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Thursday, September 18, 1997

Clinton Ups the Anti-Tobacco Ante

■ Health: He urges pay-outs by cigarette makers that are nearly double those in pending settlement, more FDA authority.

By MYRON LEVIN, Times Staff Writer

PREV STORY

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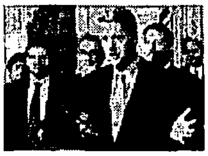

NOT HAPPY WITH TOBACCO DEAL

RELATED

Clinton Stance Bolsters Odds for Tobacco Bill

House Repeals Tax Break for Tobacco

WASHINGTON--President Clinton on Wednesday urged Congress to attack teen smoking through comprehensive legislation along the lines of the giant tobacco peace accord--but with stiffer industry payments to raise cigarette prices and unfettered authority for the Food and Drug Administration to regulate nicotine levels in cigarettes.

Although Clinton refused to embrace the $368.5-billion tobacco deal, he warmly praised the state attorneys general whose mega-lawsuits brought the industry to the bargaining table and led to the agreement announced June 20. And in a ceremony in the Oval Office as several attorneys general and prominent anti-smoking leaders looked on, Clinton outlined principles to be embodied in legislation that largely tracked provisions of the deal.

But there were significant differences as well. Clinton called for industry payments and penalties sufficient to raise cigarette prices over the next decade by up to $1.50 per pack--roughly twice the increase that would result from the proposed settlement. Aimed to discourage smoking by price-conscious teens, such an increase would bring prices more in line with other western countries where cigarette taxes often range between $2 and $4.

"This is not primarily about money," Clinton said. "This is about changing . . . the behavior of the tobacco companies, the behavior of the American people, the future behavior of our children."

Dr. David A. Kessler, former head of the FDA and a leading critic of the tobacco deal, hailed Clinton's statement as a victory for public health in one of many impromptu press conferences that broke out near the White House afterward.

"Saying he's willing to go up to $1.50, if necessary, is exactly the right approach," Kessler said.

In his long-awaited statement, Clinton did not say if he would accept the liability protections that had been the cigarette makers' whole reason for negotiating the tobacco deal. Bruce Reed, Clinton's domestic policy advisor, said later that administration officials "had some concerns" about certain of the immunity provisions, but he did not elaborate.

Industry response was critical, if a bit subdued. "We agree with his [Clinton's] stated goal of reducing underage use of tobacco products," Philip Morris, R.J. Reynolds and two other firms said in a joint statement. But they said the deal announced June 20 "still represents the most achievable balance."

"We have agreed to pay a total of $368.5 billion over a 25-year period," which is "an unprecedented amount of money," said J. Philip Carlton, an industry lawyer. "It would certainly be unacceptable to try to raise the financial terms of this agreement."

Congressional response was predictably mixed, with many Democrats praising Clinton's stance--although some, including Sen. Tom Harkin (D-Iowa), said the $1.50 increase might not be effective if phased in over 10 years. Sen. Frank R. Lautenberg (D-N.J.), announced that he will seek a $1.50-per-pack cigarette tax increase independent of any comprehensive bill.

Republicans also criticized Clinton for taking three months to weigh in with a general statement rather than a specific legislative blueprint.

"I don't think he really helped advance the ball," said Senate Assistant Majority Leader Don Nickels (R-Okla).

Administration officials said they believed it would be more effective to outline general principles and negotiate terms with Congress, rather than send up a specific package and let critics pick at the details. They said meetings between White House staff and congressional leaders should begin soon.

Since announcement of the tobacco deal June 20, Congress has been largely in a holding pattern while awaiting Clinton's verdict. Some attorneys general who had negotiated with the industry--and had been encouraged by the White House to do so--privately had voiced resentment that the deal was languishing and was being attacked as a sellout to Big Tobacco.

"We're pretty excited today about what the president has done," said Mississippi Atty. Gen. Mike Moore, who filed the first state anti-tobacco lawsuit and was lead negotiator in settlement talks.

"He [Clinton] thinks we ought to build and toughen up the settlement," Moore said. "For 90 days, we were trying to get the president to support this thing, and finally he did."

However, all parties have conceded that it is too late to move a major tobacco deal through Congress before it adjourns in late October or early November. That means Congress will not take up the measure in earnest until early next year.

Tobacco foes have spoken hopefully of a new mood in Congress that could lead to passage of anti-smoking legislation without legal protections or other concessions being given to the industry. But most observers think the cigarette makers will have to be involved for significant legislation to succeed.

"Twelve senators from tobacco states--working together, calling in IOUs--can stop anything," said Richard Scruggs, a Mississippi lawyer working for attorneys general from several states.

"Anyone who thinks you can just impose anything you want on tobacco is smoking something other than tobacco."

The tobacco deal would give the industry permanent relief from lawsuits by the states and private class-action lawyers. Although claims by individual smokers would still be allowed, punitive damages would not.

In return, the industry was to reimburse states for smoking-related health care costs and fund public health programs--with the money being raised through cigarette price increases of about 60 to 70 cents per pack.

In addition, the industry had agreed to an array of anti-smoking measures, including protections against secondhand smoke, a ban on tobacco billboards and other marketing restrictions, and industry-financed anti-smoking ad campaigns and stop-smoking programs costing $2 billion per year.

Clinton generally endorsed these measures Wednesday. Industry lawyers and attorneys general had argued that such anti-smoking programs could not be secured through court action, even if states were successful in their suits.

But critics of the deal and, ultimately, Clinton's advisors concluded that the price hikes and other measures could not achieve the deal's stated goals of reducing teen smoking by 30% within five years and 60% in 10.

Despite the country's deepening anti-tobacco mood, teen smoking appears to be on the rise, said Donna Shalala, secretary of Health and Human Services.

Times staff writers Janet Hook and Kasper Zeuthen in Washington contributed to this story.

* RELATED STORIES: Chances increase for a broad-based tobacco bill next year. D1 . . . The House rejects a $50-billion industry tax break. D3

PREV STORY

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GO GO

September 18, 1997

Tobacco Farmers Want Share of Deal

Filed at 6:26 p.m. EDT

By The Associated Press

WASHINGTON (AP) -- Farmers asked Congress on Thursday for a share of any national tobacco settlement but also expressed skepticism of government buyouts and sought preservation of federal tobacco controls.

``We want to grow tobacco. That is the business we are in," said Rod Kuegel, a farmer from Owensboro, Ky.

One tobacco-state senator, however, said with anti-smoking forces gaining political clout, the days could be numbered for the federal program that regulates tobacco production and prices -- with or without a settlement.

Farmers, said Sen. Mitch McConnell, R-Ky., must decide ``whether at some point in the process, you lose the program and get nothing. How long can we continue to win these battles?"

McConnell spoke at a Senate Agriculture Committee hearing on the potential impact on the 124,000 growers of the proposed $368.5 billion settlement of state health-related tobacco lawsuits. A day earlier, President Clinton said Congress must address the concerns of growers in any final version of the deal.

Vice President Al Gore invited youngsters into his office Thursday to talk about the dangers of smoking, part of a White House drive to gain support for penalties that would raise cigarette prices by $1.50 a pack if youth smoking doesn't drop below certain thresholds.

Gore said White House officials would meet with a bipartisan group of congressional leaders in October to consult on the pact, but not to yield: ``The principles the president laid down ... must be included and will be included."

Yet lawmakers continued to express doubt that any settlement would ever pass, including Sen. Jesse Helms, R-N.C., who aptly demonstrated his ability to rebuff opponents by forcing the withdrawal of William Weld's nomination to be ambassador to Mexico.

Helms hinted that he might use Senate rules again to slow passage of any deal, particularly if it appears to be ``piling on" an industry that Helms believes sells a perfectly legal product.

``Somewhere along the line, I hope we'll find out how many people started smoking because they had a gun to their head," Helms said.

At the Agriculture Committee hearing, growers said Congress should set aside some of the proposed settlement money to protect them and their rural communities from the economic fallout of reduced smoking.

``We deserve to share equitably in any proceeds distributed as a result of a settlement," said Bob Jenkins, president of the North Carolina Farm Bureau.

Two-thirds of tobacco -- a crop worth about $2.95 billion nationally last year -- is produced in North Carolina and Kentucky.

Rep. Bob Etheridge, D-N.C., who grows tobacco, said farmers also want contracts between growers and manufacturers mandating a minimum purchase level and a requirement that growers be compensated if the purchases fall below that level.

Most of all, the growers and their allies say they want to retain the tobacco program, which sets a production quota for individual farmers and investors and serves to keep the prices for farmers high.

On average, a farmer can net up to $2,200 per acre by growing tobacco, compared to $120 an acre for corn and $600 an acre for tomatoes.

Bill Sprague, president of the Kentucky Farm Bureau, called tobacco ``the lifeblood of thousands of small family farms."

Two economists testified that prices would fluctuate wildly without the quota program, triggering a price drop of up to 25 percent for farmers that could lead thousands to abandon their farms, bringing economic depression to some rural areas.

``The most vulnerable areas would likely be the Appalachian regions of Eastern Kentucky, Eastern Tennessee and Western North Carolina," said Will Snell, agricultural economist at the University of Kentucky.

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THE NEWS&OBSERVER
Saturday
September 20, 1997

EDITORIAL | NEXT STORY

Editorial: Shifting the focus

President Clinton has put the tobacco industry and Congress on notice thatthe national tobacco settlement should serve the entire public's interest, not merely protect those who negotiated the deal behind closed doors.

The tobacco industry prayed that the $368.5 billion settlement it reached in June would be the end of its problems. And what a deal it was. The four largest tobacco companies would together pay $15 billion a year for 25 years and agree to tone down their advertising campaigns directed at young people. In return, they would be spared an approaching tidal wave of lawsuits.

That Wall Street investors leapt to buy up tobacco stocks offered clear evidence that, for the industry at least, this was the deal of the century.

President Clinton this week faced head-on what the negotiators had so artfully sidestepped: Any agreement must -- first, last and always -- be in the best interest of the entire country and not just those self-serving negotiators who had gathered around the table.

The tobacco companies had insisted that farmers not be included in the talks. The president made it clear that any deal that shortchanges farmers will not stand. He called on Congress to protect not only farmers but also to soften the financial blow on communities that depend on tobacco money. Both of these proposals are good news indeed for worried Eastern North Carolina farmers.

The president also wants cigarette prices raised by $1.50 a pack to curtail sales, tighter control by the FDA, stiffer financial penalties if youth smoking does not decline, and fuller disclosure of internal company documents. All of those are sensible and necessary ingredients in the recipe.

The debate now moves to Congress, once a safe haven for the industry, where hardball politics can play as large a role as common sense. But Congress would be wise to heed the words of our own tobacco-growing senator, Lauch Faircloth, who in a burst of candor admitted, "We have seen a constant erosion of support for tobacco. I don't know that I've ever known a situation where tobacco was such a pile-on issue."

Big Tobacco's heady days as the 800-pound gorilla striding the halls of Congress, passing out money and calling in favors, are gone. An aroused voting public wants to know that what seems like an enormous amount of money to most people is not being distorted by smoke and mirrors. Fifteen billion a year sounds heavy, but remember: Overseas sales, which would not be curtailed by the settlement, brought in $24 billion last year for Phillip Morris alone.

The deal announced this summer was not the end, just the beginning. Clinton has rightly focused the debate, but it will be up to Congress to deliver a deal that protects American interests a lot better than the one pushed by the industry.

As for Big Tobacco, it had best be prepared to wheel and deal unless it wants to tangle with an endless parade of outraged juries hacking it to bits.

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6TH STORY of Level 1 printed in FULL format.

Health Line

September 23, 1997

SECTION: TOBACCO FIELD

LENGTH: 406 words

HEADLINE: HOW'S IT PLAYIN'?: EDITORIALS ON CLINTON'S TOBACCO PLAN

BODY:

American Health Line samples editorial opinion regarding President Clinton's proposal for amending the $368.5 billion global tobacco settlement:

Atlanta Constitution: "Clinton has torpedoed any chance of quick action on the settlement, but he was right to do so. As the president said, the focus should be on how effective the deal is at reducing smoking, especially among children, rather than on the billions of dollars that have dazzled some into immediate acceptance of the agreement" (9/18).

Baltimore Sun: "After weeks of ambivalence on the tobacco deal, President Clinton weighed in this week with a call for much stiffer payments and penalties for tobacco companies. The president stressed -- rightly -- that the primary aim of any agreement should be to reduce the number of young people who begin smoking" (9/19).

Christian Science Monitor: "Much will depend on what the president, Congress, and the tobacco industry decide to do next, and how fast they do it. What's certain is there's too much at stake to delay for long or do nothing at all" (9/19).

New York Post: "If President Clinton gets his way regarding tobacco, cigarettes may well become contraband of the sort liquor once was -- and illegal narcotics still are. That is, contraband over which smugglers would be ready, willing and able to spill much blood" (9/18).

San Francisco Examiner: "Skepticism is the proper attitude for regarding the original pact. The president's natural inclination toward compromise was, fortunately, tempered by C. Everett Koop ... and David Kessler. ... They argued convincingly that the deal wasn't tough enough, that it gave away too much government authority to regulate nicotine" (9/18).

USA Today: "Clinton has it right. Kids must come first. The question is, when will adults put them there in deed as well as in word?" (9/18).

Washington Post: "Critics say that by failing to send up a full-fledged bill, the president eliminated that last possibility that Congress would pass legislation this year. But there was no such possibility, and it would have been too hasty an act if Congress had tried. Part of the president's gamble is that the pressure on Congress to pass tough legislation will only build in the months ahead..." (9/18).

1ST STORY of Level 1 printed in FULL format.

The Hill

September 24, 1997

SECTION: THE POLITICAL LIFE; Pg. 14

LENGTH: 587 words

HEADLINE: PRESIDENT CLINTON'S LEFT TURN ON TOBACCO ROAD

BYLINE: Dick Morris

BODY:

President Clinton has taken momentary leave of his centrist road in his move to the left on tobacco. He could, and should, have accepted the tobacco deal with major modifications. Instead, he junked it and turned to higher taxes for a solution.

Had Clinton insisted, big tobacco would have swallowed hard, but accepted the elimination of restrictions on Food and Drug Administration regulation and the repeal of caps on industry fines if teen smoking doesn't drop.

Clinton would have had an agreement he could have passed through Congress and pocketed two big achievements: a drop in teen smoking and funds for universal health coverage for children. Combined with a big drop in welfare, crime and the end of the deficit, that isn't a bad credential for history.

Instead of capitalizing on the momentum of the current negotiations, Clinton has sided with the health care purists in the Department of Health and Human Services, just as he did in his health care proposal of 1994. The effect will be to kill progress on the issue for a year or more.

His $1.50 per pack tobacco tax opens the door for GOP tax-bashing and turns an issue that is an asset , opposing teen smoking , into the liability of supporting higher taxes.

The president's assertion that a big price increase driven by higher taxes is vital to reducing teen smoking is open to doubt. In Canada, a price hike succeeded in decreasing teen smoking, but in California, a massive TV advertising campaign and a smaller price increase succeeded just as well. Odd that President Clinton should have so little faith in TV ads.

Why did Clinton zig when he should have zagged? I think, in part, he wanted to protect Vice President Al Gore. Once Clinton gives Gore an assignment, he generally lets him call most of the shots as, for example, when the president backed tough clean air regulations at Gore's request. The vice president, under fire, needs all the allies he can get and is not about to put distance between himself and his pro-environment or anti-tobacco boosters.

I also think President Clinton did not have the heart, the patience, the stomach, or the stamina to get in the middle of the tobacco talks, having just lately pulled a rabbit from the hat in the budget agreement. He's tired and would rather watch from the left bank than try to outmaneuver the alligators by plunging into the center of the river and cutting a deal.

But the president has made a mistake. He's lost an opportunity for leadership.

The anti-tobacco cause had better brace itself for a series of legal reversals. The tobacco companies are confident of victory in the Texas Medicaid lawsuit where a beknighted federal judge has thrown out most of the plaintiff's claims against them and in the Federal Circuit Court where the judges seem to be leaning against allowing FDA jurisdiction over tobacco.

The left on this issue is about to crumble in the courts.

Eventually, of course, tobacco is on the way out. The attorneys general plaintiffs in the Medicaid lawsuits will probably win in Minnesota and in dozens of other states. The likely verdicts will be beyond the ability of tobacco to pay. When bankruptcy looms, a new tobacco deal will be cut.

But the deal will be years, not months, away, because of the president's error in rejecting the accomplishment he should have pocketed and going for the one he may never get.

Dick Morris is a former political consultant to President Clinton, Sen. Trent Lott (R-Miss.) and other political figures.

LANGUAGE: English

LOAD-DATE: September 24, 1997

September 25, 1997

Economic Scene: *Tobacco* Might Thrive With *Cigarette*-Price Rise

By PETER PASSELL

Is the ***tobacco*** industry playing Brer Rabbit to President Clinton's Brer Fox? The president's assertion that if necessary, the price of ***cigarettes*** should rise by $1.50 a pack to deter teen-age ***smoking*** evoked bitter denunciations from Big ***Tobacco***. "The industry should be not held solely accountable for social behavior that neither it nor the government can control," read the ***cigarette*** manufacturers' collective response.

But a close look at Clinton's demands suggests that the industry could live -- conceivably thrive -- with the consequences. Jeremy Bulow, an economist at the Graduate School of Business at Stanford University, calculates that a settlement on the president's terms would cost the ***tobacco*** companies less than the continuing uncertainty over legal liability.

"The best estimate now is that $1.50 a pack would increase the market value of ***tobacco*** stocks," Bulow argues.

"Reducing youth ***smoking*** is the administration's bottom line," Clinton said. "One of the surest ways" to meet the administration's goal of a 60 percent cut in teen-age ***smoking*** over a decade, he added, is to "increase the price of ***cigarettes***."

Since teen-agers have less money than adults and may not yet be addicted to nicotine, their consumption of ***tobacco*** is more responsive to price changes than that of adults. Nonetheless, to cut teen-age ***smoking*** by 60 percent would probably require a $1.50 price increase.

The combination of taxes and penalties built into the original settlement proposal -- a proposal the Federal Trade Commission staff argued this week could actually increase industry profits -- totaled 72 cents a pack.

When a reporter asked Bruce Reed, director of the president's Domestic Policy Council, whether the administration's approach would double the 72-cent penalty, Reed said it would. That, in turn, led to the speculation that the president's approach would have doubled the cost of the original settlement, to about $700 billion.

But Martin Feldman, a ***tobacco***-industry analyst at Smith Barney, begs to differ. He notes that the 72 cents does not include the 15-cent-a-pack increase in the federal excise tax on the books for the year 2002. Nor does it include future increases in state taxes, or in markups by retailers.

All told, Feldman estimates that the abandoned settlement would have raised the price of a pack by $1.45 in just five years -- almost as much as the president's proposed maximum increase over a decade.

Bulow of Stanford expects there is more daylight between the cost of the two proposals than Feldman argues because competition would prevent retailers from fattening their markups significantly. Nonetheless, the university economist is confident that ***cigarette*** makers could live with measures that would increase the supermarket price by $1.50 a pack.

Bulow's conclusion is based on the idea that the ***cigarette*** makers' goal is to maximize the total return for stockholders. He cites estimates by Gary Black, a ***tobacco*** analyst at Sanford C. Bernstein, that the domestic ***tobacco*** businesses of Philip Morris and RJR Nabisco are currently valued by the market at just one-third what they would be worth in the absence of uncertainty about future litigation and regulation.

He estimates that a tax of $1.50 a pack would reduce ***cigarette*** consumption by about one-third. The lost sales would mean a more-than-proportionate fall in profits, but Bulow estimates that part of the costs of the settlement would be recouped since marketing costs would also fall. On balance, he calculates that a $1.50 tax would pare the industry's $5 billion annual profit by a bit less than half.

That is hardly what the ***cigarette*** companies hoped for. But Bulow reckons that it is better than living with the current level of legal uncertainty, which has reduced the market value of the business by two-thirds.

And since the administration appears eager to set goals in terms of reduced youth ***smoking***, rather than reduced ***smoking*** over all, the companies may find ways to salvage a portion of the lost profit.

For example, Bulow expects that an increase in the minimum legal ***smoking*** age to, say, 19, would deter teen-age smokers, yet have little effect on adults in the near term. So by supporting tougher restrictions on access to ***cigarettes***, the companies might get away with a smaller tax that cut less deeply into profits from sales to adult addicts.

Concentrating on youth ***smoking*** directly has a social advantage, too. Smokers, on average, have lower incomes than nonsmokers. So relying more on direct regulation of youth ***smoking*** and less on cutting demand with across-the-board price increases reduces the regressivity of the policy. "It would be a shame to put most of the burden of the anti-***smoking*** settlement on the backs of adults earning less than $10 an hour," Bulow said.

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THE WALL STREET JOURNAL INTERACTIVE EDITION
FRONT SECTION
WORLD-WIDE

September 25, 1997

Shalala Says FDA Could Ban Tobacco if Given Free Rein

Dow Jones Newswires

WASHINGTON -- Members of the Senate's Labor and Human Resources Committee voiced concern over whether the Food and Drug Administration would ban tobacco if given full control over the issue.

"It is not going to take a randomized trial" to determine that tobacco kills you, said Sen. Bill Frist (R., Tenn.) "I would say your goal is to eliminate tobacco as a product in this country."

Secretary of Health and Human Services Donna Shalala told the committee that the goal of FDA oversight would be to stop teen smoking. However, she added that the agency's hands should not be tied from making future decisions if science dictated.

Ms. Shalala appeared on Capitol Hill to tell the senators what President Clinton would like to see included in the proposed tobacco legislation.

Mr. Clinton believes any legislation should call for a comprehensive plan to reduce teen smoking, including tough penalties if reduction targets are not met; full FDA authority over tobacco products; changes in the way the tobacco industry does business; progress toward other public health goals; and protection for tobacco farmers and their communities.

When directly asked if when given control over tobacco, the FDA could legally ban the crop, Ms. Shalala simply replied, "Yes."

Ms. Shalala added that a comprehensive approach would be needed to tackle the problem of kids and smoking.

"Studies show that a 10% increase in cigarette prices leads to a 7% reduction in teen smoking," said Ms. Shalala. "That is why the president has called for a combination of industry payments and penalties to increase cigarette prices by up to a $1.50 per pack over ten years, as needed, to help reach our youth reduction targets."

Sen. Tom Harkin (D., Iowa) said that a drastic price increase should occur sooner and should not be spread out. Several senators told Ms. Shalala there were other issues not addressed on his wish list, namely liability, attorneys' fees, the schedule for fines and how the monies received should be distributed. Shalala said the administration had not yet discussed those points but would make recommendations if asked.

"Legislation should set ambitious targets to cut teen smoking by 30% in five years, 50% in seven years, and 60% in 10 years," Ms. Shalala said. "And we must impose severe financial penalties that hold tobacco companies accountable to meet those targets and to give the strongest possible incentives to stop targeting kids."

TIME NATION SEPTEMBER 29, 1997 VOL. 150 NO. 13

WHERE THERE'S SMOKE...

...THERE'S BARBOUR. AND CONGRESS STILL REEKS OF TOBACCO

BY MARGARET CARLSON

It was one of the darkest mysteries of Congress: who was the mastermind behind the biggest heist of the year--the delivery of a $50 billion tax break for tobacco companies? Now a prime suspect has emerged: former Republican National Committee chairman Haley Barbour. Two Republican Party officials told Time last week that Barbour, now a millionaire tobacco lobbyist, had gone to House Speaker Newt Gingrich and majority leader Trent Lott and persuaded them to slip a giant gift to his clients into the must-pass balanced-budget agreement just minutes before it was inked. For weeks it looked as if the two g.o.p. leaders had pulled off a classic fix: looting the general Treasury in the interest of a specific client with a laser-like incursion into a massive bill that no one had the time or inclination to read. Tobacco executives--the guys who raised their right hands and swore that tobacco does not cause cancer, must have been spiking cartons of Marlboros in the end zone. Joe Camel lives!

Sadly for Gingrich and Lott (but not for Barbour, who gets paid no matter what), a couple of goody-goody freshmen had to go and ruin everything. Calling the move "midnight madness" that "shines and stinks like a mackerel in the moonlight," Democratic Senator Richard Durbin and Republican Susan Collins exposed the tax credit, which would have offset industry costs in the now ill-fated tobacco deal, to the light of day. No one came forward to defend the stinker once it was yanked from its protective package, so it went down, 95 to 3, in the Senate and was killed by the House in a unanimous vote. Such consensus is normally reserved for measures like proclaiming Mother's Day.

Why didn't Lott and Gingrich spread the blame by giving up Barbour? After all, he makes big bucks--$50,000 a month--fronting for the industry. But fingering Barbour would force the two leaders to choose between pleading stupidity (We were tricked into it) or venality. And neither Lott nor Gingrich is inclined to annoy tobacco's top ambassador in Washington, who controls thousands if not millions of dollars in political contributions. In the past 18 months, Republicans have pocketed $1.9 million from tobacco. (Democrats got $300,000.) Barbour makes Roger Tamraz, the star of last week's campaign-finance hearings, look like a sucker. For the $300,000 Tamraz proudly admitted spending for access, he got only a few minutes with the President at one of his six social visits, and he never nailed the help he needed for his pipeline. Barbour, in contrast, got actual results. Neither Lott nor Barbour would comment.

But Gingrich's staff has chosen to plead something between stupidity and disloyalty. An aide says Gingrich defended the tax break because he didn't really understand its political liability. When staff members sat him down and explained it, Gingrich felt, one says sadly, "betrayed."

You would think that getting caught in a clear exchange of cash for a tax break might pique the interest of the two committees busily looking for just that. But you would be wrong. Republicans (tacitly supported by many Democrats) are trying to preserve this kind of money flow by putting on a show trial of past violations. After the House killed the tax break on Wednesday, members of Congress piled onto a United States Tobacco Co. jet that very night to fly to a--this is hard to believe--tobacco-industry fund raiser in Manhattan. How's that for remorse? When the posturing at the hearings is over, the Capitol will still be for sale, and that's just what most of the Congress intends.

--With reporting by Michael Duffy/Washington

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THE WALL STREET JOURNAL INTERACTIVE EDITION
FRONT SECTION

September 29, 1997

The Outlook

WASHINGTON

What industry has the most powerful lobby in Washington?

A few months ago, the tobacco industry might have taken top honors. Cigarette peddlers had friends in high places -- including Sen. Jesse Helms of North Carolina and House Commerce Committee Chairman Thomas Bliley of Virginia. The industry employed a constellation of lobbyists and former legislators, including not one, but two former Senate majority leaders -- Republican Robert Dole and Democrat George Mitchell. And the companies placed a bold bet on continued GOP control of Congress -- giving nearly six million soft dollars to the Republicans in 1995 and 1996, compared with one million for the Democrats -- that turned up aces.

But since June, tobacco's once-vaunted clout has been reduced to ashes. The proposed settlement that the industry hoped would provide it cover instead proved it vulnerable -- and its allies ran for the bushes. An effort to slip a $50 billion industry credit into this summer's tax bill proved a huge error and was overturned with near unanimity. Legislators who once championed the interests of tobacco giants now claim to speak only for farmers. The companies are left to savor a tired but true adage: If you need a friend in Washington, get a dog.

That leaves the broadcast industry free to claim the crown. TV folks can't match big tobacco's big money -- their contributions in the past election were a fraction of tobacco's millions. And instead of friends in high places, the industry has one feisty enemy: John McCain, chairman of the Senate Commerce Committee.

But broadcasters control the one thing politicians care about more than money: television time. It is hard to find a member of Congress who doesn't fear that crossing the owner of his or her local broadcast station will translate into an immediate reduction in air time. So when broadcasters come knocking, members of Congress answer.

That's why the campaign-finance-reform bill that

Congress began debating Friday doesn't include any reference to free or cut-rate TV ads. The original reform bill put together by Sen. McCain and his Democratic counterpart, Russ Feingold of Wisconsin, included free TV as a major component of the package. In return for free TV, politicians would agree to voluntary spending limits -- the only kind of spending limits that the Supreme Court will allow.

But broadcasters complained, members of Congress cowered, and Mr. McCain gave in. "We couldn't win," he said last week. "The broadcasters are too powerful." He dropped free TV and spending limits from the measure, leaving a reform bill that could curtail some abuses but will do little to rein in runaway campaign spending.

Among those pressuring Sen. McCain to make the change was GOP Sen. Arlen Specter of Pennsylvania. "I objected to the provision, which would compel free advertising time from networks," Sen. Specter said last week on ABC's "This Week," "because I think that's a taking of property, which is unconstitutional."

Perhaps. But Sen. Specter's fine sense of property rights wasn't offended a few months ago when the Federal Communications Commission, following Congress's orders, gave the broadcasters new spectrum worth tens of billions of dollars and asked for nothing in return. What Sens. McCain and Feingold would have taken from the broadcasters in the name of the public's interest was worth a fraction of what had just been handed them, free of charge.

The broadcasters protest that the new spectrum was promised to them a decade ago to encourage the development of high-definition television. There are just two problems with that argument: 1) It wasn't promised to them, and 2) They are already getting squishy about whether they will use the new airwaves for HDTV, rather than, say, multichannel broadcasting that would help them compete with cable.

Dennis Patrick, former head of the FCC, boils over when he hears broadcasters talk about the "promise." That's because he supposedly made it. Appointed by President Reagan in 1987, he encountered a full-fledged assault from broadcasters and their congressional allies almost immediately upon taking office. The FCC was about to allocate some leftover broadcast spectrum to land-mobile-radio users, causing broadcasters to go wild and grope for any available argument to claim the spectrum for themselves. They finally settled on HDTV, and persuaded Mr. Patrick to put off the land-mobile allocation and launch a study of HDTV. "It was a mistake," he concedes, because his call for a study was twisted by the industry into a promise and provided the opening for one of the most audacious grabs of public property in U.S. history.

What should have happened, Mr. Patrick believes, is an auctioning off of the spectrum to the highest bidders, who presumably would have put it to its best and highest uses.

For his part, Mr. Patrick doesn't favor free TV for politicians or any other content restrictions on broadcasters. But he is outraged that the "broadcasters are getting it both ways." They got the spectrum for free, and they are escaping any obligation to the public in return. Mr. Specter notwithstanding, that surely isn't what the framers of the Constitution had in mind.

While celebrating their success, broadcasters may want to take a lesson from tobacco's bad summer. Even the most powerful lobbies in Washington can overreach and offend the public by doing so. When that happens, their fickle friends may head for cover.

-- ALAN MURRAY

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Politics

The New York Times on the Web

October 1, 1997

Experts Envision Market Battle Between Drug and Tobacco Companies

By JOHN M. BRODER

WASHINGTON -- The increasing popularity of smoking-cessation aids like nicotine gum and skin patches portends intense competition between drug makers and tobacco companies to deliver smoke-free nicotine to millions of Americans who now smoke, tobacco researchers and market analysts say.

The desire of many smokers to quit and the availability of nonprescription nicotine replacements pose substantial financial risks for the tobacco companies and a huge market opportunity for pharmaceutical manufacturers, these experts say.

As a result, tobacco companies, in addition to selling cigarettes, are working on alternative devices of their own that deliver nicotine without the severe health risks of smoking. The drug companies, meanwhile, having already introduced nicotine gum and the nicotine patch, are now marketing a nicotine nasal spray and are developing related products, including a nicotine-laced lollipop.

An article being published on Wednesday in The Journal of the American Medical Association suggests that while their ultimate goals are different -- tobacco companies want to keep their customers for a lifetime, while the drug companies' products are aimed at weaning them from nicotine -- the two giant industries are on a collision course.

"A series of technological, economic, political, regulatory and social developments augurs a strange-bedfellows competition in which these industries will vie for shares of a new multibillion-dollar long-term nicotine-maintenance market," says the article, titled "The Emerging Market for Long-Term Nicotine Maintenance."

Pharmaceutical companies contend that their nicotine replacement products are to be used only temporarily, as a therapeutic aid to help cigarette smokers kick the habit. And until recently, public health officials had been unwilling to speak openly about encouraging development of products to support protracted "nicotine maintenance." Doctors and anti-smoking advocates have urged rapid smoking-cessation programs or quitting cold turkey as the only ways to address nicotine addiction.

But the principal author of the report in the journal, Dr. Kenneth E. Warner of the department of health management and policy at the University of Michigan's School of Public Heath, said in an interview that it was now acceptable to begin thinking about longer-term nicotine therapy, perhaps lasting for years. Such therapy could take the form of a so-called safe cigarette that delivers nicotine without the lethal byproducts of burning tobacco. Or it might be one of the nicotine replacement products now available over the counter, like Nicorette gum or the Nicoderm patch.

"When I first broached this idea three or four years ago, the public health community's reaction was one of horror," Warner said. "But now a lot of leading thinkers have become more sympathetic," given the recognition that long-term use of nicotine alone, whatever its health drawbacks, is by far preferable to a continuation of smoking.

Warner acknowledged that some health professionals might find the idea of long-term nicotine use undesirable. But as the cigarette companies and the drug makers rush to develop new nicotine delivery systems, he said, tobacco users will have numerous new means of satisfying their nicotine craving.

"I think the time is right to open this debate and do so with no blinders on," Warner said. "I recognize there are risks associated with this strategy. If we genuinely make these products more attractive to consumers, we may induce nicotine addiction among children who do not now smoke cigarettes because of the danger. There is also the risk that people who might otherwise have quit smoking will expose themselves to the small risk of continuing nicotine addiction."

But, he added, a nation of gum-chewing nicotine addicts is preferable to one with millions of cigarette smokers incurring numerous health risks to themselves and to people who breathe secondhand smoke.

The SmithKline Beecham Corp. is the nation's leading marketer of nicotine replacement products, selling both Nicorette and Nicoderm through its Consumer Healthcare division. George M. Quesnelle, Consumer Healthcare's vice president for medical marketing and sales, said the company had no intention of marketing its products for long-term use to compete against the cigarette companies for customers.

Quesnelle said the gum and the patch were intended to be used only for a 10-to-12 week course of therapy to help end smoking. "We have very opposite goals from the tobacco companies: to help people quit smoking," he said in an interview. "We're coming from diametrically opposed views."

Peggy Carter, a spokeswoman for the R.J. Reynolds Tobacco Co., said the company's officials had not seen the article in the journal and so could not comment on it.

But she added, "We have never perceived ourselves in competition with drug companies."

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From the Ashes

The Big Tobacco Deal Gains New Momentum Despite Early Setbacks

Adjustments to the First Plan Spur Powerful Interests To Push Congress to Act

Money Is 'Sitting Around'

Al

By JEFFREY TAYLOR and SUEIN L. HWANG
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON – Henry Waxman, Phil Carlton and Orrin Hatch have little in common. Mr. Waxman is a Democratic congressman with a death wish for the tobacco industry, Mr. Carlton is a smooth tobacco operative, and Mr. Hatch is a conservative Republican senator wedded to neither side.

But the three can agree on one thing: Despite the now-popular perception that landmark tobacco legislation is DOA, a deal lives.

They predict Congress will push legislation through in the next year – with Mr. Carlton guessing by summer – approving sweeping new ground rules, sharply raising cigarette prices and forcing other broad changes that would have been unthinkable a year ago. What emerges from Congress will likely look different from the original settlement. But neither President Clinton's refusal to directly endorse the pact nor Republican leaders' decision to delay action means the tide has shifted against passage of the most resounding law in tobacco-industry history.

'Forces in Alignment'

"This is the one time in a generation," says Mr. Hatch of Utah, chairman of the Senate Judiciary Committee, "that all the forces have actually been in alignment."

Why the renewed optimism? The tobacco industry's decision to negotiate a deal with states and public-health advocates profoundly changed the legal and political landscape, unleashing an array of powerful interests that will likely push Congress to act. Democratic Sen. Edward Kennedy of Massachusetts calls momentum behind the bill "just too powerful–one of those things that nobody will be able to stand in the way of."

There have been twists and turns, though. On June 20, after three months of intense, closed-door discussions, negotiators raced their 68-page proposal to the White House. The terms were staggering. In exchange for extensive liability protection, tobacco companies agreed to shell out $368.5 billion over 25 years, to help curb underage smoking and to issue warning labels declaring cigarettes addictive. Also buried in the fine print were some clever tweaks that worked to the industry's advantage, including new language that made it harder for the FDA to reduce nicotine content in cigarettes.

At that point all the negotiators, including the cigarette makers, believed the White House would quickly review the deal and get it signed into law by year end, says plaintiffs' lawyer and central negotiator Richard Scruggs.

Almost immediately, however, the deal began to flounder. Political observers say negotiators badly miscalculated how negatively everyone else–legislators, regulators and public-health advocates not included in the talks – would view a deal struck without their input, behind closed doors.

In Congress, members of both parties made it clear they weren't pleased to be presented with a legislative *fait accompli*. "Congress would like to at least appear to write legislation," says Michael Pertschuk, former commissioner of the Federal Trade Commission.

Thumbs Down

In July, a review committee headed by former Food and Drug Administration commissioner David Kessler and former Surgeon General C. Everett Koop said the settlement was soft on Big Tobacco, and gave it a public thumbs down, making it politically difficult for national public-health groups to support it. Within the White House, deep divisions quickly formed over the deal, with strong opposition coming from Secretary of Health and Human Services Donna Shalala and Vice President Al Gore.

The industry then had to accept some humbling in its dealings with Congress. A $50 billion tax credit quietly inserted into the summer budget compromise generated public outrage–and was roundly rejected. Republican Sen. John McCain of Arizona says the flap fostered a new sensitivity among GOP lawmakers to overwhelming public antipathy for the cigarette companies, and tobacco interests began to realize "almost anything they say will get them excoriated." By early fall, the industry conceded that the entire deal would have to wait until next year.

Just as things seemed to have come to a complete standstill, one of the settlement's most visible opponents had a change of heart.

A Pleasant Surprise

On Sept. 10, Dr. Kessler arrived at the posh ANA Hotel here for dinner with Mississippi Attorney General Michael Moore. An architect of the pact and an ardent supporter of the agreement's passage, Mr. Moore was frustrated with the White House's delays and with Dr. Kessler's public opposition to the deal.

But this time, Dr. Kessler presented Mr. Moore with a pleasant surprise. "I want to be for something rather than

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against something," Mr. Moore recalls Dr. Kessler saying. The former commissioner then presented his bottom line: He could support a deal if tobacco companies raised prices by $1.50 a pack, thus reducing demand for cigarettes, particularly among cash-poor kids. After leaving the ANA, Dr. Kessler's next stop was the White House, where staffers were still embroiled in a bitter debate over the pact. There, he met with domestic-policy adviser Bruce Reed and urged him to include a substantial cigarette-price increase in the president's policy response to the settlement.

"Several years ago even a 40-cent price hike would have been unattainable," says Dr. Kessler. "There's been a sea change. It may allow us to get some big things done that just a few months ago would have been unimaginable."

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Wary Convert

Within days of Dr. Kessler's turnaround, California's Rep. Waxman also became a wary convert. Mr. Waxman says he decided legislation was viable on Sept. 16 – a day before President Clinton announced his position on the deal—during a briefing in the Capitol basement. There, Secretary Shalala and Mr. Reed told eight Democratic representatives the president had decided not to endorse the pact before him. Rather, they said, he would call for a series of steps to toughen it.

"That was pivotal," Mr. Waxman says. "At that moment I concluded that the industry would have to pay a much bigger price than was in the settlement, and we would get legislation that would make real changes in the way cigarettes are marketed."

When President Clinton finally made his announcement, the $1.50 price boost emerged as the centerpiece of what the administration would require to get its support.

The hardest work has yet to be done. Congress is still skittish about championing anything a highly unpopular industry wants, particularly in an election year. Republicans are leery of being painted by Democrats as industry pawns. (Tobacco companies and their employees gave $9.4 million to Republicans in the 1996 election cycle and $2 million more in the first six months of this year, compared with $1.9 million and $489,000 respectively to Democrats.) Democrats, stung by previous reversals by the administration on other issues, fear being abandoned by the White House.

That means the tobacco industry, which spent three months haggling over the original proposal, faces a new negotiation of sorts—with a fractious Congress. In the House, Commerce Committee Chairman Thomas Bliley, a Virginia Republican, will take the lead, working with other GOP committee chairmen. In the Senate, Mr. Hatch is angling for a leadership role, but it is still up for grabs.

It remains unclear how much more the industry will have to give up. Its position, says Mr. Carlton, one of its principal negotiators, "is that the June 20 agreement is what it will be working with. We don't need to make any more concessions."

Industry to Prevail?

The specter of dizzying punitive-damage awards has kept Big Tobacco at the bargaining table; earlier this month, for instance, tobacco companies unexpectedly settled the first national class-action lawsuit over second-hand smoking because of growing fears that a loss could result in a massive judgment. Now, though, momentum seems to be shifting in the cigarette makers' favor. Last week they won a big victory when a federal judge in Philadelphia threw out a class-action lawsuit filed by the state of Pennsylvania on behalf of its smokers.

Tobacco companies are also betting two pending cases will strengthen their position, and many observers expect the industry to prevail in both. As early as this month, a federal appeals court in Virginia will rule on whether the FDA has the right to regulate tobacco; the industry argues it doesn't. In Texarkana, Texas, cigarette makers plan to fight one of the many cases other states have filed seeking reimbursement for health-care costs.

President Clinton's former political adviser, Dick Morris, who was heavily involved in formulating White House tobacco policy, thinks "the industry is going to win the next two rounds in court," and "that will chasten liberals" in Congress who want to write tobacco legislation so restrictive it pushes the industry to the brink of bankruptcy.

While some, such as Democratic Sen. Frank Lautenberg of New Jersey, want to raise cigarette prices by $1.50 a pack in three years or less, a more likely outcome is something resembling what Mr. Clinton proposed: a combination of industry payments and penalties that could raise prices $1.50 over 10 years if the industry fails to reduce underage smoking to specified levels. (An industry spokesman notes that under the June 20 agreement, prices were set to increase by $1.50 if not more.)

It may be that neither smoking nor antismoking forces can now afford the cost of walking away from the deal. Regardless of how much cigarette prices go up, federal and state governments will collect hundreds of billions of dollars from tobacco companies, money that could settle pending state lawsuits and leave plenty for lawmakers' pet projects. Where once lawmakers expressed fear that embracing a settlement would make them look like tools of big tobacco, there may emerge a new fear: not bringing home the bacon.

"I've never seen a situation like this: where there was so much money sitting around," says Phil Schiliro, an aide to Mr. Waxman. "Everybody's going to want a piece of it."

THE WALL STREET JOURNAL THURSDAY, OCTOBER 23, 1997

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Koop Declines Spokesman's Role
For Groups on Tobacco Settlement

By John Schwartz
Washington Post Staff Writer
Friday, October 24, 1997; Page A02
The Washington Post

Former surgeon general C. Everett Koop has declined to become a spokesman for a national coalition of public health groups that wants Congress to approve a national tobacco settlement, possibly signaling a new rift over the proposed deal.

In an Oct. 20 letter to Stanton A. Glantz of the University of California, San Francisco, one of the most vocal opponents of the deal, Koop wrote that the coalition, called ENACT, is being too meek in its approach, and thus stands to lose important measures that would reduce smoking by teenagers.

Once a tobacco bill moves through Congress, Koop wrote, "there will be all sorts of compromise and if the president's proposal is the goal, we'll end up with half of that." He concluded that "we have to keep hammering away." He also expressed reservations about whether the president's focus on young people would be effective, writing that "You and I are on practically the same wavelength."

In September, President Clinton announced that he supported the goals of a proposed settlement in which the tobacco industry would pay an estimated $368 million over 25 years and submit to broad advertising and marketing restrictions in return for protection from major lawsuits. But Clinton said the proposal needed to be strengthened, and called for increasing the cost of cigarettes by as much as $1.50 a pack if youth smoking rates do not fall fast enough.

ENACT, which stands for Effective National Action to Control Tobacco, was formed soon after Clinton's announcement by the National Center for Tobacco-Free Kids, the American Cancer Society, the American Medical Association and other groups to push for Congress to approve a deal incorporating the president's changes.

Koop, along with former Food and Drug Administration commissioner David A. Kessler, had strongly criticized the original settlement proposal, hammered out between the industry and a coalition of state officials and private attorneys. Their critique of that deal, commissioned by members of Congress, was instrumental in influencing the administration to seek greater concessions for the tobacco industry.

When Clinton upped the ante by calling for the price increase, Koop and Kessler expressed their support -- and were in the Oval Office when the president outlined his position.

In his letter, Koop took a swipe at ENACT, saying that he "can't understand why these public health people are not carrying the carrot out further in front of the horse."

Koop wrote that "ENACT has asked me to be its spokesperson and I cannot be a spokesperson for a program that aims so low as far as public health goals are concerned." He also noted that when he is "asked to take an important position such as a spokesperson for an organization, I think I should have been asked a little bit about what I thought about its founding."

Calls to Koop's offices in Bethesda and Hanover, N.H., were not returned yesterday.

Matthew L. Myers of the National Center for Tobacco-Free Kids confirmed that the group had asked Koop to act as a spokesperson, but said that he was mystified by Koop's position. "ENACT supports the strongest possible public health plan," Myers said. "Like Dr. Koop and Dr. Kessler, ENACT has endorsed President Clinton's proposals . . . it's hard to imagine how we're shooting low."

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Low-graphics version

Joke of a butt

Philip Morris is coming out with a smoking gadget that could provide the most effective method yet for getting people to quit - making them look ridiculous.

The tobacco company looks pretty silly, too, having spent five years and $200 million to develop a battery-operated "smoking system" that seems about as practical as the electric fork.

Called the Accord, this 4-ounce, oblong holder encloses all but the tip of a cigarette in a box, so no offending ash or secondhand smoke can escape as a person puffs. Of course, the person still has to exhale, but the manufacturer figures that eliminating two out of three irritants for nearby nonsmokers isn't so bad.

A smoker could get very irritated, though, having to buy a special brand of short, eight-puff cigarettes to feed this thing and having to recharge it with every pack - recharging takes half an hour. A starter set, including cigarettes, recharger, and holder, will cost about $50.

If that isn't enough to send smokers to the hypnotist, the stares and questions from onlookers just might.

How many times will a person want to explain about the "puff-activated electronics," the magic microchip sensor, the tiny fan that sucks residue into the teeny catalytic converter, and why it all seemed like a smart investment when it still isn't allowed in no-smoking areas and doesn't cut nicotine intake?

Perhaps the next innovation will enclose the smoker in something similar to a diving bell - sort of a portable smoking room, with a phone on an outer wall for communication. Simply putting a vented shopping bag over one's head might have the same effect, but it could catch fire.

Eventually, researchers might come up with the ultimate solution for stalwarts trying to light up in an increasingly smokefree world: the nicotine robot. This machine would not only have a year's supply of cigarettes at the ready but would smoke them - outside in all weather.

Costly, yes, but progress never comes cheap.

This story ran on page A14 of the Boston Globe on 10/27/97.

Teenage smoking a flash point in talks

Underage buyers bear brunt of fines in retailer-backed bill

11/03/97

By George Rodrigue / The Dallas Morning News

WASHINGTON - Patrolling the streets of Alvin, Texas, Mike Merkel often saw 9-year-old children riding bicycles and smoking cigarettes.

"Where did you get them?" the police chief asked.

"At the store," they replied.

Mr. Merkel cracked down on both the stores and on the baby-faced buyers. He drew national attention as he drove underage tobacco use through the floor.

Now many in Congress want to emulate his success. Underage smoking is part of virtually every debate involving a $368.5 billion national tobacco litigation settlement.

But Congress is far from agreement on who should pay to cut teen smoking rates, now 50.2 percent and rising.

Many join public health advocates in supporting the legal settlement, which would fine retailers $25,000 or more and permanently revoke their licenses if they sell tobacco products to minors.

Others support a bill backed by convenience store owners that would divert much of the burden away from small retailers and place it on the underage smokers themselves.

That bill, called the Tobacco Use by Minors Deterrence Act of 1997, was co-sponsored by a bipartisan group of at least 20 House members, who got thousands of dollars in campaign funds from store owners or from the tobacco industry.

Convenience stores sell half the cigarette packs bought by Americans and reap a quarter of their revenue from tobacco. They say the solution lies in slapping smoking kids with stiffer sanctions, such as community service or loss of driver's licenses.

Store owners should be held responsible for getting sales licenses and training employees, said Ronnie Volkening, government affairs manager for Dallas-based Southland Corp., which owns about 5,500 stores nationwide. But, he argued, owners should not face stiff sanctions "if they do everything possible to avoid that improper sale."

Teen-smoking experts say the bill would weaken the national deal's controls on merchants. It also would pre-empt local jurisdictions' laws concerning such things as display and advertising of tobacco products. That, some experts say, could force at least half the states to roll back current enforcement efforts.

"I don't think they could even ban smoking near explosives," said Dr. Joseph R. DiFranza, a pioneer in local tobacco enforcement efforts.

Mr. Volkening said Southland supports the bill as a starting point for discussion. Under the settlement, he said, "so much of the burden is going to fall on the retail store employee. . . . It certainly doesn't make sense to me to say we are going to take licenses away [from stores] for inadvertent sales, and at the same time effectively tell the kids, 'Smoke 'em if you got 'em.' "

Experts in Texas and across the nation agree that children must be held responsible for smoking. But they shouldn't bear the brunt of the penalties, Mr. Merkel said. Alvin, a town of 20,000 about 20 miles southeast of Houston, requires teens caught smoking to attend a six-hour course on the dangers of tobacco, which kills 400,000 Americans annually.

That has persuaded many children to quit. One is Mr. Merkel's daughter, Amber, caught smoking at age 17.

Recently, Mr. Merkel said, "we circled the high school like vultures, looking for someone who's smoking. We couldn't find anyone."

But cutting teen smoking, he added, also requires prosecuting stores that flout state law by selling to buyers younger than 18. In 1993, he notified Alvin's 40 tobacco vendors that he'd be checking up on them. Still, a third got stung in the first tests. "They just didn't get the message," he said.

Recent tests found only two stores still selling to minors, he said.

"And that makes a real difference. Kids can't just walk in and buy."

Generally, teens in Texas can buy tobacco nearly half the time, a 1996 survey found.

"Right now, some of the stores just don't care who they sell to," said Karyn Briggs, North Texas tobacco control manager for the state health department. Last week in Tarrant County, she said, she sent a gawky, pimply-faced 15-year-old boy into 32 stores.

"He's clearly a kid, and his I.D. says he's 15," she said. "But one out of three stores sold to him. At one store, they never asked for his I.D. As he walked out they said, 'Put those in your pocket so we don't get in any trouble.' "

Dr. DiFranza, a Massachusetts doctor who was among the first to use children to test store clerks, said the average store makes $1,000 annually selling tobacco to children.

"Dishonest merchants can make far more," he said.

National tests several years ago found that 60 percent to 100 percent of stores sold cigarettes illegally to teens, according to U.S. Public Health Service Deputy Administrator Paul Schwab. More recent studies found states with vigorous enforcement plans approached 90 percent compliance, he said.

Mr. Schwab said closing the compliance gap is critical because 3,000 children start smoking daily. Of them, he added, "1,000 eventually will die from their tobacco use."

Store owners, however, say cracking down on merchants will not reduce teen smoking.

"If we have learned nothing else from our sorry experience with drugs, we should have learned that access restrictions alone do not deter usage," said R. Timothy Columbus, an attorney for the National Association of Convenience

Stores.

The Deterrence Act, favored by the merchants, was introduced in late June, just after the national deal was struck.

"What the bill tries to do is bring everyone who's involved in the problem of underage tobacco use into the process to stop it," said L. Selby McCash, press spokesman for chief sponsor Sanford D. Bishop Jr., D-Ga.

Teen-smoking experts, however, say the bill could gut key parts of the smoking deal, as well as many state and local programs.

The bill says people selling tobacco to teens would face a $25 fine for a first offense and no more than $150 in any case. Store owners would have to train their employees not to sell to minors but would not necessarily be held responsible for clerks who do so.

That, Dr. DiFranza said, "is not going to have much impact on a $1 billion criminal industry."

Many states already permit stiffer fines: $500 in Texas, $1,000 in North Carolina, $1,500 in Alabama, Louisiana and Washington state.

The national litigation deal, by comparison, would permit fines ranging from $500 for a first offense to $25,000 for a sixth violation. In addition, the deal would allow local governments to impose their own criminal penalties.

The deal requires licensing of all cigarette vendors. A license suspension would be possible after the first offense. Permanent revocation would be mandatory after 10 illegal sales within two years.

The Deterrence Act effectively limits revocations to 12 months and imposes several procedural hurdles on suspensions.

Federal law now requires businesses to check the identification of tobacco buyers who look younger than 26. The Deterrence Act says merchants can give cigarettes to anyone who looks at least 18.

The proposed settlement requires stores to keep cigarettes out of customers' reach or out of sight. The owners' bill permits stores to display cigarettes within reach of children, if clerks can see the packs.

Speaking on behalf of the convenience store association, Q-Markets Inc. president Duncan Thomas said marketing restrictions could infringe on owners' First Amendment rights to free speech. And, he noted, they could reduce sales to adults.

"Tobacco would effectively become invisible" in stores, he said.

Current law in most states forbids prosecuting children for purchasing tobacco or leaves that to the discretion of the police.

The store owners' bill says clerks who sell to teens could be prosecuted only if the children are taken to court.

"If you find out a store has been selling cigarettes to your children, to get the store prosecuted you'd have to turn in your own child," Dr. DiFranza said. "And the [$150] fine on the child could be six times greater than the fine on the store."

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Federal Community Section: news and columns for federal workers and tips on finding government jobs.

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All federal government stories fromthis morning's Washington Post.

U.S. Wants Share of State Tobacco Deals

By John Schwartz
Washington Post Staff Writer
Wednesday, November 5, 1997; Page A19
The Washington Post

Uncle Sam wants his cut of the tobacco deals.

As the first legislation modeled on the proposed $368 billion settlement with the tobacco industry makes its way to Congress, state Medicaid officials are receiving a letter from the federal Health Care Financing Administration (HCFA, pronounced "hicva"). The letter reminds them that the Social Security Act requires states to pay the federal government a share of any money they recover in Medicaid-related actions -- including present and any future settlements with tobacco companies.

"States must allocate from the amount of any Medicaid related recovery `the pro-rata share to which the United States [Federal government] is equitably entitled,' " said the letter from Sally K. Richardson, director of HCFA's Center for Medicaid and State Operations.

Two states have settled their cases against the tobacco industry so far: Mississippi and Florida. The multibillion-dollar settlements close off the first suits seeking reimbursement from the industry for smoking-related health care costs.

An administration official who asked that his name not be used said the letter was a "very conciliatory" reminder of a system that has long been in place for reimbursing the federal government. Under normal circumstances, that share amounts to as much as 70 percent of the total recovery by the state. The agency sent out a similar letter to states that signed a landmark 1995 settlement with Liggett Group Inc.

The new letter recognizes, however, that not every penny of the settlement is Medicaid related and invites state Medicaid officials to discuss the appropriate amounts of any settlement that should go to the government. (In fact, no check would go to Washington, because under the way HCFA does business the states would simply report the recoveries to the Health and Human Services Deparment and that amount would be deducted from future payments to the states.)

The letter also noted that Congress is preparing legislation that would implement some form of the tobacco settlement and will almost certainly develop a formula at that time for allocating the revenues.

"Stop thinking of this as a settlement and start thinking of it as legislation," the administration official said. "Settlement: dead. Legislation: the future. . . . Whatever monies are raised as a result of national legislation, Congress will be dividing it."

The letter raised the hackles of the attorneys general who filed the Medicaid suits.

"It's the attorneys general position that all of the money should go to the states," said James E. Tierney, a former Maine attorney general who serves as a consultant to the 41 states that sued the industry.

The states took the risk, Tierney said, and the suits were not based wholly on Medicaid recovery; they also allege consumer fraud and conspiracy. "If the federal government wants to receive its share, the Department of Justice should initiate litigation to recoup it."

The suit especially rankled the state attorney general who filed the first Medicaid suit, Michael Moore of Mississippi.

"I tried to get them interested in this litigation for four years," Moore said. "Now that we've recovered the money, they're real interested in it."

Moore said he and other attorneys general had an understanding with the industry and the White House that any federal share of the money would be returned to the states as part of a fund to provide health insurance for children.

He was especially irked that a copy of the HCFA letter was sent to his Republican governor, Kirk Fordice, who then used it to criticize the settlement and Democrat Moore, a likely future political opponent. "HCFA didn't do me any favors today," Moore said.

Another of the attorneys general suing the industry, however, Tom Miller of Iowa, called the HCFA notice a "good letter" that struck a middle ground between a federal government call for a straight percentage payment of any settlement and the view among many state officials that all of the money should go to the states.

"This is something that should be negotiated," Miller said. "Cooler heads should prevail, and people should sit down and talk about it."

The first bill attempting to put a version of the global settlement into legislation is set to be introduced today by Sens. Ernest F. Hollings (D-S.C.) and John McCain (R-Ariz.), according to Senate sources. The bill will track the settlement reached in June in which the industry agreed to federal regulation and huge payments in exchange for protection from certain lawsuits.

In addition, the bill would set aside $28.5 billion in aid for tobacco farmers who may be hurt if a national tobacco policy is enacted.

But a spokesman for Hollings, who faces a tough reelection fight in 1998, said Hollings sees the bill as a way to resolve the tobacco controversy "without injuring the smallest player -- the tobacco farmer."

The bipartisan pair beat other senators who have been mulling tobacco legislation to the punch, including Sens. Orrin G. Hatch (R-Utah) and Edward M. Kennedy (D-Mass.).

Staff writer Saundra Torry contributed to this report.

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News Conference with Senator John Mccain (R-A Ernest Hollings (D-SC), Senator John Breaux (D-L Slade Gorton (R-WA) Topic: Tobacco the Capitol, Gallery Washington, Dc 3:11 P.M. Est Wednesday, 1997

Federal News Service - Congressional Hearing Testimonies
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THIS IS A RUSH TRANSCRIPT.

SEN. MCCAIN: Okay. We'll go ahead and start, if I could. We' announce that we've introduced the Universal **Tobacco** Settlem co-sponsored by the ranking member and former chairman of t Committee, Senator Hollings; Senator Gorton and Senator Brea others who have voiced a desire to also.

The bill we're introducing is the legislative version of the unive settlement agreed upon by the attorneys general and the **tobacc** hope it'll serve as the basis of discussion and amendment here i

I want to briefly discuss what the bill is and what it isn't. It is th discussion, and amendment. After it's introduced, we would lik referred to various committees of jurisdiction for consideration. the Commerce Committee, we intend, in the Commerce Comm extensive hearings on the bill and use it as a vehicle for amend

Let me emphasize that the legislation was drafted by the Senate who was requested to write a bill that would implement and mi **tobacco** agreement, without any direction or input from membe alteration from the agreement.

The substance of the bill is not perfect, complete, comprehensi could ever be signed into law without considerable debate and the co-sponsors endorse this bill as being the answer to our nati **tobacco**-related death and illness, but it can and should serve as negotiations between all concerned parties. I want to thank the the **tobacco** companies for developing the language.

I had hoped that the administration would send the Congress le I would have liked for the Congress to begin considering the pr and advocated by the White House. Unfortunately, the White H take such action. As a result, we have chosen to begin this disc attorneys-general agreement.

There's been on addition to the settlement developed by the atto Universal **Tobacco** Settlement did not address the issue of **toba** communities whose existence and economy depends on the gro address this concern, Senator Hollings has added a new Title I is language of S.1310, which is legislation which was introduce It's my hope that, with the addition of this language to this bill, comprehensive debate on this subject.

Let me also say that I spoke to Mike Moore, who you know wa not the prime, negotiators for the attorneys general, and I also s Woods, the attorney general of the state of Arizona, both of wh the -- in their view, the proper thing to do and would be exactly be, and that's the vehicle to move this process forward. So after Senator Hollings and other members of the committee, we inte more hearings on the Commerce Committee and mark up our p as early as we can.

With that, I'd like to ask Senator Hollings and then Senator Gor Breaux to make some remarks, and then we'd respond to any q would have.

Senator Hollings.

SEN. HOLLINGS: I want to thank Chairman McCain for his le score.

What happens is that the farmer was totally disregarded; in all was not at the table. This particular bill finally puts the farmer a the Price Support Program continuing, whereby the **tobacco** co the government, take over its cost. And it's comprehensive in th care of the communities, as well as the farmer and the farm fam 1610, as we put in last week, Senator Ford and myself and seve wanted to particularly, with this initiative, join in and for the fir farmer at the table. And I'll join in with any other responsible in nature to make sure that the farmer is protected.

Thank you.

SEN. MCCAIN (?): Slade.

SEN. GORTON: My motivation for sponsoring this bill is the think, that all of the people of the United States owe to the grou general, who have brought us to the position where we can seri number of **tobacco**-related issues that simply were not otherwis

And obviously prominent among that group is Christine Gregoi general of the state of Washington, succeeding to a position wh years.

And so what we've tried to do is to draft a bill consistent with t agreement between the **tobacco** companies and the state attorne with some provisions that Senator Hollings has spoken about w **tobacco** farmers as an initial way of bringing this whole questi fashion before the United States Senate and, for that matter, bef people. I don't believe that any of the four of us agree with ever the bill that we've introduced today. But it does give us on a bip ability to begin a thorough and interested discussion of that issu recommendations the president may make, a health care group **tobacco** companies may make, and the attorneys general may believe that in addition to the debt that we owe to our attorneys debt at this point to Senator McCain for providing leadership in before the Senate in a way in which we can have hearings and t relatively promptly early next year.

SEN. BREAUX: Well, let me just say that no one would have ago that **tobacco** companies would have been willing to pay $3 amount for injuries caused by using their products. And no one that **tobacco** companies would admit that nicotine is addictive regulated by the FDA as a drug. And nobody would have belie companies would spend large sums of money to stop people fro that they produce. And no one would have believed five years a companies would stop advertising to influence children from us that they produce. But that is exactly what the proposed settlem that is exactly what our legislation would put into a law of this that's why this bill is important, and I think that's why it should

SEN. MCCAIN: Questions? Sir.

Q David Brosun (sp), McClatchey newspapers.

question for Senator Hollings. Isn't this a sort of a slap at the W President Clinton? As I understand it, it totally ignores the reco president made a couple of months ago on changing this agree

SEN. HOLLINGS: You got me. I didn't know that the presiden recommendations. I heard that he was studying it, prepared to recommendations. But I could be flawed in that sense. I haven't recommendations either. I had never discussed it with anyone i

This particular initiative that, for example, Senator Ford and I p bill and now part of this particular measure here was worked ou conferring, so to speak, with the White House itself.

SEN. GORTON: We're not trying to slap anyone.

SEN. HOLLINGS: No.

SEN. : Yeah.

SEN. GORTON: We're trying to bring people together, and ob listen to any suggestions the president has. We wanted a good s

SEN. BREAUX: Let me just make a comment. I -- and maybe colleagues on -- I'm on the Democratic team that has been assig Daschle to work on this issue, from a Democratic's (sic) perspe recommendations. I'm still continuing to do that.

This, I think, is, as I think Senator McCain said, a valid and a v other suggestions are brought forth, that's fine -- and hopefully incorporated. But someone's got to get the ball rolling, and I thi clearly does that.

SEN. MCCAIN: Could I also just comment on that, because it's question. We want to work with the White House. As I mention we had solicited and hoped that they would be able to send us l They were unable to do that. We respect that. We went to a me us were at a meeting at the White House with the president, wh didn't want to do that at this time. I respected that. We didn't ev want to work with the White House. We want to work with our

And by the way, all of us are old enough -- that are standing rig recognize that without the agreement of the White House, we w legislative package that we could turn into law.

Q Senator McCain, you're really the first p

comprehensive legislation, even if it is a starting -- (off mike). I intend to have a real key role when the Senate takes this up nex

SEN. MCCAIN: No, because -- (laughter) -- what I would hope statement, that the -- we would divide it up amongst the areas o you know, that is a number of committees. (To staff.) Five or si

STAFF: (Off mike.)

SEN. MCCAIN: Six different committees. We'd like to get to are under our responsibilities. They are substantial under the C But there's other vital areas. And what -- I would envision the s committee does their work, then we join together and put toget package.

Q Do you expect this to be a major piece of

will there be other alternatives?

SEN. MCCAIN: I think it's a vehicle. It's only kind of the vehic committee will work its way, again, working with all of those and the White House.

Q Has the leadership said that this is a gr

point?

SEN. MCCAIN: If I -- I spoke to Senator Lott and Senator Nic of them. The exact quote: "I have no problem with it," unquote. was their statement. And I --

SEN. GORTON (?): (Chuckling.) It's a resounding endorsemen

SEN. MCCAIN: Yeah?

Q (Off mike) -- that Senator Nickles wanted

to be on the same page on a bill before it was introduced, and (involve ?) now?

SEN. MCCAIN: Senator Nickles -- as I said, you'll have to ask feels about it, except that I might quote, he has no problem wit

Yes?

Q Senator Hatch is going to introduce his o

(off mike). Does that indicate problems here? If you can't agree what's going to be the vehicle, does that indicate problems -- (o

SEN. MCCAIN: Senator Hatch, in his chairmanship of the Judi significant oversight on this issue. I know he will exercise that. on other committees as well as Commerce Committee will exer And I have every confidence that public pressure, if nothing els together to come up with an agreement that will address this ter affects American children.

Q The White House did say they'd like to se

on a pack of cigarettes. Is that something you think would go fo vehicle?

SEN. MCCAIN: I think what we do, if -- I don't think it's in ou it's in the Finance Committee. But if I were on that committee, in the experts and they tell us what level the price of a pack of c serves to reduce teenage smoking. And that's -- I think that's pr direction that I would think that most anybody would go.

Yes?

Q Senator McCain, you've already had severa

Commerce and you said you don't endorse the whole thing. An number of experts on this. Are there two or three things that yo goes through this committee? What would you like to start with

SEN. MCCAIN: Well, obviously, the advertising is a big area t involved in. And again, there are certain people in the country t people look to; Dr. Koop and Dr. Kessler are two of those. And bring them up again as we've seen various proposals and ideas, parties the -- when we're really proposing amendments and spe there, we want to get all those people back up to give us recom that are under our jurisdiction.

Yes, sir?

Q The advertising restrictions that were in

general recommendations were not going to be written into law form and -- (off mike). In your legislation, the advertising will

SEN. MCCAIN: The advertising is an issue that needs to be dis and amended and legislated. But we have mirrored -- our langu the proposal as made by the attorneys generals.

Yes?

Q (Off mike) -- Senator Kennedy is preparin

mike).

SEN. MCCAIN: I can't make that judgment. What I want to ma frankly, to start with is the area that's under our jurisdiction and expertise. We've already gotten a lot of testimony in the areas t But I honestly don't have enough knowledge. Part of that woul of a pack of cigarettes, which I don't think we have totally deter really don't have the knowledge to make that judgment.

Yes, ma'am?

Q In putting this bill in, you're saying th

major bill that would --

SEN. MCCAIN: No, I'm not even saying it will be a major bill. the vehicle. But if it's not, then we're willing to support any oth think is reasonable. But we think that it's a reasonable place to s

Yes, ma'am?

Q The settlement with the attorneys general

the **tobacco** companies. But now that you're putting it into a leg there any reason the **tobacco** companies have to sign-on to legi

SEN. MCCAIN: Senator Breaux in his statement I think laid o dramatic sea change in attitudes on the part of the American pe reflected in the willingness on the part of the **tobacco** companie agreements and concessions that they otherwise never would ha So I think a lot of it's going to depend on the view of public opi demands we think is appropriate to make of them in order to ac is the primary goal, as we all know, is to stop teenage smoking.

SEN. BREAUX: I might just add real quickly to that. I think th the negotiators always knew that Congress would be involved i that they agreed to. And putting that agreement into law in the about is something that I think is a normal development in their they expected, I think, that this would be put into law ultimatel

SEN. MCCAIN: Could I emphasize one more time, this, we bel a beginning, not an end. Not a single one of us would probably its present form. But we believe that it will give us an opportun committees of oversight to develop a bill that we can all agree t mandate that it's clear that we're getting from the American peo

We've got to go. Thanks very much. ####

END

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Press Conference with Senator Don Nickles (R-OH Legislative Efforts to Reach a Tobacco Settlement Thursday, November 6, 1997

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THIS IS A RUSH TRANSCRIPT.

SEN. NICKLES: I just have a few brief comments concerning t is -- and I've mentioned this before -- I think many of us -- and have an overwhelming majority, Democrats and Republicans, t to pass a very significant program to reduce smoking, particular teenagers. We want to reduce smoking amongst all Americans, amongst young people. And I've been charged with the respons package together.

As you know, there's been a global agreement that the attorney Senator McCain introduced the outlines of that recently. Other different approaches.

What I have done is I have asked all the chairmen of the variou have a handful of committees that are directly involved in this, challenge that we have before us and to come up with recomme know, we had the global agreement, we had the president comi several additional suggestions, none of which were in legislativ add. And so it's a complicated issue. There's a lot of tough ques

I think we've handed out some of the questions that need to be this deal together. How is this program going to work? Are we form of -- how are we going to pay for it? Do we pay for it in p pay for it in tax increases? Where does the money go? Does the the states, does the money go to Medicare, to Medicaid, to a fe Lots of big questions. Is it on budget, off budget? You know, w programs for reducing teen smoking, should they be federal pro state programs, should they be private programs? And so we ha we have to answer those questions.

And I've asked the committee chairs to try to come up with a co committee, of Democrats and Republicans, on how to answer t jurisdiction, and I've asked them to do that by March the 16th o have held hearings. They may hold additional hearings, but to c how to do that. And then we will try to put the pieces together, see if we can't sell it. And this is not an easy process because, if those questions, you'll find a lot of questions that I don't know t answer to just yet. But we are trying to move the ball forward, rather early next year. I would like to get this done in the earlier the later part of session.

And so I'd like to keep the politics out of it as much as possible bipartisan approach to this issue. I'd like to have good policy -- good policy -- on reducing teen smoking. And I say teen smoki smoking -- and reducing drugs. I think I should mention both o simultaneously. We've had an enormous increase in consumpti teenagers, more than doubled in the last few years. We want to want to reduce teenage smoking and addiction. And that's our p

So we've got a lot of work to do and a lot of unanswered questi give me their recommendations on what they think they can get (on) in their committees. Then we'll try and put the pieces toget come up with a comprehensive package -- early part of next ye

Q How do you feel about the bill introduced

Senator McCain and others on the possibility of additional initi to see from other senators -- (off mike) -- session?

SEN. NICKLES: Well, we're well award of the fact that Senato legislation. Senator McCain introduced a bill that is really the g agreed upon. I actually asked for that to be drafted by legislativ because we had an agreement but we didn't have it in legislativ sometimes it kind of helps to have things in legislative languag suggested having something as a starting point, and I told him I him introducing it.

I refrained putting my name on it because I didn't want -- I thin name on something, if we can get everybody together." And we know, and I'd like to have these few months, I guess, to try and comprehensive together that we can get done in a bipartisan fas have the president's support. But I still want good policy. And t not just raise lots of money and throw it around lots of places.

I want to have good policy. I want to reduce consumption of **to** amongst young people. I don't want young people to get addict that it's very expensive to them healthwise. It can cost them the deadly. And we want to figure out what -- the best way.

MORE

I've met with public health officials, cancer officials, heart offic in the private sector. They all have campaigns against smoking addiction. I think we might be able to figure out some of those what's really been a success.

Q Many of those folks think that we'd have

significant price increase. It costs out at 62 cents a pack in the c They're saying $1.50 a pack or higher to really cut teen smokin people getting addicted. Do you think ultimately that's where th go, $1.50 a pack?

SEN. NICKLES: We'll have to see. And President Clinton call increase, but that raises lots and lots of questions. It's not neces only clear-cut way that you could do that that you didn't just en of **tobacco** companies would be to do it in the form of a tax inc Clinton didn't advocate that. And I doubt that that would pass.

Senator Lautenberg has advocated that and said he might pursu he won't have the votes.

Q (Off mike.)

SEN. NICKLES: Senator Hatch is looking at that. I'm willing t I'm also trying to see what we can get the votes on. For exampl dollar-and-a-half price increase, if you did that fairly immediat to be a financial windfall for **tobacco** companies. And I doubt t wanting to do that. And I'm not really one that wants to have pr profits and so on. That's not my interest.

So, you know, this is a complicated thing. You can say you wa increases, but if you're going to pass an anti-trust exemption an they have blanket authority to increase their prices, you've com And how are you -- what are you going to make them spend the basically -- they're saying most of the people that go the price i bypass Congress and say, "Yes, **tobacco** companies, you can ra dollar or a dollar and a half, and here's what we want your com money on." And maybe directly to the states or maybe to other

And Congress has not yet decided that's what we want to do. A trying to do, is ask the committees how do you want to handle t do it in the form of a tax increase? Do you want to do it in the f increase? **Or** are we going to give them an antitrust exemption allow the price increases in exchange for an exemption from cl

We've never done that before. In the history of Congress, we've before. And so that's -- you know, and will there be a majority do that? And where will the money go?

I think a lot of people are willing to have some increases in the either in the form of taxes or prices, if some of the money is sp reducing consumption, particularly amongst young people. But how much, none of those question have really been addressed.

Q Will you work with the administration on

when you were at the White House, you talked about how you to facilitate --

SEN. NICKLES: We're going to do what I've just outlined rega with the administration. Certainly I'm willing to talk to and wor officials. At the same time, we'll be working and talking to our House. I think for this ultimately to be successful, it's going to t Senate and the administration working together. And we can do with them, or we can be doing it independently. We are the Co legislative body, but certainly we'll be having dialogue and inp administration and the House leaders as well.

Q What do you think will come out on FDA au

groups have said the original agreement emasculates the FDA. called for strengthening enforcement powers of the FDA. What Congress is going to end up doing?

SEN. NICKLES: Senator Jeffords and the Labor Committee ar legislation to that extent. And my guess is you'll probably see -- forecast. But I guess you'll see probably some increase in regul the banning of nicotine, would be my guess. How far he goes, i remains to be seen. I know that he's -- that's one of his items th the next couple of months.

And we have asked their committees and their staffs to be work this is not going to be an idle time. For those people primarily i Committee, Judiciary Committee, Commerce Committee and F and to some extent, the Environmental and Public Works Com of work to do. Senator Lugar has already done a lot of work in t has a proposal out and may want to refine that. But those comm have a lot of work to do.

Q Do you expect this to be simultaneously c

committees and not sequentially, then?

SEN. NICKLES: We'll worry about sequential assignments and very complicated. I've been looking at that. But the first thing come to a conclusion of where do we want to go, and then we'll referrals.

If we can come up with a package that we have everybody havi we have strong support, bipartisan support, that makes it easier. almost a pre-conference type bill; you have a lot of inputs inste and then sequence it through several committees. And so that's is to have everybody work together to try and have at least legis March the 16th, and then we'll try and put it together.

How we -- we may still have some sequential work through the for actual mark-ups, but it's my hope to have a lot of the home simultaneously to try and put the pieces together.

Q The final product, sir, would be a -- it

under your name, I presume.

SEN. NICKLES: Well, I'm not worried about names right now.

Q And then would you have at least four or committee chairmen, hopefully, on board? I know Senator Hatc his own bill; right?

SEN. NICKLES: Well, hopefully Senator Hatch will be part of we're finished.

Q You hope to have all of them?

SEN. NICKLES: Well, it would be my hope. We're working wi would be my hope that we'd have strong bipartisan support, tha know, if we have real success, maybe we'll have a similar bill i House may well -- they're moving on their own track right now may come up with a little different idea. But we're planning on we come up and have closer of merging ideas in the interim, th to have our proposal out there for -- a significant legislative pro consumption of **tobacco**, especially amongst teenagers, that we' sometime early next year. So I've asked the committees to do th put the pieces together. And if you look at those questions you'l easier said than done.

Q Do you think there's a consensus that the

tough enough? And is there one or two areas you'd like to toug that were mentioned about the FDA?

SEN. NICKLES: I don't -- you know, some people say, well, it money or it should have greater penalties if they don't meet suc and maybe it should be another $100 billion or two and so on. analyses. What I want them to do is instead of me trying to be t am the arbiter to some extent. But what I want them to do is ma recommendations "Here's what we think we should do. Here's majority for in our committees. And we've had hearings, and in here's what we think we should do in anti-trust," for example. I' expert. And I'm uncomfortable, frankly, when you start giving going to be telling everybody they can be inclusioned to increa something I'm a little uncomfortable with. But, you know, if th done by the Judiciary Committee or Commerce Committee or - done the homework, have the expertise, and to make a recomm when we put it together, I may take it to our conference and say got," and they may all throw it -- you know, say "The heck wit good enough." And so that's the process I see evolving.

I'm going to have to run.

Q (Beginning with ?) the five -- I just wan

Finance, Labor, Judiciary, Commerce and Ag?

SEN. NICKLES: That's correct.

Q Yes. Thank you.

SEN. NICKLES: Yes.

Last question.

Q Of the two -- (off mike) -- to help **tobac**

Ford and one by Lugar, which of those do you see as drawing Senate --

SEN. NICKLES: It's probably too early to say. I think Senator Ford proposal, but I know Senator Lugar -- I'm working with S has his proposal. Actually, I think Senator Ford took Senator L just added some more money to it for community development

You know, we're happy to take a look at anybody's proposal, an and go from there.

Thank y'all very much. ####

END

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BIG TOBACCO'S HIDDEN WAR

Hardball politics at the local level as it pursues a national deal

Big Tobacco is out to get Stanton A. Glantz. In 1994, Glantz, a cardiology researcher at the University of California at San Francisco and self-described "antitobacco crazy person," published a pivotal study showing that restaurant bans on smoking don't cut sales. The results, confirmed in more recent work, are being used to persuade restaurateurs and voters to support public-place smoking bans. Communities have now passed more than 800 such clean-indoor-air ordinances, striking a major blow against cigarette companies.

But industry has launched a powerful counterattack. Not only have tobacco companies challenged Glantz's study but they have also mounted "grass-roots" campaigns to organize retailers and restaurant owners into vocal opponents of state and local tobacco-control laws. And now, they've gone after Glantz.

Last summer, an industry-backed group called Californians for Scientific Integrity filed suit against the University of California, charging that Glantz defrauded taxpayers, who funded his work. "It's clearly designed to harass me," says Glantz, and also, he adds, to slow the antitobacco momentum in local communities across America.

MAKING NICE. When it comes to the fight over smoking, the nation's attention has been riveted on the $368.5 billion settlement state attorneys general and Big Tobacco reached in June. But as the offensive against Glantz shows, largely unseen firefights are being waged over measures like cigarette taxes and smoking bans in towns, counties, and states across the land. "The industry is playing Mr. Nice Guy in Washington, but it is pounding harder than ever at state and local levels, using all sorts of front groups and dirty-trick operations," charges Gregory Connolly, head of the Massachusetts Public Health Dept.'s Tobacco Control Program.

Clearly, the industry is on the defensive. More than 1,150 counties, cities, and towns have tightened youth-access laws, banned vending machines, or restricted smoking in workplaces and restaurants. That's up from fewer than 400 a decade ago. Still, Big Tobacco, with deep pockets and canny strategists, is fiercely contesting every inch of ground. And it can point to plenty of victories. "Smoking bans have been defeated or made less restrictive from Texas to Wisconsin, from Tennessee to Massachusetts, from Maryland to Arizona," crows a newsletter published by the National Smokers Alliance, a smokers-rights group originally funded by Philip Morris Cos. and two other tobacco companies and organized by public-relations giant Burson-Marsteller.

The industry's favorite tactic: pushing state laws to preempt tough local ordinances. Of course, cigarette companies are far too wily to pitch such laws directly. "Their strategy is to take a protobacco deal and promote it as antitobacco," explains Minnesota antismoking activist Jeanne Weigum.

In Pennsylvania, industry supporters in the legislature co-opted a bill tightening restrictions on selling cigarettes to kids. They promoted it as a tough anti-tobacco measure but watered down the original. The revised bill lowered the legal age for buying tobacco from 21 to 18, reduced fines for selling cigarettes to the underage, and preempted local laws that might impose stricter regulations.

Only after strong opposition by the measure's original sponsor, State Senator Stewart J. Greenleaf, was the effort derailed last year. "I was put in the awkward position of opposing my own bill," Greenleaf recalls. But similar tobacco-backed bills have been passed by 29 other states in recent years. The latest: South Carolina and Delaware.

The Pennsylvania case also demonstrates the industry's ability to forge unlikely alliances. To the dismay of activists, the weakened bill won the support of key medical groups, such as the Pennsylvania County Medical Society. Why? State Senate sources say medical lobbyists linked their support to action on a medical-malpractice bill being considered at the time. Antismoking activists suspected, but never proved, a deal.

In California, industry foes charge that the California Medical Assn. became a pawn of tobacco by lobbying to divert cigarette-tax dollars earmarked for antismoking ads to other public-health programs. "The medical association provided the governor and legislature with a cover to raid the fund," fumes Robin Hobart, co-director of Americans for Nonsmokers' Rights. CMA President Dr. Jack Lewin firmly denies that his group's effort to funnel the money into care for poor children was part of a deal with tobacco. But he admits the tiff played into Big Tobacco's hands. "The industry has been very clever at splitting people who would otherwise be allied," he says.

BACKFIRE. The industry can be too clever. Often, it will organize and fund retail and restaurant groups to campaign against youth-access restrictions and smoking bans on the grounds that such measures hurt business. But that strategy can backfire.

Example: Last year, a group called the Minnesota Coalition of Responsible Retailers pushed for a law that would fine stores for selling tobacco to kids. To many, it seemed to be an antitobacco measure. But a leaked memo revealed that most members of the group were in the tobacco industry and that the bill was intended to preempt tougher local laws. The measure was withdrawn. Thomas A. Briant, the head of the group and author of the memo, insists there was no attempt to hide the industry's involvement. "We have always filed public reports showing who provided funding," he says. In fact, a recent report filed with the Minnesota Ethical Practices Board showed no retailers contributed.

Exposing industry front groups has helped activists win similar struggles from New York City to Oregon. So the industry has resorted to other tricks. When Colorado was considering an initiative to raise cigarette taxes in 1994, groups including the American Constitutional Law Foundation deluged the state health department's tobacco-control program with Freedom of Information Act requests. Of the 13,000 pages of documents requested, half were never even picked up, recalls program head Walter Young. Then the Law Foundation filed suit, charging Young with using taxpayer dollars to illegally lobby for the tax increase. Meanwhile, the industry-backed Citizens Against Tax Abuse & Government Waste portrayed the tax as a money grab by government bureaucrats. "It was hell," says Young. "Clearly, one of their strategies is harassment." It worked. Voters defeated the tax.

When tobacco loses a fight, it looks for loopholes. A tough Minnesota law went into effect on Aug. 1. It bans self-service displays in stores. But as dozens of towns consider ordinances implementing the law, Briant's industry-backed coalition is lobbying furiously to persuade them to pass less restrictive versions that would allow displays of bundled packs or cartons. "Some stores don't have enough space to put all their inventory behind the counter," Briant says.

The only thing that could end this trench warfare would be congressional approval of a national settlement. "It could be the mother of all preemption--and that's scary," frets Patrice McKone of the American Lung Assn. in Duluth. In addition, activists fear the deal could give Big Tobacco lots of new loopholes to exploit.

"The status quo is pretty darn good," says researcher Glantz. "By and large, industry is losing at the community level where it has less clout." That's why many fighting Big Tobacco at the grass-roots level say that hand-to-hand combat may still be the best way to win the war.

By John Carey in Washington

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Battling Tooth and Nail

How Big Tobacco is fighting back at the state and local level

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FUNDING FRONT GROUPS
Companies pump money into restaurant associations and retailer groups or organizations such as the Mesa Freedom Committee in Arizona to fight state and local measures.

ATTACKING HEALTH DEPARTMENTS
Industry-sponsored groups flood state health departments with Freedom of Information requests, then use the info to file suits alleging misuse of taxpayer dollars. In Colorado, this tactic helped kill a proposed tobacco tax increase.

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BusinessWeek

ONLINE FOCUS

SMOKING GUN?

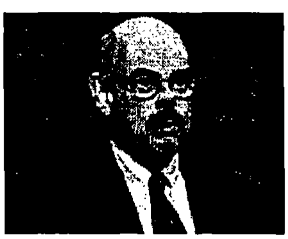
January 15, 1998

The NewsHour with Jim Lehrer Transcript

According to documents released today, R.J. Reynolds used the cartoon character Joe Camel to target young smokers. In response, President Clinton has urged Congress to act quickly on tobacco legislation. After a background report, the man-who released the documents, Congressman Henry Waxman, joins a discussion on what the federal government should do about under-aged smoking.

JIM LEHRER: Joining us now, Congressman Waxman, Democrat of California. He's the ranking Democrat on the Health Subcommittee of the House Commerce Committee; Bruce Reed, the White House senior domestic policy adviser, who serves as the President's point man on tobacco legislation; Sen. John McCain, Republican of Arizona, chairman of the Senate Commerce Committee; and Manny Goldman, a tobacco industry analyst with the Paine Weber brokerage firm. We invited RJR to participate, but they declined. Congressman Waxman, do you agree with the President that these documents say loud and clear to Congress pass this legislation?

"Don't target the children."



REP. HENRY WAXMAN, (D) California: Absolutely. The President set out for us our goal, making sure that tobacco companies don't target the children. This is the market that they've been seeking. These documents today clearly illustrate that one of the major tobacco companies was in a very cynical and clear way targeting and implementing a strategy to get kids as young as 14 years of age to smoke, so if we're going to deal with this problem, let's look at how we stopped the companies going after our kids. That should be the focus, not how to bail out the tobacco industry, how to solve their problems, but how to protect the public health.

JIM LEHRER: Now. Mr. Reed. the President wants some

A RealAudio version of this segment is available.

January 15,1998
Background report on the documents implicating R.J. Reynolds.

December 31, 1997
California bans smoking in just about all in-door public places, including bars.

August 25, 1997
Florida settles with the tobacco industry for $11.3 billion deal.

Online Forum
Congressman Waxman and Connecticut Attorney General Blumenthal debate the tobacco settlement.

June 20, 1997
A panel discussion the tobacco settlement.

changes in the deal as it now stands, correct, before Congress passes it and sends it to him?

The President takes a stand.

BRUCE REED, White House Domestic Policy Adviser: Yes. The President has set forth some clear principles that he'd like to see in tobacco legislation. First and foremost, in order to stop kids from taking up smoking in the first place we need to raise the price of cigarettes. And the President has called for a combination of price increases and penalties on the industry that would raise cigarette prices by up to $1.50 over the next 10 years if we can't bring youth smoking down. As I said, we'd also like to see stiff penalties on the tobacco industry if they don't meet these targets to reduce youth smoking because these documents make very clear that for too long the tobacco industry bottom line has been hooking kids.

JIM LEHRER: Sen. McCain, do you see it the same way, that these documents say that loud and clear?

May 20, 1997:
Research strongly suggests that second-hand smoke is a possible cause of heart disease.

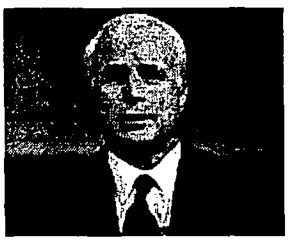
April 18, 1997:
Experts discuss the future of the tobacco industry.

March 20, 1997:
The Liggett Group admits that smoking cigarettes is addictive and can cause cancer.

Browse the NewsHour's coverage of law and health.

The Food and Drug Administration homepage.

Sen. McCain: "I read in the *Washington Post* that senior White House officials would rather have a fight with the Republicans in Congress than move forward in a bipartisan fashion."



SEN. JOHN McCAIN, Chairman, Commerce Committee: I haven't seen the documents, but I'm sure that they do, and they should know the Congress has asked for thousands of documents which will be forthcoming and give us more information on this. But let me just make a point here. Mr. Reed says that the President wants us to make changes. After the settlement was reached, the White House said in 30 days they would have a specific legislative proposal. Ninety days later they came up with a set of principles. We have written--my committee has written twice to the President of the United States asking for specific legislative proposals. And so far we have gotten no response. It's very easy for the President and Mr. Reed to say they want us to enact legislation. If they really want it, then they should come forward with specific legislative proposals as we do when we deal with any other piece of legislation so the Congress can move forward in a partnership, and it's very disturbing when I read in the *Washington Post* that senior White House officials would rather have a fight with the Republicans in Congress than move forward in a bipartisan fashion.

JIM LEHRER: What's going on, Mr. Reed?

BRUCE REED: Well, I think we've been very clear about where we'd like to see tobacco legislation and we're not interested in playing politics here. We definitely want to get something done. As

Congressman Waxman will recall, when we put forward a detailed health care bill, the reaction we got from Congress was quite the opposite. Why are you sending us all these reams of details? Let us know what your principles are. Let us know what you really care about. That's what the President has done. And we said to anyone in either party we're prepared to sit down anywhere, any time, and work this thing out.

Will the President propose specific legislation?

JIM LEHRER: But you're not going to send a bill up there, right?

BRUCE REED: No. The President has laid out clear principles. The budget that he puts forward next month will be even more detailed in how he'd like to see this matter handled. And we're going to work together on a bipartisan basis with Chairman Bliley and Congressman Waxman--

JIM LEHRER: He's the chairman of the House Committee.

BRUCE REED: Yes, he is.

JIM LEHRER: How does that sound to you, Senator? Feeling better now?

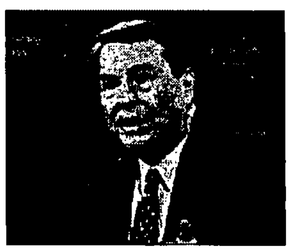
SEN. JOHN McCAIN: Well, of course, it's fascinating because Mr. Reed and his friends at the White House were sent over a very specific legislative proposal on product liability reform for which they said there would be no deviation. The fact is that in the *Washington Post* a senior ranking official, perhaps Mr. Reed can identify who it was, said, yes, we'd rather have to fight for the Republicans and make this an election year issue. We'd like to work together in a bipartisan fashion. We can do so more effectively if they send us a legislative proposal, as they do on almost every proposal that the administration makes, for clearly we don't want to fight.

JIM LEHRER: Mr. Reed, just for the record, does the President want to make this a partisan issue--

BRUCE REED: Absolutely not. This is not about politics. It's not about money. It's not about one goal reducing teen smoking. And I think that that's a goal that every Democrat, every Republican can work together to meet.

SEN. JOHN McCAIN: Then the *Washington Post* was incorrect in the quotes by a senior White House official, I take it?

BRUCE REED: The President has been very clear; he wants to get this done.



JIM LEHRER: Mr.--Congressman Waxman, where do you come down on this? Should the President be sending a specific bill, or should you and other members--you and Sen. McCain and other members of Congress write a bill?

REP. HENRY WAXMAN: This shouldn't be a partisan issue, and I've been impressed by the courageous leadership that Sen. McCain

I've been impressed by the courageous leadership that Sen. McCain has given to this matter, and I've also been impressed by the integrity under which Chairman Tom Bliley has tried to get all the information, listen to all points of--

JIM LEHRER: He's a Republican Congressman from Virginia.

REP. HENRY WAXMAN: Right. And he and I differed on a number of issues, particularly tobacco, because he presents Virginia, the home of Philip Morris Tobacco. But he has indicated his willingness to talk about these issues and try to see if we can find some common ground. I hope we work together on a bipartisan basis, but one thing I want to point out is that when Sen. Lott said that any legislation is dead, I just thought that was inappropriate for him to make that statement. This is not a partisan issue, but we do have to remember that the leadership in the House, Newt Gingrich particularly, and the leadership in the Senate, have received millions of dollars in campaign contributions for the tobacco companies. I don't think they ought to go and look at ways to accommodate the tobacco companies' interest. Let's work together and get a bill.

Will the party leadership push hard to pass tobacco legislation?

JIM LEHRER: Sen. McCain, how about that, that the leadership, your leadership is not really pushing this very hard?

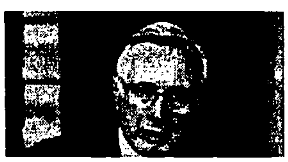
SEN. JOHN McCAIN: Well, I think they are, and I think that they are committed to addressing the major problem that afflicts America, and that is, young people smoking. We all know that 3,000 young people every day start smoking, and that's terrible, and it has to be eliminated. Sen. Lott was reacting to the quotes in the *Washington Post* when senior White House officials say that they'd rather have a fight with the Republicans. Naturally, Sen. Lott is going to react in a dissatisfied fashion. But I know that Sen. Lott, who has basically recused himself, except for his leadership position, Sen. Nichols and others have committed to trying to address this issue at least on teen smoking, we'd like to have an overall settlement as envisioned in the agreement that was negotiated by the AG's. I don't know if we can or not, but we have the obligation. I don't think the American people would appreciate it if we didn't.

JIM LEHRER: All right. Just for the record, the reason Sen. Lott recused himself is that his brother is involved in the litigation.

SEN. JOHN McCAIN: Brother-in-law.

JIM LEHRER: Sorry. Brother-in-law. Mr. Goldman, I have not forgotten you out there in San Francisco. As somebody who follows the tobacco industry, what do you think would happen to this agreement from the tobacco industry's point of view if the White House and members of Congress start fooling with it in a major way?

Will the money go to the federal government or to the states?



MANNY GOLDMAN, Tobacco Industry Analyst: Okay. Well, just keep in mind, I am an independent person here. I have no axe to grind with anyone, the tobacco or other--the other side. I'm just trying to forecast what will happen. I think the settlement, as

currently written, won't be changed all that much. I'd be very surprised to see it change dramatically. What you have in the agreement are quite a number of things that really were not expected initially in terms of the degree of FDA regulation, agreeing to OSHA regulations. The amount of money is tremendous, $368 1/2 billion is just slightly less than the Gross National Product of spending. So we're talking large dollars; we're talking money to the states; money to different agencies, health advocate groups, to the FDA. It's really an extraordinary document. And if someone had said two or three years ago that there would be such a document on the table, I don't think anyone would have believed it. So it's quite an unusual thing. My guess would be that if there were major tampering to the agreement, it would put it in jeopardy. I think there will be some changes. I think it'll probably end up somewhat more than the $368 1/2 billion. But I don't think it would be enormously more. And I think kind of the innards of the agreement, as it currently stands, probably will stay the same in terms of the look-back provisions regarding youth smoking, in terms of the FDA, in terms of money to the states. I don't think that's going to change an awful lot.

JIM LEHRER: Why not? Why don't you think it will change?

Higher taxes could create an "unsavory" black market.

MANNY GOLDMAN: Because I don't think there's a lot of wiggle room on the part of the companies. The way the agreement is currently written, after a period of 10 years, to cover the costs associated with the agreement, cigarette prices at retail would have to go up about $1.50. And if you add a lot--if you layer a lot onto that, then you get to the point that it jeopardizes not just the sales of cigarettes--that's not what I'm talking about --but it jeopardizes the legal sale of cigarettes. If you have too large an increase--as Canada found--if you have too large an increase in cigarettes prices, then all of a sudden you have under the table cigarettes being marketed by unsavory elements. And that happens to be, I believe the key factor in just how much the agreement can be increased by in terms of total dollars. That's really a key factor.

JIM LEHRER: So if the tobacco companies are pushed too far beyond which they cannot go, or which they decide they cannot go, they will just say, forget it, let's go to court?

MANNY GOLDMAN: Well, I think that's--it's kind of a remote possibility at this point. But I don't think that it's one that be excluded. I mean, the companies can walk, except for giving money to Mississippi and Florida and maybe shortly to Texas and to Minnesota, those are cases, the latter two that are currently in process, except for that, the companies haven't given money to anyone. So they still have the money in a sense, and they're willing to part with a great deal of it. And I think that's an important factor, but it has to be on what they consider reasonable terms. So there has to be a meeting of the minds here. I don't think they're likely to walk. But it's not a possibility that can be excluded.

JIM LEHRER: Senator, how do you read the wiggle room factor here?

SEN. JOHN McCAIN: Well, I think that Dr. Koop's and Dr. Kessler and many of the outside organizations will play kind of the roles of referees on this issue. I agree with Mr. Goldman, that it probably wouldn't be changed too much. But, clearly, these documents raise the issue of immunity. And that's going to have to be looked at very carefully.

raise the issue of immunity. And that's going to have to be looked at very carefully.

The immunity issue.

JIM LEHRER: Explain what you mean by that.

SEN. JOHN McCAIN: Immunity for the tobacco companies in return for these enormous payouts.

JIM LEHRER: Which is what they want in exchange for the money; they want to have immunity from lawsuits, and these documents you think would be terrific in a lawsuit, right?

SEN. JOHN McCAIN: Well, Dr. Kessler said, you know, we found the smoking gun here. I'm not sure. I'd like to see all of the documents and let the CEO's testify, but that's going to be under pressure and also, as was mentioned, there may be a requirement for more money, but also Congress is very unwieldy in dealing with a multi-jurisdictional issue like this one. I'm convinced we can--working with the White House and in a bipartisan fashion--solve at least the major challenge here of teen smoking.

JIM LEHRER: Mr. Reed, how do you feel about the wiggle question in terms of how much more there is to do here before the deal falls through completely?

BRUCE REED: Well, I think the attorneys general got us off to a good start, but there are going to have to be some important changes in order to meet the President's demands. Most important is that we need to put serious financial incentives that will penalize the industry if teen smoking doesn't go down. There's no point in having a comprehensive peaceful legislation to attack teen smoking if we don't think it's going to work. So that's the most important issue for us.

MANNY GOLDMAN: Jim.

JIM LEHRER: Yes. Mr. Goldman.

MANNY GOLDMAN: I would like to just bring up one other thing that I think is a very important issue, and that is the issue of who the money goes to. The way the settlement is currently written, money goes to the states, to agencies, and so forth. As I understand it, the administration has proposed the lion's share of the money, or some large amount going to the federal government for their programs, and some much smaller amount going to the states. And that can be a real difficult one in terms of coming to an agreement, because it's a large change in the settlement. So that's something that occurred fairly recently.

JIM LEHRER: But that's from a standpoint it would be the states who would object to that, rather than the tobacco companies, though, right?

MANNY GOLDMAN: Right. But it's a kind of thing that can keep a deal from actually happening.

SEN. JOHN McCAIN: And we're going to hear from the governors on that.

The uncertain future of the tobacco settlement.

REP. HENRY WAXMAN: I want to point out that we don't need a deal for the Congress of the United States to act, and we also don't need tobacco companies to sign off on it. They might need a deal to settle litigation, but if we're going to enact rational tobacco policy, we ought to decide what that policy ought to be. Now, that deal that the AG's and tobacco companies entered into, as far as I'm concerned, is dead.

JIM LEHRER: It's dead?

REP. HENRY WAXMAN: Yes. It'll be a reference point on some of those issues, but it's a wish list for the tobacco companies. They get immunity from liability from all their past conduct; they get immunity from and no accountability for their future activities; they--they take away some of the jurisdiction the FDA we think already has to regulate tobacco; they have a very weak performance standard to make sure that we reduce teenage smoking. We need to figure out what is rational, and the first thing that's rational is to stop them from going after our kids before we'd ever consider the issue of immunity. It seems to me we've got to get a lot of more documents. And what we revealed today is just a part of what we need to know. There are other companies involved, other documents. We ought to have it all before we start even considering giving them the special treatment.

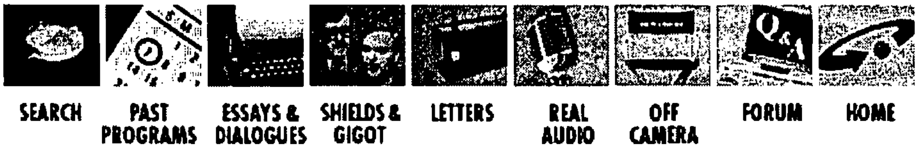
JIM LEHRER: Mr. Goldman.

MANNY GOLDMAN: Well, it's kind of an interesting thing because the issue of immunity is really a key one. It's basically a deal-breaker. You know, nothing comes free. And the kinds of things that constitute the settlement, which I guess were worked out by the tobacco companies on the one hand and the various health advocate groups and others on the other hand, you know, have an awful lot in there that is really extraordinary. And we do have documents coming up that I'm sure will be--will be discussed further, and there may be more documents, who knows? I think this is a very, very important period over these next couple of months because there will be congressional hearings, and I'm sure that all of these issues will come to the fore, but ultimately when push comes to shove, however you do it, the issue of immunity, I think, ends up being a key one, however that's worked on.

REP. HENRY WAXMAN: It really is chutzpah for the tobacco companies to think that they can lie to the Congress, go after our children, deny that there are consequences from smoking, and then ask that they be forgiven for their actions.

JIM LEHRER: A quick word from Sen. McCain. Yes, sir.

SEN. JOHN McCAIN: Very briefly, in all due respect to my friend from California, we have to have a vehicle. We have to have a framework. The AGs deserve to have that as the vehicle. Sure, it's going to be changed, but that's still got to be the initial way that we approach this issue, in my view.



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ONLINE NEWSHOUR

SMOKING GUN?

January 15, 1998

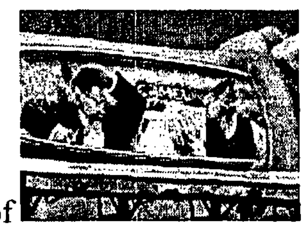
The NewsHour with Jim Lehrer Transcript

According to documents released today, R.J. Reynolds used the cartoon character Joe Camel to target young smokers. In response, President Clinton has urged Congress to act quickly on tobacco legislation. After a background report, the man who released the documents, Congressman Henry Waxman, joins a discussion on what the federal government should do about under-aged smoking.

BETTY ANN BOWSER: On Capitol Hill today, the tobacco industry took another hit. California Congressman Henry Waxman released more than 80 documents from R. J. Reynolds, the maker of Camel and Winston cigarettes, illustrating, in his terms, the companies long-time plan to attract underage smokers.

Congressman Waxman makes an accusation.

REP. HENRY WAXMAN: This meeting today and these documents we're releasing today show that at least one major tobacco company consciously and skillfully targeted our children in a campaign to get them to smoke at an age as young as 14. These documents literally bring us into the boardrooms of RJR. They show that RJR's most senior executives developed and implemented a sophisticated plan to market their cigarettes to our children.



BETTY ANN BOWSER: Waxman obtained the documents from California lawyer Janet Manjini, who sued RJR in 1991 to stop the Joe Camel campaign. According to the documents, R. J. Reynolds, creators of the popular Joe Camel cartoon advertising campaign, used the leather jacket, pool playing cartoon character to target

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A RealAudio version of this segment is available.

January 15,1998
Analysis of smoking policy.

December 31, 1997
California bans smoking in just about all in-door public places, including bars.

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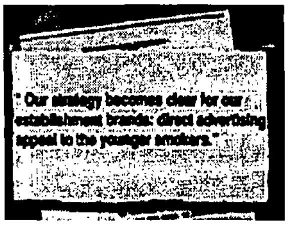
Congressman Waxman and Connecticut Attorney General Blumenthal debate the tobacco settlement.

June 20, 1997
A panel discussion the tobacco settlement.

potential young smokers. The co-creator of the ad campaign wrote a memo, which he marked "secret," to the R. J. Reynolds marketing officials in 1986, stating the Joe Camel campaign would use peer acceptance, influence to motivate the target audience to take up cigarettes, convincing target smokers that by selecting Camel as their usual brand, they will project an image that will enhance their acceptance among peers.


"Our strategy becomes clear for our establishment brands: direct advertising appeal to the younger smokers."

Twelve years earlier, on September 30, 1974, the marketing vice president told the board of directors that young people "represent tomorrow's cigarette business, as this fourteen to twenty-eight age group matures, they will account for a key share of the total cigarettes volume for at least the next 25 years." He went on to say, "Our strategy becomes clear for our establishment brands: Direct advertising appeals to the younger smokers." R. J. Reynolds released a statement today reacting to Congressman Waxman and the release of the documents. "Our documents reflect the social attitudes of the times in which they were created. Reynolds Tobacco Company's position and policy have remained constant: that smoking is a choice for adults and marketing programs are directed at those above the legal age to smoke." Congress will consider comprehensive legislation to reduce youth smoking. That was part of last summer's settlement between the state attorneys general and the tobacco industry.

May 20, 1997:
Research strongly suggests that second-hand smoke is a possible cause of heart disease.

April 18, 1997:
Experts discuss the future of the tobacco industry.

March 20, 1997:
The Liggett Group admits that smoking cigarettes is addictive and can cause cancer.

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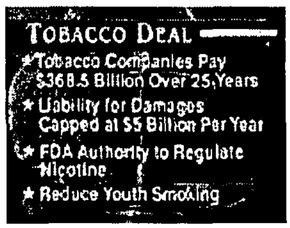
The Food and Drug Administration homepage.

The proposed tobacco settlement.

MICHAEL MOORE: We are here today to announce what we think is, we know, we believe is the most historic public health achievement in history.



BETTY ANN BOWSER: In the settlement, which Congress must approve and the President must sign, the tobacco industry would pay $368.5 billion over 25 years for anti-smoking campaigns. The industry's legal liability would be capped at $5 billion a year. Any future class action lawsuits would be barred. The FDA would regulate nicotine and cigarettes but only within certain restraints, and could not eliminate nicotine entirely for 12 years, and tobacco companies would have to reduce youth smoking by set amounts, or face financial penalties. In September, President Clinton suggested changes to the settlement, including increasing tax on cigarettes to $1.50 per pack. Today, the President called on Congress to incorporate those changes into a comprehensive bill that he can sign.

PRESIDENT CLINTON: For five years we've done everything in our power to protect our children from the dangers of tobacco. I've called for strong bipartisan legislation to reduce smoking, especially by young people. The documents that came to light today show more than ever why it is absolutely imperative that Congress take action now to get tobacco companies out of the business of marketing cigarettes to children.

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01/16/98- Updated 12:25 AM ET

Kids are getting lost in tobacco deal shuffle

Why did Big Tobacco agree to pay $368 billion over 25 years to settle state Medicaid suits? And why is it now paying tens of millions to lobbyists to get the pact through Congress? Maybe because the industry feared the evidence that might be found in its own secret files.

This week, some of R.J. Reynolds' documents came out, and they were damning.

Despite RJR's public, sworn denials to the contrary, the maker of Camel, Winston and Salem cigarettes directed marketing efforts at adolescents.

"To ensure increased and longer-term growth for Camel Filter, the brand must increase its share penetration among the 14-24 age group," wrote RJR official J.W. Hind in 1975.

"Evidence is now available to indicate that the 14- to 18-year-old group is an increasing segment of the smoking population. RJR-T (RJR Tobacco) must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term," said a 1976 memo.

Subsequent memos through the 1980s revealed the company looked at the influence of peer groups on "young adult" choices in smoking, with one chart identifying "younger adult" smokers including 12-year-olds.

The effort led to the comic character Joe Camel, a bereted hipster who became as recognizable to 5-year-olds as Bugs Bunny and helped make Camel a top-three brand among the under-18 crowd.

Such duplicity raises serious doubts about giving the industry immunity from future lawsuits, as the deal proposes. But that's just one reason this deal is starting to look sour. Others are equally damning:

It's a good deal for the industry. Despite the whopping $368 billion payout to defray the cost to Medicaid for smoking-related illnesses and other programs, the companies would scarcely feel it on their bottom lines.

A study by the Federal Trade Commission found that after tax deductions and other offsets, the total cost to the industry would be only about $100 billion. And even that is illusory. Provisions granting the companies exemptions from antitrust laws and limits on their liability would allow them to increase profit margins by limiting price competition and cutting costs.

The dealmakers are losing sight of the objective. The bottom line for the states, the Clinton administration, health groups and Congress should be public health. Yet eagerness to get hold of the money for election-year spending appears increasingly to be driving the process.

The Clinton administration, after negotiating a nearly 50/50 split of the hoped-for proceeds with the states, plans to pay a third of a new $21 billion child-care plan with money from the deal. Bills in Congress would set aside more to pay off cultural and sports groups that lose tobacco's sponsorship money under the pact. Other bills set aside billions for tobacco farmers and for health research.

The danger is clear: In their eagerness to get their hands on the money, they'll be more willing to settle for a bad deal.

Tobacco has often outwitted its foes. In the 1960s, Congress negotiated an agreement with tobacco companies to put a warning on cigarette packs. The companies then used that as a shield against liability. The industry likewise wheedled its way around TV advertising bans by paying actors to smoke and adeptly placing their billboards in camera lines at sporting events.

This deal has a lulu of a loophole on federal regulation of the addictive nicotine content of cigarettes. The Food and Drug Administration would have to prove the unprovable - that a cutback on nicotine in brands sold here wouldn't create a black market for foreign cigarettes.

The president moved in the right direction last fall by suggesting ways to toughen the pact. Because evidence shows people who don't smoke by 21 aren't likely to start, the key to making the deal work is to stop teens from smoking. So he proposes fining companies up to $1.50 a pack if teen smoking doesn't drop significantly.

But why give the industry immunity from lawsuits in order to do that? Congress doesn't need tobacco's permission to hike tobacco taxes by $1 to $2 a pack, enact extreme fines for any sales to minors, or to regulate nicotine as an addictive product. It needs only to give up its own addiction to tobacco's big political contributions.

Perhaps negotiators can still find a way to toughen the proposed deal. But in the meantime, the tobacco settlement looks more like a bargain for the industry to keep making money - and government to spend it - than a health program to get people, especially kids, to stop smoking.

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San Francisco Examiner

Monday, Jan. 19, 1998 · Page A 18

Joe Camel's legacy

A new outpouring of R.J. Reynolds documents offers

EXAMINER EDITORIAL WRITER

proof that the cigarette maker wanted to turn kids into addicts

YOUTHEN. It's a word invented by and for the R.J. Reynolds Tobacco Co. of Winston-Salem, N.C. When its executives tested the Joe Camel cartoon character 25 years ago in France, a long-secret memo said they needed to "youthen the brand" of Camel cigarettes.

The late Joe Camel, cool and suave and hip, became a role model.

"It's about as young as you can get," says a note from the advertising agency that worked for RJR in 1974, "and aims right at the young adult smoker Camel needs to attract."

Another memo from the vice president of marketing told his board of directors about the need to compete with Marlboro by capturing the "young adult market, the 14 to 24 age group" that "will account for a key share of the total cigarette volume - for at least the next 25 years."

These were among hundreds of smoking-gun documents made public last week as a condition of the $10 million settlement of a case with Joe Camel as an unnamed co-conspirator. The suit was filed in 1991 by San Francisco attorney Janet Mangini, who was joined later by City Attorney Louise Renne and lawyers for several other California cities and counties. Plaintiffs argued that Mr. Camel was part of a campaign to turn youngsters into lifelong smokers, a contention hotly denied by the tobacco giant's fuming spinmeisters.

Joe Camel brought hundreds of millions of dollars to RJR. Before his debut in 1988, according to the documents, teen smokers accounted for a mere $6 million per year in RJR revenues. By 1991, the figure hit $476 million. A cool and humpless character with a saxophone, sunglasses, leather jacket, a pool cue and a cigarette dangling from his lips, he must have scoffed at the brand's long-time slogan, "I'd walk a mile for a Camel." Contemporary youth isn't noted for walking anywhere.

Before then, the cigarette's image was the scroungy-looking dromedary still pictured amid the pyramids on packages of "Turkish & Domestic Blend Cigarettes." The surgeon general's warning is printed on the back: "Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy." Few statements are so accurate from the creators of Joe Camel, who already was ailing when taken off life support last summer as part of the same settlement.

Renne said the documents prove that the Joe Camel campaign was "exactly what we always thought it was: an illegal and unethical effort to get children to smoke."

RJR spokespersons claim the documents have been quoted out of context and assert that the company never has targeted young people. Because study after study shows that nearly 90 percent of smokers begin while in their teens, the documents supply a quote that stands by itself as grim proof of a calculated campaign: "To ensure increased and longer-term growth for Camel Filter, the brand must increase its share penetration among the 14-24 age group which have a new set of more liberal values and which represent tomorrow's cigarette business."

The latest evidence of the tobacco industry's flat-out lies should help persuade Congress to put even more teeth into the proposed $368 billion national settlement reached between the cigarette makers and state attorneys general. The deal doesn't go nearly far enough in controlling an industry that cynically intended to turn kids into addicts by means of a well-documented strategy to, in a word, youthenize.

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Some Settlement

By Lynn M. LoPucki

Tuesday, January 20, 1998; Page A15

Congress is expected to consider tobacco settlement legislation this year. The political appeal of the legislation is that over 25 years it is supposed to transfer $368.5 billion of the tobacco companies' money to the federal government, the states, people who want to quit smoking and the lawyers for everybody. There's even a budget of a billion to a billion-and-a-half dollars per year for grants to anti-smoking organizations. (Nothing saps political opposition quite like the prospect of cash payments.)

No one seems to have noticed that the folks who are supposed to pay the $368.5 billion don't have it. Section VI. B. 6. of the settlement agreement reads: "[o]bligation for annual payments responsibility only of entities selling into the domestic market." What entities are those? The subsidiaries of Philip Morris, RJR Nabisco, Loews, Brooke Group and B.A.T. that sell tobacco products in the United States. The parent companies will not be liable. Nor will the subsidiaries that sell only food, insurance, movie tickets and other non-tobacco products, the subsidiaries that sell tobacco products in foreign markets or even the subsidiaries engaged in some aspect of the tobacco business in the United States other than selling. The tobacco companies have not disclosed information sufficient to determine which of their more than 500 subsidiaries will be liable under the language of the settlement or what, if anything, those subsidiaries own.

In documents filed with the Securities and Exchange Commission four of the five major tobacco companies do list the value of the "identifiable assets" of the "tobacco segments" of their businesses. For the four companies, they total $33.1 billion -- about 9 percent of the face amount of the settlement and less than enough to make the payments due in the first three years. B.A.T.'s domestic tobacco assets would add to that number. But to determine the amount actually available for settlement liability, one must subtract the assets of the dozens of subsidiaries selling into foreign markets and the domestic tobacco subsidiaries not engaged in sale or distribution -- the tobacco subsidiaries that will not be liable. If it turned out that the subsidiaries liable for the settlement had no assets at all, that would not conflict with any public disclosure by the tobacco companies.

What the settlement does is release from liability the parent companies whose assets are sufficient to make the payments and confine the liability to subsidiaries whose assets are not. The $368.5 billion the politicians expect in exchange does not yet exist. It is money the tobacco subsidiaries hope to make in the future by selling cigarettes. If tobacco sales in the United States are high enough, the domestic tobacco subsidiaries will be able to make their payments. If they are not, the tobacco subsidiaries show their empty pockets, and that is the end of it. The money stops. Thus, the tobacco settlement is not money the tobacco industry will surrender to the American people as compensation, it is a partnership between the American government and the tobacco industry to sell cigarettes to the American people and split the profits.

The mere prospect of that much money is already corrupting our political processes. State attorneys general are lobbying Congress to enact special-interest legislation to keep the tobacco industry in business. If they are successful, Congress will ban class actions and punitive damage awards against the tobacco companies, as well as actions by the states or health insurers, to recoup the billions they will pay in treating the health problems of smokers. The tobacco companies will have no new competitors because any new tobacco company will be required to make payments 50 percent larger than those required of the existing companies. If the tobacco companies needed additional privileges in the future to stay in business and make their payments, the state and federal governments -- addicted to their $15 billion-a-year payments -- would be likely to give it to them.

Without this settlement, the tobacco industry faces the possibility of a liability meltdown. After decades of industry stonewalling, an avalanche of litigation is finally approaching trial. The hundreds of billions of dollars in damages sought in these lawsuits exceeds the entire value of the tobacco subsidiaries and their parent companies.

The United States ought to let the tort system run its course and wipe the tobacco companies from the face of the earth.

Smoking kills 160,000 Americans each year and many times that in other countries. In the long run, the medical costs of the tobacco settlement will far exceed the settlement payments. But what politician can resist $368.5 billion?

The writer teaches debtor-creditor relations at the Harvard and Cornell law schools.

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Richmond Times-Dispatch

Wednesday, January 21, 1998

Tobacco enemies break ranks

Dissident group opposes immunity

BY PETER HARDIN
Times-Dispatch
Washington Correspondent

WASHINGTON — Anne Morrow Donley of Richmond, a veteran fighter against her hometown tobacco industry, is preparing to escalate the battle.

Tomorrow, Donley will join a number of grassroots allies in unveiling a national anti-tobacco coalition that breaks away from mainstream public health groups and takes aim at proposed legal protections for the tobacco industry.

The new "Save Lives, Not Tobacco" coalition seeks to prevent Congress from ratifying what they call a legal "bailout" for Big Tobacco. It boasts more than 150 backers, including the well-financed Association of Trial Lawyers of America and the American Lung Association.

For tough-talking activists like Donley, who peppers the tobacco industry with accusations like "murder," the new group offers a national campaign as Congress weighs the future of the tobacco industry.

"We have a chance to get the message across to many more people this way," said Donley, a cofounder of Virginia Group to Alleviate Smoking in Public, or Virginia GASP.

The dissident Save Lives group has broken with ENACT, a separate coalition whose leaders include the Campaign for Tobacco-Free Kids, the American Cancer Association and the American Heart Association. ENACT is formally silent about legal protections for the embattled tobacco companies.

Former Surgeon General Everett Koop has endorsed the principles of Save Lives and is expected to appear at the news conference. It is certain to draw attention.

This long-festering, intramural discord might have been dismissed at another time. But as Congress prepares to take up the landmark $368.5 billion national settlement amid a clamor from competing interests, at least one leading lawmaker warns that disputes in the health community won't help.

Sen. John McCain, R-Ariz. and chairman of the Senate Commerce Committee, cautioned last week that passage of sweeping tobacco legislation would be very difficult without unity in the public health community.

"Legislative progress would be seriously impeded if the public health community is not fully engaged and substantially in accord on the specifics," McCain said in a letter to 34 health organizations.

Activists backing Save Lives aren't fretting too much about that.

"We say we oppose immunity, even if it kills everything," said Bill Godshall of SmokeFree Pennsylvania.

Alvina Bey Bennett of Richmond, an official with the predominantly black National Medical Association, said, "It is very fitting that we have a variety of views coming from public health."

In the proposed settlement between state attorneys general, tobacco companies and private lawyers, cigarette makers agree to major restrictions on advertising and marketing, as well as some regulation by the Food and Drug Administration.

In return, the settlement would protect the industry from punitive damages in lawsuits alleging past misconduct, bar future class action cases against the industry, and cap industry payouts at $5 billion a year.

These limits on liability are central to the embattled tobacco company's support for the settlement. They're seeking financial stability in the future after fighting off litigation for years.

Leaders with Save Lives contend the deal would let the tobacco companies "off the hook" at a time the public is finally beginning to learn the truth about their past conduct, largely through documents dug up in litigation.

"The courts are about to deliver justice to the tobacco industry," Godshall said. "Why shouldn't the industry be held accountable for all its wrongdoing?"

These critics also argue that rights of people to bring lawsuits would be wrongly sacrificed if the settlement deal were approved.

"The worst thing about the deal is that it takes away people's legal rights and relieves the tobacco industry of accountability for the millions of people that have been killed by its products," said Joan Mulhern, a lawyer with Public Citizen's Congress Watch.

In addition to disagreement over legal protections, some activists in Save Lives have gotten personal in criticizing individuals tied to ENACT.

They mention special resentment over the role of Matt Myers, an official of the Campaign for Tobacco-Free Kids, as a key negotiator at the tobacco settlement table.

A spokesman for ENACT, the more moderate group that includes the American

Heart Association and American Cancer Society, said the news media has paid too much attention to divisions in the public health community.

"There is much more in common between ENACT and Save Lives and others in the public health community than is getting reported," said Jud Richland of Partnership for Prevention.

"All of the various groups . . . will support strong legislation that includes a package of public health provisions," Richland said.

The rival groups both favor full regulatory authority for the Food and Drug Administration, large increases in the price of a pack of cigarettes to discourage youth smoking, and disclosure of internal documents that deal with industry misconduct and with public health.

Richland also maintained that although it's not a formal ENACT plank, "I don't think we could ever see ourselves supporting anything that would weaken the ability to use the courts as a public health tool."

Linda Crawford, a lobbyist for the American Cancer Society, said the dissident group has members "who are very vested in trying to punish the industry for past and current misdeeds and deceit of the American public."

"However, we have a rare opportunity at this point to control the industry instead of punishing them, which gives you the longer public health objective of saving lives," Crawford added.

The Association of Trial Lawyers of America, a lobbying powerhouse, already has published its views of the proposed settlement. It has run newspaper ads headlined, "Snuff out tobacco's sweetheart deal before America gets burned."

Trial lawyers make a living suing people, sometimes for huge fees, and they often oppose legal immunity measures.

Another group backing Save Lives is made up of trade union health-care trust funds, which have lodged class-action lawsuits against Big Tobacco.

Save Lives activists found new ammunition for their views last week when Rep. Henry A. Waxman, D-Calif., released internal R.J. Reynolds documents that talked about improving cigarette sales to youth.

The documents "completely support the idea that we need to get all the facts before we rush out and do anything" to pass comprehensive legislation, said Donley of Virginia GASP.

President Clinton saw the Reynolds documents differently, as trumpeting the need for sweeping legislation.

The documents "show more than ever why it is absolutely imperative that Congress take action now to get tobacco companies out of the business of marketing cigarettes to children," Clinton said last week.

"I'm confident that every member of Congress, without regard to party, who reads these documents will resolve to make 1998 the year that we actually pass comprehensive legislation to protect our children and the public health."

Anti-Tobacco Activists May Heal Rift

Koop Works to Unite Public Health Groups

By John Schwartz
Washington Post Staff Writer
Thursday, January 22, 1998; Page A10

An increasingly bitter rift between two factions of the nation's public health groups over the proposed national tobacco settlement could be moving toward resolution -- and a united and harder stance against cigarette-makers.

Since the announcement last year of a possible national settlement, public health groups have been divided over whether the industry should get protection from class-action civil lawsuits and punitive damages.

The division between the two sides became so acrimonious that it appeared to present a significant stumbling block for national legislation based on the deal. Sen. John McCain (R-Ariz.) sent a Jan. 13 letter to public health groups stating that they "must play a vital role" in shaping legislation, and warning that "Legislative progress would be seriously impeded if the public health community is not fully engaged and substantially in accord."

One coalition, which includes the American Cancer Society and leadership of the American Medical Association, has been willing to accept limited liability protection from class-action lawsuits and punitive damages to get the sweeping concessions by the industry to help reduce underage smoking. They banded together under the name ENACT.

The other coalition, made up of the American Lung Association, Public Citizen and a number of smaller regional anti-tobacco organizations, has remained deeply suspicious of the deal and opposed even the most limited grants of immunity. (That position on immunity was also endorsed in a vote of the AMA's House of Delegates, a direct challenge to the AMA leadership.) The anti-deal group has named itself Save Lives, Not Tobacco, and officially makes its debut this morning at a news conference in Washington. Former surgeon general C. Everett Koop was scheduled to speak, but bowed out at the last minute.

Koop said he hoped to be able to announce he had achieved that goal of a truce within two weeks. "I am almost there," he said. In the meantime, "I don't think that going to one press conference of one coalition is the way to announce unity between the two," he said.

When ENACT formed late last year, the group asked Koop to serve as a spokesman. Koop refused. In an interview yesterday, he said that the group didn't go far enough in fighting the industry, and "I also didn't feel I ought to associate myself with one community versus another." Since then, Koop and former Food and Drug Administration commissioner David A. Kessler have worked to reconcile the two groups: specifically, to try to get key players in the ENACT coalition to speak out against the civil liability protections.

Neither ENACT nor a key member, the National Center for Tobacco-Free Kids, has stated support for immunity, focusing instead on the public health issues. But their silence on the issue has been broadly taken as assent. Matthew L. Myers, executive vice president and general counsel of the National Center for Tobacco-Free Kids, disputed that interpretation, however. He said: "The campaign opposes any changes in the civil justice system that would weaken the courts' ability to protect the public health, permit the tobacco industry to operate outside the normal boundaries of the law, or escape accountability for its wrongdoing. We welcome Dr. Koop's efforts to try to permit the public health community to enter this crucial year as united as possible."

In a press briefing yesterday morning, Myers said that the situation in Congress had "moved beyond" the original national settlement proposal, and "it's important that Congress set a high mark and move toward" it, while keeping an eye on "what's achievable."

Michael Pertschuk, co-director of the Advocacy Institute and an adviser to public health groups, said that the balance of power at the time the June 1997 deal was announced has shifted because of new revelations about the industry, including new evidence that cigarette-makers targeted minors. And that has reopened liability issues. "The parties had really gotten closer," Pertschuk said, "but they were yelling at other and not talking to each other until Koop came along."

A tobacco industry spokesman warned that if the reconciliation attempt between the two coalitions is successful and a strong statement against liability protection emerges, the tobacco industry would almost certainly withdraw its support for legislation. "The limited liability provisions contained in the June 20 proposal are essential," spokesman Steve Duchesne said.

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