


1-1-2008

## Secondhand Smoke Deserves First-Rate Attention

Rickie Fulcher

Follow this and additional works at: <http://scholarship.richmond.edu/pilr>

 Part of the [Health Law and Policy Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Rickie Fulcher, *Secondhand Smoke Deserves First-Rate Attention*, 11 RICH. J.L. & PUB. INT. 165 (2007).  
Available at: <http://scholarship.richmond.edu/pilr/vol11/iss4/10>

This Editorial is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in Richmond Public Interest Law Review by an authorized administrator of UR Scholarship Repository. For more information, please contact [scholarshiprepositary@richmond.edu](mailto:scholarshiprepositary@richmond.edu).

## HEALTH EDITORIALS

### SECONDHAND SMOKE DESERVES FIRST-RATE ATTENTION

*Editorial*

*Rickie Fulcher\**

Most people probably do not know that as many as 65,000 nonsmokers die from secondhand smoke exposure each year.<sup>1</sup> In fact, secondhand smoke is the third leading cause of preventable death in the United States.<sup>2</sup>

During the 2008 session of the Virginia General Assembly, state legislators commendably introduced twelve smoke-free bills<sup>3</sup>—the most in the legislature’s history. While many of these efforts to protect the public health succeeded in the Senate, a House of Delegates subcommittee declined to hear many of the bills, effectively removing them from further consideration.<sup>4</sup> Clearly, Virginia has a long way to go, but support for

---

\* Chairman, Board of Trustees, Virginia Tobacco Settlement Foundation (VTSF). Mr. Fulcher has chaired the Virginia Tobacco Settlement Foundation’s Board of Trustees since 2003 and was appointed to the Board as a charter member in 1999. A former member of the Patrick County School Board, he is Director of Retail Operations for Clark Gas & Oil Co., Inc., and lives in Stuart, Virginia.

1. David Satcher, *Preface to NAT’L CANCER INST., NAT’L INSTS. OF HEALTH, PUBLIC HEALTH SERV., U.S. DEP’T OF HEALTH AND HUMAN SERVS., NIH PUB. NO. 99-4645, SMOKING AND TOBACCO CONTROL MONOGRAPH 10: HEALTH EFFECTS OF EXPOSURE TO ENVIRONMENTAL TOBACCO SMOKE*, at i (1999), [http://cancercontrol.cancer.gov/tcrb/monographs/10/m10\\_complete.pdf](http://cancercontrol.cancer.gov/tcrb/monographs/10/m10_complete.pdf) [hereinafter MONOGRAPH 10].

2. TOBACCO USE PREVENTION UNIT, DEKALB COUNTY BD. OF HEALTH, 2003 STATUS OF TOBACCO CONTROL IN DEKALB COUNTY 9 (2003), [http://www.dekalbhealth.net/community\\_collaborations/status-11-15.pdf](http://www.dekalbhealth.net/community_collaborations/status-11-15.pdf).

3. See H.B. 288, Va. Gen. Assembly (Reg. Sess. 2008); H.B. 500, Va. Gen. Assembly (Reg. Sess. 2008); H.B. 572, Va. Gen. Assembly (Reg. Sess. 2008); H.B. 821, Va. Gen. Assembly (Reg. Sess. 2008); H.B. 1063, Va. Gen. Assembly (Reg. Sess. 2008); H.B. 1253, Va. Gen. Assembly (Reg. Sess. 2008); H.B. 1341, Va. Gen. Assembly (Reg. Sess. 2008); H.B. 1432, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 202, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 298, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 347, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 501, Va. Gen. Assembly (Reg. Sess. 2008).

4. See Legislative Information Services, Bill Tracking: SB202, 2008 Session,

smoke-free legislation is growing.<sup>5</sup> More and more citizens and legislators are recognizing that this is a vital public health issue for the families in our Commonwealth.<sup>6</sup>

As chairman of the Board of Trustees for the Virginia Tobacco Settlement Foundation (VTSF),<sup>7</sup> I am also very concerned about the health of Virginia's children. Secondhand smoke has been shown to contribute significantly to infant mortality and low birth weights.<sup>8</sup> It increases the risk of children contracting ear infections and respiratory infections, such as pneumonia.<sup>9</sup> It also greatly increases the prevalence and severity of asthma in children.<sup>10</sup> Nationally, Congress is still debating the Food and Drug Administration's (FDA) regulation of tobacco products. At present, however, no government oversight exists for the mixture of 4,000 or more chemical compounds—at least sixty-nine of which are known carcinogens—found in the secondhand smoke that our children inhale.<sup>11</sup>

Citizens nationwide are clamoring for smoke-free legislation. Twenty-seven states—as well as Puerto Rico and Washington, D.C.—have passed laws banning smoking in workplaces, restaurants and/or bars.<sup>12</sup> As a result, 62% of the United States population is now protected by local and state laws regarding smoking.<sup>13</sup> Virginians, however, cannot yet count

---

<http://leg1.state.va.us/cgi-bin/legp504.exe?ses=081&typ=bil&val=sb202> (last visited Apr. 4, 2008); Legislative Information Services, Bill Tracking: SB298, 2008 Session, <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=081&typ=bil&val=sb298> (last visited Apr. 4, 2008); Legislative Information Services, Bill Tracking: SB347, 2008 Session, <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=081&typ=bil&val=sb347> (last visited Apr. 4, 2008); Legislative Information Services, Bill Tracking: SB501, 2008 Session, <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=081&typ=bil&val=sb501> (last visited Apr. 4, 2008).

5. A January 2008 poll found that a majority of Virginia voters supported legislation banning smoking in public places such as restaurants and workplaces. THE MELLMAN GROUP, SURVEY OF VIRGINIA VOTERS JANUARY 2008 (2008), <http://smokefreevanow.org/poll08/VFHFHPollResultsJan08.pdf>.

6. *Id.*

7. Established in 1999 by the General Assembly, VTSF leads the state government's youth tobacco-use prevention and cessation efforts. VTSF, <http://www.vtsf.org/global/about.asp> (last visited Mar. 29, 2008).

8. MONOGRAPH 10, *supra* note 1, at i.

9. *Id.*

10. *Id.*

11. Dietrich Hoffman & Ilse Hoffman, *The Changing Cigarette: Chemical Studies and Bioassays*, in NAT'L CANCER INST., NAT'L INSTS. OF HEALTH, PUBLIC HEALTH SERV., U.S. DEP'T OF HEALTH AND HUMAN SERVS., NIH PUB. NO. 02-5074, SMOKING AND TOBACCO CONTROL MONOGRAPH 13: RISKS ASSOCIATED WITH SMOKING CIGARETTES WITH LOW MACHINE-MEASURED YIELDS OF TAR AND NICOTINE 159, 160 (2002), [http://cancercontrol.cancer.org/tcrb/monographs/13/m13\\_5.pdf](http://cancercontrol.cancer.org/tcrb/monographs/13/m13_5.pdf) [hereinafter MONOGRAPH 13].

12. American Nonsmokers' Rights Foundation, Overview List – How Many Smokefree Laws? (Apr. 1, 2008), <http://www.no-smoke.org/pdf/mediaordlist.pdf>.

13. American Nonsmokers' Rights Foundation, Summary of 100% Smokefree State Laws and Population Protected by 100% U.S. Smokefree Laws, (Apr. 1, 2008), <http://www.no-smoke.org/pdf/SummaryUSPopList.pdf>.

themselves among these fortunate citizens, but that is not due to a lack of effort.

Historically, tobacco has been a cornerstone export for Virginia for 400 years, dating back to the Commonwealth's first settlers in Jamestown. The history of legislation curbing smoking in Virginia, however, dates back only to 1990, with the passage of the Virginia Indoor Clean Air Act,<sup>14</sup> which bans smoking in indoor service lines, commercial day care centers, and other key areas such as elevators, school buses, and hospital emergency rooms.<sup>15</sup> The bill was amended in 2002 to include public school buildings.<sup>16</sup>

In 2006, Virginia Governor Timothy M. Kaine issued an executive order banning smoking in government buildings and state vehicles "to improve the health of employees and minimiz[e] health risks in the workplace."<sup>17</sup> However, despite overwhelming medical evidence that secondhand smoke is harmful to public health, the General Assembly has been slow to place further restrictions on smoking. Their reluctance is probably based on fear of economic harm to tobacco-related industries and restaurant revenues. However, smoking-related illnesses place a massive financial onus on Virginia's government coffers, too. Our state government pays \$401 million annually in Medicaid costs from smoking, and the average Virginia family pays \$576 annually in state and federal taxes for these types of smoking-related government expenditures.<sup>18</sup>

In the 2008 General Assembly session, public health proponents tried a three-pronged approach to stemming secondhand smoke exposure: (1) comprehensive smoke-free legislation that would curb smoking in most indoor public places, (2) target legislation that would ban smoking in restaurants, and (3) legislation that would allow localities to make their own decisions about banning smoking in public places.<sup>19</sup> Virginians for a

---

14. VA. CODE ANN. §§ 15.2-2800 to -2810 (Repl. Vol. 2003).

15. *Id.*

16. Act of Apr. 1, 2002, ch. 283, 2002 Va. Acts. 360-61 (codified as amended at VA. CODE ANN. §§ 15.2-2801, -2804 (Repl. Vol. 2003)).

17. Exec. Order No. 41 (2006) (Oct. 26, 2006).

18. Campaign for Tobacco Free Kids, *The Toll of Tobacco in Virginia*, <http://www.tobaccofreekids.org/reports/settlements/toll.php?StateID=VA> (last visited Apr. 21, 2008).

19. *See, e.g.*, S.B. 202, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 298, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 327, Va. Gen. Assembly (Reg. Sess. 2008). Major Virginia localities such as Alexandria, Arlington, Norfolk, and Virginia Beach have expressed interest in banning smoking in restaurants. Harry Minium, *Virginia Beach, Norfolk Team Up for Smoking Ban*, VIRGINIAN-PILOT, Oct. 23, 2007, at \*1, available at <http://hamptonroads.com/2007/10/virginia-beach%2c-norfolk-team-smoking-ban>. Virginia's Dillon Rule, however, prohibits localities from making decisions that supersede state law without General Assembly approval. *City of Richmond v. Confrere Club*, 239 Va. 77, 79-80, 387 S.E.2d 471, 473 (1990). Norfolk later voted against a smoking ban, out of the dubious concern for the

Healthy Future—a coalition formed by the American Cancer Society (ACS), the American Heart Association, and the American Lung Association—led the effort this year to get Virginia legislators to sponsor and support comprehensive smoke-free legislation. The group had some success. In fact, the Senate passed measures in 2008 to both restrict indoor smoking in most public places and to allow some localities to make their own decisions about smoking.<sup>20</sup> Unfortunately, all of these excellent measures died in a subcommittee within the House of Delegates.<sup>21</sup>

In addition to supporting smoke-free legislation, the ACS also took the lead in seeking increases in funding for VTSMF's important youth tobacco use prevention work.<sup>22</sup> VTSMF has made great progress in reducing youth tobacco use across the Commonwealth. In just its first five years, VTSMF saw youth smoking in Virginia drop from 21% to 16%—a decline of nearly 30%!<sup>23</sup> VTSMF employs a multifaceted approach to battling youth tobacco use consisting of community educational programs, marketing, university research, and enforcement of Virginia's tobacco-purchasing laws.<sup>24</sup> But this effort, too, was sadly unsuccessful in the General Assembly this year.

With public support and medical data both in favor of increased restrictions on smoking, it is more important than ever for legislators to give these issues a fair hearing. Much change is needed—and quickly. The tragic human toll exacted by smoking in Virginia is both preventable and lamentable. 9,300 adults in Virginia die from smoking-related illnesses every year.<sup>25</sup> That is why it is critical not only to protect children from secondhand smoke, but also to enhance prevention efforts to ensure that today's children do not become tomorrow's adult smokers.

---

financial impact it would have on restaurants. Associated Press, *Norfolk Backs Down on Smoking Ban*, RICH. TIMES-DISPATCH, Mar. 26, 2008, at \*1, available at <http://www.inrich.com/cva/ric/search.PrintView.-content-articles-RTD-2008-03-26-0197.html>.

20. S.B. 202, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 298, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 347, Va. Gen. Assembly (Reg. Sess. 2008); S.B. 501, Va. Gen. Assembly (Reg. Sess. 2008).

21. See *supra* note 4 and accompanying text.

22. See American Cancer Society, [http://www.acscan.org/site/PageServer?pagename=ActionCenter\\_VA](http://www.acscan.org/site/PageServer?pagename=ActionCenter_VA).

23. VIRGINIA TOBACCO SETTLEMENT FOUNDATION, TOBACCO USE AMONG VIRGINIA'S MIDDLE AND HIGH SCHOOL STUDENTS: RESULTS OF THE 2005 YOUTH TOBACCO SURVEY WITH COMPARISONS TO THE 2003 SURVEY RESULTS 10 (2006).

24. Virginia Tobacco Settlement Foundation, <http://www.vtsf.org/global/about.asp> (last visited Apr. 4, 2008).

25. Campaign for Tobacco Free Kids, Key State-Specific Tobacco-Related Data & Rankings (Jan. 31, 2008), <http://tobaccofreekids.org/research/factsheets/pdf/0176.pdf>.