99 accounts. TEROC unanimously voted to endorse the decision by the Senate Committee on Budget Fiscal Review to appropriate the \$39.5 million for legitimate anti-tobacco education (Governor Davis's budget included the appropriation of \$7 million from the restricted reserve research account to be spent)<sup>46</sup>. Governor Davis vetoed the appropriation. \$32.5 million remains in the restricted reserve and was classified as "litigation reserves."

On September 1, 1999 Americans for Nonsmokers' Rights and the American Heart Association released an ad in the *New York Times* Western Edition headlined, "Where does Governor Davis stand on tobacco?" The advertisement highlighted Davis's restoration of the media campaign, but focused on Davis's veto of the \$32 million in the Health Education restricted reserve, the need for a portion of California's tobacco settlement money to be spent

# Where does Governor Davis stand on tobacco?

*Governor Gray Davis just vetoed \$32 million in voter-approved anti-tobacco spending for key state anti-tobacco programs. Will his record end up any better than Pete Wilson's?*

**G**overnor Davis distinguished himself very clearly from his opponent in the last election by refusing to play up to the tobacco lobby.

And, since he took office, he's wisely begun to restore our state's anti-tobacco billboard campaign, the most effective in the nation before Davis's predecessor, Pete Wilson, muffled it in 1994. And he put TV ads on the air that Wilson killed.

But it's way too early to become congratulatory.

Because of Wilson's pro-tobacco industry stance, tobacco addiction in California is higher than it was in 1994.

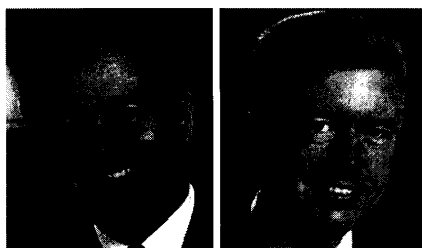
Unless Davis acts decisively, we're headed for another 50 years of disability and hundreds of thousands of tobacco-related fatalities — all unnecessary!

The Legislature did the right thing when they allocated millions of dollars recovered in a lawsuit against the Wilson Administration to be spent on tobacco education and research. Governor Davis's veto of this expenditure is completely unjustifiable and sends exactly the wrong signal.

To avoid making our state a safe haven for Big Tobacco:

- Davis should settle Wilson-era lawsuits and let the Legislature know that he supports spending tobacco tax dollars the way the voters intended — on tobacco education and research. He should stop sitting on the \$32 million now held in the Health Education & Research Accounts.

- The Centers for Disease Control have released a study showing that well-funded tobacco programs succeed in reducing tobacco consumption — saving taxpayer dollars on long-term health costs. Governor Davis should use funds from the legal settlement with tobacco



*Governor Pete Wilson did Big Tobacco big favors...*

*Ask Governor Gray Davis where he stands on tobacco...*

companies to ensure that at least \$75 million a year — less than 10% of what the tobacco industry is spending in California — goes for tobacco control efforts. What better use of Big Tobacco's money than to save your tax money for years to come?

- As for the Wilson holdovers in Sacramento still stalling the state's anti-tobacco media campaigns? They've already managed to blow Davis's July deadline for a strong new TV campaign. Davis needs to issue an order to get lifesaving spots on TV by the end of September.

If Davis retreats, it could end up costing California far more than its \$1 billion-a-year share of the Master Tobacco Settlement.

We know Gray Davis is not Pete Wilson. But those of us who welcomed Governor Davis as an honest foe of Big Tobacco are now wondering what it takes to keep up California's pressure on the tobacco industry.

Yes, Big Tobacco has taken a hit recently. They're being forced to pay the states for a long history of disease and death. But they're still out to addict the young. And whenever the public interest backs off, Big Tobacco advances.

Any delays or cutbacks in California's proven, cost-effective anti-tobacco programs carry life-and-death implications for decades to come.

The bottom line is simple. We know how to save lives; therefore, we must.

Remind Governor Davis that you care...and that you're watching.

Mail or fax the coupons below.

*Americans for Nonsmokers' Rights*



Fighting Heart Disease and Stroke  
Western States Affiliate

**Governor Davis:**  
*Wake Up! Remind your staff that you are solidly behind California's tobacco control efforts! Tell them to stop sitting on the new anti-tobacco television media campaign — if it all ready to go and should be on the air by the end of September! Let the Legislature know you want at least \$75 million a year from the state's legal settlement with tobacco companies to go toward tobacco prevention programs! Settle Wilson-era lawsuits and release the \$32 million now sitting in the Health Education and Research Accounts which has been reserved for anti-tobacco programs!*

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY/STATE/ZIP \_\_\_\_\_

Mail to: Governor Davis, State Capitol, Sacramento, CA 95814  
916/445-2841; Fax: 916/445-4633

**Americans for Nonsmokers' Rights:**  
*Your continued monitoring of state anti-tobacco efforts is obviously needed. Public policy on tobacco has a gigantic impact on the health and wealth of California. As a taxpayer disgusted with the tobacco industry's countless attempts to addict new generations, please...*  
*| Keep me alerted to events in California.*

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY/STATE/ZIP \_\_\_\_\_

Mail to: Americans for Nonsmokers' Rights, P.O. Box 668, Berkeley, CA 94701. www.no-smoke.org

**Figure 3.** Advertisement run by ANR and ANA questioning Governor Davis's position on tobacco control.

on tobacco control, and the slow approval process of the media campaign (Figure 3).

## **SAY NO**

*Just Say No To Tobacco Dough Campaign et al. v. State of California* (SAYNO) seeks to recover a money judgement against the State of California in an amount equal to the amount of Health Education Account funds that were illegally diverted from tobacco education programs to medical care programs, plus interest. The amount illegally diverted was slightly more than \$140 million and the interest at present is no less than \$54 million. If the case is successful, these monies would be paid from the General Fund to the Health Education Account for tobacco education programs in the future as determined by the Governor and the Legislature <sup>47</sup>.

In June 1998, the Wilson Administration, acting through the Attorney General, contacted counsel for the plaintiffs in ANR II and SAYNO. Wilson proposed that he would not line item veto the \$40 million appropriation that would settle ANR II if plaintiffs would drop SAYNO. Plaintiffs in SAYNO refused. Later, the Administration and the Attorney General proposed that the Governor would line item veto the \$40 million that would resolved the ANR II case unless plaintiffs in SAYNO dropped their demand for the \$140 million, which they refused to do. The Attorney General also requested that SAYNO reduce their demands by \$40 million, which the plaintiffs also refused. Counsel for plaintiffs in SAYNO informed Wilson that he should follow the directive of the voters, the constitution, and the provisions in Proposition 99 in all instances, which included agreeing to payment of both the \$194 million in SAYNO and the \$40 million in ANR II.

In Spring 1998, counsel for plaintiffs in SAYNO received copies of previously confidential tobacco industry documents released in the Medicaid reimbursement case brought by the State of Minnesota. These documents demonstrated that the diversions of Proposition 99 health education funds were part of a tobacco industry plan to undermine the effectiveness of tobacco education programs in California. As a result of this new information, SAYNO filed a Second Amended Complaint to allege the existence of this conspiracy. The defendants challenged the Second Amended Complaint by contending that the California Tort Claims Act (CTCA) applied to taxpayer suits such as SAYNO. Plaintiffs contended that in years past the California Supreme Court and District One of the Court of Appeal had held that the CTCA did not apply to taxpayer suits.

On December 3, 1998, Sacramento County Superior Court raised the issue if the Separation of Powers Doctrine applied to the SAYNO case. Doctrine of the Separation of Powers would preclude the Court from entering an money judgment against the State <sup>47</sup>. During the hearing, counsel for the plaintiffs argued that the Separation of Powers Doctrine did not apply and counsel for the state concurred. However, the Court held that Separation of Powers Doctrine did apply, but granted the plaintiffs leave to file a Third Amended Complaint, which the plaintiffs filed. The plaintiffs added allegations about amounts of campaign contributions made by the tobacco industry to the two Governors involved in the diversions, Deukmejian and Wilson, and the members of the legislature who voted for the



illegal diversions<sup>47</sup>.

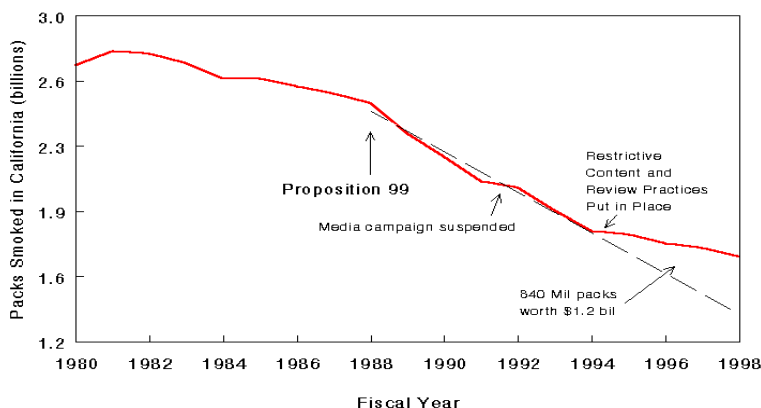
The State contested the Third Amended Complaint. It did not contend that the Separation of Powers Doctrine applied and did agree that it did not. It did contend that the CTCA applied and the Court agreed. On July 8, 1999, judgement was entered in favor of the State in the Sacramento Superior Court holding that both the Separation of Powers Doctrine and the CTCA applied to this case. As of the publication of this report, the plaintiffs intended to file a Notice of Appeal.

Governor Davis's justification for vetoing the legislative appropriation of the ANR II restricted reserve was that it was necessary to settle the SAYNO case. Under the terms of the restricted reserve, this would be impossible.

### Legislative Oversight of the Media Campaign

During the early years of the Proposition 99 tobacco control program, the rate of decline of tobacco consumption tripled compared to historical trends<sup>48</sup> (Figure 4). This aggressive program was possible because the state Director of Health Services at the time, Ken Kizer, fought for the program and convinced then-Governor George Deukmejian to take a "hands off" policy regarding the campaign and allow the public health professionals within DHS to manage the program in conjunction with their advertising agency. (Indeed, the Tobacco Institute recognized this policy as a problem in a secret memo that came to light in 1998<sup>49</sup>). In particular, the campaign included a strong element that directly confronted the tobacco industry. Such an anti-industry element is necessary for a maximally effective campaign<sup>50</sup>.

When Pete Wilson became governor in 1991, he immediately imposed tighter



**Figure 4.** During 1998, tobacco consumption continued to remain essentially flat. During the last half of 1998, consumption appeared to be increasing (data not shown), indicating the policies the Wilson Administration put in place succeeded in blunting the program's effect.

political control over the campaign by the Governor's Office. In 1998, Kizer, who had stayed on as Director of Health Services until Wilson appointed a new Director, told the *Los Angeles Times*, that "There were some comments from (Wilson's) office that they were unhappy and would like to see any subsequent ads toned down, and wanted to review any of them<sup>51</sup>." Wilson pressed to reduce the funds available for the media

campaign<sup>11,52</sup>, and even suspended it in 1992, until the American Lung Association won a court order forcing the campaign back on the air. Starting in 1994 or 1995, the Administration put in place increasingly tight censorship of the campaign by requiring that Wilson's Secretary of Health and Welfare, Sandra Smoley, personally approve all advertisements. Smoley refused to approve the kind of hard hitting advertisements that had been the hallmark of the California campaign. In 1995 and 1996, only "softer" spots were aired<sup>51</sup>. This destruction of the media campaign attracted increasing criticism from TEROC<sup>53</sup> and led the health groups to mount a public campaign to force the Administration to toughen up the advertisements, which met with some success in 1997<sup>52</sup>.

Throughout the 1998 legislative session, several Senate committees -- Budget, Health and Human Services, and Judiciary -- held increasingly pointed hearings regarding the restrictions that the Administration put on the media campaign and the adverse effects that these restrictions had on program effectiveness.

*Senate Budget Committee.* The first series of three hearings, held by Senator Mike Thompson (D-Napa) of the Budget Committee, focused on cumbersome approval procedures that the Administration had put in place to debilitate the media campaign. Thompson also expressed concern about Administration policies that kept the public health constituent groups and even TEROC, uninformed about the media campaign. In the third of these hearings, Thompson forced DHS to have the advertising agency testify. Despite efforts by DHS Director Kim Belshe to prevent the advertising agency from answering most of Thompson's questions, it became clear that the agency's best material was not being approved. Belshe also admitted that Smoley had to personally approve every advertisement for development and production. These hearings led to language being added to the budget requiring that TEROC be involved in the process of developing the advertisements. Wilson vetoed this language in an effort to maintain the secrecy that had descended over the campaign.

*Senate Health and Human Services Committee.* In a hearing overseen by Senator Diane Watson, State Health Officer James Stratton, publicly admitted that Secretary Smoley had forbade the use of specific words in advertisements, such as "lies" and "profits."

*Senate Judiciary Committee.* Account executives from Asher Gould and Associates, the advertising agency contracted with the state to design the anti-smoking ads, testified before the Senate Judiciary Committee on October 16, 1998. The executives from the agency were subpoenaed because a clause in their contract with the state forbade them to discuss content, decisions, concepts of the advertisements with anyone, including elected officials. Account executives with Asher Gould reported that some of the firm's most hard-hitting concepts were rejected due to the political concerns of Wilson Administration officials<sup>54</sup>. Ads designed by Asher Gould, such as "Nicotine Soundbites" and "Boardroom," thought to be the most powerful anti-smoking ads, which were aired in other states, but were no longer allowed to air in California. Allison Melody, account supervisor with Asher and Partners (the new name of the ad agency), testified that the prohibition of negatively portraying tobacco industry executives killed one of the firm's most hard-hitting concepts: a

1963 memo by the vice president and general council of Brown and Williamson that stated “Nicotine is addictive. We are, then, in the business of selling an addictive drug,” featuring industry executives testifying in 1994 in front of Congress that nicotine was not addictive. A memo from Hal Asher, the ad agency’s chief executive, was also produced, relating to a conversation that Asher had previously with James Stratton. Asher had written that ad executives were to be asked in the Senate Committee Hearings if the administration was “killing good ideas”, but Stratton had stated that the administration did not want to publicize the battles the ad agency were having with the Administration. They want everyone “to be on the same page”<sup>55</sup>.

Senator Adam Schiff (D-Burbank) pointed out that the state spends \$50,000 per day to broadcast anti-tobacco messages, to the \$1.2 million in advertising the tobacco industry spends in California each day<sup>54</sup>. Senator Ray Haynes (D-Riverside) defended the restraints on the advertising campaign, and claimed that he had a problem using tax dollars calling people liars, the same argument Secretary Smoley had also use for toning the ads down. James Stratton, the deputy director of DHS, testified that the effectiveness of the ads were a matter of opinion, and defended the state’s current anti-smoking advertising campaign. He testified that the decisions regarding the content of the ads were made in the cabinet level of the Health and Welfare Agency, consistent with policies established by the governor’s office<sup>54</sup>. Stratton described how the previous ads could be perceived as anti-business, and how the Wilson Administration worried that state government would be viewed as unfriendly to business, which would discourage industry from moving operations in California. Stratton also said that the advertising campaign was only one aspect of the tobacco control program, with most of the funds from Proposition 99 going to county health departments and schools where there were recent successes, including the reduction in vendors making illegal tobacco sales.

Throughout the course of the hearings, it became apparent that political considerations of the Wilson Administration had more of an impact on the content and themes of the ad than the research and findings of the advertising agency, TCS, and the Local Lead Agencies around the state working on tobacco control. The Wilson Administration had tried to derail the counter-advertising approach that had been so successful in the early part of the Proposition 99 media campaign because not only did it directly attack the tobacco industry, a close political ally of the Republican Party in California, but also because it was shown to be one of the most effective parts of the Proposition 99 campaign. The determination of the effectiveness of the media campaign was a recurring theme in battle over Proposition 99, that again pitted political allegiances against effective public health programming.

### **The New Administration**

In April 1999, the Davis Administration replaced 366 tobacco billboard advertisements, including the notorious Marlboro advertisement on Sunset Boulevard in West Hollywood, with anti-tobacco messages, in accordance with the terms of the Master Settlement Agreement<sup>56</sup>. Governor Wilson had previously killed two of the most hard-

hitting and effective ads that were released, including, “Are you choking on tobacco industry lies?” and “Nicotine Soundbites.”

On May 12, 1999 Governor Gray Davis’ office released television advertisements that were previously pulled off the air or never shown by the Wilson Administration, effective ads produced in other states, and new ad concepts featuring a toll free number for Californians who want to quit smoking, be involved with anti-tobacco community efforts, or share their story on how tobacco has impacted their lives <sup>57</sup>.

Though Governor Davis was credited for releasing the billboard ads, the Tobacco Education Research and Oversight Committee had approved all the billboard and broadcast ads on February 9, 1999 <sup>58</sup>. Jennie Cook, chairperson of TEROC, stated that the one of the TEROC’s major criticisms of the media campaign, the cumbersome approval process for the ads, was contributing to the delay of the billboard and the electronic media campaigns <sup>58, 59</sup>. Though Davis has made several changes that differed from the Wilson Administration’s policies regarding the Tobacco Control Program, Davis has been slow replace Wilson appointees to the Department of Health Services, which may be contributing to the continuous delay of the approval process for advertisements.

At the September 14, 1999 TEROC meeting, the Department of Health Services agreed to release all Wave I media, which includes previously aired ads in California and ads previously released ads from the Massachusetts and Florida tobacco control programs. The Davis Administration also approved Wave II media, a series of new print, radio, and television advertisements, many of which are targeted to ethnic communities in the state <sup>60</sup>.

## **LITIGATION AGAINST THE TOBACCO INDUSTRY**

The 1990's has seen a new element in controlling tobacco use in the United States. Litigation against the tobacco industry for decades of illicit activities and remuneration for public funds spent on tobacco related illnesses has brought tobacco control into national focus. The release of thousands of previously secret industry documents has debunked the statements that the tobacco industry have used in defending the manufacturing and sale of their product. Litigation against the industry has resulted in the largest civil settlements in United States history, and a change in the landscape of tobacco sales and marketing. California, particularly at the city and county level, has been at the forefront of using litigation as a public health tool, and using a variety of state laws as vehicles for changing the practices of the tobacco industry.

### **Overturing the Napkin Deal**

In 1987, the Legislature enacted California Civil Liability Reform Act, Civil Code Sec. 1714.45 that provided that a manufacturer or seller of a product is not liable in a products liability action if the product is inherently unsafe and ordinary consumers know it is inherently unsafe. It provided the tobacco industry with immunity from product liability actions in California. This law, which was pushed through the legislature late in the session

with little public scrutiny, became known as the “Napkin Deal” because the terms of the law were negotiated at a restaurant meeting of lobbyists from the tobacco industry, medical establishment, lawyers, and insurers and written on a napkin<sup>28</sup>. The deal was brokered by then-Speaker of the Assembly Willie Brown (D-San Francisco) and carried by Senator Bill Lockyer (D-Hayward). At the time that the Napkin Deal was negotiated, the only legal threat the tobacco industry faced was product liability actions brought by individuals, and the Napkin Deal provided the industry with complete protection from such actions.

The situation had changed dramatically by 1997. By June 1997, 36 state attorneys general had sued the tobacco companies seeking to recover the costs of smoking taxpayers had been forced to pay through state Medicaid programs. California, the largest state, could potentially recover billions of dollars through a similar lawsuit, but Attorney General Dan Lungren refused to file such a suit because he claimed that Civil Code Sec. 1714.45 prohibited him from doing so<sup>9</sup>. Lockyer, the author of the original legislation, as well as many others, disputed Lungren’s interpretation<sup>61</sup>, but Lungren continued to refuse to sue the tobacco industry.

Lungren came under criticism as early as Fall 1996, when Lieutenant Governor Gray Davis sent a letter to Lungren’s office, urging the Attorney General to join the states suit against the tobacco industry. Davis wrote, “the state, through its attorney general, has a fiduciary obligation to do everything within its power to ensure that the taxpayers are made whole for the enormous publically funded costs involved in tobacco caused diseases and deaths<sup>62</sup>.” Lungren called Davis’s request politically motivated, and stated he had no immediate plans to bring suit against the industry<sup>62</sup>. In a letter back to Davis, Lungren responded “The position taken by this office is that the immunity provided to the industry by the Legislature in 1987 (Napkin Deal) appears to make it impossible to recover damages due to tobacco related injuries and illnesses<sup>63</sup>.” Davis had argued that while the state may be prevented from recovering damages under that law, it could still sue the industry by showing that the tobacco companies defrauded the public by denying the harmful effects of smoking<sup>63</sup>. Lungren stated that he would prefer Congress to reach a global settlement with the tobacco industry instead of an “endless parade of actions clogging the state and federal court.” He also said that he was opposed to bringing suit when it would “telegraph the not-so-subtle idea that people are not responsible for their own behavior<sup>61</sup>.”

Despite Lungren’s protestations, the Napkin Deal did not prevent lawsuits to recover medical costs or claims under the Business and Professions Code because the Napkin Deal only addressed product liability actions<sup>9</sup>.

In response to Lungren’s assertions, three bills were introduced in the 1997 legislative session to specifically allow the state to sue to the tobacco industry: AB 1603 (Bustamante, D-Fresno), SB 67 (Kopp, I-San Francisco), and SB 340 (Sher, D-Stanford). Assembly Member Cruz Bustamante (D-Fresno), author of AB 1603, maintained that the court decisions regarding this civil code did not give the industry immunity against public entity actions to recover costs by the public entity. The civil code has been interpreted to prevent tort action by the knowing and voluntary individual consumer. Unlike bills SB 67 and SB

320, AB 1603 does not allow private individuals to sue the tobacco industry. AB 1603 was passed and signed by Governor Wilson on June 12, 1997. Lungren brought suit against the tobacco industry on June 12, 1997.

### **Overturing the Napkin Deal Revisited: The Same Law Did not Stop Texas**

In 1993, Texas passed a state products liability law, highly similar to California's law, both originating from the Second Restatement of Torts<sup>64</sup>. On March 28, 1996, the State of Texas filed suit against the tobacco industry, alleging violations of federal racketeering, mail fraud and conspiracy laws under the Federal RICO Act, and violations of state consumer protection and liability laws<sup>65</sup>. In January 1998, the State of Texas settled its suit against the tobacco industry for \$15.3 billion, later changed to \$17.6 billion (the Most Favored Nation clause in the Texas settlement allowed the state to receive the same terms as the State of Minnesota's subsequent settlement with the industry). Attorney General Lungren claimed that the Texas law was interpreted more broadly than the California product liability law. *American Tobacco Co v. Superior Court* (1989) held that Civil Code Section 1714.45 was "poorly drafted" and interpreted the law to give unconditional immunity to tobacco products, in terms of product liability. Further, in *Richards v. Owens Corning* (1997), the California Supreme Court interpreted Civil Code section 1714.45 to negate liability to voluntary users, emphasizing the voluntary nature of a smoker's use of tobacco<sup>66</sup>. Therefore, according to the courts, tobacco companies are immune from tort liability against "knowing and voluntary smokers"<sup>66</sup>.

In 1997, the Liggett group settled with 22 states whose state attorneys general had filed suits to recover the state medical costs of treating tobacco related disease. These 22 states were entitled to a percentage of Liggett's annual pre-tax profits. Although Attorney General Lungren later entered into an agreement with Liggett that awarded California the same settlement as the other states that had initially sued the industry, Lungren maintained that he was not able to bring suit against the industry because of Civil Code section 1714.45. Senator Lockyer's position was that there was a legal theory that the AG *could have used* if he so wanted to - the interpretation of the law did not stop him. Several California counties, including San Francisco, sued tobacco companies under the Business and Professions Code, under the premise of fraud, and in term, had settled with Liggett in April 1997.

The Napkin Deal also only prohibited suits against the manufacturer of "inherently unsafe consumer products"<sup>67</sup>, with an understanding that the consumer realizes the inherent unsafeness of the products. However, due to the tobacco industry document releases, it had become evident that consumers were often misled about tobacco due to deceptive advertising and marketing products, and not informed of the industry's knowledge of the addictiveness and harmful nature of their product.

It seemed likely that if California was to settle independently against the tobacco industry, the state would have received an unprecedented amount of money, due to its population. Attorneys General in the states that had settled independently with the tobacco industry, Mississippi, Florida, Texas, and Minnesota, have been lauded by their states by

brokering such massive deals. It was likely that Lungren's inaction would have left him vulnerable to attack not only from the tobacco control community, but also by groups who viewed settlements with the industry as a fiscal windfall.

### **Attorney General Sues the Cigarette Companies**

On June 12, 1997, California Attorney General Dan Lungren finally joined the states' suits against the tobacco industry to recover public spending on tobacco related illness, citing the industry conspiracy to deceive the public about the health risks of smoking and the addictive nature of nicotine, suppression of the development of a safer cigarette, manipulation of nicotine levels in cigarettes, intentional marketing of products to minors, and knowingly asserting false claims or statements to avoid fines and penalties for violations of statutes (*People ex rel. Lungren v. Philip Morris, Inc.* Sacramento Superior Court, Case No 97 AG 03031). The complaint cited the industry's violation of the Unfair Competition Act, the Cartwright Act (California's state anti-trust law), and the False Claims Act, in addition to the recovery of Medi-Cal expenditures.

Lungren filed suit against the tobacco industry to recover Medi-Cal expenditures pursuant to Welfare and Institutions Code 14124.7 which states, "When benefits are provided or will be provided to a (Medi-Cal) beneficiary because of an injury for which another person is liable the director (of the Department of Health Services) shall have a right to recover from such person or carrier the reasonable value of benefits so provided." Further, this statute was upheld in *Wright v. Department of Benefits Payments* (1979) Cal.App.3d 446, which stated, "the director's right of recovery is independent of a Medi-Cal recipient's right, not derivative therefrom; thus, there is no basis for imputation for the to the department of a recipient's negligence and its lien may not be reduced by percentage of fault attributable to a recipient." This statute has no relevance to the Napkin Deal, and was part of California case law for almost two decades. Lungren later amended the complaint to included alleged violations of the Cartwright Act, the California False Claims Act, and the Unfair Competition Act. In particular, many of the suits against the tobacco company alleged fraud, violations of the Business and Professional Ethics Code, violations of the racketeering laws, violations of antitrust laws and breach of warranty, all distinct from product liability actions<sup>9</sup>.

Lungren insisted that he had to wait for both the AB 1603 to pass, and evidence of tobacco industry wrongdoing, obtained through a recent settlement with the Liggett Group Inc. in April 1997. California's settlement with the Liggett Group Inc. followed shortly thereafter. The state's settlement with Liggett allowed it to share previously confidential internal documents. Lungren went so far to claim that the state's side deal with Liggett was a coup, since the state did not have to mount a costly legal battle against the North Carolina firm<sup>61</sup>. The settlement would allow California to share in Liggett's settlement with the other states - 25% of pretax income over the next 25 years, and an additional \$25 million if Liggett merges with another tobacco company<sup>61</sup>. The agreement with Liggett did not include settlement payments to the two California cities and 12 counties suing the company, though these groups will have access to the company's internal documents<sup>61</sup>.

## June 20<sup>th</sup>, 1997 “Global Settlement”

The proposed federal tobacco settlement was announced eight days after Lungren brought suit against the industry, on June 20, 1997. If California had not had a complaint pending at this time, the state could have lost billions of dollars of recovery money. The industry reached an agreement with 40 state attorneys general for \$368.5 billion<sup>68</sup>. The June 20<sup>th</sup> settlement was intended to be a framework for national tobacco control litigation that would end the most important litigation against the industry<sup>69</sup>. Advocates of the resolution cited the state’s ability to obtain specific relief from illegal industry actions, the advantages of having a uniform national tobacco policy, and the elimination of the risks in continuing to be involved with litigation<sup>69</sup>. Critics of the agreement were concerned that making a deal with the tobacco industry would guarantee the industry continued profitability, require Congressional action which would provide weak proposals because of the influence of the tobacco lobby on Capitol Hill, preempt strong state and local regulatory efforts in tobacco control, and preclude broad based public health initiatives for tobacco use prevention in the future<sup>69 70</sup>.

In April 1998, after Congress was left with the task of enacting into law the attorneys general agreement with the tobacco industry, the tobacco industry, led by Steven F. Goldstone of RJR Nabisco, pulled out of negotiations with the state attorneys general. On April 2, 1998 the Senate Commerce Committee passed a bill authored by Senator John McCain (R-Arizona) that would raise the settlement sum to \$516 billion<sup>68</sup> and implement tougher advertising restrictions, impose penalties against the industry if there were not reductions in teen smoking, impose higher taxes, and grant no immunity from future class action lawsuits, changing dramatically what the industry had originally agreed to on June 20. The Senate killed the McCain bill on June 17, 1998.

On August 29, 1997, the State of California filed an amended complaint against the tobacco industry that requested punitive damages to be assessed. On November 14, 1997 the tobacco industry defendants filed a demurrer, pleading that the plaintiffs did not state a claim. The demurrer was filed against the State’s first cause of action, which was the recoupment of the Medi-Cal expenditures for tobacco related illness, and the third cause of action, where the state alleged that the tobacco industry violated the California False Claims Act, by publicly making false and misleading statements about the dangers of their product. The defendants also filed a motion to strike the state’s punitive damages claim that had been filed in the First Amended Complaint.

On May 20, 1998, Sacramento Superior Court sustained the defendant’s demurrer, and dismissed the State’s Medicaid claim, and citing state legislation from 1987 that immunized the tobacco industry from product liability law suits. This legislation (the Napkin Deal) was overturned in the Legislature by enacting AB 1603, which stated that the Napkin Deal was never meant to be applied as it was in the state’s case against the tobacco industry. The court ruled that AB 1603 was a retroactive statute, and could not negate the language of the Napkin Deal which meant that the state could not recover Medi-Cal expenses due to tobacco consumption. After the Superior Court’s decision, the plaintiffs wrote a petition for



a writ of mandate to the Court of Appeals, requesting that the court review the plaintiff's appeal on an expedited basis. However, the Court of Appeals had not decided on the petition before the case was settled by the Master Settlement Agreement.

### **The Master Settlement Agreement**

Negotiations between several state attorneys general (including Dan Lungren representing California) and the tobacco industry resumed in June 1998, after the McCain bill was killed and the State of Washington was beginning their trial against the tobacco industry<sup>71</sup>. The new deal could be negotiated without Congressional involvement because no provisions regarding federal control over nicotine would be included<sup>71</sup>.

On November 23, 1998, the state attorneys general reached an agreement with the tobacco industry<sup>72</sup>. Forty-six states settled with the tobacco industry for \$206 billion largely for the states' medicaid claims suits against the industry<sup>68</sup>. Though the agreement was thought of as "weak" by many public health advocates<sup>68</sup>, the states involved in the suits accepted the terms of the settlement.

The Master Settlement Agreement addresses the following:

- The industry will pay \$25 million each year for ten years to fund a charitable foundation which will support the study of programs to reduce teen smoking, substance abuse, and tobacco related diseases.
- The use of cartoon characters in advertising, promotion, or packaging tobacco products is prohibited.
- Bans industry actions at initiating, maintaining, or increase smoking, specifically advertising, promotions, and marketing.
- Requires the industry to open and maintain a website which includes all documents produced in state or other health related lawsuits against the industry, for both past and future suits.
- Bans all outdoor advertising, and limits advertisements outside of retail establishment to 14 square feet, and allows the state to substitute anti-tobacco advertising for the duration of the industry's billboard lease.
- Bans distribution and sale of apparel and merchandise with brand-name logos.
- Bans sponsorship of events where participants are underage, bans tobacco names from stadiums and arenas, bans payments to promote tobacco products in movies, television shows, videos and video games, and live performances.
- Disbands the Council for Tobacco Research, the Tobacco Institute, and the Council for Indoor Air Research.
- Provides Court jurisdiction for implementation and enforcement of the settlement<sup>72</sup>.

As a result of the Master Settlement Agreement, over the next 25 years, California will receive approximately \$25 billion<sup>73</sup>.

There are several loopholes in the Master Settlement Agreement. For example,

advertising bans and signage restrictions do not apply to adult only facilities<sup>74</sup>. Cartoon characters are prohibited, but other advertising icons (such as the “Marlboro Man” and camels) are allowed<sup>74</sup>. The MSA contains no provisions for the regulation or prohibition of self service displays, point of sale advertising, or vending machines<sup>74</sup>. The MSA also does not address fines against the industry if youth consumption of tobacco is not reduced as a result of this agreement (known as “lookback penalties”)<sup>74</sup>. MSA restrictions concerning manufacturer gift and free samples only apply to states that have criminalized youth possession and/or purchase of tobacco<sup>74</sup>. In addition, although tobacco industry lobbyists are not permitted to lobby state legislatures for the use of settlement funds for purposes other than health, the MSA does not contain language that forbids industry lobbyists to lobby for health care services aside from tobacco control<sup>74</sup>. As evidenced in California, Proposition 99 tobacco control education and research funds have been diverted to health services programs.

### **City, County, and Individual Suits**

Before the Attorney General brought suit against the tobacco industry, there were several suits brought on behalf of public and private interests against the tobacco industry, that initiated tobacco litigation in the state, and perhaps the country. These civil action suits were brought to prevent further wrongdoing on the part of the industry, demand discontinuation of deceptive marketing practices, and force the industry to release profits illegally obtained by these activities. These cases, except for the private action in the Mangini case, were later coordinated with the Attorney General’s suit, and settled by the Master Settlement Agreement.

#### *The Mangini Case against Joe Camel*

In 1991, before any of the state attorneys general sued the tobacco companies or the Legislature was considering repealing the tobacco industry’s protections in the Napkin Deal, Janet C. Mangini, a San Francisco family law attorney, sued R.J. Reynolds Tobacco Company alleging that RJR had targeted children through their Joe Camel marketing campaign. *Mangini v. R.J. Reynolds Tobacco Company* (San Francisco Superior Court No. 959516) was the first instance of a person challenging the tobacco industry for targeting children. (Mangini was motivated in part by a series of papers published in *JAMA* earlier that year<sup>75-77</sup>.) The Mangini case charged the industry with engaging in unlawful business practices, namely, the tobacco industry’s violation of California Penal Code section 308 (contributing to the delinquency of a minor). *Mangini* alleged that Camel sales to teenagers rose from \$6 million in 1988, when the Joe Camel campaign first started, to \$476 million in 1992<sup>78</sup> and violated California’s consumer protection laws<sup>79</sup>.

Mangini lost the first round in 1992, when the San Francisco Superior Court dismissed the case on the grounds that it was preempted by the Federal Cigarettes Labeling and Advertising Act<sup>80</sup>. Mangini appealed and the Court of Appeals reversed this decision. RJR appealed the ruling to the California Supreme Court, which, in 1994, unanimously ruled that Ms. Mangini should be allowed to prosecute her claim. Once the case was reinstated, Mangini started discovery in the case and obtained several million pages of documents from

both RJR and its advertising companies regarding the Joe Camel campaign and related materials. In May 1997, the City and County of San Francisco, the City of San Jose, the City of Los Angeles, and ten counties intervened in the suit <sup>80</sup>.

In 1997, RJR approached the plaintiffs in an attempt to settle the case without going to trial. The plaintiffs were willing to resolve the case if the Joe Camel campaign was pulled. In July 1997, RJR agreed to end the Joe Camel campaign, though the company did not admit to wrongdoing. As part of the agreement, on September 8, 1997, RJR also paid \$10 million to San Francisco and the other cities and counties who were co-plaintiffs in *Mangini* for anti-smoking education efforts for youth in these areas. The agreement provided for public release of 80,000 pages of RJR's previously secret documents about youth marketing and the Joe Camel Campaign that the plaintiffs had obtained during discovery <sup>\* 80</sup>.

The complaints of the cities and counties under the 1996 filing, though, were not settled. The cities and counties agreed to consolidate their complaints brought in *Mangini* into the city and county industry-wide action which was set to be tried in March 1999 <sup>80</sup> (*People of the State of California v. Philip Morris, Inc. et al.*). Because the cities' and counties' suit was brought by public entities rather than a private entity, RJR could have been held liable for millions of dollars in civil penalties due to the ad campaign and be ordered to pay back tens of millions of dollars in profits generated from the cigarette ads <sup>79</sup>.

### *Cordova*

In 1992, San Diego school teacher Julia Cordova filed California's first private Attorney General's suit against the tobacco industry. *Cordova v. The Liggett Group Inc.* (San Diego Superior Court, Case No. 651824) was filed May 12, 1992, under the Unfair Competition Act, Section 17.200 of the California State Business and Professions Code. The statute was created knowing that public agencies responsible for protecting consumers and residents of the state often do not have sufficient manpower or resources to identify and rectify malevolent practices on business and industry. Section 17.200 allows any citizen of California to sue to right a public wrong, as if they were the state Attorney General (known as "private Attorney General" cases), to give supplemental power to government agencies. Section 17.200 allows private Attorney General cases to be filed under three claims: unlawful business practices, fraudulent business practices, and unfair business practices. *Cordova* alleged fifty years of fraud, lack of safer cigarettes, and nicotine manipulation on the part of the tobacco industry. *Cordova* was seeking injunctive relief from the wrongful practices of the tobacco industry, release of all industry research pertaining to this area, and disgorgement of wrongfully obtained revenues from the illegal practices. Since *Cordova* was brought as a private attorney general's suit, no monetary penalties were able to be imposed against the tobacco industry.

---

\*These documents are being made available to the public on the world wide web at the University of California San Francisco Library and Center for Knowledge Management tobacco archive web site at <http://www.library.ucsf.edu/tobacco/mangini>.

Violations of Section 17.200 are largely easier to prove than the recovery actions of many of the other states. These types of claims do not have many of the procedural hurdles that the other suits do; in regular civil suits recovery action, the plaintiffs must prove that the defendant's conduct was wrongful and the conduct caused them damage. There is no causal chain in 17.200; if the defendant violated the statute, then the parties must return to the plaintiffs what was wrongfully claimed. While other states have similar laws, they require the party bringing the action to be an injured party, for instance, the party needs to be a smoker who is suffering from a tobacco related disease. California is unique in having a private Attorney General law.

### *Cities' and Counties' Suits*

On August 5, 1996, Los Angeles County Supervisor Zev Yaroslavsky sued the tobacco industry on behalf of the public and the County of Los Angeles to recover the county's tobacco related health care costs (*County of Los Angeles v. RJ Reynolds Tobacco Co.* Los Angeles Superior Court, Case No. 707651). The complaint included allegations of violation of the Unfair Competition Act, as well as violations of the False Advertising Law (California Business and Professions Code 17.500), and claims for negligence, strict liability, fraud, and breach of warranty<sup>81</sup>.

On September 5, 1996, the City and County of San Francisco, the City of Los Angeles, the City of San Jose were the first local governments to sue to the tobacco industry in *People of the State of California v. Philip Morris, Inc. et al.* (San Francisco Superior Court, Case No. 980864). A total of 18 cities and counties (the aforementioned cities and Alameda, Contra Costa, Marin, Riverside, Sacramento, San Bernardino, San Diego, San Mateo, Santa Barbara, Santa Clara, San Luis Obispo, Shasta, Monterey, Santa Cruz, and Ventura Counties), as well as the American Heart Association, American Cancer Society, the California Medi-Cal Association, and the California District of the American Academy of Pediatrics were listed as plaintiffs. As in *Cordova*, the local governments sued the industry under California Business and Professions Code 17.200.

### *Ellis*

On July 24, 1996, Huntington Beach resident James Ellis, a longtime smoker stricken with cancer, filed a private Attorney General suit against the tobacco industry. *Ellis v. RJ Reynolds Tobacco Co.* (Orange County Superior Court, Case No. 766783), filed by private lawyers on July 24, 1996 charged the industry with engaging in decades-long conspiracy to deceive the public about the health risks of smoking and the addictive nature of nicotine<sup>81</sup> and sought to compel the industry to fund stop smoking programs and anti-smoking ads, and disgorge profits made in California through fraudulent marketing tactics<sup>82</sup>. *Ellis* was a virtually identical case to *Cordova*. The plaintiffs voluntarily dismissed the case, and refiled on December 17, 1996. In January 1997, Lieutenant Governor Gray Davis became lead plaintiff in the *Ellis* case (*Davis v. RJ Reynolds Tobacco Co.*, San Diego Superior Court, Case No. 706458). Davis's chief of staff reported that Davis joined the suit to "protect the interests of the state ... to take this action so at least California is at the table<sup>82</sup>." When Davis

joined the *Ellis* case, the Attorney General's office had not filed a complaint against the tobacco industry.

### **The Cases Against the Cigarette Companies are Consolidated**

These five actions against the tobacco industry regarding violations of the state Business and Professional Code (City and County of San Francisco and 18 additional cities and counties, including the American Cancer Society, the American Heart Association, the California Medi-Cal Association, and the California District of the American Academy of Pediatrics; the County of Los Angeles; the Attorney General's case; Cordova; and the Gray Davis-Ellis case) were coordinated in San Diego Superior Court (Judicial Council Coordinated Proceeding #4041). The suit was based on the industry's illegal targeting to minors, failure to disclose knowledge of the addictive nature of tobacco products, manipulating nicotine levels in cigarettes, and failing to market a safer cigarette. The five public enforcement actions were all coordinated into one action largely to prevent duplication of issues in separate trials. All the suits are claiming violation of the Business and Professions Code Section 17.200. Coordination of the suits was largely beneficial to public health interests. Since the Attorney General's suit was originally scheduled for the Spring 2000, the cases were to be heard earlier. This created an advantage for the other plaintiffs because the weight of the state coming into the case creates more leverage for the other plaintiffs. Coordination also allowed all the cases to be heard by one judge, rather than having the defendants pick a particular issue with a judge that might be more sympathetic to certain arguments. Public entities are not subject to multiple discovery requests, making the discovery process less costly and burdensome. The coordination of the suits also presents a united front for California against the tobacco industry, and signifies that the forces that were at the forefront of tobacco litigation in the country has joined with the representatives of the largest tobacco market in the country. However, the coordination of the cases also meant that all the state litigation against the tobacco industry was to be heard by one judge, which might hurt the cases if the judge is perceived as sympathetic to the tobacco industry. Discovery for the trial lasted for approximately one year. The trial was slated to open in June 1999, but was settled by the Master Settlement Agreement before the trial opened.

In an agreement entered into by the plaintiffs on August 5, 1998, and as outlined in a Memorandum of Understanding, the state, cities, and counties agreed that half of any recovery would go to the state, and half to the cities and counties<sup>81</sup>. The portion going to the cities and the counties had 10 percent of the share would be distributed equally among the four cities with populations greater than 750,000 involved in the suit (San Francisco, Los Angeles, San Jose, and San Diego), and 90 percent would be distributed among the 58 counties of the state on a per-capita basis<sup>81</sup>.

The Judicial Council Coordinated Proceeding Case No. 4041 had been settled by the Master Settlement Agreement. Presiding Judge Ronald S. Prager agreed to the terms of the MSA on December 9, 1998. The American Heart Association, the California Medi-Cal Association, the California District of the American Academy of Pediatrics, and the American Cancer Society had removed themselves as co-plaintiffs, and withdrew from the

case because of objections to the terms of the settlement. The public health groups stated that the settlement does not adequately hold the tobacco industry accountable for the harm done by its products. The health groups also claim that the loopholes in the advertising and marketing provisions serve to decrease their effectiveness, the settlement is compromised by its inability to mandate tobacco industry compliance with the settlement terms<sup>83</sup>.

The State of California will receive approximately \$818 million in 1999-2000, and similar amounts over the next 25 years<sup>73</sup>. According to the Department of Finance, California expects to receive the first disbursement from the industry in December 1999 or January 2000<sup>84</sup>. In a Memorandum of Understanding agreed to by the plaintiffs, the state will receive half of the settlement funds from the disbursement; the cities and counties will receive one half of the settlement funds. Senate President Pro Tem John Burton was joined by several Democratic Legislators and various health groups in recommending that the money be used for health care for the poor, for care of the mentally ill, and to fight tobacco consumption<sup>84</sup>. TEROC has recommended to the Legislature and Governor that the state devote “a substantial fraction of the funds available to the State from the Tobacco Master Settlement Agreement to tobacco control activities<sup>85</sup>. TEROC, with the support of the health group, recommends that 25 to 30 percent of the funds be devoted to tobacco control activities<sup>85</sup>. Governor Davis opposed this proposal, suggesting that the settlement money be deposited in the state’s General Fund<sup>84</sup>.

According to the terms of the MSA, the agreement will have “Final Approval” when the State-Specific Finality is reached if either 80 percent of the states that have settled with the industry, or the settling states that agree to the terms of the settlement represent 80 percent of the funds to be paid by the industry, or June 30, 2000, which ever comes first<sup>56</sup>. Each participating state reaches “State Specific Finality” when the terms of the settlement has been entered into a court as judgement, all claims against the released parties have been dismissed with prejudice, and the time for appeal or to seek review of or permission to appeal from the approval has expired<sup>56</sup>. However, after Judge Prager approved the terms of the MSA, the group Smokers for Fairness filed an appeal against the decision (Court of Appeals, 4<sup>th</sup> Appellate District Case No. D032730). On August 6, 1999, the 4<sup>th</sup> District Court of Appeal in San Diego granted a motion to dismissed the appeal. A rehearing petition was filed on August 30, and the Court of Appeals denied the request for rehearing on September 2, 1999. As of September 8, 1999, Smokers for Fairness had 40 days to appeal the Court of Appeals’ decision to the state Supreme Court

No states have received any settlement funds from the industry as of publication of this report. Even if California was to reach State Specific Finality, the addition of California would not alone give the states that have already reached State Specific Finality 80 percent of settling states, or 80 percent of allocable shares of the settlement funds<sup>86</sup>.

Any violations of the Master Settlement Agreement by the Tobacco Industry may be brought to Judge Prager. These include violations of injunctive provisions set forth by the MSA, relating to billboards, event sponsorship, magazine advertisements, and enforcement. To date, there have been no enforcement activities.

## **The Cities and Counties Sue in Federal Court**

On June 6, 1996, the City and County of San Francisco and the Counties of Marin, Santa Clara, Alameda, Contra Costa, Monterey, Sacramento, San Bernardino, Santa Cruz, Shasta, and Ventura, were also involved in a federal case in the Northern California district in Oakland (*City and County of San Francisco et al. v. Philip Morris, Inc.* US District Court, Northern District California. Case No. C-96209-DLJ). The plaintiffs were suing to recover medicaid expenditures, under common law fraud and breach of special duty claims. In March 1998, Judge Lowell Jensen of the US Northern District Court ruled that the counties could proceed in Federal Court with their suit, under claims of fraud, misrepresentation, and negligence. Jensen had previously dismissed an earlier version of their complaint<sup>87</sup>. The suit had survived two motions to dismiss, and entered the discovery phase. Together, the plaintiffs represented more than half of California's population.

The federal suit was also settled by the Master Settlement Agreement on December 9, 1999.

### **Proposition 65**

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) was passed as a citizen sponsored initiative that requires the Governor to revise and republish at least once per year the list of chemicals known to the State to cause cancer or reproductive toxicity<sup>88</sup>. The State considers the United States Environmental Protection Agency, the International Agency for Research on Cancer, the National Toxicology Program, the US Food and Drug Administration, and the National Institute for Occupational Safety and Health as authoritative bodies on cancer causing substances. Tobacco smoke and smokeless tobacco products have been on the Proposition 65 list since April 1, 1998 (tobacco smoke has no modifier, and is meant to include both directly inhaled and secondhand smoke). Proposition 65 requires that any business that knowingly exposes citizens to a chemical on the list has to warn them, if the risk associated with exposure to this product is more than one excess case of cancer in 100,000 individuals over a 70 year lifetime<sup>89</sup>. Lawsuits may be brought under Failure to Warn of the toxicity of these products. In 1998, the California Attorney General John Van de Kamp brought a Proposition 65 Failure to Warn suit against pipe tobacco and cigar companies, which did not include warning labels.

Five lawsuits were brought under Proposition 65 on behalf of the public. Four of the cases, *People of the State of California v. General Cigar Co.* (San Francisco Superior Court, Case No. 996780), *People, the City of San Jose, and Paul Dowhall v. Brown and Williamson Tobacco Corporation* (San Francisco Superior Court, Case No. 996781), *People v. Tobacco Exporters International* (San Francisco Superior Court, Case. No. 301631), and *People of the State of California et al. v. Philip Morris, Inc. et al.* (Los Angeles Superior Court, Case No. BC 194 217) were Failure to Warn cases on the dangers of exposure to secondhand smoke, and the plaintiffs sought penalties under Proposition 65, which can fine companies up to \$2,500 per day per person for damages, as well as injunctive relief in the form of a media

campaign and shelf warnings informing nonsmokers of the cancer causing effects of environmental tobacco smoke and other elements of cigarettes and cigarette smoke which are also found on the Proposition 65 list, such as nicotine, listed as a reproductive toxin.

Attorney General Lungren’s office sent a memo to Los Angeles City Attorney James Hahn stating that the city attorney had exceeded his authority by filing the suit as a statewide action in *People of the State of California et al. v. Philip Morris, Inc. et al.*, and urged Hahn to reduce the complaint to involve Los Angeles residents<sup>90</sup>. The memo stated that if Hahn did not reduce the suit’s scope, the Attorney General’s office would file a brief stating that Hahn only had the right to sue on behalf of those in the City of Los Angeles. The City Attorney’s Office cited a state law that states a suit “may be brought by the attorney general in the name of the people of the State of California or by...any city attorney of a city having population in excess of 750,000.” The Attorney General’s office claims that Hahn’s action was “politically motivated<sup>90</sup>.”

The City and County of San Francisco filed an additional Failure to Warn suit in March, 1998 against the smokeless tobacco industry, as well as several of California’s largest supermarket chains for unfairly concentrating on young adults in the sale of snuff and spit tobacco in *City and County of San Francisco v. US Tobacco* (San Francisco Superior Court, Case No. 993992)<sup>91</sup>. The causes for action for the case are both Proposition 65 and Business and Professions Code 17.200. Although there are federally mandated labels on packages of smokeless tobacco, the City and County maintain that under Proposition 65 a shelf warning must also be present. The Environmental Law Foundation of Oakland also joined the City in the lawsuit. Though smokeless tobacco has been proven to be carcinogenic, there are no usage warning labels on any smokeless tobacco products. The plaintiffs want a clear and reasonable warning on all smokeless tobacco products, and that the company to disgorge the profits they have received from illegal sales<sup>91</sup>. This case is scheduled to be heard on January 14, 2000.

These cases were coordinated as a part of the Judicial Council Coordinated Proceeding Case No. 4042 in San Diego Superior Court under Judge Ronald S. Prager. The cases, including the Proposition 65 complaints and the union trust funds suits, are listed in Table 8. Cases are scheduled to be heard starting in January 2000.

<b>Table 8. Judicial Council Coordinated Proceeding No. 4042 Cases</b>		
<b>Case<sup>92</sup></b>	<b>Court Filed</b>	<b>Case No.</b>
<i>Teamsters Benefit Trust v. Philip Morris, Inc.</i>	Alameda Superior Court	796 931-5
<i>U.A. Local No. 159 Health and Welfare Trust Fund v. Philip Morris, Inc.</i>	Alameda Superior Court	796 938-8
<i>U.A. Local No. 343 Health and Welfare Trust Fund v. Philip Morris, Inc.</i>	Alameda Superior Court	796 956-4



<i>Pipe Trades District Council No. 36 Health and Welfare Trust Fund v. Philip Morris, Inc.</i>	Alameda Superior Court	797 130
<i>Northern California Bakery Drivers Security Fund v. Philip Morris, Inc.</i>	Alameda Superior Court	797362-6
<i>Bay Area Delivery Drivers Security Fund v. Philip Morris, Inc.</i>	Alameda Superior Court	797589-9
<i>U.A. Local No. 393 Health and Welfare Trust Fund v. Philip Morris, Inc.</i>	Alameda Superior Court	798474-3
<i>Northern California General Teamsters Security Fund v. Philip Morris, Inc.</i>	Alameda Superior Court	798492-9
<i>Joint Benefit Trust v. Philip Morris, Inc.</i>	Alameda Superior Court	799495-5
<i>Northern California Pipe Trades Health &amp; Welfare Trust v. Philip Morris, Inc.</i>	Alameda Superior Court	799692-4
<i>IBEW Local 595 Health &amp; Welfare Trust Fund v. Philip Morris, Inc.</i>	Alameda Superior Court	801292-0
<i>Shop Ironworkers Local 790 Welfare Plan v. Philip Morris, Inc.</i>	Alameda Superior Court	801309-3
<i>Operating Engineers Local 12 Health &amp; Welfare Trust v. American Tobacco Company, Inc.</i>	Los Angeles Superior Court	BC 177 968
<i>Screen Actors Guild - Producers Health Plan v. Philip Morris, Inc.</i>	Los Angeles Superior Court	BC 181 603
<i>The People of the State of California, et al v. Philip Morris, Inc., et al.</i>	Los Angeles Superior Court	BC 194 217
<i>Brown v. The American Tobacco Company, Inc.</i>	San Diego Superior Court	711400
<i>Daniels v. Philip Morris Companies, Inc.</i>	San Diego Superior Court	719446
<i>Pechanga Band of Luiseno Mission Indians v. Philip Morris, Inc.</i>	San Diego Superior Court	725419
<i>People v. Tobacco Exporters International</i>	San Francisco Superior Court	301631
<i>City and County of San Francisco v. United States Tobacco</i>	San Francisco Superior Court	993992
<i>Sign, Pictorial and Display Industry Welfare Fund v. Philip Morris, Inc.</i>	San Francisco Superior Court	994403
<i>San Francisco Newspaper Publishers and Northern California Newspaper Guild Health &amp; Welfare Trust v. Philip Morris, Inc.</i>	San Francisco Superior Court	994409
<i>North Coast Trust Fund v. Philip Morris, Inc.</i>	San Francisco Superior Court	994575

<i>Northern California Plasterers Health &amp; Welfare Trust Fund v. Philip Morris, Inc.</i>	San Francisco Superior Court	995226
<i>Plastering Industry Welfare Trust Fund v. Philip Morris, Inc.</i>	San Francisco Superior Court	996189
<i>Central Valley Painting &amp; Decorating Health &amp; Welfare Trust Fund v. Philip Morris, Inc.</i>	San Francisco Superior Court	996262
<i>People of the State of California v. General Cigar Co., Inc.</i>	San Francisco Superior Court	996780
<i>People, City of San Jose, &amp; Paul Dowhall v. Brown and Williamson Tobacco Corporation</i>	San Francisco Superior Court	996781
<i>Northern California Tile Industry Health &amp; Welfare Trust Fund v. Philip Morris, Inc.</i>	San Francisco Superior Court	996822
<i>San Francisco Culinary, Bartenders &amp; Service Employees Welfare Fund v. Philip Morris, Inc.</i>	San Francisco Superior Court	996855
<i>Central Coast Trust Fund v. Philip Morris, Inc.</i>	San Francisco Superior Court	998208
<i>U.A. Local No. 467 Health &amp; Welfare Trust Fund v. Philip Morris, Inc.</i>	San Mateo Superior Court	404308
<i>Newspaper Periodical Drivers Local 921 San Francisco Newspaper Agency Health &amp; Welfare Fund v. Philip Morris, Inc.</i>	San Mateo Superior Court	404469

The Master Settlement Agreement settled the five statewide action against the tobacco industry for violations of the state unfair business practices code. The Attorney General's suit, Cities' and Counties' suit, County of Los Angeles suit, the Davis-Ellis suit, and the Cordova suit, along with the Cities' and Counties' federal suit against the tobacco industry brought \$25 billion, as well as new restrictions on advertising and marketing, to California. Unfortunately, these funds have not been devoted to control and prevent future tobacco related disease. The terms of the MSA have been appealed by a smokers' rights group, and due to the appeal, the state has yet to receive its first disbursement of settlement funds. It remains unknown how the Legislature and the Governor will direct these funds.

Several actions still remain pending. The Proposition 65 lawsuits against the tobacco industry are scheduled to be heard in early 2000. The union trust fund cases, coordinated in San Diego, are also scheduled to be heard in early 2000.

## **DIVESTMENT OF TOBACCO STOCKS**

In the last two decades, divestment has become a method of affecting public policy. The justification for divestment is a state or a institution has a fiduciary responsibility to its pensioners and investors, and any investment decisions should be based upon the quality of

return of the investments. The combination of litigation against the tobacco industry, and the continuing medical research findings about the deleterious effects of tobacco on the health of smokers could, in the future, damage the value of tobacco investments<sup>93</sup>. However, divestment also serve as sanctions against countries or companies who practice unfavorable policies.

The State of California spends approximately \$100 million in anti-tobacco education funds from Proposition 99 while concurrently investing public employee's retirement funds in the tobacco industry. The increase of retirement dollars relies on the performance of the fund, and success of the tobacco stocks require that people continue to smoke. Therefore, if the education funds work in reducing tobacco consumption in California, the profitability of tobacco investments will diminish, and likewise, for the investments to work, the education campaign must fail.

Much of the opposition to divestment relies on the strategy that profitable investments should not be altered. Eliminating tobacco stocks from index funds would reduce the universe of possible investment. Another argument often proffered is that morality does not belong in the marketplace, and that decisions with economic ramifications that will effect the entire public employee system of California have to be based on something greater than ethics. Opponents of divestment also use the slippery slope argument - if the state divests from tobacco, other investments will become challenged.

One of the problems the state's largest retirement fund has with divesting from tobacco stocks is the added cost of an actively managed fund. The City of San Francisco and the State's pension fund are both largely passively managed portfolios. Passively managed funds have stocks that generally included in a standard index of performance. Portfolio managers buy and sell funds as the index changes. Actively managed accounts have managers who buy and sell stocks more frequently with the goal of outperforming the standard indices. Actively managed funds require more costs in terms of analysis and the transaction costs of purchasing and selling stocks. There will be a greater cost in selling tobacco stocks in the present because of the transaction fees involved.

### **San Francisco Divests its Tobacco Stocks**

The City and County of San Francisco's Employees Retirement System (SFERS) has a \$8 billion investment portfolio, with approximately \$21.5 million in tobacco stock, 0.28 percent of the entire fund. In April 1996, then San Francisco Board of Supervisors member Angela Alioto convinced the Board to pass a resolution urging the San Francisco Retirement System Board to consider divesting these tobacco holdings. Alioto compared the divestment from tobacco stocks to the city's divestment from South Africa during apartheid, stating that movement caused (South Africa) to change<sup>94</sup>. Though the Board of Supervisors can make a resolution, they cannot dictate the investment of the retirement funds. The Retirement Board, the independent board in charge of SFERS, consists of 3 elected members, 3 appointed by mayor, and one supervisor, ex-officio. After the Board of Supervisors' resolution, the first time the divestment issue was visited by the Retirement System Board in 1996, it was

defeated by a 6 to 1 margin, with only Board member Herb Meiberger, the resolution's sponsor, voting for it.

Supervisor Alioto left office in January 1997, and efforts of the tobacco control community focused on issues other than divestment. The San Francisco Tobacco Free Coalition, the local lead agency that brings together groups which have tobacco control on their agenda, became the driving force to put divestment back on the Board of Supervisors' agenda. The Coalition had additionally teamed up with Oakland firm Progressive Assets Management, a private company involved in socially responsible investment. The partnership allowed the Coalition to be well versed in aspects of divestment and pension funds.

In a position paper drafted in November 1997, the Tobacco Free Coalition stated that, "The City has a moral imperative to divest from tobacco given what the tobacco industry is doing both here and abroad <sup>95</sup>." Though moral indignation may have been the primary motivation for the divestment of tobacco stocks, the Coalition further countered that investing in tobacco stocks is inconsistent with the City's anti-tobacco policies, and investing in tobacco while the City is suing the tobacco industry is a conflict of interest. While San Francisco has adopted a smoke-free business establishment law, supported numerous resolutions to further the reduction of tobacco use, filed suit against the tobacco industry to recover health related costs, and joined the Mangini complaint to end deceptive marketing tactics, the city's retirement funds remained invested in tobacco companies. More pragmatically, the coalition argued that though tobacco investments have generally yielded good returns, the volatility in the market in the last six years due to lawsuits and impending changes in the regulation of nicotine has caused tobacco to be a more risky and less profitable investment. According to Board of Supervisors Member Michael Yaki, ex-officio member of the Retirement Systems Board, this argument was the most salient in convincing the board members to divest. The board needed to weigh their responsibility as pension trustees against the public good <sup>96</sup>.

The position paper was sent to the Board of Supervisors, Mayor Brown, and City Attorney Louise Renne. The Coalition had later worked with Renne and the City Attorney's office to ensure the legality of divestment.

In January 1998, Supervisor Yaki attempted to put divestment on the Board of Supervisors agenda again, and found an ally in Supervisor Gavin Newsom. Newsom spearheaded the City-wide ban on tobacco advertising approved unanimously by the Board of Supervisors and signed into law by Mayor Willie Brown on January 16, 1998. On February 20, 1998, the San Francisco Board of Supervisors unanimously voted to recommend divestment of all tobacco stocks to the San Francisco Retirement System Board. The Board of Supervisors may only make recommendations to the Retirement System Board; the Retirement Board, however is the only body that may make fiscal decisions regarding City pension funds. However, with the support of the Board of Supervisors, and the prompting from the Tobacco Free Coalition, the Board of Supervisor's recommendation was on the agenda of the Retirement Systems Board meeting on March 31, 1998.

While the Board of Supervisors and Tobacco Free Coalition's position was clear, the staff of the Retirement System recommended that holding the tobacco stocks would be prudent<sup>97</sup>. The staff countered that tobacco stocks are still held by many other pension plans, tobacco remains a legally saleable product, which also produces tax revenue for state and federal government. In addition, the staff argued that there are no state or federal laws encouraging divestment, historical performance of tobacco stocks exceed general market returns, stock prices for tobacco already reflect associated volatility, industry experts were forecasting growth for the tobacco stocks, and selling the stocks would have no impact on tobacco company stock prices or profitability<sup>97</sup>.

At the Retirement Board's March 31, 1998 meeting, the coalition members presented their case, and the retirement board voted 4-2 to divest the passively managed funds. Michael Yaki, the Board of Supervisors member who sits on the retirement board attributed the 4-2 decision on the wealth of information that has come out on tobacco since the Board of Supervisor's vote in 1996. A majority of the SFERS portfolio is invested in the S & P 500, which is conservative with little risk, and consistent return, and contain three tobacco stocks. Yaki stated, "As trustees, we are legally bound to make decisions that are in the best interest of the retirement fund<sup>98</sup>."

The vote allows the sale of \$16 million in tobacco manufacturing stocks as part of a \$1 billion index, which leaves \$12 million in shares held in three other funds. Retirement board members reported that they would attempt to sell these shares as well<sup>96</sup>.

The Coalition met with the Retirement Board in May to follow through with the divestment decision. The language in the resolution was vague, and the coalition wanted to be active in clarification process. After two more meetings, on May 20, Commissioner Herb Meiberger voted to divest all the tobacco stocks, including the actively invested tobacco stocks. The board determined it would extend the divestment mandate to all of the US tobacco holdings in separate accounts<sup>99</sup>. The staff of the Retirement Fund prepared an implementation plan that would re-invest the proceeds from the sale of the Fund's tobacco stock. Meiberger stated that the city can instruct the Fund's managers to redirect the proceeds from the sales of the stocks into the other 497 stocks in the Standard and Poor's Index that make up the retirement funds, invest in Standard & Poor's 500 futures, or transferred to an Asset Management fund, which would purchase stocks in consumer industries. The plan was approved by the Retirement Board, and by July 1998, the San Francisco Employees Retirement System divested all stock from domestic companies that manufacture tobacco products. Proceeds from the sale of the tobacco stocks were reinvested into other holdings of the of SFERS<sup>99</sup>.

The only tobacco holdings in a small-caps value co-mingled fund, as two small holdings within that fund. The tobacco holdings in this fund are part of a fund with approximately 900-1000 other stocks, and cannot be removed from the fund<sup>99</sup>.

San Francisco joined the cities of Boston, Denver, and Philadelphia in divesting its retirement fund from tobacco stocks.

## State Divestment

California is currently spending Proposition 99 funds to reduce tobacco consumption in the state, and had filed suits against the tobacco industry on the state, county, and municipal level to recover funds spend on treating tobacco related illnesses, yet is investing the pension of state employees in the tobacco companies. It seems the state is involved in counterproductive actions: making money off the tobacco industry, and losing money to the tobacco industry.

The California Public Employees Retirement System (CalPERS) is one of the largest sources of private money in the world. There have been several attempts in state government to bar public money from investments in the tobacco industry.

*AB 1744.* In 1996, Assembly Member Wally Knox (D-Los Angeles) sponsored AB 3445, legislation to divest state retirement funds from tobacco interests. He authored AB 3445 under the premise that profiting from the deaths of Californians is immoral. In 1994, the United States Department of Labor issued a bulletin that specifically addressed economically targeted investments. According to the Department of Labor, consideration of “non-economic factors” in investment decisions is not necessarily inconsistent with the concept of “substantive prudence,” which refers to the merits of the decision made by the fiduciary<sup>100</sup>. Lobbyists from tobacco companies and pension funds were adamant that tobacco company stock was sound, and “should not be manipulated for social causes.” Knox’s first bill was introduced when the Republicans controlled the house; the bill was referred to the Assembly Consumer Protection, Government Efficiency, and Economic Development Committee, where it was withdrawn, and referred to the Assembly Public Employees, Retirement, and Social Security Committee, where it failed.

In 1998, Knox reintroduced a divestment bill, AB 1744, claiming the poor performance of tobacco industry stocks due to the transient nature of the state Attorneys General settlement negotiations with the industry would be a strong incentive to divest CalPERS of tobacco interests. According to a market analysis of the Standard and Poor’s 500 Index, which the CalPERS investments are based on, from 1983 to 1992, the tobacco industry gained 24.83% annually, while the S & P 500 without tobacco stocks gained only 14.62%<sup>100</sup>. From 1993 to 1997, the tobacco companies gained only 15.21%, while the S & P 500 without tobacco returned 20.23% annually<sup>100</sup>. The index without tobacco has gained 20 more base points (\$200,000,000 per year) than the full index for these five years<sup>100</sup>. Also, the return per unit of risk has gone up for the index without tobacco and remained stable for the index with tobacco. The tobacco stocks returned half of the gains previous to state litigation and proposed federal regulation. If CalPERS divested when Knox first introduced the bill in 1996, the retirement fund would have increased over \$550,000,000 by March 1998<sup>100</sup>.

AB 1744 primarily focused upon the value of the stock holding itself rather than the moral issue surrounding tobacco investments. The bill required PERS and the state teachers’ retirement system (STRS) to dispose of tobacco stocks over the subsequent three years, and

prohibit the pension from making any further investments in tobacco. The bill specified that investment restrictions applied only to investments in companies that made more than 10 percent of their revenue from tobacco products, have more than 10 percent of their personnel involved in tobacco products, or have more than 10 percent of their business activities in tobacco products. AB 1744 would divest between \$1.4 and \$1.7 billion in tobacco company investments from the Public Employee's Retirement System (PERS)'s portfolios.

AB 1744 contained an indemnification provision for board members, staff, and investment managers of PERS and STRS against any personal losses or costs incurred through the implementation of the divestment called for in the bill<sup>93</sup>. The bill also included a reference to Proposition 162 which gives the legislature the authority to prohibit certain investments by a retirement board where it is in the public interest to do so, provided that the move does not interfere with the fiduciary responsibility of the board.

Opponents to the divestment maintained that the state Constitution prohibits the legislature from dictating investment policy based on political reasons<sup>101</sup>. The Legislature's influence over fund managers is limited to economic decisions that directly affect the system's financial performance<sup>101</sup>. Although the most obvious opponents to the bill would be the tobacco lobby, CalPERS had come out strongly against the issue. CalPERS opposed the bill because AB 1744 would "directly infringe upon the Board's constitutional authority to make investments on behalf of its participants and beneficiaries. It would also infringe upon the Board's fiduciary duty to maximize investment returns on behalf of its membership, and meet its benefit obligations<sup>102</sup>." CalPERS did not believe that the State Legislature should not have the power to control investment, and that fiduciary responsibility should lie with fund managers, who are well versed in finance, rather than representatives who may have little to no knowledge of investment<sup>103</sup>. PERS chief lobbyist Susan Myers reportedly told committee members that the "retirement system doesn't shape its investment approach based on social or political issues<sup>104</sup>." Myers said that the pension system is against the bill because it "threatens investment opportunities<sup>104</sup>." One of CalPERS strengths is that it invested a lot of effort in diversification of the fund. CalPERS also manages the portfolio in a passive manner using quantitative optimization methods to control risk, rather than forecasting the returns on securities or application of social criteria, which would fall under an active management scheme. Passive fund managers do not make this judgement, and it contradicts the basic index strategy to buy stocks and to hold them<sup>103</sup>. CalPERS hesitated to look at any other argument besides risk, return, and liquidity.

The State Teachers Retirement System (STRS) commissioned an external analysis that indicated that divestment would cost the fund \$28.1 million in annual losses, and PERS estimates that the one time cost of divesting their \$1.2 billion in tobacco holdings would cost \$65.2 million<sup>105</sup>. STRS had also been opposed to divesting tobacco stock, however, an analyst noted that teachers, the beneficiaries of STRS, would generally agree that divestment was a sound idea<sup>5</sup>.

The Smokeless Tobacco Council was on record opposing AB 1744 because "it is bad public policy to unreasonably restrict the scope of investments available to (the) retirement

funds. Restrictions on tobacco industry investments would be an encouragement for other groups who are against certain types of stock to push for similar restrictions<sup>106</sup>.” STC’s lobbyist (Wendt-Loper) also maintained the position that divestment of tobacco stocks was not sound investment policy<sup>106</sup>. Dowd Relations, representatives of the Tobacco Institute, presented a similar stance on AB 1744, calling it blatantly “bad policy<sup>107</sup>.” Tobacco Institute representatives also argued that money invested in the tobacco industries can be in one of the subsidiaries, which can produce foods and beverages, real estate, or insurance.

This type of “slippery slope” argument had been used by the tobacco industry on other issues, particularly smoke free bars, where the legislative attempts to protect workers had been interpreted to be legislative attempts to restrict lifestyle, and predicted a “public health Armageddon” where health advocates would be forcing sound public health practices on the whole of society.

AB 1744 was heard in the Assembly Committee of Public Employees, Retirement, and Social Security, and passed by a 5-2 vote. Those voting yes on the bill received \$0 in 1997-1998, those voting no on the bill received a total of \$1,750 in 1997-1998 (average of \$875). The difference between these groups was not statistically significant (Table C-1). The bill moved to the Assembly Appropriations committee, which is chaired by Assembly Member Carole Migden (D-San Francisco), an strong advocate of tobacco control, the committee worked to make any divestment bill palatable, by compromising and proposed reducing the bill to no new investments, and the bill still did not move. It was suggested to do a spot bill, which is legislative intent to encourage the PERS to divest. The bill was held in committee, therefore killing it.

*AB 1679.* In January 1998, Assembly Member Don Perata (D-Alameda) introduced AB 1679, which would prohibit the use of any state trust funds for new investments in any tobacco interest. The bill called for an annual reduction of tobacco investments from these funds to reach the January 2002 goal of complete divestment from tobacco holdings<sup>93</sup>. The bill also indemnified governing boards of these funds against legal action resulting from the mandated divestment<sup>93</sup>.

AB 1679 was referred to the Assembly Public Employees, Retirement, and Social Security Committee. The bill was never scheduled for a vote.

*SB 1433.* In January 1998, Senator Tom Hayden (D-Los Angeles) sponsored SB 1433, which would prohibit investment in tobacco companies after January 1, 1999, and called for the divestment process to begin on January 1, 2000. SB 1433 required divestment of the PERS and STRS pension systems. In a memo, Hayden’s office stated that “Our state’s substantial holdings in tobacco stocks create an interest that conflicts with the aims of California’s health care and anti-smoking initiative programs. The future profitability of these tobacco investments requires that all of our public health efforts fails and Californians continue to smoke and die<sup>108</sup>.”

CalPERS took the same position on SB 1433 that it did on AB 3445: “any restriction



of the board's authority to invest money held in this trust fund which is based on social, rather than prudent investment standards, is an unconstitutional impairment of fiduciary duty<sup>103</sup>." CalPERS argued that the bill failed to protect the interests of the CalPERS participants and beneficiaries, limited the Board's authority to seek the highest risk-adjusted return to the pension assets, reduced opportunities for higher returns, increased costs to the employers and taxpayers, and increased risk and reduced the diversification of the fund.

SB 1433 passed the Senate Public Employees and Retirement Committee, Senate Appropriations, and the Senate Floor. The bill then passed the Assembly Public Employees, Retirement, and Social Security Committee, and failed in the Assembly Appropriations committee in August 1998, by an 7-11 vote. Those voting against the bill received a total of \$184,400 in tobacco industry campaign contributions in 1997-1998 (average of \$16,764), those voting for the bill received a total of \$0 in 1997-1998 ( $p < .05$ ; Table C-2).

## **OTHER STATE TOBACCO CONTROL LEGISLATION**

### **Restrictions on Cigarette Advertising**

*AB 752.* AB 752 (Migden, D-San Francisco), introduced in February 1998, prohibited the advertising of any tobacco product on an outdoor billboard within 1,000 feet of any public or private elementary school, junior high school, high school, or public playground<sup>109</sup>. Rather than restricting the actions of vendors, AB 752 reduced the amount of advertising in places that are frequented by children, noting that the three most advertised brands of cigarettes are the top three choices of California children<sup>109</sup>. Tobacco advertising is a consistently utilized method of attracting new users, who are mostly children, to their products. The bill also permitted stricter local regulations of outdoor tobacco advertising, and required DHS to assess the penalties of violators in accordance with the established Stop Tobacco Access to Kids Enforcement (STAKE) Act.

Opponents of the bill, including the California State Outdoor Advertising Association and the Tobacco Institute, claimed that the voluntary agreement restricting ads to 500 feet away from schools and playgrounds was sufficient. The opposition also claimed that the restrictions violated the Free Speech clause of the First Amendment.

AB 752 passed the Assembly Governmental Organizations, Health, Appropriations committees, and was passed on the Assembly Floor by a 58 -8 vote. The bill passed the Senate Health Committee, and was passed on the Senate Floor by a 26-6 vote in July 1997. The bill went into effect in early 1998. The law was rendered moot by the advertising restrictions of the Master Settlement Agreement, enacted in April 1999.

*Wilson Fails to Enforce the Law.* The billboard law received little attention from the media, public, or law enforcement agencies. However, in March 1998, a *San Francisco Chronicle* survey showed that there were 65 tobacco billboards in various neighborhoods in San Francisco, 43 in areas that violated the 1,000 foot rule<sup>110</sup>. At the time of this survey, the Department of Health Services had yet to cite its first billboard operator for violating the

billboard ban, although a spokesman from DHS stated that the department is contacting the billboard companies and working out the legal nuances of the restrictions with staff. The billboard owners claimed that they were trying to figure out which of their many billboards were in the enforcement zones. One spokesman also claimed that his company, Outdoor Systems, felt an obligation to honor the contract made with the tobacco companies before the law was passed <sup>110</sup>.

The survey reported that the most flagrant violator of the restrictions was Lorillard, maker of Newport cigarettes. Thirteen of the 17 Newport advertisements, which were small street level advertisements featuring African-American models, were in the enforcement zones <sup>110</sup>.

After the *Chronicle* story, the state health department held informational meetings with the two billboard companies <sup>111</sup>. The state claimed it neither had the “manpower or the resources” to enforce the restriction, but intended to do so after July 1, 1998 <sup>111</sup>.

In response to the billboard companies violations of this law, the Center for Environmental Health (CEH) sued the billboard companies on March 26, 1998. (*Center for Environmental Health v. Eller Media et al.* San Francisco Superior Court, Case No. 993842). CEH wanted the billboard companies, not only to take down the tobacco industry advertisements, but to put up counter-advertisements in their place. The media companies, Eller and Outdoor Advertising, settled with CEH in September 1998, and agreed to take down the advertisements, and donate the space to replace the advertisements with anti-tobacco ads for 500 billboard months. CEH worked with TCS and contracted with TCS’ advertising agency, Asher and Partners, to create an counter-advertisement. 60 billboard months were given to the City of San Jose, which joined CEH in the suit, and the rest of the billboard months would around the state, specifically in minority and ethnic neighborhoods, where most of the billboard violations were present.

According to the terms of the settlement, and in agreement with the Department of Health Services, the free space available for the billboards would occur after November 1, 1998 and December 31, 1999 <sup>112</sup>. The Department of Health Services agreed to print the advertisement, a variation on the DHS “Choking” ad in return for the free billboard space. As of publication of this report, the anti-smoking advertisements have not been posted.

## **Industry Penalties**

*AB 2381.* AB 2381 (Torlakson, D-Antioch) was entitled the “Taxpayers’ Tobacco Relief Act of 1998.” The bill included look back disincentives for tobacco companies for marketing to children, by charging the industry an annual fee based on the percentage of youth smokers in the state. The bill also included provisions to recover public expenditures for tobacco related illnesses. The bill is modeled in the 1992 Childhood Lead Poisoning Prevention Act, which assesses fees on manufacturers on lead-based products to fund lead screening of children <sup>113</sup>. The bill did not attempt to double charge the tobacco industry if the state should recuperate any costs through a national settlement, or a settlement with the

various lawsuits brought against the industry by the cities and counties of California.

Over \$1 billion of California tax payer money goes to pay for tobacco related illness, annually. The annual state cost of tobacco related diseases is approximately \$866 million; expenditures at the county level exceed \$200 million. California has spent more than \$4 billion in unrecovered costs treating tobacco related illnesses. The state collects and spends approximately \$322 million in tobacco revenue on health care, which leaves \$745 million in unrequited public costs<sup>114</sup>. Additionally, tobacco manufacturers realize annual profits of \$100 million from sales to children in California<sup>115</sup>.

The state is entitled to charge a fee to a company to ensure some kind of corporate responsibility. According to a recent case that came before the California State Supreme Court, *Sinclair Paint Co. V. State Board of Equalization*, the court held that “a paint company that had manufactured paint containing lead could be assessed a fee to fund a childhood lead poisoning prevention act providing for evaluation, screening, and medically necessary follow-up services for children determined to be potential victims of lead poisoning<sup>114</sup>.” In a similar vein, this bill would assess a fee on tobacco industry for two purposes: as a disincentive and a punitive action for industry marketing to children and, to recover state money spent on tobacco related illness.

According to the bill, the industry would collectively pay the state of California \$1 million for every percentage point of children that smoke in the state (the estimate is currently that 12% of teenagers smoke, therefore the industry would pay California \$12 million). Additionally, the fees per company would be based on the market share of the company in the youth cohort. AB 2381 allowed for the fees to be adjusted, collected by the state Board of Equalization, exempted retailers and manufacturers demonstrating “no tobacco-related costs” and prohibited the deductions of fees from personal or corporate taxes. The annual fee for treating tobacco related illnesses would be determined by the state Department of Health Services.

Opposition to this bill included the Tobacco Institute, the California Taxpayers Association, and the California Manufacturers Association. The group labels this bill as a tax “masquerading” as a fee to circumvent Proposition 13. Proposition 13 was passed in 1978 that touched off a tax revolt not only in California, but throughout the entire nation<sup>116</sup>. The law forbids the State from levying a new tax without two thirds vote of the legislature. Additionally, the opposition claimed, “the tax is characterized by having the amount charged, assessed, and paid exceed the reasonable cost of providing the protective services for which the charge was imposed, the charge is levied for unrelated revenue purposes, no clear relation exists between the (product) and the (illness or harmful effect), and the amount of the charge bear not reasonable relationship to the social or economic ‘burdens’ that the (industry)’s manufacturing operations generated that the protective services were designed to mitigate<sup>116</sup>.” The fee’s sole purpose is to recuperate costs borne by the state due to the product of this industry. By framing the issue as a tax, the opposition created the notion of a big government expenditure and an additional tax that the government is imposing. The opposition was concerned about the industry shifting costs to the cigarette consumers, which would create a

unfair burden to those who are of lower socio-economic status. According to some economic models, if the costs of this fees are passed onto consumers, then the prices of a pack of cigarettes will increase, thus reducing teen demand for cigarettes. There are debates on how well this strategy will work. One view postulates that since the fees recovered from the bill might hover around \$700 million per year, which is slightly more than the state collects from the tobacco tax, the costs of the fee might be directly passed onto the consumers in California, in effect, doubling the tax. Another study showed that cigarette manufacturers do price discriminate by state, though the effect is not large relative to the final retail price of the pack<sup>117</sup>. Additionally, the fee for the children smoking is marginal compared to the profits that the tobacco industry reaps in California, the largest tobacco market in the United States.

The opposition also claimed AB 2381 would initiate a slippery slope argument, that the tobacco industry is the first corporation to pay for their sins, and soon, in California, every industry would be assessed fees for harmful actions against the public.

AB 2381 passed through the Assembly Health committee on a 20-0 vote, and passed the Assembly Floor on a 76-0 vote. The bill was referred to Senate Health and Human Services, and passed on a 5-2 vote, then referred to Senate Appropriations, where it was held in the suspense file. The bill did not get voted off the suspense file for consideration, and remained in committee until the end of the session.

### **Evidence for Tobacco Lawsuits**

*SB 1917*. Introduced in February 1998, SB 1917 (Sher, D-Stanford) would allow statistical evidence to be introduced against a tobacco company when a tort claim is brought by a public entity, or another plaintiff to recover damages from tobacco related illness and disease. The author proposed the bill to ensure that statistical evidence showing that tobacco causes disease could be used to show proof of causation in certain actions to recover Medi-Cal expenditures or tort damages. While such evidence is already admissible, this bill would make statistical correlations admissible as a matter of public policy<sup>118</sup>. Legalizing the use of statistical or epidemiological evidence against the industry has the power to cause endless litigation for the tobacco industry and creates a convincing argument that tobacco is deleterious to public health. The tobacco industry was well aware of this, and has managed to stave off unfavorable research claims by scientific bodies by claiming that statistical evidence against the industry is not legitimate, scientifically or legally. Dr. S.J. Green, the former head of BAT research and development and member of the BAT Board had stated that, “The industry has retreated behind impossible demands for scientific proof whereas such proof has never been required as a basis for action in the legal and political fields<sup>119</sup> (p. 436).” The tobacco industry deterred litigation by demanding that only scientific proof can be used; circumventing court rulings and passing evidence laws through the legislature had the potential to change this situation to be more damaging for the industry.

Current law defines what evidence may be introduced to support or refute a fact. Under Section 350 of the Evidence Code, all relevant evidence is admissible. However, under Section 352, a court may be able to exclude evidence if it so judges that the value of

sharing the evidence is outweighed by the probability that the evidence will create undue prejudice, confuse the issue, or mislead the jury. The Welfare and Institutions code allows the Director of the Department of Health Services to recover the value of benefits from a party who is liable for an injury or damage. The Director's right to recovery of damages is independent of a Medi-Cal recipient's right, and is not dependent on the percent of fault on behalf of the Medi-Cal recipient<sup>118</sup>. The Attorney General is authorized to institute legal proceedings on behalf of the Director of DHS.

The Tobacco Institute claimed that the bill would have allowed "simple statistics" to prove causation and damages, and that such usage "would dispense with one of the most fundamental doctrines of the civil justice system: that plaintiffs bear the burden of proving that the defendant caused the alleged harm." SB 1917 passed through the Senate Judiciary Committee, and the Senate Floor, and was never set for a hearing in the Assembly Judiciary Committee.

*SB 824.* Also authored by Senator Sher, SB 824 was a similar bill introduced in the 1999-2000 legislative session. The bill was amended to allow any party to use statistical evidence to correlate tobacco use with a resulting illness, rather than only public entities or "other parties." The bill went through three readings in the Senate Judiciary Committee, where it failed. Although reconsideration of the bill was granted, Senator Sher requested that the bill be placed on the Senate Inactive File.

### **Tobacco Tax Increases**

*AB 2144.* AB 2144 (Bowen, D-Marina Del Rey) would raise the distributors' tax 50 cents per pack of cigarettes, and a commensurate amount on other tobacco products. Proceeds of the tax increase would go into the State's General Fund. AB 2144 failed in the Assembly Revenue and Taxation committee in 1998.

*AB 2717.* AB 2717 (Alquist, D-Santa Clara) would raise the distributors' tax 20 cents per pack of cigarettes, to establish a state Breast and Prostate Cancer Fund, for research, detection, and treatment of these cancers. AB 2717 was not voted on in the Assembly Revenue and Taxation committee in 1998.

*AB 1143.* AB 1143 (Floyd, D-Wilmington) would revise the provisions of Proposition 99 to provide that the combined rate of tax imposed does not include the tax imposed by the \$.50 tax increase from Proposition 10. AB 1143 was sent to the Assembly Revenue and Tax Committee; the hearing was canceled at the request of the author.

### **Tobacco Settlement Funds**

Several pieces of legislation were authored to direct California's share of funds from the Master Settlement Agreement.

*AB 100.* AB 100 (Thomson, D-Vacaville) sought to expand the California Healthy families program to cover the parents of children where are currently eligible for the program, by earmarking a portion of the settlement for funding. AB 100 passed the Assembly; and was amended in the Senate Health and Human Services committee. The amended bill proposed that all of the state's proceeds from the Master Settlement Agreement would be deposited a newly created tobacco settlement fund repository in the State Treasury. These funds would only be used for health and health care services, which would include (but were not limited to) children's access to health care, health care for uninsured working adults, tobacco use prevention for teenagers and cessation programs, and prescription medication for senior citizens. The fund would be titled the Thomson, Dunn, and Escutia Tobacco Settlement Fund. AB 100 passed the Senate on September 8, 1999, and was sent back to the Assembly for concurrence. The Assembly passed the AB 100 on September 10, 1999. As of publication of this report, the bill was enrolled, and was waiting for the Governor's approval.

*AB 112.* AB 112 (Florez, D-Shafter) would leave the direction all tobacco settlement funds allocated to the cities and counties of the state up to the localities' discretion, for any purpose. AB 112 passed the Assembly, and was re-referred to the Senate Health and Human Services Committee on July 15, 1999. The bill failed in the committee, 0-2.

*AB 251.* AB 251 (Davis, D-Kensington) would earmark \$10 million of the tobacco settlement fund for women's heart disease research and prevention, and \$10 million for genetic cancer research. AB 251 was held in the Assembly Appropriations Committee on May 26, 1999.

*AB 255.* AB 255 (Torlakson, D-Antioch) would appropriate money from the tobacco settlement fund to the Department of Health services for smoking cessation programs for teens and for the California Smokers' Helpline. AB 255 was held in the Assembly Appropriations Committee on May 26, 1999.

*AB 437.* AB 437 (Wesson, D-Culver City) would appropriate \$2 million annually from the tobacco settlement funds for funding the STAKE youth tobacco enforcement act. AB 437 passed the Assembly, and as of July 1, was in the Senate Appropriations Committee. The bill was amended in the Senate to derive the funds for enforcement from the state General Fund. However, the derivation of funds for this program was contingent on the passage of AB 100: if AB 100 was signed into law, funds for enforcement would be derived from the new Tobacco Settlement Fund. The Senate amendments were approved by the Assembly on September 9, 1999. The bill was enrolled, and as of publication of this report, was waiting for the Governor's approval.

*AB 887.* AB 887 (Jackson, D-Santa Barbara) sought to create a fund in the State Treasury for a portion of the tobacco settlement fund to be appropriated to reimburse community clinics for health care services and cessation programs for low income individuals. AB 887 was held under submission in the Assembly Appropriations committee on May 26, 1999.

*AB 1071.* AB 1071 (Soto, D-Pomona) would appropriate 5 percent of the tobacco settlement fund for uninsured children and prenatal care through pilot programs. AB 1071 was on the Assembly Appropriations Committee's suspense file as of May 26, 1999.

*SB 748.* SB 748 (Escutia, D-Montebello) restricts the use of the tobacco settlement funds to the provision of Medi-Cal services to low-income uninsured individuals and for programs reducing tobacco consumption. A hearing on SB 748 was postponed by the Senate Appropriations Committee on May 27, 1999.

*SB 822.* SB 822 (Escutia, D-Montebello) applies the terms of the Master Settlement Agreement to new cigarette manufacturers and non-participating companies in the Master Settlement Agreement, or place an amount based on the number of tobacco products sold in the state, into an escrow account. SB 822 passed the Senate, amended and passed in the Assembly. The Senate reached concurrence on the Assembly amendments on September 3, 1999. The bill was enrolled, and as of publication of this report, was waiting for the Governor's approval.

### **Cigar Labeling**

*AB 1595.* AB 1595 (Migden, D-San Francisco) required specific warning labels to be placed on cigar packages on a rotating basis effective January 1, 2001. AB 1595 passed the Assembly, and passed the Senate (with amendments) on August 31, 1999. The Senate amendments were concurred in by the Assembly on September 3, 1999. The bill was enrolled on September 11, and as of publication of this report, was waiting for the Governor's approval.

### **Licensing**

*SB 1180.* SB 1180 (Speier, D-San Francisco/San Mateo) required the licensing of retailers for the sale of tobacco products. SB 1180 was returned to the Secretary of the Senate on April 20, 1999.

In California, there continues to be considerable legislative activities surrounding tobacco control policy issues. Many areas considered by previous tobacco control bills - including taxation, advertising restrictions, and youth access - have now been addressed by the Master Settlement Agreement. As California is able to pass more stringent laws than those determined by the settlement (such as the smokefree bar law), it will be interesting to see the effect the MSA has on the breadth and frequency of tobacco control bills in the Legislature. As of the publication of this paper, though the regulations of the Master Settlement Agreement have been enacted in the state, the use of the MSA funds that California will receive is yet to be determined. Tobacco control policy in the upcoming legislative session will most likely relate to the utilization of these funds.

## **PROPOSITION 10, THE CALIFORNIA CHILDREN AND FAMILIES FIRST INITIATIVE**

Proposition 10, largely the project of actor-director Rob Reiner, imposed an additional 50 cent tax on cigarettes (and a commensurate tax on other tobacco products) to fund early childhood development programs in the state. The main programmatic aspects of the initiative were predicated on what could be done to augment the existing early childhood programs in California, and what needs of this population exist that are currently unmet. Support for this program came from state research on early childhood development, federal research in poverty and child nutrition, and an analysis of child health, child care, preschool education, and child abuse and welfare services as they had currently existed in the state. The proposition started garnering publicity in January 1998.

The Department of Finance calculated that there were approximately 3 million children in the state that can currently benefit from these programs. The tax was to be used to create a comprehensive system of information and services to encourage the intellectual, social, and emotional development of children from birth to age five<sup>115</sup>. Additionally, a portion of the tax would fund tobacco use prevention programs, specifically targeted to minors and pregnant women. Funding would largely be directed to local programs, under the umbrella of a statewide commission, that would provide guidance for local programs, establish state-wide best practice guidelines, and create public information and tobacco control campaigns.

According to the State Board of Equalization, the tax would produce \$341 million in revenue for Fiscal Year 1998-99, and \$590 million for 1990-00. Of these revenues, twenty percent would be allocated to the state commission for media communications, educational materials, child care research and administration. Of this twenty percent,

- 7 Six percent would go to the mass media and communications account of methods of child nurturing and parenting which encourage “proper” childhood development, selection of child care, health and social services, the prevention of tobacco, alcohol, and illicit drug use by pregnant women, and the effects of secondhand smoke on childhood development
- 7 Five percent would allocated for the development of educational materials and parental and professional education and training
- 7 Three percent for programs related to the education and training of child care workers, and development of materials and guidelines for the workers
- 7 Three percent for early childhood development research and evaluation of programs and services
- 7 One percent for administration
- 7 Two percent for General Services, for any purpose above except administration.

The remaining eighty percent was allocated to the participating county commissions



to implement child development services in accordance with local conditions and strategic plans. Local funds would be allocated to the based upon the number of births in each county. The initiative required that the funds be used to supplement and not replace existing levels of service.

Although the estimates of revenue differ between the Legislative Analyst Office and the Board of Equalization, it is generally assumed that the higher prices would cause a decrease in taxable sales due to reduced consumption and an increase in smuggling <sup>115</sup>. Proposition 10 would protect health related education or research programs and the Breast Cancer Fund if Proposition 99 revenues decrease. However, revenue to Proposition 99 health care and resource programs would not be offset, creating a reduction of \$18 million in Proposition 99 funds in 1998-99, and approximately \$7 million per year thereafter. However, this loss will partially be offset by increases in the tax on other tobacco products, such as cigars and spit tobacco.

It is estimated that the state General Fund revenue will increase by \$4 million for Fiscal year 1998-99, and \$2 million per year thereafter, related to the immediate increases in sales tax revenue, and then a decreased revenue due to decreased sales as time progresses.

Proposition 10 had been criticized on several fronts. The initiative had come under some criticism for targeting tobacco as a method of generating revenue. Arguments concerning the regressive nature of the tax, encouragement of smuggling, and the diminishing source of the revenue were reignited. However, some question how the state can use a small, dwindling source of revenue to fund long-term social programs <sup>120</sup>. According to the Board of Equalization, the revenue from the Proposition 99 \$.25 tax per pack has fallen, from the first year of the tax it garnered \$770 million in 1989-90, and fell to \$639 million in 1995-96. In addition, there is no clear consensus on how much the tobacco tax will directly affect demand for the product, especially among minors. However, higher prices of cigarettes generally encourage younger smokers to quit, and reduce overall tobacco consumption. High prices for older smokers appear to encourage quitting, especially when used in conjunction with other tobacco control programs.

Another criticism related to the structure of the administration of the program. Because the state board would be appointed, and not elected, it is thought that there might not be any public accountability for the disbursement of these funds. Opponents also claim that the tax is regressive, and unfairly burdens the poor and minorities, because these groups often represent a disproportionate amount of smokers. However, the health benefits from this tax are primarily directed towards lower income families. Critics also claim that the association of the tax source from cigarettes, and the use of this money for child health is “incidental and inappropriate.” Further, the opposition claims that child health should be funded by every tax payer in the state, and not a small percentage of Californians, who are smokers.

Proposition 10 passed by a narrow margin of 4,044,126 - 3,964,008 (50.5 percent to 49.5 percent) <sup>121</sup>. The tobacco industry was the only contributors to the Committee on Unfair Taxes, the No on Proposition 10 Campaign. The industry spent a total of \$29,397,147 on the

campaign (Table D-1). In October 1998, the industry spent \$27,521,037. The Yes on Proposition 10 committee raised \$7,053,388, with much of the money coming from Reiner and Hollywood interests. The American Cancer Society had contributed \$300,000, the National Center for Tobacco Free Kids had contributed \$100,000, and the American Heart Association and California Medical Association had each contributed \$50,000.

On April 20, 1999, a proposed initiative measure had been approved by the Secretary of State's Office for circulation to gather signatures to repeal the Proposition 10 surtax. The initiative was sponsored by Ned Roscoe, of Premium Tobacco Stores, and managed by the law firm of Bell, McAndrews, and Hiltachk. In 1992, Bell and Hiltachk were the legal representatives of Californians for Smokers' Rights, a front group for RJ Reynolds, that utilized the California Public Records Act to interfere with the management of the Proposition 99 program <sup>122</sup>.

Due to the elasticity of demand, an increase in the consumer's price will reduce the amount of tobacco products purchased. It is generally accepted for adult smokers, that a ten percent price increase will result in a four percent decline in adult consumption of cigarettes. Since the Proposition 99 funds are based on the amount of tax collected from the sale of tobacco products, a decline in consumption of these products would lower the available funds for the California Tobacco Control Program. A provision written into the body of Proposition 10 allowed for a portion of the tax collected to backfill the Proposition 99 Health Education Account, Research Account, and Breast Cancer Fund. The backfill amount would be based on the state Department of Finance's calculation of the fiscal impact \$0.50 tax impacted tobacco product consumption. It is unclear how the Department of Finance assessed the impact of the tax.

Because of language in the Revenue and Taxation Code, the Proposition 10 price increase triggered a 50-cent per pack equivalent increase in the Proposition 99 tax on other, non-cigarette tobacco products, changing the non-cigarette tobacco tax from 26.2% of wholesale price to 61.56% of wholesale price effective July 1, 1999. The overall tax rate on other tobacco products will be commensurate with a \$1.37 tax per pack of cigarettes <sup>123</sup>. The Department of Finance estimated that this tax increase would cause a 29% decrease in consumption of other tobacco products. Combining the effects of the decline in consumption, and the increase in the tax, Proposition 99 revenues from other tobacco products should increase \$30.6 million, making total revenue from other tobacco products \$57.3 billion in 1999-2000 <sup>123</sup>.

It seemed the Department of Finance had assumed that the tax increases on the "other tobacco products" mentioned above are a benefit of Proposition 10, and would therefore offset the impact of the new surtax on the Proposition 99 accounts. The Department of Finance deducted all the gain from the Proposition 99 other tobacco products tax rate increase (aside from the revenue anticipated without the passage of Proposition 10) from the Proposition 10 backfill obligation, which violated the Proposition 10 initiative language <sup>123</sup>. The initiative states that the Board of Equalization will determine the impact that the Proposition 10 surtax has on the consumption of cigarettes and tobacco products.

Proposition 10 funds will be transferred to the appropriate Proposition 99 programs to “offset the revenue decreases directly resulting from the imposition of additional taxes by this act (Proposition 10).” There is no provision for reducing the result of this determination by the amount of a revenue increase resulting from an increase in the Proposition 99 tax rate on other tobacco products <sup>123</sup>.

Aside from the additional Proposition 10 tax, due to the Master Settlement Agreement, it has been speculated that tobacco industry would institute a \$.45 price hike per pack of cigarettes <sup>45</sup>. A significant price hike by the tobacco industry will reduce consumption, but will also reduce funds available to the Proposition 99 programs. The Board of Equalization reported sales tax data for the first three months of 1999 (after the additional tax and the price hike were instituted). According to tax receipts collected by the Board of Equalization from January to March, 1999 and projections for April to June, 1999, there was an revenue increase of 67.9 percent from the first six months of 1998 compared to the first six months of 1999 <sup>124</sup>. Assuming that 99 percent of cigarettes sold in California are sold in packs of twenty, the number of packs sold in the state decreased 28.6 percent <sup>124</sup>. Though the programmatic elements of Proposition 10 have not been put in place, the tax increase (and price hike) have had a measurable impact on tobacco consumption in the state.

It remains unclear what specific assumptions and amounts were used in determining the backfill amounts from the Proposition 10 revenue. In addition, the 1998-1999 and 1999-2000 budgets include figures for “Proposition 10 Reductions” and “Price Hike Impact.” For Budget Year 1999-2000, Department of Finance calculated that the Proposition 10 tax increase will reduce the Health Education Account by \$2.74 million in revenue in 1999-2000, and the impact of the tobacco industry price increase will be a reduction of \$8.86 million. Examining these two figures on the surface, it seems that the industry price hike should have a similar impact as the surtax, since the amounts are very close. However, not only is the impact of the price hike more than three times as great as the tax, revenues lost due to the price hike are not backfilled into the Proposition 99 Accounts <sup>123</sup>. Likewise, the Research Account for 1998-1999 was estimated to lose \$685,000 due to the tax, and \$2.2 million due to the price hike. It is also unclear if the projected revenues for Budget Year 1999-2000 reflect the projected drop in consumption due to the tax and the price hike.

Though an increase in the price of cigarettes will most likely reduce consumption, the ambiguity regarding the Department of Finance calculation of funds available of Proposition 99 programs may be a quiet method of deducting money available for the state’s tobacco control programs.

### **Proposition 10 Legislation**

*AB 877.* AB 877 (Scott, D-Pasadena) clarified language in Proposition 10, and allowed the Cities of Long Beach, Pasadena, and Berkeley to set up City Commissions independent of the County Commission mandated by the proposition. AB 877 failed passage in the Assembly Human Services Committee on April 14. Reconsideration was granted. No further action was taken in 1999.

*AB 1576.* AB 1576 (Gallegos, D-Baldwin Park and Baugh, R-Huntington Beach) renamed Proposition 10 “The California Children and Families Act as not to confuse the program with a previously established program. The bill was signed into law by the Governor on July 14, 1999.

*SB 643.* SB 643 (Alpert, D-Coronado) established state matching funds for County Proposition 10 programs that proved to be cost-effective. Funds would be limited to programs serving low income children. SB 643 was sent to the Senate Appropriations Committee, which postponed the bill’s hearing on May 27, 1999.

*SB 1268.* SB 1268 (Senate Committee on Health and Human Services) also changed the name of the Proposition 10 supervisory board the “California Children and Families Commission” and make some changes to the supervisory board of the program. The bill also added the state Superintendent of Public Instruction as an ex-officio member to the supervisory board. The bill passed the Senate, was amended and passed by the Assembly, and sent back to the Senate for concurrence. SB 1268 was passed by the Senate on September 8, 1999, and sent to enrollment. As of publication of this report, the bill was waiting for the Governor’s approval.

## **LOCAL ORDINANCE ACTIVITY**

### **San Francisco Ends Outdoor Advertising**

The City and County of San Francisco passed an ordinance that took effect on July 1, 1998, that all tobacco billboard advertising would be banned in the city, except along Highway 101 corridor. This is one of the most restrictive local advertising laws in the country. Advertising would also be banned on all public transportation depots and shelters, and in all store fronts. The two companies who own virtually all of the outdoor advertising in the city, Eller Media and Outdoor Systems, went one step further, and reported that by June 1, there would no longer be tobacco signs in San Francisco. Neither billboard company will attempt to challenge the restrictions on First Amendment grounds, but at the time the law was enacted, the tobacco industry might have used this argument to mount opposition to the restrictions<sup>111</sup>. The companies agreed to take down all billboards in the city prior to the strict San Francisco law coming into effect in June, and further, not to advertise in the city at all, even at those places near the freeways where advertising would be allowed. All tobacco ads came down in the city on billboards, bus shelters, BART, and Muni Stops. Tobacco ads were also banned in store windows, however, taxi cabs will still be able to advertise on their roofs<sup>111</sup>.

### **Los Angeles City and County Ends Outdoor Advertising**

In June 1998, the Los Angeles County Board of Supervisors voted to prohibit tobacco (and alcohol) billboards in residential areas or within 1,000 feet of schools and parks<sup>125</sup>. Authored by Supervisor Gloria Molina, the county ban allowed six months for billboard companies to take down the ads. Tobacco advertisements located next to freeways were exempted. Enforcement on the county level has been weak<sup>126</sup>. In September 1998, the City

of Los Angeles passed advertising restrictions against tobacco and alcohol products, that would go into effect in September 1999. The City currently has only one person assigned from the Building and Safety Department to monitor the situation <sup>126</sup>.

### **Lungren Argues that Cities Cannot Regulate Smoking**

In 1995, in response to a complaint by a nursing home resident who was being forced to breathe second hand smoke while watching television in the common area of a nursing home, the City of San Jose officials told employees of a nursing home that they were in violation of a city law by permitting smoking in an enclosed area of the facility, and for failing to post no smoking signs around the home. A 1993 city law prohibited smoking in “all enclosed areas of buildings which are open to the public or which are places of employment.” Nursing home officials reported that the state Department of Health Services said the San Jose city ordinance was preempted by DHS’s “rules and regulations, which allowed such smoking <sup>127</sup>.”

San Jose sued DHS in order to clarify its rights, seeking that “no provision of state law preempted enforcement by City of its Smoking ordinance” (*City of San Jose v. Department of Health Services et al.* Santa Clara County Superior Court, Case No. CV752231). The city won at the trial court. On appeal, the Attorney General’s office contended that the trial court decision should be overturned because the City’s no-smoking law was preempted by state law, the City’s smoking ordinance as applied to long term care facilities is preempted by federal law <sup>127</sup>. The State Indoor Clean Air Act (Section 118910 of the Health and Safety Code) provides that: “The Legislature declares its intent not to preempt the field of regulation of the smoking of tobacco. A local governing body may ban completely the smoking of tobacco, or may regulate smoking in any manner not inconsistent (with the state law).” The City also contended that DHS’s rules and regulation “do not have the authority and force of statutory law.” California Government Code states that any state agency’s regulations and rules must be consistent and not in conflict with legislative statutes.

The plaintiffs also cited Labor Code 6404.5 (enacted by AB 13) which states the “intent of the Legislature that any area not defined as a ‘place of employment’ (patient smoking areas in long-term health care facilities are specifically included as *not* places of employment) shall be subject to local regulation of smoking of tobacco products.” The City also claimed that the defendants could not identify a federal law that preempts San Jose’s smoking ordinance.

In a unanimous decision, the state Court of Appeals upheld the trial court’s ruling <sup>90</sup>. The trial court concluded that San Jose’s no-smoking ordinance was valid, and is not preempted by either state or federal laws, nor is it in conflict with the Department of Health Services. The Attorney General’s office, who represented DHS, recently filed a notice of appeal with the State Supreme Court, although the Court of Appeals showed that the plain language of the San Jose law entitled the City to enforce its law.

In contending that the DHS rules and regulations, as well as AB 13 were preemptive,

the Attorney General’s office as well as the Department of Health Services were supporting preemption, one of the most contentious issues amongst tobacco control advocates<sup>128</sup>. The tobacco industry has used statewide preemption as a strategy to enact weak or non-comprehensive tobacco control policies that prevent local jurisdictions from enacting more stringent policies against environmental tobacco smoke. It remains unclear why DHS and the Attorney General’s office had filed appeals to the judgement; the beneficiary of state preemption is mainly the tobacco industry.

Other recently enacted local tobacco control legislation, including clean indoor air laws, youth access laws, and advertising restrictions are listed in Table 9.

<b>Table 9a. Clean Indoor Air Ordinances passed/changed in California Cities and Counties, May 1997 - July 1999</b>			
<b><i>City</i></b>	<b><i>Law Enacted</i></b>	<b><i>Most Recent Amendment</i></b>	<b><i>Ordinance Number</i></b>
Costa Mesa	July 21, 1998		98-69
Arcata	December 28, 1985	Amended June 28, 1997	1266
Laguna Hills	August 28, 1993	Amended May 28, 1997	97-4
Novato	September 28, 1992	Amended November 28, 1997	1377
Pasadena		June 29, 1998	6757
Santa Cruz		May 28, 1998	98-08

**Table 9b. Youth Access laws passed/changed in California Cities and Counties, May 1997 - July 1999**

<i>City</i>	<i>Law Enacted</i>	<i>Most Recent Amendment</i>	<i>Ordinance Number</i>
Avenal	May 28, 1998		98-03
Exeter	July 22, 1997		565
Contra Costa Co.		November 3, 1998	98-43
Contra Costa Co.		December 5, 1998	98-50
Corcoran	December 28, 1997		531
El Cajon	June 28, 1993	June 28, 1997	4540
Hanford		March 3, 1998	98-03
Los Banos	May 28, 1997		924
Novato	September 28, 1992	November 28, 1997	1377
Oceanside		May 6, 1998	098-18
Pasadena		June 29, 1998	6757
San Diego		October 20, 1998	18597
San Luis Obispo	June 28, 1992	July 28, 1997	1325
San Mateo Co.		May 12, 1998	03833
Santa Cruz Co.		November 10, 1998	4519
Yolo Co.		September 1, 1998	1216

## SUMMARY

In 1997-1998, tobacco control advocates in California met with success on several fronts. California enacted the first state smoke free bar law in the country. Advertising restrictions were passed on a statewide level, in Los Angeles and San Francisco, as well as other localities. Proposition 10 added an additional \$.50 to the state tobacco tax; funding tobacco control programs will be one of the priorities of this initiative. The California Tobacco Control Program Media Campaign has been resuscitated partially by the Davis Administration, by releasing billboard concepts that were not approved by the previous administration.

Though Proposition 99 programs were fully funded in 1997-1998 and 1998-1999, litigation to release the funds previously diverted from the program is still pending. In

addition, there continues to be debate on how funds from the Proposition 10 tax will backfill the Health Education and Research Accounts.

Though the Multistate Master Settlement Agreement, the State of California, as well as the Cities and Counties of California, settled its class action suit against the tobacco industry. The state will receive upwards of \$25 billion, to be shared between the counties and the state. As of the publication of this report, the Governor has not acted on legislation the Legislature passed to direct the settlement funds to tobacco control and health care.

Tobacco industry contributions in the state legislature continues to influence state tobacco policy making. However, in 1997-1998, the party in control of both houses of the legislature did not receive the majority of tobacco campaign contributions.

The tobacco control movement in California has continued to be successful in dealing with the Legislature, the Administration, in the Courts, and on the local level. With the surfeit of funds coming into the state due to the tobacco litigation settlement, tobacco control advocates must campaign for continued funding of tobacco control programs, and to increase awareness that despite the victories of 1997 and 1998, tobacco use is still a primary public health problem in California.



**Table 9c. Advertising restrictions passed/changed in California Cities and Counties, May 1997 - July 1999**

<i>City</i>	<i>Law enacted</i>	<i>Most Recent Amendment</i>	<i>Ordinance Number</i>
Berkeley		July 21, 1998	6447-N.S.
Contra Costa Co.		November 3, 1998	98-43
Covina	July 7, 1998		98-1836
Hanford		March 3, 1998	98-03
Hawthorne	August 24, 1998		1655
Carson	June 28, 1998		98-1140
Compton	October 28, 1997		1983
Los Angeles		September 17, 1998	172212
Los Angeles Co.	June 28, 1998		98-0025
Oakland	December 28, 1997		12025
San Diego		October 20, 1998	18597
San Francisco		January 5, 1998	1-98
San Francisco		December 18, 1998	363-98
Santa Cruz Co.		November 10, 1998	4519
Santa Rosa		June 1, 1998	Chp. 20-08

## SOURCES CITED

1. Center for Responsive Politics. Federal Political Action Committees Campaign Contributions: Tobacco Industry. In: <http://www.opensecrets.org/pacs/indus/A02.htm>; 1999.
2. Williams L. How the Governor Broke His Tobacco Vow. *San Francisco Examiner* 1996 May 19; p. A1.
3. Iwata E. At The Top of His Game. *San Francisco Examiner* 1998 October 18; p. A1.
4. Malmgren K. Memorandum to R. McAdam Re: California Local Referenda Program. The Tobacco Institute. December 19, 1991.
5. Sturtz L. Personal Communication. Public Assets Management. August, 1998.
6. Center for Responsive Politics. Federal Industry Campaign Contributions, 1997-1998. In: [http://www.opensecrets.org/parties/cgi-win/comp1\\_2000.exe](http://www.opensecrets.org/parties/cgi-win/comp1_2000.exe); 1999.
7. Bernstein D. Tobacco Turning Into a Stain on Politicians. *Sacramento Bee* 1997 June 14.
8. Macdonald H, Aguinaga, S, Glantz, SA. The defeat of Philip Morris' 'California Uniform Tobacco Control Act'. *American Journal of Public Health* 1997;87(12):1989 - 1996.
9. Balbach E, Monardi F, Fox B, Glantz S. Holding Government Accountable: Tobacco Policy Making in California, 1995 - 1997. San Francisco, CA: Institute for Health Policy Studies, University of California, San Francisco. June, 1997.
10. Glantz S, Begay, ME. Tobacco industry campaign contributions are affecting tobacco control policy making in California. *JAMA* 1994;272(15):1176 - 1182.
11. Monardi F, Balbach E, Aguinaga S, Glantz S. Shifting Allegiances: Tobacco Industry Political Expenditures in California, January 1995 - March 1996. . San Francisco, CA: Institute for Health Policy Studies, University of California, San Francisco. April, 1996.
12. Monardi F, Glantz S. Are tobacco industry campaign contributions influencing state legislative behavior? *American Journal of Public Health* 1998;88(6):918 - 923.
13. Goldstein A, Bearman N. State tobacco lobbyists and organizations in the United States: crossed lines. *American Journal of Public Health* 1996;86(8):1137-42.
14. Lewis G. Same lobbyist for City, tobacco. *San Francisco Examiner* 1996 June 22; p. A1.
15. Gordon R. S.F.'s Washington lobbyist drops client RJ Reynolds. *San Francisco Examiner* 1996 June 29; p. A3.
16. Friedman T. Assembly Bill 13: Chapter 310. In: An act to add to section 6404.5 of the Labor Code, relating to occupational safety and health. California Statutes; 1994.
17. Regardie J. Tobacco Road: Can Smoking Ban For Bars Possibly Be Good for Health and Business? *Downtown News* 1996 September 9:12.
18. Stauber J, Rampton S. *Toxic Sludge is Good For You*. Monroe, ME: Common Courage Press; 1995.
19. Vellinga M. Foes of Bar Smoking Ban Ready New Tactic. *Sacramento Bee* 1997 August 28; p. A20.
20. National Smokers' Alliance. California Bar Owners and Smokers Send Message to Lawmakers: "Lighten Up!". *The NSA Voice* 1996 April; pp. 1, 4.

21. Aubry Jr L. Memorandum to Pete Wilson, Governor. Department of Industrial Relations, Office of the Director. September 12, 1996.
22. Holloway S. AB 869 Bill Analysis. Sacramento, CA: Assembly Committee on Labor and Employment. April 23, 1997.
23. Lucas G. Last Gasp for Smoky Bars: Assembly panel votes down delay in tavern cigarette ban. *San Francisco Chronicle* 1997 April 24; p. A19.
24. Vanzi M. Smoking Foe Mounts Offensive. *Los Angeles Times* 1998 March 23; p. A3.
25. Morain D. Smoking Ban Is Hazardous to Capitol Rules. *Los Angeles Times* 1997 September 8.
26. California State Assembly. Assembly Rule 77.2, Joint Rule 61. Sacramento, CA: California Legislature, 1997 -98 Session, 1997.
27. Lucas G. Lobbyists Try to Delay Smoking Ban: State's bars, card clubs scheduled to be smoke-free. *San Francisco Chronicle* 1997 July 17; p. A1.
28. Glastris P. Frank Fat's Napkin: How the Trial Lawyers (and the Doctors!) Sold Out to the Tobacco Companies. *The Washington Monthly* 1987 December:19 - 25.
29. Vanzi M, Ingram C. Bid to Lift Smoking Ban Faces Fight. *Los Angeles Times* 1998 January 30; p. 4.
30. Kiser D. Interview with authors. November 11, 1998.
31. Morain D. Behind Fuming Bar Owners is Savvy, Well-Heeled Group. *Los Angeles Times* 1998 January 30.
32. Vanzi M. Senate Committee Upholds Ban on Indoor Smoking. *Los Angeles Times* 1998 March 26.
33. Lucas G. Bill to End Ban on Smoking in Bars Killed. *San Francisco Chronicle* 1998 March 26; p. A23.
34. Lucas G. Senator Kills Bill to End Ban on Smoking in Bars. *San Francisco Chronicle* 1998 March 27; p. A22.
35. Matthews J. Measure to repeal smoking ban dies. *Sacramento Bee* 1998 March 26.
36. Sweeney J. Bill to lift smoking ban hits a barrier. *San Diego Union-Tribune* 1998 March 26; p. A3.
37. Salladay R. Bar Smoking Ban Still Controversial. *San Francisco Examiner* 1998 February 11.
38. State Board of Equalization Statistics Section. Comparison of 1st Quarter 1997 and 1st Quarter 1998 Taxable Sales of Selected Eating and Drinking Places with General On-Sale Licenses. Sacramento, CA: State Board of Equalization, Agency Planning and Research Division. October 1, 1998.
39. State Board of Equalization Statistics Section. Comparison of January 1997 and January 1998 Taxable Sales of Selected Eating and Drinking Places with General On-Sale Licenses. . Sacramento, CA: Agency Planning and Research Division, California State Board of Equalization. June 24, 1998.
40. Tobacco Control Section. Final Taxable Sales Figures for Bars and Restaurants for the First Quarter of 1998. Department of Health Services. December 22, 1998.
41. Delson S. Lawmaker trumpets smoke-ban loopholes. *The Press-Enterprise* 1997 December 17.
42. Morain D. GOP Revives Effort to Kill Ban on Smoking in Bars. *Los Angeles Times* 1998 June 25; p. A26.

43. Burgat M. Interview with authors. November 17, 1998.
44. Bonpua C. SB 539 Bill Analysis. Sacramento, CA: Assembly Committee on Governmental Organizations. June 23, 1998.
45. Lloyd J. Estimates of Proposition 10 effects on Proposition 99 programs. Sacramento, CA: Tobacco Control Section, California Department of Health Services. May 4, 1999.
46. Tobacco Education and Research Oversight Committee. Letter of May 6 Re: Voluntaries Litigation. May 6, 1999.
47. Sanders L. Personal Communication. July 26, 1999.
48. Glantz S. Back to basics: Getting smoke-free workplaces back on track. *Tobacco Control* 1997;6(164 -166.).
49. Schwartz J. Unlikely Allies Opposed Anti-Smoking Campaign. *Washington Post* 1998 January 20; p. A03.
50. Goldman L, Glantz S. Evaluation of antismoking advertising campaigns. *JAMA* 1998;279(10):772 - 777.
51. Warren J, Morain D. Bid to Dilute Anti-Smoking Effort Revealed. *Los Angeles Times* 1998 January 21.
52. Balbach E, Glantz SA. Tobacco control advocates must demand high-quality media campaigns: The California experience. *Tobacco Control* 1998;7(4):397 - 408.
53. Tobacco Education and Research Oversight Committee. Toward a Tobacco-Free California: Renewing the Commitment for 1997-2000. . Sacramento, CA: California Department of Health Services. July 31, 1997.
54. Levin M. Anti-Smoking Ads Curbs Revealed. *Los Angeles Times* 1998 October 17; p. Section A.
55. Asher H. Memorandum to Joel Hochberg/Christine Steele. Asher and Partners. May 7, 1998.
56. National Association of Attorneys General. Master Settlement Agreement. Washington, DC: National Association of Attorneys General, 1998.
57. Office of the Governor. Davis Previews New Anti-Tobacco Ad Campaign. Office of the Governor, State of California. May 12, 1999.
58. Green S. Cigarette images peeled; anti-smoking ads will air. *Sacramento Bee* 1999 April 24.
59. Isackson N. Billboards against tobacco go up all over state. *San Francisco Chronicle* 1999 April 24.
60. Bonta D. Letter to Jennie Cook Re: Tobacco Control Media Campaign. California Department of Health Services. September 13, 1999.
61. Jordan H. Critics say Lungren has tobacco ties. *San Jose Mercury News* 1997 April 4; p. 3B.
62. Levin M. Davis Urges Lungren to Join Tobacco Suits. *Los Angeles Times* 1996 September 12; p. 12.
63. Bernstein D. Lungren chided for state's sideline role. *Sacramento Bee* 1997 March 21.
64. American Law Institute. *Restatement of the law, second, torts*. St. Paul, MN: American Law Institute Publishers; 1965.
65. Senate Committee on Judiciary. "The Tobacco Litigation: Where Does California Go From Here?" Pasadena, CA: California Legislature, Senate Judiciary Committee.

- October 16, 1998.
66. Liebert D. Bill Analysis: AB 1603 and Concurrence in Senate Amendments, Assembly Floor. Sacramento, CA: California State Assembly. June, 1997.
  67. State of California. California Civil Code Section 1714.45. Office of the Secretary of State, California, 1987.
  68. Meier B. Remaining states approve the pact on tobacco suits. *New York Times* 1998 November 21.
  69. Fox B, Lightwood J, Glantz S. A Public Health Analysis of the Proposed Resolution of Tobacco Litigation. San Francisco, CA: Institute for Health Policy Studies, School of Medicine, University of California, San Francisco. February, 1998.
  70. Congressional Budget Office. The Proposed Tobacco Settlement: Issues from a Federal Perspective. . Washington, DC: Congressional Budget Office. April, 1998.
  71. Kelder G. No Great Expectations. . Boston, MA: Tobacco Control Resource Center, Northeastern University School of Law, 1999.
  72. National Association of Attorneys General. Multistate Master Settlement Agreement: Tobacco Settlement Summary. Washington, DC: National Association of Attorney Generals, 1998.
  73. Action on Smoking and Health. AG Deal: Payments to State by Year. Action on Smoking and Health, 1998.
  74. Hermer L. Executive Summary: The Multistate Master Settlement Agreement and the Future of State and Local Tobacco Control. An Analysis of Selected Topics and Provisions of the Multistate Master Settlement Agreement of November 23, 1998. Boston, MA: Tobacco Control Resource Center, Northeastern University School of Law, 1999.
  75. Pierce J, Gilpin E, Burns M, Whalen E, Rosbrook B, Shopland D, Johnson M. Does tobacco advertising target young people to start smoking? *JAMA* 1991;266(22):3154-8.
  76. DiFranza J, Richards J, Paulman P, Wolf-Gillespie N, Fletcher C, Jaffe R, Murray D. RJR Nabsico's cartoon camel promotes camel cigarettes to children. *JAMA* 1991;266(22):3149-53.
  77. Fischer P, Schwartz M, Richards J, Goldstein A, Rojas T. Brand logo recognition by children aged 3 to 6 years. Mickey Mouse and Old Joe the Camel. *JAMA* 1991;366(22):3145-8.
  78. Booth W. California Sends Joe Camel To an Earlier Retirement. *Washington Post* 1997 September 10.
  79. Doyle J. Joe Camel Is History In California: Tobacco firms settles suit --- S.F. to share in \$10 million. *San Francisco Chronicle* 1997 September 9.
  80. Coughlin P, Janecek FJ. A review of RJ Reynolds internal documents produced in *Mangini v. RJ Reynolds Tobacco Co* Civil Number 939359 -- The Case that rid California and the American Landscape of "Joe Camel". . San Diego, CA: Milberg, Weiss, Bershad, Hynes, & Lerach, LLP. February, 1998.
  81. Andrews Publications. Tobacco Industry Litigation Reporter. August 14, 1998. Report No. Volume 13, Issue 7.
  82. Los Angeles Times. Davis to Join Suit Seeking Damages From the Tobacco Industry. *Los Angeles Times* 1997 January 15.

83. Plourde C. American Cancer Society Withdraws from San Francisco Tobacco Lawsuit. San Francisco, CA: American Cancer Society. December 9, 1998.
84. Morain D. Health Care Industry Seeks Share of Tobacco Funds. *Los Angeles Times* 1999 May 26.
85. Tobacco Education and Research Oversight Committee. Letter of May 6 Re: California portion of MSA funds. May 6, 1999.
86. Hertz A. Personal Communication. Office of the Attorney General of the State of California, San Francisco. August 31, 1999.
87. Russell S. Court OKs Counties' Tobacco Industry Suit. *San Francisco Chronicle* 1998 March 5; p. A20.
88. Office of Environmental Health Hazard Assessment. Proposition 65 List. Sacramento, CA: Office of Environmental Health Hazard Assessment. August 20, 1999.
89. Office of Environmental Health Hazard Assessment. Proposition 65 in Plain Language. . Sacramento, CA: Office of Environmental Health Hazard Assessment, 1999.
90. Weinstein H, Ismael K. 2 City Attorneys Criticize Lungren; Officials in LA and San Jose accuse him of undermining lawsuit and opposing local ban on smoking. *Los Angeles Times* 1998 October 2.
91. Russell S. 'Smokeless Tobacco' Lawyers' Next Target: S.F. charges makers with pitching to kids. *San Francisco Chronicle* 1998 April 1; p. A13.
92. San Diego Superior Court. Judicial Council Coordinated Proceeding, Tobacco Case JCCP #4042. San Diego, CA, 1999.
93. California's Public Retirement News Source. Tobacco and the Legislature. *The Journal* 1998 February; pp. 1 - 3.
94. Lewis G. City fund still has tobacco stocks. *San Francisco Examiner* 1997 October 10; p. A1.
95. San Francisco Tobacco Free Coalition. Position Paper on Divestment of Tobacco Stocks from the San Francisco Employees Retirement System.. San Francisco, CA: SFTFC, 1997.
96. Epstein E. SF Retirement Fund Votes to Sell Off Tobacco Stocks. *San Francisco Chronicle* 1998 April 2; p. A18.
97. Meiberger H. Memo Re: Retirement Fund Divestment of Tobacco Stocks. San Francisco City and County Employees' Retirement System. May 19, 1998.
98. Hendricks T. City pension fund will dump tobacco. *San Francisco Examiner* 1998 April 1.
99. Murphy C. Personal Communication. San Francisco Employees Retirement System. September 7, 1999.
100. Van Hulzen C. Memo to Assembly Person Wally Knox Re: Initial Response to CalPERS "Bill Analysis". Cornerstone Capital Management. March 20, 1998.
101. Vanzi M. Legislator Targets Tobacco Retirement Plans' Tobacco Stocks. *Los Angeles Times* 1998 March 26.
102. Myers S. Letter to Assembly Member Wally Knox re: AB 1744. California PERS Office of Public Affairs. April 17, 1998.
103. CalPERS. Bill Analysis: AB 1744. Sacramento, CA: California Public Employees'

- Retirement System. April 20, 1998.
104. Shnitt P. Tobacco divestiture advances in Capitol. *Sacramento Bee* 1998 April 2.
  105. Grandmaison L. Bill Analysis: AB 1744. Sacramento, CA: Department of Finance. May 19, 1998.
  106. Loper D. Letter to Assemblyman Knox on AB 1744. Wendt-Loper Governmental Relations, Inc. March 26, 1998.
  107. Dowd P. Letter to Assemblymember Knox on AB 1744. Dowd Relations. March 26, 1998.
  108. Hayden T. Don't Let Our State Pension Dollars Go Up in Smoke. California State Senate. 1998.
  109. Senate Rules Committee. Bill Analysis: AB 752. . Sacramento, CA: California State Senate. May, 1997.
  110. Russell S. Tobacco Billboards Won't Go Away -- Virtual Ban in SF Isn't Enforced, Chronicle Survey Shows. *San Francisco Chronicle* 1998 March 19; p. A1.
  111. Russell S. Firms to Take Down Tobacco Billboards in S.F. - They'll Obey Ban on Most Outdoor Ads. *San Francisco Chronicle* 1998 May 19, 1998; p. A17.
  112. California Department of Health Services. Center for Environmental Health Billboards Lawsuit Settlement Memo. 1998.
  113. Torlakson T. AB 2381: Taxpayers' Tobacco Relief Act of 1998.
  114. Miller J. Bill Analysis: AB 2381. . Sacramento, CA: Senate Health and Human Services Committee. June 23, 1998.
  115. Miller J. Committee Analysis on Proposition 10. . Sacramento, CA: Senate Committee on Health and Human Services. September, 1998.
  116. Hyink B, Provost D. *Politics and Government in California*. Fourteenth Edition ed. New York, NY: Longman; 1998.
  117. Keeler T, Hu T, Barnett P, Manning W, Sung H. Do cigarette producers price-discriminate by state? An empirical analysis of local pricing and taxation. *Journal of Health Economics* 1996;15(4):499-512.
  118. Sher B. Bill Analysis: SB 1917. . Sacramento, CA: Senate Rules Committee. May 12, 1998.
  119. Glantz S, Bero L, Hanauer P, Slade J, Barnes D. *The Cigarette Papers*. Berkeley, CA: UC Press; 1995.
  120. Jordan H. Tax Proposals Taking Aim at Pockets of State Smokers. *San Jose Mercury News* 1998 February 13; p. A1.
  121. Secretary of State's Office. 1998 Election Returns. . Sacramento, CA: California Secretary of State's Office, 1999.
  122. Aguinaga S, Glantz S. The use of public records acts to disrupt tobacco control. *Tobacco Control* 1995;4:222-230.
  123. Senate Committee on Health and Human Services. The Problem with the Proposition 10 Budget Backfill Amounts for the Proposition 99 Health Education Account. Sacramento, CA: Senate Committee on Health and Human Services. June, 1999.
  124. Maciel D. Effects of the Proposition 10 tax and tobacco industry price increase on the sale of cigarettes in California, January to June 1999. State Board of Equalization. September 14, 1999.
  125. Leeds J. City, County Officials Targeting Billboards. *Los Angeles Times* 1998 June

- 10; pp. B-5.
126. Manzanilla N. Personal Communications. LA LINKS. September 3, 1999.
  127. Court of Appeal. City of San Jose v. Department of Health Services et al. . Santa Clara, CA: Court of Appeal of the State of California, Sixth Appellate District. August 8, 1998.
  128. Siegel M, Carol J, Jordan J, Hobart R, Schoenmarklin S, DuMelle F, Fisher P. Preemption in tobacco control. Review of an emerging public health problem. *JAMA* 1997;278(10):858-63.



## **APPENDICES**

