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Tobacco Control in Tennessee: Stakeholder Analysis of the Development of the Non-Smoker Protection Act, 2007

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et al.

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# Tobacco Control in Tennessee

## Stakeholder Analysis of the Development of the Non-Smoker Protection Act, 2007

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**Clear The Air For Good Health**



# **No Smoking**

**Individual Violation: \$50 fine**  
**Business Violation: \$100 - \$500 fine**

**Title:**

Stakeholder Analysis of the Development of the Non-Smoker Protection Act, 2007

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**Keywords**

Tennessee, tobacco-producing state, smoke-free policy, change agents, restaurant association, smoke-free coalition, tobacco control groups, legislation

**Abstract**

In 2007, although Tennessee was (and still is) the third largest tobacco-producing state, it enacted the Non-Smoker Protection Act (NSPA), making most enclosed public and workplaces, and restaurants 100% smoke-free. This study triangulates archival documents with interviews, legislative debates and quantitative data for a stakeholder analysis of why and how the diverse interests in the state collaborated to develop the policy and identifies areas and opportunities for improvement. The study utilizes the policy cycle and stages of policy development approach and three public policy models – *multiple streams*, *policy networks*, and *socio-economic influences* – to give us understanding of the phases of the development of the NSPA – agenda-setting, legislative development, and implementation. While the dominant thesis for the origin of this smoke-free policy (SFP) was *government-centered*, the activities of non-governmental actors, such as efforts by students of University of Tennessee in Knoxville to have smoke-free dormitories and that of the Campaign for a Healthy and Responsible Tennessee (CHART) to repeal preemption (*nongovernmental-centered thesis*), and societal changes (*bubble-up thesis*) contributed to its emergence. The SFP entered the state’s policy agenda when the problem of tobacco use in the state (health and economic consequences ) and policy solutions (including SFP) became coupled with favorable political circumstances involving Governor Phil Bredesen’s unexpected announcement of support for a statewide SFP during smoke-free state buildings bill signing ceremony in June 2006. This announcement created a “window of opportunity” for SFP change, which was seized by a change agent in the state, CHART. In February 2007, the Governor included a comprehensive SFP proposal, Tennessee Smokefree Air Law (TSAL), in the administration's legislative package for the 105<sup>th</sup> Legislative Session. Additionally, a relatively weak competing SFP bill, NSPA, was sponsored in both houses of the Legislature by legislative leadership to make SFP a priority item on the state’s policy agenda. The weaker NSPA by legislative leadership became the basis for developing a SFP for the state and its development was facilitated by factors, such as the administration’s continuous support for the SFP, activities of CHART, public support for the SFP, U-turn in the position of Tennessee Restaurant Association (TRA) (now Tennessee Hospitality Association (THA)) to support 100% SFP and limited opposition from tobacco interests in the state. Although implementation of the NSPA has generally proceeded smoothly, about half of the stakeholders prefer that the exemptions are repealed, particularly those for age-restricted venues, non-enclosed areas of public places and private businesses with three or fewer employees. This study suggests that there is high level of knowledge on tobacco use (the problem) and control (policy solutions) in

policy circles and the key remaining factors for policy change are favorable political environment and a change agent. The development of the NSPA suggests that proponents for policy change should know and understand their policy/political environment and be alert for any change that will facilitate the development of a SFP.

**Tobacco Control in Tennessee:  
Stakeholder Analysis of the Development of the Non-Smoker Protection Act, 2007**

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## EXECUTIVE SUMMARY

Tobacco use (and exposure to secondhand smoke (SHS) in Tennessee is a major public health problem because of the higher than national average prevalence rate and the health and economic costs it imposes on the state. However, until 2007, when the Non-Smoker Protection Act (NSPA) was promulgated and implemented, dealing with the issue of tobacco use through public policy in a state with entrenched tobacco interests remained challenging even as tobacco dependence continued to decline. Although the NSPA still has the preemption introduced by the 1994 Prevention of Youth Access to Tobacco Act (PYATA), it was likely the first smoke-free policy (SFP) by any major tobacco-producing state in the country. With the NSPA, Tennessee became one of the 36 states in the country with SFPs as of July 2011. This report investigated why and how the different stakeholders in the state collaborated to develop this policy with an attempt to inform policy improvement and to improve the health of Tennesseans as well as help to achieve *Healthy People 2020* goal of 12% national adult smoking rate.

The use of public policy to control tobacco use has been in existence in Tennessee for over a century. Tennessee abolished the sale of tobacco to the public, especially minors during the prohibition era of the late 19<sup>th</sup> and early 20<sup>th</sup> century. In 1925, Tennessee introduced its first excise tax on cigarettes. Since then, while participating in federal government tobacco control policies and programs, Tennessee relied mostly on youth access prevention laws to control tobacco use in the state until the mid-2000s, when SFP began to gain prominence. This change began in 2005, when the legislature granted higher educational institutions the authority to develop SFP, which was followed by smoke-free state buildings and motor vehicles in 2006 and 2007, and the NSPA in 2007. Due to this incremental expansion of SFP in the state, three theses explain the origin of the NSPA namely, the *government-centered thesis* that points to the leading role of policymakers in starting the efforts to have a statewide SFP, the *non-governmental-centered thesis* that focuses on the activities of nongovernmental actors leading to the SFP, and the *bubble-up thesis* that highlights transitions within the society and acting as catalyst for SFP change. In contrast, policy entrepreneurs were not involved in the efforts to initiate the statewide SFP.

The cyclical approach to public policymaking involving agenda-setting, formulation and implementation was used to examine the NSPA. Additionally, three public policy models were used to understand the development of the NSPA, namely *multiple streams* that explains the rise of SFP onto the state's policy agenda as the result of confluence between problem, policy and political circumstances, *policy networks* that focuses on how the activities and shift in the strength of interest groups in the policy subsystem impact policy change, and *socioeconomic influences* that focuses on societal changes that made policymakers to act for policy change. While the problem of tobacco use in Tennessee and policy solutions have been known for several years, they became coupled with Governor Phil Bredesen's (Democrat) unexpected announcement of the idea of a statewide SFP during bill signing ceremony for smoke-free state buildings in June 2006, creating a "window of opportunity" for SFP change. Campaign for a Healthy and Responsible Tennessee (CHART), a change agent and an advocacy coalition of health groups in the state, including the American Cancer Society, the American Lung Association and the American Heart Association and local organizations, such Tennessee Public Health Association and Tennessee Medical Association seized this window of opportunity to

push for SFP at the state level. This statewide efforts for policy change resulted after several years of CHART's unsuccessful efforts to repeal preemption in the 1994 PYATA. The Governor's unexpected announcement, the presence of CHART, a U-turn in Tennessee Restaurant Association's (TRA; now Tennessee Hospitality Association (THA)) position to support 100% SFP, and public support for the SFP became major facilitating factors for the rise of SFP onto the state's policy agenda.

In February 2007, the Governor included a comprehensive SFP proposal, Tennessee Smokefree Air Law (TSAL), with preemption in the administration's legislative package for the 105<sup>th</sup> Legislative Session that was sponsored by Representative Gary Odom (Democrat, 55<sup>th</sup> District) in the House and Senator James Kyle, Jr., (Democrat, 28<sup>th</sup> District) in the Senate. In the same month, Representative Stratton Bone (Democrat, 46<sup>th</sup> District), Chair of the House Agriculture Committee, and Senator Jim Tracy (Republican, 16<sup>th</sup> District) respectively sponsored a SFP, the NSPA, in the House and the Senate. The weaker NSPA, which contained preemption and exemptions, became the basis for developing of a SFP for the state between February and June 2007.

During the policy development phase, the administration, which included the Department of Health continued to demonstrate their support for SFP and actively engaged in the process through activities, such as testifying, media advocacy, and lobbying. At the nongovernmental sector, through the efforts of CHART a loose broad-based coalition, the Smokefree Tennessee Coalition (STC), an issue network that included non-traditional partners, such as TRA and labor union emerged to support the SFP, and the general public continued to show support for it as well. Surprisingly, tobacco interests (Farm Bureau and tobacco companies), which have been part of the tobacco iron triangle and have history of working against tobacco control in the state, were against, but did not openly oppose the SFP. Opposition to the SFP mainly came from individual legislators and bar owners. Background factors, such as the health consequences and costs of tobacco use; policy factors, such as the inclusion of the SFP in the Governor Bredesen administration's legislative package and momentum for policy change; political factors, such as the emergence of the broad-based STC and the U-turn in TRA's position on SFP; and auxiliary factors, such as personal experiences of the Governor's policy advisors and legislators and voluntary transition of businesses to non-smoking environments provided some of the key rationales for the adoption of the NSPA. While the TRA opposed the NSPA in the course of the legislative development because it was not a 100% SFP but later supported it, legislators mainly opposed the SFP either because of the presence of tobacco in their districts or concerns over property and individual rights.

In general, almost all the stakeholders (not including tobacco companies) were satisfied that the NSPA was adopted. Although implementation of the NSPA has generally proceeded smoothly after initial problems, such as classification of age-restricted venues, there were still concerns over the exemptions. The TRA wanted 100% SFP from the beginning and some legislators supported the NSPA with exemptions under assumption that it was the first major SFP of the state and there was room for future improvement. Additionally, although CHART supported exemptions for age-restricted venues and private businesses with three or fewer employees, they would like to see them repealed. Moreover, although implementers appeared to have overcome the initial problems in the implementation of the NSPA, there was general

feeling that repealing the exemptions will make implementation easier and smoother. Thus, policymakers in the state should consider repealing the exemptions in the NSPA for a 100% statewide SFP to ensure that the entire population is protected from the deleterious effects of tobacco use and exposure to secondhand smoke.

In conclusion, although the NSPA is not a 100% SFP, it signaled a drastic transformation in tobacco control in Tennessee and the state's interests to improve the health status of its population through public policy. The three public policies models used in this study help us to understand how stakeholders interacted to develop the NSPA. While these stakeholders are generally satisfied that Tennessee has a SFP, about half would like to see the exemptions repealed so that everyone in the state can enjoy 100% smokefree public and workplaces.

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## LIST OF ABBREVIATIONS AND ACRONYMS

CACIA	Children's Act for Clean Indoor Air
CDC	United States Centers for Disease Prevention and Control
CHART	Campaign for a Healthy and Responsible Tennessee
MSA	Master Settlement Agreement
NSPA	Non-Smoker Protection Act
PYATA	Prevention of Youth Access to Tobacco
SFP	Smoke-free policy
SHS	Secondhand smoke
STATE	State Tobacco Activities Tracking and Evaluation System
STC	Smokefree Tennessee Coalition
THA	Tennessee Hospitality Industry
TRA	Tennessee Restaurant Association
TSAL	Tennessee Smokefree Air Law
U.S.	United States
WHO	World Health Organization



## INTRODUCTION

Tobacco use (and exposure to secondhand smoke; SHS) is leading cause of the preventable morbidity and mortality in the United States (U.S.) and linked to diseases, such as cancer, heart disease, chronic obstructive pulmonary disease among adults, and low birth weight and sudden infant death syndrome in children.<sup>[6]</sup> Nationally, tobacco use causes over 443,000 deaths and \$193 billion in costs annually.<sup>[6]</sup> Although the general rate of adult smoking prevalence in the country has been declining over the past decades to reach about 19.3 % in 2010,<sup>[7]</sup> states such as Tennessee consistently have higher rates than the national average. Because of health consequences and costs of tobacco use, *Healthy People 2020*, the national public health agenda, aims to reduce national adult smoking prevalence to 12%.<sup>[8]</sup> In the midst of these health consequences and costs of tobacco use imposed on governments, the tobacco companies spend lots of money to market their products and promote use<sup>[9]</sup> as well as undermine efforts at developing tobacco control policies and programs.<sup>[10, 11]</sup> In 2005, for example, the tobacco industry spent \$406 million to market their products in Tennessee alone.<sup>[9]</sup> Dealing with the health consequences and costs of tobacco use, and the tobacco industry activities requires development of comprehensive tobacco control programs.<sup>[12, 13]</sup>

In 2007, although Tennessee was (and still is ) the third largest tobacco-producing state in

**Box 1: The Prevention of Youth Access to Tobacco Act of Tennessee, 1994 - The Preemption Clause (TCA 39-17-1551)<sup>[1]</sup>**

The general assembly intends by this part and other provisions of Tennessee Code Annotated to occupy and preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation of tobacco products enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state or any agency thereof is void; provided, that cities, counties and counties having a metropolitan form of government may regulate the use of tobacco products in buildings owned or leased by the political subdivisions; and provided further, that airport authorities created pursuant to the provisions of title 42; utility districts created pursuant to the provisions of title 7; and special school districts may regulate the use of tobacco products in buildings owned or leased by the entities. Notwithstanding any other provision of the law to the contrary, individual owners or operators of retail establishments located within an enclosed shopping mall shall retain the right to determine the policy on the use of tobacco products within the person's establishment.

the U.S., it enacted and implemented a statewide smoke-free policy (SFP), the Non-Smoker Protection Act (NSPA; Appendix A).<sup>[14]</sup> The NSPA, however, did not repeal the 1994 Prevention of Youth Access to Tobacco Act (PYATA) and exempted places, such as age-restricted venues, tobacco retail stores, smoking rooms in hotels and motels, and non-enclosed public places (Boxes 1 and 2). The Department of Health and Department of Labor and Workforce Development were entrusted with the responsibility

of implementing the provisions in the NSPA. This report aims to provide first-hand insight into the development of this policy (agenda-setting and legislative development or formulation), identify gaps in the implementation of the policy and areas for improvement.

The first reason for the investigation into the NSPA is that although it has preemption and exemptions, till recently it was the best SFP among the top six tobacco-producing states (Georgia, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia; Table 1) and one

of the best in the southeastern part of the country. Indeed, in 2008, the American Lung Association wrote in its national report, *State of Tobacco Control 2007*, that “Tennessee became the *first* traditional tobacco-growing state [in the country] to strengthen its smoke-free workplace

**Box 2: Exemptions in the Non-Smoker Protection Act, 2007**

- (1) Age-restricted venues;
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that no more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor shall be contiguous and smoke from these rooms shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;
- (3) All premises of any manufacturer, importer, or wholesaler of tobacco products, all premises of any tobacco leaf dealer or processor, and all tobacco storage facilities;
- (4) Non-enclosed areas of public places, including:
  - (A) Open air patios, porches or decks;
  - (B) Any area enclosed by garage type doors on one (1) or more sides when all such doors are completely open; and
  - (C) Any area enclosed by tents or awnings with removable sides or vents when all such sides or vents are completely removed or open. Smoke from such areas shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;
- (5) Nursing homes and long-term care facilities licensed pursuant to Title 68, Chapter 11; provided that such exemption shall only apply to residents of such facilities and that resident smoking practices shall be governed by the policies and procedures established by such facilities. Smoke from such areas shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;
- (6) Private businesses with three (3) or fewer employees where, in the discretion of the business owner, smoking may be allowed in an enclosed room not accessible to the general public. Smoke from such room shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;
- (7) Private clubs; provided that such exemption shall not apply to any entity that is established solely for the purpose of avoiding compliance with this part;
- (8) Private homes, private residences and private motor vehicles, unless such homes, residences and motor vehicles are being used for child care or day care or unless the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;
- (9) Retail tobacco stores that prohibit minors on their premises; and
- (10) Commercial vehicles when such vehicle is occupied solely by the operator.

law. While the legislation contains loopholes [exemptions] that prevent it from being considered comprehensive, this is a significant step forward for the Volunteer State” [emphasis added].<sup>[15]</sup> The SFP was still considered as “one of the strongest laws amongst tobacco-producing states”<sup>[16]</sup> even after North Carolina, the second largest tobacco-producing state enacted and implemented a stronger SFP in January 2009.<sup>[17, 18]</sup> Second, this study specifically focuses on the SFP as it is one of the most cost-effective ways to deal with tobacco use and is promoted by reputable institutions, including the U.S. Centers for Disease Control and Prevention (CDC),<sup>[12]</sup> the World Health Organization (WHO)<sup>[19-</sup>

<sup>21]</sup> and the World Bank.<sup>[22]</sup> Third, the development of the NSPA reflects a long period of transformation in perceptions and social norms on tobacco use. In a pro-tobacco socio-cultural environment, understanding how this transformation facilitated policy development could inform tobacco control advocates and policymakers not only in the U.S. but also elsewhere in the world where the environment makes policy change seemingly cumbersome and impossible. Fourth, the rate of decline of tobacco use in the country has stalled<sup>[7, 23]</sup> due to consistently higher than national average of usage rate in places, such as Tennessee. To achieve the *Healthy People 2020* goal of 12% national smoking prevalence rate will require attention to tobacco use and control in such high-prevalence areas in the country. Last but not the least, because the NSPA is not a

comprehensive SFP, there are rooms for improvement if policymakers could understand how it was passed, which means that this report could start conversation on how to improve it.

The development of the NSPA in 2007 (even though not 100%) leapfrogged Tennessee from a state with limited SFP (smoke-free public buildings in 2006 and state motor vehicles in 2007) to a tobacco-producing state with a comparatively strong policy (Table 1).<sup>[15, 16]</sup> To understand this process, the *report* uses public policy explanatory approaches: 1) the *garbage can* or *multiple streams model* that explains why and how SFP was elevated onto the state's policy agenda; 2) the *policy networks approach* that focuses on groups activities and the shifting dominance in the policy area from a tobacco iron triangle, consisting of the agriculture committees of the State Legislature, tobacco interests, and the Department of Agriculture, to increasing public health groups' influence; and 3) *socio-economic influences* that focuses on transitions within the society from a situation where people were accommodative to tobacco use to outward demand for smoke-free environments, and voluntary transitions to smoke-free environments by businesses and institutions in the state. This report should help public health community in the state and nationwide to improve the NSPA and other smoke-free initiatives, thereby reducing health consequences and costs associated with tobacco use, and eventually improve the health of residents of Tennessee (ranked 42<sup>nd</sup> in 2010 by the United Health Foundation<sup>[24]</sup>) and the U.S. addressing tobacco use in places, such as Tennessee, is important as *Healthy People 2020* aimed to achieve a 12% national adult smoking rate through: 1) implementation of policies to reduce tobacco use and initiation among youth and adults; 2) adoption of policies and strategies to increase access, affordability, and use of smoking cessation services and treatments; and 3) establishment of policies to reduce exposure to SHS, increase the tax on tobacco sales, restrict tobacco advertising and reduce illegal sales to minors.<sup>[8]</sup> Additionally, central to the *2011 Tennessee Health Plan* was reducing tobacco use, making it a priority of the state.<sup>[25]</sup> With the paucity of research in tobacco control in Tennessee in particular, and in other tobacco-producing states, this *report* could serve as a guide for policymakers in tobacco-producing states, nationwide, and around the world seeking to develop SFPs.

The *report* is organized into the following sections:

- *Theoretical Approaches to Understanding of the NSPA.* What major public policy theories can be used to understand the development of the NSPA?
- *The methods for the research.* What was the empirical approach used for the study?
- *The burden of tobacco use in the state.* What was the prevalence of tobacco use and the associated health consequences and costs?
- *The conception of smoke-free policy in the country.* How does Tennessee fit in SFP change in the country?
- *A brief history of tobacco control in Tennessee.* What were the main historical efforts (policies and programs) to control the use of tobacco in the state? How does the SFP fit in?
- *The agenda setting for the SFP.* Among the myriad of policy concerns in the state, why and how did the SFP rise onto the state's policy agenda? What were the key motivations behind this? What were the key facilitators?
- *The development of the SFP.* What were the key facilitators? What role did the various stakeholders play in the process? How do we explain the development of the SFP?

- *The implementation of the SFP.* What were some of the challenges in the implementation process? What were key stakeholders' perceptions about the implementation and enforcement of the SFP? What part(s) of the SFP are stakeholders eager to change or improve?

**Table 1: Tobacco-producing States and Coverage of Smoke-free Laws, 2007**

2008 Rankings for Tobacco Production (largest to smallest)	Total Production (1,000 Pounds)	Private Worksites	Restaurants	Bars	Government Worksites	Schools	Childcare Facilities	Retail Stores	Recreation/ Culture Facilities	Penalties	Enforcement	Preemption	Overall Grade
North Carolina	390,360	No provision	No provision	No provision	Restricts	Bans	No provision	No provision	No provision	Yes	No	Yes	<b>F</b>
Kentucky	205,850	No provision	No provision	No provision	Restricts	Restricts	No provision	No provision	No provision	Yes	Yes	No	<b>F</b>
Tennessee	52,380	Restricts	Bans	Bars	Bans	Bans	Bans	Bans	Bans	Yes	Yes	Yes	<b>B^</b>
Virginia	45,970	No provision	Restricts	No provision	Restricts	Bans	Bans	Restricts	Restricts	Yes	Yes	Yes	<b>F</b>
South Carolina	39,900	No provision	No provision	No provision	Restricts	Restricts	Bans	No provision	Restricts	Yes	Yes	No	<b>F*</b>
Georgia	33,60	Restricts	Restricts	Restricts	Bans	Bans	Bans	Restricts	Bans	Yes	Yes	No	<b>B</b>
Pennsylvania	7,630	Restricts	Restricts	No provision	Restricts	Bans	No provision	Restricts	Restricts	Yes	No	Yes	<b>F</b>
Ohio	6,970	Bans	Bans	Bars	Bans	Bans	Bans	Bans	Bans	Yes	Yes	No	<b>A</b>
Connecticut	3,516	Restricts	Bans	Bans	Bans	Bans	Restricts	Bans	Bans	Yes	Yes	Yes	<b>B</b>
Missouri	3,360	Restricts	Restricts	No provision	Restricts	Bans	Bans	Restricts	Restricts	Yes	Yes	No	<b>F</b>
Massachusetts	968	Bans	Bans	Bans	Bans	Bans	Bans	Bans	Bans	Yes	Yes	No	<b>A</b>

\* While South Carolina did not have a meaningful state-level SFP, the fact that there was not state preemption allowed local activity to enact strong SFPs.<sup>39</sup>

^ Tennessee will be an A without the preemption

Sources: State Legislated Actions on Tobacco Issues (SLATI), American Lung Association<sup>15</sup> and United States Department of Agricultures.

## THEORETICAL APPROACHES TO UNDERSTANDING THE NON-SMOKER PROTECTION ACT

Although the policymaking process is complex, interdependent and dynamic,<sup>[26, 27]</sup> it has conceptually been divided into phases, such agenda-setting, formulation, and implementation for analytical purposes. While agenda-setting focuses on why and how an issue become a priority of a government,<sup>[28-30]</sup> the formulation phase focuses on how policy alternatives are explored, evaluated, and accepted or rejected (legislative development),<sup>[31]</sup> and the implementation focuses on the translation of policy intentions into actions and programs (usually involving bureaucratic agencies).<sup>[32-34]</sup> Theoretical approaches to understanding policymaking process in tobacco control in the states have mostly relied on policy networks approach by focusing on the actors (pro- vs. anti-smoking interests),<sup>[10, 35-39]</sup> diffusion models that focus on how policies spread across time and space,<sup>[40-46]</sup> and the garbage can or multiple streams model that focuses on how three independent streams – problem, policy and politics – converge to help an issue rise onto the policy agenda.<sup>[28, 35, 47-49]</sup> Consistent with previous research in public policy,<sup>[50-52]</sup> this study used multiple models because it examined all phases of the SFP development in Tennessee. Additionally, because of the limited diffusion of tobacco control policies across the states,<sup>[41, 42, 53]</sup> the investigation was guided by the garbage can or multiple streams model (to understand agenda-setting for the SFP in the state) and the policy networks approach (to understand the role of the various stakeholders in the policy formulation process or legislative development). Moreover, the study examined the issue of socio-economic influences on policymaking process because contextual factors are significant in understanding policy change.<sup>[26, 51, 54, 55]</sup>

### *Multiple Streams Model*

Previous research to understand agenda-setting used theoretical models, such as the rational-comprehensive<sup>[56, 57]</sup> – problems and solutions are examined and the solution that yields the maximum results is selected; incrementalism<sup>[58-61]</sup> – long series of political, and only semi-analytical, steps with no clear beginning or ending leads to broader policy change;<sup>[62, 63]</sup> issues attention cycle – public and policymakers’ attention to a problem follows a cycle of sudden awareness of the problem and gradual loss of interest;<sup>[64]</sup> and punctuated equilibrium – issue definition and institutional control combine to make possible alternation between stability and rapid change in policy.<sup>[28]</sup> However, the research suggests that the garbage can model has greater explanatory power,<sup>[30, 49, 65, 66]</sup> especially for agenda setting, but more testing and elaboration are needed.<sup>[66]</sup>

Originating from Cohen et al.’s<sup>[67]</sup> “garbage can model of organizational choice,” the model<sup>[30, 65]</sup> explains why and how issues rise to the top of government or policy agenda, the set of items explicitly up for the active and serious consideration of authoritative decision-makers or policymakers.<sup>[68:86]</sup> Under this approach, three independent streams, problem, policy and politics, converge to create a “window of opportunity” or “policy window” for an issue or problem, otherwise ignored to gain the attention of policymakers.<sup>[30]</sup> For John Kingdon, issues get on government agenda when “a problem is recognized, a solution is available, [and] the political climate makes the time right for change.”<sup>[30:93]</sup> While the problem stream involves how an issue is framed (to defined a policy’s image),<sup>[28]</sup> the policy stream focuses on solutions in the "primeval soup" whereby ideas float around, combine, split, rise or sink in popularity (alternatives for addressing the issue) and the political stream focuses on the policy/political

environment or the circumstances within which an issue emerges on the policy agenda. These independent streams may become “coupled” to create a “window of opportunity” or policy window that allows interest groups and “policy entrepreneurs”<sup>i</sup> [69-72] to advocate for certain policy solutions, [30, 73] expand the issue<sup>[28]</sup> and promote the issue through channels, such as the media.<sup>[74, 75]</sup> The “window of opportunity” can be either predictable or unpredictable<sup>[76]</sup> and can be a routine political window that coincides with institutional political events, such as elections, budget proposals, or State of the Union or State address; a discretionary political window when the behavior of individual political actors leads to predictable window openings; a spillover problem window when related issues are connected with an already opened window; and a random problem window that opens because of random events or crises.<sup>[77]</sup> These different policy windows facilitate the elevation of otherwise an obscure or ignored issue into the government agenda.

The triggers or facilitators for opening the window of opportunity can be exogenous<sup>[28, 78]</sup> or endogenous<sup>[79]</sup> or combination of these factors,<sup>[30]</sup> including “focusing events”<sup>ii</sup>,<sup>[28, 30, 62, 68, 80-82]</sup> Additionally, the media can help elevate an issue onto the government agenda<sup>[83-85]</sup> through pressure on policymakers to create, change, and enforce policies,<sup>[86-88]</sup> issue definition and framing,<sup>[28, 87-91]</sup> or “causal stories.”<sup>[92]</sup> Moreover, American political campaigns has been seen as contests by candidates to highlight certain topics or aspects of issues that should be part of the government agenda through processes, such as priming<sup>[93-95]</sup> and framing.<sup>[96-98]</sup> Furthermore, the type or nature of an issue determines its chances of becoming part of the government agenda<sup>[30, 67, 68, 81, 99]</sup> because it determines the nature and extent of political and societal conflicts around it.<sup>[100-103]</sup> In effect, issues get onto the policy agenda through different channels, including focusing events and purposive role by actors involved in the issue-area. This model guided the agenda-setting phase of the development of the SFP in Tennessee.

### *Policy Networks Approach*

This approach assumes that policies are the outcomes of groups’ activities because they play significant role in the policymaking process<sup>[104-106]</sup> and the governing of societies.<sup>[107-110]</sup> While a network “describes the several interdependent actors involved in delivering services,”<sup>[108:xii]</sup> policy networks refer to structures that both “define the roles which actors play within networks” and “prescribe the issues which are discussed and how they are dealt with.”<sup>[54:4]</sup> Relationships within networks could be either dense or loose and collaborative or contentious.<sup>[54, 107, 111]</sup> Regardless, networks are defined by features, such as shared problem,<sup>[111:14, 112]</sup> resource mobilization<sup>[108, 113]</sup> and exchanges.<sup>[110:8, 111]</sup> Thus, while the degree of integration within networks may differ, members in all networks share certain problems and goals.

The policy networks approach focuses on interactions and the structural or power relationships<sup>[112, 114]</sup> between state and society actors in a policy subsystem,<sup>[26, 115]</sup> such as tobacco. For this reason, researchers have classified these policy networks based on power relations between state and societal actors,<sup>[116, 117]</sup> such as corporatist that involves consensual

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<sup>i</sup> Individuals who exist outside the formal political structures, but persistently pursue certain policies till they become part of the policy agenda.

<sup>ii</sup> Sudden and unforeseen event that captures the attention of policymakers

interaction between labor, state and business (tripartite relations) or pluralist that involves competition among several societal actors for power and influence. Another criterion for classifying policy networks is the cognitive and normative beliefs basis of the network, such as epistemic communities that are based on consensual knowledge and scientific interpretations<sup>[111, 118, 119]</sup> and advocacy coalitions that are based on shared core beliefs about the problem and policy objectives.<sup>[115, 116, 120, 121]</sup> A third criterion for classifying policy networks is based on the structural resources of state and society actors, such as bureaucratic autonomy of societal interests, coordination capacity of state actors, and the mobilization or organizational development of societal actors.<sup>[122, 123]</sup> Finally, policy networks can be classified based on the network characteristics, such as the degree of integration, membership, distribution of resources among members and the balance of power in the network.<sup>[54, 107, 111, 124]</sup> In this case, networks are measured in a continuum, ranging from highly integrated, stable and exclusive policy communities,<sup>[125]</sup> such as iron triangles that involve a close interactions between legislative committees, bureaucratic agencies, and societal actors to issue networks<sup>[126]</sup> of loosely connected, multiple, and often conflict-ridden members.<sup>[107, 127, 128]</sup>

Regardless of the type, policy networks play influential role in the policymaking process (including public health<sup>[129]</sup>), particularly in agenda-setting<sup>[29, 30]</sup> and policy formulation.<sup>[111, 127, 130]</sup> These networks influence the policy process by engaging in activities, such as shaping definitions of problems, selection of the appropriate solutions (substance of public policies)<sup>[128]</sup> and dissemination of ideas and policy paradigms,<sup>[54, 111]</sup> Additionally, these networks interact with structural<sup>[55, 131]</sup> and other contextual<sup>[54, 107]</sup> factors to determine possibilities of policy change. For this reason, networks are considered as intermediary variables between contextual developments and policy outcomes.<sup>[110, 132]</sup> Policy change through networks can occur through the composition and boundaries of the network,<sup>[114]</sup><sup>[132]</sup> the internal mode of governance of the network,<sup>[116]</sup> how the network evolved<sup>[131]</sup> and the active participation and involvement of policymakers in the network.<sup>[104, 111, 133]</sup> In effect, there are several mechanisms through which networks can contribute to policy change. The focus in this study is on stakeholder relationships that emerged during the processes for developing the NSPA and the balance of power among groups in the tobacco policy subsystem in the state.<sup>[66, 120, 125]</sup> Who controlled the policy subsystem? How did they influence the outcome?

### *Socio-economic Influences*

The focus is on the broader structural and macro context or environment within which policy choices were made.<sup>[26, 51, 54, 55]</sup> This issue results from the fact that policies are not made in vacuum and the environment have some impact on policymakers and other societal actors (although these actors also play roles in modifying and shaping the environment<sup>[55: 116-117]</sup>). These contextual or environmental factors include the political institutions, such as the branches of government and political parties that produce the policy outcome,<sup>[110, 134, 135]</sup> structural factors, such as history and geography that impact the socioeconomic compositions,<sup>[136]</sup> policy type that dictates the degree of conflict,<sup>[137, 138]</sup> and policy inheritance from past administration.<sup>[139, 140]</sup> In essence, the policy context serves as modifying factors in the policy process.

The interactions between actors and contextual factors,<sup>[54, 107, 131]</sup> including socioeconomic variables impact policy outputs.<sup>[141]</sup> In this respect, states' policies have been found to reflect mass public opinion<sup>[142-144]</sup> attitudes,<sup>[145]</sup> partisanship<sup>[144, 146]</sup> and ideology<sup>[146, 147]</sup>



in the state . Moreover, the context impacts the strategic behavior of actors, such as venue shifting and shopping<sup>[28, 121, 148]</sup> in the policy process because the environment may favor certain strategy over others. This implies that the context defines actors' ability to realize their policy objectives.<sup>[26, 55: 116-117]</sup> In this respect, the issue of socio-economic influences examined how contextual issues in Tennessee, such as the prevalence of tobacco use, the economic costs of tobacco use, the dependence on tobacco (as a major tobacco-producer), and the changing attitudes and behaviors factored into developing the SFP.

## METHODS

The study utilized a case study approach<sup>[149-152]</sup> that triangulates<sup>[153-155]</sup> multiple sources of data to validate the results. Triangulation “is based on the idea that no single approach ever really solves, delineates, or validates a particular problem. Different methodologies, investigative approaches, and other types of triangulation yield more complete data and result in more credible findings.”<sup>[156:69]</sup> Under this methodological approach, data triangulation involves “the use of different sources to crosscheck findings.”<sup>[156:69]</sup> In this case, we triangulated archival documents with interviews of key stakeholders in the state, legislative debates on the NSPA and quantitative data.

### Data Collection

The primary data sources include: (a) over 70 million pages of online tobacco industry documents (legacy.library.ucsf.edu), (b) the state of Tennessee legislative records and debates, (c) news reports, and (d) stakeholders’ interviews. This triangulation methodology is standard for this type of qualitative research because it relies on multiple sources of information to determine consistency in an argument or viewpoint<sup>[151, 152]</sup> and balance insight gained from interviews with information gathered from archival sources.<sup>[157]</sup>

#### *General Methods for Archival Documents*

The online tobacco industry documents library was searched using standard snowball approaches to locating and screening documents.<sup>[158-161]</sup> The initial search terms were "Tennessee and tobacco control" and "Tennessee and smoke-free policy." Follow-up searches were conducted with adjacent pages, Bates numbers, and names of key individuals and organizations located in the initial search. The search conducted between July 2010 and April 2011 yielded about 7,000 documents and about 2,000 were relevant for this study. Additionally, physical search through the state of Tennessee legislative records on tobacco control in Nashville was conducted in July/August 2010. These documents were digitized and similar snowball technique was used to search through them. Moreover, the tapes of legislative debates on the NSPA were obtained from the Tennessee State Library and Archives in Nashville and transcribed for this analysis.

#### *Newspaper and other Media Sources*

We searched news reports on the SFP from June 2006 and June 2008 available at NewsBank (newsbank.com), Tobacco.org, and No Smoking in Restaurants (NoSIR; <http://www.discoveret.org/nosir/news.htm> and <http://www.discoveret.org/nosir/newsarchives.htm>). We retrieved 114 news reports from 27 local news outlets in Tennessee.

#### *Interviews*

The purpose of interviews was to get the “actor viewpoint” and in-depth description<sup>[149, 151, 152, 162]</sup> of the various stakeholders’ activities on the SFP. To meet the methodological requirement of adequate variance in data,<sup>[150, 163]</sup> we used the snowball technique<sup>[164, 165]</sup> for accessing hard-to-reach populations and search through the internet and legislative archives to locate the main stakeholders and persons involved in the policy development process for interview (Table 2). The interviewees were selected based on their involvement in development and implementation of the policy, knowledge about the SFP, willingness to talk about their

activities on the SFP, and representation of a viewpoint on the SFP.<sup>[166]</sup> The interviews were semi-structured, where the topic was introduced and the discussion was guided with specific questions,<sup>[152, 166-168]</sup> and were conducted by telephone, face-to-face, or email. All telephone and face-to-face interviews were recorded using a digital audio-recorder and transcribed.<sup>[152, 166, 169]</sup> For people who did not wish to be recorded, notes were taken during the conversation and others were allowed to respond to the interview through an email or regular mail. In effect, all efforts were made to reach stakeholders involved in the SFP issues and the interviews were made flexible and convenient to accommodate everyone interested in talking with us. In the end, we had interviews with 31 of our 34 informants. Of the 31 interviews, 29 were recorded and transcribed, one response was through email and notes were taken during one interview. Follow-up interviewees for clarification of issues raised in the original interviews were conducted between May 2011 and April 2012.

All the interviews were conducted in accordance with protocols approved by the Institutional Review Board of East Tennessee State University.

**Table 2:** Informant Characteristics (N=34)

<b>Informants</b>	<b>Number (n)</b>	<b>Percentage (%)</b>
<i>Sex</i>		
Males	26	76
Females	8	24
<i>Category</i>		
Legislators and staff	10	29
Governor and staff	2	6
State agency officials	6	18
Tobacco control and public health groups	11	32
Farm Bureau	1	3
Hospitality and Business Associations	3	9
Labor organization	1	3
Tobacco Companies	Declined	

**Note:** All efforts to interview tobacco companies’ representatives and/or lobbyists failed.

### **Analysis**

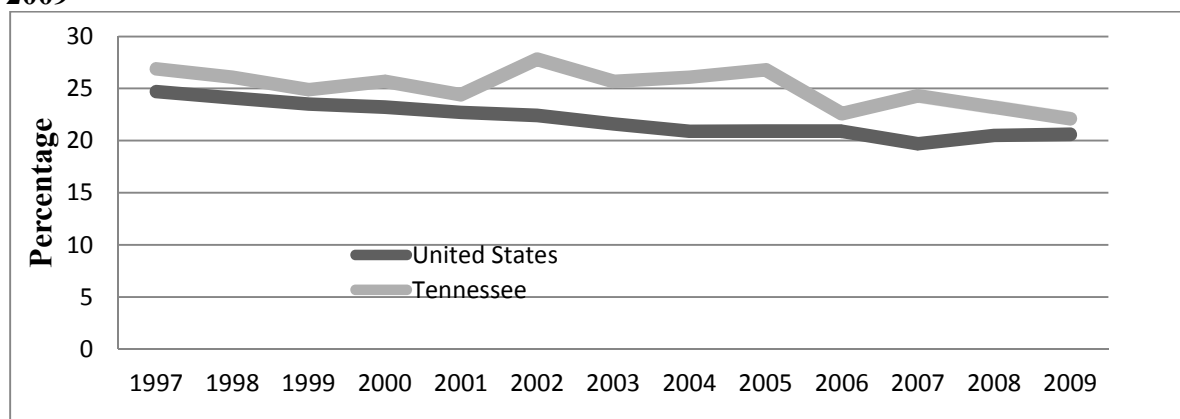
The archival documents were critically evaluated and the interviews were thematically coded using the grounded theory methodology under which “data are broken down into discrete parts, closely examined, and compared for similarities and differences.”<sup>[170:102]</sup> With this procedure, two researchers did open-ended coding through line-by-line text coding to identify conceptual labels and themes, which were subsequently merged into broader conceptual categories. These themes and conceptual categories were developed from the frequency they appeared in the transcripts. The NVivo 8 (QSR International, Australia), a qualitative software package, was used to support coding of the data. The Kappa co-efficient for inter-coder reliability was 0.97, suggesting almost a perfect consistency in the codes developed by the two coders. The PASW 18 (IBM, Chicago, U.S.) was then used for descriptive analysis (frequencies and percentages) of the data generated by the NVivo 8 and inferences were made not only on the evaluated documents but also these quantified themes in the transcribed interviews.

## THE BURDEN OF TOBACCO USE IN TENNESSEE

### *Prevalence of Tobacco Use*

Tobacco use in Tennessee has consistently been higher than the national average. In 2009, for example, the rate of adult (18 years and older) smoking prevalence in Tennessee was 22.1% (1.39 million people), ranking 41<sup>st</sup> in the country.<sup>[24]</sup> Figure 1 shows that although the rate of adult smoking in the state has been declining over the past decades, it remains one of the highest in the country. While cigarettes remain the dominant form of tobacco products in the state, the use of cigars has been increasing over the past years. For example, between 1996 and 2006, the overall use of cigar increased from 0.9% to 3.5% (see the Tobacco Use Supplement to the Current Population Survey [TUS-CPS] in the STATE system<sup>[171]</sup>). Due to the high level of tobacco use, many people in Tennessee are exposed to SHS either inside or outside their homes. Indeed, in 2006/2007, 30.1% of adult smokers and 83.7% of adult nonsmokers lived in smoke-free homes,<sup>[172]</sup> which means that a significant number of people under 18 years were exposed to SHS at home.<sup>[173, 174]</sup> Although the use of other smokeless products has been gaining prominence in the state (21.3% among high school students as of April 2011<sup>[173, 174]</sup>) this report focuses on smoked products as they were at the center of the state's SFP, the NSPA.

**Figure 1: \*Prevalence of smoking among adults --- Tennessee<sup>1</sup> and the United States<sup>2</sup>, 1997-2009**



Sources: <sup>1</sup>Behavioral Risk Factor Surveillance System and <sup>2</sup>National Health Interview Survey  
\*Prevalence of smoking measures the percentage of the population over 18 years of age who has smoked at least 100 cigarettes and currently smokes.

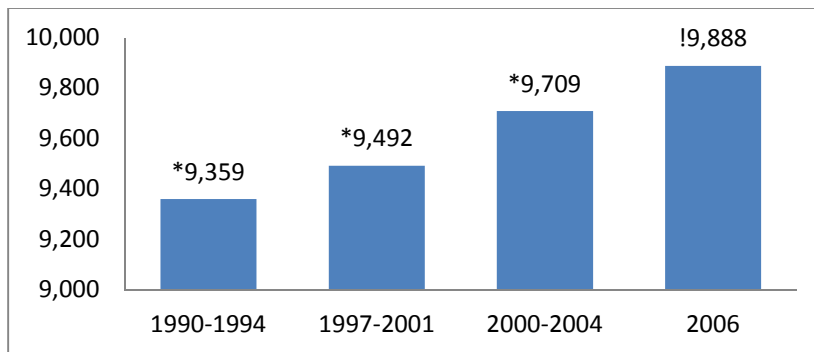
### *Health Consequences of Tobacco Use in Tennessee*

Tobacco is more addictive than illegal substances, such as heroin<sup>[175]</sup> and its links with morbidities, such as cancers, heart diseases, Chronic Obstructive Pulmonary Disease are widely known. The 2010 U.S. Surgeon General Report<sup>[6]</sup> suggests that tobacco use is harmful to almost all parts of the human body, including negative impact on the reproductive system of women. Additionally, exposure to SHS has negative health effects for both adults (example: lung cancer, coronary heart disease, mal-impact on reproductive system in women, and low birth weight) and children (example: respiratory symptoms, impaired lung function, lower respiratory illness, and

sudden infant death syndrome). Of the over 4000 chemicals in cigarette smoke, between 400 and 500 are carcinogenic to humans.<sup>[176-178]</sup> Tobacco use is thus the leading preventable cause of death in the country because it kills about half of its regular users.<sup>[6]</sup>

Figure 2 shows that smoking-attributable mortality in the state of Tennessee has been increasing over the years, reflecting the time lag between tobacco use and the onset of tobacco-induced diseases. Between 1994 and 2004, the average years of potential life lost was about 15 per death (See the CDC STATE system<sup>[171]</sup>). It was estimated that about 132,000 people under 18 years of age alive in the state as of June 2011 will die prematurely from smoking.<sup>[173, 174]</sup> In addition to these smoking-attributable mortalities, over 1,000 adult nonsmokers in the state die each year from exposure to SHS.<sup>[173]</sup> In effect, tobacco use has devastating health consequences on the state of Tennessee.

**Figure 2: Smoking-Attributable Mortality in Tennessee**

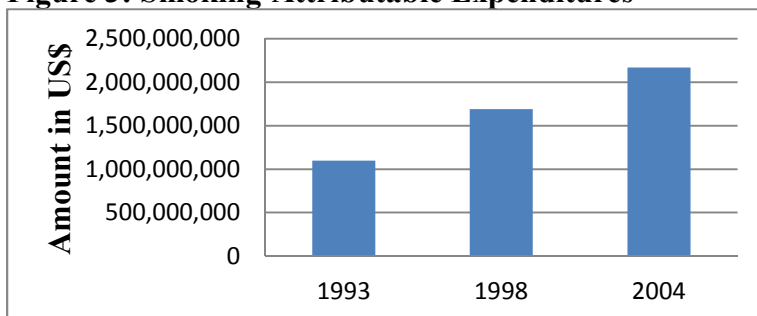


\*Source: CDC State Tobacco Activities Tracking and Evaluation (STATE) System<sup>[171]</sup>  
 !Source: 2011 Tennessee Health Plan<sup>[179]</sup>

*Economic Costs of Tobacco Use in Tennessee*

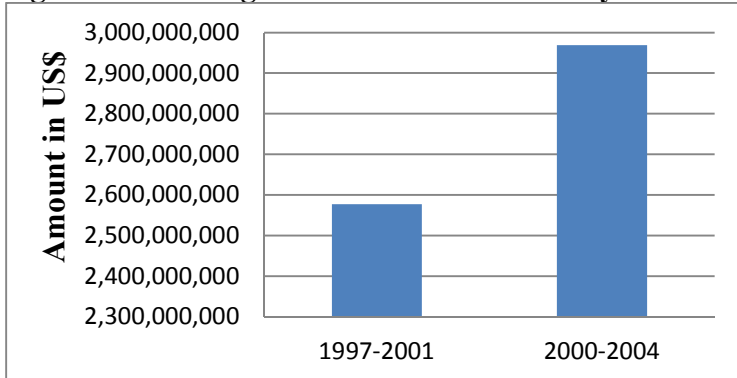
The consequences of tobacco use go beyond health to encompass economic costs. Both the direct health care costs (Figure 3) and loss of productivity due to tobacco use (Figure 4) have been increasing in the state. This increase in economic costs of tobacco reflects the increasing incidence of tobacco-induced morbidity and mortality even as the prevalence declines.

**Figure 3: Smoking-Attributable Expenditures**



Sources: CDC State Tobacco Activities Tracking and Evaluation (STATE) System<sup>[171]</sup>

**Figure 4: Smoking-Attributable Productivity Losses**



Sources: CDC State Tobacco Activities Tracking and Evaluation (STATE) System<sup>[171]</sup>

In sum, while the rate of prevalence of tobacco use in Tennessee has been declining, albeit slowly over the past decades, it was still above the national average as of 2009. The result of this relatively high rate of smoking in the state is that both health consequences and costs imposed on the state continue to increase.

## CONCEPTION OF SMOKE-FREE POLICY IN UNITED STATES

Since Arizona enacted a limited smoke-free law in 1973,<sup>[180]</sup> followed by Minnesota in 1988,<sup>[181]</sup> Massachusetts in 1992,<sup>[182, 183]</sup> and California in 1994,<sup>[184]</sup> smoke-free laws have spread across the country. As of July 2011, while there were thousands of local SFPs, a total of 36 states (including Tennessee) had such laws in effect (Table 3, Table 4).<sup>[17]</sup> North Carolina was, however, the only major tobacco-producing state with a 100% SFP. Some of these states' SFPs had preemption and/or exemption(s). For example, by the end of 2009, there were 12 states with SFP preemptions, a decline from 19 states in 2004.<sup>[185, 186]</sup> Also, Table 3 shows that some states in the country had partial SFP coverage due to exemptions. Because Tennessee had both preemption and exemptions in the NSPA (Appendix A; Box 1 and 2), it did not belong to the league of states with 100% SFP in the country. However, limited as Tennessee's SFP may be, it was one of the major tobacco-producing states in the country with a statewide SFP (Table 3 and 4). In fact, Table 4 shows that Tennessee was the first major tobacco-producing state to develop a statewide SFP, making it one of the 36 states in the country with a statewide SFP.

Type of Law	Number of States
Workplace and/or restaurants and/or bars	34*
Workplace and restaurants and bars	23
Workplace	28
Restaurants	33
Bars	29
Workplace and restaurants	26
Restaurants and Bars	29
Preemption	12¶

Source: Americans for Nonsmokers' Right<sup>[17]</sup>

\*Does not include Tennessee and Washington, D.C, which has 100% smoke-free policy

¶Include nine states with 100% smoke-free policy and Oklahoma, Tennessee and Virginia

Year	States Adopting Smoke-free Policy
1994	California, Utah
2002	Delaware, Florida, South Dakota
2003	Connecticut, Maine, New York
2004	Idaho, Massachusetts, Rhode Island
2005	Montana, North Dakota, Vermont, Washington
2006	Arizona, Colorado, Hawaii, Louisiana, Nevada, New Jersey, Ohio
2007	Illinois, Maryland, Minnesota, New Hampshire, New Mexico, Oregon, Tennessee
2008	Iowa, Pennsylvania, Nebraska
2009	Michigan, North Carolina, Wisconsin
2010	Kansas

Note: The 1994 California and Utah SFPs were the oldest policies existing as of July 2011

Source: Americans for Nonsmokers' Right<sup>[17]</sup>

Previous investigations into the development of these state-level SFPs have emphasized contextual matters, mostly tobacco production (producing vs. non-producing states). These

investigations primarily focused on non-tobacco-producing states, such as California,<sup>[184]</sup> Florida,<sup>[187, 188]</sup> Minnesota,<sup>[181, 189]</sup> Massachusetts<sup>[183, 190, 191]</sup> and New York.<sup>[192-194]</sup> The focus in this case has been on comprehensive tobacco control programs,<sup>[181-183, 195]</sup> a composite of many policies and not on any specific policy. Although there are extensive studies on components of these programs, including anti-smoking campaigns,<sup>[196]</sup> states' SFP research has mostly focused on its impacts on smoking prevalence or behavior and economic activities, such as employment and income of the hospitality industry,<sup>[192-194, 197]</sup> but few (including the States Reports Project of the Center for Tobacco Control Research and Education of University of California at San Francisco<sup>[198]</sup>) on the development or processes leading to the outcome.<sup>[184, 195, 199, 200]</sup> This situation is true even in tobacco-producing states<sup>[201]</sup> where few of such policies exist. While there is growing research on tobacco-producing states, such as North Carolina<sup>[18, 202]</sup> and South Carolina,<sup>[39, 203]</sup> and localities in places, such as Kentucky,<sup>[47, 201]</sup> little to nothing has been conducted on Tennessee. Given the differences in the states, it is important to understand not only the effects of the policy outcomes but also the processes leading to the outcome. In this respect, there is the need to know why Tennessee ended up with a SFP that has preemption and exemptions.



## A BRIEF CONTEMPORARY HISTORY OF TOBACCO CONTROL IN TENNESSEE

Controlling the use of tobacco through policy is not new to Tennessee and has persisted for over a century. In 1897, Tennessee prohibited the sale of cigarettes to the public (Box 3;

### Box 3: Tennessee Legislation on the Sale of Cigarettes, 1897

Be it enacted by the General Assembly of the state of Tennessee, That it shall be a misdemeanor for any person, firm, or corporation to sell, offer to sell, or to bring into the state for the purpose of selling, giving away, or otherwise disposing of, any cigarettes, cigarette paper, or substitute for the same; and a violation of any of the provisions of this act shall be a misdemeanor punishable by a fine of not less than \$50.

Figure 5), resulting in the *William B. Austin vs. the State of Tennessee* case (179 U.S. 343; 1900), when Mr. Austin refused to pay a \$50 (about \$1,300 in 2011) fine for selling cigarettes.<sup>[5, 204]</sup> Both the State and the U.S. Supreme Court respectively upheld the law in 1898 and 1900, giving states in the country the

authority to regulate tobacco sales. Particularly, the Supreme Court of Tennessee ruled that tobacco was not an article of commerce because it was dangerous to health (Box 4). By 1909, Tennessee was one

of the 12 states (together with Arkansas, Indiana, Iowa, Kansas, Minnesota, Nebraska, North Dakota, Oklahoma, South Dakota, Washington, and Wisconsin; Idaho and Utah in 1921) that had entirely banned cigarettes sales as part of the prohibition movement.<sup>[205, 206]</sup>

In 1921, the tobacco prohibition was, however, repealed in Tennessee.<sup>[206]</sup> In this respect,

Tennessee was one of the earliest states to recognize that tobacco use was a societal problem that must be confronted through policy solutions.

### Box 4: 1898 Supreme Court of Tennessee Ruling

#### *William B. Austin vs. the State of Tennessee*

Are cigarettes legitimate articles of commerce? We think they are not, because wholly noxious and deleterious to health. Their use is always harmful, never beneficial. They possess no virtue, but are inherently bad, and bad only. They find no true commendation for merit or usefulness in any sphere. On the contrary, they are widely condemned as pernicious altogether. Beyond question, their every tendency is toward the impairment of physical health and mental vigor.

There is no proof in the record as to the character of cigarettes, yet their character is so well and so generally known to be that stated above, that the courts are authorized to take judicial cognizance of the fact. No particular proof is required in regard to those facts which by human observation and experience have become well and generally known to be true ... nor is it essential that they shall have been formally recorded in written history or science to entitle courts to take judicial notice of them.

It is a part of the history of the organization of the volunteer army in the United States during the present year [1898, the Spanish American War era] that large numbers of men, otherwise capable, had rendered themselves unfit for service by the use of cigarettes, and that, among the applicants who were addicted to the use of cigarettes, more were rejected by examining physicians on account of disabilities thus caused than for any other, and, perhaps, every other, reason.<sup>[4:120, 5]</sup>

Tobacco control in Tennessee has, however, reflected the federal structure of the country, meaning that the state does not have absolute control over the policy area, but shared responsibility with the federal government. Because the federal government has occupied most areas of cigarettes marketing and promotion with the 1965 Cigarette Labeling and Advertising Act and the subsequent renewal in 1970 (Figure 5),<sup>[53, 207]</sup> Tennessee lacked the authority to design policies on cigarette marketing labels. This situation was the case with respect to

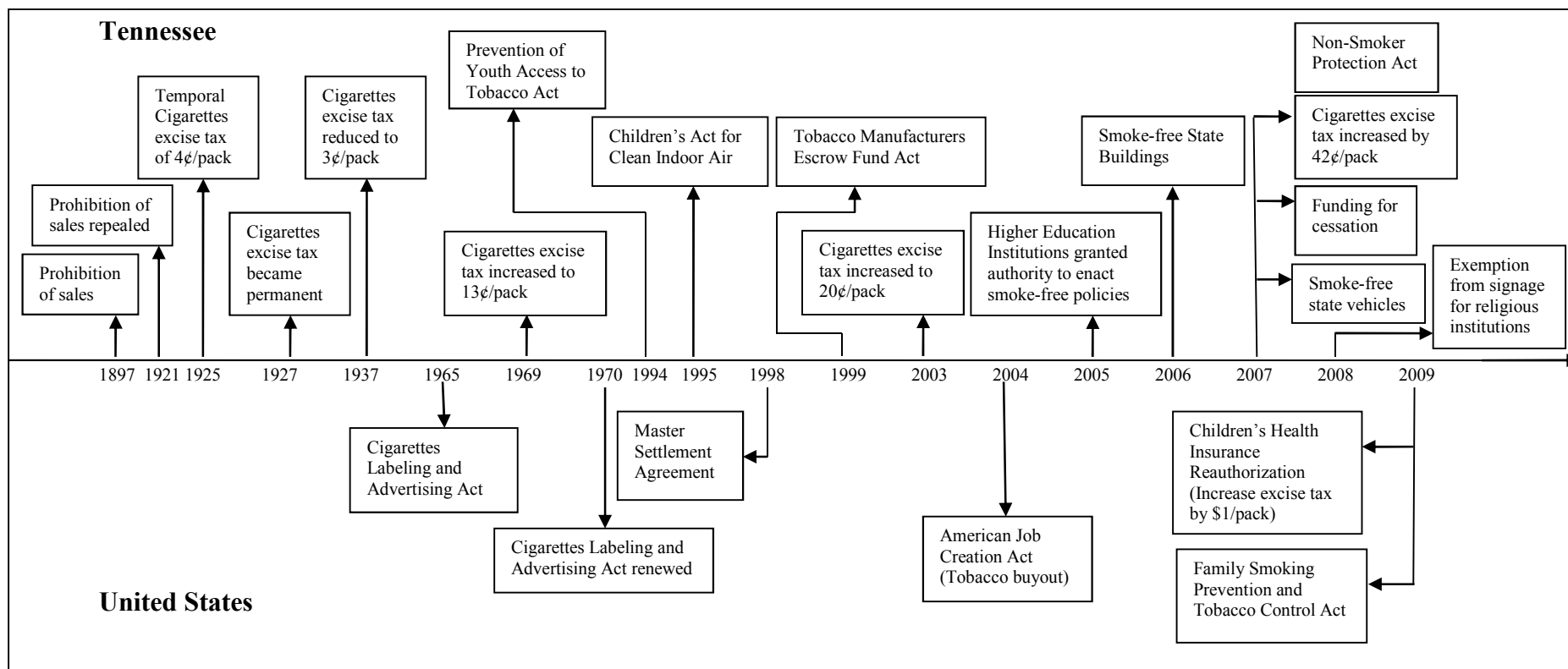
cigarettes advertising until the 2009 Family Smoking Prevention and Tobacco Control Act repealed the preemption in the Cigarette Labeling and Advertising Act and allowed state and local governments the right to restrict the time, place and manner of advertising.<sup>[208]</sup> The 1965 Act required that health warnings appear on cigarette packages and the 1970 renewal changed the warning and banned cigarette advertising in broadcasting. The states, however, maintained authority in tobacco control in taxation, tobacco sales, smoking venues, litigation, cessation, health education and promotion, and since 2009, the time, place and manner of advertising.

The major federal tobacco control policies and programs in the first decade of the 21<sup>st</sup> Century that directly affected Tennessee were the American Job Creation Act of 2004 and Children Health Insurance Reauthorization Act and the Family Smoking Prevention and Tobacco Control Act of 2009. As the third largest tobacco producer in the country, Tennessee participated in the federal buyout program to get tobacco farmers out of tobacco cultivation under the American Job Creation Act.<sup>[209, 210]</sup> The Children Health Insurance Reauthorization Act increased federal cigarettes excise tax by one dollar to fund the State Children Health Insurance Program (SCHIP) and the Family Smoking Prevention and Tobacco Control Act granted the Food and Drug Administration the authority to regulate tobacco, including labeling and content of tobacco products. (The U.S. Supreme Court overturned the Food and Drug Administration's efforts to claim similar authority in the 1990s in 2000.) While Tennessee has been involved in these federal government tobacco policies and programs, it has historically sought to control tobacco use through youth access prevention laws, excise tax, cessation and health education programs, and SFPs (Figure 5).

### *Youth Access Prevention Laws*

Restricting youth access to tobacco is one of the oldest tobacco control measures in the state. As indicated earlier, during the prohibition era of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, Tennessee developed laws to control the sale of tobacco to the public, including youth. Laws prohibiting the sale of cigarettes and paraphernalia to minors (people under 18 years of age) continued after prohibition of cigarettes sales was repealed in 1921,<sup>[206]</sup> becoming central to tobacco control in the state. Although by the mid-1990s Tennessee had youth access prevention laws because all legislative efforts to repeal them failed,<sup>[1, 211]</sup> it enacted and implemented the Prevention of Youth Access to Tobacco Act in 1994 (PYATA; Appendix C)<sup>[1]</sup> and expanded the areas of coverage with the 1995 Children's Act for Clean Indoor Air (CACIA) (Figure 5; Appendix D).<sup>[212]</sup> While the PYATA prohibited the sale or distribution of tobacco to minors, and the purchase of tobacco on behalf of a minor, the CACIA required that facilities used by minors, including schools, child care and youth development centers, and residential treatment facilities be smoke-free and adults can only smoke in designated areas. The Department of Agriculture was entrusted with the implementation of both laws. These two youth access prevention laws became the genesis of state's active involvement in tobacco control in recent history.

**Figure 5: Timeline for Key Legislative Events in Tennessee and United States**



Tobacco documents research on youth access prevention laws, however, suggests that such laws were generally used by the tobacco industry to divert responsibility of illegal sales

**Box 5: Advocacy Institute; Stop Teen Addiction to Tobacco, 1994**

The tobacco industry has actually targeted certain states in which it is attempting to gain passage of such weak laws. According to a Food Marketing Institute newsletter, states targeted are: Alabama, Arizona, California, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, New Jersey, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, West Virginia, Wisconsin and Wyoming. This list is not complete, and the tobacco industry will try to get its laws passed in any state.

The tobacco industry strategy is to tell state legislators and health officials that unless they pass "comprehensive tobacco control" laws, they will lose federal funds under Synar. The tobacco industry then presents its "model" law which reads superficially as though it is tough, but is actually written so that it prevents strict controls on tobacco sales to minors [emphasis added].<sup>[3]</sup>

from the tobacco companies to minors and undermine effective efforts to address the use and spread of tobacco.<sup>[213-215]</sup>

Particularly, in the early and mid-1990s, youth access prevention laws proliferated throughout the country because the tobacco industry promoted them to counter the 1992 Synar Amendment<sup>iii</sup> <sup>[3, 216]</sup> Indeed, Tennessee was one of the 20 "priority target states" for the tobacco industry's

youth access legislative campaigns (Box 5).<sup>[3, 216-218]</sup> It appears that the tobacco industry successfully influenced the 1994 PYATA because it embodied elements of the industry youth access prevention "model" legislation,<sup>[219, 220]</sup> which included preemption and loopholes to prevent enforcement.<sup>[3, 221-223]</sup>

This evidence suggests that the tobacco industry played supporting role in the development of the PYATA. While the PYATA demonstrated the state's interest in tobacco control, the larger political implication was that the preemptive clause in the law (Box 1) was very expansive and explicit and all subsequent efforts by legislators, anti-smoking groups, institutions and localities to repeal it failed, leaving the state with absolute control over tobacco control policy. In this case, the PYATA effectively stifled local government initiatives and role in tobacco control policymaking and made preemption part of the state's tobacco control policy culture.

### *Cigarette Excise Tax*

Ever since the federal government began to apply tax on manufactured products in 1862 (cigarettes included in 1864), taxes have mostly been used by both the federal and the state governments for different purposes. In 1925, Tennessee applied four cents (about 50 cents in 2011) excise tax on a pack of cigarette for the first time (Figure 5). This was a temporary tax imposed by the state and became permanent in 1927. In 1937, the excise tax rate was reduced to three cents per pack. Between 1937 and 2007, the rate was incrementally raised by 13 cents in 1969, 20 cents in 2003, and 42 cents in 2007. As of July 2011, the excise tax rate per a pack of 20 cigarettes was 62 cents.

<sup>iii</sup> In 1992, the federal government enacted the Synar Amendment, which required all states to enact laws to limit minors (people under 18 years) access to tobacco products. Additionally, the states were required to monitor retail compliance on the sale of tobacco to minors. Moreover, states were required to comply with the Synar in order to receive Substance Abuse Prevention and Treatment block grant.

The cigarette excise tax rate in Tennessee has historically been one of the lowest in the country, compared with other states,<sup>[224]</sup> which represents a success of the historical efforts by tobacco companies against any attempt at raising it.<sup>[225]</sup> As of July 2011, Tennessee's rate of 62 cents ranked 39<sup>th</sup> highest in the country.<sup>[226]</sup> However, Tennessee has the highest tax rate among the major tobacco-producing states (Georgia, Kentucky, North Carolina, South Carolina, and Virginia).<sup>[226]</sup> Whether cigarette excise tax in Tennessee was used as a public health or economic tool is not obvious even though excise tax is one of the most effective measures to control tobacco use, particularly among youth and people with lower socioeconomic status.<sup>[12, 20]</sup>

**Table 5: Cigarette Tax for Major Tobacco-Producing State - 2000, 2005 and 2009**

State	2000	2005	2009
	Cigarette Tax Rates (Per Pack)	Cigarette Tax Rates (Per Pack)	Cigarette Tax Rates (Per Pack)
®North Carolina	\$ 0.050	\$ 0.050	\$ 0.450
®Kentucky	\$ 0.030	\$ 0.300	\$ 0.600
®Tennessee	\$ 0.130	\$ 0.200	\$ 0.620
®Virginia	\$ 0.025	\$ 0.300	\$ 0.300
®South Carolina	\$ 0.070	\$ 0.070	\$ 0.070
®Georgia	\$ 0.120	\$ 0.370	\$ 0.370
Pennsylvania	\$ 0.310	\$ 1.350	\$ 1.350
Ohio	\$ 0.240	\$ 0.550	\$ 1.250
Connecticut	\$ 0.200	\$ 0.840	\$ 0.840
Missouri	\$ 0.170	\$ 0.170	\$ 0.170
Massachusetts	\$ 0.760	\$ 1.510	\$ 2.510

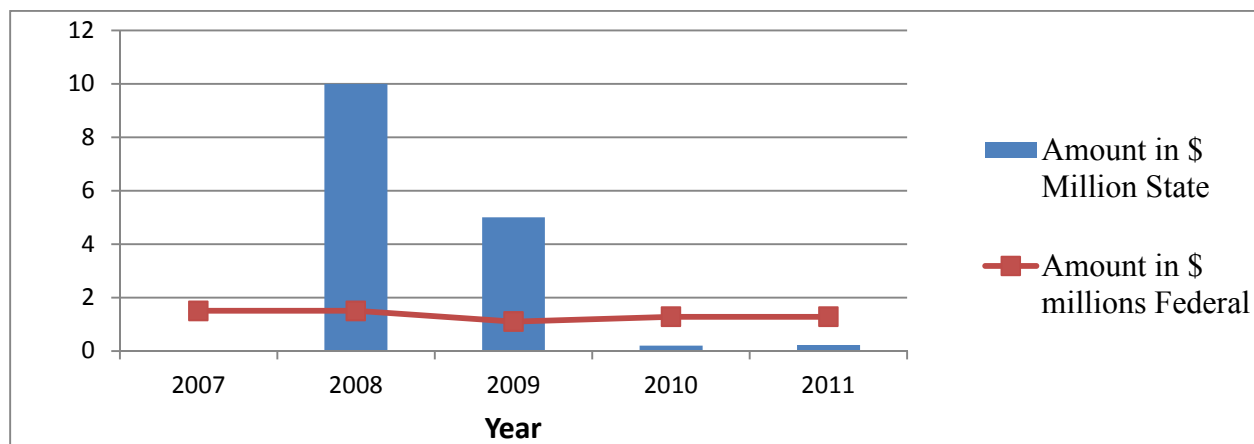
® - Major tobacco producer

Source: Campaign for Tobacco-Free Kids

### *Cessation and Health Education Programs*

Tobacco cessation and health education programs are recent phenomena in Tennessee because until 2007, very limited funds were appropriated for these programs. Even after the 1998 Master Settlement Act (MSA), Tennessee was one of the few states that did not allocate funds for cessation and education programs.<sup>[227-230]</sup> In 2007, \$10 million was first appropriated for Fiscal Year 2008 to fund cessation and health education programs, including quitlines and anti-smoking campaigns.<sup>[229]</sup> While this amount was far lower than CDC recommended annual investment of \$71.7 million or a minimum of \$51.8 million,<sup>[12]</sup> it showed the state's interest in not only taking pro-active steps at preventing the initiation of tobacco use but also helping addicted users to quit. Figure 6 shows that since late 2008 the amount of funds allotted for these programs has since dropped drastically to \$220,000 in 2011 amidst the general economic situation in the country, suggesting the need for the allocation of more resources into such programs.

**Figure 6: Funding for Tobacco Cessation and Health Education in Tennessee, 2007-2011**



Sources: CDC STATE System, Campaign for Tobacco Free Kids, and American Lung Association

### *Smoke-free Policy*

As noted earlier, since the 1970s state and local governments in the country have played an important role in creating smoke-free environments through public policy. In Tennessee, before the 1994 PYATA introduced preemption, local government bodies and institutions, such as those in Davidson, Knox and Sevierville counties were developing SFPs.<sup>[231-233]</sup> Even after 1994, major cities such as Knoxville, Memphis, and Nashville unsuccessfully fought to repeal the preemption.<sup>[234, 235]</sup> In contrast, until the mid-2000s, the state played very little role, if any, in the policy area. In particular, between 1950 and 1970, no smoking restriction legislation was introduced in the State Legislature.<sup>[211]</sup> Between the 1970s and the mid-2000s, however, several clean indoor air bills to restrict smoking were introduced in the Legislature, but except the youth access prevention laws (the 1994 PYATA and the 1995 CACIA), they were mostly stalled at the committee level.<sup>[225, 236-239]</sup> In the 1974 Legislative Session, for example, two smoking restriction bills were killed in the committees and the House defeated a joint resolution to end smoking in certain areas of the Capitol Building.<sup>[240]</sup> The 1987 Tobacco Institute *State of the State* report expressed the “outlook” of tobacco control in Tennessee as,

We do not anticipate a serious threat to cigarette taxes during the 1987 [legislative] session. We do, however, expect another effort to be made by anti-tobacco forces to ban or restrict the use of cigarettes and other tobacco products. The strength and unity of our allies in Tennessee suggests we will not have much trouble defeating such legislation.<sup>[2]</sup>

Moreover, none of the smoking restriction bills introduced in years, such as 1994 (15 bills),<sup>[241]</sup> 1995 (13 bills),<sup>[242]</sup> and 1996 (12 bills)<sup>[243]</sup> passed through the legislative committees and the Legislature.

This situation whereby localities and institutions in the state pursued SFPs, but progress was stalled by the preemption and state level efforts at policy change were foiled persisted until 2006, when the Legislature passed the smoke-free state buildings law<sup>[244]</sup> (Appendix E; Figure

5). Before that, the Legislature passed a law in 2005 to grant higher education institutions the authority to develop SFPs without reporting to the Legislature<sup>[245]</sup> (Appendix F), and thereby exempted such institutions from the state preemption. (As of July 2011, while all higher education institutions in the state had some sort of SFPs, only two, East Tennessee State University and Milligan College had tobacco-free policies.<sup>[246]</sup>) In 2007, the Legislature ended smoking in all state-owned vehicles (Appendix G)<sup>[247]</sup> and passed the NSPA (Appendix A), the first most comprehensive SFP in the state, making most enclosed public and workplaces 100% smoke-free. In 2008, religious institutions were exempted from posting no-smoking signs on their doors<sup>[248]</sup> (Appendix H), an addition to the original exemptions (Box 2). In this respect, SFP has become one of the policy instruments to reduce tobacco use, protect nonsmokers from SHS and improve the health of Tennesseans.<sup>[179]</sup>

## DEVELOPMENT OF THE NON-SMOKER PROTECTION ACT: AGENDA-SETTING

<b>Table 6: Timeline for the Non-Smoker Protection Act (NSPA), 2006 to 2007</b>	
June 2006	Governor Phil Bredesen (Democrat) unexpectedly announced support for a statewide smokefree policy (SFP) at a bill signing ceremony for smokefree state buildings in Nashville, Tennessee. Campaign for a Healthy and Responsible Tennessee (CHART) observed the Governor's announcement as a "window of opportunity" and began working for a statewide SFP.
October 2006	American Cancer Society, a member of CHART, conducted public opinion polls to test the public support for smokefree environments and policy.
November 2006	CHART had a meeting with policy advisors of the governor, which began the administration and civil society collaboration for the SFP.
December 2006	Governor's policy advisors, Department of Health, CHART and Tennessee Restaurant Association (TRA) began to negotiate an SFP for the Bredesen administration based on a proposal by CHART.
February 2007	TRA's Board of Directors unanimously voted to support the negotiated SFP for the Bredesen's administration, the Tennessee Smokefree Air Law (TSAL).
February 2007	A competing SFP bill, Non-Smokers Protection Act (NSPA; SB1325/HB1851), emerged in legislature. Senator Jim Tracy (R) sponsored SB1325 in the Senate on February 8 <sup>th</sup> , which was referred to the Commerce, Labor and Agriculture Committee on February 12 <sup>th</sup> . In the House, Rep. Stratton Bone (D), Chairman of the Agriculture Committee, sponsored HB1851 on February 15 and was referred to the Agriculture Committee on February 22 <sup>th</sup> . NSPA became the basis for develop a SFP for the state. The TSAL became SB2255/HB2335 in the legislative process. Senator James Kyle (D), Jr. sponsored SB2255 in the Senate on February 16 <sup>th</sup> and was referred to the Commerce, Labor and Agriculture Committee on February 22 <sup>nd</sup> . Rep. Gary Odom sponsored HB2336 on February 15 <sup>th</sup> in the House, but was referred to the Agriculture Committee on April 4 <sup>th</sup> . Both HB2336 and SB2255 were defeated in the agriculture committees.
February-June, 2007	Smokefree Tennessee Coalition (STC) emerged by February, which campaigned throughout the state and lobbied legislators for the SFP.
May 2007	<i>May 15</i> , the Senate Commerce, Labor and Agriculture Committee voted 6-0 to approve SB1325 with no amendment. <i>May 21</i> , Senate voted 15-12 to adopt an amendment (SA 0638) on the floor proposed by Senator Tim Burchett (Republican). Additionally, amendment (SA 0639) by Jim Tracy (Republican) was passed by 14-13, but tabled. <i>May 24</i> , the entire Senate voted 22-5 to approve the amended SB1325 and was transmitted to the House <i>May 30</i> , HB1851 passed the House Agriculture Committee by voice vote and subsequently the Finance, Ways and Means Committee and the Calendar and Rules Committee. <i>May 31</i> , The House substituted the amended SB1325 for HB1851 and voted 84-10 for it, and the Senate voted 29-2 for it.
June 2007	<i>June 4</i> , Speaker of Senate, Jimmy Naifeh (Democrat), signed the NSPA. <i>June 6</i> , Speaker of House, Rep. Ron Ramsey (Republican), signed the NSPA. <i>June 11</i> , Governor Bredesen signed the NSPA to become law.
October 2007	<i>October 1</i> , the NSPA went into effect.

The development of a statewide SFP in Tennessee became part of the agenda of the 105<sup>th</sup> Legislative Session in February 2007 (Table6) because Governor Bredesen included it in his legislative package and SFP bills were introduced in both houses of the Legislature. As noted earlier, until this point, while the state had youth access prevention laws and cigarette excise tax (imposed most likely for economic reasons), its role in SFPs was very limited. In this section, the *multiple streams* model<sup>[65]</sup> is used to explain why and how the SFP was elevated into the state's policy agenda, recognizing that Tennessee was (and is) a major tobacco-producer in the country



and the socio-cultural environment was (and is) less conducive to government regulation. The section begins with how the SFP policy originated, and then discusses the motivations behind the elevation of SFP into the state's policy agenda, identifies key facilitators for agenda-setting for the SFP, and highlights the role(s) of the key stakeholders in the agenda-setting process.

### *Origin of the Smoke-Free Policy in Tennessee*

Before the mid-2000s, localities and institutions pursued SFPs until the 1994 PYATA introduced preemption; legislators, local government bodies and institutions and health groups unsuccessfully tried to repeal the preemption; and efforts at the state-level were stifled in the legislative committees, specifically the Agriculture Committees. The genesis of the idea to have a statewide SFP was an issue that was addressed in the interviews with the stakeholders (Table 2) and three major theses or evidence emerged: 1) the government-centered; 2) non-governmental-centered; and the 3) bubble-up. The government-centered thesis, which was espoused by 38% of the interviewees, points to the leading role of policymakers, such as legislators in starting the efforts to have a statewide SFP. In this respect, interviewees cited the smoke-free state buildings in 2006 as a major event (“not a focusing event”<sup>[28, 30]</sup>) that support this thesis. For these interviewees, the successful efforts by legislators, such as Senator Roy Herron (Democrat, 24<sup>th</sup> District) and Representative Craig Fitzhugh (Democrat, 82<sup>nd</sup> District), and others, such as Senators Diane Black (Republican, 18<sup>th</sup> District; a U.S. Congresswoman as of July 2011) and Rosalind Kurita (Democrat, 22<sup>nd</sup> District) to make state buildings smoke-free was the catalyst for the efforts to expand the SFP statewide. As nurses, Senators Black and Kurita were not only concerned with the health effects of tobacco use but also the nuisance created by tobacco smoke as well as the cost of cleaning the state buildings of filth created by tobacco smoke. These concerns made these legislators to push for the smoke-free state buildings with limited input from nongovernmental groups, such as the Campaign for a Health and Responsible Tennessee (CHART) the health coalition in the state. Echoing this sentiment, Mr. Jason Spain, one of the Governor’s policy advisors said,

Well, the government buildings have been made smoke-free previously. There's a law passed, I'll say a year or two before this one [NSPA] that prohibits smoking in all state buildings. And the idea was expanded to almost all [public and workplaces]. Well, actually the original idea was all indoor public spaces (Interview, November 11, 2010).

Concurring with this point, Mr. John Chiamonte, Director of Government Affairs of American Cancer Society and an executive officer of CHART said that to know the origin of the NSPA, You have to go back to 2006 during the Legislative Session. During that time, we [CHART] started to work on all state buildings to be smoke-free and that was approved from Governor’s office and I think that was an example set to anybody to be, we can go smoke-free through the entire state (Interview, October 14, 2010).

In effect, for the majority who were conversant with the origin of the NSPA, the most important issue that triggered the movement for a statewide SFP was the smoke-free state buildings.

The nongovernmental-centered thesis, the second largest perspective, was espoused by 28% of the interviewees. According to this thesis, the activities of CHART and the efforts by

students of the University of Tennessee at Knoxville to have smoke-free dormitories generated the momentum for the SFP change in the state. As a tobacco control advocacy coalition formed around June 1999, CHART became a preeminent advocate for SFP change in the state, which they continued to do until the NSPA was enacted in 2007. For this reason, Lieutenant Governor Ron Ramsey (also Speaker of the Senate of the 106<sup>th</sup> Legislative Session; Republican, 2<sup>nd</sup> District) stated,

I guess it [the SFP] started ten years ago, but it took a while for that actually to take effect into legislation. Grassroots began to get involved, especially when the organizations I mentioned [CHART] started (Interview, March 10, 2011).

The central activities of CHART before the NSPA was campaign to repeal the preemption in the 1994 PYATA, which occurred through grassroots advocacy campaigns within localities and resulted in several anti-preemption resolutions. People from CHART in particular were forced to shop for alternative venues for SFP change (including state-level)<sup>[28, 148]</sup> because they were frustrated by the inability to repeal the preemption and the state not acting on SFPs. In this respect, Ms. Doris Spain, a CHART executive, reported,

Yes, it [efforts to have an SFP] started several years before the 2007 law was passed. It began initially, I believe with starting in 2000. Well, even before that, the American Cancer Society had worked with local governments to pass preemption resolutions asking the General Assembly [State Legislature] to give them the power back to do what they wanted to do regarding the [SFP] and other tobacco measures in general since Tennessee is a preemptive state and we have worked that [repeal preemption] angle for many years and got absolutely nowhere at all (Interview, February 10, 2011).

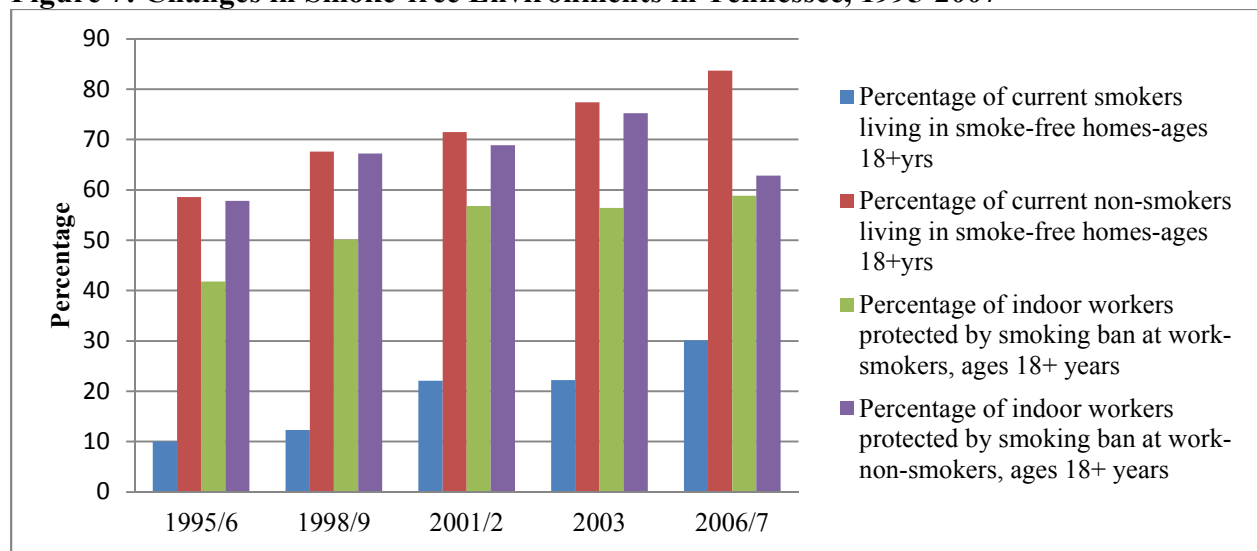
In spite of the failure to repeal the preemption, CHART's activities on SFPs reverberated throughout the state and served as a source for policy change.

For the role of the students of University of Tennessee at Knoxville in the origin of a statewide SFP, Ms. Spain from CHART said, "We used the work [smoke-free dormitories] that was done by the [University of Tennessee at Knoxville] students" to enhance our advocacy for the SFP (Personal Communication, February 10, 2011). Concerned with smoking in the dormitories and unable to bring about policy change through internal efforts, the students contacted Ms. Chastity Mitchell, Senior Director of Government Relations of CHART, who advised them to contact their then legislator, Senator Tim Burchett (Republican, Mayor of Knox County as of July 2011) for help. Senator Burchett agreed and sponsored SB 757 (Appendix F),<sup>[245]</sup> which unexpectedly passed to grant higher education institutions the authority to develop SFPs. While CHART played very limited role in this process (finding a legislative champion), the students' ability to secure exemption for higher education institutions from the tobacco policy preemption in the state helped to alter the perceptions of SFP change in the state among advocates and volunteers. These successful efforts by the students in 2005 demonstrated that the state could be a venue for SFP change and became a stepping stone for CHART to advocate for a statewide SFP.

The third perspective on the origin of the NSPA, which is closely related to the non-governmental perspective, was the bubble-up thesis. This thesis was espoused by 24% of the interviewees and focuses on how broader societal and contextual changes, such as changing trends in tobacco use behavior, public demand for smoke-free environment and support of SFPs

and transitions in businesses and institutions in favor of smoke-free environment converged for the SFP change. For many years, norms, attitudes, and behaviors were changing within Tennessee in support of SFP and smoke-free environments gradually expanded (Figure 7), coming together in 2007 to convince policymakers in the state to develop the NSPA. By the early 2000s, leaders and some legislators in cities in the state, including major cities, such as Knoxville, Memphis, and Nashville, wanted the 1994 PYATA repealed to allow local regulation of smoking in restaurants, bars, and other privately owned businesses. For example, in 2004, at least three bills aimed at repealing preemption were introduced in the State Legislature, but defeated at the committee level.<sup>[234]</sup> Additionally, in 2002, the Coffee County Jail went smoke-free, and in 2005, the Metro Board of Health in Nashville decided to ban smoking on the grounds of all six Public Health Department properties.<sup>[235]</sup> Accordingly, these contextual changes helped to particularly convince legislators that it was time for the SFP change.

**Figure 7: Changes in Smoke-free Environments in Tennessee, 1995-2007**



Source: ImpactTeen Tobacco Chart Book, 2009<sup>[172]</sup>

In conclusion, although the interview data suggests that governmental activities (government-centric thesis) served as the dominant origin of the NSPA, it is important for one to recognize that with the Legislature’s persistent refusal to repeal preemption, the NSPA may not have emerged without the activities of nongovernmental actors (nongovernmental-centric thesis) and contextual changes (bubble-up thesis) that contributed to generate interest in a statewide SFP. What is missing from the interviews as well as the archival data, though, was the unequivocal absence of policy entrepreneur(s)<sup>[69-72]</sup> in the initiation of efforts to have a statewide SFP. Everything pertaining to the origin of the NSPA was centered on the state, organizations, and institutions.

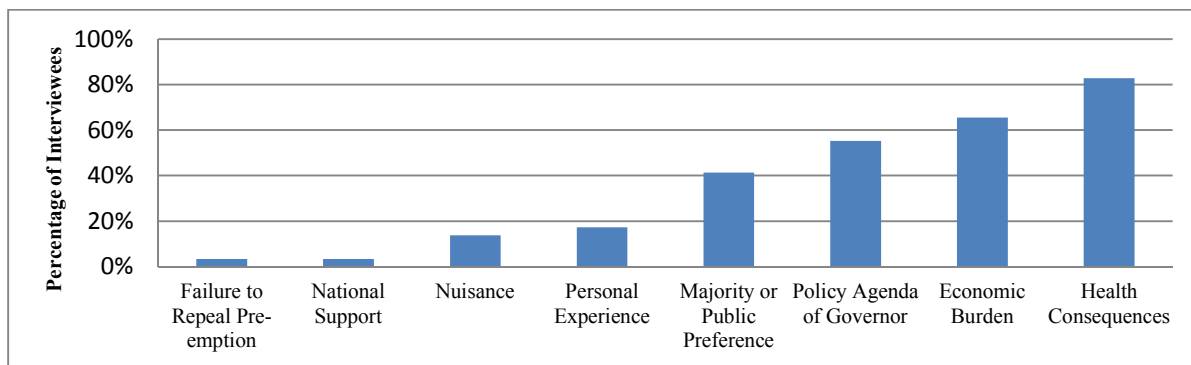
*Motivations for the Non-Smoker Protection Act*

Central to this issue is, after several years of policy resistance, what made the SFP become part of the state’s policy agenda? Eight major issues were discerned from the interviews, of which two were related to tobacco use (health consequences and economic burden or costs), four were policy/politically-related (policy agenda of governor, majority/public support, national

support, and failure to repeal preemption), and two were personal-related (personal experience and nuisance). Figure 8 shows that the most obvious motivating factors for the elevation of the SFP into the state’s policy agenda were the health consequences (83% of interviewees) and economic costs of tobacco use (66% of interviewees). These results demonstrated that stakeholders in the state had become conversant with health consequences and costs of tobacco use and SHS, and were prepared to collaborate to find policy solutions for it. This point was succinctly highlighted by Senator Jim Tracy (Republican, 16<sup>th</sup> District), that “Yes it [motivation for SFP] was health concerns. That’s where it [NSPA] came about- health concerns of the citizens of Tennessee” (Interview, October 15, 2010).

With respect to the issue of economic costs of tobacco use, Mr. Bart Perkey, Director of Community Health of the Metro Public Health Department in Nashville, from CHART said, Well, I think it [economic cost] is tremendous. I don’t have the specific data in front of me, but we know that a large proportion, maybe as much as half of the morbidity/mortality costs that we experience in the state is the result of either direct tobacco use or exposure to SHS. And, it [tobacco use] is the single largest contributor to mortality and morbidity in the state (Interview, October 8, 2010).

**Figure 8: Key Motivations for the development of the NSPA**

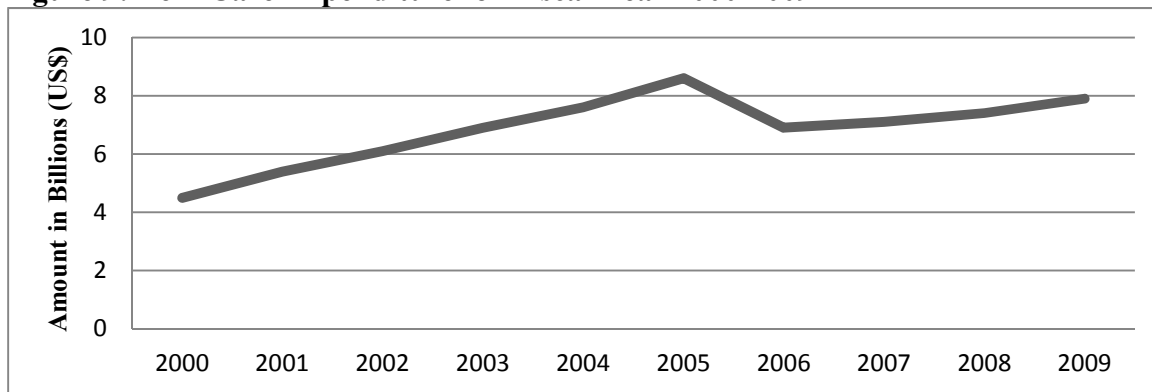


**Note:** Categories are not mutually exclusive.

The cost of TennCare, <sup>[249]</sup> the state Medicaid program created in 1994 that provides health care for 1.2 million low-income citizens in the state in 2011, was integral part of these concerns of economic implications of tobacco use (Figure 9). Because of the broad-based coverage of TennCare, policymakers in the state were particularly sensitive to the cost of health services and wanted ways to reduce the cost, of which the SFP was one of them. Thus, for Representative Bill Dun (Republican, 16<sup>th</sup> District),

Obviously with the state of Tennessee involved in the health through the TennCare program, the state has a compelling reason to have a healthy population. Obviously unhealthy practices [such as tobacco use] lead to costs for all tax payers” (Personal communication, October 20, 2010).

**Figure 9: TennCare Expenditure for Fiscal Year 2000-2009**



Source: TennCare Budget Presentation for Fiscal Year 2011<sup>[250]</sup>

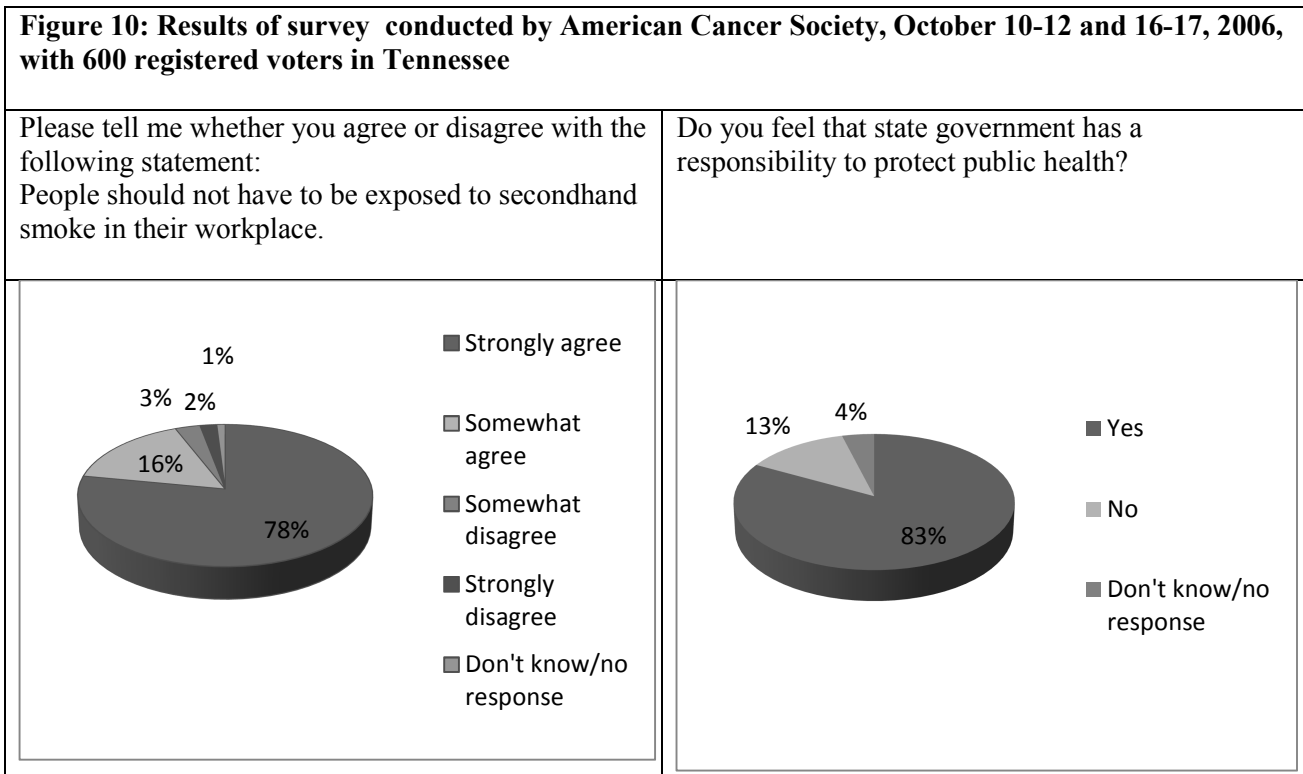
The major policy/political issue that served as motivation for the elevation of SFP to the state's policy agenda was that SFP was on policy agenda of the Governor (55% interviewees). On June 20, 2006, when Governor Bredesen was signing the smoke-free state buildings law in Tennessee, he announced the idea of expanding the SFP statewide. This announcement was unplanned and off-script and caught his own policy advisors off-guard. As the preeminent policy initiator,<sup>30,48</sup> his announcement reverberated through the tobacco policy subsystem, limiting opposition to and garnering support for the SFP. This announcement triggered year-long efforts for a SFP (*Tables 6 and 7*) and changed the debate from whether the state should have a SFP to when and type of SFP.

CHART perceived this announcement as a "window of opportunity" creating a favorable political environment for SFP change. Subsequently, CHART went to the media and made the assertion that the Governor intended to develop a statewide SFP. According to Robert Gowan, the Governor's senior policy advisor, this media assertion by CHART made the administration uncomfortable, especially in an election year as they were trying to avoid controversial issues. Still, administration decided to pursue the SFP because of the evidence from a survey that suggested overwhelming public support for SFP that CHART presented to them during a meeting in 2006 (Appendix I; Personal Communication, June 21, 2011). Additionally, to demonstrate the broad-based support for SFP in the state, CHART began building a single-purpose issue network, a loose broad-based smoke-free coalition that included non-traditional partners, such as the TRA the American Federation of Labor and Congress of Industrial Organizations' (AFL-CIO) chapter in Nashville, and the Tennessee Chamber of Commerce. (The TRA blended with the Tennessee Hotel and Lodging Association and became Tennessee Hospitality Association in December 27, 2009.) With the information on public support and a broader smoke-free coalition, Mr. Gowan and colleagues persuaded the Governor to make the NSPA part of his policy agenda. In this respect, this smoke-free coalition started to gain more influence from the agenda-setting phase of the NSPA.

The evidence of public support for SFP was revealed in an October 2006 survey (Appendix I, Figure 10 by the American Cancer Society, a member of CHART, which convinced policymakers that it was politically risky to oppose the SFP. This evidence of overwhelming public support for SFP was identified by 41% of the interviewees as a motivating factor for the elevation of SFP into the state's policy agenda. In this case, Mr. Gowan said,

They [CHART] sat down and the first thing they did was went through a poll. From political polling, we know you can sometimes design questions to get answers that you want. So, I read through pretty good detail of the polling they had done on this issue. It showed [SFP was] overwhelmingly popular. It was actually to a point where to get to that percentage that they had, if I remember it was around 78% of the population supported the state ban, you would have to have smokers who were in support of it [SFP]. So when I saw that many people felt strongly about the issue, I did obviously change my mind and told them I would talk to the Governor and see if there was any opportunity for us to support or introduce an [SFP] legislation (Interview, October 19, 2010).

Gowan was initially reluctant to push for a SFP because the governor’s advisors sought to shy away from any “controversial” issue in an election year. Gowan reported, “The biggest thing was the concern about the Governor’s re-election and desire that he not be placed in any controversy, that he [Governor] not be involved with greatly controversial issues during that re-election process” (Interview , October 19, 2010). However, the opinion polls as well as his own personal experience of high smoking prevalence in his family made Gowan to meet with the Governor to strengthen his commitment for a SFP.



Additionally, for Mr. Gowan, people in the administration were emboldened to pursue a statewide SFP because of the success in the development of smoke-free state buildings in 2006.<sup>[244]</sup> According to him, I mean, the main favorable condition [for making SFP part of the Governor’s policy agenda] was

similar bill [the smoke-free state buildings policy] that passed the year before [2006] that had not caused any great earthquakes. We were doing, just pushing it a bit further, applying it not to just state buildings, but to all public buildings (Interview, October 19, 2010). The mixture of the governor's commitment to an SFP, lobbying of CHART, public opinion polls in support of smokefree environments, personal experiences and successful expansion of smokefree environments through public policy brought the governor's policy advisors into efforts for a SFP. Thus, Mr. Perkey from CHART argued that the SFP ended up in the state's policy agenda as a result of

a combination of the Governor including it [SFP] in his legislative package plus the long term many year efforts of a number of health groups together that were able to finally persuade the Legislature that this was something that needed to be done (Interview , October 8, 2010).

For Senator Bill Ketrone (Republican, 13<sup>th</sup> District), the SFP became part of the state's policy agenda

Because that's [SFP] what the people wanted. And legislators would go out to their districts and talk to their voters and people say yeah. That's what we need to do. And we go into restaurants and they have smoke-free restaurants and the movement continues (Interview , March 10, 2011).

The issues of failure to repeal preemption in the 1994 PYATA and national support for SFP were other policy/political factors for agenda-setting for the NSPA. With respect to the former, while the failed efforts to repeal the preemption served as an origin for the NSPA, it simultaneously served as a motivating factor for people to change or shift venue and pursue SFP change at the state level. For, example, Ms. Shelley Courington, an executive of CHART said, So, you know, our thing was that we couldn't repeal the preemption. So, you know, you take it [SFP] on a statewide basis and retain all the control that we need to deal with it [SFP]. A lot of them [the health coalition members] responded to that message and we were able to move forward ( Interview, December 1, 2010).

With respect to the latter, Mr. Chiaramonte from CHART indicated that they were motivated to pursue a statewide SFP due to the support they received from the national partners, including American Cancer Society, American Heart Association, American Lung Association and Americans for Nonsmokers' Rights (Interview, October 14, 2010).

The most salient personal-related motivation for why the SFP became part of the state's policy agenda was personal experience (17%), which emanated from either the person has contracted a tobacco-induced disease or knows family members and/or other close relations who have had such diseases. For Ms. Mary Bryan, President of Children's Hospital Alliance Tennessee, from CHART, the SFP "was also important from a personal perspective because in 1997 I had [a disease related to tobacco use and SHS]" (Interview, November 24, 2010). According to Senator Herron,

Motivations for me personally, my father died when I was still in school of heart attack. He smoked three packs a day for many years until he had a heart attack and survived a few more years then heart gave out because of combination of factors because of all those years of smoking. My sister died of lung cancer and she started smoking when she was in

college and she became addicted, developed emphysema and died of lung cancer. And so those are the personal motivations and obviously, I know many people who have been stricken with heart attacks, heart disease emphysema other diseases and illnesses related to smoking and to second hand smoke (Interview, February 10, 2011).

For 14% of the interviewees, smoking is a simple nuisance. For Representative Dunn(Republican. 16<sup>th</sup> district),

I think also because of smoking was seen as nuisance and people would go out to have dinner and someone right next to them would be smoking and they would have to breathe in that smoke and whether there is a debate on how harmful secondhand smoke is but whether cause a total health problem. It does aggravate people who have allergies or you know have an aversion to smoke (Interview, October 20, 2010).

Mr. Dan Haskell, the lobbyist of TRA who became the lobbyist for THA after the merger, expressed similar sentiments when he said,

The focus on dining engagements would be less related to health and just the focus was a non-smoker. I am a lifetime non-smoker and was annoyed when my neighbors smoked while I was trying to eat (Interview, October 1, 2010).

In sum, mixture of health consequences and costs of tobacco use and policy/political and personal factors helped to elevate the SFP to Tennessee's policy agenda in 2007. While the obvious motivating factors were health and economic-related, it would have been difficult for the SFP to get onto the state's agenda if not complemented by the policy/political factors. This is due to the fact that policymakers in the state have been aware of the negative consequences of tobacco use (and SHS) for many years, but were unwilling or unable to develop SFP most likely because tobacco industry and allies (included the TRA before the NSPA) helped to kill the bills frequently. In this respect, the problem and policy components of the garbage can model have been known in policy circles for several years before the NSPA

### *Facilitators for the Non-Smoker Protection Act*

This sub-section delineates issues that facilitated the elevation of the SFP into the state's policy agenda (Figure10). The most important facilitator was the presence and strength of CHART, a change agent, with interest in tobacco control in Tennessee. National and local organizations have been involved in the issue of tobacco control in the state for years and due to the shared beliefs, they coalesced to form CHART in 1999 to focus attention on tobacco control in the state, including SFP. By 2006, when the SFP issue emerged, CHART had been working within the state for many years. CHART noticed that a "window of opportunity" for the SFP change had opened when the Governor announced the idea of expanding the SFP statewide and begun pressurizing policymakers for it. Thus, both Mr. Spain and Mr. Gowan credited CHART for helping to make SFP part of the Governor's legislative agenda for the 105<sup>th</sup> Legislative Session in 2007 (Interview: December 8, 2010; October 19, 2010). As a result of CHART's activities Representative Richard Floyd (Republican, 27<sup>th</sup> District) said,

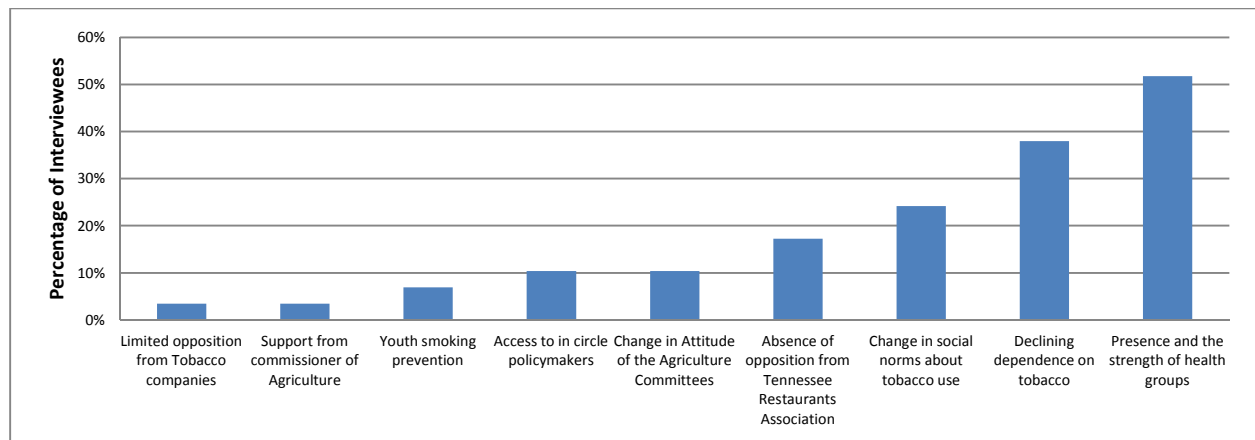
Certainly some health groups did a good job at educating our General Assembly [State Legislature] and they did a good job of getting the pertinent information out to the public



to where the general public began to put pressure, I think, on their legislators that said hey you can't hold us all hostages longer with tobacco lobbyists and several things. We want some action that is going to protect the public from a safety hazard (Interview, October 27, 2010).

In this respect, the issue would not have ended up in the state's policy agenda without the activities of CHART.

**Figure 11: Facilitators for Agenda-setting for NSPA**

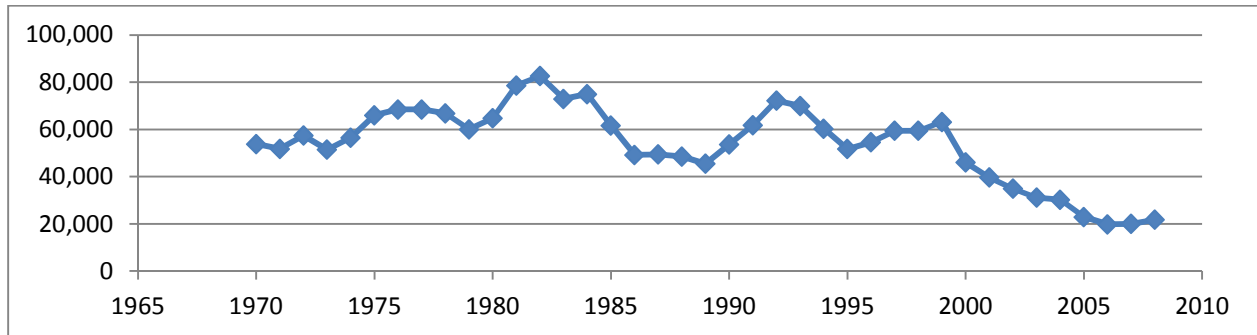


**Note:** Categories are not mutually exclusive

The socio-economic and political changes within Tennessee served as another facilitating factor. These changes included: 1) change in dependence on tobacco production (declining dependence of tobacco production); 2) normative change (changes in norms about tobacco use and control); 3) change in the attitude of policymakers (change in attitude of the Agriculture Committees of the Legislature about regulating tobacco use and support from the Commissioner of Department of Agriculture) ; and 4) change in the behavior of tobacco interests (absence of opposition from the TRA and limited opposition from tobacco companies). Figures 11a-c show all aspects of tobacco (including farm land, production, and revenue) have been declining in the state, diminishing economic and political importance of tobacco. As a result, by the mid-2000s, the concern of policy implications for tobacco in the state was not as powerful as it had historically been. The decrease of dependence on tobacco in Tennessee has been facilitated by issues, such as the federal buyout programs (Figure 6) and families switching to other crops. This point was articulated by Senator Ketron, who said,

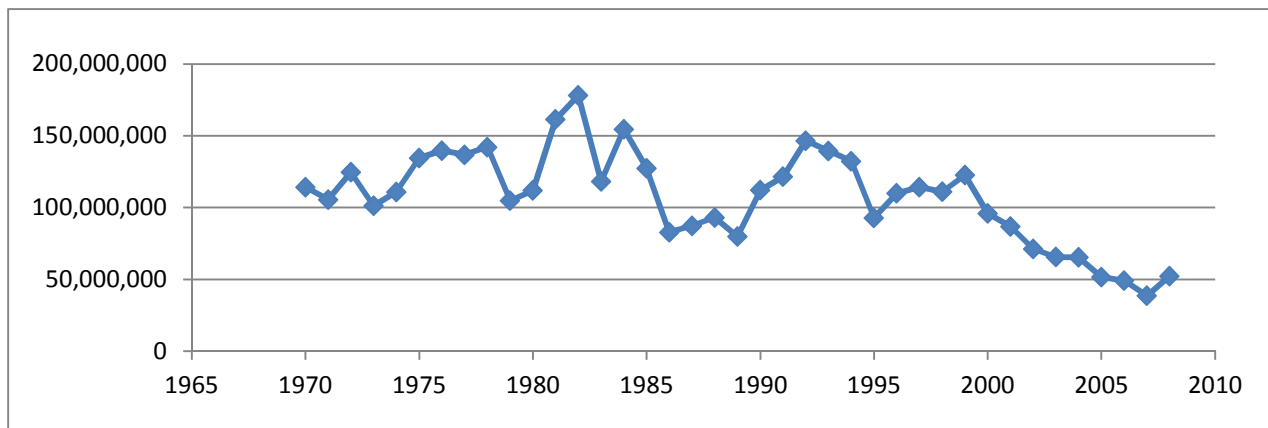
I don't think we are what we used to be in tobacco. Farmers found alternative crops to grow on their farms. That was a big concern when we were thinking of passing it [NSPA] (Interview, March 11, 2011).

**Figure 12a: Tobacco in Tennessee: Acres Harvested, 1970 -2010**



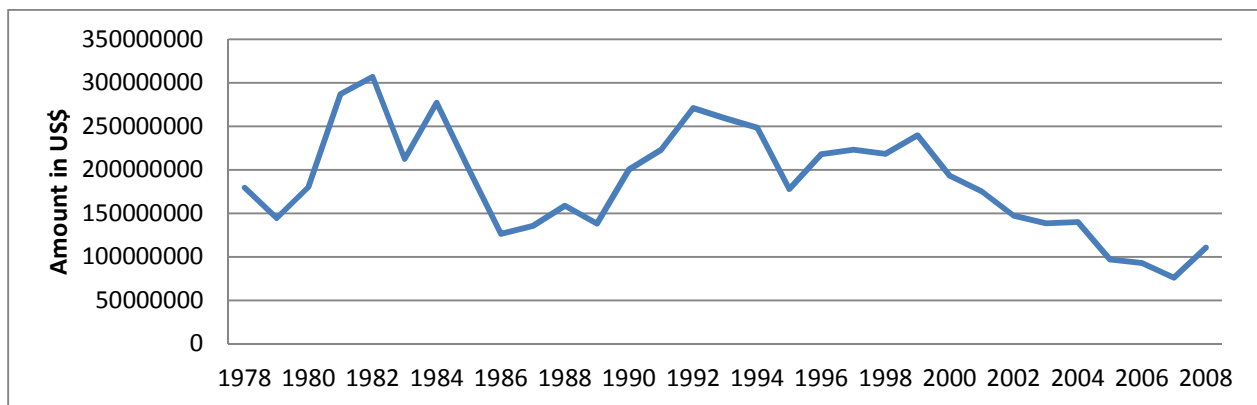
Sources: United States Department of Agriculture

**Figure 12b: Tobacco in Tennessee: Production in Pounds, 1970 -2010**



Sources: United States Department of Agriculture

**Figure 12c: Tobacco in Tennessee: Cash Receipts, 1978 -2010**



Sources: United States Department of Agriculture

Normative changes with respect to tobacco use have occurred in Tennessee. The era when people were accommodative to tobacco use and oblivious of the effects of tobacco use, (and SHS) continues to give way to people proactively demanding smoke-free environments, particular in places, such as restaurants and work places. These changes were noticed not only by CHART, but also by businesses and policymakers. In articulating this point, Representative Eddie Yokley (Democrat, 11<sup>th</sup> District) said,

There were so many factors that were negative that caused these issues to come up and I just think this all came together to cause this to happen. It could not have happened twenty years ago. The environment was totally different. But you know all the factors and you know each person making that decision has different factors that we are looking at probably a lot of different factors. But, I think, it's just that everything came together at once with what's going on in this country for this [NSPA] to be passed (Interview, November 5, 2010).

In addition to changes in societal norms, there have also been attitudinal and behavioral changes among policymakers toward tobacco use and control such that not only were they interested in curbing tobacco use and protecting nonsmokers from exposure to SHS but also switching farmers dependent on tobacco production to alternative sources of livelihood. As a result of these changes, the Agricultural Committee of the House, which has historically been antagonistic to tobacco control in the state, became receptive to some form of SFP. Ken Givens, Commissioner of Department of Agriculture helped the situation by indicating his support for SFP. This change in the position in favor of the SFP was primarily due to the administration's support for the SFP that put pressure on the legislators and strategic lobbying of the Commissioner of the Department of Agriculture by CHART (Interview, Ms. Mary Bryan, November 24, 2010). The change in the attitudes of the Agriculture Committee and the Department of Agriculture became a transitional point in the dominance of the tobacco iron triangle in the state. This change occurred without any crisis or focusing event to alter the dynamics of the policy subsystem and in turn facilitated the elevation of SFP into the state's policy agenda. Thus, for Representative Dunn,

The Agriculture Committee, a lot of its members still come from very rural areas, areas they grow tobacco. I do think that there is at least a couple of generations seems to have grown up knowing about Surgeon General report on the harms of tobacco smoking and so they are more inclined to say, you know we have to take the concerns of the health aspects (Interview, October 20, 2010 ).

Grassroots advocacy, media campaigns and lobbying by CHART complemented this phenomenon.

An important change in the attitudes and behaviors toward tobacco use in the state that facilitated the elevation of the SFP into the state's policy agenda was the U-turn in the position of TRA, which, until 2006 aligned with the tobacco industry to successfully resist efforts to enact such a policy. In fact, the TRA ended up being the staunchest supporter of 100% statewide SFP. The reasons for this U-turn included public support for SFP and demand for smoke-free environments, support of the Governor, framing the SFP as a workplace law and not a law for only restaurants, opportunity to shift the blame of smokers' complaints to policymakers, and CHART's reach out to the TRA. For Greg Adkins, the Chief Executive Officer of THA,

Well, the reason why our TRA Board ended up supporting the [SFP] legislation is

because there was a wave of support and we were hearing from a lot of restaurant owners, including members of the Board that their customers wanted some type of smoke-free establishment. And our Board was like, if it [SFP] was going to pass and everybody had to do it, then it would not hurt. This would actually help the restaurant. That was how it came about. It was a move from the public and customers were complaining that the smoke did not help. We were getting a lot of request to change the policy. By 2007 it was clear that smoking was becoming unpopular among restaurant users. And prior to that time our restaurant owners were concerned that it possibly ruined smokers business if they passed a law before 2007 (Interview, March 9, 2011).

In addition to this U-turn in TRA's position, the tobacco companies, while against any SFP, did not mobilize against it when the idea came up in 2006. In particular, Tennessee Farm Bureau completely decided to sit on the fence, having nothing to do with the SFP. Thus, for Senator Ketron, "I was quite surprised that there was less of opposition to push it [SFP] back from Farm Bureau, from Philip Morris and all the different companies, the employee lobbyists" (Interview, March 11, 2011).

CHART and the smoke-free coalition's effort to have the SFP as part of the state's policy agenda was aided by access to inner-circle policymakers. Particularly, the governor's policy advisors had personal relationships with CHART representatives, making them more sympathetic and receptive to their arguments. Moreover, because legislators, such as Senator Herron and Representative Gary Odom (Democrat, 55<sup>th</sup> District), the House Majority Leader, were personally interested in SFPs, they became allies of CHART and were willing to be champions for the SFP.<sup>[251]</sup> The relationships with these policymakers not only helped CHART to gain access, but also made these policymakers advocates for the SFP, thereby elevating the issue onto the state's policy agenda. On this issue, Ms. Bryan from CHART said,

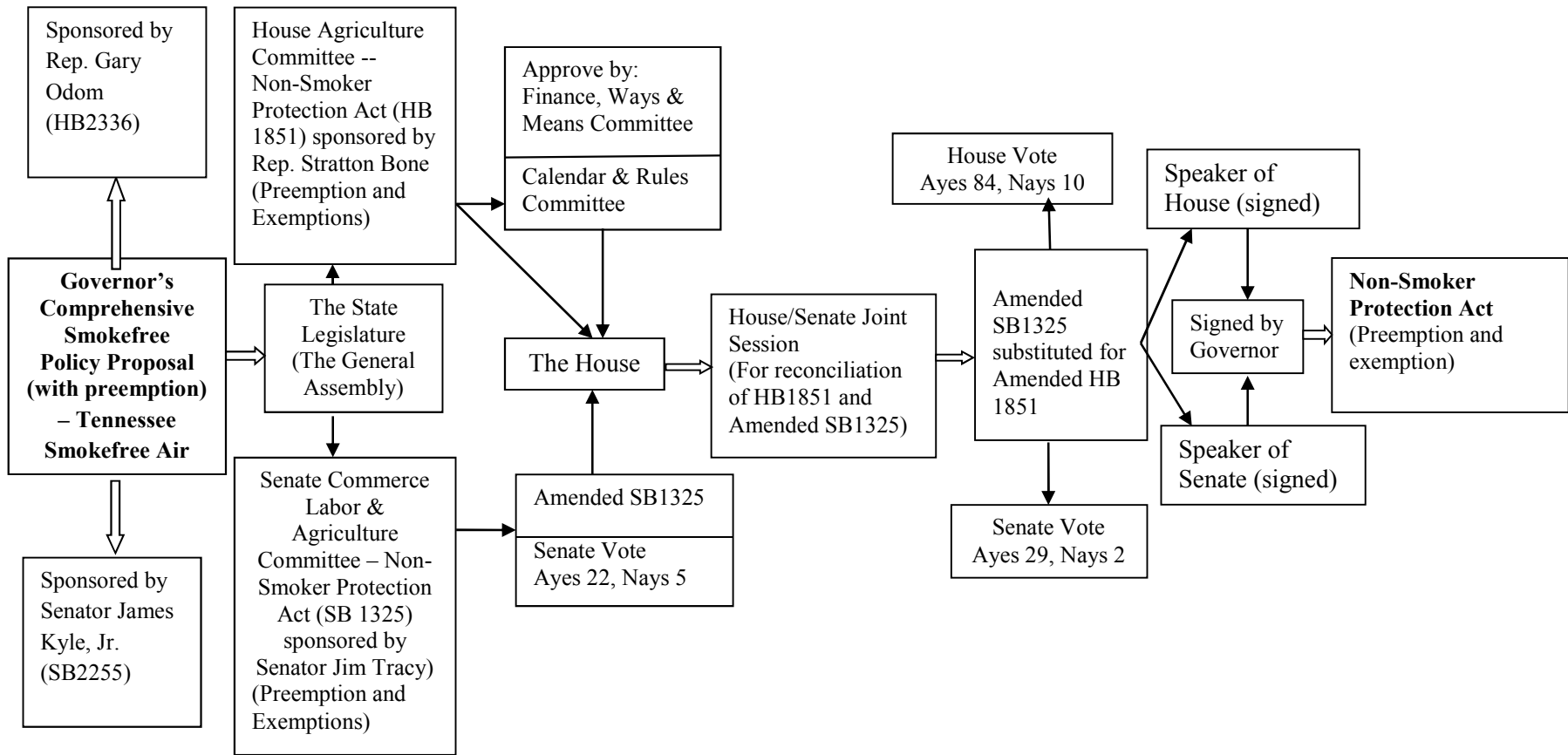
How it [SFP] happened was those three organizations [American Cancer Society, American Heart Association, and American Lung Association] forming CHART. Then CHART pulling in the other groups and raising enough money to conduct surveys, to hire lobbyists, to hire campaign coordinators. Then going and talking to legislators who were interested in it. First, [Representatives] Diane Black and Rosalind Kurita were nurses. So they were very interested. [Senator] Roy Herron is not a medical professional but he is really interested in issues like this. [Mr.] Ken Givens, first he was in the legislature and then became Commissioner of Agriculture. When he was in the legislature he was the Chair of the Agriculture Committee of the House. Although he was certainly very concerned about making sure that tobacco farmers were protected basically, he has a very strong dedication to health, to public health policy. He was married to a school nurse, who was the director of Coordinated School Health in the education of state. It was done strategically. We were also very blessed that there were a lot of people in key positions who were open to hearing us (Interview, November 24, 2010).

Another facilitator was the issue of youth smoking prevention. The youth smoking issue, the earliest policy concern in the state, continued to play a role in the SFP agenda-setting in spite of the 1994 PYATA and the 1995 CACIA. In this case, Ms. Spain pointed out that one of the key rationales for the emergence of CHART and the pursuit of the SFP was to help stop "young people from starting to smoke" (Interview, February 10, 2011). In this respect, there was strong belief that a more comprehensive and encompassing SFP than the 1994 PYATA and 1995

CACIA will discourage youth from smoking initiation. For Mr. Gowan, SFP was “one of the silver bullets to reduce high rate of teen smoking [because] besides smoking rates in general, Tennessee also has a high teen rate of smoking” (Interview, October 19, 2010).

In conclusion, in 2006 SFP emerged as an important policy issue, and entered the state’s policy agenda by February 2007. This elevation of the SFP into the state’s agenda was facilitated by factors, such as the presence of a health advocacy coalition (CHART), changes in norms as well as attitudes and behaviors towards tobacco and tobacco use, the health groups’ access to inner-circle policymakers and continued concern of youth smoking. These issues complemented each other to facilitate agenda-setting for the SFP.

**Figure 13: The Legislative Development Process**



<b>Table 7: Competing Bills for Developing Tennessee Smokefree Policy</b>				
	<b>CHART</b> Tennessee Smokefree Air Law	<b>SB2255/HB2336</b> Smoke Free Tennessee Act (Governor’s Bill) <sup>1</sup>	<b>S1325/HB1851</b> Legislative Leadership Bill Non-Smoker Protection Act <sup>2</sup>	<b>Amended SB1325</b> Non-Smoker Protection Act As Enacted <sup>3</sup>
<b>Exemptions</b>				
Workplaces	Facilities for medical or scientific research on tobacco products	Facilities for medical or scientific research on tobacco products	Designated areas with ventilation	Private businesses with 3 or fewer employees
Semi-enclosed public spaces*	Smokefree	Smokefree	Exempt	Exempt
Age-restricted venues (i.e., bars)	Smokefree	Smokefree	Exempt	Exempt
Private clubs	Exempt if no employees and the purpose is not to avoid compliance	Exempt if no employees and the purpose is not to avoid compliance	Exempt	Exempt if no employees and the purpose is not to avoid compliance
Religious ceremonies with smoking rituals	Exempt	Exempt	Smokefree	Smokefree
Private residences (not used for public purposes)	Exempt	Exempt	Exempt	Exempt
Private motor vehicle (not used for public purposes)	Exempt	Exempt	Exempt	Exempt
Nursing homes	Private or semiprivate rooms with no more than 1 occupant exempt “provided smoke does not infiltrate smokefree areas”	Private or semiprivate rooms with no more than 1 occupant exempt “provided smoke does not infiltrate smokefree areas”	No provision	Exempt
Commercial vehicles (not used for public purposes)	Exempt	Exempt	Exempt	Exempt
Tobacco venues (Retail stores, tobacco premises, cigar bars)	Smokefree	Smokefree	Exempt	Exempt
Hotel and motel rooms	Up to 25% of rooms can be smoking	Up to 25% of rooms can be smoking	Unrestricted number of designated smoking rooms	Up to 25% of rooms can be smoking
<b>Outdoor</b>	Smokefree within 20 feet of entrance or window	Smokefree within 20 feet of entrance or window	No restrictions	No restrictions

<b>Compliance</b>				
Signage (“no smoking” symbol)	Yes	Yes	Yes	Yes
“No smoking” sign at the entrance of places where smoking is prohibited	Yes	Yes	Yes	Yes
Removal of ashtrays from non-smoking areas	Yes	Yes	Yes	No
No retaliation against employees for reporting violations	Yes	Yes	Yes	No
Right of employees to smokefree workplaces	Yes	Yes	No	No
<b>Penalties</b>				
<b>Individuals</b>				
Violation	Civil offense (misdemeanor)	Civil offense	Civil offense	Civil offense
Fine	Amount not specified (collected fines earmarked to support enforcement)	Not more than \$50	Not less than \$50 and not more than \$300	Not more than \$50
<b>Businesses</b>				
Violation	Civil	Civil or criminal offense	Civil offense	Civil offense
Fine	Not stipulated	Not more than \$500	None	Written warning up to \$500
Revocation of permit or license for violation	Yes	Yes	No	No
<b>Enforcement</b>				
<b>Non-government</b>				
Owner of facility or establishment	Yes	Yes	Yes	Yes
Employer of a smoke-free facility or establishment	Yes	Yes	Yes	Yes
Legal actions by employees or private citizens to enforce Act	Yes	Yes	No	No
Individuals can lodge complaints of violation with Department of Health and Department of Labor and Workforce Development	Not indicated	Yes	No	Yes
<b>Government</b>				
Injunctive relief by Commissioner of Department of Health and Department of Labor and Workforce Development for failure to comply with Act	Yes	Yes	No	No
Any law enforcement officer can enforce Act	No	No	Yes	No



Department of Health	Yes	Yes	No	Yes
Department of Labor and Workforce Development	Not indicated	Yes	No	Yes
Mandated inspection of facilities and establishments	Yes	Yes	No	Yes
<b>Implementation</b>				
Department of Health and Department of Labor and Workforce Development to promulgate rules	Not specified	Yes	No	Yes
<b>Preemption</b>				
Repeal state preemption	Yes	No	No	No
<b>Education</b>				
Notice Business	Yes	Yes	No	Yes
Continuing program to explain and clarify the Act	Yes	Yes	No	Yes
Employers required to inform employees about the Act	Yes	Yes	No	No
* Non-enclosed areas of public places, including: 1) Open air patios, porches or decks; 2) Any area enclosed by garage type doors on one (1) or more sides when all such doors are completely open; and 3) Any area enclosed by tents or awnings with removable sides or vents when all such sides or vents are completely removed or open. Sources: Tennessee Legislature; Campaign for a Healthy and Responsible Tennessee (CHART) <sup>4</sup>				

## DEVELOPMENT OF THE NON-SMOKER PROTECTION ACT: LEGISLATIVE DEVELOPMENT

The public policymaking process is dynamic and interdependent,<sup>[26, 27, 54]</sup> which means that factors that made an issue gain policy salience and policymakers' attention, agenda-setting, could also play a role in the actual development of a legislation. In this respect, there were several overlapping issues in the development of the NSPA -- events prior to February 2007 (agenda-setting) and those between February and June 2007 (legislative development) and afterwards (implementation). With some of the issues that helped elevate the SFP into the state's policy agenda also playing role(s) in the legislative development, there was a thin line between the agenda-setting and legislative development for the NSPA, even though the differences in the timing were clear.

The process towards developing the NSPA (**Table 6 and 7**; Figure 13) started when Governor Bredesen made an SFP a priority for the 105<sup>th</sup> Legislative Session in February 2007. As a result, a weaker SFP bill, the NSPA, was sponsored by Senator Jim Tracy (Republican) in the Senate (SB1325)<sup>5</sup> on February 8, 2007 and by Rep. Stratton Bone (Democrat), Chairman of the House Agriculture Committee, in the House (HB1851)<sup>6</sup> on February 15, 2007 (**Tables 6 and 7**). Meanwhile, Rep. Gary Odom (Democrat) and Senator James Kyle, Jr. (Democrat) respectively sponsored a stronger SFP bill, Tennessee Smokefree Air Law (TSAL; Appendix O), which the administration and the STC negotiated in the House (HB2336)<sup>7</sup> and Senate (SB2255) on February 15 and 16, 2007.

The NSPA (**Table 7**), which was weaker than the TSAL in every aspect: exemptions, compliance, penalties, enforcement and education; became the basis for the legislative debates and negotiations. The NSPA received bipartisan support because it was considered among pro-health legislators that it was the only way to get a SFP bill out of the agriculture committees. Thus, although legislators such as Senator Herron (D), a member of the STC,<sup>251</sup> considered the original Senate bill (SB1325) as "the tobacco industry bill," pro-health legislators supported the weaker bill to get some kind of SFP through the legislature (Interview, February 10, 2011). Although the administration's bill was jettisoned early in the legislative process, the governor's commitment forced the legislature to take up the SFP issue and helped to shape the final legislation.

After the NSPA were filed in February 2007, efforts to amend them in Senate and House agriculture committees were defeated. However, after the Senate Commerce, Labor and Agriculture Committee unanimously passed the original SB1325 on May 15, 2007, eight amendments to weaken or strengthen the bill were introduced on the floor, of which only one by Senator Tim Burchett (Republican) was adopted<sup>8</sup> on May 21, 2007. (Senator Burchett sponsored the bill in 2005 that granted higher educational institutions the authority to develop SFPs without reporting to the legislature; Appendix F.) The amended SB1325 watered-down the coverage of the NSPA from "*all public places and places of employment*" to "*all enclosed public places*" and granted exemptions to private businesses with three or fewer employees, private clubs with no employees or set up to avoid compliance, and nursing homes. At the same time the Senate

improved the enforcement provisions, including a fine of up to \$500 for businesses violators, assigned power of implementation to the Department of Health and Department of Labor and Workforce Development and required notices and continuing education about the Act. Subsequently, the Senate passed the amended SB1325 by overwhelming majority on May 24, 2007 and transmitted it to the House (**Tables 6; Figure 13**). On May 30, 2007, with the argument to protect nonsmokers from exposure to SHS prevailing during the legislative debates (Legislative Records, Rep. Johnny Shaw (Democrat)), the House Agriculture Committee; the Finance, Ways and Means Committee and the Calendar and Rules Committee approved the HB1851 through voice vote, which was used in negotiations with the Senate.

After a lengthy debate in the House on May 31, 2007, the Senate amended SB1325, which was sponsored by Rep. Bone,<sup>9</sup> was substituted for HB1851 and the House (Ayes 84, Nays 10) and Senate (29 Ayes, 2 Nays) overwhelmingly voted for it (**Table 6; Figure 13**). On June 4 and 6, 2007, the speaker of the Senate (Lt. Governor Ron Ramsey) and the House (Representative Jimmy Naifeh, Democrat, 81<sup>st</sup> District) respectively signed the amended NSPA. On June 11, 2007, Governor Bredesen signed the NSPA, which became effective on October 1, 2007.

### ***The Role of Stakeholders in the Development of the Non-Smoker Protection Act***

Table 2 shows that seven different stakeholders were interviewed for the project (the tobacco companies declined). For the purpose of understanding events between February and June 2007, this section categorizes these stakeholders as policymakers (the administration, which includes government agencies and the Legislators), smoke-free coalition (CHART, TRA, AFL-CIO Chapter in Nashville and others), tobacco interests (tobacco companies and Farm Bureau), media and the general public.

#### **Policymakers**

Policymakers in tobacco control in the state involve the administration, which include the governor and staff as well as the bureaucratic agencies, such as the Department of Health, Department of Agriculture and the Legislature. Although in a pluralist interest group environment these policymakers interact with competing societal actors or policy networks, they are the ultimate decision-makers and the activities of societal actors or networks are meant to sway them in one way or the other in the policymaking process.

#### ***The Administration***

As the most preminent policy initiator,<sup>[30, 48]</sup> Governor Bredesen's unexpected announcement in June 2006 of the idea of expanding the SFP statewide created the "window of opportunity" that elevated SFP into the state's policy agenda, and subsequently the development of the NSPA. During the legislative development phase, the administration became committed to the issue, working with the STC and the Department of Health to support the development of the NSPA. Although the bill debated in the House and Senate, NSPA, was not the bill proposed by the Governor. The administration supported TSAL and this support for a SFP helped to create an atmosphere that made resistance to SFP very difficult. On behalf of ex-representative Ben

West (Democrat), a legislative staffer put in an email response to request for interview, it became like a “political suicide” to oppose the SFP bill because of the "wave" of support for it (Personal Communication, October 17, 2010). For this reason, 59% of the interviewees indicated that continuous support and commitment to an SFP for the state was the major and critical role of the administration in the legislative development phase. This support was very critical to the development of the NSPA because as Mr. Perkey from CHART put it.

You know I, of course, was not pretty involved in discussions at that level [legislative development], but just the fact that the Governor made it the key important part of his legislative agenda, I think, it was the single most important factor leading to the passage of this Act [NSPA]. This is true of just any of piece legislation if the Governor is supporting it. Not that the Governor cannot be defeated, he can. But, typically if there is a combination of the leadership of the Governor’s office coupled with, you know, other coalitions who are strongly supporting, you can succeed. So, I think the Governor’s office was critical [for the development of the NSPA] (Interview, October 8, 2010).

Concurring with this point, Ms. Courington said,

Well, you know, Governor Bredesen’s support was critical to move this [SFP] forward. I think eventually some smoke-free law would have passed, but without his involvement and his staff being able to spend an enormous amount of time on this issue, we would not have been able to move forward...You know, having the Governor's support for this issue, was a huge step to make something happen (Interview, December 1, 2010).

For Representative Dunn

Well, [the main reason for the development of the NSPA was] the Governor coming out in support of the law. If the Governor would have come out against it, I think, some or more legislators would have been hesitant to go forward. This is because the Governor does have certain amount of power and when he speaks people listen (Interview, October 20, 2010).

The close monitoring of the legislative process and intervening where necessary (10% of interviewees) were additional roles the administration played in the development of the NSPA. Mr. Spain described his role in these monitoring activities as,

I was much relied on [for the development of the NSPA] by the Governor's office. I reported to Robert Gowan who was the senior advisor for policy legislation and so I was primarily responsible for that bill, for following it on a day to day basis, for being part of all negotiations as they progressed, for talking to few members of [legislative] committees and to all the members of the House and Senate, encouraging them to vote for it [the NSPA] and to like you know, if we were opposed to amendments to try to preserve the intent of the bill (Interview, December 8, 2010).

Integral part of these monitoring activities was persuading the Legislature of the need for the SFP. According to Mr. Perkey from CHART,

I think what happened basically was that because of the Governor's interest in this legislation [SFP], he was able to persuade the leadership in the House Agriculture

Committee, agreeing with the Governor that this kind of legislation was needed and would not be detrimental to the interest of the tobacco farmers. So, once you had a leadership [for the NSPA] in the Governor, you had them [House Agriculture Committee] on your side (Interview, October 8, 2010).

In essence, while Governor Bredesen's inclusion of the SFP, the TSAL, in his legislative package ensured a place for it in the state's policy agenda, subsequent commitment and support for it ensured the development of the NSPA. As a result, two-thirds of the interviewees (69%) indicated that the Governor and staff played strong or very strong influential role in the development of the NSPA (Figure 14).

Integral to the administration's activities toward the development of the NSPA was the role of the Department of Health, which primarily supported the SFP (41% of interviewees). Additionally, as a state agency, the Department of Health provided information on tobacco use and control for the legislature and officials (28% of interviewees) and the Commissioner of Health testified during the legislative debates in the committees (14% of interviewees). As a health-oriented agency, the Department of Health conducted media advocacy on the health effects of tobacco use and exposure to SHS in support of the SFP (10% of interviewees), lobbied the Legislature for it (7% of interviewees) and educated the general public about the need for SFP (7% of interviewees). In this respect, Representative Dunn said,

The Department [of Health] had a major role in this effort [development of the NSPA] and then the other thing, is of course, the Commissioner of Health [Susan Cooper], play a key role in making you know, speeches, press conferences etc., blending the weight of that office towards this effort [development of the NSPA] (Interview, October 20, 2010).

For Mr. Perkey from CHART,

The Department of Health had for many years through its own efforts with its own staff [promoted SFP]. Therefore, the county health departments engage in educational and health promotion efforts with staff who works with local people who were concerned about tobacco and its effects on the public health. ... And so through those efforts they had gone a long way towards educating people about the importance of enacting legislation to protect people from secondhand smoke (Interview, October 8, 2010).

The key person in the midst of the legislative development was the Commissioner of Health. In this respect, Mr. Chiamonte from CHART said,

Certainly the Health Department [was involved], specifically the Commissioner. She was always in front of [the legislative committees]. She always presented herself to various committees to press somebody on smoke-free. She was always at it and she did an outstanding job to work this legislation to the end (Interview, October 14, 2010).

Thus, the Department of Health was an active participant in the development of the NSPA.

### *Legislature*

As noted earlier, while the administration's commitment and support for the SFP stymied legislators' opposition, it was the role of the sponsors of the SFP in the Legislature that helped to initiate the development of the NSPA. In Tennessee, tobacco policies (including tobacco

control) usually originated from the agricultural committees, which was difficult because a tobacco iron triangle dominated the policy domain. For example, Ms. Courington from CHART indicated that all their efforts to have an SFP over the past several years basically died at the committee level (Interview, December 1, 2010). However, due to factors, such as pressure on the Legislature resulting from the administration's commitment to SFP, CHART's access to legislators, and personal concerns over the health consequences and costs of tobacco use in the state, the committees decided to allow SFP bills to be debated. This decision made it obvious to observers that the 105<sup>th</sup> Legislative Session was definitely going to end with a smoke-free law, which it did. The issue then became not if, but what kind of SFP was Tennessee going to have. It was during this legislative debate that the NSPA was amended on the Senate floor (Figure 13; Table 7) to include more exemptions, but strengthen enforcement and educational components. Regardless, the interviews and the legislative debates suggest that the NSPA faced its fiercest resistance during this phase.

In order to develop the NSPA, legislators took lessons from states across the country. In this regard, Representative Floyd said,

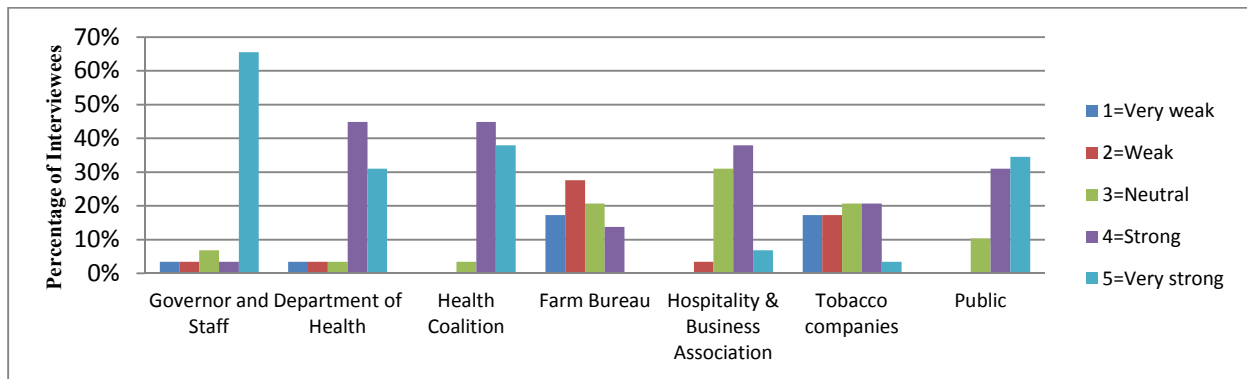
Several of us [legislators] researched what other states were doing and how they accomplished their smoke-free environment. We did take into consideration some of the best practice from other legislation across the country and which gave us some idea how to begin the process. You always like to look at how other people have been successful in their states and all states are different and you don't want to mimic somebody, but it is good to be able to look back and see what the success rate was and then how they accomplished their goals for the smoke-free environment and what the best practice was and how they went about getting it done. And so there was some taking into consideration what other states have done and how they accomplished smoke-free environments (Interview, October 27, 2010).

On this issue, Senator Ketron said,

Oh yeah, we always do [borrow from other states]. We have our Legal Department on any bill we bring forward. We get them to check whether any other state has passed some legislation. I mean, [why] reinvent the wheel when you can borrow from and look at the problems they [other states] had from passing it [SFP]. How many times they had to change or tweak the bill as far as language was concerned. So you learn from what those other states have done and make ours better. We all do that you know. Many states have come and borrowed our language and bill and we have done the same thing (Interview, March 11, 2011).

In effect, after years of SFP resistance, political and societal forces made the Legislature to decide to tackle the SFP issue, proposing the NSPA and borrowing from states, such as Georgia to develop the language of the bill.

**Figure 14: Influence of Stakeholders in the Development of the Non-Smoker Protection Act**



**Note:** Categories mutually exclusive.

### The Smoke-Free Tennessee Coalition (STC)

This was a single-purpose issue network,<sup>[126]</sup> a loose coalition of health groups, business, labor, and government agencies which was led by CHART. This coalition aligned with the administration in the efforts to secure a statewide SFP.<sup>[251, 259]</sup> Particularly, the STC negotiated a relatively strong SFP, the TSAL, with the administration (**Tables 6 and 7; Figure 13; Appendix Q**), which influenced the development of the NSPA. The active members in this smoke-free coalition in the development of the NSPA, though, were CHART and TRA.

### *Campaign for a Healthy and Responsible Tennessee (CHART)*

As of July 2011, CHART was made up of over 50 partner organizations and had eight board members (each representing a member organization) and a staff. CHART depended on donations from member organizations and other well-wishers as well as grants to support its activities. The presence and strength of CHART, an advocacy coalition<sup>[66, 115, 120]</sup> of health groups in the state, was one of the major reasons why SFP moved from the public to the policy agenda. Until the SFP entered the state's policy agenda, CHART pursued policy change within the localities primarily alone, and oftentimes in conflict with TRA and other tobacco interests, such as tobacco companies. With CHART, a network<sup>[121]</sup> of tobacco control interest emerged not only to challenge the dominance of the tobacco iron triangle in the state but also an advocate for policy change. In 2006 when the SFP issue came up, CHART decided to broaden the coalition in support of SFP to include non-traditional partners, changing the dynamics of the politics surrounding the SFP in the state. In particular, for TRA to join this STC, CHART had to give up opposition to the tobacco policy preemption that has been in existence since the enactment of the 1994 PYATA because TRA considered it as a “deal breaker” (Ms. Shelley Courington Interview, December 1, 2010). In this respect, Ms. Mitchell from CHART who was involved in the negotiations of the administration's SFP proposal, described the broadening of the smoke-free coalition as,

Tennessee Restaurant Association endorsed it [SFP] early on and they [TRA] wanted to see all the places covered [100% SFP]. They [TRA] did not want it piecemeal. They [TRA] wanted to achieve consistency from county to county to see that 100% places are smoke-free. We [CHART] also brought in labor because they [labor] wanted to see

workplaces and workers protected from secondhand smoke. And then we also sought the Chamber of Commerce and other businesses support as well because they had concerns of health care, and frankly concerns that businesses could be sued exposing their workers to smoke environments (Interview, September 24, 2010).

While the STC collaborated well during the agenda-setting phase in negotiating a comprehensive SFP bill with the administration, SB2255/HB2336 based on a proposal by CHART (Table 6 and 7), tensions emerged in the middle of the legislative development when CHART accepted exemptions for private businesses patronized by people 21 years and older and those with three or fewer employees, which was introduced in the amended HB1851. This support for these two exemptions was against TRA's staunch support for 100% SFP, creating antagonistic relationships in the process. As a result, TRA started to oppose the amended SFP bill. Describing the source of this division and tension between CHART and TRA within the STC, Ms. Mitchell said,

At this point [in the middle of the legislation development], we have the bill on the floor and we know that we do not have support from both the houses [of the Legislature] for comprehensive [SFP] bill. We knew we had to compromise on a couple of exemptions which are important to the legislation; one is the bar and the other is small businesses. Tennessee was unique in that in Tennessee we don't license bars. So everything in Tennessee is a restaurant. So we couldn't say that everyone who has a business that has a bar. We could not say look at alcohol percentage versus the struts sale because of the way our law was written, which required restaurants to say that they sell the least amount of struts. At this point, there was a lot of negotiation with us in the health coalition back in the Governor's office, with tobacco industry, with the Tennessee Chamber of Commerce. There was a closed door meeting on how we could exclude certain things that we had to do in order to pass the law. At this point, we think where we came from, the health groups, we very much identified that we could not get a 100% comprehensive law. We also had come so far that we knew we were going to cover 90% of Tennesseans with this law. To see progress made we did what we had to, make a compromise and that's the point where the Tennessee Restaurant Association and the health groups went in different directions (Interview, September 24, 2010).

While CHART generally perceived the exemptions as a good legislative compromise, TRA perceived them as unfair to some of its members. In spite of the TRA's position, some individual members of the TRA (mostly bar owners) were in favor of such exemptions (Interview, Ms. Chastity Mitchell, September 24, 2010). The tension, however, was not about whether Tennessee should have an SFP or not, rather the type of SFP. In this respect, while the members of the smoke-free coalition shared a common goal, SFP for Tennessee, they disagreed over the content in the middle of the legislative development. TRA's opposition to the SFP bill because of the exemptions was, however, abandoned towards the end of the legislative development because of the administration's continuous support for it. More importantly, this tension within the smoke-free coalition did not spillover into tension with the administration, allowing them to work collaboratively for the SFP. As Julie Griffin, Assistant Director of Government Affairs of Tennessee Medical Association (TMA), from CHART pointed out,

The relationship [between CHART and the Administration] was truly a collaborative effort. They [CHART] couldn't have done it without the administration. And the



administration would have had a much harder time [without CHART] (Interview, November 23, 2010).

CHART played several roles in the legislative development process, including grassroots mobilization to enhance awareness among legislators' constituents about the SFP (38%), public awareness campaigns (31%), direct lobbying of legislators (21%), gathering of information on tobacco use and control to inject urgency into the legislative process (21%), conducting media advocacy (17%), direct pressure on legislators through public rallies (14%), helping to draft legislation (10%), presenting alternative ideas (7%) and testifying in support of the SFP using students, people with diseases related to tobacco use and SHS and experts (7%). The mobilization of grassroots support for the SFP was the most salient of these activities, which in turn put constituent pressure on the legislators. In this regard, Representative Floyd said,

Certainly some health groups did a good job at educating our General Assembly and they did a good job of getting the pertinent information out to the public to where the general public began to put pressure, I think, on their legislators that said, hey you can't hold us all hostages longer with tobacco lobbyists and several things. We want some action that is going to protect the public from a safety hazard. You know, number of chemicals that are in the smoke from a cigarette are carcinogenic. I mean you know it is just the number of chemicals in cigarette smoke. People began to be made aware of that [health hazards of exposure to secondhand smoke] and so they [people] began to put pressure on their legislators. We [people] want some action and we have more people who don't want to smoke on our face and people who wants to smoke that is a prerogative but I don't want anyone to blow [smoke] at my face and my kid's face. And so those [health] groups did a good job at getting the pertinent information out to the public (Interview, October 27, 2010).

The mechanisms CHART used for this grassroots mobilization included developing online toolkits and talking points for members and volunteers to contact legislators; emailing members and volunteers to send out emails, write letters, or call their legislators; writing newspaper articles and speaking to news outlets to keep the issue in the media; participating in Town Hall meetings; and rallying in support of SFP in Nashville.<sup>[251, 259]</sup> While these activities helped to mobilize the grassroots support for the SFP, they had impact on the legislative development process because legislators paid attention to them. For Lt. Governor Ramsey,

Well, they [CHART] had a lot of members. They could write letters, send e-mails, make phone calls to legislators, encourage them [their members] to do this [contact their legislators].... So it was helpful that they were involved [in the legislative development] (Interview, March 10, 2010).

In agreement with this point, Senator Tracy said, "the health groups notified the people that you know in your district. They [CHART] notified [the people] through the media and through e-mails and so forth" (Interview, October 15, 2010). Even one of the staunchest opponents of the SFP in the legislative process, Representative Mike Bell (Republican, 23<sup>rd</sup> District), acknowledged, "they [CHART] would go around to pressure legislators to vote a certain way and to let them [legislators] know that most of their constituents wanted them [legislators] to vote a certain way" (Interview, October 20, 2010). For Mr. Spain, CHART was "instrumental in providing grassroots support and keeping pressure on members of the Legislature to move it [SFP] forward" (Interview, December 8, 2010). In effect, CHART used bottom-up strategies to

put constituent pressure on the legislators and top-down strategies to maneuver the political process in Nashville, the state capital. As a result, 79% of the interviewees indicated that CHART had strong or very strong influence in the legislative development (Figure 14).

Amplifying this point, Representative Bell said,

Yes, I believe it [activities of the health coalition] did [influence the development of the NSPA]. They [health coalition] were very effective lobbying group. At least, there were several of them [health coalition]. I can't recall all their names [members of the health coalition] right now, but I know American Cancer Society and in fact there was coalition of health groups called CHART. I don't know what the acronym stands for, but it [CHART] was a coalition with different health groups and they were very effective in lobbying for this [SFP] bill. And I do believe that their influence helped make this [SFP] a priority in the state (Interview, October 20, 2010).

In the end, people from CHART regarded the NSPA as the by-product of many years of their grassroots activities (Interview, Ms. Julie Griffin, November 23, 2010).

#### *Tennessee Restaurant Association (TRA; now Tennessee Hospitality Association; THA)*

While CHART led the activities of the smoke-free coalition, it was the involvement of hospitality industry and business led by the TRA in this STC that immensely shaped the opinion of legislators. In fact, one of the dominant rationales for legislators' support for the SFP was TRA's support for it. The TRA's U-turn in the agenda-setting phase of the SFP to become a strong supporter for 100% SFP continued through the legislative development phase even as tensions emerged with CHART regarding the exemptions.

For years, the TRA, which in 2006 represented both restaurants and bars in Tennessee, aligned with the tobacco industry to resist any SFP change primarily for economic reasons,<sup>[2, 222, 233, 260, 261]</sup> but changed position during the efforts to develop the NSPA. From the perspective of interviewees from TRA, major reasons why the TRA Board unanimously voted in support of the SFP included the focus of the proposal on workplaces in general and not just restaurant and bars (framed as a workplace bill), voluntary adoption of smoke-free environments by TRA's members (transition in the business), and public demands for smoke-free areas and growing dissatisfaction with tobacco industry-promoted ventilation programs. For Mr. Haskell,

One thing that you need to know is different about this [SFP] bill and what many folks do not notice is that the [SFP] bill is not about restaurants, it is not about hotels. It is about workplaces. So, it [SFP] applies equally in my office as it does to restaurants. There were critical reasons for our support of the [SFP] bill. Bills prior to that year [2007] were directly related to restaurants. And when we [TRA] changed our position from opposing these things [SFP bill] to supporting these things [SFP], one of the big reasons we [TRA] changed our position is that it [SFP bill] was not directed at us. It [SFP bill] was directed at employers and focused on health of employees (Interview, October 1, 2010).

In an agreement with Mr. Haskell, Mr. Adkins said,

For many years, the TRA... opposed [SFP] legislation. One of the reasons why the TRA opposed [SFP legislation] was because it singled out restaurants. So in 2007 when the [SFP] bill was filed it did not just single out restaurants. What it did was, it became a bill about all employers. It became a typically no smoking in the workplace. And that's when

the TRA Board unanimously said that this is becoming such a big issue and we are starting to have customers who complain about smoking. And something needs to be done and the Board unanimously approved this particular [SFP] bill (Interview, March 9, 2011).

Concurring with this view of interviewees from the TRA, Mr. Hugh Atkins, a bureaucrat from the Department of Health said,

Restaurant Association was supportive of it [SFP bill] because it was a ban on smoking in all enclosed facilities, not just restaurants. In the past, there has been talks of some of the states they have legislation that prevents smoking in restaurants and the Restaurant Association do not necessarily oppose smoking in the restaurants, they don't want to be singled out as the only public enclosed place where smoking is banned. So, once the [SFP] legislation was introduced it was a universal prohibition of smoking in all enclosed public places. Restaurant Association was supportive of that, but again I am sure that there were groups [individual restaurant and bar owners] that were opposed to it [SFP bill] (Interview, January 28, 2011)

Beyond this argument about the type of SFP legislation, Mr. Haskell said,

But during that time [when SFP entered the legislative phase] there was a fairly noticeable shift towards nonsmoking restaurants. More and more operators were responding to the public demand that they operate in a certain way [become smoke-free]. More and more Restaurants were doing that and between that general change and the fact that it went from being a restaurant bill to a workplace bill. In the year that it [SFP] [entered the state's agenda], the Board of the Restaurant Association unanimously voted to support the concept, and, from that point, you know, we became an advocate for that position [100% SFP] and somebody was at the table negotiating the details [of the SFP] (Interview, October 1, 2010).

Mr. Haskell further said,

Our customers were beginning to ask for [smoke-free places]. On top of that our [TRA] members began to feel like it was something that they were interested in doing. That's why one year the [TRA] Board was opposed to the restaurant bill and the next year they come back with workplaces and our [TRA] Board unanimously voted for us to support it. Many were the same guys who voted against it the previous year (Interview, October 1, 2010).

Politically, the administration's unequivocal support for SFP had immense impact on TRA's U-turn decision. Articulating this point, Mr. Randy Rayburn, an executive board member of TRA said,

And that [the TRA Board] ratification of that resolution [SFP proposals negotiated with the administration, HB 2216/SB 2164,] and approval of the push to remove smoking in restaurants and public facilities was critical to Governor and the Governor's support to make it part of his legislative package as opposed to being just legislation being introduced by the individual senators and state representatives and, therefore, led to my and our industry and that included our Executive Director at that time ... as well as lobbyist to support it [SFP] (Interview, October 2, 2010).

Legislators interviewed for this project, however, perceived the TRA's U-turn in support of the SFP differently. Primarily, they argue that TRA's support for the SFP was meant to shift the blame of smokers' complaints to government. This point was articulated by Lt. Governor Ramsey, who said,

Actually, it's the Restaurant Association. Every year they [TRA] opposed the [SFP] bill and in 2007 they [TRA] just became neutral on this [SFP] bill. I think the members of the Tennessee Restaurant Association wanted the [SFP] bill to pass. It is so interesting to watch because I know restaurant owners that lobbied us to pass this [SFP] legislation. Keep in mind there was absolutely nothing that kept the restaurants from making their establishments smoke-free on their own. But, we had restaurant owners who did not want to be the bad guys and they wanted to blame it [complaints against smoke-free environments] on legislators because when they get complaints that they did not have a smoking section, well, that is what the Legislature wanted. It's what they [TRA] wanted too, but they [TRA] didn't have the fortitude to do that on their own and wanted us to get involved (Interview, March 10, 2011).

The Lt. Governor went further to say,

I believe that more and more restaurants themselves were realizing that their patrons wanted them to be smoke-free restaurants and they [restaurant owners] did not have the fortitude to do it on their own so they lobbied to change the law (Interview, March 10, 2011).

For Representative Dunn,

There were a lot of restaurants that were kind of publicly against the law and privately they were kind of like, you make the decision for us [restaurant owners] and then we [restaurant owners] can blame you when we [restaurant owners] have to tell our patrons to stop smoking (Interview, October 20, 2010).

Concurring with this argument, Senator Steve Southerland (Republican, 1<sup>st</sup> District), Chair of the Senate Commerce, Labor and Agriculture Committee during the 105<sup>th</sup> Legislative Session, who voted against the SFP bill because it was against property rights and contravenes the Oath of Office said,

I know the [SFP] bill had come up and it was something that property owners could easily pass a bill. They [restaurant owners] just did not want to lose customers. They [restaurant owners] did not want to be the persons to start losing the customers and they [restaurant owners] knew that if everybody did it at the same time, they would not lose the customer base (Interview, February 23, 2011).

Additional explanations provided for the TRA's U-turn included the fear of lawsuits by employees (Interviews: Mr. Dan Haskell, October 1, 2011; Mr. Randy Rayburn, October 2, 2010; and Ms. Chastity Mitchell, September 24, 2010), CHART's concession not to oppose preemption (Interview, Ms. Shelley Courington, December 1, 2010), and lessons TRA had learned from other states that SFP was good for business (Interview, Ms. Shelley Courington, December 1, 2010) .

In sum, while interviewees from the TRA attributed the TRA's U-turn to support the SFP to the nature of the proposed bill, contextual changes and the administration's support for the

SFP, legislators perceived it as cover for TRA's members' reluctance to set their own standards pertaining to tobacco use in their facilities and, some in CHART perceived it as TRA's realization that SFP has positive business implications. The TRA's role in the legislative development was support for SFP, working and collaborating with the administration and CHART to achieve that goal and lobbying legislators for it.

The U-turn in TRA's position immensely helped in the legislative development because legislators cited it as reason for their support of the SFP bill. In particular, Senator Tracy indicated in the interview that they had meetings with TRA to make sure that they were okay with the SFP bill (Interview, October 15, 2010). For legislators wary about the bill on the grounds of property rights, the fact that the TRA came out in support of the SFP bill or was perceived as neutral in the legislative process encouraged them to support it. Accordingly, Mr. Adkins from TRA, argued,

Prior to 2007, the Association [TRA] had always opposed it [SFP] and if the Association [TRA] would have opposed it [SFP] again, I think, it [SFP bill] would have had a really hard time passing. In development of the [SFP] policy, we [TRA] were the key stakeholders because it [SFP] affects our businesses and we [TRA] were always the key stakeholders allowing the policy pass or not pass (Interview, March 9, 2011).

This point is consistent with the views held by people in CHART. Acknowledging the clout of TRA in the policy development process, [Ms. Griffin] said,

I think [TRA] could have hurt us a great deal .....not being on our side. I don't think that their influence is the reason that we passed the law. But if they [TRA] had been against us [CHART], it could have been very hurtful to us (Interview, November 23, 2010).

Thus, the TRA's support of the SFP was important in the legislative development even though they did not get their preferred policy outcome, 100% SFP. This is why 45% of the interviewees indicated that the hospitality industry and businesses played very strong or strong role in the development of the NSPA (Figure 14).

## **Tobacco Interests**

As already indicated, a policy network of tobacco iron triangle, consisting of the agricultural committees of the State Legislature (particularly the House), the Department of Agriculture and tobacco interests (tobacco companies and farmers' group represented by the Farm Bureau) dominated the tobacco policy subsystem until the mid-2000s, when SFPs were enacted.<sup>[244]</sup>

### *Tobacco Industry*

Research has already established the strong influence of tobacco companies in state legislatures across the country,<sup>[11, 262-265]</sup> resulting in a debate within the public health community as to whether the venue for tobacco control policy change should be the state or the local governments.<sup>[39, 266]</sup> Although there has been a strong historical ties between tobacco interests and politicians and policymakers in Tennessee,<sup>[267]</sup> limited or absence of overt involvement of

the tobacco interests in the development of the NSPA was a consensus among the interviewees. The companies, however, made opposition to the SFP known from the beginning of the policy development process. Additionally, the tobacco companies kept a low profile throughout the policy development process, working with legislatures and individual bar owners to dilute the NSPA.

Historically, tobacco companies have played major role in tobacco use and control in Tennessee. As the Figure 15 shows, tobacco companies spent millions of dollar to promote tobacco use in the state between 1997 and 2006, as opposed to almost nothing from the state on tobacco cessation and health education programs (Figure 6). Additionally, Tennessee is one of the states where the tobacco industry worked hard to disrupt tobacco control legislation.<sup>[265]</sup> Evidence from the tobacco industry documents suggest that the industry used several mechanisms to accomplish this goal, including:

- *Forming alliances with the business community* – The tobacco industry in Tennessee developed strong relationship with TRA, Tennessee Wholesale Grocers’ Association, Tennessee Press Association, and Tennessee Gas and Pipeline.<sup>[2, 222]</sup> According to a 1987 Tobacco Institute report, “These organizations have either directly or indirectly assisted with our efforts to control taxes and [smoking] restrictions in Tennessee.”<sup>[2]</sup>
- *Denying scientific evidence on the hazards of tobacco use* – For example, in 1984, Anne Browder, an Assistant to the President of Tobacco Institute testified before the Council of the City of Memphis that “the linkage of smoking restrictions in public places and workplaces to the reduction of purported health hazards is a highly questionable one. There is no persuasive scientific evidence to support the allegation that environmental tobacco smoke or ambient smoke constitutes a health hazard to nonsmokers.”<sup>[268]</sup>
- *Corporate Social Responsibility* – For example, in 1989, the Public Affairs Division of the Tobacco Institute developed a plan and allocated money to infiltrate the U.S. Fire Service in several states, including Tennessee by contributing to fire prevention.<sup>[269]</sup>
- *Lobbying against tax increases* – The industry worked to suppress and reduce excise tax rates on tobacco in the state.<sup>[2, 233, 260, 261, 270]</sup>
- *Lobbying against SFPs* – The industry

**Box 6: Tobacco Institute’s *State of the State* Report, 1987**

We are fortunate to have a strong relationship with: Tennessee Restaurant Association, Tennessee Wholesale Grocers’ Association, Tennessee Press Association [and] Texas Gas and Pipeline. These organizations have either directly or indirectly assisted with our efforts to control taxes and restrictions in Tennessee.<sup>[2]</sup>

**Box 7 : Tobacco Institute’s *State of the State* Report, 1987**

During a special session in December 1985, the tobacco industry came together and defeated a cigarette tax proposed by Governor [Lamar] Alexander. During the regular session in 1986, we defeated a bill to ban smoking in hospitals.

In January 1986, smoking restrictions were imposed in restaurants in Memphis. The restaurant association did not hold up their end of the argument against restrictions.<sup>[2]</sup>

ught against such policies across the state.<sup>[2, 233, 260, 261]</sup>

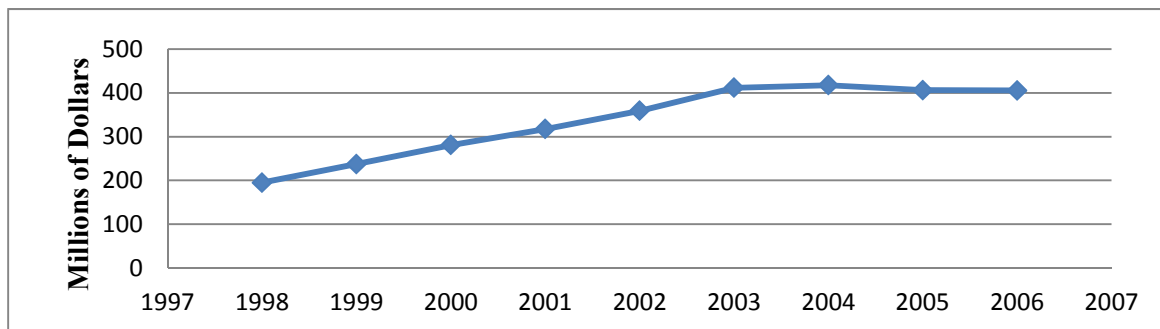
- *Sponsorship of academia* - For example, in 1984, Philip Morris gave University of Tennessee Institute of Agriculture a total of \$229,400 grants for continuing support of agricultural research and extension of educational programs<sup>[271]</sup> and in 2002, sponsored a

study on exposure of adult U.S. smokers to cigarette smoke in the University of Tennessee Medical Center.<sup>[272-275]</sup>

- *Monitoring of legislative development* – The industry consistently tracked legislative developments in the state through funded reports<sup>[276, 277]</sup> in order to undermine them.<sup>[278-281]</sup>
- *Using front groups* – The industry used front groups such as the Farm Bureau to argue for the cultural and economic importance of tobacco to Tennesseans.<sup>[282]</sup>
- *Engaging in philanthropic donations* – The industry donated to groups and organizations in the state.<sup>[283]</sup>
- *Promoting youth smoking prevention programs* – The industry promoted such programs,<sup>[284, 285]</sup> including “We Card”<sup>[286, 287]</sup> and “Life Skills Training”<sup>[288-290]</sup> to diffuse concerns for tobacco control.<sup>[291]</sup> The “We Card” activities were undertaken in conjunction with the Department of Agriculture, an ally in the tobacco iron triangle<sup>[292-294]</sup>
- *Targeting politicians with pro-tobacco messages* – For example, in 2000, Philip Morris targeted its message at U.S. Senator Bill Frist<sup>[295]</sup>
- *Demonstrating the economic significance of tobacco* – Since at least the 1960s, tobacco companies and affiliated groups have tried to demonstrate the economic significance of tobacco through economic impact analyses.<sup>[288, 296]</sup>
- *Making monetary contributions to Politicians* – The tobacco companies have consistently contributed to electoral campaigns in the state. Analysis of campaign contributions shows that between 1996 and 2006, tobacco companies contributed approximately \$200,000 to individual politicians, not political parties or political action committees electoral campaigns. Regardless, large number of legislators in the state did not take tobacco money.

In effect, the tobacco companies have been active in the tobacco policy subsystem for many years. The slow pace of advancement in tobacco control in Tennessee could likely be attributed to these historical activities by the tobacco industry.

**Figure 15: Tobacco Industry Marketing Expenditure in Tennessee**



Sources: U.S. Federal Trade Commission (FTC), *Cigarette Report for 2006*,<sup>[297]</sup> and *Smokeless Tobacco Report for the Years 2006*<sup>[298]</sup> **Note:** Data for top 5 manufacturers only.

The active historical involvement of the tobacco industry in tobacco policy in the state did not translate into overt participation in the NSPA process. Although from the beginning, the

tobacco companies lobbied the administration for a seat at the negotiating table on NSPA (Interview, Robert Gowan, October 19, 2010), their main role in the development of the SFP was limited resistance or opposition, which is why majority of the interviewees indicated that the tobacco companies were not very influential in the process in terms of derailing the entire NSPA (Figure 14). In this respect, Senator Ketrone indicated that “[the tobacco companies and Farm Bureau] were not for it [SFP bill], but they did not resist as much as I thought they would.” (Interview, March 11, 2011). For Representative Joe Pitts (Democrat, 67<sup>th</sup> District),

You know, I didn’t get any pressure from the tobacco companies to vote against it [SFP bill]. You know, I did receive visits from the local Farm Bureau members who were concerned, but understood the need to create public policy going forward. So it was not a high pressure (Interview, October 21, 2010).

While it was obvious to those involved in the legislative development that the tobacco industry was opposed to the SFP, the interviews generally suggest that the tobacco companies did not take active and concrete steps to derail it. Instead, they worked for a weak SFP. The main rationale for this limited opposition was that it became obvious to the companies that there was definitely going to be a statewide SFP regardless of their activities. Indeed, the lopsided nature of the final floor vote on the NSPA on May 31, 2007 (84 in favor as to 10 opposed in the House and 29 in favor as to two opposed in the Senate), suggests that there was very little the tobacco companies could have done to derail the process. As Representative Dunn pointed out,

Well, I remember they [the tobacco companies] were not for it [SFP bill]. I think they [tobacco companies] were a bit subdued because the Governor came out in support of it [SFP] and they [tobacco companies] probably recognized that you got to pick up your fights, but obviously the tobacco companies were not supportive of it [SFP bill]. They [tobacco companies] stated their case and that was it. I don’t remember any so called pressure by them. They [tobacco companies] did their jobs, but it was not likely that they were going to beat people. They [tobacco companies] acted as they should. They [tobacco companies] shared information with us and we made the decision (Interview, October 10, 2010)

Similarly, Representative Bell said,

Tobacco companies, I think, they also saw the handwriting on the wall and did not strongly lobby the legislators either way in this [SFP] bill. From my memory because I did remember couple of discussions with some lobbyists from the tobacco companies and they [tobacco companies] saw handwriting on the wall that it was going to pass. And chose not to take a strong active role in opposing it (Interview, October 20, 2010).

Moreover, Representative Floyd said,

The tobacco companies recognized the light at the end of this tunnel was going to be a fair thing and they were just trying as best as they could. They [tobacco companies] knew we were going to pass the [SFP] bill. They [tobacco companies] just hoped that we would not pass one that would put them out of business (Interview, October 27, 2010).

Additionally, the limited opposition from the tobacco companies in the legislative development emanated from the fact that they made their opposition to the SFP known and there was no room for negotiation, lack of coordination and agreement among the companies, and the



exemptions in the bill. In this regard, Mr. Spain from the administration described the situation as,

The tobacco companies were very much against this law [SFP]. It's just that they were so against it that that there was no discussion. There was no negotiation like before so in that way they weren't involved in the process but they clearly made their opposition known. And part of that issue was they weren't really, unified on this [SFP bill]. There were a couple of tobacco companies, largely represented by different people in the General Assembly, and somewhere outright against it [SFP] from the beginning, kind of take your hands off position. But, for a larger part of it now, I think their opposition was loose (Interview, December 8, 2010).

For Ms. Mitchell from CHART,

Tobacco industry obviously, there were differences in the companies. Philip Morris and their lobbyists pretty much opposed us during the entire time; RJ Reynolds company and their lobbyist were much more conducive, were ready to sit and talk and willing to discuss with us; they were instrumental since they knew something is going to happen and they wanted to see exclusion of the bars and they thought that if they [RJ Reynolds] could exclude the bars, then they were okay with this [SFP bill] passing. But Philip Morris not sure (Interview, September 24, 2010).

While the tobacco companies did not undertake any direct activity to derail the NSPA, they likely relied on front groups to get exemptions. In this case, the key front group was the local bar owners as the TRA became the supporter of 100% SFP. According to Mr. Gowan from the administration,

On the smoking ban legislation, [tobacco companies] had local bar owners trying to influence us [the administration] ... I mean they [bar owners] also influenced legislators. The Governor's office could not make that compromise. That was something that legislators were to and the Governor's office decided to go along with it (Interview, October 19, 2010).

As a result, representatives from CHART pointed to some exemptions in the NSPA as the likely handiwork of the tobacco companies. Ms. Courington said,

In fact, the tobacco industry, their lobbyist's had said that they expected the smoke-free law to be passed and that was not something they [tobacco companies] were going to fight tooth and nail. They definitely wanted some things like 21 and above exemption. It was something that they [tobacco companies] did not fight. It was one of the reasons that it [SFP bill] moved through [the legislative process] the way it did. You know they [tobacco companies] still have a powerful presence in our legislature (Interview, December 1, 2010).

Concurring with this point, Mr. Perkey from CHART summed up the tobacco companies influence as,

The only influence they [tobacco companies] had and I really do think the decision to allow smoking in bars was directly due to the influence of the cigarette manufactures. They [tobacco companies], that was their bottom line. They [tobacco companies] were not opposed [to the SFP], as long as they [exemptions] could continue. I think they did

not oppose; they [tobacco companies] were not going to go to the full extent, their resources to try to defeat it as long as they were able to have an exemptions made for bars (Interview, October 10, 2010).

In sum, the tobacco companies have historically played powerful role in tobacco control in Tennessee, particularly helping to hold down excise tax increases and resisting SFP. However, during the development of the NSPA, while they made their opposition known, they did not openly mobilize to derail the SFP bill. Instead, they relied on their political allies and front groups, such as local bar owners to successfully advocate for exemptions. The low resistance to the SFP bill was attributed to the administration's strong support for it, disagreement among the companies and the exemptions introduced in the bill. Although the general consensus among the interviewees was that the companies were less influential in the development of the NSPA (Figure 14), representatives from CHART pointed to the exemptions as the handiwork of the tobacco companies.

### *Farm Bureau*

The other important tobacco interest in Tennessee is the Farm Bureau. As the third largest tobacco producer in the country, the Farm Bureau has strong interest in tobacco-related issues. Tobacco farming in Tennessee has historically been a family business, not an agribusiness,<sup>[288, 299]</sup> tying families strongly to the tobacco industry.<sup>[300]</sup> However, the dependence on tobacco production has been declining primarily due to the \$13 billion federal government buyout programs<sup>[210]</sup> and farmers' switching to alternative sources of livelihood as tobacco production continues to be less lucrative (Figures 12a-c).

During the development of the NSPA, although individual members of the Farm Bureau met some legislators and expressed concerns about the potential economic impact of the SFP, they generally did not participate in the NSPA process. According to Stefan Maupin, Associate Director of the Farm Bureau, their role in the entire SFP process was limited to monitoring of the process (Interview, February 10, 2011). Consistent with this point, Mr. Gowan from the administration said,

They [Farm Bureau] were [not involved] and that was another thing that helped get it [SFP bill] passed. They [Farm Bureau] were unusually quiet. They were opposed to both the tax and the nonsmoking ban and that was generally true for Farm Bureau. They were quieter than they usually were. They were usually two or three of the main groups fighting this [SFP]. I mean, honestly, they were quiet because the Governor had included things in the budget specifically for farmers. A grass program and it was also the year that we passed the 70 million dollar proposal to build an ethanol plant that was going to be supported by crops. They would buy and has been bought crops grown by Tennessee farmers (Interview, October 19, 2010).

The major reasons for the absence of Farm Bureau's involvement in the development of the NSPA included the absence of a policy position on the SFP; lack of SFP bill is focus on tobacco production, taxes or sales, but smoking and health; lack of data to substantiate any negative effect of SFP on tobacco production; and perceived inevitability of the development of the NSPA. Additionally, the Farm Bureau decided not to take any position because the bill was

framed as employee health protection bill. Thus, Mr. Maupin from the Farm Bureau said, I'll go back saying that it [the SFP] was a health issue and the way the bill was couched. You got to remember this. The [SFP] bill was couched as an employee health protection bill. The [SFP] bill was meant to protect employees' health and so from that standpoint, some can look at it as anti-smoking bill, but it was an employee health protection bill. So, our membership looked at it [SFP] as something different and not as totally for money. Now, I am speculating, and so how that [the SFP] would affect our farmers economically is a good question and then number two, is it was for health protection. That's my speculation as to why they [Farm Bureau] did not have a position on this particular Act (Interview, February 10, 2011).

In sum, even though the Farm Bureau has historically been influential in the tobacco policy arena, they decided not to be involved in the NSPA process. As a result, interviewees overwhelmingly agreed that the Farm Bureau was not influential in the NSPA development process (Figure 14).

## Media

Known as the "fourth estate of the realm," the media plays an important role in American politics and public policy and there is substantial evidence to suggest that it is capable of setting the public agenda<sup>[83, 301-305]</sup> through influencing the relative salience of issues in the public minds,<sup>[83, 305]</sup> arousing people's emotion,<sup>[306]</sup> affording the issues great coverage<sup>[307, 308]</sup> and shaping the perceptions about the issues.<sup>[83, 301-305]</sup> Thus, scholars of agenda-setting have found the media as an important channel, particularly for defining and framing a policy issue.<sup>[28, 30, 83, 303]</sup> In tobacco control, media advocacy has been identified as a strategy to generate news coverage, develop policy, strengthen policy, and reduce tobacco use.<sup>[86, 309-311]</sup> For this reason, the media is an important stakeholder in tobacco control.

Between June 2006, when the SFP issue started and June 2007, when NSPA was enacted, 40 out of the 77 newspaper reports on SFP identified, did not express opinion or were neutral on the process, 36 supported the SFP, and one was opposed to the SFP. In this respect, while the media was not overwhelmingly in support of the SFP, they did not oppose it; rather reported the news. This point is consistent with the interviews. In this case, Representative Dunn pointed out, My recollection is that the media, I don't know if they focused so much on this piece of legislation [SFP bill] but over the years the media has put out stories about cancer and how smoking is a cause of it. I believe that as we went through the process of debating this bill, the media just sort of covered and sorted out play by play, this was what was said and this is how it all went, this is what happened in the committee and arguments of both sides (Interview, October 20, 2010).

Representative Dunn added,

I would think, I mean you could research some editorials in support. But, the media who covered the story was an unbiased, just to report. This is what was said and this is how it went. I mean there may be editorials out there in support of the law (Interview, October 20, 2010).

Concurring with this point, Representative Pitts said,

I think based on what I recall they [media] were more unbiased. They [media] were just presenting the fact that this discussion was taking place and I don't recall specific publications or media outlet that had position, that stated position for or against [the SFP bill] (Interview, October 21, 2010).

The interviews also suggest that there was intensive use of the media by the administration, the Department of Health, and CHART to raise awareness of the problem of tobacco use in the state and the need for a statewide SFP.<sup>[251, 259]</sup> Additionally, interviewees from CHART indicated that they worked hard to keep the issue in the media to put pressure on legislators who were hesitant to support or likely oppose it. Articulating this point, Ms. Mitchell from CHART said,

It was a huge battle, I mean, you know, like making sure, making the case with legislators. It got to the point that it did receive attention in the media every single day. Thus, the legislators felt that they had to do something, but it was a continuous battle making sure that all the interested stakeholders are on the same page with every single changing day (Interview, September 24, 2010).

In this respect, the main role of the media in SFP development process was that it served as a channel to raise awareness of the SFP and put pressure on policymakers.

In sum, although the media is an important player in public policymaking in the state, it basically played a neutral role in the NSPA process, which is why interviewees deemed it as not influential in the process (Figure 14). Regardless, media advocacy by supporters of the SFP was an important component of the legislative development process.

## **General Public**

The role of the general public in the development of the NSPA started very early in the process, when the American Cancer Society conducted a poll and the results showed majority support for SFP (Figure 10, Appendix I); something that continued throughout the legislative development process. This support was particularly important for legislators. Thus, for Representative Floyd,

The two key factors [that led to the development of the NSPA] would have to be the cost of health care and taking care of smokers and the economic impact it was having on the workforce and then it was public pressure on them [legislators] saying we want smoke-free environment (Interview, October 27, 2010).

For him,

[The NSPA] became a state law because that was a demand from the general public on the legislators and their districts voted, or the majority; let us put it that way. Some [legislators] from the rural counties who were tobacco farmers were for the idea, but nobody could discount the fact that smoking was harmful to your health and passive smoke was harmful to health of people around you. It was because of public demand. The restaurant used to have a smoking section and a nonsmoking section. People were tired of going into that restaurant because if you are in there and two people smoking you are still getting that passive smoke. There could be a hundred people in there. So, it could be public pressure demand action on behalf of the General Assembly; we [public] wanted a

smoke-free environment and that helped move our process along (Interview, October 27, 2010).

This view is consistent with that of the Lt. Governor Ramsey, who said,

That's exactly true [high level of public support for SFP]. I want to tell you that probably in 2000 that was not the case, but year after year, by 2007 majority of the people wanted the [SFP] bill passed (Interview, March 10, 2011).

In essence, public support for SFP was an important component of the development of the NSPA. As a result, almost all interviewees agreed that it had strong or very strong influence in the legislative development process (Figure 14).

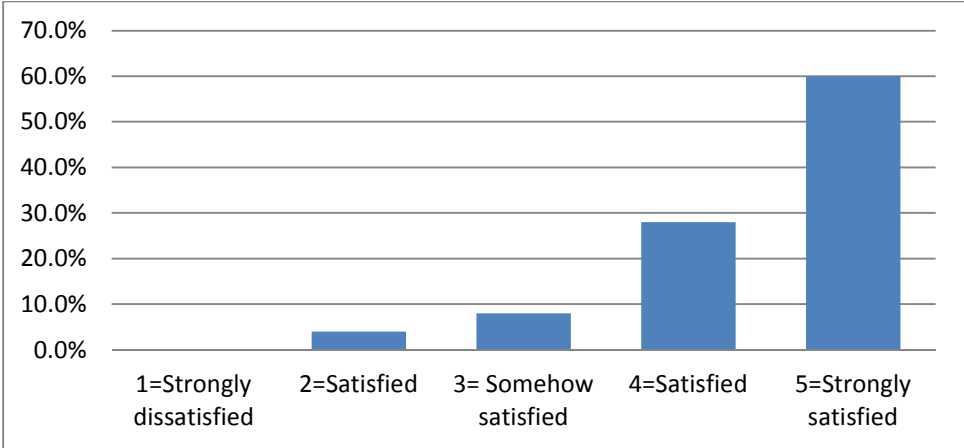
In sum, while different stakeholders played different roles in the process, they were overwhelmingly satisfied with the development of NSPA (Figure 16), even among opponents. For those "somehow" or just "satisfied," the main reason was that the NSPA has many exemptions. In this respect, Mr. Perkey from CHART said about the adoption of the NSPA, No, I think we [CHART] achieved what we were able to given, you know, the opposition that we had. We made a compromise. We decided it would be better to have a bill and allow some exemptions than do not. I think we were satisfied. We were satisfied with what we achieved. We would like to have additional changes to the law (Interview, October 8, 2010).

Consistent with this point Lt. Governor Ramsey said,

I am pretty satisfied [with the adoption of the NSPA]. I am sure; obviously we could do better on the top of [the NSPA], smoking in general. We could do a lot on smoking cessation policy that we have now, about funding that a little better. But, it is pretty obvious that every dollar we put in the smoking cessation program, it would greatly reduce our health care costs and smoking in general. So, I feel smoke-free Tennessee with restaurants, businesses etc. we did pretty well. But, in effect, we could do more in general, in smoking cessation plans (Interview, March 10, 2010).

Even Representative Bell who opposed the SFP up to the end expressed satisfaction that the NSPA was adopted to create smoke-free environments in the state, saying, "From a personal standpoint, I love [the NSPA]!" (Interview, October 20, 2010). This is because he could go to a restaurant with his family and enjoy smoke-free environment or to a football game and will not have to inhale cigarette smoke from others. Figure 16 shows that only one person, a legislator who opposed the NSPA was not satisfied that it was adopted.

**Figure 16: Are you satisfied with the Non-Smoker Protection Act?**

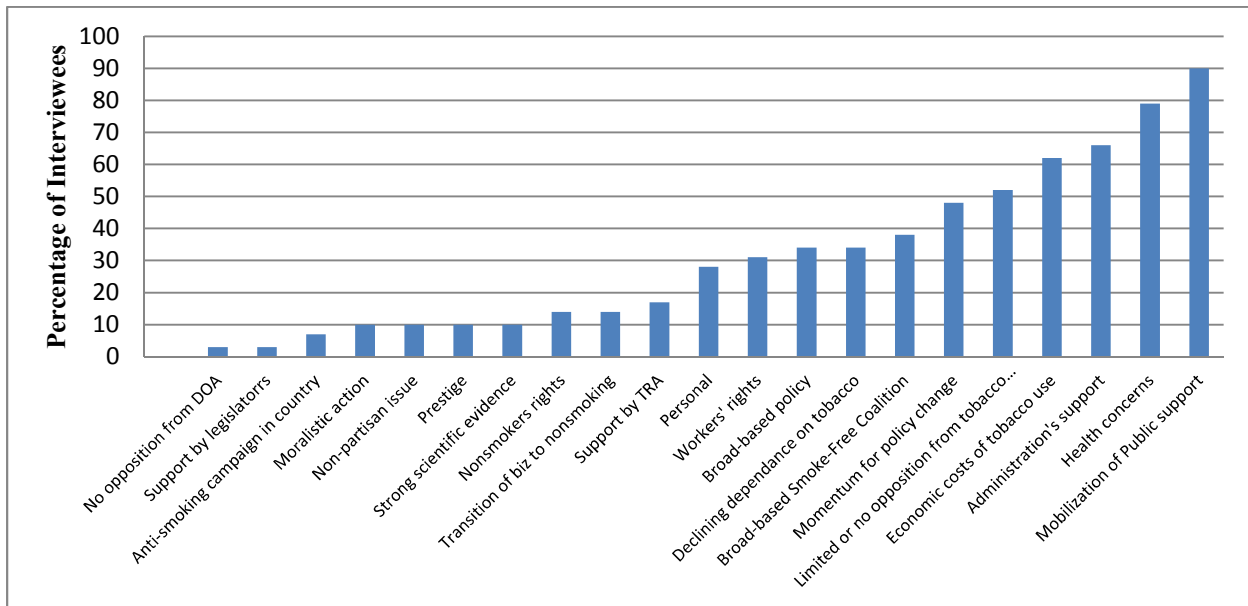


**Note:** Categories are not mutually exclusive

## EXPLANATION FOR THE ADOPTION OF THE NON-SMOKER PROTECTION ACT

On May 31, 2007, Senate amended NSPA was substituted for original NSPA (Figure 13; Tables 6 and 7) and overwhelmingly passed by both houses. This section uses the interviews and legislative debates to delineate the key rationales for and against the adoption of the NSPA. By so doing, it provides insight into why the NSPA was adopted.

**Figure 17: Key Rationales for the Adoption of the Non-Smoker Protection Act**



**Note:** Categories are not mutually exclusive

Background	Policy	Political	Auxiliary
Health concerns	Administration's support	Mobilization of public support	Personal
Economic cost of tobacco use • TennCare <sup>[249]</sup>	Momentum for policy change	Limited opposition from tobacco interests	Transitioning of businesses to nonsmoking
Declining dependence on tobacco	Broad-based policy	Broad-based Smoke-free Coalition	Prestige
Strong scientific evidence	Workers' right	Support by Tennessee Restaurant Association	Moralistic action
	Non-smokers' rights	Non-partisan	Anti-smoking campaign in the country
		Support by legislators	
		No opposition from the Department of Agriculture	

### *Rationales for the Adoption of the Non-Smoker Protection Act*

Figure 17 shows that the rationales for the NSPA range from mobilization of public support (90%) to no opposition from the Department of Agriculture (3%). These rationales can be grouped into four categories: background, policy, political, and auxiliary (Table 8).

The background rationales were issues that almost all the stakeholders were familiar with, implying that there were no disputes about them. In other words, by the time the NSPA was being developed, stakeholders were conversant with these background issues that no one in the interviews or legislative debates questioned or raised concerns about them, even among vocal opponents, such as Representative Bell and Senator Southerland. Issues, such as the health consequences and costs of tobacco use (and SHS), and the decline in tobacco dependence that played roles in agenda-setting were also relevant in legislative development and NSPA adoption. Additionally, nobody questioned the scientific base of the link between tobacco use (and SHS) and diseases, which emanated from the accumulation of scientific evidence. For example, in arguing about the role of science in the adoption of the NSPA, Representative Floyd said, “we [legislators] depend on the best data we can get. We take the best information and the best data we can get, and know in our consciousness what we feel like is best for six million Tennesseans” (Interview, October 27, 2010).

The policy rationales were issues that specifically focused on the NSPA, including its nature and scope. As the public policy literature suggests, the nature or type of policy determines the degree of conflict over it.<sup>[27, 137, 138]</sup> Similar to the background issues, the administration’s support of the SFP, framing of the SFP as a workers’ right issue, and expanding the scope of the bill beyond restaurants (broad-based) helped to elevate the SFP into the state’s policy agenda and were also key to legislative development. Additionally, support by the administration, in conjunction with the other dynamics, such as public support and pressure from CHART, created perception about the inevitability of the emergence of an SFP for Tennessee, generating a momentum for policy change. Thus, Mr. Adkins from TRA said,

Well, I think that there was a perfect storm for the enactment of the [SFP]. You had several groups pushing it, you had the Governor who came pushing for it, you had the Restaurant Association coming out for it. You had all coming together to find a way that everyone can live with. You still at that time had a democratic control of the House that was pretty much for it and you had a Senate that was convinced that it was the right thing to do. So it was like a perfect storm you could say and everybody came together and the Act [NSPA] passed (Interview, March 9, 2011).

The effect of this momentum was that even legislators opposed to the SFP did not try to derail the entire process. In this respect, although Representative Bell was not in a position to derail the SFP bill, he said,

We [Representatives Mike Bell and John Litz, legislative opponents of the SFP,] were probably not, I am sure we were among the most vocal opponents to this [SFP] bill. We have sometimes on certain issues and issues up here you can look around and say probably you could say I can get the support to kill this or amend it in such a way that it’s an effective piece of legislation. But on this [SFP bill], I don’t remember saying that. I always remember saying that this [SFP] bill is going to pass. The legislators were for it. I



just wanted to say as to why I opposed it. So I did not really try to marshal opposition against it (Interview, October 20, 2010).

Concurring with this point, Ms. Griffin from TMA and CHART said,

I think Tennessee was behind the rest of the country as about every facet of health... In the tobacco policy, we were so far behind the rest of the country and I think that when the perfect storm came and the publicity came, and it became something that people wanted it just became the perfect storm. Everything happened at the right time (Interview, November 23, 2010).

Moreover, in addition to framing the SFP as worker's right or employee's protection issue, which occurred during the agenda-setting phase, the protection of nonsmokers or nonsmokers' rights to clean air devoid of tobacco carcinogens was used in the legislative debates. Articulating this view in support of the SFP in the House Agriculture Committee on May 30, 2007, Representative Johnny Shaw (Democrat, 80<sup>th</sup> District) said,

Well, I know it has been discussed a whole lot but you know we are here today to pass some law to protect the non-smoker, not the smoker. I think we are all getting off track. I don't think we are trying to protect people that smoke because people that smoke going to quit smoking because we passed this bill and I personally don't see anybody having a problem driving alone an eighteen wheeler by himself smoking a cigarette and I don't think anybody gonna care on state route. I don't think anybody is going to pay attention. What we are interested in is protecting the non-smoker. Now if it's a truck where someone, two people are riding in it and one is a non-smoker that's what we are interested in protecting, not the guy that would smoke a cigarette driving by himself. I personally don't see a need that while I respect Representative [Bill] Dunn, I really don't see that kind of an amendment because this guy going to smoke all of it anyway. As long as no one's riding with him nobody is going to get hurt but the guy that's smoking and he is already a smoker, but I am thinking in terms of [those that] do not smoke in this bill and not those that smoke.

Representative Frank Buck (Democrat, 40<sup>th</sup> District) also said after the final House vote on May 31, 2007,

There are thousands of kids working their way through college. There are thousands of people in college who don't have a lot of skills, who have to work in establishments like this to feed their family. Their kids got to eat and they got to work and they have rights too and I think this committee did a fine of as good as we could do. The best I have seen up here in 20 years and balancing the rights on both sides. Considering that both sides [smokers and nonsmokers] have rights and disputes considering that this was a reasonable vote.

In essence, the key policy rationales for why the NSPA was adopted included the fact that the SFP became the administration's policy agenda, being broad policy, and being framed as workers and nonsmokers' right issues.

The political rationales consisted of all the activities geared to developing the NSPA (Table 8; Figure 8). In this respect, some of the activities started before or during the agenda-

setting phase, including the mobilization of the public support for the SFP, limited opposition from the tobacco interests, emergence of a single-purpose broad-based smoke-free coalition, TRA's support for 100% SFP, support by legislators and no opposition from the Department of Agriculture. Additionally, although the SFP was a policy agenda of a Democratic Governor, the issue was handled in a non-partisan manner throughout the legislative development. As the votes on the NSPA shows, the SFP was treated as a non-partisan issue, which is the reason why the HB1851 was sponsored by a Democrat (Representative Bone) and the SB1325 by a Republican (Senator Tracy) and co-sponsors were across the aisle. On the non-partisan point in particular, Representative Floyd said,

I think people finally, once you educate Americans to the good or bad on the situations such as smoking versus nonsmoking, once you educate the people to the facts and the American Cancer Society was very influential in producing the data and the facts they supported smoke-free environment. But, once you educate Americans to the need to do something, especially in our Legislature, I have found that it becomes a non-partisan effort to pass a good legislation and even though you had a strong tobacco lobby and you had other lobbyists who were opposed to it [the SFP bill] (Interview, October 27, 2010).

In sum, the key political rationales for the emergence of the NSPA included the mobilization of public support for it, the broad-based nature of the smoke-free coalition, support by the TRA, limited opposition from tobacco interests, non-partisan approach to the policy, and absence of opposition from the Department of Agriculture.

The auxiliary rationales were issues that indirectly facilitated stakeholders' support for the SFP (Table 8 Figure 8). The major rationale in this case was personal experiences. Throughout agenda-setting and the legislative development, personal stories about the deleterious effects of tobacco use (and SHS) enhanced support for the SFP. This point was articulated by Representative Yokley:

I saw my mother died of emphysema. She was young and died at the age of 57years. So I myself had personal experience with the issue. She was a heavy smoker. I have a personal experience seeing my mother die. That has impact my thought, no matter what I say (Interview, November 5, 2010).

Similarly, voluntary transitioning of businesses to smoke-free environment served as a contextual factor that indirectly influenced the legislative development. In this respect, Lt. Governor Ramsey said,

I believe the second factor [for the development of the NSPA] was the restaurants. The restaurant owners realize that this was the direction that our patrons wanted to move in and they lobbied their legislators because in the end, they [restaurant owners] felt that all restaurants should go smoke-free (Interview, March 10 2011).

The issue of prestige, which was pointed out mainly by interviewees from CHART was based on the idea that Tennessee was going to be the first major tobacco-producing state to have a statewide SFP, generating excitement and enthusiasm among some policymakers. Articulating this point, Mr. Chiamonte from CHART said,

I think the fact that there were some elected officials who wanted to be part of the fact that we [Tennessee] would be the first tobacco state to have a smoke-free legislation [made them to support NSPA] (Interview, October 14, 2010).

The arguments for the adoption of the NSPA also had moral undertones. Particularly, those who supported the NSPA felt that it was the “*right thing to do.*” In this regard, Mr. Lee from the labor union said that “most legislators supported it [the NSPA] and getting a favor was not hard because this was totally the right thing to do” (Interview, March 7, 2011). Also, Mr. Adkins from TRA said, “you had a Senate that was convinced that it [adopting the NSPA] was the right thing to do” (Interview, March 9, 2011).

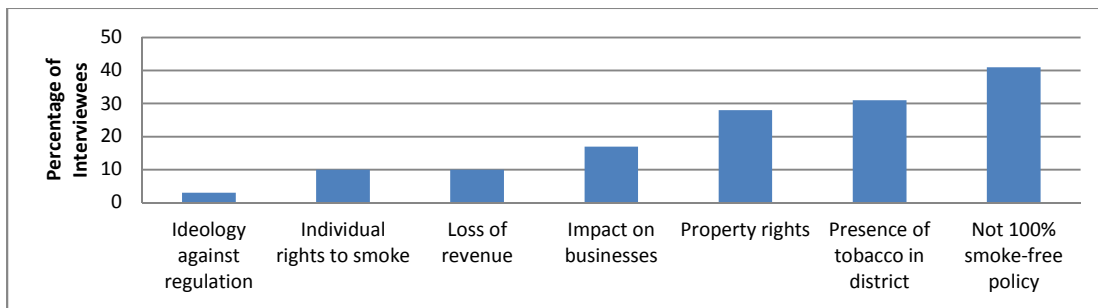
Finally, the awareness of the fact that anti-smoking campaigns has been progressing in the country for many years was an auxiliary rationale for the adoption of the NSPA. While this campaign did not directly impact the way the policymakers perceived the NSPA, it influenced their thinking about SFP in general; something pointed out by Mr. Gowan, the Governor’s senior policy advisor (Interview, October 19, 2010). For Mr. Lee from the labor union, one of the key reasons for the adoption of the NSPA was that “there has been an anti-smoking campaign [in the country] for years” Interview, March 7, 2011), and for Mr. Chiaramonte from CHART there “were the fact that 25 states were already having smoke-free legislation around the country” (Interview, October 14, 2010).

In sum, the personal experiences, transitioning of businesses to smoke-free environments, prestige, the belief that the NSPA was a right thing and anti-smoking campaign in the country became auxiliary rationales for the adoption of the NSPA.

*Rationales against the Adoption of Non-Smoker Protection Act*

Because of the general absence of organized opposition to derail the NSPA and the bipartisan approach to the SFP, opponents resorted to making their opinion known (Figure 18) or trying to weaken it with exemptions. With limited opposition from tobacco interests, opposition to the NSPA was particularly from individual legislators, notably Representatives John Litz (Democrat, 10<sup>th</sup> District) and Mike Bell as well as bar owners (who opposed the SFP, but abandoned the opposition because of the exemptions). Thus, according to Representative Bell, “We [John Litz and Mike Bell] know it [the SFP bill] was going to pass so we did not get together organized” (Interview, October 20, 2010). Rather, opponents outlined reasons why they were against the NSPA

**Figure 18: Rationales against the Adoption of the Non-Smoker Protection Act**



**Note:** Categories are not mutually exclusive

The most salient reason for opposing the NSPA was the exemptions. As pointed out earlier, the TRA opposed the SFP bill because they wanted 100% SFP. As a result, the TRA took some steps to delay the process, presenting a challenge to CHART. Narrating this episode, Ms. Spain from CHART said,

The Restaurant Association took the stand and we thought they understood this, that we shouldn't make any concessions to the bill; it should be all or none. And we knew that we could not get it [SFP bill] passed. So, towards the end, the Restaurant Association withdrew their support for the amended bill. There was an effort on their [TRA] part to stave off the legislation and just put it [SFP bill] into either a sub-committee again or to hold it off for another year, or do something to keep it from passing that year (Interview, February 1, 2011).

Both the administration and legislators noticed this change in the TRA's position. In this case, Representative Bell said,

If I would remember correctly, the Restaurant Association was strongly, probably opposed to it [amended SFP bill with exemptions]. They [TRA] wanted everybody to be the same [100% SFP]. They [TRA] wanted everybody on equal footing. If we were going to go smoke-free then they wanted everybody to go smoke-free (Interview October 20, 2010).

The presence of tobacco farming in a legislator's district was identified as a rationale for opposing the NSPA. This point was articulated by Ms. Spain, who said, "we [proponents of the SFP] had opposition from especially representatives and senators whose constituents were tobacco farmers" such as "John Litz who was a tobacco farmer" (Interview, February 1, 2011). The main reason for this opposition, according to Senator Herron was that "they [legislators] wanted to take care of tobacco" (Interview, February 10, 2011). Thus, according to Representative Floyd,

There was a push back from some of the rural legislators; simply because they felt that the economic impact is going to be so bad on tobacco farmers. So, there was a push back from some of the legislators simply for that reason (Interview, October 20, 2010).

A third issue that evoked strong opposition to the NSPA was property rights. Articulating this point in the interview, Representative Bell said,

My stand against the bill was purely from a property rights standpoint. I felt like and still to this day that if a person risked their own money, their own capital and their own time into a business for the most part, that person should be able to say what happens in his/her business. Again I did not feel like the government should be in the position to tell them whether they could or could not allow smoking and their property (Interview October 20, 2010).

During the Senate Commerce, Labor and Agriculture Committee debate on May 8, 2007, Senator Dewayne Bunch (Republican, 9<sup>th</sup> District) said,

I share one thing with the sponsor [Senator Tracy] and that is I clearly want to prohibit smoking in public places and public buildings. I think that is something that we can all reach an agreement on. But, when we get to private property it raises a lot more differences and issues.

The property right issue was entangled in political ideology/philosophy about the role of government in the society. Articulating this point, Lt. Governor Ramsey said,

I think the key arguments [against the NSPA] was the property rights issue that we live in a country that people own private property and then restaurants are owned by someone who employs people, are paying taxes and in the end it should be up to them decide where to smoke and not to smoke in their businesses. Again, the fact that Tennessee Restaurant Association remained neutral on the bill and I think that was the only issue that in the end matters. I mean, whoever voted against the bill, I am sure did not want government dictating what private company have to or don't have to on this issue (Interview, March 10, 2011).

Additionally, while arguing about property rights, Senator Southerland said,

The restaurant owners already had the ability to do that [make their own SFP] because it is their own personal property and what [the NSPA] was doing was taking their [restaurant owners] rights away to allow smokers or nonsmokers to come in ... So, basically everyone [legislator] who voted for that [SFP] bill violated their oath of office (Interview, February 23, 2011).

This opposition to the NSPA on ideological/philosophical grounds was clarified in the interview with Representative Bell, who said,

I would say from a personal standpoint, I love going to a restaurant and not have a smoking area. I love going to restaurants. I have got a son. Several months ago I was travelling to Kentucky and we went to a nonsmoking area, which could still sell cigarettes and you could smell cigarette smoke. On personal standpoint, I am greatly enjoying the smoke-free Tennessee. But from the policy standpoint and when I think from constitutional standpoint, it was overreach by state government to tell somebody that they would or would not have smoking for the place they paid for, that they pay the property tax, so their money, they put their money at risk and I just think from a policy standpoint it was horrible decision (Interview October 20, 2010).

For this reason, Representative Bell opposed the NSPA despite knowing that about 60% to 70% of his constituency supported it and did so “from a philosophical point that had nothing to do with smoking” (Interview October 20, 2010). Basically, these opponents were against the idea of the states mandating certain behaviors. Thus, for Mr. Haskell from TRA,

They [legislators and restaurant and bar owners opposed to the SFP bill] were concerned about the State mandating this [smoke-free environments]. The legislature is very conservative and largely opposed to the state mandating how private industries should behave. That's why it was unusual that [restaurant] industry got in favor of it [the NSPA] (Interview, October 1, 2010).

An integral part of this rights issue was individual rights. As Senator Herron pointed out, “some [those who opposed the NSPA] saw it as a restriction of freedom” (Interview, February 10, 2011). For Representative Floyd, “you had a group that felt like you are impeding on their constitutional rights” (Interview, October 27, 2010).

Finally, economic arguments were also used against the NSPA. The key argument in this case was the impact of the NSPA on businesses. Articulating this point, Representative Floyd said,

I just had constituent who would call me. Again it was some small business owners who were worried about the economic impact it [the SFP] would have on their businesses if people could not come in there and smoke, smoke while enjoying a drink or eating a meal, and the fact that anyone that's under 18 was not allowed in those [smoking] establishments (Interview, October 27, 2010).

For Senator Ketron, one main reason for opposition to the NSPA was concerns over “loss of revenue (Interview, March 10, 2011).

In sum, opposition to the NSPA was based on the fact that it had exemptions, tobacco farming in a legislator's district, concerns over property and individual rights, and potential economic impact of the legislation.

### *Special Provisions: Preemption and Exemptions in the Non-Smoker Protection Act*

The special provisions relating to the NSPA are the preemption and the exemptions (Boxes 1 and 2, Appendix A). Both the legislative debates and the interviews suggest that while there was very limited concern over the preemption, the contention was over the exemptions. Preemption became part of tobacco policy in the state when it was introduced in the 1994 PYATA (Appendix C). During the efforts to develop the NSPA, preemption was not a contentious issue because it was included in the initial competing bills, HB1851/SB1325 (NSPA) and HB2336/SB2255 (TSAL; Table 7) and none of the stakeholders raised the issue either in the interviews or legislative debates. As already noted, the main reason was that preemption was considered as a “deal breaker” for TRA and CHART gave up as a concession to co-opt TRA into the smoke-free coalition. Thus, for Ms. Courington from CHART,

The concession on the preemption came earlier on [during the agenda-setting phase of the SFP]. That was within our group [smoke-free coalition] and didn't have anything to do with the tobacco industry (Interview, December 1, 2010).

Elaborating on this point, Mr. Spain from the administration said that preemption was part of [the administration's] negotiations [with the smoke-free coalition] because one of the things the restaurant industry in particular was concerned about was having some locality to doing, possibly they couldn't do the lesser standards in the state-wide one but they could do a more strict standard. ... They didn't want it to comply with business standards in different cities or localities across the state (Interview, December 8, 2010).

In effect, TRA wanted uniform standards throughout the state, which they had through this preemption.

Additionally, preemption became a “silent” compromise in the legislative. Thus, commenting on this preemption issue, Senator Herron said,

If I had my way, there would not be a [preemption] provision, but it became a compromise in order to pass [the SFP] legislation. I would prefer local governments have stricter policies if they choose to, particularly places of serving but that [preemption provision] became a provision that was quintessential to pass [the SFP] legislation (Interview, February 10, 2011).

In sum, preemption became a mooted issue throughout the SFP process because of early concession by members of the smoke-free coalition to gain support of the TRA and legislative compromise to ensure that the NSPA successfully go through the legislative process.

Unlike preemption, the exemptions created tensions within the smoke-free coalition and even within TRA, and attracted lengthy legislative debates. *Which venue should be exempted from the NSPA was subject of contention among the stakeholders?* Table 5 shows, all the initial SFP bills that included some exemptions. In the course of the legislative development, while the Senate amended SB1325 to reduce the number of exemptions, the House Agricultural Committee included more areas of exemptions in the amended HB1851, which the Legislature approved.

The main reason for these exemptions was legislative compromise (48% of interviewees). Echoing sentiments during the legislative debate in an interview, Senator Herron said, There were opponents who would not vote on the [the SFP] bill unless exemptions were accepted. There were those who said that they might vote for it or would vote for it if it did have those provisions and it was necessary for us to pass the [SFP] bill. Those compromises were necessary to get the bill passed and they [exemptions] were negotiated accordingly (Interview, February 10, 2011).

As already indicated, division and tension ensued within the smoke-free coalition because CHART acquiesced to these exemptions, which TRA was strongly against.

The other considerations for the exemptions were impact on (small) businesses, (13% of interviewees), protection of rights of individuals who choose to smoke (3% of interviewees) and demands from constituents (3% of interviewees). Additionally, the legislative debates suggest that the exemptions were accepted because the NSPA provided the beginning for something that can be improved in the future. In this respect, arguing in favor of the Senate amended SB1325 during the House and Senate Joint Session on May 31, 2007, Representative Bone, the sponsor of the amended bill, said,

This is the Non-Smoker Protection Bill and I would like to make a few comments here. Our committee worked real hard on the legislation. We had people from all sections of the state that came in and spoke on this issue on both sides. We listened to all of them. We gave them all the time they wanted to speak. Both leaders came to our committee and they told us that it was time to pass some sort of legislation. Is this [SFP bill] perfect? No, it is not perfect and I don't many things (bills) we pass in here are (perfect). We can come back and change it from time to time and that's how the process works. We passed out a comprehensive bill for many Tennesseans. You know the polls show about 70 to 75 % of the people of Tennessee want something to do about this issue. CHART and other groups worked very hard on this legislation. And they all wanted more, but realized this was *just*

*a start*. And I think it's very important today that we pass this legislation [emphasis added].

In a House Agriculture Committee debate on the HB1851 on May 30, 2007, Representative Shaw withdrew an amendment on the exemption for truckers that would have restricted exemption to only trucks with no passenger saying,

I personally want to move that amendment to the table because I think that's kind of useless and I know we are not passing a perfect bill today and you know we are passing a bill that is far from being perfect, but we do need to pass something out of it. I think both of our leaders are upset, we all know we all could sit around and talk about it the next year and it wouldn't be perfect. But let us pass something out today and we can always come back and amend it later and I am going to move that amendment to the table.

Senator Tracy also said during the Senate Commerce, Labor and Agriculture Committee's debate on the original SB1325 on May 8, 2007,

This bill has been worked on for a long time. I have been hearing in my district every week when I go home. This is one of the most important issues that are talked about. I think this is something that can pass. We can move the ball down the field and it may not be perfect for everybody, but I think it's an opportunity to get it [smoking] out of our restaurants and other public places and it would be tremendous help and I think it will be very popular across the state. I think it's very important. I would like to thank Senator Paul Stanley for working on the bill and we worked on this for nearly two years, three years discussing this issue. We talked about it. Last year we got it out of local committee. Couldn't get it passed through the Senate. So, this is a very important issue and I would really like you to consider this.

In sum, proponents of SFP for Tennessee acquiesced to exemptions to allow the NSPA to successfully pass through the legislative process. This acquiescence was based on the assumption that while the NSPA was "*not perfect*", there will be room or opportunity for future improvements, which is why about half (48%) of the interviewees wanted all or parts of the exemptions removed. At the same time, however, very limited political mobilization to remove these exemptions has taken place because of the concern that opening up the NSPA for debate could result to the opening of a political can of worms, which could end up destroying what the proponents achieved, according to Mr. Spain from the administration (Interview, December 8, 2010). Thus, by the compromise on the exemptions, certain percentage of Tennesseans will likely be left without smoke-free environment for long time because of the difficulty in repealing legislation.



## **DEVELOPMENT OF THE NON-SMOKER PROTECTION ACT: IMPLEMENTATION**

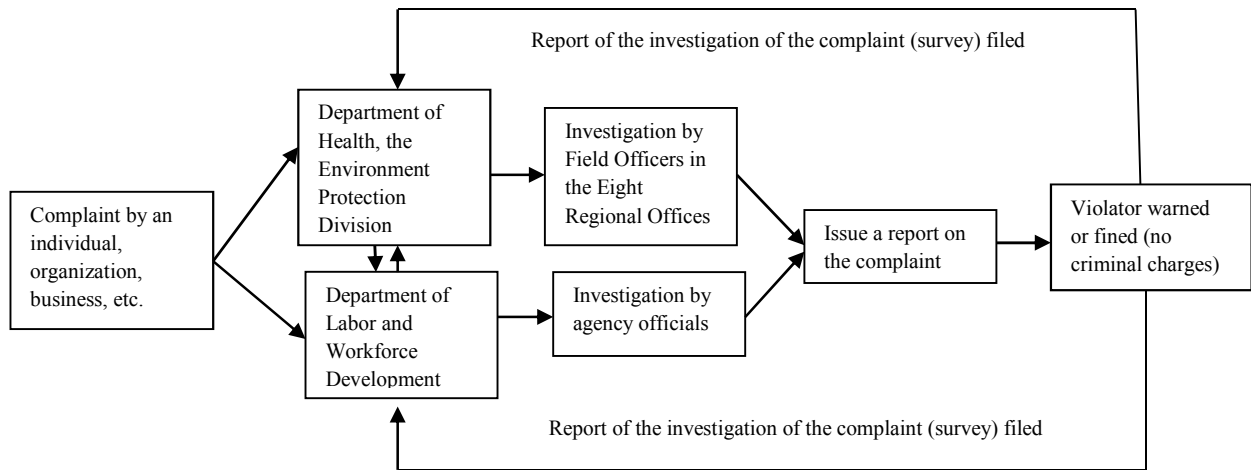
Unlike the 1994 PYATA and the 1995 CACIA that implementation was entrusted to the Department of Agriculture; the Department of Health and the Department of Labor and Workforce Development became the implementing agencies for the NSPA (Appendix A). This shift signified a major transition in the dominance of the tobacco iron triangle in the tobacco policy subsystem. In this respect, implementation of the SFP was shifted to a venue where the activities of tobacco network were less influential, which is likely to weaken the tobacco triangle in the policy subsystem.

As implementing agencies, the Department of Health and the Department of Labor and Workforce Development developed specific rules and regulations for the NSPA through inter-agency meetings and lessons from other states, particularly Indiana (Interview, Hugh Atkins, January 28, 2011) (Appendices J and K). The areas under the purview of the Department of Health included places, such as restaurants, health care facilities and hotels/motels and those of the Department of Labor and Workforce Development included places, such as manufacturing facilities, convenience and grocery stores and malls. An integral part of the implementation process is enforcement, which means that these agencies were responsible for ensuring that individuals, organizations, and businesses around the state comply with the NSPA. The interviews suggest that since the NSPA became effective on October 1, 2007, there has been a continuous inter-agency communication in the implementation process. This section is meant to provide an insight into the implementation process and stakeholders perceptions about it, but not evaluation of the implementation process or how well the NSPA is being implemented.

### **The Implementation Process**

Figure 19 shows that the implementation of the NSPA is citizen-initiated. In this respect, an individual, organization, or business observing a violation contacts the implementing agencies with a complaint (usually a phone call or email). Agency officials then investigate the complaints and violators are fined \$50 for individuals and between \$100 and \$500 for businesses; no criminal charges can be filed against any violator. Thus, violating the NSPA is a misdemeanor and not a felony. The report of the violation, a survey instrument (Appendices L and M), is filed with the agency involved. These agencies used different reporting mechanism because of the difference in the areas under their purview, which suggest the need for standardization of the reporting mechanism. It will, however, be interesting to know of the level of the general public's awareness of these implementation mechanisms.

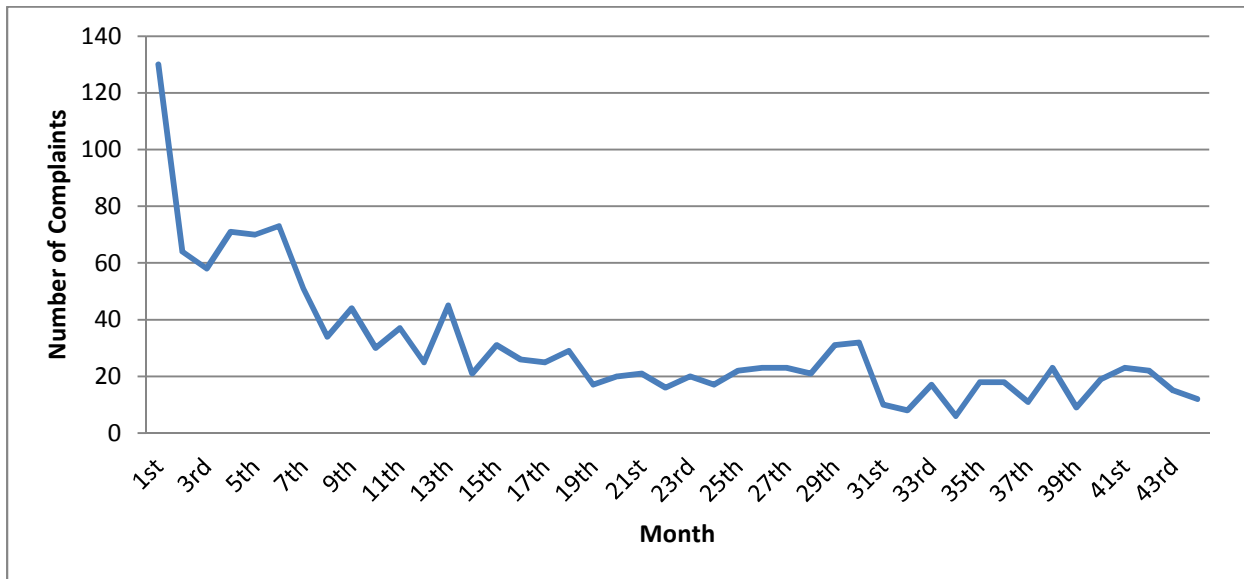
**Figure 19: The Process for the Implementation of the Non-Smoker Protection Act**



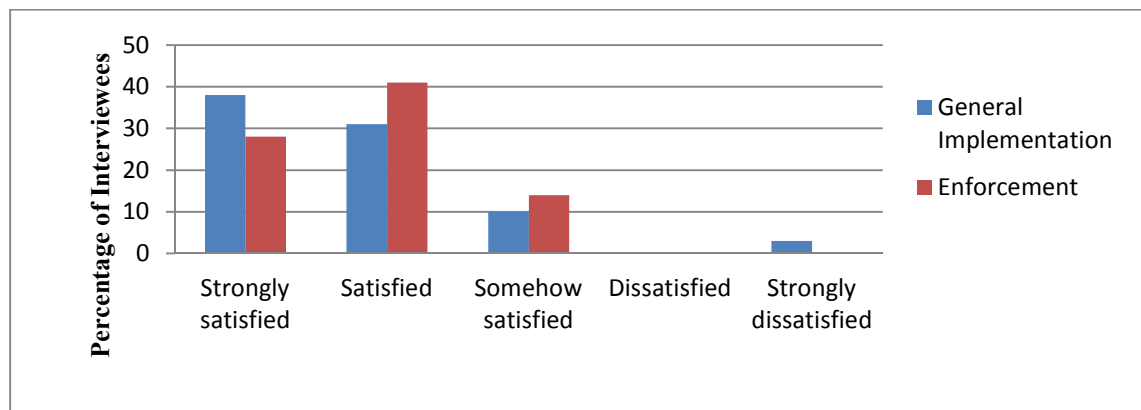
*Stakeholders' Perceptions of Implementation*

Figure 20 shows the monthly complaints of violation to the Department of Labor and Workforce Development dropped drastically from the peak period of 130 complaints in the first months of implementation, October 2007, to 12 in the 44th month, May 2011. This rapid decline in complaints is probably due to high level of receptivity of the SFP in Tennessee or general public's lack of awareness of the reporting mechanisms. Regardless, the stakeholders interviewed for this project were overwhelmingly satisfied with the general implementation and enforcement of the NSPA (Figure 21).

**Figure 20: Monthly Complaints of Violations Received by the Department of Labor and Workforce, October 2007 to May 2011**



**Figure 21: Are you satisfied with the Implementation and Enforcement of the Non-Smoker Protection Act?**



**Note:** Categories are mutually exclusive

### *Challenges in Implementation*

Since October 2007, few challenges including the initial development of the rules and regulations,<sup>[312, 313]</sup> interpretation of the NSPA and the rules, the training of agency staff, and education of the public and business establishments about the NSPA confronted implementation of the NSPA. Once the initial implementation phase passed, according to Mr. Hugh Atkins from the Department of Health,

the establishments began to understand what they could and couldn't do and public became aware of what these establishments could and couldn't do. After some initial education and work on the front end, places settled into getting into compliance and it wasn't after you know if they knew others would have been alerted everybody and once you get past that [initial phase] then you just deal with the occasional problems (Interview, January 28, 2011).

Mr. Atkins added, "Tennessee has been a huge tobacco producer for years and we prohibit something like this, it went a whole lot smoother I think than anticipated."

Abuse by patrons was identified in the interviews as another challenge in the implementation of the NSPA. Articulating this point, Representative Floyd said,

I still think we need to shore up where (example, hotel rooms) people take advantage of the law. That's, being in hotel rooms, in the nonsmoking room, it's hard to implement that. You go to a hotel room that is supposed to be a nonsmoking room and you would find a plastic bag masking it with a rubber band over it on the smoke alarm so that it does not go off. Those are the things that you still find. The biggest abuse I have found in implementation is hotels and motels (Interview, October 27, 2010).

Thus, while institutional challenges in the implementation process appear to have been overcome, few legislators and implementers were concerned about efforts by individuals to avoid compliance.

### *Gaps in the Non-Smoker Protection Act*

Although there appears to be high level of receptivity to and satisfaction with the NSPA (Figures 20 and 21), efforts to implement the NSPA led to two observable gaps -- implementing agencies and the exemptions in the policy. Because the implementation of the NSPA was entrusted to the Department of Health and the Department of Labor and Workforce Development, both agencies continue to receive calls from the Department of Agriculture inspectors and police officers on incidences of violations and non-compliance. The expenditure of time involved in the follow-up of the phone calls could be reduced if Department of Agriculture inspectors and the police officers are also authorized to enforce the NSPA. In effect, there is the need for modifying the enforcement component of the NSPA to get more agencies involved.

The interviews suggest that the stakeholders have begun to recognize that the exemptions are gaps in the NSPA. Although interviewees were satisfied with the adoption of the NSPA (Figure 16), 48% wants all or parts of the exemptions removed. Echoing the view of interviewees involved in the implementation and consistent with those from CHART and TRA, Mr. Adkins from TRA said,

Well, I think that certainly it [removing the exemptions] would be easier for the establishment and the enforcement agencies. That is, just a simple ban on smoking in enclosed public places without the exemptions, I would say that would be more of a black or white issue. But again, if we understood what the parameters are, they'll settle into them. It's [exemptions] not that big a problem. But I think, we do hear from some of the businesses that they would like it [smoking] to be consistently banned, not wanting the competition across the street, to allow smoking when they are not allowed to (Interview, January 28, 2011).

The exemptions have created loopholes in NSPA that pose challenge to implementation, especially the confusion over what constitutes a smoke-free area. Although such confusions have been reduced with the passage of time, all implementers interviewed for this project felt that implementation and enforcement of the NSPA will be easier if all or certain exemptions are removed. In the case, the top three exemptions interviewees want removed, if not all, were the exemption for private places patronized by people 21 years and older or age-restricted venues, private businesses with three or fewer employers and areas enclosed by garage type doors (Box 2)

In sum, implementation of the NSPA has revealed its shortcomings, which are the limited number of agencies (two) involved in the implementation and the exemptions. The assessment of the general public's awareness of the NSPA and in-depth examination of agency activities toward implementation will better help to determine how well the NSPA has been implemented.

## DISCUSSION

As of the time of the development of the NSPA, it was the strongest among major tobacco producers in the country (Table 1). This study sought to understand why and how SFP became a policy in a major tobacco-producing state by examining all the phases of the policy process, agenda-setting, legislative development and implementation. This section, therefore, aims to show how the three explanatory models, *multiple streams* model, *policy networks* approach, and *socio-economic influence*, guided the study.

### *Multiple Streams Model*

This model conceives agenda-setting as a confluence of three independent streams – problem, policy solutions, and politics.<sup>[30]</sup> The problem of tobacco use, particularly high smoking prevalence and health consequences in Tennessee have been known within policy circles for decades as a contributing factor to the poor health status of the state's population. The health problem became complicated with evidence on the economic costs of tobacco use for the state, including expenditure on its Medicaid program, TennCare.<sup>[249]</sup> The concerns over health consequences and economic costs of tobacco use continue to increase amidst the decline of dependence on tobacco production, which continues to reduce the economic importance of tobacco for the state. The combination of these issues provided the background for SFP in the state. In this respect, the definition of tobacco as an economic good in the state continues to shift to the definition of tobacco as a problem that needs solution. The question then is, since policymakers were familiar with the problem of tobacco use (and SHS), how was policy to deal with it framed or the policy image portrayed, especially in the absence of any observable "focusing event" or crisis?

Similar to the problem stream, the policy solutions (including SFP) have been floating around in the country for many years. By time the issue reached the state's policy agenda in February 2007, at least 22 other states and thousands of localities around the country had some sort of SFPs.<sup>[317]</sup> With respect to Tennessee, tobacco control can be traced to the late 1890s or the prohibition era. However, the state only began to be proactive in tobacco control with the promulgation of the 1994 PYATA and 1995 CACIA (Figure 5). With respect to SFP, before the mid-2000s, it was pursued at the local government level and occasionally at the state level and health groups advocated and worked for it for many years. However, all SFPs were fiercely resisted by tobacco interests, TRA and some policymakers. In effect, due to the problem of tobacco use, SFP has been on the public agenda for many years.<sup>[62, 68]</sup> However, no "focusing event" or crisis with respect to the problem of tobacco use occurred in the state to ensure that tobacco control (including SFP) gained the attention of policymakers and the public, and to facilitate the rise of the issue onto the policy agenda. The political environment, which was hostile to tobacco control, was then left to determine when the issue will arrive on the state's policy agenda.

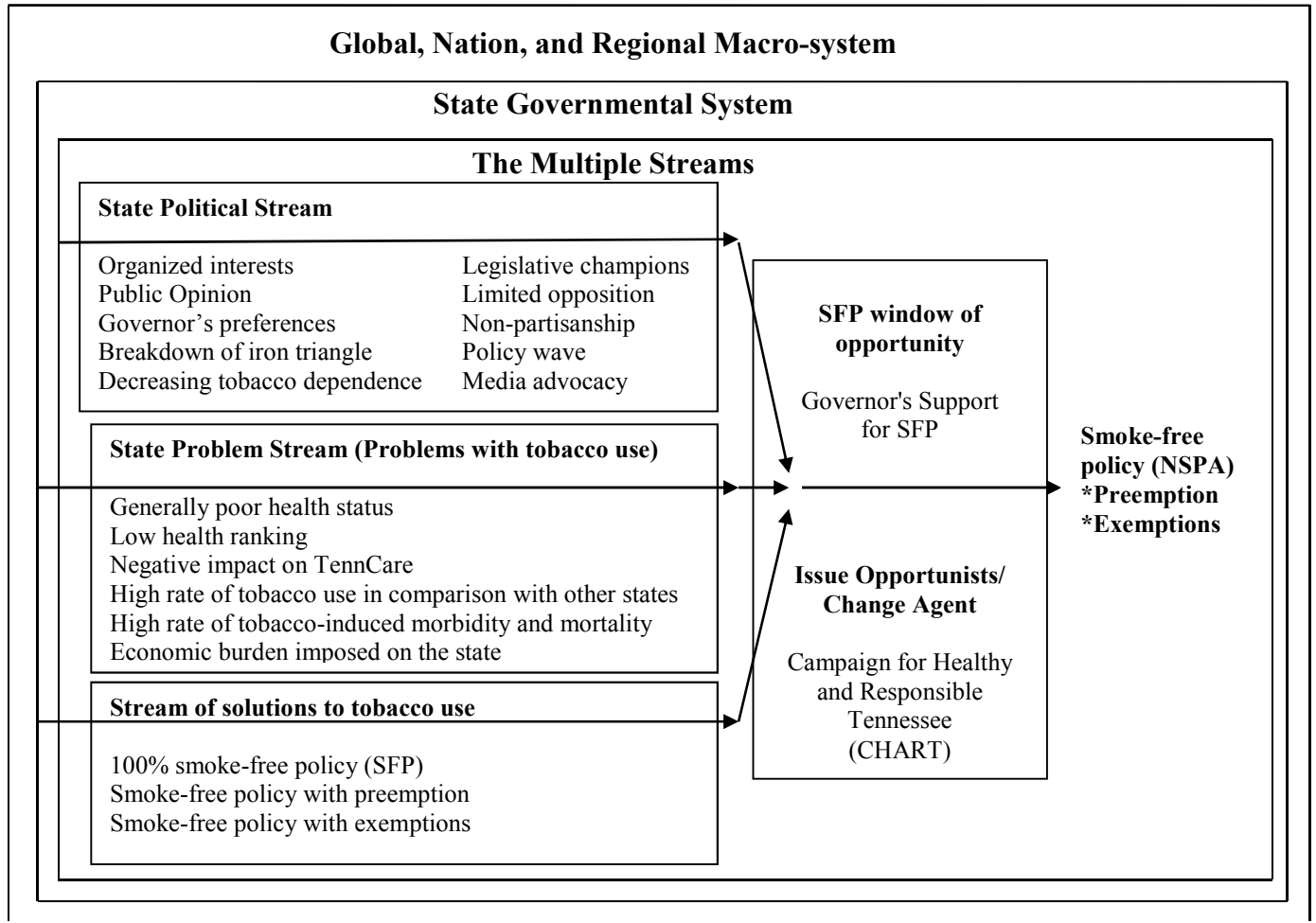
The political event that facilitated the elevation of the issue of tobacco use and control from the public agenda onto the policy agenda occurred when the Governor Bredesen announced support for a comprehensive statewide SFP in June 2006. This announcement created the "window of opportunity" that coupled the problem, policy and political streams and elevated SFP into the state's policy agenda. The Governor's announcement is consistent with Michael

Howlett's idea of a random window of opportunity<sup>[76, 77]</sup> because it was unplanned and off-script. In this case, an unforeseen political event, Governor's announcement, brought the three independent streams together, which became catalyst for policy change.

While the governor's announcement opened the window of opportunity for SFP change, it was the presence of a change agent, an advocacy coalition<sup>[66, 120]</sup> of health groups or CHART, not policy entrepreneurs<sup>[69, 70]</sup> ensured that the SFP has a place on the state's policy agenda. CHART, whose efforts to repeal the preemption in the 1994 PYATA and policy change were stalled, recognized and captured the window of opportunity, a vital determinant of agenda-setting.<sup>[75]</sup> In this respect, CHART saw the state level as an alternative venue for policy change and shifted its efforts from the localities to the state. For this reason, soon after the Governor's announcement, CHART managed to build a smoke-free coalition with non-traditional partners, mobilized the public and gathered evidence of public support for the SFP. The smoke-free coalition aligned with the administration to ensure that SFP was included in the agenda of the 105<sup>th</sup> Legislative Session.

The evidence in this study suggests that in tobacco control, the level of awareness of the issue of tobacco use and control in policy circles in the country has grown to the point that the things needed are favorable political environment and a change agent like CHART to bring about policy change. This, indeed, was the case in a state where CHART had lobbied for and introduced different versions of SFP over the years, but the issue did not get policymakers' attention until the Governor unequivocally expressed support for it. This phenomenon is consistent with SFP development in other tobacco states<sup>[35, 202]</sup> and localities<sup>[47, 201]</sup> and elsewhere in the country.<sup>[43, 48]</sup> The facilitators for policy change may vary from state to state or locality to locality, but political circumstances to bring about policy change is similar, if not same. As the first major tobacco-producing state to develop a statewide SFP, Tennessee provides a laboratory for understanding how in a tobacco-producing state political circumstances become coupled with problems (health consequences and economic costs of tobacco use) and policy solutions (tobacco control) to help elevate an issue (tobacco use and control, SFP) into the policy agenda (Figure 22).

**Figure 22: A Policy Streams Model of Smoke-free Policy in Tennessee (Borrowed from McLendon, 2003<sup>[49]</sup>)**



## *Policy Networks*

Given that the interest group structure in the country (including Tennessee) is pluralistic where groups collaborate and compete for collective action and for power and influence in the policy process, <sup>[318-320]</sup> the degree of integration <sup>[54, 107, 111, 124]</sup> was the criterion used to classifying the relationship within groups and between groups and the state of Tennessee. The relevant policy networks in the development of the NSPA were iron triangles<sup>[321]</sup> and issue networks.<sup>[126]</sup> While an iron triangle is a stable, small and consensual group-government relationship,<sup>[125, 321]</sup> issue networks refers to a situation where there are wider variety of links between government and many groups and there is less agreement and stability.<sup>[126, 321]</sup> In effect, whereas iron triangles have exclusive control of the policy subsystem with the ability to preclude the participation of other groups, issue networks are fluid with groups coming in and out of the network, and conflicts are endemic. Figure 23 illustrates the kind of group-state relationships that emerged in the development of the NSPA.

As a major tobacco-producing state, the institutional set up of the Legislature is such that tobacco policies (including tobacco control) usually originate from the agriculture committees, which is ironic because tobacco control has nothing to do with agriculture; it is all about health. As a result, a tobacco iron triangle (Agriculture Committees of the Legislature, Department of Agriculture, and tobacco interests) dominated the policy subsystem and stifled all efforts at tobacco control (including SFP) by killing tobacco-control related bills at the committee level. Mr. Perkey from CHART succinctly articulated this point that “the House Agriculture Committee had always been able to block this kind of legislation [SFP]” (Interview, October 8, 2010). Even with respect to the NSPA, which the final floor votes on May 31, 2007, showed overwhelming bi-partisan support in the Legislature, Senator Herron said,

This [SFP] legislation just barely did pass. Hopefully, it looked like the margin. Final vote was looking like it’s going to almost destroy it. The Senate [Commerce, Labor and Agriculture] Committee almost killed it .The House [Agriculture] Committee killed it. It was dragged out all session long and it barely did pass (Interview, February 10, 2011).

According Mr. Haskell from TRA was that

The problems of not getting those [SFP] bills in the committee was because it was perceived as an anti- tobacco bill in a state that was a big tobacco producer (Interview, October 1, 2010).

In effect, the tobacco iron triangle stifled the influence of the health groups in the tobacco policy subsystem in the state for many years. Even when the 1994 PYATA and 1995 CACIA were enacted, implementation was entrusted to the Department of Agriculture to maintain the iron triangle control of the policy subsystem. Additionally, the preemption ensured that this network had firm control of the policy subsystem in the state. For this reason, Ms. Bryan from CHART who has been working in tobacco control in the state for over a decade said,

When we started first working on this [SFP], tobacco had a strong coalition in the legislature that no one thought we would pass any of these, a smoke-free policy and a very significant tax free policy in one year. It’s something we really would not have dreamed off (Interview, November 24, 2010).

This tobacco iron triangle became weakened during the efforts to develop the NSPA most



likely due to the Governor's overt and strong support for the SFP, the U-turn in the position of TRA that had aligned with tobacco interests to oppose any SFP for many years, the existence of CHART that pushed its way into policy subsystem by taking advantage of a confluence of related events, public support for the SFP and momentum for policy change. Thus, it was obvious that in the case of the NSPA, relationships in the iron triangle fractured, which undermined the influence of tobacco interests in the process and helped the smoke-free coalition to become influential.

The smoke-free coalition that emerged in the NSPA process was a single-issue, loose coalition that conforms to an issue network.<sup>[126, 321]</sup> In this case, the reason this loose coalition came together was solely for the development of the SFP. At the core of this coalition was CHART, which, as indicated initiated the smoke-free coalition that aligned with the administration to support the SFP as well as mobilized public support for it. In particular, CHART co-opted TRA into the smoke-free coalition by conceding not to fight against tobacco control preemption in the state. This phenomenon was similar to the enactment of the California Assembly Bill 13 (AB 13) in 1994, when American Cancer Society, American Heart Association, and American Lung Association were willing to accept preemption to attract the state restaurant association, but were opposed by the American Nonsmokers' Rights.<sup>[184]</sup> By the concession, CHART bought into a policy culture that has stifled local initiatives and innovations since the mid-1990s. Additionally, both TRA and labor union joined the coalition because the SFP issue was primarily framed as a workers' right issue, not targeted at any particular industry. Moreover, CHART successfully sought alliance with the administration (governor and staff and the Department of Health) as well as key legislators interested in SFP issues. In effect, these diverse groups came together for one purpose, the development of the NSPA.

The evidence that the smoke-free coalition was just an issue network became obvious during the legislative development phase when conflicts emerged between CHART and TRA over the content of the SFP bill, the exemptions. CHART's decision to compromise on the exemptions infuriated TRA, which temporarily withdrew from the smoke-free coalition and became an opponent of the amended SFP bill with exemptions. However, towards the end of the legislative process, TRA reversed its position to support the bill. This phenomenon is something symptomatic of issue networks whereby conflict is endemic and groups move in and out of the network. In fact, after the enactment of the NSPA, the smoke-free coalition fizzled out and CHART became the main group for SFP in the state.

The issue then is, with the development of the NSPA, has power shifted from the tobacco network in the state to the anti-smoking network represented by CHART in the policy subsystem? During the development of the NSPA, it can certainly be said that while there was intensive bottom-up, top-down mobilization by the anti-smoking network for the NSPA, there was limited counter-mobilization on the part of the tobacco network to derail the process. This phenomenon is consistent with Lowery et al.'s study on health policy lobbying in the states,<sup>[323]</sup> but contradicts the counter-mobilization thesis<sup>[323-326]</sup> that argues that mobilization by a group leads to counter-mobilization by opposing interests<sup>[324, 325]</sup> alliance participation,<sup>[327, 328]</sup> and venue shopping<sup>[329]</sup> as a group becomes threatened by the activities of opponents<sup>[330, 331]</sup> Perhaps, the limited counter-mobilization by the tobacco network was due to the desire to avoid conflict<sup>[319, 332, 333]</sup> over an issue that had strong support from a politically powerful Governor and the public, as well as abandonment by an ally (TRA), and disagreements within the network



## *Socio-economic Influences*

The salient contextual issues in the development of NSPA are the prevalence of tobacco use, the health consequences and the economic costs of tobacco use, the dependence on tobacco (as a major tobacco-producer), and the changing attitudes and behaviors toward tobacco use. The earlier sections addressed the first three issues as motivators and facilitators for agenda-setting for the SFP and background for legislative development and adoption of the NSPA. For this reason, this section will focus on the changing attitudes and behaviors toward tobacco use and control.

The data gathered for this study suggest that attitudinal and behavioral changes toward tobacco use and control in Tennessee continue to occur at two levels: 1) the public and 2) businesses and institutions. For example, the 1987 Tobacco Institute's *State of the State* report indicated,

Anti-tobacco forces: We may see another attempt to introduce anti-tobacco legislation. There is growing anti-tobacco sentiment in the media, and at the University locations such as Knoxville, Chattanooga and at Vanderbilt in Nashville.<sup>[2]</sup>

The public is increasingly developing negative attitudes and behaviors toward tobacco use not only from the growing awareness of health hazards of tobacco use (and exposure to SHS) but also from the consideration of smoking as nuisance with decreasing smoking prevalence. The result was that, prior to the NSPA, individuals were increasingly demanding smoke-free environments, which was a reason why the TRA made the U-turn to support 100% SFP. The changing attitudes and behaviors toward tobacco use culminated in overwhelming public support for SFPs, which was illuminated by the American Cancer Society's survey of October 2006 (Appendix I).

The importance of attitudinal and behavioral changes toward tobacco use was that public support became a prime reason why stakeholders (except the tobacco interests) collaborated to develop the NSPA. Thus, echoing the sentiments of almost all the interviewees (including opponents of the NSPA), Mr. Spain from the administration said that the central reason for the developing the NSPA was that "there was broad public support for it" (Interview, December 8, 2010). From a legislative standpoint, this point was articulated by Representative Odom during the House Agriculture Committee debate on the amended HB1851 on May 30, 2007:

I think the people of Tennessee want regulation of smoking in our society. I think it's something no matter whether you go back to your district, or just simply walk down the streets, look at a poll by some non-profit organization [American Cancer Society] that's supporting it. I think it's clear that Tennesseans want some regulation and I appreciate the work of the Chair [Representative Bone] and the other sponsors of the bill, the House bill 1851.

During the same debated, Representative Bone, the sponsor of HB1851 said,

We have had two big ones. In the beginning of the year representative William Baird [Republican, 36<sup>th</sup> District] and I fought HB 1851 because, we had heard and thought that the people of Tennessee wanted some type of smoking change. We have heard that the polls have been high showing that the people of Tennessee wanted to see something

done. I don't think and a lot of us don't think that the government should get involved with everything we do, but we feel like this is an issue that we need to take a stand on and I think personally it's very important for this [House Agriculture] Committee to make through something here today and getting some kind of smoking bill through our Committee.

In effect, similar to previous studies,<sup>[142-144]</sup> public opinion was influential contextual factor in the development of the NSPA.

The change in businesses and institutions' attitudes and behaviors toward tobacco use pertains to voluntary introduction of smoke-free environments. In the absence of a state or local government SFPs, businesses and institutions either on their own or in response to public demands incrementally created smoke-free environments (Figure 7).<sup>[172]</sup> This transition was particularly obvious in the restaurant business, when the patrons' demand for smoke-free environments made individual restaurants to either be 100% smoke-free or tried to "accommodate" nonsmokers by creating smoke-free sections. As already noted, this issue contributed to the U-turn in TRA's position on SFP, and which is why legislators, such as Lt. Governor Ramsey and Representative Bell argued that the restaurants wanted SFP, but needed the NSPA as a legislative cover. Additionally, throughout the state institutions, such as hospitals voluntarily created smoke-free environments, which have contributed to modifying attitudes and behaviors toward tobacco use and control.

In sum, in public policy development, public opinion occasionally influences both agenda-setting and legislative development. The changing attitudes and behaviors toward tobacco use and control in Tennessee have culminated in increasing support for SFP. Indeed, one of the strongest and direct reasons for development of the NSPA identified by almost all stakeholders interviewed for this study (including opponents) was public opinion. This issue emanated from two key contextual factors: increased public demands for smoke-free environments and support for SFPs and voluntary transition to smoke-free status by businesses and institutions in the state.

## CONCLUSION

In 2007, Tennessee developed the strongest SFP, the NSPA, among the six states (North Carolina, Kentucky, Virginia, South Carolina, and Georgia) that account for 90% of tobacco production in the country.<sup>[334]</sup> This SFP became part of the state's policy agenda when the Governor's unexpected announcement of support for a statewide SFP became coupled with the problem of tobacco use and policy solutions to create a random window of opportunity, which a change agent, CHART, seized for policy change. In this respect, political circumstances and the presence of a change agent became important factors in agenda-setting and subsequent development of the NSPA. The key issues that helped in developing the NSPA were strong support from the administration that stifled opposition, grassroots mobilization of public support by CHART, limited counter-mobilization by tobacco interests and legislative opponents, and U-turn in TRA's position in support of 100% SFP. Thus, there was a dramatic change in the policy/political environment in support of a SFP. For this reason, understanding the entire NSPA process requires multiple models.

Stakeholders, especially legislators recognized that the NSPA was not a "perfect" SFP because of the special provisions, preemption and exemptions. State-level preemptive policies have been and continue to be commonplace in the country.<sup>[8]</sup> Previous studies found preemptive policies as an explicit strategy by tobacco industry to fight back increasingly stringent local laws<sup>[184, 335]</sup> and to win battles that otherwise would be lost in the localities.<sup>[11, 335]</sup> While this was obviously the case with respect to the inclusion of preemption in the 1994 PYATA, it provided little explanation for why all the SFP bills that were introduced in the 105<sup>th</sup> Legislative Session continued the preemption. The failure of efforts to repeal preemption made stakeholders in the state to accept it as part of the policy culture such that CHART was willing to give it away as a concession for TRA's inclusion in the STC. The result is that in Tennessee, there is little (if any) desire to remove preemption from the SFP. Thus, articulating this point, Ms. Spain from CHART said,

There's just [no] support [for removing the preemption], there hasn't been and I don't, I'm not sure there is now or will be in the next few years support to remove that preemption. There are people who are behind that [preemption]. So we hear it [preemption] needs to be [repealed] across the state. But there's nobody else to actually put a bill in to try to get that pass (Interview, February 10, 2011).

As a result, the repeal of preemption in the NSPA remained a mooted point among the stakeholders in the state, which presents a conundrum for *Healthy People 2020*, which aims to "eliminate state laws that preempt stronger local tobacco control laws," including smoke-free indoor air, advertising, and youth access.<sup>[8]</sup> In environments that preemption has been internalized as a policy culture, will there be a motivation to fight for repeal, even among health groups? This is a challenge *Healthy People 2020* could face in the next decade.

Unlike preemption that has widespread support among stakeholders in Tennessee, there were strong disagreements over the exemptions in the development of the NSPA. The TRA wanted a 100% SFP and opposed the exemptions from the beginning. CHART compromised on the exemptions likely due to the inadequate understanding that the new policy/political

environment supported a strong SFP, but the interviewees generally felt it is time to repeal the exemptions. Legislators conceded on the exemptions under the pretext that the NSPA was just a beginning for a more comprehensive SFP. This point was articulated in Representative Bone's argument in support of the NSPA during the Joint Session of the House and Senate on May 31, 2007. While indicating that challenges presented by the exemptions have been overcome with passage of time, implementers still felt that their work will be much easier with the repeal of exemptions in favor of 100% SFP. In effect, emerging agreement among stakeholders interviewed for this study (not including tobacco companies) appears to be geared towards repealing all or certain exemptions in the NSPA. This trend is consistent with *Healthy People 2020* aims to have 100% smoke-free public and private workplaces, including restaurants, bars, gaming halls, commercial and home-based day care centers, public transportation, hotels and motels, multiunit housing, vehicles with children, and prisons and commercial facilities.<sup>[8]</sup>

The final issue for the public health community, however, pertains to the best approach for SFP change, the bottom-up that focuses on gearing energy and resources toward the localities where the tobacco industry is generally weaker or the top-down that focuses on gearing energy for policy change at the state level where the tobacco industry is generally stronger.<sup>[203, 266]</sup> The case of the NSPA affirms the concerns of those who espouse the bottom-up approach that the possibility of ending up with a relatively weak SFP is very high at the state level. At the same time, with the introduction of preemption in Tennessee in 1994 and over a decade of failed grassroots efforts to repeal it, it makes sense that CHART captured the window of opportunity provided by the Governor's announcement to pursue SFP change at the state level. The issue, however, was that CHART was not able to capitalize on the new favorable policy environment to get a strong SFP. In this respect, the lesson for other states/regions/countries is that the policy and political environment should dictate the drive for policy change as there is no one-size-fits-all approach to SFP change. Proponents for policy change should know and understand their policy and political environment and be alert for any change that will facilitate the development of SFP. In Tennessee, if CHART did not capture the window of opportunity and shift the venue of their policy activities from the local to the state level, the state may still be without an SFP.

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## APPENDICES

### Appendix A: The Non-Smoker Protection Act (<http://state.tn.us/sos/acts/105/pub/pc0410.pdf>)

Public Chapter No. 410

PUBLIC ACTS, 2007

1

#### PUBLIC CHAPTER NO. 410

#### SENATE BILL NO. 1325

By Tracy, Herron, Stanley, Raymond Finney, Kurita

Substituted for: House Bill No. 1851

By Bone, Baird, Fincher, Hackworth, Williams, Ford, Eldridge, Dean, Bibb, Shaw, Shepard, Sontany, DuBois, Montgomery, Casada, Odom, Gresham, Swafford, Watson, Hood, Coleman, Gilmore, Pruitt, Hensley, Floyd, Jim Cobb, Pitts, Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17; Title 50 and Title 68, to enact the "Non-Smoker Protection Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding the following language as a new, appropriately designated part thereto:

Section 39-17-1801. This part shall be known and may be cited as the "Non-Smoker Protection Act".

Section 39-17-1802. As used in this part, unless the context requires otherwise:

(1) "Acceptable form of identification" means:

- (A) A state-issued driver license;
- (B) A state-issued identification card;
- (C) A valid passport; or
- (D) A valid military identification;

(2) "Age-restricted venue" means a legal establishment that affirmatively restricts access to its buildings or facilities at all times to persons who are twenty-one (21) years of age or older by requiring each person who attempts to gain entry to such buildings or facilities to submit for inspection an acceptable form of identification for the express purpose of determining if the person is twenty-one (21) years of age or older;

(3) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit and a person who volunteers such person's services for a non-profit entity; and

(4) "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, educational

institution, trust, or non-profit entity that employs the services of one (1) or more individual persons;

(5) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to ceiling;

(6) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities;

(7) "Person" means an individual, partnership, committee, association, corporation or any other organization or group of persons;

(8) "Place of employment" means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility;

(9) "Private club" means any club or organization that does not permit the general public access to its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of this part, the club or organization shall adhere to all of the following criteria:

(A) Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;

(B) Limit access and use of facilities, services and activities of the organization to members and guests of the members;

(C) Be controlled by its membership and operate solely for the benefit and pleasure of its members; and

(D) Advertise exclusively and only to its members, excluding membership drives;

"Private club" also means any institution or organization that has received a determination of exemption from the Internal Revenue Service under 26 U.S.C. § 501(c)(19);

(10) "Public place" means an enclosed area to which the public is invited including, but not limited to, banks, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation

facilities, reception areas, restaurants, retail food production and marketing establishments, recreational facilities, retail service establishments, retail stores, shopping malls, sports arenas, theaters, places of employment and waiting rooms;

(11) "Restaurant" means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant;

(12) "Retail tobacco store" means a retail store that derives its largest category of sales from tobacco products and accessories;

(13) "Service line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money;

(14) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments;

(15) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form; and

(16) "Sports arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Section 39-17-1803. (a) Smoking is prohibited in all enclosed public places within the State of Tennessee including, but not limited to, the following places:

(1) Aquariums, galleries, libraries, and museums;

(2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public including, but not limited to, banks, laundromats, factories, professional offices, and retail service establishments;

(3) Child care and adult day care facilities;

(4) Convention facilities;

(5) Educational facilities, both public and private;

(6) Elevators;

(7) Health care facilities;

(8) Hotels and motels;

(9) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

(10) Polling places;

(11) Public and private transportation facilities, including trains, buses, taxicabs and airports under the authority of state or local governments, and ticket, boarding, and waiting areas of public transit depots;

(12) Restaurants;

(13) Restrooms, lobbies, reception areas, hallways, and other common-use areas;

(14) Retail stores;

(15) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the State of Tennessee or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the state;

(16) Service lines;

(17) Shopping malls;

(18) Sports arenas, including enclosed public places in outdoor arenas; and

(19) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

(b) This prohibition on smoking shall be communicated to all existing employees and to all prospective employees upon their application of employment.

Section 39-17-1804. Notwithstanding any other provision of this part to the contrary, the following areas shall be exempt from the provisions of § 39-17-1803:

(1) Age-restricted venues;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that no more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so

designated. All smoking rooms on the same floor shall be contiguous and smoke from these rooms shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;

(3) All premises of any manufacturer, importer, or wholesaler of tobacco products, all premises of any tobacco leaf dealer or processor, and all tobacco storage facilities;

(4) Non-enclosed areas of public places, including:

(A) Open air patios, porches or decks;

(B) Any area enclosed by garage type doors on one (1) or more sides when all such doors are completely open; and

(C) Any area enclosed by tents or awnings with removable sides or vents when all such sides or vents are completely removed or open.

Smoke from such areas shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;

(5) Nursing homes and long-term care facilities licensed pursuant to Title 68, Chapter 11; provided that such exemption shall only apply to residents of such facilities and that resident smoking practices shall be governed by the policies and procedures established by such facilities. Smoke from such areas shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;

(6) Private businesses with three (3) or fewer employees where, in the discretion of the business owner, smoking may be allowed in an enclosed room not accessible to the general public. Smoke from such room shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;

(7) Private clubs; provided that such exemption shall not apply to any entity that is established solely for the purpose of avoiding compliance with this part;

(8) Private homes, private residences and private motor vehicles, unless such homes, residences and motor vehicles are being used for child care or day care or unless the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

(9) Retail tobacco stores that prohibit minors on their premises; and

(10) Commercial vehicles when such vehicle is occupied solely by the operator.

Section 39-17-1805. "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance to every public place and place of employment where smoking is prohibited by this part by the owner, operator, manager, or other person in control of that place.

Section 39-17-1806. (a) This part shall be enforced by the Department of Health in those enclosed public places otherwise regulated by the department. This part shall be enforced by the Department of Labor and Workforce Development in those enclosed public places otherwise regulated by the department. If neither department otherwise regulates an enclosed public place where smoking is prohibited pursuant to the provisions of this part, the Department of Labor and Workforce Development shall enforce the provisions of this part therein. The Commissioner of Health or the Commissioner of Labor and Workforce Development may apply for injunctive relief to enforce such provisions in any court of competent jurisdiction.

(b) Notice of the provisions of this part shall be given to all applicants for a business license pursuant to Title 67, Chapter 4, Part 7.

(c) Any person who desires to register a complaint under this part may initiate such complaint with the Department of Health or the Department of Labor and Workforce Development or both.

(d) The Department of Health and the Department of Labor and Workforce Development shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this part.

(e) An owner, manager, operator, or employee of an establishment regulated by this part shall inform persons violating this part of the appropriate provisions thereof.

Section 39-17-1807. (a) A person who knowingly smokes in an area where smoking is prohibited by the provisions of this part shall be subject only to a civil penalty of fifty dollars (\$50).

(b) A person who owns, manages, operates or otherwise controls any public place where smoking is prohibited pursuant to the provisions of this part and who knowingly fails to comply with any provision of this part shall be subject to the following:

(1) For a first violation in any twelve-month period, a written warning from the Department of Health or Department of Labor and Workforce Development, as appropriate;

(2) For a second violation in any twelve-month period, a civil penalty of one hundred dollars (\$100); and

(3) For a third or subsequent violation in any twelve-month period, a civil penalty of five hundred dollars (\$500).

(c) Each day on which a knowing violation of this part occurs shall be considered a separate and distinct violation.

Section 39-17-1808. The Department of Health and the Department of Labor and Workforce Development shall engage in a continuing program to explain and clarify the purposes and requirements of this part to all persons affected by the Non-Smoker Protection Act.

Section 39-17-1809. The Commissioner of Health and the Commissioner of Labor and Workforce Development shall annually request other governmental and educational agencies to establish local operating procedures in cooperation and compliance with this part.

Section 39-17-1810. No provision of this part shall be construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 2. (a) The Department of Health in consultation with the Department of Labor and Workforce Development is authorized to promulgate rules and regulations to effectuate the provisions of this act.

(b) The Department of Labor and Workforce Development, in consultation with the Department of Health, is authorized to promulgate rules and regulations to effectuate the provisions of this act.

SECTION 3. This act shall be liberally construed so as to further its purposes.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on October 1, 2007, the public welfare requiring it.

**PASSED: May 31, 2007**

  
RON RAMSEY  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 11th day of June 2007

  
PHIL BREDESEN, GOVERNOR



**Appendix B: Tobacco Manufacturers Escrow Fund Act**  
(<http://www.state.tn.us/sos/acts/101/pub/pc278.pdf>)

**PUBLIC ACTS, 1999**  
**Chapter No. 278**

**CHAPTER NO. 278**

**SENATE BILL NO. 1544**

**By Haun, Burks, Williams**

Substituted for: House Bill No. 1311

By Givens, Bowers, Ferguson, Roach, Walker, Head

AN ACT To enact the "Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999" and to amend Tennessee Code Annotated, Title 47.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, is amended by adding Sections 2 through 4 of this act as a new, appropriately designated chapter.

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999".

SECTION 3. As used in this act, unless the context requires otherwise:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Allocable share" means allocable share as that term is defined in the Master Settlement Agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(A) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(B) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(C) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its

**PUBLIC ACTS, 1999**  
**Chapter No. 278**

packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in (A) above.

The term "cigarette" includes "roll-your-own", (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

(5) "Master Settlement Agreement" means the settlement agreement, and related documents, entered into in the fall of 1998 by the state and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with Section 4(a)(2)(B) of this act.

(7) "Released claims" means released claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement.

(9) "Tobacco Product Manufacturer" means an entity that after the effective date of this act directly and not exclusively through any affiliate:

(A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer, except where such importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections ll(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection ll(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) Becomes a successor of an entity described in (A) or (B) above.

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (A) - (C) above.

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(10) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or "roll-your-own" tobacco containers bearing the excise tax stamp of the state. The Department of Revenue shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

SECTION 4. (a) Any tobacco product manufacturer selling cigarettes to consumers within the State of Tennessee, whether directly or through a distributor, retailer or similar intermediary or intermediaries, after the effective date of this act shall do one of the following:

(1) Become a participating manufacturer, as that term is defined in Section 11(j) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(A) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(i) 1999: \$.0094241 per unit sold after the effective date of this act;

(ii) 2000: \$.0104712 per unit sold;

(iii) For each of 2001 and 2002: \$.0136125 per unit sold;

(iv) For each of 2003 through 2006: \$.0167539 per unit sold; and

(v) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to subsection (a)(2)(A) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph: (a) in the order in which they were placed into escrow and (b) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of

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the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement, as determined pursuant to Section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in Section IX(i)(3) of that Agreement other than the Inflation Adjustment, had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) To the extent not released from escrow under (i) or (ii) above, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General and Reporter that it is in compliance with this subsection. The Attorney General and Reporter may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(A) Be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(C) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer or similar intermediary, for a period not to exceed two (2) years.

(b) Each failure to make an annual deposit required under this section shall constitute a separate violation.

(c) In any successful action, initiated by the Attorney General and Reporter, the court shall order reimbursement to the Attorney General and Reporter for the reasonable

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costs and expenses of investigation and prosecution of actions under this chapter, including attorneys' fees.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: May 17, 1999**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY HAFEEZ, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 26th day of May 1999**

  
DON SUNDQUIST, GOVERNOR

## Appendix C: Prevention of Youth Access to Tobacco Act

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OFFENSES AGAINST PUBLIC HEALTH, SAFETY, WELFARE 39-17-1501

**Compiler's Notes.** The federal Toxic Substances Control Act, referred to in this section, is compiled in 15 U.S.C. § 2601 et seq.

**39-17-1402. Conveyance of dangerous materials to metals recycling facilities.** — (a) A person may not sell, convey or otherwise transfer to a metals recycling facility any of the following items without first obtaining from the metals recycling facility a signed written acknowledgment that the item has been sold, conveyed or transferred to the facility:

- (1) Lead-acid battery;
- (2) Fuel tank;
- (3) PCB-containing capacitor;
- (4) Chlorofluorocarbon refrigerant; or
- (5) Unspent air bag.

(b) This section applies whether an item is included with a load of scrap or is contained or enclosed in a motor vehicle, scrap vehicle, appliance or other item of scrap. [Acts 1994, ch. 798, § 3.]

**39-17-1403. Posting of requisite notice.** — A metals recycling facility shall post in a conspicuous location a notice that is readily visible to all persons selling materials to the facility. The notice shall be no smaller than twenty-four inches (24") horizontally by eighteen inches (18") vertically and must contain the following language:

TENNESSEE LAW PROHIBITS THE SALE, TRANSFER OR CONVEYANCE OF ANY OF THE FOLLOWING ITEMS TO THIS FACILITY WITHOUT FIRST OBTAINING OUR SIGNED WRITTEN ACKNOWLEDGMENT THAT WE WILL ACCEPT THE ITEM:

- (A) LEAD-ACID BATTERIES;
- (B) FUEL TANKS;
- (C) PCB-CONTAINING CAPACITORS;
- (D) CHLOROFLUOROCARBON REFRIGERANTS; AND
- (E) UNSPENT AIR BAGS.

A VIOLATION OF THIS LAW IS A CLASS B MISDEMEANOR.

[Acts 1994, ch. 798, § 4.]

**39-17-1404. Penalty for violations.** — A person who violates this part commits a Class B misdemeanor. [Acts 1994, ch. 798, § 5.]

**Cross-References.** Penalty for Class B misdemeanor, § 40-35-111.

### PART 15—PREVENTION OF YOUTH ACCESS TO TOBACCO

**39-17-1501. Short title.** — This part shall be known and may be cited as the "Prevention of Youth Access to Tobacco Act of 1994." [Acts 1994, ch. 872, § 1.]

## Access to Tobacco Act of 1994 (TCA 39-17)

39-17-1502

CRIMINAL OFFENSES

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**Section to Section References.** Sections 39-17-1501 — 39-17-1508 are referred to in § 39-15-413.

**Attorney General Opinions.** Implementation of amendments to Prevention of Youth

Access to Tobacco Act of 1994, OAG 99-200 (9/29/99).

**Collateral References.** Protection of health of minors ⇔ 211.13.

**39-17-1502. Purpose.** — The purpose of this part is to reduce the access of persons under eighteen (18) years of age to tobacco products by strengthening existing prohibitions against the sale and distribution of tobacco products and prohibiting the purchase or receipt of tobacco products by such persons, limiting the sale of tobacco products through vending machines, restricting the distribution of tobacco product samples, prohibiting the sale of cigarettes or smokeless tobacco products other than in unopened packages, and random, unannounced inspections of locations where tobacco products are sold or distributed, providing for the report required to be submitted to the United States department of health and human services pursuant to Section 1926 of the Public Health Service Act (42 U.S.C. § 300x-26), and ensuring uniform regulations with respect to tobacco products within this state. It is the intent of the general assembly that this part be equitably enforced so as to ensure the eligibility for and receipt of any federal funds or grants that the state of Tennessee now receives or may receive relating to the provisions of this part. [Acts 1994, ch. 872, § 2.]

**Section to Section References.** Sections 39-17-1501 — 39-17-1508 are referred to in § 39-15-413.

**Collateral References.** Protection of health of minors ⇔ 211.13.

**39-17-1503. Part definitions.** — As used in this part, unless the context otherwise requires:

(1) “Beedies” or “bidis” means a product containing tobacco that is wrapped in temburni leaf (*dispyros melanoxydon*) or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as beedies or bidis. For purposes of this chapter, beedies or bidis shall be considered a tobacco product;

(2) “Commissioner” means the commissioner of agriculture or the commissioner’s duly authorized representative;

(3) “Department” means the department of agriculture;

(4) “Person” means any individual, firm, fiduciary, partnership, corporation, trust, or association;

(5) “Proof of age” means a driver license or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older, contains a photograph or other likeness of the individual, and appears on its face to be valid. Except in the case of distribution by mail, the distributor shall obtain a statement from the addressee that the addressee is eighteen (18) years of age or older;

(6) “Public place” means any public street, sidewalk or park, or any area open to the general public in any publicly owned or operated building;

(7) “Sample” means a tobacco product distributed to members of the general public at no cost for the purpose of promoting the product;

(8) “Sampling” means the distribution of samples to members of the general public in a public place; and

(9) "Tobacco product" means any product that contains tobacco and is intended for human consumption, including, but not limited to, cigars, cigarettes and bidis. [Acts 1994, ch. 872, § 3; 1995, ch. 470, § 1; 1999, ch. 354, § 3; 2002, ch. 511, §§ 1, 2.]

**Section to Section References.** Sections 39-17-1501 — 39-17-1508 are referred to in § 39-15-413. **Collateral References.** Protection of health of minors ⇌ 211.13.

**39-17-1504. Sales to minors — Penalty.** — (a) It is unlawful for any person to sell or distribute any tobacco product to another person who has not attained eighteen (18) years of age or to purchase a tobacco product on behalf of such person under eighteen (18) years of age.

(b) It is unlawful for any person to persuade, entice, send or assist a person who has not attained eighteen (18) years of age to purchase, acquire, receive or attempt to purchase, acquire or receive a tobacco product. This section and § 39-17-1505 shall not be deemed to preclude law enforcement efforts involving the use of individuals under eighteen (18) years of age if a parent of the individual has consented to this action.

(c) No person shall distribute tobacco product samples in or on any public street, sidewalk, or park.

(d) A person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under twenty-seven (27) years of age. In the case of distribution by mail, the distributor of tobacco products shall obtain from the addressee an affirmative statement that the person is eighteen (18) years of age or older, and shall inform the recipient that the person is strictly prohibited from distributing any tobacco product, as defined by this part, to any person under eighteen (18) years of age. [Acts 1994, ch. 872, § 4; 1995, ch. 470, §§ 2, 3; 1999, ch. 354, §§ 1, 2, 4.]

**Cross-References.** Civil penalty for violation of section, § 39-17-1509.

Criminal penalty for violation of section, § 39-17-1510.

**Section to Section References.** Sections 39-17-1501 — 39-17-1508 are referred to in § 39-15-413.

This section is referred to in §§ 39-17-1509, 39-17-1510.

**Attorney General Opinions.** Department of agriculture enforcement agent as law enforcement officer, OAG 99-016 (2/2/99).

Procedures for use of minors in tobacco sales sting operations, OAG 99-016 (2/2/99).

**Collateral References.** Protection of health of minors ⇌ 211.13.

**39-17-1505. Prohibited purchases or possession by minors — Penalties.** — (a) It is unlawful for a person who has not attained eighteen (18) years of age to possess a tobacco product, to purchase or accept receipt of a tobacco product, or to present or offer to any person any purported proof of age which is false, fraudulent, or not actually that person's own for the purpose of purchasing or receiving any tobacco product.

(b) Any person who violates this section shall be issued a citation by a law enforcement officer or school principal who has evidence of the violation. The citation shall require the person to appear in the juvenile court for the county



in which the violation is alleged to have occurred. At the time of issuance of the citation, the tobacco product shall be seized as contraband by the law enforcement officer or school principal.

(c) A violation of this section is a civil offense, the penalty for which is a civil penalty of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00). Upon its determination that the person has violated this section, the juvenile court shall determine the amount of the civil penalty and shall order the destruction of the tobacco product. The juvenile court may, in its discretion, also impose community service work not to exceed fifty (50) hours or successful completion of a prescribed teen court program for a second or subsequent violation within a one-year period.

(d) A minor who is cooperating with law enforcement officers in an operation designed to test the compliance of other persons with the provisions of this part shall not be subject to sanctions under this section.

(e) As used in this section, "law enforcement officer" means an officer, employee or agent of government who is authorized by law to investigate the commission or suspected commission of violations of Tennessee law.

(f) It is not unlawful for a person under eighteen (18) years of age to handle or transport:

(1) Tobacco or tobacco products as a part of and in the course of the person's employment; provided, that the person is under the supervision of another employee who is at least twenty-one (21) years of age; or

(2) Tobacco as part of an educational project that has been developed by the person for entry and display at an agricultural fair or other agricultural competition or event.

(g) Nothing in this section shall be construed to prohibit a person under eighteen (18) years of age from handling or transporting tobacco as part of and in the course of the person's involvement in any aspect of the agricultural production or storage of tobacco, the sale of raw tobacco at market or the transportation of raw tobacco to a processing facility. [Acts 1994, ch. 872, § 5; 1999, ch. 354, §§ 5-7; 2001, ch. 341, § 11.]

**Cross-References.** Using a false identification, § 39-16-303.

**Section to Section References.** Sections 39-17-1501 — 39-17-1508 are referred to in § 39-15-413.

This section is referred to in §§ 37-1-702, 39-17-1504.

**Attorney General Opinions.** Department of agriculture enforcement agent as law enforcement officer, OAG 99-016 (2/2/99).

Procedures for use of minors in tobacco sales sting operations, OAG 99-016 (2/2/99).

Implementation of amendments to Prevention of Youth Access to Tobacco Act of 1994, OAG 99-200 (9/29/99).

Authority of school principals to issue citations under § 39-17-1505, OAG 99-215 (10/27/99).

The disciplinary action a principal may take against an under-age student found in possession of tobacco products is not limited to a civil citation; the civil citation is in addition to other penalties, such as suspension, or other disciplinary measures that may be taken under a principal's general supervisory authority, OAG 00-110 (6/20/00).

**Collateral References.** Protection of health of minors ⇌ 211.13.

**39-17-1506. Required postings.** — (a) Every person who sells tobacco products at retail shall post conspicuously and keep so posted at the place of business a sign, no smaller than ninety-three and one-half (93½) square

inches, to ensure that it is likely to be read at each point of sale, stating the following:

**STATE LAW STRICTLY PROHIBITS  
THE SALE OF TOBACCO PRODUCTS OR SMOKING PARAPHERNALIA  
TO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS  
PROOF OF AGE MAY BE REQUIRED**

(b) Unless another notice is required by federal law, the notice required by this section and the notice required by § 39-15-411 shall be the only notice regarding tobacco products required to be posted or maintained in any store that sells tobacco products at retail. [Acts 1994, ch. 872, § 6; 1999, ch. 354, § 8.]

**Cross-References.** Civil penalties for violation of this section, § 39-17-1509.

Criminal penalties for violation of this section, § 39-17-1510.

**Section to Section References.** Sections 39-17-1501 — 39-17-1508 are referred to in § 39-15-413.

This section is referred to in §§ 39-15-411, 39-17-1509, 39-17-1510.

**Collateral References.** Protection of health of minors ⇔ 211.13.

**39-17-1507. Vending machine sales.** — (a) It is unlawful for any person to sell tobacco products through a vending machine unless the vending machine is located in any of the following locations:

(1) In areas of factories, businesses, offices, or other places that are not open to the public;

(2) In places that are open to the public but to which persons under eighteen (18) years of age are denied access;

(3) In places where alcoholic beverages are sold for consumption on the premises, but only if the vending machine is under the continuous supervision of the owner or lessee of the premises or an employee of the owner or lessee of the premises, and is inaccessible to the public when the establishment is closed; and

(4) In other places, but only if the machine is under the continuous supervision of the owner or lessee of the premises or an employee of the owner or lessee of the premises, or the machine can be operated only by the use of a token purchased from the owner or lessee of the premises or an employee of the owner or lessee of the premises prior to each purchase, and is inaccessible to the public when the establishment is closed.

(b) In any place where supervision of a vending machine, or operation by token is required by this section, the person responsible for that supervision or the sale of the token shall demand proof of age from a prospective purchaser if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under twenty-seven (27) years of age. [Acts 1994, ch. 872, § 7; 1999, ch. 354, §§ 9, 10.]

**Cross-References.** Civil penalties for violation of section, § 39-17-1509.

Criminal penalties for violation of section, § 39-17-1510.

**Section to Section References.** Sections 39-17-1501 — 39-17-1508 are referred to in § 39-15-413.

This section is referred to in §§ 39-17-1509, 39-17-1510.

**Collateral References.** Protection of health of minors ⇔ 211.13.

**39-17-1508. Required packaging.** — It is unlawful for any person to sell cigarettes or smokeless tobacco products except in the original, sealed package in which they were placed by the manufacturer that bears the health warning required by federal law. [Acts 1994, ch. 872, § 8; 1999, ch. 354, § 11.]

**Cross-References.** Civil penalties for violation of section, § 39-17-1509.

Criminal penalties for violation of section, § 39-17-1510.

**Section to Section References.** Sections 39-17-1501 — 39-17-1508 are referred to in § 39-15-413.

This section is referred to in § 39-17-1509, 39-17-1510.

**Collateral References.** Protection of health of minors ⇨ 211.13.

**39-17-1509. Enforcement — Inspections — Reporting — Civil penalties.** — (a) The department shall enforce this part in a manner that may reasonably be expected to reduce the extent to which tobacco products are sold or distributed to persons under eighteen (18) years of age, and shall conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this part.

(b) A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507 or § 39-17-1508 shall receive only a warning letter for the person's first violation and shall not receive a civil penalty for the person's first violation. A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507 or § 39-17-1508 is subject to a civil penalty of not more than five hundred dollars (\$500) for the person's second violation, not more than one thousand dollars (\$1,000) for the person's third violation and not more than one thousand five hundred dollars (\$1,500) for the person's fourth or subsequent violation. For purposes of determining whether a violation is the person's first, second, third, fourth or subsequent violation, the commissioner shall count only those violations that occurred within the previous five (5) years. A civil penalty shall be assessed in the following manner:

(1) The commissioner shall issue the assessment of civil penalty against any person responsible for the violation;

(2) Any person against whom an assessment has been issued may secure a review of the assessment by filing with the commissioner a written petition setting forth the person's reasons for objection to the assessment and asking for a hearing before the commissioner;

(3) Any hearing before the commissioner shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. An appeal from the final order of the commissioner may be taken by the person to whom the assessment was issued, and the appeal proceedings shall be conducted in accordance with the judicial review provisions of the Uniform Administrative Procedures Act, compiled at §§ 4-5-322 and 4-5-323;

(4) If a petition for review is not filed within thirty (30) days after the date the person received the assessment, the person shall be deemed to have consented to the assessment, and it shall become final. Whenever an assessment has become final, the commissioner may apply to the chancery court of Davidson County for a judgment in the amount of the assessment and seek execution on the judgment. The chancery court of Davidson County shall treat a person's failure to file a petition for review of an assessment as a confession of judgment in the amount of the assessment.

(c) A person who demanded, was shown, and reasonably relied upon proof of age shall not be liable for a civil penalty for a violation of § 39-17-1504 or § 39-17-1507. In the case of distribution of tobacco products by mail, a person who obtained a statement from the addressee that the addressee is at least eighteen (18) years of age shall not be liable for a civil penalty so long as that distributor of tobacco products informed the addressee that Tennessee law prohibits the distribution of any tobacco products, as defined by this part, to a person under eighteen (18) years of age.

(d) When assessing a civil penalty, the commissioner is authorized to assess the penalty against any person or persons determined by the commissioner to be responsible, in whole or in part, for contributing to or causing the violation to occur, including, but not limited to, the owner, manager or employee of a store at which tobacco products are sold at retail, the owner, manager or employee of an establishment in which a vending machine selling tobacco products is located, and a company or any of its employees engaged in the business of sampling.

(e)(1) The owner or manager of a store that sells tobacco products at retail shall provide training to the store's employees concerning the provisions of this part. As a part of this training, each employee shall, prior to selling tobacco products at retail, sign a statement containing substantially the following words:

"I understand that state law prohibits the sale of tobacco products to persons under eighteen (18) years of age and that state law requires me to obtain proof of age from a prospective purchaser of tobacco products who, based on appearance, might be as old as twenty-six (26) years of age. I promise to obey this law, and I understand that monetary or criminal penalties may be imposed on me if I violate this law."

(2) If the commissioner assesses a penalty against the store owner or manager, the owner or manager may present to the commissioner a copy of the statement described in subdivision (e)(1) that was signed by the employee who made the sale to a minor, along with a sworn statement by the owner or manager that the employee had signed the statement prior to the sale to the minor, and the name and address of the employee who made the sale. If the owner or manager does not know which employee made the sale to the minor, the owner or manager may present to the commissioner copies of the statements described in subdivision (e)(1) that were signed by all employees working at the store on the day the sale was made, along with a sworn statement that these employees had signed those statements prior to the sale to the minor.

(3) When the store owner or manager presents to the commissioner the statements described in subdivision (e)(2):

(A) If the violation is the second violation determined to have occurred at that store, the penalty against the store owner or manager shall be eliminated; or

(B) If the violation is the third or subsequent violation determined to have occurred at that store, the commissioner shall consider that evidence and any other evidence with respect to the amount of the penalty against the owner or manager.

**Appendix D: Children's Act for Clean Indoor (Youth Access Prevention Law)**  
(<http://www.capitol.tn.gov/Bills/99/Bill/HB0554.pdf>)

Filed for intro on 02/02/95  
Senate Bill \_\_\_\_\_  
By \_\_\_\_\_

<PrintHouse> Bill No. House No. HB0554  
By Halteman Harwel

AN ACT to regulate smoking of tobacco and establish the  
"Children's Act for Clean Indoor Air".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as, the "Children's Act for Clean  
Indoor Air".

SECTION 2.

a) The general assembly finds that :

(1) according to the 1994 Tennessee Department of Health survey,  
eighty-nine percent (89%) of Tennesseans favor restricting smoking in public  
places, and eighty-one percent (81%) of Tennesseans recognize that exposure  
to environmental tobacco smoke is harmful to those exposed to it;

(2) because nicotine can cross the placental blood barrier secondhand  
smoke inhaled by a pregnant woman results in nicotine and other chemicals in  
the bloodstream of the developing fetus;

00158051

(3) tens of thousands of Tennessee's children with asthma, other respiratory illnesses and allergies are effectively denied access to many public places by the presence of environmental tobacco smoke;

(4) it is in the best interest of the people of the state to protect the health of its children and to restrict involuntary exposure to environmental tobacco smoke in indoor areas which children frequent; and

5) that the 1986 U.S. Surgeon General's report establishes that simple separation of smoking areas reduces but does not eliminate, the recognized health hazards of environmental tobacco smoke;

(b) Therefore, it is the intention of the general assembly that this act preserves and improves the health and environment of the children of this state by reducing their exposure to indoor environmental tobacco smoke in public places.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Children's day-care center" means any facility in which custodial care is provided for children in return for compensation when the children cared for are present.

(2) "Group homes for children" means the home operated by any person, society, agency, corporation, or institution or any group which receives seven (7) or more children under seventeen (17) years of age for full-time care outside their own homes in facilities owned or rented and operated by the organization;

(3) "Indoor area open to the children or the public" means any indoor area or portion thereof generally accessible to children or the public.

(4) "School grounds" means any building, structure, and surrounding outdoor grounds contained within a public or private pre-school, nursery school, elementary or secondary school's legally defined property boundaries as registered in a county clerk's office, and any vehicles used to transport children or school personnel.

(5) "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter substance containing tobacco.

(6) "Youth centers and facilities for detention" shall mean youth development centers for detention, treatment, rehabilitation and education of children found to be delinquent.

(7) "Zoo" means any indoor area open to the public for the purpose of viewing animals.

#### SECTION 4.

(a) Smoking shall not be permitted and no person shall smoke in the following indoor areas open to children and the public:

(1) youth centers and facilities for detention;

(2) child day care centers or any facility that provides child care services, provided, however, the prohibition of this section does not apply to such services provided in a private home;

(3) group homes for children;

(4) public institutions for children;

(5) residential treatment facilities for children and youth;

(6) all public and private schools, including elementary and secondary schools;

(7) health care facilities; and

(8) zoos.

(b) Notwithstanding the provisions of any other law, rule or regulation, tobacco use shall not be permitted and no person shall use tobacco on school grounds; provided, however, smoking by adult faculty and staff members may be permitted in a designated smoking area during non-school hours. For purposes of this section, school

hours shall include any student activity that is supervised by faculty or staff, or any officially sanctioned school event.

(c) The owner, operator or manager of an indoor area open to the public subject to subsection (a) of this act may designate a smoking area or areas.

SECTION 5. "No Smoking" signs, or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be prominently posted and properly maintained on building entrances where smoking is regulated by this article by the owner, operator, manager or other person having control of such indoor area.

SECTION 6.

(a) Any child or parent aggrieved by the failure of an individual, employer or public accommodation to comply with requirements of this act shall have the right to file a civil action in the circuit or chancery courts of Tennessee. Upon a finding of a violation of the act, and a failure to comply upon request, the prevailing plaintiff shall be entitled to injunctive relief, attorneys' fees, and an award of damages of fifty dollars (\$50).

(b) Smoking in an area designated as a "no smoking" area by this act is a Class C misdemeanor, punishable only by a fine not to exceed fifty dollars (\$50), provided that;

(1) the individual was requested to refrain from smoking and refused to do so, or

(2) had actual notice that he or she was smoking in a "no smoking" area.

(c) Any law enforcement officer may issue a citation regarding a violation of this act.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.



SECTION 8. This act shall take effect July 1, 1995, the public welfare requiring it.

- 5 -

\*00158051\*

**Appendix E: Smoke-free State buildings (SB 3368)**  
(<http://www.capitol.tn.gov/Bills/104/Bill/SB3368.pdf>)

Filed for intro on 02/16/2006  
HOUSE BILL 3269  
By Fitzhugh

SENATE BILL 3368  
By Herron

AN ACT to amend Tennessee Code Annotated, Title 4,  
relative to smoking in buildings owned or operated  
by the state.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-4-121, is amended by deleting  
such section in its entirety and by substituting instead the following language:

Section 4-4-121. Smoking shall be prohibited in all buildings that are owned or  
operated by the state of Tennessee. It is the intent of the general assembly that all  
buildings that are owned or operated by the state shall be completely smoke-free.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring  
it.

SB 3368  
01/07/08  
\*1\*

## Appendix F: Exemption of Higher Education Institutions from Preemption

(<http://www.capitol.tn.gov/Bills/104/Bill/SB0757.pdf>)

Filed for intro on 02/03/2005

SENATE BILL 757  
By Burchett

AN ACT to amend Tennessee Code Annotated, Title 4,  
Chapter 4 and Title 49, Chapter 7, relative to  
smoking in certain higher education facilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding a new section thereto, as follows:

Section 49-7-135.

(a) The board of trustees of the university of Tennessee and the board of regents shall adopt uniform rules prohibiting smoking in all student dormitories and other university housing.

(b) With respect to public institutions of higher education, upon the adoption of smoking policies by the administrative head of such institution, the administrative head is not required to provide an indoors smoking area in each student dormitory and other university housing.

SECTION 2. Tennessee Code Annotated, Section 4-4-121(c), is amended to designate the existing language as subdivision (1), and by adding the following language to be designated as subdivision (2):

(2) With respect to public institutions of higher education, upon the adoption of smoking policies by the administrative head of such institution, the administrative head is not required to provide an indoors smoking area in each student dormitory and other university housing.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

SB0757  
00214658  
-1-

## Appendix G: Smoke-free State-owned Motor Vehicles

(<http://www.capitol.tn.gov/Bills/105/Bill/SB0010.pdf>)

HOUSE BILL 219  
By Odom

SENATE BILL 10

By Jackson

AN ACT to amend Tennessee Code Annotated, Section 4-4-121, relative to smoking.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-4-121, is amended by designating the current language as subsection (a) and by adding the following language as a new subsection (b):

(b) Smoking shall be prohibited in all motor vehicles that are owned, leased, or operated by the state of Tennessee. It is the intent of the general assembly that all motor vehicles that are owned, leased, or operated by the state shall be completely smoke-free.

SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.

SB0010  
00003663  
-1-

**Appendix H: Exemption of Religious Institutions from Smoke-free Signage**  
(<http://www.capitol.tn.gov/Bills/105/Bill/HB2484.pdf>)

HOUSE BILL 2484

By Bell

AN ACT to amend Tennessee Code Annotated, Title 39,  
Chapter 17, Part 18, relative to the posting of  
nonsmoking areas and facilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1805, is amended by designating the existing language as subsection (a) and by adding the following language as a new subsection (b):

(b) The provisions of this section shall not apply to a place of worship.

SECTION 2. Tennessee Code Annotated, Section 39-17-1802, is amended by adding the following language as a new appropriately designated subdivision:

( ) "Place of worship" means any enclosed area that is:

(A) Approved, or qualified to be approved, by the state board of equalization for property tax exemption pursuant to § 67-5-212, based on ownership and use of the enclosed area by a religious institution; and

(B) Utilized on a regular basis by such religious institution as the site of congregational services, rites or activities communally undertaken for the purpose of worship.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

HB2484  
01123934  
-1-

## Appendix I: American Cancer Society Survey

The survey was conducted October 10-12, 16-17, 2006 with a sample size of 600 registered voters in Tennessee

### Relevant Questions and Results

Please tell me whether you agree or disagree with the following statement:  
People should not have to be exposed to secondhand smoke in their workplace.

1. Strongly agree	78%
2. Somewhat agree	16%
3. Somewhat disagree	3%
4. Strongly disagree	2%
(DNR)9. Don't know/No response	1%

Do you feel that state government has a responsibility to protect public health?  
%

1. Yes	83%
2. No	13%
(DNR)9. Don't know/No response	4%

## Appendix J: Non-Smoker Protection Act Rules: Department of Health

(<http://health.state.tn.us/smokefreetennessee/Rules.pdf>)

Page 1 of 7 Pages

Notice of Rulemaking Hearing  
Tennessee Department of Health  
Chapter 1200-32-1  
Non-Smoker Protection Act Rules

There will be a hearing before the Commissioner of the Department of Health to consider the promulgation of new rules pursuant to Public Chapter 410 of the Public Acts of 2007 also known as The Non-Smoker Protection Act to be codified at Tennessee Code Annotated, Title 39, Chapter 17, Part 18. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in First Floor Hearing Room in Building A of the Tennessee Department of Labor and Workforce Development located at 220 French Landing Drive, Nashville, Tennessee 37243-1002 at 9:30 A.M. Central Time on the 15<sup>th</sup> day of November, 2007.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Health Services Administration to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at Tina Francis, 11th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243, (615) 741-3245.

For a copy of this notice of proposed rules, contact: Kay Gordon, 3rd Floor, Cordell Hull Bldg., 425 5th Ave. N., Nashville, TN 37243, (615) 741-7206.

### Substance of Proposed Rules

#### New Rules

#### Table of Contents

- 1200-32-1-.01 Purpose.
- 1200-32-1-.02 Public Places Regulated.
- 1200-32-1-.03 Signage.
- 1200-32-1-.04 Violations.
- 1200-32-1-.05 Complaints.
- 1200-32-1-.06 Penalties.
- 1200-32-1-.07 Enforcement Process, Appeals and Payment of Penalties.
- 1200-32-1-.08 Copy Costs.

1200-32-1-.01 Purpose.

- (1) The Non-Smoker Protection Act ("Act") requires that on and after October 1, 2007, smoking be prohibited in all enclosed public places within the State of Tennessee. It is the purpose of these rules to supplement the provisions of that Act and provide the mechanisms by which the Department of Health ("Department") shall implement the enforcement duties placed upon it by Section 1 of Chapter 410 of the Public Acts of 2007.

Authority: 2007 Tenn. Public Acts, ch. 410.

1200-32-1-.02 Public Places Regulated.

- (1) The Department shall be responsible for the enforcement activities required by the Act in the following enclosed public places:
  - (a) All health care facilities licensed, permitted or certified pursuant to Tennessee Code Annotated, Title 68, Chapter 11; and
  - (b) All enclosed public places for which a license, permit or certification must be obtained from any health related board assigned to the Department's Division of Health Related Boards pursuant to Tennessee Code Annotated, 68-1-101 before a health related profession may be practiced therein; and
  - (c) All enclosed public places for which a license, permit or certification must be obtained from the Department's Division of Emergency Medical Services; and
  - (d) All other enclosed public places over which the Department has regulatory authority pursuant to Tennessee Code Annotated, Title 62, Title 68 or otherwise, including, but not limited, to the following:
    1. Restaurants
    2. Indoor swimming pools
    3. Food Service Establishments
    4. Hotels
    5. Bed and Breakfasts
    6. Fast Food Establishments
    7. Primary Health Care Centers
    8. County and District Health Departments
    9. Tattoo and Body Piercing Parlors
    10. Organized Camps



- (2) For enforcement purposes as to the establishments listed above that choose to be an "age-restricted venue", and consistent with the liberal construction required pursuant to Section 3 of Chapter 410 of the Public Acts of 2007, the twenty one (21) years of age requirement contained in the definition of "age-restricted venue," set forth in Section 1 of Chapter 410 of the Public Acts of 2007, is intended to apply also to employees of such venues.
- (3) To the extent that the Department of Labor and Workforce Development has concurrent jurisdiction over those enclosed public places identified above, all documentation of violations of the Act created or collected by that Department during its normal inspection or regulatory duties may be forwarded to the Department of Health for processing and disposition.

Authority: 2007 Tenn. Public Acts, ch. 410.

1200-32-1-.03 Signage.

- (1) The "No Smoking" signs or the international "No Smoking" symbol required by Section 1 of Chapter 410 of the Public Acts of 2007 to be posted at every entrance to every public place and place of employment where smoking is prohibited shall be clearly and conspicuously placed at a height, location and in such a size as to be easily seen by a person with normal vision entering the establishment and shall not be obscured in any way.

Authority: 2007 Tenn. Public Acts, ch. 410.

1200-32-1-.04 Violations.

- (1) During its routine inspections, investigations, surveys or other required regulatory activities in the enclosed public places under its jurisdiction or in response to complaints of violations of the Act occurring in any of those enclosed public places, the Department shall document and collect necessary information on any of the following listed violations of the Act:
  - (a) Any persons knowingly smoking in a place where it is prohibited; or
  - (b) Any owners, managers, operators or persons who otherwise control a public place who knowingly fail to do any of the following:
    1. Communicate the smoking prohibition to existing and prospective employees. For purposes of enforcement of this rule, the existence of a written policy, handout or statement for distribution to all employees and prospective employees

or a sign posted in any area(s) necessarily frequented by all employees either or both of which communicates the smoking prohibition constitutes compliance; and/or

2. Post no smoking sign or the universal no smoking symbol at every entrance to the public place as required by Section 1 of Chapter 410 of the Public Acts of 2007 and rule 1200-32-1-.03; and/or
3. Either themselves or through their employees inform any person violating the Act of the appropriate provisions of the law.

Authority: 2007 Tenn. Public Acts, ch. 410.

1200-32-1-.05 Complaints.

- (1) Any person wishing to file a complaint against any person or public place where smoking is prohibited for not complying with the provisions of this Act may do so in one of the following ways:
  - (a) By a telephone call to the Department; or
  - (b) By submitting a complaint via the Internet; or
  - (c) In writing to the Department.

Authority: 2007 Tenn. Public Acts, ch. 410.

1200-32-1-.06 Penalties.

- (1) A person who knowingly smokes in an area where smoking is prohibited by the provisions of the Act shall be subject to a civil penalty of fifty dollars (\$50).
- (2) A person who owns, manages, operates or otherwise controls any public place where smoking is prohibited pursuant to the provisions of the Act and who knowingly fails to comply with any provision of the Act shall be subject to the following:
  - (a) For a first violation in any twelve-month period, a written warning from the Department, as appropriate;
  - (b) For a second violation in any twelve-month period, a civil penalty of

one hundred dollars (\$100); and

- (c) For a third or subsequent violation in any twelve-month period, a civil penalty of five hundred dollars (\$500).
- (3) Each day on which a knowing violation of the Act occurs shall be considered a separate and distinct violation.
- (4) The Department may, in those instances when a reported violation cannot be substantiated, issue advisory letters to the public place wherein the violation was alleged to have occurred.

Authority: 2007 Tenn. Public Acts, ch. 410.

1200-32-1-.07 Enforcement Process, Appeals and Payment of Penalties.

- (1) Upon receipt of verification of a violation of the Act the Department shall issue a written notice to the offender of the violation and the penalty applicable to the violation. The written notice may be issued by certified mail, delivery service, or personal service.
- (2) Any person receiving a notice of violation and penalty who wishes to contest the determination of the violation and/or the assessment of the penalty must, within ten (10) business days of receipt of the notice, file a written request for an appeal with the Department.
- (3) Any request for an appeal timely received by the Department shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act compiled at Tennessee Code Annotated, Title 4, Chapter 5 and the Administrative Procedures Division of the Secretary of State's rules governing contested case proceedings compiled at Chapter 1360-4-1.
  - (a) In contested cases pursuant to this rule, the Department shall have the burden of proof by a preponderance of the evidence to establish that a person violated the Act.
- (4) Civil Penalty Payments
  - (a) Any person who is assessed a civil penalty pursuant to the Act who does not timely file an appeal of that assessment must pay such civil penalty on or before the thirtieth (30th) day after receipt of the notice of violation and penalty.
  - (b) If the assessed civil penalty is timely appealed, the assessed penalty

must be paid no later than thirty (30) days after the date of a final order affirming the assessed penalty.

- (c) Payment of any civil penalty shall be made by check or money order made payable to "Treasurer, State of Tennessee" and mailed or delivered in person to the Department.

Authority: T.C.A. § 4-5-102(3), 68-1-103, 68-1-104 2007 Tenn. Public Acts, ch. 410; Tenn. Const. art. 1, § 8.

1200-32-1-.08 Copy Costs.

- (1) Information gathered under or generated pursuant to the Act or rules promulgated pursuant thereto shall, pursuant to the Public Records Act, be made available to any citizen of the State of Tennessee upon request and payment of a fee in the amount of twenty-five cents (\$0.25) per page.
- (2) Payment of fees set forth in this rule shall be by check or money order made payable to "Treasurer, State of Tennessee." Fees must be prepaid before requested information is sent. Payment of fees in cash shall not be accepted by the Department.

Authority: T.C.A. §§ 68-1-103, 10-7-503 and 10-7-506 and 2007 Tenn. Public Acts, ch. 410.

Department's technical contact who can answer questions concerning this notice of rulemaking. Kay Gordon, 3rd Floor, Cordell Hull Bldg., 425 5th Ave. N., Nashville, TN 37243, (615) 741-7206.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Department of Health.

\_\_\_\_\_  
Susan R. Cooper, MSN, RN, Commissioner  
Tennessee Department of Health

Subscribed and sworn to before me this the \_\_\_\_ day of September, 2007.

\_\_\_\_\_  
Notary Public

My commission expires on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

The notice of rulemaking set out herein was properly filed in the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Riley C. Darnell  
Secretary of State

By: \_\_\_\_\_

# Appendix K: Non-Smoker Protection Act Rules: Department of Labor and Workforce Development

(<http://www.tn.gov/sos/rules/0800/0800-06/0800-06-01.pdf>)

## RULES OF TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT CHAPTER 0800-6-1 NON-SMOKER PROTECTION ACT RULES

### TABLE OF CONTENTS

0800-6-1-.01	Purpose	0800-6-1-.05	Complaints
0800-6-1-.02	Public Places Regulated	0800-6-1-.06	Penalties
0800-6-1-.03	Signage	0800-6-1-.07	Enforcement Process, Appeals and Payment of Penalties
0800-6-1-.04	Violations	0800-6-1-.08	Copy Costs

#### 0800-06-1-.01 PURPOSE.

- (1) The Non-Smoker Protection Act ("Act") requires that on and after October 1, 2007, smoking be prohibited in all enclosed public places within the State of Tennessee. It is the purpose of these rules to supplement the provisions of that Act and provide the mechanisms by which the Department of Labor and Workforce Development ("Department") shall implement the enforcement duties placed upon it by T.C.A. § 39-17-1801 et seq.

**Authority:** T.C.A. § 39-17-1811. **Administrative History:** Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 20, 2007; effective March 4, 2008.

#### 0800-6-1-.02 PUBLIC PLACES REGULATED.

- (1) The Department shall be responsible for all enforcement activities required by the Act in all enclosed public places not regulated by the Department of Health.
- (2) The Department of Health shall be responsible for the enforcement activities required by the Act in the following enclosed public places:
  - (a) All health care facilities licensed, permitted or certified pursuant to Tennessee Code Annotated, Title 68, Chapter 11; and
  - (b) All enclosed public places for which a license, permit or certification must be obtained from any health related board assigned to the Department of Health's Division of Health Related Boards pursuant to Tennessee Code Annotated, 68-1-101 before a health related profession may be practiced therein; and
  - (c) All enclosed public places for which a license, permit or certification must be obtained from the Department of Health's Division of Emergency Medical Services; and
  - (d) All other enclosed public places over which the Department of Health has regulatory authority pursuant to Tennessee Code including, but not limited to, the following:
    1. Restaurants
    2. Indoor swimming pools
    3. Food Service Establishments

(Rule 0800-6-1-.02, continued)

4. Hotels
  5. Bed and Breakfasts
  6. Fast Food Establishment
  7. Primary Health Care Centers
  8. County and District Health Departments
  9. Tattoo and Body Piercing Parlors
  10. Organized Camps
- (3) For enforcement purposes as to the establishments listed above that choose to be an "age-restricted venue," and consistent with the liberal construction required pursuant to T.C.A. § 39-17-1812, the age requirement contained in the definition of "age-restricted venue," set forth in T.C.A. § 39-17-1802(2), is intended to apply also to employees of such venues.
- (4) To the extent that the Department has concurrent jurisdiction over those enclosed public places identified above, all documentation of violations of the Act created or collected by the Department during its normal inspection or regulatory duties may be forwarded to the Department of Health for processing and disposition.

**Authority:** T.C.A. §§ 39-17-1802, 39-17-1806 and 39-17-1811. **Administrative History:** Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 20, 2007; effective March 4, 2008.

#### 0800-6-1-.03 SIGNAGE.

- (1) The "No Smoking" signs or the international "No Smoking" symbol required by T.C.A. § 39-17-1805 to be posted at every entrance to every public place and place of employment where smoking is prohibited shall be clearly and conspicuously placed at a height, location and in such a size as to be easily seen by a person with normal vision entering the establishment and shall not be obscured in any way.

**Authority:** T.C.A. §§ 39-17-1805 and 39-17-1811. **Administrative History:** Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 20, 2007; effective March 4, 2008.

#### 0800-6-1-.04 VIOLATIONS.

- (1) During its routine inspections, investigations or other required regulatory activities in the enclosed public places under its jurisdiction, or in response to complaints of violations of the Act occurring in any of those enclosed public places, the Department shall document and collect necessary information on any of the following listed violations of the Act:
- (a) Any persons knowingly smoking in a place where it is prohibited; or
  - (b) Any owners, managers, operators or persons who otherwise control a public place who knowingly fail to do any of the following:
    1. Communicate the smoking prohibition to existing and prospective employees. For purposes of enforcement of this rule, the existence of a

(Rule 0800-6-1-.04, continued)

written policy, handout or statement for distribution to all employees and prospective employees or a sign posted in any area(s) necessarily frequented by all employees either or both of which communicates the smoking prohibition constitutes compliance; and/or

2. Post no smoking sign or the universal no smoking symbol at every entrance to the public place as required by T.C.A. § 39-17-1805 and rule 0800-6-1-.03; and/or
3. Either themselves or through their employees inform any person violating the Act of the appropriate provisions of the law.

**Authority:** T.C.A. §§ 39-17-1803, 39-17-1805, 39-17-1806 and 39-17-1811. **Administrative History:** Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 20, 2007; effective March 4, 2008.

#### 0800-6-1-.05 COMPLAINTS.

- (1) Any person wishing to file a complaint against any person or public place where smoking is prohibited for not complying with the provisions of this Act may do so in one of the following ways:
  - (a) By a telephone call to the Department; or
  - (b) By submitting a complaint via the Internet; or
  - (c) In writing to the Department.

**Authority:** T.C.A. §§ 39-17-1806 and 39-17-1811. **Administrative History:** Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 20, 2007; effective March 4, 2008.

#### 0800-6-1-.06 PENALTIES.

- (1) A person who knowingly smokes in an area where smoking is prohibited by the provisions of the Act shall be subject to a civil penalty of fifty dollars (\$50).
- (2) A person who owns, manages, operates or otherwise controls any public place where smoking is prohibited pursuant to the provisions of the Act and who knowingly fails to comply with any provision of the Act shall be subject to the following:
  - (a) For a first violation in any twelve-month period, a written warning from the Department, as appropriate;
  - (b) For a second violation in any twelve-month period, a civil penalty of one hundred dollars (\$100); and
  - (c) For a third or subsequent violation in any twelve-month period, a civil penalty of five hundred dollars (\$500).
- (3) Each day on which a knowing violation of the Act occurs shall be considered a separate and distinct violation.
- (4) The Department may, in those instances when a reported violation cannot be substantiated, issue advisory letters to the public place wherein the violation was alleged to have occurred.



(Rule 0800-6-1-.06, continued)

**Authority:** T.C.A. §§ 39-17-1807 and 39-17-1811. **Administrative History:** Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 20, 2007; effective March 4, 2008.

**0800-6-1-.07 ENFORCEMENT PROCESS, APPEALS AND PAYMENT OF PENALTIES.**

- (1) Upon receipt of verification of a violation of the Act the Department shall issue a written notice to the offender of the violation and the penalty applicable to the violation. The written notice may be issued by certified mail, delivery service, or personal service.
- (2) Any person receiving a notice of violation and penalty who wishes to contest the determination of the violation and/or the assessment of the penalty must, within ten (10) business days of receipt of the notice, file a written request for an appeal with the Department.
- (3) Any hearing held in response to a request for an appeal timely received by the Department shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act compiled at Tennessee Code Annotated, Title 4, Chapter 5 and the Administrative Procedures Division of the Secretary of State's rules governing contested case proceedings compiled at Chapter 1360-4-1.
  - (a) In contested cases pursuant to this rule, the Department shall have the burden of proof by a preponderance of the evidence to establish that a person violated the Act.
- (4) Civil Penalty Payments
  - (a) Any person who is assessed a civil penalty pursuant to the Act who does not timely file an appeal of that assessment must pay such civil penalty on or before the thirtieth (30th) day after receipt of the notice of violation and penalty.
  - (b) If the assessed civil penalty is timely appealed, the assessed penalty must be paid no later than thirty (30) days after the date of a final order affirming the assessed penalty.
  - (c) Payment of any civil penalty shall be made by check or money order made payable to "Treasurer, State of Tennessee" and mailed or delivered in person to the Department.

**Authority:** T.C.A. § 4-5-102(3), Tenn. Const. Art. 1 § 8 and 39-17-1811. **Administrative History:** Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 20, 2007; effective March 4, 2008.

**0800-6-1-.08 COPY COSTS.**

- (1) Information gathered under or generated pursuant to the Act or rules promulgated pursuant thereto shall, pursuant to the Public Records Act, be made available to any citizen of the State of Tennessee upon request and payment of a fee in the amount of twenty-five cents (\$0.25) per page.
- (2) Payment of fees set forth in this rule shall be by check or money order made payable to "Treasurer, State of Tennessee." Fees must be prepaid before requested information is sent. Payment of fees in cash shall not be accepted by the Department.

(Rule 0800-6-1-.08, continued)

**Authority:** T.C.A. §§ 68-1-103, 10-7-503, 10-7-506 and 39-17-1811. **Administrative History:** Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 20, 2007; effective March 4, 2008.

# Appendix L: Survey Instrument for Inspection: Department of Health

SEP/17/2010/FRI 10:29 PM CHURCH HILL HLTH DPT FAX No. 423 357 2231 7.002



## TOBACCO SURVEY – NON-SMOKERS PROTECTION ACT INSPECTION REPORT TENNESSEE DEPARTMENT OF HEALTH DIVISION OF GENERAL ENVIRONMENTAL HEALTH

ESTABLISHMENT	EST. NO.	STAFF ID	CO. NO.	DATE
---------------	----------	----------	---------	------

### TOBACCO SURVEY

49.	Tobacco products are sold. (If "no" then this section of the survey is complete)	Yes	No
50.	Appropriate "No Sale of Tobacco Products to Minors" sign posted?	Yes	No
51.	Sale of single cigarettes observed?	Yes	No
52.	Vending machines conspicuously placed and supervised or tokens used?	Yes	No
53.	Sale of tobacco products to minors (under 18) observed?	Yes	No
54.	For use in Memphis – Shelby County only.	N/A	
55.	Are persons under the age of 18 ever allowed in the establishment?	Yes	No

<input type="checkbox"/> complete <input type="checkbox"/> follow-up		NON-SMOKERS PROTECTION ACT			<input type="checkbox"/> complaint		
56.	Establishment is claiming an exemption from the Act. If "Yes" check exemption being claimed: <u>    </u> age-restricted venue; <u>    </u> private club; <u>    </u> three or fewer employees.	Yes	No	N/A			
57.	"No Smoking" signs or the international "No Smoking" symbol conspicuously posted at every entrance.	Yes	No	N/A			
58.	Provisions of the Act have been communicated to all existing employees and prospective employees.	Yes	No	N/A			
59.	Smoking allowed in more than twenty-five percent (25%) of rooms in the hotel or motel.	Yes	No	N/A			
60.	Smoking observed in an area where smoking is prohibited by the Act (If "No" then this section of the inspection is complete).	Yes	No	N/A			
61.	Owner, manager, operator, or employee of the establishment informed person(s) violating the Act of the appropriate provisions thereof.	Yes	No	N/A			

REMARKS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A person who owns, manages, operates, or otherwise controls any public place where smoking is prohibited pursuant to provisions of the "Non-Smokers Protection Act" and who knowingly fails to comply with any provisions of the "Non-Smokers Protection Act" shall be subject to the following: (1) For a first violation in any twelve-month period, a written warning from the Department of Health; (2) For a second violation in any twelve-month period, a civil penalty of one hundred dollars (\$100); (3) For a third or subsequent violation in any twelve-month period, a civil penalty of five hundred dollars (\$500). T.C.A. Section 39-171807 (b) (1), (2), and (3).

I have read this form and agree that the facts and violations cited exist as written.

Signature of Person in Charge \_\_\_\_\_ By \_\_\_\_\_ Environmentalist  
Date of Signature \_\_\_\_\_ Date of Signature \_\_\_\_\_

# Appendix M: Survey Instrument for Inspection: Department of Labor and Workforce Development

## THE DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT NON-SMOKER PROTECTION ACT INSPECTION REPORT

Date \_\_\_\_\_ Employer Representative \_\_\_\_\_

Establishment: \_\_\_\_\_

Address (Street, City, County, Zip) \_\_\_\_\_

Type of Business \_\_\_\_\_

No. of Employees \_\_\_\_\_ Phone # \_\_\_\_\_ County \_\_\_\_\_

1. "No Smoking" signs or the international "No Smoking" symbol conspicuously posted at every entrance? \_\_\_\_\_

2. Evidence that the provisions of the Act have been communicated to all existing employees and prospective employees? \_\_\_\_\_

3. Evidence of smoking in an area where smoking is prohibited by the Act? \_\_\_\_\_

Remarks: \_\_\_\_\_

**Pursuant to Chapter 410 of Public Acts of 2007, a person who owns, manages, operates or otherwise controls any public place or place of employment where smoking is prohibited and who knowingly fails to comply with any provision of the Act shall be subject to the following: (a) For a first violation in any 12-month period, a written warning; (b) For a second violation in any 12-month period, a civil penalty of \$100; and (c) Third or subsequent violation in any 12 month period, a civil penalty of \$500. Each day on which a knowing violation of the Act occurs shall be considered a separate and distinct violation.**

**Please promptly correct the above noted violations and complete the bottom portion of this document and send it to TOSHA Legal at the address or fax noted below within five (5) days. Doing so will mean that this document constitutes only an advisory letter, not a warning letter under the Act. Failure to promptly correct and notify TOSHA Legal within five (5) days will result in a warning letter or penalty being issued. TOSHA Legal reserves the right to issue a warning letter or fine if an advisory letter has already been issued to this establishment.**

CO Signature \_\_\_\_\_ Date \_\_\_\_\_

How Corrected \_\_\_\_\_

Employer Official's Signature \_\_\_\_\_ Job Title \_\_\_\_\_

Mail to: TOSHA Legal, 220 French Landing Drive, Nashville, TN 37243-1002  
Or Fax to (615) 253-6779



## Appendix O: "Tennessee Smokefree Air Law of 2007"

HOUSE BILL 2336  
By Odom

SENATE BILL 2255

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 68,  
relative to the smoking of tobacco products in  
public places.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 1, is amended by adding Sections 2 through 18 of this act as a new, appropriately designated part.

SECTION 2. This Act shall be known and may be cited as the "Tennessee Smokefree Air Law of 2007."

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, educational institution, trust, or non-profit entity that employs the services of one or more individual persons.

(2) "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to ceiling.

(3) "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care facility, adult day care, or health care facility.

(4) "Public Place" means an enclosed area to which the public is invited or in which the public is permitted which is not a public building, including but not limited to banks,

educational facilities, health care facilities, hotel and motel lobbies, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, recreational facilities, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms.

(5) "Environmental tobacco smoke" (ETS), or 'secondhand smoke' is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as side stream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as 'passive smoking' or 'involuntary smoking'.

(6) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(7) "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

(8) "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(9) "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(10) "Smoking" means inhaling, exhaling, burning, or carrying any lighted

cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

(11) "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

(12) "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

(13) "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions.

#### SECTION 4.

(a) Smoking shall be prohibited in all enclosed public places within the State of Tennessee, including but not limited to, the following places:

- (1) Aquariums, galleries, libraries, and museums;
- (2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not



limited to, banks, laundromats, factories, professional offices, and retail service establishments;

(3) Bars;

(4) Child care and adult day care facilities;

(5) Convention facilities;

(6) Educational facilities, both public and private;

(7) Elevators;

(8) Health care facilities;

(9) Hotels and motels;

(10) Lobbies, hallways, and other common areas in apartment

buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

(11) Polling places;

(12) Private clubs when being used for a function to which the

general public is invited;

(13) Public and Private transportation facilities, including trains, buses, taxicabs and airports, under the authority of state or local governments and ticket, boarding, and waiting areas of public transit depots;

(14) Restaurants;

(15) Restrooms, lobbies, reception areas, hallways, and other common-use areas;

- (16) Retail stores;
- (17) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the State of Tennessee or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the State;
- (18) Service lines;
- (19) Shopping malls;
- (20) Sports arenas, including enclosed places in outdoor arenas;  
and
- (21) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

- (b) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Act and to all prospective employees upon their application of employment.

SECTION 5. Notwithstanding any other provision of this Act to the contrary, the following areas shall be exempt from the provisions of Section 4:

- (a) Private homes, private residences and private automobiles, provided however it shall only apply when such homes, residences or vehicles are being used for child care or day care or when the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;
- (b) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more

than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Act.

(c) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Act.

(d) Private clubs that have no employees, except when being used for a function to which the general public is invited. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Act.

(e) By a person, organization or other entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited college or university, or in a professional testing laboratory as regulated by the Department of Health.

(f) Religious ceremonies where smoking is part of the ritual;

#### SECTION 6.

(a) In each Public Place, Public Meeting, and Place of Employment in which smoking is prohibited by this Act, the Employer, proprietor or other person in charge of

the premises shall post or cause to be posted in a conspicuous place, including, but not limited to every public entrance and exit, signs clearly stating that smoking is prohibited by state law. All signs required to be posted under this Section shall have letters at least four inches high with the principal strokes of letters not less than one-half inch wide. The color and design of such signs shall be left to the discretion of the Employer or person in charge of the premises.

(b) All ashtrays shall be removed from any area where smoking is prohibited by this Act by the owner, operator, manager, or other person having control of the area.

#### SECTION 7.

(a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Act or reports or attempts to prosecute a violation of this Act.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

SECTION 8. Smoking is prohibited within a distance of 20 feet outside entrances and operable windows of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

SECTION 9.

- (a) This act shall be enforced by department of health with respect to the prohibition against smoking in a public place and by the department of labor and workforce development with respect to the prohibition against smoking in places of employment.
- (b) Notice of the provisions of this act shall be given to all applicants for a business license pursuant to Tennessee Code Annotated, Title 67, Chapter 4, Part 7.
- (c) Any citizen who desires to register a complaint under this act may initiate enforcement with either department of health or the department of labor and workforce development, as appropriate.
- (d) Any mandated inspection by state law of an establishment shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this act.
- (e) An owner, manager, operator, or employee of an establishment regulated by this act shall inform persons violating this act of the appropriate provisions thereof.
- (f) Notwithstanding any other provision of this act, an employee or private citizen may bring legal action to enforce this act.
- (g) In addition to the remedies provided by this act, the commissioner of the department of health or the department of labor and workforce development, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this act may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
- (h) The commissioner of the department of health and the commissioner of the department of labor and workforce development are authorized to promulgate

rules to effectuate the provisions of this act in accordance with the uniform administrative procedures act, compiled in title 4, chapter 5.

SECTION 10.

(a) A person who knowingly smokes in an area where smoking is prohibited by the provisions of this act shall be subject to a civil fine not exceeding fifty dollars (\$50).

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who knowingly fails to comply with the provisions of this act shall be subject to a civil fine:

(1) Not exceeding one hundred dollars (\$100) for a first violation;

(2) Not exceeding two hundred dollars (\$200) for a second violation within one (1) year; or

(3) Not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(c) In addition to the fines established by this section, a knowing violation of this act by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Each day on which a knowing violation of this act occurs shall be considered a separate and distinct violation.

SECTION 11. The department of health in conjunction with the department of labor and workforce development shall engage in a continuing program to explain and clarify the purposes and requirements of this act to citizens affected by it, and to guide owners, operators, and managers of places of employment in their compliance with it.

SECTION 12. The commissioners of the departments of health and labor and workforce development shall annually request other governmental and educational agencies within the

state to establish local operating procedures in cooperation and compliance with this act. This includes urging all municipalities and local education agencies to update any existing smoking control regulations or policies to be consistent with the current health findings regarding secondhand smoke.

SECTION 13. This Act shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 14. If any provision of this Act or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 15. This Act shall take effect 90 days after becoming law, the public welfare requiring it.