

History of WCB Legislation

- In 1992, a Workers' Compensation Board (WCB) sub-committee of workers and employers looking at a variety of workplace hygiene issues recommended that the WCB introduce regulations to protect all workers in BC from second-hand smoke (ETS).
- In 1996, draft ETS Regulations were finally taken to public hearings in BC. The Heart and Stroke Foundation of BC & Yukon, the Canadian Cancer Society, BC and Yukon Division and the BC Lung Association made a joint submission to the WCB during the initial round of these public hearings.
- In July 1997, the WCB approved the ETS Regulation with an effective date of April 15, 1998. All workplaces in BC, except the hospitality industry and long-term residential and provincial corrections facilities, were required to protect workers from exposure to second-hand smoke by ensuring that workers did not work in an indoor area where smoking was permitted.
- Hospitality and long-term residential and provincial correctional facilities were provided a partial exemption to the Regulation under what is known as a "Sunset Clause", and were given until January 1, 2000 to implement the Regulation to give them more time to prepare.
- In July 1998, a memorandum of understanding was signed by the WCB, the Ministry of Health (MOH) and the Union of BC Municipalities (UBCM) establishing a framework for a cooperative approach to the implementation and enforcement of the Regulation. Overseeing implementation of the Regulation was an Implementation Working Group (IWG).
- In 1998, three non-profit organizations formed the Clean Air Coalition of BC (CAC) and teamed up with the WCB and the MOH to ensure widespread public support for the WCB second-hand smoke Regulation. The CAC was a member of the IWG, along with representatives from the MOH, Health Authorities, WCB and the UBCM.
- In March 2000, the BC Supreme Court ruled the 'sunset clause' null and void, finding WCB had not adequately consulted the parties (hospitality and long-term residential and provincial correctional facilities).
- In April 2000, WCB published a new draft ETS Regulation for public hearing. This draft Regulation removed the partial exemption for public entertainment and long-term residential care and provincial correctional facilities, but also provided for the development of designated smoking areas that workers could enter only in specified circumstances.
- In June 2000, public hearings were conducted in four locations throughout BC and more than 500 oral and written submissions were received and considered. WCB also commissioned further reviews of the scientific literature of the health effects of ETS, the science regarding the effectiveness of current ventilation technologies, and an independent economic review.
- In March 2001, WCB approved amendments to its ETS Regulation (4.81 of the Occupational Health and Safety Regulation re: ETS) to further control workers' exposure to second-hand smoke in hospitality, long-term care and provincial correctional facilities. The amendments meant that all employers in all workplaces, including those in hospitality, long-term care and provincial correctional facilities, must control workers' exposure to second-hand smoke by prohibiting smoking, or restricting smoking to outdoor areas or indoor Designated Smoking Rooms (DSR). The Regulation was to take effect on September 10, 2001 and meant that workers were not allowed to enter DSRs except in emergency situations or to investigate illegal activity.
- On August 22, 2001, the BC government directed WCB to consider delaying the amended ETS Regulation until April 30, 2002 due to concerns raised by the hospitality industry. The government established a Committee of six MLA's to conduct a two-month review of the ETS regulation, focusing on implementation and the economic impact to small businesses. The Committee was to report to the Minister of Labour by October 31, 2001. View the Report from MLA Review Committee.
- On August 28, 2001, the WCB Panel of Administrators advised the government that it could not accede to the Ministers request to delay the effective date of the ETS Regulations, since they had conducted an extensive and thorough review process and determined that because workers in

restaurants and bars are at greater risk of exposure to second-hand smoke, their current Regulation best upholds worker health and safety for this hazard.

- On August 30, 2001, the government of BC, by Order in Council, amended the Regulation to delay the implementation date from September 10, 2001 to April 30, 2002. The delayed implementation applied to public entertainment facilities, long-term residential care facilities and corrections institutions only. However, the MLA Committee was only tasked with a review of the Regulation as it applied to public entertainment facilities. As such, any new Regulation would only pertain to such facilities and the WCB Regulation as approved in March 2001 would come into effect for long-term residential care facilities and corrections institutions on May 1st, 2002.
- On October 1st and 2nd, the Clean Air Coalition of BC (CAC) sponsored a two-part symposium, broadcast live on the internet, to educate the public on second-hand smoke issues and encourage the government to implement and enforce the existing WCB Regulations in all workplaces. Unfortunately, the Premier, Ministers of Health and Labour and MLA's reviewing the Regulation did not attend this event nor did they send representatives on their behalves. For more information on this event, read about the Second-Hand Smoke symposium.
- On October 11, 2001, CAC submitted a report on second-hand smoke issues to the MLA Committee reviewing the second-hand smoke Regulation. View this report entitled Protecting the Health of Workers.
- On January 11, 2002, the government directed WCB to consider amending the ETS regulations to include the recommendations of the MLA review Committee. The government's proposed Regulation would permit workers, in the hospitality industry only, to be intermittently exposed to second-hand smoke by allowing them to choose whether to work in DSRs up to 20% of their work shift. This Regulation created a double standard of protection for workers, whereby workers in the hospitality industry would receive less protection from the carcinogens in second-hand smoke than all other workplaces in BC. View the letter from Honorable Graham Bruce to WCB Panel of Administrators.
- On January 15, 2002, the WCB Panel of Administrators refused to accede to the government's direction to repeal the current Regulation and replace it with the government's proposed Regulation. The Panel concluded, among other things, that the government's proposed Regulation provided less protection from second-hand smoke to workers in the hospitality industry than the existing Regulation, and that workers in public entertainment facilities are at greater risk of exposure to second-hand smoke. They also concluded that there is no known safe level of exposure to second-hand smoke and that intermittent exposure of workers to second-hand smoke would be difficult to enforce (20% of shift). View the letter from the WCB Panel of Administrators
- On January 16, 2002, despite WCB opposition, the government announced it had revised the ETS Regulations affecting BC's hospitality industry. The government made this change under the authority of BC's Workers Compensation Act. Under the Act, the Lieutenant-Governor-in-Council has the authority to create and/or amend health and safety Regulations made by the Workers' Compensation Board. This is unprecedented in BC - since the WCB was established in 1918, the government has never before overturned a WCB health and safety Regulation.
- On May 1st, 2002, the ETS Regulations come into effect requiring employers in public entertainment facilities (including restaurants, bars, pubs, lounges, nightclubs, bingo halls, bowling alleys, and gambling casinos) to control workers' exposure to second-hand smoke by either prohibiting smoking in the workplace, or restricting smoking to separately structured and ventilated DSRs. Workers in the hospitality industry have the right to choose whether to enter a DSR and may not be discriminated against for choosing not to enter a DSR. The Regulation requires that there be only intermittent exposure to second-hand smoke and workers who choose to work in the DSR must not exceed 20% of their work shift.
- Workers in all other BC workplaces will continue to be provided the greater standard of protection outlined in Section 4.81 of the WCB Occupational Health and Safety Regulation Re: ETS. This means that all workers, except those in the hospitality industry, do not have to choose whether to enter a DSR, because they are protected from working in these smoky rooms. Only workers in the hospitality industry must choose whether to expose themselves to the carcinogens in second-hand smoke.

- The revised Regulations do not override municipal bylaws that prohibit smoking in designated smoking rooms in various municipalities. Municipalities that have enacted stronger legislation to protect their residents by banning smoking in all public places, with no allowances for DSRs include: The Capital Regional District, Richmond, Belcarra, District of North Vancouver and White Rock.
- To make a complaint concerning establishments that are not complying with the revised second-hand smoke regulations that come into effect on May 1, 2002 please contact the WCB Information Line at 604-276-3100 in the Lower Mainland, or toll-free at 1-888-621-7233 to inform them of your concern. WCB is required to follow up on every complaint. Together, we can ensure that the regulation is being followed and enforced so that workers are protected from the known carcinogens in second-hand smoke