

Approved \_\_\_\_\_

Date 2-27-9

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin L. Littlejohn at \_\_\_\_\_  
Chairperson

1:30 a.m./p.m. on February 21, 1989 in room 423-S of the Capitol.

All members were present except:

Representative Weimer, excused

Committee staff present:

Bill Wolff, Research  
Norman Furse, Revisor  
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Representative Elizabeth Baker  
Ron Hein, R.J.Reynolds Tobacco Company  
Dr. Gary Hulett, Under Secretary, Department of Health/Environment  
Steven J. Bellissimo, Vice President of Phoenix Marketing/Research,  
Long Island, New York  
Allen Alderson, Tobacco Institute  
Klausen Ely, Tobacco Institute  
William Henry, Phillip Morris Tobacco Company  
Paul Coleman, Ks. Tobacco/Candy Distributors and Vendors  
William Sneed, Smokeless Tobacco Council  
Chip Wheelen, Kansas Medical Society, printed testimony only.  
Jon Brax, Kansans for Life at its Best  
Representative Henry Helgerson  
Representative Bill Reardon  
Representative Gary Blumenthal  
Lila Paslay, Chairperson/Legislative Affairs/Association for  
Retarded Citizens of Kansas, Inc.

Chair called meeting to order, acknowledging persons in the audience i.e., Kansas Association of Local Health Departments, Kansas Association of Sanitarians, and Kansas Public Health Associations. He thanked them for attending.

Chair drew attention to Hearings to be held on **HB 2317, HB 2271, HB 2206.**

**HEARINGS BEGAN ON HB 2317:**

Representative Elizabeth Baker addressed HB 2317 as primary sponsor of the bill, noting her interest in the issues restricting the areas of smoking and sampling of tobacco products. She is concerned with the highly addictive quality of cigarettes and the level of addiction that occurs with persons that consume cigarettes, and that free samples of tobacco is a form of enticement. She would like committee to give this serious consideration when they take action on HB 2317. She cited an example of the Ks. Coliseum sponsors events such as Marlboro Tour and sample packages are given out. It is against the law to give samples to minors, but these samples do fall into the hands of minors.

Ron Hein, R. J. Reynolds Tobacco Company, (Attachment No.1), stated opposition for HB 2317. Sampling of cigarettes is done to convert smokers to other brands, not to encourage new smokers. No evidence has been presented that sampling encourages non-smokers to become smokers. In the absence of such evidence, he said, it is inappropriate for the State to interfere with the process of sampling, and to interfere with freedom of choice of smokers. He asked for the defeat of HB 2317.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 423, Statehouse, at 1:30 /a.m./p.m. on February 21, 1989

HEARINGS CONTINUED ON HB 2317:- - Dr. Gary Hulett, Department of Health and Environment, (Attachment No.2), noted they favor the passage of HB 2317. Their department feels the bill would assist in regulating distribution of samples of cigarettes and other tobacco products, which are a known health hazard. They feel sampling is an advertising ploy; feel these products are given away to convert users to their brands, and to induce non-users to become users of tobacco and tobacco products. He recommended favorable passage.

Mr. Allen Alderson, Tobacco Institute made no statement to HB 2317 at this point, but introduced Mr. Steve Bellissimo, and Mr. Klausen Ely, from the Tobacco Institute.

Mr. Bellissimo offered hand-out, (Attachment No.3). He is Vice President of Phoenix Marketing/Research, and noted companies like theirs are independent businesses, not tobacco companies. They perform contract work for cigarette manufacturers, and adhere to the Industry Code of Cigarette Sampling. He outlined the code regulations, i.e., primary purpose of sampling is to convert adult smokers 21 years or older to a brand most like what they currently smoke. Sampling is not to persuade non smokers to become smokers. They follow strict rules, i.e., no distribution to minors, no sampling to nonsmokers, no sampling within two blocks of centers of youth activity. He highlighted the contract his Company would use with a Tobacco Company, and a lengthy list of restrictions on cigarette sampling that is strictly followed. He answered questions.

Mr. Klausen Ely, Tobacco Institute, stated he had no printed testimony, but would provide it for the record in a few days. He stressed strong opposition to HB 2317. The Federal Government has already looked carefully at this question and has decided that sampling and couponing should not be banned and has issued a law that States and localities should not go any farther than the Federal Government has on this issue. He detailed the process followed by the Government since 1969 in the banning of broadcasting of cigarette advertising. At that time they carefully considered whether other forms of cigarette promotion should be banned, i.e., sampling/couponing. They sought to find a balance, and came to the conclusion not to ban the sampling/couponing. He called attention to the strict code of restrictions that is followed in the sampling process.

Mr. William Henry, Attorney for Phillip Morris, U.S.A. offered handout, (Attachment NO.4). He stated opposition to HB 2317, noting sampling is a competitive tool to switch smokers from one brand to another and is not designed to entice non-smokers to smoke. Phillip Morris supports their Industry's code, and adheres to those rules. He noted in countries where sampling and other cigarette marketing efforts have been prohibited, there is no showing that consumption has declined or smoking instance among minors declined. He asked for defeat of the bill.

Mr. Paul Coleman, Executive Secretary of Kansas Tobacco/Candy Distributors and Vendors. He noted their Association is a Trade Association of small business men and women who are opposed to HB 2317 because they feel existing state statutes are already in place that prohibit sampling to minors. There is also a code with restrictions to sampling in place that is enough restriction. He answered questions.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 423-S Statehouse, at 1:30 /a.m./p.m. on February 21, 1989

HEARINGS CONTINUE ON HB 2317:--

Mr. Sneed continued:--the proposed ban is likely to be found Unconstitutional as an impermissible restraint on free speech under the First Amendment. His hand-out included material on training of those persons who distribute samples; committment to advertising responsibility; and opinion from a firm in Washington C.C. on banning being Unconstitutional.

Chip Wheelen, Kansas Medical Society offered printed testimony only. (See Attachment No.6).

Jon Brax, Kansans for Life at Its Best, (Attachment No.7), addressed both HB 2317, and HB 2271. He noted there are some who are not fully aware of the health and economic problems caused by tobacco. Color advertisements and distribution of free samples are often given to a vulnerable group of people. He asked for favorable support of HB 2317.

Mr. Brax then spoke to HB 2271, noting since the House and Senate have banned smoking from their respective floors, and since Lobbyists are sometimes considered members of the "Third Chamber", he asked that smoking be banned from the entire third floor.

HEARINGS CLOSED ON HB 2317.

HEARINGS BEGAN ON HB 2271.

Representative Helgerson offered (Attachment NO.8), and spoke as the primary sponsor of this legislation. Other attachments to his testimony, Statutes on policy of smoking, (Attachment 8-A), Council on State Government report on smoking in public places, (Attachment 8-B), Executive Order from Governor Hayden on clean air policy in workplace, (Attachment 8-C). Rep. Helgerson asked for the opportunity to breath clean air in his work space. He noted this bill would not eliminate smoking in the Capitol, it would restrict it to an enclosed space. He asks the Capitol building make public areas, i.e., hallways, stairways, restricted against smoking. This would allow children and others in the building to breath cleaner air. Smoking could still be done in enclosed areas. He answered questions, i.e., employees having to leave building completely to smoke, and the costs lost in relation to time lost by employees away from their desks. There was discussion in relation to "closed space" definition.

Mr. Ron Hein, R. J. Reynolds Tobacco Company spoke to HB 2271. (Attachment No.9). He raised the question, perhaps it might be more appropriate to have this issue handled by Legislative Coordinating Council or a Resolution, rather than by State Law. He expressed concerns with the definition of "enclosed office", and "occupied by state officer or employee". He noted clarification should be made. He answered questions.

Dr. Gary Hulett, Department of Health and Environment offered hand-out, (Attachment No.10). The position of their Department is to recommend that smoking be prohibited in the State Capitol, except for enclosed offices which may be designated as amoking areas. He cited statistics from the Surgeon General's report from 1986, noting conclusions were that breathing other people's tobacco smoke causes lung cancer. Their Department supports HB 2271. He answered questions.

Mr. Furse gave information requested by committee in regard to penalties addressed in HB 2271. He noted it would be a \$20 fine for non-compliance and a \$50 fine for failing to post notice about smoking areas/restrictions.

Mr. Allen Alderson spoke to HB 2271, expressing concerns in language being too vague, i.e., "enclosed office", "state employee being present". He noted these are matters that can be taken care of under current law. He feels it would be bad precedent to have the Capitol Building be the first and only to specify that smoking is prohibited.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 423-S Statehouse, at 1:30 /a/m/ p.m. on February 21, 1989

HEARINGS CONTINUED ON HB 2271:-----

Mr. Bill Henry spoke to concerns in sub section (2); spoke to the difficult job of balancing public policy, and how far do we go in certain areas. He feels HB 2271 is starting to go over the edge.

Mr. Paul Coleman noted he too has the same questions in regard to boundries for smoking, non-smoking in HB 2271. He would prefer this bill not be passed as it is too open and subject to interpretation. He noted the first thing people see when they come in this building is not a Welcome sign, but where they can and cannot smoke.

Representative Bill Reardon spoke to HB 2271, noting as an educator he was asked by teachers in his school, if after legislation was passed last year in regard to schools not permitting smoking in buildings or on school grounds, if Legislators did the same thing about the Capitol building. He had to answer no, but feels if HB 2271 were passed, it would be a big improvement. He answered numerous questions. He favors HB 2271 and asked for its support.

HEARINGS CLOSED ON HB 2271.  
HEARINGS BEGAN ON HB 2206.

Rep. Blumenthal (Attachment No.11), stated he brought HB 2206 out, as a result of concerns when he was contacted by an individual who had worked in facility for the mentally retarded, who had suspicions that a client in that facility could be the victim of abuse. When the information was shared, there was hesitation regarding whether or not to inform the SRS office. HB 2206 will speak to this concern. If such an allegation has been made, it should be reported and allow appropriate investigations to be made. He noted many facilities are facing questions in regard to appropriate care, and feels this extended protection is vital. He answered questions.

Representative Reardon spoke to the support of HB 2206. He related how a reporting procedure works in the school systems, and how it could also relate to the reporting of abuse in facility for mentally retarded persons. He cited a carrot/stick approach. Carrot approach is, if an employee reports suspected abuse, in good faith, and the case is proven wrong, that employee cannot be sued. The stick approach is that if a person has reason to suspect abuse and does not report, then that person is going against the law. If this bill is passed, it won't completely solve all problems in this regard, but should help greatly.

Lila Paslay, Association for Retarded Citizens of Kansas, (Attachment No.12), urged for support of HB 2206, and offered an amendment to change language in lines 30-32. "Any individual with mental retardation/developmental disability receiving services through a licensed comprehensive community mental retardation center or served through a licensed resident care facility, community based residential facility or adult family home." She felt this language was better suited to current language being used.

Note Attachment No. 13- from American Lung Cancer. No verbal testimony given.

Meeting adjourned 3:00 p.m.

GUEST REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

Date 2/21

Name	Organization	Address
Mark Saworth	Close-up	Meade
Brad Craiger	" "	" "
Kathy Feldman	" "	Great Bend
Mark Nierdere	" "	" "
Lori Dougherty	" "	" "
FRANCES KASTNER	Ks Food Dealers Assn	Topeka
Ben Gurin	Close Up	Great Bend
Pete Heppner	Close Up	De Soto
Kenny McCallum	Close-Up	Olathe
Diane Bulon	Close-Up KS	Olathe
Katherine Calore	Close-Up Kansas	1912 Osage Olathe, Ks, 66002
Matt [unclear]	Close Up KS	Olathe, KS
Martha [unclear]	Kansas Public Health Dept	5435 Outlook Dr Missouri, KS 66202
Frank [unclear]	—	Overland Park
Pete [unclear]	—	Overland Park
Jan Wiebe	student - Bethel College	N. Newton, Ks.
Michael O. Quinn	R. J. Reynolds	Wichita KS
H.W. HAYNER	A. J. Hayner	Lenexa, Ks
Carol Lane	Assoc of Dept	Lyndon Ks
Sara Anschutz RW	" " " "	Lyndon Ks
Charley Gowdy	Close Up Kansas	Great Bend
Steve G. [unclear]	KDHE/KPHD	Hays Ks.
And [unclear]	R J Reynolds	Topeka

GUEST REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

Date 2-21-1989

Name	Organization	Address
Jan Michel	Am. Lung Assoc.	4300 Dunwoody Ln.
Janet N. McMill	Jo. Co. Health Dept.	301 B S. Clairborne <sup>Overland Park, KS</sup>
Burke Riley	Jo. Co. Health Dept	301 B S Clairborne <sup>Overland Park, KS</sup>
Constance K Murphy	Jo Co Health Dept	301-B South Clairborne <sup>Overland Park, KS</sup>
DICK TAYLOR	LIFE AT ITS BEST	TOPEKA
Sherrif Martin	Close-Up	Meade, KS 67864
Ron Ryckman	"	Meade, KS 67864
Allison Crown	"	Meade, KS 67864
Matt Lillie	"	Meade, KS 67864
Dug Farmer	"	Overland, KS 66062
Honny Koenig	"	Overland, KS 66062
CLAUSEN ELY	<del>TOBACCO</del> TOBACCO INSTITUTE	WASH. D.C.
STEVEN BELLISSIMO	TOBACCO INSTITUTE	N.Y. N.Y.
ARAN ANDERSON	TOBACCO INSTITUTE	TOPEKA
Paul D. Coleman	KS TOB - Can Dist & Vend.	434 SW Topeka Blvd @3
Lisa Gaslay	ARC of Kansas	Topeka
Ray Arvin	Topeka, KS	Citizen
Mary Belski	Topeka	Citizen
Rene McKenzie	Johnson County Health Dept.	Shawnee.
KETH K LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS	TOPEKA
Juli Viebrock	Johnson County Health Dept KPHA	Overland Park, KS
Karen Elliott	KPHA	Salina, KS 67401
Patte Martin	K.P.H.A.	Horton, KS 66439



TESTIMONY TO HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE  
ON BEHALF OF R. J. REYNOLDS TOBACCO USA  
RE: HB 2317  
BY RONALD R. HEIN  
FEBRUARY 21, 1989

Mr. Chairman, members of the committee:

My name is Ron Hein, and I am legislative counsel for R. J. Reynolds Tobacco USA. We oppose HB 2317 for a number of reasons.

First of all, proponents of anti-sampling legislation such as set out in HB 2317 generally state that their intent is to discourage the onset of new smokers. However, as was pointed out to this committee last year and as in the past, sampling is utilized for brand competition only. In the past, no evidence has been presented by proponents of this type of legislation to support their claim that sampling encourages non-smokers to become smokers. In the absence of such evidence, it is imprudent and unnecessary for the state to attempt to interfere in the brand selection process.

Secondly, it is important to note that sampling or distribution of tobacco products to minors is already prohibited by law. This bill prohibits distribution of tobacco products or sampling of tobacco products by adults. There has been significant encroachment by the government upon the freedoms of the people since our country's government was commenced more than two hundred years ago. This bill attempts to prohibit freedom of choice and freedom of activity by adult members of society in such a manner that it should be defeated.

Brand sampling is conducted by R. J. Reynolds and by other companies in the industry in a mature, responsible manner, and great care is taken to insure that sampling does not result in distribution to minors.

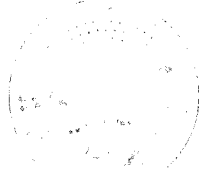
In conclusion, in years past, and once again this year, no evidence has been presented to justify this type of legislation. We would strongly urge you to defeat HB 2317.

Thank you very much for hearing our views on this matter, and I would yield for any questions.

*RH/W*  
*Attn. #1*  
*2-21-89*



STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

*Forbes Field*

*Topeka, Kansas 66620-0001*

*Phone (913) 296-1500*

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

Testimony presented to  
House Public Health and Welfare

by

The Kansas Department of Health and Environment

House Bill 2317

The Kansas Department of Health and Environment supports HB 2317 because it would assist in regulating the distribution of free samples of cigarettes and other tobacco products which are a known health hazard.

Tobacco companies have for a long time given away free cigarettes and chewing tobacco as an advertising ploy. This practice was and is especially popular around armed forces installations and college campuses. The majority of states have laws against the sale of cigarettes to persons under 18 years of age.

Tobacco companies give their products away not only to convert users to their brands but also to induce non-users to become users. The younger they can reach potential customers, the higher the conversion rate.

HB 2317 would prohibit the practice of giving away free cigarettes and other tobacco products to the general public regardless of age.

We support HB 2317 and recommend that it be passed.

Presented by: Gary K. Hulett, PhD  
Under Secretary

February 21, 1989

PH & W  
attn. #2  
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TESTIMONY OF STEVEN J. BELLISSIMO

My name is Steven J. Bellissimo. I am Vice President of Phoenix Marketing & Research, Inc., located in Long Island, New York. I have been involved in sampling tobacco products for eight years.

It is important that you understand that companies like mine are independent businesses. We are not tobacco companies. We perform contract work for cigarette manufacturers, and, in doing so, we adhere to the industry's Code of Cigarette Sampling Practices. I make this point to present an accurate assessment as to who else is affected by legislative action of this type.

Sampling is a marketing tool. It offers the consumer an opportunity to try another brand of a product he or she is already using. With cigarettes, the purpose of the sampling operation is to get smokers to try a new brand or variety of cigarettes, not to try to win new customers to the ranks of smokers.

In my opinion, there are many inaccuracies perceived about sampling objectives and methods. I would like to present more accurate explanations of the purpose of a sampling company and the rules we follow:

\* { 1) The primary purpose of a cigarette sampling campaign is to convert adult smokers 21 years of age or older to a brand which is most like he/she is currently smoking. It is not to persuade nonsmokers to become smokers.

\* { 2) The rules governing all sampling campaigns are taken directly from the Code of Cigarette Sampling Practices. These rules are major components of the contract we must sign before starting a campaign. My employees are instructed to ask in all instances -- "Are you a smoker?"

PAW  
Attn # 3

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They ask it only after determining that the person addressed is 21 years of age or older. These precedures are required by our contract and by the Code.

Violations of these very clear rules results in the loss of considerable dollars. More importantly, it is grounds for dismissal as an independent contractor. Local personnel not adhering to the rules are terminated on the spot. There are no exceptions. We cannot afford to jeopardize our contracts.

- 3) Sampling crews -- most of whom are local residents -- are trained in detail prior to the start of a promotion. These local workers are supervised by a full-time on-site manager. Each has agreed to abide by the Code of Cigarette Sampling Practices, and by the standards Phoenix Marketing has set. The workers know they will be fired if they breach the Code.
- 4) The rules we observe for cigarette sampling stay the same, regardless of the sampling location. In each case the rules include:

- . No distribution to minors,
- . No sampling to nonsmokers, and
- . No sampling within two blocks of centers of youth activity.

In conclusion, I state emphatically that anti-smoking groups have exaggerated, distorted and deliberately misled legislators around the country to believe that companies like mine and the tobacco companies have no regard for the non-smoking community or minors.

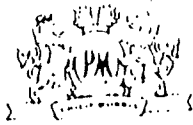
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Any claim that samplers deliberately give cigarettes to young people does not take into account how a sampler works or how much he desires to stay in business. I cannot help but feel that these detractors have something else in mind: the complete prohibition of a lawfully-made and legally-marketed product, a product for adult smokers not young people.

I strongly ask you to reject this bill and all bills to prohibit or curtail cigarette promotion and advertising. The industry polices itself, and there are local laws which prohibit the sale and/or sampling of tobacco products to minors.

Thank you for permitting me to express my point of view. I would be happy to answer any questions that you may have.

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# PHILIP MORRIS

U.S.A.

120 PARK AVENUE, NEW YORK, N.Y. 10017 TELEPHONE (212) 880-5000

AGREEMENT made as of \_\_\_\_\_ between PHILIP MORRIS  
U.S.A., a division of Philip Morris Incorporated, 120 Park  
Avenue, New York, New York 10017 ("PM") and PHOENIX MARKETING &  
RESEARCH, INC., 62 South Second Street, Suite 1, Deer Park, New  
York 11729 ("Sampler").

PM wishes to retain Sampler for certain services in connection  
with a sampling program of its \_\_\_\_\_ cigarette brands (the  
"Product"), and Sampler is experienced in performing such  
services and is agreeable to being retained by PM on the terms  
set out herein.

THEREFORE, the parties agree as follows:

1. Beginning \_\_\_\_\_ Sampler will effect the  
distribution of \_\_\_\_\_ samples of Product, furnished by PM,  
in accordance with the sampling program agreed on between  
the parties, to be conducted in the \_\_\_\_\_  
area during the period \_\_\_\_\_
2. Sampler agrees at all times to comply with the Code of  
Cigarette Sampling Practices attached as Exhibit A hereto.

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3. The services of Sampler under this Agreement will include selecting proper mass intercept locations in the market, including special events and a limited environmental delivery, and spacing distributors so as to minimize the probability of duplication; furnishing home office personnel to oversee and supervise the sampling program; recruiting suitable sampling distributors, drivers and helpers, all over twenty-one (21) years of age; holding orientation meetings for all such persons to go over all details and requirements of the program (it being understood that one or more PM personnel will participate in such meetings if reasonably possible but may in any event instruct Sampler at times to be covered in such meetings); transporting distributors, Product and related necessary materials to sampling locations; rendering reports upon completion of distribution supplying additional personnel to clean up discarded sample packs as necessary; creating a sampling plan with PM employees for effectively reaching potential consumers; establishing appropriate security measures to protect Product (it being understood that no Product will be left in vehicles overnight); and further related services as requested by PM.

4. Sampler will be paid against invoice the sum of \_\_\_\_\_ for each 1,000 samples distributed. PM will also furnish Product and necessary supplies. Included in the supplies will be the sampling carriers which will be delivered to the Sampler assembled.

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5. Sampler is an independent contractor and PM does not and will not have any actual, potential or other control over it except as otherwise set forth in the Agreement. None of Sampler's employees shall be or become employees of PM by reason of this Agreement.
6. Sampler shall procure and maintain in full force and effect Workmen's Compensation Insurance covering all employees of the Sampler performing services required by this Agreement. Sampler shall provide PM with a valid Certificate of Insurance confirming said Workmen's Compensation Insurance prior to
7. Without limiting paragraph 2 above, Sampler warrants that it will comply fully with all federal, state and municipal laws, regulations, rules and ordinances of every nature including, but not limited to, those relating to its distribution of sample cigarettes and other items pursuant to this Agreement and to its employment of personnel hereunder. Sampler will promptly advise PM if Sampler receives any notice from any governmental authority, or otherwise learns of any questions, relating to its services hereunder or any proposed or actual restriction upon them.
8. Sampler hereby indemnifies, saves and holds harmless PM and its subsidiaries and their officers, employees, directors and agents from any and all suites, damages, loss, liability, penalties (whether civil or criminal) and all

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expenses including reasonable attorney's fees arising out of or claimed to have arisen out of the negligent acts or omissions of Sampler, its employees, agents or assigns or arising out of or claimed to have arisen out of the performance of Sampler, its employees, agents or assigns of its warranties or obligations under this Agreement including, but not limited to, the breach of any warranty or obligation undertaken by Sampler hereunder of the furnishing of sample cigarettes and/or items to any person, whether or not by inadvertence, who is in fact under twenty-one (21) years of age, but excluding, however, claims for product liability, unless such claims arise from negligent acts or omissions of Sampler, its employees, agent or assigns.

9. Sampler gives its full assurance to PM that the sampling program will be conducted efficiently and effectively and to the complete satisfaction of PM.

10. PM may terminate the services of Sampler hereunder by written notice at any time. In the case of any termination, PM will pay Sampler all amounts owed to it in accordance with this Agreement to the time of termination.

11. All notices under this Agreement shall be in writing, signed by the party giving notice, and addressed as set forth at the beginning of this Agreement, if to PM to the attention of \_\_\_\_\_ and if to Sampler, to the attention of Mr. Vernon Dempsey, President. Notices shall

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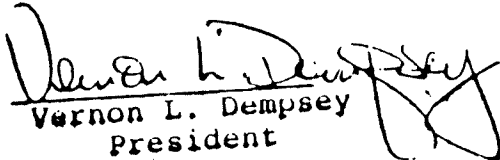


be effective when hand delivered or, if mailed, when deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested.

12. This Agreement may not be assigned by either party without the consent of the other. No modification to this Agreement shall be valid unless in writing and signed by the party to be charged. No waiver by either party of a breach of the other shall be deemed a waiver of any preceding or subsequent breach of the same or any other breach of the Agreement. This Agreement shall be governed by the laws of the State of New York.

Signed as of the date first set out above.

PHOENIX MARKETING &  
RESEARCH INC.

By:   
Vernon L. Dempsey  
President

PHILIP MORRIS U.S.A.

By: \_\_\_\_\_  
Brand Manager,

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CODE OF CIGARETTE SAMPLING PRACTICES

STATEMENT OF PURPOSE

Cigarette Sampling is a form of cigarette advertising conducted through the free distribution of sample packages of cigarettes directly to adult smokers. The purpose of the Code is to ensure that certain standards are observed in connection with cigarette sampling, particularly avoiding the distribution of cigarettes to minors and the disruption of pedestrian or vehicular traffic, and to provide a means whereby compliance with those standards can be monitored and enforced.

ARTICLE I

DEFINITIONS

1. "Sampling" means giving or distributing without charge packages of cigarettes in a public place for commercial advertising purposes ("cigarette samples"), but does not include isolated offerings of complimentary packages or the distribution of such packages to wholesale or retail customers or to company shareholders or employees in the normal course of business.

2. "Public place" includes any street, sidewalk, park, plaza, public mall, and the public areas of shopping centers and office buildings.

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ARTICLE II

RESTRICTIONS ON CIGARETTE SAMPLING

1. Persons who engage in sampling shall refuse to give a sample to any person whom they know to be under 21 years of age or who, without reasonable identification to the contrary, appears to be less than 21 years of age.

2. Sampling shall not be conducted in any public place within two blocks of any centers of youth activities, such as playgrounds, schools, college campuses, or fraternity or sorority houses.

3. The mails shall not be used to distribute unsolicited cigarette samples.

4. Persons who engage in sampling shall not urge any adult 21 years of age or over to accept a sample if the adult declines or refuses to accept such sample.

5. No cigarette samples shall be distributed by a sampler in a public place to any person in a vehicle.

6. Persons distributing cigarette samples shall secure their stocks of samples in safe locations to avoid inadvertent distribution of samples contrary to the provisions of the Article.

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7. Persons distributing cigarette samples shall avoid blocking or otherwise significantly impairing the flow of pedestrian traffic.

8. In the event that circumstances arise at the particular location that make it unlikely that sampling can be conducted in a manner consistent with the provisions of this Article, sampling shall be stopped at that location until such circumstances abate.

9. Persons distributing samples shall promptly dispose of empty sample boxes and shall take reasonable steps to ensure that no litter remains in the immediate area of sampling as a result of sampling activities.

### ARTICLE III

#### COMPLIANCE AND ENFORCEMENT PROVISIONS

1. Each cigarette manufacturer that subscribes to the Code shall impose by contract on all independent contractors who conduct cigarette sampling on the manufacturer's behalf a set of sampling standards no less stringent than those contained in this Code. In addition, each cigarette manufacturer shall require such sampling contractors to inform all personnel employed by the contractor who engage in sampling activities of the provisions of this Code, both orally and in writing.

2. Persons who engage in sampling shall be monitored on a periodic basis by supervisory personnel of the cigarette manufacturer and/or independent contractor for whom the sampling activities are being conducted to ensure compliance with the provisions of this Code.

3. Each cigarette manufacturer that subscribes to this Code shall take all reasonable steps to ensure that any person who engages in sampling and knowingly violates any of the provisions of Article II of this Code shall be discharged from employment as a cigarette sampler.

BRIEFING FORMAT FOR RIO MENTHOL

All persons participating in our sampling program must strictly adhere to the following:

1. Only SMOKERS, 21 years of age or older, are eligible to receive a free sample.
2. Only ONE sample is to be distributed to each person.
3. Distributors will ask each smoker their preference, Menthol Kings or Menthol 100's.
4. All personnel will be courteous. Your performance represents the high quality of all Philip Morris products.
5. No smoking or gum chewing is permissible while working. During breaks ONLY RIO Menthol is to be smoked. This insures a professional image and continuity with the promotion.
6. ONLY pedestrian traffic may receive a sample. Samples may not be distributed to anyone in a vehicle.
7. All distributors (FEMALES) will be provided with a uniform for the duration of the promotion. Crew suppliers (MALES) should wear dark or neutral trousers. NO Jeans (Designer Jeans included) or athletic footwear may be worn. Comfortable shoes should be worn. ALL promotional materials MUST be returned at the conclusion of the promotion. Failure to comply will delay in payment of your compensation.
8. Damaged product should NOT be distributed and must be reported to your Market Manager.
9. Security of the product is your responsibility: NEVER leave any material unprotected.
10. All questions pertaining to this promotion MUST be directed to your Market Manager. No discussions, interviews or photos are allowed with anyone.
11. In the event of a retailer complaint, STOP sampling immediately and notify your Market Manager.
12. I certify that I am 21 years of age or older and will carry proper identification ALL TIMES.

I FULLY understand the above rules, and any violation of these regulations will result in immediate dismissal.

AGENCY: \_\_\_\_\_  
NAME (PRINT): \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE #: \_\_\_\_\_ SOCIAL SECURITY #: \_\_\_\_\_  
DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

*Attn 2-3*  
*Pg. 13*  
*2-21-9*

*William M. Henry*

Attorney at Law  
627 S. Topeka, P.O. Box 477  
Topeka, Kansas 66601

Testimony for the  
House Public Health & Welfare Committee  
February 21, 1989  
In Opposition to H.B. 2317

Mr. Chairman, members of the committee I am Bill Henry, and I appear today on behalf of my client, Philip Morris, U.S.A. in opposition to H.B. 2317.

Philip Morris, U.S.A. is a tobacco product manufacturer which utilizes sampling in its marketing programs. It is the view of Philip Morris, U.S.A. that sampling is a competitive tool to switch smokers from one brand to another and sampling is not designed to entice non-smokers to begin to smoke.

As other representatives of the tobacco industry today will testify, the industry's own sampling code strictly forbids any distribution to persons under 21. Philip Morris supports this view and adheres to this rule. In fact in agreements with marketing groups there are strict provisions in the contracts that allow for the severance of the contract if any violation of state or local law occurs including any distribution to minors.

In Kansas, as in all other states Philip Morris, U.S.A., pays all applicable federal, state and local taxes on samples that are distributed and conforms with all federal and state laws and guidelines in regards to samples.

Finally, in countries where sampling and other cigarette marketing efforts have been prohibited, there has been no showing that cigarette consumption has declined nor has the smoking instance among minors declined in those areas where sampling has been prohibited.

Because of these reasons we respectfully hope you will oppose H.B. 2317 and report it unfavorably.

Respectfully submitted,

William M. Henry  
Attorney at Law

*PHW*  
*Attn #4*  
*2-21-89*

PREPARED STATEMENT  
OF THE SMOKELESS TOBACCO COUNCIL, INC.  
IN OPPOSITION TO H.B. 2317

February 19, 1989

Mr. Chairman, members of the Committee:

My name is Bill Sneed, and I am legislative counsel for the Smokeless Tobacco Council, Inc. The Smokeless Tobacco Council, Inc., an association of smokeless tobacco manufacturers with its headquarters in Washington, DC, appreciates the opportunity to present testimony in opposition to House Bill 2317. The bill appears to ban the distribution "without charge or at nominal cost cigarettes or any tobacco products" or "distribute cigarettes or tobacco products with the redemption of any coupon or similar marking artifice." The Smokeless Tobacco Council urges the House Public Health and Welfare Committee to reject this measure.

The Council represents the major domestic manufacturers of smokeless tobacco products, as well as the millions of consumers of smokeless tobacco products in Kansas and throughout the nation. We believe that banning the free distribution of tobacco products and coupons for such products is unwise, unnecessary, and unconstitutional.

To summarize our points:

\*First, as a matter of public policy, the State should not be engaged in an effort to prohibit the distribution of a lawful product.

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2-21-9



\*Second, to the extent the goal of the legislation is to keep tobacco products out of the hands of minors, the smokeless tobacco industry has undertaken extensive efforts over the past few years -- and will continue them -- to discourage use of its products by minors.

\*Third, the proposed ban is likely to be found unconstitutional as an impermissible restraint on free speech under the First Amendment to the US Constitution.

\*Also, we are attaching copies of two of our brochures demonstrating our commitment on this issue.

#### I. BAD PUBLIC POLICY

Without adequate basis, House Bill 2317 seeks to prohibit one form of advertising about a lawful product.

Product sampling is a common promotional technique widely used by the manufacturers of dozens of consumer products. The reason its done is straightforward -- to persuade the consumer to switch brands.

In the case of smokeless tobacco, sampling offers an opportunity to convey the most important quality of a tobacco product -- taste -- in a way that print advertising cannot. Smokeless consumers tend to be very loyal to their brand and sampling is an important means of fostering brand competition within the industry.

To ban only the distribution of tobacco products would be to discriminate unfairly against a single type of legal product

and would place an unreasonable and unnecessary restriction the industry's marketing options.

Secondly, if the intent of this legislation is to discourage use of a lawful product by adults, in addition to being unconstitutional and illegal, the bill is simply unnecessary. There is significant evidence that sampling of smokeless tobacco products does not generate additional consumption. Sampling of smokeless tobacco products was designed primarily to encourage an existing user of smokeless tobacco products to use a product of a different brand. Brand competition is the name of the game in sampling. Evidence to support a contention that sampling is used as a means of encouraging use of the product where it would otherwise not be used, or that such advertising has such an influence upon the general populace does not result from several significant studies in this area.

HB 2317 is an attempt by the State to utilize its police power in a field which has already been preempted by the Federal Government, and which constitutes an unconstitutional interference with free speech. There is significant case law with regard to what steps can be taken to limit advertising of a lawful product, especially where the Federal Government has preempted the field. In our opinion, the provisions of HB 2317 are not in compliance with constitutional, statutory, or common law requirements. In short, this legislation will not meet the tests necessary to be upheld as constitutional, in our opinion.

## II. YOUTH ISSUE

The Smokeless Tobacco Council is sensitive to concerns about the use of smokeless tobacco products by minors. The Council has long believed smokeless products are for adults only and has undertaken extensive measures to reinforce this policy.

First, the Council has encouraged state legislatures to enact laws to prohibit the sale or distribution of smokeless tobacco products to anyone under the age of 18. We have offered a model statute on this subject to various state legislatures across the United States.

Second, the member companies of the Smokeless Tobacco Council have voluntarily adopted the Code of the Smokeless Tobacco Industry which governs their advertising and sample distribution practices. A copy of the Code is found in the green folder. The Code specifically states:

\*Smokeless tobacco samples shall be distributed only to persons who are at least 18 years of age. Persons who appear to be under 18 years of age shall be required to furnish proof of age.

\*No sampling shall be conducted within two blocks of any premises identified as being used primarily for youth activities, such as schools or organized youth centers, at times when such premises are being used for their primary purpose.

\*No unsolicited samples shall be sent through the mail.

\*All sampling activities shall be conducted in compliance with local and state laws and ordinances.

\*All persons conducting sampling activities -- whether in direct employ or as agents of the Subscribers to the Code -- shall be furnished copies of this code and shall agree to comply with its terms.

\*All persons conducting sampling activities shall be at least 18 years of age.

Before employees are allowed to participate in sampling activities, they must complete a detailed training course familiarizing them with the techniques of responsible sampling.

In-house training includes:

\*How to keep sample products secure and under control at all times;

\*How to properly request and determine proof of age and the importance of doing so before samples are distributed;

\*The most effective way to display lapel buttons and table placards that carry the industry's message, "No Tobacco Samples Given to Anyone Under 18 Years of Age;"

\*Familiarization with areas where sampling is not permitted -- such as youth centers and schools -- in accordance with industry policy.

\*Familiarization with the strict policies governing sampling activities contained in the official Code of the Smokeless Tobacco Industry;

\*Each employee signing a statement indicating their understanding and agreement to above by each provision in the Code of the Smokeless Tobacco Industry.

To demonstrate the industry's commitment to stand behind its voluntary Code, the Smokeless Tobacco Council, in 1986, worked with The California Assembly to add a new section to the California Business and Professions Code which essentially enacts the industry Code into state law. The law regulates mail-in coupon sampling, requires that appropriate efforts are made to ascertain the age of persons requesting smokeless samples, prohibits the distribution of samples within a 2-block radius of any premises or facilities whose primary purpose is directed toward persons under the age of 18, and prohibits the distribution of unsolicited samples of smokeless tobacco products through a mail campaign.

This law was signed by Governor Deukmejian on July 11, 1986 and the Council is not aware of any instances in which the law is alleged to have been violated.

Finally, the Smokeless Tobacco Council has conducted a public awareness campaign to prevent the sale of smokeless tobacco products to those under 18 years of age and also to discourage its use by minors. This campaign has included public service announcements on television, a series of open letters to parents, teachers, and high school coaches printed in magazines and newspapers, point of purchase materials informing retailers of the industry's minimum age policy, as well as a nationwide program of advertisements.

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In short, there should be no mistake about the policy and intent of smokeless tobacco manufacturers; we do not want persons under 18 to use smokeless tobacco products and are taking every reasonable precaution to ensure that such use does not occur. Banning the distribution of samples and coupons, therefore, is unnecessary to accomplish the goal of discouraging use of smokeless tobacco products by minors.

#### **UNCONSTITUTIONAL RESTRAINT**

The smokeless Tobacco Council believes any effort to ban the advertising of tobacco products would be found unconstitutional because it violates the First Amendment. (We also believe it to have been preempted by congressional enactment of P.L. 91-222 and P.L. 99-252.) Since the distribution of samples and coupons serves the same purpose as advertising (i.e., informing the public about the availability and characteristics of a product), it is entitled to the same protection as advertising. There is significant case law with regard to what steps can be taken to limit advertising of a lawful product, especially where the Federal Government has preempted the field. In our opinion, the provisions of House Bill 2317 are not in compliance with the constitutional, statutory, or common law requirements. In short, this legislation will not meet the tests necessary to be upheld as constitutional.

The Smokeless Tobacco Council has prepared a memorandum for the committee summarizing the legal basis for our view that a

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sampling ban would be held unconstitutional. This memorandum has been submitted to the committee under separate cover.

#### CONCLUSION

The Smokeless Tobacco Council opposes enactment of H.B. 2317 because it believes banning the free distribution of smokeless tobacco products and coupons is unreasonably burdensome on the industry, unconstitutional, and unnecessary to prevent smokeless tobacco products from being distributed to minors. The industry has demonstrated its commitment to responsible sampling practices and opposes any bill which would prohibit the legitimate commercial practice of offering samples of tobacco products to adults.

We appreciate this opportunity to appear before the committee today.

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2-21-9

# Taking Our Responsibility Seriously . . .



**ADULT PRODUCTS,  
RESPONSIBLE MARKETING**

*Attn #5  
2-21-9*





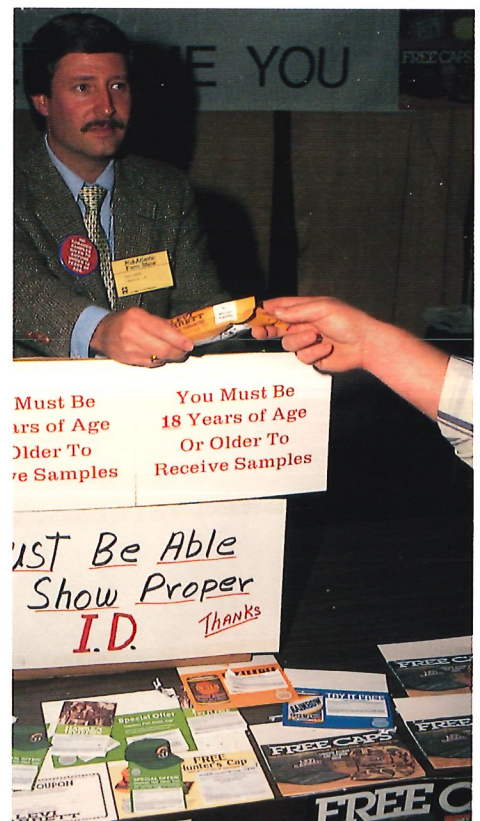
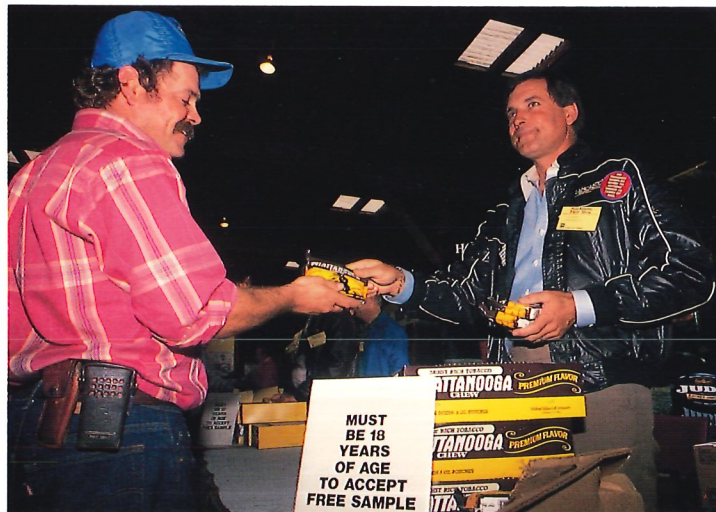
**PRODUCT SAMPLING** is a legitimate promotional technique whereby free samples of a commodity are offered to consumers through the distribution of either trial samples or redeemable coupons. Sampling is widely practiced by the makers of many products — cheese, toothpaste, sausage and soap — to persuade people to try, and ultimately use, their brands rather than those of their competitors.

Sampling gives manufacturers the opportunity for direct contact with consumers of smokeless tobacco; the means to convey the qualities of a particular brand in ways that advertising cannot. Smokeless tobacco sampling enables people to experience the all-important quality of taste, so that they may make more informed judgments about which products they prefer. Like other manufacturers, the makers of smokeless tobacco recognize the effectiveness of sampling in encouraging consumers to switch brands.

Fueled by concerns that smokeless tobacco not be distributed to minors, proposals are sometimes made to ban outright the sampling of these products — even to adults. The Smokeless Tobacco Council (STC) considers such proposals not only unnecessary, but unreasonable and discriminatory restrictions on a legitimate, time-honored industry.

The members of the Council make every reasonable effort — including supporting minimum-age-of-purchase legislation — to ensure that their products are marketed and sold to adults only. Their sampling programs are carefully targeted to existing adult consumers, using sample distribution at sporting events (such as rodeos, fishing tournaments and automobile races) frequented by adults.

This booklet describes the in-house employee training program, strict guidelines and enforcement methods STC member companies employ to ensure their sampling efforts are directed *TO ADULTS ONLY*.



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## MEMBER COMPANY TRAINING

Before employees are allowed to participate in sampling activities, they must complete a detailed training course familiarizing them with the techniques of responsible sampling.

Employee training programs include instruction in the following areas:

- How to keep sample products secure and under control at all times;
- How to request proof of age and the importance of doing so before samples are distributed;
- How to effectively display lapel buttons and table placards carrying the industry's message, "No Tobacco Samples Given to Anyone Under 18 Years of Age;"
- Where sampling is not permitted — such as youth centers and schools — in accordance with industry policy;
- Applicable state and local laws and regulations; and
- Familiarization with the strict policies governing sampling activities contained in the official *Code of the Smokeless Tobacco Industry*.

Upon completion of sampling training, each employee signs a statement indicating a full understanding of and agreement to abide by each provision in the *Code of the Smokeless Tobacco Industry*.

Employees found to have violated any of these policies are immediately removed from sampling activity. Disciplinary action, including possible dismissal, varies based on individual review.



**"YOUR STAFF WAS GREAT TO WORK WITH AS ALWAYS AND WAS VERY CONSCIENTIOUS AS TO SAMPLING POLICIES . . . (THEY) DID A GREAT JOB OF SAMPLING THE ADULT ATTENDEES ONLY."**

Mr. Dave Davis  
Historical Tobacco Company  
6030 West Broad Street  
Richmond, VA 23293

Dear Dave:

It was certainly a pleasure having the Historical Tobacco Company as a sponsor during the 1988 Kentucky State Fair. The staff was very professional and very helpful along with the Kentucky Park Products, your co-sponsor.

Your staff was great to work with and very conscientious as to sampling policies.



**NATIONAL CHAMPIONSHIP RACING ASSOCIATION**  
1211 SOUTH 101 EAST AVENUE • TULSA, OKLAHOMA 74106-4629 • (918) 435-4242

September 20, 1988

Bobby L. Roberts  
Manager of Special Events  
Historical Tobacco Company  
1015 Eldorado Avenue  
Charlottesville, VA 22914

Dear Bobby:

Just a note to tell you again how much I appreciate the support the Historical Tobacco Company has given to our sport.

**"I HAVE BEEN PARTICULARLY PROUD OF YOUR PEOPLE FOR THEIR DEDICATION TO SAMPLING OUR ADULT FANS AND THE COURTEOUS MANNER IN WHICH THEY REFUSE TO SAMPLE TO THE YOUNGER FANS . . ."**

Your people were very professional and very helpful in handling the younger fans at our event. I have been particularly proud of your people and the courteous manner in which they refused to sample to the younger fans at our event.

Dear Bobby:

I have to

congratulate you

on the success of

the sampling

at our event.

We hope

that will

**Dodge**  
**National Circuit**  
**Finals Rodeo**

April 6, 1988

Jim Hudson  
P.O. Tobacco Company  
1743 S. Division, Suite 100  
Alhambra, California 91706

Dear Jim:

I "old hand", hope you are keeping in shape for next year's race. We're going to make it more interesting for you next year. Keep the people interested.

**"THE GUYS WERE EXTREMELY PROFESSIONAL IN SAMPLING THE CROWD . . ."**

Your staff was very professional in sampling the crowd at our event. I have been particularly proud of your people and the courteous manner in which they refused to sample to the younger fans at our event.

**Jim Morrison & Associates, Inc.**



South Georgia Office  
P.O. Box 1144  
2801 First Kings George Lane  
Darien, Georgia 31705  
912-437-1962

North Georgia Office  
410 W. Union Drive  
Tucker, Georgia 30084  
404-299-4733



Sept. 7, 1988

**"I ESPECIALLY WANT TO COMPLIMENT YOUR PEOPLE FOR THE HIGHLY PROFESSIONAL MANNER IN WHICH THEY DISTRIBUTE SAMPLES AT THE SHOWS, INCLUDING THE DIPLOMATIC YET EFFECTIVE WAY THAT THEY INSURE THAT NO ONE UNDER 18 RECEIVES SAMPLES."**

Needless to say, Hootan is a real hit with our spectators to seeing you at the show. Since discovering how popular you are, I have made sure I continued your participation in all of the shows for the past two years.

I especially want to compliment your people for the manner in which they distribute samples at the shows, including the effective way that they insure that no one under 18 receives a sample in the 16 shows that I have produced in the past 6 months.

I'm looking forward to working with you again in the many, many years to come!

Please let me know of any way in which I can be of service to you.

Sincerely,  
Jim Morrison  
President

**National Peanut Festival Association**  
1691 Ross Clark Circle, S.E. • Dothan, Alabama 36301/205-783-4323

Mr. H. C. Taylor  
National Sales Manager  
Dorland Company, L. P.  
Memphis, Tennessee 38101

Dear Sir:

We of the National Peanut Festival strive to bring you the best part in our festival have provided such a service. They have conducted themselves and have observed that we are always very conscientious as to sampling policies.

**"... THEY ARE EXTREMELY CAREFUL THAT THEIR SAMPLES ARE ALWAYS UNDER COMPLETE CONTROL."**

We are pleased to have you as a sponsor with George Petrey and the other representatives, and look forward to their participation in next year's National Peanut Festival.

Sincerely,

Andi Mack  
President  
National Peanut Festival

## SMOKELESS TOBACCO IS NOT FOR KIDS

The members of the Smokeless Tobacco Council are committed to the principle that “smokeless tobacco is NOT for kids.” In accordance with their longstanding policy, STC members affirm 18 years as the minimum age for purchase of smokeless tobacco products.

Beyond that, the Council has established a Code setting out strict policies governing the advertising and promotion of smokeless tobacco products. Among the provisions that concern sampling are the following:

- Smokeless tobacco samples shall be distributed only to persons who are at least 18 years of age. Persons who appear to be under 18 years of age shall be required to furnish proof of age.
- No sampling shall be conducted within two blocks of any premises identified as being used primarily for youth activities, such as schools or organized youth centers, at times when such premises are being used for their primary purpose.
- All sampling activities shall be conducted in compliance with state and local laws.
- All persons conducting sampling activities—whether directly employed by or acting as agents of the subscribers to the Code— shall be furnished copies of this Code and shall agree to comply with its terms.
- All persons conducting sampling activities shall be at least 18 years of age.

### COUPON SAMPLING:

- No unsolicited samples shall be sent through the mail.
- Promotional offers of smokeless tobacco products and of premium items that require proof of purchase of smokeless tobacco products shall carry the designation “Offer not available to minors” and, on the coupon for mail-in offers, a statement by which the person requesting the product certifies that he or she is at least 18 years of age.
- Mail-in and telephone requests for smokeless tobacco products may be honored by a company if it can be reasonably ascertained that the intended recipients are at least 18 years of age.



## THE SMOKELESS TOBACCO COUNCIL

1925 K Street, NW, Suite 504  
Washington, DC 20006  
(202) 452-1252

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Smokeless  
tobacco  
is *not*  
for kids!

PHW  
attn #5  
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**F**or years, the members of the Smokeless Tobacco Council have voluntarily adhered to the principles set forth in *The Code of the Smokeless Tobacco Industry*—a longstanding industry creed setting strict policies governing the advertising and marketing of smokeless tobacco products.

In addition to formally stating the industry's position, the *Code* has had another purpose: to serve as the cornerstone for a broad and aggressive public awareness campaign enlisting the support of adult authority figures—parents, educators and retailers—for the principle that "smokeless tobacco is *NOT* for kids."

This ongoing education effort has evolved and been refined over the years to help the Council reach different audiences through various media. The following pages detail the magnitude and range of the smokeless tobacco industry's efforts to communicate to the public the principle that smokeless tobacco use is a privilege properly reserved *for adults only*.

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# THE CODE of the Smokeless Tobacco Industry

In order to ensure that the advertising and the sampling or free distribution of smokeless tobacco products — chewing tobacco and snuff — are conducted in a responsible and uniform manner, the Subscribing Members of the Smokeless Tobacco Industry Code, hereby adopt and make known to all the following standards. In accordance with their longstanding policy, the Subscribing Members confirm 18 years as the minimum age for purchase of smokeless tobacco products.

## ADVERTISING

- Smokeless tobacco advertisements shall be directed to adults and shall not appear in publications that are primarily youth-oriented.
- Models who appear in smokeless tobacco advertising shall be at least 25 years of age.
- No athlete actively competing in professional sports shall be used to present any smokeless tobacco product in any advertisements by way of oral or written endorsement or by depiction of use of any such product.
- No professional entertainer who appeals primarily to persons under the age of 18 shall be used to present any smokeless tobacco product in any advertisements by way of oral or written endorsement or by depiction of use of any such product.
- Promotional offers of smokeless tobacco products and of premium items that require proof of purchase of smokeless tobacco products shall carry the designation "Offer not available to minors" and, on the coupon for mail-in offers, a statement by which the person requesting product certifies that (s)he is 18 years of age or older.
- Mail-in and telephone requests for smokeless tobacco products may be honored by a company if it can be reasonably ascertained that the intended recipients are at least 18 years of age.

## SAMPLING

- Smokeless tobacco samples shall be distributed only to persons who are at least 18 years of age. Persons who appear to be under 18 years of age shall be required to furnish proof of age.
- No sampling shall be conducted within two blocks of any premises identified as being used primarily for youth activities, such as schools or organized youth centers, at times when such premises are being used for their primary purpose.
- Sample products shall be kept secure and under control at all times, so that samples will not be obtained by persons under 18 years of age.
- No unsolicited samples shall be sent through the mails.
- Persons conducting sampling activities shall do so in such manner as to avoid the impairment or obstruction of orderly pedestrian and vehicular traffic.
- Persons conducting sampling shall ensure that no littering or unsightly conditions are created as a result of the activity.
- All sampling activities shall be conducted in compliance with state and local laws and ordinances.
- All persons conducting sampling activities — whether in the direct employ or as agents of the Subscribers to the Code — shall be furnished copies of this Code and shall agree to comply with its terms.
- All persons conducting sampling activities shall be at least 18 years of age.
- Persons found to have violated any provisions of this Code shall be immediately removed from sampling activities and disciplined.

We, the Subscribing Members, shall monitor and enforce the provisions of this Code in order to ensure compliance.



Smokeless Tobacco Council, Inc., 1925 K Street, NW, Suite 504, Washington, DC 20006

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# Public Service Announcement

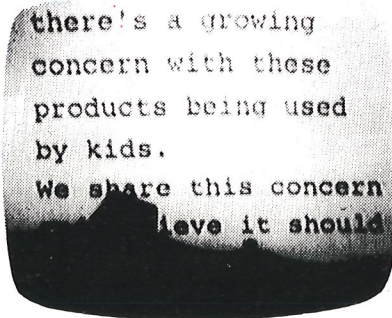
## ADULTS ONLY



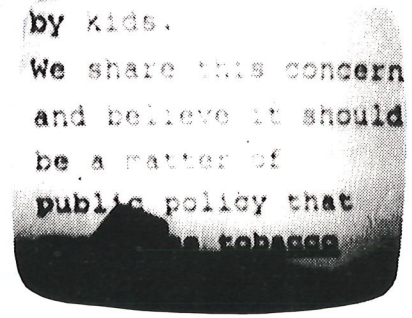
(MUSICAL TONE)



ANNCR. (V.O.):  
ADULTS ONLY!

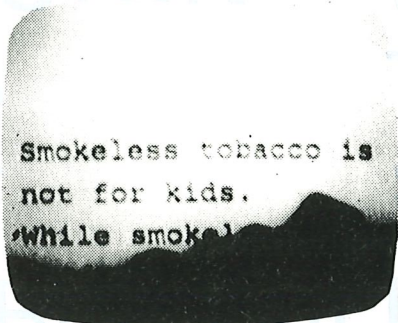


there's a growing concern with these products being used by kids.

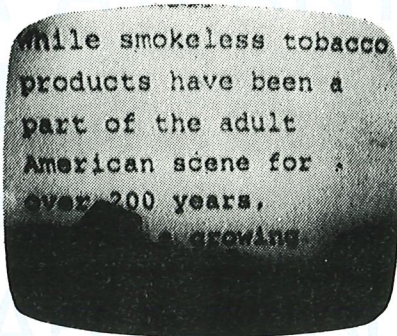


We share this concern and believe it should be a matter of public policy that

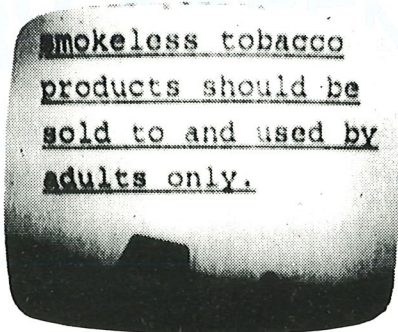
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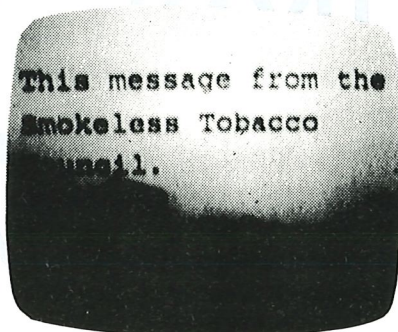
(TELETYPE SFX)  
Smokeless tobacco is not for kids.



While smokeless tobacco products have been a part of the adult American scene for over 200 years,



*Smokeless tobacco products should be sold to and used by adults only.*



This message from the Smokeless Tobacco Council.

Several years ago, the Council developed a hard-hitting and effective public service announcement reinforcing the fundamental rule that smokeless tobacco use is an *adult* custom. The 60-second spot featured the industry's primary message—"smokeless tobacco is *NOT* for kids"—and was released to some 300 television stations nationwide and seen by millions of Americans in nearly all major media markets.

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R KIDS

RE TO SELL CHEWING TOBACCO TO A  
ACCO AND  
PERSONS  
S THE POLIC  
SELL CH

# Smokeless tobacco and youth...

**know the law and obey it.**  
Laws in 36 states establish a minimum age  
for purchasing chewing tobacco and snuff.

## Minimum age requirement for purchase of smokeless tobacco products\*

15 and over

Hawaii

16 and over

Connecticut

Illinois

Indiana

Maryland

New Jersey

Pennsylvania

Texas

17 and over

Delaware

Vermont

18 and over

Arizona

Arkansas

California

Florida

Idaho

Iowa

Maine

Massachusetts

Michigan

Minnesota

Mississippi

Nebraska

Nevada

New Mexico

New York

North Dakota

Ohio

Oklahoma

Oregon

South Carolina

Tennessee

Washington

West Virginia

Wyoming

19 and over

Utah

\*verified August 1985

is the policy  
this store to sell  
chewing tobacco and snuff  
only to persons 18 or older.

do not be offended  
ask for proof of age.

Smokeless  
Tobacco  
Council, Inc.

If your state is not on the list, or if the min-  
imum age in your state is less than 18, the  
Smokeless Tobacco Council urges you to  
adopt its policy—sell chewing tobacco and  
snuff only to persons 18 or older.



Smokeless  
Tobacco  
Council, Inc.

Washington, D.C.

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TO SELL CHEWING TOBACCO AND



# Editorial

## SETTING THE RECORD STRAIGHT

For the Record...

**“**

***The Phoenix Gazette***

**FOR ADULTS ONLY**

**On smokeless tobacco**

By MICHAEL J. KERRIGAN  
*Michael J. Kerrigan is president of the Smokeless Tobacco Council, the Washington-based trade association which represents the manufacturers of chewing tobacco and snuff.*

From ancient Greece and Rome to modern America, societies have traditionally honored the transition from childhood to adulthood.

Practically everyone agrees that some things are for adults only: serving in the armed forces, consuming alcohol, using tobacco and other adult products, voting, and running for public office are for adults. Our belief is reflected by the laws codifying each of these privileges.

The members of the Smokeless Tobacco Council accept this principle unequivocally. They understand that the decision to use smokeless tobacco should be made by adults only.

This is why they do not condone nor encourage the use of chewing tobacco or snuff by those under 18 years of age.

As a responsible industry, we have invested significant time, energy and resources in measures designed to inform parents, guidance counselors, smokeless tobacco retailers and others that, as stated in The Code of the Smokeless Tobacco Industry, "...the Subscribing Members confirm 18 years as the minimum age for purchase of smokeless tobacco products."

The Code, which is subscribed to by the vast majority of companies that produce the vast majority of smokeless tobacco consumed in the United States, prohibits advertising to anyone except adults.

For example, advertisements cannot be placed in youth-oriented publications. Active athletes and entertainers appealing to the youth market are barred from promoting smokeless tobacco; models appearing in ads shall be at least 30 years of age.

It further prohibits the distribution of samples of smokeless tobacco products to anyone younger than 18 years and requires proof of age as a safeguard.

The Council backs its Code with a model age-of-purchase statute developed for state legislatures.

This legislation would serve the public interest better in those states having no minimum age legislation as well as in states that permit those under 18 to purchase smokeless tobacco products. We have testified in support of this legislation on numerous occasions.


The Council is also opposed to marketing campaigns by other industries that are directed at children in which such products as bubble gum — manufactured and packaged to look like chewing tobacco — are aggressively promoted.

The smokeless tobacco industry is committed to the accepted societal norm of "adults only" and is deeply concerned about the misuse of its products.

The manufacture of smokeless tobacco is a 200-year-old industry with a proud history of economic and cultural contribution to the American way of life. We recognize our responsibilities and duties.

As the record shows, we have expended — and will continue to exert — all efforts necessary to enlist the participation of those who care about America's youth in helping us to carry out our policy: "Smokeless tobacco is NOT for kids."

**”**

 Smokeless Tobacco Council, Inc.  
1925 K Street, N.W. Suite 504 Washington, D.C. 20006

**T**he Smokeless Tobacco Council delivers its message directly to the public in the editorial-opinion pages of our nation's newspapers. As a matter of practice, the Council aggressively seeks out opportunities for timely editorial comment and attempts to set the record straight by faithfully and persistently responding to media coverage that suggests a misunderstanding of the Council's policies. Smokeless Tobacco Council opinion articles and letters to the editor have appeared in scores of newspapers and magazines across the country, reaching millions of readers.

#15  
Pg. 20  
2-21-79

For the Record...

# The Herald-Advocate

87th Year

An Invited Guest In Over 90% Of The Homes In Harder Counties

Wauchula Florida • Thursday, September 10, 1987

Letter To The Editor

## Smokeless Tobacco Is Not For Kids

Dear Editor:

In "More Males Using Smokeless Tobacco," (July 23), you charged that "youths also may be influenced by popular athletes, particularly baseball players, who have been shown in advertisements as users of smokeless tobacco."

I would like to set the record straight in this matter. The Code of

the Smokeless Tobacco Industry supports and has testified in favor of state legislation establishing 18 as the minimum age of purchase for smokeless tobacco products.

Sincerely,  
Michael J. Kerrigan  
President  
Smokeless Tobacco Council, Inc.

(EDITOR'S NOTE: The July 23 article was a news release based on research by Dr. Robert McDermott, of the University of South Florida.)

Smokeless Tobacco Council, Inc.

September 1, 1987

The Herald-Advocate  
Post Office Box 338  
Wauchula, Florida 33873

Dear Editor:

In "More Males Using Smokeless Tobacco," (July 23), you charged that "youths also may be influenced by popular athletes, particularly baseball players, who have been shown in advertisements as users of smokeless tobacco."

I would like to set the record straight in this matter. The Code of the Smokeless Tobacco Industry states: "No athlete actively competing in professional sports shall be used to present any smokeless tobacco products in any advertisements by way of oral or written endorsement or by depiction of use of any such product."

Additionally, the industry maintains a strong public awareness campaign that seeks to inform parents, teachers, athletic coaches, convenience store retailers and other youth authority figures of its policy that smokeless tobacco is NOT for kids.

It should also be noted that the Code of the Smokeless Tobacco Industry sets 18 years as the minimum age of purchase for smokeless tobacco products. The industry supports and has testified in favor of state legislation establishing 18 as the minimum age of purchase for smokeless tobacco products.

Sincerely,  
*Michael J. Kerrigan*  
Michael J. Kerrigan  
President

- The Washington Post
- New York Medical Tribune
- Wauchula Herald-Advocate
- Williamston Journal
- Chicago Defender
- Peoria Times
- Circleville Herald
- Sturgis Times-Tribune
- Knickerbocker News
- Traverse City Record Eagle
- Pierre Capital Journal
- The Phoenix Gazette
- Danville Commercial News
- Ottawa Daily Times
- Chicago Sun-Times
- Southern Illinoisian
- Cass County Star-Herald
- Excelsior Springs Standard
- Ste. Genevieve Herald
- The Pemiscot Journal
- Maysville Record-Herald
- Granby News
- The Fort Gateway Daily Guide
- The Mexico Ledger
- The Potosi Independent Journal
- Lexington News
- Seymour Citizen
- Baton Rouge Morning Advocate
- The Wisconsin State Journal
- The Patriot Ledger
- The Intermountain Jewish News
- The Grit

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*Pg. 21*  
*2-21-9*



# Advertisements BECAUSE WE CARE

THE WASHINGTON POST INS  
PARADE MAGAZINE  
BOSTON HERALD  
FLINT JOURNAL D  
HELENA INDEPENDENT  
RECORD  
LINCOLN JOURNAL  
TRENTON TIMES  
EDUCATION WEEK  
SAN DIEGO UNION  
MIAMI HERALD  
MINNEAPOLIS STAR & TRIBUNE  
CONVENIENCE STORE MERCHA

Some things are still for adults only.

Smokeless tobacco is intended exclusively for the enjoyment of persons 18 years old or older. So, if you're under 18, please don't attempt to buy it, and if you're a retailer, please refrain from selling it to people under 18.

*PH & W  
attempts  
Pg. 22  
2-21-9*



**Smokeless Tobacco Council, Inc.**

Any questions or comments should be directed to:  
Michael J. Kerrigan, Pres.  
Smokeless Tobacco Council, Inc.  
1925 K Street, N.W.  
Washington, D.C. 20006

*This advertisement is part of a Public Service Campaign to support the Council's policy that chewing tobacco and snuff are intended for adults only.*

TRUCTOR  
PHOENIX  
RT W  
OKAN  
JOHNS  
DEMOC  
CHARLES  
CK DEMOCRA  
PEND  
T  
F  
C  
S  
BANGOR  
SCHOLASTIC CLAC  
SACRAMENTO BEE  
NDISER EUGENE REGISTER GUAR

**Because we care**  
an open letter  
to America's  
convenience store retailers  
from the  
Smokeless Tobacco Council


Dear Retailer:

We want you to know the policy of the smokeless tobacco that chewing tobacco and snuff are not for those under 18. This is part of our official Code of the Smokeless Tobacco Industry. Although there are laws in 40 states which establish a minimum age for purchase, these laws vary. We ask you to know your state's laws by it. In those cases where the minimum age is less than 18, you strictly enforce our minimum age policy.

You see, we firmly believe that smokeless tobacco is an adult product. That our products, like serving in the military, or voting and holding public office, are still for adults only.

So the next time you are not sure if you are old enough to buy smokeless tobacco, it may take a little more time, but won't you please help us to enforce our policy?

Since  
*Michael J. Kerrigan*

 Smokeless Tobacco Council  
1925 K Street, N.W.  
Suite 504  
Washington, D.C. 20006

**Because we care**  
an open letter to  
America's teachers  
from the  
Smokeless Tobacco Council

Dear Teacher:

Did you know that the use of chewing tobacco is our official policy of the Smokeless Tobacco Industry?

Smokeless Tobacco Council

**Because we care**  
an open letter to  
America's elementary and  
high school coaches  
from the  
Smokeless Tobacco Council

Dear Coach:

Did you know that the tobacco industry actively discourages the use of chewing tobacco and snuff by those under 18 years of age? It is our official policy, part of The Code of the Smokeless Tobacco Industry.

You see, we believe that some things are still for adults only. Like serving in the military, or voting and holding public office.

And because we care about the kinds of choices our children make, I am writing to you to ask for your help. The next time you and your children talk about adult issues, tell them what we say about smokeless tobacco.

We say "Smokeless tobacco is NOT for kids."

Why? Because that has been our policy for a long time. Smokeless tobacco is an adult custom; has been ever since our industry began more than 200 years ago. We believe adult Americans have the information and the right to make choices for themselves, including using our products. Isn't that what our democracy is all about?

But we also believe we have a duty to help our children learn how to make responsible decisions, free from peer pressure.

Won't you please help us? We care.

Sincerely yours,  
*Michael J. Kerrigan*  
Michael J. Kerrigan  
President  
Smokeless Tobacco Council

Smokeless Tobacco Council, Inc.  
1925 K Street, N.W. Suite 504 Washington, D.C. 20006

**Because we care**  
an open letter to  
America's parents  
from the  
Smokeless Tobacco Council

Dear Parents:

Did you know the smokeless tobacco industry actively discourages the use of chewing tobacco and snuff by those under 18 years of age? It is our official policy, part of The Code of the Smokeless Tobacco Industry.

You see, we believe that some things are still for adults only. Like serving in the military, or voting and holding public office.

And because we care about the kinds of choices our children make, I am writing to you to ask for your help. The next time you and your children talk about adult issues, tell them what we say about smokeless tobacco.

We say "Smokeless tobacco is NOT for kids."


Why? Because that has been our policy for a long time. Smokeless tobacco is an adult custom; has been ever since our industry began more than 200 years ago. We believe adult Americans have the information and the right to make choices for themselves, including using our products. Isn't that what our democracy is all about?

But we also believe we have a duty to help our children learn how to make responsible decisions, free from peer pressure.

Won't you please help us? We care.

Sincerely yours,  
*Michael J. Kerrigan*  
Michael J. Kerrigan  
President  
Smokeless Tobacco Council

P.S. Although we believe parental responsibility and adult guidance are the best way to help our children, we recognize state government also has an appropriate role to play. That is why we support legislation setting 18 as the minimum age of purchase for smokeless tobacco products.

 Smokeless Tobacco Council, Inc.  
1925 K Street, N.W. Suite 504 Washington, D.C. 20006

"Because We Care" was the straightforward theme used in the earliest of the Council's print advertising campaigns. Open letters to parents, teachers, coaches and retailers encouraged support of our policy that smokeless tobacco is NOT for kids.

The Council's messages were placed in such national publications as *The Washington Post* and *Parade Magazine* and in specialty publications such as *Convenience Store News* and *Education Week*, reaching nearly 25 million readers.

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# Advertisements RESPONSIBILITY

In more recent campaigns, the message has been "responsibility." Two campaigns, one targeting parents and the other educators, have emphasized the important role youth authority figures play in helping our nation's young people develop a mature sense of responsibility.

One campaign—"It's Our Responsibility"—featured strong parental figures discussing responsibility and the importance of parents helping to prepare their children for adult decisions. "It's Our Responsibility" messages were placed throughout the country in daily newspapers with a cumulative readership of more than three million Americans.

**It's Our Responsibility**

My job depends on teamwork

Being a miner is a tough job . . .

But like a lot of things in life, that's just the way it is. When my kids ask me what it's like being down in the mine, I tell them the truth. It's hard work, but like it, I never wanted to do any thing else.

They respect that. And they respect me for telling them the truth. That's why, when they ask me about smokeless tobacco, I tell them it's for adults only. Like some other important things in life. Like serving in the military, for example, or voting and holding public office.

Smokeless tobacco is an adult custom, has been ever since the industry was founded more than 200 years ago. As a matter of fact, the Code of the Smokeless Tobacco Industry sets 18 years as the minimum age for purchase of smokeless tobacco products.

The industry believes that adult Americans have the information and the right to make personal decisions, including using smokeless tobacco products. And I agree.

My wife and I believe we have a duty to help our kids learn how adults make responsible decisions, free from peer pressure. What about you? It's your decision.

**SMOKELESS TOBACCO COUNCIL**  
1925 K Street, NW, Suite 504, Washington, DC 20006

**It's Our Responsibility**

a farmer, we live by decisions . . .

But I tell my boys, ask me how I like to plant, or I say, "First on the weather, making an as much as I can. We do it, I like it."

of the Smokeless Tobacco Industry sets 18 years as the minimum age for purchase of smokeless tobacco products.

The industry believes that adult Americans have the information and the right to make personal decisions, including using smokeless tobacco products.

My wife and I believe that part of our responsibility is to help our kids learn how adults make responsible decisions, free from peer pressure. Doesn't this sound sensible to you?

**SMOKELESS TOBACCO COUNCIL**  
Washington, DC 20006

- The Mobile Press
  - The Alabama Journal
  - The Montgomery Advertiser
  - Wisconsin State Journal
  - The Capital Times (Madison)
  - The Charleston Gazette
  - Charleston Daily Mail
  - The Huntington Herald-Dispatch
  - The Richmond News Leader
  - Houston Chronicle
  - The Odessa American
  - Beaumont Enterprise
  - Austin American-Statesman
  - Amarillo Daily News
  - Amarillo Globe-Times
  - The Harrisburg Evening News
  - The Morning Call (Lehigh Valley)
  - The Washington Observer-Reporter
  - The Steubenville Herald-Star
  - The Lincoln Star
  - Lincoln Journal
  - The Grand Island Daily Independent
  - Billings Gazette
  - The Tuesday Holland Sentinel
  - Lansing State Journal
  - The Grand Rapids Press
  - The Patriot Ledger (Massachusetts)
  - Newton Tab
  - Framingham Tab
  - Boston Tab
  - Brookline Tab
  - Hagerstown Daily Mail
  - The Morning Herald
  - The Des Moines Register
  - Effingham Daily News
  - Journal Star (Central Illinois)
  - Joliet Herald News
  - Southern Illinoisan
  - The State Journal-Register
  - The News-Gazette
  - Tallahassee Democrat
  - South Dade News Leader
  - The Stamford Advocate
  - Greenwich Time
  - The Sacramento Bee
  - The Monterey Herald
  - The Hemet News
  - Visalia Times-Delta
- P.A.W.  
P.P. #4  
2-21-9

**Education Week**  
 Alabama  
*Alabama School Journal*  
 Arizona  
*The Arizona Administrator*  
 Arkansas  
*The Educator*  
 Colorado  
*Administrator's Viewpoint*  
 Delaware  
*DSEA Action*  
 Georgia  
*GAE Update*  
*The Georgia Teacher*  
 Indiana  
*Advocate*  
*Indiana School Board Journal*  
 Iowa  
*Communique*  
 Kansas  
*Issues*  
 Kentucky  
*KEA News*  
*Kentucky Federation of Teachers*  
 Louisiana  
*The Boardmember*  
*LAE News*  
*Louisiana PTA*  
 Maine  
*The Maine Teacher*  
 Michigan  
*Principal*  
 Minnesota  
*Advocate*  
 Mississippi  
*The Mississippi Educator*  
*Mississippi American Federation of Teachers*  
 Missouri  
*Something Better*  
*School and Community*  
 Montana  
*Montana Association of Principals*  
 Nebraska  
*Voice*  
 New Hampshire  
*Newsnotes*  
 New Mexico  
*New Mexico Secondary School Principals*

New York  
*Advocate*  
*Chalk Talk*  
 North Carolina  
*North Carolina Education Voice*  
 North Dakota  
*N.D. Journal of Education*  
 Ohio  
*OSBA Journal*  
 Oklahoma  
*The School Board Journal*  
 Oregon  
*Oregon Education*  
 Pennsylvania  
*Bulletin*  
*PSFCA Journal*  
 Rhode Island  
*Newsline*  
 South Dakota  
*The Educator's Advocate*  
 Tennessee  
*Tennessee Teacher*  
 Washington  
*Action*  
*Hotline*  
 West Virginia  
*West Virginia School Journal*  
*The Interscholastic Update*  
 Wisconsin  
*Administrator's Newsletter*

**A** second campaign, "The Fourth R?" series, was developed specifically for educators—teachers, coaches and principals. The ads stressed that responsibility—the fourth "R"—is just as important as reading, (w)riting and (a)rithmetic in preparing kids to make *adult* decisions.

The series originally was meant to appear in education publications nationwide, but unfortunately, almost 25 percent of those contacted—publications such as *The National Coach*—refused the ads, citing policies against accepting tobacco-sponsored advertising.

**The 4th "R"?**  
 Responsibility

**The 4th "R"?**  
 Respon'si-bil'ity!

**The 4th "R"?**  
 Responsibility

*PH & W*  
*Attn #5*  
*Reg. 25*  
*2-21-9*

SMOKELESS TOBACCO COUNCIL  
 1925 K Street NW Suite 514 Washington DC 20006









# The Smokeless Tobacco Council Member Companies

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Brown & Williamson Tobacco Corporation  
Louisville Galleria  
Post Office Box 35090  
Louisville, Kentucky 40232

Conwood Company, L. P.  
813 Ridge Lake Boulevard  
Post Office Box 217  
Memphis, Tennessee 38101

Helme Tobacco Company  
Post Office Box 10379  
250 Harbor Drive  
Stamford, Connecticut 06904

The Pinkerton Tobacco Company  
Post Office Box 11588  
6630 West Broad Street  
Brookfield Office Complex  
Richmond, Virginia 23230

R.C. Owen Company  
Post Office Box 1626  
Gallatin, Tennessee 37066

U.S. Tobacco Company  
100 West Putnam Avenue  
Greenwich, Connecticut 06830

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Pg. 28  
2-21-9*

PATTON, BOGGS & BLOW  
2550 M STREET, N.W.  
WASHINGTON, D.C. 20037  
(202) 457-6000

January 9, 1989

BACKGROUND MEMORANDUM

Re: Free Sampling of Smokeless Tobacco Products

I. INTRODUCTION

In the past few years, an increasing number of states have considered, but shelved, legislative proposals to ban the free distribution of unsolicited tobacco products and coupons that can be redeemed for remuneration upon proof of purchase of tobacco products. In the view of the Smokeless Tobacco Council, Inc., the national trade association for the smokeless tobacco industry, these proposals were unwise, unconstitutional, and unnecessary. With this background memorandum, we hope to show why sampling is important to the industry, the lengths to which industry members go to discourage use of their products by minors, and why a court is likely to strike down a sampling ban as a violation of the First Amendment right of manufacturers to distribute a lawful product. In short, we hope to demonstrate why the Council, on behalf of the industry and its millions of customers throughout the nation, will continue to fight to permit the free sampling of its products to adults.

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2-21-9

## II. BACKGROUND

Like the manufacturers of soap and toothpaste, smokeless tobacco manufacturers recognize that one of the most effective ways to encourage tobacco users to switch brands is to offer a free sample. In an effort to encourage existing adult tobacco users to switch, the industry concentrates its sampling efforts at events that attract large groups of adults like rodeos, tractor pulls, softball tournaments, fishing competitions, racetracks, and state fairs. Ultimately, tobacco consumers will switch brands if they perceive one product to taste better, give greater satisfaction, or be easier to use than another. Manufacturers have found sampling encourages such a shift in consumer preferences.

The industry's sampling practices are directed solely at adults. All but a handful of states have established a minimum age of purchase for smokeless tobacco products. Even in those states permitting sales to individuals under 18 years old, industry members voluntarily observe marketing practices to ensure that marketing efforts--including sampling--are not aimed at anyone under 18 years old. Nonetheless, charges have been made repeatedly that the marketing of smokeless tobacco products is aimed at youth. These assertions are totally unfounded and should not serve as the predicate for legislation ostensibly aimed at deterring marketing efforts like free sampling of products.

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The members of the Council have voluntarily adopted an Advertising and Sampling Code. In addition to restricting print advertisements, the Code specifically provides:

Smokeless tobacco samples shall be distributed only to persons who are at least 18 years of age. Persons who appear to be under 18 years of age shall be required to furnish proof of age.

In adhering to the Code, Council members do not advertise on programs or in publications that appeal solely or disproportionately to youth, do not depict youth using smokeless tobacco in any of their advertising, do not use active professional entertainers who appeal primarily to persons under 18 in any of their advertising, and do not offer samples of their products to youth. As noted above, the policy of limiting free samples to people over 18 years old is followed even in states which permit minors to purchase smokeless tobacco products. (In Alaska, where consumption is limited to persons 19 years and older, the industry restricts its sampling accordingly.) Council members individually have developed comprehensive training programs to ensure that sales people follow these guidelines, with immediate firings a prospect for any employee found to have knowingly distributed smokeless tobacco products to minors.

The members of the smokeless tobacco industry have carried out the spirit of the Code not only in their marketing and advertising practices, but in the political arena as well. In furtherance of their policy to market smokeless tobacco only to

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adults, the members of the industry have never opposed any state legislative proposal to raise the permissible sales age to 18 years old. In fact, the industry has encouraged state legislatures to limit the sale or distribution of smokeless tobacco products to those persons 18 years of age or older. Furthermore, the industry has undertaken a program to foster parental guidance and youth education to promote smokeless tobacco use as a custom reserved for adults.

In short, there should be no mistake about the policy and intent of smokeless tobacco manufacturers: they do not want persons under 18 to use smokeless tobacco products and they are taking every reasonable precaution to ensure that such use does not occur. Banning the distribution of samples and coupons, therefore, is unnecessary to accomplish the goal of discouraging use of smokeless tobacco products by minors.

III. BAD PUBLIC POLICY

Without adequate basis, many states have sought to intervene to preclude one form of truthful advertising about a lawful product. Congress enacted the Comprehensive Smokeless Tobacco Health and Education Act of 1986 to ensure that the public receives consistent warnings about the perceived health effects of the consumption of smokeless products. In doing so, Congress reaffirmed the right of all adult Americans to obtain and use smokeless tobacco products. The Federal Trade Commission subsequently promulgated extensive regulations governing the

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display of health warnings by manufacturers, packagers, and importers on the packaging and in print advertising of smokeless tobacco products. Apparently not satisfied with the scope of the federal law and regulations, however, some states would use a sampling ban to discourage the consumption of a lawful product. The Council believes that to be unwise as a matter of public policy, and unnecessary.

#### IV. UNCONSTITUTIONAL RESTRAINT

We believe a state's effort to ban the advertising of smokeless tobacco products would be found unconstitutional because it violates the First Amendment. Since the distribution of samples and coupons serves the same purpose as advertising (i.e., informing the public about the availability and characteristics of a product), it is entitled to the same protection. Under governing law, we believe the bill would found to be an impermissible restriction on commercially protected free speech.

In 1976, the Supreme Court affirmed the constitutionality of truthful speech that proposes lawful commercial transactions by invalidating a state law forbidding licensed pharmacists from advertising prices of prescription drugs. Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976). This and subsequent decisions have refined the treatment of state advertising restrictions. Under the tests subsequently articulated by the Supreme Court in Central Hudson

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p. 33  
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Gas & Elec. Corp. v. PSC, 447 U.S. 557 (1980), a state may ban smokeless tobacco advertising (using samples and coupons) only if it can demonstrate that the governmental interest in doing so is substantial, the regulation directly advances that interest, and the least restrictive means of achieving that goal have been chosen. We do not believe a State could meet this burden.

Given the available evidence on the relationship between advertising and consumption of tobacco products, a State could not adequately demonstrate that banning smokeless tobacco advertising would effectively advance the apparent goal of reducing smokeless tobacco consumption. The available evidence indicates that advertising expenditures do not significantly affect large, mature consumer markets other than at the brand level. The evidence also indicates that tobacco advertising serves primarily as a vehicle for intense interbrand rivalry and, consequently, restrictions on such advertising would primarily interfere with competition rather than reduce overall demand for smokeless tobacco products. Additionally, the available evidence indicates that advertising is not a significant influence on the decision by young people to use tobacco products. In short, a State could not demonstrate that a ban would reduce smokeless tobacco consumption.

Moreover, a State could not demonstrate that a ban would be no more extensive than necessary in advancing its purported goal. A ban could not be defended as "narrowly crafted" or the

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"least restrictive" means of achieving this goal. If a perceived problem can be addressed by providing more information (i.e., through Congressionally required warning labels), by definition that alternative is less restrictive than an alternative limiting communication. In case after case, the Supreme Court has emphasized that "the preferred remedy is more disclosure, not less." Bates v. State Bar, 433 U.S. 350, 374 (1977) (striking down state-law restrictions on advertising by lawyers).

The distribution of free samples of smokeless tobacco and redeemable coupons has the sole purpose of informing the adult public about the uses, availability, and qualities of smokeless tobacco products. The underlying activity, the consumption of smokeless tobacco, is lawful. In short, the activity which a legislative ban would prohibit is a form of advertising and is the very kind of dissemination of commercial information that the courts repeatedly have found to be speech within the protection of the First Amendment. See, e.g., Shapiro v. Kentucky Bar Association, 56 U.S.L.W. 4532 (1988) (letter offering free legal advice protected under First Amendment as commercial speech); Zauderer v. Office of Disciplinary Counsel, 105 S. Ct. 2265 (1985) (illustration contained in advertisement held commercial speech even though non-verbal because it "serves important communicative functions").

In no case since Virginia Pharmacy has the Supreme Court "approved a blanket ban on commercial speech unless the

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- 8 -

expression itself was flawed in some way, either because it was deceptive or related to unlawful activity." Central Hudson, 447 U.S. at 556 n.9. Because a state sampling ban could not be defended as meeting the Central Hudson tests, a court almost assuredly would strike it down as unconstitutional.

#### V. CONCLUSION

Like those states that have rejected sampling bans, those states currently considering them should reject the proposed legislation as unwise, unconstitutional, and unnecessary. Given the importance of sampling to the industry, the Smokeless Tobacco Council will continue to fight to permit the free distribution of smokeless tobacco products to adults.

PATTON, BOGGS & BLOW

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*2-21-9*



**KANSAS MEDICAL SOCIETY**

1300 Topeka Avenue · Topeka, Kansas 66612 · (913) 235-2383

February 21, 1989

TO: House Public Health and Welfare Committee

FROM: Kansas Medical Society *Chip Weeler*

SUBJECT: House Bill 2317, As Introduced

The Kansas Medical Society appreciates this opportunity to express our support for the provisions of House Bill 2317. As you are well aware, the health hazards associated with the use of tobacco products have been documented by researchers time and time again. It has been known for several years that the use of tobacco products can contribute to cancer in the human body and, more recently, research has corroborated that smoking does indeed, contribute to coronary disease.

For these reasons, it is appropriate that elected officials reverse any outdated policies which encouraged the use of tobacco products or smoking. Examples of those policies are the laws which allowed tobacco manufacturers to distribute their products as samples or using discount coupons which encourage the general public to consume those products. We are not asking that individuals be denied the right to consciously choose to expose themselves to health risks by consuming tobacco products. We are, however, asking that the law be amended in such a way that individuals who may not be fully aware of the risks associated with the usage of tobacco products, will not be encouraged to take those risks.

We believe that passage of HB2317 would represent a positive step toward improved public health policy in the state of Kansas. Thank you for considering our concerns. We urge you to recommend HB2317 for passage.

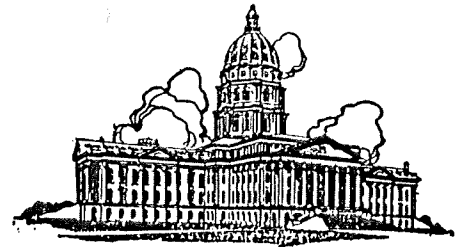
CW:lg

*P/A/W*  
*Attn #6*  
*2-21-9*

# KANSANS FOR LIFE AT ITS BEST!

Rev. Richard Taylor, Box 888, Topeka, Kansas 66601

Phone (913) 235-1866 Office 1273 Harrison  
(3 Blocks South of Statehouse)



Jon Brax, KANSANS FOR LIFE AT ITS BEST!  
Testimony before the House Public Health and Welfare Committee  
House Bills 2271 and 2371  
21 February, 1989

*A Proud Land*

Mr. Chairman and members of the committee:

Last year when this committee was considering prohibiting the distribution of free tobacco samples, opponents flew in from as far away as Washington, D.C. and Long Island, New York. That fact alone should prove that HB 2317 will reduce Kansans' health problems associated with tobacco use.

This well-informed committee is aware of the health and economic problems caused by tobacco. Unfortunately, this is not true of all Kansans. It is those citizens who are particularly vulnerable to the tobacco companies educational program. They use colorful advertisements and clever marketing tools (such as the distribution of free samples) to link their dangerous product with athleticism, financial success, and exciting personal relationships.

It seems that those with less formal education are most susceptible to the tobacco industry's messages. According to a recent "To Your Health" radio segment, in 1989 we can expect 3000 new smokers daily. Their average educational experience will be below high school graduate.

Kansans For Life At Its Best! would ask that you favorably report HB 2317 to reduce the societal damage caused by tobacco use.

As far as HB 2271 is concerned, since the House and Senate have each banned smoking from their respective floors, and since lobbyists are sometimes considered members of "The Third Chamber", I would ask that you ban smoking on our floor as well.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jon Brax".

Jon Brax

A handwritten note enclosed in a hand-drawn circle. The text inside the circle reads "PH&amp;W", "Attn #7", and "2-21-89" on three separate lines.

"Of our political revolution of 1776 we are all justly proud," said Abraham Lincoln on Washington's birthday in 1842. He went on to say "how proud the title of that land" where persons declare their freedom from alcoholic beverages because they "shall find a stronger bondage broken, a vile slavery manumitted, a greater tyrant deposed. . . perfect liberty!" With per-person consumption at nearly half the national average, thousands of Kansans enjoy that perfect liberty. Concerned users and non-users are united in this R-E-A-L effort to prevent alcoholism, highway tragedy, and other suffering caused by our most abused recreational drug.

Rehabilitation — Help alcohol-dependent persons adjust to life without the drug.

Education — Inform children, youth & adults of effect of alcohol on mind & body.

Amount — Encourage persons to be non-users and encourage users to use less.

Law — Pass and enforce laws that reduce consumption and suffering.

HENRY M. HELGERSON, JR.  
 REPRESENTATIVE, EIGHTY-SIXTH DISTRICT  
 4009 HAMMOND DRIVE  
 WICHITA, KANSAS 67218-1221



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: APPROPRIATIONS  
 ECONOMIC DEVELOPMENT  
 ELECTIONS

February 21, 1989

TO: Public Health and Welfare Committee  
 FROM: Rep. Henry Helgerson  
 RE: HB 2271

HB 2271 prohibits smoking in the capitol except in enclosed offices which are designated smoking areas. This bill would prohibit smoking in hallways, stairways, and passages that may now be designated smoking areas.

The intent of the bill is to provide for non-smokers a healthy, clean environment while in the capitol.

The hazards and dangers of smoking have been well-documented since the original Surgeon General's report in 1964. The direct linkages between lung cancer, heart disease, and many other illnesses are undisputed except by the American Tobacco Institute.

The 1986 Report of the Surgeon General states that "cigarette smoking is the single largest preventable cause of premature death and disability in the United States...and is responsible for well over 300,000 deaths annually in the United States."

The Smoking Behavioral Policy Institute, Harvard University, has provided the following figures based on 1982 data (1985 dollars):

health costs of smoking (with a range of \$12-35 billion)	\$22 billion
lost productivity cost (with a range of \$27-61 billion)	\$43 billion
total costs (with a range of \$38-95 billion)	\$65 billion

*PHW*  
*Attn # 8*  
*2-21-9*

But this is a personal issue for me. Why? Because the U.S. Public Health Service, Surgeon General C. Everett Koop and hundreds of other scientists have reached these conclusions:

- 1.) Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.
- 2.) Involuntary smoking has the same degree of risk as smoking.
- 3.) The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of lung function as the lung matures.

Because of these health problems to non-smokers the state of Kansas, other states and many cities have taken a policy limiting and in some cases banning smoking.

Finally, I would close with what Surgeon General Koop said in a 1986 report:

u Cigarette smoking is an addictive behavior, and the individual smoker must decide whether or not to continue that behavior; however, it is evident from the data presented in this volume that the choice to smoke cannot interfere with the nonsmokers' right to breathe air free of tobacco smoke. The right of smokers to smoke ends where their behavior affects the health and well-being of others; furthermore, it is the smokers' responsibility to ensure that they do not expose nonsmokers to the potential harmful side effects of tobacco smoke.

I appreciate your time and consideration in this matter. //

**Sec. 20-201. Sanitary apparatus; inspection.**

It shall be unlawful for any person to engage in the business of cleaning septic tanks or outside closet vaults or removing night soil, except with odorless and sanitary apparatus and appliances which shall be inspected by, and meet the approval of the sanitary engineer of the Topeka-Shawnee County health department prior to the issuance of the license by the city clerk. Such person shall at all times maintain the apparatus in a sanitary condition, and in case of failure so to do, the sanitary engineer may at any time condemn such apparatus, and with the consent of the board of commissioners, may also cancel the license. The sanitary engineer shall inspect each licensee's sanitary apparatus at least every six (6) months. Such inspection shall be at a site at which the licensee is performing his or her duty. No person shall remove the contents of any septic tank or closet vault in an uncleanly or offensive manner. (Code 1975, § 17-306; Ord. No. 14632, § 3, 4-8-80)

**Sec. 20-202. Hauling on Kansas Avenue restricted.**

No stable manure, offal, house refuse, garbage, night soil or dead animals shall be hauled along Kansas Avenue except over the Kansas Avenue Memorial Bridge. (Code 1975, § 17-306)

Secs. 20-203—20-215. Reserved.

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**ARTICLE IX. USE OF TOBACCO PRODUCTS IN PUBLIC PLACES AND PLACES OF EMPLOYMENT\*****Sec. 20-216. Declaration of policy.**

It is the policy of the City of Topeka, Kansas in furtherance of its responsibility to protect the public health, safety and welfare:

- (a) To prohibit the smoking of tobacco products in public places, except in designated smoking areas, and
- (b) To regulate the smoking of tobacco products in places of employment, and
- (c) To strike a reasonable balance between the needs of smokers and the need of nonsmokers to breathe smokefree air, recognizing that, where these needs conflict, the need to breathe smokefree air shall have priority. (Ord. No. 15584, § 1, 2-25-86; Ord. No. 15662, § 1, 8-26-86)

**Sec. 20-216.1. Purpose.**

It is the purpose of this article to effectuate the policies set forth in section 20-216 by providing for:

- (a) A program of effective regulation of the use of tobacco products for the protection of the public health, safety and welfare;
- (b) A program to promote the public education as to the health hazards and other ill effects of breathing secondhand smoke;
- (c) A program to establish procedures for the assumption and performance of certain regulatory and enforcement responsibilities with respect to the smoking of tobacco products. (Ord. No. 15662, § 2, 8-26-86)

**Sec. 20-217. Definitions.**

As used in this article, the following terms shall have the meaning indicated:

\*Editor's note—Ord. No. 15584, §§ 1-12, adopted Feb. 25, 1986, as amended by Ord. No. 15662, §§ 1-7, adopted Aug. 26, 1986, has been codified in Ch. 20 as Art. IX, §§ 20-216—20-226, with the arrangement of sections and the designation of section numbers being at the discretion of the editor. Said ordinances were nonamendatory of the Code.



*Bar* means an area which is devoted to the serving of alcoholic beverages and in which the serving of food is incidental to the consumption of such beverages.

*Business* means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

*Dining area* means any enclosed area containing a counter or tables upon which meals are served.

*Employee* means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

*Employer* means any person, partnership, corporation, or nonprofit entity, including a municipal corporation, who employs the services of one or more persons.

*Enclosed* means closed-in by a roof and four (4) walls with appropriate openings for ingress and egress.

*Nonprofit entity* means any corporation, unincorporated association, or other entity created for charitable, educational, political, social, or other similar purposes, the net proceeds from the cooperations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a "nonprofit entity" within the meaning of this section.

*Place of employment* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, cafeterias and hallways; except:

- (a) A private residence is not a "place of employment" unless it is used as a child care or health care facility.

- (b) The dining area of a restaurant is not a "place of employment."

*Public health officer* means the director of the Topeka-Shawnee County Health Agency.

*Public place* means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.

*Restaurant* means any coffee shop, cafeteria, tavern, sandwich stand, soda fountain, private or public school cafeteria, and any other eating establishment, organization, club, boardinghouse, or guesthouse, which gives or offers food for sale to the public, guests, patrons, or employees, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined hereinbefore.

*Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories.

*Service line* means any indoor line at which one or more persons are waiting for or receiving services of any kind, whether or not such service involves the exchange of money.

*Smoke or smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe or weed.

*Sports arena* means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events. (Ord. No. 15584,, § 2, 2-25-86; Ord. No. 15662, § 3, 8-26-86)

**Sec. 20-218. Areas where smoking is prohibited.**

Smoking shall not be permitted and smoking areas shall not be designated in those areas where smoking is prohibited by the fire chief, state statute, ordinances or regulations of the City of Topeka

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that is comparable to and compatible with this article. (Ord. No. 15584, § 3(A), 2-25-86)

**Sec. 20-220. Permitted public smoking areas.**

Smoking may be permitted in the following public places:

- (a) Bars or taverns.
- (b) Fully enclosed rooms occupied exclusively by smokers, even though the rooms may be visited by nonsmokers.
- (c) Rooms and halls being used by a person or group for a social or business function where the seating arrangements are under the control of the sponsor of the function.
- (d) Smoking areas designated by the proprietor or person in charge of a public place or public meeting pursuant to this article.
- (e) Retail business primarily engaged in the sale of tobacco or tobacco products.

*Cross reference*—Sale to or purchase of tobacco products by minors, § 20-226.

- (f) Private residences, except when used as a child care or health care facility.
- (g) Hotel and motel rooms rented to guests.
- (h) Restaurants with a seating capacity of thirty (30) or fewer persons.

*Cross reference*—No smoking areas in restaurants with a seating capacity of thirty (30) or more persons, § 20-219(f).

- (i) Restaurant, hotel, and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions.
- (j) Bowling centers. During league play, a league may determine a smoking policy for the league. During open play, if a nonsmoker requests a lane they shall be provided with a lane, if available, where there is no smoking. If there is a request for more than one nonsmoking lane, the owner or manager on duty shall select bowling lanes that are contiguous with and adjacent to another nonsmoking lane. (Ord. No. 15584, § 4(A), 2-25-86; Ord. No. 15662, § 4(A), 8-26-86)

**Sec. 20-221. Declaration of establishments as nonsmoking.**

Notwithstanding any other provisions of sections 20-219 and 20-220, any owner, operator, manager or other person who controls any establishment described in said sections may declare that entire establishment as a nonsmoking establishment. (Ord. No. 15584, §§ 3(B), 4(B), 2-25-86; Ord. No. 15662, § 4(B), 8-26-86)

**Sec. 20-222. Responsibility of proprietors.**

The proprietor or person in charge of a public place or public meeting shall make reasonable efforts to obtain compliance with this article in such places by:

- (a) Posting appropriate signs.
- (b) Arranging seating and work areas to provide a smokefree area.
- (c) Asking smokers to refrain from smoking upon request if a client or an employee suffers discomfort from the smoke.

(d) Affirmatively directing smokers to designated smoking areas.

- (e) Using existing physical barriers and ventilation systems to minimize the toxic effect of transient smoke in adjacent no-smoking areas. (Ord. No. 15584, § 8, 2-25-86)

*Cross reference*—Posting of signs, § 20-225.

**Sec. 20-223. Designation of nonsmoking areas in places of employment.**

(a) It shall be the responsibility of employers to provide smokefree areas.

- (1) No person shall smoke in any work area in places of employment, except that any employer may designate as much as fifty (50) per cent of the total work area as a smoking area.
- (2) Smoking is prohibited in auditoriums, classrooms, conference and meetings rooms, elevators, medical facilities and restrooms.
- (3) There shall be provision for and maintenance of separate and contiguous nonsmoking areas in cafeterias, lunchrooms and em-

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ployee lounges or provision for and maintenance of separate cafeterias, lunchrooms and employee lounges, for smokers and nonsmokers.

- (4) If an employer designates a smoking area in his work area pursuant to this section and if a dispute arises concerning the designation of a smoking area, the nonsmoker shall be given precedence. In determining the dispute, the employer shall consider the following factors:
- a. Health impact on nonsmokers;
  - b. Square footage of the work area;
  - c. Ventilation;
  - d. Existing physical barriers;
  - e. Office traffic patterns;
  - f. Availability of fully enclosed rooms for use by smokers; and
  - g. Any other relevant factors.

(b) In no event shall restrooms, lobbies, hallways or other common areas typically shared by smokers and nonsmokers be designated as smoking areas, except that lobbies, hallways or other common areas which exceed twelve hundred (1,200) square feet in area may have within them designated smoking areas provided that no more than twenty-five (25) per cent of the total areas of such lobby, hallway or common area is so designated and further providing that such designated areas are located such that it is not necessary for nonsmokers to pass through such areas to reach other nonsmoking areas.

(c) Notwithstanding any other provision of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

(d) The city council may, by special permit, exempt a public place or business from the provisions herein, upon a showing by the applicant that the public place or business has implemented a satisfactory smoking policy. (Ord. No. 15584, § 5, 2-25-86; Ord. No. 15662, § 5, 8-26-86)

#### Sec. 20-224. Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because

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such employee or applicant exercises any rights afforded by this article. (Ord. No. 15584, § 12, 2-25-86)

#### Sec. 20-225. Posting of signs.

To advise persons of the existence of "No Smoking" or "Smoking Permitted" areas, signs shall be posted as follows:

- (a) In public places where the proprietor or person in charge prohibits smoking in the entire establishment, the international no-smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the establishment.
- (b) In public places where certain areas are designated as no-smoking or smoking permitted areas pursuant to this article, the international no-smoking symbol shall be conspicuously posted and clearly visible in the nonsmoking areas and the international smoking symbol shall be conspicuously posted and clearly visible in the smoking areas.
- (c) In public places where smoking is permitted in the entire establishment, the international smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the establishment.
- (d) Every restaurant, except those with less than thirty (30) seating capacity, shall have posted at every public entrance a conspicuous sign clearly stating that a nonsmoking section is available. Every patron shall be asked as to his or her preference by the host or hostess (if she is on duty). A person taking reservations for a restaurant shall likewise ask if there is a nonsmoking or smoking preference.
- (e) In work areas where an area or areas are designated as no-smoking or smoking permitted areas, the international no-smoking symbol shall be conspicuously posted and clearly visible in the nonsmoking areas and the international smoking symbol shall be conspicuously posted and clearly visible in

the smoking areas. (Ord. No. 15584, § 6, 2-25-86)

*Cross references*—Provisions relative to smoking in restaurants, § 20-219(f), § 20-220(h); responsibilities of proprietors, § 20-222.

**Sec. 20-226. Sale to or purchase of tobacco products by minors.**

(a) It shall be unlawful for any person to sell any tobacco product in any form to any person under the age of eighteen (18).

(b) It shall be unlawful for any person under the age of eighteen (18) to purchase any tobacco product in any form. (Ord. No. 15584, §§ 9, 10, 2-25-86)

**Sec. 20-227. Penalty.**

Any person, business or employer who violates any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum of twenty-five dollars (\$25.00). Each and every day that such violation continues shall constitute a separate offense. (Ord. No. 15584, § 11, 2-25-86; Ord. No. 15662, § 7, 8-26-86)

**Sec. 20-228. Enforcement; duties of public health officer.**

(a) The public health officer shall be responsible for carrying out the purposes and intent of this article and enforcing its provisions within the City of Topeka.

(b) The public health officer shall, for the protection of the public health, safety and welfare, develop programs for the evaluation of health hazards associated with the use of tobacco products.

(c) The public health officer may fix, charge and collect fees for investigating a request for exemption from the provisions of this article. After investigation, the public health officer shall make a finding on the significant risks, if any, to the health, safety and welfare of the public if the exemption was granted. The public health officer shall forward a summary of the investigation and the findings to the governing body of the City of Topeka.

(d) The governing body of the City of Topeka, after reviewing the public health officer's inves-

tigation and findings, may grant or deny the request for exemption. The period of exemption shall be for two (2) years. The governing body may review an exemption if changes at the exempted public place or business cause the exemption to create a significant risk to the health, safety and welfare of the public. The public health officer may fix, charge and collect fees for an exemption.

(c) An exemption may be renewed. A renewal request shall follow the procedure and requirements of an initial exemption request as detailed above. The public health officer may fix, charge and collect a fee for renewal of an exemption. (Ord. No. 15662, § 6, 8-26-86)

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# Backgrounder

068701

States Information Center  
The Council of State Governments  
Iron Works Pike  
P.O. Box 11910  
Lexington, KY 40578  
(606) 252-2291

**Date:** June 1987  
**Topic:** SMOKING IN PUBLIC PLACES  
**Infokey:** Health Care  
(NT) Smoking

## SMOKING IN PUBLIC PLACES AND/THE WORKPLACE

Whether an etiquette problem or a public health problem, the issue of smoking in public places and passive smoking has been getting the attention of lawmakers at all levels.

During the last ten years, the effect of smoking on both smokers and nonsmokers has become a much-debated topic. With the Surgeon General's December, 1986, pronouncement about the dangers of secondhand or "side-stream" smoking (smoke released at the burning end of a cigarette), the issue has become even more prominent as strict guidelines and regulations are being implemented to protect the "rights" of nonsmokers.

### Federal Actions

Until recently, the federal government was unsuccessful in establishing any agency-wide restrictions or limitations on smoking in its buildings. A bill that would have restricted smoking to designated areas in all U.S. Government buildings and would have imposed a civil penalty for anyone who disregarded the restriction, failed in the 99th Congress.<sup>2</sup> However, in February, 1987, the General Services Administration (GSA) imposed rules designed to discourage smoking in all federal offices, while giving each agency freedom to designate smoking areas within its buildings, including private offices.<sup>3</sup>

In accordance with the GSA guidelines, the Department for Health and Human Services (HHS), the federal government's largest agency, on May 5th banned smoking throughout all its buildings. HHS has an estimated 120,000 employees and includes the Social Security Administration, the Public Health Service, and the sub-agency that oversees the Medicare and Medicaid programs. HHS Secretary Otis R. Bowen stated, that the HHS restrictions were the most comprehensive of any federal agency.<sup>4</sup>

### State Restrictions on Smoking in Public Areas

Despite debate over smoker's and nonsmoker's rights, state officials are increasingly imposing restrictions or bans on smoking in public places (see Table II). The most comprehensive legislation of this nature has been adopted by Alaska, Florida, Minnesota, Montana, Nebraska, Utah, and Washington.<sup>5</sup>

\*This CSG Backgrounder was compiled by Margaret Oberst, Information Specialist, States Information Center, Office of Information Services.

**Note:** Backgrounder information is the latest available at the time of publication, but for updates, you should contact the appropriate state or federal agency directly. This material does not represent the position of The Council of State Governments. Information is included based on relevance to the topic. Some material, as noted, is copyrighted and may not be reproduced further without permission of the original publisher. Contact the States Information Center or the writer at CSG.

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CSG Backgrounder -- Smoking in Public Places

In February, 1987, the New York State Public Health Council adopted tough statewide restrictions, including bans on smoking in certain public facilities such as food markets, courthouses and banks. However, a state supreme court judge threw out the restrictions in April, 1987, deciding that the Public Health Council exceeded its legal authority in imposing the restrictions. The judge said it was the state legislature's place to make state laws, not the executive branch. The Public Health Council plans to appeal the decision.<sup>6</sup>

Smoking in the Workplace

Smoking in the workplace is perhaps the most controversial aspect of the smoking issue because it affects people every day for extended periods of time. Florida, Minnesota, Montana, Nebraska, North Dakota, Utah, and Wisconsin restrict smoking to designated areas in offices. Florida requires employers, upon request, to provide employees with workspaces that are not within a designated smoking area. Alaska prohibits smoking in all places of employment, public or private, where a no-smoking sign is posted.

Connecticut and New Jersey mandate that employers of more than 50 people establish and post written rules governing smoking within their facilities. Maine requires employers of one or more people to establish written policies concerning smoking and nonsmoking and to prohibit smoking except in designated areas. Colorado law encourages those in charge of offices and commercial facilities to designate non-smoking areas physically separate from the working environment of those who smoke.<sup>8</sup> A 1986 Rhode Island act requires employers to implement, maintain and post a written smoking policy permitting any non-smoking employee to object to the employer, and requiring the employer to attempt to accommodate, "using available means of ventilation or partition." Also, Rhode Island employers are prohibited from terminating or discriminating against employees for exercising their rights under the law.

Massachusetts recently issued a virtual ban on smoking in state buildings which affects approximately 65,000 state workers. The ban prohibits smoking in any work area (including private offices), visitor reception areas, waiting rooms, lobbies and entranceways, restrooms, any room where business meetings are held, patient rooms and patient service areas, classrooms, stairwells and any state vehicle in which an occupant is a non-smoker.<sup>10</sup>

Various states also restrict smoking in workplaces not frequented by the general public. Minnesota, Nebraska and Utah have directed their state health departments to develop rules to prohibit or restrict smoking in factories, warehouses, and other places of work where inadequate ventilation and close proximity of workers causes smoke pollution.<sup>11</sup>

CSG Backgrounder -- Smoking in Public Places

Table I  
LEGISLATION RESTRICTING SMOKING IN OFFICES AND OTHER WORKPLACES

State	Government- Controlled Offices	Office of Private Employers
Alaska	X	
Arizona	X	
California	X	
Connecticut		X
Florida	X	X
Maine	X	X
Minnesota	X	X
Montana	X	X
Nebraska	X	X
New Hampshire	X	
New Jersey	X	X
New Mexico	X	X
North Dakota	X	
Ohio	X	
Oregon	X	X
Utah	X	X
Washington	X	X
Wisconsin	X	X

Source: Smoking and Health: A National Status Report, U.S. Dep't for Health and Human Services 87-8396, p. 67.

Arguments For and Against Smoking Restrictions

Proponents of smoking restrictions argue that:

- o An individual has the basic right to breath clean air and to live in a smoke-free environment.
- o Medical research has shown that passive smoking can cause common irritations such as coughing, eye irritations, headaches, and aggravated allergies, as well as that a nonsmokers exposure to significant side-stream smoking decreases his or her lung function (the ability of the lung to take in air and exchange oxygen, carbon monoxide and other gases between the blood and the lungs).
- o The U.S. Surgeon has pronounced the harmful effects of passive smoking.

Opponents of smoking restrictions argue that:

- o An individual has the right to smoke, if not anywhere, at least in designated spaces.
- o There is no viable evidence that passive smoking increases the incidence of lung cancer or causes premature death.
- o Anti-smoking Laws are not realistically enforceable. Police have more important crimes that need to be addressed. Courts are too backlogged to handle such cases. The costs to the public and private sector for no-smoking signs and accommodations are very high, as well as employee time lost for regular "smoke breaks."

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CSG Backgrounder -- Smoking in Public Places

Table II  
STATE LIMITATIONS ON SMOKING IN PUBLIC PLACES

	Public Transit	Health Care Offices Facilities	Indoor Cultural Recreation Facilities	Retail Outlets	Restaurants	Public Buildings
AL						
AK	X	X	X	X	X	X
AZ	X	X	X			
AR		X				
CA	X	X	X	X	X	
CO	X	X	X			X
CT	X	X		X	X	X
DE	X					
DC	X	X		X		X
FL	X	X	X	X	X	X
GA	X					
HI			X			
ID	X	X	X	X	X	
IL						
IN						
IA	X	X	X			X
KS	X	X	X			
KY						
LA						
ME	X	X		X		
MD	X	X				
MA	X	X	X	X		
MI		X		X	X	
MN	X	X	X	X	X	X
MS	X					
MO						
MT	X	X	X	X	X	X
NE	X	X	X	X	X	X
NV	X	X	X			X
NH	X	X	X	X		X
NJ	X	X		X	X	X
NM		X	X			X
NY	X		X			X
NC						
ND	X	X	X		X	X
OH	X	X	X			X
OK	X		X			
OR		X	X	X	X	X
PA		X	X	X		
RI	X	X	X	X	X	
SC						

\* States without an X designation have no laws governing smoking.



CSG Backgrounder --- Smoking in Public Places

	Public Transit	Health Care Office Facilities	Indoor Cultural Recreation Facilities	Retail Outlets	Restaurants	Public Buildings
SD	X	X	X			
TN						
TX	X	X	X			
UT	X	X	X	X	X	X
VT						X
VA						
WA	X	X	X	X	X	X
WV	X					
WI	X	X	X	X	X	X
WY						

Source: Smoking and Health: A National Status Report, U.S. Dep't for Health and Human Services 87-8396, p. 65.

Notes

1. "Clampdown on Smoking," The Courier-Journal Magazine, May 3, 1987, p. 31.
2. Smoking and Health: A National Status Report, U.S. Department for Health and Human Services, 87-8396, p. 61.
3. "Groups Petition for Smoking Ban in Private Workplaces," The State-Journal, May 6, 1987, p. 4, Sec. B.
4. Ibid.
5. Smoking and Health: A National Status Report, p. 64.
6. "New York Smoking Ban Butted Out," The Journal of Commerce, April 27, 1987.
7. Smoking and Health: A National Status Report, p. 67.
8. Ibid.
9. "State Labor Legislation Enacted in 1986," Monthly Labor Review, January, 1987, p. 63.
10. "Smoker's Rights Limited in Three More States," From the State Capitols -- General Trends, March 30, 1987, p. 1.
11. Smoking and Health: A National Status Report, p. 67.

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FILED  
JUL 20 1987  
BILL GRAVES  
SECRETARY OF STATE

OFFICE OF THE GOVERNOR  
State Capitol  
Topeka 66612-1590  
(913) 296-3232

Mike Hayden Governor

EXECUTIVE ORDER NO. 87-99

ESTABLISHING A CLEAN AIR POLICY IN  
THE WORKPLACES OF EXECUTIVE AGENCIES

Executive Department  
State House  
Topeka, Kansas

WHEREAS, tobacco smoking has resulted in numerous deaths each year in the form of heart disease, emphysema, chronic bronchitis, and cancers of the lungs, mouth, throat, pancreas and bladders;

WHEREAS, smoking is the single most preventable cause of illness and death;

WHEREAS, health care costs are greatly increased as a result of illnesses resulting from smoking;

WHEREAS, smoking subjects nonsmokers to the toxic effect of smoke;

WHEREAS, the enactment of 1987 House Bill No. 2412 highlights the concerns of society arising from smoking; and

WHEREAS, a clean air policy in the workplaces of executive agencies will benefit our employees and citizens by reducing medical expenses, lost productivity, absenteeism, premature deaths, maintenance costs, and health insurance costs.

NOW, THEREFORE, under the authority vested in me as Governor of the State of Kansas, it is hereby ordered as follows:

I. That the secretary of administration shall designate the Docking State Office Building, Judicial Center, Landon State Office Building, Memorial Hall, Printing Plant, and the Wichita State Office Building as follows:

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*2-21-9*

- a. All points of public ingress to these buildings will be posted "no smoking except in designated areas."
- b. All common areas open to the public in these buildings, that is, restrooms, hallways, and stairwells, will be non-smoking areas.
- c. Agency heads of those state agencies leasing space or assigned space in these buildings are to determine and post those areas, if any, which are designated smoking areas.

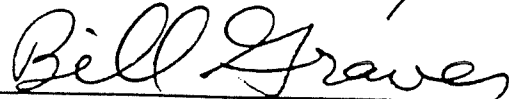
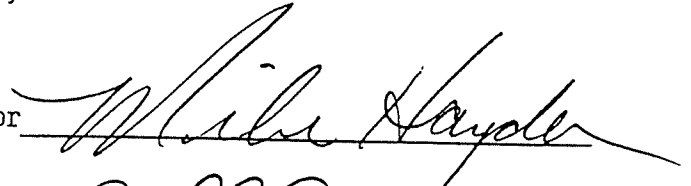
II. That state agencies occupying other state-owned buildings are responsible for posting the no-smoking signage required by House Bill No. 2412 and designating any areas where smoking is permitted.

III. That all state agencies in private leased space shall post areas under their control and open to the public with appropriate no-smoking signage as required by House Bill No. 2412 and that the designation of smoking areas, if any, in private leased space is the responsibility of the state agency leasing space.

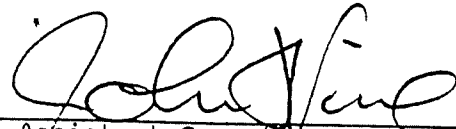
This document shall be filed with the Secretary of State as Executive Order No. 87-99 and shall become effective immediately.

THE GOVERNOR'S OFFICE

By the Governor



Secretary of State



Assistant Secretary of State

July 1, 1987

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BILL GRAVES  
SECRETARY OF STATE

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TESTIMONY TO HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE  
ON BEHALF OF R. J. REYNOLDS TOBACCO USA  
RE: HB 2271  
BY RONALD R. HEIN  
FEBRUARY 21, 1989

Mr. Chairman, members of the committee:

My name is Ron Hein, and I am legislative counsel for R. J. Reynolds Tobacco USA. R. J. Reynolds generally takes the position of not interfering in the decisions by an individual proprietor with regards to designation of smoking or non-smoking areas within the private jurisdiction of that proprietor. In this case, we would take essentially the same position, noting that it is for the discretion of the appropriate body that governs the State Capitol Building to decide where smoking should or should not be permitted.

However, as with any law that has a criminal penalty associated with it, as this law does, care should be taken to insure that the legislation is necessary and is well defined.

Therefore, we would note that this possibly is a matter that is more properly dealt with by the Legislative Coordinating Council or by the Legislature through a concurrent resolution rather than by state law. It should be noted that the state law provides the mechanism for designating the appropriate smoking areas, and this is, in essence, such a designation. A concurrent resolution would have exactly the same effect.

There is also some concern about the definition of "enclosed office" and "occupied by a state officer or employee." For instance, is Senator Bogina's office an "enclosed office?" Is an office such as Senator Strick's office, which would appear to meet the definition of enclosed, permitted to be designated as a smoking area only during the time that office is actually occupied by Senator Strick or his secretary. Not to belabor the point, but numerous other examples or questions could be raised, that could be more readily avoided by simply having the Legislative Coordinating Council, working with the Legislative Administrative Services staff, prepare a map of the designated areas throughout the Capitol, and then let the decision be made on a case by case basis if there are individual problems.

We very much appreciate the committee's attention, and I would yield for any questions.

*PHVLO*  
*Attn. #9*  
*2-21-9*



DEPARTMENT OF HEALTH AND ENVIRONMENT

*Forbes Field*

*Topeka, Kansas 66620-0001*

*Phone (913) 296-1500*

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

Testimony presented to  
House Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

House Bill 2271

The Kansas Department of Health and Environment recommends that smoking be prohibited in the State Capitol except for enclosed offices which may be designated as smoking areas for those who work in the Capitol.

The detrimental health hazards of second hand tobacco smoke are well documented. A 1986 report of the Surgeon General entitled, "The Health Consequences of Involuntary Smoking" examines the evidence that even a low exposure to smoke received by the non-smoker carries with it a health risk. This report makes the following conclusions:

1. Involuntary smoking is a cause of disease, including lung cancer, in healthy non-smokers.
2. Simple separation of smokers and non-smokers within the same air space may reduce, but does not eliminate, exposure of non-smokers to environmental tobacco smoke.
3. The children of parents who smoke, compared with the children of non-smoking parents, have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.

A 1986 article in the British Medical Journal entitled, "Does Breathing Other People's Tobacco Smoke Cause Lung Cancer?" reviewed data from 13 epidemiological studies of lung cancer and exposure to other people's smoke. It found that non-smokers living with smokers have a 35 percent increase in the risk of lung cancer compared with non-smokers who live with non-smokers. This analysis

PH/W  
attm # 10  
2-21-9

Testimony, HB 2271  
February 21, 1989  
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supports the conclusion that breathing other people's tobacco smoke causes lung cancer.

We support the bill because it would help protect the non-smoker from the health consequences of involuntary exposure to tobacco smoke in the State Capitol.

Presented by: Gary K. Hulett, PhD  
Under Secretary

February 21, 1989

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2-21-9

GARY H. BLUMENTHAL  
 REPRESENTATIVE, TWENTY-THIRD DISTRICT  
 JOHNSON COUNTY  
 10125 EDELWEISS CIRCLE  
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TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: EDUCATION  
 LEGISLATIVE, JUDICIAL AND CONGRESSIONAL  
 APPORTIONMENT  
 TRANSPORTATION  
 JOINT COMMITTEE ON ADMINISTRATIVE RULES  
 AND REGULATIONS

Mr. Chairman, I appreciate the opportunity to speak with you today regarding HB 2206.

As many of you know, I have spent many years working with advocacy groups concerned about the care and treatment of the mentally retarded. I have brought this bill to your attention, as the result of my concern when I was contacted by an individual who worked in a facility for the mentally retarded, who had suspicions that a client in one of these facilities could possibly be the victim of abuse.

When this information was shared within the facility, there seemed to be a great amount of hesitation regarding whether this information should be shared with the area SRS office, in view of the fact that the mentally retarded person might not be fully able to articulate the allegation of abuse.

I feel quite strongly that in such a case when an allegation has been made, it should be the responsibility of the facility to immediately respond by notifying SRS and allow the appropriate individuals the opportunity to conduct an investigation and determine the validity of the allegation. Needless to say, I was quite surprised to learn that this is not necessarily the case or even standard procedure.

HB 2206 simply amends 39-1401, which covers issues of abuse for residents of adult care homes and adult family homes, by adding "any individual kept, cared for, treated, boarded or otherwise accommodated in a group home, sheltered workshop, rehabilitation facility or half-way house serving the mentally retarded". Thus notification would be required the appropriate licensed personnel.

At a time in which many of our facilities for the mentally retarded are facing questions regarding appropriate care, protection from abuse, and active treatment, I feel we must extend this protection to ensure the quality of care within these facilities.

*PAK W*  
*Attn # 11*  
*2-21-9*



*Hope through understanding*

ROBERT ATRISSON  
*President*  
*Stockton*

BRENT GLAZIER  
*Executive Director*

February 21, 1989

MARIE LEACH  
*Vice President*  
*Wichita*

MARY DONDLINGER  
*Secretary*  
*Hutchinson*

ED REMPE  
*Treasurer*  
*Hays*

CAROL A. DUCKWORTH  
*Past President*  
*Lawrence*

TO: Representative Marvin Littlejohn, Chairman  
Members of House Public Health & Welfare Committee

FROM: Lila Paslay, Chairperson  
Legislative Affairs

RE: H. B. 2206

The members of the Association for Retarded Citizens of Kansas urge you to support H.B. 2206.

As we see many more individuals with mental retardation being served in community facilities, the possibility of abuse and/or neglect is increased. We also know that persons with more severe disabilities which includes behavior problems are at greater risk for such incidences. The protection provided in this bill would, hopefully, give assurance that cases of abuse and/or neglect would not go unreported and would insure improved care and safety.

We would like to offer an amendment for a change in the language which we believe would more accurately describe the individuals for whom the protection is desired and the programs in which they participate.

Lines #30-32 - Any individual with mental retardation/developmental disability receiving services through a licensed comprehensive community mental retardation center or served through a licensed resident care facility, community based residential facility or adult family home.

PH/W  
Attn. #12  
2-21-9



## What is Second-hand Smoke?

Tobacco smoke contains about 4,000 chemicals, including 200 known poisons such as DDT, arsenic, formaldehyde, and carbon monoxide. Every time someone smokes these poisons are released into the air, which means that not only is the smoker inhaling them but so is everyone else around him. Many studies now show that this secondhand smoke can have harmful effects on nonsmokers and even cause them to develop diseases such as lung cancer.

Americans are beginning to recognize how hazardous smoking can be to everybody's health. National surveys show that most nonsmokers — and even the majority of smokers themselves — believe that people should not smoke when they are around nonsmokers. Clearly, in our society, causing other people to be exposed to secondhand smoke is becoming less and less acceptable.

## Side-Stream Smoke

Every time anyone lights up a cigarette, cigar, or pipe, tobacco smoke enters the air from two sources. The first is mainstream smoke, which the smoker pulls through the mouthpiece when he inhales or puffs. Nonsmokers are also exposed to mainstream smoke after the smoker exhales it. The second, and even more dangerous source, is sidestream smoke, which goes directly into the air from the burning tobacco.

Sidestream smoke — which a nonsmoker inhales whenever he's around someone who's smoking — actually has higher concentrations of some harmful compounds than the mainstream smoke inhaled by the smoker. Some studies show that there is twice as much tar and nicotine in sidestream smoke as compared to mainstream. There is also three times as much carbon monoxide, which robs the blood of oxygen, as well as several suspected cancer-causing substances.

Most of the smoke in a room results from sidestream smoke. When nonsmokers breathe in this type of smoke from other people's cigarettes, cigars, and pipes, it is often called involuntary or passive smoking.

## Second-hand Smoke and Lung Cancer

The fact that cigarette smoking is the main cause of lung cancer in smokers is well-known. In 1986 the Surgeon General of the United States reported that involuntary smoking can cause lung cancer

in nonsmokers.

What this could mean is that tobacco smoke and radiation may have this in common: there are just no safe levels of exposure.

## Effects on Children

Secondhand smoke has an especially bad effect on infants and children whose parents smoke. A number of studies show that in their first two years of life, babies of parents who smoke at home have a much higher rate of lung diseases such as bronchitis and pneumonia than babies with nonsmoking parents.

A study involving children ages five-to-nine showed impaired lung function in youngsters who had smoking parents as compared with those whose parents were nonsmokers. And smoking by a child's mother seems to predispose the child to respiratory distress syndrome.

Parents who smoke at home can aggravate symptoms in some children with asthma and even trigger asthma episodes. Parents should limit their smoking to separate rooms away from these children or, better yet, quit smoking altogether.

Even among children without asthma, a team of researchers found that acute respiratory illnesses happen twice as often to young children whose parents smoke around them as compared to those with nonsmoking parents.

The American Lung Association is encouraging smoke-free families so that children can have the best possible chance to grow up healthy.

## Smoke at the Workplace

An increasing number of state and local laws now restrict smoking at the workplace. The idea behind these laws is that the preferences of both nonsmokers and smokers should be considered, whenever possible. However, when these preferences conflict, the health and preferences of nonsmokers should come first.

More and more private companies are also adopting policies that restrict smoking and protect nonsmokers at work.

## Tobacco Odors

Burning tobacco smoke creates bad odors which also cling to people's clothes, hair, and even their skin. This contamination is so intense that when someone smokes in an air-conditioned room, the air-conditioning demands can jump as much as 600 percent in order to control the odors.

The bad odors created by tobacco smoke also linger on. Long after a person has left a smoke-filled room, they may still have the odor of cigarettes on their bodies and in the fabric of their clothes. This is because while certain chemicals created by burning tobacco cause bad odors, other chemicals actually help the odors to hold onto the surface that they penetrate.

Smokers themselves usually are not sensitive to these odors because of the destructive effects that the smoke from their own cigarettes has on the inner linings of the smoker's nose.

AMERICAN  LUNG ASSOCIATION  
of Kansas

4300 Drury Lane, P.O. Box 4426  
Topeka, Kansas 66604

## Smoke-Free Society

More than 40 million Americans have kicked the cigarette habit. Millions more are trying. Overall, only about one out of three people in this country still smokes.

Clearly, people who don't smoke are the majority, and they are concerned about being able to breathe clean air, free from harmful and irritating tobacco smoke. Even most smokers agree that smoking is hazardous to the health of nonsmokers as well as to their own health.

These are among the facts that have led the Surgeon General to propose that America become a Smoke-Free Society by the year 2000. If we were a smoke-free nation, we would be helping to protect everybody's health.

## Clean Air for Everyone

Being able to breathe clean air, free from harmful, irritating tobacco smoke is a serious issue for everyone. At home, at work, and

in other public and private places it is important to speak up about how dangerous smoking can be to smokers and nonsmokers alike.

Here's what you can do to help:

- Let family, friends, co-workers, and others know that you mind if they smoke.
- Put stickers, buttons, and signs in your home, car, and office. Ask to be seated in nonsmoking sections when you travel or dine.
- Support legislation to restrict smoking or to set up smoke-free areas in public places and at the workplace.
- Ask your doctor and dentist to restrict smoking in their waiting rooms and to help establish no-smoking regulations in all health-care facilities, including hospitals.
- Propose no-smoking resolutions at organization meetings. Encourage hotels and restaurants to establish no-smoking areas.

- Encourage management and unions where you work to establish a policy to protect nonsmokers on the job.
- Help to promote the concept of smoke-free families in your community.
- Contact your nearest American Lung Association office. They have the facts about smoking, and a network for action.

## A Challenge for the Future

A recent Gallup survey conducted for the American Lung Association revealed that the majority of both smokers and nonsmokers believe that smoking can damage the

health of people who don't smoke.

Translating this belief into social action is the challenge we all face as we head into the 1990's. Your local American Lung Association can help: they have a wide variety of programs to help people quit smoking. They can also assist you in finding out about ways to protect nonsmokers at work.



It's a Matter of Life and Breath®

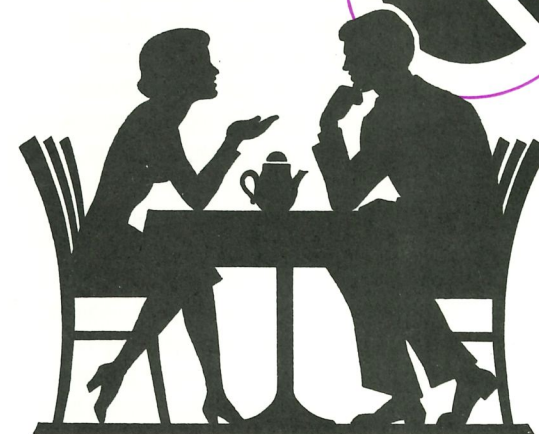
This publication was made possible in part by your support of Christmas Seals® and other contributions to the American Lung Association.

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facts about...

SECOND-  
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