

3-9-1994

## Smoking And Tobacco Products. Statewide Regulation.

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# State of California

OFFICE OF THE SECRETARY OF STATE

June 27, 1994

TO: All County Clerks/Registrars of Voters (94162)



Pursuant to Section 3523 of the Elections Code, I hereby certify that on June 27, 1994 the certificates received from the County Clerks or Registrars of Voters by the Secretary of State established that the Initiative Statute, **SMOKING AND TOBACCO PRODUCTS. STATEWIDE REGULATION.** has been signed by the requisite number of qualified electors needed to declare the petition sufficient. The **SMOKING AND TOBACCO PRODUCTS. STATEWIDE REGULATION. INITIATIVE STATUTE** is, therefore, qualified for the November 8, 1994 General Election.

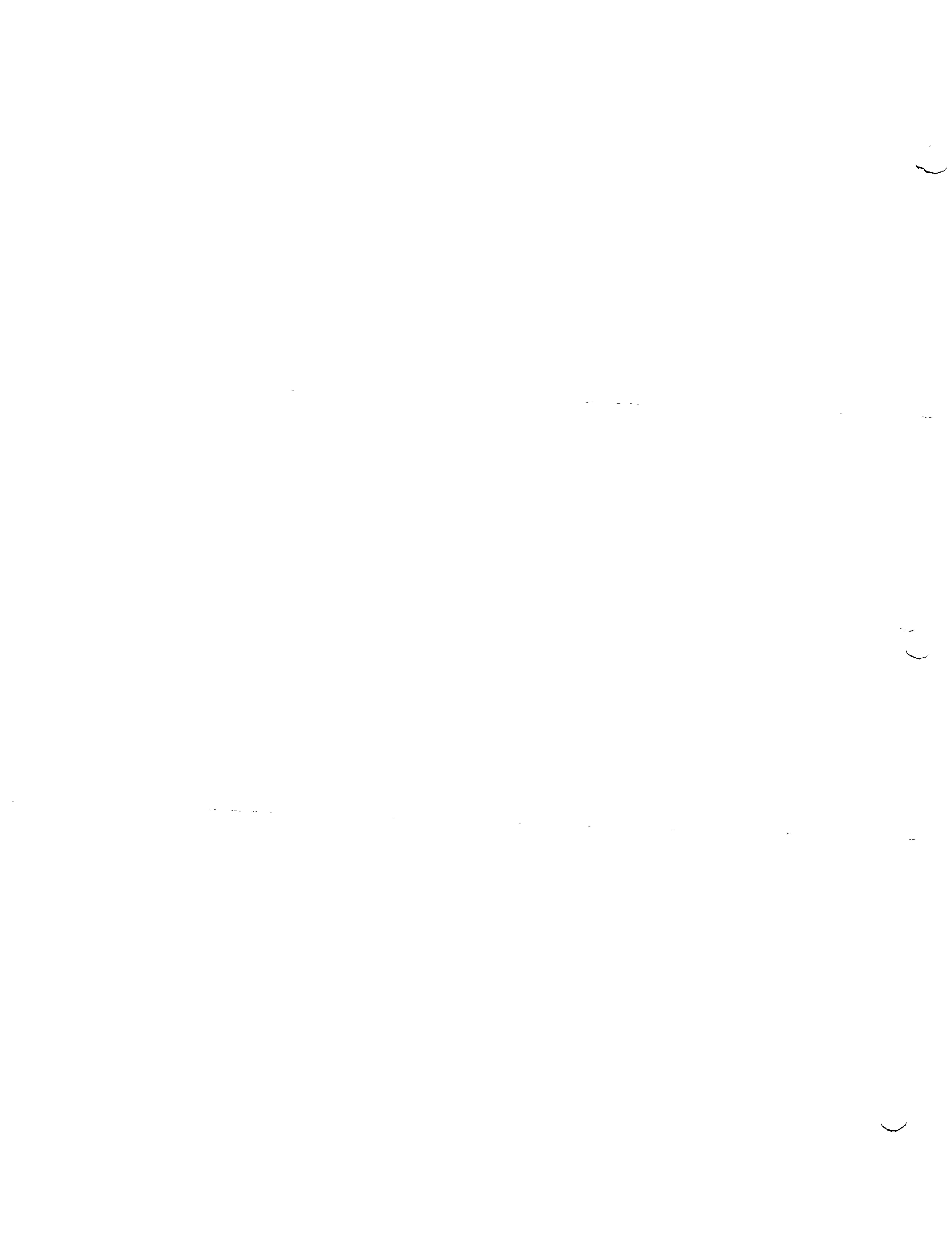
**SMOKING AND TOBACCO PRODUCTS. STATEWIDE REGULATION. INITIATIVE STATUTE.** Establishes statewide smoking and tobacco regulations. Repeals California Indoor Clean Air Act of 1976. Repeals and preempts local smoking and tobacco regulations. Bans public smoking with significant exceptions. Permits smoking sections in restaurants and employee cafeterias. Bars not regulated. Permits smoking in private offices, and business conference rooms with occupants' consent. Exempts from smoking regulations gaming clubs, bingo establishments, racetracks, sports facility private boxes and smoking lounges. Regulates location of tobacco vending machines and billboards. Increases penalties for tobacco purchases by minors. Permits amendment of tobacco regulations by two-thirds vote of Legislature. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unknown effects on public-sector health care costs and state tobacco tax revenues, depending on the extent there are changes in the consumption of tobacco products and/or exposure to second-hand smoke. State costs to enforce the measure would be around \$1 million annually; local enforcement costs would probably not be significant.

IN WITNESS WHEREOF, I hereunto  
set my hand and affix the Great Seal of  
the State of California this 27th day of  
June, 1994.

*Tony Miller*

TONY MILLER  
Acting Secretary of State







Office of the Secretary of State

1230 J Street  
Sacramento, California 95814

ELECTIONS DIVISION  
(916) 445-0820

For Hearing and Speech Impaired  
Only:  
(800) 833-8683

#638

March 9, 1994

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS (94063)

Pursuant to Section 3513 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

**SMOKING AND TOBACCO PRODUCTS. STATEWIDE REGULATION.  
INITIATIVE STATUTE.**

Circulating and Filing Schedule

- 1. Minimum number of signatures required ..... 384,974  
Cal. Const., Art. II, Sec. 8(b).
- 2. Official Summary Date ..... Wednesday, 03/09/94  
Elec. C., Sec. 3513.
- 3. Petition Sections:
  - a. First day Proponent can circulate Sections for  
signatures ..... Wednesday, 03/09/94  
Elec. C., Sec. 3513.
  - b. Last day Proponent can circulate and file with  
the county. All sections are to be filed at  
the same time within each county ..... Friday, 08/05/94  
Elec. C., Secs. 3513, 3520(a)
  - c. Last day for county to determine total number of  
signatures affixed to petition and to transmit total  
to the Secretary of State ..... Wednesday, 08/17/94

(If the Proponents file the petition with the county on a date prior to 08/05/94, the county has eight working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State.) Elec. C., Sec. 3520(b).



**SMOKING AND TOBACCO PRODUCTS. STATEWIDE REGULATION.  
INITIATIVE STATUTE.**

March 9, 1994  
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d. Secretary of State determines whether the total number of signatures filed with all county clerks meets the minimum number of required signatures, and notifies the counties . . . . . Friday, 08/26/94\*

e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State . . . . . Wednesday, 10/12/94

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 08/17/94, the last day is no later than the thirtieth day after the county's receipt of notification.)  
Elec. C., Sec. 3520(d), (e).

f. If the signature count is more than 423,472 or less than 365,726 then the Secretary of State certifies the petition has qualified or failed, and notifies the counties. If the signature count is between 365,726 and 423,472 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures . . . Saturday, 10/22/94\*

g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State . . . . . Wednesday, 12/07/94

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 10/22/94, the last day is no later than the thirtieth working day after county's receipt of notification.)  
Elec. C., Sec. 3521(b), (c).

h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient . . . . . Sunday, 12/11/94\*

\* Date varies based on receipt of county certification.

**SMOKING AND TOBACCO PRODUCTS. STATEWIDE REGULATION.  
INITIATIVE STATUTE.**

March 9, 1994

Page 3

**4. The Proponents of the above-named measure are:**

Julian Diamond  
2838 Union Street  
San Francisco, CA 94123  
(415) 673-2016

Donna Maret-Fahrenholz  
306 Bora Bora Way, #112  
Marina del Rey, CA 90292

**5. Important Points:**

- (a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code section 29770; *Bilofsky v. Deukmejian* (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen. 37 (1980).
- (b) Please refer to Elections Code sections 41, 41.5, 44, 3501, 3507, 3508, 3517, and 3519 for appropriate format and type consideration in printing, typing, and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- (c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.
- (d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- (e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- (f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

**NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 8, 1994  
GENERAL ELECTION:** This initiative must be certified for the ballot 131 days before the election (June 30, 1994). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions to county elections officials by April 22, 1994. If a 100% check of signatures is necessary, it is advised that the petitions be filed by March 2, 1994.

Sincerely,



CATHY MITCHELL  
Initiative Coordinator

Attachment: POLITICAL REFORM ACT OF 1974 REQUIREMENTS

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511  
P.O. Box 944255  
SACRAMENTO, CA 94244-2550  
(916) 445-9555

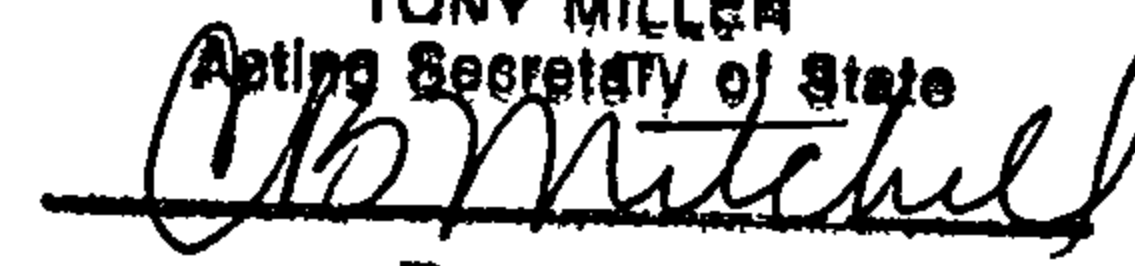
(916) 324-5490

March 9, 1994

**FILED**  
In the office of the Secretary of State  
of the State of California

MAR 09 1994

Tony Miller  
Acting Secretary of State  
1230 J Street  
Sacramento, CA 95814

TONY MILLER  
Acting Secretary of State  
  
Deputy

Re: Initiative Title and Summary  
Subject: SMOKING AND TOBACCO PRODUCTS. STATEWIDE REGULATION.  
INITIATIVE STATUTE.  
File No: SA 93 RF 0003

Dear Mr. Miller:

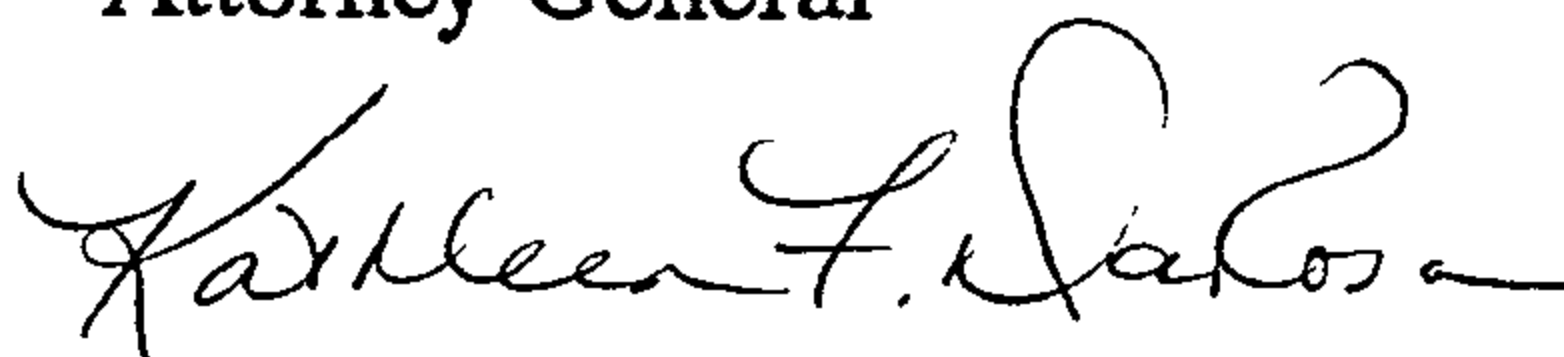
Pursuant to the provisions of sections 3503 and 3513 of the Elections Code, you are hereby notified that on this day we mailed to the proponents of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the names and addresses of the proponents are as stated on the declaration of mailing.

Sincerely,

DANIEL E. LUNGREN  
Attorney General



KATHLEEN F. DaROSA  
Initiative Coordinator

KFD:ms  
Enclosures

Date: March 9, 1994  
File No: SA94RF0003

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**SMOKING AND TOBACCO PRODUCTS. STATEWIDE REGULATION.**

**INITIATIVE STATUTE.** Establishes statewide smoking and tobacco regulations.

Repeals California Indoor Clean Air Act of 1976. Repeals and preempts local smoking and tobacco regulations. Bans public smoking with significant exceptions. Permits smoking sections in restaurants and employee cafeterias. Bars not regulated. Permits smoking in private offices, and business conference rooms with occupants' consent. Exempts from smoking regulations gaming clubs, bingo establishments, racetracks, sports facility private boxes and smoking lounges. Regulates location of tobacco vending machines and billboards. Increases penalties for tobacco purchases by minors. Permits amendment of tobacco regulations by two-thirds vote of Legislature. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unknown effects on public-sector health care costs and state tobacco tax revenues, depending on the extent there are changes in the consumption of tobacco products and/or exposure to second-hand smoke. State costs to enforce the measure would be around \$1 million annually; local enforcement costs would probably not be significant.



RECEIVED  
JAN 18 1994

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

January 17, 1994

Ms. Kathleen DaRosa  
Initiative Coordinator  
Office of the Attorney General  
1515 K Street, 6th Floor  
Sacramento, California 95814

Re: Request for Initiative Title and Summary

Dear Ms. DaRosa:

I, along with Donna Maret-Fahrenholz, are proponents and request that the Attorney General prepare a title and summary of the chief purpose and points of the attached initiative measure that enacts the "California Uniform Tobacco Control Act." Enclosed is a check for \$200 as required by Elections Code #3503.

I have enclosed the written statement as required by Elections Code #3502.

The below address is my residence where I am registered to vote.

Sincerely,



Julian Diamond  
2838 Union Street  
San Francisco, CA 94123

Enclosures  
(Telephone contact: 415/673-2016)

RECEIVED  
JAN 18 1994

306 Bora Bora Way, #112  
Marina del Rey, California 90292

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

January 17, 1994

Ms. Kathleen DaRosa  
Initiative Coordinator  
Office of the Attorney General  
1515 K Street, 6th Floor  
Sacramento, CA 95814

RE: Request for Initiative and Summary

Dear Ms. DaRosa:

I request that the Attorney General prepare a title and summary of the chief purpose and points of the attached initiative measure that enacts the "California Uniform Tobacco Control Act."

I have also included a written statement as required by Elections Code §3502.

Please send all inquiries to the above listed address which is my residence and voter registration address.

Sincerely,



Donna Maret-Fahrenheit  
(Voter ID#: 206-159-859)

Attachment

## TEXT OF INITIATIVE

SECTION 1. The People of the State of California find and declare that:

(a) The current regulation of smoking in public in California is inadequate in that there are insufficient statewide standards for regulating smoking in restaurants, office buildings, and other public places.

(b) There is a wide variance in the local regulation of smoking. Some localities provide little or no protection to those who wish to avoid secondhand smoke in such places, while others overregulate to the extent that in at least one city a person may be fined for smoking on the sidewalk or in the street.

(c) There is a clear need for uniform statewide regulation of smoking in public to assure those interested in avoiding secondhand tobacco smoke have the same protections wherever they go in the state and that those who do smoke have fair notice of where smoking is prohibited.

(d) There must be stricter statewide controls to curb the illegal sale of tobacco products to minors, including the regulation of tobacco products vending machines. Further, the advertisement of tobacco products near schools must be restricted.

SEC. 2. To accomplish the goals set forth in Section 1, the People enact this measure to provide for the statewide regulation of smoking in restaurants, other public places and the workplace, and for statewide restrictions on the marketing and distribution of tobacco products through the regulation of sales to minors, tobacco products vending machines, and billboard advertising near school grounds.

SEC. 3. This act shall be known and may be cited as the California Uniform Tobacco Control Act.

SEC. 4. Division 10 (commencing with Section 25800) is added to the Business and Professions Code, to read:

## DIVISION 10. REGULATION OF SMOKING

## CHAPTER 1. GENERAL PROVISIONS

25800. For purposes of this division, the following definitions shall apply:

(a) "ASHRAE Standard 62-1989" means the standard approved by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. in 1989 as ASHRAE Standard 62-1989, "Ventilation for Acceptable Indoor Air Quality" and approved by the American National Standards Institute in 1991. The standard is also designated "ANSI/ASHRAE 62-1989."

(b) "Bar" means an area that is devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food, if any, is incidental to the consumption of alcoholic beverages. When a bar is located within a building in conjunction with another use, including, but not limited to, a restaurant, only the area used primarily for the consumption of alcoholic beverages shall constitute a bar. The dining area shall not constitute a bar, even though alcoholic beverages may be served therein.

(c) "Private office" means a room within a building in which no more than one person works that is enclosed by floor to ceiling walls and an operable door.

(d) "Public place" means any enclosed indoor area open to the general public, including, but not limited to, a theater, educational facility, health facility, retail services establishment, retail food production and market establishment, gymnasium, health spa, library, museum, and gallery. "Public place" does not include a workplace, restaurant, or bar.

(e) "Restaurant" means any coffeeshop, cafeteria, short-order cafe, luncheonette, diner, sandwich shop, soda fountain, and any other eating establishment which gives, sells, or offers for sale food to the general public for consumption on the premises. "Restaurant" does not include a "bar" as defined in this section.

(f) "Workplace" means any enclosed indoor area in which one or more individuals are employed on a full-time basis and to which the general public does not have access, except by specific invitation. Notwithstanding the preceding sentence, "workplace" does not include a prison, jail or other correctional facility and does not include a work area in a private residence other than a licensed family day care home during its hours of operation and in those areas where children are present.

## CHAPTER 2. RESTAURANTS

25806. Smoking is prohibited in any restaurant, except as otherwise provided in this chapter.

25808. (a) The prohibition of Section 25806 shall not apply to any restaurant to which both of the following apply:

(1) Smoking is confined to designated areas not exceeding 25 percent of the seating capacity.

(2) Ventilation is provided in accordance with the recommended ventilation rates specified for dining rooms and cafeterias in Table 2 of ASHRAE Standard 62-1989 or in accordance with the requirements of the indoor air quality procedure described in ASHRAE Standard 62-1989. If a restaurant elects to provide ventilation in accordance with this paragraph, the restaurant shall keep on the premises a written certification, provided at least once a year by the contractor who maintains the ventilation system, that the system meets the applicable provisions of ASHRAE Standard 62-1989.

(b) Any restaurant permitting smoking shall post a sign on the exterior of the building at each point of public entrance stating that smoking and non-smoking sections are available.

25810. The prohibition of Section 25806 shall not apply to rooms in restaurants being used for private functions.

25812. Nothing in this chapter shall be construed to prevent the owner of any restaurant from prohibiting smoking entirely on any premises under his or her control.

### CHAPTER 3. WORKPLACES

25814. Smoking is prohibited in any workplace, except as otherwise provided in this chapter.

25816. (a) The prohibition of Section 25814 shall not apply to any workplace that is any of the following:

(1) Any private office or, with the consent of all occupants, any conference room if ventilation is provided to that office or room in accordance with the recommended ventilation rates specified for offices in Table 2 of ASHRAE Standard 62-1989 or in accordance with the requirements of the indoor air quality procedure described in ASHRAE Standard 62-1989.

(2) Any employee cafeteria where smoking is confined to a single area not exceeding 25 percent of the seating capacity of the cafeteria, and ventilation is provided in accordance with the recommended ventilation rates specified for dining rooms and cafeterias in Table 2 of ASHRAE Standard 62-1989 or in accordance

with the requirements of the indoor air quality procedure described in ASHRAE Standard 62-1989.

(3) Designated smoking lounges if ventilation is provided in accordance with the recommended ventilation rates specified for smoking lounges in Table 2 of ASHRAE Standard 62-1989 or in accordance with the requirements of the indoor air quality procedure described in ASHRAE Standard 62-1989.

(b) If an employer elects to provide ventilation in accordance with subdivision (a), the employer shall keep on the premises a written certification, provided at least once a year by the contractor who maintains the ventilation system, that the system meets the applicable provisions of ASHRAE Standard 62-1989.

25818. Smoking is prohibited in any company vehicle unless all those present in the vehicle consent.

25820. Nothing in this chapter shall be construed to prevent an employer from prohibiting smoking entirely on any premises under his or her control.

#### CHAPTER 4. PUBLIC PLACES

25822. Smoking is prohibited in any public place, except as otherwise provided in this chapter.

25824. Smoking may be permitted in no more than 25 percent of the concourse area of any bowling alley and the lobby areas of any hotel, motel or other lodging facility.

25826. The prohibition of Section 25822 shall not apply to any of the following places:

(a) Hotel and motel rooms rented to guests, unless they are designated non-smoking rooms by management.

(b) Establishments devoted primarily to the retail sale of tobacco products or to the operations of a manufacturer of tobacco products.

(c) Hotel and motel conference or meeting rooms, and public and private assembly rooms, while these places are being used for private functions.

(d) Gaming clubs registered pursuant to Chapter 5 (commencing with Section 19800) of Division 8, facilities used to conduct bingo games pursuant to Section 326.5 of the Penal Code,

racetracks, and private boxes and separate smoking lounges in indoor and outdoor sports arenas.

25828. Nothing in this chapter shall be construed to prevent the owner or lessee of any public place from prohibiting smoking entirely on any premises under his or her control.

#### CHAPTER 5. SIGNS

25836. Smoking and non-smoking areas designated pursuant to this division shall be clearly indicated by the posting of signs.

#### CHAPTER 6. VENDING MACHINES

25840. It is unlawful to sell tobacco products at retail through a vending machine unless the vending machine is located in one of the following areas:

(a) In an area of a factory, business, office, or other place that is not open to the general public.

(b) On any public premises, as defined in Section 23039, to which persons under the age of 21 years are denied access pursuant to Section 25665.

(c) On other premises to which persons under the age of 18 years are not permitted access.

(d) In any other place, but only if the machine is operated by the activation of an electronic switch by the licensee, or by an employee of the licensee, prior to each purchase.

25842. The person liable for a violation of Section 25840 is the person authorizing the installation or placement of the tobacco products vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or otherwise should have grounds for knowledge, of the violation.

#### CHAPTER 7. BILLBOARDS

25844. No person shall advertise or cause to be advertised tobacco products on any outdoor billboard located within 500 feet of any public or private elementary school, junior high school, or high school. This prohibition shall not apply to advertisements erected or maintained at street level and affixed to business establishments selling tobacco products at retail.



## CHAPTER 8. ENFORCEMENT

25850. The provisions of Chapter 3 shall be considered occupational safety and health standards under the California Occupational Safety and Health Act of 1973 as amended and shall be enforced as standards under that act.

25852. Except as provided in section 25850, every person who smokes in violation of this division, every person in charge of a place where smoking is prohibited by this division who knowingly permits smoking in violation of this division, every person who fails to post a sign required by this division and every person who violates any other prohibition in this division, shall be guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, by a fine not to exceed two hundred dollars (\$200) for a second violation within one year, or by a fine not to exceed five hundred dollars (\$500) for a third violation and for each subsequent violation within one year.

SEC. 5. Article 1 of Chapter 10.8 (commencing with Section 25940) of Division 20 of the Health and Safety Code is repealed.

SEC. 6. Section 25949.6 of the Health and Safety Code is repealed.

SEC. 7. Section 308 of the Penal Code is amended to read:

308. (a) (1) Every person, firm or corporation that knowingly sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or a controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of five hundred dollars (\$500) for a first violation, one thousand dollars (\$1,000) for a second violation within two years of the first violation, two thousand dollars (\$2,000) for a third violation within two years of the second violation, and two thousand dollars (\$2,000) for any violation within two years of a violation subsequent to the third violation.

(2) A fine imposed on a person, firm, or corporation for a violation of this subdivision that is a first violation or that occurs more than two years after any other violation of this subdivision shall be waived and any subsequent violation of this subdivision shall be deemed a first violation if the person,



firm, or corporation clearly establishes that he, she, or it acted in good faith to prevent the violation and that the violation occurred despite the exercise of due diligence by the person, firm, or corporation. For purposes of this paragraph, a person, firm, or corporation shall be deemed to have exercised due diligence if the person, firm, or corporation complies with subdivisions (d) and (e).

(3) Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (c).

(4) Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be a defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the armed forces.

(b) For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco products vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco products vending machine will be utilized by minors.

(c) Every person under the age of 18 years who purchases or receives any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of five hundred dollars (\$500) or 100 hours of community service work.

(d) Every person, firm, or corporation that sells or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business, at

each point of purchase within the premises, a sign, no smaller than 8 1/2 by 11 inches, stating the following in no smaller than 28 point type:

NOTICE--SECTION 308 OF THE PENAL CODE PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE AND THE PURCHASE OF TOBACCO PRODUCTS BY PERSONS UNDER 18 YEARS OF AGE.

Any person failing to do so shall upon conviction be punished by a fine of one hundred dollars (\$100) for the first offense and two hundred dollars (\$200) for each succeeding violation of this provision, or by imprisonment for not more than 30 days.

The Secretary of State is hereby authorized to have printed sufficient copies of this act to enable him or her to furnish dealers in tobacco with copies thereof upon their request for the same.

(e) Every person, firm, or corporation that sells, or deals in tobacco or any preparation thereof, shall notify each individual employed by the person, firm, or corporation as a retail sales clerk that state law prohibits the sale of tobacco products to any person under 18 years of age and the purchase of tobacco products by any person under 18 years of age. This notice shall be provided before the individual commences work as a retail sales clerk or, in the case of an individual employed as a retail sales clerk on the date when this subdivision becomes operative, within 30 days of that date. The individual shall signify that he or she has received the notice required by this subdivision by signing a form stating as follows: "I understand that state law prohibits the sale of tobacco products to persons under the age of 18 and the purchase of tobacco products by persons under the age of 18. I promise, as a condition of my employment, to observe this law." Each form signed by an individual shall indicate the date of signature. The employer shall retain the form signed by each individual employed as a retail sales clerk until 120 days after the individual has left the employer's employ. Any employer failing to comply with the requirements of this subdivision with respect to any employee shall upon conviction be punished by a fine of one hundred dollars (\$100) for the first offense and two hundred dollars (\$200) for each succeeding violation of this subdivision, or by imprisonment for not more than 30 days.

(f) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent

violations of this section, each individual franchise or business location shall be deemed a separate entity.

(g) In addition to other efforts to ensure compliance with this section, every county sheriff, city police chief, and other head of a law enforcement agency responsible for enforcing subdivision (a) shall at least annually conduct unannounced inspections at randomly selected locations where tobacco products are sold or distributed. A person under the age of 18 may be employed to test compliance with subdivision (a) only if the testing is conducted under the direct supervision of a peace officer acting within the scope of his or her official duties and written parental consent for the person's participation has been obtained. Except as provided in this subdivision, every person who, for the purpose of testing compliance of another with subdivision (a), solicits, employs or otherwise aides a minor in the purchase or attempted purchase of any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or a controlled substance, is guilty of a misdemeanor.

(h) The Attorney General shall prepare for submission annually to the Secretary of the United States Department of Health and Human Services the report required by Section 1926 of Subpart II of Part B of Title XIX of the federal Public Health Service Act (42 U.S.C. Sec. 300x-26).

SEC. 8. Consistent with the finding in Section 1 of this act, the People find and declare that the need for uniform statewide regulation, as set forth in this act, is a matter of statewide concern and uniform statewide regulation of smoking in public places, bars, restaurants, and workplaces, as well as the sale, distribution, advertising, sampling, promotion, or display of tobacco products, is required to maximize public awareness of and compliance with this act and is warranted because these activities do not vary from county to county or city to city. This act shall apply, without limitation, to a city, county, and city and county, including a charter city, charter county, or charter city and county. It is the People's intent to regulate the subject matter of this act comprehensively and to occupy the field to the exclusion of local action. Notwithstanding any other provision of law, no ordinance or regulation of any city, county, city and county, including a charter city, charter county, or charter city and county, or other political subdivision of this state, or any local ordinance or regulation adopted by the use of an initiative or other ballot measure, shall in any way attempt to regulate the sale, distribution,

advertising, sampling, promotion, or display of tobacco products, or smoking in public places, restaurants, bars, or workplaces.

SEC. 9. The amendment of Section 308 of the Penal Code by this act shall not be construed to in any way affect other statutory prohibitions before or hereafter enacted on the distribution of controlled substance paraphernalia to minors or possession of such paraphernalia, including, but not limited to, Sections 11364, 11364.5 and 11364.7 of the Health and Safety Code.

SEC. 10. This act may be amended by a statute passed by a two-thirds vote of the membership of each house of the Legislature.

SEC. 11. If any provision of this act or its application to any person or circumstance is held invalid, this shall not affect other provisions or applications of this act that can be given effect without the invalid application and to this end the provisions of the act are severable.

SEC. 12. This act shall become effective on the first day of July of the year following its enactment.

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