

FRANK E. RESNIK .

Anti-Smoking Forces Stoke Legislative Fires

Spurred by an aggressive health lobby and a surgeon general publicly committed to making America a smoke-free society by the year 2000, Congress is again preparing to do battle over tobacco.

Expected to gain center stage in 1987 are proposals to ban cigarette advertising and promotions, to raise the 16-cents-per-pack federal excise tax on cigarettes, to ban smoking on domestic airplane flights and to limit severely smoking in federal buildings.

Not surprisingly, anti-smoking advocates are predicting early success, while the tobacco industry says the proposals are likely to go nowhere.

"This issue's time has come," says Rep. Mike Synar, D-Okla., sponsor of the ad ban bill in the 99th Congress. "I didn't believe we could do it this quickly, but I'm now convinced that there's a good chance — a very good chance — that we can [ban cigarette advertising in] this Congress."

Not so fast, argues Scott Stapf, spokesman for the Tobacco Institute, which represents the interests of cigarette manufacturers. "I think there's been a lot of attention," says Stapf, "but it's been a lot of smoke and not much fire." Given Congress' concern with the budget deficit and the controversy surrounding the sale of arms to Iran, Stapf wants to see "how much time these sideshows are given when there's big business at hand."

Examining the Evidence

The public health groups that make up the anti-smoking lobby say their case is bolstered by the increasing body of evidence linking cigarette smoking to health problems.

"The science is now irrefutable," says Matthew L. Myers, staff director of the Coalition on Smoking OR Health (CSH), whose members include the American Cancer Society, the American Heart Association and the American Lung Association.

The Tobacco Institute, however, steadfastly maintains that the biological causal link between smoking and disease has never been established and

But Tobacco Interests See Nothing But Smoke

more research is necessary.

Myers dismisses that. "The Tobacco Institute now stands on the same level with the Flat Earth Society, frankly, and deserves the same credibility," he says.

The numbers, say anti-smokers, are on their side. They cite as evidence a staff report prepared by the congressional Office of Technology Assessment (OTA). It shows that an estimated 350,000 Americans died from smoking-related ailments in 1985 and that smoking-related diseases cost the U.S. health care system an estimated \$22 billion, of which some \$4.2 billion was paid by the federal government. OTA notes that when lost earnings are added in, the total economic cost is about \$65 billion, or about \$2.17 for every pack of eigarettes sold in 1985.

Anti-smoking forces have also applauded the completion in 1986 of two studies by panels appointed by the congressionally chartered National Academy of Sciences (NAS).

In August, an NAS panel recommended that smoking be banned on all domestic airline flights, arguing that it would lessen discomfort to passengers, reduce potential health hazards to cabin crews, bring cabin air quality into line with standards for other closed environments and remove the possibility of fires caused by cigarettes.

In October, another NAS committee reported that non-smokers can be adversely affected if they breathe smoke-contaminated air, so-called "passive smoke." The committee found that young children whose parents smoke suffer more respiratory ailments than do children of non-smokers and that non-smoking spouses of smokers have an increased risk of developing lung cancer.

Koop Report Anticipated

Anti-smoking groups are expecting even more ammunition Dec. 16 when Surgeon General C. Everett Koop, an outspoken critic of smoking and the tobacco industry, is scheduled to release a long-awaited study on the effects of passive smoking.

Some observers speculate that the Koop report could be as important in establishing the right of non-smokers to live and work in a smoke-free environment as Surgeon General Luther L. Terry's 1964 report was in establishing that smoking could be hazardous to health. (History of anti-smoking legislation, p. 3051)

Despite repeated attacks from the tobacco industry charging that his claims are scientifically suspect and politically motivated, Koop has steadfastly refused to back off his strong anti-smoking stance.

"It is irrefutable that cigarette smoking is the single most important preventable cause of death in our society," he testifed Aug. 1 before the

"There's only so much time that somebody who's elected to Congress and sent to Washington is going to spend futzing around with cigarettes."

-Scott Stapf, Tobacco Institute



-By Julie Rovner

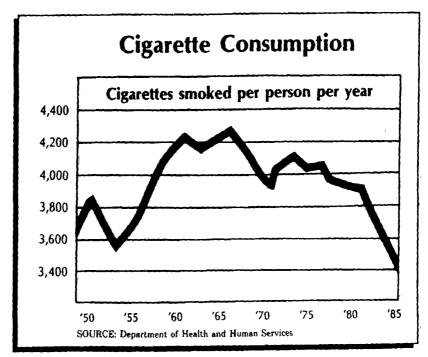
House Energy and Commerce Subcommittee on Health and the Environment. "There is a cost to our society resulting from cigarette smoking. That cost is paid in sickness, death and an overwhelming economic loss. It is a cost that we as a society can no longer tolerate."

The tobacco industry challenges Koop's assertions and attacks the passive-smoking study even before it is released. "There is a clear, conscious and deliberate willingness on the part of the Surgeon General's office and others to allow the political agenda to completely overwhelm any concept of scientific integrity," says Stapf. Still, he admits it will be difficult to challenge the report, which, he says "will be judged as a scientific document even though it is going to be almost purely a political document."

But the surgeon general is not alone in his attempts to crack down on smoking. Other segments of the executive branch are also taking action to curb smoking.

On Dec. 4 the General Services Administration (GSA) issued final regulations designed to guarantee non-smoking federal workers "a reasonably smoke-free environment." The GSA provides office space for 890,000 federal employees nationwide — about one-third of the federal work force.

Smoking is also being discouraged among armed forces personnel as a result of a directive from Defense Secretary Caspar W. Weinberger. The secretaries of the Army and Navy have imposed tough new rules restricting smoking in military facilities.



And the Department of Health and Human Services; in a report issued Nov. 20, noted that 42 states have enacted legislation to control, restrict or prohibit smoking in public places. (Box, p. 3053)

Battle of the Lobbyists

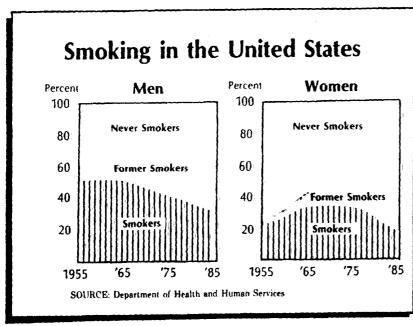
A major force behind the antismoking drive is a well-organized lobbying effort by major public health groups. "The health community has become a real and serious political force," says CSH's Myers, who laments that it was not always so. "Until the last five years, the health community felt that all you had to do was make a case for the science against smoking, and then Congress and the government would naturally do what science suggested," he says. "And it took them about 15 years to realize that politics didn't work that way."

Leading the new charge is the American Medical Association (AMA), which has made the cigarette ad ban the No. 1 item on its public health agenda.

The AMA was conspicuously absent during congressional debate in 1964 and 1965 over legislation to force cigarette packages to bear health warning labels. (In 1964, the organization accepted \$10 million from the tobacco industry for research into the links between smoking and health.) But in recent years the organization has come out in favor of the goal of a smoke-free society by the year 2000.

The Tobacco Institute's Stapf says the AMA's new interest is a thinly disguised effort "to try to attract young doctors, and to reposition itself away from the doctors who golf into the area of the doctors who are concerned about preventative medicine."

That is a charge the AMA does not dispute. "The AMA opened its doors about 10 years ago to medical students and residents and they've been relentless about this issue," said a spokesman for the association. But even more important, he says, is the



change in the public's perception about smoking. "There's just been kind of a general public awareness that this stuff is really bad," he said.

The evidence of health risks has led to a decline in cigarette consumption, especially among men, and antismoking advocates say it is having a major effect on the social acceptability of smoking. (Charts, p. 3050)

"The non-smokers' rights movement has changed the perception and awareness of the majority of the people in our society about cigarette smoking," says Myers. "They now realize they're the majority. They now realize that the one-third of the society who smoke not only irritate them, but jeopardize their health, and they'remore willing to speak out."

Even smokers are becoming aware of the rights of non-smokers. A 1985 Gallup Poll found that 75 percent of all adults, including 62 percent of smokers, agreed that smokers should refrain from smoking in the presence of non-smokers.

Banning Advertisements

By far the most controversial antismoking proposal Congress is expected to take up is Synar's bill to extend the radio and television ban on tobacco advertising to the print media.

The bill, (HR 4972 in the 99th Congress) would also prohibit tobacco manufacturers from offering free samples and from sponsoring athletic, artistic or other events under the registered brand name of a tobacco product. This would prohibit such events as the annual Kool Jazz Festival and the Virginia Slims women's tennis tournaments.

The goal, says Synar, is to prevent young people from starting to smoke. Synar argues that despite a voluntary code that is supposed to prohibit cigarette advertising from explicitly appealing to young people; that is exactly what the ads do.

"The facts of the matter are that this industry has to replace 500,000 smokers each year; 350,000 because of death; and another 150,000 because they give up the habit by choice. They have obviously geared that replacement to the children of this country," he says, citing tobacco industry sponsorship of athletic events and rock concerts and cigarette ads depicting young adults sailing, biking and enjoying other outdoor activities.

The tobacco companies respond that their ads are not aimed at getting non-smokers to take up the habit, but

Then to Now: The Cigarette Warning

The battle in Congress over cigarette health warnings dates back to 1964, when then-Surgeon General Luther L. Terry issued his now celebrated report branding cigarettes "a health hazard of sufficient importance ... to warrant appropriate remedial action."

The following year Congress passed legislation (PL 89-92) insisting that all cigarette packages contain the warning: "Caution: Cigarette Smoking May Be Hazardous to Your Health." (1965 Almanac p. 344).

Although it marked the first time the tobacco industry was forced to acknowledge the link between smoking and disease, manufacturers supported the measure because it postponed until 1969 a Federal Trade Commission (FTC) ruling that would have required health warnings in advertisements as well as on cigarette packages.

Four years later Congress took up the issue again, and in 1970 passed legislation (PL 91-222) banning cigarette advertising from television and

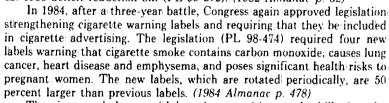
radio. Congress also changed the required notice on packages to: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health." (1970 Almanac p. 145)

Again, the legislation was passed with the consent of cigarette manufacturers, who gained another reprieve on FTC-imposed advertising regulations — this one until 1971. The legislation also prevented state and local jurisdictions from imposing their own bans on cigarette advertising.

Anti-smoking forces won their first major victory in 1982, when Congress agreed as part of a deficit reduction package (PL 97-248) to raise the excise tax imposed on cigarettes from 8 cents to 16 cents per pack.

Tobacco-state legislators, led by Sen. Jesse Helms, R-N.C., added an amendment restoring the 8-cent rate after three years, but it never took effect and the 16-cent tax was made permanent in the fis-

cal 1986 deficit reduction bill (PL 99-272). (1982 Almanac p. 32)



The cigarette industry withdrew its opposition to the bill after the removal of language stating that the warnings did not relieve cigarette makers of liability for smoking-related diseases. Reportedly, the industry was also hoping to gain good will for future legislative battles.

Congress turned its attention to chewing tobacco and snuff in 1986, when it passed the Comprehensive Smokeless Tobacco and Health Education Act (PL 99-252).

Concerned that smokeless tohacco was viewed as a harmless alternative to cigarettes, lawmakers banned advertisements for smokeless tohacco products from television and radio, and required that three rotating labels be printed on packages and in print advertisements. They warn that products may cause mouth cancer, gum disease and tooth loss.

Industry officials did not oppose the final bill. Like cigarette manufacturers in 1970, they faced the prospect of states imposing their own labeling requirements if there were no federal regulations. (Weekly Report p. 267)

-By Julie Rovner



at getting current smokers to switch brands.

Synar says his eventual goal is to end all tobacco use, but concedes that is not possible now. "The point is, the total ban of tobacco is not a political reality. And so this is the next natural step towards moving us to a tobacco-free society," he says.

Although prospects for the legislation in the Senate remain unclear, Synar has found a powerful ally in Henry A. Waxman, D-Calif., chairman of the House Energy and Commerce Subcommittee on Health and the Environment, which shares jurisdiction over the proposal.

While not specifically endorsing Synar's bill, Waxman says the tobacco advertising issue "is going to be a very high priority for us. It seems to me the major push behind continued acceptance of cigarette smoking is the enormous amount being spent to advertise and promote that product by the tobacco industry."

But the measure faces formidable opposition, not only from the tobacco industry, but also from the advertising industry, which would hate to lose its share of the more than \$2 billion spent annually to promote tobacco use, and the liquor industry, which fears that if Congress bans tobacco advertising, alcohol will be the next target.

The American Civil Liberties Union (ACLU) has also publicly assailed the advertising ban proposal, charging that "the First Amendment does not permit a prohibition on truthful advertising of products which may lawfully be distributed and sold!"

Synar insists the First Amendment argument lacks merit, since the Supreme Court has held that advertising and other "commercial speech" need not be afforded the same protection as other forms of speech. He and other backers cite a July Supreme Court decision upholding a ban on casino gambling advertising in Puerto Rico, even though casino gambling is legal there. (Posadas de Puerto Rico, Associates, Condado Holiday Inn v. Tourism Company of Puerto Rico, Weekly Report p. 1526)

Synar also insists that the liquor industry has nothing to fear from a tobacco ad ban. "Tobacco is a unique product," he argues. "It's the only product that we know, when used as intended, still is harmful to your health. A doctor may say, 'Have a drink before you go to bed,' but I've never heard of one saying, 'Have a cigarette before you go to bed.'"

Another approach comes from Fortney H. "Pete" Stark, D-Calif., chairman of the House Ways and Means Subcommittee on Health, and Bill Bradley, D-N.J., a member of the Senate Finance Committee. They would allow tobacco advertising to continue, but would not permit its costs to be deducted as business expenses.

Bradley rejects industry claims that ads are not aimed at creating new smokers. "The tobacco manufacturers have been telling us for years that smoking does not cause cancer," he says. "Now they are telling us that advertising does not cause smoking."

"Those who sell and promote these products are merchants of death," charged Stark at a July 18 hearing before Waxman's panel "The federal government should get out of the business of subsidizing the promotion of this lethal substance."

The proposal has the support of Sen. Orrin G. Hatch, R-Utah, who will

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be ranking Republican on the Labor and Human Resources Committee in the 100th Congress. "The Bradley proposal takes the money out of [cigarette: manufacturers']: pookets, while the ad-ban puts the money back in," a Hatch staffer points out...

But the tobacco industry and the ACLU say the same constitutional arguments apply to the Stark-Bradley proposal that apply to the overall ad ban. "It's also pretty unfair on its face," says the Tobacco Institute's Stapf. "It's not like we're talking about the elimination of some special loophole: This is the standard deal that every business from Philip Morris to the corner drugstore gets."

Raising Excise Taxes

While the ad ban question is likely to attract the most media attention, lobbyists and members say the most likely anti-smoking action Congress will take in 1987 will be to raise the current 16-cents-per-pack federal excise tax on cigarettes.

Pressure to reduce the federal deficit is likely to be as much a factor as health considerations, they say. Congressional budget analysts estimate that each penny added to the tax brings in approximately \$200 million. Thus, doubling the current tax could reduce the federal budget deficit by some \$3.2 billion annually.

And while the Tobacco Institute's Stapf likens raising the cigarette excise tax in order to reduce the deficit to "breaking into your kid's piggy bank to try to make the house mortgage payment," many members and staffers think there's a good chance it will happen, especially given recent reports that the Reagan administration would support such an increase.

Anti-smoking forces are eager to raise excise taxes because studies show that price increases result in corresponding consumption decreases.

According to a report published in the Feb. 28, 1986, issue of The Journal of the American Medical Association, an excise tax increase of 8 cents would prompt 1.8 million Americans to quit or not start smoking, including 400,000 teenagers and 500,000 young people between the ages of 20 and 25. A 16-cent increase, according to the report, would drop the smoking population by 17 percent, including 800,000 teenagers.

The move to raise the tax is likely to come in the Senate from John H. Chafee, R-R.I., who succeeded in pushing a hike through the committee during consideration of fiscal 1987 deficit-reduction legislation (PL 99-509), only to see the proposal stripped on the Senate floor. And while a staffer for incoming Finance Committee Chairman Lloyd Bentsen, D-Texas, said Bentsen would not lead the charge to raise the tax, he did not rule out supporting the move if President Reagan pledged not to veto it.

Opposition will certainly surface in the Senate from key tobacco-backers Jesse Helms, R-N.C., and Wendell H. Ford, D-Ky., who represent the two states whose economies most heavily rely on tobacco production. "It's always out there," said a Ford staffer of the potential excise tax hike: "It's a perennial favorite of people who want to attack tobacco. But if we're going to fall back on regressive taxes, what was the point of tax reform?"

Passive Smoking

Congress is also likely to address several initiatives related to passive smoking.

States Move Aggressively to Limit Smoking

In Connecticut, teachers cannot be certified unless they have passed an examination on the effects of nicotine and tobacco.

In Florida, smoking is restricted in schools, restaurants, offices, elevators and retail outlets. Minnesota prohibits persons running for public office from distributing cigarettes to voters.

And in West Virginia, it is illegal to give or sell tobacco products to patients at a state mental hospital.

Increasingly, state and local governments are moving to regulate the sale and use of tobacco products. And a Nov. 20 report to Congress by the Department of Health and Human Services (HHS) suggests a new emphasis on protecting the rights of non-smokers.

The HHS report, required by the 1984 Comprehensive Smoking Education Act (PL 98-474), says 42 states have enacted laws restricting smoking in public places.

Wide Range of Regulations

Smoking is most commonly prohibited or limited on public transportation vehicles (33 states), at health care facilities (32 states) and on elevators (31 states).

According to the HHS report, the states with the most comprehensive rules are Alaska, Florida, Minnesota, Montana, Nebraska, Utah and Washington. They prohibit or restrict smoking in health care facilities, elevators, recreational facilities, public transportation vehicles, schools, stores, restaurants, offices and work places, government buildings and at public meetings.

Thirty-five other states and the District of Columbia restrict smoking in one or more of these public places. Only eight states have no such restrictions: Alabama, Illinois, Louisiana, Missouri, North Carolina, Tennessee, Virginia and Wyoming.

Seventeen states have legislation restricting smoking in offices and other work places. Alaska prohibits smoking in all places of employment — public or private — where a no-smoking sign is posted. Florida, Minnesota, Montana, Nebraska, North Dakota, Utah and Wisconsin restrict smoking to designated areas in private on public offices. Florida also requires employers to provide no-smoking work space to any employee who requests it. (Chart, this page)

In most states, violations of anti-smoking laws are punishable by fines ranging from \$25 to \$100. In West Virginia, however, the fine can be as low as \$1. The highest fines for failing to comply with smoking restrictions—up to \$300—are imposed by Alaska, Maryland, New Jersey and the District of Columbia.

Taxes and Licenses

All 50 states and the District of Columbia tax cigarettes and all but West Virginia require that persons obtain licenses before engaging in the business of distributing, retailing, wholesaling or manufacturing cigarettes.

The sale or distribution of cigarettes or tobacco products to minors is regulated by 39 states. The majority define a minor as anyone under the age of 18, but 10 states set the age at 16 and Hawaii puts it at 15. According to the HHS report, all 50 states tax cigarettes. North Carolina has the lowest rate — 2 cents per pack — and Maine has the highest — 28 cents.

Some states channel a portion of their cigarette tax revenues into health programs. Louisiana puts \$1 million of its annual tax revenue into the Cancer and Lung Trust Fund, which finances research on cancer and cardiopulmonary diseases. Nebraska sets aside 1 cent per pack for research on smoking-related diseases.

Education Required

The HHS report says 18 states now require elementary and secondary schools to include instruction on the dangers associated with tobacco use:

In addition, three states.— Alabama, Connecticut and Oklahoma — are establishing training programs for teachers and other school personnel on the effects of nicotine and tobacco use. And in Minnesota, all schools that provide teacher training must offer programs on the risks associated with the misuse of and dependency on tobacco.

Several other anti-smoking regulations have been adopted by individual states:

- Utah prohibits cigarette advertising on billboards, streetcars and buses.
- New Jersey has made it a misdemeanor to sell tobacco to reformatory inmates.
 - Smoking is illegal under a covered bridge in Maine:

Smoking in the Work Place

The following states have laws prohibiting or restricting smoking in offices and other work places:

Government-

	Controlled Offices	Employers' Offices
Alaska	V	
California	V	
Connecticut		V
Florida	V	V
Maina		V
Minnesota		V
Montana	V	ν
Nebraska	V	V
New Hampshire	V	
New Jersey	<i>V</i>	V
New Mexico	V	V
North Dakota	V	
Ohio	y	·
Oregon	V	· V
Utah	V	V
Washington	V	ν
Wisconsin	<i>V</i>	V

SOURCE: Departmenti of Health and Human Services

Private

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Subcommittees in both chambers held hearings in the 99th Congress on legislation to restrict smoking in federal buildings, but it remains unclear what effect the recent GSA regulation will have on those efforts.

A spokesman for Sen. Ted Stevens, R-Alaska, sponsor of the Senate measure and outgoing chairman of the Governmental Affairs Subcommittee on Civil Service, said no decision has been made on whether to pursue the legislation in light of the GSA action. "It's not everything we wanted, but it's a good start," he said.

But a staffer for House sponsor James H. Scheuer, D-N.Y., says the GSA regulations "complement rather nicely the goals of our bill." He says Scheuer still plans to push for enactment. He pointed out that GSA oversees only about one-third of the federal work force and that legislation is nec-

ances, including buses and trains.

The Tobacco Institute's Stapf says the National Academy of Sciences' report, despite its recommendation that smoking on domestic flights be banned, did not help the effort. "I just don't see that report being the dramatic piece of evidence that's going to stampede members of Congress into taking that action," he said, citing numerous: instances in the report where the panell called for further study.

But Stapf says the industry is concerned that members might see banning smoking on short flights as a moderate alternative to banning it altogether. "The problem with that is that 90 percent of flights in the U.S. are two hours or less," he said, and trying to distinguish which flights are smoking and which are non-smoking "will create an absolute nightmare.

Chairman Edward M. Kennedy, D-Mass., is known to be sympathetic to anti-smoking legislation, but not as devoted to the cause as outgoing Chairman Hatch. "When Kennedy takes the cigar out of his mouth, he agrees: that smoking's bad for you," laughed a Kennedy staffer.

But advertising legislation in the Senate would probably have to go through the Commerce Committee, where it will likely be received coolly by incoming Chairman Ernest F. Hollings, D-S.C. Although never an outspoken supporter of the tobacco industry, one lobbyist says, Hollings has "always been a good soldier" in protecting the state's tobacco interests:

Anti-smoking advocates still speak in awed tones of the tobacco industry's vast influence on Capitol Hill. "The tobacco lobby is quite powerful, and since the tobacco industry has become much more diverse in its holdings, they've become even more powerful," admits Waxman. With so many tobacco manufacturers merging with other companies, says Waxman, "they can control an enormous amount of money that goes into advertising and otherwise can be effective in gaining their way."

What enabled tobacco-state legislators to wield so much influence in the past, say observers, was the allconsuming nature of their interest. Members from tobacco-producing states "would do anything to save tobacco," says CSH's Myers. "Anything. Folks from New York or other states couldn't do that. So they were able to wield more power than their numbers because they were willing to make any political trade whatsoever."

The lack of an active health lobby aided tobacco interests as well: "For many years the tobacco lobby was the only lobby on this issue," says Myers. "The Tobacco Institute operated pretty much in a vacuum."

But as the number of smokers in the population dwindles and evidence of the health hazards of smoking becomes better known, Myers says that balance is beginning to shift.

"Many, many members of Congress now realize that a vote in favor of health and against tobacco is now more likely to be helpful to them than a vote to the contrary, and I think that is a very significant psychological change," he says: "They now realize that a vote for tobacco will be perceived by most of their constituents as a sellout for a very narrow special interest, and one that will have to be explained."



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essary "to make the policy consistent across the board for all federal buildings."

Still, it is likely to be an uphill fight. "I think most members will want to wait to see how [the GSA regulations] work out before taking on a legislative remedy," says Thomas J. Bliley Jr., R-Va., like Scheuer a member of the Energy and Commerce Subcommittee on Health. Bliley is a key tobacco industry supporter; the Philip Morris tobacco company is a major presence in his Richmond district.

Also related to the passive smoking issue are legislative efforts to ban smoking on airplanes. Several plans were offered in the 99th Congress, ranging from banning smoking on short flights to banning it on all domestic flights, and a Hatch staffer says the senator plans to introduce legislation in the 100th Congress to ban smoking not only on airplanes, but on all publicly funded convey-

The competitive disadvantage for the airlines would be just enormous."

Time Is a Factor

While both sides agree that tobacco issues are likely to attract significant congressional attention, a key question is how much effort members will actually devote to pushing measures through.

"There's only so much time that somebody who's elected to Congress ... is going to spend futzing around with cigarettes," says Stapf. "I don't think the anticipation is that people get sent to Washington to make personal lifestyle choices for their voters."

Another question is the makeup of the committees that will deal with smoking issues. "A lot will depend on who the new members of [the House Energy and Commerce] committee will be," says Bliley.

On the Senate side, incoming Labor and Human Resources Committee

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