

ANALYSIS: DISTRICT OF COLUMBIA BILL 5-329  
PROPOSED "RESTRICTION OF SMOKING IN THE WORKPLACE ACT OF 1983"

I. Introduction: Requirements and Consequences

In seeking to regulate the lawful personal behavior of smoking in certain workplaces, the proposed "Restriction on Smoking in the Workplace Act of 1983" (Bill 5-329), if enacted, would have a number of unintended but quite adverse consequences for the citizens and businesses of the District of Columbia. These adverse consequences include: the imposition of unnecessary and likely high compliance costs on businesses; costly enforcement burden for the City government; and, unfair discrimination against lower-income, clerical workers.

Broadly defining "workplace" as "any enclosed indoor area serving as a place of work," Bill 5-329 would prohibit smoking in "any workplace", except within:

- A. Enclosed offices occupied exclusively by one or more smokers;
- B. Enclosed offices in which nonsmoking persons "normally occupying" such offices "affirmatively and voluntarily consent to smoking there";
- C. Factories, warehouses and "similar places of work not usually frequented by the general public." (For "workplaces where proximity of workers to each other or inadequacy of ventilation may cause smoke pollution detrimental to...nonsmoking employees," the Mayor shall establish restrictive smoking rules.);
- D. Stage areas, where smoking by performers is part of the theatrical production; and
- E. Designated smoking areas in the workplace. (Where a workplace consists of a single room, up to one-half of the room may be reserved as a smoking area.) Existing barriers and ventilation systems shall be used "to minimize the irritating and toxic effects of smoking in adjacent no-smoking areas."

The proposed legislation would require employers regulated by it, as "persons in charge" of facilities where smoking is prohibited, to 1) post "No Smoking" signs at each entrance of the facility or workplace area; and 2) ask persons smoking in violation of the law to refrain from smoking.

Smoking in a "posted 'No Smoking' area" is punishable by a fine of \$10-\$50 for the first offense; and, \$50-\$100 for the second and each subsequent offense. Failure to post a required "No Smoking" sign is punishable by a fine of up to \$300, with every day in violation constituting a separate offense. Persons violating the statute are issued citations. Issuance of a citation does not constitute an arrest. An "aggrieved person", defined as "any person subjected to tobacco smoke due to failure to comply" with the law, may file a lawsuit for injunctive relief to prevent the person in charge of a facility from violating or continuing to violate any provision of the D.C. smoking control law.

## II. Adverse Impact on Business

In addition to obvious employer expenditures for purchasing and installing required "No Smoking" signs, the proposed law would entail other implementation costs for District of Columbia businesses. These other potential costs, while perhaps not obvious, likely will be burdensome:

- o Disruption of employee work due to rearrangement, if not segregation, of smoking and nonsmoking employees, causing productivity loss;
- o Management time and administrative costs to develop, implement and enforce a smoking policy consistent with law's requirements;
- o Rearrangement/remodeling of work areas;
- o Higher taxes due to government's enforcement costs associated with the law;
- o Legal fees to defend against lawsuits brought by "aggrieved" persons ("any person subjected to tobacco smoke due to failure to comply..."); and
- o Legal harassment of employers by ardent anti-smokers using the "aggrieved person" provision to pursue their goal of a total prohibition of smoking.

Not only would Bill 5-329 mandate employer compliance with needlessly imposed and costly requirements, it would mandate compliance with vague, ambiguously-worded requirements, placing a most difficult, if not unconstitutional, burden on employers. For example, the bill states that "where smoking areas are designated, existing barriers and ventilation systems shall be used to minimize the irritating and toxic effects of smoke in adjacent no-smoking areas." Before an employer can comply with this provision, a number of critical questions must be answered: What are these alleged "irritating and toxic effects" of smoke?

What does it mean to "minimize" these purported effects? How can an employer "minimize" these "effects" without first knowing what these purported effects are, or without knowing whether "minimize" provides an objective or subjective standard of required behavior with which employers must comply? Providing little, if any, guidance in answering these important questions, the proposed legislation is glaringly deficient.

Exempted from the workplace smoking prohibition are "factories, warehouses, and similar places of work not usually frequented by the general public." However, the bill provides that for such places, "the Mayor shall establish rules to restrict or prohibit smoking in those workplaces where proximity of workers to each other or inadequacy of ventilation may cause smoke pollution detrimental to the health, comfort, or convenience of nonsmoking employees." Because it is broadly and vaguely worded, this provision gives the Mayor virtually unrestricted power to impose on employers in such workplaces severe and perhaps unnecessary smoking control rules. This section demonstrates how less-than-precise laws - after all, what is "smoke pollution detrimental to the...convenience of nonsmoking employees?" - may lead to regulatory confusion, unanticipated costs and no enhancement of the public welfare.

### III. Public Interest Concerns

#### A. Enforcement Burden on City

At a time when the citizens of the District of Columbia are facing tax increases and budget deficits, one must question the wisdom of further burdening the City's services with the responsibility for enforcing an ill-conceived law. Will additional licensing and health inspectors be hired to monitor employer compliance with the smoking control law? Or, will vital services provided by the City be neglected, as inspectors are assigned to enforce the proposed legislation? Or, will the law go unenforced? If the law is not going to be enforced, why burden the business community with a regulation of dubious value? Doesn't an ordinance which is not enforced, particularly one with this bill's likely visibility and controversy, create a disrespect for the law and cause citizens to wonder why it was enacted in the first place?

B. Private Office Exemption: Social Discrimination

The adverse effects of the proposed ordinance, were it to become law, would not be solely economic in nature. A more subtle and equally troubling result of this unjustified legislative attempt to dictate policy to the business sector is social discrimination. For example, unlike the so-called bullpen or common work areas, a "private enclosed office workplace occupied exclusively by one or more smokers" would not be regulated by the law. Persons with such private offices are likely to be at middle management or executive levels. However, clerical employees, blue-collar workers and persons with low-paying positions, many of whom are women and minorities, generally share work areas. Therefore, they, unlike their better-paid executive colleagues, would have a lawful personal behavior - smoking - restricted, if not prohibited, in their work areas. The likelihood of such unfair discrimination should concern all persons.

IV. Conclusion

The proposed "Restriction on Smoking in the Workplace Act of 1983" may be a well-intentioned legislative effort to advance the public good. But, unfortunately, if enacted, it would not serve the public interest. Economic costs and legal and social problems attendant to such a law raise the question of whether it is the proper role of government to regulate lawful personal activity in privately-owned places. Clearly, it is not. Differences between smokers and nonsmokers are best worked out through courtesy and tolerance. People do not need the paternalistic intervention of government to tell them that mutual accommodation is the most effective way of dealing with personal differences over smoking.

Were it to become law, this proposal would harm economically the business community, place a most difficult enforcement burden on the City and on employers, discriminate against certain groups of citizens and intrude needlessly into administrative policy-making of private organizations. The public interest of the District of Columbia is best served through the the defeat of Bill 5-329.