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## **TRENDS IN SMOKEFREE GAMING**

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Presented at

ANR Conference - ETS and Worker Health

Fallen Leaf Lake, California

September 13, 2005

Updated

January 31, 2006

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## **I. Introduction**

Why do smokefree gaming venues exist? Gaming venues go smokefree for health reasons, most likely because a law requires that they protect workers and patrons, or they have their own human resources health policy. Or the business is scared of a lawsuit based on an unhealthy environment due to ETS. Gaming venues also go smokefree for economic reasons, usually voluntarily, to keep up with patron needs.

## **II. Smoking Policies in Gaming Venues in the USA and Abroad**

### **A. Smokefree by law**

Whether it's for health or economics, smokefree gambling venues exist in the United States and abroad (see ANR's list online at [www.no-smoke.org](http://www.no-smoke.org)). Here in the U.S., state law requires smokefree gambling in California, Delaware, Florida, Maine, Massachusetts, New York, South Dakota, Utah, and Vermont. In Maine, even the Native American reservation bingo is smokefree, except for two weeks of high stakes gambling per year. New York has smokefree bingo, and the government won a recent decision to require the Oneida Reservation's casino to be smokefree (based on a sovereignty issue). Delaware has smokefree racinos and video slots, and Florida has smokefree racetracks. Three of Quebec's casinos are smokefree, except for separately ventilated lounges that have nothing in them (no gaming, restaurant, bar, etc).

One state, Rhode Island, carved out an exemption to its smokefree law for its two gaming facilities, Lincoln Park and Newport Grand, but required them to construct separate nonsmoking areas with separate ventilation systems for the gaming areas. Any bar that existed prior to March 1, 2005 in a gaming facility was exempt. However, restaurants at the gaming facilities must be smokefree. The new law requires that gaming employees shall have the right to opt out of working in the smoking sections without any adverse impact or action taken against the employee for opting out.

### **B. Smokefree voluntarily**

Some gambling sites have gone smokefree voluntarily, such as a gaming venue in Taos, New Mexico. In September 2005, the Blackfeet Reservation in Montana made its gaming facilities smokefree. The Lucky Bear Casino on the Hoopa Reservation in northern California is Native American and completely smokefree voluntarily. Several Native American casinos offer smokefree rooms for gambling and restaurant areas, and this data is tracked by our colleagues at the American Indian Tobacco Education Network in California <http://www.crihb.org/Tobacco/tobacco.htm>.

MotorCity in Detroit has smokefree floors. In Louisville, Kentucky, Churchill Downs horse racing is smokefree since it refurbished, except for one bar. Harrah's Cherokee Casino & Hotel in North Carolina created a 100% smokefree policy for one 8,000 square feet building in September 2005.

Foxwoods and Mohegan Sun casinos banned smoking in their poker rooms. Grand Casino Gulfport in Mississippi banned smoking from a wing of its casino that covers a 15-table, 150-seat poker room, which takes up almost all of the gambling space on the third floor. And some of the big casinos in Las Vegas and Atlantic City have smokefree poker rooms. Quebec's casinos originally went mostly smokefree out of fear of litigation from a pregnant worker who got her union behind her on the issue. (Now they're smokefree by law, as described above.)

### **C. Not smokefree**

Most gambling venues are not smokefree, such as in Reno, Las Vegas, Atlantic City, St. Louis, and the Gulfport region. More likely than not, the fastest growing casino industry region, China's Macau, has few, if any, smokefree zones at its casinos. Interestingly, over the last few years, the airports in Reno and Las Vegas have become almost smokefree, except for a few smoking rooms.

The following portion of my presentation will address the plethora of information that I have reviewed on smokefree gaming – economics, settled lawsuits, studies, etc.

## **III. Economics of Smokefree Gaming**

### **A. NJ Division of Taxation Smoking Ban Impact II report, April 1, 2005**

An April 1, 2005 Smoking Ban Impact II three-page report, issued by the New Jersey Division of Taxation's Office of Revenue and Economic Analysis, to New Jersey Treasurer John McCormac, concluded that "...there is little objective evidence of any, much less a sizable, negative economic impact. This is

like the smoking ban on airplanes several decades ago. One can hardly argue that that has led to a decline in air travel." The report stated that, "[i]t seems unlikely that the Corporate Business Tax (CBT) would be impacted in any material way.... Casinos owed \$25.5 million in CBT in CY2003. A one percent reduction in net income generates a \$255,000 loss in CBT revenue."

### **B. Dover Downs Racino, Delaware, quarterly reports**

Delaware's smokefree air law passed on November 27, 2002; it went into effect on March 10, 2003 (that's the effective date stated in the law, although the racinos stated it went into effect in November). In May 2003, the head of Park Place Entertainment, [a.k.a. Caesars (name change in January 2004), now Harrah's (merger in 2005)], testified before the New Jersey Legislature's Senate Health Committee. He testified that the Delaware smokefree law had a negative effect on gaming revenues, in that revenues dropped 25% since the ban took effect in November 2002. He did not present any studies to prove this, so I decided to investigate to determine if Caesars Entertainment (that had a management agreement with Dover Downs) and/or Dover Downs claimed at any time that their revenues were affected by the Delaware smoking ban.

The research consisted of a review of the quarterly earnings reports from 4th quarter 2002 thru 4th quarter 2004 that both Dover Downs and Caesars Entertainment are required to file with the Securities and Exchange Commission. Caesars Entertainment's "Eastern Division" includes Dover Downs and Atlantic City, and as such, the Eastern Division earnings information was the focus of the review for the Caesars Entertainment earnings reports. There are two major findings from the data that I reviewed:

1. Caesars Entertainment filings never mentioned that the Eastern Region was affected by the Delaware smokefree law.
2. Although Dover Downs' filings predicted a negative impact on business from the smokefree law, the report filed by Dover Downs states that the CEO was "extremely happy with the 4th quarter [2004] results", and that its hotel's occupancy rate for the year was at 95%.

Caesars Entertainment's quarterly reports from 4<sup>th</sup> quarter 2002 to 4<sup>th</sup> quarter 2004 never mentioned the smokefree law as a reason for any changes in revenues for their Eastern Region, which includes Atlantic City and Dover Downs. Rather, over the course of those two years, the Caesars Entertainment quarterly reports blamed these factors:

- bad weather
- Iraqi war
- Sars fear
- economy
- Borgata competition
- Atlantic City union strike.

The Dover Downs quarterly reports from 4<sup>th</sup> quarter 2002 to 1<sup>st</sup> quarter 2003 initially blamed the decrease in revenues on three factors:

- severe weather
- economy
- smokefree law (no empirical data is supplied in the filed reports to support this).

The 2<sup>nd</sup> quarter results blamed the decrease in slot revenues on the smoking ban, but hotel occupancy rates increased. By 3<sup>rd</sup> quarter 2003, although revenues were down, margins increased, along with hotel occupancy rates. In December 2003, Dover Downs showed a 7% increase in slot earnings, which its report states is due to:

- new legislation going into effect, that allows for more slots, higher betting limits, credit play and longer hours
- completed renovation and construction of the facility.

Only in June 2004 did Dover Downs have a decrease in revenues, blaming two factors, but NOT the smokefree law:

- high gas prices
- soft economy.

Gross revenues increased for both the 3<sup>rd</sup> and 4<sup>th</sup> quarters at Dover Downs, with record hotel occupancy rates at 95%. In fact, Denis McGlynn, the President and CEO of Dover Downs, stated, "We are extremely happy [emphasis added] with our fourth quarter results, as well as our slot win growth for 2004 as a whole.... Our level of play is increasing, but more importantly, our level of play from our Club customers is increasing faster." Ironically, two and a half years earlier, Mr. McGlynn testified before the Delaware Senate in May 2003 that Delaware's revenue losses could reach \$57 million if smokers abandoned the state's three casinos (see <http://www.mascotcoalition.org/initiatives/cia/delaware.html>).

Conclusions from data reviewed:

Dover Downs had (1) positive earnings reports since it renovated and expanded in early 2004, due to several factors, including legislation that allowed for more slots, increased betting limits, etc. and (2) record hotel occupancy rates of 95% for 2004. It attributed the slowdown in June 2004 to increased gas prices and a softness in the industry, not the smokefree law. The last time that the smokefree law was blamed for decreased revenues in their quarterly filings was 2<sup>nd</sup> quarter 2003, almost two years ago. Caesars Entertainment did not mention in its filings that the Delaware smokefree law was a reason for decreased revenues in their Eastern Division, which includes Atlantic City and Dover Downs. In fact, while 4th quarter 2004 revenues were down for the Eastern region due to the A.C. strike, Dover Downs had an increase in revenues for both the 3rd and 4th quarters 2004.

2005 Follow-up: 1st and 2nd Quarter 2005 earnings for Dover Downs:

Gross revenues are up for Dover Downs for both 1<sup>st</sup> and 2<sup>nd</sup> quarter 2005, compared to those quarters in 2004. As of December 28, 2004, Dover Downs no longer has a management agreement with Caesars Entertainment regarding video slots. Caesars Entertainment merged with Harrah's. Thus Caesars' SEC quarterly filings are not filed separately from Harrah's.

**C. Dover Downs studies: University of California, San Francisco vs. Pakko**

As mentioned in the previous section, I reviewed the quarterly filings by the two companies that ran or managed Dover Downs. In 2004, The Center for Tobacco Control Research and Education of the University of California, San Francisco, reviewed data on Dover Downs' gaming revenue, as collected by the state office of the Delaware Video Lottery, by gaming establishment and number of machines per establishment, from January 1996 to May 2004. The average revenue per machine was calculated on a total basis. The results of the University of California study showed no significant effect of the smokefree law for either total revenues or average revenues per machine.

The University of California study was challenged by senior economist of the Federal Reserve Bank of St. Louis, Michael Pakko. Reviewing the Pakko study, some oddities can be noted:

1. The Pakko study only reviewed financial reports up to the 1<sup>st</sup> quarter 2004 on Dover Downs, yet the report was released in June 2005. It's unclear why the author chose not to include the data for the rest of 2004, which showed a clear uptick in revenues.
2. The Pakko study omits a clear reference that the quarterly SEC filings for Dover Downs cites the war, weather, etc. for 2003 revenue concerns.
3. The Pakko study does not mention that in the 4<sup>th</sup> quarter 2004 filing the CEO of Dover Downs is "extremely happy" with the company's 4<sup>th</sup> quarter results.
4. The Pakko study does not cite the Dover Downs' website which advertised "Dover Downs is completely Smoke Free!".

In response to the Pakko study, the University of California corrected the data, and re-ran the analysis. The conclusion was the same: that there was no change in gaming revenue associated with the Delaware smokefree laws. <http://tc.bmjournals.com/cgi/letters/14/1/10> .

#### **D. University of California Response to PriceWaterhouseCoopers' Report**

The Center for Tobacco Control Research and Education of the University of California, San Francisco, in December 2005 examined a November 2005 report the Casino Association of New Jersey commissioned from PriceWaterhouseCoopers, a report which predicted economic losses for casinos if New Jersey enacted the smokefree air law. The University of California Center stated that the PriceWaterhouseCoopers report assumed that smokers would reduce their visits to casinos but, paradoxically, assumed nonsmokers would not increase their visits. According to the University of California analysis, correcting for just one of several such assumptions led to their conclusion that revenue would increase 7% the first two years. As a sidenote, according to Altria's website, PriceWaterhouseCoopers is the auditor for Altria. See [www.altria.com/about\\_altria/1\\_5\\_8\\_ourauditors.asp](http://www.altria.com/about_altria/1_5_8_ourauditors.asp).

#### **E. Additional economic data on smokefree gaming**

- In 1998, California implemented a smokefree air law for establishments that serve alcohol, including gaming rooms and casinos, except Native American casinos. The California Board of Equalization analyzed taxable sales figures for those sites for each quarter of 1998 vs. 1997, and found that revenues increased by more than 5% following implementation of the law.

- The 2003 Glantz/Wilson-Loots Study showed that there is no association between smokefree ordinances and profits decreasing from bingo and charitable games in Massachusetts. The study reviewed data from 220 municipalities as reported to the Massachusetts State Lottery Commission. During 1985-2001, bingo profits fell over the entire period, this trend was established before smokefree laws started in the early 1990s, and that trend was unaffected by the smokefree law.
- Three Montreal casinos have been smokefree since July 2003 (except for separated smoking lounges). Their 2004 annual report, on page 12, states that going smokefree is "...a move that places them in the avant-garde of the North American gaming industry where most gaming houses have yet to adopt this measure." Annual revenues (for all three totaled) went from \$747.5 million in 2003, to \$751.9 in 2005. My understanding is that, in 2003, a pregnant employee complained that she didn't want to work in the smoking section, her union supported her, and the casinos agreed to go smokefree.
- In 2004 the Mandalay Resort Group created a 100% smokefree policy for its third floor at its MotorCity Casino in Michigan. The third floor houses the casino's poker room which usually has a waiting list to play, since the smokefree floor represents 10% of the total gambling space, but more than 10% of the patrons gamble here. Later in 2004, MGM Mirage bought out Mandalay, a Detroit businesswoman bought MotorCity, and MotorCity retained its smokefree policy.
- Prior to New Zealand's smokefree law taking effect in December 2004, New Zealand's biggest casino operator, Sky City Entertainment, voluntarily made more than 40% of its gaming areas smokefree. The smokefree policy also covered 50% to 100% of the space in its seven Auckland casino restaurants and all public areas. As of August 8, 2005, and since being 100% smokefree, Sky City Entertainment has stated that it beat its own expectations with a slight rise in its annual profit, even with delays in refurbishing one of its six casinos, and technology problems. Net profits rose \$4 million or 4% last year. It expected a steady recovery from the smokefree law, and predicted any residual impacts would be minimal in 2007. Incidentally, the company also faced tougher gaming regulations that coincided with the smoking ban. Currently, there is a ban on creating new casinos in New Zealand.

- In the province of Saskatchewan, Canada, smokefree legislation became effective January 1, 2005. A July 28, 2005 article in the Saskatoon Star Phoenix reports that the Saskatchewan Gaming Corporation stated that attendance at its two government-run casinos (one in Regina, one in Moose Jaw) was up 25% in January 2005, compared to January 2004, but net income was down 33 per cent for the 1<sup>st</sup> quarter 2005 (April – June). However, the Saskatchewan Gaming Corporation’s Annual Report 2004-2005 (April 2004-March 2005) concluded that the smokefree air legislation had minimal impact.
  - “Revenue from table games was down marginally over the previous year, but this was expected due to the transition to a smoke-free environment at Casino Regina. Clearly though, table games have not been impacted to date to the extent that was first projected.” (page 20)
  - “An innovative marketing campaign, along with facility updates to accommodate patrons smoking outdoors, helped ease the transition.” The casino’s atmosphere was “refreshed” by cleaning carpets and drapes, re-painting, etc. (page 13)
  - “These strategies, coupled with a new multimedia campaign advertising the benefits of SGC’s refreshed facilities, has helped minimize the impact of the smoking ban on overall revenues.” (page 18)
  - “During the 2004-2005 fiscal year, SGC posted a net income of \$39.4 million, an increase of \$2.9 million over the previous year’s profit of \$36.5 million.” “Net revenues were \$97.7 million, an increase of \$6.7 million, or 7.4% of the previous year.” “Slot revenues increased \$5.1 million. Table revenues saw no change from the previous year.” (page 47)

#### **F. Negative comments by the industry**

The March 2004 issue of Global Gaming Business magazine published a two-page article by a gaming industry research analyst, Jeffries & Co. (an investment banking company with an equity research branch). The author stated that, since the smokefree law initiation and up until December 2003, Delaware’s gaming revenues have been down. The article referred to the smokefree law as the cause, yet never mentioned Dover Downs’ and Park Place Entertainment’s SEC filings, which cited problems with the weather, the Iraqi war, increases in gas pricing, and Dover Downs’ refurbishing project.

## **IV. Support for Smokefree Gaming**

### **A. 2005 ICR Survey estimates 1.5 million more visitors to Atlantic City**

In spring 2005, International Communications Research, an independent research organization, surveyed 496 adults in the Mid-Atlantic states about smokefree casinos and the proposed New Jersey smokefree air legislation. Nonsmokers said they'd be more likely to go to Atlantic City if casinos were smokefree, smokers said they'd still visit. The researchers estimated that smokefree casinos would bring 1.5 million more visitors to Atlantic City.

### **B. Casino management and gaming industry**

- Trump Plaza in Atlantic City has a 100% smokefree gambling floor in the East Tower (the main tower gambling floor has smoking).
- Smokefree poker rooms in casinos in Atlantic City, Las Vegas, etc. have increased.
- Smokefree casinos exist in Montreal, MotorCity has a smokefree floor, and Native American Tribal Councils (Montana, Taos, etc) require smokefree gaming on tribal land.
- An editorial in *Gambling Magazine* (May 16, 2005) supports smokefree gaming.
- The *Press of Atlantic City* quotes the *Gaming Industry Observer* that "It's going to take hard work, but there is a way to benefit from this inevitable trend", and recommends an effective marketing plan.
- The CEO of Sky City, New Zealand's gambling industry leader, reported in December 2004 that his casinos are fully prepared to accommodate the regulatory changes (new law making casinos smokefree), and said "business is well set to move forward." (www.no-smoke.org)
- Mohegan Sun Casino in Connecticut states that their customer survey shows that the #1 amenity that patrons would like is a smokefree gaming area, stating, "It's just good business." (www.no-smoke.org)

### **C. State officials, National Federation of Casino Employees, patrons**

- On December 25, 2003, the *Wilmington News-Journal* reported that Delaware's state casino officials had no plans to change the smokefree law, and expected casinos in other states to be operating in smokefree environments soon.

- The Director of the National Federation of Casino Employees in September 2000 stated that casinos should be completely smokefree because people have the right to breathe safe air.
- International Communications Research (Media, Pennsylvania) interviewed 496 adults in the Mid-Atlantic states about the proposed smokefree air law for New Jersey. The results showed that nonsmokers would be more likely to go to Atlantic City if smoking were banned. Smokers said they'd still visit. The researchers estimated that the smoking ban would bring 1.5 million more visitors to Atlantic City (*Press of Atlantic City*, May 15, 2005).
- In England, a study by the University of the West of England, Bristol, published in September 2005, concluded that two-thirds of casino staff wanted smoking banned from their workplace. "The majority of casino workers who responded to our survey want their working area to be smoke-free, including 40 per cent of current smokers."

## **V. Detrimental Health Effects of Secondhand Smoke on Gaming Workers and Patrons**

From a human resources standpoint, an employer wants to provide safe workplaces for all employees, whether they work in the back offices or serve the public. New scientific studies conclude that secondhand smoke, which is a Class A human carcinogen according to the Environmental Protection Agency and the National Institutes of Health, has an effect on risks associated with breast cancer, and is a health hazard for pregnant women and their fetuses, people with heart problems, including heart attacks, and respiratory distress (see below). In fact, the 2005 Annual Public Hearing Report of the New Jersey Clean Air Council stated that a ban on public smoking "requires immediate attention."

Furthermore:

- The California EPA report published September 2005 shows a causal link between secondhand smoke exposure and breast cancer in younger, primarily pre-menopausal women as well as pre-term delivery, asthma induction, and altered vascular properties.
- A 2005 *BMC Pediatrics* research article reports that passive smoke exposure *in utero* leads to an increase in fetal mutation. This should encourage workplaces to protect pregnant women, and women who might become pregnant, from secondhand smoke.
- In 2004, the Centers for Disease Control issued an advisory that doctors should warn patients with heart problems that secondhand smoke can significantly increase their risk of a heart attack.

- In September 2005, the University of Wisconsin - Madison, released its study that nonsmoking bartenders in smoky bars show respiratory distress, in addition to red or irritated eyes, coughing in the morning, runny nose and sneezing, scratchy throat, and that "these symptoms are precursors to serious disease like asthma, emphysema and bronchitis", (September 18, 2005 article in [www.madison.com](http://www.madison.com)).
- A University of Minnesota study published in December 2003 showed that nonsmokers exposed for 4+ hours in a smoky casino have uptake of tobacco specific lung carcinogens NNK and NNAL.
- The July 2005 issue of the *Journal of Occupational and Environmental Medicine* published a study that measured cotinine levels in saliva of 92 nonsmoking workers in Victoria, Australia. (Cotinine is a by-product of nicotine.) It showed that the levels were significantly higher among club workers than casino workers, but that casino and club workers reported similar levels of respiratory morbidity and were more likely to have sore eyes and sore throat, compared to office employees.
- James Repace's study on air quality at Delaware gaming facilities, before and after the smokefree air law, November 2002, showed that secondhand smoke contributed 90% to 95% of the RSP air pollution, and 85% to 95% of the carcinogenic PPAH before the law's implementation, greatly exceeding levels of these contaminants encountered on major truck highways and polluted city streets.

## **VI. Lawsuits by Casino Workers**

Concern about being sued by a worker who is getting sick from secondhand smoke can motivate employers to change their smoking policies. Employees around the globe are becoming sick from secondhand smoke, and are taking their employers to court. Generally speaking, most cases settle out of court and are not reported. However, here are some settlements and decisions of legal cases brought by casino workers:

- In response to a Montreal casino's pregnant worker, whose union supported her, the casinos voluntarily went smokefree. Starting in 2006, the Quebec province's smokefree law will be in effect, including in casinos.
- In June 2002, a class action employee lawsuit over the air quality of the Kenner riverboat casino in Louisiana was settled. Employees alleged that the ventilation system on the vessel was faulty and re-circulated smoky air, making them sick. One thousand current and former Treasure Chest employees will receive money from the \$2.6 million settlement.

- In Ontario Canada, in April 2005, an ex-casino worker was awarded employment insurance benefits; he had to quit his job because he was getting sick from ETS on the job. He is 36 years old and worked at Casino Rama for six years.
- In Halifax Canada, in May 2003, a female casino worker was the first Canadian to win employment insurance benefits.
- In January 2004, an employee of the Napoleon's Casino in London, where he worked as an inspector for fourteen years, settled for almost \$100,000.

A plethora of cases exists throughout the United States on worker health protection. In New Jersey, employees have won cases that have involved secondhand smoke in the workplace. Decisions have included a mandate for a smokefree workplace, if there is not statute that requires it, as in the 1976 New Jersey case, *Shimp v. NJ Bell* (office setting), or a workers compensation award as in *Magaw v. Middletown Board of Education*. In New York, a state prison employee won a major monetary award in his case, *McKinney v. Anderson*.

Employees may bring challenges under the federal Americans with Disabilities Act, and/or a state law version (but not in Native American casinos, which are exempt under the term "employer" in the ADA statute).

## **VII. Successes in Smokefree Gaming in New Jersey**

- Some employees have testified before New Jersey's Senate and Assembly Health Committees' hearings, and in press conferences, in favor of smokefree casinos.
- Local 54 may be interested in pursuing it for the next negotiations. The Borgata casino negotiates separately in 2007.
- In March 2005, when the smokefree air bill was considered in the New Jersey Senate Health Committee, the members voted for an amendment to the bill to make the entire casinos smokefree. Earlier versions exempted the casinos entirely, or exempted the casino floors. This is a major shift. Some casinos considered the possibility of making parts of the casinos smokefree.
- Trump Plaza voluntarily made its East Tower casino floor smokefree.
- The Metuchen Roman Catholic Diocese created a smokefree bingo policy for its churches and schools.

## **VIII. Moving Forward**

More air quality testing of gaming venues across the USA and abroad is being done, to produce national and international studies. Roswell Park Cancer Institute is conducting studies and training colleagues to use air-testing equipment. Harvard's School of Public Health is conducting studies. James Repace Associates is testing the air quality in many gaming venues, and Repace is testifying as an expert witness.

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