

1990 PROACTIVE LEGISLATIVE PLANS

February 20, 1990

State/Issue

Summary/Status

ALABAMA

* Anti-Discrimination/
Smokers' Rights/
Smoking Restriction Preemption

Summary: Would prohibit hiring/promotion discrimination -- Would establish smoker's right to smoke in public/private places and in the workplace -- Would preempt local government from adopting restriction ordinances

Status: Smoking restriction bill H327 has been amended with anti-discrimination clause and establishes smoking areas -- Awaits House floor vote -- Similar action is being pursued in Senate Health Committee on S432

* Repeal Local Tax Authority

Summary: Would repeal authority for counties and cities to impose local excise taxes

Status: There is no opportunity to develop effort during 1990 session -- Action postponed until the 1991 session -- No levelization bill has been introduced

ALASKA

Anti-Discrimination

Summary: Would prohibit hiring and employment discrimination

Status: Efforts are underway to identify a sponsor for a free-standing bill -- Also looking for opportunities to attach provisions to existing legislation

* IAQ/Ventilation Standards

Summary: Would amend carryover indoor air quality bill H283 to require ventilation standards

Status: Amendments were to be made only if sponsors were going to pursue bill -- Sponsors have decided not to proceed with legislation

* Denotes updated information since 1/24/90 report to the Policy Committee

ARIZONA
Anti-Discrimination

Summary: Would prohibit an employer from discharging or not hiring smokers

Status: Due to severe tax proposals, it is advisable to postpone proactive legislation until tax situation is resolved -- Anti-discrimination could be amended into another bill after tax situation is settled

Smoking Restriction Preemption

Summary: Would prohibit local governments from adopting smoking restriction ordinances -- Would roll back some current local ordinances

Status: Due to severe tax proposals, it is advisable to postpone proactive legislation until tax situation is resolved -
-Preemption could be amended into another bill at a later date

ARKANSAS
Anti-Discrimination/
Smoking Restriction Preemption

Summary: Would protect smokers from hiring/promotion discrimination -- Would preempt local governments' ability to impose restrictive smoking ordinances

Status: No legislative session in 1990 -- Strategy sessions for 1991 will begin later this year

CALIFORNIA
* Smoking Restriction Preemption

Summary: Would preempt local governments from passing restrictions on smoking in public and private places -- Would grandfather existing local restrictions while creating a state law to establish minimal private places/workplace smoking policy

Status: Plans have been postponed -- Legislative climate is not conducive to this type of legislation at the present time

* Sampling Preemption

Summary: Would set state standards and prohibit local restrictions on sampling

Status: Language is being drafted -- Assemblyman Filante to sponsor bill -- Waiting for outcome of pending Los Angeles city sampling ordinance -- "Spot bill" has been introduced so that issue can be addressed at future date

COLORADO

* H1123 Anti-Discrimination

Summary: Would make it unlawful to prohibit legal activities as a condition of employment

Status: House Agriculture, Livestock & Natural Resources Committee amended bill to prohibit employers from terminating employment due to worker's engaging in any lawful activity during nonworking hours unless restriction is a bona fide occupational requirement, would cause conflict to interest or is reasonably related to employment -- House approved bill 2/7 -- Goes to Senate Business Affairs & Labor Committee -- Attempts will be made to amend bill in the Senate -- Do not expect opposition from sponsor and expect House to concur with amendments

CONNECTICUT

Excise Tax Rollback

Summary: Would roll back state excise tax (40-cents) to that of neighboring Rhode Island (37-cents) or New York (33-cents)

Status: Roll back would be attempted only through "raised committee bill" to be included in the FY 1991 budget -- This plan is very preliminary and will not be attempted if the industry consensus is that the dangers are too great -- Further industry discussions slated

* Anti-Discrimination

Summary: Would prohibit private employers from using non-job-related personal behaviors as a criteria for employment or promotions

Status: Amendment will be "raised committee bill" out of Labor Committee -- The state AFL-CIO has agreed to introduce measure as amendment to a labor and/or personnel bill, when appropriate -- Likelihood of passage in the 1990 session is not great

Smoking Restriction Rollback

Summary: Would require that a smoking car be included on all MTA commuter trains beginning or ending in Connecticut while operating in the state -- Would overturn ban imposed on Metro North line by New York MTA

Status: Bill has been narrowly defeated for two years -- Efforts will be made again this year to obtain passage -- Sponsor has been identified -- Issue to be raised by Transportation Committee and attached to another transportation or tobacco-related measure -- NOTE: MTA is in the first of three-year contract. Our measure would be applicable to a new MTA contract.

Indoor Air Quality

Summary: Would establish state-wide IAQ standards (including ETS) for workplaces

Status: AFL-CIO has adopted resolution supporting bill and will sponsor legislation -- Bill has been drafted and labor is working the measure

*** Comprehensive Minors Legislation**

Summary: Would regulate sampling of tobacco products -- Would regulate vending machine placement -- Would amend existing prohibition on sale to persons under age 18 to also prohibit purchase or possession by minors or causing a minor to purchase tobacco products -- Would preempt local regulation of sales, sampling and vending

Status: Will be considered as alternative to comprehensive smoking restriction bill and may be offered by early March - This bill is patterned after MA S2212 (1989 bill)

DELAWARE

S210 Anti-Discrimination

Summary: Would prohibit discrimination against individuals who use tobacco products in private workplaces

Status: Senate passed S210 before end of 1989 session -- Bill carried over to 1990 and is pending in the House -- Bill is expected to move by mid-March

DISTRICT OF COLUMBIA
Indoor Air Quality

Summary: Would require public buildings to provide minimum ventilation as prescribed by ASHRAE for public buildings -- Would require public buildings to provide space to test and monitor indoor air quality

Status: Bill has been drafted at labor's request -- Labor is waiting for opportunity to introduce the bill -- Crisis in City leadership may alter strategies during 1990, as players jockey for political position

FLORIDA
Anti-Discrimination

Summary: Would prohibit employment discrimination on the grounds that individual is a smoker

Status: All proactive plans are on hold pending outcome of Governor's proposal for a 19-cent per pack cigarette tax increase -- Session does not begin until April -- Proactive efforts may be postponed until 1991

Smokers' Rights

Summary: Would clarify present state language to allow smokers to use tobacco products in public places

Status: Plans still being formulated -- Proactive efforts may be postponed until 1991 due to tax situation

Sampling Preemption/Advertising

Summary: Would liberalize and protect advertising rights -- Would protect right to sample tobacco products in conformance with Industry Code

Status: Plans still being formulated -- Proactive efforts may be postponed until 1991 due to tax situation

HAWAII

* H2989, S2780 Ad Valorem Tax Rate

Summary: Would repeal state's ad valorem tax structure and replace it with an equitable per-pack excise tax rate

Status: House Finance Committee has agreed to report bill favorably; has not yet been reported to House floor -- Companion bill, S2780 was held in Senate Health Committee 2/15 -- If House bill crosses over to the Senate, bill may be killed and provisions amended to vehicle bill -- Progress of bill may be impeded by introduction of bills to ban tobacco sales and tax rate increase to cover "social costs"

IDAHO

Anti-Discrimination

Summary: Would prohibit employment discrimination

Status: Opportunities are being explored to introduce legislation either as an amendment to a smoking restriction bill or to find sponsor who will introduce as a separate bill -- To facilitate passage, it is important that the industry not be identified as a sponsor

* Indoor Air Quality

Summary: Would enact indoor air quality and ventilation standards

Status: Plan is not being pursued because efforts to obtain essential third party allies were unsuccessful

ILLINOIS

H1695 Anti-Discrimination/
Smokers' Rights/
Smoking Restriction Preemption

Summary: Would restrict smoking in various public places - Would allow smoking areas to be designated in workplace and places open to the public -- Would prohibit discrimination against anyone who exercises rights under this act -- Would prohibit localities from adopting smoking restriction legislation (exempts localities that have passed such an ordinance prior to 10/1/89)

Status: Bill was signed by Governor 1/9/90

Sampling/Advertising Preemption

Summary: Would preempt local sampling and outdoor advertising ordinances

Status: Due to Senate rules on emergency legislation, it may not be possible to get a bill filed until 1991 -- Legislative measures will be closely monitored for amendment opportunities

IOWA

*** Smoking Restriction Preemption**

Summary: Amendment would preempt localities from adopting smoking restriction ordinances

Status: House passed smoking restriction bill HF209 1/19/90 with amendments -- Bill has been assigned to Senate Human Resources Committee where subcommittee has been appointed to study bill -- Attempts will be made to amend bill to include explicit local preemption clause

*** Sampling/Tax Code**

Summary: Would eliminate Iowa's de facto sampling ban by changing the revenue code to allow sample packages of six or more cigarettes

Status: Project on hold while developing alliance with wholesalers and legislative language

KANSAS

Sampling Preemption

Summary: Amendment would provide for minimal state regulation of sampling and prohibit local regulation of sampling

Status: Committee on Public Health and Welfare tabled the sampling ban bill 1/18/90 -- Unless the bill is voted back before the committee or another bill is introduced, proposed amendments will not be necessary or prudent at this time

KENTUCKY

*** H628 Anti-Discrimination**

Summary: Would provide for fair and equal treatment of employees who smoke -- Would forbid bias in hiring and promotions -- Prohibits sale of tobacco products to minors under age of 16

Status: Bill was introduced 2/16

Smokers' Rights

Summary: Would prohibit restrictions on the use of a Kentucky agricultural product

Status: Bill has been drafted by Rep. Gedling -- Introduction of the bill has been delayed due to Governor's introduction of 7-cent cigarette tax -- Proactive efforts will resume when tax situation is resolved

LOUISIANA

*** Smokers' Rights**

Summary: Would guarantee smokers' rights to use tobacco products in public places

Status: Strategy meeting has been held -- Legislation being drafted -- Proposed 20-cent per pack cigarette tax would delay efforts on all proactive plans

Smoking Restriction Preemption

Summary: Would preempt local governments' ability to impose smoking restriction ordinances

Status: Senator has agreed to sponsor legislation -- Working to have local ordinance in Lake Charles amended or repealed to help persuade other cities to accept preemption -
- Legislative session begins in April

MAINE

Anti-Discrimination

Summary: Would prohibit employers from using off-the-job personal activities as considerations for hiring, firing or promotion decisions

Status: Language expected to be amended to a labor bill -- AFL-CIO has agreed to introduce -- Due to short session, likelihood of passage is not great

Indoor Air Quality

Summary: Would require that new state buildings meet ASHRAE ventilation standard -- Would establish statewide IAQ standards for all workplaces, both public and private

Status: AFL-CIO has agreed to introduce bill this session -- Due to short session, likelihood of passage is not great

Comprehensive Minors Legislation

Summary: Would regulate sampling of tobacco products -- Would regulate vending machine placement -- Would amend existing prohibition on sale to persons under age 18 to also prohibit purchase or possession by minors or causing a minor to purchase tobacco products -- Would preempt local regulation of sales, sampling and vending

Status: Measure will be introduced only if passage appears likely -- Maine Commission on Smoking Report, to be issued later this year, may make bill introduction counterproductive -- If so, an effort will be mounted in 1991

MARYLAND

*** H1246, S721 Anti-Discrimination**

Summary: Would prohibit discrimination in conditions of employment based on whether person is a smoker or nonsmoker -- Would prohibit requiring employees to abstain from use of tobacco products during nonworking hours

Status: H1246 was introduced 2/6 and referred to Environmental Matters Committee; hearing scheduled 3/6 -- S721 was introduced same day and referred to Judicial Proceedings Committee; hearing scheduled for 3/7

**MASSACHUSETTS
Anti-Discrimination**

Summary: Would prohibit private employers from using off-the-job personal activities as considerations for hiring, firing or promotion decisions

Status: Amendment to be included in appropriate legislative vehicle

Indoor Air Quality

Summary: Would establish state-wide IAQ standards for workplaces

Status: AFL-CIO is in the lead on this bill -- H2771 to be reintroduced from 1989 -- Amendments will be made including anti-discrimination provisions

Comprehensive Minors Legislation

Summary: Would regulate sampling of tobacco products -- Would regulate vending machine placement -- Would amend existing prohibition on sale to persons under age 18 to also prohibit purchase or possession by minors or causing a minor to purchase tobacco products -- Would preempt local regulation of sales, sampling and vending

Status: Plans include the reintroduction of 1989's S2112; also have a measure ready that addresses sampling only

Advertising Revenue Maximization

Summary: Would expand existing law requiring MBTA to maximize non-transportation related revenues, including advertising, to include all public authorities and state agencies that engage in advertising

Status: Provision could be attached as an outside section to the FY 1991 budget in June -- However, without a comprehensive MBTA study, chances of passage are remote

Local Restaurant Restriction Rollback

Summary: Would reduce stringent local restaurant smoking restriction ordinance to the level of the state statute's requirements

Status: Five cities have been targeted -- Town meetings scheduled in these cities in March -- Restaurant owners will be selected to introduce rollback ordinances

MISSISSIPPI

**Smokers' Rights/
Smoking Restriction Preemption**

Summary: Would guarantee smokers' rights to use tobacco products in public places -- Would preempt local governments' ability to impose restrictive smoking restriction ordinances

Status: Due to other industry concerns, legislative leadership has recommended that proactive legislative plans not be pursued this session

MISSOURI

*** H1044, S607 Anti-Discrimination**

Summary: Would prohibit employers from refusing to hire, discharge or otherwise disciplining an employee for the use of tobacco products outside the course of employment

Status: S607 was heard in Senate Labor Committee 2/7 -- No action taken -- House Human Rights & Resources Committee gave favorable report to H1044 1/30 -- Has not been scheduled for floor action

*** Smoking Restriction Preemption**

Summary: Would limit scope of state-wide smoking restrictions by prohibiting local governments from adopting restrictive smoking restriction ordinances

Status: Efforts to amend smoking restriction bill H1055 with preemption language failed in committee -- There is no chance to amend bill on House floor -- Plans now are to kill restriction bill

NEBRASKA

*** Smoking Restriction Preemption**

Summary: Would amend pending workplace restriction bill L269 to prohibit localities from adopting more restrictive local smoking laws, rules and regulations

Status: L269 passed Health Committee 1/19/90 -- Two amendments were added in committee that makes the proposal more objectionable -- Local preemption clause would serve no useful purpose at this time -- Attempts are being made to kill bill outright -- Local preemption may be a viable project for the 1991 session

NEVADA
Anti-Discrimination

Summary: Would prohibit discrimination against smokers in hiring and employment practices

Status: Legislature is not in session in 1990 -- Strategy is being planned and legislation drafted for 1991

NEW HAMPSHIRE
Indoor Air Quality

Summary: Would expand existing law requiring some restaurants to maintain ASHRAE ventilation standards by establishing statewide indoor air quality/ventilation standards for all workplaces

Summary: Due to passage of 4-cent cigarette tax and pending workplace smoking restriction bill, proactive effort is on-hold -- Working with AFL-CIO to introduce measure in House Committee as substitute to Senate's onerous restriction bill, S379

NEW JERSEY
* S2232 Anti-Discrimination

Summary: Would prohibit employers from hiring or firing individuals because of smoking/nonsmoking preferences

Status: Bill has been referred to Senate Labor, Industry and Professions Committee; no Assembly bill yet

Smoking Restriction Preemption

Summary: Would preempt municipalities from enacting their own smoking laws

Status: Due to changes in leadership in both Houses and a new Governor, proactive measure will not be introduced until assessments of new political climate can be made, and additional research on general local preemption matters can be completed

NEW YORK

S6133 Anti-Discrimination

Summary: Would make it illegal to discriminate against a person who smokes during non-working hours

Status: Bill carried over from 1989 session in Senate -- Pending in Senate Investigation, Taxation and Government Operations Committee -- No date for hearing scheduled -- May be more comprehensive anti-discrimination bill introduced in the future

Advertising Revenue Maximization

Summary: Would require mass transit authorities to maximize advertising revenues from non-fare box revenues

Status: Legislation has been drafted -- Contacts are being made with key fiscal staff in both houses and with Governor's office -- Bill will not be worked until after budget/tax cycle is finished

Small Business Exemption from Smoking Law

Summary: Would exempt from current law businesses with 25 or fewer employees and/or retail establishments with less than 500 square feet of common space open to the public

Status: After 12 years debating smoking restriction issue, legislator support for bill is minimal -- Action to be postponed until 1991 unless a measure that modifies the state smoking law is introduced and small business exemption could be incorporated

OHIO

Smoking Restriction Preemption

Summary: Would preempt localities from adopting smoking restriction ordinances

Status: Local tax issues to take legislative precedence -- In addition, due to election and limited legislative session, action may be postponed until after November election

OKLAHOMA

* H1812 Anti-Discrimination

Summary: Would prohibit employers from refusing to hire, discharge or otherwise disciplining an employee for the use of tobacco products outside the course of employment

Status: Bill was referred to Business & Commerce Committee -- No hearings has been scheduled -- Bill must be heard in house of origin by 3/1 to move forward

PENNSYLVANIA

Advertising Revenue Maximization

Summary: Would require mass transit authorities to maximize advertising revenues from all possible sources

Status: Industry strategy session to be held in 1st quarter -- Efforts will be made to include advertising revenue maximization language into FY 1990-1991 state budget -- State budget to be adopted by 6/30/90

RHODE ISLAND

* Anti-Discrimination

Summary: Would prohibit discrimination against smokers in hiring and employment practices

Status: At the request of the state ACLU and AFL-CIO, Rep. Boeniger introduced the bill -- The industry must remain in the background on the issue -- Attempting to encourage ACLU to introduce similar legislation in the other five New England states

SOUTH CAROLINA

S138, H3303 Anti-Discrimination/
Smokers' Rights/
Smoking Restriction Preemption

Summary: Amendments would prohibit discrimination against smokers -- Would establish mandatory set-aside areas for smokers -- Would preempt local government from adopting smoking restriction ordinances

Status: H3303 is pending in Medical, Military, Municipal Committee -- Subcommittee to report back to Committee during week of February 19 -- Will attempt to amend S138 and companion bill H3303 which restrict smoking in public places with favorable amendments -- Both bills carried over from 1989

TENNESSEE

Smokers' Rights

Summary: Would provide for smoking sections for adult employees on school grounds -- Would prohibit smoking on school busses where minors are present

Status: Provisions were amended into S1072 during 1989 -- Bill is pending in the House

* S2092, H2131 Smokers' Rights/
Smoking Restriction Preemption

Summary: Would require the heads of all state agencies, including public institutions of higher education, to protect the rights of smokers and nonsmokers -- At least one area indoors in each workplace to be designated for smoking

Status: S2092 was amended in State & Local Government Committee and then passed Senate 2/8 -- Goes to House -- Companion bill, H2131 passed State & Local Government Committee 2/20 -- Bill goes to Calendar & Rules with recommendation for passage -- Possible amendments to both bills include local smoking restriction preemption

* H1783, S1962 Anti-Discrimination

Summary: Would make it an unlawful employment practice to discriminate against an individual because individual is a smoker or nonsmoker -- Would prohibit employer from requiring an employee to abstain from using tobacco products outside employment

Status: H1783 was recalled from General Welfare Committee and referred to Commerce Committee 2/17 -- S1962 was introduced and is pending in Senate Commerce Committee

UTAH

* H331 Anti-Discrimination/
Smokers' Rights

Summary: Would prohibit hiring or employment discrimination against smokers or nonsmokers -- Would permit smoking in areas now totally nonsmoking

Status: Bill was defeated on House floor, 38-32

VERMONT

*** H850 Anti-Discrimination/
Smoker's Rights**

Summary: Would prohibit private employers from using off-the-job personal activities as consideration for hiring, firing or promotion decisions -- Would amend existing workplace smoking law to allow smoking areas to be designated based on majority (instead of current two-thirds) vote by employees in workplace

Status: Bill has been introduced and referred to General Affairs Committee

Indoor Air Quality

Summary: Would establish state-wide IAQ standards for workplaces

Status: Proposed indoor air quality amendments will be raised during debate on smoking restriction bill -- State AFL-CIO will lead again in 1991 if we are unsuccessful in 1990

H98, H177, S14 Smokers' Rights

Summary: Would amend law to require simple majority vote to establish smoking areas in unenclosed workplace areas (current law requires 75% majority to permit smoking in unenclosed areas)

Status: Bills carryover from 1990 session -- Hearing date has not been scheduled

*** H771 Comprehensive Minors
Legislation**

Summary: Would regulate sampling of tobacco products -- Would regulate vending machine placement -- Would amend existing prohibition on sale to persons under age 18 to also prohibit purchase or possession by minors or causing a minor to purchase tobacco products -- Would preempt local regulation of sales, sampling and vending

Status: Hearing was held in House Health & Welfare Committee 1/31 -- No action taken -- Additional language clarifying bill has been prepared as substitute amendment -- Next action occurs at hearing on 2/22

Local Tax Preemption

Summary: Would prevent individual cities and towns from enacting local excise taxes on cigarettes

Status: Because of budget deficit, proactive action is not appropriate until 1991

VIRGINIA

* H1055 Smokers' Rights/
Smoking Restriction Preemption

Summary: Would prohibit employers from banning smoking in private workplaces -- Would prevent localities from enacting smoking restriction laws

Status: Original industry sponsored bill was defeated in the Senate -- Because a restriction bill is going to pass in Virginia this year, attempts are being made to amend Substitute bill H1055 -- As passed by House 2/12, H1055 would require "reasonable no-smoking areas" to be designated in all state and local government buildings -- Allows local governments to enact smoking restriction ordinances with certain limits -- Would allow ordinances adopted prior to 7/1/89 to be retained even if inconsistent with state law -- Would allow local ordinances to include language relating to smoking in workplaces so that employers regulate smoking as they deem appropriate -- Written agreements may be adopted and smoking may not be banned entirely without consent of 2/3 of employees unless ban is subject of contract of employment -- Senate Local Government Committee amended bill to clarify that businesses with total workplace smoking bans in effect before 7/1/90 could continue to enforce such policies -- Committee vote postponed to 2/27

* Local Tax Preemption

Summary: Would cap local cigarette tax authority of cities and towns to 20 cents-per-pack

Status: Plan failed to receive legislator support -- Attempt to pursue plan during 1991 session -- Awaiting outcome of Governor's committee report on financing of local government -- Local taxes may be reorganized

WASHINGTON

* H2773 Anti-Discrimination

Summary: Would ensure that smokers are not discriminated against in employment practices

Status: Bill was extensively amended by Commerce & Labor committee 2/2 -- Amendment would allow employers to offer financial incentives for employees to stop smoking -- Bill died in House Rules Committee 2/12 -- It is unlikely that a germane bill can be found for a vehicle in the remainder of this session, but are still looking

WISCONSIN

*** Anti-Discrimination**

Summary: Would prohibit employers from discriminating against an employee for off-the-job activities

Status: Language has been submitted for drafting but because backlog for drafting requests is substantial, unlikely that free standing bill will be introduced -- Attempts will be made to identify vehicle bill -- Chances are good for introduction in 1991 legislative session

Indoor Air Quality

Summary: Would have amended either one of two smoking restriction bills by requiring new or renovated state-owned buildings to comply with the ASHRAE ventilation standard

Status: Smoking restriction bill S66 was signed by Governor -- It was not possible to amend bill with indoor air quality requirements