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## Tobacco Control Policy Making: United States

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Tobacco Control in California 2003-2007: Missed Opportunities

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**Abstract:**

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Neither the Schwarzenegger Administration nor the California Legislature sought to divert the Proposition 99 funding allocations, but continued the policy of the Davis administration to emphasize aspects of the California Tobacco Control Program that are not proven to be effective, such as school-based education programs, while moving slowly with those that are effective, particularly a strong media campaign.

The Administration has continued to shift increasing amounts of funds from the Proposition 99 Research Account away from the Tobacco Related Disease Research Program to the Department of Public Health Cancer Registry, leading to marked reductions in funding for important and innovative tobacco control research.

The state continued to refuse to use any money from the Master Settlement Agreement for tobacco control. In 2003 and again in 2006, the Legislature sold the state's share of the Master Settlement Agreement payments for immediate revenues ("securitization") by the tobacco



companies through 2030. Counties and municipalities, which receive 50% of California's Master Settlement Agreement funds, have increasingly securitized their share of these monies. Only 30% of the 58 counties allocated any MSA funds for tobacco control.

Under Bill Lockyer, the Attorney General's office has vigorously enforced tobacco industry compliance with the Master Settlement Agreement. Campaigns to end tobacco industry violations of the Master Settlement Agreement (primarily by R.J. Reynolds Tobacco Company) with regard to youth marketing tactics and youth access to tobacco products were successful. Former Attorney General Lockyer was active in the campaign of a multi-state group of Attorneys General to get smoking out of movies targeted at children; but Attorney General Jerry Brown has not participated in this effort since taking office in 2007.

The tobacco industry intensified its efforts to influence California politics with its campaign contributions to legislators, legislative candidates, political parties and constitutional officers. The industry steadily increased monies spent on state level political activities in the period 2003-2007, from \$4,086,553 in 2003-2004 (\$1,083,448 to candidates) to \$4,359,205 in 2005-2006 (\$1,895,584 to candidates).

Campaign contributions from the tobacco industry continue to heavily favor Republicans. In 2005-2006, \$1,797,484 was contributed to the Republican candidates and officeholders, to the California Republican Party and other Republican controlled committees compared to \$98,100 to the Democrats.

In the 2006 general election for constitutional offices, neither candidate for Governor, State Treasurer, Insurance Commissioner, or Superintendent of Public Instruction took any tobacco for industry campaign contributions. The Republican candidates for Lt. Governor (McClintock, \$8,364), Secretary of State (McPherson, \$15,200), State Controller (Strickland, \$7,100), Attorney General (Poochigian, \$8,100) and two Board of Equalization seats (Leonard, \$7,600 and Steel, \$1,500) all took tobacco industry money. Among Democratic candidates for constitutional offices, only Jerry Brown (\$5,600) for Attorney General and Betty Yee (\$2,000) for Board of Equalization took tobacco industry money. In the Legislative races in 2006, Dutton (R) in the Senate (\$9,100) and Garcia (R) in the Assembly (\$14,800) were the top recipients of tobacco company money. Of the 56 legislators who took no tobacco industry campaign contributions in 2005-2006, 52 were Democrats.

By far the most significant tobacco-related event in the 2003-2007 period was the defeat of the effort to increase cigarette taxes through Proposition 86 in 2006. The proposition would have increased the cigarette tax by \$2.60 a pack. What began as a well-planned initiative petition campaign by health groups for a \$1.50 tobacco tax increase became an excessive, badly structured joint initiative with the California Association of Hospitals and Health Services. The fact that most of the money from the proposed tax was directed towards funding hospitals, the size of the tax, and the fact that only 10.7% of the money would go to genuine tobacco control provided legitimate points of criticism that the tobacco industry could use to attack the proposal in its \$66 million campaign against Proposition 86. Voters rejected Proposition 86, with 51.3% voting "no."

In 2003, the Legislature passed a tobacco sales licensing law (AB 71) that requires every entity in the commercial chain from manufacturers to retailers to obtain state licenses to sell tobacco. While it lacks any penalty for selling tobacco to minors, it did not preempt local jurisdictions from enacting stronger licensing laws. Forty-two California communities have strong local retailer licensing ordinances that include fees high enough to sufficiently fund administration and enforcement, and fines and penalties including suspension and revocation of license to deter violations.

In 2005, the Legislature passed AB 178, which mandated that all cigarettes sold in California on and after January 1, 2007 be so-called "fire safe" cigarettes or reduced ignition products (RIP).

Manufacturers are required to certify that the cigarettes are self-extinguishing at least 75% of the time.

Governor Schwarzenegger vetoed two important tobacco control bills in 2006, a ban on internet sales of cigarettes (SB 1208) and a mandate for health insurance coverage of smoking cessation services (SB 576).

Six tobacco control measures were passed in the 2007 Session. SB 7 prohibits smoking in any motor vehicle with any minors present, and AB 1467 would have eliminated the remaining exceptions in the original 1994 smoke-free workplaces law (AB 13). The other four bills strengthen youth access laws. AB 1617 would have prohibited the shipping or transporting of cigarettes to individuals in California (another attempt to control internet sales of cigarettes), and SB 624 broadens enforcement of the STAKE (Stop Tobacco Access to Kids) Act from just the Department of Public Health to all law enforcement agencies and increases penalties for violations. The Governor vetoed two of the 2007 tobacco control bills, another ban on internet cigarette sales (AB 1617) and a bill closing loopholes in the original California smoke-free workplaces law (AB 1467).

Local tobacco control policymaking in California since 2003 has seen innovation. Momentum for nonsmoking multi-unit housing has been building, with surveys showing that 80% of nonsmoking tenants in California wish to live in smoke-free buildings. In 2004, the Thousand Oaks City Council unanimously became the first city in the nation to pass a mandate on by requiring that one-third of new multi-unit affordable housing units funded by the city would be nonsmoking. Another important first in California local tobacco control policymaking came when the City of Calabasas in 2006 mandated an all-inclusive smoke-free policy in the entire city except in small (no more than 40 square feet) designated smoking areas in shopping malls, so long as no smoke is permitted to enter adjacent areas in which smoking is prohibited, and outdoor areas in which no nonsmoker is present or likely to be present. Then in October 2007, Belmont became the first city in California to ban smoking in the residential units of all multi-unit housing. Adding to this expansion, smoke-free ordinances for public beaches have also been passed by local communities in many locales in California.

The history of tobacco control in California has been local activism and voter initiatives, with statewide legislation following. Local activism is still the key source of innovation in California.



# **Tobacco Control in California 2003-2007: Missed Opportunities**

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## EXECUTIVE SUMMARY

- While smoking prevalence in California continued its decline (reaching an historic low of 13.3% in 2006), this rate was slower than in earlier years, reflecting the fact that tobacco control efforts in California in the period 2003-2007 continued to drift, with no clear indications that California would regain its international leadership in tobacco control.
- Neither the Schwarzenegger Administration nor the California Legislature sought to divert the Proposition 99 funding allocations, but continued the policy of the Davis administration to emphasize aspects of the California Tobacco Control Program that are not proven to be effective, such as school-based education programs, while moving slowly with those that are effective, particularly a strong media campaign.
- The Administration has continued to shift increasing amounts of funds from the Proposition 99 Research Account away from the Tobacco Related Disease Research Program to the Department of Public Health Cancer Registry, leading to marked reductions in funding for important and innovative tobacco control research.
- The state continued to refuse to use any money from the Master Settlement Agreement for tobacco control. In 2003 and again in 2006, the Legislature sold the state's share of the Master Settlement Agreement payments for immediate revenues ("securitization") by the tobacco companies through 2030. Counties and municipalities, which receive 50% of California's Master Settlement Agreement funds, have increasingly securitized their share of these monies. Only 30% of the 58 counties allocated any MSA funds for tobacco control.
- Under Bill Lockyer, the Attorney General's office has vigorously enforced tobacco industry compliance with the Master Settlement Agreement. Campaigns to end tobacco industry violations of the Master Settlement Agreement (primarily by R.J. Reynolds Tobacco Company) with regard to youth marketing tactics and youth access to tobacco products were successful. Former Attorney General Lockyer was active in the campaign of a multi-state group of Attorneys General to get smoking out of movies targeted at children; but Attorney General Jerry Brown has not participated in this effort since taking office in 2007.
- The tobacco industry intensified its efforts to influence California politics with its campaign contributions to legislators, legislative candidates, political parties and constitutional officers. The industry steadily increased monies spent on state level political activities in the period 2003-2007, from \$4,086,553 in 2003-2004 (\$1,083,448 to candidates) to \$4,359,205 in 2005-2006 (\$1,895,584 to candidates).
- Campaign contributions from the tobacco industry continue to heavily favor Republicans. In 2005-2006, \$1,797,484 was contributed to the Republican candidates and officeholders, to the California Republican Party and other Republican controlled committees compared to \$98,100 to the Democrats.
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unanimously became the first city in the nation to pass a mandate on by requiring that one-third of new multi-unit affordable housing units funded by the city would be nonsmoking. Another important first in California local tobacco control policymaking came when the City of Calabasas in 2006 mandated an all-inclusive smoke-free policy in the entire city except in small (no more than 40 square feet) designated smoking areas in shopping malls, so long as no smoke is permitted to enter adjacent areas in which smoking is prohibited, and outdoor areas in which no nonsmoker is present or likely to be present. Then in October 2007, Belmont became the first city in California to ban smoking in the residential units of all multi-unit housing. Adding to this expansion, smoke-free ordinances for public beaches have also been passed by local communities in many locales in California.

- The history of tobacco control in California has been local activism and voter initiatives, with state-wide legislation following. Local activism is still the key source of innovation in California.



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## INTRODUCTION

Tobacco control efforts in California are a model of success despite a history of struggles with the tobacco industry and unsupportive state administrations. California voters have a strong history of supporting tobacco control, particularly clean indoor air laws and strong anti-tobacco media campaigns and community programs. The tobacco industry has consistently opposed these efforts, with many of these battles played out at the state level.<sup>1-8</sup>

In November 1988, California voters approved Proposition 99, the California Tobacco Tax and Health Protection Act,<sup>8,9</sup> which increased the state excise tax on cigarettes by 25 cents per pack and added a commensurate amount on other tobacco products. The revenues generated by Proposition 99 were earmarked for programs to reduce smoking, to provide medical care services to indigents, to support tobacco-related research, and environmental programs. Proposition 99 allocated 20% of the 25 cents per pack tax revenue to a Health Education Account for the California Tobacco Control Program (CTCP), which is administered by the Tobacco Control Section of the California Department of Public Health (in the old Department of Health Services before July 1, 2007) and the Department of Education. The Tobacco Related Disease Research Program (TRDRP) was allocated 5% of Proposition 99 revenues through the Research Account. In 1998, Proposition 10 raised taxes on cigarettes in California by an additional 50 cents per pack to support early childhood education; Proposition 10 allocated some money to “backfill” Proposition 99 for the effects on cigarette consumption due to the price increase.<sup>10</sup> Despite continuous attacks from the tobacco industry and its political allies (including inside state government),<sup>1-8</sup> the CTCP significantly reduced smoking prevalence and cigarette consumption as well as a reduction in mortality from heart disease and decreased lung cancer incidence.<sup>11,12</sup>

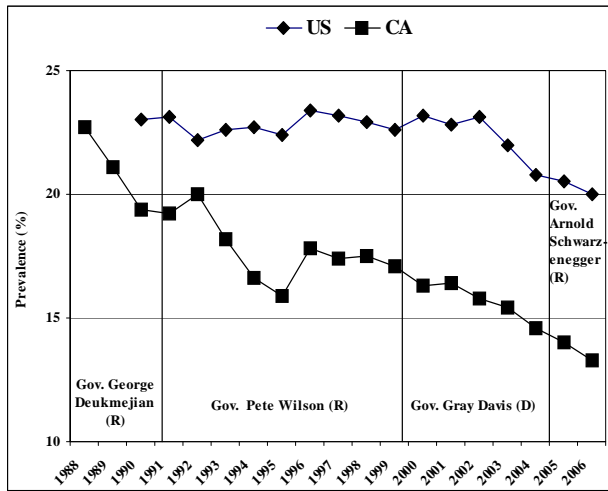
The initial legislation implementing Proposition 99 (AB75, 1989) created the Tobacco Education and Research Oversight Committee (TEROC) as a legislatively-mandated oversight committee to monitor the use of Proposition 99 tobacco tax revenues for tobacco control and prevention education and for tobacco-related research and make programmatic and budgetary recommendations pertaining to the CTCP to the California legislature. The Committee advises the California Department of Health Services, the University of California, and the California Department of Education, regarding the administration of Proposition 99 funds.<sup>13</sup> One of the primary purposes of TEROC from the beginning has been to develop a periodic Master Plan to guide future implementation of tobacco control policy and education in California.

From passage of Proposition 99 in 1988, California’s adult smoking rate has dropped by 45% from a prevalence of 22.7% to a rate of 13.3 % in 2006 (Figure 1a).<sup>14</sup> Per capita cigarette consumption also declined faster in California than the rest of the US, dropping by 41%, from 90.1 packs/person in 1988 to 33.1 packs in 2005, a decline of almost 60%, as compared to a drop from 113.2 packs in 1988 to 67 packs in 2005 (Figure 1b).<sup>15</sup> In the ten years following the inception of the California Tobacco Control Program, more than 1.3 million Californians quit smoking.<sup>16</sup>

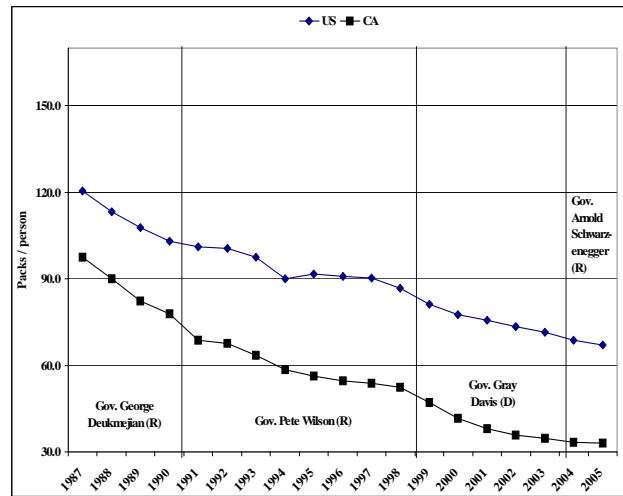
The rate of decline in adult smoking prevalence flattened out during Gov. Schwarzenegger’s first term (Figure 1b), although it did reach 13.3% in 2006, an historic low for California smokers, and the third lowest in the nation (behind the U.S. Virgin Islands and Utah). Per capita cigarette consumption also declined only slightly from 34.7 packs in 2003 to 33.1 packs in 2005. Even so, that consumption rate



was still less than half that of the nation as a whole.



**Figure 1a** Adult smoking prevalence US and CA, 1988-2006 (Source: California Adult Tobacco Survey; Behavioral Risk Factor Surveillance System (CDC))



**Figure 1b** Per capita consumption US and CA, 1987-2005 (Source: Tax Burden on Tobacco 2005<sup>15</sup>)

Data released in May 2007 shows that the prevalence of smoke-free homes in California increased from 59.1% in 1992-93, to 72.7% in 1998-1999 and to 84.4% in 2003, an increase of 42.9% from 1992 to 2003.<sup>17</sup> California was second in the nation in 2003 only to Utah, which had a 88.8% prevalence of smoke-free homes. Because smoke-free home rules are voluntary, they are important indicators of changes in public awareness of the health effects of secondhand smoke (SHS) and in public attitudes regarding the social acceptability of smoking.<sup>17</sup>

Between 1992 and 2004, youth smoking prevalence rates in California remained much lower than in the rest of the nation. In the mid-1990s, youth smoking in California increased along with the rest of the U.S., but by 1998 youth smoking prevalence began declining in California and continued declining through 2004, as it did in the rest of the country.<sup>18-20</sup> However, between 2004 and 2006, the California Student Tobacco Survey (CSTS) shows there was an increase in California youth smoking prevalence among current and daily smokers (Table 1).<sup>21</sup> Nationally, between 2003 and 2005, youth smoking prevalence among frequent/daily and ever smokers continued to decline, while among current smokers it increased slightly.<sup>20</sup>

<b>Table 1 California High School Smoking Prevalence Rates (CSTS)</b>			
	Current Smoker <sup>1</sup>	Daily Smoker <sup>2</sup>	Ever Smoker <sup>3</sup>
2006	15.4	2.0	41.3
2004	13.2	1.7	43.9
2002	16.0	2.9	51.9

Source: California Department of Health Services, Tobacco Control Section<sup>21</sup>  
 1 Smoked cigarettes on 1 or more days of the 30 days preceding the survey  
 2 Smoked cigarettes on all of the 30 days preceding the survey  
 3 Ever tried cigarette smoking, even 1 or 2 puffs

The reason for this reversal of the downward trend of smoking prevalence among California

youth is ambiguous. The California Tobacco Control Section addressed the issue:

This rise has been seen nationally as well. It is not clear if this increase is due to an underlying cohort effect, a decrease in the real price of cigarettes in California and the U.S., which can have a large impact on youth smoking, or a decrease in national tobacco control mass media.<sup>22</sup>

The increase in youth smoking prevalence in California 2004 to 2006 increased broadly, whereas the national increase was only in the current smoker category from 2003 to 2005; the other two categories continued to decline nationally.<sup>23</sup> CTCP appeared to be trying to place the blame, at least in part, for the broad increase in California youth smoking prevalence on the American Legacy Foundation's "truth"® campaign. Rather, it may be that the increase in youth smoking in California was due to a substantial drop in funding for the state's anti-smoking media campaign. While there was a dramatic decline in spending for the American Legacy Foundation's highly successful national truth® campaign targeting youth, beginning in FY2002,<sup>24</sup> the California mass media budget suffered an equally significant drop at the same time. The California mass media budget was over \$45 million per year in FY2001 and FY2002, but fell to \$21.1 million in FY2003, \$16.8 million in FY2004, \$15.6 million in FY2005 and to \$14.3 million in FY2006. For FY2007, that media budget increased to nearly \$20 million (See Figure 4, CTCP Media Funding). Not only did the California media budget decline after FY2002, the number of media messages declined with youth prevention messages only in 2003 for the period 2001-2006.

Another significant factor in this reversal of the downward trend in youth smoking prevalence may be the marketing practices of the tobacco industry. Higher levels of advertising, lower cigarette prices and greater availability of cigarette promotions have been associated with youth smoking initiation and youth moving from experimentation to regular smoking.<sup>25</sup> At the same time the California (and the American Legacy Foundation's national truth® campaign<sup>24</sup>) spending on media campaigns was declining, tobacco industry activities increased to lower cigarette prices through discounts and promote consumption through coupons.<sup>26</sup> The tobacco industry-sponsored youth smoking prevention and public image media campaign also continued during this period, and has been shown to garner public sympathy for the tobacco industry, potentially undermining the youth anti-smoking campaigns aimed at tobacco company behavior.<sup>27</sup> These messages have been shown to encourage smoking.<sup>28</sup>

Despite many successes, the CTCP experienced severe funding cutbacks and programmatic limitations in some years which reduced its ability to compete with tobacco industry advertising and promotion. The most dramatic effects of the CTCP were seen in its early years when the prevalence of adult smoking fell from 22.7% in 1988 to 17.3% in 1994, a decrease of nearly 24% (Figure 1a)<sup>29</sup> and annual per capita consumption of cigarettes dropped from 90.1 packs to 58.6 packs during this same time period, a decrease of nearly 35% (Figure 1b).<sup>15</sup> During the administration of Pete Wilson (R) from 1991-1998, the progress of the CTCP was impeded by hostile administrative policies which attempted to shut down the tobacco control media campaign in 1991<sup>3</sup> and increasingly diverted Proposition 99 funding from CTCP which also impacted local community efforts<sup>1</sup> until a major campaign combining litigation and public advocacy brought the diversions to an end in 1995.<sup>8</sup> The tobacco industry benefitted from the weakened campaign; the loss of the media campaign's effectiveness after 1994 resulted in Californians smoking 840 million packs of cigarettes (worth \$1.5 billion in sales to the tobacco industry) between 1994 and 1998 that would not have been smoked and 15,000 more deaths from heart disease had the campaign been maintained at the same level of effectiveness it had between 1989 and 1994.<sup>11</sup>

During the administration of Gov. Gray Davis (D) (1999-2003), CTCP fared better in the second and third Davis budgets with substantial funding when Gov. Davis finally released unspent funds that had accumulated during the Wilson years, then fell back for the remainder of the Davis Administration, largely due to declines in Proposition 99 revenues.<sup>6,7</sup> Davis was also slow to approve anti-smoking advertisements, which blunted the program's effectiveness.<sup>7</sup>

In April 2003, US tobacco companies RJ Reynolds and Lorillard filed a lawsuit in federal court against the state alleging that the state's anti-tobacco media campaign had violated the constitutional rights of the companies by "vilifying" tobacco companies and thereby creating negative images of their corporate identities.<sup>7, 30, 31</sup> In 2003, U.S. District Judge Karlton dismissed the lawsuit by the tobacco companies.<sup>32</sup> The tobacco companies appealed unsuccessfully to the 9<sup>th</sup> Circuit Court of Appeals<sup>32</sup> and the dismissal of the lawsuit was upheld when the U.S. Supreme Court declined to review the case in 2006.<sup>33</sup> This lawsuit backfired on the tobacco industry because Gov. Davis rallied behind the CTCP media campaign and supported release of new ads, several aimed at revealing the tobacco industry's marketing tactics, just a few days after the lawsuit was filed.<sup>34</sup> In a contemporaneous opinion piece directed at the tobacco industry, Gov. Davis stated "[T]he state of California will continue to tell the truth about your product - tobacco kills".<sup>35</sup>

In January 2003, the California legislature securitized (sold future state tobacco settlement revenues for an up-front lump sum payment) 56.57% of the state's future settlement payments from the Master Settlement Agreement for \$2.3 billion. This revenue was allocated to the fiscal year 2003 budget. In September 2003, California securitized more of its settlement payments and received \$3 billion, which was allocated to the fiscal year 2004 budget.<sup>36-38</sup> The state sold an estimated \$7.9 billion in future tobacco settlement payments for \$5.3 billion.<sup>39</sup> As a result, the State of California will not begin receiving unencumbered MSA payments again until 2023. While MSA funds had previously been a source of monies for CTCP in only one Davis budget (\$20 million in FY2002 for a youth smoking prevention media campaign<sup>6</sup>), MSA payments were now removed as a potential funding resource for tobacco control.

A troubling aspect of the way California securitized the MSA payments is that the state guaranteed its bonds with general fund monies, and hence lost the advantage of transferring the risk of default by the tobacco companies to the bond investors.<sup>40</sup> Although pledged tobacco settlement revenues are the expected source of payment for the bonds, ultimate security is based on the covenant that the state director of finance will request that the governor include an appropriation for the full amount of debt service, and operating expenses, due in the next fiscal year in the annual state budget act.<sup>41</sup> In effect, California is still wedded to the success of tobacco sales to ensure that general funds are not required to pay off the tobacco bonds, a fact that could be used by pro-tobacco forces to argue against reducing smoking.

Despite lack of adequate political leadership and funding for tobacco control, adult smoking prevalence during the Davis era declined from 18.0% in 1999 to 15.4% in 2003, a decline of over 14% (Figure 1a), and consumption fell from 47.2 packs in 1999 to 34.7 packs in 2003, a decline of more than 26% (Figure 1b).

In a special election on October 7, 2003 Gov. Gray Davis was recalled from office and replaced by Gov. Arnold Schwarzenegger (R). Gov. Schwarzenegger was reelected to a full term as governor in

November 2006.

## THE SCHWARZENEGGER ADMINISTRATION

The tenor of tobacco control policy under Gov. Schwarzenegger’s administration was neither openly supportive or hostile. However, his public persona as a cigar-smoking deal-making governor with a “smoking tent” in a state capitol courtyard (of dubious legality) to broker deals in while smoking cigars showed a disposition not unfriendly to tobacco interests.

### The Schwarzenegger Tobacco Control Budgets

During his first term as Governor, Arnold Schwarzenegger did not divert any funds from Proposition 99 revenues as specified by Proposition 99: 20% of the total Proposition 99 revenues were allocated to the Health Education Account and 5% of the total Proposition 99 revenues were allocated to the Health Research Account (Table 2). Because the Davis administration had supported an increase in tobacco control programs by spending down all of the reserves in the Health Education Account and the Health Research Account, Gov. Schwarzenegger’s first budget (2004-2005) had only current revenues to spend resulting in overall cuts to the tobacco control program with all components reduced by roughly 10-15% (media campaign, competitive grants, local lead agencies, Department of Education). The Tobacco Related Disease Research Program suffered a 27 % reduction in its expenditures as compared to monies spent in the prior year in FY2004 (Table 2). Fiscal year 2006 saw little change in the tobacco control budget for any of the program components.

While cigarette consumption rates continued to fall (Figure 1b), the collection rate for tobacco excise taxes increased after the passage in 2003 of Assembly Bill (AB) 71 that required the licensing of all manufacturers, distributors, wholesalers, importers and retailers of tobacco products and increased the penalties for selling tobacco products with no stamp or a counterfeit stamp for the excise tax. The Board of Equalization, responsible for the collection of the tobacco excise tax, has been able to identify and inspect thousands of tobacco merchants from manufacturers to retailers. As a result, cigarette excise tax revenues actually increased in fiscal year 2005, providing additional funds for Proposition 99 programs beginning in fiscal year 2006, but the appropriations for fiscal year 2006 remained nearly the same as for fiscal year 2005. Tobacco control appropriations increased nearly \$6.8 million dollars in fiscal year 2007, with most going to increasing the media campaign, while the Department of Education funding for tobacco prevention education from the Health Education Account has remained virtually flat during the Schwarzenegger administration. TRDRP also benefitted from the increased revenue collections with a \$2 million increase in proposed funding for fiscal year 2008 (Table 2).

	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008*
Total Revenues	371,890	351,157	334,066	324,714	309,950	308,000	331,237	330,480	330,443
Board of equalization fee	-1,283	-1,337	-1545	-2,137	2,387	1,997	-3,620	-4,767	-6,556
Total Revenues to be allocated	370,607	349,820	332,521	322,577	307,563	306,003	327,617	325,713	323,887
<b>HEALTH EDUCATION ACCOUNT</b>									
Beginning balance	63,605	59,487	69,273	12,878	13,539	1,371	11,873	8,742	8,735
Prior year adjustment	-5,739	39,517	-29,018	1,553	-2,906		927		
20% of Total Proposition 99 Revenues	74,121	69,964	66,504	64,515	61,513	61,201	66,247	66,096	66,089
Prop 10 Backfill	14,880	14,900	15,900	21,800	13,400	13,400	12,600	12,600	11,400

	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008*
Interest	2,211	7,350	3,558	2,077	1,478	1,478	2,311	1,166	1,178
Net Resources Listed in the Budget	149,078	191,218	126,217	102,823	87,024	77,450	93,958	88,604	87,402
Total Actual Expenditures	89,592	121,945	113,480	91,173	85,653	73,992	77,272	84,243	77,415
Dept. of Health Services	60,319	93,403	84,928	63,056	58,920	50,932	54,217	61,235	54,361
Dept. of Education	27,722	27,661	28,064	27,933	26,560	23,020	23,004	23,003	23,048
Direct Pro Rate Charges	1,551	881	488	184	173	40	39		
Reserve	59,487	69,273	12,737	11,650	1,371	3,458	3,390	4,430	4,370
<b>RESEARCH ACCOUNT</b>									
Beginning Balance	85,527	75,120	56,334	8,825	8,032	530	1921	2,285	3,777
Prior year Adjustment		109	-46,096	190	-837		-58		
5% of Total Proposition 99 Revenues	18,530	17,491	16,626	16,129	15,378	15,300	16,562	16,524	16,522
Prop 10 Backfill	3,720	3,700	4,000	5,400	3,300	3,300	3,100	3,100	2,900
Interest	531	4,905	2,325	1,169	1,169	1,169	1,330	657	657
Net Resources Listed in the Budget	108,308	101,325	33,189	31,713	27,042	20,299	22,855	22,566	23,856
Total Actual Expenditures	33,188	44,991	24,364	24,513	26,512	19,279	19,390	19,929	22,251
TRDRP	31,311	39,823	19,434	19,434	21,625	14,253	14,253	14,553	16,553
DHS Cancer Registry	1,719	5,050	4,930	4,930	4,738	5,026	5,129	1,128	5,694
Direct Pro Rata Charges	158	118		149	149		6		
Reserve	75,120	56,334	8,825	7,200	530	1,020	405	2,950	1,193

Source: California Department of Finance, Cigarette and Tobacco Products Surtax Fund Expenditures and Available Revenues, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008

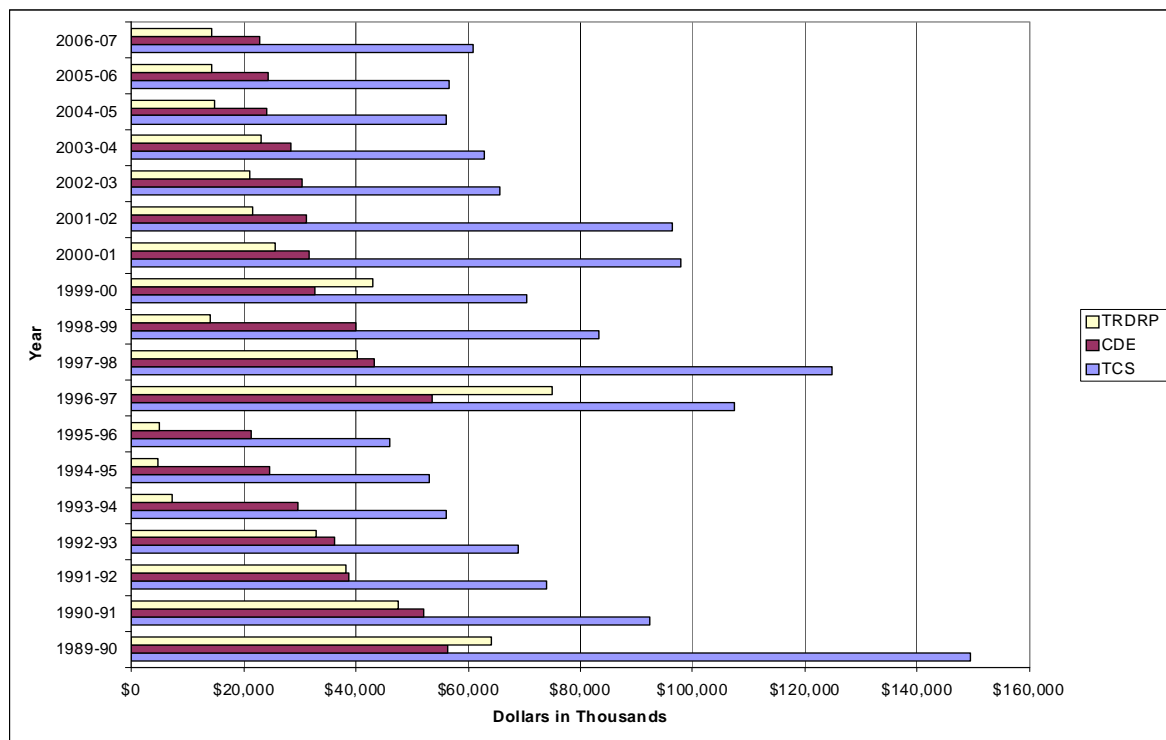
Some of Gov. Schwarzenegger's budget policies have not led to the most effective use of available resources for the CTCP (Table 3). When the Health Education Account dropped from \$85.5 million in fiscal year 2004 to \$77.5 million in fiscal year 2005 because of less budget carry-forward and declining Proposition 99 revenue, the Governor cut the budget for the media campaign from \$16.8 million in 2003-2004 to \$15.7 million in 2004-2005. Meanwhile he maintained the Department of Education funding stream, budgeting a little more than \$23 million each year for the program in 2004-2008 (Table xx). It is not good policy to cut funding for a proven successful intervention such as the media campaign compared to a school-based intervention. An effective anti-tobacco media campaign reflects state of the art understanding of tobacco control and has been consistently associated with reduced consumption of tobacco products, lower youth initiation, and increased cessation among smokers.<sup>42-44</sup> In contrast, school education programs have not been consistently linked to long-term quit rates or sustained reductions in smoking prevalence.<sup>45, 46</sup>

	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008*
<b>HEALTH EDUCATION ACCOUNT</b>									
Dept of Public Health Tobacco Control Section									
Administrative Support	1,016	1,778	1,733	1,790	1,250	2,492	1,826	2,568	3,094
Media Campaign	19,624	45,264	45,264	21,112	16,781	15,695	14,348	19,995	15,695
Competitive Grants	17,690	17,690	17,690	16,775	17,334	15,444	18,044	16,744	15,444
Local Lead Agencies	17,426	17,426	17,426	16,525	19,525	16,215	16,212	16,215	16,215
Evaluation	4,405	4,381	4,381	4,154	3,255	3,641	3,787	5,713	3,913
Tobacco Settlement Funds			20,000						
Multi-year Carryover					775	783	241		
Total	60,161	86,539	106,494	60,356	58,920	54,270	54,458	61,235	54,361
Department of Education	28,011	28,038	28,042	27,996	26,560	23,282	23,004	23,003	23,048
<b>Total from the Health Education Account</b>	<b>88,172</b>	<b>114,577</b>	<b>134,536</b>	<b>88,352</b>	<b>85,480</b>	<b>77,552</b>	<b>77,703</b>	<b>84,238</b>	<b>77,409</b>
<b>HEALTH RESEARCH ACCOUNT</b>									

	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008*
Total to the Tobacco-Related Disease Research Program	38,726	22,627	19,434	19,434	21,625	14,253	14,253	14,553	16,553
Total to the Dept of Health Services' Cancer Registry	1,719	5,050	4,930	4,930	4,738	5,026	5,129	5,372	5,694
<b>Total from the Research Account</b>	<b>40,445</b>	<b>27,677</b>	<b>24,364</b>	<b>24,364</b>	<b>26,363</b>	<b>19,279</b>	<b>19,382</b>	<b>19,925</b>	<b>22,247</b>
<b>TOTAL</b>	<b>128,617</b>	<b>142,254</b>	<b>158,900</b>	<b>112,716</b>	<b>111,843</b>	<b>96,831</b>	<b>96,603</b>	<b>104,163</b>	<b>99,296</b>

\*indicates the proposed expenditures  
Source: California Department of Health Services, Proposition 99 Health Education Account, TCS, Funding, CDE and TRDRP Budget Appropriation Summary

Figure 2 shows trends in expenditures for CTCP by program area since its inception in 2006 dollars (to remove the effects of inflation). The sharp decline in spending for CTCP after 1989 until 1996 reflects the diversion and withholding of funding during the Wilson Administration from the Health Education and Research Accounts. Litigation by the health groups<sup>47</sup> prevented Wilson from spending this money on other programs, but he refused to spend it on tobacco control. When Gray Davis became governor in 1999, he released these Reserve funds over time, accounting for the increase in support for the CTCP beginning in fiscal year 2001. The programs shrunk after these reserve funds were spent.



**Figure 2** Tobacco Control Expenditures 1989-2007 (2006 Dollars)

There has been a steady decline in Proposition 99 revenues from 1989 through 2006 from \$573 million to \$330 million, a 43% decline because of the program's success at reducing smoking. The purchasing power of the remaining money, however, has been seriously eroded by inflation since 1989. For a dollar spent on tobacco control in 1989, California would have to have spent \$1.63 in 2006.

*Diversion of Funds from the Research Account*

Created by Proposition 99 in 1988, the Research Account was intended to be used to fund research

on the causes of and treatments for tobacco-related disease. The Tobacco-Related Disease Research Program (TRDRP) was created by the Legislature to carry out the voter mandate for such research. TRDRP is recognized for funding research that has led to groundbreaking discoveries and advances, and for building a tobacco-related research infrastructure in California of nationally and internationally recognized experts in tobacco-related diseases and tobacco control.<sup>13</sup> From 1990 through 2006, TRDRP has awarded over \$379 million for 1,161 research grants. Examples of recent TRDRP funded research breakthroughs are:<sup>48</sup>

- Identified specific molecules in the brain targeted by nicotine;
- Developed a new immunotherapy for the treatment of small cell lung cancer;
- Found an increase in smoking cessation that was associated with changes in public policies, particularly physician advice to quit, restrictions on smoking in the workplace and taxation;
- Discovered in internal tobacco industry documents research showing that low levels of sidestream smoke can damage the respiratory epithelium, which contributed to the development of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standard states that the adverse effects of secondhand smoke cannot be controlled by ventilation; and
- Confirmed that children receive higher doses of secondhand tobacco smoke (amount per pound of body weight) than adults at all levels of activity.

Fiscal Year	TRDRP	DHS
1996	4,000	1,696
1997	60,422	3,696
1998	32,950	3,697
1999	18,661	3,738
2000	38,726	1,738
2001	22,627	4,948
2002	19,434	4,930
2003	19,434	4,930
2004	23,863	4,738
2005	14,253	5,026
2006	14,253	5,213
2007	14,553	5,372

Source: Annual Budget Acts

While TRDRP enjoyed significant funding in the early years (Figure 2), its funding suffered from Gov. Wilson’s attempted diversion of Proposition 99 funds to health care in fiscal years 1995 and 1996, along with the funding for all other tobacco control programs funded through Proposition 99. However, a different and significant diversion of Research Account money began in fiscal year 1997 and continued through fiscal year 2007, to fund the Department of Health Services Cancer Registry that was created by the Legislature in the late 1980’s to collect data on a statewide basis for all cancers diagnosed and treated in California.<sup>11</sup> This decision, of unknown origin, shifted funding for the Cancer Registry from the Department of Health Services onto TRDRP and reduced the money available for tobacco-related research.

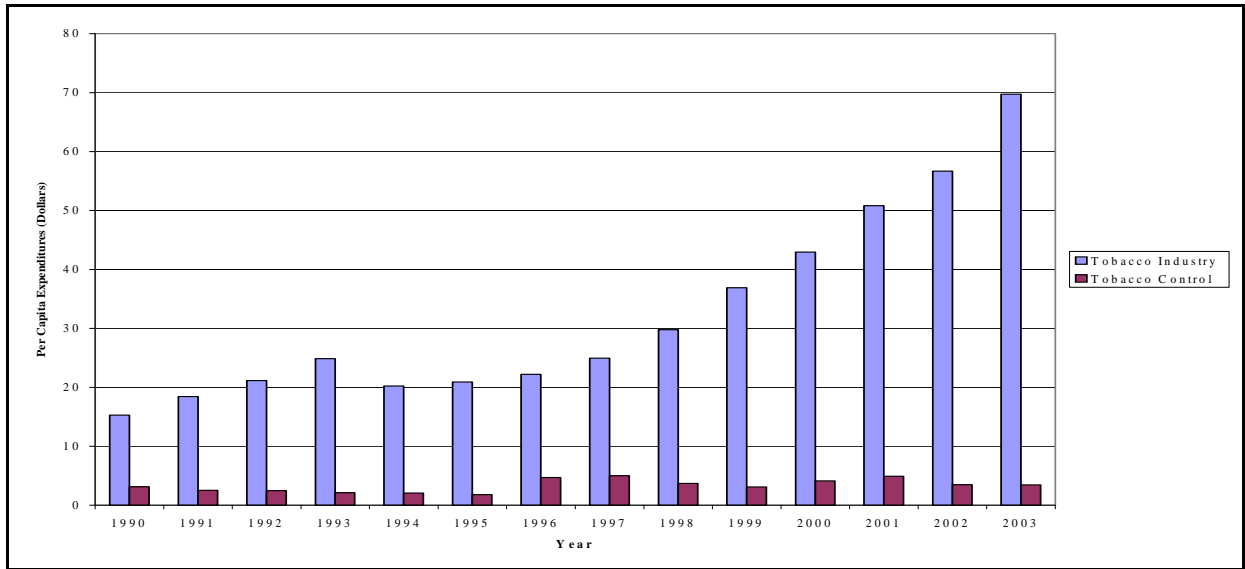
Table 4 shows the growth of the diversion since fiscal year 1996. While DHS reports this appropriation as being for the Cancer Registry program, that may not actually be the case. The Budget Acts for fiscal years 1997-2007 all show the allocation from the Research Account going for the general support of the Department of Health Services. The Budget Acts for fiscal years 2001-2004, however, do specifically allocate a portion of the general appropriation from the Research Account to DHS: \$500,000

for cancer research and \$500,000 for cancer registry data collection. It is unclear from data from DHS how the appropriation from the Research Account is actually being used, or what the annual cost of the Cancer Registry program is. However, TRDRP reports that the Department of Finance and DHS have stated that most of the diverted Research Account money is used as salary support for personnel in the Cancer Registry and in the Environmental Health Investigations unit of DHS.<sup>12a</sup> In the Analysis of the 2006-07 Budget Bill from the Legislative Analyst's Office, a complaint is recorded about the lack of subprogram spending data from DHS.<sup>49</sup> If, in fact, all of the funds appropriated to DHS from the Research Account are not being used for research on tobacco-related issues, then the mandate of Proposition 99 has been violated. As the Proposition 99 revenues have fallen, the increasing appropriation from the Research Account to DHS is having a significantly negative impact on TRDRP funding for research with many highly meritorious research proposals going unfunded.<sup>13</sup> For fiscal year 2008, TRDRP requested that the Governor's Budget shift the diversion of Research Account monies to DHS to the Proposition 99 Unallocated Account. That request was not granted, leaving only the Tobacco Education and Research Oversight Committee to oppose the diversion of TRDRP funds;<sup>13,50</sup> the tobacco control advocates have been silent on this issue.

#### *Oversight of Proposition 99 revenues: The Tobacco Education and Research Oversight Committee*

As mandated by law, the Tobacco Education and Research Oversight Committee makes regular programmatic and budgetary recommendations to the Governor and Legislature. Like his predecessors, Governor Schwarzenegger's budget for CTCP during his first term did not meet the amounts recommended by TERO in the 2003 Master Plan, entitled "Toward a Tobacco Free California, 2003-2005: The Myth of Victory"<sup>50</sup> (reiterated in the Master Plan for years 2006-2008 entitled "Toward a Tobacco-Free California 2006-2008: Confronting a Relentless Adversary: a Plan for Success"<sup>13</sup>). The recommendation was to adjust funding for CTCP to maintain a consistent level of effort per smoker equal to that in the early years of the CTCP by adjusting for inflation and to allow the CTCP to compete with the tobacco industry's marketing spending in California (Figure 3). In real terms, the California tobacco control budget has fallen, while industry spending has intensified. As of 2003, the amount spent by the tobacco industry in California to promote smoking was twenty times the entire budget of CTCP.<sup>13</sup> To address these concerns, TERO developed a budget summary<sup>13</sup> that calculated the purchasing power CTCP needed to offset the tobacco industry's spending on promotional activities in California, such that it would match the effectiveness of program dollars in 1989 when it competed with industry dollars successfully and tobacco use in California dropped steeply (1989-1993).<sup>7</sup> To meet these spending goals, revenues from sources other than Proposition 99 would be required.





**Figure 3** Per Capita Tobacco Industry and Tobacco Control Expenditures, 1990-2003

Source: Tobacco Education and Research Oversight Committee<sup>13</sup>

Table 5 presents these recommendations and the actual dollars spent for the CTCP. The recommendations by TEROC were in the mid-range of the \$165.1 million to \$442.4 million funding levels for California recommended by the Center for Disease Control and Prevention (CDC) “Best Practices” for comprehensive state tobacco control programs.<sup>51</sup> Gov. Davis’ budget for 2003-2004 for the tobacco control program was \$110 million (Table 5), underfunding the program by \$200.5 million. These recommendations went unheeded, so that in FY 2004 California’s tobacco control program was only funded at 35% of the CDC recommended funding for California.

Program Component	Actual FY 03-04	TEROC FY 03-04	Actual FY 04-05	TEROC FY 04-05	Actual FY 05-06	TEROC FY 05-06	Actual FY 06-07	TEROC FY 06-07	Proposed FY 07-08	TEROC FY 07-08
CDHS/TCS	58.9	158.3	54.3	163.1	57.8	154.9	61.2	159.6	54.4	164.4
CDE	26.6	77.6	23.2	79.9	23.1	72.9	23.1	78.3	23.1	80.6
TRDRP	21.6	74.5	14.3	76.7	14.2	76.0	14.5	75.1	16.5	77.4
Total	107.1	310.5	91.8	319.7	95.1	303.8	98.8	313.0	94.0	322.4

TCS: Tobacco Control Section  
CDE: California Department of Education  
TRDRP: University of California Tobacco-Related Disease Research Program

## The Tobacco Control Media Campaign

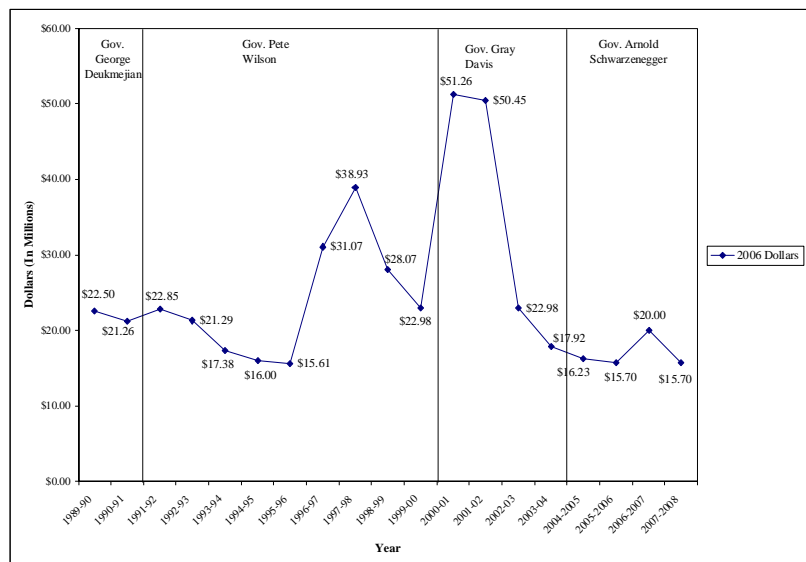
California's Tobacco Education Media Campaign was nationally recognized in its early years for its aggressive hard-hitting advertisements delivered through several forms of media including television, radio, print, billboards and transit. The Campaign's primary messaging has been consistently in three areas: holding the tobacco industry accountable, the impact of secondhand smoke, and trying to convince people that nicotine is addictive.<sup>31, 52</sup>

### *Overview of Administration Policy for the California Tobacco Education Media Campaign*

The media campaign was launched while George Deukmejian (R) was governor. Governor Deukmejian delegated the content of the campaign to the Department of Health, which ran a large, aggressive campaign that had substantial effects on smoking.<sup>52</sup> As noted above, when Pete Wilson (R) became governor in 1991, the campaign came under immediate attack and was only restored after the American Lung Association sued the governor. Despite Governor Wilson's attempts to shut down the program, more than 20 advertisements were produced each year through 1995, however the most effective messaging contents of the ad campaign were tempered.<sup>7</sup> When Wilson left office, his policy of refusals to approve waiting ads was a legacy inherited by the newly elected Governor Davis in 1999. While Governor Davis did not oppose the media campaign outright as Governor Wilson had, he remained slow to approve the advertisements until pressed by the health groups and TEROC.<sup>7</sup> Davis did renew the release of advertisements that focused on the misdeeds of the tobacco industry, despite a lawsuit by R.J. Reynolds and Lorillard that sought to stop the ads.<sup>34, 35</sup> He also for a short period during fiscal year 2000-2001 and fiscal year 2001-2002 augmented the budget for the media campaign and increased funding to \$45.3 million, after political pressure from the American Heart Association and Americans for Nonsmoker's Rights,<sup>7</sup> by using previously restricted funds and carryover from the previous year. Once these funds were expended, however in FY2004 he reduced the media campaign budget to \$16.8 million.<sup>7</sup>

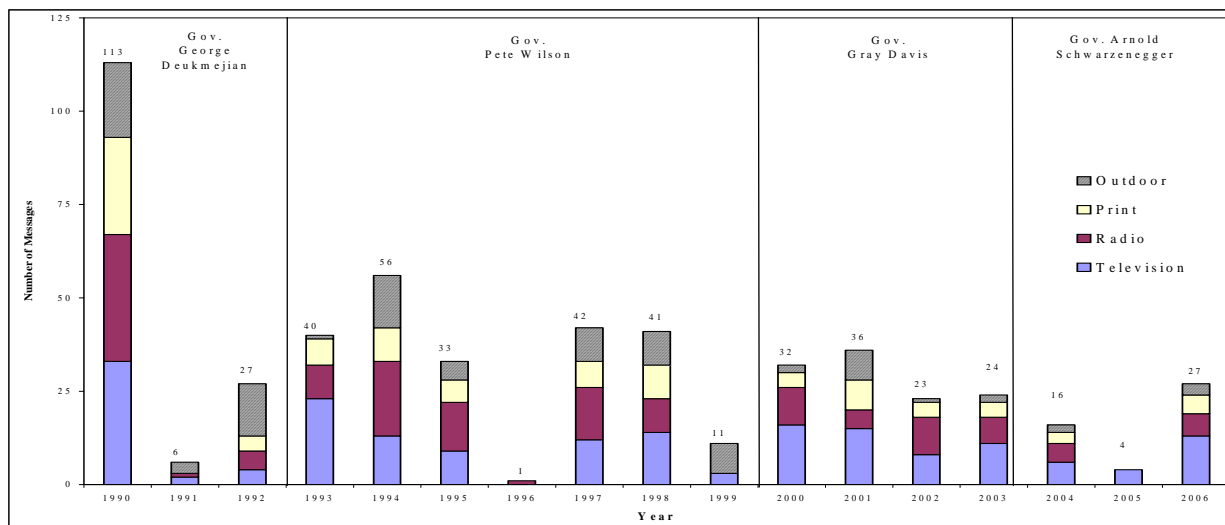
Governor Schwarzenegger's first term in office was similar to Governor Wilson's first term in his handling of the media campaign, in that he was slow to approve advertisements. But he was also more like Gov. Davis in that his first two budgets allocated \$15.7 million dollars for FY2005 and \$14.3 million for FY2006, and the budget increased to nearly \$20 million for FY2007 for the media campaign (Figure 4).

In 2005, only 4 advertisements were produced (Figure 5). The advertisements produced in 2004 involved 9 that targeted the tobacco industry, 2 that addressed secondhand smoke and 5 that addressed cessation. In 2005, the

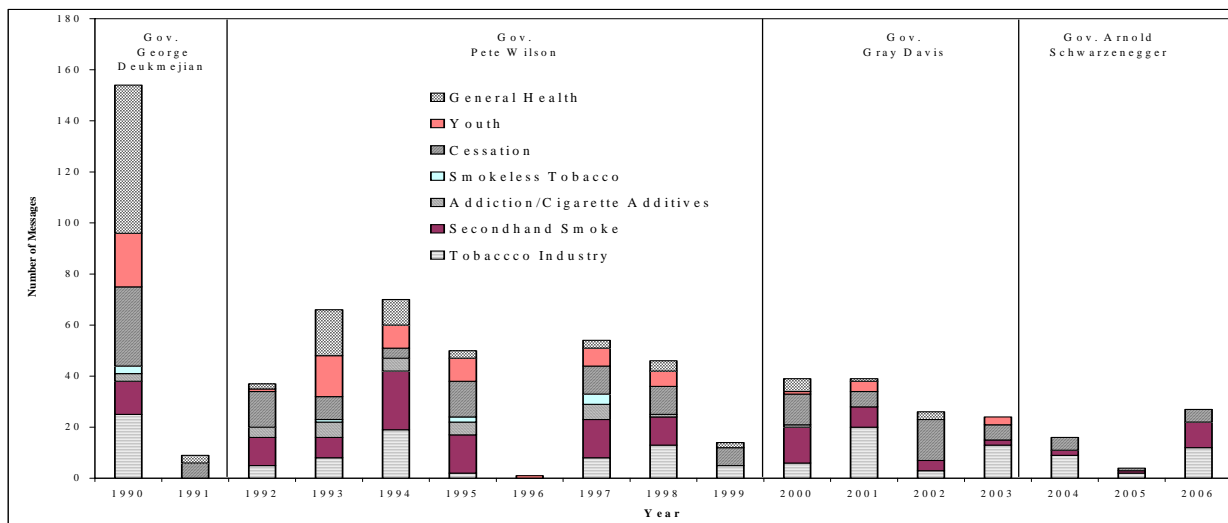


**Figure 4** CTCP Media Funding, 1990-2008  
Source: California Department of Public Health, Tobacco Control Section

4 advertisements again addressed the tobacco industry, secondhand smoke and cessation. Such low production of advertisements has not been seen since the Wilson administration when Governor Wilson tried to shut the program down and approved only 1 ad in 1996. The media program, however, rebounded in 2006 with 27 new advertisements; 5 of the advertisements addressed cessation and 10 advertisements had content messaging about secondhand smoke; 12 addressed the tobacco industry (Figure 6). However, none of those new 2006 advertisements was aired until December 2006. This resurgence in media efforts could reflect a renewed interest in the program by the Administration. Figures 4, 5 and 6 show the trends in funding for the media campaign throughout these administrations with annual budgets, quantity of advertisements produced over the various administrations, and the contents and venues of the advertisements produced, and shown in constant 2006 dollars. Table 6 lists the cumulative total of media messages by subject. While the advertisement content of the media campaign in Governor



**Figure 5** CTCP Media Campaign by Venue and Number of Messages, 1990-2006  
Source: California Department of Public Health, Tobacco Control Section



**Figure 6** CTCP Media Campaign by Type and Number of Messages  
Source: California Department of Public Health, Tobacco Control Section

hwarzenegger’s first term focused on the most effective themes, that of tobacco industry manipulation and secondhand smoke,<sup>53</sup> the low number of new advertisements prior to December 2006 may have affected the success of the campaign.

Table 6 shows the cumulative number of media messages by number and type since the inception of the media campaign.

Cessation	156
Tobacco Industry	144
Secondhand Smoke	134
General Health	112
Youth	78
Addiction/Cigarette Additives	31
Smokeless Tobacco	10
Source: California Department of Public Health, Tobacco Control Section	

### **The California Environmental Protection Agency Report on Secondhand Smoke**

On January 26, 2006 the Air Resources Board (ARB) of the California Environmental Protection Agency (CalEPA) unanimously identified secondhand smoke (also called “environmental tobacco smoke”) as a toxic air contaminant to join such substances as benzene, arsenic and diesel exhaust as an air pollutant harmful to human health.<sup>54</sup> The 1,200-page report drafted by the Air Resources Board and CalEPA Office of Environmental Health Hazard Assessment, drew upon evidence from over 1,000 primary studies on the health effects of secondhand smoke.<sup>55</sup>

Among the adverse outcomes associated with secondhand smoke exposure are heart disease, lung cancer, and nasal sinus cancer. With respect to children, secondhand smoke is linked to sudden infant death syndrome, pre-term delivery, low birth weight, induction and exacerbation of asthma, and chronic respiratory symptoms.<sup>55</sup> For the first time in history, a governmental agency in the US concluded that pre-menopausal women exposed to significant amounts of secondhand smoke were at higher risk for breast cancer by 68% to 120%.<sup>55</sup> The report was based on a rigorous four year scientific study that included public comment and independent peer review by CalEPA’s Scientific Review Panel on Toxic Air Contaminants.

Future directions for the Air Resources Board after its declaration of secondhand smoke as an air contaminant are to evaluate the need for any regulatory action to reduce exposures. This risk assessment would involve an analysis of current measures to control exposure to secondhand smoke, and potential additional ways to further reduce exposure. The Air Resources Board will have three years from January 2006 to consider regulations on secondhand smoke exposure that could be adopted and enforced in California. As of September 2007, no action had been taken.

While neither Governor Schwarzenegger nor the Legislature diverted funds the voters allocated to

tobacco control in Proposition 99, they did not give implementation of an aggressive tobacco control program priority. During this period, the state's tobacco control program had very few new anti-smoking ads and there was no move to increase funding beyond that required in Proposition 99, which meant that inflation continued to erode the purchasing power of the available funds. Despite this lack of priority, during the 2003-2007 period, smoking prevalence among adults and overall consumption rates continued to fall, though at a slower rate than in the past and smoking prevalence among youth increased slightly.

## **ENFORCING THE MASTER SETTLEMENT AGREEMENT**

On November 23, 1998 the Attorneys General of 46 states, including California, and the four major domestic cigarette companies (Brown and Williamson Tobacco Corp, Lorillard Tobacco Co., Phillip Morris Inc, and RJ Reynolds Tobacco Co.) reached an agreement that resolved years of multi-state lawsuits directed at the tobacco companies to recover state governments' costs associated with treatment for individuals suffering from tobacco-related disease.<sup>56,57</sup> The MSA obligated the tobacco companies to pay funds to the settling states in perpetuity with approximately \$206 billion to be paid in total by year 2025.<sup>58</sup> Additionally, the MSA required the tobacco industry to fund a national foundation to develop programs to reduce youth tobacco use and to provide a forum to educate the public about the dangers of tobacco use. Significant marketing restrictions on the tobacco industry were also specified in the MSA, along with an edict to dismantle industry funded research and trade organizations that promoted pro-industry science to discredit evidence of the hazards of cigarette use. The MSA also made publicly available millions of internal tobacco industry documents accessible through the internet. Compliance with the MSA protected the tobacco companies from future litigation by the states for monetary funds to offset health costs associated with tobacco-related morbidity. Enforcement of the MSA is carried out by the attorneys general of each state. The MSA provides for judicial enforcement of its terms, and violations of orders can result in a monetary, civil contempt or criminal sanctions against the tobacco industry.

A vigorous campaign to force the tobacco companies to comply with the MSA provisions in California has been waged by the California Attorney General's office in recent years.<sup>13</sup> The California MSA litigation has involved tobacco industry marketing, youth access to tobacco, advertising restrictions and endorsements, and obligations to pay monies to the state as promised by the MSA.

### **Preventing Marketing Targeting Youth**

In March 2001 Attorney General Bill Lockyer (D) filed a lawsuit against RJ Reynolds, alleging that the company's marketing practices of placing cigarette advertisements in magazines with large youth readership violated the MSA provision that barred marketing of tobacco products to youths.<sup>59</sup> Brands such as Camel, Winston, Salem, Doral, Kool, Lucky Strike, and Pall Mall were advertised in magazines popular with teen readership such as *Sports Illustrated*, *Spin*, *Vibe*, *Rolling Stone*, *Hot Rod*, and *Car and Driver*. In June 2002 San Diego County Superior Court Judge Ronald S. Prager ruled that RJ Reynolds had violated the Master Settlement Agreement and issued a permanent injunction requiring RJ Reynolds to curtail teen exposure to RJ Reynolds tobacco product advertising together with a \$20 million civil penalty. RJ Reynolds appealed Judge Prager's ruling, which was upheld by the 4th District Court of Appeals in February 2004 which concurred that RJ Reynolds advertised to teens to the same degree they targeted adults, showing intent to market to youths. The District Court of Appeals, however, reversed the \$20 million fine, stating that the fine was calculated on the company's national print advertising budget and not

on the effect the targeted advertising had on teens in California. RJ Reynolds appealed the case to the California Supreme Court. The Supreme Court denied further review. In December 2004, RJ Reynolds agreed to pay a total of \$17.25 million in penalties and costs to settle the lawsuit.<sup>60</sup> The settlement also prohibited RJ Reynolds from advertising in a publication if the publication's teen readership exceeds 15% or more of its total readership.<sup>59</sup> The company must also ensure that the number of teens exposed to RJ Reynolds advertisements is 30% below the adult exposure level and that RJ Reynolds not slant any of its products' brand appeal towards youth.<sup>59</sup>

### **State tobacco control laws enforced**

In 2001, the Attorney General sued RJ Reynolds for violating a California law that prohibits the distribution of free tobacco products in any public buildings or on any public grounds where minors are allowed. The trial court found R.J. Reynolds in violation of the California law in May 2002 and levied a fine of over \$14 million. Reynolds appealed that decision, which was upheld by the Court of Appeal in October 2003. Reynolds then appealed to the California Supreme Court, which affirmed in December 2005 the lower courts' findings of liability, but remanded to the trial court the question of whether the fine was too high. On May 8, 2006, Attorney General Lockyer announced that Reynolds had settled the case for \$5 million.<sup>61</sup>

In addition to enforcing the marketing restrictions related to youth that are in the MSA, the Attorney General actively enforced related state laws limiting tobacco marketing to youth. In February 2004, the Attorney General settled another lawsuit against R.J. Reynolds and a Reynolds marketing agent alleging that in 2003 the marketing agent distributed free Reynolds tobacco products on public grounds where minors were allowed.<sup>62</sup> The settlement included a payment of \$60,000 in lieu of civil penalties with 90% of the money to be used for projects that support youth and young adult tobacco control advocacy in California through the California Youth Advocacy Network.<sup>63</sup>

### **Enforcing the California Non-participating Manufacturers Statute**

The MSA includes a non-participating manufacturer (NPM) adjustment provision for the settling states to prevent competitors of the original participating manufacturers of the MSA (e.g., Philip Morris, RJ Reynolds, Brown and Williamson, and Lorillard) from gaining a market advantage as a result of the participating manufacturers need to raise their cigarette prices to make the MSA payments to the states.<sup>58, 64</sup> The intent of the "NPM adjustment" is to pressure the settling states to pass a "qualifying statute" whereby the states require all cigarette manufacturers selling cigarettes within the state to either join the MSA (and make commensurate payments to the state) or place a specified per-pack amount in an escrow fund.<sup>64</sup> If the state does not pass a "qualifying statute" the MSA provision penalizes the state by a reduction in state tobacco settlement payments from the participating manufacturers (the "NPM adjustment").

California did pass such a qualifying statute, the Non-Participating Manufacturer (NPM) Reserve Fund Statute (California Health and Safety Code, §§104555 - 104557) in 1999 (SB822) that requires every tobacco product manufacturer selling cigarettes to consumers in California to either become a participating manufacturer by signing the MSA or place in a qualifying escrow fund a specified sum (in 2007 \$.0188 per cigarette sold in California the previous year). The Attorney General has vigorously pursued identification

of violators of this law. A number of NPMs have violated the California statute and were prohibited by a court from selling their tobacco products to consumers, distributors, and retailers within California state until they by law pay into an escrow account and show proof of full compliance:

2003: PT. Bentoel Prima; Sekap S.A. Greek Cooperative Cigarette Manufacturing Company.<sup>65</sup>

2004: Sekap S.A. Greek Cooperative Cigarette Manufacturing Company; GTCV Industries, LTD aka Golden Tobacco Company; Grand River Enterprises/6 Nations, Ltd.; Georgio S.A. Keranis Viomichaniki Emporiki Anonymos, aka Etaireia G.A. Keranis Vee aka Keranis Holdings S.A. aka G.A. Keranis; Grand Tobacco Company; Patriot Tobacco Company, PT Wahana Sarana Baladika; Eduardo Aroustamyan; Sekap, Greek Cooperative Cigarette Manufacturing Company (2 cases); Sumatra Tobacco Trading Company NV; Tabacalera Boqueron S.A.; M/S Mohanlal Hargovinddas; Sinnar Bidi Udyog Ltd., Shrirang Sarda and Kisanlal Bastiram Sarda.<sup>66</sup>

2005: W100 Importacao E Exportacao LTDA.; CIG-TEC Tobacco, LLP.<sup>67</sup>

2006: Grand River Enterprises/6 Nations Ltd.; Mighty Corporation, Intercontinental Pacific MFG and National Tobacco; China National Tobacco; Sekap S.A. Greek Cooperative Cigarette Manufacturing Company; M/S Mohanlal Hardovinddas; Intercontinental Pacific Mfg; GTC Industries, LTD aka Golden Tobacco Company; G.A. Keranis (Tobacco) S.A.<sup>68</sup>

The California Cigarette and Tobacco Products Licensing Act of 2003 (AB 71) requires the Attorney General to post on the Internet a list of all tobacco product manufacturers that participate in the MSA, and all non-participating manufacturers that are in compliance with the terms of the MSA and who are making payments into an escrow account.<sup>69</sup> The bill provided that it would be illegal to sell, possess for sale, or affix tax stamps to tobacco products if the manufacturer of the products is not included on the Attorney General's list. Of the companies pursued by the Attorney General 2003-2006, only Grand Tobacco complied with the payment requirements and was authorized to market its cigarettes in California as of September 7, 2007.<sup>70</sup>

### **Enforcing the Annual MSA Payments Obligation**

In 2006, the participating manufacturers claimed that the NPM adjustment provision in the MSA allowed them to unilaterally reduce their annual payments to all of the states. The participating manufacturers maintained that their aggregate national market share decreased from 99.6% in 1997 to 92% in 2003 as a result of the cost-disadvantage created by the MSA payments to the states.<sup>71</sup> They maintained that non-participating manufacturers gained part of the participating manufacturers' market share because of their lower cigarette prices and hence the major tobacco companies could seek to reduce their settlement payments. In April 2006, Attorney General Lockyer sued Philip Morris, RJ Reynolds and Lorillard and 27 smaller tobacco manufacturers to prevent them from withholding from their 2006 payment to California \$153.4 million to offset what the tobacco companies claimed was an overpayment in 2003.<sup>72</sup> While the MSA does include a provision which ties MSA payments to aggregate market share, the MSA does not automatically entitle the tobacco companies to the NPM adjustment. Two conditions must also be met to award them the reduction. First, the Independent Auditor, hired jointly by the participating manufacturers and the Attorneys General serving on the Executive Committee of the National Association of Attorneys

General to make all payment calculations under the MSA, must determine that the MSA was a significant factor contributing to the market share loss. Second, the tobacco companies cannot receive an offset of their settlement payments from a state if the state has been proactive in enforcing laws that equalize market competition between participating and nonparticipating manufacturers vis-a-vis product pricing. In 2006, Philip Morris made all of the required payments to California and the 45 other settling states. In August 2006, the court ordered the remaining parties to arbitration as provided for in the MSA. As of September 10, 2007, the proceedings in the case were stayed by the court while the parties finalized documents settling the case.

### **Multi-state MSA enforcement activities**

A settlement between RJ Reynolds and the Attorneys General of 38 states and California was reached in October, 2006 which prohibited RJ Reynolds' future marketing and sales in the United States of its candy, fruit and alcohol-flavored cigarettes.<sup>73</sup> Flavored Camel, Kool and Salem cigarettes and further development of flavored cigarette products other than those flavored as tobacco or menthol are prohibited. The Attorneys General alleged that RJ Reynolds had violated the provision of the MSA which prohibited youth targeting of tobacco products by their advertising and promotion of flavored cigarettes with youth appeal.

Among the restrictions in the settlement are:

“The name of the cigarette may not be that of a candy, a fruit or an alcoholic beverage, and may not include any of a number of specified terms that evoke imagery of candy, fruit or alcoholic beverages.”

“RJR may not use print advertising, point of sale materials, exterior packaging or non-age-verified direct mail or internet advertising that contain: names of a candy, a fruit or an alcoholic beverage; any of a number of specified terms that evoke imagery of a candy, fruit or alcoholic beverages; or imagery of candy, fruit or alcoholic beverages.”

“RJR may not distribute scented promotional materials, such as ‘Lift and Sniffs’ or ‘Scratch and Sniffs.’”<sup>73</sup>

### **Other Multi-state Tobacco Enforcement Activities**

In addition to activities directly tied to enforcing the MSA, Attorney General Lockyer participated in several multi-state activities to control the activities of the tobacco industry.

#### ***Controlling Sales to Youth in Major Retail Chains***

Since 2000 the California Attorney General has led a multi-state enforcement effort in conjunction with 34 other state Attorneys General focusing on retailers with poor records of selling tobacco products to minors. Although most states prohibit sales of tobacco products to minors, compliance with such provisions has been spotty among some retailers. The aim of the Attorneys General in their enforcement program has been to implement specific goals as “best practices” to reduce sales to minors, which were



designed by the Attorneys General in consultation with researchers, and state and local tobacco control officials.<sup>74</sup> These “best practices” were crafted to be part of a contractual agreement between the Attorneys General and the non-compliant retailers and are meant to advance corrective actions through “Assurances of Voluntary Compliance” (AVC) and require the stores to:

- Prohibit self-service displays of cigarettes and the use of vending machines to sell tobacco products
- Prohibit the sale of smoking paraphernalia to minors
- Check the ID of any person purchasing tobacco products when the person appears to be under age 35
- Hire an independent entity to conduct annual, random compliance checks of fifty percent of the outlets.
- Transition to cash registers programmed to prompt ID checks on tobacco.
- Train employees on state laws and company policies regarding tobacco sales to minors

As of June 2006 Chevron was the 10<sup>th</sup> company to adopt the AVCs as part of an agreement with the Attorneys General, joining retailers Wal-Mart, CVS, Walgreens, Rite Aid and 7-Eleven stores, and all gas stations and convenience stores operating under the Exxon, Mobil, BP, ARCO, Amoco, and ConocoPhillips (Conoco, Phillips 66 and 76 gas stations) chains. These stores in combination with Safeway Inc.’s AVC agreement in California comprise more than 73,000 retail outlets across the U.S. These AVC agreements govern youth access to tobacco products at the nation’s top retail chain, Wal-Mart, the number one drug store chain, Walgreens, the largest oil company, ExxonMobil, the biggest retailer of tobacco products, 7-Eleven, and the largest retail pharmacy, CVS.<sup>74</sup>

### ***Preventing Internet Tobacco Sales***

In 2006, Attorney General Lockyer, allied with attorney generals of 33 other states, reached agreements with Philip Morris and Lorillard Tobacco to implement protocols aimed at curbing illegal internet cigarette sales.<sup>75, 76</sup> The restrictions imposed on Philip Morris and Lorillard Tobacco are: “termination of shipments of cigarettes to any of its direct customers that Attorneys General have found to be engaging in illegal Internet and mail order sales; reduction of the amount of products made available to direct customers found by the Attorneys General to be engaged in the illegal sale of said tobacco company cigarettes to Internet vendors; and suspension from the company’s incentive programs any retailer found by the Attorneys General to be engaging in such illegal sales”.<sup>75, 76</sup> Numerous state and federal laws are breached by Internet sales of cigarettes including: the federal Jenkins Act, which require that sales be reported to state tax authorities; federal mail and wire fraud statutes; and the federal Racketeer Influenced and Corrupt Organizations (RICO) statute. Federal smuggling, cigarette labeling, money laundering and contraband product laws are also violated when Internet sales of cigarettes are sold by foreign web sites.<sup>75, 76</sup>

### ***Attempting to close a loophole in the federal definition of “cigarette”***

In April 2006, the California Attorney General, in conjunction with 22 other states petitioned the federal Alcohol and Tobacco Tax and Trade Bureau to adopt rules revising the definition of cigars and cigarettes, in reaction to the marketing of “little cigars”.<sup>77</sup> In May 2006, 16 additional states and Guam

joined as petitioners. They maintained that “little cigars” are cigarettes in disguise and a statutory loophole in the Internal Revenue Code allows the tobacco companies to self-classify their products as cigars when operationally they are cigarettes. The classification of “cigar” offers significant benefits to tobacco manufacturers in that they pay lower taxes and also do not have to sell “little cigars” in quantities of 20, as with cigarettes. Hence, this is extremely appealing to youth who purchase these “little cigars” individually as cost is cheap and also these “little cigars” often come sweetened with flavors making them even more attractive to youth. This definition is important because sales of cigars are not subject to the youth and other marketing restrictions mandated by the MSA and cigar makers do not have to place federal health warnings on their products. The success of these “little cigars” is evident in that from 1998 to 2006, the little cigar market grew 167%, while the cigarette market declined 17%. Little cigar sales increased 52% over the period 2004 to 2006.<sup>78</sup> The ultimate goal of the Attorneys General action was to eliminate the loophole by prohibiting the cigarette industry from self-classifying their products as cigars.

On October 25, 2006, the Alcohol and Tobacco Tax and Trade Bureau issued its Notice of Proposed Rulemaking<sup>79</sup> that interpreted and applied the statutory definitions of “cigar” and “cigarette” in a way intended to close the loophole. The comment period on the proposed rule ended March 26, 2007. The Attorneys General filed a comment strongly supporting the proposed rule, with some suggestions for clarification.<sup>80</sup> As expected, comments from the major tobacco companies that have been losing market share to little cigars generally supported the proposed rule, while the manufacturers of little cigars strongly objected to the proposed rule.<sup>81</sup> As of October 2007, the final rule had not yet been issued.

### *Smoking in the Movies*

In 2003, California Attorney General Lockyer asked the Motion Picture Association of America (MPAA), the major motion picture studios’ lobbying organization, and the movie industry to support World No Tobacco Day and later that year joined 24 other Attorneys General in signing a letter to MPAA urging it to use its leadership to reduce the depiction of smoking in movies accessible to youth.<sup>82</sup> The MPAA did not respond. In 2005, 32 Attorneys General asked the industry to add anti-smoking public service announcements on all DVD and other home video movie media in which smoking is depicted.<sup>83</sup> While Gen. Lockyer did not sign this letter, he did sign the 2006 follow-up letter on the same issue that included three specific public service announcements.<sup>84</sup>

In October 2006, Dan Glickman, MPAA Chief Executive Officer, wrote to Attorney General Joseph Curran of Maryland, lead Attorney General in the smoke-free movies campaign, that MPAA had invited recommendations from the Harvard School of Public Health on smoking in the movies and would work among its member studios to gain consensus on implementing the recommendations.<sup>85</sup>

In February 2007, the Harvard School of Public Health made its formal presentations of its recommendations to MPAA and the representatives of Directors Guild of America, National Association of Theater Owners, Screen Actors Guild and 8 major movie studios.<sup>86</sup> The recommendation was unequivocal: “Take substantive and effective action to eliminate the depiction of tobacco smoking from films accessible to children and youth, and take leadership and credit for doing so”,<sup>87</sup> which included reference to the recommendation by Attorneys General, the American Medical Association, WHO, advocacy groups and others that the R rating be applied to movies depicting tobacco smoking.<sup>88</sup>

On May 1, 2007, 32 Attorneys General signed a letter urging the movie studios to fulfill the commitment to implement the Harvard School of Public Health recommendations.<sup>89</sup> California Attorney General Jerry Brown did not sign the letter.

The MPAA issued its response to the Harvard School of Public Health recommendations on May 10, 2007, that its Rating Board would “consider” smoking in three ways: Is the smoking pervasive, does the film glamorize smoking, and is there an historic or other mitigating context?<sup>90</sup> A group of 32 Attorney General responded that the MPAA process “falls short of the recommendations you sought and received from the Harvard School of Public Health. . . .”<sup>91</sup> California Attorney General Brown did not sign this letter.

Overall, the Office of the Attorney General has carried out its responsibilities under the Master Settlement Agreement with vigor and determination to force, when necessary, the tobacco industry to abide by it.

## **TOBACCO INDUSTRY POLITICAL EXPENDITURES IN CALIFORNIA: A RESURGENCE**

Campaign contributions and lobbying are two ways in which the tobacco industry exercises political power. On average, legislators who receive more campaign contributions from the tobacco industry exhibit more pro-tobacco behavior and pro-tobacco legislators are rewarded with larger campaign contributions.<sup>92, 93</sup> In 2005-6 the tobacco industry spent a total of \$4,359,205 on state level political activities and \$62,571,827 to defeat Proposition 86, the Tobacco Tax Act of 2006, for a combined total spent to influence California tobacco politics of \$66,931,032. The \$4,359,205 spent on state level political activities in 2005-2006 was up 7% from 2003-4, when the industry spent \$4,086,553.

### **Data Sources**

Data provided in this report on the political expenditures made by the tobacco industry in the state of California for 2003-2006 were collected from disclosure statements filed with the Political Reform Division of the California Secretary of State’s Office.<sup>94</sup> The following organizations were included to define the “tobacco industry” and the streams of campaign contributions as derived from them: Cigar Association, Altria /Philip Morris/Kraft, R.J. Reynolds, Smokeless Tobacco Council, California Distributors’ Association, Lorillard Tobacco Company, US Tobacco, Cigarettes Cheaper and the Cigar Association. In 2004 Brown and Williamson merged with R.J. Reynolds tobacco company so Brown and Williamson was not identified as a tobacco company in this analysis of campaign contributions for the 2005-2006 election cycle. Kraft Foods as a subsidiary of Altria was classed with Altria in the totaling of contributions made by Altria, the parent company. In 2002, Miller Brewing was acquired by South African Breweries from Philip Morris (now a subsidiary of Altria), so no contribution data from Miller Brewing were included in this report.

The information provided in this report includes campaign contribution data on the part of the tobacco industry to individual legislators, political parties, political party-controlled committees, state constitutional officers and candidates and expenditures made for lobbying legislative and administrative officials. Comprehensive data on campaign contributions made to these groups from the tobacco industry were collected for the period January 1, 2003 to December 31, 2006. A complete list of all elected officials to the legislature and their tobacco industry campaign contributions, stratified by each respective tobacco

company, and their tobacco policy scores are listed in Appendix A. Appendix B lists tobacco industry contributions made to political parties and committees, again stratified by tobacco company. Appendix C lists tobacco industry campaign contributions made to constitutional officers elected in the 2003-2006 cycles, stratified by tobacco company.

Political organizations such as §527 groups, created pursuant to the Internal Revenue Code, are not regulated by the California Secretary of State’s Office, and are not subject to the same contribution limits as PACs, are required to file reports on contributions and expenditures with the IRS. Our research for the period 2003-2007 found no §527 organizations that spent money in California elections, and had received money from any of the tobacco companies.

### Political Parties and Committees

Contributions to political parties are a way for the tobacco industry to support candidates without making direct contributions to them. Because party committees are generally controlled by legislative leaders, party contributions are another way for the industry to increase its influence with leaders. In 2003-2004 the tobacco industry contributed a total of \$679,654 to California’s political parties and political party controlled committees; \$624,654 went to the Republicans (91.9%) and \$55,000 (8.1%) went to the Democrats. Of the total contributions to political parties and committees in 2005-2006, \$1,433,300 was contributed to the California Republican Party and other Republican party controlled committees and no monies were contributed to Democratic party (Table 7). Tobacco industry contributions in the 2005-2006 election cycle exceeded those given in 2003-2004 by \$753,646. (A complete list of tobacco industry campaign contributions from each of the individual companies is in Appendices A, B and C).

<b>TABLE 7 Contributions Made by the Tobacco Industry to Political Parties/Committees 2003-2006</b>		
	2005-2006	2003-2004
<b>Democratic Party</b>		
California Democratic Party	\$0	\$5,000
Los Angeles County Democratic Party State Issues and Advocacy Committee	\$0	\$25,000
Merced County Democratic Central Committee	\$0	\$25,000
<b>Subtotal for Democratic Party</b>	\$0	\$55,000
<b>Republican Party</b>		
California Republican Party	\$1,377,500	\$444,654
California Republican Victory Fund/San Joaquin County Republican Central Committee	\$0	\$25,000
California Young Republicans, Inc. Victory Fund	\$0	\$10,000
Monterey County Republican Central Committee	\$27,900	\$0
Republican Central Committee of Imperial County	\$0	\$10,000
Republican Party of Orange County	\$27,900	\$25,000
Republican Party of Sacramento County	\$0	\$25,000
Riverside County Republican Central Committee	\$0	\$35,000
San Bernardino County Republican Central Committee	\$0	\$25,000
San Diego County Republican Central Committee	\$0	\$25,000
<b>Subtotal for Republican Party</b>	\$1,433,300	\$624,654

<b>TOTAL</b>	\$1,433,300	\$679,654
Source: California Secretary of State		

***Political Action Committees and Ballot Initiative Committees***

During 2003-2006, the tobacco industry gave contributions (Table 8) to fourteen political action committees(PACs), three issue committees directed to defeating Proposition 86 in 2006, and one issue committee in 2003-2004 to defeat Proposition 56, which would have lowered the vote required for the Legislature to enact a budget or increase taxes from 2/3 to 55% (Table 9). For most of the these PACs and committees, tobacco industry contributions did not make up the lion's share of contributions received by these groups. The Proposition 86 issue committees received \$66,582,857 from the tobacco industry and were nearly fully funded (99.99%) by it. The Californians Against Higher Taxes - No on 56 Committee contributions from the tobacco industry were only \$740,863 (7.9%) out of a total of \$9,403,108. Every major business and business trade association in California contributed to the No on 56 committee.

	2005-2006	2003-2004
Alliance for California's Tomorrow: A California Business and Labor Coalition	\$40,000	\$15,000
California African American Political Empowerment PAC	\$52,000	\$30,500
Californians Allied for a Prosperous Economy	\$10,000	\$0
Californians for a Better Future	\$0	\$30,000
California Business Political Action Committee	\$100,000	\$0
California Independent Grocer's and Convenience Stores PAC	\$6,000	\$0
Californians for a Better Economy	\$0	\$15,000
Californians for Civil Justice Reform PAC	\$40,000	\$45,000
Californians United	\$0	\$10,000
Hispanas Organized for Political Equity PAC	\$0	\$5,000
JOBS-PAC	\$0	\$95,000
Political Future PAC	\$0	\$2,000
Small Business Action Committee PAC	\$0	\$45,000
Women Building for the Future -- The Future PAC	\$35,000	\$0
<b>TOTAL</b>	<b>\$283,000</b>	<b>\$292,500</b>
Source: California Secretary of State		

	2005-2006	2003-2004
Californians Against Higher Taxes - No on 56		\$740,863
No on 86 - Stop the \$2 Billion Tax Hike	\$39,292,697	
No on Proposition 86 - Californians Against Unaccountable Taxes	\$27,167,045	
California Association of Liberty and Choice - No on Prop 86	\$123,115	
Source: California Secretary of State		

The tobacco industry's targeting to influence minority groups with campaign contributions was exhibited during 2003-2006. The California African American Political Empowerment PAC received \$52,000 in 2005-2006 from the tobacco companies and also received \$30,500 in contributions in 2003-

2004. Altria donated \$5,000 to the Hispanas Organized for Political Equity PAC in 2003-2004 and while this may seem to be a small amount this PAC had received only \$8,500 in total contributions that year. Women Working for the Future PAC received \$35,000 from Altria in 2005-2006, showing the tobacco industry's interest in an organization directed towards women.

In the primary election on March 2, 2004 Proposition 56 was defeated by a margin of 34.3% to 65.7% by voters.<sup>95</sup> The proposition<sup>96</sup> would have permitted the legislature to enact budget-related bills, such as a tobacco tax bill, with a 55% vote rather than the existing requirement of 2/3 vote in both houses of the legislature.<sup>97</sup> The logic of the tobacco companies in their financial support to defeat this bill is obvious as fewer votes needed to pass a tobacco tax would increase the chances of a tax raise on cigarettes via legislation and thus hurt their market. The tobacco companies contributed \$740,863 to defeat this Proposition in the primary election.

In 2003-2004 the tobacco industry contributed \$45,000 to the California Business and Affordable Housing Council, a Coalition of Civil Justice and Reformers and Builders PAC. What is of note that year is that of the total contributions received by this PAC of \$213,900, approximately \$150,000 of their resources (3/4 of their funds) went to support legislative candidate Abel Maldonado's campaign. However, Abel Maldonado accepted no tobacco campaign contributions in 2005-2006 and received a tobacco policy score of 5.4. In the 2003-2004 election cycle he did receive \$3,600 in tobacco industry contributions for his campaign and in his total career history he has only received \$5,850 from the tobacco companies. Although it may be possible that the tobacco industry had some interest in Abel Maldonado's campaign in 2003-2004, based on this legislator's tobacco control position it is unclear why they would support his campaign through donating to this PAC.

### ***Independent Expenditure Committees***

Under California law, campaign expenditures can be made by persons not controlled by the candidate in support of that candidate or in opposition to a candidate. "Independent expenditures" are those made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, but which is not made to or at the behest of the affected candidate or committee.<sup>98</sup> In one 2006 election campaign, the independent expenditure committees played a huge role. Assembly Members Judy Chu (D, Dist. 49) and Jerome Horton (D, Dist. 51) opposed each other in the 2006 primary election seeking the 4<sup>th</sup> District (Los Angeles County and vicinity) on the Board of Equalization. Among other things, the Board of Equalization oversees the collection of state tobacco taxes. As an Assembly member, Judy Chu accepted no tobacco industry money and had returned a \$1000 contribution from the California Distributors Association PAC (a frequent tobacco industry ally) in 2001-2002 when she learned it included tobacco firms. Chu's policy score is 9.8, and she has a strong anti-tobacco record. In contrast, Jerome Horton has been one of the biggest beneficiaries of tobacco industry largess receiving \$98,500 during his Assembly career, and received a policy score of 4.4. In this Board of Equalization race, Horton received only \$10,900 in contributions directly from the tobacco industry, but he was the recipient of significant benefits from two independent expenditure committees which were heavily supported by the tobacco industry.

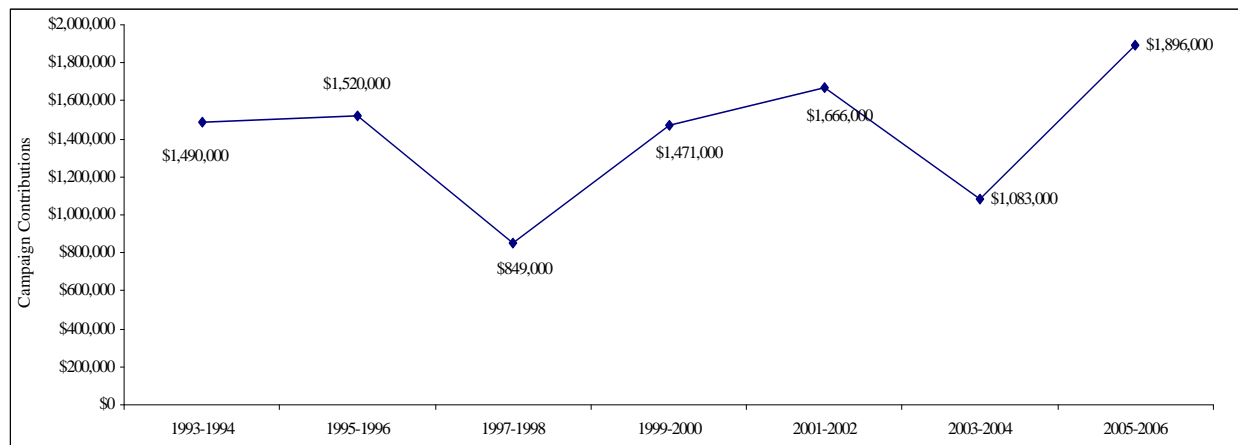
Since independent expenditure committees can both support and oppose candidates, they can double up by supporting one candidate in a race and opposing the other candidate in the same race. In this

election, the California Political Empowerment Committee, a/k/a the California African American Empowerment Committee, supported Horton (\$133,513) and opposed Chu (\$52,753). This Committee received \$45,000 from Kraft Foods, a subsidiary of Kraft Foods, \$5,000 from Lorillard and \$5,000 from UST. A second independent expenditure committee, Alliance for California's Tomorrow, spent \$185,445 for billboards supporting Horton. This committee received \$40,000 from Philip Morris and \$25,000 from UST. These tobacco industry contributions amounted to 32.3% of these committees' total expenditures in this race.

In one campaign episode, the California Political Empowerment Committee ironically mailed out a flyer accusing Chu of being a shill for Big Tobacco. Since it was an independent expenditure committee communication opposing Chu, it was not directly tied to Horton. When this was exposed in the media, Horton tried to distance himself from the independent expenditure committee, adding that he did not condone the attack on his opponent.<sup>99</sup> Despite this substantial effort on behalf of Horton, Chu received 49.7% of the vote to Horton's 31.5%. Two other candidates split the remaining 18.8%.

### Contribution Patterns

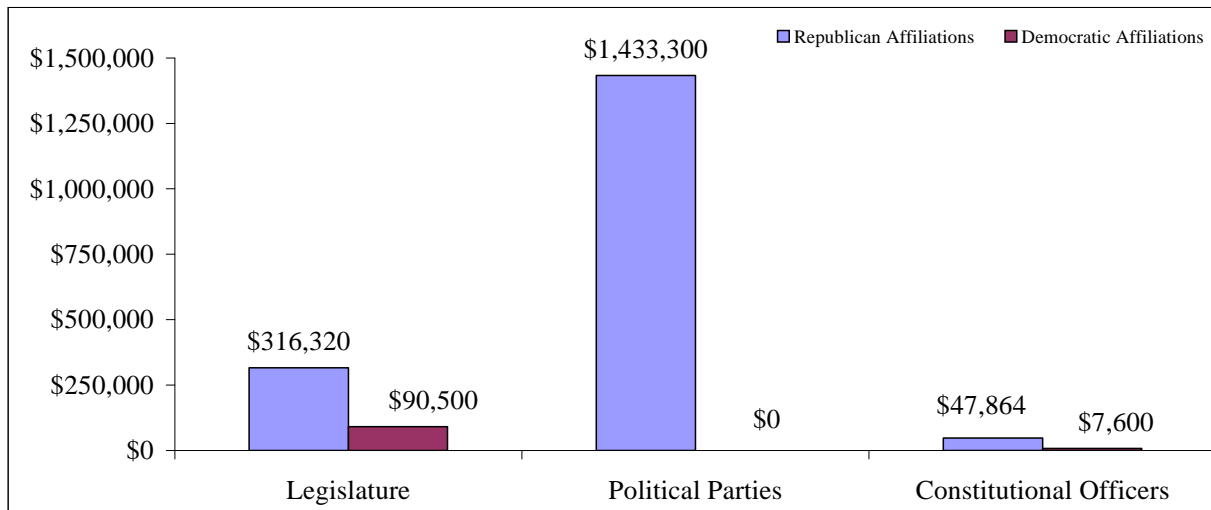
The tobacco industry increased its campaign contributions in 2005-2006, totaling \$1,896,000 to influence legislators, legislative candidates, political parties and constitutional officers, a 43% increase over the previous election cycle (\$1,083,000) in 2003-2004 (Figure 7).



**Figure 7** Trends in the Campaign Contributions from the Tobacco Industry to Elected Officials and Political Parties in California, 1993/94-2005/06

The partisan divide in campaign contributions is extreme, with Republican candidates receiving 78% of the contributions in the 2005-2006 election cycle and 100% of party contributions in 2005-2006 went to the Republican Party (Figure 8). In the 2003-2004 election cycle, \$55,000 was given to the Democratic Party and \$624,654 went to the Republican Party. In the 2005-2006 election cycle the Democratic party received no monies from the tobacco industry and the Republican Party received \$1,433,300 in contributions. In the 2003-2004 election cycle, the tobacco industry spent \$258,694 in campaign contributions to Republican legislators and \$132,500 to Democratic legislators. In the 2005-2006 election cycle the tobacco industry spent \$316,320 in campaign contributions for Republican legislators and \$90,500 for Democratic legislators. In 2003-2004, of the \$1,083,448 that was contributed to the Republicans and Democrats, \$895,948 went to the Republicans (83%) compared to \$187,500 that went to the Democrats (17%). Of the \$1,895,584 that was contributed to the Republicans and Democrats in 2005-

2006, \$1,797,484 went to the Republicans (95%) compared to only \$98,100 to Democrats (5%).



**Figure 8** Total Tobacco Industry Political Contributions by Party Affiliation, 2003-2006

### Tobacco Policy Scores

In order to relate the information on political expenditures by the tobacco industry to legislative behavior, “tobacco policy scores” were created for each member of the 2005-2006 Legislative Session (Appendix A). The score was obtained from polling five individuals with extensive knowledge of the California Legislature and knowledge of tobacco control policy. Each legislator was evaluated based on a scale of 0 to 10. A score of 0 represented an extremely pro-tobacco legislator and a score of 10 represented an extremely pro-tobacco control legislator. The average for each legislator is reported. Legislators with scores ranging from 0.0 to 3.9 are considered pro-tobacco industry, scores ranging from 4.0 to 6.0 are considered neutral, and scores ranging from 6.1 to 10.0 are considered pro-tobacco control.

The average policy scores in the Senate and in the Assembly in the 2005-2006 Legislative Session were similar, 5.7 and 5.6, respectively, showing a small movement towards favoring tobacco control compared with the 2001-2002 legislative cycle, when the average policy scores for the Senate and the Assembly were 5.2 and 5.2, respectively.<sup>7</sup> As in the past,<sup>7, 100</sup> the Republicans were very pro-tobacco with an average policy score of 1.03 and the Democrats were very pro-tobacco control with an average policy score of 8.4. This extreme divide in tobacco control sentiment among Republicans and Democrats was stronger than in the 2001-2002 legislative cycle when the Republicans had an average policy score of 2.6 and the Democrats had an average policy score of 6.7.<sup>7</sup>

In the Assembly, Juan Vargas (D-Dist.79) and Paul Koretz (D-Dist.42) received the highest tobacco policy scores, 10 and Jay La Suer (R-Dist.77) and Dennis Mountjoy (R-Dist.59) received the lowest tobacco policy scores, 0.2. Assembly Republicans received a pro-tobacco policy score average of 1.0 and Assembly Democrats received a pro-tobacco control policy average score of 8.4.

In the Senate, Wesley Chesbro (D-Dist. 2) and Deborah Ortiz (D-Dist.6) received the highest tobacco policy scores, both 10, indicating a strong pro-tobacco control policy position. Senator Tom McClintock (R-Dist.19) received the lowest tobacco control policy score of 0.2, indicating a very strong



pro-tobacco position. The following Senators all received the second lowest tobacco policy score, 0.3: Roy Ashburn (R-Dist.18), James Battin (R-Dist.37), Dennis Hollingsworth (R-Dist.36), Bob Margett (R-Dist.29), Charles Poochigian (R-Dist.14), Robert Dutton (R-Dist.31) and Bill Morrow (R-Dist.38) . These scores indicate a strong pro-tobacco position for the above-mentioned Senators. Senate Republicans received a pro-tobacco policy score average of 1.0 and Senate Democrats received a pro-tobacco control policy average score of 8.5.

**Legislative Officeholders and Candidates**

During the 2005-2006 election cycle, the tobacco industry contributed a total of \$306,306 to 42 members of the Assembly and \$100,514 to 20 members of the Senate, for a total of \$406,820 in campaign contributions. This is a \$15,626 increase from the previous election cycle when a total of \$391,194 was contributed by the tobacco industry to legislative office holders or candidates (Appendix A ).

Contributions from the tobacco industry continued to overwhelmingly favor Republicans over Democrats, and in the past two legislative sessions over two-thirds of contributions went to Republican legislators. During the 2005-2006 legislative cycle, Republican candidates or elected officials received \$316,320 in tobacco industry campaign contributions which accounted for 78% of all tobacco industry campaign contributions in California to legislative office holders; Democratic candidates and elected officials received \$90,500.

**Legislators Receiving the Highest Amounts of Tobacco Industry Campaign Contributions**

Table 10 shows the top 26 recipients of tobacco industry campaign contributions during the 2005-2006 legislative cycle. Assemblywoman Bonnie Garcia (R-Dist. 80) received the most tobacco industry campaign contributions, \$14,800, which is about a \$23,600 decrease from the top recipient during the 2003-2004 legislative cycle, Assemblywoman Audra Strickland (R-Dist.37) who received a total of \$38,400 in contributions (Appendix A). Vice Chair to the Senate Revenue and Taxation Committee Robert Dutton (R-Dist.31) was the top recipient in the Senate, with contributions totaling \$9,100. Additionally, Assemblymen Greg Aghazarian (R-Dist.26), Chuck Devore (R-Dist.70), Mimi Walters (R-Dist. 73) and Senators Dean Florez (D-Dist. 16), Dave Cox (R-Dist.1) and Tom McClintock (R-Dist.19) were also among the top 20 recipients during the 2005-2006 legislative cycle. The average tobacco policy score for the top 26 recipients of tobacco industry contributions was 1.6, which is considerably more pro-tobacco than the remainder of the legislature which received an average tobacco policy score of 5.5.

Name	A/S	Party	District	2005-2006	2003-2004	2002-1976	Tobacco Policy Score	Grand Total
Garcia, Bonnie	A	R	80	\$14,800	\$2,500	\$1,000	1.3	\$18,300
La Malfa, Doug	A	R	2	\$13,350	\$6,400	\$5,000	0.3	\$24,750
Strickland, Audra	A	R	37	\$13,100	\$38,400	\$0	0.3	\$51,500
Houston, Guy S.	A	R	15	\$12,600	\$0	\$0	0.8	\$12,600
Plescia, George A.	A	R	75	\$12,363	\$11,400	\$4,000	0.7	\$27,763
Cogdill, Dave	A	R	25	\$11,800	\$7,400	\$29,000	0.3	\$48,200

Calderon, Ronald S.	A	D	58	\$11,600	\$4,200	\$16,000	4.7	\$31,800
Horton, Shirley	A	R	78	\$11,350	\$2,000	\$0	1.0	\$13,350
Horton, Jerome	A	D	51	\$10,900	\$26,600	\$61,000	4.4	\$98,500
Benoit, John J.	A	R	64	\$10,100	\$7,400	\$4,000	0.7	\$21,500
Spitzer, Todd	A	R	71	\$10,100	\$8,400	\$4,000	0.3	\$22,500
Keene, Rick	A	R	3	\$9,850	\$8,400	\$3,000	0.3	\$21,250
Wyland, Mark	A	R	74	\$9,800	\$4,200	\$14,500	1.5	\$28,500
Dutton, Robert	S	R	31	\$9,100	\$7,900	\$4,000	0.3	\$21,000
Aghazarian, Greg	A	R	26	\$9,100	\$7,400	\$7,000	0.7	\$23,500
DeVore, Chuck	A	R	70	\$8,900	\$5,200	\$0	0.7	\$14,100
Florez, Dean	S	D	16	\$8,600	\$1,000	\$750	8.3	\$10,350
Cox, Dave	S	R	1	\$8,600	\$2,500	\$23,750	0.8	\$34,850
Walters, Mimi	A	R	73	\$8,600	\$3,200	\$0	0.7	\$11,800
McClintock, Tom	S	R	19	\$8,364	\$5,700	\$0	0.2	\$14,064
Emmerson, Bill	A	R	63	\$8,100	\$0	\$0	1.8	\$8,100
Baca, Joe	A	D	62	\$7,700	\$9,700	\$0	6.0	\$17,400
Daucher, Lynn	A	R	72	\$7,700	\$5,200	\$16,500	3.0	\$29,400
Runner, George	S	R	17	\$7,600	\$4,200	\$16,750	1.3	\$28,550
Huff, Bob	A	R	60	\$7,600	\$0	\$0	0.7	\$7,600
Tran, Van	A	R	68	\$7,600	\$0	\$0	0.7	\$7,600
Total				\$259,277	\$179,300	\$210,250		\$648,827

### Elected Officials and Candidates Who Did Not Accept Tobacco Industry Contributions

Table 11 shows the elected officials who did not accept any tobacco industry campaign contributions during the 2005-2006 legislative cycle. The average tobacco policy score for legislators who did not accept tobacco industry contributions was 8.5, indicating a strong pro-tobacco control position. This average score was higher than the average tobacco policy score for individuals not accepting tobacco industry donations during the 2001-2002 legislative cycle, which was 7.3,<sup>7</sup> and much higher than the average tobacco policy score inclusive of all legislators in 2005-2006, which was 5.5. Four of these individuals were Republicans and 54 were Democrats. Additionally, 39 of these legislators not accepting tobacco industry campaign contributions during the 2005-2006 legislative cycle have *never* accepted tobacco industry contributions.

Name	A/S	Party	District	Tobacco Policy Score	Name	A/S	Party	District	Tobacco Policy Score
Alarcon, Richard*	S	D	20	8.3	Levine, Lloyd E.	A	D	40	8.8
Alquist, Elaine*	S	D	13	9	Lieber, Sally J.*	A	D	22	8.8
Arambula, Juan*	A	D	31	6.3	Lieu, Ted W.*	A	D	53	9.3
Bass, Karen*	A	D	47	8.8	Liu, Carol*	A	D	44	8.3
Berg, Patty*	A	D	1	8.8	Lowenthal, Alan*	S	D	27	9

Bermudez, Rudy	A	D	56	7.3	Maldonado, Abel	S	R	15	5.4
Bowen, Debra*	S	D	28	9.4	Matthews, Barbara	A	D	17	4.5
Cedillo, Gilbert	S	D	22	8.8	Montanez, Cindy*	A	D	39	9.4
Chan, Wilma*	A	D	16	9.8	Mullin, Gene*	A	D	19	9.6
Chavez, Ed	A	D	57	6.5	Nakanishi, Alan	A	R	10	1
Chesbro, Wesley*	S	D	2	10	Nation, Joe	A	D	6	9.2
Chu, Judy**	A	D	49	9.8	Nava, Pedro*	A	D	35	9
De La Torre, Hector*	A	D	50	8.8	Oropeza, Jenny	A	D	55	9.8
Dunn, Joseph*	S	D	34	9.5	Ortiz, Deborah*	S	D	6	10
Dymally, Mervyn M.	A	D	52	9	Perata, Don	S	D	9	7.8
Escutia, Martha*	S	D	30	9.8	Richman, Keith	A	R	38	2.2
Evans, Noreen*	A	D	7	9.3	Ridley-Thomas, Mark	A	D	48	8.8
Figuroa, Liz*	S	D	10	8.8	Romero, Gloria*	S	D	24	9.8
Frommer, Dario*	A	D	43	9	Ruskin, Ira*	A	D	21	9.3
Goldberg, Jackie*	A	D	45	9	Saldana, Lori*	A	D	76	9.3
Hancock, Loni*	A	D	14	9.4	Salinas, Simon	A	D	28	9
Jones, Dave*	A	D	9	9	Scott, Jack*	S	D	21	9
Kehoe, Christine*	S	D	39	8.3	Simitian, Joseph	S	D	11	7.8
Klehs, Johan*	A	D	18	9	Soto, Nell	S	D	32	9.3
Koretz, Paul*	A	D	42	10	Speier, Jackie*	S	D	8	9
Kuehl, Sheila*	S	D	23	9.8	Torlakson, Tom*	S	D	7	9.8
Laird, John*	A	D	27	9.2	Vargas, Juan	A	D	79	10
La Suer, Jay	A	R	77	0.2	Wolk, Lois*	A	D	8	8.3
Leno, Mark*	A	D	13	9.8	Yee, Leland*	S	D	8	8.2
* never accepted tobacco industry funds in entire career									
** Ran for and won a seat on the Board of Equalization in November 2006									

## Legislative Leaders

During the 2005-2006 legislative cycle, the Democrats maintained control of both the Assembly and the Senate. Among the Democratic leadership, no individuals were among the top recipients of tobacco industry campaign contributions. Assembly Speaker Fabian Nunez (Dist. 46) and Assistant Majority Leader Rebecca Cohn (Dist. 24) were the only Democratic leaders in the Assembly who accepted tobacco industry campaign contributions, \$3,300 and \$500 respectively (Table 12). The remaining members of the Democratic leadership in the Assembly did not accept tobacco industry contributions and received pro-tobacco control policy scores; Assemblywomen Sally Lieber (Dist. 22), Karen Bass (Dist. 47), and Cindy Montanez (Dist. 39) and Assemblymen Dario Frommer (Dist. 43) and John Laird (Dist. 27) have never accepted tobacco industry contributions. With a total of \$8,100 in tobacco industry contributions, the Assembly Democratic leadership received an average tobacco policy score of 8.8 indicating a pro-tobacco control position.

**Table 12 Campaign Contributions from the Tobacco Industry to the Assembly Leadership 2003-2006 Leadership**

Name	Position	Party	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Nunez, Fabian	Speaker	D	\$3,300	\$2,500	\$0	\$5,800	8.5
Yee, Leland	Speaker pro-Tempore	D	\$0	\$0	\$0	\$0	8.2
Lieber, Sally	Asst. Speaker pro-Tempore	D	\$0	\$0	\$0	\$0	8.8
Frommer, Dario	Majority Leader	D	\$0	\$0	\$0	\$0	9.0
Cohn, Rebecca	Asst. Majority Leader	D	\$500	\$3,200	\$10,000	\$13,700	7.8
Ridley-Thomas, Mark	Dem. Caucus Chair	D	\$0	\$7,400	\$0	\$7,400	8.8
Bass, Karen	Majority Whip	D	\$0	\$0	\$0	\$0	8.8
Chu, Judy	Appropriations Chair	D	\$0	\$0	\$1,000	\$1,000	9.8
Montanez, Cindy	Rules Chair	D	\$0	\$0	\$0	\$0	9.4
Laird, John	Budget Chair	D	\$0	\$0	\$0	\$0	9.2
TOTALS			\$3,800	\$13,100	\$11,000	\$27,900	

The Republican leaders in the Assembly accepted a total of \$98,495 in tobacco industry campaign contributions in the 2005-2006 legislative session and received an average tobacco policy score of 0.8 (Table 13). Among the top recipients were Chief Republican Whip Doug La Malfa (Dist. 2), Republican Leader George Plescia (Dist.75), Republican Party Whip John J. Benoit (Dist. 64), and Republican Party Whip Tod Spitzer (Dist. 71). Additionally, Republican Party Whip Tod Spitzer (Dist. 71) was the recipient of the lowest tobacco policy score (0.3), indicating an extreme pro-tobacco policy position.

Name	Position	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
George Plescia	Republican Leader	\$12,363	\$11,400	\$4,000	\$27,763	0.7
Greg Aghazarian	Caucus Chair	\$9,100	\$7,400	\$7,000	\$23,500	0.7
Mimi Walters	Asst. Republican Leader	\$8,600	\$3,200	\$0	\$11,800	0.7
Michael N. Villines	Asst. Republican Leader	\$6,282	\$3,200	\$0	\$9,482	0.2
Van Tran	Asst. Republican Leader	\$7,600	\$0	\$0	\$7,600	0.7
Bill Emmerson	Chief Republican Whip	\$8,100	\$0	\$0	\$8,100	1.8
Doug La Malfa	Chief Republican Whip	\$13,350	\$6,400	\$5,000	\$24,750	0.3
John J. Benoit	Whip	\$10,100	\$7,400	\$4,000	\$21,500	0.7
Bob Huff	Whip	\$7,600	\$0	\$0	\$7,600	0.7
Roger Niello	Whip	\$5,300	\$5,200	\$0	\$10,500	1.5
Todd Spitzer	Whip	\$10,100	\$8,400	\$4,000	\$22,500	0.3
TOTALS		\$98,495	\$52,600	\$24,000	\$175,095	

The members of the Senate leadership accepted a total of \$21,500 in 2005-2006 in tobacco industry campaign contributions and received an average tobacco policy score of 5.4 (Table 14). Republican Caucus Chair Sen. George Runner (Dist. 17) received the most in total campaign contributions from the tobacco industry during the 2005-2006 legislative cycle. Democrat Majority Leader Sen. Gloria Romero (Dist. 24) and Democratic Caucus Chair Sen. Tom Torlakson (Dist.7) both received high tobacco control policy scores (9.8) and have never accepted tobacco campaign contributions in their entire careers.

<b>Name</b>	<b>Position</b>	<b>Party</b>	<b>2005-2006</b>	<b>2003-2004</b>	<b>2002-1976</b>	<b>Grand Total</b>	<b>Tobacco Policy Score</b>
Perata, Don	President pro Tem	D	\$0	\$3,200	\$0	\$3,200	7.8
Romero, Gloria	Majority Leader	D	\$0	\$0	\$0	\$0	9.8
Ackerman, Dick	Minority Leader	R	\$6,300	\$13,700	\$0	\$20,000	0.5
Torlakson, Tom	Dem. Caucus Chair	D	\$0	\$0	\$0	\$0	9.8
Runner, George	Rep. Caucus Chair	R	\$7,600	\$4,200	\$16,750	\$28,550	1.3
Migden, Carole	Majority Whip	D	\$4,300	\$0	\$38,000	\$42,300	8.4
Hollingsworth, Dennis	Minority Whip	R	\$3,300	\$5,200	\$11,250	\$19,750	0.3
<b>TOTALS</b>			<b>\$21,500</b>	<b>\$26,300</b>	<b>\$66,000</b>	<b>\$113,800</b>	

### **Legislative Committees**

There are several committees which review tobacco-related policies, including the Health, Budget, Appropriations, Rules, Revenue and Taxation, and Governmental Organizations Committees. During the 2005-2006 legislative session, each of these committees reviewed at least one tobacco-related bill, including the following topics: securitization of the Master Settlement Agreement revenues, tobacco retail licensing, tobacco excise taxes, sales and distribution of tobacco products, restrictions on secondhand smoke exposure in public spaces, bans on internet sales of tobacco products, mandated cessation services as provided by insurance companies, fire-safe cigarettes, mental health and tobacco use, and cigarettes as environmental litter. By reviewing the committee members' collective campaign contributions from the tobacco industry and the committee's average tobacco policy score one can understand the dynamics behind the fate of these bills.

Among all of the Committees reviewed in 2005-2006, the Assembly Labor and Employment Committee received the highest average tobacco industry campaign contributions among those recipients who accepted tobacco industry funding: \$12,600 per member accepting tobacco funds. This was followed by the Assembly Budget Committee (\$8,074 per accepting member), the Assembly Governmental Organizations Committee (\$7,946 per accepting member) and the Senate Human Services Committee (\$7,600 per accepting member). With the exception of Assemblyman Alan Nakanishi (R-Dist. 10), Assemblyman Jay La Suer (R-Dist. 77), Assemblyman Keith Richman (R-Dist. 38) and Senator Abel Maldonado (R-Dist. 15), all of the Republican members of these committees accepted tobacco industry campaign contributions.

Finally, all of the Committees received neutral average tobacco policy scores, except for the following committees who received on average pro-tobacco control policy scores: Assembly Health Committee (policy score: 6.2), Senate Health Committee (policy score: 6.5), Assembly Appropriations Committee (policy score: 6.5), Senate Labor and Industrial Relations Committee (policy score: 6.7), Senate Human Services Committee (policy score: 7.1), Assembly Labor and Employment Committee (policy score: 7.4), and the Assembly Budget Committee (policy score: 6.1)

#### ***Assembly Health Committee***

Four of the thirteen members of the Assembly Health Committee in 2005-2006 accepted tobacco industry campaign contributions for a total of \$24,700 during the 2005-2006 legislative cycle (Table 15). Despite the contributions accepted, the Health Committee received a tobacco policy score of 6.2, indicating a slightly pro-tobacco control position on tobacco-related issues. The top recipient, Audra Strickland (R-Dist.37) accepted \$13,100 in tobacco industry campaign contributions and received a tobacco policy score of 0.3. While Chair of the Committee Wilma Chan (D-Dist.16) has never accepted tobacco industry campaign contributions, Vice Chair Greg Aghazarian (R-Dist.26) accepted \$9,100 and received a tobacco policy score of 0.7. Assemblywoman Gloria Negrete McLeod (D-Dist.61) accepted \$2,000 in tobacco industry campaign contributions and received a tobacco policy score of 5.3.

<b>Name</b>	<b>Party</b>	<b>District</b>	<b>2005-2006</b>	<b>2003-2004</b>	<b>2002-1976</b>	<b>Grand Total</b>	<b>Tobacco Policy Score</b>
Chan, Wilma (Chair)	D	16	\$0	\$0	\$0	\$0	9.8
Aghazarian, Greg (Vice Chair)	R	26	\$9,100	\$7,400	\$7,000	\$23,500	0.7
Berg, Patty	D	1	\$0	\$0	\$0	\$0	8.8
Cohn, Rebecca	D	24	\$500	\$3,200	\$10,000	\$13,700	7.8
Dymally, Mervyn	D	52	\$0	\$500	\$5,000	\$5,500	9.0
Frommer, Dario	D	43	\$0	\$0	\$0	\$0	9.0
Jones, Dave	D	9	\$0	\$0	\$0	\$0	9.0
Montanez, Cindy	D	39	\$0	\$0	\$0	\$0	9.4
Negrete McLeod, Gloria	D	61	\$2,000	\$0	\$0	\$2,000	5.3
Nakanishi, Alan	R	10	\$0	\$0	\$0	\$0	1.0
Richman, Keith	R	38	\$0	\$1,200	\$8,000	\$9,200	2.2
Ridley-Thomas, Mark	D	48	\$0	\$7,400	\$0	\$7,400	8.8
Strickland, Audra	R	37	\$13,100	\$38,400	\$0	\$51,500	0.3
<b>TOTALS</b>			<b>\$24,700</b>	<b>\$58,100</b>	<b>\$30,000</b>	<b>\$112,800</b>	

**Senate Human Services Committee**

In the Senate Human Services Committee during 2005-2006 , two of the seven members accepted tobacco industry campaign contributions, for a total of \$15,200 (Table 16). The Committee received an average tobacco policy score of 7.1, which is higher than the score of the Assembly Health Committee (6.2) and this indicates a fair tobacco control position. The top recipient was Senator Dean Florez (D-Dist.16) who accepted \$8,600 in tobacco industry campaign contributions and received a tobacco policy score of 8.3 indicating a pro-tobacco control position despite his acceptance of funds. Only one other member of the committee accepted tobacco funds, Senator Sam Aanestad (R-Dist.4) who accepted \$6,600 and received a policy score of 1.0, indicating a pro-tobacco position.

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Simitian, Joseph (Chair)	D	11	\$0	\$0	\$5,500	\$5,500	7.8
Maldonado, Abel (Vice Chair)	R	15	\$0	\$3,600	\$2,250	\$5,850	5.4
Aanestad, Sam	R	4	\$6,600	\$0	\$500	\$7,100	1.0
Alarcon, Richard	D	20	\$0	\$0	\$0	\$0	8.3
Alquist, Elaine	D	13	\$0	\$0	\$0	\$0	9.0
Chesbro, Wesley	D	2	\$0	\$0	\$0	\$0	10.0
Florez, Dean	D	16	\$8,600	\$1,000	\$750	\$10,350	8.3
<b>TOTALS</b>			<b>\$15,200</b>	<b>\$4,600</b>	<b>\$9,000</b>	<b>\$28,800</b>	

**Senate Health Committee**

Four of the eleven members of the Senate Health Committee in 2005-2006 accepted campaign contributions from the tobacco industry for a total of \$26,100 (Table 17). Despite these contributions, the committee received an average tobacco policy score of 6.5 indicating a slightly pro-tobacco control position. The top recipient of tobacco industry contributions was Dave Cox (R-Dist.1) who received \$8,600 in tobacco industry contributions and a pro- tobacco policy score of 0.8. Chair of the Senate Health Committee, Deborah Ortiz (D-Dist.6) has never accepted tobacco industry contributions in her entire career and received a pro-tobacco control policy score of 10. Alternatively Vice-Chair George Runner (R-Dist.17) accepted \$7,600 in tobacco industry campaign contributions and received a pro-tobacco policy score of 1.3. Additionally, among the Senate Health Committee, Sam Aanestad (R-Dist.4) accepted tobacco industry contributions totaling \$6,600 and received a pro-tobacco policy score of 1 and Edward Vincent (D-Dist.25) accepted \$3,300 in tobacco industry campaign contributions and received a neutral tobacco policy score of 6.0

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Ortiz, Deborah (Chair)	D	6	\$0	\$0	\$0	\$0	10.0
Runner, George (Vice Chair)	R	17	\$7,600	\$4,200	\$16,750	\$28,550	1.3
Aanestad, Sam	R	4	\$6,600	\$0	\$500	\$7,100	1.0

Alquist, Elaine	D	13	\$0	\$0	\$0	\$0	9.0
Chesbro, Wesley	D	2	\$0	\$0	\$0	\$0	10.0
Cox, Dave	R	1	\$8,600	\$2,500	\$23,750	\$34,850	0.8
Figueroa, Liz	D	10	\$0	\$0	\$0	\$0	8.8
Kuehl, Sheila	D	23	\$0	\$0	\$0	\$0	9.8
Maldonado, Abel	R	15	\$0	\$3,600	\$2,250	\$5,850	5.4
Romero, Gloria	D	24	\$0	\$0	\$0	\$0	9.8
Vincent, Edward	D	25	\$3,300	\$4,200	\$0	\$7,500	6.0
<b>TOTALS</b>			\$26,100	\$14,500	\$43,250	\$83,850	

### *Assembly Budget Committee*

Ten of the 25 members of the Assembly Budget Committee in 2005-2006 accepted campaign contributions from the tobacco industry for a total of \$96,895 (Table 18). Despite these contributions, the committee received an average tobacco policy score of 6.1 indicating a neutral to marginally pro-tobacco control position. The top recipient of tobacco industry contributions was George Plescia (R-Dist.75) who is also the Republican leader. He received \$12,363 in tobacco industry contributions and a pro-tobacco policy score of 0.7. Chair of the Budget Committee, John Laird (D-Dist.27) has never accepted tobacco industry campaign contributions in his entire career and received a pro-tobacco control policy score of 9.2 Vice-Chair Rick Keene (R-Dist.3) accepted \$9,850 in tobacco industry campaign contributions and received a pro-tobacco policy score of 0.3, one of the lowest in the legislature. Additionally, among the Assembly leadership, Assistant Republican Leader Michael Villines (R-Dist.29), Republican Whip Bob Huff (R-Dist.60) and Republican Whip John J. Benoit (R-Dist.64) accepted tobacco industry contributions, and all received pro-tobacco policy scores (low scores). Rules Chair Cindy Montanez (D-Dist.39) has never accepted tobacco industry campaign contributions in her entire career and received a pro-tobacco control policy score of 9.4.

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Laird, John (Chair)	D	27	\$0	\$0	\$0	\$0	9.2
Keene, Rick (Vice Chair)	R	3	\$9,850	\$8,400	\$3,000	\$21,250	0.3
Arambula, Juan	D	31	\$0	\$0	\$0	\$0	6.3
Benoit, John J.	R	64	\$10,100	\$7,400	\$4,000	\$21,500	0.7
Bermudez, Rudy	D	56	\$0	\$2,000	\$0	\$2,000	7.3
Blakeslee, Sam	R	33	\$6,600	\$3,200	\$0	\$9,800	5.0
Chan, Wilma	D	16	\$0	\$0	\$0	\$0	9.8
Cogdill, Dave	R	25	\$11,800	\$7,400	\$29,000	\$48,200	0.3
Coto, Joe	D	23	\$6,600	\$0	\$0	\$6,600	8.3
Daucher, Lynn	R	72	\$7,700	\$5,200	\$16,500	\$29,400	3.0
De La Torre, Hector	D	50	\$0	\$0	\$0	\$0	8.8
DeVore, Chuck	R	70	\$8,900	\$5,200	\$0	\$14,100	0.7
Dymally, Mervyn M.	D	52	\$0	\$500	\$5,000	\$5,500	9.0
Evans, Noreen	D	7	\$0	\$0	\$0	\$0	9.3
Goldberg, Jackie	D	45	\$0	\$0	\$0	\$0	9.0



Hancock, Loni	D	14	\$0	\$0	\$0	\$0	9.4
Huff, Bob	R	60	\$7,600	\$0	\$0	\$7,600	0.7
Montanez, Cindy	D	39	\$0	\$0	\$0	\$0	9.4
Mullin, Gene	D	19	\$0	\$0	\$0	\$0	9.7
Nava, Pedro	D	35	\$0	\$0	\$0	\$0	9.0
Parra, Nicole	D	30	\$7,600	\$2,000	\$0	\$9,600	7.3
Pavley, Fran	D	41	\$1,500	\$0	\$0	\$1,500	9.8
Plescia, George	R	75	\$12,363	\$11,400	\$4,000	\$27,763	0.7
Villines, Michael N.	R	29	\$6,282	\$3,200	\$0	\$9,482	0.3
Wolk, Lois	D	8	\$0	\$0	\$0	\$0	8.2
<b>TOTALS</b>			<b>\$96,895</b>	<b>\$55,900</b>	<b>\$61,500</b>	<b>\$214,295</b>	

***Senate Budget and Fiscal Review Committee***

In 2005-2006 a total of \$36,964 in tobacco industry contributions was accepted by seven of the sixteen members of the Senate Budget and Fiscal Committee who received a neutral tobacco policy score, 6.0 (Table 19). Chair of the Committee, Senator Wesley Chesbro (D-Dist.2) has never accepted tobacco industry funds in his entire career and received a pro-tobacco control policy score of 10. Vice Chair of the Committee and and Minority Whip of the Senate leadership Senator Dennis Hollingsworth (R-Dist.36) accepted \$3,300 in campaign contributions from the tobacco industry and received a pro-tobacco policy score of 0.3, one of the lowest in the legislature. Senator Robert Dutton (R-Dist.31) was the top recipient for this committee accepting \$9,100 in campaign contributions and he received, along with other Republicans on this committee, the lowest tobacco policy score, 0.3. Additionally, among the Senate leadership on the Committee, Republican Caucus Chair George Runner (R-Dist.17) accepted \$7,600 in campaign contributions from the tobacco industry and received a pro-tobacco policy score of 1.3. Majority Leader Gloria Romero (D-Dist.24) has never accepted tobacco industry funds and Democratic Caucus Chair Tom Torlakson (D-Dist.7) has also never accepted campaign contributions. Senator Romero received a pro-tobacco control policy score of 9.8 as did Senator Torlakson.

**Table 19 Campaign Contributions from the Tobacco Industry to Members of the Senate Budget and Fiscal Review Committee, 2003-2006**

<b>Name</b>	<b>Party</b>	<b>District</b>	<b>2005-2006</b>	<b>2003-2004</b>	<b>2002-1976</b>	<b>Grand Total</b>	<b>Tobacco Policy Score</b>
Chesbro, Wesley (Chair)	D	2	\$0	\$0	\$0	\$0	10.0
Hollingsworth, Dennis (Vice Chair)	R	36	\$3,300	\$5,200	\$11,250	\$19,750	0.3
Ducheny, Denise Moreno	D	40	\$4,300	\$4,200	\$0	\$8,500	5.6
Dunn, Joseph	D	34	\$0	\$0	\$0	\$0	9.5
Dutton, Robert	R	31	\$9,100	\$7,900	\$4,000	\$21,000	0.3
Kehoe, Christine	D	39	\$0	\$0	\$0	\$0	8.3
Kuehl, Sheila	D	23	\$0	\$0	\$0	\$0	9.8
Lowenthal, Alan	D	27	\$0	\$0	\$0	\$0	9.0
Machado, Mike	D	5	\$1,000	\$13,200	\$0	\$14,200	4.8
Margett, Bob	R	29	\$3,300	\$5,200	\$0	\$8,500	0.3
McClintock, Tom	R	19	\$8,364	\$5,700	\$0	\$14,064	0.2
Romero, Gloria	D	24	\$0	\$0	\$0	\$0	9.8

Runner, George	R	17	\$7,600	\$4,200	\$16,750	\$28,550	1.3
Scott, Jack	D	21	\$0	\$0	\$0	\$0	9.0
Simitian, Joseph	D	11	\$0	\$0	\$5,500	\$5,500	7.8
Torlakson, Tom	D	7	\$0	\$0	\$0	\$0	9.8
<b>TOTALS</b>			\$36,964	\$45,600	\$37,500	\$120,064	

### *Assembly Appropriations Committee*

In 2005-2006 seven out of seventeen members of the Assembly Appropriations Committee accepted tobacco industry contributions for a total of \$45,500 and received a slightly pro-tobacco control average policy score of 6.5 (Table 20). While Judy Chu (D-Dist.49), Chair of the committee and the Appropriations Chair in the Assembly leadership, has accepted very little tobacco industry funds in her career (\$1,000) and received a pro-tobacco control policy score of 9.8, Vice Chair Sharon Runner (R-Dist.36) accepted \$7,600 during the 2005-2006 legislative cycle and received a tobacco policy score of 0.5. The top recipient in the Committee was Ronald Calderon (D-Dist.58) who accepted \$11,600 from the tobacco industry and received a tobacco policy score of 4.7. Additionally, among the Assembly Leadership, Assistant Republican Leader Mimi Walters (R-Dist.73) received \$8,600, and Chief Republican Whip Bill Emmerson (R-Dist.63) accepted \$8,100 in contributions from the tobacco industry in 2005-2006.

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Chu, Judy (Chair)	D	49	\$0	\$0	\$1,000	\$1,000	9.8
Runner, Sharon (Vice Chair)	R	36	\$7,600	\$4,324	\$3,000	\$14,924	0.5
Bass, Karen	D	47	\$0	\$0	\$0	\$0	8.8
Berg, Patty	D	1	\$0	\$0	\$0	\$0	8.8
Calderon, Ronald S.	D	58	\$11,600	\$4,200	\$16,000	\$31,800	4.7
Emmerson, Bill	R	63	\$8,100	\$0	\$0	\$8,100	1.8
Haynes, Ray	R	66	\$4,300	\$4,200	\$0	\$8,500	0.3
Karnette, Betty	D	54	\$1,000	\$0	\$0	\$1,000	9.8
Klehs, Johan	D	18	\$0	\$0	\$0	\$0	9.0
Leno, Mark	D	13	\$0	\$0	\$0	\$0	9.8
Nakanishi, Alan	R	10	\$0	\$0	\$0	\$0	1.0
Nation, Joe	D	6	\$0	\$0	\$500	\$500	9.2
Oropeza, Jenny	D	55	\$0	\$0	\$1,000	\$1,000	9.8
Ridley-Thomas, Mark	D	48	\$0	\$7,400	\$0	\$7,400	8.8
Saldana, Lori	D	76	\$0	\$0	\$0	\$0	9.2
Walters, Mimi	R	73	\$8,600	\$3,200	\$0	\$11,800	0.7
Yee, Leland	D	8	\$0	\$0	\$0	\$0	8.2
<b>TOTALS</b>			\$41,200	\$23,324	\$21,500	\$86,024	

### *Senate Appropriations Committee*

A total of \$47,850 in 2005-2006 was accepted from the tobacco industry by eight of the thirteen members of the Senate Appropriations Committee, which received a neutral tobacco policy score of 5.5

(Table 21). Chair Carole Migden (D-Dist.3) and Vice Chair Sam Aanestad (R-Dist.4) both accepted tobacco industry campaign contributions; \$4,300 and \$6,600 respectively. Furthermore, Robert Dutton was the top recipient for the Committee, accepting \$9,100 and he received the lowest tobacco policy score, 0.3. Among the committee, Carole Migden was the only Senator that served in the in the Senate leadership in 2005-2006 (as Majority Whip) who accepted contributions from the tobacco industry; despite her acceptance of these funds she received a pro-tobacco control policy score of 8.4.

<b>Name</b>	<b>Party</b>	<b>District</b>	<b>2005-2006</b>	<b>2003-2004</b>	<b>2002-1976</b>	<b>Grand Total</b>	<b>Tobacco Policy Score</b>
Migden, Carole (Chair)	D	3	\$4,300	\$0	\$38,000	\$42,300	8.4
Aanestad, Sam (Vice Chair)	R	4	\$6,600	\$0	\$500	\$7,100	1.0
Alquist, Elaine	D	13	\$0	\$0	\$0	\$0	9.0
Ashburn, Roy	R	18	\$7,050	\$2,000	\$69,250	\$78,300	0.3
Battin, James	R	37	\$6,300	\$7,300	\$0	\$13,600	0.3
Bowen, Debra	D	28	\$0	\$0	\$0	\$0	9.4
Dutton, Robert	R	31	\$9,100	\$7,900	\$4,000	\$21,000	0.3
Escutia, Martha	D	30	\$0	\$0	\$0	\$0	9.8
Florez, Dean	D	16	\$8,600	\$1,000	\$750	\$10,350	8.3
Murray, Kevin	D	26	\$3,400	\$3,200	\$0	\$6,600	5.4
Ortiz, Deborah	D	6	\$0	\$0	\$0	\$0	10.0
Poochigian, Charles	R	14	\$2,500	\$0	\$21,500	\$24,000	0.3
Speier, Jackie	D	8	\$0	\$0	\$0	\$0	9.0
<b>TOTALS</b>			<b>\$47,850</b>	<b>\$21,400</b>	<b>\$134,000</b>	<b>\$203,250</b>	

### *Assembly Rules Committee*

Six out of eight members of the Assembly Rules Committee in 2005-2006 accepted a total of \$43,482 in tobacco industry contributions and the Committee received a tobacco policy score of 5.5 (Table 22). Chair Cindy Montanez (D-Dist. 39) did not receive tobacco industry contributions (tobacco policy score 9.4), however, Vice Chair Dave Cogdill (R-Dist. 25) accepted \$11,800 in contributions and was the top recipient in the committee: he received a tobacco policy score of 0.3. Also serving in the committee Assistant Republican Leader Michael Villines (R-Dist.29) received \$6,282 in contributions from the tobacco industry and received a pro-tobacco policy score of 0.3. Republican Whip, John J. Benoit (R-Dist.64), accepted \$10,100 from the tobacco industry and received a pro-tobacco policy score of 0.7.

**Table 22 Campaign Contributions from the Tobacco Industry to Members of the Assembly Rules Committee, 2003-2006**

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Montanez, Cindy (Chair)	D	39	\$0	\$0	\$0	\$0	9.4
Cogdill, Dave (Vice Chair)	R	25	\$11,800	\$7,400	\$29,000	\$48,200	0.3
Baca, Joe	D	62	\$7,700	\$9,700	\$0	\$17,400	6.0
Benoit, John J.	R	64	\$10,100	\$7,400	\$4,000	\$21,500	0.7
Coto, Joe	D	23	\$6,600	\$0	\$0	\$6,600	8.3
Dymally, Mervyn M.	D	52	\$0	\$500	\$5,000	\$5,500	9.0
Karnette, Betty	D	54	\$1,000	\$0	\$0	\$1,000	9.8
Villines, Michael N.	R	29	\$6,282	\$3,200	\$0	\$9,482	0.2
<b>TOTALS</b>			\$43,482	\$28,200	\$38,000	\$109,682	

***Senate Rules Committee***

A total of \$13,350 in 2005-2006 in tobacco industry campaign contributions was received by two of the five members of the Senate Rules Committee (Table 23), and the committee received a neutral tobacco policy score of 5.3. Chair Don Perata (D-Dist.9) accepted no tobacco industry funds in 2005-2006 and received a tobacco policy score of 7.8. Vice Chair James Battin (R-Dist.37) accepted \$6,300 in tobacco industry campaign contributions and received a pro-tobacco policy score of 0.3. The other recipient to receive funds and who was the top recipient of campaign contributions from the tobacco industry in the committee was Senator Roy Ashburn. He accepted \$7,050 and received a pro-tobacco policy score of 0.3

**Table 23 Campaign Contributions from the Tobacco Industry to Members of the Senate Rules Committee, 2003-2006**

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Perata, Don (Chair)	D	9	\$0	\$3,200	\$0	\$3,200	7.8
Battin, James (Vice Chair)	R	37	\$6,300	\$7,300	\$0	\$13,600	0.3
Ashburn, Roy	R	18	\$7,050	\$2,000	\$69,250	\$78,300	0.3
Bowen, Debra	D	28	\$0	\$0	\$0	\$0	9.4
Cedillo, Gilbert	D	22	\$0	\$0	\$1,000	\$1,000	8.8
<b>TOTALS</b>			\$13,350	\$12,500	\$70,250	\$96,100	

***Assembly Revenue and Taxation Committee***

In 2005-2006 three of the seven members of the Assembly Revenue and Taxation Committee received a total of \$20,800 in tobacco industry campaign contributions and the Committee received an average tobacco policy score of 6.0 (Table 24). Chair Johan Klehs (D-Dist.18) accepted no tobacco industry campaign contributions and received a pro-tobacco control policy score of 9.0. Vice Chair Mimi Walters (also Assistant Republican Leader) (R-Dist.73) accepted tobacco industry funds amounting to \$8,600. She received a tobacco policy score of 0.7. The top recipient in the committee to receive tobacco industry funds was Assemblyman Chuck Devore (R-Dist.70), who accepted \$8,900 and received a pro-tobacco policy score of 0.7.

**Table 24 Campaign Contributions from the Tobacco Industry to Members of the Assembly Revenue and Taxation Committee, 2003-2006**

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Johan Klehs (chair)	D	18	\$0	\$0	\$0	\$0	9.0
Mimi Walters (vice Chair)	R	73	\$8,600	\$3,200	\$0	\$11,800	0.7
Joseph Canciamilla	D	11	\$3,300	\$23,200	\$47,500	\$74,000	4.3
Judy Chu	D	49	\$0	\$0	\$1,000	\$1,000	9.8
Chuck DeVore	R	70	\$8,900	\$5,200	\$0	\$14,100	0.7
Dave Jones	D	9	\$0	\$0	\$0	\$0	9.0
Sally Lieber	D	22	\$0	\$0	\$0	\$0	8.8
<b>TOTALS</b>			\$20,800	\$31,600	\$48,500	\$100,900	

***Senate Revenue and Taxation Committee***

In 2005-2006, half of the members of the Senate Revenue and Taxation Committee (4 of 8 members) accepted tobacco industry campaign contributions totaling \$20,200 and the Committee received a neutral average tobacco policy score of 5.4 (Table 25). This Committee received the lowest average of tobacco industry contributions (\$5,050) among the Senate members accepting tobacco industry funding. Chair Mike Machado (D-Dist.5) accepted \$1,000 in tobacco funding, and Vice Chair Robert Dutton (R-Dist.31) received \$9,100 in tobacco industry campaign contributions with a pro-tobacco policy score of 0.3. Fellow Republicans Charles Poochigian (R-Dist.14) and George Runner (Republican Caucus Chair) (R-Dist.17) also accepted tobacco industry contributions, accepting \$2,500 and \$7,600 respectively.

**Table 25 Campaign Contributions from the Tobacco Industry to Members of the Senate Revenue and Taxation Committee, 2003-2006**

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Mike Machado (Chair)	D	5	\$1,000	\$13,200	\$0	\$14,200	4.8
Robert Dutton (Vice Chair)	R	31	\$9,100	\$7,900	\$4,000	\$21,000	0.3
Elaine Alquist	D	13	\$0	\$0	\$0	\$0	9.0
Debra Bowen	D	28	\$0	\$0	\$0	\$0	9.4
Gilbert Cedillo	D	22	\$0	\$0	\$1,000	\$1,000	8.8
Charles Poochigian	R	14	\$2,500	\$0	\$21,500	\$24,000	0.3
George Runner	R	17	\$7,600	\$4,200	\$16,750	\$28,550	1.3
Jack Scott	D	21	\$0	\$0	\$0	\$0	9.0
<b>TOTALS</b>			\$20,200	\$25,300	\$43,250	\$88,750	

***Assembly Labor and Employment Committee***

A total of \$12,600 in 2005-2006 was received by only one member of the Assembly Labor and Employment committee and the committee received a tobacco policy score of 7.4 (Table 26). This was the only committee along with the Senate Human Services committee (average tobacco policy score, 7.8) of which neither the Chair, Paul Koretz (D-Dist.42), or the Vice Chair, Alan Nakanishi (R-Dist.10), accepted tobacco industry campaign contributions. The sole recipient for this committee was Assemblyman Guy Houston (R-Dist.15) who, as stated, accepted \$12,600 in tobacco industry contributions and received a pro-

tobacco policy score of 0.8.

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Paul Koretz (Chair)	D	42	\$0	\$0	\$0	\$0	10.0
Alan Nakanishi (Vice Chair)	R	10	\$0	\$0	\$0	\$0	1.0
Wilma Chan	D	16	\$0	\$0	\$0	\$0	9.8
Judy Chu	D	49	\$0	\$0	\$1,000	\$1,000	9.8
Guy Houston	R	15	\$12,600	\$0	\$0	\$12,600	0.8
Johan Klehs	D	18	\$0	\$0	\$0	\$0	9.0
John Laird	D	27	\$0	\$0	\$0	\$0	9.2
Mark Leno	D	13	\$0	\$0	\$0	\$0	9.8
<b>TOTALS</b>			\$12,600	\$0	\$1,000	\$13,600	

### ***Senate Labor and Industrial Relations Committee***

Two out of seven members of the Senate Labor and Industrial Relations Committee in 2005-2006 accepted tobacco industry contributions totaling \$13,900; the committee received an average tobacco policy score of 6.7 (Table 27). While Chair Richard Alarcon (D-Dist.20) did not accept tobacco industry funds (tobacco policy score, 8.3), Vice-Chair Dick Ackerman (R-Dist.33) (also Senate Minority Leader) accepted \$6,300 from the tobacco industry and received a tobacco policy score of 0.5. The only other recipient of the committee to receive tobacco industry funds was George Runner, also the Republican Caucus Chair. He accepted \$7,600 and received a pro-tobacco policy score of 1.3.

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Richard Alarcon (Chair)	D	20	\$0	\$0	\$0	\$0	8.3
Dick Ackerman (Vice Chair)	R	33	\$6,300	\$13,700	\$0	\$20,000	0.5
Joseph Dunn	D	34	\$0	\$0	\$0	\$0	9.5
Liz Figueroa	D	10	\$0	\$0	\$0	\$0	8.8
Sheila Kuehl	D	23	\$0	\$0	\$0	\$0	9.8
Alan Lowenthal	D	27	\$0	\$0	\$0	\$0	9.0
George Runner	R	17	\$7,600	\$4,200	\$16,750	\$28,550	1.3
<b>TOTALS</b>			\$13,900	\$17,900	\$16,750	\$48,550	

### ***Assembly Governmental Organizations Committee***

In 2005-2006 two-thirds of the members of the Assembly Governmental Organizations Committee (10 out of 15 members) received tobacco industry campaign contributions for a total of \$79,463 and the committee had an average tobacco policy score of 4.9 (Table 28); this was the second lowest tobacco policy score of all the committees. This committee was also among those committees that received the largest average tobacco industry contribution among members accepting tobacco funds: \$7,946 per accepting

member. Vice Chair George Plescia (R-Dist.75) (also Republican Leader) and Chair Jerome Horton (D-Dist.51) were among the top ten members of the legislature receiving the most amount of tobacco industry contributions during the 2005-2006 legislative cycle, accepting \$12,363 and \$10,900, respectively. Additionally, the largest recipient accepting tobacco industry contributions in the 2005-2006 legislative cycle was on this committee, Assemblywoman Bonnie Garcia (R-Dist.80) who accepted \$14,800 and received a pro-tobacco policy score of 1.3.

<b>Name</b>	<b>Party</b>	<b>District</b>	<b>2005-2006</b>	<b>2003-2004</b>	<b>2002-1976</b>	<b>Grand Total</b>	<b>Tobacco Policy Score</b>
Jerome Horton (Chair)	D	51	\$10,900	\$26,600	\$61,000	\$98,500	4.4
George Plescia (Vice Chair)	R	75	\$12,363	\$11,400	\$4,000	\$27,763	0.7
Greg Aghazarian	R	26	\$9,100	\$7,400	\$7,000	\$23,500	0.7
Rudy Bermudez	D	56	\$0	\$2,000	\$0	\$2,000	7.3
Ronald Calderon	D	58	\$11,600	\$4,200	\$16,000	\$31,800	4.7
Ed Chavez	D	57	\$0	\$15,000	\$70,000	\$85,000	6.5
Joe Coto	D	23	\$6,600	\$0	\$0	\$6,600	8.3
Bonnie Garcia	R	80	\$14,800	\$2,500	\$1,000	\$18,300	1.3
Jay La Suer	R	77	\$0	\$2,000	\$14,250	\$16,250	0.2
Lloyd E. Levine	D	40	\$0	\$0	\$500	\$500	8.8
Carol Liu	D	44	\$0	\$0	\$0	\$0	8.3
Dennis Mountjoy	R	59	\$5,800	\$7,400	\$13,250	\$26,450	0.2
Gloria Negrete McLeod	D	61	\$2,000	\$0	\$0	\$2,000	5.2
Alberto Torrico	D	20	\$2,000	\$0	\$0	\$2,000	8.0
Leland Yee	D	8	\$0	\$0	\$0	\$0	8.2
<b>TOTALS</b>			<b>\$79,463</b>	<b>\$79,500</b>	<b>\$187,000</b>	<b>\$345,963</b>	

***Senate Governmental Organizations Committee***

Eight of the eleven members in 2005-2006 of the Senate Governmental Organizations Committee accepted tobacco industry funds for a total of \$42,864; the Committee received an average tobacco policy score of 4.8 (Table 29), the lowest score among all the committees. Chair Dean Florez (D-Dist.16) and Vice Chair Jeff Denham (R-Dist.12) accepted \$8,600 and \$1,000, respectively from the tobacco industry. Chair Dean Florez received a pro-tobacco control policy score of 8.3, despite his acceptance of tobacco industry funds, and Senator Jeff Denham received a pro-tobacco policy score of 3.0. Chair Dean Florez tied with Assemblyman Dave Cox (R-Dist.1) as the top recipients of tobacco industry campaign contributions for the 2005-2006 legislative cycle in this committee.

**Table 29 Campaign Contributions from the Tobacco Industry to Members of the Senate Governmental Organizations Committee, 2003-2006**

Name	Party	District	2005-2006	2003-2004	2002-1976	Grand Total	Tobacco Policy Score
Dean Florez (Chair)	D	16	\$8,600	\$1,000	\$750	\$10,350	8.3
Jeff Denham (Vice Chair)	R	12	\$1,000	\$6,400	\$0	\$7,400	3.0
James Battin	R	37	\$6,300	\$7,300	\$0	\$13,600	0.3
Wesley Chesbro	D	2	\$0	\$0	\$0	\$0	10.0
Dave Cox	R	1	\$8,600	\$2,500	\$23,750	\$34,850	0.8
Joseph Dunn	D	34	\$0	\$0	\$0	\$0	9.5
Bob Margett	R	29	\$3,300	\$5,200	\$0	\$8,500	0.3
Tom McClintock	R	19	\$8,364	\$5,700	\$0	\$14,064	0.2
Kevin Murray	D	26	\$3,400	\$3,200	\$0	\$6,600	5.4
Nell Soto	D	32	\$0	\$3,000	\$0	\$3,000	9.3
Edward Vincent	D	25	\$3,300	\$4,200	\$0	\$7,500	6.0
<b>TOTALS</b>			\$42,864	\$38,500	\$24,500	\$105,864	

### Constitutional Officers

During the 2005-2006 election cycle, five candidates and three incumbents in constitutional offices accepted tobacco industry funding for a total of \$55,464. Lt. Governor candidate Tom McClintock (R) accepted \$5,714 from Altria and \$2,650 from RJ Reynolds for a total of \$8,364 from the tobacco industry (Appendix C). Tony Strickland (R), candidate for State Controller, accepted \$7,100 from the tobacco industry. Board of Equalization members Betty Yee(D), Bill Leonard (R) and Michelle Chu accepted \$2,000, \$7,600 and \$1,500 respectively from the tobacco industry; and they were also the only incumbent candidates to accept tobacco funds in the 2006 election. Jerry Brown, elected Attorney General in 2006, accepted \$5,600 from Altria (Appendix C). two other successful candidates, Treasurer Bill Lockyer(D) and Superintendent of Public Instruction, Jack O'Connell (D), accepted tobacco industry contributions in past elections (in Bill Lockyer's case when he ran for another office) (Appendix C). However, neither of them accepted tobacco industry money during the 2006 election.

Another candidate receiving tobacco industry funds for the race for Secretary of State was Bruce McPherson (R). He received \$15,200, the most monies donated to any candidate that ran for a constitutional office in 2006. He lost to Debra Bowen (D) who had been a Senator in the legislature (D-Dist.28) prior to running for Secretary of State and she has never accepted tobacco industry funds in her entire career and received a pro-tobacco control policy score of 9.4. Another Senator from the legislature, Charles Poochigian (R-Dist.14) who received a pro-tobacco policy score of 0.3, ran for Attorney General. He lost to Jerry Brown (D), despite receiving \$8,100 from the tobacco industry for his campaign. Contributions to constitutional office candidates by tobacco industry company are shown in Appendix C.

### Lobbying Expenditures

In addition to campaign contributions of \$1,896,000 in 2005-6 and \$1,083,000 in 2003-4 , the tobacco industry spent \$2,463,621 in 2005-2006 and \$3,003,105 in 2003-2004 for lobbying (Table 30). Of the total lobbying expenditures in 2005-2006, \$2,291,083 was paid directly to lobbying firms or individuals and the remaining \$172,538 was spent on activities and other expenditures to influence policy making in



California. Excluding the activities and “other expenditures” categories, the tobacco industry decreased its total lobbying expenditures by \$255,701 between the 2003-2004 and 2005-2006 election cycles and substantially less than in 2001-2002, when it spent \$3,638,486 on lobby firms and individuals and \$649,076 on “other expenditures” categories, for a total of \$4,287,562.<sup>7</sup> Reasons for the decrease in lobbying expenditures by the tobacco companies are unclear.

<b>Table 30 Tobacco Industry Lobbying and Influence Expenditures in California, 1976-2006</b>					
	<b>2005-2006</b>	<b>2003-2004</b>	<b>2001-2002</b>	<b>1976-2000</b>	<b>Grand Total</b>
<b>Lobbying Expenditures</b>					
Capitol Advocacy	\$204,126	\$194,857	\$82,858	\$0	\$481,841
Capitol Connection	\$240,000	\$237,742	\$300,736	\$116,668	\$895,146
Capitol Strategies Group, Inc.	\$97,920	\$94,320	\$349,720	\$334,395	\$876,355
Snodgrass & Micheli, LLC	\$0	\$184,000	\$182,000	\$2,559,660	\$2,925,660
Carter Lobbying Firm, Art	\$0	\$0	\$267,641	\$165,502	\$433,143
Carter, Wetch and Associates	\$0	\$58,746	\$0	\$0	\$58,746
DCK Advocates, Inc.	\$0	\$33,254	\$45,454	\$0	\$78,708
Dowd Relations	\$0	\$0	\$27,500	\$260,591	\$288,091
Joseph G. Yocca: Capitol Venture	\$140,000	\$140,000	\$78,190	\$0	\$358,190
Lang Hansen O'Malley and Miller Governmental Relations	\$600,000	\$554,250	\$472,333	\$2,551,163	\$4,177,746
Livingston & Mattesich Law Corp.	\$0	\$0	\$330,783	\$0	\$330,783
McCabe and Co.	\$0	\$0	\$148,816	\$0	\$148,816
Nielsen, Marksamer, Parrinello, Mueller and Naylor	\$20,513	\$179,840	\$378,665	\$2,729,824	\$3,308,842
Political Solutions, Inc.	\$93,500	\$0	\$0	\$0	\$93,500
Ross Communications	\$0	\$0	\$22,500	\$0	\$22,500
Sacramento Advocates	\$310,000	\$310,000	\$310,000	\$0	\$930,000
Spencer Roberts & Associates, Inc.	\$0	\$0	\$45,833	\$154,484	\$200,317
The Apex Group	\$180,948	\$172,230	\$188,748	\$40,446	\$582,372
The Flanigan Law Firm	\$404,076	\$387,545	\$406,709	\$346,742	\$1,545,072
Walt Klein & Assoc.	\$0	\$0	\$0	\$161,691	\$161,691
<b>Activity Expenses</b>	\$18,428	\$20,972	\$18,166	\$0	\$57,566
<b>Total Other Payments to Influence Policy Making</b>	\$154,110	\$435,349	\$630,910	\$0	\$1,220,369
<b>TOTALS</b>	<b>\$2,463,621</b>	<b>\$3,003,105</b>	<b>\$4,287,562</b>	<b>\$9,421,166</b>	<b>\$19,175,454</b>

Payments to lobbying firms by the tobacco companies for direct lobbying activities are so reported, while other costs of the tobacco companies for their lobbying activity that are not related to direct lobbying activities are reported from Section C entitled “Activity Expenses” and Section D entitled “Other Payments to Influence Legislative or Administrative Action” on Form 635 (Report of Lobbyist Employer and Report of Lobbying Coalition) which is filed with the Secretary of State on a quarterly basis.<sup>94</sup> Section C which defines “Activity Expenses” states that these expenses are:

any expense which benefits, in whole or in part, an elected state officer, a legislative official, an agency official, a state candidate, or a member of the immediate family of such officials or candidates. Activity expenses include gifts, honoraria, consulting fees, salaries, and any other form

of compensation, but do not include campaign contributions.<sup>94</sup>

Section D, “Other Payments to Influence Legislative or Administrative Action” includes:

all other payments...made in connection with your attempts to influence legislative or administrative action. Such payments would include payments to a lobbying coalition; payments in support of your lobbyist (but not made directly to the lobbyist), such as the payment of a credit card charge for activity expenses which have been reported by the lobbyist; payments for office overhead and operating expenses and subscription services, payments to expert witnesses, and compensation to employees (other than a lobbyist) who [spent] 10 percent or more of their compensated time in a calendar month in connection with lobbying activities.<sup>94</sup>

In the 2005-2006 legislative cycle, the tobacco industry spent \$18,428 on activity expenses and \$154,110 on other payments to influence the legislature, for a total of \$172,538 (Table 30). In the 2003-2004 legislative cycle, the tobacco industry spent \$20,972 on activity expenses and \$435,349 on other payments to influence the legislature, for a total of \$456,321 (Table 30). The activity expenses and other payments to influence the legislature of each tobacco industry company are shown in Table 31. Finally, lobbying expenditures made by each respective tobacco company to lobbying firms are provided in Appendix D.

	<b>Cigar Assoc.</b>	<b>Altria</b>	<b>RJR</b>	<b>CDA PAC</b>	<b>UST</b>	<b>LOR</b>	<b>2005-2006 Total</b>	<b>2003-2004 Total</b>
Activity Expenses	\$3,266	\$6,885	\$0	\$1,404	\$2,838	\$4,035	\$18,428	\$20,972
Other Payments	\$0	\$65,292	\$42,427	\$0	\$3,225	\$43,166	\$154,110	\$435,349
<b>TOTALS</b>	<b>\$3,266</b>	<b>\$72,177</b>	<b>\$42,427</b>	<b>\$1,404</b>	<b>\$6,063</b>	<b>\$47,201</b>	<b>\$174,543</b>	<b>\$456,321</b>

### **Tobacco Industry Lobbying Activities**

Among the individual tobacco companies, Altria spent the most money at \$1,242,690 in 2005-2006 and RJ Reynolds came in second with \$446,503. US Tobacco spent \$391,137 in 2005-2006. The remaining tobacco companies spent less than \$300,00 in lobbying expenditures during 2005-2006. Altria decreased their direct expenditures to lobbying firms by \$367,796 in 2006 compared to their expenditures in the 2001-2002 legislative cycle. RJ Reynolds decreased their direct lobbying expenditures as well by \$87,369 in 2006 compared to its expenditures in 2002. Lorillard also decreased their direct expenditures to lobbying firms by \$211,742 in 2006 as compared to its expenditures in 2002; however US Tobacco increased their direct expenditures in 2006 to lobbying firms by \$90,968 since 2002.<sup>7</sup>

The three lobbying firms on which the tobacco industry spent the most money during 2003-2004 were Lang Hansen O'Malley and Miller Governmental Relations, The Flanigan Law Firm, and Sacramento Advocates (Appendix D). During the 2005-2006 legislative cycle, Lang Hansen O'Malley and Miller Governmental Relations received the most tobacco money, followed by the Flanigan Law

Firm, and Sacramento Advocates .

Many tobacco industry lobbying firms that lobbied for the industry in 2003-2006 also lobbied for health-related organizations (Tables 32 and 33).

Capitol Advocacy (received \$194,857 from UST)	Lang, Hansen, O'Malley and Miller Governmental Relations (received \$554,250 from Altria)	Nielsen, Merksamer, Parrinello, Mueller and Naylor LLP (received \$179,840 from Altria)	Sacramento Advocates Inc.(received \$310,000 from Altria)
American Occupational Therapy Association, Inc.  California Association of Health Facilities  Moms Pharmacy  NDC Health Corporation  Occupational Therapy Association of California  Roche Diagnostics  Subacute Saratoga Hospital  Triline Medical, LLC	Eli Lilly and Company	Addus Healthcare, Inc.  California Podiatric Medical Association  Cooperative of American Physicians/Mutual Protection Trust  Genentech, Inc.  Local Health Plans of California  Local Initiative Health Authority of Los Angeles County DBA L.A. Care Health Plan  Medco Health Solutions, Inc.  Merck and Co.  Pfizer, Inc.  Safeguard Health Plans, Inc.	American Red Cross, California Chapter  The Breast Cancer Fund  California Academy of Audiology  California Nurses Association  End of Life Choices (of Compassion and Choices)
Source: California Secretary of State			

Capitol Advocacy (received \$204,126 from UST)	Lang, Hansen, O'Malley and Miller Governmental Relations (received \$600,000 from Altria )	Nielsen, Merksamer, Parrinello, Mueller and Naylor LLP (received \$20,513 from Altria)	Political Solutions, Inc. (received \$93,500 from the Cigar Association of America)	Capitol Strategies Group, Inc. (received \$97,920 from the California Distributors Association)	Sacramento Advocates Inc. (received \$310,000 from Altria)
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American Diabetes Association	California Association of Health Plans	Alameda Alliance for Health	The California Association for Nurse Practitioners	Eli Lilly and Company	Breast Cancer Fund
American Occupational Therapy Association Inc.	Eli Lilly and Company	California Institute for Regenerative Medicine	The California Association of Nurse Anesthetists		
Blue Cross of California		California Podiatric Medical Association	The California March of Dimes Birth Defects Foundation		
California Association of Health Facilities		California Psychiatric Association	California Nurse Midwives Association		
Occupational Therapy Association of California		Catholic Healthcare West	California Pharmacy Management		
Pharmaceutical Research and Manufacturers of America		The Community Health Group	The Healthcare Distribution Management Association		
Roche Diagnostics		Genentech, Inc.			
California Retailers Association		Local Health Plans of California			
		Merck and Co., including Merck Human Health Division			
		Pfizer Inc.			

Source: California Secretary of State

During 2003-2007, the tobacco industry intensified its efforts to influence California politics with its campaign contributions to legislators, legislative candidates, political parties and constitutional officers. The industry steadily increased monies spent on state level political activities in the period 2003-2007, from \$4,086,553 in 2003-2004 (\$1,083,448 to candidates) to \$4,359,205 in 2005-2006 (\$1,895,584 to candidates).

## LEGISLATIVE ACTIVITY

### The 2003-2004 Legislative Session

The 2003-2004 legislative session saw 25 bills proposed that included retail licensing, taxation, tobacco sales and distribution, smoking restrictions, advertising and promotion, tobacco fees, environmental pollution and other areas. Only 7 of the bills became law (Table 34). Some bills that did not pass that session (Table 35) were precursors for future efforts to expand smoking restrictions, such as AB 1583 which would have prohibited smoking on beaches, AB 894 that would have prohibited smoking in vehicles with minors, and AB 210 that would have restricted smoking in common areas of multifamily dwellings.

An important bill that passed was AB 71, California's first statewide comprehensive tobacco product licensing act, though there were already a number of local retail licensing ordinances. Manufacturers, importers and retailers were added to the existing law that required licenses only for tobacco distributors and wholesalers. For the first time, the state would be able to identify and inspect every tobacco retailer in California. SB 1700, authored by Sen. Peace (D-Dist. 40, Policy Score 4.3) and who accepted \$66,000 from the tobacco industry during his legislative career, passed in the Senate in 2002, but it died in the Assembly. AB 71, as introduced, was nearly identical to SB 1700 except that it did not include for any suspension or revocation of a license for a violation of the STAKE Act (illegal sales to minors). The California Cigarette and Tobacco Products Licensing Act of 2003, requires all manufacturers, distributors, wholesalers, importers and retailers of cigarettes and tobacco products to obtain licenses in order to sell tobacco. The goal of the legislation is to curtail sales of untaxed cigarettes. The Board of Equalization estimated an additional \$87 million in tobacco taxes would be collected annually through identification and inspection of tobacco sellers. Authored by Assemblyman Jerome Horton (D-Dist. 51, Policy Score 4.4) and who had accepted \$98,500 from the tobacco industry during his legislative career through 2006, the bill was initially supported by the health groups even though it did not include suspension or loss of license for illegal tobacco sales to minors or adequate funding for enforcement.

SB 71 was supported by the California Attorney General because it would help curtail the sale of untaxed cigarettes. Philip Morris agreed to the bill,<sup>101</sup> but RJ Reynolds opposed it. Philip Morris may have agreed to the bill, even though it included a \$.01 per pack tax on tobacco manufacturers and importers, because of its enforcement provisions relating to smuggled and counterfeit cigarettes.<sup>101</sup> Philip Morris' support for the bill may also explain, at least in part, why Assemblyman Horton authored AB 71. The health groups tried to get the bill amended to correct the shortcoming they objected to as it moved through the Assembly, but were rebuffed.<sup>101</sup> After AB 71 passed in the Assembly and crossed over to the Senate, the health groups went on record opposing the bill because it did not address illegal sales to minors and continued to work on amending it.<sup>102</sup>

When it was assigned to the Senate Health and Human Services Committee, chaired by Senator Deborah Ortiz (D, Dist. 6, Policy Score 10.0), the health groups thought they had a chance for getting the amendments they wanted. The attempt "failed miserably".<sup>101</sup> While the Committee did amend the bill to provide additional penalties for conviction for illegal sales of tobacco products to minors, the penalties were inconsequential and not likely to deter illegal sales. The first conviction earns a warning letter, a second violation within a 12-month period results in a \$500 fine, and it was not until the fourth conviction within a 12-month period that suspension of license could occur. Convictions for violations at one retail location cannot be accumulated at other locations of the same retailer, and the penalties may not be imposed on any retailer when the Department of Health Services annual Synar Amendment

compliance survey shows that less than 13% of youth were able to purchase cigarettes. The funding for enforcement was not changed, with all funding coming from the one-time fee for a new license for each location engaging in the sale of tobacco. The Board of Equalization estimated that new license applications would provide \$1.5 million annually for enforcement.

The health groups continued to oppose AB 71, but it passed the Senate 26-9. The Assembly concurred in the Senate amendments and passed the bill 51-15. The Act sunsets on January 1, 2010, and would have to be reauthorized if state licensing for tobacco sellers is to continue.

The unsuccessful attempt by the health groups to amend AB 71 to make it meaningful tobacco control legislation was shaped by the history of an earlier bill on tobacco sales licensing. Following the demise of SB 1700, negotiations on tobacco sales licensing among all the legislative leadership took place because it was seen as an ongoing source of new revenue through effective collection of an existing tax. It had become part of the budgeting process. When AB 71 was introduced in December 2002 for the 2003 Session, it was a negotiated bill among legislative leadership that they did not want tampered with as it could undo the budget deal.<sup>101</sup> Part of that budget agreement was to leave tobacco control issues, mainly relating to tobacco sales to minors, to local governments and to focus the state legislation on tax compliance.<sup>103</sup>

A summary of tobacco-related legislation that became law in 2003-2004 is shown in Table 34, and a summary of tobacco-related laws that failed to become law in 2003-2004 is shown in Table 35.

<b>Table 34 Summary of Enacted Tobacco-Related Legislation in 2003-2004</b>				
<b>Bill No.</b>	<b>Author</b>	<b>Title</b>	<b>Topic</b>	<b>Outcome</b>
<b>Licensing</b>				
AB 71	Horton (D-Dist.51)	California Cigarette and Tobacco Products Licensing Act of 2003	Provides for the licensure by the State Board of Equalization of manufacturers, distributors, wholesalers, importers and retailers of cigarette or tobacco products. Revenues generated from the one-time licensing fee is deposited into the Cigarette and Tobacco Products Compliance fund to finance the implementation, enforcement and administration of this Act. Requires the Attorney General to develop an Internet site to list the tobacco manufacturers that are in compliance with the requirements of the MSA.	Took effect Jan. 1, 2004
<b>Taxes</b>				
AB 1666	Campbell (R-Dist.70)	Cigarettes and tobacco products	Reduces the amount of the security deposit required by a distributor that defers payments for stamps or meter register settings.	Took effect Jan. 1, 2004
<b>Tobacco Sales and Distribution</b>				
SB 1173	Ortiz (D-Dist.6)	Tobacco products: Self Service Display	Broadens the state ban on self-service displays of cigarettes to a ban on self-service displays of all other tobacco products and tobacco paraphernalia, except in tobacco stores.	Took effect Jan. 1 2005.
AB 3092	Horton (D-Dist.51)	STAKE Act Signage	Increases the fines for failure to post a STAKE Act sign from \$10 to \$50 for the first violation and from \$50 to \$100 for each subsequent violation.	Took effect Jan. 1 2005.

Bill No.	Author	Title	Topic	Outcome
SB 1016	Bowen (D-Dist.28)	Tobacco products: sales to minors	Prohibits public or private postal services from knowingly delivering packages containing tobacco products unless a visible label that states that the package is not to be delivered to anyone under the age of 18 is affixed to the package and requires verification that the recipient is over the age of 18 and applicable excise and use taxes have been paid.	Took effect Jan. 1, 2004
<b>Smoking Restrictions</b>				
AB 384	Leslie (D-Dist.13)	Tobacco products: correctional facilities.	Requires the Dept. of Corrections and the Dept. of the Youth Authority to prohibit the possession of tobacco products by inmates in state prison and Youth Authority facilities, as well as eliminate the sale of these items in these facilities.	Took effect Jan. 1, 2005
AB 846	Vargas (D-Dist.79)	Smoking: public buildings	Prohibits smoking inside a defined public building and within 20 feet of the main entrance or exit.	Took effect Jan. 1, 2004

**Table 35 Proposed, But Not Enacted, Tobacco-Related Legislation in 2003-2004**

Bill No.	Author	Title	Topic	Status
<b>Licensing</b>				
SB 433	Ortiz (D-Dist.6)	Tobacco products: licensing of retailers	Would have declared the Legislature's intent that the Board of Equalization license cigarette retailers and maintain the license on the premise for which it was issued.	Returned to Secretary of Senate pursuant to Joint Rule 56.
<b>Taxes</b>				
AB 1040	Leno (D-Dist.13)	Cigarette taxes	Would have authorized the County Board of Supervisors to impose a tax, in addition to other local taxes, on the sale of cigarettes and tobacco products at retail locations within the county's boundaries.	Died pursuant to Art. IV. Sec.(c) of the Constitution
AB 1276	Horton (D-Dist.51)	Tobacco Settlement Agreement: escrow compliance	Would have authorized the Attorney General to create an Internet site to list tobacco manufacturers that have provided current certification of escrow payments by April 15th of each year, and prohibited any tax or meter impression to be affixed unless the manufacturer is in compliance and is listed on the website. (See also AB 71)	To inactive file on motion of author. Died on inactive file.
<b>Tobacco Sales and Distribution</b>				
AB 2443	Daucher (R-Dist.72)	Sales to Minors Law	Would have amended the STAKE Act to increase the fines imposed on violators and allow local law enforcement agencies to conduct enforcement without a contract from the Department of Health Services.	From Assembly Committee on Governmental Organization without further action.

<b>Bill No.</b>	<b>Author</b>	<b>Title</b>	<b>Topic</b>	<b>Status</b>
AB 221	Koretz (D-Dist.42)	Tobacco products: minimum legal age: advertising, display and distribution limitations	Would have increased the minimum age to purchase tobacco products to 21. All tobacco promotion/advertising restriction currently in place would now apply to youth under the age of 21.	From Assembly Governmental Organization committee without further action pursuant to Joint Rule 62 (a).
<b>Smoking Restrictions</b>				
AB 1583	Koretz (D-Dist.42)	Beaches: Prohibiting Smoking	Would have prohibited smoking on all state beaches under the jurisdiction of the State Department of Parks and Recreation, with some exceptions allowing local municipal control. Would have allowed a city or county to pass an ordinance further restricting, weakening or opting out of the state smoke-free beach policy.	Passage failed in the Senate.
AB 894	Firebaugh (D-Dist.50)	Smoking in Cars with Minors	Would have made it an infraction for a person to smoke in a vehicle in which children are present who are required to ride in a child safety seat(six years or sixty pounds).	Died with Concurrence pending.
AB 210	Nation (D-Dist.6)	Tobacco : dwellings	Would have prohibited the smoking of any tobacco-related product within any common area in a common dwelling, as well as in indoor and outdoor common areas of multifamily residential housing.	Died pursuant to Art. IV. Sec.10 (c) of the Constitution
AB 549	Cohn (D-Dist.24)	School facilities: smoking.	Would have required school districts to prohibit smoking by anyone on a schoolsite during construction, reconstruction, rehabilitation or repair.	From Senate committee on Public Safety without further action.
<b>Advertising and Promotion</b>				
AB 1033	Montanez (D-Dist.39)	Tobacco: prohibition on free distribution	Would have prohibited the free distribution of any tobacco products to any individual, regardless of age; current law prohibits the free distribution to individuals under age 18.	Died pursuant to Art. IV. Sec.10 (c) of the Constitution
<b>Tobacco Fees</b>				
AB 1239	Wiggins (D-Dist.2)	Fees on Tobacco Manufacturers	Would have imposed a fee on tobacco manufacturers that did not sign the 1998 Master Settlement Agreement, and created a fund to be used for tobacco-related health measures including smoking cessation programs	From Senate committee on Revenue and Taxation without further action.
<b>Environmental Pollution</b>				



<b>Bill No.</b>	<b>Author</b>	<b>Title</b>	<b>Topic</b>	<b>Status</b>
AB 2694	Bogh (R-Dist.65)	Littering of Tobacco Products	Would have increased the range of fines established in current law for discarding a cigarette, cigar, match or any flaming or glowing substance.	Referred to Assembly Committee on Public Safety and from committee went without further action.
<b>Other</b>				
AB 586	Koretz (D-Dist.42)	Tobacco-related Waste	Would have prohibited the display or availability of ashtrays or other receptacles designed for tobacco-related waste for use on premises where smoking is prohibited by law.	Died pursuant to Art. IV. Sec.10 (c) of the Constitution
SB 676	Ortiz (D-Dist.6)	Tobacco products: health care costs: tobacco manufacturer fees	Would have imposed a fee on specified tobacco product manufacturers and created the Tobacco-Related Health Care Costs Trust Fund to reimburse state and local governments for the cost of treating individuals with tobacco-related diseases.	From Assembly Committee on Governmental Organization without further action.
SB 858	Ortiz (D-Dist.6)	Tobacco control	Would have provided that any funds appropriated to the Department of Health Services for the implementation of tobacco use prevention programs would be available for encumbrance and expenditure for two fiscal years after the date of appropriation.	From Assembly Committee on Appropriations without further action.
AB 221	Koretz (D-Dist.42)	Age to Purchase Tobacco	Would have increased the minimum age to purchase or possess tobacco in California from 18-21 years.	From Assembly Committee on Governmental Organization without further action pursuant to Joint Rule 62 (a)
SB 1821	Dunn (D-Dist.69)	Minimum Legal Age to purchase tobacco	Would have increased the minimum age to purchase or possess tobacco in California from 18-21 years.	From Senate Committee on Appropriations without further action.

Bill No.	Author	Title	Topic	Status
AB 1808	Yee (D-Dist.12)	Smoke-Free Beach Information Campaign	Would have required the Department of Health Services to conduct a public education program regarding the impacts of environmental tobacco smoke and secondhand smoke exposure in outdoor areas, particularly at beaches.	From Assembly Committee on Appropriation s without further action pursuant to Joint Rule 62 (a).

### **The 2005-06 Legislative Session**

The 2005-2006 California legislative session saw 15 tobacco-related bills introduced encompassing taxation, use of Master Settlement funds, tobacco product safety, smoking and mental health, smoking restrictions, environmental pollution, licensing, cessation services and tobacco sales and distribution.

There were 6 categories of tobacco control legislation that passed the Assembly and Senate and were signed by the Governor during the 2005-2006 legislative session: tobacco taxes and collection, securitization of Master Settlement funds, tobacco retail licensing, tobacco product fire safety, smoking and mental health, and smoking restrictions. Gov. Schwarzenegger’s record on tobacco issues was mixed. He signed legislation that required fire safe cigarettes , but also approved further securitization of tobacco settlement monies in 2006 (which was not opposed by the health groups) and vetoed two unquestionably anti-tobacco bills (a ban on internet sales of cigarettes and a mandate for health insurance coverage of smoking cessation services).

### ***Further Securitization of Master Settlement Funds***

The first securitization legislation occurred in 2003 and pledged MSA revenues until 2023 as security for the bonds. In 2006 SB 1141 authored by members of the Committee on Budget and Fiscal Review was passed and signed into law. It extended the policy, established by SB 1831 in 2002, to sell off \$400-\$500 million per year of the monies received by the state from the Master Settlement Agreement through 2022 to obtain an up-front lump payment. SB 1141 authorized the sale of additional tobacco settlement bonds backed the Master Settlement funds through year 2030.<sup>104</sup> The issuance of these bonds in March 2007 generated \$1.25 billion for the state.<sup>105</sup> The bill had mixed support in the Assembly, however it was almost unanimously supported on the Senate floor.<sup>104</sup> The health groups took no position on this bill, although it undermined the tobacco control movement as these bond funds would likely never be used for tobacco control. The voluntary health groups felt that they had little control over the issue of securitizing tobacco settlement funds, that it was a technical issue not a health issue, and that the battle had been “lost a long time ago and [that] nothing is going to change the legislature’s mind”.<sup>106</sup>

## ***Retail Licensing***

Retail licensing has been a contentious issue in California tobacco control for years, with tobacco control advocates rejecting many of the proposed retail licensing bills because they were structured to prevent tax evasion instead of dealing with illegal tobacco sales to minors. In 2006, the Legislature passed another retail licensing bill, AB 1749, authored by Assemblyman Jerome Horton (D-Dist. 51), who accepted the relatively large sum of \$10,900 from the tobacco industry in the 2005-2006 election cycle and received a mildly pro-tobacco policy score of 4.4. AB 1749 made substantive changes to the provisions in AB 71 by increasing the one-time fee for a new license requiring licenses for manufacturers and importers of other tobacco products besides cigarettes, increasing fines for violating the laws, limiting in-store placement of smoking paraphernalia, and repealing the January 1, 2010 sunset provision of the original AB 71.<sup>107, 108</sup> AB 1749 requires tobacco manufacturers and importers (excluding chewing tobacco) to pay a one-time license fee of \$2,000. Chewing tobacco manufacturers and importers will pay a one-time fee of \$10,000. Retailers, distributors, importers and manufacturers are all prohibited from purchasing tobacco products from anyone who is not licensed or whose license is suspended. AB 1749 imposes fines for possessing, selling, or buying counterfeit cigarettes and fraudulent cigarette tax stamps. AB 1749 increases to \$25,000 the fines for the sale of unstamped or unmetered cigarettes, for falsely or fraudulently making a cigarette tax stamp or meter impression, and for transporting cigarettes without a permit. AB 1749 adds blunt wraps to the list of tobacco paraphernalia and imposes specific restrictions on the sale of blunt wraps.<sup>107, 108</sup> This bill again focused on tax evasion without any provisions to limit youth access to tobacco products, but the increases in fines and penalties may have implications for better tobacco control. AB 1749 was requested by the Board of Equalization and no opposition was filed.<sup>109</sup> The voluntary health groups took no position on this bill because it did not have a tobacco control component.<sup>102</sup>

## ***Tobacco Product Fire Safety***

Cigarettes are the leading cause of fatal fires, and public safety authorities have been advocating for cigarettes that would be less likely to start fires for over twenty years. The tobacco industry has vigorously opposed such measures, often arguing that the problem was not with the ignition propensity of the cigarettes, but rather with the fact that furniture was too easily set on fire. The industry also financed many organizations that nominally dealt with fire safety in order to keep them from supporting fire safe cigarette legislation.<sup>110</sup> Fire safety legislation was finally passed in 2005 by the Senate and Assembly and approved by the Governor with the enactment of AB 178. AB 178, authored by Assemblyman Paul Koretz (D-Dist.42), who did not accept tobacco industry money and received a pro-tobacco control policy score of 10, prohibits the in-state sale, manufacture or distribution of cigarettes that are not fire-safe.<sup>111</sup> Manufacturers are required to certify that the cigarettes are self-extinguishing at least 75 percent of the time when tested in accordance with methods established by the American Society of Testing and Materials.<sup>112, 113</sup> Cigarette manufacturers are required to mark packages sold in California to show compliance with these provisions.<sup>113</sup> California was the third state, after New York and Vermont, to enact such a law as of 2006.<sup>114</sup> This bill was supported by a broad coalition of health, insurance, firefighters, labor, and consumer protection groups. The bill was opposed by the California Manufacturers & Technology Association and RJ Reynolds Tobacco Company.<sup>115</sup> AB 178 took effect on January 1, 2007. The American Cancer Society took no position on this bill because they did not believe it was a cancer control issue and would have no impact on reducing cancers and that the bill

implicitly intimates that a cigarette may be safe in some context.<sup>106</sup>

### ***Smoking and Mental Health***

The 2006 legislative session included the passage of AB 1880, a law to mediate violence marginally related to tobacco use in state hospitals<sup>116</sup> that was authored by Assemblyman Sam Blakeslee (R-Dist. 33) who received a tobacco policy score of 5 and accepted \$6,600 from the tobacco industry in 2006. The bill requires the director of Atascadero State Hospital, the maximum security hospital that administers care, treatment and education to the mentally disordered for the entire state, to develop a hospital-wide strategic plan to improve the health, safety, therapeutic, and workplace environment with relation to the presence or use of tobacco products.<sup>116</sup> The bill as introduced created a new crime of escape from a mental health facility by a person committed as a sex offender. However, it emerged from the Assembly Committee on Public Safety requiring the Director of Atascadero State Hospital to prohibit smoking in all areas inside the hospital. When the bill passed in the Assembly, it required the State Department of Mental Health to adopt regulations prohibiting smoking by patients in all state hospitals and by any nonpatient on the grounds of a state hospital, except for designated smoking areas. The Senate Committee on Health amended the bill to limit its application to Atascadero State Hospital and only required that the Director develop a strategic plan related “to the presence or use of tobacco products” there. The law requires that strategic plan is to include ways to improve staff and patient safety, better manage violent and aggressive behavior, ways to improve staff retention, and strategies to improve the health, safety, therapeutic and workplace environment as they relate to the presence and use of tobacco products. The Senate passed AB 1880 in that form and the Assembly concurred in the amendments. The author of the bill stated his reasons for regulating tobacco use in ASH involved violence among patients over barter of cigarettes. The California Association of Psychiatric Technicians (CAPT) supported the measure to eliminate smoking to protect the health of patients and staff. CAPT also argued that it would reduce the cost of medications as lower doses would be required to overcome the effects of nicotine. An additional factor cited by CAPT was the banning of tobacco use at California prisons, which created an incentive for prisoners to manipulate the system to get assigned to a state mental health facility where they could smoke. This ties up hospital resources while clinicians determine they do not have a mental illness that warrants hospitalization. A patients advocacy group cited the patients right to smoke to help calm themselves.No public position was taken by the health groups or the tobacco industry on this bill. The American Cancer Society and the American Lung Association felt the bill had no true direction and would not effectively stop tobacco consumption among the targeted population. The bill did not include true tobacco control policy measures such as smoking cessation for the targeted population.<sup>102, 117</sup> Also the voluntary health groups found the bill to have limited applicability, as its provisions would be implemented in just one hospital and did not address the broader issue of mental health and tobacco consumption.<sup>102, 106</sup>

In its Long Term Care Services Division Strategic Plan Fiscal Years 2007-2009,<sup>118</sup> the California Department of Mental Health stated its goal of transitioning all state hospitals to banning tobacco products from hospital property to create a healthier, safer environment for patients, staff and visitors. The Strategic Plan also announced that Atascadero and Patton State Hospitals would begin implementation of their Tobacco-Free Transition Plans on September 1, 2007.

### ***Smoking Restrictions***

Assemblywoman Jenny Oropeza (D-Dist.55) who accepted no tobacco industry money and received a pro-tobacco control policy score of 9.8 introduced AB 2067 in 2006 which extended the existing restriction on indoor smoking to include lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of a covered parking lot of a public building.<sup>119</sup> The existing law before AB 2067 prohibited smoking inside public buildings, but excluded covered parking lots of public buildings from the prohibition. AB 2067 also amended the definition of “enclosed spaces” in places of employment to include lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building in places of employment.<sup>119</sup> AB 2067 was supported by the American Heart Association, American Lung Association, Association of California Healthcare Districts, California Teamsters, The Foundation for a Smokefree America, no opposition was filed and the tobacco industry did not lobby the bill.<sup>120</sup> The American Cancer Society took no position on this bill as they felt the scope of the bill was extremely limited and relatively inconsequential, and also stated that evidence was not available to substantiate the impact of this smoking restriction on health outcomes for the public.<sup>106</sup> The American Lung Association supported the bill, although it was not a comprehensive bill, because it would be another venue where people would be unable to smoke and hence maintain momentum focused on the de-normalization of smoking.<sup>102</sup>

### **Proposed But Not Enacted Tobacco-Related Legislation in 2005-2006**

Of the eight tobacco-related laws proposed but not enacted in the 2005-2006 legislative session, all were favorable for tobacco control; two passed but were vetoed by the Governor.

#### ***Requiring Private Health Plans to Offer Smoking Cessation***

Senator Deborah Ortiz (D-Dist.6), who has never accepted tobacco industry money in her entire career as a legislator and received a pro-tobacco control policy score of 10, sponsored SB 576 in the 2005-2006 legislative session, to require health care service plan contracts and health insurance policies that provide outpatient prescription drug benefits to also provide coverage for tobacco cessation services.<sup>121</sup> The Legislature passed the bill, but Governor Schwarzenegger vetoed it.

SB 576 was supported by American Cancer Society (Co-sponsor), California Tobacco Control Alliance (Co-sponsor), American Federation of State, County and Municipal Employees, AFL-CLO, American Heart Association, American Lung Association, California Academy of Family Physicians, California Medical Association, California Psychological Association, Latino Issues Forum and the San Luis Obispo Tobacco Control Coalition.<sup>122</sup>

It was opposed by America's Health Insurance Plans, Association of California Life and Health Insurance Companies, California Association of Health Plans, California Association of Physician Groups, California Chamber of Commerce, California Restaurant Association, Health Net, Kaiser Permanente.<sup>122</sup> The opponents, principally health plans and insurers, advanced several arguments against SB 576:

While tobacco cessation services have proven effectiveness, mandating their coverage will increase the price of insurance and further limit its availability to employers and other purchasers.

It insulates tobacco cessation benefits from industry-standard cost control methods that apply to most other benefits, such as deductibles, copayments and formularies.

The mandated coverage of over-the-counter drugs would be a departure from industry practice with potentially significant cost implications.

The passage of SB 576 marked the first time that a smoking cessation measure had passed in both houses of the Legislature, despite the efforts of two of the most powerful lobbies in Sacramento - insurance and tobacco. Table 36 shows how the vote on SB 576 fell largely along party lines and underscores the impact of the tobacco industry contributions on voting by Republican legislators and the value of Policy Scores. Tobacco control advocates worked hard for floor votes and managed good majorities in both houses (Assembly 42-35, Senate 23-15), but well short of the 2/3 vote in each house needed to override the veto (Table 36). Historically, it is very difficult, if not impossible, to increase the Ayes on a veto override vote.

The bill was sent to the Governor on September 13, 2005.

<b>Table 36 Votes on SB 576</b>					
<b>SENATE</b>					
Senate Ayes	Policy Score	Tobacco Industry Contributions	Senate Noes	Policy Score	Tobacco Industry Contributions
Alarcon (D)	8.3	\$0	Aanestad (R)	1.0	\$7,100
Bowen (D)	9.4	\$0	Ackerman (R)	0.5	\$20,000
Cedillo (D)	8.8	\$1,000	Ashburn (R)	0.3	\$78,300
Chesbro (D)	10.0	\$0	Battin (R)	0.3	\$13,600
Ducheny (D)	5.6	\$8,500	Campbell (R)	2.3	\$36,400
Dunn (D)	9.5	\$0	Cox (R)	0.8	\$34,850
Escutia (D)	9.8	\$0	Denham (R)	3.0	\$7,400
Figueroa (D)	8.8	\$0	Dutton (R)	0.3	\$21,000
Florez (D)	8.3	\$10,350	Hollingsworth (R)	0.3	\$19,750
Kehoe (D)	8.3	\$0	Machado (D)	4.8	\$14,200
Kuehl (D)	9.8	\$0	Margett (R)	0.3	\$8,500
Lowenthal (D)	9.0	\$0	McClintock (R)	0.2	\$14,064
Maldonado (R)	5.4	\$5,850	Morrow (R)	0.3	\$8,800
Migden (D)	8.4	\$42,300	Poochigian (R)	0.3	\$24,000
Murray (D)	5.4	\$6,600	Runner (R)	1.3	\$28,550
Ortiz (D)	10.0	\$0			
Perata (D)	7.8	\$3,200			
Romero (D)	9.8	\$0			
Simitian (D)	7.8	\$5,500			
Soto (D)	9.3	\$3,000			
Speier (D)	9.0	\$0			
Torlakson (D)	9.8	\$0			
Vincent (D)	6.0	\$7,500			
<b>ASSEMBLY</b>					
Assembly Ayes	Policy Score	Tobacco Industry Contributions	Assembly Noes	Policy Scores	Tobacco Industry Contributions
Arambula (D)	6.3	\$0	Aghazarian (R)	0.7	\$23,500
Baca (D)	6.0	\$17,400	Benoit (R)	0.7	\$21,500

Bass (D)	8.8	\$0	Bogh (R)	1.8	\$23,300
Berg (D)	8.8	\$0	Calderon (D)	4.7	\$31,800
Bermudez (D)	7.3	\$2,000	Chavez (D)	6.5	\$85,000
Blakeslee (R)	5.0	\$9,800	Cogdill (R)	0.3	\$48,200
Canciamilla (D)	4.3	\$74,000	Daucher (R)	3.0	\$29,400
Chan (D)	9.8	\$0	DeVore (R)	0.7	\$14,100
Chu (D)	9.8	\$1,000	Emmerson (R)	1.8	\$8,100
Cohn (D)	7.8	\$13,700	Garcia (R)	1.3	\$18,300
De La Torre (D)	8.8	\$0	Harman (R)	1.5	\$22,520
Dymally (D)	9.0	\$5,500	Haynes (R)	0.25	\$8,500
Evans (D)	9.3	\$0	(S) Horton (R)	1.0	\$13,350
Frommer (D)	9.0	\$0	Houston (R)	0.75	\$12,600
Goldberg (D)	9.0	\$0	Huff (R)	0.7	\$7,600
Hancock (D)	9.4	\$0	Keene (R)	0.3	\$21,250
Horton (D)	4.4	\$98,500	La Malfa (R)	0.3	\$24,750
Jones (D)	9.0	\$0	La Suer (R)	0.2	\$16,250
Karnette (D)	9.75	\$1,000	Leslie (R)	1.75	\$67,400
Klehls (D)	9.0	\$0	Matthews (D)	4.5	\$30,200
Koretz (D)	10	\$0	Maze (R)	0.3	\$8,911
Laird (D)	9.2	\$0	McCarthy (R)	1.25	\$26,200
Leno (D)	9.75	\$0	Mountjoy (R)	0.2	\$26,450
Levine (D)	8.75	\$500	Nakanishi (R)	1.0	\$0
Lieber (D)	8.75	\$0			
Liu (D)	8.3	\$0			
Montanez (D)	9.4	\$0			
Mullin (D)	9.7	\$0			
Nava (D)	9.0	\$0			
Nunez (D)	8.5	\$5,800			
Negrete-McLeod (D)	5.25	\$2,000			
Oropeza (D)	9.8	\$1,000			
Parra (D)	7.3	\$9,600			
Pavley (D)	9.8	\$1,500			
Ridley-Thomas (D)	8.8	\$7,400			
Ruskin (D)	9.3	\$0			
Saldana (D)	9.25	\$0			
Salinas (D)	9	\$3,000			
Umberg (D)	9	\$3,300			
Vargas (D)	10	\$500			
Wolk (D)	8.25	\$0			
Yee (D)	8.2	\$0			

According to Jim Knox, Vice President of Legislative Advocacy of the ACS California Division, SB 576 was their top priority bill that year.<sup>106</sup> In fact, ACS put more effort toward obtaining a gubernatorial signature on SB 576 than they probably had in the history of the American Cancer Society's advocacy campaigns in California, including a meeting with the Governor's staff and mounting an extensive grassroots campaign.<sup>106</sup> The California Tobacco Control Alliance, a coalition of public health, health care, academic and community-based organizations working in collaboration with managed care providers on smoking cessation programs, a co-sponsor of SB 576, had presented data during legislative hearing on SB 576 showing the long-term cost benefits to health plans if SB 576 was

adopted based on a return-on-investment model provided by the Center for Health Research, Kaiser Permanente Northwest and America's Health Insurance Plans.<sup>123</sup> In her letter to the Governor asking him to sign the bill, Kirsten Hansen, executive director of the California Tobacco Control Alliance presented that same data to Gov. Schwarzenegger:

Based on the work of the Center for Health Research, Kaiser Permanente Northwest and America's Health Insurance Plans, we are able to calculate the savings to employers and health plans who invest in cessation benefits. This bill will cost health plans several millions of dollars in the first year, but will return \$108 million in the second year and \$1.4 billion in the fifth year. Employers will save money the first year due to increased productivity. Failure to enact SB 576 will forgo a 2000 percent return on investment. According to the federal Centers for Disease Control, tobacco cessation is the most cost effective medical intervention available - second only to inoculations in return on investment.<sup>124</sup>

The Governor's decision to veto the bill was based on an analysis of SB 576's fiscal impact by the California Health Benefits Review Program (CHBRP) which is the agency created by the Legislature in 2002 to provide to the Legislature independent analysis of the medical, financial, and public health impacts of proposed health insurance benefit mandates. In his October 7, 2006 Veto Message, the Governor wrote:

I fully support efforts to help Californians stop smoking. Due to a successful aggressive antitobacco campaign, California's smoking rate has decreased to 15.4 percent, a 32.5 percent decline since 1988. California is second only to Utah in terms of having the fewest smokers. A key priority of my Administration is to increase access to affordable health insurance. An independent analysis of SB 576 by the University of California's Health Benefits Review Program indicates that this bill would impose costs of \$77 million on employers, plans and individuals but only increase the utilization of the benefit by two-tenths of one percent among plans that already cover tobacco cessation and 6% for those that don't currently provide the benefit. Additionally, while more than 55% of insured Californians already have tobacco cessation coverage; only ten percent of smokers trying to quit utilize the benefit. This bill reflects a difficult policy choice: focus on providing access to affordable health insurance products that an average Californian can purchase or impose a mandate that every person or employer that pays for health insurance pays a higher premium to cover costs for a universally offered tobacco cessation benefit.

Mandating coverage is not the appropriate approach to take at this time. I believe we should build upon California's anti-smoking success and encourage plans to get more smokers to utilize existing tobacco cessation benefits and persuade additional plans to include tobacco cessation benefits on a voluntary basis. I invite the sponsors of SB 576 and the healthcare industry to work with my Administration through the Department of Health Services and Department of Managed Health Care to challenge each other to develop affordable and efficient strategies that will further reduce smoking in California without increasing the cost of health insurance.<sup>125</sup>

The veto was sustained in the Legislature when the Session ended without any veto override vote having been taken in the Senate, which, as the house of origin, had to take up the veto first.



The governor's veto message cited the CHBRP study as the cause for his veto, as the study indicated that SB 576 would impose costs of \$77 million on employers, health plans and individuals the first year. What the veto message did not state was that this was only the projected costs for the first year of the program and that the CHBRP study actually acknowledged that there would be savings in future years:

Based on the scientific evidence for the effectiveness of tobacco cessation services, the impact of tobacco cessation on both short-term and long-term outcomes, and the evidence of economic benefits from reductions in smoking-related expenses, SB 576 would likely have a positive impact on public health in the state. Short-term benefits would be limited to those associated with the reduction in morbidity and mortality associated with AMI and low birth weight deliveries. *A discussion of long-term benefits of tobacco cessation is beyond the scope of this analysis.* However, we might assume that the long-term effects of cessation would be likely to impact conditions that are more chronic in nature, possibly more disabling and more costly than the short-term outcomes discussed in this analysis.<sup>126</sup> [emphasis added]

In February 2007, CHBRP released new criteria for its analysis of the long-term impact on healthcare and public health of legislation it is asked to analyze. First, CHBRP explains its past criteria to limit its analysis to a one-year time period: CHBRP lacks the capacity for modeling long-term costs and benefits, especially within the 60-day time frame allotted for its analysis. As a result, it acknowledged, "Ignoring these long-term consequences because of time constraints may result in analyses that substantially underreport the health benefits and possible cost savings associated with a proposed mandate". Instead of trying to model long-term costs and benefits itself, CHBRP will conduct a literature review for relevant studies of long-term costs and benefits and summarize the data in narrative form in its analysis."<sup>127</sup> Had this criteria been in place when the analysis of SB 576 was performed, the outcome might have been different. However, while the opportunity to legislate public health services delivered through the private marketplace would have been innovative and comprehensive, the positive public health aspects of SB 576 were never fully addressed because the strong opposition of the health insurance companies dominated the debate and likely influenced the Governor.<sup>128</sup>

Given the new criteria for analysis of long-term benefit by CHBRP and the 2007 Institute of Medicine recommendation (Recommendation 20) in its report "Ending the Tobacco Problem: Blue Print for the Nation"<sup>129</sup> that all insurance, managed care and employee benefit plans, including Medicaid and Medicare, should cover reimbursement for effective smoking cessation programs as a lifetime benefit, California tobacco control advocates are on more solid ground for another try at achieving the goal of SB 576.

### ***Smoking Restrictions***

While AB 2067 was enacted, two other proposed smoking restriction bills failed. AB 616 was introduced by Assemblyman Juan Vargas (D-Dist.79) who accepted no tobacco industry money in 2006 and received a pro-tobacco control policy score of 10. The proposed bill would have prohibited individuals from smoking in an outdoor area (patio, courtyard, etc.) of a state-owned or leased building that is enclosed on four sides.<sup>113, 130</sup> This bill appears to have been designed to shut down the Governor's

“smoking tent,” which is located in a courtyard in the State Capitol adjacent to the Governor’s office, but this was not explicitly stated. After passing in the Assembly, the bill moved to the Senate died in the Committee on Rules. It died in this committee which was chaired by Senator Don Perata (D-Dist.9) who received no tobacco industry money in 2006 and received a pro-tobacco control policy score of 7.8. The bill was supported by the American Heart Association, American Lung Association, California Teamsters, The Foundation for a Smokefree America and no formal opposition was filed,<sup>120</sup> but the bill was lobbied by the tobacco industry as reported to the Secretary of State. The bill was viewed by some as more symbolic in nature and with little consequential merit.<sup>106</sup> The American Lung Association (ALA) felt, however, that the bill had no impact on the Governor’s smoking tent and was not designed to address the tent, although media attention was focused on the bill’s potential to restrict the Governor’s smoking habit.<sup>102</sup> Rather, the ALA felt that the author of the bill was interested in expanding the current policy restricting smoking in entryways and outdoor places around public buildings to expand further to restrict smoking in patios and courtyards.<sup>102</sup>

AB 379 was introduced in the Assembly in 2006 by Assemblywoman Noreen Evans (D-Dist. 7) who did not accept tobacco industry money and received a pro-tobacco control policy score of 9.3. As introduced, AB 379, would have added certain educational activities to the eligible core activities for recipients of benefits in the welfare-to-work program. It passed in the Assembly with minor technical amendments on May 31, 2005, and additional authors Koretz, Goldberg, Laird, Leno and Lieber. In the Senate in August 2005, Senators Kuehl, Kehoe, and Migden joined as coauthors. The Senate Committee on Appropriations amended the bill on August 23, 2005 to strike all of the language as passed in the Assembly and to add language prohibiting discrimination on the basis of sex by life and disability insurers. Senator Ortiz joined as a coauthor and Assemblyman Paul Koretz became the sole author. Koretz did not accept any tobacco industry money and received a policy score of 10. Sen. Ortiz also accepted no tobacco industry money and received a policy score of 10. In the Senate Committee on Health, chaired by Sen. Ortiz, the bill was amended to make it an infraction to smoke in a motor vehicle in which there is a child in a child passenger restraint system. The law would be named the Marco Firebaugh Memorial Children’s Health and Safety Act of 2006, in honor of Assemblyman Firebaugh who had championed this issue in three separate bills in that failed in 2004 (AB 894, AB 1569 and AB 2997). AB 379 passed in the Senate 23-14. Because it was substantially amended in the Senate, Assembly Rules allowed the Speaker to assign the bill to the appropriate committee. AB 379 was assigned to the Assembly Committee on Health where it was reported out with a recommendation to concur in the Senate amendments. On the Assembly floor, concurrence was rejected 37-35. In 2004, AB 2997 was the only one of the three Firebaugh smoking in vehicles bills to reach the floor of either house and it failed in the Assembly 37-30. AB 379 was then referred to Conference Committee where it died at the end of the session. The bill was supported by American Federation of State, County and Municipal Employees, American Cancer Society, American Heart Association, American Lung Association, California Medical Association, California Thoracic Society, Children’s Advocacy Institute. There was no formal opposition filed.<sup>131</sup> The voluntary health groups felt most of the opposition for this sort of legislation hinged on the civil rights issue of smokers. “Nanny” government and restricting smokers from smoking in their own cars presented a slippery slope for enacting smoking regulations, even when it addresses the issue of secondhand smoke exposure of children. Although there was no official opposition filed for this bill, the American Lung Association stated the tobacco companies were actively working to kill the bill,<sup>102</sup> although the tobacco industry did not report lobbying on the bill as required by law. Along with the constant efforts to oppose smoking restrictions, ALA believed that the

tobacco companies also felt this bill would further ruin their corporate image, where de-normalization of smoking is extended to an extreme by restricting smokers from smoking in their own vehicles.<sup>102</sup>

### ***Cigarette Litter and Environmental Pollution***

Two bills were introduced regarding cigarette litter and pollution. Cigarette litter, principally the filter tip butt, is a toxic waste that is harmful to the children and wildlife that ingests them. The cleanup costs of this litter in California is in the millions of dollars annually.<sup>132</sup> The tobacco industry explored using a biodegradable cigarette filter, but abandoned the idea in 2000. Even a biodegradable filter would still not solve the toxic waste problem.<sup>133, 134</sup>

AB 1612 was authored by Assemblywoman Fran Pavley (D-Dist.41) who accepted \$1,500 from the California Distributors Association (a frequent tobacco industry ally) in 2006, but has never taken tobacco company money and received a pro-tobacco control policy score of 9.8. The bill would have required cigarette manufacturers to pay a fluctuating fee determined by the Board of Equalization based on number of packs of cigarettes sold in the preceding six months based on the costs associated with cigarette litter clean up and the mitigation of cigarette related pollution, as well as to support programs by public agencies and nonprofit organizations to reduce cigarette litter, to develop and implement public education and outreach programs, to assist individuals to access and utilize smoking cessation services, to develop and implement public education and outreach programs aimed at preventing individuals from starting to smoke, and to develop and implement community interventions aimed at reducing the harm caused by smoking.<sup>135</sup> While the bill was reported “do pass” by the Committee on Natural Resources in April 2005, it was referred to the Assembly Committee on Judiciary by unanimous consent on January 4, 2006. That Committee amended the bill by striking all of the previous language and adding language on attorney whistleblowers. AB 1612 as introduced was supported by American Heart Association, American Lung Association of California, Californians Against Waste, City of Calabasas, League of California Cities, Natural Resources Defense Council, and the Sierra Club California. AB 1612 was opposed by California Alliance for Consumer Protection, California Chamber of Commerce, California Manufacturers and Technology Association, Howard Jarvis Taxpayers Association, Lorillard Tobacco Company.<sup>136</sup> The California Chamber of Commerce and the California Manufacturers and Technology Association had been members of the coalition recruited by the tobacco industry to oppose Proposition 99 in 1988.

The second bill regarding cigarette litter was SB 942 introduced by Senator Wesley Chesbro (D-Dist.2) who received a pro-tobacco control policy score of 10 and had never accepted tobacco industry money. This bill was identical to AB 1612 introduced in the Assembly and both bills were drafted and co-sponsored by the American Lung Association and the Californians Against Waste. They were introduced simultaneously in the House and the Senate with the hope that one of them would make it to passage.<sup>102</sup> SB 942 was reported “do pass” by the Senate Committee on Health in April 2005 and was referred to the Senate Committee on Appropriations in May 2005. The bill was still under submission in the Senate Appropriations Committee on January 31, 2006 and thus failed to qualify as a carry-over bill into the 2006 session. The Committee was chaired by Senator Carole Migden (D-Dist.3) who accepted \$4,300 from the tobacco industry in 2006 and received a pro-tobacco control policy score of 8.4. SB 942 was supported by the American Lung Association, Californians Against Waste, American Heart Association, American Cancer Society, Baykeeper, California Alliance for Consumer Protection,

League of California Cities, Natural Resources Defense Council, Planning and Conservation League, and the Sierra Club. SB 942 was opposed by California Chamber of Commerce, California Manufacturers & Technology Association, California Taxpayers' Association, and Lorillard Tobacco Company.<sup>137</sup> Even though these companion bills on the surface were proposed to impose a litter mitigation fee, they had a strong tobacco control and prevention component. Both bills were designed to advance the coalitions and the work that had been done on smoke-free beaches where environmental and tobacco control groups had come together.<sup>102</sup> This combination of environmental concerns and tobacco control policy created the movement for this bill, with the litter fee becoming the focal point in the Senate.<sup>102</sup> The principal reason advanced for why these bills failed was the proposed fee, which was always unpopular in the Legislature, even if directed at the tobacco industry. Both bills were publicly opposed by the tobacco industry.

### ***Retail Licensing***

SB 400 was introduced in 2006 by Senator Sheila Kuehl (D-Dist.23) who never accepted tobacco industry funds and received a pro-tobacco control policy score of 9.8. SB 400 would have repealed that section of the current law passed in 2003 (AB 71) that authorized the Board of Equalization to suspend or revoke a license for underage sales violations, but only in periods when the underage sales rate in California is 13% or more, which had never happened. SB 400 would have provided the Board of Equalization with the authority to levy penalties against a license holder for violations of underage sales at any time.<sup>138</sup> The bill was referred to the Senate Appropriations Committee, chaired by Senator Carole Migden (D-Dist.3) who accepted \$4,300 from the tobacco industry in 2006 and received a pro-tobacco control policy score of 8.4. It was set many times for hearing but none were held and the bill eventually died in committee. SB 400 was co-sponsored by the American Cancer Society, the American Heart Association and the American Lung Association, and supported by Attorney General Bill Lockyer. It was opposed by the California Grocers Association and the California Retailers Association.<sup>139</sup> The opposition of the California Grocers Association was no surprise as they have a long history of working with the tobacco industry to defeat many restrictions related to tobacco sales.<sup>140</sup> This bill had very little support after it was introduced and the main intent of the bill was to fix language in AB 71 enacted in 2003 regarding retail licensing that was not comprehensive enough for good tobacco control. The voluntary health groups ultimately decided not to continue to push for passage of the bill because local retail licensing ordinances were becoming more prevalent and with penalties that had deterrent effect as compared with state licensing activity and enforcement.<sup>102</sup>

### ***Tobacco Taxes***

SB 564 was introduced in 2005 by Senator Tom Torlakson (D-Dist.7) who has never accepted tobacco industry money and received a pro-tobacco control policy score of 9.8. The bill was designed to increase tobacco taxes by \$1.00 to support tobacco control and to fund child health programs. Proceeds generated by the new taxes would have been allocated to a newly created fund called the California Healthy Children Trust Fund. The Department of Health Services would allocate the funds to the following programs: 1.) 33% to fund training, education, nutrition, and physical activity, 2.) 11% to fund preventive health programs for children ages one through five, 3.) 8% to fund preventive health programs for children ages six through seven, 4.) 6% to fund preventive health programs for children

ages eight through ten, 5.) 22% to fund the California Tobacco Control Program for smoking cessation programs in the workplaces, especially workplaces that exhibit increased rates of tobacco use due to the socioeconomic status of the workforce, 6.) 9.5% to fund community-based programs to match locally raised funds for the research, prevention, and treatment of pediatric AIDS, obesity, diabetes, and childhood cancers, 8.) 1% to fund research and prevention of other cancers, including lung cancers.<sup>141</sup> This bill included a backfill for Proposition 99, the Breast Cancer Fund and the Proposition 10 California Children and Families trust fund. SB 564 was referred to the Senate Revenue and Taxation Committee and amended several times to increase the tax to \$1.00 from \$.50 per pack, to change the percentage allocation of the Trust Fund and to extend the effective date to January 1, 2007. However, it failed to qualify for carryover to the 2006 Session because it had not passed in the house of origin by January 31, 2006.<sup>142</sup> The Senate Revenue and Taxation Committee was chaired in 2005 by Senator Michael Machado (D-Dist. 5) who accepted \$1,000 from the tobacco industry in 2006 and received a neutral tobacco policy score of 4.8. SB 564 was supported by the American Lung Association of California, the American Cancer Society, the California Medical Association, and the California State PTA. It was opposed by the California Distributors Association, the California Taxpayers' Association, the Conway Sales Company, Lorillard Tobacco Company, RJ Reynolds and Swedish Match North America.<sup>141</sup> At the time, the voluntary health groups were fully engaged in the tax initiative process that would lead to Proposition 86 later in 2006 and directed little attention to SB 564.<sup>102, 106</sup> The historic lack of support for any tobacco tax increase in the California Legislature had been the catalyst for the two initiatives (Proposition 99 in 1988 and Proposition 10 in 1998) to increase the cigarette tax by a total of \$.75, and the requirement for a 2/3 vote in both houses to approve any tax increase continued to make any legislative tobacco tax increase only a very remote possibility.

### ***Tobacco Sales and Distribution***

Another important tobacco control bill introduced in the 2005-2006 legislative session was SB 1208 by Senator Deborah Ortiz (D-Dist.6) who has never accepted tobacco industry money and received a pro-tobacco control policy score of 10. SB 1208 would have banned internet sales of cigarettes by prohibiting the shipment of cigarettes to private individuals in California, and would have established criminal and civil penalties for violations. Individuals would have been allowed to transport up to 800 cigarettes (4 cartons) for themselves or other adults in California.<sup>107, 143</sup> SB 1208 was introduced into the Senate in January, 2006. The California Attorney General sponsored SB 1208 because “virtually all internet tobacco retailers engage in illegal sales, because, among other things, they make no effort to verify the age of their customers, as required by Section 22963 of the [California] Business and Professions Code, and they violate the Act’s tax reporting requirements”, which deprives the state of millions of dollars of tax revenue each year.<sup>144</sup> It passed the Assembly and Senate in August, and was vetoed by the governor on September 29, 2006.

The Governor’s veto message stated:

This bill would prohibit cigarette sales via the Internet to individual California consumers and only permit shipping of cigarettes via the Internet to state of California tobacco licensed businesses. Existing law reduces youth access to cigarettes over the Internet by requiring Internet sellers and shippers to verify the age of the purchaser, similar rules that apply to alcohol sales and shipments. In addition, the Board of Equalization is currently uses [sic] the federal

Jenkins Act to recover excise taxes from Californians that have purchased cigarettes via out-of-state Internet websites.<sup>145</sup>

After the veto, SB 1208 was assigned in the Senate to unfinished business and eventually died on file with no veto override vote being taken.<sup>146</sup> As with SB 576, SB 1208 did not receive enough votes in the Senate (24-11) or the Assembly (48-31) to indicate that a 2/3 vote was possible to override the veto. SB 1208 was supported by the California Attorney General (Sponsor), the American Cancer Society, the American Heart Association, the American Lung Association, Breathe California, the California Association of Retail Tobacconists, the California Hospital Association, the California Medical Association, the California State Association of Counties, the California Tobacco Control Alliance, and Girl Scouts of California. It was opposed by the Cigar Manufacturers of America.<sup>144</sup>

Along with the high priority given to SB 576, the American Cancer Society also placed high priority on SB 1208.<sup>106</sup> ACS and the other supporters of SB 576 and SB 1208 believed that these measures would have resulted in the greatest impact among all of the tobacco-related bills introduced in 2005-2006 and devoted their greatest resources to the passage and signing of both measures. “The fact that the Governor vetoed what we felt were the most important tobacco control bills in both 2005 and 2006 is unfortunate testimony to his poor record on tobacco control”.<sup>147</sup>

In the period 2003-2006, the Legislature and the Governor continued to block most tobacco control measures, though some meaningful tobacco control legislation was passed. AB 71 in 2003 established the first state-wide tobacco sales licensing law, and covered every step of the commerce from manufacturer to retailer. While not supported by the health groups because it did not provide penalties for illegal sales to minors, AB 71 does provide for the first time the identities of all tobacco retailers, which should aid enforcement of youth access laws. AB 178 in 2005 prohibited the sale in California after January 1, 2007 of any cigarette that is not self-extinguishing. Two major 2006 legislative victories by public health forces, however, suffered vetoes by Governor Schwarzenegger, mandatory smoking cessation coverage in health insurance (SB 576) and restrictions on internet sales of cigarettes (SB 1208), despite grassroots activity by the health groups to prevent these vetoes.

## **2007 Legislation**

As a result of the 2006 elections, the 2007 Legislative Session had many new faces in both houses. The Senate had a 30% turnover and the Assembly a 45% turnover. Bills introduced in the 2007 Legislative Session encompassed issues ranging from smoking restrictions, taxes, tobacco sales and distribution, tobacco use programs, and definitions of cigarettes. What is probably a first for tobacco control legislation in California, AB 1467 had not a single amendment from its introduction in the Assembly through passage in the Senate, but was vetoed by Governor Schwarzenegger. AB 1467 would have eliminated the last exceptions in the smoke-free workplaces law.

### ***Restructuring the Tobacco Control Program in the California Department of Education***

Freshman Assemblywoman Mary Salas (D-Dist.79), who accepted no tobacco industry campaign contributions (no policy score available) introduced AB 647 which proposed to significantly restructure the Tobacco Use Prevention Education (TUPE) program of the Department of Education funded from the Proposition 99 Health Education Account.<sup>148</sup> The Superintendent of Public Instruction sponsored the bill to combine three programs into one to provide appropriate funding in the face of declining Proposition 99 revenues.<sup>149</sup> AB 647 passed unanimously in both houses of the Legislature and was signed by Gov. Schwarzenegger on July 27, 2007. The new law becomes effective July 1, 2008. Prior to the passage of SB 647, TUPE funding allocations were made in three separate processes: (1) Entitlement funding for grades four through eight, (2) supplemental competitive grants to fund grades six through eight, and (3) competitive grant program for grades nine through 12. In FY 2007, \$9.3 million was allocated to the entitlements program to serve approximately 2.4 million students in grades four through eight. In multi-year grants for FY2006-2009, \$1 million was awarded to serve 26,633 students in grades six through eight and \$10 million to provide services for 150,000 students in grades nine through 12. SB 647 consolidated the three funding processes into a single competitive grant program for grades 6 through 12. SB 647 also imposed some criteria for the grants: (1) each recipient of a grant must provide tobacco-use prevention instruction, (2) each recipient of a grant for pupils in grades seven through 12 must provide tobacco-use intervention and cessation activities targeted for pupils in high-risk groups. SB 647 also requires the Department of Education to consider the need to balance rural, suburban and urban projects when adopting criteria and standards for the allocation of grant awards. Priority must be given to applications and programs that do all of the following: (1) target current smokers and pupils most at risk for beginning to use tobacco, (2) offer or refer pupils to cessation classes for current smokers, (3) utilize existing antismoking resources, including local antismoking efforts by local lead agencies and competitive grant recipients, (4) design the project to coordinate with other community services, including local health agencies, voluntary health organizations and parent organizations, (5) design the project to use and develop existing services and resources, and (6) demonstrate an understanding of the role that environment and community norms play in influencing tobacco use. In support were the American Federation of State, County and Municipal Employees, the American Heart Association, California Teachers Association and the State Superintendent of Public Instruction.

This bill implemented the major component of a 2000 TERO recommendation that TUPE reduce the entitlement funding to one-third of the total with a focus on grades six through eight and increasing the competitive grant funds to two-thirds of the total to include supplemental funding for the

“crucial middle-school years” of grades six through eight.<sup>150</sup> In 2003, the Department of Education established a Tobacco Use Prevention Education Recommendations Task Force to recommend ways that TUPE might be changed to continue to deliver an effective program that could operate with less money. One of the eleven Task Force recommendations was to limit funding to provide prevention programs in grades six through ten and cessation programs for grades seven through twelve.<sup>13</sup> TEROC urged in 2006 that the Department of Education and the legislature implement the Task Force recommendations, which AB 647 largely did.

### ***Smoking Restrictions***

SB 4 introduced in the 2007 legislative session was sponsored by freshman Senator and former Assemblywoman Jenny Oropeza (D-Dist.28) who accepted \$1,000 from the California Distributors Association PAC (a frequent tobacco industry ally) in 2001-2002 and has never accepted money from a tobacco company and received a pro-tobacco control policy score of 9.8. The bill would prohibit smoking within the state park system or at a state coastal beach, with a \$250 fine for individuals committing this infraction.<sup>151, 152</sup> SB 4 was supported by the American Cancer Society, American Federation of State, County, and Municipal Employees, American Lung Association, City of Huntington Beach, and the California Chiropractic Association. No formal opposition was filed.<sup>153</sup> The voluntary health groups supported the bill primarily because it expanded restrictions regarding secondhand smoke exposure and would have reinforced the de-normalization of smoking in public places.<sup>102</sup> In September, 2007, SB 4 died at the end of the Session in the Senate Committee on Natural Resources and Water where it had been since being withdrawn from hearing by its author on April 24, 2007. The bill was never viewed as significant by members of either party.<sup>154</sup>

SB 7 addressed smoking restrictions in motor vehicles with children inside, which had been repeatedly introduced in past legislative sessions and was again introduced with modifications from the failed AB 379 in 2006. SB 7 would prohibit smoking in motor vehicles, whether stationary or moving, in which a minor is present, while AB 379 applied only when a child under six years old or weighing less than 60 pounds was present. Another addition in SB 7 is the requirement that the provisions of this bill would be displayed in the California Driver’s Handbook and included when vehicle registration renewals are mailed.. SB 7 was also authored by freshman Senator Jenny Oropeza (D-Dist.28), and former member of the Assembly, who accepted \$1,000 from the California Distributors Association PAC in 2001-2002 and has never accepted money from a tobacco company and received a pro-tobacco control policy score of 9.8.<sup>155</sup> This bill would prohibit smoking in a motor vehicle, regardless of whether the vehicle is stationary or moving, if a minor were present. Violations would be punishable by a fine of up to \$100. This bill would require the State Department of Health Services to implement a public education program regarding the dangers of secondhand smoke in confined spaces and to “the extent funds are available, the department [Department of Public Health] shall inform the public of the provisions of this article”.<sup>152, 155</sup> The Senate amended SB 7 to provide that no law enforcement officer could stop a vehicle for the sole purpose of determining whether the driver was in violation of the anti-smoking provisions of the bill. SB 7 passed 22- 18 in the Senate on June 7, 2007 (AB 379 had passed in the Senate 23-14 in 2006). The Assembly amended SB 7 to delete the public education mandate and passed the bill. The Senate concurred in the Assembly amendment, sending the bill to the Governor. On October 10, 2007, the Governor signed the bill. Support for SB 7 was much broader than was that for AB 379 (Table 37).



<b>Table 37 Supporters of AB 379 (2006) and SB 7 (2007)</b>	
<b>AB 379 (2006)</b>	<b>SB 7 (2007)</b>
American Cancer Society, CA Division	American Cancer Society, CA Division
American Federation of State, County and Municipal Employees	American Federation of State, County and Municipal Employees
American Heart Association	American Heart Association
American Lung Association of CA	American Lung Association of CA
California Medical Association	California Medical Association
California Thoracic Society	American Academy of Pediatrics, CA District
California's Advocacy Institute	Breathe California
First 5 California	First 5 California
Alameda County	California Alliance for Consumer Protection
Los Angeles County	California Black Health Network, Inc.
	California Child Development Administrators Ass'n
	California Chiropractic Association
	California Dental Association
	County Health Executives Association of CA
	Association of California Healthcare Districts
	Kids Involuntarily Inhaling Secondhand Smoke
	Medical Oncology Association of Southern CA
	Oakland Berkeley Asthma Coalition
	Smokefree Air for Everyone (SAFE)
	The Foundation for a Smokefree America
	City of Long Beach
	City of Los Angeles

AB 1467 was introduced by freshman Assemblyman Mark DeSaulnier (D-Dist.11) (no tobacco campaign contributions accepted and no policy score available) which addressed the expansion of smoke-free workplaces<sup>156</sup> by eliminating exemptions from the statewide smoke-free workplace law (AB 13) for owner-operated bars regardless of whether they have employees, warehouse facilities, employee break rooms, and hotel lobbies, meeting and banquet rooms. Since the passage of AB 13 in 1994, some businesses had found loopholes that AB 14 67 was intended to close. First, AB 13 required “employers” to prohibit smoking in enclosed workplaces. This allowed some businesses to claim exemption because they claimed they had no employees, only owners, and were thus not “employers”. AB 1467 would close this loophole by requiring all “business owners and operators” to prohibit smoking in enclosed workplaces. The second problem AB 1467 addresses is the hookah bar phenomenon. Because of a vague definition of “retail or wholesale tobacco shop” in AB 13, hookah bars claim the exemption for tobacco shop even though their primary business is food and/or beverage service. AB 1467 would apply the definition of “tobacco store” in §22962 of the California Business and Professions Code which would mean that for a business to qualify as an exempt “retail or wholesale tobacco shop” it (1) must primarily sell tobacco products, (2) must generate more than 60% of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia, (3) does not permit any one under the age of 18 to be present or enter the premises at any time unless accompanied by a parent or legal guardian, and (4) does not sell alcoholic beverages or food for consumption on the premises. AB 1467 passed in the Assembly (45-27) and in the Senate 21-16. What is probably a first for tobacco control legislation in

California, AB 1467 had not a single amendment from its introduction in the Assembly through passage in the Senate. On October 14, 2007, the Governor vetoed AB 1467. The bill was supported by the American Cancer Society (Sponsor), the American Heart Association, the American Lung Association, the California Conference Board of the Amalgamated Transit Union, the California Hospital Association, the California Labor Federation, AFL-CIO, the California Teamsters Public Affairs Council, the Engineers and Scientists of California, IFPTE Local 20, the Professional and Technical Engineers, IFPTE Local 21 and the United Food and Commercial Workers Western States Council. No formal opposition was filed. This bill was primarily seen among the tobacco control advocates as a clean-up bill to AB 13, which ended smoking in workplaces in 1994. The American Lung Association believed that the tobacco industry was not opposing AB 1467 because the exemptions for some venues, like hotel lobbies and meeting rooms, were largely negated by hotels making such areas smoke-free voluntarily, and the smoking room is so impractical that there is no record of any employer creating one.<sup>102</sup> In his veto message, Gov. Schwarzenegger stated:

California has led the nation in effective smoking control activities, achieving the second lowest rate of smoking among adults in the nation. The cessation of smoking is a component of my plan to encourage Californian's to lead a healthy lifestyle and thereby reduce health care costs. While more needs to be done to reduce smoking rates, I do not agree that placing further restrictions on business owners is the correct approach. Instead, California can further reduce smoking rates in other ways, such as increasing access to cessation services offered through the highly effective California Smokers' Helpline.<sup>157</sup>

The irony here is twofold: The purpose of the bill was worker and public protection from secondhand smoke, not reducing smoking, and Gov. Schwarzenegger vetoed SB 576 in 2006 that would have mandated coverage of smoking cessation in health plans.

### ***Tobacco Mitigation Fee***

SB 24 was introduced by pro-tobacco control Senator Tom Torlakson (D-Dist.7), who has never accepted tobacco industry money and received a pro-tobacco control policy score of 9.8, proposed in this bill to increase California's tobacco tax on tobacco product distributors by an additional \$1.90/pack, to a total of \$2.77/pack. The bill would require the revenues collected from these additional taxes be used, upon appropriation, for a study on the health impacts of secondhand tobacco smoke, tobacco cessation services, tobacco education, media and community awareness campaigns, environmental tobacco smoke related disease research, and health programs that combat the effects of secondhand tobacco smoke. The bill was amended by Sen. Torlakson in the Senate Committee on Revenue and Taxation in April, 2007 to instead impose a health effects mitigation fee on consumers of tobacco products. Richard Zeiger, chief of staff for Sen. Torlakson, explained that the rationale for changing to fee instead of a tax meant that only a simple majority vote of legislators was required to pass a fee as opposed to a tax measure that requires a two-thirds vote.<sup>158</sup> (In the California Supreme Court decision in *Sinclair Paint Company v. State Board of Equalization, et al.*,<sup>159</sup> the Court held that fees paid under the Childhood Lead Poisoning Prevention Act of 1991 were valid regulatory fees and not improper special taxes that had failed to comply with Proposition 13.) The *Sinclair Paint* decision allows a fee on a product or service if there is a direct nexus between the cost of mitigating a problem, such as the economic burden of tobacco-related disease, and the parties who are to pay the fee (smokers), and that

the funds raised by the fee are used exclusively to mitigate the adverse effects of secondhand tobacco smoke. SB 24 was reported “do pass” from the Senate Committee on Health in April 2007, and died in the Senate Committee on Revenue and Taxation when the 2007 Legislative Session ended. Since it did not pass in the house of origin, it did not carry over to the 2008 Session.

Support for SB 24 came from the Association of Northern California Oncologists, the California School Employees Association, California Coalition for Youth, the Alameda County Board of Supervisors, the California Primary Care Association, and the California Coalition for Youth. The voluntary health groups had SB 24 on their watch list and had not decided on supporting or opposing it. In formal opposition to SB 24 were Reynolds American, the California Chamber of Commerce, the California Retailers Association, the California Manufacturers and Technology Association, the California Grocer's Association and the California Alliance for Consumer Protection; Philip Morris reporting lobbying the bill.

### ***Tobacco Tax Increase***

With his SB 24 bottled up in the Senate Committee on Revenue and Taxation, Sen. Torlakson introduced on May 31, 2007 SCA 13 proposing a constitutional amendment to submit to voters to increase the cigarette tax by \$2.10 a pack. The revenue would be used to fund tobacco cessation services, lung cancer research, and health related purposes. SCA 13 was amended on July 25, 2007 at the author's request in the Senate Committee on Revenue and Taxation to allocate the funds and to backfill Proposition 99 accounts and the Breast Cancer Fund. The allocation included 50% for children's health care (a major recipient of Proposition 86 monies had it passed in 2006), 15% for tobacco cessation services, 15% to fund general health care and 5% for lung cancer research, especially research regarding early detection, prevention and treatment methods. The balance would fund the backfill. Philip Morris reported to the Secretary of State that it lobbied against both SB 24 and SCA 13.<sup>160</sup>

### ***Tobacco Sales, Distribution and Enforcement***

AB 1585 was introduced in 2007 by Assemblywoman Sally Lieber (D-Dist.22) who has never accepted tobacco industry money and received a pro-tobacco control policy score of 8.8, to address the issue of the nonsale distribution of cigarettes. This bill as introduced would expand §118950 of the Health and Safety Code (STAKE Act) to prohibit the nonsale distribution of any smokeless tobacco or cigarettes on all public or private property. This bill would also make the prohibition applicable to manufacturers, distributors, and retailers and would include gift certificates, credits, and proofs-of-purchase within the prohibited distributions, and would delete an exemption for tobacco product distribution in connection with the sale of another item.<sup>161</sup> AB 1585 was amended in the Assembly to restore the exemption for distributions in connection with the sale of another item. AB 1585 passed the Assembly 42-30. and had been reported out “do pass” by the Senate Health Committee. A Senate floor amendment added to the prohibition all nonsale distributions through the mail or by other delivery services and applied all laws on the sale of tobacco by mail or other delivery service to nonsale distributions. It was further amended in the Senate to restore the existing language of §118950, except it limited nonsale distribution on private property open to the public to a separate enclosed area out of view to minors and to which minors are denied access by a peace officer or licensed security guard. AB 1585 passed in the Senate 26-14, and the Assembly concurred in the amendments. On October 10, 2007, the

Governor signed the bill. Supporting the bill were the American Cancer Society, American Heart Association, American Lung Association, California Tobacco Alliance and Taxpayers for Improving Public Safety. There was no formal opposition to this bill, but Philip Morris and Reynolds American reported to the California Secretary of State that they lobbied on AB 1585.

Freshman Assemblyman Mark DeSaulnier (D-Dist.11), who has never accepted tobacco industry campaign contributions (no policy score available ) introduced AB 1617 which amend the STAKE Act (illegal sales to minors) to prohibit the transportation of cigarettes to persons in California other than to an entity licensed by the California Board of Equalization, to a federally authorized export or bonded warehouse, or to a state or local government official acting in an official capacity. Violations could bring a fine of not more than \$1,000 on the first violation, not more than \$5,000 on the second and imprisonment not to exceed three months, and for third and subsequent violations, a fine of not more than \$25,000 and imprisonment not to exceed six months. The bill also placed a prohibition on common and contract carriers to not knowingly transport cigarettes to anyone other than the three classes of recipients authorized to receive cigarettes in California. AB 1617 also expands the existing STAKE Act prohibitions on mail order sales to minors to include all other tobacco products including smokeless tobacco. The bill was sponsored by the Attorney General for the purpose of facilitating the collection of taxes on cigarettes sold to residents of California over the Internet or by mail. The tax collection intent of AB 1617 is similar to that of SB 1208 that was vetoed by Gov. Schwarzenegger in 2006. In part, the veto of SB 1208 was justified on the basis that current law was adequate in collecting taxes on such sales. In the case of AB 1617, BOE estimated that its passage would mean a revenue gain of as much as \$23.9 million if all sellers were to comply with the new law.<sup>162</sup> AB 1617, like SB 1208, also expanded the definition of “bidis” or “beedies” to include a product that is marketed or sold as “bidis” or “beedies”, an often flavored product aimed at youth. AB 1617 passed in the Assembly 47-31. The Senate amended the bill to limit the penalties to civil fines and added enforcement powers to any district attorney, city attorney and the Attorney General. As amended, AB 1617 passed in the Senate 22-14, and the Assembly concurred in the Senate amendments. The Governor vetoed AB 1617 on October 14, 2007. California Attorney General Brown was the sponsor of the bill which was also supported by the American Cancer Society, the American Heart Association, the American Lung Association, the California Medical Association and the California State Association of Counties. In his veto message, the Governor justified his action:

This bill is intended to help curb smoking by minors and also help the state collect all applicable taxes on tobacco. In vetoing nearly identical legislation last year, I noted that the federal Jenkins Act, which requires the sale of tobacco across state lines to be reported to the Board of Equalization, is already in place to help identify taxable sales of tobacco. Further, existing law reduces youth access to cigarettes over the Internet by requiring Internet sellers and shippers to verify the age of the purchaser. Proponents should address any perceived deficiencies in these laws rather than seeking an outright prohibition that will be difficult to enforce.<sup>163</sup>

The reality is that internet tobacco sellers simply ignore the Jenkins Act requirements, and AB 1617 prohibited carriers from delivering the cigarettes to individuals, requiring little or no enforcement activity by state or local authorities.

SB 624 was introduced by freshman Senator Alex Padilla (D-Dist.20), who has never accepted tobacco industry campaign contributions (no policy score available) and made technical, clarifying changes to existing law on nonsale distribution of tobacco products. SB 624 was gutted and amended by the Senate to improve enforcement of the Stop Tobacco Access to Kids Enforcement Act (STAKE) by (1) broadening direct enforcement powers beyond the Department of Public Health (DPH) to include most law enforcement agencies, (2) increase the penalties for first (\$200-\$400 to \$400-600) and second violations (\$600-900 to \$900- 1000), and (3) lift the cap on the amount of civil penalties assessed by all enforcing agencies allocated to the Sale of Tobacco to Minors Control Account from \$300,000 to 100% of all civil penalties collected to be used to pay for the expanded enforcement of the STAKE Act. SB 624 was amended a second time in the Senate to restore the cap of \$300,000 for the Sale of Tobacco to Minors Control Account. Under existing law, with DPH the only enforcement agency and limited resources, annual inspections were less than 3% of tobacco retailers. SB 624 passed the Senate 21-13. SB 624 was amended in the Assembly to remove the \$300,000 cap on civil penalties that would go to the Sale of Tobacco to Minors Control Account and passed the bill 76-0. The Senate concurred in the Assembly amendment, and the Governor signed SB 624 on October 13, 2007. Organizations in support of SB 624 included the American Cancer Society, the American Heart Association, the American Lung Association of California, the California Academy of Family Physicians, the California Association of Physicians Group, the California Dental Association, the California Hospital Association, the California Nurses Association, Cities Counties Schools Partnership, Kaiser Permanente Medical Group, the League of California Cities and Alameda County Office of Education. In opposition of the bill were 7-Eleven Stores Inc., the California Distributors Association, and the California Grocers Association (a tobacco industry ally). The legislative intent is expressed in SB 624: "Full compliance and vigorous enforcement of the 'Synar Amendment' requires collaboration of multiple state agencies that license, inspect, or otherwise conduct business with retailers, distributors, or wholesalers that sell tobacco."<sup>164</sup> The tobacco control value of that intent is underscored by the opposition to SB 624 that objected that multiple enforcement agencies with power to assess civil penalties will result in increased investigations.<sup>164</sup> The opposition also objected to the increase in penalties for first and second violations.

### ***Retail Licensing***

Freshman Senator Alex Padilla (D-Dist.20), who had never accepted tobacco industry campaign contributions (no policy score available) introduced another tobacco control bill in 2007, SB 625, that addressed tobacco product retail licensing.<sup>165</sup> The bill as introduced proposed to require a \$100 fee for the annual renewal of a retail tobacco license. It was amended in the Senate to require the \$100 fee only as a precondition for reinstatement of an expired state tobacco retailer license to encourage timely license renewal. The fee would not apply to the annual renewal application for state tobacco product retailer licenses, but only to the licenses that actually expire and must be reinstated. Since the inception of the state licensing requirement in 2004, approximately 38,000 retail establishments have been licensed by the Board of Equalization to sell tobacco products. Since then, about 2000 licensees have allowed their licenses to expire, but have continued to sell tobacco products. Most renewals of expired licenses occur when a distributor or wholesaler refuses to sell tobacco products to the unlicensed retailer as required by law.<sup>166</sup> SB 625 passed in the Senate 23-13 and passed in the Assembly without amendment 44-28. On October 13, 2007, the Governor signed SB 625. The Board of Equalization sponsored and the American Heart Association supported the bill and no opposition had been filed.

### ***Definition of “Cigarettes”***

Bill SB 554 introduced by Senator Carole Migden ( D-Dist.3) who accepted \$42,300 from the tobacco industry and received a pro-tobacco control policy score of 8.4 proposed to change the definition of cigarette to expand the tobacco products taxes under the Cigarette Tax Law to include any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use.<sup>167</sup> SB 554 was sponsored by the Attorney General’s Office and the State Board of Equalization to make uniform the definition of “cigarette” in California laws. Under SB 554, “little cigars” would be taxed at the same rate as cigarettes, instead of less than half that rate. Since SB 554 would amend Proposition 99, a 4/5 vote is required, making passage unlikely. It was amended in the Senate Committee on Appropriations to delete all substantive language and only provide intent language “to enact legislation that would create a uniform definition of “cigarette” for purposes of the Cigarette Tax law and other provisions of law”. As of September 2007, SB 554 was in pending in the Senate Committee on Rules having passed second reading in the Senate. In addition to the Attorney General and the Board of Equalization, the California School Employees Association supported SB 554, and the Howard Jarvis Taxpayers Association was an early opponent. Both Philip Morris and Reynolds American reported to the California Secretary of State that they lobbied on SB 554; the major cigarette manufacturers generally support taxing “little cigars” as cigarettes as little cigars have taken a rapidly increasing market share from cigarette manufacturers because they are much cheaper. The success of these “little cigars” is evident in that from 1998 to 2006, the little cigar market grew 167%, while the cigarette market declined 17%. Little cigar sales increased 52% over the period 2004 to 2006.<sup>78</sup> The fiscal impact of this bill is of interest to the voluntary health groups as it would increase tobacco tax revenues and would help them to formulate a position.<sup>102</sup>

### ***Cigarette Ingredient Disclosure***

A licensing bill to disclose ingredients in cigarettes, SB 950, was introduced by another freshman in the Senate, Senator Ellen Corbett (D-Dist.10) , who has not accepted campaign contributions from the tobacco industry (no policy score available). Current law requires licensure by the State Board of Equalization of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California. Penalties for violating this provision result in a criminal charge. SB 950 would require each manufacturer and each importer of cigarettes and tobacco products subject to licensing to provide to the Board of Equalization and the State Department of Public Health an annual report of ingredients and would require the State Department of Public Health to disclose the information to the public if it finds that there is a reasonable scientific basis for concluding that public availability of the information could reduce the risks to the public health.<sup>168</sup> In April 2007, SB 950 failed passage in the Senate Committee on Health. There was no formal support or opposition to this bill, but Philip Morris and Reynolds American reported to the California Secretary of State that they lobbied on SB 950.

Six tobacco control measures were passed in the 2007 Session, including two important ones: SB 7 prohibits smoking in any motor vehicle with any minors present, and AB1467 would have eliminated the remaining exceptions in the original 1994 smoke-free workplace law (AB 13). The other four bills strengthen youth access laws. AB 1617 would have prohibited the shipping or transporting of cigarettes to individuals in California (another attempt to control internet sales of cigarettes), and SB 624

broadens enforcement of the STAKE (Stop Tobacco Access to Kids) Act from just the Department of Public Health to all law enforcement agencies and increases penalties for violations. These two changes would have the potential to improve youth access enforcement significantly if effectively applied. Gov. Schwarzenegger repeated his 2006 performance of vetoing important tobacco control measures by vetoing AB 1467 and AB 1617.

**A FAILED TOBACCO TAX: PROPOSITION 86 IN 2006**

The two large tobacco tax increases in California, Proposition 99 in 1988 (25 cents) and Proposition 10 in 1998 (50 cents) were both passed through the initiative process. California’s tobacco tax of 87 cents per pack ranked 3<sup>rd</sup> in the nation in 1999 (behind Alaska and Hawaii, tied at \$1.00) and 23<sup>rd</sup> in 2005 and 29<sup>th</sup> in July 2007. Since California had not increased cigarette taxes since 1998, in 2003 the voluntary health agencies decided to launch a new tobacco tax initiative campaign. The tobacco taxes in effect at the time are shown in Table 38.

<b>Table 38 California’s Cigarette Tax in 2006</b>			
<b>Component</b>	<b>Tax Rate (per pack)</b>	<b>Estimated 2006-07 Revenue (Millions)</b>	<b>Purpose</b>
Proposition 10	50 cents	\$617	Programs for children age 0 through 5
Proposition 99	25 cents	\$335	Tobacco prevention, health care services, tobacco-related disease research, and environmental programs
General Fund	10 cents	\$118	General support for state programs
Breast Cancer Fund	2 cents	\$24	Breast cancer research and services
Total	87 cents	\$1,094	
Source: California Budget Project <sup>169</sup>			

This effort led to the Tobacco Tax Act of 2006 proposed in Proposition 86 which would have increased the cigarette tax in California by \$2.60, to \$3.47, per pack and would have given California the highest cigarette tax in the nation. The health groups’ original idea was for a \$1.00 tax that would support the California Tobacco Control Program and other public health programs as well as some medical research programs. Under pressure from the California Hospital Association and children’s advocates, the proposal was increased from \$1.00 to \$2.60 with the largest fraction of the money (43%) going to the hospitals and physicians for emergency services and only 10% going to tobacco control and only 10% for disease detection and treatment. The tobacco industry’s campaign against the initiative that stressed the fact that little of the money was going to tobacco control defeated the initiative in the November 2006 election, with 51.7% voting against the tax increase.

**The Early History of Proposition 86**

In the Fall of 2003, the CEOs of the California units of the American Cancer Society, American Heart Association and American Lung Association, along with staff personnel, conferred on a new strategy to increase the tobacco tax in California since legislative attempts to increase the tobacco tax had proven futile.<sup>170, 171</sup> The Campaign for Tobacco-Free Kids, that had been involved in the years of futile legislative efforts to raise the tobacco tax, came on board soon thereafter.<sup>172</sup> What developed was a

plan to put a ballot measure on the general election ballot in November 2006, because there was not enough time to get it on the November 2004 ballot.<sup>171</sup> The group also resurrected its Coalition for a Healthy California that had successfully passed Proposition 99 in 1988 and successfully opposed an effort by Philip Morris to overturn the state smoke-free workplace law by initiative in 1994 (Proposition 188).<sup>8</sup>

In September 2004, the group conducted its first poll of voter attitudes toward a tobacco tax increase and revenue expenditures for various programs.<sup>173</sup> The proposed tax rates were \$.50, \$.85 and \$1.50, and the programs were (1) prevention, early detection, treatment and medical research programs for major diseases, (2) expanding health care availability and keeping emergency rooms and trauma centers open, and (3) tobacco education, prevention and cessation programs to help keep young people from starting to smoke and help smokers quit. A majority supported all of the tax rates, with \$.85 and \$1.50 polling highest (56% “definitely yes” for both amounts). Preferences for the three program areas are shown in Table 39.

	First Choice	Second Choice
Funding tobacco education, prevention and cessation programs to help keep young people from starting to smoke and help smokers quit.	29%	19%
Expanding health care availability and keeping emergency rooms and trauma centers open	43%	26%
Funding prevention, early detection, treatment and medical research programs for major diseases	24%	46%
Source: California Tobacco Policy Survey <sup>173</sup>		

### *The Search for Additional Allies*

The health voluntaries recognized that an initiative campaign would require more money than the three groups were willing to spend, so in early 2005, they began exploring possible partnerships with the California Hospital and Health Services Association (CHHSA), the California Medical Association (CMA) and The Children’s Partnership (TCP), a national nonprofit, nonpartisan child advocacy organization with offices in Santa Monica, CA and Washington, DC.<sup>170, 171, 174</sup>

CHHSA had been involved in the Coalition for a Healthy California that had successfully passed Proposition 99 in 1988 but not in a major way. Other Coalition members in 1988 were the health voluntaries, CMA and the Planning and Conservation League.<sup>8</sup> CHHSA had tried and failed to pass an emergency services initiative in November 2004 (Proposition 67) funded by a surtax on telephone services, but it was crushed by a 71.6% “no” vote. That was the first attempt by CHHSA at an emergency services package since 1990 when its alcohol surtax proposal (Proposition 134) was also rejected by voters (69%-31%). When approached by the health voluntaries, the first reaction of CHHSA was to “think about it.”<sup>170</sup> When negotiations on a joint initiative process began in Spring 2005, CHHSA made it clear that they wanted a great deal of money from any new tobacco tax for emergency services. There were protracted negotiations, which extended beyond the August 22 date for filing the initiative, which would have allowed the maximum time to gather signatures (and so minimize the cost of gathering the signatures) in order to qualify the initiative for the November 2006 ballot.



The Children’s Partnership (TCP) and its allies had been trying to pass legislation to provide health insurance coverage to California’s uninsured children for years. In 2005, they were supporting AB772 and AB 1199 which would do just that, but without a new revenue source to fund it.<sup>175, 176</sup> In March 2005, TCP publicly released polling data showing that four out of five voters supported a plan to expand health insurance coverage to all California children.<sup>177</sup>

In May, 2005, the health voluntaries conducted another poll to test another approach to the tobacco tax program funding.<sup>178</sup> In this poll, the programs proposed were (1) prevention, early detection, treatment and medical research programs for major diseases, and (2) tobacco education, prevention and cessation programs to help keep young people from starting to smoke and help smokers quit. Again a majority supported a \$1.50 tax increase (50% “definite yes”) and a \$1.25 tax increase (52% “definite yes”). When asked about additional ways to use part of the tax revenue, the respondents ranked three proposals as shown in Table 40.

<b>Table 40 Voter Preferences for Additional Programs Funded by Increase in Tobacco Tax - May 2005</b>			
	First Choice	Second Choice	Is a Good Idea
Expanding college scholarships	15%	22%	45%
Expanding health insurance to all children	37%	30%	61%
Funding emergency rooms and trauma centers to prevent them from closing and ensure they are available to provide emergency care	32%	29%	62%
Source: California Tobacco Policy Survey <sup>178</sup>			

All of this polling data, along with the details of the Coalition’s initiative language and strategy, was being shared with CHHSA during the negotiations on a joint initiative effort. There was a great deal of tension between CHHSA and the voluntaries on how much of the \$1.50 was to be devoted to emergency services. In September, CHHSA abruptly pulled out of negotiations with the health voluntaries, and on September 2, 2005 filed its own initiative petition application for the Emergency Services and Tobacco Tax Act (\$1.50 tax increase) without any notice to the Coalition.

In contrast, the the health voluntaries’ original plan to aim for the November 2006 general election ballot, CHHSA was planning for the June 2006 primary election ballot, which would have the practical effect of preempting the health groups’ planned effort for November.

A few days later, on September 9, the Coalition for a Healthy California filed its initiative petition application for its Tobacco Tax and Disease Prevention Act (\$1.00 tax increase) sticking to their plan for the November 2006 ballot. The health groups kept aiming for the November ballot because collecting the necessary signatures in time to qualify for the June ballot would have been more expensive.

The funding allocations of the CHHSA and Coalition initiatives are shown in Tables 41 and 42.

<b>Table 41 Emergency Services and Tobacco Tax Act of 2006 \$1.50 Tax Increase (September 2, 2005) (SA2005RF0097)</b>		
Allocation of Revenue	Percentage	Amount (Est FY2008)

Emergency Services and Trauma Hospital Services	64.75%	\$784,471,154
Emergency Care Physicians	4.50%	54,519,230
Rural Emergency Care Physicians	0.50%	6,057,692
Nursing Workforce Education	9%	109,038,461
Tobacco Use Prevention (children, teenagers and young adults age 20-25)	9%	109,038,461
Black Market Cigarette and Tobacco Crime Prevention	3%	36,346,153
Proposition 99 Backfill	3%	36,346,153
Proposition 10 Backfill	5%	60,576,923
Breast Cancer Fund Backfill	1%	12,115,384
BOE Administrative Costs	0.25%	3,028,846

<b>Table 42 Tobacco Tax and Disease Prevention Act of 2006 \$1.00 Tax Increase (September 9, 2005) (SA2005RF0098)</b>		
Allocation of Revenue	Percentage	Amount (Est. FY2008)
Tobacco Use Prevention, Education and Enforcement	35%	\$282,692,307
Media Campaign	24%	67,846,153
Tobacco Control Competitive Grants	16%	45,230,769
Local Health Department Tobacco Use Prevention	14%	39,576,922
Tobacco Cessation Services	8%	22,615,384
Tobacco Control Evaluation	4%	11,307,692
Tobacco Education (Youth Prevention)	13%	36,749,999
Tobacco Research (TRDRP)	14%	39,576,922
Tobacco Control Enforcement	7%	19,788,461
Disease Prevention, Treatment and Research	65%	525,000,000
Breast and Cervical Cancer Early Detection	20%	105,000,000
Prostrate Cancer Treatment	5%	26,250,000
Cancer Registry	3%	15,750,000
Breast Cancer Research	8%	42,000,000
Cancer Research	3%	15,750,000
Heart Disease and Stroke Prevention	20%	105,000,000
Obesity Prevention and Nutrition and Physical Activity Promotion	20%	105,000,000
Asthma Prevention and Control	10%	52,500,000
Colorectal Cancer Prevention, Detection and Treatment	11%	57,750,000

***The Veto of the Children's Health Insurance Legislation Brings on a New Initiative Proposal***

AB 772 and AB 1199 passed and were sent to the Governor's Office on September 7, 2005. Later that same day, Gov. Schwarzenegger vetoed it. The bills would have established health coverage for every child in California.

The Coalition's initiative petition application filed on September 9, 2005 included nothing for children's health insurance. The Coalition conducted another poll on September 13-16, 2005 revisiting the issue of including children's health insurance in its initiative proposal. While a majority of respondents still supported the idea, the "definitely yes" had slipped to 44% with "probably yes" increasing to 20%. Also tested was an election contest pitting the proposed new initiative including a children's health component against the CHHSA's Emergency Services and Tobacco Tax Act. The respondents preferred the Coalition's new proposal by 57% to 43%.

On October 20, 2005, an expanded Coalition for a Healthy California that now included Children Now, the Children's Partnership and PICO California who had fought for AB 772 and AB 1199, along with the California Primary Care Association, withdrew the initiative it filed on September 9 and replaced it with an initiative petition application for its Tobacco Tax, Disease Prevention and Children's Health Insurance Act (Table 43). The addition of the children's advocacy organizations to the Coalition brought with it an additional capacity in grassroots advocacy but also further complicated the initiative proposal.

### **Dual Tobacco Tax Initiatives**

The analysis of the September 13-16 poll had two key findings that portended the outcome of the election. Voters trusted the voluntary health groups and the children's advocacy groups supporting the Tobacco Tax, Disease Prevention and Children's Health Coverage Act (56%) much more than they trusted the California Hospital Association and medical groups supporting the Emergency Services and Tobacco Tax Act (25%). By testing positive and negative messaging, the poll measured the impact of such messaging on voter commitment. The pollsters found that positive messages serve only to

<b>Table 43 Tobacco Tax, Disease Prevention and Children's Health Insurance Act of 2006 \$1.50 Tax Increase (October 20, 2005) (SA2005RF0113)</b>		
Allocation of Revenue	Percentage	Amount (Est. FY2008)
Tobacco Use Prevention, Education and Enforcement	20%	\$242,307,692
Media Campaign	24%	58,153,846
Tobacco Control Competitive Grants	16%	38,769,230
Local Health Department Tobacco Use Prevention	15%	36,346,153
Tobacco Cessation Services	8%	19,384,615
Tobacco Control Evaluation	2%	4,846,153
Tobacco Education (Youth Prevention)	13%	31,499,999
Tobacco Control Research(TRDRP)	14%	33,923,076
Tobacco Control Enforcement	8%	19,384,615
Disease Prevention, Treatment and Research	33%	399,807,692
Breast and Cervical Cancer Early Detection	19%	75,963,461
Prostrate Cancer Treatment	5%	19,990,384
Cancer Registry	4%	15,992,307
Breast Cancer Research	7%	27,986,538
Cancer Research	4%	15,992,307
Heart Disease and Stroke Prevention	20%	79,961,538
Obesity Prevention and Nutrition and Physical Activity Promotion	18%	71,965,384
Asthma Prevention and Control	10%	39,980,769
Colorectal Cancer	10%	39,980,769
Lung Disease Research	3%	11,994,230
Community Clinics Uninsured	6%	72,692,307
California Healthy Kids	32%	387,692,307
Nursing Education, Student Health and Public Health	4%	48,461,538
Proposition 10 Backfill	5%	60,576,923

maintain, rather than increase, the broad initial support for the Tobacco Tax, Disease Prevention and Children's Health Coverage Act, suggesting that the level of support seen in this poll may represent a maximum threshold for the campaign. The polling firm concluded, "This makes it all the more important to prevent the syphoning off of support that multiple measures in a competitive environment could create."<sup>179</sup>

By mid-November 2005, public opposition to the CHHSA initiative proposal began to change the environment. On November 16, CMA, Health Access California, a patient advocacy group, Congress of California Seniors and the Campaign for Tobacco-Free Kids issued a joint press release documenting their opposition to the CHHSA proposal and urged CHHSA to stop gathering signatures on its petition.<sup>180</sup> In addition, because the nursing training provisions of the CHHSA initiative put the hospitals and their allies firmly in charge, the California Nurses Association (CNA) attacked the

proposal as offering a “deceptive, false solution on both fronts” to the emergency care crisis and the nurse shortage.<sup>181</sup> On the emergency care crisis, CNA asserted that the real cause of the emergency care crisis was the large number of uninsured Californians that “must rely on emergency rooms for their primary point of entry into the healthcare system” which would be relieved by a universal healthcare system. CNA also blamed the nurse shortage on the hospitals themselves that laid off nurses and replaced them with lower paid lower licensed and unlicensed personnel, and criticized the CHHSA proposal for was only studying the problem, not solving it.

Shortly thereafter, movie director Rob Reiner, chief proponent of Proposition 10 in 1998 that created the early education program that became known as First Five, blasted the hospital proposal and threatened to oppose it because it did not completely backfill Proposition 10 which would result in the First Five Fund losing \$34 million annually because of lower cigarette sales resulting from the tax increase. (Reiner was unmoved by the argument that the initiative would expand medical insurance for children.)

At this point CHHSA was spending \$500,000 a week on signature gathering for its petition because it faced a December 12, 2005 deadline to file its signed petitions in order to make the June 2006 ballot.

On November 29, Jack Nicholl, political consultant to the Coalition for a Healthy California, sent a memo to Coalition Steering Committee members in which he reported that CHHSA had contacted the attorney for the children’s advocacy groups in the Coalition to request a meeting to discuss the situation of the opposing ballot measures. Nicholl included a summary of that meeting. CHHSA stated it was on target to file their signatures to qualify for the June 2006 ballot, but CHHSA was extremely worried that ACS, AHA and ALA would oppose the CHHSA measure in June, which would allow the tobacco industry to “beat the CHHSA measure to death”. CHHSA offered two alternatives for the Coalition to consider:

Both groups withdraw their petitions and refile a joint measure with a tobacco tax increase of \$2.75 for the November 2006 ballot, but this would have to be accomplished by the December 12 deadline for CHHSA to submit its signatures for the June ballot, or

ACS, AHA and ALA agree to endorse the June CHHSA measure in exchange for which CHHSA provides the Coalition for a Healthy California a substantial contribution.<sup>182</sup>

CHHSA added that only the three health voluntaries would need to endorse its initiative, not the Coalition, and that other Coalition members opposed to the CHHSA measure would not be asked to change their positions.

The Coalition chose not to endorse the CHHSA proposal, and thus began two weeks of intensive negotiations to arrive at a joint initiative, which was filed on December 13, 2005 that became Proposition 86 (Table 44). A comparison of the competing initiative proposals with the final joint initiative proposal (Table 45) shows that in the merged arrangement, the hospitals gained and tobacco control barely held its own. The allocation of Proposition 86 revenues for tobacco control is shown in

Table 46. The total of \$245 million allocated to tobacco control is below the mid-range of the *CDC Best Practices* recommendation for California (\$165 - 442 million).<sup>51</sup>

<b>Table 44 Tobacco Tax Act of 2006</b>		
<b>\$2.60 Tax Increase (December 13, 2005) (SA 2005RF0139)</b>		
Allocation of Revenue	Percentage	Amount (Est. FY2008)
<b>Health Treatment and Services</b>	<b>52.75%</b>	<b>\$1,107,750,000</b>
Emergency and Trauma Hospital Services 74.5%		825,273,750
Emergency Care Physicians Services 5.75%		63,695,625
Rural Emergency Care Physicians Services 0.75%		8,308,125
Nursing Workforce Education 9%		99,697,500
Community Clinics Uninsured 5.75%		63,695,625
Tobacco Cessation Services 1.75%		19,385,625
Prostrate Cancer Treatment 1.75%		19,385,625
Medically Underserved 0.75%		8,308,125
<b>Health Maintenance and Disease Prevention</b>	<b>42.25%</b>	<b>887,250,000</b>
California Healthy Kids 45.50%		399,148,750
Tobacco Control Media Campaign 6.75%		59,214,375
Tobacco Control Competitive Grants 4.50%		39,476,250
Local Health Department Tobacco Use Prevention 4.25%		37,283,125
Tobacco Control Evaluation 0.50%		4,386,250
Tobacco Education (Youth Prevention) 3.50%		30,703,750
Tobacco Control Enforcement 2.25%		19,738,125
Breast and Cervical Cancer Early Detection 8%		70,180,000
Heart Disease and Stroke Prevention 8.50%		74,566,250
Obesity Prevention, Nutrition and Physical Activity Promotion 7.75%		67,986,875
Asthma Prevention and Control 4.25%		37,283,125
Colorectal Cancer 4.25%		37,283,125
<b>Health and Disease Research</b>	<b>5%</b>	<b>105,000,000</b>
Tobacco Control Research (TRDRP) 34%		35,700,000
Cancer Registry 14.50%		15,225,000
Breast Cancer Research 25.75%		27,037,500
Cancer Research 14.75%		15,487,500
Lung Cancer and Lung Disease Research 11%		11,550,000

**Table 45 Comparison of Program Funding in 2005 Tobacco Tax Initiative Proposals (Estimated FY2008 Revenues in Millions of Dollars Rounded to the Nearest Million)**

	California Hospital Association	Voluntary Health Agencies	Voluntary Health Agencies and Children's Advocates	Proposition 86
	Emergency Services and Tobacco Tax Act of 2006 (\$1.50)	Tobacco Tax and Disease Prevention Act of 2006 (\$1.00)	Tobacco Tax, Disease Prevention and Children's Health Insurance Act of 2006 (\$1.50)	Tobacco Tax Act of 2006 (\$2.60)
<b>TOBACCO CONTROL</b>				
Tobacco Use Prevention	145*	221	188	190
Tobacco Use Cessation Services		23	19	19
Tobacco Research (TRDRP)		40	34	36
<b>TOTAL</b>	<b>145</b>	<b>284</b>	<b>241</b>	<b>245</b>
<b>MEDICAL SERVICES</b>				
Emergency and Trauma Hospital Services	845			897
Nursing Workforce Education	109		48	100
California Healthy Kids			388	399
Community Clinics Uninsured Medically Underserved			73	64
				8
<b>TOTAL</b>	<b>954</b>	<b>-0-</b>	<b>509</b>	<b>1468</b>
<b>OTHER HEALTH PROMOTION</b>				
Breast and Cervical Cancer Early Detection		105	76	70
Heart Disease and Stroke Prevention		105	80	75
Obesity Prevention, Nutrition and Physical Activity Promotion		105	72	68
Asthma Prevention and Control		53	40	37
Prostrate Cancer Treatment		26	20	19
Colorectal Cancer Prevention, Detection and Treatment		58	40	37
<b>TOTAL</b>	<b>-0-</b>	<b>452</b>	<b>328</b>	<b>306</b>
<b>DISEASE RESEARCH</b>				
Cancer Registry		16	16	15
Breast Cancer and other Cancer Research		58	44	42
Lung Cancer and Lung Disease Research			12	12
Breast Cancer Fund Backfill	12			
<b>TOTAL</b>	<b>12</b>	<b>74</b>	<b>72</b>	<b>69</b>
Black Market Cigarette and Tobacco Crime Prevention	36			

Proposition 10 Backfill	61		61	**
BOE Administrative Costs	3			
GRAND TOTAL	1211	810	1211	2088

\*Includes only smoking prevention programs for children, teenagers and young adults age 20-25; includes \$36 million Proposition 99 Backfill

\*\* The Board of Equalization shall determine annually the fiscal effect on the Proposition 10 Trust Fund of the decrease in tobacco consumption resulting from the passage of Proposition 86 and shall transfer that amount to the Proposition 10 Trust Fund from the Proposition 86 Trust Fund.

<b>Table 46 Allocation of Proposition 86 Revenues for Tobacco Control</b>		
PROGRAM (ADMINISTRATIVE AGENCY)	PROJECTED REVENUES (FY2008)	EXISTING/NEW PROGRAM
Tobacco Related Disease Research (UC)	\$36 million	Existing program
Tobacco Control Media Campaign (DHS)	\$59 million	Existing Program
Tobacco Control Competitive Grants (DHS)	\$39 million	Existing program
Local Health Department Tobacco Control (DHS)	\$37 million	Existing program with new allocation formula. New tobacco tax funds will be allocated to local health departments on a per capita basis.
Tobacco Control Evaluation (DHS)	\$4 million	Existing program
Tobacco Enforcement (DHS/Board of Equalization/Attorney General)	\$20 million	New program designed to support enforcement of tobacco control laws, reduce illegal sales to minors and reduce cigarette smuggling.
Tobacco School Education Program (CDE)	\$31 million	Existing program
Tobacco Cessation Services (DHS)	\$19 million	Existing program, and new technical and training assistance, and expanded services to reach new communities.

Source: The Center for Tobacco Policy and Organizing; American Lung Association of California<sup>183</sup>

### The Proposition 86 Campaign Organization

During the negotiations leading to merger of the two competing initiatives, CHHSA insisted that its campaign manager, Townsend, Raimundo, Besler & Usher, run the new campaign. Coalition for a Healthy California was concerned because this firm had managed the No on Proposition 99 campaign in 1988 that was funded by the tobacco industry.<sup>8</sup> Also, the CHHSA attorney, Thomas Hiltachk, had represented tobacco industry clients and had been an aggressive player in attacks on Prop 99 programs.<sup>184</sup> While the new coalition was a nominal equal partnership between the CHHSA and the health groups, CHHSA provided most of the money and took charge of the campaign. In the end, Hiltachk drafted the joint petition, the Townsend firm ran the campaign and Jack Nicholl, the veteran of the Proposition 99 success, did remain active in the campaign.



## **The Opposition to Proposition 86**

Proposition 86 qualified for the ballot on June 20, 2006. RJ Reynolds had already created its opposition committee, Californians Against Unaccountable Taxes, in late May 2006 and funded it with \$500,000. Philip Morris organized its opposition committee, No on 86 - Stop the \$2 Billion Tax Hike, on June 21. The two tobacco giants would together provide over \$66 million to the two committees, mostly on advertising (\$60 million, with \$38 million of the \$60 million on television advertising) to defeat Proposition 86. Campaign finance filings with the California Secretary of State<sup>185</sup> by the two committees shows that research, survey and polling data were shared between the two committees during the early part of the campaign, and they used the same media firm for placement of television advertisements, GCW Media Services, Inc.

A small group of cigar companies and tobacconists formed the California Association of Liberty and Choice, No on Prop. 86 in September 2006, and raised a modest \$123,115 for a mailer campaign against Proposition 86. Over half of the contributions came from out-of-state tobacco businesses.

Another committee was formed, but had a short life and spent no money. Physicians Against Proposition 86 was formed by grocery distributors Coremark International and Pacific Groservice on September 18, 2006, with each of the cosponsors putting \$25,000 into the committee. The committee was terminated on September 22, 2006, and the contributions were returned to the cosponsors. A month later, Coremark International and Pacific Groservice each donated \$25,000 to the Philip Morris sponsored committee. On September 25, 2006, the Los Angeles County Medical Association issued a press release opposing Proposition 86 because of the exemption of hospitals from antitrust laws, but this action was never formally tied to the “No” campaign. A small group of doctors signed onto the Philip Morris campaign as supporters and persons identified as doctors appeared in No on 86 television advertisements.

## **Proposition 86 Gathers Momentum and Opposition Grows**

Political support for Proposition 86 came from an endorsement by the California Democratic Party, and a statement of support by Democratic gubernatorial candidate Phil Angelides. Gov. Schwarzenegger announced his opposition to the tax increase in late July 2006. Numerous other state and local elected officials formally supported or opposed the measure. Last minute help for Proposition 86 came from the endorsements by popular California Sen. Dianne Feinstein (D) and by former U.S. Surgeon General David Satcher. Sen. Feinstein attended a Yes on 86 rally, spoke in support of Proposition 86, and made phone calls to voters from the Yes on 86 campaign call center. Former U.S. Surgeon General C. Everett Koop appeared in the last Yes on 86 television advertisement that began airing on November 4, 2006. The early public opinion polls done in July 2006 by the Field Research Corporation<sup>186</sup> showed a favorable lead for the tax proposal, with likely voters voting yes for Proposition 86 by a two to one majority (63% to 32%), although only 26% had heard about it.<sup>186</sup> Soon after this poll was completed, the real opposition to Proposition 86 from the tobacco industry began and the media battle was engaged.

### ***Media, Timing and Money***

As hard-hitting opposition to the tax initiative had begun, the second polling of voter opinion on Proposition 86 was conducted in late September 2006. Compared to those surveyed in July, potential voters surveyed in September showed increased awareness of the tax initiative with 60% of survey respondents saying they had heard of the initiative as compared with only 26% in July.<sup>187</sup> However, when survey respondents were asked whether they would vote for the initiative at this current time there was a drop in support of the tax initiative with, 53% saying they would vote yes and 40% who said no.<sup>187</sup> This was a substantial drop from a nearly two to one level of support (63% to 32%) from respondents surveyed in July.<sup>187</sup> (Appendix E shows polling details of voter preferences by region, party, political ideology, gender, age, race/ethnicity, smoking status and prior awareness<sup>186</sup>) Groups reflecting the biggest declines in support of Proposition 86 occurred among women, voters in Northern California outside of the San Francisco Bay Area, conservatives, voters 65 and over, and non-smokers.<sup>187</sup> Because the September Field Poll showed declines in voter support for Proposition 86, Field Poll Director Mark DiCamillo stated in the poll report that the change in voter attitude was likely due to the widespread media campaign by the tobacco industry against the tax measure.<sup>187</sup> The polarity of support and opposition for the initiative also generated earned media that may have confused and likely overwhelmed voters. Earned media such as editorials in newspapers across California supporting Yes and No positions on Proposition 86 served to influence voter decisions. Table 47 shows editorials in California newspapers that took a Yes or No position on Proposition 86.

By this time in the campaign, the tobacco companies had committed approximately \$52 million. In comparison, the Yes on 86 campaign had raised \$14.2 million , mostly from hospital groups.<sup>189</sup> According to the Center for Governmental Studies, a nonprofit research organization in Los Angeles, the opposition to the initiative had by October of 2006 spent \$16.1 million on television advertisements, with their commercials running more than 10,300 times in the top five media markets, Los Angeles, San Francisco, San Diego, Sacramento, and Fresno.<sup>190</sup> In contrast, by October 26 supporters of Proposition 86 had only spent \$1.9 million on television ads that had by that time run 1,767 times.<sup>190</sup> Table 48 shows the time line for the unfolding media campaign.

<b>Table 47 Editorial Positions on Proposition 86</b>	
YES	Paradise Post Los Angeles Times San Jose Mercury News Oakland Tribune Fontana Herald News Santa Rosa Press-Democrat Napa Valley Register Inside Bay Area sister papers North County Times (Escondido, CA)

NO	Orange County Register - Part One Orange County Register - Part Two Long Beach Press-Telegram San Bernardino County Sun Sacramento Bee San Diego Union-Tribune Modesto Bee Daily Breeze (Torrance, CA) Pasadena Star-News Riverside Press-Enterprise San Francisco Chronicle Stockton Record San Francisco Examiner UCSD Guardian Ventura County Star
Source: HealthVote.org <sup>188</sup>	

This ratio of early media spending may have been the undoing of Proposition 86. Voters in the September Field Poll who had some prior awareness of Proposition 86 were less supportive (49%) than those who had no prior awareness (59%). The loss of 10 percentage points in overall support by late September coincided with the beginning of the absentee voting period on October 8. Absentee voting in California had been available for any voter to use since 1978. In the early years, not many voters took advantage of it and by 1986 only 9% of voters voted an absentee ballot. But that rate jumped to over 18% in 1990, to nearly 33% in 2004 and to 39.95% in the special election in 2005. In the November 2006 election, 42% voted by absentee ballot. Over 4 million absentee ballots were cast in the Proposition 86 vote, and the Proposition lost by only 289,331 votes.

Not only did the timing of media usage favor the tobacco industry in the first half of the campaign, but so did the messaging. As shown in Table 49, the tobacco industry hit the soft spot of the Yes camp by targeting the hospitals as the principal beneficiaries of Proposition 86, and hammered that point in every advertisement. Meanwhile, the Coalition did not mention in television ads that 24% of the Proposition 86 revenue would go to children’s health care until its “Take a Stand” advertisement on October 17, even though polling had consistently shown strong support for children’s health care.

Support			Oppose		
Date First Aired	Title	Sponsor	Date First Aired	Title	Sponsor
			August 14	Unfair	RJR
			August 14	Why	RJR
August 22	They Lied	CHC			
			September 4	I Liked the Idea	PM
			September 5	At First	PM
September 13	Decision	CHC			
September 13	Remember	CHC			
			September 25	No Bid	RJR
			September 28	Uninsured	RJR
			October 4	Papers	RJR

Support			Oppose		
Date First Aired	Title	Sponsor	Date First Aired	Title	Sponsor
			October 9	Stop Prop 86	PM
			October 9	Groups	RJR
October 17	55 Million	CHC			
October 17	Take a Stand	CHC			
October 18	Tobacco Kills	CHC			
			October 20	Dr. Ralph Dilibero	PM
October 27	Dr. Christy Russell	CHC			
			October 31	Mark Kogan	RJR
			October 31	LaDonna White	RJR
November 4	Koop	CHC			

Source: HealthVote.org<sup>191</sup>

Title	Sponsor	Content	AdWatch Analysis of Accuracy of Statements
Unfair	RJR	Only 15 percent of the revenues would go to tobacco-related programs, while hundreds of millions of tax dollars would go to hospital corporations	Debatable
Why	RJR	Hospitals would reap hundreds of millions of dollars in tax revenue and be exempt from antitrust laws	Some accurate while others misleading
They Lied	CHC	Tobacco industry executives want to defeat Proposition 86 because it would reduce smoking by increasing cigarette taxes	Generally accurate
I Liked the Idea	PM	The measure exempts hospitals from antitrust laws, lets them divvy up and limit medical services without worrying about competition, and lacks provisions to ensure accountability for how tax revenues from the measure would be spent	Generally misleading
At First	PM	Less than 10% of revenues from the measure would go to helping smokers quit or keeping kids from starting, while hundreds of millions would go to hospitals and HMOs	Generally accurate; 10% figure debatable
Decision	CHC	The measure will reduce smoking and save lives, and is supported by health-related organizations and opposed by tobacco companies	Accurate
Remember	CHC	The tobacco industry has lied and that the measure's cigarette tax increase would reduce smoking and save lives	First assertion is an overstatement; the second is true
No Bid	RJR	The measure would raise taxes by \$2 billion a year, that hospitals would "reap the benefit themselves," and that bureaucrats could award contracts without competitive bidding	Technically accurate but omit important details

Title	Sponsor	Content	AdWatch Analysis of Accuracy of Statements
Uninsured	RJR	Hospital corporations would get hundreds of millions a year by billing taxpayers for emergency care for the uninsured, and hospitals often charge the uninsured many times more than they charge people with insurance	Some accurate statements but misleading about the effects Proposition 86 would have
Papers	RJR	Quotes editorials by five major news outlets	Quotes are accurate, but some of the editorials make some debatable statements
Stop Prop 86	PM	The measure would deprive schools of more than \$800 million that they are supposed to receive from new taxes, give hundreds of millions of dollars to special interests, create more bureaucracy, and allow contracts without public bidding	Many statements are true, some are misleading or in need or further details
Groups	RJR	Only 10% of Proposition 86 revenues would go to anti-smoking programs and that the rest would go to new bureaucracies, no-bid contracts and more bureaucrats	Somewhat misleading
55 Million	CHC	Tobacco companies are spending \$55 million to defeat Proposition 86 because it would reduce smoking by 312 million packs a year	Generally accurate
Take a Stand	CHC	100% of the money from the tobacco tax increase would go to health care, with 39% to emergency services, 24% to children's health coverage, 11% to anti-tobacco programs	Accurate
Tobacco Kills	CHC	Tobacco companies want to defeat Proposition 86 and asks viewers to join various health organizations in supporting the measure	Accurately portrays the largest donors for and against Proposition 86
Dr. Ralph Dilibero	PM	Only 10% of Proposition 86 revenues would go to anti-smoking programs, and the measure would increase tobacco smuggling and crime and deny schools more than \$800 million in tax dollars	Accurate statements but omits important details
Dr. Christy Russell	CHC	The measure is sponsored by the Cancer Society and the Heart and Lung Associations, and 100% of the Proposition 86 revenues would go to health-related programs	Accurate but omits important details
Mark Kogan	RJR	10% of revenues from the measure would go to anti-smoking programs, and the rest of the money would go to special interests sponsoring the measure and more government bureaucracy	Some statements are accurate but others are debatable or misleading
LaDonna White	RJR	10% of the revenue from the measure would go to anti-smoking programs, and the rest would go to special interests sponsoring the measure and more government bureaucracy	Some statements are accurate but others are debatable or misleading
Koop	CHC	Proposition 86 will reduce smoking and save lives, and 100% of the proceeds will fund critical health care programs	Accurate

Source: HealthVote.org<sup>191</sup>

The tobacco industry's media attack stressed the theme that already rich hospitals would get richer as a result of Proposition 86. This theme was nearly identical to that used by the telephone companies who successfully opposed the CHHSA's Proposition 67 in 2004 that would have raised the telephone surtax to finance emergency services and emergency physicians.<sup>192</sup>

One provision of Proposition 86 allowed hospitals to cooperate in the development of regional plans to provide emergency services. The No on 86 forces used this fact to claim that Proposition 86 would exempt hospitals from antitrust laws, allowing them to do whatever they wanted. This statement was not a fair representation of what Proposition 86 actually said. The intent of the measure was quite clear and far from what the opponents were charging; any regional plans developed by the hospitals had to receive approval and continuing oversight of the plan by local emergency services authorities in order to enjoy the anti-trust protection:

It is the policy of the state to encourage hospitals to work cooperatively to develop regional plans for assuring maximum availability of emergency services to all patients, and to share equitably in the provision of emergency services to uninsured and low income underinsured patients in achieving such maximum availability of emergency services.

To the extent that any hospital or hospitals work cooperatively in developing and implementing the plans for providing emergency services described in this Section, the people intend that such hospital or hospitals shall incur no liability under federal or state antitrust or other anticompetition laws prohibiting combinations in restraint of trade, including, without limitation, the provisions of Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.<sup>193</sup>

The initiative required that any such regional plans "shall be submitted to the county or other local emergency services authority for approval and continuing oversight of implementation."<sup>193</sup> Thus, the antitrust provision was very limited and subject to oversight to prevent the potential abuses the opponents were claiming.

The attorneys for the Yes on 86 Committee sent a letter on August 15, 2006 to television stations throughout the state advising them of the falsehood of the antitrust claim and pointing out that they were advised by the National Association of Broadcasters to rectify false issue advertising.<sup>194</sup> Nevertheless, the ads continued to be broadcast.

No of 86 also charged that hospitals would be able to "double dip" by receiving Proposition 86 funding and charge the uninsured higher rates for emergency care than they charged insured patients, with taxpayers paying for the uninsured through state and county medical services. What the advertisement did not disclose was that AB 774, effective on January 1, 2007, forbade hospitals from charging more than Medicare, Medi-Cal or workers' compensation rates to uninsured patients making less than 350% of the federal poverty level. Proposition 86 contained the same limitations on hospital billing practices and, had it passed, would have provided the same protection had AB 774 not become law.

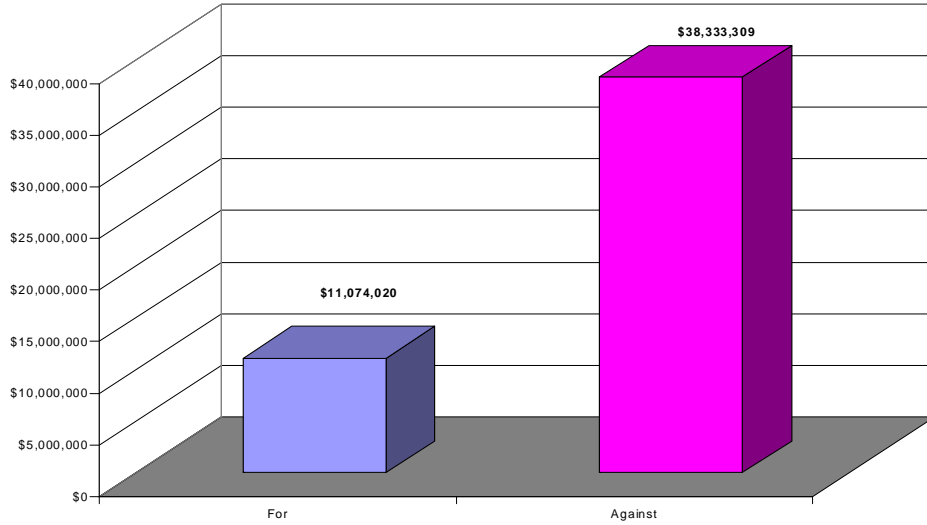
The Yes on 86 campaign did not have the resources to respond through paid media. According to Eric Batch, AHA Vice President, Advocacy, “But because we had limited resources, there was a portion of a point in time in the campaign where we actually were off the air. During that time when we weren’t on the air, tobacco just bombarded the airwaves with the not enough money goes to tobacco and the anti-trust issues.”<sup>195</sup>

The assertion that there would be no competitive bidding on contracts funded by Proposition 86 also provided an opportunity for the tobacco industry to attack. The fact that this provision only applied to six specific health-related programs for five years did not provide a defense. The proposed initiative filed by the voluntaries in September 2005 had a similar provision reciting that “due to the necessity to implement the mandates of this Act” contracts made pursuant to the Act are not subject to the Public Contracts Law, but without any time limitation. These programs included cancer detection and prevention, asthma prevention and control, and obesity prevention, nutrition and physical activity promotion.

With the race tightening and the media creating voter uncertainty, as intended by the tobacco industry’s campaign, the final Field Poll released on November 2, 2006, just 5 days before the election, showed that by late October voters were evenly divided, with 45% of likely voters supporting the initiative and 45% opposing it.<sup>196</sup> The deterioration of support for the tax since the summer of 2006 when there was a two to one (63% to 32%) lead supporting it reflects the effect of the successful campaigning on the part of the tobacco industry to defeat the initiative. The tobacco industry spent over \$38 million on television alone compared to a little over \$11 million by the Yes campaign (Figure 9).

Figure 12 shows the historical trend of voter preference on Proposition 86 over the course of the year in 2006. It had high voter approval in the early polls; however, with the intense media campaigning by the tobacco industry, voter awareness spiked to 83% in the poll’s final pre-election survey and presumably the industry’s negative media affected voter preference. The pre-election survey conducted one week prior to the election reported that voters were evenly divided on the initiative, with 45% intending to vote yes and 45% intending to vote no, and 10% undecided. Ultimately, Proposition .

86 was defeated in the election unofficial results that the loss was 51.7%

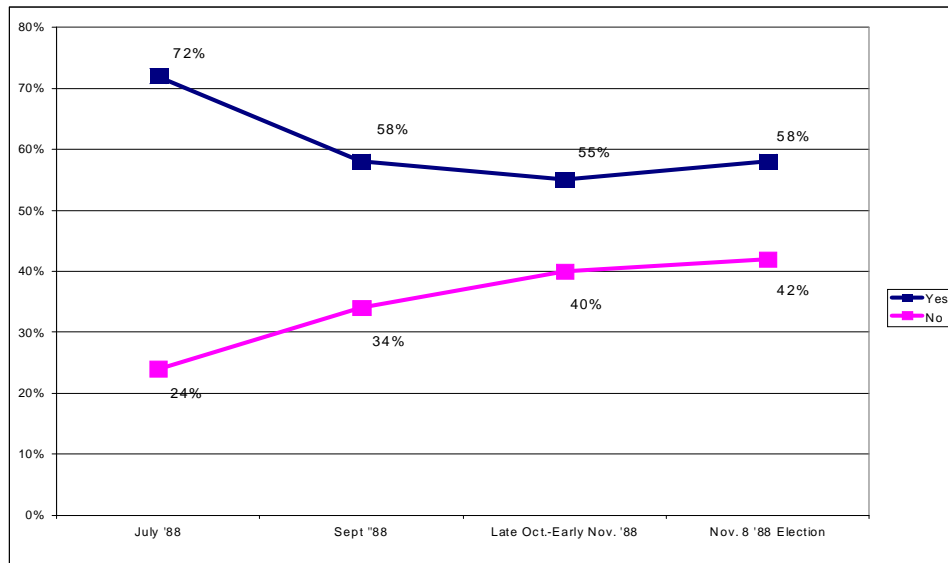


narrowly by voters 2006 and election showed margin of 48.3% to

**Figure 9** Total Television Spending For and Against Proposition 86

Source: An Analysis of Pre-Election Field Polls Regarding Proposition 86, the Tax on Cigarettes Initiative<sup>198</sup> According to the Field

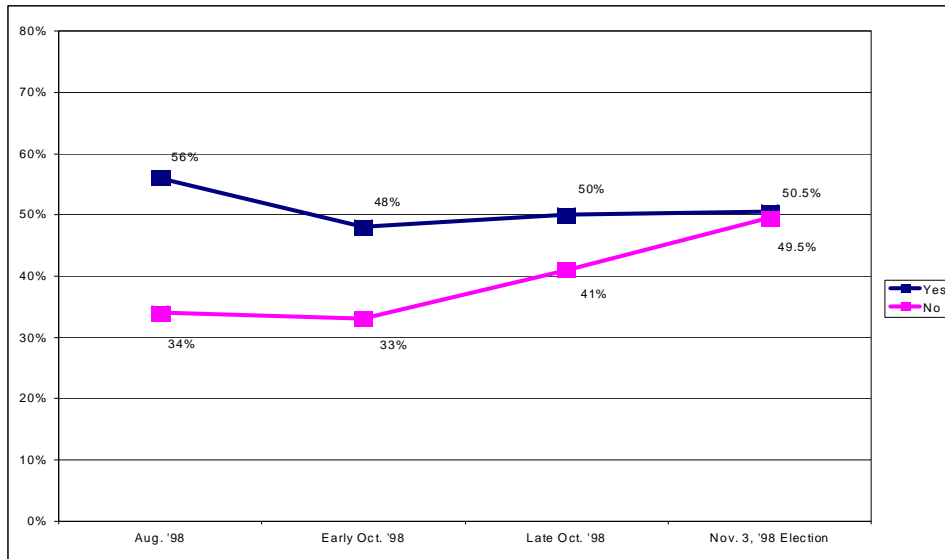
pollster Mark DiCamillo, California’s approval of past tobacco taxes Proposition 99 and Proposition 10 may explain the erosion of support for Proposition 86 (Figures 10 and 11). “I think there’s an element of fairness that’s operating against it .... I think people recognize the disincentiveness (for smoking), but it’s also about fairness. Is it too much? Is this too onerous a tax?”<sup>197</sup>



**Figure 10** Trend of Voter Preferences on Proposition 99 (1988)

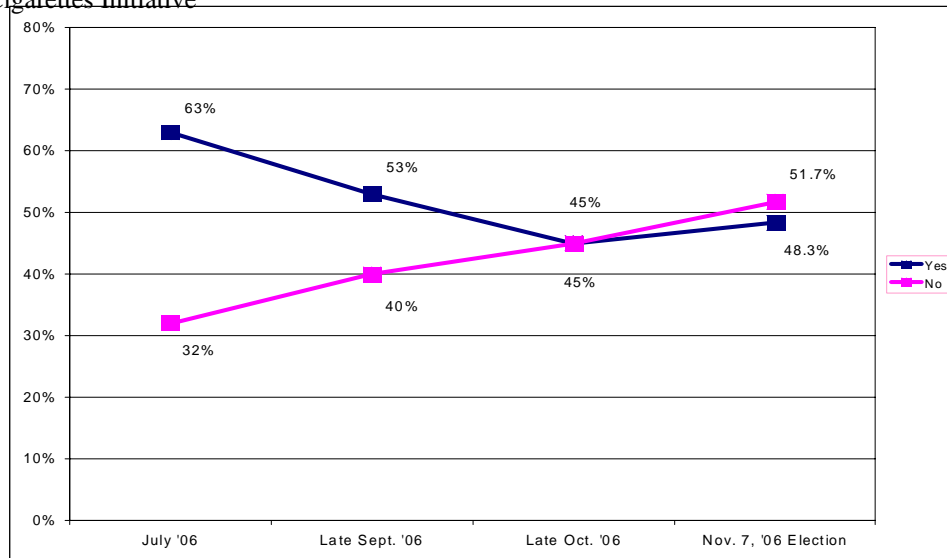
Source: An Analysis of Pre-Election Field Polls Regarding Proposition 86, the Tax on Cigarettes Initiative<sup>198</sup>





**Figure 11** Trend of Voter Preferences on Proposition 10 (1998)

Source: An Analysis of Pre-Election Field Polls Regarding Proposition 86, the Tax on Cigarettes Initiative<sup>198</sup>



**Figure 12** Proposition 86 Polling Data Trend Over Time

Source: An Analysis of Pre-Election Field Polls Regarding Proposition 86, the Tax on Cigarettes Initiative<sup>198</sup>

Tables 50 and 51 list the sources of funding for the Yes and No on Proposition 86 campaigns. While the Yes campaign had a significant amount of small contributions, the No campaign was almost entirely funded by tobacco interests.

Name	Amount
Alta Med Health Services	\$28,960
American Cancer Society	2,771,315
American College of Emergency Physicians	\$10,000

American Heart Association	1,082,018
American Lung Association	288,587
Association of California Nurse Leaders	30,000
California Association of Hospitals and Health Systems	11,394,363
California Primary Care Association	144,361
O'Connor Hospital	39,569
St. Louise Regional Hospital	33,046
Seton Medical Center	43,538
St. Francis Medical Center	133,846
The Children's Partnership	37,296
The Susan G. Komen Breast Cancer Foundation	10,500
Tobacco Free Kids Action Fund	502,131
Other Small Contributions	291,578
<b>TOTAL</b>	<b>\$16,841,108</b>
Source: California Secretary of State	

<b>Table 51 Contributors to Committees Opposed to Proposition 86</b>	
<b>NO ON 86 - STOP THE \$2 BILLION TAX HIKE</b>	
Name	Amount
Altria Group Inc.	\$36,502
Californians Against Unaccountable Taxes (RJR)	144,448
California Republican Party	10,000
Commonwealth Brands	1,250,000
Coremark International, Inc.	25,000
MTC Distributing California Convenience Services	12,500
Pacific Groservice, Inc.	25,000
Philip Morris USA Inc.	35,091,861
US Smokeless Tobacco	2,653,623
TREPCO Ltd	15,000
Other Donors (\$5,000 and less)	28,763
<b>NO ON PROPOSITION 86 - CALIFORNIANS AGAINST UNACCOUNTABLE TAXES</b>	
Cigar Association of America	1,000,000
Conwood Company LP	500,000
No on 86 - Stop the \$2 Billion Tax Hike (PM)	248,246
Philip Morris	52,638
MTC Distributing California Convenience Services	17,500
R. J. Reynolds Tobacco Co.	25,348,261
Other Donors (\$200 and less)	400
<b>CALIFORNIA ASSOCIATION OF LIBERTY AND CHOICE, NO ON PROP. 86</b>	
A Fuentes Cigars USA Inc	10,000
Ashton Distributors Inc	5,000
Camacho Cigars	5,000
Davidoff of Geneva Inc	5,000
Drew Estate, Jonathan Drew Inc	5,000
Kretek International Inc	5,000
Miami Cigar & Co	10,000
Olivia Cigar Co	5,000

Perelman Pioneer & Co Inc	4,800
Prometheus International Inc	5,065
Retail Tobacco Dealers of America	40,000
Rocky Patel Premium Cigars	5,000
Other Donors (\$1,000 and less)	18,250
TOTAL	\$66,582,857
Source: California Secretary of State	

### What Went Wrong for the Health Groups?

Most advocates for Proposition 86 blamed the fact that they were outspent by the tobacco industry for their defeat. There was more to it than that.

The supporters of Proposition 86 shed some light on why the campaign went as it did. Eric Batch, Vice President, Advocacy for the Western States Affiliate of the American Heart Association., felt that the unprecedented coalition that was brought together for Proposition 86, along with the early endorsements for Proposition 86 had set the stage for an optimistic campaign.<sup>195</sup> He also felt the monies supporting the initiative from the hospital association would give the campaign a chance at countering the tobacco industry’s well-funded opposition.<sup>195</sup> Early polls and focus groups showed favorable attitudes toward a tobacco tax and the coalition “realized \$2.60 had legs.”<sup>195</sup> Cyndi Lewis, then Western Regional Director of the Campaign for Tobacco-Free Kids and a key strategic advisor for the Coalition, shared this opinion. “They blanketed the whole state with television ads. It was a TV war, that is how it works in ballot measures...it was us against them and their ads.... ours were really good but they were all over the map on message... [the tobacco industry] had a little bit of traction with some of our women, some of our Democrats, they were the older Democrats and they were able to peel them with the special interest message that they used. So in the end obviously the hospitals as a supporter was a vulnerability with regard to trying to beat big tobacco”.<sup>172</sup> Lewis noted that the hospital industry understood that the public’s esteem for the voluntary agencies was crucial to run a successful campaign and this brought them to the negotiating table.<sup>172</sup> “[The hospitals] knew that the kind of leverage they get with the voters with the logos of the voluntaries couldn’t be bought or manufactured with all the communications with PR [public relations] money in the world . . . . So we lost because not enough money went to promoting that, not that they didn’t want to promote it. . . .”<sup>172</sup>

Once the industry campaign started, it became clear that the dominant role of the hospitals in the allocation of funds by the initiative was proving a major problem. The industry effectively capitalized on the fact that relatively little of the money went to tobacco control, hospitals were not sympathetic beneficiaries of the tax, and the fact that the proposed tax increase was so large. While the Coalition tried to capitalize on the high public esteem of the voluntary health agencies, this esteem was not enough to overcome the realities of the way that the initiative was structured.

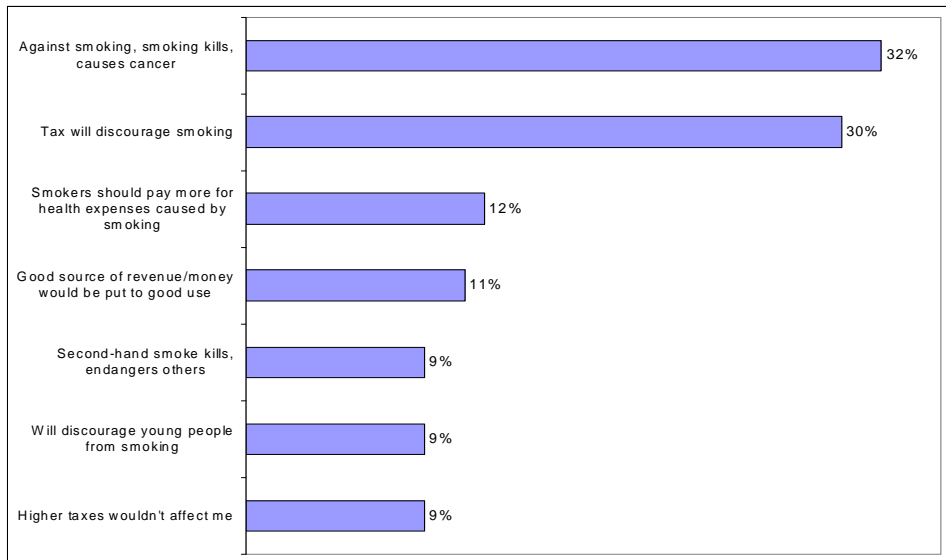
Paul Knepprath, Vice President, American Lung Association of California, commented on post-election results and the joining of voluntary groups with the hospital industry. “Frankly we could have laid off until 2008 I think, sort of let them [the CHHSA] go ahead [without the health groups], and that was one option we didn’t really put on the table and that was because we had already been at it for two years and had a lot of momentum and it probably didn’t occur to us to just sit it out and wait for another

two years because all of our organizations were very geared up to go”.<sup>171</sup> He further commented on the campaign: “I do think the hospital association policy measures that were in the initiative drew attention to things that took us off track. I think the provisions around setting up fees for specialty care, on-call fees, allowing hospitals to come together for the so-called antitrust exemption language did not help us. I think it gave the tobacco companies a piece of something to exploit and I think they did a good [job] of exploiting it”.<sup>171</sup>

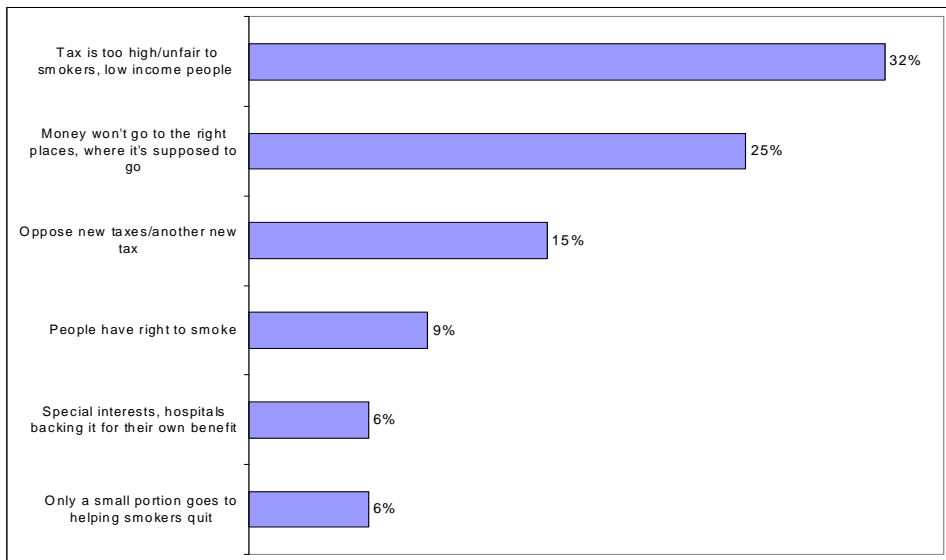
Finally, one last factor in the campaign that could have changed matters was the underutilization of the grassroots base of the voluntary agencies. Knepprath stated “I don’t think we had as much of a field operation through the campaign as much as I would have liked”.<sup>171</sup> He further emphasized that their faithful constituents were overwhelmed by the tobacco industry’s messaging; “I think the one thing of the take away messages for us in tobacco control and for folks across the country is to be on the lookout for the industry targeting our base in these campaigns...they went right after our voters and these were people who wanted to help reduce smoking, they wanted to prevent teen smoking . . . .”<sup>171</sup>

Wendy Lazarus, founder and Co-President of The Children’s Partnership, added that “we would have had more success had we spent more time earlier on tapping into the Democratic Party infrastructure and machine at an earlier stage . . . by having a strong support from the grassroots and grassstops of the Democratic Party”.<sup>174</sup> Lazarus also pointed out that voters didn’t understand that children’s health care was a large part of the program: “We knew that we had to have a pretty singular message that ran through the whole campaign and that was that raising the tax would save lives and keep people from smoking and especially help young people not smoke in the first place, but by putting so much of our emphasis on that message, I think that too many voters didn’t understand where does the money go . . . .”<sup>174</sup>

An analysis<sup>198</sup> of polling data from the late October 2006 Field Poll showed the reasons voters gave for opposing proposition 86 or for supporting it (Figures 13 and 14). Although the negative media against Proposition 86 primarily focused on the aspect of the “money grab” by the hospitals, this was not the top reason voters polled gave for opposing Proposition 86. The top reason for opposing Proposition 86 was that the tax was too high and would hurt low income populations. The next top argument to vote no on 86 was the injustice of the allocations for the tax revenues, which was a reflection of the fact that little of the money was allocated to tobacco control.



**Figure 13** Reasons YES Voters Gave for Supporting Proposition 86  
 Source: An Analysis of Pre-Election Field Polls Regarding Proposition 86, the Tax on Cigarettes Initiative<sup>198</sup>



**Figure 14** Reasons NO Voters Gave for Opposing Proposition 86  
 Source: An Analysis of Pre-Election Field Polls Regarding Proposition 86, the Tax on Cigarettes Initiative<sup>198</sup>

Jack Nicholl, the seasoned initiative campaign consultant to the Coalition, pointed to the fateful decision to join forces with the hospitals as the defining moment because “we knew the hospitals were bringing in a bunch of baggage that was going to be used to attack us.”<sup>199</sup> “We knew they’d lost the same issue basically two years before, so we had an inkling of all of the weaknesses and problems we were going to face, but we weighed that against the money, and my own opinion is we made the wrong choice.”<sup>199</sup> He said that a lot of his colleagues disagreed, feeling that the Coalition wouldn’t have gotten so close to victory without the hospitals’ money.

To me, the real question is: Could you do a measure where more of a pure tobacco control and health care priorities from Heart, Lung and Cancer perspective, or tobacco control and children's health insurance, where you were basically able to raise maybe five million dollars and have three million dollars for a campaign and two million dollars to qualify for the ballot. Could you do that and win as opposed to having to link up with a deep-pocket institution that brought in all the baggage that the hospitals did? My perspective is that choice. We said, 'No, we couldn't do that.' My own opinion is that I think we could have.<sup>199</sup>

Ironically, if you exclude from Table 50 the contributions from the hospital association and the individual hospitals, the Coalition raised over \$5 million. Nicholl also reported that the hospitals, in the end, did not deliver all the money they had promised: "Maybe if we'd had the amount that we were promised, we might have made up those extra points".<sup>199</sup>

While there is no question that the fact that the tobacco industry heavily outspent the Coalition was an important element in the defeat of Proposition 86, this opposition was predictable. More important, the health groups had prevailed against well-funded industry campaigns in the past, Proposition 99 in 1988 and Proposition 10 in 1998. Figure 10 shows the trend of voter preferences on Proposition 99, where California voters approved Proposition 99 by 16 percentage points, 58% to 42%, in the November 1988 election.<sup>198</sup> Proposition 10, which increased cigarette taxes by 50 cents per pack in 1998, narrowly won voter approval by 50.5% to 49.5% (Figure 11) but not with the same comfortable margin that Proposition 99 had enjoyed in 1988, perhaps because the money from the initiative was going to early childhood education, not tobacco control. The tobacco industry spent \$21.4 million (\$36.5 million in 2006 dollars) fighting Proposition 99 in 1988<sup>1</sup> compared to \$3.1 million (\$5.3 million in 2006 dollars) raised by the health groups and other supporters,<sup>8</sup> and \$29.4 million (\$36.4 million in 2006 dollars) compared to \$7.1 million ((\$8.8 million in 2006 dollars) raised by the health groups in its unsuccessful campaign to defeat Proposition 10 in 1998.<sup>47</sup> Both these initiatives passed despite major campaigns against them.

This history, combined with the information in the election polls, strongly suggests that the fundamental reason that the health and children's groups lost was a result of the way that the initiative was constructed. The health groups did a thorough job in their planning up to the time they decided to do a joint initiative with CHHSA. The health and children's groups held a strong position, CHHSA had a long list of negatives on its side which it hoped to offset, and the health groups let CHHSA bluff them into the partnership. In the end, the health and children's groups probably would have won had they rejected the partnership offer and presented their own smaller tax with a stronger focus on tobacco control.

## **LOCAL POLICY MAKING IN CALIFORNIA: 2003 – 2007**

As people have become used to breathing indoor air free of secondhand smoke in California,<sup>8</sup> local tobacco control policymaking has shifted to addressing smoking restrictions in multi-unit housing, smoking restrictions in outdoor dining areas, parks and beaches, distribution of samples, retail licensing and designation of secondhand smoke as a public or private nuisance. Ordinances creating smoke-free cities, smoke-free beaches and restricting smoking near entryways of buildings have also been passed. A

comprehensive listing of tobacco control ordinances in effect as of September 2007 for municipalities in California is provided in Appendix F.<sup>200</sup>

### **Multi-Unit Housing and Secondhand Smoke**

According to the 2000 US Census, over 40% of California's housing stock consists of multi-unit residences. Arguments of infringing on the rights for smokers to smoke in their private homes mimic arguments against efforts to end smoking in automobiles when children are present. Yet, momentum has continued to build for smoke-free units in apartments. One survey conducted in 2006 reported that 69% of apartment renters and 57% of apartment owners/managers favored a law that would require all apartment buildings in their municipality to offer non-smoking sections.<sup>201</sup> CTCP media efforts to educate the public on the dangers of secondhand tobacco smoke have promoted nonsmoking multi-unit housing.

Smokefree Air For Everyone (S.A.F.E.), a group dedicated to advocating for policies and laws which protect the public from exposure to secondhand smoke and funded by the Tobacco Control Section since 2000,<sup>202</sup> was involved in the Los Angeles City Council efforts to promote smoke-free housing. In 2003, S.A.F.E. formed a campaign called the Campaign for Smoke-Free Affordable Housing which was actively engaged in pursuing smoke-free housing options for the Los Angeles affordable housing community. S.A.F.E. engineered through their campaign the platform for the Los Angeles City Council's preliminary steps to create smoke-free affordable housing.<sup>202</sup> However the Los Angeles Housing Department was opposed to these new measures due to concerns that such a ban would create difficulties for the indigent to have housing, since providers of affordable housing would have to yet conform to another edict. Affordable housing providers protested that individuals would say anything in order to get into the housing unit and state that they were nonsmokers when they were in actuality smokers.

The Housing Department offered a compromise to the Campaign. They encouraged grant proposals from developers of affordable housing that would create policies to regulate drifting tobacco smoke. Grant proposals could require no smoking in enclosed common areas and could also require no smoking in a certain percentage of units or buildings. The Housing Department suggested the use of air purifiers to remedy the problem of tobacco smoke drifting between units. In response, members of the Campaign for Smoke-Free Affordable Housing told the City Council that air purifiers would not mitigate the toxic effects of drifting smoke. Moreover the Campaign stated that rules requiring no smoking in outdoor common areas would have the unintended consequences of driving people who smoke back into their apartments to smoke, and hence create a health hazard for other family members.<sup>202</sup> Members of the Campaign suggested that designated outdoor areas be provided for those who need to smoke. The City Council stated "We understand what you are trying to do. We applaud you. We don't want you to give up but we can't do anything at this time . . . ."<sup>202</sup>

Despite this initial movement for smoke-free housing on the part of the Los Angeles City Council, opposition from affordable housing coalition groups and the Los Angeles Housing Department led to the demise of the ordinance.<sup>202</sup> There was a drop in support for the ordinance among members of the City Council and the ordinance died in 2004.<sup>203</sup>

Of note in the campaign for smoke-free multi-unit housing, the movement persuaded the California Tax Credit Allocation Committee to add in January 2006 to its scoring system for competitive applications from developers of affordable housing projects one point for including smoke-free sections or smoke-free buildings in their proposed projects. The California Tax Credit Allocation Committee is a function of the California Treasurer's Office that distributes federal and state tax credits to developers and sponsors of affordable housing projects to assist in funding those projects through the sale of tax benefits to investors.<sup>204</sup> The minimum requirement to earn the point is that half the units in a building must be nonsmoking and the nonsmoking units must be contiguous (CA Code of Regulations, Title 4, §10325).

In the role as a funder of affordable housing, Mary Silverstein, Vice President, Community Development Banking, Bank of America, introduced the idea of a tax credit point for developers of nonsmoking affordable housing to Smokefree Air For Everyone (S.A.F.E.).<sup>202</sup> Silverstein told S.A.F.E. this could be a way to win support from the affordable housing developers.<sup>203</sup> S.A.F.E. pursued this idea in 2003 and presented the idea of providing a smoke-free point to William Pavao, Executive Director, California Tax Credit Allocation Committee. A campaign, called the Campaign for Smoke-Free Choice in Multi-Unit Housing composed of the American Lung Association, the American Cancer Society, the Hispanic/Latino Tobacco Education Partnership, the American Heart Association and various other community groups began a letter writing campaign.<sup>202</sup> In January 2006, the Allocation Committee added the smoke-free tax credit to the program.

William Paveo reported that in 2006 60% of the affordable housing developers utilized the smoke-free point. As of July 2007, 48% of affordable housing developers were using the smoke-free point, the single most used tax credit point in the funding cycle.<sup>202</sup> Schiller felt the reason for this was that "it doesn't cost the affordable housing provider any money to use it. Most times, the kinds of points [require you to do] things like build a green building. That's going to be more expensive to use green building materials [than to go smoke-free]. That's going to be expensive but the smoke-free point doesn't cost them any money."<sup>202</sup>

An important success for smoke-free multi-unit housing came in September 2004 when, after a three year campaign by local advocates, the Thousand Oaks City Council unanimously passed a resolution that mandated that one-third of new multi-unit affordable housing units funded by the city be nonsmoking.<sup>205</sup> This was the first city in California and the first in the nation to institute such a policy.<sup>129</sup> In 2006, the Housing Authority of the City of Madera began requiring that two out of three of all senior buildings be nonsmoking.<sup>206</sup>

While these early efforts at protecting nonsmokers from secondhand tobacco smoke in multi-unit housing focused on public housing, the City of Belmont amended its smoke-free ordinance (Belmont Municipal Code, Chapter 20.5) on October 9, 2007, to prohibit smoking in the residential units of all multi-unit housing in the city, with a 14-month phase-in for existing landlord-tenant relationships. After November 8, 2007, all new leases must provide smoke-free environments in multi-unit housing and any smoking outdoors must be more than 20 feet from any public entrance or exit or operable window.

## **Secondhand Smoke Declared a Nuisance**



On February 1, 2006, the City of Calabasas passed a comprehensive smoke-free ordinance that included a first for California, declaring secondhand smoke a public nuisance. On September 5, 2006, the City Council of Dublin amended its Smoking Pollution Control Ordinance to declare secondhand smoke a nuisance, and authorizing private citizens to bring a legal action to abate secondhand smoke as a nuisance. Dublin was the second city in California to take such action. Emeryville followed in December 2006 and Belmont joined in October 2007. Utah and Oklahoma have state statutes declaring secondhand smoke a nuisance, but California does not. Such declaration has significance because it provides a private remedy whereby private citizens can take legal action to prevent exposure to secondhand tobacco smoke in multi-unit housing and any other environment in which the involuntary exposure to secondhand smoke occurs.

### **Drifting Secondhand Tobacco Smoke as Trespassing**

On October 9, 2007, the City of Belmont amended its smoke-free ordinance to declare that the uninvited presence of secondhand smoke on property is not only a nuisance, but also a trespass. This is significant as the usual remedy for a nuisance is an order to stop the behavior or activity that constitutes the nuisance, while money damages can be recovered for a trespass.

### **Entryway Ordinances**

While clean indoor air laws have become the norm, the issue of secondhand smoke in entryways of buildings has been seen as an area of expansion to protect individuals against secondhand smoke exposure. The California Legislature has addressed the building entryway issue by passing AB 846 in 2003, which prohibits smoking within 20 feet of a main entrance, exit, or operable window of all city, county or State owned or leased buildings in the state.<sup>207</sup> This bill did not include a clause preempting local policymaking and consequently much stronger ordinances regarding local entryway smoking have been passed. Instead of just city, county or State buildings, many local ordinances prohibited smoking within at least 20 feet from all entryways of all buildings open to the public.<sup>200</sup>

### **Outdoor Areas**

On October 1, 2007, Beverly Hills joined Calabasas, Santa Monica and Burbank in the Los Angeles area in prohibiting smoking in outdoor dining areas. In 1987, Beverly Hills was the first city in California to make all restaurants entirely smoke-free indoors.<sup>8</sup> On October 16, 2007, the Oakland City Council unanimously adopted an amendment to the city's smoking ordinance that expanded smoke-free areas to outdoor dining areas, service lines, bus stops and municipal recreational facilities. The comprehensive amendments made to the City of Belmont smoke-free ordinance on October 9, 2007 included prohibiting smoking in all outdoor workplaces and public places, and on city streets and sidewalks during events such as fairs and parades.

### **“Smoke-free Cities” and Smoke-free Beaches**

The first ordinance for a smoke-free beach in California was enacted by San Diego and took effect in November 2003.<sup>208</sup> The advocacy campaign was led by the San Dieguito Alliance for Drug-

Free Youth, and supported by the member organizations and individuals of the Tobacco-Free Communities Coalition of San Diego County. Traditional partners, the American Heart Association, the American Lung Association, the American Cancer Society and the Youth Tobacco Prevention Corps participated in the campaign and non-traditional partners such as The Surfrider Foundation also joined their efforts. The final decision to make Solana Beach public parks and beaches smoke-free was unanimous. There was no tangible opposition to the ordinance, but the points made by persons testifying against the ordinance were virtually identical to those raised by individuals who spoke against a similar ordinance in San Clemente several months later. By 2007, most public beaches in Southern California had smoke-free policies with only three exceptions, Dana Point, Newport Coast and Redondo Beach.<sup>200</sup> Beaches in Capitola, Carmel, Monterey, Morro Bay, Pacifica, San Mateo County and Santa Cruz in Northern California had become smoke-free.<sup>200</sup>

A dramatic first in tobacco control policymaking in the U.S. was when the City of Calabasas mandated an all-inclusive smoking ban in 2006 in the entire city except in designated smoking areas.<sup>209</sup> On February 15, 2006 the Calabasas City Council unanimously passed an ordinance that restricted smoking in all outdoor public places except for strictly designated smoking areas. It went into effect on March 17, 2006.<sup>209</sup> Public spaces include outdoor worksites, enclosed and unenclosed patio areas of restaurants and bars, within 20 feet of an entrance to any enclosed, nonsmoking areas and in outdoor common areas in multi-unit housing (including lobbies, hallways, swimming pools, outdoor eating areas, and play areas).<sup>210</sup> Smoking is permitted in private residences, in up to twenty percent of guest rooms in a hotel or motel, in designated smoking areas in shopping malls, and other outdoor areas not specified by the ordinance as long as non-smokers are not present. This ordinance also declared secondhand smoking to be a public nuisance and thus provides a means for nonsmokers to take legal action if involuntarily exposed to secondhand smoke.

### Local Retail Licensing

While state retail licensing laws were enacted with AB 71 in 2003 and AB 1749 in 2006, these laws did not contribute to tobacco control by failing to create sanctions against retailers who sell tobacco to children. While state level tobacco control advocates were not able to include such a public health policy in the state laws, they were able to ensure that these laws did not preempt communities from passing local retail licensing laws. Local licensing ordinances are more effective at promoting good tobacco control if the license fees paid by retailers are high enough to fund effective enforcement and compliance checks, which lowers rates of illegal tobacco sales to minors. Good local retail licensing ordinances include high fines, and also include penalties such as suspension and revocation of licenses if there are illegal sales or breaches of any other tobacco-related laws. Over 60 local ordinances providing local tobacco retail licensing have passed in California since 2002.<sup>200, 211</sup> Table 52 shows the cities with strong local tobacco retail licensing laws and significant reductions in youth tobacco sales.

<b>Table 52 Cities with strong retail licensing laws and significant reductions in youth tobacco sales</b>			
	Date of Adoption of Retail Licensing Law	Annual Fee	Drop in Tobacco Sales Rate among Youth as of March 2006 since ordinance adoption
Berkeley	December 2002	\$300	From 38% to 14%

Contra Costa County	January 2003	\$160	From 37% to 7%
Elk Grove	September 2004	\$270	From 17% to 10%
Pasadena	January 2004	\$135	From 19% to 5%
Sacramento	March 2004	\$300	From 27% to 7%
Sacramento County	May 2004	\$287	From 20.6% to 10.6%
San Luis Obispo	August 2003	\$225	From 17% to 2%
Source: The Center for Tobacco Policy and Organizing: American Lung Association of California. Tobacco Retailer Licensing is Effective. <sup>212</sup>			

Local activism remained innovative and successful in the 2003-2007 period. Calabasas became essentially smoke-free, indoors and out. Four cities, Belmont, Calabasas, Dublin and Emeryville, declared secondhand smoke to be a nuisance, giving private citizens new powers to protect themselves. In Southern California, almost all public beaches became smoke-free, and the move to limit secondhand smoke in multi-unit housing was advanced in Belmont, Thousand Oaks and Temecula.

### Local Efforts Using MSA Funds

California's allotment of the settlement monies from the 1998 MSA, estimated at \$21.4 billion over the first 25 years, was evenly divided between the state of California and all 58 counties and 4 cities (Los Angeles, San Diego, San Francisco, and San Jose) because these localities had sued the tobacco industry before the state did.<sup>7</sup>

In 2003 California officials securitized 57% percent of the state's portion of future settlement payments from the MSA and sold \$2.3 billion in bonds and these revenues were used to close the deficit of the fiscal year 2003 budget. An additional portion of the state's settlement payments were securitized in late 2003 generating \$3 billion in bond, which was allocated to the fiscal year 2004 budget.<sup>36</sup> This action committed MSA funds to repayment of the bonds through 2022. Thus the state lost the opportunity to use its portion of settlement funds for tobacco control. This action did not have any direct effect on the local funds. Securitization has also become a trend in local use of the settlement funds, thereby eliminating a viable funding stream for California's local tobacco control programs.

Out of the 58 counties, 40 (70%) did not apportion any funds specifically for tobacco control; 17 out of 58 counties (29%) securitized its MSA monies, 6 out of 58 (10%) directed the monies into the general fund, and only 18 out of 58 counties (31%) used any of its monies for tobacco control measures (Table 53). Instead of using the MSA funds for tobacco control programs, counties spent these monies on other programs: health services and health care, capital improvement and projects, recreational projects, debt service and management, county operations, and public works. A study has shown that states justify non-tobacco control related MSA spending decisions on the following arguments for expenditures: (1) other needy causes and deserving groups, (2) state development and (3) to help states overcome financial crises.<sup>213</sup> The non-tobacco related MSA spending priorities of the California counties follow the same path. Many counties created endowments from the settlement monies but most of the income from the endowments was not used for tobacco control.

Just like the state, most local governments receiving MSA funds directed it to programs with no tobacco control content, and some securitized the funds. Once again, tobacco control has lost a valuable funding source for local programs.

<b>County/ City</b>	<b>Smoking Prevalen ce</b>	<b>Cost of Smoking (in thousands)</b>	<b>Initial Payment (in thousands)</b>	<b>Annual Payment (in thousands)</b>	<b>Use of Funds</b>
Alameda	11.0%	\$710,496	\$5,925	\$15,830	100% was dedicated to health care.
Alpine	16.5%	\$542	\$5	\$14	Funds were placed in special trust fund: 21% of funds were used for tobacco cessation programs. The remaining funds were not earmarked.
Amador	16.5%	\$22,549	\$139	\$372	100% went to the general fund, where some (but not specifically earmarked) funds were allocated for tobacco reduction programs, fire protection, and recreation programs.
Butte	17.9%	\$141,737	\$844	\$2,254	100% went to the general fund, where approximately \$50,000 annually were allocated for cessation services.
Calaveras	16.5%	\$33,348	\$148	\$396	100% was allocated for capital improvement programs annually.
Colusa	17.9%	\$12,911	\$75	\$201	\$2.5 million were securitized.
Contra Costa	12.4%	\$428,587	\$3,723	\$9,946	Funds went into the general fund where they were allocated to Contra Costa Health Services for indigent care. No funds were designated for specific tobacco control programs.
Del Norte	17.9%	\$16,699	\$109	\$290	Funds were dedicated to fund county health care, specifically to offset the cost of employee health insurance, juvenile and adult inmate health and medical care costs, ambulance services, General Assistance, and in-home supportive services. Funds also contributed to the payment of costs for acute and specialized medical and health care for juvenile wards and dependents.
El Dorada	16.5%	\$92,782	\$584	\$1,559	From 2002-2006, 85% of the funds went to public health programs and 15% was allocated for tobacco control programs.
Fresno	15.3%	\$337,383	\$3,092	\$8,260	75% of funds were securitized with the remaining going into the general fund. Of this amount, a large portion was earmarked for community health programs.
Glenn	17.9%	\$15,262	\$115	\$307	100% placed in county's general fund.

County/ City	Smoking Prevalence	Cost of Smoking (in thousands)	Initial Payment (in thousands)	Annual Payment (in thousands)	Use of Funds
Humboldt	17.9%	\$84,837	\$552	\$1,474	Through 2004, 53% of funds went to the cost of medical services for the jail inmate population, 34% went to health care indigent programs, and 13% went to drug, tobacco and other substance abuse programs. Future funds will be allocated for jail medical costs and none will be available for tobacco control.
Imperial	18.9%	\$63,881	\$506	\$1,353	100% of funds were securitized.
Inyo	18.9%	\$9,900	\$85	\$226	100% of funds were divided between Northern Inyo hospital and Southern Inyo hospital.
Kern	18.9%	\$329,688	\$2,517	\$6,725	\$32.6 million were used for capital projects; remaining amount was securitized and placed in an endowment fund and the interest generated was used for health programs.
Kings	18.9%	\$51,737	\$470	\$1,256	100% of funds were securitized and placed in a capital endowment fund for tax-exempt securities.
Lake	17.9%	\$47,424	\$235	\$627	For fiscal year 2003-2004 the funds went into the general fund. None of the settlement money was earmarked for tobacco control.
Lassen	17.9%	\$18,255	\$128	\$342	Funds were put into a trust. MSA funds were encumbered for new family resource centers. A portion of the funds was allocated to fund health insurance for retired employees.
Los Angeles	13.6%	\$4,255,752	\$41,055	\$109,681	Funds were designated to a trust account. \$101.8 million was earmarked for health service programs annually. No funds were used for tobacco control.
Madera	15.3%	\$56,265	\$408	\$1,090	Funds were securitized and put into a trust. Funds were earmarked for capital projects. No funds were dedicated to tobacco control.
Marin	13.4%	\$110,610	\$4,066	\$2,847	In 2003, \$27 million was securitized for capital improvement. Approximately \$400,000 was allocated for tobacco control in FY 2004-2005. Significant reductions in tobacco control spending are planned for future years.
Mariposa	16.5%	\$11,179	\$66	\$177	Funds were not securitized and instead put into a trust. Funds were spent on recreational projects, however \$30,000 was spent on after school programs. Included in the monies spent were two banners that said "Yes to sports, no to tobacco" which were hung at Mariposa schools.
Mendocino	17.9%	\$60,988	\$372	\$994	60% was allocated to debt management. 40% was dedicated to ongoing prevention and safety efforts (through capital and community projects).

County/ City	Smoking Prevalen ce	Cost of Smoking (in thousands)	Initial Payment (in thousands)	Annual Payment (in thousands)	Use of Funds
Merced	15.3%	\$94,156	\$826	\$2,208	All funds were securitized for capital projects.
Modoc	17.9%	\$6,587	\$45	\$120	All funds were securitized to fund hospital.
Mono	18.9%	\$5,613	\$46	\$123	All funds are allocated annually for Paramedic Program.
Monterey	16.2%	\$169,948	\$1,647	\$4,401	Funds to be used for health services, public works, capital projects, to fund the Health Coalition Trust Fund, and to supplement revenues for uncompensated care funded by Prop. 99 CHIP funding.
Napa	13.4%	\$65,694	\$513	\$750	Funds were earmarked for public health services through health related programs and capital improvements.
Nevada	16.5%	\$59,206	\$364	\$972	MSA funds went into the county's general fund.
Orange	13.2%	\$1,104,084	\$11,166	\$29,830	As of 2000, funds were allocated as such: 12% to tobacco prevention and cessation, substances abuse prevention and treatment and mental health, 6% to uncompensated care for persons with health care, 19% to health services for seniors and those with disabilities, 20% for community clinics, 20% for public safety, and 23% for uncompensated care for hospitals.
Placer	16.5%	\$137,434	\$800	\$2,138	All funds were securitized. Monies were used for capital improvement projects.
Plumas	17.9%	\$17,415	\$91	\$244	For fiscal year 2004-2005 \$125,00 of MSA funds were divided between 5 family resource centers for tobacco related prevention, education and cessation. The balance of 2004-2005 funds and funds for future years will be allocated to the construction of a new Health and Human Services building.
Riverside	16.7%	\$821,320	\$5,421	\$14,484	Funds were not securitized and approximately \$10 million of the \$15 million the county receives goes to hospitals and operations. The remainder is divided among other county agencies and operations.
Sacramento	16.0%	\$627,280	\$4,823	\$12,885	In 2004, 15% of interest monies generated from an endowed fund created from MSA funds was voted by the county to be spent for tobacco control grants. Anticipated payments in years 6-25 have been securitized to fund capital projects.
San Benito	16.2%	\$20,899	\$170	\$454	All funds were securitized and dedicated to capital projects.
San Bernardino	19.6%	\$818,455	\$6,570	\$17,552	For 2004-2005 the funds were allocated to the Medical Center reserve and debt service, to address health related issues.

County/ City	Smoking Prevalen ce	Cost of Smoking (in thousands)	Initial Payment (in thousands)	Annual Payment (in thousands)	Use of Funds
San Diego	13.4%	\$1,249,274	\$11,571	\$30,913	100% to health care: mental health, alcohol and drug services, access to health care for the uninsured, senior homeless transitional housing, emergency medical services, and to medical services for juvenile detainees.
San Francisco	13.9%	\$432,979	\$7,183	\$19,189	\$1 million annually for tobacco control, including enforcement, capacity building, media, cessation and evaluation. After \$1 million dollars spent on tobacco control, all tobacco settlement monies was apportioned each year to pay for rebuilding Laguna Honda Hospital, San Francisco county's long-term care facility.
San Joaquin	16.5%	\$318,792	\$2,226	\$5,948	Allocation of the MSA funds: 40% for health care facilities, 20% for road projects, 20% for public improvement and capital projects and 20% for automation expansion. The board also approved \$500,000 for the health access program.
San Luis Obispo	13.0%	\$111,585	\$1,006	\$2,687	Funds allocated as such: 12% to tobacco prevention and control, including cessation services, 5% to the Sheriff's Department for public safety services, 6% to hospitals within San Luis Obispo County, 15% to preventive health grants, 19% to provide health care services for seniors and persons with disabilities, 20% to non-profit community clinics, and 23% to fund emergency medical services.
San Mateo	12.1%	\$348,551	\$3,009	\$8,039	\$270,000 of MSA funds go to tobacco prevention, youth prevention, cessation, and enforcement. The remainder of the funds go to debt service of the county hospital.
Santa Barbara	13.0%	\$159,126	\$1,712	\$4,574	100% to health and an endowment was created. None of the tobacco settlement revenues may be invested in any stocks or companies with interests in the tobacco industry.
Santa Clara	10.7%	\$645,170	\$6,937	\$18,532	For fiscal year 2004-2005 approximately \$700,000 was dedicated to tobacco control efforts.
Santa Cruz	16.2%	\$103,172	\$1,064	\$2,843	Through June 30, 2004 \$150,000 was allocated annually to augment tobacco enforcement and tobacco control media efforts. As of July 1, 2004 MSA funds were directed into the general fund to fill the deficit and tobacco control allocated funds were discussed to be cut.
Shasta	17.9%	\$129,967	\$681	\$1,820	75% allocated for capital improvement, 10% allocated annually to the Shasta Community Health Clinic, 15% is unallocated.

County/ City	Smoking Prevalence	Cost of Smoking (in thousands)	Initial Payment (in thousands)	Annual Payment (in thousands)	Use of Funds
Sierra	16.5%	\$1,634	\$15	\$41	Until 2003, MSA funds were all allocated to the Park and Recreation department. MSA funds for fiscal year 2004-2005 were to be allocated to the general fund. No funds were earmarked for tobacco control.
Siskiyou	17.9%	\$30,538	\$202	\$539	10% to General County Health, 40% to Water and Sewer, 40% to Infrastructure, and 10% to Public works money.
Solano	12.1%	\$187,073	\$1,577	\$4,213	Partial securitization of funds. Between \$3 and \$3.3 million was allocated to reduce rates of tobacco, alcohol and drug use and to improve health care access for indigent and uninsured care. \$400,000 was allocated to community clinics, \$75,000 for family violence prevention, and \$600,000 to emergency medical services commitment.
Sonoma	13.4%	\$216,853	\$1,798	\$4,804	All funds were securitized. Half of the monies were invested into Juvenile Hall facilities. The remainder has been placed in an endowment fund for capital projects.
Stanislaus	15.3%	\$227,237	\$1,716	\$4,585	For fiscal year 2003-2004 \$500,000 was allocated to the Health Services Agency. No funds were earmarked for tobacco control.
Sutter	16.5%	\$48,755	\$298	\$797	No funds allocated for tobacco control.
Tehama	17.9%	\$43,947	\$230	\$614	Through June 2004, \$120,000 was allocated for cessation programs. From July, 2004 no funds were allocated for tobacco control.
Trinity	17.9%	\$13,206	\$61	\$162	All funding is used to reimburse physicians for up to 50% of indigent care.
Tulare	18.9%	\$164,426	\$1,445	\$3,860	All funds were securitized. An endowment fund was created to fund capital projects.
Tuolumne	16.5%	\$35,122	\$224	\$600	All funds were securitized. Funds were used to upgrade the county hospital, and a small amount was spent to upgrade the county roads.
Ventura	13.0%	\$304,329	\$3,099	\$8,000	4.8% of annual MSA funds received were dedicated to tobacco control programs as follows: \$437,500 to Public Health Tobacco Settlement Program, with a mandate to proceed with a second year of cessation services. \$100,000 of this amount was allocated to purchase nicotine replacement therapies. Funding also covered the mobile exhibit "Bus of Tobacco Horrors" for 6th graders throughout county.



County/ City	Smoking Prevalence	Cost of Smoking (in thousands)	Initial Payment (in thousands)	Annual Payment (in thousands)	Use of Funds
Yolo	17.9%	\$85,424	\$564	\$1,746	All funds were securitized. Half of the monies were used for capital facilities, and an endowment was created with the remaining amount. \$200,000 from this endowment fund was spent in fiscal year 2004-2005 for cessation, a youth coalition and for projects for 18-24 year olds.
Yuba	16.5%	\$41,718	\$270	\$721	All MSA funds went into the county's general fund.
<p>Source for smoking prevalence year 2005: County and Statewide Archive of Tobacco Statistics, California Department of Public Health.</p> <p>Source for cost of smoking and economic health burden: Max et. al., 2004.<sup>214</sup></p> <p>Source for MSA payments and use of funds: American Lung Association of California, 2004. "Tracking Tobacco Settlement Funds, California: Tracking By City and County".</p>					

## CONCLUSION

After laying a foundation through passage of local smoke-free laws beginning in the 1980s, the period of aggressive tobacco control at the state level began in California with the passage of a 25-cent tobacco tax increase in Proposition 99 in 1988.<sup>8</sup> The next decade saw significant decreases in smoking prevalence and cigarette consumption rates in California, despite many attempts by the tobacco industry and its political allies to block effective tobacco control programs.<sup>1, 3, 8, 47</sup> This reduction in smoking was followed by corresponding reductions in heart disease<sup>215</sup> and lung cancer.<sup>12</sup> Statewide smoke-free workplace legislation was passed in 1994, built on the foundation of 195 local clean indoor air ordinances.<sup>8</sup> Proposition 10 in 1998 added another \$.50 to the tobacco tax, though none of the revenue went to the state's tobacco control program. As a result of these successes, California was widely viewed as an international leader in tobacco control.

While neither Governor Schwarzenegger nor the Legislature diverted funds the voters allocated to tobacco control in Proposition 99, they did not prioritize the implementation of an aggressive tobacco control program priority. During the period 2003-2007, the state's tobacco control program had very few new anti-smoking ads and there was no move to increase funding for the tobacco control program beyond monies generated from Proposition 99, which meant that inflation continued to erode the purchasing power of any available funds. Despite this lack of priority, during the 2003-2007 period smoking prevalence among adults and overall consumption rates continued to fall, though at a slower rate than in the past and smoking prevalence among youth increased slightly.

Declining revenues from Proposition 99 continue to plague the California Tobacco Control Program, and the Legislature eliminated any possibility of supplementing tobacco control funding with Master Settlement Agreement funds by securitizing those funds through 2030. That decision, together with the failure of Proposition 86 in 2006, leaves the tobacco control program with a shrinking source of funding.

The diversion of Proposition 99 Research Account funds from the Tobacco-Related Disease Research Program has increased, with an even greater impact as overall Proposition 99 revenues continue to decline.

The diversion appears to violate the mandate of voters in Proposition 99 as most of the diverted funds do not appear to be used for research on tobacco related issues. The net effect is the eventual destruction of a unique and trend-setting research program.

In the period 2003-2006, the Legislature and the Governor continued to block most tobacco control measures, although some meaningful tobacco control legislation was passed. AB 71 in 2003 established the first state-wide tobacco sales licensing law, and covered every step of the commerce from manufacturer to retailer. While not supported by the health groups because it did not provide penalties for illegal sales to minors, AB 71 does provide for the first time the identities of all tobacco retailers, which should aid enforcement of youth access laws. AB 178 in 2005 prohibited the sale in California after January 1, 2007 of any cigarette that is not self-extinguishing.

Two major 2006 legislative victories by public health forces, however, suffered vetoes by Governor Schwarzenegger, mandatory smoking cessation services coverage in health insurance (SB 576) and restrictions on internet sales of cigarettes (SB 1208), despite grassroots activity by the health groups to prevent these vetoes.

Six tobacco control measures were passed in the 2007 Session, including two important ones: SB 7 prohibits smoking in any motor vehicle with any minors present, and AB 1467 would have eliminated the remaining exceptions in the original 1994 smoke-free workplace law (AB 13). The other four bills strengthen youth access laws. AB 1617 would have prohibited the shipping or transporting of cigarettes to individuals in California (another attempt to control internet sales of cigarettes), and SB 624 broadens enforcement of the STAKE (Stop Tobacco Access to Kids) Act from just the Department of Public Health to all law enforcement agencies and increases penalties for violations. The STAKE Act change has the potential to improve youth access enforcement significantly if effectively applied. Gov. Schwarzenegger vetoed both AB 1467 and AB 1617.

By far, the most important event of 2003-2007 was the defeat of an attempt to substantially increase the tobacco tax through the initiative process with Proposition 86 in 2006, which offers important lessons on what not to do in the initiative process. The health groups began with a methodical approach of testing through polling and focus groups variations of a tobacco tax increase in both amount and uses for the new revenues. They developed a model of what voters would support and then drafted an initiative petition that neatly fit into that model, with a target of the November 2006 general election ballot. That initial proposal had 35% of revenues going directly to genuine tobacco control. After substantial planning, the health groups approached the California Hospital and Health Services Association (CHHSA) to become an ally in this process in exchange for a portion of the revenues from the planned \$1.50 tax. When CHHSA could not get as much money as it wanted from the tobacco tax increase in negotiations with the health groups, it preempted them by filing its own initiative petition, aiming for the June 2006 primary election. Caught off guard, the health groups filed their petition, but were then placed in a position of playing catch-up and appeared to be spoilers since they filed after the hospitals did. The health groups then effectively worked behind the scenes to garner opposition to the hospitals' petition, which forced CHHSA back into negotiations. Even though the hospitals had gathered enough signatures to qualify their petition for the June 2006 ballot, they recognized that there was already enough opposition to sink their third effort to fund emergency services with yet another kind of tax increase (they had unsuccessfully tried an increase in alcohol tax and a telephone surcharge). At this point, the health groups held the high ground with a petition that was based on good research with a sound

strategic plan. Even so, the hospitals bluffed the health groups into accepting a joint petition that increased the tax by \$2.60 by threatening to go forward with the hospital petition and by offering substantial financing for the campaign (lots of monies, which the hospitals did not fully deliver).

The result was a very large tax increase in which only 10.7% of the money went directly to genuine tobacco control. The tobacco industry took advantage of the structural flaws in the joint petition as well as the unpopularity of the hospitals (that had unsuccessfully tried to generate revenues for emergency services through an increase in the alcohol tax in 1990 and a telephone surcharge in 2004). The principal reasons given by voters for opposing Proposition 86: The tax increase was too large, and the money did not go to programs closely related to tobacco. These structural flaws were so fundamental, it is unlikely that more financing for the campaign or a focus on the children's health insurance component would have saved Proposition 86. Ironically, had the health groups moved forward with their original proposal and the funds that they ultimately committed to Proposition 86, they probably would have prevailed.

Local activism remained innovative and successful in the 2003-2007 period. Calabasas became essentially smoke-free, indoors and out. Four cities, Belmont, Calabasas, Dublin and Emeryville, declared secondhand smoke to be a nuisance, giving private citizens new powers to protect themselves through private enforcement. In Southern California, almost all public beaches became smoke-free, and the move to limit secondhand smoke in multi-unit housing was advanced in Belmont, Thousand Oaks and Temecula.

The period 2003-2007 reflected a continuation of tobacco control at the state level as a holding pattern since the late 1990s, maintaining the status quo, but not moving forward and regaining California's former status as the bellwether state in tobacco control. The vetoes of important tobacco control measures in 2006 and 2007 were significant setbacks, and showed that Gov. Schwarzenegger was not supportive of tobacco control innovation. Innovation in tobacco control policy development was at the local level, which has been cutting edge since 2003, expanding smoke-free venues to numerous outdoor venues, adopting tough retail tobacco licensing ordinances to combat illegal sales to minors, and protecting residents of multi-unit housing from secondhand smoke. If history repeats itself, local tobacco control activism in California will eventually translate into state action.

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## **APPENDICES**

- A. Tobacco Industry Contributions to California Legislators
- B. Tobacco Industry Contributions to Political Parties/Committees
- C. Tobacco Industry Contributions to Constitutional Officers and Candidates
- D. Tobacco Industry Lobbying Expenditures
- E. Field Polls of Likely Voters Regarding Proposition 86, 2006
- F. Tobacco Control Ordinances in California Cities and Counties



Appendix A Tobacco Industry Contributions to California Legislators, 1976-2006

Name of Legislator	Party	District	2006					Grand Total 2006	Grand Total 2004	Grand Total 2002-1976	Grand Total	Policy Score
			Altria	RJR	CDA/PAC	UST	LOR					
<b>Senate</b>												
Aanestad, Sam	R	4	\$6,600	\$0	\$0	\$0	\$0	\$6,600	\$0	\$500	\$7,100	1
Ackerman, Dick	R	33	\$3,300	\$3,000	\$0	\$0	\$0	\$6,300	\$13,700	\$0	\$20,000	0.5
Alarcon, Richard	D	20	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	8.3
Alquist, Elaine	D	13	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9
Ashburn, Roy	R	18	\$3,300	\$3,750	\$0	\$0	\$0	\$7,050	\$2,000	\$69,250	\$78,300	0.3
Battin, James	R	37	\$3,300	\$3,000	\$0	\$0	\$0	\$6,300	\$7,300	\$0	\$13,600	0.3
Bowen, Debra	D	28	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.4
Cedillo, Gilbert	D	22	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,000	\$1,000	8.8
Chesbro, Wesley	D	2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	10
Cox, Dave	R	1	\$6,600	\$2,000	\$0	\$0	\$0	\$8,600	\$2,500	\$23,750	\$34,850	0.8
Denham, Jeff	R	12	\$0	\$1,000	\$0	\$0	\$0	\$1,000	\$6,400	\$0	\$7,400	3
Ducheny, Denise Moreno	D	40	\$3,300	\$1,000	\$0	\$0	\$0	\$4,300	\$4,200	\$0	\$8,500	5.6
Dunn, Joseph	D	34	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.5
Dutton, Robert	R	31	\$6,600	\$2,500	\$0	\$0	\$0	\$9,100	\$7,900	\$4,000	\$21,000	0.3
Escutia, Martha	D	30	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.8
Figueroa, Liz	D	10	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	8.8
Florez, Dean	D	16	\$6,600	\$0	\$2,000	\$0	\$0	\$8,600	\$1,000	\$750	\$10,350	8.3
Harman, Tom	R	35	\$1,500	\$1,500	\$0	\$0	\$0	\$3,000	\$4,270	\$15,250	\$22,520	1.5
Hollingsworth, Dennis	R	36	\$3,300	\$0	\$0	\$0	\$0	\$3,300	\$5,200	\$11,250	\$19,750	0.3
Kehoe, Christine	D	39	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	8.3
Kuehl, Sheila	D	23	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.8
Lowenthal, Alan	D	27	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9
Machado, Mike	D	5	\$0	\$0	\$1,000	\$0	\$0	\$1,000	\$13,200	\$0	\$14,200	4.8
Maldonado, Abel	R	15	\$0	\$0	\$0	\$0	\$0	\$0	\$3,600	\$2,250	\$5,850	5.4
Margett, Bob	R	29	\$3,300	\$0	\$0	\$0	\$0	\$3,300	\$5,200	\$0	\$8,500	0.3
McClintock, Tom	R	19	\$5,714	\$2,650	\$0	\$0	\$0	\$8,364	\$5,700	\$0	\$14,064	0.2
Migden, Carole	D	3	\$3,300	\$0	\$1,000	\$0	\$0	\$4,300	\$0	\$38,000	\$42,300	8.4
Morrow, Bill	R	38	\$0	\$2,600	\$0	\$0	\$0	\$2,600	\$6,200	\$0	\$8,800	0.3
Murry, Kevin	D	26	\$2,400	\$0	\$1,000	\$0	\$0	\$3,400	\$3,200	\$0	\$6,600	5.4

Appendix A Tobacco Industry Contributions to California Legislators, 1976-2006

Name of Legislator	2006							Grand Total 2006	Grand Total 2004	Grand Total 2002-1976	Grand Total	
	Party	District	Altria	RJR	CDA/ PAC	UST	LOR					
Ortiz, Deborah	D	6	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	10
Perata, Don	D	9	\$0	\$0	\$0	\$0	\$0	\$0	\$3,200	\$0	\$3,200	7.8
Poochigian, Charles	R	14	\$0	\$2,500	\$0	\$0	\$0	\$2,500	\$0	\$21,500	\$24,000	0.3
Romero, Gloria	D	24	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.8
Runner, George	R	17	\$6,600	\$1,000	\$0	\$0	\$0	\$7,600	\$4,200	\$16,750	\$28,550	1.3
Scott, Jack	D	21	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9
Simitian, Joseph	D	11	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,500	\$5,500	7.8
Soto, Nell	D	32	\$0	\$0	\$0	\$0	\$0	\$0	\$3,000	\$0	\$3,000	9.3
Speier, Jackie	D	8	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9
Torlakson, Tom	D	7	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.8
Vincent, Edward	D	25	\$3,300	\$0	\$0	\$0	\$0	\$3,300	\$4,200	\$0	\$7,500	6
<b>TOTAL</b>			\$69,014	\$26,500	\$5,000	\$0	\$0	\$100,514	\$106,170	\$209,750	\$416,434	
<b>Assembly</b>												
Aghazarian, Greg	R	26	\$6,600	\$2,500	\$0	\$0	\$0	\$9,100	\$7,400	\$7,000	\$23,500	0.7
Arambula, Juan	D	31	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	6.3
Baca, Joe	D	62	\$3,300	\$4,400	\$0	\$0	\$0	\$7,700	\$9,700	\$0	\$17,400	6
Bass, Karen	D	47	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	8.8
Benoit, John J.	R	64	\$6,600	\$3,500	\$0	\$0	\$0	\$10,100	\$7,400	\$4,000	\$21,500	0.7
Berg, Patty	D	1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	8.8
Bermudez, Rudy	D	56	\$0	\$0	\$0	\$0	\$0	\$0	\$2,000	\$0	\$2,000	7.3
Blakeslee, Sam	R	33	\$6,600	\$0	\$0	\$0	\$0	\$6,600	\$3,200	\$0	\$9,800	5
Bogh, Russ	R	65	\$3,300	\$3,000	\$0	\$0	\$0	\$6,300	\$10,000	\$7,000	\$23,300	1.8
Calderon, Ronald S.	D	58	\$6,600	\$3,000	\$0	\$2,000	\$0	\$11,600	\$4,200	\$16,000	\$31,800	4.7
Canciamilla, Joseph	D	11	\$3,300	\$0	\$0	\$0	\$0	\$3,300	\$23,200	\$47,500	\$74,000	4.3
Chan, Wilma	D	16	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.8
Chavez, Ed	D	57	\$0	\$0	\$0	\$0	\$0	\$0	\$15,000	\$70,000	\$85,000	6.5
Chu, Judy	D	49	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,000	\$1,000	9.8
Cogdill, Dave	R	25	\$6,600	\$2,000	\$3,200	\$0	\$0	\$11,800	\$7,400	\$29,000	\$48,200	0.3
Cohn, Rebecca	D	24	\$500	\$0				\$500	\$3,200	\$10,000	\$13,700	7.8



Appendix A Tobacco Industry Contributions to California Legislators, 1976-2006

Name of Legislator	Party	District	2006					Grand Total 2006	Grand Total 2004	Grand Total 2002-1976	Grand Total	Policy Score
			Altria	RJR	CDA/PAC	UST	LOR					
Matthews, Barbara	D	17	\$0	\$0	\$0	\$0	\$0	\$3,200	\$27,000	\$30,200	4.5	
Maze, Bill	R	34	\$3,411	\$1,500	\$0	\$0	\$4,911	\$1,000	\$3,000	\$8,911	0.33	
McCarthy, Kevin	R	32	\$3,300	\$2,000	\$0	\$0	\$5,300	\$17,900	\$3,000	\$26,200	1.25	
Montanez, Cindy	D	39	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.4	
Mountjoy, Dennis	R	59	\$3,300	\$2,500	\$0	\$0	\$5,800	\$7,400	\$13,250	\$26,450	0.2	
Mullin, Gene	D	19	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.7	
Nakanishi, Alan	R	10	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	1	
Nation, Joe	D	6	\$0	\$0	\$0	\$0	\$0	\$0	\$500	\$500	9.2	
Nava, Pedro	D	35	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9	
Negrete McLeod, Gloria	D	61	\$0	\$0	\$2,000	\$0	\$2,000	\$0	\$0	\$2,000	5.25	
Niello, Roger	R	5	\$3,300	\$2,000	\$0	\$0	\$5,300	\$5,200	\$0	\$10,500	1.5	
Nunez, Fabian	D	46	\$3,300	\$0	\$0	\$0	\$3,300	\$2,500	\$0	\$5,800	8.5	
Oropeza, Jenny	D	55	\$0	\$0	\$0	\$0	\$0	\$0	\$1,000	\$1,000	9.8	
Parra, Nicole	D	30	\$6,600	\$0	\$1,000	\$0	\$7,600	\$2,000	\$0	\$9,600	7.3	
Pavley, Fran	D	41	\$0	\$0	\$1,500	\$0	\$1,500	\$0	\$0	\$1,500	9.8	
Plescia, George A.	R	75	\$3,483	\$6,000	\$0	\$2,880	\$12,363	\$11,400	\$4,000	\$27,763	0.66	
Richman, Keith	R	38	\$0	\$0	\$0	\$0	\$0	\$1,200	\$8,000	\$9,200	2.2	
Ridley-Thomas, Mark	D	48	\$0	\$0	\$0	\$0	\$0	\$7,400	\$0	\$7,400	8.8	
Runner, Sharon	R	36	\$6,600	\$1,000	\$0	\$0	\$7,600	\$4,324	\$3,000	\$14,924	0.5	
Ruskin, Ira	D	21	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.3	
Saldana, Lori	D	76	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	9.25	
Salinas, Simon	D	28	\$0	\$0	\$0	\$0	\$0	\$0	\$3,000	\$3,000	9	
Spitzer, Todd	R	71	\$6,600	\$2,500	\$1,000	\$0	\$10,100	\$8,400	\$4,000	\$22,500	0.25	
Strickland, Audra	R	37	\$6,600	\$4,500	\$0	\$2,000	\$13,100	\$38,400	\$0	\$51,500	0.66	
Torrico, Alberto	D	20	\$0	\$0	\$2,000	\$0	\$2,000	\$0	\$0	\$2,000	8	
Tran, Van	R	68	\$6,600	\$1,000	\$0	\$0	\$7,600	\$0	\$0	\$7,600	0.66	
Umberg, Tom	D	69	\$3,300	\$0	\$0	\$0	\$3,300	\$0	\$0	\$3,300	9	
Vargas, Juan	D	79	\$0	\$0	\$0	\$0	\$0	\$0	\$500	\$500	10	
Villines, Michael N.	R	29	\$3,532	\$2,750	\$0	\$0	\$6,282	\$3,200	\$0	\$9,482	0.25	
Walters, Mimi	R	73	\$6,600	\$2,000	\$0	\$0	\$8,600	\$3,200	\$0	\$11,800	0.66	

Appendix A Tobacco Industry Contributions to California Legislators, 1976-2006

Name of Legislator	2006							Grand Total 2006	Grand Total 2004	Grand Total 2002-1976	Grand Total	Policy Score
	Party	District	Altria	RJR	CDA/ PAC	UST	LOR					
Wolk, Lois	D	8	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	8.25
Wyland, Mark	R	74	\$6,600	\$3,200	\$0	\$0	\$0	\$9,800	\$4,200	\$14,500	\$28,500	1.5
Yee, Leland	D	12	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	8.2
Total Assembly			\$137,726	\$69,200	\$17,200	\$10,880	\$0	\$405,820	\$284,024	\$441,000	\$1,453,964	
Total Legislature								\$406,820	\$391,194	\$650,750	\$1,870,398	

Appendix B Tobacco Industry Contributions to Political Parties/Committees, 2003-2006

<b>Parties/Committees</b>	<b>2005-2006 Total</b>	<b>2003-2004 Total</b>
<b>Democratic Party/Committees</b>		
Assembly Democratic Leadership 2000	\$0	\$0
Assembly Democrat Victory Fund	\$0	\$0
Assembly Democratic Voter Registration	\$0	\$0
California Democratic Party	\$0	\$5,000
Democratic Legislative Campaign Committee	\$0	\$0
Democratic National Committee Non-Federal Corporate	\$0	\$0
Los Angeles County Democratic Party State Issues and Advocacy Committee	\$0	\$25,000
Merced County Democratic Central Committee	\$0	\$25,000
Senate Democratic Leadership Fund	\$0	\$0
<b>Subtotal for Democratic Party/Committees</b>	<b>\$0</b>	<b>\$55,000</b>
<b>Republican Party/Committees</b>		
California Republican Party* Committee	\$1,377,500	\$444,654
California Young Republicans, Inc. Victory Fund	\$0	\$25,000
Golden State Republican Fund	\$0	\$10,000
Hispanic Republican Caucus	\$0	\$0
Monterey County Republican Central Committee	\$27,900	\$0
Republican Central Committee of Imperial County	\$0	\$10,000
Republican Party of Orange County	\$27,900	\$25,000
Republican Party of Sacramento County	\$0	\$25,000
Riverside County Republican Central Committee	\$0	\$35,000
San Bernardino County Republican Central Committee	\$0	\$25,000
San Diego County Republican Central Committee	\$0	\$25,000
Senate Republican Leadership	\$0	\$0
<b>Subtotal for Republican Party/Committees</b>	<b>\$1,433,300</b>	<b>\$624,654</b>
<b>Other PACs and Committees receiving Tobacco Industry Funds</b>		
Alliance for California's Tomorrow: A California Business and Labor Coalition	\$40,000	\$15,000
Assembly Republican PAC (ARPAC)	\$0	\$0
Bay Area Free Enterprise	\$0	\$0
Black Leadership PAC	\$0	\$0
California African American PAC	\$0	\$0
California African American Political Empowerment PAC	\$52,000	\$30,500
California Democratic Moderates PAC	\$0	\$0
Californians Allied for a Prosperous Economy	\$10,000	\$0
Californians for a Better Future	\$0	\$30,000
CDA/ PAC	\$0	\$0

Appendix B Tobacco Industry Contributions to Political Parties/Committees, 2003-2006

	<b>2005-2006</b>	<b>2003-2004</b>
<b>Other PACs and Committees receiving Tobacco Industry Funds</b>	<b>Total</b>	<b>Total</b>
California Business Political Action Committee	\$100,000	\$0
California Independent Grocer's and Convenience Stores PAC	\$6,000	\$0
California Friends of Latino PAC	\$0	\$0
California Latino Alliance	\$0	\$0
California Manufacturers & Technology Assoc. PAC	\$0	\$0
Californians for a Better Economy	\$0	\$15,000
Californians for Civil Justice Reform PAC	\$40,000	\$45,000
Californians for Common Sense	\$0	\$0
Californians United	\$0	\$10,000
California Voter Registration 2002	\$0	\$0
Citizens Right to Petition	\$0	\$0
Dairy Institute Legislative Committee	\$0	\$0
Democratic Business PAC	\$0	\$0
Hispanas Organized for Political Equity PAC	\$0	\$5,000
JOBS-PAC	\$0	\$95,000
Los Angeles Labor Federation Voter Improvement	\$0	\$0
Political Future PAC	\$0	\$2,000
Small Business Action Committee PAC	\$0	\$45,000
Women Building for the Future -- The Future PAC	\$35,000	\$0
Taxpayers PAC	\$0	\$0
<b>Subtotal: PACS and Committees</b>	<b>\$283,000</b>	<b>\$292,500</b>
<b>Proposition 86 Committees</b>		
Californians against Unaccountable Taxes	\$25,348,466	\$0
No on 86 --Stop the \$2 Billion Tax Hike	\$36,845,964	\$0
Californians against Unfair Taxes, a Coalition of Business and Taxpayer Organizations	\$377,397	
<b>Subtotal: Proposition 86 Committees</b>	<b>\$62,571,827</b>	
<b>Proposition 56 Committees</b>		
Californians against Higher Taxes, No on 56		\$485,000
<b>TOTAL</b>	<b>\$64,288,127</b>	<b>\$1,457,154</b>

Appendix C Tobacco Industry Contributions Made to Constitutional Officers and Candidates, 1976-2006

<b>Name of Candidate</b>	<b>Party</b>	<b>Position</b>	<b>2005-2006 Total</b>	<b>2003-2004 Total</b>	<b>2002-1976 Total</b>	<b>Grand Total</b>
Schwarzenegger, Arnold*	R	Gov	\$0	\$0	\$0	\$0
Angelides, Phil	D	Gov.	\$0	\$0	\$0	\$0
Garamendi, John*	D	Lt. Gov	\$0	\$0	\$0	\$0
McClintock, Tom	R	Lt. Gov	\$8,364	\$5,700	\$0	\$14,064
McPherson, Bruce	R	Sec. of State	\$15,200	\$6,900	\$8,500	\$30,600
Bowen, Debra*	D	Sec. Of State	\$0	\$0	\$0	\$0
Chiang, John*	D	State Controller				
Strickland, Tony	R	State Controller	\$7,100		\$77,500	\$84,600
Lockyer, Bill*	D	Treasurer	\$0	\$0	\$178,850	\$178,850
Parrish, Claude	R	Treasurer	\$0	\$0	\$150	\$150
Brown, Jerry*	D	Att. Gen.	\$5,600	\$0	\$0	\$5,600
Poochigian, Chuck	R	Att. Gen.	\$8,100	\$0	\$21,500	\$29,600
O'Connell, Jack*	D	Sup. Pub. Inst.	\$0	\$0	\$22,500	\$22,500
Bustamante, Cruz	D	Ins. Comm.	\$0	\$0	\$72,750	\$72,750
Poizner, Steve*	R	Ins. Comm.	\$0	\$0	\$0	\$0
Yee, Betty*	D	BOE	\$2,000	\$0	\$0	\$2,000
Leonard, Bill*	R	BOE	\$7,600	\$0	\$125,250	\$132,850
Steel, Michelle*	R	BOE	\$1,500	\$0	\$0	\$1,500
Chu, Judy*	D	BOE	\$0	\$0	\$1,000	\$1,000
<b>Grand Total</b>			<b>\$55,464</b>	<b>\$12,600</b>	<b>\$508,000</b>	<b>\$576,064</b>



Appendix D Tobacco Industry Lobbying Expenditures 1976-2006

Name of Firm	Cigar Assoc.	Altria/ Kraft	RJR	CDA PAC	UST	LOR	2005-2006 Total	2003-2004 Total	2001-2002 Total	1976-2000 Total	Grand Total
<b>Lobbying Expenses</b>											
Capitol Advocacy					\$204,126		\$204,126	\$194,857	\$82,858	\$0	\$481,841
Capitol Connection		\$240,000					\$240,000	\$237,742	\$300,736	\$116,668	\$895,146
Capitol Strategies Group, Inc.				\$97,920			\$97,920	\$94,320	\$349,720	\$334,395	\$876,355
Snodgrass & Micheli, LLC							\$0	\$184,000	\$182,000	\$2,559,660	\$2,925,660
Carter Lobbying Firm, Art							\$0	\$0	\$267,641	\$165,502	\$433,143
Carter, Wetch and Associates							\$0	\$58,746	\$0	\$0	\$58,746
DCK Advocates, Inc.							\$0	\$33,254	\$45,454	\$0	\$78,708
Dowd Relations							\$0	\$0	\$27,500	\$260,591	\$288,091
Joseph G. Yocca: Capitol Venture						\$140,000	\$140,000	\$140,000	\$78,190	\$0	\$358,190
Lang Hansen O'Malley and Miller Governmental Relations		\$600,000					\$600,000	\$554,250	\$472,333	\$2,551,163	\$4,177,746
Livingston & Mattesich Law Corp.							\$0	\$0	\$330,783	\$0	\$330,783
McCabe and Co.							\$0	\$0	\$148,816	\$0	\$148,816
Nielsen, Marksamer, Parrinello, Mueller and Naylor		\$20,513					\$20,513	\$179,840	\$378,665	\$2,729,824	\$3,308,842
Political Solutions, Inc.	\$93,500						\$93,500	\$0	\$0	\$0	\$93,500
Ross Communications							\$0	\$0	\$22,500	\$0	\$22,500
Sacramento Advocates		\$310,000					\$310,000	\$310,000	\$310,000	\$0	\$930,000
Spencer Roberts & Associates, Inc.							\$0	\$0	\$45,833	\$154,484	\$200,317

Appendix D Tobacco Industry Lobbying Expenditures 1976-2006

<b>Name of Firm</b>	<b>Cigar Assoc.</b>	<b>Altria/ Kraft</b>	<b>RJR</b>	<b>CDA PAC</b>	<b>UST</b>	<b>LOR</b>	<b>2005-2006 Total</b>	<b>2003-2004 Total</b>	<b>2001-2002 Total</b>	<b>1976-2000 Total</b>	<b>Grand Total</b>
The Apex Group					\$180,948		\$180,948	\$172,230	\$188,748	\$40,446	\$582,372
The Flanigan Law Firm			\$404,076				\$404,076	\$387,545	\$406,709	\$346,742	\$1,545,072
Walt Klein & Assoc.							\$0	\$0	\$0	\$161,691	\$161,691
<b>Activity Expenses</b>	\$3,266	\$6,885	\$0	\$1,404	\$2,838	\$4,035	\$18,428	\$20,972	\$18,166	\$0	\$57,566
<b>Total Other Payments to Influence Policy Making</b>	\$0	\$65,292	\$42,427	\$0	\$3,225	\$43,166	\$154,110	\$435,349	\$630,910	\$0	\$1,220,369
<b>TOTALS</b>	\$96,766	\$1,242,690	\$446,503	\$99,324	\$391,137	\$187,201	\$2,463,621	\$3,003,105	\$4,287,562	\$9,421,166	\$19,175,454

Appendix E Field Poll of Likely Voters Regarding Proposition 86 2006

<b>July 2006 Field Poll of Likely Voters Regarding Proposition 86</b>			
	<b>Yes</b>	<b>No</b>	<b>Undecided</b>
Total voters	63%	32	5
Party			
Democrats	73%	19	8
Republicans	54%	42	4
Non-partisan/other	56%	40	4
Political Ideology			
Strongly conservative	53%	44	3
Moderately conservative	60%	36	4
Middle-of-the-road	64%	29	7
Moderately liberal	66%	27	7
Strongly liberal	73%	21	6
Gender			
Male	54%	42	4
Female	71%	22	7
Race/Ethnicity			
White non-Hispanic	58%	36	6
Latino	83%	14	3
Black/Asian/other*	65%	31	4
Smoking Status			
Current smoker	23%	72	5
Former smoker	53%	39	8
Never smoked	76%	19	5
Prior Awareness			
Have heard	56%	41	3
No prior awareness	65%	28	7

\* Small sample size

Source: The Field Poll {DiCamillo, August 2, 2006 #204}

<b>Late September 2006 Field Poll of Likely Voters Regarding Proposition 86</b>			
	<b>Yes</b>	<b>No</b>	<b>Undecided</b>
Total voters	53%	40	7
Party			
Democrats	59%	33	8
Republicans	42%	53	5
Non-partisan/other*	60%	34	6
Political Ideology			
Conservative	38%	55	7
Middle-of-the-road	56%	39	5
Liberal	64%	28	8
Gender			
Male	55%	42	3
Female	51%	39	10
Age			
18-39	66%	34	**
40-64	53%	41	6
65 or older	42%	45	13
Race/Ethnicity			
White non-Hispanic	49%	44	7
Latino	70%	25	5
Black/Asian/other*	57%	42	1
Smoking Status			
Current smoker*	21%	77	2
Former smoker	50%	39	11
Never smoked	61%	34	5
Prior Awareness			
Have heard	49%	43	8
No prior awareness	59%	37	4

\* Small sample size

\*\* Less than 1/2 of 1%

Source: The Field Poll {DiCamillo, October 4, 2006 #205}

<b>Late October 2006 Field Poll of Likely Voters Regarding Proposition 86</b>			
	<b>Yes</b>	<b>No</b>	<b>Undecided</b>
Late October	45%	45	10
Late September	53%	40	7
July	63%	32	5
Party			
Democrats	53%	39	8
Republicans	35%	55	10
Non-partisan/other	48%	41	11
Gender			
Male	45%	47	8
Female	46%	42	12
Race/Ethnicity			
White non-Hispanic	42%	49	9
Latino	56%	39	5
Black/Asian/other*	51%	33	16
Age			
18-39	61%	30	9
40-49	51%	40	9
50-64	39%	50	11
65 or older	36%	55	9
Smoking Status			
Current smoker	10%	80	10
Former smoker	41%	50	9
Never smoked	53%	37	10
Parent of child under 18			
Yes	51%	41	8
No	43%	47	10

\* Small sample size

Source: The Field Poll {DiCamillo, November 2, 2006 #212}

Appendix F Tobacco Control Ordinances in California Cities and Counties - October 2007

Municipality	Workplaces: type covered	Workplaces: 100% Smokefree	Restaurants: smokefree restrictions	Restaurants: 100% Smokefree	Restaurants with bars: 100% smokefree or partial smokefree	Freestanding Bars: smokefree provisions	Freestanding Bars: 100% Smokefree	Public Places: smokefree restrictions	Enclosed public places smokefree restrictions	Outdoor areas: smoking restrictions	Outdoor areas with proximity to buildings: smokefree restrictions	Public Outdoor Areas (parks, beaches etc.): Smokefree restrictions	Outdoor Sport facilities: smokefree restrictions
Berkeley	All	Yes	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Calabasas	All	Yes	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Capitola	All	Yes	Yes	Qualified	Sep Ventilated	No		Yes	Yes	Yes	No	Yes	No
Carmel	None		No			No		Yes	No	Yes	No	Yes	No
Carpinteria	Public	Yes	Yes	Qualified	Sep Ventilated	No		Yes	No	Yes	Yes	Yes	Yes
Carson	None		No			No		No		Yes	No	Yes	No
Ceres	All	Yes	Yes	Qualified	Sep Ventilated	Yes	No	Yes	Yes	Yes	No	Yes	No
Chula Vista	All	No	Yes	Qualified	No restrictions	No		Yes	Sections	Yes	Yes	Yes	No
Colton	None		No			No		No		Yes	No	Yes	No
Contra Costa County	All	Yes	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Corona	Public	Yes	No			No		Yes	No	No			
Coronado	All	No	Yes	No	No restrictions	No		Yes	Sections	Yes	No	Yes	No
Culver City	All	No	Yes	No	No restrictions	No		Yes	Yes	Yes	No	Yes	No
Del Mar	All	Yes	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Dublin	All	Qualified	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
El Cajon	None		No			No		No		Yes	Yes	Yes	No
El Segundo	All	No	Yes	No	No restrictions	No		Yes	Yes	Yes	No	Yes	No
Escondido	All	No	Yes	No	No restrictions	No		Yes	Sections	Yes	Yes	No	No
Fairfax	All	Yes	Yes	Qualified	Sep Ventilated	No		Yes	Yes	Yes	Yes	Yes	No
Fowler	None		No			No		No		Yes	No	Yes	No
Fresno	All	No	Yes	No	No restrictions	No		Yes	Yes	Yes	No	Yes	No
Galt	All	Qualified	No			No		Yes	No	No			
Glendale	Public	No	No			No		Yes	No	Yes	No	Yes	Yes
Hermosa Beach	None		No			No		Yes	No	Yes	No	Yes	No
Huntington Beach	All	No	Yes	Qualified	No restrictions	No		Yes	No	Yes	No	Yes	No
Imperial Beach	All	Yes	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Indian Wells	All	No	Yes	No	No restrictions	No		Yes	Yes	No			
Jackson	None		No			No		No		Yes	No	Yes	No
La Mesa	All	No	Yes	No	No restrictions	No		Yes	No	Yes	No	Yes	No
Laguna Beach	All	No	Yes	No	No restrictions	No		Yes	No	Yes	No	Yes	No
Laguna Hills	All	Yes	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Laguna Woods	All	Yes	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Lancaster	All	No	Yes	No	No restrictions	No		Yes	Yes	No			

Appendix F Tobacco Control Ordinances in California Cities and Counties - October 2007

Municipality	Workplaces: type covered	Workplaces: 100% Smokefree	Restaurants: smokefree restrictions	Restaurants: 100% Smokefree	Restaurants with bars: 100% smokefree or partial smokefree	Freestanding Bars: smokefree provisions	Freestanding Bars: 100% Smokefree	Public Places: smokefree restrictions	Enclosed public places smokefree restrictions	Outdoor areas: smoking restrictions	Outdoor areas with proximity to buildings: smokefree restrictions	Public Outdoor Areas (parks, beaches etc.): Smokefree restrictions	Outdoor Sport facilities: smokefree restrictions
Los Angeles	All	No	Yes	Qualified	No restrictions	No		Yes	No	Yes	No	Yes	No
Los Angeles County	Public	No	Yes	No	No restrictions	No		Yes	No	Yes	No	Yes	No
Malibu	None		No			No		No		Yes	No	Yes	No
Manhattan Beach	All	No	Yes	No	No restrictions	No		Yes	No	Yes	No	Yes	No
Marin County	All	Yes	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Monterey	All	No	Yes	No	No restrictions	No		Yes	Yes	Yes	No	Yes	No
Monterey Park	Public	Yes	No			No		Yes	No	Yes	No	Yes	No
Morro Bay	All	No	Yes	No	No restrictions	No		Yes	No	Yes	No	Yes	No
National City	All	No	Yes	No	No restrictions	No		Yes	No	Yes	No	Yes	No
Newport Beach	All	No	Yes	No	No restrictions	No		Yes	No	Yes	No	Yes	No
Oakland	All	Qualified	Yes	Qualified	No restrictions	No		Yes	Yes	Yes	Yes	Yes	Yes
Oceanside	All	No	Yes	No	No restrictions	No		Yes	Sections	Yes	No	Yes	No
Orland	None		Yes	No	No restrictions	No		No		No			
Pacific Grove	None		No			No		Yes	No	Yes	No	Yes	No
Palm Desert	All	No	Yes	No	No restrictions	No		Yes	Sections	Yes	Yes	Yes	Yes
Palmdale	All	No	Yes	No	No restrictions	No		Yes	Yes	Yes	No	Yes	Yes
Palos Verdes Estates	None		No			No		No		Yes	No	Yes	No
Pasadena	All	Yes	Yes	Yes	100% S/F	No		Yes	Yes	Yes	No	Yes	No
Rancho Mirage	All	No	Yes	No	No restrictions	No		Yes	Yes	No			
Redlands	All	No	Yes	No	No restrictions	No		Yes	Yes	Yes	No	Yes	Yes
Reedley	Public	Yes	No			No		Yes	No	Yes	No	Yes	Yes
Richmond	All	Yes	Yes	Qualified	No restrictions	No		Yes	Yes	Yes	No	No	Yes
Riverside	All	No	Yes	No	No restrictions	No		Yes	No	No			
Riverside County	Public	Yes	No			No		Yes	No	No			
Sacramento	All	Yes	Yes	Qualified	Sep Ventilated	No		Yes	Yes	Yes	Yes	No	No
Sacramento County	All	Yes	Yes	Qualified	Sep Ventilated	No		Yes	Yes	Yes	Yes	No	No
San Bernardino County	All	Yes	Yes	No	No restrictions	No		Yes	Yes	Yes	Yes	No	Yes
San Carlos	All	Yes	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	Yes	Yes	No	No
San Clemente	All	No	Yes	No	No restrictions	No		Yes	No	Yes	No	Yes	No
San Diego	All	Qualified	Yes	No	No restrictions	No		Yes	Yes	Yes	No	Yes	Yes
San Diego County	All	No	Yes	Yes	100% S/F	Yes	Yes	Yes	No	Yes	No	Yes	No
San Francisco	All	Yes	Yes	Qualified	No restrictions	No		Yes	No	Yes	No	Yes	Yes
San Luis Obispo	All	Qualified	Yes	Yes	100% S/F	Yes	Yes	Yes	Yes	No			