

Tobacco Use and Regulation

BACKGROUND

Rise of Tobacco Use

Although tobacco consumption and production grew steadily after the plant's "discovery" in 1492 (American Indians introduced it to Columbus when he landed in the Americas), smoking did not become commonplace until after 1884, when a machine supplanted hand rolling. A skilled cigarette roller could produce about 2,000 cigarettes a day, but the machine could roll 120,000, thereby greatly reducing their cost. The later invention of safety matches allowed smokers to carry around the means for lighting up, and smoking became both inexpensive and convenient.

Between the world wars, U.S. smoking rates soared, and they continued to rise for decades; cigarettes became part of the popular culture. They were included among soldiers' rations, and by World War II's end, the number of smokers reached an all-time high—almost half the entire adult population. By 1950, the five major cigarette manufacturers were selling more than 400 billion cigarettes a year.

GLOSSARY

Secondhand smoke

That which (1) comes from a smoking agent (e.g., a cigarette or cigar) or (2) is exhaled by the smoker; also called environmental tobacco smoke.

Tobacco products

Cigarettes, pipe and chewing tobacco, and cigars.

Rise of the Anti-Tobacco Movement

In 1830 the first organized U.S. anti-tobacco movement was established as an adjunct to the temperance movement (tobacco was believed to dry out the mouth, "creating a morbid or diseased thirst" that only liquor could quench). In 1913 the American Society for the Control of Cancer (today the American Cancer Society) was founded to inform consumers about the dangers of tobacco use and other suspected cancer-causing products. That year fewer than 400 lung cancer cases were reported in the United States (a rate of 0.6 per 100,000 population). By 1956, however, almost 50,000 people died from the disease—a rate of 30 per 100,000.

Although they did not have proof, for decades many scientists, physicians, and others argued that smoking causes lung cancer. Then, in 1950 the Journal of the American Medical Association published the first major study definitively linking smoking to lung cancer. Seven years later, the surgeon general released the *Joint Report of the Study Group on Smoking and Health*, which stated that, "prolonged cigarette smoking was a causative factor in the etiology of lung cancer." This was the first time the federal government had taken a formal position on smoking's relationship to cancer. Following this report, people's attitudes and actions toward tobacco began to change substantially.

- In 1965 Congress voted to require manufacturers to include warnings on cigarette packages.

- In 1970 Congress banned cigarette advertising on radio and television and strengthened the warning label on cigarette packages.
- In 1973 Arizona passed the first state law to protect nonsmokers' rights.
- In 1981 health insurance companies began offering discounts to nonsmokers.

By the early 1980s, people began reducing their cigarette consumption, and by 1992 it dropped to an average of seven a day among adults—down from 12 a generation earlier.

War against Tobacco

In 1988 the tobacco industry experienced the first in a series of devastating blows: A New Hampshire judge ordered Liggett Group, one of the nation's top five tobacco manufacturers, to pay the first ever financial award in a liability suit; the lawsuit had been brought against the tobacco company by the husband of a woman who died from lung cancer after smoking for 40 years (the decision later was overturned on a technicality). A few years later, the courts ruled that a death resulting from exposure at work to secondhand smoke warranted a company's compensating the worker's family. Then, in 1993, the U.S. Environmental Protection Agency officially declared cigarette smoke a carcinogen (cancer-causing agent).

In 1995 the news broke that cigarette companies, to increase addiction, for years had been purposefully controlling the nicotine level in cigarettes. Shortly thereafter, the federal Food and Drug Administration (FDA) declared that nicotine is a drug and cigarettes are a drug-delivery device; the move was upheld in court and gave the agency the right to regulate tobacco-product sales. For example, the FDA recently issued a rule requiring photographic identification for anyone aged under 27 who attempts to buy tobacco; other provisions regulate vending machines and self-serve displays.

In 1996 Liggett Group made a dramatic break with the tobacco industry and offered to settle pending lawsuits involving recovery of public health care dollars spent on treating smokers. Months later, Michi-

gan joined various other states in suing the remaining tobacco companies for their role in contributing to government health care costs (including falsely advertising and marketing cigarettes as safe products and manipulating nicotine levels to ensure addiction). A year later, Liggett Group publicly stated that (1) smoking is addictive and causes cancer; (2) the industry targets its advertising toward youths—people aged under 18; and (3) it would turn over documents supporting the admissions.

The move, along with extreme government pressure, prompted the nation's remaining tobacco manufacturers to begin to negotiate settlements in pending lawsuits, and in mid-1997 they reached an agreement with the U.S. government and several states' attorneys general to

- spend \$368 billion over 25 years for damages resulting from smoking (\$10 billion initially and then \$15 billion annually); the money mainly will pay for (1) damage claims made by ill smokers, (2) smoking-cessation programs, and (3) anti-smoking campaigns;
- use a bolder health warning on packaging (it must cover 25 percent of the cigarette pack);
- curb all cigarette advertising (including that on billboards, the Internet, and at athletic events);
- pay fines if youth smoking does not drop substantially (by 42 percent in five years, 58 percent in seven, and 67 percent in ten); and
- agree to the FDA's regulating nicotine as a drug.

In return, the federal government agreed to

- limit total awards against all tobacco companies to \$5 billion a year;
- ban future class-action lawsuits (although individual lawsuits still are permitted); and
- ban punitive damages from being awarded in civil trials (the deal does not ban criminal prosecution of tobacco companies, however).

To date, Congress has not approved the agreement; negotiations still are taking place.

Toll of Tobacco Use

Over the years, health professionals and scientists have documented that the health risks of smoking are substantial. More than 4,000 chemical compounds have been identified as present in tobacco and its smoke. Many are toxic, and several are carcinogenic or can cause tumors. Tobacco smoke includes at least 43 cancer-causing substances, including carbon monoxide, hydrogen cyanide, phenols, ammonia, formaldehyde, benzene, nitrosamine, and nicotine.

According to scientists, lung cancer risk increases steadily with the number of cigarettes smoked: Among those who smoke 40 or more cigarettes a day (two or more packs), the lung cancer risk is nearly 20 times that among nonsmokers. The risk is less for people who quit smoking than for those who do not. Smoking also causes other health problems.

- Smoking doubles the chances that one will die from heart disease or stroke.
- Smoking during pregnancy increases the risk of infant mortality and other adverse outcomes associated with low birth weight.
- Children exposed to secondhand smoke experience a higher rate of incidence of respiratory irritation and asthma than those who are not.

In 1997 the American Cancer Society's *Cancer Prevention Study II* reported that tobacco use was responsible for more than one in six American deaths (419,000 a year). In Michigan, an estimated 15,000 people die from using the plant and its products (including cigars, pipes, and chewing tobacco), and up to 2,000 nonsmokers die each year from being exposed to secondhand tobacco smoke. According to the federal Centers for Disease Control, tobacco use is the single most preventable cause of death in the United States.

DISCUSSION

With surprising ease, tobacco and its products became an integral part of modern society. Although its role in the world economy has changed somewhat (for example, it no longer is a medium of monetary exchange), its consumption employs thousands

in agriculture, processing, advertising, and other businesses. Furthermore, tobacco sales account for billions in retail sales every year.

Perhaps because of smoking's part in society and tobacco's role in the economy, some lawmakers have difficulty deciding how to respond to the conclusive evidence that tobacco use poses a serious public health threat. For example, at this writing, the agreement between the tobacco companies and the government still has not been approved by Congress. Some members argue that the agreement is too soft on tobacco companies, which they claim should be punished for their efforts to keep smokers addicted to cigarettes and other products. Others argue that the agreement is too hard on the tobacco companies: after all, people *choose* to smoke and be addicted to nicotine and therefore should accept the consequences of their actions. The Congress, states' attorneys general, and tobacco industry remain in negotiations and are discussing other possible legal settlements.

If policymakers and industry officials agree to a settlement, Michigan will be one beneficiary, but until then the state must continue to rely on its own and federal efforts to control tobacco consumption and the costs that stem from it. In pursuing this goal, Michigan policymakers have focused their efforts mainly on reducing the number of minors who begin smoking.

Youth Tobacco Use

In 1994 Michigan ranked 14th in the nation in terms of the percentage of its population that smoke (most recent data available). Today, it is estimated that among Michigan adults almost 26 percent are smokers, and people are starting the habit at a younger age—90 percent of smokers begin before age 21 (hardly any begin after age 25). It is thought that nearly 112,000 Michigan adolescents aged 12–18 smoke at least once a week. The 1997 Michigan Youth Risk Behavior Survey finds that among high schoolers

- 75 percent have tried smoking,
- 38 percent smoke cigarettes at least once a month,
- 27 percent smoke two or more cigarettes on the days they smoke,

- 15 percent usually get their cigarettes by buying them in a store or gasoline station,
- 13 percent never have been asked to show proof of age when purchasing cigarettes in a store, and
- 38 percent have tried to quit smoking.

These figures, except the last, are higher than the national average.

In all 50 states, tobacco sale to minors is prohibited, but Michigan policymakers believe that the data show that the prohibition is insufficient, and legislation has been introduced to impose harsher monetary punishment on those who *sell*, *give*, or *furnish* tobacco products to minors—that is, hit violators where it most hurts: in the pocketbook. Another proposed change is to *decriminalize* provision of tobacco products to minors.

Currently, under the Youth Tobacco Act of 1988, one who provides a tobacco product to may be charged with a *criminal* misdemeanor and fined (maximum \$50); the proposed legislation would make it a *civil* infraction and increase the fine (maximum \$100). (Under Michigan law, a civil infraction—e.g., a parking ticket—is not criminal in nature, and no “criminal” record is kept on the violator.)

Supporters of the civil-infraction provisions say that the current law makes prosecuting attorneys reluctant to prosecute, and judges reluctant to find guilty, a person who provides a tobacco product to a minor, because it means establishing a criminal record for him/her. Moreover, if this becomes a civil rather criminal offense, apprehension will be facilitated, because local public health officials have enforcement authority.

Some observers say the legislation does not go far enough. They believe that to have an effective law to reduce tobacco use by minors, the bill should require licensure of retailers who sell tobacco products, repeal the state law preempting local ordinances that are different from state laws, and provide funding for enforcement. Legislation that incorporates such provisions also is pending before Michigan lawmakers.

A step taken earlier to curb youth tobacco use is the 1992 Michigan law prohibiting vending machines from being placed in locations open to minors; exceptions are restaurants with certain liquor licenses and private clubs and workplaces not open to the public.

Youth-Targeted Advertising

Another issue surrounding youth tobacco consumption relates to advertising. A 1991 study published in the *Journal of the American Medical Association* found that 91 percent of 6-year-olds can match Joe Camel to his product (cigarettes), and the character is as recognized by preschoolers as Mickey Mouse. Since the Joe Camel campaign began (1987), Camel’s share of the under-18 market had risen from less than one percent to almost 33 percent. Other studies reveal that 86 percent of underage smokers prefer one of the three most heavily advertised brands—Marlboro, Newport, or Camel. Although the producer of Camel cigarettes has agreed to discontinue the Joe Camel campaign (and others have agreed to avoid using cartoon characters at all), many fear that cigarette manufacturers will find other ways to target young people, their greatest source of market growth.

Today, most policymakers are reluctant to introduce legislation placing limitations on tobacco advertising because the settlement talks still are pending. Opponents of such restrictions argue that they would violate tobacco advertisers’ First Amendment right to free speech. However, a Supreme Court decision rendered in the late 1980s suggests that there is a difference between political free speech, which is clearly protected by the Constitution, and advertising. If talks continue to delay a tobacco settlement, legislators may begin looking more closely at further regulating and/or banning tobacco-product ads.

Secondhand Smoke

Secondhand smoke (environmental tobacco smoke) is that which (1) comes from a smoking agent (e.g., a cigarette or cigar) or (2) is exhaled by the smoker. About one-half of the smoke generated from a burning cigarette is emitted between puffs—when the user is not drawing in the smoke. Nonsmokers who are exposed to secondhand smoke absorb nicotine and

other compounds just as smokers do, and they too can suffer from cancer and other ailments as a result. According to the American Cancer Society, nearly nine of ten nonsmoking Americans (88 percent) regularly are exposed to secondhand smoke.

Policymakers have taken steps to reduce nonsmokers' exposure to secondhand smoke. For example, federal law prohibits smoking on airline flights that serve the continental United States. In Michigan, the Clean Indoor Air Act of 1986 restricts smoking to designated areas in publicly owned buildings and certain private facilities; the law places additional restrictions on child care centers and some health care facilities. Also, as of 1994, Michigan law requires restaurants having 50 or more seats to designate a minimum of 50 percent of their seating as a non-smoking area; for private clubs and restaurants with fewer than 50 seats, at least 25 percent of the seating must be nonsmoking. Other states have adopted similar legislation.

A 1986 surgeon general's report concludes, however, that simply separating smokers and nonsmokers in the same air space only reduces—but does not eliminate—exposure to secondhand smoke. As a result, many states—Arizona, California, Colorado, Massachusetts, New York and Texas—have implemented full smoking bans in restaurants and other public places. In Michigan, legislation is pending that would prohibit smoking in public facilities, including workplaces, except in certain well-ventilated areas. In the absence of legislative action, some groups are considering initiating a ballot question that would achieve the same end.

Supporters of a full smoking ban argue that nationwide, over the next 45 years, such legislation could prevent more than 32,000 cancer and 575,000 heart-disease deaths. They contend that children and people with certain conditions, such as asthma, should be protected from the health hazards of exposure to cigarette and other tobacco smoke. Those opposing such a law argue that the expense of complying with secondhand smoke provisions (e.g., changing ventilation systems) could put some small firms out of busi-

ness. Many also believe that enforcing smoke-free laws could create more government bureaucracy, and some contend that workplace smoking-related issues are a management-labor matter.

Tobacco Taxes

Another public policy issue is tobacco product taxation. The federal government currently taxes cigarettes at 24 cents a package; the levy will go up 10 cents in 1998 and probably again in 2002. Michigan first started taxing cigarettes in 1947 to (1) generate revenue and (2) discourage tobacco use.

The state last raised its cigarette tax in 1994, from 25 to 75 cents a pack. (A tax on tobacco products other than cigarettes also was imposed—16 percent on the product's wholesale price; proponents suggest that the move acknowledges policymakers' awareness that all tobacco products pose a serious public health threat.) Part of the additional revenue is dedicated to public K–12 education and part to health-and-wellness programs. An example of the latter is the Healthy Michigan Fund (to which 6 percent of tobacco-tax collections go), a primary purpose of which is to reduce the state's smoking rate.

Those who opposed the 1994 tax increase pointed out that the state actually could lose revenue—some people would stop buying cigarettes because they are too expensive, and others would smuggle cigarettes from places (such as in neighboring states) where they can buy the product for less. They were right: Cigarette sales are down (by more than 2 percent), and smuggling is up (costing millions in lost tax revenue annually).

To combat smuggling, state law now requires (1) wholesalers and unclassified acquirers of cigarettes to affix special stamps to cigarette packages that will be sold in Michigan and (2) prohibits unstamped packages from being sold at retail. The drop in cigarette sales actually is good news to policymakers, who are willing to lose funds for some programs in return for the state's saving money that otherwise would have to be allocated to care for smokers who become ill.

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