

LEGAL PROBLEM CONCERNING NON-SMOKER'S HEALTH PROTECTION*

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ABSTRACT

In decades past, the topic of second-hand smoke was commonly mentioned in the medical profession. Scientists stated that toxic chemicals in second-hand smoke cause harm to people's health and that there is also no safe level of exposure to second-hand smoke. Second-hand smoke contains a mixture of particulate matter and thousands of chemicals such as carcinogens and formaldehyde which are cancer-causing; it has harmful chemicals which are similar to those which smokers inhale. Since much research concerning the hazards of second-hand smoke are well-known, people are beginning to want to live in smoke-free society. Many rights were established to protect people from the hazard of second-hand smoke. The right to live in healthy environment and the right to breathe clean air are two such rights.

In Thailand, to protect non-smokers' health from exposure to tobacco smoke, the Thai government enacted the Non-Smokers' Health Protection Act B.E. 2535 two decades ago. The law gives the power to the Minister to define non-smoking areas and if smokers are smoking in non-smoking areas which are provided by law, they shall be subject to a fine not exceeding two thousand baht. However, exposure of second-hand smoke to non-smokers is not only restricted in non-smoking areas, but also the non-smoker who lives outside the non-smoking areas should have protected the rights to breath clean air by law similar to the people who also live in non-smoking areas. A protection for the right to breathe clean air should not restrict only in specific places but law should protect everyone equally.

The purpose of this study is to study legal measures for the non-smoker's health protection outside non-smoking areas, are

which provide by law. Domestic and Foreign laws, theories of human rights and related international laws have been researched to see whether Thai law can protect non-smokers outside non-smoking areas from hazard of second-hand smoke and the justifications for doing so. If Thai laws are not capable of protecting non-smokers' health outside non-smoking areas, research must be conducted to find the cause of this problem and to make improvements to the law. This study would be conducted as a qualitative research by researching and gathering related documents from various information sources, then analyzing the data and compiling with the content of the study in each chapter.

Keywords: Second-hand smoke, Non-smoker's Health Protection, Non-smoking areas

บทคัดย่อ

หลากรหักรายที่ผ่านมาประดิ่นเกี่ยวกับค่านุหรี่มือสองถูกพูดถึงกันอย่างกว้างขวางในวงการทางการแพทย์ นักวิทยาศาสตร์ก็ล่าวว่าสารพิษในควันบุหรี่มือสองสามารถส่งผลกระทบต่อสุขภาพของผู้คนได้และไม่มีระดับความปลอดภัยใดๆในการสัมผัศควันบุหรี่มือสอง ควันบุหรี่มือสองประกอบไปด้วย อนุภาคต่างๆรวมไปถึงสารเคมีกว่าพันชนิด ไม่ว่าจะเป็นฟอร์มาลดีไฮด์ หรือสารที่ก่อให้เกิดมะเร็ง ควันบุหรี่มือสองนั้นมีสารพิษที่อันตรายไม่แตกต่างไปจากการที่สูบบุหรี่นั้น ได้รับสารพิษจากการสูบบุหรี่ด้วยตนเอง ดังเดิมที่ที่เกี่ยวกับอันตรายของควันบุหรี่มือสองเป็นที่รู้กันมากขึ้นประชาชนก็เริ่มที่จะให้ความสำคัญกับการคำร้องอยู่ในสังคมปัจจุบัน ลิทธิ์ต่างๆถูกกล่าวอ้างเพื่อที่จะปักป้องผู้คนจากอันตรายของควันบุหรี่มือสอง เช่น ลิทธิ์ที่จะอยู่ในสิ่งแวดล้อมที่ดี และลิทธิ์ที่จะได้รับอาการบวสุทธิ์ เป็นต้น

สำหรับประเทศไทย เพื่อปักป้องสุขภาพของผู้ไม่สูบบุหรี่จากควันบุหรี่มือสอง สนับนิติบัญญัติจึงได้ออกกฎหมาย พறาราชบัญญัติคุ้มครองสุขภาพของผู้ไม่สูบบุหรี่ พ.ศ.2535 มาบังคับใช้เป็นระยะเวลากว่าส่องทศวรรษแล้ว พறาราชบัญญัติคุ้มครองสุขภาพของผู้ไม่สูบบุหรี่ พ.ศ.2535 ได้วางหลักให้คุณธรรมนิรเมจอำนวยในการกำหนดค่าว่าพénที่ได้ควรเป็นเขตปลอดบุหรี่และหากผู้ใดฝ่าฝืนสูบบุหรี่ในเขตปลอดบุหรี่ที่กำหนดโดยกฎหมาย ต้องระวางโทษปรับไม่เกิน 2,000 บาท แต่ถ้ายังไร้ตามการได้รับควันบุหรี่มือสองนั้นมาได้จำกัดเฉพาะในเขตที่กฎหมายกำหนดให้เป็นเขตปลอดบุหรี่เท่านั้น แต่ผู้ไม่สูบบุหรี่ที่อยู่นอกเขตปลอดบุหรี่ก็ควรที่จะได้รับการปักป้องลิทธิ์เช่นเดียวกับผู้ที่

อยู่ในเขตปลดบุหรี่ การคุ้มครองสิทธิที่จะได้รับจากศูนย์ในสถานที่ใดสถานที่หนึ่ง ทุกคนควรได้รับการปกป้องสิทธิที่จะได้รับจากศูนย์ที่อยู่ข้างเท่าเทียมกัน

ดังนี้ วิจัยฉบับนี้จึงได้ทำการศึกษาถึงมาตรการทางกฎหมายที่มีผลต่อสุขภาพของผู้ไม่สูบบุหรี่ภายนอกเขตปลดบุหรี่ที่กำหนดโดยกฎหมาย โดยศึกษาทั้งกฎหมายภายในประเทศ กฎหมายต่างประเทศ กฎหมายที่เกี่ยวกับสิทธิมนุษยชน และกฎหมายระหว่างประเทศที่เกี่ยวข้อง เพื่อศึกษาว่ามาตรการทางกฎหมายในประเทศไทยสามารถคุ้มครองสุขภาพของผู้ไม่สูบบุหรี่ที่อยู่นอกเขตปลดบุหรี่ได้หรือไม่ เพราะเหตุใด และหากยังไม่สามารถคุ้มครองได้เกิดจากปัญหาใดและมีแนวทางในการแก้ไขปรับปรุงกฎหมายให้คุ้มครองสุขภาพของผู้ไม่สูบบุหรี่ที่อยู่นอกเขตปลดบุหรี่ได้อย่างไร โดยการดำเนินการวิจัยเป็นแบบการวิจัยเชิงคุณภาพ ใช้วิธีการศึกษาด้วยการค้นคว้าและรวบรวมเอกสารที่เกี่ยวข้องจากแหล่งข้อมูลต่างๆแล้วจึงทำการวิเคราะห์ข้อมูลที่ได้เรียบเรียงอ้างอิงประกอบเนื้อหาการศึกษาในแต่ละบทต่อไป

คำสำคัญ: บุหรี่มือสอง, การคุ้มครองสุขภาพของผู้ไม่สูบบุหรี่, เขตปลดบุหรี่

1. Introduction

In a modern society, rights and liberty necessary for integration in that society are the most essential needs for which people should have awareness. Everyone has equal rights for existence, but these rights must not infringe upon the rights of others¹, meaning that the possession of such rights must be held under the rules of morality, without exploitation or violation of others. Thus, any actions taken under privilege of individual rights that result in harm or misfortune to others are unacceptable. This is especially in cases of healthcare. If someone has health problems, they deserve to be treated without difficult or wasted time. Moreover, such negative action caused by others without consent is extremely unacceptable. A tobacco smoker who exposes others to second-hand smoke is the best example of this. Non-smokers are subjected to

¹ ฟ้าดาว คงนร. พื้นฐานความเป็นพลเมืองในระบบประชาธิปไตย. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร: สำนักการพิมพ์สำนักงานเลขานุการสภาผู้แทนราษฎร, 2556 (Phadao Kongnakorn, “**Fundamentals of Citizenship in Democracy**”. (1st ed. Bangkok: The Secretariat of the House of Representatives Publishing, 2013))

In a modern society, rights and liberty necessary for integration in that society are the most essential needs for which people should have awareness. Everyone has equal rights for existence, but these rights must not infringe upon the rights of others², meaning that the possession of such rights must be held under the rules of morality, without exploitation or violation of others. Thus, any actions taken under privilege of individual rights that result in harm or misfortune to others are unacceptable. This is especially in cases of healthcare. If someone has health problems, they deserve to be treated without difficult or wasted time. Moreover, such negative action caused by others without consent is extremely unacceptable. A tobacco smoker who exposes others to second-hand smoke is the best example of this. Non-smokers are subjected to unnecessary health risks from the hazards of cigarette smoke originating from smokers. It is unfair to non-smokers to face possible risk from this type of situation, especially in public places meant for general access by all people in society; everybody should have equal right to use public spaces without undue risk. The argument is not whether smokers have the right to smoke, but rather that smokers should not abuse their right by infringing on the right of others around them to breathe clean air, which is a fundamental right.

2. Rights of Non-smoker

The right of non-smokers to be free from second-hand smoke has been mentioned in many principles, as follows:

1) Rights under the Constitution

Under the concept of human dignity, rights and liberties in Section 4, the Constitution of the Kingdom of Thailand B.E.2550 also details the concept to provide fundamental rights in Chapter 3 as “Rights and Liberties of the Thai People.” Under Section 32 of this

² พล.ค.ว. คงนกร. พื้นฐานความเป็นพลเมืองในระบอบประชาธิปไตย. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร: สำนักการพิมพ์สำนักงานเลขานุการสภาผู้แทนราษฎร, 2556 (Phadao Kongnakorn, “**Fundamentals of Citizenship in Democracy**”. (1st ed. Bangkok: The Secretariat of the House of Representatives Publishing, 2013))

chapter, it is stated that “*A person shall enjoy the right and liberty in his or her life and person.*” Therefore, it can be said that a person shall have the right and liberty to do anything they want or be everything they want to be. Further, the state should protect this right from the interference of others. However, the state should also be restrictive if such action infringes on the rights of other persons. Likewise is the right to smoke for smokers. Smokers have the right and liberty in their life and person. They can do everything they want, even smoke. However, this right should be restricted if such smoking infringes on the right of non-smokers. Smokers cannot exercise their right or liberty where it is harmful to the health of others or infringes on the right to live in a good environment and breathe clean air.

2) Right to the Environment

The desire to produce better conditions for life on earth is a common need of both environmental law and human rights principles. The benefit of the environment and benefit of mankind on both a local and global scale is the aim of environment law, which seeks to protect. However, it has been restricted by inter-state relations and the behavior of some economic actors. Human rights are a principle of fundamental aspirations for human beings, which are also a mechanism to allow people to claim their rights. The issue of environmental measures in human rights has become a significant view of the recognition of the widespread influence of both local and global environmental conditions upon the realization of human rights.

It is obvious that preservation, conservation and restoration of the environment are necessary and important to the rights to health, food and life, including a good quality of life. Therefore, it is clear that a right to environment can be coordinated into the objective of the human rights protection, such as the principle of human dignity.³

³ Philippe Cullet, “*Definition of an Environmental Right in a Human Rights Context*”, available at <http://www.ielrc.org/content/a9502.pdf>, (last visited December 26, 2015.)

3) Right to Breathe Clean Air

Clean air is what people need and also essential to have a good health, therefore everyone has the right to live in a good environment for his or her health and well-being, in condition of protection and improvement the environment for the present and the next generations.⁴

3. The Rights of the Child

According to the principles of the Convention on the Rights of the Child 1989, there are 2 fundamental rights as follows:

1) Inherit right

Under Article 6 of the Convention, the government should ensure that children have a right to live, including the right to survive and develop healthily. For example, Article 7 of the Convention states that all children have the right to a legally registered name, officially recognized by the government, the right to a nationality and the right to know and, as far as possible, to be cared for by their parents.⁵

2) The best interests of the child

The Convention on the Rights of the Child shall undertake measures for implementation to protect and develop both mental and physical factors or at least recognize this convention

⁴ Alan Andrews, “*The Clean Air Hand Book: A Practical Guide to EU Air Quality Law*”, available at <http://www.clientearth.org/reports/20140515-clientearth-air-pollution-clean-air-handbook.pdf>, (last visited December 19, 2015.)

⁵ ปานรัตน์ นิมคุณ, “*บทที่ 2 แนวความคิดว่าด้วยสิทธิเด็กตามหลักการสากลและกลไกในการทำงานด้านเด็กของประเทศไทยในปัจจุบัน*”: โครงการวิจัย การปรับเปลี่ยนกลไกเชิงสถาบันเพื่อเสริมสร้างสมรรถนะในการทำงานด้านเด็กขององค์กรปกครองส่วนท้องถิ่น, 2552. (Panrat Nimtalung, “*Chapter 2: Concept of right of the child under the international principle and children performance mechanisms in Thailand*”, Research Proposal on the modification of institutional mechanisms for enhance the children performance capability of local administrative, 2552.) http://www.dla.go.th/upload/ebook/column/2012/7/2012_5042.pdf, (last visited June 10, 2016.)

without an action that harms the future and life of children. For example, Article 24 of the convention calls for states parties to recognize the right of the child to the enjoyment of the highest attainable standard of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. The Convention should provide support and promote the ability for children to develop at a level which causes children to be good persons in the future. Therefore, in any action of government should take into consideration the best interests of the child.⁶ For example, Article 3 of the convention states that the best interests of children must be the primary concern in making decisions that may affect them, no matter undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. All adults should do what is best for children and when adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.⁷ ⁸ Article 4 of the convention states that

⁶ *Id.*

⁷ The Convention on the Rights of the Child, art.3 provides that

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

⁸ UNICEF, “Fact Sheet: A summary of the rights under the Convention on the Rights of the Child”, available at http://www.unicef.org/crc/files/Rights_overview.pdf, (last visited June 10, 2016.)

governments have a responsibility to take all available measures to make sure that children's rights are respected, protected and fulfilled, whether undertaken by all appropriate legislative, administrative, and other measures for the implementation of rights.^{9 10}

4. Framework Convention on Tobacco Control

The WHO Framework Convention on Tobacco Control (WHO FCTC) was the first treaty negotiated under the auspices of the World Health Organization. It was adopted under Article 19 of the WHO Constitution, which confirms the right of all people to the highest standard of health.¹¹ This convention shows how countries viewed the need to develop, like an international legal instrument. To protect non-smoker's health from tobacco smoke, FCTC provided section 8 to protect the rights of non-smoker from air polluted by tobacco smoke toxins under the human right theory which everybody should have an equal right to breath clean air. Section 8 have two related objection, the first is to support a member states in meeting their obligation under FCTC in manner consistent with scientific evidence regarding to hazard of second-hand tobacco smoke and the best practice in the implementation of non-smoking measures, and the second objective is to identify the key elements of legislation necessary to effectively protect people from exposure to tobacco smoke.¹²

⁹ *Id.*

¹⁰ The Convention on the Rights of the Child, art.4 provides that

"States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

¹¹ World Health Organization, "About the WHO Framework Convention on Tobacco Control", <http://www.who.int/fctc/about/en/>, (last visited December 10, 2015)

¹² Guidelines on Protection from Exposure to Tobacco smoke, Section 8

To comply with the provisions of the WHO Framework Convention on Tobacco Control and the willingness of the Conference of the Parties, the Guideline on Protection from Exposure to Tobacco Smoke collects the best available evidence and experience of parties that have succeeded as effective measures to reduce exposure to tobacco smoke. Moreover, these guidelines are defined to cover statements of principles and definitions of relevant terms agreed upon between parties. In addition, the guidelines also specify the measures necessary to reach effective protection from the harm of second-hand smoke. Parties should encourage using these guidelines to not only achieve their legal duties under the Convention, but also follow best practices in protecting public health.

- Fundamental Considerations

The development of the Guideline on Protection from Exposure to Tobacco Smoke has been influenced by the following fundamental considerations:

(a) The duty to protect people from tobacco smoke exposure as mentioned in Article 8 of the WHO Framework Convention on Tobacco Control is under fundamental human rights and freedoms. This duty is implicit in the right to life and the right to the highest attainable standard of health, which is recognized in the constitutions of many countries and provided in many international legal instruments including the WHO Framework Convention.

(b) The duty to protect people from tobacco smoke exposure is one of the obligations for which a government has to enact law to protect people from threats to their fundamental rights and freedoms. Most importantly, this obligation has to extend to all persons and not only certain populations.

(c) Several scientific organizations have shown that second-hand tobacco smoke contains carcinogens. Therefore, beyond the requirement of Article 8, parties shall have the obligation to emphasize the hazard of exposure to tobacco smoke in accordance

with existing law to cover exposure to harmful substances, including second-hand tobacco smoke.¹³

- Statement of Principles underlying Protection from Exposure to Tobacco Smoke:

The following principles should be guidelines for the implementation of Article 8 of the Convention

Principle 1: Eliminate tobacco smoke to create 100% smoke free places,

Principle 2: Protect everyone – don't allow exemptions,

Principle 3: Use legislation not voluntary measures,

Principle 4: Provide resources for implementing and enforcing the law,

Principle 5: Include civil society as an active partner,

Principle 6: Monitor and evaluate smoke free laws,

Principle 7: Be prepared to extend the law if needed.

5. Legal Measure to Protect Non-smoker's Health in California

California is a state in the US that has had strong and innovative non-smoker protection and tobacco control laws for a long time. For example, the City Council of San Rafael, a city located north of San Francisco, approved the strictest type of smoking ordinance in the country by passing a law to prohibit smoking in any homes that share common walls, whether apartments, condominiums, and even multi-family residences that hold three units or more.¹⁴ And in case of private car, California Health and Safety Code Sections 118947–118949, smoking or possessing a lighted pipe, cigar, or cigarette containing tobacco in any motor vehicle in which there is a minor under 18 years of age, regardless of whether the vehicle is in motion or at rest, is prohibited by law. A violation of this section

¹³ อัมรรัตน์ โพธิพรรค. การรักษาสุขภาพจากควันบุหรี่มือสอง, พิมพ์ครั้งที่ 2, กรุงเทพ: เจริญกิมมั่นคงการพิมพ์, 2551 (Amornrat Photipak. **Health Protection from Second-hand Smoke**, 2nd ed., Bangkok: Chareon Mankong Publishing, 2008)

¹⁴ Jess Remington, “*It Is Now Illegal To Smoke In Your Own Home In San Rafael, California*”, available at <http://reason.com/blog/2013/11/25/it-is-now-illegal-to-smoke-in-your-own-h>, (last visited June 10, 2016)

shall be subject to fine not exceeding one hundred dollars (\$100) for each violation.¹⁵

6. Legal Measure to Protect Non-smoker's Health in Thailand

By the virtue of the power vested by the provision of section 4(3) and section 15 of the Non-smoker's Health Protection Act B.E.2535, Ministry of Public Health Notice B.E.2553 (Volume 19) divided smoke-free areas into 2 types: total non-smoking areas and non-smoking areas which can be designed with a specific smoking area.¹⁶

At present, solving the problems with the Non-smoker's Health Protection Act B.E. 2535 not covering beyond the protection of health of non-smokers outside non-smoking areas means the officer will interpret the sources of nuisance under the Public Health Act B.E. 2535. This act provides legal measures to protect people from nuisance by giving power to the local officials. Section 25 (4) of the Public Health Act B.E. 2535 states, "*In the event of an occurrence that may cause annoyance to residents in the neighboring area or expose persons to the following, it shall be a source of nuisance:(4) any action which causes odor, light, ray noise, heat, toxic matter, vibration, dust, powder, soot, ash, or any other to the extent that causes impairment or may be harmful to health*". Thus, a person or any organization taking actions which cause pollution to the odor, light, ray noise, heat, vibration, dust, soot, ash or other toxic matter, such as the burning of waste, burned grass resulting in soot, ash, percussion / hitting / banging metal, etc. which cause a deterioration or health hazard shall be deemed a nuisance. Such actions must be done regularly until affecting the lives of neighboring residents.

¹⁵ *Id.*

¹⁶ ปกป้อง ศรีสันติ. รวมกฎหมายยาสูบ, พิมพ์ครั้งที่ 2, กรุงเทพ: โรงพิมพ์มหาวิทยาลัยธรรมศาสตร์, 2555. (Pokpong Srisanit, **Tobacco Law**, (2nd ed., Bangkok: Thammasat University Publishing, 2012))

7. Legal Problem of Non-smoker's Health

1) Legal Problem concerning Non-Smoking Areas

From the study of the Non-smoker's health protection Act B.E.2535, the writer found that protection the Non-smoker's health protection Act B.E.2535 are not covered beyond to the place outside non-smoking area which providing by law despite the fact that non-smoker who lives outside the non-smoking areas should have protected the rights to breath clean air by law like people who live in non-smoking areas also. However, in order to solve the problem which the Non-smoker's Health Protection Act B.E.2535 did not cover beyond to protect health of non-smoker outside non-smoking area, the official will interpret this issue to be a source of nuisance under the Public Health Act B.E.2535. But in actually, the Public Health Act B.E.2535 have an objective and management in a field of hygienic and environment health or environment sanitation, the Act did not intend to protect people health from tobacco smoke exposure indirectly and power to control or eliminate source of nuisance under the Public Health B.E.2535 is on the local official which has to do under the complicated process. So, The Public Health Act B.E.2535 are not suitable for protect people from tobacco smoke exposure.

2) Legal Problem concerning on lack of children protection in House and Car

According to the Non-smoker's Health Protection Act B.E.2535, It can be seen that whether will be a total non-smoking areas or non-smoking areas but can designating a specific smoking areas, the protection under the Non-smoker's health Protection Act B.E.2535 is prohibit only public place, the law does not covered beyond house and car where have a great effect to the children. Despite the fact that the main objective of the Non-smoker's Health Protection Act B.E.2535 is to protect health of non-smoker especially children from the cigarette smoke but at present many children still exposure to second-hand smoke in house and car without the protection of the law.

3) Legal Problem concerning Legal Enforcement

At present the power to enforcing the Non-smoker's Health Protection Act B.E.2535 was given to be a liability of the inquiring officer, the police officer shall have a power to arrest and impose a fine under the process of criminal procedure code. The authority under the Non-smoker's Health Protection Act B.E.2535 has only a power to patrol, they have only a duty to collect the evidence such as a photo while smoking and pass the case to the inquiring officer to apprehended or fine. However, the gathering of evidence and apprehended or fine under the criminal procedure is almost impossible and hardly take any benefit to the law enforcement. Because in nature of smoking, smoker will not take a long time to smoke and when the smoking is finish, the smoker is suddenly going out from such area. The enforcement process under the criminal procedure make the police officer cannot impose to fine the offender because before the police arrived, the offender has already gone. The law enforcement which has to take a long time to perform will make the law enforcement ineffective and cannot achieve to the objective of the law. Law enforcement is the most importance step to achieve the objective of the law, Even the law will define the more protections but the law enforcement is ineffective, non-smoker is also get a risk to exposure toxic of second-hand smoke in anyways.

8. Conclusions and Recommendations

Under the objective of the Non-smoker's Health Protection Act B.E. 2535, the aim is to protect the right to breathe clean air by non-smokers from second-hand tobacco smoke. The law gives power to the Minister to design some public places as non-smoking areas. In actually, however, there are children and non-smokers who are outside the non-smoking areas and remain at risk to exposure from the toxins in tobacco smoke. The law does not protect them. In order to protect children and non-smokers who are outside smoking areas from the hazards of tobacco smoke, the law should be extended to cover the right to breathe clean air by non-smokers outside non-smoking areas as well.

1. In cases of legal issues concerning non-smoking areas

In order to protect the right of non-smokers to breathe clean air outside non-smoking areas, the law should specify the protection of non-smoker's health outside non-smoking areas in the Non-smokers' Health Protection B.E. 2535 to achieve protection for non-smokers' health directly and give power to the authority under the Non-smokers' Health Protection Act B.E. 2535 to make enforcement easier. Such action would also awaken flagrant incidents by enacting an exception to the right to smoke outside non-smoking areas, such as defining that "any areas which are not arranged as non-smoking areas, smoking is allowed except when such smoking causes damage to life, body, health or any right of another person. If any person infringes on others, they shall be subject to fine under the law."

2. In cases of legal problems concerning the lack of child protection in homes and vehicles

In order to achieve the objective of the Non-smoker's Health Protection Act B.E. 2535, which intends to protect children from the hazards of second-hand smoke, the law should be improved with a legal measure to cover the rights of children in a house and car. Even though a house and car are private places, no children should be exposed to cigarette smoke to any degree. According to the Convention on the Rights of the Child 1989, the government should take into consideration the best interest of the child in essence. Children have the right to live and survive as well as develop healthily, including the right to reach the highest attainable standard of health. The government shall have the responsibility to take all effective and appropriate measures to protect children from the hazards of second-hand smoke.

Under the objective of the Non-smoker's Health Protection Act B.E. 2535, the law was provided to protect the health of non-smokers against cigarette smoke only in public places. Therefore, protecting children from the hazards of second-hand smoke in homes and vehicles, which are private places, compels this

writer to recommend that the Non-smoker's Health Protection Act B.E. 2535 be amended to include protected coverage beyond a home and vehicle. Children can be protected by enacting a specific regulation extending protection to children in homes and vehicles. For example, in the case of a car, the law may have defined that "smoking in any motor vehicle where there is a minor under 18 years of age, regardless of whether the vehicle is in motion or at rest, is prohibited by law". In the case of a house and in order to balance the rights and liberty of the dwelling with the right to breathe clean air by non-smokers, the law may be defined as "All units of a duplex or multi-family residence, including any associated exclusive-use enclosed areas or unenclosed areas in all indoor and outdoor areas such as a private balcony, porch, deck, or patio shall be designated places that protect the health of non-smokers and are declared tobacco-free areas". However, smoking areas can be established provided such areas are not located within 100 feet of enclosed areas primarily used by children and enclosed areas used to facilitate physical activity, such as playgrounds, swimming pools, and school campuses".

3. In cases of legal problems concerning law enforcement

In order to achieve the objective of the Non-smokers' Health Protection Act B.E. 2535, the law should be comprised of proper implementation and adequate enforcement, including solid efforts and effective instruments for implementation.

Therefore, this writer recommends that the effectiveness of law enforcement and achieving the true intention of the Non-smokers' Health Protection Act B.E. 2535 requires affording power to the authority to impose a fine by operating under administrative procedure. The immediate and serious enforcement will make an offender afraid of committing wrongdoing and create orderliness as a result. Moreover, the implementation of administrative procedure assists the law achieve its intention without causing smokers to have

a criminal record if found to be in violation, such as by criminal fine penalty.

Furthermore, this writer recommends that increasing the effectiveness of law enforcement with respect to the Non-smokers' Health Protection Act B.E. 2535 requires the law to impose the duty on operators to prohibit smoking in their places, as well as the duty to control and dissuade smoking in non-smoking areas. The cooperation of officers and operators will make enforcement of the Non-smoker's Health Protection Act B.E. 2535 much easier and more effective.

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