Panel warned on tobacco ad restrictions

By Samuel Goldreich
THE WASHINGTON TIMES

Several legal experts yesterday advised a Senate panel against imposing sweeping advertising restrictions on tobacco companies, saying restraints would violate free speech.

The issue has become central to prospects for legislation based on the $368.5 billion deal tobacco firms reached last June with a group of attorneys general who sued to recover the costs of treating smoking-related illnesses.

"I would urge both this committee and the Congress not to start down a path so obviously fraught with avoidable First Amendment land mines," attorney Floyd Abrams, who has argued many Supreme Court free-speech cases, told the Senate Judiciary Committee.

He said Congress should consider passing a bill similar to one introduced by Senate Judiciary Chairman Orrin G. Hatch, Utah Republican, who proposes a series of court-enforced consent decrees spelling out unacceptable tobacco industry marketing practices.

Mr. Hatch also would grant tobacco makers the protection they seek against class-action lawsuits and punitive damages under the attorneys general settlement. Without such limits, the continuing onrush of anti-tobacco lawsuits could bankrupt the industry, he said.

"The civil liability provisions are also needed to prevent a race to the courthouse for settling pending and future lawsuits for the relatively limited tobacco company assets," Mr. Hatch said.

GOP leaders are awaiting clear signals from the White House on this issue today, when Vice President Al Gore is scheduled to join a group of Democrats proposing tobacco control legislation. The bill, drafted by a task force led by Sen. Kent Conrad, North Dakota Democrat, would boost taxes on cigarettes by $1.50 per pack and impose tough advertising and marketing restrictions without granting tobacco makers the liability protection they say is crucial to a national settlement.

White House Press Secretary Mike McCurry said that Mr. Gore would offer support to the bill because it reflects President Clinton's tobacco-control priorities.

The president has laid out minimum requirements for its support, including a boost in cigarette prices to discourage teen-age smokers, preservation of federal tobacco regulation, a ban on marketing that targets children and programs to fight nicotine addiction.

Justice Department attorney David

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Ogden told the Senate panel that the administration would prefer no limits on the right to sue tobacco makers, repeating earlier White House statements. But he added that Mr. Clinton would accept giving the industry the legal protections it seeks, if that was necessary to pass comprehensive tobacco legislation.

"Reasonable provisions modifying the civil liability of the tobacco industry would not be a deal-breaker," Mr. Ogden said.

But the difficulty of building political support to help tobacco makers was underscored by Senate Judiciary Committee member Richard Durbin, Illinois Democrat, who is a longtime industry foe.

"Should we reduce this process to one of let's make a deal, or should we do what we believe is right for the public health of America, whether the tobacco industry likes it or not?" he asked.

He said it would be "foolish to make concessions to the tobacco industry," when Congress could pass legislation banning most advertising on the grounds that it is aimed at children.

But Martin Redish, a Northwestern University School of Law professor argued that shutting down tobacco industry advertising would stifle one side of a national debate on "personal lifestyle choices and social good."

"Nothing could be further from the premises of the First Amendment," he said.

Parents may get break on schools

Bill would expand education IRAs

By John Godfrey
THE WASHINGTON TIMES

The Senate Finance Committee, on a nearly party-line vote, approved legislation yesterday that would allow people to pay elementary and secondary school expenses with money from tax-shielded savings accounts.

The legislation, which passed 11 to 8, would also increase the amount people could put each year in these types of accounts.

Similar legislation has passed the House. Senate aides say the measure will be brought to the floor for a vote in March.

Treasury Secretary Robert E. Rubin and Education Secretary Richard W. Riley have already recommended a veto.

"The bill disproportionately benefits the most affluent families and provides little benefit to lower and middle-income families," the two wrote in a letter Monday to Senate Finance Committee Chairman William V. Roth Jr., Delaware Republican.

According to the Treasury Department, 75 percent of the tax benefit would go to the top 20 percent of income earners.

Mr. Roth and the bill's original author, Sen. Paul Coverdell, Georgia Republican, call their proposal a double win — it encourages savings and gives students an alternative to public schools.

Last year's tax act created so-called Education IRAs into which people can contribute as much as $500 a year in after-tax dollars. Interest in the accounts accumulates tax free, and tax- and penalty-free withdrawals can be made for college-related expenses.

Mr. Roth's version of the Coverdell bill would increase the annual contribution limit to $2,000. It would also allow tax- and penalty-free withdrawals for elementary and secondary school expenses.

Debate over the legislation and the Finance Committee's markup of the bill are just a measure of the difficulties tax reform faces in upcoming months, said Sen. Don Nickles, Oklahoma Republican.

"It's going to be very difficult this year to get passed and signed into law any tax bill," Mr. Nickles said. Last year each side could force concessions from the other. This year that's not the case.

Mr. Roth had hoped to garner Democratic support for the measure by adding provisions with bipartisan support. He also tried to broker a deal on a provision that would have provided tax incentives for the construction of elementary and secondary schools.

His offer won over Sen. Carol Moseley-Braun, Illinois Democrat, but cost him support from several Republicans and even some conservative Democrats.

Mr. Roth spent the morning trying to rework an agreement.

"The committee remains deeply divided," Sen. Daniel Patrick Moynihan of New York, the highest ranking Democrat on the committee, said.

In the end, Mr. Roth inserted a more modest proposal to help schools float bonds and gained only two of nine Democrats' votes.

Asked whether he would continue to work for a bipartisan bill, Mr. Roth said: "I made a good faith effort. My goal is still there to work with the full committee."

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