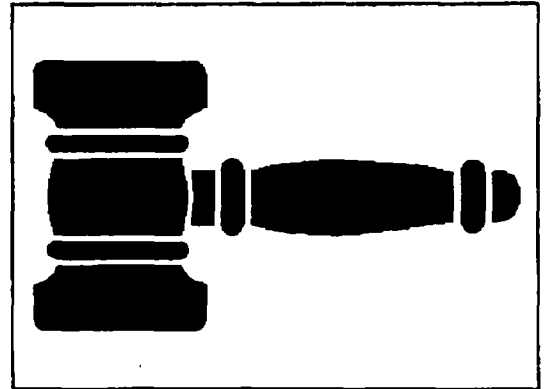


U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF THE GENERAL COUNSEL

PHONE: (202) 690-6318
FAX: (202) 690-7998

DATE: January 23, 1997

TO: **ELIZABETH DRYE**
fax: 456-7028



FROM: **ANDREW D. HYMAN**
Special Assistant to the General Counsel
U.S. Department of Health and Human Services
Office of the General Counsel, Room 707F
200 Independence Ave., SW
Washington, D.C. 20201

COMMENTS: Attached is a bill prohibiting regulation of tobacco sponsorship of auto racing events (similar to bills introduced last Congress) introduced couple weeks ago.

A handwritten signature in black ink, appearing to read "Andy", written over a large, faint, circular watermark or background mark.

No. of Pages (including cover): 3

105TH CONGRESS
1ST SESSION

H. R. 410

To prohibit the regulation of the use of any tobacco or tobacco product as a sponsor of an event of the National Association of Stock Car Automobile Racing, its agents or affiliates, or any other professional motor sports association by the Secretary of Health and Human Services or any other instrumentality of the Federal Government.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1997

Mr. GILMAN (for himself, Mr. HAMILTON, Mr. SOLOMON, Mr. MCHALE, Mr. TALENT, and Mr. SAM JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To prohibit the regulation of the use of any tobacco or tobacco product as a sponsor of an event of the National Association of Stock Car Automobile Racing, its agents or affiliates, or any other professional motor sports association by the Secretary of Health and Human Services or any other instrumentality of the Federal Government.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. PROHIBITION.

2 The Secretary of Health and Human Services or any
3 other official or instrumentality of the Federal Govern-
4 ment shall not regulate the use of tobacco or a tobacco
5 product as a sponsor of an event of the National Associa-
6 tion of Stock Car Automobile Racing, its agents or affili-
7 ates, or any other professional motor sports association
8 under the Federal Food, Drug, and Cosmetic Act and
9 shall not take any action with respect to tobacco advertis-
10 ing used by the National Association of Stock Car Auto-
11 mobile Racing, its agents or affiliates, or any other profes-
12 sional motor sports association under the Federal Ciga-
13 rette Labeling and Advertising Act or the Comprehensive
14 Smokeless Tobacco Health and Education Act of 1986.

○

MEMORANDUM

TO: BRUCE REED, ELENA KAGAN

FROM: TOM FREEDMAN, MARY L. SMITH

RE: TOBACCO BILLS

DATE: JULY 9, 1997

SUMMARY

Below is a list of bills, in reverse chronological order, that were introduced in both the 104th and 105th Congress that relate to tobacco. (The list was compiled by performing a Nexis search for any legislation that contains the words "tobacco" and "cigarettes.")

Many of the bills relate to topics that are already covered in the proposed settlement agreement such as bills regarding restrictions on advertising and bills aimed at reducing youth smoking.

We have not examined the details of every bill, but there are a few bills that relate to topics that are not covered by the proposed settlement that look interesting:

1. **Bills to create conversion funds for farmers.** S.804 by Sen. Bradley on 5-15-95; S.598 by Sen. Bradley (D-NJ) on 3-22-95.
2. **Bills to disallow deductions for advertising expenses for tobacco products.** H.R. 1323 by Rep. McHale (D-PA) on 41-15-97; H.R. 2962 by Rep. McHale (D-PA) on 2-06-96; S. 596 by Sen. Harkin (D-IA) on 3-22-95.
3. **A bill to create a tobacco accountability board.** H.R. 1881 by Rep. Waxman (D-CA) on 6-12-97. The board would investigate all matters relating to the tobacco industry including (1) any efforts to conceal research relating to the adverse health effects caused by tobacco; (2) any efforts by tobacco manufacturers to mislead the public; (3) any efforts to sell tobacco to children; and (4) any attempt to circumvent regulations of tobacco.
4. **A bill to regulate the advertising of tobacco over the Internet.** S. 2184 by Sen. Lautenberg (D-NJ) on 10-01-96.

NOTE:

In cases where there is an overlap in topics, the proposed Hill legislation often uses different methodology than does the proposed settlement. For instance, S. 828 proposed by Senator Durbin seeks to reduce youth smoking by 20% in the second year after enactment while the proposed settlement seeks to reduce the level by 30% only in the fifth year after enactment. Let us know if you would like us to pursue any of these comparisons or perform any additional research.

DATE INTRO	BILL NO.	SPONSOR	STATUS	DESCRIPTION OF BILL
6-27-97	S. Res. 104	Sen. Harkin (D-IA)	referred to committee	Resolution to state the sense of the Senate regarding the tax status of payments made as a result of the recent tobacco liability settlement. Under the settlement, any payment by the tobacco manufacturers is counted as a "normal and necessary" business expense and is therefore tax deductible, thereby potentially requiring taxpayers to subsidize up to \$147 billion of the settlement payment. This resolution seeks to prohibit parties to the agreement from claiming tax deductions for these payments.
6-25-97	H.R. 2034	Rep. Bishop (D-GA); 13 cosponsors	referred to committee	A bill to amend section 1926 of the Public Health Service Act to encourage states to strengthen their efforts to prevent the sale and distribution of tobacco products to individuals under the age of 18.
6-24-97	H.R. 2017	Rep. Bishop (D-GA); no cosponsors	referred to committee	A bill to amend section 1926 of the Public Health Service Act to encourage states to strengthen their efforts to prevent the sale and distribution of tobacco products to individuals under the age of 18.
6-12-97	H.R. 1881	Rep. Waxman (D-CA)	referred to committee	Tobacco Accountability Act: A bill to establish the Tobacco Accountability Board. The Board will investigate all matters relating to the tobacco industry including (1) any efforts to conceal research relating to the adverse health effects caused by tobacco; (2) any efforts by tobacco manufacturers to mislead the public; (3) any efforts to sell tobacco to children; and (4) any attempt to circumvent regulations of tobacco.

6-06-97	H.R. 1826	Rep. Elizabeth Furse (D-OR)	referred to House Agriculture Committee	A bill to increase deficit-reduction assessments for participants in the Federal price support program for tobacco and to extend the period during which such assessments will be collected.
6-03-97	S.828	Sen. Durbin (D-IL); Cosponsors: Sen. Lautenberg (D-NJ), Sen. Harkin (D-IA)	referred to Committee on Commerce	No Tobacco for Kids Act: Directs HHS to conduct annual surveys to determine the number of children who used each manufacturer's tobacco products. Requires each manufacturer to make specified annual reductions in child tobacco use, and provides penalties based on total consumer use for failure to meet such requirements. Sets forth performance standards for new manufacturers. Directs that specified amounts of fiscal year penalties shall go to a Tobacco Enforcement and Education Fund in the Treasury, with any excess to go to the Treasury.
6-03-97	S.826	Sen. Lautenberg (D-NJ); Cosponsors: Sen. Durbin (D-IL), Sen. Kerry (D-MA)	referred to Senate Environment and Public Works Committee	Smoke Free Environment Act of 1997: A bill to amend the Public Health Service Act to protect the public from health hazards caused by exposure to environmental tobacco smoke.
6-03-97	H.R. 1772	Rep. Waxman (D-CA); no cosponsors	referred to committee	No Tobacco for Kids Act: A bill to provide for the reduction in the number of children who use tobacco products.
6-03-97	H.R. 1771	Rep. Waxman (D-CA); 2 cosponsors	referred to committee	Smoke-Free Environment Act of 1997: A bill to amend the Public Health Service Act to protect the public from health hazards caused by exposure to environmental tobacco smoke

4-24-97	S.643	Sen. Durbin (D-IL); 3 Cosponsors	referred to Committee on Agriculture	Tobacco Subsidy Reduction Act of 1997: Amends the Federal Crop Insurance Act to prohibit the CCC from providing federal crop insurance or reinsurance for tobacco. Amends the Agricultural Market Transition Act to prohibit the Secretary of Agriculture from providing noninsured crop disaster assistance for tobacco.
4-24-97	H.R. 1438	Rep. Degette (D-CO); 43 cosponsors	referred to committee	Tobacco Subsidy Reduction Act of 1997: A bill to prohibit the Federal Government from providing insurance, reinsurance, or noninsured corp disaster assistance for tobacco.
4-17-97	H.R. 1364	Rep. Johnson (R-CT); 12 cosponsors	referred to committee	Child Health Insurance and Lower Deficit Act of 1997: A bill to provide grants to States to provide uninsured children with access to health care insurance coverage and to amend the IRS Code of 1986 to increase the excise taxes on tobacco products for the purpose of funding such grants and reducing the deficit.
4-15-97	H.R. 1323	Rep. McHale (D-PA); 34 cosponsors	referred to committee	Tobacco Advertising Tax Reform Act: A bill to amend the IRS Code of 1986 to disallow deductions for advertising expenses for tobacco products.

4-09-97	H.R. 1263	Rep. Pallone (D-NJ); 40 cosponsors	referred to committee	Child Health Insurance and Lower Deficit Act: A bill to amend the Public Health Service Act to provide access to health care insurance coverage for children and to amend the IRS Code of 1986 to increase the excise taxes on tobacco products for the purpose of offsetting the Federal budgetary costs associated with such insurance coverage.
4-08-97	S.527	Sen. Lautenberg (D-NJ); 5 cosponsors	referred to Committee	Tobacco Disclosure and Warning Act of 1997: A bill to prescribe labels for packages and advertising for tobacco products, to provide for the disclosure of certain information relating to tobacco products.
4-08-97	S.526	Sen. Hatch (R-UT); 23 cosponsors	In Committee.	A bill to amend the IRS Code of 1986 to increase the excise taxes on tobacco products for the purpose of offsetting the federal budgetary costs associated with the Child Health Insurance and Lower Deficit Act.
4-08-97	H.R. 1244	Rep. Mechan (D-MA); 5 cosponsors	referred to committee	Tobacco Disclosure and Warning Act of 1997: A bill to prescribe labels for packages and advertising for tobacco products and to provide for the disclosure of certain information relating to tobacco products.
2-13-97	H.R. 768	Rep. LaHood (R-IL); 34 cosponsors	referred to committee	A bill to restrict the FDA from penalizing retailers for face-to-face tobacco sales that are in accordance with State law.
2-13-97	H.R. 762	Rep. Hansen (R-UT); 5 cosponsors	referred to committee	Youth Protection from Tobacco Addiction Act of 1997: A bill to restrict the advertising and promotion of tobacco products.

2-04-97	H.R. 516	Rep. Baesler (D-KY); no cosponsors	referred to committee	Youth Smoking Prevention Act of 1997: A bill to establish the Federal Authority to regulate tobacco and other tobacco products containing nicotine as a condition to the receipt by a State of the Federal preventive health and health services block grant.
1-23-97	S.201	Sen. Ford (D-KY); no cosponsors	Referred to committee	Tobacco Products Control Act of 1997. A bill to provide for the establishment of certain limitations on advertisements relating to, and the sale of, tobacco products, and to provide for increased enforcement of laws relating to underage tobacco use.
1-09-97	H.R. 410	Rep. Gordon (D-TN); 29 cosponsors	referred to committee	A bill to prohibit the use of any tobacco or tobacco product as a sponsor of an event of the National Association of Stock Car Automobile Racing, its agents or affiliates, or any other professional motor sports associations by HHS or any other instrumentality of the Federal Government.
10-01-96	S. 2184	Sen. Lautenberg (D-NJ); no cosponsors	referred to Senate Commerce, Science and Transportation Committee	Tobacco-Free Children's Internet Act of 1996: a bill to require the Commissioner of the Food and Drug Administration to issue regulations limiting the advertising of cigarettes and smokeless tobacco over the Internet.
9-26-96	H. Con. Res. 223	Rep. Greene (R-UT); no cosponsors	referred to House Economic and Educational Opportunities Committee	Expresses the sense of the Congress that addiction to nicotine should not be considered a disability for purposes of specified provisions of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973

9-27-96	H.R. 4245	Rep. Fox (R-PA); no cosponsors	referred to House Commerce Committee	Tobacco Youth Access Act: a bill to restrict the access of youth to tobacco products.
8-02-96	H.R. 3954	Rep. Fox (R-PA); no cosponsors	referred to committee	Control of Youth Access to Tobacco Act: A bill to restrict the access of youth to tobacco products.
7-16-96	H.R. 3821	Rep. Hansen (R- UT); 8 cosponsors	referred to committee	Youth Protection from Tobacco Addiction Act of 1996: A bill to restrict the advertising and promotion of tobacco products.
7-10-96	H.R. 3779	Rep. Oberstar (D- MN); 16 cosponsors	referred to committee	Tobacco Medicaid Recovery Act of 1996: a bill to amend title XIX of the Social Security Act to reward states for collecting Medicaid funds expended on tobacco-related illnesses.
6-19-96	S. 1892	Sen. Lautenberg (D-NJ); 6 cosponsors	referred to Senate Finance Committee	Tobacco Medicaid Recovery Act of 1996: a bill to reward states for collecting Medicaid funds expended on tobacco-related illnesses
2-06-96	H.R. 2962	Rep. McHale (D- PA); 22 cosponsors	referred to House Ways and Means Committee	A bill to amend the Internal Revenue Code of 1986 to disallow deductions for advertising expenses for tobacco products.
11-16-95	H.R. 2653	Rep. Charlie Rose (D-NC); no cosponsors	referred to House Agriculture Committee	Tobacco Amendments Act of 1995: A bill to amend the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949 to improve the operation of the Government flue-cured and burley tobacco programs.

11-06-95	H.R. 2585	Rep. Schroeder (D-CO); 26 cosponsors	referred to committee	Smokeless Tobacco Consumption Reduction and Education Act of 1995: A bill to amend the IRS Code of 1986 to increase the excise taxes on smokeless tobacco to an amount equivalent to the tax on cigarettes and to use the resulting revenues to fund a trust fund for programs to reduce the use of smokeless tobacco.
9-28-95	H.R. 2414	Rep. Baesler (D-KY); 3 cosponsors	referred to House Commerce Committee	Youth Smoking Prevention Act of 1995: a bill to establish the Federal authority to regulate tobacco and other tobacco products containing nicotine.
9-26-95	S. 1295	Sen. Helms (R-NC); 3 cosponsors	referred to Senate Commerce, Science and Transportation Committee	A bill to prohibit the regulation of any tobacco products, or tobacco sponsored advertising, used or purchased by the National Association of Stock Car Automobile Racing, its agents or affiliates, or any other professional motor sports association by HHS or any other instrumentality of the Federal government.
9-20-95	S. 1262	Sen. Ford (D-KY)	referred to Senate Commerce, Science and Transportation Committee	Tobacco Products Control Act of 1995: a bill to provide for the establishment of certain limitations on advertisements relating to, and the sale of , tobacco products, and to provide for the increased enforcement of laws relating to underage tobacco use.
9-07-95	H.R. 2283	Rep. Payne (D-VA); 23 cosponsors	referred to House Commerce Committee	A bill to prohibit the regulation of the sale or use of tobacco or tobacco products by HHS.

9-06-95	H.R. 2265	Rep. Funderburk (R-NC); 53 cosponsors	referred to House Commerce Committee	A bill to prohibit the regulation of any tobacco products, or tobacco sponsored advertising, used or purchased by the National Association of Stock Car Automobile Racing, its agents or affiliates, or any other professional motor sports association by HHS or other instrumentality of the Federal Government.
8-07-95	S. Res. 159	Sen. Bradley (D-NJ); 11 cosponsors	referred to Senate Finance Committee	A resolution to express the sense of the Senate regarding the role of tobacco in leading to addiction, disease, and premature death among children and teenagers, and the role of increased excise taxes in reducing tobacco use by children and teenagers.
8-04-95	S. 1123	Sen. Bingaman (D-NM); no cosponsors	referred to Senate Environment and Public Works Committee	A bill to limit access by minors to cigarettes through prohibiting the sale of tobacco products in vending machines and the distribution of free samples of tobacco products in federal buildings and property accessible by minors.
6-15-95	H.R. 1853	Rep. Meehan (D-MA); 9 cosponsors	referred to House Science Committee	Freedom from Nicotine Addiction Act of 1995: A bill to amend the Federal Food, Drug, and Cosmetic Act to require the reduction and eventual elimination of nicotine in tobacco products.
5-15-95	S. 804	Sen. Bradley (D-NJ); no cosponsors	referred to Senate Finance Committee	Tobacco Consumption Reduction and Health Improvement Act of 1995: A bill to amend the Internal Revenue Code of 1986 to increase the excise taxes on tobacco products, and to use a portion of the resulting revenues to fund a trust fund for tobacco diversification.

4-06-95	H.R. 1455	Rep. Stark (D-CA); 13 cosponsors	referred to the House Ways and Means Committee	Tobacco Health Tax and Agricultural Conversion Act of 1995: A bill to amend the IRS Code of 1986 to increase the tax on tobacco products.
3-22-95	S. 598	Sen. Bradley (D-NJ); cosponsor: Lautenberg (D-NJ)	referred to Senate Finance Committee	Tobacco Consumption Reduction and Health Improvement Act of 1995: A bill to amend the Internal Revenue Code of 1986 to increase the excise taxes on tobacco products and to use a portion of the resulting revenue to fund a trust fund for tobacco diversification.
3-22-95	S. 597	Sen. Lautenberg (D-NJ); 2 cosponsors	referred to Senate Finance Committee	Medicare/Medicaid Solvency Act: A bill to insure the long-term viability of the Medicare, Medicaid, and other federal health programs by establishing a dedicated trust fund to reimburse the government for the health care costs of individuals with diseases attributable to the use of tobacco products.
3-22-95	S. 596	Sen. Harkin (D-IA)	referred to Senate Finance Committee	A bill to amend the Internal Revenue Code of 1986 to disallow deductions for advertising and promotional expenses for tobacco products.
1-23-95	H.R. 636	Rep. Kildee (D-MI)	referred to House Economic and Educational Opportunities Committee	The Tobacco Workers Equity Act: A bill to amend section 207(m) of the Fair Labor Standards Act of 1938 to eliminate the partial overtime exemption for employees that perform services necessary and incidental to the sale and processing of green and cigar leaf tobacco.

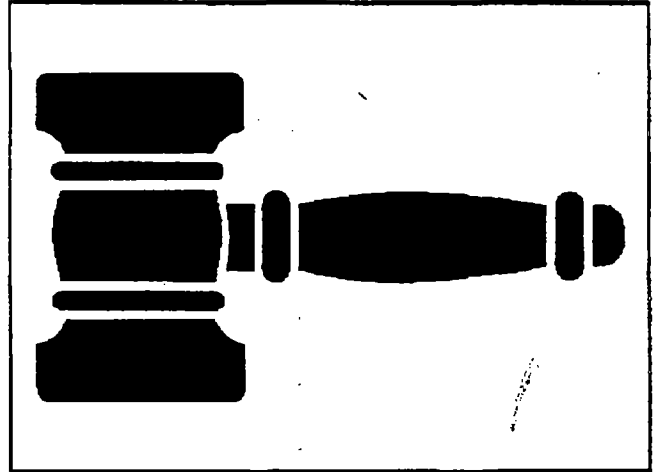
FACSIMILE TRANSMISSION

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 713-F H.H. Humphrey Building
Washington, DC 20201

TO: Elizabeth Drye

FROM: Andrew D. Hyman
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No. of pages:

MESSAGE:

NEWS RELEASE
WENDELL H. FORD of KENTUCKY
UNITED STATES SENATE

173-A Russell Senate Office Building
Washington, D.C. - 20510-4343

FOR IMMEDIATE RELEASE
January 23, 1997

Contact: Mark L. Day
(202) 224-1156

**FORD REINTRODUCES YOUTH SMOKING BILL;
CALLS FOR LEGISLATIVE COMPROMISE**

WASHINGTON-- Calling on all parties concerned to reach a legislative compromise, U.S. Senator Wendell Ford (D-KY) reintroduced his legislation that will prohibit the Food and Drug Administration (FDA) from regulating tobacco while addressing the issue of youth smoking.

"I've said it before and I'll say it again: If we want to address the issue of youth smoking sooner rather than later, we must have a legislative compromise," Ford said. "What this problem calls for is reason, not more rhetoric. That's why I introduced legislation last year, and that's why I'm introducing it again this year."

Ford said that any FDA regulation of tobacco would be tantamount to years of court wrangling and would create an entire new bureaucracy in a time of government downsizing.

"My legislation represents a serious, enforceable measure to combat teenage smoking. But it does not interfere with the legal, private decisions of adults. It also does not trample on the First Amendment's protection of free speech," he added.

In an effort to go the extra mile, Ford said that while he thought last year's bill was sufficient to reach our common goals, he's broadened it to accommodate other concerns. A ban on advertising at sports and entertainment events attended by youth and requiring presentation of photo ID for the purchase of tobacco products of those appearing under age 26 are now included in this bill.

"We all share a common goal -- reducing the number of youths smoking. If we put our collective efforts toward resolving the problem rather than advancing personal agendas, I believe we can solve the problem," Ford said.

###

*** SUMMARY OF LEGISLATION ATTACHED -- (Changes from last year's bill in bold type.)

Tobacco Products Control Act of 1997

• Amendments to Federal Cigarette Labeling and Advertising and the Comprehensive Smokeless Tobacco Health and Education Acts:

- (1) Bans cigarette and smokeless tobacco advertising on billboards within 500 feet of schools; allows ground-level non-brand signs.
- (2) Bans cigarette and smokeless tobacco advertising in magazines with 15% or greater youth subscribers.
- (3) Bans paid cigarette or smokeless tobacco product placement in motion pictures.
- (4) Bans cigarette and smokeless tobacco product advertising in video games.
- (5) Bans cigarette and smokeless tobacco product advertising in arenas or stadia where professional or amateur sporting events occur. Allow ads in programs or signs at concession stands where tobacco products sold. Allows sponsorship where at least 75% of attendees are 18 years or older.
- (6) Bans any licensing payment for use of non-tobacco product name on tobacco product.
- (7) Bans cigarette and smokeless tobacco advertising in or on taxis, buses, trains, or in subway, bus, or train station, terminal, or platform, except at stands where tobacco products are sold.

• Amendment to Public Health Service Act:

- (1) Makes SAMHSA grants contingent on the enactment of a state law that:
 - (a) Bans under-18 tobacco sales and requiring the presentation of a photo ID for all face-to-face transactions where individual appears 26 or younger,
 - (b) Restricts the placement of cigarette vending machines to those areas under the control of an establishment's employee, unless the vending machine is located in an "adults only" area,
 - (c) Restricts sampling to "adults only" areas or transactions involving a photo ID,
 - (d) Requires a photo ID for the sale or giveaway of non-tobacco merchandise,
 - (e) Restricts self-service displays to areas under the control or observation of an establishment's employees, and
 - (f) bans the sale of individual cigarettes and establishes a minimum package size of 20 cigarettes.

- (2) Doubles current SAMHSA penalties.

• Amendment to Food, Drug and Cosmetic Act expressly banning FDA jurisdiction.