

HB

466

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 2, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 2/20/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 466

HOUSE BILL NO. 466 RELATING TO TOBACCO AND TOBACCO PRODUCTS

"An Act relating to tobacco."

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note DPS
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

J. Ellis
Ms. Greenberg
Cheri Dauch
Pete Jann

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Mannbeyen</u>		<input checked="" type="checkbox"/>	

J. Ellis
Chairman's Signature

February 9, 1990

MEMORANDUM

Re: H.B. 466 -- Prohibition on Tobacco
Product Sampling on Alaska

Representative Gruenberg has introduced a bill (H.B. No. 466) that, if enacted, would effectively ban the promotional distribution of free cigarette samples to adults. The bill would permit the distribution of free samples in only extremely limited circumstances: at retail stores primarily selling tobacco, closed conventions or trade shows, and in conjunction with a separate sale of tobacco. The proposed ban on sampling to adults is unwarranted and would conflict with federal law.

The purpose of cigarette sampling is not to recruit new smokers but to promote new brands or reintroduce old ones. Sampling is a promotional practice designed to secure for such unfamiliar brands a share of the existing, highly competitive cigarette market. Leading brands rarely are distributed in sample form. If the purpose of sampling were to recruit new smokers, the most popular brands would be distributed -- not the least familiar.

A sampling ban is not necessary to prevent the distribution of cigarettes to minors. Those who seek to ban cigarette sampling often claim that such a ban is the only way to keep free cigarette samples away from minors. Rarely is there any solid evidence of any significant problem in this

regard. The cigarette manufacturers insist on strict controls to prevent cigarette samples from reaching minors. Moreover, Alaska law already prohibits the distribution of tobacco products to any person under 19. Alaska Code § 11.76.100(a). The law also prohibits the purchase of tobacco by persons under 19 years of age. Id. § 11.76.105(a). Violation of either prohibition is punishable by a fine of up to \$300. Id. § 12.55.035. Enforcement of the existing law against distributing cigarettes to minors can solve any problem that may be thought to exist.

A sampling ban would violate the Federal Cigarette Labeling and Advertising Act. This is the federal law that regulates cigarette advertising and promotion. The statute contains a "preemption" provision that states as follows:

"No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes." 15 U.S.C. § 1334(b).

The federal law assures uniformity in the advertising and promotion of a nationally marketed product and thereby "protect[s] the interests of the national economy." *Cipollone v. Liggett Group, Inc.*, 789 F.2d 181, 187 (3d Cir. 1986), cert. denied, 479 U.S. 1043 (1987). A sampling ban obviously would frustrate that purpose.

Antismoking advocates themselves recognize that state and local sampling bans are preempted by the federal law. The legislative history of the law clearly shows that Congress viewed sampling a form of cigarette "advertising or

promotion" within the meaning of the federal law. The Coalition on Smoking OR Health and the American Medical Association have urged Congress to repeal the "preemption" provision of the federal law precisely because of the obstacle it presents to state and local action in this area. The AMA stated that repeal of the "preemption" provision is --

"essential to enable state and local jurisdictions, that have been precluded from taking certain regulatory actions on tobacco products, to act responsibly and regulate prohibitions on the advertising or promotion of tobacco products based on public health concerns."

Finally, a sampling ban would violate the equal protection guaranty of the Fourteenth Amendment which requires that state laws must be "rational" -- that is, they must have some hope of accomplishing their stated purpose. A sampling ban would not reduce cigarette consumption among either adults or minors, and thus would not be "rational." In 1986, a federal district court in Oklahoma invalidated a ban on liquor advertising as "irrational" because the evidence did not establish that the ban would accomplish its stated purpose -- curtailing liquor consumption in the state. *Oklahoma Broadcasters Ass'n v. Crisp*, 636 F. Supp. 978, 992 (W.D. Okla. 1986). H.B. 466 would suffer from the same infirmity.

* * *

For the foregoing reasons, H.B. No. 466 should be rejected by the Alaska House of Representatives.

COVINGTON & BURLING

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

February 20, 1990

MEMORANDUM

TO: Members of House HESS Committee
FROM: Representative Max Gruenberg *mx*
RE: HB 466, "An Act relating to tobacco"

I would very much appreciate your support for HB 466, the anti-tobacco sample bill.

Under the present law, it is legal to give adults unsolicited free samples of cigarettes and other tobacco products.

This bill prohibits giving away tobacco products in order to promote retail sales except in limited circumstances, such as in tobacco shops or conventions.

Deaths and serious illnesses from tobacco use are some of society's most serious substance abuse problems. This bill discourages tobacco use by prohibiting this type of aggressive marketing.

If you have any questions about the bill, please contact me or my staff attorney, Mark Handley, at 465-4986.

Thank you.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Relating to tobacco and BRU: Alaska State Troopers
tobacco products
 Sponsor: Rep. Gruenberg, et al. Component: Detachments
 Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Francis C. Allan
 Division: Alaska State Troopers

Phone: 269-5691
 Date: 02/08/90

Approved by Commissioner: Arthur English
 Agency: Department of Public Safety

Date: _____
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2/8/90

STATE OF ALASKA
THE LEGISLATURE

FOUCHY - STATE CAPITOL
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Mary Van Nimwegen

H. HESS

2-2-70