

HB

9

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 21, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 1-30-91

The JUDICIARY Committee considered:

HB 9

HOUSE BILL NO. 9

LIMIT FREE SAMPLES OF TOBACCO PRODUCTS

"An Act relating to tobacco."

RECOMMENDATIONS:

be replaced with _____ the same title

have attached amendments(s) a new title

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note LAU, Public Safety

zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
<i>Dave Buckley</i>				
<i>W. H. ...</i>			<input checked="" type="checkbox"/>	
	<i>Terry ...</i>		<input checked="" type="checkbox"/>	
	<i>Mark ...</i>		<input checked="" type="checkbox"/>	
	<i>Kevin ...</i>		<input checked="" type="checkbox"/>	
	<i>Michael ...</i>		<input checked="" type="checkbox"/>	

Dave Buckley

Chairman's Signature

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 9

Revision Date: _____ Department Affected: Department of Law

Title: "An Act relating to tobacco." BRU: Legal Services

Component: Operations

Sponsor: Representative Gruenberg

Requestor: Representative Gruenberg COMPONENT SERIAL NO.

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 24, 1991
 Approved by Commissioner: Richard I. Pegues
Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 24, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 9

This bill amends AS 11.76 by adding a new section that provides that a person may not provide tobacco to another person without charge or for a nominal fee, for the purpose of promoting retail sales. The bill does allow a person to provide small samples of tobacco without charge or for a nominal fee to a person 19 years of age or older for the purpose of promoting retail sales, if the samples are provided in a retail store that sells primarily tobacco, or at trade shows or conventions from which the general public is excluded, or in conjunction with a separate sale of tobacco by a retailer, manufacturer, or distributor.

In the past, the tobacco industry represented that state jurisdiction of tobacco promotions is preempted by 15 U.S.C. 1334(b), which places responsibility for regulating tobacco advertising at the federal level. It is the Department of Law's view, however, that the distribution of free samples falls under 15 U.S.C. 1332(6), which places the responsibility for the regulation of the distribution of tobacco, whether for sale or not, at the state level. If the bill is approved and is then subsequently challenged in court, the department will handle a challenge using its existing staff. Consequently, fiscal note costs are not required.

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 9

Revision Date: _____
Title: An Act Relating to Tobacco
Sponsor: Rep. Gruenberg
Requestor: H. JUD

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO.

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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

Estimate of current year impact No fiscal impact anticipated.

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Gayle A. Horetski, Dep. Commissioner Phone: 465-4322
 Division: Commissioner's Office Date: 1/25/91
 Approved by Commissioner: *Gayle A. Horetski* Richard L. Burton
 Agency: Department of Public Safety Date: 1/25/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

State of Alaska

Committees

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



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

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

MEMORANDUM

TO: Members of the House Judiciary Committee
FROM: Representative Max Gruenberg
DATE: January 24, 1991
SUBJECT: HB 9, the Anti-Tobacco Sample Bill

I would very much appreciate your support of HB 9, 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.

This is the same bill that passed the House last year by a vote of 29-4 as HB 466.

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

January 28, 1991

Charles E. Cole
Attorney General
P.O. Box K
Juneau, Alaska 99811

Re: HB 9 -- Prohibiting the free distribution or sampling of tobacco products

Dear Attorney General Cole:

Last year the Attorney General concluded that HB 466 was not preempted by federal statute (opinion attached). The Judiciary Committee would like an opinion from you as to whether HB 9, which is substantially identical to last year's HB 466, is preempted by federal statute.

Thank you for your attention to this request.

Very truly yours,

A handwritten signature in cursive script that reads "Dave Donley".

Dave Donley, Chair

DD:lho

State of Alaska

Committees

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



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(907) 276-6844

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

MEMORANDUM

DATE: January 28, 1991
TO: Representative Max Gruenberg
FROM: Mark Handley
RE: Sectional Analysis of HB 9, "An Act relating to Tobacco"

Section 1

AS 11.76.100 (a) amends statutes prohibiting sales of tobacco to persons under the age of 19 by changing the definition of tobacco to that used in the state revenue statutes.

Section 2

AS 11.76.105 (a) amends the statute prohibiting possession of tobacco by a person under 19 by changing the definition of tobacco to that used in the revenue statutes.

Section 3

AS 11.76.108 prohibits giving away free samples of tobacco for the purpose of promoting retail sales except under certain circumstances.

Section 4

AS 11.81.90 (b) (58) defines tobacco in all of title 11 as "cigarette" or "tobacco product" as defined in the revenue statutes.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

465-2696

DIVISION OF ENVIRONMENTAL HEALTH
P.O. BOX 0, JUNEAU, AK 99811-1800

POSITION PAPER CSHB 446 (JUDICIARY)

March 18, 1990

Contact: Douglas Donegan

Title

An act relating to tobacco

Effect of the Bill

The bill prohibits the sale of tobacco to minors and adds a section regulating promotional sale of tobacco.

Department Position

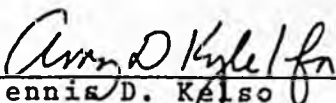
The Department supports CSHB 446. The adverse health effects of the use of tobacco products are well recognized. Smoking represents the major preventable cause of death and disease in the U. S. today. Prohibiting the free distribution of tobacco samples to minors and adults can serve to discourage their initial and subsequent addiction to tobacco.

Suggested Revisions

None

Fiscal Effect

There is no fiscal impact on the Department.



Dennis D. Kelso
Commissioner

KETCHIKAN MEDICAL CLINIC, INC.

3612 Tongass
Ketchikan, Alaska 99901

H.J. Henrickson, M.D., F.A.A.F.P.
D.E. Johnson, M.D., F.A.A.P.

Phone 225-5144

March 13, 1990

The Honorable Max F. Gruenberg, Jr.
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Gruenberg:

Thank you for your letter of March 7, and for sending me a copy of House Bill 466. At risk of burdening you with information you can't use, I have taken the liberty of enclosing quite a packet. It is not as overwhelming as it might look, and I will explain the sequence of things and what they are.

The first item is self explanatory. The second item is a set of statistics from the Wall Street Journal that showed that cigarette companies are increasing their inflation adjusted prices, not simply their consumer price. Cigarettes generated approximately 31 billion dollars for the tobacco companies in 1982, and netted the tobacco companies 38 billion dollars in 1989! Excise taxing has not kept pace.

Next in this packet are several first sheets on articles from the **Journal of the American Medical Association** of January 1989. Starting smoking is decreasing among young men, while it is remaining about the same or increasing slightly among young women. Smoking prevalence is declining in all educational groups, but is declining more among the higher educated. Projections to the year 2000 suggest that at current rates at least 30% of those who have a high school education or less will be smokers, whereas less than 10% of those who graduate from college will smoke. Approximately 1.3 million people per year stop smoking, but about 1 million start smoking, most of them young people.

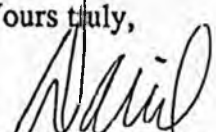
Pregnant women smoked only 70% as much as non-pregnant women, mostly because pregnant women were more likely to have quit smoking than non-pregnant women. "However, unmarried pregnant white women were 40% more likely to smoke than their non-pregnant counterparts."

Even with a program that reduced illegal over-the-counter sale of cigarettes to minors, sales to minors from vending machines were not reduced at all. An eye-tracking study showed that the commercial artists employed by tobacco companies are very skillful at keeping the warnings out of perception. Bill board advertising also effectively excludes the surgeon general's warnings from readability, and for comparison, I have attached a headline from the **Seattle Post Intelligencer** that grabs attention much more effectively.

The packet of articles that follows is four of the articles whose first sheets I sent, and an editorial on smoking from **JAMA**. Please contact me or Rick Urion if you need any further information. The Health Sciences Library in the University of Alaska Anchorage can help you with getting articles from the list of references.

Thank you again for your efforts in this area.

Yours truly,


David E. Johnson, M.D.

DEJ:bjh

cc: Representative Cheri Davis

Local Address: P.O. Box 1285, Kotzebue, Alaska 99752

AMERICAN LUNG ASSOCIATION of ALASKA

Dedicated to the prevention and control of lung disease

27 February 1990

Representative Max F. Gruenberg, Jr., Co-Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

We have a serious drug problem in Kotzebue that your committee can help us fix. As you may know, tobacco products kill more Americans than all the other recreational drugs combined—nearly 400,000 people die a year from tobacco-related illnesses.

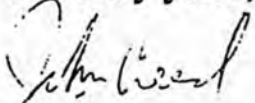
Most Alaskans addicted to nicotine get hooked at an early age, and that is how you can help with your support of HB 141, which would license the sale of tobacco products.

We have a problem in Kotzebue with one store in particular that routinely sells tobacco products to children. While most local store owners are responsible people who do not sell tobacco to children, this one store may be helping to addict a whole new generation of children to nicotine. If that store needed a license to sell tobacco products, the police would have a license to revoke if it broke the law.

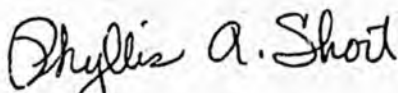
We also support HB 466, which deals with the distribution of tobacco products, as well as SB 222 (and its counterpoint in the House), which would further restrict smoking in public places.

Attitudes have changed dramatically about tobacco use in our society in the past few years. Alaska has always been on the forefront of this movement, and your support of this legislation would demonstrate your commitment to the anti-drug campaign in America. Thank you.

Sincerely yours,



John Creed, Kotzebue Facilitator
American Lung Association of Alaska



Phyllis Short, Board Member, Kotzebue
American Lung Association of Alaska

cc: Walter Hays
Senator Al Adams
Representative Eileen MacLean

KETCHIKAN MEDICAL CLINIC, C.

3612 Tongass
Ketchikan, Alaska 99901

H.J. Henrickson, M.D., F.A.A.F.P.
D.E. Johnson, M.D., F.A.A.P.

Phone 225-5144

February 22, 1990

The Honorable Max Gruenberg
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Gruenberg:

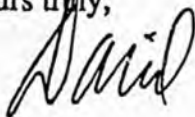
I am writing to follow-up our visit of last week, and to thank you for taking the time to meet with us. I appreciated the candor in our discussions, even when we do not always agree. I am going to send letters on separate issues, so that things not get needlessly complicated for your staff. In this letter I would like to address one of the issues that we did not have the opportunity to discuss, and on which I believe that we have considerable agreement.

I am very appreciative for your efforts in discouraging tobacco use by everyone, particularly by young people. Tobacco is clearly the primary "gateway" drug to other addictions. I am outraged that the tobacco industry can spend two billion dollars a year to recruit the one million new smokers necessary to replace the 350,000 or so who die and the 650,000 or so who quit each year. Sadly, they are recruiting these new tobacco users from those under 20 years old almost exclusively. It is a hard-headed business decision that is worth \$2000 per new smoker to these megacorporations.

The article I have attached is "A Parting Shot at Tobacco" from the past Surgeon General of the USPHS, C. Everett Koop, M.D. His references at the end of the article cite several useful studies. Further, the individual that he cites at the end, Ronald M. Davis, M.D., is an outstanding physician who could provide considerable information on the subject. He is the director of the Office on Smoking and Health at CDC listed on the front page of the article.

Please feel free to contact me personally, or the Alaska State Medical Association, if we can provide any information or assistance. I appreciate your willingness to be out in front on this issue that clearly must be addressed responsibly and well.

Yours truly,



David E. Johnson, M.D.

DEJ:bjh

Enclosure

A Parting Shot at Tobacco

ON SEPTEMBER 13, 1989, I made my last appearance as Surgeon General before the US Congress. I used the occasion to address the one issue with which previous Surgeons General and I have become most closely associated: tobacco and health. In testimony before the Subcommittee on Transportation and Hazardous Substances, Committee on Energy and Commerce, US House of Representatives, I focused my remarks on two topics that this subcommittee had considered in previous hearings: tobacco advertising and children's access to tobacco products. The purpose of this article is to share with a wider audience the comments I made at that hearing.

Tobacco Advertising

The bill introduced by Subcommittee Chairman Thomas A. Luken (D, Ohio), HR 1250, would eliminate all image-based tobacco advertising (allowing only so-called tombstone advertising). On several occasions during my tenure as Surgeon General, I endorsed proposals that would ban all tobacco advertising and promotion. I certainly support the proposal to restrict tobacco advertising as a reasonable compromise, although I would continue to endorse a total advertising ban as a long-term goal.

It is a curious public policy that we, as a society, allow the most important preventable cause of death to be one of the most heavily advertised consumer products. I know that First Amendment concerns have been expressed about tobacco advertising restrictions. Opponents of these restrictions argue that if a product is legal to sell, it should be legal to advertise. That argument, expressed in a different way, says that if Congress wants to ban the advertising of a product, it first has to ban the sale of that product.

I do not believe our Founding Fathers would have endorsed such a narrow and inflexible range of options for Congress to consider. An advertising ban seems to me to be a reasonable middle ground between the status quo and a total prohibition of tobacco use, which no one seriously proposes.

While I am not a legal scholar, I understand that Congress has the clear authority to prohibit *deceptive* advertising.¹ In my opinion, much of today's advertising for tobacco products is deceptive. Many advertisements portray smoking as a safe, if not healthful, activity, and no advertisements disclose many of the serious and extensive health effects of smoking, such as stroke and nicotine addiction.

One of the more outrageous advertisements (for Newport cigarettes) has used, for at least a decade, the slogan "Alive

With Pleasure." This is clearly a message designed to undermine the Surgeon General's warning. If one considers smokers who suffer from lung cancer, emphysema, or stroke caused by smoking, truth in advertising would demand use of the slogan "Dying in Agony" instead of "Alive With Pleasure."

Two advertisements in particular strike me as highly objectionable. An advertisement for Kool cigarettes clearly targets young people; it shows a young-looking couple in teenage attire, with macho antiestablishment facial expressions, standing next to a motorcycle.² A recent Camel advertisement suggests violence against women. It describes and graphically depicts the following "smooth dating move": "Run into the water, grab someone and drag her back to the shore, as if you've saved her from drowning. The more she kicks and screams, the better" (*Washington Post*, July 26, 1989; C1, C10). It is interesting that Philip Morris associates Virginia Slims with women's liberation ("You've Come a Long Way, Baby"), whereas RJ Reynolds, in the Camel advertisement, treats women as if it were still the Age of Dinosaurs.

I also object to the promotional placement of cigarettes in movies, to which Congressman Luken³ has appropriately drawn attention. Cigarette promotions placed in movies such as *Superman II*⁴ expose large numbers of children and adolescents to these messages. When these movies are shown on television, the ban on broadcast cigarette advertising is circumvented.

A Rebuttal to the Advertising Industry

Since release of the 1989 Surgeon General's report, *Reducing the Health Consequences of Smoking: 25 Years of Progress*,⁵ advertising industry trade associations and publications have taken quotations from the report grossly out of context. I would like to cite three examples and then set the record straight.

In a written statement to the Subcommittee on Transportation and Hazardous Substances for its July 25, 1989, hearing, the president of the Point-of-Purchase Advertising Institute argued against tobacco advertising restrictions by quoting from the report^{6,7,8}:

In the Surgeon General's 1989 Report, it states that "THE MOST DIRECT APPROACH TO ASSESSING THE RELATIONSHIP BETWEEN ADVERTISING AND CIGARETTE CONSUMPTION HAS BEEN TO ASK CHILDREN OR ADULTS ABOUT FACTORS THAT INFLUENCED THEM TO SMOKE. THESE STUDIES TYPICALLY FIND THAT ADVERTISING IS RANKED QUITE LOW ON THE LIST OF RELEVANT FACTORS [capitalization added by the Point-of-Purchase Advertising Institute]."

The witness conveniently omitted the next three sentences, which are as follows^{9,10,11}:

Dr Koop recently left his position as Surgeon General of the US Public Health Service, Department of Health and Human Services. He now resides in Bethesda, Md. Reprint requests to the Director, Office on Smoking and Health, Centers for Disease Control, Park Bldg, Room 1-10, 5600 Fishers Ln, Rockville, MD 20857.

Marketing experts have questioned the validity of this approach because conscious response to advertising is deemed to be a poor index of actual response (Bergler 1981; Chapman 1986). As such, studies with a similar method and opposite findings also offer little insight into the actual effects of advertising. An example is a study by Fisher and Magnus (1981), which found that most children believe that cigarette ads encourage children to smoke.

Also in written testimony submitted to the subcommittee for the July hearing, the American Advertising Federation stated:

Even the Surgeon General's 1989 report, "Reducing the Health Consequences of Smoking," admits, "There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption."

Similarly, an article in *Advertising Age* (January 16, 1989) quoted the report as follows: "The extent of influence of advertising and promotion on the level of consumption is unknown and possibly unknowable," the report said."

The entire excerpt, including these statements taken out of context, is as follows (omitted portions italicized)^(pp:4-17):

There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption. *Given the complexity of the issue, none is likely to be forthcoming in the foreseeable future. The most comprehensive review of both the direct and indirect mechanisms [whereby advertising may affect consumption] concluded that the collective empirical, experiential, and logical evidence makes it more likely than not that advertising and promotional activities do stimulate cigarette consumption. However, that analysis also concluded that the extent of influence of advertising and promotion on the level of consumption is unknown and possibly unknowable (Warner 1986b).*

The major point being made in this paragraph of the report is that a perfectly designed study to prove that cigarette advertising increases cigarette consumption will probably never be performed because of the complexity of this issue. I would emphasize that absolute scientific proof is rarely available when studying human behavior. Humans do not behave like the laws of physics. In medicine and in public health, we rarely await, and we would be foolish to await, definitive proof before taking appropriate action.

In the 1850s, John Snow ended an epidemic of cholera in London by removing the handle of the Broad Street pump, 30 years before the bacterium that causes cholera was first identified. Fortunately, there was no Cholera Institute that lobbied against removal of the pump handle until it could be proved that the water from that pump was causing cholera.

In my opinion, the burden of proof should be on the tobacco and advertising industries to show that advertising does not increase cigarette consumption. In the absence of such evidence, advertising should not be allowed. This shifting of the burden of proof would represent prudent public health policy for a product that kills 390 000 Americans each year, *when used exactly as intended.*

Children's Access to Tobacco Products

In May 1988, I released the Surgeon General's report, *The Health Consequences of Smoking: Nicotine Addiction.*⁴ In the preface to that report, I raised a number of important policy questions concerning the sale and distribution of tobacco products^{5,6}:

We as citizens, in concert with our elected officials, civic leaders, and public health officers, should establish appropriate public policies for how tobacco products are sold and distributed in our society. With the evidence that tobacco is addicting, is it appropriate for tobacco products to be sold through vending machines, which are easily accessible to children? Is it appropriate for free samples of tobacco products to be sent through the mail or distributed on public property, where verification of age is difficult if not impossible? Should the sale of tobacco be treated less seriously than the sale of alcoholic beverages, for which a specific license is required (and revoked for repeated sales to minors)?

My answer to each of these three questions is "No." There is no logical reason why we should have a double standard for controlling the sale of tobacco and alcohol, the two major legal addicting drugs used in our society. Would we tolerate the sale of alcoholic beverages through vending machines? Would we allow free samples of alcoholic beverages to be sent through the mail or passed out on public property? Of course not. Why, then, should we be so permissive with the sale of tobacco, when 43 states have laws that prohibit the sale of tobacco to minors?

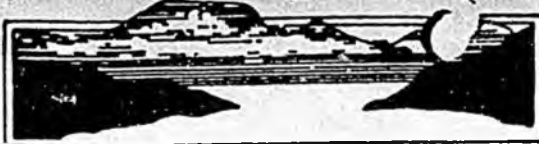
The issue of whether it is appropriate to sell tobacco products through vending machines is important for two reasons. First, vending machines are a powerful symbol that we do not take seriously the problem of cigarette sales to minors. Second, they allow children to have easy access to cigarettes. At the subcommittee's July 1989 hearing, a representative of the National Automatic Merchandising Association testified that, "About 8 out of 10 cigarette vending machines are located where teenagers are not allowed or rarely frequent." Even if true—and I am not convinced it is—this is a poor argument against banning vending machine sales of cigarettes. Even 20% of the 374 000 cigarette vending machines in the United States (National Automatic Merchandising Association estimate) represents a huge number of sites (75 000) from which teenagers can readily obtain cigarettes . . . illegally.

I agree with past statements by the Department of Health and Human Services that controlling the sale of tobacco to minors is a potentially effective strategy to prevent the initiation of tobacco use among young people. It is disappointing that states have made so little effort to enforce existing laws banning the sale of tobacco to minors. As long as states take no action to enforce these laws, I support federal efforts to prevent the sale of tobacco to minors.

C. Everett Koop, MD, ScD

I gratefully acknowledge Ronald M. Davis, MD, for his assistance in the preparation of this statement.

1. Blaai V, Monaghan HP. The first amendment and cigarette advertising. *JAMA*. 1986;256:502-509.
2. Davis RM. Current cigarette advertising trends in the United States. In: Aoki M, Hisamichi S, Tomiyaga S, eds. *Smoking and Health 1987: Proceedings of the 6th World Conference on Smoking and Health, Tokyo, 9-12 November 1987*. New York, NY: Excerpta Medica; 1988:435-440.
3. Luken TA. Luken seeks criminal probe by Department of Justice of cigarette advertising in new James Bond movie and other films. Press release, March 20, 1989, Congressman Thomas A. Luken, US House of Representatives, Washington, DC.
4. Magnus P. Superman and the Marlboro woman: the lungs of Lois Lane. *NY State J Med* 1985;85:342-343.
5. *Reducing the Health Consequences of Smoking: 25 Years of Progress*. Rockville, Md: Centers for Disease Control, Office on Smoking and Health; 1989. A report of the Surgeon General, DHHS publication (CDC) 89-8411.
6. *The Health Consequences of Smoking: Nicotine Addiction*. Rockville, Md: Centers for Disease Control, Office on Smoking and Health; 1988. A report of the Surgeon General, DHHS publication (CDC) 88-8406.



SITKA MEDICAL CENTER

700 KATLIAN STREET, SUITE E • SITKA, ALASKA 99835 • (907) 747-5861
AFTER HOURS (907) 747-3241

February 7, 1990

Representative Max F. Gruenberg, Jr.
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Dear Representative Gruenberg:

Thank you for introducing House Bill 466 prohibiting the distribution of free samples of cigarettes, cigars, snuff, and other tobacco products in Alaska. As a physician I am well aware of the detrimental health effects of tobacco products. Passage of your bill will lend a hand in the battle improving the health of all Alaskans.

Sincerely yours,

Donald R. Lehmann, M.D., A.B.F.P.

DRL:bj

~~RODNEY K. VAUGHN, M.D.~~
FAMILY PRACTICE


ROBERT C. HUNTER, M.D.
INTERNAL MEDICINE
GENERAL PRACTICE

DONALD R. LEHMANN, M.D.
FAMILY PRACTICE

AMERICAN  LUNG ASSOCIATION of ALASKA
Dedicated to the prevention and control of lung disease

DATE: FEBRUARY 27, 1990

TO: MEMBERS OF THE HOUSE JUDICIARY COMMITTEE
ALASKA STATE LEGISLATURE

FROM: WALTER L. HAYS, EXECUTIVE DIRECTOR 
AMERICAN LUNG ASSOCIATION OF ALASKA

RE: HB 466

I am writing in support of HB 466 currently under review by your committee.

There is an increasing awareness in our society about the health hazards of tobacco use. The National report by former Surgeon General Koop that categorically defines tobacco as an addictive substance, the recent federal bill that bans smoking on 99% of all domestic airlines flights and the recent statements by Health and Welfare Secretary Sullivan regarding the target marketing of tobacco products to specific populations are all indications of the growing public awareness of the issues related to smoking and health.

The prohibition of the distribution of most tobacco samples would be a positive step forward for Alaska. Currently, Minnesota and Utah have enacted such laws. Similar legislation has been introduced in New York and Washington. In 1989, Nebraska banned the distribution of smokeless tobacco products.

Additionally, sixteen (16) major metropolitan areas have laws restricting the distribution of tobacco product samples. These cities include: Austin, Texas; Cambridge, Mass; Cincinnati, Ohio; Atlanta, Georgia; Amherst, Mass; and St. Paul, Minn.

The simple documented fact is that access does impact consumption. We have current report of rural Alaskan communities where 60-70% of older teens are regular smokers.

This act will be a positive step forward for all Alaskans in the regulation of an addictive and potential harmful product and the promotion of better community health.

Gruenberg

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1990

The Hon. Max Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

STEVE COWPER, GOVERNOR

REPLY TO:

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Re: HB 466 -- (prohibition on the
free distribution or sampling
of tobacco products)

Dear Representative Gruenberg:

You have asked us if the state is preempted by federal law from enacting a prohibition on the free distribution or sampling of tobacco products. There is a prohibition against providing free tobacco in HB 466.

Because of the short period of time in which our response has been requested, we have not done an extensive analysis of this issue. However, our initial review leads us to believe that while it may be a close question, there is a legitimate argument that the state is not preempted by federal law from enacting a prohibition against the free distribution or sampling of tobacco products.

Under the supremacy clause of the United States Constitution, Article VI, cl. 2, Congress can pass laws that will completely govern an area, thus preempting any state action in that area. However, in determining whether state action is preempted in any particular area we must analyze whether there is an actual conflict between state and federal legislation and whether there was an intent behind the federal legislation to preclude state action. See Florida Lime & Avocado Growers v. Paul, 373 U.S. 132 (1962).

House Bill 466 states (with certain exceptions for tobacco stores and trade conventions), "A person may not provide tobacco to another person without charge or for a nominal fee, for the purpose of promoting retail sales." HB 466, p. 1, lines 23-25. Federal statute provides that "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 [when the packages are properly labelled]." 15 U.S.C.A. 1334(b) (1970).

The key question is whether or not giving away tobacco is "advertising or promotion." While giving away tobacco could be considered part of a promotional scheme, it is not "advertising" in the traditional sense. Furthermore, under 15 U.S.C.A. 1332(6) (1970), Congress defined the term "sale or distribution" as "including sampling or any other distribution not for sale." If Congress had meant to preempt state action in this area it arguably would have used the same terms ("sale or distribution") in 15 U.S.C.A. 1334(b) and would have clearly stated that states cannot interfere with the ~~sale or distribution of tobacco.~~ By not doing so, even though Congress has obviously taken action in this field, states do not appear to be explicitly forbidden from enacting legislation limiting the distribution of tobacco.

This analysis is further supported by the rule of statutory construction that states:

Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling.

2A C. Sands, Sutherland Statutory Construction 51.05, at 315 (4th ed. 1973) (footnotes omitted), cited in State v. Green, 586 P.2d 595, 602 (Alaska 1978).

House Bill 466 and federal law can be read in harmony with one another. Promotion is a general term, and does not necessarily cover the distribution of an item. Furthermore, even if the two laws did conflict, prohibiting the distribution of tobacco could be found to simply specify in a "more detailed manner" something that is not allowed under the general ambit of "promotion."

Finally, Congress's statement of intent in 15 U.S.C.A. 1331 does not specifically preclude states from limiting distribution of tobacco. Rather, it precludes the states from enacting "diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." Id. At least three other states have enacted statutes similar to the one proposed by HB 466. As we have noted,

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although it may be a close issue, we believe the better view is that states are not automatically preempted from enacting a restriction on the free distribution of tobacco.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: _____

Elizabeth J. Kerttula

Elizabeth J. Kerttula
Assistant Attorney General

EJK:jf

POSITION PAPER
CS HB 466

"An Act relating to tobacco."

BACKGROUND

This bill would prevent tobacco sampling, restrict the availability of tobacco samples, and place limits on methods of distributing tobacco. It defines, as a violation, the distribution of tobacco to any person without charge or at nominal cost for the purpose of promoting retail tobacco sales, with some exceptions involving sales of tobacco to adults, or at promotional conventions and trade shows not open to the public.

ANALYSIS

The following statistical and research data was obtained from two principle sources: a 1989 report of the Surgeon General to Congress, "Reducing the Health Consequences of Smoking, 25 Years of Progress" (SGR), and a report dated February 20, 1990 to Congress by the Center for Disease Control's Office on Smoking and Health, "Smoking and Health, A National Status Report, 2nd Edition" (OSH).

Limiting access to tobacco is an important public health measure for the following reasons:

1. Tobacco use has clearly been shown to cause, or increase the risk of, some of the leading causes of mortality in the United States, including cancer, heart disease and stroke. In fact, smoking causes more premature deaths than cocaine, heroine, alcohol, fire, automobile accidents, homicide, and suicide combined (OSH).
2. Smoking is an especially serious health problem in Alaska, which has the highest rate of both smoking and lung cancer mortality in the country. The OSH report states, based on 1985 data, that while the national smoking prevalence rate is 26.5%, in Alaska the rate for persons over 20 is 43.4% for males, and 28.9% for females. A recent survey of Alaska adolescents' health-related behavior suggests that smoking prevalence in this group may be much higher, particularly in rural areas. The OSH report states

that the direct and indirect costs of smoking-related adverse health effects to Alaska residents is \$82.3 million annually, and that the smoking-attributable years of potential life lost for Alaskans is 4,762 years.

3. Availability and price effect tobacco use, especially with young people. Virtually all adult smokers began using tobacco before age 20. Research indicates that if persons do not begin smoking by age 20 they rarely do so later. Those who begin smoking early in life have more trouble quitting, smoke more heavily, and have a higher risk of developing smoking related disease. Delaying the onset of smoking behavior, by prohibiting sampling, will likely have the effect of reducing both the incidence of new smokers and the prevalence of smoking and the associated adverse health effects.
4. The Surgeon General's report states that retailers are the primary source of tobacco used by minors. Vending machines and free samples are both cited as sources of tobacco for the youngest children, possibly due to refusal by retailers to sell to them directly because of statutory restrictions. Therefore, this bill may be particularly effective in preventing tobacco use by this group, which is arguably the least able to make informed judgements about using tobacco and is at the greatest risk for adverse health effects if they begin using tobacco.

The right of states to restrict tobacco use has a long legal history in the United States, dating to a Supreme Court decision in 1900. In general, the federal government has not restricted the distribution of tobacco, leaving this to the states (SGR). Twelve (12) states and at least 12 municipalities have laws restricting the distribution of samples of tobacco products.

Free sampling of tobacco products is an inappropriately aggressive marketing tactic because tobacco is an extremely harmful and addictive drug.

The likely effect of this bill would be to discourage tobacco use. In particular, it would tend to prevent people

from beginning to smoke, or limit the amount they smoke, by limiting their access to free tobacco samples.

POSITION

The Department of Health and Social Services strongly supports this bill.

Recommended by: Jay Lewis for
Sally Mead, Coordinator
Office of Prevention

Date: 3/16/90

Approved by: Myra M. Munson
Myra M. Munson, Commissioner
Department of Health and
Social Services

Date: 3/19/90

Tanana Chiefs Conference, Inc.

122 First Avenue
Fairbanks, Alaska 99701-4897
(907) 452-8251
Fax (907) 451-8936

March 29, 1990

Representative Ben Grussendorf
Chairman, Rules Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau AK 99811

Dear Chairman Grussendorf:

Tanana Chiefs Conference, Inc. (TCC) supports HB 466, a bill prohibiting distribution of free tobacco samples.

We are all aware of the health effects of tobacco consumption. There exists a need to restrict free distribution of these products especially to young people. The tobacco industry depends on young people as the new generation of addicts. Studies show 18% to 21% of all high school students are smokers. Teenagers spend over one billion dollars a year on tobacco. It is much more difficult to start smoking as an adult than it is to start as a young teenager.

The tobacco industry aims much of their marketing techniques at the teenager population - it is their guarantee that a steady stream of customers are insured. A large amount of the marketing monies are used to give away free samples. These samples are given away at sporting and music events, events that are often frequented by young people. Distribution of free samples makes it much easier for our youth and others to pick up that cigarette for the first time and smoke.

Tanana Chiefs wants to make it difficult to learn to smoke by supporting legislation that prohibits this activity, that prohibits smoking in educational and health facilities, that increases taxes on tobacco products, and to penalize those entrepreneurs who sell tobacco products to our youth.

COPY

Your Committee is the last Committee to review this bill in the House. Your earliest consideration to scheduling this bill would be much appreciated. Thank you.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

Michael Graf

Michael Graf, Director
Community Health Services

LAC/de

cc: House Rules Committee Members

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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DOUGLAS B. BAILY
ATTORNEY GENERAL

By: _____

Elizabeth J. Kerttula

Elizabeth J. Kerttula
Assistant Attorney General

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Anchorage Daily News

Gerald E. Grilly
Publisher



Howard Weaver
Editor

Michael Carry, Editorial Page Editor

Patrick Dougherty, Managing Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1948 by Norman C. Brown

12-18-90

No smoking

Industry message to kids isn't enough

Pardon us if we're not bowled over by the Tobacco Institute's promise it'll launch a campaign to discourage underage children from smoking.

It's not that we question the industry's motives. Cynics might say the campaign is just a cheap way to spruce up the industry's image and head off calls for higher tobacco taxes and tighter restrictions on tobacco ads, sales and use. If you were really cynical, you might even worry that the campaign could increase appeal of smoking among more rebellious youth, by highlighting the idea that it's an adults-only activity.

But we'll give the industry the benefit of the doubt. It's probably sincere in wanting to discourage kids from starting smoking — when they're kids. The tobacco industry would probably be just as happy if kids wait to start smoking as soon as they're grown up.

We just wonder how effective the new campaign can possibly be. The industry already spends billions of dollars a year on ads that make smoking look like a glamorous, danger-free pastime. Any "Don't smoke" ads aimed at youth will have as much effect as going down to the beach and hollering at a hurricane to stop.

So let's not rely on the Tobacco Institute's modest campaign to do the job alone. Some steps Alaska has taken offer a good blueprint for other states and Congress:

Raise the smoking age to 19. Make vendors keep cigarette machines in places off limits to kids. Raise cigarette taxes enough to discourage young users.

Other steps would help, too. Free samples should be banned. Tobacco is powerfully addictive. If people are going to risk getting hooked, they should have to put their own money on the line.

Tobacco vendors should be licensed. If they habitually sell to minors, they should have their licenses yanked, just as offending liquor outlets do.

And then there's the matter of neutralizing the industry's relentless parade of pro-smoking ads. California offers a novel approach. It devotes a sizable chunk of cigarette tax proceeds to a no-holds-barred ad campaign that portrays smoking in all its disgusting, deathly glory.

If our society took all these steps, it would really send kids a message. It would tell them we're serious