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Governor Philip D. Murphy and
New Jersey Health Commissioner Dr. Kaitlan Baston

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**SUPERIOR COURT OF NEW JERSEY
MERCER VICINAGE
CHANCERY DIVISION, GENERAL EQUITY PART**

<p>UAW, REGION 9 OF THE UAW, and C.E.A.S.E. N.J.,</p> <p>PLAINTIFFS,</p> <p>v.</p> <p>NEW JERSEY GOVERNOR PHILIP MURPHY, and ACTING NEW JERSEY HEALTH COMMISSIONER DR. KAITLIN BASTON,</p> <p>DEFENDANTS.</p>	<p>HON. PATRICK J. BARTELS, P.J.Ch.</p> <p>DOCKET NO. MER-C-26-24</p> <p>[PROPOSED] ORDER</p>

This matter having been opened to the Court by Matthew J. Platkin, Attorney General of New Jersey, Robert J. McGuire, Deputy Attorney General, appearing on behalf of Defendants, Governor Philip D. Murphy and New Jersey Health Commissioner Dr. Kaitlan Baston, and the Court having considered the matter and for good cause shown;

IT IS on this ____ day of _____, 2024

ORDERED that Plaintiffs' application for injunctive relief is DENIED; and it is further

ORDERED that Defendants' cross-motion to dismiss Plaintiffs' Verified Complaint is granted; and it is further

ORDERED that Plaintiffs' Verified Complaint is dismissed with prejudice; and it is further

ORDERED that a copy of this Order shall be forwarded to all counsel within 7 days of receipt hereof.

Hon. Patrick J. Bartels, P.J.Ch.

___ Opposed

___ Unopposed

MATTHEW J. PLATKIN
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Governor Philip D. Murphy and
New Jersey Health Commissioner Dr. Kaitlan Baston

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UAW, REGION 9 OF THE UAW, and
C.E.A.S.E. N.J.,

PLAINTIFFS,

v.

NEW JERSEY GOVERNOR PHILIP
MURPHY, and ACTING NEW JERSEY
HEALTH COMMISSIONER DR.
KAITLIN BASTON,

DEFENDANTS.

SUPERIOR COURT OF NEW
JERSEY
CHANCERY DIVISION MERCER
COUNTY

Docket No. MER-C-26-24

CIVIL ACTION

**CERTIFICATION OF
ROBERT J. McGUIRE,
DEPUTY ATTORNEY GENERAL**

Robert J. McGuire, of full age, hereby certifies as follows:

1. I am employed as a Deputy Attorney General by the State of New Jersey, Department of Law and Public Safety. I am Assistant Section Chief of the Appellate Section of the Division of Law, which provides legal representation to the

State of New Jersey and its entities and employees. I am assigned to represent Governor Philip D. Murphy and New Jersey Health Commissioner Dr. Kaitlan Baston in the above-captioned matter.

2. I make this certification in support of Defendants' cross-motion to dismiss, pursuant to Rule 4:6-2(e).

3. Attached to this certification as Exhibit A is a true and accurate copy of the Floor Statement to S. 1926 (P.L. 2005, c. 383) (Sen. Adler), which can be accessed publicly on the Legislature's website.

4. Attached to this certification as Exhibit B is a true and accurate copy the written testimony provided for and against the passage of S. 1493 (2024), which is publicly available from the New Jersey Senate Health, Human Services and Senior Citizens Committee.

5. Attached to this certification as Exhibit C is a true and accurate copy of the Spectrum Gaming Group Report (Nov. 3, 2021), which was submitted to the Senate Health, Human Services and Senior Citizens Committee.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

s/ Robert J. McGuire
Robert J. McGuire
Deputy Attorney General

DATE: April 29, 2024

EXHIBIT A

STATEMENT TO

[First Reprint]

SENATE, No. 1926

with Senate Floor Amendments
(Proposed By Senator ADLER)

ADOPTED: DECEMBER 8, 2005

This amendment would exempt from the provisions of this bill restricting smoking in indoor public places and workplaces the following:

(1) the area within the perimeter of any casino as defined in N.J.S.A.5:12-6 approved by the Casino Control Commission that contains at least 150 stand-alone slot machines, 10 table games, or some combination thereof approved by the commission, which machines and games are available to the public for wagering; and

(2) the area within the perimeter of any casino simulcasting facility approved by the Casino Control Commission pursuant to N.J.S.A.5:12-194 that contains a simulcast counter and dedicated seating for at least 50 simulcast patrons or a simulcast operation and at least 10 table games, which simulcast facilities and games and games are available to the public for wagering.

The purpose of this amendment, in specifying "the area within the perimeter of a casino and simulcasting facility," is to exempt only those areas in a casino and simulcasting facility that are completely surrounded by the applicable wagering area.

EXHIBIT B

UNITE HERE

ATLANTIC CITY, NEW JERSEY
WWW.UNITEHERELOCAL54.ORG

DONNA M. DECAPRIO
PRESIDENT

BENJAMIN H. ALBERT
FIN. SECRETARY TREASURER

JAVIER SOTO
VICE PRESIDENT

CINDY PEMBERTON
RECORDING SECRETARY



January 29, 2024

Dear Chairman Vitale, Vice Chair Singleton, and Members of the Committee:

My name is Donna DeCaprio. I am the President of UNITE HERE Local 54. I represent over 10,000 casino workers in Atlantic City.

Our members are cocktails servers, bartenders, barporters, EVS Attendants and Heavy Porters, who all work on the casino floor. We also represent housekeepers, bellmen, food servers, dishwashers and cooks.

Our members are proud of the jobs that they have. They work hard, they own homes, they have children, they pay their taxes, they spend money at local businesses and they are active in the communities.

We've worked tirelessly to negotiate these good paying jobs with excellent benefits, including retirement and family healthcare. We have also worked tirelessly to preserve these jobs. And that's why I am here.

I have worked in the casino industry for over 36 years. I've experienced the really good times and the really bad times. There were once 50,000 casino industry related jobs in Atlantic City, but increased competition from surrounding states has really taken its toll. That number is now about 25,000.

AC is very fragile right now. Visitors are not returning in the numbers they were prior to the pandemic, while inflation continues to put downward pressure on those who would like to come to Atlantic City.

There has historically been a direct correlation between a reduction in casino revenues and a reduction in jobs, but those topline numbers are no longer representative of the impact on my members, since growth of internet gaming and internet sports wagering does not bring people to the physical casinos.

If you take an honest look at the data regarding the bricks-and-mortar casinos you will understand that a majority of the casinos are seeing continued declines which directly impact our jobs. The smoking ban bill as it is written today is expected to eliminate up to 3,000 jobs in

ATLANTIC CITY HEADQUARTERS

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Atlantic City and diminish work opportunities and tip opportunities for thousands more across the state.

Thousands of workers will lose their jobs, their healthcare and will become a burden to the state.

These projections are not theoretical. I was working in AC in 2008 when the AC city council passed a full smoking ban. Within the first week, casino revenues fell by 19.8%.

The City understood that this was an untenable position and the ban was very quickly repealed, with a 25% smoking carve out put in place.

I want to be clear that we do not encourage smoking, but we have no choice but to acknowledge the disproportionate economic impact of the subset of casino gaming by customers who smoke at casinos.

The data shows that customers that smoke spend more money and gamble more than those who don't. Customers who prefer to smoke inside and come to AC from the farther reaches of NJ, PA and NY will choose not to come to Atlantic City.

PA permits smoking on 50% of the casino floor. Customers from PA will choose to stay and gamble there, while customers from NJ will drive over the bridge to PA where smoking is permitted.

Customers from NY won't travel to NJ. They will stay in NY where it is non-smoking.

The impending establishment of New York City casinos will further cannibalize the Atlantic City market.

Let's be clear: We are on the cusp of very challenging times ahead.

A full smoking ban will be an economic disaster. For the workers. For Atlantic City. For the entire state of NJ. As you are aware, casino taxes get spread across the state to fund programs for seniors and disabled persons. Those programs would be cut.

Approximately 80% of Local 54's membership is comprised of people of color, who are generally the sole or main providers for their families.

Laid off workers will lose health benefits for themselves and their families, as well as future retirement benefits. They will stop spending their money at local businesses, and their homes are likely to go into foreclosure. We have seen this play out too many times.

In addition, a portion of the remaining workers will become underemployed...working less than full-time hours and earning less gratuities, earning less pension...paying more for healthcare.

We fight for workers' safety every day. They want to work. They are proud of what they do and I am proud to represent them.

There needs to be a balance. I believe that there is a compromise to be reached that would both improve worker and customer safety as well as protect the economic lifeline of AC.

We are not pro-smoking. We are pro-jobs.

We would like to engage in discussions with the legislators about what a compromise looks like so that jobs can be saved.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'DM DeCaprio', with a long, sweeping horizontal line extending to the right.

Donna M. DeCaprio
President



American
Heart
Association.

To: Members of the Senate Health, Human Services and Senior Citizens
Committee

From: Corinne Orlando, Director of Government Relations, American Heart
Association

Date: January 29, 2024

Re: S1493-Eliminates smoking ban exemption for casinos and simulcasting
facilities

Dear Chairman Vitale, Vice Chair Singleton and members of the committee:

Thank you for the opportunity to submit written testimony today.

The American Heart Association supports S1493, which would eliminate the
loophole in the Smoke-Free Air Act that allows for smoking in casinos and
simulcasting facilities. We applaud Senator Turner and Senator Vitale for
introducing this legislation to ensure that casino workers have access to a safe
and healthy workplace. We urge the committee to pass the bill as it is currently
written with no amendments.

The scientific evidence is clear: there is no safe level of exposure to secondhand
smoke. Secondhand smoke causes serious diseases and premature death
among nonsmokers. That's why all workplaces and public places, including
restaurants, bars and casinos should be smoke-free. Everyone should have the
right to breathe clean air.

Cigarette smoking is responsible for more than 480,000 deaths annually in the
United States; more than 41,000 of these deaths result from secondhand smoke
exposure.ⁱ Numerous studies over the years have found that secondhand smoke
exposure is a risk factor for cardiovascular diseases, stroke, cancer and other
chronic health conditions.

For example, in 2010, the Surgeon General released a report entitled *How
Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking
Attributable Disease*. The report found that even low levels of smoke exposure,
including secondhand smoke exposure, lead to dysfunction and inflammation
of the blood vessels, which can lead to heart disease and stroke.ⁱⁱ



A year earlier, in 2009, the Institute of Medicine released a report, *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*,ⁱⁱ that included the following findings:

- "The committee concludes that there is a causal relationship between smoking bans and decreases in acute coronary events.
- "The evidence reviewed by the committee is consistent with a causal relationship between secondhand-smoke exposure and acute coronary events, such as acute MI (myocardial infarction)."
- "The committee concludes that it is biologically plausible for a relatively brief exposure to secondhand smoke to precipitate an acute coronary event."ⁱⁱⁱ According to the report, experimental studies have found that secondhand smoke exposure causes adverse changes in the cardiovascular system that increase the risk of a heart attack.ⁱⁱⁱ

The State of New Jersey enacted the Smoke-Free Air Law in 2006 to protect workers from the dangers of secondhand smoke. Smoking was prohibited in almost all indoor public places, including bars and restaurants. However, the law includes a loophole that allows for smoking in casinos, denying casino workers the protections that all other workers in the state enjoy. The New Jersey Legislature has an opportunity to correct this injustice by eliminating that loophole and providing a healthy work environment for those who work in casinos. No one should have to choose between their health and providing for their family.

Thank you for your consideration of this important issue.

Sincerely,
Corinne Orlando
Director, Government Relations
American Heart Association
Email: Corinne.Orlando@heart.org
Phone: (609)223-3720



**American
Heart
Association.**

ⁱ U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014 [accessed 2018 Feb 22].

ⁱⁱ U.S. Department of Health and Human Services (HHS), How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking Attributable Disease: A Report of the Surgeon General. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.

ⁱⁱⁱ Institute of Medicine (IOM), Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence, Washington, DC: The National Academies Press, 2009, <http://www.iom.edu/Reports/2009/Secondhand-Smoke-Exposure-andCardiovascular-Effects-Making-Sense-of-the-Evidence.aspx>.

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Robert Wood Johnson Foundation

January 29, 2024

Hon. Joseph F. Vitale
Chair, Senate Health, Human Services and Senior Citizens Committee
Submitted via email: smschmidt@njleg.org

TESTIMONY IN SUPPORT OF SB 1493 FROM RICHARD BESSER, M.D.

Dear Committee Members,

I serve as the President and CEO of the Robert Wood Johnson Foundation, a national philanthropy dedicated to the health and wellbeing of everyone in the United States, with a special focus on New Jersey, the Foundation's home since it was established more than 50 years ago. Thank you for the invitation to submit written testimony on what is literally a life and death matter for New Jersey casino workers and patrons.

I have no doubt that all members of this Committee want New Jersey to be a place where everyone has a fair and just opportunity to reach their best health and wellbeing, no matter their race, ethnicity, or class. And for most New Jersey residents, our smoke-free laws reflect that desire. New Jersey has strong, sensible laws that protect people in government workplaces, most private workplaces, schools, childcare facilities, and retail stores from the dangers of secondhand smoke.

But not casino workers. Denying casino workers access to clean, smoke-free air has no basis in *science*. It has no basis in *equity*.

There is no basis in *common sense* for some 20,000 New Jerseyans working in Atlantic City casinos, and the customers they serve daily, to be victims of a loophole that treats them as second-class citizens when it comes to their health.

The legislation before you, S1493, would bring casino workers the protection they deserve.

Across New Jersey and the nation, health disparities hit people of color hardest. On this, the casino industry is not an exception. The industry employs a more diverse workforce than most in the US: 45% of the gaming workforce are people of color; 50% are women.

The threat this smokefree loophole poses to their workplace is but one more obstacle to good health – one more example of inequity that has gone on too long.

I encourage you not to amend this bill in any way that would weaken clean air protection for casino workers and patrons. Seeking compromise in the interest of the greater good is a worthy endeavor, but as anyone who has seen a loved one die of preventable lung disease knows, there is no negotiating with cancer. There's no middle ground with emphysema. And there's no deal that can justify shortened life spans for your constituents who would be left unprotected. I urge you to not compromise when it comes to the health and safety of New Jerseyans. Their lives are worth it.

The Robert Wood Johnson Foundation appreciates your consideration of this issue and all that you are doing to make New Jersey a safer, healthier place to live and work – a place without unjust and unfair barriers that shorten lives and threaten wellbeing.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Besser". The signature is fluid and cursive, with the first name being more prominent.

Richard Besser, M.D.

President & CEO



American Cancer Society
 Cancer Action Network
 Quinton.Law@cancer.org
 609.410.5214

<https://www.fightcancer.org/states/new-jersey>

ACS CAN supports S-1493 (Turner/Vitale) which would eliminate the loophole that allows for smoking in casinos in New Jersey.

As the Director of Government Relations for the American Cancer Society Cancer Action Network (ACS CAN in New Jersey, I am grateful for the opportunity to discuss this incredibly important issue. ACS CAN is a non-profit and non-partisan advocacy affiliate of the American Cancer Society, that works to promote public policies that reduce cancer-related deaths and suffering. ACS CAN fully supports S-1493 in its current form with no amendments, which seeks to eliminate the exemption for casinos and simulcasting facilities in the statewide smoke-free law. Everyone has the right to breathe clean, smoke-free air, and no one should have to compromise their health for a paycheck.

People exposed to secondhand smoke inhale the same cancer-causing substances as other people that smoke. Each year in the US, secondhand smoke causes almost 42,000 deaths, including up to 7,300 lung cancer deaths among non-smoking adults. Exposure to secondhand smoke can cause heart disease, stroke, and cancer, just like active smoking. Being exposed to secondhand smoke at home or at work increases risk of developing lung cancer by 20–30%. Surgeon General's reports confirm that secondhand smoke poses no risk-free level of exposure. Exposure to secondhand smoke, even for a short period, can cause damage to cells which can trigger the development of cancer. Like active smoking, the risk of developing lung cancer is higher with longer exposure to higher levels of secondhand smoke. Twenty-one states, Puerto Rico, and the U.S. Virgin Islands have laws in effect that require all state-regulated gaming facilities to be 100% smoke-free. New Jersey should follow their lead.

. A person's place of employment should not determine whether they can breathe smoke-free air while at work. In New Jersey, employees working in casinos are currently lacking protection from secondhand smoke. A study has shown that, prior to the enactment of a smoke-free law, full-time workers in restaurants and bars that permitted indoor smoking were exposed to air pollution levels 4.4 times higher than the safe annual levels established by the U.S. Environmental Protection Agency. This was due to their occupational exposure to secondhand smoke pollution. Much of the workforce can go to work every day not having to wonder about breathing clean air. However, here in New Jersey casino workers remain unprotected from secondhand smoke. Many hospitality jobs like those in gaming facilities offer flexible hours and schedules that work better for people. Finding another job in Atlantic City that fits an employee's current schedule or situation may not be an option.

A report published by Las Vegas-based C3 Gaming found that casinos without indoor smoking outperform their smoking counterparts. "Data from multiple jurisdictions clearly indicates that banning smoking no longer causes a dramatic drop in gaming revenue," wrote C3 Gaming. "In fact, non-smoking properties appear to be performing better than their counterparts that continue to allow smoking. A 2021 poll of New Jersey voters found that voters supported permanently prohibiting smoking indoors at New Jersey casinos by a margin of 2 to 1. Further, 70% of voters said they would prefer to visit a smoke-free casino over one that allows smoking, and 89% agreed that casino workers have the right to breathe clean, smoke-free air. There was support for smoke-free casinos across political and demographic groups.

Secondhand smoke incurs significant costs. According to the Surgeon General, the economic value of lost wages, fringe benefits, and workforce associated with premature mortality due to secondhand smoke exposure was estimated to be \$6.5 billion annually nationwide. However, this estimate does not account for the losses due to morbidity and significantly underestimates the total economic impact of secondhand smoke. Studies have consistently shown that smoke-free laws have a positive impact on businesses, workers, and customers. These laws have no adverse effects on the hospitality industry, as research published in leading scientific journals has concluded. In fact, smoke-free laws have been found to benefit businesses. Employers who allow smoking in the workplace end up paying more in health, life, and fire insurance premiums, and workers' compensation payments, and suffer from higher worker absenteeism, resulting in lower work productivity. Other costs associated with smoking in the workplace are increased housekeeping and maintenance costs.

The Surgeon General has concluded that there is no safe level of exposure to secondhand smoke and even separating people who smoke from those who do not, cleaning the air, and ventilating buildings cannot eliminate exposure to secondhand smoke. The only effective way to fully protect people from exposure to secondhand smoke is to eliminate smoking in indoor public spaces. Particulate matter, which is present in secondhand smoke, can be easily inhaled, leading to serious health issues and even death. Studies conducted over the past two decades have consistently shown that smoke-free laws are the only effective solution to reduce exposure to secondhand smoke. Despite this, the tobacco industry and its supporters continue to promote ventilation systems. The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) has concluded that prohibiting smoking is the only way to effectively eliminate the health risks associated with secondhand smoke. Furthermore, no engineering approaches, including ventilation and air cleaning technologies, can eliminate the health risk of secondhand smoke.

We urge you to vote yes on S-1493 as is with no amendments to protect all workers and the public from the harmful effects of secondhand smoke exposure. No one should have to choose between their livelihood and their health.



MEMORANDUM

To: Interested Parties
From: Jill Normington
Date: December 11, 2023
RE: 74% More Likely to Visit Atlantic City Casinos If They Are Smokefree

The following is a summary of findings from an online survey conducted among 500 adults in the Philadelphia media market in New Jersey and Pennsylvania. Interviews were conducted December 5-7, 2023. The sampling error for this survey is plus or minus 4.4 percentage points.

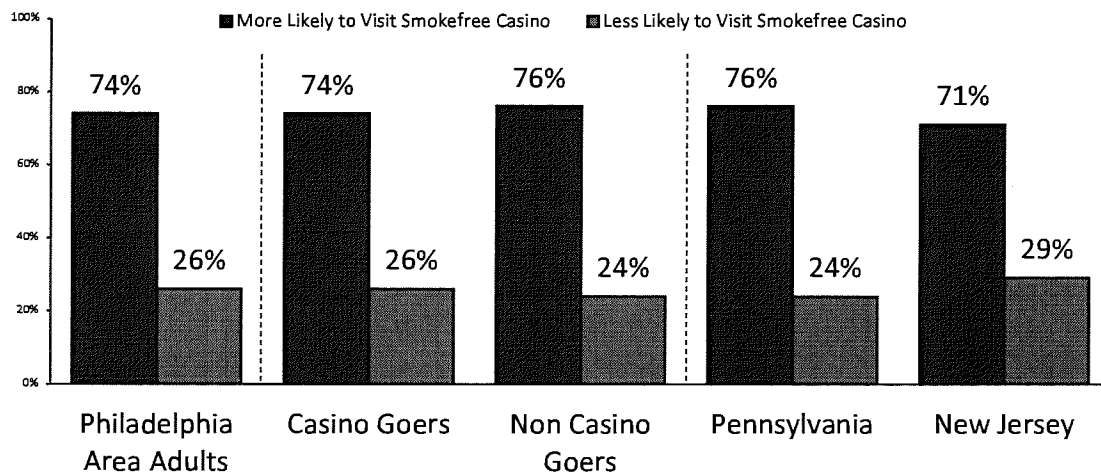
Philadelphia-area adults are much more likely to visit Atlantic City casinos if they are 100% smokefree. Nearly three in four adults (74%) stated they were more likely to visit an entirely smokefree casino while only 26% stated that they were less likely.

Among the 69% of Philadelphia-area adults who are casino-goers (they have been to a casino in the past five years), 74% are more likely to visit a smokefree casino. Among non casino-goers, even more (76%) are more likely to visit a smokefree casino.

The survey showed that Pennsylvania and New Jersey residents living in the Philadelphia area are also more likely to visit a casino if it is smokefree (76% and 71%, respectively).

These data indicate that not only will Atlantic City not lose its customer base, but tourism could actually increase if casinos were smokefree.

“Would you be more or less likely to visit a casino in Atlantic City if the casino was 100% smokefree indoors?”





Shaping Tomorrow's
Built Environment Today

ASHRAE Position Document on **ENVIRONMENTAL TOBACCO SMOKE**

Approved by the ASHRAE Board of Directors June 28, 2023

Expires June 28, 2026

ASHRAE is a global professional society of over 55,000 members, committed to serve humanity by advancing the arts and sciences of heating, ventilation, air conditioning, refrigeration and their allied fields (HVAC&R).

ASHRAE position documents are approved by the Board of Directors and express the views of the Society on specific issues. These documents provide objective, authoritative background information to persons interested in issues within ASHRAE's expertise, particularly in areas where such information will be helpful in drafting sound public policy. The documents also clarify ASHRAE's position for its members and building professionals.

Environmental Tobacco Smoke is a Public Interest Issue

While indoor smoking has become less common in recent years in many countries (WHO 2021), exposure to Environmental Tobacco Smoke (ETS) continues to have significant health and cost impacts (USDHSS 2014).

Researchers have investigated the health and irritant effects among non-smokers exposed to tobacco smoke in indoor environments. Such exposure is also known as passive smoking and as involuntary exposure to secondhand smoke. A number of national and global health research groups and agencies (Cal EPA 2005, EPA 1992, IARC 2004, IOM 2010, NRC 1986, SCTH 1998, USDHSS 2014, USDHSS 2006, WHO 2019) have concluded, based on the preponderance of evidence, that exposure of nonsmokers to tobacco smoke causes specific diseases and other adverse effects to human health most significantly, cardiovascular disease and lung cancer. No cognizant authorities have identified an acceptable level of ETS exposure to non-smokers, nor is there any expectation that further research will identify such a level.

Despite extensive evidence of such harm, the well-documented benefits of bans, including exposure reduction and benefits to public health (CPSTF 2013) and widening adoption of smoking bans, many locations worldwide still lack laws and policies that provide sufficient protection. In many locations, laws and policies are only partially protective, permitting smoking in certain building types including casinos, entertainment and multifamily housing. Even where permitted by law, many developers, building owners, and operators, including those of restaurants and other hospitality venues, do not allow smoking indoors.

There is currently a trend of increased use of electronic nicotine delivery systems (ENDS), smoking of cannabis, use of hookahs and other related activities that are beyond the scope of this document. The harm from these activities has not been researched to the same breadth and depth as

traditional secondhand smoke (smoke exhaled by the smoker and combustion products from the end of a lit tobacco cigarette). Therefore, they present risks that are not as well understood, but are likely to be similar.

Why ASHRAE Takes Positions on Environmental Tobacco Smoke

While ASHRAE does not conduct research on the health effects of indoor contaminants, ASHRAE has been involved in this topic for many years. Through its committees, standards, handbooks, guides, and conferences, ASHRAE has long been providing information to support healthful and comfortable indoor environments, including efforts to reduce indoor Environmental Tobacco Smoke (ETS) exposure.

Consequently, ASHRAE's positions, standards and design guidance can help avoid health risks associated with Environmental Tobacco Smoke (ETS).

ASHRAE Takes the Positions that:

- All smoking activity inside and near buildings should be eliminated, which is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects.
- The only means of avoiding health effects and eliminating indoor ETS exposure is to ban all smoking activity inside and near buildings. This position is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects and therefore,
 - The building and its systems can reduce only odor and discomfort but cannot eliminate exposure when smoking is allowed inside or near a building.
 - Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated.
 - Neither dilution ventilation, air distribution (e.g., "air curtains") nor air cleaning can be relied upon to control ETS exposure.

ASHRAE Recommends that:

- ASHRAE's current policy (ROB 1.201.008) that Standards and Guidelines shall not prescribe ventilation rates or claim to provide acceptable indoor air quality in smoking spaces, should be extended to other ASHRAE documents.
- Building design practitioners educate and inform their clients, where smoking is still permitted, of the limits of engineering controls of ETS exposure; multifamily buildings have smoking bans inside and near them; and
- Given current and developing trends, further research be conducted on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs and electronic nicotine delivery devices (ENDS), and other activities commonly referred to as e-cigarettes or vaping.
- Building design practitioners work with their clients to define their intent, where smoking is still permitted, for addressing ETS exposure in their building and educate and inform their clients of the limits of engineering controls in regard to ETS.

- Multifamily buildings have complete smoking bans inside and near them in order to protect nonsmoking adults and children.
- ASHRAE is committed to encouraging lawmakers, policymakers and others who exercise control over buildings to eliminate smoking inside and near buildings.

Appendix: Background Information

ASHRAE, through its Environmental Health Committee, TC 4.3 Ventilation Requirements and Infiltration, SSPCs 62.1 Ventilation for Acceptable Indoor Air Quality, 62.2 Ventilation and Acceptable Indoor Air Quality in Residential Buildings, 189.1 Standard for the Design of High-Performance Green Buildings, Handbook Applications Chapter 46 (ASHRAE 2023) and Handbook Fundamentals Chapters 10 and 11 (ASHRAE 2021), Indoor Air Quality Design Guides (ASHRAE 2018, 2009), and IAQ conferences, has long been active in providing engineering technology, standards and design guidance in support of providing healthful and comfortable indoor environments.

Previous versions of this position document have been instrumental in informing the public, building scientists and practitioners, policymakers and lawmakers about the inability of HVAC technologies to eliminate health risks to nonsmokers from exposure to tobacco smoke in indoor environments.

The evidence on the health consequences of exposure to ETS is extensive (hundreds of scientific papers) and has been reviewed by numerous independent expert groups in the United States and internationally, all reaching similar conclusions regarding the adverse health effects caused among nonsmokers exposed to tobacco smoke indoors. These include but are not limited to:

- U.S. Surgeon General (USDHHS 1986, 2014, 2006)
- U.S. Environmental Protection Agency (EPA 1992)
- National Research Council (NRC 1986)
- California Environmental Protection Agency Cal EPA 2005)
- World Health Organization (WHO 2019)
- International Agency for Research on Cancer (IARC 2004)
- United Kingdom Department of Health (SCTH 1998)

The first studies on passive smoking involved the health of children whose parents smoked. The first major studies on passive smoking in adults reported that passive smoking was associated with lung cancer in non-smokers. Subsequent evidence has identified other health effects in adults and children, including linking ETS to cardiovascular disease. Notably, the number of coronary heart disease deaths attributed to ETS greatly exceeds the number of ETS-caused lung cancer deaths. Additionally, the scientific evidence recognizes substantial subpopulations, such as children (USDHHS 2014) and adults with asthma or heart disease, whose disease may be exacerbated by ETS exposure.

There is no threshold for ETS exposure below which adverse health effects are not expected, as indicated in the referenced health authority reports. In general, risks tend to increase with the level of exposure and conversely to decrease with a reduction in exposure.

Only an indoor smoking ban, leading to near zero exposure, provides effective control, and only such bans have been recognized as effective by health authorities. Experience with such bans documents that they can be effective (CPSTF 2013; USDHHS 2014, 2006). While there are no engineering design issues related to this approach, the existence of outdoor smoking areas near the building and their potential impacts on entryway exposure and outdoor air intake need to be considered.

Nevertheless, smoking is permitted in some indoor spaces in some buildings. There are now several decades of international experience with the use of strategies, including separation of smokers and nonsmokers, ventilation, air cleaning and filtration, to limit contamination spread from smoking-permitted areas to other areas inside the building.

There are three general cases of space-use and smoking activity in sequence from most to least effective in controlling ETS exposure:

1. allowing smoking only in isolated rooms;
2. allowing smoking in separate but not isolated spaces; and
3. totally mixing occupancy of smokers and nonsmokers.

These approaches do not necessarily account for all circumstances. Each leads to different engineering approaches as follows.

1. **Smoking Only in Isolated Rooms:** Allowing smoking only in separate and isolated rooms, typically dedicated to smoking, can reduce ETS exposure in non-smoking spaces in the same building. Effective isolation requires
 - a. sealing of cross contamination pathways and airtightness of the physical barriers between the smoking and nonsmoking areas,
 - b. the use of separate ventilation systems serving the smoking and non-smoking spaces,
 - c. exhausting air containing ETS so it does not enter the non-smoking area through the outdoor air intakes, windows, and other airflow paths,
 - d. airflow and pressure control including location of supply outlets and return and exhaust air inlets to preserve airflow into the smoking space at doorways and other openings, which is powerful enough so that movement of people between non-smoking and smoking areas and so that thermal and other effects do not disrupt intended air distribution patterns.

Even when all available strategies have been employed in multifamily housing, there is a lack of credible evidence that anything short of a smoking ban will provide full protection to occupants of non-smoking residential dwelling units. The risk of adverse health effects for the occupants of the smoking room itself also cannot be controlled by ventilation.

2. **Smoking in Separate but Not Isolated Spaces:** This approach includes spaces where smokers and non-smokers are separated but still occupy a single space or a collection of smoking and non-smoking spaces not employing all the isolation techniques described in 1a through 1d above. Examples can be found in restaurants and bars with smoking and non-smoking areas, or buildings where smoking is restricted to specific rooms, but a common, recirculating air handler serves both the smoking and non-smoking rooms.

Engineering techniques to reduce odor and irritation include, directional airflow

patterns achieved through selective location of supply and exhaust vents, and air cleaning and filtration. Limited evidence is available, and none supports the significant reduction of health effects on those exposed.

3. **Mixed Occupancy of Smokers and Nonsmokers:** If smoking is allowed throughout a space or a collection of spaces served by a single air handler, with no effort to isolate or separate the smokers and nonsmokers, there is no currently available or reasonably anticipated ventilation or air cleaning system that can adequately control or significantly reduce the health risks of ETS to an acceptable level.

This situation includes unrestricted smoking in homes, dormitories, casinos, bingo parlors, small workplaces, and open plan office spaces. Air cleaning, dilution ventilation and displacement ventilation can provide some reduction in exposure, but they cannot adequately control adverse health effects, nor odor and sensory irritation for nonsmokers in general.

Ongoing trends, studies and research:

- Electronic nicotine delivery systems (ENDS) are increasing in use and the health effects of primary and secondary exposure continue to be revealed. ENDS and other related exposures in the indoor environment, including those arising from cannabis combustion and use of hookahs, are outside the scope of this position document. ENDS are addressed in an ASHRAE [Emerging Issue Brief](#).
- Third-hand smoke, which results from the release of contaminants from the clothing of smokers and other surfaces, is a relatively new concept. There is evidence of potential hazards (Sleiman 2010) and researchers are still studying it (Mayo Clinic 2017).

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DOCUMENT REVISION COMMITTEE ROSTER

The ASHRAE Position Document on Environmental Tobacco Smoke was developed by ASHRAE's Environmental Tobacco Smoke Position Document Committee, formed on May 16, 2018, with Larry Schoen as its chair.

Lawrence J. Schoen
Schoen Engineering Inc.
Columbia, MD, USA

Kevin Kennedy
Children's Mercy Kansas City
Kansas City, MO, USA

Costas Balaras
National Observatory of Athens
Athens, Greece

Andrew Persily
NIST
Gaithersburg, MD, USA

Lan Chi Nguyen Weekes
La Cite Collegiale
Ottawa, ON, Canada

Cognizant Committee

The chair of the ASHRAE Environmental Health Committee also served as an ex-officio member.

Wade Conlan
Hanson Professional Services
Maitland, FL, USA

DOCUMENT HISTORY

Publication and Revision History

ASHRAE's Technology Council and the cognizant committee recommend revision, reaffirmation, or withdrawal every 30 months. The history of this position document is described below:

6/30/2005—BOD approves Position Document titled *Environmental Tobacco Smoke*

6/25/2008—BOD approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

10/22/2010—BOD approves revision to Position Document titled *Environmental Tobacco Smoke*

6/30/2013—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

6/29/2016—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

6/26/2019—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

7/1/2020—BOD approves revision to Position Document titled *Environmental Tobacco Smoke*

6/28/2023—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

S1493 / A2143: Closing the Casino Smoking Loophole

*“After working in casinos for nearly 40 years, I was recently diagnosed with stage two breast cancer. While I’m not sure we will ever know the exact cause of my illness, I can’t help but wonder if it would have happened had I not worked in casinos — or better yet, if casinos didn’t force me to breathe in secondhand smoke all throughout my shifts...**For workers like me, this is literally a life-or-death fight.**” – Tammy Brady, Atlantic City Casino Dealer*

Overview

- New Jersey’s Smoke-Free Air Act took effect on April 15, 2006 – but a legislative compromise carved out an exemption to allow indoor smoking in Atlantic City casinos.
- Atlantic City casino employees are essentially the last group of workers not protected by New Jersey law from dangerous secondhand smoke.
- S1493 and A2143 are identical bills; each “[e]liminates [the] smoking ban exemption for casinos and simulcasting facilities.”
- After operating smokefree indoors for more than a year, smoking returned to Atlantic City casinos on July 4, 2021. Immediately following the return of indoor smoking, thousands of AC casino workers began speaking out and formed Casino Employees Against Smoking’s Effects (CEASE), growing to 3,000 members.
- Shawn Fain, the president of the United Auto Workers (UAW), which represents casino table games dealers, has urged New Jersey legislators to pass these bills. “Patrons blow cigarette/tobacco smoke directly into their faces for eight hours, and due to the nature of their work, table dealers are unable to take their eyes away from the table so they bear through the thick smoke that surrounds their workplace... The UAW will not compromise on the health of any worker.”

Workers Shouldn’t Have to Choose Between a Paycheck and Their Health

- Smoking and secondhand smoke remain leading causes of death and disease.
- The U.S. Surgeon General released a landmark report 18 years ago affirming the harmful effects of secondhand smoke, and tobacco use and secondhand smoke kills nearly 500,000 Americans every year.
- The Centers for Disease Control and Prevention state: “There is no risk-free level of secondhand smoke, and even brief exposure can cause immediate harm.”
- The following public health organizations support A2143/S1493: American Heart Association; American Lung Association; American Cancer Society Cancer Action Network; Americans for Nonsmokers’ Rights; Campaign for Tobacco Free Kids; New Jersey Prevention Network; Atlantic Prevention Resources; Medical Society of New Jersey; and New Jersey Public Health Association.

Ventilation Experts Say Even the Best Ventilation Systems Fail to Protect Health

Casinos make false claims about their ventilation systems protecting their workers. Ventilation systems are not the answer, according to the engineers who design such systems and collectively make up the **American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)**. “[Ventilation systems] are not effective against secondhand smoke” and

“can reduce only odor and discomfort, but cannot eliminate exposure.” “There is no currently available or reasonably anticipated ventilation or air-cleaning system that can adequately control or significantly reduce the health risks of [environmental tobacco smoke] to an acceptable level.”

Smokefree Casinos Mean More Business & Healthier Workers

Respected Las Vegas-based researchers C3 Gaming released the only independent report post-COVID analyzing revenue performance in several competitive casino markets, including in eastern Pennsylvania, and found smokefree casinos generate more revenue than smoking casinos.

“Data from multiple jurisdictions clearly indicates that banning smoking no longer causes a dramatic drop in gaming revenue. In fact, non-smoking properties appear to be performing better than their counterparts that continue to allow smoking.” Read the entire report [here](#).

Further, research conducted in December 2023 found that 74% of New Jerseyans and Philadelphians would be more likely to visit Atlantic City casinos if they were to operate 100% smokefree indoors, completely contradicting claims by casinos. [Read the polling memo here](#).

New Jersey Is Surrounded By Smokefree Casinos

Every casino in New York, Connecticut, Maryland, and Delaware that competes with Atlantic City does not allow indoor smoking. In Pennsylvania, the top revenue-generating casino in the Commonwealth, **Parx Casino** just north of Philadelphia, has been voluntarily operating smokefree for the last several years – and they’ve expanded their market share.

Casinos Are Thriving, Posted Revenue Record Last Year

Despite industry claims that ‘now is not the time’ and that they are struggling, record-high revenues say otherwise. “In-person casino winnings were the highest in a decade, internet gambling revenue surpassed 2022’s record by more than 15%, and sports wagering revenue set a yearly record,” reported the *Press of Atlantic City* in detailing the \$5.8B in revenue recorded by the casinos.

Don’t Be Fooled By So-Called “Compromises”

In the previous session, casinos floated last-minute, dangerous amendments, including proposals for Philip Morris smoking rooms. They’re relying on outdated scare tactics, including claiming casinos will close, to block critical protections for their workers. They made the same claim when they pushed tax breaks two years ago through the PILOT legislation that still hasn’t taken effect in 2024 – yet, thankfully, not one casino has closed.

Compromising workers' health should never be an acceptable business model. We urge Committee members to vote for this bill so that workers no longer have to choose between their health and their paycheck.



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Ginger Scoggins
2023-2024 ASHRAE President

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January 26, 2024

The Honorable Sen. Joseph F. Vitale
Chair
Senate Committee on Health, Human Services and Senior Citizens
PO Box 099
Trenton, NJ 08608

Sent via email to: SenVitale@njleg.org

Dear Chair Vitale, Vice Chair Singleton, and Committee Members:

I am writing on behalf of ASHRAE regarding S. 1493, which proposes to eliminate the smoking ban exemption for casinos and simulcasting facilities. ASHRAE, a not-for-profit organization founded in 1894, is a professional and technical society that focuses on building systems, energy efficiency, indoor air quality, refrigeration and sustainability.

ASHRAE encourages the Committee to support the proposed elimination of the smoking ban exemption. ASHRAE's Position Document on Environmental Tobacco Smoke (ETS) states that with regard to indoor environments with mixed occupancy of smokers and nonsmokers, "If smoking is allowed throughout a space or a collection of spaces served by a single air handler, with no effort to isolate or separate the smokers and nonsmokers, **there is no currently available or reasonably anticipated ventilation or air cleaning system that can adequately control or significantly reduce the health risks of ETS to an acceptable level.** This situation includes unrestricted smoking in homes, dormitories, casinos, bingo parlors, small workplaces, and open plan office spaces." (*ASHRAE Position Document on Environmental Tobacco Smoke, p. 9.*)

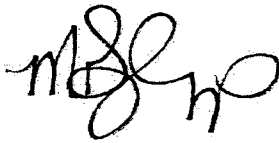
As a technical Society developing standards for indoor environmental quality, **ASHRAE holds the position that the only means of avoiding health effects and eliminating indoor ETS exposure is to ban all smoking activity inside and near buildings.** This position is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects, and therefore:

- The building and its systems can reduce only odor and discomfort but cannot eliminate exposure when smoking is allowed inside or near a building.

- Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated.
- Neither dilution ventilation, air distribution (e.g., “air curtains”) nor air cleaning should be relied upon to control ETS exposure.
- For multifamily buildings, complete smoking bans inside and near them protects nonsmoking adults and children.
- Further research is needed from cognizant health authorities on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs, using electronic nicotine delivery systems (ENDS), and engaging in other activities commonly referred to as vaping or using e-cigarettes.

Again, thank you for your consideration of S. 1493 and its proposed elimination of the smoking ban exemption, which ASHRAE supports. I am attaching a copy of the ASHRAE Position Document on Environmental Tobacco Smoke, which more thoroughly discusses this matter. ASHRAE would be happy to address any questions you might have. Please feel free to contact me or have your staff contact GovAffairs@ashrae.org.

Sincerely,



Ginger Scoggins
ASHRAE President

Enclosure



Testimony of Michael Seilback

American Lung Association

Senate Health, Human Services and Senior Citizens Committee

January 29, 2024

Chair Vitale, Vice Chair Singleton and members of the Health, Human Services and Senior Citizens Committee, on behalf of the American Lung Association, we urge the Committee to pass S1493, without any amendments that would compromise health, and finally afford smokefree air protections to New Jersey's casino workers, patrons and visitors.

For over 16 years, New Jersey's comprehensive Smoke-Free Air Law has "ensured that workers have a safe, smoke-free workplace and that all nonsmokers – including children and senior citizens – can breathe smoke-free air in public places". However, despite that powerful statement taken right from the state's website, we are joined here today because those protections are not afforded to all of New Jersey's workers. In fact, just last week, the American Lung Association's State of Tobacco Control Report gave New Jersey a B grade for Smokefree Air due to the state's exclusion of casinos in its smokefree air law.

Back in 2006, the U.S. Surgeon General concluded there is no safe level of exposure to secondhand smoke and that eliminating smoking in indoor spaces is the only way to fully protect people from exposure. Secondhand smoke causes lung disease, lung cancer and heart disease and also worsens existing health conditions including asthma and COPD. Tobacco users are not the only ones who breathe the deadly smoke – all the people around them are forced to inhale it too. Secondhand smoke causes nearly 42,000 deaths, including up to 7,300 lung cancer deaths among nonsmoking adults each year in the United States.

Separating people who smoke from people who don't smoke, cleaning the air, and ventilating buildings cannot eliminate this exposure. The only way to eliminate the health risks from secondhand smoke in indoor environments is to prohibit smoking completely.

It isn't just health officials like the Surgeon General and the Lung Association who recognize this.

The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) founded in 1894, is a global society of 50,000 members advancing human well-being through sustainable technology for the built environment. They have stated that:

"If smoking is allowed throughout a space or a collection of spaces served by a single air handler, with no effort to isolate or separate the smokers and nonsmokers, there is no currently available or reasonably anticipated ventilation or air cleaning system that can adequately control or significantly reduce the health risks of environmental tobacco smoke (ETS) to an acceptable level. This situation includes unrestricted smoking in homes, dormitories, casinos, bingo parlors, small workplaces and open plan office spaces." They continued by stating that air ventilation systems

can reduce only odor and discomfort in casinos. It cannot eliminate exposure when smoking is allowed inside or even near a building.

As New Jersey emerged from the worst of the covid pandemic, Governor Murphy protected the health of workers and casino visitors by ensuring that Atlantic City casinos reopened smokefree. While this may have seemed like a novel decision, it was a recognition of the very real health effects that we are discussing today. And as you have heard today, over 20 states and a growing number of cities require smokefree gaming and a growing number of sovereign Tribes and even private corporations are also making the choice to be smokefree leading to over 1,000 smokefree casinos nationwide. We also know that lawmakers in Pennsylvania are considering passing smokefree legislation statewide as well.

In conclusion, I come back to a simple tagline from the American Lung Association: "When you can't breathe, nothing else matters". **The Lung Association strongly urges you to pass S1493, without any weakening amendments** and finally give New Jersey's casino workers the same protections that workers across the state enjoy. Thank you.

For more information: Please contact Michael.Seilback@Lung.org or via phone at 631.415.0946.

S1493

Dear Mr Lucero ,
Hope all is well,

I am not a Cease members or casino worker, I am a slot player who used to frequent Atlantic City, I have since moved on to play at Parx in Pa and both casinos in Ct. They are now smoke free establishments. If you have any doubt how bad the smoking is at the casinos in Atlantic City you should drop in on a Saturday Night and experience it for yourself, the smoke, ashes and air quality are some of the worst I have experienced, they also have no smoking areas 2 feet away from smoking areas (completely useless) Restaurants, Malls, Beaches, Zoo's Museums and Bars as well as Airplanes and every form of public transportation as well as casinos that have gone smoke free have thrived, please make the right choice for your constituents and the people who are breathing in this second hand smoke as well as the smokers themselves.

Thank you for your consideration on this important matter and let's all get a little healthier (as best as we can) smoke free

Thank you again
Randy Wasserman

Brian Christopher Testimony

New Jersey Senate Health Committee - Bill S1493

January 29, 2024

Good afternoon, and thank you Senate Health Committee for the opportunity to once again testify. Let's hope this is the last time.

I'm here to let it be known that gamblers go to casinos to gamble. Not smokers. Not non-smokers. But gamblers. Just how drinkers and eaters go to restaurants just as much today, as they did back when smoking was allowed in them. So don't be swayed by the scare tactics that jobs will be lost here. Gamblers are still going to gamble.

My name is Brian Christopher. I am the largest social influencer for Casinos in the world, known as Brian Christopher Slots. I post daily videos playing slot machines, reaching millions of avid casino visitors a month – with male millennials being my top demographic – the very customers casinos care deeply about and are desperate to attract. I'm one myself, by the way.

As part of my job, I travel across the country and partner with casinos to excite and educate the most vibrant, diverse, and deeply engaged community of players. So far, our videos have been viewed more than a BILLION times over.

Now, imagine growing up in a world where walking into a room full of cigarette smoke is simply not normal. Throughout my travels, I have spoken to numerous new and younger employees at casinos that went smokefree over COVID who told me there was no way they would consider working there if they brought smoking back. If casinos truly do care about their patrons' health, as they reminded us daily in the heat of the pandemic when they were compelled to implement measures to keep us safe, then there should be no room for smoke indoors. And if casinos truly do want to attract the next generation of players and workers, then the time is now, when only 11% of the population smokes.

I love New Jersey. In fact I've worked with numerous properties in Atlantic City, and I was the first streamer at the opening of Hard Rock. I am also a longtime proponent of smokefree casinos and the worker-led movement that CEASE has started right here in New Jersey. But as of this year, I am only partnering with smokefree casinos. I do not promote smoking casino floors, period.

I made this decision after my staff and I, who work in casinos day in and day out, came down with weekly ailments and coughs – this made me feel responsible. After conducting a public survey of my followers, we found an overwhelming preference for smokefree casinos: 94% of frequent gamblers prefer smokefree casinos, including 88% of those who smoke. Among higher income and more frequent gamblers, a higher percentage of them are nonsmokers. Just this past month, I took 550 of my fans on a cruise that offered a smokefree casino on board. When I told them on stage that I would be addressing you today, the entire amphitheater erupted in cheers. So many of them, both smokers and non-smokers, came up to me privately and thanked me for speaking up on behalf of the community. They don't understand why casinos are the exception for smoke. The math and the science are crystal clear, while a set of antiquated business fears just don't add up.

Unfortunately, without a change in state law, I will not be visiting Atlantic City casinos, or using my platform to promote the otherwise fantastic entertainment experience they provide. While this means turning down some business opportunities, I believe in this cause – and my business continues to thrive. A lot of casinos that went smokefree during COVID and have remained smokefree are reaping the benefits.

Smokefree casinos ARE good for business and are preferred by players. The pandemic has changed everything around this issue. It is time to close the casino smoking loophole in New Jersey law and finally keep workers and guests safe from secondhand smoke.

Thank you
Brian Christopher, BCSlots.com

Brian Christopher

Greetings:

My name is Richard Schuetz, and I provide these comments supporting S1943.

By way of introduction, I entered the gaming world in 1971 by dealing cards and dice at night while attending college during the day. I continued this through a master's program in finance. I then entered a Ph.D. program in economics, and my dissertation topic was on the evolution of the Nevada gambling regulatory model from 1945-66.

I have worked throughout the world in gaming, including working in finance for Mr. Wynn prior to him leaving New Jersey. I have held senior executive positions with Mr. Wynn, Mr. Adelson, Mr. Boyd, the Hughes folks, Mr. Berman, and several others. Moreover, I have been a CEO of a large Las Vegas casino company. I have taught casino management and regulation in Macau, China, and Lausanne, Switzerland, and lectured on these topics throughout the world. I sit on the Advisory Board for the National Council on Problem Gambling and for All-In Diversity. I have published over 150 articles on gaming and its regulation and am one of the most-read people on gaming in North America. I have also been appointed to the California Gambling Control Commission twice by Governor Brown, was the consultant on gaming to the California Governor's Office, and also served the California legislature in a like position. I was also appointed as the Executive Director of the Bermuda Gaming Commission and was the consultant to the state of Kansas and the City of Detroit to assist those entities in introducing gaming.

I provide you with an article I published last week regarding smoking in casinos:



Opinion - Moral Cowardice and Smoking in Casinos -
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Richard Schuetz
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Opinion - Moral Cowardice and Smoking in Casinos

By [Richard Schuetz](#)

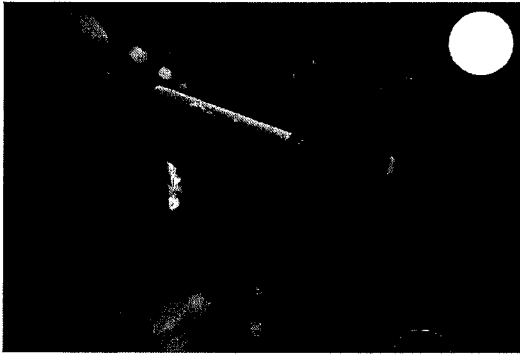
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Wed, Jan 24, 2024

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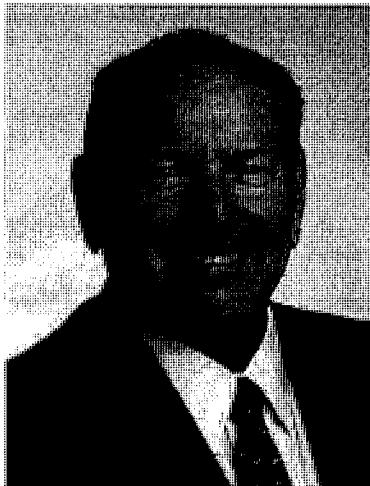
During COVID-19, it was rather strange how we shut down so many casinos because congregating within them may have endangered the health and welfare of the guests and employees. Yet today, in the states that allow smoking in casinos,

congregating within casinos endangers the health and welfare of the guests and employees, yet casinos are kept open.

The lesson from the casino industry is clear—they are cool with killing their guests and employees as long as it is a long and drawn-out event.

It was in the early 1950s that the scientific community began suggesting that smoking carried health risks to people who consumed tobacco products. This soon evolved into an understanding within the scientific community and beyond that this risk was also borne by people who were in the presence of secondhand smoke (SHS) from tobacco products.

In industrial settings, it was during the middle to late 1960s that the health risks of smoking on airlines began to be discussed in public, with Ralph Nader being one of the more noteworthy airline anti-smoking advocates. The argument was that people smoking on airlines, even in special sections, created health risks for other passengers and an unsafe working environment for employees of the airlines.



Richard Shuetz

Yet, it was not until 1990 that smoking was banned on domestic flights in the U.S., and it was not until 1998 that the Tobacco Master Settlement Agreement was signed between the attorneys general of the vast majority of U.S. states and territories, and the four largest U.S. tobacco companies. This last event greatly curtailed tobacco industry practices and set in motion a material decrease in smoking in the U.S.

White men, in and around the casino industry, have long held little concern or respect for people of color, as was best demonstrated by the reality that black people could not enter the casinos on the Las Vegas Strip until the early to mid 1960s. One, therefore, should not be too surprised that the white men who still control the casino industry today are not overly concerned over the detrimental effects of smoke in casinos when the employees most affected are not male and pale.

One would think that the parents of college athletes would also be concerned, knowing that for athletic events in Nevada, their kids may be housed in a building that is unsafe (I am talking about the casino resorts and not the brothels). Utah must love this.

It would be interesting to see what the college athletic sanctioning bodies feel about having college students required to stay in buildings that are dangerous to a student's health. Or are the colleges like the gaming industry, which will subject people to unsafe air for a few dollars more?

Most gaming regulatory agencies have language within their enabling legislation and/or regulatory packages that suggests the industry participants will operate with a high degree of character, honesty and integrity. Moreover, there is generally language to suggest that the operators adhere to a suitable means of operation. It is a rather Mad Hatter's notion that risking the health of a large segment of the workforce in an unhealthy work environment is suitable—and reflective of character, honesty and integrity.

I would also suggest that most of the heads of the regulatory agencies in smoking states would say they stick up for their people. It is hard to comprehend why the head of an agency would remain silent while his or her people are required to work in an unsafe work environment. This appears more in line with regulatory capture than protecting the staff from harmful working conditions. Making them work in casinos with secondhand smoke is not sticking up for them—it is selling them out.

One of the most interesting things to watch in the whole casino smoking issue is the absence of industry executives in the smoking debate. A number of gaming conferences over the last few years have had panels on casino smoking, and if there is a common element, it is that the conference organizer cannot find an executive willing to join the panel. These folks also are no-shows as speakers at legislative hearings. This makes a great deal of sense.

If the executive attempts to suggest that special smoking sections within casinos eliminate the risk to employees and guests, they would not be telling the truth, and there is some excellent research to demonstrate that this is a myth—or maybe the more appropriate expression is it is a lie.

If the executive tried to suggest that filtration systems can eliminate the risk, they would not be telling the truth, and there is great research to demonstrate this is an industry myth...or shall we say lie?

If the executive would suggest that the casinos' employees were its most important asset, they would not make them work in a hazardous environment. No, a casino executive does not show up to speak on smoking because science has uncovered all of the smoking arguments as myth-based nonsense, and casino executives need to be careful about going on the record with myth-based nonsense—especially when it affects the health and welfare of its guests and employees.

At best, one can expect more silence and hiding by the executives, and they will just pay some lobbyist or politician to continue to shape the dishonest narrative.

Part of the problem is that today's executives live in a very small world that is financial quarter to quarter. They understand that eliminating smoking in a casino will affect the next quarter's results. To avoid this, they parrot the myths and lies, hide, and pay someone to delay the political process and allow the damage to employees and guests to continue.

There is a cost to this, and it has everything to do with the future. It might be time for the leadership of the gaming industry to get out of its quarter-to-quarter little world and look at what that group of roughly 25-to-40-year-olds thinks about hanging out in smokey and dangerous buildings (spoiler alert, they don't dig it). Ironically, the industry is helping kill off the baby boomers and simultaneously turning off the millennials—and that is stupidity, not vision.

Leadership should also understand that social and consumer change is coming about at an ever-increasing rate, and if they continue to be stuck with an arcane model, they will completely miss the future. What they are doing is not building a sustainable model but living in the death throgs of a rapidly antiquating one.

Plus, damaging the health of employees is very uncool. In fact, it is downright wrong. I pray that the children of today's casino executives find jobs with someone with higher moral qualities than their parents, who cause their workers to jeopardize their health if they want to work. It seems the casino operators in smoking states believe that if an employee does not want to work in a dangerous environment, they don't care. There will always be another job seeker to whom they can sell the industry's myths.



Richard Schuetz entered the gaming industry working nights as a blackjack and dice dealer while attending college, and has since served in many capacities within the industry, including operations, finance, and marketing. He has held senior executive positions up to and including CEO in

jurisdictions across the United States, and served as a member of the California Gambling Control Commission and as executive director of the Bermuda Casino Gaming Commission. [View all articles by Richard Schuetz \(https://ggbmagazine.com/author/schuetz_richard/\)](https://ggbmagazine.com/author/schuetz_richard/)

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Ninety-eight percent of your employees are assets to the business. Two percent are liabilities.

WILLIAM C. SPROULE
EXECUTIVE SECRETARY-TREASURER



ANTHONY N. ABRANTES
ASST. EXECUTIVE SECRETARY-TREASURER

Eastern Atlantic States REGIONAL COUNCIL OF CARPENTERS

3300 S. White Horse Pike, Mullica Township, NJ 08037 | Phone: 609-567-0400 | EASCARPENTERS.ORG

January 29, 2024

Chair Vitale and the Senate Health, Human Services and Senior Citizens Committee:

The Eastern Atlantic States Regional Council of Carpenters Local Union 255 is the premiere skilled trade organization representing carpenters in South Jersey, Delaware County, PA, Delaware, and the Eastern Shore of Maryland. We represent the hardworking men and women of Atlantic, Cape May, Camden, Cumberland, Gloucester, Ocean, Burlington, Monmouth in New Jersey and Kent, New Castle and Sussex Counties in Delaware, and Delaware County, PA. On behalf of our 5,700 members, we are joining our brothers and sisters of Unite Here Local 54 and the New Jersey Building Trades as well as the Casino Association of New Jersey in opposition of Senate Bill 1493 in its current form.

Local Union 255 is dedicated to building a better tomorrow and advocating for all working carpenters. While we appreciate that this is a difficult issue, we would like to point out that Senate Bill 1493 would have a negative impact on our members in South Jersey. The casino industry is vital to South Jersey's economy and enacting a smoking ban would be devastating to the region.

As you know, this is a challenging economic climate and studies show that a smoking ban could result in a significant loss of jobs, as well as a decline of in-person gaming revenue and visits to our brick-and-mortar casinos. In addition, several casinos have yet to return to pre-pandemic levels and it is unclear if and when they will. While there is a perception that Atlantic City's Casinos are doing well, the truth is that in-person attendance at most of the brick-and-mortar properties across Atlantic City is down. As attendance declines while operating costs are still on the rise, the South Jersey region faces uncertainty and the tens of thousands of jobs created directly and indirectly by the industry are in jeopardy.

When the casino industry is negatively impacted, that is felt by the local and regional economy because it results in fewer visitors staying in our hotels, restaurants and other shopping and entertainment establishments, and this in turn slows down any capital investments that may be planned in all these industries. The economic damage caused by up to a ten percent decrease of in-person attendance, as projected by the Spectrum Gaming Group report, would have a chilling effect on any immediate or short-term investments that would create jobs for the thousands of

Representing members in Delaware, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia, and The District of Columbia.



EASTERN ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS

Representing members in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and Washington D.C.

union carpenters our union represent. Many may assume that our union only represents those that build the casinos South Jersey is home to, but we also represent in-house carpenters that make their living through upholstery, key card maintenance, table game maintenance, and overall structural maintenance for the brick-and-mortar casinos in Atlantic City. These are good paying jobs local working families rely on and must be put into consideration when drastic changes like the ones made in Senate Bill 1493.

As New Jersey must do everything we can to invest in the economy and create good-paying jobs for our members. A smoking ban would slow economic growth and cause us to lose valuable job opportunities at a time that we need them most. The Eastern Atlantic States Regional Council of Carpenters Local Union 255 respectfully urges you to oppose Senate Bill 1493 as it is currently composed.

Thank you,

William Sproule
Executive Secretary-Treasurer
Eastern Atlantic States Regional Council of Carpenters

REGIONAL OFFICES:

1803 Spring Garden Street
Philadelphia, PA 19130
Phone: 215-569-1634

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Pittsburgh, PA 15205
Phone: 412-922-6200

91 Fieldcrest Avenue, Suite A18
Edison, NJ 08837
Phone 732-417-9229

8500 Pennsylvania Avenue
Upper Marlboro, MD 20772
Phone 301-735-6660

WILLIAM C. SPROULE
EXECUTIVE SECRETARY-TREASURER



ANTHONY N. ABRANTES
ASST. EXECUTIVE SECRETARY-TREASURER

Eastern Atlantic States
REGIONAL COUNCIL OF CARPENTERS

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Representing members in Delaware, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia, and The District of Columbia.



**INTERNATIONAL
UNION OF
PAINTERS
& ALLIED
TRADES**

**DISTRICT
COUNCIL
21**

**FRANCIS MCLAUGHLIN
BUSINESS MANAGER
SECRETARY-TREASURER**



**(215) 677-7980
FAX (215) 677-3877**



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PENNSYLVANIA
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**EASTERN REGION
CONFERENCE OF I.U.P.A.T.**



HEADQUARTERS

**2980 SOUTHAMPTON ROAD
PHILADELPHIA, PA 19154**



January 29, 2024

Senator Joseph F. Vitale
569 Rahway Avenue
Woodbridge, New Jersey 07095

Dear Honorable Vitale:

District Council 21 supplies the workforce in Atlantic City casinos with over 100 members throughout the region. We strongly oppose S1493 as it will negatively impact our jobs in the casino, hotel, and restaurant industries.

As you know, the Atlantic City casino industry has been significantly impacted by the COVID-19 crisis and competing with neighboring gaming jurisdictions. Under S1493 the ban on smoking in casinos would increase from 75% to 100%. In other jurisdictions that have banned smoking, business has dropped 15% to 25%. That increase will substantially decrease business in Atlantic City and, as a union that directly benefits from the success of the casino industry, we urge you not to support a complete smoking ban at this time. If we experience a 13% drop in visitation, it is expected to equate to a job loss of 2,500 jobs.

We cannot afford layoffs at this uncertain time in our economy with neighboring casino jurisdictions who offer smoking and put New Jersey at a competitive disadvantage. Now is simply not the time to implement the proposed legislation.

Any policy changes to increase the smoking ban to 100% that will result in further decreased visitation, job loss and additional economic harm to the industry. It will also negatively the Casino Revenue Fund which funds vital programs and services for senior and disabled citizens, like PAAD and disabled transportation services. In fact, this bill may result in a \$27 million negative impact to PAAD to all twenty-one counties in New Jersey.

I urge you to support our jobs and vote against any efforts to implement a complete smoking ban in New Jersey casinos.

Sincerely,

**Francis McLaughlin
Business Manager/Secretary-Treasurer**

**Michael Laughlin
Assistant Business Manager**

**Timothy Crowther
Political Director**



2601 Brunswick Avenue, PO Box 55082, Trenton, NJ 08638-9998

Maureen Bergeron, President
Barbara Nedohon, Vice President
Cynthia McNellis, Secretary
Maria LaFace, Treasurer
Joanne Fetzko, Past President, USAging Board alternate
Lorraine Joewono, Past President, USAging Board Member

Atlantic County **January 29, 2024**

Bergen County

Burlington County **Dear Chair Vitale and Members of the Committee:**

Camden County

Cape May County

Cumberland County

Essex County

Gloucester County

Hudson County

Hunterdon County

Mercer County

Middlesex County

Monmouth County

Morris County

Ocean County

Passaic County

Salem County

Somerset County

Sussex County

Union County

Warren County

As you consider Senate Bill No. 1493 that serves to eliminate a smoking ban exemption for casinos and simulcasting facilities, the New Jersey Association of Area Agencies on Aging (NJ4A), which represents New Jersey's (21) County Offices of Area Agencies on Aging, we urge you to consider the devastating impact the passage of these bills will have on critical programs for the aged and disabled population in this State.

As the statewide advocate for older adults, individuals with disabilities and their families, NJ4A is committed to creating communities that support independence and aging with dignity. Collectively, we advocate, plan, coordinate and deliver services to enhance the quality of life for the residents we serve. Accordingly, we do not support or encourage smoking or any behavior that threatens the health and well-being of our residents.

While we applaud your efforts to promote a smoke-free environment and to protect the health of casino guests and employees, we are compelled to inform you of the unintended adverse effect this legislation will have on aging and disability services. The revenue generated from this fund is used to support critical programs such as Pharmaceutical

Assistance to the Aged and Disabled (PAAD), Senior Citizen & Disabled Residents Transportation Assistance Program, Jersey Assistance for Community Caregiving Program (JACC), along with other community-based senior programs.

NJ4A

By now, most of you are familiar with the phrase “Silver Tsunami” used to describe the vast number of Baby Boomers turning (60) years old each day and the challenges that come with an aging population. As we continue to reel from this unrelenting pandemic, the demand for aging services has increased substantially. Moreover, Older Americans’ Act funding has not kept pace with inflation or the growing number of older adults that rely on our aging networks to maintain their independence.

As we strive to make known the significant impact this legislation will have on the funding of these much needed programs for our older adults, please recognize that this attempt to consider our position in no way minimizes the efforts to promote smoke-free environments in the casinos.

Thank you for your consideration in this matter.

Sincerely,

Eileen E. Doremus

Eileen E. Doremus
NJ4A Advocacy Coordinator
edoremus@verizon.net



LOCAL 68

AND ITS BRANCHES
INTERNATIONAL UNION OF OPERATING ENGINEERS

11 Fairfield Place
West Caldwell, NJ 07006
Tel: (973) 244-5800
Fax: (973) 227-3785
Web Site: www.local68.org

BRANCH
1501 Pacific Avenue
Atlantic City, NJ 08401
Tel: (609) 345-6868
Fax: (609) 345-2504

January 29, 2024

Senator Joseph F. Vitale

Dear Hon. Vitale:

As President of the International Union of Operating Engineers Local 68, we supply the workforce in Atlantic City casinos with our 1,000 members throughout the region. We strongly oppose S1493 as it will negatively impact our jobs in the casino, hotel, and restaurant industries.

As you know, the Atlantic City casino industry has been significantly impacted by the COVID-19 crisis and competing with neighboring gaming jurisdictions. Under S-264/A-2151 the ban on smoking in casinos would increase from 75% to 100%. In other jurisdictions that have banned smoking, business has dropped 15% to 25%. That increase will substantially decrease business in Atlantic City and, as a union that directly benefits from the success of the casino industry, we urge you not to support a complete smoking ban at this time. If we experience a 13% drop in visitation, it is expected to equate to a job loss of 2,500 union jobs.

We cannot afford layoffs at this uncertain time in our economy with neighboring casino jurisdictions who offer smoking and put New Jersey at a competitive disadvantage. Now is simply not the time to implement the proposed legislation.

Any policy changes to increase the smoking ban to 100% that will result in further decreased visitation, job loss and additional economic harm to the industry. It will also negatively impact the Casino Revenue Fund which funds vital programs and services for senior and disabled citizens, like PAAD and disabled transportation services. In fact, this bill may result in a \$27 million negative impact to PAAD to all twenty-one counties in New Jersey.

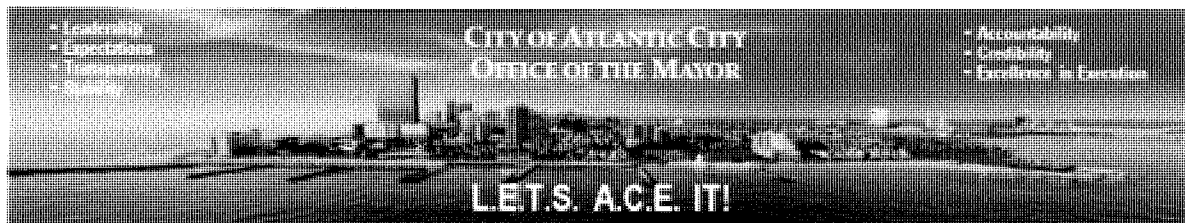
I urge you to support our union jobs and vote against any efforts to implement a complete smoking ban in New Jersey casinos.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael B. McGlynn".

Michael B. McGlynn
President
IUOE Local 68





MAYOR MARTY SMALL, SR.

City Hall
1301 Barcharach Boulevard • Suite 706
Atlantic City, New Jersey 08401
Telephone 609-347-5400

Dear Senator Vitale and Members of the Senate Health, Human Services and Senior Citizens Committee,

As the Mayor of the great City of Atlantic City, I am writing to you today to express my strong opposition to Bill S1493. I understand this is a really tough issue, as it affects the well-being of city residents and employees in several different ways, but as Mayor, I must take a step back and look at the big picture in the context of current facts and our city's economic climate. As Atlantic City's biggest employer and our city's biggest taxpayer, the casino industry is integral to Atlantic City's success. When the casino industry struggles, everyone in the great City of Atlantic City struggles – from the local school district to small business owners, as well as employees and families.

The casino industry has been through some tough times over the past decade, resulting in significant economic challenges for our community. More recently, the COVID-19 pandemic hit our city and residents hard, and we must do everything we can to support this vital industry as we recover from this global crisis. The truth is, recent gaming revenue reports show that the industry is still struggling. Six of nine casinos have yet to return to pre-pandemic levels. A smoking ban during this challenging economic climate, while casinos in our neighboring states still allow smoking, could be catastrophic, resulting in fewer visitors, declining revenue, and job cuts.

We are certain that a smoking ban in Atlantic City casinos would have a devastating impact on our city and its residents, because we have seen its impact before. The former Revel Casino is a perfect real-world example of what happens when smoking is banned at a casino. In 2014, the \$2.4 billion casino resort was forced to close its doors permanently. Revel was the city's only smoke-free casino, and even with significant investments and financial backing, it didn't survive.

Unfortunately, we have already seen what happens when the casino industry is adversely affected by economic or other conditions. Casinos have closed during economic downturns, and it has severely impacted our local economy. History shows that when we don't support our casinos, the odds are against Atlantic City's recovery. Residents and local businesses suffer. But when Atlantic City's casinos see success, we all win. I understand this is an important issue because of the health concerns involved, but I urge you to put your money on Atlantic City's recovery and vote against S1493 at this time.

Marty Small, Sr.
Mayor, City of Atlantic City



January 29, 2024

Re: S1493: Smoking ban exemption for casinos and simulcasting facilities

Dear Honorable Members of the New Jersey Senate,

On behalf of the Greater Atlantic City Chamber, please accept the following statement on behalf of the organization regarding the recent efforts to impose a permanent smoking ban on Atlantic City casinos:

As we mark almost three years since the beginning of the COVID-19 pandemic, the greater Atlantic City region continues to feel the adverse economic impact from that health crisis and the economic downturn that has followed it. As our community struggles to rebuild and recover, our priority must be to support and maintain a favorable economic environment for local businesses and employees. We must be focused on maintaining stability in the market, preserving and creating jobs, and supporting the local community during these uncertain times.

To that end, recent efforts to impose a permanent smoking ban on Atlantic City casinos should be halted. A smoking ban would have a negative impact on the casino industry, resulting in significant job losses, decline in revenues, which in turn would hurt local businesses and vendors that rely on the industry for their economic livelihood. We recognize the concerns of casino employees who support a smoking ban, but we also must keep in mind that thousands of employees and their families will be impacted by lost jobs if a ban is passed.

A permanent smoking ban would put Atlantic City at a significant competitive disadvantage with casinos in Pennsylvania where smoking is permitted. As we continue to rebuild and recover from the pandemic, Atlantic City deserves a level playing field. By imposing a smoking ban, we are simply driving visitors, businesses and jobs away from our region to neighboring states.

In addition, the success of online gaming has created a misperception about the current state of the Atlantic City casino industry. The truth is employment and visitation are at 20-year low. At six of the nine casino properties, land-based gaming revenues are down from 2019 and have not returned to pre-pandemic levels. As the numbers demonstrate, this is not the time to enact policy changes that could inflict yet another blow to an already struggling industry and the employees, families and businesses that it supports.

Despite these recent challenges, Atlantic City remains the economic engine of not only South Jersey, but the entire State of New Jersey, and we must do all that we can to help the industry recover from this once in a lifetime pandemic. The casino industry has produced more jobs, investment, and tax revenue than any other industry in Atlantic County over the past 40 years. I urge legislators to protect the jobs, tourism and revenue that fuel our local and regional



economy and oppose any efforts to enact a smoking ban at Atlantic City casinos. The growth and vitality of our community depend on it.

We thank you for your time and careful consideration. Please feel free to contact us at any time to discuss in greater detail.

Respectfully,



Michael Chait
President
Greater Atlantic City Chamber
mchait@acchamber.com
(609) 513-6688

Cc: Honorable Senator Joseph Vitale
Honorable Senator Troy Singleton
Honorable Senator Renee Burgess
Honorable Senator Raj Mukherji
Honorable Senator Angel McKnight
Honorable Senator Owen Henry
Honorable Senator Holly Schepisi
Honorable Senator Robert Singer
Honorable Senator Nicholas Scutari
Honorable Timothy Lydon
Janice Johnston, Chairwoman of the Greater Atlantic City Chamber



TEAMSTERS LOCAL UNION #331

AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

1 Philadelphia Avenue - Egg Harbor City, New Jersey 08215
Phone: (609) 641-2331 - Fax: (609) 641-2740

- Marcus W. King**
President
- Abimael Ortiz**
Secretary-Treasurer
- Kent McFarland**
Vice President
- Sharon Woodard**
Recording Secretary
- John Showell**
Trustee
- Stephen Dalbow**
Trustee
- Erica Rassmann**
Trustee

January 29, 2024

Dear Chairman Vitale, Vice Chairman Singleton, & Members of the Senate Health, Human Services
and Senior Citizens Committee:

Please accept this letter on behalf of the International Brotherhood of Teamsters Local 331 in opposition to S1493 in its current form.

The International Brotherhood of Teamsters Local 331 is headquartered in Egg Harbor City and represents over 2000 men and women working in the Atlantic City region.

Our members have faced many hardships in Atlantic City, riding the ups and downs of the casino-based economy during the recent turbulent decades, and as such we are especially concerned about the proactive implementation of any policies, such as this legislation, that may add to those challenges. We believe that this legislation will have a broad and immediate negative impact that will lead to declining attendance and demand for the products our members deliver to casino properties and surrounding businesses, as well as for the services we perform, such as front desk positions, warehouse and loading dock operators, and valet drivers.

It is our sincere hope that the sponsors of this legislation and the Members of this Committee take these concerns into consideration and weigh the unintended consequence that this bill as currently written will have on my membership and the overall economy of Atlantic City and the surrounding region.

The Atlantic City economy continues to be a challenging economic environment. We request that you please work to find a compromise to this matter without compromising the financial security of our membership and their families who rely on the well-paying jobs and the important benefits, such as health and retirement, that we've been able to secure.

Sincerely,

Marcus King



**Statement prepared for the Senate
Health, Human Services and Senior Citizens Committee
in opposition to S1493**

Senator Vitale and the Senate Health, Human Services and Senior Citizens Committee:

Unfortunately, I am recovering from an emergency appendectomy and am unable to be here in person, so on behalf of the Casino Association of New Jersey (CANJ) I would like to share our continued opposition to S1493.

The Atlantic City casino industry is the economic backbone of South Jersey. As the largest employer in Atlantic County, the casino industry is committed to growing and strengthening Atlantic City's economy to ensure long-term stability and security for our employees and the community where we operate. But it does not end there as the Atlantic City casinos purchase over \$300 million in goods and services from vendors throughout the state outside of Atlantic County. No one is more committed to the well-being of our employees and that is why we are so opposed to implementing this legislation *as currently proposed*. We understand this is an important issue, but it's critical that we are transparent and clear on the significant adverse effect an implementation of a complete smoking ban at this time would have on the State of New Jersey, our employees and others who are dependent on the casino industry.

An immediate and complete smoking ban in New Jersey casinos, while smoking is still permitted in casinos in Pennsylvania, against the backdrop of an already weakened and worsening economic climate would endanger thousands of jobs and jeopardize millions of dollars in tax revenue dedicated to seniors and the disabled of New Jersey. Such a ban would also jeopardize statewide tax revenues and jobs generated by the hundreds of vendors servicing the Atlantic City casinos, as validated by multiple independent studies. And the majority of New Jersey residents agree, according to a recent poll conducted by Fairleigh Dickinson University, the majority of New Jersey voters oppose a smoking ban in Atlantic City casinos.

Atlantic City is a destination market, and most of our guests live in the backyards of the city's regional competitors. A complete smoking ban would result in long-term financial implications for the industry, many employees, and the region, placing Atlantic City casinos at a significant

Casino Association of New Jersey, Inc.
c/o Resorts Casino Hotel
1133 Boardwalk, Atlantic City, New Jersey 08401

Casino Association of New Jersey, Inc.
c/o Resorts Casino Hotel
1133 Boardwalk, Atlantic City, New Jersey 08401

In addition, the industry has been and continues to be very willing to discuss potential amendments to the current bill with the legislature that would avert a complete ban at this time. UNITE HERE Local 54 which represents the majority of the Atlantic City casino workforce as well as the Eastern Atlantic States Regional Council of Carpenters and the New Jersey Building Trades join in opposition of this legislation in its current form and in support of efforts to work toward a solution that addresses the health concerns without a complete smoking ban.

The Atlantic City casino industry recognizes the concerns of our employees and others who advocate the elimination of smoking in our properties. Our industry has taken significant steps over the years to create a healthier environment for employees and patrons, including limiting smoking to just a fraction of the floorspace. Atlantic City casinos currently permit smoking on only 25 percent of the gaming floor, compared to Pennsylvania and other jurisdictions that permit smoking at 50 percent or more. The air-handling systems in Atlantic City casinos were designed to handle smoking on 100% of the casino floor – four times the amount of smoking currently permitted. Further, the industry has invested in state-of-the-art filtration systems that circulate fresh air. When the pandemic began, the casinos had independent experts review their air filtration systems, confirming their effectiveness in exchanging large volumes of air to help maintain positive air quality for patrons and employees.

According to an analysis from Spectrum Gaming Group, a complete smoking ban on Atlantic City casinos could cause a loss of up to 2,500 jobs and have a significant negative economic impact on the State of New Jersey. The report concludes that approximately 10 percent of the Atlantic City workforce is at risk of losing their jobs if a smoking ban were enacted, resulting in the potential loss of between 1,000 and 2,500 jobs, along with a substantial decline of up to 10.9 percent in gaming revenue, up to \$93 million in non-gaming revenue, and a loss of between \$17.2 million and \$44 million for the State of New Jersey and the City of Atlantic City in tax revenue. Further, analysis by John DeCree, a senior analyst with CBRE Equity, projects that a complete ban on indoor casino smoking at Atlantic City's nine casinos would even be more significant – negatively impacting annual gross gaming revenue (GGR) by as much as 20 to 25 percent. DeCree says those smoking spaces are where upwards of 50 percent of the annual GGR is generated. And our largest union leader agrees, Donna DeCaprio, president of UNITE HERE Local 54, says a smoking ban "would mean lost jobs for our union and throughout the state, and lost tax revenues and less money for senior programs".

competitive disadvantage with Pennsylvania casinos where smoking on twice the amount of casino floors is permitted. It's clear that casinos in Pennsylvania see this as a competitive advantage in attracting patrons to their properties as 15 of 17 casinos in the state allow smoking. And two of those 15 casinos that allow smoking tried to remain non-smoking after the pandemic, only to reinstate their policies to permit smoking on their casino floors. In Shreveport, Louisiana, the local city council repealed the smoking ban in casinos this past year, recognizing the adverse economic impact the ban had on the local economy – loss of job, tourism and tax dollars – particularly when smoking is still permitted in nearby jurisdictions.

The Atlantic City casino industry is still very much in a rebuilding and recovery phase from where it was at the start of the pandemic. The industry has yet to see any real growth from pre-pandemic levels in gaming at its casino hotels. Employment at our casinos is at a 20-year low, with about 50 percent of the workforce from 2003. Visitation to Atlantic City is near a 20-year low, while gas and toll prices are increasing. And land-based casino revenue remains at an almost 50 percent decrease from our peak in 2006 and still significantly down from 2019 numbers at two thirds of the casino properties. Adding a complete smoking ban could cause a devastating effect to the community and state in this difficult economy.

While any legislation that further restricts smoking on the casino floors would inevitably divert some guests to other casinos where they can more freely smoke, the casino industry believes that there is potential for compromise in this matter that will address the concerns of our employees without substantially jeopardizing jobs and benefits to seniors. The industry remains focused on the long-term success of Atlantic City and will work with the legislature and other stakeholders on this issue for the betterment of Atlantic City, the tourism and gaming industries and the collective interest and well-being of the entire Atlantic City workforce. But, now is certainly not the time to enact a complete smoking ban.

It is for these reasons that we urge that full consideration be given to the significant negative impact that a complete smoking ban would have on the casino industry, the State of New Jersey, and all the New Jersey residents who benefit from the jobs, construction, purchases, and taxes our industry generates, if Bill S1493, without amendment, were to become law.

Thank you.

Mark Giannantonio
President, Casino Association of New Jersey (CANJ)

www.casino.org /news/atlantic-city-casino-smoking-ban-would-hurt-gaming-revenues/

Atlantic City Casino Smoking Ban Would Hurt Gaming Revenues Up To 25 Percent, Analyst Projects

: 5/2/2022

Last updated on: May 2, 2022, 04:57h.

An Atlantic City casino smoking ban would have a devastating consequence on gaming revenue, or so says an analyst at CBRE Equity Research.

John DeCree, a senior analyst at Union Gaming, a subsidiary of CBRE since 2021, projects that a complete ban on indoor casino smoking at Atlantic City's nine casinos would negatively impact annual gross gaming revenue (GGR) by as much as 20%-25%.

New Jersey lawmakers continue to mull legislation that would end the smoking loophole afforded to the casinos and under the state's clean air law passed in 2006. Currently, Atlantic City casinos can allow smoking on up to 25% of their gaming floor. But DeCree says those smoking spaces are where upwards of 50% of the annual GGR is generated.

This is consistent with our research over the years that often reveal smoking sections in casinos generate substantially higher win per days than non-smoking sections," DeCree wrote.

DeCree adds that since Atlantic City is primarily a drive-in destination, the East Coast gaming mecca relies heavily on Philadelphia and New York gamblers. The Union Gaming analyst reasons that outlawing cigarettes would result in some of those players opting for casinos where smoking remains permitted in Pennsylvania and Connecticut.

Quarter Revenue at Stake

A growing coalition of Atlantic City casino workers argues that it's long past due to eliminating indoor smoking on the gaming floors. The movement has gained bipartisan support in Trenton, where at least 43 elected lawmakers have lent their names to Senate Bill 264/Assembly Bill 2151. The bills are clones of one another, and each seeks to extinguish casino smoking.

However, the Casino Association of New Jersey says such a ban would hurt the industry and result in substantial job layoffs. The trade group earlier this year commissioned a study on the consequences of banning cigarettes. That report, conducted by Spectrum Gaming Group, also found that a smoking ban would hurt GGR in a similar projection as the one issued this week by DeCree.

DeCree adds that the 20%-25% negative gaming revenue forecast is conservative.

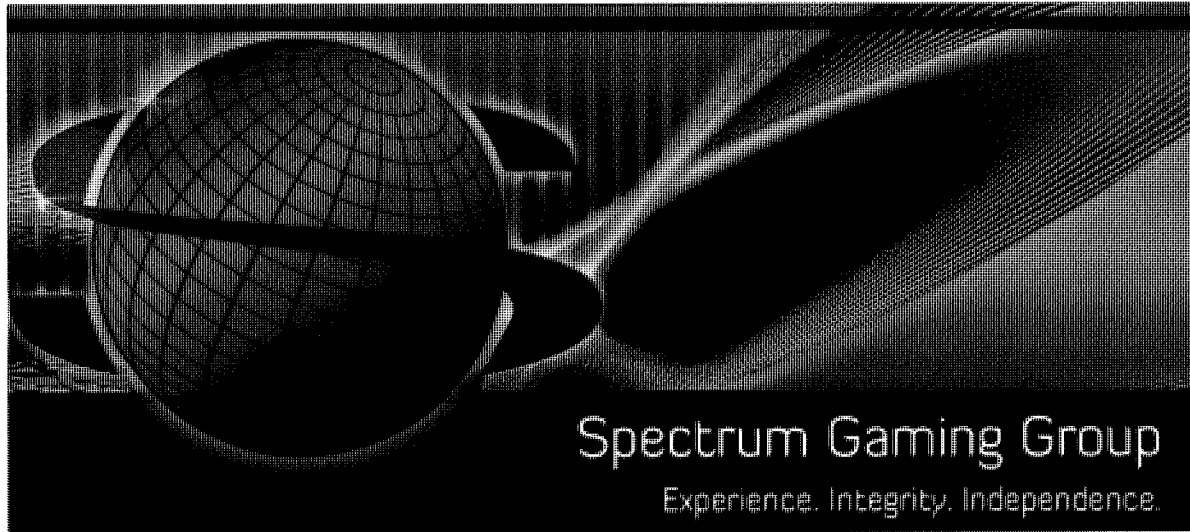
“Atlantic City must pull its customers away from more conveniently-located gaming options, and the absence of smoking would leave many of its higher value smoking customers without reason to make the trip,” Decree said. “For those smoking customers who do still make the trip to Atlantic City, smoking breaks would likely take longer relative to regional casinos, given the size and scale of Atlantic City casinos, resulting in a greater loss of Time on Device (TOD) – a key metric in gaming revenue.”

Data Proof

Atlantic City casino workers argue that a smoking ban would not hurt gaming as much as the industry and analyst believes. But even if it would, they say their health should take precedence over GGR and profits.

DeCree says the economic health of the nine casinos would be expected to suffer in the wake of a complete smoking prohibition. The analyst pinpoints several other markets where casino smoking was eliminated and the GGR impact they endured in the first 12 months after the regulatory implementation.

DeCree cites Harrah's New Orleans seeing its revenue plummet 20% after the city-instituted smoking ban went into effect in April of 2015. Similarly, Chicagoland casinos in Illinois saw their GGRs decline 22% after a smoking prohibition was instituted in January of 2008.



GAMING INDUSTRY ANALYSIS:

Potential Impacts of an Atlantic City Casino Smoking Ban on Gross Gaming Revenue

Prepared for Casino Association of New Jersey
November 3, 2021



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Executive Summary

The Casino Association of New Jersey (“Client”), which represents the seven casino operators (and all nine casinos) in Atlantic City, engaged Spectrum Gaming Group (“Spectrum,” “we” or “our”) to independently analyze the potential effect a possible smoking ban would have, collectively, on the Atlantic City casino industry’s gross gaming revenue (“GGR”) and the resulting State of New Jersey (“State”) gaming taxes.

It is beyond the scope of this study to consider other impacts or issues that may be associated with smoking or a smoking ban. Further, Spectrum offers no opinion or recommendation whether smoking should be allowed on casino floors.

New Jersey has earned an A from the American Lung Association for its clean-air practices, which include prohibiting smoking in all workplaces, as well as in restaurants, schools, child-care facilities, retail stores and bars (with the exception of cigar bars and lounges), and notably the state has penalty and enforcement provisions in place. One glaring exception to the state’s widespread anti-smoking policy is the Atlantic City casino industry, whose members are allowed under a local ordinance to allow smoking in up to 25% of the casino floor space, and the American Lung Association duly notes that exception and has urged that it be eliminated.

Spectrum’s analysis recognizes that this exception allows for a scenario in which Atlantic City casinos become a more attractive recreational outlet for smokers. Smoking restrictions cover nearly every public entertainment option, a reality that in turn makes Atlantic City casinos a more prominent oasis for smokers.

The calculus through which adults select their entertainment options is broad and complex, ranging from convenience to cost to various other preferences. The ability to smoke in an indoor public setting may be a factor for adults who cannot indulge in smoking at movies, bars, restaurants or shopping outlets.

While the level of that preference cannot be definitively determined, its existence can reasonably be presumed as a factor that accounts for the demographic differences among casino visitors. To put that another way, if smoking were banned at casinos in New Jersey, Pennsylvania and Connecticut, the demographics among casino visitors would likely adhere more closely to the demographic mean. The appeal of casinos to smokers would likely diminish under such a scenario.

The presence of that appeal would clearly account for the longstanding differential between the level of smokers in the general population (13% in New Jersey, 14% nationally) and their significantly greater representation amongst casino visitors, a differential that has been identified in demographic studies.

With that in mind, Spectrum first estimated the prevalence and value of casino smokers, based on an earlier visitor profile study and on current data provided by casino operators. We found that smokers account for a higher percentage of casino patrons than they do in the general adult population, and smokers spend significantly more than non-smokers while gambling on a per-capita basis. As such,

- Spectrum estimates that 21% of Atlantic City casino players are smokers
- Spectrum applied a 25% premium to smokers' gambling expenditure value to the casinos in our low case and a 50% premium in our high case

Starting with those assumptions, Spectrum developed a range of projected GGR impact based on our research and analysis, which included the following:

- Analysis of GGR impacts when casino smoking bans were instituted in Delaware, Illinois and New Orleans.
- Other related empirical data.
- Assessment of previous studies regarding casinos and smoking, all of which are of limited value for this report for various reasons, not the least of which is because of the passage of time. Smoking prevalence rates have declined significantly since those studies were conducted.
- Interviews with casino employees, casino management, advocacy groups, and others who participate in, or who closely follow, the Atlantic City casino industry.
 - We spoke with the property or finance heads of seven of the nine casinos. They provided us with proprietary performance data regarding smoking areas vs. non-smoking areas, on the condition that neither they nor their properties be disclosed.

A critical assumption in our analysis is that Pennsylvania casinos would continue to allow smoking, per the commonwealth's pre-Covid-19 policy.¹

Spectrum developed a range of GGR impacts that is necessarily broad, recognizing that certain factors are unknowable at this time but would be significant were a smoking ban to be enacted in Atlantic City casinos. Such factors include:

- The intensity of the marketing and promotional response by Pennsylvania casino operators, who could target dissatisfied Atlantic City casino smokers with direct marketing programs and broader advertising programs.
- The facility response by Atlantic City casino operators. Outdoor gaming areas are common at casinos in other jurisdictions in which smoking is prohibited. Some smoking areas are rather lavish and comfortable while others appear to be less accommodating. The quality and convenience of such outdoor gaming areas at Atlantic City casinos would clearly vary by property, and would involve capital investment and additional operating costs due to the inefficiencies of having separate gaming areas.
- The quality of the marketing response by Atlantic City casino operators.
 - Reaching patrons who smoke to inform them about the new policy and any new facilities that would be developed to accommodate smoking.

¹ During the Covid-19 pandemic, some Pennsylvania casinos have at least temporarily prohibited smoking, either by choice or by local health ordinance.

- Reaching adults who currently do not visit Atlantic City casinos – or those who visit less frequently or for less time – because they find the smoky casino floors to be unappealing to inform them about their entirely smoke-free casino floors.
- The amount of time between the enactment and implementation of the casino smoking ban. The longer the gap, the more time casino operators would have to:
 - Develop quality outdoor gaming areas
 - Communicate their plans to patrons who currently smoke
 - Develop marketing programs to attract more non-smokers.

Spectrum projects that a smoking ban in Atlantic City casinos would have the following effects on revenue in Year 1:²

- A smoking ban would result in a GGR decline of between 5.0% and 11.9% among patrons who smoke.
- Non-smokers attracted to the smokefree air may increase their play by 1.0% to 1.5% (in GGR)
- On a *net* basis, a smoking ban would cause a GGR decline of between 4.2% and 10.9%
- A smoking ban would cause a decline in the casinos' non-gaming revenue of 3.0% in the low case and 6.5% in the high case
- Using 2019 (pre-Covid-19) data as a basis, we estimate a smoking ban would lead to declines in State of New Jersey gaming-tax receipts of between \$10.7 million and \$25.7 million to the Casino Revenue Fund and between \$1.7 million and \$4.0 million to the Casino Reinvestment Development Authority
 - Declines in total taxes of between \$17.2 million and \$44 million
- Reductions in revenue as described above could result in a net loss of between 1,021 and 2,512 jobs at the casino properties, based on comparisons to 2019 (pre-pandemic) levels. It is critical to note that such reductions in employment assume that the casinos would be at full employment as they were in 2019; at this time, most casinos are short-staffed, consistent with businesses across the country during the pandemic, and/or have purposely reduced their staffing levels; it to be determined whether those modified staffing levels will be permanent.

² Estimating GGR changes beyond Year 1 is dependent on a host of factors – including the casino operators' reactions to the smoking ban – that cannot be reasonably quantified at this time.

Contents

EXECUTIVE SUMMARY	ii
INTRODUCTION	1
A. SMOKING IN ATLANTIC CASINOS	1
B. SMOKING TRENDS NATIONALLY	3
C. METHODOLOGY	4
D. ABOUT SPECTRUM GAMING GROUP	5
I. IMPACTS OF CASINO SMOKING BANS IN OTHER JURISDICTIONS.....	8
A. DELAWARE	8
B. ILLINOIS	8
1. Chicagoland	9
2. Quad Cities	10
3. St. Louis	11
4. Peoria	12
C. NEW ORLEANS	13
II. SUMMARIES OF CASINO-SMOKING STUDIES.....	16
III. CASINOS AND SMOKING IN ATLANTIC CITY: POLICY, PERCEPTIONS AND PERFORMANCE.....	28
A. CONSEQUENCES OF NEW JERSEY TOBACCO POLICIES	28
B. ESTIMATING THE PERCENTAGE OF GAMBLERS WHO ARE SMOKERS	29
C. THE VALUE OF SMOKERS VS. NON-SMOKERS	30
1. Time on Device.....	31
IV. PROJECTED GGR IMPACTS OF A SMOKING BAN IN ATLANTIC CITY CASINOS.....	33
A. CONSIDERING THE EXPERIENCE OF SMOKEFREE CASINOS AFTER REOPENING.....	34
B. ESTIMATED RANGE OF IMPACTS TO ATLANTIC CITY CASINO GGR	35
1. Estimated Percentage of Casino Gamblers who are Smokers.....	36
2. Estimated Value of Smokers	37
3. Estimated Range of GGR Change from Reduction of Play by Smokers.....	38
4. Estimated Range of GGR Change from Increase in Play by Non-Smokers.....	39
5. Estimated Range of Net GGR Change from a Casino Smoking Ban	40
6. Estimated Change in Non-Gaming Revenue	41
7. Estimated Change in Tax Receipts from a Casino Smoking Ban	42
8. Potential Changes in Employment.....	43

Figures

Figure 1: Northeast states’ indoor casino-floor smoking policies	2
Figure 2: US adult cigarette-smoking prevalence rates, selected demographic groups, 2019	3
Figure 3: US adult cigarette-smoking prevalence rates, 1965-2018.....	4

Figure 4: Average number of cigarettes smoked per day, among smokers, 1974-2018 4

Figure 5: Delaware VLT GGR, 2000-2006 8

Figure 6: Annual percentage change in selected Illinois casino markets 9

Figure 7: Chicagoland casino market monthly GGR by state, June 2007-December 2012 10

Figure 8: Quad Cities casino GGR by state, 2006-2012..... 11

Figure 9: St. Louis area casino GGR by state, June 2007-December 2012..... 12

Figure 10: Year-over-year AGR percentage change in Peoria and all Illinois excluding Peoria 12

Figure 11: Peoria casino GGR and non-farm employment in Peoria 2006-2010..... 13

Figure 12: New Orleans market slot revenue LTM, April 2014-April 2018..... 14

Figure 13: New Orleans market LTM slot and Mississippi GGR win by segment, 2014-2018 14

Figure 14: Estimated local annual visits and slot win in New Orleans market Louisiana casinos 15

Figure 15: Illustrative example of change in GGR due to smoking break..... 31

Figure 16: Comparison of Atlantic City and Pennsylvania GGR for 3-month and 7-month periods..... 35

Figure 17: Estimated smoker participation at Atlantic City casinos, by state..... 36

Figure 18: High case estimate of smoker GGR at Atlantic City casinos 37

Figure 19: Low case estimate of smoker GGR at Atlantic City casinos 38

Figure 20: High case estimate of casino GGR change from reduction in play by smokers, Year 1..... 38

Figure 21: Low case estimate of casino GGR change from reduction in play by smokers, Year 1 39

Figure 22: High case estimate of casino GGR change from increased in play by non-smokers, Year 1 40

Figure 23: Low case estimate of casino GGR change from increased in play by non-smokers, Year 1 40

Figure 24: High case estimate of net change in casino GGR from a casino smoking ban, Year 1 41

Figure 25: Low case estimate of net change in casino GGR from a casino smoking ban, Year 1 41

Figure 26: Atlantic City gaming and non-gaming revenue, 2019..... 41

Figure 27: Low case estimated non-gaming revenue loss from smoking ban 42

Figure 28: High case estimated non-gaming revenue loss from smoking ban 42

Figure 29: Estimated tax impacts from a smoking ban, compared to 2019 43

Figure 30: Potential change in employment, based on total revenue per employee 43

Introduction

The Casino Association of New Jersey (“Client”), which represents the seven casino operators (and all nine casinos) in Atlantic City, engaged Spectrum Gaming Group (“Spectrum,” “we” or “our”) to undertake an independent analysis of the effect a possible smoking ban would have, collectively, on the casinos’ gross gaming revenue (“GGR”) and the resulting State of New Jersey (“State”) gaming taxes.

It is beyond the scope of this study to consider other impacts that may be associated with a casino smoking ban. Further, Spectrum offers no opinion or recommendation whether smoking should be allowed on casino floors.

GGR is the amount that the casinos retain after all winning wagers have been paid. The casinos pay the State a combined gaming tax of 9.25% on their GGR, which is divided as follows:

- 8.00% deposited into the Casino Revenue Fund, which benefits programs for senior and disabled New Jerseyans; and
- 1.25% deposited into the Casino Reinvestment Development Authority, which funds economic and community development programs in Atlantic City.

A. Smoking in Atlantic Casinos

Patrons have been allowed to smoke on the gaming floors of Atlantic City casinos since the commencement of gaming there in 1978, with notable exceptions and events that include:

- The New Jersey Smoke-Free Air Act of 2006 prohibited smoking in workplaces and indoor public places throughout the State – except for certain specifically exempted establishments, including casinos.
- In February 2007, the City of Atlantic City passed an ordinance restricting smoking on a casino floor to 25% of the gaming area, with required separate, designated smoking and non-smoking areas.
- Effective October 15, 2008, the City passed another ordinance that required casinos to be entirely smokefree. However, less than two weeks later the City passed a new ordinance in which casinos could revert to the previous 25% smoking, effective November 16, 2008. This meant the casinos were smokefree for one month.³
- In April 2012, Revel opened as the first Atlantic City casino property to be entirely smokefree. The property closed in September 2014.⁴
- On July 2, 2020, casinos were allowed to reopen after being shuttered for 15 months due to the Covid-19 pandemic – but smoking was prohibited. Three months later, as NJ.com

³ “Atlantic City, NJ,” Global Advisors on Smokefree Policy. <http://www.njgasp.org/smokefree-gaming/atlantic-city-nj/> (accessed August 31, 2021)

⁴ The property reopened under new ownership, and a new name – Ocean Casino Resort – in June 2018 and has the same smoking policy as other Atlantic City casinos.

reported, “[Governor Phil] Murphy was originally set to allow smoking to return there when statewide indoor dining resumed in September. But he reversed course after backlash from health experts who said it was too much of a risk because smoke may help Covid-19 spread.”⁵

- The State lifted the temporary, Covid-19-related ban on July 4, 2021. Governor Murphy said at the time he would be receptive to making the smoking ban permanent.⁶

The competition for casino patrons in the Northeast/Mid-Atlantic region is fierce, with 32 casinos operating within a 150-mile radius of Philadelphia. Those casinos generated total GGR of \$11.8 billion for the 12-month period ending August 2021, including \$8.5 billion from live slots and table games.⁷

Figure 1 provides the casino smoking policies in Northeast states with casinos. Among the primary competitors to Atlantic City, Pennsylvania permits smoking on 50% of its casino floors, although the highest-grossing casino in that state, Parx, has opted to remain smokefree⁸ since the state allowed a resumption of smoking on casino floors in June 2021. The two Philadelphia casinos, Rivers and Live, are smokefree due to the city’s indoor mask mandate. The state-regulated casinos in Delaware, Maryland and New York are smokefree; the tribal casinos in Connecticut and New York permit smoking. Many casinos where smoking is prohibited indoors do have covered outdoor gaming areas where smoking is permitted.

Figure 1: Northeast states’ indoor casino-floor smoking policies

State	Casino Smoking Policy ⁸
Connecticut	Smoking permitted in the casinos, which are operated by sovereign, Native American entities
Delaware	Smoking prohibited as of November 2002
Maine	Smoking prohibited since opening of first casino in 2005
Maryland	Smoking prohibited since commencement of casino gaming in 2010
Massachusetts	Smoking prohibited since commencement of casino gaming in 2015
New Jersey	Smoking permitted on 25% of casino floor
New York	Smoking prohibited at state-regulated casinos, allowed in Native American casinos
Pennsylvania	Smoking permitted on 50% of casino floor
Rhode Island	Smoking permitted in designated areas; both casinos are currently smokefree by choice
West Virginia	Smoking restrictions vary by county; two of the five casinos are smokefree

Source: Spectrum Gaming Group research. *Casino smoking policies may have temporarily changed in certain jurisdictions due health requirements related to Covid-19.

It is against this background that the Atlantic City casino operators seek to understand the impacts that a permanent smoking ban would have on their gaming revenues.

⁵ Brent Johnson, “Smoking ban in Atlantic City casinos due to Covid ends Sunday. Murphy wants permanent ban.” NJ.com, July 2, 2021. <https://www.nj.com/coronavirus/2021/06/smoking-ban-in-atlantic-city-casinos-due-to-covid-ends-sunday-murphy-wants-permanent-ban.html>

⁶ Ibid.

⁷ Spectrumetrix Mid-Atlantic Gaming Analysis.

⁸ As of the cover date of this report.

B. Smoking Trends Nationally

According to the most recent data provided by the Centers for Disease Control and Prevention,⁹ 14% of US adults in 2019 smoked cigarettes every day or on some days. The cigarette smoking prevalence varies by demographic group, as shown in Figure 2.

Figure 2: US adult cigarette-smoking prevalence rates, selected demographic groups, 2019

Male	15.3%
Female	12.7%
Ages 18-24	8.0%
Ages 25-44	16.7%
Ages 45-64	17.0%
Ages 65+	8.2%
White, non-Hispanic	15.5%
Black, non-Hispanic	14.9%
Asian, non-Hispanic	7.2%
Hispanic	8.8%
Northeast Region	12.8%
New Jersey	13.1%
Pennsylvania	17.0%
New York	12.8%
Delaware	16.5%
No diploma	21.6%
General Education Development	35.3%
High School diploma	19.6%
Some college	17.7%
Associate degree	14.0%
Undergraduate degree	6.9%
Graduate degree	4.0%
Less than \$35,000 income	21.4%
\$35,000 – \$74,999	15.7%
\$75,000 - \$99,999	11.4%
\$100,000+	7.1%

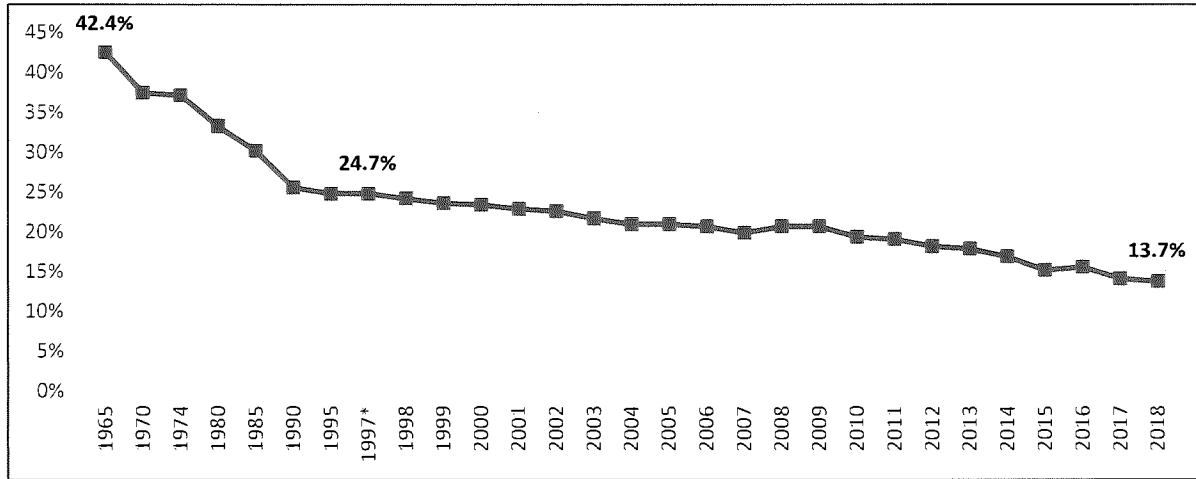
Source: Centers for Disease Control and Prevention

The prevalence of adult cigarette smoking has steadily declined through the years, according to the American Lung Association, and it declined by 44.5% during the 20-year period ending in 2018, as shown in Figure 3.¹⁰

⁹ Monica E. Cornelius, PhD; Teresa W. Wang, PhD; Ahmed Jamal, MBBS; Caitlin G. Loretan, MPH; Linda J. Neff, PhD, "Tobacco Product Use Among Adults — United States, 2019," *Morbidity and Mortality Weekly Report*, Centers for Disease and Prevention, November 20, 2020; based on National Health Interview Survey, United States, 2019. https://www.cdc.gov/mmwr/volumes/69/wr/mm6946a4.htm?s_cid=mm6946a4_w#F1_down

¹⁰ "Trends in Cigarette Smoking Rates," American Lung Association. <https://www.lung.org/research/trends-in-lung-disease/tobacco-trends-brief/overall-tobacco-trends> (accessed August 31, 2021)

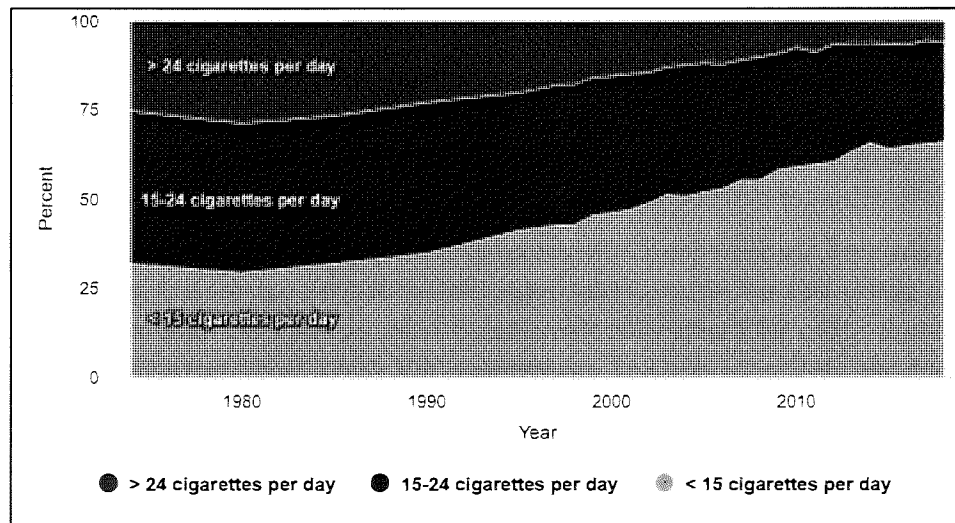
Figure 3: US adult cigarette-smoking prevalence rates, 1965-2018



Source: American Lung Association, via the Centers for Disease Control and Prevention, National Center for Health Statistics. National Health Interview Survey 1965-2018. Analysis for years 1997-2018 by the American Lung Association Research Team using SPSS software. *Due to the redesign of the NHIS survey in 1997, comparisons with data from prior years must be conducted with caution.

Among smokers, the number of cigarettes they smoke per day has been decreasing, as shown in Figure 4.

Figure 4: Average number of cigarettes smoked per day, among smokers, 1974-2018



Source: American Lung Association of analysis of Centers for Disease Control data, 1974-2018

C. Methodology

Spectrum recognizes that the topic of indoor cigarette smoking is controversial, especially as it pertains to the casino industry. In New Jersey and Pennsylvania, casinos were specifically exempted from statewide indoor workplace smoking bans. The issue typically pits the health and comfort of patrons and employees – and the advocacy groups that support them – against the casinos’ desire to maximize revenues and the state governments’ desire to maximize the concomitant gaming-tax receipts.

As noted above, this study is limited to the impacts that a permanent smoking ban on Atlantic City floors would have on gross gaming revenue. As detailed in Chapter IV of this report, Spectrum projected a range of potential GGR impact based our research and analysis, which included the following:

- Analysis of GGR impacts when casino smoking bans were instituted in Delaware, Illinois and New Orleans.
- Other related empirical data.
- Assessment of previous studies regarding casinos and smoking, all of which are of limited value for this report for various reasons, not the least of which is because of the passage of time. As seen above, smoking prevalence rates have declined significantly since those studies were conducted.
- Interviews with casino employees, casino management, advocacy groups, and others who participate in, or who closely follow, the Atlantic City casino industry.
 - We spoke with the property or finance heads seven of the nine casinos. They provided us with proprietary performance data regarding smoking areas vs. non-smoking areas, on the condition that neither they nor their properties be disclosed.

D. About Spectrum Gaming Group

This report was prepared by Spectrum Gaming Group, an independent research and professional services firm founded in 1993 that serves private- and public-sector clients worldwide. Our principals have backgrounds in operations, economic analysis, law enforcement, regulation and journalism.

Spectrum holds no beneficial interest in any casino operating companies or gaming equipment manufacturers or suppliers. We employ only senior-level executives and associates who have earned reputations for honesty, integrity and the highest standards of professional conduct. Our work is never influenced by the interests of past or potential clients.

Each Spectrum project is customized to our client's specific requirements and developed from the ground up. Our findings, conclusions and recommendations are based solely on our research, analysis and experience. Our mandate is not to tell clients what they want to hear; we tell them what they need to know. We will not accept, and have never accepted, engagements that seek a preferred result.

Our clients in 48 countries on six continents have included government entities of all types and gaming companies (national and international) of all sizes, both public and private. In addition, our principals have testified or presented before the following governmental bodies:

- Brazil Chamber of Deputies
- British Columbia Lottery Corporation
- California Assembly Governmental Organization Committee
- Connecticut Public Safety and Security Committee
- Florida House Select Committee on Gaming
- Florida Senate Gaming Committee
- Georgia House Study Committee on the Preservation of the HOPE Scholarship Program
- Georgia Joint Committee on Economic Development and Tourism
- Illinois Gaming Board
- Illinois House Executive Committee

- Indiana Gaming Study Commission
- Indiana Horse Racing Commission
- International Tribunal, The Hague
- Iowa Racing and Gaming Commission
- Louisiana House and Senate Joint Criminal Justice Committee
- Massachusetts Gaming Commission
- Massachusetts Joint Committee on Bonding, Capital Expenditures, and State Assets
- Michigan Senate Regulatory Reform Committee
- National Gambling Impact Study Commission
- New Hampshire Gaming Study Commission
- New Jersey Assembly Regulatory Oversight and Gaming Committee
- New Jersey Assembly Tourism and Gaming Committee
- New Jersey Senate Legislative Oversight Committee
- New Jersey Senate Wagering, Tourism & Historic Preservation Committee
- New York Senate Racing, Gaming and Wagering Committee
- New York State Economic Development Council
- North Dakota Taxation Committee
- Ohio House Economic Development Committee
- Ohio Senate Oversight Committee
- Pennsylvania Gaming Control Board
- Pennsylvania House Gaming Oversight Committee
- Puerto Rico Racing Board
- US House Congressional Gaming Caucus
- US Senate Indian Affairs Committee
- US Senate Permanent Subcommittee on Investigations
- US Senate Select Committee on Indian Gaming
- US Senate Subcommittee on Organized Crime
- Washington State Gambling Commission
- West Virginia Joint Standing Committee on Finance
- World Bank, Washington, DC

Disclaimer

Spectrum has made every reasonable effort to ensure that the data and information contained in this study reflect the most accurate and timely information possible. The data are believed to be generally reliable. This study is based on estimates, assumptions, and other information developed by Spectrum from its independent research effort, general knowledge of the gaming industry, and consultations with the Client and its representatives. Spectrum shall not be responsible for any inaccuracies in reporting by the Client or its agents and representatives, or any other data source used in preparing or presenting this study. The data presented in this study were collected through the cover date of this report. Spectrum has not undertaken any effort to update this information since this time.

Some significant factors that are unquantifiable and unpredictable – including, but not limited to, economic, governmental, managerial and regulatory changes; and acts of nature – are qualitative by nature and cannot be readily used in any quantitative projections. No warranty or representation is made by Spectrum that any of the projected values or results contained in this study will actually be achieved. We shall not be responsible for any deviations in the project’s actual performance from any predictions, estimates, or conclusions contained in this study.

Possession of this study does not carry with it the right of publication thereof, or the right to use the name of Spectrum in any manner without first obtaining the prior written consent of Spectrum. This study may not be used in conjunction with any public or private offering of securities or other similar purpose where it may be relied upon to any degree by any person other than the Client, without first obtaining the prior written consent of Spectrum. This study may not be used for any purpose other than that for which it is prepared or for which prior written consent has first been obtained from Spectrum. This study is qualified in its entirety by, and should be considered in light of, these limitations, conditions and considerations.

I. Impacts of Casino Smoking Bans in Other Jurisdictions

Several jurisdictions over the last 20 years have implemented permanent casino smoking bans well after their gaming industries had been established. Although the results appear to show a decline in gross gaming revenue post-implementation, there were other factors that contributed to declines, as discussed below.

A. Delaware

On November 27, 2002, the Delaware Clean Indoor Air Act took effect, prohibiting smoking at the state's three racetrack casinos (Dover Downs, Harrington Raceway and Delaware Park), which at the time were limited to video lottery terminals ("VLTs"). The impact on VLT revenue was significant in the first year of the smoking ban, as shown in Figure 5 below.

Figure 5: Delaware VLT GGR, 2000-2006

	2000	2001	2002	2003	2004	2005	2006
VLTs at Year End	5,151	5,277	5,430	5,683	6,435	6,581	7,360
Revenue (M)	\$485.1	\$526.6	\$565.9	\$502.0	\$553.3	\$579.4	\$651.7
Avg. Daily Win/Unit	\$257	\$273	\$286	\$242	\$235	\$241	\$243

Source: Delaware Lottery, UNLV Gaming Research Center

The smoking ban impact became noticeable in 2003. In addition, Hurricane Isabel in September 2003 caused minor disruptions in the state. VLT revenues fell by nearly \$64 million, or 11.3% for the year. At the time, the casinos in Atlantic City presented the only other Mid-Atlantic casino competition. After the first year of the smoking ban, revenues rebounded to nearly the same level as 2002, the year prior to the ban. By 2005, two years later, VLT revenues exceeded the 2002 level by \$13 million.

Throughout this period the operators continued to expand and add gaming positions, as the legislature approved extending casino operating hours and allowed additional machines at each track. Other legislative changes included permitting the casinos to extend credit to players, and removing the \$100 betting limit. Dover Downs began construction of an 11,000-square-foot addition to accommodate the new games.

While the smoking ban reduced VLT revenue in Delaware for a short period, legislative initiatives, capital investment by the casinos, and the lack of other competition meant that the dip in GGR was short-lived.

B. Illinois

The Smoke Free Illinois Act banned smoking in public places, including casinos. The act took effect January 1, 2008. In 2008, casino revenue at Illinois casinos declined dramatically, but why? The Illinois Gaming Board ("IGB") Annual Report discussed the results:

There are two factors underlying the reductions in this year's gaming revenues. The first is the smoking ban implemented by the Smoke Free Illinois Act (Public Act 95-0017), effective January 1, 2008. According to the casino industry, implementation of this Act has caused the AGR [adjusted gross receipts] per admission

to fall. This is because habitual smokers take smoking breaks, during which time they do not engage in gaming activity. The second factor is the downturn in the Illinois and national economies. As a discretionary form of spending, gaming expenditures are especially prone to reductions during hard economic times. The relative importance of the above two factors has not yet been quantified with certainty.¹¹

Illinois casino gamblers also may have left Illinois casinos for casinos in neighboring states that permit smoking. Notably, Quad Cities, Saint Louis, and Chicago gaming markets straddle state lines. The Peoria market, however, is not near a state line and thus can serve as a benchmark for the gaming markets that include another state. As can be seen in Figure 6 below, Illinois as a whole experienced a 20.9% year-over-year decline in GGR in 2008. Revenues at the Peoria casino declined by 12.1%, which seems to indicate that proximity of smoking casinos increases the likelihood of switching.

Figure 6: Annual percentage change in selected Illinois casino markets

Market Portion	2007 vs 06	2008 vs 07	2009 vs 08	2010 vs 09	2011 vs 10	2012 vs 11	Total % Ch
IL Properties Chicago Market	2.6%	-21.7%	-14.1%	-4.0%	13.9%	16.1%	-12.5%
IL Properties St. Louis Market	6.3%	-19.2%	-9.3%	-9.8%	-2.5%	-0.3%	-31.7%
IL Property Quad City Market	-8.6%	-4.1%	105.6%	12.6%	8.1%	2.3%	145.7%
Peoria Market	1.4%	-12.1%	-1.5%	0.2%	0.2%	0.7%	-11.2%
ALL Illinois Markets	3.1%	-20.9%	-8.9%	-3.9%	7.6%	10.9%	-14.8%
Non IL Portion of Markets	-2.5%	1.7%	0.6%	2.5%	-1.9%	-1.1%	-0.7%

Source: Deutsche Bank

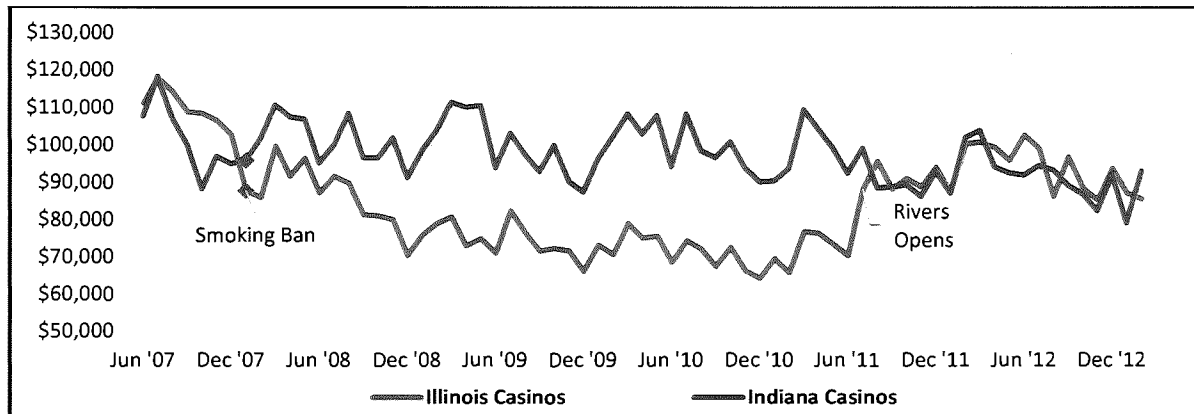
The performance was not uniform across the state or the markets. Several factors contribute to the varied results. Below we discuss these factors and review each sub-market.

1. Chicagoland

At the time of the implementation of the Illinois smoking ban in 2008, the Chicagoland casino market included nine riverboat casinos: four in Illinois (two in Joliet, one in Elgin, and one in Aurora) and five in Indiana (one in Hammond, one in East Chicago, two in Gary, and one in Michigan City). In 2008, the Illinois casinos experienced a significant decline in GGR while the casinos in Indiana saw increased revenue.

¹¹ Illinois Gaming Board Annual Report 2008. <https://www.igb.illinois.gov/AnnualReport.aspx>

Figure 7: Chicagoland casino market monthly GGR by state, June 2007-December 2012



Source: Deutsche Bank, Spectrum Gaming Group

The imbalance of GGR and the GGR trend are evident in Figure 7: The Illinois GGR share declined while the Indiana share increased.

In 2011, a tenth casino, Rivers Casino Des Plaines, opened in the Chicagoland market. Rivers is the only casino in Illinois’ Cook County. It is located five miles from Chicago O’Hare International Airport and easily accessible from the city of Chicago and its suburbs via interstate. Once the Rivers casino opened, the revenue balance shifted back to Illinois favor, despite the fact that Rivers, like all the other Illinois casinos, was a non-smoking property.

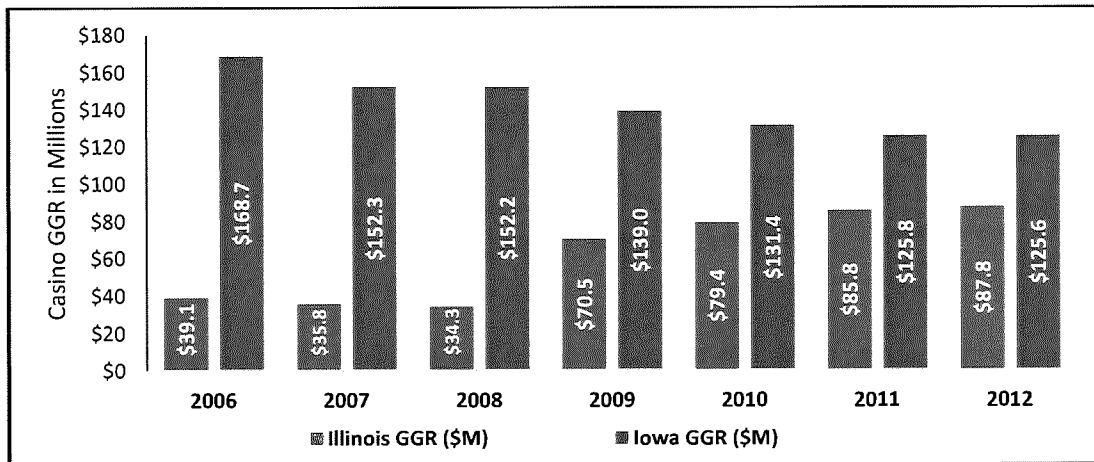
While it appears the smoking ban had a negative impact on GGR at the Chicagoland casinos in Illinois, the opening of a new, modern casino expanded the market and, from a market-wide perspective, limited the impact of the smoking ban.

2. Quad Cities

The Quad Cities gaming market includes Bettendorf and Davenport in Iowa and Moline and Rock Island in Illinois. For many years, the market was stable. Early on, there were three casinos in the market: two in Iowa and one in Illinois. The market is ideal for studying the impact of differing state regulations.

In December 2008, Jumer’s Rock Island casino in Illinois opened a new casino and hotel complex. This investment coincided with a surge in revenue at the property. Figure 8 below depicts the Quad Cities GGR by state from 2006 to 2012.

Figure 8: Quad Cities casino GGR by state, 2006-2012



Source: H2 Gaming Capital

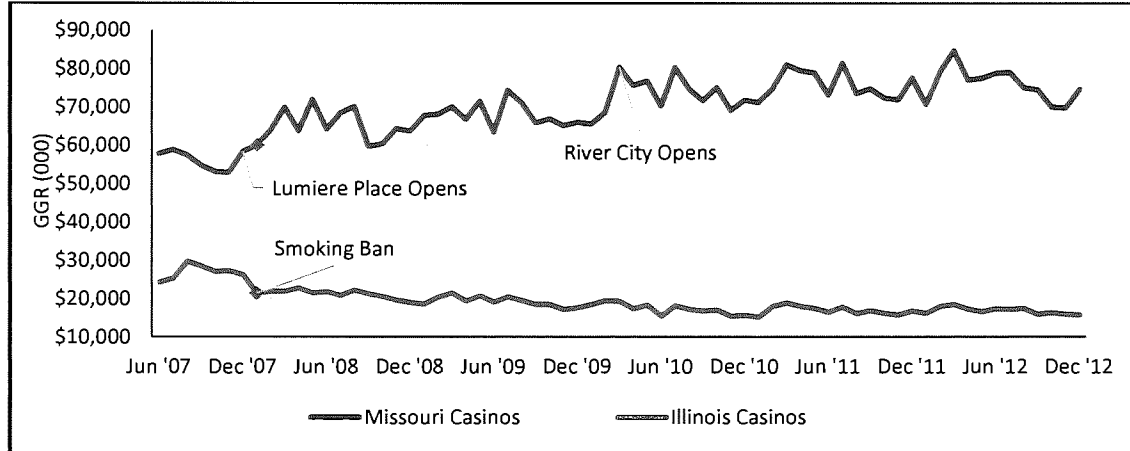
From the data presented above, it appears that the smoking ban had minimal impact on gaming revenues at the Jumer’s Rock Island casino in Illinois. Of more interest is that when the property was enhanced and updated after the smoking ban was implemented, casino revenues increased. The share of gaming revenue in Illinois grew despite – or perhaps because of – the smoking ban. Non-smoking patrons may have chosen the new, modern smokefree casino as a preferred alternative to less-appealing, first-generation casino boats in Iowa. We cannot know the motivations of the patrons, just the impact on GGR. It is notable that some players chose the new casino over casinos where smoking is permitted.

3. St. Louis

In 2006, there were four casinos in the St. Louis gaming market: two in Illinois (one in Alton, one in East St. Louis) and two in Missouri (one in St. Charles, one in Maryland Heights). In December 2007 – two weeks before the Illinois smoking ban took effect – the \$507 million Lumiere Place casino hotel opened in downtown St. Louis, giving the market a fifth casino. Later, in March 2010, River City casino opened south of downtown St. Louis, adding a sixth casino to the market.

Figure 9 shows the GGR performance of the St. Louis market, with key events indicated.

Figure 9: St. Louis area casino GGR by state, June 2007-December 2012



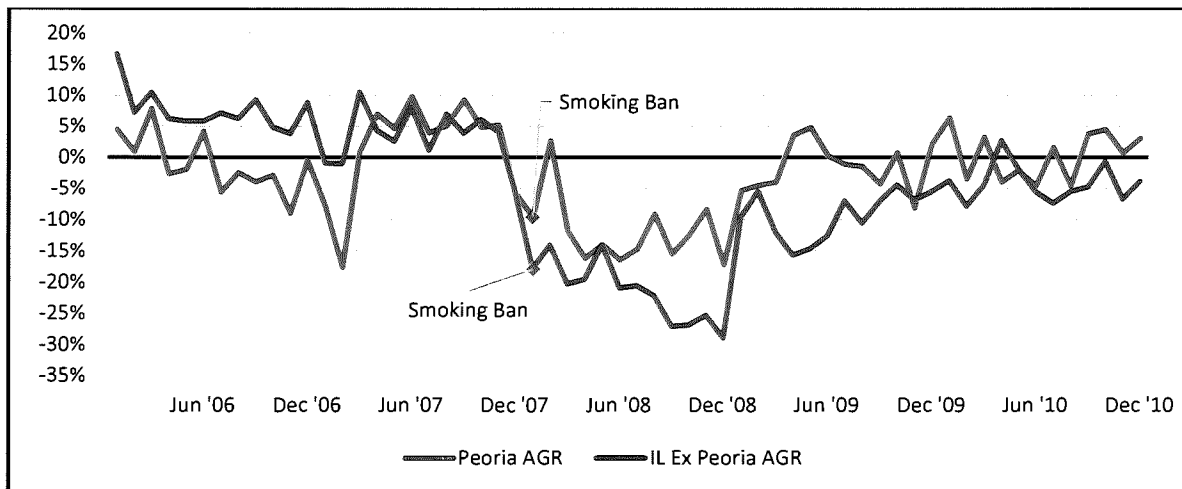
Source: Deutsche Bank

There is no real means to separate the impact of the smoking ban on Illinois casino revenue in the St. Louis market from the impact a new casino would have on offering a better product. There is clearly a jump in revenue on the Missouri side of the river, and a 10% decline in GGR at the Illinois casinos in the market. Spectrum cannot determine how much of the shift in revenues and growth of the market is due to a new casino and how much is due to the Illinois smoking ban.

4. Peoria

The Peoria gaming market is entirely within Illinois. The Par-A-Dice casino has been operating there since 1992, with no new casino entrants in the area. The closest casino competition is in the Quad Cities market, approximately 75 miles northwest of Peoria, and a casino in Burlington, IA. Because of its relative isolation, Spectrum believes the Peoria market provides a good benchmark to evaluate the impact of a smoking ban in a market without being affected by competing casinos where smoking is allowed.

Figure 10: Year-over-year AGR percentage change in Peoria and all Illinois excluding Peoria, 2006-2010

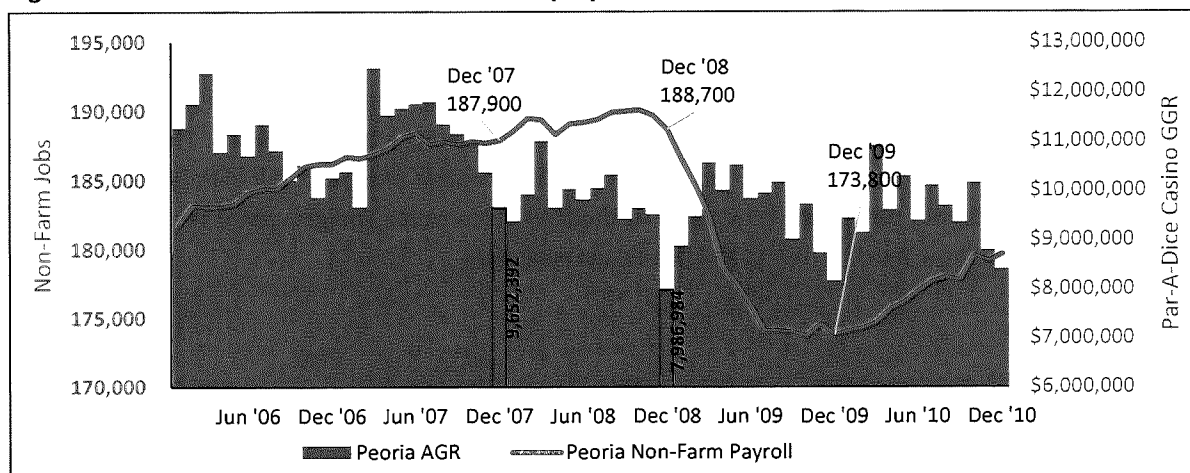


Source: Illinois Gaming Board. **Note:** AGR = adjusted gross receipts, essentially the same as gross gaming revenue.

Protected by distance from casinos where smoking was permitted, adjusted gross receipts, (“AGR”) at the Peoria casino declined but by less than the rest of the state. Figure 10 above presents the monthly year-over-year percentage change in AGR for five years. It can be argued that without smoking casinos for competition, local casino patrons had no choice but to visit the Peoria property. As a result, there was less of a swing to other states as was seen in other markets.

Another factor mentioned by the IGB in its annual report for 2008 was the recession that began that year. Figure 11 below presents total non-farm employees in the Peoria metropolitan statistical area (“MSA”) by month. It is clear that while employment fell dramatically in the MSA in 2009, there was a slight rise in payroll employment in calendar year 2008. This gives an indication that perhaps the smoking ban in Peoria Illinois was more of a cause of the revenue decline than the recession.

Figure 11: Peoria casino GGR and non-farm employment in Peoria 2006-2010



Source: St. Louis Federal Reserve

C. New Orleans

The New Orleans casino market includes four casinos in Louisiana and the casinos in the nearby Mississippi Gulf Coast cites of Bay St. Louis, Biloxi and Gulfport. Two of the Louisiana casinos, Harrah’s New Orleans and Fair Grounds Race Course & Slots, are located in Orleans parish. Two other casinos, Boomtown and Treasure Chest, are located in Jefferson Parish. Fair Grounds Race Course offers only slots whereas the other properties offer tables and slots. Because we are trying to measure the impact of smoking on play, we have focused on slot revenue for the Louisiana casinos for comparison purposes. The Mississippi Gulf Coast casinos are a longer drive from the New Orleans metro area but they permit smoking. In April 2015, Orleans Parish imposed a smoking ban on casinos.

The smoking ban appears to have benefitted nearby Treasure Chest in Kenner and Boomtown in Harvey at the expense of the Orleans Parish properties. In the following 24 months, the slot win at Harrah’s declined more than \$45 million and the slot win declined \$3.9 million at Fair Grounds; slot win increased at Boomtown and Treasure Chest in Jefferson Parish by a nearly \$11 million combined in this same timeframe. Revenue grew at the Mississippi Gulf Coast casinos. The Mississippi Gaming Commission

releases GGR data in total without breaking out slot and table revenue. We used the total GGR for the Mississippi casinos.

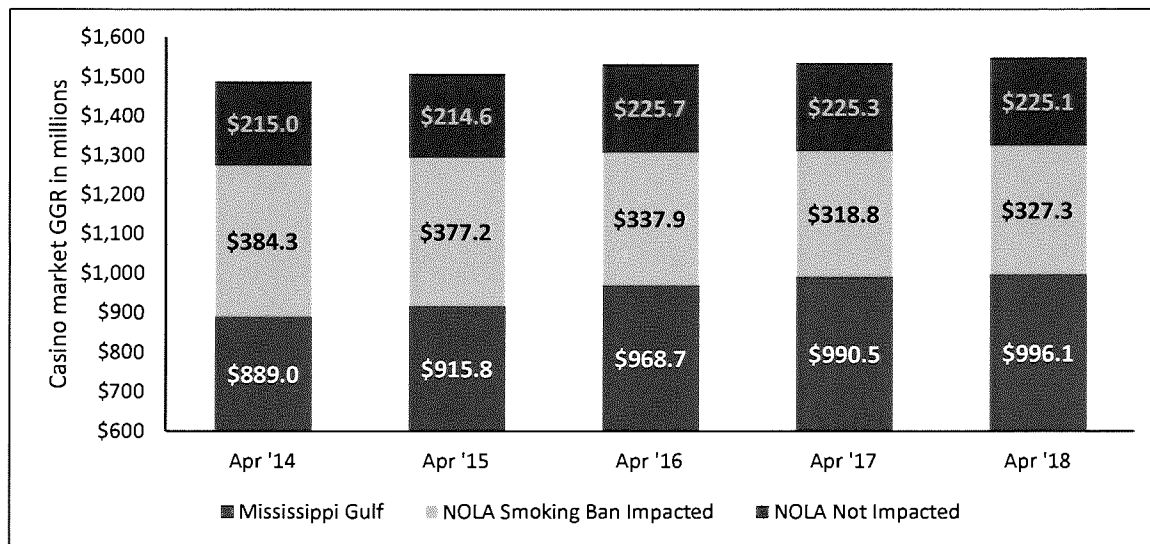
Figure 12: New Orleans market slot revenue LTM, April 2014-April 2018

LTM Slot Revenue (M)	April 2014	April 2015	April 2016	April 2017	April 2018	% Change, 2014-2018
Boomtown Harvey Slots	\$116.3	\$114.1	\$119.7	\$118.3	\$116.9	0.5%
Treasure Chest Slots	\$98.7	\$100.5	\$106.0	\$107.0	\$108.2	9.7%
Fair Grounds Slots	\$46.0	\$45.9	\$42.0	\$41.9	\$41.9	-8.9%
Harrah's New Orleans Slots	\$338.3	\$331.3	\$295.9	\$277.0	\$285.4	-15.6%
Coastal MS- All GGR	\$889.0	\$915.8	\$968.7	\$990.5	\$996.1	12.0%
Total	\$1,488.3	\$1,507.6	\$1,532.3	\$1,534.7	\$1,548.6	4.0%

Source: Spectrumetrix

Another factor is the continued investment and improvement of the Mississippi Gulf Coast casinos. As the coast casinos rebuilt after Hurricane Katrina, some moved to the landside of US Route 90, affording them with modern facilities that patrons may find more appealing than the older Louisiana riverboats. We have grouped the casinos into three segments: NOLA smoking-ban-impacted (Harrah's and Fair Grounds), NOLA not-smoking-ban-impacted (Boomtown and Treasure Chest), and Mississippi Gulf Coast. The chart below presents the slot win from each segment of the market in the years immediately before and after the smoking ban.

Figure 13: New Orleans market LTM slot and Mississippi GGR win by segment, 2014-2018



Source: Spectrumetrix

The Louisiana Gaming Control Board (“LGCB”) annual report includes estimates of the percentage of visitation from over 150 miles away by casino, total casino visits and revenue for each casino.¹² We have used these estimates to develop estimates of local visitation and revenue, as a means to assess the

¹² Louisiana Gaming Control Board Annual reports, 2014-2019. http://lgcb.dps.louisiana.gov/annual_reports.html

impact of a smoking ban on casino visitation patterns from local patrons where the cost of switching from a non-smoking to a smoking casino is minimal. The data in Figure 14 show that local casino visitation and revenue decreased in both the smoking and non-smoking properties, which may mean that Louisiana lost casino players and their gaming revenues to Mississippi.

Figure 14: Estimated local annual visits and slot win in New Orleans market Louisiana casinos

Estimated Local Visits	2014	2015	2016	2017	2018	2019	% Change from 2014
Smoking Casinos	2,023,000	1,929,000	1,989,000	1,873,000	1,699,000	1,680,000	-17.0%
Non-smoking Casinos	3,744,000	3,617,000	3,534,000	3,250,000	3,125,000	3,150,000	-15.9%
Total Est. Local Visits	5,767,000	5,546,000	5,523,000	5,123,000	4,824,000	4,830,000	-16.2%
Estimated Local Revenue (000)							
Smoking Casinos	\$190,210	\$179,060	\$185,360	\$183,770	\$180,810	\$179,830	-5.5%
Non-smoking Casinos	\$249,990	\$235,990	\$218,270	\$210,560	\$215,590	\$218,590	-12.6%
Total Est. Local Rev	\$440,200	\$415,050	\$403,630	\$394,330	\$396,400	\$398,420	-9.5%

Sources: Spectrumatrix, Louisiana Gaming Control Board

II. Summaries of Casino-Smoking Studies

Different organizations over the last three decades have studied various aspects related to cigarette smoking in casinos. The studies have been conducted by academic institutions, consulting firms, advocacy groups, and others. Following are Spectrum's synopses of studies that are most relevant to this report; i.e., those that relate to gaming revenues and smoking prevalence. Many other studies focus on the health aspects of smoking in casinos, but they are not included here because of the narrow scope of this report. We believe the synopses help to provide context for the discussion and analysis throughout this report. The synopses are presented in chronological order of the reports' publication dates.

2005: *Smoking Ban Economic Effect Analysis*¹³

Prepared by: PricewaterhouseCoopers

Scope of Study: In light of a proposed smoking ban in Delaware, PricewaterhouseCoopers LLP ("PwC") was hired to perform a preliminary analysis of the effect of the smoking ban on Delaware's three gaming facilities and, among other things, estimate the effect of a smoking ban on the Atlantic City casino market's gaming revenues.

Key Findings: PwC estimated the two-year cumulative effect on Delaware's adjusted gaming revenues would be -19.12%. It estimated the two-year cumulative effect on the adjusted gaming revenues for Delaware's Dover Downs would be -20.40%. It further estimated that if a smoking ban were to be effected in Atlantic City, the two-year cumulative effect on the adjusted gaming revenues for Atlantic City would be -20.40%.

Limitations: The study was done 16 years ago, and the numbers are projections rather than actual results. The study made certain assumptions, including that approximately 50% of the Delaware gaming market's customers are smokers and that the relative gaming spend of smokers is approximately 10% higher than non-smokers.

2005: *Smoke-free law did not affect revenue from gaming in Delaware*¹⁴

Prepared by: L.L. Mandel, B.C. Alamar, and S.A. Glantz (published in *Tobacco Control*)

Scope of Study: The study attempted to determine the effect of the Delaware smoke-free law on gaming revenue. The Delaware Clean Indoor Air Act took effect on November 27, 2002. It made virtually all of Delaware's public places and workplaces smoke-free, including the state's three racinos.

¹³ "Smoking Ban Economic Effect Analysis," PricewaterhouseCoopers, November 17, 2005. http://www.nigasp.org/wp-content/uploads/2014/05/i_economics_PWC-full-report.pdf

¹⁴ L.L. Mandel, B.C. Alamar, and S.A. Glantz, "Smoke-free law did not affect revenue from gaming in Delaware," *Tobacco Control*, 2005. <https://tobaccocontrol.bmj.com/content/tobaccocontrol/14/1/10.full.pdf>

The publication says that while previous studies had examined the effects of smoke-free laws and ordinances on the hospitality industry and charitable bingo, this was the first study to examine the effects of a state-wide smoke-free law on gaming revenue.

Key Findings: “The linear regression showed that the smoke-free law was associated with no effect on total revenue or average revenue per machine.”

Note: *Tobacco Control* later published a correction to this study. It said the article contained inaccurate results because of a data entry error. The correction stated that “(t)he analysis based on the corrected data confirms the results of the published paper, that the smoke-free law had no affect [*sic*] on revenue from gaming in Delaware.”

Limitations: The study was published in 2005. Unlike most studies synopsised in this chapter, this paper did not note any limitations of the study.

2006: Smoke-free law did affect revenue from gaming in Delaware¹⁵

Prepared by: M.R. Pakko (published in *Tobacco Control*)

Scope of Study: Pakko examines the data and methodologies used in the study by Mandel, Alamar, and Glantz (see above) and concludes that their finding is questionable. “Using more general approaches to controlling for heteroskedasticity and seasonality in the data, I find that both total gaming revenues and revenues per VLT declined significantly after the implementation of the Delaware smoke-free law.” According to the Corporate Finance Institute, “Heteroskedasticity refers to situations where the variance of the residuals is unequal over a range of measured values. When running a regression analysis, heteroskedasticity results in an unequal scatter of the residuals (also known as the error term). When observing a plot of the residuals, a fan or cone shape indicates the presence of heteroskedasticity. In statistics, heteroskedasticity is seen as a problem because regressions involving ordinary least squares (OLS) assume that the residuals are drawn from a population with constant variance. If there is an unequal scatter of residuals, the population used in the regression contains unequal variance, and therefore the analysis results may be invalid.”¹⁶

Key Findings: The author finds that the smoke-free law in Delaware did affect revenue from gaming. “This finding is statistically significant and quite robust. The public health benefits of smoke-free laws should be weighed against these (and other, similar) economic costs.” The author also disagrees with the original study’s contention that only the seasonal effects of winter are relevant. The author finds that the results reveal significant seasonal variation.

¹⁵ M.R. Pakko, “Smoke-free law did affect revenue from gaming in Delaware,” as published in PubMed Central, US National Library of Medicine, National Institutes of Health, 2006.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563623/>

¹⁶ “What is Heteroskedasticity,” Corporate Finance Institute.
<https://corporatefinanceinstitute.com/resources/knowledge/other/heteroskedasticity/> (accessed September 29, 2021)

In a separate summary, the author wrote: “After correcting for evident errors in that analysis, I find that the smoke-free law did affect revenues from gaming in Delaware. Total gaming revenues are estimated to have declined by at least \$6 million per month after the implementation of Delaware’s Clean Indoor Air Law. This represents a loss of over 12% relative to average monthly revenues in the year preceding the smoking ban.”¹⁷

Limitations: The disagreement between the two Delaware impact studies cited comes down to interpretation of statistics.

2006: *The Percentage of Gamblers Who Smoke: A Study of Nevada Casinos and other Gaming Venues*¹⁸

Prepared by: Dr. Chris A. Pritsos, University of Nevada Reno

Scope of Study: Authors attempted to determine actual percentage of gamblers in Nevada who smoke. Gaming industry officials and lobbyists say the percentage is upward of 70%, based on anecdotal information obtained in a survey of casino executives. Health organizations suggest the number is more in line with the national average of smokers, which at the time was 20.9%.

Key Findings: Authors say they observed 17,723 gamblers, of whom 1,335 were smoking. Because smokers don’t smoke constantly, the study used a methodology published in 1980 by Repace and Lowry to determine the number of smokers in a room. The results from the three tourist centers of Nevada they surveyed (Las Vegas, Reno/Sparks and Lake Tahoe) gave similar results for the percentage of smokers (21.5, 22.6 and 17.0 respectively). Observations of smaller casinos in rural communities showed higher smoker rates amongst gamblers of 36.5%, which, the authors wrote, most likely reflects the higher percentage of smokers in these communities and the fact that much of the gaming patronage is from locals. The percentage of gamblers who smoke at local grocery, drug and convenience stores that have slot machines in Nevada is also higher, with a rate of 42%.

Overall, the results of this study suggest that the percentage of smokers at tourist destination gaming establishments is reflective of the overall percentage of smokers in the population. The percentage of smokers at small rural or non-tourist dependent gaming establishments may better reflect the percentage of smokers in that local area/community than that of the overall US population.

Limitations: The study was published 15 years ago. Authors acknowledge that the methodology used to count smokers might overestimate the number of smokers (because it assumes all smokers are habitual smokers, when 19.2% of smokers do not smoke every day, according to a 2005 report in *Morbidity and Mortality Weekly*). The study was limited to gamblers on the casino floor. Players in the smoke-free poker rooms and people seated at bars in the casino were not included in the study. Authors

¹⁷ M.R. Pakko, “Smoke-free law did affect revenue from gaming in Delaware,” *Semantic Scholar*, 2006. <https://www.semanticscholar.org/paper/Smoke-free-law-did-affect-revenue-from-gaming-in-Pakko/d21c6fd10dfa735b89789da130a7f6a382aef5c9>

¹⁸ Dr. Chris A. Pritsos, “The Percentage of Gamblers Who Smoke: A Study of Nevada Casinos and other Gaming Venues,” University of Nevada Reno, 2014. <https://core.ac.uk/display/100466600>

acknowledge that the small number of gamblers observed at grocery stores, convenience stores and high-minimum table games (except in the Las Vegas Strip casinos) made the sample sizes in those subcategories too small to be meaningful.

2010: *The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois*¹⁹

Prepared by: Federal Reserve Bank of St. Louis

Scope of Study: This study explored the effects that the Illinois state smoking ban, which took effect at the beginning of 2008, had on Illinois casino revenue, casino attendance, and casino tax revenue. The study compared the performance of Illinois casinos with out-of-state casinos (where there was no smoking ban) that share a market with Illinois casinos.

Key Findings: The results indicated that Illinois casinos suffered losses of more than 20% – well over \$400 million – in total during the first year of the Smoke Free Illinois Act.

“Some of this loss appears to be associated with casino patrons gambling less when they do attend the casinos, and part of the loss is also evident in declining attendance. We find that the impact of the smoking ban on total admissions amounts to around 10%, with our point estimates indicating a downturn in the range of 9 to 13%. These estimates imply total casino tax revenue was lower by roughly \$200 million. The economic effects of the Smoke Free Illinois Act — specifically with regard to casino revenue and government tax receipts — represent only part of the Act’s overall impact. In a full analysis, these effects need to be considered alongside costs and benefits, including the public health benefits of the legislation.” The authors wrote that their findings “are consistent with the survey results of Petry and Oncken (2002), which suggests that smoking patrons visit casinos more often and wager more money. The results ... suggest that smoking patrons continued to visit the casinos, but perhaps did not visit as often, stay as long, or wager as much as they did before the ban.”

The study found that the one casino that seemed least affected by the smoking ban was the one that faces the least competition – the Par-A-Dice casino in Peoria. Its location in the center of the state sets it approximately 90 miles from the nearest competition.

Limitations: The study was limited to casinos in Illinois and certain surrounding states. Also, the authors acknowledge that the timing of the Illinois smoking ban coincided with a general economic downturn in Illinois and the nation as a whole. That makes it hard to assess how much a decline in casino revenue was caused by the economic downturn and how much was caused by the smoking ban, although the authors “attempted to statistically disentangle the factors underlying the decline in Illinois casino revenue.”

¹⁹ Thomas A. Garrett, and Michael R. Pakko, “The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois,” Federal Reserve Bank of St. Louis, March 2010. <https://doi.org/10.20955/wp.2009.027>

2011: Consumer Attitudes and Visit Intentions Relative to a Voluntary Smoking Ban in a Single Casino Resort with a Dense Competitive Set²⁰

Prepared by: Gregory T. Bradley and Cherylynn Becker, University of Southern Mississippi (published in Academy of Health Care Management Journal)

Scope of Study: The study was conducted to assess the feasibility of implementing a voluntary smoking ban at a major casino resort in an established regional gaming market in the southeastern United States. While, according to the most recent statistics, the smoking incidence rate across the country is 18.4%, the population under study has one of the highest regional smoking rates in the country at 22.4% (Centers for Disease Control, 2010). As such, the primary objectives of this research were to assess smoking rates among gamblers within the prescribed population, and, subsequently, to determine how the hypothetical implementation of a voluntary smoking ban at a single property in this competitively dense market would affect the attitudes and behaviors of gamblers with regard to modifying their casino choice and visitation frequency.

Key Findings: Based on data collected for a large-scale research study, it was found that there was a substantial difference between smokers and non-smokers in attitudes, perceptions, and behavioral intent regarding the elimination of smoking at their favorite casino or another casino in the market.

- Gamblers reported a smoking rate that was actually lower (18.4%) than the smoking rate in the defined population (22.4%). However, it should be noted that the authors did not distinguish between frequent and infrequent visitors to casinos. The only requirement for participation in the study was to have gambled in that market.
- Smokers expressed a strong likelihood of migrating to a smoking casino if their favorite casino were to institute a voluntary smoking ban. This finding, of course, was not at all surprising based on the aforementioned literature. However, the relative strength of the response should send a message to casino operators that a careful evaluation of the smoking habits of their core customer base is critical prior to instituting a voluntary smoking ban.
- Non-smoking gamblers expressed a strong likelihood of migrating to a non-smoking casino if a competitive casino were to institute a voluntary smoking ban. The strength of this likelihood was as robust as the likelihood of smoker migration in a smoke-free environment.
- Non-smoking gamblers expressed a strong likelihood to visit a non-smoking casino more often than their current favorite casino.
- It was found that air quality in casinos was significantly more important to non-smokers than to smokers.

²⁰ Gregory T. Bradley and Cherylynn Becker, "Consumer Attitudes and Visit Intentions Relative to a Voluntary Smoking Ban in a Single Casino Resort with a Dense Competitive Set," Academy of Health Care Management Journal, Volume 7, Number 2, 2011.

https://www.bradleyresearchgroup.com/uploads/1/3/4/0/134099823/bradley_and_becker_-_ahcmj_smoking_research.pdf

- Non-smokers with a non-smoking spouse or significant other were more likely than non-smokers with a smoking spouse or significant other to indicate the intent to migrate to a non-smoking casino.

Limitations: The authors acknowledge that a potential limitation in this study surrounds the issue of unqualified generalizability. The sampling area was purposive, while the data extraction method within the selected areas was stratified and random. Moreover, participants were selected based on whether they had gambled in the subject casino market. In this inquiry, frequency of visitation or estimated gaming budget was not weighted based on volume. Hence, customers with a low lifetime gaming worth were equally as influential in the study as visitors with a high lifetime gaming worth.

2012: Tribal casinos in California: the last vestige of indoor smoking²¹

Prepared by: BMC Public Health

Scope of Study: Native American casinos were exempt from California’s ban on smoking in public places. The authors analyzed results from the 2008 California Tobacco Survey to research the smoking status of casino patrons, their avoidance of secondhand smoke while visiting, and their views on a hypothetical smoking ban in the Native American casinos.

Key Findings: The data indicate that a ban on smoking in tribal casinos would increase casino visitation, possibly resulting in greater revenue and greater customer satisfaction. If casinos became smokefree, then it is anticipated that they would be visited by a significantly larger number of Californians, including both past casino patrons and those who otherwise would not have visited a casino.

According to the study, “The prevalence of cigarette smoking was considerably higher in casino patrons (17.6%) compared to non-patrons (10.4%), but, not nearly as high as the 50% estimate reported by gaming lobbyists.” Adjusting for demographic variables, current smokers were approximately twice as likely to have visited an Indian casino compared to “never smokers.”

A majority of casino patrons, 60.8%, attempted to avoid secondhand smoke by moving around the casino. This varied considerably by smoking status as reported by 71.8% of the never smokers, 64.5% of the former smokers, and 20.4% of current smokers.

A total of 42.7% of casino patrons indicated that they would extend their stay if smoking were prohibited; another 48.8% reported that their stay would not be affected by such a ban; and the remaining 8.5%, predominately smokers, reported a shortened stay if there were such a ban.

In a separate question asked among all participants (not just casino patrons), 24.3% expressed a greater interest in visiting a casino if smoking were prohibited, 6.3% expressed a diminished interest, and 69.4% expressed indifference.

The authors conclude that, “Similar to the smoking bans in restaurants and bars in California, a smoking ban in tribal casinos is unlikely to affect casino businesses negatively.”

²¹ Timberlake et al.: Tribal casinos in California: the last vestige of indoor smoking. BMC Public Health, February 25, 2012. <https://bmcpublihealth.biomedcentral.com/articles/10.1186/1471-2458-12-144>

Limitations: The study was published in 2012, based on results of a 2008 survey. It was based on a survey of people in California, where smoking prevalence is lower than the overall smoking prevalence in the United States (e.g., 15.2% vs. 20.9%, respectively, in 2005, according to the Centers for Disease Control). Part of the study was based on a hypothetical smoking ban in Native American casinos, the details of which could be perceived differently by various respondents. According to the study itself, “[t]he primary weakness of this study was the lack of information on the last visited casino and residential addresses of participants; thus, a crude estimation was based on number of slot machines and proximity of a casino to a participant’s geocoded centroid. Further, most study participants were sampled in regions in California where casinos are sparse, an additional complication to our estimation. However, our assertion that proximity was a prime determinant of the last visited casino was warranted, given the significant association between casino visitation and residence in a casino-populated region. ... Our study was also hampered by a use of a cross-sectional design; use of different methods in ascertaining a casino’s non-smoking section (i.e. visit vs. telephone call); lack of data on actual smoking in a casino; and location where exposure to smoke occurred (e.g., slot machines vs. card tables).”

Spectrum Update: According to a 2019 article in the *San Francisco Chronicle*, only three of California’s 69 tribal casinos were smokefree.²²

2014: Casinos, Smoking Bans, and Revenues: A Survey of Casino Gamblers in Illinois²³

Prepared by: Clyde W. Barrow and David R. Borges of the Center for Policy Analysis at the University of Massachusetts Dartmouth (published in *Gaming Law Review and Economics*)

Scope of Study: The American Lung Association of the Upper Midwest approached the Center for Policy Analysis and commissioned a poll of Illinois casino gamblers – similar to the New England Gaming Behavior Survey, which is also conducted by the Center for Policy Analysis – to determine whether the smoking ban that became effective January 1, 2008, was a significant factor in the subsequent downturn in gross gaming revenues at Illinois’ riverboat casinos.

In the 2011 New England survey, “We found that contrary to conventional industry wisdom, among gamblers who had actually visited a casino or racino in the last twelve months, 53% said they are more likely to visit a casino where smoking is prohibited on the gaming floor, while 32% said it does not matter, and only 15% said they would be less likely to visit a casino where smoking is prohibited on the gaming floor. ... Moreover, 47% of the respondents who had not visited a casino or racino in the last twelve

²² Michael Cabanatuan, *San Francisco Chronicle*, December 27, 2019. “Tribal casinos remain last refuge for California smokers, at least for now. <https://www.sfchronicle.com/bayarea/article/Smoking-allowed-Tribal-casinos-remain-last-14922820.php#:~:text=Because%20the%20California%20tribes%20are,casinos%20are%20entirely%20smoke%20Dfr ee.&text=Tribal%20casinos%20make%20bold%20play%20to%20control%20sports%20betting>

²³ Clyde W. Barrow and David R. Borges, “Casinos, Smoking Bans, and Revenues: A Survey of Casino Gamblers in Illinois,” *Gaming Law Review and Economics*, August 19, 2014. <https://www.liebertpub.com/doi/abs/10.1089/glre.2014.1865?journalCode=glre>

months said they would be more likely to visit a smoke-free casino, which signals the potential availability of a large untapped market cache of casino patrons.”

Key Findings: The survey found that 45% of Illinois’s casino gamblers report that they are more likely to visit a casino where smoking is prohibited on the gaming floor, 31% say it does not matter, and only 24% state they are less likely to visit a casino where smoking is prohibited on the gaming floor.

“In other words, more than three-quarters (76%) of Illinois’s casino gamblers report that they either prefer, or are indifferent, to smoking prohibitions on the gaming floor.”

Industry officials who are against smoking bans in casinos “typically argue that if 21% of the casinos’ customer base are unhappy with smoking prohibitions, that is sufficient to account for the documented decline in the state’s gross gaming revenues. They typically point to New Jersey and Colorado as supporting examples, in conjunction with Illinois. The Center for Policy Analysis’ Illinois survey actually found that more than one-third (36%) of casino gamblers who smoke report that they, too, either prefer a smoking prohibition on the gaming floor (13%) or that it does not matter to them (23%).

The survey also found that smokers do not constitute a disproportionate percentage of casino gamblers in comparison to smoking prevalence in the state’s general adult population—20% of adults aged 21+ who gamble at casinos were self-identified smokers, as compared to 21% of the general adult population aged 18+.

According to the authors, Illinois has one of the highest prevalence rates for smoking in the United States, with 21.3% of the adult population reporting that they were current cigarette smokers (2007-2008).

Limitations: The study was limited to people of one state. The survey had a margin of error of +/- 4.9% at the 95% confidence interval, according to the authors.

2015: Six Months after Implementation of a Smoke-Free Ordinance: Harrah’s New Orleans²⁴

Prepared by: Mississippi State University

Scope of Study: Authors examined statistics from Harrah’s New Orleans casino before and after a smoke-free ordinance to see what such a law might mean to Mississippi casinos.

Key Findings: Authors state that although year-over-year revenue was more volatile during the six months after the no-smoking ordinance, the average decrease did not differ substantially for the six months before (-7.0%) and six months after the ordinance (-6.5%). Furthermore, year-over-year revenue for the Louisiana riverboat casinos – which were not affected by the smoking ordinance – did not increase after the implementation of the smoke-free ordinance in April, providing no support for concerns that gamblers would turn to these casinos in order to smoke and play. Admissions data showed that Harrah’s experienced decreased admissions each month (compared with the same month a year earlier) for the six months prior to the smoking ordinance. However, after the smoking ordinance took effect, the downward

²⁴ “Six Months after Implementation of a Smoke-Free Ordinance: Harrah’s New Orleans” Mississippi State University, 2015. https://mstobaccodata.org/wp-content/uploads/2015/08/Harrahs_factsheet.pdf

trend ended and increased year-over-year admissions continued for the first six months after the ordinance.

Limitations: The study is not scientific. Six months is not enough time to evaluate the impact of the smoke-free ordinance on business. There is no discussion of what other factors might have affected the GGR and admissions figures either before or after the ordinance took effect.

2019: Attitudes Toward Smoke-Free Casino Policies Among US Adults, 2017²⁵

Prepared by: Michael A. Tynan, Teresa W. Wang, Kristy L. Marynak, Pamela Lemos, and Stephen D. Babb (published in *Public Health Reports*)

Scope of Study: The authors examined attitudes toward smokefree casino policies among US adults. During June and July 2017, they used a web-based survey to ask a nationally representative sample of 4,107 adults aged 18+ about their attitudes toward smoke-free casinos.

To assess attitudes toward smoke-free casino policies, respondents were asked, “Do you favor or oppose smoke-free policies that prohibit smoking tobacco in all areas of a casino?” Response options included “strongly favor,” “somewhat favor,” “somewhat oppose,” and “strongly oppose.” Adults who responded “strongly favor” or “somewhat favor” were considered to favor smoke-free casino policies

Key Findings: Among 4,048 respondents aged 18+, a weighted 75.0% favored smokefree casino policies, including respondents who visited casinos about once per year (74.1%), several times per year (75.3%), and at least once per month (74.2%).

Although the sociodemographic characteristics of respondents who favored smokefree casino policies varied, the majority in each group, except current smokers (45.4%), supported smokefree policies. Allowing smoking inside casinos involuntarily exposes casino employees and visitors to SHS, a known and preventable health risk. Further assessment of public knowledge and attitudes toward smokefree casinos at state and local levels may help inform tobacco control policy, planning, and practice

Overall, 75.0% of US adults favored (55.1% strongly favored and 20.0% somewhat favored), 13.6% somewhat opposed, and 11.4% strongly opposed smoke-free casinos. Favorability was 71.5% among men and 78.3% among women.

By age, favorability ranged from 71.7% among adults aged 25-44 to 81.6% among adults aged 65+; by race/ethnicity, from 66.4% among non-Hispanic black adults to 80.4% among non-Hispanic other adults; by education level, from 63.4% among adults who did not graduate from high school to 81.7% among adults with a college degree; by income, from 66.7% among adults with <\$30 000 in annual household income to 80.8% among adults with >\$150 000 in annual household income; and by US Census region, from 72.4% in the South to 77.4% in the West. Smoke-free casinos were favored by 75.1% of adults

²⁵ Michael A. Tynan, Teresa W. Wang, Kristy L. Marynak, Pamela Lemos, Stephen D. Babb, “Attitudes Toward Smoke-Free Casino Policies Among US Adults, 2017,” *Public Health Reports*, vol. 134, 3: pp. 234-240, March 21, 2019. <https://journals.sagepub.com/doi/full/10.1177/0033354919834581>

who reported going to casinos, with similar favorability among respondents who visited casinos about once a year (74.1%), several times a year (75.3%), and at least once a month (74.2%).

Favorability ranged from 65.5% among adults who visited casinos about once every two years to 80.6% among adults who visited casinos every three years or more.

By smoking status, favorability ranged from 45.4% among current cigarette smokers to 81.9% among never smokers and from 56.7% among current users of other noncigarette tobacco products to 77.2% among never users.

Limitations: According to the authors, the study had three limitations. First, the web-based survey does not recruit participants by using population-based probability samples, and, thus, the study may have limited generalizability. However, these data were weighted to be nationally representative, and previous tobacco-use estimates have been consistent with findings from other large national household surveys. Second, data were self-reported, which could result in misreporting of tobacco product use behaviors and frequency of casino visits. Finally, the cross-sectional design of the survey precluded establishing any causal relationships between the assessed covariates and attitudes toward smoke-free casino policies.

2019: Assessing the Economic Impact of Eliminating Secondhand Smoke in Northern Nevada Workplaces²⁶

Prepared by: Mehmet S. Tosun, Mark Nichols, and Ethan Grumstrup of University of Nevada Reno

Scope of Study: To study the possible effects of a smoking ban in Washoe County, NV, the authors studied three jurisdictions that had implemented a smoking ban: Illinois, Colorado, and New Orleans.

Key Findings: Illinois has 10 casinos statewide, most of which are located near the borders of other states. Those states also have casinos located near their borders that allow smoking. The authors theorized that the smoking ban's impact on Illinois casinos could be negative if Illinois gamblers who smoke travel to other states, or positive if non-smokers in Illinois or the surrounding states visit Illinois casinos.

Colorado has numerous, small commercial casinos located in three mountain resort communities. There are no other casinos within a five-hour drive of the commercial casinos, so the authors expected that any impact of a smoking ban would be minimized as smokers have few alternatives.

New Orleans has one casino and is a major tourist destination. It is also one of the few cities to implement a ban where there is no corresponding statewide ban.

Based on comparing several jurisdictions that implemented a smoking ban with others that did not, this analysis suggests that the impact of smoking bans ranges from having no impact to a substantial

²⁶ Mehmet S. Tosun, Mark Nichols, Ethan Grumstrup, "Assessing the Economic Impact of Eliminating Secondhand Smoke in Northern Nevada Workplaces," University of Nevada Reno, June 9, 2019. https://www.smokefreetruckeemeadows.org/sites/default/files/2020-03/Economic%20Impact%20Assessment%20Presentation%2006_13_19.pdf

negative impact. There is no widespread evidence of a positive impact following a smoking ban. In the authors' analysis, the largest negative impact, at nearly 20%, is found in Illinois. Illinois faces substantial competition from casinos in nearby states where smoking is still permitted. Colorado, in contrast, shows no significant long-term impact from the smoking ban. Colorado is a jurisdiction where few competing casinos in surrounding areas exist and likely a more health-conscious state. The impact in New Orleans is less than Illinois and more than Colorado. These results suggest that providing a specific, precise estimate of the impact of a smoking ban on casino performance is fraught with danger.

Revenue in Illinois decreased dramatically following the implementation of the smoking ban. The authors note that revenue had been declining prior to the smoking ban and that the ban was implemented during the Great Recession. While taking those factors into account, the authors conclude that the smoking ban had a significant negative impact on casino revenue.

The change in Colorado is much less dramatic. While casino revenue in Colorado declined slightly following the smoking ban, it later stabilized. The authors concluded that the smoking ban in Colorado had no long-term impact on revenue.

The authors note "two important caveats" to this analysis. First, the economic impact estimates presented here are short-term rather than long-term estimates. The results suggest that there is likely to be a negative short-term impact on casino revenue and employment as a result of a smoking ban. The longer-term impact on casino revenue and employment is much more difficult to predict as economic conditions, smoking rates, and gambling opportunities (e.g. online and mobile gambling) will all change. Secondly, the economic impact estimates do not incorporate any health benefits resulting from a smoking ban. Improved worker productivity, and fewer sick days as well as improved health of non-smoking casino patrons are important considerations not factored into the estimates.

Limitations: Authors acknowledge that none of the other jurisdictions studied are a perfect match for Washoe County, Nevada. Study looked at overall economic impact, of which GGR was but one part.

2020: Expanding smoke-free communities: attitudes and beliefs surrounding smoke-free casinos and bars in Washoe County, Nevada²⁷

Prepared by: Eric Crosbie et al, University of Nevada Reno (published in *Journal of Hospital Management and Health Policy*)

Scope of Study: A team of University of Nevada Reno researchers surveyed residents of Washoe County to determine their feelings toward a law that would prohibit smoking in all Washoe County casinos (and also bars). Washoe County is the second-most-populous county in Nevada. Reno is the county seat.

Key Findings: The web-based survey found that 60% of Washoe County residents (and 74% of non-smokers) indicated they would favor a law prohibiting tobacco smoking in all casinos in Washoe County. Only 24% of residents (and 15% of non-smokers) oppose the prohibition of tobacco smoking in

²⁷ Eric Crosbie et al, "Expanding smoke-free communities: attitudes and beliefs surrounding smoke-free casinos and bars in Washoe County, Nevada," *Journal of Hospital Management and Health Policy*, September 2020. <https://ihmhp.amegroups.com/article/view/6326/html>

casinos. 77% of residents dislike smelling like smoke after visiting a casino or bar and 65% agree that smoke bothers them in these establishments. A majority of residents would both be more likely to visit a casino and bar and also find them more enjoyable if they were completely smoke-free. 79% of residents believe customers should be able to breathe smoke-free air while only 21% believe businesses should be able to decide.

According to the authors, in 2006, a statewide survey showed that 52.9% of Nevadans were in favor of casinos being exempted from the Nevada Clean Indoor Air Act, which was approved by Nevada voters in 2006. That act prohibited smoking in most public places.

Limitations: The study was limited to residents of one Nevada County. According to the authors, “(a)lthough the focus groups were primarily used to construct and develop the survey, the demographics of focus group participants were not representative of the population of Washoe County as a whole. The usage of large panel surveys are supported in similar study designs but there is some skepticism of their usage in the field. The survey sample in this study was recruited through Qualtrics™, and cannot be considered a probability sample. The survey sample was demographically different from population level estimates with regard to race/ethnicity and gender. In addition to differences between our sample and the general population, it is possible that our sample also differs from populations of casino-patrons (e.g., visitors from California) and casino-employees.” Also, the study indicated that 97% of survey respondents had been to a casino in Washoe County. “The most common reasons cited by participants for visiting Washoe County casinos were dining (76% of participants), gaming (52%), and shows (26%).” There is no indication that the survey separated gamblers from residents who went to the casino just to visit a restaurant or go to a show.

III. Casinos and Smoking in Atlantic City: Policy, Perceptions and Performance

A. Consequences of New Jersey Tobacco Policies

Organizations focused on advancing anti-smoking policies give New Jersey mixed grades, ranging from A to F on various policy specifics. For example, New Jersey receives a failing grade from the American Lung Association for its funding of tobacco-control programs, in that the state has allocated \$7.8 million in FY 2021 for such programs, which is less than 10% of what the Centers for Disease Control recommend as best practices for such programs.²⁸ To put that funding in context, New Jersey generates approximately \$854.2 million annually from what the American Lung Association refers to as “tobacco-related revenue.”²⁹

By contrast, New Jersey has earned an A from the association for its clean-air practices, which include prohibiting smoking in all workplaces, as well as in restaurants, schools, child-care facilities, retail stores and bars (with the exception of cigar bars and lounges), and notably the state has penalty and enforcement provisions in place.³⁰

One glaring exception to the state’s widespread anti-smoking policy is the Atlantic City casino industry, whose members are allowed under a local ordinance to allow smoking in up to 25% of the casino floor space, and the American Lung Association duly notes that exception and has urged that it be eliminated. That exception allows for a scenario in which Atlantic City casinos become a more attractive recreational outlet for smokers.

As noted in Figure 2 of this report, Pennsylvania has a higher smoking prevalence than New Jersey: 17.0% to 13.1%. In 2008, the last year in which a reliable survey of Atlantic City visitors was conducted, smokers comprised 23.5% of the visitor base.³¹ That same year, the percentage of adults who smoked was 14.8% in New Jersey and 21.4% in Pennsylvania.³²

Although more current data on the percentage of casino visitors who smoke is not available, the data trends allow for a reasonable extrapolation that smoking is more prevalent among casino patrons than it is in the general population.

²⁸ “State of Tobacco Control 2021: New Jersey,” American Lung Association, <https://www.lung.org/research/sotc/state-grades/new-jersey> (accessed August 13, 2021)

²⁹ Ibid.

³⁰ Ibid.

³¹ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 140. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

³² Centers for Disease Control, “State-Specific Secondhand Smoke Exposure and Current Cigarette Smoking Among Adults --- United States, 2008.” <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5844a3.htm#tab2>

If anything, macro trends in anti-smoking policies since 2008 would support the conclusion that the gulf is even wider today, with smokers still likely comprising more than 20% of Atlantic City casino patronage. That assumption rests on the reality that the restrictions on smoking have materially expanded since 2008, now encompassing nearly every public entertainment option, a reality that in turn makes Atlantic City casinos a more prominent oasis for smokers.

The calculus through which adults select their entertainment options is broad and complex, ranging from convenience to cost to various other preferences. The ability to smoke in public may be a factor for adults who cannot indulge in smoking at movies, bars, restaurants or shopping outlets.

While the level of that preference cannot be definitively determined, its existence can reasonably be presumed as a factor that accounts for the demographic differences among casino visitors. To put that another way, if smoking were banned at casinos in New Jersey, Pennsylvania and Connecticut, the demographics among casino visitors would likely adhere more closely to the demographic mean. The appeal of casinos to smokers would likely diminish under such a scenario.

That consequence of New Jersey's smoking policy is clearly unintended, but is nonetheless real.

B. Estimating the Percentage of Gamblers Who are Smokers

Policies in New Jersey that were designed to limit smoking areas and expand smoke-free zones clearly have made smokers a more prominent segment of the gaming customer base than would otherwise be reflected in their share of the overall adult population.

Relying on the 2008 ratio of smokers who patronize casinos vs. smokers in the general population (23.5 to 14.8), we can reasonably assume a delta of at least 8 points, which would indicate that at least 21% of the adults who patronize Atlantic City casinos are smokers. The 21% estimate is in the range observed by casino employees interviewed by Spectrum for this report; management tended to estimate a higher percentage are smokers – around 25% – while casino-floor workers tended to estimate a lower percentage – around 15% to 20%.

Enacting a smoking ban would not translate into a loss of all or most of those adults. Rather, because it would put casino entertainment on a level playing field with all other forms of entertainment, gaming would lose its distinct appeal for smokers, meaning that the percentage of Atlantic City casino visitors who smoke would likely decline to about 13%, roughly equal to the ratio of smokers to the general adult population in New Jersey. The percentage of casino visitors who smoke could drop below that mean, however, if smoking options in other states were sufficiently convenient and attractive.

The competitive problem, indeed, becomes more acute for Atlantic City casinos when they are competing for patrons from those regions in which a smoking casino would be roughly equidistant, or even closer geographically for smokers. This includes significant population centers in Camden, Burlington, Mercer and other areas of southern New Jersey (making Pennsylvania casinos more attractive) as well as areas such as Bergen County or other sections of northern New Jersey that would be closer to casinos in Connecticut, as well as to casinos in eastern Pennsylvania. An independent junket operator told Spectrum that smokers still will play at a casino that is most convenient despite smoking restrictions, but

that if a smoking casino and a nonsmoking casino are equidistant – or even if the smoking casino is slightly farther away – they will choose the smoking casino.

C. The Value of Smokers vs. Non-Smokers

Although casinos know their customers well through player tracking and database analytics, they are not known to segment their players by smoker vs. non-smoker from a database perspective. Atlantic City casino operators do, however, track the performance of games in their smoking sections vs. their non-smoking sections. Spectrum interviewed property heads and/or finance heads at seven of the nine casinos, and each executive said that based on the comparative performance of those sections, smokers have a higher value than non-smokers. Six of them provided specific data points since the temporary smoking ban was lifted on July 4, 2021:

- One casino president told Spectrum that 43% its slot machines were in the designated smoking section.³³ Among those slots, those with video reels had an average daily win per unit (“WPU”) that was 33% above those in the non-smoking section, and those with spinning reels had a WPU that was 53% above those in non-smoking section.
- One casino president said the slot machines in its smoking section from July 4 through August performed at 91% above those in the non-smoking section on a WPU basis. This casino president further said that the table games in smoking pits performed 72% higher than those in the non-smoking pits on a WPU basis – with the high-limit games removed to ensure an apples-to-apples comparison.
- One casino president said that for August 2021, the WPU for all gaming devices in the smoking sections was 40% higher than those in the non-smoking sections. The general manager of a second casino gave an identical figure.
- One casino general manager said the slots in the smoking section were performing at more than three times the level of those in the non-smoking sections on a WPU basis.
- One casino general manager said that when the casino reopened smokefree in July 2020, the occupancy rate – i.e., the percentage of slot or table game seats that are filled at a given time – in the high-limit slot area was about 20% to 25% for the remainder of the summer, compared to “normal” rates of 40% to 50% when smoking was allowed. The general manager said since the ban was lifted, occupancy has risen to about 35%.
- One casino president said approximately 50% of its slot revenue was generated from the smoking section.

Spectrum recognizes that there may be issues regarding the number, quality and location of games in the smoking sections vs. the non-smoking sections in a given casino that could influence performance, such as placing high-limit tables and slots in smoking areas. However – and this is a critical point – Spectrum recognizes that casino managers are under continuous, intense pressure to achieve the highest profits possible and therefore have configured their casino floors to optimize GGR. In many cases, they have placed more than 25% of their gaming positions in the allotted 25% of the smoking space so as

³³ Atlantic City’s 25% smoking restriction is based on gaming space, not number of gaming units.

to maximize revenue. In other words, casino management has found – based on their trove of internal analytics – that smokers have a higher value than non-smokers.

The data provided by the casino executives is supported by the *Atlantic City Visitor Profile Study 2008* (the latest such Atlantic City visitor profile that assessed smoking habits). That survey found that,

[T]he median gambling budgets are higher for smokers (\$250 vs. \$200) and average spending figures for both gambling (\$655 vs. \$497) and total spending (\$981 vs. \$796) are higher among smokers than non-smokers, indicating that smokers of higher worth spend at a higher magnitude than non-smokers. Smokers gamble longer than non-smokers (mean 14.6 hours vs. 11.5 hours) ...”³⁴

Anecdotally, casino floor employees interviewed by Spectrum for this report said that smokers tend to be more prevalent among premium table-games players than they do among regular players. The interviewed casino floor employees, all of whom are non-smokers, said that although they wish their respective casino floors were smokefree they believe gaming revenues would decline if smoking were prohibited.

1. Time on Device

Casino operators fear that a smoking ban would not only put them at a disadvantage to their competitors in Pennsylvania and Connecticut but also would result in lower GGR because of smoking breaks. A player’s desire or need to smoke would impel them to leave their seat at a slot machine or gaming table and walk outside to smoke. Such a break would result in a player having less time playing a slot machine or table game, or what is known as time on device (“TOD”). For example, if a player planned a two-hour casino session and took two 10-minute cigarette breaks (including walking time) during that period, the player’s TOD could potentially decline by 17%. Figure 15 below is an illustrative example of how two such smoking breaks could impact the casino’s win, or GGR, from that player.

Figure 15: Illustrative example of change in GGR due to smoking break

	Non-Smoker	Smoker
Minutes at Casino	120	120
Minutes Playing Slot Machine	120	100
Minutes Smoking Break	0	20
Bankroll	\$100	\$100
Average Bet	\$1.15	\$1.15
Slot Machine Hold	7.25%	7.25%
Bets/Spins per Minute	10	10
Total Coin-In	\$1,379	\$1,150
Total Number of Bets/Spins	1,199	1,000
Casino Win (GGR)	\$100.00	\$83.38

Source: Spectrum Gaming Group

³⁴ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 141. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

Some gamblers may have a fixed amount of time to play, which for a smoker could result in lower GGR for the casino due to the smoking breaks. In the above example, it also is possible the smoker would continue playing beyond the planned two-hour session and would also wind up losing \$100, but would need 140 minutes to lose the same amount. It is also possible that the smoker during the first or second break would cut his or her losses and leave the casino, thus losing less than the \$83.38 illustrated above.

IV. Projected GGR Impacts of a Smoking Ban in Atlantic City Casinos

In this chapter Spectrum projects a range of likely GGR impacts if smoking were to be banned on Atlantic City casino floors, based on the following:

- Analysis of GGR impacts when casino smoking bans were instituted in Delaware, Illinois and New Orleans.
- Other relevant empirical data.
- Assessment of previous studies regarding casinos and smoking, all of which are of limited value for this report for various reasons, not the least of which is because of the passage of time.
- Interviews with casino employees, casino management, advocacy groups, and others who participate in, or who closely follow, the Atlantic City casino industry.

A critical assumption in our analysis is that Pennsylvania's policy (pre-Covid-19) of allowing smoking on casino floors remains unchanged.

Spectrum's projected range of GGR impact is necessarily broad due to factors that are unknowable at this time but would be significant were a casino-floor smoking ban to be enacted in Atlantic City casinos. They include:

- The intensity of the marketing and promotional response by Pennsylvania casino operators, who could target dissatisfied Atlantic City casino smokers with direct marketing programs and broader advertising programs.
- The facility response by Atlantic City casino operators. Outdoor gaming areas are common at casinos in other jurisdictions where smoking is prohibited. Some such areas are rather lavish and comfortable while others are less accommodating. The quality and convenience of such outdoor gaming areas at Atlantic City casinos would no doubt vary by property, and would involve capital investment and additional operating costs related to the inefficiencies of having separate gaming areas.
- The quality of the marketing response by Atlantic City casino operators:
 - Reaching patrons who smoke to inform them about the new policy and any new facilities that would be developed to accommodate smoking.
 - Reaching adults who currently do not visit Atlantic City casinos – or those who visit less frequently or for less time – because they find the smoky casino floors to be unappealing to inform them about their entirely smoke-free casino floors.
- The amount of time between the enactment and implementation of the casino smoking ban. The longer the gap, the more time casino operators would have to develop quality outdoor gaming areas, to communicate their plans to patrons who currently smoke, and to develop marketing programs to attract more non-smokers.

A. Considering the Experience of Smokefree Casinos after Reopening

Every casino in the United States closed at the height of the Covid-19 pandemic in spring 2020. They began reopening in late spring 2020 and into fall 2020, with patrons required to wear facemasks to help stop the spread of Covid-19. Almost all state-regulated casinos that previously allowed smoking were required to reopen smokefree, as smoking inside would require a player to remove his or her facemask.

Spectrum considered whether the Covid-19-caused smokefree period resulted in a “new normal” for casinos and their patrons, and thus the results of this reopening period could be fairly compared to the results during pre-pandemic period. We determined that such comparisons are not fair because casinos may have benefited during the post-Covid-19 period from a confluence of exceptional circumstances, including:

- Being open at a time when most other indoor entertainment venues remained closed, such as movie theaters, amusement centers and performing-arts centers.^{35 36 37}
- Travel restrictions³⁸ that made drive-to casinos an attractive option for those seeking a leisure getaway.
- A combination of free time due to high unemployment³⁹ and supplemental unemployment benefits,^{40 41} meaning there were more people than usual with time and money to spend and fewer leisure options in which to expend such. (People also had more free time due to working from home/spending less time in the community. For example, “Time spent traveling, such as commuting to work or driving to a store, declined by 26 minutes from an average of 1.2 hours per day in 2019 to 47 minutes per day in 2020. The share of individuals who spent time traveling on a given day declined 17 percentage points in 2020, from 84% in 2019 to 67% in

³⁵ Irina Ivanova and Thom Craver, “Closed due to coronavirus: List of activities and state shutdowns over Covid-19 outbreak concerns,” CBS News, <https://www.cbsnews.com/news/closed-due-to-coronavirus-list-of-activities-and-state-shutdowns-over-covid-19-outbreak-concerns/>

³⁶ Alison Durkee, “State-By-State Guide To Coronavirus Restrictions: Los Angeles Bans Outdoor Dining, Nevada Restricts Capacity,” *Forbes*, November 23, 2020. <https://www.forbes.com/sites/alisondurkee/2020/09/17/state-by-state-reopening-guidelines-coronavirus/?sh=20bdec55533b>

³⁷ Anastasia Tsioulcas, “America’s Independent Music Venues Could Close Soon Due To Coronavirus,” NPR, June 9, 2020. <https://www.npr.org/sections/coronavirus-live-updates/2020/06/09/873196748/americas-independent-music-venues-could-close-soon-due-to-coronavirus>

³⁸ Patrick Clarke, “A Timeline of Covid-19 Travel Restrictions Throughout 2020,” *Travel Pulse*, December 24, 2020. <https://www.travelpulse.com/gallery/impacting-travel/a-timeline-of-covid-19-travel-restrictions-throughout-2020.html>

³⁹ Unemployment Rates During the Covid-19, Congressional Research Service, August 20, 2021. <https://sgp.fas.org/crs/misc/R46554.pdf>

⁴⁰ Unemployment Insurance Relief During Covid-19 Outbreak,” US Department of Labor. <https://www.dol.gov/coronavirus/unemployment-insurance> (accessed September 13, 2021)

⁴¹ “How will the expansion of unemployment benefits in response to the Covid-19 pandemic be recorded in the NIPAs?,” Bureau of Economic Analysis, April 29, 2021. <https://www.bea.gov/help/faq/1415>

2020. Those who spent time traveling on a given day did so for a shorter duration [1.5 hours in 2019, compared with 1.2 hours in 2020].⁴²

The US casino industry in general rebounded well after reopening, with some jurisdictions reporting that gaming revenues surpassed pre-pandemic levels after a matter of months. However, the results in Atlantic City and Pennsylvania do not support that being at least temporarily smokefree benefited the casinos. Figure 16 shows the results for the first full three months and seven months⁴³ of slot and table games GGR after the casinos reopened smokefree vs. the same prior-year periods when the regular smoking policies were in place.

Figure 16: Comparison of Atlantic City and Pennsylvania GGR for 3-month and 7-month periods

GGR for 3 months ending ...			
	October 2019	October 2020	Change
NJ Slots	\$515.0	\$421.0	-18.3%
NJ Tables	\$191.7	\$154.3	-19.5%
PA Slots	\$738.5	\$591.0	-20.0%
PA Tables	\$206.7	\$187.3	-9.4%
GGR for 7 months ending ...			
	February 2020	February 2021	Change
NJ Slots	\$1,119.1	\$842.3	-24.7%
NJ Tables	\$420.9	\$329.4	-21.7%
PA Slots	\$1,505.2	\$1,049.3	-30.3%
PA Tables	\$492.0	\$359.3	-27.0%

Source: Spectrumatrix US Gross Gaming Revenue Analysis, based on data from state regulatory agencies. GGR includes promotional credit play where reported.

It is not possible to quantify how being smokefree may have impacted the GGR declines shown above, but it is evident that being smokefree did not cause their revenues to increase.

B. Estimated Range of Impacts to Atlantic City Casino GGR

A smoking ban in Atlantic City casinos has the potential to negatively impact gross gaming revenue due to a reduction in play by smokers from three primary causes:

- Defection: Some smokers will instead choose to play in out-of-state casinos where smoking is permitted, principally those casinos in eastern Pennsylvania but also the two tribal casinos in Connecticut.
- Reduced visitation: Atlantic City casinos are smoker-friendly – they are the only significant public places in New Jersey where smokers can legally smoke indoors,⁴⁴ and thus a higher

⁴² “American Time Use Survey Summary,” Bureau of Labor Statistics, July 22, 2021. <https://www.bls.gov/news.release/atus.nr0.htm>

⁴³ Valid 12-month comparisons cannot be made, as casinos closed in March 2020 and reopened in July 2021.

⁴⁴ In New Jersey, indoor smoking is permitted only in casinos, registered cigar bars, tobacco outlets whose primary activity is the sale of tobacco products, and up to 20% of guest rooms in lodging establishments. See: State of New Jersey, Department of Health, “Tobacco Control.” <https://www.nj.gov/health/fhs/tobacco/regulations/> (accessed September 27, 2021)

percentage of their patrons are smokers than in the general public.⁴⁵ If casinos can no longer accommodate smokers indoors, they will no longer be special havens for smokers; they will be like any other indoor entertainment option, and thus some smokers are likely to shift some of their discretionary spending to other forms of entertainment.

- Less time on device: As discussed above (section III.C.1 of this report), smokers will take breaks from their gambling. Some will lose the same amount of money by extending their stay to account for the breaks, but some with time constraints will lose less money.

Conversely, a smoking ban in Atlantic City casinos has the potential to positively impact gross gaming revenue from non-smokers who are attracted to the cleaner air in the casinos:

- Attracting new, non-smoking players: Some patrons who dislike the smoky air in casinos may be attracted to the cleaner air, including some who currently patronize the smokefree casinos in Delaware or New York.
- Extending the playing time of current non-smokers: Some current casino patrons who may leave early after having “had their fill” of smoky air may extend their playing time.

Based on our research and analysis for this report, Spectrum developed a range of potential impacts that accounted for all of these factors. First, we made certain assumptions about the prevalence and value of casino smokers.

1. Estimated Percentage of Casino Gamblers who are Smokers

As with all estimates, the foundational assumptions are essential to understand. Using data from the Centers for Disease Control and Prevention (“CDC”) on smoking by state, building on the smoking data from the *2008 Atlantic City Visitor Profile*, and receiving data from Atlantic City casino executives regarding the residency of their customers, we developed an estimate of smoking prevalence by Atlantic City casino patrons. In Figure 17 below, we estimate that 40% of visitors to Atlantic City are from New Jersey. Of those casino visitors, 19.7% are smokers, meaning that just under 8% of all visitors are smokers from New Jersey. In total we estimate that approximately 21% of casino patrons in Atlantic City are smokers.

Figure 17: Estimated smoker participation at Atlantic City casinos, by state

State	% Visits	% Smokers in State	% Players Smokers	Smokers as % Total Visitors
New Jersey	40.0%	13.1%	19.7%	7.86%
New York	24.0%	12.8%	19.2%	4.61%
Pennsylvania	20.0%	17.0%	25.5%	5.10%
Maryland	3.0%	12.5%	18.8%	0.56%
Other States	13.0%	14.0%	21.0%	2.73%
Atlantic City Market	100.0%			20.86%

Source: Centers for Disease Control and Prevention, Spectrum Gaming Group

⁴⁵ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 140. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

2. Estimated Value of Smokers

The next step is developing an estimate of the value of smokers to the casinos. Casino executives and casino floor employees have stated that smokers are of higher value than non-smokers. Evidence for this can be found in the relative value of the average daily win per unit (“WPU”) at slot machines in smoking and non-smoking sections of the Atlantic City casinos, as noted earlier in this report. The WPU of slots in smoking sections ranges from 33% higher to 91% higher when compared with the non-smoking sections. One executive noted that GGR from table games in the smoking section are 72% higher than from the same games with the same limits and rules in the non-smoking section.

The *Atlantic City Visitor Profile 2008* (the latest such study that surveyed smoking habits in the city) found that smokers spent 32% more than non-smokers on gambling (\$655 per visit vs. \$497 per visit).⁴⁶

We designated this phenomenon the “smoker premium,” and developed two estimates of the value of smokers to the Atlantic City casinos. We used a 50% smoker premium and a 25% smoker premium to establish our range of value. Due to the disruptions of Covid-19, we used 2019 GGR data as the basis for our revenue numbers.

Figure 18: High case estimate of smoker GGR at Atlantic City casinos

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smokers % of GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	50%	\$316,743,119	29.5%
New York	24.0%	\$644,769,708	12.8%	19.2%	50%	\$185,693,676	28.8%
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	50%	\$205,520,345	38.3%
Maryland	3.0%	\$80,596,214	12.5%	18.8%	50%	\$22,667,685	28.1%
Other States	13.0%	\$349,250,259	14.0%	21.0%	50%	\$110,013,832	31.5%
GGR 2019	100.0%	\$2,686,540,452				\$840,638,656	31.3%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

Using this set of assumptions, Spectrum estimates the yearly estimated value of smokers to the casinos to be \$840 million in the high case. The estimated value of the non-smokers in this case is \$1,846 million.

Using the same modeling but with a 25% smoker premium results in the estimated value of smokers to the casinos to be \$700 million in the low case, as shown in Figure 19. The estimated value of the non-smokers in this case is \$1,986 million. Spectrum estimates that smokers account for approximately 21% of casino visits, but between 26.1% and 31.3% of casino win.

⁴⁶ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 141. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

Figure 19: Low case estimate of smoker GGR at Atlantic City casinos

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smokers % of GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	25%	\$263,952,599	24.6%
New York	24.0%	\$644,769,708	12.8%	19.2%	25%	\$154,744,730	24.0%
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	25%	\$171,266,954	31.9%
Maryland	3.0%	\$80,596,214	12.5%	18.8%	25%	\$18,889,738	23.4%
Other States	13.0%	\$349,250,259	14.0%	21.0%	25%	\$91,678,193	26.3%
GGR 2019	100.0%	\$2,686,540,452				\$700,532,214	26.1%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

3. Estimated Range of GGR Change from Reduction of Play by Smokers

Having established two estimates for the value of smokers to the Atlantic City casinos, the question turns on how smokers would behave if a smoking ban were implemented. If all smokers chose not to visit the casinos, the analysis in Figure 18 and Figure 19 estimates a GGR decline of \$804 to \$965 million. Evidence from other states indicate that there will not be total abandonment of casinos by smokers. Again, we estimated a range of how much reduction in play would result from a smoking ban based on the state and the level of competition in the home state of the casino players. Players in New Jersey and Pennsylvania are close to casinos that permit smoking. New York casino players have to travel farther to visit a casino with smoking, and in Maryland all of the nearby casinos are smokefree. We have further assumed that the visitors from the other 47 states have chosen to visit Atlantic City without regard to smoking. As such we believe few will alter plans based on a change in smoking policy.

Spectrum has provided all of its estimates of GGR change for Year 1 of a smoking ban. Estimating GGR changes beyond Year 1 is dependent on a host of factors – including the casino operators’ reactions to the smoking ban – that cannot be reasonably quantified at this time. As noted in Chapter I of this report, the experience in other jurisdictions is that after the initial shock caused by a smoking ban, GGR begins to grow again.

Figure 20: High case estimate of casino GGR change from reduction in play by smokers, Year 1

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smoker Play Reduction	Estimated Annual Lost GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	50%	\$316,743,119	-50%	\$(158,371,560)
New York	24.0%	\$644,769,708	12.8%	19.2%	50%	\$185,693,676	-25%	\$(46,423,419)
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	50%	\$205,520,345	-50%	\$(102,760,172)
Maryland	3.0%	\$80,596,214	12.5%	18.8%	50%	\$22,667,685	-10%	\$(2,266,769)
Other States	13.0%	\$349,250,259	14.0%	21.0%	50%	\$110,013,832	-10%	\$(11,001,383)
GGR 2019	100.0%	\$2,686,540,452				\$840,638,656	Total	\$(320,823,303)
							% of Total	-11.9%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In the high case, Spectrum estimates that the Atlantic City casinos would see a Year 1 loss of 11.9% of GGR if a smoking ban were implemented. Some of this gaming activity would shift to other states where smoking is permitted. Some activity may be lost to other forms of leisure activity where smoking is also

banned such as in entertainment venues, restaurants, and movie theaters. And some casino gambling expenditures by the remaining smokers in Atlantic City casinos would be reduced due to smoking breaks, or shifted to online gaming. (It must be noted that casinos typically receive less than 10% of online GGR; their licensed online gaming operators receive the rest.)

Spectrum also developed a low estimate, using the same model but applying a 25% smoker premium and lower reductions in play by smokers.

Figure 21: Low case estimate of casino GGR change from reduction in play by smokers, Year 1

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smoker Play Reduction	Estimated Annual Lost GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	25%	\$263,952,599	-25%	\$(65,988,150)
New York	24.0%	\$644,769,708	12.8%	19.2%	25%	\$154,744,730	-13%	\$(19,343,091)
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	25%	\$171,266,954	-25%	\$(42,816,738)
Maryland	3.0%	\$80,596,214	12.5%	18.8%	25%	\$18,889,738	-5%	\$(944,487)
Other States	13.0%	\$349,250,259	14.0%	21.0%	25%	\$91,678,193	-5%	\$(4,583,910)
GGR 2019	100.0%	\$2,686,540,452				\$700,532,214	Total	\$(133,676,376)
							% of Total	-5.0%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In the low case estimate, smokers are worth \$700 million to the casinos, and non-smokers worth \$1,986 million.

Based on the assumptions stated, rates of smoking prevalence, and conversations with casino staff and executives in Atlantic City, Spectrum estimates the range of potential lost GGR from the implementation of a smoking ban to be between 5.0% and 11.9% of total GGR (based on 2019 results).

4. Estimated Range of GGR Change from Increase in Play by Non-Smokers

While a smoking ban could cause a reduction in play by smokers, it may cause an increase in play by non-smokers who are either extending their play or making additional visits because they would not be annoyed by cigarette smoke, or by new players who have shunned the casinos due to the smoky air. Spectrum believes the upside of attracting additional play from non-smokers in Atlantic City casinos is limited because the casinos operate in a mature market in which virtually every potential new customer has long been exposed to the opportunity to play casino games and because the casinos are already 75% smokefree, meaning the current casino environment, in Spectrum’s opinion, is not as off-putting to non-smokers as it is in some jurisdictions where the cigarette smoke is (or was) much more objectionable.

In Figure 20, we estimated the value of smokers to Atlantic City casinos at \$840 million and non-smokers at \$1,846 million. In Figure 22, we provide a high case estimate of the potential worth of non-smokers to Atlantic City if revenue from non-smokers were to increase their play by 1.5%, or by \$27.7 million.

Figure 22: High case estimate of casino GGR change from increased in play by non-smokers, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Non-Smokers	Increase in Non-Smoker Play	Value of Non-Smoker Increase	Value of Non-Smokers Post Ban
New Jersey	40.0%	\$1,074,616,181	\$757,873,062	1.5%	\$11,368,096	\$769,241,157
New York	24.0%	\$644,769,708	\$459,076,032	1.5%	\$6,886,140	\$465,962,173
Pennsylvania	20.0%	\$537,308,090	\$331,787,746	1.5%	\$4,976,816	\$336,764,562
Maryland	3.0%	\$80,596,214	\$57,928,528	1.5%	\$868,928	\$58,797,456
Other States	13.0%	\$349,250,259	\$239,236,427	1.5%	\$3,588,546	\$242,824,974
GGR 2019	100.0%	\$2,686,540,452	\$1,845,901,796	1.5%	\$27,688,527	\$1,873,590,322

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In Figure 23, we present a low case estimate if non-smokers were to increase their play by 1.0%, or by \$19.8 million.

Figure 23: Low case estimate of casino GGR change from increased in play by non-smokers, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Non-Smokers	Increase in Non-Smoker Play	Value of Non-Smoker Increase	Value of Non-Smokers Post Ban
New Jersey	40.0%	\$1,074,616,181	\$810,663,581	1.0%	\$8,106,636	\$818,770,217
New York	24.0%	\$644,769,708	\$490,024,978	1.0%	\$4,900,250	\$494,925,228
Pennsylvania	20.0%	\$537,308,090	\$366,041,137	1.0%	\$3,660,411	\$369,701,548
Maryland	3.0%	\$80,596,214	\$61,706,476	1.0%	\$617,065	\$62,323,541
Other States	13.0%	\$349,250,259	\$257,572,066	1.0%	\$2,575,721	\$260,147,786
GGR 2019	100.0%	\$2,686,540,452	\$1,986,008,238	1.0%	\$19,860,082	\$2,005,868,321

Source: New Jersey Division of Gaming Enforcement, Spectated Gaming Group

The potential increase in casino visitation and revenue may be a small factor in offsetting the estimated large revenue shifts from casino players who smoke, but we believe that it is a real phenomenon and needs to be considered in the overall revenue impacts.

5. Estimated Range of Net GGR Change from a Casino Smoking Ban

Based on the anticipated reduction in play from smokers and the potential increase in play from non-smokers, Spectrum estimates that the Atlantic City casinos would experience a Year 1 net GGR decline of between \$113.8 million and \$293.1 million, or a decline of between 4.2% and 10.9%, based on 2019 results and the assumptions detailed in this report.

Figure 24: High case estimate of net change in casino GGR from a casino smoking ban, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Smokers	Estimated Annual Lost Smoker GGR	Increase in Play by Non-Smokers	Net Change in GGR from Smoking Ban
New Jersey	40.0%	\$1,074,616,181	\$316,743,119	\$(158,371,560)	\$11,368,096	\$(147,003,464)
New York	24.0%	\$644,769,708	\$185,693,676	\$(46,423,419)	\$6,886,140	\$(39,537,279)
Pennsylvania	20.0%	\$537,308,090	\$205,520,345	\$(102,760,172)	\$4,976,816	\$(97,783,356)
Maryland	3.0%	\$80,596,214	\$22,667,685	\$(2,266,769)	\$868,928	\$(1,397,841)
Other States	13.0%	\$349,250,259	\$110,013,832	\$(11,001,383)	\$3,588,546	\$(7,412,837)
GGR 2019	100.0%	\$2,686,540,452	\$840,638,656	\$(320,823,303)	\$27,688,527	\$(293,134,776)
				-11.9%	1.0%	-10.9%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

Figure 25: Low case estimate of net change in casino GGR from a casino smoking ban, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Smokers	Estimated Annual Lost Smoker GGR	Increase in Play by Non-Smokers	Net Change in GGR from Smoking Ban
New Jersey	40.0%	\$1,074,616,181	\$263,952,599	\$(65,988,150)	\$8,106,636	\$(57,881,514)
New York	24.0%	\$644,769,708	\$154,744,730	\$(19,343,091)	\$4,900,250	\$(14,442,841)
Pennsylvania	20.0%	\$537,308,090	\$171,266,954	\$(42,816,738)	\$3,660,411	\$(39,156,327)
Maryland	3.0%	\$80,596,214	\$18,889,738	\$(944,487)	\$617,065	\$(327,422)
Other States	13.0%	\$349,250,259	\$91,678,193	\$(4,583,910)	\$2,575,721	\$(2,008,189)
GGR 2019	100.0%		\$700,532,214	\$(133,676,376)	\$19,860,082	\$(113,816,294)
				-5.0%	0.7%	-4.2%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

6. Estimated Change in Non-Gaming Revenue

Each Atlantic City casino files a detailed quarterly report, which includes its performance in non-gaming areas such as food and beverage, entertainment, hotel, etc. By summing the non-gaming revenue from each property, it is possible to derive an estimate of non-gaming revenue for a given year. For the calendar year 2019, the total of the calendar year revenues is summarized in the figure below.

Figure 26: Atlantic City gaming and non-gaming revenue, 2019

Revenue Department	2019
Casino Win	\$2,686,541
Rooms	\$609,998
Food & Bev	\$578,057
Other	\$243,735
ALL Non-Gaming	\$1,431,790
Non-Gaming as % of Gaming	53.3%

Source: New Jersey Division of Gaming Enforcement

Earlier in the report we derived an estimate of the percentage of Atlantic City visitors who are smokers, and we proposed a factor for reduction in smoker visits under a smoking ban. By combining

these two assumptions with the detail of non-gaming revenue we can arrive at an estimate of the potential lost non-gaming revenue from the decrease in gaming participation by smokers.

Figure 27: Low case estimated non-gaming revenue loss from smoking ban

State	% Visits	% Smokers in State	% Players Smokers	Smokers as % Total Visitors	Smoker Play Reduction	% of Lost Smoker Visits	Non-Smoker Visit Change	Non-Gaming Revenue Change
New Jersey	40.0%	13.1%	19.7%	7.86%	25%	-1.97%	0.37%	\$(22,857,668)
New York	24.0%	12.8%	19.2%	4.61%	13%	-0.58%	0.23%	\$(4,969,159)
Pennsylvania	20.0%	17.0%	25.5%	5.10%	25%	-1.28%	0.19%	\$(15,537,785)
Maryland	3.0%	12.5%	18.8%	0.56%	5%	-0.03%	0.03%	\$24,430
Other States	13.0%	14.0%	21.0%	2.73%	5%	-0.14%	0.13%	\$(143,881)
Atlantic City Market	100.0%			20.86%		Change in Non-Gaming		\$(43,484,063)
						% Change		-3.0%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

Figure 28: High case estimated non-gaming revenue loss from smoking ban

State	% Visits	% Smokers in State	% Players Smokers	Smokers as % Total Visitors	Smoker Play Reduction	% of Lost Smoker Visits	Non-smoker Visit Change	Non-Gaming Revenue Change
New Jersey	40.0%	13.1%	19.7%	7.86%	50%	-3.93%	0.55%	\$(48,353,839)
New York	24.0%	12.8%	19.2%	4.61%	25%	-1.15%	0.34%	\$(11,577,294)
Pennsylvania	20.0%	17.0%	25.5%	5.10%	50%	-2.55%	0.28%	\$(32,434,339)
Maryland	3.0%	12.5%	18.8%	0.56%	10%	-0.06%	0.04%	\$(164,701)
Other States	13.0%	14.0%	21.0%	2.73%	10%	-0.27%	0.19%	\$(1,193,018)
Atlantic City Market	100.0%			20.86%		Change in Non-Gaming		\$(93,723,190)
						% Change		-6.5%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In our high case we estimated that the Atlantic City casinos would lose approximately 6.5% of trips. The estimated 1.5% increase in non-smoker visitation offsets a portion of the loss of visitation from smokers, as it does with the GGR estimates. In the low case we estimated that 3% of all trips would be lost. Here too, the 1% increase in non-smoking visitation offsets a portion of the estimated lost revenue from smokers. As a result, we estimate that these are the amounts of non-gaming revenue that would be lost by the Atlantic City casinos. In the high case approximately \$93.7 million annually, and in the low case approximately \$43.5 million.

7. Estimated Change in Tax Receipts from a Casino Smoking Ban

Gaming and non-gaming revenue at the Atlantic City casino properties are subject to a variety of taxes. Figure 29 below presents the estimated change in tax revenues from each segment. Non-gaming revenue is reported by the New Jersey Division of Gaming Enforcement. The Division reports food and beverage as one number. Alcoholic beverages are subject to the Atlantic City Luxury Tax, which does not apply to food. We used an estimate of 40% of food and beverage sales to be alcohol, and applied the Luxury Tax accordingly. Depending on the severity of the revenue impacts of a smoking ban, Spectrum estimates the annual loss of total tax revenue as being between \$17.2 million and \$44.6 million.

Figure 29: Estimated tax impacts from a smoking ban, compared to 2019

Revenue Department (\$ in 000)		2019	Low Loss Estimate	High Loss Estimate
Casino Gross Gaming Revenue		\$2,686,541	\$2,552,864	\$2,365,717
Hotel Rooms		\$609,998	\$591,472	\$552,755
Food and Beverage (40% Bev)		\$578,057	\$560,501	\$523,811
Other revenue, Entertainment, Spa, Etc.		\$243,735	\$236,333	\$220,863
Tax Rate	Tax (\$ in 000)	Tax Revenue	Tax Revenue	Tax Revenue
8.000%	State of New Jersey Casino Revenue Fund	\$214,923	\$204,229	\$189,257
1.250%	State of New Jersey CRDA Obligation	\$33,582	\$31,911	\$29,571
9.000%	Luxury Tax – Rooms	\$54,900	\$53,232	\$49,748
3.625%	State Sales – Tax Rooms	\$22,112	\$21,441	\$20,037
1.000%	State Occupancy Fee	\$ 6,100	\$5,915	\$5,528
3.000%	Alcohol Beverage Luxury Tax	\$ 6,937	\$6,726	\$6,286
6.625%	State Sales Tax – Alcoholic Beverages	\$15,319	\$14,853	\$13,881
6.625%	State Sales– Tax Food	\$22,978	\$22,280	\$20,822
9.000%	Luxury Tax –Entertainment	\$21,936	\$21,270	\$19,878
3.625%	State Sales Tax – Entertainment	\$ 8,835	\$8,567	\$8,006
	Total Tax	\$407,622	\$390,424	\$363,014
	<i>Change in Tax</i>		<i>\$(17,198)</i>	<i>\$(44,608)</i>
	<i>% Change in Tax</i>	<i>0.0%</i>	<i>-4.2%</i>	<i>-10.9%</i>

Sources: New Jersey State Treasurer, Spectrum Gaming Group

8. Potential Changes in Employment

A reduction in visitation and gaming revenue will likely result in a reduction in employment at the casinos. Spectrum examined employment at the casinos and developed a revenue-per-employee figure. In 2019, each casino job was supported by \$155,008 of total revenue. If we hold this factor constant and apply the estimated reductions in revenue from a smoking ban, we can derive an estimate of the potential job loss from a smoking ban. As can be seen in Figure 30 below, Spectrum estimates potential job losses from a smoking ban range from 1,021 to 2,512 depending on the severity of the impact on revenue. *It is critical to note that such reductions in employment assume that the casinos would be at full employment as they were in 2019; at this time, most casinos are short-staffed, consistent with businesses across the country during the pandemic, and/or have purposely reduced their staffing levels; it to be determined whether those modified staffing levels will be permanent.*

Figure 30: Potential change in employment, based on total revenue per employee

Revenue Department	2019	Low Loss Estimate	High Loss Estimate
Casino GGR (000)	\$ 2,686,541	\$ 2,572,725	\$ 2,393,406
Non-Gaming Revenue (000)	\$ 1,431,790	\$ 1,388,306	\$ 1,338,067
Total Revenue (000)	\$ 4,118,331	\$ 3,961,031	\$ 3,731,473
% Change Total Revenue	N/A	-3.8%	-9.4%
Total Jobs	26,741	25,720	24,229
Revenue per Job	\$154,008	\$154,008	\$154,008
Est. Change in No. Jobs	N/A	(1,021)	(2,512)

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

FDU Poll: Voters Oppose Expansion of NJ Casinos, Smoking Bans

fdu.edu/news/fdu-poll-voters-oppose-expansion-of-nj-casinos-smoking-bans/

FDU



For Immediate Release

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Voters Oppose Expansion of NJ Casinos, Smoking Bans

Rare bipartisan accord on issues surrounding Atlantic City

Fairleigh Dickinson University, Madison, NJ, November 10, 2022 – There isn't much that Republicans and Democrats in New Jersey can agree on, but across party lines, New Jersey opposes the expansions of casinos outside of Atlantic City and opposes a ban on smoking in those casinos. According to the latest results from the FDU Poll, while the environment around these issues has changed dramatically, there has been little movement in public opinion on these issues in more than a decade.

Just 37 percent of New Jersey residents say that they favor expanding casino gambling outside of Atlantic City, with a bare majority, 51 percent, saying that they oppose such an expansion. Opposition to casino expansion may be one of the few remaining bipartisan issues in the state: 50 percent of Democrats oppose it, along with 54 percent of Republicans and 53 percent of independents. Any expansion of casinos would require a vote on a constitutional amendment in the state; in 2016, such an amendment failed, 77 to 23.

"Competition from new casinos opening soon in New York City and the endless search for new sources of revenue mean that there's a lot of pressure to open new casinos in Jersey," said Dan Cassino, a professor of Government and Politics at FDU, and the Executive Director of the Poll. "But if the state wants those casinos, they're going to have to change a lot of minds."

There's also little sign that attitudes on the issue are changing. When the FDU Poll asked the same question to New Jersey residents in 2016, 50 percent opposed it, and 37 percent supported it: no different than the numbers this year. As far back as 2014, opposition was at 50 percent, with 42 percent opposing. However, support is a bit higher than it was in 2009, when just 24 percent said that they favored expansion.

"Views of casino expansion in New Jersey have been crystallized for years," said Cassino. "None of the arguments that have been made in favor of expansion have made any dent."

Older residents, who may remember the initial wave of casinos opening in Atlantic City in 1978, are the most skeptical about opening casinos elsewhere in the state. Only 25 percent of residents 65 and older favor casino expansion, with 65 percent saying that they oppose it. By way of contrast, 47 percent of residents 31 to 44 favor expansion – the only age group where supporters outnumber opponents.

In recent days, Atlantic City casinos have also been grappling with the issue of smoking on the gaming floors. Smoking was banned in most indoors areas in New Jersey in 2006, but exceptions were made for casinos, cigar bars and a few other types of businesses, and today Atlantic City casinos allow smoking in about one-quarter of their gaming areas. The state legislature has been considering a bill to ban smoking in casinos altogether, but casinos have argued that it would reduce their business, which has not yet recovered to pre-pandemic levels, and lead to layoffs.

Most New Jersey residents (57 percent) support the status quo on smoking in casinos, in which smoking is allowed only in certain designated areas. Twenty-nine percent support a complete ban on smoking in casinos, and 12 percent say that smoking should be allowed anywhere in a casino. These figures are not much changed from when the question was asked in 13 years ago, in 2009: then, 35 percent of New Jersey residents said that it should be banned entirely, with 47 percent saying that it should be limited to certain areas.

“This is a balancing act,” said Cassino. “Smoking bans protect workers from secondhand smoke, but no one wants to risk hurting the casino’s bottom lines and having to bail out Atlantic City. Again.”

Support for a ban on smoking in casinos is highest among older voters (42 percent among those 65 and older), and lowest among young voters (just 14 percent). More educated voters – those with a college degree – are more likely to support a ban (35 percent) than those without a four-year degree (24 percent). As with casino expansion, though, partisanship has no real impact on views of smoking in casinos: Democrats, Republicans and independents are all about equally likely to support a ban.

Methodology

The survey was conducted between October 24 and November 1, 2022, using a certified list of adult New Jersey residents carried out by Ironwood Insights. Respondents were randomly chosen from the list, and contacted via either live caller telephone interviews, or text-to-web surveys sent to cellular phones, resulting in an overall sample of 801 respondents. 174 of the surveys were carried out via live caller telephone interviews on both cell phones (70%) and landlines (30%), and the remainder (627) were done on a web platform via weblinks sent via SMS to cell phones. Surveys were conducted only in English.

The data were weighted to be representative of the population of adult NJ residents, as of the 2020 US Census. The weights used, like all weights, balance the demographic characteristics of the sample to match known population parameters. The weighted results used here are balanced to match parameters for sex, age, education and race/ethnicity.

SPSSINC RAKE, an SPSS extension module that simultaneously balances the distributions of all variables using the GENLOG procedure, was used to produce final weights. Weights were trimmed to prevent individual interviews from having too much influence on the final results. The use of these weights in statistical analysis helps to ensure that the demographic characteristics of the sample approximate the demographic characteristics of the target population. The size of these weights is used to construct the measure of design effects, which indicate the extent to which the reported results are being driven by the weights applied to the data, rather than found in the data itself. Simply put, these design effects tell us how many additional respondents would have been needed to get the weighted number of respondents across weighted categories: larger design effects indicate greater levels of under-representation in the data. In this case, calculated design effects are approximately 1.4.

All surveys are subject to sampling error, which is the expected probable difference between interviewing everyone in a population versus a scientific sampling drawn from that population. Sampling error should be adjusted to recognize the effect of weighting the data to better match the population. In this poll, the simple sampling error for 801 registered voters is +/-3.5 percentage points, at a 95 percent confidence interval. Including the design effects, the margin of error would be +/-4.9 percentage points, though the figure not including them is much more commonly reported.

This error calculation does not take into account other sources of variation inherent in public opinion studies, such as non-response, question wording, differences in translated forms, or context effects. While such errors are known to exist, they are often unquantifiable within a particular survey, and all efforts, such as randomization and extensive pre-testing of items, have been used to minimize them.

Weighted Telephone Sample Characteristics

801 New Jersey Residents

Figures are weighted to overall voter characteristics from the 2020 US Census. Respondents who refused to answer a demographic item are not included.

Man

42% N = 341

Woman

55% N = 436

Some Other Way

3% N = 22

18-30

21% N = 162

31-44

25% N = 207

45-64

32% N = 261

65+

19% N = 154

Democrat (with leaners)

50% N = 354

Independent

17% N = 118

Republican (with leaners)

33% N = 240

White

53% N = 400

Black

14% N = 104

Hispanic/Latino/a

24% N = 178

Asian

7% N = 55

Other/Multi-racial

2% N = 16

No college degree

55% N = 447

College degree or more

45% N = 350

Question Wording and Order

NJ1. Do you approve or disapprove of the way Phil Murphy is handling his job as governor?

1. Approve
2. Disapprove
3. Not Sure/Don't Know [Vol]

4. Refused [Vol]

NJ2. Right now, casino gambling in New Jersey is limited to Atlantic City. Do you favor or oppose [rotate] expanding casino gambling to other areas in the state?

- 1. Favor
- 2. Oppose
- 3. [DK /REF]

NJ3. Do you think smoking should be banned entirely in Atlantic City casinos, or just limited to certain areas, or allowed anywhere?

- 1. Banned Entirely
- 2. Limited to Certain Areas
- 3. Allowed Anywhere
- 4. [Don't Know/Refused]

NJ4 Held for future release

Following questions released in earlier reports

Release Tables

Right now, casino gambling in New Jersey is limited to Atlantic City. Do you favor or oppose expanding casino gambling to other areas in the state?

	All	Dem	Indp	Rep
Favor	37%	35%	35%	36%
Oppose	51%	50%	53%	54%
[Vol] Don't Know/Refused	12%	13%	12%	10%

Right now, casino gambling in New Jersey is limited to Atlantic City. Do you favor or oppose expanding casino gambling to other areas in the state?

	All	2016	2015	2014	2009
Favor	37%	37%	36%	42%	24%

Oppose	51%	50%	57%	50%	70%
[Vol] Don't Know/Refused	12%	13%	8%	8%	6%

Do you think smoking should be banned entirely in Atlantic City casinos, or just limited to certain areas, or allowed anywhere?

	All	Dem	Indp	Rep
Banned Entirely	29%	31%	30%	27%
Limited to Certain Areas	56%	55%	53%	57%
Allowed Anywhere	12%	12%	14%	14%
[Vol] Don't Know/Refused	3%	2%	3%	2%

Do you think smoking should be banned entirely in Atlantic City casinos, or just limited to certain areas, or allowed anywhere?

	All	No College Degree	College Degree
Banned Entirely	29%	24%	35%
Limited to Certain Areas	56%	60%	53%
Allowed Anywhere	12%	15%	8%
[Vol] Don't Know/Refused	3%	1%	4%

Do you think smoking should be banned entirely in Atlantic City casinos, or just limited to certain areas, or allowed anywhere?

	All	Under 30	31 to 44	45 to 64	65+
--	-----	----------	----------	----------	-----

Banned Entirely	29%	14%	25%	34%	42%
Limited to Certain Areas	56%	64%	55%	56%	51%
Allowed Anywhere	12%	18%	18%	9%	4%
[Vol] Don't Know/Refused	3%	4%	2%	1%	3%

Do you think smoking should be banned entirely in Atlantic City casinos, or just limited to certain areas, or allowed anywhere?

	All	Men	Women
Banned Entirely	29%	33%	27%
Limited to Certain Areas	56%	51%	59%
Allowed Anywhere	12%	13%	12%
[Vol] Don't Know/Refused	3%	3%	2%

Right now, casino gambling in New Jersey is limited to Atlantic City. Do you favor or oppose expanding casino gambling to other areas in the state?

	All	Under 30	31 to 44	45 to 64	65+
Favor	37%	37%	47%	38%	25%
Oppose	51%	50%	39%	51%	65%
[Vol] Don't Know/Refused	12%	13%	14%	11%	10%

go to what's new

From: [REDACTED]
Sent: Monday, January 29, 2024 10:54 AM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from portia.fuentes@advocatefor.me. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

I am reaching out to urge you to pass S1493 and finally give Atlantic City's Casino workers a 100% smokefree environment.

Decades ago, the US Surgeon General concluded that there are no safe levels of secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of workers and nonsmokers to secondhand smoke. 100% smokefree workplace policies are the only effective way to eliminate secondhand smoke exposure. Unfortunately, casino, bar and restaurant workers are more exposed to toxic secondhand smoke in their jobsite compared to other segments of the US. Every worker deserves to breathe smokefree air.

Please pass S1493 and finally protect workers and patrons from toxic secondhand smoke and needless risk for disease and death.

Regards,
Portia Lagmay-Fuentes

From: [REDACTED]
Sent: Thursday, January 25, 2024 3:17 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from mdasilvartt@advocacymessages.com. [Learn why this is important](#)

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Regards,
Michele DaSilva

From: [REDACTED]
Sent: Thursday, January 25, 2024 3:20 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from agers@grassrootsmessage.com. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

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Regards,
abigail malyon

From: [REDACTED]
Sent: Thursday, January 25, 2024 3:29 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from karen.isky@forgrassroots.com. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

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Regards,
Karen M Isky

[REDACTED]

From: [REDACTED]
Sent: Thursday, January 25, 2024 3:32 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from ejottj@foradvocacy.com. [Learn why this is important](#)

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Regards,
Edward Ott

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Thursday, January 25, 2024 3:41 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from lauren.buckley@grassrootsmessage.com. [Learn why this is important](#)

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Regards,
Lauren Buckley

From:
Sent: Thursday, January 25, 2024 4:22 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from jarutk2@grsdelivery.com. [Learn why this is important](#)

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Regards,
John Rutkowski

From: [REDACTED]
Sent: Thursday, January 25, 2024 4:52 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from aletterteeheehee@advocatefor.me. [Learn why this is important](#)

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Regards,
David Taggart

From:
Sent: Thursday, January 25, 2024 4:56 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from 8wildcat@sendgrassroots.com. [Learn why this is important](#)

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Regards,
Judy Fairless

From: [REDACTED]
Sent: Thursday, January 25, 2024 6:14 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from gjjak52@advocacymessages.com. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

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Regards,
Janice Dlugosz

From: [REDACTED]
Sent: Thursday, January 25, 2024 7:51 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from carolinezachowski82@forgrassroots.com. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

I am reaching out to urge you to pass S1493 and finally give Atlantic City's Casino workers a 100% smokefree environment.

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Regards,
Caroline Zachowski

From:
Sent: Thursday, January 25, 2024 1:51 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from s_rudewicz13@p2a.co. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

I am reaching out to urge you to pass S1493 and finally give Atlantic City's Casino workers a 100% smokefree environment.

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Regards,
Stephanie Rudewicz

From:
Sent: Thursday, January 25, 2024 8:06 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from madanna102@p2a.co. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

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Regards,
Marie D'Anna

From:
Sent: Thursday, January 25, 2024 8:13 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

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Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

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Please pass S1493 and finally protect workers and patrons from toxic secondhand smoke and needless risk for disease and death.

Regards,
Dianne Douthat

From: Teresa Schrul, Constituent Services
Sent: Thursday, January 25, 2024 8:35 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from teresaschrul@yourconstituent.com. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

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Please pass S1493 and finally protect workers and patrons from toxic secondhand smoke and needless risk for disease and death.

Regards,
Teresa Schrul

From: Frank Brincka
Sent: Thursday, January 25, 2024 9:42 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from tek_rider@advocatefor.me. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

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Regards,
Frank Brincka

From:
Sent: Thursday, January 25, 2024 11:30 PM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from geraldine2@foradvocacy.com. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

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Please pass S1493 and finally protect workers and patrons from toxic secondhand smoke and needless risk for disease and death.

Regards,
Barbara Milloy

From:
Sent: Friday, January 26, 2024 2:28 AM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from mleia@advocatesmessage.com. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

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Please pass S1493 and finally protect workers and patrons from toxic secondhand smoke and needless risk for disease and death.

Regards,
Leia Manzo

From: [REDACTED]
Sent: Friday, January 26, 2024 5:31 AM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from ppugh253013@forgrassroots.com. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

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Regards,
Rebecca Pugh

From: Erica Masin - ForAdvocacy
Sent: Monday, January 29, 2024 10:36 AM
To: OLSaideSHH
Subject: Pass S1493 and make NJ's Casinos Smokefree

You don't often get email from emasin55@foradvocacy.com. [Learn why this is important](#)

Dear Justin Lucero, Sarah Schmidt NJ Senate Office of Legislative Service Aids to the SHH Committee,

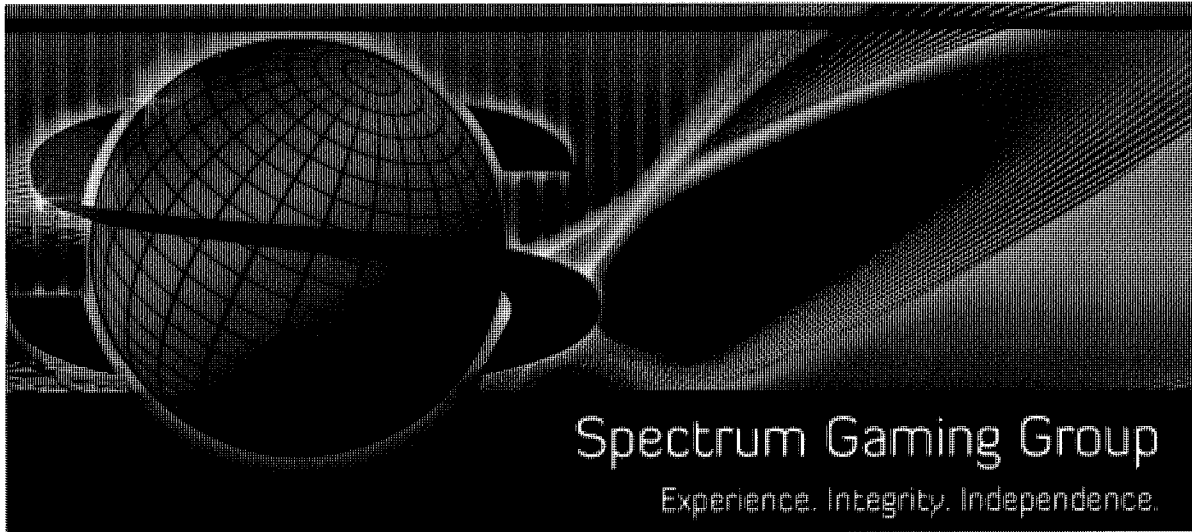
I am reaching out to urge you to pass S1493 and finally give Atlantic City's Casino workers a 100% smokefree environment.

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Regards,
Erica Masin

EXHIBIT C



GAMING INDUSTRY ANALYSIS:

Potential Impacts of an Atlantic City Casino Smoking Ban on Gross Gaming Revenue

Prepared for Casino Association of New Jersey
November 3, 2021



200 Lakeside Drive, Suite 250
Horsham, PA 19044 USA
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Executive Summary

The Casino Association of New Jersey (“Client”), which represents the seven casino operators (and all nine casinos) in Atlantic City, engaged Spectrum Gaming Group (“Spectrum,” “we” or “our”) to independently analyze the potential effect a possible smoking ban would have, collectively, on the Atlantic City casino industry’s gross gaming revenue (“GGR”) and the resulting State of New Jersey (“State”) gaming taxes.

It is beyond the scope of this study to consider other impacts or issues that may be associated with smoking or a smoking ban. Further, Spectrum offers no opinion or recommendation whether smoking should be allowed on casino floors.

New Jersey has earned an A from the American Lung Association for its clean-air practices, which include prohibiting smoking in all workplaces, as well as in restaurants, schools, child-care facilities, retail stores and bars (with the exception of cigar bars and lounges), and notably the state has penalty and enforcement provisions in place. One glaring exception to the state’s widespread anti-smoking policy is the Atlantic City casino industry, whose members are allowed under a local ordinance to allow smoking in up to 25% of the casino floor space, and the American Lung Association duly notes that exception and has urged that it be eliminated.

Spectrum’s analysis recognizes that this exception allows for a scenario in which Atlantic City casinos become a more attractive recreational outlet for smokers. Smoking restrictions cover nearly every public entertainment option, a reality that in turn makes Atlantic City casinos a more prominent oasis for smokers.

The calculus through which adults select their entertainment options is broad and complex, ranging from convenience to cost to various other preferences. The ability to smoke in an indoor public setting may be a factor for adults who cannot indulge in smoking at movies, bars, restaurants or shopping outlets.

While the level of that preference cannot be definitively determined, its existence can reasonably be presumed as a factor that accounts for the demographic differences among casino visitors. To put that another way, if smoking were banned at casinos in New Jersey, Pennsylvania and Connecticut, the demographics among casino visitors would likely adhere more closely to the demographic mean. The appeal of casinos to smokers would likely diminish under such a scenario.

The presence of that appeal would clearly account for the longstanding differential between the level of smokers in the general population (13% in New Jersey, 14% nationally) and their significantly greater representation amongst casino visitors, a differential that has been identified in demographic studies.

With that in mind, Spectrum first estimated the prevalence and value of casino smokers, based on an earlier visitor profile study and on current data provided by casino operators. We found that smokers account for a higher percentage of casino patrons than they do in the general adult population, and smokers spend significantly more than non-smokers while gambling on a per-capita basis. As such,

- Spectrum estimates that 21% of Atlantic City casino players are smokers
- Spectrum applied a 25% premium to smokers' gambling expenditure value to the casinos in our low case and a 50% premium in our high case

Starting with those assumptions, Spectrum developed a range of projected GGR impact based on our research and analysis, which included the following:

- Analysis of GGR impacts when casino smoking bans were instituted in Delaware, Illinois and New Orleans.
- Other related empirical data.
- Assessment of previous studies regarding casinos and smoking, all of which are of limited value for this report for various reasons, not the least of which is because of the passage of time. Smoking prevalence rates have declined significantly since those studies were conducted.
- Interviews with casino employees, casino management, advocacy groups, and others who participate in, or who closely follow, the Atlantic City casino industry.
 - We spoke with the property or finance heads of seven of the nine casinos. They provided us with proprietary performance data regarding smoking areas vs. non-smoking areas, on the condition that neither they nor their properties be disclosed.

A critical assumption in our analysis is that Pennsylvania casinos would continue to allow smoking, per the commonwealth's pre-Covid-19 policy.¹

Spectrum developed a range of GGR impacts that is necessarily broad, recognizing that certain factors are unknowable at this time but would be significant were a smoking ban to be enacted in Atlantic City casinos. Such factors include:

- The intensity of the marketing and promotional response by Pennsylvania casino operators, who could target dissatisfied Atlantic City casino smokers with direct marketing programs and broader advertising programs.
- The facility response by Atlantic City casino operators. Outdoor gaming areas are common at casinos in other jurisdictions in which smoking is prohibited. Some smoking areas are rather lavish and comfortable while others appear to be less accommodating. The quality and convenience of such outdoor gaming areas at Atlantic City casinos would clearly vary by property, and would involve capital investment and additional operating costs due to the inefficiencies of having separate gaming areas.
- The quality of the marketing response by Atlantic City casino operators.
 - Reaching patrons who smoke to inform them about the new policy and any new facilities that would be developed to accommodate smoking.

¹ During the Covid-19 pandemic, some Pennsylvania casinos have at least temporarily prohibited smoking, either by choice or by local health ordinance.

- Reaching adults who currently do not visit Atlantic City casinos – or those who visit less frequently or for less time – because they find the smoky casino floors to be unappealing to inform them about their entirely smoke-free casino floors.
- The amount of time between the enactment and implementation of the casino smoking ban. The longer the gap, the more time casino operators would have to:
 - Develop quality outdoor gaming areas
 - Communicate their plans to patrons who currently smoke
 - Develop marketing programs to attract more non-smokers.

Spectrum projects that a smoking ban in Atlantic City casinos would have the following effects on revenue in Year 1:²

- A smoking ban would result in a GGR decline of between 5.0% and 11.9% among patrons who smoke.
- Non-smokers attracted to the smokefree air may increase their play by 1.0% to 1.5% (in GGR)
- On a *net* basis, a smoking ban would cause a GGR decline of between 4.2% and 10.9%
- A smoking ban would cause a decline in the casinos' non-gaming revenue of 3.0% in the low case and 6.5% in the high case
- Using 2019 (pre-Covid-19) data as a basis, we estimate a smoking ban would lead to declines in State of New Jersey gaming-tax receipts of between \$10.7 million and \$25.7 million to the Casino Revenue Fund and between \$1.7 million and \$4.0 million to the Casino Reinvestment Development Authority
 - Declines in total taxes of between \$17.2 million and \$44 million
- Reductions in revenue as described above could result in a net loss of between 1,021 and 2,512 jobs at the casino properties, based on comparisons to 2019 (pre-pandemic) levels. It is critical to note that such reductions in employment assume that the casinos would be at full employment as they were in 2019; at this time, most casinos are short-staffed, consistent with businesses across the country during the pandemic, and/or have purposely reduced their staffing levels; it to be determined whether those modified staffing levels will be permanent.

² Estimating GGR changes beyond Year 1 is dependent on a host of factors – including the casino operators' reactions to the smoking ban – that cannot be reasonably quantified at this time.

Contents

EXECUTIVE SUMMARY	ii
INTRODUCTION	1
A. SMOKING IN ATLANTIC CASINOS	1
B. SMOKING TRENDS NATIONALLY	3
C. METHODOLOGY	4
D. ABOUT SPECTRUM GAMING GROUP	5
I. IMPACTS OF CASINO SMOKING BANS IN OTHER JURISDICTIONS.....	8
A. DELAWARE	8
B. ILLINOIS	8
1. Chicagoland	9
2. Quad Cities	10
3. St. Louis	11
4. Peoria	12
C. NEW ORLEANS	13
II. SUMMARIES OF CASINO-SMOKING STUDIES.....	16
III. CASINOS AND SMOKING IN ATLANTIC CITY: POLICY, PERCEPTIONS AND PERFORMANCE.....	28
A. CONSEQUENCES OF NEW JERSEY TOBACCO POLICIES	28
B. ESTIMATING THE PERCENTAGE OF GAMBLERS WHO ARE SMOKERS	29
C. THE VALUE OF SMOKERS VS. NON-SMOKERS	30
1. Time on Device.....	31
IV. PROJECTED GGR IMPACTS OF A SMOKING BAN IN ATLANTIC CITY CASINOS.....	33
A. CONSIDERING THE EXPERIENCE OF SMOKEFREE CASINOS AFTER REOPENING.....	34
B. ESTIMATED RANGE OF IMPACTS TO ATLANTIC CITY CASINO GGR	35
1. Estimated Percentage of Casino Gamblers who are Smokers.....	36
2. Estimated Value of Smokers	37
3. Estimated Range of GGR Change from Reduction of Play by Smokers.....	38
4. Estimated Range of GGR Change from Increase in Play by Non-Smokers.....	39
5. Estimated Range of Net GGR Change from a Casino Smoking Ban	40
6. Estimated Change in Non-Gaming Revenue	41
7. Estimated Change in Tax Receipts from a Casino Smoking Ban	42
8. Potential Changes in Employment.....	43

Figures

Figure 1: Northeast states' indoor casino-floor smoking policies	2
Figure 2: US adult cigarette-smoking prevalence rates, selected demographic groups, 2019	3
Figure 3: US adult cigarette-smoking prevalence rates, 1965-2018.....	4

Figure 4: Average number of cigarettes smoked per day, among smokers, 1974-2018 4

Figure 5: Delaware VLT GGR, 2000-2006 8

Figure 6: Annual percentage change in selected Illinois casino markets 9

Figure 7: Chicagoland casino market monthly GGR by state, June 2007-December 2012 10

Figure 8: Quad Cities casino GGR by state, 2006-2012..... 11

Figure 9: St. Louis area casino GGR by state, June 2007-December 2012..... 12

Figure 10: Year-over-year AGR percentage change in Peoria and all Illinois excluding Peoria 12

Figure 11: Peoria casino GGR and non-farm employment in Peoria 2006-2010..... 13

Figure 12: New Orleans market slot revenue LTM, April 2014-April 2018..... 14

Figure 13: New Orleans market LTM slot and Mississippi GGR win by segment, 2014-2018 14

Figure 14: Estimated local annual visits and slot win in New Orleans market Louisiana casinos 15

Figure 15: Illustrative example of change in GGR due to smoking break..... 31

Figure 16: Comparison of Atlantic City and Pennsylvania GGR for 3-month and 7-month periods..... 35

Figure 17: Estimated smoker participation at Atlantic City casinos, by state..... 36

Figure 18: High case estimate of smoker GGR at Atlantic City casinos 37

Figure 19: Low case estimate of smoker GGR at Atlantic City casinos 38

Figure 20: High case estimate of casino GGR change from reduction in play by smokers, Year 1..... 38

Figure 21: Low case estimate of casino GGR change from reduction in play by smokers, Year 1 39

Figure 22: High case estimate of casino GGR change from increased in play by non-smokers, Year 1 40

Figure 23: Low case estimate of casino GGR change from increased in play by non-smokers, Year 1 40

Figure 24: High case estimate of net change in casino GGR from a casino smoking ban, Year 1 41

Figure 25: Low case estimate of net change in casino GGR from a casino smoking ban, Year 1 41

Figure 26: Atlantic City gaming and non-gaming revenue, 2019..... 41

Figure 27: Low case estimated non-gaming revenue loss from smoking ban 42

Figure 28: High case estimated non-gaming revenue loss from smoking ban 42

Figure 29: Estimated tax impacts from a smoking ban, compared to 2019 43

Figure 30: Potential change in employment, based on total revenue per employee 43

Introduction

The Casino Association of New Jersey (“Client”), which represents the seven casino operators (and all nine casinos) in Atlantic City, engaged Spectrum Gaming Group (“Spectrum,” “we” or “our”) to undertake an independent analysis of the effect a possible smoking ban would have, collectively, on the casinos’ gross gaming revenue (“GGR”) and the resulting State of New Jersey (“State”) gaming taxes.

It is beyond the scope of this study to consider other impacts that may be associated with a casino smoking ban. Further, Spectrum offers no opinion or recommendation whether smoking should be allowed on casino floors.

GGR is the amount that the casinos retain after all winning wagers have been paid. The casinos pay the State a combined gaming tax of 9.25% on their GGR, which is divided as follows:

- 8.00% deposited into the Casino Revenue Fund, which benefits programs for senior and disabled New Jerseyans; and
- 1.25% deposited into the Casino Reinvestment Development Authority, which funds economic and community development programs in Atlantic City.

A. Smoking in Atlantic Casinos

Patrons have been allowed to smoke on the gaming floors of Atlantic City casinos since the commencement of gaming there in 1978, with notable exceptions and events that include:

- The New Jersey Smoke-Free Air Act of 2006 prohibited smoking in workplaces and indoor public places throughout the State – except for certain specifically exempted establishments, including casinos.
- In February 2007, the City of Atlantic City passed an ordinance restricting smoking on a casino floor to 25% of the gaming area, with required separate, designated smoking and non-smoking areas.
- Effective October 15, 2008, the City passed another ordinance that required casinos to be entirely smokefree. However, less than two weeks later the City passed a new ordinance in which casinos could revert to the previous 25% smoking, effective November 16, 2008. This meant the casinos were smokefree for one month.³
- In April 2012, Revel opened as the first Atlantic City casino property to be entirely smokefree. The property closed in September 2014.⁴
- On July 2, 2020, casinos were allowed to reopen after being shuttered for 15 months due to the Covid-19 pandemic – but smoking was prohibited. Three months later, as NJ.com

³ “Atlantic City, NJ,” Global Advisors on Smokefree Policy. <http://www.njgasp.org/smokefree-gaming/atlantic-city-nj/> (accessed August 31, 2021)

⁴ The property reopened under new ownership, and a new name – Ocean Casino Resort – in June 2018 and has the same smoking policy as other Atlantic City casinos.

reported, “[Governor Phil] Murphy was originally set to allow smoking to return there when statewide indoor dining resumed in September. But he reversed course after backlash from health experts who said it was too much of a risk because smoke may help Covid-19 spread.”⁵

- The State lifted the temporary, Covid-19-related ban on July 4, 2021. Governor Murphy said at the time he would be receptive to making the smoking ban permanent.⁶

The competition for casino patrons in the Northeast/Mid-Atlantic region is fierce, with 32 casinos operating within a 150-mile radius of Philadelphia. Those casinos generated total GGR of \$11.8 billion for the 12-month period ending August 2021, including \$8.5 billion from live slots and table games.⁷

Figure 1 provides the casino smoking policies in Northeast states with casinos. Among the primary competitors to Atlantic City, Pennsylvania permits smoking on 50% of its casino floors, although the highest-grossing casino in that state, Parx, has opted to remain smokefree⁸ since the state allowed a resumption of smoking on casino floors in June 2021. The two Philadelphia casinos, Rivers and Live, are smokefree due to the city’s indoor mask mandate. The state-regulated casinos in Delaware, Maryland and New York are smokefree; the tribal casinos in Connecticut and New York permit smoking. Many casinos where smoking is prohibited indoors do have covered outdoor gaming areas where smoking is permitted.

Figure 1: Northeast states’ indoor casino-floor smoking policies

State	Casino Smoking Policy ^a
Connecticut	Smoking permitted in the casinos, which are operated by sovereign, Native American entities
Delaware	Smoking prohibited as of November 2002
Maine	Smoking prohibited since opening of first casino in 2005
Maryland	Smoking prohibited since commencement of casino gaming in 2010
Massachusetts	Smoking prohibited since commencement of casino gaming in 2015
New Jersey	Smoking permitted on 25% of casino floor
New York	Smoking prohibited at state-regulated casinos, allowed in Native American casinos
Pennsylvania	Smoking permitted on 50% of casino floor
Rhode Island	Smoking permitted in designated areas; both casinos are currently smokefree by choice
West Virginia	Smoking restrictions vary by county; two of the five casinos are smokefree

Source: Spectrum Gaming Group research. ^aCasino smoking policies may have temporarily changed in certain jurisdictions due health requirements related to Covid-19.

It is against this background that the Atlantic City casino operators seek to understand the impacts that a permanent smoking ban would have on their gaming revenues.

⁵ Brent Johnson, “Smoking ban in Atlantic City casinos due to Covid ends Sunday. Murphy wants permanent ban.” NJ.com, July 2, 2021. <https://www.nj.com/coronavirus/2021/06/smoking-ban-in-atlantic-city-casinos-due-to-covid-ends-sunday-murphy-wants-permanent-ban.html>

⁶ Ibid.

⁷ Spectrumetrix Mid-Atlantic Gaming Analysis.

⁸ As of the cover date of this report.

B. Smoking Trends Nationally

According to the most recent data provided by the Centers for Disease Control and Prevention,⁹ 14% of US adults in 2019 smoked cigarettes every day or on some days. The cigarette smoking prevalence varies by demographic group, as shown in Figure 2.

Figure 2: US adult cigarette-smoking prevalence rates, selected demographic groups, 2019

Male	15.3%
Female	12.7%
Ages 18-24	8.0%
Ages 25-44	16.7%
Ages 45-64	17.0%
Ages 65+	8.2%
White, non-Hispanic	15.5%
Black, non-Hispanic	14.9%
Asian, non-Hispanic	7.2%
Hispanic	8.8%
Northeast Region	12.8%
New Jersey	13.1%
Pennsylvania	17.0%
New York	12.8%
Delaware	16.5%
No diploma	21.6%
General Education Development	35.3%
High School diploma	19.6%
Some college	17.7%
Associate degree	14.0%
Undergraduate degree	6.9%
Graduate degree	4.0%
Less than \$35,000 income	21.4%
\$35,000 – \$74,999	15.7%
\$75,000 - \$99,999	11.4%
\$100,000+	7.1%

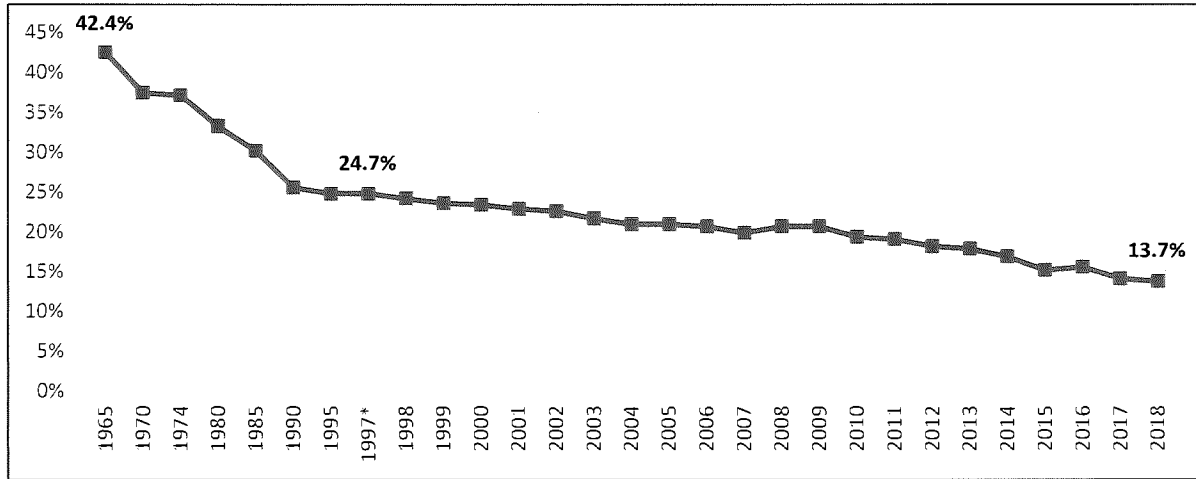
Source: Centers for Disease Control and Prevention

The prevalence of adult cigarette smoking has steadily declined through the years, according to the American Lung Association, and it declined by 44.5% during the 20-year period ending in 2018, as shown in Figure 3.¹⁰

⁹ Monica E. Cornelius, PhD; Teresa W. Wang, PhD; Ahmed Jamal, MBBS; Caitlin G. Loretan, MPH; Linda J. Neff, PhD, "Tobacco Product Use Among Adults — United States, 2019," *Morbidity and Mortality Weekly Report*, Centers for Disease and Prevention, November 20, 2020; based on National Health Interview Survey, United States, 2019. https://www.cdc.gov/mmwr/volumes/69/wr/mm6946a4.htm?s_cid=mm6946a4_w#F1 down

¹⁰ "Trends in Cigarette Smoking Rates," American Lung Association. <https://www.lung.org/research/trends-in-lung-disease/tobacco-trends-brief/overall-tobacco-trends> (accessed August 31, 2021)

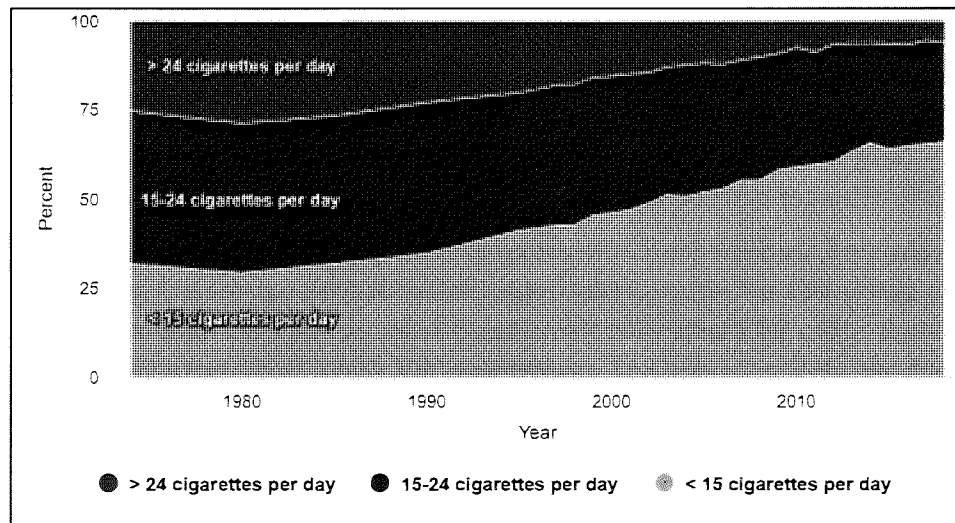
Figure 3: US adult cigarette-smoking prevalence rates, 1965-2018



Source: American Lung Association, via the Centers for Disease Control and Prevention, National Center for Health Statistics. National Health Interview Survey 1965-2018. Analysis for years 1997-2018 by the American Lung Association Research Team using SPSS software. *Due to the redesign of the NHIS survey in 1997, comparisons with data from prior years must be conducted with caution.

Among smokers, the number of cigarettes they smoke per day has been decreasing, as shown in Figure 4.

Figure 4: Average number of cigarettes smoked per day, among smokers, 1974-2018



Source: American Lung Association of analysis of Centers for Disease Control data, 1974-2018

C. Methodology

Spectrum recognizes that the topic of indoor cigarette smoking is controversial, especially as it pertains to the casino industry. In New Jersey and Pennsylvania, casinos were specifically exempted from statewide indoor workplace smoking bans. The issue typically pits the health and comfort of patrons and employees – and the advocacy groups that support them – against the casinos’ desire to maximize revenues and the state governments’ desire to maximize the concomitant gaming-tax receipts.

As noted above, this study is limited to the impacts that a permanent smoking ban on Atlantic City floors would have on gross gaming revenue. As detailed in Chapter IV of this report, Spectrum projected a range of potential GGR impact based our research and analysis, which included the following:

- Analysis of GGR impacts when casino smoking bans were instituted in Delaware, Illinois and New Orleans.
- Other related empirical data.
- Assessment of previous studies regarding casinos and smoking, all of which are of limited value for this report for various reasons, not the least of which is because of the passage of time. As seen above, smoking prevalence rates have declined significantly since those studies were conducted.
- Interviews with casino employees, casino management, advocacy groups, and others who participate in, or who closely follow, the Atlantic City casino industry.
 - We spoke with the property or finance heads seven of the nine casinos. They provided us with proprietary performance data regarding smoking areas vs. non-smoking areas, on the condition that neither they nor their properties be disclosed.

D. About Spectrum Gaming Group

This report was prepared by Spectrum Gaming Group, an independent research and professional services firm founded in 1993 that serves private- and public-sector clients worldwide. Our principals have backgrounds in operations, economic analysis, law enforcement, regulation and journalism.

Spectrum holds no beneficial interest in any casino operating companies or gaming equipment manufacturers or suppliers. We employ only senior-level executives and associates who have earned reputations for honesty, integrity and the highest standards of professional conduct. Our work is never influenced by the interests of past or potential clients.

Each Spectrum project is customized to our client's specific requirements and developed from the ground up. Our findings, conclusions and recommendations are based solely on our research, analysis and experience. Our mandate is not to tell clients what they want to hear; we tell them what they need to know. We will not accept, and have never accepted, engagements that seek a preferred result.

Our clients in 48 countries on six continents have included government entities of all types and gaming companies (national and international) of all sizes, both public and private. In addition, our principals have testified or presented before the following governmental bodies:

- Brazil Chamber of Deputies
- British Columbia Lottery Corporation
- California Assembly Governmental Organization Committee
- Connecticut Public Safety and Security Committee
- Florida House Select Committee on Gaming
- Florida Senate Gaming Committee
- Georgia House Study Committee on the Preservation of the HOPE Scholarship Program
- Georgia Joint Committee on Economic Development and Tourism
- Illinois Gaming Board
- Illinois House Executive Committee

- Indiana Gaming Study Commission
- Indiana Horse Racing Commission
- International Tribunal, The Hague
- Iowa Racing and Gaming Commission
- Louisiana House and Senate Joint Criminal Justice Committee
- Massachusetts Gaming Commission
- Massachusetts Joint Committee on Bonding, Capital Expenditures, and State Assets
- Michigan Senate Regulatory Reform Committee
- National Gambling Impact Study Commission
- New Hampshire Gaming Study Commission
- New Jersey Assembly Regulatory Oversight and Gaming Committee
- New Jersey Assembly Tourism and Gaming Committee
- New Jersey Senate Legislative Oversight Committee
- New Jersey Senate Wagering, Tourism & Historic Preservation Committee
- New York Senate Racing, Gaming and Wagering Committee
- New York State Economic Development Council
- North Dakota Taxation Committee
- Ohio House Economic Development Committee
- Ohio Senate Oversight Committee
- Pennsylvania Gaming Control Board
- Pennsylvania House Gaming Oversight Committee
- Puerto Rico Racing Board
- US House Congressional Gaming Caucus
- US Senate Indian Affairs Committee
- US Senate Permanent Subcommittee on Investigations
- US Senate Select Committee on Indian Gaming
- US Senate Subcommittee on Organized Crime
- Washington State Gambling Commission
- West Virginia Joint Standing Committee on Finance
- World Bank, Washington, DC

Disclaimer

Spectrum has made every reasonable effort to ensure that the data and information contained in this study reflect the most accurate and timely information possible. The data are believed to be generally reliable. This study is based on estimates, assumptions, and other information developed by Spectrum from its independent research effort, general knowledge of the gaming industry, and consultations with the Client and its representatives. Spectrum shall not be responsible for any inaccuracies in reporting by the Client or its agents and representatives, or any other data source used in preparing or presenting this study. The data presented in this study were collected through the cover date of this report. Spectrum has not undertaken any effort to update this information since this time.

Some significant factors that are unquantifiable and unpredictable – including, but not limited to, economic, governmental, managerial and regulatory changes; and acts of nature – are qualitative by nature and cannot be readily used in any quantitative projections. No warranty or representation is made by Spectrum that any of the projected values or results contained in this study will actually be achieved. We shall not be responsible for any deviations in the project’s actual performance from any predictions, estimates, or conclusions contained in this study.

Possession of this study does not carry with it the right of publication thereof, or the right to use the name of Spectrum in any manner without first obtaining the prior written consent of Spectrum. This study may not be used in conjunction with any public or private offering of securities or other similar purpose where it may be relied upon to any degree by any person other than the Client, without first obtaining the prior written consent of Spectrum. This study may not be used for any purpose other than that for which it is prepared or for which prior written consent has first been obtained from Spectrum. This study is qualified in its entirety by, and should be considered in light of, these limitations, conditions and considerations.

I. Impacts of Casino Smoking Bans in Other Jurisdictions

Several jurisdictions over the last 20 years have implemented permanent casino smoking bans well after their gaming industries had been established. Although the results appear to show a decline in gross gaming revenue post-implementation, there were other factors that contributed to declines, as discussed below.

A. Delaware

On November 27, 2002, the Delaware Clean Indoor Air Act took effect, prohibiting smoking at the state's three racetrack casinos (Dover Downs, Harrington Raceway and Delaware Park), which at the time were limited to video lottery terminals ("VLTs"). The impact on VLT revenue was significant in the first year of the smoking ban, as shown in Figure 5 below.

Figure 5: Delaware VLT GGR, 2000-2006

	2000	2001	2002	2003	2004	2005	2006
VLTs at Year End	5,151	5,277	5,430	5,683	6,435	6,581	7,360
Revenue (M)	\$485.1	\$526.6	\$565.9	\$502.0	\$553.3	\$579.4	\$651.7
Avg. Daily Win/Unit	\$257	\$273	\$286	\$242	\$235	\$241	\$243

Source: Delaware Lottery, UNLV Gaming Research Center

The smoking ban impact became noticeable in 2003. In addition, Hurricane Isabel in September 2003 caused minor disruptions in the state. VLT revenues fell by nearly \$64 million, or 11.3% for the year. At the time, the casinos in Atlantic City presented the only other Mid-Atlantic casino competition. After the first year of the smoking ban, revenues rebounded to nearly the same level as 2002, the year prior to the ban. By 2005, two years later, VLT revenues exceeded the 2002 level by \$13 million.

Throughout this period the operators continued to expand and add gaming positions, as the legislature approved extending casino operating hours and allowed additional machines at each track. Other legislative changes included permitting the casinos to extend credit to players, and removing the \$100 betting limit. Dover Downs began construction of an 11,000-square-foot addition to accommodate the new games.

While the smoking ban reduced VLT revenue in Delaware for a short period, legislative initiatives, capital investment by the casinos, and the lack of other competition meant that the dip in GGR was short-lived.

B. Illinois

The Smoke Free Illinois Act banned smoking in public places, including casinos. The act took effect January 1, 2008. In 2008, casino revenue at Illinois casinos declined dramatically, but why? The Illinois Gaming Board ("IGB") Annual Report discussed the results:

There are two factors underlying the reductions in this year's gaming revenues. The first is the smoking ban implemented by the Smoke Free Illinois Act (Public Act 95-0017), effective January 1, 2008. According to the casino industry, implementation of this Act has caused the AGR [adjusted gross receipts] per admission

to fall. This is because habitual smokers take smoking breaks, during which time they do not engage in gaming activity. The second factor is the downturn in the Illinois and national economies. As a discretionary form of spending, gaming expenditures are especially prone to reductions during hard economic times. The relative importance of the above two factors has not yet been quantified with certainty.¹¹

Illinois casino gamblers also may have left Illinois casinos for casinos in neighboring states that permit smoking. Notably, Quad Cities, Saint Louis, and Chicago gaming markets straddle state lines. The Peoria market, however, is not near a state line and thus can serve as a benchmark for the gaming markets that include another state. As can be seen in Figure 6 below, Illinois as a whole experienced a 20.9% year-over-year decline in GGR in 2008. Revenues at the Peoria casino declined by 12.1%, which seems to indicate that proximity of smoking casinos increases the likelihood of switching.

Figure 6: Annual percentage change in selected Illinois casino markets

Market Portion	2007 vs 06	2008 vs 07	2009 vs 08	2010 vs 09	2011 vs 10	2012 vs 11	Total % Ch
IL Properties Chicago Market	2.6%	-21.7%	-14.1%	-4.0%	13.9%	16.1%	-12.5%
IL Properties St. Louis Market	6.3%	-19.2%	-9.3%	-9.8%	-2.5%	-0.3%	-31.7%
IL Property Quad City Market	-8.6%	-4.1%	105.6%	12.6%	8.1%	2.3%	145.7%
Peoria Market	1.4%	-12.1%	-1.5%	0.2%	0.2%	0.7%	-11.2%
ALL Illinois Markets	3.1%	-20.9%	-8.9%	-3.9%	7.6%	10.9%	-14.8%
Non IL Portion of Markets	-2.5%	1.7%	0.6%	2.5%	-1.9%	-1.1%	-0.7%

Source: Deutsche Bank

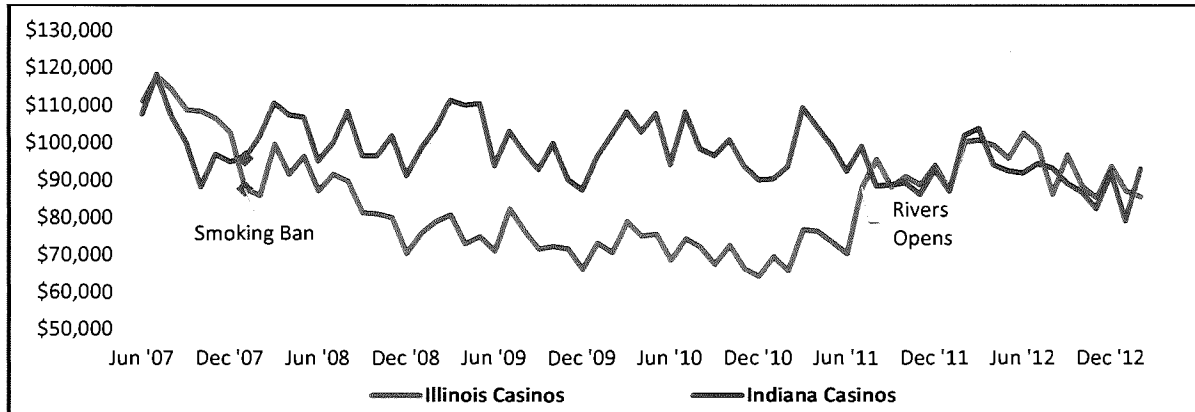
The performance was not uniform across the state or the markets. Several factors contribute to the varied results. Below we discuss these factors and review each sub-market.

1. Chicagoland

At the time of the implementation of the Illinois smoking ban in 2008, the Chicagoland casino market included nine riverboat casinos: four in Illinois (two in Joliet, one in Elgin, and one in Aurora) and five in Indiana (one in Hammond, one in East Chicago, two in Gary, and one in Michigan City). In 2008, the Illinois casinos experienced a significant decline in GGR while the casinos in Indiana saw increased revenue.

¹¹ Illinois Gaming Board Annual Report 2008. <https://www.igb.illinois.gov/AnnualReport.aspx>

Figure 7: Chicagoland casino market monthly GGR by state, June 2007-December 2012



Source: Deutsche Bank, Spectrum Gaming Group

The imbalance of GGR and the GGR trend are evident in Figure 7: The Illinois GGR share declined while the Indiana share increased.

In 2011, a tenth casino, Rivers Casino Des Plaines, opened in the Chicagoland market. Rivers is the only casino in Illinois' Cook County. It is located five miles from Chicago O'Hare International Airport and easily accessible from the city of Chicago and its suburbs via interstate. Once the Rivers casino opened, the revenue balance shifted back to Illinois favor, despite the fact that Rivers, like all the other Illinois casinos, was a non-smoking property.

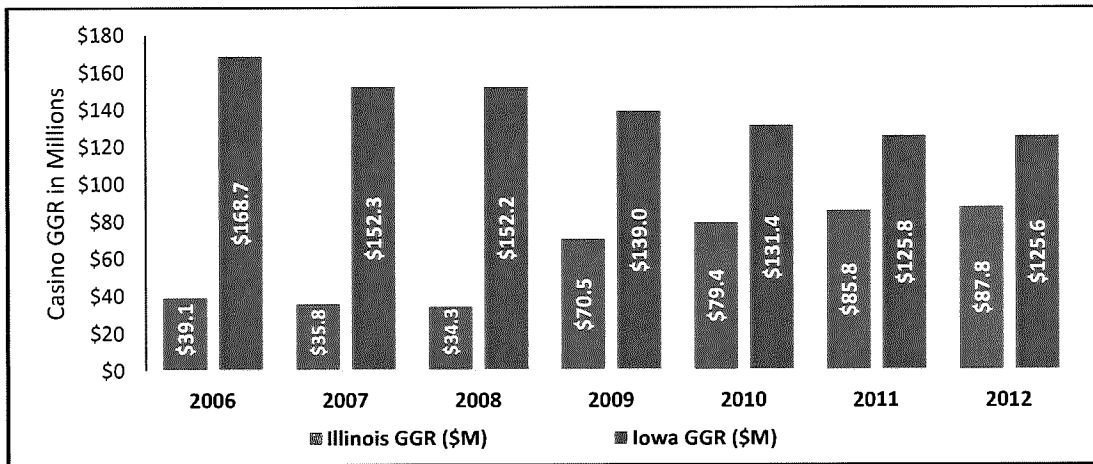
While it appears the smoking ban had a negative impact on GGR at the Chicagoland casinos in Illinois, the opening of a new, modern casino expanded the market and, from a market-wide perspective, limited the impact of the smoking ban.

2. Quad Cities

The Quad Cities gaming market includes Bettendorf and Davenport in Iowa and Moline and Rock Island in Illinois. For many years, the market was stable. Early on, there were three casinos in the market: two in Iowa and one in Illinois. The market is ideal for studying the impact of differing state regulations.

In December 2008, Jumer's Rock Island casino in Illinois opened a new casino and hotel complex. This investment coincided with a surge in revenue at the property. Figure 8 below depicts the Quad Cities GGR by state from 2006 to 2012.

Figure 8: Quad Cities casino GGR by state, 2006-2012



Source: H2 Gaming Capital

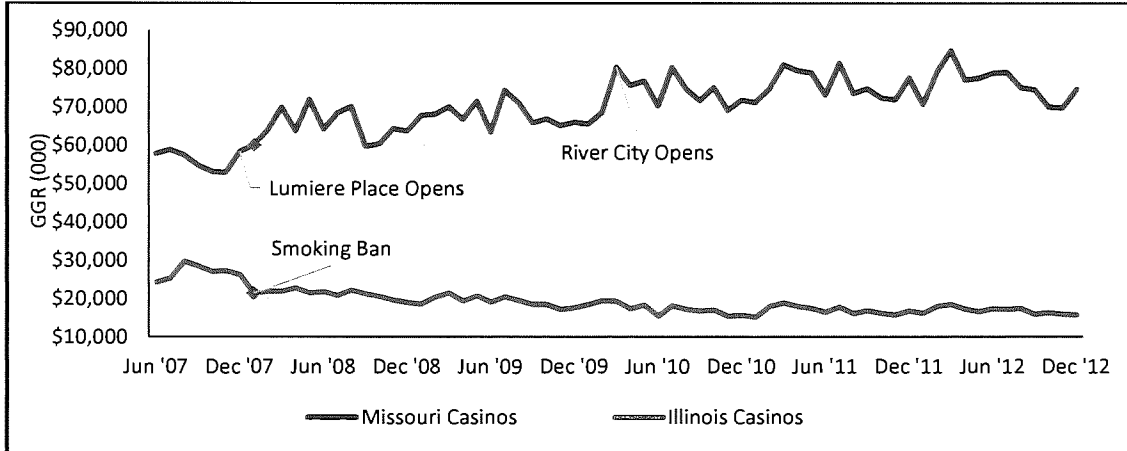
From the data presented above, it appears that the smoking ban had minimal impact on gaming revenues at the Jumer’s Rock Island casino in Illinois. Of more interest is that when the property was enhanced and updated after the smoking ban was implemented, casino revenues increased. The share of gaming revenue in Illinois grew despite – or perhaps because of – the smoking ban. Non-smoking patrons may have chosen the new, modern smokefree casino as a preferred alternative to less-appealing, first-generation casino boats in Iowa. We cannot know the motivations of the patrons, just the impact on GGR. It is notable that some players chose the new casino over casinos where smoking is permitted.

3. St. Louis

In 2006, there were four casinos in the St. Louis gaming market: two in Illinois (one in Alton, one in East St. Louis) and two in Missouri (one in St. Charles, one in Maryland Heights). In December 2007 – two weeks before the Illinois smoking ban took effect – the \$507 million Lumiere Place casino hotel opened in downtown St. Louis, giving the market a fifth casino. Later, in March 2010, River City casino opened south of downtown St. Louis, adding a sixth casino to the market.

Figure 9 shows the GGR performance of the St. Louis market, with key events indicated.

Figure 9: St. Louis area casino GGR by state, June 2007-December 2012



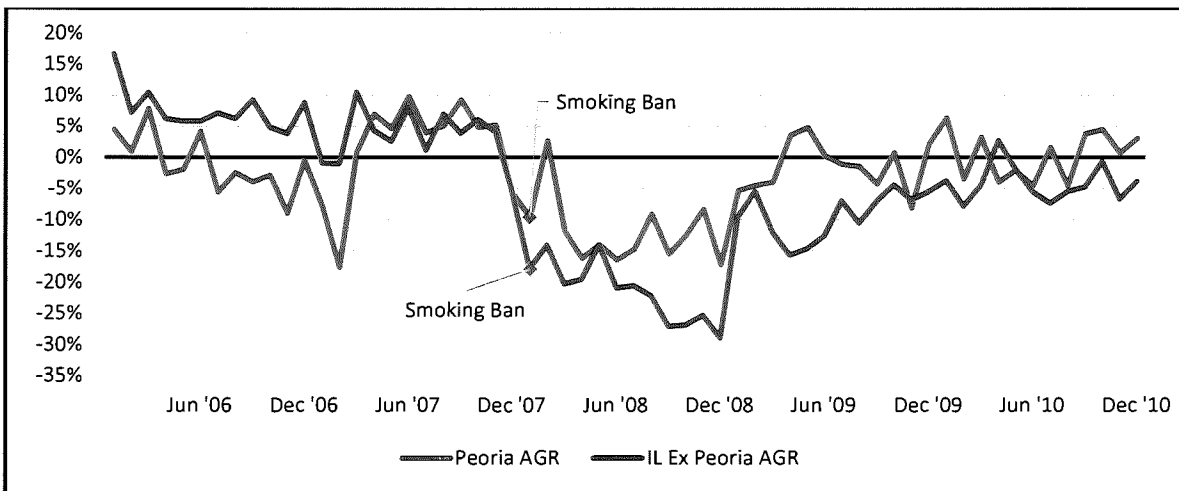
Source: Deutsche Bank

There is no real means to separate the impact of the smoking ban on Illinois casino revenue in the St. Louis market from the impact a new casino would have on offering a better product. There is clearly a jump in revenue on the Missouri side of the river, and a 10% decline in GGR at the Illinois casinos in the market. Spectrum cannot determine how much of the shift in revenues and growth of the market is due to a new casino and how much is due to the Illinois smoking ban.

4. Peoria

The Peoria gaming market is entirely within Illinois. The Par-A-Dice casino has been operating there since 1992, with no new casino entrants in the area. The closest casino competition is in the Quad Cities market, approximately 75 miles northwest of Peoria, and a casino in Burlington, IA. Because of its relative isolation, Spectrum believes the Peoria market provides a good benchmark to evaluate the impact of a smoking ban in a market without being affected by competing casinos where smoking is allowed.

Figure 10: Year-over-year AGR percentage change in Peoria and all Illinois excluding Peoria, 2006-2010

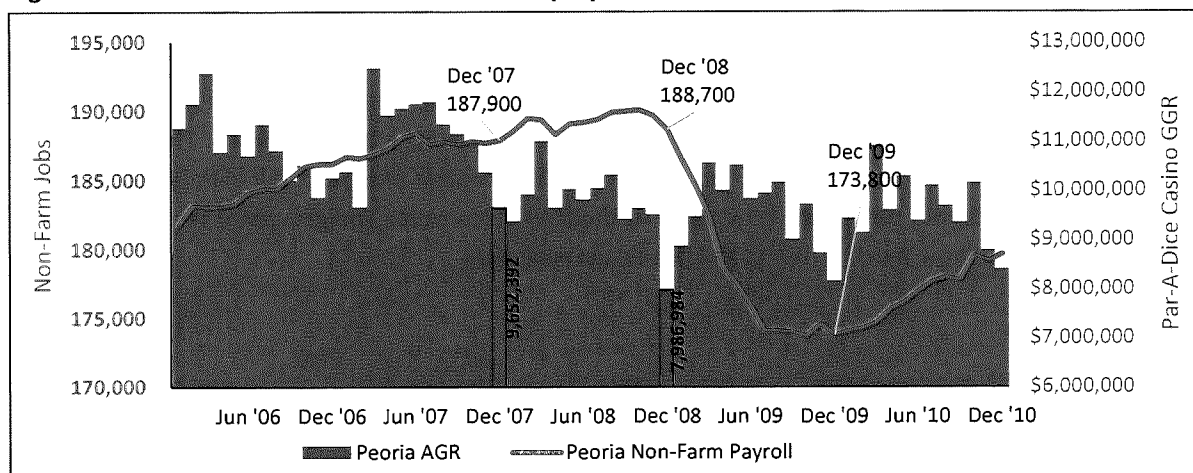


Source: Illinois Gaming Board. **Note:** AGR = adjusted gross receipts, essentially the same as gross gaming revenue.

Protected by distance from casinos where smoking was permitted, adjusted gross receipts, (“AGR”) at the Peoria casino declined but by less than the rest of the state. Figure 10 above presents the monthly year-over-year percentage change in AGR for five years. It can be argued that without smoking casinos for competition, local casino patrons had no choice but to visit the Peoria property. As a result, there was less of a swing to other states as was seen in other markets.

Another factor mentioned by the IGB in its annual report for 2008 was the recession that began that year. Figure 11 below presents total non-farm employees in the Peoria metropolitan statistical area (“MSA”) by month. It is clear that while employment fell dramatically in the MSA in 2009, there was a slight rise in payroll employment in calendar year 2008. This gives an indication that perhaps the smoking ban in Peoria Illinois was more of a cause of the revenue decline than the recession.

Figure 11: Peoria casino GGR and non-farm employment in Peoria 2006-2010



Source: St. Louis Federal Reserve

C. New Orleans

The New Orleans casino market includes four casinos in Louisiana and the casinos in the nearby Mississippi Gulf Coast cites of Bay St. Louis, Biloxi and Gulfport. Two of the Louisiana casinos, Harrah’s New Orleans and Fair Grounds Race Course & Slots, are located in Orleans parish. Two other casinos, Boomtown and Treasure Chest, are located in Jefferson Parish. Fair Grounds Race Course offers only slots whereas the other properties offer tables and slots. Because we are trying to measure the impact of smoking on play, we have focused on slot revenue for the Louisiana casinos for comparison purposes. The Mississippi Gulf Coast casinos are a longer drive from the New Orleans metro area but they permit smoking. In April 2015, Orleans Parish imposed a smoking ban on casinos.

The smoking ban appears to have benefitted nearby Treasure Chest in Kenner and Boomtown in Harvey at the expense of the Orleans Parish properties. In the following 24 months, the slot win at Harrah’s declined more than \$45 million and the slot win declined \$3.9 million at Fair Grounds; slot win increased at Boomtown and Treasure Chest in Jefferson Parish by a nearly \$11 million combined in this same timeframe. Revenue grew at the Mississippi Gulf Coast casinos. The Mississippi Gaming Commission

releases GGR data in total without breaking out slot and table revenue. We used the total GGR for the Mississippi casinos.

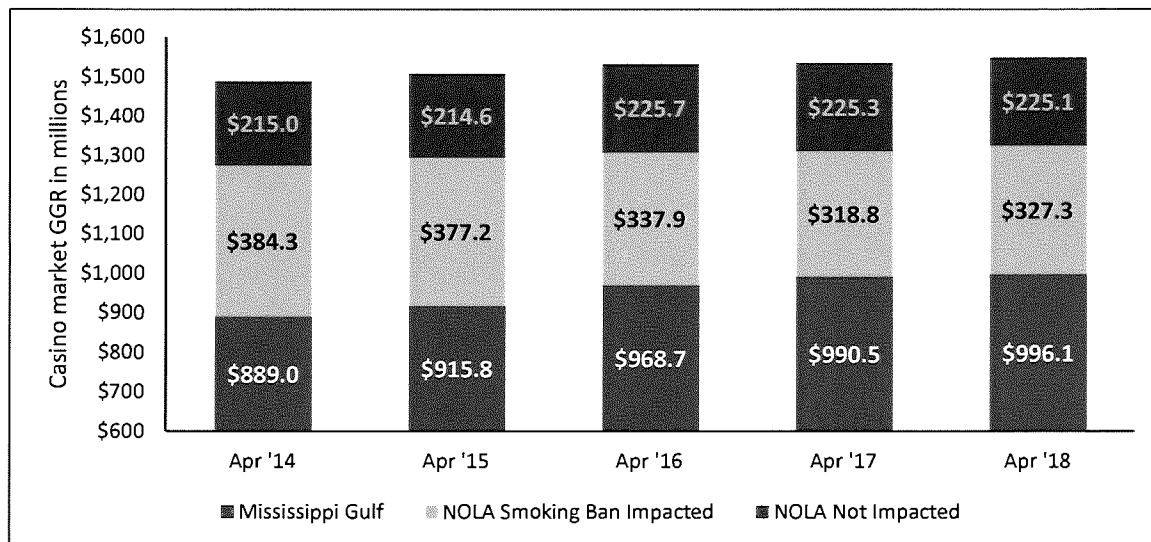
Figure 12: New Orleans market slot revenue LTM, April 2014-April 2018

LTM Slot Revenue (M)	April 2014	April 2015	April 2016	April 2017	April 2018	% Change, 2014-2018
Boomtown Harvey Slots	\$116.3	\$114.1	\$119.7	\$118.3	\$116.9	0.5%
Treasure Chest Slots	\$98.7	\$100.5	\$106.0	\$107.0	\$108.2	9.7%
Fair Grounds Slots	\$46.0	\$45.9	\$42.0	\$41.9	\$41.9	-8.9%
Harrah's New Orleans Slots	\$338.3	\$331.3	\$295.9	\$277.0	\$285.4	-15.6%
Coastal MS- All GGR	\$889.0	\$915.8	\$968.7	\$990.5	\$996.1	12.0%
Total	\$1,488.3	\$1,507.6	\$1,532.3	\$1,534.7	\$1,548.6	4.0%

Source: Spectrumetrix

Another factor is the continued investment and improvement of the Mississippi Gulf Coast casinos. As the coast casinos rebuilt after Hurricane Katrina, some moved to the landside of US Route 90, affording them with modern facilities that patrons may find more appealing than the older Louisiana riverboats. We have grouped the casinos into three segments: NOLA smoking-ban-impacted (Harrah’s and Fair Grounds), NOLA not-smoking-ban-impacted (Boomtown and Treasure Chest), and Mississippi Gulf Coast. The chart below presents the slot win from each segment of the market in the years immediately before and after the smoking ban.

Figure 13: New Orleans market LTM slot and Mississippi GGR win by segment, 2014-2018



Source: Spectrumetrix

The Louisiana Gaming Control Board (“LGCB”) annual report includes estimates of the percentage of visitation from over 150 miles away by casino, total casino visits and revenue for each casino.¹² We have used these estimates to develop estimates of local visitation and revenue, as a means to assess the

¹² Louisiana Gaming Control Board Annual reports, 2014-2019. http://lgcb.dps.louisiana.gov/annual_reports.html

impact of a smoking ban on casino visitation patterns from local patrons where the cost of switching from a non-smoking to a smoking casino is minimal. The data in Figure 14 show that local casino visitation and revenue decreased in both the smoking and non-smoking properties, which may mean that Louisiana lost casino players and their gaming revenues to Mississippi.

Figure 14: Estimated local annual visits and slot win in New Orleans market Louisiana casinos

Estimated Local Visits	2014	2015	2016	2017	2018	2019	% Change from 2014
Smoking Casinos	2,023,000	1,929,000	1,989,000	1,873,000	1,699,000	1,680,000	-17.0%
Non-smoking Casinos	3,744,000	3,617,000	3,534,000	3,250,000	3,125,000	3,150,000	-15.9%
Total Est. Local Visits	5,767,000	5,546,000	5,523,000	5,123,000	4,824,000	4,830,000	-16.2%
Estimated Local Revenue (000)							
Smoking Casinos	\$190,210	\$179,060	\$185,360	\$183,770	\$180,810	\$179,830	-5.5%
Non-smoking Casinos	\$249,990	\$235,990	\$218,270	\$210,560	\$215,590	\$218,590	-12.6%
Total Est. Local Rev	\$440,200	\$415,050	\$403,630	\$394,330	\$396,400	\$398,420	-9.5%

Sources: Spectrumatrix, Louisiana Gaming Control Board

II. Summaries of Casino-Smoking Studies

Different organizations over the last three decades have studied various aspects related to cigarette smoking in casinos. The studies have been conducted by academic institutions, consulting firms, advocacy groups, and others. Following are Spectrum's synopses of studies that are most relevant to this report; i.e., those that relate to gaming revenues and smoking prevalence. Many other studies focus on the health aspects of smoking in casinos, but they are not included here because of the narrow scope of this report. We believe the synopses help to provide context for the discussion and analysis throughout this report. The synopses are presented in chronological order of the reports' publication dates.

2005: *Smoking Ban Economic Effect Analysis*¹³

Prepared by: PricewaterhouseCoopers

Scope of Study: In light of a proposed smoking ban in Delaware, PricewaterhouseCoopers LLP ("PwC") was hired to perform a preliminary analysis of the effect of the smoking ban on Delaware's three gaming facilities and, among other things, estimate the effect of a smoking ban on the Atlantic City casino market's gaming revenues.

Key Findings: PwC estimated the two-year cumulative effect on Delaware's adjusted gaming revenues would be -19.12%. It estimated the two-year cumulative effect on the adjusted gaming revenues for Delaware's Dover Downs would be -20.40%. It further estimated that if a smoking ban were to be effected in Atlantic City, the two-year cumulative effect on the adjusted gaming revenues for Atlantic City would be -20.40%.

Limitations: The study was done 16 years ago, and the numbers are projections rather than actual results. The study made certain assumptions, including that approximately 50% of the Delaware gaming market's customers are smokers and that the relative gaming spend of smokers is approximately 10% higher than non-smokers.

2005: *Smoke-free law did not affect revenue from gaming in Delaware*¹⁴

Prepared by: L.L. Mandel, B.C. Alamar, and S.A. Glantz (published in *Tobacco Control*)

Scope of Study: The study attempted to determine the effect of the Delaware smoke-free law on gaming revenue. The Delaware Clean Indoor Air Act took effect on November 27, 2002. It made virtually all of Delaware's public places and workplaces smoke-free, including the state's three racinos.

¹³ "Smoking Ban Economic Effect Analysis," PricewaterhouseCoopers, November 17, 2005. http://www.njgasp.org/wp-content/uploads/2014/05/i_economics_PWC-full-report.pdf

¹⁴ L.L. Mandel, B.C. Alamar, and S.A. Glantz, "Smoke-free law did not affect revenue from gaming in Delaware," *Tobacco Control*, 2005. <https://tobaccocontrol.bmj.com/content/tobaccocontrol/14/1/10.full.pdf>

The publication says that while previous studies had examined the effects of smoke-free laws and ordinances on the hospitality industry and charitable bingo, this was the first study to examine the effects of a state-wide smoke-free law on gaming revenue.

Key Findings: “The linear regression showed that the smoke-free law was associated with no effect on total revenue or average revenue per machine.”

Note: *Tobacco Control* later published a correction to this study. It said the article contained inaccurate results because of a data entry error. The correction stated that “(t)he analysis based on the corrected data confirms the results of the published paper, that the smoke-free law had no affect [*sic*] on revenue from gaming in Delaware.”

Limitations: The study was published in 2005. Unlike most studies synopsised in this chapter, this paper did not note any limitations of the study.

2006: Smoke-free law did affect revenue from gaming in Delaware¹⁵

Prepared by: M.R. Pakko (published in *Tobacco Control*)

Scope of Study: Pakko examines the data and methodologies used in the study by Mandel, Alamar, and Glantz (see above) and concludes that their finding is questionable. “Using more general approaches to controlling for heteroskedasticity and seasonality in the data, I find that both total gaming revenues and revenues per VLT declined significantly after the implementation of the Delaware smoke-free law.” According to the Corporate Finance Institute, “Heteroskedasticity refers to situations where the variance of the residuals is unequal over a range of measured values. When running a regression analysis, heteroskedasticity results in an unequal scatter of the residuals (also known as the error term). When observing a plot of the residuals, a fan or cone shape indicates the presence of heteroskedasticity. In statistics, heteroskedasticity is seen as a problem because regressions involving ordinary least squares (OLS) assume that the residuals are drawn from a population with constant variance. If there is an unequal scatter of residuals, the population used in the regression contains unequal variance, and therefore the analysis results may be invalid.”¹⁶

Key Findings: The author finds that the smoke-free law in Delaware did affect revenue from gaming. “This finding is statistically significant and quite robust. The public health benefits of smoke-free laws should be weighed against these (and other, similar) economic costs.” The author also disagrees with the original study’s contention that only the seasonal effects of winter are relevant. The author finds that the results reveal significant seasonal variation.

¹⁵ M.R. Pakko, “Smoke-free law did affect revenue from gaming in Delaware,” as published in PubMed Central, US National Library of Medicine, National Institutes of Health, 2006.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563623/>

¹⁶ “What is Heteroskedasticity,” Corporate Finance Institute.
<https://corporatefinanceinstitute.com/resources/knowledge/other/heteroskedasticity/> (accessed September 29, 2021)

In a separate summary, the author wrote: “After correcting for evident errors in that analysis, I find that the smoke-free law did affect revenues from gaming in Delaware. Total gaming revenues are estimated to have declined by at least \$6 million per month after the implementation of Delaware’s Clean Indoor Air Law. This represents a loss of over 12% relative to average monthly revenues in the year preceding the smoking ban.”¹⁷

Limitations: The disagreement between the two Delaware impact studies cited comes down to interpretation of statistics.

2006: *The Percentage of Gamblers Who Smoke: A Study of Nevada Casinos and other Gaming Venues*¹⁸

Prepared by: Dr. Chris A. Pritsos, University of Nevada Reno

Scope of Study: Authors attempted to determine actual percentage of gamblers in Nevada who smoke. Gaming industry officials and lobbyists say the percentage is upward of 70%, based on anecdotal information obtained in a survey of casino executives. Health organizations suggest the number is more in line with the national average of smokers, which at the time was 20.9%.

Key Findings: Authors say they observed 17,723 gamblers, of whom 1,335 were smoking. Because smokers don’t smoke constantly, the study used a methodology published in 1980 by Repace and Lowry to determine the number of smokers in a room. The results from the three tourist centers of Nevada they surveyed (Las Vegas, Reno/Sparks and Lake Tahoe) gave similar results for the percentage of smokers (21.5, 22.6 and 17.0 respectively). Observations of smaller casinos in rural communities showed higher smoker rates amongst gamblers of 36.5%, which, the authors wrote, most likely reflects the higher percentage of smokers in these communities and the fact that much of the gaming patronage is from locals. The percentage of gamblers who smoke at local grocery, drug and convenience stores that have slot machines in Nevada is also higher, with a rate of 42%.

Overall, the results of this study suggest that the percentage of smokers at tourist destination gaming establishments is reflective of the overall percentage of smokers in the population. The percentage of smokers at small rural or non-tourist dependent gaming establishments may better reflect the percentage of smokers in that local area/community than that of the overall US population.

Limitations: The study was published 15 years ago. Authors acknowledge that the methodology used to count smokers might overestimate the number of smokers (because it assumes all smokers are habitual smokers, when 19.2% of smokers do not smoke every day, according to a 2005 report in *Morbidity and Mortality Weekly*). The study was limited to gamblers on the casino floor. Players in the smoke-free poker rooms and people seated at bars in the casino were not included in the study. Authors

¹⁷ M.R. Pakko, “Smoke-free law did affect revenue from gaming in Delaware,” *Semantic Scholar*, 2006. <https://www.semanticscholar.org/paper/Smoke-free-law-did-affect-revenue-from-gaming-in-Pakko/d21c6fd10dfa735b89789da130a7f6a382aef5c9>

¹⁸ Dr. Chris A. Pritsos, “The Percentage of Gamblers Who Smoke: A Study of Nevada Casinos and other Gaming Venues,” University of Nevada Reno, 2014. <https://core.ac.uk/display/100466600>

acknowledge that the small number of gamblers observed at grocery stores, convenience stores and high-minimum table games (except in the Las Vegas Strip casinos) made the sample sizes in those subcategories too small to be meaningful.

2010: *The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois*¹⁹

Prepared by: Federal Reserve Bank of St. Louis

Scope of Study: This study explored the effects that the Illinois state smoking ban, which took effect at the beginning of 2008, had on Illinois casino revenue, casino attendance, and casino tax revenue. The study compared the performance of Illinois casinos with out-of-state casinos (where there was no smoking ban) that share a market with Illinois casinos.

Key Findings: The results indicated that Illinois casinos suffered losses of more than 20% – well over \$400 million – in total during the first year of the Smoke Free Illinois Act.

“Some of this loss appears to be associated with casino patrons gambling less when they do attend the casinos, and part of the loss is also evident in declining attendance. We find that the impact of the smoking ban on total admissions amounts to around 10%, with our point estimates indicating a downturn in the range of 9 to 13%. These estimates imply total casino tax revenue was lower by roughly \$200 million. The economic effects of the Smoke Free Illinois Act — specifically with regard to casino revenue and government tax receipts — represent only part of the Act’s overall impact. In a full analysis, these effects need to be considered alongside costs and benefits, including the public health benefits of the legislation.” The authors wrote that their findings “are consistent with the survey results of Petry and Oncken (2002), which suggests that smoking patrons visit casinos more often and wager more money. The results ... suggest that smoking patrons continued to visit the casinos, but perhaps did not visit as often, stay as long, or wager as much as they did before the ban.”

The study found that the one casino that seemed least affected by the smoking ban was the one that faces the least competition – the Par-A-Dice casino in Peoria. Its location in the center of the state sets it approximately 90 miles from the nearest competition.

Limitations: The study was limited to casinos in Illinois and certain surrounding states. Also, the authors acknowledge that the timing of the Illinois smoking ban coincided with a general economic downturn in Illinois and the nation as a whole. That makes it hard to assess how much a decline in casino revenue was caused by the economic downturn and how much was caused by the smoking ban, although the authors “attempted to statistically disentangle the factors underlying the decline in Illinois casino revenue.”

¹⁹ Thomas A. Garrett, and Michael R. Pakko, “The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois,” Federal Reserve Bank of St. Louis, March 2010. <https://doi.org/10.20955/wp.2009.027>

2011: Consumer Attitudes and Visit Intentions Relative to a Voluntary Smoking Ban in a Single Casino Resort with a Dense Competitive Set²⁰

Prepared by: Gregory T. Bradley and Cherylynn Becker, University of Southern Mississippi (published in Academy of Health Care Management Journal)

Scope of Study: The study was conducted to assess the feasibility of implementing a voluntary smoking ban at a major casino resort in an established regional gaming market in the southeastern United States. While, according to the most recent statistics, the smoking incidence rate across the country is 18.4%, the population under study has one of the highest regional smoking rates in the country at 22.4% (Centers for Disease Control, 2010). As such, the primary objectives of this research were to assess smoking rates among gamblers within the prescribed population, and, subsequently, to determine how the hypothetical implementation of a voluntary smoking ban at a single property in this competitively dense market would affect the attitudes and behaviors of gamblers with regard to modifying their casino choice and visitation frequency.

Key Findings: Based on data collected for a large-scale research study, it was found that there was a substantial difference between smokers and non-smokers in attitudes, perceptions, and behavioral intent regarding the elimination of smoking at their favorite casino or another casino in the market.

- Gamblers reported a smoking rate that was actually lower (18.4%) than the smoking rate in the defined population (22.4%). However, it should be noted that the authors did not distinguish between frequent and infrequent visitors to casinos. The only requirement for participation in the study was to have gambled in that market.
- Smokers expressed a strong likelihood of migrating to a smoking casino if their favorite casino were to institute a voluntary smoking ban. This finding, of course, was not at all surprising based on the aforementioned literature. However, the relative strength of the response should send a message to casino operators that a careful evaluation of the smoking habits of their core customer base is critical prior to instituting a voluntary smoking ban.
- Non-smoking gamblers expressed a strong likelihood of migrating to a non-smoking casino if a competitive casino were to institute a voluntary smoking ban. The strength of this likelihood was as robust as the likelihood of smoker migration in a smoke-free environment.
- Non-smoking gamblers expressed a strong likelihood to visit a non-smoking casino more often than their current favorite casino.
- It was found that air quality in casinos was significantly more important to non-smokers than to smokers.

²⁰ Gregory T. Bradley and Cherylynn Becker, "Consumer Attitudes and Visit Intentions Relative to a Voluntary Smoking Ban in a Single Casino Resort with a Dense Competitive Set," Academy of Health Care Management Journal, Volume 7, Number 2, 2011.

https://www.bradleyresearchgroup.com/uploads/1/3/4/0/134099823/bradley_and_becker_-_ahcmj_smoking_research.pdf

- Non-smokers with a non-smoking spouse or significant other were more likely than non-smokers with a smoking spouse or significant other to indicate the intent to migrate to a non-smoking casino.

Limitations: The authors acknowledge that a potential limitation in this study surrounds the issue of unqualified generalizability. The sampling area was purposive, while the data extraction method within the selected areas was stratified and random. Moreover, participants were selected based on whether they had gambled in the subject casino market. In this inquiry, frequency of visitation or estimated gaming budget was not weighted based on volume. Hence, customers with a low lifetime gaming worth were equally as influential in the study as visitors with a high lifetime gaming worth.

2012: Tribal casinos in California: the last vestige of indoor smoking²¹

Prepared by: BMC Public Health

Scope of Study: Native American casinos were exempt from California’s ban on smoking in public places. The authors analyzed results from the 2008 California Tobacco Survey to research the smoking status of casino patrons, their avoidance of secondhand smoke while visiting, and their views on a hypothetical smoking ban in the Native American casinos.

Key Findings: The data indicate that a ban on smoking in tribal casinos would increase casino visitation, possibly resulting in greater revenue and greater customer satisfaction. If casinos became smokefree, then it is anticipated that they would be visited by a significantly larger number of Californians, including both past casino patrons and those who otherwise would not have visited a casino.

According to the study, “The prevalence of cigarette smoking was considerably higher in casino patrons (17.6%) compared to non-patrons (10.4%), but, not nearly as high as the 50% estimate reported by gaming lobbyists.” Adjusting for demographic variables, current smokers were approximately twice as likely to have visited an Indian casino compared to “never smokers.”

A majority of casino patrons, 60.8%, attempted to avoid secondhand smoke by moving around the casino. This varied considerably by smoking status as reported by 71.8% of the never smokers, 64.5% of the former smokers, and 20.4% of current smokers.

A total of 42.7% of casino patrons indicated that they would extend their stay if smoking were prohibited; another 48.8% reported that their stay would not be affected by such a ban; and the remaining 8.5%, predominately smokers, reported a shortened stay if there were such a ban.

In a separate question asked among all participants (not just casino patrons), 24.3% expressed a greater interest in visiting a casino if smoking were prohibited, 6.3% expressed a diminished interest, and 69.4% expressed indifference.

The authors conclude that, “Similar to the smoking bans in restaurants and bars in California, a smoking ban in tribal casinos is unlikely to affect casino businesses negatively.”

²¹ Timberlake et al.: Tribal casinos in California: the last vestige of indoor smoking. BMC Public Health, February 25, 2012. <https://bmcpublihealth.biomedcentral.com/articles/10.1186/1471-2458-12-144>

Limitations: The study was published in 2012, based on results of a 2008 survey. It was based on a survey of people in California, where smoking prevalence is lower than the overall smoking prevalence in the United States (e.g., 15.2% vs. 20.9%, respectively, in 2005, according to the Centers for Disease Control). Part of the study was based on a hypothetical smoking ban in Native American casinos, the details of which could be perceived differently by various respondents. According to the study itself, “[t]he primary weakness of this study was the lack of information on the last visited casino and residential addresses of participants; thus, a crude estimation was based on number of slot machines and proximity of a casino to a participant’s geocoded centroid. Further, most study participants were sampled in regions in California where casinos are sparse, an additional complication to our estimation. However, our assertion that proximity was a prime determinant of the last visited casino was warranted, given the significant association between casino visitation and residence in a casino-populated region. ... Our study was also hampered by a use of a cross-sectional design; use of different methods in ascertaining a casino’s non-smoking section (i.e. visit vs. telephone call); lack of data on actual smoking in a casino; and location where exposure to smoke occurred (e.g., slot machines vs. card tables).”

Spectrum Update: According to a 2019 article in the *San Francisco Chronicle*, only three of California’s 69 tribal casinos were smokefree.²²

2014: Casinos, Smoking Bans, and Revenues: A Survey of Casino Gamblers in Illinois²³

Prepared by: Clyde W. Barrow and David R. Borges of the Center for Policy Analysis at the University of Massachusetts Dartmouth (published in *Gaming Law Review and Economics*)

Scope of Study: The American Lung Association of the Upper Midwest approached the Center for Policy Analysis and commissioned a poll of Illinois casino gamblers – similar to the New England Gaming Behavior Survey, which is also conducted by the Center for Policy Analysis – to determine whether the smoking ban that became effective January 1, 2008, was a significant factor in the subsequent downturn in gross gaming revenues at Illinois’ riverboat casinos.

In the 2011 New England survey, “We found that contrary to conventional industry wisdom, among gamblers who had actually visited a casino or racino in the last twelve months, 53% said they are more likely to visit a casino where smoking is prohibited on the gaming floor, while 32% said it does not matter, and only 15% said they would be less likely to visit a casino where smoking is prohibited on the gaming floor. ... Moreover, 47% of the respondents who had not visited a casino or racino in the last twelve

²² Michael Cabanatuan, *San Francisco Chronicle*, December 27, 2019. “Tribal casinos remain last refuge for California smokers, at least for now. <https://www.sfchronicle.com/bayarea/article/Smoking-allowed-Tribal-casinos-remain-last-14922820.php#:~:text=Because%20the%20California%20tribes%20are,casinos%20are%20entirely%20smoke%20free.&text=Tribal%20casinos%20make%20bold%20play%20to%20control%20sports%20betting>

²³ Clyde W. Barrow and David R. Borges, “Casinos, Smoking Bans, and Revenues: A Survey of Casino Gamblers in Illinois,” *Gaming Law Review and Economics*, August 19, 2014. <https://www.liebertpub.com/doi/abs/10.1089/glre.2014.1865?journalCode=glre>

months said they would be more likely to visit a smoke-free casino, which signals the potential availability of a large untapped market cache of casino patrons.”

Key Findings: The survey found that 45% of Illinois’s casino gamblers report that they are more likely to visit a casino where smoking is prohibited on the gaming floor, 31% say it does not matter, and only 24% state they are less likely to visit a casino where smoking is prohibited on the gaming floor.

“In other words, more than three-quarters (76%) of Illinois’s casino gamblers report that they either prefer, or are indifferent, to smoking prohibitions on the gaming floor.”

Industry officials who are against smoking bans in casinos “typically argue that if 21% of the casinos’ customer base are unhappy with smoking prohibitions, that is sufficient to account for the documented decline in the state’s gross gaming revenues. They typically point to New Jersey and Colorado as supporting examples, in conjunction with Illinois. The Center for Policy Analysis’ Illinois survey actually found that more than one-third (36%) of casino gamblers who smoke report that they, too, either prefer a smoking prohibition on the gaming floor (13%) or that it does not matter to them (23%).

The survey also found that smokers do not constitute a disproportionate percentage of casino gamblers in comparison to smoking prevalence in the state’s general adult population—20% of adults aged 21+ who gamble at casinos were self-identified smokers, as compared to 21% of the general adult population aged 18+.

According to the authors, Illinois has one of the highest prevalence rates for smoking in the United States, with 21.3% of the adult population reporting that they were current cigarette smokers (2007-2008).

Limitations: The study was limited to people of one state. The survey had a margin of error of +/- 4.9% at the 95% confidence interval, according to the authors.

2015: Six Months after Implementation of a Smoke-Free Ordinance: Harrah’s New Orleans²⁴

Prepared by: Mississippi State University

Scope of Study: Authors examined statistics from Harrah’s New Orleans casino before and after a smoke-free ordinance to see what such a law might mean to Mississippi casinos.

Key Findings: Authors state that although year-over-year revenue was more volatile during the six months after the no-smoking ordinance, the average decrease did not differ substantially for the six months before (-7.0%) and six months after the ordinance (-6.5%). Furthermore, year-over-year revenue for the Louisiana riverboat casinos – which were not affected by the smoking ordinance – did not increase after the implementation of the smoke-free ordinance in April, providing no support for concerns that gamblers would turn to these casinos in order to smoke and play. Admissions data showed that Harrah’s experienced decreased admissions each month (compared with the same month a year earlier) for the six months prior to the smoking ordinance. However, after the smoking ordinance took effect, the downward

²⁴ “Six Months after Implementation of a Smoke-Free Ordinance: Harrah’s New Orleans” Mississippi State University, 2015. https://mstobaccodata.org/wp-content/uploads/2015/08/Harrahs_factsheet.pdf

trend ended and increased year-over-year admissions continued for the first six months after the ordinance.

Limitations: The study is not scientific. Six months is not enough time to evaluate the impact of the smoke-free ordinance on business. There is no discussion of what other factors might have affected the GGR and admissions figures either before or after the ordinance took effect.

2019: Attitudes Toward Smoke-Free Casino Policies Among US Adults, 2017²⁵

Prepared by: Michael A. Tynan, Teresa W. Wang, Kristy L. Marynak, Pamela Lemos, and Stephen D. Babb (published in *Public Health Reports*)

Scope of Study: The authors examined attitudes toward smokefree casino policies among US adults. During June and July 2017, they used a web-based survey to ask a nationally representative sample of 4,107 adults aged 18+ about their attitudes toward smoke-free casinos.

To assess attitudes toward smoke-free casino policies, respondents were asked, “Do you favor or oppose smoke-free policies that prohibit smoking tobacco in all areas of a casino?” Response options included “strongly favor,” “somewhat favor,” “somewhat oppose,” and “strongly oppose.” Adults who responded “strongly favor” or “somewhat favor” were considered to favor smoke-free casino policies

Key Findings: Among 4,048 respondents aged 18+, a weighted 75.0% favored smokefree casino policies, including respondents who visited casinos about once per year (74.1%), several times per year (75.3%), and at least once per month (74.2%).

Although the sociodemographic characteristics of respondents who favored smokefree casino policies varied, the majority in each group, except current smokers (45.4%), supported smokefree policies. Allowing smoking inside casinos involuntarily exposes casino employees and visitors to SHS, a known and preventable health risk. Further assessment of public knowledge and attitudes toward smokefree casinos at state and local levels may help inform tobacco control policy, planning, and practice

Overall, 75.0% of US adults favored (55.1% strongly favored and 20.0% somewhat favored), 13.6% somewhat opposed, and 11.4% strongly opposed smoke-free casinos. Favorability was 71.5% among men and 78.3% among women.

By age, favorability ranged from 71.7% among adults aged 25-44 to 81.6% among adults aged 65+; by race/ethnicity, from 66.4% among non-Hispanic black adults to 80.4% among non-Hispanic other adults; by education level, from 63.4% among adults who did not graduate from high school to 81.7% among adults with a college degree; by income, from 66.7% among adults with <\$30 000 in annual household income to 80.8% among adults with >\$150 000 in annual household income; and by US Census region, from 72.4% in the South to 77.4% in the West. Smoke-free casinos were favored by 75.1% of adults

²⁵ Michael A. Tynan, Teresa W. Wang, Kristy L. Marynak, Pamela Lemos, Stephen D. Babb, “Attitudes Toward Smoke-Free Casino Policies Among US Adults, 2017,” *Public Health Reports*, vol. 134, 3: pp. 234-240, March 21, 2019. <https://journals.sagepub.com/doi/full/10.1177/0033354919834581>

who reported going to casinos, with similar favorability among respondents who visited casinos about once a year (74.1%), several times a year (75.3%), and at least once a month (74.2%).

Favorability ranged from 65.5% among adults who visited casinos about once every two years to 80.6% among adults who visited casinos every three years or more.

By smoking status, favorability ranged from 45.4% among current cigarette smokers to 81.9% among never smokers and from 56.7% among current users of other noncigarette tobacco products to 77.2% among never users.

Limitations: According to the authors, the study had three limitations. First, the web-based survey does not recruit participants by using population-based probability samples, and, thus, the study may have limited generalizability. However, these data were weighted to be nationally representative, and previous tobacco-use estimates have been consistent with findings from other large national household surveys. Second, data were self-reported, which could result in misreporting of tobacco product use behaviors and frequency of casino visits. Finally, the cross-sectional design of the survey precluded establishing any causal relationships between the assessed covariates and attitudes toward smoke-free casino policies.

2019: Assessing the Economic Impact of Eliminating Secondhand Smoke in Northern Nevada Workplaces²⁶

Prepared by: Mehmet S. Tosun, Mark Nichols, and Ethan Grumstrup of University of Nevada Reno

Scope of Study: To study the possible effects of a smoking ban in Washoe County, NV, the authors studied three jurisdictions that had implemented a smoking ban: Illinois, Colorado, and New Orleans.

Key Findings: Illinois has 10 casinos statewide, most of which are located near the borders of other states. Those states also have casinos located near their borders that allow smoking. The authors theorized that the smoking ban's impact on Illinois casinos could be negative if Illinois gamblers who smoke travel to other states, or positive if non-smokers in Illinois or the surrounding states visit Illinois casinos.

Colorado has numerous, small commercial casinos located in three mountain resort communities. There are no other casinos within a five-hour drive of the commercial casinos, so the authors expected that any impact of a smoking ban would be minimized as smokers have few alternatives.

New Orleans has one casino and is a major tourist destination. It is also one of the few cities to implement a ban where there is no corresponding statewide ban.

Based on comparing several jurisdictions that implemented a smoking ban with others that did not, this analysis suggests that the impact of smoking bans ranges from having no impact to a substantial

²⁶ Mehmet S. Tosun, Mark Nichols, Ethan Grumstrup, "Assessing the Economic Impact of Eliminating Secondhand Smoke in Northern Nevada Workplaces," University of Nevada Reno, June 9, 2019. https://www.smokefreetruckeemeadows.org/sites/default/files/2020-03/Economic%20Impact%20Assessment%20Presentation%2006_13_19.pdf

negative impact. There is no widespread evidence of a positive impact following a smoking ban. In the authors' analysis, the largest negative impact, at nearly 20%, is found in Illinois. Illinois faces substantial competition from casinos in nearby states where smoking is still permitted. Colorado, in contrast, shows no significant long-term impact from the smoking ban. Colorado is a jurisdiction where few competing casinos in surrounding areas exist and likely a more health-conscious state. The impact in New Orleans is less than Illinois and more than Colorado. These results suggest that providing a specific, precise estimate of the impact of a smoking ban on casino performance is fraught with danger.

Revenue in Illinois decreased dramatically following the implementation of the smoking ban. The authors note that revenue had been declining prior to the smoking ban and that the ban was implemented during the Great Recession. While taking those factors into account, the authors conclude that the smoking ban had a significant negative impact on casino revenue.

The change in Colorado is much less dramatic. While casino revenue in Colorado declined slightly following the smoking ban, it later stabilized. The authors concluded that the smoking ban in Colorado had no long-term impact on revenue.

The authors note "two important caveats" to this analysis. First, the economic impact estimates presented here are short-term rather than long-term estimates. The results suggest that there is likely to be a negative short-term impact on casino revenue and employment as a result of a smoking ban. The longer-term impact on casino revenue and employment is much more difficult to predict as economic conditions, smoking rates, and gambling opportunities (e.g. online and mobile gambling) will all change. Secondly, the economic impact estimates do not incorporate any health benefits resulting from a smoking ban. Improved worker productivity, and fewer sick days as well as improved health of non-smoking casino patrons are important considerations not factored into the estimates.

Limitations: Authors acknowledge that none of the other jurisdictions studied are a perfect match for Washoe County, Nevada. Study looked at overall economic impact, of which GGR was but one part.

2020: Expanding smoke-free communities: attitudes and beliefs surrounding smoke-free casinos and bars in Washoe County, Nevada²⁷

Prepared by: Eric Crosbie et al, University of Nevada Reno (published in *Journal of Hospital Management and Health Policy*)

Scope of Study: A team of University of Nevada Reno researchers surveyed residents of Washoe County to determine their feelings toward a law that would prohibit smoking in all Washoe County casinos (and also bars). Washoe County is the second-most-populous county in Nevada. Reno is the county seat.

Key Findings: The web-based survey found that 60% of Washoe County residents (and 74% of non-smokers) indicated they would favor a law prohibiting tobacco smoking in all casinos in Washoe County. Only 24% of residents (and 15% of non-smokers) oppose the prohibition of tobacco smoking in

²⁷ Eric Crosbie et al, "Expanding smoke-free communities: attitudes and beliefs surrounding smoke-free casinos and bars in Washoe County, Nevada," *Journal of Hospital Management and Health Policy*, September 2020. <https://ihmhp.amegroups.com/article/view/6326/html>

casinos. 77% of residents dislike smelling like smoke after visiting a casino or bar and 65% agree that smoke bothers them in these establishments. A majority of residents would both be more likely to visit a casino and bar and also find them more enjoyable if they were completely smoke-free. 79% of residents believe customers should be able to breathe smoke-free air while only 21% believe businesses should be able to decide.

According to the authors, in 2006, a statewide survey showed that 52.9% of Nevadans were in favor of casinos being exempted from the Nevada Clean Indoor Air Act, which was approved by Nevada voters in 2006. That act prohibited smoking in most public places.

Limitations: The study was limited to residents of one Nevada County. According to the authors, “(a)lthough the focus groups were primarily used to construct and develop the survey, the demographics of focus group participants were not representative of the population of Washoe County as a whole. The usage of large panel surveys are supported in similar study designs but there is some skepticism of their usage in the field. The survey sample in this study was recruited through Qualtrics™, and cannot be considered a probability sample. The survey sample was demographically different from population level estimates with regard to race/ethnicity and gender. In addition to differences between our sample and the general population, it is possible that our sample also differs from populations of casino-patrons (e.g., visitors from California) and casino-employees.” Also, the study indicated that 97% of survey respondents had been to a casino in Washoe County. “The most common reasons cited by participants for visiting Washoe County casinos were dining (76% of participants), gaming (52%), and shows (26%).” There is no indication that the survey separated gamblers from residents who went to the casino just to visit a restaurant or go to a show.

III. Casinos and Smoking in Atlantic City: Policy, Perceptions and Performance

A. Consequences of New Jersey Tobacco Policies

Organizations focused on advancing anti-smoking policies give New Jersey mixed grades, ranging from A to F on various policy specifics. For example, New Jersey receives a failing grade from the American Lung Association for its funding of tobacco-control programs, in that the state has allocated \$7.8 million in FY 2021 for such programs, which is less than 10% of what the Centers for Disease Control recommend as best practices for such programs.²⁸ To put that funding in context, New Jersey generates approximately \$854.2 million annually from what the American Lung Association refers to as “tobacco-related revenue.”²⁹

By contrast, New Jersey has earned an A from the association for its clean-air practices, which include prohibiting smoking in all workplaces, as well as in restaurants, schools, child-care facilities, retail stores and bars (with the exception of cigar bars and lounges), and notably the state has penalty and enforcement provisions in place.³⁰

One glaring exception to the state’s widespread anti-smoking policy is the Atlantic City casino industry, whose members are allowed under a local ordinance to allow smoking in up to 25% of the casino floor space, and the American Lung Association duly notes that exception and has urged that it be eliminated. That exception allows for a scenario in which Atlantic City casinos become a more attractive recreational outlet for smokers.

As noted in Figure 2 of this report, Pennsylvania has a higher smoking prevalence than New Jersey: 17.0% to 13.1%. In 2008, the last year in which a reliable survey of Atlantic City visitors was conducted, smokers comprised 23.5% of the visitor base.³¹ That same year, the percentage of adults who smoked was 14.8% in New Jersey and 21.4% in Pennsylvania.³²

Although more current data on the percentage of casino visitors who smoke is not available, the data trends allow for a reasonable extrapolation that smoking is more prevalent among casino patrons than it is in the general population.

²⁸ “State of Tobacco Control 2021: New Jersey,” American Lung Association, <https://www.lung.org/research/sotc/state-grades/new-jersey> (accessed August 13, 2021)

²⁹ Ibid.

³⁰ Ibid.

³¹ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 140. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

³² Centers for Disease Control, “State-Specific Secondhand Smoke Exposure and Current Cigarette Smoking Among Adults --- United States, 2008.” <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5844a3.htm#tab2>

If anything, macro trends in anti-smoking policies since 2008 would support the conclusion that the gulf is even wider today, with smokers still likely comprising more than 20% of Atlantic City casino patronage. That assumption rests on the reality that the restrictions on smoking have materially expanded since 2008, now encompassing nearly every public entertainment option, a reality that in turn makes Atlantic City casinos a more prominent oasis for smokers.

The calculus through which adults select their entertainment options is broad and complex, ranging from convenience to cost to various other preferences. The ability to smoke in public may be a factor for adults who cannot indulge in smoking at movies, bars, restaurants or shopping outlets.

While the level of that preference cannot be definitively determined, its existence can reasonably be presumed as a factor that accounts for the demographic differences among casino visitors. To put that another way, if smoking were banned at casinos in New Jersey, Pennsylvania and Connecticut, the demographics among casino visitors would likely adhere more closely to the demographic mean. The appeal of casinos to smokers would likely diminish under such a scenario.

That consequence of New Jersey's smoking policy is clearly unintended, but is nonetheless real.

B. Estimating the Percentage of Gamblers Who are Smokers

Policies in New Jersey that were designed to limit smoking areas and expand smoke-free zones clearly have made smokers a more prominent segment of the gaming customer base than would otherwise be reflected in their share of the overall adult population.

Relying on the 2008 ratio of smokers who patronize casinos vs. smokers in the general population (23.5 to 14.8), we can reasonably assume a delta of at least 8 points, which would indicate that at least 21% of the adults who patronize Atlantic City casinos are smokers. The 21% estimate is in the range observed by casino employees interviewed by Spectrum for this report; management tended to estimate a higher percentage are smokers – around 25% – while casino-floor workers tended to estimate a lower percentage – around 15% to 20%.

Enacting a smoking ban would not translate into a loss of all or most of those adults. Rather, because it would put casino entertainment on a level playing field with all other forms of entertainment, gaming would lose its distinct appeal for smokers, meaning that the percentage of Atlantic City casino visitors who smoke would likely decline to about 13%, roughly equal to the ratio of smokers to the general adult population in New Jersey. The percentage of casino visitors who smoke could drop below that mean, however, if smoking options in other states were sufficiently convenient and attractive.

The competitive problem, indeed, becomes more acute for Atlantic City casinos when they are competing for patrons from those regions in which a smoking casino would be roughly equidistant, or even closer geographically for smokers. This includes significant population centers in Camden, Burlington, Mercer and other areas of southern New Jersey (making Pennsylvania casinos more attractive) as well as areas such as Bergen County or other sections of northern New Jersey that would be closer to casinos in Connecticut, as well as to casinos in eastern Pennsylvania. An independent junket operator told Spectrum that smokers still will play at a casino that is most convenient despite smoking restrictions, but

that if a smoking casino and a nonsmoking casino are equidistant – or even if the smoking casino is slightly farther away – they will choose the smoking casino.

C. The Value of Smokers vs. Non-Smokers

Although casinos know their customers well through player tracking and database analytics, they are not known to segment their players by smoker vs. non-smoker from a database perspective. Atlantic City casino operators do, however, track the performance of games in their smoking sections vs. their non-smoking sections. Spectrum interviewed property heads and/or finance heads at seven of the nine casinos, and each executive said that based on the comparative performance of those sections, smokers have a higher value than non-smokers. Six of them provided specific data points since the temporary smoking ban was lifted on July 4, 2021:

- One casino president told Spectrum that 43% its slot machines were in the designated smoking section.³³ Among those slots, those with video reels had an average daily win per unit (“WPU”) that was 33% above those in the non-smoking section, and those with spinning reels had a WPU that was 53% above those in non-smoking section.
- One casino president said the slot machines in its smoking section from July 4 through August performed at 91% above those in the non-smoking section on a WPU basis. This casino president further said that the table games in smoking pits performed 72% higher than those in the non-smoking pits on a WPU basis – with the high-limit games removed to ensure an apples-to-apples comparison.
- One casino president said that for August 2021, the WPU for all gaming devices in the smoking sections was 40% higher than those in the non-smoking sections. The general manager of a second casino gave an identical figure.
- One casino general manager said the slots in the smoking section were performing at more than three times the level of those in the non-smoking sections on a WPU basis.
- One casino general manager said that when the casino reopened smokefree in July 2020, the occupancy rate – i.e., the percentage of slot or table game seats that are filled at a given time – in the high-limit slot area was about 20% to 25% for the remainder of the summer, compared to “normal” rates of 40% to 50% when smoking was allowed. The general manager said since the ban was lifted, occupancy has risen to about 35%.
- One casino president said approximately 50% of its slot revenue was generated from the smoking section.

Spectrum recognizes that there may be issues regarding the number, quality and location of games in the smoking sections vs. the non-smoking sections in a given casino that could influence performance, such as placing high-limit tables and slots in smoking areas. However – and this is a critical point – Spectrum recognizes that casino managers are under continuous, intense pressure to achieve the highest profits possible and therefore have configured their casino floors to optimize GGR. In many cases, they have placed more than 25% of their gaming positions in the allotted 25% of the smoking space so as

³³ Atlantic City’s 25% smoking restriction is based on gaming space, not number of gaming units.

to maximize revenue. In other words, casino management has found – based on their trove of internal analytics – that smokers have a higher value than non-smokers.

The data provided by the casino executives is supported by the *Atlantic City Visitor Profile Study 2008* (the latest such Atlantic City visitor profile that assessed smoking habits). That survey found that,

[T]he median gambling budgets are higher for smokers (\$250 vs. \$200) and average spending figures for both gambling (\$655 vs. \$497) and total spending (\$981 vs. \$796) are higher among smokers than non-smokers, indicating that smokers of higher worth spend at a higher magnitude than non-smokers. Smokers gamble longer than non-smokers (mean 14.6 hours vs. 11.5 hours) ...”³⁴

Anecdotally, casino floor employees interviewed by Spectrum for this report said that smokers tend to be more prevalent among premium table-games players than they do among regular players. The interviewed casino floor employees, all of whom are non-smokers, said that although they wish their respective casino floors were smokefree they believe gaming revenues would decline if smoking were prohibited.

1. Time on Device

Casino operators fear that a smoking ban would not only put them at a disadvantage to their competitors in Pennsylvania and Connecticut but also would result in lower GGR because of smoking breaks. A player’s desire or need to smoke would impel them to leave their seat at a slot machine or gaming table and walk outside to smoke. Such a break would result in a player having less time playing a slot machine or table game, or what is known as time on device (“TOD”). For example, if a player planned a two-hour casino session and took two 10-minute cigarette breaks (including walking time) during that period, the player’s TOD could potentially decline by 17%. Figure 15 below is an illustrative example of how two such smoking breaks could impact the casino’s win, or GGR, from that player.

Figure 15: Illustrative example of change in GGR due to smoking break

	Non-Smoker	Smoker
Minutes at Casino	120	120
Minutes Playing Slot Machine	120	100
Minutes Smoking Break	0	20
Bankroll	\$100	\$100
Average Bet	\$1.15	\$1.15
Slot Machine Hold	7.25%	7.25%
Bets/Spins per Minute	10	10
Total Coin-In	\$1,379	\$1,150
Total Number of Bets/Spins	1,199	1,000
Casino Win (GGR)	\$100.00	\$83.38

Source: Spectrum Gaming Group

³⁴ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 141. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

Some gamblers may have a fixed amount of time to play, which for a smoker could result in lower GGR for the casino due to the smoking breaks. In the above example, it also is possible the smoker would continue playing beyond the planned two-hour session and would also wind up losing \$100, but would need 140 minutes to lose the same amount. It is also possible that the smoker during the first or second break would cut his or her losses and leave the casino, thus losing less than the \$83.38 illustrated above.

IV. Projected GGR Impacts of a Smoking Ban in Atlantic City Casinos

In this chapter Spectrum projects a range of likely GGR impacts if smoking were to be banned on Atlantic City casino floors, based on the following:

- Analysis of GGR impacts when casino smoking bans were instituted in Delaware, Illinois and New Orleans.
- Other relevant empirical data.
- Assessment of previous studies regarding casinos and smoking, all of which are of limited value for this report for various reasons, not the least of which is because of the passage of time.
- Interviews with casino employees, casino management, advocacy groups, and others who participate in, or who closely follow, the Atlantic City casino industry.

A critical assumption in our analysis is that Pennsylvania's policy (pre-Covid-19) of allowing smoking on casino floors remains unchanged.

Spectrum's projected range of GGR impact is necessarily broad due to factors that are unknowable at this time but would be significant were a casino-floor smoking ban to be enacted in Atlantic City casinos. They include:

- The intensity of the marketing and promotional response by Pennsylvania casino operators, who could target dissatisfied Atlantic City casino smokers with direct marketing programs and broader advertising programs.
- The facility response by Atlantic City casino operators. Outdoor gaming areas are common at casinos in other jurisdictions where smoking is prohibited. Some such areas are rather lavish and comfortable while others are less accommodating. The quality and convenience of such outdoor gaming areas at Atlantic City casinos would no doubt vary by property, and would involve capital investment and additional operating costs related to the inefficiencies of having separate gaming areas.
- The quality of the marketing response by Atlantic City casino operators:
 - Reaching patrons who smoke to inform them about the new policy and any new facilities that would be developed to accommodate smoking.
 - Reaching adults who currently do not visit Atlantic City casinos – or those who visit less frequently or for less time – because they find the smoky casino floors to be unappealing to inform them about their entirely smoke-free casino floors.
- The amount of time between the enactment and implementation of the casino smoking ban. The longer the gap, the more time casino operators would have to develop quality outdoor gaming areas, to communicate their plans to patrons who currently smoke, and to develop marketing programs to attract more non-smokers.

A. Considering the Experience of Smokefree Casinos after Reopening

Every casino in the United States closed at the height of the Covid-19 pandemic in spring 2020. They began reopening in late spring 2020 and into fall 2020, with patrons required to wear facemasks to help stop the spread of Covid-19. Almost all state-regulated casinos that previously allowed smoking were required to reopen smokefree, as smoking inside would require a player to remove his or her facemask.

Spectrum considered whether the Covid-19-caused smokefree period resulted in a “new normal” for casinos and their patrons, and thus the results of this reopening period could be fairly compared to the results during pre-pandemic period. We determined that such comparisons are not fair because casinos may have benefited during the post-Covid-19 period from a confluence of exceptional circumstances, including:

- Being open at a time when most other indoor entertainment venues remained closed, such as movie theaters, amusement centers and performing-arts centers.^{35 36 37}
- Travel restrictions³⁸ that made drive-to casinos an attractive option for those seeking a leisure getaway.
- A combination of free time due to high unemployment³⁹ and supplemental unemployment benefits,^{40 41} meaning there were more people than usual with time and money to spend and fewer leisure options in which to expend such. (People also had more free time due to working from home/spending less time in the community. For example, “Time spent traveling, such as commuting to work or driving to a store, declined by 26 minutes from an average of 1.2 hours per day in 2019 to 47 minutes per day in 2020. The share of individuals who spent time traveling on a given day declined 17 percentage points in 2020, from 84% in 2019 to 67% in

³⁵ Irina Ivanova and Thom Craver, “Closed due to coronavirus: List of activities and state shutdowns over Covid-19 outbreak concerns,” CBS News, <https://www.cbsnews.com/news/closed-due-to-coronavirus-list-of-activities-and-state-shutdowns-over-covid-19-outbreak-concerns/>

³⁶ Alison Durkee, “State-By-State Guide To Coronavirus Restrictions: Los Angeles Bans Outdoor Dining, Nevada Restricts Capacity,” *Forbes*, November 23, 2020. <https://www.forbes.com/sites/alisondurkee/2020/09/17/state-by-state-reopening-guidelines-coronavirus/?sh=20bdec55533b>

³⁷ Anastasia Tsioulcas, “America’s Independent Music Venues Could Close Soon Due To Coronavirus,” NPR, June 9, 2020. <https://www.npr.org/sections/coronavirus-live-updates/2020/06/09/873196748/americas-independent-music-venues-could-close-soon-due-to-coronavirus>

³⁸ Patrick Clarke, “A Timeline of Covid-19 Travel Restrictions Throughout 2020,” *Travel Pulse*, December 24, 2020. <https://www.travelpulse.com/gallery/impacting-travel/a-timeline-of-covid-19-travel-restrictions-throughout-2020.html>

³⁹ Unemployment Rates During the Covid-19, Congressional Research Service, August 20, 2021. <https://sgp.fas.org/crs/misc/R46554.pdf>

⁴⁰ Unemployment Insurance Relief During Covid-19 Outbreak,” US Department of Labor. <https://www.dol.gov/coronavirus/unemployment-insurance> (accessed September 13, 2021)

⁴¹ “How will the expansion of unemployment benefits in response to the Covid-19 pandemic be recorded in the NIPAs?,” Bureau of Economic Analysis, April 29, 2021. <https://www.bea.gov/help/faq/1415>

2020. Those who spent time traveling on a given day did so for a shorter duration [1.5 hours in 2019, compared with 1.2 hours in 2020].⁴²

The US casino industry in general rebounded well after reopening, with some jurisdictions reporting that gaming revenues surpassed pre-pandemic levels after a matter of months. However, the results in Atlantic City and Pennsylvania do not support that being at least temporarily smokefree benefited the casinos. Figure 16 shows the results for the first full three months and seven months⁴³ of slot and table games GGR after the casinos reopened smokefree vs. the same prior-year periods when the regular smoking policies were in place.

Figure 16: Comparison of Atlantic City and Pennsylvania GGR for 3-month and 7-month periods

GGR for 3 months ending ...			
	October 2019	October 2020	Change
NJ Slots	\$515.0	\$421.0	-18.3%
NJ Tables	\$191.7	\$154.3	-19.5%
PA Slots	\$738.5	\$591.0	-20.0%
PA Tables	\$206.7	\$187.3	-9.4%
GGR for 7 months ending ...			
	February 2020	February 2021	Change
NJ Slots	\$1,119.1	\$842.3	-24.7%
NJ Tables	\$420.9	\$329.4	-21.7%
PA Slots	\$1,505.2	\$1,049.3	-30.3%
PA Tables	\$492.0	\$359.3	-27.0%

Source: Spectrumetrix US Gross Gaming Revenue Analysis, based on data from state regulatory agencies. GGR includes promotional credit play where reported.

It is not possible to quantify how being smokefree may have impacted the GGR declines shown above, but it is evident that being smokefree did not cause their revenues to increase.

B. Estimated Range of Impacts to Atlantic City Casino GGR

A smoking ban in Atlantic City casinos has the potential to negatively impact gross gaming revenue due to a reduction in play by smokers from three primary causes:

- Defection: Some smokers will instead choose to play in out-of-state casinos where smoking is permitted, principally those casinos in eastern Pennsylvania but also the two tribal casinos in Connecticut.
- Reduced visitation: Atlantic City casinos are smoker-friendly – they are the only significant public places in New Jersey where smokers can legally smoke indoors,⁴⁴ and thus a higher

⁴² “American Time Use Survey Summary,” Bureau of Labor Statistics, July 22, 2021. <https://www.bls.gov/news.release/atus.nr0.htm>

⁴³ Valid 12-month comparisons cannot be made, as casinos closed in March 2020 and reopened in July 2021.

⁴⁴ In New Jersey, indoor smoking is permitted only in casinos, registered cigar bars, tobacco outlets whose primary activity is the sale of tobacco products, and up to 20% of guest rooms in lodging establishments. See: State of New Jersey, Department of Health, “Tobacco Control.” <https://www.nj.gov/health/fhs/tobacco/regulations/> (accessed September 27, 2021)

percentage of their patrons are smokers than in the general public.⁴⁵ If casinos can no longer accommodate smokers indoors, they will no longer be special havens for smokers; they will be like any other indoor entertainment option, and thus some smokers are likely to shift some of their discretionary spending to other forms of entertainment.

- Less time on device: As discussed above (section III.C.1 of this report), smokers will take breaks from their gambling. Some will lose the same amount of money by extending their stay to account for the breaks, but some with time constraints will lose less money.

Conversely, a smoking ban in Atlantic City casinos has the potential to positively impact gross gaming revenue from non-smokers who are attracted to the cleaner air in the casinos:

- Attracting new, non-smoking players: Some patrons who dislike the smoky air in casinos may be attracted to the cleaner air, including some who currently patronize the smokefree casinos in Delaware or New York.
- Extending the playing time of current non-smokers: Some current casino patrons who may leave early after having “had their fill” of smoky air may extend their playing time.

Based on our research and analysis for this report, Spectrum developed a range of potential impacts that accounted for all of these factors. First, we made certain assumptions about the prevalence and value of casino smokers.

1. Estimated Percentage of Casino Gamblers who are Smokers

As with all estimates, the foundational assumptions are essential to understand. Using data from the Centers for Disease Control and Prevention (“CDC”) on smoking by state, building on the smoking data from the *2008 Atlantic City Visitor Profile*, and receiving data from Atlantic City casino executives regarding the residency of their customers, we developed an estimate of smoking prevalence by Atlantic City casino patrons. In Figure 17 below, we estimate that 40% of visitors to Atlantic City are from New Jersey. Of those casino visitors, 19.7% are smokers, meaning that just under 8% of all visitors are smokers from New Jersey. In total we estimate that approximately 21% of casino patrons in Atlantic City are smokers.

Figure 17: Estimated smoker participation at Atlantic City casinos, by state

State	% Visits	% Smokers in State	% Players Smokers	Smokers as % Total Visitors
New Jersey	40.0%	13.1%	19.7%	7.86%
New York	24.0%	12.8%	19.2%	4.61%
Pennsylvania	20.0%	17.0%	25.5%	5.10%
Maryland	3.0%	12.5%	18.8%	0.56%
Other States	13.0%	14.0%	21.0%	2.73%
Atlantic City Market	100.0%			20.86%

Source: Centers for Disease Control and Prevention, Spectrum Gaming Group

⁴⁵ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 140. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

2. Estimated Value of Smokers

The next step is developing an estimate of the value of smokers to the casinos. Casino executives and casino floor employees have stated that smokers are of higher value than non-smokers. Evidence for this can be found in the relative value of the average daily win per unit (“WPU”) at slot machines in smoking and non-smoking sections of the Atlantic City casinos, as noted earlier in this report. The WPU of slots in smoking sections ranges from 33% higher to 91% higher when compared with the non-smoking sections. One executive noted that GGR from table games in the smoking section are 72% higher than from the same games with the same limits and rules in the non-smoking section.

The *Atlantic City Visitor Profile 2008* (the latest such study that surveyed smoking habits in the city) found that smokers spent 32% more than non-smokers on gambling (\$655 per visit vs. \$497 per visit).⁴⁶

We designated this phenomenon the “smoker premium,” and developed two estimates of the value of smokers to the Atlantic City casinos. We used a 50% smoker premium and a 25% smoker premium to establish our range of value. Due to the disruptions of Covid-19, we used 2019 GGR data as the basis for our revenue numbers.

Figure 18: High case estimate of smoker GGR at Atlantic City casinos

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smokers % of GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	50%	\$316,743,119	29.5%
New York	24.0%	\$644,769,708	12.8%	19.2%	50%	\$185,693,676	28.8%
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	50%	\$205,520,345	38.3%
Maryland	3.0%	\$80,596,214	12.5%	18.8%	50%	\$22,667,685	28.1%
Other States	13.0%	\$349,250,259	14.0%	21.0%	50%	\$110,013,832	31.5%
GGR 2019	100.0%	\$2,686,540,452				\$840,638,656	31.3%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

Using this set of assumptions, Spectrum estimates the yearly estimated value of smokers to the casinos to be \$840 million in the high case. The estimated value of the non-smokers in this case is \$1,846 million.

Using the same modeling but with a 25% smoker premium results in the estimated value of smokers to the casinos to be \$700 million in the low case, as shown in Figure 19. The estimated value of the non-smokers in this case is \$1,986 million. Spectrum estimates that smokers account for approximately 21% of casino visits, but between 26.1% and 31.3% of casino win.

⁴⁶ “Atlantic City Visitor Profile 2008,” Spectrum Gaming Group, p. 141. <https://www.spectrumgaming.com/wp-content/uploads/2018/04/atlanticcityvisitorprofile2008.pdf>

Figure 19: Low case estimate of smoker GGR at Atlantic City casinos

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smokers % of GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	25%	\$263,952,599	24.6%
New York	24.0%	\$644,769,708	12.8%	19.2%	25%	\$154,744,730	24.0%
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	25%	\$171,266,954	31.9%
Maryland	3.0%	\$80,596,214	12.5%	18.8%	25%	\$18,889,738	23.4%
Other States	13.0%	\$349,250,259	14.0%	21.0%	25%	\$91,678,193	26.3%
GGR 2019	100.0%	\$2,686,540,452				\$700,532,214	26.1%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

3. Estimated Range of GGR Change from Reduction of Play by Smokers

Having established two estimates for the value of smokers to the Atlantic City casinos, the question turns on how smokers would behave if a smoking ban were implemented. If all smokers chose not to visit the casinos, the analysis in Figure 18 and Figure 19 estimates a GGR decline of \$804 to \$965 million. Evidence from other states indicate that there will not be total abandonment of casinos by smokers. Again, we estimated a range of how much reduction in play would result from a smoking ban based on the state and the level of competition in the home state of the casino players. Players in New Jersey and Pennsylvania are close to casinos that permit smoking. New York casino players have to travel farther to visit a casino with smoking, and in Maryland all of the nearby casinos are smokefree. We have further assumed that the visitors from the other 47 states have chosen to visit Atlantic City without regard to smoking. As such we believe few will alter plans based on a change in smoking policy.

Spectrum has provided all of its estimates of GGR change for Year 1 of a smoking ban. Estimating GGR changes beyond Year 1 is dependent on a host of factors – including the casino operators’ reactions to the smoking ban – that cannot be reasonably quantified at this time. As noted in Chapter I of this report, the experience in other jurisdictions is that after the initial shock caused by a smoking ban, GGR begins to grow again.

Figure 20: High case estimate of casino GGR change from reduction in play by smokers, Year 1

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smoker Play Reduction	Estimated Annual Lost GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	50%	\$316,743,119	-50%	\$(158,371,560)
New York	24.0%	\$644,769,708	12.8%	19.2%	50%	\$185,693,676	-25%	\$(46,423,419)
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	50%	\$205,520,345	-50%	\$(102,760,172)
Maryland	3.0%	\$80,596,214	12.5%	18.8%	50%	\$22,667,685	-10%	\$(2,266,769)
Other States	13.0%	\$349,250,259	14.0%	21.0%	50%	\$110,013,832	-10%	\$(11,001,383)
GGR 2019	100.0%	\$2,686,540,452				\$840,638,656	Total	\$(320,823,303)
							% of Total	-11.9%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In the high case, Spectrum estimates that the Atlantic City casinos would see a Year 1 loss of 11.9% of GGR if a smoking ban were implemented. Some of this gaming activity would shift to other states where smoking is permitted. Some activity may be lost to other forms of leisure activity where smoking is also

banned such as in entertainment venues, restaurants, and movie theaters. And some casino gambling expenditures by the remaining smokers in Atlantic City casinos would be reduced due to smoking breaks, or shifted to online gaming. (It must be noted that casinos typically receive less than 10% of online GGR; their licensed online gaming operators receive the rest.)

Spectrum also developed a low estimate, using the same model but applying a 25% smoker premium and lower reductions in play by smokers.

Figure 21: Low case estimate of casino GGR change from reduction in play by smokers, Year 1

State	% Visits	CY 2019 Casino GGR	% Smokers in State	% Players Smokers	Smoker Premium	Estimated Value of Smokers	Smoker Play Reduction	Estimated Annual Lost GGR
New Jersey	40.0%	\$1,074,616,181	13.1%	19.7%	25%	\$263,952,599	-25%	\$(65,988,150)
New York	24.0%	\$644,769,708	12.8%	19.2%	25%	\$154,744,730	-13%	\$(19,343,091)
Pennsylvania	20.0%	\$537,308,090	17.0%	25.5%	25%	\$171,266,954	-25%	\$(42,816,738)
Maryland	3.0%	\$80,596,214	12.5%	18.8%	25%	\$18,889,738	-5%	\$(944,487)
Other States	13.0%	\$349,250,259	14.0%	21.0%	25%	\$91,678,193	-5%	\$(4,583,910)
GGR 2019	100.0%	\$2,686,540,452				\$700,532,214	Total	\$(133,676,376)
							% of Total	-5.0%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In the low case estimate, smokers are worth \$700 million to the casinos, and non-smokers worth \$1,986 million.

Based on the assumptions stated, rates of smoking prevalence, and conversations with casino staff and executives in Atlantic City, Spectrum estimates the range of potential lost GGR from the implementation of a smoking ban to be between 5.0% and 11.9% of total GGR (based on 2019 results).

4. Estimated Range of GGR Change from Increase in Play by Non-Smokers

While a smoking ban could cause a reduction in play by smokers, it may cause an increase in play by non-smokers who are either extending their play or making additional visits because they would not be annoyed by cigarette smoke, or by new players who have shunned the casinos due to the smoky air. Spectrum believes the upside of attracting additional play from non-smokers in Atlantic City casinos is limited because the casinos operate in a mature market in which virtually every potential new customer has long been exposed to the opportunity to play casino games and because the casinos are already 75% smokefree, meaning the current casino environment, in Spectrum’s opinion, is not as off-putting to non-smokers as it is in some jurisdictions where the cigarette smoke is (or was) much more objectionable.

In Figure 20, we estimated the value of smokers to Atlantic City casinos at \$840 million and non-smokers at \$1,846 million. In Figure 22, we provide a high case estimate of the potential worth of non-smokers to Atlantic City if revenue from non-smokers were to increase their play by 1.5%, or by \$27.7 million.

Figure 22: High case estimate of casino GGR change from increased in play by non-smokers, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Non-Smokers	Increase in Non-Smoker Play	Value of Non-Smoker Increase	Value of Non-Smokers Post Ban
New Jersey	40.0%	\$1,074,616,181	\$757,873,062	1.5%	\$11,368,096	\$769,241,157
New York	24.0%	\$644,769,708	\$459,076,032	1.5%	\$6,886,140	\$465,962,173
Pennsylvania	20.0%	\$537,308,090	\$331,787,746	1.5%	\$4,976,816	\$336,764,562
Maryland	3.0%	\$80,596,214	\$57,928,528	1.5%	\$868,928	\$58,797,456
Other States	13.0%	\$349,250,259	\$239,236,427	1.5%	\$3,588,546	\$242,824,974
GGR 2019	100.0%	\$2,686,540,452	\$1,845,901,796	1.5%	\$27,688,527	\$1,873,590,322

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In Figure 23, we present a low case estimate if non-smokers were to increase their play by 1.0%, or by \$19.8 million.

Figure 23: Low case estimate of casino GGR change from increased in play by non-smokers, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Non-Smokers	Increase in Non-Smoker Play	Value of Non-Smoker Increase	Value of Non-Smokers Post Ban
New Jersey	40.0%	\$1,074,616,181	\$810,663,581	1.0%	\$8,106,636	\$818,770,217
New York	24.0%	\$644,769,708	\$490,024,978	1.0%	\$4,900,250	\$494,925,228
Pennsylvania	20.0%	\$537,308,090	\$366,041,137	1.0%	\$3,660,411	\$369,701,548
Maryland	3.0%	\$80,596,214	\$61,706,476	1.0%	\$617,065	\$62,323,541
Other States	13.0%	\$349,250,259	\$257,572,066	1.0%	\$2,575,721	\$260,147,786
GGR 2019	100.0%	\$2,686,540,452	\$1,986,008,238	1.0%	\$19,860,082	\$2,005,868,321

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

The potential increase in casino visitation and revenue may be a small factor in offsetting the estimated large revenue shifts from casino players who smoke, but we believe that it is a real phenomenon and needs to be considered in the overall revenue impacts.

5. Estimated Range of Net GGR Change from a Casino Smoking Ban

Based on the anticipated reduction in play from smokers and the potential increase in play from non-smokers, Spectrum estimates that the Atlantic City casinos would experience a Year 1 net GGR decline of between \$113.8 million and \$293.1 million, or a decline of between 4.2% and 10.9%, based on 2019 results and the assumptions detailed in this report.

Figure 24: High case estimate of net change in casino GGR from a casino smoking ban, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Smokers	Estimated Annual Lost Smoker GGR	Increase in Play by Non-Smokers	Net Change in GGR from Smoking Ban
New Jersey	40.0%	\$1,074,616,181	\$316,743,119	\$(158,371,560)	\$11,368,096	\$(147,003,464)
New York	24.0%	\$644,769,708	\$185,693,676	\$(46,423,419)	\$6,886,140	\$(39,537,279)
Pennsylvania	20.0%	\$537,308,090	\$205,520,345	\$(102,760,172)	\$4,976,816	\$(97,783,356)
Maryland	3.0%	\$80,596,214	\$22,667,685	\$(2,266,769)	\$868,928	\$(1,397,841)
Other States	13.0%	\$349,250,259	\$110,013,832	\$(11,001,383)	\$3,588,546	\$(7,412,837)
GGR 2019	100.0%	\$2,686,540,452	\$840,638,656	\$(320,823,303)	\$27,688,527	\$(293,134,776)
				-11.9%	1.0%	-10.9%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

Figure 25: Low case estimate of net change in casino GGR from a casino smoking ban, Year 1

State	% Visits	CY 2019 Casino GGR	Estimated Value of Smokers	Estimated Annual Lost Smoker GGR	Increase in Play by Non-Smokers	Net Change in GGR from Smoking Ban
New Jersey	40.0%	\$1,074,616,181	\$263,952,599	\$(65,988,150)	\$8,106,636	\$(57,881,514)
New York	24.0%	\$644,769,708	\$154,744,730	\$(19,343,091)	\$4,900,250	\$(14,442,841)
Pennsylvania	20.0%	\$537,308,090	\$171,266,954	\$(42,816,738)	\$3,660,411	\$(39,156,327)
Maryland	3.0%	\$80,596,214	\$18,889,738	\$(944,487)	\$617,065	\$(327,422)
Other States	13.0%	\$349,250,259	\$91,678,193	\$(4,583,910)	\$2,575,721	\$(2,008,189)
GGR 2019	100.0%		\$700,532,214	\$(133,676,376)	\$19,860,082	\$(113,816,294)
				-5.0%	0.7%	-4.2%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

6. Estimated Change in Non-Gaming Revenue

Each Atlantic City casino files a detailed quarterly report, which includes its performance in non-gaming areas such as food and beverage, entertainment, hotel, etc. By summing the non-gaming revenue from each property, it is possible to derive an estimate of non-gaming revenue for a given year. For the calendar year 2019, the total of the calendar year revenues is summarized in the figure below.

Figure 26: Atlantic City gaming and non-gaming revenue, 2019

Revenue Department	2019
Casino Win	\$2,686,541
Rooms	\$609,998
Food & Bev	\$578,057
Other	\$243,735
ALL Non-Gaming	\$1,431,790
Non-Gaming as % of Gaming	53.3%

Source: New Jersey Division of Gaming Enforcement

Earlier in the report we derived an estimate of the percentage of Atlantic City visitors who are smokers, and we proposed a factor for reduction in smoker visits under a smoking ban. By combining

these two assumptions with the detail of non-gaming revenue we can arrive at an estimate of the potential lost non-gaming revenue from the decrease in gaming participation by smokers.

Figure 27: Low case estimated non-gaming revenue loss from smoking ban

State	% Visits	% Smokers in State	% Players Smokers	Smokers as % Total Visitors	Smoker Play Reduction	% of Lost Smoker Visits	Non-Smoker Visit Change	Non-Gaming Revenue Change
New Jersey	40.0%	13.1%	19.7%	7.86%	25%	-1.97%	0.37%	\$(22,857,668)
New York	24.0%	12.8%	19.2%	4.61%	13%	-0.58%	0.23%	\$(4,969,159)
Pennsylvania	20.0%	17.0%	25.5%	5.10%	25%	-1.28%	0.19%	\$(15,537,785)
Maryland	3.0%	12.5%	18.8%	0.56%	5%	-0.03%	0.03%	\$24,430
Other States	13.0%	14.0%	21.0%	2.73%	5%	-0.14%	0.13%	\$(143,881)
Atlantic City Market	100.0%			20.86%		Change in Non-Gaming		\$(43,484,063)
						% Change		-3.0%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

Figure 28: High case estimated non-gaming revenue loss from smoking ban

State	% Visits	% Smokers in State	% Players Smokers	Smokers as % Total Visitors	Smoker Play Reduction	% of Lost Smoker Visits	Non-smoker Visit Change	Non-Gaming Revenue Change
New Jersey	40.0%	13.1%	19.7%	7.86%	50%	-3.93%	0.55%	\$(48,353,839)
New York	24.0%	12.8%	19.2%	4.61%	25%	-1.15%	0.34%	\$(11,577,294)
Pennsylvania	20.0%	17.0%	25.5%	5.10%	50%	-2.55%	0.28%	\$(32,434,339)
Maryland	3.0%	12.5%	18.8%	0.56%	10%	-0.06%	0.04%	\$(164,701)
Other States	13.0%	14.0%	21.0%	2.73%	10%	-0.27%	0.19%	\$(1,193,018)
Atlantic City Market	100.0%			20.86%		Change in Non-Gaming		\$(93,723,190)
						% Change		-6.5%

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

In our high case we estimated that the Atlantic City casinos would lose approximately 6.5% of trips. The estimated 1.5% increase in non-smoker visitation offsets a portion of the loss of visitation from smokers, as it does with the GGR estimates. In the low case we estimated that 3% of all trips would be lost. Here too, the 1% increase in non-smoking visitation offsets a portion of the estimated lost revenue from smokers. As a result, we estimate that these are the amounts of non-gaming revenue that would be lost by the Atlantic City casinos. In the high case approximately \$93.7 million annually, and in the low case approximately \$43.5 million.

7. Estimated Change in Tax Receipts from a Casino Smoking Ban

Gaming and non-gaming revenue at the Atlantic City casino properties are subject to a variety of taxes. Figure 29 below presents the estimated change in tax revenues from each segment. Non-gaming revenue is reported by the New Jersey Division of Gaming Enforcement. The Division reports food and beverage as one number. Alcoholic beverages are subject to the Atlantic City Luxury Tax, which does not apply to food. We used an estimate of 40% of food and beverage sales to be alcohol, and applied the Luxury Tax accordingly. Depending on the severity of the revenue impacts of a smoking ban, Spectrum estimates the annual loss of total tax revenue as being between \$17.2 million and \$44.6 million.

Figure 29: Estimated tax impacts from a smoking ban, compared to 2019

Revenue Department (\$ in 000)		2019	Low Loss Estimate	High Loss Estimate
Casino Gross Gaming Revenue		\$2,686,541	\$2,552,864	\$2,365,717
Hotel Rooms		\$609,998	\$591,472	\$552,755
Food and Beverage (40% Bev)		\$578,057	\$560,501	\$523,811
Other revenue, Entertainment, Spa, Etc.		\$243,735	\$236,333	\$220,863
Tax Rate	Tax (\$ in 000)	Tax Revenue	Tax Revenue	Tax Revenue
8.000%	State of New Jersey Casino Revenue Fund	\$214,923	\$204,229	\$189,257
1.250%	State of New Jersey CRDA Obligation	\$33,582	\$31,911	\$29,571
9.000%	Luxury Tax – Rooms	\$54,900	\$53,232	\$49,748
3.625%	State Sales – Tax Rooms	\$22,112	\$21,441	\$20,037
1.000%	State Occupancy Fee	\$ 6,100	\$5,915	\$5,528
3.000%	Alcohol Beverage Luxury Tax	\$ 6,937	\$6,726	\$6,286
6.625%	State Sales Tax – Alcoholic Beverages	\$15,319	\$14,853	\$13,881
6.625%	State Sales– Tax Food	\$22,978	\$22,280	\$20,822
9.000%	Luxury Tax –Entertainment	\$21,936	\$21,270	\$19,878
3.625%	State Sales Tax – Entertainment	\$ 8,835	\$8,567	\$8,006
Total Tax		\$407,622	\$390,424	\$363,014
<i>Change in Tax</i>			<i>\$(17,198)</i>	<i>\$(44,608)</i>
<i>% Change in Tax</i>		<i>0.0%</i>	<i>-4.2%</i>	<i>-10.9%</i>

Sources: New Jersey State Treasurer, Spectrum Gaming Group

8. Potential Changes in Employment

A reduction in visitation and gaming revenue will likely result in a reduction in employment at the casinos. Spectrum examined employment at the casinos and developed a revenue-per-employee figure. In 2019, each casino job was supported by \$155,008 of total revenue. If we hold this factor constant and apply the estimated reductions in revenue from a smoking ban, we can derive an estimate of the potential job loss from a smoking ban. As can be seen in Figure 30 below, Spectrum estimates potential job losses from a smoking ban range from 1,021 to 2,512 depending on the severity of the impact on revenue. *It is critical to note that such reductions in employment assume that the casinos would be at full employment as they were in 2019; at this time, most casinos are short-staffed, consistent with businesses across the country during the pandemic, and/or have purposely reduced their staffing levels; it to be determined whether those modified staffing levels will be permanent.*

Figure 30: Potential change in employment, based on total revenue per employee

Revenue Department	2019	Low Loss Estimate	High Loss Estimate
Casino GGR (000)	\$ 2,686,541	\$ 2,572,725	\$ 2,393,406
Non-Gaming Revenue (000)	\$ 1,431,790	\$ 1,388,306	\$ 1,338,067
Total Revenue (000)	\$ 4,118,331	\$ 3,961,031	\$ 3,731,473
% Change Total Revenue	N/A	-3.8%	-9.4%
Total Jobs	26,741	25,720	24,229
Revenue per Job	\$154,008	\$154,008	\$154,008
Est. Change in No. Jobs	N/A	(1,021)	(2,512)

Source: New Jersey Division of Gaming Enforcement, Spectrum Gaming Group

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**SUPERIOR COURT OF NEW JERSEY
MERCER VICINAGE
CHANCERY DIVISION, GENERAL EQUITY PART**

<p>UAW, REGION 9 OF THE UAW, and C.E.A.S.E. N.J.,</p> <p>PLAINTIFFS,</p> <p>v.</p> <p>NEW JERSEY GOVERNOR PHILIP MURPHY, and ACTING NEW JERSEY HEALTH COMMISSIONER DR. KAITLIN BASTON,</p> <p>DEFENDANTS.</p>	<p>HON. PATRICK J. BARTELS, P.J.Ch.</p> <p>DOCKET NO. MER-C-26-24</p> <p>NOTICE OF CROSS-MOTION TO DISMISS</p>
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PLEASE TAKE NOTICE that on **May 13, 2024**, or as soon thereafter as counsel may be heard, the undersigned, attorney for Defendants Governor Philid D. Murphy and Commissioner Kaitlan Baston, M.D., will apply to the Chancellor of the Superior Court of New Jersey, Mercer Vicinage, for an Order dismissing Plaintiffs' Verified Complaint with prejudice pursuant to R. 4:6-2(e) in this matter.

In support of its cross-motion, Defendants will rely upon the attached Brief, Certification of Counsel, and Exhibits.

A proposed form of Order is attached.

Discovery End Date: N/A

Arbitration Date: N/A

Trial Date: N/A

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: s/ Robert J. McGuire
Robert J. McGuire (046361992)
Deputy Attorney General
[046361992]

DATE: April 29, 2024

UAW, REGION 9 OF THE UAW,
and C.E.A.S.E. N.J.,

Plaintiffs,

v.

NEW JERSEY GOVERNOR
PHILIP MURPHY, and ACTING
NEW JERSEY HEALTH
COMMISSIONER DR. KAITLIN
BASTON,*

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
GENERAL EQUITY PART

MERCER COUNTY

Docket No. MER-C-26-24

Civil Action

**BRIEF OF DEFENDANTS GOVERNOR PHILIP MURPHY AND NEW
JERSEY HEALTH COMMISSIONER DR. KAITLAN BASTON IN
OPPOSITION TO PLAINTIFFS' ORDER TO SHOW CAUSE AND IN
SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

Robert J. McGuire
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On the Brief

Brett J. Haroldson
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* The Verified Complaint (and therefore the case caption) erroneously identifies the Commissioner of Health as "Acting" and misspells the Commissioner's given name. Dr. Kaitlan Baston was confirmed by the Senate on March 18, 2024. Defendants request that the Court correct the caption.

TABLE OF CONTENTS

	PAGE
PRELIMINARY STATEMENT.....	1
STATEMENT OF FACTS.....	4
A. Background	4
1. Restrictions on Smoking in Public Places in the 1980s and 1990s	6
2. The New Jersey Smoke-Free Air Act.....	9
3. Post-2006 Legal Developments	13
4. Pending Legislation	15
B. This Litigation.....	18
ARGUMENT	19
 POINT I	
 This Court Should Deny Plaintiffs’ The Request For A Preliminary Injunction In This Constitutional Case	
	19
 A. A Preliminary Injunction Is Not An Appropriate Device for Upending this Long-Standing Status Quo	
	19
 B. Preliminary Injunctive Relief Should Be Denied Because Plaintiffs Have Not Established a Reasonable Probability of Success on the Merits and the Balance of the Hardships Favors the State.....	
	23
1. Section 3D-59(e) Is Not “Special Legislation”.....	24
2. Section 3D-59(e) Does Not Violate Equal-Protection Rights.....	33

3. Section 3D-59(e) Does Not Violate Any Constitutional “Right to Safety”	35
C. The Balancing of Hardships Does Not Favor Plaintiffs	38
POINT II	
Plaintiffs are Procedurally Barred from Obtaining Permanent Injunction at this Juncture in the Litigation.....	40
POINT III	
This Court Should Dismiss Plaintiffs Complaint for Failure to State a Claim.....	44
CONCLUSION	45

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<u>Acierno v. New Castle Cnty.</u> , 40 F.3d 645 (3d Cir. 1994)	20, 21
<u>Amiriantz v. New Jersey</u> , 251 F. App’x 787 (3d Cir. 2007)	34, 35
<u>Amiriantz v. New Jersey</u> , Civil Action No. 06-1743 (FLW), 2006 WL 3486814 (D.N.J. Nov. 30, 2006)	34
<u>Batte-Holmgren v. Galvin</u> , No. CV044000287, 2004 WL 2896485 (Conn. Super. Ct. Nov. 5, 2004)	34
<u>Bd. of Health v. Jennings</u> , 129 N.J. Eq. 51 (Sup. Ct. 1941).....	22
<u>Bennington Foods LLC v. St. Croix Renaissance, Group LLP</u> , 528 F.3d 176 (3d Cir. 2008)	21
<u>Benton v. Kernan</u> , 126 N.J. Eq. 343 (E. & A. 1939)	22
<u>Chalom v. Benesh</u> , 234 N.J. Super. 248 (Law Div. 1989).....	43
<u>In re City of Newark</u> , 469 N.J. Super.....	38
<u>Coalition for Equal Rights, Inc. v. Owens</u> , 458 F. Supp. 2d 1251 (D. Colo. Oct. 19, 2006).....	34
<u>Crowe v. De Gioia</u> , 90 N.J. 126 (1982)	20, 23
<u>DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.</u> , 489 U.S. 189 (1989).....	36

Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C.,
237 N.J. 91 (2019)44

Franklin v. N.J. Dep’t of Human Servs.,
225 N.J. Super. 504 (App. Div.)37

Gonzalez v. City of Camden,
357 N.J. Super. 339 (App. Div. 2003)37

Gormley v. Wood-El,
218 N.J. 72 (2014)36, 37

Grabowsky v. Twp. of Montclair,
221 N.J. 536 (2015)42

Harvey v. Essex Cnty. Bd. of Freeholders,
30 N.J. 381 (1959)25, 26

Jordan v. Horsemen’s Benevolent & Protective Assoc.,
90 N.J. 422 (1982)25

L.T. v. N.J. Dep’t of Human Servs., Div. of Family Dev.,
264 N.J. Super. 334 (App. Div. 1993), rev’d on other grounds, 134
N.J. 304 (1993)37

Lanin v. Borough of Tenafly,
515 F. App’x 114 (3d Cir. 2013)21

Mahwah Twp. v. Bergen Cnty. Bd. of Tax’n,
98 N.J. 268 (1985)24, 30, 32

McKenzie v. Corzine,
396 N.J. Super. 405 (App. Div. 2007)22, 39

Messina v. Coll. of New Jersey,
566 F. Supp. 3d 236 (D.N.J. 2021)23

Mueller v. Kean University,
474 N.J. Super. 272 (App. Div. 2022)44

N.J. State Bar Ass’n v. Berman,
259 N.J. Super. 137 (App. Div. 1992)33

Nazare v. Bd. of Embalmers & Funeral Dirs.,
4 N.J. Super. 567 (Ch. Div. 1949)22

Nken v. Holder,
556 U. S. 418 (2009).....39

Nordlinger v. Hahn,
505 U.S. 1 (1992).....27

Parking Auth. of City of Atlantic City v. Bd. of Chosen Freeholders of
Atlantic County,
180 N.J. Super. 282 (Law Div. 1981).....29, 31

Paul Kimball Hosp., Inc. v. Brick Twp. Hosp., Inc.,
86 N.J. 429 (1981)25, 26, 27, 33

Peters v. Pub. Serv. Corp.,
132 N.J. Eq. 500 (Ch. Div. 1942)21

Pharmacia Corp. v. Alcon Labs.,
201 F.Supp.2d 335 (D.N.J. 2002).....21, 23

Printing Mart-Morristown v. Sharp Elecs. Corp.,
116 N.J. 739 (1989)44

Punnett v. Carter,
621 F.2d 578 (3d Cir. 1980)20

Rinaldo v. RLR Inv., LLC,
387 N.J. Super. 387 (App. Div. 2006)20, 23, 38

Roe v. Kervick,
42 N.J. 191 (1964)25

Solondz v. Kornmehl,
317 N.J. Super. 16 (App. Div. 1998).....42, 43

Stepien v. Murphy,
574 F.Supp.3d 229 (D.N.J. 2021).....20, 21

Subcarrier Commc’ns, Inc. v. Day,
299 N.J. Super. 634 (App. Div. 1997).....20

Verna v. Links at Valleybrook Neighborhood Ass’n, Inc.,
 371 N.J. Super. 77 (App. Div. 2004).....23

Vreeland v. Byrne,
 72 N.J. 292 (1977)26

Waste Mgmt. of New Jersey, Inc. v. Union Cnty. Utilities Auth.,
 399 N.J. Super. 508 (App. Div. 2008)20, 40, 42, 43

Statutes

N.J.S.A. 2A:16-50 to -6242

N.J.S.A. 2A:23B-341

N.J.S.A. 2A:23B-541

N.J.S.A. 2A:23B-5(a).....41

N.J.S.A. 2C:37-912, 28

N.J.S.A. 5:12-1b(2), (8)30

N.J.S.A. 5:12-1b(4), (13)31

N.J.S.A. 5:12-1b(19).....30

N.J.S.A. 5:12-70(a)(18).....12

N.J.S.A. 5:12-70a(18)28

N.J.S.A. 10:6-1 to -242

N.J.S.A. 26:3D-1 to -66

N.J.S.A. 26:3D-7 to -146

N.J.S.A. 26:3D-15 to -226

N.J.S.A. 26:3D-23 to -317

N.J.S.A. 26:3D-32 to -377

N.J.S.A. 26:3D-38 to -458

N.J.S.A. 26:3D-46 to -547

N.J.S.A. 26:3D-55 to -649

N.J.S.A. 26:3D-56.....26

N.J.S.A. 26:3D-56(f).....9, 27

N.J.S.A. 26:3D-5710

N.J.S.A. 26:3D-58.....9

N.J.S.A. 26:3D-58(b)13, 32

N.J.S.A. 26:3D-59, -6027

N.J.S.A. 26:3D-59(f).....14

N.J.S.A. 26:3D-59(g)13

N.J.S.A. 26:3D-59(h)13

N.J.S.A. 26:3D-59.27

N.J.S.A. 26:3D-59 to -6010

N.J.S.A. 26:3E-7 to -13.....7

N.J.S.A. 33:1-1 to 33:5-513, 28

N.J.S.A. 54:40A-15

N.J.A.C. 8:6-1.114

N.J.A.C. 8:6-5.314

N.J.A.C. 13:69M-1.111

Rules

Rule 1:6-3.....42

Rule 4:6-2(e)44

Rule 4:5240

Rule 4:67-1.....41, 42
Rule 4:67-1(a).....40, 41, 43
Rule 4:67-1(b).....40, 41, 42

PRELIMINARY STATEMENT

How best to protect nonsmokers from tobacco smoke in public places and at work is a question of public policy that policymakers in New Jersey and around the country have continued to debate in the decades since the health risks posed by second-hand smoke were no longer debatable. The New Jersey Legislature has enacted more than a dozen laws on the topic since the 1980s, with legislators incrementally adjusting the protections for nonsmokers since that time. None of those laws is more significant than the Smoke-Free Air Act, which has prohibited smoking in most indoor public places and workplaces since its enactment in 2006. But legislators have continued to amend and debate additional changes to the law in more recent years, including by considering whether to eliminate or amend a provision of the Smoke-Free Air Act, N.J.S.A. 26:3D-59(e), which allows smoking in certain areas of casinos. That legislative debate remains active to this day.

The ongoing, robust public debate is precisely the right mechanism to weigh the competing arguments about public health and economics that are implicated by N.J.S.A. 26:3D-59(e). The ultimate policy choice belongs to our elected representatives, who are entrusted to make policy decisions and who are accountable to the citizenry for the choices that they make. And while Governor Murphy has consistently and repeatedly stated that he would sign a bill prohibiting indoor smoking in casinos should it reach his desk, the policy choices that have been made

by our elected representatives to date are reflected in current law: the Smoke-Free Air Act and its array of exceptions, including the casino provision in Section 3D-59(e).

Plaintiffs—organizations representing a subset of casino workers—seek to upend the status quo and terminate the ongoing legislative debate by converting a policy question into a constitutional one. Advancing several remarkably novel constitutional theories, they maintain that N.J.S.A. 26:3D-59(e) is invalid and that the Legislature actually has been obligated all along to prohibit smoking in casinos. And they ask this Court to preliminarily and permanently enjoin, on an emergent basis, a state statute that has remained in effect for over 18 years.

Plaintiffs have the right to disagree with the law as it currently stands. But they do not have the right to a judicial order short-circuiting the usual democratic process. Accordingly, this Court should deny Plaintiffs' pending motion for injunctive relief for multiple independent reasons.

First, as to Plaintiffs' request for a preliminary injunction, such relief is not the appropriate mechanism to challenge a statute that has been on the books for over 18 years. The primary purpose of a preliminary injunction is to preserve the status quo while the parties can more fully litigate and develop a record on the merits of the constitutional claims. So where a movant has long delayed seeking relief—such

that the status quo now favors maintenance of the law—courts regularly deny such applications. That applies here.

Second, Plaintiffs cannot establish their right to any relief—preliminary or permanent—because their submissions fail to demonstrate that Section 3D-59(e) violates the New Jersey Constitution. As laid out below, Plaintiffs’ contentions—that the statutory section at issue (1) constitutes impermissible special legislation or (2) violates the Constitution’s guarantees of equal protection or (3) violates a purported constitutional right to safety—are contrary to well-established law. Whatever the strength of Plaintiffs’ policy arguments in favor of legislation banning smoking in casinos, they do not raise a substantial constitutional claim warranting redress in our courts. Because Plaintiffs’ arguments do not have merit, this Court should also dismiss them as a matter of law.

Third, the balance of the equities and public interest do not favor Plaintiffs, who move on an emergent and summary basis to set aside a longstanding regulatory regime. Granting such relief would disrupt the well-settled status quo; likely affect the businesses and livelihoods of third-parties, including the casinos, their management, and the many casino workers who disagree with Plaintiffs’ position; and potentially bring about economic consequences that the Legislature sought to avoid when it enacted the Smoke-Free Air Act.

Beyond these flaws in their motion, Plaintiffs effectively seek a final disposition of this matter in their favor on a summary basis through their requests for a declaratory judgment and a permanent injunction. Granting such relief at this juncture would be procedurally improper. Instead, because Plaintiffs' claims have no chance of success as a matter of law, the only immediate relief that should be granted is the dismissal of Plaintiffs' complaint.

For these reasons, this Court should deny Plaintiffs' request for injunctive relief and grant Defendants' cross-motion to dismiss Plaintiffs' complaint.

STATEMENT OF FACTS

C. Background

That tobacco smoke poses risks to human health is indisputable. The causal link between smoking and disease in active smokers has been recognized by federal health authorities for at least six decades. See C. Everett Koop, Surgeon General, Preface to the Health Consequences of Involuntary Smoking: A Report of the Surgeon General ix (1986) (“1986 Surgeon General Report”), https://stacks.cdc.gov/view/cdc/20799/cdc_20799_DS1.pdf (“By 1964, . . . a substantial body of evidence had accumulated upon which a judgment could be made that smoking was a cause of disease in active smokers”). And by the 1980s, federal authorities acknowledged that second-hand smoking is itself a clear cause of chronic disease in nonsmokers. See ibid. (“It is now clear that disease risk due to the

inhalation of tobacco smoke is not limited to the individual who is smoking, but can extend to those who inhale tobacco smoke emitted into the air.”).

New Jersey has deployed a vast array of strategies to address the health risks of tobacco smoking. For example, the State prohibits tobacco sales to young people and in 2017 increased the minimum age to 21. See P.L.2017, c.118 (raising the minimum age for purchase and sale of tobacco products and electronic smoking devices from 19 to 21); see also Dorie E. Apollonio & Stanton A. Glantz, *Minimum Ages of Legal Access for Tobacco in the United States From 1863 to 2015*, 106 Am. J. Pub. Health 1200, 1201 (2016) (noting that the State in 1883 set the minimum age of legal access at 16 years). Sales of tobacco products to individuals of legal age are regulated and taxed, in part to deter smoking. See N.J.S.A. 54:40A-1 et seq. (Cigarette Tax Act with supplements); N.J.S.A. 54:40B-1 et seq. (Tobacco and Vapor Products Act). And the State funds public education on the health risks of smoking and resources for smokers who want to quit. See, e.g., N.J. Dep’t of Health, Office of Tobacco Control & Prevention, <https://www.nj.gov/health/fhs/tobacco> (last visited Apr. 25, 2024); New Jersey Quitline, <https://www.njqitline.org> (last visited Apr. 25, 2024). These efforts to reduce smoking in New Jersey broadly benefits non-smokers, who are less likely to be exposed to second-hand smoke as a result.

Most relevant here, New Jersey has gradually emerged as a national leader in restricting smoking in public places, which has significantly reduced nonsmokers' involuntary exposure to tobacco smoke. The remainder of this section addresses New Jersey's place-based restrictions on smoking in the 1980s and 1990s; the Smoke-Free Air Act of 2006; and more recent policy developments and legislative deliberations.

1. Restrictions on Smoking in Public Places in the 1980s and 1990s

States legislatures first began restricting smoking in public places as a means of protecting the health of nonsmokers in the 1970s, reflecting emerging concerns about second-hand smoke. See 1986 Surgeon General Report at 267. New Jersey joined them in 1981. Citing a “conflict between the right of the smoker to smoke and the right of the nonsmoker to breathe clean air,” the Legislature passed a trio of laws identifying specific locations in which “the right of the nonsmoker to breathe clean air should supersede the right of the smoker to smoke.” See P.L.1981, c.318 (codified at N.J.S.A. 26:3D-1 to -6; repealed 2006); P.L.1981, c.319 (codified at N.J.S.A. 26:3D-7 to -14; repealed 2006); P.L.1981, c.320 (codified at N.J.S.A. 26:3D-15 to -22; repealed 2006). With that, the Legislature prohibited smoking tobacco products in public elevators, P.L.1981, c.318; in health care facilities and waiting rooms of the offices of persons licensed to practice the healing arts, except in certain designated smoking areas, P.L.1981, c.319; and in schools, colleges,

universities, and professional training schools, except in smoking areas designated by the educational institution, P.L.1981, c.320.

The State has updated its smoking restrictions in the years that followed. In 1985, the Legislature enacted five additional bills to curb exposure to second-hand smoke. First, employers were required to designate nonsmoking areas in structurally enclosed places of employment of at least 50 workers – if smoking was permitted at all – but this requirement did not apply to locations frequented by members of the public. P.L.1985, c.184 (codified at N.J.S.A. 26:3D-23 to -31; repealed 2006). Second, restaurants (but not bars) were “encourage[d]” to establish nonsmoking areas and required to post signage reflecting whether or not a nonsmoking area was offered. P.L.1985, c.185 (codified at N.J.S.A. 26:3E-7 to -13; repealed 2006). Third, smoking was prohibited in large grocery stores. P.L.1985, c.186 (codified at N.J.S.A. 26:3D-32 to -37; repealed 2006). Fourth, the Legislature addressed smoking on government property by generally prohibiting smoking in public meetings and in offices open to the public, libraries, indoor theatres, museums, lecture or concert halls, and gymnasiums (with exceptions for special occasions); requiring nonsmoking areas in certain restaurants in government buildings; and mandating nonsmoking areas in places of government employment (except the Legislature). P.L.1985, c.381 (codified at N.J.S.A. 26:3D-46 to -54; repealed 2006).

Government facilities used for sports events or recreational activities like ice and roller skating were exempt from the bill’s requirements. Id. § 2(a).

The final bill enacted in 1985 restricted smoking in a variety of indoor public places. P.L.1985, c.318 (codified at N.J.S.A. 26:3D-38 to -45; repealed 2006). Smoking was prohibited in pharmacies, drug stores, and other places where drugs could be dispensed or hearing aids sold. Id. § 3(b). Other indoor public places—defined to mean a structurally enclosed area generally accessible to the public in theatres, gymnasiums, libraries, museums, concert halls, auditoriums, and similar facilities not covered by other smoking laws—were required to establish designated nonsmoking areas. Id. §§ 2(a), 3(a). Significantly, however, the bill’s definition of public places explicitly excluded “[r]ace track facilities, casinos . . . , facilities used for the holding of boxing and wrestling exhibitions or performances, football, baseball, and other sporting event facilities, bowling alleys, dance halls, ice and roller skating rinks and other establishments providing ambulatory recreation.” Id. § 2(a).

The Legislature modestly expanded upon these restrictions on smoking in public places in the two decades that followed: in 1998, a law was enacted to prohibit smoking in child care centers. P.L.1998, c.35 (repealed in part 2006).

2. The New Jersey Smoke-Free Air Act

Enacted on January 15, 2006, the New Jersey Smoke-Free Air Act struck a new balance between the interests of smokers and nonsmokers. See P.L.2005, c.383 (codified as amended at N.J.S.A. 26:3D-55 to -64) (“the Act”). Finding that “tobacco is the leading cause of preventable disease and death in the State and the nation,” that “tobacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public,” and that “the separation of smoking and nonsmoking areas in indoor public places and workplaces [as mandated in the 1980s] does not eliminate the hazard to nonsmokers if these areas share a common ventilation system,” the Legislature declared that “subject to certain specified exceptions,” it is clearly in the public interest to prohibit smoking in all enclosed indoor places of public access and workplaces. Id. § 1 (codified as amended at N.J.S.A. 26:3D-56(f)) (emphasis supplied).

The Act repealed the prior legislation imposing piecemeal regulations on smoking in designated places, id. § 11, and replaced those laws with a general prohibition on smoking in any indoor public place or workplace, “except as otherwise provided” in the Act, and at elementary and secondary schools, including both indoor and outdoor areas, id. § 4 (codified as amended at N.J.S.A. 26:3D-58). “Indoor public place” was defined to mean “a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately

owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public.” Id. § 3 (codified as amended at N.J.S.A. 26:3D-57). The definition explicitly includes, but is not limited to, a list of specific indoor public places, including many that were specifically addressed (i.e., either regulated or exempted) in prior legislation on smoking in designated places. Ibid. “Workplace” was defined to mean “a structurally enclosed location or portion thereof at which a person performs any type of service or labor.” Ibid.

The Act included several exemptions. See id. §§ 5–6 (codified as amended at N.J.S.A. 26:3D-59 to -60). By its terms, the Act did not apply to certain cigar bars or cigar lounges; tobacco retail establishments and any area a tobacco retail establishment provides for the purposes of smoking; and certain other tobacco businesses. Id. § 5(a)-(c). Private homes, private residences, and private automobiles were explicitly exempt to the extent that the Act might otherwise apply (e.g., a private residence on the grounds of a school). Id. § 5(d). And hotels, motels, and lodging establishments were permitted to allow smoking in up to twenty percent of their guest rooms. Id. § 6(a).

Finally, in a provision codified at N.J.S.A. 26:3D-59(e), the Act specified that its provisions did not apply to “the area within the perimeter of”:

- (1) any casino as defined in section 6 of P.L.1977, c.110 (C.5:12-6) approved by the Casino Control Commission that contains at least 150 stand-alone slot machines, 10

table games, or some combination thereof approved by the commission, which machines and games are available to the public for wagering; and

(2) any casino simulcasting facility approved by the Casino Control Commission pursuant to section 4 of P.L.1992, c.19 (C.5:12-194) that contains a simulcast counter and dedicated seating for at least 50 simulcast patrons or a simulcast operation and at least 10 table games, which simulcast facilities and games are available to the public for wagering.

Id. § 5(e).¹

Section 59(e) of the Act was the subject of legislative debate. As introduced, the Senate bill that eventually became the Smoke-Free Air Act would have more broadly exempted any casino, any casino simulcasting facility, and any bar located in a casino or simulcasting facility. See S1926, 211th Leg. (as introduced, October 14, 2004). In the Senate Health, Human Services and Senior Citizens Committee, the bill was amended to eliminate that exemption, along with another exemption that covered social and fraternal organizations. See S1926, 211th Leg. (as reported by S. Comm. on Health, Human Servs. & Senior Citizens, Mar. 14, 2005). Before passage, however, the bill was further amended on the floor of the Senate to include the narrower casino-related exemption that ultimately was included in the Act. See

¹ Casino simulcasting is the simultaneous transmission by picture of running or harness horse races conducted at racetracks to casino licensees and pari-mutuel wagering at casino simulcasting facilities operated by casino licensees on the results of those races. N.J.A.C. 13:69M-1.1. Casino simulcasting facilities must be located in an approved hotel operated by a casino licensee. Ibid.

S1926, 211th Leg. (as amended by the Senate, Dec. 8, 2005). An accompanying statement indicated that the purpose of this amendment, with its reference to “the area within the perimeter of a casino and simulcasting facility,” was “to exempt only those areas in a casino and simulcasting facility that are completely surrounded by the applicable wagering area.” See Statement to S. 1926, N.J. Senate, 1 (Dec. 8, 2005) (statement of Sen. Adler) , attached as Exhibit A to the Certification of Robert J. McGuire (“McGuire Cert.”)

The Act’s treatment of casinos and casino simulcasting facilities is consistent with other laws that are specific to casinos and casino simulcasting facilities. For instance, notwithstanding its general prohibitions on private, special, or local laws, N.J. Const. art. IV, § VII, ¶¶ 7–10, and on legislation authorizing gambling of any kind without a special election, N.J. Const. art. IV, § VII, ¶ 2, New Jersey’s Constitution permits the Legislature to authorize the establishment of casinos and casino simulcasting facilities in – and only in – Atlantic City, and to license and tax their operations, N.J. Const. art. IV, § VII, ¶ 2(D)–(E). The Legislature has done so through the Casino Control Act, N.J.S.A. 5:12-1 et seq., and has exempted activities authorized by the Casino Control Act from otherwise applicable laws that, for example, criminalize gambling-related activity, see N.J.S.A. 2C:37-9, and regulate sales of alcohol, see N.J.S.A. 5:12-70(a)(18).

In other instances, the Legislature has seen fit to impose more stringent restrictions on activity at casinos than on the same activity at other locations. So, for example, state law does not prohibit individuals who are too young to purchase or consume alcoholic beverages from entering bars, see generally N.J.S.A. 33:1-1 to 33:5-5, but does prohibit them from entering a licensed casino or simulcasting facility, except by way of passage to another room, without being licensed or registered under the Casino Control Act, N.J.S.A. 5:12-119.

Such distinctions in established law between casinos and other locations provide relevant background for distinctions drawn in the Smoke-Free Air Act, including particularly its distinctions between locations where young people are likely to be present and exposed to second-hand smoke. Cf. N.J.S.A. 26:3D-58(b) (prohibiting smoking even in outdoor areas on school grounds).

3. Post-2006 Legal Developments

Policymakers have continued to evaluate and refine the scope of the State's place-based smoking restrictions in the years the Smoke-Free Air Act. Among other changes, the Act's definition of "smoking" was amended to include use of electronic smoking devices or vapes. P.L. 2009, c.182. The Act's smoking ban also was amended to apply to public parks and beaches, P.L.2018, c.64, and new exemptions were established for golf courses, N.J.S.A. 26:3D-59(g), designated smoking areas not to exceed 15 percent of municipal or county beaches, N.J.S.A. 26:3D-59(h), and

research laboratories and facilities conducting research on the health effects of smoking, N.J.S.A. 26:3D-59(f).

Regulations to implement the Smoke-Free Air Act also have been adopted and enforced by DOH and its predecessor the Department of Health and Senior Services. See N.J.A.C. 8:6-1.1 to -10.1; see, e.g., N.J.A.C. 8:6-5.3 (requiring signage to designate smoking and nonsmoking areas in casinos). In response to comments on the initial rulemaking under the Act, the Department of Health and Senior Services indicated its support for legislative repeal of the Act's casino provision and rejected comments arguing that the Act was meant to permit smoking in restaurants, bars, and walkways abutting or adjacent to the area within the perimeter specified in the Act. See 39 N.J.R. 2027(a) (May 21, 2007) (responses to comments 43-76).

Significantly, Atlantic City also has exercised its discretion under Section 9 of the Smoke-Free Air Act, N.J.S.A. 26:3D-63, to impose smoking restrictions greater than those contained in the Act. In 2007, the City enacted an ordinance that effectively limited smoking in casinos and casino simulcasting facilities to 25% of the area within the perimeter where smoking was permitted under the Act itself. See City of Atlantic City Ordinance No. 86-2006 (approved Feb. 15, 2007; effective April 15, 2007). In 2008, the City went further – banning smoking on all employee-staffed portions of the casino floor effective October 15, 2008 and limiting smoking

in casinos to non-staffed, separately exhausted, and enclosed smoking lounges. See City of Atlantic City Ordinance No. 27 (approved April 30, 2008).

Shortly after the ban went into effect, Atlantic City backtracked on the smoking ban. Citing the deterioration of the national and regional economy, declining casino industry performance, and “the consequences of similar restrictions placed on casino patrons’ smoking in other jurisdictions around the country,” the City found that banning smoking on the casino floor “would likely cause a significant, immediate and further decline in the Atlantic City casino industry.” See City of Atlantic City Ordinance No. 95 (approved Oct. 27, 2008; effective November 16, 2008). Accordingly, the City (1) readopted its prior policy limiting smoking to 25% of the gaming floor and (2) required that local officials annually review the policy to “whether the factors then impacting the general welfare of Atlantic City residents and the Atlantic City casino industry and the employment, development, competitive and other economic conditions which affect them warrant” a smoking ban. Ibid. (codified at Code of the City of Atlantic City §§ 221-6A(6) and 221-6B).

All told, Atlantic City’s ban on smoking on the casino floor was in effect for a month. The ban has not been reinstated since.

4. Pending Legislation

Meanwhile, legislation has been introduced in every session since 2006 to eliminate the Smoke-Free Air Act’s casino provision. See S1493/A2143, 221st Leg.

(2024-2025); S264/A2151, 220th Leg. (2022-2023); S1878/A4541, 219th Leg. (2020-2021); S1237, 218th Leg. (2018-2019); S1517/A2936, 217th Leg. (2016-2017); S1639/A2133, 216th Leg. (2014-2015); S1795/A343, 215th Leg. (2012-2013); S423/A1062, 214th Leg. (2010-2011); S236/A806, 213rd Leg. (2008-2009); S1089/A2067, 212th Leg. (2006-2007).

Most recently, on January 29, 2024, Senate Bill 1493 was reported out of the Senate Health, Human Services and Senior Citizens Committee with amendments after the Committee heard from both supporters and opponents of the bill. See Exhibit B to McGuire Cert.² Generally speaking, supporters of the bill emphasized the health impacts of smoking, including on casino workers. Opponents generally emphasized anticipated economic impacts of banning smoking in casinos, including significant revenue losses for the casino industry and ancillary businesses and the job losses they expect to follow. See Exhibit B to McGuire Cert.

² Those submitting written opposition to the eliminating the casino-related provision – some of whom invited a compromise – included the Atlantic City Branch of the NAACP; Teamsters Local Union #331; UNITE HERE Local 54; the Greater Atlantic City Chamber; Atlantic City Mayor Marty Small, Sr.; the International Union of Operating Engineers Local 68; the New Jersey Association of Area Agencies on Aging; the Eastern Atlantic States Regional Council of Carpenters Local Union 255; District Council 21 of the International Union of Painters & Allied Trades; and the Casino Association of New Jersey.

Those submitting written support for the bill included the American Heart Association, the Robert Wood Johnson Foundation, the American Cancer Society Cancer Action Network, ASHRAE, the American Lung Association, and a number of individuals.

In connection with its written submission to the Committee, the Casino Association of New Jersey offered an analysis by Spectrum Gaming Group (“Spectrum”), which forecasted the short-term consequences of a repeal. See Exhibit C to McGuire Cert., Spectrum Report. Spectrum estimated that Atlantic City casinos would experience a net decline of between \$113.8 and \$293.1 in gross gaming revenue in the first year of implementation, id. at 40; an annual loss of total tax revenue between \$17.2 and \$44.6 million, id. at 42; and potentially 1,021 to 2,512 lost jobs, id. at 43.

In addition to the bill that would repeal the Act’s casino provision, other pending legislation would amend the provision to further restrict (but not ban) smoking at casinos. See S2651, 221st Leg. (introduced Feb. 12, 2024). That bill would: (1) limit smoking to not more than 25 percent of the area of the casino floor and casino simulcasting facility, which must be designated by signage; (2) requiring that interior designated smoking areas be either enclosed and separately exhausted or, if unenclosed, located in areas containing slot machines and other electronic games that are more than fifteen feet from any casino pit offering table games with live dealers; and (3) provide that no stationary employee may be involuntarily assigned to work in an enclosed interior designated smoking area.

In short, the issue of whether to repeal or revise Section 3D-59(e), and the potential impact of doing so on New Jerseyans as a whole, is a public policy issue

under active and ongoing debate that involves a complex consideration of many factors, with advocates on both sides of the issue contending that their position has the greatest overall positive impact on the State. At least at present, those advocating for legislative change have been unable to persuade the Legislature to undo the eighteen-year-old casino exception under Section 3D-59(e).

D. This Litigation

Plaintiffs—the UAW (International United Automobile Aerospace and Agricultural Implement Workers of America), Region 9 of the UAW, and C.E.A.S.E. N.J. (Casino Employees Against Smoking’s (Harmful) Effects), all of whom represent a subset of New Jersey casino workers—commenced this action on April 5, 2024. Plaintiffs filed both a verified complaint and an accompanying order to show cause that purports to seek—as relevant to this opposition brief—both preliminary and permanent injunctive relief that would void Section 3D-59(e).

In their three-count complaint, Plaintiffs, who state that their members are (or were) exposed to second-hand smoke against their will while working as New Jersey casino employees, see Complaint, ¶¶ 2-4, advance claims under the New Jersey Civil Rights Act (“NJ CRA”), N.J.S.A. 10:6-2(c), alleging that Section 3D-59(e) violates the State Constitution because it: violates a constitutional “right to safety” (Count I); constitutes an unconstitutional “special law” (Count II); and denies Plaintiffs equal protection under the State Constitution (Count Three).

On April 5, 2024, this Court entered an order requiring Defendants to show cause why: (1) Section 3D-59(e) is not unconstitutional; (2) the Court should not void Section 3D-59(e); and (3) fees should not be awarded to Plaintiffs' counsel. See eCourts Transaction ID No. CHC2024109696. At Defendants' request, the Court modified the briefing and hearing schedule with respect to the order to show cause. See eCourts Transaction ID No. CHC2024114858.

ARGUMENT

POINT I

THIS COURT SHOULD DENY PLAINTIFFS' THE REQUEST FOR AN INJUNCTION IN THIS CONSTITUTIONAL CASE.

Plaintiffs cannot meet their burden to support entry of an injunction—whether on an emergent or permanent basis—mandating on constitutional grounds that the State ban smoking in casinos.

A. A Preliminary Injunction Is Not An Appropriate Device For Upending The Longstanding Status Quo.

Even before considering the merits, this Court should deny the request to grant a preliminary injunction that would upend a status quo that has existed for at least 18 years, since enactment of the Smoke-Free Air Act.

As our courts have consistently and repeatedly recognized, the purpose of a preliminary injunction “is to maintain the parties in substantially the same condition

‘when the final decree is entered as they were when the litigation began.’ Subcarrier Commc’ns, Inc. v. Day, 299 N.J. Super. 634, 639 (App. Div. 1997); see also, e.g., Crowe v. De Gioia, 90 N.J. 126, 134 (1982) (confirming that “the point of temporary relief is to maintain the parties in substantially the same condition when the final decree is entered as they were when the litigation began”); Waste Mgmt. of New Jersey, Inc. v. Union Cnty. Utilities Auth., 399 N.J. Super. 508, 520 (App. Div. 2008) (describing preliminary injunction “an equitable policing measure” that “keep[s] the parties, while the suit goes on, as far as possible in the respective positions they occupied when the suit began” (citation omitted)). As a result, any “party who seeks mandatory preliminary injunctive relief” that upends the status quo in effect “must satisfy a ‘particularly heavy’ burden.” Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006) (quoting Punnett v. Carter, 621 F.2d 578, 582 (3d Cir. 1980)).

Our courts are hardly alone in expressing this position. See, e.g., Acierno v. New Castle Cnty., 40 F.3d 645, 647 (3d Cir. 1994) (agreeing “primary purpose of a preliminary injunction is maintenance of the status quo until a decision on the merits of a case is rendered”); Stepien v. Murphy, 574 F.Supp.3d 229, 237 (D.N.J. 2021) (citing Acierno and agreeing that maintenance of status quo is “primary purpose of preliminary injunctive relief”). Instead, in New Jersey and elsewhere, the view that preliminary injunctions should be used specifically to protect the status quo is of

longstanding provenance. See, e.g., Peters v. Pub. Serv. Corp., 132 N.J. Eq. 500, 511 (Ch. Div. 1942) (explaining that “[t]he purpose of ad interim restraint is to enable the Court to fully deliberate and investigate the case in order that the injunction maintains the status quo so that the parties are in substantially the same plight when the final decree is entered as they were when the litigation began”). But the upshot is clear: any “party seeking a mandatory preliminary injunction that will alter the status quo bears a particularly heavy burden in demonstrating its necessity.” Acierno, 40 F.3d at 653; see also Bennington Foods LLC v. St. Croix Renaissance, Group LLP, 528 F.3d 176, 179 (3d Cir. 2008) (same); Stepien, 574 F.Supp.3d at 237 (agreeing that “[p]articuliar scrutiny is required where, as here, the plaintiff is asking the Court to order an affirmative act that changes the status quo”).

Relatedly, courts have consistently denied motions for preliminary injunctions on the ground that the plaintiff delayed in seeking that relief—such that the status quo was no longer in their favor. As courts have put the point, delay can “knock[] the bottom out of any” demand for a preliminary injunction and instead can offer a “dispositive basis” for rejecting emergency relief. Pharmacia Corp. v. Alcon Labs., 201 F.Supp.2d 335, 382-83 (D.N.J. 2002). After all, if preliminary injunctive relief proceeds “under the theory that there is an urgent need for speedy action to protect the plaintiffs’ rights” or preserve the status quo before a new law takes effect, Lanin v. Borough of Tenafly, 515 F. App’x 114, 117-18 (3d Cir. 2013), then a long delay

demonstrates exactly the opposite. For decades, our courts have thus held that a party's long delay in seeking preliminary relief militates against granting such equitable injunctive relief. See, e.g., Nazare v. Bd. of Embalmers & Funeral Dirs., 4 N.J. Super. 567, 569 (Ch. Div. 1949) (“It is elementary that one who seeks the drastic remedy of injunction must not only present a clear case entitling him to relief but he must move with dispatch to secure it.”); Bd. of Health v. Jennings, 129 N.J. Eq. 51, 56 (Sup. Ct. 1941) (holding “long delay” in seeking relief can outweigh plaintiff's showing on equitable factors); Benton v. Kernan, 126 N.J. Eq. 343, 347 (E. & A. 1939) (emphasizing importance of “long delay” in undermining claim); McKenzie v. Corzine, 396 N.J. Super. 405, 414 (App. Div. 2007) (noting injunction improper because movant could have filed challenge “much earlier” and thus “without the potential of additional costs to the public and disruption”).

The timing here fatally undermines Plaintiffs' application for a preliminary injunction. Plaintiffs do not and cannot dispute that they seek to disrupt the status quo—the Smoke-Free Air Act has provided a smoking exemption for casinos for the past 18 years. Pb8. Plaintiffs also do not and cannot dispute that they could have filed this constitutional challenge sooner—indeed, if Plaintiffs are correct, they could have filed this lawsuit as early as January 16, 2006, as the law (in their view) has been unconstitutional this entire time. Courts have found far shorter delays to justify denying preliminary relief, reasoning each time that the proper role for such

a motion is really to protect the status quo. See Pharmacia, 201 F.Supp.2d at 383-84 & n.18 (collecting cases involving less than one-year delay); Messina v. Coll. of New Jersey, 566 F. Supp. 3d 236, 249 (D.N.J. 2021) (four months).

B. Plaintiffs Are Not Entitled To Injunctive Relief Because They Cannot Meet Their Burden to Show That the Legislature’s Policy Choice Reflected in Section 3D-59(e) Is Unconstitutional.

A plaintiff is not entitled to injunctive relief—whether preliminary or permanent—if she cannot prevail on the merits of her claims as a matter of law. In the context of emergent requests for injunctive relief, courts require that the plaintiff “make a preliminary showing of a reasonable probability of ultimate success on the merits.” St. John’s Evangelical Lutheran Church, 195 N.J. Super. at 420 (citing Crowe, 90 N.J. at 132-34). And to secure permanent injunctive relief, it is necessary—but not, by itself, sufficient—for the plaintiff to “establish the liability of the other party.” Rinaldo, 387 N.J. Super. at 397; Verna v. Links at Valleybrook Neighborhood Ass’n, Inc., 371 N.J. Super. 77, 89 (App. Div. 2004) (plaintiff must prove “a legal right to the relief sought” to obtain a permanent injunction).

As discussed below, Plaintiffs’ constitutional claims in this case—that Section 3D-59(e) is impermissible “special legislation,” violates the equal protection rights of casino workers, or otherwise violates a purported “right to safety”—all fail as a matter of law. Because “the burden is on the party challenging the constitutionality of the statute to demonstrate clearly that it violates a constitutional provision,”

Newark Superior Officers, 98 N.J. at 222, and Plaintiffs do not come close to meeting that burden or even suggesting that it is probable that they will do so, injunctive relief should be denied (and indeed, Plaintiffs’ complaint should be altogether dismissed, as Defendants request by cross-motion).

1. Section 3D-59(e) Is Not “Special Legislation.”

Contrary to Plaintiffs’ contention (Mot. at 8-11), Section 3D-59(e) does not constitute a “special law” within the meaning of the twinned restrictions contained in article IV, § 7 of the New Jersey Constitution. Those provisions state that “[n]o general law shall embrace any provision of a private, special or local character,” N.J. Const. art. IV, § 7, ¶ 7, and that “[t]he Legislature shall not pass any private, special or local laws . . . [g]ranting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever,” N.J. Const. art. IV, § 7, ¶ 9(8). But they do not limit the Legislature’s ability to draw reasonable classifications that are rationally related to the government interest, nor require that it adopt the most “expansive classification” that would “fully achieve[]” “the legislative objective” if the Legislature reasonably prefers to proceed incrementally. Mahwah Twp. v. Bergen Cnty. Bd. of Tax’n, 98 N.J. 268, 289 (1985).

Section 3D-59(e) is one of several permissible exceptions contained in a general law that embodies the Legislature’s policy choices for how best to address health-related concerns about smoking in indoor public places while also taking

countervailing interests into account. While Plaintiffs are free to advocate in the Legislature to amend the Smoke-Free Air Act, they cannot establish that Section 3D-59(e) is unconstitutional by asserting, in essence, that they would draw a different line.

The constitutional analysis under article IV distinguishes between “general” and “special” laws. Jordan v. Horsemen’s Benevolent & Protective Assoc., 90 N.J. 422, 432 (1982). A law is general, as opposed to special, when it affects “equally all of a group who, bearing in mind the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves.” Harvey v. Essex Cnty. Bd. of Freeholders, 30 N.J. 381, 389 (1959). On the other hand, courts consider a law “special legislation” when it excludes “any appropriate person . . . to which the law, but for its limitations, would apply.” Paul Kimball Hosp., Inc. v. Brick Twp. Hosp., Inc., 86 N.J. 429, 446 (1981). In other words, unconstitutional special legislation arbitrarily fails to “encompass[] all of the subjects which reasonably belong within the classification” and excludes “any which naturally belong therein.” Id. at 445 (quoting Roe v. Kervick, 42 N.J. 191, 233 (1964)).

Importantly, mere disagreement with the boundaries of a classification is not enough to sustain a constitutional attack. A “false or deficient classification” that contravenes the Constitution not only affords differential treatment to “persons,

things or places which are not dissimilar” with respect to the “qualities or situations” upon which the classification is purportedly based; it “create[s] preference[s] and establish[es] inequalities” in the constitutional sense. Harvey, 30 N.J. at 389. Accordingly, New Jersey courts “utilize[e] the principles generally applicable to equal protection” to analyze whether statutory exclusions amount to impermissible special laws. Paul Kimball Hosp., Inc., 86 N.J. at 446. And in that analysis, a “strong presumption in favor of constitutionality” attaches. Ibid. Indeed, “the Legislature has wide discretion in determining the perimeters of a classification” and “an adequate factual basis for the legislative judgment is presumed to exist.” Id. at 446-47.

To decide whether challenged legislation is an impermissible special law, courts apply a three-part test that (1) “consider[s] the purpose and object of the legislation”; (2) “appl[ies] it to the factual situation to determine whether any one thing is excluded that should be included”; and (3) “determine[s] whether, as so applied, the resulting classification can be said to rest upon any rational or reasonable basis relevant to the purpose and object of the act.” Newark Superior Officers, 98 N.J. at 223 (citing Vreeland v. Byrne, 72 N.J. 292, 300-01 (1977)). Under that test, the Smoke-Free Air Act is a general law that embodies a reasonable classification to advance the public interest in broadly prohibiting smoking in “enclosed indoor places of public access and workplaces,” N.J.S.A. 26:3D-56, while excluding certain

places (such as casino floors) whose characteristics provide a rational basis for unique treatment, N.J.S.A. 26:3D-59, -60.

The analysis begins with the legislative purposes underlying the Smoke-Free Air Act and its treatment of casinos. Recognizing the negative health and safety effects associated with smoking, the Legislature determined, “subject to certain specific exceptions,” that it was “in the public interest to prohibit the smoking of tobacco products” in several settings, including most “enclosed indoor places of public access and workplaces.” N.J.S.A. 26:3D-56(f) (emphasis added). By implication, the Legislature also concluded that it was not in the public interest, for other reasons, to prohibit smoking in certain “areas and businesses” that were specifically carved out, including designated areas of casinos. N.J.S.A. 26:3D-59. The Smoke-Free Air Act therefore advances the legislative purpose of promoting public health across the State while acknowledging countervailing considerations applicable to certain locations, including casino floors.³

At the second step, the court looks to whether, under the challenged legislation, any person or entity “is excluded that should be included.” Newark

³ “[T]he Equal Protection Clause,” whose principles apply to special-legislation challenges, “does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification.” Nordlinger v. Hahn, 505 U.S. 1, 15 (1992). “[A]n adequate factual basis for the legislative judgment is presumed to exist.” Paul Kimball Hosp., Inc., 86 N.J. at 446-47.

Superior Officers, 98 N.J. at 223. Here, the classification drawn by the Legislature is reasonable because the casinos covered by Section 3D-59(e) are not similarly situated with respect to the indoor places of public access and workplaces that are subject to the smoking prohibition. Indeed, the Constitution itself recognizes that casinos occupy a unique place in the economic life of the State. The same constitutional article that Plaintiffs invoke in their challenge authorizes legalized gambling establishments only in Atlantic City, and provides specifically for the casinos' licensing and taxing. See N.J. Const. art. IV, § 7, ¶ 2(D). Implicit in that treatment is the recognition that casinos may require specialized, industry-specific regulatory and licensing regimes, uniquely applicable in Atlantic City where they are exclusively located, that would not be appropriate for other industries and workplaces in New Jersey. Reading the provisions of article IV in harmony with one another, the Legislature's differential treatment of casinos does not offend the Constitution and is in fact entirely consistent with it.

Unsurprisingly, then, the Smoke-Free Air Act is not the only legislative act to reflect that otherwise generally applicable statutory regimes may not be suitably applied to Atlantic City casinos. See, e.g., N.J.S.A. 2C:37-9 (excluding Atlantic City casinos from gambling criminalization across the State); N.J.S.A. 5:12-70a(18) (exempting casinos from generally applicable alcohol regulations under N.J.S.A. 33:1-1 to 33:5-5 "because of the unique character of the hotel casino premises and

operations” and tasking the Casino Control Commission with promulgating casino-specific regulations); see also Parking Auth. of City of Atlantic City v. Bd. of Chosen Freeholders of Atlantic County, 180 N.J. Super. 282, 294 (Law Div. 1981) (recognizing that “New Jersey’s casino industry depends substantially upon Atlantic City’s ability to attract large numbers of nonresident visitors” and therefore, while transportation is only tangentially related to legalization of gambling, sufficient nexus justified a standalone transportation statute giving Atlantic County and Atlantic City differential treatment).

Unable to quarrel with casinos’ special status, Plaintiffs attempt to recharacterize how the classification operates by recasting Section 3D-59(e) as arbitrarily excluding “casino workers from safety protections given to other [non-casino] workers.” See Mot. at 11. This argument misses the mark. The Smoke-Free Air Act plainly differentiates among types of places where it is in the public interest to ban smoking, and those places where it is not. Similarly, different safety regulations have long applied to different workplaces depending on the characteristics of the premises and the activity carried out there without raising constitutional concerns.

At the final step of the analysis, “the generality or speciality of a statute becomes a question of reasonableness” dictated by “practical [considerations] varying with the facts in each case.” Newark Superior Officers Ass’n, 98 N.J. at

227. A challenged classification will be upheld if it “can be said to rest upon any rational or reasonable basis relevant to the purpose and object of the act.” *Id.* at 223. Under that deferential standard, if the court “can conceive of any reason to justify the classification” or if “the question of reasonableness is fairly debatable,” the statute will survive the challenge. *Mahwah Twp.*, 98 N.J. at 290. The Smoke Free-Fair Act and Section 3D-59(e) satisfy that test.

The first justification is economic. In enacting the Casino Control Act, N.J.S.A. 5:12-1 to -152, the Legislature underscored the need for a “sufficiently flexible” “regulatory system” to support “the ability of the legalized casino gaming industry in New Jersey to compete in an ever-expanding national gaming market.” N.J.S.A. 5:12-1b(19). The Legislature found that the New Jersey public has a “vital interest in casino operations in Atlantic City” because “[b]y reason of its location, natural resources and worldwide prominence and reputation,” Atlantic City’s hospitality sector is “a critically important and valuable asset in the continued viability and economic strength of the tourist, convention and resort industry” in the state as a whole. N.J.S.A. 5:12-1b(2), (8). The unique position of Atlantic City’s casinos—and the legislative interest in supporting their ability to compete and thrive in the national marketplace—may reasonably warrant a different balancing of the interests affected by indoor smoking bans at casinos than at other indoor places of public access and workplaces. Section 3D-59(e), like the casino-specific laws noted

above, reasonably advances the constitutionally sanctioned legislative goals of bolstering the casino industry and the continued economic revitalization of Atlantic City. See, e.g., N.J.S.A. 5:12-1b(4), (13); see also N.J. Const. art. IV, § 7, ¶ 2(D).

But that is not the only reasonable basis for distinguishing between casino floors and other places subject to the smoking bans. Another reason—also related to the unique constitutional status of casinos and casino simulcasting facilities—is that they are geographically limited to a single municipality, Atlantic City, which is therefore uniquely affected by laws affecting casinos. In the Smoke-Free Air Act, the Legislature struck a reasonable balance that preserves the authority of the municipality that would be most affected to weigh the costs and benefits of a smoking ban for itself – authority that Atlantic City has in fact exercised since 2006 by adopting casino smoking policies that are more restrictive than state law. Thus, as was the case of Parking Authority of City of Atlantic City, 180 N.J. Super. 282, the unique nature of Atlantic City and its economy can provide a reasonable basis for a legislative distinction.

Finally, the Legislature could reasonably conclude that casino floors are distinct from other places where smoking is banned because individuals under the age of 21 are not permitted there. Young people face particular health risks from second-hand smoke, see Ctrs. for Disease Control & Prevention, Smoking & Tobacco Use, Secondhand Smoke, <https://www.cdc.gov/tobacco/secondhand->

smoke/health.html (last visited Apr. 28, 2024), which New Jersey has recognized by imposing more significant restrictions on smoking in locations where children are most likely to be present. See, e.g., N.J.S.A. 26:3D-58(b) (outdoors on school grounds); P.L.1998, c.35 (child care centers). Conversely, the Legislature could reasonably determine that less restrictive measures are warranted where children are not likely to be present.

At bottom, the Legislature’s current choice to address the problems of smoking indoors incrementally is not unconstitutional just because Plaintiffs assert that a more expansive classification would better serve the underlying health policy goals. See Mahwah, 98 N.J. at 289–90 (recognizing that in special-legislation challenge, Legislature may “recognize degrees of harm” and “limits its actions” based on “practical exigencies” or competing “considerations of public policy”). Reasonable minds may and do differ on whether the unique role and circumstances of casinos favor a different legislative approach to indoor smoking on casino floors than in other locations. Because that policy question is debatable—and in fact under debate in the Legislature—injunctive relief should be denied. Id. at 290 (“[W]here the question of reasonableness is fairly debatable, courts will uphold the classification.”).

2. Section 3D-59(e) Does Not Violate Equal-Protection Rights.

Equal-protection principles govern special-legislation challenges, Paul Kimball Hosp., Inc., 86 N.J. at 446, and Plaintiffs all but concede that their separate equal-protection claim, such as it is, rises and falls with their special-legislation claim (see Mot. at 17). For the same reasons described above in Section II.B.1, Plaintiffs are not entitled to injunctive relief because Section 3D-59(e) does not violate their equal protection rights as a matter of law.

At the outset, Plaintiffs do not identify any basis to apply a more demanding level of scrutiny than rational basis. See N.J. State Bar Ass'n v. Berman, 259 N.J. Super. 137, 145 (App. Div. 1992) (a rational basis standard applies if no fundamental right or suspect class is implicated). Although Plaintiffs assert—circularly and without supporting authority—that their claims implicate their rights to safety and equal protection, neither is itself a fundamental right that can justify a heightened standard of review. See Section II.B.1. And Plaintiffs do not allege, nor can they, that casino workers are a suspect class.

Accordingly, the lines drawn by the Legislature in the Smoke-Free Air Act are consistent with equal-protection principles so long as those lines can be justified by any rational basis at all. Berman, 259 N.J. at 145. As explained above, because the lines drawn by the Legislature are reasonably justifiable based on economic impacts and the unique character and clientele of casinos—including the fact that

casinos operate only in Atlantic City, which has discretion to ban or further restrict smoking in casinos if it chooses, and the fact that minors are not permitted. The Legislature's judgment in the Smoke-Free Air Act regarding smoking in discrete areas of casinos easily meets the low threshold necessary to pass constitutional muster.

That result comports with the outcome of a similar equal-protection challenge against Section 3D-59(e) that was litigated in federal court. See Amiriantz v. New Jersey, 251 F. App'x 787, 788 (3d Cir. 2007). In Amiriantz, a transportation company challenged the exclusion of casinos from the Smoke-Free Air Act on equal-protection grounds. Amiriantz v. New Jersey, Civil Action No. 06-1743 (FLW), 2006 WL 3486814, at *4 (D.N.J. Nov. 30, 2006). The Third Circuit affirmed the dismissal of the complaint, agreeing with the district court's reasoning that the State's economic concerns articulated in the Casino Control Act provided a rational basis for the differential treatment accorded by Section 3D-59(e). 251 F. App'x at 789; 2006 WL 3486814, at *5-6.

For similar reasons, courts have upheld analogous casino exceptions to smoking bans imposed by other States. See Batte-Holmgren v. Galvin, No. CV044000287, 2004 WL 2896485 (Conn. Super. Ct. Nov. 5, 2004) (finding legislature's concern regarding inability to enforce smoking ban at casinos provided rational basis for exemption); Coalition for Equal Rights, Inc. v. Owens, 458 F.

Supp. 2d 1251 (D. Colo. Oct. 19, 2006) (holding economic considerations constituted proper basis for casino exemption).

As the Third Circuit explained in Amiriantz, “social or economic legislation” like the Smoke-Free Air Act “is valid unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that a court can only conclude that the legislature’s actions were irrational.” 251 F. App’x at 789 (citations and alterations omitted). Because Plaintiffs cannot make that extraordinary showing, their equal protection claim fails as a matter of law and injunctive relief should be denied.

3. Section 3D-59(e) Does Not Violate Any Constitutional “Right to Safety.”

Plaintiffs suggest that Section 3D-59(e) violates a purported “right to safety” that Plaintiffs locate in the first paragraph of the New Jersey Constitution. But while that provision lists several “natural and unalienable rights” of all persons, including the right “of pursuing and obtaining safety and happiness,” N.J. Const. art. I, ¶ 1, there is no basis for Plaintiffs’ claim that the State is obligated by this provision to mandate that casinos prohibit smoking by their patrons.

Plaintiffs themselves do not cite a single case in support of their argument, and that is unsurprising: No precedential decision has ever embraced the notion that our State Constitution creates a freestanding “right to safety.” Rather, tracking well-

established federal jurisprudence, our courts have consistently rejected the notion that the State has an affirmative constitutional obligation to provide “safety” for some persons in the State (e.g., Plaintiffs’ members) by regulating the conduct of others (e.g., casinos and smokers).

The core of Plaintiffs’ claim is that the State failed to take affirmative action to protect them when it enacted a smoking ban that did not apply to the entirety of their employers’ facilities and therefore left it up to those employers to determine whether smoking would be allowed in designated areas limited in area by both state law and local ordinance. That claim is plainly not cognizable. See DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs., 489 U.S. 189, 195 (1989) (explaining that there is no federal constitutional “guarantee of certain minimal levels of safety and security” and no general obligation that government take action to protect general public from harm caused by conduct of private actors); Gormley v. Wood-El, 218 N.J. 72, 103 (2014) (explaining that liability only attaches to affirmative state action “and not just failure to protect” from harm resulting from conduct of others). And as a factual matter, it ignores the comprehensive steps the State has taken and continues to take to protect the public, including Plaintiffs’ members, from the dangers of smoking. See, supra, at 4.⁴

⁴ Plaintiffs do not invoke—nor could they—the doctrines that impose specific obligations on the State to protect persons in state custody or persons who are

Plaintiffs’ theory of a novel right to safety also must be rejected because it lacks any limiting principle. If the State in fact had an affirmative constitutional obligation to protect Plaintiffs’ members from health risks due to tobacco smoke in the limited areas where smoking is allowed, it is not clear why the State’s constitutional obligation would be limited to casinos and their employees. The logic of Plaintiffs’ argument implies that the State is obligated to ban smoking by anyone in any place and has been obligated to impose such a ban since the health risks of smoking were established. Nor do Plaintiffs have any explanation why their purported right to safety could require a smoking ban without logically also requiring affirmative steps by the State to protect public health in a host of other novel contexts.⁵ The effectively boundless nature of the purported right that Plaintiffs assert—which would intrude impermissibly into the policymaking realm of the Legislature—confirms why their claim has no basis in law and must be rejected.

exposed to state-created dangers. See, e.g., Gormley, 218 N.J. at 97-104; Gonzalez v. City of Camden, 357 N.J. Super. 339, 351 (App. Div. 2003).

⁵ Cf. L.T. v. N.J. Dep’t of Human Servs., Div. of Family Dev., 264 N.J. Super. 334, 340-42 (App. Div. 1993), rev’d on other grounds, 134 N.J. 304 (1993) (rejecting the argument that Article I, paragraph 1 imposes “an affirmative obligation on the government to finance social services” including “government-funded housing”); Franklin v. N.J. Dep’t of Human Servs., 225 N.J. Super. 504, 522 (App. Div.) (“Appellants’ theory is that [Article I, paragraphs 1 and 2] impose an affirmative obligation upon state government to provide certain necessities of life for indigent persons, including shelter. However, this theory is not supported by the history of these constitutional provisions, their language, or the prior decisions of the Supreme Court of New Jersey.”), aff’d, 111 N.J. 1 (1988).

C. Injunctive Relief Should Be Denied Because the Balance of the Equities and the Public Interest Is Against Plaintiffs.

The balancing of hardships and public interest do not favor Plaintiffs, and that alone forecloses injunctive relief on an emergent or permanent basis. In re City of Newark, 469 N.J. Super. at 387 (movant for emergent injunctive relief must show “that on balance the harm to the moving party is greater than the harm to the party to be restrained” and that “the public interest will not be harmed”); Rinaldo, 398 N.J. Super. at 297 (“appropriateness of [injunctive] relief on a balancing of the equities” is one of the factors guiding “the determination whether to grant a permanent injunction”).

Granting the requested injunction would harm the State by overturning the Legislature’s duly enacted judgments about where to permit smoking. It would harm the interests of casino operators—by eliminating their already-limited discretion to decide for themselves whether to allow their patrons to smoke in certain locations—as well as the interests of those casino patrons who wish to smoke there. And it would potentially inflict economic harms on casino operators, ancillary businesses, their workers, the State, and Atlantic City and the surrounding region. Defendants understand that representatives of casinos and unions representing thousands of casino workers (from all Atlantic City casinos) seek to intervene in this litigation to demonstrate that enjoining Section 3D-59(e) will have an immediate and very

harmful economic impact—precisely the type of economic impact and harm to the public interest that the Legislature was constitutionally entitled to consider when it enacted the Smoke-Free Air Act.

On the other side of the ledger, Plaintiffs suggest that each day that their members are potentially exposed to second-hand smoke involves a risk to those members' health. See Verified Complaint, ¶¶ 8-10, 22, 31, 36. Whatever the strength of that contention, it reflects the status quo that has existed for decades without legal challenge. Plaintiffs could easily have sought relief sooner so that the “defined and specific issue . . . could have been adjudicated much earlier” without the same threat of substantial disruption of others' lives and livelihoods. See McKenzie v. Corzine, 396 N.J. Super. 405, 414-15 (App. Div. 2007) (emergent relief inappropriate where party “self-created a situation where it is alleged the irreparable harm is ‘imminent’ which could have been avoided if filed timely”).

Finally, “[t]here is always a public interest in prompt execution” of the law, absent a showing of its unconstitutionality. Nken v. Holder, 556 U. S. 418, 436 (2009). The Legislature continues to debate whether the public would be better served by maintaining the status quo or amending the Smoke-Free Air Act to further restrict smoking in casinos. But, under our Constitution, that determination is the Legislature's to make. And, absent a change in the law, the public interest favors

judicial respect for the judgment made by the Legislature when it enacted Section 3D-59(e).

In short—particularly given Plaintiffs’ long delay in seeking to invalidate Section 3D-59(e)—the balancing of hardships weighs against the entry of injunctive relief.

POINT II

PLAINTIFFS ARE PROCEDURALLY BARRED FROM OBTAINING A PERMANENT INJUNCTION AT THIS JUNCTURE IN THE LITIGATION.

Plaintiffs have not met their burden to show that they are entitled to injunctive relief, on an emergent or permanent basis, under the applicable analysis. See supra Point I. But their request for a final judgment in the form of a declaratory judgment and a permanent injunction at this nascent point in the litigation is also procedurally improper.

It is black-letter law that the process governing injunctive relief applications under Rule 4:52 “does not allow for the entry of an order to show cause for the entry of a permanent injunction.” Waste Management, 399 N.J. Super. at 516 (emphasis in original). Notwithstanding that clear law, Plaintiffs appear to seek immediate entry of a permanent injunction on a summary basis pursuant to either Rule 4:67-1(a), which authorizes summary actions if “the court is permitted by rule or by statute to proceed in a summary manner,” or Rule 4:67-1(b), which allows a summary action

by agreement of the court and the parties. Compare Proposed Order to Show Cause at 1 (eCourts Trans. ID CHC2024109696), with Mot. at 18. But neither provision applies here for reasons described below. Plaintiffs' demand for a final injunction should be denied as improper under the applicable Court rules and as a misuse of the order-to-show-cause mechanism that New Jersey courts have specifically cautioned against.

First, Plaintiffs have no basis to proceed summarily pursuant to Rule 4:67-1(a) because they have failed to identify a court rule or statute that authorizes them to do so, as that rule's plain text requires. Plaintiffs' proposed order to show cause cites to Rule 4:67-1, without further specification, and their brief exclusively cites to Rule 4:67-1(b). But neither filing identifies any rule or statute authorizing summary action pursuant to Rule 4:67-1(a). While the proposed order to show cause that they presented to this Court for execution cites to N.J.S.A. 2A:23B-5 as the supposed underlying legal basis for this summary challenge, that statute authorizes summary proceedings only in the specific context of arbitration disputes. See N.J.S.A. 2A:23B-5(a) (“[A]n application for judicial relief pursuant to this act shall be made upon commencement of a summary action.” (emphasis added)); N.J.S.A. 2A:23B-3 (providing that the “Act applies” with respect to certain “agreements to arbitrate”). And none of the other statutes implicated by Plaintiffs' complaint

authorizes summary action. N.J.S.A. 10:6-1 to -2 (New Jersey Civil Rights Act); N.J.S.A. 2A:16-50 to -62 (New Jersey Declaratory Judgment Act).

Second, if Plaintiffs are instead asserting a right to summary disposition under Rule 4:67-1(b), as their brief suggests (Mot. at 18), that also fails. The New Jersey Supreme Court has made clear that a party may proceed in a summary fashion under that subsection of the rule only “by agreement of the court and the parties, evinced by ‘a clear and unambiguous statement from the judge and the unequivocal consent of the parties to a final resolution.’” Grabowsky v. Twp. of Montclair, 221 N.J. 536, 550 (2015) (quoting Waste Mgmt., 399 N.J. Super. at 518-19 (App. Div. 2008)). Defendants here have not consented to a final resolution and that ends the inquiry. In any event, Plaintiffs failed to comply with Rule 4:67-1(b) because they did not send the required notice and motion under Rule 1:6-3 concerning their intent to seek a potential summary disposition.

Plaintiffs’ misuse of Rule 4:67-1 exemplifies a practice that New Jersey courts have sharply criticized: the improper use of the order-to-show-cause mechanism to seek essentially a full final judgment on the merits in an initial filing and on abbreviated notice. As the Appellate Division reminded the bar in Solondz v. Kornmehl, 317 N.J. Super. 16 (App. Div. 1998), an order to show cause is appropriate only “where a party seeks some form of emergent, temporary, interlocutory or other form of interim relief such as the preservation of the status quo

pending final hearing of the cause” or “in those actions in which the court is permitted by statute or rule to proceed in a summary manner” under Rule 4:67-1(a). Id. at 20 (emphasis added). Instead, Plaintiffs seek to upend the status quo of the last 18 years by requesting “instant, complete and final relief without giving the opposing party an adequate opportunity to present argument” on a full record. See Solondz, 317 N.J. Super. at 20 (discussing Chalom v. Benesh, 234 N.J. Super. 248, 254 (Law Div. 1989)). That is precisely the approach that the Appellate Division condemned as a “misuse[]” of “the purpose and function of the form of pleading known as the [order to show cause].” Ibid. (rejecting as improper filing of order to show cause seeking immediate judgment for sum of money allegedly owed under contract).

Plaintiffs’ attempt to bypass the ordinary judicial process and put the Court in the position to issue a final judgment on the validity of an eighteen-year-old law on an expedited basis and without the benefit of a fully developed record should be rejected. See Waste Mgmt., 399 N.J. Super. at 516 & n.1 (App. Div. 2008) (where Rule 4:67-1(a) does not apply, as here, court rules do not allow for entry of order to show cause for entry of permanent injunction).

POINT III

THIS COURT SHOULD DISMISS PLAINTIFFS' COMPLAINT FOR FAILURE TO STATE A CLAIM.

In discussing Plaintiffs' inability to establish a likelihood of success on their constitutional claims for purposes of preliminary injunctive relief, Defendants have demonstrated that each of Plaintiffs' claims fails as a matter of law. Accordingly, the Court should also dismiss the Verified Complaint under Rule 4:6-2(e) because Plaintiffs cannot show that Section 3D-59(e) is unconstitutional.

When reviewing a motion to dismiss for failure to state a claim, a court must examine "the legal sufficiency of the facts alleged on the face of the complaint," and draw all reasonable inferences of fact in the plaintiff's favor. Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C., 237 N.J. 91, 107 (2019) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). However, dismissal is mandated where "the factual allegations are palpably insufficient to support a claim upon which relief can be granted . . . and discovery will not give rise to one." Mueller v. Kean University, 474 N.J. Super. 272, 289–90 (App. Div. 2022) (quotations omitted).

Here, even accepting all factual allegations as true, Plaintiffs cannot establish a legal right to injunctive or declaratory relief voiding Section 3D-59(e). As explained above in Part I.B, there is a rational basis for the Smoke-Free Air Act and

its differential treatment of casinos, and Section 3D-59(e) is not special legislation, does not violate Plaintiffs' equal protection rights, and does not infringe on any purported constitutional right to safety. No amount of discovery will change this legal reality, and that should end this case. The Verified Complaint should be dismissed.

CONCLUSION

For all of the foregoing reasons, this Court should deny Plaintiffs' requests for injunctive relief and should grant Defendants' cross-motion to dismiss.

Respectfully submitted,

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