

Executive **Summary**



Friday, December 19, 1997

AT THE FEDERAL LEVEL

- The Commerce Committee posted 834 documents subpoenaed from the tobacco industry by Chairman Bliley (R-VA) on the Committee's Internet web-site.
- Congress remains in recess until 12 noon Tuesday, January 27.

IN THE STATES

- New Jersey Governor Whitman signed a measure approved by the Assembly 58-18, and 33-6 in the Senate, to increase the state cigarette excise tax by 40-cents per pack, and increase by 48 percent the wholesale price of other tobacco products. The revenue is earmarked for the Health Care Subsidy Fund and school construction. The measure awaits Governor Whitman's signature.
- The Michigan legislature passed a measure that would require wholesalers to purchase and affix a uniform, statewide tax stamp on all cigarette packs. The bill would also require that all cigarette packs sold by wholesalers carry a stamp by May 1, 1998, while retailers have until September 1, 1998 to comply. The measure awaits a signature from the Governor.

Note: The Executive Summary will not be published Friday, December 26, 1997 due to the Institute's observance of the Holidays.

Executive **Summary**



Friday, December 12, 1997

AT THE FEDERAL LEVEL

- The House Commerce Health Subcommittee held two hearings this week on issues related to the proposed national tobacco settlement. The first hearing addressed Medicaid reimbursement and the allocation of funds recouped under the proposed settlement, while the second addressed potential “black market” problems as a result of the agreement. Details of both hearings were provided by separate memoranda.
- The House Courts and Intellectual Property Subcommittee held a hearing regarding the fees for private attorneys in the tobacco settlement. Details were provided by separate memorandum.
- Sen. Kennedy (D-MA) gave his view on a variety of national issues at the National Press Club. Kennedy briefly discussed the merits of his bills to increase the federal excise tax on cigarettes by \$1.50 per pack, establish FDA authority over tobacco products, and fund several public health initiatives.

IN THE STATES

- The Michigan House passed a measure to be used as a vehicle for proposed tax stamp legislation in order to end current litigation on the stamping issue. The Senate is expected to quickly substitute tax stamp language into the measure, send the bill back to the House for concurrence, and forward the legislation to the Governor prior to adjourning for the holidays.

Executive Summary



Friday, December 5, 1997

AT THE FEDERAL LEVEL

- Senator Graham (D-FL) and Florida Governor Chiles told officials at a press conference to forego taking funds from the state's \$11.3 billion settlement stating that any federal reimbursement should be part of a national deal. Sen. Graham told reporters that any federal reimbursement "is a gross example of governmental golddigging."
- The Food and Drug Administration (FDA) issued a final rule in the Federal Register granting federal preemption exemptions from the tobacco regulations to Alabama, Alaska, and Utah. The exemptions were granted to permit the states to continue to enforce certain state sales restrictions that are more stringent than the federal FDA regulations issued in August 1996.
- The U.S. House Commerce Health Subcommittee will hold two hearings next week on the proposed tobacco settlement. On December 8, the subcommittee will hear testimony from Florida Governor Chiles, Mississippi Attorney General Moore, and a Health Care Financing Administration representative to discuss Medicaid allocations of the settlement. The following day, the subcommittee will focus on teens and the "black market," with witnesses that include New York Attorney General Vacco and representatives of the Bureau of Alcohol Tobacco and Firearms, General Accounting Office, and the Royal Canadian Mounted Police.
- On December 10, the U.S. House Judiciary Courts Subcommittee will hold a hearing on the tobacco settlement and attorneys fees.

IN THE STATES

- The Illinois legislature approved legislation during a special session December 2 increasing the state cigarette excise tax by 14 cents per pack to 58 cents per pack effective 12/16/97. No floor tax or tax on other tobacco products are included in the measure. Revenue generated by the tax is earmarked for state schools.
- Massachusetts Governor Celluci held a press conference to sign legislation expanding health care coverage to low-income children using revenue from the state's increased tobacco tax.

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- On November 24, Florida Governor Chiles launched the "Florida Kids Campaign Against Tobacco" which includes statewide unveilings of anti-smoking billboard advertisements near middle and elementary schools.
- The Michigan House Judiciary Committee passed two measures by a 9-2 vote. One measure prohibits the manufacture or distribution of "dangerously defective" products or devices, while the other allows punitive damages against a defendant found to be at fault if the conduct of the defendant was a proximate cause of the injury and was intentional, malicious, fraudulent, or was incurred with deliberate disregard.

Executive Summary



From
The
Tobacco
Institute

Friday, November 21, 1997

AT THE FEDERAL LEVEL

- This week President Clinton signed the Fiscal Year (FY) 1998 Agriculture/Food and Drug Administration (FDA) appropriations bill. The measure includes the requested \$34 million by the Administration for FDA enforcement of the tobacco regulation's age verification requirements. Clinton also signed into law the FY 1998 Labor/Health and Human Services/Education appropriations measure that repeals a provision within the Balanced Budget Act crediting the tobacco tax increase against payments made pursuant to tobacco industry settlement legislation.

IN THE STATES

- The Illinois House defeated a measure to increase the state cigarette excise tax by 14 cents per pack. The measure passed the full Senate 43-16, as well as the House Education Committee (9-2), before being defeated on the House floor 67-47.
- The Florida Department of Business & Regulation issued final regulations regarding the ability of the Division of Alcoholic Beverages & Tobacco to assess taxes and penalties.

Note: Executive Summary will not be published, Friday November 28, in observance of the Thanksgiving holiday.

Executive Summary



From
The
Tobacco
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Friday, November 14, 1997

AT THE FEDERAL LEVEL

- The House Commerce Committee held the first House hearing on the proposed national tobacco settlement. Details were provided by separate memorandum.
- Sen. Hatch (R-UT) held a press conference to introduce the "Placing Restraints on Tobacco's Endangerment of Children and Youth Act (PROTECT)." The measure calls for \$398.3 billion over 25 years, \$95 billion of which is considered punitive damages and earmarked for biomedical research, to be paid into general, federal, and state trust funds for anti-tobacco programs. The bill also would increase the federal cigarette excise tax incrementally between \$1.10 and \$1.40 per pack over three years, expand the authority of the Food and Drug Administration to regulate all aspects of tobacco, including a ban on the product should Congress agree with such an action. The measure also includes provisions protecting tobacco growers, a limit on attorneys' fees, and strict "look back" penalties.
- Sen. Kennedy (D-MA) introduced the "Healthy and Smokefree Children Act," a comprehensive tobacco-control measure, while Rep. DeLauro (D-CT) introduced its companion in the House.
- Sen. Mack (R-FL) introduced a measure to prohibit a federal income tax deduction for payments to federal, state, or local governments in connection with any tobacco litigation or settlement, and to dedicate any federal revenue as a result of the prohibition to promote public health. The measure is pending in the Senate's Finance Committee. A companion bill was introduced in the House by Rep. Gekas (R-PA) and referred to the Budget, Commerce, and Ways & Means Committees.
- Rep. Lewis (D-GA) introduced a bill that would impose an excise tax on persons who operate vending machines that dispense tobacco products. The measure was referred to the House Ways & Means Committee. An additional tax measure was introduced this week by Rep. DeLauro that will increase the federal cigarette excise tax by \$1.50 per pack and is pending before the Ways & Means Committee.
- Rep. Bilirakis (R-FL) introduced a measure to prohibit the Secretary of Health and Human Services from treating any Medicaid-related funds recovered as part of state litigation from one or more tobacco companies as an overpayment under the Medicaid program. The measure was referred to the House Commerce Committee.

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- Rep. Luther (D-MN) introduced a resolution expressing the Sense of Congress that the motion picture industry should work to discourage tobacco use among youth. Referred to the House Commerce Committee.

IN THE STATES

- The New Hampshire Liquor Commission issued proposed rules providing for tobacco enforcement policy, commission procedures, and clarification of tobacco laws relative to sampling, delivery, and packaging of tobacco products. The comment deadline and hearing date is set for November 25, 1997.
- The Texas Public Finance Agency/Comptroller of Public Accounts issued proposed rules providing new regulations authorizing the comptroller to establish minimum curriculum requirements for approved seller training programs that prohibit the sale or delivery of tobacco products to minors. In addition, the agency also issued proposed rules requiring the comptroller to determine the design and size of warning notice signs that must be displayed by each person selling tobacco products by retail or by vending machine. The rules also prohibit the sale of tobacco to minors and provides a scope of the comptrollers' responsibility regarding warning notice signs.

Executive Summary



From
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Friday, November 7, 1997

AT THE FEDERAL LEVEL

- Senators McCain (R-AZ), Gorton (R-WA), Breaux (D-LA), and Hollings (D-SC) held a press conference this week to announce the introduction of the "Universal Tobacco Settlement Act" that codifies the June 20 agreement between state attorneys general and the tobacco industry. The bill is intended to serve as a framework and "vehicle for amendment" for any legislated tobacco settlement, and incorporates legislative language from Sen. Ford's S. 1310 protecting tobacco farmers.
- Sen. Kennedy (D-MA) held a press conference to introduce a measure increasing to \$700 billion the amount the tobacco industry would pay as part of a comprehensive settlement.
- Sen. Robb (D-VA) announced that he will introduce legislation to protect tobacco growers in light of the economic uncertainty created by possible tobacco settlement legislation. Robb's plan would compensate quota owners for the value of their quota, dismantle the existing tobacco program, reinstitute a privatized supply-limiting program, and target development funds to tobacco-dependent communities to attract jobs and education.
- Representatives McInnis (R-CO) and McHale (D-PA) held a press conference discussing provisions of their legislation limiting attorney's fees as part of the comprehensive tobacco settlement.
- A subcommittee of the National Toxicology Program's Board of Scientific Counselors voted unanimously to add tobacco smoke and smokeless tobacco to the list of known human carcinogens to its "Report on Carcinogens."

IN THE STATES

- Union health officials in Texas filed a class action lawsuit against the tobacco industry alleging that the industry "deliberately addicted youngsters to a product it knew was deadly."

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- **Ohio** Governor Voinovich appeared with film producer Rob Reiner to support funding for early childhood development programs from either an increase in the state cigarette excise tax or reimplementation of the "pop tax."
- **Missouri** Attorney General Nixon announced a legislative package to reduce youth smoking and provide the state with similar benefits as part of the proposed national settlement with the tobacco industry. Nixon proposed a state legislative solution because he had "lost confidence in Congress' ability or interest in standing up to big tobacco." The proposed legislation would address ingredients disclosure, youth access to tobacco products through vending machines, and sampling and advertising restrictions on tobacco products.
- A federal district judge in **Vermont** ruled against the Vermont Vending Amusement and Music Operators Association in a suit seeking to prevent state authorities from enforcing a new state ban on cigarette vending machines. The state is now free to enforce the ban.

Executive Summary



From
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Friday, October 31, 1997

AT THE FEDERAL LEVEL

- The Senate passed by voice vote the conference report to H.R. 2160, the Fiscal Year 1998 appropriations for the Department of Agriculture, Food and Drug Administration (FDA), and other related agencies approved by the House earlier this month. The report includes the \$34 million requested by the Clinton Administration for FDA enforcement of the tobacco regulations. The measure now proceeds to President Clinton for final action.
- The House Transportation Public Buildings Subcommittee amended and reported to the full committee a measure sponsored by Rep. Traficant (D-OH) that would ban smoking in all federal buildings with certain exceptions. Details were provided by separate memorandum.
- Rep. McInnis (R-CO) introduced a measure this week limiting attorneys' fees in the national tobacco settlement.
- Several tobacco-related measures were introduced in the Senate this week. Sen. Lugar (R-IN) introduced a measure to establish a \$15 billion tobacco transition account in a national tobacco settlement trust fund to provide buy-out and transition payments to tobacco growers, as well as rural economic assistance block grants to tobacco growing areas. Lugar's measure would phase out the tobacco price support program and the tobacco production adjustment programs. Sen. Ford (D-KY) introduced the "Long-Term Economic Assistance for Farmers Act" which was referred to the Agriculture Committee, while Sen. Rockefeller (D-WV) filed a substitute to S. 648, a product liability measure authored by Sen. Gorton (R-WA), excluding "civil actions brought for harm caused by tobacco products."
- Sen. Lautenberg (D-NJ) and Rep. Hansen (R-UT) introduced a measure that would increase the federal cigarette excise tax by \$1.50 per pack over three years and earmark the revenue to a Public Health and Education Resource Trust Fund.
- Two hearings were held this week on the national tobacco settlement and its implications. The Senate Labor Public Health and Safety Subcommittee focused on youth and tobacco, while the Senate's Judiciary Antitrust Subcommittee took up the topic of settlement's antitrust exemption for the tobacco industry.

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- Federal agencies this week published their Semiannual Regulatory Agenda in the Federal Register. The agenda describes regulatory actions the agencies are in the process of developing, as well as their current status. The Occupational Safety and Health Administration's Indoor Air Quality/workplace smoking ban proposal indicates no date for final action, while the Federal Trade Commission (FTC) projects a staff recommendation for completion by December, 1997 regarding health warnings on auto racing vehicles for smokeless tobacco products. FTC estimates final action on the health warnings for March, 1998.

- The National Parents' Resource Institute for Drug Education (PRIDE) held a press conference to release the results of its 1996-97 survey. According to the survey, monthly cigarette smoking rose to 35 percent among senior high school students (grades 9-12). The report states that "Despite widespread public attention to adolescent cigarette smoking, more young people lit up last year than at any time in the ten years of the survey."

IN THE STATES

- Three tobacco tax bills were considered in **Minnesota** this week that would have increased the state cigarette excise tax by four, five, and ten cents per pack, and would have earmarked the revenue for the construction of a new baseball stadium. The bills would have also provided for private contributions, authorized public bonding and property tax fee requirements in regard to a new stadium. All three measures were defeated before adjournment.

- **Pennsylvania** Health Secretary Hoffman announced that the state would join nine other states currently contracting with FDA to enforce new regulations prohibiting retailers from selling cigarettes and smokeless tobacco to minors. Hoffman stated that approximately 330 compliance checks will take place each month over the next eight months to "fight this youth epidemic of nicotine addiction."

- The **Oklahoma** Alcoholic Beverage Laws Enforcement Commission issued proposed rules providing for the enforcement of the Oklahoma Youth Access to Tobacco Act requiring the community to notify employers or parents when employees or minors violate the act.

Executive Summary



From
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Friday, October 24, 1997

AT THE FEDERAL LEVEL

- Sen. Ford (D-KY) introduced the Long-term Economic Assistance for Farmers (LEAF) Act. The bill would create a trust fund of \$28.5 billion over 25 years to help tobacco producers and tobacco growing communities adjust to the impact of national tobacco settlement legislation. Details of the measure were provided by separate memorandum.
- The House Transportation Public Buildings Subcommittee held a hearing on a measure authored by Rep. Traficant (D-OH) that would prohibit smoking in all federal buildings. The measure expands upon President Clinton's Executive Order banning smoking in executive branch buildings, to include the legislative and judicial branches.
- The General Services Administration (GSA) published a bulletin in the Federal Register to leaders of federal agencies regarding President Clinton's Executive Order "Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace." The bulletin advises that federal agencies must prohibit the smoking of tobacco products in all interior space owned, rented, or leased by the executive branch of the federal government, in any outdoor areas under executive branch control, in front of air intake ducts, and must evaluate the need to restrict smoking in doorways and courtyards. Federal agencies must implement and comply with the Executive Order by August 9, 1998.
- By a vote of 12-5, the Senate Labor Committee approved the nomination of Dr. David Satcher as U.S. Surgeon General and Assistant Health and Human Services Secretary. The nomination now proceeds to the full Senate for consideration.

Executive **Summary**



Friday, October 17, 1997

AT THE FEDERAL LEVEL

- The Defense Department sent a letter to the White House last month requesting \$14.6 billion over 25 years from any tobacco settlement as a reimbursement for treating soldiers and military retirees with alleged "smoking-related" illnesses.

IN THE STATES

- **Wisconsin** Governor Thompson signed into law a state budget that includes a 15-cent increase in the state cigarette excise tax that becomes effective November 1, 1997.
- **Massachusetts** Governor Cellucci signed into law a measure requiring the state pension fund to divest itself of tobacco holdings.
- **Minnesota** Governor Carlson rescheduled a special session of the state legislature on the issue of funding for a baseball stadium. An increase in the state excise tax on tobacco has been proposed as a revenue source.

Executive Summary



From
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Friday, October 10, 1997

AT THE FEDERAL LEVEL

- The Senate Commerce Committee held a hearing on the proposed settlement's impact on public health goals. Committee Chairman McCain (R-AZ) expressed disappointment with President Clinton for providing only concepts for potential tobacco control legislation and urged the White House to be more cooperative. Witnesses included representatives from the American Cancer Society, American Medical Association, American Heart Association, and the American Public Health Association. The health groups testified that the proposed settlement was a good starting point but made several recommendations for changes, including raising the price of tobacco products by \$2.00, full FDA authority over tobacco, tombstone advertising, international marketing and promotion restrictions and tougher penalties for failure to reduce youth smoking rates. The American Heart Association also stated there should be no liability immunity for tobacco manufacturers for "past criminal wrongdoing."
- The Senate Indian Affairs Committee held a hearing on the tobacco settlement's impact on tribal issues. Several witnesses testified that any Congressional action on the settlement must include preservation of Indian sovereignty and respect for Indian culture. At the hearing, Senate Judiciary Committee Chairman Hatch (R-UT) announced that his committee will hold a hearing on antitrust issues surrounding the settlement before Congress adjourns in November. Details were provided by separate memorandum.
- The Senate Labor Committee held a confirmation hearing on the nomination of Dr. David Satcher to the dual post of U.S. Surgeon General and Assistant Secretary for Health and Human Services. Details were provided by separate memorandum.
- On October 6, the House adopted by a 399-18 vote the conference report for H.R. 2160, the FY98 agriculture/FDA appropriations bill which includes the \$34 million that President Clinton requested for FDA enforcement of the tobacco regulations.
- The House Government Reform and Oversight Committee defeated by a vote of 15-22 an amendment by Rep. Waxman (D-CA) to the reauthorization bill for the Office of National Drug Control Policy to extend the jurisdiction of the office to include alcohol and tobacco in its definition of "drug," therefore making the bill's reduction targets for illegal drugs also applicable to alcohol and tobacco.

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- The Senate Veterans Affairs Committee favorably reported a veterans benefits measure to the Senate floor that originally included a provision relieving the federal government of liability for compensating veterans for "tobacco-related" illnesses. That provision, however, was removed from the bill before the committee vote.
- Senate Agriculture Committee Chairman Lugar (R-IN) distributed a "Dear Colleague" letter yesterday outlining legislation he is proposing as part of a tobacco settlement to reform the federal tobacco program. The proposal would buy-out production quotas, phase-out the price support system, make 40-cent per pound transition payments to growers for three years while the program is being phased-out, and provide economic assistance to affected rural communities. The transition for tobacco growers would be funded by tobacco companies at a cost of approximately \$15 billion, in addition to the \$368 billion in the proposed settlement.

IN THE STATES

- California Governor Wilson vetoed a measure that would have granted an exemption from the state law restricting product liability suits for individuals claiming injuries from ETS.
- The New York City Council Health Committee held a second public hearing on a proposal to ban outdoor tobacco advertisements. The committee will hold another public hearing and vote on whether to send the proposal to the full Council in November.

Executive **Summary**



Friday, October 3, 1997

AT THE FEDERAL LEVEL

- Congressional leaders met this week with President Clinton to discuss drafting national tobacco-control legislation, while Vice President Gore hosted a discussion of the plan at a school in Tampa, Florida.
- The Senate Labor Committee held a hearing on the public health consequences of the tobacco settlement. Details were provided by separate memorandum.
- Sen. Smith (R-OR) introduced a measure to encourage states to strengthen efforts preventing the sale and distribution of tobacco products to minors by requiring retailers to be licensed, imposing strict penalties on stores and clerks who sell tobacco to minors, and penalizing minors caught purchasing or using tobacco products. The measure was referred to the Senate Labor Committee.
- Rep. Blumenthal (D-OR) introduced a resolution to amend the rules of the House of Representatives to prohibit smoking in rooms and corridors leading to the House floor and in the Rayburn room. The measure was referred to the House Rules Committee.
- Rep. Fox (R-PA) introduced a measure to restrict youth access to tobacco products. The bill was referred to the House Commerce Committee.
- Movie actor and director Rob Reiner unveiled a California ballot initiative to raise the state cigarette excise tax by 50 cents per pack in order to fund children's health care and development programs.
- Several public health groups announced the formation of the Effective National Action to Control Tobacco (ENACT) and pledged to work with the Administration, Congress, the public health community, and the public to enact "comprehensive, sustainable, effective, well-funded national tobacco-control legislation." ENACT also released a poll demonstrating strong public support for the five elements of the national tobacco plan recently outlined by President Clinton.
- Bloomberg News Service held a panel discussion on the prospects for national tobacco legislation. The president of Campaign for Tobacco-Free Kids announced the group will release a survey indicating strong public support for the settlement as the public learns more details of the settlement's provisions.

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IN THE STATES

- **California** Governor Wilson signed into law a measure removing tobacco from product liability exemptions for a manufacturer or seller “if the product is inherently unsafe and is a common consumer product intended for personal consumption,” but maintains the exemption for retailers and distributors of tobacco products.
- **Delaware** Governor Carper held a press conference this week announcing plans for a settlement between the state and the tobacco industry. Additionally, Carper and several advocacy groups will release a proposed package of tobacco legislation with a goal towards “detering teen smoking, encouraging healthy lifestyles, and ensuring that all Delaware residents are not bearing a disproportionate share of the burden of financing health care and treatment for those who smoke.”
- A **Wisconsin** budget measure passed the Assembly with amendments approved by the Senate that include a 15-cent increase in the state cigarette tax to fund various health care programs and now awaits final action by Governor Thompson.

Executive Summary



From
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Friday, September 26, 1997

AT THE FEDERAL LEVEL

- This morning the House adopted by voice vote an amendment by Rep. Doggett (D-TX) to the FY 1998 Commerce-Justice-State appropriations bill that prohibits federal funds from being used to promote the sale or export of tobacco or tobacco products or to remove marketing restrictions by any foreign country. The House also adopted by voice vote a substitute amendment to the Doggett amendment by Rep. Mollohan (D-WV) which requires that such restrictions can only be applied to U.S. tobacco if a foreign country applies the same restrictions to its own tobacco.
- The Senate Labor Committee held a hearing on the Clinton Administration's reaction to the proposed tobacco settlement. Health and Human Services Secretary Shalala was the Committee's only witness. Details were provided by separate memorandum.
- A study released by the Federal Trade Commission on the tobacco settlement found that tobacco companies are likely to generate substantial profits due to price increases and other features of the settlement.
- The Senate adopted an amendment to the Food and Drug Administration reform bill offered by Sen. Jeffords (R-VT), that provides "nothing in the amendments...shall be construed to alter any authority of the HHS Secretary to regulate any tobacco product, or any additive or ingredient of a tobacco product."
- Rep. DeGette (D-CO) introduced a measure to increase the legal smoking age from age 18 to age 21. The bill was referred to the House Commerce Committee.
- On Monday, September 29, Bloomberg News Service will sponsor a panel discussion at the National Press Club on the prospects for national tobacco legislation. The first panel will include White House Domestic Policy Advisor Bruce Reed, Philip Morris attorney J. Philip Carlton, Mississippi Attorney General Mike Moore, and William Novelli, of the Campaign for Tobacco-Free Kids. The second panel will consist of four tobacco company analysts and address the impact of the settlement on the tobacco companies.

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IN THE STATES

- **Wisconsin** legislators decided not to meet in special session to take up a proposal by the state Attorney General to pass legislation enhancing the state's lawsuit against the tobacco industry. Negotiations ended in an impasse prompting the AG to address the issue next legislative session.

Executive Summary



From
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Friday, September 19, 1997

AT THE FEDERAL LEVEL

- President Clinton held a press conference encouraging Congress to build on the proposed national tobacco settlement and outlined Administration recommendations for future legislation. Press conferences immediately followed by Senator Nickles (R-OK) with the GOP response, by Senators Durbin (D-IL), Harkin(D-IA), Kennedy(D-MA), Lautenberg (D-NJ), Wellstone(D-MN), and another by Senators Conrad (D-ND), Reed(D-RI), and Robb (D-VA) praising the Administration's recommendations on the issue. Two additional tobacco-related briefings occurred, one by Health and Human Services Secretary Shalala and White House aide Bruce Reed, the other by tobacco industry attorney J. Phil Carlton. Details of the four events were provided by separate memorandum.
- The House approved by voice vote an amendment by Rep. Lowey (D-NY) to the FY 1998 Labor/HHS/Education appropriations measure to repeal the \$50 billion tax credit provided in the Balanced Budget Act of 1997.
- The Campaign for Tobacco-Free Kids (CTFK) held a press conference this week to release a new anti-tobacco campaign, "Unfiltered Facts," featuring 60 "fact" cards packaged in a flip-top style cigarette box that highlight state statistics of tobacco use among young people, including six tobacco company cards containing "admissions from internal documents, evidence they marketed to children and information on campaign contributions." The cards will be distributed to Members of Congress, public health advocates, state political leaders, and Attorneys General.
- Sen. Durbin introduced a bill to repeal a provision in the 1997 Balanced Budget Act providing the tobacco industry with a \$50-billion tax credit against future payments to be made as part of the comprehensive tobacco settlement.
- The Senate Agriculture Committee held a hearing to discuss the effect of the proposed settlement on tobacco growers. Representatives from the North Carolina and Kentucky Farm Bureaus, the Flue-Cured and Burley tobacco growers cooperatives, and economists from North Carolina State University and the University of North Carolina testified that the federal tobacco program must be protected to provide income stability to farmers and maintain the competitiveness of U.S. tobacco in the world market.

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IN THE STATES

- Alabama's Governor James and Attorney General Pryor announced plans to "ensure that Alabamians receive their fair share of revenue from the tobacco industry" by proposing legislation that would assess the industry the amount they have agreed to pay the state under the comprehensive tobacco settlement. Pryor estimated the state would receive \$3.9 billion, including \$200 million immediately, under the proposed legislation and "tolling agreement," that "preserves claims against tobacco defendants pending a legislative decision." Governor James announced that the legislation will be placed on call for any special session he might convene or given priority during the next regular session.

- Minnesota's legislature will reportedly convene a special session the week of October 20 to resolve the problem of funding for a new sports stadium. The governor continues to support an increase in the state cigarette excise tax as a source of funding for the new stadium.

Executive Summary



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Friday, September 12, 1997

AT THE FEDERAL LEVEL

- Today, President Clinton will nominate Dr. David Satcher as U.S. Surgeon General and Assistant Secretary of Health. Dr. Satcher is currently the Director of the Centers for Disease Control in Atlanta, Georgia.
- The Senate Agriculture Committee held a hearing on the national tobacco settlement. The Committee will hold another hearing September 18 on grower issues. Details were provided by separate memorandum.
- During consideration of the Fiscal Year (FY) 1998 appropriations bill for the departments of Labor, Health & Humans Services and Education, the Senate adopted several amendments related to the proposed national tobacco settlement. An amendment offered by Senator Durbin (D-IL) to repeal the \$50 billion tax credit contained in the Balanced Budget Act that tobacco companies could apply to the costs of the national tobacco settlement was approved by vote of 95-3. Details were provided by separate memorandum.
- Senators Mack (R-FL) and Harkin (D-IA) held a press conference to announce legislation to eliminate the tax deductibility of the tobacco industry's payments under the proposed settlement agreement and earmark that money for medical research at the National Institutes of Health. Details were provided by separate memorandum.
- Last week the House voted 299-125, in a non-binding vote, to instruct its conferees to agree with a Senate amendment to the FY 1998 appropriations bill for the Department of Agriculture and Food & Drug Administration (FDA). The amendment, sponsored by Senator Harkin (D-IA), provides \$34 million for FDA enforcement of the tobacco regulations requiring retailers to check identification of persons appearing to be under 27 years of age wishing to purchase tobacco products.
- Next week amendments are expected to be offered during House consideration of the FY 1998 Commerce-Justice-State appropriations legislation to prohibit the federal government from using any money in the spending bill to promote the sale or export of tobacco products and bar any government agency from lobbying foreign governments to loosen their tobacco import laws.

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- Three bills were introduced in the House last week to repeal a provision in the Balanced Budget Act of 1997 which credits the 15-cent tobacco tax increase in the Act against payments under the proposed tobacco settlement. Bills by Reps. Franks (D-NJ), Lowey (D-NY), and Moakley (D-MA) were referred to the House Ways & Means Committee.
- The Federal Trade Commission issued a proposed rule to change its methodology for determining tar, nicotine and carbon monoxide yields of cigarettes, and a proposed format for disclosing the resulting ratings in advertising. Comments on the proposed rule are due by November 17, 1997.

IN THE STATES

- The **California** Assembly voted 44-28 to pass legislation to extend the suspension of smoking prohibitions for specified bars, taverns, and gaming clubs to January 1999 if the federal Occupational Safety & Health Administration (OSHA) or California OSHA adopt a standard for the reduction and control of permissible exposure to environmental tobacco smoke. The more restrictive of the standards would apply effective January 2001. The measure was sent to the Senate for further action.
- **Iowa's** House Speaker urged Governor Branstad and state lawmakers to call a special session to pass a bill to "strengthen the state's hand in a lawsuit against tobacco companies." An Iowa judge recently dismissed part of the state's Medicaid recovery suit against the industry, but the state is currently appealing the decision.
- A federal judge in **Austin, Texas** threw out components of the state's Medicaid suit against the industry. The judge dismissed the state's antitrust claims and ruled that the "Liggett documents" from Florida's settlement with the industry could not be admitted into evidence. The judge did, however, deny dismissal of the state's claims under the RICO Act with certain qualifications.

Executive Summary



From
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Friday, September 5, 1997

AT THE FEDERAL LEVEL

- The Senate this week approved by voice vote an amendment sponsored by Sen. Harkin (D-IA) to H.R. 2601, the FY 1998 Agriculture Appropriations Act, that appropriates an additional \$29 million to ensure retailers check the identification of those purchasing tobacco products. A motion by Sen. Cochran (R-MS) to table the Harkin amendment failed, 28-70. Details were provided by separate memorandum.
- Senators Durbin (D-IL), Lautenberg (D-NJ), Leahy (D-VT), and Wellstone (D-MN) held a press conference to release letters sent to seven Senate committee chairmen and the President urging them to call for the disclosure of tobacco industry documents prior to Congress' consideration of comprehensive settlement legislation. Details were provided by separate memorandum.
- The Senate Labor and Human Resources Committee held the first in a series of hearings on the terms of the comprehensive tobacco settlement. Details were provided by separate memorandum.
- Sen. Durbin (D-IL), Collins (R-ME), and Rep. Lowey (D-NY) held a press conference to announce their efforts to repeal a provision in H.R. 2015, the FY 1998 Budget Act, that allows the tobacco industry to deduct \$50 billion in federal taxes and count that figure as part of the \$368.5 billion the industry must pay as part of the proposed settlement.

IN THE STATES

- Oregon Governor Kitzhaber and Attorney General Myers announced their conditional support for the proposed national tobacco settlement, but with recommendations to strengthen the regulatory authority of the Food and Drug Administration and the penalties in the "look-back" provisions. The announcement characterized the agreement as "far from perfect," but "major progress in reducing the role of tobacco in our society."
- A California measure was enrolled and sent to the Governor for final action. The bill would remove tobacco from product liability exemptions for a manufacturer or seller "if the product is inherently unsafe and is a common consumer product intended for personal consumption." However, the exemption is not extended to retailers and distributors of tobacco products. A similar measure, S. 340, passed the Assembly and was sent to the Senate for concurrence.

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- **Massachusetts Governor Celluci signed a measure that prohibits smoking in the state house.**

Executive Summary



Thursday, August 28, 1997

AT THE FEDERAL LEVEL

- Senator Harkin (D-IA) intends to offer an amendment during Senate floor consideration of S. 1033, the Fiscal Year (FY) 1998 Department of Agriculture/Food and Drug Administration (FDA) appropriations bill, to fully fund FDA's request of \$34 million to enforce its tobacco rule. As approved by the Senate Appropriations Committee, S. 1033 provides \$4.9 million for enforcement of the FDA tobacco regulations, the same level provided in FY 1997.
- The Senate Labor Committee will hold hearings September 3 and 16 on the proposed national tobacco settlement. Witnesses will include representatives from the public health community, state Attorneys General, and the tobacco industry. The Senate Agriculture Committee has scheduled hearings on the settlement for September 11 and 18 on growers' issues as well as alternative settlement proposals.

IN THE STATES

- The **California** Assembly approved legislation to remove tobacco from a state law that exempts manufacturers and sellers from product liability actions "if the product is inherently unsafe and is a common consumer product intended for personal consumption." The bill stipulates that tobacco retailers and distributors are exempt from product liability actions. The measure has been sent to the Senate for concurrence.
- The **Florida** Medicaid recovery litigation against the tobacco industry was settled this week with tobacco manufacturers agreeing to pay a total of \$11.3 billion, with an initial payment of \$1 billion in the next 12 months and the remainder to be paid over 25 years. The money will be dedicated to children's health, substance abuse education, treatment programs, and an anti-smoking education campaign. The industry also agreed to immediately remove billboard advertising from sporting arenas, public transit systems, and within 1,000 feet of any school. In addition, all tobacco billboards will be banned in the state and cigarette vending machines will be banned in facilities accessible to children. Other provisions of the settlement call for the industry to pay all of the state's litigation expenses, including attorneys fees, and to make public about 400 confidential documents.
- **Georgia** announced it will join 40 other states attempting to recoup money spent on medical care for indigent smokers. State officials had previously declined to file suit citing that "it would not be proper under existing law."

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- . A Polk County, Iowa judge dismissed four of nine counts in Iowa's lawsuit against the tobacco industry for recovery of Medicaid costs spent treating alleged "smoking-related" illnesses. Iowa's Attorney General Miller said he would appeal the judge's decision on the four counts dismissed to the state Supreme Court.

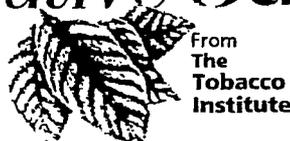
- . Legislation to prohibit smoking in the Massachusetts State House was sent to the Governor for action.

- . The Michigan Treasury Department issued emergency rules to implement a cigarette stamping program under the "Tobacco Products Tax Act of 1993" to address "health, safety, and welfare concerns because of cigarette smuggling into the state." The rules require wholesalers and other cigarette sellers to begin stamping all packs of cigarettes sold to retailers by December 1, 1997. Retailers may sell unstamped packs from inventory until February 12, 1998. Tax stamps will be provided by the state's Treasury department and stamping will be the responsibility of wholesalers.

- . The North Carolina legislature approved a measure that would make sales or distribution of tobacco products or cigarette wrapping papers to persons under 18 an infraction punishable by fines of up to \$300, and impose a penalty of \$250 on retailers who fail to demand proof of age from persons believed to be under 18. The measure also requires retailers to post signs and train their employees on the law. Minors who purchase or attempt to purchase tobacco products or cigarette wrapping papers would be punished by the same fines as retailers. The legislation also restricts cigarette vending machines and prohibits out-of-package sales. The measure has been sent to the Governor for action.

- . The Pennsylvania Department of Revenue issued a proposed rule to repeal provisions of the state's cigarette and beverage tax rules and replace them with regulations more consistent with the state "Cigarette Sales and Licensing Act of 1993," which relates to cigarette stamping, dealer licensing, unfair cigarette sales and sampling. Comments on the proposal are due by September 1, 1997.

Executive Summary



Friday, August 22, 1997

AT THE FEDERAL LEVEL

- The National Institute on Drug Abuse's Special Emphasis Panel held a closed meeting August 18 on the "Preparation of Standardized Nicotine and Cigarettes for Addiction."
- Congress will return from the August recess September 2.

IN THE STATES

- A federal appeals court in Massachusetts upheld the constitutionality of the state's 1996 ingredients disclosure law requiring cigarette and smokeless tobacco manufacturers to file annual reports with the Department of Public Health (DPH) disclosing the ingredients and nicotine levels of their products. The DPH would then determine if the information should be made public. Also this week, the DPH's Public Health Council voted to approve regulations to implement the ingredients disclosure law. The regulations require manufacturers to submit the list of ingredients and nicotine yield ratings for each brand of cigarettes and smokeless tobacco products to the state DPH by December 15, 1997.
- The Maine Department of Human Services' Bureau of Health adopted rules providing guidelines and requirements for designated indoor smoking areas and includes acceptable standards for indoor smoking areas in places of work. The rules became effective upon adoption.
- The Oregon Department of Human Resources' Health Division has proposed rules on awarding the grants for programs to educate the public on the risks of tobacco use. The deadline for comments is August 25. A hearing will take place on the topic that same day.

Executive Summary



Friday, August 15, 1997

AT THE FEDERAL LEVEL

- The U.S. District Court of Appeals for the Fourth Circuit heard challenges to the April ruling by U.S. District Court Judge Osteen on the Food and Drug Administration's (FDA) tobacco regulations. Tobacco manufacturers challenged the ruling which held that FDA has the authority to regulate tobacco, while FDA itself urged the appellate court to reverse Osteen's decision that the regulation of tobacco advertising and marketing exceed FDA's authority.
- On Saturday, August 9, President Clinton signed an executive order banning smoking in all federal executive branch facilities. The policy, which requires that agency heads implement the order within one year, also would ban outdoor smoking in front of air-intake ducts. Agencies would be allowed to have indoor designated smoking areas as long as they are enclosed and exhaust outside. Agency heads are directed to evaluate the need to limit smoking in doorways and in courtyards. The policy also encourages agencies to offer smoking cessation assistance to their workforce.
- This week the American Medical Association (AMA) joined with a number of health groups calling for FDA to be given expanded authority to regulate pipe tobacco, cigars, and any other tobacco product as part of the proposed tobacco settlement. However, unlike the other health groups, the AMA is supporting the settlement's 12-year moratorium on the prohibition of traditional tobacco products or the elimination of nicotine from tobacco products.
- The Occupational Safety and Health Administration (OSHA) will hold a workshop September 12-13 on workplace environmental tobacco smoke exposures. A "diverse" group of scientists who have expertise in exposure modeling are scheduled to participate.

IN THE STATES

- The Minnesota legislature is scheduled to begin a special session on August 19 to address the issue of flood relief. A cigarette tax increase may be proposed to address funding for a new baseball stadium.

Executive **Summary**



August 8, 1997

AT THE FEDERAL LEVEL

- President Clinton is expected to announce his intention to sign an executive order to prohibit smoking in all executive branch buildings that are owned or leased by the federal government. The order would also ban smoking in courtyards and building entrances. Smoking would be permissible indoors only in separately ventilated rooms. The order would take effect one year after its promulgation.
- The Senate Agricultural Committee has scheduled two hearings in September on tobacco settlement issues. On September 11, the Committee will focus on the implications of the settlement for tobacco growers, with a hearing on September 18 providing a "broader explanation of the impact of the settlement and alternative proposals."
- The CATO Institute held a policy forum this week on the tobacco settlement. Speakers included: Alabama Attorney General (AG) Bill Pryor, New York AG Dennis Vacco, The Campaign for Tobacco-Free Kids' President Novelli, and Robert Levy of the CATO Institute. Novelli predicted President Clinton would announce in September that the settlement is a good start, but will recommend changes contained in the Kessler/Koop commission report.
- Health and Human Services Secretary Shalala and National Drug Control Policy Director McCaffrey held a press conference this week to announce the results of the 1996 National Household Survey on Drug Abuse. The survey found that tobacco use among 12-17 year olds remained flat at 18 percent, while the rate of smokeless tobacco use among 12-17 year olds declined significantly from 2.8 percent in 1995 to 1.9 percent in 1996.
- Congress is in summer recess. The Senate will return on September 2 and the House on September 3.

IN THE STATES

- The Ohio legislature is in recess until September 9. Pennsylvania is also in recess and is scheduled to return September 22.

Executive Summary



Friday, August 1, 1997

AT THE FEDERAL LEVEL

- Congress voted to approve budget reconciliation legislation after successful negotiations with the White House. The House voted to approve the spending portion 346-85, and the Senate by a vote of 85-15. The spending bill increases the federal cigarette excise tax by 10 cents in the year 2000, and an additional 5 cents in 2002. But a provision placed in the tax portion of the reconciliation measure provides that the new revenue from the tobacco taxes "shall be credited against the total payments made by parties pursuant to federal legislation implementing the tobacco industry settlement agreement of June 20, 1997." The tax portion of the reconciliation measure was approved by the House 389-43, and by a vote of 92-8 in the Senate.
- Senators Ford (D-KY), Robb (D-VA), and seven Congressmen sent a letter to President Clinton expressing concern about the White House review process of the proposed tobacco settlement. The letter urges the President to refrain from considering issues "aimed squarely at adult choice," rather than the mutual goal of reducing tobacco consumption among youth.
- The Senate Commerce and Judiciary Committees held hearings this week to explore the details and ramifications of the comprehensive tobacco "settlement." Details of these hearings were provided by separate memoranda.
- Rep. Doggett (D-TX) intends to offer a tobacco amendment to the Commerce-State-Justice appropriations measure upon its consideration by the House, that would prohibit federal funds to promote the sale or export of tobacco products, or would seek to reduce and remove restrictions placed by a foreign country on the marketing of tobacco products.
- Policy forums have been held at the CATO Institute and The Heritage Foundation to explore both the legal and political ramifications of the proposed comprehensive tobacco settlement.
- The American Medical Association (AMA) held a press conference announcing its support for the proposed tobacco settlement on the condition that Congress adopt "critical" improvements. The AMA is requesting that FDA be given the same authority over tobacco that the agency has over drugs and devices; the price of cigarettes be

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increased by \$1.00 per pack rather than the proposed 62 cents; tombstone-only advertising be expanded to all publications; the "Look Back" program be strengthened, as well as ensuring that the targets for smokeless tobacco consumption are identical to those of cigarettes; and clarifying the preemptive effect of federal youth access restrictions so that states and localities may impose civil sanctions on retailers beyond those contained in the federal agreement.

IN THE STATES

- **California's** Governor signed into law a measure that requires a specified notice to be posted in the Business and Professional Code stating that selling tobacco products to minors is illegal and subject to penalties as part of the Stop Tobacco Access to Kids Enforcement Act.
- **Oregon's** Governor signed into law a measure that extends the 10-cent temporary cigarette tax to December 21, 1999.
- The **Louisiana** Legislature recently passed a resolution that expresses its intent that 51 percent of "tobacco settlement" monies coming to the state be used to fund medical coverage for uninsured children. The measure was referred to the Senate Government Operations Committee.
- The **California** Department of Corrections Office of Administrative Law issued a regulation prohibiting smoking in prison facilities except residential staff areas, as well as areas designated for religious ceremonies, and prison yards.

Executive **Summary**



Friday, July 25, 1997

AT THE FEDERAL LEVEL

- This week the House and Senate passed their own versions of Fiscal Year 1998 Department of Agriculture and Food and Drug Administration (FDA) appropriations measures. A total of four anti-tobacco amendments, two in each body, were offered during floor action on the bills. All four amendments were defeated. Details of the amendments and their respective vote counts were provided by separate memorandum.
- Earlier this week, House and Senate Republicans agreed not to include new tobacco taxes in the tax portion of budget reconciliation legislation. The Joint Committee on Taxation calculated that the tax bill met targets for a net tax cut of \$85 billion over five years without a tobacco tax increase. According to Senate Majority Leader Lott (R-MS), the final determination on the inclusion of a tobacco tax will be made after consultation with the White House.
- On June 27, Sen. Harkin (D-IA) introduced a sense of the Senate resolution that any legislation implementing the tobacco settlement will prohibit tobacco companies from claiming federal tax deductions for any of the payments made as a result of the agreement.
- This week Senators Lautenberg (D-NJ), Wyden (D-OR), and Rep. Doggett (D-TX) held a press conference to introduce the "Worldwide Tobacco Disclosure Act." The legislation would prohibit the United States from engaging in trade practices "which undercut international anti-tobacco laws, including foreign countries' warning requirements and advertising bans."
- On July 8, the Senate adopted an amendment to the defense authorization bill requiring the Secretary of Defense to report to Congress by March 30, 1998 on the effectiveness of Defense Department programs and policies intended to educate members of the Armed Services about the potential health consequences of the use of alcohol and tobacco, as well as the alcohol and tobacco sales policies in commissaries, post exchanges, service clubs and entertainment activities.

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IN THE STATES

- Governor Wilson of **California** withdrew a measure from enrollment that amends state law by removing tobacco from the list of consumer products exempted from product liability action to allow individuals to file product liability suits against tobacco manufacturers. The Governor returned the measure to the legislature in order to ensure that tobacco distributors and retailers are not included in lawsuits that may be filed against tobacco manufacturers. Other activity in **California** includes a measure prohibiting the advertisement of tobacco products on billboards within 1,000 feet of schools and public playgrounds. The bill was enrolled and sent to the Governor for final action.
- The **New York** Assembly unanimously passed a measure that requires the Office of Fire Prevention and Control, in conjunction with the state's health department, to promulgate fire safety standards for cigarettes sold or manufactured in the state. A Senate companion measure is pending in the Senate Finance Committee.

Executive Summary



From
The
Tobacco
Institute

Friday, July 18, 1997

AT THE FEDERAL LEVEL

- The Senate Appropriations Committee reported the FY 1998 spending bill for the U.S. Department of Agriculture (USDA), Food and Drug Administration (FDA), and other related agencies. The Committee appropriated \$4.9 million for the FDA enforcement of tobacco regulations, the same funding as last year. During the markup, Senator Harkin (D-IA) offered an amendment to increase the tobacco marketing assessment on tobacco marketed during FY 1998 to 2.1 percent to be paid by purchasers and importers to provide for the \$34 million that FDA has requested to enforce its tobacco regulations. The amendment also would eliminate the .5 percent assessment currently paid by tobacco growers. At the request of Chairman Stevens (R-AK), Senator Harkin withdrew his amendment, but is expected to offer it again when the bill is considered on the Senate floor.
- The House began consideration of the H.R. 2160, the FY 1998 appropriations bill for the USDA, FDA, and related agencies but suspended further consideration until next week. Amendments likely to be offered include a proposal by Rep. Lowey (D-NY) to effectively prohibit the federal government from paying salaries of personnel who provide crop insurance or disaster assistance for tobacco for the 1998 crop or any subsequent crops. Another proposal by Rep. Meehan (D-MA) would increase funding for the FDA salaries and expenses by \$10 million in FY 1998 to enforce the agency's tobacco regulations. In order to offset the increase, the amendment reduces funding in the bill for crop insurance sales commissions of USDA's Risk Management Agency by \$14 million.
- The Senate Judiciary Committee held a hearing on the legal issues of the settlement between the state Attorneys General and the tobacco industry. Minnesota Attorney General Humphrey testified in opposition to the settlement proposal. Testifying in support of the proposal were the attorneys general from Connecticut and Colorado and plaintiffs attorneys involved in the litigation in Mississippi and Colorado. Harvard Law Professor Tribe supported many of the provisions as "feasible," while Robert Levy, Cato Institute, testified that the proposed tobacco settlement is a "shameful" document "extorted" by public officials and which violates many fundamental constitutional principles.

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- At a press conference this week, Sen. Kennedy (D-MA) urged Congress “to retain the 20-cent increase in the cigarette tax enacted by the Senate and...use the full \$24 billion” generated by the increase for children’s health insurance. Details were provided by separate memorandum.
- The American Lung Association (ALA) held a press conference today criticizing the tobacco settlement for excluding “communities of color.” The American Heart Association also held a press conference on the tobacco settlement.
- A bipartisan group of governors met with House and Senate budget reconciliation conferees to urge the enactment of provisions that would allow states more flexibility in the Medicaid program and in expanding children’s health coverage. The conferees are working out the difference in the House and Senate versions of the tax reconciliation bill, H.R. 2014, (the Senate version contains a 20 cent increase in the federal cigarette excise tax), and H.R. 2015, the spending reconciliation bill.
- The Federal Trade Commission published its Report to Congress: Tar, Nicotine and Carbon Monoxide of the Smoke Varieties of Domestic Cigarettes for the Year 1994.

IN THE STATES

- A measure passed the **California** Assembly this week that would make it a crime for any person under 18 years of age, except when carrying out specified law enforcement activities, to attempt to purchase tobacco products or smoking paraphernalia, and require retailers to post signs stating tobacco sales to minors are prohibited. The measure will be sent to the Senate for enrollment, and then to the Governor for final action.

Executive Summary



From
The
Tobacco
Institute

Friday, July 11, 1997

AT THE FEDERAL LEVEL

- The House Appropriations Committee unanimously approved a \$49.4 billion Fiscal Year 1998 spending bill for the Department of Agriculture, Food and Drug Administration (FDA), and other related agencies. The Committee also agreed by voice vote to appropriate an additional \$9 million to FDA for the enforcement of the new tobacco age verification rule. Details were provided by separate memorandum.
- The Advisory Committee on Tobacco Policy and Public Health released a 160 page report providing a public health community "blueprint" of a national tobacco control policy. Co-Chairs Kessler and Koop said the report is a "template" of the best tobacco control policy for this country "against which any settlement might be measured." The report calls for unrestricted FDA regulation of tobacco and nicotine, more stringent fines against tobacco companies if youth smoking is not reduced in two years, and higher federal excise taxes, among other numerous recommendations.
- Rep. Doggett (D-TX) introduced the "International Tobacco Responsibility Act" to protect foreign children from the "aggressive marketing practices of American tobacco companies."
- Rep. Traficant (D-OH) introduced H.R. 2118 to prohibit smoking in federal buildings. The measure was referred to House Committees on Transportation & Infrastructure; Judiciary; and Oversight.

IN THE STATES

- Vermont's Governor signed a measure into law that bans tobacco product vending machines and self-service displays except in places not open to minors, prohibits possession of tobacco products by minors with penalties that include the suspension of driver's license, and requires retailer inspection by the Departments of Health and Liquor Control.
- The Rhode Island Governor signed a budget measure that includes a 10-cent increase in the state cigarette excise tax.

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- **Hawaii's** Governor signed a measure into law effective September 1, 1997, to increase the state cigarette excise tax from 60 cents to 80 cents per pack. The tax will increase again July 1, 1998 to \$1.00 per pack.
- **Ohio's** Governor introduced a school-funding reform plan that will increase taxes by \$1.1 billion over five years, including a 12-cent increase in the state cigarette excise tax. The cigarette tax increase would bring the total tax per pack in Ohio to 36 cents, and is projected to raise \$102 million a year in revenue.
- **New York's** Assembly approved a measure that bans billboards advertising tobacco products within 1,000 feet of schools. The measure is pending further action in the Senate Rules Committee.
- The **California** Senate concurred with Assembly amendments to remove tobacco from a list of inherently dangerous common consumer products exempted from product liability actions under state law. The measure awaits final action by the Governor.

Executive Summary



From
The
Tobacco
Institute

Friday, June 27, 1997

AT THE FEDERAL LEVEL

- The Senate completed work on the revenue portion of budget reconciliation this week. Several attempts were made to raise the federal cigarette excise tax. Details were provided by separate memorandum.
- The Senate Judiciary Committee began a series of hearings on the terms of the settlement agreement between the state Attorneys General and the tobacco industry. The next hearing is scheduled for July 16. Details of the hearing were provided by separate memorandum.
- The House Appropriations Subcommittee on Agriculture, Food and Drug Administration (FDA) reported a \$13.65 billion fiscal year 1998 spending measure this week. The panel appropriated \$15.2 million of the \$34 million requested by the administration for enforcement of the new tobacco age verification rule. Rep. DeLauro (D-NY) is expected to offer an amendment during full committee markup July 9 to fully fund FDA's \$34 million request. Further details were provided by separate memorandum.
- Rep. Sanford Bishop (D-GA) introduced H.R. 2017, the "Tobacco Use By Minors Deterrence Act," to encourage states to strengthen efforts to prevent the sale and distribution of tobacco products to persons under eighteen years of age. The measure was referred to the House Commerce Committee.

IN THE STATES

- In a special session last week, the **Maine** legislature approved a Governor-backed proposal doubling the state cigarette excise tax from 37 to 74 cents per pack. The bill will become effective November 1, 1997.
- **Hawaii's** Governor signed a measure making it legal for minors to purchase any tobacco product, as long as it is a controlled purchase that is part of a law enforcement activity or study authorized by the state health department to determine the level of retail compliance with state tobacco laws.

Executive Summary



Friday, June 20, 1997

AT THE FEDERAL LEVEL

- In a closed-door executive session, the Senate Finance Committee agreed to increase the federal cigarette excise tax 20-cents per pack, with a proportional increase on other tobacco products. Earlier this week, Senator Hatch (R-UT) offered an amendment to raise the federal cigarette excise tax by 43 cents per pack, however the amendment was ruled out of order. Details of the executive session and the Hatch amendment were provided by separate memoranda.
- The Campaign for Tobacco-Free Kids, joined by the American Cancer Society and American Heart Association, held a press conference announcing they will lobby Members of Congress to appropriate the Food and Drug Administration's (FDA) Fiscal Year 1998 budget request of \$34 million to enforce the initial phase of the agency's tobacco regulations. The Campaign for Tobacco-Free Kids also launched a new advertising campaign targeting key Members, including House Appropriations Agriculture/FDA Subcommittee Chair Skeen (R-NM) and other Subcommittee members, including Reps. Kaptur (D-OH), Latham (R-IA), and Walsh (R-NY).

IN THE STATES

- The Governor of Texas signed an extensive sales, vending, and advertising restriction measure. In addition, a tobacco ingredient disclosure bill continues to await final action by the Governor.
- The Vermont legislature approved a joint resolution that would divest the state's Teachers' Retirement Stock of its tobacco holdings. An additional tobacco-related measure awaits final action by the Governor that would ban tobacco product vending machines and self-service displays except in places not open to minors, prohibit possession by minors with penalties including the suspension of drivers license, require inspections by the Departments of Health and Liquor Control, among other provisions.
- The Oregon House approved by a 41-14 vote, a measure repealing the January 1, 1998 sunset date of the "temporary" 10-cent cigarette tax increase enacted in 1995 for the Oregon Health Plan. The measure awaits referral to a Senate committee.

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- A **Rhode Island** measure passed the House last week that would increase the state cigarette excise tax 10 cents per pack. The measure is scheduled for referral to the Senate Finance Committee.
- The Dallas-Ft. Worth, Texas Airport Governing Board voted last week to lift the airport's four year-old ban on smoking. The Board allocated up to \$5.3 million in its budget to build 20 separately ventilated smoking lounges.

Executive Summary



Friday, June 13, 1997

AT THE FEDERAL LEVEL

- Rep. Waxman held a press conference to release "secret" Liggett Group documents that he alleges "indicate there is evidence that the tobacco industry, using attorney client privilege, may have been involved in fraudulent and criminal conduct." Rep. Waxman also announced the introduction of the "Tobacco Accountability Act." Details about the press conference and legislation were provided by separate memorandum.
- Sen. Smith (R-OR) and Rep. Bishop (D-GA) held a press conference to announce the "Tobacco Use by Minors Deterrence Act." Details of the legislation and the press conference were provided by separate memorandum.
- Sen. Lautenberg (D-NJ) held a press conference this week to announce that he will offer an amendment to exclude tobacco products from the scope of S. 648, the pending product liability reform legislation, when it is considered on the Senate floor. Details were provided by separate memorandum.
- Early this morning, the House Ways & Means Committee completed mark-up of the tax provisions of the Fiscal Year 1998 budget reconciliation legislation. Two amendments to increase the federal excise tax on tobacco were defeated. Details were provided by separate memorandum.
- The Advisory Panel on Tobacco Policy and Public Health co-chairs Drs. Koop and Kessler sent a letter to the White House today urging President Clinton not to take a position on any settlement with the tobacco industry until the Panel completes its work next month. The next meeting of the panel is scheduled June 18.
- The Occupational Safety and Health Administration (OSHA) issued a notice in the Federal Register approving California's Hazard Communication Standard incorporating occupational applications of California's Proposition 65.
- Rep. Furse (D-OR) introduced a bill to increase the deficit-reduction assessments for participants in the federal price support program for tobacco and to extend the period during which such assessments will be collected.

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IN THE STATES

- Three states, **California, Colorado, and Idaho** recently filed suit against the tobacco industry for the recovery of Medicaid expenses spent treating alleged “smoking-related” illnesses.
- A **Michigan** measure passed the Senate that would prohibit billboard advertising of tobacco products. The measure was referred to the House.
- **Vermont’s** State Employee’s Retirement Board has voted to divest over \$21 million in tobacco holdings from its pension portfolio.
- **Nebraska** is scheduled to adjourn its regular legislative session June 12. **Oklahoma** adjourned May 30; **South Carolina** adjourned June 5 and **Tennessee** adjourned May 31.

Executive Summary



Friday, June 6, 1997

AT THE FEDERAL LEVEL

- The Senate Republican leadership is considering supporting a 21-cent per pack increase in the federal cigarette excise tax. Details were provided by separate memorandum.
- A U.S. District Judge in Pennsylvania denied class-action status to a lawsuit brought by Pennsylvania smokers who claim they are "addicted" to nicotine. Citing "manageability problems," the judge ruled that "[t]he reality of this litigation is that there are simply too many individual issues and class members to try this case efficiently." The ruling applies to one of more than 15 class-action cases filed after last year's decertification of the Castano case.
- Senators Lautenberg (D-NJ) and Durbin (D-IL) and Representative Waxman (D-CA) held a press conference to announce introduction of legislation on second-hand smoke and tobacco sales to children. Details were provided by separate memorandum.
- The House and Senate passed H.C.R. 84, the Fiscal Year 1998 budget resolution. Congress will now begin work on budget reconciliation legislation to accomplish the goals of the budget resolution which outlines congressional spending priorities for the year.
- The first meeting of the Advisory Panel on Tobacco Policy and Public Health was held this week in Washington, D.C. Former Surgeon General Everett Koop and former Food and Drug Administration Commissioner Kessler serve as co-chairs of the panel. The group was formed at the suggestion of nine Members of Congress to report to Congress and the White House on essential components of an "effective" national tobacco policy and issues relating to a "global" settlement.
- The Department of Health and Human Services Centers for Disease Control issued a notice in the Federal Register this week extending the comment period on its protocol to measure nicotine content of smokeless tobacco products. The comment period has been extended from June 2, 1997 to July 2, 1997.

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- The U.S. Department of Agriculture's Farm Service Agency and Commodity Credit Corporation issued a final rule this week codifying the Secretary of Agriculture's determinations for the national marketing quota and price support level for the 1997 burley tobacco crop. The 1997 marketing quota is 704.5 million pounds and the 1997 price support level is 176 cents per pound.

IN THE STATES

- A U.S. District Court Judge struck down a Nassau County, New York Board of Health's smoking ban in a case brought by several local bowling alley owners. The judge ruled that boards of health have authority to deal only with "health issues," while a legislature may consider issues as "diverse as economic interests and privacy concerns."
- **New Hampshire** filed suit against the tobacco industry seeking to recover revenue spent on treating alleged "smoking-related" illnesses.
- **Maine's** Governor vetoed a measure that would have doubled the state cigarette excise tax from 37 cents to 74 cents per pack. Revenues from the increase would have been earmarked to fund health coverage for low-income children, the elderly, and anti-smoking efforts. However, the Governor has called a special session for June 19 to consider compromise legislation on the matter.
- A subcommittee of the **Washington State** Investment Board voted unanimously to recommend to the full Board the divestiture of more than \$250 million in tobacco stocks on the basis that the stocks are "too risky." The next meeting of the full Board is scheduled for July 17.
- A **California** measure passed the Senate this week by a 29-8 vote that urges the state Attorney General to file suit against the tobacco industry to recover costs incurred by the state spent treating alleged "smoking-related" illnesses. The measure awaits concurrence by the Assembly.
- **Oregon's** Senate Business Law and Government Committee amended a "fire-safe" cigarette measure by striking all provisions relating to fire-safe cigarettes. The measure, as amended, does not contain any references to tobacco.

Executive Summary



Friday, May 30, 1997

AT THE FEDERAL LEVEL

- The Federal Trade Commission (FTC) voted 3-2 to charge the R.J. Reynolds Tobacco Company with unfair advertising practices, alleging that the company's "Joe Camel" advertising campaign targets children. The FTC announced that it will present its case to an Administrative Law Judge (ALJ) who will determine if there is sufficient evidence to support FTC's claim. The FTC stated that it will ask the ALJ to order RJR to "cease and desist" the Joe Camel advertising campaign, maintain and make available brand-specific sales data to underage smokers, and disseminate public education messages to discourage persons under 18 from smoking.
- The U.S. Senate passed its version of the Fiscal Year 1998 budget resolution by a 78-22 vote. Conferees will meet June 2 when Congress returns from the Memorial Day recess.
- The Senate Labor and Human Resources Public Health Subcommittee held a hearing on reauthorizing the Substance Abuse and Mental Health Services Administration (SAMHSA). During questioning on the implementation of the Synar Amendment, SAMHSA Administrator Chavez said the agency was working closely with Food and Drug Administration (FDA) and the Centers for Disease Control to address all aspects of youth access to tobacco. Chavez also stated that "we are not a regulatory agency, which is basically what FDA is."
- The Pan American World Health Organization held an awards ceremony in observance of "World No Tobacco Day, 1997" featuring former FDA Commissioner David Kessler, and Campaign for Tobacco-Free Kids President Bill Novelli.

IN THE STATES

- New Mexico's Attorney General filed suit against the tobacco industry for the recovery of Medicaid costs incurred treating alleged "smoking-related" illnesses.
- The Florida State Board of Administration voted 2-1 to sell \$825 million of tobacco stocks invested in the state's retirement plan.

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- **New York's** Governor Pataki announced that the state will abandon efforts to collect taxes on gasoline and cigarette sales in Indian reservations.
- The **Texas** legislature approved an ingredients disclosure bill where the measure awaits action by the Governor.
- The **Maine** legislature approved a measure that requires a purchaser of tobacco products to produce positive photographic identification prior to the purchase. The measure awaits action by the Governor.

Executive Summary



From
The
Tobacco
Institute

Friday, May 23, 1997

AT THE FEDERAL LEVEL

- During consideration of the Senate Concurrent Resolution on the 1998 budget resolution this week, Senators Hatch (R-UT) and Kennedy (D-MA) offered an amendment that would have raised the federal excise tax on cigarettes and other tobacco products in order to fund health care coverage for uninsured children and to reduce the federal deficit. The Senate voted to table the amendment, 55-45. Details of the vote and the debate were provided by separate memorandum.
- Representatives Meehan (D-MA) and Hansen (R-UT) began circulating a "Dear Colleague" letter urging House members to co-sign a letter requesting the House Appropriations subcommittee with FDA oversight to approve FDA's \$34 million funding request implementing the agency's tobacco regulations. The letter will be sent to subcommittee chairman Skeen (R-NM) and ranking member Kaptur (D-OH).
- The House approved the "Drug-Free Communities Act of 1997" by a vote of 420-1. The bill requires the Director of the Office of National Drug Control Policy to establish a matching grant program to support local community initiatives for reducing substance abuse among youth. Tobacco is one of the products included in the bill's definition of "substance abuse." The Senate companion awaits Senate floor consideration.

IN THE STATES

- A Maryland District Court judge dismissed nine of thirteen counts in the state's lawsuit against the tobacco industry to recover state Medicaid monies spent treating alleged "smoking-related" illnesses. The court ruled, however, that the state may seek only compensation from the tobacco industry for violations of the state's Consumer Protection Act or Antitrust Act.
- The Governor of Kansas vetoed a measure that would have added "cigarette or tobacco infractions" to the state's classification of crimes.
- An Iowa measure prohibiting the sale of cigarettes and tobacco products through vending machines in locations accessible to minors was signed into law by the Governor.
- The Minnesota Senate approved legislation that bans single cigarette pack displays, requires one sting operation a year, gives a 30-day notice to municipalities to any changes

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in tobacco ordinances, requires the loss of driver's license for 90 days for anyone over 18 years of age purchasing tobacco products for minors or for minors using false identification to purchase tobacco, and requires the "limited" disclosure of tobacco ingredients to the Commissioner of Health. Another tobacco bill was defeated in a House floor vote and would have provided for point-of-purchase and a variety of other tobacco advertising restrictions.

- **Missouri** adjourned its regular legislative session May 16 and went immediately into special session; **Alabama** and **Minnesota's** legislatures adjourned their regular session on May 19, but Minnesota is expected to call a special session; **Illinois** is scheduled to recess May 23.

Executive Summary



From
The
Tobacco
Institute

Friday, May 16, 1997

AT THE FEDERAL LEVEL

- The House Veterans' Affairs Benefits Subcommittee held a hearing this week on a Department of Veterans' Affairs (VA) proposal to limit liability on behalf of the federal government for compensating and treating veterans with alleged "smoking-related" illnesses. Details were provided by separate memorandum.
- Senator Kennedy (D-MA), joined by the American Cancer Society and the Children's Defense Fund, held a press conference to announce the "newly-formed and growing" Campaign For Child Health Now (CCHN) to support and seek passage of the Hatch-Kennedy children's health care legislation funded by a tobacco tax. Details were provided by separate memorandum.
- The House Government Reform & Oversight Committee amended and favorably reported H.R. 956, the "Drug-Free Communities Act of 1997." The bill would require the Director of the Office of National Drug Control Policy to establish a grant program to support local community initiatives for reducing substance abuse among youth. The term "substance abuse" includes the "use of alcohol, tobacco, or other related product prohibited by state or local law." An amendment offered by Rep. Barr (R-GA) to strike tobacco from the definition of substance abuse was defeated by voice vote.
- The Federal Crop Insurance Corporation issued a proposed rule in the May 13 Federal Register to add a new section to the Common Crop Insurance Regulations specifying provisions for the insurance of the tobacco quota. Comments on the proposed rule are due by June 12, 1997.

IN THE STATES

- **South Carolina** Attorney General Condon filed suit against the tobacco industry to recover medical costs allegedly incurred by smokers and "protections against tobacco farmers." This is the first tobacco-producing state to file such a suit. In an additional development, **Missouri's** Secretary of State filed suit in St. Louis City Circuit Court against the industry seeking civil penalties, damages, and reimbursement for costs incurred treating alleged "tobacco-related" illnesses.

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- **Minnesota** Attorney General Humphrey filed a court brief on behalf of 31 states and the City of San Francisco in support of a Massachusetts tobacco ingredients disclosure law. Massachusetts' law requires tobacco firms to disclose to state health officials the ingredients of cigarettes and smokeless tobacco products.
- The **Alaska** House approved a 71-cent increase in the state cigarette excise tax, bringing the state's cigarette tax to \$1 per pack, while proportionately raising the tax on other tobacco products. The measure awaits action by the Governor.
- **Alabama** recessed May 9 and will return May 19 to adjourn its regular session; **Alaska** adjourned May 11, and **Missouri** is scheduled to adjourn May 16.

Executive Summary



From
The
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Institute

Friday, May 9, 1997

AT THE FEDERAL LEVEL

- Earlier this week, Food and Drug Administration (FDA) Deputy Commissioner Schultz held a press briefing for foreign press only on the FDA's tobacco regulations.
- U.S. Representatives Johnson (R-CT) and Matsui (D-CA) and Senators Hatch (R-UT) and Kennedy (D-MA) held a press conference to promote their legislation to expand health care coverage to uninsured children that is to be funded by an increase in the federal excise tax on cigarettes. They were joined by Rep. Roukema (R-NJ), Morella (D-MD), Shays (R-CT), Riggs (R-CA), and McGovern (D-MA). Rep. Riggs urged policymakers to "rethink" their relationship with the tobacco industry, while Rep. Roukema stated that GOP support for the legislation would help dispel the notion that the party has "gender-compassion" gap.
- The Battle Against Sin in Corporate Society held a news conference to criticize the National Center for Tobacco Free Kids for negotiating with the tobacco industry.

IN THE STATES

- The **New Hampshire** Senate failed to approve two tobacco tax measures to fund education in the state. The first would have increased the state cigarette excise tax by 25 cents per pack in order to fund state education, while the second would have increased the state cigarette excise tax by 16 cents per pack to fund kindergarten aid.
- An **Oklahoma** measure was signed by the Governor modifying the circumstances under which proof-of-age must be requested for the sale of tobacco.
- The **Alabama** House approved a measure establishing the state ABC Board as the state agency primarily responsible for promulgating, regulating, and enforcing state and federal laws prohibiting the sale of tobacco or tobacco products to minors. The bill also requires persons involved in the distribution of tobacco products to obtain a permit from the Board for each distribution location, and provides penalties for the purchase, possession, use, or transportation of tobacco or tobacco products by minors.
- A **Hawaii** measure was approved by the House urging the U.S. Congress to adopt a local requirement for the purchase of cigarettes by military and Coast Guard facilities in Alaska and Hawaii.

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- **Arkansas, Colorado, Florida, Hawaii, Kansas, and Mississippi** have adjourned their regular 1997 legislative sessions. **New York's** legislature recently returned from recess and is now back in session.

Executive Summary



Friday, May 2, 1997

AT THE FEDERAL LEVEL

- The U.S. Supreme Court refused to review a First Amendment challenge to a Baltimore, Maryland ordinance banning cigarette and alcohol advertisements in residential neighborhoods and other outdoor locations.
- Senators Harkin (D-IA), Lautenberg (D-NJ), and Wellstone (D-MN) held a press conference to release a letter calling on U.S. Attorney General Reno to join the state Attorneys General in litigation and negotiations to recover federal taxpayer dollars spent treating alleged "tobacco-related" illnesses. Details were sent by separate memorandum.
- The Centers for Disease Control's Office of Smoking and Health is requesting comments on a uniform standard methodology for measurement of quantity of nicotine in smokeless tobacco. The "Comprehensive Smokeless Tobacco Health and Education Act of 1986" requires smokeless tobacco manufacturers to provide annually to the Health and Human Services (HHS) Secretary, a report on the quantity of nicotine contained in smokeless tobacco products. HHS requested that a standard methodology be developed to ensure the accuracy and reliability of the information. Comments are due by June 2, 1997.
- The Senate confirmed Alexis Herman as Secretary of Labor by a 85-13 vote.
- On May 7, the U.S. House Appropriations Labor/HHS Subcommittee will hear testimony by Labor Secretary Herman on the Department of Labor's Fiscal Year 1998 budget request.
- On May 22, the Senate Labor and Human Resources Committee has scheduled a hearing on the Substance Abuse and Mental Health Services Administration (SAMHSA).

IN THE STATES

- Nebraska Governor Nelson and state Attorney General Stenberg sent a letter to the Chairmen of Philip Morris Companies and RJR Nabisco requesting their written assurances that if a settlement is reached on state Medicaid litigation, that the State of Nebraska will be given the opportunity, without filing suit, to participate in the settlement on the same terms as the current litigating states.

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- **Ohio's** Attorney General announced that state will file suit against the tobacco industry seeking reimbursement of costs spent treating alleged "smoking-related" illnesses. Ohio becomes the 25th state that has filed such a suit.
- The **Rhode Island** legislature passed resolutions requesting the state Attorney General to join other states in litigation against the tobacco industry.
- A **Hawaii** measure to allow the participation of minors in tobacco sting operations was sent to the Governor for final action.
- A **Texas** bill to increase the state cigarette excise tax by 25 cents per pack passed the House by a 95-49 vote. The measure now goes to the Senate for hearings before the Senate Tax Reform Committee.
- A **Vermont** measure passed the Senate making it illegal for anyone under the age of 18 to possess or purchase tobacco products. The bill also banned the use of tobacco vending machines after December 31, 2000.

Executive Summary



Friday, April 25, 1997

AT THE FEDERAL LEVEL

- The U.S. District Court in Greensboro, North Carolina ruled that the Food and Drug Administration (FDA) can regulate tobacco products and their sales, but can not restrict the advertising and promotion of them. President Clinton said it was an "historic and landmark day," adding that the administration will appeal that portion of the decision prohibiting advertising and promotion restrictions.
- Senators Durbin (D-IL), Harkin (D-IA), Lautenberg (D-NJ) and Representatives Waxman (D-CA) and Meehan (D-MA) held a press conference on the U.S. District Court's ruling on FDA's authority to regulate tobacco products. The group declared the decision to allow FDA to regulate the sale of tobacco products a "victory" for both President Clinton and former FDA Commissioner Kessler. Rep. Waxman indicated he was confident the appellate court would overturn that portion of the ruling which denied FDA the authority to restrict tobacco product advertising and promotion. Waxman added that if FDA loses such an appeal, "then it is simply a matter of changing the law."
- Officials of the Department of Veterans Affairs (VA) are urging Congress to support a provision in President Clinton's 1998 budget proposal that would prohibit compensation for death or disabilities caused by a veteran's use of tobacco products during his time in service. The provision stems from a 1993 legal opinion by the VA general counsel that concluded the federal government could be held liable for tobacco-related illnesses.
- Sen. Hatch (R-UT) acknowledged this week that he is seeking a revenue source other than tobacco to fund a measure he co-sponsored to expand health insurance coverage for children. Hatch defended the tax, arguing he believes "people are fed up with the tobacco industry," but noted there was little support for the proposal among Republicans because of the tobacco tax.
- Representatives Meehan (D-MA) and Waxman (D-CA) were joined by former FDA Commissioner Kessler to present their views on "tobacco settlement" negotiations. Details of the event were provided by separate memorandum.
- Sen. Durbin (D-IL) and Rep. DeGette (D-CO) introduced companion bills, S. 643 and H.R. 1438, to prohibit federal insurance, re-insurance, or non-insurance of crop disaster assistance for tobacco growers. The bills were referred to the Agriculture Committee of each house.

- The Tobacco Control Resource Center and National Center for Tobacco-Free Kids are providing assistance to state and local governments that desire to file a request for an exemption from federal preemption of FDA's tobacco regulations. The assistance being provided includes a model application, a toll-free hotline, an Internet site, and the delivery of applications to the FDA. The FDA also has an "exemption" clearinghouse to provide information to activists on state and local levels that wish to preserve local tobacco-control laws. The deadline for states and localities to submit applications is May 6, 1997.
- Several events were held this week regarding the expansion of children's health care coverage. Details were provided by separate memorandum.

IN THE STATES

- There were several developments on the liability front this week. The Attorney's General of **Missouri** and **Pennsylvania** announced their intent to file suit against the tobacco industry to recover Medicaid funds spent treating alleged "smoking-related" illnesses, bringing the total number of such state suits to 25. In **California**, the Los Angeles County City Council voted unanimously to join a class-action suit against R.J. Reynolds Tobacco Company to collect profits from cigarettes sold as a result of the company's "Joe Camel" advertising campaign. In **Illinois**, Cook County attorneys filed suit to prevent the tobacco industry from "misrepresenting the effect of tobacco" and also to seek the recovery of costs incurred treating patients with alleged "tobacco-related" diseases at Cook County Hospital.
- A measure in **Washington** state was signed by the President of both the House and Senate transferring the cigarette and tobacco tax enforcement from the Department of Revenue to the state's Liquor Control Board.
- According to reports from the Coalition for a Healthy New York, the state's anti-tobacco groups have received \$1 million in grants from the New Jersey-based Robert Wood Johnson Foundation.

Executive Summary



From
The
Tobacco
Institute

Friday, April 18, 1997

AT THE FEDERAL LEVEL

- Senators Durbin (D-IL), Lautenberg (D-NJ), Wellstone (D-MN), and Rep. Meehan (D-MA) held a press conference in response to reported settlement talks between representatives of tobacco companies, state Attorney's General, and plaintiff's lawyers. They indicated that any proposed settlement must be approved by Congress, with Senator Durbin emphasizing that a settlement proposal would not be approved with a "rubber stamp" in Congress. In addition, the group announced that an acceptable settlement must include "just and fair compensation to 'victims'," reimbursement to states for costs spent treating alleged smoking-related illnesses, the tobacco industry's acceptance of a wide ranging Food and Drug Administration (FDA) regulation, and a public education campaign for youths funded by the tobacco industry. Senators Durbin, Lautenberg, Wellstone, and Representatives Hansen and Meehan, sent letters to President Clinton outlining their requirements and concerns in a potential settlement.
- Rep. Johnson (R-CT) introduced H.R. 1363 and H.R. 1364, companion legislation to Senators Kennedy and Hatch's S. 525 and S. 526, to increase the federal excise tax on cigarettes by 43 cents per pack in order to provide health insurance coverage to children of low-income families. The proposed tax would raise a total of \$30 billion, with \$20 billion allocated to states for the health insurance coverage, with the balance allocated to the federal government for deficit reduction.
- Rep. Lewis (D-GA) introduced H.R. 1351, the "Smoke-Free Transportation Facilities Act," to prohibit smoking in any transportation facility assisted by federal funds. The measure was referred to the House Transportation and Infrastructure Committee.
- During a House Judiciary Committee hearing on product liability reform, Iowa's Attorney General testified that any product liability legislation considered by Congress should exempt the tobacco industry so as not to impede in any way litigation against the industry.
- Rep. McHale (D-PA) introduced H.R. 1323 to disallow tax deductions for advertising expenses for tobacco products. The measure was referred to the Ways & Means Committee.
- President Clinton participated in a "Kick Butts" event with Rep. Schumer (D-NY) in Brooklyn, New York, with comments focusing upon the issue of tobacco advertising and youth.

- The Senate Labor and Human Resources Committee held a hearing on the issue of children's health care. Details are being provided by separate memorandum.

IN THE STATES

- Alaska Governor Knowles directed the state's Attorney General to file suit against the tobacco industry to recoup Medicaid payments on behalf of "injured smokers." Other tobacco-related action included Senate passage of a substitute measure that would increase the state cigarette excise tax by 42 cents, to 71 cents per pack. As originally introduced, the measure would have increased the tax by \$1 per pack.
- New Mexico's Attorney General issued a request for bids from private law firms to file a lawsuit against the tobacco industry seeking reimbursement on behalf of the state for health care expenses. Attorney General Udall indicated he hopes to have the firms in place by May 7, 1997.
- The Governor of New Mexico vetoed a measure that would have required licensing tobacco retailers.
- New Hampshire's House approved a measure by a 271-81 vote that would increase the state cigarette excise tax by 20 cents to 25 cents per pack. The measure goes to the Senate for further consideration.
- A Washington measure passed the Senate and was sent to the Governor for final action that requires the Board of Director's of each school district to have a policy prohibiting the use of all tobacco products on public school property.

Executive Summary



Friday, April 11, 1997

AT THE FEDERAL LEVEL

- This week Senators Kennedy (D-MA) and Hatch (R-UT) introduced two companion bills affecting tobacco, S. 525 and S. 526. The former, titled the "Child Health Insurance and Lower Deficit Act," provides \$20 billion in federal funds over five years to assist states in providing health insurance coverage to children in low-income working families. Senate bill 526 increases the federal cigarette excise tax 43 cents and increases the federal excise tax on snuff and chewing tobacco products by 17 and 20 times their current rates, respectively. The proposed tax would raise a total of \$30 billion, with \$20 billion allocated to the states for the expanded health insurance for children, and the balance allocated to the federal government for deficit reduction. The health insurance measure was referred to the Senate Labor and Human Resources Committee with 20 co-sponsors; the tax bill was referred to the Senate Finance Committee with 15 co-sponsors.
- Senator Lautenberg (D-NJ) and Representatives Meehan (D-MA) and Hansen (R-UT) introduced S. 527 and H.R. 1244, the "Tobacco Disclosure and Warning Act." Details were provided by separate memorandum.
- Rep. Pallone (D-NJ) introduced H.R. 1263 to provide access to health care insurance coverage for children and to increase the federal excise tax on tobacco products to offset the costs associated with providing such coverage. The measure was referred to the House Commerce, Ways & Means, and Education Committees.
- In preparation for the April 29 Senate Appropriations Agriculture/Food & Drug Administration Subcommittee hearing on FDA's Fiscal Year (FY) 1998 budget request, Senator McConnell (R-KY) sent a letter to Acting FDA Commissioner Michael Friedman posing a series of questions regarding FY 1997 and FY 1998 funding and enforcement activities for the agency's tobacco regulations, as well as on data of states' enforcement of the Synar Amendment. The letter requested that the information be provided one week prior to the appropriations hearing.
- In light of "new evidence" that has surfaced since 1994, Senator Wyden (D-OR) joined the Campaign for Tobacco-Free Kids (CTFK) in a press conference this week calling on Congress to bring back the chief executive officers of the seven tobacco companies to testify under oath on the health effects of tobacco, the marketing practices of the companies, and on the possibility of a "global [legislative tobacco] settlement." The CTFK also announced a new national advertising campaign aimed at congressional leadership to advocate such a hearing. Details were provided by separate memorandum.

IN THE STATES

- A **Minnesota** measure was approved by the Senate that imposes penalties on retailers who sell tobacco to minors, bans self-service displays and vending machines, and prohibits tobacco companies from paying retailers "slotting fees to gain advantageous positions for their products." The measure also requires the disclosure of any "hazardous substance" contained in tobacco products. The bill was sent to conference committee for further action.
- The **Iowa** Senate removed references to tobacco in a bill that would have changed the provisions relating to the illegal purchase or possession of alcohol and tobacco by juveniles and youth offenders. The measure now proceeds to the House for further consideration.
- A **Maryland** measure currently awaits action by the Governor that would authorize a manufacturer or wholesaler licensee, with the approval of the state comptroller, to act as an agent for a licensed wholesaler or manufacturer to stamp and distribute cigarettes.
- The state treasurer of **Vermont** has called for the state to divest its state pension fund of \$21 million in tobacco stocks.

Executive Summary



From
The
Tobacco
Institute

Friday, April 4, 1997

AT THE FEDERAL LEVEL

- Senator Lautenberg (D-NJ) and Rep. Meehan (D-MA) will hold a press briefing on April 8 to discuss a bill they intend to introduce, the "Tobacco Disclosure and Warning Act of 1997."
- On Monday, April 7 Sen. Wyden (D-OR) will join the Campaign for Tobacco-Free Kids (CTFK) at a press conference to urge Congress to call for a hearing to bring back the seven tobacco executives before Congress in light of Liggett Group's admissions regarding the alleged addictiveness of tobacco. The CTFK also will unveil a new national advertising campaign targeted at congressional leadership to push for such a hearing.
- Earlier this week, Senators Lautenberg (D-NJ), Harkin (D-IA), Durbin (D-IL), Bennett (R-UT), and Reps. Meehan (D-MA) and Hansen (R-UT), co-chairs of the Congressional Task Force on Tobacco and Health, sent "Dear Colleague" letters to the House and Senate inviting Members and staff to attend a briefing on tobacco issues. Details were provided by separate memorandum.
- American University's Washington College of Law sponsored a symposium this week on the possibility as to "whether a global legal settlement can be devised under which both the tobacco industry and anti-smoking advocates could co-exist," as well as provide information on the status of state Medicaid lawsuits against the tobacco industry. Details were provided by separate memorandum.
- Rep. Meehan wrote the House Judiciary and Commerce Committees last week to request congressional hearings to investigate the tobacco industry about the "addictiveness and health effects of tobacco use" in light of Liggett Group's recent settlement with 22 state Attorney's General.
- The U.S. Dept. of Agriculture issued an interim rule, effective April 2, allowing special combinations of flue-cured tobacco allotments and quotas for farms that have production flexibility contracts under the Federal Agriculture Improvement and Reform Act of 1996, with those farms that do not have production contracts. The rule would allow farms to make quota more easily because of transfer and lease restrictions unique to flue-cured tobacco, undermarketings in the 1996 crop, and a sizable quota increase in the 1997 crop. Comments on the rule are due prior to May 2, 1997.

IN THE STATES

- **California** Attorney General Dan Lundgren announced this week that California has reached an agreement with Liggett Tobacco Company that “closely mirrors the settlement struck with 22 other states on March 20.” While the State of California has not filed suit against the industry, it would still receive part of whatever Liggett pays into a settlement fund. Liggett also will not have to settle Medicaid claims in suits filed by San Francisco and 12 other California counties because the agreement with the state will provide the counties and San Francisco with the same documents provided to the states as part of Liggett’s settlement.
- A ruling by a Kanawha County, **West Virginia** judge cleared the way for the state’s Attorney General to proceed with a Medicaid liability lawsuit against the tobacco industry. Although 11 of 14 counts were dismissed by the same judge in February, the judge refused to grant a tobacco industry motion to dismiss the three remaining antitrust and consumer protection counts.
- **Maine’s** Governor signed into law a measure that repeals the state sales preemption by allowing municipalities the authority to restrict the sale of tobacco products.
- **New York’s** Assembly passed a measure that prohibits smoking on transportation facilities, regardless of the presence of pupils. The measure was referred to the Senate Education Committee for further action.
- Two tobacco-related measures in **New Hampshire** failed in House floor votes this week. One would have prohibited smoking in restaurants where serving food is the primary function of the establishment; the other would have prohibited the distribution of coupons that could be redeemed for tobacco products.
- The **New Jersey** Assembly approved a measure to measure to make it a “petty disorderly person” offense to sell or give to persons under age 18, in any form, smokeless tobacco or cigarette papers. The measure was referred to the Senate for further action.

Executive Summary



Friday, March 28, 1997

AT THE FEDERAL LEVEL

- The Food and Drug Administration (FDA) has indicated that its planned 10-state "sting-type" enforcement pilot program for the tobacco regulations may be delayed due to insufficient funding. In February, FDA announced plans to enter into enforcement contracts with 10 states to test the contract process. Due to budget constraints, the agency has not revealed the 10 "pilot" states it has selected since not all of them will now be part of the special program. FDA's budget for Fiscal Year (FY) 1997 for the tobacco regulations is \$4.6 million. FDA is requesting \$34 million for FY 1998.
- Federal Trade Commission (FTC) staff is urging the agency to lodge an unfair advertising complaint against R.J. Reynolds Tobacco Company (RJR) alleging that the Joe Camel advertising campaign is "designed to lure children into smoking." In June 1994, the five FTC Commissioners voted against raising such charges against RJR. The FTC reopened its investigation last summer after 67 Members of Congress petitioned the agency to review "new evidence" since the 1994 vote. The Commissioners are expected to vote on the staff recommendation in May.
- Rep. McDermott (D-WA) introduced H.R. 1200, the "American Health Security Act," a single-payer health care plan to be partially funded by a 21-cent per pack increase in the federal cigarette excise tax. The bill has been referred to the House Government Reform and Oversight, Ways & Means, Commerce, and National Security Committees.
- Last week, the U.S. House Government Reform and Oversight Committee's National Security Subcommittee amended and reported H.R. 956, the "Drug-Free Communities Act of 1997," to the full committee. As amended, the bill includes the "use of alcohol, tobacco, or related products prohibited by state or local law" in the definition of "substance abuse." The bill requires the Director of the Office of National Drug Control Policy to establish a grant program to support communities in the development and implementation of long-term plans to treat and prevent substance abuse. Full committee action has not yet been scheduled.
- The Department of Agriculture's Farm Service Agency issued a proposed rule in the Federal Register to improve the administration of the tobacco marketing quota and price support program. Written comments on the proposal are due by May 20, 1997.
- Congress is in recess until April 7, 1997.

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IN THE STATES

- Judges in **Illinois**, **Mississippi**, and **Texas** ordered the Liggett Group to turn over documents for review as part of the company's settlement with 22 state attorneys general last week, and will determine whether the documents can be used as evidence. The judges in Mississippi and Texas also issued orders preventing the tobacco companies from taking any legal action against Liggett for releasing the documents to the courts for judicial review. A **Florida** judge also ordered Liggett to immediately deliver the documents for possible use in the state's Medicaid liability lawsuit against the industry.
- A **Mississippi** Circuit Court judge ruled that internal documents from the Liggett Group could be turned over to plaintiffs in a lawsuit against the tobacco industry over secondhand smoke. The judge stayed his order until this afternoon to give tobacco industry attorneys time to file an appeal with the state Supreme Court.
- **Cook County, Illinois** officials announced plans to file a lawsuit against the tobacco industry to recoup funds spent treating uninsured patients with alleged "smoking-related" illnesses.
- A **New Mexico** tobacco licensing measure is awaiting action by Governor Johnson. The state's legislature adjourned its 1997 regular session on March 22.
- Two tobacco-related **Utah** bills were signed by Governor Leavitt this week. The first increases the state cigarette excise tax by 25 cents to 51.5 cents. The second measure places restrictions on smoking in multi-family housing units. Last week, Governor Leavitt signed a bill into law authorizing persons who claim to be affected by environmental tobacco smoke to bring a statutory nuisance action against the property owners who have prohibited smoking on the premises. The measure also allows the by-laws of condominiums to specify whether smoking is permitted in condo units.
- A **Montana** measure to increase the state cigarette excise tax by 10 cents, and the tax on other tobacco products by 6.9 percent, was defeated on the House floor by a 58-42 vote.
- A bill in **Maine** to permit municipalities to restrict the sale of tobacco products is pending action by Governor King.

Executive Summary



Friday, March 21, 1997

AT THE FEDERAL LEVEL

- At the annual meeting of National Association of Attorneys General, Liggett Group announced a settlement with 22 state attorneys general and plaintiffs' lawyers seeking Medicaid reimbursement for treating alleged "smoking-related" illnesses. According to media accounts, the settlement provides that Liggett will: a). provide a warning on its cigarette packages that tobacco is addictive and causes lung cancer and other illnesses; b). pay 25% of its annual pre-tax revenues for the next 25 years to the 22 states with which it settled; c). provide internal documents relating to the state's allegations; and d). refrain from using a cartoon character in cigarette advertising and any attempt to market their products to minors. The settlement also includes numerous provisions apparently aimed at inducing an acquisition of Liggett. At the same time, Liggett continues to deny any liability or "wrong-doing." Sen. Lautenberg (D-NJ) and representatives from the National Center for Tobacco-Free Kids were also present at the news conference.
- The U.S. Supreme Court refused to grant certiorari to an appeal of a Florida Supreme Court ruling that upheld the constitutionality of Florida's "Third Party Medicaid Liability Act" authorizing the state to sue cigarette manufacturers to recover Medicaid funds spent treating alleged "smoking-related" illnesses.
- U.S. Court of Appeals for the District of Columbia denied Action on Smoking and Health's (ASH) petition for a re-hearing by the full court of an earlier decision by a panel of the court that rejected ASH's initial petition to require the Department of Labor's Occupational Safety and Health Administration to regulate immediately environmental tobacco smoke in the workplace.
- The Penn Advertising Company asked the U.S. Supreme Court to review again a Baltimore, Maryland ordinance that prohibits cigarette and alcohol billboard advertising where children are likely to see it. Last year the Court vacated an appellate court's decision upholding the constitutionality of the ordinance. On remand from the Court, however, the appellate court reconsidered its earlier decision and, again, upheld the ordinance.
- At a House Commerce Subcommittee on Health reauthorization hearing for the Substance Abuse and Mental Health Services Administration (SAMHSA), Nevada's

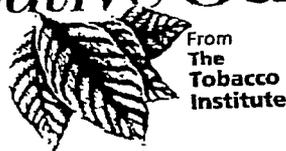
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Attorney General testified that Nevada's 40 percent reduction in youth purchase rates for tobacco products can be attributed to the retail industry's "We Card" program. Rep. Ganske (R-IA) suggested that SAMHSA offer the "We Card" program as a resource to assist in the compliance with the 1992 Synar regulations. Details were provided by separate memorandum.

IN THE STATES

- A **Minnesota** measure was amended last week removing all references to an increase in the state cigarette excise tax as a funding mechanism for the state's new baseball stadium. A companion bill also was amended, reducing an initial increase of 10 cents per pack to 5 cents. Four of those cents would be earmarked for funding the new stadium, while the remaining cent would be utilized for anti-smoking education.
- **Idaho** ADAMHA legislation was sent to the Governor for final action. As passed, the measure allows law enforcement officials to notify retailers within two business days of a sting, prohibits minors or persons under age 18 from selling cigarettes at retail outlets, and allows city and other localities to enact more stringent ordinances not related to the provisions of the Tobacco Access to Minors Act.

Executive Summary



Friday March 14, 1997

AT THE FEDERAL LEVEL

- Senators Hatch (R-UT) and Kennedy (D-MA) held a press conference to introduce "The Children's Health Insurance and Lower Deficit Act" that would increase the federal cigarette excise tax by 43 cents per pack, and other tobacco products at comparable rates, in order to finance health care coverage for children of lower income families. The proposed tax would raise a total of \$30 billion, with \$20 billion allocated to the states for expanded health insurance for children, and the balance going to the federal government for deficit reduction. The measure is expected to be formally introduced next week. Details were provided by separate memorandum.
- Senator Wendell Ford (D-KY) announced that he will not seek re-election for a fifth term in 1998.
- The Campaign for Tobacco Free Kids (CTFK) held a press conference at the National Press Club to "sound" what the organization calls a "Tobacco Smoke Alarm" accusing the tobacco industry of targeting its marketing efforts at African-American youth. Details were provided by separate memorandum.
- The American Advertising Federation held a Government Affairs Conference in Washington on a series of topics, including alcohol and tobacco advertising. Panelists included several Members of Congress, as well as Commissioners from both the Federal Trade Commission and Federal Communications Commission.

IN THE STATES

- The Mississippi Supreme Court rejected Governor Fordice's petition to block state Attorney General Moore's Medicaid suit against the tobacco industry that seeks to recover state monies spent treating alleged "smoking-related" diseases.
- Connecticut has been chosen as one of 12 states by the Robert Wood Johnson Foundation as a "smokeless state." The state will receive close to \$1 million over the next four years to develop anti-tobacco youth coalitions and a public education campaign to promote smoke-free homes.

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- **New Mexico's** Senate passed by a 30-8 vote a measure that would increase the state cigarette excise tax by four cents per pack. The measure was referred to three standing House committees: Business & Industry, Tax & Revenue, and Appropriations.
- The **Arizona** House amended and passed an ADAMHA measure referring it to the Senate for further action. Earlier in the week, the House struck the bill's preemption and non-severability clauses by a 27-26 vote.

Executive Summary



From
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Friday, March 7, 1997

AT THE FEDERAL LEVEL

- The Clinton Administration has developed a draft executive order establishing a strategy to “better protect” children from environmental health risks. The order calls for federal agencies to further study how environmental hazards threaten the health of children, and would establish the Children’s Environmental Health Council that is similar to the Environmental Protection Agency’s newly created Office of Children’s Health Protection.
- The Center for Media Education held a press conference this week to release a study that purports to demonstrate that alcohol and tobacco companies utilize the Internet to promote and market their products. The group called for action by Congress, the Federal Trade Commission, as well as parents and educators to instruct young people about the on-line promotion of these products.

IN THE STATES

- The Indiana legislature defeated a measure to require ingredient disclosure of tobacco products by a vote of 59-34. The Indiana House defeated legislation to provide parents and legal guardians a civil cause of action against retailers who sell tobacco to minors by a 51-46 vote.
- Legislation allowing cities and counties in Idaho to pass tobacco-control ordinances was approved by a 67-0 House vote. The measure was sent to the Senate for further action.
- A bill in Utah was passed by the legislature stating that drifting tobacco smoke is a “nuisance” under specified circumstances and provides that residential unit rental, and purchase agreements, may prohibit smoking. The measure is pending gubernatorial action.
- Colorado’s Senate amended and passed a measure to restrict youth access to tobacco. As amended, the bill allows cigarette vending machines to be located anywhere, but can only be operated with the use of tokens. As originally introduced, the measure would have allowed cigarette vending machines, but restricted them to areas where persons under 18 years of age do not have access. The bill was returned to the House for concurrence.

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- **Alabama's** Senate passed a measure to establish the state's Alcohol Beverage Control Board as the state agency responsible for promulgating, regulating, and enforcing state and federal laws prohibiting the sale of tobacco or tobacco products to minors.
- There are currently 45 state legislatures in session. **Florida** began its regular session on March 4, while **Wyoming** and **Utah** adjourned their regular sessions on March 1 and March 5, respectively.

Executive Summary



Friday, February 28, 1997

AT THE FEDERAL LEVEL

- President Clinton paid tribute to outgoing Food and Drug Administration Commissioner (FDA) David Kessler at a White House ceremony this morning and discussed the first phase of the agency's tobacco regulations which become effective today. Details were provided by separate memorandum.
- FDA Lead Deputy Commissioner Michael Friedman testified before the House Agriculture/FDA Appropriations Subcommittee on the agency's proposed Fiscal Year (FY) 1998 budget request. Details were provided by separate memorandum.
- The Campaign for Tobacco-Free Kids (CTFK) held a teleconference with state officials from Indiana and Florida to discuss each state's compliance efforts for the initial phase of the FDA's tobacco regulations that went into effect today. Officials from both states indicated they wish to be chosen as two of the ten "trial" states FDA will enter into contracts with to enforce the rule. Each state intends to seek one-tenth of the \$34 million FDA has requested to enforce the rule, with the contracts expected to be awarded by May.
- The FDA issued a notice in the Federal Register announcing the availability of a revised compliance guide for small entities on the new tobacco regulations. The revised guide, entitled "The Small Entity Compliance Guide on Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents," is available on the Internet.
- The White House Office of Drug Control Policy released its 1997 National Drug Control Strategy that adopts a ten-year plan on drug control. President Clinton is requesting \$16 billion for FY 1998 to support the strategy. The strategy focuses on adolescent drug and substance abuse education and prevention programs, including \$175 million in anti-drug media campaign funds, as well as possible matching funds from the private sector. The first of these goals is to "educate and enable America's youth to reject illegal drugs as well as alcohol and tobacco."

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- Earlier this month, the Environmental Protection Agency (EPA) circulated a draft proposal for national environmental goals to “key” congressional contacts for their review and comment. The draft goals include reducing children’s exposure to environmental tobacco smoke from 39 percent in 1986 to 15 percent by 2005.

IN THE STATES

- A federal court in **San Francisco, California** dismissed all claims against the tobacco industry in a Medicaid lawsuit brought by the City and County of San Francisco and joined by ten other California counties. The ruling is the first to come from a federal court dealing with Medicaid liability actions against the industry.
- **California’s** Senate adopted a non-binding resolution urging the state’s Attorney General to join other states in filing suit against the tobacco industry to recover Medicaid costs allegedly spent treating “smoking-related” illnesses. A spokesman for the Attorney General’s office reportedly stated that such a suit would not be successful due to a product liability exemption granted to the tobacco industry in 1987.
- **Arkansas’** House amended and passed a measure to increase the state’s cigarette excise tax by 2.5 cents per pack. The measure was returned to the Senate for concurrence.
- **Maryland’s** attempt to increase the state cigarette excise tax failed in the Senate Judiciary Committee.
- **Utah’s** House concurred with a Senate amendment to increase the cigarette excise tax by 25 cents per pack. The measure now goes to the Governor for further action.
- **Maine** Governor King is proposing to double the state cigarette excise tax from 37 to 74 cents per pack.
- **Minnesota** Governor Carlson called for a 10-cent increase in the state cigarette excise tax. Nine cents would be earmarked to finance a new baseball stadium with the remainder for public health programs.

Executive Summary



From
The
Tobacco
Institute

Friday, February 21, 1997

AT THE FEDERAL LEVEL

- The Food and Drug Administration (FDA) issued a proposed rule to grant exemptions from the federal preemption of certain state tobacco laws in Alabama, Alaska, and Utah under the agency's tobacco regulations, all of whom have enacted a law stating the minimum age to purchase tobacco is 19. Comments on the exemptions, and requests for oral hearings, are due March 21.
- Sen. Ford (D-KY) circulated a "Dear Colleague" letter to refute criticism of his recently introduced bill, S. 201, by the Campaign for Tobacco-Free Kids. Both Republican senators from North Carolina have agreed to support S. 201, the goal of which is to reduce youth access to tobacco.
- The Congressional Task Force on Tobacco and Health, co-chaired by Reps. Hansen (R-UT) and Meehan (D-MA), announced its legislative priorities for the 105th Congress. They include: tobacco advertising restrictions, ingredients disclosure, "stronger" Surgeon General's warning on "addiction," elimination of the Agriculture Department's tobacco program and opposition to any weakening of the FDA rule.
- Rep. Lahood (R-IL) introduced a bill to restrict the FDA from penalizing retailers for face-to-face tobacco sales that are in accordance with state law. The measure, H.R. 768, was referred to the House Commerce Committee.
- Action on Smoking and Health (ASH), joined by the American Medical Association, Stop Teenage Addiction to Tobacco (STAT) and the Parent-Teacher Association (PTA), held a press conference to discuss private citizen enforcement of FDA's tobacco regulations. ASH announced it was distributing leaflets that tell merchants how to comply with the regulations and citizens how to watch for and report violations. ASH indicated that citizen volunteers are needed to supplement FDA's efforts because the agency has only 1,000 field inspectors nationwide.

IN THE STATES

A Kanawha County, West Virginia Circuit judge dismissed 11 of the 13 counts in a lawsuit against the tobacco industry that seeks to reclaim costs treating alleged "smoking-related" illnesses. Circuit Judge Berger ruled that state agencies have no direct cause of action against cigarette manufacturers, and dismissed the state's claims of negligence,

conspiracy, and public nuisance. The state Attorney General plans to appeal the ruling on those counts that were dismissed.

- The state of **Indiana** filed suit against the tobacco industry to reclaim costs incurred by the state for treating alleged “smoking-related” illnesses. The Indiana suit brings the number of states filing such suits to 23.
- This week the **Utah** Senate approved H. 27, a 25-cent per pack cigarette excise tax increase. The measure now returns to the House for concurrence.
- **Colorado** tobacco ingredients disclosure bill H. 1091 was defeated on the House floor by a 38-22 vote.
- **North Dakota’s** House failed to pass a measure to restrict smoking in non-public workplaces. A motion to reconsider also failed.

Executive Summary



Friday, February 14, 1997

AT THE FEDERAL LEVEL

- U.S. District Court Judge William Osteen of the Middle District Court of North Carolina heard oral argument on the tobacco industry's request for summary judgment on the validity of the Food and Drug Administration's (FDA) tobacco regulations. Details were provided by separate memorandum.
- Yesterday, the cigarette and smokeless tobacco manufacturers filed motions with the U.S. District Court in Boston requesting permission to appeal the court's February 7 ruling that the Massachusetts ingredient disclosure statute is not preempted by federal law. The manufacturers called the court's attention to a January 31 ruling by another U.S. District Court that found federal law prohibits a state from requiring cigarette manufacturers to disclose ingredient information to the public.
- Representatives Meehan (D-MA) and Hansen (R-UT) announced their intention to introduce tobacco ingredient disclosure legislation in March. In addition, Rep. Hansen reintroduced H.R. 762, the "Youth Protection From Tobacco Addiction Act," to ban tobacco advertising in magazines, on billboards, at sporting events, music concerts, and other places frequented by children. H.R. 762 was referred to the House Commerce and Judiciary Committees.
- President Clinton's Fiscal Year (FY) 1998 budget request for the U.S. Department of Agriculture proposes that "no funds be made available to the Agriculture Research Service, the Cooperative State Research and Extension Services, to carry out activities related to the production, processing, or marketing of tobacco or tobacco products." The provisions are similar to former Rep. Durbin's (D-IL) amendments to the FY 1996 and FY 1997 Agriculture/FDA appropriations measures which were narrowly defeated on the House floor in the 104th Congress.
- The Campaign for Tobacco-Free Kids (CTFK) held a "Smoke Alarm" press conference on industry congressional campaign contributions and on The Tobacco Institute's 1997 legislative conference in Scottsdale, Arizona. CTFK announced it will issue a new "smoke alarm" every month on tobacco industry activities. Details were provided by separate memorandum.
- In testimony before a House Appropriations subcommittee this week, Health and Human Services (HHS) Secretary Donna Shalala said that President Clinton will nominate a new Surgeon General this spring.

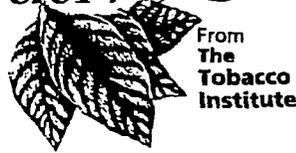
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- The House Appropriations Labor, HHS, and Education Subcommittee heard testimony on the Substance Abuse and Mental Health Services Administration's (SAMHSA) FY 1998 budget request. Subcommittee member Northup (R-KY) stated that she preferred the Synar Amendment over FDA's tobacco regulations to reduce youth access to tobacco. She added that FDA's regulations would not be necessary if SAMHSA had been more aggressive in implementing the Synar law.
- Outgoing FDA Commissioner David Kessler has been appointed Dean of the Yale University Medical School effective July 1. Dr. Kessler is expected to leave FDA later this month. Michael Friedman, FDA's Deputy Commissioner for Operations, will serve as "Lead Deputy" of the agency until a replacement for Kessler is named.
- The U.S. House and Senate begin their President's Day recess today and will return on February 24.

IN THE STATES

- **Wisconsin** Governor Thompson's proposed FY 1998-99 biennial budget calls for a five-cent cigarette tax increase, to 49 cents per pack, to raise \$42 million a year to pay for state health care initiatives.
- The **Indiana** legislature voted to override Governor Bayh's veto of S. 106, ADAMHA legislation, by a Senate vote of 26-24, and a House vote of 56-43.
- **Utah** H. 27, to increase the state excise tax on cigarettes by 25 cents per pack, was amended and passed by the House. As amended, the bill now calls for a 20-cent per pack cigarette tax increase. H. 27 is pending committee referral in the Senate.
- **Mississippi** ADAMHA bill H. 1389 was amended and passed by the House. As amended, the bill's sales preemption clause and identification requirement for persons under age 27 were deleted from the bill. The measure now goes to the Senate for committee referral.
- The **Michigan** Senate approved S. 101, legislation to require a state tax stamp on each pack of cigarettes in an effort to curb the smuggling problem the state has experienced since raising the cigarette tax to 75 cents per pack in 1994.

Executive Summary



Friday, February 7, 1997

AT THE FEDERAL LEVEL

- A federal district court in Boston, Massachusetts ruled today that the state's ingredient disclosure statute is not preempted by federal law. In a statement, the cigarette manufacturers said they would seek leave to appeal the ruling, and would press forward in the district court with their other constitutional claims which the district court did not address in today's preemption ruling.
- Rep. Scott Baesler (D-KY) introduced H.R. 516, the "Youth Smoking Prevention Act," to deny the Food and Drug Administration (FDA) authority to regulate tobacco, deny federal assistance to the states if they do not have in effect state law placing various restrictions on tobacco advertising and youth access to tobacco products, and require the Health and Human Services Secretary to make an annual report to Congress on the compliance actions taken by the states. The measure was referred to the House Commerce Committee.
- President Clinton released a \$1.69 trillion budget request for Fiscal Year (FY) 1998. The request includes \$34 million to implement FDA's tobacco regulations, to be divided among state inspectors for retailer sting operations and enforcement. The request also includes \$36 million for tobacco control programs at the Centers for Disease Control and Prevention. Details of the budget request were provided by separate memorandum.
- The Campaign for Tobacco-Free Kids (CTFK) and Public Citizen held a joint briefing for print media to preview oral arguments to be presented February 10 in U.S. District Court on the Food and Drug Administration's tobacco regulation. Additionally, CTFK circulated a letter to Congress last week urging members to oppose Sen. Ford's (D-KY) measure, S. 201, characterizing the bill as "an inadequate substitution for the FDA rule."
- A letter to Agriculture Secretary Glickman, signed by the entire North Carolina delegation, supports a proposal to grant discretionary authority to North Carolina's U.S. Department of Agriculture facilities allowing them to waive the recent policy prohibiting smoking in all of its facilities and vehicles.
- Rep. Oberstar (D-MN) introduced H.R. 552 to prohibit smoking on any scheduled interstate, intrastate, or foreign airline flight segment. The bill is similar to a measure sponsored by Oberstar in the 104th Congress and was referred to House Transportation Committee.

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- The U.S. House returned from recess this week and will remain in session until February 13, when the both the House and Senate are scheduled to recess from February 14-23.

IN THE STATES

- **Hawaii** and **Wisconsin** filed suit against the tobacco industry this week for the reimbursement of medical expenses for treating alleged "smoking-related" illnesses.
- **Indiana's** Senate passed S. 6, by a vote of 46-0, making the possession of tobacco by persons less than 18 a Class C infraction. The measure now moves to the House for further action.
- The Governor of **New Hampshire** reportedly asked state legislators for a two-fold increase in the state cigarette excise tax--to 50 cents per pack--to offset a \$37 million state budget deficit.
- **Alabama's** state legislature convened February 4. **West Virginia** is expected to convene its regular session February 12, while **Virginia** is expected to adjourn its 1997 session February 22.

Executive Summary



From
The
Tobacco
Institute

Friday, January 31, 1997

AT THE FEDERAL LEVEL

- Sen. Kohl (D-WI) introduced S. 225, the "Sunshine in Litigation Act," to restrict judges' ability to seal records obtained through discovery and to issue protective orders. The bill requires that before a judge restricts disclosure of information obtained through discovery or access to court records in a civil case, he must find that either: 1) the order would not restrict the disclosure of information relevant to the protection of public health or safety; or 2) that the public interest in the disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records. The bill was referred to the Senate Judiciary Committee.
- The Senate Environmental and Public Works Committee's Clean Air Subcommittee will hold a hearing February 5 on the Environmental Protection Agency's proposed revisions to the ambient air quality standards for ozone and particulate matter. The full committee is scheduled to hear the issue on February 12.
- The American Cancer Society (ACS) released the results of two national polls at a congressional briefing on cancer trends and research. Details were provided by separate memorandum.
- The U.S. Farm Service Agency issued a proposed rule to establish national marketing quotas for five varieties of tobacco. As required by law, the Secretary of Agriculture must proclaim by March 1, 1997 the national marketing quotas for fire-cured, dark-air cured, Virginia sun-cured, and cigar filler and binder. Comments on the rule are due by February 12, 1997.

IN THE STATES

- New York Attorney General Dennis Vacco filed suit against the tobacco industry to recover costs spent treating alleged "smoking-related" illnesses. In addition, Vacco proposed legislation to raise the legal purchase age from 18 to 21, ban tobacco product vending machines, ban self-service displays of tobacco products, and require a new stamp on all tobacco products stating prominently that "One in three children who smoke will die from their smoking." The measure also requires retailers to obtain a new tobacco sales license linked to other retail licenses, and provides for the suspension of any state-issued license for the underage sale of tobacco products, among other provisions.

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- **Idaho's** Attorney General issued an opinion this week stating that Idaho's local governments are preempted from enacting additional tobacco taxes.
- **Florida H. 239** would limit to tobacco companies the definition of "third parties" against whom the state's Agency for Health Care Administration has a cause of action to recover medical assistance provided by Medicaid.
- **Alabama's** state legislature is scheduled to convene February 4, while **West Virginia** is scheduled to convene on February 12.

Executive Summary



Friday, January 24, 1997

AT THE FEDERAL LEVEL

- This week Sen. Ford (D-KY) introduced S. 201, the "Tobacco Products Control Act." The bill limits the placement of cigarette and smokeless tobacco advertising, sampling, and the placement of tobacco product vending machines and self-service displays. The bill also requires photographic identification for sales if the individual appears to be 26 years of age or younger, and bans the sale of individual cigarettes, among other provisions. In addition, the bill amends the Food, Drug and Cosmetic Act to expressly deny the Food and Drug Administration the authority to regulate tobacco or tobacco products in any manner. The bill was referred to the Commerce, Science, and Transportation Committee.
- The Food and Drug Administration (FDA) will sponsor a national video conference and a series of public meetings to educate retailers of their compliance responsibilities for the FDA's tobacco regulations. Beginning February 28, retailers will be required to check photo identification of persons under the age of 27 for tobacco sales and prohibited to sell tobacco products to anyone under age 18. The national video conference is scheduled to take place February 18 from 1 to 2:30 p.m. Eastern Standard Time, at 25 locations nationwide, while the one-hour public meetings are scheduled to begin on February 11 through February 26. The dates, and the cities in which the meetings will occur, are: February 11 in Baltimore and Boston; February 12 in Detroit; February 13 in Chicago; February 19 in Boulder and Miami; February 20 in Atlanta and Houston; February 25 in Los Angeles; and February 26 in Seattle.
- Action on Smoking and Health (ASH) petitioned the entire U.S. Court of Appeals for the D.C. Circuit to review *en banc* an earlier decision by a panel of the court that denied ASH's motion to force the Occupational Safety and Health Administration (OSHA) to immediately regulate environmental tobacco smoke in the workplace.
- The Commodity Credit Corporation issued a final rule on import assessments of the tobacco loan program, which became effective January 22, 1997.
- The U.S. Customs Service issued a proposed rule to revise its drawback regulations to implement changes to the drawback law made by the North American Free Trade Agreement. "Drawbacks" are a refund or remission, in whole or in part, of a customs

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duty, internal revenue tax, or fee. Because tobacco is recognized as an agricultural product by the agreement, and therefore subject to an over-quota rate of duty, the proposed rule provides that "no drawback will be available when either the designated imported merchandise or the substituted merchandise, if substitution drawback is claimed, is such an agricultural product." Comments on the proposed rule are due March 24, 1997.

- Senate Majority Leader Lott (R-MS) and Minority Leader Daschle (D-SD) introduced their respective legislative priorities for the 105th Congress. The Republican agenda includes S. 2, the "Family Tax Relief Act" and S. 5, a product liability reform measure. The Democrat's agenda includes S. 13, the "Children's Health Coverage Act" sponsored by Sen. Daschle. Massachusetts Senators Kennedy and Kerry announced that they would introduce "fundamentally similar" legislation financed by a tobacco tax increase, rather than by the tax credits proposed in S. 13.
- The U.S. House of Representatives is in recess until February 4. The Senate will remain in session until February 13 then recess until February 23.

IN THE STATES

- The Ohio Attorney General announced this week that the state will not file suit against the tobacco industry for the recovery of Medicaid costs spent treating alleged "tobacco-related" illnesses due to the enormous legal costs the state would incur to pursue the case.
- Documents obtained by tobacco companies named as defendants in a Florida lawsuit to recover alleged "smoking-related" Medicaid costs, show that the state of Florida manufactured its own cigarettes in the mid to late 1970's. The documents presented in court this week show that the state manufactured, sold, and gave away the cigarettes to inmates in its prison system, to its state hospitals, and to local governments.
- All state legislatures, with the exceptions of Alabama, Florida, Louisiana, and West Virginia, are in regular session.

Executive Summary



Friday, January 17, 1997

AT THE FEDERAL LEVEL

- President Clinton's draft budget requests \$5 million to enforce the new FDA tobacco regulations and \$26 million for other activities to curb tobacco use. The President's budget request is to be submitted to Congress in early February.
- The U.S. Department of Agriculture (USDA) banned smoking in all buildings and facilities owned, leased, or occupied by the agency, including all USDA-owned or leased motor vehicles. The policy also provides that "employees may pursue available training, educational, and counseling services for smoking cessation, if desired." In 1987, GSA issued guidelines for smoking in federal agency buildings, but allowed agency heads to establish their own smoking policies.
- Rep. Bart Gordon (D-TN) introduced H.R. 410 to prohibit the Health and Human Services (HHS) Secretary, or "any other instrumentality of the government," from banning tobacco sponsorship of NASCAR or any other professional motor sports association. The measure was referred to the House Commerce Committee.
- The Campaign for Tobacco-Free Kids held a press conference to release the results of a telephone survey of 513 teenagers between the ages of 12-17 on the topic of cigarette advertising. The survey found that 76 percent of those surveyed believed that cigarette advertising intentionally targets teens; 25 percent believed that advertising was the reason teens chose certain brands.
- The Coalition for America's Children released a report on the role children's issues, played in the 1996 elections. The report, based on a post-election survey of 800 registered voters found 84 percent said children's issues influenced their voting. Forty-three percent believed government has the primary responsibility for helping parents obtain health insurance for their children, while 68 percent would support spending additional tax dollars to help solve problems facing children. Several Members of Congress have suggested addressing these issues through increased federal tobacco taxes.

IN THE STATES

- Alaska announced it is filing a suit against the tobacco industry for the reimbursement of "tobacco-related" medical expenses. Earlier, the tobacco industry filed a preemptive lawsuit against the state stating "health warnings on cigarette packs relieve tobacco firms from liability

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for tobacco-related Medicaid and other expenses the state absorbs.” Alaska also is seeking a \$1 per pack increase in the state cigarette excise tax.

- As part of his 1997-98 budget, Florida Governor Chiles announced a 10-cent cigarette excise tax increase. Chiles’ hope is to raise \$90 million in revenue for the state. Florida’s current excise tax is 33.9 cents per pack.

In addition, Governor Chiles is easing recent efforts to divest the state’s retirement account of tobacco holdings after receiving a report from the State Board of Administration advising that the Governor and two other officials could be held personally liable if they decide to sell all or part of the state’s tobacco holdings. Other tobacco-related developments in Florida include a Palm Beach County Circuit Court judge’s ruling that the state is entitled to “full financial disclosure” from tobacco companies, thus permitting the state to proceed in seeking punitive damages in its lawsuit against the tobacco industry. Florida, along with 19 other states, is seeking recovery of Medicaid costs for treating alleged “smoking-related” illnesses.

- Minnesota Governor Carlson is proposing a statewide 10-cent per pack excise tax increase on cigarettes to help fund a new baseball stadium for the Minnesota Twins. He is also asking that nine cents be earmarked for the stadium, with the remaining penny diverted into tobacco education programs.
- Massachusetts Governor Weld is reportedly objecting to details of a tobacco tax increase passed over his veto last year that utilizes revenues to fund Medicaid coverage to children younger than 13 in families below 200 percent of the poverty line. The Governor reportedly wants to limit the coverage to children below 133 percent of the poverty line, as well as offer tax credits to encourage employers to cover other uninsured families.

Executive Summary



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Executive Summary



From
The
Tobacco
Institute

Friday, January 10, 1997

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AT THE FEDERAL LEVEL

- The Eighth Circuit Court of Appeals affirmed in Chiglo v. Sween the District Court's refusal to allow private citizens to intervene as defendants for the purpose of appealing the District Court's decision invalidating, as preempted, a local point-of-sale advertising restriction. Citing Cippolone v. Liggett Group, Inc. and Vango Media v. City of New York, the Court of Appeals noted that "the City would face significant legal obstacles in seeking a reversal of the district court's preemption ruling."
- The Food and Drug Administration (FDA) next week will release an educational brochure to help retailers comply with its regulations on tobacco. The brochure focuses on the responsibilities of retailers, beginning February 28, to check a photo ID of anyone under 26 who attempts to purchase tobacco products and to deny sales to anyone under 18. The agency also is launching a major public relations campaign to enlist consumers' aid in enforcing the tobacco regulations. FDA is in the process of establishing a toll-free number for consumers to report violations. In addition to the brochure, FDA may hold a national satellite teleconference next month for retailers.
- The 105th Congress convened on January 7. The U.S. House of Representatives re-elected Rep. Newt Gingrich (R-GA) as Speaker. Congress is in recess from January 10-20, 1997.

IN THE STATES

- Arizona Governor Fife Symington reportedly is supporting a move to add \$10 million to the state's anti-smoking campaign. The state legislature would have to approve any budget increases in the program.
- State legislatures scheduled to convene next week are: Alaska, Arizona, Delaware, Georgia, Hawaii, New Jersey, North Carolina, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, and Wyoming.

Executive Summary



Friday, January 3, 1997

AT THE FEDERAL LEVEL

- Rep. John Lewis (D-GA) pre-filed the "Smoke-Free Transportation Facilities Act," a measure similar to H.R. 4333 that he filed in the second session of the 104th Congress. The bill denies federal financial assistance to any transportation facility that does not ban smoking in all indoor portions of the facility accessible to the general public.
- The 105th Congress will convene next week on Tuesday, January 7.

IN THE STATES

- A U.S. District Court judge in **Connecticut** dismissed a suit filed by four tobacco companies to block Connecticut's Medicaid recovery suit against the tobacco industry.
- The Suffolk County, **New York** legislature approved a resolution directing the county attorney to "join or participate in class-action litigation" already brought by 19 states, and a handful of cities and counties, to recover Medicaid costs spent treating alleged "tobacco-related" illnesses. A similar resolution is pending before the Nassau County, New York legislature.
- The Governor of **Utah** announced that his 1997 budget will include a request to raise the existing excise tax on cigarettes by 9 cents per pack, with the revenue earmarked for health care services for the state's uninsured citizens.
- An advisory panel to the state of **Florida's** pension trustees remains deadlocked over whether or not to recommend the sale of the state's \$835 million in tobacco stocks. The decision is now in the hands of the trustees, one of whom is Governor Chiles. Consideration of the issue is set for January 28.
- There are two tobacco-related updates in **California**. First, the jails in Santa Clara County will again permit smoking beginning January 1997. The policy reverses a six-year ban on smoking in all of the county's adult correctional facilities in an effort to control the cigarette smuggling problem that resulted from the smoking ban. The second, Berkeley enacted an ordinance making most of the city's work sites, including bars, smoke-free. The ordinance becomes effective February 16, 1997. Work sites with separate ventilation systems, as well as 25 percent of hotel rooms, are exempt from the ordinance.

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- A report on preventing youth from buying cigarettes was issued by the Texas Health and Human Services Committee. Issued at the request of the Lieutenant Governor, the report's proposals include: a ban on outdoor tobacco advertising, a ban on self-service displays, location restrictions on vending machines to areas where youth are not permitted, and licensing provisions for retailers.
- State legislatures scheduled to convene their respective sessions next week include: **Massachusetts and Rhode Island** on January 2; **Idaho, Montana, North Dakota, and Wisconsin** on January 6; **Mississippi, Oklahoma, Pennsylvania, and Vermont** on January 7; **Colorado and Connecticut** on January 8; **Iowa, Kansas, Maine, Maryland, Michigan, Missouri, Nebraska, New Hampshire, and Virginia** on January 8; **Alaska, Arizona, Arkansas, and Georgia** on January 13.