

Bill No. 1265 Resolution No. \_\_\_\_\_

Councilmanic District \_\_\_\_\_

Introduced by Bell, Dixon, D'Adamo, Rep. Clarke,  
at the request of Reeve, Welch, Stokes

address \_\_\_\_\_ phone number \_\_\_\_\_

prepared by Leg. Ref.

Bill/Resolution

Referred to	Report Received	Action
<u>Health</u>	<u>3-20-91</u>	<u>for</u>
<u>Police</u>	<u>4-2-91</u>	<u>no position</u>

Reports Journalized on J. 4-9-91 p. 2957

Advertised on the following date(s) \_\_\_\_\_

Paper(s) \_\_\_\_\_

Property \_\_\_\_\_

Property Owners \_\_\_\_\_

READINGS

	Date	Journal Page No.
1st _____	<u>3-11-91</u>	<u>2864</u>
2nd <u>for/amend</u> Action _____	<u>6-17-91</u>	<u>3217, 3218</u>
3rd <u>passed</u> Action _____	<u>6-24-91</u>	<u>3340</u>

President Signed 6-24-91

Mayor Signed 6-28-91 Final Ordinance No. 774

*Hearing 5-24-91 - 10:00 AM*

REMARKS:

Hearing notify: David Tambling, Suite 300, 200  
Brookston Ave. Winton Salem, N.C. 27101

1265

HEALTH

Date Referral Letters Sent 3-14-91

2nd \_\_\_\_\_

Final \_\_\_\_\_

Referred to Board of Estimates \_\_\_\_\_



CITY OF BALTIMORE

ORDINANCE NO. 774

(Council Bill No. 1265)

1 AN ORDINANCE concerning

2 DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

3 FOR The purpose of prohibiting the distribution of tobacco  
4 samples and coupons in public places in Baltimore City.

5 BY adding

6 Article 11 - Health

7 To come under the new subtitle "Distribution of Tobacco  
8 Samples and Coupons"

9 Section 284

10 Baltimore City Code (1983 Replacement Volume, as amended)

11 WHEREAS, Smoking has been linked to lung cancer, respiratory  
12 disease, and heart disease; and

13 WHEREAS, Maryland has the highest cancer death rate in the  
14 nation, and 42 percent of Maryland's cancer deaths are linked to  
15 tobacco use, alcohol use, or both; and

16 WHEREAS, Baltimore has one of the highest cancer death rates  
17 within the state; and

18 WHEREAS, The commercial distribution of free or economically  
19 priced tobacco products and coupons for tobacco products, to  
20 members of the public in public places, promotes the use of  
21 tobacco products and, in particular, encourages and facilitates  
22 smoking by minors; and

23 WHEREAS, Article 27, Section 404 of the Annotated Code of  
24 Maryland prohibits the sale or gift of tobacco products to  
25 minors; and

26 WHEREAS, One-half of all smokers begin smoking before the  
27 age of 18, smoking by minors is detrimental to public policy,  
28 and, despite Maryland State Law, access by minors to tobacco  
29 products is a major problem; and

30 WHEREAS, Enforcement of age-related restrictions on the  
31 commercial distribution of free or economically priced tobacco  
32 samples and coupons for tobacco products would be impractical and  
33 ineffective; now, therefore,

34 Section 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF  
35 BALTIMORE, That Section(s) of the Baltimore City Code (1983  
36 Replacement Volume, as amended) be added, repealed, or amended,  
37 to read as follows:

ARTICLE 11 - HEALTH

DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

284. DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS PROHIBITED.

(A) DEFINITIONS.

(1) "DISTRIBUTE" MEANS TO GIVE, SELL, DELIVER, OFFER TO GIVE, SELL OR DELIVER, OR CAUSE OR HIRE ANY PERSON TO GIVE, SELL, DELIVER OR OFFER TO GIVE, SELL OR DELIVER.

(2) "DOWNTOWN AREA" MEANS THE AREA WITHIN AND BOUNDED BY CENTRE STREET ON THE NORTH, PRATT STREET ON THE SOUTH, THE FALLSWAY ON THE EAST, PACA STREET ON THE WEST, AND DRUID HILL AVENUE ON THE NORTHWEST.

~~(2)~~(3) "LESS THAN BASIC COST" MEANS FREE OF CHARGE, A NOMINAL OR DISCOUNT PRICE OR ANY OTHER PRICE LESS THAN THE DISTRIBUTOR'S COST, TO WHICH SHALL BE ADDED THE FULL VALUE OF ANY CIGARETTE TAXES PAYABLE ON THEM.

~~(3)~~(4) "PERSON" MEANS ANY INDIVIDUAL, FIRM, PARTNERSHIP, ASSOCIATION, CORPORATION, COMPANY.

~~(4)~~(5) "PRIVATE FUNCTION" MEANS AN EVENT IN AN ENCLOSED AREA TO WHICH ENTRY IS NOT AVAILABLE TO THE GENERAL PUBLIC, BUT ONLY TO THOSE WHOM THE SPONSOR OF THE EVENT INVITES.

~~(5)~~(6) "PUBLIC AREA" MEANS AN ENCLOSED AREA IN WHICH MEMBERS OF THE PUBLIC ARE NORMALLY INVITED OR PERMITTED. A RETAIL STORE IS NOT A PUBLIC AREA WITHIN THE MEANING OF THIS DEFINITION.

~~(6)~~(7) "PUBLIC PLACE" MEANS ANY AREA IN WHICH MEMBERS OF THE PUBLIC ARE NORMALLY INVITED OR PERMITTED, INCLUDING BUT NOT LIMITED TO PARKS, STREETS, SIDEWALKS, SPORTS FIELDS, GYMNASIUMS, SHOPPING CENTERS OR PROPERTY OWNED, OCCUPIED OR OPERATED BY THE CITY.

(8) "TOBACCO PRODUCTS" MEANS A PACKAGE OF CIGARETTES CONTAINING MORE THAN 1 CIGARETTE.

(B) DISTRIBUTION PROHIBITED.

(1) A PERSON MAY NOT DISTRIBUTE TOBACCO PRODUCTS TO MEMBERS OF THE PUBLIC AT LESS THAN BASIC COST IN PUBLIC PLACES, IN PUBLIC AREAS, OR AT PUBLIC EVENTS.

(2) A PERSON MAY NOT DISTRIBUTE COUPONS WHICH ARE REDEEMABLE FOR TOBACCO PRODUCTS TO MEMBERS OF THE PUBLIC IN PUBLIC PLACES, IN PUBLIC AREAS OR AT PUBLIC EVENTS.

1 (C) EXCEPTIONS.

2 (1) THE PROVISIONS OF SUBSECTION (B) DO NOT APPLY IN  
3 THE DOWNTOWN AREA AND TO THE DISTRIBUTION OF COUPONS WHICH ARE  
4 REDEEMABLE FOR TOBACCO PRODUCTS WHEN THE COUPONS ARE:

5 (I) CONTAINED IN NEWSPAPERS, MAGAZINES OR OTHER  
6 TYPES OF PUBLICATIONS IN WHICH THE COUPON IS INCIDENTAL TO THE  
7 PRIMARY PURPOSE OF THE PUBLICATION; OR

8 (II) SENT THROUGH THE MAIL.

9 (2) THE PROVISIONS OF SUBSECTION (B) DO NOT APPLY TO  
10 TOBACCO PRODUCTS OR COUPONS DISTRIBUTED AT PRIVATE FUNCTIONS, OR  
11 BY RETAILERS, MANUFACTURERS, OR DISTRIBUTORS OF TOBACCO PRODUCTS  
12 TO ANY EMPLOYEE OF SUCH COMPANIES WHO ARE OVER THE AGE OF  
13 MAJORITY.

14 (D) PENALTY.

15 ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION  
16 IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION MAY BE FINED NOT  
17 MORE THAN ~~\$25.00~~ \$100.00 FOR EACH SEPARATE OFFENSE AND EACH ACT  
18 OF DISTRIBUTION TO A DIFFERENT PERSON SHALL BE DEEMED A SEPARATE  
19 OFFENSE.

20 SEC. 2. AND BE IT FURTHER ORDAINED, That this ordinance  
21 shall take effect on the 30th day after the date of its  
22 enactment.



A TRUE COPY  
WILLIAM R. BROWN, JR.  
DIRECTOR OF FINANCE

Certified as duly passed this JUN 24 1991 day  
of \_\_\_\_\_ 19\_\_

(Signed) Mary Pat Clarke  
\_\_\_\_\_  
President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,  
this JUN 24 1991 day of \_\_\_\_\_ 19\_\_

(Signed) Leonard F. Wright  
\_\_\_\_\_  
Chief Clerk

Approved this \_\_\_\_\_ JUN 28 1991 day of  
\_\_\_\_\_ 19\_\_

(Signed) Kurt L. Schmoke  
\_\_\_\_\_  
Mayor, Baltimore City

INTRODUCED BY Councilmembers Bell, Dixon, D'Adamo, <sup>REEVES</sup>  
AT THE REQUEST OF <sup>MARY PAT CLARKE MARCH, STOKES, HALL</sup> \*\*

ADDRESS

TELEPHONE

PREPARED BY Dept. of Legislative Reference DATE March 8, 1991

COUNCILMANIC DISTRICT \_\_\_\_\_

REFERRED TO HEALTH COMMITTEE

Also referred for recommendation and report to Municipal Agencies listed on reverse side.

CITY COUNCIL 1265

**A BILL**

*Laurence A. Bell*  
*Nicholas C. Dillman*  
*Debra Wilcox*  
*Mary Pat Clark*

AN ORDINANCE concerning

**DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS**

FOR The purpose of prohibiting the distribution of tobacco samples and coupons in public places in Baltimore City.

BY adding  
Article 11 - Health  
To come under the new subtitle "Distribution of Tobacco Samples and Coupons"  
Section 284  
Baltimore City Code (1983 Replacement Volume, as amended)

*Tris H. Reeves*  
*Sheela Duff*  
*Vera P. Hall*

No. \_\_\_\_\_

\*\* The introduction of an Ordinance or Resolution by Councilmembers at the request of any person, firm or organization is a courtesy extended by the Councilmembers and not an indication of their position.



**MUNICIPAL AGENCY REFERRALS**

\_\_\_\_\_ Board of Municipal & Zoning Appeals

\_\_\_\_\_ City Solicitor

\_\_\_\_\_ Employees' Retirement System

\_\_\_\_\_ Fire & Police Employees' Retirement System

**COMMISSIONS**

\_\_\_\_\_ Civic Design Commission

\_\_\_\_\_ Planning Commission

\_\_\_\_\_ Off-Street Parking Commission

\_\_\_\_\_ Commission for Historical & Architectural Preservation

\_\_\_\_\_ Wage Commission

\_\_\_\_\_

**DEPARTMENTS**

\_\_\_\_\_ Department of Housing & Community Development

\_\_\_\_\_ Department of Public Works

\_\_\_\_\_ Department of Recreation & Parks

\_\_\_\_\_ Fire Department

✓ \_\_\_\_\_ Health Department

\_\_\_\_\_ Office of the Mayor

\_\_\_\_\_ Department of Finance

\_\_\_\_\_ Board of Estimates

\_\_\_\_\_ B.E.D.C.O.

✓ \_\_\_\_\_ Police Department

\_\_\_\_\_ Department of Real Estate

\_\_\_\_\_ Department of Education

\_\_\_\_\_ Department of Comptroller

\_\_\_\_\_ Department of Transportation

\_\_\_\_\_ Board of Finance

\_\_\_\_\_

**OTHER**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_ President

Drafted by Department of Legislative Reference

Date - June 17, 1991

Amendments to Bill No. 1265 - First Reader Copy

Submitted by \_\_\_\_\_ Committee on \_\_\_\_\_ 19\_\_

Signed \_\_\_\_\_ Chair.

No. 1. On page 2, after line 15 insert:

"(2) 'Downtown area' means the area within and bounded by Centre Street on the north, Pratt Street on the south, the Fallsway on the east, Paca Street on the west, and Druid Hill Avenue on the northwest."

No. 2. On page 2, lines 16, 20, 22, 25, and 28 strike "(2)", "(3)", "(4)", "(5)", and "(6)" and substitute "(3)", "(4)", "(5)", "(6)", and "(7)" respectively.

No. 3. On page 2, after line 32 insert:

"(8) 'Tobacco products' means a package of cigarettes containing more than 1 cigarette."

No. 4. On page 3, line 2, after "apply" insert "in the downtown area and".

No. 5. On page 3, line 17, strike "\$25.00" and substitute "\$100.00" and after "offense" insert "and each act of distribution to a different person shall be deemed a separate offense".

**ADOPTED**

JUN 17 1991



<b>FROM</b>	NAME & TITLE	Elias A. Dorsey, <i>E.A.D.</i>
	AGENCY NAME & ADDRESS	Acting Commissioner of Health Baltimore City Health Department 303 E. Fayette Street, 8th Floor
	SUBJECT	Baltimore, Maryland 21202 City Council Bill No. 1265

CITY of  
BALTIMORE  
**MEMO**



**TO**

DATE:

President and Members of  
the City Council  
c/o Lorraine Laszczynski  
Executive Secretary  
409 City Hall

March 18, 1991

This bill would ban the distribution of sample tobacco products and/or coupons in public places.

The bill seeks to further limit the accessibility of cigarettes to minors, but does not discourage adults from purchasing cigarettes if they desire to do so. Over a period of time, hopefully this effort, coupled with others at the state level, will help to reduce the number of young people who begin to smoke.

/ch

**RECEIVED**  
MAR 20 1991  
CITY COUNCIL  
BY *L. L.*



POLICE DEPARTMENT ... CITY OF BALTIMORE



601 E. FAYETTE STREET

BALTIMORE, MARYLAND 21202

396 - 2525

Area Code 301

EDWARD V. WOODS  
Commissioner

April 1, 1991

JOSEPH W. NIXON  
Administrative Bureau

HARWOOD W. BURRITT  
Information Management Bureau

RONALD J. MULLEN  
Operations Bureau

MICHAEL C. ZOTOS  
Services Bureau

Deputy Commissioners

The Honorable Mary Pat Clarke  
President  
Baltimore City Council  
Room 409, City Hall  
Baltimore, Maryland 21202

Attention: Ms. Lorraine Laszczynski

Dear President Clarke:

This department has reviewed City Council Bill 1265, Distribution of Tobacco Samples and Coupons, and takes no position on its passage.

This legislation would prohibit the distribution of tobacco samples and coupons in public places in Baltimore City.

City Council Bill 1265 would have no impact on the operations of the Baltimore Police Department.

Sincerely,

*Edward V. Woods*  
Edward V. Woods  
Commissioner

*Rec. 4-2-91  
L.L.*



CITY OF BALTIMORE

KURT L. SCHMOKE, Mayor



OFFICE OF COUNCILMANIC SERVICES

421 City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202  
396-5607

TO: Honorable Carl Stokes, Chair and members of the Health Sub-Committee

FROM: Bill Driscoll, Legislative Policy Analyst

DATE: May 15, 1991

RE: Hearing to be held at 11:00 a.m. on Friday May 24, 1991 for CC 1265 DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

CC 1265 DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

Sponsored By: Councilman Bell, Dixon, D'Adamo, Reeves, President Clarke, Welch, and Stokes

Agency Reports: Health - Favorable  
Police - No Position

Background: This bill would prohibit the public distribution of tobacco products which are " free " or " below cost " in Baltimore City. There would also be a prohibition against public place distribution of coupons that could be redeemed for " free " or " below cost " tobacco products. There are exemptions for distribution of coupons through publications in which the coupon is incidental. Also exempted would be coupons sent through the mail. Coupons distributed at private functions would be exempted. Finally coupons could be distributed to employees (those over the age of majority) of companies who sell, manufacture or distribute tobacco products. The penalty for violation of the ordinance would be a fine of not more than \$25.00 per offence.

Committee HEALTH SUBCOMMITTEE

Chairperson CARL STOKES

Date MAY 24, 1991

Time 10:00 AM

Place CITY COUNCIL CHAMBERS

CC Bill Number CC 1265

Subject DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

# PLEASE PRINT ALL INFORMATION

NAME	ADDRESS	AGENCY, ORGANIZATION OF COMPANY	FAVOR THIS BILL	OPPOSE THIS BILL	CHECK TO TESTIFY
Stephen C. Buckingham	1211 Catherine St. 21201	MEDICAL SOCIETY - STATE AND BALTIMORE CITY	✓		✓
Robert D. Shultz	Phillip Morris USA -	Local Attorney			

PLEASE PRINT



Committee HEALTH SUBCOMMITTEE

Chairperson CARL STOKES

Date MAY 24, 1991

Time 10:00 AM

Place CITY COUNCIL CHAMBERS

CC Bill Number CC 1265

Subject DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

PLEASE PRINT ALL INFORMATION

NAME	ADDRESS	AGENCY, ORGANIZATION OF COMPANY	FAVOR THIS BILL	OPPOSE THIS BILL	CHECK TO TESTIFY
Kevin Reynolds	195 Ave of Gloucester St Annapolis MD 21401	Tobacco Institute		✓	✓
M. Jane McManis	<del>1840 York Rd.</del> 1840 York Rd. Timonium, Md. 21083	American Lung	✓		✓
Benjamin Boale	111 S. Calvert St Baltimore	American Lung	✓		✓
Dr. John Lewis	303 E. FAYETTE ST. BALTIMORE, 21202	BALTIMORE CITY HEALTH DEPT.	✓		✓
Maryann Moulden	303 E. Fayette St Baltimore	BCHD			
Bernellisa M. Carey	303 E. Fayette St. 21202	BCHD	✓		
John M. Boyd	11007 Baithers Farm Rd Ellicott City, MD 21043	BCHD			
Paul Kohn	303 E. Fayette St. Baltimore 21202	BCHD	✓		
Stephen M. Peregoy	1840 York Road Timonium, MD 21093	American Lung	✓		

PLEASE PRINT

CITY OF BALTIMORE  
COUNCIL BILL NO. 1265 - FIRST READER

By: Councilmembers Bell, Dixon, D'Adamo, President Clarke,  
Councilmembers Reeves, Welch, Stokes  
Requested by: [mirrored text]  
Address: [mirrored text]  
Introduced: March 11, 1991  
Assigned to: Health Committee [mirrored text]

REFERRED TO THE FOLLOWING MUNICIPAL AGENCIES: Health Department,  
Police Department [mirrored text]

A BILL ENTITLED

1 AN ORDINANCE concerning [mirrored text]  
2 [mirrored text] DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS [mirrored text]

3 FOR The purpose of prohibiting the distribution of tobacco  
4 samples and coupons in public places in Baltimore City.

5 BY adding [mirrored text]  
6 Article 11 - Health  
7 To come under the new subtitle "Distribution of Tobacco  
8 Samples and Coupons"  
9 Section 284  
10 TAA Baltimore City Code (1983 Replacement Volume, as amended)

11 WHEREAS, Smoking has been linked to lung cancer, respiratory  
12 disease, and heart disease; and

13 WHEREAS, Maryland has the highest cancer death rate in the  
14 nation, and 42 percent of Maryland's cancer deaths are linked to  
15 tobacco use, alcohol use, or both; and

16 WHEREAS, Baltimore has one of the highest cancer death rates  
17 within the state; and

18 WHEREAS, The commercial distribution of free or economically  
19 priced tobacco products and coupons for tobacco products, to  
20 members of the public in public places, promotes the use of  
21 tobacco products and, in particular, encourages and facilitates  
22 smoking by minors; and

23 WHEREAS, Article 27, Section 404 of the Annotated Code of  
24 Maryland prohibits the sale or gift of tobacco products to  
25 minors; and [mirrored text]

26 WHEREAS, One-half of all smokers begin smoking before the  
27 age of 18, smoking by minors is detrimental to public policy,  
28 and, despite Maryland State Law, access by minors to tobacco  
29 products is a major problem; and

[mirrored text]  
DLR#1483-91/2-28-91/HEALTH BCKP./TOBACCO

1 WHEREAS, Enforcement of age-related restrictions on the  
2 commercial distribution of free or economically priced tobacco  
3 samples and coupons for tobacco products would be impractical and  
4 ineffective; now, therefore,

5 Section 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF  
6 BALTIMORE, That Section(s) of the Baltimore City Code (1983  
7 Replacement Volume, as amended) be added, repealed, or amended,  
8 to read as follows:

9 ARTICLE 11 - HEALTH

10 DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

11 284. DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS PROHIBITED.

12 (A) DEFINITIONS.

13 (1) "DISTRIBUTE" MEANS TO GIVE, SELL, DELIVER, OFFER TO  
14 GIVE, SELL OR DELIVER, OR CAUSE OR HIRE ANY PERSON TO GIVE, SELL,  
15 DELIVER OR OFFER TO GIVE, SELL OR DELIVER.

16 (2) "LESS THAN BASIC COST" MEANS FREE OF CHARGE, A  
17 NOMINAL OR DISCOUNT PRICE OR ANY OTHER PRICE LESS THAN THE  
18 DISTRIBUTOR'S COST, TO WHICH SHALL BE ADDED THE FULL VALUE OF ANY  
19 CIGARETTE TAXES PAYABLE ON THEM.

20 (3) "PERSON" MEANS ANY INDIVIDUAL, FIRM, PARTNERSHIP,  
21 ASSOCIATION, CORPORATION, COMPANY.

22 (4) "PRIVATE FUNCTION" MEANS AN EVENT IN AN ENCLOSED  
23 AREA TO WHICH ENTRY IS NOT AVAILABLE TO THE GENERAL PUBLIC, BUT  
24 ONLY TO THOSE WHOM THE SPONSOR OF THE EVENT INVITES.

25 (5) "PUBLIC AREA" MEANS AN ENCLOSED AREA IN WHICH  
26 MEMBERS OF THE PUBLIC ARE NORMALLY INVITED OR PERMITTED. A RETAIL  
27 STORE IS NOT A PUBLIC AREA WITHIN THE MEANING OF THIS DEFINITION.

28 (6) "PUBLIC PLACE" MEANS ANY AREA IN WHICH MEMBERS OF  
29 THE PUBLIC ARE NORMALLY INVITED OR PERMITTED, INCLUDING BUT NOT  
30 LIMITED TO PARKS, STREETS, SIDEWALKS, SPORTS FIELDS, GYMNASIUMS,  
31 SHOPPING CENTERS OR PROPERTY OWNED, OCCUPIED OR OPERATED BY THE  
32 CITY.

33 (B) DISTRIBUTION PROHIBITED.

34 (1) A PERSON MAY NOT DISTRIBUTE TOBACCO PRODUCTS TO  
35 MEMBERS OF THE PUBLIC AT LESS THAN BASIC COST IN PUBLIC PLACES,  
36 IN PUBLIC AREAS, OR AT PUBLIC EVENTS.

37 (2) A PERSON MAY NOT DISTRIBUTE COUPONS WHICH ARE  
38 REDEEMABLE FOR TOBACCO PRODUCTS TO MEMBERS OF THE PUBLIC IN  
39 PUBLIC PLACES, IN PUBLIC AREAS OR AT PUBLIC EVENTS.

1 (C) EXCEPTIONS.

2 (1) THE PROVISIONS OF SUBSECTION (B) DO NOT APPLY TO  
3 THE DISTRIBUTION OF COUPONS WHICH ARE REDEEMABLE FOR TOBACCO  
4 PRODUCTS WHEN THE COUPONS ARE:

5 (I) CONTAINED IN NEWSPAPERS, MAGAZINES OR OTHER  
6 TYPES OF PUBLICATIONS IN WHICH THE COUPON IS INCIDENTAL TO THE  
7 PRIMARY PURPOSE OF THE PUBLICATION; OR

8 (II) SENT THROUGH THE MAIL.

9 (2) THE PROVISIONS OF SUBSECTION (B) DO NOT APPLY TO  
10 TOBACCO PRODUCTS OR COUPONS DISTRIBUTED AT PRIVATE FUNCTIONS, OR  
11 BY RETAILERS, MANUFACTURERS, OR DISTRIBUTORS OF TOBACCO PRODUCTS  
12 TO ANY EMPLOYEE OF SUCH COMPANIES WHO ARE OVER THE AGE OF  
13 MAJORITY.

14 (D) PENALTY.

15 ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION  
16 IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION MAY BE FINED NOT  
17 MORE THAN \$25.00 FOR EACH SEPARATE OFFENSE.

18 SEC. 2. AND BE IT FURTHER ORDAINED, That this ordinance  
19 shall take effect on the 30th day after the date of its  
20 enactment.



CITY OF BALTIMORE  
COUNCIL BILL - INTRODUCTORY\*

By: Councilmembers Bell, Dixon, D'Adamo  
Requested by:  
Address:  
Introduced:  
Assigned to:

REFERRED TO THE FOLLOWING MUNICIPAL AGENCIES:

A BILL ENTITLED

1 AN ORDINANCE concerning  
2 DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS  
3 FOR The purpose of prohibiting the distribution of tobacco  
4 samples and coupons in public places in Baltimore City.  
5 BY adding  
6 Article 11 - Health  
7 To come under the new subtitle "Distribution of Tobacco  
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10 Baltimore City Code (1983 Replacement Volume, as amended)  
11 WHEREAS, Smoking has been linked to lung cancer, respiratory  
12 disease, and heart disease; and  
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15 tobacco use, alcohol use, or both; and  
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21 tobacco products and, in particular, encourages and facilitates  
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24 Maryland prohibits the sale or gift of tobacco products to  
25 minors; and  
26 WHEREAS, One-half of all smokers begin smoking before the  
27 age of 18, smoking by minors is detrimental to public policy,  
28 and, despite Maryland State Law, access by minors to tobacco  
29 products is a major problem; and  
30 WHEREAS, Enforcement of age-related restrictions on the  
31 commercial distribution of free or economically priced tobacco

DLR#1483-91/2-28-91/HEALTH BCKP./TOBACCO

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[BRACKETS] indicate matter deleted from existing law.

\*WARNING: THIS IS THE INTRODUCTORY COPY OF THIS BILL.  
THE OFFICIAL COPY UNDER CONSIDERATION BY THE CITY COUNCIL IS THE FIRST READER COPY.

1 samples and coupons for tobacco products would be impractical and  
2 ineffective; now, therefore,

3 Section 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF  
4 BALTIMORE, That Section(s) of the Baltimore City Code (1983  
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17 CIGARETTE TAXES PAYABLE ON THEM.

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7 PRIMARY PURPOSE OF THE PUBLICATION; OR

8 (II) SENT THROUGH THE MAIL.

9 (2) THE PROVISIONS OF SUBSECTION (B) DO NOT APPLY TO  
10 TOBACCO PRODUCTS OR COUPONS DISTRIBUTED AT PRIVATE FUNCTIONS, OR  
11 BY RETAILERS, MANUFACTURERS, OR DISTRIBUTORS OF TOBACCO PRODUCTS  
12 TO ANY EMPLOYEE OF SUCH COMPANIES WHO ARE OVER THE AGE OF  
13 MAJORITY.

14 (D) PENALTY.

15 ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION  
16 IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION MAY BE FINED NOT  
17 MORE THAN \$25.00 FOR EACH SEPARATE OFFENSE.

18 SEC. 2. AND BE IT FURTHER ORDAINED, That this ordinance  
19 shall take effect on the 30th day after the date of its  
20 enactment.

**ACTION BY THE CITY COUNCIL**

FIRST READING (INTRODUCTION) \_\_\_\_\_ MAR 11 1991 19 \_\_\_\_\_

PUBLIC HEARING HELD ON \_\_\_\_\_ May 24 19 91

COMMITTEE REPORT AS OF \_\_\_\_\_ June 17 19 91

\_\_\_\_\_ FAVORABLE \_\_\_\_\_ UNFAVORABLE  FAVORABLE AS AMENDED \_\_\_\_\_ WITHOUT RECOMMENDATION

\_\_\_\_\_  
Chair

COMMITTEE MEMBERS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Edward J. Reisinger

COMMITTEE MEMBERS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECOND READING: The Council's action being favorable (~~unfavorable~~), this City Council bill was (was not) ordered printed for Third Reading on:

JUN 17 1991

Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING \_\_\_\_\_ JUN 24 1991 19 \_\_\_\_\_

\_\_\_\_\_ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (ENROLLED) \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (RE-ENROLLED) \_\_\_\_\_ 19 \_\_\_\_\_

WITHDRAWAL \_\_\_\_\_ 19 \_\_\_\_\_

There being no objections to the request for withdrawal, it was so ordered that this City Council Ordinance be withdrawn from the files of the City Council.

\_\_\_\_\_  
President

\_\_\_\_\_  
Chief Clerk



Drafted by Department of Legislative Reference

Date - June 17, 1991

Amendments to Bill No. 1265 - First Reader Copy

Submitted by \_\_\_\_\_ Committee on \_\_\_\_\_ 19\_\_

Signed \_\_\_\_\_ Chair.

No. 1. On page 2, after line 15 insert:

"(2) 'Downtown area' means the area within and bounded by Centre Street on the north, Pratt Street on the south, the Fallsway on the east, Paca Street on the west, and Druid Hill Avenue on the northwest."

No. 2. On page 2, lines 16, 20, 22, 25, and 28 strike "(2)", "(3)", "(4)", "(5)", and "(6)" and substitute "(3)", "(4)", "(5)", "(6)", and "(7)" respectively.

No. 3. On page 2, after line 32 insert:

"(8) 'Tobacco products' means a package of cigarettes containing more than 1 cigarette."

No. 4. On page 3, line 2, after "apply" insert "in the downtown area and".

No. 5. On page 3, line 17, strike "\$25.00" and substitute "\$100.00" and after "offense" insert "and each act of distribution to a different person shall be deemed a separate offense".

Drafted by Department of Legislative Reference

Date - June 24, 1991

Amendments to Bill No. 1256 - First Reader Copy

Submitted by \_\_\_\_\_ Committee on \_\_\_\_\_ 19\_\_

Signed \_\_\_\_\_ Chair.

No. 1. On page 1, line 5, strike everything after "Baltimore to", strike lines 6-8, in line 9 strike "exceptions;" and substitute:

"require that all passenger cars and trucks purchased by the City are manufactured or assembled in the United States;".

No. 2. On page 1, line 17, after "230-" insert "235".

No. 3. On page 2, strike lines 8 and 9 and substitute "passenger cars and trucks".

No. 4. On page 2, line 28, strike everything after "automobile" and substitute "industry"; line 29, strike everything up to "has".

No. 5. On page 3, line 4, strike "all goods and services" and substitute "passenger cars and trucks".

No. 6. On page 3, in line 7, strike "any materials"; in line 8 strike everything up to "by any " and substitute "passenger cars and trucks".

No. 7. On page 3, in line 9, strike "SHALL" and substitute "SHOULD".

No. 8. On page 3, after line 10, insert the following:

"(3) A PROGRAM BE ESTABLISHED BY SEPTEMBER 30, 1991 TO INFORM BIDDERS OF THE CITY'S POLICY FOR PASSENGER CARS AND TRUCKS OF AMERICAN BUSINESSES;

(4) AS A FIRST STEP IN THE PROCESS, THIS POLICY SHALL APPLY TO THE PROCUREMENT OF ALL PASSENGER CARS AND TRUCKS. ADDITIONAL PRODUCTS SHALL BE ADDED BY EXECUTIVE ORDER OR LEGISLATION OF THE BALTIMORE CITY COUNCIL.

ALL PASSENGER CARS AND TRUCKS WHICH ARE PROVIDED PURSUANT TO A CITY PROCUREMENT CONTRACT OR SUBCONTRACT SHALL BE MANUFACTURED OR ASSEMBLED IN THE UNITED STATES."

- No. 9. On page 3, , in line 11, strike "232" and substitute "233", in line 12, after "SUBCONTRACT" insert "TO A CITY PROCUREMENT CONTRACT"; and in line 13, strike "PROVISION THAT" and substitute "NOTICE NOTIFYING THE CITY PURCHASING AGENT WHEN"; strike "MATERIALS, GOODS, SERVICES, CONSTRUCTION, INSTALLATION OR REPAIR" and substitute "PASSENGER CARS AND TRUCKS"; and in line 16 strike "SHALL BE" and substitute "ARE", and in that same line after "IN" insert "ANY OTHER NATION EXCEPT".
- No. 10. On page 3, strike lines 18 through 22, inclusive, and substitute:
- "(B) (1) THE CITY PURCHASING AGENT AND ALL CITY AGENCIES SHALL INCLUDE IN ALL CITY BIDS AND REQUESTS FOR BIDS A STATEMENT OF THE CITY'S POLICY ON THE PREFERENCE FOR PASSENGER CARS AND TRUCKS MADE OR ASSEMBLED BY AMERICAN BUSINESSES.
- (2) ALL BIDS SUBMITTED TO THE CITY PURCHASING AGENT OR CITY AGENCIES SHALL IDENTIFY WHEN PASSENGER CARS AND TRUCKS OF AMERICAN BUSINESSES HAVE BEEN INCLUDED IN THE BID."
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- No. 11. On page 3, in line 23, strike "233" and substitute "234", in line 24, after the "any" insert "CITY PROCUREMENT"; in line 25, strike the colon and substitute "INVOLVES A PURCHASE OF \$16, 000 OR LESS"; strike lines 26 through 29, inclusive.
- No. 12. On page 3, strike line 31; strike line 32 up to "THAT" and substitute "PASSENGER CARS AND TRUCKS".
- No. 13. On page 3, in line 38, strike "234".
- No. 14. On page 4, strike lines 1 through 11, inclusive.

Drafted by Department of Legislative Reference

Date - June 24, 1991

Amendments to Bill No. 1256 - First Reader Copy

Submitted by \_\_\_\_\_ Committee on \_\_\_\_\_ 19\_\_

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232.

ALL PASSENGER CARS AND TRUCKS WHICH ARE PROVIDED PURSUANT TO A CITY PROCUREMENT CONTRACT OR SUBCONTRACT SHALL BE MANUFACTURED OR ASSEMBLED IN THE UNITED STATES."

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- No. 12. On page 3, strike line 31; strike line 32 up to "THAT" and substitute "PASSENGER CARS AND TRUCKS".
- No. 13. On page 3, in line 38, strike "234".
- No. 14. On page 4, strike lines 1 through 11, inclusive.

Drafted by Department of Legislative Reference

Date - June 24, 1991

Amendments to Bill No. 1256 - First Reader Copy

Submitted by \_\_\_\_\_ Committee on \_\_\_\_\_ 19\_\_

Signed \_\_\_\_\_ Chair.

No. 1. On page 1, line 5, strike everything after "Baltimore to", strike lines 6-8, in line 9 strike "exceptions;" and substitute:

"require that all passenger cars and trucks purchased by the City are manufactured or assembled in the United States;".

No. 2. On page 1, line 17, after "230-" insert "235".

No. 3. On page 2, strike lines 8 and 9 and substitute "passenger cars and trucks".

No. 4. On page 2, line 28, strike everything after "automobile" and substitute "industry"; line 29, strike everything up to "has".

No. 5. On page 3, line 4, strike "all goods and services" and substitute "passenger cars and trucks".

No. 6. On page 3, in line 7, strike "any materials"; in line 8 strike everything up to "by any " and substitute "passenger cars and trucks".

No. 7. On page 3, in line 9, strike "SHALL" and substitute "SHOULD".

No. 8. On page 3, after line 10, insert the following:

"(3) A PROGRAM BE ESTABLISHED BY SEPTEMBER 30, 1991 TO INFORM BIDDERS OF THE CITY'S POLICY FOR PASSENGER CARS AND TRUCKS OF AMERICAN BUSINESSES;

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232.

ALL PASSENGER CARS AND TRUCKS WHICH ARE PROVIDED PURSUANT TO A CITY PROCUREMENT CONTRACT OR SUBCONTRACT SHALL BE MANUFACTURED OR ASSEMBLED IN THE UNITED STATES."

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No. 10. On page 3, strike lines 18 through 22, inclusive, and substitute:

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Submitted by \_\_\_\_\_ Committee on \_\_\_\_\_ 19\_\_

Signed \_\_\_\_\_ Chair.

No. 1. On page 2, after line 15 insert:

"(2) 'Downtown area' means the area within and bounded by Centre Street on the north, Pratt Street on the south, the Fallsway on the east, Paca Street on the west, and Druid Hill Avenue on the northwest."

No. 2. On page 2, lines 16, 20, 22, 25, and 28 strike "(2)", "(3)", "(4)", "(5)", and "(6)" and substitute "(3)", "(4)", "(5)", "(6)", and "(7)" respectively.

No. 3. On page 2, after line 32 insert:

"(8) 'Tobacco products' means a package of cigarettes containing more than 1 cigarette."

No. 4. On page 3, line 2, after "apply" insert "in the downtown area and".

No. 5. On page 3, line 17, strike "\$25.00" and substitute "\$100.00" and after "offense" insert "and each act of distribution to a different person shall be deemed a separate offense".

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CITY OF BALTIMORE  
CITY COUNCIL  
OFFICE OF COUNCILMANIC SERVICES



WILLIAM M. DRISCOLL  
LEGISLATIVE POLICY ANALYST

(301) 396-5607

421 City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

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## Cigarette Advertising and Promotion Code

---

Cigarette smoking is an adult custom. Children should not smoke. Laws prohibiting the sale of cigarettes to minors should be strictly enforced. The cigarette manufacturers advertise and promote their products only to adult smokers. They support the enactment and enforcement of state laws prohibiting the sale of cigarettes to persons under 18 years of age.

The cigarette manufacturers have adopted the following Code to emphasize their policy that smoking is solely for adults.

This Code, as set forth below, combines (1) the provisions of the original Cigarette Advertising Code of 1964, as restated in 1982; (2) the Code of Cigarette Sampling Practices of 1981, as amended in 1983; and (3) the additional restrictions on cigarette advertising and promotion adopted by the industry in 1990.

**Advertising**

1. Cigarette advertising shall not appear -

(a) in publications directed primarily to those under 21 years of age, including school, college or university media (such as athletic, theatrical or other programs), comic books or comic supplements; or

(b) on billboards located within 500 feet of any elementary school, junior high school or high school or any children's playground.

2. No payment shall be made by any cigarette manufacturer or any agent thereof for the placement of any cigarette, cigarette package, or cigarette advertisement as a prop in any movie produced for viewing by the general public.

3. No one depicted in cigarette advertising shall be or appear to be under 25 years of age.

4. Cigarette advertising shall not suggest that smoking is essential to social prominence, distinction, success or sexual attraction, nor shall it picture a person smoking in an exaggerated manner.

5. Cigarette advertising may picture attractive, healthy looking persons provided there is no suggestion that their attractiveness and good health is due to cigarette smoking.

6. Cigarette advertising shall not depict as a smoker anyone who is or has been well known as an athlete, nor shall it show any smoker participating in, or obviously just having participated in, a physical activity requiring stamina or athletic conditioning beyond that of normal recreation.

7. No sports or celebrity testimonials shall be used or those of others who would have special appeal to persons under 21 years of age.

## 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 or on public streets, sidewalks or parks, except in places that are open only to persons to whom cigarettes lawfully may be sold.
3. Cigarette product samples shall not otherwise be distributed in any public place within two blocks of any centers of youth activities, such as playgrounds, schools, college campuses, or fraternity or sorority houses.
4. The mails shall not be used to distribute unsolicited cigarette samples.
5. Cigarette samples shall not be distributed by mail without written, signed certification that the addressee is 21 years of age or older, a smoker and wishes to receive a product sample.
6. Cigarette samples shall not be distributed in direct response to requests by telephone.
7. 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.
8. Persons who engage in sampling shall indicate by oral or written means that samples are intended only for smokers.
9. No cigarette samples shall be distributed by a sampler in a public place to any person in a vehicle.
10. Persons distributing cigarette samples shall secure their stocks of samples in safe locations to avoid inadvertent distribution of samples contrary to these provisions.
11. Persons distributing cigarette samples shall avoid blocking or otherwise significantly impairing the flow of pedestrian traffic.
12. In the event that circumstances arise at a particular location that make it unlikely that sampling can be conducted in a manner consistent with the provisions of this Code, sampling shall be stopped at that location until such circumstances abate.
13. 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.

**Other Promotional Activities**

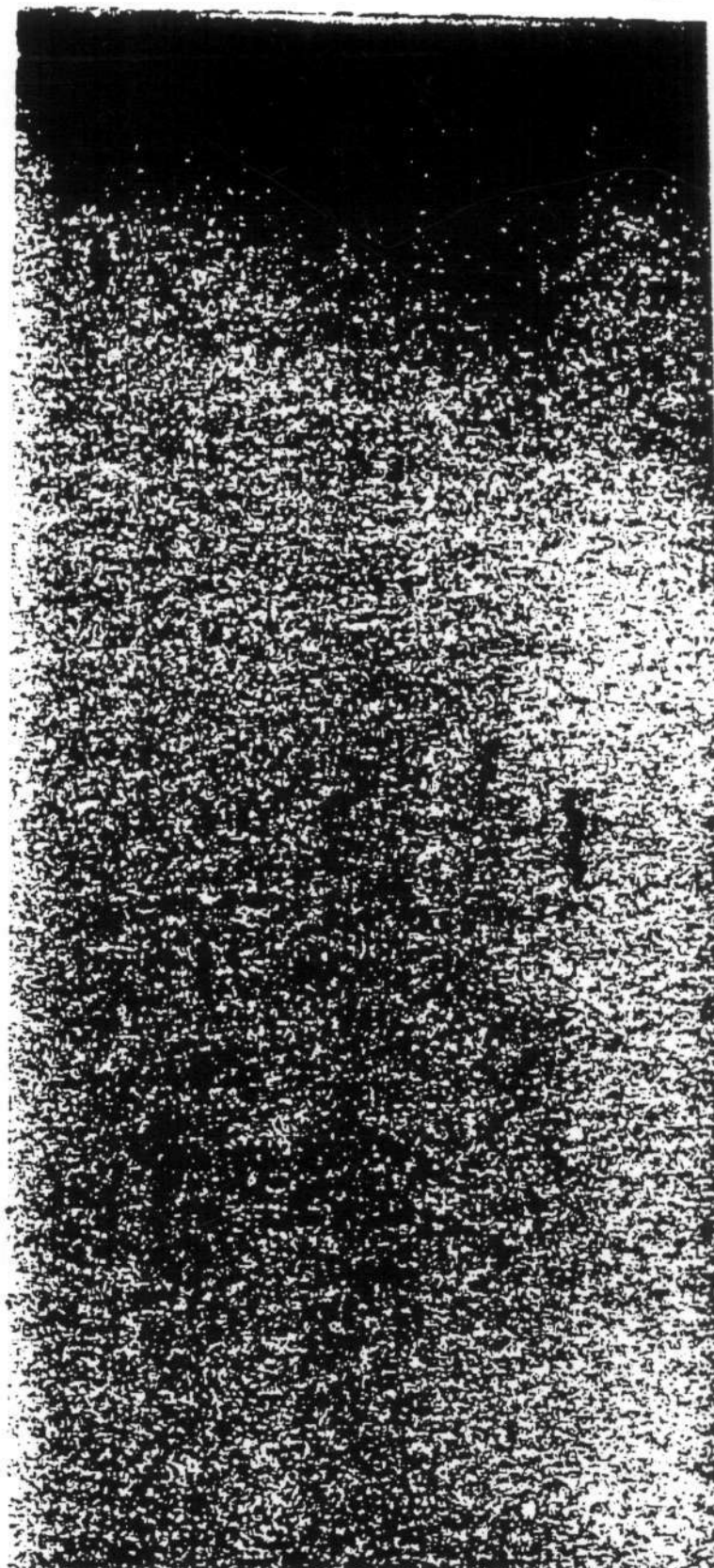
14. Each cigarette manufacturer shall impose by contract on all independent contractors who conduct cigarette sampling on the manufacturer's behalf a set of sampling standards no less stringent than those contained in this Code. In addition, each cigarette manufacturer shall require such sampling contractors to inform all personnel employed by the contractor who engage in sampling activities of the provisions of this Code concerning cigarette sampling, both orally and in writing.
  15. 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 concerning cigarette sampling.
  16. Each cigarette manufacturer shall take all reasonable steps to ensure that any person who engages in sampling and knowingly violates any of the provisions of this Code concerning cigarette sampling shall be discharged from employment as a cigarette sampler.
1. There shall be no mail distribution of nontobacco premium items bearing cigarette brand names, logos, etc., without written, signed certification that the addressee is 21 years of age or older, a smoker and wishes to receive the premium.
  2. There shall be no other distribution of nontobacco premium items bearing cigarette brand names, logos, etc., except with the purchase of a package or carton of cigarettes or to persons 21 years of age or older.
  3. Clothing bearing cigarette brand names or logos shall be in adult sizes only.

## Definitions

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1. "Advertising" means all forms of advertising including vehicle decals, posters, pamphlets, matchbook covers and point of purchase materials in the United States, Puerto Rico, and U.S. territorial possessions.
  
2. "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.
  
3. "Public place" includes any street, sidewalk, park, plaza, public mall, and the public areas of shopping centers and office buildings.

December 1990



## **SOME FACTS ABOUT CIGARETTE SMOKING IN MARYLAND**

- o Cigarettes cause eighty percent of the lung cancer in Maryland
- o Five thousand Marylanders develop new cancers annually because of smoking: cancers of the lung, lip, mouth, esophagus, larynx, pancreas, stomach, bladder, and kidney
- o Maryland has the second highest death rate from lung cancer among white males in the nation and ranks in the top five states for other races and sexes in lung cancer deaths
- o Thirty-four percent of Maryland adults smoke compared to thirty percent as a national average
- o Seventy-five hundred Marylanders have heart attacks each year due to cigarette smoking
- o Seven thousand Marylanders die prematurely each year due to cigarette smoking
- o Mothers-to-be who smoke increase the risk of a low birth-weight baby (200 percent increased risk), miscarriage (55 percent increased risk), infant death (44 percent increased risk), and Sudden Infant Death Syndrome (50 percent increased risk)
- o Infants of parents who smoke have a higher frequency of hospitalization for pneumonia, bronchitis, and acute respiratory illness and infections during the first year of life
- o Young children of smokers experience more chronic middle ear infections
- o Children of non-smoking parents are less likely to become smokers



## SMOKING FACTS

1,000 people quit smoking every day--by dying. That is equivalent to 2 fully loaded jumbo jets crashing every day, with no survivors. (*Where There's No Smoke*. Videotape. American Cancer Society, 1988)

Cigarette smoking causes more premature deaths than do all the following together: acquired immunodeficiency syndrome, cocaine, heroin, alcohol, fire, automobile accidents, homicide, and suicide. (Warner, K. "Health Implications of a Tobacco-Free Society," *Journal of the American Medical Association*, Vol. 258, No. 15, October 16, 1987)

More than 30% of Americans don't know that smoking doubles the risks of heart attack. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

A heavy smoker is 24 times more likely to develop lung cancer than a non-smoker. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

87% of lung cancer patients die within 5 years of diagnosis. (*1986 Cancer Facts and Figures*. American Cancer Society, 1986.)

Tobacco consumption is implicated in 30% of all cancer deaths, with lung cancer by itself accounting for one fourth of all cancer fatalities. (Warner, K. "Health Implications of a Tobacco-Free Society," *Journal of the American Medical Association*, Vol. 258, No. 15, October 16, 1987)

Smoking is responsible for about 170,000 premature heart attacks in the United States each year. Heart disease is the major cause of death for American Women. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

As many as one-third of heavy smokers age 35 will die before age 85 of diseases caused by their smoking. (Mattson, M., Pollack, E. and Cullen, J. "What Are the Odds that Smoking Will Kill You?" *American Journal of Public Health*, Vol. 77, No. 4, April, 1987.)

Cigarette smoking is responsible for almost 16 percent of all deaths (1 of 7 deaths) in the United States each year. ("Cigarette Smoking in the United States, 1986" *Morbidity and Mortality Weekly Report*, Vol. 36, No. 35, September 11, 1987)

More than 2,500 deaths of infants under one-year-old could be attributed to smoking by the mother. ("Cigarette Smoking in the United States, 1986" *Morbidity and Mortality Weekly Report*, Vol. 36, No. 35, September 11, 1987)

Americans dying of smoking-related causes before age 65 lost a total of 949,924 potential years of life. ("Cigarette Smoking in the United States, 1986" *Morbidity and Mortality Weekly Report*, Vol. 36, No. 35, September 11, 1987)



With one of every three or four smokers' deaths attributable to tobacco use, the life-expectancy gain for people who would have experienced a tobacco-related death would be approximately 1 1/2 decades. (Warner, K. "Health Implications of a Tobacco-Free Society," *Journal of the American Medical Association*, Vol. 258, No. 15, October 16, 1987)

Sudden infant death syndrome (crib death) occurs 2 1/2 times more often among babies of smoking mothers. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

Ten years after quitting, a former smoker's risk of lung cancer returns to that of a nonsmoker. (*Smoking and Health: A Report of the Surgeon General*, U. S. Department of Health and Human Services, 1979)

Attainment of a tobacco free society ultimately would produce a national life-expectancy gain comparable with that which would accompany the complete elimination of all cancers not caused by tobacco use. Warner, K. "Health Implications of a Tobacco-Free Society," *Journal of the American Medical Association*, Vol. 258, No. 15, October 16, 1987)

When both parents smoke, their children are more than twice as likely to smoke. And a teenager with an older brother or sister who smokes is three times more likely to smoke. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

Smokers who inhale retain 70% of small particles of materials such as tar and nicotine in their lungs. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

Almost 80% of patients with emphysema smoke. If you smoke, you are five times more likely to develop chronic bronchitis and severe lung infection. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

In smokers emphysema leads to severe disability and death even more often than cancer does. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

Lung cancer is one type of cancer that can almost always be prevented by not smoking. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

The American Cancer Society estimates that cigarette smoking is responsible for 85% of lung cancer cases among men and 75% among women--about 83% overall. (*1986 Cancer Facts and Figures*. American Cancer Society, 1986)

The cancer rate for male cigarette smokers is more than double that of nonsmokers, and the rate for female smokers is 67% higher than for nonsmokers. (*1986 Cancer Facts and Figures*. American Cancer Society, 1986)

Smoking accounts for about 30% of all cancer deaths, is a major cause of heart disease, and is linked to conditions ranging from colds and gastric ulcers to chronic bronchitis and emphysema. (*1986 Cancer Facts and Figures*. American Cancer Society, 1986)

A Federal Trade Commission staff report states that although most Americans are aware of a health risk in smoking, more than 40% don't know smoking causes most lung cancer, and 20% don't know it can cause cancer at all. More than 30% are unaware that smoking doubles a person's risk of heart attack, and 50% of women do not know that smoking during pregnancy increases the risk of stillbirth and miscarriage. (*1986 Cancer Facts and Figures*. American Cancer Society, 1986)

Currently, the overall excess death rate in a year from all causes, irrespective of the quantity of cigarettes smoked is 70% higher than that for non-smokers. This means that for every 100 non-smokers who die during a year, 170 smokers will die. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

Between 2.5 and 4 out of every 10 smokers will die because of their smoking. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

Death from heart attacks is 3 times more common in smokers than in non-smokers. For those smoking more than a pack a day, the risk is about 5 times greater. Once a smoker quits, risk of heart attack tends to fall fairly quickly to that of the non-smoker. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

Among men aged 40-50, deaths from coronary heart disease are nine times more common in smokers than in non-smokers. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

When 12 people die from lung cancer, 11 will have been smokers. Smokers who consume more than two packs a day have lung cancer death rates 15-25 times greater than non-smokers. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

Smokers are six times more likely to die from the crippling respiratory diseases, emphysema, and chronic bronchitis. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

There are indications that retarded fetal growth from smoking may affect physical growth, mental development and behavioral characteristics of children up to the age of 11. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

More than six million Americans under the age of 18 use tobacco; they spend nearly one billion dollars per year on tobacco products. (Tye, J. *Stop Teenage Addiction to Smoking*, 1987)

Sixty percent of all young people who smoke or use smokeless tobacco start by the age of 14; more than 90% start before the age of 21. (Tye, J. *Stop Teenage Addiction to Smoking*, 1987)

Young people who smoke are 15 times more likely than non-smokers to "graduate" to narcotic drugs. (Tye, J. *Stop Teenage Addiction to Smoking*, 1987)

To replace the adults who quit smoking or die of cigarette-induced diseases, the tobacco industry must recruit more than 5,000 children every day. (Tye, J. *Stop Teenage Addiction to Smoking*, 1987)

More money is spent advertising and promoting tobacco products than any other consumer product. (Tye, J. *Stop Teenage Addiction to Smoking*, 1987)

The total of smoking-related health care costs and lost productivity costs amounts to \$2.17 per pack of cigarettes. (Smoking-Related Deaths and Financial Costs. Staff Memo. Office of Technology Assessment, September, 1985)

# TOBACCO-FREE AMERICA

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## TOBACCO SAMPLING: THERE IS NO FREE LUNCH

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APRIL 1990

*A Public Policy Project Sponsored by*



**THE DISTRIBUTION OF TOBACCO PRODUCT SAMPLES:  
THERE IS NO FREE LUNCH**

**OVERVIEW**

Cigarette smoking is the number one preventable cause of death and disease in the United States. Scientific studies have proved that there is no known safe human use of tobacco products. Clearly, the way to substantially improve the overall health of this country is to drastically reduce or totally eliminate tobacco consumption. Yet, each year nearly 400,000 Americans die from cigarettes and tobacco-induced disease. To what may this alarming statistic be attributed? A simple answer would be "advertising and promotion."

Cigarettes are this nation's most heavily advertised consumer product. In 1987, the tobacco industry spent approximately \$2.6 billion on advertising and promotion, which includes the free distribution of product samples, to attract new smokers, retain current smokers, and to increase consumption. Advertising experts have testified that advertising and promotional practices used by the tobacco industry are specifically designed to attract and influence the behavior of the most vulnerable group in society: youth.

According to the National Institute on Drug Abuse 60 percent of all new smokers are 14 years of age or younger; 90 percent of all smokers start by age 19; and, very few people begin to smoke after the age of 21. Coupled with the fact that the younger one starts to smoke, the more likely one will:

- remain a smoker;
- smoke more heavily; and,
- die prematurely.

These statistics should not be ignored.

Through the association of tobacco use with youthful vigor, independence, social and athletic success, and with individuals and activities most likely to be admired by young people, tobacco advertising and promotion influences the attitudes of teenagers and their perceptions about cigarette smoking and the use of other tobacco products. Although the tobacco industry denies any purposeful attempt to recruit young users, increased distribution of tobacco product samples at industry-sponsored sports events and rock concerts attended by large numbers of teenagers make such claims untenable.

## SAMPLING PRACTICE BECOMES WIDESPREAD

Since the early Seventies, the practice of distributing samples of tobacco products in public places or at public events, commonly referred to as "sampling," has become a vital marketing tool for tobacco manufacturers. The widespread use of sampling was prompted when the federal ban on cigarette advertising through the television and radio mediums, which would serve to greatly reduce the advertising capacity of the tobacco industry, took effect in 1970. Consequently, the tobacco industry was forced to find other ways to promote the sale of its products. In contrast to advertising, which communicates and identifies a product, promotional activities lead directly to consumer action, such as trying or buying the product. Thus, it was only natural for the tobacco industry to step up its promotional activities, and distributing samples of its products became a viable alternative.

Cigarette sampling is not new to our society. During World War II, packages of cigarettes became a staple ingredient in field rations sent to the men fighting in Europe. Soldiers quickly began associating cigarettes with such positive images as relaxation, safety, and home. Unfortunately, they continued smoking cigarettes after they returned to the States.

Today, cigarette manufacturers in the United States spend more money on promotional activities than they do on media advertising. For example, promotional expenditures grew from under 10 percent of their total advertising and promotional expenditures in 1963, to over one-half of total expenditures in 1983, to 66 percent in 1987. Of those totals, sampling expenditures increased from almost \$13 million in 1963 to over \$125 million in 1983. Although that figure decreased to over \$55 million in 1987, it is still way above the 1963 total.

Moreover, tobacco companies do not limit their sampling practices to cigarettes alone. With the increasing prevalence of smokeless tobacco use, especially among children, and the federal law banning the advertising of smokeless tobacco on both television and radio in 1986, sampling of smokeless tobacco products has been exercised on a greater scale.

## OBJECTIONS TO SAMPLING RAISED

This explosion of the tobacco industry's use of non-media methods of promotion has alarmed consumer groups, health organizations, such as the American Cancer Society, the American Heart Association, and the American Lung Association, and private citizens. Consequently, the American Cancer Society, the American Heart Association, and the American Lung Association, through a joint venture -- Tobacco-Free America -- support the total elimination of tobacco product sampling. Rather than limit the distribution of tobacco products to those above the legal age, they believe it is more effective to ban the practice

entirely.

Several objections to the sampling of cigarette and smokeless tobacco products are:

- A. Tobacco product giveaways inevitably fall into the hands of minors. The tobacco industry has developed its own "Code of Cigarette Sampling Practices," which details certain standards that are to be observed in order to avoid distributing cigarette samples to under-age children. (Appendix A) According to the code, a distributor is required to ask a person's age and whether or not they are a smoker. Reports of random spot-checking of sampling distribution points have proved that no such restrictions are being observed. Moreover, the tobacco industry claims that its promotional activities are designed to induce existing smokers to switch brands, and not to attract new smokers. Yet, if they were not trying to enlist new smokers, their markets would disappear after one generation. Obviously, this is not the case. The tobacco industry sees children as future customers and acts accordingly.

In addition, minors can easily obtain samples discarded by adults. Although most states, including the District of Columbia, prohibit the sale and furnishing of tobacco products to minors, laws prohibiting the distribution of tobacco product samples to minors would do nothing to limit a child's access to discarded samples. Sampling provides another source for children to obtain tobacco products. The danger of samples getting into the hands of minors is demonstrated in studies that show that each year approximately one million adolescents who smoke even a few cigarettes become regular users.

- B. Persons who are trying to curtail their use of tobacco or who have already "kicked the habit" are confronted with the temptation to try these products. Usually, people will try anything that is free. Even a nonsmoker may attempt to smoke a cigarette, if there is no "risk" (loss of money) associated with smoking that cigarette.

Consequently, the size of the sample plays an important role. Most samples are packaged in smaller quantities in order to keep the cost of the promotion lower. However, tobacco companies are using larger samples (a full pack or even a carton) to increase the period of time in which the product may be sampled. A longer time-span gives consumers the opportunity to modify their preferences and to permanently adopt the use of the product. It also allows for the addictive substances contained in tobacco, primarily nicotine, to take effect. In the long run, it is to the tobacco companies' economic advantage to distribute larger samples when the result is increased sales of their product.



- C. A substantial portion of the public interprets sampling as an official endorsement of the products' use, even a dangerous and addictive substance like tobacco. Public confusion regarding a local government's position on tobacco use may encourage minors to risk trying it. In addition, already-addicted adults are provided with the rationale for not curtailing the use of the substance.
- D. The distribution of tobacco products on sidewalks and street corners and at entrances to sporting and cultural events creates congestion of pedestrian traffic and litter. Traffic tie-ups and littered sidewalks are a nuisance to pedestrians and to taxpayers who must bear the burden of the clean-up costs.

### LEGISLATIVE ACTION

Whereas, in the past, significant legislative and regulatory limits were placed on tobacco advertising, attention has now shifted to restricting the promotional activities of tobacco manufacturers. Local governments have taken the lead in curbing the tobacco industry's sampling practices. Since 1979, 16 cities across the country have banned the distribution of cigarette samples. (Appendix B)

With regard to state legislation, the focus has been on limiting the accessibility of tobacco products solely to minors. Forty-four states and the District of Columbia restrict the sale of tobacco products to minors. Six states--Kentucky, Louisiana, Missouri, Montana, New Mexico, and Wyoming--have not yet acted to prohibit the sales of tobacco products to young persons. (Appendix C)

While many limit access of tobacco products to minors by prohibiting sales or furnishing, only 12 states have taken action to restrict the distribution of samples. Minnesota and Utah totally ban the distribution of cigarettes, smokeless tobacco products, cigars, pipe tobacco, or other tobacco products suitable for smoking. Kansas prohibits the distribution of sample cigarettes. Nebraska prohibits the distribution of sample smokeless tobacco products. Georgia, Indiana, Louisiana, Maine, New Hampshire, Oregon, Rhode Island, and Wisconsin ban the distribution of tobacco product samples to minors only. (Appendix B)

### PREEMPTION ISSUE ADDRESSED

The question of whether the previous federal laws that banned radio and television advertising of cigarettes and smokeless tobacco products took away the authority of states to outlaw such sampling may be an obstacle that is preventing states from tackling this issue full-force. There are actually three laws that are referred to in the discussion of the preemption

issue for cigarettes: the Federal Cigarette Labeling and Advertising Act (1965), the Public Health Cigarette Smoking Act (1969), and the Little Cigar Act (1973). In short, the federal preemption pertains only to state regulations based on "smoking and health." It is limited entirely to state requirements or prohibitions in the advertising of cigarettes, and does not apply to:

- a) purely intrastate commerce;
- b) proper exercise by states of police and other powers in the interest of public health and safety; and,
- c) topics other than smoking or health.

Thus, states still retain the authority to restrict cigarette sampling when the legislative intent is to facilitate enforcement of existing laws that prohibit the sale and furnishing of tobacco products to minors and to control commercial activity on the public right-of-way.

With regard to smokeless tobacco, the Smokeless Tobacco Education Act (1986) clearly does not prohibit states from outlawing smokeless tobacco sampling in public areas. Under the Smokeless Tobacco Education Act, states were also given the authority to regulate how smokeless tobacco is advertised.

While representatives of the tobacco industry argue that any ban on the distribution of cigarette and other tobacco product samples, or "sampling," by state or local governments is preempted by federal law, a careful reading of the applicable laws and legal principles leads to the conclusion that the enactment of such a ban is permissible and is not preempted by federal law. (Appendix D)

## CONCLUSION

Although the tobacco industry argues otherwise, states indeed have the legal authority to ban sampling. It has become a question of whether states have the political desire to regulate the tobacco industry in this manner. Enactment of such legislation would lead to more effective enforcement of already existing laws designed to prevent minors' access to a deadly product. It would also shield the public from the insidious practices of the tobacco industry. Given that the costs associated with tobacco use in the United States are estimated at nearly \$65 billion annually, including health care expenditures and loss productivity, the tobacco industry's promotional strategies of giving away samples lends credence to the old economic adage that "there is no such thing as a free lunch."

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## **STATEMENT OF PURPOSE**

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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 this 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.

# **Code of Cigarette Sampling Practices**

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## **ARTICLE I**

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### **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.

## **ARTICLE II**

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### **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 this Article.
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 a 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**

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### **COMPLIANCE AND ENFORCEMENT PROVISIONS**

1. Each cigarette manufacturer that subscribes to this 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.

APPENDIX B

RESTRICTIONS ON DISTRIBUTION OF TOBACCO PRODUCT SAMPLES

STATES WITH LAWS RESTRICTING (13):

MINNESOTA (1986, 1987) -- TOTAL BAN  
UTAH (1983, 1986, 1989) -- TOTAL BAN  
  
GEORGIA (1987) -- MINORS ONLY  
ILLINOIS (1988) -- MINORS ONLY  
INDIANA (1987) -- MINORS ONLY  
KANSAS (1984) -- BAN APPLIES TO CIGARETTES AND  
MINORS ONLY  
LOUISIANA (1988) -- MINORS ONLY  
MAINE (1983) -- MINORS ONLY  
NEW HAMPSHIRE (1987) -- MINORS ONLY  
OREGON (1989) -- MINORS ONLY  
RHODE ISLAND (1988) -- MINORS ONLY  
WISCONSIN (1989) -- MINORS ONLY  
  
NEBRASKA (1989) -- SMOKELESS TOBACCO PRODUCTS ONLY

CITIES WITH ORDINANCES PROHIBITING (16)

ALBERT LEA, MN (1986)  
AMHERST, MA (1987)  
ATLANTA, GA (1986)  
AUSTIN, TX (1988)  
BOSTON, MA (1984)  
BOWIE, MD (1986)  
CAMBRIDGE, MA (1982)  
CINCINNATI, OH (1988)  
LEOMINSTER (1990)  
MINNEAPOLIS, MN (1979)  
NEW BEDFORD, MA (1989)  
NEW ORLEANS, LA (1988) -- MINORS ONLY  
NEWTON, MA (1982)  
ST. PAUL, MN (1979)  
SOMERVILLE, MA (1983)  
WEYMOUTH, MA (1989)  
WORCESTER, MA (1984)

APRIL



APPENDIX C

STATE AGE RESTRICTIONS  
FOR SALES OF TOBACCO PRODUCTS

STATE	MINIMUM AGE FOR:		STATE	MINIMUM AGE FOR:	
	CIGARETTES	SMOKELESS		CIGARETTES	SMOKELESS
AL	19	19	MO	--	--
AK	19	19	MT	--	--
AZ	18	18	NE	18	18
AR	18	18	NV	18	18
CA	18	18	NH	18	18
CO	18	18	NJ	18	18
CT	18	18	NM	--	--
DE	17	17	NY	18	18
DC	16	16	NC	17	17
FL	18	18	ND	18	18
GA	17	17	OH	18	18
HI	18	18	OK	18	18
ID	18	18	OR	18	18
IL	18	18	PA	16	16
IN	18	18	RI	18	18
IA	18	18	SC	18	18
KS	18	18	SD	18*	18
KY	--	--	TN	18	18
LA	--	--	TX	18**	18**
ME	18*	18*	UT	19	19
MD	18*	18	VT	17	17
MA	18	18	VA	16	16
MI	18	18	WA	18	18
MN	18	18	WV	18	18
MS	18	18	WI	18*	18*
			WY	--	--

-- No statewide age limit

\* Effective July 1, 1989

\*\* Effective September 1, 1989

SOURCES:

State departments of health, 1989.

"Tobacco-Free America State Component Survey," data received from state offices of the American Cancer Society, American Heart Association, and the American Lung Association, September 1988.

APRIL

APPENDIX D

**ARE STATE AND LOCAL GOVERNMENTS PREEMPTED  
FROM BANNING THE FREE DISTRIBUTION OR  
SAMPLING OF TOBACCO PRODUCTS?**

1. What are the federal laws that must be examined to determine whether a state or local government may lawfully ban the free distribution or sampling of tobacco products?

There are only two federal laws that address these issues. They are the Federal Cigarette Labeling and Advertising Act, as amended by the Comprehensive Smoking Education Act of 1984, 15 U.S.C. Sections 1331-1340, and the Comprehensive Smokeless Tobacco Education Act of 1986, 15 U.S.C. Sections 4401-4406.

The text of the relevant provisions of these acts is as follows:

The Federal Cigarette Labeling and Advertising Act: 15 U.S.C. Section 1334

- (a) No statement relating to smoking and health, other than the statement required by Section 1331 of the Title, shall be required on any cigarette package.
- (b) No requirement or prohibition based on smoking and health shall be imposed under state law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Chapter.

The Comprehensive Smokeless Tobacco Education Act: 15 U.S.C. Section 4406

- (b) No statement relating to the use of smokeless tobacco products and health, other than the statement required by Section 4402 of this Title, shall be required by any state or local statute or regulation to be included on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

2. Why doesn't the Federal Cigarette Labeling and Advertising Act prohibit a state or local government from banning the free distribution of cigarette products?

There are three sound reasons why the Federal statute does not preempt state or local action in this area. They are:

- A. A ban on free sampling is a restriction on the distribution, not the promotion of cigarettes. While the Federal Cigarette Labeling and Advertising Act preempts efforts to restrict "the promotion" of cigarettes, it does not preempt state or local efforts to limit or restrict the "distribution" of cigarettes.

A state or local government remains free to restrict when and where and to whom cigarettes may be sold. A ban on the free sampling or free distribution of cigarettes is a restriction on the "distribution" of cigarettes, not on the "promotion" of cigarettes. This conclusion is confirmed by Section 1332 of the Act, which defines the terms "sale or distribution" as including "sampling or other distribution not for sale." Thus, just as a state or local government remains free to restrict the sale of cigarettes to minors or to prohibit the sale of cigarettes in schools or other facilities populated largely by minors, a state or local government remains free to limit the "distribution" of cigarettes by banning their free distribution and sampling.

- B. A ban on free sampling is consistent with the goals and purposes of the Federal Act. The preemption provision in the Federal Cigarette Labeling and Advertising Act must be examined in the context of the declared Congressional policy and purpose of the Act. The preemption provision was enacted to insure that state and local governments did not take actions which were inconsistent with the purposes of the Act.

15 U.S.C. Section 1331 states that Congress had two goals in the enactment of the Federal Cigarette Labeling and Advertising Act. First, Congress wished to inform the public about the hazards of cigarettes. Second, Congress did not want to unnecessarily impede the cigarette manufacturer's ability to sell cigarettes "by diverse, non-uniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." 15 U.S.C. Section 1331(2).

A ban on the free sampling and free distribution of cigarette products is not inconsistent with the policy and purposes of the Federal Cigarette Labeling and Advertising Act, nor does it set up conflicting and confusing requirements that will otherwise impede the ability of cigarette manufacturers to market their products. The preemption provision was enacted to prohibit state and local restrictions on advertising and promotion that would make it difficult or impossible for a manufacturer to conduct a national advertising and promotional campaign. A ban on the free distribution of cigarette products within a particular jurisdiction does not conflict with this goal.

C. A ban on free sampling may be enacted for reasons other than smoking and health. Even if the federal statute is considered to preempt an effort to ban the free sampling of cigarettes when such a prohibition is "based on smoking and health" considerations, a state and local government is free to enact such a ban if it does so to avoid congestion on its streets, to control or reduce litter, to protect pedestrians from annoyance and invasion of their privacy, or to avoid facilitating the availability of cigarettes and other tobacco products to minors. The preemption provision is limited to laws enacted based on "smoking and health" considerations only.

3. Does the Federal Cigarette Labeling and Advertising Act provision that says "No Requirement or Prohibition Based on Smoking or Health Shall be Imposed Under State Law with Respect to the Advertising and Promotion" of cigarettes preempt a state or local government from banning the free distribution of cigarettes?

Probably not. The tobacco industry argues that a ban on the free distribution of cigarettes amounts to a prohibition on its promotional efforts and, therefore, is preempted by the federal statute. No court has explicitly addressed this issue yet. Nonetheless, there are sound reasons for concluding that the Federal Cigarette Labeling and Advertising Act does not preempt a state or local government from banning the free distribution, or sampling, of cigarettes.

4. Does the Comprehensive Smokeless Tobacco Health Education Act of 1986 preempt state or local governments from banning the free distribution, or sampling, of smokeless tobacco products?

No. The preemption provision in the Smokeless Tobacco Act is careful and narrowly limited. It only prevents a state or local government from enacting a statute that requires a different warning label required by the federal statute. State and local governments remain free otherwise to limit or restrict the advertisement of these products and to limit or prohibit any promotional efforts for smokeless tobacco products that take place within their jurisdiction.

Compiled by the Coalition on Smoking or Health, a public policy project supported by the American Cancer Society, the American Heart Association, and the American Lung Association, Washington, D.C.

PROCEDURE AND INSTRUCTIONS

FOR

LORILLARD

CIGARETTE SAMPLERS

REVISED 1/91

PAGE 1

WELCOME TO THE LORILLARD SAMPLING TEAM!

You are about to participate in an important sampling program. You will be introducing smokers to one of the Lorillard Brands by giving them a free sample of \_\_\_\_\_ cigarettes.

\_\_\_\_\_ cigarettes are  
a product of the highest quality.

They are made by the company that  
markets such brands as:

NEWPORT

&

KENT

&

TRUE

PAGE 2

YOUR SAMPLING JOB

You will be handing out free sample packs of \_\_\_\_\_ cigarettes to adults who are SMOKERS at various special events in your area. You will be assigned specific locations and times for your sampling work.

WHY YOU?

You have been selected for this sampling work on the basis of

- \* A Pleasing Personality
- \* A Good Appearance
- \* Genuine Interest

You appear to be the type of person who enjoys working with others. You seem to be extremely well qualified to do an effective sampling job for \_\_\_\_\_ cigarettes.

THE WAY YOU WORK

The way you sample will have a direct bearing on the attitude of sampled smokers towards this brand. When you create a favorable impression, a smoker is prepared to think favorably of the sample pack you have just given to them.



WHY WE SAMPLE

Sampling is a way of inducing SMOKERS to switch away from the cigarettes they are now smoking, to our brand. It is really a form of advertising which permits the cigarette to speak for itself.

We know that \_\_\_\_\_ cigarettes is a fine product.  
We want many smokers over 21 years of age to try them.

RESULTS:

- \* Many smokers sampled will enjoy \_\_\_\_\_ cigarettes.
- \* Some of these smokers will prefer them to their regular brand.
- \* A reasonable percentage of those enjoying the cigarettes will continue to smoke them.

SAMPLE ADULTS ONLY

It is imperative that you DO NOT give samples to any one who appears to be under 21 years of age.

WE REPEAT:

DO NOT GIVE SAMPLES TO ANYONE WHO APPEARS

TO BE UNDER 21 YEARS OF AGE!

YOU ARE THE JUDGE!!

If a person you think is under 21 asks you for a sample, simply say that you are sorry but that you are not permitted to give away samples to anyone under 21, request identification verifying age. If you think they are under 21 **NO SAMPLES!** And this holds good even if a person is smoking or carrying a pack of cigarettes!

YOUR WORK PATTERN

Your sampling work will be supervised by a person who knows the job well.

Your supervisor will:

1. Supply you with samples of \_\_\_\_\_ cigarettes.
2. Give you a divided carry bag to hold the cigarettes.
3. Show you how carrying samples in the divided bag frees your hands for use in passing out samples.
4. Observe your performance

SPECIAL AUDITS

All sampling is observed by a private audit company. When sampling, and an auditor observes:

- Multiple pack sampling
- Sampling to under 21 years old.
- Not asking person, "Do you smoke?"
- Any other poor effort in regards to Lorillards sampling manual.

You will be warned by your supervisor to correct your actions. If a second infraction is observed, further action will be taken.

RESTRICTIONS ON SAMPLING

It is important for you to understand that the only reason we are permitted to sample on the streets, sidewalks or in parks is because we provide an enclosure which allows access only to smokers 21 or older. It is therefore essential that the standard barrier be set up so that there is only one point of entry, that the age limitation sign be posted at the enclosure entrance at all times, and that someone always be posted by that entrance to monitor compliance.

SPECIAL PROBLEMS

During the time you are sampling, your supervisor will be able to help with any problems which may come up. For example, if anyone should object to your sampling at an assigned location, please don't argue about it. Simply tell that person that your supervisor will be around shortly and will handle all complaints. Sampling is your job. Complaints are your supervisor's job.

ONE SAMPLE ONLY

You are to hand only one sample to each person who is a (smoker). If a person repeatedly asks for an extra sample for a friend or relative, give it to them rather than argue. And should you run across some "chiseler" who keeps coming back for more free samples, simply:

Tell them you cannot oblige because you are allowed to give only one sample to each person.

- \* Do not argue. Ever. Turn Away!
- \* Just go about sampling other smokers.

A WORD OF CAUTION: Never give samples to people who are in vehicles, whether they are parked, standing or moving, and where required on public streets, sidewalks or parks, remain within physical barrier which limit access to smokers 21 or older.

SAMPLING TECHNIQUES

- \* Make sure you speak up clearly when approaching a person to whom you may sample.
- \* Always give the full and correct name of the cigarette brand.
- \* Please give only one sample to each person
- \* When you are going to sample, step up to the person and say:

(Do you smoke?)

If the answer is yes, say ...

"Have a free sample of \_\_\_\_\_ cigarettes."

"Full Flavor of Lights?" "King size or 100's?"

"Regular or Menthol?" (Whichever pertains's)

If you have any questions regarding any of the sampling procedures do not hesitate to ask your supervisor!

YOU WORK ON A TIGHT SCHEDULE

You will not have time to:

- \* Stop and talk about the samples.
- \* Debate or argue the merits of cigarette smoking in general.
- \* Strike up a conversation with anyone.

Please Remember: We want to give one free sample pack of cigarettes only to adults who smoke. If a person refuses a sample, his or her decision must be respected. No attempt to force a sample on a person should ever be made. This is very important.

WHAT TO WEAR ON THE JOB

You are representing \_\_\_\_\_ cigarettes to smokers. Your appearance is, therefore, important. Each sampler will be furnished with a Lorillard uniform. Since you will be on your feet for a long period of time please make sure your shoes are comfortable. **NO SNEAKERS ARE ALLOWED.**

GUARD YOUR SAMPLERS

If your supervisor leaves some extra cases of samples with you, be sure that these samples are stored in a safe place. They are not to be left unguarded at any time.

AVOID LITTER

It is your responsibility to ensure that no litter remains in the immediate vicinity of your assigned location as a result of sampling activities.

NO OUTSIDE INTERVIEWS.

It is possible that you may be questioned by representatives of other companies. If this happens, simply:

- \* Tell them you are not permitted to answer questions.
- \* Refer them to your Supervisor.
- \* Ask them for their business card to give to your supervisor.

EVEN IF A REPORTER ASKS FOR AN INTERVIEW

PLEASE SAY NO AND REFER HIM TO YOUR SUPERVISOR

PAGE 8

REHEARSAL

During the training session every sampler (if a large group, at least 50%) will be asked to demonstrate his or her sampling techniques by actually stepping up and offering a sample to the Supervisor. This type of "Dry Run" will help build your confidence.

It may sometimes be necessary to repeat several times the lines: "Do you smoke?" "Have a free sample of \_\_\_\_\_." "Full Flavor or Lights?" "King size or 100's?" "Regular or Menthol?"

GOOD LUCK TO ALL

This sampling job should be rewarding work for every member of the sampling team. \_\_\_\_\_ cigarettes are a quality tobacco product. You are doing a smoker a favor by giving him a free sample of the brand.

We know that you will enjoy your work.

Good Luck to each and everyone of you.

And many thanks for your efforts from the makers of \_\_\_\_\_ cigarettes.

THE LEGG MASON TOWER  
SUITE 2700  
111 SOUTH CALVERT STREET  
BALTIMORE, MARYLAND 21202

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*Copy  
To: Lawrence Bell  
+ Carl State*

May 28, 1991

Mr. William Driscoll  
Baltimore City Council  
Office of Councilmanic Services  
Room 421  
City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

**RE: PROPOSED AMENDMENT TO CITY  
COUNCIL BILL #1265  
DISTRIBUTION OF TOBACCO SAMPLES  
AND COUPONS**

Dear Mr. Driscoll:

Thank you for considering an amendment to this bill.

I propose that the penalty be increased from \$25.00 for each separate offense to something substantial like \$25,000.00 per offense. While this may seem harsh, it should be. These large companies are making millions from tobacco products and unless the penalty is severe and financially punitive, the bill will have no "teeth".

I further propose that "separate offense" be defined in your definition section. It could mean separate event, separate distribution to any person etc. I would propose that it means a fine to be levied per pack of cigarettes. This problem is just that serious. If we compromise this ordinance, we compromise the lives of our youngsters and of your constituents.



Letter to William Driscoll  
Page 2

Thank you for your consideration. I am available for further dialogue if necessary.

Yours truly,



**GEORGIA H. GOSLEE**

GHG/nt

cc: Dr. M. Jane McMahon  
President, American Lung Association

Mr. Stephen M. Peregoy  
Executive Director, American Lung Association

# TOBACCO-FREE AMERICA

Legislative Clearinghouse  
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Angela T. Mickel  
*Director*

John H. Madigan  
*American Cancer Society*

Scott D. Ballin  
*American Heart Association*

Fran Du Melle  
*American Lung Association*

## TOBACCO SAMPLING: THERE IS NO FREE LUNCH

\*\*\*\*\*

APRIL 1990

*A Public Policy Project Sponsored by*



**THE DISTRIBUTION OF TOBACCO PRODUCT SAMPLES:  
THERE IS NO FREE LUNCH**

**OVERVIEW**

Cigarette smoking is the number one preventable cause of death and disease in the United States. Scientific studies have proved that there is no known safe human use of tobacco products. Clearly, the way to substantially improve the overall health of this country is to drastically reduce or totally eliminate tobacco consumption. Yet, each year nearly 400,000 Americans die from cigarettes and tobacco-induced disease. To what may this alarming statistic be attributed? A simple answer would be "advertising and promotion."

Cigarettes are this nation's most heavily advertised consumer product. In 1987, the tobacco industry spent approximately \$2.6 billion on advertising and promotion, which includes the free distribution of product samples, to attract new smokers, retain current smokers, and to increase consumption. Advertising experts have testified that advertising and promotional practices used by the tobacco industry are specifically designed to attract and influence the behavior of the most vulnerable group in society: youth.

According to the National Institute on Drug Abuse 60 percent of all new smokers are 14 years of age or younger; 90 percent of all smokers start by age 19; and, very few people begin to smoke after the age of 21. Coupled with the fact that the younger one starts to smoke, the more likely one will:

- remain a smoker;
- smoke more heavily; and,
- die prematurely.

These statistics should not be ignored.

Through the association of tobacco use with youthful vigor, independence, social and athletic success, and with individuals and activities most likely to be admired by young people, tobacco advertising and promotion influences the attitudes of teenagers and their perceptions about cigarette smoking and the use of other tobacco products. Although the tobacco industry denies any purposeful attempt to recruit young users, increased distribution of tobacco product samples at industry-sponsored sports events and rock concerts attended by large numbers of teenagers make such claims untenable.

## SAMPLING PRACTICE BECOMES WIDESPREAD

Since the early Seventies, the practice of distributing samples of tobacco products in public places or at public events, commonly referred to as "sampling," has become a vital marketing tool for tobacco manufacturers. The widespread use of sampling was prompted when the federal ban on cigarette advertising through the television and radio mediums, which would serve to greatly reduce the advertising capacity of the tobacco industry, took effect in 1970. Consequently, the tobacco industry was forced to find other ways to promote the sale of its products. In contrast to advertising, which communicates and identifies a product, promotional activities lead directly to consumer action, such as trying or buying the product. Thus, it was only natural for the tobacco industry to step up its promotional activities, and distributing samples of its products became a viable alternative.

Cigarette sampling is not new to our society. During World War II, packages of cigarettes became a staple ingredient in field rations sent to the men fighting in Europe. Soldiers quickly began associating cigarettes with such positive images as relaxation, safety, and home. Unfortunately, they continued smoking cigarettes after they returned to the States.

Today, cigarette manufacturers in the United States spend more money on promotional activities than they do on media advertising. For example, promotional expenditures grew from under 10 percent of their total advertising and promotional expenditures in 1963, to over one-half of total expenditures in 1983, to 66 percent in 1987. Of those totals, sampling expenditures increased from almost \$13 million in 1963 to over \$125 million in 1983. Although that figure decreased to over \$55 million in 1987, it is still way above the 1963 total.

Moreover, tobacco companies do not limit their sampling practices to cigarettes alone. With the increasing prevalence of smokeless tobacco use, especially among children, and the federal law banning the advertising of smokeless tobacco on both television and radio in 1986, sampling of smokeless tobacco products has been exercised on a greater scale.

## OBJECTIONS TO SAMPLING RAISED

This explosion of the tobacco industry's use of non-media methods of promotion has alarmed consumer groups, health organizations, such as the American Cancer Society, the American Heart Association, and the American Lung Association, and private citizens. Consequently, the American Cancer Society, the American Heart Association, and the American Lung Association, through a joint venture -- Tobacco-Free America -- support the total elimination of tobacco product sampling. Rather than limit the distribution of tobacco products to those above the legal age, they believe it is more effective to ban the practice

entirely.

Several objections to the sampling of cigarette and smokeless tobacco products are:

- A. Tobacco product giveaways inevitably fall into the hands of minors. The tobacco industry has developed its own "Code of Cigarette Sampling Practices," which details certain standards that are to be observed in order to avoid distributing cigarette samples to under-age children. (Appendix A) According to the code, a distributor is required to ask a person's age and whether or not they are a smoker. Reports of random spot-checking of sampling distribution points have proved that no such restrictions are being observed. Moreover, the tobacco industry claims that its promotional activities are designed to induce existing smokers to switch brands, and not to attract new smokers. Yet, if they were not trying to enlist new smokers, their markets would disappear after one generation. Obviously, this is not the case. The tobacco industry sees children as future customers and acts accordingly.

In addition, minors can easily obtain samples discarded by adults. Although most states, including the District of Columbia, prohibit the sale and furnishing of tobacco products to minors, laws prohibiting the distribution of tobacco product samples to minors would do nothing to limit a child's access to discarded samples. Sampling provides another source for children to obtain tobacco products. The danger of samples getting into the hands of minors is demonstrated in studies that show that each year approximately one million adolescents who smoke even a few cigarettes become regular users.

- B. Persons who are trying to curtail their use of tobacco or who have already "kicked the habit" are confronted with the temptation to try these products. Usually, people will try anything that is free. Even a nonsmoker may attempt to smoke a cigarette, if there is no "risk" (loss of money) associated with smoking that cigarette.

Consequently, the size of the sample plays an important role. Most samples are packaged in smaller quantities in order to keep the cost of the promotion lower. However, tobacco companies are using larger samples (a full pack or even a carton) to increase the period of time in which the product may be sampled. A longer time-span gives consumers the opportunity to modify their preferences and to permanently adopt the use of the product. It also allows for the addictive substances contained in tobacco, primarily nicotine, to take effect. In the long run, it is to the tobacco companies' economic advantage to distribute larger samples when the result is increased sales of their product.

- C. A substantial portion of the public interprets sampling as an official endorsement of the products' use, even a dangerous and addictive substance like tobacco. Public confusion regarding a local government's position on tobacco use may encourage minors to risk trying it. In addition, already-addicted adults are provided with the rationale for not curtailing the use of the substance.
- D. The distribution of tobacco products on sidewalks and street corners and at entrances to sporting and cultural events creates congestion of pedestrian traffic and litter. Traffic tie-ups and littered sidewalks are a nuisance to pedestrians and to taxpayers who must bear the burden of the clean-up costs.

### LEGISLATIVE ACTION

Whereas, in the past, significant legislative and regulatory limits were placed on tobacco advertising, attention has now shifted to restricting the promotional activities of tobacco manufacturers. Local governments have taken the lead in curbing the tobacco industry's sampling practices. Since 1979, 16 cities across the country have banned the distribution of cigarette samples. (Appendix B)

With regard to state legislation, the focus has been on limiting the accessibility of tobacco products solely to minors. Forty-four states and the District of Columbia restrict the sale of tobacco products to minors. Six states--Kentucky, Louisiana, Missouri, Montana, New Mexico, and Wyoming--have not yet acted to prohibit the sales of tobacco products to young persons. (Appendix C)

While many limit access of tobacco products to minors by prohibiting sales or furnishing, only 12 states have taken action to restrict the distribution of samples. Minnesota and Utah totally ban the distribution of cigarettes, smokeless tobacco products, cigars, pipe tobacco, or other tobacco products suitable for smoking. Kansas prohibits the distribution of sample cigarettes. Nebraska prohibits the distribution of sample smokeless tobacco products. Georgia, Indiana, Louisiana, Maine, New Hampshire, Oregon, Rhode Island, and Wisconsin ban the distribution of tobacco product samples to minors only. (Appendix B)

### PREEMPTION ISSUE ADDRESSED

The question of whether the previous federal laws that banned radio and television advertising of cigarettes and smokeless tobacco products took away the authority of states to outlaw such sampling may be an obstacle that is preventing states from tackling this issue full-force. There are actually three laws that are referred to in the discussion of the preemption

issue for cigarettes: the Federal Cigarette Labeling and Advertising Act (1965), the Public Health Cigarette Smoking Act (1969), and the Little Cigar Act (1973). In short, the federal preemption pertains only to state regulations based on "smoking and health." It is limited entirely to state requirements or prohibitions in the advertising of cigarettes, and does not apply to:

- a) purely intrastate commerce;
- b) proper exercise by states of police and other powers in the interest of public health and safety; and,
- c) topics other than smoking or health.

Thus, states still retain the authority to restrict cigarette sampling when the legislative intent is to facilitate enforcement of existing laws that prohibit the sale and furnishing of tobacco products to minors and to control commercial activity on the public right-of-way.

With regard to smokeless tobacco, the Smokeless Tobacco Education Act (1986) clearly does not prohibit states from outlawing smokeless tobacco sampling in public areas. Under the Smokeless Tobacco Education Act, states were also given the authority to regulate how smokeless tobacco is advertised.

While representatives of the tobacco industry argue that any ban on the distribution of cigarette and other tobacco product samples, or "sampling," by state or local governments is preempted by federal law, a careful reading of the applicable laws and legal principles leads to the conclusion that the enactment of such a ban is permissible and is not preempted by federal law. (Appendix D)

## CONCLUSION

Although the tobacco industry argues otherwise, states indeed have the legal authority to ban sampling. It has become a question of whether states have the political desire to regulate the tobacco industry in this manner. Enactment of such legislation would lead to more effective enforcement of already existing laws designed to prevent minors' access to a deadly product. It would also shield the public from the insidious practices of the tobacco industry. Given that the costs associated with tobacco use in the United States are estimated at nearly \$65 billion annually, including health care expenditures and loss productivity, the tobacco industry's promotional strategies of giving away samples lends credence to the old economic adage that "there is no such thing as a free lunch."

## REFERENCES

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- U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Center for Health Promotion and Education, Office on Smoking and Health, Smoking and Health: A National Status Report. A Report to Congress, 1990.





**The Tobacco Institute**  
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## **STATEMENT OF PURPOSE**

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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 this 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.

# **Code of Cigarette Sampling Practices**

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## **ARTICLE I**

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### **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.

## **ARTICLE II**

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### **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 this Article.

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 a 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**

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### **COMPLIANCE AND ENFORCEMENT PROVISIONS**

- 1. Each cigarette manufacturer that subscribes to this 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.**

APPENDIX B

RESTRICTIONS ON DISTRIBUTION OF TOBACCO PRODUCT SAMPLES

STATES WITH LAWS RESTRICTING (13):

MINNESOTA (1986, 1987) -- TOTAL BAN  
UTAH (1983, 1986, 1989) -- TOTAL BAN

GEORGIA (1987) -- MINORS ONLY  
ILLINOIS (1988) -- MINORS ONLY  
INDIANA (1987) -- MINORS ONLY  
KANSAS (1984) -- BAN APPLIES TO CIGARETTES AND  
MINORS ONLY  
LOUISIANA (1988) -- MINORS ONLY  
MAINE (1983) -- MINORS ONLY  
NEW HAMPSHIRE (1987) -- MINORS ONLY  
OREGON (1989) -- MINORS ONLY  
RHODE ISLAND (1988) -- MINORS ONLY  
WISCONSIN (1989) -- MINORS ONLY

NEBRASKA (1989) -- SMOKELESS TOBACCO PRODUCTS ONLY

CITIES WITH ORDINANCES PROHIBITING (16)

ALBERT LEA, MN (1986)  
AMHERST, MA (1987)  
ATLANTA, GA (1986)  
AUSTIN, TX (1988)  
BOSTON, MA (1984)  
BOWIE, MD (1986)  
CAMBRIDGE, MA (1982)  
CINCINNATI, OH (1988)  
LEOMINSTER (1990)  
MINNEAPOLIS, MN (1979)  
NEW BEDFORD, MA (1989)  
NEW ORLEANS, LA (1988) -- MINORS ONLY  
NEWTON, MA (1982)  
ST. PAUL, MN (1979)  
SOMERVILLE, MA (1983)  
WEYMOUTH, MA (1989)  
WORCESTER, MA (1984)

APRIL

APPENDIX C

STATE AGE RESTRICTIONS  
FOR SALES OF TOBACCO PRODUCTS

<u>STATE</u>	<u>MINIMUM AGE FOR:</u>		<u>STATE</u>	<u>MINIMUM AGE FOR:</u>	
	<u>CIGARETTES</u>	<u>SMOKELESS</u>		<u>CIGARETTES</u>	<u>SMOKELESS</u>
AL	19	19	MO	--	--
AK	19	19	MT	--	--
AZ	18	18	NE	18	18
AR	18	18	NV	18	18
CA	18	18	NH	18	18
CO	18	18	NJ	18	18
CT	18	18	NM	--	--
DE	17	17	NY	18	18
DC	16	16	NC	17	17
FL	18	18	ND	18	18
GA	17	17	OH	18	18
HI	18	18	OK	18	18
ID	18	18	OR	18	18
IL	18	18	PA	16	16
IN	18	18	RI	18	18
IA	18	18	SC	18	18
KS	18	18	SD	18*	18
KY	--	--	TN	18	18
LA	--	--	TX	18**	18**
ME	18*	18*	UT	19	19
MD	18*	18	VT	17	17
MA	18	18	VA	16	16
MI	18	18	WA	18	18
MN	18	18	WV	18	18
MS	18	18	WI	18*	18*
			WY	--	--

-- No statewide age limit

\* Effective July 1, 1989

\*\* Effective September 1, 1989

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SOURCES:

State departments of health, 1989.

"Tobacco-Free America State Component Survey," data received from state offices of the American Cancer Society, American Heart Association, and the American Lung Association, September 1988.

APRIL

APPENDIX D

**ARE STATE AND LOCAL GOVERNMENTS PREEMPTED  
FROM BANNING THE FREE DISTRIBUTION OR  
SAMPLING OF TOBACCO PRODUCTS?**

1. **What are the federal laws that must be examined to determine whether a state or local government may lawfully ban the free distribution or sampling of tobacco products?**

There are only two federal laws that address these issues. They are the Federal Cigarette Labeling and Advertising Act, as amended by the Comprehensive Smoking Education Act of 1984, 15 U.S.C. Sections 1331-1340, and the Comprehensive Smokeless Tobacco Education Act of 1986, 15 U.S.C. Sections 4401-4406.

The text of the relevant provisions of these acts is as follows:

**The Federal Cigarette Labeling and Advertising Act: 15 U.S.C. Section 1334**

- (a) No statement relating to smoking and health, other than the statement required by Section 1331 of the Title, shall be required on any cigarette package.
- (b) No requirement or prohibition based on smoking and health shall be imposed under state law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Chapter.

**The Comprehensive Smokeless Tobacco Education Act: 15 U.S.C. Section 4406**

- (b) No statement relating to the use of smokeless tobacco products and health, other than the statement required by Section 4402 of this Title, shall be required by any state or local statute or regulation to be included on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

2. **Why doesn't the Federal Cigarette Labeling and Advertising Act prohibit a state or local government from banning the free distribution of cigarette products?**

There are three sound reasons why the Federal statute does not preempt state or local action in this area. They are:

- A. **A ban on free sampling is a restriction on the distribution, not the promotion of cigarettes.** While the Federal Cigarette Labeling and Advertising Act preempts efforts to restrict "the promotion" of cigarettes, it does not preempt state or local efforts to limit or restrict the "distribution" of cigarettes.

A state or local government remains free to restrict when and where and to whom cigarettes may be sold. A ban on the free sampling or free distribution of cigarettes is a restriction on the "distribution" of cigarettes, not on the "promotion" of cigarettes. This conclusion is confirmed by Section 1332 of the Act, which defines the terms "sale or distribution" as including "sampling or other distribution not for sale." Thus, just as a state or local government remains free to restrict the sale of cigarettes to minors or to prohibit the sale of cigarettes in schools or other facilities populated largely by minors, a state or local government remains free to limit the "distribution" of cigarettes by banning their free distribution and sampling.

- B. A ban on free sampling is consistent with the goals and purposes of the Federal Act. The preemption provision in the Federal Cigarette Labeling and Advertising Act must be examined in the context of the declared Congressional policy and purpose of the Act. The preemption provision was enacted to insure that state and local governments did not take actions which were inconsistent with the purposes of the Act.

15 U.S.C. Section 1331 states that Congress had two goals in the enactment of the Federal Cigarette Labeling and Advertising Act. First, Congress wished to inform the public about the hazards of cigarettes. Second, Congress did not want to unnecessarily impede the cigarette manufacturer's ability to sell cigarettes "by diverse, non-uniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." 15 U.S.C. Section 1331(2).

A ban on the free sampling and free distribution of cigarette products is not inconsistent with the policy and purposes of the Federal Cigarette Labeling and Advertising Act, nor does it set up conflicting and confusing requirements that will otherwise impede the ability of cigarette manufacturers to market their products. The preemption provision was enacted to prohibit state and local restrictions on advertising and promotion that would make it difficult or impossible for a manufacturer to conduct a national advertising and promotional campaign. A ban on the free distribution of cigarette products within a particular jurisdiction does not conflict with this goal.

C. A ban on free sampling may be enacted for reasons other than smoking and health. Even if the federal statute is considered to preempt an effort to ban the free sampling of cigarettes when such a prohibition is "based on smoking and health" considerations, a state and local government is free to enact such a ban if it does so to avoid congestion on its streets, to control or reduce litter, to protect pedestrians from annoyance and invasion of their privacy, or to avoid facilitating the availability of cigarettes and other tobacco products to minors. The preemption provision is limited to laws enacted based on "smoking and health" considerations only.

3. Does the Federal Cigarette Labeling and Advertising Act provision that says "No Requirement or Prohibition Based on Smoking or Health Shall be Imposed Under State Law with Respect to the Advertising and Promotion" of cigarettes preempt a state or local government from banning the free distribution of cigarettes?

Probably not. The tobacco industry argues that a ban on the free distribution of cigarettes amounts to a prohibition on its promotional efforts and, therefore, is preempted by the federal statute. No court has explicitly addressed this issue yet. Nonetheless, there are sound reasons for concluding that the Federal Cigarette Labeling and Advertising Act does not preempt a state or local government from banning the free distribution, or sampling, of cigarettes.

4. Does the Comprehensive Smokeless Tobacco Health Education Act of 1986 preempt state or local governments from banning the free distribution, or sampling, of smokeless tobacco products?

No. The preemption provision in the Smokeless Tobacco Act is careful and narrowly limited. It only prevents a state or local government from enacting a statute that requires a different warning label required by the federal statute. State and local governments remain free otherwise to limit or restrict the advertisement of these products and to limit or prohibit any promotional efforts for smokeless tobacco products that take place within their jurisdiction.

Compiled by the Coalition on Smoking or Health, a public policy project supported by the American Cancer Society, the American Heart Association, and the American Lung Association, Washington, D.C.



~~Festing~~  
Addiction

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1117

- Food  
Operative  
Litter

---

CITY OF BALTIMORE

KURT L. SCHMOKE, Mayor



OFFICE OF COUNCILMANIC SERVICES

421 City Hall  
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Baltimore, Maryland 21202  
396-5607

TO: Honorable Carl Stokes, Chair and members of the Health Subcommittee

FROM: Bill Driscoll, Legislative Policy Analyst

DATE: May 15, 1991

RE: Hearing to be held at 11:00 a.m. on Friday May 24, 1991 for CC 1265 DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

CC 1265 DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

Sponsored By: Councilman Bell, Dixon, D'Adamo, Reeves, President Clarke, Welch, and Stokes

Agency Reports: Health - Favorable  
Police - No Position

Background: This bill would prohibit the public distribution of tobacco products which are " free " or " below cost " in Baltimore City. There would also be a prohibition against public place distribution of coupons that could be redeemed for " free " or " below cost " tobacco products. There are exemptions for distribution of coupons through publications in which the coupon is incidental. Also exempted would be coupons sent through the mail. Coupons distributed at private functions would be exempted. Finally coupons could be distributed to employees (those over the age of majority) of companies who sell, manufacture or distribute tobacco products. The penalty for violation of the ordinance would be a fine of not more than \$25.00 per offence.

Testimony in Support of City Council Bill No. 1265  
Distribution of Tobacco Samples and Coupons  
24 May 1991

Dr. M. Jane McMahon, President  
American Lung Association of Maryland  
Nationally Certified Health Education Specialist

City Council Health Sub-Committee Chair Stokes and Sub-Committee Members:

Thank you providing me with the opportunity to speak on this important issue.

Each one of you are aware of the hazards of cigarette smoke to the smoker. Pharmacologically, nicotine is categorized as a stimulant. Psychologically, it is categorized as a drug of dependence. Tar, the most dangerous component of cigarette smoke, even in very low dosages, leads to respiratory problems such as chronic bronchitis, emphysema as well as contributes to the development of lung cancer. Carbon monoxide accumulates slowly in the body so that the body just as slowly is starved of oxygen. Insufficient amounts of oxygen affects heart functioning leading to heart attack and/or heart disease. You also know of the more than 4,000 other gases and solid components of tobacco smoke that impair the smoker. (Koop, "A Parting Shot at Tobacco." Journal of the American Medical Association, 24 November 1989).

Lung disease, including lung cancer, is third leading cause of death in the United States of America. The death rate from lung disease is *growing* faster than most any major disease with the exception of AIDS. Also lung disease is a quality of life issue in that it forces significant changes in lifestyle and can drain Baltimore City families financially even when it does not kill. (ALA/ATS International Conference, May 1991). Clearly the linkage of tobacco smoking and poor levels of health have been and continue to be medically documented.

In addition, cigarettes are the most heavily marketed consumer product in America, even though they cannot be advertised on television or radio. The tobacco industry is the largest advertiser in the print media, including magazines, newspapers and outdoor billboards. In fact 6 out of 10 billboards in African-American communities advertise alcohol or cigarettes. (Watson, ALA/ATS International Conference, May 1991) "Eighty-five to ninety percent of all new smokers start before or during their teenage years." (Myers and Hollar, "Tobacco Marketing and Promotion." Tobacco Use in America Conference, January 1989). In her remarks to the 1991 ALA/ATS International Conference, California State Senator Diane E. Watson indicated that the tobacco industry has engaged in a calculated conspiracy targeting both females and African-American in their marketing segments and targeted sales. "African-American male smokers suffer nearly twice the mortality and morbidity of white males. Cancer deaths for African-Americans exceed those of the general population." (Watson, May 1991) Now that this market has been achieved, the time to move on to other target segments such as the women and youth is right.

Why have marketing strategies such as the distribution of tobacco products and/or public distribution of tobacco product coupons redeemable for free or below cost products been aimed at the young and the poor? These individuals are the most vulnerable to addiction. In testimony before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce in 1989, health promotion specialists indicated that "in general, the personality and social variables which distinguish adolescent smokers from nonsmokers--risk taking, impulsiveness--are congruent with the images of independence, strength, maturity, and adventurous behavior portrayed in many cigarette advertisements.

For the typical teenager seeking to make his/her real self correspond more closely to his/her ideal self, the portrayal in cigarette ads of valued aspects of identity such as independence, social and physical attractiveness and confidence cannot fail to make cigarettes appear more attractive to teenagers than they would be without such associated imagery. The data support the conclusion that smoking is a behavior for which there is a 'period of enhanced vulnerability' and that smoking onset occurs most often between the ages of twelve and sixteen." "There are enough children who smoke that one day's taxes from kids' cigarettes is enough to keep the Federal Office of Smoking or Health operating for one year." (Watson, 1991) Research indicates that children who live in single family homes in which the parent smokes are eight times more likely to smoke than those children who live in a smoke free home. In two parent homes, children who have one parent who smokes are five times more likely to smoke than those children who come from a smoke free home.

In addition, marketing techniques such as free distribution of cigarettes as a form of advertising and promotion markets death and physical as well as financial disability for each one of us. We know that 28.8 percent of Americans are smokers. We know that smoking costs the State of Maryland over one billion dollars for direct medical expenses and lost productivity each year. This is the equivalent of \$232 per resident in the State of Maryland. (Department of Health and Mental Hygiene, Maryland Report 12/5/90). Keep in mind there is no one more susceptible to image advertising than young women and young minority populations.

If you would close your eyes and visualize the images seen by those of us in the health professions. Tobacco kills more people each and every year than we lost in World War I, World War II and in Vietnam combined. For every one person who dies on our highways across the country, six die from cigarettes. For every death by murder in this country, tobacco kills ten. For every person who dies from complications of AIDS, seventeen die from tobacco use. This is a business and industry that we have deliberately chosen to tolerate directly through our actions or lack of them. In the time it took me to make this presentation, approximately five minutes, twenty people died of tobacco-related lung disease. The death rate is equivalent to the fatality rate of two DC-10 air plane crashes each day for the 365 days of the year. (American Cancer Society, 1988)

I ask you not to tolerate the most recent marketing strategies employed by the tobacco industry and send them a message that you, the leaders of the City Council, will no longer turn your back to the on-the-street marketing of a slow suffocating form of death. I ask you to cast a favorable for the Bill 1265.

I thank you for your time, interest and urge your support.

PROCEDURE AND INSTRUCTIONS

FOR

LORILLARD

CIGARETTE SAMPLERS

REVISED 1/91

PAGE 1

WELCOME TO THE LORILLARD SAMPLING TEAM!

You are about to participate in an important sampling program. You will be introducing smokers to one of the Lorillard Brands by giving them a free sample of \_\_\_\_\_ cigarettes.

\_\_\_\_\_ cigarettes are  
a product of the highest quality.

They are made by the company that  
markets such brands as:

NEWPORT

&

KENT

&

TRUE



YOUR SAMPLING JOB

You will be handing out free sample packs of \_\_\_\_\_ cigarettes to adults who are SMOKERS at various special events in your area. You will be assigned specific locations and times for your sampling work.

WHY YOU?

You have been selected for this sampling work on the basis of

- \* A Pleasing Personality
- \* A Good Appearance
- \* Genuine Interest

You appear to be the type of person who enjoys working with others. You seem to be extremely well qualified to do an effective sampling job for \_\_\_\_\_ cigarettes.

THE WAY YOU WORK

The way you sample will have a direct bearing on the attitude of sampled smokers towards this brand. When you create a favorable impression, a smoker is prepared to think favorably of the sample pack you have just given to them.

WHY WE SAMPLE

Sampling is a way of inducing SMOKERS to switch away from the cigarettes they are now smoking, to our brand. It is really a form of advertising which permits the cigarette to speak for itself.

We know that \_\_\_\_\_ cigarettes is a fine product.  
We want many smokers over 21 years of age to try them.

RESULTS:

- \* Many smokers sampled will enjoy \_\_\_\_\_ cigarettes.
- \* Some of these smokers will prefer them to their regular brand.
- \* A reasonable percentage of those enjoying the cigarettes will continue to smoke them.

SAMPLE ADULTS ONLY

It is imperative that you DO NOT give samples to any one who appears to be under 21 years of age.

WE REPEAT:

DO NOT GIVE SAMPLES TO ANYONE WHO APPEARS

TO BE UNDER 21 YEARS OF AGE!

YOU ARE THE JUDGE!!

If a person you think is under 21 asks you for a sample, simply say that you are sorry but that you are not permitted to give away samples to anyone under 21, request identification verifying age. If you think they are under 21 **NO SAMPLES!** And this holds good even if a person is smoking or carrying a pack of cigarettes!

YOUR WORK PATTERN

Your sampling work will be supervised by a person who knows the job well.

Your supervisor will:

1. Supply you with samples of \_\_\_\_\_  
cigarettes.
2. Give you a divided carry bag to hold the cigarettes.
3. Show you how carrying samples in the divided bag frees your hands for use in passing out samples.
4. Observe your performance

SPECIAL AUDITS

All sampling is observed by a private audit company. When sampling, and an auditor observes:

- Multiple pack sampling
- Sampling to under 21 years old.
- Not asking person, "Do you smoke?"
- Any other poor effort in regards to Lorillards sampling manual.

You will be warned by your supervisor to correct your actions. If a second infraction is observed, further action will be taken.

RESTRICTIONS ON SAMPLING

It is important for you to understand that the only reason we are permitted to sample on the streets, sidewalks or in parks is because we provide an enclosure which allows access only to smokers 21 or older. It is therefore essential that the standard barrier be set up so that there is only one point of entry, that the age limitation sign be posted at the enclosure entrance at all times, and that someone always be posted by that entrance to monitor compliance.

SPECIAL PROBLEMS

During the time you are sampling, your supervisor will be able to help with any problems which may come up. For example, if anyone should object to your sampling at an assigned location, please don't argue about it. Simply tell that person that your supervisor will be around shortly and will handle all complaints. Sampling is your job. Complaints are your supervisor's job.

ONE SAMPLE ONLY

You are to hand only one sample to each person who is a (smoker). If a person repeatedly asks for an extra sample for a friend or relative, give it to them rather than argue. And should you run across some "chiseler" who keeps coming back for more free samples, simply:

Tell them you cannot oblige because you are allowed to give only one sample to each person.

- \* Do not argue. Ever. Turn Away!
- \* Just go about sampling other smokers.

A WORD OF CAUTION: Never give samples to people who are in vehicles, whether they are parked, standing or moving, and where required on public streets, sidewalks or parks, remain within physical barrier which limit access to smokers 21 or older.

SAMPLING TECHNIQUES

- \* Make sure you speak up clearly when approaching a person to whom you may sample.
- \* Always give the full and correct name of the cigarette brand.
- \* Please give only one sample to each person
- \* When you are going to sample, step up to the person and say:

(Do you smoke?)

If the answer is yes, say ...

"Have a free sample of \_\_\_\_\_ cigarettes."

"Full Flavor of Lights?" "King size or 100's?"

"Regular or Menthol?" (Whichever pertains's)

If you have any questions regarding any of the sampling procedures do not hesitate to ask your supervisor!

YOU WORK ON A TIGHT SCHEDULE

You will not have time to:

- \* Stop and talk about the samples.
- \* Debate or argue the merits of cigarette smoking in general.
- \* Strike up a conversation with anyone.

Please Remember: We want to give one free sample pack of cigarettes only to adults who smoke. If a person refuses a sample, his or her decision must be respected. No attempt to force a sample on a person should ever be made. This is very important.

WHAT TO WEAR ON THE JOB

You are representing \_\_\_\_\_ cigarettes to smokers. Your appearance is, therefore, important. Each sampler will be furnished with a Lorillard uniform. Since you will be on your feet for a long period of time please make sure your shoes are comfortable. **NO SNEAKERS ARE ALLOWED.**

GUARD YOUR SAMPLERS

If your supervisor leaves some extra cases of samples with you, be sure that these samples are stored in a safe place. They are not to be left unguarded at any time.

AVOID LITTER

It is your responsibility to ensure that no litter remains in the immediate vicinity of your assigned location as a result of sampling activities.

NO OUTSIDE INTERVIEWS.

It is possible that you may be questioned by representatives of other companies. If this happens, simply:

- \* Tell them you are not permitted to answer questions.
- \* Refer them to your Supervisor.
- \* Ask them for their business card to give to your supervisor.

EVEN IF A REPORTER ASKS FOR AN INTERVIEW

PLEASE SAY NO AND REFER HIM TO YOUR SUPERVISOR

PAGE 8

REHEARSAL

During the training session every sampler (if a large group, at least 50%) will be asked to demonstrate his or her sampling techniques by actually stepping up and offering a sample to the Supervisor. This type of "Dry Run" will help build your confidence.

It may sometimes be necessary to repeat several times the lines: "Do you smoke?" "Have a free sample of \_\_\_\_\_." "Full Flavor or Lights?" "King size or 100's?" "Regular or Menthol?"

GOOD LUCK TO ALL

This sampling job should be rewarding work for every member of the sampling team. \_\_\_\_\_ cigarettes are a quality tobacco product. You are doing a smoker a favor by giving him a free sample of the brand.

We know that you will enjoy your work.

Good Luck to each and everyone of you.

And many thanks for your efforts from the makers of \_\_\_\_\_ cigarettes.

CITY OF BALTIMORE

KURT L. SCHMOKE, Mayor



OFFICE OF COUNCILMANIC SERVICES

421 City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202  
396-5607

TO: Honorable Carl Stokes, Chair and members of the Health Subcommittee

FROM: Bill Driscoll, Legislative Policy Analyst

DATE: May 15, 1991

RE: Hearing to be held at 11:00 a.m. on Friday May 24, 1991 for CC 1265 DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

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Sponsored By: Councilman Bell, Dixon, D'Adamo, Reeves, President Clarke, Welch, and Stokes

Agency Reports: Health - Favorable  
Police - No Position

Background: This bill would prohibit the public distribution of tobacco products which are " free " or " below cost " in Baltimore City. There would also be a prohibition against public place distribution of coupons that could be redeemed for " free " or " below cost " tobacco products. There are exemptions for distribution of coupons through publications in which the coupon is incidental. Also exempted would be coupons sent through the mail. Coupons distributed at private functions would be exempted. Finally, coupons could be distributed to employees (those over the age of majority) of companies who sell, manufacture or distribute tobacco products. The penalty for violation of the ordinance would be a fine of not more than \$25.00 per offence.



COMMITTEE MINUTES

COMMITTEE: HEALTH  
DATE: MAY 24, 1991

CC 1265 ( short title ) DISTRIBUTION OF TOBACCO  
SAMPLES AND PRODUCTS

*Rich Krueger  
Dan Friedman*

COUNCIL ATTENDANCE: ( circle initials ) MPC { ND, D"M"D, JS }  
{ AA, JM, CS } { W"B"C, MC, JL, } { LB, SD, AW } { VH, IR, RS }  
{ JD, TM, ER }

CHAIR: Hon. Carl Stokes ✓ Opened hearing at ( time ) : 10:00

COMMENTS READ ( circle ) :	DOT	DPW	FIN
	LAW	R&P	PLAN
	HCD	FIRE	POL <i>no pos</i>
	HEALTH <i>FAV</i>	EDUC	MAYOR
	OTHER(S)	_____	_____
	_____	_____	_____

ADVERTIZING/POSTING ( note source and certification date ) : NOT  
REQUIRED

SPONSOR COMMENTS: Y/N ( major points ) - *Poor neighborhoods staple cigarette's targeted by coupon samples - Murphy homes*

AGENCY COMMENTS: Y/N ( major points and amendments )  
HEALTH - DR. JOHN Lewis, 1/2 of deaths would be prevented  
strongly supports cc1265.

PUBLIC TESTIMONY:

1. ( name - organization ) Kevin Reynolds, TOBACCO Institute

major points:

opposed to bill, problems with distribution in Memphis homes. Tobacco Institute has set a policy to correct distribution in Birmingham MET with <sup>Sen.</sup> Larry Young + Del. Ruth Kirk) opposed to the bill.

2.

Chair asked Idealt Dept, Tobacco institute to check out who distributed samples at BUCK EXPO (FESTIVAL HALL)

3.

4.

Which other cities have restrictions?  
Some do Bill

5.

↳ Some smaller distributors are not members of the Tobacco institute - How can they be controlled

6.

SD Free samples may make young people try cigarettes

7.

LB How do you tell the age of people?

\* ec1167?  
TO IZOW  
EF ALL REPORTS IN  
ON 8 Electronic Pages  
She will hold hearing

SD Observations: saw guys giving out

9.

Dr. M. Jane McMahon (written comments)

10.

Cost State in Direct Medical Costs (lung patients)  
\$1,000,000

Georgia Goslee: Targeted minority communities

Cigarettes are given to young people to induce them to smoke.

- MONEY MOTIVATION
- young people - peer pressure
- if there is no fear, let the law pass
- Penalties should be punitive

"Per occurrence"  
NOT CLEAR

Add incarceration  
RAISE FINE \$25,000 A FINE

DR. Steven Buckingham - Head Society of Butanese  
opposed to bill, supports  
increasing fine

COUNCIL REQUEST FOR DATA : - Amendments: 1 "per occurrence" is NOT  
clear

2 \* RAISE FINE to \$25,000

3 INCREASED

ASK LAW Dept. to REVIEW

COMMITTEE DISPOSITION ( circle ) :

MOVE TO SECOND READER

HOLD IN COMMITTEE

AMEND

DECISION PENDING

OTHER \_\_\_\_\_

ADJOURNMENT ( time ) :

ADDITIONAL COMMENTS :

MR. D Shields.

law against distribution ARE ALREADY  
ON THE BOOKS

NO evidence to say sampling  
is affected

WOULD ABOUT other restrictions  
Following this

Brand Competition is issue, NOT NEW  
smokers

"TESTING"

Lawrence Bell - comments of a report  
- on childhood, lung cancer  
- self regulation won't work

---

AD

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We know that you will enjoy your work.

Good Luck to each and everyone of you.

And many thanks for your efforts from the makers of \_\_\_\_\_ cigarettes.

### **SOME FACTS ABOUT CIGARETTE SMOKING IN MARYLAND**

- o Cigarettes cause eighty percent of the lung cancer in Maryland
- o Five thousand Marylanders develop new cancers annually because of smoking: cancers of the lung, lip, mouth, esophagus, larynx, pancreas, stomach, bladder, and kidney
- o Maryland has the second highest death rate from lung cancer among white males in the nation and ranks in the top five states for other races and sexes in lung cancer deaths
- o Thirty-four percent of Maryland adults smoke compared to thirty percent as a national average
- o Seventy-five hundred Marylanders have heart attacks each year due to cigarette smoking
- o Seven thousand Marylanders die prematurely each year due to cigarette smoking
- o Mothers-to-be who smoke increase the risk of a low birth-weight baby (200 percent increased risk), miscarriage (55 percent increased risk), infant death (44 percent increased risk), and Sudden Infant Death Syndrome (50 percent increased risk)
- o Infants of parents who smoke have a higher frequency of hospitalization for pneumonia, bronchitis, and acute respiratory illness and infections during the first year of life
- o Young children of smokers experience more chronic middle ear infections
- o Children of non-smoking parents are less likely to become smokers

## SMOKING FACTS

1,000 people quit smoking every day--by dying. That is equivalent to 2 fully loaded jumbo jets crashing every day, with no survivors. (*Where There's No Smoke*. Videotape. American Cancer Society, 1988)

Cigarette smoking causes more premature deaths than do all the following together: acquired immunodeficiency syndrome, cocaine, heroin, alcohol, fire, automobile accidents, homicide, and suicide. (Warner, K. "Health Implications of a Tobacco-Free Society," *Journal of the American Medical Association*, Vol. 258, No. 15, October 16, 1987)

More than 30% of Americans don't know that smoking doubles the risks of heart attack. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

A heavy smoker is 24 times more likely to develop lung cancer than a non-smoker. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

87% of lung cancer patients die within 5 years of diagnosis. (*1986 Cancer Facts and Figures*. American Cancer Society, 1986.)

Tobacco consumption is implicated in 30% of all cancer deaths, with lung cancer by itself accounting for one fourth of all cancer fatalities. (Warner, K. "Health Implications of a Tobacco-Free Society," *Journal of the American Medical Association*, Vol. 258, No. 15, October 16, 1987)

Smoking is responsible for about 170,000 premature heart attacks in the United States each year. Heart disease is the major cause of death for American Women. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

As many as one-third of heavy smokers age 35 will die before age 85 of diseases caused by their smoking. (Mattson, M., Pollack, E. and Cullen, J. "What Are the Odds that Smoking Will Kill You?" *American Journal of Public Health*, Vol. 77, No. 4, April, 1987.)

Cigarette smoking is responsible for almost 16 percent of all deaths (1 of 7 deaths) in the United States each year. ("Cigarette Smoking in the United States, 1986" *Morbidity and Mortality Weekly Report*, Vol. 36, No. 35, September 11, 1987)

More than 2,500 deaths of infants under one-year-old could be attributed to smoking by the mother. ("Cigarette Smoking in the United States, 1986" *Morbidity and Mortality Weekly Report*, Vol. 36, No. 35, September 11, 1987)

Americans dying of smoking-related causes before age 65 lost a total of 949,924 potential years of life. ("Cigarette Smoking in the United States, 1986" *Morbidity and Mortality Weekly Report*, Vol. 36, No. 35, September 11, 1987)



With one of every three or four smokers' deaths attributable to tobacco use, the life-expectancy gain for people who would have experienced a tobacco-related death would be approximately 1 1/2 decades. (Warner, K. "Health Implications of a Tobacco-Free Society," *Journal of the American Medical Association*, Vol. 258, No. 15, October 16, 1987)

Sudden infant death syndrome (crib death) occurs 2 1/2 times more often among babies of smoking mothers. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

Ten years after quitting, a former smoker's risk of lung cancer returns to that of a nonsmoker. (*Smoking and Health: A Report of the Surgeon General*, U. S. Department of Health and Human Services, 1979)

Attainment of a tobacco free society ultimately would produce a national life-expectancy gain comparable with that which would accompany the complete elimination of all cancers not caused by tobacco use. Warner, K. "Health Implications of a Tobacco-Free Society," *Journal of the American Medical Association*, Vol. 258, No. 15, October 16, 1987)

When both parents smoke, their children are more than twice as likely to smoke. And a teenager with an older brother or sister who smokes is three times more likely to smoke. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

Smokers who inhale retain 70% of small particles of materials such as tar and nicotine in their lungs. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

Almost 80% of patients with emphysema smoke. If you smoke, you are five times more likely to develop chronic bronchitis and severe lung infection. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

In smokers emphysema leads to severe disability and death even more often than cancer does. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

Lung cancer is one type of cancer that can almost always be prevented by not smoking. (*Smoking and Women*. American College of Obstetrics and Gynecology, April 1986.)

The American Cancer Society estimates that cigarette smoking is responsible for 85% of lung cancer cases among men and 75% among women--about 83% overall. (*1986 Cancer Facts and Figures*. American Cancer Society, 1986)

The cancer rate for male cigarette smokers is more than double that of nonsmokers, and the rate for female smokers is 67% higher than for nonsmokers. (*1986 Cancer Facts and Figures*. American Cancer Society, 1986)

Smoking accounts for about 30% of all cancer deaths, is a major cause of heart disease, and is linked to conditions ranging from colds and gastric ulcers to chronic bronchitis and emphysema. (*1986 Cancer Facts and Figures*. American Cancer Society, 1986)

A Federal Trade Commission staff report states that although most Americans are aware of a health risk in smoking, more than 40% don't know smoking causes most lung cancer, and 20% don't know it can cause cancer at all. More than 30% are unaware that smoking doubles a person's risk of heart attack, and 50% of women do not know that smoking during pregnancy increases the risk of stillbirth and miscarriage. (*1986 Cancer Facts and Figures*. American Cancer Society, 1986)

Currently, the overall excess death rate in a year from all causes, irrespective of the quantity of cigarettes smoked is 70% higher than that for non-smokers. This means that for every 100 non-smokers who die during a year, 170 smokers will die. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

Between 2.5 and 4 out of every 10 smokers will die because of their smoking. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

Death from heart attacks is 3 times more common in smokers than in non-smokers. For those smoking more than a pack a day, the risk is about 5 times greater. Once a smoker quits, risk of heart attack tends to fall fairly quickly to that of the non-smoker. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

Among men aged 40-50, deaths from coronary heart disease are nine times more common in smokers than in non-smokers. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

When 12 people die from lung cancer, 11 will have been smokers. Smokers who consume more than two packs a day have lung cancer death rates 15-25 times greater than non-smokers. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

Smokers are six times more likely to die from the crippling respiratory diseases, emphysema, and chronic bronchitis. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

There are indications that retarded fetal growth from smoking may affect physical growth, mental development and behavioral characteristics of children up to the age of 11. (Chapman, S. *The Lung Goodbye (2nd Edition)*. Penang, Malaysia: International Organization of Consumers Unions, 1985)

More than six million Americans under the age of 18 use tobacco; they spend nearly one billion dollars per year on tobacco products. (Tye, J. *Stop Teenage Addiction to Smoking*, 1987)

Sixty percent of all young people who smoke or use smokeless tobacco start by the age of 14; more than 90% start before the age of 21. (Tye, J. *Stop Teenage Addiction to Smoking*, 1987)

Young people who smoke are 15 times more likely than non-smokers to "graduate" to narcotic drugs. (Tye, J. *Stop Teenage Addiction to Smoking*, 1987)

To replace the adults who quit smoking or die of cigarette-induced diseases, the tobacco industry must recruit more than 5,000 children every day. (Tye, J. *Stop Teenage Addiction to Smoking*, 1987)

More money is spent advertising and promoting tobacco products than any other consumer product. (Tye, J. *Stop Teenage Addiction to Smoking*, 1987)

The total of smoking-related health care costs and lost productivity costs amounts to \$2.17 per pack of cigarettes. (Smoking-Related Deaths and Financial Costs. Staff Memo. Office of Technology Assessment, September, 1985)



# POLICE DEPARTMENT ... CITY OF BALTIMORE



601 E. FAYETTE STREET

BALTIMORE, MARYLAND 21202

896 - 2525

Area Code 301

EDWARD V. WOODS  
Commissioner

April 1, 1991

JOSEPH W. NIXON  
Administrative Bureau

HARWOOD W. BURRITT  
Information Management Bureau

RONALD J. MULEN  
Operations Bureau

MICHAEL C. ZOTOS  
Services Bureau

Deputy Commissioners

The Honorable Mary Pat Clarke  
President  
Baltimore City Council  
Room 409, City Hall  
Baltimore, Maryland 21202

Attention: Ms. Lorraine Laszczynski

Dear President Clarke:

This department has reviewed City Council Bill 1265, Distribution of Tobacco Samples and Coupons, and takes no position on its passage.

This legislation would prohibit the distribution of tobacco samples and coupons in public places in Baltimore City.

City Council Bill 1265 would have no impact on the operations of the Baltimore Police Department.

Sincerely,

*Edward V. Woods*  
Edward V. Woods  
Commissioner



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601 E. FAYETTE STREET

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CITY OF BALTIMORE

KURT L. SCHMOKE, Mayor



OFFICE OF COUNCILMANIC SERVICES

421 City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202  
396-5607

TO: Honorable Carl Stokes, Chair and members of the Health Sub-Committee

FROM: Bill Driscoll, Legislative Policy Analyst

DATE: May 15, 1991

RE: Hearing to be held at 11:00 a.m. on Friday May 24, 1991 for CC 1265 DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

CC 1265 DISTRIBUTION OF TOBACCO SAMPLES AND COUPONS

Sponsored By: Councilman Bell, Dixon, D'Adamo, Reeves, President Clarke, Welch, and Stokes

Agency Reports: Health - Favorable  
Police - No Position

Background: This bill would prohibit the public distribution of tobacco products which are " free " or " below cost " in Baltimore City. There would also be a prohibition against public place distribution of coupons that could be redeemed for " free " or " below cost " tobacco products. There are exemptions for distribution of coupons through publications in which the coupon is incidental. Also exempted would be coupons sent through the mail. Coupons distributed at private functions would be exempted. Finally coupons could be distributed to employees (those over the age of majority) of companies who sell, manufacture or distribute tobacco products. The penalty for violation of the ordinance would be a fine of not more than \$25.00 per offence.