

KRAFT GENERAL FOODS



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# Washington Report

WASHINGTON RELATIONS OFFICE

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November 11, 1992

## **ELECTION OVERVIEW, YEAR-END WRAP-UP, AND OUTLOOK FOR 1993**

In this special edition of the Washington Report, we have included an overview of the results of the November 3 general election; a report on congressional and regulatory actions taken on issues of importance to Philip Morris during the second session of the 102nd Congress and anticipated activity in 1993; and a report on relevant state legislative and regulatory actions. Due to the length of this Report, a table of contents has been provided below for your convenience.

2022838753

- TABLE OF CONTENTS -

**ELECTION OVERVIEW** ..... 1

    Congress..... 1

    Clinton-Gore Transition..... 1

**TOBACCO** ..... 2

    Tobacco Advertising Deductibility ..... 2

    Kennedy "Omnibus" Anti-Tobacco Bill ..... 2

    Veterans Smoking Legislation..... 2

    Indoor Air Quality/Environmental Tobacco Smoke ..... 3

    FDA Regulation of Tobacco ..... 4

    Federal Preemption..... 4

    Congressional Investigations ..... 4

    Export Restrictions And Related GAO Investigation ..... 5

    USDA Tobacco Export Disclosure Reporting Regulations..... 6

    DoD Draft Proposal To Ban Smoking In The Workplace ..... 6

    National Minimum Sales Age For Tobacco Products..... 6

    Gateway Drug Studies ..... 7

    Fire Safe Cigarettes ..... 7

**FOOD -- FEDERAL GOVERNMENT AFFAIRS**..... 7

    FDA Enforcement ..... 7

    FDA User Fee Legislation..... 8

    Food Safety Legislation ..... 8

    Nutrition Labeling Regulations..... 9

    Nutrition Advertising Coordination Act ..... 9

    FTC Environmental Labeling Guidelines..... 9

    Defense Commissary Agency ..... 10

    Defense Pension Benefits..... 10

    USTR Rejection of Goya Cheese Petition..... 10

    Dairy Legislation..... 11

**FOOD -- STATE GOVERNMENT AFFAIRS** ..... 11

    Packaging Standards Legislation/Ballot Initiatives..... 11

    Proposition 65 Legislation/Ballot Initiatives..... 11

    Snack Taxes ..... 12

    Downsizing Legislation..... 12

    Dairy Legislation..... 12

    BST Legislation..... 12

2022838754

## ELECTION OVERVIEW

### Congress

The 121 new members joining the 103rd Congress as a result of the November 3 general election -- 110 in the House and 11 in the Senate -- comprise the largest group of incoming freshmen since 1948. In addition, the role of women, Blacks and Hispanics will be greatly enhanced in the new Congress. Women gained 28 new seats (53 total), Blacks gained 17 new seats (39 total), and Hispanics gained 7 new seats (16 total). However, despite the significant turnover in membership, the margins by which Democrats control the House and Senate remained relatively unchanged. Pending several recounts, House Democrats have a margin of 258-176 compared to 268-166 before the election. And, pending a November 24 run-off in Georgia, Senate Democrats have a 57-42 margin compared to 57-43 before the election. The membership turnover is not expected to materially change the current leadership in Congress.

Republicans and Democrats in the Senate met on November 10 to select their leadership and will work from now until they convene in January to determine the committees on which the new Senators will sit. House Democrats and Republicans will meet during the first week of December to select their leadership and new members for major committee assignments. Of those committees, the Appropriations Committee has 19 vacancies, the Ways and Means Committee has 13 vacancies, the Energy and Commerce Committee has 12 vacancies, the Agriculture Committee has 13 vacancies, and the Rules Committee has 1 open Republican position.

### Clinton-Gore Transition

In a three-way race for President, Arkansas Governor Bill Clinton won 43% of the popular vote and 370 electoral votes; President Bush won 38% of the vote and the remaining 168 electoral votes; and Ross Perot received 19% of the popular vote. President-elect Clinton has formed a "transition team" to help him select members of his new Administration, which will take power in January. Vernon Jordon, former head of the Urban League, is the Chairman of the transition team while former Carter Administration Deputy Secretary of State Warren Christopher is the Director of the transition team and in charge of the team's day-to-day affairs. Former San Antonio Mayor Henry Cisneros, former Vermont Governor Madeline Kunin, Arkansas businessman Thomas McLarty, and lawyer and Clinton Campaign Chairman Mickey Kantor round out the transition team. Department of Transportation Secretary Andrew Card is in charge of the Bush Administration transition efforts. The Clinton transition team is reportedly focusing on the development of an economic recovery plan that President-elect Clinton intends to present to Congress during his first 100 days in office. The selection of a Treasury Secretary, a Director of the Office of

2022838755

|   |    |
|---|----|
| <b>BEER</b> .....   | 13 |
| Advertising .....   | 13 |
| National Forced Deposit Legislation.....                    | 13 |
| Surgeon General and CSPI Attacks On Alcohol Industry .....  | 13 |
| Beverage Brand Bans.....                                    | 13 |
| <b>CORPORATE</b> .....                                      | 14 |
| Tax Legislation.....  | 14 |
| Resource Conservation And Recovery Act Reauthorization..... | 15 |
| Resale Price Maintenance Legislation.....                   | 15 |
| FTC Unfairness Rulemaking Authority.....                    | 16 |
| Transit and Outdoor Advertising.....                        | 16 |
| Health Care Reform.....                                     | 17 |
| Family Leave Legislation .....                              | 18 |
| Executive Compensation Legislation .....                    | 18 |
| <b>INTERNATIONAL TRADE</b> .....                            | 19 |
| North American Free Trade Agreement .....                   | 19 |
| Uruguay Round .....   | 19 |
| China MFN Status.....                                       | 20 |
| Trade Legislation .....                                     | 20 |
| <b>TORT REFORM</b> .....                                    | 20 |
| Federal Product Liability Reform Bill.....                  | 20 |
| State Product Liability Reform Legislation .....            | 21 |
| State Protective Order Bills .....                          | 21 |
| State Comparative Fault Legislation.....                    | 22 |
| State Punitive Damages Legislation.....                     | 22 |
| State Statute Of Limitations Measures.....                  | 22 |
| Uniform Transfer of Litigation Act.....                     | 22 |
| Trial Lawyer Efforts In Louisiana.....                      | 23 |

2022838756

Management and Budget, and a chairman of a new "Economic Security Council" modeled after the existing National Security Council are expected shortly.

## **TOBACCO**

### **Tobacco Advertising Deductibility**

Various Members proposed legislation in the 102nd Congress to repeal the deductibility of advertising and promotion expenses for tobacco and/or alcohol products. No hearings were held on any of these measures. However, during the Senate's consideration of the Urban Aid/Tax bill in September, Senators Tom Harkin (D-IA) and Bill Bradley (D-NJ) offered an amendment to reduce by 20% the tax deductible costs of advertising and promoting tobacco products. Their efforts were opposed vehemently by the tobacco industry, the advertising community, and constitutional scholars on the basis that the amendment violated the tobacco industry's First Amendment right to commercial speech. The measure was defeated by a vote of 56-38.

The credibility of the tobacco industry's constitutional argument was strengthened by the defeat of the Harkin/Bradley amendment. Nonetheless, similar legislation may well be introduced again next year. In addition, limiting the tax deductibility of advertising generally continues to be high on the congressional tax-writers' list of potential revenues raisers and a major concern for all industries.

### **Kennedy "Omnibus" Anti-Tobacco Bill**

Senator Edward Kennedy's (D-MA) "omnibus" anti-tobacco bill, which was reported out of his Labor and Human Resources Committee in June 1991, failed to advance to the floor for a vote in 1992. In addition, Rep. Henry Waxman (D-CA) did not introduce a companion bill in the House as had been widely expected. Senator Kennedy will likely make the 103rd Congress the third Congress in a row that he has introduced some form of omnibus anti-tobacco legislation. Whether Rep. Waxman (D-CA) pursues omnibus anti-tobacco legislation next year will likely depend on the composition of the Energy and Commerce Committee and his legislative priorities.

### **Veterans Smoking Legislation**

On October 1, the House voted 338 to 71 to pass an amendment to the Veterans Health Care Act (H.R. 5193) sponsored by Rep. Harley Staggers (D-WV) that would require the establishment of designated indoor smoking areas in VA hospitals. The Staggers amendment was designed to overturn a ban on smoking in VA facilities imposed by former Secretary of Veterans Affairs Edward Derwinski that forced VA patients who smoked to do so outdoors. House and Senate conferees subsequently agreed to compromise conference report language that requires the VA to establish a suitable indoor area for smoking at each of its hospitals which either prevents

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smoke from entering other areas of the facility or is in an adjacent building that has heating and air conditioning. The compromise language also directs the General Accounting Office (GAO) to report to Congress on the feasibility of such smoking areas after taking into consideration costs, patient health and welfare, and hospital accreditation issues. Due to the pendency of the GAO report, the veterans' smoking issue can be expected to arise again next year.

### **Indoor Air Quality/Environmental Tobacco Smoke .**

In 1992, the issue of indoor air quality was involved in the following legislative measures, none of which ultimately passed the Congress:

- Senate Majority Leader George Mitchell (D-ME) had no difficulty in the Senate in 1991 in passing his indoor air bill, which would have given EPA central research authority over indoor air issues. The legislation, however, bogged down in the House this year. The referral of the bill to three separate committees, the failure of Rep. Henry Waxman (D-CA) to introduce any indoor air legislation, and the inclusion of a labor supported-indoor air provision in the Education and Labor Committee's OSHA Reform bill combined to deny Senator Mitchell's legislation any momentum.
- The Senate Labor Committee passed an OSHA Reform bill containing a mandate that OSHA issue final indoor air standards by December 1993, while a similar provision was dropped from the OSHA Reform bill reported out of the House Education and Labor Committee. Neither bill advanced to the floor for consideration. OSHA Reform legislation, which is one of organized labor's highest legislative priorities, is likely to be introduced again next year.
- In the waning days of 102nd Congress, Senator Frank Lautenberg (D-NJ) attempted to amend the Labor-HHS Appropriations bill to require smoking bans in all facilities where federally funded children's activities are performed. Lautenberg's amendment, however, was stricken in conference with the House. Similar legislation is likely to be introduced again next year.

In the regulatory area, indoor air quality (IAQ) issues generally and environmental tobacco smoke (ETS) received a great deal of attention:

- The EPA revised its draft of the ETS risk assessment and the agency's Scientific Advisory Board (SAB) held public hearings on the document at the subcommittee and executive committee level. In October, the SAB approved the revised risk assessment, which classifies ETS as a class A carcinogen and concludes that ETS exposure is a cause of respiratory illness in children. During the approval process, the SAB ordered that some minor modifications to the risk assessment be made, which must be completed before it is sent to the EPA Administrator for final approval. In addition, a senior EPA career official has indicated that some of the questions raised in the testimony before

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the SAB will require further attention. As a result, the extent of modifications to the risk assessment and the timing of its transmittal to the EPA Administrator are not clear at this time.

- At the Occupational Safety and Health Administration (OSHA), the agency extended its formal comment period in its request for information on IAQ issues generally, including ETS. The AFL-CIO petitioned OSHA to promulgate indoor air quality regulations and the Coalition on Smoking OR Health (COSH) petitioned it to promulgate a workplace smoking ban. Although OSHA has not responded to either petition, its staff has completed its initial review of the more than 1,200 comments received. No further action at OSHA is expected in 1992.

In 1993, indoor air quality issues will be the focus of increased attention in the legislative and regulatory arenas. Questions concerning which federal agency should have jurisdiction in this area (OSHA or EPA) and which regulatory approach to the issue is best (ventilation standards or source controls) could well be decided. Philip Morris will continue its aggressive advocacy in support of improving the scientific integrity of the risk assessment process as well as cost effective solutions for what is truly an indoor air quality problem rather than an issue of environmental tobacco smoke.

### **FDA Regulation of Tobacco**

Legislation was introduced in the second session by Rep. Mike Synar (D-OK) and Senator Jeff Bingaman (D-NM) to give the FDA regulatory authority over the manufacture, marketing, and sale of tobacco products. No hearings were held on either bill, and the measures died when Congress adjourned. Anti-tobacco forces are expected to intensify their efforts next year to subject tobacco to FDA regulation. The Coalition on Smoking OR Health (COSH) will likely seek to prod the FDA on petitions it has filed in the last two years to subject certain of Philip Morris' brands and others to FDA regulation on the ground that the products "impliedly" make health claims. In addition, Rep. Synar and Senator Bingaman will likely introduce similar legislation next year and push for hearings as well.

### **Federal Preemption**

Unlike past years, no Member introduced legislation in the 102nd Congress to totally repeal the "federal preemption" provision contained in the 1965 Federal Cigarette Labeling and Advertising Act, as amended. Nonetheless, the Supreme Court's Cipollone decision renewed interest in such an approach and led to a letter to Senator John Danforth (R-MO) from over 20 state Attorney Generals asking him to introduce legislation so that they could take action against tobacco advertising. Similar efforts should be expected next year.

### **Congressional Investigations**

In late-September, House Energy and Commerce Committee Chairman John Dingell (D-MI) denied COSH's request for a full Committee investigation of the

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tobacco industry. In a July 20 letter to Chairman Dingell, COSH had requested that his Committee conduct a "full-scale investigation" into whether tobacco industry representatives had sought "to defraud" Congress and the public concerning the alleged link between smoking and disease and the independence of research the industry has sponsored on the subject. The ten-page letter catalogued statements given by industry representatives in past hearings before the Congress and statements contained in internal industry documents that COSH claimed evidenced fraud on the part of the industry.

Although Chairman Dingell declined COSH's request for a full Committee investigation, he did state that COSH may wish to contact Energy and Commerce Health and Environment Subcommittee Chairman Henry Waxman (D-CA) with its information. Whether COSH will do so and whether Waxman may hold hearings on the matter as a part of his broader anti-tobacco legislative agenda next year is unknown at this time.

### **Export Restrictions And Related GAO Investigation**

Congress took no action this year on legislation introduced by Reps. Chester Atkins (D-MA) and Mel Levine (D-CA) to restrict the ability of U.S. cigarette manufacturers to export their products. The legislation would have required cigarette manufacturers to place health warnings on exported cigarette packages and in advertisements run in foreign markets and also would have prohibited the U.S. Government from seeking to change an importing country's laws pertaining to the sale, distribution, taxation, or advertisements of cigarettes. Significantly, neither Rep. Atkins nor Rep. Levine will be returning to Congress next year. Congress did pass legislation this year that prohibits the use of federally appropriated funds for fiscal year 1993 to carry out the Market Promotion Program (MPP) with respect to tobacco export subsidies. The MPP is administered by the USDA to promote the expansion of overseas markets for U.S. agricultural commodities. The effect of the amendment is to eliminate 1993 federal funding for projects initiated by Tobacco Associates, the only authorized tobacco participant in the MPP. Tobacco Associates had previously received \$3.3 million in MPP grants to form a venture with the Turkish State Tobacco Enterprise to develop an American blend cigarette containing flue-cured and burley tobacco.

On a related front, Reps. Atkins (D-MA), Waxman (D-CA), Senator Kennedy (D-MA), and other Members directed the GAO to undertake another investigation into the marketing practices of U.S. cigarette companies in export markets. The report is currently being finalized and is expected to be presented to the Members who requested the investigation sometime in November. The report is expected to focus on the impact of U.S. government efforts to open cigarette markets in Thailand and Taiwan, advertising and promotional campaigns for U.S. cigarette exports, and alleged violations by U.S. cigarette manufacturers of foreign market

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restrictions. According to GAO representatives, the investigation has been expanded to compare the federal regulation of the export of cigarettes with the federal regulation of exports of other allegedly "harmful substances."

Although no congressional hearings are presently scheduled on the GAO report, hearings are likely in 1993.

### **USDA Tobacco Export Disclosure Reporting Regulations**

The USDA has not yet finalized regulations designed to implement the tobacco export reporting provisions contained in the 1990 Farm Bill. Progress on the regulations has been halted by President Bush's regulatory moratorium. When the moratorium is lifted, USDA plans to publish the draft regulations as an "Advanced Notice of Public Rulemaking" in the Federal Register. The tobacco industry will then be able to submit comments regarding how the detailed information concerning grade, country of origin, crop year, and type should be submitted to the USDA and made available to Congress. The USDA will consider those comments and others received from interested parties and then issue final regulations.

### **DoD Draft Proposal To Ban Smoking In The Workplace**

Asserting that "tobacco use is the single most important preventable cause of serious illness" in the Department of Defense (DoD) and that "ETS has the potential for causing cancer among occupationally exposed workers," the Pentagon is circulating for comment a draft proposal that would ban smoking in all DoD workplaces and bachelor housing (excluding outdoor areas). The Office of the Deputy Assistant Secretary of Defense for the Environment is developing the policy under DoD Directive 1010.10 (March 11, 1986), which ordered DoD to discourage and "deglamorize" smoking. We are advised that the DoD most likely will not ultimately implement this policy. Nonetheless, it is anticipated that DoD will consider additional anti-smoking initiatives in 1993, including efforts to restrict the sale and promotion of cigarettes in the military services.

### **National Minimum Sales Age For Tobacco Products**

Congress approved legislation this year reauthorizing the Alcohol, Drug and Mental Health Administration (ADAMHA), which funds the bulk of federal programs aimed at discouraging substance abuse. The legislation contained industry-negotiated language that requires states seeking ADAMHA funding to adopt laws establishing 18 as the minimum age for the purchase of tobacco products and to report annually to HHS concerning the enforcement of these laws. During negotiations over this provision, the industry was successful in securing the deletion of other provisions from the legislation that would have mandated a federal "gateway" drug study involving tobacco and alcohol and provided the Secretary of HHS with extensive enforcement powers with respect to the minimum sales age provision.

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## **Gateway Drug Studies**

In addition to ensuring that a "gateway" drug study provision was deleted from the ADAMHA legislation, the industry was successful in thwarting efforts to include such a study involving tobacco and alcohol in the National Institutes of Health reauthorization bill this year. These efforts to link alcohol and tobacco to the use of illegal drugs by means of a federally sponsored gateway drug study are expected to be renewed again next year.

## **Fire Safe Cigarettes**

The final report mandated by the Fire Safe Cigarette Act of 1990 is due in August 1993. The Act directed the Consumer Product Safety Commission (CPSC) to carry out specified tasks in order to make "an assessment of the practicability of developing a performance standard to reduce cigarette ignition propensity." The Act also requires the National Institute of Standards and Technology (NIST) to conduct research on test method development and the Department of Health and Human Services (HHS) to assist in evaluating possible health effects. In addition, the act established a Technical Advisory Group (TAG) to work with CPSC and NIST to implement the law. Representatives of the tobacco industry serve on TAG.

Research data to validate a standard test method to determine cigarette ignition propensity will be collected in late-December 1992, and released in mid-January 1993. The agreed upon test methodology will then be employed to compile performance data for currently-marketed cigarettes. A separate survey, conducted by the CPSC, will identify the characteristics of smokers, cigarettes, and ignitable materials that may contribute to the risk of fire. This report should be available by March 1993. Another report, compiled by CPSC in consultation with HHS, will examine and develop information on changes in the toxicity of smoke and provide a comprehensive assessment of health effects from cigarette prototypes. This report is likely to be released before the end of the year.

## **FOOD -- FEDERAL GOVERNMENT AFFAIRS**

### **FDA Enforcement**

Legislation introduced by Rep. Henry Waxman (D-CA) and Senator Edward Kennedy (D-MA) that would have significantly expanded FDA's enforcement powers failed to pass in the 102nd Congress due to industry opposition. These bills contained a number of onerous provisions that would have strengthened FDA's enforcement authority in the areas of recordkeeping, record inspections, recall and embargo powers, and civil monetary penalties. In the House, Rep. Waxman's Energy and Commerce Health and Environment Subcommittee reported out the bill and the full Energy and Commerce Committee approved a modified, but still objectionable bill on a straight party-line vote in July. However, because of the bill's controversial nature, it was not scheduled for floor action before adjournment. In the

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Senate, the only action taken on Kennedy's companion bill was a May 19 Labor and Human Resources Committee hearing.

It is anticipated that FDA enforcement legislation will be introduced again next year.

### **FDA User Fee Legislation**

During 1992, industry successfully fought off the imposition of FDA user fees through both the congressional appropriations and authorization processes. In the appropriations realm, efforts by the Administration to include user fees for the FDA in the FY 1993 Agriculture Appropriations bill were defeated despite significant budget shortfalls. The Administration's funding request for FDA was \$791 million, and it assumed that \$200 million of that total would come through the collection of user fees. The final version of the bill, signed by the President on August 14, funds the agency at \$778 million, a 21% increase over FY 1992. However, the bill contains statutory language prohibiting OMB from collecting general user fees, and report language criticizing the Administration's user fee funding assumption as "budget gimmickry."

On the authorization side, House Energy and Commerce Committee Chairman John Dingell (D-MI) floated two FDA user fee proposals -- one for food and cosmetics, and the other for drugs and devices. As the debate progressed, prescription drugs, rather than other FDA regulated products, became the focus of the Committee's attention in this area. Ultimately, Congress passed legislation imposing FDA user fees on the prescription drug industry with the industry's concurrence.

FDA user fees for the food industry are not expected to be considered a priority measure by either the House or Senate authorizing committees next year.

### **Food Safety Legislation**

There was no final action during the second session of the 102nd Congress on "food safety" legislation, which is designed to establish safety standards for pesticide residues in both raw and processed food. A broad range of food and agricultural interests supported legislation introduced by Reps. Terry Bruce (D-IL) and Tom Bliley (R-VA), which garnered 139 cosponsors.

It is not clear whether food safety legislation will move forward next year. The legislative outlook is complicated by a Ninth Circuit Court of Appeals decision currently under appeal to the Supreme Court that overturned the EPA's application of a "de minimis" risk standard for the use of pesticides on produce that is subsequently processed. Specifically, the court held that the so-called Delaney clause, passed in 1958, prohibited the EPA from approving the use of any pesticide on food that poses any degree of risk whatsoever of cancer. If the Supreme Court does not overturn the Ninth

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Circuit's decision, the Clinton Administration and the EPA will have to decide whether to begin formal proceedings to revoke tolerances for certain pesticide applications previously granted under the EPA de minimis policy or seek a legislative solution in the area. In any event, KGF and the rest of the Food Chain Coalition will be actively supporting the legislative concepts outlined in the Bruce/Bliley bill.

### **Nutrition Labeling Regulations**

Under the Nutrition Labeling and Education Act, which was enacted in 1990 with the support of the food industry, an initial set of regulations to implement the Act was proposed in November 1991. Over 40,000 public comments were submitted concerning the proposed rules, including an extensive submission by KGF. The Administration was scheduled to issue the final version of the rules by no later than November 8, but an impasse between Agriculture Secretary Madigan and HHS Secretary Sullivan caused the Administration to fail to meet the deadline. Specifically, Secretary Madigan and Secretary Sullivan were unable to resolve their differences over the format that should be used to present nutrition information on food and meat labels. The White House has indicated its intention to have the President make a decision on the contested issues and promulgate final regulations within the next month. The rules could take effect in May 1993, but under a procedure allowed by the Act, the effective date is expected to be extended until the Spring of 1994.

### **Nutrition Advertising Coordination Act**

Rep. Joe Moakley (D-MA) introduced legislation that would have required the FTC to apply the requirements of the Nutrition Labeling legislation and regulations to food advertising. Industry opposed the legislation because it would have taken away the FTC's traditional jurisdiction to determine the standards by which advertising is judged. The FTC did indicate that it would take into account the nutrition labeling regulatory scheme in evaluating food advertising, but maintained that there was enough of a difference between labeling and advertising that the requirements should not be identical. The legislation did not move in the 102nd Congress, but if proponents believe that the FTC is not being aggressive enough in its regulation of food advertising, the measure could be proposed again in the 103rd Congress.

### **FTC Environmental Labeling Guidelines**

After almost 18 months of consideration, the FTC issued its environmental labeling guidelines on July 28. The guides were issued in response to a petition filed by a broad-based coalition of trade associations, including the NFPA and GMA. The national guidelines cover advertising claims about recycled content, recyclability, and other environmental benefits of consumer products and packaging. The guidelines are not legally enforceable, but represent administrative interpretation of laws administered by the FTC to assist marketers in conforming with legal requirements.

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Besides giving manufacturers guidance in this area, the guidelines provide two additional benefits. First, they may help discourage the enactment of inconsistent and ill-advised state and regional environmental labeling requirements. Second, if Resource Conservation and Recovery Act (RCRA) reauthorization legislation is considered again next year, the guides may eliminate the necessity to include an environmental claims provision in the bill.

### **Defense Commissary Agency**

The Defense Commissary Agency (DeCA) is the new agency overseeing the defense commissary system. Since its inception in October 1991, vendors such as KGF and PM USA have had ongoing problems with DeCA's late billpaying practices. Consequently, a House Armed Services Committee Panel held oversight hearings on DeCA's billpaying problems in June and September and a Senate subcommittee held an oversight hearing in August. In addition to the oversight hearings, Congress inserted language sought by PM USA and KGF in the Defense Authorization Act that expressed concern about the "systematic billpaying problems being encountered by DeCA since its creation." Congress also approved provisions directing DeCA to comply with the spirit of the Prompt Pay Act and to review its current compliance programs. DeCA also was directed to submit a plan to revise its policies regarding roll-ups to conform to industry practices.

Congressional oversight of this matter will continue in the next Congress.

### **Defense Pension Benefits**

The House-passed Defense Authorization bill contained a provision that would have required all "major defense contractors" to provide costly pension benefits to workers who were terminated due to cutbacks in defense contracts. As written, the term "major defense contractor" could have applied to defense commissary suppliers like KGF and PM USA. We were ultimately successful in getting this provision deleted from the final version of the legislation.

### **USTR Rejection of Goya Cheese Petition**

On June 15, the United States Trade Representative (USTR) formally rejected a petition that sought to obtain duty-free treatment for Hungarian Goya cheese. Hungarian Goya, along with Goya from several other countries, competes directly for sales with parmesan cheese. An industry coalition was successful in efforts to have the petition rejected. Following the USTR action, the coalition suggested legislation requiring that when a Generalized System of Preference petition such as the Goya measure is denied, it cannot be attempted again for three years. The legislation was not enacted, but the group plans to renew its efforts in 1993.

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## **Dairy Legislation**

Dairy prices in 1992 did not approach the low 1991 levels because of improved market conditions and aggressive intervention by the Administration. As a result, there was no federal legislative activity this year. Depending on the level of dairy prices in the coming year, there may be renewed interest in moving dairy price support legislation.

On other issues, the Livestock, Dairy and Poultry Subcommittee of the House Agriculture Committee held a hearing in July to review a proposal by Reps. Steve Gunderson (R-WI) and Charles Stenholm (D-TX) to establish a federal fund to pay dairy producers when a handler declares bankruptcy. The Congressmen intend to pursue this legislation in 1993.

## **FOOD -- STATE GOVERNMENT AFFAIRS**

### **Packaging Standards Legislation/Ballot Initiatives**

Environmental packaging standards legislation was debated in 14 states in 1992, although no legislation passed. Massachusetts was the key battleground state in this area. The Massachusetts legislature focused its efforts this year on developing compromise legislation that would keep the stringent Massachusetts Public Interest Research Group (MassPIRG) "rates and dates" packaging standards initiative off the November 1992 ballot. A compromise bill was reported out by Committee but failed to advance any further, thereby setting the stage for the November MassPIRG ballot initiative. After an aggressive campaign conducted by both industry and MassPIRG, the voters rejected the initiative referendum by a margin of 59-41%.

In 1993, Arizona, Colorado, Florida, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island and Washington are likely to consider some form of "rates and dates" packaging standards legislation. The advancement of such measures will depend upon four principal factors: 1) the movement of RCRA reauthorization legislation at the federal level; 2) whether the newly elected legislatures become more active on environmental issues generally; 3) the degree to which various state PIRG affiliates decide to push their "rates and dates" proposals; and 4) how much of a priority various Governors give to a model solid waste bill developed in 1992 by the Council of Northeastern Governors (CONEG).

### **Proposition 65 Legislation/Ballot Initiatives**

In 1992, Ohio considered a "Right-To-Know" ballot initiative patterned after California's Proposition 65. The proposal would have required warning labels on any consumer product containing chemicals that allegedly may cause cancer or reproductive harm. In addition, the initiative would have required companies to notify residents within a 2-mile radius of any company facility that discharges toxins which could put those residents at risk of cancer or birth defects. The ballot petition was initiated by the Ohio Citizens Action (OCA), a Ralph Nader-

inspired organization. Labor, farm and business leaders formed a coalition to defeat the Right-To-Know proposal and also formed a political action committee -- Ohioans For Responsible Health and Information -- to direct the opposition effort. After an intensive campaign, the voters of Ohio rejected the initiative on November 3 by an overwhelming margin of 78-22%.

In 1992, Proposition 65-type legislation was introduced in Illinois and Massachusetts, but neither state passed such legislation. However, both states are expected to consider this legislation again during the 1993 legislative year.

### **Snack Taxes**

In California, industry supported the passage of Proposition 163 -- a ballot initiative that would amend the California Constitution to prohibit the taxation of food and water and also repeal the state sales tax on snack foods imposed in 1991. The electorate voted to approve the proposal on November 3 by a vote of 66-34%. In Maryland, an omnibus sales tax proposal that included a 5% snack food tax was signed into law by the Governor.

Snack tax measures are likely to resurface next year in various states. In addition, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) is considering proposing a 5% snack food tax to help fund an agriculture chemical clean-up program administered jointly by the DATCP and the Department of Natural Resources.

### **Downsizing Legislation**

"Downsizing" legislation was considered in New York, New Jersey, Maine, Rhode Island and Hawaii in 1992, although no state passed such legislation. Downsizing legislation would require any new packaging having the same or substantially the same size and appearance as an established package, but with a lower net weight, to carry a label noting the extent of that reduction. Downsizing measures are expected to be reintroduced in a number of states next year.

### **Dairy Legislation**

Legislators in Missouri, Nebraska, and Kansas were unsuccessful this year in attempts to pass milk tax bills aimed at providing financial relief for dairy farmers. A bill did pass in Minnesota to create a state-set minimum price for milk and that matter is now under litigation. Due to the failure of the federal government to provide increased price supports for the farmers in 1992, increased state efforts in this area are expected in 1993.

### **BST Legislation**

Bovine Somatotropin (BST) is a genetically engineered growth hormone that increases a cow's milk production. Efforts to pass legislation that would require the labeling of dairy products produced through the use of

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BST were defeated in California and New York in 1992. In addition, the Governor of Wisconsin vetoed a bill that would have required the state to certify dairy producers who used BST. Legislation directed against the use of BST is likely to be introduced in various states in 1993.

BST is currently under review at the FDA as well. Agency approval of the growth hormone is not expected before mid-1993.

## **BEER**

### **Advertising**

Senator Strom Thurmond (R-SC) and Rep. Joe Kennedy (D-MA) introduced legislation in the House and Senate, respectively, that would require all alcohol beverage advertising to carry five rotating warnings. Although hearings were held in both the House and Senate, the legislation did not make it out of committee. It is expected that the legislation will be reintroduced next year.

### **National Forced Deposit Legislation**

National forced deposit legislation, often referred to as "bottle bills," was introduced in both the House and Senate. The legislation came before the Senate Environment and Public Works Committee and the House Energy and Commerce Committee in the context of the RCRA reauthorization debate. In each Committee, bottle bill amendments were defeated. Bottle bill proponents were heartened by President-elect Clinton's favorable comments toward such legislation during the campaign. However, it is not clear whether Clinton will push the issue next year in the face of congressional opposition.

### **Surgeon General and CSPI Attacks On Alcohol Industry**

The Center for Science in the Public Interest (CSPI) teamed up with the Surgeon General to attack the beer industry's advertising and marketing practices this year. The portrayal of "risky activities" in ads, product placements in movies and television shows and alleged appeals to underage drinkers were just a few of the issues on which the Surgeon General and CSPI attacked the beer industry.

### **Beverage Brand Bans**

Protests from Native American and anti-alcohol groups prompted Rep. Frank Wolf (R-VA) and Senator Tom Daschle (D-SD) to propose legislation to curtail Hornell Brewing Co.'s use of the "Crazy Horse" name on its malt beverage product. Senator Daschle ultimately succeeded in placing language in the Treasury Appropriations bill that effectively bans the use of the Crazy Horse name. Under the terms of the legislation, the Crazy Horse

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brand may not be produced or sold after all of the labels Hornell currently has in stock have been used. This episode has caused the BATF to slow down the approval process for all new alcoholic beverage labels.

## CORPORATE

### Tax Legislation

President Bush vetoed the two major tax bills produced by the 102nd Congress in 1992. However, the bills contained several items which will likely form part of next year's economic recovery/tax bill. Congress passed the first tax bill, H.R. 4240, on March 20 in response to a challenge President Bush laid out in his State of the Union message. The \$77.5 billion package was designed to provide middle income tax relief and incentives to boost the lagging economy. One provision in the bill supported by Philip Morris allowed taxpayers with open-year tax returns to "retroactively" amortize previously acquired intangible assets over a 16-year period.

In October, Congress produced a second major tax initiative, H.R. 11, in response to the Los Angeles riots and President Bush's call for the passage of enterprise zone legislation to assist inner cities. The \$27 billion bill established 50 enterprise zones, increased the availability of IRAs, repealed luxury taxes imposed by the 1990 budget agreement, and provided tax relief to the real estate industry. H.R. 11 also contained a provision that allowed taxpayers to amortize acquired intangible assets over a 14-year period. Unlike Congress' first tax bill, however, H.R. 11 did not contain a "retroactive" intangible provision. Philip Morris sought to obtain such a provision during Congress' consideration of H.R. 11. After an amendment offered by Senators Paul Simon (D-IL) and Kent Conrad (D-ND) to eliminate "goodwill" as an intangible asset was defeated by a vote of 75-19, attempts were made to secure an acceptable retroactivity provision in conference. Conferees ultimately decided not to include such a provision when severe time constraints associated with Congress' imminent adjournment caused them to drop all controversial proposals from the final version of the bill. Given the amount of revenue a retroactivity provision would raise in a five-year budget window, however, an opportunity exists for Philip Morris to revisit the issue next year when Congress takes up an economic recovery/tax bill.

In addition to the two major tax bills considered by the 102nd Congress, numerous bills were introduced to increase excise taxes on tobacco and beer products. Although none of the proposals were incorporated into bills that passed, many of them were discussed in the context of providing funding for health care reform. Since that issue will be near the top of President-elect Clinton's legislative agenda next year, excise tax measures likely will resurface in the 103rd Congress. The 103rd Congress is also expected to consider changes in the taxation of U.S.-based multinational corporations, the redesign of the present tax structure (i.e., a VAT or

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national sales tax), the taxation of employee benefits, an extension of expiring tax credit provisions such as the R&D and investment tax credits, the increased taxation of foreign companies operating in the U.S., capping the deductibility of executive pay at \$1 million per executive per year, higher tax rates for high income individuals, and a millionaires surtax.

### **Resource Conservation And Recovery Act Reauthorization**

During the 102nd Congress, the House and Senate considered reauthorization legislation for the Resource Conservation and Recovery Act (RCRA), which contained provisions that would have imposed "rates and dates" recycling/waste reduction requirements on consumer product packaging. This legislation posed a significant threat to all of Philip Morris' domestic products, particularly our food products packaged in plastic and our cigarette packaging. Since the reauthorization of RCRA started out as a major environmental objective for congressional Democrats, it appeared likely that a bill might pass. Therefore, in spite of our adamant opposition to the concept of mandated "dates and rates," we began to try to forge a compromise which would exempt critical portions of our food and tobacco packages from the scope of the bill.

Working with moderate Democrats on the Energy and Commerce Subcommittee on Transportation and Hazardous Materials, we were ultimately successful when the Energy and Commerce Committee passed a compromise bill. That compromise placed KGF paper and plastic packaging (other than bottles and jars) and PM USA cigarette packaging outside the scope of the bill. It also contained a provision directing state and local governments to consider "food safety" concerns and the food safety requirements of the Federal Food, Drug and Cosmetics Act when developing packaging laws and regulations. In the end, however, the Energy and Commerce bill did not make it to the House floor for consideration. Environmentalists believed the bill did not go far enough and most industry groups refused to support it.

We were able to make some important progress this year in raising the issue of "food safety" and having the use of packaging with recycled content in contact with food recognized as an important health issue. As a result, when the debate on the reauthorization of RCRA does resume next year, the precedent we set this year of exempting food packaging from recycling mandates should assist our efforts.

### **Resale Price Maintenance Legislation**

The House and Senate last year approved different versions of a resale price maintenance bill, which is designed to make it easier for plaintiffs to bring and prove antitrust cases challenging minimum resale price maintenance agreements. The Senate bill included an amendment supported by Philip Morris which would have overruled Supreme Court precedent that treats maximum resale price maintenance agreements as

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per se illegal. Maximum resale price maintenance agreements enable a manufacturer to establish price ceilings for the resale of its goods. The amendment would have accorded "rule of reason" treatment to such agreements, which would allow courts to evaluate them on their merits. A House-Senate conference reconciled the House and Senate bills in early-June and included the Senate maximum resale price maintenance provision in the conference report. However, the House rejected the conference report because the conferees had dropped a provision that would have exempted small businesses lacking "market power" from the bill's minimum resale standards. This action killed the legislation for the year.

It is likely that the bill's principal sponsors, Senator Howard Metzenbaum (D-OH) and Rep. Jack Brooks (D-TX), will reintroduce the legislation next year. Philip Morris will continue to seek the inclusion of the maximum resale price maintenance provision in the bill.

### **FTC Unfairness Rulemaking Authority**

In October, the President signed the Commerce, Judiciary and State Appropriations bill, which funds the FTC. The legislation contains a provision, which Philip Morris supports, that prohibits the FTC from expending funds through October 1993 to utilize its vague and highly subjective "unfairness" rulemaking authority over commercial advertising. In the 1970's, the FTC used its unfairness rulemaking authority in a controversial attempt to ban children's television advertising and other forms of advertising that a majority of the Commission believed to be in violation of ill-defined notions of "public policy." In response, Congress barred the FTC from using its unfairness rulemaking authority in the 1980 FTC reauthorization bill, which expired in 1982. Since that time, the House has sought to lift this prohibition and the Senate has resisted, which has resulted in Congress failing to pass an FTC reauthorization bill for the last decade. Instead, as it did again this year, the Senate prevailed over House opposition through the yearly appropriations process in barring the FTC from using its unfairness rulemaking authority.

Consumer groups have cited the more moderate leadership of the FTC and the need to regulate "targeted advertising" for alcohol, food and tobacco products to "underage and vulnerable population groups" as the primary reasons for restoring the FTC's unfairness rulemaking authority. They will undoubtedly renew this argument in 1993 in support of their efforts to attack commercial advertising with which they disagree.

### **Transit and Outdoor Advertising**

The first session of the 102nd Congress saw two efforts to restrict transit and outdoor advertising of alcohol and tobacco products. One effort involved the Transportation Appropriations bill, where Rep. Richard Durbin (D-IL) sought the adoption of a provision that would have withheld

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federal transit funds unless alcohol and tobacco advertising was restricted; the second involved the Highway Reauthorization bill, where Rep. Mike Andrews (D-TX) proposed to place further restrictions on billboards on federally funded roads. Both efforts were blocked in the first session, and no such measures were offered in the second session. With the support of the Sierra Club, Rep. Andrews will likely pursue the passage of his measure again next year.

### **Health Care Reform**

Health care reform vaulted to the top of Congress' legislative agenda in late-1991 due to the perceived success with which Senator Harris Wofford (D-PA) used the issue to defeat former Republican Attorney General Richard Thornburgh in a special Pennsylvania Senatorial election. In fact, House Democrats on January 14 held unprecedented coordinated "town meetings" in their districts across the country to discuss the issue with their constituents. In addition, Senate Democrats held five "field hearings" around the country last December focusing on the issue. Congressional committees also held a host of hearings on the issue during 1992.

Despite this flurry of activity on the part of the Congressional Democrats, no comprehensive health care reform legislation made it to the floor of either the House or Senate this year. The Democrats were unable to reach a consensus among themselves on which major approach to take with respect to the issue. Some Members supported a "Canadian-style" legislative model that would have had the government essentially take over the nation's health care system; others sought the adoption of a "play or pay" plan that would have required employers to provide insurance to their employees or pay into a government-run program that would provide health insurance to uninsured workers and dependents; still others sought the adoption of a "managed competition" plan whereby market forces would be looked to to reform the system; and still others sought a compromise by combining various elements of the above-described plans. On the other side of the aisle, congressional Republicans took a more unified approach to health care reform that relied on using market forces and other "managed care" systems to build on and improve the nation's health care system. President Bush weighed in with a similar proposal in February, but neither the Administration nor congressional Republicans were able to advance their legislation in the Democratic-controlled Congress.

With the election of President-elect Clinton to the Presidency, the prospects for the passage of health care reform legislation in the next Congress has improved significantly since the issue was one of the centerpieces of his campaign. Clinton favors a modified version of the "play or pay" plan that combines global health care budgets with a requirement that all employers provide health insurance to their employees. The key questions in the next Congress will be whether the Clinton Administration

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can forge a consensus among the Democrats and whether excise taxes on tobacco and beer products will be looked to to help finance the costs of such legislation.

### **Family Leave Legislation**

The 102nd Congress, like the 101st, failed to override President Bush's veto of the Family Leave bill. The legislation would have required employers of 50 or more workers to provide each employee up to 12 weeks of unpaid leave per year in the event of the birth or adoption of a child or the occurrence of a serious illness on the part of the employee or an immediate family member. Eligibility for such leave would have been restricted to employees who had worked 1250 hours or more over the previous year, and employees seeking such leave would have had to give 30 days notice for foreseeable leaves involving birth, adoption, or planned medical treatment. In addition, employers would have been allowed to deny leave to "key" employees, defined as those who are among the highest paid 10% of the workforce.

President-elect Clinton has stated that he strongly supports the Family Leave bill vetoed by President Bush. Prospects for the passage of such legislation next year appear to be high.

### **Executive Compensation Legislation**

Prompted by the general publicity surrounding executive pay packages in this year's tough economic climate and the President's Trade Mission to Japan with several highly-paid U.S. Automotive CEOs in tow, the issue of executive compensation came under intense scrutiny in Congress. For instance, a tax bill vetoed by President Bush last Spring contained a provision that would have capped the tax deductibility for executive pay at \$1 million per executive per year. The House included a similar provision later in the year in its employment compensation extension bill, although that provision was ultimately dropped in conference with the Senate. In addition, Senator Carl Levin (D-MI) and Rep. John Bryant (D-TX) pushed bills in their respective chambers that would have thoroughly revamped the method by which corporations make decisions on the pay levels for their top executives. Among other things, their legislation would have permitted shareholders to vote directly on the propriety of executive pay levels and the manner in which corporate boards make executive compensation decisions.

In response to the above-described legislative initiatives, the SEC announced in February that it would reinterpret the federal proxy rules to permit stockholders for the first time to submit proposals in proxy statements and cast non-binding votes on executive compensation packages. In addition, the SEC announced that it was preparing new rules governing disclosures companies must make concerning executive compensation. In mid-October, the SEC gave final approval to these new

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rules, which require companies to more clearly present to shareholders the amount of compensation paid to the CEO and the four other highest paid executives, the criteria used by the Board in reaching executive compensation decisions, and the relationship between executive compensation and corporate performance.

The development and final adoption of the new SEC rules undoubtedly helped stave off the passage of legislation this year designed to regulate executive pay levels. The new rules also may reduce the chances that such legislation will pass the 103rd Congress. But the fact remains that limiting executive compensation or its deductibility is a populist issue which may find a receptive audience in a Congress and an Administration that have pledged to provide relief to the middle class.

## **INTERNATIONAL TRADE**

### **North American Free Trade Agreement**

On August 12, the Administration announced that negotiations between the United States, Canada, and Mexico on the North American Free Trade Agreement (NAFTA) had been completed. When fully implemented, NAFTA will eliminate tariffs and other trade barriers between these three countries within 15 years. NAFTA covers a number of issues of importance to the various Philip Morris operating companies, including dairy product exports to Mexico, and the elimination of such barriers as Mexican import duties on U.S. beer and U.S. import duties on vegetables. Several committees of the House and Senate held hearings regarding various aspects of NAFTA after the negotiations concluded. The primary focus of the hearings was on environmental issues and retraining for workers that may be displaced as a result of the agreement's implementation.

It is expected that implementing legislation for NAFTA will be introduced in early 1993 and that more congressional hearings will be held. Concerns raised during hearings this year regarding the environment and worker retraining will likely be handled in separate legislation, as the provisions for "fast-track" consideration of NAFTA do not allow for amendments. Recent statements by President-elect Clinton in support of NAFTA give rise to the belief that the legislation will be approved and that the agreement will become effective by January 1, 1994.

### **Uruguay Round**

The Uruguay Round is a multilateral trade negotiation whose purpose is to remove barriers to international trade. More than 100 countries are participating. Philip Morris has asked the U.S. government to seek the reduction or elimination of trade barriers covering several hundred products and several dozen countries.

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Progress on the talks has been slowed due to disputes over agricultural trade generally and specifically due to a disagreement between the U.S. and the EC over the EC's unfair treatment of U.S. oilseed exports. Negotiations between the U.S. and the EC recently broke down, and the U.S. has threatened to impose retaliatory duties on over \$300 million of EC exports to this country. It is anticipated, however, that the U.S./EC dispute will be resolved by the end of November. If this issue and others involving agricultural trade are resolved and the Uruguay Round negotiations are successfully concluded by early-1993, "fast-track" Congressional approval provisions come into play. Congress will have ninety legislative days to review the agreement and then must vote up or down on the agreement itself, without being able to amend it. If approved, the agreement would become effective by January 1, 1994.

### **China MFN Status**

President Bush twice vetoed legislation that would have placed conditions on the renewal of the most-favored-nation (MFN) trading status for the Peoples' Republic of China (PRC). (MFN status confers on a country the right to have its goods assessed at the lowest import duty offered to other U.S. trading partners.) Both bills would have revoked the PRC's MFN status after next July unless that country adopted changes in its human rights and trade policies. It is likely that similar legislation will be introduced during the 103rd Congress.

President-elect Clinton has indicated that he would make the PRC's MFN status conditional on an annual Presidential determination that the PRC was improving its human rights performance. If such an improvement were not evident, MFN status would be taken away only from goods produced by the PRC state sector. Most experts believe this approach would be problematic, because it would be very difficult to determine whether products were produced by the public or private sector.

### **Trade Legislation**

Despite a significant amount of congressional activity in the area, no major trade legislation was enacted during 1992. It is anticipated, however, that legislation will be offered in the new Congress to restrict imports of products from countries deemed to be engaged in unfair trade activities. Rep. Dick Gephardt (D-MO) has been a sponsor of such legislation in the past, with Japan as the primary target.

## **TORT REFORM**

### **Federal Product Liability Reform Bill**

Proponents of S. 640, the Product Liability Fairness Act, failed by 2 votes to get the 60 votes needed under Senate procedures to end a filibuster of the measure in September. The 58-38 vote to stop the debate did indicate,

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however, that a majority of the Senate may have backed the bill and also marked the first time proponents succeeded in forcing a vote in the full Senate. The bill, long sought by many elements of the business community, would set national standards for product liability litigation in limited areas involving statutes of limitations, punitive damages, joint and several liability for product wholesalers and retailers, damage offsets for workmen's compensation benefits, defenses available when a plaintiff's use of alcohol or drugs was the primary cause of an accident, and the use of alternative dispute resolution procedures.

Proponents of the bill, which has been pending in Congress in some form for more than a decade, were encouraged by the Senate vote and will push the legislation in the Senate again next year. Significant hurdles for the legislation remain, however, particularly in the House, where Judiciary Committee Chairman Jack Brooks (D-TX) has kept a companion bill bottled up due to his intense opposition. Moreover, the Clinton Administration is not expected to advocate product liability reform as the Bush Administration did.

### **State Product Liability Reform Legislation**

Tort reform proponents made serious efforts to enact substantive product liability reform legislation in both Mississippi and Pennsylvania this year. Neither effort succeeded. The plaintiffs' trial bar led the opposition in both states, and labor leader resistance was a critical factor in stalling the Pennsylvania reform effort. On the defensive front, two trial lawyer-backed bills to unfavorably amend the 1987 California product liability statute were defeated. One proposal sought to codify the Supreme Court decision in Cipollone. Similar legislation may be introduced in several states during 1993 and the trial bar will likely try to use the tobacco issue in pursuit of other tort reform objectives.

During 1993, the priority states for tort reform proponents will be Texas, Mississippi, and Massachusetts. In Texas, Lieutenant Governor Bullock is leading an effort to have the business-backed Texas Civil Justice League and the Texas Trial Lawyers' Association agree on a negotiated product liability bill. In Mississippi, the forest products industry and consumer products companies are organizing business interests to seek product liability and punitive damage reforms. In Massachusetts, tort reform proponents will be seeking to change the common law with regard to the inadequate "state of the art" defense currently available to manufacturer defendants. There will also be significant activity in North Dakota, where a Chamber-led coalition will support the repeal of a law that sunsets reforms enacted in 1987 and advocate punitive damage reforms.

### **State Protective Order Bills**

Since 1989, the Association of Trial Lawyers of America has promoted legislation to curtail the discretion of trial courts in civil lawsuits to issue

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protective orders that keep litigants' discovery materials and settlement agreements confidential. Such legislation was rejected by 29 states in 1991 and by all 16 states where legislators considered the bills in 1992, including California where the Governor vetoed the bill. The trial lawyers' only successes came in 1990 when Florida enacted protective order legislation and the Texas Supreme Court issued a similar court rule. Efforts are underway in both states to overturn these measures. The trial lawyers are expected to keep pushing such legislation in 1993.

### **State Comparative Fault Legislation**

Trial lawyer-backed proposals to unfavorably amend comparative fault laws were defeated in Colorado, Idaho, Minnesota, Rhode Island and South Carolina in 1992. These proposals would have significantly expanded the ability of plaintiffs to recover damages in civil lawsuits. During 1993, North Carolina trial lawyers will seek to repeal that state's contributory negligence doctrine and enact a comparative fault statute. Business interests will vigorously oppose those efforts in North Carolina and in other states.

### **State Punitive Damages Legislation**

Measures that would have expanded the availability of punitive damages in civil litigation were defeated in Illinois, Iowa, Kansas, Louisiana, Mississippi and Wisconsin in 1992. Florida adopted legislation that reduced the portion of punitive damage awards paid to the state from 60% to 35% in personal injury and wrongful death actions. New York adopted a law that requires 20% of a punitive damages award to be paid to the state. During 1993, the Mississippi and North Dakota legislatures will consider punitive damage reform proposals backed by the business community. Many business leaders in other states are advocating such reforms, so it is likely that other legislatures will also address the issue.

### **State Statute Of Limitations Measures**

Legislation backed by the trial bar that would have weakened state statute of limitations was rejected in Illinois, Indiana, Iowa, Kansas, Minnesota and Nebraska. A Virginia measure is being reviewed in a study committee and may be addressed in 1993.

### **Uniform Transfer of Litigation Act**

Legislation that would allow a state court to transfer all or part of a lawsuit to another state's court -- the "Uniform Transfer of Litigation Act" -- was defeated in seven states: Kansas, Minnesota, Oklahoma, South Dakota, Virginia, Washington and West Virginia. Because these bills were modeled after a measure adopted by the Commission on Uniform State Laws, they are likely to be reintroduced in various states in 1993.

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## **Trial Lawyer Efforts In Louisiana**

A business coalition defeated an extraordinary effort this year by the Louisiana Trial Lawyers' Association (LTLA) to have its legislative agenda enacted by the Louisiana legislature. LTLA's legislative priorities included: 1) permitting punitive damages in all civil actions; 2) emasculating the 1988 products liability statute; 3) restricting trial courts' discretion to issue protective orders; 4) increasing a defendant's exposure under joint and several liability law from 50 to 100%; and 5) allowing a subcontractor's employee to bring a tort claim against the corporation employing the contractor, in addition to receiving workmen's compensation.

The business coalition's victory was particularly notable in the light of LTLA's widespread success in the 1991 legislative and gubernatorial elections and the domination by its supporters of key Senate and House legislative committees. Preparations are underway in the business community for the 1993 session of the legislature.

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