

THE TOBACCO INSTITUTE

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GEORGE R. MINSHEW
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M E M O R A N D U M

TO: Roger Mozingo
FROM: George MinsheW
DATE: June 6, 1987

NORTHERN SECTOR STATEWIDE S/R WITH PRE-EMPTION

A basic survey of the 25 northern sector states reveals the possibility of 12 states implementing local pre-emption thereby limiting the extent and seriousness of smoking restriction legislation in a local jurisdiction. In coming to the above conclusion, one should be cognizant that states which are listed as no (not probable) are much more definite than the 12 listed as yes (possible).

There are many variables which change daily as related to the state's legislature, local pressures, press promotion, allies, and our own strength to carry forth such an endeavor through legislative channels. Most of these variables move down hill rather than up in our favor and the task will become more difficult each day.

The major question which is always predominant is, "will the industry benefit, even over the long haul from the support of such legislation?" The question is impossible to answer on any multistate level, but must be considered at a specific time and under a specific set of circumstances. That which exist today will not give us support for making these kinds of determinations for next month and certainly for next year.

While our policy is to fight for the protection of the Tobacco Industry and the consumer, it is not our practice to set a pace offering compromise or alternatives unless there is absolutely no light at the end of the tunnel. Our starting point today is a willingness to bring every resource we have to bear and to use these resources to defeat or survive the on-slaught of restrictive legislation we are faced with.

The one light at the end of the tunnel may be, in many cases, our dedication to stand and fight while not allowing the pendulum to swing toward an industry willing to offer or accept compromise.

The information attached, separated as to each state in the northern sector, comes from the S/A field staff and lobbyist, and is only for consideration and discussion.

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GEORGE R. MINSHEW
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NORTHERN SECTOR STATE ASSESSMENT PRE-EMPTION

	<u>YES</u>	<u>NO</u>
✓ Alaska		X
ARIZONA • Connecticut	X	
• Hawaii	X	
Idaho		X
Illinois		X
Indiana		X
• Iowa	X	
• Maine	X	
• Massachusetts	X	
Michigan		X
Minnesota		X
Montana		X
• Nebraska	X	
New Hampshire		X
New Jersey		X
New York	X	
North Dakota	X	
Ohio		X
• Oregon	X	
Pennsylvania		X
Rhode Island		X
• South Dakota	X	
Vermont		X
• Washington	X	
• Wisconsin	X	

Raymond V

STATE/LOCAL SMOKING RESTRICTIONS

No

STATE OF ALASKA

1. Current state law on local preemption.

Local preemption is not addressed in current law.

2. Considerations for passage of state law with local preemption.

If legislation were introduced to modify current law it would be technically possible to add a local preemption provision. However, with the very stringent Anchorage ordinance and in view of the fact most of the population is in Anchorage, a local preemption is unlikely.

3. Prognosis for future activity on state and local smoking restriction legislation.

There will continue to be considerable anti-smoking efforts as long as Alaskans continue hearing about the numerous proposals in the state of Washington. In the next legislative session there will be proposals to strengthen state smoking restrictions. At this time, I have no knowledge of any further local proposals.

4. History of state and local smoking restriction legislation.

Alaska currently has comprehensive smoking restrictions in place. Again, Anchorage has gone a step further and completely banned smoking in city buildings.

STATE/LOCAL SMOKING RESTRICTIONS

No

STATE OF IDAHO

1. Current state law on local preemption.

Currently, there is no state law concerning local preemption.

2. Considerations for passage of state law with local preemption.

There has been very little local smoking restriction activity thus far in Idaho. However, a Beverly Hills type of ordinance will be introduced soon in the Sun Valley area. With so little local activity it would be of little value to seek passage of local preemption.

3. Prognosis for future activity on state and local smoking restriction legislation.

Anti-tobacco activity will no doubt continue on the state level simply because of the strong Mormon influence. Restriction legislation will continue to be difficult as long as it is approached in a moral and religious vein.

4. History of state and local smoking restriction legislation.

Idaho has a fairly comprehensive smoking restriction on the books currently. However, attempts will continue to be made to include the workplace.

Region III

CONFIDENTIAL

X 1987
Yes or No Year

Illinois
STATE

1. State law on local preemption - A) No
A) The Illinois code allows cities over 25,000 population -
counties over a 1.0M to adopt regulations without a vote of the
people.

2. Recommendation for passage of state law with local
preemption: A) No
 - . would legislature adopt local preemption
A) No
 - . strength of lobbyists
A) No issue - therefore no strength
 - . strength of allies
A) would be opposed
 - . other considerations
A) No issue

3. Prognosis of future activity on state and local smoking
restriction legislation
 - . anti-tobacco movement legislative
A) It will continue because of health groups
 - . continuing state problems
A) Same
 - . continuing local legislative
A) Same
 - . political climate
A) Will not change

4. History of state and local smoking restriction legislation
in the state
 - . existing state law
A) None
 - . severity of local laws
A) Will have an adverse effect on the Illinois State Assembly in
the year 1988.

CONFIDENTIAL

X 1987
Yes or No Year

Indiana
STATE

1. State law on local preemption - A) Yes
A) Indiana code will not allow for a preemption of the code for cities, towns or counties for smoking restriction ordinances. EXAMPLE: But they cannot regulate excise taxes at the local level. Our counsel tried to get the smoking restriction preemption this year (1987) within Section 8 of the Code, but failed.
2. Recommendation for passage of state law with local preemption: A) No
 - . would legislature adopt local preemption
A) No
 - . strength of lobbyists
A) No strength
 - . strength of allies
A) Chambers and the state and local county-city association would be opposed
 - . other considerations
A) We should not try to make it an issue
3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement legislative
A) Activity will increase because of health groups and the press
 - . continuing state problems
A) Yes - because of the awareness of issues
 - . continuing local legislative
A) Same as above
 - . political climate
A) It's popular for them to be on the health side of the smoking restriction issue
4. History of state and local smoking restriction legislation in the state
 - . existing state law
 - . severity of local laws
A) HB-1007 - Prohibits smoking in government buildings (state, city and county) unless it is in a designated smoking area. Effective September 1, 1987.

TI0044-0117

CONFIDENTIAL

X 1987
Yes or No Year

Michigan
STATE

1. State law on local preemption - A) No
A) There is no law on local preemption. On individual issues they (locals) can adopt ordinances.
2. Recommendation for passage of state law with local preemption: A) No
 - . would legislature adopt local preemption
 - A) In some cases. Gun law is the example
 - . strength of lobbyists
 - A) Depends on the issue
 - . strength of allies
 - A) Allies in most issues would oppose
 - . other considerations
 - A) Michigan General Assembly do sometimes preempt the locals.
3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement legislative
 - A) Will continue, but with less effect
 - . continuing local legislative problems
 - A) They will adopt Public Act 198
 - . continuing state problems
 - A) At a minimum
 - . political climate
 - A) No change anticipated
4. History of state and local smoking restriction legislation in the state
 - . Existing state law
 - . severity of local laws
 - A) Public Act 198 was adopted in 1986 and allows local government's and public places to adopt the state policies. They are doing so and we believe the severity has been minimized.

CONFIDENTIAL

Clean Indoor Air law passed 1975.

MINNESOTA

1. State law on local preemption

None.

2. Recommendation for passage of state law with local preemption:

- . would legislature adopt local preemption

No, not this year.

- . strength of lobbyists

Very strong.

- . strength of allies

Strongest yet since constant local grassroots efforts have been in effect. Wholesalers, Northwest group, pleasant surprise.

- . other considerations

Legislature deeply affected by many aspects; religious, ethnic, partisan and geographic distribution.

3. Prognosis of future activity on state and local smoking restriction legislation

- . anti-tobacco movement

Anti-tobacco legislators, at this point, would see through any preemption attempt. Anti-tobacco legislators feel that strategically keeping us busy at the local level, weakens us on the state level.

- . continuing local legislative problems

Hennipen County, (Minneapolis), Ramsey County (St. Paul), St. Louis County (Duluth) - big problems and constant worries.

- . continuing state legislative problems

Everywhere.

- . political climate

Hostile.

4. History of state and local smoking restriction legislation in the state

- . existing state law

First in the country, since 1975.

- . severity of local laws

Difficult to assess, but not more severe than state law.

STATE/LOCAL SMOKING RESTRICTIONS

No

STATE OF MONTANA

1. Current state law on local preemption.

None

2. Considerations for passage of state law with local preemption.

At this time there is practically no local activity regarding smoking restrictions. Therefore, there is probably little need for local preemption.

3. Prognosis for future activity on state and local smoking restriction legislation.

The anti-tobacco forces will continue to introduce legislation to strengthen the current law on the state level. However, the state legislature does not seem to be eager to impose further restrictions.

4. History of state and local smoking restriction legislation.

Current Montana state law requires posting of smoking and non-smoking areas in all public buildings including restaurants and offices. The only buildings which must have non-smoking areas are government offices.

NEW HAMPSHIRE

1. STATE LAW ON LOCAL PREEMPTION

The status of state legislation containing a local preemption clause is currently being reviewed by Sulloway, Hollis & Soden in New Hampshire. The initial impression is that despite a strong home rule tradition, local preemption would survive a legal challenge.

It is also reasonable to assume that a "non-severability" clause requiring voiding of the entire law should any portion of it be deemed unconstitutional would also survive a legal challenge.

2. RECOMMENDATION FOR PASSAGE OF STATE LAW WITH LOCAL PREEMPTION

- | | |
|---|------------------------|
| . WOULD LEGISLATURE ADOPT
LOCAL PREEMPTION | . STRENGTH OF ALLIES |
| . STRENGTH OF LOBBYISTS | . OTHER CONSIDERATIONS |

Given the nature of the 400-member New Hampshire legislature, it is unlikely that it would enact legislation restricting the abilities of the cities and towns to govern themselves in any area. Our lobbyist would surely be required to work any type of legislation through the process on his own. The allies that exist in New Hampshire, while offering solid support, are generally not sophisticated enough to understand or assist in this type of legislative approach.

I would suggest, however, that it may be possible to work closely with the Northern New England Coalition for Clean Indoor Air to advance their non-tobacco-specific clean indoor air legislation. If that process and our support of it is successful, then it may provide us with an opportunity to replace existing public smoking legislation with clean indoor air legislation. Negotiations with the coalition are continuing in both Boston and Washington.

3. PROGNOSIS OF FUTURE ACTIVITY ON STATE AND LOCAL SMOKING RESTRICTION LEGISLATION

- | | |
|--|--|
| . ANTI-TOBACCO MOVEMENT | . CONTINUING STATE LEGISLATIVE
PROBLEMS |
| . CONTINUING LOCAL LEGISLATIVE
PROBLEMS | . POLITICAL CLIMATE |

It is unlikely that the anti-tobacco movement in New Hampshire will shift its interests to the local level. During 1988 the primary interest of the New Hampshire legislative community will be the presidential primaries. It is unlikely that substantive measures will be raised or debated during what is likely to be a shortened session. There may be some movement to consolidate the various and sometimes conflicting anti-tobacco legislation currently on the books.

4. HISTORY OF STATE AND LOCAL SMOKING RESTRICTION LEGISLATION IN THE STATE
. EXISTING STATE LAW . SEVERITY OF LOCAL LAWS

The state currently restricts smoking in publicly-supported buildings and requires workplace policies of all employers. During 1987 unique restaurant legislation was passed requiring restaurants to provide "clean indoor air" regardless of their policies on smoking. There are no local tobacco restrictions separate from those required by the 1981 law requiring policies in public buildings.

New Jersey
 STATE

1. State law on local preemption

There is no state law on local preemption in New Jersey. There are at present a package of six bills adopted in 1985 which restrict smoking in public places.

2. Recommendation for passage of state law with local preemption:

- . would legislature adopt local preemption
- . strength of allies
- . strength of lobbyists
- . other considerations

No, the Legislature would never adopt local preemption. The strength of allies is such that they believe they can live with the statutes presently on the books. Local government in New Jersey is not as strong as in either New York or Pennsylvania and because of the present statewide statutes, localities have been completely inactive in considering smoking restriction regulations.

3. Prognosis of future activity on state and local smoking restriction legislation

- . anti-tobacco movement
- . continuing state legislative problems
- . continuing local legislative problems
- . political climate

While GASP remains very active, the Legislature seems content with the present statutes regulating smoking. Local legislative problems for the time being will not occur. With regard to the political climate, with the removal of Assemblyman Herman from the Legislature, no new champion of public smoking restriction has surfaced. Continuing state legislative problems may focus on taxes, advertising restrictions and sampling bans.

4. History of state and local smoking restriction legislation in the state

- . existing state law
- . severity of local laws

In 1985 existing state laws were adopted restricting smoking in public places, requiring workplace policies and restaurants posting notices of their policies. These statutes were significantly watered down over a period of six years and were viewed as mild. There are no statutes at the local level at the present time.

CONFIDENTIAL

X 1987
Yes or No Year

Ohio
STATE

1. State law on local preemption - A) No
 - A) There is one county in the state with a charter government. The Ohio codes allows for health board reeregulation in the county of Hamilton.

2. Recommendation for passage of state law with local preemption: A) No
 - . would legislature adopt local preemption
 - A) Depending on the issue. The Ohio Assembly would do it statute by statute
 - . strength of lobbyists
 - A) Lobbyist strength for a smoking restriction preemption would be almost nil
 - . strength of allies
 - A) Most allies would oppose
 - . other considerations
 - A) Try for a modified smoking restriction bill at the state assembly level in 1987. To apply to state, city and county government buildings only

3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement legislative
 - A) Health groups will continue for a very severe smoking restriction bill with the state assembly
 - . continuing state problems
 - A) Smoking restrictions
 - . political climate
 - A) Will not change
 - . continuing local legislative problems
 - A) Health groups have the pressure on local governments and will continue

4. History of state and local smoking restriction legislation in the state
 - . existing state law
 - A) None
 - . severity of local laws
 - A) Local laws on smoking restriction are in great numbers of introduction and the passages will cause the Ohio State Assembly to consider smoking restriction legislation in Ohio more so in the fall session of 1987.

Pennsylvania
STATE

1. State law on local preemption

There are no state laws on local preemption in Pennsylvania.

2. Recommendation for passage of state law with local preemption:

- | | |
|--|------------------------|
| . would legislature adopt local preemption | . strength of allies |
| . strength of lobbyists | . other considerations |

It is extremely unlikely the Legislature would adopt local preemption. Allies have indicated they would support reasonable restrictions. With Rep. Michael Dawida seriously promoting a statewide "Clean Indoor Air Act" it is unlikely that the Legislature would attempt to shift to local preemption. Legislative counsel has been successful in holding off any legislation and this scenario will likely exist for sometime in the future.

3. Prognosis of future activity on state and local smoking restriction legislation

- | | |
|---|---|
| . anti-tobacco movement | . continuing state legislative problems |
| . continuing local legislative problems | . political climate |

The anti-tobacco movement in the Legislature is strong as well as in the City of Pittsburgh. There will continue to be local level problems in such communities as Philadelphia, Erie, Allentown/Bethlehem/Easton and others. Continued state legislative problems will include tax proposals, advertising restrictions and vending machine sales. The political climate is not severe in that Rep. Dawida is not viewed as a leader and enjoys little support from leadership.

4. History of state and local smoking restriction legislation in the state

- . existing state law
- . severity of local laws

There are no existing state statutes which restrict public smoking but Rep. Dawida will remain in the forefront in promoting a statewide restriction law. There are no statewide smoking restriction laws but problems have existed in Philadelphia, Erie and many other localities.

RHODE ISLAND

1. STATE LAW ON LOCAL PREEMPTION

It would appear that despite a strong home rule tradition, local preemption would survive a legal challenge. It is also reasonable to assume that a "non-severability" clause requiring voiding of the entire law should any portion of it be deemed unconstitutional would also survive a legal challenge.

2. RECOMMENDATION FOR PASSAGE OF STATE LAW WITH LOCAL PREEMPTION

- | | |
|---|------------------------|
| . WOULD LEGISLATURE ADOPT
LOCAL PREEMPTION | . STRENGTH OF ALLIES |
| . STRENGTH OF LOBBYISTS | . OTHER CONSIDERATIONS |

I would not recommend the introduction of preemptive legislation in the state. The attitude of the legislature is such that this type of legislation would not have a chance of passage because the state would be unwilling to restrict the ability of the cities and towns to govern themselves. Further, at this time, there have been no local legislation beyond state requirements.

3. PROGNOISIS OF FUTURE ACTIVITY ON STATE AND LOCAL SMOKING RESTRICTION LEGISLATION

- | | |
|--|--|
| . ANTI-TOBACCO MOVEMENT | . CONTINUING STATE LEGISLATIVE
PROBLEMS |
| . CONTINUING LOCAL LEGISLATIVE
PROBLEMS | . POLITICAL CLIMATE |

The anti-tobacco movement has become more organized and active each year. It is reasonable future activity to be concentrated on restaurant restrictions and strengthening the workplace law.

4. HISTORY OF STATE AND LOCAL SMOKING RESTRICTION LEGISLATION IN THE STATE

- | | |
|----------------------|--------------------------|
| . EXISTING STATE LAW | . SEVERITY OF LOCAL LAWS |
|----------------------|--------------------------|

The smoking restriction law requires employers to adopt a smoking policy. A second law requires restaurants to have a smoking policy and post a sign. No city or town has adopted local smoking restrictions beyond the state's workplace law or fire code requirements.

VERMONT

1. STATE LAW ON LOCAL PREEMPTION

It would appear that despite a strong home rule tradition, local preemption would survive a legal challenge. It is also reasonable to assume that a "non-severability" clause requiring voiding of the entire law should any portion of it be deemed unconstitutional would also survive a legal challenge.

2. RECOMMENDATION FOR PASSAGE OF STATE LAW WITH LOCAL PREEMPTION

- | | |
|---|------------------------|
| . WOULD LEGISLATURE ADOPT
LOCAL PREEMPTION | . STRENGTH OF ALLIES |
| . STRENGTH OF LOBBYISTS | . OTHER CONSIDERATIONS |

I would not recommend the introduction of preemptive legislation in the state. The attitude of the legislature is such that this type of legislation would not have a chance of passage because the state would be unwilling to restrict the ability of the cities and towns to govern themselves. In fact, during the second year of the session (1988), it is not possible to substantially alter legislation enacted during the first year.

3. PROGNOSIS OF FUTURE ACTIVITY ON STATE AND LOCAL SMOKING RESTRICTION LEGISLATION

- | | |
|--|--|
| . ANTI-TOBACCO MOVEMENT | . CONTINUING STATE LEGISLATIVE
PROBLEMS |
| . CONTINUING LOCAL LEGISLATIVE
PROBLEMS | . POLITICAL CLIMATE |

The anti-tobacco movement has become more organized and active each year. It is reasonable future activity to be concentrated on restaurant restrictions strengthening the workplace law.

4. HISTORY OF STATE AND LOCAL SMOKING RESTRICTION LEGISLATION IN THE STATE

- | | |
|----------------------|--------------------------|
| . EXISTING STATE LAW | . SEVERITY OF LOCAL LAWS |
|----------------------|--------------------------|

The only state restriction law requires employers to adopt a smoking policy. The city of Burlington approved a workplace law, but it is the only city or town to adopted local smoking restrictions beyond the state's workplace law or fire code requirements.

EXTREMELY CONFIDENTIAL

STATE WIDE SMOKING RESTRICTIONS WITH PREEMPTION

State Activities has surveyed all states in an attempt to gain a clearer picture in discussing the question "is it prudent and/or possible to seek state level smoking restriction laws which preempt local jurisdictions?" Our basic survey reveals that 22 states may be considered for such preemption. In reaching the above conclusion we are cognizant that states which are listed as "possible" are done so with caution and the many variables which play an important role must be understood. The following points reflect major considerations in addressing the subject in any state:

1. How strong are the "Home Rule" concepts and will the legislative body consider preemption seriously?
2. What has been the past history as to local smoking restriction legislative success and what is the prognosis regarding local activity for future?
3. How strong is the in-state anti-tobacco movement; how well organized; what are their plans for the future?
4. Will our allies continue to support our industry position? Can resources continue to be provided to deal with local legislative threats?
5. Is there a state-wide smoking restriction law at present? What is the possibility of serious attempts to strengthen the law; can we defeat these attempts?
6. Does the industry weaken its position on all issues by adopting an alternative position on smoking restriction legislation? What are the pros and cons? Can such legislation be controlled?

The information attached, by state, comes from the State Activities field staff and lobbyists, and is only for consideration and discussion. It is not to provide a definite "yes" recommendation without serious SAPC discussion for each state.

STATES WHERE LOCAL PREEMPTION MAY BE POSSIBLE

Arizona	1988
*California	1987-1988
Colorado	1988
Connecticut	1988
Hawaii	1988
Iowa	1988
Kansas	1989
Louisiana	1987-1988
Maine	1988
Massachusetts	1988
Maryland	1988
*Missouri	1987-1988
Nebraska	1988
New Mexico	1988
*New York	1987-1988
North Dakota	1988
Oregon	1988
South Dakota	1988
Texas	1989
Washington	1988
*Wisconsin	1988
Wyoming	1988

*Influencing activity now happening

ARIZONA

1. State law on local preemption

Preemption is possible in this state.

During 1987 legislation was introduced in the Arizona legislature to authorize counties to adopt smoking restriction legislation. Apparently some counties do not feel that they have the authority without being specifically granted it by the legislature.

2. Recommendation for passage of state law with local preemption

- o would legislature adopt local preemption
- o strength of lobbyists
- o strength of allies
- o other considerations

Legislature would probably adopt a statewide law if our opposition were removed. Whether this could also contain preemption language is also possible if the language of the basic law were strong enough to satisfy the anti-smoking groups. In 1986 the anti-smokers in effect killed an effort to establish reasonable statewide regulation because the bill attempted to preempt.

Lobbyist can do it if the package can get sufficient active ally support.

Allies would have to be convinced that preemption would be in their own best interests before any active support could be expected. This would take considerable time and effort.

3. Prognosis of future activity on state and local smoking restriction legislation

- o anti-tobacco movement
- o continuing local legislative problems
- o continuing state legislative problems
- o political climate

There is an extremely active anti-smoking organization in Arizona principally in the Phoenix area, but willing to travel wherever opportunity exists.

They have picked off local situations one-by-one, but have begun to run into resistance and have slowed down some.

They have been very active at the state level, pushing for broad legislation in an effort to cover places not covered by local laws. They can be expected to continue to push strongly at the state level and are picking up adherents among the more liberal members of the legislature.

My general prognosis is that preemption is doable in Arizona, but we would probably have to give away a lot of ground to do it.

4. History of state and local smoking restriction legislation in the state

- o existing state law
- o severity of local laws

The two mega Arizona cities, Phoenix and Tucson plus about two-thirds of the suburban cities around Phoenix have adopted legislation restricting smoking in workplace and, to a degree restaurants. It is estimated that about 70% of the population in this state are now covered by some regulation. Several outlying smaller cities have so far flatly refused to adopt such laws. Others show some signs of weakening.

State law currently applies only to state buildings and agencies and is very permissive.

CALIFORNIA

1. State law on local preemption
 - o Because of the so-called Charter Cities Act in California, it is questionable whether preemption could be accomplished in any meaningful sense. Chip Nielson, who has dealt with this for other clients, will have a general opinion for us by June 11 or 12.
2. Recommendation for passage of state law with local preemption
 - . would legislature adopt local preemption
 - . strength of lobbyists
 - . strength of allies
 - . other considerations
 - o If done correctly, some local preemption could be accomplished. It is likely that some "grandfathering" of existing local law would have to take place.
 - o Lobbyists are strong enough if the package is right.
 - o Strength of allies is impossible to predict. Restaurant Association is known to be discussing a state-wide law. We would probably be better off to make sure their's is right and then just not oppose it.
3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement
 - . continuing local legislative problems
 - . continuing state legislative problems
 - . political climate
 - o Anti-smoking movement is very strong, especially ALA, ACS and to lesser degree the Non-Smoking Rights group.
 - o Local problems will continue, but I believe that most cities will view Beverly Hills as a mistake and refuse to go that far.
 - o We expect some state legislation to continue to be introduced, but with few exceptions our lobbyists have been able to deal with them.
 - o Political climate is not favorable to anything that is viewed as helpful to tobacco. We would have to accept some dangerous risks if we embark upon this slippery slope.

- o General prognosis is that California is so far down the road in terms of local enactments that meaningful preemption is problematic, i.e., how much would we have to give and would our allies accept that? They are the ones being regulated. Might our better cause be to require provision for the smoker?
4. History of state and local smoking restriction legislation in the state
- . existing state law
 - . severity of local laws
 - o California has had some state-wide regulation, i.e., grocery stores, restaurants in publicly-owned buildings, health care facilities beginning in the mid-seventies.
 - o Serious local legislation began to appear also in the mid-seventies, but became most evident after the defeat of Props 5 & 10 in 1978 and 1980.
 - o These laws are almost universally ignored because of lack of enforcement.
 - o The severity of local legislation reached its peak in 1987 with Beverly Hills and Rancho Mirage, where smoking is essentially banned in most indoor public and private restaurants. Curiously, Beverly Hills ordinance did not regulate workplace.

COLORADO

1. State law on local preemption

- o Legislative counsel in Colorado indicates that even though preemption is "theoretically" allowed, the issue is one which could be challenged by local government entities.

In 1986, an amendment (to preempt localities) was attempted in the Senate and surprisingly received substantial support. Its defeat was not due to any legal arguments.

2. Recommendation for passage of state law with local preemption

- . would legislature adopt local preemption
- . strength of lobbyists
- . strength of allies
- . other considerations

- o It is anticipated that the legislature will contend that this issue is being properly handled by local government but if a collective industry position is established and agreed upon by all segments (allies included), a statewide bill with preemption is a possibility.
- o The strength of the industry has focused on relationships built by legislative counsel. The erosion of political strength which has occurred is largely due to lack of support from traditional allies. Most of our allies have either softened their position or have done a complete reversal in support of legislation.
- o Due to the fact that numerous localities have already adopted severely restrictive measures and these laws are now the norm rather than the exception, any statewide measure with preemption would most probably be opposed by anti-tobacco forces unless the measure was extremely broad.
- o If the industry hopes to have any success with preemptive legislation, it must be attempted in 1988.

3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement
 - . continuing state legislative problems
 - . continuing local legislative problems
 - . political climate
 - o Colorado, together with California, Massachusettes and Texas, has been the site of more successes by antismoking groups than any other area of the country. Led by GASP and the ALA, anti-smoking activists have achieved enactment of smoking restriction ordinances in virtually all major cities and towns in the state.
 - o There is no doubt that antismoking groups will continue their quest for restrictive legislation in Colorado at the state and local level. There is also no doubt that they will continue to be successful. A very real possibility exists that efforts will be made to strengthen existing local smoking restriction ordinances, or perhaps to begin an initiative petition drive to place a statewide smoking restriction proposal on an election ballot.
 - o Our ability to kill smoking restriction legislation gets somewhat weaker each year due to the basic attitude of legislators on this issue.
4. History of state and local smoking restriction legislation in the state
 - . existing state law
 - . severity of local laws
 - o The existing state law does not cover food stores, retail stores, restaurants, government workplace or the private workplace.
 - o Local laws are extremely restrictive and go beyond the public place areas into the private sector.

CONFIDENTIAL

MAYBE 1988, 1989
Yes or No Year

CONNECTICUT

1. STATE LAW ON LOCAL PREEMPTION

It would seem that state law does allow local preemption. Like all of the New England states, the Connecticut constitution makes the cities and towns "creatures of the state." In essence, this would seem to give the state the power to restrict the legislative leeway of the municipalities.

While "home rule" statutes do exist, they do not overcome the preeminent power of the state.

Further, it would also be possible to include a "non-severability" clause in the statute. The effect of this would be to declare the entire law void if, as a result of a legal challenge, any part of the law were eliminated.

2. RECOMMENDATION FOR PASSAGE OF STATE LAW WITH LOCAL PREEMPTION:

- . WOULD LEGISLATURE ADOPT LOCAL PREEMPTION
- . STRENGTH OF LOBBYISTS
- . STRENGTH OF ALLIES
- . OTHER CONSIDERATIONS

Notwithstanding the relative strength and superior legislative abilities of our lobbyists or the comparative weakness of our allies in the state, it is unreasonable to assume that the state legislature would seriously consider any amendments to those tobacco-related laws enacted during the 1987 session. This would include the addition of local preemption to laws affecting smoking in the workplace or restaurants. If there is any opportunity, it may be related to sampling legislation but would only occur as a last resort effort. What may be possible is the enactment of some sort of non-tobacco-specific clean indoor air or "sick building" legislation.

I would not recommend Connecticut as a viable site for this type of action at this time.

3. PROGNOSIS OF FUTURE ACTIVITY ON STATE AND LOCAL SMOKING RESTRICTION LEGISLATION

- . ANTI-TOBACCO MOVEMENT
- . CONTINUING STATE LEGISLATIVE PROBLEMS
- . CONTINUING LOCAL LEGISLATIVE PROBLEMS
- . POLITICAL CLIMATE

The anti-tobacco movement in the state of Connecticut is one of the best organized and most active in the country. In 1988 it is reasonable to assume that legislation attempting to regulate sampling, advertising, and require the sale of self-extinguishing cigarettes will

be considered by the state legislature. In addition to this statewide legislation, the expansion of local legislative activities is possible in Connecticut. This will depend largely on the amount of publicity local ordinances receive in publications like the New York Times and Hartford Courant.

4. HISTORY OF STATE AND LOCAL SMOKING RESTRICTION LEGISLATION IN THE STATE

. EXISTING STATE LAW . SEVERITY OF LOCAL LAWS

At present there are two statutes referencing tobacco on the books. One requires restaurants of seventy-five seats or more to have a smoking section of undetermined size and location. There are no fines and penalties imposed for violations of the law. A second, initially enacted in 1983 and amended in 1987, imposes restrictions on smoking in the workplace. There are a variety of local public building restrictions, but they are all related to the statewide workplace law. To our knowledge, there are no tobacco-specific local ordinances that go beyond what is required by the state workplace law.

There is currently under consideration a ban on smoking in restaurants, workplaces, and public places in the town of Westport.

STATE/LOCAL SMOKING RESTRICTIONS

STATE OF HAWAII

Yes - Needed
Difficult to Accomplish

1. Current state law on local preemption.

None

2. Considerations for passage of state law with local preemption.

With all of the recent local activity in the various islands it would certainly be advantageous to enact local preemption. However, the state legislature may be reluctant to interfere in an area which is so visible and controversial. If past history is any indication, we would have few allies to assist in a battle for local preemption.

3. Prognosis for future activity on state and local smoking restriction legislation.

There will continue to be numerous attempts to pass more stringent smoking restriction legislation on both the local and state level. Once again, as we've noted in the past, Hawaii politics follows the lead of California on many issues including this one.

4. History of state and local smoking restriction legislation.

During each legislative session throughout the past several years, some type of anti-tobacco legislation has passed. In this year's legislative session smoking restriction legislation passed, but in an amended form. The anti-smoking forces will certainly be back to try again next session. Recently Hawaii and Kauai counties have dealt with very restrictive ordinances. It is likely this local activity will continue and in fact spread.

CONFIDENTIAL

Yes - Smoking law enacted 1987
Not yet signed by Governor.

IOWA

1. State law on local preemption

None.

2. Recommendation for passage of state law with local preemption:

- . would legislature adopt local preemption

Possible - only if an attempt were made to strengthen present state law.

- . strength of lobbyists

Very strong.

- . strength of allies

Member company strength very good, wholesaler strength nonexistent. New allies developed by phone banks, very good.

- . other considerations

Law that was passed is very weak. There will undoubtedly be an attempt to strengthen it in 1988.

3. Prognosis of future activity on state and local smoking restriction legislation

- . anti-tobacco movement

Will continue to attempt to strengthen.

- . continuing local legislative problems

Des Moines remains a problem.

- . continuing state legislative problems

Legislature preoccupied with budget problems, as soon as they straighten the budget out, they will probably come after us in this area (workplace smoking).

- . political climate

Governor hates tobacco industry, wife active in GASP.

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Preemption - Iowa
Page 2

4. History of state and local smoking restriction legislation in the state

- . existing state law

1987 stripped-down version, relatively weak.

- . severity of local laws

Weak.

KANSAS

1. State law on local preemption
 - o Preemptive legislation is allowed.

2. Recommendation for passage of state law with local preemption
 - . would legislature adopt local preemption
 - . strength of lobbyists
 - . strength of allies
 - . other considerations
 - o It is quite possible that the state legislature would agree with a statewide smoking restriction law which preempts localities. However, it would be necessary to strengthen our lobbying corp and initiate an active educational program with our allies in order to be successful.
 - o We can anticipate that the anti-tobacco forces will actively support a very stringent law if the preemption provision is included. The private workplace would most probably be included. The Kansas Medical Society and the ALA are strong and active.
 - o A two-year program will need to be initiated in order to pass legislation with a preemption. Therefore, 1989 would be a likely target date.

3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement
 - . continuing local legislative problems
 - . continuing state legislative problems
 - . political climate
 - o Anti-smoking fervor in Kansas is, for the moment, temporarily dormant. Kansas for Nonsmokers Rights and other groups seem to be satisfied with the legislation they have obtained at the state level. We can, however, anticipate that activity at the state and local level will continue to be a problem.

4. History of state and local smoking restriction legislation in the state
 - . existing state law

. severity of local laws

- o The smoking restriction law at the state level mainly involves public places and government buildings. No movement has been initiated to incorporate the private workplace.
- o The laws in a few localities (Topeka, Overland Park) are more stringent while several smaller towns have passed less restrictive ordinances affecting city-owned buildings and public transportation.

LOUISIANA

1. State law on local preemption:

Constitution of Louisiana permits preemption of various areas of rule by state law. It would be possible to preempt the cities right to pass a local clean indoor air act.

2. Recommendation of passage of state law with local preemption:

Legislation could and would adopt local preemption under certain conditions. However, before we could exempt commitment for such activities, leadership would have to review legislation in question.

Our allies, (i.e., restaurant association, hotel/motel association, Louisiana Association of Business and Industry, wholesale tobacco distributors association, retail grocers) have relatively good strength. They would, however, leave the critical activities of the passage of a preemptive clean indoor air act to The Tobacco Institute and the wholesale organizations.

We should consider involvement of the municipal league and association of parishes if we are to attempt passage of such legislation.

3. Prognosis of future activity on state and local smoking restriction legislation:

There is a strong anti-tobacco group in Louisiana. Their primary activities are in New Orleans and in state legislation. We'll see them continue to promote clean indoor air act at state level using Senator John Johnson as sponsor. He introduced two such bills this year. At this time we have those bills contained in committee. It appears we will be able to defeat that legislation this session.

The political climate is such that our best effort is to hold the line this year and survey the potential for change on a pro-active or a defensive effort after the November election.

4. History of state and local smoking restriction legislation in the state:

Over the years we have seen many pieces of legislation introduced at state level. Thus far, only smoking restrictions in elevators and enabling legislation in the Superdome has passed. While several cities have considered no-smoking legislation, none have been more severe than no smoking in council chambers.

At present, The Department of Health and Human Resources is trying to obtain clearance to establish non-smoking areas in its facilities. These facilities include state-run charity hospitals and clinics only.

MAINE

1. STATE LAW ON LOCAL PREEMPTION

Again, municipalities are creations of the state. Therefore, it is likely that local preemption is legal in the state of Maine. The question of non-severability may be a more difficult one, and TI counsel remains currently looking into the matter further.

2. RECOMMENDATION FOR PASSAGE OF STATE LAW WITH LOCAL PREEMPTION:

- | | |
|--|------------------------|
| . WOULD LEGISLATURE ADOPT LOCAL PREEMPTION | . STRENGTH OF ALLIES |
| . STRENGTH OF LOBBYISTS | . OTHER CONSIDERATIONS |

It is not likely that the state legislature would adopt legislation introduced by the tobacco industry that would limit the ability of either itself or other political jurisdictions to restrict the activity of the industry in Maine. It is, however, possible that the legislature would consider legislation introduced by some neutral third party relative to clean indoor air or "sick buildings." That type of activity is currently being considered by the Maine State Employees Association in conjunction with its parent organization, the Service Employees International Union (SEIU), under the name of the Northern New England Coalition for Clean Indoor Air. Tobacco industry participation with this organization both in Maine and New Hampshire is currently being explored by both the Region I field office and TI Public Relations Division.

Any opportunity to enact statewide tobacco legislation favorable to the industry is likely to come in the area of sampling.

3. PROGNOSIS OF FUTURE ACTIVITY ON STATE AND LOCAL SMOKING RESTRICTION LEGISLATION

- | | |
|---|---|
| . ANTI-TOBACCO MOVEMENT | . CONTINUING STATE LEGISLATIVE PROBLEMS |
| . CONTINUING LOCAL LEGISLATIVE PROBLEMS | . POLITICAL CLIMATE |

The anti-tobacco movement in the state of Maine is quite organized and active. In 1988 it is reasonable to assume that legislation attempting to regulate sampling, advertising, and require the sale of self-extinguishing cigarettes will be considered by the state legislature. In addition to this statewide legislation, the expansion of local legislative activities is possible in Maine. This will depend largely on the amount of publicity local ordinances receive.

CONFIDENTIAL

State and Local Preemption - Maine
June 3, 1987

Page 2

4. HISTORY OF STATE AND LOCAL SMOKING RESTRICTION LEGISLATION IN THE STATE

. EXISTING STATE LAW

. SEVERITY OF LOCAL LAWS

Statutes on the books include restrictions on smoking in the workplace, public buildings, jury rooms, and a requirement for restaurant smoking policy notice. The only local legislation relates to fire codes or the state workplace law. To our knowledge, there are no tobacco-specific local ordinances that go beyond what is required by the state workplace law.

MASSACHUSETTS

1. STATE LAW ON LOCAL PREEMPTION

The status of state legislation containing a local preemption clause is currently being reviewed by both Covington & Burling and Coyne & Maloney here in Boston. The initial impression is that despite a strong home rule tradition, local preemption would survive a legal challenge.

It is also reasonable to assume that a "non-severability" clause requiring voiding of the entire law should any portion of it be deemed unconstitutional would also survive a legal challenge.

2. RECOMMENDATION FOR PASSAGE OF STATE LAW WITH LOCAL PREEMPTION

- | | |
|--|------------------------|
| . WOULD LEGISLATURE ADOPT LOCAL PREEMPTION | . STRENGTH OF ALLIES |
| . STRENGTH OF LOBBYISTS | . OTHER CONSIDERATIONS |

It is possible that the state legislature would adopt a bill or series of bills that restricted the activities of the tobacco industry or its consumers that included local preemption. The key to the success of that activity would be the combination of careful drafting of the legislation, prior notification of our intentions, and careful timing. The ability to be successful would rest solely on the shoulders of our legislative counsels in Massachusetts. There would be no attempt to enlist the support of other allies, nor would we attempt to widen the circle beyond the immediate lobbying corps of the Tobacco Institute and, as necessary, its member companies.

The specifics of this attempt in Massachusetts have been discussed in detail and will be outlined in a follow-up memorandum.

3. PROGNOISIS OF FUTURE ACTIVITY ON STATE AND LOCAL SMOKING RESTRICTION LEGISLATION

- | | |
|---|---|
| . ANTI-TOBACCO MOVEMENT | . CONTINUING STATE LEGISLATIVE PROBLEMS |
| . CONTINUING LOCAL LEGISLATIVE PROBLEMS | . POLITICAL CLIMATE |

As you know, the anti-tobacco movement in Massachusetts is one of the most sophisticated and active in the nation. It is the headquarters of GASP and the Tobacco Product Liability Project, which seeks to encourage litigation against the tobacco industry. This year there were 51 separate pieces of anti-tobacco legislation introduced in Massachusetts. Although we continue to be successful in our efforts to

defeat those bills, it is reasonable to assume that this success cannot continue indefinitely. At the local level, Massachusetts is one of the three most active states in the country. Not only have six cities banned the free distribution of cigarettes, but some thirty towns also restrict smoking in restaurants, and the city of Cambridge recently enacted one of the strictest smoking laws in the country. The extent of this local legislative activity and its drain on our resources makes the discussion of statewide legislation of more immediate concern in Massachusetts than in other states.

4. HISTORY OF STATE AND LOCAL SMOKING RESTRICTION LEGISLATION IN THE STATE

. EXISTING STATE LAW

. SEVERITY OF LOCAL LAWS

Massachusetts has a long tradition of anti-tobacco activity. In the late 1600s, it was illegal to smoke anywhere in the Massachusetts Bay Colony except in taverns. In recent years there have been a number of non-binding public policy questions of the Massachusetts ballots referencing restrictions on the use of tobacco in public places. Currently, Massachusetts restricts smoking in museums, libraries, elevators, jury rooms, all Massachusetts Bay Transportation Authority (MBTA) facilities. Local legislation has been approved in many cities and towns, ranging from banning sampling and advertising to restrictions on smoking in workplaces, restaurants, public places.

MARYLAND

1. State law on local preemption
 - o State law allows preemption.
2. Recommendation for passage of state law with local preemption
 - . would legislature adopt local preemption
 - . strength of lobbyists
 - . strength of allies
 - . other considerations
 - o The legislature would probably adopt a statewide law if our opposition were removed. The strength of our lobbyist and allies is excellent and if an agreement among all groups can be reached, the legislature would possibly pass such legislation. However, it is unlikely that the farm community would support any smoking restriction law even with a preemption.
 - o It is anticipated that the anti-tobacco groups would push for a severely restrictive bill if a preemption provision is included.
3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement
 - . continuing local legislative problems
 - . continuing state legislative problems
 - . political climate
 - o There is an extremely active anti-smoking organization in Maryland at the state and local level.
 - o We can anticipate that smoking restriction legislation at the state and local level will continue to be a constant problem and be even more difficult to control each year.
 - o The influence of the various health groups in and around the DC area is tremendous. Strong opposition to any preemption can be expected from these groups.
 - o Our success in Maryland has centered around the ability of legislative counsel and his ability to control specific committees. However, the majority of legislators would vote for statewide legislation.

4. History of state and local smoking restriction legislation in the state
- . existing state law
 - . severity of local laws
 - o The existing state smoking restriction law only includes elevators, transportation and health care facilities. An Executive Order by the Governor now imposes smoking restriction in all state government buildings.
 - o Most of the local measures only apply to restaurants and in some cases include restriction in government buildings and public places.

MISSOURI

1. State law on local preemption
 - o Smoking restriction legislation which includes a preemption has passed the Senate and is being debated in the House of Representatives. State law does not prohibit preemptive provisions.

2. Recommendation for passage of state law with local preemption
 - . would legislature adopt local preemption
 - . strength of lobbyists
 - . strength of allies
 - . other considerations
 - o If the industry would agree that such legislation is advisable, the legislature would adopt a relatively weak state law with a local preemption.
 - o Tobacco Institute legislative counsel in Missouri is exceptionally strong and influential. As in past years, this has been obvious in 1987 as counsel has been able to maneuver smoking restriction legislation almost at will. The Institute's most consistent and strongest ally against smoking restriction legislation is the Missouri Restaurant Association. The MRA, however, has recently expressed serious concerns about local legislative problems, and a desire for a locally preemptive state law. Other notable allies are the Missouri Hotel/Motel Association, the tobacco and candy wholesalers and vendors, and the Missouri Council for Burley Tobacco, all of which will follow TI's lead on the smoking restriction issue.

3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement
 - . continuing local legislative problems
 - . continuing state legislative problems
 - . political climate
 - o Antismoking groups in Missouri have sought passage of a statewide smoking restriction law since 1972. They have never even come close to success. In fact, all efforts at enactment of smoking restrictions have been unsuccessful until recently when three cities approved smoking ordinances (Kansas City, Independence and Columbia).

Recent local successes by Missouri antismoking groups are rather alarming. It is quite possible that Missouri could experience the same phenomena that have so many others: Frustrated with failure in the state capitol, antismokers begin to concentrate on the local level and have good success in convincing city councils that smoking restriction ordinances are needed. In the meantime, annual attempts at passing a statewide law can be expected; but there is virtually no chance that these attempts will be successful.

4. History of state and local smoking restriction legislation in the state

- . existing state law
- . severity of local laws
- o There is no restriction on smoking at the state level.
- o Three cities have adopted ordinances which apply to restaurants and public places but do not cover the workplace.

CONFIDENTIAL

Smoking legislation failed 1987, still alive
for 1988 session.

NEBRASKA

1. State law on local preemption

None.

2. Recommendation for passage of state law with local preemption:

- . would legislature adopt local preemption

Perhaps in January, this is best possible scenario for preemption.

- . strength of lobbyists

Very strong.

- . strength of allies

Aside from wholesalers, who "took a walk" this session, new allies due to phone banking and letter writing have been relatively strong.

- . other considerations

Unicameral legislature gives advantage to our efforts due to legislative process requiring three readings.

3. Prognosis of future activity on state and local smoking restriction legislation

- . anti-tobacco movement

Very active through anti-tobacco legislator, Senator Shirley Marsh.

- . continuing local legislative problems

Omaha and Lincoln will be problem areas, preemption may be the only remedy.

- . continuing state legislative problems

1987 bills carry over into January of 1988. Problems will continue.

- . political climate

Varied, new Republican Governor Kay Orr, unpredictable with regard to industry issues.

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Preemption - Nebraska
Page 2

4. History of state and local smoking restriction legislation in the state
 - . existing state law
Only weak rudimentary state legislation.
 - . severity of local laws
Local codes and ordinances regarding fire and public safety.

NEW MEXICO

1. State law on local preemption
 - o State law allows local preemption.

2. Recommendation for passage of state law with local preemption
 - . would legislature adopt local preemption
 - . strength of lobbyists
 - . strength of allies
 - . other considerations
 - o It can be expected that the legislature would be receptive to a statewide preemptive law.
 - o If an attempt is made to pass locally preemptive smoking legislation in New Mexico, the 1988 legislative session will probably offer the best opportunity to do so. TI legislative counsel in that state has established excellent relationships with legislative leaders in the current general assembly. The Institute has no particularly powerful allies or coalitions in New Mexico; but those that do exist are solid supporters of TI legislative policy. Another factor which would be important in seeking a desirable smoking bill is the excellent relationship which exists between The Institute and the New Mexico Municipal League, a powerful lobby in the state. The NMML would not oppose preemptive language in such a bill, and this fact would help the legislation's chances.

3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement
 - . continuing local legislative problems
 - . continuing state legislative problems
 - . political climate
 - o Smoking restriction legislation has not been the burning issue in New Mexico that it has been in some neighboring states. The state has a rather mild smoking law on the books and Albuquerque enacted a limited ordinance some years ago. Beyond these two instances, antismoking activity has not been much in evidence.

- o There is some antismoking sentiment in the state legislature, led by representative Lynn Tytler. This faction would relish the opportunity to get stronger smoking restrictions into law, but simply does not have the support to accomplish it at this time. Similarly, the medical community and volunteer health organizations openly express a desire for smoking restriction laws, but have not yet pressed for their enactment. However, given the intense antismoking activity underway in other states in the region, an offensive for smoking control laws in New Mexico is very likely in the near future.

4. History of state and local smoking restriction legislation in the state

- . existing state law
- . severity of local laws

- o The state has a smoking restriction law which only includes government buildings.

- o Albuquerque has a very limited law in effect.

CONFIDENTIAL

Yes 1987
Yes or No Year

New York
STATE

1. State law on local preemption

Given the Public Health Council activity and Assemblyman Grannis' legislative history, it would be impossible to have legislation adopted preempting localities.

2. Recommendation for passage of state law with local preemption:

- . would legislature adopt local preemption
- . strength of allies
- . strength of lobbyists
- . other considerations

The sentiment within the Legislature as indicated by lobbyists is that local preemption cannot be passed. In the case of allies, they would support a reasonable statewide bill as a way to hopefully cool down the activity at the local level.

3. Prognosis of future activity on state and local smoking restriction legislation

- . anti-tobacco movement
- . continuing state legislative problems
- . continuing local legislative problems
- . political climate

The anti-tobacco movement is extremely strong; is spearheaded by Commissioner of Health Axelrod with the tacit approval of the Governor. Continuing statewide legislative problems will center around sampling, ingredients disclosure, taxes and the Public Health Council smoking restriction regs. The political climate indicates that proponents of smoking restriction will continue to have strength in the capitol. Relative to local legislative problems, county health commissioners are completely coordinated in their efforts to adopt local legislation through county boards of health. Their efforts continue to be our major problem.

4. History of state and local smoking restriction legislation in the state

- . existing state law
- . severity of local laws

The existing state law adopted in 1975 pertains to smoking restrictions in elevators, museums, libraries and grocery stores. The Public Health Council regulations are presently in litigation. Because the anti-smoking zealots have been unsuccessful at the state level, numerous counties have adopted or will adopt severe smoking restriction regulations. At present some ten counties in the state are considering severe proposals.

CONFIDENTIAL

Yes - Smoking law passed in 1987

NORTH DAKOTA

1. State law on local preemption

None.

2. Recommendation for passage of state law with local preemption:

- . would legislature adopt local preemption

Possible, but legislature not in until 1989.

- . strength of lobbyists

Strong, but new.

- . strength of allies

Rather weak.

- . other considerations

One of the strongest lung associations, for a state its size, in the country.

3. Prognosis of future activity on state and local smoking restriction legislation

- . anti-tobacco movement

Strong.

- . continuing local legislative problems

Bismarck continues to be a problem.

- . continuing state legislative problems

Legislature feels that it has dealt with the smoking issue in 1987. Therefore, very little activity is expected in this regard.

- . political climate

Varied. Democratic Governor Sinner is anti-tobacco and Lt. Governor Meiers recently died of lung cancer. (she was a smoker)

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Preemption - North Dakota
Page 2

4. History of state and local smoking restriction legislation in the state

. existing state law

Passed in 1987. Was repeatedly introduced since 1978.

. severity of local laws

Bismarck relatively severe. However, state law takes precedence and has weakened local law.

STATE/LOCAL SMOKING RESTRICTIONS

Yes

STATE OF OREGON

1. Current state law on local preemption.

No local preemption.

2. Considerations for passage of state law with local preemption.

Oregon would be an excellent candidate for passage of local preemption. There has been very little successful local activity to date. The state legislature continues to consider changes in current law each session, so we could have an excellent opportunity to pass local preemption. However, Oregon local units of government are protective of their turf and may challenge such a law.

3. Prognosis for future activity on state and local smoking restriction legislation.

The anti-tobacco movement continues to be strong in Oregon, particularly on the state level. Legislative leadership is generally supportive of anti-tobacco legislation. We can be sure their efforts will continue on the state level rather than the local.

4. History of state and local smoking restriction legislation.

The last revision in the Oregon Clean Indoor Air Act was in 1981. Current law requires posting of smoking and non-smoking areas in all public places. The restaurant provisions are very weak and there are no workplace restrictions.

CONFIDENTIAL

No Clean Indoor Air Act has passed.

SOUTH DAKOTA

1. State law on local preemption

None.

2. Recommendation for passage of state law with local preemption:

- . would legislature adopt local preemption

Yes, but no need at this time.

- . strength of lobbyists

Very strong.

- . strength of allies

Comparatively strong when considering size of state and lack of wholesaler participation.

- . other considerations

Sioux Falls will be a problem due to defeat of smoking law.

3. Prognosis of future activity on state and local smoking restriction legislation

- . anti-tobacco movement

Not particularly strong, however, they are organized.

- . continuing local legislative problems

Sioux Falls.

- . continuing state legislative problems

Reintroduction of state smoking legislation.

- . political climate

Neutral.

TEXAS

1. State law on local preemption
 - o A statewide smoking restriction law which includes preemption is allowed.
2. Recommendation for passage of state law with local preemption
 - . would legislature adopt local preemption
 - . strength of lobbyists
 - . strength of allies
 - . other considerations
 - o Texas' political situation and the advances made by antismoking groups in the state argue against any plan to obtain a preemptive law through some coy, subtle manipulation of the legislative process. The Institute would be much better advised to participate in the drafting of a bill with allies, and engage in direct and adamant lobbying for the bill's passage.
 - o The industry's success is largely due to the exceptional strength of TI legislative counsel.
 - o A large number of TI allies in Texas (restaurant association, hotel/motel association, bowling proprietors association) have been hard pressed in fighting local smoking ordinances, and have become convinced that a locally preemptive state law is the only answer to their problems. These groups are prepared to make a major effort to obtain such a law, and would cooperate fully with The Institute in a plan to accomplish this.
3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement
 - . continuing local legislative problems
 - . continuing state legislative problems
 - . political climate
 - o Antismoking sentiment has swept throughout the state of Texas during the past eighteen months. All major cities and many smaller ones have enacted smoking restriction ordinances of varying stringency. Currently, antismoking groups in Dallas are seeking to strengthen that city's existing ordinance to regulate the workplace, and several other cities are following suit. The medical community and volunteer health organizations have for years sought enactment of a statewide smoking law, but have been unsuccessful. This effort will continue.

4. History of state and local smoking restriction legislation in the state
 - . existing state law
 - . severity of local laws
 - o The existing statewide law restricts smoking in elevators, public transportation and educational, health care and cultural facilities.
 - o The majority of the local laws include only public places but some cities include the workplace both private and public.

STATE/LOCAL SMOKING RESTRICTIONS

Yes

STATE OF WASHINGTON

1. Current state law on local preemption.

None

2. Considerations for passage of state law with local preemption.

The state legislature may well wish to pass a local preemption to solve some of the problems caused by the numerous local ordinances. The localities also may be interested especially if the state would take responsibility for enforcement away from local health and fire departments. Our restaurant allies would possibly be supportive if any local restaurant restrictions are introduced.

3. Prognosis for future activity on state and local smoking restriction legislation.

As always, the state of Washington has many anti-smoking activists which are bent on eliminating tobacco. Every year they increase the pressure on the legislature and local governments for further restrictions. These battles will continue to be extremely difficult in this state.

4. History of state and local smoking restriction legislation.

The more restrictive smoking restriction legislation has been passed on the local level. Pierce County/Tacoma is probably the most restrictive with both private and public workplace restrictions. Both King County and the city of Seattle have also passed extensive smoking restriction ordinances.

CONFIDENTIAL

Clean Indoor Air Law passed 1983.

WISCONSIN

1. State law on local preemption

The present Clean Indoor Air Act DOES NOT address preemption.

2. Recommendation for passage of state law with local preemption:

- . would legislature adopt local preemption

Possible - only if issue were reopened in new Clean Indoor Air legislation.

- . strength of lobbyists

Very strong.

- . strength of allies

Wholesalers - very strong; phone banking and letter writing have enhanced our allies communication system.

- . other considerations

A particularly active anti-tobacco lobby. Cancer, lung and heart associations have same lobbyist.

3. Prognosis of future activity on state and local smoking restriction legislation

Milwaukee, Eau Claire, Superior and Green Bay potential areas of local problem.

- . anti-tobacco movement

Milwaukee has the most dangerous situation due to headquarters of lung association and State Medical Society.

- . continuing local legislative problems

Dane County (Madison) has had a great deal of local debate and has passed a make-shift workplace smoking policy for city government.

- . continuing state legislative problems

Senator Risser (D-Madison) has "thumbed his nose" at pro-tobacco forces and is introducing an omnibus "strict" smoking in the workplace legislation.

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Preemption - Wisconsin
Page 2

- . political climate

More favorable this session due to strengthened local legislative contact program. Leadership very friendly to Wimmer, Brozek and Sicula.

4. History of state and local smoking restriction legislation in the state

State smoking law, passed in 1983, was first introduced in 1975. Local ordinances have been considered since the mid-1970's. Mostly a reaction to Minnesota's "first in the country" Clean Indoor Air Act.

- . existing state law

Mild.

- . severity of local laws

Difficult to enforce.

WYOMING

1. State law on local preemption
 - o State law allows local preemption.

2. Recommendation for passage of state law with local preemption
 - . would legislature adopt local preemption
 - . strength of lobbyists
 - . strength of allies
 - . other considerations

 - o TI legislative counsel is very strong and has good relationships with a number of key legislators. In addition, since antismoking organizations in Wyoming have not yet enjoyed any remarkable successes, they could probably be expected to willingly accept a local preemption clause in exchange for passage of any smoking restriction law.

 - o Tobacco Institute allies and coalitions in Wyoming are not particularly influential or politically viable, but they are committed and can be counted upon to follow TI's lead in legislative policy. The Colorado/Wyoming Restaurant Association, for example is very weary of fighting local smoking restriction ordinances and would welcome the opportunity to work for enactment of a locally preemptive state smoking law.

 - o It is advisable for The Tobacco Institute to begin planning now to push for enactment of a locally preemptive smoking law in Wyoming. All conditions are right for pursuing such a plan, and success would preclude the protracted local ordinance fights that are unquestionably on the horizon in Casper, Jackson, Riverton, and many other cities.

3. Prognosis of future activity on state and local smoking restriction legislation
 - . anti-tobacco movement
 - . continuing local legislative problems
 - . continuing state legislative problems
 - . political climate

o Colorado antismoking groups, which are very strong and committed, are working to inspire their bretheren in Wyoming to seek smoking restriction laws in many places. In addition, the political climate in the Wyoming state legislature has changed considerably in the recent past. Legislative counsel has advised that the current leadership in the House of Representatives is markedly antismoking, and that smoking restriction legislation would be very difficult to stop there. This situation is balanced by considerable strength The Institute enjoys in the Wyoming State Senate.

4. History of state and local smoking restriction legislation in the state

- . existing state law
- . severity of local laws

o The tidal wave of antismoking activity that has swept over some western states has only just touched Wyoming. To date, Cheyenne and Laramie are the only cities that have approved smoking restriction ordinances (and very weak ones, at that); and the state legislature has never come close to passing a smoking control law. This situation, however, is expected to change.