

11-Apr-85

VIA ELECTRONIC MAIL

PLAINTIFFS' EXHIBIT 1430  
DATE 10-16-97  
RICHARD G. STIREWALT  
REG. PROF. COURT REPORTER

MEMORANDUM

TO: Roger Mozingo  
FROM: Michael Brozek  
RE: Minnesota Legislative Status

Roger, the following report will serve as an auxiliary update to the March 28, 1985 Minnesota legislative status report. The following information will serve to outline the status not only of our legislative program but will outline our legislative support, administrative and communications systems with regard to our efforts in Minnesota.

BACKGROUND:

Since January, as you know, the situation in Minnesota has been "uncommonly active." A raft of legislative issues in the form of taxation, regulation and prohibitions have found their way through the Minnesota legislative process. The 39-point Technical Advisory Committee Report on Nonsmoking and Health, introduced in November, held the promise of 39 separate legislative proposals to be advanced through both houses. This report, a revolutionary attack on our industry, was championed not only by anti-industry organizations, but also the strong direct lobbying of the Minnesota Department of Health. The ink was not yet dry on this report before our lobbyists initiated an aggressive and focused effort in communication with legislative leadership and targeted key legislative activists. This effort was successful in preventing a majority of the report from seeing its way from the drafting board to a legislator's hand.

However, of those recommendations which have survived, ten separate bills have evolved to form the basis of our opponents' legislative agenda. Additionally, several strategic procedural amendments, having onerous implications to our industry, have been attempted by our opponents. These strategic moves came on the heels of a four day visit by United States Surgeon General C. Everett Koop. Koop, in a well publicized media event, testified before several legislative committees and study groups. In a previous memo I noted that Koop's appearance in Minnesota was timed to bring life to a flagging and scattered legislative effort by the Minnesota Lung, Cancer and Heart Organizations.

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Koop's media presence gave political "propellent" and credibility to some legislative measures that were being successfully "contained" by our lobbying team. This situation, coupled with the recent Republican takeover of the Minnesota House of Representatives, a frenetic and independent Democratic governor who is in the habit of hatching controversial causes for the TV cameras and a befuddled Democratic State Senate, promoted an environment not witnessed since the days of Hubert H. Humphrey's tenure as mayor of Minneapolis in the 1940's.

With that preface and background information, the following information will outline our legislative program, legislative support program and status of these legislative measures.

**STATUS:**

SF 38 Diessner (DFL-Afton) Measure referred to the committee on Health and Human Services. Would increase state excise tax on cigarettes to 54 cents a pack, earmarking those revenues for State Medical Assistance Fund. Language contained in this legislation formally refers to "tobacco related illnesses."

**LEGISLATIVE PROGRAM/ACTION NOTES:**

No action at this time; although Medical Assistance Fund is in terrible shape, we are having success in convincing those key legislators that an excise tax is an illogical revenue source. Efforts are continuing to kill this bill in committee.

**LEGISLATIVE SUPPORT/ACTION NOTES:**

Tobacco Institute legislative counsels have been working closely with one of two wholesaler organizations on this particular bill. A more subtle and less bombastic approach has been utilized in order to prevent an overemphasis by Twin Cities media. No further support group assistance is requested at this time.

**STATUS:**

SF 92 Bertram (DFL-Paynesville) Referred to the committee on Veterans and General Legislation. Measure would take 2.5% of existing revenues from cigarette tax in order to segregate those revenues for a "Fire Safety Account."

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LEGISLATIVE PROGRAM/ACTION NOTES:

No action scheduled at this time. Similar to legislation defeated in 1984 session.

LEGISLATIVE SUPPORT/ACTION NOTES:

Utilizing Tobacco Institute Fire Safety Programs, active communication with friends in the Volunteer Firefighters Organization have proved helpful in our efforts to diffuse this issue. No additional legislative support requested at this time.

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STATUS:

SF 442 Bertram (DFL-Paynesville) For some bizarre reason, Senator Bertram introduced two identical bills. Speculation is that one of these bills might be "gutted" for other purposes. Same as SF 92.

LEGISLATIVE PROGRAM/ACTION NOTES:

Same as SF 92.

LEGISLATIVE SUPPORT/ACTION NOTES:

Same as SF 92.

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STATUS:

SF 472 D. Johnson (DFL-Cook)  
HF 556 Dempsey (IR-New Ulm) Companion legislation originally designed as a noncontroversial "housekeeping" or remedial measure.

LEGISLATIVE PROGRAM/ACTION NOTES:

In Senate Tax Committee, measure was amended to (1) place a 72 cent tax on sample cigarettes, (2) remove enforcement language pertaining to Unfair Cigarette Sales Act and (3) repeal stamping requirements on Indian sales of cigarettes. Measure passed Senate committee where it was sent to the floor for debate. On 3/25/85 industry lobbyists successfully deleted the 72 cent per pack tax on sample cigarettes.

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House version passed Taxation Committee on 3/12/85 WITHOUT any offensive language. However, an attempt was made to amend the legislation with the end result being a total ban on cigarette sampling in Minnesota. That motion failed by a vote of 15-12. Unfortunately, that motion will most assuredly be repeated on the House floor. Industry lobbyists have successfully deferred floor action on this measure for the past two weeks. It is our opinion that this measure will see a floor debate sometime within the next week. Please note that even if an amendment to ban sampling passes on the House floor, the measure would not agree with the Senate version and must progress to House/Senate Conference Committee. It is the goal of legislative counsel to kill any sampling ban amendment on the House floor. If we are unsuccessful in that endeavor, legislative counsel is confident of a favorable disposition in House/Senate Conference Committee.

LEGISLATIVE SUPPORT/ACTION NOTES:

It must be noted, and this has been emphasized in our conference calls with legislative counsel as well as my on site analysis, that any extraneous or uncontrolled support activity with regard to this legislation could prove counterproductive. Taking into account that the anti-industry language attempted in this legislation was always offered surreptitiously in the form of last-minute amendments, nonlobbyist interaction was not recommended nor was it indicated. However, tobacco industry support came in the form of our own lobbying team, the lobbying efforts of the Northwest Association of Tobacco and Candy Distributors and the contracted lobbyist retained by R. J. Reynolds Tobacco. It is my belief that this is the most effective and controllable method to deal with this particular measure. Therefore, by recommendation of legislative counsel, no further legislative support has been requested.

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STATUS:

HF 662 Hartinger (IR-Coon Rapids) Referred to Committee on Health and Human Services. Requires all smoking and nonsmoking areas in public places be "aesthetically equal."

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LEGISLATIVE PROGRAM/ACTION NOTES:

We are baffled by the term "aesthetically equal." In fact, it appears that the author is equally confused. In order to prevent this measure from getting any undue credibility, we will attempt to keep this bill in committee by discreet direct lobbying.

LEGISLATIVE SUPPORT/ACTION NOTES:

Legislative counsels from The Tobacco Institute as well as the wholesalers and R. J. Reynolds Tobacco have been in contact with appropriate legislative leadership on this measure. Unless measure progresses through its attachment to a revenue or tax bill, we are confident of its eventual defeat.

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STATUS:

SF 776 Nelson (DFL-Austin)  
HF 810 Quist (IR-St. Peter) Companion legislation. This is Governor Perpich's priority legislation. Bill would increase cigarette tax by 15 cents per pack in order to segregate revenues for youth education, community "stop smoking" programs, workplace initiatives, sampling ban, advertising bans, sewer construction, mosquito control and general mischief.

LEGISLATIVE PROGRAM/ACTION NOTES:

Senate version passed the Committee on Health and Human Services but has been successfully rereferred to the Committee on Education. From Education, if we are successful, it will be rereferred to Senate Finance and then to Senate Tax. It is at Finance Committee level that we hope to defeat this measure.

The House version was successfully rereferred to the Tax Committee in order to keep it away from the rabidly anti-industry Committee on Health. Pressure is mounting and we are fearful that a backlash is developing to have this legislation heard in the House Health Committee. Legislative counsel is doubtful that measure can be killed in Health Committee. If Health Committee recommends passage, we will move to send the bill to the following committees: House Education, House Appropriations and House Taxation. Any floor battles would prove costly and even unsuccessful.

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Special note: there is increasing pressure being generated by our opponents. In a recent letter to the editor as printed in the Minneapolis Star Tribune, a reader attacks House Speaker Jennings for rereferring this measure to the Tax Committee. We expect similar pressure to persist until adjournment.

The entire issue embodied in this legislation is a piecemeal charade to attach workplace smoking initiatives to a segregated funding mechanism for sewer construction. It is interesting to note that the focus of this funding source is the antiquated sewer system in St. Paul. It is the opinion of legislative counsel that a backlash is developing from "non-St. Paul" legislators indicating that the passage of this tax would be inequitable not only to smokers, but those citizens NOT residing in the city of St. Paul. However, legislative counsel is extremely concerned that a type of "bidding-war" is presently under way in the cloak rooms. That "bidding-war" will surface in the form of varying cigarette excise tax levels to fund this project. Several legislators have approached us to report that the Governor is sending messages indicating a willingness to compromise on the amount of the tax increase. Our response has been, and will continue to be, that the basis of this legislation is flawed, inequitable and downright incorrect when estimating revenue levels and economic impact.

LEGISLATIVE SUPPORT/ACTION NOTES:

In addition to Tobacco Institute legislative counsels, Minnesota wholesalers' legislative counsels and the retained counsel from R. J. Reynolds, we have activated retailers in an effort to generate telephone calls and letters to the Chairman of the House Tax Committee, Representative Bill Schreiber (IR-Brooklyn Park).

On this particular piece of legislation we are now requesting our member companies contact any of their coalition groups, suppliers and political contacts to instill a "no tax increase consciousness." Since the level of tax to be raised is constantly being modified, any communication should emphasize the inequity of taxing cigarettes for parochial construction projects and questionable educational initiatives when nearly a half a billion dollar budget surplus exists in the state of Minnesota. Legislative counsel is close to the situation, but due to the fact that most of these discussions are

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occurring on a "catch as catch can" basis, any additional legislative support would be helpful. An interesting note is the recent defection by the Minnesota Association of Commerce and Industry. MACI recently, through their legislative lobbyist, indicated that it was supporting this measure. Although we are presently meeting with key members of that association, any industry assistance would be appreciated in our efforts to at least diffuse their impact.

Additionally, a public opinion survey dealing with issues of workplace smoking and cigarette taxation, funded by The Tobacco Institute, has been completed and will be released Monday, April 15, 1985. The timing for this release date has been discussed in detail and all parties agree that the release of this report at this time would be the most strategically beneficial action in our efforts to contain this bill.

Lastly, legislative counsel has recommended against the filing of an Action Request for legislative communication. Due to the volatile nature of this legislation both politically and from a media standpoint, legislative counsel has consistently felt that an organized effort perceived by the legislature as being instigated by tobacco company employees may draw negative attention. Notwithstanding legislative counsels' recommendation, we have prepared an Action Request contingent on the legislative situation and/or further guidance from legislative counsel.

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STATUS:

SF 1156  
HF 1058 D. Carlson (IR-Sandstone) Referred to the Environmental and Natural Resources Committee. Legislation to increase cigarette tax by 5 cents per pack earmarking those revenues for the Minnesota Commission on Natural Resources.

LEGISLATIVE PROGRAM/ACTION NOTES:

Both measures have been approved by their respective standing committees and have been rereferred to the Senate and House Tax Committees. Legislation calls for \$30 million to be generated by a 5 cent per pack tax increase. Even a cursory glance indicates that it would be impossible to generate \$30 million from a 5 cent per pack tax increase. Fiscal reestimates are expected.

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Tobacco Institute economists have provided economic models to be used in combating this legislation. In short, even in the unlikely event that cigarette sales would remain constant in the face of a tax increase, the revenues generated would barely equal \$22 million. With Minnesota enjoying a price advantage with neighboring state Wisconsin (Wisconsin 25 cent per pack tax and Minnesota 18 cent per pack tax), Wisconsin revenue officials have already estimated a \$6 million per year loss to Minnesota in "cross over" sales. Fiscal estimates advanced by proponents of this legislation ignore this fact.

LEGISLATIVE SUPPORT/ACTION NOTES:

In addition to TI legislative counsel, legislative counsel from Minnesota wholesalers and legislative counsel retained by R. J. Reynolds, individual wholesalers, retailers and grocery/convenience store operators have been contacting their legislators emphasizing the inequity of a cigarette tax increase to fund an environmental project.

SUMMARY:

A special note: Minnesota legislative rules mandate that by April 4, legislation to be scheduled for floor action must be advanced from its committee of origin or it dies with adjournment. On the surface this rule appears to be a "cure all" for our interests. However, this rule does not apply to legislation having an appropriation or revenue impact. As you can see by the above analysis, workplace, sampling and prohibitory language has been conveniently attached to tax or revenue bills. Those tax and revenue measures are considered "alive" until adjournment. The Minnesota legislature is expected to adjourn May 20, 1985.

Additionally, there has been a great deal of talk, championed mainly by the Speaker of the House, to force the Minnesota legislature into a "biennial session." This biennial session would circumvent the need for an additional floor period in 1986. Although the Speaker supports this concept and bipartisan leadership agrees, it is becoming increasingly likely that due to this disorganized and poorly conceived 1985 legislative session, a 1986 session may be necessary.

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Every possible legislative, political, social and theoretical angle is being utilized in our efforts to get out of this session unscathed. Since Minnesota has seen fit to designate itself, as Surgeon General Koop stated, "a model for the country" with regard to anti-smoking legislation, our only choice in this matter is a complete victory. Anything less could be used against us in other states. We will employ all means to secure that victory.

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