

Executive Summary



From
The
Tobacco
Institute

Friday, December 20, 1996

AT THE FEDERAL LEVEL

- The U.S. Department of Health and Human Services (HHS) released its 22nd annual "Monitoring the Future" survey which gauges lifetime, annual, current (use in the past month) and daily use of drugs, alcohol and tobacco by eighth, tenth and 12th graders. The survey showed that marijuana and tobacco use among eighth and tenth graders increased between 1995 and 1996, while use of these substances remained level among 12th graders. The survey found that tobacco use in the past month among eighth graders increased from 19 to 21 percent and by 28 to 30 percent among 10th graders. According to the survey, one-fifth of eighth graders and one-third of 12th graders are "current" smokers. HHS Secretary Shalala called for strict enforcement of the Food & Drug Administration's "tough" new tobacco regulations and asked retail establishments to help enforce the regulations.
- White House Director of Public Liaison Alexis Herman was appointed Secretary of Labor to succeed Robert Reich.

IN THE STATES

- The California Court of Appeal, Third Appellate District, overturned a Sacramento Superior Court ruling that found the approximately \$64 million diverted from the state's Proposition 99 tax-fund was illegal. The Appellate Court ruled that the legislature could cut funding from the state's anti-smoking education programs and disease research, accepting the defense that the needs of the state had changed.
- A state judge in Palm Beach County, Florida Circuit Court issued a ruling last Friday allowing the state to sue the tobacco industry for violating anti-racketeering laws. The racketeering counts are in addition to the state's lawsuit to recover Medicaid costs allegedly spent treating "tobacco-related" illnesses.
- Illinois, New Jersey and New York will not formally adjourn until the first week of January 1997. Ohio is slated to adjourn on December 31st.

NOTE: The *Executive Summary* will not be published on December 27. Publication will resume on January 3, 1997. Best wishes for a safe and happy holiday.

Executive Summary



From
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Friday, December 6, 1996

AT THE FEDERAL LEVEL

- The Food and Drug Administration (FDA) filed a brief in U.S. District Court in Greensboro, North Carolina opposing the tobacco industry's motion for summary judgment on its lawsuit to block FDA's final rule regulating tobacco products. The tobacco industry has until December 23 to file its response to the brief. Oral arguments are scheduled for February 10, 1997.
- The U.S. Court of Appeals for the District of Columbia denied a petition by Action on Smoking and Health (ASH) to force the Occupational Safety and Health Administration (OSHA) to adopt a rule immediately to regulate environmental tobacco smoke (ETS) in the workplace. In its lawsuit, ASH charged that OSHA's delay in promulgating a final rule on ETS violates the agency's Cancer Policy. The court ruled that OSHA has not unreasonably delayed action on ETS, among other findings.
- Food and Drug Commissioner David Kessler resigned on November 25; however, Dr. Kessler agreed to remain in the post until a replacement is confirmed.
- The Initiative on Tobacco Marketing and Children began a campaign asking marketing professionals to "think twice" about working with the tobacco industry. CTFK recently sent an open letter to advertising agencies around the country, urging them to redirect their marketing efforts. CTFK also plans to survey advertising and marketing professionals and invite industry leaders to a summit on the issue sometime in January. Additionally, CTFK began airing a television advertisement designed to bolster support for the FDA final rule regulating the advertising and marketing of tobacco products. According to CTFK, the advertisement will air again in January when the 105th Congress convenes.
- The Social Investment Forum and Co-Op America held a tele-news conference to release a new report entitled "Tobacco's Changing Context: A Challenge and Opportunity for Institutional Investors." The group alleges that 1997 will be a year in which institutional investors will be forced to reconsider continued investment in tobacco stocks, citing a financially weakened industry. The report is designed to serve as a guide for institutional investors and explores alternative investment strategies, including reducing tobacco ownership, freezing tobacco holdings at current levels, and engaging in shareholder activism. Other participants included the American Medical Association and the United Methodist Church.

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IN THE STATES

- A decision on December 3 by the North Carolina Court of Appeals invalidated the Halifax County Smoking Control Rules adopted by the Halifax County Board of Health in October 1993 before the state legislature enacted preemption legislation. The Court, following similar decisions handed down in New York and Ohio, held that the rules were an invalid exercise of legislative power by an administrative body.
- Iowa and Wisconsin joined 17 other states in filing suit against the tobacco industry in an attempt to recover Medicaid costs spent treating patients with “smoking-related” illnesses.
- The Minnesota Supreme Court ordered tobacco companies to submit their cigarette formulas as part of the state’s lawsuit against the industry. The state and Blue Cross/Blue Shield of Minnesota (BCBS) are suing the tobacco industry in an attempt to recover costs spent treating alleged “smoking-related” illnesses. The state and BCBS has sought the formulas in an attempt to substantiate their claim that tobacco companies manipulated nicotine levels “to keep smokers addicted.” In June 1996, the lower court judge ordered that the formulas be turned over to the states which led to an industry appeal to the state Supreme Court and this most recent ruling.
- On November 11, the Massachusetts Department of Public Health unveiled regulations to implement a law passed by the legislature earlier this year that requires cigarette manufacturers to disclose the ingredients and nicotine yields for each of their brands. The rules would require cigarette manufacturers to conduct more rigorous tests than currently required by the Federal Trade Commission in order “to determine more accurate tar and nicotine levels that smokers actually inhale.” Cigarette manufacturers filed suit in federal court to block the legislation. A hearing on the suit was scheduled for this week, but was postponed without a new date due to an illness of one of the state’s attorneys. A new hearing date has not yet been determined.
- The Pennsylvania Senate approved S. 1315 by a unanimous vote prior to the legislature’s adjournment. As passed, S. 1315 was amended to include a provision that prohibits “pupils” from using or possessing tobacco in a school building, school bus, and on any school property owned, leased by, or under the control of a school district. The measure’s definition of “pupil” is defined as a person between the ages of 6 and 21 who is enrolled in school. Violators would commit a summary offense punishable by a fine of not more than \$50.

Executive Summary



Friday, November 22, 1996

AT THE FEDERAL LEVEL

- Rep. Waxman (D-CA) has stepped down as the ranking member of the House Commerce Health and Environment Subcommittee to be the ranking member of the Government Reform and Oversight Committee. He will remain a member of the Commerce Committee and its Health and Environment Subcommittee.
- In an effort to encourage tobacco-free investments, The Calvert Group, which controls mutual funds worth more than \$5 billion, began an Internet service that identifies the tobacco holdings of 8,000 mutual funds. Entitled "Know What You Own," the site is located at <http://www.calvertgroup.com>. The group is also working with several health organizations to distribute action kits around the country that employees can use to urge their employers to offer "socially responsible" funds in which to invest. A survey released by the group showed that of 800 shareholders surveyed, 59 percent might be more inclined to invest in "smoke-free" funds.
- The Food and Drug Administration (FDA) issued a final rule implementing the medical device recall authority provided in the Safe Medical Device Act (SMDA) of 1990. The SMDA provides that if FDA finds a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA would be required to issue an order to cease distribution of the device. A recall may occur only after FDA: 1) makes the requisite finding; 2) issues a cease distribution and notification order to the device manufacturer; 3) provides the manufacturer an opportunity for regulatory hearing; and 4) determines that a recall of the device will not present a greater health risk than not recalling the device from use. The final rule will become effective May 19, 1997. Public comment on the rule's information collection requirements are due by January 21, 1997. As reported here on November 8, the rule was modified because of its potential applicability to tobacco. The FDA stated in its final tobacco rule that removing tobacco products from the market would cause more harm than good to public health and safety.
- Health and Human Services Secretary Shalala announced a new government campaign combining anti-drug and anti-smoking advertisements with messages encouraging girls ages 9-14 to devote themselves to school, sports, and the arts. The advertisements will feature Hollywood and sports celebrities. Funding for the \$750,000 campaign will come from the agency's Substance Abuse and Mental Health Services Administration.

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- Smokers' Rights United filed a class-action lawsuit in U.S. District Court on behalf of 50 million smokers. The suit charges that the U.S. Environmental Protection Agency has no legal or scientific basis to classify environmental tobacco smoke as a Group A carcinogen.

IN THE STATES

- A Washington state judge ruled that antitrust claims filed by the state of Washington against the tobacco industry could proceed, but that "claims of special duty, unjust enrichment and consumer protection" also brought by the state must be dismissed. The court found "no set of facts can be brought by the state to support [its] claims."
- The New York State Supreme Court gave the state 120 days to begin enforcement of regulations requiring Native Americans to collect state sales taxes on cigarettes and gasoline sold to non-Native Americans. The ruling stipulated that if the state does not comply, it must suspend the collection of all sales and excise taxes on tobacco products and motor fuel.
- As part of a proposed 10 percent income tax cut, Maryland Governor Glendening included in his plan a provision to double the state cigarette excise tax to 72 cents per pack to compensate for the revenue lost by the proposal. The Governor projects that the cigarette tax increase will yield the state approximately \$286 million over three years.
- California's Occupational Safety and Health Administration extended the deadline for the comment period on the state's Hazardous Communication Standard that incorporates Proposition 65, that established a list of "cancer-causing" chemicals and substances that included environmental tobacco smoke. Comments are now due November 26, 1996.
- For the second time in one month, Maryland's Montgomery County Council defeated by a 7-2 vote a measure that would have banned smoking in all of the county's 1,200 restaurants. The first measure defeated by the Council was a proposal that originated in Friendship Heights that would have banned smoking in all indoor and outdoor public areas within the town.

Executive Summary



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Friday, November 15, 1996

AT THE FEDERAL LEVEL

- On remand from the U.S. Supreme Court, the U.S. Court of Appeals for the Fourth Circuit re-affirmed its decision in Penn Advertising v. Baltimore to allow the City of Baltimore, Maryland to ban cigarette billboard advertising. Despite an instruction from the Supreme Court that the Court of Appeals reconsider its decision in view of the Supreme Court decision in 44 Liquormart Inc. v. Rhode Island that prohibits states from banning the advertisement of liquor prices, the Fourth Circuit stated that 44 Liquormart "does not require us to change our decision in this case."
- A draft report by the Inspector General of the Department of Defense (DoD) urges the department to go beyond its recent price increase that became effective November 1, and raise the price of cigarettes sold in military commissaries to market level. On November 1, cigarettes at the military's 230 commissaries nationwide increased by \$4 per carton to "discourage smokers from smoking."
- Participants in the Teachers Insurance and Annuity Association College Retirement Equities Fund (TIAA-CREF) recently voted against a proposal to sell the fund's tobacco holdings. The fund's board and management urged shareholders to vote against the measure after an October press conference by participants urged shareholders to support Resolution 3 that called for the fund to divest itself and cease the purchase of tobacco stocks. The resolution failed, 72 percent to 38 percent.
- Congress will hold leadership elections beginning next week when House Democrats convene November 18-22 to choose leaders and House Republicans convene November 20-22. Senate elections are expected to take place December 3-4.

IN THE STATES

- As reported last week, the Oregon initiative to increase by 30 cents the state cigarette excise tax was approved by voters on November 5th. The official tally, which includes all absentee ballots, is 56 percent voted in favor and 44 percent voted against the measure.

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- **Illinois and Iowa filed suit against the tobacco industry to recover Medicaid funds spent treating alleged “smoking-related” diseases. Arizona revised its tobacco lawsuit to accuse the industry of contributing to the delinquency of minors through marketing strategies aimed at encouraging them to smoke. The revised suit also drops the focus of the original suit filed August 20, a demand that the tobacco industry pay the state for past and present costs of treating people with alleged “tobacco-related” illnesses.**

Executive **Summary**



From
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Friday, November 8, 1996

AT THE FEDERAL LEVEL

- The Food and Drug Administration (FDA) issued a notice inviting state and local governments to file applications for exemption from preemption for requirements governing the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents. The Food, Drug and Cosmetic Act provides that the agency may exempt a state or local requirement from preemption if (1) the state or local requirement is more stringent than a requirement under the act applicable to the device; or (2), is required by compelling local conditions. To expedite matters, FDA will consider applications in two separate groups. The two groups are based on the effective dates for different requirements in the FDA's final rule on tobacco. Group I applications must be submitted by December 9, 1996; Group II applications are due by May 6, 1997.
- The Food and Drug Administration has reportedly modified its imminent final rule on device recalls to emphasize that the agency has discretion on what products it can remove from the market. According to reports, concerns over the rule's applicability to tobacco is the primary reason FDA's discretionary powers will be emphasized in the revised final rule. In its final rule on tobacco, FDA stated that removing tobacco products from the market would cause more harm than good to public health and safety.
- Effective November 1, 1996, the Department of Defense announced that the price of cigarettes sold at military commissaries and base exchanges will rise by \$4 per carton in an effort to discourage military members from smoking.
- The Department of Transportation issued a proposed rule for public comment regarding non-discriminatory air travel by those with handicaps. The department is seeking comments on whether to add regulations to require airports to protect such individuals from environmental tobacco smoke (ETS). If granted, the petitions would lead to a proposal that carriers and airports ensure that an individual with a severe respiratory disability "triggered" by exposure to tobacco smoke have available a path of access from the terminal entrance to the aircraft free from exposure to tobacco smoke. According to the proposal, the Department "would not intend to ban smoking in all terminals," by providing a number of compliance options. Written comments on the rule are due by January 30, 1997.

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IN THE STATES

- A San Diego County, California Superior Court judge ruled that a lawsuit against the tobacco industry and the Council for Tobacco Research could proceed. The suit alleges that the tobacco industry has “deceived the public” since 1954 regarding the alleged “dangers of smoking.” The case is not expected to go to trial until 1998.
- The latest estimates suggest that Oregon voters approved an initiative to increase the state cigarette excise tax by 30 cents. While many absentee ballots continue to be counted, the initiative appears to have been approved by 55% to 45%. Revenue generated by the tax will be earmarked for a tobacco-use reduction program and a state health plan.

Executive Summary



From
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Friday, November 1, 1996

AT THE FEDERAL LEVEL

- The U.S. Treasury's Bureau of Alcohol, Tobacco, and Firearms issued a notice re-opening the comment period on its Advanced Notice of Proposed Rulemaking to revise and recodify regulations on the exportation of alcoholic beverages, denatured alcohol, tobacco products, and cigarette papers and tubes. The comment period has been extended to December 9, 1996.

IN THE STATES

- The Illinois Attorney General is proposing tobacco retail restrictions that are expected to be introduced during the General Assembly's veto session which begins November 7. The legislation includes a statewide ban on self-service displays of tobacco products, the creation of a tobacco sales license, vending machine restrictions, and unannounced compliance checks and penalties for both the illegal sale and purchase of tobacco products.
- The Utah Substance Abuse and Anti-Violence Coordinating Council (USAAV) has released its priority list for the 1997 legislative session. The priority list includes a 20-cent per pack cigarette excise tax increase to be earmarked to tobacco education, prevention, cessation, and enforcement; a self-service display ban; and, amending the 1994 Tobacco Sting Control Act to allow local health officers to enforce the law and place the option of administrative enforcement under local health departments.
- The Montgomery County, Maryland Council's Health and Human Services (HHS) Committee took action on two tobacco-related matters this week. First, the Committee defeated by a 3-1 vote the Friendship Heights proposal to ban smoking in all outdoor public places. Second, the Committee voiced disapproval of a proposed restaurant smoking ban, although it did not take a formal vote. While the Committee stated it would not support a full smoking ban, it did suggest, as an alternative, the imposition of higher license fees on restaurants with smoking sections in an attempt to encourage restaurants to ban smoking voluntarily.

Executive Summary



From
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Friday, October 25, 1996

AT THE FEDERAL LEVEL

- The Railroad Retirement Board issued a final rule prohibiting tobacco product vending machines and the distribution of free tobacco samples on federal property because the Board conducts its business on real property owned or leased by the General Services Administration (GSA). Federal law prohibits tobacco product vending machines and sampling in, or upon, GSA-owned or leased property. The Board may sell tobacco products to persons 18 years of age and older through staffed concession stands on property occupied and maintained by the Board. The rule became effective on October 22.
- The Department of Defense (DOD) and the House Special Oversight Panel on Morale, Welfare, and Recreation continue to debate DOD's August notification that, effective November 1, 1996, "[t]obacco products will be sold as exchange items in commissary outlets at the prevailing exchange price," rather than at discounted military prices.
- The National Licensed Beverage Association held a press conference to announce the findings of a nationwide survey of restaurant and tavern owners and managers concerning the federal Occupational Safety and Health Administration's (OSHA) proposal to ban smoking in all workplaces. The study reports that 83 percent of all bar owners and 49 percent of restaurant operators anticipate a loss of revenue overall. The study also indicates that nearly two-thirds of those surveyed expect that they would have to lay off employees as well, an action that could result in 138,000 layoffs nationwide.

IN THE STATES

- A Palm Beach, Florida Circuit County judge ruled that the state does not have to identify by name those Medicaid patients treated for "smoking-related" illnesses as part of its suit against the tobacco industry. The Court instead upheld the state's identification of patients by case number.
- New Mexico's Attorney General appeared before the state's Legislative Finance Committee requesting \$200,000 for the current fiscal year and \$800,000 per year for the next four fiscal years, to hire attorneys and finance the cost of the state's litigation against the tobacco industry. The Committee is considering the issue.

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- The Coalition for Smoke-Free **Maryland** Workplaces, a Rockville-based group, filed civil rights complaints against 18 restaurants in Montgomery and Howard counties on behalf of citizens with asthma, emphysema, and other breathing disorders. The complaints are based on local ordinances that require businesses to make “reasonable accommodations” for the disabled. The complaints allege that the restaurants named in the action have violated the rights of non-smokers with respiratory ailments by not providing a smoke-free environment. Maryland law restricts smoking in restaurants to enclosed areas.

- The **Indiana** State Medical Association modified its standing resolutions during last week’s annual meeting to place greater restrictions on the tobacco industry. Rather than “urging” the Attorney General to file suit against the industry, the Association indicated that it would support legal action by the state’s Attorney General to recover Medicaid costs spent treating alleged “smoking-related” illnesses. Two additional tobacco issues were addressed at the meeting: the issue of banning smoking in private cars when children are present was nullified; and the association supported placing information about tobacco-use on death certificates.

Executive Summary



Friday, October 18, 1996

AT THE FEDERAL LEVEL

- The major cigarette manufacturers filed a motion in federal court requesting a summary judgment on the industry's lawsuit challenging the Food and Drug Administration's (FDA) regulation of tobacco products.
- This week the U.S. Supreme Court upheld the Fifth Circuit's dismissal of the Allgood v. American Tobacco Company case in which plaintiffs claimed negligence, conspiracy, product liability, breach of warranty, fraudulent misrepresentation and concealment. The Court supported the Fifth Circuit's decision that tobacco companies are not required to provide additional warnings about their products because the risks "have long been known to the community." Originally filed in 1991, the Allgood case was dismissed in federal court in 1995. The dismissal was upheld by the Fifth Circuit in April before being appealed to the Supreme Court.
- A U.S. District Court judge in Louisiana ruled in favor of Brown & Williamson in a lawsuit brought by a former smoker Lawrence Hutchin v. American Tobacco (Brown & Williamson). The judge accepted the defendants' motion for summary judgment which cited several recent cases in which courts have held that the public has long been aware of risks associated with smoking.
- A study appearing in the journal Science purports to demonstrate cellular evidence of a causal relationship between cigarette smoking and lung cancer.
- The District of Columbia Bar Association hosted a lunch program featuring FDA Deputy Commissioner Schultz entitled "How the FDA Came to Take on the Tobacco Industry." Details were provided by separate memorandum.
- The Center for Responsive Politics held a press conference at the National Press Club to announce the results of its pre-election report entitled "Who's Paying for This Election?" The study, which will be available in its entirety on the Internet, will include a thorough look at the financing of the 1996 congressional races, featuring an analysis of industry PAC contributions. Details were provided by separate memorandum.

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- The Campaign for Tobacco-Free Kids sent a letter to “political professionals” and candidates on “why it’s important to raise tobacco issues” in this year’s political campaigns. The letter stated that “poll after poll shows that the voting public strongly supports political candidates that take on the tobacco companies.” The 14 page memorandum entitled “The Right Side of History: Tobacco & Politics 1996,” included “Ten Good Questions” on tobacco to ask political candidates.
- The National Institutes of Health sponsored a lecture by Dr. Jack Henningfield, formerly of the National Institute on Drug Abuse. Entitled “Nicotine Addiction: Science, Medicine, and Public Policy,” Henningfield’s lecture referred to cigarettes as “highly sophisticated drug delivery systems” and stated that “cigarettes contain a drug, nicotine...and this is the premise of the FDA.” Henningfield also said that nicotine is not the most highly addictive substance but its accessibility makes it use more widespread.
- As part of President Clinton’s 1995 regulatory reform initiative, the U.S. Department of Treasury Bureau of Alcohol, Tobacco and Firearms issued a final rule revising and recodifying the regulations governing the operations of cigarette papers and tubes manufacturers. The revisions consist of a clear definition of the term “set,” as the term is applied to cigarette papers. The rule also eliminates obsolete terms and clarifies certain requirements. The rule became effective October 17, 1996.

IN THE STATES

- Today, **Arizona** Governor Fife Symington ordered the state to drop its lawsuit against tobacco companies to recover Medicaid costs of treating alleged “smoking-related” illnesses.
- The states of **Kentucky** and **North Carolina** this week joined the tobacco industry’s lawsuit challenging the FDA’s authority to regulate tobacco.
- **New York City, New York** filed suit against the tobacco industry this week in an attempt to recover monies the city spent on alleged “smoking-related” illnesses.
- The state of **Florida** added a racketeering charge to its pending lawsuit against the tobacco industry. The Attorney General indicated the state has additional information to support its claim than when the suit was originally filed last year. The racketeering count would be based upon “claims that the industry lied to federal officials, committed fraud, illegally marketed its products to children, and conspired to deceive the public about the dangers of cigarettes.” The state is attempting to recover costs associated with treating alleged “smoking-related” illnesses.

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- The Village Council of Friendship Heights, **Maryland** voted unanimously to ban smoking in all outdoor public areas of the community. As adopted, the regulation exempts two major thoroughfares in the area, Wisconsin and Willard Avenues, and allows for a warning for first-time offenders with subsequent violations carrying a \$100 fine. The measure must be approved by the Montgomery County Council, which is currently considering a ban on smoking in restaurants and bars.

Executive Summary



From
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Friday, September 27, 1996

AT THE FEDERAL LEVEL

- Congressman Paul McHale (D-PA), sponsor of H.R. 2962, held a congressional briefing on the advertising deductibility measure and addressed the “impact” of tobacco advertising on youth. Details of the briefing were provided by separate memorandum.
- The Public Citizen “Tobacco Accountability Project” will run television advertisements in various congressional districts to target Members of Congress who have accepted tobacco contributions, opposed the Food and Drug Administration (FDA) regulation, and opposed ending federal assistance to tobacco growers. Details were provided by separate memorandum.
- The National Parents’ Resource Institute for Drug Education (PRIDE) held a press conference to release the results of its ninth annual survey on adolescent drug abuse. The group reported that adolescent illicit drug use increased 23 percent between 1995-96. Record percentages of use were reported for cigarettes, marijuana, cocaine, hallucinogens, amphetamines, barbiturates, and heroin. PRIDE attributes the record increases to the absence of parental involvement stating that “parents are the strongest force this nation has in solving the drug problem.” Retired General Barry McCaffrey, Director of the Office of National Drug Control Policy, embraced the PRIDE program as “the center to the solution of the drug problem -- Parents Not Politics.”
- The American Cancer Society held a “Tobacco & Health” symposium in Roanoke, Virginia. Health, agriculture, and economic development experts from six southern states discussed competing concerns.
- Negotiations among congressional leaders continue on an omnibus Fiscal Year 1997 appropriations bill. Seven of the thirteen regular appropriations measures have been sent to the White House; four have been signed into law. If agreement is reached on the omnibus appropriations bill containing the remaining six funding bills, floor consideration could occur later today or tonight.
- The September 26 edition of the New England Journal of Medicine contains an article by FDA Commissioner Kessler describing the Food and Drug Administration’s internal decision-making process to issue the recently promulgated final rule to regulate tobacco products.

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- The United States Department of Agriculture's Commodity Credit Corporation issued a final rule this week to codify determinations made by Secretary of Agriculture Glickman with respect to the 1996 burley tobacco crop. The 1996 marketing quota for burley tobacco was set at 633.8 million pounds, while the price support level for the crop was set at 173.7 cents per pound, nearly 12 cents below the 1995-96 average market price.
- On Tuesday, October 1, the Teachers Insurance and Annuity Association College Retirement Equities Fund will hold a news conference to urge its retirement fund to relinquish its investment of \$1.5 billion in tobacco stocks.

IN THE STATES

- An ingredients disclosure bill, A. 2373, was introduced in New Jersey this week that would require a manufacturer of cigarettes, snuff, or chewing tobacco sold in the state to provide the Department of Health and Senior Services with an annual report containing for each brand of tobacco product sold, the identity of any added constituent other than tobacco, water, or reconstituted tobacco sheet, as well as nicotine yield ratings. The bill also would stipulate that a manufacturer would not be required to identify or disclose the specific amount of any ingredient that has been approved by the federal Food and Drug Administration when burned and inhaled.
- An ingredients disclosure bill was introduced earlier this month in New York, S. 7969. The measure would require the manufacturers to disclose the ingredients in tobacco products, other than water and tobacco, to the state Department of Health for each product manufactured. The bill also would require the disclosure of nicotine yield ratings and require the Commissioner of Health to submit a report to the Governor and Legislature with recommendations. S. 7969 remains pending in the Senate Rules Committee. A similar measure introduced last year, A.B. 837, remains pending in the Assembly Rules Committee.
- The Washington State Pharmacists Association and Tobacco-Free Washington have joined to discourage tobacco sales and promotions at pharmacies throughout the state. Through their "Tobacco-Free Pharmacy Program," the two groups intend to enlist at least a quarter of the state's 1,000 retail pharmacies to begin discontinuing tobacco sales and certify pharmacists as "tobacco-cessation" counselors. Pharmacists that join the program agree to encourage patrons to stop smoking, to decrease the visibility of tobacco products in their stores, to remove tobacco advertisements, and to cease selling tobacco products in their pharmacies.

Executive Summary



Friday, September 20, 1996

AT THE FEDERAL LEVEL

- The federal Occupational Safety and Health Administration (OSHA) issued a request for comments on the California OSHA Hazard Communication Standard and its incorporation of Proposition 65 into the standard. Proposition 65, the "Safe Drinking and Toxic Enforcement Act," approved by California voters in 1986, established a large list of "cancer-causing" chemicals and substances that included environmental tobacco smoke. Businesses are required to post signs or to label products warning workers and the public of the presence of these substances. Federal OSHA is seeking public comment on a number of issues to determine whether or not to approve the California standard. Comments are due by November 12, 1996.

IN THE STATES

- A West Palm Beach, Florida County Court Judge dismissed 15 of 18 claims in Florida's Medicaid recovery lawsuit against the tobacco industry, including fraud and conspiracy counts and all of the state's claims prior to 1994. The judge also ordered the state to provide to defendants, within 30 days, the identity of each recipient of Medicaid payments for whom damages will be sought. However, the ruling stipulated that the state did have viable claims to recover damages for Medicaid payments made after July 1, 1994, the effective date of the Florida Medicaid Amendments of 1994.
- The Illinois Attorney General announced that the state will file suit against the industry to recover Medicaid costs for treating alleged "tobacco-related" illnesses. Illinois is the 16th state to file such a suit against the industry.
- The Texas Board of Education divested the state's Permanent School Fund of its tobacco company holdings, attributing the decision to an expected downturn in the value of the stocks rather than political pressure.
- Legislatures in Michigan, New Jersey, and Ohio continue to meet in regular session. Pennsylvania is expected to return from recess on September 24, and Illinois is expected to return on November 7.

Executive Summary



Friday, September 13, 1996

AT THE FEDERAL LEVEL

- The National Association of Health Services Executives, the American Lung Association, and the National Medical Association will hold a news conference later this evening to support FDA plans to regulate tobacco sales to children.
- Rep. Funderburk (R-NC) sent a letter to the Office of Management and Budget (OMB) expressing concerns about the paperwork reduction issues raised in his July 31 comments to OMB and the way those comments were handled by the Food and Drug Administration (FDA) in its final tobacco rule. Rep. Funderburk also expressed concern that the FDA did not ask for public comment on the paperwork reduction issues he raised. In addition, he said that the FDA rule may be unnecessary due to the recent promulgation of the SAMHSA regulations that are designed to reduce and prevent youth smoking. Rep. Funderburk said that he believes the SAMHSA rule should be given a chance to work before imposing the reporting and record keeping requirements encompassed in the FDA rule.
- Following up on the paperwork issue raised by Rep. Funderburk, the House Small Business Committee sent a letter this week to FDA Commissioner Kessler requesting all documents related to paperwork procedures followed by the FDA in promulgating its final rule on tobacco. The Committee letter states that it wants to "review the manner in which FDA did or did not follow the statutorily required procedures for meaningful public participation in the Paperwork Reduction Act" during the rule's promulgation. A deadline of September 23 was set by the Committee for the receipt of those documents.
- Senators Lautenberg (D-NJ) and Kennedy (D-MA) held an ad hoc hearing on teen smoking and to support the FDA rule's goal to "cut teen smoking in half." Details were provided by separate memorandum.
- During the Christian Coalition's annual meeting, Coalition Director Ralph Reed said "We agree with the objective of protecting children from tobacco," adding that "we're prepared to go further" and called upon Vice President Gore to return to the U.S. Treasury "every dime" he received from growing tobacco. In a message to President Clinton, Reed stated, "Before you tell us to get tobacco out of our homes, you better get illegal drugs out of the White House, and you need to do it today."

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- Environmental Protection Agency Administrator Browner announced a new national strategy to protect children from environmental risks. The report, entitled "Environmental Threats to Children," lists "second-hand tobacco smoke" as a "threat" along with toxic waste dumps, pesticides, water pollution, and PCB's among others.
- The Public Health Service (PHS) held a Healthy Women 2000 conference entitled "Clearing the Air: Smoking, Girls and Young Women's Health." The conference featured an announcement of the Girl Scout U.S.A.'s new anti-smoking campaign developed in collaboration with the PHS. The Girl Scouts awarded First Lady Hillary Clinton their new "Girl Scouts Against Smoking" patch earlier this week.
- Rep. McHale (D-PA) has scheduled a congressional hearing on September 26 on the impact of tobacco advertising on public health and on the economy.

IN THE STATES

- Kentucky Governor Patton met this week with a White House official to begin discussions on a legislative alternative to the FDA rule on tobacco. Joining Patton were Kentucky's Agriculture Commissioner, Sen. Ford (D-KY), and Rep. Baesler (D-KY). In a press release issued September 12, Patton reiterated his opposition to FDA's jurisdiction of tobacco and his support for S. 1262 and H.R. 2414, the Ford and Baesler proposals to reduce and prevent tobacco use by minors.
- New Jersey became the 15th state to file suit against the tobacco industry seeking to recover Medicaid costs for treating alleged "smoking-related" illnesses. A similar suit will be filed as a class action by Erie County, New York on behalf of all other counties within the state.
- The Arizona Attorney General reportedly indicated he believes the state's largest pension fund, the Arizona State Retirement System, should divest itself of \$134 million in tobacco company investments.
- Virginia's Attorney General is considering the option of legal action to block the federal regulation of cigarettes and smokeless tobacco products as "addictive drugs" stating that "legal or regulatory action...merits review."
- The Lt. Governor of New York suggested that a 10-cent per pack increase in the state excise tax on cigarettes would provide a means to finance her proposed \$117 million pre-kindergarten expansion program for disadvantaged children. Other legislation to raise the tax by 1-cent, 25-cents, 50-cents, \$1.12, or by a 5 percent ad valorem tax remains pending.

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- A resolution failed by a 2-2 vote in **Minnesota** that urged limiting the state's investment in tobacco stocks. The resolution was prompted by concerns about the perceived financial risk from recent lawsuits against the industry, and the recently promulgated FDA rule on tobacco.
- At the urging of Governor Chiles, the **Florida** Board of Administration began a study on the feasibility of the state's divestiture of \$693 million in tobacco holdings. The Governor, as well as the State Comptroller, Treasurer, and Insurance Commissioner, will be members of the Board which oversees the state's pension fund. A decision on whether the state will divest itself of tobacco stocks is expected by the end of the calendar year.
- The **North Carolina** Attorney General has drafted legislation for introduction during the 1997 legislative session to further restrict vending machine sales, and require photo identification to purchase tobacco products. The proposal also includes voluntary restrictions such as banning tobacco advertisements on public transportation, as well as sports facilities.
- All state health department facilities in **Texas** became smoke-free on September 3, 1996. There are no designated smoking areas, and smoking is prohibited outdoors on health department property as well as in state-owned vehicles.

Executive Summary



Friday, September 6, 1996

AT THE FEDERAL LEVEL

- The Campaign for Tobacco-Free Kids (CTFK) held a press conference to release results of a national poll indicating public support for the Food and Drug Administration (FDA) rule and to display national and regionally targeted newspaper advertisements urging selected Congressional members and candidates to support the recently promulgated FDA rule. Further details were provided by separate memorandum.
- The Senate Judiciary Committee held a hearing on the recent increase of teenage drug use. Among those that testified were National Drug Control Policy Director Barry McCaffrey, Health and Human Services Secretary Donna Shalala, and Senator Mitch McConnell (R-KY). In his statement, Sen. McConnell challenged the Administration's claim that cigarettes lead to marijuana use. He referred to an internal White House study that states most marijuana-users "start with marijuana, not cigarettes." McConnell then criticized the Administration's "complete abdication of the war on menacing, addictive drugs."
- The Federal Trade Commission issued a final rule to determine the rotation of three health warnings placed upon smokeless tobacco advertisements and packaging. The rule amends the current regulation governing "utilitarian" items and promotional materials to permit a rotation based upon three standards: the date the objects or materials are ordered or are disseminated; the cover or closing date for publications; and either the scheduled or the actual appearance of the advertisement of the product. The final rule will become effective September 30, 1996.

IN THE STATES

- California's Assembly concurred with Senate amendments to A.B. 3037 by a 50-22 vote. As passed by the legislature, the measure would extend to January 1, 1998 the date by which either the Occupational Safety and Health standard board or the Environmental Protection Agency must adopt guidelines for reducing employee exposure to environmental tobacco smoke, and to permit continued smoking ban exemptions for bars, taverns, and gaming clubs. The bill awaits action by the Governor. In other legislative developments, the Senate approved Senate Concurrent Resolution 62 requesting the state Attorney General to bring suit against the tobacco industry to recover costs spent treating alleged "smoking-related" diseases. The resolution now moves to the Assembly for further action.

Executive Summary



From
The
Tobacco
Institute

Doc
9/12

Thursday, August 29, 1996

AT THE FEDERAL LEVEL

- Congress returns next week from its August recess. The Senate returns September 3, and the House resumes business on September 4.

IN THE STATES

- Governors Patton (D-KY) and Hunt (R-NC) stated that each of their states will file an amicus brief supporting the tobacco industry's suit against the Food and Drug Administration (FDA) that seeks to block the FDA tobacco regulation promulgated last week.
- Individuals and business owners in Mesa, Arizona filed suit against a smoking ban initiative approved earlier this year. A similar Mesa suit filed by owners of various licensed businesses and restaurants is scheduled for an initial hearing today in Maricopa County Superior Court.
- The state legislatures in California, New York, and Ohio remain in session. Four other state legislatures are in recess, but will reconvene in the fall: Illinois (11/7), Michigan (9/10), New Jersey (9/3), and Pennsylvania (9/24).

Executive Summary



Friday, August 23, 1996

AT THE FEDERAL LEVEL

- In a Rose Garden ceremony today, President Clinton announced support for the Food and Drug Administration's (FDA) proposed rule to regulate tobacco. Details of the final rule are being provided by separate memorandum. Immediately following the President's announcement, Health and Human Services (HHS) Secretary Shalala and FDA Commissioner Kessler answered additional questions from the press. The final rule is expected to be published in the Federal Register on Wednesday, August 28.
- HHS Secretary Shalala and Drug Policy Director McCaffrey held a news conference earlier in the week to announce the findings of the 1995 National Survey on Household Drug Abuse. The survey revealed that illicit drug use among 12 to 17 year-olds has increased 78 percent since 1992. Shalala added that tobacco and alcohol use by youths was "unacceptably high."
- The National Center for Tobacco-Free Kids held a press conference reiterating its support for the regulation of tobacco by the FDA. Spokespersons for the Center stated that they expect the final rule to be as "hard-hitting and focused" as the original proposal and added that the FDA regulation would have no "short-term effects" on tobacco growers.
- Rep. David Funderburk (R-NC) sent a letter to the Office of Management and Budget (OMB) stating that the FDA incorrectly applied the 1980 Paperwork Reduction Act to the proposed rule to regulate tobacco when it should have applied the more stringent paperwork reduction requirements of the 1995 Act. Rep. Funderburk demanded that the FDA be required to take the necessary steps to comply with the 1995 Act, including allowing the public 60 days to submit comments on the initial proposed information collection prior to submitting the proposed rule to OMB. Rep. Funderburk requested that OMB advise FDA of the need to comply with the 1995 Act by August 15, 1996.
- Representatives Richard Burr (R-NC) and L.F. Payne (D-VA) sent a letter urging the OMB to halt further consideration of the FDA rule to regulate tobacco.

IN THE STATES

- This week the state Attorneys General in Arizona, Kansas, and Michigan filed suit against the tobacco industry seeking reimbursement for Medicaid costs incurred by each state for treating alleged "tobacco-related" illnesses. New Jersey will reportedly wait until next month to file a similar suit against the industry.

continued...

- The California Senate this week approved A. 3037 by a 29-5 vote. As passed by the Senate, the bill would extend the existing smoking ban compliance deadline by one year to 1998. In addition, the measure would provide that if the state EPA adopts standards for reducing employee exposure to environmental tobacco smoke for bars, taverns, and gaming clubs, businesses would have two years to comply with the standards. The bill is pending House concurrence with Senate amendments.

Executive **Summary**



From
The
Tobacco
Institute

Friday, August 16, 1996

AT THE FEDERAL LEVEL

- On Tuesday, the Food and Drug Administration sent its final rule regulating tobacco to the White House for review by the Office of Management and Budget. Reportedly, the rule may be published in September.
- The Bureau of Alcohol, Tobacco, and Firearms (ATF) issued an Advanced Notice of Proposed Rulemaking to revise and recodify regulations covering the exportation of alcoholic beverages and tobacco products as part of President Clinton's 1995 regulatory reform initiative. Public comments on the proposal are due by October 8, 1996.
- At its annual conference in July, the National Association of Counties (NACo) reaffirmed its existing policy toward tobacco use by minors. The resolution states that "more must be done to reduce tobacco use among minors, including strengthening regulation and enforcement policies to make tobacco products less accessible to minors, curtailing activities which make tobacco products appealing to minors and expanding education programs which target young people and pregnant women."

IN THE STATES

- Three state legislatures remain in regular session: **California, New York, and Ohio.**

Executive Summary



Friday, August 9, 1996

AT THE FEDERAL LEVEL

- Rep. Jon Fox (R-PA) introduced H.R. 3954 to restrict youth access to tobacco products. In addition to restrictions on sampling and vending machines, the measure bans the promotion of tobacco products in family amusement centers, outdoor advertisements within 1,000 feet of playgrounds and schools, bans the sale of cigarettes individually and in packs of less than 20, and establishes a minimum sales age of 18 unless a higher age has already been established by the state. The bill would not preempt states and localities from enacting more stringent requirements. H.R. 3954 has been referred to the House Commerce Committee, with an additional referral to the House Government and Oversight Committee.
- The National Center for Tobacco-Free Kids held a press conference this week to unveil an advertising campaign for the national conventions of both parties and announce the results of a national poll on public attitudes toward the proposed Food and Drug Administration rule to regulate tobacco. Details were provided by separate memorandum.
- President Clinton signed H. R. 3603, the Fiscal Year 1997 Agriculture/FDA appropriations bill. As signed, the bill, among other provisions, specifies how the FDA should operate and spend its funding for next year. In addition, the bill requires FDA to seek approval from the House and Senate Appropriations Committees if a reallocation of funds within an account would result in a major policy, program, or personnel change. Arguably, FDA would have to seek permission to reallocate resources to implement and enforce a tobacco rule.
- Congress began the summer recess on Friday, August 2. The Senate will return on September 3; the House on September 4.

IN THE STATES

- Los Angeles County, California filed suit against the industry this week, joining 10 states and the City of San Francisco in an attempt to recover costs spent treating alleged "tobacco-related" illnesses.

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- **Rhode Island** Governor Almond signed ADAMHA bill S. 2804. The bill prohibits the sale of tobacco products to persons under 18, requires photographic proof of age when purchasing tobacco products, prohibits the sale of tobacco products through the mail to persons under 18, prohibits sampling within 500 feet of schools, and prohibits the sale of single cigarettes or packs of less than 20. In addition, the measure requires the Department of Health and law enforcement officials to investigate violations and to conduct unannounced vendor compliance checks. The new law also increases monetary penalties for violations, and provides for retailer license suspension and revocation for repeat offenses.
- The **New York** and **Ohio** state legislatures remain in regular session. The following state legislatures are expected to return from recess in the fall: **Illinois** (11/7), **Michigan** (9/10), **New Jersey** (9/3), and **Pennsylvania** (9/24).

Executive Summary



Friday, August 2, 1996

AT THE FEDERAL LEVEL

- Rep. Tim Roemer (D-IN) held a press conference releasing a bi-partisan letter to petition the Federal Trade Commission (FTC) to reopen its investigation of the "Joe Camel" advertising campaign. Supporters are asking the FTC to reopen the investigation on the basis that newly published studies allegedly demonstrate advertising is a significant factor in tobacco use among youth. Rep. Roemer noted that FTC action would "complement, not replace" FDA regulation of tobacco.
- Reps. Thomas Ewing (R-IL) and Charlie Rose (D-NC) wrote Secretary of Agriculture Dan Glickman expressing significant concern over the Food and Drug Administration's (FDA) proposed rule to regulate tobacco. Noting FDA estimates of 10,000 jobs lost over ten years, they commented that "[o]f particular importance is FDA analysis not previously published for public comment that was obtained by the General Accounting Office which indicates that 60% of the annual job loss for the industry will be attributed directly to tobacco growers." The Congressmen asked to be informed by August 7, 1996 as to "how the United States Department of Agriculture plans to protect tobacco farmers from these unprecedented FDA actions and burdens."
- Congress approved the conference report for H.R. 3603, the Fiscal Year 1997 Agriculture/FDA appropriations bill, sending the measure to the White House for final action. H.R. 3603 is the first spending bill to clear Congress, and is the eighth of 13 Fiscal Year 1997 appropriations bills approved by the Senate.

IN THE STATES

- A Michigan Circuit Court granted a preliminary injunction preventing the City of Troy's vending machine ban from taking effect "until further order from this Court." The Court held that the local vending machine ban is preempted by state law and threatened plaintiffs with an unconstitutional taking of their property.
- Massachusetts Gov. William Weld signed the recently passed cigarette ingredients disclosure legislation bill. The Massachusetts law, the first state to require cigarette manufacturers to disclose all ingredients in their tobacco products, was immediately challenged by the industry in federal district court.

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In other developments, the Massachusetts House approved H. 6253 that would prohibit public pension funds from remaining invested in “the stocks, securities, or other obligations of any company which derives more than 15 % of its revenues from the sale of tobacco products.” The measure was referred to the Senate Ways and Means Committee.

- The **Rhode Island** Senate concurred with House amendments to S. 2804, sending the measure to the Governor for final action. The amended bill would require photographic proof of age for the purchase of tobacco products.
- Four state legislatures remain in regular session: **Massachusetts, New York, Ohio, and Rhode Island.**

Executive Summary



From
The
Tobacco
Institute

July 26, 1996

AT THE FEDERAL LEVEL

- The House Small Business Government Programs Subcommittee heard testimony from the FDA's Acting Deputy Commissioner Robert Byrd on the agency's efforts to lessen the regulatory and paperwork burdens on small business. In questioning, Subcommittee member Rep. David Funderburk (R-NC) stated that "Congress has never given FDA authority to regulate tobacco" and said such regulation would be "legally suspect." He then asked why FDA subjected the proposed tobacco rule to the 1980 Paperwork Reduction Act instead of the 1995 Act. Commissioner Byrd said he was not prepared to answer questions on the tobacco proposal. Rep. Funderburk submitted several questions to the record for an FDA response. In written testimony, the Medical Device Manufacturers Association charged that FDA's attempts to regulate tobacco "has left the U.S. medical device industry dangling on life support."
- The House has sent 13 regular Fiscal Year 1997 appropriations bills to the Senate. This week, the Senate approved the Fiscal Year 1997 Agriculture/FDA appropriations bill, H.R. 3603. The Senate has now passed four of the 13 appropriations bills.

IN THE STATES

- The **Minnesota** Supreme Court ruled this week that Blue Cross and Blue Shield can proceed with a lawsuit seeking damages for allegedly "deceptive and unlawful trade practices and false advertising." However, the court also ruled they have no basis to pursue a tort claim seeking damages against the industry.
- **Massachusetts** lawmakers overrode Governor Weld's veto on legislation that increases the state's cigarette tax by 25 cents and places a 15 percent tax on cigars and other tobacco products. The House override vote was 117-40; the Senate vote was 32-7. The tax is set to go into effect October 1, 1996. Revenues will be earmarked to a state program providing health coverage for uninsured children and prescription assistance for the elderly. In an unprecedented move this week, the legislature also approved an ingredients disclosure bill, H. 2191. The bill, making Massachusetts the first state to require cigarette manufacturers to disclose all ingredients in their tobacco products, including smokeless tobacco products, is on the Governor's desk.

continued...

- After approval by the **New York** legislature earlier in the month, S. 7940 awaits action by Governor Pataki. The bill requires the suspension or revocation of a cigarette retailer's registration for the possession of unstamped, or unlawfully stamped, cigarette packs. Fines and penalties are graduated for violation of the bill's provisions.
- **New Jersey** ACR 1 was withdrawn from consideration on the Senate floor after voting began on the resolution. Although no official vote was recorded, there were reportedly 11 votes in favor and 18 votes against the measure. The resolution would have earmarked revenues from two pending cigarette tax bills, A. 2157 and S. 1436, for school construction and renovation. The tax bills, which would increase the cigarette tax by 25-cents, are pending on the Senate floor.
- A proposed referendum in **Maine** would raise the state's legal age to purchase tobacco products from 18 to 21. The Secretary of State approved the proposal's wording, but the sponsors must still provide a draft petition and obtain more than 51,000 valid signatures by January, 1997 in order for the measure to be placed on the November, 1997 ballot.
- Eight state legislatures remain in regular session: **California, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island.**

Executive Summary



From
The
Tobacco
Institute

Friday, July 19, 1996

AT THE FEDERAL LEVEL

- Rep. James Hansen (R-UT) introduced H.R. 3821 to ban the advertising and promotion of tobacco products. The bill has been referred to the House Commerce Committee with a subsequent referral to the House Judiciary Committee.
- The House Transportation Committee's Aviation Subcommittee held a hearing on H.R. 969, the "Airliner Cabin Air Quality Act of 1995," by Rep. James Oberstar (D-MN). The bill would prohibit smoking on all scheduled airline flights, including foreign carriers. In testimony, a Clinton Administration witness questioned the ability of the federal government to ban smoking on foreign carriers. Details of the hearing were provided by separate memorandum.
- The House approved H.R. 3756, the Fiscal Year 1997 Treasury, Postal Service and General Government appropriations bill, by a 215-207 vote. The House has now approved ten of the thirteen Fiscal Year 1997 appropriations bills.
- The Institute continues to prepare for the Food and Drug Administration to promulgate a final rule on tobacco. According to some reports, a final rule may be issued around the anniversary date of the proposed rule, August 11, which also coincides with the start of the Republican convention.

IN THE STATES

- **Connecticut** filed a \$1 billion lawsuit against the industry to recover Medicaid costs of alleged "tobacco-related" illnesses. Nine other states have filed similar suits against the industry.
- Legislation in **Massachusetts** to increase the state cigarette excise tax by 25 cents awaits action by Governor Weld. The revenue would be earmarked for health coverage for uninsured children.

continued...

- Next week, the **New Jersey** Senate will consider legislation to increase the cigarette tax by 25 cents. The legislation, A. 2157 and S. 1436, is accompanied by concurrent resolutions (A.C.R. 1 and S.C.R. 88) that would dedicate the revenue for a \$1 billion school construction and refurbishment project. Should a tax be enacted, it would become effective only if a concurrent resolution to dedicate the revenue is approved by the legislature and then by the voters in November.
- The **California** Senate unanimously approved legislation that would state the intent of the legislature to make statutory changes to implement the Budget Act of 1996 relative to programs funded by the Cigarette and Tobacco Products Surtax Fund. S. 1773 is pending Assembly consideration.
- Eight state legislatures remain in regular session.

Executive Summary



Friday, July 12, 1996

AT THE FEDERAL LEVEL

- The U.S. Supreme Court last week set aside an appeals court ruling that permitted the City of Baltimore to ban cigarette billboard advertising. The Court remanded the case to the 4th U.S. Circuit Court of Appeals for review on First Amendment grounds in light of a recent decision in 44 Liquormart v. Rhode Island that prohibits states from banning the advertisement of liquor prices.
- A companion to Sen. Lautenberg's (D-NJ) Medicaid bill, S. 1892, was introduced in the House by Rep. Oberstar (D-MN). The bill, H.R. 3779, provides financial incentives to states that sue tobacco manufacturers for recovery of Medicaid costs by requiring the federal government to return part of its share of any court awards to the states. Current law requires states to return the federal Medicaid share of awards. The measure allows states to retain one-third of the federal Medicaid share. The next third would be earmarked for NIH research on "smoking-related" diseases, and the balance of the award would go to the federal treasury for deficit reduction. H.R. 3779 was referred to the House Commerce Committee with a subsequent referral to the House Budget Committee.
- The Senate Appropriations Committee unanimously approved the Fiscal Year 1997 Agriculture/FDA appropriations bill, H.R. 3603. Senate floor action on the measure is possible next week. Details of the bill, as reported by the committee, were provided by separate memorandum.
- This week the House approved Fiscal Year 1997 appropriations bills for the Legislative Branch (H.R. 3754) and the Departments of Labor, Health and Human Services, and Education (H.R. 3755). To date, the House has approved nine of the thirteen Fiscal Year 1997 appropriations bills.

IN THE STATES

- Two tobacco-related bills recently became law in **Hawaii**. H. 3809 requires signs to be posted near the point of sale stating that the sale of tobacco products to minors is prohibited. S. 2280 prohibits cigarette sales within 1,000 feet of schools.

continued...

- A 25-cent tax increase has been sent to the Governor of **Massachusetts**.
- Supporters of a ballot initiative in **Oregon** submitted 128,000 signatures to the state for verification. The question would increase the state's cigarette excise tax by 30 cents and raise the tax on other tobacco products 30 percent of the wholesale price. One-half of the generated revenue would be earmarked for the maintenance of the state health plan, while the remainder would be disbursed to the state's general fund, local governments, and to a tobacco-use prevention program. The proposal needs 73,261 valid signatures to qualify for placement on the November ballot.

Executive Summary



From
The
Tobacco
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Friday, June 21, 1996

AT THE FEDERAL LEVEL

- Sen. Lautenberg (D-NJ) held a press conference introducing S. 1892, the "Tobacco Medicaid Recovery Act." The bill allows states to retain a greater share of any awards that result from suits seeking to recover Medicaid costs. The bill amends current law by requiring the federal government to return one-third of its share to the states to be used in their Medicaid programs; another third would be placed in a National Institutes of Health trust fund for the research of "smoking-related" diseases; and the remainder would be used for deficit reduction. The bill was referred to the Senate Finance Committee. Details of the press event were provided by separate memorandum.
- Sen. Snowe (R-ME) introduced S. 1799, the "Women's Health Equality Act of 1996," to require smoking prevention and cessation programs at Women, Infants, and Children (WIC) clinics. The bill, which includes many other provisions focusing on women's health issues, was referred to the Senate Labor & Human Resources Committee.

IN THE STATES

- Arizona's Attorney General announced that the state will file suit against the industry for reimbursement of "tobacco-related" Medicaid expenses.
- New Jersey Assembly floor action is expected next week on legislation to increase the state cigarette tax by 25 cents. The bill, A. 2157, is accompanied by Assembly Concurrent Resolution 1 (A.C.R. 1), which would dedicate the revenue from the proposed tax to a \$1 billion public school construction and facilities-aid project. If enacted, A. 2157 would become effective only if A.C.R. 1 were to pass the legislature and be approved by the voters in November.
- Delaware S. 374 was defeated on the Senate floor by a 9-9 vote. The bill would repeal the new ADAMHA law's uniformity provision.

Executive Summary



From
The
Tobacco
Institute

Friday, June 14, 1996

AT THE FEDERAL LEVEL

- The House approved H.R. 3603, the fiscal year 1997 Agriculture/FDA Appropriations bill, by a 351-74 vote. The House defeated an amendment offered by Rep. Durbin (D-IL) by a 212-210 vote that would have prohibited the use of federal funds to pay the salaries of personnel who provide tobacco-related extension services and crop insurance programs for tobacco growers. Details were provided by separate memorandum.
- Rep. Waxman (D-CA), joined by Matthew Myers of the Campaign for Tobacco-Free Kids, held a press conference calling on Bob Dole to recant his statement that the Food and Drug Administration (FDA) lacks the authority to regulate tobacco as a drug. Waxman reiterated his call to all politicians to refuse tobacco industry campaign contributions and to support the proposed FDA rule to regulate tobacco.
- The House and Senate adopted the conference report on House Concurrent Resolution 178, the fiscal year 1997 non-binding budget resolution. The House report language proposing the elimination of the Office of Surgeon General was not included in the conference report.
- The Office of the U.S. Trade Representative extended to June 19 the comment period on the administration of the tariff-rate quota for leaf tobacco.

IN THE STATES

- Los Angeles County Board of Supervisors voted 4-1 to either join the recent suit filed by the city of San Francisco against the industry, or have a Los Angeles firm file a separate lawsuit on the county's behalf to recover county funds spent treating alleged "smoking-related" illnesses. Councilman Braude introduced a motion suggesting the city also try a similar strategy to recoup pension benefits paid to people disabled by smoking.
- Massachusetts H. 5905 passed the House by a 115-42 vote. The bill would raise the cigarette tax by 25 cents per pack and earmark the revenue generated from the measure to provide health insurance for children.
- The New Jersey Assembly Speaker introduced A. 2157, a bill that would increase the cigarette tax 25 cents per pack. Revenues generated from the tax would be earmarked for a \$1 billion bond fund for school construction and renovation.

continued...

- The New Hampshire Department of Revenue Administration announced that the current 24.7 percent tax rate on smokeless tobacco products will decrease to 23.6 percent, effective July 1, 1996.
- Connecticut ADAMHA bill H. 5457 was recently signed into law.

Executive **Summary**



From
The
Tobacco
Institute

Friday, June 7, 1996

AT THE FEDERAL LEVEL

- The House Appropriations Committee defeated by a 29-19 vote an amendment offered by Rep. Durbin (D-IL) to eliminate funding for extension service and crop insurance programs for tobacco growers.

IN THE STATES

- There were several developments on liability issues recently. Class action suits were filed in Louisiana, Maryland, and New Mexico as a result of the *Castano* decertification, while Washington State filed suit against the industry to seek recovery of costs allegedly incurred treating "smoking-related" illnesses.
- The Michigan House passed H. 5622 requiring tax stamps on cigarettes, as well as providing a two-percent stamping discount for distributors. The measure was sent to the Senate for consideration.

Executive Summary



From
The
Tobacco
Institute

Thursday, May 23, 1996

AT THE FEDERAL LEVEL

- Unlike last year, there were no cigarette tax amendments filed for Senate consideration for the fiscal year 1997 budget resolution.
- The Coalition for Responsible Tobacco Retailing held the first in a series of national events to unveil billboards advertising the "We Card" program to discourage youth access to tobacco products. In a Rochester, New York press conference, representatives from national and state wholesale and retail organizations attended to support the program. The New York Attorney General also attended to "wholeheartedly embrace and endorse" the program, stating that he would make an effort to "sell it [the program] to his colleagues across the U.S."
- The U.S. Court of Appeals for the Fifth Circuit, located in New Orleans, Louisiana, issued a ruling denying class-action certification of a suit brought against the tobacco industry by Diane Castano. The court remanded the case to the U.S. District Court for the Eastern District of Louisiana.
- The House will be in recess on the 27th and 28th in observance of Memorial Day. The Senate will be in recess all of next week.

IN THE STATES

- Two tobacco-related developments occurred in California this week. The Senate passed S. 1832 which would authorize the Board of Equalization to increase or decrease a determination of tax made by the Board under the Cigarette & Tobacco Products Tax Law. The bill was sent to the Assembly for consideration. The Assembly passed measure A. 3037 by a 44-28 vote to extend the compliance date for adopting prescribed standards for reducing employee exposure to environmental tobacco smoke from January, 1997 to January, 2000. The bill was sent to the Senate for consideration.

Please note: The Institute will be closed in observance of Memorial Day on Friday, May 24 and Monday, May 27.

Executive Summary



SJC
6/12

Friday, May 17, 1996

AT THE FEDERAL LEVEL

- Philip Morris (PM) and U.S. Tobacco (UST) announced support for federal legislation to reduce youth access to tobacco products. The legislative blueprint would include a ban on vending machine sales, a ban of tobacco brand names and logos on promotional items, and provide \$250 million over five years to assist in the enforcement and implementation of the program. The Departments of Justice, Health & Human Services, and the Federal Trade Commission would enforce the restrictions. FDA would be denied jurisdiction over tobacco products. Both companies reiterated their intention to continue the lawsuit against FDA's proposed rule to regulate tobacco products absent a legislative solution.
- In response to the PM/UST proposal, the President stated that "we should do more, because under the proposal, kids...would still be confronted with Joe Camel and the Marlboro Man on billboards, in stores and all the magazines." He said the proposal is "an indication there may be some way that we can agree on legislation to do this." The President added that "FDA has made perfectly clear that they will stop their efforts to impose regulations if we can have a joint agreement [by all the tobacco companies] on a legislative solution."
- The Supreme Court struck down a state law in Liquormart v. Rhode Island that restricted the content of alcoholic beverage advertising. Media analysis of the Court's ruling speculates that the decision is likely to have an impact on that portion of FDA's proposed rule that affects tobacco advertising.
- According to the Federal Register, final action is anticipated in October on the Environmental Protection Agency's "Guidelines for Carcinogenic Risk Assessment."

IN THE STATES

- The Governor of New York suspended the deadline for the collection of state taxes on cigarettes and gasoline sold on reservations to non-Native Americans. Other tobacco-related action in the Empire State included the sale of 25 percent of the tobacco stock held by the State Teachers' Retirement System.
- Seventeen state legislatures remain in regular session.

Executive Summary



Friday, May 10, 1996

AT THE FEDERAL LEVEL

- Department of Transportation Secretary Pena announced that smoking will be prohibited on 80 percent of U.S. non-stop international airline flights. Smoking is permitted on subsequent legs of travel between foreign cities, but will vary among carriers under their voluntary agreements.
- The House failed to override the President's veto of product liability reform bill H.R. 956. The vote on the measure was 258-163, twenty-three votes short of the two-thirds required for an override.

IN THE STATES

- **Hawaii's** governor signed into law three pieces of tobacco-related legislation. The first, H. 3809, requires signs prohibiting the sale of tobacco products to minors; the second, S. 2880, prohibits the sale of cigarettes within 1,000 feet of schools. The final bill, S. 2772, prohibits the sale of cigarettes in packs of less than twenty, bans single cigarette sales, as well as the sale of cigarettes without the manufacturer's original packaging.
- There were developments in four states this week regarding Medicaid liability. Resolutions were introduced in **Delaware**, **New Jersey**, and **Pennsylvania** that would direct their respective state Attorneys General to seek recoupment of Medicaid costs incurred in treating "tobacco-related" illnesses. In **Rhode Island**, bill S. 3292 was introduced with similar intent.
- **Oklahoma** ADAMHA compliance bill H. 2494 passed the Senate and is before the Governor for signature. The bill retains the state's uniformity provisions but adds new penalties.
- As **Florida's** legislative session concluded this week, S. 12 died in the House after passing the Senate by a 35-3 vote. The bill would have limited to tobacco companies suits brought under the 1994 Medicaid Third Party Liability law. No further attempt was made to override Governor Chiles' veto of the 1995 bill to repeal the law.
- Seventeen state legislatures remain in regular session.

Executive Summary



Friday, May 3, 1996

AT THE FEDERAL LEVEL

- Food & Drug Commissioner Kessler testified before the House Commerce Subcommittee on Health & Environment on three proposed FDA reform bills; however, the proposed rule to regulate tobacco was not mentioned. Kessler also testified before the Senate Appropriations Subcommittee on Agriculture, but refused to answer questions from Senators on a possible date the agency may promulgate its tobacco rule.

IN THE STATES

- **Maryland** became the eighth state to file suit against the tobacco industry and its trade associations in an attempt to recover funds spent treating alleged "smoking-related" illnesses. The Attorney General of **Connecticut** indicated that it, too, may soon file a similar suit.
- **Kansas** ADAMHA bill H. 2544 was sent to the Governor for final action after passing the House by a 98-25 vote. The final bill does not include preemption, but increases licensing fees for both retailers and vendors and regulates inspections.
- **Florida** bill S. 322 awaits approval by the Governor after passing the House this week by a 79-26 vote. The bill fines students for smoking within 1,000 feet of public or private schools.
- The **Minnesota** Department of Revenue issued a notice this week that prohibits cigarette manufacturers or wholesalers from offering rebates, concessions, or discounts in connection with cigarette sales. The policy is a new interpretation of the state's Unfair Cigarette Sales Act and applies to rack allowances, payments for display space, coupons or stickers, as well as a variety of other such discounts.
- There are twenty state legislatures currently in regular session.

Executive Summary



From
The
Tobacco
Institute

Friday, April 26, 1996

AT THE FEDERAL LEVEL

- The Director of the National Cancer Institute (NCI) confirmed in testimony before the House Appropriations Subcommittee on Labor/HHS/Education that sections of an analysis of state legislators' voting records on tobacco issues by Stanton Glantz are inappropriate for NCI funding. NCI reduced the grant by \$74,000, but according to the Los Angeles Times, the American Cancer Society replaced the lost funding.
- The American Medical Association (AMA) held a briefing this week to announce new AMA policies against tobacco and to highlight the contents of the Journal of the American Medical Association dedicated entirely to tobacco issues. The event was funded in part by the Robert Wood Johnson Foundation. Media attention to the event was heavy. Details were provided by separate memorandum.

IN THE STATES

- A Washington State Superior Court this week upheld the state's 1994 regulation that bans smoking in private office workplaces.
- The Arizona Governor this week signed H. 2503 into law, distributing tobacco tax money to qualifying county health departments to fund educational programs related to the prevention and reduction of tobacco use.
- The New York Assembly passed A. 1734 that would prohibit tobacco or alcohol billboard advertising within 1,000 feet of public and private schools. The measure was referred to the Senate.
- Florida S. 12 passed the Senate Judiciary Committee by a 4-3 vote and was referred to the Senate Ways & Means Committee. The bill would apply the 1994 law on third-party liability suits to recover Medicaid costs only to tobacco companies.
- There are currently twenty-three state legislatures in regular session.

Executive Summary



Friday, April 19, 1996

AT THE FEDERAL LEVEL

- Health and Human Services Secretary Shalala told the House Appropriations Subcommittee on Labor/HHS/Education that it is illegal for ASSIST funds to be used in state or local lobbying activities. Further details were provided by separate memorandum.
- A representative of the Coalition on Smoking OR Health recommended to the House Appropriations Subcommittee on Agriculture/FDA that changes be made to the tobacco price support program to assist tobacco farmers to convert to other crops. During the question and answer period, Rep. Durbin (D-IL) stated he would give his colleagues the opportunity to revisit the price support program this year.

IN THE STATES

- The Governor of **New Jersey** announced that the state will join seven others and file suit against the tobacco industry to recover monies the state claims to have spent on alleged "tobacco-related" illnesses.
- **Maryland** became the first state to divest the public employees retirement fund of all tobacco holdings. The divestment occurred in March and was announced this week.
- **Nebraska** L. 1190 was signed into law this week by the Governor. The law alters the distribution of the current 34-cent per pack cigarette tax and earmarks 2 cents to a fund to update state government computer systems in preparation for the year 2000.
- **New Hampshire's** H. 1517 failed on the Senate floor by a vote of 8-16 in an attempt to increase the cigarette excise tax by 11 cents.
- The Governor of **Oregon** announced support of a ballot initiative to increase by 30 cents the state's 38-cents per pack cigarette tax. Revenue generated by the increase would be earmarked for the state's health plan. Supporters of the initiative have until July 6 to collect the necessary 73,261 valid signatures needed to place the initiative on the November ballot.

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- By a vote of 38-0, the **Florida** Senate approved S. 322, to make it unlawful for a minor to smoke tobacco in, on, or within 1,000 feet of a public or private school. The measure now goes to the House for consideration.
- There are twenty-five state legislatures that remain in regular session.

Executive Summary



Friday, April 12, 1996

AT THE FEDERAL LEVEL

- Congress returns from recess Monday, April 15.

IN THE STATES

- **Virginia's** Governor recently signed into law four tobacco-related bills. The first, H. 1231, prohibits tobacco vending machine sales unless under direct managerial supervision, while H. 1416 requires photo identification for tobacco product purchases. Tobacco manufacturer liability bill H. 1392 provides that no special tort provisions apply if the state attempts to recover Medicaid costs from third parties, and S. 494 restricts smoking in restaurants and other public places.
- **The Delaware** Governor this week signed into law H. 440 after the House concurred with a Senate amendment offered last week. The law prohibits the purchase of tobacco products by anyone under eighteen years of age; prohibits the distribution of free samples to minors; prohibits the sale of single cigarettes; restricts the location of cigarette vending machines to adult-only establishments; and provides that the enforcement of these restrictions be carried out by the Department of Public Safety.
- **The Florida** House Commerce Committee failed to pass third-party liability bill H. 637 on a 14-16 vote. The measure would amend the 1994 law to limit the state's ability to recoup Medicaid costs and make the law applicable only to tobacco companies.
- Tobacco ingredients disclosure bill S. 2191 passed the **Massachusetts** Senate this week by a 36-0 vote. An amendment to incorporate S. 2191 into House budget bill H. 6000 was defeated 71-72. A motion to reconsider was also defeated, 55-94.
- **Maryland's** 1996 regular session adjourned this week, with the defeat of all bills that would have increased excise taxes on cigarettes and other tobacco products. Other defeated measures included bills that also would have placed vending and sales restrictions on tobacco products, as well as addressed tobacco manufacturer liability.

Executive Summary



Friday, April 5, 1996

AT THE FEDERAL LEVEL

- The Ninth Circuit Court of Appeals recently held in U.S. v. Gord that cigarettes that did not have a Washington state tax stamp affixed, and were not pre-approved by the state for re-sale to Native Americans, are contraband under federal law.
- The Campaign for Tobacco-Free Kids released a study this week that allegedly measures the influence of cigarette advertising on the brand choices of teen smokers. In response, the Freedom to Advertise Coalition (FAC) released a statement arguing the study "in no way demonstrates any link between tobacco advertising and smoking initiation by teenagers." The event was moderately attended.
- Congress remains in recess until April 15.

IN THE STATES

- Action occurred this week on several state liability measures. In **Delaware**, the Senate passed S.C.R. 52, which encourages the Governor and the state Attorney General to file suit against the tobacco industry to recover state Medicaid costs incurred from the treatment of patients with alleged "smoking-related" diseases. A new introduction in **Illinois**, H. 3725, mirrors the above, while **Louisiana's** S. 161 would hold tobacco manufacturers liable for death or injury caused by the use or consumption of cigarettes.
- A recent House-passed bill in **Maryland** would prohibit certain locations for tobacco vending machines. Referred to the Senate Rules Committee, H. 331 also would prohibit from distributing tobacco products to minors.
- The **Delaware** Senate passed H. 440 this week by a 21-0 vote, sending the measure back to the House for concurrence. As amended, the bill would prohibit the purchase of tobacco products by anyone under eighteen years of age; prohibit the distribution of free samples to minors; prohibit the sale of single cigarettes; restrict the location of cigarette vending machines to adult-only establishments; and, provide that the restrictions be enforced by the state Department of Public Safety.

Executive Summary



Friday, March 29, 1996

AT THE FEDERAL LEVEL

- Congress approved the conference report to H.R. 2854, the Agricultural Market Transition Act of 1996, sending the measure to the president for final action. The only tobacco-related provision in the bill was part of Senate-approved S. 1541, which would repeal current tobacco export reporting requirements. The House approved the report by a vote of 318-89; the Senate by a vote of 72-26.

IN THE STATES

- **Florida** liability bills S. 406 and S. 12 were combined to create an amended S. 12 that would apply the 1994 law on third-party liability suits to recover Medicaid costs only to tobacco companies. Tobacco liability legislation has been introduced in 10 other states: **California, Connecticut, Illinois, Iowa, Kansas, Louisiana, New Jersey, New York, Vermont**, and was defeated in **Maryland**.
- The **Texas** Attorney General filed a lawsuit in federal court against the industry to recover \$4 billion in costs to treat alleged tobacco-related illnesses. The suit, which includes smokeless tobacco, also alleges the industry violated federal racketeering law.
- Voters in **Mesa, Arizona** approved a smoking ban initiative this week by a margin of 56 to 44 percent. The measure bans smoking in public places, restaurants, and bars.
- Two tobacco-tax bills were defeated in the **Maryland** Senate. The first, S. 390, was defeated in the Budget and Taxation Committee; it would have increased the state cigarette excise tax from 36 to 61 cents. The other bill, S. 602, would have increased the cigarette excise tax by the same amount, but would have earmarked revenue to a Smoking and Cancer Prevention Fund.
- Thirty state legislatures continue to meet in regular session.

Executive Summary



507
3/25

Friday, March 22, 1996

AT THE FEDERAL LEVEL

- The Food and Drug Administration (FDA) re-opened the docket on the proposed rule to regulate cigarettes and smokeless tobacco products in order to permit public comment on new documents the FDA is adding to the record. The thirty-day comment period extends until April 19, 1996.
- The Coalition on Smoking OR Health (COSH) held a press conference to announce the results of its poll of public attitudes towards FDA's proposed regulation of tobacco, the tobacco industry in general, and the industry's campaign contributions. COSH also claimed that more than ninety members of Congress signed a pledge to support FDA's proposed rule. Later that day in a White House ceremony, President Clinton received the Mike Synar Public Service Award from anti-smoking groups and praised their efforts to reduce tobacco use by adolescents. Details were provided by separate memorandum.

IN THE STATES

- The **Indiana** governor vetoed ADAMHA bill S. 106 that would have preempted localities from regulating the sale of tobacco, and would provide state enforcement against the sale of tobacco to minors.
- **Utah's** governor vetoed bill H. 43 that would have increased by 4.5 cents the state cigarette excise tax. The measure also would have preempted the local taxation, regulation, sales, distribution and promotion of cigarettes and other tobacco products.
- A new bill in **New Jersey**, S. 973, would give the state Attorney General authorization to sue cigarette manufacturers for the recovery of Medicaid costs allegedly related to the use of tobacco products. Similarly in **New York**, two Assembly members along with representatives of the American Cancer Society, held a press conference this week urging the state's Attorney General to initiate legal proceedings against the industry.

Executive Summary



From
The
Tobacco
Institute

5/23/23

Friday, March 22, 1996

AT THE FEDERAL LEVEL

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Executive Summary



From
The
Tobacco
Institute

Friday, March 15, 1996

AT THE FEDERAL LEVEL

- In the course of the next two weeks, House Commerce Committee Chairman Bliley (R-VA) announced that three bills will be introduced to overhaul the Food and Drug Administration. Bliley appointed committee members Barton (R-TX), Burr (R-NC), and Klug (R-WI) to shepherd the individual bills, with overall coordination of the effort by Rep. Greenwood (R-PA). Bliley expects markup of the bills to be completed by the end of April.
- The Senate markup of S. 1477, the Food and Drug Administration Performance and Accountability Act of 1995 authored by Labor and Human Resources Committee Chair Kassebaum, was postponed and has not been rescheduled.
- In testimony before a House Appropriations subcommittee, FDA Commissioner David Kessler cited the agency's pending tobacco regulation as one of the FDA's significant accomplishments during his tenure. In response to other tobacco-related questions, Kessler stated that current state and local efforts to reduce tobacco sales to minors had "not succeeded."
- The Campaign for Tobacco-Free Kids held a press conference this week to comment upon two recent studies that document tobacco industry contributions to Members of Congress. Conducted by Common Cause and the U.S. Public Interest Research Group, the studies examine tobacco industry contributions made over the course of the last decade, and also attempt to demonstrate a correlation between tobacco contributions and legislative actions.

IN THE STATES

- The Florida legislature debated, without taking a vote, to override Governor Chiles' 1995 veto of a bill repealing the 1994 law that prompted the state's lawsuit against the tobacco industry.
- Virginia's legislature adjourned with several tobacco-related bills that will carry over to the 1997 session. Among them, H. 814 would impose a 2-cent tax on each pack of cigarettes manufactured within the state; and, H. 1150 would extend local cigarette tax authority to all Virginia counties. Sent to the governor's desk for final action was H. 1392, that provides no special tort provisions will apply if the state attempts to recover Medicaid costs from third parties.

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- **Maryland** S. 662 to recover Medicaid expenditures from tobacco manufacturers was withdrawn from consideration this week. A companion bill, H. 909, was withdrawn in February.
- The **Indiana** legislature approved ADAMHA measure S. 106 this week, sending it to the governor for final action. Provisions of the bill would preempt localities from regulating the sale of tobacco, and would regulate the sale of tobacco to comply with federal law.
- **Washington** state adjourned its 1996 legislative session this week, with all tobacco-related measures being defeated. The legislature will re-convene in January, 1997.

Executive Summary



From
The
Tobacco
Institute

Friday, March 8, 1996

AT THE FEDERAL LEVEL

- The U.S. Railroad Retirement Board published an interim final rule in the Federal Register to implement tobacco vending and sampling restrictions contained in H.R. 2020, the Treasury/Postal appropriations bill enacted last fall. The board will continue to allow the sale of tobacco products at adult-staffed concession stands, but will prohibit the distribution of samples, and sales through vending machines, anywhere on its property. In addition to the General Services Administration and the Tennessee Valley Authority, the railroad board is the third federal entity to issue guidelines relating to tobacco access on federal property since the enactment of H.R. 2020.
- The House Regulatory Sunset and Review Act, authored by Rep. Chapman (R-TX), was removed from the House agenda for an anticipated revision of the bill. The measure would require federal agencies to review major federal regulations periodically and demonstrate that their benefits outweigh costs to businesses and individuals.

IN THE STATES

- **Florida's** governor asked legislators to uphold his veto of the 1995 bill repealing the law passed in 1994 that prompted the state's lawsuit against the tobacco industry. No dates have been given for the veto override consideration.
- **South Dakota's** legislature recently passed H. 1291, limiting the ability of local governments to enact taxes. The bill awaits action by the governor.
- The **Michigan** Senate refused to concur with House amendments to ADAMHA bill S. 730 that would have repealed the state's sales preemption law. The measure proceeds to conference committee.
- Recently passed **Kentucky** ADAMHA bill S. 137 was signed into law by the governor this week. The law requires retailers to train clerks to ask for proof of age and provides funding for enforcement efforts. However the governor also asked for the introduction of H. 800, which would require retailers to be licensed, and vending machines to be located within 22 feet of a cashier.

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- Two bills approved by the **Virginia** legislature to address the issue of youth smoking await action by the governor. The measures, H. 1231 and H. 1416, would limit vending locations and require clerks to check purchasers' identification.
- The **Minnesota** House passed an Omnibus Crime Bill by a 94-23 vote. Although both House and Senate versions of H. 2856 contain a ban on the use of tobacco products in correctional facilities effective August 1, 1997, the measure proceeds to conference committee to reconcile other differences.
- The **Georgia** House passed a resolution opposing the FDA's proposed regulation of tobacco products.

Executive Summary



Friday, March 1, 1996

AT THE FEDERAL LEVEL

- By a vote of 270-155, the House passed the Agricultural Market Transition Act authored by Rep. Roberts (R-KS). Colloquially known as "the Farm bill," H.R. 2854 is the House response to the expiration of previous agricultural law. The Senate passed a similar measure authored by Sen. Lugar (R-IN) in early February, S. 1541. Neither bill alters the existing structure of the tobacco program. Conference action is anticipated this month.
- On March 5, the Senate Governmental Affairs Committee hears S. 1376, the Corporate Subsidy Review, Reform, and Termination Act of 1996. The bill creates a commission to review "corporate subsidies," but does not affect advertising deductibility that is eliminated in other pending bills.

IN THE STATES

- The **Utah** House voted 40-28 to accept last week's Senate amendments to H. 43 that preempt local taxation, regulation, sales, distribution, promotion of cigarettes, and increase the state excise tax by 4.5-cents per pack. The measure now goes to the governor for final action.
- The **Michigan** House amended ADAMHA bill S. 730 to strike the preemption language contained in the measure. The bill now returns to the Senate for concurrence or for a conference committee.
- The **Minnesota** House passed S. 558 by a 78-54 vote, with an amendment removing the measure's preemption language. The measure would require inspections of, reports on, and training for tobacco retailers and their employees. Upon a move to reconsider, the bill was placed on General Orders.
- Two measures addressing youth smoking were approved by the **Virginia** Senate this week. One, H. 1416, would require retailers to ask for photo identification unless the purchaser appears to be over 18 years of age; the other, H. 1231, would restrict the location of vending machines. Both measures now return to the House for concurrence.
- Supporters of a **California** 50-cent tax initiative decided to "withdraw, amend, and refile" their measure for the 1998 ballot. A fiscal analysis indicates that Proposition 99 revenues, generated as a result of the initiative approved in 1988, indicates that revenues would decrease upon the imposition of additional taxes.

Executive Summary



From
The
Tobacco
Institute

Friday, February 23, 1996

AT THE FEDERAL LEVEL

- The Senate Labor and Human Resources Committee conducted hearings this week on FDA reform proposals. Although Commissioner Kessler was the first to testify, only tangential references were made to the agency's proposed rule to regulate cigarettes and smokeless tobacco.
- While appropriations remain uncertain to a series of federal agencies for fiscal year 1996, several House appropriations subcommittees will hold hearings on appropriations for fiscal year 1997. The House Agriculture/FDA Subcommittee is expected to begin hearings on March 5, with FDA's FY 1997 appropriation to be addressed on March 12.
- Pursuant to last year's Treasury/Postal appropriations bill that placed restrictions on tobacco vending on federal property, the Tennessee Valley Authority (TVA) this week published a rule in the Federal Register regarding cigarette vending and the distribution of sample tobacco products on TVA property. Unlike the General Services Administration, which decided to remove cigarette vending machines, TVA will allow the vending machines to remain on the property while it determines if the locations are inaccessible to minors and, therefore, exempt from the ban.
- The Senate will convene on Monday, February 26 at 10 a.m.; the House will return the following day.

IN THE STATES

- The Utah Senate Revenue and Tax Committee amended H. 43 to preempt local taxation, regulation, sales, distribution, and promotion of cigarettes and other tobacco products. The measure would also increase the state cigarettes excise tax by 4.5 cents per pack. As passed by the House, the bill included only the tax provision.
- The Virginia House passed H. 1392 and referred the measure to the Senate Education and Health Care Committee. As passed, the measure states that financial recovery of Medicaid expenditures from third parties would be determined by the same criteria utilized in determining recovery if an individual brought action directly against a third party.

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- **California's** Office of Environmental Health Hazard Assessment (OEHHA) is developing a comprehensive risk assessment on environmental tobacco smoke and will hold a public workshop on March 25.
- The **Kentucky** legislature approved a resolution opposing the regulation of cigarettes and other tobacco products by FDA.
- This week **Wyoming** lawmakers convened their 1996 legislative session.

Executive Summary



From
The
Tobacco
Institute

Friday, February 16, 1996

AT THE FEDERAL LEVEL

- In a photo-opportunity held in the Oval Office with youngsters, President Clinton offered his support for the creation of the National Center for Tobacco-Free Kids. Formerly known as the Campaign for Tobacco-Free Kids, the new organization will lobby Congress and the states, and sponsor advertisements to discourage the use of tobacco products by youth. The initiative is the result of \$30 million donated primarily by the Robert Wood Johnson Foundation.
- Congress continues to meet in pro forma sessions through February 26.

IN THE STATES

- The **Utah** House passed H. 43 on a 44-27-4 vote to increase the state cigarette tax by 4.5 cents. The measure is scheduled for review by the Senate Revenue & Tax Committee next week.
- The **South Dakota** House defeated by a vote of 59-19 a measure brought to the floor that would have required tobacco retailers to pay a biennial \$20 license fee.
- The third reading of S. 106 by the **Indiana** House sends the measure back to the Senate for concurrence. If approved, the measure would enforce laws against the sale of tobacco to minors to comply with the Synar Amendment.
- The **Virginia** Senate passed by a vote of 29-11 a substitute to S. 494 that would ban smoking in public restrooms within state government buildings.
- A resolution introduced in the **Georgia** House would urge that nicotine not be included among the drugs FDA can regulate, and also petitions the President to rescind and remove any action that would give FDA regulatory authority over the tobacco industry.

Executive **Summary**



From
The
Tobacco
Institute

Friday, February 9, 1996

AT THE FEDERAL LEVEL

- The Senate approved revisions to farm programs in S. 1541, the Agricultural Market Transition Act of 1996 by a vote of 64-32. Only one tobacco-related provision was included for final consideration and it repeals the tobacco export reporting provision required under current law. Eleven amendments would have altered the tobacco marketing assessment, but were not considered. The measure now proceeds to the House for consideration.
- This week Rep. McHale (D-PA) introduced H.R. 2962, to disallow the deduction of advertising expenses for tobacco products.
- In a letter addressed to the chair and ranking member of the Senate Labor and Human Resources Committee, Sen. Lautenberg (D-NJ) urged his colleagues to hold hearings in the committee due to the "recent disclosures about the health effects of tobacco products and the nicotine contained in them." In addition, the Senator made a floor statement with remarks similar to those in his letter.
- The Committee will hold hearings on FDA reform scheduled for February 21 and 22. The House Commerce Committee will begin similar hearings on February 27.
- The absence of a formal resolution to recess the Congress will keep the House and Senate meeting in pro forma sessions through February 26.

IN THE STATES

- A Maryland Senate bill would provide for state lawsuits against tobacco manufacturers to recover Medicaid expenditures. The bill would also deny manufacturers common-law defenses and determine the amount of recovery "based on reliable estimates...rather than on the proof of the cause."
- Massachusetts' Senate Ways & Means Committee reported S. 1982 to the Senate's Steering & Policy Committee for scheduling floor action. A carryover from 1995, the measure would require tobacco manufacturers to disclose the ingredients of their products.

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- **The New Mexico House Government Committee** defeated a bill authorizing local tobacco taxes by a vote of 4-3.
- **Oklahoma and Connecticut** legislators convened their legislative sessions on February 5 and 7.

Executive Summary



From
The
Tobacco
Institute

Friday, February 2, 1996

AT THE FEDERAL LEVEL

- The Senate failed this week to act on Sen. Lugar's S. 1541, the Agricultural Market Transition Act of 1996, commonly referred to as "the Farm Bill." As introduced, the measure does not impact the tobacco program, but two tobacco-related amendments offered by Sen. Brown (R-CO) are filed for consideration. The first amendment requires that the current tobacco marketing assessment be increased to cover all costs associated with the tobacco program; the second imposes a new marketing assessment on both growers and purchasers of tobacco to cover salaries and other expenses of those USDA employees that administer the tobacco program. On Tuesday, the Senate will again attempt to invoke cloture on substitute language.
- After acting on the Farm Bill, the Senate intends to join the House in recess. Both chambers are scheduled to return February 26.

IN THE STATES

- The Indiana Senate this week passed S. 106 by a vote of 29-21. The measure regulates the sale of tobacco to comply with the Synar Amendment and was sent to the House for consideration. Similarly the Indiana House passed its own ADAMHA measure, H. 1221, which will now be considered by the Senate.
- Kentucky's Governor Patton held a news conference on Friday to announce Kentucky's initiative to reduce youth access to tobacco, including his support of SAMHSA legislation. The Tobacco Institute and Kentucky retail organizations were invited by the governor to display "We Card" youth access materials to the press. The governor also announced his continuing intention to oppose FDA's proposal to regulate tobacco--including a pledge to continue to discuss the matter with President Clinton.
- State legislatures scheduled to convene this month are: **Oklahoma** on February 5; **Alabama** on February 6; **Connecticut** on February 7; and **Wyoming** on February 19.

Executive Summary



Friday, January 26, 1996

AT THE FEDERAL LEVEL

- During his State of the Union address, the President issued a “challenge” to those that manufacture cigarettes to “market your product to adults--if you wish--but draw the line on children.” Press inquiries to The Institute regarding the tobacco remarks were very light. Details were sent by separate memorandum.
- As a result of an amendment offered in the autumn by Sen. Bingaman (D-NM) to H.R. 2020, the Treasury/Postal appropriations measure that was signed into law before the holidays, the General Services Administration (GSA) published a final rule this week in the Federal Register regarding vending and sampling of tobacco products on federal government property. Effective this week, the rule states that GSA intends to remove all tobacco-product vending machines from government property; the rule also prohibits all distribution of sample tobacco products in or around federal buildings.
- A floor statement this week by Sen. McConnell (R-KY) praised the approach of the regulations recently issued by the Substance Abuse and Mental Health Services Administration (SAMHSA), while criticizing the rule to regulate tobacco proposed by the Food and Drug Administration (FDA). Reps. Chambliss (R-GA) and Gordon (D-TN), in this week’s Congressional Record, made similar statements regarding SAMHSA and FDA.
- Representatives of the Coalition on Smoking OR Health, in conjunction with the Campaign for Tobacco-Free Kids, released a Centers for Disease Control (CDC) report that presents state data on tobacco use, “costs” associated with tobacco use, and tobacco control legislation. Entitled “State Tobacco Control Highlights, 1996,” the figures, assertions, and purported correlations are similar to prior CDC reports. Press inquiries to The Institute were light. Details were sent by separate memorandum.
- Senator Lautenberg (D-NJ) introduced the “Airliner Cabin Quality Act of 1996.” The bill, S. 1524, would prohibit smoking on any scheduled airline flight segment in intrastate, interstate, or foreign air transportation. A companion bill, H.R. 969, was introduced earlier this year by Rep. Oberstar (D-MN).
- After both houses return briefly next week to convene a joint session welcoming the French president, they are expected to recess until late February.

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IN THE STATES

- A newly introduced bill in New Jersey, A. 213, would authorize the state Attorney General to sue tobacco companies.
- There are thirty-three state legislatures currently in session.

Executive Summary



From
The
Tobacco
Institute

Friday, January 19, 1996

AT THE FEDERAL LEVEL

- This week the Substance Abuse and Mental Health Services Administration (SAMHSA) of the Department of Health and Human Services (HHS) issued a final rule regarding the sale and distribution of tobacco products to individuals under the age of 18. The rule provides guidance to states to assist their compliance with the 1992 Synar Amendment to the Public Health Service Act, which requires states to enforce laws banning the sale and distribution of tobacco products to individuals under age 18. Media inquiries to The Institute regarding the new rule were heavy. Details were sent by separate memorandum.
- Congress is scheduled to reconvene on January 22.

IN THE STATES

- The governor of **Alaska** endorsed a \$1 tobacco tax proposal recommended by a state financial planning commission. The commission's proposal would also increase excise taxes on gasoline and liquor.
- **Massachusetts'** House Speaker and House members of the Joint Health Care Committee drafted a health care "minimum wage" proposal that includes a 25-cent cigarette tax increase, with revenue generated from the measure earmarked for children's health care and prescription drugs for the elderly.
- A prefiled bill in **Florida** would amend the 1994 law that authorizes lawsuits against third parties for recovery of Medicaid costs to apply only to tobacco companies. The state's legislature is scheduled to convene March 5.
- A prefiled bill in **Oklahoma** would allow the state Health Care Authority to "institute and pursue legal proceedings against any third party who may be liable for the cost of medical expenses arising out of such person's injury, disease, or disability." The state's legislature is scheduled to convene February 5.
- Four additional states this week convened their 1996 legislative sessions, bringing the total number of state legislatures currently in session to thirty-three.

Executive Summary



Friday, January 12, 1996

AT THE FEDERAL LEVEL

- The Occupational Safety and Health Administration reportedly will extend by an additional 24 days the agency's comment period on the pending indoor air quality rule. The extension will make post-hearing briefs on the proposed rule due by February 9, 1996. An official notice has not yet been published in the Federal Register.
- Congress is in recess until January 22. Due to the continuing budget impasse, much of the government remains funded by a continuing resolution until January 26.

IN THE STATES

- The Wisconsin Court of Appeals ruled that the state's law restricting the sale or distribution of tobacco to minors preempts the city of Fond Du Lac's 1993 ordinance prohibiting the self-service display of single packs of cigarettes. The ruling affirmed a county circuit court decision.
- Twenty states convened their 1996 legislative sessions this week.

Executive Summary



Friday, January 5, 1996

AT THE FEDERAL LEVEL

- Thirty-two Senators, including Minority Leader Daschle (D-SD), signed a comment with strong objections to FDA's pending rule to assert regulatory jurisdiction over tobacco. A similar comment, signed by 124 House members, also was submitted to the FDA docket by the January 2 deadline.
- The Institute hosted an industry press conference to highlight industry comments on FDA's pending rule to regulate tobacco. The event was well attended and broadcast media coverage was heavy. Details of the event were sent by separate memorandum.
- The 104th Congress adjourned its first session this week and immediately convened the second session. Budget issues will dominate activities for the foreseeable future.

IN THE STATES

- Michigan's governor signed product liability bill S. 344 that provides damage award limitations, as well as new legal defenses. Filed with the Secretary of State on January 2, the new law will become effective in ninety days.
- Thirteen state legislatures convened their 1996 sessions this week. Next week, another 20 states begin sessions.